

## Where can I find an attorney?

You may call the North Carolina Bar Association's Lawyer Referral Service at (919) 677-8574, Legal Aid of North Carolina toll-free at (866) 219-5262, or check your local telephone directory.

## Where can I get a copy of the Employment Security Law?

The Employment Security Law is found in Chapter 96 of the North Carolina General Statutes and in Title 4, Chapter 24 of the North Carolina Administrative Code. You can find a copy of the governing law on the DES website at <https://www.des.nc.gov>, the General Assembly's website at <https://www.ncleg.gov>, or the Office of Administrative Hearings' website at <https://www.oah.nc.gov>.

## CONTACT INFORMATION

### Board of Review

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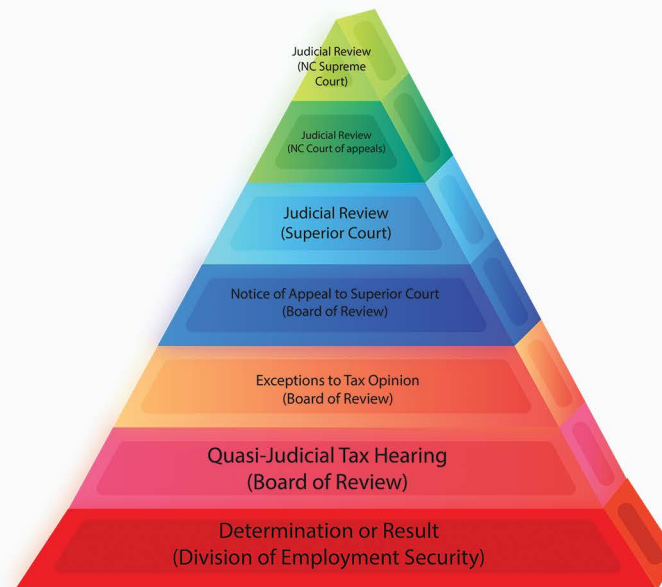
# APPEALING A TAX OPINION

## FILING EXCEPTIONS TO A TAX OPINION AND OBTAINING JUDICIAL REVIEW IN A TAX CASE

This pamphlet contains important information about your rights under the Employment Security Law. It contains information about filing exceptions and seeking judicial review of an unfavorable decision in a tax liability case.

If you do not comply with all the requirements established by law, you may lose your right to appeal.

## LEVELS OF APPEALS - TAX



**For claims filed on or after June 30, 2013, claimants are subject to repayment of any overpayment of benefits resulting from any decision that is later reversed on appeal.**  
**N.C. Gen. Stat. § 96-18(g)(2).**



**NC DEPARTMENT  
of COMMERCE**  
EMPLOYMENT SECURITY

**For more information about appeals in tax liability cases, visit the "Frequently Asked Questions" (FAQ) section of the North Carolina Department of Commerce, Division of Employment Security's website at [www.des.nc.gov](http://www.des.nc.gov)**

*Usted puede obtener una copia de este folleto en español en la oficina de l Departamento de Comercio, División del Desempleo de Carolina del Norte*



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## **The tax hearing is over, and I just received the Tax Opinion from the North Carolina Department of Commerce, Board of Review. What does this mean?**

The Board members considered all the evidence given in the case and made a decision. The decision, called a Tax Opinion, was mailed to all parties in the case. See 04 N.C. Admin. Code 24F .0308.

## **What can I do if I disagree with the Tax Opinion?**

You can accept the decision made in the Tax Opinion, or you can ask the Board to reconsider its decision. To ask the Board to reconsider, you must first file exceptions to the decision. See N.C. Gen. Stat. § 96-4(q).

## **What are exceptions?**

Exceptions are the specific reasons that you disagree with the Tax Opinion. Exceptions must be filed with the Board in writing. There is no special form for filing exceptions to an opinion. See N.C. Gen. Stat. § 96-4(q).

## **What is the deadline for filing my exceptions?**

Exceptions must be received by the Board within 10 days after you get notice of the Tax Opinion. See N.C. Gen. Stat. § 96-4 (q).

## **What happens after I file exceptions?**

The Board members will review your exceptions, the record of the case, and the applicable provisions of the Employment Security Law. The Board will then issue a written decision addressing your exceptions. The decisions are generally called an *Order Granting Exceptions*, an *Order Overruling Exceptions*, or an *Order Granting Exceptions in Part, and Overruling Exceptions in Part*. The name of the order will be located at the top right on the first page of the decision. See N.C. Gen. Stat. § 96-4(q).

## **What is an *Order Granting Exceptions*?**

An *Order Granting Exceptions* means that the Board ruled in your favor regarding the reasons that you gave for disagreeing with the Tax Opinion. The Board may set aside the Tax Opinion if it grants your exceptions and decides that it should have reached a different conclusion.

## **What is an *Order Overruling Exceptions*?**

An *Order Overruling Exceptions* means that the Board did not rule in your favor regarding the reasons that you gave for disagreeing with the Tax Opinion and will not change the decision it rendered in the Tax Opinion.

## **What does an *Order Overruling Exceptions in Part, and Granting Exceptions in Part* mean?**

An *Order Overruling Exceptions in Part, and Granting Exceptions in Part* means that the Board ruled in your favor regarding some of your exceptions and upheld its previous decision with regard to the rest of your exceptions.

## **If I disagree with the Board's ruling on my exceptions, can I take the case to court?**

Yes. You may ask that a superior court judge review the case. A request for superior court review is called a petition for judicial review. You will have a chance to attend a hearing before the judge. If you plan to take the case to court, you must first file exceptions to the Tax Opinion and get a decision from the Board on the exceptions before seeking judicial review. See N.C. Gen. Stat. § 96-4(q).

## **What is the deadline for giving notice that I want judicial review?**

You must file a notice of appeal with the Board within 10 days from the date that you receive notice from the Board that your exceptions were overruled. See N.C. Gen. Stat. § 96-4(q). The case caption should be written as stated in N.C. Gen. Stat. § 96-4(r). See N.C. Gen. Stat. §§ 96-4 (q) and (r).

## **What must I do after I notify the Board that I want the case reviewed by a superior court judge?**

Within 10 days after serving your notice of appeal on the Board, you must file an appeal statement explaining your specific reasons for disagreeing with the decision overruling your exceptions. The statement must be filed with the Board. See N.C. Gen. Stat. § 96-4(q).

## **What happens after I file my appeal statement explaining the reasons that I disagree with the Board's decision to overrule my exceptions?**

Within 30 days of receiving your appeal statement, the Board will file the record of the case, including your exceptions, with the superior court in the county where you live, maintain a place of business, or conduct business. If the appealing party lives or conducts business out-of-state, the record will be filed in the Superior Court of Wake County in Raleigh, NC. Each party will receive written notice of the time, date, and location of the court hearing.

## **What does a judge look for when reviewing the record in a tax case?**

The superior court functions as an appellate court when reviewing the Board's decisions. The judge will not take additional evidence. The evidence in the case was taken at the hearing before the Board. The judge will review the entire record of the case. The record consists of the documents and other evidence presented as evidence during the hearing before the Board. After reviewing the record, the judge must determine: (1) whether there was any competent evidence before the Board to support its findings of fact; and (2) whether the facts support the conclusions of law made by the Board.

## **Am I required to have legal representation for the judge to hear my petition for judicial review?**

Maybe. Legal representation in judicial proceedings, such as in the superior court, must comply with Chapter 84 of the North Carolina General Statutes and the North Carolina State Bar Rules. You should consult an attorney for legal advice about your case and the procedures that you must follow.