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Protect Your Statewide Non-Residential Development Fee Refund

Developers who have obtained or will obtain a preliminary or final site plan approval for a non-residential development on or after July 1, 2013 and before January 1, 2015 and who have paid the Statewide Non-Residential Development Fee to the municipality or the State, as applicable, will be entitled to a refund of their payment if the Statewide Non-Residential Development Fee moratorium bill (S-1011/A-1907) becomes law. The bill has passed both houses of the New Jersey Legislature and is currently awaiting the Governor's signature.

However, if the municipality has already spent the Statewide Non-Residential Development Fee which the developer paid, then it does not have to return the fee. Therefore, developers who have paid the fee are at risk of losing their rights to a refund, if a municipality spends the fee before the moratorium bill becomes law.

Fortunately, there is an inexpensive way for developers to protect themselves from this risk. If the developer files a challenge to the fee, which can be done by a letter, with the Director of the [New Jersey Division of Taxation](#), the municipality cannot spend the fee, but must hold it in an interest bearing escrow account until the challenge is resolved. The Director has 45 days to decide the challenge. The developer can then appeal the Director's decision to the New Jersey Tax Court. As with the challenge to the Director, during this appeal, the municipality cannot spend the fee and must hold it in an interest bearing escrow account.

These measures should protect any Statewide Non-residential Development fees paid between June 30, 2013 and January 1, 2015, from municipal expenditure until the moratorium bill becomes law.

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