§ 804. Review; assessment of additional tax. Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if the proceeding is commenced within ninety days after the giving of the notice of such final determination, provided, however, that any such proceeding shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law, shall first be deposited and an undertaking filed, in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules if the proceeding is commenced within ninety days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

Except in the case of a wilfully false and fraudulent return with intent to evade the tax, no assessment of additional tax shall be made with respect to the tax imposed under this article, after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by local law, the tax may be assessed at any time.