

CHAPTER 2
CONDUCT OF APPEALS, RULES OF PRACTICE AND PROCEDURE

[Prior to 12/17/86, Revenue Department[730]]

701—2.1(421,17A) Definitions. For the purposes of these rules the following definitions shall govern:

1. “*Board*” or “*state board*” shall refer to the state board of tax review created by chapter 342 of the Acts of the 62nd General Assembly.
2. “*Department*” shall refer to the Iowa department of revenue and finance.
3. “*Director*” shall refer to the director of the Iowa department of revenue and finance.
4. “*Secretary*” shall refer to the secretary of the state board of tax review.

701—2.2(421,17A) Notice of appeal. Jurisdiction is conferred upon the state board by giving written notice to the department within 30 days of the rendering of the decision, order or directive from which such appeal is taken. However, the state board does not have jurisdiction with regard to a final equalization notice issued pursuant to Iowa Code section 441.49, unless written notice is given within 10 days of the date of the order in accordance with rule 701—71.15(441).

Notice of appeal may be given by certified mail with return receipt requested addressed to the department of revenue and finance to the attention of the director; or, by service on the director or an assistant director as provided by the Iowa rules of civil procedure.

Notice shall be proved by affidavit of mailing signed by appellant or the appellant’s duly authorized representative, with return receipt and a copy of the notice attached filed with the secretary or, filing with the secretary a copy of the notice of appeal with return of service attached.

This rule is intended to implement Iowa Code sections 441.49 and 421.2.

701—2.3(421,17A) Contents of notice of appeal. The written notice of appeal shall contain:

1. A caption in the following form:

BEFORE THE IOWA STATE BOARD OF TAX REVIEW
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ (state taxpayer’s name, address and designate type of proceeding e.g., income tax refund claim)	☆ ☆ ☆ ☆	NOTICE OF APPEAL DOCKET NO. _____ (filled in by Board)
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2. Substantially state in separate numbered paragraphs the following:
 - a. The appellant’s name and legal residence;
 - b. The date appellant received the director’s decision, order or directive;
 - c. The amount of assessment, nature of tax, year or other period, date of assessment, and approximate amount of total tax liability in controversy;

- d.* A clear and concise assignment of each and every error;
- e.* A clear and concise statement of the facts upon which the affected taxpayer relies as sustaining the assignment of error;
- f.* The relief requested;
- g.* The signature of affected taxpayer or counsel, together with address to which all subsequent correspondence, notice or papers shall be served or mailed.

701—2.4(421,17A) Certification by director. Within 30 days after notice of appeal is given the director shall certify to the board all records, documents, reports, audits, a copy of the decision, order or directive from which appeal is taken and all other information pertinent thereto.

701—2.5(421,17A) Motions and special appearances. All motions or special appearances shall be in writing and shall be filed with the state board within 30 days after the filing of the pleading attacked and shall set forth the reasons and grounds thereof. The state board shall act upon such motions or special appearances as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit.

701—2.6(421,17A) Responsive pleadings. Responsive pleadings shall be filed with the state board within 30 days after the filing of pleading responded to, unless attacked by motion or special appearance as provided in 2.5(421,17A), and then responsive pleadings shall be filed within 30 days after ruling on said motion or special appearance.

701—2.7(421,17A) Docketing. Appeals shall be assigned consecutive file numbers. The state board shall cause to be kept a well-bound, blank record book with suitable index. There shall be entered therein each action and each act done with the proper dates as follows:

1. The title of the appeal.
2. Brief statement of the type of tax, year or period, date of assessment, and the amount involved including tax, penalty, interest and costs.
3. The manner and time of service of notice of appeal.
4. The appearance of all parties.
5. Notice of hearing, together with manner and time of service.
6. The decision of the state board or other disposition of the case and the date thereof.

701—2.8(421,17A) Filing of papers. After filing proof of giving notice, all motions, pleadings, briefs and other papers to be filed shall be in quadruplicate with the secretary who shall send copies to members of the state board and to all other parties of record, unless represented by counsel of record, then to such counsel.

701—2.9(421,17A) Hearing an appeal. Hearing an appeal shall be de novo. The case may be submitted on an agreed statement of the facts with written briefs and arguments. Or, the state board, on its own motion or at the written request of any party, may allow the production of evidence, by oral testimony or otherwise, and the submission of the case on oral arguments, or any combination of the foregoing.

Notwithstanding the aforementioned provisions of this rule, in the event that the case consists of a review by the board of a decision of the director in a contested case proceeding, the board will only consider those issues or selected issues actually presented at the contested case proceeding where such issues were of the type which by statute were entrusted to the director for determination. Further, in such review of the decision of the director on these issues presented at the contested case proceeding, the board shall not itself hear any further evidence with respect to those issues, but it shall afford each party an opportunity to present briefs and oral arguments.

This rule is intended to implement Iowa Code sections 421.1(4) and 17A.15(5).

701—2.10(421,17A) Amendments. The board, upon its own motion or upon motion of either party showing good cause filed prior to setting the appeal for hearing, may order a party to file a further and better statement of the nature of the claim or defense. Such a motion filed by a party shall point out defects complained of and the details desired.

The state board may set such motions for hearing or may rule thereon ex parte.

The state board may at any time during the course of the hearing grant motion of either party to amend to conform to the proof.

701—2.11(421,17A) Appearances by appellant. Any appellant may appear in person, or, in the case of corporations, partnerships or other associations, by its duly authorized representative, or by an attorney at law or a certified public accountant authorized to practice in the state of Iowa.

701—2.12(421) Authority of chairperson to enter prehearing and procedural orders. During periods when the board is not in session, the chairperson, or other member designated by the chairperson, may enter preliminary orders for a party to file a better statement of the nature of a claim or defense under rule 701—2.10(421,17A) or a continuance under rule 701—2.14(421,17A) or order a prehearing conference before the board to be conducted under rule 701—2.13(421,17A). The chairperson, or other member designated by the chairperson, may also enter preliminary orders on discovery disputes or other prehearing matters which should be timely resolved in order to assist the progress of the appeal toward final hearing before the board. The secretary shall immediately mail a copy of any preliminary order entered under this rule to the two members of the board who did not participate in the order. All orders entered under this rule shall become the action of the board unless both members of the board who did not participate in the order notify the secretary of their objection within five days of its receipt by them. In case both members of the board who did not participate in the order object, then the order shall be null and void. The secretary shall notify the parties of the order entered under this rule, when it becomes the order of the board. The chairperson, or other member designated by the chairperson, may grant a continuance of the hearing on appeal for just cause even though there is insufficient time before the scheduled hearing for other members of the board to object to the continuance.

701—2.13(421,17A) Prehearing procedure. The state board, on its own motion or on the written request of any party, may order a prehearing conference to consider:

1. The desirability of amending pleadings.
2. Agreeing to the admission of facts, documents or records not really controverted, to avoid unnecessary proof.
3. Limiting the number of witnesses.

4. Settling any facts of which the state board is to be asked to take judicial notice.
5. Stating and simplifying the factual and legal issues.
6. Consolidation or separation of cases.
7. Possibility of compromise.
8. Manner of submission of case.
9. Any other matter which may aid, expedite or simplify the hearing.

The state board shall make an order reciting any action taken at the prehearing conference which will control the subsequent course of the case relative to matters it includes, unless modified to prevent manifest injustice.

701—2.14(421,17A) Continuances. Any hearing may be continued for good cause. Requests for continuance prior to the hearing shall be in writing, promptly filed with the state board immediately upon the cause becoming known.

701—2.15(421,17A) Place of hearing. Unless otherwise designated by the state board, the hearing shall be held in the office of the State Board of Tax Review, Hoover State Office Building, Des Moines, Iowa 50319.

701—2.16(421,17A) Members participating. All appeals shall be heard by a minimum of two members of the state board or a hearing officer. Orders and decisions shall be signed by one member of the board and shall name members participating. Decisions shall affirm, modify, remand or reverse the director's decision, order or directive. A majority decision by the state board shall govern and control. Written dissenting decisions may be filed.

701—2.17(421,17A) Presiding officer. The chairperson of the state board, the chairperson's designated member or a hearing officer appointed according to Iowa Code chapter 17A shall preside at the hearing.

701—2.18(421,17A) Rulings of the chair. The presiding member shall rule upon motions, objections and other evidentiary matters arising during a hearing, or such rulings may be deferred to the state board or reserved.

701—2.19(421,17A) Rules of evidence. Although the state board is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the state board may give probative effect to evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The state board shall give effect to the rules of privilege recognized by law. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the state board.

701—2.20(421,17A) Transcript of hearing. Hearings shall be stenographically reported and a transcript thereof shall be made if in the opinion of the state board a permanent record is deemed necessary. Either party may provide a certified court reporter at their own expense.

701—2.21(421,17A) Suspension or alterations of rules. The board may in its discretion, on its own motion, or upon request by the parties, amend, modify or suspend any of its rules or may adopt other or different rules for the conduct of hearings and procedure before the board.

701—2.22(17A) Declaratory rulings. The state board will not consider or rule upon petitions for declaratory rulings as to the applicability of any statutory provision, rule or other written statement of law or policy, decision or order. Upon request, the state board may review a ruling of the department of revenue and finance disposing of a petition for a declaratory ruling properly submitted to the department of revenue and finance.

701—2.23(17A) Petitions for rule making. The state board will not consider any petitions of interested persons requesting the promulgation, amendment or repeal of a substantive tax rule. Such petitions should be submitted to the department of revenue and finance. The board will, however, consider and dispose of petitions of interested persons requesting the amendment or repeal of procedural or administrative rules of the state board of topics covered in chapter 1 or 2 of these rules or the promulgation of such rules.

These rules are intended to implement Iowa Code sections 421.1, 441.49 and chapter 17A.

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CHAPTERS 3 and 4

Reserved