

## REVENUE DEPARTMENT[701]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 421.6, the Department of Revenue hereby gives Notice of Intended Action to rescind Chapter 1, “State Board of Tax Review—Administration,” and Chapter 2, “State Board of Tax Review—Conduct of Appeals and Rules of Practice and Procedure,” and to amend Chapter 6, “Organization, Public Inspection,” Chapter 7, “Practice and Procedure Before the Department of Revenue,” Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Chapter 11, “Administration,” Chapter 67, “Administration,” Chapter 71, “Assessment Practices and Equalization,” Chapter 73, “Property Tax Credit and Rent Reimbursement,” Chapter 76, “Determination of Value of Railroad Companies,” Chapter 77, “Determination of Value of Utility Companies,” Chapter 80, “Property Tax Credits and Exemptions,” Chapter 81, “Administration,” Chapter 85, “Tobacco Master Settlement Agreement,” and Chapter 103, “State-Imposed and Locally Imposed Hotel and Motel Taxes—Administration,” Iowa Administrative Code.

This proposed rule making revises the Department of Revenue’s rules to conform to 2015 Iowa Acts, chapter 109 (“the Act”). The Act caused the State Board of Tax Review to be dissolved upon the final disposition of all cases pending before the board on the effective date of the Act, or July 1, 2016, whichever occurs earlier. At the time of this rule making, the State Board of Tax Review has disposed of all of its pending cases and has been dissolved. The Act also provided that appeals previously brought before the State Board of Tax Review will now be heard by the Director of Revenue. In response to the Director’s having an appellate role in certain tax areas, the Iowa Code was amended to provide that the Department of Revenue shall become the agency actor in place of the Director.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 17, 2016. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Request for a public hearing must be received by May 17, 2017.

After analysis and review of this rule making, the Department estimates that there will be a small fiscal impact in the elimination of the State Board of Tax Review, as it will eliminate the state funding of the Board. No fiscal impact has been found for the other portions of the bill that transfer the former responsibilities of the Director of Revenue to the Department.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 421.60, 425.7, 425.17, 425.18, 425.26, 425.27, 425.29, 425.31, 426A.6, 426C.7, 426C.8, 428.28, 428.29, 429.1, 429.2, 429.3, 433.1, 433.2, 433.3, 433.4, 433.5, 433.7, 433.8, 433.9, 434.2, 434.12, 434.14, 434.15, 434.16, 434.17, 434.22, 437.2, 437.4, 437.5, 437.6, 437.7, 437.8, 437.9, 437.10, 437.12, 438.4, 438.5, 438.6, 438.7, 438.8, 438.9, 438.11, 438.12, 438.13, 438.14, 438.15, 440.2, 440.5, 440.6, 440.7, 441.17, 441.21, 441.24, 441.26, 441.47, and 441.48 and 2015 Iowa Acts, chapter 109.

The following amendments are proposed.

ITEM 1. Rescind and reserve **701—Chapter 1.**

ITEM 2. Rescind and reserve **701—Chapter 2.**

ITEM 3. Amend subrules 6.1(1) and 6.1(2) as follows:

**6.1(1) *Establishment of the department.*** ~~By an Act of the general assembly (chapter 1245, Acts of the 71st GA), a department of revenue and finance was created in lieu of three separate state agencies. The department is administered by the director with a three-member state board of tax review established within the department for administrative and budgetary purposes. As to the organization and functions of the state board of tax review, see rules contained in 701—Chapters 1 to 5. Iowa Code section 421.2 establishes a department of revenue to be administered by a director of revenue.~~

~~Effective July 1, 2003, the Iowa department of revenue and finance is titled the Iowa department of revenue.~~

The department of revenue in recognizing its responsibilities has adopted the following creed to guide and lend direction to its endeavors:

“The Department of Revenue is dedicated to serving the citizens of Iowa and other public officials, while performing the following mission:

~~“Collect all taxes due, which any person may be required by law to pay, but no more. “To serve Iowans and to support government services in Iowa by collecting all taxes required by law, but no more.~~

~~“In carrying out this mission the department resolves to provide the best service possible in a cordial and helpful manner and to provide maximum opportunity and incentive for the professional growth and development of all our employees.”~~

The office of the department is maintained at the seat of government in the Hoover State Office Building, 1305 East Walnut Street, P.O. Box 10460, Des Moines, Iowa ~~50306~~ 50319.

**6.1(2) *Organization of the department.*** The department consists of the office of the director; and the following divisions: property tax, tax policy and communications, internal services, tax management, and research and analysis, process improvement and innovation; and the state board of tax review. For ease of administration, the director has organized the department’s divisions in some instances into bureaus, sections, subsections, and units.

*a. The office of the director.* ~~The office of the director consists of the director and the following areas within this office: strategic planning and public/private partnership.~~ The essential functions of the director’s office of the director include:

(1) Overall management of the agency ~~and review of protest and revocation cases on appeal.~~

(2) Review of protest and revocation cases on appeal.

~~(2) (3)~~ Strategic planning and coordination of the future operations and goals of the department.

~~(3) (4)~~ ~~Providing~~ Provision of financial checks and balances within the department.

~~(4) (5)~~ ~~Public/private partnership provides for~~ Facilitation of a working relationship between the public sector and the private sector.

*b. Divisions.*

(1) Property tax division. The property tax division provides technical assistance and training to local assessing jurisdictions, ensures equal assessment of property, and is responsible for determining valuation for ~~railroads, electric, water, and pipeline companies~~ centrally assessed property.

(2) Tax management division. The tax management division includes the processing services section, the compliance services section and the collection services section. The essential functions of the tax management division include:

1. Functions performed by the processing services section, ~~including which is responsible for~~ registration of taxpayers, deposit of tax revenue, processing of tax returns, ~~records management of~~ records, and provision of mail services;

2. Functions performed by the compliance services section, including office examination of returns, identification of nonfilers and underreporters of income, assessment, and review and approval of refund claims. The compliance services section also performs field audits and is responsible for audits for criminal prosecution; and

3. Functions performed by the collection services section, which is responsible for the timely collection of past-due tax liabilities, as well as collection activities for ~~the judicial branch of state government and for~~ other state agencies and local governments.

(3) Tax policy and communications division. The tax policy and communications division consists of audit services, taxpayer services, and policy. The essential functions of the tax policy and communications division include:

1. Functions performed by the audit services section, which ~~develops and reviews audit programs and completed audits, manuals, and guidelines for auditors, and which~~ provides support for the compliance services section, and coordinates the administrative process of protests and protest resolution ~~and includes the clerk of the hearings section;~~

2. Functions performed by the taxpayer services section, which is responsible for responding to inquiries from the public, ~~practitioners and other agencies, drafting brochures and graphics, completing returns,~~ maintaining the department's online tax research library and Web page site, and coordinating public education by the department; and

3. Functions performed by the tax policy section, which is responsible for ~~the interpretation of legislation, statutes and cases~~ interpreting state and federal law, developing and maintaining rules for the department and monitoring tax-related issues considered by the general assembly and the United States Congress. This section also drafts declaratory orders, offers technical advice and completes studies and reports.

(4) Internal services division. The essential functions of the internal services division include:

1. Functions performed by the central accounting team, which include operating budget development, maintenance, and reporting; and

2. Functions performed by the employee resource team, which governs personnel activities, payroll, benefits, quality of the environment and customer service;

3. Functions performed by the application development section, including system analysis, programming, database administration and support, in coordination with the information technology enterprise of the department of administrative services; and

4. Functions performed by the technical planning and support section, including providing technical support to the department on software and hardware issues, in coordination with the information technology enterprise of the department of administrative services.

(5) Research and analysis division. The essential functions of the research and analysis division include:

1. Functions performed by the research and program analysis section, which provides research on tax issues, compiles statistical tax data, undertakes tax credit tracking and analysis, projects state receipts and refunds, and evaluates the fiscal impact of tax legislation and policies on the state budget; and

2. Functions performed by the performance analysis section, which develops and maintains performance measures for the department to align the department's resources, systems, and employees to meet strategic goals and priorities.

~~(6) Process improvement and innovation division. The essential functions of the process improvement and innovation division include:~~

~~1. Functions performed by the application development section, including system analysis, programming, database administration and support, in coordination with the information technology enterprise of the department of administrative services;~~

~~2. Functions performed by the technical planning and support section, including providing technical support to the department on software and hardware issues, in coordination with the information technology enterprise of the department of administrative services; and~~

~~3. Functions performed by the process improvement section, including identifying, analyzing, and improving existing processes within the department.~~

ITEM 4. Amend subrule 7.8(7) as follows:

**7.8(7)** The protest shall substantially state in separate numbered paragraphs the following:

a. Proper allegations showing:

- (1) Date of assessment department action, such as the assessment notice, refund denial, etc.;
- ~~(2) Date of refund denial;~~
- ~~(3)~~ (2) Whether the protester failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
- (4) (3) Whether the protest involves the appeal of a refund claim after six months from the date of filing the refund claim because the department failed to deny the claim;
- (5) (4) The assessment, refund claim, and refund denial, copies Copies of which shall be attached the documented department action, such as the assessment notice, refund claim, and refund denial letter;
- (6) (5) Other items that the protester wishes to bring to the attention of the department; and
- (7) (6) A request for attorney fees, if applicable.
- b. The type of tax, the taxable period or periods involved and the amount in controversy.
- c. Each error alleged to have been committed, listed in a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.
- d. Reference to any particular statute or statutes and any rule or rules involved, if known.
- e. Description of records or documents ~~which that~~ were not available or were not presented to department personnel prior to the filing of the protest, if any. Copies of any records or documents that were not previously presented to the department shall be provided.
- f. Any other matters deemed relevant and not covered in the above paragraphs.
- g. The desire of the protester to waive informal or contested case proceedings if waiver is desired. Unless the protester so indicates a waiver, informal procedures will be initiated.
- h. A statement setting forth the relief sought by the protester.
- i. The signature of the protester or that of the protester's representative, the addresses of the protester and of the protester's representative, and the telephone number of the protester or the protester's representative. A copy of the power of attorney for the protester's representative shall be attached.

ITEM 5. Amend paragraph **7.17(10)“b”** as follows:

- b. *Finality of decision.* A decision entered in an expedited case proceeding shall not be reviewed by the director, ~~state board of tax review~~, or any other court; and shall not be treated as a precedent for any other case.

ITEM 6. Amend paragraph **10.8(1)“f”** as follows:

- f. The taxpayer presents proof that the taxpayer at the due date of the return, deposit form, or payment relied upon applicable, documented, written advice made specifically to the taxpayer, the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service. The advice should be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The advice must be current and not superseded by a court decision, ruling of a quasi-judicial body such as an administrative law judge; or the director, or the state board of tax review, or by the adoption, amendment, or repeal of a rule or law.

ITEM 7. Amend subrule 11.4(5) as follows:

**11.4(5) *Preservation of records.*** The records required in this rule shall be preserved for a period of five years and open for examination by the department during this period of time. ~~*McCarville v. Ream*, 247 Iowa, 72 N.W.2d 476 (1956).~~

The department shall be able to examine the records of a taxpayer for a period of years as is necessary to adequately determine if tax is due in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review or~~ district court or ~~supreme~~ an appellate court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and the department will compute the tax liability as authorized in Iowa Code section ~~422.54~~ 423.37.

ITEM 8. Amend rule **701—11.4(422,423)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~422.47, 422.50, 422.54, 423.16 and 423.21~~ 423.37, 423.41, and 423.45.

ITEM 9. Amend subrule 67.3(13) as follows:

**67.3(13) General requirements.** If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review, or district court or supreme~~ an appellate court, books, papers, records, memoranda, or documents specified in this rule ~~which~~ that relate to the period covered by the assessment must be preserved until the final disposition of the appeal.

If the requirements of this rule are not met, the records will be considered inadequate and rule 701—67.5(452A), estimate gallonage, applies.

ITEM 10. Amend rules 701—71.8(428,441) and 701—71.9(428,441) as follows:

**701—71.8(428,441) Abstract of assessment.** Each city and county assessor shall submit annually to the ~~director~~ department of revenue at the times specified in Iowa Code section 441.45 an abstract of assessment for the current year. The assessor shall use the form of abstract prescribed and furnished by the department of revenue, and shall enter on the abstract all information required by the department. However, the department may approve the use of a computer-prepared abstract if the data is in essentially the same format as on the form prescribed by the department. The information entered on the abstract of assessment shall be reviewed and considered by the ~~director of revenue~~ department in equalizing the valuations of classes of properties.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

**701—71.9(428,441) Reconciliation report.** The assessor's report of any revaluation required by Iowa Code section 428.4 shall be made on the reconciliation report prescribed and furnished by the department of revenue. The assessor shall enter on the report all information required by the department. The reconciliation report shall be a part of the abstract of assessment required by Iowa Code section 441.45 and shall be reviewed and considered by the ~~director~~ department in equalizing valuations of classes of property.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

ITEM 11. Amend rule 701—71.11(441) as follows:

**701—71.11(441) Equalization of assessments by class of property.**

**71.11(1)** Commencing in 1977 and every two years thereafter, the ~~director~~ department of revenue shall order the equalization of the levels of assessment of each class of property as provided in rule 701—71.12(441) by adding to or deducting from the valuation of each class of property, as reported to the department on the abstract of assessment and reconciliation report ~~which~~ that is a part of the abstract, the percentage in each case as may be necessary to bring the level of assessment to its actual value as defined in Iowa Code section 441.21. Valuation adjustments shall be ordered if the ~~director~~ department determines that the aggregate valuation of a class of property as reported on the abstract of assessment submitted by the assessor is at least 5 percent above or below the aggregate valuation for that class of property as determined by the ~~director~~ department pursuant to rule 701—71.12(441). Equalization orders of the ~~director~~ department shall be restricted to equalizing the aggregate valuations of entire classes of property among the several assessing jurisdictions. All classifications of real estate shall be applied uniformly throughout the state of Iowa.

**71.11(2)** Equalization percentage adjustments determined for residential realty located outside incorporated areas and not located on agricultural land shall apply to buildings located on agricultural land outside incorporated areas, which are primarily used or intended for human habitation, as defined in subrule 71.1(4).

Equalization percentage adjustments determined for residential realty located within incorporated cities and not located on agricultural land shall apply to buildings located on agricultural land within

incorporated cities ~~which~~ that are primarily used or intended for human habitation as defined in subrule 71.1(4).

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.

ITEM 12. Amend paragraph **71.12(1)“b”** as follows:

*b. Use of other relevant data.* The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the department ~~of revenue~~, to determine the level of assessment of agricultural real estate.

ITEM 13. Amend paragraphs **71.12(2)“a”** and **“b”** as follows:

*a. Use of assessment/sales ratio study.*

(1) Basic data shall be that set forth in rule 701—71.10(421) refined by eliminating any sales determined to be abnormal or by adjusting the sales to eliminate the effects of factors ~~which~~ that resulted in the determination that the sales ~~having been determined to be~~ were abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The ~~director~~ department of revenue may also supplement the assessment/sales ratio study with appraisals made by department ~~of revenue~~ appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of residential real estate in each assessing jurisdiction. The ~~director of revenue~~ department may consider sales and appraisal data for prior years if it is determined the use of the sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

(2) Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals ~~which~~ that would indicate abnormal or unusual conditions or reporting discrepancies ~~which~~ that would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

*b. Use of other relevant data.* The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the department, ~~of revenue~~ to determine the level of assessment of residential real estate.

ITEM 14. Amend paragraphs **71.12(3)“a”** and **“b”** as follows:

*a. Use of assessment/sales ratio study.*

(1) Basic data shall be that set forth in rule 701—71.11(421), refined by eliminating any sales determined to be abnormal or by adjusting same to eliminate the effects of factors ~~which~~ that resulted in the determination that the sales ~~having been determined to be~~ were abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The ~~director~~ department of revenue may also supplement the assessment/sales ratio study with appraisals made by department ~~of revenue~~ appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of multiresidential real estate in each assessing jurisdiction. The ~~director of revenue~~ department may consider sales and appraisal data for prior years if it is determined the use of sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

(2) Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals that would indicate abnormal or unusual conditions or reporting discrepancies that would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate

actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

*b. Use of other relevant data.* The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the department of revenue, to determine the level of assessment of multiresidential real estate.

~~Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.~~

ITEM 15. Amend paragraphs 71.12(4)“a” and “b” as follows:

*a. Use of assessment/sales ratio study.*

(1) Basic data shall be that set forth in rule 701—71.10(421), refined by eliminating any sales determined to be abnormal or by adjusting same to eliminate the effects of factors ~~which~~ that resulted in the determination that the sales ~~having been determined to be~~ were abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The ~~director~~ department of revenue may also supplement the assessment/sales ratio study with appraisals made by department of revenue appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of commercial real estate in each assessing jurisdiction. The ~~director of revenue~~ department may consider sales and appraisal data for prior years if it is determined the use of sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value. Properties receiving a dual classification with the primary use being commercial shall be included.

(2) ~~Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals that would indicate abnormal or unusual conditions or reporting discrepancies that would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.~~

*b. Use of other relevant data.* The ~~director~~ department of revenue may also consider other relevant data, including field investigations conducted by representatives of the department of revenue, to determine the level of assessment of commercial real estate. The diverse nature of commercial real estate precludes the use of a countywide or citywide income capitalization study.

~~Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.~~

ITEM 16. Amend subrules 71.12(5), 71.12(6) and 71.12(7) as follows:

**71.12(5) Industrial real estate.** It is not possible to determine the level of assessment of industrial real estate by using accepted equalization methods. The lack of sales data precludes the use of an assessment/sales ratio study, the diverse nature of industrial real estate precludes the use of a countywide or citywide income capitalization study, and the limited number of industrial properties precludes the use of sample appraisals. The level of assessment of industrial real estate can only be determined by the valuation of individual parcels of industrial real estate. Any attempt to equalize industrial valuations by

using accepted equalization methods would create an arbitrary result. However, under the circumstances set forth in Iowa Code subsection 421.17(10), the ~~director~~ department may correct any errors in such assessments ~~which~~ that are brought to the ~~director's~~ attention of the department, including errors related to property with a dual classification if the primary use of the property is from the industrial portions.

**71.12(6) Centrally assessed property.** Property assessed by the ~~director~~ department of revenue pursuant to Iowa Code chapters 428 and 433 to 438, inclusive, is equalized internally by the ~~director~~ department in the making of the assessments. Further, the assessments are equalized with the aggregate valuations of other classes of property as a result of actions taken by the ~~director of revenue~~ department pursuant to rule 701—71.11(441).

**71.12(7) Miscellaneous real estate.** Since it is not possible to use accepted equalization methods to determine the level of assessment of mineral rights and interstate railroad and toll bridges, these classes of property shall not be subject to equalization by the ~~director~~ department of revenue. However, under the circumstances set forth in Iowa Code section 421.17(10), the ~~director~~ department may correct any errors in assessments which are brought to the ~~director's~~ attention of the department.

ITEM 17. Amend rules 701—71.14(441) to 701—71.17(441) as follows:

**701—71.14(441) Hearings before the ~~director~~ department.**

**71.14(1) Protests.** Written or oral protest against the proposed percentage adjustments as set forth in the tentative equalization notice issued by the ~~director~~ department of revenue shall be made only on behalf of the affected assessing jurisdiction. The protests shall be made only by officials of the assessing jurisdiction, including, but not limited to, an assessing jurisdiction's city council or board of supervisors, assessor, or city or county attorney. An assessing jurisdiction may submit a written protest in lieu of making an oral presentation before the ~~director~~ department, or may submit an oral protest supported by written documentation. Protests against the adjustments in valuation contained in the tentative equalization notices shall be limited to a statement of the error or errors complained of and shall include such facts as might lead to their correction. No other factors shall be considered by the ~~director~~ department in reviewing the protests. Protests and hearings on tentative equalization notices before the ~~director~~ department are excluded from the provisions of the Iowa Administrative Procedure Act governing contested case proceedings.

**71.14(2) Conduct of hearing.** The ~~director~~ department shall schedule each hearing so as to allow the same amount of time within which each assessing jurisdiction can make its presentation. During the hearing each assessing jurisdiction shall be afforded the opportunity to present evidence relevant to its protest. The ~~director or the director's designated~~ division administrator for the property tax division shall act as the department's representative. The department's representative shall preside at the hearing, which shall be held at the time and place designated by the ~~director~~ department or such other time and place as may be mutually agreed upon by the ~~director~~ department and the protesting assessing jurisdiction.

This rule is intended to implement Iowa Code section 441.48.

**701—71.15(441) Final equalization order and appeals.**

**71.15(1) Issuance of final equalization order.** After the tentative equalization notice has been issued and an opportunity for a hearing described in rule 701—71.14(441) has been afforded, the ~~director~~ department of revenue shall issue a final equalization order by mail to the county auditor. The order shall specify any percentage adjustments in the aggregate valuations of any class of property to be made effective for the county as of January 1 of the year in which the order is issued. The final equalization order shall be issued on or before October 1 unless for good cause it cannot be issued until after October 1. The final equalization order shall be implemented by the county auditor.

**71.15(2) Appeal of final equalization order.** ~~An~~ The city or county officials of the affected county or assessing jurisdiction may appeal a final equalization order to the state board of tax review director of revenue by filing a notice of appeal with the clerk of the hearings section of the department of revenue. The protest notice of appeal must be filed or postmarked not later than ten days after the date the final equalization order is issued.



a. Form of appeal. The notice of appeal shall be in writing and in the same format as provided in 701—subrule 7.8(6).

- (1) The notice of appeal shall substantially state in separate numbered paragraphs the following:
1. The county or assessing jurisdiction;
  2. The date on which the final equalization order was issued;
  3. The portion of the equalization order being appealed;
  4. A clear and concise assignment of each and every error;
  5. A clear and concise statement of the facts upon which the affected county or assessing jurisdiction relies as sustaining the assignment of error;
  6. The relief requested;
  7. The signature of the city or county officials bringing the appeal, or their representative, along with the address to which all subsequent correspondence, notice or papers shall be served or mailed.

(2) A county or assessing jurisdiction may amend its notice of appeal at any time prior to the commencement of the evidentiary hearing. The department may request that the county or assessing jurisdiction amend the notice of appeal for clarification.

b. Filing of notice of appeal. The notice of appeal must either be delivered to the department by electronic means or by United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section at P.O. Box 14457, Des Moines, Iowa 50319, or be personally delivered to the clerk of the hearings section or served on the clerk of the hearings section by personal service during business hours. For the purpose of mailing, a notice of appeal is considered filed on the date of the postmark. If a postmark date is not present on the mailed article, then the date of receipt of protest will be considered the date of mailing. Any document, including a notice of appeal, is considered filed on the date personal service or personal delivery to the office of the clerk of the hearings section is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

c. Answer. The department of revenue shall file an answer with the clerk of the hearings section within 30 days after the filing of the pleading responded to, unless attacked by motion as provided in 701—subrule 7.17(5), and then the answer shall be filed within 30 days after the date on which the fact finder issues a ruling on the motion. The department may amend its answer at any time prior to the commencement of the evidentiary hearing.

d. Docketing. Appeals shall be assigned a docket number as provided in rule 701—7.10(17A). Records consisting of the case name and the corresponding docket number assigned to the case must be maintained by the clerk of the hearings section. The records of each case shall also include each action and each act done, with the proper dates as follows:

- (1) The title of the appeal;
- (2) Brief statement of the date of the final equalization order, the property tax classification affected, and the relief sought;
- (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; and
- (6) The decision of the director or administrative law judge or other disposition of the case and the date.

e. Hearing. Rules 701—7.14(17A) through 701—7.22(17A) shall apply to any hearing or proceeding regarding the appeal of a final equalization order to the director of revenue.

This rule is intended to implement Iowa Code chapter 17A and sections 441.48 and 441.49.

## **701—71.16(441) Alternative method of implementing equalization orders.**

### **71.16(1) Application for permission to use an alternative method.**

a. A request by an assessing jurisdiction for permission to use an alternative method of applying the final equalization order must be made in writing to the ~~director~~ department of revenue within ten days from the date the county auditor receives the final equalization order. The written request shall include the following information:

~~a.~~ (1) Facts evidencing the need to use an alternative method of implementing the final equalization order. Such facts shall clearly show that the proposed method is essential to ensure compliance with the provisions of Iowa Code section 441.21.

~~b.~~ (2) The exact methods to be employed in implementing the requested alternative method for each class of property.

~~c.~~ (3) The specific method of notifying affected property owners of the valuation changes.

~~d.~~ (4) Evidence that the alternative method will result in an aggregate property class valuation adjustment equivalent to that prescribed in the ~~director's~~ department's final equalization order.

*b.* The ~~director~~ department of revenue shall review each written request for an alternative method and shall notify the assessing jurisdiction of acceptance or rejection of the proposed method by October 15. The assessing jurisdiction shall immediately inform the county auditor of the ~~director's~~ department's decision. The county auditor shall include a description of any approved alternative method in the required newspaper publication of the final equalization order. In those instances where the approved alternative method includes individual property owner notification, the publication shall not be considered proper notice to the affected property owners.

**71.16(2) *Implementation of alternative method.*** If an alternative method is approved by the ~~director~~ department of revenue, any individual notification of property owners shall be completed by the assessor by not later than October 25.

**71.16(3) *Appeal by property owners.*** If an alternative method is approved by the ~~director~~ department of revenue, the special session of the local board of review to hear equalization protests shall be extended to November 30. In such instances, protests may be filed up to and including November 4.

This rule is intended to implement Iowa Code section 441.49.

#### **701—71.17(441) Special session of boards of review.**

**71.17(1) *Grounds for protest.*** The only ground for protesting to the local board of review reconvened in special session pursuant to Iowa Code section 441.49 is that the application of the ~~director's~~ department's final equalization order results in a value greater than that permitted under Iowa Code section 441.21.

**71.17(2) *Authority of board of review.*** When in special session to hear protests resulting from equalization adjustments, the local board of review shall only act upon protests for those properties for which valuations have been increased as a result of the application of the ~~director~~ department of revenue's final equalization order.

The local board of review may adjust valuations of those properties it deems warranted, but under no circumstance shall the adjustment result in a value less than that which existed prior to the application of the ~~director's~~ department's equalization order. The local board of review shall not adjust the valuation of properties for which no protests have been filed.

**71.17(3) *Report of board of review.*** In the report to the ~~director~~ department of revenue of action taken by the local board of review in special session, the board of review shall report the aggregate valuation adjustments by class of property as well as all other information required by the ~~director~~ department of revenue to determine if such actions may have substantially altered the equalization order.

**71.17(4) *Meetings of board of review.*** If the final equalization order does not increase the valuation of any class of property, the board of review is not required to meet during the special session. If the final equalization order increases the valuation of one or more classes of property but no protests are filed by the times specified in Iowa Code section 441.49, the board of review is not required to meet during the special session.

This rule is intended to implement Iowa Code sections 421.17(10) and 441.49.

ITEM 18. Amend paragraph **71.25(2)“d”** as follows:

*d.* ~~Director~~ Department of revenue. The ~~director~~ department of revenue may make an omitted assessment of any property assessable by the ~~director~~ department at any time within two years from the date the assessment should have been made.

ITEM 19. Amend rule 701—71.26(441) as follows:

**701—71.26(441) Assessor compliance.**

**71.26(1)** The assessor shall determine the value of real property in accordance with rules adopted by the department of revenue and in accordance with forms and guidelines contained in the Iowa Real Property Appraisal Manual prepared by the department. The assessor may use an alternative manual to value property if it is a unique type of property not covered in the manual prepared by the department.

**71.26(2)** If the department finds that an assessor is not in compliance with the rules of the department relating to valuation of property or has disregarded the forms and guidelines contained in the real property appraisal manual, the department shall notify the assessor and each member of the conference board for that assessing jurisdiction. The notice shall be mailed by restricted certified mail and shall specify the areas of noncompliance and the steps necessary to achieve compliance. The notice shall also inform the assessor and conference board that if compliance is not achieved, a penalty may be imposed.

**71.26(3)** The conference board shall respond to the department within 30 days of receipt of the notice of noncompliance. The conference board may respond to the notice by asserting that the assessor is in compliance with the rules, guidelines, and forms of the department or by informing the department that the conference board intends to submit a plan of action to achieve compliance. If the conference board responds to the notification by asserting that the assessor is in compliance, a hearing before the director of revenue shall be held on the matter within 60 days of receipt of the notice of noncompliance. The director's decision is subject to judicial review in accordance with Iowa Code chapter 17A. If it is agreed that the assessor is not in compliance, the conference board shall submit a plan of action within 60 days of receipt of the notice of noncompliance.

**71.26(4)** The plan of action shall contain a time frame under which compliance shall be achieved, which shall be no later than January 1 of the following assessment year. The plan ~~of action~~ shall contain the signature of the assessor and of the chairperson of the conference board. The department shall review the plan to determine whether the plan is sufficient to achieve compliance. Within 30 days of receipt of the plan, the department shall notify the assessor and the chairperson of the conference board that it has accepted the plan or that it is necessary to submit an amended plan of action.

**71.26(5)** By January 1 of the assessment year following the calendar year in which the plan of action was submitted to the department, the conference board shall submit a report to the department verifying that the plan ~~of action~~ was followed and compliance has been achieved. The department may conduct a field inspection to ensure that the assessor is in compliance. By January 31, the department shall notify the assessor and the conference board, by restricted certified mail, either that compliance has been achieved or that the assessor remains in noncompliance. If the department determines that the assessor remains in noncompliance, the department shall take steps to withhold up to 5 percent of the reimbursement payment authorized in Iowa Code section 425.1 until the ~~director of revenue~~ department determines that the assessor is in compliance.

**71.26(6)** If the conference board disputes the determination of the department, the chairperson of the conference board may appeal the determination to the ~~state board of tax review~~ director of revenue under 701—Chapter 7.

This rule is intended to implement Iowa Code ~~Supplement~~ section 441.21.

ITEM 20. Amend rule 701—73.30(425) as follows:

**701—73.30(425) Audit of claim.**

**73.30(1) Authority.** The ~~director~~ department of revenue may audit the records of the county treasurer to determine the accuracy of claims filed for property tax credits. The ~~director~~ department may also investigate the eligibility of a claimant for a property tax credit or rent reimbursement.

**73.30(2) Recomputed rent reimbursement claim.** If it is determined a computed rent reimbursement is in error, the ~~director~~ department shall collect any overpayment from the claimant or reimburse the claimant for any underpayment. If a claimant fails to reimburse the department for an overpayment, the amount of overpayment shall be deducted from any future rent reimbursement to which the claimant is entitled.

**73.30(3) Recomputed property tax credit claim.** If it is determined a computed property tax credit has been overpaid, the ~~director~~ department shall notify the claimant and county treasurer of the overpayment. The county treasurer shall collect the overpayment from the claimant as if it were an unpaid property tax and reimburse the ~~director~~ department for the amount of overpayment. However, if the property upon which the credit was allowed is no longer owned by the claimant, the ~~director~~ department shall collect the amount of overpayment directly from the claimant. If it is determined a computed property tax credit has been underpaid, the ~~director~~ department shall reimburse the claimant directly for the amount of underpayment.

This rule is intended to implement Iowa Code section 425.27.

ITEM 21. Amend subrule 76.2(3) as follows:

**76.2(3)** The ~~director~~ department of revenue may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

ITEM 22. Amend subrule 76.5(1) as follows:

**76.5(1)** The income capitalization approach to unit value estimates the market value of the operating property by dividing the income stream generated by the operating assets by a market-derived capitalization rate based on the costs of the various sources of capital utilized or available for use to purchase the assets generating the income stream.

*a.* The net railway operating income to be capitalized shall be a weighted average net railway operating income. The weighted average net railway operating income shall consist of an average of the three 12-month periods immediately preceding the valuation date. Each of the three preceding 12-month periods shall be weighted by multiplying the first preceding period by 60 percent, the second preceding period by 30 percent, and the third preceding period by 10 percent. There shall be no adjustment for the company's current-year deferred income taxes to this income stream.

*b.* The ~~director~~ department may also utilize a "free cash flow model" in calculating the railway operating income to be capitalized. The "free cash flow model" shall consist of an average of the five 12-month periods immediately preceding the valuation date. Each of the five preceding 12-month periods shall be given equal weighting in the calculation of the five-year average railway operating income to be capitalized. Each year the net railway operating income shall be adjusted by adding the current-year deferred income taxes associated with maintenance expenditures, adding the current-year depreciation expense, and subtracting the current-year capital expenditures necessary to maintain the plant.

*c.* The ~~director~~ department may give consideration to both calculations of operating income as described in this subrule to determine the railway operating income to be capitalized. The ~~director~~ department may also consider, in both calculations, adjustments for extraordinary, unusual, and infrequent items. These adjustments would not be expected to occur annually and are different from the typical railroad business operations. The purpose and intent of the income indicator of value is to match income with sources of capital and therefore every source of capital utilized or available to be utilized to purchase assets should be reflected in the capitalization rate determination as well as all operating income. The ~~director~~ department shall not include a separate adjustment to either income stream for noncapitalized operating leases. In the event the railroad company has no income or has a negative income, the indicator of value set forth in this subrule shall not be utilized.

ITEM 23. Amend rule 701—76.7(434) as follows:

**701—76.7(434) Correlation.** In making a final determination of value, the ~~director~~ department shall give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the railroad company's entire operating property. The stock and debt indicator of value and the income indicator of value shall each be weighted at 50 percent. In this particular circumstance, when the ~~director~~ department utilizes the stock and debt indicator and the income indicator in the correlation process, the cost indicator will be given no weighting. If

circumstances dictate that a particular method is inappropriate for a specific company, that method shall be given little or no weight in the final correlation of value.

This rule is intended to implement Iowa Code section 434.15.

ITEM 24. Amend rule 701—76.8(434) as follows:

**701—76.8(434) Allocation of unit value to state.**

**76.8(1) *Allocation by ~~director~~ the department.*** The ~~director~~ department shall allocate that portion of the total unit value of the railroad company's operating property to the state of Iowa based on factors which that are representative of the ratio that the railroad company's property and activity in the state of Iowa bear to the railroad company's total property and activity. These factors are:

- a. Gross operating revenue weighted 40 percent.
- b. All track mileage weighted 35 percent.
- c. Revenue traffic units weighted 15 percent.
- d. Car and locomotive mileage weighted 10 percent.

**76.8(2) *Alternative methods.*** In the event that the allocation prescribed by subrule 76.8(1) does not fairly and reasonably allocate unit value of the railroad company's operating property to the state of Iowa, the ~~director~~ department shall consider such other factors as the ~~director~~ department deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code section 434.15.

ITEM 25. Amend subrule 77.2(3) as follows:

**77.2(3)** The ~~director~~ department may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

ITEM 26. Amend rule 701—77.6(428,433,437,438) as follows:

**701—77.6(428,433,437,438) Cost approach to unit value.** The cost approach to unit value shall be determined by combining the cost of the operating properties of the utility and deducting therefrom an allowance for depreciation calculated on a straight-line basis. Other forms of depreciation may be deducted if found to exist. The ~~director~~ department may use the replacement cost new less depreciation (RCNLD) valuation methodology for determining the assessed value of the Iowa operating property required under Iowa Code chapter 433.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

ITEM 27. Amend rule 701—77.7(428,433,437,438) as follows:

**701—77.7(428,433,437,438) Correlation.** In making a final determination of value, the ~~director~~ department may give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the utility company's entire operating property. Generally, for other than pipeline companies, the stock and debt indicator of value shall be considered to be the most useful, the income indicator the next most useful, and the cost indicator the least useful. If circumstances dictate that a particular indicator is inappropriate or less reliable for a particular company, the correlation of the indicators of value shall be adjusted accordingly. The correlation for pipeline companies will consider the cost indicator to be the most useful, the income indicator the next most useful, and the stock and debt indicator the least useful. In making the final determination of value, the ~~director~~ department will weigh the stock and debt indicator of value at 10 percent, the income indicator of value at 40 percent and the cost indicator of value at 50 percent.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

ITEM 28. Amend rule 701—77.8(428,433,437,438) as follows:

**701—77.8(428,433,437,438) Allocation of unit value to state.**

**77.8(1) *Allocation by ~~director~~ the department.*** The ~~director~~ department shall allocate that portion of the total unit value of the utility company's operating property to the state of Iowa based on factors

which that are representative of the ratio that the utility company's property and activity in the state of Iowa bear to the utility company's total property and activity. These factors are:

- a. Gross operating property weighted 75 percent, and
- b. Gross operating revenues, or MCF miles, or barrel miles weighted 25 percent. The selection of the property and use factor to be utilized shall depend on the type of utility being valued.

**77.8(2) *Alternative methods.*** In the event that the allocation prescribed by subrule 77.8(1) does not fairly and reasonably allocate unit value of the utility company's operating property to the state of Iowa, the ~~director~~ department shall consider such other factors as the ~~director~~ department deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, and 438.14.

ITEM 29. Amend subrule 80.8(7) as follows:

**80.8(7) *Minimum assessment.*** The partial exemption shall apply only to the value added in excess of the actual value of the property as of the year immediately preceding the year in which value added was first assessed. If the actual value of the property is reduced for any year during the period in which the partial exemption applies, any reduction in value resulting from the partial exemption shall not reduce the assessment of the property below its actual value as of January 1 of the assessment year immediately preceding the year in which value added was first assessed. This subrule applies regardless of whether the reduction in actual value is made by the assessor, the board of review, a court order, or an equalization order of the ~~director~~ department of revenue.

ITEM 30. Amend subrule 81.4(13) as follows:

**81.4(13) *General requirements.*** If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review or district court or supreme or appellate court~~, books, papers, records, memoranda or documents specified in this rule ~~which that~~ relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

The records will be considered inadequate when the requirements of this rule are not met. The director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those so prescribed (agreements must be in writing).

ITEM 31. Amend subrule 85.22(4) as follows:

**85.22(4) *Procedure for contesting notice of noninclusion or deletion.***

a. A tobacco product manufacturer that disagrees with a decision made by the attorney general in relation to the directory may contest the validity of the decision within 60 days of the date of the decision by filing a written protest of that decision with the Iowa Department of Revenue, Clerk of the Hearings Section, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, pursuant to rule 701—7.8(17A). The protest shall conform generally to the requirements of 701—subrules 7.8(1) through 7.8(10) to the extent applicable. The protest will, thereafter, be processed and a contested case hearing will be held in general conformity with ~~the rules set forth in 701—Chapter 7, rules 701—7.10(17A), 701—7.12(17A) and 701—7.14(17A) to 701—7.16(17A), 701—subrule 7.17(8), and rules 701—7.19(17A) to 701—7.22(17A),~~ to the extent applicable. The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory.

b. The form, status, finality and appealability of orders shall be controlled by the general provisions of 701—subrule 7.17(8), except that no appeal to or on motion of ~~the state board of tax review or~~ any other agency is authorized. All parties to the contested case may appeal any orders entered in relation to the contested case.

c. Stays of the decision of the attorney general during the pendency of the contested case proceedings and judicial review of the final contested case order of the department may be sought under 701—subrule 7.17(9). However, the addition or retention of a tobacco product manufacturer or brand family in the directory shall not be ordered during the pendency of the contested case proceedings and judicial review of the final contested case order unless a sufficient bond has been provided to the attorney general to ensure that all escrow amounts owed at the time of bonding and all escrow amounts reasonably expected to become due during the pendency of the contested case and all related appeals

will be satisfied if the tobacco product manufacturer does not ultimately prevail in its challenge. Such bonds shall be subject to update on a quarterly basis on motion of the attorney general.

d. If a claim is made that a particular entity is the tobacco product manufacturer and the entity obtains an order allowing it and any of the brands it claims to be responsible for to be listed in the directory pending final resolution of its status and it is ultimately determined that the entity is not the tobacco product manufacturer, the required bond shall be forfeited to the state.

ITEM 32. Amend rule 701—103.4(423A) as follows:

**701—103.4(423A) Retailers required to keep records.**

**103.4(1)** Every retailer shall keep and preserve the following records:

~~1. a.~~ A daily record of the amount of all cash and time payments and credit sales from the renting of rooms subject to tax under Iowa Code chapter 423A.

~~2. b.~~ A record of all deductions and exemptions taken in filing a tax return.

**103.4(2)** The records required in this rule must be preserved for a period of three years and open for examination by the department during this period of time.

**103.4(3)** Retailers performing all or part of their record keeping and retention of books, records, and other sources of information under electronic data interchange process or technology, see 701—subrule 11.4(4).

**103.4(4)** If a tax liability has been assessed and an appeal is pending to the department, ~~state board of tax review~~, district court, or ~~supreme~~ an appellate court, books, papers, records, memoranda or documents specified in this rule ~~which~~ that relate to the period covered by the assessment shall be preserved until the final disposition of the appeal. This provision applies equally to parties to the appeal and other retailers who could claim a refund as a result of the resolution of the appeal.

**103.4(5)** Failure to keep and preserve adequate records shall be grounds for revocation of the state-imposed tax permit.

This rule is intended to implement Iowa Code section 423.41 and 2005 Iowa Code Supplement sections 423A.3 and 423A.4.