

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to powers of attorney

The Revenue Department hereby amends Chapter 5, “Public Records and Fair Information Practices,” and Chapter 7, “Practice and Procedure Before the Department of Revenue,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 421.59, 422.20 and 422.72.

Purpose and Summary

Through 2020 Iowa Acts, House File 2641, the Legislature created Iowa Code section 421.59, which describes the various methods a taxpayer may use to appoint powers of attorney to work with the Department of Revenue. Prior to the creation of this Iowa Code section, authorized representation was almost exclusively covered only in rule. The new law mandates that the Department adopt rules to administer Iowa Code section 421.59. These amendments update existing rules to reflect the new law, clarify areas of confusion, and modify current procedures to improve administration. The Department’s current rules on powers of attorney are in rules 701—7.6(17A) and 701—7.34(421). New rule 701—7.6(17A,22,421,422) in Item 3 combines and revises the content of the current rules to make it easier to find pertinent information.

The new rule defines the powers that a representative under a power of attorney may utilize, the method a taxpayer may use to file a power of attorney, who may authorize a power of attorney on behalf of a taxpayer, and the process by which a power of attorney may be revoked. Additionally, this rule making outlines those individuals who have authority to act on behalf of a taxpayer, other than via the Department’s power of attorney form, as well as the method and documentation required to be filed to show authority. Item 4 rescinds rule 701—7.34(421), whose content has been integrated into the rule in Item 3.

Section 17 of 2019 Iowa Acts, House File 779, amended Iowa Code sections 422.20 and 422.72 to allow for disclosure of confidential taxpayer information as authorized by the taxpayer and gave the Department permissive authority to establish procedures for authorizing disclosure by rule. New rule 701—5.7(17A,22,421,422) in Item 1 defines the powers that a designee authorized by a tax information disclosure designation form may utilize, the method a taxpayer may use to file a tax information disclosure designation, who may authorize a tax information disclosure designation on behalf of a taxpayer, and the process by which a tax information disclosure designation may be revoked. Item 2 rescinds rule 701—5.11(17A,22), whose content has been integrated into the rule in Item 1. Because the Legislature instructed the Department to establish appropriate procedures by rule, this rule making will replace Agency Procedures for Fair Information Practices uniform rule X.7(17A,22), Consent to disclosure by the subject of a confidential record, as well as rule 701—5.11(17A,22), Consensual disclosure of confidential records. Both the uniform rule and the current Department rule cover the release of confidential information with taxpayer authorization. Through the consolidation of these concepts, taxpayers will have one rule to look to for guidance without losing the protections outlined in Agency Procedures for Fair Information Practices uniform rule X.7(17A,22), Consent to disclosure by the subject of a confidential record, and rule 701—5.11(17A,22).

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 27, 2021, as **ARC 5398C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on March 3, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 28, 2021.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** rule 701—5.7(17A,22,421,422):

701—5.7(17A,22,421,422) Tax information disclosure designation.

5.7(1) Powers authorized. A taxpayer may designate an individual to receive, inspect, and discuss confidential state tax information from the department about the taxpayer. Such designation does not authorize the designee to act or authorize any action on the taxpayer's behalf in any way other than to receive information and communicate with the department. For transfers of decision-making authority, see Iowa Code section 421.59 and rule 701—7.6(17A).

5.7(2) Contents of the tax information disclosure designation form. A taxpayer must use the department's tax information disclosure designation form, or other method authorized by the department, to designate an individual to receive, inspect, and discuss confidential state tax information. A tax information disclosure designation form must contain the following information to be valid:

- a. Legal name and address of the taxpayer;
- b. Identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or any federal- or Iowa-issued tax identification number);
- c. Name, mailing address, and preparer's tax identification number (PTIN), FEIN, SSN, individual taxpayer identification number (ITIN), Iowa department of revenue-issued account number (IAN) of the representative, or an indication that an IAN is being requested;
- d. Description of the matter(s) for which disclosure is authorized, which may include:

- (1) The type of tax(es) involved or an indication that all tax types are within the scope of disclosure;
 - (2) The specific year(s) or period(s) involved; or an indication that the scope is unlimited (not to exceed three years into the future beyond the signature date); and
 - (3) Business tax permit number, or an indication that all tax types are within the scope of authority;
- e.* A clear expression of the taxpayer's intention concerning any restrictions to the scope of authority granted to the recognized representative(s) as provided in subrule 5.7(1);
 - f.* An authorized signature of an individual listed in subrule 5.7(4) meeting the requirements of rule 701—8.2(17A,421);
 - g.* Any other information required by the department.

5.7(3) Authorization period for a tax information disclosure designation.

a. A tax information disclosure designation may not be used to authorize disclosure for tax periods that end more than three years after the date on which the tax information disclosure designation is signed by the taxpayer. A tax information disclosure designation may concern an unlimited number of tax periods which have ended prior to the date on which the tax information disclosure designation is received by the department; however, tax periods must be stated if the intention is to limit the periods. If the tax periods section is left blank, all tax periods, including those ending up to three years in the future, are included.

b. A tax information disclosure designation continues to be effective for tax periods as defined in paragraph 5.7(3)“*a*” until revocation by the taxpayer, incapacity of the taxpayer, death of the taxpayer, or withdrawal, death, or incapacity of the tax information disclosure designee.

5.7(4) Individuals who may execute a tax information disclosure designation. The individual(s) who may execute a tax information disclosure designation depends on the type of taxpayer involved as follows:

a. Individual. In matters involving an individual taxpayer, a tax information disclosure designation must be signed by the individual.

b. Joint or combined returns. In matters involving a joint return or married taxpayers who have elected to file separately on a combined return, each taxpayer must complete and submit the taxpayer's own tax information disclosure designation form. Each spouse may independently authorize disclosure of information from a joint or combined return.

c. Individuals who have filed a valid representative certification form. The tax information disclosure designation form must be signed by an individual who has filed a valid representative certification form authorized by the department as described in 701—subrule 7.6(6).

5.7(5) Revocation and withdrawal.

a. Revocation by the taxpayer.

(1) By written statement. By filing a statement of revocation with the department, a taxpayer may revoke a tax information disclosure designation without authorizing a new representative. The statement of revocation must indicate that the authority of the previous tax information disclosure designation is revoked and must be signed by the taxpayer. Also, the name and address of each representative whose authority is revoked must be listed (or a copy of the tax information disclosure designation must be attached).

(2) Does not automatically revoke. A new tax information disclosure designation for a particular tax type(s) and tax period(s) does not revoke a prior tax information disclosure designation for any tax type(s) and tax period(s), unless the taxpayer has indicated in a written submission to the department that a prior tax information disclosure designation is to be revoked.

b. Withdrawal by the representative. By filing a statement with the department, a representative may withdraw from representation in a matter in which a tax information disclosure designation has been filed. The statement must be signed by the representative and must identify the name and address of the taxpayer(s) and the matter(s) from which the representative is withdrawing. A representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired.

5.7(6) Submitting a form.

a. Submit separately. A tax information disclosure designation form may not be submitted as an attachment to a tax return except as provided by these rules. A tax information disclosure designation must be submitted separately to the department in accordance with the submission instructions on the form. However, the department may, at its discretion, provide a method for authorizing disclosure on the face of a tax return as defined in Iowa Code section 421.6.

b. Original or electronic forms accepted. The department will accept either the original, an electronically scanned and transmitted tax information disclosure designation form or representative certification form, or a copy. A copy received by facsimile transmission (fax) or email will be accepted. All copies, facsimiles and electronically scanned and transmitted forms must include a valid signature meeting the requirements of rule 701—8.2(17A,421) of the taxpayer to be represented.

c. Timely submission. The form must be submitted within six months of the date it is signed, or it will be considered invalid.

d. Evaluation of documentation provided. The department will evaluate the tax information disclosure designation form and any additional documentation to confirm authorization. Authorization to receive, inspect, and discuss confidential state tax information from the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authorization to receive, inspect, and discuss confidential state tax information from the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authorization.

This rule is intended to implement Iowa Code chapters 17A, 22, 421, and 422.

ITEM 2. Rescind and reserve rule **701—5.11(17A,22)**.

ITEM 3. Rescind rule 701—7.6(17A) and adopt the following new rule in lieu thereof:

701—7.6(17A,22,421,422) Authorized representatives—powers of attorney and representative certifications. No individual, including an attorney, accountant, or other representative, will be recognized as representing any taxpayer in regard to any claim, appeal, or other matter before the department or in any communication with, hearing before, or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization meeting the requirements of this rule and Iowa Code section 421.59. If a taxpayer wishes to allow the department to discuss otherwise confidential tax matters with an individual other than an authorized representative or power of attorney, without giving that individual authority to act on the taxpayer's behalf, the taxpayer must provide the department with written authorization to disclose such confidential tax information as provided in rule 701—5.7(17A,22,421,422).

7.6(1) Individuals authorized to represent a taxpayer, generally; transfers of decision-making authority.

a. If a taxpayer wishes to have any other individual or individuals act on the taxpayer's behalf in matters before the department, the taxpayer must file with the department an Iowa department of revenue (IDR) power of attorney form, as described in subrule 7.6(5), authorizing that individual to do so. Even if an individual desires to represent a taxpayer only through correspondence with the department but does not intend to personally appear before the department in a hearing or conference, the taxpayer must submit an IDR power of attorney form appointing that individual to act on the taxpayer's behalf.

b. Individuals with the authority to act on behalf of a taxpayer, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file a representative certification form as described in subrule 7.6(6). See subrule 7.6(6) for more information about individuals who may qualify as authorized representatives and the information required.

7.6(2) Powers authorized.

a. A power of attorney or representative certification form as applicable is required by the department before an individual can perform one or more of the following acts on behalf of the taxpayer:

(1) To receive copies of any notices or documents sent by the department, its representatives, or its attorneys.

(2) To receive, but not to endorse and collect, checks made payable to the taxpayer in payment of any refund of Iowa taxes, penalties, or interest. Certain representatives with a valid representative certification form may be authorized to receive, endorse and collect checks made payable to the taxpayer in payment of any refund of Iowa taxes, penalties, or interest.

(3) To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

(4) To execute consents extending the statutory period for assessment or collection of taxes.

(5) To fully represent the taxpayer in any hearing, determination, final or otherwise, or appeal. See subrule 7.6(8) for additional requirements.

(6) To enter into any settlement or compromise with the department.

(7) To execute any release from liability required by the department as a prerequisite to divulging otherwise confidential information concerning the taxpayer.

(8) To authorize a third party as power of attorney or disclosure designee for the taxpayer.

b. The taxpayer may limit the scope of the authority of a power of attorney by expressly stating the limitations, if any, on the IDR power of attorney form submitted to the department. The taxpayer may not expand the scope of authority of a power of attorney beyond those powers authorized in this rule.

7.6(3) Submitting a form.

a. *Submit separately.* An IDR power of attorney form or representative certification may not be submitted as an attachment to a tax return except as provided by these rules. A power of attorney or representative certification form must be submitted separately to the department in accordance with the submission instructions on the form(s).

b. *Original or electronic forms accepted.* The department may accept either the original, an electronically scanned and transmitted IDR power of attorney form or representative certification form, or a copy. A copy received by facsimile transmission (fax) or email may be accepted. All copies, facsimiles, and electronically scanned and transmitted forms must include a valid signature meeting the requirements of rule 701—8.2(17A,421) of the taxpayer to be represented.

c. *Timely submission.* The form must be submitted within six months of the date of signature, or it will be considered invalid.

7.6(4) Communications with represented taxpayers. Any notice or other written communication (or copy thereof) from the department provided to the representative, where required or permitted to be given to the taxpayer in any matter before the department, will be given to the taxpayer.

7.6(5) Powers of attorney. Individuals appointed by a taxpayer to represent the taxpayer must file an IDR power of attorney form.

a. *Individuals who may execute an IDR power of attorney form.* The individual who must execute an IDR power of attorney form is as follows:

(1) Individual. In matters involving an individual taxpayer, an IDR power of attorney form must be signed by the individual.

(2) Joint or combined returns. In matters involving a joint return or married taxpayers who have elected to file separately on a combined return, each taxpayer must complete and submit the taxpayer's own IDR power of attorney form, even if the taxpayers are represented by the same appointee(s). In any matter concerning a joint return or married taxpayers who have elected to file separately on a combined return, in which the two taxpayers are not to be represented by the same representative(s), the recognized representative of such spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

(3) Individuals who have filed a valid representative certification form. The IDR power of attorney form must be signed by an individual who has filed a valid representative certification form authorized by the department as described in subrule 7.6(6).

b. *Contents of the IDR power of attorney form.* An IDR power of attorney form must contain the following information to be valid:

(1) Legal name and address of the taxpayer;

(2) Identification number of the taxpayer (i.e., social security number (SSN), federal identification number (FEIN), or any federal- or Iowa-issued tax identification number);

(3) Name, mailing address, and preparer's tax identification number (PTIN), FEIN, SSN, individual taxpayer identification number (ITIN), Iowa department of revenue-issued account number (IAN) of the representative, or an indication that an IAN is being requested;

(4) Description of the matter(s) for which representation is authorized, which may include:

1. The type of tax(es) involved or an indication that all tax types are within the scope of authority;

2. The specific year(s) or period(s) involved, or an indication that the scope is unlimited (not to exceed three years into the future beyond the signature date) and Iowa tax permit number, or an indication that all tax types are within the scope of authority;

(5) A clear expression of the taxpayer's intention concerning any restrictions to the scope of authority granted to the recognized representative(s) as provided in subrule 7.6(2).

(6) A valid signature meeting the requirements of rule 701—8.2(17A,421) of an individual listed in paragraph 7.6(5) "a."

(7) Any other information required by the department.

c. Authorization period for an IDR power of attorney form.

(1) An IDR power of attorney form may not be used to authorize representation for tax periods that end more than three years after the date on which the IDR power of attorney form is signed by the taxpayer. The authority granted may concern an unlimited number of tax periods which have ended prior to the date on which the IDR power of attorney form is received by the department; however, tax periods must be stated if the intention is to limit the periods. If the tax period section is left blank, all tax periods, including those ending up to three years in the future, are included.

(2) The authority granted by an IDR power of attorney form ceases to be effective for tax periods as defined in subparagraph 7.6(5) "c"(1) upon revocation by the taxpayer, incapacity of the taxpayer, death of the taxpayer, or withdrawal, death, or incapacity of the individual granted power of attorney authority.

d. Evaluation of documentation provided. The department will evaluate the IDR power of attorney form and any additional documentation to confirm authority. Authority to act before the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

e. Revocation and withdrawal.

(1) Revocation by the taxpayer.

1. By written statement. By filing a statement of revocation with the department, a taxpayer may revoke authority granted by an IDR power of attorney form without authorizing a new representative. The statement of revocation must indicate that the authority of the previous representative is revoked and must be signed by the taxpayer. Also, the name and address of each representative whose authority is revoked must be listed (or a copy of the prior IDR power of attorney form must be attached).

2. By filing a new IDR power of attorney form. Filing a new IDR power of attorney form for a particular tax type(s) and tax period(s) automatically revokes a previously granted power of attorney authority for that tax type(s) and tax period(s). For a previously designated representative to remain as the taxpayer's representative when a subsequent IDR power of attorney form is filed, the taxpayer must include the representative on the newly submitted IDR power of attorney form. This rule applies regardless of whether the power of attorney authority is authorized by an IDR power of attorney form or on a return as described in subrule 7.6(7).

(2) Withdrawal by the representative. By filing a statement with the department, a representative may withdraw from representation in a matter in which an IDR power of attorney form has been filed. The statement must be signed by the representative and must identify the name and address of the taxpayer(s) and the matter(s) from which the representative is withdrawing. A representative may withdraw from multiple matters by including with the statement a list of all matters and taxpayers for which withdrawal is desired.

(3) Administrative revocation by the department. The department may administratively revoke a power of attorney or representative certification authority.

7.6(6) Representative certification; durable and general powers of attorney.

a. Individuals with the authority to act on behalf of a taxpayer, including pursuant to Iowa Code section 421.59(2) or chapter 633B, must file with the department a representative certification form prior to utilizing that authority with the department. Individuals authorized by an IDR power of attorney form are not required to file a representative certification form for themselves.

b. *Contents of the representative certification form.* The representative certification form must include the following information:

- (1) Legal name and address of the taxpayer;
- (2) Identification number of the taxpayer (i.e., SSN, FEIN, or any federal- or Iowa-issued tax identification number relative to matters covered by the IDR power of attorney form);
- (3) Name, mailing address, and PTIN, FEIN, or SSN, ITIN, or IAN of the representative. If the identification number is left blank, a new IAN will be assigned to the representative;
- (4) Proof of authority must be included with the form as follows:
 1. Durable power of attorney or general power of attorney other than an IDR power of attorney form: a copy of the power of attorney document;
 2. Guardian, conservator, or custodian appointed by a court: documentation as required in Iowa Code section 421.59(2)“a”;
 3. Receiver appointed pursuant to Iowa Code chapter 680: a copy of the relevant court order(s);
 4. Individual holding one of the following titles within a corporation, association, partnership, or other entity:
 - President/CEO of corporation/association: in the case of a president or CEO, affirmation of authority to act on behalf of the corporation or association on the form designated by the department;
 - Any officer of a corporation/association other than a president or CEO: authorization from the president or CEO;
 - Designated partner authorized to act on behalf of a partnership: affirmation of authority to act on behalf of the partnership on the form designated by the department;
 - Individual authorized to act on behalf of a limited liability company in tax matters: affirmation of authority to act on behalf of the limited liability company on the form designated by the department;
 5. Licensed attorney appearing on behalf of the taxpayer or the taxpayer’s estate in a court proceeding: a copy of the filed notice of appearance in the relevant court proceeding;
 6. Parent or guardian of minor taxpayer for whom the parent or guardian has signed the minor’s tax return: a copy of the return signed by the parent or guardian;
 7. Governmental representative: affirmation of authority to act on behalf of the government entity on the form designated by the department;
 8. Executor or personal representative: a copy of the will or court order appointing the individual;
- (5) A valid signature meeting the requirements of rule 701—8.2(17A,421) of the representative;
- (6) Any other information required by the department.

c. *Evaluation of documentation provided.* The department will evaluate documentation submitted in support of a representative certification to confirm authority. Authority to act before the department shall only cover those matters and time frames covered by the submitted documentation. The party claiming authority to act before the department on behalf of a taxpayer shall have the burden to prove, to the satisfaction of the department, the existence and extent of the claimed authority.

d. *Revocation.* A representative certification may be revoked in the following ways:

- (1) By the representative being withdrawn, following procedures in subparagraph 7.6(5)“e”(2).
- (2) By the taxpayer, following procedures in subparagraph 7.6(5)“e”(1).
- (3) By another representative. A representative properly appointed by a representative certification or an IDR power of attorney form may notify the department that a representative no longer has authority to act on behalf of the taxpayer by filing a statement of revocation with the department. The notification statement must indicate that the authority of the former representative has ceased and must be signed by a current authorized representative. Also, the name and address of each representative who no longer has authority must be listed (or a copy of the prior representative certification form must be attached).

(4) Administrative revocation by the department, following procedures in paragraph 7.6(5) “e.”

7.6(7) *Returns that may be used to grant power of attorney authority.* An IDR power of attorney form is not needed for individuals who have been named as an authorized representative on a fiduciary return of income filed under Iowa Code section 422.14 or a tax return filed under Iowa Code chapter 450.

7.6(8) *Individuals authorized to represent themselves or others in a contested case proceeding.* The right to represent oneself or others in connection with any contested case proceeding before the department or administrative hearings division shall be limited to the following classes of individuals, so long as such representation is not barred by another provision of law. Representatives must have a valid IDR power of attorney form or valid representative certification form on file with the department to represent others in a contested case proceeding. The right to represent a taxpayer before the department or the administrative hearings division does not confer the right to represent the taxpayer in a judicial proceeding.

a. Taxpayers who are natural persons representing themselves. One spouse may not represent the other in contested case proceedings, unless the spouse is acting in a capacity described in paragraphs 7.6(8) “b” to “j”;

b. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa;

c. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with the requirements for admission to practice before the courts of the state of Iowa pro hac vice;

d. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542;

e. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer. Attorneys who are acting in the capacity of a director or officer of a corporation must meet the requirements of paragraph 7.6(8) “b” or “c”;

f. Partners representing their partnership. Attorneys who are acting in the capacity of a partner must meet the requirements of paragraph 7.6(8) “b” or “c”;

g. Fiduciaries. Fiduciaries include trustees, receivers, guardians, personal representatives, administrators, and executors. For purposes of this rule, a fiduciary is considered to be the taxpayer and not a representative of the taxpayer;

h. Government officials authorized by law;

i. Enrolled agents, currently enrolled under 31 CFR §10.6 for practice before the Internal Revenue Service, representing a taxpayer in proceedings under division II of Iowa Code chapter 422; and

j. Conservators, guardians, or durable powers of attorney appointed to handle tax matters.

ITEM 4. Rescind and reserve rule **701—7.34(421)**.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/24/21.