

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to motions to redact certain information and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 6, “Organization, Public Inspection,” and Chapter 7, “Practice and Procedure Before the Department of Revenue,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed 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 422.20 and 422.72.

*Purpose and Summary*

In its 2020 Legislative Session, the Legislature amended Iowa Code sections 422.20 and 422.72 to explicitly allow those filing protests with the Department to move for certain information to be redacted prior to release in response to a public records request. These proposed amendments outline the procedure a taxpayer will follow to file the motion and the requirements thereof.

*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).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 3, 2021. Comments should be directed to:

Abigail Sills  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306  
Phone: 515.336.1140  
Email: [abigail.sills@iowa.gov](mailto:abigail.sills@iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*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).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **6.1(3)“b”** as follows:

*b. Regional offices.* Regional offices do not have facilities for making available all matters that are available for public inspection under [701—6.2\(17A\) Iowa Code chapter 17A or 22](#). The regional offices and auditors do have copies of all rules and will make them available to the public. Members of the public needing forms or needing assistance in filling out forms are encouraged to contact the principal office.

ITEM 2. Rescind and reserve rule **701—6.2(17A)**.

ITEM 3. Amend rule [701—7.9\(17A\)](#) as follows:

**701—7.9(17A) Identifying details, requests for redaction.**

~~**7.9(1) Information redacted by the department, subject to certain exceptions. Any person may file a motion to delete identifying details concerning the person from any document relating to any proceeding as defined in rule [701—7.2\(421,17A\)](#) prior to disclosure to members of the public. Such a motion must be filed with the clerk of the hearings section if the motion is filed prior to the commencement of a contested case, which is before the notice for hearing is issued. If the motion is filed during a contested case proceeding pending before an administrative law judge and before the administrative law judge has entered a proposed decision on the case or has entered a closing order, the motion must be filed with and ruled upon by the administrative law judge. Otherwise, the motion must be filed with the clerk of the hearings section and ruled upon by the director. The motion shall be filed simultaneously with the presentation of the privacy or trade secret information under circumstances whereby the information may be disclosed to the public and before the issuance of any opinion, order or decision. Prior to being made available for public inspection, the department shall redact from an appeal or contested case the information required to be redacted in Iowa Code sections [422.20\(5\)](#) and [422.72\(8\)](#). “Make available for public inspection” means disclosure to the public by the department pursuant to Iowa Code section [17A.3](#) or chapter [22](#).**~~

~~**7.9(2) Process for requesting redaction of other details from a pleading, exhibit, attachment, motion, or written evidence. If the motion concerns information which is not a part of a contested case, the motion shall be in the form of a request to delete identifying details; if part of a contested case, the motion shall be in the form of a motion to delete identifying details. All motions to delete identifying details shall conform to subrule [7.17\(5\)](#). If a taxpayer desires information contained in a record, other than the information described in Iowa Code sections [422.20\(5\) “a”](#) and [422.72\(8\) “a,”](#) to be redacted prior to public inspection, the taxpayer must file a motion and affidavit meeting the requirements below.**~~

~~*a. Process for filing a motion for redaction of other details during a contested case. Motions for redaction of other details from a pleading, exhibit, attachment, motion or written evidence filed after the notice of hearing is issued in a contested case must follow the requirements in subrule [7.17\(5\)](#).*~~

~~*b. Process for filing a motion for redaction of other details prior to the commencement of a contested case. Motions for redaction of other details from a pleading, exhibit, attachment, motion or written evidence filed prior to a contested case must be filed with the clerk of the hearings section of the department. The motion must be filed separately from the protest described in subrule [7.8\(6\)](#).*~~

~~a. c.~~ Contents of motion. ~~The motion~~ Motions filed under this rule, including those filed during contested cases, shall contain the following:

(1) The name of the person requesting ~~deletion~~ redaction and the docket number of the proceeding, if applicable;

(2) ~~The legal basis for the motion for deletion, which is either that release of the material would be a clearly unwarranted invasion of personal privacy or the material is a trade secret. A corporation may not claim an unwarranted invasion of privacy; Clear and convincing evidence that the disclosure would reveal a trade secret or would constitute a clear, unwarranted invasion of personal privacy. Corporations, limited liability companies, other business entities (including but not limited to partnerships and joint ventures), and trusts do not have protectible personal privacy interests.~~

(3) ~~A~~ An unredacted copy of the document containing the information at issue and also a copy of the document with the desired redaction made. If a copy of the document is not in the possession of the taxpayer, the motion must contain a precise description of the document, report, or other material in the possession of the department from which the deletion redaction is sought and a precise description of the information to be deleted redacted. If deletion redaction is sought from more than one document, each document and the materials information sought to be deleted from it redacted shall be listed in separate paragraphs. Also contained in each separate paragraph shall be a statement of the legal basis for the deletion requested in that paragraph, which is that release of the material sought to be deleted is a clearly unwarranted invasion of privacy or the material is a trade secret and the material serves no public purpose.

(4) For each item for which redaction is requested, an explanation of the legal basis for the redaction requested, including an explanation of why the release of the information sought to be redacted is a clear, unwarranted invasion of personal privacy or a trade secret.

~~b.~~ (5) An affidavit in support of deletion must accompany each motion redaction. The affidavit must:

1. be ~~be~~ sworn to by a person familiar with the facts asserted within it and shall contain a clear and concise explanation of the facts justifying ~~deletion~~ redaction, not merely the legal basis for ~~deletion~~ redaction or ~~conclusionary~~ conclusory allegations.

~~e.~~ 2. All affidavits shall contain ~~Contain~~ a general and truthful statement that the information sought to be ~~deleted~~ redacted is not available to the public from any source or combination of sources, direct or indirect, and a general statement that the release would serve no public purpose.

~~d.~~ Burden of proof. The burden of showing that ~~deletion~~ redaction is justified shall be on the movant. The burden is not carried by mere ~~conclusionary~~ conclusory statements or allegations, for example, that the release of the material would be a ~~clearly~~ clear, unwarranted invasion of personal privacy or that the material is a trade secret.

~~e.~~ Contested case proceeding. That the ~~matter~~ information sought to be ~~deleted~~ redacted is part of the pleadings, motions, evidence, and the record in a contested case proceeding otherwise open for public inspection and that the matter would otherwise constitute confidential tax information shall not be grounds for ~~deletion~~ (1992 Op. IA Att’y Gen. 1) redaction.

~~f.~~ The ruling on the motion shall be strictly limited to the facts and legal bases presented by the movant, and the ruling shall not be based upon any facts or legal bases not presented by the movant.

**7.9(3)** Process for requesting redaction of other details in a final order, decision, or ruling. Motions to redact information from a final order, decision, or ruling cannot be made until the order is issued and must be made within 30 days of the date of the order, decision, or ruling. The taxpayer must follow the requirements in paragraph 7.9(2)“c” and subrule 7.17(5). The department shall have 30 days to respond to the motion from the date the department’s representatives receive notice from the presiding officer, unless otherwise ordered by the presiding officer.

**7.9(4)** Rulings. Motions filed with the clerk of the hearings section will be ruled on by the director. Motions filed with the administrative law judge will be ruled on by the administrative law judge. In the case of motions before the director prior to contested case proceedings, the department may respond in writing to a motion on the request of the director or upon the initiative by department staff.

7.9(5) Limitation on motions. If the motion or request is denied, the movant may not submit a motion to redact the same identifying details unless the movant is in possession of new information that may support the requested redaction(s) that the movant was not or could not have been aware of at the time of the original motion.

7.9(6) Handling of the file while the motion is pending. During the pendency of a motion, unless otherwise required or permitted by law, the department will treat the motion as if it has been granted and will not publicly release any information pursuant to Iowa Code chapter 22 or 17A sought to be kept confidential by the taxpayer.

This rule is intended to implement Iowa Code chapter 17A and sections 422.20(5) and 422.72(8).

ITEM 4. Amend subparagraph 7.17(5)“e”(4) as follows:

(4) Motion ~~to delete~~ for redaction of identifying details in the decision. For more information, see rule 701—7.9(17A).