

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to appeals, taxpayer representation, and administrative procedures and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 7, “Appeals, Taxpayer Representation, and Other Administrative Procedures,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 421.14, 421.59, 422.20 and 422.72.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A and sections 421.10, 421.14, 421.17, 421.60 and 422.28.

Purpose and Summary

The proposed amendments accomplish a variety of objectives. The rule regarding applicability and scope is proposed to be amended in Item 1. Definitions are proposed to be amended in Item 2 to eliminate unnecessary duplication of statute. The list of tax types now available on GovConnectIowa is proposed to be updated in Item 3. Other amendments are proposed to add clarity. Changes to the Department’s rules on taxpayer representation are proposed to more clearly describe the Department’s signature requirements, to modify the Department’s procedures related to tax returns of minors, and to add clarity to the rules. Amendments to the Department’s rules on motions to redact identifying details are proposed to correct an error and to clarify hearing procedures related to such motions. Rules 701—7.9(17A) and 701—7.12(17A,421) are proposed to be amended to simplify the procedures related to untimely appeals, appeals filed in the improper format, and appeals with no statutory basis to eliminate the need for taxpayers to file a separate application for reinstatement for untimely appeals and to more closely resemble the processes utilized for late-filed cases in other administrative or judicial settings. Other amendments are proposed to multiple rules to reflect the use of electronic service by the Administrative Hearings Division of the Department of Inspections and Appeals. Finally, amendments are proposed to rule 701—7.19(17A) to ensure matters that a taxpayer seeks to appeal to the district court are first appealed to the Director to exhaust administrative procedures and ensure the Department’s final order reflects the position of the Director rather than that of an administrative law judge.

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 March 14, 2023. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50319
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

March 24, 2023
10 to 11 a.m.

Via video/conference call

Persons who wish to participate in the video/conference call should contact Alana Stamas before 4:30 p.m. on March 22, 2023, to facilitate an orderly hearing. A video link and conference call number will be provided to participants prior to the hearing.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

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 rule 701—7.1(421,17A) as follows:

701—7.1(421,17A) Applicability and scope of rules. These rules are designed to implement the requirements of the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the tax laws of this state and other activities of the department. These rules shall govern the practice, procedure, and conduct of the informal proceedings, contested case proceedings, licensing, rule making, requests for waiver of rules, and declaratory orders involving taxation and other areas within the department's jurisdiction. The rules in this chapter apply to all informal proceedings, contested case proceedings, licensing, rule making, requests for waiver of rules, and declaratory orders pending or commenced on or after their effective date.

This rule is intended to implement Iowa Code chapter 17A.

ITEM 2. Amend rule **701—7.2(421,17A)**, definitions of "Contested case," "Department," "Motion," "Provision of law" and "Rule," as follows:

"Contested case" means ~~a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by an agency after an~~

~~opportunity for an evidentiary hearing~~ the same as defined in Iowa Code section 17A.2(5). This term also includes any matter defined as a no factual dispute contested case as provided in Iowa Code section 17A.10A.

~~“Department” or “IDR”~~ means the Iowa department of revenue.

~~“Motion” has the same meaning as the term is~~ means the same as defined in Iowa R. Civ. P. Rule of Civil Procedure 1.431.

~~“Provision of law”~~ means the whole or part of the Constitution of the United States of America or the Constitution of the State of Iowa, or of any federal or state statute, court rule, executive order of the governor, or rule of the department same as defined in Iowa Code section 17A.2(10).

~~“Rule”~~ means a department statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of the department. Notwithstanding any other statute, the term includes an executive order or directive of the governor which creates an agency or establishes a program or which transfers a program between agencies established by statute or rule. The term includes the amendment or repeal of an existing rule, but does not include the excluded items set forth in the same as defined in Iowa Code section 17A.2(11).

ITEM 3. Amend paragraph **7.3(1)“a”** as follows:

a. By submitting through GovConnectIowa. As of November 15, 2021 14, 2022, GovConnectIowa is available for filing petitions for declaratory order, petitions for rule making, and petitions for rule waiver for all tax types, but is only available for filing appeals for the following tax types: sales, consumers/retailers use, E911, withholding, motor fuel, hotel/motel, local option sales, automobile rental, and water service excise, corporation income, S corporation income, partnership income, franchise, and tax credits and distributions associated with these tax types.

ITEM 4. Amend subrule 7.3(3) as follows:

7.3(3) Service by the department. All notices or documents required or permitted by this chapter to be served on parties or persons by the department or presiding officer that are not currently pending before an administrative law judge shall be served by ordinary mail unless the taxpayer has elected to receive communications exclusively through GovConnectIowa, pursuant to rule 701—8.6(421). For taxpayers registered in GovConnectIowa, posting the document in the taxpayer’s GovConnectIowa account constitutes service or notice of the document. For taxpayer representatives registered in GovConnectIowa, posting the document in the taxpayer representative’s GovConnectIowa account constitutes service or notice of the document. For nonregistered taxpayers or nonregistered taxpayer representatives, documents will be served by ordinary mail. When this nonregistered mailing is required, however, the department may note on the docket the parties served and the method of service instead of filing a certificate of service. With respect to any notice, correspondence, or communication served electronically, response deadlines shall be calculated from the date the taxpayer is notified electronically of the correspondence or the item is mailed, whichever is earlier.

ITEM 5. Amend paragraph **7.6(1)“a”** as follows:

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.

ITEM 6. Amend subrule 7.6(3) as follows:

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 form 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 an original form, an electronically scanned and transmitted form, or a copy of a form. 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.

d. Appointment of a representative via another form. The department designates certain returns or other departmental forms on which a taxpayer may appoint a representative.

e. Signature. The signature on the form must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

ITEM 7. Amend subrule 7.6(4) as follows:

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 as well.

ITEM 8. Amend subrule 7.6(5) as follows:

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~~ Individuals who ~~must~~ are permitted to execute an IDR power of attorney form ~~is~~ are as follows:

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

(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 authorized representative of ~~such~~ one spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

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 identification number of the representative (i.e., preparer's tax identification number (PTIN), ~~FEIN~~, SSN, centralized authorization file (CAF) number, or any federal- or Iowa-issued tax identification number) or an indication that an issued account number (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. If the tax type field is left blank, all tax types will be included within the scope of the representative's 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;

3. Iowa tax permit number;

(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.”~~ A signature on the form, which must be a handwritten signature, a

digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

(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). If the writing indicates that authorization should be revoked from “all” authorized representatives, this will apply to all representatives appointed via an IDR power of attorney form or an entity representative form.

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 authorized representative to remain as the taxpayer’s authorized 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). This subrule does not apply to entities appointed as authorized entity representatives under subrule 7.6(9).

(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, identification number, and address of the taxpayer(s); the name, address and identification number of the representative withdrawing; 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.

ITEM 9. Amend paragraph 7.6(6)“b” as follows:

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 identification number (i.e., SSN, CAF number, or any federal- or Iowa-issued tax identification number) 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:

- Officer/employee of corporation/association: affirmation of authority to act on behalf of the corporation or association on the form designated by the department;

- 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 or proof of status as parent or guardian, such as birth certificate or equivalent document, stating parent and minor taxpayer’s names, as well as the minor taxpayer’s date of birth. By submitting a copy of a return signed by the parent or guardian, the parent or guardian will only have authority in relation to that return. Without other authorization, such as a court-ordered guardianship, a parent’s right to access a minor taxpayer’s account will cease when the minor taxpayer reaches majority;

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;

9. Trustee: a copy of the certificate of trust, trust document, or court order appointing the representative;

10. Successor of a very small estate under Iowa Code section 633.356(2): affirmation of authority to act on behalf of the estate on the form designated by the department;

(5) ~~A valid signature meeting the requirements of rule 701—8.2(17A,421) of the representative~~ A signature of the representative on the form, which must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization;

(6) No change.

ITEM 10. Amend subrule 7.6(9) as follows:

7.6(9) Entities as authorized representatives.

a. Appointment.

(1) A taxpayer may authorize an entity to act on its behalf in tax-related matters by following the procedures described in this subrule in a manner approved by the department. By appointing an authorized entity representative, the taxpayer consents to the authorized entity representative, and any individuals submitted to the department by the authorized entity representative, as described in paragraph 7.6(9)“c,” sending and receiving the taxpayer’s information to and from the department and taking any other action described in these rules. By appointing an authorized entity representative, the taxpayer understands that the authorized entity representative is solely responsible for maintaining an accurate list of individuals allowed to act on the taxpayer’s behalf. The taxpayer agrees that any improper disclosure or use of the taxpayer’s information by the entity or entity’s current or former employees, agents, or contractors shall solely be the responsibility of the entity and the entity’s

employees, agents, or contractors. The department shall not be liable for any acts or omissions of the entity or the entity's employees, agents, or contractors.

(2) The taxpayer's consent must be in writing, in a form specified by the department, including a signature and date. The signature must be a handwritten signature, a digital signature with a digital certificate, or a signature otherwise accepted by the IRS for purposes of third-party authorization.

b. and c. No change.

d. *Powers authorized.* An authorized entity representative may be granted any or all of the powers described in subrule 7.6(2). The taxpayer may restrict the authorized entity representative as described therein and by tax type. If the tax type field is left blank, all tax types are included within the scope of the authorized entity representative's authority.

e. to g. No change.

ITEM 11. Amend paragraph **7.8(2)“b”** as follows:

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~~ appeal described in subrule ~~7.8(6)~~ 7.9(6).

ITEM 12. Amend subrule 7.8(4) as follows:

7.8(4) Rulings. Motions filed with the clerk of the hearings section will be ruled on by the director or may be referred by the director to an administrative law judge. 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. Oral argument, including a hearing, may be held at the discretion of the presiding officer. The presiding officer may choose to close a hearing or other proceeding that may otherwise be open to the public due to the confidential nature of information covered by the motion during the pending motion.

ITEM 13. Amend subrule 7.9(3) as follows:

7.9(3) Paying assessment in order to appeal refund claim denial. Notwithstanding the above, the taxpayer who fails to timely appeal an assessment may contest the assessment by paying the whole assessed tax, interest, and penalty, and filing a refund claim within the time period provided by law for filing such claim. However, in the event that such assessment involves divisible taxes which are not timely appealed, namely, an assessment which is divisible into a tax on each transaction or event, the taxpayer may contest the assessment by paying a portion of the assessment and filing a refund claim within the time period provided by law. In this latter instance, the portion paid must represent any undisputed portion of the assessment and must also represent the liability on a transaction or event for which, if the taxpayer is successful in contesting the portion paid, the unpaid portion of the assessment attributable to that specific type of transaction would be canceled. *Flora v. United States*, 362 U.S. 145, 4 L.Ed. 2d 623, 80 S.Ct.630 (1960); *Higginbotham v. United States*, 556 F.2d 1173 (4th Cir. 1977); *Steele v. United States*, 280 F.2d 89 (8th Cir. 1960); *Stern v. United States*, 563 F. Supp. 484 (D. Nev. 1983); *Drake v. United States*, 355 F. Supp. 710 (E.D. Mo. 1973). Any such appeal filed is limited to the issues covered by the amounts paid for which a refund was requested and denied by the department. Thereafter, if the department does not grant or deny the refund within six months of the filing of the refund claim or if the department denies the refund, the taxpayer may file an appeal as authorized by this rule.

ITEM 14. Amend subrule 7.9(5) as follows:

7.9(5) Who may be named in an appeal. The appeal shall be brought in the name of the aggrieved taxpayer. The appeal may be filed by and in the name of the aggrieved taxpayer or by ~~and in the name~~ of the authorized representative described in Iowa Code section 421.59(2), Iowa Code chapter 633B, or subrule 7.6(6) legally entitled to institute a proceeding on behalf of the person, or by an intervenor in contested case proceedings. In the event of a discrepancy between the name set forth in the appeal and the correct name, a statement of the reason for the discrepancy shall be set forth in the appeal.

ITEM 15. Amend subrule 7.9(7) as follows:

7.9(7) Amendments.

a. The taxpayer may amend the appeal at any time before a responsive pleading is filed. Amendments to the appeal after a responsive pleading has been filed may be allowed by the presiding officer with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

b. The department may request that the taxpayer amend the appeal for purposes of clarification or to comply with format requirements. If the taxpayer fails to amend the appeal within the time provided for in the department's request, the department may move to dismiss the appeal under paragraph 7.12(3) "a." Requests by the department to the taxpayer to amend the appeal after a responsive pleading has been filed may be allowed by the presiding officer with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

ITEM 16. Amend subrule 7.11(1) as follows:

7.11(1) Appeals section review. ~~When~~ After an appeal is filed, the review unit, subject to the control of the director or the division administrator of the legal services and appeals division, will:

a. to e. No change.

ITEM 17. Rescind rule 701—7.12(17A,421) and adopt the following **new** rule in lieu thereof:

701—7.12(17A,421) Dismissal of appeals.

7.12(1) Appeals filed after expiration of statutory deadline. Appeals that are not filed by the deadline described in statute shall be dismissed by the director or the director's designee in accordance with the procedure outlined in paragraph 7.12(1) "a."

a. Procedures for motions to dismiss. The department shall file a motion to dismiss with the clerk and serve a copy of the motion on the taxpayer. The taxpayer may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director's designee shall immediately enter an order dismissing the appeal. If a resistance is filed, the department has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the taxpayer and the clerk. If no such notice is received by the clerk within the ten-day period, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the appeal was filed within the statutory appeal period. Thereafter, rule 701—7.19(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

b. Grounds for denying the department's motion. The department's motion shall be granted unless the taxpayer can prove that it filed the appeal prior to the expiration of the statutory appeal deadline because the department failed to:

- (1) Mail or personally deliver the notice of assessment, refund denial, or other notice of department action to the taxpayer's last-known address; or
- (2) If applicable, also mail the notice of assessment, refund denial, or other notice of department action to the taxpayer's authorized representative; or
- (3) Comply with the requirements of Iowa Code section 421.60(2) "b."

For purposes of this rule, "last-known address" and "personal delivery" mean the same as described in rule 701—7.33(421).

7.12(2) Appeals not authorized by statute. Appeals that are not authorized by statute or otherwise are inconsistent with the statutory requirements for an appeal shall be dismissed by the director in accordance with the procedure outlined in paragraph 7.12(1) "a," except that the issue shall be limited to the question of whether the appeal is authorized by statute and consistent with statutory appeal requirements.

7.12(3) Failure to pursue the appeal at the informal stage. If the appeal was filed timely and informal procedures were initiated, the failure of the taxpayer to provide documents or information requested by the department, including the failure to respond to a position letter or an information request, shall constitute grounds for the department to dismiss the appeal in accordance with the procedure outlined in

paragraph 7.12(3) “a.” For purposes of this subrule, an evasive or incomplete response will be treated as a failure to provide documents or information.

a. Procedures for motions to dismiss. If the department seeks to dismiss the appeal, the department shall file a motion to dismiss with the clerk and serve a copy of the motion on the taxpayer. The taxpayer may file a resistance to the motion within 20 days of the date of service of the motion. If no resistance is so filed, the director or the director’s designee shall immediately enter an order dismissing the appeal. If a resistance is filed, the department has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the taxpayer and the clerk. If no such notice is received by the clerk within the ten-day period, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the taxpayer failed to pursue the appeal, as that term is defined in this subrule. Thereafter, rule 701—7.19(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

b. Grounds for reinstatement of dismissed appeals. If a motion to dismiss is filed and is unresisted, the appeal that was dismissed may be reinstated by the director or the director’s designee for good cause if an application for reinstatement is filed with the clerk within 30 days of the date the appeal was dismissed. For purposes of this rule, “good cause” shall mean the same as “good cause” in Iowa Rule of Civil Procedure 1.977.

c. Content and review of the application for reinstatement. The application shall set forth all reasons and facts upon which the taxpayer relies in seeking reinstatement of the appeal. Supporting documentation must be supplied. The department shall review and notify the taxpayer whether the application is granted or denied.

d. Denial of the application. If the department denies the application to reinstate the appeal, the taxpayer has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing on the reinstatement. The taxpayer shall send the written request to the clerk. When a written request for formal hearing is received, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice as prescribed in rule 701—7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the taxpayer has good cause to reinstate the dismissed appeal. Thereafter, rule 701—7.19(17A) pertaining to contested case proceedings shall apply in such reinstatement proceedings. If the taxpayer does not respond to a denial of the application for reinstatement within 30 days of the denial, the director or the director’s designee will issue an order closing the appeal.

e. Failure to file timely application for reinstatement. If an application for reinstatement is filed after the 30-day deadline, the application shall not be accepted by the director or director’s designee.

7.12(4) Dismissal of appeals during contested case proceedings. Once contested case proceedings have been commenced, it shall be grounds for a motion to dismiss that a taxpayer has either failed to diligently pursue the appeal or has refused to comply with requests for discovery set forth in rule 701—7.17(17A). Such a motion must be filed with the presiding officer.

This rule is intended to implement Iowa Code sections 17A.12, 421.10, 421.60, and 422.28.

ITEM 18. Amend subrule 7.16(3) as follows:

7.16(3) Contested case proceedings will be commenced by the presiding officer by delivery of notice by ordinary mail or electronic mail directed to the parties after a demand or request is made (a) by the taxpayer and the filing of the answer, if one is required, which demand or request may include a date to be set for the hearing, or (b) upon filing of the answer, if a request or demand for contested case proceedings has not been made by the taxpayer. The notice will be given by the presiding officer.

ITEM 19. Amend subrule 7.17(1) as follows:

7.17(1) When the department relies on a witness in a contested case, whether or not the witness is a departmental employee, who has made prior statements or reports with respect to the subject matter of the witness’ testimony, the department shall, on request, make such statements or reports available to a party for use on cross-examination unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute. Identifiable ~~departmental~~ department records that are relevant

to disputed material facts involved in a contested case shall, upon request, promptly be made available to the party unless the requested records are expressly exempt from disclosure by constitution or statute.

ITEM 20. Amend subparagraph 7.19(4)“d”(2) as follows:

(2) Evidence of a federal determination of the taxpayer’s liability. Evidence of a federal determination of the taxpayer’s liability such as a treasury department ruling, regulation or determination letter issued to the taxpayer; a taxpayer’s federal court decision; or an Internal Revenue Service assessment issued to the taxpayer relating to issues raised in the proceeding shall be admissible, and the taxpayer shall be presumed to have conceded the accuracy of the federal determination unless the taxpayer specifically states wherein it is erroneous.

ITEM 21. Amend paragraph 7.19(7)“f” as follows:

f. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the ~~adverse~~ adversely affected party as provided in subrule 7.19(13).

ITEM 22. Amend paragraphs 7.19(8)“d” and “h” as follows:

d. When the director initially presides at a hearing or considers decisions on appeal from or review of a proposed decision by the presiding officer other than the director, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to or review on motion of a second agency within the time provided by statute or rule. When a presiding officer other than the director presides at the hearing, the order becomes ~~the final order of the department for purposes of judicial review or rehearing~~ and not subject to judicial review unless there is an appeal to or review on motion of the director within 30 days of the date of the order, including Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A, or 10 days, excluding Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A, for a revocation order pursuant to rule 701—7.39(17A). However, if the contested case proceeding involves a question of an award of reasonable litigation costs, the proposed order on the substantive issues shall not be appealable to or reviewable by the director on the director’s motion until the issuance of a proposed order on the reasonable litigation costs. If there is no such appeal to or review by the director within 30 days or 10 days, whichever is applicable, from the date of the proposed order on reasonable litigation costs, both the proposed order on the substantive issues and the proposed order on the reasonable litigation costs become ~~the final orders of the department for purposes of judicial review or rehearing~~ and not subject to judicial review. On an appeal from, review of, or application for rehearing concerning the presiding officer’s order, the director has all the power which the director would initially have had in making the decision; however, the director will consider only those issues presented at the hearing before the presiding officer or raised independently by the presiding officer, including the propriety of and the authority for raising issues. The parties will be notified of those issues which will be considered by the director.

h. Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service, regular mail, certified mail, return receipt requested, AEDMS as described in 481—Chapter 16, or any other method to which the parties may agree. For example, a copy of the order can be submitted by electronic mail if both parties agree.

ITEM 23. Adopt the following **new** paragraph 7.19(8)“k”:

k. A party may not seek judicial review until the director has issued a final decision of the agency. If a party seeks judicial review of a proposed decision of an administrative law judge without appealing to the director or without review of the proposed decision by the director, the party shall be deemed to have failed to exhaust adequate administrative remedies.

ITEM 24. Amend subrule 7.29(7) as follows:

7.29(7) Action required. Within 60 days after the filing of the petition, or within an extended period as agreed to by the petitioner, the department must, in writing, either: (a) deny the petition and notify the petitioner of the department’s action and the specific grounds for the denial; or (b) grant the petition

and notify the petitioner that the department has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial of the petition or the granting of the petition on the date that the department mails or delivers the required notification to the petitioner. All orders granting or denying a petition shall be submitted ~~on the Internet site as prescribed in Iowa Code section 17A.9A~~ to the administrative rules review committee.

ITEM 25. Amend subrule 7.37(2) as follows:

7.37(2) Procedures. Appeals will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

a. to d. No change.

e. Subrules 7.12(1), 7.12(2), and ~~7.12(6)~~ 7.12(4);

f. to p. No change.