

CHAPTER 7
TAX APPEALS, TAXPAYER REPRESENTATION,
AND OTHER ADMINISTRATIVE PROCEDURES

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

Chapter rescission date pursuant to Iowa Code section 17A.7: 3/26/30

701—7.1(421,17A) Applicability and scope of rules. These rules implement the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the laws of this state and other activities of the department. These rules govern the practice, procedure, and conduct of the informal proceedings, contested case proceedings, and certain other administrative procedures within the department's jurisdiction. The rules in this chapter apply to all informal proceedings, contested case proceedings, licensing proceedings pending or commenced on or after their effective date; however, 701—Chapter 6 applies to appeals and contested case proceedings for matters under Iowa Code chapters 123 and 99G. 701—Chapter 3 contains rules on rulemaking for all matters within the department's jurisdiction. 701—Chapter 4 contains rules on declaratory order for all matters within the department's jurisdiction.

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

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.2(421,17A) Definitions. Terms not defined below have the same meaning as defined in Iowa Code chapter 17A. Unless otherwise specifically stated, the terms used in these rules promulgated by the department have the meanings defined by the Act. These definitions apply to this chapter unless the text states otherwise:

“*Act*” means the Iowa administrative procedure Act.

“*Appeal*” means a dispute of a notice of assessment, refund denial, or other department action that may culminate in a contested case proceeding. “*Protest*” has the same meaning as appeal.

“*Appeals section*” means the section of the department designated by the director to administer the informal stage of the tax appeals process and participate in contested case proceedings for appeals before the department.

“*Clerk*” means the clerk of the legal services and appeals division or the clerk's designee.

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

“*Director*” means the director of the department or the director's designee.

“*Division of administrative hearings*” means the division of the department of inspections, appeals, and licensing responsible for holding contested case proceedings pursuant to Iowa Code chapter 10A.

“*Entity*” means any taxpayer other than an individual or sole proprietorship.

“*GovConnectIowa*” means the e-services portal of the department.

“*Informal stage*” means the procedures of the appeals process described in rule 701—7.10(17A).

“*Issuance*” means the date specified in the decision or order, the date of mailing of a decision, or order or date of delivery of the decision or order if service is by other means.

“*Last-known address*” means the last address associated with a taxpayer by tax type, as determined pursuant to rule 701—7.23(421).

“*Motion*” means the same as defined in Iowa Rule of Civil Procedure 1.431.

“*Party*” means the same as defined in Iowa Code section 17A.2(8) and includes intervenors.

“*Person*” means the same as defined in Iowa Code section 17A.2. “Public or private organization of any character or any other person covered by the Act other than an agency” as used in that definition includes estates, trusts, or fiduciary.

“*Petition*” means application for declaratory order; request to intervene in a declaratory order under consideration; or application for initiation of proceedings to adopt, amend or rescind a rule or document filed in licensing.

“*Pleadings*” means appeal, answer, reply or other similar document filed in a contested case proceeding, including contested cases involving no factual dispute.

“*Presiding officer*” means the person designated to preside over a proceeding involving the department. A presiding officer of a contested case involving the department will be either the director or a qualified administrative law judge appointed, pursuant to Iowa Code chapter 17A, by the division of administrative hearings established pursuant to Iowa Code section 10A.801. In cases in which the department is not a party, at the director’s discretion, the presiding officer may be the director or the director’s designee. The presiding officer of an administrative appeal is the director of the department.

“*Proceeding*” means informal, formal, and contested case proceedings.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the director did not preside, as described in Iowa Code section 17A.15.

“*Review unit*” means the unit composed of the appeals section of the department and any of the attorney general’s staff who have been assigned to review appeals filed by taxpayers.

“*Taxpayer interview*” means any in-person contact between an employee of the department and a taxpayer or a taxpayer’s representative that has been initiated by a department employee.

“*Taxpayer’s representative*” or “*taxpayer’s authorized representative*” means an individual authorized to practice before the department on behalf of a taxpayer under Iowa Code section 421.59; an individual who has been named as an authorized representative on a fiduciary return of income form filed under Iowa Code section 422.14 or a tax return filed under Iowa Code chapter 450 or 450B; or for proceedings before the department, any other individual the taxpayer designates who is named on a valid power of attorney if appearing on behalf of another.

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

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.3(17A) How to submit an appeal, petition or related documents; service. Appeals, petitions, and other documents governed by this chapter may be filed electronically, by mail, or in person, in accordance with the limits described below. The headquarters of the department in the Hoover State Office Building in Des Moines, Iowa, will generally be open between the hours of 8 a.m. and 4:30 p.m. daily, except Saturdays, Sundays, and holidays as defined in Iowa Code section 421.9A.

7.3(1) *Ways to submit an appeal, petition, or related document.* Unless otherwise specified in another rule in this chapter, a person may submit an appeal, petition, related document, or document filed during an appeal or pending petition:

a. By submitting through GovConnectIowa. As of November 12, 2024, GovConnectIowa is available for filing petitions for declaratory order, petitions for rulemaking, and petitions for rule waiver for all tax types as well as for lottery and alcohol matters but is only available for filing appeals for the following tax types: sales, use, E911, withholding, motor vehicle fee for new registration, vehicle lease, cigarette, tobacco products, alternative nicotine, vapor device, vapor products, drug stamp, utility replacement, central assessments, statewide property, motor fuel, hotel/motel, local option sales, automobile rental, water service excise, individual income, fiduciary income, corporation income, S corporation income, partnership income, composite, franchise, inheritance, moneys and credits, and tax credits and distributions associated with these tax types.

b. By email to idrhearings@iowa.gov.

c. By mail to Legal Services and Appeals Division, Iowa Department of Revenue, P.O. Box 14457, Des Moines, Iowa 50306-3457.

d. By hand delivery to the department’s customer service desk in the Hoover State Office Building, First Floor, 1305 East Walnut Street, Des Moines, Iowa 50319, during regular business hours.

7.3(2) *Filings with the division of administrative hearings and service upon the department during contested case proceedings.* All documents or papers required or permitted to be filed with an administrative law judge appointed by the division of administrative hearings to be a presiding officer in a contested case shall be filed in accordance with rule 481—10.12(17A). All papers or documents required or permitted by this chapter to be filed with the department or the director and served upon the opposing party or other person in a contested case shall be served by ordinary mail unless another rule specifically refers to another method.

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.

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

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.4(17A) Time requirements for filings.

7.4(1) Computing time. Time shall be computed in accordance with Iowa Code section 421.9A. For electronic submissions, in addition to the requirements described in Iowa Code section 421.9A, local time for the state of Iowa applies. In computing time in accordance with Iowa Code section 421.9A, the first day shall be excluded and the last included.

7.4(2) Date of filing. The date of filing for appeal requests, petitions, or other related documents shall be:

a. If sent electronically either through GovConnectIowa or as described on the department’s website, determined by the date on which the electronic submission was completed.

b. If sent by regular mail, the date postmarked on the envelope sent to the department’s principal office or, if the postmark is not available, the date the appeal is stamped as received by the department.

c. If hand delivered, the date the appeal is stamped as received by the department.

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

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.5(17A) Form and style of documents.

7.5(1) Requirements applicable to all filings under this chapter.

a. **Signatures.** Signatures must meet the requirements of 701—subrule 8.2(6). The signature shall constitute a certification that the signer has read the document; that, under penalty of perjury, the signer declares that to the best of the signer’s knowledge and belief, the information contained in the document is true, correct, and complete; and that no statement contained in the document is misleading.

b. **Citations.** Citations may be italicized or underlined.

7.5(2) Paper. Any paper documents that are allowed or required to be submitted by this chapter must:

a. Be clear and legible.

b. Be on white paper.

c. Be on the applicable department appeal, application for reinstatement, or petition form available on the department’s forms website revenue.iowa.gov/forms under the category “Applications and Other” or, if not on the department’s form, include a proper caption on the first page.

d. Include a signature.

e. Include copies as herein provided or as specified in other applicable rules.

7.5(3) Email. Any documents allowed or required to be filed by email under this chapter must be:

a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2), or

b. The body of an email that meets all of the requirements of subrules 7.5(1) and 7.5(2).

7.5(4) GovConnectIowa. Any documents allowed or required to be filed through GovConnectIowa under this chapter must be:

a. A document in PDF, Microsoft Word, Microsoft Excel, or image format that complies with subrules 7.5(1) and 7.5(2) that is properly uploaded and properly submitted through GovConnectIowa.

b. Completed and submitted on the applicable GovConnectIowa form.

This rule is intended to implement Iowa Code chapters 17A and 554D and sections 421.17 and 421.27A.

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701—7.6(17A) Docket. Every matter coming within the purview of this chapter is assigned a docket number that is the official identification number of the matter for the purposes of identification. The parties will be notified of the docket number. The number will be placed by the parties on all documents thereafter filed in the proceeding. After the transfer of a case to the division of administrative hearings for contested case proceedings, that division may assign another docket number to the case and, in that event, both docket numbers will be placed by the parties on all documents thereafter filed in the proceeding.

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

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.7(17A) Identifying details, requests for redaction.

7.7(1) *Information redacted by the department, subject to certain exceptions.* Prior to being made available for public inspection, the department will redact from an appeal or contested case the information required by 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.

7.7(2) *Process for requesting redaction of other details from a pleading, exhibit, attachment, motion, or written evidence.* 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 comply with 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 appeal described in subrule 7.9(6).

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

(1) The name of the person requesting redaction and the docket number of the proceeding.

(2) 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) 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 in the possession of the department from which the redaction is sought and a precise description of the information to be redacted. If redaction is sought from more than one document, each document and the information sought to be redacted shall be listed in separate paragraphs.

(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.

(5) An affidavit in support of redaction. The affidavit must:

1. 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 redaction, not merely the legal basis for redaction or conclusory allegations.

2. Contain a general and truthful statement that the information sought to be 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 redaction is justified is on the movant. The burden is not carried by mere conclusory statements or allegations, for example, that the release of the material would be a clear, unwarranted invasion of personal privacy or that the material is a trade secret.

e. Contested case proceeding. That the information sought to be 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 is not grounds for redaction.

7.7(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 7.7(2)“c” and subrule 7.18(5). The department has 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.

7.7(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.

7.7(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.

7.7(6) *Handling of the file while the motion is pending.* While a motion is pending, 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).

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.8(17A) Tax appeals. Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding, shall file an appeal, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The appeal must be filed as described in rule 701—7.3(17A).

7.8(1) *Deadlines.* The period for appealing department action relating to refund claims is the same statutory period as that for contesting an assessment. Failure to timely file a proper appeal will be construed as a waiver of opposition to the matter involved unless, on the director’s own motion, pursuant to statutory authority, the powers of abatement or settlement are exercised.

7.8(2) *Paying an assessment that is divisible.* When an assessment involves divisible taxes that are not timely appealed, namely, an assessment that 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. 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. 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.

7.8(3) Types of divisible taxes. All of the taxes administered and collected by the department can be divisible taxes, except individual income tax, fiduciary income tax, corporation income tax, franchise tax, partnership income, S corporation income, composite, and statewide property tax. The following noninclusive examples illustrate the application of the divisible tax concept:

EXAMPLE A: As a responsible party, X is assessed withholding income taxes, penalty, and interest on eight employees. X fails to timely appeal the assessment. X contends that X is not a responsible party. If X is a responsible party, X is required to make monthly deposits of the withholding taxes. In this situation, the withholding taxes are divisible. Therefore, X may pay an amount of tax, penalty, and interest attributable to one employee for one month and file a refund claim within the time period provided by law since, if X is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

EXAMPLE B: Y is assessed sales tax, interest, and penalty for electricity purchased and used to power a piece of machinery in Y's manufacturing plant. Y fails to timely appeal the assessment. Y was billed monthly for electricity by the power company to which Y had given an exemption certificate. Y contends that the particular piece of machinery is used directly in processing tangible personal property for sale and that, therefore, all of the electricity is exempt from sales tax. In this situation, the sales tax is divisible. Therefore, Y may pay an amount of tax, penalty, and interest attributable to one month's electrical usage in that machinery and file a refund claim within the time period provided by law since, if Y is successful on the refund claim, the remaining unpaid portion of the assessment would be canceled.

7.8(4) Who may be named in an appeal. The appeal shall be brought in the name of the aggrieved taxpayer. Each aggrieved taxpayer may protest more than one agency action in a single appeal, subject to the applicable statutory appeal period for each protested agency action. Individuals or entities required to file separate tax returns or those choosing to file separate tax returns may not combine appeals with any other individual or entity. Taxpayers who are not named in the department action under appeal are not aggrieved taxpayers and may not be included in the appeal. The appeal may be filed by and in the name of the aggrieved taxpayer or by the authorized representative described in Iowa Code section 421.59(2), Iowa Code chapter 633B, or subrule 8.8(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.

7.8(5) Form and content of the appeal.

a. Department forms. Appeals may be filed using the form available on GovConnectIowa or the form available on the department's website: revenue.iowa.gov/forms.

b. Manually created appeals. Persons who do not use GovConnectIowa or the form available on the department's website shall use the following format:

(1) The appeal shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ (state taxpayer's name and address and designate type of proceeding, e.g., income tax refund claim)	* * * *	APPEAL Docket No. _____ (filled in by Department)
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(2) The appeal shall substantially state in separate numbered paragraphs the following:

1. Proper allegations showing:
 - Date of department action, such as the notice of assessment or refund denial;
 - Whether the taxpayer failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
 - Whether the appeal 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;

- Copies of the documented department action, such as the notice of assessment, refund claim, and refund denial letter;
 - Other items that the taxpayer wishes to bring to the attention of the department; and
 - A request for attorney fees, if applicable.
2. The type of tax, the taxable period or periods involved, and the amount in controversy.
 3. 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.
 4. Reference to any particular statute or statutes and any rule or rules involved, if known.
 5. Description of records or documents that were not available or were not presented to department personnel prior to the filing of the appeal, if any. Copies of any records or documents that were not previously presented to the department shall be provided.
 6. Any other matters deemed relevant and not covered in the above paragraphs.
 7. The desire of the taxpayer to expedite proceedings. Rule 701—7.12(17A,421) contains more details on expedited proceedings.
 8. A statement setting forth the relief sought by the taxpayer.
 9. The signature of the taxpayer or the authorized representative. If the appeal is signed by the taxpayer, the address and telephone number of the taxpayer is to be included in the signature block. If the appeal is signed by an authorized representative, the address and telephone number of the authorized representative is to be included in the signature block. Appeals submitted by an authorized representative must have a valid IDR power of attorney form or representative certification form, as applicable in accordance with rule 701—8.8(17A,22,421,422), on file with the department, or one should be included with the appeal.

c. Spouses. If an appeal involves an assessment or a refund denial to a married couple and both spouses intend to appeal, both spouses must sign the document as drafted under paragraph 7.8(5) “a” or “b.” Appeals submitted by an authorized representative must include an executed IA 2848 power of attorney form or representative certification form, as applicable, for each spouse unless an IA 2848 power of attorney form or representative certification form is on file with the department.

7.8(6) Amendments.

a. Subject to the statutory appeal period, 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, subject to the statutory appeal period, 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 7.11(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, subject to the statutory appeal period, with the consent of the other parties or at the discretion of the presiding officer who may impose terms or grant a continuance.

7.8(7) Alcohol and lottery appeals. This chapter does not apply to appeals and contested case proceedings for matters under the Iowa alcoholic beverage control Act (Iowa Code chapter 123) or the Iowa lottery act (Iowa Code chapter 99G). Information about appeals under those chapters is contained in 701—Chapter 6.

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

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.9(17A) Resolution of tax liability. In the event that a proper appeal has been filed, other department personnel, when authorized by the appeals section, have the authority to discuss the resolution of any matter in the appeal either with the taxpayer or the taxpayer’s representative. The personnel shall report their activities in this regard to the appeals section, and the section shall be authorized to approve or reject any recommendations made by the appropriate personnel to resolve an appeal.

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

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.10(17A) Informal stage of the tax appeals process. When an appeal is filed, the parties are encouraged to utilize the informal procedures described in this rule to reach a resolution between the parties without the necessity of initiating contested case proceedings. That resolution may be the granting of the appeal in full or in part, the denial of the appeal in full or in part, or an agreement to settle the matter. Unless, in accordance with rule 701—7.12(17A,421), the taxpayer demands a contested case proceeding or an expedited hearing is agreed to or the department waives informal procedures upon notification to the taxpayer, such informal procedures will be initiated as herein provided upon the filing of a proper appeal.

7.10(1) Appeals section review. 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. Review and evaluate the validity of the appeal.
- b. Determine the correct amount of tax owing or refund due.
- c. Determine the best method of resolving the dispute between the taxpayer and the department.
- d. Take further action regarding the appeal, including any additions to and deletions from the audit, as may be warranted by the circumstances to resolve the appeal, including a request for an informal conference.
- e. Determine whether the appeal complies with rule 701—7.8(17A) and request any amendments to the appeal or additional information.

7.10(2) Determinations, conferences. The review unit may concede any items contained in the appeal that it determines should not be controverted by the department. If the taxpayer has not waived informal procedures, the review unit may request that the taxpayer and the taxpayer's representative, if any, attend an informal conference with the review unit to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or the possibility of narrowing the issues presented in the appeal if no settlement can be made. The review unit may request clarification of the issues from the taxpayer or further information from the taxpayer or third persons.

7.10(3) Findings. A position letter addressing the issues raised in the appeal may be issued to the taxpayer or taxpayer's representative unless the issues may be more expeditiously determined in another manner or it is determined that such a letter is unnecessary.

7.10(4) Format of review. Nothing herein will prevent the review unit and the taxpayer from mutually agreeing on the manner in which the appeal will be informally reviewed.

7.10(5) Settlements. Only the director, a deputy director, the division administrator of the legal services and appeals division, or another person designated in writing by the director may approve and sign settlements of appeals. If a settlement is reached during informal procedures, a closing order stating that a settlement was reached by the parties and that the case is terminated shall be issued by the director and provided to all parties.

This rule is intended to implement Iowa Code section 17A.10.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.11(17A,421) Dismissal of tax appeals.

7.11(1) Appeals filed after expiration of statutory deadline. Appeals that are not filed by the applicable statutory deadline shall be dismissed by the director or the director's designee in accordance with the procedure outlined in paragraph 7.11(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 in writing 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. Once such dismissal order is entered, the director or the director's designee shall close 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—7.15(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—7.18(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—7.23(421).

7.11(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 7.11(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.

7.11(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 failure to pursue the appeal and is grounds for the department to dismiss the appeal in accordance with the procedure outlined in paragraph 7.11(3) "a." For purposes of this subrule, an evasive or an incomplete response will be treated as a failure to pursue the appeal.

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—7.15(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—7.18(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" means 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—7.15(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—7.18(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.

7.11(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—7.16(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.
[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.12(17A,421) Demand for contested case proceeding. Pursuant to Iowa Code section 421.60(2) “g,” a taxpayer may make a written demand for a contested case proceeding after a period of six months from the filing of a proper appeal. Demands made prior to six months will be treated as premature and must be resubmitted six months or later from the filing of the appeal. Upon receipt of a timely written demand, the department shall file its answer within 30 days after receipt of the demand. If the department fails to file its answer within this 30-day period, interest shall be applied in the manner described in the introductory paragraph of rule 701—7.13(17A).

This rule is intended to implement Iowa Code sections 17A.12 and 421.60.
[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.13(17A) Answer. If the parties are unable to resolve the appeal informally, or if the parties waive informal proceedings as described in rule 701—7.12(17A,421), the department shall file an answer to the appeal with the clerk. Subject to the limitations in rule 701—7.12(17A,421), the department will file an answer within 30 days of receipt of written demand for a contested case hearing from the taxpayer. In the case of an appeal of an assessment, failure to answer within the 30-day time period and after a demand for hearing has been made shall result in the suspension of interest from the time that the department was required to answer until the date that the department files its answer. In the case of an appeal of a refund denial, failure to answer within the 30-day time period after a demand for hearing has been made shall result in the accrual of interest payable to the taxpayer at double the rate in effect under Iowa Code section 421.7 from the time the department was required to answer until the date that the department files its answer. Failure to file an answer within 30 days after the demand for contested case will not result in a default judgment for the taxpayer.

7.13(1) The answer of the department shall be drawn in a manner as provided by the Iowa Rules of Civil Procedure for answers filed in Iowa district courts.

7.13(2) Each paragraph contained in the answer shall be numbered or lettered to correspond, where possible, with the paragraphs of the appeal. The answer shall be signed by the department’s counsel or representative.

7.13(3) The department shall promptly serve a copy of the answer upon the representative of record or, if there is no representative of record, upon the taxpayer. The department may amend its answer at any time prior to the commencement of the evidentiary hearing in response to the filing of an amended appeal or to assert a new matter or an affirmative defense. The presiding officer has discretion to grant a continuance to avoid prejudice to the taxpayer or the department.

7.13(4) The provisions of this rule shall be considered as a part of the informal procedures since a contested case proceeding, at the time of the filing of the answer, has not yet commenced. However, an answer shall be filed pursuant to this rule whether or not informal procedures have been waived by the taxpayer or the department.

7.13(5) The department’s answer may contain a statement setting forth whether the case should be transferred to the division of administrative hearings or the director should retain the case for hearing.

7.13(6) The department’s answer should set forth the basis for retention of the case by the director as provided in subrule 7.18(1). If the answer fails to allege that the case should be retained by the director, the case should be transferred to the division of administrative hearings for contested case proceedings unless the director determines on the director’s own motion that the case should be retained by the director.

7.13(7) Upon the filing of an answer, the clerk will transfer the appeal file to the division of administrative hearings within 30 days of the date of the filing of the answer unless the director determines not to transfer the case. If a party objects to a determination under rule 701—7.18(17A), the transfer, if any, would be made after the director makes a ruling on the objection.

This rule is intended to implement Iowa Code chapter 17A and section 421.60.
[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.14(17A) Subpoenas. Prior to the commencement of a contested case, the department has the authority to subpoena books, papers, and records and has all other subpoena powers conferred upon it by law. Subpoenas in this case shall be issued by the director or the director's designee. Once a contested case is commenced, subpoenas must be issued by the presiding officer.

This rule is intended to implement Iowa Code sections 17A.13, 421.9, 421.17, and 422.70.
[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.15(17A) Commencement of contested case. A demand or request by the taxpayer for the commencement of contested case proceedings must be in writing and filed with the clerk by email to the address provided in paragraph 7.3(1) "b"; by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk to the address listed in paragraph 7.3(1) "c"; or by personal service to the department's customer service desk as described in paragraph 7.3(1) "d." Alternatively, a taxpayer that has a GovConnectIowa account may notify the clerk by using the Manage Appeal option in GovConnectIowa. The demand must be made no sooner than six months after the filing of the appeal. If the demand or request does not indicate a postmark date, then the date of receipt or the date personal service is made is considered the date of filing. Iowa Code section 622.105 describes the evidence necessary to establish proof of mailing.

7.15(1) When requesting a contested case hearing with the division of administrative hearings, the department shall complete a transmittal form consistent with rule 481—10.4(10A). The transmittal form is merely an administrative tool intended to facilitate the issuance of the notice of hearing.

7.15(2) At the request of a party or the presiding officer made prior to the issuance of the hearing notice, the presiding officer shall hold a telephone conference with the parties for the purpose of identifying the issues within the scope of the contested case, scheduling the hearing date, establishing discovery or other deadlines, and other procedural matters to be addressed in the notice of hearing. The notice of hearing shall be issued by the later of the following: within 30 days of the transmittal of the case from the department to the division of administrative hearings or one week after a telephone conference held under this subrule.

7.15(3) A contested case commences when the presiding officer delivers the notice of hearing by ordinary mail or electronic mail to the parties.

7.15(4) Any party may apply to the presiding officer for a continuance or a specific date for the hearing. The presiding officer may grant or deny such requests.

a. The notice of hearing shall include:

(1) A statement of the time (which shall allow for a reasonable time to conduct discovery), place and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is held;

(3) A reference to the particular sections of the statutes and rules involved; and

(4) A short and plain statement of the matters asserted, including the issues.

b. The statement of the issues in the notice of hearing shall not include issues that are not presented in the appeal or the answer.

7.15(5) After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings in accordance with this chapter.

This rule is intended to implement Iowa Code section 17A.12.
[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.16(17A) Discovery.

7.16(1) The rules of the supreme court of the state of Iowa applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission shall apply to discovery procedures in contested cases.

7.16(2) Disputes concerning discovery shall be resolved by the presiding officer. If necessary, a hearing shall be scheduled, with reasonable notice to the parties, and, upon hearing, an appropriate order shall be issued by the presiding officer.

7.16(3) 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.

7.16(4) Identifiable 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.

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

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.17(17A) Prehearing conference.

7.17(1) Following the commencement of the contested case and upon the motion of the presiding officer, or upon the written request of a party, the presiding officer shall direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

- a. The possibility or desirability of waiving any provisions of the Act relating to contested cases by written stipulation representing an informed mutual consent;
- b. The necessity or desirability of setting a new date for hearing;
- c. The simplification of issues;
- d. The necessity or desirability of amending the pleadings, subject to the applicable statute of limitations and the applicable statutory appeal period;
- e. The possibility of agreeing to the admission of facts, documents or records not controverted, to avoid unnecessary introduction of proof;
- f. The procedure at the hearing;
- g. Limiting the number of witnesses;
- h. The names and identification of witnesses and the facts each party will attempt to prove at the hearing;
- i. Conduct or schedule of discovery; and
- j. Such other matters as may aid, expedite or simplify the disposition of the proceeding.

7.17(2) Any action taken at the prehearing conference shall be recorded in an order unless the parties enter into a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

7.17(3) When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed for the parties to present objections on the grounds that the order does not fully or correctly embody the agreements made at such conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters the order includes unless modified to prevent manifest injustice.

7.17(4) If either party to the contested case fails to appear at the prehearing conference without requesting a continuance and without submitting evidence or arguments that the party wishes to be considered in lieu of appearance, the opposing party may move for dismissal. The motion shall be made in accordance with subrule 7.18(5).

This rule is intended to implement Iowa Code section 17A.12.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.18(17A) Contested case procedures.

7.18(1) *Evidentiary hearing.* Unless the parties to a contested case proceeding have, by written stipulation representing an informed mutual consent, waived the provisions of the Act relating to such proceedings, contested cases shall culminate in an evidentiary hearing open to the public.

a. Evidentiary hearings in which the presiding officer is an administrative law judge employed by the division of administrative hearings shall be held at the location designated in the notice of evidentiary hearing.

b. If the director retains a contested case, the location for the evidentiary hearing will generally be at the main office of the department at the Hoover State Office Building, First Floor, Des Moines, Iowa 50319. However, the department retains the discretion to change the location of the evidentiary hearing if necessary. The location of the evidentiary hearing will be designated in the notice of hearing issued by the director.

7.18(2) *Determination of presiding officer.* If the director retains a contested case for evidentiary hearing and the department is a party, the initial presiding officer will be the director. Upon determining that a case will be retained and not transferred to the division of administrative hearings, the director shall issue to the parties a written notification of the determination that states the basis for retaining the case for evidentiary hearing.

a. The director may determine to retain a contested case for evidentiary hearing and decision upon the filing by the department of its answer under rule 701—7.13(17A). If the answer failed to allege that the case should be retained by the director and the case was transferred to the division of administrative hearings for contested case proceedings, either party may, within a reasonable time after the issuance of the hearing notice provided in rule 701—7.15(17A), make application to the director to recall and retain the case for hearing and decision. Any such application shall be served upon the assigned administrative law judge or presiding officer.

b. A taxpayer may file a written objection to the director's determination to retain the case for evidentiary hearing and may request that the contested case be heard by an administrative law judge or presiding officer and request a hearing on the objection. Such an objection must be filed with the clerk by email to the address provided in paragraph 7.3(1)"*b*," by mail via the United States Postal Service or common carrier by ordinary, certified, or registered mail in care of the clerk to the address listed in paragraph 7.3(1)"*c*," or by personal service to the department's customer service desk as described in paragraph 7.3(1)"*d*" within 20 days of the notice issued by the director of the director's determination to retain the case.

c. The director may retain the case only upon a finding that one or more of the following apply:

(1) One of the reasons listed in Iowa Code section 17A.11(1)"*a*."

(2) The case involves an issue or issues the resolution of which would create important precedent;

(3) The case involves complex or extraordinary questions of law or fact;

(4) The case involves issues or questions of law or fact that, based on the director's discretion, should be retained by the director;

(5) The request is not consistent with a specified statute; or

(6) Assignment of an administrative law judge will result in lengthening the time for issuance of a proposed decision, after the case is submitted, beyond a reasonable time as provided in subrule 7.18(8). In making this determination, the director shall consider whether the assigned administrative law judge has a current backlog of submitted cases for which decisions have not been issued for one year after submission.

d. The director shall issue a written order specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If a party objects to the director's determination to retain a case for evidentiary hearing, transfer of the appeal file, if any, will be made after the director makes a final determination on the objection. If the ruling is contingent upon the availability of a qualified administrative law judge, the parties shall be notified at least ten days prior to the hearing whether a qualified administrative law judge will be available.

e. If there is no factual conflict or credibility of evidence offered in issue, either party, after the contested case has been heard and a proposed decision is pending with a presiding officer other than the director for at least one year, may make application to the director to transfer the case to the director for decision. In addition, if one or more criteria listed in paragraph 7.18(2)"*c*" exist, the director, on the director's own motion, may issue a notice to the parties of the director's intention to transfer the case to the director for decision. The opposing party may file, within 20 days after service of such application or notice by the director, a resistance setting forth in detail why the case should not be transferred. If the director

approves the transfer of the case, the director shall issue a final contested case decision. The director or a party may request that the parties be allowed to submit proposed findings of fact and conclusions of law.

f. The director has the right to require that any presiding officer, other than the director, be a licensed attorney in the state of Iowa unless the contested case only involves licensing. In addition, any presiding officer must possess, upon determination by the director, sufficient technical expertise and experience in the areas of taxation and presiding over proceedings to effectively determine the issues involved in the proceeding.

g. Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the director.

7.18(3) *Conduct of proceedings.*

a. A proceeding shall be conducted by a presiding officer who shall:

- (1) Open the record and receive appearances;
- (2) Administer oaths and issue subpoenas;
- (3) Enter the notice of hearing into the record;
- (4) Receive testimony and exhibits presented by the parties;
- (5) In the presiding officer's discretion, interrogate witnesses;
- (6) Rule on objections and motions;
- (7) Close the hearing; and
- (8) Issue an order containing findings of fact and conclusions of law.

b. The presiding officer may resolve preliminary procedural motions by telephone or videoconference in which all parties have an opportunity to participate. Other telephone or video proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone or video hearing. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall be notified at least 30 days in advance of the date and place of the hearing.

c. Evidentiary proceedings shall be oral, open to the public, and recorded either by electronic means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters bear the costs of reporting. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the department for at least five years from the date of the decision. An opportunity shall be afforded to the parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order:

- (1) Taxpayer,
- (2) Intervenor (if applicable),
- (3) Department,
- (4) Rebuttal by taxpayer,
- (5) Oral argument by parties (if necessary).

d. If the taxpayer or the department appears without counsel or other representative who can reasonably be expected to be familiar with these rules, the presiding officer shall explain to the parties the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when the parties have counsel or representation. It should be the purpose of the presiding officer to assist any party appearing without such representative to the extent necessary to allow the party to present evidence, testimony, and argument on the issues. The presiding officer shall take whatever steps may be necessary and proper to ensure that all evidence having probative value is presented and that each party is accorded a fair hearing.

e. If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner than when an evidentiary hearing is conducted.

f. The presiding officer may enter a default decision as described in subrule 7.18(7).

g. Contemptuous conduct by any person appearing at a hearing shall be grounds for the person's exclusion from the hearing by the presiding officer.

7.18(4) *Rules of evidence.*

a. Oath. All testimony presented before the presiding officer shall be given under oath, which the presiding officer has authority to administer.

b. Production of evidence and testimony. The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records, or other real evidence.

c. Subpoena. When a subpoena is desired after the commencement of a contested case proceeding, the proper party shall indicate to the presiding officer the name of the case, the docket number, and the last-known mailing addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. When properly prepared by the presiding officer, the subpoena will be returned to the requesting party for service. Service may be made in any manner allowed by law before the hearing date of the case that the witness is required to attend. No costs for serving a subpoena will be allowed if the subpoena is served by any person other than the sheriff. Subpoenas requested for discovery purposes shall be issued by the presiding officer.

d. Admissibility of evidence.

(1) Evidence having probative value.

1. Although the presiding officer is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which a reasonably prudent person would rely for the conduct of the person's serious affairs and may be based upon such evidence even if it would be inadmissible in a jury trial. Therefore, the presiding officer may admit and give probative effect to evidence on which a reasonably prudent person would rely for the conduct of the person's serious affairs. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence not provided to a requesting party through discovery shall not be admissible at the hearing. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, substantially any part of the evidence may be required to be submitted in verified written form by the presiding officer.

2. Objections to evidentiary offers may be made at the hearing, and the presiding officer's ruling thereon shall be noted in the record.

(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 are admissible, and the taxpayer is presumed to have conceded the accuracy of the federal determination unless the taxpayer specifically states wherein it is erroneous.

(3) Copies of evidence. A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available.

(4) Stipulations. Approval of the presiding officer is not required for stipulations of fact to be used in contested case proceedings. In the event the parties file stipulations of fact in the proceedings, the stipulation is binding on the parties and the presiding officer.

e. Identification of exhibits. Exhibits that are offered by taxpayers and attached to a stipulation or entered in evidence shall be numbered serially, e.g., 1, 2, 3; exhibits offered by the department shall be lettered serially, e.g., A, B, C; and those offered jointly shall be numbered and lettered, e.g., 1-A, 2-B, 3-C.

f. Official notice. The official notice provisions of Iowa Code section 17A.14(4) apply to contested cases of the department.

g. Evidence outside the record. Except as provided by these rules, the presiding officer shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

h. Presentation of evidence and testimony. In any hearing, each party in attendance shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies on behalf of an adverse party. A person whose testimony has been submitted in written form shall, if available, also be subject to cross-examination by an adverse party. Opportunity shall be afforded each

party for re-direct examination and re-cross-examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

i. Offer of proof. An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

7.18(5) Motions.

a. Filing of motions after commencement of contested case proceedings. After commencement of contested case proceedings, appropriate motions may be filed with the presiding officer by any party when facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the motions are based.

b. Service, rulings. Motions made prior to a hearing shall be in writing and a copy thereof served on all parties and attorneys of record. The presiding officer will rule on such motions by issuing a written order. A copy of the order containing the ruling on the motion shall be served on the parties and authorized representatives. A motion may be made orally during the course of a hearing; however, the presiding officer may request that the motion be reduced to writing and filed with the presiding officer.

c. Consent of the opposing party, burden. To avoid a hearing on a motion, it is advisable to secure the consent of the opposing party prior to filing the motion. If consent of the opposing party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause as to why the motion should be granted.

d. Affidavits. The party making the motion may affix thereto such affidavits as are deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposing party may reply with counter affidavits.

e. Resistance. The party opposing a motion, except in the case of motions for summary judgment, must file its resistance within ten days of the date of filing of the motion unless a presiding officer otherwise orders a different deadline to file the resistance.

f. Reply. The movant may file a reply within seven days of the date of filing of the resistance to the motion.

g. Types of motions. Types of motions include but are not limited to:

(1) Motion for continuance. Motions for continuance should be filed no later than ten days before the scheduled date of the contested case hearing unless the grounds for the motion are first known to the moving party within ten days of the hearing, in which case the motion shall be promptly filed and shall set forth why it could not be filed at least ten days prior to the hearing. Grounds for motion for continuance include, but are not limited to, the unavailability of a party, a party's representative, or a witness; the incompleteness of discovery; and the possibility of settlement of the case.

(2) Motion for dismissal.

(3) Motion for summary judgment.

(4) Motion for redaction of identifying details in the decision. More information is contained in rule 701—7.7(17A).

(5) Motion for default.

(6) Motion to vacate default.

h. Summary judgment procedure. Summary judgment may be obtained under the following conditions and circumstances:

(1) A party may move, with or without supporting affidavits, for summary judgment in the party's favor upon all or any part of a party's claim or defense.

(2) The motion shall be filed not less than 60 days prior to the date set for the contested case hearing unless otherwise ordered by the presiding officer. Any party resisting the motion shall file the following within 30 days of the date of filing of the motion: a resistance; a statement of disputed facts, if any; and a memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. The movant may reply to the resistance within 15 days of the date of filing of the resistance.

(3) Upon any motion for summary judgment pursuant to this rule, there shall be affixed to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions,

answers to interrogatories, admissions on file, and affidavits that support such contentions and a memorandum of authorities.

(4) Supporting and opposing affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleading but the party's response must set forth specific facts, by affidavits or as otherwise provided in this rule, showing that there is a genuine issue for hearing. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(5) If, on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the presiding officer at the hearing of the motion, by examining the pleadings and the evidence before the presiding officer and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The presiding officer shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the hearing of the contested case, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(6) Should it appear from the affidavits of a party opposing the motion that the party cannot present, by affidavit, facts essential to justify the party's opposition, the presiding officer may refuse the application for judgment, may order a continuance to permit affidavits to be obtained, may order depositions be taken or discovery be completed, or may make any other order appropriate.

(7) An order on summary judgment that disposes of less than the entire case is appealable to the director at the same time that the proposed order is appealable pursuant to subrule 7.18(8).

7.18(6) Briefs and oral argument.

a. At any time, upon the request of any party or in the presiding officer's discretion, the presiding officer may require the filing of briefs on any of the issues before the presiding officer prior to or at the time of hearing, or at a subsequent time. At the conclusion of hearing, the parties should be prepared to make oral arguments as to the facts and law if directed by the presiding officer.

b. A copy of all briefs shall be filed. Filed briefs shall conform to the requirements of subrules 7.5(1) and 7.5(2).

c. The parties may agree to a briefing schedule. If the parties agree to a briefing schedule and if the presiding officer adopts the agreed-upon briefing schedule by issuing an order to that effect, the schedule is binding on the parties and the presiding officer except that, for good cause shown, the time may be extended upon application of a party.

7.18(7) Defaults. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

a. Where appropriate and not contrary to law, any party may move for default against a party who has failed to file a required pleading or has failed to appear after proper service.

b. A default decision or a decision rendered on the merits after a party failed to appear or participate in a contested case proceeding becomes a final department action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided in subrule 7.18(8). A motion to vacate must state all facts relied upon by the moving party that establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, and such affidavit(s) must be attached to the motion.

c. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

d. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

e. For purposes of this rule, "good cause" means the same as "good cause" in Iowa Rule of Civil Procedure 1.977.

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 adversely affected party as provided in subrule 7.18(11).

g. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

h. A default decision may award any relief consistent with the request for relief by the party in whose favor the default decision is made and embraced in the contested case issues, but unless the defaulting party has appeared, the relief awarded cannot exceed the relief demanded.

i. A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for a stay.

7.18(8) Orders.

a. *Proposed decisions submitted by parties.* At the conclusion of the hearing, the presiding officer, in the presiding officer's discretion, may request the parties to submit proposed findings of fact and conclusions of law. Upon the request of any party, the presiding officer shall allow the parties an opportunity to submit proposed findings of fact and conclusions of law. In addition to or in lieu of the filing of briefs, upon the request of all of the parties waiving any contrary contested case provisions of law or of these rules, the presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law, and the presiding officer may sign and adopt as the decision or proposed decision one of such proposed findings of fact and conclusions of law without any changes or with such changes that are supported by the record and law.

b. *Preparing the proposed decision.* The decision in a contested case is an order that shall be in writing or stated in the record. The order shall include findings of fact prepared by the presiding officer, unless the presiding officer is unavailable, and based solely on the evidence in the record and on matters officially noticed in the record and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. If a party has submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. The decision must include an explanation of why the relevant evidence in the record supports each material finding of fact. If the issue of reasonable litigation costs was held in abeyance pending the outcome of the substantive issues in the contested case and the proposed order decides substantive issues in favor of the taxpayer, the proposed order shall include a notice of time and place for a hearing on the issue of whether reasonable litigation costs shall be awarded and on the issue of the amount of such award unless the parties agree otherwise. All decisions and orders in a contested case proceeding shall be based solely on the legal bases and arguments presented by the parties. In the event that the presiding officer believes that a legal basis or argument for a decision or order exists, but has not been presented by the parties, the presiding officer shall notify the parties and give them an opportunity to file a brief that addresses such legal basis or argument.

c. *Decision on motions to redact identifying details.* When a motion has been made to redact identifying details in an order on the basis of personal privacy or trade secrets, the justification for such redaction or refusal to redact shall be made by the moving party and shall appear in the order.

d. *Proposed and final decisions.* 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 final 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—7.26(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 final 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 that will be considered by the director.

e. Application to review interlocutory decisions. Notwithstanding this rule, where a presiding officer other than the director issues an interlocutory decision or ruling which does not dispose of all the issues, except reasonable litigation costs, in the contested case proceeding, the party adversely affected by the interlocutory decision or ruling may apply to the director within 20 days (10 days for a revocation proceeding) of the date of issuance of the interlocutory decision or ruling to grant an appeal in advance of the proposed decision. The application shall be served on the parties and the presiding officer. The party opposing the application shall file any resistance within 15 days of the service of the application unless, for good cause, the director extends the time for such filing. The director, in the exercise of discretion, may grant the application on finding that such interlocutory decision or ruling involves substantial rights and will materially affect the proposed decision and that a determination of its correctness before hearing on the merits will better serve the interests of justice. The order of the director granting the appeal may be on terms setting forth the course of proceedings on appeal, including advancing the appeal for prompt submission, and the order shall stay further proceedings below. The presiding officer, at the request of the director, shall promptly forward to the director all or a portion of the file or record in the contested case proceeding.

f. Appeals to and reviews by director—notice to administrative hearings division. In the event of an appeal to or review of the proposed order by the director, the administrative hearings division shall be promptly notified of the appeal or review by the director. The administrative hearings division shall, upon such notice, promptly forward the record of the contested case proceeding and all other papers associated with the case to the director.

g. Director's authority in appeals and review of proposed decisions. On an appeal or review of a proposed decision, the director has all the power that the director would have in initially making the final decision except as it may limit the issues on notice to the parties. A decision by the director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding of fact or may reverse or modify any conclusion of law that the director finds to be in error.

h. Issuing orders. 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.

i. Cross-appeals. A cross-appeal may be taken within the 30-day period for taking an appeal to the director or in any event within 5 days after the appeal to the director is taken. If a cross-appeal is taken from a revocation order pursuant to rule 701—7.26(17A), the cross-appeal may be taken within the ten-day period for taking an appeal to the director or in any event within five days after the appeal to the director is taken.

j. Transmission of case from administrative hearings division back to the department. Upon issuance of a closing order or the proposed decision by a presiding officer other than the director, such presiding

officer no longer has authority over the contested case, except to resolve taxpayer requests for awards of reasonable litigation costs. Thereafter, any further proceedings associated with or related to the contested case must occur before the director.

k. Exhaustion of administrative remedies required. 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 is deemed to have failed to exhaust adequate administrative remedies.

7.18(9) Stays.

a. During the pendency of judicial review of the final contested case order of the department, the party seeking judicial review may file with the director an application for a stay. The application shall set forth in detail the reasons why the applicant is entitled to a stay and shall specifically address the following four factors:

- (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter;
- (2) The extent to which the applicant will suffer irreparable injury if the stay is not granted;
- (3) The extent to which the granting of a stay to the applicant will substantially harm the other parties to the proceedings; and
- (4) The extent to which the public interest relied on by the department is sufficient to justify the department's actions in the circumstances.

b. The director shall consider and balance the previously mentioned four factors and may consult with department personnel and the department's representatives in the judicial review proceeding. The director shall expeditiously grant or deny the stay.

7.18(10) Costs.

a. A prevailing taxpayer in a contested case proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded by the department reasonable litigation costs incurred subsequent to the issuance of the notice of assessment or refund denial that are based upon the following:

- (1) The reasonable expenses of expert witnesses.
- (2) The reasonable costs of studies, reports, and tests.
- (3) The reasonable fees of independent attorneys or independent accountants retained by the taxpayer.

No such award is authorized for accountants or attorneys who represent themselves or who are employees of the taxpayer.

b. An award for reasonable litigation costs shall not exceed \$25,000 per case.

c. No award shall be made for any portion of the proceeding which has been unreasonably protracted by the taxpayer.

d. For purposes of this subrule, "prevailing taxpayer" means a taxpayer who establishes that the position of the department in the contested case proceeding was not substantially justified and who has substantially prevailed with respect to the amount in controversy, or has substantially prevailed with respect to the most significant issue or set of issues presented. If the position of the department in issuance of the assessment or refund denial was not substantially justified and if the matter is resolved or conceded before the contested case proceeding is commenced, there cannot be an award for reasonable litigation costs.

e. The definition of "prevailing taxpayer" is taken from the definition of "prevailing party" in 26 U.S.C. §7430. Therefore, federal cases determining whether the Internal Revenue Service's position was substantially justified will be considered in the determination of whether a taxpayer is entitled to an award of reasonable litigation costs to the extent that 26 U.S.C. §7430 is consistent with Iowa Code section 421.60(4).

f. The taxpayer has the burden of establishing the unreasonableness of the department's position.

g. Once a contested case has commenced, a concession by the department of its position or a settlement of the case either prior to the evidentiary hearing or any order issued does not, per se, either authorize an award of reasonable litigation costs or preclude such award.

h. If the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies with respect to the tax imposed by Iowa Code chapter 453B, an award for reasonable litigation costs shall not be made in a contested case proceeding involving the determination, collection, or refund of that tax.

i. The taxpayer who seeks an award of reasonable litigation costs must specifically request such award in the appeal, or the request for award will not be considered.

j. A request for an award of reasonable litigation costs shall be held in abeyance until the concession or settlement of the contested case proceeding, or the issuance of a proposed order in the contested case proceeding, unless the parties agree otherwise.

k. At the hearing held for the purpose of deciding whether an award for reasonable litigation costs should be awarded, consideration shall be given to the following points:

- (1) Whether the department's position was substantially justified;
- (2) Whether the taxpayer is the prevailing taxpayer;
- (3) Whether the taxpayer has established how the alleged reasonable litigation costs were incurred.

The burden is upon the taxpayer to establish how the alleged reasonable litigation costs were incurred. This requires a detailed accounting of the nature of each cost, the amount of each cost, and to whom the cost was paid or owed;

- (4) Whether alleged litigation costs are reasonable or necessary;
- (5) Whether the taxpayer has met the taxpayer's burden of demonstrating all of these points.

7.18(11) *Interlocutory appeals.* Upon written request of a party or on the director's own motion, the director may review an interlocutory order of the presiding officer. In determining whether to do so, the director shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the director at the time of the review of the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

7.18(12) *Consolidation and severance.*

a. Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

- (1) The matters at issue involve common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues involved; and
- (3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. Severance. On motion by a party, the presiding officer may, for good cause shown, order any contested case or portions thereof severed. If the presiding officer severs one or more issues from the remaining issues in the contested case, the contested case proceeds only on the issues that the presiding officer ordered for resolution. Once the decision on the issues that the presiding officer ordered for resolution becomes final and is not subject to further appeals, the parties may proceed, if necessary, with contested case on the issues that the presiding officer severed.

c. Stipulations. Stipulations of fact are encouraged, but no party can be required to stipulate to any facts. Stipulations as to the law are invalid.

d. Informal disposition. Without the necessity of proceeding to an evidentiary hearing in a contested case, the parties may agree in writing to informally dispose of the case by stipulation, agreed settlement, or consent order or by another method agreed upon. If such informal disposition is utilized, the parties shall so indicate to the presiding officer that the case has been settled. Upon request, the presiding officer shall issue a closing order to reflect such a disposition. The contested case is terminated upon issuance of a closing order.

e. Mutual waivers. Unless otherwise precluded by law, the parties in a contested case proceeding may mutually agree to waive any provision under this rule governing contested case proceedings.

This rule is intended to implement Iowa Code sections 17A.12, 17A.14, 17A.15, 421.60 and 452A.68.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.19(17A) Interventions. Interventions are governed by the Iowa Rules of Civil Procedure.

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

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.20(17A) Record and transcript.

7.20(1) The record in a contested case shall include:

- a. All pleadings, motions, and rulings;
- b. All evidence received or considered and all other submissions;
- c. A statement of all matters officially noticed;
- d. All questions and offers of proof, objections, and rulings thereon;
- e. All proposed findings and exceptions;
- f. All orders of the presiding officer; and
- g. The order of the director on appeal or review.

7.20(2) Oral hearings regarding proceedings on appeal to or considered on motion of the director that are recorded by electronic means shall not be transcribed for the record of such appeal or review unless a party, by written notice, or the director, orally or in writing, requests such transcription. Such a request must be filed with the clerk who will be responsible for making the transcript. A transcription will be made only of that portion of the oral hearing relevant to the appeal or review if so requested and if no objection is made by any other party to the proceeding or the director.

7.20(3) Upon request, the department shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means bear the cost of that recording unless otherwise provided by law.

7.20(4) Upon issuance of a proposed decision that leaves no issues open for further consideration or upon issuance of a closing order, the administrative hearings division shall promptly forward the record of a contested case proceeding to the director. However, the administrative hearings division may keep the tapes of any evidentiary proceeding in case a transcript of the proceeding is required and, if one is required, the administrative hearings division shall make the transcription and promptly forward the tapes and the transcription to the director.

This rule is intended to implement Iowa Code section 17A.12.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.21(17A) Application for rehearing. Any party to a contested case may file an application with the director for a rehearing in the contested case with the clerk in one of the manners described in subrule 7.3(1), stating the specific grounds therefor and the relief sought. The application must be filed within 20 days after the final order is issued. A copy of such application shall be timely served by the applicant on all parties in conformity with rule 701—7.3(17A). The director shall have 20 days from the filing of the application for rehearing to grant or deny the application. If the application for rehearing is granted, a notice will be served on the parties stating the time and place of the rehearing. An application for rehearing is deemed denied if not granted by the director within 20 days after filing.

7.21(1) The application for rehearing shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____	*	
(state taxpayer's name and address and	*	APPLICATION FOR REHEARING
designate type of proceeding, e.g.,	*	Docket No. _____
income tax refund claim)	*	

7.21(2) The application for rehearing shall substantially state in separate numbered paragraphs the following:

- a. Clear and concise statements of the reasons for requesting a rehearing and each and every error that the party alleges to have been committed during the contested case proceedings;
- b. Clear and concise statements of all relevant facts upon which the party relies;
- c. Reference to any particular statute or statutes and any rule or rules involved;

d. The signature of the party or that of the party's representative, the address of the party or of the party's representative, and the telephone number of the party or the party's representative.

7.21(3) No applications for rehearing shall be filed with or entertained by an administrative law judge.

This rule is intended to implement Iowa Code section 17A.16.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.22(17A) Ex parte communications and disqualification.

7.22(1) *Ex parte communication.* A party that has knowledge of a prohibited communication by any party or presiding officer should file a copy of the written prohibited communication or a written summary of the prohibited oral communication with the clerk. The clerk will transfer to the presiding officer the filed copy of the prohibited communication.

a. *Prohibited communications.* Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the department or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in this rule, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record. Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

b. *"Ex parte" communication defined.* Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

c. *How to avoid prohibited communications.* To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with this chapter and may be supplemented by telephone, facsimile, electronic mail, or other means of notification. Where permitted, oral communications may be initiated through conference telephone calls including all parties or their representatives.

d. *Joint presiding officers.* Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

e. *Advice to presiding officer.* Persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the parties are not disqualified from participating in the making of a proposed or final decision under any provision of law and the parties comply with these rules.

f. *Procedural communications.* Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties when seeking to continue hearings or other deadlines.

g. *Disclosure of prohibited communications.* A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served

on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

h. Disclosure by presiding officer. Promptly after receiving the communication or being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

7.22(2) Disqualification of a presiding officer. Request for disqualification of a presiding officer must be filed in the form of a motion supported by an affidavit asserting an appropriate ground for disqualification. A substitute presiding officer may be appointed by the division of administrative hearings if the disqualified presiding officer is an administrative law judge. If the disqualified presiding officer is the director, the governor must appoint a substitute presiding officer.

a. Grounds for disqualification. A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- (1) Has a personal bias or prejudice concerning a party or a representative of a party;
- (2) Has personally investigated, prosecuted, or advocated in connection with that case the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- (3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case the specific controversy underlying that contested case or a pending factually related contested case or controversy involving the same parties;
- (4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- (5) Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- (6) Has a spouse or relative within the third degree of relationship that:
 1. Is a party to the case or an officer, director, or trustee of a party to the case;
 2. Is a lawyer in the case;
 3. Is known to have an interest that could be substantially affected by the outcome of the case; or
 4. Is likely to be a material witness in the case; or
- (7) Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

b. Personally investigated. “Personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other department functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and these rules.

c. Disqualification and the record. In a situation where a presiding officer or other person knows of information that might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

d. Motion asserting disqualification.

(1) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party

first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

(2) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and seek a stay as provided under this chapter.

This rule is intended to implement Iowa Code sections 17A.11 and 17A.17.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.23(421) Mailing to the last-known address or personal delivery of notices of assessment and refund denial letters.

7.23(1) *Failure by department to mail to last-known address or personally deliver.*

a. If the department fails to either mail a notice of assessment to the taxpayer's last-known address or personally deliver the notice to the taxpayer, interest is waived for the month the failure occurs through the month of correct mailing or personal delivery.

b. In addition, if the department fails to either mail to the taxpayer's last-known address or personally deliver to the taxpayer a notice of assessment or denial of a claim for refund or fails to mail or personally deliver a copy of the notice to the taxpayer's authorized representative, if applicable, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered or for a period not to exceed one year, whichever is the lesser period.

c. Collection activities, except in the case of a jeopardy assessment, shall be suspended and the statute of limitations for assessment and collection of the tax shall be tolled during the period in which interest is waived.

7.23(2) *Determination of last-known address.*

a. A taxpayer's last-known address for a particular tax type shall be one of the following most recently updated in the department's records:

- (1) The address provided in an application to register or receive a permit for a particular tax type;
- (2) The address used on the most recent filed and processed Iowa tax return of a particular tax type;
- (3) The address received by the department in a written, concise statement the taxpayer mailed to: Changes in Name or Address, Iowa Department of Revenue, P.O. Box 10465, Des Moines, Iowa 50306;
- (4) The address provided by the taxpayer in GovConnectIowa;
- (5) The address provided by the taxpayer in any correspondence to the department;
- (6) The address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

b. While the determination of last-known address may differ by tax type, a notice of assessment or refund claim denial will be considered to be mailed to the last-known address if it is mailed to the taxpayer's last-known address used for another tax type.

7.23(3) *Mail or personal delivery to a taxpayer.* The following shall constitute personal delivery to a taxpayer:

a. Personal service upon a taxpayer by any method deemed sufficient to constitute personal service of an original notice pursuant to the Iowa Rules of Civil Procedure.

b. Providing a notice of assessment or refund claim denial to the taxpayer by electronic means based on the taxpayer's election to receive electronic communications in GovConnectIowa.

c. Mailing to an address the department receives from a third-party skip tracing service; a public or private utility company in response to a subpoena issued pursuant to Iowa Code section 421.17(32); or a federal, state, or local agency.

d. By any other method that is reasonably calculated to result in the taxpayer's actually receiving the notice, if the taxpayer actually receives the notice.

7.23(4) *Mail or personal delivery to authorized representatives.* The department may mail or personally deliver a copy of a notice to an authorized representative by one of the following methods:

- a. Mailing to the address used on the most recently filed and processed written authorization as described in rule 701—8.8(17A,22,421,422) for the taxpayer the authorized representative is representing, or the most recent address on file;
- b. In the case of fiduciary or inheritance tax matters, mailing to the address for the authorized representative contained on the most recently filed and processed return;
- c. By providing the notice electronically through GovConnectIowa or similar method of electronic service;
- d. By any method deemed sufficient to constitute personal service of an original notice pursuant to the Iowa Rules of Civil Procedure;
- e. By any other method that is reasonably calculated to result in the authorized representative's actually receiving a copy of the notice if the authorized representative actually receives a copy of the notice.

This rule is intended to implement Iowa Code section 421.60.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.24(441) Appeals of director's rejection of assessor appointment or reappointment.

7.24(1) *Written request for appeal.* Any assessor or conference board wishing to contest the director's rejection of the conference board's appointment of an assessor under 701—subrule 10.15(4) or reappointment of an assessor under 701—subrule 103.16(3) shall file an appeal, in writing, within 30 days of the director's notice of decision. Any person who does not seek an appeal within 30 days of the director's notice shall be precluded from challenging the director's decision.

7.24(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. Subrules 7.3(2) and 7.3(3);
- b. Rule 701—7.7(17A);
- c. The introductory paragraph of rule 701—7.8(17A) and subrule 7.8(6);
- d. Subrules 7.11(1), 7.11(2), and 7.11(4);
- e. Rule 701—7.12(17A,421);
- f. Subrules 7.13(1) to 7.13(3);
- g. Rule 701—7.14(17A);
- h. Rule 701—7.15(17A);
- i. Rule 701—7.16(17A);
- j. Rule 701—7.17(17A);
- k. Subrule 7.18(1); subrules 7.18(3) through 7.18(7); subrule 7.18(8), except paragraph 7.18(8)“b” related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.18(9) and 7.18(12);
- l. Rule 701—7.19(17A);
- m. Rule 701—7.20(17A);
- n. Rule 701—7.21(17A);
- o. Rule 701—7.22(17A); and
- p. Rule 701—8.8(17A,22,421,422).

7.24(3) *Presiding officer.* The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.24(4) *Contents of the appeal.* The appeal shall contain the following in separate numbered paragraphs:

- a. A statement of the department action giving rise to the appeal.
- b. The date of the department action giving rise to the appeal.
- c. Each error alleged to have been committed, listed as 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 the particular statutes, rules, or agreement terms, if known.
- e. References to and copies of any documents or other evidence relevant to the appeal.

- f. Any other matters deemed relevant to the appeal.
- g. A statement setting forth the relief sought.
- h. The signature, mailing address, and telephone number of the person or that person's representative.

7.24(5) Burden of proof. The burden of proof is on the party challenging the director's decision under 701—subrule 10.15(4) or 103.16(3).

This rule is intended to implement Iowa Code section 441.6(3) and chapter 17A.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.25(441) Appeals and hearings regarding the director's intent to remove a member of the board of review.

7.25(1) Written request for hearing. A member of the board of review who has received a notice of intent to remove from the director and who wishes to contest the removal shall file a written request for a hearing within 30 days after the receipt of the notice of the director's intent to remove the member. Any person who does not seek a hearing within 30 days of receipt of the notice of the director's intent to remove shall be precluded from challenging the removal.

7.25(2) Procedures. Hearings will be governed by the procedures set forth in this rule together with the procedures set forth in the following rules:

- a. The introductory paragraph of rule 701—7.7(17A), excluding the first sentence of the introductory paragraph of 701—7.7(17A); and subrule 7.8(6);
- b. Subrule 7.8(1);
- c. 701—7.9(17A);
- d. Subrules 7.11(1) to 7.11(4);
- e. Rule 701—7.12(17A,421);
- f. Rule 701—7.13(17A);
- g. Rule 701—7.14(17A);
- h. Rule 701—7.15(17A);
- i. Subrule 7.18(1); 7.18(3) through 7.18(7); subrule 7.18(8), except paragraph 7.18(8)“b” related to costs shall not apply; additionally, Iowa Code section 421.60 shall not apply; subrules 7.18(9), and 7.18(12);
- j. Rule 701—7.17(17A);
- k. Rule 701—7.18(17A);
- l. Rule 701—7.19(17A);
- m. Rule 701—7.20(17A); and
- n. Rule 701—7.21(17A).

7.25(3) Presiding officer. The director shall be the presiding officer in a contested case under this rule. The director may request that an administrative law judge assist and advise the director with any matters related to the contested case proceedings, including but not limited to ruling on any prehearing matters, presiding at the contested case hearing, and issuing orders and rulings.

7.25(4) Contents of the appeal. The appeal shall contain the following in separate numbered paragraphs:

- a. A statement of the department action giving rise to the appeal.
- b. The date of the department action giving rise to the appeal.
- c. Each error alleged to have been committed, listed as 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 the particular statutes, rules, or agreement terms, if known.
- e. References to and copies of any documents or other evidence relevant to the appeal.
- f. Any other matters deemed relevant to the appeal.
- g. A statement setting forth the relief sought.
- h. The signature, mailing address, and telephone number of the person or that person's representative.

7.25(5) Burden of proof. The burden of proof is on the party challenging the director's intent to remove a board member.

This rule is intended to implement Iowa Code section 441.32(2)“e” and chapter 17A.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—7.26(17A) License and permit denials and revocations.

7.26(1) *Specified license or permit denial and revocation processes.* Procedures related to alcohol and lottery license denials and revocations are contained in 701—Chapters 1000 and 1102. Procedures related to sales or use tax permit revocations are contained in 701—Chapter 201. For all other license and permit denials, this rule applies.

7.26(2) *Denial of license or permit; refusal to renew license or permit.*

a. Written notice in general. When the department is required by constitution or statute to provide notice and an opportunity for an evidentiary hearing prior to the refusal or denial of a license, the department will serve notice of intent to deny or refuse the license by restricted certified mail or by personal service as in a civil action. The notice will contain a statement of facts or conduct and the provisions of law that warrant the denial of the license or the refusal to renew a license. The notice will provide the licensee or applicant with 30 days to request a hearing and information about how to contact the department to make such a request.

b. Requesting a hearing. If a hearing is requested, the matter will be transferred to the administrative hearings office unless retained by the director.

c. Notice of hearing. A notice of hearing issued as described in rule 701—7.15(17A) upon the licensee or applicant.

d. Licensee opportunity to file a petition. If the licensee so desires, the licensee may file a petition as provided in subrule 7.26(4) with the presiding officer within 30 days prior to the hearing. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule 701—7.18(17A) governing contested case proceedings shall apply.

e. Treatment of existing license while matter is pending. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the department, and in the case the application is denied or the terms of the new license limited, until the last date for seeking judicial review of the department's order or a later date fixed by order of the department or the reviewing court.

7.26(3) *Revocation of license.*

a. Written notice in general. The department will not revoke, suspend, annul or withdraw any license until written notice is served by restricted certified mail or by personal service as in a civil case. The notice will provide the licensee with the 30 days to request a hearing and information about how to contact the department to make such a request. If a hearing is requested, the matter will be transferred to the division of administrative hearings unless retained by the director. A notice of hearing will be issued by the presiding officer as described in rule 701—7.15(17A). The licensee whose license is to be revoked, suspended, annulled, or withdrawn, will be given an opportunity to show at an evidentiary hearing conducted pursuant to rule 701—7.18(17A) compliance with all lawful requirements for the retention of the license.

b. Contents of notice. In addition to the requirements of rule 701—7.15(17A), the notice shall contain a statement of facts or conduct and the provisions of law that warrant the revocation, suspension, annulment, or withdrawal of the license.

c. Licensee opportunity to file petition. A licensee whose license may be revoked, suspended, annulled, or withdrawn may file a petition as provided in subrule 7.26(4) with the department prior to the hearing. The petition should be filed at the address provided on the notice to revoke, suspend, annul, or withdraw. The department may, in its discretion, file an answer to a petition filed by the licensee prior to the hearing. Thereafter, rule 701—7.18(17A) governing contested case proceedings shall apply.

d. Emergency proceedings. Notwithstanding paragraph 7.26(3)“a,” if the department finds that public health, safety, or welfare imperatively requires emergency action and the department incorporates a finding to that effect in an order to the licensee, summary suspension of a license shall be ordered pending proceedings for revocation as provided herein. These proceedings shall be promptly instituted and determined. When a summary suspension as provided herein is ordered, a notice of the time, place and nature of the evidentiary hearing shall be attached to the order.

7.26(4) *Petition.*

a. When a person desires to file a petition as provided in subrules 7.26(2) and 7.26(3), the petition to be filed shall contain a caption in the following form:

BEFORE THE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF	*	PETITION
State taxpayer's name and address, and type of license)	*	Docket No.
	*	(filled in by Department)
	*	

- b.* The petition shall substantially state in separate numbered paragraphs the following:
- (1) The full name and address of the petitioner;
 - (2) Reference to the type of license and the relevant statutory authority;
 - (3) Clear, concise and complete statements of all relevant facts showing why petitioner's license should not be revoked, refused, or denied;
 - (4) Whether a similar license has previously been issued to or held by petitioner or revoked and if revoked the reasons therefor; and
 - (5) The signature of the petitioner or petitioner's representative, the address of petitioner and of the petitioner's representative, and the telephone number of petitioner or petitioner's representative.

This rule is intended to implement Iowa Code section 17A.18.

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