

701—28.1(9C,91C) Procedure. The following subrules shall govern the procedure for that forfeiture under Iowa Code chapters 9C and 91C.

28.1(1) Definitions.

“*Nonlocal business entity*” is either an out-of-state contractor or a transient merchant as those terms are defined in this subrule.

“*Out-of-state contractor*” means a general contractor, subcontractor, architect, engineer, or other person who contracts to perform in this state construction or installation of structures or other buildings or any other work covered by Iowa Code chapter 103A and whose principal place of business is outside Iowa.

“*Taxes payable*” means any amount referred to in the definitions of “taxes payable by an out-of-state contractor” and “taxes payable by a transient merchant.”

“*Taxes payable by an out-of-state contractor*” means tax, penalty, interest, and fees that the department, another state agency, or a subdivision of the state has determined to be due by assessment or due as a result of an appeal from an assessment. The tax assessed must accrue as the result of a contract to perform work covered by Iowa Code chapter 103A.

“*Taxes payable by a transient merchant*” refers to all taxes administered by the department and penalties, interest, and fees that the department has previously determined to be due by assessment or due as a result of an appeal from an assessment.

“*Transient merchant,*” for the purposes of this rule, means the same as defined in Iowa Code section 9C.1.

28.1(2) Increases in existing bonds. If an out-of-state contractor has on file with the secretary of state a bond for any particular contract and for that particular contract the contractor has tax due and owing but unpaid and this tax is greater than the amount of the bond, the department shall require the out-of-state contractor to increase the bond on file with the secretary of state in an amount sufficient to pay tax liabilities that will become due and owing under the contract in the future.

28.1(3) Responsibility for notification. Concerning taxes that are payable by an out-of-state contractor but that are not administered by the department of revenue, it shall be the duty of the department or subdivision of Iowa state government to which the taxes are owed to notify the department of revenue of the taxes payable by the out-of-state contractor in order to institute bond forfeiture proceedings or an increase in the amount of the bond that the out-of-state contractor must post.

28.1(4) Initial notification. After it is determined that a bond ought to be forfeited, notice of this intent shall be sent to the nonlocal business entity and its surety of record, if any, in accordance with Iowa Code section 91C.7(4). This notice may be sent by ordinary mail. The notice shall state the intent to demand forfeiture of the nonlocal business entity’s bond, the amount of bond to be forfeited, the nature of the taxes alleged to be payable, the period for which these taxes are due, and the department or subdivision of Iowa to which the taxes are payable. The notice shall also state the statutory authority for the forfeiture and the right to a hearing upon timely application.

28.1(5) Appeal of bond forfeiture. The application of a nonlocal business entity for a hearing shall be written and substantially in the form set out for appeals of other department action in rule 701—7.8(17A). The caption of the application shall be basically in the form set out in 701—subrule 7.8(5), except the type of proceeding shall be designated as a bond forfeiture collection. The body of the application for hearing must substantially resemble the body of the protest described in 701—subrule 7.8(5). However, referring to 701—numbered paragraph 7.8(5)“b”(2)“1,” the nonlocal business entity shall state the date of the notice described in subrule 28.1(4). With regard to 701—subparagraph 7.8(5)“b”(2), in the case of a tax payable that is not administered by the department, the errors alleged may be errors on the part of other departments or subdivisions of the state of Iowa. The application for hearing shall be filed with the department’s administrative law judge in the manner described in rule 701—7.9(17A). The docketing of an application for hearing shall follow the procedure for the docketing of an appeal under that rule.

28.1(6) Prehearing, hearing and rehearing procedures. The following rules are applicable to preliminary and contested case proceedings under this rule: 701—7.3(17A) through 701—7.14(17A) and 701—7.17(17A) through 701—7.23(17A).

28.1(7) Sureties and state departments other than revenue. If there exist taxes payable by an out-of-state contractor and these taxes are payable to a department or subdivision of state government other than

the department of revenue, that department or subdivision shall be the real party in interest to any proceeding conducted under this rule and it shall be the responsibility of that department or subdivision to provide its own representation and otherwise bear the expenses of representation.

This rule is intended to implement Iowa Code sections 9C.4 and 91C.7.

[ARC 8915C, IAB 2/19/25, effective 3/26/25]