

701—115.5(421,441) Motions and settlements.

115.5(1) *Authority of board to issue procedural orders.* The board may issue preliminary orders regarding procedural matters.

115.5(2) *Motions.* No technical form for motions is required. All prehearing motions should be in writing, filed with the board and contain the reasons and grounds supporting the motion. The board will act upon such motions as justice may require. Motions based on matters that do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than ten days from the date the motion is filed unless the time period is extended or shortened by the board. The board may schedule oral argument on any motion.

a. Filing of motions. Motions pertaining to the hearing, except motions discussed in paragraph 115.5(2)“b,” must be filed and served at least ten days before the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board.

b. Motions for summary judgment and motions to dismiss for lack of jurisdiction.

(1) Motions for summary judgment and motions to dismiss for lack of jurisdiction should comply with the requirements of Iowa Rule of Civil Procedure 1.981. Notwithstanding the time for filing motions in Iowa Rule of Civil Procedure 1.981, motions should be filed within ten days of issuance of a notice of hearing or written consideration. Responses should follow the provisions of Iowa Rule of Civil Procedure 1.981. Motions will be disposed of according to the requirements of that rule unless such requirements are inconsistent with this chapter or any other provision of law governing in contested cases.

(2) Reserved.

c. Motions to withdraw. An appellant may withdraw the appeal. A withdrawal of an appeal must be in writing and signed by the appellant or the appellant’s designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board’s granting of a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

d. Motions for refund. If the board reduces an assessment following a contested case hearing, the appellant shall be notified in the board’s final agency action of the appellant’s right to elect to be refunded for taxes already paid by filing a motion with the board. Such a motion shall be filed within ten days of the board’s final agency action. If the appellant does not timely file a motion for refund, any change in taxes resulting from the assessment reduction shall be credited toward future tax payments.

115.5(3) *Settlements.* Parties to an appeal may propose to settle all or some of the issues in the appeal at any time before the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed with the board. The settlement filed with the board shall indicate whether the assessment modification will result in a tax refund or a credit toward future tax payments. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

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