

701—7.11 (17A) Informal procedures and dismissals of protests.

7.11(1) Informal procedures. Persons are encouraged to utilize the informal procedure provided herein so that a settlement may be reached between the parties without the necessity of initiating contested case proceedings. Therefore, unless the protester indicates a desire to waive the informal procedures in the protest or the department waives informal procedures upon notification to the protester, such informal procedures will be initiated as herein provided upon the filing of a proper protest.

a. Review unit. A review unit is created within the department and, subject to the control of the director, the unit will:

- (1) Review and evaluate the validity of all protests made by taxpayers from the agency action.
- (2) Determine the correct amount of tax owing or refund due.
- (3) Determine the best method of resolving the dispute between the protester and the department.
- (4) Assign protests to the appropriate divisions or sections of the department for resolution.
- (5) Take further action regarding the protest, including any additions and deletions to the audit,

as may be warranted by the circumstances to resolve the protest, including a request for an informal conference.

(6) Determine whether the protest complies with rule 701—7.8(17A) and request any amendments to the protest or additional information.

After assignment of the protest, the section or division responsible may concede any items contained in the protest which it determines should not be controverted by the department. If the protester has not waived informal procedures, the section or division responsible may request the protester and the protester's representative, if any, to attend an informal conference with the responsible section or division to explore the possibility of reaching a settlement without the necessity of initiating contested case proceedings or of narrowing the issues presented in the protest if no settlement can be made.

If informal procedures have been waived, findings dealing with the issues raised in the protest may be issued unless the issues may be more expeditiously determined in another manner or it is determined that findings are unnecessary. The protester will be notified of the decision on the issues in controversy.

Nothing herein will prevent the section or division responsible and the protester from mutually agreeing on the manner in which the protest will be informally reviewed.

b. Settlements. If a settlement is reached during informal procedures, the administrative law judge shall be notified. The administrative law judge shall issue an order and serve it upon all parties which order shall set forth that a settlement was reached and shall terminate the case.

7.11(2) Dismissal of protests.

a. Whether informal procedures have been waived or not, the failure of the protester to timely file a protest or to pursue the protest may be grounds for dismissal of the protest by the administrative law judge. If informal procedures have not been waived, the failure of the protester to present evidence or information requested by the review unit shall constitute grounds for the administrative law judge to dismiss the protest. For purposes of this subrule, an evasive or incomplete response will be treated as a failure to present evidence or information. The failure of protester to file a protest in the format required by rule 7.8(17A) may be grounds for dismissal of the protest by the administrative law judge.

b. If the department seeks to have the protest dismissed, the review unit shall file a motion to dismiss with the office of the administrative law judge and serve a copy of the motion on protester. Protester 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 administrative law judge shall immediately enter an order dismissing the protest. If a resistance is filed, the review unit has 10 days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the administrative law judge and protester. If no such notice is issued by the review unit within the 10-day period, the administrative law judge shall issue a notice for a contested case proceeding on the motion as prescribed by rule 7.14(17A) except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be

dismissed. Thereafter, the rules of the department pertaining to contested case proceedings shall apply in such dismissal proceedings.

c. If a motion to dismiss is filed and is unresisted, a protest so dismissed may be reinstated by the administrative law judge for good cause shown if an application for reinstatement is filed with the office of the administrative law judge within 30 days of the date the protest was dismissed. The application shall set forth all reasons and facts upon which the protester relies in seeking reinstatement of the protest. The review unit shall review the application and notify the protester whether the application is granted or denied. If the review unit denies the application to reinstate the protest, the protester has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing before the administrative law judge on the reinstatement. When a written request is received, the administrative law judge shall issue a notice as prescribed in rule 7.14(17A) except that the issue of the contested case proceeding shall be limited to the question of whether the protest shall be reinstated. Thereafter, the rules of the department pertaining to contested case proceedings shall apply in such reinstatement proceedings.

d. Once contested case proceedings have been commenced, whether informal proceedings have been waived or not, it shall be grounds for a motion to dismiss that a protester has either failed to diligently pursue the protest or refuses to comply with requests for discovery set forth in rule 7.15(17A).