

701—7.14 (17A) Commencement of contested case proceedings.

7.14(1) Payment of tax or bond required prior to contested case proceedings for assessments made prior to January 1, 1991.

a. Effective date—payment or bond required. Effective for contested case proceedings for unpaid tax, penalty, interest, or fees commenced in response to assessments made on or after January 1, 1987, and prior to January 1, 1991, the taxpayer must pay prior to the commencement of contested case proceedings, all of the assessed tax, penalty, interest, or fees or, upon a showing of good cause, a bond may be posted in lieu of payment of the amount of the assessment that is in dispute.

b. Cases applicable. The provisions of this subrule only apply to those contested case proceedings where a tax, penalty, interest, or fees, or any combination of them, which has not been previously paid prior to the commencement of contested case proceedings, is at issue.

c. Cases not applicable. This subrule does not apply to protest proceedings involving only the denial of refund claims. Nor does this subrule apply to a taxpayer's appeal or protest pending in informal procedures involving an unpaid tax, penalty, interest, or fees.

d. Time disputed tax, penalty, interest, or fees must be paid. Unless a bond has been posted as provided in subrule 7.14(1), paragraph "f," all of the disputed tax, penalty, interest, or fees assessed computed to the date of payment must be paid in full, within 30 days after the date the answer is filed by the department. Undisputed amounts are not eligible for a bond and must be paid with the payment of the disputed amount, or with the posting of the bond.

e. Payment deemed made under protest. Unless the taxpayer declares otherwise in writing, the payment of that portion of the assessed tax, penalty, interest, or fees in dispute after the filing of the department's answer, shall be deemed to have been paid under protest and, if upon resolution of the protest, the amount paid is in excess of the correct tax, penalty, interest, or fees due, the excess shall be refunded to the taxpayer or other persons entitled with interest as provided by law, subject to any right of offset.

f. Bond in lieu of payment. Within 30 days after the date the answer is filed by the department, and upon filing an application showing good cause, the taxpayer may, in lieu of payment, post a bond securing the payment of that portion of the assessed tax, penalty, interest, or fees which is in dispute accrued to the date the bond is posted. A taxpayer is not permitted to refuse to pay the portion of the assessed amount not in dispute until all disputed issues have been resolved. The uncontested portion of the assessment must be paid and a bond is only permitted to be posted in lieu of payment of the amount in dispute. The bond shall be payable to the department for the use of the state of Iowa and shall be conditioned upon the full payment of the tax, penalty, interest, or fees that are found to be due which remain unpaid upon the resolution of the contested case proceedings. The bond shall be for the full amount of the assessed tax, penalty, interest, or fees that is in dispute, computed to the day the bond is posted. Provided upon application of the taxpayer or the department, the department's administrative law judge may, upon hearing, fix a greater or lesser amount to reflect changed circumstances, but only after ten days' prior notice is given to the department or the taxpayer as the case may be.

g. Type of bond. A personal bond, without a surety, is only permitted if the taxpayer posts with the department's administrative law judge, cash, a cashier's check, a certificate of deposit, or other marketable securities with a readily ascertainable value which is equal in value to the total amount of the bond required. If a surety bond is posted, the surety on the bond may be either personal or corporate. The provisions of this subrule and Iowa Code chapter 636 relating to personal and corporate sureties shall govern.

h. Procedure for posting bond. In the event the taxpayer desires to post bond in lieu of payment of the amount of the tax, penalty, interest, or fees claimed to be due which is in dispute, an application in writing, together with the bond must be filed with the administrative law judge within 30 days after the department's answer is filed. The application must state the reasons why good cause exists for posting a bond in lieu of payment. A copy of the application with a copy of the bond attached must be given the department's representative by ordinary mail and thereafter if the taxpayer and the department agree on the bond, it shall be approved by the administrative law judge. If an agreement on the bond is not

reached and the department has not filed with the administrative law judge written objections to granting the bond within ten days after the postmark date of the notice of application, the administrative law judge shall approve the bond, if the bond is otherwise in proper form and in compliance with the law. In the event objections are filed by the department, the administrative law judge shall set the objections down for hearing with written notice to be given the taxpayer and the department at least ten days prior to the hearing. If upon hearing the department's objections are overruled, the bond shall be approved. If the objections are sustained, and the taxpayer fails to pay the amount of the tax, penalty, interest, or fees claimed to be due or cure the bond defects, if permitted by the administrative law judge's order, within 30 days after the administrative law judge's decision, the protest shall be dismissed and the dismissal shall be with prejudice, if the time for protesting the department action has elapsed.

i. Reasons constituting good cause. The financial hardship of the taxpayer as evidenced by the books and records of the taxpayer is an example of a good cause for posting a bond in lieu of paying the tax, penalty, interest, or fees in dispute. In addition, posting of a bond will be allowed upon agreement of the protester and the department.

j. Form of surety bond. The surety bond posted shall be in substantially the following form:

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

<u>IN THE MATTER OF</u>	*	
		<u>SURETY BOND</u>
(Taxpayer's Name,	*	
Address and designate	*	
proceeding, e.g., income,	*	
sales, etc.)	*	
	*	DOCKET NO.

KNOW ALL PERSONS BY THESE PRESENTS:

That we (taxpayer) as principal, and (surety) , as surety, of the county of _____, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue for the use of the State of Iowa, in the sum of \$ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest, or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated the _____ day of _____, 20 ____ .

Principal

Surety

Surety

(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA

ss.

COUNTY OF)

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts", and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution".

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____	\$ _____	\$ _____
Surety (type name)		
_____	\$ _____	\$ _____
Surety (type name)		

Subscribed and sworn to before me the undersigned Notary Public this ____ day of _____, 20 ____.

(Seal)

Notary Public in and
for the State of Iowa

k. Duration of bond. The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated by the administrative law judge.

l. Exoneration of the bond. Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the administrative law judge when any of the following events occur: upon full payment of the tax, penalty, interest, or fees found to be due; upon filing a bond for the purposes of judicial review; or if no additional tax, penalty, interest, or fees are found to be due that have not been previously paid, upon entry of the order resolving the contested case proceedings.

m. Failure to pay amount found to be due. If upon resolution of the contested case proceedings, the taxpayer fails to pay the tax, penalty, interest, or fees assessed or found to be due, the bond shall be forfeited by the administrative law judge and the department may sell or liquidate any property posted by the taxpayer, or bring suit against the surety on the bond and apply the amount recovered to the tax, penalty, interest, or fees due. Any excess over the amount due shall be refunded to the taxpayer or other persons entitled as provided by law, subject to any right of offset.

n. Dismissal of protest—failure to pay or post bond. The administrative law judge must dismiss the protest in the following circumstances:

(1) If the taxpayer fails to pay the amount of the assessed tax, penalty, interest, or fees or fails to post a bond with the administrative law judge for the amount of the assessment in dispute within 30 days after the filing of the department's answer;

(2) The taxpayer fails to pay the disputed tax, penalty, interest, or fees or fails to file an acceptable bond, if permitted by order of the administrative law judge, within 30 days after the order sustaining the

department's objection to the bond. The dismissal shall be with prejudice if the time for protesting the department's action has elapsed at the time of dismissal. The dismissal of the protest cannot be avoided or circumvented when payment has not been made or a bond posted by a withdrawal of or amendment to the protest after the answer has been filed.

7.14(2) Demand or request for contested case proceedings. A demand or request by the protester for the commencement of contested case proceedings must be in writing and either be mailed to the department by United States Postal Service ordinary, certified, or registered mail directed to the attention of the administrative law judge, or be served on the department by personal service or by personal delivery of the demand or request to the office of the administrative law judge during business hours. The demand or request is considered filed on the date of the postmark or the date personal service is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

Contested case proceedings will be commenced by the department's administrative law judge by delivery of notice by ordinary mail directed to the parties, after a demand or request is made (1) by the protester and the filing of the answer, if one is required, which demand or request may include a date to be set for the hearing, or (2) upon filing of the answer, if a request or demand for contested case proceedings has not been made by the protester. The notice will be given by the department's administrative law judge. Both the department's administrative law judge and the presiding administrative law judge may grant a continuance of the hearing. Any change in the date of the hearing shall be set by the presiding administrative law judge. Either party may apply to the presiding administrative law judge for a specific date for the hearing. The notice 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;
4. A short and plain statement of the matters asserted, including the issues.

After the delivery of the notice commencing the contested case proceedings, the parties may file further pleadings or amendments to pleadings as they desire. However, any pleading or amendment thereto which is filed within seven days prior to the date scheduled for the hearing or filed on the date of the hearing shall constitute good cause for the party adversely affected by the pleading or amendment to seek and obtain a continuance.

This rule is intended to implement Iowa Code sections 10A.202(1*m*), 17A.12 and 421.8A.