

701—7.8 (17A) Protest. 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 a protest, 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 protest must either be delivered to the department by electronic means or by United States Postal Service or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the clerk of the hearings section at P.O. Box 10472, Des Moines, Iowa 50306, or be personally delivered to the clerk of the hearings section or served on the clerk of the hearings section by personal service during business hours. For the purpose of mailing, a protest is considered filed on the date of the postmark. If a postmark date is not present on the mailed article, then the date of receipt of protest will be considered the date of mailing. Any document, including a protest, is considered filed on the date personal service or personal delivery to the office of the clerk of the hearings section for the department is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing.

7.8(1) 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 written protest 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. The review unit created within the department by the director to review protests as provided in rule 701—7.11(17A) may seek dismissal of protests which are not in the proper form as provided by this rule. See subrule 7.11(2) for dismissals.

7.8(2) If the department has not granted or denied a filed refund claim within six months of the filing of the claim, the refund claimant may file a protest. Even though a protest is so filed, the department is entitled to examine and inspect the refund claimant's records to verify the refund claim.

7.8(3) Notwithstanding the above, the taxpayer who fails to timely protest an assessment may contest the assessment by paying the whole assessed tax, interest, and penalty and by filing a refund claim within the time period provided by law for filing such claim. However, in the event that such assessment involves divisible taxes which are not timely protested, namely, an assessment which 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 would be canceled. *Flora v. United States*, 362 U.S. 145, 4 L.Ed. 2d 623, 80 S.Ct.630 (1960); *Higginbotham v. United States*, 556 F.2d 1173 (4th Cir. 1977); *Steele v. United States*, 280 F.2d 89 (8th Cir. 1960); *Stern v. United States*, 563 F. Supp. 484 (D. Nev. 1983); *Drake v. United States*, 355 F. Supp. 710 (E.D. Mo. 1973). Any such protest filed is limited to the issues covered by the amounts paid for which a refund was requested and denied by the department. Thereafter, 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 a protest as authorized by this rule.

7.8(4) 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, 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 protest 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 protest 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(5) The protest shall be brought by and in the name of the interested or affected person or by and in the full descriptive name of the fiduciary legally entitled to institute a proceeding on behalf of the person or by an intervenor in contested case proceedings. In the event of a variance in the name set forth in the protest and the correct name, a statement of the reason for the discrepancy shall be set forth in the protest.

7.8(6) The protest 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 * PROTEST

designate type of proceeding, e.g., * Docket No. _____

income tax refund claim) * (filled in by Department)

7.8(7) The protest shall substantially state in separate numbered paragraphs the following:

- a. Proper allegations showing:
 - (1) Date of assessment;
 - (2) Date of refund denial;
 - (3) Whether the protester failed to timely appeal the assessment and, if so, the date of payment and the date of filing of the refund claim;
 - (4) Whether the protest 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;
 - (5) The assessment, refund claim, and refund denial, copies of which shall be attached;
 - (6) Other items that the protester wishes to bring to the attention of the department; and
 - (7) A request for attorney fees, if applicable.
- b. The type of tax, the taxable period or periods involved and the amount in controversy.
- c. 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.
- d. Reference to any particular statute or statutes and any rule or rules involved, if known.
- e. Description of records or documents which were not available or were not presented to department personnel prior to the filing of the protest, if any. Copies of any records or documents that were not previously presented to the department shall be provided.
- f. Any other matters deemed relevant and not covered in the above paragraphs.
- g. The desire of the protester to waive informal or contested case proceedings if waiver is desired. Unless the protester so indicates a waiver, informal procedures will be initiated.
- h. A statement setting forth the relief sought by the protester.
- i. The signature of the protester or that of the protester's representative, the addresses of the protester and of the protester's representative, and the telephone number of the protester or the protester's representative. A copy of the power of attorney for the protester's representative shall be attached.

7.8(8) An original and two copies of the protest shall be filed with the clerk of the hearings section. Upon receipt of the protest, the clerk of the hearings section shall register receipt of the protest, docket the protest, and assign a number to the case. The assigned number shall be placed on all subsequent pleadings filed in the case.

7.8(9) The protester may amend the protest at any time prior to the commencement of the evidentiary hearing. The department may request that the protester amend the protest for purposes of clarification.

7.8(10) Upon the filing of an answer or if a demand for contested case is made by the protester, the clerk of the hearings section will transfer the protest file to the division of administrative hearings within 30 days of the date of the filing of the answer or the demand for contested case, unless the director determines not to transfer the case. If a party objects to a determination under rule 701—7.17(17A), the transfer, if any, would be made after the director makes a ruling on the objection.

7.8(11) Denial of renewal of vehicle registration or denial of issuance or renewal, or suspension, of a driver's license.

a. A person who has had an application for renewal of vehicle registration denied, has been denied the issuance of a driver's license or the renewal of a driver's license, or has had a driver's license suspended may file a protest with the clerk of the hearings section if the denial of the issuance or renewal or the suspension is because the person owes delinquent taxes.

b. The issues raised in a protest by the person, which are limited to a mistake of fact, may include but are not limited to:

- (1) The person has the same name as the obligor but is not the correct obligor;
- (2) The amount in question has been paid; or
- (3) The person has made arrangements with the department to pay the amount.

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

[ARC 0251C, IAB 8/8/12, effective 9/12/12]