

701—7.12(17A,421) Dismissal of appeals.

7.12(1) *Untimely appeals.* Appeals that are not filed by the deadlines described in statute or rule shall be dismissed by the director or the department employee designated by the director. Such dismissals do not require the filing of a motion to dismiss as described in subrule 7.12(3). If the appeal is so dismissed, the taxpayer may file an application for reinstatement of the appeal as provided in paragraph 7.12(1) “b.” Such application must be filed within 30 days of the date of the dismissal notice. Thereafter, the procedure in subrule 7.12(4) should be followed.

a. Grounds for reinstatement of an untimely appeal. Grounds for reinstating an untimely appeal are limited to the following:

(1) The department fails to do at least one of the following:

1. Mail the notice of assessment, refund denial, or other notice of department action as required by Iowa Code section 421.60(2) “c”(1) through 421.60(2) “c”(3); or

2. Personally deliver such notice as required by Iowa Code section 421.60(2) “c”(1) through 421.60(2) “c”(3).

For purposes of this rule, “last-known address” and “personal delivery” mean the same as described in rule 701—7.33(421).

(2) If the department fails to comply with the requirements of Iowa Code section 421.60(2) “b.”

b. Content of the application for reinstatement. The application shall set forth all reasons and facts upon which the taxpayer relies in seeking reinstatement of the appeal and the grounds that are relevant. Supporting documentation must be supplied. The review unit shall review the application and notify the taxpayer whether the application is granted or denied.

7.12(2) *Failure to follow the required format.* The failure of the taxpayer to file an appeal in the format required by rule 701—7.9(17A) may also be grounds for dismissal of the appeal by the director or the department employee designated by the director. Such dismissals do not require the filing of a motion to dismiss as described in subrule 7.12(3). The director or the department employee designated by the director shall notify the taxpayer of the format issue and provide the taxpayer with 30 days to correct the deficiencies. If the taxpayer fails to correct the format issues within 30 days, the protest may only be reinstated under the process and grounds described in subrule 7.12(3).

7.12(3) *Failure to pursue the appeal at the informal stage.* If the protest was filed timely and informal procedures were initiated, the failure of the taxpayer to present evidence or information requested by the review unit, including the failure to respond to a position letter or information request, shall constitute grounds for the director or the director’s designee to dismiss the appeal. For purposes of this subrule, an evasive or incomplete response will be treated as a failure to present evidence or information. Such dismissals require a motion to be filed by the review unit.

a. Procedures for motions to dismiss. If the department seeks to dismiss the appeal, the review unit shall file a motion to dismiss with the clerk and serve a copy of the motion on the taxpayer. The taxpayer 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 director or the director’s designee shall immediately enter an order dismissing the appeal. If a resistance is filed, the review unit has ten days from the date of the filing of the resistance to decide whether to withdraw its motion and so notify the taxpayer and the clerk. If no such notice is received by the clerk within the ten-day period, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice for a contested case proceeding on the motion as prescribed by rule 701—7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the appeal shall be dismissed. Thereafter, rule 701—7.19(17A) pertaining to contested case proceedings shall apply in such dismissal proceedings.

b. Grounds for reinstatement of dismissed appeals. If a motion to dismiss is filed and is unresisted, the appeal that was dismissed may be reinstated by the director or the director’s designee for good cause if an application for reinstatement is filed with the clerk within 30 days of the date the appeal was dismissed and following the conclusion of the procedure in subrule 7.12(4). For purposes of this rule, “good cause” shall mean the same as “good cause” in Iowa Rule of Civil Procedure 1.977.

c. Content and review of the application for reinstatement. The application shall set forth all reasons and facts upon which the taxpayer relies in seeking reinstatement of the appeal and the grounds

that are relevant. Supporting documentation must be supplied. The director shall refer the application to the review unit for review and notify the taxpayer whether the application is granted or denied. Thereafter, the procedure in subrule 7.12(4) should be followed.

7.12(4) *Denial of the application.* If the review unit denies the application to reinstate the appeal, the taxpayer has 30 days from the date the application for reinstatement was denied in which to request, in writing, a formal hearing on the reinstatement. The taxpayer shall send the written request to the clerk. When a written request for formal hearing is received, the appeal file will be transferred to the division of administrative hearings, which shall issue a notice as prescribed in rule 701—7.16(17A), except that the issue of the contested case proceeding shall be limited to the question of whether the appeal shall be reinstated. Thereafter, rule 701—7.19(17A) pertaining to contested case proceedings shall apply in such reinstatement proceedings. If the taxpayer does not respond to a denial of the application for reinstatement within 30 days of the denial, the appeals section may file a motion to dismiss the application for reinstatement for failure to pursue, in accordance with the procedures described in subrule 7.12(3) above.

7.12(5) *Failure to file timely application for reinstatement.* If an application for reinstatement is filed after the 30-day deadline, the application shall be dismissed by the director or the department employee designated by the director.

7.12(6) *Dismissal of appeals during contested case proceedings.* 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 taxpayer has either failed to diligently pursue the appeal or has refused to comply with requests for discovery set forth in rule 701—7.17(17A). Such a motion must be filed with the presiding officer.

This rule is intended to implement Iowa Code sections 17A.12, 421.10, 421.60, and 422.28.
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