

701—11.6(422,423) Billings.**11.6(1) Notice of adjustments.**

a. An agent, auditor, clerk, or employee of the department, designated by the director to examine returns and make audits, who discovers discrepancies in returns or learns that gross receipts, gross purchases, or services subject to sales and use tax may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the person of this discovery by ordinary mail. This notice is not an assessment. It informs the person what amount would be due if the information discovered is correct.

b. Right of person upon receipt of notice of adjustment. A person who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the person wishes to contest the matter, they should then file a claim for refund. However, payment will not be required until an assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the person may discuss with the agent, auditor, clerk, or employee who notified them of the discrepancy, either in person or through correspondence, all matters of fact and law which may be relevant to the situation. This person may also ask for a conference with the Audit and Compliance Division, Des Moines, Iowa. Documents and records supporting the person's position may be required.

c. Power of agent, auditor or employee to compromise tax claim. No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk or employee who notified the person of the discrepancy is limited to the determination of the correct amount of tax.

11.6(2) Notice of assessment. If, after following the procedure outlined in subrule 11.6(1), paragraph "b," no agreement is reached and the person does not pay the amount determined to be correct, a notice of the amount of tax due shall be sent to the person responsible for paying the tax. This notice of assessment shall bear the signature of the director and will be sent by mail.

If the notice of assessment is timely protested according to the provisions of rule 701—7.41(17A), proceedings to collect the tax will not be commenced until the protest is ultimately determined, unless the department has reason to believe that a delay caused by the appeal proceedings will result in an irrevocable loss of tax ultimately found to be due and owing the state of Iowa. The department will consider a protest to be timely if filed no later than 30 days following the date of assessment notice. See rule 701—7.4(17A). For notices of assessment issued on or after January 1, 1995, the department will consider a protest to be timely if filed no later than 60 days following the date of the assessment notice or, if the taxpayer fails to timely appeal a notice of assessment, the taxpayer may make payment pursuant to rule 701—7.41(17A) and file a refund claim within the period provided by law for filing such claims.

11.6(3) Supplemental assessments and refund adjustments. The department may, at any time within the period prescribed for assessment or refund adjustment, make a supplemental assessment or refund adjustment whenever it is ascertained that any assessment or refund adjustment is imperfect or incomplete in any respect.

If an assessment or refund adjustment is appealed (protested under rule 701—7.41(17A)) and is resolved whether by informal proceedings or by adjudication, the department and the taxpayer are precluded from making a supplemental assessment or refund adjustment concerning the same issue involved in the appeal for the same tax period unless there is a showing of mathematical or clerical error or a showing of fraud or misrepresentation.

This rule is intended to implement Iowa Code sections 422.54(1), 422.54(2), 422.57(1), 422.57(2), 422.70, 423.21 and 423.23.