

What to Expect During a Sales Tax Permit Revocation or Suspension Hearing

Overview

This guide will assist you in knowing what to expect if you receive a Notice of a Revocation or Suspension Hearing regarding your sales tax permit. This guide also explains the potential outcomes of a sales tax permit revocation or suspension hearing. **This guide is an informational overview and does not replace the Administrative Procedure Act or any applicable laws or regulations.**

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (DOR) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the DOR and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

This guidance document may change with updated information or added examples. The DOR recommends you do not print this document. Instead, sign up for the [subscription service](#) at revenue.nebraska.gov to get updates on your topics of interest.

Terms

Account Balance. The account balance is the final amount due and owing including tax, penalty, and ongoing interest.

Evidence. Evidence is something, such as testimony, a document, or a tangible object, that tends to prove or disprove an alleged fact. The hearing officer only considers evidence received into the record in making a recommendation to the Tax Commissioner.

Exhibit. An exhibit is a document, record, or other tangible object that either party asks the hearing officer to accept into the record. Usually parties offer exhibits that support their side of the argument. To be considered at a hearing, exhibits must be sent to the bailiff and other party at least three days before the hearing date unless otherwise directed by the Hearing Officer.

Final Action. The final action is an order issued by the Tax Commissioner following a hearing.

Hearing Officer. A hearing officer is the Tax Commissioner or an individual or individuals designated by the Tax Commissioner to conduct a hearing in a contested case pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title designation.

Parties. The parties are the persons whose legal rights or privileges will be substantially affected by the Tax Commissioner's decision in the case. Usually the parties are the permit holder and the DOR.

Permitholder. For purposes of this guide, the permitholder is the person holding the sales tax permit that is the subject of the revocation or suspension hearing. When this guide refers to You it means the permitholder.

Record. The record is the official report of the proceedings in a case, including the filed papers, a recording of the hearing, and exhibits, if applicable.

Reinstatement. Reinstatement means to restore a sales tax permit from a revocation or suspension.

Revocation. To permanently void and recall all rights and privileges of the sales tax permit.

Suspension. To cause a temporary interruption of all rights and privileges of the sales tax permit.

Notice of Hearing

After DOR has requested a revocation or suspension hearing, the permitholder will receive a Notice of Revocation or Suspension Hearing (Notice). The Notice will give the permitholder at least 20 days' notice of the hearing and will set the location, time, and date of the hearing.

The Notice contains pre-hearing deadlines. At least three days before the hearing date, you must submit the following:

- ❖ A [Power of Attorney, Form 33](#), or other acceptable Power of Attorney to the bailiff, if you will be represented by an attorney.
- ❖ Witness list to the bailiff and the other party, if you plan to call witnesses.
- ❖ Exhibits to the bailiff and the other party, if you plan to submit exhibits at the hearing.

The hearing officer may limit any witnesses called or exhibits submitted for the first time at the hearing. These requirements apply to all parties to the case.

If the permitholder is a sole proprietorship, the owner may represent the business or hire an attorney to represent the permitholder at the hearing. If the permitholder is a separate legal entity (corporation, LLC, etc.), the permitholder may be represented by its owner subject to the limitations in [Reg-33-008.03 and 008.04](#), or may hire an attorney to represent it at the hearing. An attorney must enter his or her appearance by filing a Power of Attorney, Form 33, or other acceptable Power of Attorney with the hearing officer's bailiff three days before the hearing.

Conducting the Hearing

Pre-Hearing Procedures. You will need to show identification to DOR.

- ❖ For in-person hearings at a DOR location, go to the Taxpayer Assistance Desk first. There, you will show your identification to a DOR teammate, sign-in for the hearing, and receive a Visitor's Badge. Then, you may proceed to the Hearing Room for your hearing.
- ❖ For electronic hearings, you will need to show your identification before the hearing starts.

In addition, the hearing officer will explain how the revocation or suspension hearing will proceed.

Recording the Hearing. Hearings will usually be recorded electronically and not transcribed at the time of the hearing. In certain instances, or at the request of a party, a court reporter may be present. If a court reporter is requested, the costs associated with the court reporter will be paid by the party against whom the final action is entered.

Preliminary Matters. The hearing officer will ask if there are any preliminary matters that need to be addressed on the record. If there are any issues, the hearing officer will address each issue in turn.

Opening Statement. Each party will be given a chance to make an opening statement to explain their position.

DOR's Case. The DOR will generally present first; however, the burden of proof remains on the permitholder to show cause why the permit should not be revoked. The hearing officer will swear in the DOR's representative. After the DOR's representative is sworn in, the hearing officer will ask the DOR's representative to introduce any exhibits the DOR wants received as evidence into the record. You have an opportunity to object to the exhibits offered by the DOR. The hearing officer will consider the arguments for and against accepting the exhibits and will make a decision. Any exhibits not received into the record will be specifically noted. The DOR's representative may then present oral testimony stating DOR's case and ask the hearing officer to decide the case in the DOR's favor.

When the DOR's representative is done testifying, the hearing officer may ask questions. When the hearing officer is finished asking questions, you will be allowed to ask questions of the DOR's representative.

Permitholder's Case. The hearing officer will swear in you or an authorized witness. After being sworn in, the hearing officer will ask you to introduce any exhibits you want received as evidence into the record. The DOR will have an opportunity to object to the exhibits you offer. The hearing officer will consider the arguments for and against accepting the exhibits and will make a decision. Any exhibits not received as evidence into the record will be specifically noted. You may then present oral testimony stating your case and ask the hearing officer to decide the case in your favor.

After testifying, the hearing officer may ask you questions. When the hearing officer is finished asking questions, the DOR's representative will be allowed to ask you questions.

Additional Testimony. The hearing officer may allow the DOR's representative to present additional testimony or respond to anything you presented. When the DOR's representative has finished, you will have the opportunity to respond. This could occur several times, but you will always have the final opportunity to respond.

Closing Arguments. When the testimony is finished, each party will be given a chance to tell the hearing officer why the case should be decided in their favor. You will have the final opportunity to speak.

Possible Outcomes

The hearing officer might make a decision at the end of the hearing. In that case, you will know the outcome of the hearing before you leave. Other times, the hearing officer might need additional time to consider the evidence and make a decision. The hearing officer will prepare a recommended order for the Tax Commissioner's signature. The DOR is not precluded from seeking revocation of a sales tax permit at any time based on the facts of any given case. However, in most instances, the outcome of the hearing will be determined as described below:

Dismissal. The case will be dismissed if the hearing officer determines that the permitholder showed cause that the sales tax permit should not be revoked or suspended. The case may be dismissed if the sales tax permit is cancelled or if the DOR is satisfied that the permitholder will comply with the DOR's requirements without any restrictions.

Conditional Continuance

- ❖ **Prior to the Hearing.** If, prior to the hearing, the permitholder agrees to a payment plan with the DOR to bring the account current and agrees to meet filing and security requirements, the case may be continued for a specified period of time to allow the permitholder an opportunity to comply with these requirements. If the permitholder fails to comply with the requirements, the hearing may be reconvened. If the permitholder complies with the requirements, the case may be dismissed at the end of the continuance period.
- ❖ **At the Time of the Hearing.** If, at the time of the hearing, the permitholder agrees to a payment plan with the DOR to bring the account current and to meet filing and security requirements, the case may be continued for a specified period of time to allow the permitholder an opportunity to comply with these requirements. If the permitholder fails to comply with the requirements, the hearing may be reconvened. If the permitholder complies with the requirements, the case may be dismissed at the end of the continuance period.

Permitholder Fails to Attend the Hearing. If the permitholder does not attend the hearing, the sales tax permit will be revoked. Any application for reinstatement will be decided on a case-by-case basis and will require payment in full of the tax liability as well as any penalties and interest. The permitholder will also be required to post a security bond between three and five times the permitholder's average sales tax filing amount.

Permitholder Attends the Hearing. If the permitholder attends the hearing, the sales tax permit will be revoked or suspended if the hearing officer determines that the permitholder failed to show cause why the sales tax permit should not be revoked or suspended. Possible outcomes:

- ❖ **First Case.** If this is the first case against the permitholder that has been brought to revocation/suspension hearing, the sales tax permit may be suspended if the Hearing Officer determines the Permitholder has not shown cause. Typical conditions in an Order of Suspension include paying part or all of the sales tax balance and posting a security bond equal to three times the permitholder's average sales tax filing amount. This is considered a first case even if the matter was set for a revocation/suspension hearing and was continued.
- ❖ **Second Case.** If this is the second case against the permitholder that has been brought to a revocation/suspension hearing, the sales tax permit will be suspended if the Hearing Officer determines the Permitholder has not shown cause. Typical conditions in an Order of Suspension will include paying part or all of the sales tax balance and posting a security bond equal to five times the permitholder's average sales tax filing amount. This is considered a second case if Permitholder has been previously suspended or revoked.
- ❖ **Third Case.** If this is the third or subsequent case against the permitholder that has been brought to a revocation/suspension hearing, the sales tax permit will be revoked. If the Hearing Officer determines the Permitholder has not shown cause. An application for reinstatement will be decided on a case-by-case basis and will require the account balance to be paid in full as well as posting a security bond equal to five times the permitholder's average sales tax filing amount. A payment plan will not be considered. This is considered a third case if Permitholder has twice been suspended or revoked in prior cases.

After the Hearing

If a sales tax permit is revoked or suspended, the permitholder must immediately cease operating the business. Failure to do so is a criminal offense.

Final Action and Appeal. If the permitholder disagrees with the final Order of Revocation or Suspension, the party may appeal to the appropriate district court (usually the District Court of Lancaster County) within 30 days after the postmark date of the order. If an appeal is not filed within the required period, the Tax Commissioner's Order of Revocation or Suspension becomes final.

Reinstatement. If the permitholder wishes to reinstate a revoked or suspended sales tax permit, the permitholder must file an application of reinstatement with the DOR after the hearing. The DOR considers applications for reinstatement on a case-by-case basis. For a suspended permit, the application for reinstatement may require the permitholder to show that all conditions in the Order of Suspension have been met. If the DOR is satisfied that the permitholder will comply with the provisions of the Revenue Act and the related sales tax regulations, a revoked or suspended sales tax permit may be reinstated. Permitholders must pay a reinstatement fee of \$25 after the first revocation and a reinstatement fee of \$50 after any later revocations.

Resource List

- ❖ Administrative Procedure Act, [Neb. Rev. Stat. §§ 84-913 through 84-919](#)
- ❖ Nebraska Revenue Act of 1967, [Neb. Rev. Stat. §§ 77-2701 et seq.](#)
- ❖ [Neb. Rev. Stat. § 77-2705](#)
- ❖ [Neb. Rev. Stat. § 77-2713](#)
- ❖ [Nebraska Practice and Procedure Regulations, Title 316, Chapter 33](#)
- ❖ [Statutory Responsibilities For Collecting, Reporting, and Remitting Sales Taxes and Income Tax Withholding Information Guide](#)

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800-742-7474 (NE and IA) or 402-471-5729

Nebraska Department of Revenue, PO Box 94818, Lincoln, NE 68509-4818