

Procedures for Reviewing and Appealing A Notice of Deficiency Determination for Nebraska Motor Fuels Taxes

Overview

A Notice of Deficiency Determination (Notice) is a letter informing the taxpayer of the amount of tax, interest, and penalty the Excise Tax and Compliance (ETAC) unit of the Nebraska Department of Revenue (DOR) asserts is due to the State of Nebraska. The proposed assessment may result from an audit of the taxpayer's books and records, or it may be based upon the best information available to ETAC. Enclosed with the Notice are schedules and work papers that identify the basis for the assessment. If there are any questions concerning the computation of the amount assessed, ETAC's position concerning an item which was taxed, or the appeals procedure, contact ETAC.

This guidance document is advisory in nature but is binding on DOR until amended. A guidance document does not include internal procedural documents that only affect the internal operations of 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. DOR recommends you do not print this document. Instead, sign up for the [subscription service](https://revenue.nebraska.gov/motor-fuels) at revenue.nebraska.gov/motor-fuels to get updates on your topics of interest.

Do you agree with the proposed assessment?

If the taxpayer agrees with the proposed assessment as issued, payment of the amount assessed must be made.

- ❖ If the taxpayer has previously been notified that all payments must be made electronically, the amount assessed must also be paid using an [electronic payment method](#). To ensure proper processing, it is recommended that this payment not be combined with other electronic payments.
- ❖ If the taxpayer is not required to pay electronically, electronic payment is encouraged. As an alternative, the taxpayer may mail the payment to ETAC. To ensure proper processing, a copy of the Notice should be included with the payment.

Do you disagree with the proposed assessment?

If the taxpayer wishes to dispute the proposed assessment, a timely Petition for Redetermination (Petition) must be filed with the Nebraska Department of Revenue, PO Box 98904, Lincoln, NE 68509-8904. This Petition must be in writing. Although Petitions may be amended to supply some omitted elements, no writing filed with DOR will be recognized as a Petition unless it is sufficient to identify the taxpayer and inform DOR of the taxpayer's intent to protest an identifiable proposed assessment.

An acceptable Petition must:

- ❖ Identify the taxpayer;
- ❖ Identify the proposed assessment being protested;
- ❖ Identify each item or issue within the proposed assessment being protested. Include a statement describing the reasons you believe that there are items in the proposed assessment which are incorrect (where appropriate, the protested items should be identified by the audit work paper page and line numbers);
- ❖ State concisely the action the Division is being requested to take. Usually, this will be a list of the items in the proposed assessment you are asking DOR to remove; and
- ❖ Be submitted in writing and signed by the taxpayer or authorized representative. To be represented by another person, the taxpayer must complete and return a [Power of Attorney, Form 33](#).

Taxpayers are responsible for the timely filing and adequacy of their Petitions.

Due Dates. The taxpayer must file a Petition within 60 days from the postmark date of the Notice.

If a Petition is not filed within the applicable 60-day limitation, the proposed assessment becomes final, and the tax, interest, and penalty assessment is due and payable.

When a proposed assessment is protested, the statutory time restrictions for collection of the assessed tax, interest, and penalty are suspended until a final determination has been made. Both parties have a duty to keep the case active. Once protested, a proposed assessment is not final until an order is issued by the Tax Commissioner.

Penalty Abatement and Waiver of Interest

Penalty. Penalties are assessed in accordance with state law. The Tax Commissioner has discretionary authority to abate all or a portion of the penalty. The taxpayer may request a penalty abatement, whether or not the taxpayer has filed a Petition. A [Motor Fuels Application for Abatement of Penalty, Form 21MF](#), is available on DOR's website.

Interest. DOR assesses interest on unpaid taxes as required by statute, and interest continues to accrue until the taxes are paid. The Tax Commissioner has authority to waive interest in certain instances. See [Revenue Ruling 99-08-3](#). In all cases, interest accrues only on the amount of tax finally determined to be due. A [Request for Abatement of Interest, Form 21A](#), is available on the Department's website.

Interest accrues on the tax portion of the proposed assessment until the taxes are paid. A taxpayer wishing to stop the accrual of interest on the tax portion of a proposed assessment, without giving up the right to contest the proposed assessment, may pay the tax and file a timely Petition protesting the disputed taxes.

Procedure

Representation. Whenever the taxpayer wishes to be represented by another individual, for example an attorney or accountant, the taxpayer must furnish a written authorization for that person to act on the taxpayer's behalf. Representatives may be appointed using a [Form 33](#), or its equivalent. No appointments will be recognized until they are filed with DOR.

Informal Conference. DOR will acknowledge receipt of a Petition in writing. The taxpayer may request an informal conference to eliminate items from the proposed assessment because of additional information supplied, or to clarify any factual or legal issues in preparation for a formal hearing. The informal conference will be scheduled at DOR's Lincoln office. In many cases, all issues can be resolved at the informal conference or from information obtained as a result of the informal conference.

If the issues of fact or law raised by the taxpayer's Petition are resolved through informal discussions, the case will be closed using a Motion to Dismiss, or a Settlement Stipulation and Order of the Tax Commissioner.

Formal Hearing. If all the issues raised by the taxpayer's Petition are not resolved informally, the case will proceed to formal hearing before a Hearing Officer. Once the case has progressed to formal hearing, the parties will be required to submit motions or briefs or to participate in other legal procedures. Performing these types of activities constitutes the practice of law and can only be done by an attorney unless the taxpayer chooses to represent itself. The use of a non-attorney representative, such as a certified public accountant or other financial advisor, is not allowed.

Prior to the formal hearing, DOR and taxpayer will be encouraged to reach an agreement that certain facts are not in dispute. Both parties will also be encouraged to agree upon a statement of the legal issues to be submitted to the Tax Commissioner after the formal hearing. These agreements are called stipulations. In some cases, a preliminary conference is also held before the Hearing Officer in order to further develop the issues or to set time lines for each party to obtain information from the other party. This is commonly referred to as the discovery process.

The formal hearing (and the preliminary conference if one is held) takes place in the Nebraska Department of Revenue's Hearing Room located in the Nebraska State Office Building in Lincoln, Nebraska. At the formal hearing, both the taxpayer and DOR may present evidence in the way of witness testimony, written documents, or other exhibits. Both parties may also present arguments which address the issues raised in the Petition. Normally, the evidence and arguments are presented in a less formal fashion than that which occurs in other courts. However, either party may request that both parties must instead follow the more formal rules of evidence which occur in the Nebraska district courts. If such a request is made, it must be done in writing at least three days in advance of the formal hearing. A verbatim record of the proceeding is made for use in the event of further appeal.

After reviewing the evidence submitted, the Tax Commissioner will issue a written Order deciding all issues submitted at the formal hearing. All proceedings are governed by the [Administrative Procedure Act, Chapter 84, article 9 of the Nebraska Revised Statutes](#).

Appeal of Decision After Formal Hearing. If taxpayers disagree with the Order, they may appeal the decision to the District Court of Lancaster County within 30 days from the postmark date of the Tax Commissioner's Order. Any appeal must be filed with the clerk of that Court.

Prior to the District Court's review of the Tax Commissioner's Order, the court will be provided with the written record of the formal hearing which was held at DOR. This record includes any pleadings which were filed either prior to or during the formal hearing, any evidence upon which the hearing officer made a determination as to whether it should be allowed for consideration, and the written transcript of everything that was stated by the parties or the hearing officer during the formal hearing. This record will be the only material which the District Court reviews in reaching a decision of the case. Neither party may introduce any additional evidence during the appeal process.

If the taxpayer does not file an appeal within the 30-day period, the Order of the Tax Commissioner becomes final. Any tax, interest, or penalty becomes due and payable and the assessment will be collected by DOR if not already paid.

Resource List

Information Guides

- ❖ [Nebraska Liquid Fuel Carriers](#)
- ❖ [Nebraska Motor Fuel Ethanol and Biodiesel Producer](#)
- ❖ [Nebraska Motor Fuels Retailers and Compressed Fuel Retailers](#)
- ❖ [Nebraska Motor Fuels Tax Laws](#)
- ❖ [Nebraska Motor Fuels Tax Refunds](#)

Regulations

- ❖ [Nebraska Motor Fuels Tax Regulations](#)
- ❖ [Nebraska Practice and Procedure Regulations, Title 316, Chapter 33](#)

Statutes

- ❖ [Administrative Procedure Act, Chapter 84, article 9 of the Nebraska Revised Statutes](#)
- ❖ [Neb. Rev. Stat. §§ 84-913 through 84-919](#)

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800-554-3835, 402-471-5730

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