

# How to Protest a Notice of Deficiency Determination

## Overview

A Sales and Use Tax Notice of Deficiency Determination or an Income Tax Notice of Proposed Deficiency Determination (notice) is issued after an audit or examination by the Nebraska Department of Revenue (Department). The assessment of additional tax, interest, or penalties (assessment) contained in the notice resulted from: an audit or examination of the taxpayer's books and records; information obtained from the Internal Revenue Service; the taxpayer's failure to respond to a request from the Department to file a Nebraska tax return; or any other information available to the Department.

A notice may include schedules and work papers that identify the basis for the assessment. If a notice is issued because the taxpayer failed to file tax returns as required by Nebraska law, it is based upon the best information available to the Department from any source. For questions concerning the computation of the assessment, the Department's position concerning an item which was taxed, or the appeals procedure, please contact the Department.

To protest a notice, a taxpayer must file a Petition for Redetermination (petition). Requirements of this petition and due dates are included in this guide. The protest process may involve an informal conference, a pre-hearing conference, a formal hearing, and a final order of the Tax Commissioner.

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

## Do you agree with the assessment?

If the taxpayer agrees with the assessment as issued, the amount assessed must be paid. Generally, the taxpayer and the Department can negotiate a payment agreement if necessary.

## Assessments Due to Non-Filed Tax Returns

If the notice was issued because the taxpayer failed to file a tax return as required under Nebraska law, the taxpayer may file a petition as described below if he or she disagrees with the assessment, or may instead file the missing return or returns with information that the taxpayer asserts is correct. If the taxpayer files the returns within 60 days

from the postmark date of the notice, the Department may examine the returns and other documents and may change or withdraw the assessment.

Filing a return is not a protest. All protests must be filed as a petition in the manner described below. If the taxpayer does not file a petition by the applicable deadline, the assessment becomes final and cannot be appealed.

## Do you disagree with the assessment?

**File a Petition for Redetermination.** If the taxpayer wishes to dispute the assessment he or she must file a petition with the Nebraska Department of Revenue, Legal Section, PO Box 94818, Lincoln, NE 68509-4818. The petition must be in writing and timely filed. Filing may be accomplished by personal delivery or by mail. Petitions cannot be filed by fax or email.

A petition must be legibly written, typed, or printed on white, 8½ by 11 inch paper and must:

- ❖ Identify the taxpayer;
- ❖ Identify the assessment being protested;
- ❖ Include statements describing the reasons one or more items in the assessment are believed to be incorrect (where appropriate, the protested items should be identified by their audit work paper page and line numbers);
- ❖ Concisely state the action being requested of the Department. Usually, this will be a list of the items in the assessment you are asking the Department to remove;
- ❖ Request a hearing, if one is desired; and
- ❖ Be 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](#), or its equivalent.

A taxpayer is responsible for the timely filing and adequacy of the petition. The Department's Legal Section will acknowledge receiving a properly filed petition in writing.

### Petition Due Dates

Grounds for Assessment	Number of Days from Assessment Postmark
Income Tax and Income Tax Withholding	60
If the taxpayer was outside the US	150
Sales and Use Tax	60
Responsible Officer Notice and Demand for Payment	60
Documentary Stamp Tax	30
Tobacco Products Tax	20
Drug Tax	10
Jeopardy	10
All other assessments not specifically identified	60

**If a petition is not filed within the applicable 10, 20, 30, 60, or 150-day limitation period, the assessment becomes final, and cannot be appealed. The tax, interest, and penalty are immediately due and payable.**

When a petition is filed, the statutory time restrictions for collection of the assessed tax, interest, and penalty are suspended until a final determination has been made. Once protested, an assessment is not final until 30 days after an order is issued by the Tax Commissioner.

**Resolution without a Formal Hearing.** Petitions resolved without a formal hearing can be closed by the granting of a motion to dismiss, a settlement stipulation and order, or a written determination of the Tax Commissioner.

**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 the Department. Once a formal hearing is set for the petition, taxpayers can either appear on their own behalf or be represented by an attorney.

**Informal Conference.** The purpose of the informal conference is to eliminate items from the assessment because of additional information supplied by the taxpayer and to clarify any factual or legal issues in the matter. 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 taxpayer requests an informal conference, the Legal Section will schedule a conference to be held at the Department's Lincoln office at the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, 68509.

**Formal Hearing.** Unless all the issues raised in the petition are resolved, the case will proceed to a formal hearing, if a formal hearing was requested. The Tax Commissioner may serve as the hearing officer or will appoint a hearing officer.

In complex cases, or in cases where no agreements are reached on the stipulated facts or the remaining factual or legal issues, the formal hearing may be preceded by a prehearing order or a prehearing conference, presided over by the hearing officer.

If the case proceeds to a formal hearing, briefs, motions, or procedures are typically required. In these cases, taxpayers must either appear on their own behalf or be represented by an attorney.

The hearing officer will encourage the Department and the taxpayer to stipulate to the undisputed facts for purposes of the formal hearing. The taxpayer and the Department will also be encouraged to agree upon a statement of the remaining factual and legal issues to be submitted for decision by the Tax Commissioner after the formal hearing.

At the formal hearing, both the taxpayer and the Department may present evidence (including the testimony of witnesses, documents, and other exhibits) and arguments bearing upon the factual or legal issues. The taxpayer may request that the formal hearing be governed by the rules of evidence applicable in district courts in Nebraska. This request must be in writing and made at least three days in advance of the hearing. A verbatim record of the proceedings is made in case of a future appeal. All proceedings are governed by the [Administrative Procedure Act, Neb. Rev. Stat. §§ 84-913 through 84-919](#).

The Tax Commissioner will review the evidence and the hearing record, decide all issues submitted at the formal hearing, and issue a final order (order).

**Final Action and Appeal.** Final action means either an order following a formal hearing, or, if the taxpayer did not request a formal hearing, a written determination by the Tax Commissioner. If the taxpayer disagrees with the final action taken, the taxpayer may appeal it to the appropriate district court (usually the District Court of Lancaster County) within 30 days after the postmark date of the order or written determination. Protests closed by the granting of a taxpayer's motion to dismiss or a settlement stipulation and order cannot be appealed.

The district court will review the final action on the basis of the record of the proceedings within the Department. Neither party may introduce additional evidence in the course of an appeal.

If an appeal is not filed within the required period, the Tax Commissioner's order or written determination becomes final. Any tax, interest, or penalty is then immediately due and payable, and the assessment will be collected by the Department.

## **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 any penalty. The taxpayer may request penalty abatement whether or not the taxpayer has filed a petition. Any taxpayer who has been assessed a penalty and has paid all tax and interest not subject to abatement, may request an abatement of the penalty. Complete and return a [Request for Abatement of Penalty, Form 21](#), to begin this process.

**Interest.** The Department assesses interest on unpaid taxes as required by statute, and interest continues to accrue until the taxes are paid. The Tax Commissioner has the authority to abate 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. Complete and return an [Application for Abatement of Interest, Form 21A](#), to begin this process.

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

## Paying the Assessment

Mandates of Electronic Payment. Some entities are required to make their payments (tax, penalty, interest, and assessment) electronically. To ensure proper processing, it is recommended that this payment of the assessment not be combined with regular tax payments. Failure to pay electronically, when required, may result in additional penalty. For mandate purposes, all electronic payment options satisfy the mandate requirement. All entities are encouraged to make their payments electronically.

### Electronic Payment Options

**Electronic Funds Withdrawal (EFW).** With this payment option, you provide your payment information within your electronically-filed return. Your payment will automatically be withdrawn from your bank account on the date you specify.

**Nebraska e-pay.** Nebraska e-pay is the Department's web-based electronic payment system. You enter your payment and bank account information, and choose a date (up to a year in advance) to have your account debited. You will receive an email confirmation for each payment scheduled.

**ACH Credit.** You (or your bank) create an electronic file in the appropriate ACH file format. It is submitted to the Federal Reserve and instructs your bank to "credit" the state's bank account.

**Nebraska Tele-pay.** Nebraska Tele-pay is the Department's phone-based electronic payment system. Call 800-232-0057, enter your payment and bank account information, and choose a date (up to a year in advance) to have your account debited. You will receive a confirmation number at the end of your call.

**Credit Card.** Secure credit card payments can be initiated through Official Payments at [officialpayments.com](http://officialpayments.com); via phone at 800-2PAY-TAX; or by downloading the OPAY app from your smart phone's app store. Eligible credit cards include American Express, Discover, MasterCard, and VISA. A convenience fee (2.49% of the tax payment, \$1 minimum) is charged to the card you use. This fee is paid to the credit card vendor, not the state, and will appear on your credit card statement separately from the tax payment. At the end of your transaction, you will be given a confirmation number. Keep this number for your records. [If you are making your credit card payment by phone, you will need to provide the Nebraska Jurisdiction Code, which is 3700.]

**Check or Money Order.** If you are not using one of the electronic payment options described above, include a check or money order payable to the "Nebraska Department of Revenue." Include your Nebraska ID number, identify the applicable tax program on your payment, and include a copy of the notice with your payment to ensure proper processing. Checks written to the Department may be presented for payment electronically.

## Payment Plan

If you are unable to pay the full amount of tax due, you must contact the Department to set up a payment plan, and payments must be made electronically. For more information, see [How to Pay Your Balance Due](http://revenue.nebraska.gov) at [revenue.nebraska.gov](http://revenue.nebraska.gov).

## Resource List

- ❖ [Administrative Procedure Act, Neb. Rev. Stat. §§ 84-913 through 84-919](#)
- ❖ [Nebraska Practice and Procedure Regulations, Title 316, Chapter 33](#)
- ❖ [350, Neb. Admin. R. & Regs. 52 \(2009\)](#)
- ❖ [Revenue Ruling 99-08-3, Abatement of Interest Assessed on Delinquent Taxes](#)
- ❖ [Request for Abatement of Penalty, Form 21](#)
- ❖ [Request for Abatement of Interest, Form 21A](#)
- ❖ [Power of Attorney, Form 33](#)
- ❖ [Nebraska Department of Revenue Refund, Protest, and Appeal Process Flowchart](#)

**revenue.nebraska.gov**

800-742-7474 (Nebraska and Iowa), 402-471-5729

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