

INDIANA DEPARTMENT OF REVENUE ADMINISTRATIVE PROTEST GUIDE

Introduction

When a taxpayer receives a proposed assessment for additional tax or has been denied a request for refund, the taxpayer may be entitled to file a protest with the Indiana Department of Revenue (DOR). This guide provides information and guidance on the protest process.

You may also reference DOR's Appeals webpage where you will find helpful information as and links to relevant forms. The Appeals webpage can be found at <http://www.in.gov/dor/5691.htm>.

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Note that this guide provides general advice on how to best present a protest. Following the recommendations is not a guarantee that your protest will be sustained.

I. DOR Actions That Can Be Protested

If you receive a proposed assessment or denial of a claim for refund from DOR, you have 60 days from the date the proposed assessment or refund denial is issued to file a written protest. The mailing address for a protest is:

Indiana Department of Revenue
Attn: Legal Division, MS 102
100 N. Senate Avenue, Room N248
Indianapolis, IN 46204

II. Filing a Protest—What to Include

Your protest must be in writing and accompany the Protest Submission Form (State Form 56317). This form and other helpful information are available on the [Appeals webpage](#). *Make sure to fill out the second page of the form which asks you to select one of four options to resolve your protest.*

The traditional option is to request a hearing after which DOR will issue a written final determination. The second option is to ask DOR to issue a written final determination based on what you presented in the protest without a hearing. The third option is to forgo both a hearing and a written final determination and just make a settlement offer to DOR. Last, if you've presented new documentation with your protest, you may request DOR review of the documentation before proceeding with the protest.

When writing the protest, provide as much relevant information as possible. This includes, but is not limited to:

- The tax years and months that are at issue.
- The tax type that is at issue.
- The specific part of the proposed assessment or refund denial you disagree with.
- The specific reason(s) why you disagree with DOR's position.
- The statutes, regulations, and/or court cases you believe support your protest.
- The type of documentation you have that you believe supports your protest.
- Copies of the supporting documentation, along with an explanation of the specific portions of the relevant documentation.
- The specific result you desire. If it is a dollar amount with which you do not agree, include the specific dollar amount you believe is correct. If it is a percentage to be applied to audit calculations, include that specific percentage.

Your protest will be handled by a hearing officer, who might not have all the information seen by other DOR employees at earlier stages of your audit or claim for refund. Include enough explanation of the facts for the hearing officer to understand the overall circumstances and that support your specific protest. Remember, you are the expert with the most knowledge of your activities. It is up to you to get the relevant facts into the protest.

III. The Hearing Notice Letter—What Does It Mean?

When you submit a written protest, DOR will send you a one-page acknowledgement letter with the docket number assigned to your protest. This letter will also provide the date and time for your administrative hearing if that is the option you selected. You can request a reasonable change to the date and time for your convenience by submitting a Protest Resolution Extension Request (State Form 56318). This form is also available on the [Appeals webpage](#).

You also can request that the hearing be conducted over the telephone. You may contact the Appeals Coordinator to request a telephone hearing. There is rarely any significant difference between a telephone hearing and an in-person hearing. If your protest depends heavily on a large number of documents, however, an in-person hearing can be beneficial because you can point the hearing officer to the information you believe is relevant. That is a matter of your preference. If the hearing will be conducted over the telephone, the Appeals Coordinator will provide a number for you to call at the time of the hearing.

The hearing notice letter will also contain additional important information:

- Your protest's docket number
- The location of DOR's offices where the hearing will be conducted

IV. Hearing Preparation—What to Bring to the Administrative Hearing

The administrative hearing will be more effective if you are properly prepared. Here are some tips for making sure you are prepared for your hearing:

- Review the audit report, refund denial, or other document that explains the DOR position you are protesting.
- Review your protest letter so that you are familiar with your reasons for protesting.
- Bring copies of all documents that support your protest. For example, if you are protesting that you paid sales tax at the time you purchased an item, bring a copy of the receipt. Please do not bring original documents.
- Be prepared to explain things that you might have already explained to an auditor or other DOR employee. The hearing officer may not have all the information that you provided to another employee. Therefore, even though the hearing officer has reviewed the protest prior to the hearing, it is best to assume that he does not know anything about the protest and explain too much rather than too little.

Being thoroughly familiar with your own circumstances and the specifics of the protest is the best way to make sure that the hearing officer understands your position.

V. The Administrative Hearing

The hearing is really just an opportunity for you to explain your position to the hearing officer and to make the best case for your protest. The hearing is informal. The hearing officer is not a judge and the hearing room is not a court room. Often, the hearing officer will ask for clarification of one or more points you are addressing. After you present your position, the hearing officer might ask if you have documentation supporting your position.

Hearings are typically scheduled for 60 minutes but can be shorter or longer. The length of time is up to you and is subject to the hearing officer's schedule. You are the one who will be explaining the protest, so you can take as much time as is reasonably needed to fully explain your position. The hearing officer is there to listen and possibly ask questions.

VI. Post-Hearing

After a hearing (or if the taxpayer elects not to have a hearing but nonetheless requests a written decision), the hearing officer usually issues a written decision. The Department's written decision will come in one of three versions. The three versions are called a Letter of Findings (LOF) when the protest is in regard to a proposed assessment, a Memorandum of Decision (MOD) when the protest is in regard to a claimed refund and the protest is sustained in part or in whole, and an Order Denying Refund (ODR) when the protest is in regard to a claimed refund and the protest is denied in whole. The outcome of the protest would result in different post-hearing options.

- If the LOF or MOD sustains a protest in whole, DOR agrees with your protest and will dismiss the proposed assessment being protested or will issue the refund being claimed. You will not need to take any further actions. Be sure to keep the LOF or MOD for future reference because it may be the only documentation sent to you on this matter.
- If the LOF denies the protest, DOR is not convinced that you have proven the proposed assessment wrong, as required by statute, and the proposed assessment will remain in place. Similarly, if the ODR denies the claim for refund, the Department is not convinced that the claim for refund is valid. If this is the case, you can ask for a rehearing (*see below*), pay the assessment, or file a lawsuit with the Indiana Tax Court.
- If the LOF or MOD partially sustains and partially denies the protest, DOR agrees with one or more, but not all, of the points you protested. Many protests address more than one issue. An LOF or MOD can sustain the protest on one issue and deny the protest on a second issue. In the case of a proposed assessment, the portion of the protest that was sustained will be dismissed, while the portion denied will remain. In the case of a claim for refund, the portion which is sustained will be refunded, while the portion that is denied will not be refunded. If any portion of your protest of a proposed assessment is denied, you can ask for a rehearing on the denied portion, pay the remaining amount of the assessment, or file a lawsuit with the Indiana Tax Court. If any portion of a claim for refund is denied, you can ask for a rehearing on the denied portion, accept the approved amount of refund, or file a lawsuit with the Indiana Tax Court.

VII. Request for Rehearing

If your protest of a proposed assessment or a claim for refund is denied in any portion, you have the right to request a rehearing. Rehearing requests must be submitted within thirty (30) days of your initial determination. Rehearings are granted at DOR's discretion, which means that rehearing requests are not always granted. Typically, rehearings are granted when:

- You have new, relevant documentation that was unavailable at the time of the original hearing; or
- The LOF, MOD, or ODR did not address a portion of your protest

DOR will review a request for rehearing and determine whether a rehearing is warranted. If DOR determines that the reason(s) you list in your request could make a difference in the outcome of the protest, then DOR will send you a letter scheduling a rehearing and will give you a new rehearing docket number. If DOR determines that the reason(s) you list will not result in a different outcome of the protest, then DOR will send you a letter saying that the request for rehearing has been denied. At that point, you can either accept that as DOR's final determination or file a lawsuit with the Indiana Tax Court.

VIII. Filing in Court

The Indiana Tax Court has exclusive jurisdiction to hear cases regarding Indiana taxes. The Tax Court is a formal court with a judge and all the standard rules that apply to court proceedings. DOR is represented in court by the Indiana Attorney General's Office. The procedures for contacting the Tax Court and for filing a lawsuit are available online at <http://www.in.gov/judiciary/tax/>.

IX. Settlement Offers

At any point during the protest process, a taxpayer may make a settlement offer to the Department. The Department may consider a settlement offer at its discretion and is under no obligation to accept such an offer. A settlement offer must be in writing and must state a specific offer to settle the protest. If you wish to make a settlement offer at the outset or during the protest process, you should send the offer to the hearing officer assigned to your protest. The hearing officer will then present the offer to the Department's senior managers. Those senior managers will decide whether or not to accept the offer. The hearing officer will then relay that decision to you.

X. Definitions

DOR's written documents often use terminology specific to Indiana state taxes. The following is a list of the more common terms:

Administrative hearing. This is an informal meeting during which you explain your protest to DOR. Although the administrative hearing is conducted by DOR's Legal Division, it is informal and is not a court. No record is created and no formal rules of evidence are used.

Hearing officer. A hearing officer is an attorney and is a DOR employee who conducts administrative hearings. The hearing officer is not a judge. The hearing officer's job is to write and issue DOR's decision on a protest after a hearing.

IAC. This means Indiana Administrative Code, which contains the various regulations for different state agencies. Regulations are an agency's rules created to explain how it applies the statutes for its area of governance. The DOR's regulations are found under Title 45 of the IAC. An example of an Indiana Administrative Code reference is 45 IAC 2.2-3-4. This means that the document is referring to Title 45 of the Indiana Administrative Code, Article 2.2, Chapter 3, Section 4.

IC. This means Indiana Code, which is the codification of Indiana law into statutes. Indiana's state taxes are found under Title 6 of the Indiana Code. An example of an Indiana Code reference is IC § 6-8.1-5-1(c). This means that the document is referring to Indiana Code Title 6, Article 8.1, Chapter 5, Section 1, Subsection (c). The "§" is merely a symbol that means "section."

LOF. This means Letter of Finding, which is the DOR's written decision on a protest. The LOF explains the DOR's reason for issuing a proposed assessment; the taxpayer's reason for believing that she is not liable for the proposed assessment; and the relevant statutes, regulations, and court cases. The LOF discusses all these factors and reaches a conclusion called a "finding." The finding either sustains or denies a protest. If the protest is sustained, DOR agrees with the taxpayer and will make the changes that are requested. If the protest is denied, DOR is not convinced that the taxpayer has proven the proposed assessment wrong, as required by statute. LOFs are published in the Indiana Register, which can be found online.

MOD. This means Memorandum of Decision, which is the DOR's written decision when it is wholly or partially agreeing with a claim for refund at the hearing level. The MOD is written in a manner similar to an LOF. MODs are published in the Indiana Register.

ODR. This means Final Order Denying Refund, which is the DOR's written decision when it is wholly denying a claim for refund at the hearing level. The ODR is written in a manner similar to an LOF. ODRs are published in the Indiana Register.

POA. This means Power of Attorney. You can have another person represent you in a protest process. That representative can be anyone of your choosing and is often referred to as a "POA." However, you must properly complete and submit a POA-1 form before DOR can communicate with the POA about your protest. The POA-1 form is available online on the [Appeals webpage](#).

Protest. A protest is a written letter in which you explain why you believe you are not liable for a proposed assessment of taxes or why you believe you are entitled to a refund of previously paid taxes. A protest is filed after you have received a proposed assessment

of taxes or after a claim for refund has been either partially or wholly denied at the initial refund claim stage.

Protest Submission Form. State Form 56317 which is now required when a taxpayer files a written protest with the Department. This form is available on the [Appeals webpage](#). In addition to other information, this form asks the taxpayer to select one of four options to resolving the protest:

Final determination with a hearing

Hearings are informal and present the taxpayer with an opportunity to explain its protest and documentation to the department. The taxpayer will receive notice of the scheduled hearing from the Appeals Coordinator. The hearing will be held at the department's office in downtown Indianapolis. If the taxpayer needs to reschedule a hearing or request a phone hearing, the taxpayer must contact the Appeals Coordinator before the designated hearing date. The department will issue its decision after the hearing.

Final determination without a hearing

The taxpayer may wish to forgo a hearing. In selecting this option, the taxpayer asks the department to make its decision based on the written protest and documentation (if any) the taxpayer presents along with the protest, and waives the right to a hearing.

"Fast track" settlement without a hearing or a final determination

By selecting this option at the time a taxpayer presents its written protest (and documentation supporting that protest), a taxpayer elects to propose a settlement of the protest before any hearing is held and/or final determination is issued. The settlement proposal must be in writing, made within two weeks of the protest submission, and set out the rationale for settlement. The hearing officer handling the protest will shepherd the settlement. If settlement is not achieved, the taxpayer may then resume its protest by contacting the hearing officer and selecting one of the other three tracks.

Request audit review prior to proceeding with the protest

Please Note: *This is only for assessments that result from an audit. You must provide the audit control number and present the audit summary report.*

When a taxpayer presents documentation with its protest not previously reviewed during the department's audit, the taxpayer may request audit review of the new documentation at the outset of the protest process. The review will determine if the new documentation resolves any part of the protest. The results of the review will be communicated to the taxpayer. The taxpayer will then determine if its protest is resolved or if it wishes to proceed with one of the other four protest tracks. Selecting this option may result in a delay in resolving the protest. Also, please note that the taxpayer or the department may elect to request audit review any point during the protest process.

Request refund review prior to proceeding with the protest

Please Note: *This is only for refund denials generated from the filing of a Claim for Refund, Form GA-110L. You must provide the refund denial claim number and a copy of the refund denial letter.*

When a taxpayer presents documentation with its protest not previously reviewed during the department's refund analysis, the taxpayer may request a refund review of the new documentation at the outset of the protest process. The review will determine if the new documentation resolves any part of the protest. The results of the review will be communicated to the taxpayer. The taxpayer will then determine if its protest is resolved or if it wishes to proceed with one of the other four protest tracks. Selecting this option may result in a delay in resolving the protest. Also, please note that the taxpayer or the department may elect to request a refund review of new documentation at any point during the protest process.

Protest Resolution Extension Form. State Form 56318 is now required when a taxpayer wishes to reschedule a hearing beyond two weeks or request an extension or stay in resolving a protest. This form is available on the [Appeals webpage](#).