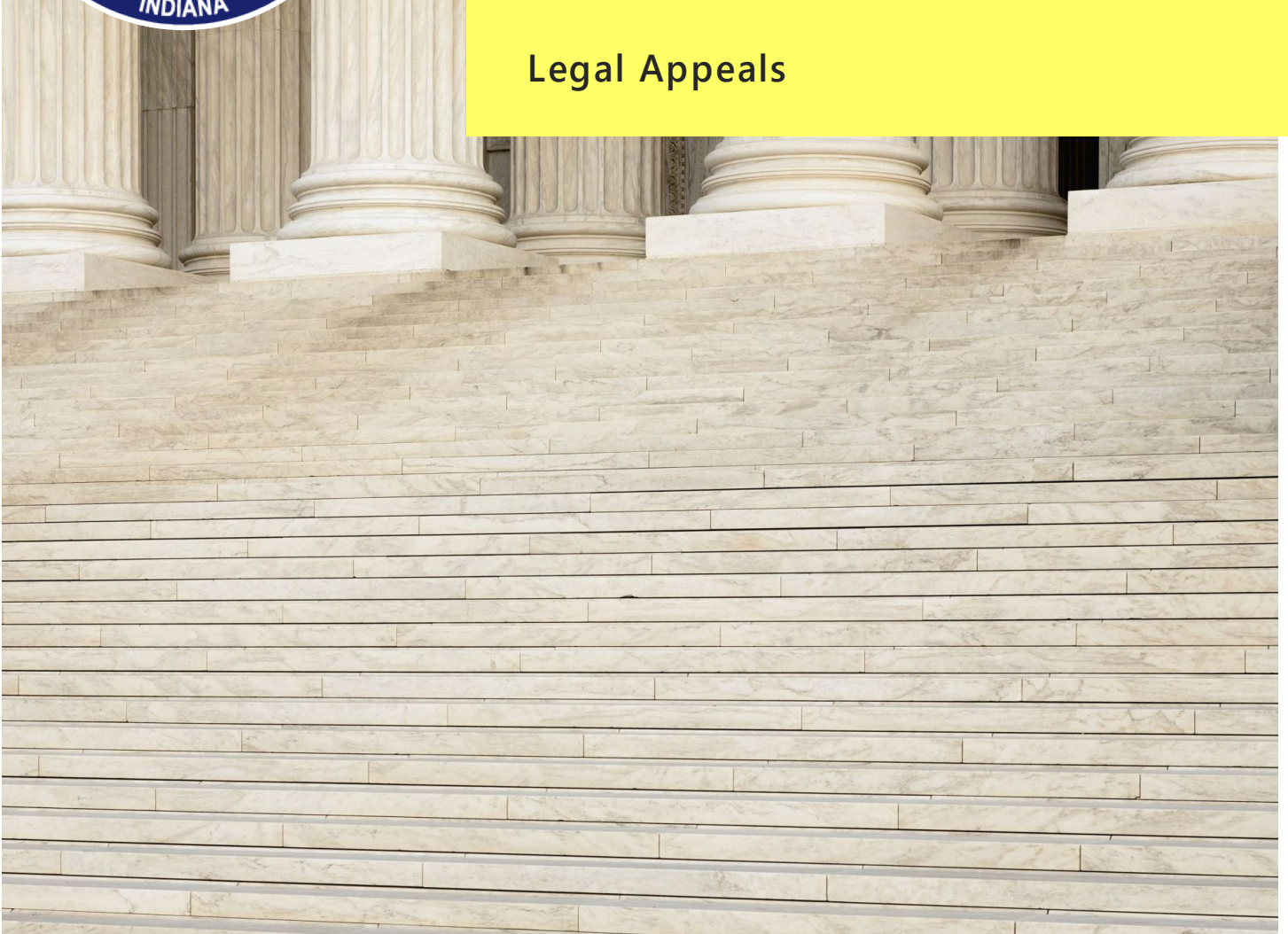




Protest & Administrative Hearing Guide

Legal Appeals



Last revised: October 2023

Introduction

When a taxpayer receives a proposed assessment for additional tax or has been denied a request for refund, in whole or in part, the taxpayer may be entitled to file a protest with the Indiana Department of Revenue (DOR).

The ability for a taxpayer to file a timely appeal of a proposed assessment or the denial of a refund in a fair and unbiased forum is essential for ensuring due process for taxpayers and for preserving the public trust in tax administration. This guide provides information on the protest and administrative hearing process.

You may also reference [DOR's Appeals webpage](#) where you will find helpful information, other guides and links to relevant forms available at <https://in.gov/dor/legal-resources/appeals/>.

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Important Note

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.

DOR Actions That Can Be Protested

Only a proposed assessment (IC 6-8.1-5) or the denial of a refund (IC 6-8.1-9) may be protested. If you receive a proposed assessment or a denial, in whole or in part, of a claim for refund from DOR, **you have sixty (60) days** from the date printed on the proposed assessment or refund denial to file a written protest. The 60-day deadline to file a written protest is set by statute and cannot be extended.

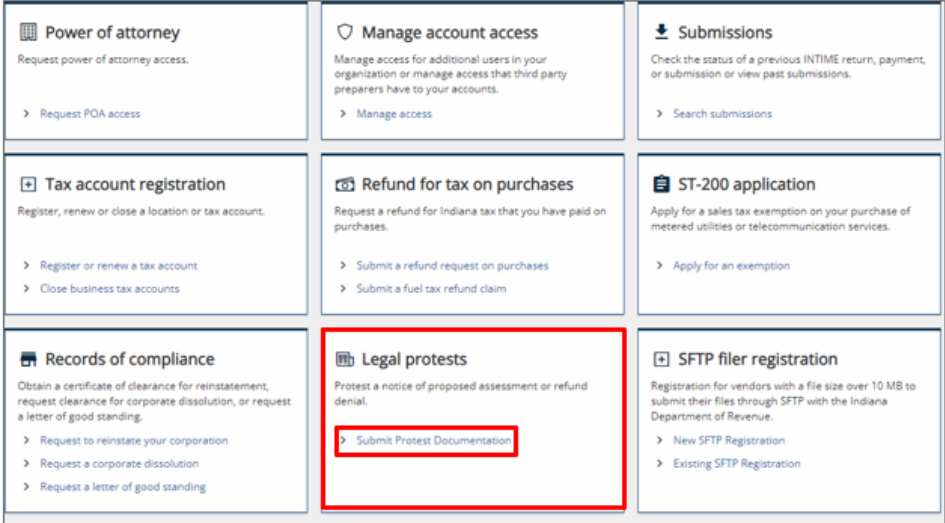
Filing a Protest: How to File

Your protest must be filed in writing and must be accompanied by the [Protest Submission Form](#) (State Form 56317) available at <https://in.gov/dor/legal-resources/appeals/>.

If you are filing your protest by mail, the mailing address for a protest is:

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

Alternatively, as of July 24, 2023, protests may be filed electronically via [DOR’s customer portal, the Indiana Taxpayer Information Management Engine \(INTIME\)](#). To file your protest via INTIME, log into your account, select “Submit Protest Documentation” in the Legal protests panel (as shown in the image below), and follow the instructions provided.



To submit your protest via INTIME, you will need the Letter ID from the notice you received from DOR that assessed additional tax or denied your request for a refund.

Information on INTIME, including a variety of resources and step-by-step guides, is available on DOR’s webpage at <https://www.in.gov/dor/online-services/intime-tax-center/>. Additional information, including a user guide, will be updated in the coming weeks and will be available on the [Appeals webpage](#) at <http://in.gov/dor/legal-resources/appeals/>.

Important Note

DOR has previously accepted the submission of protests via email; however, that email address will be retired as of **Friday, September 29, 2023**. After that day, all electronic filing of protests must be done via INTIME.

Filing a Protest: What to Include

When preparing the written protest, you or your Power of Attorney (POA) should provide as much relevant information as possible. This includes, but is not limited to:

- The tax period(s) at issue.
- The tax type(s) at issue.
- The specific part of the proposed assessment or refund denial you believe is incorrect.
- The specific reason(s) why you disagree with DOR's position.
- The statutes, regulations and/or court cases you believe support your protest.
- Copies of all supporting documentation you believe supports your protest, along with an explanation highlighting the relevant portions of the documentation provided.
- The specific result you desire. For example:
 - If you disagree with a dollar amount, include the specific dollar amount you believe is correct.
 - If you disagree with a percentage to be applied to audit calculations, include that specific percentage.

Be mindful that the Legal Analyst or Hearing Officer tasked with reviewing your written protest might not have all the information previously shared with other DOR employees. Please include a detailed explanation of the relevant facts that support your specific protest so that the people reviewing your protest can understand the overall circumstances.

Remember, **you** have the most knowledge of your activities. It is up to you to explain all of the relevant facts and to offer supporting evidence and documentation to ensure that your position is able to be properly considered during the protest.

Who Handles the Protest?

All protests are referred to DOR's Legal Division.

If you have a POA who is representing you as a lawyer, the Indiana Rules of Professional Conduct (see Rule 4.2 – Communication with a Person Represented by Counsel) require us to communicate with your lawyer about the subject of the representation unless your lawyer/POA consents to direct communication. If your POA is not a lawyer, then, pursuant to the Indiana Administrative Code (see 45 IAC 15-3-4 – Representation of taxpayers before the department), DOR will communicate primarily with your POA. In either scenario, your POA will be responsible for keeping you up to date on any developments in your protest.

Upon initial review of your written protest, the Legal Operations team may be able to resolve your protest without the need for a hearing or written decision. If your protest can be resolved without further action, you will receive a “notice of resolution” if the underlying case was related to an assessment of tax. In the case of a refund, the refund check may be the only notice you receive that the protest has been resolved in your favor.

Important Note

All protests that are not able to be resolved by Legal Operations will be assigned to a Hearing Officer for resolution based on the track selected on the Protest Submission Form which accompanies your written protest.

The most common protest track 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 without a hearing, in which case the final determination will be based solely upon what you have presented in the written protest.

The Hearing Notice Letter: What Does It Mean?

If you submit a written protest requesting a final determination with a hearing, DOR will send you or your POA a hearing notice letter that acknowledges your protest and contains the Docket Number for your case. The Docket Number is important because it is a unique identifier specific to your protest. The hearing notice letter will also contain the location of DOR's offices where the hearing will be conducted and contact information for the assigned Hearing Officer.

The assigned Hearing Officer will separately send you or your POA a letter setting the time and date of the hearing. You can request a reasonable change to the date and time for your convenience by contacting the Hearing Officer.

You also can contact the Hearing Officer to request that the hearing be conducted remotely over the telephone or virtually via Teams. If the hearing will be conducted over the telephone, the Hearing Officer will provide a number for you to call at the time of the hearing. If the hearing will be conducted via Teams, the Hearing Officer will provide you with the Teams link prior to the hearing.

There is rarely any significant difference between a remote and in-person hearing. However, if your protest depends heavily on a large number of documents, 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.

Please note that all hearing times and other scheduled appointments with DOR are on Eastern time.

Hearing Preparation:

What to Bring to the Administrative Hearing?

If you have requested to have an administrative hearing, the hearing will be more effective if you and/or your POA are properly prepared. Here are some tips for making sure you are prepared for your hearing:

- Review the audit report, refund denial, and any other document that explains the DOR position you are protesting.
- Review your written protest and Protest Submission Form so that you are familiar with your reasons for protesting.
- Bring copies of all documents that support your protest if you have not already included them with your protest submission. 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.** DOR will not return 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 this person does not know anything about the protest. It is better to 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 the Hearing Officer understands your position.

If you have requested that your protest be addressed without a hearing, these steps are still important. Be sure to include all relevant and detailed explanations and documentation with your written protest. The Hearing Officer will reach out to you if he/she needs clarification or additional information.

The Administrative Hearing

The administrative hearing is conducted by the Hearing Officer who is an **impartial party**—they represent neither your interests nor the interests of DOR. They are tasked with compiling information, applying the law, and arriving at what they believe to be the correct answer in the situation giving rise to your protest. Hearing Officers have the authority to conduct a hearing and to make independent decisions without interference or influence from within or outside of DOR.

The hearing is your opportunity 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 courtroom. Often, the Hearing Officer will ask for clarification of one or more points you are addressing and the Hearing Officer is able to consider information gathered or presented outside of the ordinary limits of formal rules of evidence. After you present your position, the Hearing Officer might ask if you have additional documentation supporting your position.

Hearings are typically scheduled for sixty (60) minutes but can be shorter or longer. The length of time can be modified at the Hearing Officer's discretion, subject to the needs of the situation and 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, possibly ask questions and to consider the facts and information as presented by you.

Final Determination and Next Steps

A final determination is a written decision representing DOR's final position on a protested tax matter, whether you have requested a hearing or not. The final determination aims to provide transparency as to the basis for the decision, and remains DOR's position on the tax matter, unless subsequently changed by way of legislation, court decision, or DOR publication in the Indiana Register. If you requested a hearing, the final determination will be issued after the hearing; however, the same written decisions would be issued if no hearing is held.

The Hearing Officer will issue the written final determination in one of three versions:

1. A Letter of Findings (LOF) when the protest originated from a proposed assessment;
2. A Memorandum of Decision (MOD) when the protest originated from a claimed refund and the protest is sustained in part or in whole; or
3. An Order Denying Refund (ODR) when the protest originated from a claimed refund and the protest is denied in whole.

Depending upon the outcome of the protest, as described in the final determination, **you may need to take further action**. Those potential next steps are described below:

- A finding sustaining taxpayer's protest in whole:
 - If the LOF or MOD sustains a protest in whole, that means that DOR agrees with your protest and will dismiss the protested proposed assessment 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.
- A finding denying taxpayer's protest in whole:
 - If the LOF denies your protest of a proposed assessment, that means that DOR is not convinced that you have met your statutory burden of proving the proposed assessment to be wrong, and the proposed assessment will remain in place. If this is the case, you can either accept the determination as explained in the written decision, ask for a rehearing (see below), pay the assessment, or file a lawsuit with the Indiana Tax Court. If no request for rehearing is submitted, the billing process will resume unless the taxpayer files a lawsuit with the Indiana Tax Court, in which case the billing remains stayed until the court case is resolved.
 - Similarly, if an ODR is issued upholding DOR's denial of your claim for a refund, that means that DOR is not convinced that the claim for refund is valid. If this is the case, you can either accept the determination as explained in the written decision, ask for a rehearing, or file a lawsuit with the Indiana Tax Court.
- A finding partially sustaining and partially denying taxpayer's protest:
 - If the LOF or MOD partially sustains and partially denies the protest, that means that DOR agrees with one or more, but not all, of the issues you protested.
 - If the LOF or MOD is partially denied, you may follow the same actions items listed above for when your protest is denied in whole, except that those action items will only apply to those issues which were denied.

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 proposed assessment under 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 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.

Request for Rehearing

If your protest is denied in any portion, you have the right to request a rehearing. Rehearing requests must be received within thirty (30) days from date of the final 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 or misstates relevant facts.

DOR will review a request for rehearing and determine whether it is warranted. If DOR determines that the reason(s) you list in your request could possibly make a difference in the outcome of the protest, then DOR will send you a letter scheduling a rehearing.

- 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 DOR's final determination or file a lawsuit with the Indiana Tax Court.
- If DOR grants the request for rehearing, it will follow the same process as the hearing and will result in a supplemental LOF, MOD, or ODR.

Filing in Court

The Indiana Tax Court has exclusive jurisdiction to hear cases regarding Indiana taxes. The Indiana 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 Office of the Indiana Attorney General. The procedures for contacting the Tax Court and [filing a lawsuit are available online](https://www.in.gov/judiciary/tax/) at <https://www.in.gov/judiciary/tax/>.

Important Note

All administrative procedures, i.e., the filing of a protest as described above, must be exhausted prior to filing a lawsuit with the Indiana Tax Court. Additionally, there are important deadlines associated with all Tax Court proceedings.

Settlement Offers

At any point during the protest process, a taxpayer may make an offer to DOR to settle its protested assessment or claim for refund. Because DOR's assessments are presumed to be correct under Indiana Code, all offers of settlement must be initiated by the taxpayer. You must present an offer that clearly states your reasons for wanting to settle, along with the specific amount you are offering in settlement, whether that amount is an assessment or a reduced refund. DOR may consider a settlement offer at its discretion and is under no obligation to accept such an offer.

Important Note

A settlement offer must be in writing and must state a specific offer.

If you wish to make a settlement offer at the outset or during the protest process, you should send the offer, including the proposed settlement amount and any other relevant terms, to the Hearing Officer assigned to your protest. The Hearing Officer will then present the offer to DOR's senior managers who will decide whether to accept the offer. The Hearing Officer will then relay that decision to you.

For further information on settlements, please [refer to the Settlement Guide](http://in.gov/dor/legal-resources/appeals/) available at <http://in.gov/dor/legal-resources/appeals/>.

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 at the agency level and no formal rules of evidence are used. This may take place in person or over the telephone.

Deny/Denied: This is the word written decisions use when DOR disagrees with all or part of a protest. In other words, when a written decision says that a protest is "denied", it means that the taxpayer in question loses all or part of their protest.

Final determination: A written decision that represents DOR's final position on a protest, whether a hearing has been request or not. The final determination is issued in one of three versions: 1) a Letter of Findings (LOF), 2) a Memorandum of Decision (MOD), or 3) an Order Denying Refund (ODR).

Hearing Officer: A Hearing Officer is an attorney and a DOR employee who conducts administrative hearings. The Hearing Officer is not a judge. Hearing Officers are impartial and do not represent either party. The Hearing Officer's job is to collect information, apply the law, and to arrive at the correct result in a protest. Ultimately, the Hearing Officer will write and issue DOR's decision on a protest or will present settlement offers to DOR's senior managers.

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. 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 DOR's written decision on a protest. The LOF explains DOR's reason for issuing a proposed assessment; the taxpayer's reason for believing that he/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, as required by law, that the proposed assessment wrong. LOFs are published in the Indiana Register, which can be found online.

MOD: This means Memorandum of Decision, which is 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 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 the 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](https://in.gov/dor/legal-resources/appeals/) at <https://in.gov/dor/legal-resources/appeals/>.

Protest: Indiana law allows taxpayers to contest, or ‘protest’, the proposed assessment of tax or the denial, in part or in whole, of a request for a refund of tax previously paid. The protest is initiated by the submission of 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.

Protest Submission Form: State Form 56317 is required when a taxpayer files a written protest with DOR and is available on the [Appeals webpage](https://in.gov/dor/legal-resources/appeals/) at <https://in.gov/dor/legal-resources/appeals/>. In addition to other information, this form asks the taxpayer to select one of two options to resolving the protest:

Final determination with a hearing:

Hearings are informal and present the taxpayer with an opportunity to explain their protest and documentation to DOR. The taxpayer will receive notice of the scheduled hearing from the Hearing Officer handling the protest. The hearing will be held at DOR’s office in downtown Indianapolis. If the taxpayer needs to reschedule a hearing or request a phone hearing, the taxpayer must contact the Hearing Officer before the designated hearing date. DOR 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 DOR 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.

Settlement offer: An offer initiated by the taxpayer that proposes to resolve a protest without a written decision. The offer is followed by a negotiation between the taxpayer and DOR that may result in an agreed compromise as to DOR’s assessment and/or the taxpayer’s claimed refund. The settlement offer is **always** initiated by the taxpayer. A settlement may be proposed at any point during the protest process. Not all settlement negotiations result in an agreement. A Settlement Guide on the [Appeals webpage](https://in.gov/dor/legal-resources/appeals/) at <https://in.gov/dor/legal-resources/appeals/> provides additional information on settlements.

Sustain/Sustained: This is the word used in written decisions when DOR agrees with all or part of a protest. In other words, a written decision says that a protest is “sustained” means that the taxpayer in question wins all or part of their protest.