

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

### Overview

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

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### Terms

**Evidence.** A piece of evidence is something, such as testimony, a document, or a tangible object, that tends to prove or disprove an alleged fact. If exhibits and testimony have been received into the record, they become evidence. All of the evidence received into the record is what the hearing officer considers in making a decision and 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 and consider in making a decision. Usually parties offer exhibits that support their side of the argument.

**Final Action.** A final action in this type of hearing 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 who will be affected by the Tax Commissioner's decision in the case. Usually the parties are the permit holder and the Department.

**Permitholder.** For purposes of this information guide, the permitholder is the person holding the sales tax permit that is the subject of the revocation/suspension hearing.

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

## Notice of Hearing

After the Department has requested a revocation/suspension hearing, the permitholder will receive a Notice of Hearing (Notice). The Notice will set the location, time, and date of the hearing. If the permitholder is a sole proprietorship, the owner may represent the company. 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 should enter his or her appearance in the matter by filing notice with the hearing officer and the Department.

## Pre-Hearing Procedures

Before going on the record and beginning the hearing, the hearing officer will explain how the revocation/suspension hearing will proceed. If there are any issues that need to be addressed before the hearing begins, the hearing officer will address each issue in turn.

## Conducting the Hearing

### 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.

### Hearing on the Record

**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.

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

**Department's Case.** In this type of a hearing, the Department 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 representative for the Department. After the representative is sworn in, the hearing officer will ask the representative to introduce any exhibits the Department wants to have received into evidence. You will be given an opportunity to object to any of the exhibits. The hearing officer will consider the arguments for and against accepting the exhibits and make a decision. Any exhibits that are not received into evidence will be specifically noted. After the exhibits are received, the Department representative will present oral testimony stating the Department's case and asking the hearing officer to decide the case in the Department's favor.

When the Department 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 Department representative.

**Permitholder's Case.** The hearing officer will swear you in. After you are sworn in, the hearing officer will ask you to introduce any exhibits you want to have received into evidence. The Department will be given an opportunity to object to any of the exhibits. The hearing officer will consider the arguments for and against accepting the exhibits and make a decision. Any exhibits that are not received into evidence will be specifically noted. After the exhibits are received, you will present oral testimony stating your case and asking the hearing officer to decide the case in your favor.

When you are done testifying, the hearing officer may ask questions. When the hearing officer is finished asking questions, the Department representative will be allowed to ask you questions.

**Additional Testimony.** After the hearing officer and Department representative have finished asking you questions, the hearing officer may allow the Department representative to present additional testimony or respond to anything you presented. When the Department representative has finished, you will have the opportunity to respond. This could occur several times, but you will always have the final time to speak.

**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.

**Decision.** 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. In that case, you will receive a written order at a future date that tells you the outcome of the case.

## **Post-Hearing Procedures**

### **Possible Outcomes**

The hearing officer will consider the evidence and prepare an order for the Tax Commissioner's signature. The Department is not precluded from revoking a sales tax permit at any time based on the facts of any given case. However, in most instances, the outcome of most hearings will be determined as described below:

**Dismissing the Case.** The case may 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 also be dismissed if the sales tax permit is cancelled or if the Department is satisfied that the permitholder will comply with the Department's requirements without any restrictions.

### **Continuing the Case**

- ❖ **Prior to the Hearing.** If, prior to the hearing, the permitholder brings the account current and is able to meet filing and security requirements as agreed to, the case may be continued for a specified period of time to allow the permitholder an opportunity to comply with those requirements.
- ❖ **At the Time of the Hearing.** If, at the time of the hearing, the permitholder commits to bring the account current and to meet security and future compliance requirements, the case may be continued for a specified period of time to allow the permitholder an opportunity to comply with those 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 automatically dismissed at the end of the continuance period.

**Deciding in Favor of the Department.** If the hearing officer determines that the permitholder failed to show cause why the sales tax permit should not be revoked or suspended, a decision in favor of the Department will be entered.

- ❖ **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/applicant will also be required to post a security payment between three and five times the permitholder's average sales tax filing amount.
- ❖ **Permitholder Attends the Hearing, Generally:**
  - First Hearing.** If this is the first case against the permitholder that has been brought to a revocation/suspension hearing, the sales tax permit will be suspended until the account balance is paid in full or until the permitholder has entered into a payment plan that resolves the balance in full within six months. Additionally, the Department will require a security payment equal to three times the permitholder's average sales tax filing amount. If the permitholder enters into a payment agreement, the case will be continued for a minimum of 12 months to allow the permitholder to demonstrate timely filing and payment. Violations will result in a motion to reconvene the hearing.

**Second Hearing.** If this is the second case against the permit holder that has been brought to a revocation/suspension hearing, the sales tax permit will be suspended until the account balance is paid in full or until the permit holder has entered into a payment plan that resolves the balance in full within six months. Additionally, the Department will require a security payment equal to five times the permit holder's average sales tax filing amount. If the permit holder enters into a payment agreement, the case will be continued for a minimum of 12 months to allow the permit holder to demonstrate timely filing and payment. Violations will result in a motion to reconvene the hearing.

**Third Hearing.** If this is the third case against the permit holder that has been brought to a revocation/suspension hearing, the sales tax permit will be revoked. 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 payment equal to five times the permit holder's average sales tax filing amount. A payment plan will not be considered.

**Fourth and Subsequent Hearings.** The sales tax permit will be revoked.

## Final Action and Appeal

If any party disagrees with the final action taken, 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 written determination becomes final.

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

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