

February 5, 2021

Requesting Review of a Guidance Document

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (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](#) at revenue.nebraska.gov to get updates on your topics of interest.

Issue

What is the procedure for requesting a review of a guidance document issued by DOR?

Conclusion

A request to review and repeal or revise a guidance document should be directed to the Policy Section of DOR and should include statements of law or fact, provide legal arguments, state concisely the specific revisions sought, and be signed by the requestor or authorized representative.

Analysis

[Neb. Rev. Stat. § 84-901.03\(2\)](#) provides that guidance documents are “advisory in nature but [are] binding on an agency until amended by such agency.” This subsection further provides that, if any person believes that a guidance document imposes additional requirements or penalties, that person may request a review of the guidance document. Subsection (3) goes on to provide that:

“A person may request in writing that an agency revise or repeal a guidance document or convert a guidance document into a rule or regulation. No later than sixty calendar days after the agency receives such a request, the agency shall advise the requestor in writing of its decision to (a) revise or repeal the guidance document, (b) initiate a proceeding to consider a revision or repeal of a guidance document, (c) initiate the rulemaking or regulationmaking process to

convert the guidance document into a rule or regulation, or (d) deny the request and state the reason for the denial.”

The statute, however, does not provide a procedure for initiating such requests for repeal or revision. This revenue ruling provides a procedure that individuals or other persons can use to initiate these actions. While most actions before DOR begin with the filing of a petition, requests to review guidance documents are not contested cases under the Nebraska Administrative Procedures Act. However, some of the requirements for petitions are appropriate for these requests.

A request to review and repeal or revise a guidance document must be legibly written or typed and sent to the Nebraska Department of Revenue, Policy Section, either by email at rev.bailiff@nebraska.gov, or mailed to PO Box 94818, Lincoln, NE 68509-4818, and must:

- Identify the person requesting that the guidance document be revised or repealed;
- Identify the specific guidance document for which the review is requested;
- Include statements of law or fact and any legal arguments justifying revision or repeal;
- State concisely the specific revisions sought or request that the guidance document be repealed entirely by DOR; and
- Be signed by the requestor or authorized representative. To be represented by another person, the requestor must complete and return a [Power of Attorney, Form 33](#), or its equivalent to DOR.

The requestor is responsible for the adequacy of the contents of the request. The DOR Policy Section will acknowledge receiving a properly filed request. Within 60 days after receiving the request, the requestor will receive a written determination from the Policy Section that DOR will:

- Revise or repeal the guidance document;
- Initiate an action within DOR to revise or repeal the guidance document;
- Initiate a rulemaking proceeding covering the subject matter of the guidance document; or
- Deny the request and state the reasons for denial.

APPROVED:



Tony Fulton
Tax Commissioner
February 5, 2021