

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF

GENETIC ID, NA, INC.
504 N 4th St.
Fairfield, IA 52556

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DECLARATORY ORDER

DOCKET NO. 2017-300-2-0217

Pursuant to a Petition for Declaratory Order filed with the Iowa Department of Revenue (hereinafter referred to as “Department”) by GENETIC ID, NA, INC. (hereinafter referred to as “Petitioner”) in accordance with Iowa Code, section 17A.9, and Iowa Administrative Code rule 701—7.24 (17A) “Declaratory order—in general,” Iowa Administrative Code, the Director issues the following order.

I. FACTS

All facts are as stated in the Petition for Declaratory Order.

Petitioner offers laboratory testing and consulting services for food, feed, and agricultural companies. Petitioner’s testing services include Genetically Modified Organism (GMO) testing, plant and animal species identification, gluten testing, food microbiology testing, and contract research services. Petitioner performs all testing at its facility located in Fairfield, Iowa.

Petitioner has customers located throughout the United States and elsewhere in North America, Latin America, and South America. Petitioner offers brief quantitative—yes or no—answers, detailed qualitative answers, or both, depending on the service ordered. The customer orders Petitioner’s testing service by completing an Analysis Order Form and Agreement (“Order Form”) and a Genetic ID Analysis Customer Agreement Form. The Genetic ID

Analysis Customer Agreement Form contains the terms of sale and the rights and obligations of both parties. The Order Form requires the customer to provide the following information:

- Company name, business address, and email address of test customer
- Whether the customer desires to receive a confirmation, detailed test results, or both
- Whether the confirmations and results are to be sent by email or fax
- Invoicing information, including purchase order number, billing address, and email
- Sample information, including:
 - Test turnaround time (standard, two-day, or three-day)
 - Customer sample ID data
 - Sample type
 - Testing requested, level of quantification, and test method
 - Other information required for GMO testing

The customer sends one or more test samples to Petitioner in Fairfield. The samples may come from one or multiple locations, which may be within Iowa, without Iowa, or both. After testing, Petitioner sends the test results as the customer directs. The test results may go to the same location as where the sample originated or to a different location. The person receiving the test results may be the customer, an entity related to the customer, or an unrelated entity. Petitioner estimates it sends 95% of test results via email. Petitioner occasionally sends hard copies of the results via mail, and on rare occasion Petitioner sends the results via fax. Petitioner also provides access to test results through its website using a secure data portal that is

maintained in Fairfield. Petitioner makes the results available on its website at no extra charge within roughly 48 hours of initially sending the results.

Petitioner invoices the customer for the testing services ordered. The invoice includes separately stated charges for the testing services performed and the manner in which outcomes are communicated. The invoice also includes itemized charges for copies of the test report, a sample disposal fee, and Iowa sales tax when applicable.

II. ISSUE PRESENTED

Petitioner presents four issues for resolution:

1. Are charges for testing services subject to Iowa sales tax when lab results are delivered in hard copy via US mail or other transportation services to customers outside of Iowa?
2. Are charges for testing services subject to Iowa sales tax when the lab results are delivered via email to a customer who receives the email at a location outside of Iowa?
3. Does the ability of customers to access lab results via Petitioner's secure portal in Iowa at no charge change the taxability of the charges from the transactions described in issues (1) and (2)?
4. Does the location where a sample originates affect the situs of the sale and the responses to the issues above? For example, is a transaction subject to Iowa sales tax when the sample is shipped to Petitioner from an Iowa location and the results are delivered to a non-Iowa location?

III. ANALYSIS AND CONCLUSIONS

A. Declaratory orders under the Iowa Administrative Procedure Act.

The function of a declaratory order is to provide “reliable advice from an agency as to the applicability of unclear law.” Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process*, 60 Iowa Law Rev. 731, 805 (1975). Iowa Code section 17A.9 contemplates declaratory orders by administrative agencies on a disclosed set of facts. *City of Des Moines v. P.E.R.B.*, 275 N.W.2d 753, 758 (Iowa 1979). A declaratory order enables the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts. Bonfield, at 822–23.

It is not the function of a declaratory order to resolve issues involving factual analysis “too complicated to handle outside of an actual adjudication.” *Id.* at 807. A declaratory order is not a “contested case” as defined in Iowa Code section 17A.2(5); namely, it is not an evidentiary hearing, which is also an administrative remedy set forth in Iowa Code chapter 17A and in the Department's rules. *See* Iowa Admin. Code r. 701—7.8 (2018). Consequently, for the purposes of any declaratory order, the Director views the issues raised in the petition as questions of law applicable to future factual situations as disclosed in the petition. This view is consistent with Department rule 7.24 concerning the issuance of declaratory orders. *Id.* r. 701—7.24.

B. The sale of Petitioner’s test laboratory service is subject to Iowa sales tax if the first use of the service occurs in Iowa, as described in Iowa Code section 423.15.

Iowa imposes sales tax “upon the sales price from the furnishing of . . . test laboratories, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals and excluding environmental testing services.” Iowa Code § 423.2(5),

(6)(a) (2018); *see also id.* § 423.3(102) (exempting “environmental testing services” from sales tax, where “‘environmental testing’ means the physical or chemical analysis of soil, water, wastewater, air, or solid waste performed in order to ascertain the presence of environmental contamination or degradation”). According to the Petition, Petitioner sells the taxable service of a test laboratory—a testing service—as described in Iowa Code section 423.2(6)(a).

For Iowa sales tax purposes, the sale of a product is sourced to a location as follows:

- a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser’s donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.
- c. When paragraphs “a” and “b” do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller’s business when use of this address does not constitute bad faith.
- d. When paragraphs “a”, “b”, and “c” do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser’s payment instrument, if no other address is available, when use of this address does not constitute bad faith.
- e. When paragraphs “a”, “b”, “c”, and “d” do not apply, including the circumstance where the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided disregarding for these purposes any location that merely provided the digital transfer of the product sold.

Id. § 423.15(1).

Iowa sales tax applies to the sale of a service sourced to Iowa if the service is “received” in Iowa. *Id.* § 423.15. A service is “received” in Iowa if the “first use of the service” occurs in Iowa. *Id.*; *see also id.* § 423.1(43)(a)(2) (defining “receive” to include “Making first use of a service”). The “first use of a service” occurs at “the location at which the purchaser or the

purchaser's donee can first make use of the result of the service.” *Id.* § 423.1(20). “[T]he location at which the seller performs the service is not determinative of the location at which the service is received.” *Id.*

1. The sales price for testing service is not subject to Iowa sales tax when lab results are first delivered in hard copy via US mail or other transportation services to an individual outside Iowa.

According to the Petition, Petitioner occasionally first makes the test results available by delivering a hard copy via US mail or other transportation service. Iowa sales tax applies to the sale of a service if the first use of the service occurs in Iowa. *See id.* § 423.15. Under the facts provided, Petitioner's testing service is first used at the location where the test results are received.

Iowa Code section 423.15(a) determines the sourcing of a sale if “the product is received by the purchaser at a business location of the seller.” *Id.* § 423.15(a). When Petitioner first delivers a hard copy of the test results via US mail, as described in the facts, the results are not received at a business location of Petitioner. Accordingly, under the facts provided, Iowa Code section 423.15(a) does not apply when Petitioner first delivers a hard copy of the test results via US mail.

When Iowa Code section 423.15(a) does not apply, Iowa code section 423.15(b) sources the sale “to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs . . . known to the seller.” *Id.* § 423.15(b). When Petitioner first delivers a hard copy of the test results via US mail, as described in the facts, the test results are received at a location known to Petitioner. Specifically, the test results are received at the business address indicated on the Order Form that Petitioner uses to mail the results.

Accordingly, when Petitioner first delivers a hard copy of the test results, as described in the facts, the testing service is sourced to the business address Petitioner uses to mail the results.

Therefore, under the facts provided, if Petitioner first makes the test results for a taxable testing service available by delivering a hard copy via US mail to a location in Iowa, the sale is sourced to Iowa and Iowa sales tax, including any applicable Iowa local option sales tax, is due on the sales price of the testing service. *See id.* If Petitioner first makes the test results available by delivering a hard copy via US mail to a location outside Iowa, the sale is not sourced to Iowa and Iowa sales tax is not due on the sale. *See id.*

2. The sales price for testing service may be subject to Iowa sales tax when lab results are delivered via email to a customer who receives the email at a location outside of Iowa, depending on the address the customer provides

According to the Petition, Petitioner typically first makes the test results available by delivering the results via email. Again, Iowa sales tax applies to the sale of a service if the first use of the service occurs in Iowa. *See id.* § 423.15. Under the facts provided, Petitioner's testing service is first used at the location where the test results are received.

Iowa Code section 423.15(a) determines the sourcing of a sale if "the product is received by the purchaser at a business location of the seller." *Id.* § 423.15(a). When Petitioner first delivers the test results via email, as described in the facts, the results are not received at a business location of Petitioner. Accordingly, under the facts provided, Iowa Code section 423.15(a) does not apply when Petitioner first delivers the test results via email.

When Iowa Code section 423.15(a) does not apply, Iowa code section 423.15(b) sources the sale "to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs . . . known to the seller." *Id.* § 423.15(b). When Petitioner first

delivers the test results via email, as described in the facts, Petitioner does not know where receipt of the test results occurs. In such a transaction, the customer provides an email address for delivery on the Order Form, but the facts do not show that the location where the results are received is known to Petitioner. *Id.* Accordingly, under the facts provided, Iowa Code section 423.15(b) does not apply when Petitioner first delivers the test results via email.

When Iowa Code sections 423.15(a) and (b) do not apply, Iowa Code section 423.15(c) sources the sale “to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller’s business when use of this address does not constitute bad faith.” *Id.* § 423.15(c). Additionally, when Iowa Code sections 423.15(a), (b), and (c) do not apply, Iowa Code section 423.15(d) sources the sale “to the location indicated by an address for the purchaser obtained during the consummation of the sale.” *Id.* § 423.15(d). Under the facts provided, the customer specifies its business address on the Order Form when ordering the testing service. While the facts do not indicate whether Petitioner maintains this address in its business records, this business address provides the sourcing location regardless of whether Petitioner maintains the address in its business records or only obtains the address during consummation of the sale. *See id.* § 423.15(c), (d). This business address on the order form provides the sourcing location even if the customer specifies a separate billing address on the Order Form or directs Petitioner to email the results to a separate entity. Accordingly, when Petitioner first delivers the test results via email, as described in the facts, the testing service is sourced to the business address the customer specified on the Order Form. *See id.*

Therefore, under the facts provided, when Petitioner first sends the test results for a taxable testing service via email, the sale is sourced to Iowa and Iowa sales tax, including any

applicable Iowa local option sales tax, is due on the sales price of the testing service if the customer provides an Iowa business address on the Order Form. *See id.* When Petitioner first sends the test results via email, the sale is not sourced to Iowa and no Iowa sales tax is due if the customer does not provide an Iowa business address on the Order Form. *See id.*

3. The ability of customers to access lab results via Petitioner's secure portal in Iowa does not change the sourcing of the testing service when Petitioner first delivers the test results in hard copy or via email

According to the Petition, Petitioner offers access to test results through its website using a secure data portal that is maintained in Fairfield. Petitioner makes these results available on its website within roughly 48 hours of initially sending the results in hard copy or via email.

As explained above, Iowa sales tax is due for a taxable testing service only if the service is first used in Iowa. *See id.* § 423.15. Under the facts provided, Petitioner's secure portal represents a secondary means to access the test results, which is only available after Petitioner first delivers the test results in hard copy or via email. Therefore, under the facts provided, Petitioner's secure portal does not provide the first use of the testing service, and the availability of the test results via the secure portal does not affect the sourcing of the testing service.

Furthermore, even if Petitioner were to make the test results first available via the secure portal, the location of the secure portal does not affect the sourcing. Instead, the sourcing of the service would still be determined by the location where the first use of the service occurs, as described in Iowa Code section 423.15.

4. The location where a sample originates does not affect the sourcing of the sale of Petitioner's testing service.

According to the Petition, Petitioner has customers based in many locations both within and without the United States. A single customer may order testing service for multiple samples, and these samples may come from different locations within Iowa, without Iowa, or both within and without Iowa. As explained above, the location where the first use of the service occurs determines the sourcing of a service. *See id.* The location where a sample originates does not affect the sourcing of Petitioner's testing service. Therefore, the sourcing of Petitioner's testing service depends on where the first use of the service occurs, as described in Iowa Code section 423.15, regardless of the locations where the samples originate.

C. Additional Considerations

This order only addresses Petitioner's obligation to collect and remit Iowa sales tax, including Iowa local option sales tax. Petitioner may have an obligation to collect and remit sales or use tax for other states. The Director offers no opinion on the laws of other states. Also, Petitioner's customers may have an obligation to remit Iowa use tax if they use the testing service in Iowa, even if no Iowa sales tax is due on the sale. The Director offers no opinion on whether any customer is required to remit Iowa use tax for any specific use.

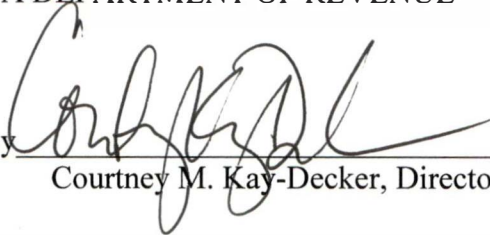
ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the issues raised in the Petition for a Declaratory Order are as answered above. When Petitioner first delivers the test results via US mail, the sales price for the testing service is subject to Iowa sales tax when Petitioner mails the test results to an Iowa address. When Petitioner first delivers the test results via email, the sales price for the testing service is subject to Iowa sales tax when the customer specified an Iowa business address on the Order

Form. The ability of customers to access test results via Petitioner's secure portal does not affect the taxability of Petitioner's testing service. The location where a sample originates does not affect the taxability of Petitioner's testing service.

Issued at Des Moines, Iowa this 1st day of March, 2018.

IOWA DEPARTMENT OF REVENUE

By 
Courtney M. Kay-Decker, Director

CERTIFICATE OF SERVICE

I certify that on this 1st day of March, 2018, I caused a true and correct copy of the Declaratory Order of the Director of Revenue to be forwarded by U.S. Mail to the following person:

John Skavlem
Baker Tilly Virchow Krause, LLP
777 East Wisconsin Ave., 32nd Fl
Milwaukee, WI 53202


Hollie Welch, Executive Secretary