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

IN THE MATTER OF	*	
	*	
BLX, Inc.	*	**DECLARATORY ORDER**
118 3rd Avenue SE	*	
Cedar Rapids, IA 52401	*	
	*	
	*	DOCKET NO. 2018-240-2-0390

Pursuant to a Petition for Declaratory Order filed with the Iowa Department of Revenue (hereinafter referred to as "Department") by BLX, Inc. (hereinafter referred to as "BLX" or "Petitioner") on August 15, 2018, and in accordance with Iowa Code section 17A.9 (2018) and Iowa Administrative Code rule 701—7.24(17A) "Declaratory order—in general," the Director issues the following order.

I. FACTS

The findings of fact are based on the Petition for Declaratory Order and Petitioner's responses to the Department's subsequent request for additional information.

BLX is incorporated in Iowa and headquartered in Cedar Rapids. The company has elected to file as an S-Corporation for both federal and Iowa purposes. BLX describes itself as a "transportation brokerage specialist," which connects clients that need transportation services to transportation service providers. Clients contact BLX and provide the pickup location and destination for goods that they need transported. BLX then solicits bids for the shipment from transportation service providers and selects the most favorable bid. Finally, BLX arranges for the client's shipment to be transported, and pays the transportation service provider after the shipment is complete. Clients pay BLX for their services in a separate transaction. The amount

clients pay BLX includes the amount BLX pays the transportation service provider, and additional compensation for BLX's own services.

The Department responded to Petitioner's initial request by asking for more information. In the Department's response, it requested that BLX provide information and answers to several questions.

First the Department asked for contracts with BLX's clients showing the possible variations of shipments originating and/or terminating either inside or outside of Iowa (shipments originating and terminating in Iowa, shipments originating in Iowa and terminating outside the state, shipments originating outside of Iowa and terminating inside the state, and shipments that both originate and terminate outside of Iowa). In response, BLX provided invoices providing examples of each of the variations requested.[1] The invoices each show a company name and address for the pickup location, the delivery location, and the billing location for the client's request. Usually the name and address listed for billing do not match either the pickup or the delivery location. None of the invoices specifically identify which of the parties listed solicited BLX's services, and would therefore be BLX's "client."

The Department also asked, "when does the liability shift from BLX to its clients in the event of a delivery failure?" To which BLX responded that the only time BLX assumes liability for a delivery failure is if BLX provided wrong or poorly communicated information and stated that BLX would never be held liable for the destruction of goods since it never holds title during the shipping process.

When asked to suggest an appropriate method of apportionment BLX responded that it should be allowed to apportion its income based on the location of the client under Iowa

[1] BLX is not listed as a party on any of these invoices. Each of the exhibits includes an invoice from Logistic Dynamics, Inc. (LDI), which BLX explains is a third party that handles its billing and other "logistical features." The exhibits also contain various documents from the third party transportation companies which BLX engages to fulfill its customers' orders.

Administrative Code rule 701—54.6. It argued that the approach is ideal because it is a simpler approach, scales well when dealing with large amounts of shipments from frequent clients, and BLX believes that the approach is equitable, but BLX provided no analysis on how the client's location should be determined in that scenario.

II. ISSUES PRESENTED.

What is the appropriate method for determining BLX's Iowa apportionment method for its transportation brokerage services, as described in the facts?

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 (2016). Consequently, for the purposes of any declaratory order, the Director generally 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. Iowa Admin. Code r. 701—7.24.

B. Applicable Law

Iowa Code section 422.33(2) provides for the apportionment of income of a corporation whose trade or business is carried on partly within and partly without the state. That subsection contains a number of provisions describing how specific types of business and nonbusiness income are to be allocated within and without the state. The provision relevant to BLX's request is section 422.33(2)(a)(2)(c), which provides "[w]here income is derived from business other than the manufacture or sale of tangible personal property, the income shall be specifically allocated or equitably apportioned within and without the state under rules of the director." Under this provision, the legislature has delegated to the Director specific authority to promulgate rules for how businesses which derive their income from sources other than the manufacture or sale of tangible personal property should apportion that income within and without Iowa.

According to the facts provided, BLX derives its income by connecting clients with transportation service providers. This is obviously not the manufacture or sale of tangible personal property, but rather the provision of a service. Therefore, the default is that Iowa Administrative Code Rule 701—54.6 (422) "Apportionment of income derived from business other than the manufacture or sale of tangible personal property" applies to BLX's business. Specifically, rule 701—54.6(1) applies to "[s]ervices other than those set forth in subrules 54.6(3) to 54.6(5) and rule 701—54.7(422)." Subrules 54.6(3) (applicable to financial organizations), 54.6(4) (applicable to construction contractors), and 54.6(5) (applicable to distributive shares of net income or loss from a joint venture, limited liability company, or partnership) do not apply to BLX based on the facts presented. In its original request BLX

suggested that rule 701—54.7, which applies to "transportation" companies might apply, but argued that applying the apportionment methods described in rule 701—54.7 would not be an accurate reflection of BLX's actual business activities, as described in the request. For the reasons described below, the Director agrees that rule 701—54.6(1), and not rule 701—54.7, applies to the activities described in BLX's request.

C. The transportation brokerage activities BLX described in its request are not those of a transportation service company under Iowa Administrative Code rule 701—54.7.

Although it argued that the apportionment method applicable to transportation companies was inappropriate to their business model, BLX's original request suggested that the services they described may be those of a "transportation company" under rule 701—54.7(2) which provides in relevant part: "Airline, truck and bus line companies, water transportation companies, freight car and equipment companies shall determine their Iowa proportion of gross receipts or gross revenues derived from transportation operations by taking the proportion of mileage traveled in Iowa to the total mileage traveled within and without the state."

Based on the facts that BLX has provided, it appears that BLX's activities are limited to finding and engaging the services of transportation companies (particularly trucking companies) on behalf of BLX's clients. BLX specifically states that it does not transport goods itself, and never holds title to the goods while they are in transit. BLX explains that it merely arranges for other companies to perform that task on behalf of BLX's clients. The rule provides that transportation companies must base their apportionment factor for income derived from "transportation operations" on miles traveled within and without Iowa. Therefore, at a minimum, the rule seems to require that a company move people or goods some distance in performing its services in order to be engaged in "transportation operations." According to the facts provided, BLX does not actually transport its clients' goods over any distance, therefore its

activities are not those of a transportation service provider subject to rule 701—54.7. If BLX were ever to transport a client's shipment in its own vehicles, or using its own drivers, rather than hiring another company to perform that task, receipts from that service would likely be subject to the apportionment formula for transportation services under rule 701—54.7.

D. The transportation brokerage services BLX described are subject to the apportionment method described in rule 701—54.6(1).

BLX provides a service, other than a service set forth in subrules 54.6(3) through 54.6(5) or in rule 54.7, therefore the default rule applies, and BLX's income from providing transportation brokerage services should be apportioned based on rule 701—54.6. That rule provides that the numerator of BLX's apportionment factor (receipts attributable to Iowa) should include the portion of BLX's gross receipts for which "the recipient of the service receives benefit of the service in this state." Iowa Admin. Code r. 701—54.6. In order to correctly calculate the apportionment factor as required by this rule, BLX must determine the location where the recipient of their transportation brokerage service receives the benefit of that service.

E. The benefit of BLX's transportation brokerage service is received at the delivery location provided by BLX's client.

BLX asserts that it is unclear from rule 701—54.6 where the benefit of their service is received under that rule in any of the transactions described above. BLX provides the service of connecting clients who need goods transported from one place to another with transportation service providers (transportation brokerage services). This includes soliciting bids from transportation service providers to transport goods from one location to another according to the client's needs and making arrangements with the winning bidder on behalf of the client. BLX

suggested that "[a] reasonable approach would be to consider the location of the client seeking shipment or, at worst, where the load eventually leaves the dock."

As BLX has noted, there are no examples in the rules that directly reflect BLX's business model. However, of the many examples of how this rule applies to other types of business activities in the existing rules, the two examples that seem most analogous to the facts BLX presents are 701—54.6(1)(d) and (e) which both deal with direct mailing services. Rule 701—54.6(1)(d) provides:

> A corporation located in Iowa performs direct mail activities for a customer located in State X. The direct mail activities include the preparation and mailing of materials to households located throughout the United States. The corporation located in Iowa performed some activities related to the direct mail contract in State X. One percent of the direct mailings went to addresses within Iowa. One percent of the gross receipts related to this direct mail contract are attributable to Iowa and included in the numerator of the apportionment factor because the recipient of the service received the 1 percent of the benefit of the service in Iowa.

Similarly, rule 701—54.6(1)(e) provides:

> A corporation located in State A performs direct mail activities for a customer located in State X. The corporation has nexus with Iowa due to other activities of the unitary business. The direct mail activities include the preparation and mailing of materials to households throughout the United States. The corporation located in State A printed and mailed the direct mail materials to households on a mailing list prepared by the direct mailing company in State A. Five percent of the direct mailings went to addresses within Iowa. Five percent of the gross receipts related to this direct mail contract are attributable to Iowa and included in the numerator of the apportionment factor.

In each of these examples a client hires the taxpayer to prepare and mail materials to households located throughout the United States. In both examples the service of preparing and mailing materials is performed from one location, but the benefit of that service is considered received at the location to which the materials are mailed. This is true regardless of where the client requesting the service, or the taxpayer performing the service, is located, because the service is not complete until the mailings are delivered. Similarly, BLX's client may be located

anywhere, and BLX may perform all of its actual work from its offices in Cedar Rapids, but the ultimate result of BLX's service is always the delivery of goods to the location specified by the client. Therefore, unless BLX is transporting the goods, the delivery location specified by the client is the location where the benefit of BLX's transportation brokerage service is received. Where the delivery address for one of BLX's sales is located in Iowa, receipts from that sale should be apportioned to Iowa for purposes of calculating the apportionment factor under rule 701—54.6. Where the delivery address is located outside of Iowa, BLX's receipts from that sale should be apportioned outside this state.

The Director finds that the delivery location is a better reflection of the location where BLX's services are received than the pickup location, as suggested by Petitioner. While the pickup location is obviously an important part of the service BLX provides, that service cannot fairly be said to be complete when the goods are picked up. There would not seem to be any reason for a client to engage BLX's services other than to have the goods in question both picked up and delivered to the specified locations and, presumably, the client would not pay BLX if the goods were picked up, but never delivered. It seems, at best, highly unlikely that a client would consider the service complete under those circumstances, therefore the benefit of the service cannot fairly be said to be received until the goods actually arrive at their final destination.

BLX also suggested that "the client's location" was the best measure of where the benefit of BLX's services are received. However, the information BLX has provided does not leave the Department with a clear picture of how BLX would determine their client's location for any given transaction. As noted in the facts, each of the invoices BLX provided shows a pickup location, a delivery location, and a billing address. Nothing on the invoices indicates which of the three locations listed, if any, was the location of the client who actually requested

BLX's services. It seems plausible that for any given transaction BLX's actual client may have been any one of the three, or a person at a fourth location not listed on the invoice at all, depending on the circumstances. Even if the facts supported a clear way to determine the client's location, the analysis above would still apply. The transportation brokerage service BLX is hired to perform is not complete until the goods arrive at the delivery location specified by the customer, therefore that location is where the benefit of the service is received.

D. Conclusion

Receipts from petitioner, BLX, Inc.'s transportation brokerage services must be apportioned within and without Iowa according to the rules provided in Iowa Administrative Code rule 701—54.6. For purposes of applying the apportionment factor formula provided in that rule, the benefit of BLX's transportation brokerage services are received at the delivery location provided by BLX's clients when they engage BLX's services.

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.

Issued in Des Moines, Iowa this 31 day of December, 2018.

IOWA DEPARTMENT OF REVENUE

By_____
Courtney M. Kay-Decker, Director

CERTIFICATE OF SERVICE

I certify that on this 31st day of December, 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:

Dereck Crockett
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