

## Amazon Services LLC (DO) (2016)

Topic Code: B144 Bundled Service Contracts

Document Reference: 16300080

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

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IN THE MATTER OF

AMAZON SERVICES LLC  
2021 7th Avenue  
Seattle, WA 98121

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**DECLARATORY ORDER**

DOCKET NO. 2017-240-2-0000

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Pursuant to a Petition for Declaratory Order filed with the Iowa Department of Revenue (hereinafter referred to as “Department”) by AMAZON SERVICES LLC (hereinafter referred to as “Petitioner”) on September 2, 2016, and in accordance with Iowa Code, section 17A.9 (2016) and Department rule 701 IAC 7.24 (17A) “Declaratory order—in general,” Iowa Administrative Code, the Director issues the following order.

### **I. FACTS**

The finding of facts are based on the Petition for Declaratory Order, Exhibits A and B to the Petition, the internet citations provided in the Petition, other pages on Amazon’s websites, and the Department’s review of Prime.<sup>1</sup>

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<sup>1</sup> When considering a petition for declaratory order, “[t]he department may solicit comments or information from any person on the questions raised. Also, comments or information on the questions raised may be submitted to the department by any person.” Iowa Admin. Code r. 701-7.24(7) (2016).

Petitioner is an affiliate of Amazon.com, Inc. Amazon.com, Inc. and its affiliates sell and provide goods and services through various websites, including through www.Amazon.com (“Website”).<sup>2</sup>

**A. Overview of Amazon Prime.**

Petitioner sells Amazon Prime (“Prime”). Participants in Prime are referred to by Petitioner as “Prime Members.” Prime Members must agree to the Prime Terms and Conditions before activating Prime. Petitioner currently sells Prime for \$99 per year, or \$10.99 per month. Petitioner offers a free 30-day trial Prime Membership.<sup>3</sup> Prime benefits are subject to change in the future. As of the date of the Petition, Prime included the following benefits, products, and services:

- Prime Video: Prime Video allows Prime Members to “[s]tream thousands of TV shows, movies, and Award-Winning Amazon Originals” on demand at no additional cost.<sup>4</sup> Members can view these television shows and movies on a television equipped with the proper hardware, a computer, or another compatible device. Amazon Fire TV is an example of hardware that connects to a television and allows a Member to stream Prime Videos. Prime Members can also download Prime Videos onto compatible devices for viewing later. When a Prime Membership ends,

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<sup>2</sup> Petitioner claims it does not directly provide benefits to Prime Members. Instead, Petitioner states that it contracts with other Amazon affiliates, and these affiliates provide the benefits to Prime Members. The relationship between these Amazon affiliates does not alter the analysis regarding the taxability of Prime. Regardless of what affiliate actually provides individual Prime benefits, Petitioner is the retailer. *See* Iowa Code § 423.1(47) (defining “retailer”). As the retailer, Petitioner is ultimately responsible for collecting and remitting any tax due on the Prime Memberships. *See id.* § 423.14 (requiring collection of sales and use tax by retailers).

<sup>3</sup> <http://www.amazon.com/gp/prime> (last visited Dec. 8, 2016).

<sup>4</sup> <https://www.amazon.com/Prime-Video/b?ie=UTF8&node=2676882011> (last visited December 8, 2016).

the former Member loses access to any downloaded Prime Videos and can no longer stream Prime Videos.

- **Amazon Dash Button:** Prime Members may purchase an Amazon Dash Button. Currently, only Prime Members are eligible to purchase Amazon Dash Buttons. The Amazon Dash Button allows a user to reorder a product by pressing a button. Pressing the button places an order through the associated customer's Amazon.com account for the specific item. Each button works for a single product. The appropriate sales and use tax is collected on sales of the Dash Button wherever Amazon.com LLC is required to collect sales and use tax.
- **Kindle First:** The Kindle First feature allows Prime Members who own eligible Kindle devices to download, with no additional charge, one electronic book per month from four electronic books selected by Amazon Publishing editors. The selected electronic book becomes a permanent part of the Prime Member's Kindle library.
- **Kindle Owners' Lending Library:** The Kindle Owners' Lending Library allows Prime Members who own Kindle devices to choose from thousands of electronic books to borrow, at no additional cost, as frequently as one book a month, with no due dates. When a Prime Membership ends, the former Member loses access to any borrowed electronic books.
- **Prime Early Access:** Prime Members receive 30-minute early access to select "Lightning Deals" on the Website and sales events on [www.MyHabit.com](http://www.MyHabit.com). The deals and sales events are designated as such on the product detail page or on the respective websites.

- Prime Elements: Prime Elements is a line of premium, everyday essential products—currently limited to baby wipes—only available for purchase by Prime Members.
- Prime Music: Prime Members may stream or download songs and albums from Prime Music at no additional charge. Members may play Prime Music on a computer, other compatible device, or a television connected to a device such as Amazon Fire TV. When a Prime Membership ends, the former Member loses access to any albums and music downloaded from Prime Music.
- Prime Pantry: The heavy/bulky items in Prime Pantry are only available for purchase by Prime Members. The Prime Pantry benefit allows Prime Members to ship up to 45 pounds of heavy/bulky items for a flat shipping fee of \$5.99.
- Prime Photos: Prime Members are eligible to store unlimited digital photographs and up to five gigabytes of other data with Amazon Cloud Drive at no additional charge.
- Prime Pricing: Prime Pricing provides Prime Members discounts on certain items of tangible personal property. For example, Prime Members can purchase certain televisions and software at a discount.
- Shipping: Prime Members receive free two-day shipping and other discounted shipping benefits on eligible purchases made on the Website. Also, certain products sold through the “Fulfillment by Amazon” program are eligible for Prime shipping benefits.<sup>5</sup>

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<sup>5</sup> Petitioner characterizes Prime as simply a non-taxable membership. Petitioner alleges no tangible personal property or services are provided at the time Prime is purchased. Petitioner further states that it does not know which benefits of Prime a member will ultimately use. The Department rejects the characterization of Prime as simply a club that grants the “intangible

## B. Additional Details about Prime Video.

Prime Video is included with every Prime Membership.<sup>6</sup> Petitioner also sells Prime Video by itself (without the other benefits of Prime) for \$8.99 per month.<sup>7</sup> Prime Video allows subscribers to view thousands of television shows and movies.<sup>8</sup> Such shows and movies include both original content produced by Amazon (“Amazon Originals”) and licensed content from other media companies, including many television networks.<sup>9</sup>

Subscribers may access Prime Video through Amazon’s Fire TV, another compatible streaming device connected to a television, a computer, or a mobile device. Regardless of the device, Prime users may access television programming by selecting a tab called “TV Shows.”<sup>10</sup> The “TV Shows” tab contains television programs that are available for Prime subscribers to

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right to access certain benefits.” Prime includes the sale of services such as Prime Video. *See* Iowa Code § 423.1(50) (2015). Under either the Petitioner’s characterization or the Department’s characterization, such a transaction constitutes a “sale” under Iowa Code section 423.1(50). Furthermore, an individual customer’s actual use of particular Prime goods or services does not impact the analysis in this Order. For example, the issue of whether or how much a consumer *actually* used his dating service, pay television, or country club membership in a given month does not alter the taxation of these purchased services. *See* Iowa Code 423.2(6)(a) (2015). The Iowa General Assembly clearly knows how to make a taxpayer’s actual use of a product relevant to its taxation. *See, e.g.,* Iowa Code § 423.3(47) (2015) (exempting certain tangible personal property from sales and use tax if such property is “[d]irectly and primarily used in processing by a manufacturer”). The legislature did not place this restriction in the statutes applicable to this Order. Therefore, the Department declines to create and impose such a subjective factor to determine taxation. *See Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 228 (Iowa 2014) (rejecting the taxpayer’s argument that tax on telephone lines should not apply since the telecommunications lines were primarily used to provide cable service, when the statute did not expressly contain a primary use standard).

<sup>6</sup> <https://www.amazon.com/Amazon-Prime-One-Year-Membership/dp/B00DBYBNEE> (last visited Dec. 8, 2016).

<sup>7</sup> *Id.*

<sup>8</sup> <https://www.amazon.com/Prime-Video/b?ie=UTF8&node=2676882011> (last visited December 8, 2016).

<sup>9</sup> <https://www.amazon.com/Prime-Video/b?node=2676882011> (last visited Dec. 8, 2016).

<sup>10</sup> *See, e.g.,* [https://www.amazon.com/Amazon-Video/b/ref=topnav\\_storetab\\_atv?encoding=UTF8&node=2858778011](https://www.amazon.com/Amazon-Video/b/ref=topnav_storetab_atv?encoding=UTF8&node=2858778011) (last visited Dec. 8, 2016).

review in various categories.<sup>11</sup> Such categories include, “Prime Amazon Original Series,” “Prime Trending TV,” “Prime Originals & Exclusive TV for Kids,” “Prime Exclusive TV,” “Prime Recently Added TV,” “Prime Recommended Kids & Family TV,” “Prime Popular TV,” “Prime Best of TV,” “Prime Recommended TV,” “Prime Educational Kids TV,” and “Prime Bingeable TV.”<sup>12</sup>

Prime Video presently includes unlimited streaming of approximately 19 separate Amazon Original Series.<sup>13</sup> Amazon releases these programs in seasons.<sup>14</sup> Each season is a group of approximately 8 to 12 episodes.<sup>15</sup> For some Amazon Original Series—including *The Grand Tour*, *Betas*, and *Alpha House*—Amazon released one new episode per week, each week, until the season concluded.<sup>16</sup> For other Original Series, Amazon made all episodes in a season available to watch on or around the same date.<sup>17</sup> Episodes of Amazon Original Series are slightly less than a half hour or hour long, depending on the series.<sup>18</sup> Each episode of an Amazon program follows the television rating system (i.e. TV-Y, TV-14, TV-MA, etc.).<sup>19</sup> Individual episodes contain the label “cc,” to indicate the availability of closed captioning subtitles.<sup>20</sup> Many episodes of Amazon Original Series open with a brief advertisement for other Amazon Original Series and contain the upcoming start of a new season of an Original Series. The Internet Movie Database a/k/a/ IMDb.com, which is owned by Amazon.com, Inc.,

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<sup>11</sup> *See id.*

<sup>12</sup> *See id.*

<sup>13</sup> <https://studios.amazon.com/amazon-originals/series> (last visited Dec. 8, 2016).

<sup>14</sup> <https://www.amazon.com/Prime-Video/b?node=2676882011> (last visited Dec. 8, 2016).

<sup>15</sup> <https://www.amazon.com/Prime-Video/b?node=2676882011> (last visited Dec. 8, 2016).

<sup>16</sup> *See, e.g.,* [https://www.amazon.com/b/ref=sv\\_atv\\_1?encoding=UTF8&node=2864549011](https://www.amazon.com/b/ref=sv_atv_1?encoding=UTF8&node=2864549011) (last visited Dec. 8, 2016).

<sup>17</sup> *See, e.g., id.*

<sup>18</sup> *See, e.g., id.*

<sup>19</sup> *See, e.g., id.*

<sup>20</sup> *See, e.g., id.*

categorizes Amazon Original Series as “TV Series.”<sup>21</sup> Furthermore, in 2016 the Academy of Television Arts and Sciences nominated 3 Amazon Original Series for a combined 16 Emmy nominations.<sup>22</sup> The Amazon Original Series *Transparent*, *The Man in the High Castle*, and *Mozart in the Jungle* won a total of 6 Emmys.<sup>23</sup> Amazon Original Series have also received Golden Globe nominations and awards in the “Best Television Series” categories.<sup>24</sup>

In addition to Amazon Original Series, Prime subscribers can stream, at no additional cost, large numbers of other television programs. These include television programs originally featured on CBS, NBC, PBS, Nickelodeon, HBO, Showtime, FX, the History Channel, and other television channels. Like Amazon Original Series, these television programs are broken into seasons. Each season contains episodes that are each approximately one half hour or hour long. These television programs have television audience ratings and labels to indicate the availability of close captioning. Much of this licensed content is well-established television programming. These programs include, among others, television shows such as *The Good Wife*, *Dora the Explorer*, *Sesame Street*, *SpongeBob SquarePants*, *Downton Abbey*, *The Sopranos*, *24*, *Sex and the City*, *Sons of Anarchy*, and *Vikings*. For an additional monthly charge, users can also subscribe to premium “channels.”<sup>25</sup> These premium channels include HBO, Cinemax, Showtime, and Starz. Much of the Prime television programming and available premium

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<sup>21</sup> [http://www.imdb.com/title/tt3502262/?ref=nm\\_sr\\_1](http://www.imdb.com/title/tt3502262/?ref=nm_sr_1) (lasted visited Dec. 8, 2016). The Department takes official notice of this statement as both a generally-known, undisputed statement by IMDB and as an admission by an Amazon-owned entity. See Iowa Admin. Code r. 701-7.24(7) (2016).

<sup>22</sup> <https://www.amazon.com/p/feature/m22v9n9joh3g37z> (last visited Dec. 8, 2016).

<sup>23</sup> <http://www.emmys.com/awards/nominees-winners> (last visited Dec. 8, 2016).

<sup>24</sup> <http://www.goldenglobes.com/winners-nominees> (last visited Dec. 23, 2016); [https://www.amazon.com/gp/video/storefront/?ie=UTF8&merchId=originals1&pf\\_rd\\_r=TWVZ6TP9WWQKBN1N7452&pf\\_rd\\_p=4692f4e3-7eba-448d-9be1-70026aded3f7&ref=dvm\\_us\\_dl\\_sl\\_go\\_gga\\_18GG|c\\_166325028421\\_m\\_2HwDtdaj-dc\\_s](https://www.amazon.com/gp/video/storefront/?ie=UTF8&merchId=originals1&pf_rd_r=TWVZ6TP9WWQKBN1N7452&pf_rd_p=4692f4e3-7eba-448d-9be1-70026aded3f7&ref=dvm_us_dl_sl_go_gga_18GG|c_166325028421_m_2HwDtdaj-dc_s) (last visited Dec. 23, 2016).

<sup>25</sup> <https://www.amazon.com/gp/help/customer/display.html?nodeId=201975120> (last visited Dec. 8, 2016).

channels is the exact same content that is subject to Iowa sales tax when purchased from traditional cable or satellite providers.

## **II. ISSUES PRESENTED.**

The Petition presents two issues. First, Petitioner asks whether the sale of Prime Memberships to Iowa customers is subject to Iowa sales and use tax. Second, Petitioner asks whether providing a free 30-day trial of Prime to Iowa customers is subject to Iowa sales and use tax.

## **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. *Id.* r. 701—7.24.

**B. Statutory Construction and the Department’s Interpretive Authority.**

Under Iowa law, courts “assess the whole statute, not just isolated words and phrases.” *In re J.C.*, 857 N.W.2d 495, 500 (Iowa 2014). It is presumed the legislature intended an “entire statute...to be effective.” Iowa Code § 4.4(2) (2015). “Courts must avoid construction which renders part of a statute superfluous.” *State v. Luppess*, 358 N.W.2d 322, 324 (Iowa Ct. App. 1984). “If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both.” Iowa Code § 4.7 (2015). “If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.” *Id.* Furthermore, “a statute can encompass technologies not in existence at the time of its promulgation.” *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014) (holding that a tax imposed on “telephone line[s]” and “telephone companies operating a ‘line’” applied to a cable company offering Voice over Internet Protocol service (VoIP), even though (1) the technology and transmission of VoIP differed from traditional telephone transmission and technology and (2) the statute originated in the late 19<sup>th</sup> and early 20<sup>th</sup> century and originally applied to telegraph and telephone companies—prior to advent of cable or VoIP).

The Petition for Declaratory Order involves the application of the facts regarding the sale of Prime to Iowa’s sales tax laws under Iowa Code chapter 423 and accompanying regulations. The General Assembly has vested the Department with interpretative authority over these statutes. *See* Iowa Code § 422.68 (2015) (“The [D]irector [of the Department of

Revenue] shall have the power and authority to prescribe all rules not inconsistent with the provisions of this chapter, necessary and advisable for its detailed administration and to effectuate its purposes.”); Iowa Code § 423.42(1) (2015) (incorporating the same rulemaking authority from section 422.68 into chapter 423); *Iowa Ag Const. Co. v. Iowa State Bd. of Tax Review*, 723 N.W.2d 167, 172-74 (Iowa 2006) (finding the legislature vested the Department with authority to interpret Iowa’s sales tax statutes); *City of Sioux City v. Iowa Dep’t of Revenue and Finance*, 666 N.W.2d 587, 589–90 (Iowa 2003) (same); *City of Marion v. Iowa Dep’t of Revenue and Finance*, 643 N.W.2d 205, 206–07 (Iowa 2002) (same).

### **C. Sales Tax on “Pay Television.”**

Iowa imposes sales tax “upon the sales price of all sales of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state.” Iowa Code § 423.2(1) (2015). “‘Tangible personal property’ means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. ‘Tangible personal property’ includes electricity, water, gas, steam, and prewritten computer software.” Iowa Code § 423.1(59) (2015).

Iowa also imposes sales tax upon the sales price of certain enumerated services, including “pay television.” Iowa Code § 423.2(6)(a) (2015). The Department rules define “pay television service” as “distributing the signals of one or more television broadcasting stations, *or other television programming to subscribers, and using any transmission path.*” Iowa Admin. Code r. 701—26.56 (2016) (emphasis added).

Additionally, Iowa imposes sales tax upon the sales price of a bundled transaction. Iowa Code § 423.2(8)(a) (2015). “[A] ‘bundled transaction’ is the retail sale of two or more distinct and identifiable products, except real property and services to real property, which are sold for one nonitemized price.” *Id.*

Furthermore, Iowa imposes a corresponding use tax on the use in Iowa of tangible personal property and enumerated services. Iowa Code § 423.5(1)(a), (e) (2015). Use tax is based upon the purchase price. Iowa Code § 423.5(1) (2015). “Purchase price” means the same as “sales price.” Iowa Code § 423.1(41) (2015).

Iowa provides a sales and use tax exemption for “[t]he sales price of a sale at retail if the substance of the transaction is delivered to the purchaser digitally, electronically, or utilizing cable, or by radio waves, microwaves, satellites, or fiber optics.” Iowa Code § 423.3(67) (2015). This exemption applies to the sale of tangible personal property. Iowa Admin. Code r. 701—231.14 (2016). “Sales of items such as artwork, drawings, photographs, music, electronic greeting cards, ‘canned’ software . . . , entertainment properties (e.g., films, concerts, books, and television and radio programs), and all other digitized products delivered as described above are not taxable, except *the exclusion does not repeal by implication the tax on the service of providing pay television.*” *Id.* (emphasis added).

**D. The Sale of Prime is Subject to Iowa Sales and Use Tax.**

Under the facts found by the Department, Prime is a bundle of goods, services, and other benefits, each distinct and identifiable, sold for one nonitemized price. Accordingly, a Prime Membership is taxable as a bundled transaction if at least one of the individual Prime benefits would be a taxable item when sold separately. *See* Iowa Code § 423.2(8)(a) (2015). The Department concludes that the sale of Prime Video is taxable. Therefore, the Department holds that the sale of Prime is subject to Iowa sales and use tax. Furthermore, Petitioner’s sale of Prime Video, purchased apart from the general Prime Membership, is also subject to Iowa sales and use tax.

Iowa imposes sales tax on the service of “pay television.” Iowa Code § 423.2(6)(a). “Pay television” means “*distributing* the signals of one or more television broadcasting stations,

or other television programming to subscribers, and using any transmission path.” Iowa Admin. Code r. 701—26.56 (2016) (emphasis added). Iowa first imposed sales tax upon “pay television” service in 1990. 1990 Iowa Acts, 73d G.A. ch. 1232, § 13. This enactment predated Prime Video and the wide availability of the internet. However, the Iowa Supreme Court, when reviewing the application of law, including laws of taxation, has “interpreted statutes in a common-sense manner rather than assuming the legislation intended to capture only technologies that existed when the law was enacted.” *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 225 (Iowa 2014).

Prime Video is a subscription-based service that allows subscribers to view thousands of television programs and movies either by streaming on-demand or by downloading content for later viewing. A subscriber can access Prime Video on a television equipped with proper hardware (including Amazon’s Fire TV device), a computer, or other compatible device. Even if the content is downloaded for later viewing, the subscriber loses access to the content upon termination of the Membership. As described in more detail above, the available television shows include original Amazon television programs and television programs from traditional television networks. These available television programs are often similar—or even identical—to standard television programs. In addition to the standard subscription, Prime Video content, Members can subscribe to several additional premium channels, including HBO, Showtime, and Starz, for an additional fee.

Based on these facts, Prime Video service fits within the common-sense understanding of the statutory term “pay television” and the Department rule that defines it. It shares traits with traditional television services, such as cable and satellite. For example, like traditional television services, Prime Video programming includes television programs and movies. Prime Video television programs generally follow the same multi-episodic, multi-season, format of

traditional television services. Prime Video’s television programming is equivalent to distributing new television programs as well as “reruns” and syndicated programs that were originally released by other companies. Also like traditional television services, these programs are available to subscribers for a periodic fee. Furthermore, Amazon’s description and advertising of much of the Prime Video content as “TV”, along with its use of television rating systems and traditional television terminology (e.g. episodes, seasons, etc.) for Amazon Original Series and other included television programming is further evidence Prime Video is “pay television.” See *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d at 226 (noting that a cable company’s reference to VoIP as “phone service” and traditional telephone features such as caller ID, three-way calling, and voicemail in its marketing to customers was further evidence VoIP provided over cable lines was comparable to and taxable like telephone lines). Under the Department’s long-standing administrative rule, the taxability of Prime does not depend on the Petitioner owning or initiating the internet communication through which the pay television service is distributed. See Iowa Admin. Code r. 701—26.56 (2016) (taxing pay television that “us[es] any transmission path”) (emphasis added). Rather, the controlling fact is that Petitioner sells pay television service in Iowa. Therefore, Prime Video is subject to Iowa sales and use tax as “pay television” service. See Iowa Code § 423.2(6)(a) (2015); Iowa Admin. Code r. 701—26.56 (2016); *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d at 226 (focusing on the comparability of the service between telephone and VoIP, rather than the specific, technological method by which the service was provided over a line).

Petitioner also asked whether Prime may be exempt under the general sales tax exemption for “a sale at retail if the substance of the transaction is delivered to the purchaser digitally, electronically, or utilizing cable, or by radio waves, microwaves, satellites, or fiber optics.” Iowa Code § 423.3(67) (2015). As stated in the Department’s rules, despite the fact

that the exemption lists “cable” and “satellites” as delivery methods, Iowa Code section 423.3(67) does not exempt the service of “pay television.” *See* Iowa Admin. Code r. 701—231.14 (“[T]he exclusion does not repeal by implication the tax on the service of providing pay television.”). The Department’s rule is based on the “strong presumption against implied repeal.” *Burton v. Univ. of Iowa Hosp. & Clinics*, 566 N.W.2d 182, 189 (Iowa 1997). “The presumption is even stronger when a repeal is claimed of a special statute by a more general one.” *Id.*; *see also Goergen v. State Tax Comm’n*, 165 N.W.2d 782, 788 (Iowa 1969).

Consistent with the very strong presumption against implied repeal of statutes, the exemption only applies to certain digitally-delivered property, not pay television or any other specifically enumerated taxable service. *See* Iowa Admin. Code r. 701—231.14 (2016) (the rule specifies that a “taxable ‘sale’ of *tangible personal property* does not occur if the substance of the transaction is delivered to the purchaser digitally...” (emphasis added)). The rule on the digitally-delivered property exemption makes a special point to note that it does not impliedly repeal the tax on pay television. *See id.* This has been the Department’s interpretation since the original inception of the rule. *See* Iowa Admin. Code r. 701—18.61 (Nov. 15, 2000) (“[T]he exclusion does not repeal by implication the tax on the service of providing pay television.” Rule 701—18.61 was moved to 701—231.14 in 2005 but the substance did not change in any relevant way. *Compare* Iowa Admin. Code r. 701—18.61 (Nov. 15, 2000) *with* Iowa Admin. Code r. 701—231.14 (Jan. 19, 2005)). The Department promulgated this rule pursuant to the interpretive authority vested by the legislature. *See, e.g., Iowa Ag Const. Co.*, 723 N.W.2d at 172–74. In the sixteen years since the Department first promulgated this rule—harmonizing and giving meaning to both the general digitally-delivered property exemption and the more specific, itemized taxable service on pay television—the legislature has made many other changes to the sales and use tax statutes. These changes include adding numerous other

exemptions to Iowa's sales and use tax. Despite making numerous other modifications to Iowa's sales and use tax and having ample opportunity to clearly repeal the tax on pay television service, the legislature has not repealed the tax. The legislature has not nullified the Department's administrative rule on this issue. *See* Iowa Const. Art. 3, § 40; Iowa Acts 2016 (86<sup>th</sup> G.A.) ch. 1128, H.F. 2433, § 6 (rescinding the Department's published administrative rules regarding sales and use tax exemptions). It has left the Department's long-standing interpretation, pursuant to administrative rule, intact. This fact strengthens the conclusion that the sales tax on pay television is not affected by Iowa Code section 423.3(67). *See City of Marion*, 643 N.W.2d at 207-08 (Iowa 2003) (upholding the Department's 17-year-old interpretive rule and noting that the length of the rule and the legislature's failure to change the statutory language during that period strengthened the conclusion that the Department's interpretation was not erroneous); *City of Sioux City v. Iowa Dep't of Revenue and Finance*, 666 N.W.2d at 592 (finding that the legislature's long-running failure to amend a statute to undo the Department's administrative rule amounted to "tacit approval of the department's action" and noting that the "fact that this administrative rule has been in effect for eleven years strongly cautions against finding the rule invalid"). Therefore, the specific, itemized service of pay television is not exempt from Iowa sales tax under general provisions of Iowa Code section 423.3(67). *See, e.g.*, Iowa Code § 4.7 (2015).

Accordingly, Prime Video is subject to Iowa sales and use tax. The inclusion of Prime Video in a Prime Membership, and the fact that the price of Prime is not itemized among its various components, causes the Prime Membership to become a taxable bundled transaction. *See* Iowa Code § 423.2(8)(a) (2015). Furthermore, the separate sale of Prime Video is also subject to Iowa sales and use tax.

#### **E. Taxation of the Free One-Month Trial.**

Under the facts presented by Petitioner, the free one-month trial of Prime is not subject to sales tax.



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. The Prime Membership, as described in the Petition, is subject to Iowa sales and use tax. The free, one-month trial Prime Membership, as described in the Petition, is not subject to Iowa sales and use tax.

Issued in Des Moines, Iowa this \_\_\_\_ day of December, 2016.

IOWA DEPARTMENT OF REVENUE

By \_\_\_\_\_  
Courtney M. Kay-Decker, Director

## CERTIFICATE OF SERVICE

I certify that on this 4<sup>th</sup> day of January, 2017, 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:

Dylan Waits  
Senior Manager, State and Local Tax  
Amazon Services LLC  
2021 7th Ave  
Seattle, WA 98121

Served by email with consent of the Petitioner on December 28, 2016.

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Hollie Welch