

## ARLINGTON PLACE OF GRUNDY CENTER (F) (2016)

Topic Code: E041 Electricity, Gas, & Fuel

Document Reference: 16300060

April 15, 2016

William F. Kurtzner III  
Util Auditors, LLC  
1200 N. Federal Hwy, Suite 200  
Boca Raton, Florida 33432

**Re: Arlington Place of Grundy Center Sales Tax Protest**  
**Docket No. 2015-320-1-0340**  
**Letter of Findings**

Dear Mr. Kurtzner,

The Review Unit of the Iowa Department of Revenue (hereinafter “Department”) has met to consider the above-captioned protest and issues the following departmental Letter of Findings as authorized by chapter 7 of the Department’s Rules of Practice and Procedure. This Letter of Findings constitutes the Department’s legal and factual determination of the issues raised in your Protest at the informal stage of the appeals process. Based upon its review of the applicable law and the facts and evidence presented, the Department takes the following position with regard to your Protest.

In your protest, you contend that the Department should refund Arlington Place of Grundy Center<sup>1</sup> the sales tax it paid on certain utilities. In support of your argument, you state that the Iowa Administrative Code’s definition of “Residential Dwelling” is contrary to the purpose of rule 701-17.38; rule 701-17.38 focuses on usage; Protester’s structure is used for both commercial and residential usage; and the Department is improperly discriminating between commercial and residential uses.

Iowa Code section 423.3(84) provides the statutory authority for the exemption at issue by exempting from sales tax “the sales price from the sale or furnishing of metered gas,

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<sup>1</sup> I note that the following cases on which you are the POA concern the identical issues presented here: Vintage Park (2015-320-1-0351); Parker Place (2015-320-1-0350); Glenwood Place (2015-320-1-0349); Garnett Place (2015-320-1-0348); Courtyard Estates, Inc. (2015-320-1-0347); Courtyard Estates, Inc. (2015-320-1-0346); Country Meadow Place (2015-320-1-0345); Arlington Place of Red Oak (2015-320-1-0344); Arlington Place of Pocahontas (2015-320-1-0343); Clover Ridge (2015-320-1-0342); and Arlington Place of Oelwein (2015-320-1-0341). Accordingly, the remainder of the analysis in the Letter of Findings applies equally to the above-listed protests.

electricity, and fuel, including propane and heating oil, to residential customers which is used to provide energy for residential dwellings and units of apartment and condominium complexes used for human occupancy.” To qualify for this exemption a taxpayer must meet the following requirements: (1) there must be a sale of metered gas, electricity, or fuel; (2) such sale must be to residential customers; (3) such sale must be used to provide energy; (4) the energy must be used for residential dwellings, units of apartment, or condominium complexes; and (5) the residential dwelling, units of apartment, or condominium complex must be used for human occupancy.

The term “residential dwelling” is not defined in section 423.3(84). However, the Iowa Administrative Code defines “residential dwelling” for purposes of Iowa Code section 423.3(84) as

a structure used exclusively for human occupancy. . . . A building containing apartment units is not considered to be qualifying property for purposes of this rule. However, if each apartment has a separate meter, it may qualify for the phase-out if classified as qualifying property by the utility. Also excluded from the phase-out provisions are certain nonqualifying properties that include, but are not limited to, nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, apartment units not individually metered, and group homes.

Iowa Admin. Code r. 701-17.38(1).

Here, you state on your refund claim that Arlington Place of Grundy Center is an assisted living facility. Assisted living facilities are explicitly excluded from the definition of “residential dwelling” and, therefore, Arlington Place of Grundy Center does not qualify for the exemption. Moreover, the applicability of the exemption is “construed strictly against the taxpayer and liberally in favor of the taxing body.” *Iowa Network Servs., Inc. v. Iowa Dep’t of Revenue*, 784 N.W.2d 772, 776 (Iowa 2010) (quoting *Ranniger v. Iowa Dep’t of Revenue & Fin.*, 746 N.W.2d 267, 269 (Iowa 2008)). Because of this strict construction and the fact that assisted living facilities are defined as not being a residential dwelling, Arlington Place of Grundy Center does not qualify for the section 423.3(84) exemption.

The Department disagrees with your contention that the exclusion of assisted living facilities contradicts the purpose of rule 701-17.38. While you are correct that rule 701-17.38 begins to define residential dwelling as a structure used for human occupancy, it then goes on to specifically exclude assisted living facilities from the definition. The Department at this stage does not contend that the assisted living facilities exist solely for human occupancy or that such facilities used energy to power or operate fixtures or appliances. However, because the rule excludes assisted living facilities, Arlington Place of Grundy Center does not qualify for the exemption.

Similarly, whether the structure is used for both commercial and residential uses is immaterial in this case. Because Arlington Place of Grundy Center is an assisted living facility,

it does not qualify for the exemption. That is, even if you could show that 100% of the energy usage went to “residential” usage as opposed to “commercial” usage, the exclusion of assisted living facilities from the exemption is dispositive. You also point to rule 701-17.38(4) in support of this position. Simply put, pursuant to rule 701-17.38(4), all energy usage by an assisted living facility is nonqualifying usage because it is usage by an assisted living facility—not a residential dwelling.

Please respond in writing by May 20, 2016 whether you agree with the Review Unit’s position. If you agree or choose not to pursue the protest, then your letter will serve as authority for the Review Unit to request the Director to close this protest.

If you disagree with the Review Unit’s position, then the Review Unit requests you identify those areas of disagreement and provide documentation to support your position. Upon receipt of your letter, the Review Unit may file an Answer, which will initiate the process for an administrative hearing on your protest.

If the Department does not receive a response by May 20, 2016, the Department will construe this inaction as failure to pursue the protest and will request dismissal of the protest pursuant to Iowa Administrative Code rule 701-7.11(2).

If you have any questions or we can be of any further assistance, please do not hesitate to contact us. Thank you for your time and attention to this matter.

Sincerely,

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