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

IN THE MATTER OF PSA AIRLINES, INC. d/b/a/ American Eagle SALES AND USE TAX	DECLARATORY ORDER DOCKET NO. 2019-300-2-0791

Pursuant to a Petition for Declaratory Order ("Petition") filed with the Iowa Department of Revenue ("Department") by PSA Airlines, INC. ("PSA Airlines") on December 18, 2019, and in accordance with Iowa Code section 17A.9 and Iowa Administrative Code rule 701—7.24, the Director issues the following order.

I. FACTS

The findings of fact are based on the Petition and other information submitted to the Department by PSA Airlines.

PSA Airlines "is a Pennsylvania for-profit corporation" that "regularly rents multiple hotel rooms in Iowa on a long-term basis for its employees." Pet. For Declaratory Order at ¶¶ 1-2, No. 2019-300-2-0791 (Dec. 18, 2019). On a monthly basis, PSA Airlines notifies the hotel of the daily number of hotel rooms required by PSA Airlines for the upcoming month. PSA Accommodations Lease Agreement ¶ 4 (Sept. 1, 2017). Different employees physically sleep in the hotel rooms from night-to-night. Pet. For Declaratory Order at ¶ 3. Lodging costs for the employees are billed to PSA Airlines, not the employees, and PSA Airlines pays for these lodging costs. *Id.* at ¶ 3, ¶ 6; PSA Accommodations Lease Agreement at ¶ 8.

Depending on PSA Airlines' business needs, the number of rooms that PSA Airlines rents from the hotel each month fluctuates. *Id*. at ¶ 4. All rooms rented by PSA Airlines are rented for more than thirty-one consecutive days. *Id.* For example, throughout the calendar year, PSA Airlines may rent eight rooms for more than thirty-one consecutive days, then rent six rooms for more than thirty-one consecutive days and, thereafter, rent twelve rooms for more than thirty-one consecutive days. *Id*. at ¶ 5.

II. ISSUES PRESENTED

The Petition presents two issues for consideration:

A. Whether PSA Airlines qualifies for the hotel and motel tax exemption under Iowa Code section 423A.5(1) and Iowa Administrative Code rule 701—103.3(2); and

B. If PSA Airlines qualifies for the hotel and motel tax exemption under Iowa Code section 423A.5(1) and Iowa Administrative Code rule 701—103.3(2), whether the Department approves of PSA Airlines' calculation and payment methodology described in the Petition.

III. STANDARD OF REVIEW

A. Declaratory Orders under the Iowa Administrative Procedure Act

Iowa's Administrative Procedure Act ("IAPA") was enacted "to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public." Iowa Code § 17A.1(2) (2020). Under the IAPA, "[a]ny person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency." *Id*. at § 17A.9(1)(a). The IAPA also describes agency rights and responsibilities with respect to declaratory order proceedings. *Id*. at § 17A.9(8). Pursuant to Iowa Code section 17A.9(2), the Department adopted

Iowa Administrative Code rule 701—7.24, which outlines department-specific rules governing declaratory orders.

The purpose of a declaratory order is to provide a "generally available means for persons to obtain reliable information about agency administered law as it applies to their particular circumstances." *Sierra Club Iowa Chapter v. Iowa Dep't of Transp.*, 832 N.W.2d 636, 647 (2013) (citing Arthur Earl Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government*, 1–8 (1998)). Declaratory orders are not contested cases that "entitle[] parties affected by the agency action to an adversarial hearing" in order to "adjudicate disputed facts pertaining to particular individuals in specific circumstances." *Greenwood Manor v. Iowa Dep't of Pub. Health, State Health Facilities Council*, 641 N.W.2d 823, 834 (Iowa 2002); Iowa Code § 17A.12. Instead, the IAPA "contemplates declaratory rulings by administrative agencies on purely hypothetical sets of facts." *City of Des Moines v. Pub. Emp't Relations Bd.*, 275 N.W.2d 753, 758 (1979). As such, "[t]he procedure established by section 17A.9 allows persons to seek formal opinions on the effect of future transactions and arrange their affairs accordingly." *Bennett v. Iowa Dep't of Nat. Res.*, 573 N.W.2d 25, 26 (Iowa 1997). Declaratory orders issued by an administrative agency do, however, have "the same status and binding effect as any final order issued in a contested case proceeding." Iowa Code § 17A.9(7). The Department's rules governing declaratory orders are consistent with this understanding of the role of declaratory orders in administrative procedure. *See* Iowa Admin. Code r. 701—7.24(1)(b), (9)(a)(2), (9)(a)(6), (9)(a)(8), (12) (2020).

B. Statutory Construction and Interpretation of Tax Statutes

Generally, when interpreting a statute, the Department begins by "examin[ing] the language of the statute and determin[ing] whether it is ambiguous." *Kay-Decker v. Iowa State*

Bd. of Tax Review, 857 N.W.2d 216, 223 (Iowa 2014). If the statute's language is unambiguous, the express language in the statute is controlling. *Id.* (citing *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011)). "If, however, the statute is ambiguous," the Department's interpretation will seek to effectuate the legislature's intent. *See id.* (citing *Rolfe State Bank*, 794 N.W.2d at 564). A statute "must [be] read . . . as a whole and give[n] 'its plain and obvious meaning, a sensible and logical construction.'" *Id.* (quoting *Hamilton v. City of Urbandale*, 291 N.W.2d 15, 17 (Iowa 1980)). When ascertaining the meaning of undefined words in a statute, the Department may look to the words' ordinary usage, dictionary definitions, use in similar statutes, and court rulings to aid in its interpretation. *Id.* (citing *Gardin v. Long Beach Mortg. Co.*, 661 N.W.2d 193, 197 (Iowa 2003)).

"Special additional principles [of statutory construction] apply in tax cases." *Iowa Auto Dealers Ass'n v. Iowa Dep't of Revenue*, 784 N.W.2d 772, 776 (Iowa 2010). When a statute imposes a tax, it "is construed liberally in favor of the taxpayer." *Scott Cnty. Conservation Bd. v. Briggs*, 229 N.W.2d 126, 127 (Iowa 1975). "However, when the taxpayer relies on a statutory exemption, *the exemption* is construed strictly *against the taxpayer* and liberally in favor of the taxing body." *Iowa Auto Dealers Ass'n*, 301 N.W.2d at 761 (emphasis added). This is so because "exemptions from taxation are generally disfavored as contrary to the democratic notions of equality and fairness, and exist solely due to legislative grace." *Van Buren Cnty. Hosp. & Clinics v. Bd. of Review of Van Buren Cnty.*, 650 N.W.2d 580, 586 (Iowa 2002). As such, any doubts as to the applicability of an exemption to a taxpayer must be "resolved against [allowing the] exemption." *Iowa Auto Dealers Ass'n*, 301 N.W.2d at 762–63 (citing *Iowa Methodist Hosp. v. Bd. of Review*, 252 N.W.2d 390, 391 (Iowa 1977)).

IV. DISCUSSION

A. *Hotel and Motel Tax Exemption*

Iowa imposes a state hotel and motel tax "of five percent…upon the sales price for the renting of any lodging if the lodging is located in this state." Iowa Code § 423A.3 (2020); *see* Iowa Admin. Code r. 701—103.3(1). Iowa generally exempts from the hotel and motel tax "[t]he sales price from the renting of lodging which is rented by the same person for a period of more than thirty-one consecutive days." Iowa Code § 423A.5(1); *see* Iowa Admin. Code r. 701—103.3(2). Thus, the taxpayer will be exempt from the hotel and motel tax if 1) there is a rental of lodging; 2) by the same person; 3) for a period of more than thirty-one consecutive days.

Under Iowa Code section 423A.2(1)(j), the term "renting", "rental", or "rent" "means a transfer of use, possession, or control of lodging for a fixed or indeterminate term for consideration." PSA Airlines obtains use, possession, or control of the lodging. PSA Airlines contacts the hotel monthly and notifies the hotel of the number of rooms needed for the month. Furthermore, although the employees physically use the rooms, lodging costs for the employees are billed to PSA Airlines, not the employees, and PSA Airlines pays for these lodging costs. Therefore, there is a rental of lodging by PSA Airlines.

The Iowa Code defines "person" as "an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity." Iowa Code § 423A.2(1)(i); Iowa Code § 423.1(36). PSA Airlines is a "person" under the Iowa Code because it is a corporation. Even though different employees may sleep in the rented rooms on a night-to-night basis, the same employee need not occupy the hotel rooms for the entire

thirty-one consecutive days in order to qualify for the tax exemption because PSA Airlines is the "person" renting the hotel room.

Finally, the exemption requires a rental period of more than thirty-one consecutive days. Based on the facts presented, PSA Airlines rents rooms for more than thirty-one consecutive days. Therefore, the consecutive occupancy requirement is met and PSA Airlines qualifies for the hotel and motel tax exemption under Iowa Code section 423A.5(1) and rule 701—103.3(2).

B. PSA Airlines' Payment Methodology

PSA Airlines seeks approval of its calculation and payment methodology described in the Petition to prevent penalties or notices of tax due. Iowa Administrative Code rule 701—7.24(9)"a", provides in pertinent part that the Department may refuse to issue a declaratory order for several reasons, including the following:

> (5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter;
>
> (6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order;
>
> …
>
> (9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

The Director declines to address this issue. Whether the Department would approve of PSA Airlines' methodology for calculating and paying the Iowa hotel and motel tax is a highly factual and often complex question. Highly factual and complex matters are not normally resolved by

declaratory order. Furthermore, the questions presented would necessarily determine the legal rights of hotel providers. The question is better addressed through another type of proceeding.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the Director finds that the Petition for Declaratory Order is granted in part and denied in part.

Issued at Des Moines, Iowa this 12 day of May, 2020.

IOWA DEPARTMENT OF REVENUE

By _____
Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 12th day of May, 2020, 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:

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Hollie Welch, Executive Secretary