

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

IN THE MATTER OF	DECLARATORY ORDER
FIRESTONE BUILDING PRODUCTS, LLC	DOCKET NO.: 2020-300-2-0158
SALES AND USE TAX	

Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by Firestone Building Products, LLC (“FSBP”) on March 17, 2020, 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 submitted to the Department by FSBP. FSBP sells, among other products, roofing materials to contractors located in Iowa. The sales process is set forth below:

- 1) The contractor goes to a local building supplier,
- 2) The supplier enters an order in FSBP’s sales order system,
- 3) The order is transmitted to Nashville, TN where it is accepted by FSBP,
- 4) The goods are loaded on to a common carrier at a plant or warehouse located outside of [Iowa] for the shipment to the contractor’s site in [Iowa],

Pet. For Declaratory Order No. 2020-300-2-0158 (Mar. 17, 2020). FSBP bills the contractor for the products and pre-paid freight charges. According to FSBP, “FSBP bills the [Iowa retailer’s] Use Tax to the contractor, but not the Local Option Sales Tax.” *Id.*

II. ISSUES PRESENTED

The Petition presents five issues for consideration:

1. Whether FSBP sales are subject to Iowa sales or use tax under Iowa Code chapter 423 and corresponding administrative rules;
2. Whether FSBP sales are subject to local option sales tax (“LOST”) under Iowa Code chapter 423 and corresponding administrative rules;¹
3. Whether the pre-paid freight charges are subject to sales and use tax under Iowa Code chapter 423 and corresponding administrative rules;
4. Whether any additional charges, such as mileage fees or trip charges that are added to the invoice, are subject to sales and use tax under Iowa Code chapter 423 and corresponding administrative rules; and
5. Whether any changes to Iowa’s administrative rules pertaining to LOST are anticipated to occur in the near future.²

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

¹ In the Petition, FSBP specifically asked whether LOST should be charged on its sales under Iowa Administrative Code rule 701—107.3. Rule 701—107.3 pertains to the administration of LOST, whereas Iowa Administrative Code rule 701—107.6 discusses which sales are subject to LOST and the sourcing requirements. Therefore, based on the context of the question, the Department assumes that FSBP means to ask whether LOST should be charged on its sales pursuant to Iowa Administrative Code rule 701—107.6.

² In the Petition, FSBP asked, “Is it anticipated that IA will change this rule in the near future?” Based on the context of the question, the Department assumes that FSBP is asking if the Department plans to change Iowa Administrative Code rule 701—107.6 in the near future.

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. Issue 1: FSBP Sales Are Subject to Iowa Sales Tax

Iowa Code section 423.2(1) (2020) imposes sales tax “of six percent upon the sales price of all sales of tangible personal property...sold at retail in the state....” “‘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.” Iowa Code section 423.1(59). Under the facts presented, FSBP’s products qualify as tangible personal property.

Tangible personal property is “sold at retail in the state” if the sale is sourced to Iowa. Iowa Code § 423.1(55A). Whether a sale of tangible personal property is sourced to Iowa generally depends on where the buyer receives the property. *See* Iowa Code § 423.15(1)(b). Pursuant to Iowa Code section 423.15(1)(b), “[w]hen 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 by the seller.” *See also* Iowa Admin. Code r. 701—223.6.

The Iowa Code also imposes a use tax on the use of tangible personal property within Iowa. Iowa Code § 423.5(1)(a). If a sale is subject to Iowa sales tax, and the sales tax is paid, then Iowa use tax is not due. Iowa Code § 423.6(1). Under the facts presented, the sale is sourced to Iowa because the contractor (purchaser) receives FSBP’s product at the contractor’s site in Iowa. Therefore, sales tax is due on these sales. Because the sale is subject to sales tax, Iowa use tax is not due.

B. Issue 2: FSBP Sales May Be Subject to LOST

Iowa permits local jurisdictions to impose LOST on local sales and services. Iowa Code § 423B.5. If a local jurisdiction imposes LOST, the LOST rate must be one percent. Iowa Code § 423B.1(5)(d). “A local sales and services tax shall be imposed on the same basis as the state sales and services tax,” meaning that LOST can only be due if sales tax is due and the sourcing rules are the same as for sales tax.³ *Id.* However, rather than the sale being sourced to the state, the sale is sourced to the local jurisdiction where the buyer takes delivery of the product. Furthermore, while the majority of local

³ Iowa does not impose local option use taxes.

jurisdictions in Iowa impose LOST, not every jurisdiction does.⁴ As such, a sale may or may not be subject to LOST. Therefore, if the jurisdiction where the purchaser takes delivery of FSBP's product imposes LOST, FSBP sales are subject to LOST.

C. Issues 3 and 4: Whether Pre-paid Freight Charges and Additional Charges on the Invoice Are Subject to Tax

The third and fourth issues FSBP seeks to resolve are whether pre-paid freight charges, as well as, additional charges such as mileage fees or trip charges that are added to the invoice are subject to tax under Iowa Code chapter 423 and Iowa's administrative rules. Iowa Administrative Code rule 701—7.24(9)“a”(6), provides that the Department may refuse to issue a declaratory order because “[t]he facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order....” The Petition fails to provide enough detail about the pre-paid freight charges and additional charges, such as what these charges mean and how they are invoiced. Consequently, the Director is not able to render a decision regarding the taxability of the fees involved.

D. Issue 5: Whether Any Changes to Iowa's Administrative Rules Pertaining to LOST Are Anticipated to Occur in the Near Future

The fifth and final issue FSBP seeks to resolve is whether the Department anticipates making any changes to Iowa Administrative Code rule 701—107.6 or the LOST rules generally in Iowa Administrative Code chapter 107 in the near future. Iowa Administrative Code rule 701—7.24(9)“a”(6), provides that the Department may refuse to issue a declaratory order because “[t]he facts or questions presented in the petition are unclear, overbroad, insufficient, or *otherwise inappropriate as a basis upon which to issue an order....*” (emphasis added). The question of whether the Department plans to make changes to its rules is “inappropriate as a basis upon which to issue an order.” The Department's

⁴ What is the 'Regular' Local Option Sales Tax (LOST)? IOWA DEP'T. REV., <https://tax.iowa.gov/what-regular-local-option-sales-tax-lost> (last visited Apr. 29, 2020). The Department's webpage provides a tool to search the local option sales tax rate of an address or location available at: <https://tax-mapper.iowa.gov/>.

administrative rules implement Iowa Code provisions regarding LOST and the Department cannot answer whether there will be any legislative changes in the future. Therefore, the Director refuses to issue an order on this particular matter.

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 10 day of June, 2020.

IOWA DEPARTMENT OF REVENUE

By



Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 10th day of June, 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:

Mark Loftis
Bridgestone Americas, Inc.
Indirect Tax Department
200 4th Avenue South
Nashville, TN 37201


Hollie Welch, Executive Secretary