

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

IN THE MATTER OF MONTE BOWMAN PROPERTY TAX	REFUSAL TO ISSUE DECLARATORY ORDER DOCKET NO. 2020-300-2-0276
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Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by Monte Bowman (“Petitioner”) on May 18, 2020, and in accordance with Iowa Code section 17A.9 and Iowa Administrative Code rule 701—7.24(17A), the Director issues the following order.

I. FACTS

The findings of fact are based on the Petition. Petitioner states that three components of the total consideration are exempt, by law, from taxes when a hotel or motel is bought or sold in Iowa. Pet. For Declaratory Order at 1, No. 2020-300-2-0276 (May 18, 2020). Petitioner states that the exemptions are set forth by law, but are not defined, and that calculations for the exemptions are not provided for. *Id.* Additionally, Petitioner states that he is waiting on a decision from the Iowa [*sic*] Assessment Appeal Board (“PAAB”) regarding some of the questions presented in the Petition. Pet. For Declaratory Order at 3, No. 2020-300-2-0276 (May 18, 2020). No further facts were stated.

II. ISSUES

Petitioner presents the following issues for resolution:

1. How is the amount of personal property reported?
2. How is the amount of goodwill reported?

3. How is the amount of special/use value reported?
4. How is the amount of goodwill and special/use value reported on the Declaration of Value?

III. STANDARD OF REVIEW

A. Declaratory Orders Under the Iowa Administrative Procedure Act

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 (Iowa 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)). 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, *supra*, at 822–23.

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 a separate administrative remedy set forth in Iowa Code chapter 17A and in the Department’s rules. *See* Iowa Admin. Code r. 701—7.41(17A). Consequently, for the purposes of any declaratory order, the Director 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 Iowa Administrative Code rule 701—7.24(17A) concerning the issuance of declaratory orders.

IV. RULING

For the reasons stated below, the Director refuses to issue a declaratory order in response to the Petition. “An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary

to a rule adopted” by the Department in accordance with Iowa Code section 17A.9, subsection (2). Iowa Code § 17A.9(1)(b)(1). Under Iowa Administrative Code rule 701—7.24(9)“a”, the Department may refuse to issue a declaratory order for several reasons, including the following:

- (1) The petition does not substantially comply with the required form;
- (2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order;
- ...
- (4) The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding that may definitively resolve them;
- (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;
- ...
- (8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct, in an effort to establish the effect of that conduct or to challenge a department decision already made;
- ...
- (11) The petition requests a declaratory order on an issue presently under investigation or audit or in rule-making proceedings or in litigation in a contested case or court proceedings.

When the Department refuses to issue an order, the Department must indicate the specific grounds for the refusal. Iowa Admin. Code r. 701—7.24(9)“b”. Such a refusal constitutes final department action on the petition. *Id.* The Department refuses to issue a declaratory order on all issues presented in the Petition for each of the reasons enumerated below both individually and collectively.

A. The Petition Does Not Substantially Comply with the Required Form

The Department may refuse to issue a declaratory order on some or all questions raised if the petition does not substantially comply with the required form. Iowa Admin. Code r. 701—7.24(9)“a”(1). The petition must provide certain information set forth under Iowa Administrative Code rule 701—7.24(1)“b”.

First, the petition must provide “[a] clear and concise statement of all relevant facts on which the order is requested.” Iowa Admin. Code r. 701—7.24(1)“b”(1). The facts presented in the Petition are more akin to general observations or conclusions about existing law in Iowa than clear and relevant facts that would allow the Department to determine the “applicability to *specified* circumstances of a statute, rule, or order . . .” Iowa Admin. Code r. 701—7.24(1)“a” (emphasis added). The Petition generally references the sale and purchase of hotels and motels, rather than a particular sale or sales. Indeed, the Petition does not contain any facts or circumstances related to any specific circumstance, transaction or other taxable event. The Petition does not meet the above requirement.

Second, the petition must “provide the questions the petitioner wants answered, stated clearly and concisely.” Iowa Admin. Code r. 701—7.24(1)“b”(3). The Petition presents questions about how the amount of personal property, goodwill, and special/use value are reported. Pet. For Declaratory Order at 1-2, No. 2020-300-2-0276 (May 18, 2020). Additionally, Petitioner asks about reporting goodwill and special/use value on the Declaration of Value document. *Id.* These questions are broad and vague. The questions are not clear and concise questions regarding a specific set of facts, but appear to be general statutory interpretation questions pertaining to facts unstated in the Petition.

Third, the petition must provide “[t]he reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.” Iowa Admin. Code r. 701—7.24(1)“b”(5). According to the Petition, the reason for requesting the Order is because the exemptions that the Petition references “need to be clarified on definition and calculation to give a uniform usage.” Pet. For Declaratory Order at 3, No. 2020-300-2-0276 (May 18, 2020). Petitioner has failed to disclose Petitioner’s interest in the outcome of this Order. For the above reasons, the Petition does

not substantially comply with the required form, and the Department refuses to issue a declaratory order on all questions presented.

B. The Petition Does Not Contain Facts Sufficient to Demonstrate That the Petitioner Will be Aggrieved or Adversely Affected by the Failure of the Department to Issue an Order

The Department may refuse to issue a declaratory order on some or all questions raised if “[t]he petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order.” Iowa Admin. Code r. 701—7.24(9)“a”(2).

The Petition refers to tax exemptions when a hotel or motel is bought or sold in Iowa, and asks for general clarification regarding exemption calculations. Pet. For Declaratory Order at 1, No. 2020-300-2-0276 (May 18, 2020). As stated above, the Petition contains virtually no facts. Indeed, the Petition does not contain any specific facts or circumstances surrounding any particular transaction that would be affected by this Order. Without more specific facts, the Department is unable to discern whether Petitioner will be aggrieved or adversely affected by the failure of the Department to issue an Order. Therefore, the Department refuses to issue an Order on each question presented.

C. The Questions Presented by the Petition Are Also Presented in a Current Rule Making, Contested Case, or Other Department or Judicial Proceeding That May Definitively Resolve Them

The Department may refuse to issue a declaratory order on some or all questions raised if “[t]he questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding that may definitively resolve them.” Iowa Admin. Code r. 701—7.24(9)“a”(4).

Petitioner has stated that they are “waiting for a determination from [PAAB] on some of the above questions representing one of the clients below.” Pet. For Declaratory Order at 3, No.

2020-300-2-0276 (May 18, 2020). “An appeal to . . . [PAAB] is a contested case under chapter 17A.” Iowa Code § 441.37A(1)(b). Therefore, any questions currently before PAAB are presented in a contested case, and the Department refuses to issue a declaratory order on those questions.

D. 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

The Department may refuse to issue a declaratory order on some or all questions raised if “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.” Iowa Admin. Code r. 701—7.24(9)“a”(6).

As discussed, the Director views the issues raised in the petition as questions of law applicable to *future* factual situations as disclosed in the petition. The only indication of timing in the Petition is the statement by Petitioner that they are “waiting for a determination from [PAAB] on some of the above questions representing one of the clients below.” Pet. For Declaratory Order at 3, No. 2020-300-2-0276 (May 18, 2020). An appeal to PAAB may only be made following a final decision, finding, ruling, determination, or order of a local board of review relating to protests of an assessment, valuation, or an application of an equalization order, or any final decision of the county board of supervisors relating to denial of an application for, or the revocation of, a property tax exemption pursuant to section 427.1, subsection 40. Iowa Code § 421.1A(3). A Petition for declaratory order should be based on facts calculated to aid in the planning of future conduct. Iowa Admin. Code r. 701—7.24(9)“a”(8). A declaratory order is not the proper mechanism by which to seek review of a decision, finding, ruling, or determination on facts that have already occurred. For this reason, the Department refuses to issue a declaratory order.

E. The Facts or Questions Presented in the Petition Are Unclear, Overbroad, Insufficient, or Otherwise Inappropriate as a Basis Upon Which to Issue an Order

The Department may refuse to issue a declaratory order on some or all questions raised if “[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.” Iowa Admin. Code r. 701—7.24(9)“a”(6).

In this case, the questions presented are unclear, overbroad, and insufficient as a basis upon which to issue an order. The Petition asks about reporting personal property, goodwill, special/use value. Pet. For Declaratory Order at 1-2, No. 2020-300-2-0276 (May 18, 2020). Additionally, the Petition asks about reporting goodwill and special/use value on the Declaration of Value document. *Id.* It is unclear whether these questions apply to a specific transaction. Rather, Petitioner is seeking general and broad advice about compliance with Iowa property tax law in conducting an Iowa real estate transaction. Again, without further facts and more specific questions, the Department is unable to issue a declaratory order.

F. The Petition Is Not Based Upon Facts Calculated to Aid in the Planning of Future Conduct but Is, Instead, Based Solely Upon Prior Conduct, in an Effort to Establish the Effect of That Conduct or to Challenge a Department Decision Already Made

The Department may refuse to issue a declaratory order on some or all questions raised if “[t]he petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct, in an effort to establish the effect of that conduct or to challenge a department decision already made.” Iowa Admin. Code r. 701—7.24(9)“a”(8).

Petitioner indicates that they are “waiting for a determination from [PAAB] on some of the above questions representing one of the clients below.” Pet. For Declaratory Order at 3, No. 2020-300-2-0276 (May 18, 2020). An appeal to PAAB may only be made following a final decision, finding, ruling, determination, or order of a local board of review relating to protests of an

assessment, valuation, or an application of an equalization order, or any final decision of the county board of supervisors relating to denial of an application for, or the revocation of, a property tax exemption pursuant to section 427.1, subsection 40. Iowa Code § 421.1A(3). Therefore, the facts and circumstances surrounding the questions that were submitted to PAAB have already occurred, and these questions are based on prior conduct, rather than facts calculated to aid in the planning of future conduct. The Petition is sought in an effort to establish the effect of that conduct. For this reason, the Department refuses to issue an Order on the questions presented in the Petition.

G. The Petition Requests a Declaratory Order on an Issue Presently under Investigation or Audit or in Rule Making Proceedings or in Litigation in a Contested Case or Court Proceedings

The Department may refuse to issue a declaratory order on some or all questions raised if “[t]he petition requests a declaratory order on an issue presently under investigation or audit or in rule-making proceedings or in litigation in a contested case or court proceedings.” Iowa Admin. Code r. 701—7.24(9)“a”(11).

Petitioner has indicated that they are “waiting for a determination from the [Property] Assessment Appeal Board on some of the above questions representing one of the clients below.” Pet. For Declaratory Order at 3, No. 2020-300-2-0276 (May 18, 2020). “An appeal to . . . [PAAB] is a contested case under chapter 17A.” Iowa Code § 441.37A(1)(b). Therefore, because these questions are currently before the PAAB, they are presented in a contested case, and the Department refuses to issue an Order on those questions.

ORDER

THEREFORE, based on the facts, foregoing reasoning, and applicable provisions of the law, the Petition for declaratory order is denied.

Done at Des Moines, Iowa on this 10 day of July, 2020.

IOWA DEPARTMENT OF REVENUE

BY 
Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 10th day of July, 2020, I caused a true and correct copy of the Refusal to Issue Declaratory Order of the Director of Revenue to be forwarded by U.S. Mail or delivered to the following person:

Monte Bowman
P.O. Box 27321
Ralston, NE 68127


Hollie Welch, Executive Secretary
Iowa Department of Revenue