

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

IN THE MATTER OF	DECLARATORY ORDER
CANDID	DOCKET NO.: 2020-300-2-0286
SALES AND USE TAX	

Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by Candid, formerly known as Foundation Center, on June 1, 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 Candid. Foundation Center, a charitable organization under Internal Revenue Code § 501(c)(3), was chartered in 1956 by the Board of Regents of the New York State Education Department. On February 1, 2019, Foundation Center acquired the assets of GuideStar USA, Inc., another I.R.C. § 501(c)(3) organization. On September 10, 2019, Foundation Center’s charter was amended and its name changed to Candid. Candid continues to operate under the federal Employer Identification Number originally issued to Foundation Center.

Candid is an organization that “serves as the leading source for information regarding philanthropy performed worldwide.” Pet. for Declaratory Order at 1, No. 2020-300-2-0286 (June 1, 2020). According to the Petition, Candid “sells digital products and services that include, among others, platform products which allow users to remotely access and search database information over the internet, custom web portal and website design services, live trainings on

various philanthropic topics, and recorded and live webinars on various philanthropic topics.”

Petition at 2.

Candid is recognized as an I.R.C. § 501(c)(3) tax-exempt entity by the Internal Revenue Service. According to Candid’s charter, “[n]otwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on...by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986...” and also provides that “[t]he corporation shall be a nonstock corporation organized and operated exclusively for educational purposes, as defined in section 501(c)(3) of the Internal Revenue Code of 1986....” Petition at 2.

Candid’s mission is to “strengthen the social sector by advancing knowledge about philanthropy in the United states and around the world.” Petition at 1. Candid accomplishes this mission by, among other things:

- (1) Operating library/learning centers in New York City, Atlanta, Washington D.C., Cleveland and San Francisco, which provide free access to information resources and educational programs about foundations;
- (2) Maintaining databases with information on more than 140,000 foundations, corporate donors, and grantmaking charities, much of which is available to the public free of charge;
- (3) Maintaining a website with a variety of tools, reports, news and other information related to foundations and public charities; and
- (4) Operating research, educational and training programs.

Petition at 1-2.

Candid states its charter provides that its corporate purpose is:

- (a) To assemble, catalogue, and maintain a library or libraries, open to the public, relating to philanthropy and the nonprofit sector;
- (b) To collect, organize, and make available to the public in the corporation’s library or libraries and elsewhere reports and information about foundation and nonprofit organizations organized and operated exclusively for charitable, scientific, literary, or educational purposes;
- (c) To promote the development and maintenance of sound standards for reporting by such foundations and nonprofit organizations to assist them in

- making such reports available to the public through the use of the corporation's library or libraries or in other ways;
- (d) To aid and promote, in any and all lawful ways, the preparation and dissemination of reports to the public by such organizations;
 - (e) If and to the extent deemed advisable by its board or trustees, to compile and publish periodically a general directory of foundations and nonprofit organizations, newsletters, reports or other publications concerning them; and
 - (f) To study and give counsel on the organization, management and programming of such foundations and nonprofit organizations.

Petition at 2-3.

Candid asserts that Foundation Center's Form 990 return for the 2018 tax year shows that all of Foundation Center's program service revenue, including product revenue, is related to its tax-exempt purpose.¹ Furthermore, the Petition states that the program service revenue "funds the direct expenses of developing, maintaining and providing its products and services as well as other activities related to its tax-exempt purpose and which further its state mission." Petition at 3. Therefore, according to Candid, all of the Iowa retail sales profits are expended exclusively on costs related to the organization's educational and/or charitable purposes described in the charter.

While Candid does not have physical nexus in Iowa, the Petition states that it had economic nexus in 2019 when its gross sales of remote sales of digital products and services to Iowa customers exceeded \$100,000.²

II. ISSUES PRESENTED

The Petition presents one issue for consideration: Whether Candid's retail sales to Iowa customers are exempt from sales tax pursuant to Iowa Code section 423.3(78).

¹ As of the date of the Petition, the 2019 Form 990 has not yet been filed.

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

Iowa imposes a state sales tax “of six percent...on the sales price of specified digital products sold at retail in the state.” Iowa Code § 423.2(10) (2020). Pursuant to Iowa Code section 423.3(78)(a), Iowa exempts from sales tax:

The sales price from the sale of tangible personal property, specified digital products, or services rendered by any entity where the profits from the sale of the tangible personal property, specified digital products, or services rendered, are used by or donated to a nonprofit entity that is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a governmental entity, or a nonprofit private educational institution, and where the entire proceeds from the sale or services are expended for any of the following purposes:

- (1) Educational.
- (2) Religious;
- (3) Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add to or to improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring the person performing the service or giving the gift.

Additionally, the Code provides that “[t]his exemption is disallowed on the amount of the sales price only to the extent the profits from the sales, rental, or services are not used by or donated to the appropriate entity and expended for educational, religious, or charitable purposes.” Iowa Code § 423.3(78)(c).

Candid is recognized as a charitable organization under Internal Revenue Code § 501(c)(3) by the Internal Revenue Service; therefore, the main issue is whether the entire proceeds from the sales of specified digital products and services are expended for educational purposes.

Iowa Administrative Code rule 701—17.1(6)“a”(3)(1) defines what constitutes educational as follows:

- The acquisition of knowledge tending to develop and train the individual.
- An activity that has as its primary purpose to educate by teaching.
- An activity that has as its primary objective to give educational instruction.
- An activity for which the educational process is not merely incidental. An activity where the purpose is systematic instruction.

The term “educational purpose” is synonymous with “educational undertaking” and, therefore, it can include recreational activities as well as an activity designed to offer culture to the public...Municipal or civic science centers and libraries are also considered educational for purposes of the exemption.

The Petition states that Candid expends all of its revenue and profits on four main activities. First, Candid operates library and learning centers which provide free access to information resources and educational programs about foundations. Candid assembles, catalogues, and maintains the libraries which make available to the public reports and information about foundation and nonprofit organizations worldwide. Rule 701—17.1(6)“a”(3)(1) specifically states that libraries are considered educational for purposes of the exemption. Furthermore, in *Community Drama Association v. Iowa State Tax Commission*, 109 N.W.2d 23 (1961), the Iowa Supreme Court found that an organization’s free public use of its library was “educational.” Therefore, Candid’s library and learning centers are educational.

Second, Candid maintains databases with information on more than 140,000 foundations, corporate donors, and grantmaking charities, much of which is provided to the public for free. Users may remotely access and search database information. Similar to a library, the database

provides education to the community by it being open for users to research various philanthropic organizations. Therefore, Candid's databases are educational.

Third, Candid maintains its website that contains a variety of tools, reports, news and other information related to philanthropic organizations. Through the tools, reports, news and other information accessible on the website, Candid is performing an activity with a primary purpose of educating the user on foundations and public charities. Therefore, Candid's website is educational.

Finally, the fourth activity Candid engages in is operating research, educational and training programs. According to the Petition, Candid offers live trainings as well as both recorded and live webinars on various philanthropic topics. The trainings constitute an "activity that has as its primary objective to give educational instruction" under rule 701—17.1(6)"a"(3)(1) and are therefore, educational.

Based on the facts and supporting law, the Director concludes that Candid's purpose is an educational one. Thus, once Candid is approved as a 501(c)(3) not-for profit organization, its retail sales to Iowa customers are exempt from Iowa tax under Iowa Code section 423.3(78) so long as the "entire proceeds" of those sales are devoted to Candid's educational purpose.

Having determined that Candid's entire proceeds from its sales of specified digital products and services are expended for educational purposes, the Director declines to draw any further conclusions as to whether the activities described in the Petition are charitable because the factor discussed above is dispositive.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the issues raised in the Petition for Declaratory Order are as answered above.

Issued at Des Moines, Iowa this 17th day of September, 2020.

IOWA DEPARTMENT OF REVENUE

By 
Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 17th day of September, 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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