

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

IN THE MATTER OF STUDY.COM, LLC SALES AND USE TAX	DECLARATORY ORDER DOCKET NO. 2020-310-2-0649
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Pursuant to a Petition for Declaratory Order (hereinafter referred to as “Petition”) filed with the Iowa Department of Revenue (hereinafter referred to as “Department”) by Study.com, LLC (hereinafter referred to as “Study.com” or “Petitioner”) on December 7, 2020 and in accordance with Iowa Code section 17A.9 (2021) and Iowa Administrative Code rule 701—7.24(17A), “Declaratory order-in general,” the Director issues the following order.

I. FACTS

The findings of fact are based on the Petition and further communications with Petitioner. Petitioner is a multi-member, Delaware limited liability company headquartered in California. Petitioner operates an online learning platform (“Platform”) which is a “virtual learning environment serving the education needs of students who purchase the [Petitioner’s] learning plans.” Pet. For Declaratory Order at 1, No. 2020-310-2-0649 (Dec. 7, 2020).

A. The Platform

Petitioner offers for sale six learning plans which are all only accessible through the Platform. The Platform is a virtual learning environment that offers, among other things, access to thousands of academic on-demand digital courses that teach academic subjects, professional topics, and vocational licensure preparation. In addition to offering on-demand digital courses, the

Platform is where users¹ also access interactive quizzes, online proctored exams, grading information, homework assignments, a tutoring portal, and course questions.²

In order to access the Platform, a user creates an individual sign-on and pays Petitioner on a monthly subscription basis. The six learning plans are sold at different subscription prices, but the sales price of the subscription for a single type of learning plan does not vary and is not negotiable.³ Additionally, the subscription plans are all sold for one-nonitemized price. The subscription may be cancelled by the user at any time.

The Platform is accessible by a user's computer or mobile device. Access to the Platform on a user's mobile device requires the user to download Petitioner's mobile app. The mobile app is free to download and is accessible in both Apple and Android stores. Users who download the app are subject to the mobile app's End User License Agreement. The mobile app "enables and controls time-limited caching of mobile version files for temporary offline viewing and use of interactive quizzes." Petition at 2-3.

According to the Petition, the on-demand digital courses are generally copyright-protected. A written transcript of the audio is available for each digital course. The digital courses on the Platform are not available to download; "however, the mobile device version of the Platform provides temporary caching of the digital course for several days, to enable uninterrupted access to the course at times when the user's internet access has been interrupted." Petition at 2. When the user's mobile device regains internet access, the Platform will update the user's course progress on Petitioner's servers. Temporarily cached files are no longer available on the mobile app after five days.

¹ The Petition refers to a person that pays for Petitioner's products as a "student". For purposes of this Order, they are referred to as a "user".

² For the learning plans that offer online guidance counselors for educational assistance, communication between the user and the guidance counselor may occur outside of the Platform.

³ Petitioner may offer discounts occasionally which apply against the entire subscription price. Also, business customers of Learning Plan B may be provided a volume discount if enrolling more than one student.

B. The Learning Plans

The Petition describes the six learning plans as follows:

Product A; College-Courses for Credit, with Assessments, Online Tutors and Online Advisors: Product A is intended for college and college-bound Students. The digital courses for Product A include interactive chapter quizzes which assess the Student's understanding of the instruction provided. Product A includes two online, proctored exams per month for the Platform's courses which are recommended for transferable credit by the American Council on Education and the National College Credit Recommendation Service. The Student's grades for courses recommended for transferable credit are based on a combination of graded homework assignments, quizzes, plus a proctored final exam. The Student must answer at least 70% of the course questions correctly to achieve a passing grade. The homework assignments are graded by online tutors who interact with the Student to explain their grading, and the Student receives advice from online guidance counselors who advise the Student with choosing a college and choosing the Student's course selections at the Platform. Product A includes up to ten live tutoring interactions per subscription period. [Petitioner] retains copies of Student's learning transcripts indefinitely, which the Student can arrange to have submitted to a learning institution. The learning institution may grant course credit to the Student at its own discretion.⁴

Product B; College-Courses for Credit, with Assessments, Online Tutors and Online Advisors (Sponsored Students): Product B is a program ("the Program") offered by [Petitioner] to enterprises and other organizations who sponsor their employee ("Sponsored Student") to earn a college degree from a partnering college. The Sponsored Student must be accepted into the Program, which requires submission of an application, passing [Petitioner's] background check, and passing one college level course on the Platform to confirm the Sponsored Student has met the Program's application criteria. Upon acceptance into the Program, the Sponsored Student receives access to the features of the Platform described in Product A, and under the guidance of an assigned live "success coach", commences the course of study designated for the partnering college to ultimately achieve a college degree. The Program is designed for Sponsored Students to address their general education course requirements via the Platform. Upon the Sponsored Student's completion of credit eligible courses via the Platform, the Program then assists the Sponsored Student with their transfer-application to the partnering college. Product B includes up to ten live tutoring interactions per month. The Program fee does not include the Sponsored Student's tuition or application fees paid to the partnering college. [Petitioner] bills the fee for the Program directly to the enterprise. [Petitioner] also offers the Program to municipalities, who sponsor municipal employees, and philanthropic organizations, who sponsor individuals in their pursuit of a college degree.⁵

⁴ The digital courses, quizzes, online exams, graded homework assignments, and tutoring interactions are all accessed on the Portal.

⁵ All features a student needs to complete eligible courses under Learning Plan B are accessible through the Platform.

Product C; Courses with Assessments and Access to Live Tutor: Product C provides access to the digital courses which include interactive chapter quizzes to assess the Student's understanding of the instruction provided. Product C enables the Student to enroll in the courses and thereby earn a certificate of completion for each course the Student passes with a grade of 60% or better on the course quizzes. Students can retake the quizzes multiple times until successfully passing the course. Product C provides a dashboard which shows all the courses passed and failed, from which the Student can download a copy of a certificate of completion earned. The Platform retains a permanent record of the Student's certificates of completion, which a Student can request at any time, even if the Student is no longer a paid subscriber. Product C also allows the Student to download a pdf copy of the quiz questions and a transcript for any course in which the Student is enrolled. Product C includes up to ten live tutoring interactions per month.⁶

Product D; Teacher Plan: [Petitioner] offers a teacher plan, which contains all the features of Product C, plus additional capabilities which enable a subscriber who is a teacher ("teacher-subscriber"), to integrate the Platform's digital courses into their curriculum. Teacher-subscribers can provide their students access to digital courses at no additional charge; and can remotely assign courses and lessons, as well as display the courses in their classroom. The teacher-subscriber can, if desired, customize the digital lessons by inserting slides with the teacher's own text material into the digital lessons. The teacher-subscriber also receives additional web-based resources such as lesson plans, automated-grading of the student's quizzes, student-progress tracking, and access to group-learning activities for their classroom. Additionally, the teacher membership plan allows the teacher to enroll in any class offered by the Platform, which offers courses to help teachers pass and maintain their professional certifications. The teacher plan provides access to live online instructors, for which the teacher receives up to ten instructor-access questions per month. Learning institutions may subscribe to teacher-plans on behalf of the institution's teachers or the subscription may be purchased by a teacher as an individual.⁷

Product E; Courses with Access to Live Tutor: Product E provides access to the Platform's learning courses. Product E does not include quizzes, and as such, the Student is not assessed on having passed a course. Product E includes up to five live tutoring interactions per month.⁸

Product F; "Tutor Access" Plan: The tutor access plan provides up to five live tutoring interactions per subscription period. The tutor access plan does not provide access to entire digital courses but does provide, when available in relation to the Student's question, access to brief video lesson and interactive questions to help the Student practice the lesson. Additional live tutor-interactions are available for purchase if the Student requires additional tutoring interactions within the subscription period.⁹

⁶ All features in Learning Plan C are accessible through the Platform.

⁷ All of the additional features in Learning Plan C for teachers are accessible through the Platform.

⁸ All features in Learning Plan E are accessible through the Platform.

⁹ All features in Learning Plan F are accessible through the Platform.

Petition at 3-5.

Each learning plan provides access to a limited number of tutoring interactions. The tutoring interactions are optional and up to the user whether they want to use the tutoring interactions. The Platform makes available online tutors to answer user's questions twenty-four hours a day, seven days a week. If a user has an academic question, the user will first search the question within the Platform's database. The Platform stores previously asked questions and will provide answers in the form of electronic responses to users whose questions have been previously asked. If a user receives an answer to a question through the Platform's database, the question will count as a tutoring interaction, provided the user indicates that the answer is satisfactory.

If a user's question is not answerable through the Platform's question database, the user will need to submit the question to an online tutor. The Platform has a communication portal in which the user can electronically submit a question and receive an electronic response back from the tutor.¹⁰ The Platform will search for tutors that are currently online that have the designated qualifications to answer the question. The Platform will assign a user with a tutor and the tutoring interaction will occur through the communication portal.

C. Nexus

Petitioner states that it has no employees located in Iowa, it owns no property or offices in Iowa, and that it has not attended any trade shows or otherwise traveled into Iowa. Petitioner pays independent contractors for ad-hoc assignments which include writing articles for Petitioner's website, curriculum design, lesson writing, and grading user's homework assignments. Petitioner posts these independent contractor opportunities on its website and other freelance work

¹⁰ According to Petitioner, the communication portal within the Platform functions similarly to an email inbox. There is no live chat function where a user and a tutor can communicate back and forth in real time. The communication portal on the Platform is the only method of communication that a user and tutor can communicate. One tutoring interaction may include multiple communication exchanges between the user and a tutor about a single topic through the communication portal.

websites. Petitioner is the owner of all work completed by freelance contributors. Petitioner began collecting Iowa sales and use tax on August 17, 2020.¹¹

D. Internet Advertising Revenue

Petitioner earns internet advertising revenue from Internet advertising under two revenue models: a pay-per-click model and through fulfilling insertion orders. Under the pay-per-click model, Petitioner earns revenue by creating web content for an advertising campaign for an advertiser that is a learning institution. When an individual finds the web content via an Internet search, the individual will be directed to answer a short series of click-through, qualifying questions related to age, educational degree desired, etc. Individuals who click the questions are redirected, on their final click, to the advertiser's website. Petitioner gets compensated for the final click if the individual submits their personal information at the advertiser's website.

Petitioner also earns revenue by "fulfilling [i]nsertion [o]rders on behalf of predominately not-for-profit universities for which [Petitioner] is paid up to a certain number of re-directed, qualified clicks." Petition at 5. Petitioner describes this model of advertising as follows:

For this model of advertising, [Petitioner] designs content, of which [Petitioner] is the owner, to attract the desired demographic to a [Petitioner]-owned website, where [Petitioner] hosts the qualifying questions and then instantaneously forwards the person's information to the university advertiser when the person makes the final click. For this model of advertising, [Petitioner's] landing page shows a list of university advertisers on the left side of the web page, for which the advertiser who has placed the Insertion Order will be listed at the top. Once [Petitioner's] click-tracking technology detects the clicks have been met for the advertiser's Insertion Order, that advertiser's name is automatically reranked lower on the list, and a different advertiser's name will automatically appear at the top of the list, and [Petitioner] will begin fulfilling clicks for that advertiser's Insertion Order. [Petitioner] does not retain or re-use the information submitted by individuals in response to advertising content.

Id.

II. ISSUES PRESENTED

The Petition presented two issues for consideration:

¹¹ Petitioner states it also collected Iowa sales and use tax from a few students in June and July 2020.

1. Whether Learning Plans A, B, C, D, E, and F are subject to sales tax; and
2. Whether Petitioner's revenue from fulfillment of insertion orders is subject to sales tax.

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). 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) (2021).

B. Statutory Construction and Interpretation of Tax Statutes

“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. Taxation of Software as a Service

Iowa imposes a six percent sales tax on software as a service. Iowa Code § 423.2(6)(bu). Neither the Iowa Code nor the Department’s administrative rules currently define software as a service. However, the Department’s guidance states that software as a service (“SaaS”) means the following:

the sale, storage, use, or other consumption of vendor-hosted computer software, such as software accessible on the cloud. ‘Vendor-hosted

computer software' means computer software that is accessed through the internet or a vendor-hosted server whether the access is permanent or temporary, whether any downloading occurs, or whether the software is hosted by the retailer of the software or by a third party. The content or material accessed by way of software as a service does not impact the taxability of the software itself.

Taxation of Specified Digital Products, Software, and Related Services, IOWA DEP'T OF REVENUE, <https://tax.iowa.gov/taxation-digital-products> (2021).

Iowa also imposes a six percent sales tax on “specified digital products sold at retail in this state.” Iowa Code § 423.2(10)(a). The tax on specified digital products applies “whether the purchaser obtains permanent use or less than permanent use of the specified digital product, whether the sale is conditioned or not conditioned upon continued payment from the purchaser, and whether the sale is on a subscription basis or is not on a subscription basis.” *Id.* “Specified digital products” is defined as:

- a. . . . Electronically transferred digital audio-visual works, digital audio works, digital books, or other digital products.
- b. For purposes of this subsection:
 - (1) “Digital audio-visual works” means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.
 - (2) “Digital audio works” means works that result from the fixation of a series of musical, spoken, or other sounds, including but not limited to ringtones. For purposes of this subparagraph, “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.
 - (3) “Digital books” means works that are generally recognized in the ordinary and usual sense as books.
 - (4) “Electronically transferred” means obtained or accessed by the purchaser by means other than tangible storage media, including but not limited to a specified digital product purchased through a computer software application, commonly referred to as an in-app purchase, or through another specified digital product, or through any other means.
 - (5) “Other digital products” means greeting cards, images, video or electronic games or entertainment, news or information products, and computer software applications.

Iowa Code § 423.1(55B).

B. Petitioner's Learning Plans are Taxable as SaaS

The Director finds that the sale of all of Petitioner's learning plans are taxable because the learning plans are the sale of the Platform and the Platform is SaaS.¹² Pursuant to the Department's guidance, the Platform is SaaS because it is vendor-hosted computer software that is accessed through the internet or a vendor-hosted server. The Platform is software that resides on Petitioner's servers and is accessed by users via the Internet on a computer or mobile device. Users cannot install, permanently download, or transfer the software onto their own computers or mobile devices and Petitioner charges users for accessing the software based on a monthly subscription basis. Thus, the Platform meets the definition of SaaS articulated in the Department's guidance.

The learning plans are taxable despite each one having varying features. The Department's guidance specifies that the content or material accessed by way of SaaS does not impact the taxability of the software itself. Thus, the fact that each learning plan offers different features, some of which on its own may not be considered SaaS, does not affect the taxability of each learning plan because everything is accessible through the Platform. For example, Learning Plan A includes interactive chapter quizzes, online proctored exams, graded homework assignments, and tutoring interactions. All of these features are accessed on the Platform.¹³ Learning Plan B and C offer the same features as in Learning Plan A, only each learning plan is intended for different types of users that have different purposes for using the Platform.¹⁴ Learning Plan D offers unique features for teacher-subscribers such as access to digital courses and lessons, online instructors, additional web-based resources, and courses to help teachers pass and maintain their professional certifications. Again, all of these features are accessed through

¹² Alternatively, the sale of the learning plans would also constitute the sale of a specified digital product. This also results in the sale being subject to Iowa sales tax.

¹³ Learning Plan A includes a feature to receive advice from online guidance counselors. While some of the communication may occur outside of the Platform, this does not affect that Learning Plan A is still taxable.

¹⁴ Learning Plan A is intended for college and college-bound students seeking to get college course credit, Learning Plan B is intended for enterprises and organizations seeking to sponsor their employees to earn a college degree, Learning Plan C, E, and F are intended for any type of user, and Learning Plan D is intended for teachers.

the Platform. Finally, Learning Plans E and F are the most limited options in terms of features offered and all of the features are accessed on the Platform.

The Petition references “live tutoring interactions” as a feature available within the learning plans. These tutoring interactions do not affect the taxability of the learning plans because all tutoring communication occurs through the Platform. The Platform has a communication portal in which a student and tutor are able to send messages to each other regarding a user’s question about an academic topic. No tutoring communication happens outside of the Platform.

When considering whether a product is SaaS, the Director will consider all facts and circumstances. Here, because the learning plans are the sale of the Platform and the Platform is SaaS, the learning plans are subject to Iowa sales tax. This outcome does not change because each learning plan has varying features or are intended for different users for different purposes.

C. Learning Plan B May Be Exempt under Iowa Code Section 423.3(104)

Iowa law exempts from sales tax the sales price of software as a service furnished “to a commercial enterprise for use exclusively by the commercial enterprise.” Iowa Code § 423.3(104)(a). Commercial enterprise means “businesses and manufacturers conducted for profit, for-profit and nonprofit insurance companies, and for-profit and nonprofit financial institutions, but excludes other nonprofits and professions and occupations.” Iowa Code § 423.3(47)(d)(1). To qualify for the exemption, the products must be used exclusively by the commercial enterprise, and any non-commercial use of the products and services must be *de minimis*. Iowa Code § 423.3(104)(a).

According to the Petition, Learning Plan B is sold to student-sponsors who are enterprises, insurance companies, and financial institutions. Petitioner bills the subscription fee for Learning Plan B directly to the student-sponsor. Assuming that the student-sponsor is a qualified entity

under section 423.3(104)(a) and the other requirements of the exemption are satisfied, the sales price of Learning Plan B is exempt from sales tax.¹⁵

D. Petitioner's Internet Advertising Revenue Is Not Subject to Sales tax

Petitioner seeks a determination on whether its revenue from its pay-per-click and insertion order revenue models are subject to Iowa sales tax. Iowa Code section 423.2(6) imposes a sales tax of six percent on the furnishing of enumerated services. "Digital" or "Internet" advertising is not included as an enumerated service. Therefore, Petitioner's Internet advertising revenue from the pay-per-click and the insertion order models are not subject to Iowa sales tax.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the Director finds the following: The sales price of all of Petitioner's learning plans are subject to sales tax as software as a service pursuant to Iowa Code section 423.2(6)(bu); Learning Plan B could be exempt from sales tax pursuant to Iowa Code section 423.3(104) depending on whether additional facts satisfy the requirements of the exemption; and Petitioner's Internet advertising revenue is not subject to sales tax.

Issued at Des Moines, Iowa this 20th day of April, 2021.

IOWA DEPARTMENT OF REVENUE

By 
Kraig Paulsen, Director

¹⁵ Petitioner provided facts indicating that Learning Plan B is the only plan purchased by entities that may qualify as commercial enterprises under Iowa law. If commercial enterprises purchase other learning plans, those learning plans may also be exempt under Iowa Code section 423.3(104).

CERTIFICATE OF SERVICE

I certify that on this 20th day of April, 2021, I caused a true and correct copy of the Declaratory Order of the Director of Revenue to be forwarded by U.S. Mail or delivered to the following person(s):

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