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

IN THE MATTER OF	*	
DAVID FAITH et al. 104 Apple Circle Indianola, Iowa 50125	*	DECLARATORY ORDER
INDIVIDUAL INCOME TAX	*	DOCKET NO.: 2021-200-2-0203

Pursuant to a Petition for Declaratory Order ("Petition") filed with the Iowa Department of Revenue ("Department") by David Faith, Benjamin Smith, and David Brooks ("Petitioners"), and in accordance with Iowa Code ("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 and additional facts relevant to this Order.

Petitioners are Iowa taxpayers and members of the Iowa National Guard. Pet. for Declaratory Order at 1, No. 2021-200-2-0203 (May 7, 2021) [hereinafter "Petition"]. At the time of filing the Petition with the Department, Petitioners were deployed, pursuant to orders issued under Title 10 of the United States Code, to Kosovo. *Id.* Petitioners received "active guard pay" for their service in Europe. *See id.* Prior to that overseas mission, Petitioners had been "mobilized for COVID-relief operations on Title 32 orders." *Id.* Petitioners also explained that "most Iowa National Guard members receive weekend drill and annual training pay" under Title 32 as well. *Id.*

Petitioners are not seeking a determination about the Iowa tax treatment of active guard pay received by members who are serving under Title 10 orders. *Id.* Similarly, Petitioners are not seeking a determination about the taxability of pay received by full-time Iowa National Guard members who perform active guard and reserve duty under Title 32, section 328. *Id.* Nor are Petitioners concerned with Iowa's tax treatment of pay received by full-time members who are acting as technicians pursuant to Title 32, section 709 orders. *Id.* Instead, Petitioners seek an Order with respect to the taxability of pay received by "part-time members of the Iowa National Guard who are placed on temporary Title 32, section 502 orders [or who] receive drill and annual training pay." *Id.*

II. ISSUES PRESENTED

The Petition presents three separate, but related, issues for consideration:

A. Whether part-time members of the Iowa National Guard may exclude from Iowa net income "pay received from the federal government when . . . they are ordered to Title 32 active duty for operational support[,]" under Iowa Code section 422.7(42A) and Iowa Administrative Code rule 701—40.76;

B. Whether part-time members of the Iowa National Guard may exclude from Iowa net income "pay received from the federal government when [they] receive Title 32 drill pay," under Iowa Code section 422.7(42A) and Iowa Administrative Code rule 701—40.76; and

C. Whether part-time members of the Iowa National Guard may exclude from Iowa net income "pay received from the federal government when [they] receive Title 32 annual training pay" under Iowa Code section 422.7(42A) and Iowa Administrative Code rule 701—40.76.

III. STANDARD OF REVIEW

A. *Declaratory Orders and the Iowa Administrative Procedures 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) (2021). 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(1)(b)–(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); *see also* 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. *The Department's Interpretive Authority*

This Petition asks the Department to determine the applicability of Iowa Code section 422.7(42A), as interpreted through Iowa Administrative Code rule 701—40.76, to the facts presented by the Petitioners. Iowa's legislature has conferred upon the Director "the power and authority to prescribe all rules not inconsistent with [Iowa's income tax statute], necessary and advisable for its detailed administration and to effectuate its purposes." Iowa Code § 422.68(1). "Given the broad language of the enabling statute, the scope of the department's authority [to interpret Iowa Code chapter 422 through its rules] is expressly comprehensive." *City of Sioux City v. Iowa Dept. of Revenue & Fin.*, 666 N.W.2d 587, 590 (Iowa 2003). The Department has "clearly been vested with discretion to interpret chapter 422." *Ranniger v. Iowa Dept. of Revenue & Fin.*, 746 N.W.2d 267, 268 (Iowa 2008); *see also Lance v. Iowa State Bd. of Tax Review*, 871 N.W.2d 703 (Table) (Iowa Ct. App. 2015) (restating that the Department's discretion to interpret chapter 422 is broad and affirming a rule promulgated under Iowa Code section 422.7).

C. *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) (citing *Rolfe State Bank v. Gunderson*,

794 N.W.2d 561, 564 (Iowa 2011)). 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)).

In the regulatory context, "the rules of statutory construction and interpretation also govern the construction and interpretation of rules and regulations of administrative agencies." *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52, 56 (Iowa 1983) (citing *Motor Club of Iowa v. Dep't of Transp.*, 251 N.W.2d 510, 518 (Iowa 1977)). However, when interpreting ambiguous language in an administrative rule, "the intent of the agency in promulgating the rule" serves as the polestar that guides the analysis. *Hollinrake v. Iowa Law Enforcement Acad., Monroe Cnty.*, 452 N.W.2d 598, 601 (Iowa 1990) (citing *Iowa Fed'n of Labor, AFL-CIO v. Iowa Dep't of Job Serv.*, 427 N.W.2d 443, 449 (Iowa 1988)). Agencies are afforded a "reasonable range of discretion in the interpretation and application of [their] own administrative rules." *Id.* (citing *Meads v. Iowa Dep't of Soc. Servs.*, 366 N.W.2d 555, 558 (Iowa 1985)). When an agency's interpretation of a rule is at issue, a court will not allow the interpretation to stand when it is "plainly inconsistent with" the statute or rule or when it is "plainly erroneous." *Id.* (citing *Sommers v. Iowa Civil Rights Comm'n*, 337 N.W.2d 470, 475 (Iowa 1983)). Absent such plain

error or inconsistency, a court will sustain reasonable agency interpretations. *See Banilla Games, Inc. v. Iowa Dep't of Inspections & Appeals*, 919 N.W.2d 6, 16 (Iowa 2018) (holding that the department's "interpretation, unlike Banilla's, is reasonable."); *Hollinrake*, 452 N.W.2d at 601 (determining that "the rule [under consideration was] clearly subject to two interpretations" and upholding the agency's reasonable interpretation as a result.).

"Special additional principles [of construction] apply in tax cases." *Iowa Auto Dealers Ass'n v. Iowa Dep't of Revenue*, 301 N.W.2d 760, 762 (Iowa 1981). 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. APPLICABLE LAW

A. *Income Exclusion under the Iowa Code and Iowa Administrative Code*

The Code "impose[s] upon every resident and nonresident" of Iowa a tax that "shall be levied, collected, and paid annually upon and with respect to the entire taxable income" of the taxpayer. Iowa Code § 422.5(1)(a). For individuals, "'[t]axable income' means . . . the net income as defined in section 422.7 minus the deductions allowed by 422.9, if available." *Id.* at § 422.4(16). Section 422.7, in turn, provides that "[t]he term 'net income' means the adjusted gross

income before the net operating loss deduction as properly computed for federal income tax purposes under the Internal Revenue Code" with any applicable Iowa adjustments. *Id.* at § 422.7. One of the adjustments housed in section 422.7, and the specific adjustment at issue here, permits taxpayers, when calculating their Iowa net income, to "[s]ubtract, to the extent included [in federal adjusted gross income], all pay received by the taxpayer from the federal government for military service performed while on active duty status in the armed forces." *Id.* at § 422.7(42A).

The Department has promulgated administrative rules interpreting Code section 422.7(42A). Iowa Administrative Code rule 701—40.76 states that "[f]or tax years beginning on or after January 1, 2011, all pay received from the federal government for military service performed while on active duty status in the armed forces, armed forces military reserve, or the national guard is excluded to the extent the pay was included in federal adjusted gross income." Iowa Admin. Code r. 701—40.76. The rule goes on to articulate the meaning of "active duty personnel" for purposes of the statutory exclusion. Iowa Admin. Code r. 701—40.76(1).

Specifically, the rule provides that "[m]embers of the national guard who are in an active duty status as defined in Title 10 of the United States Code" are "personnel who qualify for the exclusion[.]" Iowa Admin. Code r. 701—40.76(1)"c". In contrast, the rule lists the following as "[m]ilitary personnel who *do not* qualify for the exclusion" under section 422.7(42A):

> b. Full-time members of the national guard who perform duties in accordance with Title 32 of the United States Code.
> c. Other members of the national guard who are not in an active duty status as defined in Title 10 of the United States Code.
> d. Other members of the national guard who do not receive pay from the federal government.

Iowa Admin. Code r. 701—40.76(2)"b"–"d" (emphasis added). The rule also prohibits taxpayers from excluding income "earned from nonmilitary wages for personal services conducted in

Iowa" and makes clear that non-wage income from nonmilitary sources is required to be included when calculating Iowa net income. Iowa Admin. Code r. 701—40.76(3).

In addition to the income exclusion described in section 422.7(42A) of the Code and rule 701—40.76, the Department's rule on military pay provides additional relevant context related to the taxability of National Guard pay. *See* Iowa Admin. Code r. 701—40.5. That rule, which applies to military service performed before January 1, 1969, and to military service performed in tax years beginning between January 1, 1977, and January 1, 2011, states that "[f]ederal active duty does not include a member of the national guard when called for training by order of the governor through order of the adjutant general" because, in that case, the member is "in the service of the state and not on active duty of the United States." Iowa Admin. Code r. 701—40.5(2). Additionally, the rule articulates that "[n]ational guard and reservist pay does not qualify for the military exemption and such pay is taxable by the state of Iowa." Iowa Admin. Code r. 701—40.5(2)"b". While this rule is not applicable for tax years beginning on or after January 1, 2011, it illustrates the Department's historical interpretation of Iowa's income tax treatment of National Guard pay since a rule similar to rule 701—40.5 has been included in the Administrative Code since at least 1975. *See* Iowa Admin. Code r. 730—40.5 (1975). These provisions make clear that the Department has long made a distinction between different types of National Guard duty—including differences based on the activities undertaken and the legal authority under which the member's orders were issued—for purposes of determining whether certain types of pay are excluded when calculating Iowa net income.

B. *Federal Duty Status Definitions*

As noted above, Iowa's Administrative Code specifically cites two titles of the United States Code and links the availability of the income exclusion in section 422.7(42A) and rule

701—40.76 to National Guard orders issued under those titles. Iowa Admin. Code r. 701—40.76(1)–(2). The Petition also indicates that Titles 10 and 32 of the United States Code are relevant to the interpretation of the Department's rule. Petition at 2. Title 10 of the United States Code governs the nation's armed forces, generally. 10 U.S.C.A. §§ 101–499a (West 2021). Title 32, in contrast, specifically regulates the National Guard. 32 U.S.C.A. §§ 101–908. Both titles provide relevant definitions related to duty status. 10 U.S.C.A. § 101; 32 U.S.C.A. § 101.

1. *Duty Status under Title 10 of the United States Code*

Section 101(d) of Title 10 defines seven duty statuses, including "active duty" and "active status"—which are the focus of the Petition. 10 U.S.C.A. §101(d). Under that section, "active duty" is a duty status that "means full-time duty in the active military service of the United States." *Id.* at § 101(d)(1). It "includes full-time training duty, annual training duty, and attendance, while in the active military service," at a service school under certain circumstances. *Id.*; *see also* 10 U.S.C.A. § 101(d)(2) (defining "active duty for a period of more than 30 days"). The term "active duty" does not mean "full-time National Guard duty." *Id.* "Full-time National Guard duty," in turn, is defined as "training or other duty, other than inactive duty, performed by a member of the Army National Guard . . . under section[s] 316, 502, 503, or 505 of title 32 for which the member is entitled to pay from the United States." *Id.* at § 101(d)(5). "Full-time National Guard duty" is further contrasted with "active Guard or Reserve Duty." *Id.* § 101(d)(6)(A). The latter "means active duty performed by a member of a reserve component of the [armed forces], or full-time National Guard duty performed under [specified orders] for the purpose of organizing, administering, recruiting, instructing, or training the reserve components." *Id.* The definition of "active guard or reserve duty" excludes certain types of

service, including "[d]uty performed as a property or fiscal officer under section 708 of title 32." *Id.* at § 101(d)(6)(B).

Section 101 of Title 10 distinguishes those statuses discussed above, with "active service," "active status," and "inactive-duty training." *See id.* § 101(d)(3)–(4), (7). "Active status" incorporates both "active duty" and "full-time National guard duty." *Id.* at § 101(d)(3). The United States Code defines "active status" as "the status of a member of a reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserves." *Id.* at § 101(d)(4). "Inactive-duty training" means "duty prescribed . . . under section 206 of title 37 or any other provision of law; and . . . special additional duties authorized for Reserves . . . and performed by them on a voluntary basis in connection with [specified] activities of the units to which they are assigned." *Id.* at § 101(d)(7)(A)–(B). That definition also "includes those duties when performed by Reserves in their status as members of the National Guard." *Id.*

2. *Duty Status under Title 32 of the United States Code*

Title 32, which houses federal statutes governing the National Guard, also provides definitions related to members' "duty status." 32 U.S.C.A. § 101. "Active duty" is defined as "full-time duty in the active military service of the United States." *Id.* at § 101(12). Under Title 32, "active duty" also "includes such Federal duty as full-time training duty, annual training duty, and attendance, while in the active military service, at [certain] school[s] designated as []service school[s]." *Id.* "Active duty," for Title 32 purposes, "does not include full-time National Guard duty." *Id.*

Title 32 of the U.S. Code goes on to define "[f]ull-time National Guard duty." *Id.* at § 101(19). That term "means training or other duty, other than inactive duty, performed by a

member of the Army National Guard . . . or the Air National Guard . . . in the member's capacity as a member of the National Guard of a State or territory[.]" *Id.* The member's duty must take place "under section 316, 502, 503, 504, or 505 of this title" and the member must be "entitled to pay from the United States" as a result of that duty to fall within the definition. *Id.*

C. *Relevant Iowa Definitions of Duty Status*

Though not mentioned in the Petition or cited in the income tax provisions of the Code and rules, chapter 29A of the Iowa Code provides further context with respect to the duty status of members of the National Guard. *See* Iowa Code ch. 29A (titled "Military Code" and housing state-level provisions governing the Iowa Army and Air National Guards and certain rights and obligations of their members). Of particular relevance to this Petition, section 29A.1 provides its own definitions of "[f]ederal active duty" and "[n]ational guard duty." Iowa Code § 29A.1(3), (8). In pertinent part, "[f]ederal active duty" is defined as "full-time duty in the active military service of the United States authorized and performed under the provisions of Tit. 10 of the United States Code[.]" *Id.* at § 29A.1(3). "National guard duty," in contrast, "means training or other duty authorized and performed under the provisions of 32 U.S.C. including but not limited to 32 U.S.C. § 316, 32 U.S.C. § 502 – 505, and 32 U.S.C. § 709 as part of the national guard and paid for with federal funds." *Id.* at § 29A.1(8). "National guard duty," further, "includes but is not limited to full-time national guard duty and inactive duty training and annual training." *Id.*

V. ANALYSIS AND CONCLUSIONS

A. *Petitioner's Arguments*

As described above, Petitioners are members of the Iowa National Guard who have been called to serve under various authorities and who would like to know whether the Iowa income tax exclusion housed in Iowa Code section 422.7(42A) and interpreted in Department rule 701—40.76 applies to certain income received as a result of that service. Petition at 1.

Specifically, Petitioners seek a determination with regard to "all military pay received from the federal government when 1) they are ordered to Title 32 active duty for operational support . . ., 2) receive Title 32 drill pay, and 3) receive Title 32 annual training pay." *Id.* Petitioners assert that the income exclusion in Iowa Code section 422.7(42A) should be understood to permit "members of the Iowa National Guard [to] deduct from their Iowa state taxes *all military pay received from the federal government* when they are ordered to temporary duty in an active status . . . , *regardless of the federal authority under which the orders are issued.*" *Id.* at 6 (emphasis added).

In essence, Petitioners challenge the Department's interpretation of section 422.7(42A) through its rule and argue that certain maxims of statutory interpretation support their expanded understanding of the statute. Petition at 3–6. Petitioners rely primarily on the language in Iowa Code section 422.7(42)—a separate statutory provision—to support their position. *Id.* That provision, like section 422.7(42A), also provides an exclusion for certain taxpayers serving in the National Guard, in the military reserve, or in the armed forces. Iowa Code § 422.7(42). Specifically, that provision permits a taxpayer to "[s]ubtract, to the extent included, *military student loan repayments* received by the taxpayer serving on *active duty in the national guard* or armed forces military reserve *or* on *active duty status in the armed forces*." *Id.* (emphasis added). Unlike section 422.7(42A), section 422.7(42) makes a distinction between "active duty" in the National Guard and "active duty status" in the armed forces. *Compare* Iowa Code § 422.7(42), *with* Iowa Code § 422.7(42A) (providing an income exclusion for certain pay received but only referencing "*active duty status* in the armed forces, the armed forces military reserve, or the national guard" (emphasis added)).[1]

[1] The Department has adopted a rule—not at issue here— interpreting section 422.7(42). Iowa Admin. Code r. 701—40.63. The rule states: "[i]ndividuals serving on active duty in the national guard, armed forces military

The distinction between "active duty" and "active duty status" in section 422.7(42), Petitioners contend, is material and, as a result, the two phrases must have different meanings. Petition at 3–4. According to Petitioners, "active duty status" should be understood as encompassing "active status" under section 101 of Title 10 of the United States Code. *Id.* That expanded understanding of the language of section 422.7(42) should then, for reasons of statutory consistency, also apply to section 422.7(42A). *Id.* Ultimately, if Petitioners' expanded understanding of "active duty status" is applicable to section 422.7(42A), then the Department's rule is in error because its more circumscribed definition of "active duty" is inconsistent with the statute it purports to interpret. *Id.* Petitioners also assert that their broader reading of the phrase is consistent with the statute's plain language and is supported by policy considerations. *Id.* at 4–6.

B. *"Active Duty Status" Is Ambiguous*

As noted above, the first issue that must be analyzed is whether the statutory language at issue—the phrase "active duty status" in Iowa Code section 422.7(42A)—is ambiguous. *See Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014) (citing *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011)). "If the statute is unambiguous," the statute's "express language" is controlling. *Id.* Where a statute is ambiguous, the analysis continues in an effort to discern "the legislature's intent in promulgating the statute." *Id.*

Ambiguity exists where "reasonable minds could disagree as to [a statute's] meaning." *Colwell v. Iowa Dep't of Human Servs.*, 923 N.W.2d 225, 232 (Iowa 2019) (citing *State v. Spencer*, 737 N.W.2d 124, 129 (Iowa 2007)). Further, "[a]mbiguity may arise from either the meaning of particular words or the general scope and meaning of a statute." *Id.* In this instance, "active duty status" in Iowa Code section 422.7(42A) is ambiguous. The term "active duty

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reserve or the armed forces of the United States may subtract, to the extent included in federal adjusted gross income, income from military student loan repayments made on or after January 1, 2003." *Id.*

status" is not defined in chapter 422. *See* Iowa Code ch. 422. Additionally, while there are a number of definitions that shed light on what the phrase *might* mean, *see* 10 U.S.C.A. § 101(d); 32 U.S.C.A. §§ 101(12), (19); Iowa Code §§ 29A.1(3), (8), (10), (12), nothing in the provision at issue indicates which of these definitions, if any, the Legislature had in mind when it adopted Iowa Code section 422.7(42A). Unlike many other provisions in Iowa Code section 422.7, which expressly incorporate and cross-reference definitions from other state and federal statutes, the legislature did not expressly couple the definition of "active duty status" in section 422.7(42A) to any of these statutes. *Compare* Iowa Code § 422.7(42A), *with* Iowa Code §§ 422.7(32)(c) (cross-referencing various Iowa and federal statutes).

C. *Principles of Statutory Construction Support the Department's Interpretation of Section 422.7(42A) through Its Administrative Rule*

When attempting to interpret an ambiguous statute, the guiding principle is to give effect to the legislature's intent in enacting the statute. *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014) (citing *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011)). A number of interpretive conventions, discussed below, help direct the analysis and, ultimately, support the Department's interpretation, in rule 701—40.76, that the income exclusion in section 422.7(42A) is limited to members of the National Guard who are serving in an active duty status as defined in Title 10 of the United States Code.

1. *The Language and Structure of Section 422.7*

As noted above, Petitioners rely mainly on the contention that the Legislature, when it enacted Code section 422.7(42), must have intended for the phrases "active duty" and "active duty status" to have separate meanings. Petition at 3. As a result, the phrase "active duty

status"—which is used alone in section 422.7(42A)—must carry the same meaning as Petitioners assert it does in section 422.7(42). *Id.* at 3–4.

To support their position, Petitioners cite the Iowa Supreme Court's observation that, "[w]hen the same term appears multiple times in the same statute, it should have the same meaning each time." *State v. Paye*, 865 N.W.2d 1, 7 (Iowa 2015). In that case, the court was tasked with determining the meaning of "public place" as used in Iowa Code section 123.46—"Iowa's public intoxication statute." *State v. Paye*, 865 N.W.2d 1, 2 (Iowa 2015). In *Paye*, the court noted that:

> There are five sentences in [the statute]. The fourth sentence is at issue: "A person shall not be intoxicated in a public place." The second sentence also uses the phrase "public place:" "A person shall not use or consume alcoholic liquor in any public place except premises covered by a liquor control license."

State v. Paye, 865 N.W.2d 1, 7 (Iowa 2015) (internal citations omitted). Ultimately, in *Paye*, the court concluded that the phrase "public place," as used in the statute under consideration, did not include the front steps of a private individual's single-family home. *State v. Paye*, 865 N.W.2d 1, 8 (Iowa 2015).

There is an understandable appeal to Petitioners' argument. Subsections (42) and (42A) use similar, though not identical, language. Iowa Code § 422.7(42), (42A). They are both related to income exclusions for certain National Guard members. *Id.* And, because they are both Iowa income tax adjustments, to use the language of *Paye* and the Petition, they are both housed in "same statute." *Id*; Petition at 3–4. The court's approach to statutory interpretation in *Paye*, however, is more nuanced than the cited passage would at first make it seem.

First, the court notes in *Paye* that, when engaging in statutory construction, it "is axiomatic" that the statute being interpreted is "consider[ed] . . . in its entirety." *State v. Paye*, 865 N.W.2d 1, 7 (Iowa 2015) (citing *State v. Hawk*, 616 N.W.2d 527, 529 (Iowa 2000)). Indeed,

when interpreting tax statutes, specifically, the Iowa Supreme Court has held that a statute must be "read as a whole" and it must be given "a sensible and logical construction." *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014) (citing *Hamilton v. City of Urbandale*, 291 N.W.2d 15, 17 (Iowa 1980)). When section 422.7 is analyzed as a whole, a clearer picture of the relationship between subsections (42) and (42A), and other relevant provisions as well, becomes apparent. *See* Iowa Code § 422.7. As described above, section 422.7 provides that "[t]he term 'net income' means adjusted gross income before the net operating loss deduction as properly computed for federal income tax purposes under the Internal Revenue Code" with permitted Iowa adjustments. *Id.* The section then lists a number of Iowa adjustments. Iowa Code § 422.7(1)–(62). Section 422.7 is, effectively, a repository for all of the Iowa adjustments to federal adjusted gross income as determined before taking the federal net operating loss deduction. *Id.* That two individual subsections are housed in section 422.7, even when they deal with thematically similar adjustments, does not necessitate identical Department interpretation of isolated words or phrases through rule. In this case, the legislative history of section 422.7(42A), which is discussed at length below, suggests that, despite superficial similarities between subsections (42A) and (42), the Department's interpretation of section 422.7(42A) is more appropriately analyzed with reference to sections 422.7(24), (25), and (40). *See* discussion *infra* Part V.C.3.

At a more granular level, Petitioners reliance on *Paye* is inapposite. In *Paye*, the court was tasked with evaluating a term used multiple times in a single subsection. *State v. Paye*, 865 N.W.2d 1, 7 (Iowa 2015) (noting that the five-sentence statute being analyzed used the term "public place" twice—once in the second sentence and once in the fourth sentence); *see also* Iowa Code § 123.46(2) (West 2013). The subsection at issue here uses a single term a single

time. Iowa Code § 422.7(42A) ("Subtract, to the extent included, all pay received by the taxpayer from the federal government for military service performed while on *active duty status* in the armed forces, the armed forces military reserve, or the national guard." (emphasis added)). Petitioners effectively argue for a broader analysis than that used in *Paye* because they assert that the Department should have, when crafting its rule interpreting Code section 422.7(42A), evaluated the language of a different provision of the Iowa Code—section 422.7(42).

2. *Special Rules Applicable to Tax Statutes*

Additionally, the Department's interpretation of section 422.7(42A) through its rule is consistent with the special rules of statutory interpretation that are applicable when a tax statute is at issue. As described above, when the statute being interpreted 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). In contrast, when the statute provides an exemption from tax, as the statute does here, "*the exemption* is construed *strictly against the taxpayer* and liberally in favor of the taxing body." *Iowa Auto Dealers Ass'n v. Iowa Dep't of Revenue*, 301 N.W.2d 760, 761 (Iowa 1981) (emphasis added). Thus, when an ambiguous statutory provision is susceptible to various interpretations, the ambiguity must be "resolved against [allowing the] exemption." *Iowa Auto Dealers Ass'n v. Iowa Dep't of Revenue*, 301 N.W.2d 760, 762–63 (Iowa 1981) (citing *Iowa Methodist Hosp. v. Bd. of Review*, 252 N.W.2d 390, 391 (Iowa 1977)).

In this case, the ambiguous provision at issue is capable of differing interpretations. As noted, "active duty status" is not defined in chapter 422. *See* Iowa Code ch. 422. And, while there are a number of possible definitions of that phrase that could have been adopted by the Legislature, none was. *Id. See also* 10 U.S.C.A. § 101(d); 32 U.S.C.A. §§ 101(12), (19); Iowa Code §§ 29A.1(3), (8), (10), (12).

Petitioners contend that section 422.7(42A) should be understood to exclude all pay received by National Guard members for services performed under section 502 of Title 32—pay that is currently subject to tax. Petition at 2–6. They explain that the word "status," as used in Code section 422.7(42) must be read broadly to "encompass the term 'active status' as used in 10 U.S.C. § 101(d)(4)" and that broad interpretation must also apply to Code section 422.7(42A). Petition at 4. The language section 422.7(42A), however, is not as broad as Petitioners contend.

As noted, section 101(d) of Title 10 provides definitions of multiple duty statuses. 10 U.S.C.A. § 101(d). As used in section 422.7(42A), the term "active duty" modifies "status" and tells us the particular type of status, out of the collection of duty statuses, for which the exclusion is available. Iowa Code § 422.7(42A). This understanding is reflected in the Department's determination, through rule, that "active duty status" includes "active duty members of the regular armed forces" and members of the National Guard and reservists who are in an "active duty status as defined in Title 10 of the United States Code." Iowa Admin. Code r. 701—40.76(1). The Department's rule specifically excludes from its interpretation of "active duty status" reservists and National Guard members who are not in an "active duty status as defined in Title 10 of the United States Code," full-time National Guard members who are serving pursuant to Title 32 of the United States Code, and National Guard members "who do not receive pay from the federal government." Iowa Admin. Code r. 701—40.76(2).

Here the statute is susceptible to more than one interpretation. Because the statute provides taxpayers with an exemption, however, the narrower interpretation adopted by the Department outweighs the broader interpretation proffered by Petitioners. *See Iowa Auto Dealers Ass'n v. Iowa Dep't of Revenue*, 301 N.W.2d 760, 763 (Iowa 1981) ("Because the . . . provision is an exemption, it is strictly construed against the petitioners.").

3. *The Statute's Legislative History*

Further, the Department's interpretive rule is supported by section 422.7(42A)'s legislative history. As the Code makes clear, the legislative history of a statute is a relevant consideration when attempting to determine the Legislature's intent. Iowa Code § 4.6(3). The history of Iowa Code section 422.7(42A) is enlightening in this case. Iowa law has long included special income tax provisions related to a taxpayer's military service. *See, e.g.*, Iowa Code § 422.5 (1971) ("A resident of Iowa who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, section 101, for more than six continuous months, shall not include any income received for such service performed on or after January 1, 1969, in computing the tax imposed by this section."). By 1993, the Legislature had adopted a specific income exclusion for "active duty pay" received by National Guard members who had served in the Persian Gulf. Iowa Code § 422.7(24) (1993). The Legislature continued, until 2011, to adopt operation- or conflict-specific income exclusion provisions for National Guard members, some of which remain in the Iowa Code. *See* Iowa Code §§ 422.7(24), (25), (40) (related, respectively, to service in the Persian Gulf conflict, peacekeeping in Bosnia-Herzegovina, and service in certain named operations related to the War on Terror, in Iraq, and in Afghanistan). In addition, the Department adopted rules interpreting these provisions. *See* Iowa Admin. Code rr. 701—40.5, 40.40, 40.51, 40.61.

In 2011, however, the Legislature passed House File 652. 2011 Iowa Acts, 84th G.A., ch. 105, §§ 1–2. Section 1 of that Act added Operation New Dawn to the list of operations covered by Iowa Code section 422.7(40) and, of most interest in this instance, section 2 of the Act added the entirety of subsection (42A) to the Code. *Id.* In its fiscal note, the Legislative Services Agency explained that at the time the law was adopted, "Iowa . . . exempt[ed] active duty pay

from the State income tax in specified combat-related instances." Robinson, Fiscal Note: H.F. 652 – Military Active Duty Income Tax Exemption (LSB 1110HV.1), Legislative Services Agency, Iowa Legislature (April 20, 2011), *available at* https://www.legis.iowa.gov/docs/publications/FN/964932.pdf. Section 2 of the Act, the fiscal note articulated, exempted "all active duty pay . . . *without regard to the list of operations* contained in the Iowa Code." *Id.* (emphasis added).

Following the adoption of House File 652, the Department initiated the process of promulgating interpretive rules. 5 Iowa Admin. Bulletin 358 (Sept. 7, 2011) (codified at Iowa Admin. Code r. 701—40.76). The initial filing explained that the new rule "provides for an exclusion from Iowa individual income tax for all pay received from the federal government for military service performed while on active duty status in the armed forces, armed forces military reserve, or the national guard for tax years beginning on or after January 1, 2011." *Id.* In addition to the new rule, the filing also amended some of the older rules related to military pay. *Id.* at 359–360 (codified at Iowa Admin. Code rr. 701—40.5, 40.61). The adopted rule became effective on December 7, 2011. 9 Iowa Admin. Bulletin 646 (Nov. 2, 2011).

These contemporaneous writings indicate that, at the time the Act was passed and section 422.7(42A) was added to the Code, it was seen as a successor statute to the prior military pay exclusions. Rather than continuing to exempt active duty status pay received by National Guard members in a piecemeal way, the new statute sought to exempt active duty pay received by members irrespective of the specific operation or conflict in which they served. By adding section 422.7(42A) to the Code, the Legislature did not intend to provide an income exemption for pay received while members are in a status other than "active duty" as evidenced by the

consistent use of that term in Iowa Code subsections 422.7(24), (25), (40), and (42A) and in the related Department rules.

4. *The Department's Interpretation of the Statute Is Longstanding*

Finally, the Department's interpretation of what constitutes "active duty status" for purposes of Iowa tax law is longstanding. As noted above, the Department has interpreted statutory military pay exemptions since at least 1975. *See* Iowa Admin. Code r. 730—40.5 (1975). The Department's current interpretation of "active duty status" has been in force for nearly a decade. Iowa Admin. Code r. 701—40.76. Neither Iowa Code section 422.7(42A), nor Iowa Administrative Code rule 701—40.76 have been modified since their adoption in 2011. *Compare* Iowa Code § 422.7(42A) (2021), *with* Iowa Code § 422.7(42A) (2013); *see also* Iowa Admin. Code r. 701—40.76.

"The longevity of the rule, unchallenged by the legislature . . . also supports [the] conclusion" that the Department's interpretation of section 422.7(42A) is valid. *Christensen v. Iowa Dep't of Revenue*, 944 N.W.2d 895, 909 (Iowa 2019). When "the [L]egislature has not amended" a statute after the promulgation of an administrative rule interpreting it, such legislative "inaction [is viewed] as tacit approval" of the Department's interpretation. *City of Sioux City v. Iowa Dep't of Revenue & Fin.*, 666 N.W.2d 587, 592 (Iowa 2003). As in *City of Sioux City*, where the rule at issue had been in effect for eleven years, the Department's interpretive rule's decade of existence in this case "strongly cautions against finding the rule invalid." *Id.*

D. *The Department's Interpretation in Iowa Administrative Code Rule 701—40.76 Is Reasonable*

As noted above, the Department's authority to interpret chapter 422 through administrative rule is "expressly comprehensive." *City of Sioux City v. Iowa Dept. of Revenue & Fin.*, 666 N.W.2d 587, 590 (Iowa 2003). That interpretive authority extends to section 422.7. *Id.*; *see also Lance v. Iowa State Bd. of Tax Review*, 871 N.W.2d 703 (Table) (Iowa Ct. App. 2015). Where an agency has been vested with authority to interpret a provision of law, as the Department has been here, an agency's interpretation will not be set aside unless it is "irrational, illogical, or wholly unjustifiable[.]" Iowa Code § 17A.19(10)(l); *see also Ranniger v. Iowa Dep't of Revenue & Fin.*, 746 N.W.2d 267, 268 (Iowa 2008)(holding that the Department's interpretation of Iowa Code section 422.7(21) "was not irrational, illogical, or wholly unjustifiable" and noting that that standard applied "[b]ecause the Department . . . has clearly been vested with the discretion to interpret chapter 422").

As described above, the Department's interpretation of Iowa Code section 422.7(42A) as articulated in Iowa Administrative Code rule 701—40.76 is supported by a number of interpretive conventions. The structure of 422.7, broadly, and the language used in subsection (42A), specifically, distinguish the Department's approach to statutory interpretation from the approach used by the court in *Paye*. The special rules of statutory interpretation that apply in the tax context counsel against the expanded interpretation advanced by Petitioners. The unique legislative history of section 422.7(42A) shows a clear link between other subsections of 422.7 that have consistently linked the income exclusion to a members duty stats and indicates that the addition of subsection (42A) was intended to remove the operation- or conflict-specific language that had applied before its introduction. Finally, in the decade that has passed since subsection (42A) was enacted and the Department promulgated its interpretive rule, the Legislature has

chosen not to modify the statute—a sign that the Legislature has acquiesced to the Department's interpretation.

VI. CONCLUSION

For these reasons articulated, the Department's interpretation of Iowa Code section 422.7(42A) is not "irrational, illogical, or wholly unjustifiable", Iowa Code § 17A.19(10)(l), and, as a result, is not in error. Thus, income received from the federal government by part-time members of the Iowa National Guard called to temporary service pursuant to section 502 of Title 32 of the United States Code or who participate in National Guard drills and annual training is not eligible for the exclusion from Iowa net income described in section 422.7(42A) because they are not "active duty personnel" as defined in Iowa Administrative Code rule 701—40.76. Iowa Code § 422.7(42A); Iowa Admin. Code r. 701—40.76(1), (2)"b".

ORDER

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

Done at Des Moines, Iowa on this 17 day of December, 2021.

IOWA DEPARTMENT OF REVENUE

BY _____

Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 17th day of December, 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 persons:

David Faith
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Hollie Welch, Executive Secretary
Iowa Department of Revenue