

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

IN THE MATTER OF

MARION COUNTY FAIR ASSOCIATION
D/B/A KNOXVILLE RACEWAY
1000 N LINCOLN ST.,
KNOXVILLE, IA 50138

DIRECTOR'S ORDER TO
PETITION FOR WAIVER
FROM A DISCRETIONARY RULE

DOCKET NUMBER: 2021-PRW-001

Pursuant to a Petition for Waiver filed with the Iowa Department of Revenue (hereinafter the "Department") by the MARION COUNTY FAIR ASSOCIATION D/B/A KNOXVILLE RACEWAY (hereinafter referred to as "Petitioner"), and in accordance with Iowa Code section 17A.9A, and Iowa Administrative Code rule 701—7.28, the Director issues the following order.

I. FACTS

All facts presented below are based on the Petition and the Department's records regarding the rebate program at issue.

The Petitioner is an automobile racetrack facility located at the Marion County Fairgrounds in Knoxville, Iowa. The Petitioner allows retailers to make taxable retail sales within the facility. In order to reinvest in and make improvements to the facility, Iowa law allows the Petitioner to apply for a rebate of the sales tax collected by retailers, provided it meets certain reporting requirements, including reporting the Petitioner's completed project costs and all sales tax collected by retailers at the raceway.

The rebate was enacted by the Iowa legislature in 2014. See 2014 Iowa Acts, House File 2464. The Department denied the majority of rebate claims submitted by the Petitioner from 2015 to 2017. See Pet. For Waiver From a Discretionary Rule at Retailer Sales Reports, No. 2021-PRW-001 (Sept. 20, 2021). The Petitioner and the Department met in 2017 to discuss these denials, at which time the Petitioner stated its belief that the statute did not require it to engage in any projects to be eligible for a rebate. The Department disagreed with the Petitioner's reading of the statute. In addition, the Petitioner's initial claims did not identify to the Department all retailers at the raceway who made retail sales, as required by the 2014 legislation. To resolve these years of denied claims, the Petitioner pursued a legislative change during the 2018 legislative session.

2018 Iowa Acts, Senate File 2407 was enacted on May 16, 2018. The statutory change allowed the Petitioner to claim a rebate for sales made by retailers between January 1, 2015 and May 16, 2018 without substantiating corresponding project costs. Senate File 2407 also codified report deadlines, changed the "project cost" definition, and lowered the program cap to \$1.8 million. The Department published forms and implemented administrative rules to administer the rebate, which became effective in December 2018. The rules specifically provide a deadline for the Petitioner to resubmit claims for sales made by retailers between January 1, 2015 and May 16, 2018 which had already been denied by the Department. See Iowa Admin. Code r. 701—235.3(5)(a). The Petitioner failed to timely resubmit its report of sales that occurred between January 2015 and May 2018. Petition at 3–4. Additionally, the Petitioner failed to timely report its sales from March 2019 through June 2020. See *id.*

The Petitioner reports miscommunication occurred between it and the Department during the time period the Petitioner failed to timely submit its reports. *Id.* at 4. Specifically, the Petitioner asserts Department staff members indicated the Petitioner was only required to supply reports of sales by retailers and did not need to include the Petitioner's own sales tax information in those reports. *Id.* The Petitioner notes its concern at the lack of ability to verify receipt of reports submitted and that the lack of communication has led to difficulty in the Petitioner complying with the sales tax rebate law. *Id.* The Petitioner acknowledges that it did not report its own retail sales on the Raceway Retailer Sales Report (RRSR) form from Quarter 1-2019 through Quarter 2-2020. *Id.* at 5. However, beginning in Quarter 3-2020, the Petitioner has submitted its sales tax numbers along with the other retailer sales on the RRSR form and has received some rebate funding from the Department. *Id.*

On September 20, 2021, the Department received a petition from the Petitioner seeking a waiver of subrules 4 and 5 of Iowa Administrative Code rule 701—235.3, the Department's rule providing the reporting requirements in order to obtain the rebate. The petition states the requirements, as set forth in those subrules, as well as the process of implementing the rebate administrative rules in general, caused problems that led to its waiver petition. Specifically, the Petitioner states the "rules of engagement and the staff [of the Department] changed several times which led to all of the problems realized and ultimately the submission for this Waiver petition." Petition at Cover Page. The Petitioner asks that the timelines as set forth in Iowa Administrative Code rules 701—235.3(4) and 701—235.3(5) be set aside and all sales tax revenue reported to the Department by the Petitioner be recognized and given credit. *Id.* In addition, the Petitioner asks that the project costs reported be paid. *Id.*

II. ANALYSIS AND CONCLUSIONS

A. **Waiver of Department Rules.**

The Iowa Code section 17A.9A allows any person to “petition an agency for a waiver from the requirements of a rule.” Iowa Code § 17A.9A(1). Iowa Code section 17A.9A does not allow the granting of a waiver of a rule unless the “agency has jurisdiction over the rule and the waiver is consistent with any applicable statutes.” *Id.* Iowa Code section 17A.9A does not allow an agency to waive any requirement that has been created or imposed by statute. *Id.* Iowa Administrative Code rule 701—7.28 sets the following requirements for waiver of Department rules:

7.28(3) *Applicability of this rule.*

a. This rule applies only to waiver of those rules that are within the exclusive rule-making authority of the department. This rule shall not apply to interpretive rules that merely interpret or construe the meaning of a statute, or other provision of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its interpretation or construction. Thus, this waiver rule applies to discretionary rules and discretionary provisions in rules, and not to interpretive rules.

b. The application of this rule is strictly limited to petitions for waiver filed outside of a contested case proceeding. Petitions for waiver from a discretionary rule or discretionary provisions in a rule filed after the commencement of a contested case as provided in rule 701—7.14(17A) will be treated as an issue of the contested case to be determined by the presiding officer of the contested case.

7.28(4) *Authority to grant a waiver or variance.* The director may not issue a waiver under this rule unless:

a. The legislature has delegated authority sufficient to justify the action;
and

b. The waiver is consistent with statutes and other provisions of law. No waiver from any mandatory requirement imposed by statute may be granted under this rule.

7.28(5) *Criteria for waiver or variance.* In response to a petition, the director may, in the director's sole discretion, issue an order granting a waiver from a discretionary rule or a discretionary provision in a rule adopted by the department, in whole or in part, as applied to the

circumstances of a specified person, if the director finds that the waiver is consistent with subrules 7.28(3) and 7.28(4) and if all of the following criteria are also met:

- a. The waiver would not prejudice the substantial legal rights of any person;
- b. The rule or provisions of the rule are not specifically mandated by statute or another provision of law;
- c. The application of the rule or rule provision would result in an undue hardship or injustice to the petitioner; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule or rule provision for which the waiver or variance is requested.

Iowa Admin. Code r. 701—7.28.

The burden of persuasion is placed on the person petitioning the agency for the waiver and therefore the Petitioner must meet the burden of persuasion. Iowa Code § 17A.9A(3).

B. Iowa Administrative Code rule 701—235.3(4), 235.3(5)

After the passage of Senate File 2407, the Department filed administrative rules on September 26, 2018, which became effective on December 26, 2018. Iowa Admin. Code r. 701—235.3. The rules the Petitioner has petitioned the Department to waive are:

701—235.3(4) *Raceway facility retailer sales report and filing requirements.*

The owner or operator must submit a retailer sales report to the department on the authorized form. The form will be made available on the department's website. A properly completed form shall contain the following.

- a. *Who may file the claim.* The claim must be filed by the owner or operator. Claims filed under the name of an affiliated entity will be denied.
- b. *Information regarding retailers making sales at the raceway facility.* The following information shall be provided:
 - 1. Business name,
 - 2. Responsible party,
 - 3. Federal employer identification number (FEIN), and
 - 4. Sales tax permit number.

- c. *Sales at the raceway facility.* Sales occurring at the raceway facility and sales tax collected on those sales must be reported. Only sales by retailers meeting the requirements of paragraph 235.3(4)“b” and Iowa Code section 423.4(11) as amended by 2018 Iowa Acts, Senate File 2407, are eligible for rebate. Only sales occurring on or after January 1, 2015, and before January 1, 2025, are eligible for the rebate.
- d. *Additional information.* The department may request any other additional information, from any person, necessary to verify the rebate.
- e. *Sworn statement.* The department may require a sworn statement by the retailer and the owner or operator regarding the truthfulness and eligibility of the claim.
- f. *Filing frequency.* The forms are due quarterly, on or before the last day of the month following the quarter in which the sales at the raceway facility took place.

701—235.3(5) Raceway facility retailer sales report for sales occurring on or after January 1, 2015, and before May 16, 2018.

- a. *Sales report required.* A comprehensive raceway facility retailer sales report comprising sales occurring at the raceway facility on or after January 1, 2015, and before May 16, 2018, must be filed by the owner or operator by March 30, 2019.
- b. *Report requirements.* The report must include a list of retailers that meet the requirements of subrule 235.3(2), all information described in subrule 235.3(4), and any other information required by the department to calculate the eligible sales that occurred at the raceway facility during that time period. The report shall be in the same or substantially similar format as the quarterly raceway facility retailer sales report required by subrule 235.3(4).

Iowa Admin. Code r. 701—235.3(4)–(5).

C. Determination of Waiver.

The administrative rules are not discretionary and are interpretive of Iowa Code.

The Petitioner asks the Director to waive the provisions contained in Iowa Administrative Code rules 701—235.3(4)–(5) which sets out the raceway facility retail sales reports and filing requirements, as well as the cumulative report filing requirements. The Director finds that the report and filing requirements outlined in Iowa Administrative Code rules 701—235.3(4)–(5) are not discretionary and are interpretive

of the statute because these requirements are mandated by Iowa Code section 423.4(11). An owner of the raceway facility can only obtain a rebate if the owner submits "forms furnished by the department within the time period provided in" statute. Iowa Code § 423.4(11)(c)(1). As stated in Iowa Code section 423.4(11)(c)(2), the owner shall "provide information as deemed necessary by the department, including but not limited to information to substantiate the project costs incurred and paid by the owner or operator." *Id.* § 423.4(11)(c)(2). It is necessary for the Department to receive information from the Petitioner regarding the sales tax imposed and collected by retailers upon sales of tangible personal property or services sold at the raceway in order for the Department to calculate what funds are available to the Petitioner. *See id.* § 423.4(11)(b). Additionally, information regarding the cost of projects to the raceway are necessary to determine what funds are available to be paid to the Petitioner. *See id.* § 423.4(11)(c)(1).

These costs must be reported to the Department so that it can accurately administer the rebate program. Therefore, the Department created necessary reporting forms for the Petitioner to use in order to obtain the required information. The two forms that were created by the Department, specifically for the Petitioner's use in this rebate program, are 1) the Raceway Retailer Sales Report (RRSR), and 2) the Project Cost Report and Rebate.

i. The Raceway Retailer Sales Report (RRSR)

Similar to other sales tax rebate programs, the Iowa Code requires the Department to calculate and transfer, each quarter, the amount of sales tax receipts that are properly allocated to the raceway facility rebate fund. *See id.* § 423.2A(2)(g). The Raceway Retailer Sales Report states clearly that "Forms are due quarterly, on or

before the last day of the month following the quarter in which the sales at the raceway took place.” Petition at Raceway Retailer Sales Report. The instructions that are included on this form state, “Any listed vendors must have been listed on the Raceway Facility Retailer Identification form previously submitted to the Department.” *Id.* The information identified in the form’s instructions is necessary for the Department to verify the validity of all retailers that are being reported and to “assist the department in determining the amount of the rebate” and “verify such identity and ensure that all proper permits have been issued.” Iowa Code § 423.4(11)(d). This rebate program is intended to provide Petitioner with additional funds to improve the raceway facilities, however, the Department must verify the sales generating the rebate funds are accurate, occurring by verified retailers, and all sales are occurring at the raceway itself. See *id.* The form includes columns available to provide information such as, the retailer’s name, FEIN, the retailer’s permit number, the reported sales at the raceway, the amount of sales/use tax to be refunded, and the local option tax not eligible for rebate. Petition at Raceway Retailer Sales Report. This is information the Department has deemed necessary to ensure compliance by the raceway retailers and the Petitioner, as well as to administer the rebate program according to the statute. See Iowa Code § 423.4(11).

ii. The Project Cost Report and Rebate

The second form that is required to be provided to the Department by the Petitioner is the Project Cost Report and Rebate form. The form states, “This form and supporting documentation must be provided to the Iowa Department of Revenue within 90 days of the date the project cost was paid.” Petition at Project Cost Report and Rebate. The instructions clearly state the statutorily required deadline for the project

costs report in order to be considered by the Department. See *id.*; Iowa Code § 423.4(11)(c)(1). The form includes columns to report the retailer or supplier's name, the total cost of the project (including tax), an explanation of how this item meets the definition of project cost, the date the cost was incurred, and the date the cost of the project was paid. See Petition at Project Cost Report and Rebate.

These required forms are a direct result of the information that the statute requires the Petitioner to report to the Department. The forms, as described above, flow directly from the statute. See Iowa Code § 423.4(11). The statute outlines how the Petitioner is only able to obtain the rebate for the project costs if the Petitioner submits "forms furnished by the department within the time period provided". *Id.* § 423.4(11)(c)(1) ("A rebate claim calculated according to an amount of project costs shall be considered timely only if the form upon which the rebate is requested is filed with the department within ninety days of the date the project cost is paid by the owner or operator."). Additionally, the Petitioner is statutorily required to assist the Department in identifying the valid retailers that are making sales at the raceway facility. *Id.* § 423.4(11)(c)(5). Without this information supplied by the Petitioner and meeting the conditions outlined in the statute, the Department is not able to provide the Petitioner with the rebate. See *id.* Therefore, the rules written by the Department to create the forms described above, and the applicable timelines, are merely interpreting or construing the meaning of the statute, and therefore Iowa Administrative Code rule 701—7.28 does not apply to this petition. See Iowa Admin. Code r. 701—7.28(3).

D. Conclusion

The Director finds that Iowa Administrative Code rules 701—235.3(4)–(5) are not discretionary and are interpretative of Iowa law, therefore the Director is unable to

use his discretion to waive Iowa Administrative Code rule 701—235.3(4)–(5). The Department reminds the Petitioner this Order does not prevent the Petitioner from continuing to utilize the rebate until its expiration or until the funds are fully used, given all future forms are completed and timely filed. See Iowa Code § 423.4(11); Iowa Admin. Code r. 701—235.3.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the Petition for Waiver is DENIED.

Issued at Des Moines, Iowa on this 14 day of FEBRUARY, 2022.

IOWA DEPARTMENT OF REVENUE
BY 
Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 14th day of February, 2022, I caused a true and correct copy of the Director's Order to Petition for Waiver from a Discretionary Rule to be forwarded by U.S. Mail or delivered to the following persons:

Marion County Fair Association
d/b/a Knoxville Raceway
Attn: Gary Schumacher
1000 N Lincoln St.,
Knoxville, IA 50138



Hollie Welch
Executive Secretary
Iowa Department of Revenue