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

IN THE MATTER OF CRESCENT ELECTRIC SUPPLY COMPANY P.O. BOX 500 EAST DUBUQUE, IL 61025	DIRECTOR'S ORDER TO PETITION FOR WAIVER FROM A DISCRETIONARY RULE DOCKET NUMBER: 98974

Pursuant to a Petition for Waiver filed with the Iowa Department of Revenue (hereinafter the "Department") by CRESCENT ELECTRIC SUPPLY COMPANY (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

The Petitioner is an American distributor of electrical hardware. Petitioner is headquartered in East Dubuque, Illinois, and has numerous warehouses across the country. The Petitioner requests an extension for amending its fourth quarter sales tax return from 2018, as overpayments were discovered by the Petitioner. The Petitioner states tax adjustments were made during December 2018 and were not taken on its fourth quarter sales tax filing. The Petitioner does not include the relevant Administrative Rule to be waived, but asks for the three-year limitation on time to file an amended return be waived.

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.* 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.* 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. The Petition does not conform to the requirements of Iowa Administrative Code rule 701—7.28(8).

Iowa Administrative Code rule 701—7.28(8)*"b"*(2)"2" requires a petitioner to provide "A description and citation of the specific rule or rule provisions from which a waiver is being requested." The web form that the Petitioner utilized to submit its filing describes this requirement as follows: "Include a citation to the relevant rule. (E.g. Iowa Administrative Code rule 701—8.3(2)), and description." *See* Pet. for Rule Waiver: Web Submission Copy, Docket No. 98974 (Mar. 29, 2022). In its petition, the Petitioner failed to cite a specific rule. Instead, the Petitioner provided only the following description: "Time to file an amended return for sales tax period online is 3 years - partial waiver is requested to file the return by April 30, 2022." *Id.* Therefore, the petition is deficient and must be denied. The Director cannot determine whether a rule can be waived without knowing with specificity the rule for which waiver is sought.

C. The Petitioner's description of the rule appears to be a statutory requirement.

While the Petition must be denied because it does not cite to a rule, it also appears the Petitioner may be referring to a statutory requirement rather than a rule based on the description. The applicable statute in the situation Petitioner describes is Iowa Code section 423.47, which states:

> **423.47 Refunds and credits.**
> If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, such amount shall be credited against any tax due, or to become due, on the books of the department from the person who made the erroneous payment, or such amount shall be refunded to such person by the department. A claim for refund or credit that has not been filed with the department within three years after the tax payment for which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later, shall not be allowed by the director.

The Petitioner asks the Director to waive the three-year statute of limitations to amend a return for the fourth quarter 2018 sales tax return. The Petitioner states that overpayments were discovered and therefore the Petitioner would like to amend the sales tax return, resulting in a refund or credit under Iowa Code section 423.47. Iowa Code section 423.31 states sales tax returns and payments are due "on or before the last day of the month following the close of each calendar quarter..." Iowa Code § 423.31(1), (4). The Petitioner's return and tax for the fourth quarter of 2018 would therefore have been due on or before January 31, 2019. *See id.* Accordingly, the Petitioner had until January 31, 2022 to amend its fourth quarter 2018 sales tax return. *See id.* § 423.47. The Petitioner never filed an amended return, so its opportunity to do so within the statutory period has closed. *See id.*; Pet. for Rule Waiver: Web Submission Copy, Docket No. 98974 (Mar. 29, 2022).

Iowa Administrative Code rule 7.28(4)*"b"* states, "No waiver from any mandatory requirement imposed by statute may be granted under this rule." The Director is not able to waive the three-year limitation to amend a return or request a refund as this requirement is mandated by statute under Iowa Code section 423.47. The Director does not have the necessary authority to waive this three-year requirement.

D. Conclusion

The Director finds that the Petition is deficient because it did not provide a citation to a specific rule as required by Iowa Administrative Code rule 701—7.28(8)*"b"*(2)"2". To the extent Petitioner's description indicates a request to waive the three-year statute of limitations to file an amended return, that limitation is not discretionary; it is required by Iowa law. Therefore, the Director is unable to waive the deadline.

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 20 day of APRIL, 2022.

IOWA DEPARTMENT OF REVENUE

BY _____
Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 20th day of APRIL, 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:

Crescent Electric Supply Company
P.O. Box 500,
East Dubuque, IL 61025

Hollie Welch
Executive Secretary
Iowa Department of Revenue