

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

IN THE MATTER OF  ACARA SOLUTIONS, INC.  250 International Drive Williamsville, NY 14221  SALES AND USE TAX	<b>REFUSAL TO ISSUE DECLARATORY ORDER</b>  DOCKET NO. 167469
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Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by Acara Solutions, Inc. (“Petitioner”) on June 13, 2022, and in accordance with Iowa Code section 17A.9 (2022) and Iowa Administrative Code rule 701—7.24(17A) (2022), the Director issues the following order.

**I. FACTS**

The findings of fact are based on the Petition. Petitioner is a temporary employment agency that provides temporary employees to its clients. These employees fill positions in which a computer is utilized. Petitioner provides the job description of one such position. This position is a “Buyer” that includes numerous job duties, including the following:

- Procure a variety of goods and services in accordance with company policies in an MRP/ERP environment
- Review and issue purchase-orders and make necessary changes, including obtaining quotes, and negotiating costs, payment terms, and related issues
- Expedite and track required parts or processes to support production schedules
- Assist with executing engineering changes within the plant and with external suppliers
- Assist in resolving supplier related quality issues

The job description includes the following minimum qualifications:

- Bachelor's degree without industry experience OR
- Associate's degree plus 2 years' experience in a manufacturing environment OR
- High school diploma (or equivalent) plus 5 years in a manufacturing environment

The description also includes numerous preferred qualifications, most of which are previous related experience. Petitioner has not provided information about any of the other positions for which it requests a determination regarding taxable services of machine operators.

## **II. ISSUES PRESENTED**

Petitioner asks whether placing staff in temporary jobs that utilize a computer are considered machine operators and are subject to sales tax under Iowa Administrative Code rule 701—26.28<sup>1</sup> when operation of a computer is not the “main function” of the job. Petitioner also asks whether the answer to this question differs if the position extensively utilizes the computer even if computer use is not the main function of the position.

## **III. STANDARD OF REVIEW**

### **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 §

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<sup>1</sup> Wages paid to an employee to perform tasks on a computer are not subject to sales tax. The service performed is providing the services of a temporary employee to another entity.

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 Administrative Code r. 701—7.24 (2022).

For the reasons discussed below, the Director refuses to issue a declaratory order in response to the Petition.

#### IV. DISCUSSION

“An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary to a rule adopted in accordance with [Iowa Code section 17A.9(2)].” Iowa Code § 17A.9(1)(b)(1). Pursuant to this statutory authority, the Department promulgated a rule setting forth several reasons for refusing to issue a declaratory order. Iowa Administrative Code r. 701—7.24(9)“a.” The following grounds applicable to the Petition are specifically enumerated in the rule:

- (5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter;  
[and]
- (6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

*Id.*

First, the question presented would be more properly resolved in a different type of proceeding: a contested case. Petitioner provides one job description for which it requests a determination whether the position is that of a machine operator for purposes of Iowa Administrative Code rule 701—26.28. This position is that of a buyer who utilizes a computer in his or her role. Department rule 26.28 provides that the operation of computers falls within the scope of the enumerated service of machine operator, and further explains that “to be taxable as machine operation, the operation of the . . . [computer] must be the primary service that is being performed and not just incidental to the performance of the primary service being rendered.” The Petition does not, however, contain sufficient facts that would allow the Director to determine whether the buyer’s computer use is primary or incidental to the primary service rendered by the person hired as a buyer. *See id.* r. 701—7.24(9)“a”(6). In fact, given the factual nature of this inquiry, it is unlikely that the question presented by the Petition may be resolved through any

means other than contested case. The Department's informal proceedings and, if necessary, a contested case would allow both parties the opportunity to develop the factual record and obtain a decision based on a full set of facts. *See id.* r. 701—7.24(9)“a”(5).

Additionally, the questions posed by the Petition are very general in nature. Petitioner has provided information pertaining to only one of the several employment positions staffed by Petitioner, but Petitioner has not asked the Department for a decision regarding this specific position. With regard to all other employment positions staffed by Petitioner, the Petition fails to provide any facts whatsoever that the Department would need to review before making a determination on the questions raised in the Petition. *See id.* r. 701—7.24(9)“a”(6). It is impossible to make a determination as to whether a person who operates a computer in the course of his or her job is a machine operator without further information on the position. As explained above, a declaratory order petition like this is overbroad and insufficient, making it ill-suited for addressing legal questions that turn on fact-intensive inquiries where the relevant facts could be disputed by the parties.

Given the general nature of the question presented, while only a contested case could answer the question specifically as it pertains to Petitioner, part of the question presented could also be better addressed through in another proceeding: rulemaking. Currently, Iowa Administrative Code rule 701—26.28 includes computers in the definition of “machine.” The same rule further states that “. . . to be taxable as machine operation, the operation of the machine must be the primary service that is being performed and not just incidental to the performance of the primary service being rendered.” The current rule addresses the operation of a machine as a “primary service,” while Petitioner's question discusses computer use as the “main function” of the job. To the extent Petitioner's question makes the case for the adoption of a different legal

test, i.e., “main function” versus “primary service,” Petitioner’s inquiry may be resolved through rulemaking. *See id.* r. 701—7.24(9)“a”(6).

V. CONCLUSION

THEREFORE, for the foregoing reasons, the Director refuses to issue a declaratory order.

Done at Des Moines, Iowa on this 26 day of September, 2022.

IOWA DEPARTMENT OF REVENUE

By 

Kraig Paulsen, Director