

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

IN THE MATTER OF	
AMES WEST SIDE STORAGE, LLC	REFUSAL TO ISSUE DECLARATORY ORDER
1515 Florida Ave. Ames, IA 50014	DOCKET NO. 174273
SALES AND USE TAX	

Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by Ames West Side Storage, LLC (“Petitioner”) on June 30, 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 and on publicly available information on Petitioner’s website. Petitioner owns and operates a self-storage facility in Ames, Iowa. Petitioner’s website describes this facility as a “mini-storage facility.” The Petition states that Petitioner does not employ anyone to regularly staff the facility, but that Petitioner has an employee who periodically visits and performs maintenance at the facility. Customers can obtain and pay for storage units, and receive gate codes via a kiosk. Petitioner’s website describes the Petitioner’s employees activities differently than the petition. The web page states, “. . . we have real humans to answer your questions over the phone, and we’re there most of the time as well.”¹

¹ Ames West Side Storage, “About Us,” <https://ameswestsidestorage.com/about-us/> (last visited September 20, 2022).

According to the Petition, Customers may rent units that are accessible from the exterior of the building or units that are accessible from an interior hallway in the building. The facility also contains an area for the storage of boats and recreational vehicles. The facility is surrounded by a fence and has security cameras and customers provide their own locks. Petitioner's website advertises that it provides 24/7 video surveillance from numerous cameras inside and outside the facility, gated access that requires a PIN, and padlocks for sale onsite.

Petitioner states the following are terms of its standard lease:

- a. The lessee assumes full responsibility of the contents placed in the storage unit.
- b. Petitioner does not carry insurance covering the lessee's stored goods.
- c. Petitioner "is not a warehousemen engaged in the business of storing goods for hire and no bailment is created by [the] agreement."
- d. Petitioner "exercises neither care, nor custody nor control over the Occupant's stored property."

II. ISSUES PRESENTED

Petitioner presents the following issues for review:

- a. Whether Iowa imposes sales tax on the mere rental of a self-storage unit.
- b. Whether Iowa imposes sales tax on the separately stated ancillary services provided to lessees/renters of a self-storage unit.
- c. Whether Iowa imposes sales tax on the rental of a storage unit where the lessor/owner provides the lessee/renter with tangible personal property that is incidental to the rental of the self-storage unit that allows the lessee/renter to

utilize the self-storage unit, such as a lock, and where there is not a separate charge for the tangible personal property.

d. What is the basis for the Department making the distinction between a non-taxable airplane hangar rental (rental of real property) and the rental of real property to store a recreational vehicle, which the Department has determined to be taxable mini-storage?

e. Are certain portions of IAC r. 701—26.78 invalid?

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 § 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 (2022).

IV. DISCUSSION

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

“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 Admin. Code r. 701—7.24(9)“a.” The following three grounds applicable to the Petition are specifically enumerated in that rule:

- (2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order;

(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.

Much of the Petition questions the validity of the Department's administrative rules on storage of household goods and mini-storage and even administrative rules relating to products Petitioner does not sell. This includes a request to rule that the Department's long-standing administrative rules describing mini-storage are invalid. The Petitioner also asks the Department to find that an administrative rule concerning storage units sold by apartment owners is invalid. Such questions are more properly resolved through legislation, rulemaking, or contested case. *See id.* r. 701–7.24(9)“a”(5).

Turning to the first applicable basis for refusing to issue a declaratory order, the Department concludes that Petitioner has not explained how it would be aggrieved or adversely affected by the Department's refusal to rule on the taxability of airplane hangar rentals or storage lockers or units at apartment complexes provided by the lessor for the primary convenience of the tenant. *See* Pet. ¶¶ 13(d)–(e), 17–18. Similarly, Petitioner states that it does not sell what it describes as “enhanced security services” and “logistics services.” Yet, it asks the Department to rule on the taxability of both of these. Indeed, Petitioner acknowledges that it is engaged in the business of renting out self-storage units, not airplane hangars or apartments with storage lockers or units. *See id.* ¶¶ 1, 2, 19. The taxability of the transactions that Petitioner engages in in the regular course of its business is addressed by the Department's existing rules, and Petitioner's sales and use tax filings will not be affected by the Department's refusal to issue a declaratory order concerning the taxability of services the Petitioner states it does not provide. *See id.* r. 701–

7.24(9)“a”(2). There is also no indication that Petitioner has future plans to sell any of these services.²

Similarly, Petitioner requests that the Department conclude that the rental of self-storage units is non-taxable in those cases where Petitioner provides its customers with a lock allowing access to the mini-storage unit and where there is not a separate charge for the lock. *See id.* ¶¶ 13(c), 16. Under current section 423.2(6)(ax) and rule 26.78, the entire mini-storage rental charge is subject to sales or use tax, whether it includes a charge for a lock or not. Moreover, the facts recited in the Petition are unclear as to whether Petitioner factors a charge for the lock in the overall mini-storage unit rental price or whether the lock is provided for free. *See id.* r. 701—7.24(9)“a”(6). The absence of such facts precludes the Department from analyzing the question fully.

The facts presented in the Petition also “are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.” *See id.* r. 701—7.24(9)“a”(6). A declaratory order is not the proper forum to resolve unclear or disputed facts. Specifically, the Petitioner refers to itself in the Petition as providing a completely automated facility that offers self storage. It asks for the Department to order that it is not selling the taxable service of “mini-storage.” Yet, Petitioner publicly describes itself as a mini-storage facility.³ Furthermore, the Petition says Ames West Side Storage “does not employ anyone to staff the facility.” Footnote one of the Petition then undermines that statement, by saying there is an employee “who periodically visits the facility

² The Petition asks the Department to rule on the taxability of a variety of services the Petitioner does not sell. The Petition also calls into question various rules and Department statements related to products Petitioner does not sell. The Petitioner did not disclose sellers of these products in its required disclosure of others affected by the Petition. The Department refuses to issue the declaratory order, for the additional reason that an order on these topics may impact the legal rights of persons who are not parties to this proceeding. *See* Iowa Admin. Code r. 701—7.24(9)“a”(9).

³ Ames West Side Storage, “About Us,” <https://ameswestsidestorage.com/about-us/> (last visited September 20, 2022).

to check the units and perform maintenance.” The company’s website, however, claims that “real humans . . . answer your questions over the phone, and we’re there most of the time as well.” Similarly, the Petition states that Petitioner does not engage in what is described as “enhanced security services” and that Petitioner does not exercise care over the contents stored at the facility. Petitioner’s public statements tout that it has the most high-tech security equipment and that “security has been our primary concern.”⁴ Petitioner claims its approach to mini-storage means it is not even providing a service. Even if any of these facts determined the taxability of Petitioner’s sales, as Petitioner suggests it should, at a minimum there is a conflict between the Petition and the Petitioner’s own public statements about its activity at the facility. Such conflicting facts would be better determined in a contested case. *See id.* r. 701–7.24(9)“a”(5)

V. **CONCLUSION**

For the reasons stated above, the Department declines to issue the requested declaratory order.

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

IOWA DEPARTMENT OF REVENUE

BY 

Kraig Paulsen, Director

⁴ Ames West Side Storage, “Storage Unit Pricing and Sizing,” <https://ameswestsidestorage.com/storage-unit-pricing-and-sizes/> (last visited September 20, 2022).