

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

IN THE MATTER OF

ALLEN D. AND DEBORAH L. BAILEY
235 HEATHER AVENUE
EVANSDALE, IA 50707

INDIVIDUAL INCOME TAX

REFUSAL TO ISSUE
DECLARATORY ORDER

DOCKET NO. 230658

Pursuant to a Petition for Declaratory Order ("Petition") filed with the Iowa Department of Revenue ("Department") by Allen and Deborah Bailey ("Petitioners") on September 12, 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. Petitioners purchased a building on October 4, 1985 for equipment storage and office space to take care of administrative needs to operate their cleaning business. The building was used through 2010 and sold on installments on January 3, 2011. In 2017, the buyer defaulted on the contract and, after some difficulty, Petitioners repossessed the property.

Petitioners found a new buyer in 2018, with the buyer paying the contract in 2019. Petitioners claimed a deduction for the net capital gain on the sale of real property used in a business on their 2019 return under Iowa Code section 422.7(21)(a) (2019). The Department concluded that Petitioners had met neither the material participation nor the holding period requirements under section 422.7(21)(a) and denied the deduction. Petitioners were sent a Notice of Assessment on June 14, 2022.

II. ISSUES PRESENTED

Petitioners present two issues for consideration:

1. Do Petitioners meet the holding period requirement for claiming the net capital gain deduction under section 422.7(21)(a)?
2. Do Petitioners meet the material participation requirement for claiming the net capital gain deduction under Iowa Administrative Code rule 701—40.38(1)“e”(6)?

III. STANDARD OF REVIEW

Declaratory Orders under the Iowa Administrative Procedure Act

The function of a declaratory order is to provide “reliable advice from an agency as to the applicability of unclear law.” Arthur Earl Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process*, 60 Iowa L. Rev. 731, 805 (1975). Iowa Code section 17A.9 contemplates declaratory orders by administrative agencies on a disclosed set of facts. *City of Des Moines v. P.E.R.B.*, 275 N.W.2d 753, 758 (Iowa 1979). A declaratory order enables the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts. Bonfield, *supra*, at 822–23.

It is not the function of a declaratory order to resolve issues involving factual analysis “too complicated to handle outside of an actual adjudication.” *Id.* at 807. A declaratory order is not a “contested case” as defined in Iowa Code section 17A.2(5); namely, it is not an evidentiary hearing, which is a separate administrative remedy set forth in Iowa Code chapter 17A and in the Department’s rules. See Iowa Admin. Code rule 701—7.24(17A). Consequently, for the purposes of any declaratory order, the Director views the issues raised in the petition as questions of law applicable to future

factual situations as disclosed in the petition. This view is consistent with Iowa Administrative Code rule 701—7.24(17A) concerning the issuance of declaratory orders.

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

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct, in an effort to establish the effect of that conduct or to challenge a department decision already made

Id. r. 701—7.24(9)“a”(5) & (8) (2022).¹

The Petition was filed in response to a Department adjustment disallowing Petitioners’ net capital gain deduction for the gain on the sale of the building. After

¹ Even if sub-rules 701—7.24(9)“a”(5) and (8) did not apply, the Petition asks fact-intensive questions about whether Petitioners’ business was a personal service activity and whether Petitioners met the relevant holding period. The facts, as presented in the Petition, are unclear, overbroad, insufficient, and an inappropriate basis upon which a declaratory order could be issued. See *id.* r. 701—7.24(9)“a”(6).

the Department denied the deduction, it issued a Notice of Assessment on June 14, 2022. Petitioners had the right to appeal the Notice of Assessment, but did not. Petitioners are not planning future conduct as the sale of the property detailed in the Petition has already taken place, and the deduction has already been claimed and denied. *See id.* r. 701—7.24(9)“a”(8). Instead, Petitioners are challenging the Department’s decision disallowing the deduction without utilizing the required appeal process. *See id.* The appeal process is the appropriate forum to challenge the Department’s determination. *See id.* r. 701—7.24(9)“a”(5). Petitioners’ 60-day appeal period to contest the Department’s assessment ended prior to filing this Petition. Petitioners still have the option to pay the additional assessment, along with penalty and interest, file an amended return requesting a refund, and, if that refund is denied, appeal that denial.

V. CONCLUSION

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

Issued at Des Moines, Iowa this 28 day of October, 2022.

IOWA DEPARTMENT OF REVENUE

By 

Kraig Paulsen, Director