

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

<p>IN THE MATTER OF</p> <p>Cedar Falls CSD 1002 W 1st St. Cedar Falls, IA 50622</p> <p>INDIVIDUAL INCOME TAX</p>	<p>REFUSAL TO ISSUE DECLARATORY ORDER</p> <p>DOCKET NO. 252567</p>
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Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by Cedar Falls CSD (“Petitioner”) on November 15, 2022, and in accordance with Iowa Code section 17A.9 (2022) and Iowa Administrative Code rule 701—7.24(17A), the Director refuses to issue a Declaratory Order in this matter.

I. FACTS

The findings of fact are based on the Petition, and additional undisputed facts relevant to this Order. Petitioner is a school district that received grant money from the Teacher & Paraeducator Registered Apprenticeship Program (“TPRAP”). This grant money is used to pay for tuition, fees, books, employee wages, and other expenses for either high school students studying to become paraeducators or paraeducators studying to become teachers. The school district makes payment for tuition, fees, and books directly to the university or college on behalf of the apprentices participating in the TPRAP.

II. ISSUE PRESENTED

Whether payments made by a school district directly to universities or colleges for tuition, fees, and books on behalf of apprentices are taxable to the apprentice to the extent the payments exceed \$5,250.

III. STANDARD OF REVIEW

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.* § 17A.9(1)(a). The IAPA also describes agency rights and responsibilities with respect to declaratory order proceedings. *Id.* § 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); *see also* 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 Rels. 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 rule governing declaratory orders is consistent with this understanding of the role of declaratory orders in administrative procedure. *See* Iowa Admin. Code r. 701—7.24 (2022).

IV. DISCUSSION

When the Department receives a petition for a declaratory order, it is required to issue an order “unless the agency determines that issuance of the order under the circumstances would be contrary to a rule adopted in accordance with subsection 2.” Iowa Code § 17A.9(1)(b)(1). Under the Department’s rule adopted pursuant to Iowa Code section 17A.9, refusal is proper in this instance. The relevant rule reads as follows:

(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;

Iowa Admin. Code r. 701—7.24(9) “a”(5).

Petitioner is seeking to know whether the amount it paid to universities or colleges as part of the TPRAP is taxable to the apprentices when the amount exceeds \$5,250. The Director refuses to answer this pursuant to Iowa Administrative Code rule 701—7.24(9)“a”(5) because the determination of this question is a matter of federal tax law and should be decided by the Internal Revenue Service (“IRS”) who has jurisdiction over the matter.

Because there is no adjustment for payments made under the TPRAP for Iowa income tax purposes, whether or not these payments are includable in the apprentices’ taxable income is primarily a question of federal law. Taxable income for Iowa income tax purposes is based on an individual’s net income calculated pursuant to Iowa Code section 422.7. Iowa Code section 422.7 requires that individuals start with their federal adjusted gross income before the net operating loss “as properly computed for federal income tax purposes under the Internal Revenue Code.” Iowa

Code § 422.7. The individual is then required to make a number of adjustments to arrive at Iowa net income. *Id.* None of those adjustments relate to the specific program on which the Petitioner is requesting guidance.

Federal adjusted gross income is calculated as gross income minus certain deductions. IRC § 62(a). Gross income includes all income from whatever source derived. *Id.* § 61(a). Sections 101 through 140 of the Internal Revenue Code (“IRC”) describe items that are specifically excluded from gross income.

IRC section 127 excludes from an employee’s gross income amounts paid by the employer for educational assistance under programs that meet certain requirements. *Id.* § 127(a). This exclusion is limited to \$5,250. IRC § 127(a)(2). The Petition appears to assume the TPRAP would qualify as an educational assistance program. Whether or not the TPRAP would qualify for this exclusion is a matter of federal income tax law and should be decided by the IRS.

The Petition is primarily focused on how to treat the amount of payments in excess of \$5,250. Petitioner states that these amounts would be taxable to the apprentices because it would not qualify as a working condition fringe benefit. Petition, p. 2. IRC section 132 excludes certain fringe benefits from gross income. “Working condition fringe” is defined as “any property or services provided to an employee or employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.” IRC § 132(d).

Educational expenses are deductible under IRC section 162, subject to some restrictions. Treas. Reg. § 1.162-5(a). Expenditures for education that is required to meet the minimum educational requirements for the individual’s employment or their trade or business and educational expenditures that qualify the individual for a new trade or business are not deductible

as ordinary and necessary business expenses. *Id.* § 1.162-5(b). Petitioner states that these payments for education expenses of the apprentices would qualify the apprentices for a new trade or business making them nondeductible as a working condition fringe benefit. Petition, p. 2. Whether or not the courses taken by the apprentices paid for using TPRAP funds would qualify those apprentices for a new trade or business is a matter of federal law and should be determined by the IRS.

To properly answer the Petitioner's question the Director would need to determine (1) whether or not the TPRAP is an educational assistance program and (2) whether or not the apprentices would be qualified for a new trade or business following completion of their education paid for by TPRAP funds. Both of these determinations are matters of federal income tax law and therefore the IRS is better suited to answer the question posed by the Petitioner.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the Director refuses to issue a Declaratory Order in this matter.

Issued at Des Moines, Iowa this 15 day of December, 20 .

IOWA DEPARTMENT OF REVENUE

By  _____
Krifig Paulsen, Director