

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

IN THE MATTER OF

TEMPLETON RYE SPIRITS
 HOLDINGS LLC
 209 East 3rd Street
 Templeton, Iowa 51463

SALES TAX REFUND CLAIM

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 *
 * DIRECTOR'S ORDER ON
 * REQUEST TO DELETE
 * IDENTIFYING DETAILS
 *
 * DOCKET NO. 2021-300-1-0066

On February 16, 2021, the above-named taxpayers filed a Motion to Delete Identifying Details. The underlying Protest is ongoing as the Protest has not been resolved.

Iowa Code section 22.2(1) states that "Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in the public record." Public records as defined in Iowa Code section 22.1(3) "includes all records, documents, tape or other information, store or preserved in any medium, belonging to this state . . . or any branch, department" Therefore, tax protests filed with the Department of Revenue ("Department") and maintained in the Department's records are public records. *See* 1992 Iowa Op.Att'yGen. 1. The protest and its accompanying documents are open to public inspection in accordance with Iowa Code sections 17A.3(1)(e), 22.2, and 22.7. *See id.*

Iowa Code section 17A.3(1)(e) provides each agency shall:

Make available for public inspection and index by name and subject all final orders, decisions, and opinions: Provided that to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets, an agency shall delete identifying details when it makes available for public inspection any final order, decision, or opinion; however, in each case the justification for the deletion shall be explained fully in writing.

The Department implements this provision through Iowa Administrative Code rule 701-7.9 which provides in relevant part:

[T]he motion must be filed with the clerk of the hearings section and ruled upon by the director. The motion shall be filed simultaneously with the presentation of the privacy or trade secret information under circumstances whereby the information may be disclosed to the public and before the issuance of any opinion, order or decision.

If the motion concerns information which is not a part of a contested case, the motion shall be in the form of a request to delete identifying details; if part of a contested case, the motion shall be in the form of a motion to delete identifying details. All motions to delete identifying details shall conform to subrule 7.17(5).

a. The motion shall contain the following:

(1) The name of the person requesting deletion and the docket number of the proceeding, if applicable;

(2) The legal basis for the motion for deletion, which is either that release of the material would be a clearly unwarranted invasion of personal privacy or the material is a trade secret. A corporation may not claim an unwarranted invasion of privacy;

(3) A precise description of the document, report, or other material in the possession of the department from which the deletion is sought and a precise description of the information to be deleted. If deletion is sought from more than one document, each document and the materials sought to be deleted from it shall be listed in separate paragraphs. Also contained in each separate paragraph shall be a statement of the legal basis for the deletion requested in that paragraph, which is that release of the material sought to be deleted is a clearly unwarranted invasion of privacy or the material is a trade secret and the material serves no public purpose.

b. An affidavit in support of deletion must accompany each motion. The affidavit must be sworn to by a person familiar with the facts asserted within it and shall contain a clear and concise explanation of the facts justifying deletion, not merely the legal basis for deletion or conclusionary allegations.

c. All affidavits shall contain a general and truthful statement that the information sought to be deleted is not available to the public from any source or combination of sources, direct or indirect, and a general statement that the release would serve no public purpose.

d. The burden of showing that deletion is justified shall be on the movant. The burden is not carried by mere conclusionary statements or allegations, for example, that the release of the material would be a clearly unwarranted invasion of personal privacy or that the material is a trade secret.

e. That the matter sought to be deleted is part of the pleadings, motions, evidence, and the record in a contested case proceeding otherwise open for public inspection and that the matter would otherwise constitute confidential tax information shall not be grounds for deletion (1992 Iowa Op.Att'yGen. 1).

f. The ruling on the motion shall be strictly limited to the facts and legal bases presented by the movant, and the ruling shall not be based upon any facts or legal bases not presented by the movant.

This rule allows for identifying details to be deleted if the details are clearly an unwarranted invasion of personal privacy or the material is a trade secret. By statute, final orders, decisions, and opinions are indexed by name and subject, so that information may not be deleted. Iowa Code § 17A.3(1)(e).

The motion does not meet the requirements of Iowa Administrative Code r. 701—7.9(2) “b,” or “c” as there was no affidavit filed in support of the request with a clear and concise explanation of the facts justifying deletion and a general and truthful statement that the information sought to be deleted is not available to the public from any source or combination of sources, direct or indirect.

Additionally, the motion does not meet the requirements of Iowa Administrative Code rule 701-7.9(2) “d”. “The burden of showing that deletion is justified shall be on the movant. The burden is not carried by mere conclusory statements or allegations...that the release of the material would be a clearly unwarranted invasion of personal privacy....” Iowa Administrative Code rule 701-7.9(2) “d”. *See also U.S. West v. Consumer Advocate*, 498 N.W.2d 711, 713-715 (Iowa 1993). The movant requests for “the names of the equipment used in the manufacturing process and names of equipment that are part of the protest” to be deleted. The movant has provided only the conclusory statement that the names are “proprietary in nature”. The movant does not provide any evidence or other argument that the information requested to be deleted would constitute an unwarranted invasion of personal privacy.

The movant has not met the requirements under Iowa Administrative Code rule 701—7.9(2) “b”-“d”. The movant may refile its motion with these issues resolved.

THEREFORE, the Motion to Delete Identifying Details is denied without prejudice.

Dated at Des Moines, Iowa, this 26 day of July, 2021.

IOWA DEPARTMENT OF REVENUE

BY 

Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 26th day of July, 2021, I caused a true and correct copy of the Director's Order on Request to Delete Identifying Details to be forwarded by U.S. mail or delivered to the following person(s):

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L O C A L



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