

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

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IN THE MATTER OF

Polaris Industries Inc.  
2100 Highway 55  
Medina MN 55340

SALES AND USE TAX

REFUSAL TO ISSUE  
DECLARATORY ORDER

DOCKET NO. 331678

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Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by Polaris Industries Inc (“Petitioner”) on August 25, 2023, and in accordance with Iowa Code section 17A.9 (2023) and Iowa Administrative Code rule 701—7.24(17A) (2023), the Director issues the following order.

I. FACTS AND ISSUES PRESENTED

The findings of fact are based on the Petition and on publicly available information on the Petitioner’s website. According to its website, Petitioner is a Polaris franchise dealer that sells Polaris ATVs and Side x Side Utility Vehicles (Polaris Medina)<sup>1</sup>. It has its own service department and parts staff. According to the Petition, another entity, which is currently under audit, provides automotive paint booth cleaning services and maintenance for Petitioner. These services are claimed to be “necessary as part of the production of the vehicles and are beyond the type of cleaning service routinely performed by a janitor in the normal course of business.” Petitioner argues that while janitorial services are enumerated as taxable, the services provided by this entity fall outside the scope of janitorial services.

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<sup>1</sup> Polaris Medina. “Polaris Medina.” *Polaris Medina - Motorcycles, Parts and Services*, <https://polarismedina.com>. (last visited September 27, 2023.)

Petitioner presents one issue for review: Whether the services provided by its cleaning and maintenance company fall within the scope of janitorial services, per Iowa Code section 423.2(6) and Administrative Rule 701—26.60<sup>2</sup>?

## II. STANDARD OF REVIEW

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. Pub. Emp. Rel. Bd.*, 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 r. 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

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<sup>2</sup> The Petitioner references the previous rule section. The rule cited by the Petitioner has been renumbered and can now be found at Iowa Administrative Code rule 701—211.37(423) and shall be referenced as such.

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.

### III. DISCUSSION

The Director refuses to issue a declaratory order in response to the Petition for the following reasons:

- (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;
- (9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner; and
- (11) The petition requests a declaratory order on an issue presently under investigation or audit or in rule-making proceedings or in litigation in a contested case or court proceedings.

Iowa Admin. Code r. 701—7.24(9) “a”(5), (9), (11).

First, according to the Petition, the entity that performs cleaning services and maintenance is currently under audit, and the question presented is the subject of the audit. Since the issue in this Petition is being addressed in an audit, the Department declines to issue a declaratory order on this topic.

Second, the Department’s refund claim process is a better route than a declaratory order for Polaris to determine whether services it has already purchased should have been exempt from tax. The refund claim process will allow Petitioner to submit detailed information and documents to support its claim. In the refund claim process, the Department could analyze the information and determine whether the services provided to Petitioner, as described above, are exempt from tax under the provisions of Iowa

Administrative Code rule 701—211.37(423). Furthermore, the refund claim process will afford Petitioner a better remedy. Unlike a declaratory order, the refund claim process would allow the Department to review Petitioner’s exemption claim and allow Petitioner to seek to recover all tax paid that is not barred by the statute of limitations. If the Department’s determination on the refund is unfavorable to Petitioner, Petitioner would have an opportunity to appeal and ultimately have an evidentiary hearing to dispute the Department’s determination.

Third, not all relevant parties are a party to the Petition. The question presented revolves around the taxability of the services sold to Petitioner by a third party providing cleaning and maintenance services. The Petition requests a declaratory order that would undoubtedly determine the legal rights, duties, or responsibilities of this third party. Furthermore, the interests and position of each entity may, in fact, be adverse to one another.

IV. CONCLUSION

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

Issued at Des Moines, Iowa this 28th day of September, 2023.

IOWA DEPARTMENT OF REVENUE

By Mary Mosiman  
Mary Mosiman, Director