

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

<p>IN THE MATTER OF</p> <p>SWEAT IOWA LLC 140 Jordan Creek Pkwy West Des Moines IA 50266-8777</p> <p>SALES AND USE TAX</p>	<p>DECLARATORY ORDER</p> <p>DOCKET NO. 346007</p>
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Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by Sweat Iowa LLC, and in accordance with Iowa Code section 17A.9 (2023) and Iowa Administrative Code rule 701—7.24 (2023), the Director issues the following order.

I. FACTS

The findings of fact are based on the Petition, additional information provided by the Petitioner, and publicly available information on the Petitioner’s website.¹ The business is called Perspire Sauna Studio. Pet. for Dec. Order at 1, No. 346007 (August 28, 2023). Perspire Sauna Studio (hereinafter referred to as “Studio”) is an “infrared sauna studio and the main service/item is using an infrared sauna.” *Id.* The Studio opened in 2021. *Id.* There are two locations—West Des Moines and Ankeny. The Studio does not offer classes. *Id.* It does not consider itself as “a fitness facility”. *Id.* According to the Petitioner, “a user pays to get access to be able to book appointments for sauna sessions. *Id.*

¹ When considering a petition for declaratory order, “[t]he department may solicit comments or information from any person on the questions raised. Also, comments or information on the questions raised may be submitted to the department by any person.” Iowa Admin. Code r. 701- 7.24(7).

The Petitioner suggested the Department gain an understanding of its services by viewing their website. *Id.* According to Petitioner’s website, its saunas combine the centuries-old healing practice of traditional sauna with the science-backed technology of infrared (IR) and red light therapy (RLT) to optimize health and wellness. (Perspire Sauna Studio).² The website states the saunas have the following effects: relaxing the mind, detoxing the body, burning calories, boosting immunity, rejuvenating skin, and recovering faster. *Id.*

II. ISSUE PRESENTED

The Petition presents one issue for consideration: whether the use of the infrared saunas provided at Petitioner’s Studio is a service subject to Iowa sales tax.

III. STANDARD OF REVIEW

A. Declaratory Orders and 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.” Iowa Code § 17A.9(1)(a). The IAPA also describes agency rights and responsibilities with respect to declaratory order proceedings. Iowa Code § 17A.9(1)(b)-(8). Pursuant to Iowa Code (“Code”) section 17A.9(2), the Department adopted Iowa Administrative

² Perspire Salon Studio. “Perspire Salon Studio.” *Infrared Sauna + Red Light Therapy Your Personal Escape*, <https://perspiresaunastudio.com> (last visited October 24, 2023.)

Code rule 701—7.24 which outlines department-specific rules governing declaratory orders. Iowa Code § 17A.9(2); see also Iowa Admin. Code r. 701—7.24.

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 rr. 701—7.24(1)“b”, (9)“a”(2), (9)“a”(6), (9)“a”(8), (12).

IV. ANALYSIS AND CONCLUSIONS

The Iowa Code imposes a sales tax of six percent on “[t]he sales price of any of the [listed] . . . enumerated services.” Iowa Code § 423.2(6).” One of these enumerated services is “all commercial recreation.” *Id.* § 423.2(6)(v). While the Code itself does not define “all commercial recreation,” the Department’s administrative rule provides guidance on this issue.

Iowa Administrative Code rule 701—216.3 defines “recreation” to include “all activities pursued for pleasure, including sports, games and activities which promote physical fitness, but shall not include admissions otherwise taxed under Iowa Code section 423.2.” Black's Law Dictionary definition of pleasure is “[s]omething that causes an agreeable sensation.” PLEASURE, Black's Law Dictionary (11th ed. 2019). The rule also states that “[p]ersons providing facilities for recreation for a charge are rendering, furnishing or performing a service, the [sales price] of which [is] subject to tax” in Iowa. Iowa Admin. Code r. 701–216.3.

On its website, Studio identifies that the use of its sauna “relax[es] the mind,” “melts away stress,” and “leav[es] you fully refreshed, rejuvenated[, and] renewed.” Perspire Sauna Studio, *IR Sauna Benefits*, <https://www.perspiresaunastudio.com/infrared-sauna-benefits/> (last visited November 7, 2023). The Petitioner says, “[i]nfrared sauna therapy helps you relax....” *Id.* The Petitioner wants the customer to make their time at the sauna a “personal experience.” Perspire Sauna Studio, *Infrared Sauna + Red Light Therapy Your Personal Escape*, <https://perspiresaunastudio.com> (last visited November 7, 2023). “Guests choose from an array of light therapy colors, premium entertainment options, and temperature

settings.” *Id.* Guests can stream TV or listen to music, choose the color that best fits their mood, and choose to use their time in the sauna to stretch or meditate. Perspire Sauna Studio, *Color Light Therapy*, <https://www.perspiresaunastudio.com/color-light-therapy/> (last visited November 7, 2023).

All of these choices are geared toward increasing the guests’ enjoyment, or pleasure, while in the sauna. After the sauna, guests can “refresh and revive” with cold eucalyptus towels and replenish and rehydrate with alkaline, coconut water or other nutrient dense beverages. Perspire Sauna Studio, *Perspire Sauna Studio Experience*, <https://www.perspiresaunastudio.com/infrared-sauna-experience/> (last visited November 7, 2023). The video on the website talks about “settling in and relaxing” in the sauna. Perspire Sauna Studio, *IR Sauna Benefits*, <https://www.perspiresaunastudio.com/infrared-sauna-benefits/> (last visited November 7, 2023). The Petitioner’s website further features statements from guests that describe their experience as a “beautiful place in relaxation and bliss” and “feeling relaxed, detoxed, and rejuvenated.” Perspire Sauna Studio, *Infrared Sauna + Red Light Therapy Your Personal Escape*, <https://perspiresaunastudio.com> (last visited November 7, 2023). Given the information and descriptions provided on the website, the Petitioner’s services qualify as an activity pursued for pleasure and, therefore, taxable commercial recreation.

In addition to an “activit[y] pursued for pleasure,” the Petitioner’s description of the services also makes it an “activit[y] which promotes[s] physical fitness.” Iowa Admin. Code r. 701—216.3. The Petitioner states that the saunas optimize health and wellness

as its website states the saunas detox the body, burn calories, bring relief and healing to muscles and tissues, enhance immunity, and have other benefits. Perspire Sauna Studio, *IR Sauna Benefits*, <https://www.perspiresaunastudio.com/infrared-sauna-benefits/> (last visited November 7, 2023). Thus, using the sauna contributes to improving the physical fitness of the user's body. In conclusion, using the infrared sauna is both an activity pursued for pleasure and an activity which promotes physical fitness. The Department has long held that permitting customers to use a piece of equipment for pleasure and to engage in an activity that promotes physical fitness to be taxable as commercial recreation. See *In re JC Health Inc. D/B/A Cyclebar Jordan Creek*, Dep't of Revenue Declaration Order, Docket No. 2019-300-2-0291 (2019) (describing the Department's long-standing interpretation of "all commercial recreation" as applying to a variety of forms of physical fitness). Therefore, the Studio's service of infrared saunas are considered "commercial recreation" and, as such, are subject to tax in Iowa.

Finally, even if the service was not subject to the tax on "all commercial recreation," the service would be taxable under Iowa Code section 423.2(6)(bg). This provision imposes a tax on Turkish baths and reducing salons. These services include "any type of facility where an individual is warmed by steam or dry heat" as well as "any activities for the purpose of weight reduction." Iowa Admin. Code r. 701-211.29(2).

Accordingly, the Director concludes that the use of infrared sauna services is subject to sales tax as commercial recreation. Alternatively, the service is subject to tax as a Turkish bath or as a reducing salon. There is no exemption that applies to the sale of the service. Therefore, Studio is required to collect and remit sales tax on sales of the infrared sauna services offered at its Iowa locations.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the Director finds that because the services offered by Studio are subject to Iowa sales tax as commercial recreation, a Turkish bath, or as a reducing salon, it is required to collect and remit sales tax for those services, pursuant to Iowa Code sections 423.2(6)(v) and (bg).

Done at Des Moines, Iowa on this 14th day of November, 2023.

IOWA DEPARTMENT OF REVENUE

BY Mary Mosiman
Mary Mosiman, Director