

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

<p>IN THE MATTER OF</p> <p>PERFORMANCE CONTRACTING INC. 11145 Thompson Ave Lenexa, KS, 66219</p> <p>SALES/USE TAX</p>	<p>DECLARATORY ORDER</p> <p>DOCKET NO. 318637</p>
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Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by Performance Contracting Inc. (“Petitioner”) on July 31, 2023, 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 submitted to the Department and publicly available information on Petitioner’s website.<sup>1</sup> Petitioner is a contracting firm based in Lenexa, Kansas, that performs construction-related services for customers across the country, including in Iowa. One service Petitioner offers is the installation of manufacturing equipment. Petitioner is requesting clarification on the correct handling of taxability on invoices.

**II. ISSUES PRESENTED**

The Petition presents the following issues:

1. When qualified manufacturing equipment, either new or used, is installed that is directly used in the manufacturing process, are installation charges required to be separately stated to be considered exempt?

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<sup>1</sup> 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).

2. If there is one lump-sum charge for the qualified manufacturing equipment and installation, is the total charge taxable or exempt?

### **III. STANDARD OF REVIEW**

#### *Declaratory Orders and the Iowa Administrative Procedures 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." *Id.* at § 17A.9(1)(a). The IAPA also describes agency rights and responsibilities with respect to declaratory order proceedings. *Id.* at § 17A.9(1)(b)–(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 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 sales price of tangible personal property is subject to Iowa sales tax unless specifically exempted. Iowa Code § 423.2. The sales price from “the furnishing of the design and installation of new industrial machinery or equipment” is exempt from sales tax under Iowa Code section 423.3(48). The Petitioner did not ask about whether any specific equipment qualifies as “industrial machinery or equipment.” Pet. for Dec. Order at 2, No. 318637. Therefore, some elements of the exemption are not analyzed in this Order.

Petitioner first asked whether “qualified manufacturing equipment, either *new or used*, is installed that is directly used in the manufacturing process, are installation charges required to be separately stated to be considered exempt?” *Id.* (emphasis added). The first issue presented in this question is whether the exemption applies to both new and used manufacturing equipment. Iowa Code section 423.3(48) provides that the service must be “[a] design or installation service . . . [o]f *new* . . . [i]ndustrial machinery or equipment.” (emphasis added). Iowa Administrative Code rule 701—215.22 implements Iowa Code section 423.3(48). Under Iowa Administrative Code rule 701—215.22(3), “[n]ew’ means never having been used or consumed by anyone. The exemption does not apply to design or installation services on reconstructed, rebuilt, repaired, or previously owned machinery or equipment.” Therefore, only the installation of industrial machinery or

equipment that meets this definition of “new” is exempt from sales tax. Equipment or machinery that has been used in any way does not qualify for the exemption under Iowa Code section 423.3(48).

The second issue presented in Petitioner’s first question is “are installation charges required to be separately stated to be considered exempt?” Pet. for Dec. Order at 2, No. 318637. The Petitioner’s second question is related to this issue. Petitioner asked, “If there is one lump-sum charge for the qualified manufacturing equipment and installation, is the total charge taxable or exempt?” *Id.* Iowa Administrative Code rule 701—215.22(5) states “[t]he sales price for designing or installing new industrial machinery or equipment must be separately identified, charged separately, and reasonable in amount for the exemption to apply.” In other words, each charge for qualified machinery or equipment or installation must be separately itemized on the invoice in order to be exempt from tax.

In the example provided with the rule, a dealer sells and installs two machines, one that is directly and primarily used in processing, and one that is not. *Id.* Since one machine is eligible for the exemption and one machine is not, in order for the exemption to apply, the dealer’s invoice separately itemized each machine and each installation. *Id.* Similarly, if a dealer sells and installs one new and one used machine, the sales price for the installation of the new machine would need to be separately itemized on the invoice for the exemption to apply because the design and installation of the new machine would qualify for the exemption, but the design and installation of the used machine would be subject to tax. If there is one lump-sum charge for both exempt and non-exempt equipment and installation, that amount would be subject to tax because the new equipment is not separately identified and charged. If, on the other hand, the lump-sum billing is for only new industrial machinery or equipment and for the design or installation of such qualifying equipment, the entire invoice amount is exempt, and there is no need to separately identify the

sales price of each piece of machinery or equipment or the sales price of each design or installation service for such qualifying machinery or equipment, so long as it is clear from the invoice that each component of the lump-sum charge is not subject to sales tax.

To avoid confusion and for consistency in its billing practices, Petitioner may consider always itemizing the sales price of each used or new machinery or equipment and of each installation charge. Doing so would allow for more detailed record-keeping and would further enable Petitioner to determine the taxability of each individual component of each invoice, so that Petitioner may ensure compliance with Iowa's sales tax laws.

### **ORDER**

THEREFORE, based on the facts presented, the foregoing reasoning, and the applicable provisions of law, the Director finds that when Petitioner charges for the installation of used industrial machinery and equipment, the sales price of such installation is taxable. Further, when Petitioner sells or installs both new and used industrial machinery or equipment, Petitioner must separately itemize the sales price of each installation charge, or the entire lump-sum invoice billing is subject to sales tax. When, on the other hand, Petitioner bills one lump-sum that consists only of the sales price of new industrial equipment or machinery and of the sales price of installation services for such qualifying equipment or machinery, there is no sales tax due, so long as it is clear from the invoice that each component of the lump-sum charge is not subject to sales tax.

Issued at Des Moines, Iowa this 8th day of December, 2023.

IOWA DEPARTMENT OF REVENUE

By Mary Mosiman  
Mary Mosiman, Director