

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

IN THE MATTER OF

DAKOTA AG RESEARCH
26323 463rd Avenue
Hartford SD 57033

SALES AND USE TAX

DECLARATORY ORDER

DOCKET NO. 314460

Pursuant to a Petition for Declaratory Order ("Petition") filed with the Iowa Department of Revenue ("Department") by Dakota Ag Research ("Dakota") on July 26, 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.

FACTS AND ISSUES PRESENTED

The findings of fact are based on the Petition submitted to the Department. Dakota is a research company based in South Dakota, offering two services related to corn to customers located in multiple states, including Iowa. Dakota identifies its main service as "yield trial testing" which involves customers sending corn hybrid seeds to Dakota, which are then planted in Dakota's trial locations in Iowa, Minnesota, and South Dakota. As the corn hybrid grows during the summer, Dakota takes agronomic notes and then in the autumn, Dakota will harvest the corn. Once harvested, Dakota collects data on the yield which is delivered to its customers via email. The corn yielded is not delivered to customers.

Dakota also provides corn breeding services. Customers send corn inbred seed to Dakota to either self or cross pollinate. The seeds received are planted in Dakota's nursery located near Brandon, South Dakota, and once the plants flower, Dakota will make pollinations. In autumn, like the yield trial testing, the corn is harvested, however, instead of sending information back to their customer, Dakota will dry the harvested corn and send the corn back to the customer.

The Petition presents the following two issues:

1. Whether the two services described in the Petition are subject to Iowa sales tax?
2. If either of the services described is subject to Iowa sales tax, when is Iowa sales tax applied?

STANDARD OF REVIEW

I. Declaratory Orders under 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." *Id.* at § 17A.9(1)(a). The IAPA also describes agency rights and responsibilities with respect to declaratory order proceedings. *Id.* at § 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); 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 r. 701—7.24.

II. Statutory Construction and Interpretation of Tax Statutes

“When engaging in statutory interpretation,” the Department “first examine[s] the language of the statute and determine[s] whether it is ambiguous.” *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014) (citing *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011)). “Generally, we presume words used in a statute have their ordinary and commonly understood meaning.” *Id.* (quoting *McGill v. Fish*, 790 N.W.2d 113, 119 (Iowa 2010)). “Legislative intent is expressed by what the legislature has said, not what it could or might have said. When a statute’s language is clear, we look no further for meaning than its express terms. Intent may be expressed by the omission, as well as the inclusion of statutory terms” *Hawkeye Land Co. v. Iowa Util. Bd.*, 847 N.W.2d 199, 210 (Iowa 2014) (quoting *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001) (internal citations omitted)).

In addition to applying the general principles of statutory construction, “[s]tatutes which impose taxes are construed liberally in favor of the taxpayer and strictly against the taxing body. It must appear from the language of a statute that the tax assessed against the taxpayer was clearly intended.” *Iowa Auto Dealers Ass’n v. Iowa Dep’t of Revenue*, 301 N.W.2d 760, 762 (Iowa 1981).

DISCUSSION

I. SERVICES SUBJECT TO IOWA SALES TAX

Dakota's Petition requests a determination on whether two of their services are subject to sales tax. Each service will be separately analyzed below.

A. Yield Trial Testing

Iowa Code section 423.2(5) imposes sales tax on the sales price of specifically enumerated services identified in Iowa Code section 423.2(6). Included in this list of taxable services is "[t]est laboratories, including mobile testing laboratories and field testing by testing laboratory." Iowa Code § 423.2(6)(bc). However, "tests on humans or animals . . . and . . . environmental testing services" are excluded from tax. *Id.* § 423.3(6)(bc); *see also id.* § 423.3(102) (exemption for "environmental testing services"). Iowa Administrative Code rule 701—211.26(1) implements these Code sections and provides that "[p]ersons engaged in the business of providing laboratory testing of any substance for any experimental, scientific, or commercial purpose are selling a service subject to sales tax." Additionally, rule 211.26(2) provides that exempt "'environmental testing services' includes but is not limited to the physical and chemical analysis of soil, water, wastewater, air, or solid waste performed in order to ascertain the presence of environmental contamination or degradation."

Here, the Petition identifies that corn hybrid seed is the subject of the service Dakota provides, which includes planting the seed the customer provided, studying the seed and resulting plant throughout the growth period, and after harvesting the yield, collecting the data about the yield. This information is then sent to the customer. This qualifies as a testing service. Further, the service is conducted upon a plant and not on any human, animal, and it does not fall within the gamut of environmental testing, so Dakota's service does not fall within those exclusions. As such, Dakota's service is subject to tax in Iowa under Iowa Code section 423.2(6)(bc). *See In re Genetic ID, NA, Inc.*, Iowa Dep't. Of Revenue, Dec. Ruling No. 2017-300-2-0217 (2018). The

Director offers no opinion on whether this qualifies as a taxable service under the tax imposition statutes of another state.

B. Corn Breeding

The Petitioner also requests a determination on whether its service of corn breeding is a service subject to sales tax. Based on the information provided, unlike Dakota's service of testing corn seed, its corn breeding service does not test the seed but instead Dakota performs multiple activities including planting seed sent by the customer, making pollinations, and then once harvested and dried, the corn is sent back to the customer. Essentially, according to the information provided, Dakota is growing the corn for the customer. Given the activities as described in the petition, there is no applicable taxable service(s) listed in Iowa Code section 423.2(6) for the service(s) provided. Accordingly, Dakota's service of corn breeding is not subject to tax in Iowa. The Director offers no opinion on whether this could be a taxable service in another state.

II. SOURCING

The Petition further requests a determination about the sourcing of the above services. First, given that corn breeding is not a service subject to tax, as discussed above, the following relates only to Dakota's service of yield trial testing.

Iowa sales tax is imposed on a sale of a service when the sale is sourced to Iowa as discussed in Iowa Code section 423.15 and which is implemented by Iowa Administrative Code rule 701—205.2. For services subject to tax, the tax "shall be due and collectible when [the] first use of the service is received by the ultimate user of the service." Iowa Code § 423.1(54). The "first use of a service" occurs, for the purposes of [the imposition of sales tax], at the location at which the service is received." *Id.* § 423.1(20). Further, "the location at which the seller performs the service is not determinative of the location at which the service is received." *Id.*; see also *id.* § 423.1(43)(a)(2) (definition of "receive" and "receipt" includes "[m]aking [the] first use of a service.>").

As identified above, sales of services are sourced according to Iowa Code section 423.15. That section provides the framework for determining where the sale of services shall be sourced and "a seller's obligation to pay or collect and remit Iowa sales or use tax with respect to the seller's sale of a [service]." A sale of a service is sourced as follows:

- a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.
- c. When paragraphs "a" and "b" do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
- d. When paragraphs "a", "b", and "c" do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
- e. When paragraphs "a", "b", "c", and "d" do not apply, including the circumstance where the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the specified digital product or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided disregarding for these purposes any location that merely provided the digital transfer of the product sold.

Id. § 423.15(1).

In its Petition, Dakota identified that after receiving the corn seed from its customers, it will be planted at one of Dakota's locations, which may or may not be in Iowa. However, as stated in Iowa Code section 423.1(20), where the seller performs the service does not determine the location where the service is received. Therefore, the locations where Dakota plants the yield trials do not determine whether and how its testing services are sourced and if Iowa sales tax is due on a sale of that service.

Instead, Dakota indicated in its Petition that it sends the test results to its customers only by email and nothing is physically mailed to its customers by US Mail or any similar delivery

service. This is again similar to the circumstances and discussion provided in *In re Genetic ID*, Iowa Dep't. Of Revenue, Dec. Ruling No. 2017-300-2-0217 (2018). Since sales tax in Iowa applies when the first use of a service occurs in Iowa, the facts as presented provide that Dakota's testing service is first used at the location where the test results are received. Therefore, if the location where the customer receives the test results is in Iowa, then the sale will be sourced to Iowa and Iowa sales tax applies, but this requires Dakota to have knowledge of that location. See Iowa Code § 423.15(1)(b). The Petition does not state whether the customer provides that information to Dakota or if Dakota already has that knowledge but, in the instance that Dakota is provided the location where a customer will receive the emailed test results and that location is in Iowa, the sale is sourced to Iowa. If that location is not in Iowa then the sale is not sourced to Iowa.

However, in the instances where Dakota is not given that information, other factors must be considered as identified above in Iowa Code section 423.15(1). Since the test results are only emailed to the customer, the facts as presented provide that neither section 423.15(1)(a) or (b) apply to determine the sourcing of the sale in these instances.

In situations where neither 423.15(1)(a) or (b) apply to a transaction, then a "sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith." *Id.* § 423.15(1)(c). Further, if (1)(a), (b), or (c) do not apply, section (1)(d) sources a sale "to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of [the customer's] payment instrument, if no other address is available." Finally, if the circumstance occurs where a seller receives insufficient information and neither (1)(a), (b), (c), or (d) applies, then (1)(e) will apply and the location "from where the service was provided" will determine sourcing.

In the present matter, there is not enough information to determine which of the sourcing rules in Iowa Code section 423.15(1) applies to Dakota's business transactions. Additionally, every transaction may not fall under the same sourcing rule depending on the circumstances

involved, however section 423.15(1) does determine when Dakota's testing services are Iowa sales and therefore subject to Iowa sales tax.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the issues as stated in the Petition for a Declaratory Order are as answered above. In summary, Dakota's service of yield trial testing is subject to tax in Iowa and when it delivers the test results via email, Iowa Code section 423.15(1) determines when the testing services are subject to Iowa sales tax. Further, Dakota's service of corn breeding is not a service subject to Iowa sales tax.

Issued at Des Moines, Iowa this 24th day of January, 2024.

IOWA DEPARTMENT OF REVENUE

By Mary Mosiman
Mary Mosiman, Director