

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

<p>IN THE MATTER OF</p> <p>CasterFrame, P.C. 7155 Lake Dr. West Des Moines, IA 50266</p> <p>INDIVIDUAL INCOME TAX</p>	<p>REFUSAL TO ISSUE DECLARATORY ORDER</p> <p>DOCKET NO. 480829</p>
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Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by CasterFrame, P.C. (“Petitioner”) on February 22, 2024, and in accordance with Iowa Code section 17A.9 (2024) and Iowa Administrative Code rule 701—7.24(17A) (2024), the Director issues the following order.

I. FACTS

The findings of fact are based on the Petition submitted to the Department. Petitioner is a business that “prepares tax returns and provides tax planning services for multiple employee-shareholders of various Iowa corporations.” Pet. for Declaratory Order, p.1 (Feb. 22, 2024) (hereinafter “Petition”). Prior to January 1, 2023, these clients had stock “redeemed by their employer in exchange for a ten-year promissory note.” *Id.* Installment payments on this note are made at least annually. *Id.*

II. ISSUE PRESENTED

Whether installment payments from the sale of certain stock that occurred prior to January 1, 2023 qualify for the net capital gain deduction under Iowa Code section 422.7(42).

III. STANDARD OF REVIEW

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.* § 17A.9(1)(a). The IAPA also describes agency rights and responsibilities with respect to declaratory order proceedings. *Id.* § 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); 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 Rel. 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 rule governing declaratory orders is consistent with this understanding of the role of declaratory orders in administrative procedure. See Iowa Admin. Code r. 701—7.24 (2024).

IV. DISCUSSION

When the Department receives a petition for a declaratory order, it is required to issue an order “unless the agency determines that issuance of the order under the circumstances would be contrary to a rule adopted in accordance with subsection 2.” Iowa Code § 17A.9(1)(b)(1). Under the Department’s rule adopted pursuant to Iowa Code section 17A.9, 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;

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct, in an effort to establish the effect of that conduct or to challenge a department decision already made;

(12) The petition requests a declaratory order on an issue that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

Iowa Admin. Code r. 701—7.24(9) “a”(5), (8), (12).¹

¹ While the issue presented mainly focuses on the timing of the transaction in question, Petitioner also asserts that the clients are employee-owners who are employed by qualified corporations and have sold capital stock as those terms are defined under Iowa Code section 422.7(42). To determine whether the clients qualify for the net capital gain deduction, the Department would need additional facts about these assertions not presented in the Petition. Stating the clients meet these definitions without additional information amounts to unclear and insufficient facts as a basis upon which to issue an order. Iowa Admin. Code r. 701—7.24(9)“a”(6).

Petitioner is seeking to know whether installment payments that occur after January 1, 2023 resulting from a sale of certain qualified stock that occurred before January 1, 2023 are eligible for the capital gain deduction under Iowa Code section 422.7(42).

This question is of a topic better resolved through a rulemaking. The facts presented are such that they could apply to many taxpayers and the answer to the question presented could have broad applicability. Additionally, the question centers on the Department's interpretation of a legislative change as opposed to the application of a legislative change to a specific set of facts. Questions of this nature are generally resolved in a rulemaking. For this reason, the Director refuses to answer this pursuant to Iowa Administrative Code rule 701—7.24(9)"a"(5).

Additionally, the Petition is based on prior conduct and is trying to establish the effect of that conduct. The Petition states that the sales of the stock in question have already occurred prior to January 1, 2023. Petition, p. 1. The installment payments stemming from this sale are made at least annually and will occur in the future. *Id.* However, the transaction creating the installment payments has already occurred. Petitioner's advising its clients to file a return either claiming or not claiming the capital gain deduction as a result of this transaction is not planning future conduct in the context of the facts relevant to the issue presented. Petitioner cannot change the facts of the transaction that has already occurred and is instead seeking to establish the Iowa income tax effect of that transaction. For this reason, the Director refuses to issue a Declaratory Order. See Iowa Admin. Code r. 701—7.24(9)"a"(8).

Lastly, the issue presented would substantially prejudice the rights of persons who are necessary parties and who have not consented in writing to the determination of the matter in a declaratory order. See Iowa Admin. Code r. 701—7.24(9)“a”(12). The Petition states that Petitioner provides tax planning and tax preparation services to clients who have the facts presented in the Petition, but it does not name the clients. Petition, p. 1. Petitioner is only affected by this determination to the extent of providing tax advice to its clients. These clients would ultimately be the persons whose potential tax liabilities are decided by this determination. It is not clear which of these clients, if any, have consented to the question being determined by a declaratory order. The Petition also includes as other interested parties all employee-owners currently receiving installment payments. *Id.* at 2. This class of persons is broad and may apply to taxpayers who are not clients of Petitioner and who have not consented to this issue being determined by a declaratory order. For this reason, the Director refuses to issue a Declaratory Order.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the Director refuses to issue a Declaratory Order in this matter.

Issued at Des Moines, Iowa this 22nd day of March, 2024.

IOWA DEPARTMENT OF REVENUE

By Mary Moisman
Mary Moisman, Director