

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

IN THE MATTER OF T5 DATA CENTERS LLC 3344 PEACHTREE RD NE ATLANTA, GEORGIA 30326 SALES/USE/EXCISE	DECLARATORY ORDER DOCKET NO. 439443
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Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by T5 Data Centers LLC (hereinafter referred to as “T5” or “Petitioner”) on February 1, 2024, and in accordance with Iowa Code section 17A.9 (2024) and Iowa Administrative Code rule 701—7.24(17A), “Declaratory order-in general,” the Director issues the following order.

FACTS

The findings of fact are based on the Petition submitted to the Department. The Petition asserts that “T5 is a data center business that provides the physical data center facility and tenant space for customer servers as well as power and cooling infrastructure that provides forever-on uptime for its tenants.” Pet. for Declaratory Order at 4, No. 439443 (Feb. 1, 2024). T5 is contemplating purchasing land in Iowa to construct a data center campus. T5 intends to lease the space to data center business tenants. The petition provides that the tenants “are data center businesses that sometimes own their own facilities and sometimes lease their facilities; but in all instances, the tenants own the networking gear and servers that the tenants put in the space leased from T5.” *Id.* The petition asserts that T5 will own and operate the building, and own and operate back of house infrastructure that support the computer services which T5’s tenants will own and operate, including servers providing the centralization, storage, management, and dissemination of information about power and cooling in the building as well as physical access

to the facility. *Id.* The tenants will populate the data center facility with servers and operate and maintain the logical components of the data center, including servers providing the centralization, storage, management, and dissemination of information related to the service they are providing to their internal and external customers. *Id.*

The petition further asserts that T5 will comply with the minimum requirements of the sales tax exemption for data center businesses. T5 will purchase the land and construct the physical data center facility entirely on T5's balance sheet. *Id.* The data center will exceed 150,000 square feet. *Id.* Tenants will lease a minimum of 5,000 square feet. *Id.* Each building on T5's data center campus will have greater than a \$200 million capital investment from T5. *Id.* at 5. T5's tenants will populate each building with more than \$250 million in IT servers. *Id.* T5 will also comply with applicable sustainable design and construction standards as established by the state building code commissioner pursuant to Iowa Code section 103A.8B. *Id.*

Before moving forward with constructing a data center campus in Iowa, T5 is seeking clarification on whether they, and their tenants, will qualify for the Iowa Code section 423.3(95) sales tax exemption for data center businesses based on the criteria provided.

QUESTIONS PRESENTED

1. Does T5 qualify for the sales tax exemption for data centers based on the information provided?
2. Can tenants of T5 qualify for the exemption based on T5's qualifications?
3. Can T5 and its data center tenants both qualify separately for the sales tax exemption if they are based at the same location?

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); 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 (Iowa 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)). “[L]egislative 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 Utils. Bd.*, 847 N.W.2d 199, 210 (Iowa 2014) (quoting *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001)).

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). However, the Department construes tax exemption statutes narrowly in favor of taxation. See *Dial Corp. v. Iowa Dep’t of Revenue*, 634 N.W.2d 643, 646 (Iowa 2001) (“Tax exemption statutes are construed strictly, with all doubts resolved in favor of taxation.”); see also *Lowe’s Home Ctrs., LLC v. Iowa Dep’t of Revenue*, 921 N.W.2d 38, 46 (Iowa 2018).

DISCUSSION

Applicable Law and Rules

Iowa law provides a sales tax exemption for data center businesses for

(1) The sales price from the sale of computers and equipment that are necessary for the maintenance and operation of a data center business and property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity used for

the maintenance and operation of the data center business, including but not limited to exterior dedicated business-owned substations, backup power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the data center business.

(2) The sales price of backup power generation fuel that is purchased by a data center business for use in the items listed in subparagraph (1).

(3) The sales price of electricity purchased for use by a data center business.

Iowa Code § 423.3(95)(a).

In order to receive the exemption, the data center business must meet the following requirements:

(1) The purchaser shall be a data center business.

(2) The data center business shall have a physical location in the state that is, in the aggregate, at least five thousand square feet in size that is used for the operations and maintenance of the data center business.

(3) The data center business shall make a minimum investment in an Iowa physical location of two hundred million dollars within the first six years of operation in Iowa beginning with the date the data center business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The data center business shall comply with the sustainable design and construction standards established by the state building code commissioner pursuant to section 103A.8B.

Id. § 423.3(95)(b). “This exemption applies from the date of the initial investment in or the initiation of site preparation activities for the data center business facility.” *Id.* § 423.3(95)(c).

The following definitions apply:

(1) “Data center” means a building rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge. A data center business's facility typically includes the mechanical and electrical systems, redundant or backup power supplies, redundant data communications connections, environmental controls, and fire suppression systems. A data center business's facility also includes a restricted access area employing advanced physical security measures such as video surveillance systems and card-based security or biometric security access systems.

(2) “Data center business” means an entity whose business among other businesses, is to operate a data center.

Id. § 423.3(95)(e).

Iowa Administrative Code rule 701—215.12 provides rules on the data center business exemption. It does not add anything substantive beyond what is already contained in the code about the requirements necessary to qualify for the exemption.

T5 Petition for Declaratory Order

In the present matter, T5 asks multiple questions relating to the ability for data center tenants and property owners to qualify for the exemption under Iowa Code section 423.3(95). These will be addressed each in turn.

T5's Qualification for the Exemption

The first question asked in the Petition is whether T5 will qualify for the sales tax exemption for data center businesses based on the facts provided. In order to qualify for the exemption, T5 must meet all of the requirements outlined in Iowa Code section 423.3(95)(b). The first requirement is that the purchaser must be a data center business, as defined above. Iowa Code § 423.3(95)(b)(1). The petition asserts that T5 owns and operates the building and owns and operates back of house infrastructure that supports computer centers that T5's tenants own and operate. The petition also asserts that T5 will maintain servers providing the centralization, storage, management, and dissemination of information about power and cooling at the building as well as physical access into the facility. Based on the information provided, T5 is a data center business and meets this requirement.

The second requirement is that "[t]he data center business shall have a physical location in the state that is, in the aggregate, at least five thousand square feet in size that is used for the operations and maintenance of the data center business." *Id.* § 423.3(95)(b)(2). The petition states that T5 is considering constructing a data center campus in Iowa, and that the campus will exceed 150,000 square feet. Assuming these facts are true upon completion of the project, T5 would meet this requirement.

The third requirement is that “[t]he data center business shall make a minimum investment in an Iowa physical location of two hundred million dollars within the first six years of operation in Iowa beginning with the date the data center business initiates site preparation activities.” *Id.* § 423.3(95)(b)(3). The petition states that each building on T5’s data center campus will have greater than a \$200 to \$500 million investment from T5 alone. Provided that T5 invests at least \$200 million in the physical location within six years of initiating site preparation activities, it will meet this requirement.

The final requirement is that “[t]he data center business shall comply with the sustainable design and construction standards established by the state building code commissioner pursuant to section 103A.8B.” *Id.* § 423.3(95)(b)(4). The petition asserts that T5 will comply with this requirement. Provided that it does comply with the sustainable design and construction standards, it will meet this requirement.

Therefore, based on the assertions provided in the petition, as long as T5 does comply with each of the four requirements as described above, it will be eligible for the sales tax exemption for data center businesses under Iowa Code section 423.3(95).

Ability for Property Owner and Tenant to Aggregate Investment

The second question stated in the petition is whether T5’s tenants could qualify for the exemption under T5’s qualification, or if they would have to separately qualify. Stated differently, T5 is asking whether a data center tenant automatically qualifies for the exemption if the property owner meets all the requirements.

As stated above, the first requirement to qualify for the exemption is that the purchaser must be a data center business, which is defined as “*an entity* whose business among other businesses, is to operate a data center.” *Id.* § 423.3(95)(b)(1) (emphasis added). The use of the word “an,” and the singular noun of “entity” in the statute demonstrates that a data center business consists of a singular entity. Since the language is singular, it does not allow two data centers to

both qualify under the same set of facts. Therefore, T5's tenants cannot qualify for the exemption solely because T5 qualifies for the exemption.

The next issue is whether a data center tenant and property owner can aggregate their investments to meet the two hundred million dollar minimum investment. Iowa's exemption statute does not contain words such as "collective," "aggregate investment," or similar language. When construing the meaning of a statute "we look to the language chosen by the legislature and not what the legislature might have said." *Vaudt v. Wells Fargo Bank, N.A.*, 4 N.W.3d 45 (Iowa 2024); see also *Chavez v. MS Tech. LLC*, 972 N.W.2d 662 (Iowa 2022) ("[L]egislative intent is expressed by omission as well as by inclusion"). With respect to Iowa Code section 423.3(95), the Iowa legislature could have chosen to include language allowing for owners and tenants to aggregate their investments in order to meet the required investment amount; however, section 423.3(95)(b)(3) does not contain such language and only refers to a data center business as a singular entity. Under *Vaudt* and similar principles of statutory construction, it must be concluded that omitting language allowing collective or aggregate investments from the statute was intentional, and the Iowa legislature did not intend to allow property owners and tenants to aggregate their investments to meet the exemption requirements.

There are other states with a similar sales tax exemption for data center businesses that do allow the data center operator and tenants to aggregate their investments to meet the minimum requirement. For example, Illinois law requires a minimum of "\$250,000,000 collectively by the data center operator and the tenants of the data center over the 60-month period." 20 ILCS 605/605-1025(c). In a similar Connecticut statute, qualified investment is defined as "the aggregate, nonduplicative eligible qualified data center costs expended by an owner, operator and colocation tenant of a qualified data center." Conn. Gen. Stat. Ann. § 32-286. These statutes have explicit language allowing the operator and the tenant to aggregate their investments, where the Iowa statute intentionally excludes similar language.

Additionally, “exemption statutes are construed strictly, with all doubts resolved in favor of taxation.” *Story County. Wind, LLC v. Story County. Bd. of Rev.*, 990 N.W.2d 282 (Iowa 2023). If there is any doubt whether the exemption statute allows tenants to qualify under the property owner’s qualification, the statute must be construed strictly, and doubts must be resolved in favor of taxation. Interpreting this statute in favor of taxation means that a tenant and a property owner are not able to aggregate their investments in order to meet the minimum investment requirement. Additionally, given that Iowa Code section 423.3(95) is silent on the topic of leases and that tax exemption statutes are to be construed narrowly, the Director cannot read the terms lease or lease agreements into section 423.3(95)(b)(3) when it is not expressly stated. The “statute’s silence on [this] topic . . . means that the unmentioned topic is simply not covered by the statute.” *Id.* at 287. Therefore, given that Iowa Code section 423.3(95) does not contain language about aggregation of investments or similar language, the Director finds that in order to qualify for the exemption, T5 and its tenants would each need to independently invest a minimum of 200 million dollars.

Tenant’s Ability to Qualify for the Exemption

The third question stated in the petition is whether both T5 and T5’s tenants can each qualify for the exemption under Iowa Code section 423.3(95) if they both meet all of the criteria independently but both T5 and its tenant are based at the same physical location. When looking at the language of Iowa Code section 423.3(95), there is no explicit language granting a data center business that is a tenant in its physical location the right to claim the exemption, however there is also no language explicitly precluding a tenant from qualifying either. One requirement to qualify for the exemption is that the business must “have” a physical location. Iowa Code § 423.3(95)(b)(2). Whether a data center business that is leasing a building can qualify under this requirement depends on whether the word “have” in this statute requires the business to be the property owner or if occupying the space under a lease is sufficient. The statute does not define

what it means to have a physical location. “When the legislature has not defined words of a statute, we look to prior decisions of this court and others, similar statutes, dictionary definitions, and common usage.” *Gardin v. Long Beach Mortg. Co.*, 661 N.W.2d 193 (Iowa 2003). “Have” has not been defined previously in this context, so we turn to a dictionary definition and common usage. A plain meaning of have is that it means “to hold or maintain as a possession.” *Have*, Merriam-Webster.com Dictionary, (last visited June 6, 2024), <https://www.merriam-webster.com/dictionary/have>. This definition does not necessarily require ownership, just possession. It supports the idea that a data center business leasing a building would “have” that building. In addition, if the legislature had intended ownership to be a requirement they could have used the word “own” in the statute instead of “have.” As written, the exemption statute does not preclude a data center tenant from being eligible for the exemption.

Another requirement to qualify for the exemption is that the data center business shall make a \$200 million minimum investment in an Iowa physical location. Iowa Code § 423.3(95)(b)(3). As recently concluded in *In re Microsoft Corporation*, Iowa Dep’t. of Revenue, Dec. Ruling No. 344592 (2024), lease payments do not apply toward the minimum investment requirement. However, if T5’s tenants can meet the minimum investment requirement through other means, they could still qualify under this requirement. The statute does not define investment, and neither does the administrative rule implementing the statute. Black’s Law Dictionary defines “investment” as “[a]n expenditure to acquire property or assets to produce revenue.” INVESTMENT, Black’s Law Dictionary (11th ed. 2019). The petition states that tenants will populate each building with over \$250 million in IT servers. IT servers would be considered assets that the data center tenants are purchasing in order to run their business and produce revenue. Under this definition, this would qualify as an investment in the business and go toward meeting the minimum investment requirement.

The minimum investment must be made “within the first six years of operation in Iowa beginning with the date the data center business initiates site preparation activities.” Iowa Code section 423.3(95)(b)(3). As the law states, it is site preparation by the data center business that is claiming the exemption that triggers the timeframe. Neither Iowa Code section 423.3(95) or Iowa Administrative Code rule 215.12 define “site preparation activities.” The tenant would have to initiate activities that would be considered site preparation under the statute in order to be eligible.

The exemption also requires the data center business to comply with sustainable design and construction standards. Iowa Code § 423.3(95)(b)(4). These standards can be found in Iowa Administrative Code chapter 661—310. In order for a building to be approved as a sustainably designed project for purposes of claiming the exemption, the building must obtain certification at gold level or better in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, version 3.0, and comply with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Iowa Admin. Code r. 661—310.5(1). As long as the building meets these requirements, a tenant using the building for data center operations will qualify under this exemption requirement.

Based on the above reasons, Iowa law does not allow a data center tenant and data center property owner to aggregate their investments to qualify for the exemption, but it does not preclude both a data center tenant and data center property owner from claiming the exemption. The data center tenant and data center property owner would have to independently meet the requirements in order to qualify for the exemption independently.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the Director finds that, assuming that the assertions made in the Petition

will be true upon completion of the data center project, T5 will be able to meet the requirements of the sales tax exemption for data centers. The Director also finds that a data center property owner and a data center tenant based at the same physical location cannot aggregate their investments to meet the requirements of the sales tax exemption, but they can both qualify for the exemption as long as they each independently meet the minimum requirements.

Issued at Des Moines, Iowa this 26th day of June, 2024.

IOWA DEPARTMENT OF REVENUE

By Mary Mosiman
Mary Mosiman, Director