

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

IN THE MATTER OF QUALITY TECHNOLOGY SERVICES, LLC 12851 FOSTER ST STE 100 OVERLAND PARK KS 66213-2611 SALES/USE/EXCISE	DECLARATORY ORDER DOCKET NO. 487047
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Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by Quality Technology Services, LLC (hereinafter referred to as “QTS” or “Petitioner”) on February 28, 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. QTS “owns and operates large colocation and hyperscale data centers throughout the world.” Pet. at 1, No. 487047 (Feb. 28, 2024). QTS constructs “a building or a group of buildings in one physical location for data center businesses.” *Id.* In some cases, there is only one data center business at the location, and in some cases there are multiple data center businesses at the same location. *Id.* QTS is planning to build a large data center in Iowa and lease portions of the property to tenants. *Id.*

QUESTIONS PRESENTED

QTS presents a series of scenarios on pages 9-18 of the Petition relating to the ability to qualify for the sales tax exemption for data center businesses found in Iowa Code section 423.3(95). Rather than repeating each specific scenario, they can be summarized by the following questions:

1. Can multiple entities located on the same data center property aggregate their investments to meet the \$200 minimum requirement to qualify for the exemption?
2. Can a data center tenant qualify for the exemption?
3. Can a third-party investor qualify for the exemption?
4. Can an entity that is contracted to operate a data center business qualify for the exemption?
5. Which entity or entities can fill out and utilize an Iowa Sales/Use/Excise Tax Exemption Certificate Form 31-014 or the Iowa Data Center Business Property Tax Exemption Form 54-009?

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).

The exemption is implemented by Iowa Administrative Code rule 701—215.12. The rule clarifies that both sales and leases of equipment are covered by the exemption. See Iowa Admin. Code r. 701—215.12(3).

Iowa Code section 427.1(37) also provides a property tax exemption for

Property, other than land and buildings and other improvements, that is utilized by a data center business as defined in and meeting the requirements of section 423.3, subsection 95, including computers and equipment that are necessary for the maintenance and operation of a data center business and other 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, including but not limited to exterior dedicated business-owned substations, and power distribution systems which are not subject to assessment under chapter 437A; racking systems, cabling, and trays; and backup power generation systems, battery systems, and related infrastructure all of which are necessary for the maintenance and operation of the data center business.

Iowa Code § 427.1(37)(a). The property tax exemption applies “beginning with the assessment year the investment in or construction of the facility utilizing the materials, equipment, and systems set forth in paragraph “a” are first assessed.” *Id.* § 427.1(37)(b). In order to claim the exemption,

“[t]he owner of the property must file a claim for exemption with the assessor by February 1 of the first year the exemption is claimed.” Iowa Admin. Code r. 701—110.26. Successive filing in subsequent years is not required unless there is an addition to the property. *Id.*

QTS Petition for Declaratory Order

In the present matter, QTS presents a series of scenarios¹ and asks whether each entity involved will be eligible to qualify for the sales tax exemption for data center businesses under Iowa Code section 423.3(95) under the facts presented. This order will first address the main issues presented in the Petition, as outlined above. Then, this order will specifically analyze each scenario proposed in the Petition to answer each question.

Ability to Aggregate Investments

The Petition states that “QTS plans to build a large data center in Iowa and lease portions of the large data center to tenants.” Pet. at 1. The first issue is whether QTS and its tenants can aggregate their investments to meet the \$200 million minimum investment requirement.

In order to qualify for the sales tax exemption, “the data center business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa.” Iowa Code § 423.3(95)(b)(3). The Iowa statute refers to “*the* data center business” as a singular entity. *Id.* Additionally, “data center business” is defined as “*an entity* whose business among other businesses, is to operate a data center.” *Id.* § 423.3(95)(e)(2) (emphasis added). This definition again uses language that refers to a single entity. It does not contain language that would allow multiple data centers at the same location to be able to aggregate their investments to meet the minimum investment requirement.

¹ Pet. at 9-18.

As outlined in the Petition, there are other states with a similar sales tax exemptions 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) (2024). Virginia law requires “a new capital investment on or after January 1, 2009, of at least \$150 million... by the data center operator and the tenants of the data center, collectively.” Va. Code Ann. § 58.1-609.3(18)(a) (2024). A similar Texas statute also contains a \$200 million minimum investment requirement that must be met by “the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently.” Tex. Tax Code Ann. § 151.359(d)(2) (2023). These states include specific language in their statutes allowing the operator of a data center business and a tenant to aggregate their investments, where the Iowa statute omits 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”). Other states, like Illinois, Virginia, and Texas, included words like “collectively” and “jointly” in the data center exemption statutes. The Iowa legislature could have used similar language indicating an ability for multiple entities to aggregate their investments. However, there was no such language included, and instead the statute only refers to a data center business as a singular entity. Therefore, following the principles of statutory construction as outlined in *Vaudt*, the exclusion of those terms in the Iowa statute is just as important as the inclusion of those terms in other states’ statutes. Since the Iowa statute does not include language that would allow collective or joint investments, it does not allow an operator of data center businesses and a tenant to aggregate their investments to meet the exemption requirements.

Additionally, “exemption statutes are construed strictly, with all doubts resolved in favor of taxation.” *Dial Corp. v. Iowa Dep’t of Revenue*, 634 N.W.2d 643, 646 (Iowa 2001). If there is any doubt whether Iowa’s exemption statute allows an operator of a data center business and a tenant to aggregate their investment, the statute must be construed strictly, and doubts must be resolved in favor of taxation. Interpreting this statute in favor of taxation means that an operator of a data center business and a tenant are not able to aggregate their investments in order to meet the minimum investment requirement. 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, QTS and its data center tenants would each need to independently invest a minimum of \$200 million.

Ability for a Data Center Tenant to Qualify

The next issue is whether an entity that does not own the property, and occupies it as a tenant under a lease, is eligible to qualify for the sales tax exemption for data center businesses under Iowa Code section 423.3(95). As described above, there are four requirements that must be met in order for an entity to qualify for the exemption. The tenant must meet every requirement listed in Iowa Code section 423.3(95)(b)(1)-(4) in order to qualify for the exemption. The first requirement is that the purchaser “shall be a data center business.” Iowa Code § 423.3(95)(b)(1). As long as a tenant is a data center business, as defined by Iowa Code section 423.3(95)(e)(2), it will qualify for this requirement.

The second requirement is that the data center business shall have a physical location in the state of Iowa that is at least 5,000 square feet in size. *Id.* § 423.3(95)(b)(2). Whether a tenant can meet this requirement depends on whether a tenant can “have” a physical location of the requisite size. The statute does not define what it means to “have” a physical location. When the legislature has not defined a term, we turn to “the context in which the term appears and give it its ordinary and common meaning.” *State v. Mathias*, 936 N.W.2d 222, 227 (Iowa 2019). An

ordinary meaning of “have” is “to hold or maintain as a possession.” *Have*, Merriam-Webster.com Dictionary, (last visited July 9, 2024).² This definition refers to possession, but not ownership. A tenant occupying a property would have possession rights under the lease, so it would “have” the physical location covered by the lease. Under the language of the statute, a tenant would “have” a physical location and would meet this requirement of the exemption if that location was at least 5,000 square feet in the state of Iowa.

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) (emphasis added). This requirement has two elements that must be satisfied: a minimum investment and a time frame in which to make the minimum investment. Furthermore, the emphasized language indicates that the data center business that is claiming the exemption is the party that must invest \$200 million and initiate site preparation activities. If the tenant is claiming the exemption, it would have to initiate site preparation activities and then make a minimum investment of \$200 million within six years in order to qualify.

Based on the facts provided in the Petition, the tenant is not the party that would initiate site preparation activities. Instead, in questions one and three, QTS would be the party initiating site preparation activities, and in question two the third-party investor would be the party initiating site preparation activities. Since the tenant will not initiate site preparation activities, the tenant will not be able to qualify for the exemption.

Ability of a Third-Party Investor to Qualify for the Exemption

The next issue is whether a third-party investor is able to qualify for the sales tax exemption for data center businesses under Iowa Code section 423.3(95). The Petition’s second

² <https://www.merriam-webster.com/dictionary/have>

set of scenarios propose situations where a third-party investor constructs and owns data center property that is operated by QTS and occupied by a tenant. As discussed above, an entity is only eligible for the exemption if it can independently meet all of the requirements set forth in Iowa Code section 423.3(95)(b).

The Petition states that the third-party investor would construct and own more than 5,000 square feet in Iowa, invest \$200 million within six years of initiating site preparation activities, and comply with the sustainable design and construction standards. Pet. at 11. Assuming the investor does comply, as stated in the Petition, it will meet the requirements outlined in Iowa Code section 423.3(95)(a)(2)-(4). However, in order to qualify for the exemption, it must also meet the definition of a data center business, as described in Iowa Code section 423.3(95)(e)(2). If the third-party investor is merely a company that constructed the buildings and owns the property, that is not enough to qualify it for the exemption. The investor is only able to qualify for the exemption if it can meet every requirement outlined in Iowa Code section 423.3(95)(a)(1)-(4).

Ability of QTS to Qualify if it is Contracted to Operate the Facility

The next issue is whether QTS can qualify for the sales tax exemption for data center businesses if it is contracted to operate a data center facility. The second set of scenarios propose situations in which a third-party investor will construct and own space for operations and maintenance of a data center, and the third set of scenarios propose situations in which QTS will construct a data center, lease space to a tenant, and then sell the property to a third-party investor. In both sets of scenarios, QTS is contracted to operate the facility. The issue in these scenarios is whether QTS is eligible for the sales tax exemption for data center businesses if it is contracted to operate a data center facility.

As stated above, QTS must meet the following requirements in order to qualify for the exemption: it must be a data center business, it must have a physical location in Iowa that is at least 5,000 square feet, it must make a minimum investment of at least \$200 million within six

years of when it initiates site preparation activities, and it must comply with sustainable design and construction standards. *Id.* § 423.3(95)(b). QTS is considered a data center business if its business is to operate a data center. *Id.* § 423.3(95)(e). Based on the definition stated above, in order to “have” a data center property, some form of possession is required. The facts of the Petition do not provide sufficient information for the Director to determine whether QTS would “have” a physical location that meets the size and use requirements of Iowa Code section 423.3(95)(b)(2) when it is contracted to operate a data center facility. QTS can only qualify for the exemption if it meets the requirements outlined in Iowa Code section 423.3(95)(b). Because the Petition lacks sufficient information for the Director to evaluate this exemption requirement, the Director declines to rule on whether QTS would “have” a qualifying physical location in Iowa if it is contracted to operate the facility.

The scenarios presented in question 2 do not state any investment or site preparation activities by QTS itself, while the scenarios presented in question 3 propose that QTS will construct more than 5,000 square feet of space for operations in Iowa and comply with sustainable design and construction standards. Under the conclusions stated above, if an entity does not invest at least \$200 million within six years of initiating site preparation activities, it is not eligible for the exemption. Therefore, if QTS is merely contracted to operate the facility, and does not initiate site preparation activities, QTS would not be eligible for the sales tax exemption for data center businesses under Iowa Code section 423.3(95). If QTS does initiate site preparation and invests at least \$200 million within six years, it would meet the minimum investment requirement. An entity that is contracted to operate a data center facility can only qualify for the exemption if it meets all of the requirements set forth in Iowa Code section 423.3(95)(b).

Ability to Complete Exemption Certificates

Questions 4, 5, and 6 presented in the Petition ask whether QTS, the tenant, and the third-party investor will be able to fill out an exemption certificate in each of the proposed scenarios.

The Iowa Sales/Use/Excise Tax Exemption Certificate Form 31-014 allows a purchaser to indicate to a seller that the purchase is exempt from tax. See Iowa Code § 423.45(4)(a). Iowa Administrative Code rule 701—288.3(2)³ outlines the information that must be listed on a valid sales and use tax exemption certificate, such as the nature of business and the reason for purchasing tax exempt. Iowa Admin. Code r. 701—288.3(2). In this case, the purchaser would be a data center business claiming the exemption for computers and equipment that are necessary for the maintenance and operation of a data center business under Iowa Code section 423.3(95). Any entity that meets the eligibility requirements for the sales tax exemption for data center businesses, as stated above, is able to complete a sales tax exemption certificate and provide it to sellers to indicate that the purchases should be exempt from tax.

The Iowa Data Center Business Property Tax Exemption Form 54-009 must be filed by a property owner to a city or county assessor to claim the property tax exemption for data center businesses. The owner of the property is responsible for filing a claim for exemption. Iowa Admin. Code r. 701—110.26.

Scenarios Presented in the Petition

Finally, the Petition presents a series of scenarios asking whether the entity or entities identified in the scenario would qualify for the data center sales tax exemption under Iowa Code section 423.3(95) based upon the facts described in each scenario. The main issues presented in the Petition have been addressed above, but the specific questions presented in each scenario can be answered as follows:

Question 1:⁴

(a) - (b): If neither QTS nor the tenant independently invest \$200 million within six years

³ Iowa Administrative Code rule 701—288.3 is being renumbered as Iowa Administrative Code rule 701—209.1, effective August 28, 2024.

⁴ Pet. at 9-11.

of initiating site preparation activities, neither entity will be eligible for the exemption.

(c): If QTS invests zero dollars within six years of initiating site preparation activities it will not have met the minimum investment requirement and will not be eligible for the exemption. If the tenant does not independently initiate site preparation activities, it will not be eligible for the exemption.

(d): If QTS meets all of the requirements listed in Iowa Code section 423.3(95), it will be eligible for the exemption. If the tenant does not independently invest at least \$200 million, it will not be eligible for the exemption.

(e): If QTS meets all of the requirements listed in Iowa Code section 423.3(95), it will be eligible for the exemption. If the tenant does not independently initiates site preparation activities, it will not be eligible for the exemption.

Question 2:⁵

(a) - (c): If neither, QTS, the third-party investor, nor the tenant independently invests \$200 million within six years of initiating site preparation activities, none of them is eligible for the exemption.

(d): If a third-party investor meets the requirements outlined in Iowa Code section 423.3(95)(a)(2)-(4), it is only eligible for the exemption if it also meets the definition of a data center business. If neither QTS nor the tenant independently invest \$200 million within six years of initiating site preparation activities, none of them is not eligible for the exemption.

(e): If a third-party investor meets the requirements outlined in Iowa Code section 423.3(95)(a)(2)-(4), it is only eligible for the exemption if it also meets the definition of a data center business. If QTS does not make any investment in the property, it is not eligible for the exemption. If the tenant does not independently initiate site preparation activities, it is not eligible for the exemption.

⁵ Pet. 11-14.

Question 3:⁶

(a) - (c): If neither QTS, the tenant, nor the third-party investor independently invests \$200 million within six years of initiating site preparation activities, none of them is eligible for the exemption.

(d) - (e): If QTS meets all of the requirements listed in Iowa Code section 423.3(95), it will be eligible for the exemption. If QTS sells the data center to a third-party investor during the initial six-year period, QTS will only qualify for the exemption if it continues to “have” the data center. If neither the tenant nor the third-party investor independently invests \$200 million within six years of initiating site preparation activities, none of them is eligible for the exemption.

Questions 4-6:⁷ Each entity that meets the qualifications for the sales tax exemption is able to fill out the Iowa Sales/Use/Excise Tax Exemption Certificate Form 31-014 to indicate their exempt status. The owner of the property can file out the Data Center Business Property Tax Exemption Form 54-009 with the local assessor to claim the exemption.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the issues raised in the Petition are as answered above.

Issued at Des Moines, Iowa this 23rd day of July, 2024.

IOWA DEPARTMENT OF REVENUE

By Mary Mosiman
Mary Mosiman, Director

⁶ *Id.* at 14-17.

⁷ *Id.* at 17-18.