

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

<p>IN THE MATTER OF</p> <p>CRI GENETICS, LLC 401 WILSHIRE BLVD SANTA MONICA, CA 90701</p> <p>SALES/USE/EXCISE</p>	<p>DECLARATORY ORDER</p> <p>DOCKET NO. 469782</p>
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Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”) by CRI Genetics, LLC (hereinafter referred to as “CRI” or “Petitioner”) on February 19, 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, on additional information provided by the Petitioner on March 28, 2024, and on information publicly available from the Petitioner’s website.¹

Petitioner is a California-based limited liability company that provides reports on ancestry and health history to its customers, including customers in Iowa. Petitioner sells ancestry and health history reports to customers in all states, including Iowa. All the reports are generated from the Petitioner’s analysis of DNA samples submitted by its customers. When a customer places an order, Petitioner sends them a collection kit through the mail. The customer then utilizes the kit to collect their own saliva samples. Customers then mail their collected samples to Petitioner’s

¹ 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)(b).

facility in Georgia for testing. In addition to this Georgia testing facility, Petitioner also notes that it has a distribution center in Utah from which test kits are mailed.

After a customer mails their DNA sample to Petitioner's lab in Georgia, the sample is processed. After processing, the individualized report that the customer purchased is created utilizing only information from the DNA sample. Customers are then able to access their individual reports through Petitioner's website.

Reports that customers can purchase from Petitioner are ancestry and health history reports, including reports on likely allergies, nutritional information, and family history and related genealogy information.

QUESTIONS PRESENTED

Petitioner presents the following questions for consideration:

1. Where is the service deemed to be provided?
2. If the service is provided in Iowa, how will the Department categorize the service being provided?
3. Given the use of tangible personal property (the specimen-collecting kit) in performance of the service, would the tangible personal property be considered "bundled" with the non-taxable service?
4. Is the specimen collection kit itself subject to use tax in Iowa?

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

Petitioner asks “how the state will categorize the service being provided.” Petition at 4. First, it is necessary to evaluate whether Petitioner is providing a taxable service. Iowa Code sections 423.2(5) and 423.2(6) impose sales tax on the sales price of specifically enumerated services. 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). According to Iowa Administrative Code rule 701–211.26(1), “laboratory testing of any substance for any experimental, scientific, or commercial purpose are selling a service subject to sales tax.” The petition describes laboratory testing on saliva samples to test for DNA characteristics. In *In Re Dakota Ag Research*, Iowa Dep’t. of Revenue, Ruling No. 314460, one of the services at issue was

testing on corn hybrid seeds. The seed was studied throughout a growing period and data was sent to customers. Like the testing at issue in *Dakota Ag*, the testing at issue here falls under the definition of testing services, as described by the rule. The described services are therefore “test laboratory” services. Thus, the services described in the petition are an enumerated service and would be subject to sales tax if they did not fall under the exclusion in Iowa Code section 423.2(6)(bc).

Iowa Code section 423.2(6)(bc) excludes “tests on humans” from the tax on testing services. Iowa Administrative Code rule 701—211.26 implements this Code section and also states, “Test laboratory services performed on humans and animals and environmental testing services are not taxable.” As discussed above, the service that Petitioner is providing is laboratory testing on human samples. According to Petitioner, the reports that customers are able to purchase are compiled exclusively based on data from the customer’s DNA, tested in Petitioner’s lab. Although the testing at issue in *Dakota Ag* was also a testing service, these tests were on corn seeds. The testing on corn seeds was not on humans or animals, and it was determined not to fall within the gamut of environmental testing. The testing therefore did not fall within any of the exclusions in Iowa Code section 423.2(6)(bc). Unlike the testing at issue in *Dakota Ag*, the testing at issue here is on humans and therefore falls within the exclusion for testing on humans in Iowa Code section 423.2(6)(bc). Although the final product delivered to the customer is the report, the report arose from the lab testing. The Director finds that the services at issue here are tests on humans and are therefore not taxable.

The conclusion that the testing at issue here is not a taxable service does not necessarily extend to other similar services. The service discussed above is testing on humans. If Petitioner were to offer similar reports, such as those containing genealogy and family history information,

generated without testing services on humans, then these services may be taxable as a different enumerated service. For example, “information services” is one of the enumerated services identified in Iowa Code section 423.2(6). Iowa Code section 423.1(22A) states that “information services includes but is not limited to database files, research databases, genealogical information, and other similar information.” If a report similar to the ones Petitioner provides to its customers were generated utilizing sources such as genealogical information or databases rather than exclusively the customer’s DNA, then the provided service may be taxable.

Because the conclusion on Petitioner’s question on the taxability of its services is dispositive of the issue of whether the services would be deemed to be provided in Iowa, the Director declines to address the sourcing of the services provided by Petitioner.

II. Bundled Transactions and Taxability of Tangible Personal Property

Next, Petitioner asks whether its testing services and testing kit would be considered a bundled transaction and whether the testing kit itself is taxable. A bundled transaction is defined as “the retail sale of two or more distinct and identifiable products, except real property and services to real property, which are sold for one nonitemized price.” Iowa Code § 423.2(8)(a). “A ‘bundled transaction’ does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.” *Id.* A sale is not a bundled transaction when “[t]he retail sale of tangible personal property or specified digital product and a service, where the tangible personal property or specified digital product is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service.” Iowa Code § 423.2(8)(d)(1).

Information on the itemization of Petitioner's products was obtained from Petitioner's website.² This information indicates that when a test kit is ordered, the test kit is not charged or itemized separately.³ To perform a test, customers utilize the testing kit to submit their samples. Because the kit is integral to the testing service being provided, it cannot be excluded from the purchase of testing services. The testing services cannot take place without the customer first submitting a sample, and the testing service is the item being sold to the customer. Petitioner does not sell testing kits, it sells genetic testing services. Therefore, the sale of these genetic testing services and the testing kit would not be a bundled transaction because the testing is the true object of the transaction and the kit is not separately itemized and is essential to the service.

Petitioner also asks whether the testing kit it mails to its customers is subject to sales and use tax as tangible personal property. Iowa Code section 423.2(1) imposes sales tax on "the sales price of all sales of tangible personal property, sold at retail in the state to consumers or users." As discussed above, customers do not purchase the kit separately, and it is not itemized separately. Therefore, there is no sales price upon which to pay sales tax. As discussed above, the service being provided is genetic testing. The testing kit utilized to collect a sample is essential to the use of the testing services and is provided to customers in order to facilitate this testing. The kit itself is not the object of the sale and is therefore not subject to sales tax.

Similarly, Iowa Code section 423.5(1) also imposes use tax on "the use in this state of tangible personal property." Petitioner sends testing kits to its customers to collect their samples and send them to a lab for testing. Petitioner does not impose a charge for the testing kit itself on

² CRI Genetics. "CRI Cellular Research Institute Genetics." *Information*, <https://crigenetics.com> (last visited July 12, 2024).

³ When a test was added to the cart and an Iowa address was entered at the checkout, the itemized total did not include the testing kit and there was no separate charge for the kit.

which to impose use tax for tangible personal property. As discussed above, the kit is incidental to the purchase of the testing service and there is no bundled transaction. Therefore, the product being sold here is a non-taxable service. Thus, there would also be no use tax due from customers. The Director finds that use tax does not apply to the tangible personal property at issue.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the Director finds that Petitioner’s genetic testing services are not taxable under Iowa Code section 423.2(6)(bc). The Director also finds that Petitioner’s genetic testing services and testing kits are not a bundled transaction, and the testing kits are not subject to Iowa sales and use tax.

Issued at Des Moines, Iowa this 29th day of July, 2024.

IOWA DEPARTMENT OF REVENUE

By *Mary Mosiman*
Mary Mosiman, Director