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

IN THE MATTER OF SWEAT IOWA, L.L.C. 140 Jordan Creek Parkway, Suite 155 West Des Moines, Iowa 50266-8777 SALES AND USE TAX	**DECLARATORY ORDER** DOCKET NO.: 378882

Pursuant to a Petition for Declaratory Order ("Petition") filed with the Iowa Department of Revenue ("Department") by Sweat Iowa, L.L.C. ("Petitioner") and in accordance with Iowa Code section 17A.9 (2024) and Iowa Administrative Code rule 701—7.24 (2024), the Director issues the following Order.

I. FACTS AND PROCEDURAL POSTURE

The findings of fact are based on the Petition submitted to the Department and other publicly available information relevant to the Petition.[1]

A. Petitioner's Business

Petitioner does business as "Perspire Sauna Studio" and operates three locations in Iowa—one in Ankeny, one in Waukee, and one in West Des Moines. Pet. for Dec. Order, No. 378882 (Dec. 21, 2023) ¶ 2 [hereinafter "Petition"]. Petitioner does not view itself as a "fitness facility." *In re Sweat Iowa LLC*, Iowa Dep't of Revenue, Dec. Order, No. 346007 (2023) [hereinafter "*Sweat Iowa I*"]. Instead, Perspire Sauna Studio "combine[s] the centuries-old healing practice of traditional sauna with the science-backed technology of infrared . . . and red light therapy . . . to optimize [its customer's] health and wellness." *Homepage*, Perspire Sauna Studio (last visited Aug. 25, 2024).[2] Petitioner's studios offer clients access to and use of private rooms containing infrared saunas. Petition ¶ 2; *Homepage*,

[1] When considering a Petition for Declaratory Order, "[t]he department may . . . solicit comments or information from any other 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*".
[2] Available at https://www.perspiresaunastudio.com/.

Perspire Sauna Studio (last visited Aug. 25, 2024). When a client books a session in one of Petitioner's infrared sauna rooms, the client will not share the room with other patrons unless the session is booked with one or more other persons. Petition ¶ 2.

Petitioner's business offers its customers various options to purchase sessions at its studios. *Ankeny Location*, Perspire Sauna Studio (last visited Aug. 25, 2024).[3] A customer may purchase a single session in one of Petitioner's locations for $39.00. *Id*. A customer who knows they would like more than one session can purchase multi-session packages with four, eight, or 20 sessions for $129.00, $199.00, and $399.00 respectively. *Id*. The "Perspire Packages" are "[o]nly valid at the location of purchase," they "cannot be shared or transferred," and they "[e]xpire 12 months from [the] purchase date." *Id*. A customer can also choose to purchase "Perspire Memberships." *Id*. The IRelax membership entitles the purchaser to four sessions per month and costs $79.00. *Id*. The IRecover membership entitles the purchaser to eight sessions per month and costs $139.00. *Id*. Finally, the IRitual membership entitles the purchaser to an unlimited number of sessions each month and costs $179.00. *Id*. Each of the memberships is "[v]alid at any Perspire Sauna Studio location." *Id*. Membership plans renew automatically each month and "[a]ctive IRecover and IRelax [m]embership sessions rollover for 90 days." *Id*. Notably, Petitioner's website indicates that, in addition to the listed price for any session, package, or membership, the customer will be required to pay "[a]pplicable sales tax." *Id*.

When a customer purchases a session at one of Petitioner's locations, the customer is purchasing an "infrared sauna experience [that] includes a private room with personalized treatments and entertainment." *Homepage*, Perspire Sauna Studio (last visited Aug. 25, 2024).[4] In each room, customers "choose from red light therapy, an array of color lights, premium entertainment options, and

[3] Available at https://www.perspiresaunastudio.com/ia/ankeny/. While the description above cites the information for Petitioner's location in Ankeny, Iowa, the pricing, package, and membership information appears to be the same at all three Iowa locations operated by Petitioner. *Compare* Perspire Sauna Studio, https://www.perspiresaunastudio.com/ia/ankeny/ (last visited Aug. 25, 2024), *and* Perspire Sauna Studio, https://www.perspiresaunastudio.com/ia/waukee/ (last visited Aug. 11, 2024), *with* Perspire Sauna Studio, https://www.perspiresaunastudio.com/ia/west-des-moines/ (last visited Aug. 11, 2024).

[4] Available at https://www.perspiresaunastudio.com/.

set their [own] temperature settings." *Id*. After checking in with staff, Petitioner's customers are "show[n] to [their] private room," and Petitioner will ensure that customers are able to "work the Smart TV and sauna controls." *Perspire Sauna Studio Experience*, Perspire Sauna Studio (last visited Aug. 25, 2024).[5] After each session, Petitioner's website encourages customers to "refresh and revive with the provided cold eucalyptus towel" and to "replenish and rehydrate" with "alkaline and coconut water, as well as other nutrient dense beverages." *Id*.

Petitioner contends that "infrared sauna is different [from] a traditional steam bath or dry heat." Petition ¶ 3. "A traditional sauna heats up the air whereas an infrared sauna heats your body directly without warming the air around you." *How Infrared Saunas Work*, Perspire Sauna Studio (last visited Aug. 25, 2024).[6] As described on Petitioner's website, infrared saunas function by targeting "near, mid, and far-infrared waves" at the body in order to "gently heat the body from within." *Id*. Because infrared saunas heat the body, the sauna room can maintain a lower ambient temperature, "which allows for a longer session and increased therapeutic benefits," especially for individuals "who can't tolerate the high heat of a traditional sauna." *Id*.

By using infrared sauna, Petitioner asserts that its customers "experience numerous benefits, including, but not limited to, relaxation, detoxification, burning of calories, recovery, immunity, rejuvenation of skin, and improved sleep." Petition ¶ 4. Indeed, Petitioner's website highlights various benefits it believes its service offers. *IR Sauna Benefits*, Perspire Sauna Studio (last visited Aug. 25, 2024).[7] For example, Petitioner's website contends that its service "help[s] detoxify the body" by increasing circulation and stimulating sweat glands. *Id*. Similarly, by increasing the body's temperature, infrared sauna creates an "artificial fever" that "increases [the customer's] overall health and resistance to disease." *Id*. Petitioner's website repeatedly describes the effects of infrared sauna as "rejuvenating" and "refreshing." *See id*.

[5] Available at https://www.perspiresaunastudio.com/infrared-sauna-experience/.
[6] Available at https://www.perspiresaunastudio.com/how-infrared-sauna-works/.
[7] Available at https://www.perspiresaunastudio.com/infrared-sauna-benefits/.

Two assertions are of particular importance, however. First, is Petitioner's description of its service as relaxing for the customer. Petitioner's website invites customers to experience a "personal escape" where tension will be released and balance will be restored. *Homepage*, Perspire Sauna Studio (last visited Aug. 25, 2024).[8] Through use of Petitioner's infrared saunas, customers are told their stress will "melt[] away" and that the nervous system will be calmed. *IR Sauna Benefits*, Perspire Sauna Studio (last visited Aug. 25, 2024).[9] Not only does infrared sauna promote calmness and relaxation during waking hours, the website says, it may also "promote[]. . . improved sleep" through the use of chromotherapy that relaxes, soothes, and "has a pacifying effect on the nervous system encouraging great relaxation." *Id*. Indeed, the infrared sauna rooms offer a customizable experience that allows users to "[s]tream their favorite show, play some music or opt for something to help get [them] into a calm meditative state"—the choice, as the website tells the customer, "is yours." *Ankeny Location*, Perspire Sauna Studio (last visited Aug. 25, 2024).[10]

Second, is the claim that infrared sauna burns calories. Petitioner asserts that "the primary purpose of infrared sauna is *not* weight loss." Petition ¶ 4 (emphasis added). Instead, customers receive a number of potential benefits from using Petitioner's service. *Id*. Petitioner's website, however, paints a different picture. While "burning calories" is listed as one of several potential benefits of infrared sauna use, the website provides additional information about the possibility of losing weight from utilizing its service. *IR Sauna Benefits*, Perspire Sauna Studio (last visited Aug. 25, 2024).[11] While use of Petitioner's infrared saunas is relaxing, the website articulates that "[the customer's] body is actually hard at work producing sweat, pumping blood, and burning calories." *Id*. "This increase in your metabolism will burn additional calories all while you relax and even for some time after your session." *Id*. Regular infrared sauna use, the website proclaims, results in "a similar aerobic response from the cardiovascular system as that of light to moderate exercise" and "may be an effective way to support

[8] Available at https://www.perspiresaunastudio.com/.
[9] Available at https://www.perspiresaunastudio.com/infrared-sauna-benefits/.
[10] Available at https://www.perspiresaunastudio.com/ia/ankeny/.
[11] Available at https://www.perspiresaunastudio.com/infrared-sauna-benefits/.

those on a journey to healthy weight." *Id*. In fact, the potential for weight loss is addressed in two dedicated pages on Petitioner's website. *See How to Use Infrared Sauna for Weight Loss?*, Perspire Sauna Studio (last visited Aug. 25, 2024) (citing studies that conclude infrared sauna use results in "passive conditioning" and noting reduced body weight and body fat of "twenty-five obese adults . . . after daily infrared sauna treatments of only 15 minutes")[12]; *Burn 300-600 Calories While Relaxing*, Perspire Sauna Studio (last visited Aug. 25, 2024) (stating that a forty-minute session in an infrared sauna is "equivalent of a 2-3 mile run, based on your BMI")[13].

B. Procedural Posture

In addition to the facts outlined in the Petition and on Petitioner's website, the procedural posture of this Petition is notable. The current Petition is the second Petition for Declaratory Order that Petitioner has submitted to ascertain the Iowa sales tax treatment of Petitioner's services. Petitioner's first Petition for Declaratory Order was submitted to the Department on August 28, 2023, through the Department's web portal GovConnectIowa. Pet. for Dec. Order, No. 346007 (Aug. 28, 2023). In the earlier petition, Petitioner sought to "confirm [that Petitioner's] service is not taxable under Iowa code [sic]." *Id.* at 2. After considering the earlier petition, the Director issued a Declaratory Order in which she concluded that Petitioner's services were taxable under the Iowa Code and associated administrative rules as taxable commercial recreation or, in the alternative, as a taxable Turkish bath or reducing salon. *Sweat Iowa I* at 4–6. Petitioner did not appeal the Director's determinations in Sweat Iowa I to the district court. As a result, and in line with Department procedures, a Closing Order was entered by the Director on December 19, 2023. *In re Sweat Iowa LLC*, Iowa Dep't of Revenue, Closing Order, No. 346007 (Dec. 19, 2023).

Subsequent to the issuance of *Sweat Iowa I* and the associated Closing Order, the Petitioner submitted the current Petition alleging error in *Sweat Iowa I* and presenting a new legal argument. Petition ¶ 1. Specifically, Petitioners allege that, "[a]s a result of using the Department's online form,

[12] Available at https://www.perspiresaunastudio.com/infrared-sauna-weight-loss/.
[13] Available at https://www.perspiresaunastudio.com/burn-300-600-calories-while-relaxing/.

Petitioner omitted—and the Department, therefore, failed to consider—material facts related to Petitioner." *Id*. In Petitioner's view, *Sweat Iowa I* contains "many erroneous assumptions" that resulted in incorrect conclusions by the Director. *Id*. Thus, the current Petition was filed to "correct" the alleged errors in *Sweat Iowa I* and Petitioner asserts that this Petition, unlike its predecessor, contains "all relevant material facts." *Id*. Despite Petitioner's assertion to the contrary, in the Director's view, the Petition in this case does not provide any new, material facts to review. Additionally, when subsequently asked to provide additional information that would aid the Director in her review of the new legal arguments presented in the Petition, Petitioner declined to provide the requested information.

II. ISSUES PRESENTED

Petitioner presents four issues for the Director's consideration:

A. Whether Petitioner is renting real property when it provides its clients with access to and use of an infrared sauna at its Iowa studios;[14]

B. Whether the Petitioner is providing the taxable service of "commercial recreation" under Iowa Code section 423.2(6)(v) and Iowa Administrative Code rule 701—216.3;

C. Whether Petitioner is providing the taxable service of "Turkish baths" under Iowa Code section 423.2(6)(bg) and Iowa Administrative Code rule 701—211.29[15]; and

D. Whether Petitioner is providing the taxable service of "reducing salons" under Iowa Code section 423.2(6)(bg) and Iowa Administrative Code rule 701—211.29.

[14] The Petition cites Iowa Administrative Code rule 701—225.6(3) in its discussion of this issue. Effective August 28, 2024, the applicable rule has been renumbered as Iowa Administrative Code rule 701—225.5(3) though the substance of the rule has not changed. For purposes of this Order, the rule's old number will be used throughout.

[15] The administrative rule governing Turkish baths and reducing salons has been renumbered since the Petition was submitted, though the substance of the rule has not changed. Effective August 28, 2024, the applicable rule can be found at Iowa Administrative Code rule 701—211.17. For purposes of this Order, the rule's old number will be used throughout.

III. STANDARD OF REVIEW

A. Declaratory Orders and 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*. § 17A.9(1)(a). The IAPA also describes agency rights and responsibilities with respect to declaratory order proceedings. *Id*. § 17A.9(1)(b)–(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 Natural 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 Iowa administrative procedure. *See* Iowa Admin. Code r. 701—7.24.

B. The Department's Interpretive Authority

This Petition asks the Director to determine whether the service, namely use of infrared saunas, offered by Petitioner is subject to Iowa's sales tax.

Iowa's legislature has conferred upon the Director "the power and authority to prescribe all rules not inconsistent with [the statute], necessary and advisable for its detailed administration and to effectuate its purposes." Iowa Code § 422.68(1). This authority extends to Iowa's sales and use tax. *Id*. § 423.42(1) (extending the authority granted in section 422.68 to Iowa Code chapter 423). The Iowa Supreme Court has consistently held that the legislature's grant of authority includes the power to interpret Iowa's sales and use tax statutes through its administrative rules. *City of Sioux City v. Iowa Dep't of Revenue & Fin.*, 666 N.W.2d 587, 589–90 (Iowa 2003) (finding that the legislature delegated "expressly comprehensive" authority to interpret and administer the law to the Department); *City of Marion v. Iowa Dep't of Revenue & Fin.*, 643 N.W.2d 205, 207 (Iowa 2002) ("We conclude from this statute [Iowa Code § 422.68(1)] that the matter under consideration has been vested in the discretion of the agency."). The Department's authority also extends to determinations of how the statute and agency rules apply to specific sets of facts. *Lowe's Home Ctrs. LLC v. Iowa Dep't. of Revenue*, 921 N.W.2d 38, 45 (Iowa 2018) ("Factual determinations as to sales tax obligations are vested in the Department."); *Iowa Ag Constr. Co., Inc. v. Iowa State Bd. of Tax Review*, 723 N.W.2d 167, 173 (Iowa 2006) ("Because factual determinations are by law clearly vested in the agency, it follows that application of the law to the facts is likewise vested by a provision of the law in the discretion of the agency.").

C. Statutory Construction and Interpretation of Tax Statutes

Generally, when interpreting a statute, the Department begins by "examin[ing] the language of the statute and determin[ing] whether it is ambiguous." *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014). If the statute's language is unambiguous, the express language in

the statute is controlling. *Id.* (citing *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011)). "If, however, the statute is ambiguous," the Department's interpretation will seek to effectuate the legislature's intent. *See id*. A statute "must [be] read . . . as a whole and give[n] 'its plain and obvious meaning, a sensible and logical construction.'" *Id.* (quoting *Hamilton v. City of Urbandale*, 291 N.W.2d 15, 17 (Iowa 1980)). When ascertaining the meaning of undefined words in a statute, the Department may look to the words' ordinary usage, dictionary definitions, use in similar statutes, and court rulings to aid in its interpretation. *Id.* (citing *Gardin v. Long Beach Mortg. Co.*, 661 N.W.2d 193, 197 (Iowa 2003)).

"Special additional principles [of statutory construction] apply in tax cases." *Iowa Auto Dealers Ass'n v. Iowa Dep't of Revenue*, 301 N.W.2d 760, 762 (Iowa 1981). When a statute imposes a tax, it "is construed liberally in favor of the taxpayer." *Scott Cnty. Conservation Bd. v. Briggs*, 229 N.W.2d 126, 127 (Iowa 1975). "However, when the taxpayer relies on a statutory exemption, the exemption is construed strictly against the taxpayer and liberally in favor of the taxing body." *Iowa Auto Dealers Ass'n*, 301 N.W.2d at 761.

IV. APPLICABLE LAW

The Iowa Code imposes "a tax of six percent upon the sales price from the furnishing of services as defined in section 423.1."[16] Iowa Code § 423.2(5). The Code goes on to state that "[t]he sales price of any of the . . . enumerated services [listed in subsection 423.2(6)] is subject to the tax imposed by subsection 5." *Id.* at § 423.2(6). The Code also provides several explicit exemptions to Iowa's sales tax. *See id.* at § 423.3. The Department has adopted rules that interpret and implement these provisions of the Iowa Code as well as to administer Iowa's sales tax law. *See generally* Iowa Admin. Code ch. 701—200 to 225. The Director next turns to the specific provisions of the Code and administrative rules at issue in this case.

[16] Section 423.1(54) defines "services" as "all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an employer who pays the wages of an employee for valuable consideration by any person engaged in any business or occupation specifically enumerated in section 423.2." Iowa Code § 423.1(54). Additionally, the definition of "services" makes clear that "[t]he tax shall be due and collectible when first use of the service is received by the ultimate consumer of the service." *Id.*

A. Sales Tax Treatment of Commercial Recreation

As mentioned above, the Iowa Code imposes tax on the sale of a number of enumerated services. *See* Iowa Code § 423.2(6). One listed service that is subject to Iowa sales tax is "[g]olf and country clubs and all commercial recreation." *Id.* at § 423.2(6)(v). The Department has promulgated administrative rules that implement this provision. *See* Iowa Admin. Code r. 701—216.3.

The rule states that "[p]ersons providing facilities for recreation for a charge are rendering, furnishing, or performing a service, the sales price of which is subject to tax." Iowa Admin. Code r. 701—216.3. The rule goes on to define "recreation" as "*all activities pursued for pleasure*, including sports, games and *activities that promote physical fitness*[.]" *Id.* at r. 701—216.3 (emphasis added). However, the administrative rule carves out certain commercial recreational activities that are not subject to Iowa sales tax. First, under subrule (1), "school[s] providing training services in any activity pursued for pleasure or recreation shall not be subject to tax." *Id.* at r. 701—216.3(1). Second, where the service provider furnishes both the facilities for the recreation and instruction in the activity, "charges for instruction in the recreational activities shall not be subject to tax" if certain conditions are met. *Id.* at r. 701—216.3(2).

To fall into the second exception, the service provider must contract for and bill separately any charge for instruction and that instruction charge must be reasonable in relation to any charge for use of the facility. *Id.* at r. 701—216.3(2)"*a*". Additionally, the persons receiving instruction in a recreational activity "must be under the guidance and direction of a person training them in how to perform the recreational activity." *Id.* at r. 701—216.3(2)"*b*". Finally, any instruction provided "must impart to the learner a level of knowledge or skill in the recreational activity which would not be known to the ordinary person engaging in the recreational activity" and the instructor must have some specialized training in the recreational activity. *Id.* at r. 701—216.3(2)"*c*".

B. Sales Tax Treatment of Turkish Baths and Reducing Salons

Like "all commercial recreation," the Code lists as an enumerated service subject to Iowa sales tax the service of "Turkish baths, massage, and reducing salons, excluding services provided by

massage therapists licensed under chapter 152C." Iowa Code § 423.2(6)(bg). The Department has also promulgated administrative rules that implement this statutory provision. *See* Iowa Admin. Code r. 701—211.29.

The rule begins by reiterating that "[p]ersons engaged in the business of operating Turkish baths . . . and reducing salons are selling a service subject to sales tax." *Id.* at r. 701—211.29(1). These services are subject to tax even when a business providing them only provides the services as "*part of* its operation" and when the business "offers *any* services of Turkish baths . . . or reducing facilities or programs." *Id.* (emphasis added). The rule also provides useful definitions of the terms "Turkish baths" and "reducing salons." A "Turkish bath," the rule explains, is "any type of facility where an individual is warmed by steam or dry heat." *Id.* at r. 701—211.29(2). A "reducing salon" is defined as "any type of establishment that offers facilities or a program of activities for the purpose of weight reduction." *Id*.

V. ANALYSIS

With that context in mind, the Director now turns to the substantive issues contained in the Petition.

A. Petitioner Is Bound by the Prior Declaratory Order Issued for Its Business

As described above, "Petitioner previously filed for a Petition for Declaratory Order using the Department's online form[.]" Petition ¶ 1. The original petition submitted by Petitioner was received by the Department on August 28, 2023. Pet. for Dec. Order, No. 346007 (Aug. 28, 2023). After reviewing the original petition, the Director issued *Sweat Iowa I* on November 14, 2023. *Sweat Iowa I* at 7. Pursuant to Department procedure, after Petitioner declined to appeal *Sweat Iowa I*, the Director issued a Closing Order. *In re Sweat Iowa LLC*, Iowa Dep't of Revenue, Closing Order, No. 346007 (Dec. 19, 2023). Thirty-seven days after the Director issued *Sweat Iowa I*, Petitioner submitted this Petition on the same material facts seeking answers to several specific questions. Petition ¶ 10. This unconventional sequence of events raises the question of whether the IAPA permits a second declaratory order in this instance. As will be articulated below, the plain language of chapter 17A and

other additional authorities persuade the Director that Petitioner and the Department are bound by *Sweat Iowa I* and that issuance of a new, substantive order in this case would be inappropriate.

As indicated above, the IAPA was enacted by the legislature "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). Section 17A.9, specifically, describes declaratory orders. *Id.* at § 17A.9. As laid out in 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 Code commands agencies to "adopt rules that provide for the form, contents, and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of the petitions." *Id.* at § 17A.9(2). Of particular relevance here is the Code's statement that "[a] declaratory order has the same status and binding effect as any final order in a contested case proceeding." *Id.* at § 17A.9(7).

The Department, in line with the Code's mandate, has adopted administrative rule 701—7.24 to provide department-specific guidelines for filing, reviewing, and issuing declaratory orders. The Department's rules reiterate that "[a] declaratory order has the same status and binding effect as a final order issued in a contested case proceeding." Iowa Admin. Code r. 701—7.24(12). The rule further articulates that "[a] declaratory order is binding on the department, the petitioner, and any intervenors[,]" but, "[a]s to all other persons, a declaratory order serves only as precedent and is not binding on the department." *Id.* The rule also makes clear that "[t]he issuance of a declaratory order constitutes final department action on the petition." *Id.*

As outlined above, Iowa Code section 17A.9(7) provides that declaratory orders "ha[ve] the same status and binding effect as any final order issued in a contested case." Iowa Code § 17A.9(7) (emphasis added). The Code goes on to explain that, "[a] person or party who . . . is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under [the IAPA.]" *Id.* at § 17A.19(1). Additionally, the Code articulates that compliance with section 17A.19 is "the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek

judicial review of such agency action." *Id.* at § 17A.19. Compliance with section 17A.19 requires any petition for judicial review to be filed within thirty days of the final decision's issuance. *Id.* at § 17A.19(3).

The Iowa Supreme Court, however, has opined on the binding nature of declaratory orders and has indicated that, when a party seeking a declaratory order disagrees with the outcome, judicial review is the appropriate next step. *Sierra Club Iowa Chapter v. Iowa Dep't of Transportation*, 832 N.W.2d 636 (Iowa 2013). Though the court in *Sierra Club* was focused on whether a party is required to seek a declaratory order in order to exhaust administrative remedies prior to seeking judicial relief, it cites two passages approvingly that address judicial reviewability of declaratory orders once issued. *See Sierra Club*, 832 N.W.2d at 645–48. When an "agency ruling runs counter to the interests of the applicant, and the applicant finds it worthwhile to seek its modification by a higher authority, the judicial process may be invoked." *Id.* at 646 (citing Arthur E. Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rulemaking Process,* 60 Iowa L. Rev. 731, 806 (1975)). Indeed, in Bonfield's view, section 17A.19 provides "for the judicial reviewability of declaratory rulings." *Id.* (citing Arthur E. Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rulemaking Process,* 60 Iowa L. Rev. 731, 824 (1975)). After the IAPA was updated in 1998, Bonfield published an additional article in which he explained that "[section 17A.9(7)] assures that declaratory rulings are (i) *judicially reviewable*, (ii) *binding on the petitioner, the agencies, and other parties to the declaratory order, unless reversed or modified on judicial review*, and (iii) have the same precedential effect as contested cases." *Id.* (citing, Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government*, 39-40 (1998)) (emphasis added). In reaching its conclusion that seeking a declaratory order is necessary to meet the exhaustion requirement, the Iowa Supreme Court opined that, once a declaratory order is issued, judicial review "protects a party to a declaratory order proceeding if the agency makes the incorrect decision." *Sierra Club Iowa Chapter*, 832 N.W.2d at 648.

All of this is to say that, when the Director issued *Sweat Iowa I*, that order took on "the same status and binding effect as a[] final order in a contested case proceeding." Iowa Code § 17A.9(7). Petitioner obviously disagreed with the Director's conclusions in *Sweat Iowa I*. Petition ¶ 1. Petitioner should have, within thirty days of *Sweat Iowa I*'s issuance, filed a petition for judicial review in district court to challenge the Director's determination. *See* Iowa Code § 17A.19(3). Petitioner did not follow the statutorily prescribed course of action to have the prior order reviewed and, potentially, modified. That Petitioner failed to do so is sufficient reason, in the Director's opinion, to decline to issue a new, substantive order in this case.

Additionally, in the Director's view, were she to issue a new, substantive order in this instance, it would undermine the finality and binding status of the prior order—a status granted to all declaratory orders by the General Assembly—and this the Director will not do. Further, while there may be compelling reasons to issue a new, substantive determination in situations where the applicable law or material facts have changed, *see* Arthur E. Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process*, 60 Iowa L. Rev. 731, 813–14 (1975), that is not the situation in this case. Here, the Petitioner does not allege that the applicable provisions of the Code or rules were altered between the time *Sweat Iowa I* was issued and the time when this Petition was submitted. Nor did Petitioner present facts that differ materially from those reviewed by the Director in *Sweat Iowa I*. In this case, Petitioner is simply unhappy with the Director's prior, binding order. The Director concludes that Petitioner's displeasure with the prior order is not a sufficient reason to undermine that order's binding nature or to diverge from the process outlined in statute for challenging an agency's final determination. That Petitioner made additional legal arguments in this Petition does not alter the Director's analysis. As a result, the Director declines to issue a second, binding declaratory order on the questions presented in the Petition.

B. Petitioner's Service Is Subject to Iowa Sales Tax

As stated, the Director concludes that Petitioner and the Department are bound by *Sweat Iowa I* and that a new, substantive order in this instance undermines the finality and binding effect of the decision in that case. However, were *Sweat Iowa I* not binding on Petitioner and the Department, the Director would answer the issues raised in the Petition as follows.

1. Applicability of Rule 701—225.6(3) to Petitioner's Business

Petitioner begins by asserting that Petitioner's service is not taxable under the Iowa Code and rules because, rather than offering a service at all, Petitioner is, in fact, offering a mixed transaction in which the customer is primarily renting real property and, incidentally, being offered tangible personal property which facilitates the rental of that real property. Petition ¶ 11. The Director declines to make a determination on this issue.

The rule cited by Petitioner on this issue provides that the sales price of a rental may not be subject to Iowa sales tax "[i]f *a rental contract* allows the renter exclusive possession or use of a defined area of real property and, incident to *that contract*, tangible personal property is provided which allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property[.]" Iowa Admin. Code r. 701—225.6(3) (emphasis added). Here, Petitioner provided no rental contract for the Director to analyze to determine whether the transactions Petitioner enters with its customers fall within the scope of this rule. As noted above, Petitioner was asked to provide additional information to help inform the Director in her review. Specifically, Petitioner was asked to provide a copy of the franchise agreement it entered with the Perspire Sauna Studio franchisor, copies of any lease agreements with landlords related to Petitioner's business locations, and copies of any agreements between Petitioner and its customers describing the rights and obligations of the parties when a customer purchases a session, package, or membership. Without this necessary documentation, the Director cannot draw any conclusions as to whether this rule applies to the Petitioner's sales to its customers.

To support its reading of the administrative rules, Petitioner cites a single, non-binding policy letter issued by the Department nearly thirty years ago. *See* Petition ¶ 11.c; Iowa Dep't of Revenue, Policy Letter No. 97300051 (July 23, 1997)[17]. In that letter, a member of the Department's staff concluded that a business that "rent[s] . . . three batting cages on a half an hour rental rate basis" and that "provide[d] equipment, such as bats and balls upon request as incidental to the cage rental" fell within the scope of the rule that is now Iowa Administrative Code rule 701—225.6(3). Iowa Dep't of Revenue, Policy Letter No. 97300051 (July 23, 1997).[18] Here, Petitioner argues, the towels and water are like the bats and balls; the infrared sauna room is akin to the batting cages. *Id.* The Director does not share Petitioner's view and would make some observations about Petitioner's use of this authority.

A single, decades-old letter, written by Department staff, that, by its own terms, was "an informal opinion," did not "bind the Department" at the time it was issued and does not bind the Department now. *Id.* Further, a search of the Iowa Tax Research Library[19] returns three additional documents on the same topic and with similar fact patterns—all of which reach the opposite conclusion and abrogate the determination in the cited policy letter from 1997. Failure to reference these documents presents an incomplete picture of the state of the law with respect to rule 701—255.6 (formerly housed at 701—16.26 and 701—26.18) and its applicability to the facts presented in this case.

In the earliest of those documents, a declaratory ruling, the Director of Revenue at the time was presented with the question of whether Soccer and Sports Center L.C.'s rental of arena space for sports practice was taxable commercial recreation or was non-taxable rental of real property. *In re Soccer and Sport Center L.C.*, Iowa Dep't of Revenue and Finance, Dec. Ruling No. 97-30-6-0153 (1997).[20] As described, Soccer and Sports Center provided neither incidental equipment nor instruction in any of the sports its facility was equipped to handle. *Id*. In that ruling, Director Bair

[17] Available at https://itrl.idr.iowa.gov/Browse/OpenFile/4281%7C26ddott18%7CAll%7C%7CAll.
[18] Available at https://itrl.idr.iowa.gov/Browse/OpenFile/4281%7C26ddott18%7CAll%7C%7CAll.
[19] The Iowa Tax Research Library can be found at https://itrl.idr.iowa.gov/.
[20] Available at https://itrl.idr.iowa.gov/Browse/OpenFile/4494%7C26ddott18%7CAll%7C%7CAll.

concluded that "[t]he rental of the arena for sports practice [was] not the rental of real property." *Id.* Instead, the customers were paying a fee to use a specialized facility that was designed for commercial recreation. *Id*. In a simultaneous petition submitted by the same business, Director Bair analyzed the taxability of renting batting cages to customers with incidental provision of baseballs and exclusive use of the cages during the rental period. *In re Soccer and Sports Center L.C.*, Iowa Dep't of Revenue and Finance, Dec. Ruling No. 97-30-6-0154 (1997).[21] Again, Director Bair concluded that "the rental of batting cages is not the rental of real property." *Id.* And again, Director Bair concluded that the customers were paying a fee to rent a specialized facility that was designed for the customer to engage in commercial recreation. *Id.* Finally, a second non-binding policy letter issued by the Department in 2012 evaluated whether rental of a racetrack for customers to experience driving stock cars was taxable commercial recreation or non-taxable rental of real property. Iowa Dep't of Revenue, Policy Letter No. 12300036 (Aug. 14, 2012).[22] The Department concluded, in line with the two orders previously discussed, that rental of the racetrack was taxable commercial recreation. *Id.*

Thus, the Director concludes that the informal, non-binding policy letter cited by Petitioner is not a reliable authority on Iowa Administrative Code rule 701—225.6(3), though she declines to determine whether Petitioner's business falls within the scope of that rule.

2. Petitioner's Service Is Taxable Commercial Recreation

Next, Petitioner argues that the Director's conclusion in *Sweat Iowa I* that Petitioner's "service of infrared sauna [is] considered 'commercial recreation' and, as such, [is] subject to tax in Iowa" is incorrect. *Sweat Iowa I* at 6. At its core, Petitioner's argument on this issue is one of statutory construction. *See* Petition ¶ 12.b–c, e–g. The Director declines to adopt Petitioner's interpretation of the relevant statute.

As noted above, when construing a statute's meaning, the Department begins by "examin[ing] the language of the statute and determin[ing] whether it is ambiguous." *Kay-Decker,* 857 N.W.2d at

[21] Available at https://itrl.idr.iowa.gov/Browse/OpenFile/4497%7C26ddott18%7CAll%7C%7CAll.
[22] Available at https://itrl.idr.iowa.gov/Browse/OpenFile/3229%7C26ddott18%7CAll%7C%7CAll.

223. When the statute's language contains no ambiguity, the express language in the statute controls. *Id.* (citing *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011)). As such, the analysis begins with the Code.

The Iowa Code imposes tax on "[t]he sales price of any of the following enumerated services[:] . . . Golf and country clubs and all commercial recreation." Iowa Code § 423.2(6)(v). Following the Iowa Supreme Court's lead, the Director gives the words their "ordinarily and commonly understood meanings" and utilizes dictionary definitions to do so. *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 224 (Iowa 2014) (citing the Court's approval of using dictionaries to determine statutory meaning when terms are not defined by the legislature in *Schaefer v. Putnam*, 841 N.W.2d 68 (Iowa 2013)). At issue specifically is the phrase "all commercial recreation." Petition ¶ 12. "All" is defined as "every one of[,]" "any[,]" and "every[.]" Webster's New World College Dictionary 36 (Michael Agnes ed. 2006). "Commercial" means "of or in connection with commerce or trade" or "made, done, or operating primarily for profit." *Id.* at 293; *see also* COMMERCIAL, Black's Law Dictionary (12th ed. 2024) (Commercial is defined as "[o]f, relating to, or *involving the selling* of goods or *services for profit*." (emphasis added)). Finally, "recreation" carries the meaning of "refreshment in body or mind, . . . by some form of play, amusement, or relaxation." Webster's New World College Dictionary 1198 (Michael Agnes ed. 2006).

Applying these dictionary definitions, the Director concludes that the service of "all commercial recreation" means, essentially, any type or every type of activity intended to refresh the body or mind offered for profit. The Department's administrative rule is consistent with the plain meaning of the statute. The rule provides that "[p]ersons providing facilities for recreation for a charge are rendering, furnishing, or performing a service, the sales price of which is subject to tax." Iowa Admin. Code r. 701—216.3. The rule further clarifies that "'recreation' includes all activities pursued for pleasure, including sports, games, and activities that promote physical fitness[.]" *Id.* Further, as the Director's order in *Sweat Iowa I* made clear, "pleasure," as used in the rule, encompasses "something that causes an agreeable sensation." *Sweat Iowa I* at 4 (citing PLEASURE, Black's Law Dictionary (11th ed. 2019)).

While the rule does provide an exception when the service is instruction in a recreational activity, Petitioner does not assert that the exception applies to Petitioner's services in this instance. *See* Iowa Admin. Code r. 701—216.3(2); Petition ¶ 12.

Here, the service offered by Petitioner—namely infrared sauna—falls squarely within the plain meaning of the statute and its attendant rule. Petitioner provides its service for a fee, presumably with the goal of making a profit, and certainly in connection with commerce or trade. *See Ankeny Location*, Perspire Sauna Studio (last visited Aug. 25, 2024).[23] The service is also marketed to potential customers as refreshing for the mind and the body. *See IR Sauna Benefits*, Perspire Sauna Studio (last visited Aug. 25, 2024).[24] Thus, under the plain meaning of section 423.2(6)(v), the Director concludes Petitioner is providing commercial recreation.

Even under the somewhat more restrictive definition in the administrative rule, Petitioner is clearly providing a service subject to Iowa tax. As noted above and as the Director found in her prior order, Petitioner claims that its services "relax the mind" and "melt[] away stress." *Id.* Infrared sauna, it says, "bring[s] great calm and peace to the mind that is worried, excited, or in a constant nervous state." *Id*. Further, Petitioner's customers have options when using Petitioner's services that allow them to customize their experience in order to maximize their enjoyment of infrared sauna. *See Homepage*, Perspire Sauna Studio (last visited Aug. 25, 2024) (noting that customers can choose the color of light in their private room, can set their ideal temperature, and have "premium entertainment options" to keep them occupied during their session).[25] Undoubtedly a personalized experience that imparts such relaxation would be described by the average user as pleasurable. That Petitioner's service is subject to Iowa's sales tax as taxable commercial recreation under the Code and rule is even more clear when Petitioner's claims about the physical fitness benefits of infrared sauna are considered. *See IR Sauna Benefits*, Perspire Sauna Studio (last visited Aug. 25, 2024).[26] As

[23] Available at https://www.perspiresaunastudio.com/ia/ankeny/.
[24] Available at https://www.perspiresaunastudio.com/infrared-sauna-benefits/.
[25] Available at https://www.perspiresaunastudio.com/.
[26] Available at https://www.perspiresaunastudio.com/infrared-sauna-benefits/.

described, use of Petitioner's infrared saunas may help customers to lose weight through the burning of calories, to "releas[e] built up toxins in the body[,]" by "reduc[ing] inflammation[,]" by "reliev[ing] tension [and] pain[,]" by improving the immune system, and by promoting sleep. *Id.* The activity of using Petitioner's infrared sauna appears to "promote physical fitness" as contemplated in the Department's rule. Iowa Admin. Code r. 701—216.3.

Petitioner suggests, though, that the Department's understanding of the Code and rule is flawed because it fails to apply the maxim of statutory construction known as *ejusdem generis*.[27] Petition ¶ 12.b, e–g. Petitioner misunderstands, however, the correct order of operations when interpreting statutory language. As the Iowa Supreme Court has stated, "[i]f the statute is unambiguous, [the interpreting tribunal] look[s] *no further* than the statute's express language." *Kay-Decker*, 857 N.W.2d at 223 (Iowa 2014) (emphasis added) (citing *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011) (internal quotation marks omitted)). Here, as noted, the Director concludes the language of the statute is unambiguous—phrased differently, the words "all commercial recreation" bear "their ordinary and commonly understood meaning[s]." *Id.* at 223 (citing *McGill v. Fish*, 790 N.W.2d 113, 119 (Iowa 2010) (internal quotation marks omitted)). Additionally, the Director concludes the Department's rule is consistent with the plain meaning of the statute. As a result, application of any canon of statutory interpretation would be inappropriate.

3. Petitioner's Service Is Taxable as a "Turkish Bath"

Next, Petitioner takes issue with the Director's prior determination that Petitioner's services "would be taxable under Iowa Code section 423.2(6)(bg)" as a Turkish bath. *Sweat Iowa I* at 6. Specifically, Petitioner contends that the Director's conclusion in *Sweat Iowa I* is in error because "the Iowa legislature did not clearly intend to include infrared sauna within the definition of 'Turkish baths'" and because "the 'service' [sic] provided by Petitioner . . . does not fit the definition of 'Turkish bath' as

[27] "*Ejusdem generis*" is "[a] canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed." *EJUSDEM GENERIS*, Black's Law Dictionary (12th ed. 2024).

defined by the Department." Petition ¶ 13.b. The Director disagrees.

The Iowa Code imposes a tax on "[t]he sales price of any of the following enumerated services[:] . . . *Turkish baths*, massage, and reducing salons, excluding the services provided by massage therapists licensed under chapter 152C." Iowa Code § 423.2(6)(bg) (emphasis added). As Petitioner notes, "[t]he legislature enacted the statute imposing sales tax on Turkish baths prior to 1980." Petition ¶ 13.c. Indeed, the service of providing Turkish baths has been subject to Iowa sales tax for more than half a century—Turkish baths having first been added to the provision enumerating services subject to Iowa's sales tax in the 1971 edition of the Iowa Code. Iowa Code § 422.43 (1971). Petitioner argues that, due to the age of the provision including Turkish baths in the Code, "the legislature could not have intended to tax infrared saunas as 'Turkish baths' when it passed the law imposing a tax on 'Turkish baths' because infrared sauna 'services' [sic] did not exist at that time." Petition ¶ 13.c.

Petitioner's view is too limited. While it is true that the Iowa legislature likely did not have infrared sauna, specifically, in mind when it decided to include Turkish baths as a taxable service, the provisions of the Code are not to be viewed as prehistoric insects trapped forever in amber. Instead, the Iowa Supreme Court has long held that "legislative enactments in general and comprehensive terms, prospective in operation, apply alike to all persons, subjects and business within their general purview and scope coming into existence subsequent to their passage." *Bruce Transfer Co. v. Johnston*, 287 N.W. 278, 280 (Iowa 1939). The Iowa Supreme Court has utilized this approach to statutory construction in a tax case. *See Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216 (Iowa 2014). In that case, the Iowa Supreme Court analyzed "whether a company providing Voice over Internet Protocol (VoIP) service on cable wires in Iowa is subject to central assessment as a 'telephone company operating a line in this state' or, otherwise stated, a company 'that . . . operates . . . any . . . telephone line.'" *Id.* at 217. Ultimately, the court in *Kay-Decker* determined that such services were subject to central assessment under the Code. *Id.* at 225–26. The court explained that "the technology at issue [in *Kay-Decker*] did not exist when the legislature enacted the statute," but, instead

of “assuming the legislature intended to capture only technologies that existed when the law was enacted[,]” the court instead “applied the language of the statute in a common-sense manner.” *Id.* at 225. Indeed, the court opined that “the [statutory] definition of ‘telephone line’ adapts with changing technology, so long as there is a line and a comparable service is being provided.” *Id.* at 226. In short, the Iowa Supreme Court has found, repeatedly, that “a statute can encompass technologies not in existence at the time of its promulgation.” *Id.* at 223.

The Director believes the same principle holds true in this instance. Instead of imposing the narrow reading of the Code proposed by Petitioner, the Director instead opts for a more common-sense understanding of 423.2(6)(bg). In the Director’s view “Turkish baths” is not limited to the technologies used to provide that service at the time of the provision’s adoption in the 1970s. Instead, “Turkish baths” as used in section 423.2(6)(bg) encompasses new technologies, like infrared sauna, that can now be utilized to provide a comparable service to the public. As such, the Director concludes that Petitioner’s services fall within the Code’s language and the service is taxable.

Petitioner also contends that Petitioner’s service cannot be taxable as a “Turkish bath” because it does not fall within the definition of “Turkish bath” provided in the Department’s rule. Petition ¶ 13.d–e. Rule 701—211.29(2) defines “Turkish bath” as “any type of facility when an individual is warmed by steam or dry heat.” Petitioner argues that “[t]he infrared sauna does not produce steam and is not a dry heat.” Petition ¶ 13.d. Additionally, Petitioner suggests that, because the rule does “not use a phrase such as ‘and other similar methodologies’ or ‘including but not limited to’ the Department cannot extend the interpretation of Turkish baths[.]” *Id.* at ¶ 13.e. The Director again reaches a different conclusion.

While the Director agrees that infrared sauna does not “warm [the user] by steam[,]” the Director believes Petitioner is confusing the descriptive phrase “dry heat” with traditional sauna technology. “Steam” is defined as “water as converted into invisible vapor or gas by being heated to the boiling point; vaporized water; it is used for heating[.]” Webster’s New World College Dictionary 1401 (Michael Agnes ed. 2006). “Dry” means “having no moisture” or “not wet or damp.” *Id.* at 438. In

the Director's view, as used in the rule "dry heat" does not refer to any particular technology for heating a sauna's user or the space itself—for example through heated forced air, an electric heater, hot stones, or burning wood or coals that heat the ambient air. Instead, the rule's use of "dry heat" is presented in contrast to steam—it describes heating that does not utilize "vaporized water." As Petitioner's website explains, while "[a] traditional sauna heats up the air[,] an infrared sauna heats your body directly without warming the air around you." *How Infrared Saunas Work*, Perspire Sauna Studio (last visited Aug. 25, 2024).[28] "Infrared sauna studios use near, mid, and far-infrared waves which gently heat the body from within." *Id.* However, both infrared saunas and traditional dry saunas operate without the use of steam to heat the user. As such, the Director concludes that Petitioner's infrared saunas fall within the scope of the Department's rule.

For the reasons described above, the Director concludes that the service offered by Petitioner's business is taxable under section 423.2(6)(bg) as a Turkish bath because that term, as used in the Code, is capable of "encompass[ing] technologies not in existence at the time of its promulgation"—namely technologies like infrared sauna. Additionally, the Director determines that services offered by Petitioner fall within the scope of the definition of Turkish bath in rule 701—211.29(2) because, though it uses relatively novel technology to warm its customers, Petitioner's infrared saunas provide a "dry heat" that does not utilize vaporized water to heat the client or the room in which the client receives Petitioner's services.

4. Petitioner's Service Is Taxable as a "Reducing Salon"

Finally, Petitioner challenges the Director's prior determination that Petitioner's services "would be taxable under Iowa Code section 423.2(6)(bg)" as a reducing salon. *Sweat Iowa I* at 6. Petitioner asserts that the Director's determination in *Sweat Iowa I* is incorrect because "the legislature did not clearly intend to include infrared saunas within the definition of 'reducing salons'" and because it is "inconsistent with the Department's previous rulings." Petition ¶ 14.a. Petitioner misreads both the law

[28] Available at https://www.perspiresaunastudio.com/how-infrared-sauna-works/.

imposing tax on the service of reducing salons and the rulings presented in support of its position.

As outlined above, section 423.2(6)(bg) imposes a tax on "[t]he sales price of any of the following enumerated services[:] . . . Turkish baths, massage, and *reducing salons*, excluding services provided by massage therapists licensed under chapter 152C." Iowa Code § 423.2(6)(bg) (emphasis added). The Department promulgated rule 701—211.29 to interpret and implement the relevant provision of the Iowa Code. The rule defines "reducing salon" as "*any type of establishment that offers facilities* or a program of activities *for the purpose of weight reduction*." Iowa Admin. Code r. 701—211.29(2) (emphasis added). The rule also makes clear that section 423.2(6)(bg) and the rule applies to all persons providing the listed taxable services "includ[ing] persons engaged in the business of operating a health studio which, *as a part of its operation*, offers any services of . . . reducing facilities or programs." *Id.* at r. 701—211.29(1).

Here, Petitioner's service falls within the plain language of the Code and rule. As noted above, Petitioner's website touts several potential benefits its customers may enjoy after using its services. *Homepage*, Perspire Sauna Studio (last visited Aug. 25, 2024).[29] One of the benefits advertised on the landing page of Petitioner's website—the first place a potential customer browsing online would interact with—is "burn calories." *Id.* Looking deeper, a user would discover a page dedicated to the benefits of Petitioner's services that explains that use of Petitioner's infrared saunas can "burn up to 400 calories" and that the user will "lose water weight in a session, but [the user will] burn additional calories at rest which can help support weight loss." *IR Sauna Benefits*, Perspire Sauna Studio (last visited Aug. 25, 2024).[30] Studies show, Petitioner's website states, that "regular use of an infrared sauna imparts a similar aerobic response from the cardiovascular system as that of light to moderate exercise" and using Petitioner's service "may be an effective way to support those on a journey to healthy weight." *Id.* Two additional dedicated pages on Petitioner's website also highlight how use of its service may result in weight loss for the user. *See See How to Use Infrared Sauna for Weight Loss?*,

[29] Available at https://www.perspiresaunastudio.com/.
[30] Available at https://www.perspiresaunastudio.com/infrared-sauna-benefits/.

Perspire Sauna Studio (last visited Aug. 25, 2024)[31]; *Burn 300-600 Calories While Relaxing*, Perspire Sauna Studio (last visited Aug. 25, 2024).[32]

Petitioner's business falls squarely within the rule's definition of "reducing salon" because it is an "establishment that offers facilities . . . for the purpose of weight reduction." Iowa Admin. Code r. 701—211.29(2). It matters not that Petitioner's customers may experience other benefits in addition to weight loss, that some users may not seek weight reduction when they purchase the service, or that other services are offered by Petitioner—the rule is clear that Petitioner's service is taxable when "reducing facilities" are offered as "*part of* its operation." *Id.* at r. 701—211.29(1).

Petitioner puts forward two arguments in support of its position; the Director, however, remains unpersuaded by either. First, Petitioner asserts that the vintage of the Code provision imposing tax on reducing salons precludes it from applying to the Petitioner's business. Petition ¶ 14.c. Petitioner explains that "[t]he legislature enacted the statute imposing sales tax on reducing salons prior to 1980." *Id.* However, infrared saunas have only recently become popular and available to the average consumer. *Id.* As a result, "the legislature could not have intended to tax infrared saunas when it enacted the law imposing a tax on 'reducing salons' because infrared sauna 'services' [sic] did not exist at that time." *Id.* As discussed above, however, "a statute can encompass technologies not in existence at the time of its promulgation." *Kay-Decker*, 857 N.W.2d at 223. In this case, neither the Code nor the rule is concerned with the particular technology, type of facility, or program that is offered by the service provider. *See* Iowa Code § 423.2(6)(bg); Iowa Admin. Code r. 701—211.29(2). Instead, the Code as interpreted through rule is concerned with the purpose of the service, namely weight loss. Iowa Admin. Code r. 701—211.29(2). That service is offered by Petitioner.

Second, Petitioner contends that several inapposite rulings should govern the outcome in this case. *See* Petition ¶ 14.d. Petitioner begins by inaccurately characterizing a thirty-year-old, informal policy letter issued by the Department. *Id.* at ¶ 14.d.i. As Petitioner reads the non-binding

[31] Available at https://www.perspiresaunastudio.com/infrared-sauna-weight-loss/.
[32] Available at https://www.perspiresaunastudio.com/burn-300-600-calories-while-relaxing/.

communication, the Department determined "that to be a reducing salon the [fitness] training must be for weight reduction *only* [sic]." *Id.*

However, when one reads the cited policy letter, it becomes clear that the Department made no such determination. Iowa Dep't of Revenue and Finance, Policy Letter (June 28, 1991)[33] In that letter, the Department was responding to a question from a "certified personal trainer who assesse[d] clients health and fitness and design[ed] workout program[s] to meet the client[s'] personal health and fitness goals" and who "monitor[ed] the progress of the client[s] during their fitness program[s]" as to whether the services provided were subject to Iowa tax. *Id.* After noting that there was "no specific listing for 'fitness trainer'" in the tax imposition provisions of the Code at the time, the Department explained that the services provided *may* be taxable as a "reducing salon." *Id.* The Department explained that the description of the business was not clear about whether the services provided were for weight reduction or were related to other aspects of personal fitness. *Id.* "However," the Department stated, "*if part of your program is for weight reduction*, then [the service provided] may be subject to sales tax." *Id.* The substantive portion of the letter concludes that "because the activities . . . describe[d] could easily be viewed as taxable as a weight reduction business[,]" the trainer "should make sure [to] make note of the difference [in services provided to clients] and impose tax accordingly." *Id.* Thus, instead of supporting Petitioner's contention that businesses are only taxable as reducing salons if the only benefit offered is weight loss, the letter, in fact, supports the opposite conclusion. *Id.*

Petitioner also argues that two prior declaratory orders issued by the Department, which analyzed a different provision of the Code and applied their analyses to businesses offering different services, should control the analysis in this instance. Petition ¶ 14.d.ii–v. In both prior orders, the Director was presented squarely with the question of whether the services provided—Pilates and yoga classes, respectively—should be treated as commercial recreation under the Iowa Code and rules. See Pet. for Dec. Order, No. 2019-300-2-0020 at 1–2 (Jan. 15, 2019); Pet. for Dec. Order, No. 209-

[33] Available at https://itrl.idr.iowa.gov/Browse/OpenFile/4709%7Creducing%20salons%7CExact%7C%7CAll.

300-2-0586 at 1–2 (Sept. 3, 2019).[34] The Director answered that question in the negative in both instances based on the facts presented. *See In re Tice Group, Inc.*, Iowa Dep't of Revenue, Dec. Order, No. 2019-300-2-0020 (2019)[35]; *In re Yoga MAT*, Iowa Dep't of Revenue, Dec. Order, No. 2019-300-2-0586 (2019).[36] Petitioner seems to believe that the Director's decision *not* to answer questions that *were not* presented should somehow guide the Director's determination here; Petitioner is incorrect. In this instance, the petition in *Sweat Iowa I* stated broadly that Petitioner "wanted to confirm that our service is not taxable under Iowa code [sic]." Pet. for Dec. Order, No. 346007 at 2 (Aug. 28, 2023). The Petition before the Director now squarely asks whether Petitioner's services are taxable as a reducing salon. Petition ¶ 14. Simply put, the issue of whether section 423.2(6)(bg) and the associated rule applied to the services described was not before the Director in either of the orders cited by Petitioner; it is before the Director now.

In sum, the Director concludes that the services offered by Petitioner's business is taxable under section 423.2(6)(bg) and Iowa Administrative Code rule 701—211.29 as a reducing salon because it "offers facilities or a program of activities for the purpose of weight reduction." Petitioner's arguments to the contrary are unconvincing.

VI. CONCLUSION

As noted above, Petitioner presented the Director with several questions for review. In light of Petitioner's failure to appeal *Sweat Iowa I* for judicial review and that order's final and binding status on both the Petitioner and the Department, the Director declines to issue a second, substantive order in this case. However, were *Sweat Iowa I* not binding upon Petitioner and the Department, the Director would conclude that Petitioner failed to provide information relevant to a determination that its sales fall within the scope of Iowa Administrative Code rule 701—225.6(3). The Director would further

[34] The Department's prior orders in these cases inartfully described the question presented as whether the services at issue were subject to sales tax generally. As noted in the text above, both petitions asked specifically whether Iowa Code 423.2(6)(v) and rule 701—26.24 (now housed at 701—216.3) applied to the services offered by the petitioners in those instances.

[35] Available at https://itrl.idr.iowa.gov/Browse/OpenFile/6076%7CPilates%7CAll%7C%7CAll.

[36] Available at https://itrl.idr.iowa.gov/Browse/OpenFile/6157%7CYoga%20MAT%7CAll%7C%7CAll.

conclude that Petitioner's services are subject to Iowa sales tax as commercial recreation, Turkish baths, or reducing salons as those terms are described in Iowa Code sections 423.2(6)(v) and 423.2(6)(bg), respectively, and their associated administrative rules.

ORDER

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

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

IOWA DEPARTMENT OF REVENUE

By Mary Mosiman
Mary Mosiman, Director