IN THE COURT OF APPEALS OF IOWA

No. 24-0103
Filed February 19, 2025

HEALTH ENTERPRISES OF IOWA,
Plaintiff-Appellant,

vs.

IOWA DEPARTMENT OF REVENUE,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

A nonprofit corporation seeks judicial review of the Iowa Department of Revenue's denial of tax refund claims. **AFFIRMED.**

Cody J. Edwards and Ronald L. Mountsier of Dickinson, Bradshaw, Fowler & Hagen, P.C., Des Moines, for appellant.

Brenna Bird, Attorney General, Patrick C. Valencia, Deputy Solicitor General, Ian Jongewaard, Assistant Solicitor General, and Stephen P. Sullivan, Assistant Attorney General, for appellee.

Heard by Ahlers, P.J., and Badding and Buller, JJ.

BADDING, Judge.

Following years of contested case proceedings, the Director of the Iowa Department of Revenue denied two refund claims for sales tax, use tax, and vehicle registration fees paid by Health Enterprises of Iowa, a chapter 504 nonprofit corporation providing group purchasing access and other shared services to Iowa hospitals. Health Enterprises' members are "nonprofit hospitals licensed pursuant to chapter 135B," making them individually eligible for tax exemptions under Iowa Code section 423.3(27) (2013). But the director's final order on appeal concluded that Health Enterprises—a separate, unlicensed entity—was not eligible for the exemptions. The district court agreed with the director's conclusion on judicial review. Health Enterprises appeals, claiming that its members' tax exemptions should "flow through" to Health Enterprises.

I. Background Facts and Proceedings

This appeal arises from a long-pending dispute over a pair of tax refund claims filed by Health Enterprises of Iowa, a chapter 504 nonprofit corporation. It comes to this court with an extensive procedural history and a more than 18,000-page administrative record. However, as the Director of the Iowa Department of Revenue observed in his final order, the dispositive facts are few and undisputed.

During the relevant period, each of Health Enterprises' members were nonprofit hospitals licensed under Iowa Code chapter 135B. In April 2016 and July 2017, Health Enterprises submitted refund claims to the department for sales tax, use taxes, and vehicle registration fees that it paid over the course of three years. As the basis for this refund, Health Enterprises claimed an exemption under Iowa Code section 423.3(27), which excludes from taxable sales the price of

certain goods and services furnished "to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital."[1] Health Enterprises argued that it was entitled to the exemption because it is a nonprofit entity comprised of licensed nonprofit hospitals, and because "a group of exempt institutions acting in concert should be afforded the exemption available to the exempt institutions which make up the entity."

The department denied Health Enterprises' claims. In August 2017, Health Enterprises filed a protest. Several years of proceedings ensued. Following a two-day hearing, an administrative law judge issued a proposed decision that found Health Enterprises' purchases were not exempt under section 423.3(27) because it was not a nonprofit hospital licensed under chapter 135B. Health Enterprises appealed the decision to the director, who entered a final order affirming the department's refund denials. Finding the language of section 423.3(27) unambiguous, the director concluded "[t]here is simply nothing in the provision at issue that would indicate that an entity that is not, itself, a nonprofit hospital licensed under chapter 135B is eligible for the exemption in section 423.3(27)."

The district court affirmed the director's final order on judicial review. Health Enterprises now appeals, challenging the department's legal conclusion that Iowa

[1] Health Enterprises invoked matching exemptions for use taxes and vehicle registration fees. *See* Iowa Code § 423.6(6) (exempting from use tax goods and services "exempt from the sales tax under section 423.3," subject to exceptions not relevant here); *id.* § 321.105A(2)(c)(1) (exempting from the new registration fee "[e]ntities listed in section [423.3(27)], to the extent that those entities are exempt from the tax imposed on the sale of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state to consumers or users"). There is no dispute that Health Enterprises' eligibility under section 423.3(27) is a requirement for all three of the exemptions it claims.

Code section 423.3(27) unambiguously requires a taxpayer to be a "nonprofit hospital licensed pursuant to chapter 135B" to qualify for an exemption. It also asks this court to find, as matters of fact, that Health Enterprises is a group of nonprofit licensed hospitals "acting in concert," that it is consequently a "nonprofit hospital licensed pursuant to chapter 135B," and that the purchases at issue in its refund claims were "used in the operation of the hospital."

II. Standard of Review

Judicial review of agency decisions is governed by Iowa Code section 17A.19 (2024). *Lowe's Home Ctrs., LLC v. Iowa Dep't of Revenue*, 921 N.W.2d 38, 45 (Iowa 2018). Relief from a final agency action is available to a party whose substantial rights have been prejudiced due to one or more enumerated categories of administrative error. Iowa Code § 17A.19(10). The district court acts in an appellate capacity to review the agency action according to the standards set forth in section 17A.19(10). *Lowe's Home Ctrs., LLC*, 921 N.W.2d at 45. We apply the same standards "to determine if we reach the same result as the district court." *Id.*

The parties agree that our review should proceed under section 17A.19(10)(c), which requires us to determine whether the agency's decision was "[b]ased upon an erroneous interpretation of a provision of law." In applying that standard, we owe no deference to the department's interpretation and are free to substitute our own judgment if we conclude the department made a legal error. *See The Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 423–24 (Iowa 2010) (noting that despite the court's previous "indications of interpretive discretion" to the department of revenue, "it is difficult to

find a clear legislative delegation of interpretive authority" for a word that "has already been interpreted, i.e., explained, by the legislature through its enactment of a statutory definition").

III. Analysis

Iowa Code section 423.3(27) (2013) imposes two conditions for exemption from sales tax: (1) the tax-exempt goods or services must be sold "to a nonprofit hospital licensed pursuant to chapter 135B," and (2) the tax-exempt goods or services must be "used in the operation of the hospital." Health Enterprises asks this court to find that the first requirement is satisfied when licensed nonprofit hospitals act "in concert" to purchase goods and services through an otherwise non-qualifying entity. The parties refer to this idea as a "flow-through" or "concerted-action" theory of exemption. Whether section 423.3(27) embraces such a rule is a pure question of statutory interpretation.

A. Interpretive Principles

"When engaging in statutory interpretation, we first examine the language of the statute and determine whether it is ambiguous." *Kay-Decker v. Iowa State Bd. of Tax Rev.*, 857 N.W.2d 216, 223 (Iowa 2014). Ambiguity exists where reasonable minds could differ about the meaning of the statutory text. *Sherwin-Williams*, 789 N.W.2d at 424 (citing Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 46:4, at 179 (7th ed. 2007)). Such a dispute can "arise from specific language used in a statute," or it can stem from "the context of the entire statute or related statutes." *Id.* at 425 (citation omitted). If a statute is ambiguous, the court must apply the familiar principles of statutory construction to determine the legislature's intent. *Kay-Decker*, 857 N.W.2d at 223. But if there

is no ambiguity, "we look no further than the statute's express language." *Id.* (quoting *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011)).

"Special additional principles apply in tax cases." *Iowa Auto Dealers Ass'n v. Iowa Dep't of Revenue*, 301 N.W.2d 760, 762 (Iowa 1981). Statutes imposing taxes are generally construed in favor of the taxpayer and against the taxing body. *Lowe's Home Ctrs.*, 921 N.W.2d at 46. Yet "taxation is the rule, exemption is the exception." *Iowa Network Servs., Inc. v. Iowa Dep't of Revenue*, 784 N.W.2d 772, 776 (Iowa 2010); *see also Van Buren Cnty. Hosp. & Clinics v. Bd. of Rev. of Van Buren Cnty.*, 650 N.W.2d 580, 586 (Iowa 2002) (noting tax exemptions are "generally disfavored as contrary to the democratic notions of equality and fairness, and exist solely due to legislative grace"). Thus, contrary to the general rule, statutory tax exemptions are "construed strictly against the taxpayer and liberally in favor of the taxing body." *Lowe's Home Ctrs.*, 921 N.W.2d at 46 (citation omitted). Any doubt must be resolved in favor of taxation, and the taxpayer seeking the exemption bears the burden to prove entitlement. *Sherwin-Williams*, 789 N.W.2d at 424.

B. Health Enterprises' Position

The cornerstone of Health Enterprises' flow-through theory of exemption is the Iowa Supreme Court's decision in *American Coll. Testing Program, Inc. v. Forst* (*ACT*), 182 N.W.2d 826 (Iowa 1970). In that case, ACT—a chapter 504 nonprofit organization whose members were delegates of educational organizations in thirty-three states—sought an exemption from sales and use tax under a statutory exemption for "private nonprofit educational institution[s]." *ACT*, 182 N.W.2d at 826 (quoting Iowa Code § 422.45(8) (1966)). The sole question before the court

was whether ACT was an "educational institution" under the exemption statute in effect at the time. *Id.* at 827.

Observing that tax exemptions must be strictly construed, the court found that ACT's primary purpose of developing and administering college placement exams was beyond the plain meaning and prior interpretations of the phrase "educational institution." *Id.* at 827–28 (conceding that "ACT's activities are related to the educational process," but explaining "the fact that it performs a valuable service for students and schools does not qualify it as an educational institution"). In reaching this conclusion, the court distinguished educational *institutions* from educational *activities*, emphasizing that "the legislature knew how to exempt all persons engaged in educational activities from the payment of sales tax on goods or services purchased for use in such activity, if it wished to do so." *Id.* at 828 (citing *Cmty. Drama Ass'n of Des Moines v. Iowa State Tax Comm'n*, 109 N.W.2d 23 (Iowa 1961)).

After determining that ACT was not an educational institution within the plain language of the statute, the court closed its opinion by noting:

> Plaintiff also cites cases which support the proposition that an activity which would be exempt if performed by an exempt institution is also exempt when several qualifying institutions act in concert, such as a hospital laundry[,] or an organization for joint purchasing by hospitals to take advantage of volume discounts.
>
> We do not quarrel with the results reached in the cited cases but do not find them analogous to the case at bar.

Id. (internal citations omitted).

Relying on the above passage, Health Enterprises contends that in the *ACT* decision, the Iowa Supreme Court introduced a flow-through or concerted-action

theory of exemption applicable to all Iowa sales tax exemptions. Yet it cites no Iowa appellate decision relying on *ACT* or otherwise finding a non-exempt entity may claim a tax exemption based on the eligibility of its members. Instead, it points to a 1992 Iowa Attorney General opinion relying on *ACT* to find a chapter 28E entity would enjoy the same property tax exemption as its constituent municipalities, *see* Op. Iowa Att'y Gen. No. 92-11-4 (Nov. 12, 1992), 1992 WL 470385, at *3, and a district court's summary judgment ruling in a different proceeding that discussed *ACT* in determining whether Health Enterprises qualified as a charitable organization under Iowa's property tax exemption statute.

To shore up its Iowa authority, Health Enterprises cites several out-of-state cases finding multi-hospital ventures eligible for state tax exemptions based on the exempt status of their members. *See Dep't. of Revenue v. Cent. Med. Lab'y*, 555 S.W.2d 632, 633–34 (Ken. 1977) (finding a medical laboratory organized by nonprofit hospitals was exempt from sales and use taxes under a statute incorporating Kentucky's constitutional exemption for "institutions of purely public charity"); *Cmty. Hosp. Linen Servs., Inc. v. Comm'r of Tax'n*, 245 N.W.2d 190, 194–95 (Minn. 1976) (finding property of hospital laundry wholly owned by public hospitals was constitutionally exempt from taxation, reasoning a subsidiary "devoted exclusively to serving the purposes of the parent corporations" may be "disregarded as a separate tax entity"); *Hosp. Purchasing Serv. of Mich. v. City of Hastings*, 161 N.W.2d 759, 761 (Mich. Ct. App. 1968) (finding the real and personal property of a hospital group purchasing organization exempt under Michigan's statutory exemption for "charitable . . . institutions"). It also cites several federal

court decisions and IRS private letter rulings reaching similar conclusions under applicable federal tax laws.

Finally, Health Enterprises argues that the department itself has embraced the flow-through exemption theory through prior rulemaking. In the wake of the 1970 decision in *ACT*, the department amended its rules implementing the exemption in former section 422.45(8) to recognize that a "private nonprofit educational institution" includes "a group of qualifying organizations acting in concert." Iowa Admin. Code r. 701-17.11 (1977). That rule remained on the books for more than four decades,[2] even after the legislature amended section 422.45 to include a distinct statutory definition of "educational institution"—now codified at section 423.3(17)—that did not include "a group of qualifying organizations acting in concert." *See* 2001 Iowa Acts, ch. 150, § 3.[3]

Although the department has never promulgated a similar rule defining "nonprofit hospitals" under section 423.3(27), Health Enterprises contends the department's longstanding rule for educational institutions all but acknowledged that a flow-through exemption "is implicit in the law" of taxation in Iowa. According

[2] The department rescinded former rule 17.11 in July 2024 during the pendency of this dispute. *See* 47 Iowa Admin. Bull. 455 (July 24, 2024).

[3] The statute now provides:

> The sales price of all tangible personal property, specified digital products, or services, used for educational purposes sold to any private nonprofit educational institution in this state. For the purpose of this subsection, "educational institution" means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution and the curriculum must include basic courses which are offered every year. "Educational institution" includes an institution primarily functioning as a library.

Iowa Code § 423.3(17) (2024).

to Health Enterprises, the department's prior interpretation of "educational institution" suggests there is ambiguity in section 423.3(27) because the exemptions are "located within the same statute and . . . have [the] same basic requirements." Finally, Health Enterprises emphasizes deposition testimony by a department designee, who acknowledged that two hospitals sharing the cost of jointly purchased equipment could "claim the exemption on their half of the purchase price."

C. Iowa Code § 423.3(27) is Not Ambiguous

The problem with Health Enterprises' position is that its flow-through exemption theory is nowhere to be found in the language of section 423.3(27), nor is it even between the statute's lines. And that is the beginning and end of our inquiry. *See Vaudt v. Wells Fargo Bank, N.A.*, 4 N.W.3d 45, 50 (Iowa 2024) ("When the text of a statute is plain and its meaning clear, the court should not search for a meaning beyond the express terms of the statute." (cleaned up)). Health Enterprises' theory is, at best, a policy proposal to expand Iowa's sales tax exemption to organizations that "the legislature knew how to exempt . . . if it wished to do so." *ACT*, 182 N.W.2d at 828. If this court is to pay "anything more than lip service" to the rule that tax exemptions must be narrowly construed, *id.* at 827, then the director's final order must be affirmed.

We repeat what each of the reviewing courts before us already found: the language of section 423.3(27) is facially unambiguous. To qualify for the exemption, a purchaser of goods or services must be "a nonprofit hospital licensed pursuant to chapter 135B." Iowa Code § 423.3(27). Through its reference to chapter 135B, the legislature expressly conditioned exemption on a purchaser's

licensure status under a separate statutory scheme—indicating its intent to tether eligibility to a class of *entities*, not a range of activities. *See Sherwin-Williams*, 789 N.W.2d at 425 (noting courts may not override the legislature's decision to "act as its own lexicographer" (citation omitted)); *ACT*, 182 N.W.2d at 828 ("There is a distinction between being engaged in educational activities for educational purposes and educational institutions."). It is not hard to think of broader language—such as "nonprofit healthcare organization"—that might have left room for debate about whether non-hospitals could qualify. This court's role, however, is to interpret "the language chosen by the legislature," not a hypothetical alternative. *Vaudt*, 4 N.W.3d at 50 (citation omitted).

For lack of textual support, Health Enterprises tries to locate an exemption in "the patina of prior judicial interpretation." *Doe v. State*, 943 N.W.2d 608, 612 (Iowa 2020). But its argument is built on a single statement in a decision construing the broader language of a different exemption. *ACT*, 182 N.W.2d at 828. By declining to "quarrel with the results" of out-of-state cases finding tax exemptions for multi-hospital ventures, the supreme court simply distinguished those authorities on their facts. *Id.* ("We . . . do not find [these decisions] analogous to the case at bar."). It did not announce a new rule of construction or discuss whether a flow-through theory of exemption might apply under Iowa law.

Even if *ACT* stood for the rule that Health Enterprises attempts to distill, its application would remain doubtful here. Importantly, the *ACT* court was asked to decide whether a college-placement testing organization qualified as an "educational institution." *Id.* at 826. And each of the cases it cited concerned whether hospital laundries or group purchasing organizations were "charitable"

entities under applicable state exemptions. *See Hosp. Purchasing Serv.*, 161 N.W.2d at 760; *Children's Hosp. Med. Ctr. v. Bd. of Assessors of Bos.*, 227 N.E.2d 908, 914 (Mass. 1967); *Hosp. Bureau of Standards & Supplies, Inc. v. United States*, 158 F. Supp. 560, 561 (Ct. Cl. 1958). These terms are markedly more open-ended than the phrase "nonprofit hospital licensed pursuant to chapter 135B," which our legislature defined by reference to a separate statutory scheme. This court may not expand unambiguous language under the guise of construction. *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155, 168 (Iowa 2016).

As for its argument that the department has embraced a flow-through exemption, Health Enterprises fails to explain how the department's former definition of "educational institution" or the purported concessions of an agency deponent control this court's statutory interpretation on review for legal error. The bar is high for parties seeking to invoke the principles of estoppel against a government body, *see ABC Disposal Sys., Inc. v. Dep't of Nat. Res.,* 681 N.W.2d 596, 607 (Iowa 2004), and Health Enterprises makes no such argument in its briefing. And although Iowa Code section 17A.19(10)(h) provides relief from agency actions that depart without reason from "the agency's prior practice or precedents," Health Enterprises stops short of asserting that the department's interpretation of section 423.3(27) lacks a rational basis or conflicts with its previous applications of the same exemption.

At bottom, Health Enterprises' argument is not rooted in statutory interpretation—it is rooted in policy. It contends the law should not "penalize, through taxation, a group of nonprofit hospitals . . . joined together for a common

purpose, such as reducing costs and providing greater access to care." *See, e.g.*, *Hosp. Purchasing Serv.,* 161 N.W.2d at 762 ("We think it would be unwise to interpret the statutory provisions under scrutiny here so as to conclude that what is free from taxation when accomplished by hospitals individually, is suddenly subject to taxation when hospitals act in concert."). But whether sound policy dictates expansion of a tax exemption is not for us to decide. *See Randolph v. Aidan, LLC*, 6 N.W.3d 304, 308 (Iowa 2024) (stating the "first principle" of statutory construction is that "courts don't write statutes" (citing Iowa Const. art. III, § 1)). Health Enterprises has come to the wrong branch of government for its relief.

D. Health Enterprises' Factual Issues

Separate from the interpretative question that marks the throughline of this case, Health Enterprises asks the court to decide several unresolved factual issues:

> Health Enterprises requests this Court rule that (1) Health Enterprises is a group of nonprofit hospitals licensed pursuant to chapter 135B acting in concert, (2) due to Health Enterprises' relationship with its member hospitals, Health Enterprises is considered a nonprofit hospital licensed pursuant to chapter 135B, and (3) purchases by Health Enterprises are "used in the operation of the hospital" as that phrase used in Iowa Code § 423.3(27).

The department contends these issues are not preserved for appellate review because they were never decided by the decision-makers below. We agree.

This is a court of review, not first-view. *See Lowe's Home Ctrs.*, 921 N.W.2d at 53 (remanding for determination of factual questions left unaddressed by the Department and district court). "Just as we do not entertain issues that were not ruled upon by the district court . . . , we decline to entertain issues not ruled upon by an agency when the aggrieved party failed to follow available procedures

to alert the agency of the issue." *KFC Corp. v. Iowa Dep't of Revenue*, 792 N.W.2d 308, 329 (Iowa 2010) (internal citation omitted) (citing *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002)). Because Health Enterprises' fact issues were never resolved by the department, we cannot do so ourselves on judicial review of this 18,000-page administrative record. *See StateLine Coop. v. Iowa Prop. Assessment Appeal Bd.*, 958 N.W.2d 807, 817 (Iowa 2021) ("The role of an appellate court in an administrative review proceeding is not to be primary fact-finder.").

AFFIRMED.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	Case Title
24-0103	Health Enterprises of Iowa v. Iowa Department of Revenue

Electronically signed on 2025-02-19 08:29:22

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

HEALTH ENTERPRISES OF IOWA, **Petitioner,** **vs.** **IOWA DEPARTMENT OF REVENUE,** **Respondent.**	**Case No. CVCV065360** **RULING ON PETITION FOR JUDICIAL REVIEW**

The above-captioned matter came before this Court for hearing on November 3, 2023. Petitioner Health Enterprises of Iowa ("HEI") was represented by Attorney Cody Edwards. Attorney Stephen Sullivan appeared for Respondent Iowa Department of Revenue ("IDR"). Having heard the arguments of counsel and reviewed the court file, including the briefs provided by the parties, the certified administrative record ("Cert. Rec."), and being otherwise fully advised in the premises, the Court now enters the following ruling.

I. BACKGROUND FACTS AND PROCEEDINGS.

HEI is a non-profit corporation that is made up of several licensed non-profit hospitals. It states that its purpose "was and is to allow member-hospitals to collaborate to address problems faced by rural critical-access hospitals, reduce costs, and provide access to services that member-hospitals would not be able to provide individually." Pet. Br. 6. In 2016 and 2017, HEI filed claims for tax refunds on purchases it had made, claiming the purchases were exempt from sales tax. HEI specifically cited Iowa Code section 423.3(27), which exempts from tax "[t]he sales price of tangible personal property sold, or of services furnished, to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital."[1] While HEI concedes that it is not "a

[1] Subsection 423.3(27) was updated in 2018 to include the sale of "specified digital products," but this change was not in place when HEI filed for an exemption.

nonprofit hospital licensed pursuant to chapter 135B," it contends that since all of its members are such entities, these tax benefits should "flow through" to HEI.

This Court need not reiterate the extensive history of hearings and appeals that followed these two claims, which were later consolidated. The relevant legal details will be discussed further below, but in summary, IDR concluded that HEI was not entitled to an exemption under section 423.3(27). In a Proposed Decision issued August 5, 2022, an ALJ from the Iowa Department of Inspections and Appeals agreed with IDR. HEI appealed, and the Director of IDR[2] held a hearing on January 10, 2023. On March 27, 2023, IDR Director Kraig Paulson issued his Final Order on Appeal, which ultimately affirmed the finding that HEI was not entitled to tax refunds under section 423.3(27). On April 17, 2023, HEI initiated the instant Petition for Judicial Review.

II. SCOPE AND STANDARDS OF REVIEW.

In an administrative proceeding, the Court's review is governed by Iowa Code section 17A.19. A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id*. § 17A.19(10).

The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co*., 649 N.W.2d 744, 748 (Iowa 2002). Where the issue is one of fact, the Court must accept the agency's factual findings unless they are "not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f); *see also Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-465 (Iowa 2004).

[2] Iowa Admin. Code r. 701-7.19(8) requires that a decision from an ALJ be appealed to the Director of IDR for a final agency determination before a party can initiate judicial review.

III. MERITS.

The parties agree to the two key factual issues in this case: 1) that HEI is a nonprofit organization organized under Iowa Code chapter 504; and 2) during the relevant time period all of HEI's members were nonprofit hospitals licensed under Iowa Code chapter 135B. The dispute in this case is a legal one centered on the question of whether a 504 organization can claim the tax benefits of its 135B members. Both the Proposed Decision and the Final Order concluded that the statute is unambiguous. Only "a nonprofit hospital licensed pursuant to chapter 135B" may claim the exemption.

On appeal, HEI makes several arguments for why the statute is, in fact, ambiguous. For instance, it claims that there is a variety of caselaw supporting the existence of an unenumerated flow-through exception. The cases from federal courts and other states rely on laws that are not applicable to the situation at hand; therefore, they are unpersuasive. With regard to Iowa cases, HEI has not identified a case where a flow-through exception for sales and use tax has been applied to nonprofit hospitals.

A. Sales and Use Tax Exemption for Educational Institutions

HEI has identified a handful of cases where a "flow through" or "in concert" exemption has been applied in the area of sales and use taxes; however, all of these cases involve educational institutions. Property and services that are "used for educational purposes sold to any private nonprofit educational institution in this state" are exempt from sales and use tax. Iowa Code § 423.3(17). Prior to 1977, there was no specific definition for what constituted an "educational institution." In 1977, IDR announced proposed amendments to its administrative code adding, among other things, an unnumbered paragraph to the section regarding sales and use tax exemptions that states, "A private nonprofit educational institution consists of a school, college,

or university with students, faculty, and an established curriculum, a group of qualifying organizations acting in concert, or libraries." Iowa Admin. Code Supp., Revenue *[730] p. 10 (June 15, 1977). This change was adopted and indeed continues to exist in the Department's regulations. Iowa Admin. Code r. 701-284.11. However, in 2001, the Iowa Legislature adopted the current version of the statute, which created a definition of "educational institution" that includes some, but not all, of the language from IDR's rule.

> For the purpose of this subsection, "educational institution" means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution and the curriculum must include basic courses which are offered every year. "Educational institution" includes an institution primarily functioning as a library.

2001 Iowa Acts ch. 150, § 3. Notably, the language "a group of qualifying organizations acting in concert" was removed.

The case HEI heavily relies on, *American College Testing Programs, Inc. v. Forst*, took place before IDR's regulations or the addition of the legislature's definition of an educational institution. 182 N.W.2d 826 (Iowa 1970). In that case, the Iowa Supreme Court addressed the issue of if American College Testing (ACT) was an educational institution for the purposes of sales and use tax. *Id*. at 826. ACT claimed that it was, because it was a nonprofit corporation and all of its members were educational institutions, i.e., high schools and colleges using its testing services. *Id*. Its governing board was also elected by these institutions. *Id*. The Iowa Supreme Court ruled that this did not make ACT an educational institution, noting that "ACT's activities are related to the educational process, but the fact that it performs a valuable service for students and schools does not qualify it as an educational institution." *Id*. at 828. HEI draws particular attention to one section of the opinion.

> Plaintiff also cites cases which support the proposition that an activity which would be exempt if performed by an exempt institution is also exempt when several qualifying institutions act in concert, such as a hospital laundry[,] *Children's Hospital Medical Center v. Board of Assessors of Boston* (1967), 353 Mass. 35, 227 N.E.2d 908, or an organization for joint purchasing by hospitals to take advantage of volume discounts. *Hospital Bureau of Standards and Supplies, Inc. v. United States* (1958), 158 F.Supp. 560, 141 Ct.Cl. 91; *Hospital Purchasing Service of Michigan v. City of Hastings* (1968), 11 Mich.App. 500, 161 N.W.2d 759.
>
> We do not quarrel with the results reached in the cited cases but do not find them analogous to the case at bar.

Id. In particular, HEI focuses on the phrase "We do not quarrel with the results reached in the cited cases" and claims this supports their position. Even setting aside the age of the case, the fact that the Iowa Supreme Court—in dicta—did not dispute other courts' application of Massachusetts, Michigan, and federal law does not indicate that it endorsed the same rule for Iowa's laws.

More broadly, HEI's attempt to create ambiguity in subsection 423.3(27) by discussing subsection 423.3(17) is flawed for several reasons. First, an agency rule is clearly superseded by statute, and the statute since 2001 has adopted a narrower definition of an educational institution. HEI has not introduced any authority applying the "in concert" exception since the statute changed in 2001. Second, even if there was evidence of recent application of the "in concert" exception to educational institutions, HEI has not provided any compelling reason that this would in any way inform interpretation of a different subsection. The fact that they are in the same section of Iowa Code is not enough on its own, particularly given the fact that section 423.3 currently has 109 subsections. Finally, unlike subsection 423.3(17), IDR's regulations for 423.3(27) make no mention of "acting in concert" or any similar concepts. *See generally* Iowa Admin. Code 701-285.59. The conspicuous absence of any similar language for hospitals does not create ambiguity, and in fact the opposite is true. IDR could have added similar language for nonprofit hospitals, but they did not.

B. Property Tax Exemption for Nonprofit Hospitals

The only case HEI has identified having anything to do with nonprofit hospitals is a case in which HEI participated and, crucially, involved property taxes. More specifically, in *Health Enterprises of Iowa v. City of Cedar Rapids, Iowa Board of Review*, Linn County Case No. CVCV090476, HEI filed for judicial review for a decision ordering them to pay property taxes. *See* Cert. Rec. 5821-29. The Linn County Court did ultimately find that HEI was entitled to a property tax exemption. This case has little to no probative value, because the statute regarding property tax is quite different from the statute regarding sales tax. The Linn County Court found that HEI fit the definition of Iowa Code section 427.1(8), which exempts "[a]ll grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects . . . and not leased or otherwise used or under construction with a view to pecuniary profit." This is a significantly broader mandate than the standard for a sales tax exemption.

HEI claims that the Linn County Court "found the flow-through exemption applies not only to sales tax and educational intuitions, but also to property tax and charitable institutions." Pet. Br. 19-20. This is a misleading interpretation of the case. The Trial Order articulated the three requirements HEI had to show: 1) that HEI is a qualifying charitable institution, 2) that the land was used for appropriate objects, and 3) that the land was not used with a view to pecuniary profit. In discussing these requirements, the Court wrote:

> The Court notes that application of the "flow through" exemption proposed by HEI was rejected by this Court in the August 14, 2019 Order as to the second and third statutory requirements, but not as to the first. HEI proposed an interpretation of dictum in *American College Testing Programs, Inc. v. Forst*, 182 N.W.2d 826 (Iowa 1970) which this Court found:
>
> > stands only for the proposition that qualifying organizations may work in concert consistent with their charitable or benevolent goals

> at a mutually owned property and fulfill the first of three elements Iowa Code section 427.1(8) requires; operation by a qualified organization. It does not stand for the elimination of the second two statutory requirements for exemption from property taxes where the organizations working in concert have met the second two elsewhere.

(*August 14, 2019 Order* at 7). Therefore, HEI must carry the burden of proving by a preponderance of the evidence that the Property is used solely for its appropriate objects and without a view toward pecuniary profit, independent of its members' use of their respective properties.

Cert. Rec. 5823-24. Essentially, HEI's membership was relevant for determining if it was a charitable organization, a term that is not defined in the statute. This is not the case for the chapter on sales tax; therefore, this case is uninstructive.

C. Ambiguity Through Litigation

Finally, HEI claims that Iowa Code section 423.3(27) must be ambiguous, because its meaning has been litigated by these two parties over the course of several years. In support of this, HEI states, "'[D]iffering interpretations throughout . . . proceedings show reasonable minds disagree' about the meaning of statutes." Pet. Br. 20 (alterations in original) (quoting *Carreras v. Iowa Dept. of Transportation*, 977 N.W.2d 438, 446 (Iowa 2022)). The problem is that what the Iowa Supreme Court actually stated in *Carreras* was "The differing interpretations throughout *these* proceedings show reasonable minds disagree *as to the interpretation of section 322.3(12)*." *Carreras*, 977 N.W.2d at 446 (emphasis added). While the two offered interpretations in *Carreras* were both reasonable, but same cannot be said for this case. Ambiguity is created by a legitimate difference of interpretation of a statute by reasonable minds, not by the fact that one party can argue for the purposes of litigation that there should be a different interpretation.

The Court concludes that the language of Iowa Code section 423.3(27) is unambiguous in its meaning. "[W]hen a statute is plain and its meaning is clear, courts are not permitted to search

for meaning beyond its expressed terms." *State v. Welton*, 300 N.W.2d 157, 160 (Iowa 1981). HEI is not "a nonprofit hospital licensed pursuant to chapter 135B" and therefore is not entitled to a sales and use tax exemption.

IV. DISPOSITION.

IT IS THE ORDER OF THE COURT that the Final Order of the Iowa Department of Revenue is **AFFIRMED**. The Petition for Judicial Review is **DISMISSED**.

State of Iowa Courts

Case Number	**Case Title**
CVCV065360	HEALTH ENTERPRISES OF IOWA VS IOWA DEPT OF REVENUE
Type:	ORDER REGARDING DISMISSAL

So Ordered

Scott D. Rosenberg, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2023-12-20 14:32:45

HEALTH ENTERPRISES OF IOWA 5825 Dry Creek Lane NE Cedar Rapids, Iowa 52402 v. IOWA DEPARTMENT OF REVENUE SALES/USE TAX	* * * * * * * * * * *	REV. DOCKET NOS.: DIA DOCKET NOS.:	2017-300-1-0248 2017-300-1-0284 18IDR0038 18IDR0039

PROCEDURAL POSTURE

This case comes before the Director of the Iowa Department of Revenue ("Director") on appeal with a somewhat lengthy procedural history. In late April 2016 and in early June 2017, Health Enterprises of Iowa ("HEI") filed claims for a refund of tax it contends was paid on certain purchases of exempt tangible personal property and services made between January 1, 2013, and late March 2016. After reviewing HEI's refund claims, the Iowa Department of Revenue ("Department") denied the claims. HEI filed two protests in response to the Department's denials which were consolidated for review.

On October 23, 2018, HEI filed a Motion for Partial Summary Judgment with the presiding Administrative Law Judge ("ALJ"). The Department resisted the Motion for Partial Summary Judgment and a hearing was held on the Motion before the ALJ on March 11, 2019. The ALJ denied HEI's Motion on April 11, 2019. Subsequently, HEI appealed the denial to the Director on May 1, 2019. The parties submitted briefs and the Director held a hearing on HEI's interlocutory

2021, the District Court granted the Department's Motion to Dismiss, finding that HEI had not exhausted all administrative remedies available to it and that it had not shown it was eligible for an exemption to the exhaustion requirement.

Upon remand, the ALJ conducted hearings on April 11 and 12, 2022. As noted by the ALJ, "[t]he parties presented witness testimony, and the administrative file, including the exhibits, was admitted into the record." Proposed Decision, p. 1. The record remained open until July 18, 2022, in order for the parties to submit post-hearing briefs. Reviewing the record before him, the ALJ entered his Proposed Decision upholding the Department's denial of HEI's refund claims on August 5, 2022.

On September 1, 2022, the Department filed a Notice of Appeal and Request for Briefing and Oral Argument Schedule. HEI, likewise, filed a Notice of Cross Appeal and Request for Briefing and Oral Argument Schedule on September 6, 2022. The Director issued a Notice of Hearing and Briefing Schedule on October 18, 2022. In accordance with that Briefing Schedule, the Department submitted its Initial Brief on November 17, 2022. HEI submitted its Responsive Brief on December 16, 2022. The Department then filed a Reply Brief on January 3, 2023.

A hearing before the Director was held on January 10, 2023, at the Hoover State Office Building in Des Moines, Iowa. Attorneys Cody Edwards and Ronald Mountsier appeared on behalf of HEI. Assistant Attorney General Stephen Sullivan appeared on behalf of the Department. Also present at the hearing were Zachary Waldmeier and Haley Wurdinger, attorneys for the Director,

the ALJ's Order Denying Motion for Summary Judgment and the ALJ's Proposed Decision, the Director's prior Order on Appeal, and the briefs and oral arguments submitted by the parties, the Director issues this Final Order on Appeal.

FINDINGS OF FACT

As the ALJ succinctly noted in his Proposed Decision, "[d]espite the comparatively extensive procedural history of this matter as well as the larger size of the record, *the dispositive facts are few*[.]" Proposed Decision, p. 1 (emphasis added). As mentioned briefly above, HEI submitted two claims for refund seeking to have Iowa sales tax and vehicle one-time registration fees that it believes were incorrectly paid refunded to it. *See* Exs. 1-J, 2-J. The first refund claim, dated April 26, 2016, related to the claim period from January 1 to December 31, 2013. Ex. 1-J, pp. 1–2. The second refund claim, dated July 28, 2016, related to the claim period from May 1, 2013, to March 31, 2016. Ex. 2-J, pp. 1–2. Both refund claims were submitted with attached cover letters outlining HEI's belief that, because HEI's member-hospitals "are non-profits and licensed under Iowa Code chapter 135B[,]" HEI itself should be eligible for the sales tax exemption provided in Iowa Code section 423.3(27). Exs. 1-J, pp. 3–7; 2-J, pp. 3–5. Throughout the claim periods, HEI's member-hospitals were nonprofit hospitals licensed under Iowa Code chapter 135B. Ex. 155, pp. 13–20; *In the Matter of Health Enterprises of Iowa*, Protest, Docket No. 2017-300-1-0248 at ¶ 4 (Aug. 2, 2017) (hereinafter "HEI Protest 1"); *In the Matter of Health Enterprises of Iowa*, Protest, Docket No. 2017-300-1-0284 at ¶ 5 (Aug. 3, 2017) (hereinafter "HEI Protest 2").

It should be noted that in its Notice of Appeal and Request for Briefing and Oral Argument Schedule, the Department asked the Director to make additional findings of fact in order to correct errors it alleges were made by the ALJ in his Proposed Decision. *See* Iowa Dep't of Revenue's Not. of Appeal & Req. for Br'g & Oral Arg. Sched (Sept. 1, 2022) (hereinafter "Dep't Not. of App."). Specifically, the Department finds fault with the ALJ's decision not to rule on two issues. Dep't Not. of App., p. 3. First, the Department sought a determination as to whether HEI was the purchaser of the items for which tax was paid to the Department and for which HEI requested a refund. *Id.* Second, the Department sought a determination as to whether tax was paid at all for at least some of the transactions for which HEI submitted a refund claim. *Id.*

While the Department is correct that a finding against HEI on each of those issues may independently cause HEI's refund claims to fail, in the Director's view the factual findings above and the legal conclusions below are sufficient to dispose of this case. The parties appear to agree that a ruling against HEI on the question of whether HEI is eligible to claim the exemption in section 423.3(27) would be dispositive with respect to all of HEI's refund claims in this case. *See* Iowa Dep't of Revenue's Initial Br., p. 12 (Nov. 17, 2022) (discussing other independent grounds for denying HEI's refund claims, but noting that for all claims, even those for which the Department did not dispute HEI had purchased the items at issue and for which tax had been paid, "HEI *still* is not entitled to *any refund* of taxes because the transactions are not exempt from tax under [the relevant provisions of the Code]." (emphasis added)); Dir.'s Hr'g Oral Arg. at 2:03-

nature of legal issue at the center of this matter, the Director views the additional questions highlighted by the Department in its Notice of Appeal as ancillary and unnecessary for a conclusive ruling on HEI's eligibility for the exemption it has claimed. In sum, the Director declines to make the additional findings of fact requested by the Department because those facts are not required to evaluate HEI's exemption claim and to decide whether the refund claim was correctly or incorrectly denied. As such, the issues of whether HEI purchased the items upon which tax was paid and for which a refund was requested and whether tax was paid at all for some of the transactions in the record are still in dispute.

CONCLUSIONS OF LAW

From the beginning, the central and, in the Director's view, dispositive issue in this matter has been whether HEI, an entity organized under Iowa Code chapter 504, is eligible to claim the exemption housed in Iowa Code section 423.3(27) by virtue of the fact that its member-hospitals, during the claim period, were nonprofit hospitals licensed under Iowa Code chapter 135B. To that analysis the Director now turns.

A. *Sales Tax Exemption Under Iowa Code Section 423.3(27) and the Related Department Rule*

The Iowa Code imposes "a tax . . . upon the sales price of all sales of tangible personal property . . . sold at retail in this state" and upon certain services furnished in this state. *See generally* Iowa Code § 423.2. A use tax is also imposed in Iowa on the purchase price of certain

case, exempts "[t]angible personal property or services the sales price of which is exempt from the sales tax under section 423.3, except section 423.3, subsections 39 and 73" from Iowa's use tax. Iowa's Code also imposes a "'fee for new registration' . . . in the amount of five percent of the purchase price for each vehicle subject to registration." Iowa Code § 321.105A(2). "Entities listed in section 423.3, subsection[] . . . 27, to the extent that those entities are exempt from the tax imposed on the sale of tangible personal property . . . sold at retail in the state" are also exempt from the fee for new registration. Iowa Code § 321.105A(2)(c)(1). As noted, the fighting issue in this case, specifically, is whether HEI is eligible to claim the sales tax exemption provided in section 423.3(27) and, as a result, would also be exempt from use tax and the fee for new registration.

Section 423.3(27) allows a sales tax exemption for "[t]he sales price of tangible personal property sold, or of services furnished, to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital." Iowa Code § 423.3(27).[1] To be eligible for the exemption, a taxpayer must meet two conditions. First, the tangible personal property or services must be sold or furnished to a nonprofit hospital licensed pursuant to Iowa Code chapter 135B. Second, the tangible personal property sold or the services furnished must be used in the operation of the hospital to which they are sold or furnished.

[1] This exemption is made applicable to use tax by section 423.6(6).

Iowa Code chapter 135B are exempt from tax if the property or service purchased is used in the operation of the hospital." Iowa Admin. Code r. 701—18.59. Thus, the rule mirrors the conditions laid out by the Code—to be eligible for the exemption, the property or service must be purchased by a nonprofit hospital licensed pursuant to Iowa Code chapter 135B and the property or service purchased must be used in the operation of the hospital to which they are sold or furnished.

B. *Statutory Interpretation*

As described above, HEI's argument, at its core, is one of statutory construction—HEI urges the Director to interpret section 423.3(27) in a way that permits HEI to utilize the exemption provided therein. As such, a discussion of the principles that govern statutory interpretation, generally, and the particular rules at play in the tax context, specifically, is warranted.

Generally, when interpreting a statute, the analysis begins with an "examin[ation of] the language of the statute [to] determine 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)). Ambiguity exists where "reasonable minds could differ or be uncertain as to the meaning of the statute." *Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 424 (Iowa 2010) (citing *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996)). Even so, "[i]f the 'text of a statute is plain and its meaning clear, [the tribunal] will not search for a

[2] This rule is now cited as Iowa Admin. Code r. 701—285.59 (March 22, 2023).

J.C., 857 N.W.2d 495, 501(Iowa 2014) (citing *Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 880 (Iowa 2014)).

"If . . . the statute is ambiguous," the guiding principle is to effectuate the legislature's intent. *Kay-Decker*, 857 N.W.2d at 223. (citing *Rolfe State Bank*, 794 N.W.2d at 564). 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 762 (emphasis added). This is so because "exemptions from taxation are generally disfavored as contrary to the democratic notions of equality and fairness, and exist solely due to legislative grace." *Van Buren Cnty. Hosp. & Clinics v. Bd. of Review of Van Buren Cnty.*, 650 N.W.2d 580, 586 (Iowa 2002). As such, any doubts as to the applicability of an exemption to a taxpayer must be "resolved against [allowing the]

Action" Exception

As the ALJ stated in his Proposed Decision, "there is not much to be said that not been previously found by the [ALJ] or by the Director" in earlier proceedings. Proposed Decision, p. 12. Here the analysis begins with the language of the statute. *See Kay-Decker*, 857 N.W.2d at 223. In reviewing a statute's language, the words are given "their common, ordinary meaning in the context within which they are used unless the words are defined in the statute or have an established legal meaning." *In re J.C.*, 857 N.W.2d at 500. Where the legislature has provided a definition, the reviewing tribunal is bound by the definition adopted by the legislature. *Id.* Additional tools of statutory interpretation are only deployed when a statute's language is ambiguous. *See Rolfe State Bank*, 794 N.W.2d at 564.

In this case, the provision at issue exempts from Iowa's sales tax "[t]he sales price of tangible personal property sold, or of services furnished, to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital." Iowa Code § 423.3(27). As the Director previously concluded, "[t]he Iowa Legislature explicitly defined 'nonprofit hospital' [for purposes of this exemption] by prescribing that it must be 'licensed pursuant to chapter 135B.'" Dir. Final Order on App. for Summ. J., p. 8. As both the Director and the ALJ have noted, the Legislature could have chosen to use different, more expansive language when it crafted the exemption—for instance "nonprofit hospital" alone "may be generic enough to allow for some ambiguity." Proposed Decision, p. 13. But where, as here, the language is unambiguous "additional

language ambiguous and to read into section 423.3(27) a "concerted action" exception that would allow HEI to claim the exemption through its members because its members, individually, may qualify for the exemption as nonprofit hospitals licensed under chapter 135B. Despite the valiant attempts by HEI to muster legal authority to support its argument that there is a "generalized, amorphous collective-action exception" hidden within section 423.3(27), Proposed Decision, p. 5 (citing ALJ Order Den. Mot. Summ. J., pp. 6–7), that would apply in this situation, the ALJ and the Director have repeatedly distinguished the cited authorities and have found other arguments unpersuasive. *See* Proposed Decision, pp. 12–15; Dir. Final Order on App. for Summ. J., pp. 8–16. Any such understanding would require the Director to ignore the clear, unambiguous language chosen by Iowa's Legislature and, "[u]nder the pretense of construction" to "extend [the] statute, expand [the] statute, or change its meaning." *In re J.C.*, 857 N.W.2d 495, 501 (Iowa 2014) (citing *Bank of Am., N.A.*, 843 N.W.2d 876, 880 (Iowa 2014)). This the Director declines to do.

The language of section 423.3(27) is clearly and unambiguously limited to "nonprofit hospitals licensed pursuant chapter 135B" and does not permit the exemption contained therein to "flow through" to a related business that is not such an entity. As a result, HEI is not eligible for the sales tax exemption provided in Iowa Code section 423.3(27), the use tax exemption housed in Iowa Code section 423.6(6), or the exemption from the fee for new registration found in Iowa Code section 321.105A(2)(c)(1), and its refund claims were correctly denied by the Department.

2. *Iowa Code Section 423.3(27)'s Use Requirement*

have been sold or furnished "to be used in the operation of the hospital." Iowa Code § 423.3(27). These conditions are conjunctive—both must be present in order for the exemption to be applicable in any given instance. Here, the Director has concluded that HEI is not eligible for the exemption because the language of section 423.3(27) is clearly and unambiguously limited to nonprofit hospitals licensed under chapter 135B, HEI is not such an entity, and the Code does not permit a "concerted action" theory of eligibility.

Like the fact questions described above relating to whether HEI, itself, made the purchases and paid the tax subject to its refund claims and whether any tax was paid at all on some of the transactions subject to HEI's refund claim, the Director views the legal question of whether HEI could or would meet the use requirement contained in Iowa Code section 423.3(27) through a "concerted action" theory of eligibility as ancillary and unnecessary to dispose of this case. In other words, because HEI fails to satisfy the first required criterion embedded within section 423.3(27), the Director need not and, as a result, declines to determine whether the items of tangible personal property and services subject to tax were used in the way that would permit HEI to claim the exemption in section 423.3(27).

ORDER

IT IS THEREFORE ORDERED that, for the reasons articulated above, the Department's denials of HEI's claims for refund of Iowa sales, use, excise, and local option tax are **AFFIRMED**.

Done at Des Moines, Iowa on this 27 day of March, 2023.

IOWA DEPARTMENT OF REVENUE

BY _____

Kraig Paulsen, Director

Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building, Third Floor
Des Moines, Iowa 50319

HEALTH ENTERPRISES OF IOWA, 5825 Dry Creek Lane NE Cedar Rapids, IA 52402, Appellant, v. IOWA DEPARTMENT OF REVENUE, Respondent. Sales/Use Tax	PROPOSED DECISION Case Nos. 18IDR0038 18IDR0039 Rev. Docket Nos. 2017-300-1-0248 2017-300-1-0284

On April 11-12, 2022, a contested case hearing was held. Health Enterprises of Iowa ("HEI") was represented by Ronald Mountsier and Cody Edwards. The Iowa Department of Revenue ("IDR") was represented by Stephen Sullivan and Paxton Williams. The parties presented witness testimony, and the administrative file, including the exhibits, was admitted into the record. The record was held open until July 18, 2022 for the submission of briefs, which were received. After the closing date of the record, IDR filed essentially a Motion to Strike, and HEI responded on July 28, 2022. The matter is now fully submitted.

I.

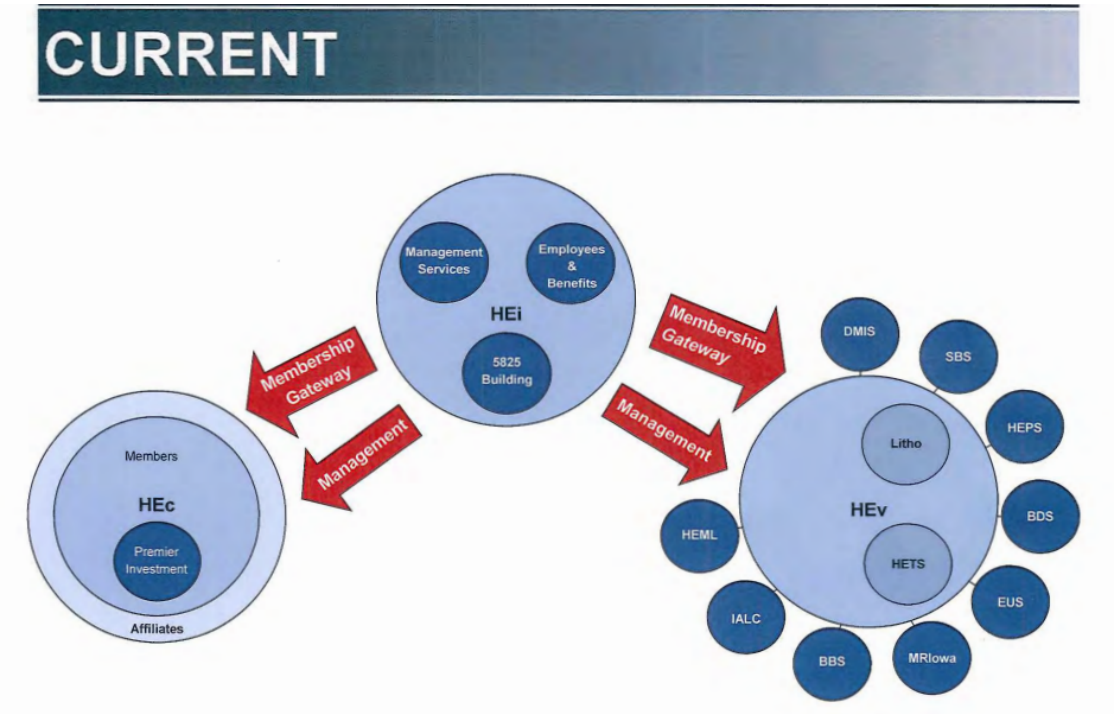
A.

Despite the comparatively extensive procedural history of this matter as well as the larger size of the record, the dispositive facts are few, with the controversy ultimately turning on a legal issue the Director of IDR has already decided during an interlocutory appeal. HEI is a non-profit corporation organized under Iowa Code chapter 504, and it has existed in some form since 1983. Hearing Trasncript, at pp. 36, 66; Exs. 26-J, 27-J. It is part of a "family of companies," designed to provide services to mostly Iowa hospitals organized under Iowa Code chapter 135B. Hearing Transcript, at pp. 37, 40. The two other principal companies in the family are Health Enterprises Cooperative ("HEC"), which is a cooperative organized under Iowa Code chapter 499, and Health Enterprises Ventures ("HEV"), which is a limited liability company organized under Iowa Code Chapter 490A. Exs., 30-J, 33; Hearing Transcript, at p. 37.

Broadly speaking, HEI served as the "management company" for the other affiliated companies by being the entity that, among other things, provided staff and administrative services to the other family entities. Hearing Transcript, at p. 40. In order to access services from the affiliated companies, a hospital typically must first become a member of HEI, and HEI's board of directors was composed of the CEO's of the member hospitals. Id., at pp. 41-42; see also Exs. 27-J. By contrast, HEC served primarily to provide "supply chain management" to its members via group purchasing. Hearing

Transcript, at p. 43. In other words, it would secure more favorable prices on products by pooling its members' needs to buy in bulk, and its members were comprised of HEI members that chose to buy into the program and become HEC members. Id., at pp. 43-44. HEC had no employees, and its managing board of directors was comprised of representatives of its members. Id., at p. 44.

HEV's function was to allow hospitals "to share equipment or personal" that they may not be able to otherwise secure and offer to the public outright at market acceptable prices. Id., at p. 44. HEV would form various limited liability companies ("LLCs") to facilitate sharing of services, such as an LLC for a mobile radiographic equipment and services. Id., at p. 45-46. HEV members were generally non-profit hospitals that were also HEI members, and it would often be the case that larger hospitals would access HEC but not HEV services since the larger hospitals often did not need to share equipment and services to make medical products economically feasible. Id., at pp. 45-47. A simple, but still detailed graphical representation of the companies at one time can be viewed on page 16 of Exhibit 194, with a screenshot of it as follows:



Ex. 194, at p. 16. The bubbles surrounding HEV are the various LLCs named in accord with the services the LLC provided. Hearing Transcript, at p. 46. Of note, HEV only eventually owned all of the LLCs it created, but there was a time a Nebraska hospital and a for-profit entity owned a portion of some of the LLCs. Id., at pp. 47-48, 58-60. In addition, HEI and other entities did treat HEV and its various LLCs as separate entities, as evidence in part by HEI having to forgive a loan when the pharmacy LLC failed to prove economically viable. Id., at pp. 100-02.

B.

On April 26, 2016, HEI filed a claim for refund for $63,647.05, for sales tax paid on items between January 1, 2013, and December 31, 2013, and in a supporting letter, HEI summarized its claim as follows: "We are claiming a refund for sales tax overpayments made by Health Enterprises. Health

Enterprises is an Iowa non-profit corporation whose members are all nonprofit hospitals; as a result of Health Enterprises structure, it is afforded the exemption under Iowa Code section 423.3(27)." Ex. J-1, at pp. 1, 3. For clarity, and as discussed at length below, Iowa code section 423.3(27) states:

> On and after July 1, 1998, the gross receipts from sales or rentals of tangible personal property to and from the rendering, furnishing, or performing of services for a nonprofit hospital licensed under Iowa Code chapter 135B are exempt from tax if the property or service purchased is used in the operation of the hospital.

Iowa Code § 423.3(27). On July 28, 2016, HEI filed a second claim for refund in the amount of $226,761.49 for sales and use tax paid on items between May 1, 2013, and March 31, 2016. Ex. 2-J, at p. 1. HEI again reiterated its collective-action theory in a supporting letter. Ex. 2-J, at p. 3. In a September 21, 2016, letter, IDR denied the April 2016 refund request, stating:

> Health Enterprises' members are nonprofit hospitals licensed pursuant to chapter 135B. The hospitals' purchases, if used in the operation of the hospitals, are exempt per Iowa Code § 423.3(27). Since their membership is comprised of hospitals who qualify for the above exemption, Health Enterprises claims they should also receive the same exemption. Health Enterprises, however, is not a nonprofit hospital and is not licensed pursuant to chapter 135B. Accordingly, Health Enterprises purchases are not exempt from tax.

Amended and Restated Protest, Ex. A. On June 17, 2017, IDR denied the second refund request essentially for the same reasons albeit in a more lengthy letter. Amended and Restated Protest, Ex. B. HEI appealed, triggering this proceeding.

During the pendency of this proceeding, HEI moved for summary judgment on the narrow legal issue of whether "a legally distinct entity formed by a group of non-profit hospitals licensed pursuant to Iowa Code chapter 135B [such as HEI] is entitled [to the tax exemption contained in Iowa Code section 423.3(27)]." Order on Summary Judgment, at p. 2. The stated purpose of the Motion was to secure a proper ruling on the legal issue so that any hearing would be limited to proving the 135B membership of HEI and the validity of any specific item upon which a refund was being requested. IDR resisted on the ground there is no collective-action exemption in this provision of law, and in an April 11, 2019, Order, the Tribunal denied the Motion for Summary Judgment. Id., at p. 7. In particular, the Tribunal held:

> While the term "nonprofit hospital" in isolation could likely be viewed as ambiguous, the broader statutory phrase of "nonprofit hospital licensed pursuant to chapter 135B" leaves no ambiguity. Iowa Code § 423.3(27). In order for an entity to qualify for the hospital exemption, it must first be a nonprofit hospital and, second, be licensed pursuant to chapter 135B. Id. The clause licensed pursuant to chapter 135B modifies which nonprofit hospitals are eligible to create a narrow fixed universe of entities that qualify for the exception. This is in keeping with the language of the entire exception which then requires purchased goods or services to be used in "the hospital," that is the nonprofit's hospital, to be exempt from tax. Id. In short, neither the specific words nor the meaning of the entire statutory scheme creates an ambiguity in what types of entities qualify for the hospital exemption. Thus, the inquiry into the meaning of the statute ends. See Comes v. Microsoft Corp., 646 N.W.2d 440, 445 (Iowa 2002) ("If there is no ambiguity, but the plain meaning of the statute is ascertainable, our inquiry

> must end."). Applying the plain meaning, HEI is not a hospital nor can it be viewed as an agent of one because it is a separate legal entity organized under Iowa Code chapter 504. See generally, Nw. Nat. Bank of Sioux City v. Metro Ctr., Inc., 303 N.W.2d 395, 398 (Iowa 1981) ("We have said that central to corporate law is the concept that a corporation is an entity separate and distinct from its shareholders."). Its obligations and assets are not held by its members, and there is no suggestion of veil piercing by any party.
>
> There is no case holding the contrary, and IDR's administrative rule on this topic merely restates the law as it existed at the time of the rule's passage[.]

Id., at pp. 3-4. The Tribunal then went on to distinguish the various authorities HEI cited, including the Supreme Court's decision in American College Testing Program, Inc. v. Forst, 182 N.W.2d 826 (1970), and an Attorney General Opinion, 1992 Iowa Op. Att'y Gen. 188 (1992), stating in part:

> Again, the language at issue in those cases and the context are different, and at least with respect to the opinion, there is no discussion of the traditional rules of statutory interpretation that first focuses on the language actually utilized. The opinion appears to assume an ambiguity, and then allow for collective action. While such may be acceptable in the 28E context given how the joint action statute is written, this is a step to far in this case without specific guidance from a higher court. To accept HEI's position would be to find there is an inherent ambiguity in all taxation statutes for collective action through another legally distinct entity, and this ambiguity then permits an expansion from the words the legislature chose in the governing statute. From the Tribunal's perspective, this turns statutory interpretation on its head because it appears to use legislative intent beyond the words in a statute to find an ambiguity in the words and because such legislative intent from beyond the words of a statute is traditionally only considered after an ambiguity is found. See Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp., 606 N.W.2d 359, 363 (Iowa 2000) (holding "when the language is plain and unambiguous, we do not look beyond the statute for its meaning and do not engage in further construction"). Nothing in the persuasive cases from other jurisdictions that HEI cites changes this, particularly since the language at issue was different and a different interpretative framework may exists in some of those jurisdictions. See, e.g., HealthEast v. Cty. of Ramsey, 770 N.W.2d 153, 157–58 (Minn. 2009). At most, it could be said that the legislature did not draft Iowa Code section 423.3(27) to expressly state no collective action is allowed, which could be seen as a tacit acceptance that collective action is permitted after the Supreme Court's decision in American College Testing Program case, but this is too thin a reed in the Tribunal's perspective to support HEI's position because that case did not really focus on the collective action issue. It just opined on it in passing while concluding ACT factually could not take advantage of it. In fact, the Tribunal is at loss for what specific legislative history for section 423.3(27) would require reading it broader that the literal meaning of its words.

Id., at pp. 5-6. The Tribunal finally noted accepting this collective-action exemption would create additional difficulties in this case, stating in summary:

> Assuming the Tribunal is erring in adhering too rigidly to the words of the statute, HEI still could not prevail. As noted earlier, there are two undisputed material facts in this case. The first undisputed fact is that HEI is a nonprofit corporation and not 135B hospital. The second undisputed fact is that no good or services are being exchanged between HEI and any nonprofit hospital licensed under Iowa code chapter 135B. . . . This equally proves fatal to HEI's position because any collective action exception could not be broad enough to include separate legal entities with no business dealings with the qualifying legal entities. At such a point, the statutory language would be all but meaningless, and the maximum that tax exemptions are strictly construed with any doubt resolved in favor of taxation and against exemption would be little more than a hollow statement that would have at best an inconsistent and arbitrary application for an unfortunate few with the luck of those who have been struck by lightning.
>
> In fact, teasing out what would be required to allow HEI to take advantage of the tax exemption for hospitals reveals the dangers of jettisoning the traditional methodology of interpreting statutes in favor of a generalized, amorphous collective-action exception. In order for HEI to secure a tax exemption for the goods and services it bought—as opposed to the good and services the 135B hospitals that formed it bought and did receive a tax exemption, it would need the collective action exemption to not only make it a qualifying entity, as it is not a 135B nonprofit hospital, but also to make its purchases qualified, that is those used in "the hospital." . . . In short, HEI would need a collective action exemption to allow it to capture the actions of itself, HEC, Ventures, and the underlying nonprofit hospitals licensed under Iowa Code chapter 135B. At this point, the question arises where does the collective action exemption end? Are, for example, HEI's suppliers able to claim the credit for themselves, and if not, what specifically in statute or legislative history creates the barrier? The difficulty in answering these questions reveals the fault in simply reading into all taxation statutes a collective-action exemption that expands the scope of qualifying entities. Such an analysis would have only the most tenuous contact with any real legislative intent.

Id., at pp. 6-7. In response to denying the Motion for Summary Judgment, HEI took an interlocutory appeal, essentially arguing this purely legal issue was dispositive of the case.

On June 14, 2021, the Director of IDR issued a ruling upholding the denial of summary judgment. Director's Final Order on Appeal, at p. 1. The Director identified two issues:

> First, whether a legally distinct entity formed by a group of non-profit hospitals licensed pursuant to Iowa Code chapter 135B is entitled to the exemption provided in Iowa Code section 423.3(27). Second, whether HEI is a group of hospitals exempt pursuant to Iowa Code section 423.3(27) "acting in concert."

Id., at p. 3. The Director noted the "relevancy of the second issue is dependent upon a finding in favor of HEI on the first issue," and ultimately the Director agreed with the Tribunal's legal conclusion, stating in part:

> As such, statutory interpretation of a "nonprofit hospital licensed under chapter 135B" begins with a plain reading analysis. The Iowa Legislature explicitly defined

> "nonprofit hospital" by prescribing that it must be "licensed under chapter 135B." Thus, there is no ambiguity about the type of entity that qualifies under the statute. Had the Legislature written the exemption to apply to "nonprofit hospitals" or crafted a less-restrictive alternative, there may be sufficient ambiguity about what constitutes a qualified entity. However, where the statute's language is unambiguous, as is here, additional interpretation is neither necessarily nor appropriate.
>
> Because the Legislature explicitly defined the type of nonprofit hospital that qualifies under the statute, that demonstrates the Legislature's specific intent to only include that type of entity. By reading the whole phrase "nonprofit hospital licensed under chapter 135B," no reasonable minds could differ that it includes a corporation that is not a nonprofit hospital licensed under chapter 135B. Therefore, the Director finds that the statute is unambiguous and nothing beyond the express terms of the statute should be considered to discern its meaning. Thus, the Director determines that a legally distinct entity formed under Iowa Code chapter 504 by a group of nonprofit hospitals licensed pursuant to Iowa Code chapter 135B is not a qualified purchaser under Iowa Code section 423.3(27).

Id., at p. 8. In reaching its conclusion, the Director provided a more extensive and nuanced rationale as to why the authorities HEI cited were not persuasive. The Director concluded in part:

> HEI relies on American College Testing Program[ ], and the Department's subsequent amendment to Iowa Administrative Code rule 701-17.11 to argue that section 423.3(27) is ambiguous and that a flow-through exemption should be read into the statute. In order to address HEI's argument, a brief summary of the case is helpful. In American College Testing Program [ ], the Iowa Supreme Court had to decide whether American College Testing Program, Inc. ("ACT") was an "educational institution" within the meaning of Iowa Code section 422.45(8). [American College Testing, 182 N.W.2d at 827]. Iowa Code section 422.45(8) (1970) exempted from sales tax, "all [tangible personal property] ... used for educational purposes to any private nonprofit educational institution in the state." ACT was a nonprofit corporation organized under Iowa Code chapter 504. American College Testing Program[ ], 182 N.W.2d at 826. ACT's members comprised of "one member from each of the 33 participating states ... [and] [e]ach member is elected by the vote of all educational institutions and organizations within the state which participate in the ACT program." Id., at 826.
>
> Ultimately, the Iowa Supreme Court held that ACT did not fall within the meaning of "educational institution" because ACT itself, was not an educational institution." Id., at 827. At the end of its Opinion, the Iowa Supreme Court acknowledged that:
>
> > Plaintiff also cites cases which support the proposition that an activity which would be exempt if performed by an exempt institution is also exempt when several qualifying institutions act in concert, such as a hospital laundry. Children's Hospital Medical Center v. Board of Assessors of Boston (1967), 227 N.E.2d 908, or an organization for joint purchasing by hospitals to take advantage of volume discounts. Hospital

> Bureau of Standards and Supplies, Inc. v. United States (1958), 158 F.Supp. 560[.]

Id. at 828 (some citations omitted). While the Iowa Supreme Court did not "quarrel with the results reached in the cited cases," it did not find them analogous because ACT "failed to meet its burden of clearly showing it is a 'private nonprofit educational institution' within the meaning of section 422.45(8)." Id.

After the Iowa Supreme Court issued its opinion, the Department, in 1977, amended its administrative rule that implemented Iowa Code section 422.45(8) to permit a flow-through exemption for educational institutions. The Department amended the rule to include, "[a] private nonprofit educational institution consists of a school, college, or university with students, faculty, and an established curriculum, a group of qualifying organizations acting in concert, or libraries." Iowa Admin. Coder. 701-17.11 (1977).

HEI argues section 423.3(27) should be interpreted in the same manner as section 422.45(8), so that section 423.3(27) includes a group of qualifying hospitals acting in concert, in the same manner that section 422.45(8) includes a group of educational institutions acting in conceit. . . . HEI's argument fails for a number of reasons. First, the fact that the Department added the phrase "a group of qualifying organizations acting in concert" to its rule defining educational institutions, does not mean that phrase should be read into the meaning of "nonprofit hospital licensed under chapter 135B." To do so would be ultra vires and place a "strained, impractical or absurd construction" on section 423.3(27) in contravention to the established principles of statutory construction. Doe v. Ray, 251 N. W .2d 496, 501 (Iowa 1977).

Second, section 423.3(27) is not similar enough to section 422.45(8) to render section 423.3(27) equally ambiguous. The language in section 422.45(8) compared to the language in section 423.3(27) is different: "any private nonprofit educational institution" is expansive in tone compared to the restrictive language of "a nonprofit hospital licensed pursuant to chapter 135B." Compare Iowa Code§ 422.46(8) (1970) with Iowa Code§ 423.3(27) (2013).

Furthermore, it is important to note that at the time the Department amended rule 701-17 .11 to include the flow-through exemption language in its definition of "educational institution," the Legislature had not yet defined it in statute. Thus, when the Department expanded the definition by rule to include the flow-through exemption language, the statute was ambiguous enough to permit that interpretation. In contrast, the Legislature has explicitly defined nonprofit hospital in section 423.3(27) as "licensed under chapter 135B." Therefore, section 423.3(27) is not similarly ambiguous as section 422.45(8).

HEI also relies on a 1992 Iowa Attorney General Opinion to support its argument that section 423.3(27) should be interpreted to include the flow-through exemption theory. . . . The statute at issue in the Attorney General Opinion is a property tax exemption which exempts from property tax, "[t]he property of a county, township, city, school corporation ... when devoted to public use ...." Iowa Code section 427.1(2) (1992); 1992 Iowa Op. Att'y. Gen. 188 (1992) (hereinafter AG Opinion). In the

AG Opinion, the Attorney General opined that a separate legal entity formed under Iowa Code chapter 28E and composed solely of section 427.1(2) exempt entities is exempt under section 427.1(2).

It is important to note however, that the 28E entity at issue in the AG Opinion qualified for the exemption on its own. The AG Opinion states, "R.E.I.C. was created under Iowa Code chapter 28E through the joint exercise of powers by public agencies. Counties and cities are public agencies as that term is defined in Code s 28E.2 . . . A 28E entity created by joint action of public agencies is itself a public agency and political subdivision." 1992 Iowa OP. Atty. Gen. 188. In contrast, HEI does not itself qualify as a nonprofit hospital licensed under 135B. Therefore, HEI's reliance on the AG Opinion is unhelpful to its argument.

Finally, HEI relies on a ruling by the District Court for Linn County regarding a property tax case involving HEI to support its argument that section 423.3(27) should be interpreted to include the flow-through exemption theory. . . . In order to address HEI's argument, a brief summary of HEI's property tax case is helpful. HEI claimed an exemption from property taxes under Iowa Code section 427.1(8), which exempts "[a]ll grounds and building used ... by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects ... and not leased or used or under construction with a view to pecuniary profit." Health Enterprises of Iowa v. City of Cedar Rapids, Iowa Board a/Review, Case No. CVCV09047, 2 (Aug. 14, 2019). Thus, the exemption requires that the facility must (1) be operated by a charitable, benevolent or religious institution or society; (2) be used solely for their appropriate objects; and (3) not be operated with a view toward pecuniary profit.

HEI filed a Motion for Summary Judgment arguing that the property owned by HEI is exempt because "each HEI members' property is exempt from property taxes and the Property is used in a manner consistent with its member's charitable purpose." Id. at 6. HEI primarily relied on American College Testing to make its arguments. The Linn County District Court denied HEI's motion but acknowledged that the 'flow through' exemption could apply to the first requirement, but not to the second or third. The Court stated that "qualifying organizations may work in concert consistent with their charitable or benevolent goals at a mutually owned property and fulfill the first of the three elements Iowa Code section 427.1(8) requires; operation by a qualified organization." Id. at 7.

In its subsequent Trial Order, the Linn County District Court held that HEI is exempt from property tax under section 427.1 (8) because it met its burden of satisfying all three statutory requirements. See Health Enterprises of Iowa v. City of Cedar Rapids, Iowa Board of Review, Case No. CVCV09047 (Sept. 11, 2019). However, rather than applying the 'flow through' exemption proposed by HEI, the Linn County District Court seemingly held that HEI satisfied the first requirement of being a charitable organization because HEI itself qualified as a charitable organization. . . . Therefore, the Linn County District Court did not conclude HEI was a qualified entity through any 'flow through' exemption, but rather it concluded it was a qualified entity because HEI itself was a charitable organization.

> Unlike in HEI's property tax case regarding Iowa Code section 427.1(8), HEI does not on its own constitute a qualified entity under Iowa Code section 423.3(27). HEI is not a nonprofit hospital licensed under chapter 135B.

Id., at pp. 8-13. The Director further distinguished away its prior policy letters and noted on the second issue of whether HEI was, in fact, acting in concert with 135B hospitals, there was an insufficient factual record. Id., at p. 16. The Director ultimately remanded the case to the Tribunal holding as its instructions:

> As such, the Director finds there is not sufficient facts to decide this issue. It is important to note, however, that this second issue only becomes relevant to the case upon a finding in favor of HEI regarding the first issue. Given the Director's determination against HEI on the first issue, the Director affirms the ALI' s Order Denying Motion for Summary Judgment and remands the case back to the ALJ for proceedings consistent with this Order.

Id.

At this point, HEI took judicial review of the Director's decision, and in attempting to avoid the general prohibition against judicial review of non-final agency action, HEI asserted the following: "[W]hile the agency has only entered a decision denying its motion on the principle legal issue, the decision amounts to a final decision on tax liability in favor of DOR." Ex. 173, at p. 2. In response, IDR—which filed a motion to dismiss for failure to exhaust administrative remedies—"argued that the summary judgment order is not final agency action and HEI has not exhausted agency remedies" because "the director's ruling does not address all aspects of the exemption, such as the extent to which specific transactions were exempt from sales tax." Id., at p. 2. Ultimately, the district court dismissed the judicial review for failure to exhaust administrative remedies, finding in part:

> The larger problem is with the exhaustion element. DOR has yet to enter a final decision on HEI's appeals. *While DOR's decision seemingly preordains a finding that the protests will be denied on the tax liability issue, DOR has not officially entered that order.* DOR has only denied HEI's motion for summary judgment, it has not granted judgment in favor of the agency. . . .

Id., at p. 4 (emphasis added). The case was then remanded to the Tribunal for adjudication, and in a status conference hearing, the Tribunal inquired whether IDR would move for summary judgment given there appeared to be a dispositive legal issue that would need to be address regardless of the specific record made at the hearing. IDR declined to file such a motion, reiterating its desire to litigate the other issues in this case, including whether certain specific transactions could qualify for the exemption even if an acting-in-concert theory were accepted.

C.

A hearing was held on April 11 and 12, 2022, and in the hearing, the record was made allowing for the findings of fact in this decision. HEI also presented a detailed and lengthy accounting of the final set of transactions on which it sought a refund. See generally, Ex. 4. In its closing brief after the hearing, HEI asserted the Tribunal was not bound to the Director's decision and should reconsider its prior

holding because case law demonstrates Iowa Code section 423.3 should not be interpreted in a "vacuum" and because this case law establishes "there is an omnipresent, ethereal collective action exemption in taxing statutes." HEI closing Br, at p. 2.

In so doing, HEI appeared to rely upon substantially the same authority as it did in its prior fillings before the Tribunal and Director, although it did seem to expand on the argument the Internal Revenue Service via adjudicatory decisions created and maintained an acting-in-concert doctrine that should apply. Id., at p. 5 ("Furthermore, the acting in concert or flow through exemption is so prevalent within Federal taxation that the courts and the Internal Revenue Service have their own name for it—the 'integral part doctrine. The integral part doctrine is not codified, but rather is the outgrowth of judicial opinions, rulings, and regulations and dates back to 1951. The rationale behind the integral part doctrine is that an organization that takes over an essential task which would otherwise have to be performed by the organizations served should be exempt because the members would continue to be exempt if they performed the task themselves." (internal quotations marks and citations omitted)). HEI also took issue with IDR's treatment of Rule 701-17.11, stating in part: "In its Pre-hearing Brief, the Department, for the first time since this contested case commenced, argued that the portion of IAC r. 701—17.11 defining private non-profit educational institution to include 'a group of qualifying organizations acting in concert' has been invalid since 2001 and further argues the rule may have never been valid."). Id., at p. 7.

HEI then argued it was acting in concert essentially because qualifying hospitals were "working together towards a common purpose." Id., at p. 10. One specific aspect of this claim is that HEC, HEV, and the other family companies were acting as a unit to which the corporate form should be disregarded for tax purposes because of a special close relationship, a common corporate purpose, and ultimately the family of companies being agents of the qualifying 135B hospitals. Id., pp. 10-15. This same rationale applies to its remaining arguments that the Tribunal should look past the corporate formalities and allow the products and services HEI, HEV, HEC, and the other family entities purchased to be deemed as used in the operation of the hospital such that the tax exemption applies. Id., at p. 15. In HEI's words, "if Health Enterprises is deemed to be a group of non-profit hospitals licensed pursuant to chapter 135B acting in concert, then Health Enterprises should be treated as a hospital licensed pursuant to Iowa Code chapter 135B. . . . Accordingly, any sales to Health Enterprises or the Group would be considered to be sales to a nonprofit hospital licensed pursuant to chapter 135B." Id. Finally, HEI asserts all of the items at issue were purchased by HEI or at the very least by a HEI family member that gave HEI authority to file a claim on its behalf. Id., at pp. 15-19.

In response, IDR asserted numerous reasons exist for denying HEI's claim in its entirety, including in particular: "the vast majority of transactions at issue in HEI's refund claims are transactions for which HEI was not the purchaser that paid the tax or fees"; and "neither HEI nor the several for-profit businesses it manages are nonprofit hospitals licensed pursuant to chapter 135B of the Iowa Code." IDR Br., at p. 2. In support of its first claim, IDR asserted Iowa Code section 423.47 only permits "the person who made the erroneous payment" to claim a refund, and the record shows HEI did not purchase many of the items in the refund but instead another entity in the HEI family did. Id., at p. 34. Of note, the record is compelling and largely uniform in showing many of the purchases at issue in the refund claim were made not by HEI but by another member of the HEI family, whether it is HEC, HEV, or the LLCs. See e.g., Tr. at p. 149 ("Q.· ·Now, are you able to say, with regard to Exhibit 4, that when we're talking about items of tangible, personal property, the majority of those are owned by either Ventures or one of the -- I think you guys called them Ventures affiliates? A. Yes, I think that would be true.").

In support of its second claim, IDR succinctly stated: It is undisputed that neither HEI nor any of the HEI-Managed Businesses are nonprofit hospitals licensed pursuant to chapter 135B. As a result, neither HEI nor the HEI-Managed Businesses may claim the exemption[. . . .] The Tribunal does not need to go any further in its analysis to entirely deny HEI's exemption." Id., at p. 45. IDR then reiterated essentially the reasons for this conclusion previously presented to the Tribunal and the Director. Id., at pp. 45-50. On the integral-part doctrine that appears to have new focus in this matter, IDR stated federal tax law does not apply to Iowa precedent on how to interpret statutes, including tax statutes, and stated it does not matter because the tests is limited to qualifying a 501(c)(3) organization and does not even have broad applicability in federal tax law. Id., at p. 50.

Finally, IDR made a series of other claims, including HEI has not fully proven the tax was paid upon which it now seeks a refund and Iowa law forecloses selective disregarding corporate forms, which prohibits the agency theory HEI asserted. Id., at pp. 41-43, 53-63. Of note, IDR did take the unusual step of submitting nearly 30 pages of proposed findings of fact, which is still generally allowed under IDR rules 7.19. Id., at pp. 4-30.[1]

In response to IDR's closing brief, HEI filed a Reply brief, reiterating its intent to act in concert and the general the acceptance of such a theory. Reply, at pp. 1-2. HEI further states it is a permissible act to assign the right to file a refund, which is what occurred here, and the fact that some of the family companies were for-profit or at least not non-profits is a proverbial red herring because they were operated in concert with qualifying entities. Id., at pp. 7-8. In making its various arguments, HEI cited claimed instances of IDR accepting refunds filed by others and employing a collective-action concept to sales tax. Id., at pp. 5-6 (citing attachments). This, in turn, prompted IDR to file what amounts to a motion to strike portions of the Reply, styled as IDR's "Objection and Resistance to thee Offer of Additional Evidence by [HEI]." Motion to Strike, at p. 1. While HEI did file a response, the Tribunal

---

[1] Although the Tribunal would often in an ordinary case go through each finding to make a separate ruling, this is a unusual case that does not require separate rulings on each proposed finding to meet the IDR rule's requirement for a "ruling upon each proposed finding." 701 I.A.C. § 7.19(b). As both parties, the Tribunal, the Director, and perhaps even the district court have concluded at least in passing, a threshold issue in this case is whether an acting-in-concert theory is permissible under Iowa Code section 423.3(27). This is a legal conclusion that requires little more than a finding of fact that the entity seeking the refund is not a qualifying entity. This basic fact has been undisputed at all relevant times, and as such, to the extent IDR's findings of fact go beyond this or the rudimentary contextual facts found in this decision, such findings are rejected as unnecessary with no specific finding on how much of the tone or content of each fact is materially supported by the record. Further, while there are cases in which the Tribunal will make essentially contingency findings of fact should a reviewing entity come to a different result on a legal issue, it would be unwise to do so in this case.

Besides the general dangers of making superfluous findings of fact (including whether the parties or the adjudicatory body really focused on such if they were deemed immaterial), there is a specific danger in this case. HEI is effectively asking the Tribunal to read into the law the acting-in-concert theory to overcome not only the entity requirements for a tax exemption but also the use requirements. The contours of this ethereal doctrine are unknown and would have to be made up—including for example whether subjective intent of the participating legal entities controls on the existence of a common purpose or whether it is an objective test, as well as what type and how much of a common purpose qualifies. Absent guidance from a reviewing entity on at least the broad outlines of such a doctrine, it would be all but impossible to start making spare findings of facts to cover all potential contingencies. This is particularly true in this case where not all of the entities were owned by qualifying Iowa Code 135B hospitals at all times (thereby asking the question of how many of the entities have to be qualifying to trigger the doctrine), not all the qualifying entities appears to participate consistently in all the programs (thereby asking how much of a common purposes in what is needed), and there were multiple layers of diverse business entities used in the process (thereby asking how many and of what type of independent legal entities can be employed and selectively disregarded). In short, and given findings of facts often depend upon the specific nuisances of a governing legal standard at least in highly technical fields such as tax, it is imprudent to make extra findings of fact in absence of a specific legal standard.

need not get into the issue as generic attorney statements or even IDR's prior practice are more akin to persuasive legal authority and not true evidence. Regardless, they have no material bearing on statutory interpretation as discussed below.

II.

A.

At issue in these cases are whether a series of purchases by HEI and its family of companies, which are not nonprofit hospitals licensed pursuant to chapter 135B, made for their own operations qualify for the hospital sales and use tax exemption contained in Iowa Code section 423.3(27). To qualify for the hospital tax exemption, two conditions must exist. First, there must be a qualified purchaser of the goods or services, which the statute identifies as "a nonprofit hospital licensed pursuant to chapter 135B." Iowa Code § 423.3(27). Second, there must be a qualifying use of the purchased goods or services, namely that they are "used in the operation of the hospital." Id. Both conditions have to exist for the tax exemption to apply, and the reach of the exemption turns on statutory interpretation, which has a specific analysis in Iowa. Andover Volunteer Fire Dep't v. Grinnell Mut. Reinsurance Co., 787 N.W.2d 75, 79 (Iowa 2010) (internal quotation marks omitted).

The overarching purpose behind any statutory interpretation is to effectuate the legislature's intent, and the "first step when interpreting a statute is to determine whether it is ambiguous." State v. Iowa Dist. Court for Scott Cty., 889 N.W.2d 467, 471 (Iowa 2017). "A statute is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute." The Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417, 424 (Iowa 2010) (internal quotation marks omitted). "Ambiguity arises in two ways—either from the meaning of specific words or from the general scope and meaning of the statute when all of its provisions are examined." State v. McCullah, 787 N.W.2d 90, 94 (Iowa 2010) (internal quotation marks omitted). A term or phrase is given its "common and ordinary meaning" often from a common usage dictionary, unless the legislature chose to define it or it had "a well-settled legal meaning" at the time the legislature passed the law. Miller v. Marshall Cty., 641 N.W.2d 742, 748 (Iowa 2002).

"If no ambiguity exists, [a] statute is rationally applied as written." Andover Volunteer Fire Dep't, 787 N.W.2d at 81. This is true absent the most exceptional circumstances where confidence exists that "the legislature did not intend the result required by literal application of the statutory terms." Brakke v. Iowa Dep't of Nat. Res., 897 N.W.2d 522, 541 (Iowa 2017). Indeed, "the task is to interpret the statute, not improve it," and statutory interpretation cannot be used a guise for redrafting a statute, even one that is at best a "half measure" on an important issue. Id. Finally, when dealing with tax exemption statutes such as Iowa Code section 423.3, they are "strictly construed with any doubt resolved in favor of taxation and against exemption." Parshall Christian Order v. Bd. of Review, Marion Cty., 315 N.W.2d 798, 801 (Iowa 1982).

B.

In this case, there is not much to be said that has not previously been found either by the Tribunal or by the Director. Indeed, at least with the record made, it is unfortunate IDR simply did not move for summary judgment when requested, and turning to the merits, the statutory phrase "nonprofit hospital licensed pursuant to chapter 135B" is unambiguous on its face on the type of institution that can qualify for the exemption. The term nonprofit hospital may be generic enough to allow for some

ambiguity, but the statute identifying the chapter under which the hospital has to be licensed removes all ambiguity, particularly given the interpretive maximum that identification of one thing that qualifies excludes all others. State v. Beach, 630 N.W.2d 598, 600 (Iowa 2001) ("Put another way, the express mention of one thing implies the exclusion of other things not specifically mentioned."). Once more, the context of the phrase "nonprofit hospital licensed pursuant to chapter 135B" does not create ambiguity. This is because the statute goes on to require the property to be "used in the operation of the hospital," which suggests that the qualifying entity must be the same as the one using the products and which does lend itself to collective actions by vast webs of differing types of businesses entities. There is nothing else in the governing statute to change this, and as such, there is no statutory ambiguity, which ends the analysis and compels the conclusion that neither HEI nor any of its family of companies qualify for the refund HEI seeks because they are not 135B nonprofit hospitals. Comes v. Microsoft Corp., 646 N.W.2d 440, 445 (Iowa 2002) ("If there is no ambiguity, but the plain meaning of the statute is ascertainable, our inquiry must end.").

Neither case law nor IDR's prior actions can change this conclusion. While it may be true that in some circumstances prior judicial interpretation of a term may be used to find an ambiguity, there is no such history defining the statutory phrase "nonprofit hospital licensed pursuant to chapter 135B" to mean anything but what is says. See generally, Bank of Am., N.A. v. Schulte, 843 N.W.2d 876, 880 (Iowa 2014) ("Words or phrases that are undefined in the statute or for which there is no established legal meaning are given their common, ordinary meaning in the context within which they are used."). Perhaps the closest case to this circumstance is the Supreme Court's decision in American College Testing, but the comments about collective action were not essential to its holding and concerned a different statutory phrase and facts. American College Testing, 182 N.W.2d at 827; see also State v. Foster, 356 N.W.2d 548, 550 (Iowa 1984) ("To sustain a claim of binding precedent a case must be interpreted in reference to an involved question which necessarily must be decided."). Such is not sufficient to overcome the binding precedent on how to interpret a statute, as well as the more specific holding of the Iowa Supreme Court that tax exemptions are "strictly construed with any doubt resolved in favor of taxation and against exemption." Parshall, 315 N.W.2d at 801. Frankly, it is unclear how HEI's claim of "an omnipresent, ethereal collective action exemption in taxing statutes" is compatible with the Supreme Court's holding tax exemptions are to be narrowly construed. There is no general statute allowing for collective action for all tax exemptions, which would seem to end the analysis once again.

IDR's practice also does not change this. As an initial matter, estoppel does not lie against the State absent the most compelling circumstances, of which this case has none. ABC Disposal Sys., Inc. v. Dep't Of Nat. Res., 681 N.W.2d 596, 607 (Iowa 2004) ("We have consistently held equitable estoppel will not lie against a government agency except in exceptional circumstances."). As such, the actual historical practice of IDR or any other State entities on collective action or the like has no controlling weight on the foregoing statutory analysis. Once more, because the legislature specifically chose what types of hospitals—namely those licensed pursuant to Iowa Code chapter 135B—may qualify for the exemption, no discretion exists for IDR to use its administrative rules to interpret the statutory phrase further in a post Renda world. See generally, The Sherwin-Williams Co., 789 N.W.2d at 423–24 ("The insurmountable obstacle to finding the department has authority to interpret the word 'manufacturer' in this context is the fact that this word has already been interpreted, i.e., explained, by the legislature through its enactment of a statutory definition."). As such, none of IDR's administrative rules, decisions, or other forms of guidance have any controlling bearing on the statutory analysis of the relevant terms. At most, prior practice and IDR's other rules may serve as persuasive authority such as a district court decision, but such authority cannot overcome the controlling jurisprudence on how to interpret a tax

exemption statute such as the one here. Finally, even if these authorities had some salience, it is worth noting both the Tribunal and Director have found them distinguishable, and there is nothing more to do than rely on the analysis in the resolution of the summary judgment motion. This is true whether or not the Director's decision is law of the case for the Tribunal.

One potential exception to the conclusion the Director has already considered the relevant arguments is for the newer claim concerning the integral-part doctrine. The Tenth Circuit aptly summarized it as well as the difficulty of employing it in the tax context, stating in part:

> In general, "separately incorporated entities must qualify for tax exemption on their own merits." Geisinger Health Plan v. C.I.R., 30 F.3d 494, 498 (3d Cir.1994) (Geisinger II) (citing Church of the Brethren, 759 F.2d at 795 n. 3). Several circuits, however, have recognized a so-called "exception" to this general rule, commonly called the integral-part doctrine. See, e.g., id. ("[The] 'integral part doctrine' ... may best be described as an exception to the general rule that entitlement to exemption is derived solely from an entity's own characteristics."); Tex. Learning Tech. Group v. C.I.R., 958 F.2d 122, 126 (5th Cir.1992); Squire v. Students Book Corp., 191 F.2d 1018, 1020 (9th Cir.1951). Under the integral-part doctrine, where an organization's sole activity is an "integral part" of an exempt affiliate's activities, the organization may derive its exemption from that of its affiliate. Geisinger II, 30 F.3d at 498; see also Geisinger I, 985 F.2d at 1220 ("The integral part doctrine provides a means by which organizations may qualify for exemption vicariously through related organizations, as long as they are engaged in activities which would be exempt if the related organizations engaged in them, and as long as those activities are furthering the exempt purposes of the related organizations.").
>
> To the extent the integral-part doctrine rests on a derivative theory of exemption, it runs contrary to two fundamental tenets of tax law: (1) the "doctrine of corporate entity," under which a corporation is a separate and distinct taxable entity; and (2) the canon of statutory interpretation requiring strict construction of exemptions from taxation.

IHC Health Plans, Inc. v. Comm'r, 325 F.3d 1188, 1202 (10th Cir. 2003). Importantly, "[t]he integral part doctrine is not codified, but its genesis may be found in sec. 1.502–1(b), Income Tax Regs., which states that a subsidiary may qualify for tax-exempt status 'on the ground that its activities are an integral part of the exempt activities of the parent organization.'" IHC Health Plans, Inc. v. Comm'r, T.C.M. (RIA), 2001-246 (T.C. 2001), aff'd, 325 F.3d 1188 (10th Cir. 2003). Whatever the merits of the doctrine, it originates from language not at issue here and would require the Tribunal to not follow binding precedent on how to interpret tax statutes. The Tribunal cannot do this; only the Supreme Court has the authority to carve out an exception to its precedent on statutory interpretation of tax statutes.

Finally, the Tribunal will note that, while its decision rests on HEI not being a qualifying entity for purposes of the claimed refund, HEI still has an equally grave issue with the use requirements, namely that the products and services must be "used in the operation of the hospital." Iowa Code § 423.3(27). The only means of having many of the claimed expenses for which refunds are now sought to be deemed as used in the hospital would be to conflate all the HEI enterprises with the underlying 135B hospitals that owned the entities. Since there is no statutory language authorizing such selective veil piercing, it would again appear to run afoul of the binding precedent that taxation statues are "strictly construed with any doubt resolved in favor of taxation and against exemption." Parshall, 315 N.W.2d at 801. While it is true that many of the underlying hospitals forming HEI are rural hospitals facing

exceedingly difficult financial circumstances and while the loss of rural hospitals would be measured not only in economic damage but also lives, there is simply no way of faithfully reading Iowa Code section 423.3(27) to allow for collective action. It just is not in the plain language, and the fact HEI even argues the statute cannot be interpreted in a vacuum could easily be seen as a tacit recognition of this. As such, IDR's refund denials must be AFFIRMED, and HEI may wish to seek legislative change to deal with this issue.

III.

IDR's action is AFFIRMED. IDR shall take all necessary action to comply with this decision.

IT IS SO ORDERED.

Dated this the 5th day of August, 2022.

Jonathan M. Gallagher
Administrative Law Judge

Cc: Stephen Sullivan, Attorney for IDR (By AEDMS)
Paxton Williams, Attorney for IDR (By AEDMS)
Cody Edwards, Attorney for Protestor (By email)
Ronald Mountsier, Attorney for Protestor (By mail and email)

NOTICE

Any aggrieved party has 30 days, including Saturdays, Sundays and legal holidays, of the date of this Proposed Decision to file an appeal to the Director of the Department of Revenue. 701 I.A.C. § 7.17(8)(d). The appeal must be made in writing. The appeal shall be directed to:

Office of the Director
Iowa Department of Revenue
Hoover State Office Building
Des Moines, Iowa 50319