

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

IN THE MATTER OF

HILLSIDE (NEW MEDIA HOLDINGS US)
INC., D/B/A HILLSIDE (IOWA) LLC
9000 LINCOLN DRIVE EAST
MARLTON, NJ 08503

WITHHOLDING TAX

DECLARATORY ORDER

DOCKET NO. 288621

Pursuant to a Petition for Declaratory Order (hereinafter referred to as "Petition") filed with the Iowa Department of Revenue (hereinafter referred to as "Department") by Hillside (New Media Holdings US) Inc., d/b/a Hillside (Iowa) LLC (hereinafter referred to as "Hillside" or "Petitioner") on April 11, 2023, and in accordance with Iowa Code section 17A.9 (2023) and Iowa Administrative Code rule 701—7.24(17A), "Declaratory order-in general," the Director of the Department (hereinafter referred to as "Director") issues the following order.

I. FACTS

The following findings of fact are based on the Petition and further communications with Petitioner. Hillside has entered into an Online Sportsbook Operations Agreement with Casino Queen Marquette, Inc. (hereinafter referred to as "CQ") to host, manage, and operate a branded internet site to conduct advance deposit online sports wagering for CQ, the licensee, as described in Iowa Code section 99F.7A(3). CQ is the owner and operator of an excursion gambling boat licensed to conduct sports wagering under Iowa Code section 99F.7A. Hillside is the withholding

agent for online sports wagering winnings paid out pursuant to the Agreement between Petitioner and CQ.

II. ISSUE PRESENTED

Is Petitioner required to withhold Iowa income tax from payments of online sports wagering winnings?

III. STANDARD OF REVIEW

A. Declaratory Orders under the Iowa Administrative Procedure Act

Iowa's Administrative Procedure Act ("IAPA") was enacted "to provide a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public." Iowa Code § 17A.1(2). Under the IAPA, "[a]ny person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency." *Id.* at § 17A.9(1)(a). The IAPA also describes agency rights and responsibilities with respect to declaratory order proceedings. *Id.* at § 17A.9(8). Pursuant to Iowa Code section 17A.9(2), the Department adopted Iowa Administrative Code rule 701—7.24, which outlines department-specific rules governing declaratory orders.

The purpose of a declaratory order is to provide a "generally available means for persons to obtain reliable information about agency administered law as it applies to their particular circumstances." *Sierra Club Iowa Chapter v. Iowa Dep't of Transp.*, 832 N.W.2d 636, 647 (2013) (citing Arthur Earl Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government*, 1–8 (1998)). Declaratory orders are not contested cases that "entitle[] parties affected by the agency action to an adversarial

hearing” in order to “adjudicate disputed facts pertaining to particular individuals in specific circumstances.” *Greenwood Manor v. Iowa Dep’t of Pub. Health, State Health Facilities Council*, 641 N.W.2d 823, 834 (Iowa 2002); Iowa Code § 17A.12. Instead, the IAPA “contemplates declaratory rulings by administrative agencies on purely hypothetical sets of facts.” *City of Des Moines v. Pub. Emp’t Relations Bd.*, 275 N.W.2d 753, 758 (1979).

As such, “[t]he procedure established by section 17A.9 allows persons to seek formal opinions on the effect of future transactions and arrange their affairs accordingly.” *Bennett v. Iowa Dep’t of Nat. Res.*, 573 N.W.2d 25, 26 (Iowa 1997). Declaratory orders issued by an administrative agency do, however, have “the same status and binding effect as any final order issued in a contested case proceeding.” Iowa Code § 17A.9(7). The Department’s rules governing declaratory orders are consistent with this understanding of the role of declaratory orders in administrative procedure. See Iowa Admin. Code r. 701—7.24(1)(b), (9)(a)(2), (9)(a)(6), (9)(a)(8), (12) (2020).

B. Statutory Construction and Interpretation of Tax Statutes

Generally, when interpreting a statute, the Department begins by “examin[ing] the language of the statute and determin[ing] whether it is ambiguous.” *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014). If the statute’s language is unambiguous, the express language in the statute is controlling. *Id.* (citing *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011)). “If, however, the statute is ambiguous,” the Department’s interpretation will seek to effectuate the legislature’s intent. See *id.* (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)).

IV. DISCUSSION

A. Sports Wagering Winnings Are Income Subject to Taxation by Iowa.

Hillside states in its Petition that it has entered into an Online Sportsbook Operations Agreement with CQ, a licensed Iowa excursion gambling boat, to host, manage, and operate a branded internet site to conduct advance deposit online sports wagering for CQ. Sports wagering in Iowa Code section 99F.1(29) is defined as "the acceptance of wagers on an authorized sporting event or sports-related event by any system of wagering as authorized by the commission" with certain exceptions not relevant here. Sports wagering is authorized in Iowa under Iowa Code section 99F.3.

Gambling winnings constitute income subject to tax in Iowa. Iowa Code section 422.7 defines net income as "the taxable income as properly computed for federal income tax purposes under section 63 of the Internal Revenue Code" followed by a list of enumerated adjustments. Gambling winnings are reported as "other income" on Internal Revenue Service Form 1040. Thus, for federal income tax purposes, gambling winnings are generally included in calculating a taxpayer's total income, adjusted gross income, and taxable income. Because there is no Iowa adjustment for gambling winnings, they also constitute income subject to taxation by Iowa.

B. Iowa Code Section 422.16(2)¹ Does Not Require Withholding on Sports Wagering Winnings for Iowa Residents.

Subsection 422.16(2) imposes withholding requirements on payers of specified sources of income. Paragraph “d” of that subsection specifically addresses certain types of gambling income, and requires withholding agents to withhold Iowa income tax on winnings in excess of:

- \$600 for gambling activities authorized under chapters 99B (social and charitable gambling) or 99G (lottery);
- \$1,000 for gambling activities authorized under chapter 99D (pari-mutuel wagering); and
- \$1,200 for slot machine winnings authorized under chapter 99F (gambling games and sports wagering).

Sports wagering is authorized under chapter 99F. However, the requirement to withhold on winnings authorized under that chapter is limited to slot machine winnings. Thus, paragraph 422.16(2)(d) does not apply to winnings from sports wagering authorized under chapter 99F.

C. Iowa Code Section 422.16(2)(b)(1) Requires Withholding on Sports Wagering Winnings Paid to Nonresidents.

In addition to the specific requirement, which is discussed in the Section IV.B of this Order, to withhold Iowa income tax on, among other items of income, certain gambling winnings, subparagraph 422.16(2)(b)(1) imposes the following Iowa income tax withholding requirement:

¹ Iowa Code section 422.16 was revised in 2023 Iowa Acts Senate File 565, Division IV, Sec. 17, effective July 1, 2023. The code citations in this order reflect those revisions.

In the case of a nonresident having income subject to taxation by Iowa, but not subject to withholding of such tax under this subsection or subject to the provisions of section 422.16B, a withholding agent shall withhold from such income at the same rate as provided in this subsection. A Withholding agent and nonresident shall be subject to provisions of this section, according to the context, except that such withholding agents may be absolved of such requirement to withhold taxes from such nonresident's income upon receipt of a certificate from the department issued in accordance with the provisions of section 422.17.

With certain exceptions described below, withholding agents are required to withhold Iowa income tax on payments of income subject to taxation by Iowa that are made to nonresidents, as described in Iowa Administrative Code rule 701—307.4(1) “b” (2023).

The first exception is for income subject to withholding under subsection 1. As described earlier, this does not apply to Petitioner since sports wagering winnings are not subject to withholding under paragraph 422.16(2)(d). The next exception is for income subject to the Iowa composite return requirement under section 422.16B. This requirement is imposed on pass-through entities with nonresident members. Since wagers can only be made by a natural person, the exception will not apply either. See Iowa Code § 99F.9.

The final exception is for payments made to nonresidents for whom the payer received a certificate from the Department pursuant to section 422.17 that states that withholding is not required. To obtain such a certificate, nonresidents are required to file a request with the Department and agree to make estimated Iowa income tax payments in lieu of withholding. If Petitioner receives such certificates issued by the Department, Petitioner is not required to withhold Iowa income tax from any sports wagering winnings paid out to those nonresidents who have provided the certificates in accordance with section 422.17.²

ORDER

THEREFORE, based on the facts presented, the foregoing reasoning, and the applicable provisions of the law, the Director finds that sports wagering winnings are subject to Iowa income tax withholding at the rate specified in Iowa Administrative Code rule 701—307.4(1) “b” when paid to nonresidents, except in those cases where the nonresidents provided Petitioner with certificates issued by the Department pursuant to section 422.17. Sports wagering winnings are not subject to Iowa withholding when paid to Iowa residents.

Issued at Des Moines, Iowa this 10th day of July, 2023.

IOWA DEPARTMENT OF REVENUE

By Mary Mosiman
Mary Mosiman, Director

² All conditions of section 422.17 must be satisfied for a withholding agent to not withhold income from a nonresident. In particular, the nonresident is only relieved from withholding up to the amount of tax liability estimated as indicated upon the certificate.