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

IN THE MATTER OF DRY DUCK BASEMENT WATERPROOFING LLC 3000 SCOTT AVE DES MOINES IA 50317-1302 SALES AND USE	**REFUSAL TO ISSUE DECLARATORY ORDER** DOCKET NO. 1301188

Pursuant to a Petition for Declaratory Order ("Petition") filed with the Iowa Department of Revenue ("Department") by DRY DUCK BASEMENT WATERPROOFING LLC ("Dry Duck" or "Petitioner") on April 13, 2026, and in accordance with Iowa Code section 17A.9 (2026) and Iowa Administrative Code rule 701—4.7(17A) (2026),[1] the Director issues the following order.

I. FACTS

The findings of fact are based on the Petition. Petitioner is in the business of waterproofing basements and requested a declaratory order seeking clarification on whether several services it provides are subject to sales tax or are exempt from sales tax.

A request was sent on May 5, 2026 to provide detailed information about the services listed in the petition; an identification of the specific Code provisions the Petitioner wanted the Department to analyze; and information on the exemptions from

[1] As of July 1, 2026, Iowa Administrative Code rule 701—4.7 on Declaratory Orders is rescinded. 2026 Iowa Acts, Senate File 2463, Section 4, Subsection 4. The Department of Revenue's Administrative Code rules on Declaratory Orders are now found in Iowa Administrative Code chapter 701—2503. As the Petition was filed prior to this date, citations are made to rule 4.7.

sales tax the Petitioner believes it would qualify for. As of the date of this declaratory order, no response to the requested information was received.

II. ISSUES PRESENTED

The petitioner presented four issues for consideration:

1. Whether the labor on installing new egress windows is subject to sales tax?
2. Whether the labor on installing a new sump pump is subject to sales tax?
3. Whether the labor on replacing foundation walls is subject to sales tax?
4. Whether the labor on adding foundation braces is subject to sales tax?

III. STANDARD OF REVIEW

Declaratory Orders under the Iowa Administrative Procedure Act

The function of a declaratory order is to provide “reliable advice from an agency as to the applicability of unclear law.” Arthur Earl Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process*, 60 Iowa L. Rev. 731, 805 (1975). Iowa Code section 17A.9 contemplates declaratory orders by administrative agencies on a disclosed set of facts. *City of Des Moines v. P.E.R.B.*, 275 N.W.2d 753, 758 (Iowa 1979). A declaratory order enables the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts. Bonfield, *supra*, at 822–23.

A declaratory order is not a “contested case” as defined in Iowa Code section 17A.2(5) as it is not an evidentiary hearing, a separate administrative remedy set forth in Iowa Code chapter 17A and in the Department’s rules. *See* Iowa Admin. Code r. 701—4.7(17A). Therefore, for the purposes of a declaratory order, the Director views the issues raised in the petition as questions of law applicable to future factual situations as disclosed in the petition. This view is consistent with Iowa Administrative Code rule 701—4.7 concerning the issuance of declaratory orders.

IV. DISCUSSION

For the reasons stated below, the Director refuses to issue a declaratory order in response to DRY DUCK BASEMENT WATERPROOFING LLC's Petition. Pursuant to Iowa Administrative Code rule 701—4.7(1)"*c*"(2), a petition for a declaratory order must contain, among other things, the following:

> 1. A clear and concise statement of all relevant facts on which the order is requested;
> 2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, the applicability of which is questioned, and any other relevant law.

The Petition does not meet these requirements. The Petition lacks sufficient detail about the services Petitioner performs to make a determination as to whether their services would or would not qualify as any of the services subject to tax listed in Iowa Code section 423.2(6). Additionally, the Petitioner states that some services would be exempt from tax but the Petition lacks sufficient information to make a determination as to what exemption is claimed and whether the qualifications for that exemption are met. Absent this information, the Director is unable to adequately respond to the questions raised in the Petition.

Accordingly, pursuant to Iowa Administrative Code rule 701—4.7(10)"*a*", the Director therefore refuses to issue a declaratory order for the following reasons:

> (6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order;

The refusal to issue this declaratory order does not preclude the Petitioner from filing a new petition with the requested information as provided in Iowa Administrative Code rule 701—4.7(10)"*c*".

Issued at Des Moines, Iowa this 8th day of July, 2026.

IOWA DEPARTMENT OF REVENUE

By Mary Mosiman
Mary Mosiman, Director