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

IN THE MATTER OF TORY M. WESTHOFF 117 N LABETTE ST FRONTENAC KS 66763-2274 Sales Tax and Hotel/Motel Tax	**DECLARATORY ORDER** DOCKET NO. 1308392

Pursuant to a Petition for Declaratory Order ("Petition") filed with the Iowa Department of Revenue ("Department") by TORY M. WESTHOFF (hereinafter referred to as "Petitioner") on May 5, 2026, and in accordance with Iowa Code section 17A.9 (2026) and Iowa Administrative Code rule 701—4.7(17A),[1] "Declaratory order-in general," the Director issues the following order.

I. FACTS

The facts below are based on the original petition filed on May 5, 2026, Petitioner's website, and the response to the Department's request for supplemental information received on June 27, 2026.

Petitioner's business books reservations and grants guests access to the historic Fremont County jail, located in Sidney, Iowa. Response to Request for Supplemental Information, Docket No. 1308392, No. 2 (hereinafter "Supp. Info.") (June 27, 2026). According to the Petitioner, customers' primary use of the property is for paranormal investigation and related activities; including research, observation, and exploration of the

[1] As of July 1, 2026, Iowa Administrative Code rule 701—4.7 on Declaratory Orders is rescinded. 2026 Iowa Acts, Senate File 2463, Section 4, Subsection 4.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.

premises. Pet. for Declaratory Order, No. 1308392 (May 5, 2026) P. 1 No. 2 (hereinafter "Petition"). Petitioner's business activities include scheduling reservations, administrative duties, and maintaining the property. Supp. Info. at No. 10. Petitioner maintains a website (hereinafter "Petitioner's website") that includes a history of the property, rules for guests, and a calendar and reservation system allowing customers to book reservations, described as "investigations," for overnight (3 p.m. to 10 a.m.), daytime (11 a.m. to 2 p.m.), and 24-hour increments. *Historic Fremont County Jail*, (last visited Aug. 29, 2026),[2] *Id.* at Nos. 4 and 9. Guests are required to sign a release of liability statement to access the facility. *Id.* at Attachment "Jail Liability Waivers."

The Petition states that customers' overnight presence is due to the preference of customer groups to utilize the premises during overnight hours because paranormal investigations are commonly conducted at night. Petition at P. 1 Nos. 5 and 6. Petitioner's website encourages overnight investigators to bring their own air mattresses and bedding, and reminds visitors that those items are not included with their rental. *Rules*, Historic Fremont County Jail (last visited Sep. 2, 2026).[3] Petitioner states the building itself is safe and hospitable, and it is Petitioner's intention to maintain the premises and preserve its historic nature and protect the long-term integrity of the building. Supp. Info. at No. 8.

Petitioner maintains that "[t]he structure, marketing, and operation of Petitioner's business consistently reflects a facility rental model." Petition at P.2 No.6. Petitioner's website references the building's documented history and reported paranormal activity. *History*, Historic Fremont County Jail (last visited Sep. 2, 2026).[4] In sum, the nature of

[2] Available at https://historicfremontcountyjail.weebly.com/
[3] Available at https://historicfremontcountyjail.weebly.com/rules.html
[4] Available at https://historicfremontcountyjail.weebly.com/history.html

Petitioner's business is to provide access to a facility uniquely positioned to appeal to customers wishing to conduct paranormal investigation(s). Petition at P.2. Nos. 5 and 6.

II. ISSUE PRESENTED

Petitioner presents the following two issues for the Director's consideration:

1. Whether Petitioner's activities or business is subject to Iowa sales and use tax.
2. Whether Petitioner's activities or business is subject to Iowa hotel and motel tax.

III. STANDARD OF REVIEW

A. Declaratory Orders under the Iowa Administrative Procedure Act.

Iowa Code chapter 17A, the Iowa 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—4.7, 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); *See also* 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 (Iowa 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—4.7.

B. Statutory Construction and Interpretation of Tax Statutes.

"When engaging in statutory interpretation," the Department "first examine[s] the language of the statute and determine[s] whether it is ambiguous." *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014) (citing *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011)). "'Generally, we presume words used in a statute have their ordinary and commonly understood meaning.'" *Id*. (quoting *McGill v. Fish*, 790 N.W.2d 113, 119 (Iowa 2010)). "[L]egislative intent is expressed by what the legislature has said, not what it could or might have said. When a statute's language is

clear, we look no further for meaning than its express terms. Intent may be expressed by the omission, as well as the inclusion . . . of statutory terms . . . ." *Hawkeye Land Co. v. Iowa Utils. Bd.*, 847 N.W.2d 199, 210 (Iowa 2014) (quoting *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001)). The Iowa Supreme Court, in *Chickasaw County Board of Review v. Property Assessment Appeal Board*, determined that "we will construe tax statutes according to their ordinary meaning and apply the same principles of construction we apply to any other type of statute." 36 N.W.3d 273, 283 (2026).

IV. DISCUSSION

A. Commercial Recreation

The Petition requests an order determining whether Petitioner or Petitioner's business activities are subject to Iowa sales or use tax.

1. Applicable Law

Iowa Code imposes a tax of six percent upon the sales price from the furnishing of services as defined in Iowa Code section 423.1. "Services" means:

> [A]ll acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an employer who pays the wages of an employee for a valuable consideration by any person engaged in any business or occupation specifically enumerated in section 423.2. The tax shall be due and collectible when first use of the service is received by the ultimate user of the service.

Iowa Code § 423.1(54).

Among the specifically enumerated services in Iowa Code section 423.2 is "[g]olf and country clubs and all commercial recreation." Iowa Code § 423.2(6)(v). The Department's administrative rule on this service states that "[p]ersons providing facilities for recreation for a charge are rendering, furnishing, or performing a service, the sales

price of which is subject to tax." Iowa Admin. Code r. 701—216.3. The rule states that "recreation" includes "all activities pursued for pleasure, including sports, games and activities that promote physical fitness, but does not include admissions otherwise taxed under Iowa Code section 423.2." *Id.*

Any activity pursued for pleasure may be considered "recreation" because the rule includes "all activities pursued for pleasure." *Id.* Likewise, the rule makes clear that the service subject to tax is the provision of facilities for recreation for charge (i.e. commercialization). *Id.* Thus, a for-profit enterprise would be subject to tax for providing facilities for customers to participate in "[g]olf and country clubs and all commercial recreation." Taxability then turns on a construction of the phrase "all commercial recreation" as it is written in Iowa Code section 423.2(6)(v).

The Director gives words their "ordinary and commonly understood meanings" and utilizes dictionary definitions to do so. *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 224 (Iowa 2014) (citing the Court's approval of using dictionaries to determine statutory meaning when terms are not defined by the legislature in *Schaefer v. Putnam*, 841 N.W.2d 68 (Iowa 2013)). "All" is defined as "that is the whole amount or quantity of : that is the whole extent or duration of." *All*, Webster's Third New International Dictionary at 54 (unabr. ed. 1993); *see also* ALL AND SINGULAR, Black's Law Dictionary (12th ed. 2024) (All and singular is defined as "[c]ollectively and individually"). "Commercial" is defined as "of, in, or relating to commerce" or "from the point of view of profit : having profit as the primary aim." *Commercial*, Webster's Third New International Dictionary at 456; *see also* COMMERCIAL, Black's Law Dictionary (12th ed. 2024) (Commercial is defined as "[o]f, relating to, or involving the ability or business to make a

profit"). "Recreation" is defined as "a means of getting diversion or entertainment" or "equipped so as to provide diversions or amusements." *Recreation*, Webster's Third New International Dictionary at 1899. Taken together, these definitions mean "all commercial recreation" includes the entirety of commercialized entertainment or amusement pursued primarily for pleasure. This is consistent with the Department's prior order construing the meaning of the same statute. *See In the Matter of Sweat Iowa, L.L.C.*, Iowa Dep't of Revenue, Dec. Ruling No. 378882 (2024).

2. Petitioner's Business

The Petition states: "Purpose of Use: The property is used by customers primarily for paranormal investigation and related activities, including research, observation, and exploration of the premises." Petition at P. 1 No. 2. Also: "Facility Rental Characterization: The business is marketed and operated as a private facility rental granting temporary access to real property, rather than as a provider of lodging." Petition at P. 2 No. 6. Based on Petitioner's description, the business is a commercial enterprise providing a facility for customers to participate in recreational activity. As explained below, this is taxable as the service of commercial recreation.

Petitioner refers to its customers as "investigators." *Rules*, Historic Fremont County Jail (last visited Sept. 2, 2026).[5] Said investigators book the facility to reserve time(s) to conduct paranormal investigations. *Pricing*, Historic Fremont County Jail (last visited Sept. 2, 2026).[6] What paranormal investigation specifically consists of is not addressed or explained by Petitioner. "Paranormal" is defined as "beyond the range of scientifically known or recognizable phenomena : RARE, UNUSUAL, SUPERNATURAL" *Paranormal*,

[5] Available at https://historicfremontcountyjail.weebly.com/rules.html
[6] Available at https://historicfremontcountyjail.weebly.com/pricing.html

Webster's Third New International Dictionary at 1639. "Investigation" is defined as "the action or process of investigating" or "a searching inquiry." *Investigation*, Webster's Third New International Dictionary at 1189. Taken together, these definitions mean a "paranormal investigation" is the act or process of investigating, or conducting a searching inquiry, in order to discover phenomena beyond the range of scientific explanation. For context, Petitioner's website description of the history of the facility describes what investigators may encounter:

> Many believe the old jail never truly emptied. Visitors have reported strange sounds echoing through the corridors, footsteps when no one else is inside, doors that seem to shift on their own, and the unmistakable feeling of being watched in the upper cell block. People often describe the atmosphere as heavy and emotional, as if the walls themselves remember the fear, anger, and desperation once contained within them. Standing inside the dim cells today, it is easy to imagine the countless nights prisoners spent staring through iron bars, waiting for morning . . . or wondering if anyone would ever come for them. For those drawn to haunted history, The Historic Fremont County Jail is more than a building. It is a place where over a century of human stories -- crime, justice, and regret -- still seem to linger in the shadows.

History, Historic Fremont County Jail (last visited Sept. 2, 2026).[7]

These details suggest investigators search for phenomena beyond the range of normal experience or scientific explanation (e.g. doors that seem to shift on their own, footsteps when no one is inside, or what human stories seem to linger in the shadows), and Petitioner's business invites customers to investigate, research, and explore the facility in search of the aforementioned phenomena. Customers then pay (i.e., are engaged in commerce or "commercial" activity) to engage in this pursuit; to spend their leisure hours, typically overnight, in search of paranormal activity or evidence thereof.

[7] Available at https://historicfremontcountyjail.weebly.com/history.html

From these facts, it is rational to conclude that those customers are participating in a physical or mental activity pursued primarily for pleasure (i.e. recreation).

Therefore, Petitioner is "providing facilities for recreation for a charge," the sales price of which is subject to sales tax. *See* Iowa Admin. Code r. 701—216.3. According to the facts provided, Petitioner provides a facility and charges a fee for customers to engage in paranormal investigations as a form of recreation or a hobby. Because Petitioner's service is providing a facility for this form of recreation, i.e., paranormal investigation, the Director finds that it is subject to Iowa sales tax.

B. Hotel and Motel Tax

Petitioner also asks whether their business or business activities are subject to hotel and motel tax.

1. Applicable Law

Iowa imposes a state hotel and motel tax "of five percent . . . upon the sales price for the renting of any lodging if the lodging is located in this state." Iowa Code § 423A.3. "Lodging" means:

> rooms, apartments or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, cabin, apartment, residential property, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. Lodging does not include conference, meeting, or banquet rooms that are not used for or offered as part of sleeping accommodations.

Iowa Code § 423A.2(e).

2. Petitioner's Business

In the present matter, the property is located in Iowa and is rented to guests throughout the year. Supp. Info. at Nos. 2 and 7. The facility includes, but is not limited

to, a former jail. *History*, Historic Fremont County Jail (last visited Sep. 2, 2026).[8] The Petition makes clear the purpose of the facility is for customers to conduct paranormal investigations and related activities, and not to use the facility as lodging. Petition at P.1 at Nos.2 and 4.

The facility is clearly not a "hotel, motel, inn, public lodging house, rooming house, cabin, apartment, residential property, or manufactured or mobile home which is tangible personal property, or in a tourist court, or any place where sleeping accommodations are furnished to transient guests for rent." Petitioner maintains that no sleeping facilities are provided. Petition at P. 1 Nos. 3 and 6 and P.2 Nos. 2 and 5. The Petition also states that no lodging or hospitality services are provided, and the business does not market or promote itself as a place for sleeping or lodging. Petition at P. 1 Nos. 4 and 6 and P.2 Nos. 3, 5, and 6. The Petition states specifically: "It will not operate as, and does not represent itself as, any type of lodging provider, including but not limited to a hotel, motel, inn, or short-term rental." Petition at P. 1 No. 4.

Even if investigators choose to stay or sleep overnight at the facility, Petitioner maintains that no sleeping accommodations are provided. Petition at P.1 at Nos.2 and 4. If, based on the facts provided by Petitioner, there is no residential dwelling area, apartment, or any other characteristic that would make the property fall within the definition of "lodging," under Iowa Code, then Petitioner is not subject to Iowa hotel and motel tax. Under these facts, the facility does not appear to be among the types of establishments enumerated under the statutory definition of lodging, and Petitioner does not furnish sleeping accommodations to transient guests for rent. Therefore, Petitioner's

[8] Available at https://historicfremontcountyjail.weebly.com/history.html

business does not fall within the definition of lodging. The Director finds for those reasons that the Petitioner and Petitioner's business activities are not subject to Iowa hotel and motel tax.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of law, the Director finds Petitioner or Petitioner's business is subject to Iowa sales tax because Petitioner or Petitioner's business is providing a facility for customers to participate in commercial recreation. Additionally, because Petitioner or Petitioner's business does not provide lodging services, Petitioner or Petitioner's business is not subject to Iowa's hotel and motel tax.

Issued at Des Moines, Iowa this 28th day of September, 2026.

IOWA DEPARTMENT OF REVENUE

By Mary Mosiman
Mary Mosiman, Director