

**701—7.24 (17A) Declaratory order—in general.** Any oral or written advice or opinion rendered to members of the public by department personnel not pursuant to a petition for declaratory order is not binding upon the department. However, department personnel, including field personnel, ordinarily will discuss substantive tax issues with members of the public or their representatives prior to the receipt of a petition for a declaratory order, but such oral or written opinions or advice are not binding on the department. This should not be construed as preventing members of the public or their representatives from inquiring whether the department will issue a declaratory order on a particular question. In these cases, however, the name of the taxpayer shall be disclosed. The department will also discuss questions relating to certain procedural matters such as, for example, submittal of a request for a declaratory order or submittal of a petition to initiate rule-making procedures. Members of the public may, of course, seek oral technical assistance from a departmental employee in regard to the proper preparation of a return or report required to be filed with the department. Such oral advice is advisory only, and the department is not bound to recognize the advice in the examination of the return, report or records.

**7.24(1) *Petition for declaratory order.***

*a.* Any person may file with the Clerk of the Hearings Section, Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319, a petition seeking a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department. A petition is deemed filed when it is received by the clerk of the hearings section. The clerk of the hearings section shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the clerk of the hearings section an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE

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Petition by (Name of Petitioner)	*	PETITION FOR
for a Declaratory Order on (Cite	*	DECLARATORY ORDER
provisions of law involved).	*	Docket No. _____
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- b.* The petition must provide the following information:
- (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, whose applicability is questioned, and any other relevant law;
  - (3) The questions the petitioner wants answered, stated clearly and concisely;
  - (4) The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers;
  - (5) The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome;
  - (6) A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;
  - (7) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition;
  - (8) Any request by petitioner for a meeting provided for by this rule; and
  - (9) Whether the petitioner is presently under audit by the department.

c. The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and of the petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

**7.24(2) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the clerk of the hearings section shall give notice of the petition to all persons not served by the petitioner to whom notice is required by any provision of law. The clerk of the hearings section may also give notice to any other persons.

**7.24(3) Intervention.**

a. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order, shall be allowed to intervene in a proceeding for a declaratory order.

b. Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

c. A petition for intervention shall be filed with the Clerk of the Hearings Section, Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by the clerk of the hearings section. The clerk of the hearings section will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF REVENUE

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Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original Petition).	* * * *	PETITION FOR INTERVENTION Docket No. _____
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- d. The petition for intervention must provide the following information:
- (1) Facts supporting the intervenor’s standing and qualifications for intervention;
  - (2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers;
  - (3) Reasons for requesting intervention and disclosure of the intervenor’s interest in the outcome;
  - (4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;
  - (5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented;
  - (6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding;
  - (7) Whether the intervenor is presently under audit by the department; and
  - (8) Consent of the intervenor to be bound by the declaratory order.

e. The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, and telephone number of the intervenor and of the intervenor’s representative and a statement indicating the person to whom communications should be directed.

*f.* For a petition for intervention to be allowed, the petitioner must have consented to be bound by the declaratory order and the petitioner must have standing regarding the issues raised in the petition for declaratory order. The petition for intervention must not correct facts that are in the petition for declaratory order or raise any additional facts. To have standing, the intervenor must have a legally protectible and tangible interest at stake in the petition for declaratory order under consideration by the director for which the party wishes to petition to intervene. Black's Law Dictionary, Centennial Edition, p. 1405, citing *Guidry v. Roberts*, 331 So. 44, 50 (La.App.). Based on Iowa case law, the department may refuse to entertain a petition from one whose rights will not be invaded or infringed. *Bowers v. Bailey*, 237 Iowa 295, 21 N.W.2d 773 (1946). The department may, by rule, impose a requirement of standing upon those that seek a declaratory order at least to the extent of requiring that they be potentially aggrieved or adversely affected by the department action or failure to act. Bonfield, "The Iowa Administrative Procedure Act, Background, Construction, Applicability and Public Access to Agency Law, The Rule-making Process," 60 Iowa Law Review 731, 805 (1975). The department adopts this requirement of standing for those seeking a petition for a declaratory order and those seeking to intervene in a petition for a declaratory order.

*g.* An association or a representative group is not considered to be an entity qualifying for filing a petition requesting a declaratory order on behalf of all of the association or group members. Each member of an association may not be similarly situated or represented by the factual scenario set forth in such a petition.

*h.* If a party seeks to have an issue determined by declaratory order, but the facts are different from those in a petition for declaratory order that is currently under consideration by the director, the interested party should not petition as an intervenor in the petition for declaratory order currently under the director's consideration. Instead, the party should file a separate petition for a declaratory order, and the petition should include all of the relevant facts. The director may deny a petition for intervention without denying the underlying petition for declaratory order that is involved.

**7.24(4) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

**7.24(5) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Policy and Communications Division, Department of Revenue, Fourth Floor, Hoover State Office Building, Des Moines, Iowa 50319.

**7.24(6) Service and filing of petitions and other papers.**

*a. When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

*b. Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Clerk of the Hearings Section, Department of Revenue, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

*c. Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided in rules 701—7.8(17A) and 701—7.21(17A).

**7.24(7) Department consideration.** Upon request by petitioner in the petition, the department may schedule a brief and informal meeting between the original petitioner, all intervenors, and the department, a member of the department, or a member of the staff of the department to discuss the questions raised. The department may solicit comments or information from any person on the questions raised. Also, comments or information on the questions raised may be submitted to the department by any person.

**7.24(8) Action on petition.**

*a.* Within 30 days after receipt of a petition for a declaratory order, the director shall take action on the petition.

*b.* The date of issuance of an order or of a refusal to issue an order is as defined in rule 701—7.2(17A).

**7.24(9) Refusal to issue order.**

*a.* The department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- (1) The petition does not substantially comply with the required form;
- (2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order;
- (3) The department does not have jurisdiction over the questions presented in the petition;
- (4) The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding that may definitively resolve them;
- (5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter;
- (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;
- (7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances;
- (8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct, in an effort to establish the effect of that conduct or to challenge a department decision already made;
- (9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner;
- (10) The petitioner requests the department to determine whether a statute is unconstitutional on its face; or
- (11) The petition requests a declaratory order on an issue presently under investigation or audit or in rule-making proceedings or in litigation in a contested case or court proceedings.

*b.* A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

*c.* Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue an order.

**7.24(10) Contents of declaratory order; effective date.**

*a.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

*b.* A declaratory order is effective on the date of issuance.

**7.24(11) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

**7.24(12) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. A declaratory order is binding on the department, the petitioner, and any intervenors. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition. A declaratory order, once issued, will not be withdrawn at the request of the petitioner.

**7.24(13) Prejudice or no consent.** The department will not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

This rule is intended to implement Iowa Code section 17A.9.

[ARC 0251C, IAB 8/8/12, effective 9/12/12]