

This decision has been appealed to Polk County District Court.

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

IN THE MATTER OF FOUR M, INC., d/b/a Quick Shop Foods; STEVEN MARK EBELSHEISER, formerly d/b/a Four M, Inc. and Quick Shop Foods, individually and as authorized agent and/or successor in interest of Four M, Inc., d/b/a Quick Shop Foods; and CENTRAL CITY LIQUORS, INC., formerly d/b/a Locust Street Spirits ALCOHOL	DECLARATORY ORDER DOCKET NO. 695985
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Pursuant to a Petition for Declaratory Order (“Petition”) filed with the Iowa Department of Revenue (“Department”)¹ by Four M, Inc., doing business as Quick Shop Foods; Steven Mark Ebelsheiser, formerly doing business as Four M, Inc. and Quick Shop Foods, individually and as authorized agent and/or successor in interest of Four M, Inc., doing business as Quick Shop Foods; and Central City Liquors, Inc., formerly doing business as Locust Street Spirits (collectively hereinafter “Petitioners”), and in accordance with Iowa Code section 17A.9 (2025) and Iowa Administrative Code rule 701—7.24 (2025), the Director issues the following Order.²

¹ Effective July 1, 2023, the Iowa Alcoholic Beverages Division (“ABD”) became a part of the Department. See 2023 Iowa Acts ch. 19, § 2355. For consistency with both the petition and the Iowa Code, references herein to the regulatory body will use “Department.” This administrative reorganization does not affect the substance of the underlying claims or the statutory provisions at issue. See also Iowa Code § 17A.2(1) (including “each board, commission, department, officer, or other administrative office or unit of the state” within the definition of “agency”).

² When considering a petition for declaratory order, “[t]he 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.” Iowa Admin. Code r. 701—7.24(7).

I. FACTUAL BACKGROUND

A. The Parties

Petitioner Central City Liquors, Inc. currently holds an active Class “E” retail alcohol license and regularly purchases alcoholic liquor from the Department for resale.³ Petitioner Four M, Inc. previously held a Class “E” license from approximately 1997 until 2016 and conducted similar purchases during its period of licensure.⁴

B. The Department’s Pricing Practices

The Department has implemented several operational mechanisms to manage its wholesale distribution responsibilities:

1. Temporary Price Reductions (“TPRs”): A program allowing manufacturers to offer time-limited wholesale price reductions.⁵
2. Bailment System: An inventory management system where manufacturers retain ownership of products until sale to retailers, with associated operational fees.⁶
3. Special Handling Fees: Charges assessed for non-compliant shipments or additional services required beyond standard handling.⁷

The Department’s implementation of these mechanisms, particularly their treatment in markup calculations, forms the basis of the Petitioners’ request.

³ See the Department’s Public Database of retail alcohol licenses, currently available at iowaabd.my.site.com/s/public-database. Searching using “central city” in field “d/b/a” reveals the active license for Petitioner Central City Liquors, Inc., number LE0000046; see *also* Iowa Code §§ 123.10(6), .22(1), .24, .30(3)(d).

⁴ Pls.’ Second Am. Class Action Pet., No. LACL146683 (Feb. 27, 2020) at 4.

⁵ Pet. for Declaratory Order, No. 695985 (Oct. 10, 2024) at 29-30, 32.

⁶ *Id.* at 62-63.

⁷ *Id.* at 63.

II. ISSUES PRESENTED

The Petition presents four primary issues for determination:

1. Whether the Department's prior practices involving TPRs and buy-outs resulted in markups exceeding statutory limits;
2. Whether the Department's treatment of bailment fees, special handling fees, and defective product charges in markup calculations complies with statutory requirements;
3. Whether the Department's interpretation of "wholesale price paid" appropriately includes freight and excise taxes; and
4. Whether the Department's pricing practices violate due process protections under the Iowa Constitution.

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.* § 17A.9(1)(a). The IAPA also describes agency rights and responsibilities with respect to declaratory order proceedings. See *id.* § 17A.9(1)(b)–(8). Pursuant to section 17A.9(2), the Department adopted Iowa Administrative Code rule 701—7.24, which outlines department-specific rules governing declaratory orders. See *also* Iowa Admin. Code chapter 185—10.

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 Natural 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.

Given that declaratory orders are intended to guide contemplated future actions of the petitioning party and the responding agency—not to adjudicate the propriety of past acts—this declaratory order request is not the appropriate vehicle to determine whether

the Department overcharged the Petitioners for liquor purchases or to calculate the amount of any purported refund owed. See *Women Aware v. Reagen*, 331 N.W.2d 88, 92 (Iowa 1983) (“The declaratory ruling procedure under section 17A.9 permits persons to seek formal opinions on the effect of future transactions and arrange their affairs accordingly,” citing A. Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access To Agency Law, The Rulemaking Process*, 60 Iowa L. Rev. 731, 807 (1975)). Instead, the Petitioners’ may request a refund of any alleged overcharge paid by them by submitting the specific contested invoice to the Department’s alcohol accounting teams for review. The Department, therefore, will answer the Petitioners’ requests only to the extent that they seek clarification of the authority underlying the Department’s liquor pricing practices.

B. Iowa Code Chapter 123

“An agency shall have only that authority or discretion delegated to or conferred upon the agency by law and shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency.” Iowa Code § 17A.23. As noted above, the Legislature delegated to the Department the power to administer and enforce the laws concerning alcoholic beverage control, as well as the power to adopt rules as necessary to carry out the duties delegated to it under chapter 123. See *id.* §§ 123.4, .10.

IV. STATUTORY AND REGULATORY FRAMEWORK

A. Historical Background

The regulation of alcoholic beverages in Iowa has its roots in the post-Prohibition era, when the state enacted the “Iowa Liquor Control Act” to promote temperance and control “alcoholic liquor traffic within the state.” 1933-34 Iowa Acts Extra Sess. ch. 24.

Central to this regulatory scheme was the establishment of state monopoly power over the wholesale distribution of alcoholic liquor. See *id.* §§ 1, 7-9. The original Act created a liquor control commission vested with “the sole and exclusive authority to purchase alcoholic liquor . . . for the purpose of re-sale.” See *id.*

While the administrative structure has evolved over time, the fundamental framework remains: the state maintains its monopoly over wholesale distribution of alcoholic liquor and retains broad authority to regulate pricing throughout the distribution chain. See 1971 Iowa Acts ch. 131, §§ 1, 4-5, 16, 20-23 (codifying Iowa Code chapter 123 (1973)); 1986 Iowa Acts ch. 1245, §§ 731-32; 1986 Iowa Acts ch. 1246, § 734; 1987 Iowa Acts ch. 22, §§ 1-2; 2024 Iowa Acts ch. 1170, §§ 193-95. The current statutory scheme, codified in Iowa Code chapter 123, continues this regulatory approach while incorporating modern operational mechanisms such as the bailment system.

B. Current Statutory Framework

The Department’s authority over alcoholic beverage control derives from several key statutory provisions. Iowa Code section 123.4 designates the Department as the state’s primary authority for alcoholic beverage control. Section 123.10 grants specific powers including regulation of state warehouse management and merchandise, control over alcoholic liquor purchasing and distribution, authority to establish and distribute price lists, and power to establish prices based on minimum standards. Section 123.24 establishes specific parameters for wholesale pricing, including the requirement to sell only to Class “E” licensees, a mandate for uniform pricing regardless of quantity or delivery distance, a formula for price computation including the manufacturer’s price and

a markup averaging no more than fifty percent of wholesale price, and additional authorized charges for split cases and bottle handling.

V. DISCUSSION

A. TPRs and Buy-outs

The Petitioners challenge the Department's historical practice of purchasing products at temporary reduced prices while maintaining standard retail markups. For the following reasons, the Director finds this practice falls within the Department's statutory authority.

First, Iowa Code section 123.24(2)(b) explicitly authorizes the Department to "increase the markup on selected kinds of alcoholic liquor" provided the average return does not exceed statutory limits. This grant of authority necessarily implies discretion in managing individual product pricing within the aggregate cap. Additionally, the Department's role as exclusive wholesaler requires flexibility to manage inventory and respond to market conditions. The Legislature's grant of broad regulatory authority under section 123.10 contemplates such operational discretion. Furthermore, the controlling factor is whether the "average return to the department on all sales of alcoholic liquor" remains within statutory limits. There is no evidence that TPR practices resulted in excessive aggregate returns.

Finally, the Petitioners acknowledge buy-outs ceased in late 2017. The purported calculation "error" for markups on TPR products was fixed in July 2018 out of an abundance of caution.⁸ Because the complained of practices have been discontinued by the Department, future transactions cannot be affected.

⁸ The TPR pricing system did not actually change the wholesale price of liquor at all. Instead, it functioned as a mechanism for distributors to provide rebates to retailers with Class "E" licenses. When distributors

B. Treatment of Fees in Markup Calculations

Next, the Petitioners argue that bailment fees, special handling fees, and charges related to defective products should be treated as reductions in the wholesale price when calculating markups. However, the Director finds this position misconstrues both the statutory framework and the operational reality of the state's distribution system.

The Legislature established distinct statutory provisions for pricing (Iowa Code section 123.24) and operational systems (including bailment under section 123.22). This deliberate separation indicates legislative intent to treat operational fees separately from product pricing. The markup provisions in section 123.24(2) specifically reference the "wholesale price paid," not overall operational costs or fees.

The bailment system represents a fundamental operational framework authorized by section 123.22. Bailment fees serve several distinct purposes, including compensating the state for warehouse operations, managing inventory carrying costs, and allocating operational expenses equitably among suppliers. These fees do not constitute reductions in wholesale price but rather represent the cost of participating in the state's distribution system. This interpretation aligns with both statutory construction principles and sound accounting practices.

Additionally, Iowa Administrative Code rule 185—8.4(6) explicitly authorizes special handling charges for non-compliant shipments. These charges serve regulatory and operational purposes distinct from product pricing, such as ensuring compliance with shipping requirements, recovering costs of additional handling, and creating incentives

offered these rebates, the Department acted as an intermediary, adjusting both the distributor and retailer invoices to reflect the exact rebate amount. This process maintained consistent wholesale pricing while facilitating the rebate transfer.

for proper shipping practices. Treating such charges as wholesale price reductions would undermine their regulatory purpose and conflate distinct operational functions.

Lastly, these bailment and product-handling fees are not costs charged to or recovered from retailers holding Class “E” retail alcohol licenses. Instead, these costs are voluntarily borne by the suppliers who choose to participate in the state’s liquor bailment system. Thus, any purported refund owed as a consequence of the Department’s alleged charging unauthorized or excessive bailment and other handling fees would be due to the suppliers who paid them, not the Petitioners or other similar Class “E” licensees. The Petitioners, accordingly, lack standing to assert any overpayment claim on behalf of these liquor suppliers.

C. Interpretation of “Wholesale Price Paid”

The Department’s inclusion of freight and excise taxes in determining “wholesale price paid” represents a reasonable interpretation of section 123.24(2) for several reasons. First, the phrase “wholesale price paid” must be interpreted within the broader context of the Department’s role as exclusive wholesaler. When the Legislature uses a general term without specific definition, agencies may reasonably interpret it to effectuate statutory purposes. See *ABC Disposal Sys., Inc. v. Dep’t of Nat. Res.*, 681 N.W.2d 596, 603 (Iowa 2004). The Department’s interpretation reflects actual costs of acquiring product, maintains consistent treatment across suppliers, and enables effective operation of the distribution system. Moreover, standard industry practice recognizes that wholesale pricing typically includes costs necessary to acquire and receive product. The Department’s interpretation aligns with these commercial norms while maintaining transparency and uniformity in pricing. Notably, the former ABD and the Department have

consistently applied this interpretation since implementing the current bailment and markup structure in 1988. See 1988 Iowa Acts ch. 1241. Although the Legislature has repeatedly revised Iowa Code chapter 123 over the years—with substantial changes recently coming in 2022 and 2023 after the Petitioners’ concerns were first raised—it has not modified or altered the Department’s pricing or bailment authority. See *generally* 2023 Iowa Acts ch. 19, §§ 2351-470 (making numerous changes to Iowa Code chapter 123 without changing the pricing or bailment authority provisions); 2022 Iowa Acts ch. 1099 (same). Accordingly, the Director finds this long-standing administrative construction, coupled with legislative acquiescence, supports its reasonableness. See, e.g., *Mathis v. Iowa Utils. Bd.*, 934 N.W.2d 423, 430 (Iowa 2019) (looking at an agency’s longstanding administrative interpretation without any legislative action in support of the reasonableness of the agency’s interpretation).

D. Constitutional Claims

Finally, while administrative agencies generally lack the authority to render constitutional judgments, the Director observes that, on their face, the Petitioners’ constitutional claims appear to be without merit. See, e.g., *Endress v. Iowa Dep’t of Hum. Servs.*, 944 N.W.2d 71, 83 (Iowa 2020) (reaffirming that administrative agencies lack authority to decide constitutional issues). It bears noting that the Petitioners have no constitutionally-protected right to sell alcoholic beverages in the state of Iowa because a retail alcohol license “is not property” under Iowa law. Iowa Code § 123.38. Rather, such a license is characterized merely as a “personal privilege.” *Id.*

Nonetheless, the Petitioners first allege violations of due process under Article I, Sections 9 and 18 of the Iowa Constitution. The Department’s pricing practices, however,

satisfy procedural due process requirements. These practices are explicitly authorized by statute and are implemented through properly promulgated rules. Furthermore, due process at a minimum requires notice and opportunity to be heard. See *Endress*, 944 N.W.2d at 177-78. Both requirements are met here.

Licensees receive advance notice of the prices to be charged for liquor sold by the Department, and they are given detailed invoices for any purchases made. Moreover, both informal and formal administrative remedies are available to challenge agency decisions and to correct errant billing invoices. See *generally* Iowa Admin. Code 185 ch. 10. Lastly, licensees have the right to seek judicial review under the IAPA of any pricing or billing decision of the Department that adversely prejudiced them. See Iowa Code § 17A.19; see also *Larson v. City of Fergus Falls*, 229 F.3d 692, 697 (8th Cir. 2000) (“The right to a judicial hearing is the classic protection provided by the Due Process Clause against arbitrary deprivations of life, liberty, or property.”).

Similarly, there is no substantive due process violation. The Department’s pricing practices serve legitimate governmental purposes. The Department operates within statutory authority. Importantly, licensees voluntarily participate in a heavily regulated industry wherein the pricing structure applies uniformly to all licensees.

Finally, there is no unconstitutional taking. See *generally City of Eagle Grove v. Cahalan Invs., LLC*, 904 N.W.2d 552, 559-61 (Iowa 2017) (discussing the takings provisions in the federal and state constitutions). State law defines what qualifies as private property rights, and compensation is only required when those constitutionally protected rights are taken. See *id.* at 560. No constitutionally protected private property right is implicated here; a retail alcohol license is a personal privilege, not property. See

Iowa Code § 123.38. Licensees also have no protected property interest in specific markup calculations. The Iowa Code expressly authorizes the Department to employ a variable markup provided that all class “E” licensees are charged the same price. See *id.* § 123.24(1). Additionally, the challenged practices fall within normal regulatory authority. If there is any economic impact, it results from the legitimate exercise of state police power. As noted above, each Class “E” licensee who purchases liquor from the Department does so voluntarily with advance notice of the prices the Department charges. For all of these reasons, the Director would find the Department’s pricing practices are constitutional if she had the authority to do so.

VI. CONCLUSIONS

Based on the foregoing analysis:

1. The Department’s historical practices regarding temporary price reductions and buy-outs fell within its statutory authority under Iowa Code chapter 123.
2. The Department’s treatment of bailment fees, special handling fees, and defective product charges as operational fees distinct from wholesale price calculations is proper under Iowa Code section 123.24.
3. The Department’s interpretation of “wholesale price paid” to include freight and excise taxes represents a reasonable construction of Iowa Code section 123.24(2).
4. The Department lacks authority to adjudicate the Petitioners’ constitutional questions, though it is the Department’s belief that its pricing practices do not violate constitutional due process or takings provisions.

ORDER

THEREFORE, based on the facts presented, the applicable provisions of law, and the foregoing reasoning the issues raised in the Petition for Declaratory Order are as answered above.

Done at Des Moines, Iowa on this 24th day of February, 2025.

IOWA DEPARTMENT OF REVENUE

BY Mary Mosiman
Mary Mosiman, Director

cc:

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