IN THE SUPREME COURT OF IOWA

No. 19-0261

JOHN A. CHRISTENSEN AND LILA G. CHRISTENSEN,

Plaintiffs-Appellants,

v.

IOWA DEPARTMENT OF REVENUE,

Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR
WINNESHIEK COUNTY
THE HONORABLE JOHN J. BAUERCAMPER, JUDGE

BRIEF OF APPELLEE
AND
REQUEST FOR ORAL ARGUMENT

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FINAL BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The Iowa Department of Revenue (“Department”) disagrees with John A. Christensen’s and Lila G. Christensen’s (“Taxpayers”) Statement Of Issue Presented For Review. *See* Appellants’ Br. at 5–6. The Department asserts that the issues on appeal are properly stated as follows:

I. WHETHER THE DISTRICT COURT CORRECTLY SUSTAINED THE FINAL AGENCY DETERMINATION THAT THE CASH FARM LEASE RULE WAS VALID AND THAT TAXPAYERS DID NOT PROVE MATERIAL PARTICIPATION UNDER THAT RULE.

Iowa Code § 17A.19(10)(*l*)

Iowa Admin. Code r. 701-40.38(1)“c”(4)

Iowa Code § 422.7(21)

Iowa Code § 17A.19(11)(c)

Harlan v. Iowa Dep't of Job Srvc., 350 N.W.2d 192 (Iowa 1984)

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Iowa Code § 17A.19(10)(m)

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26 U.S.C. § 469(h)

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Iowa Admin. Code r. 701-40.38(1)“c”(4)-(7)

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II. WHETHER THE DISTRICT COURT CORRECTLY SUSTAINED THE FINAL AGENCY DETERMINATION THAT TAXPAYERS DID NOT PROVE MATERIAL PARTICIPATION UNDER THE GENERAL MATERIAL PARTICIPATION TESTS.

Iowa Code § 422.7(21)

Lowe's Home Centers, LLC v. Iowa Dep't of Revenue, 921 N.W.2d 38 (Iowa 2018)

Iowa Code § 17A.19(10)(m)

Iowa Code § 17A.19(11)(c)

Iowa Admin. Code r. 701-40.38(1)"c"(2)

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Shaw v. Comm'r, 83 T.C.M. (CCH) 1194 (T.C. 2002)

Treasury Regulation 1.469-5T(f)(4)

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III. WHETHER THE DIRECTOR OF REVENUE ERRED IN FAILING TO ADDRESS THE MERITS OF TAXPAYERS' EQUAL PROTECTION CLAIM.

Iowa Admin. Code r. 701-7.8(7)"c"

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ROUTING STATEMENT

The Department disagrees that this appeal involves a constitutional challenge to the validity of the cash farm lease rule—Iowa Administrative Code rule 701-40.38(1)"c"(4). *See* Appellants' Br. at 6. Indeed, as explained in more detail below, Taxpayers have not preserved for review their constitutional claims. *See infra* at 39–42. Nevertheless, the Court must retain this appeal as it involves a substantial issue of first impression, i.e., the claim that the Department's cash farm lease rule is inconsistent with the statutory provision that the rule implements—Iowa Code section 422.7(21). *See* Iowa R. App. P. 6.1101(2)(c).

STATEMENT OF THE CASE

Nature of the Case

This is a judicial review of a final agency action by the Department whereby the Director of Revenue ("Director") affirmed the Administrative Law Judge's ("ALJ") conclusion that Taxpayers did not meet their burden of proving that the Department's assessment was erroneous. *See* Final Order at 2 (App. at 199). The agency decision was based on the following two conclusions. First,

the Director affirmed the ALJ's determination that rule 40.38(1)"c"(4) was a reasonable interpretation of section 422.7(21) in the context of cash farm leases and that Taxpayers did not prove material participation under that rule. *See* Proposed Decision at 9–14, *aff'd*, Final Order at 2 (App. at 188–93, 199). Second, the Director upheld the ALJ's conclusion that even if the cash farm lease rule was ultra vires or otherwise inapplicable, Taxpayers were still not entitled to the disallowed net capital gain deduction because they did not meet their burden of proving material participation under the general material participation tests. *See* Proposed Decision at 14–16, *aff'd*, Final Order at 2 (App. at 193–95, 199).

It was not until their appeal to the Director that Taxpayers also raised an equal protection claim. *See* Appeal to Dep't Director at 5, 9–10 (App. at 49, 53–54). The Director did not reach the merits of Taxpayers' equal protection claim and did not decide whether that issue was properly raised before the ALJ, finding instead that the Director "may not determine whether a rule promulgated by the Department is constitutional on its face." *See* Final Order at 2 (App. at 199).

On appeal to this Court, Taxpayers claim that the final agency action in this matter was erroneous in its entirety.

Course of Proceedings

The Department agrees with Taxpayers' recitation of the procedural history of this contested case, *see* Appellants' Br. at 8–9, with the following clarification. On judicial review, the district court affirmed the Director's Final Order in its entirety. *See* Dist. Ct. Order at 4 (App. at 204).

STATEMENT OF THE FACTS

The Director adopted in full the ALJ's findings of fact. *See* Final Order at 1 (App. at 198). Taxpayers do not appear to disagree with the ALJ. *See* Appellants' Br. at 9–33. Notably, nowhere in their extensive statement of the relevant facts do Taxpayers identify any particular disagreements with the ALJ's findings of fact. *See id.* Nor do Taxpayers offer any arguments as to why particular fact-findings are not supported by substantial evidence. *See id.* Indeed, to the extent any portion of Taxpayers' statement of facts appears to disagree with the agency's fact-finding, those areas of disagreement actually have to do not with the ALJ's findings of fact but with the

conclusions that the ALJ drew from the facts. *See, e.g.*, *id*. at 28–33 (summarizing the evidence regarding the level of Taxpayers' involvement in the cash farm rental activity, but disagreeing with the conclusion that the ALJ drew from this evidence). Set forth below is a summary of the pertinent facts.

Mrs. Christensen and her brother, Mr. Tom Benson, inherited, in equal shares, the farm ground at issue when their father passed away in 1989. *See* ALJ Hr'g Tr. at 40:14–17 (App. at 136). The parcel of farmland was approximately ninety-six acres, and all but approximately three acres were leased out. *See* Ex. 27, Attachment 4, B-1 (Seller's Closing Statement) (App. at 450). The three acres that were not rented out included the farm house and the garage that Taxpayers and Mr. Benson kept for personal use; these three acres were sold in 2005 separately from the rest of the farm. *See* ALJ Hr'g Tr. at 107:19–108:12 (App. at 157). The leased farm ground (sold in 2006) was rented out to two tenants. Mr. Thomas Frana rented 34.7 acres while Mr. Jeffrey Miller—58.6 acres. *See* Ex. 27 at 25, 32 (App. at 434, 442). Messrs. Frana and Miller were the only tenants during

the relevant period—tax years 1996 through 2005. *See* ALJ Hr'g Tr. at 85:12—19 (App. at 148).

Neither sibling lived on the farm during the relevant period. Taxpayers were not farmers, and they repeatedly stated so during the course of this litigation. *See, e.g.*, Ex. 8 (App. at 319–20) (stating that Taxpayers were never engaged in farming); Ex. 11 (App. at 326–27) (same); Ex. 14 (App. at 332) (same); Ex. 15 (App. at 335) (same); Ex. 22 (App. at 365–68) (same); Ex. 25 at 2 (App. at 375) (same); Ex. 26 at 12 (App. at 394) (same); Ex. B at 1, 2 (App. at 250, 251) (same); *see also* Proposed Decision at 11 (App. at 190) ("The parties also agree that the Taxpayers were not, and never had been, farmers."). During the relevant period, Taxpayers lived in Loami, Illinois and Waverly, Illinois while Mr. Benson lived in Des Moines, Iowa and in Minnesota since 1997. *See* ALJ Hr'g Tr. at 58:9–16 (App. at 144). Waverly is located approximately 350 to 360 miles from the farm. *See id.* at 58:17–21 (App. at 144). Taxpayers testified that they had a verbal agreement with Mr. Benson, whereby they agreed to do what was required to maintain the cash farm rental, and Mr. Benson maintained the house that was not rented out. *See id.* at 40:15–23

(App. at 136). The activities flowchart, however, indicates that Mr. Benson and Taxpayers shared all duties—both with respect to the house and the farmland—prior to his moving to Minnesota in 1997. *See* Ex. 2 (App. at 313–14). When questioned regarding this discrepancy, Mr. Christensen stated that the flowchart was incorrect, but was unable to explain the discrepancy. *See id.* at 54:23–57:1 (App. at 141–43). Moreover, Mr. Benson and Mr. Frana believed that all duties were shared until Mr. Benson's move to Minnesota in 1997 because they attested to the accuracy of the flowchart. *See* Exs. 2, 3 (App. at 313–14, 316–17).

Mr. Christensen's testimony regarding Mr. Benson's duty to maintain the house was vague and lacking in detail. For instance, when Taxpayers visited the farm, they also did what was required to make the house habitable. *See* ALJ Hr'g Tr. at 59:16–60:3 (App. at 145). Additionally, despite admitting that he did not know what tasks Mr. Benson had to complete during the relevant period in maintaining the house, Mr. Christensen remained confident that Mr. Benson did substantially all of the work with respect to the house. *See id.* at 60:13–15 (App. at 146).

Mr. Christensen testified that he and Mrs. Christensen prepared the cash farm leases, dealt with tenant issues, maintained fences and the outbuildings, and cut down a few trees. *See* ALJ Hr'g Tr. at 41:1–42:3 (App. at 136–37). Until 1999 when Mr. Christensen retired, however, Mr. Benson was solely responsible for paying the bills associated with the farmland. *See id.* at 43:10–15 (App. at 138). Mr. Christensen admitted that they did not maintain any records of the amount of time spent on activities regarding the farmland. *See id.* at 43:16–22 (App. at 138). Mr. Christensen could not even state how many times per year they travelled to the farm or how many days they spent on the farm during the relevant period. *See id.* at 45:3–12 (App. at 139). Taxpayers' tax returns state the total amount of expenses by category, but do not provide further detail into the nature of the expenses, who performed the required work, or how much time each task took. *See* Ex. H at 4; Ex. I at 4; Ex. J at 5; Ex. K at 5; Ex. L at 5; Ex. M at 5; Ex. N at 5; Ex. O at 5 (App. at 267, 271, 276, 282, 288, 294, 300, 306).

The amount of time that Taxpayers spent on negotiating and executing the leases was minimal. In fact, the only term that

changed from one year to another was the per-acre rent amount, and even that did not change every year during the relevant period. *See* ALJ Hr'g Tr. at 86:3–87:23 (App. at 148–49). Both tenants were experienced farmers, and Taxpayers did not need to monitor or give advice as to the tenants' farming practices. *See id.* at 88:4–17 (App. at 150). As for installing tile, Mr. Christensen testified that they arranged for it, but Mr. Frana testified that he was the one who made the arrangements in December of 2004. *Compare id.* at 89:2–24 (App. at 150–51) *with id.* at 123:25–125:13 (App. at 161–63). Regarding fence and cattle building maintenance, Mr. Christensen could provide no information other than to state that Taxpayers did whatever needed to be done. *See id.* at 89:25–91:12 (App. at 151–52). His testimony regarding clearing brush from the fence line was similarly lacking in detail, and Mr. Christensen could not explain why they took on this responsibility when the lease agreements placed on the tenants the duty to keep the farmland free of brush. *See id.* at 92:4–94:5 (App. at 153–55). Mr. Frana testified that he had never seen—nor was he otherwise made aware that—Taxpayers repaired fences or cleared brush from the fence line, even though he was their

farm tenant during the entire relevant period (1996 through 2005) and lived only one quarter mile from the farm. *See id.* at 125:14–127:5; 131:3–12 (App. at 163–64, 165).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY SUSTAINED THE FINAL AGENCY DETERMINATION THAT THE CASH FARM LEASE RULE WAS VALID AND THAT TAXPAYERS DID NOT PROVE MATERIAL PARTICIPATION UNDER THAT RULE.

A. Preservation Of Error.

The Department agrees that Taxpayers preserved this issue for appeal.

B. Standard Of Review.

The Department agrees with Taxpayers as to the applicable standard of review. *See* Appellants' Br. at 34. Taxpayers claim that the final agency determination on this issue is "based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency." *See id.* (citing Iowa Code § 17A.19(10)(*l*)). In other words, Taxpayers argue that rule 40.38(1)"c"(4) is an irrational, illogical, and wholly unjustifiable interpretation of section 422.7(21) in the context of cash farm leases.

See id. Because the parties agree that the Department is vested with interpretive authority over this statutory provision, the Court "[s]hall give appropriate deference to the view of the agency" in deciding whether the cash farm lease rule is inconsistent with section 422.7(21). *See id.* § 17A.19(11)(c).

Taxpayers do not raise a substantial evidence challenge. *See* Appellants' Br. at 34–64. Indeed, Taxpayers' brief contains a detailed recitation of what they believe to be the relevant facts, but what is notably missing is an argument why any of the agency's findings of fact are not supported by substantial evidence. *See id.*

> The agency's findings are conclusive when the facts are in dispute or when reasonable minds may differ on the inferences to be drawn from the evidence. . . . Misconduct can only be determined as a matter of law when there is no dispute about the facts or the inferences to be drawn from them.

Harlan v. Iowa Dep't of Job Srvc., 350 N.W.2d 192, 193 (Iowa 1984) (internal citation omitted). Furthermore, as highlighted in the Statement of Facts above, there is substantial evidence in the record to support the Department's findings of fact. Therefore, the Department's findings of fact are binding on the Court in this judicial review proceeding.

"'Because factual determinations are by law clearly vested in the agency, it follows that application of the law to the facts is likewise vested by a provision of law in the discretion of the agency.'" *Lowe's Home Centers, LLC v. Iowa Dep't of Revenue*, 921 N.W.2d 38, 46 (Iowa 2018) (quoting *Iowa Ag Const. Co., Inc. v. Iowa State Bd. of Tax Review*, 723 N.W.2d 167, 174 (Iowa 2006)). Therefore, this Court may "reverse the agency's application of the law to the facts only if . . . [it] determine[s] such application was 'irrational, illogical, or wholly unjustifiable.'" *Id.* (quoting *Iowa Ag Const. Co., Inc.*, 723 N.W.2d at 174 & Iowa Code § 17A.19(10)(m)). Accordingly, an agency's application of law to fact is given deference in judicial review proceedings. *See Iowa Ag Const. Co., Inc.*, 723 N.W.2d at 174 (concluding that courts analyze challenges to a final agency action under section 17A.19(10)(m) by giving "'appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency'" (quoting Iowa Code § 17A.19(11)(c))).

C. The Cash Farm Lease Rule Is Valid And Taxpayers Did Not Prove Material Participation Under That Rule.

Taxpayers challenge the validity of the Department's cash farm lease rule, which states that "[a] farmer who rents farmland on a cash basis will not generally be considered to be materially participating in the farming activity. The burden is on the landlord to show there was material participation in the cash-rent farm activity." *Id.* r. 701-40.38(1)"c"(4) (now rule 40.38(1)"f"(4)) (App. at 211). This rule implements section 422.7(21) and prescribes how a taxpayer-landlord can demonstrate material participation with respect to farm ground subject to a cash farm lease. *See id.* (App. at 211). The crux of Taxpayers' argument is that the Department lacks the authority to promulgate a rule dealing specifically with cash farm rentals because the term "material participation," as used in section 422.7(21), must have a single meaning that applies to all business activities alike, including the different types of rentals. *See* Appellants' Br. at 58, 63–64. Therefore, Taxpayers contend, the Department has no authority to separately define "material participation" in the context

of cash farm rentals, or, for that matter, crop share rentals or Conservation Reserve Program ("CRP") contracts. *See id.*

Tax exemption statutes, such as section 422.7(21), are strictly construed against the taxpayers with all doubts resolved in favor of taxation. *See Ranniger v. Iowa Dep't of Revenue & Fin.*, 746 N.W.2d 267, 269 (Iowa 2008). The burden is on Taxpayers to show that the Department's assessment was made in error. *See Camacho v. Iowa Dep't of Revenue & Fin.*, 666 N.W.2d 537, 542 (Iowa 2003). Taxpayers also bear the burden "to make a clear and convincing showing that . . . [the cash farm lease rule] is ultra vires." *See Hiserote Homes, Inc. v. Riedemann*, 277 N.W.2d 911, 913 (Iowa 1979). "An agency rule is presumed valid unless the party challenging the rule proves a rational agency could not conclude the rule was within its delegated authority." *Brakke v. Iowa Dep't of Natural Res.*, 897 N.W.2d 522, 533 (Iowa 2017); *accord Davenport Cmty. Sch. Dist. v. Iowa Civil Rights Comm'n*, 277 N.W.2d 907, 909 (Iowa 1979) ("[T]he burden of proof lies on the person or entity challenging the administrative rule due to the presumption of validity supporting such rules.").

At the contested case hearing, Taxpayers made the identical argument they are advancing in this appeal. The ALJ rejected the argument, concluding that the cash farm lease rule was valid and that Taxpayers did not show material participation under the rule. On review, the Director affirmed. *See* Final Order at 2 (App. at 199). In particular, the ALJ stated the following, in relevant part:

> The Director of the Department of Revenue is responsible for the administration of tax laws in Iowa. Iowa Code § 421.17(1). The legislature has granted the Director the express authority to prescribe all rules not inconsistent with law "necessary and advisable" for detailed administration of the sales and use tax laws and to effectuate their purpose. Iowa Code § 422.68(1). "Bearing in mind the practical considerations involved in the legislature's vesting the department with discretion to enforce the laws, it follows the department has the authority to define terms necessary to fulfill its responsibility." *City of Sioux City v. Iowa Dept. of Revenue and Finance*, 666 N.W.2d 587, 590 (Iowa 2003). Absent direct conflict with an applicable statute, definitions of terms and interpretations of Code chapter 422 enacted by the Department through administrative rule-making will be reversed by the court only if found to be "irrational, illogical, or wholly unjustifiable." Iowa Code § 17A.19(10)(*l*); *see, e.g.*, *Ranniger v. Iowa Dept. of Revenue and Finance*, 746 N.W.2d at 268; *City of Sioux City*, 666 N.W.2d at 590; *City of Marion v. Iowa Dept. of Revenue and Finance*, 643 N.W.2d 205, 207 (Iowa 2002).
>
> The definition of "materially participated" in subsection 469(h) of the IRC is incorporated into the section 422.7(21)(a)(1) capital gain deduction. IRC subsection

469(h) is not itself a statute directly related to capital gains and does not contain a duration requirement. Rather, IRC Section 469 addresses the annual deductibility of passive activity losses. 26 U.S.C. § 469. Passive activity losses can typically be deducted only to the extent the losses offset any income the activity generates. Under subsection 469(h), a taxpayer may deduct losses exceeding income in any given year if they can establish material participation in the underlying business activity. It is noteworthy that IRC section 469(h) is generally inapplicable to rental activities because, except in cases where the taxpayer is a real estate professional, rental activities are designated as passive activities to which the section 469(h) material participation tests do not apply. 26 U.S.C. § 469(c)(2), (7).

The rule 40.38 sub-rules addressing rental activities were enacted by the Department in 1993 to clarify how the material participation requirement of the Iowa capital gain deduction would be applied when property that had been held for rental was sold. The formal rule-making procedure outlined in the Iowa Administrative Procedure Act, which include publication, public comment, and review by the Administrative Rules Committee of the legislature, was used. *See* Iowa Code §§ 17A.4; 17A.6. These sub-rules represent the Department's position with regard to administration of Code section 422.7(21) and application of the material participation requirement farmland and other real property held for rental.

Given that leasing of farmland is a wide-spread practice in this state, it was not irrational or illogical for the Department to specifically address the most common forms of farm rental agreements – the cash rent lease and the crop-share arrangement – in the material participation rules. Nor was it irrational or illogical for these forms of farm rental agreements to be treated differently. The landowner under a crop-share agreement typically retains

> managerial authority and is actively involved in farming activity on the property. In contrast, the landowner under a cash rent lease generally cedes farm management responsibility to the tenant and is wholly removed from farming activity on the property. The former materially participates in the business of farming; the latter does not. Rule 40.38(1) represents a narrow construction of the capital gain deduction that is neither unreasonable nor inconsistent with the terms of the statute.
>
> For more than 20 years the Department has consistently maintained that, for purposes of establishing eligibility for the Iowa capital gain deduction, the cash rental of farmland, without participation in the underlying farming activity, does not constitute material participation in the business for which the property is used. The current version of the rule has been in place since 1993. The legislature has had ample opportunity to revise the statute to countermand the agency's interpretation and has not done so, lending "tacit approval" to the implementing rules. *See City of Sioux City*, 666 N.W.2d at 592; *City of Marion*, 643 N.W.2d at 207-08.

Proposed Decision at 12–13, *aff'd*, Final Order at 2 (App. at 191–92, 199) (footnote omitted).

As seen above, the ALJ thoroughly analyzed Taxpayers' ultra vires argument and concluded that the cash farm lease rule was not inconsistent with section 422.7(21). The ALJ noted that the material participation standards in Internal Revenue Code section 469(h) have no applicability to rental activities because, under federal law, rental activities are *per se* passive. *See* 26 U.S.C. § 469(c)(2). Thus,

although section 422.7(21) incorporates the definition of "material participation" in section 469(h), there remains a gap under Iowa law as to rental activities because, under federal law, taxpayers may not materially participate in rental activities as a matter of law. *See id.* Therefore, the Department had both the duty and the authority to promulgate rules implementing section 422.7(21) with regard to rental activities. *See id.* § 421.17(1); § 422.68(1); *see also Ranniger*, 746 N.W.2d at 268 (recognizing that the Department is vested with authority to interpret section 422.7(21)) & *Lance v. Iowa State Bd. of Tax Review*, No. 14-1144, 2015 WL 5287134, at *4 (Iowa Ct. App. Sept. 10, 2015) (same). Had the Department not promulgated such rules, Iowa taxpayers would have been without guidance as to the material participation standards applicable to rental activities under section 422.7(21).

Although section 422.7(21) allows taxpayers to prove material participation in rental businesses, there is no doubt that rentals are different in nature from other businesses. The Department's rules acknowledge as much by categorically excluding rentals from the scope of certain material participation tests. *See id.* r. 701-

40.38(1)“c”(4) (App. at 210). The Department’s rules further acknowledge that cash farm rentals, crop share rentals, and land in CRP are, by nature, different from one another and also different from residential and commercial rentals; accordingly, the Department promulgated separate material participation standards for these three cash farm rental arrangements. *See id.* r. 701-40.38(1)“c”(4)–(7) (App. at 211–12). It is not irrational, illogical, or wholly unjustifiable to determine that the nature of crop shares, cash farm leases, and CRP contracts is sufficiently different from residential and commercial rentals to require separate sets of material participation standards. *See id.* § 17A.19(10)(*l*). As the ALJ concluded, there was nothing irrational, illogical, or wholly unjustifiable for the Department to promulgate rules addressing material participation in “the most common forms of farm rental agreements.” *See* Proposed Decision at 13 (App. at 192). It was similarly not irrational, illogical, or wholly unjustifiable for the Department to conclude that residential and commercial rentals could be governed by the general material participation tests because they typically required considerable landlord involvement. *See id.* r.

701-40.38(1)“f”(7) (App. at 216) (providing examples of qualifying tasks that, if performed on a regular, continuous, and substantial basis by the residential or commercial landlord, will rise to the level of material participation).

The Department, however, did not come to the same conclusion with respect to cash farm leases, land in CRP, and crop shares because, by their nature, those arrangements are different. As Taxpayers demonstrated in this case, the duties of a cash farm landlord are generally limited to collecting and depositing rent twice a year; paying property taxes, insurance, and utilities; lease agreement renewals (if necessary); and arranging for tax return preparation. *See* Proposed Decision at 5; Ex. H–O (App. at 184, 264–307). Thus, the cash farm lease rule reflects the Department’s determination that the duties of the farm landlord are generally so limited that the landlord would be unable to establish regular, continuous, and substantial involvement with regard to the leased land, unless the landlord participates in the management or operation of the farm. *See* Proposed Decision at 11–12, 13 (App. at 190–91, 192) (noting that for purposes of showing material participation the Department has

consistently required that cash farm landlords participate in the management or operation of the farm); *see also id.* § 469(h) (defining "material participation" as involvement in the operations of the activity on a regular, continuous, and substantial basis). Moreover, most of the activities (such as rent collection, paying bills, and tax preparation) typically performed by cash farm landlords, including Taxpayers in this case, are investor-type activities that the Department does not take into account for the purpose of establishing material participation because farm landlords do not participate in the "day-to-day management or operations of the activity." *See id.* r. 701-40.38(1)"c"(3) (App. at 211); *see also Lance*, 2015 WL 5287134, at *6.

Additionally, the Department's treatment of cash farm leases for purposes of section 422.7(21) is consistent both with the way the Department treats cash farm rentals elsewhere in its rules and with applicable federal law. For example, for Iowa corporation income tax purposes,

> [a] taxpayer is engaged in the operation of a farm if the taxpayer cultivates, operates, or manages a farm for gain or profit, either as owner or tenant. For the purpose of Iowa Code section 422.33(1), a taxpayer who receives a rental

> (either in cash or in kind) which is based upon farm production is engaged in the operation of a farm. *However, a taxpayer who receives a fixed rental (without reference to production) is engaged in the operation of a farm only if the taxpayer participates to a material extent in the operation or management of the farm.*

Id. r. 701-54.1(1) (emphasis added) (App. at 218). Thus, taxpayers subject to Iowa corporation income tax "who receive[] a fixed rental (without reference to production)" may not use the allocation and apportionment rules applicable to farming businesses, unless the taxpayers materially participate "in the operation or management of the farm." *See id.* (App. at 218).

Similarly, under federal law, a taxpayer-landlord who receives rental payments that are not based on farm production is not engaged in the business of farming. *See* 26 C.F.R. § 1.61-4(d); § 1.175-3; § 1.180-1(b) (App. at 225–27). If the taxpayer-landlord, however, materially participates in the operation or management of the farm, then such taxpayer-landlord is engaged in farming. *See id.* (App. at 225–27). For instance, a taxpayer-landlord will be engaged in the business of farming if the taxpayer-landlord cash-rents farm ground to a separate legal entity which farms the land and in which entity the taxpayer is materially participating. *See id.* (App. at 225–27). This

is the identical standard established by rule 40.38(1)"c"(4). Indeed, under this scenario, the taxpayer-landlord would satisfy the material participation standard in the cash farm lease rule and would be eligible to claim the net capital gain deduction.

The cash farm lease rule represents a narrow construction of section 422.7(21) that is reasonable, logical, and based in fact and reason. *See id.* § 17A.19(10)(*l*). The rule was promulgated through the formal rule-making process prescribed in the Iowa Administrative Procedure Act. *See id.* § 17A.4; § 17A.6; *see also* Vol. XVI, No. 10 Iowa Admin. Bull. 1093–94 (Nov. 10, 1993) (App. at 240–41). Notably, for more than twenty-five years, the legislature has not amended section 422.7(21) in response to the rule or its application. *See Lowe's Home Centers, LLC*, 921 N.W.2d at 48 ("We consider the legislature's inaction as a tacit approval of the [agency's] action." (quoting *City of Sioux City v. Iowa Dep't of Revenue & Fin.*, 666 N.W.2d 587, 592 (Iowa 2003)); *see also City of Marion v. Iowa Dep't of Revenue & Fin.*, 643 N.W.2d 205, 207–08 (Iowa 2002) (same) & *Lance*, 2015 WL 5287134, at *5 (same).

There is no question that the Iowa legislature has had ample opportunity to revise the statute to countermand the agency's interpretation of section 422.7(21) in the context of cash farm leases. The legislature has not done so, thus lending "tacit approval" to the Department's action. *See Lowe's Home Centers, LLC*, 921 N.W.2d at 48. This is particularly important here because the Iowa legislature has amended section 422.7(21) several times since 1993, but has not sought to abrogate the cash farm lease rule or its application. *See, e.g.*, 2019 Iowa Acts ch. 162 § 1; 2018 Iowa Acts ch. 1161 § 113; 2006 Iowa Acts ch. 1013 § 2.

For these reasons, this Court must affirm the Department's determination that the cash farm lease rule was valid and that Taxpayers did not prove material participation under that rule because such determinations were not irrational, illogical, or wholly unjustifiable. "Material participation" is a term within the Department's expertise that has a specific technical meaning in tax law. *See Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 14 (Iowa 2010). Moreover, the term does not have an independent legal definition and is found in chapter 422, which the Department is

tasked with enforcing. *See id.*; *see also The Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 423 (Iowa 2010) ("We have held in prior cases that the legislature has given the department discretion to interpret chapter 422."). The rule unambiguously requires that to prove material participation the taxpayer-landlord must participate in the farming activity. *See id.* r. 701-40.38(1)"c"(4) (App. at 211). Taxpayers, however, did not have any role in managing or operating the farming business, ceding instead those duties to their farm tenants. *See* ALJ Hr'g Tr. at 88:4–17; 123:25–125:13 (App. at 150, 161–63).

Administrative rules are presumed valid, and Taxpayers have not made "a clear and convincing showing" that rule 40.38(1)"c"(4) is an unreasonable interpretation of section 422.7(21) in the context of cash farm leases. *See Hiserote Homes, Inc.*, 277 N.W.2d at 913. Indeed, there is nothing arbitrary, capricious, or illogical in narrowly construing the exemption provision in section 422.7(21) to state that "the cash rental of farmland, without participating in the underlying farming activity, does not constitute material participation in the business for which the property was used." *See* Proposed Decision

at 13 (App. at 192). Therefore, the Court must sustain the final agency determination on this issue.

II. EVEN IF THE CASH FARM LEASE RULE WAS INVALID, THE DISTRICT COURT CORRECTLY SUSTAINED THE FINAL AGENCY DETERMINATION THAT TAXPAYERS DID NOT PROVE MATERIAL PARTICIPATION UNDER THE GENERAL MATERIAL PARTICIPATION TESTS.

A. Preservation Of Error.

The Department agrees that Taxpayers preserved this issue for appeal.

B. Standard Of Review.

Taxpayers do not claim that the general material participation tests promulgated by the Department are an irrational, illogical, or wholly unjustifiable interpretation of "material participation," as that term is used in section 422.7(21). *See* Appellants' Br. at 37–42, 46–48, 56–61. As explained above, Taxpayers do not challenge the final agency action as unsupported by substantial evidence. *See supra* at 16–17. Therefore, the agency's findings of fact are binding on this Court. "Because factual determinations are by law clearly vested in the agency, it follows that application of the law to the facts is likewise vested by a provision of law in the discretion of the agency." *Lowe's*

Home Centers, LLC, 921 N.W.2d at 46 (internal citation and quotation marks omitted). Therefore, this Court must give deference to the Department's application of law to the facts and may only reverse it if it "determine[s] such application was 'irrational, illogical, or wholly unjustifiable.'" *Id.* (internal citation and quotation marks omitted); *see also id.* § 17A.19(10)(m) & § 17A.19(11)(c).

C. Taxpayers Did Not Prove Material Participation Under The General Material Participation Tests.

Taxpayers assert that the Court must decide whether they materially participated in the cash farm rental by reference to the general material participation tests. *See* Appellants' Br. at 37–42, 46–48, 56–61. In particular, Taxpayers argue that they satisfy the material participation standards in rules 40.38(1)"c"(2) and 40.38(1)"c"(7). *See id.* At the contested case hearing, Taxpayers relied, among others, on these same material participation tests, but to no avail. Indeed, the ALJ analyzed Taxpayers' arguments with respect to each test, but ultimately concluded that none of the four tests was met. In particular, the ALJ concluded as follows:

Even if the cash farm lease rule did not apply or was found invalid, the Taxpayers can prevail only by proving that they materially participated in the business activity related to renting the farmland.

. . .

The Taxpayers assert that they meet the material participation tests found in sub-rule 40.38(1)(c)(2) – in that their "participation in the business constitutes substantially all of the participation in the business for the tax year[s]"; sub-rule 40.38(1)(c)(3) – in that they "participate[d] in the business for more than 100 hours in the tax year[s] and no other individual [spent] more time in the business activity than the taxpayer[s]"; subrule 40.38(1)(c)(5) – in that they "materially participated [by meeting test 2 or 3] in [the] business for five of the past ten years"; and sub-rule 40.38(1)(c)(7) – in that they meet the special provision related to a "retired or disabled farmer." The primary barrier to the Taxpayers meeting these tests lies in absence of proof of the specific nature, amount, or frequency of their activity related to rental of the farmland.

The burden of proof rests on the Taxpayers. Each of the material participation tests requires some degree of quantification of the activity performed by a taxpayer and/or others. Regulations implementing IRC section 469(h) outline acceptable methods of proof a taxpayer may use to establish material participation.

> *Methods of proof.* The extent of an individual's participation in an activity may be established by any reasonable means. Contemporaneous daily time reports, logs, or similar documents are not required if the extent of such participation may be established by other reasonable means. Reasonable means for purposes of this paragraph may include but are not limited to the identification of services

> performed over a period of time and the approximate number of hours spent performing such services during such period, based on appointment books, calendars, or narrative summaries.

26 C.F.R. 1.469-5T(f)(4) – Material Participation (temporary).

Regulation 1.469-5T(f)(4) allows a broad range of records to be used to prove participation. Highly detailed, credible testimony supported by established circumstances can be sufficient to prove material participation. *See Montgomery v. Commissioner of Internal Revenue,* T.C. Memo. 2013-151 (2013) (detailed testimony of husband and wife taxpayers regarding their activities starting and managing a rapidly growing business found sufficient to prove material participation). However, federal tax court decisions make clear that more than a "post-event ballpark guestimate" is required. *See Schumann v. Commissioner of Internal Revenue,* T.C. Memo. 2014-138 (2014) (court declined to accept taxpayer's uncorroborated testimony about time spent doing business related tasks and found that narrative summary presenting broad description of the work performed was little more than a post-event ballpark guestimate); *Wilson v. Commissioner of Internal Revenue,* T.C. Memo. 2012-101 (2012) (finding inadequate proof of amount of time devoted to business activity where "Petitioner maintained no business records such as appointment books, calendars, or logs" and "[h]is testimony was based solely on his recollections and was completely lacking in detail with respect to dates and time spent performing specific tasks").

The Taxpayers argue that they offered sufficient "narrative summaries," in the form of written statements and Mr. Christensen's testimony, to prove their case. The written statements are little more than conclusory statements

mirroring the verbiage of the tests for material participation. The Taxpayers presented no calendars, log books, expense or mileage documentation, or other contemporaneously maintained records to support their generalized claims. Mr. Christensen did testify about his activities, but his testimony was largely lacking in substance and detail. Some of the detail provided was directly contradicted by other evidence in the record – Christensen testified that he arranged and paid for tiling on the farm and tenant Tom Frana later reimbursed a portion of the cost; while Frana testified that he arranged and paid for the tiling without consulting the owners, who later agreed to pay half of the cost. The rental agreements required both tenants to keep the property clear of weeds and brush; calling into question Christensen's testimony that he cleared brush from fence lines. The Taxpayers offered no business records or testimony from others to corroborate Christensen's testimony.

The Activities Flowcharts offered by the Taxpayers show that prior to 1997 Tom Benson, John Christensen, and Lila Christensen shared duties and that after 1997, Tom spent "substantially all his time on personal home activity" and John and Lila spent "substantially all their time on the agricultural ground activities." At hearing, Mr. Christensen clarified that he and Lila took care of the land rental and Tom took care of the homestead. Christensen also testified that up until Tom Benson's retirement in 1999, Benson held the checkbook for the farm, deposited rent checks, paid bills, and maintained income and expense records for the farmland rental. Paying bills and accounting for income and expenses are significant activities in the context of managing a rental property. This is particularly true with ongoing rental of farmland on a cash rent basis to long-term tenants under 12-month lease agreements.

Without quantification of the work performed by third parties – including Benson and the tenants – I cannot

> conclude that the Taxpayers' participation in the business constituted "substantially all of the participation in the business" for the tax years at issue, as required by subrule 40.38(1)(c)(2). Nor are the statements and testimony offered by the Taxpayers sufficient to prove they devoted more than 100 hours per to rental activity in any of the ten years prior to sale of the property, as required to satisfy subrule 40.38(1)(c)(3). In failing to prove sufficient activity to meet the material participation tests 2 or 3, the Taxpayers also fail the subrule 40.38(1)(c)(5) test, which requires a showing that they materially participated in the business under tests 2 or 3 for five of the past ten years. The final material participation test cited by the Taxpayers, subrule 40.38(1)(c)(7), requires both proof of past material participation and the status of a retired or disabled farmer. This test cannot possibly apply to the Taxpayers here, in that they have consistently maintained that they are not and never have been farmers.

Proposed Decision at 14–16, *aff'd*, Final Order at 2 (App. at 193–95, 199).

Taxpayers do not explain why the Department's application of the law to the facts was irrational, illogical, or wholly unjustifiable. *See* Appellants' Br. at 37–38, 40–42, 45–50. Instead, Taxpayers ask that this Court find in their favor by substituting its judgment for that of the Department. *See id.* Judicial review proceedings, however, are appellate in nature, and this Court may not undertake a de novo review of the Department's application of the law to the facts. *See*

Iowa Ag Const. Co., Inc., 723 N.W.2d at 174 (citing *id.* § 17A.19(10)(m)).

The ALJ, as the trier of fact, presided over the proceeding and received all the evidence in the record, including all witness testimony. She heard Mr. Christensen's description of Taxpayers' claimed activities and concluded that Taxpayers did not prove material participation by reasonable means, observing that

> [t]he record shows some participation in rental activities by the Taxpayers. But the nature and amount of proven activity related to rental of the farmland falls far short of the regular, continuous, and substantial activity required to support a finding of material participation in a business activity.

Proposed Decision at 16, *aff'd*, Final Order at 2 (App. at 195, 199). Specifically, the ALJ found that Mr. Christensen's uncorroborated testimony did not constitute a narrative summary because it was lacking in detail and substance. *See id.* at 15 (App. at 194) ("Taxpayers offered no business records or testimony from others to corroborate [Mr.] Christensen's testimony."). Contrary to Taxpayers' claim, *see* Appellants' Br. at 19, 29, 30, the tax returns admitted in evidence do not substantiate Mr. Christensen's testimony as the returns merely list the expense totals by category without any

further detail. *See* Ex. H at 4; Ex. I at 4; Ex. J at 5; Ex. K at 5; Ex. L at 5; Ex. M at 5; Ex. N at 5; Ex. O at 5 (App. at 267, 271, 276, 282, 288, 294, 300, 306). However, "the amount of money spent . . . does not quantify the number of hours" that Taxpayers spent on the farm rental. *See Shaw v. Comm'r*, 83 T.C.M. (CCH) 1194, at *12 (T.C. 2002).

Additionally, the ALJ noted that on those rare occasions when Mr. Christensen attempted to provide details regarding the activities Taxpayers allegedly performed, his testimony was contradicted by other evidence in the record. *See* Proposed Decision at 15 (App. at 194). These undisputed inconsistencies call into question the reliability and credibility of Mr. Christensen's testimony and bolster the ALJ's conclusion that such testimony alone was not a narrative summary or, for that matter, any other type of reasonable means of proving material participation. *See id.* (App. at 194) (applying Treasury Regulation 1.469-5T(f)(4) and related case law to the record evidence). The agency conclusion on this issue properly applied the controlling law to the relevant facts. Therefore, this Court must give deference to the Department and affirm its determination that

Taxpayers did not prove material participation under the general material participation tests because such determination was not irrational, illogical, or wholly unjustifiable. *See Clark v. Iowa Dep't of Revenue & Fin.*, 644 N.W.2d 310, 315 (Iowa 2002) (noting that determinations concerning witness credibility and weighing the evidence are within the purview of the agency); *see also id.* § 17A.19(10)(m); § 17A.19(11)(c).

III. THE DISTRICT COURT CORRECTLY SUSTAINED THE DIRECTOR'S DECISION NOT TO RESOLVE THE MERITS OF TAXPAYERS' EQUAL PROTECTION CLAIM.

A. Preservation Of Error.

Taxpayers did not preserve for appeal the merits of their constitutional claims. Turning first to the equal protection claim, Taxpayers did not assert such a claim in the agency. A tax protest filed with the Department must include "[e]ach error alleged to have been committed . . . [and] an explanation of the error and all relevant facts related to the error." *See id.* r. 701-7.8(7)"c" (App. at 220). Because Taxpayers did not raise an equal protection claim in their protest, the issue is beyond the scope of this contested case. *See* Ex. B (App. at 250–53) (the protest failing to mention differential

taxation and/or equal protection as errors that the Department allegedly committed in issuing the notice of assessment). Moreover, at the contested case hearing, Taxpayers presented no evidence to support this alleged violation of their equal protection rights and did not explain in their post-hearing briefs how or why the cash farm lease rule results in such constitutional violation. *See generally* Taxpayers' Post-Hr'g Initial Br. & Reply Br. Because of that, the ALJ did not address equal protection in her proposed decision. *See generally* Proposed Decision (App. at 180–96).

The Director, whose review of the proposed decision was limited to the issues raised before the ALJ, declined to address the merits of Taxpayers' equal protection claim. *See* Director's Notice Of Time & Place Of Hr'g at 1 & Final Order at 2 (App. at 61, 199). This refusal to address Taxpayers' equal protection claim on the merits is the only reviewable agency action in this appeal. *See Shell Oil Co. v. Bair*, 417 N.W.2d 425, 429 (Iowa 1987) ("We have previously held that, where issues decided by an administrative agency involve potential constitutional questions, these constitutional issues must first be raised before the agency in order to be considered by a court

in reviewing the final agency action under Iowa Code section 17A.19."). Even if Taxpayers asserted an equal protection claim before the agency, however, they still have not preserved for review the merits of this claim. *See KFC Corp v. Iowa Dep't of Revenue*, 792 N.W.2d 308, 329 (Iowa 2010) (holding that the party challenging an agency decision is "required to file a motion for rehearing under Iowa Code section 17A.16(2) . . . to preserve the issue[] when the agency issued a final order that did not address [it]").

As with the equal protection claim, Taxpayers similarly did not raise a due process claim in the agency, and the Department did not address the issue. *See generally* Proposed Decision & Final Order (App. at 180–96, 198–99). Indeed, Taxpayers' protest alleges no due process violation. *See* Ex. B (App. at 250–53). Taxpayers did not brief this issue before the ALJ, nor did they raise it before the Director on review of the proposed decision. *See generally* Taxpayers' Post-Hr'g Initial Br.; Reply Br.; & Appeal to Dep't Director (App. at 23–28, 31–41, 45–55). The Director's Final Order makes no mention of due process. *See* Final Order (App. at 198–99). Neither does Taxpayers' judicial review petition. *See* Pet. for Judicial Review

at 1–20 (App. at 67–85). Taxpayers did not brief the due process issue before the district court. *See* Taxpayers' Br. in Supp. of Pet. for Judicial Review at 25–40 & Reply Br. in Supp. of Pet. for Judicial Review at 21–22 (App. at ___, 128–29). The district court's ruling did not address this argument, *see generally* Dist. Ct. Order (App. at 201–04), and Taxpayers did not move that the district court amend and enlarge its ruling. Accordingly, there is no reviewable agency action, and Taxpayers did not preserve this issue for appeal. *See Garwick v. Iowa Dep't of Transp., Motor Vehicle Div.*, 611 N.W.2d 286, 288 (Iowa 2000) (finding that a double jeopardy claim was not preserved for appeal because it was not raised in the judicial review petition); *see also KFC Corp.*, 792 N.W.2d at 329 & *Shell Oil Co.*, 417 N.W.2d at 429.

B. Standard Of Review.

Although an agency's conclusion as to the merits of a constitutional claim is reviewed de novo under subsection 17A.19(10)(a), the Department's final determination in this case did not include a decision on the merits of Taxpayers' equal protection claim. *See* Final Order at 2 (App. at 199). Indeed, the Director

declined to resolve the merits of Taxpayers' claim. *See id.* (App. at 199). This is the only reviewable agency action. Taxpayers did not raise an equal protection challenge to the Department's assessment in their protest or at the contested case hearing, and the Director's review hearing was limited only to those issued raised before the ALJ. *See* Ex. B (App. at 250–53) & Director's Notice Of Time And Place Of Hr'g at 1 (App. at 61). Therefore, the Director's refusal to decide the equal protection claim on the merits was not irrational, illogical, or wholly unjustifiable. *See id.* § 17A.19(10)(*l*).

C. Taxpayers' Constitutional Claims Must Fail.

In asserting their equal protection claim, Taxpayers ask that this Court strike down the cash farm lease rule as facially unconstitutional. *See* Appellants' Br. at 44, 54 ("In other words, the same set of "Material Participation" standards are to be applied to all rental activities including a cash farm rental activity."). This prayer, however, is duplicative with the requested relief under Taxpayers' claim that the cash farm lease rule is inconsistent with section 422.7(21). If this Court finds that rule 40.38(1)"c"(4) is ultra vires, then there would be no need to address the equal protection issue.

If, on the other hand, the Court concludes that the rule is a reasonable interpretation of section 422.7(21), then the rule on its face cannot be unconstitutional, unless, of course, the statute is also unconstitutional. Taxpayers, however, do not claim that section 422.7(21) is unconstitutional. Therefore, under either scenario, this Court need not address Taxpayer's equal protection claim on the merits, assuming, of course, that this constitutional issue was preserved for review in the first place.

If the Court finds it proper to address the equal protection claim on the merits, it must nevertheless reject the claim because Taxpayers have failed to carry their burden of proof. Indeed, Taxpayers have presented no facts establishing an equal protection violation. Taxpayers have the "heavy burden" to prove such constitutional violation and "must negate every reasonable basis upon which the classification may be sustained." *Tyler v. Iowa Dep't of Revenue*, 904 N.W.2d 162, 166 (Iowa 2017) (internal citation and quotation marks omitted). "The government is not required or expected to produce evidence to justify its action. . . ." *King v. State*, 818 N.W.2d 1, 28 (Iowa 2012) (internal citations and quotation marks omitted).

Taxpayers claim that the Department violated their equal protection rights by promulgating a separate material participation standard for cash farm leases. *See* Appellants' Br. at 42–45. Indeed, Taxpayers argue that there is no basis to treat cash rentals of farmland (or, for that matter, CRP contracts and crop share rentals) differently than residential and commercial rentals. *See id.* at 44. Taxpayers, however, have not presented any facts to demonstrate that landlords who cash-rent farmland are similarly situated with landlords who lease out residential and commercial properties. Thus, the Court need not reach "the rational basis prong of the equal protection analysis." *See Timberland Partners XXI, LLP v. Iowa Dep't of Revenue*, 757 N.W.2d 172, 177 (Iowa 2008) (internal citation and quotation marks omitted).

Although the Court has de-emphasized the similarly situated inquiry in recent cases, it has not abandoned this step of the analysis. *See Tyler*, 904 N.W.2d at 167*; Qwest Corp. v. Iowa State Bd. of Tax Review*, 829 N.W.2d 550, 561 (Iowa 2013) (internal citation and quotation marks omitted). Accordingly, Taxpayers are still required to prove that they are similarly situated with landlords renting out

residential and commercial buildings. *See Varnum v. Brien*, 763 N.W.2d 862, 882 (Iowa 2009) ("[I]f plaintiffs cannot show as a preliminary matter that they are similarly situated, courts do not further consider whether their different treatment under a statute is permitted under the equal protection clause."). If the similarly situated step of the analysis is to have any meaning, the Court must reject Taxpayers' equal protection claim at this threshold inquiry because the record in this case lacks any evidence as to the asserted similarities between residential and commercial rentals, on the one hand, and farmland rentals, on the other.

Even if the Court finds it necessary to reach the legitimacy step of the equal protection analysis, it must still deny Taxpayers' claim. "[A] party bringing a rational basis challenge must "negat[e] every reasonable basis that might support the disparate treatment." *Qwest Corp., 829 N.W.2d* at 560–61 (internal citation and quotation marks omitted). In other words, Taxpayers must prove either that there is no legitimate goal advanced by the challenged classification or that the challenged classification does not bear a rational relationship to any such goal. *See LSCP, LLLP v. Iowa Dep't of*

Revenue, 861 N.W.2d 846, 860–61 (Iowa 2015). As with the similarly situated inquiry, Taxpayers make no effort to explain why rule 40.38(1)"c"(4) is not rationally related to a legitimate state purpose. *See* Appellants' Br. at 42–45, 58. Therefore, they have not met their burden of establishing a violation of their equal protection rights. Accordingly, the Court must reject Taxpayers' equal protection claim.

To the extent Taxpayers have advanced a due process claim separate from their equal protection claim, they have failed to explain how the Department's actions have denied them due process. *See* Appellants' Br. at 42–45, 61–62. Therefore, if the Court finds that Taxpayers have preserved this issue for appeal, it must nevertheless reject the claim because Taxpayers have not met their burden of establishing a due process violation.

CONCLUSION

For the reasons above, the Court must affirm the district court's ruling upholding the Director's Final Order. The Department's final agency decision was the product of a reasonable and logical interpretation of the relevant law and the diligent application of such

governing law to the facts of the case. Therefore, the Court must uphold the final agency determination and affirm the district court's ruling.

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REQUEST FOR ORAL ARGUMENT

The Department requests an oral argument in this appeal.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(*g*)(1) or (2) because:
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