

Cite as 10 WTD 332 (1990).

APPEALS DIVISION

BEFORE THE INTERPRETATION AND  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition ) D E T E R M I N A T I O N  
For Correction of Assessment of)   
 ) No. 90-385  
 )  
 . . . ) Registration No. . . .  
 ) . . ./Audit No. . . .  
 )  
 )

[1] RULES 180, 179 AND 189, RCW 82.16.020: PUBLIC UTILITY TAX -- TAXICABS -- URBAN TRANSPORTATION. Cab operator's income from contracting with local public transportation agencies to provide transportation services to segments of public is taxable.

[2] RULES 180, 179 AND 189, RCW 82.16.020: PUBLIC UTILITY TAX -- TAXICABS -- URBAN TRANSPORTATION. The taxpayer's gross receipts from the taxi business are subject to the public utility tax with no deductions for compensation paid to drivers, who were under taxpayer's direction and control.

[3] RULES 180, 179 AND 189, RCW 82.16.020: PUBLIC UTILITY TAX -- TAXICABS -- URBAN TRANSPORTATION. Income received by taxi cab business from transporting elderly and physically challenged passengers is subject to public utility tax, just like income from other passengers is taxed.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .  
. . .

NATURE OF ACTION

The taxpayer operates a fleet of taxicabs and petitioned for a correction of an assessment of public utility tax - urban transportation - on amounts which were determined to have been received from cash fares and charge fares.

#### FACTS

De Luca, A.L.J. -- The audit covered the period from . . . , 1986 through . . . , 1989. The auditor assessed the taxpayer \$ . . . in taxes and interest. The taxpayer leased several cabs from [a local cab company] who also charged the taxpayer for dispatching and administrative services. The taxpayer claims it works for [a local county] Transit and [a local county] Paratransit by carrying certain passengers and packages. Such work constitutes half of its business.

The taxpayer's president drove the cabs himself and employed drivers to operate them. According to the auditor, the drivers were under the taxpayer's direction and control. For example, through training, scheduling and dispatching, the taxpayer determined how, when and where the drivers worked. Each driver and the taxpayer split the fare income after each shift on a 50-50 % commission basis. The drivers did not hold themselves out to the public as engaged in business and they were not liable for the losses or expenses of conducting a business. However, the auditor stated the taxpayer did not have written cab rental agreements or commission agreements with the drivers. The agreements were verbal.

#### ISSUES

- 1) Is the taxpayer's income from contracting with local governmental agencies to provide transportation services to segments of the public exempt from the public utility tax?
- 2) Is the taxpayer liable for all fare income earned by its cab drivers if they do not sublease the cabs from the taxpayer, but operate them under taxpayer's direction and control?
- 3) Is the taxpayer's income from transporting elderly and physically challenged passengers exempt from the public utility tax?

#### TAXPAYER'S EXCEPTIONS

The taxpayer contends it should be liable for only half of the assessed taxes because half of its income is from its contracts with local public transportation agencies.

Alternatively, the taxpayer urges if the drivers are being taxed as independent contractors then it should owe only one quarter of the taxes assessed rather than the one half it otherwise proposes.

Finally, the taxpayer states that because much of its work is devoted to transporting elderly and physically challenged riders it does not believe such income should be taxed at all.

#### DISCUSSION

[1] The taxpayer is engaged in the urban transportation business as defined by RCW 82.16.010(9). The state imposes the public utility tax on such activity:

(1) There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(d) Urban transportation business: ....

RCW 82.16.020. See also WAC 458-20-180 (Rule 180). The tax applies unless the taxpayer can show an exemption. The taxpayer has not cited any authority allowing such an exemption. Merely because the taxpayer contracts with local governmental agencies to provide transportation service to segments of the community does not exempt it from the tax.

Indeed, WAC 458-20-189 provides:

(3) Counties, cities and other municipal subdivisions are taxable with respect to amounts derived, however designated, from any "utility or enterprise activity" for which a specific charge is made.

(4) Utility activities. "Utility activities," which are taxable under the public utility tax, include water and electrical energy distribution, public

transportation services, and sewer collection  
services. (See WAC 458-20-179.) (underlining  
ours).

Thus, the local governments themselves are subject to the public utility tax when they perform such services. Furthermore, the taxpayer is a registered business operating in name as a corporation. Such an entity is not an employee of the governmental bodies.

[2] The taxpayer's next argument is the assessment should be reduced if its drivers are determined to be independent contractors. However, no evidence has been provided to show the drivers are independent contractors. The auditor found the drivers do not sublease the cabs from the taxpayer, but are under the taxpayer's direction and control. Therefore, all of the fare income is taxable to the taxpayer.

[3] The taxpayer's last argument is the income it receives from transporting elderly and physically challenged persons should be exempt from taxation. Again, the taxpayer has not cited any authority in support of its claim. Moreover, the taxpayer is not donating its services or fare income to such passengers. It is earning fares from them as it does from other members of the public.

#### DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 21st day of November 1990.