Cite as Det. No. 91-175, 11 WTD 361 (1992).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	D E T E R M I N A T I O N
	)	No. 91-175
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .

[1] MISCELLANEOUS: JOINT VENTURES. The taxpayer's claim of a joint venture must be supported by evidence such as, for example, a written agreement, minutes, other written records, or affidavits from the other parties. Additionally, the taxpayer must show that funds were handled as a joint venture rather than as the separate funds of the taxpayer. Further, profit and loss must be proportionately shared by all joint venturers based on their contributions of money, property and/or labor. Accord: Det. 88-14, 5 WTD 19 (1988), Det. 87-93, 2 WTD 411 (1987).

[2] RCW 82.16.010(12), .020, .050(3): PUBLIC UTILITY TAX -- URBAN TRANSPORTATION -- NO DEDUCTIONS. Where the taxpayer, a taxi cab company, does not jointly furnish urban transportation services with another person taxable under the same chapter and report gross income, it is liable for the public utility tax on the gross income without any deduction for labor costs or any other expense whatsoever paid or accrued.

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: . . .

DATE OF TELEPHONE CONFERENCE: . . .

NATURE OF ACTION:

The taxpayer seeks to correct an assessment of urban transportation business taxes.

FACTS:

De Luca, A.L.J. -- The Department of Revenue audited the taxpayer corporation for the period [January 1986] through [December 1989]. Due to disorganized records, the auditor selected 1987 as a test period. The taxpayer was assessed $ . . . in Urban Transportation Business taxes plus penalties and interest. The total amount due and assessed is $ . . . . The assessment was mailed to the taxpayer [in August 1990] with a due date of [September 1990]. The taxpayer filed its petition [in August 1990] and supplemental materials [in November 1990]. The tax remains unpaid.

The taxpayer operates a fleet of approximately ten taxi cabs on a two shifts per day basis. The taxpayer leases the cabs . . . . During the audit period, the taxpayer employed ten to twenty drivers per day to drive them. None of the drivers were registered with the Department of Revenue during the audit period. Income from the cab operations consisted of cash fares and charge fares. The auditor did not allow deductions from gross revenues such as drivers' earnings and taxi cab rentals and related charges paid to [the cab company].

According to the auditor, the total fares earned by the drivers were split with the taxpayer approximately on a 50-50 basis. However, the taxpayer submitted cab lease agreements to the auditor a month after their [March 1990] meeting showing individual drivers were paying fixed weekly rental rates for the cabs. In reply, the auditor found the rental agreements were incomplete and he did not use them to compute tax liabilities in the audit report. The auditor determined the cab rental agreements did not represent what the drivers paid to drive the cabs.

The auditors and the taxpayer held another meeting [in July 1990] to discuss the issue whether the drivers were subcontractors or its employees. The auditors determined the drivers were the taxpayers' employees. First, the auditors found the taxpayer controlled the drivers by hiring and firing them and directing their activities. Second, the auditors believed the 50-50 compensation split did not indicate a rental arrangement. Third, the taxpayer controlled car use because multiple drivers used each car.

TAXPAYER'S EXCEPTIONS:

During the audit, the taxpayer claimed it leased/rented the cabs to the drivers for fixed weekly payments. However, in its appeal, the taxpayer no longer makes that assertion. Instead, the taxpayer contends it has a joint venture with [the cab company] and the drivers to provide urban transportation. The taxpayer argues the Department improperly assessed it on the full amount of fares earned by the drivers. The taxpayer still insists the drivers are independent contractors and were never its employees. The taxpayer claims it does not control the drivers' activities. It states the drivers are free to decide whether, where or when to pick up passengers.

Thus, the taxpayer contends it should be liable only for the net amounts it earns. It argues the amounts kept by the drivers (one half of gross income) and amounts it pays [the cab company] should be deducted from the gross income found by the auditor.

Furthermore, the taxpayer states each audit year other than the test year should be computed by reducing gross income by 10% - an amount it claims the estimated income exceeded the actual income.

ISSUES:

Did the taxpayer have a joint venture with [the cab company] and the drivers? Is the taxpayer entitled to deduct amounts earned by the drivers and amounts it pays to [the cab company]?[1]

DISCUSSION:

The taxpayer insists the drivers are independent contractors and were never its employees, but the taxpayer has taken inconsistent positions regarding its relationship with them. As noted, a month after their first meeting, the taxpayer provided the auditor incomplete cab rental agreements along with several attachments showing drivers' names and weekly rental rates. Apparently, the taxpayer submitted these documents in an attempt to show the drivers were not its employees.

During the second meeting, the auditors (two this time) informed the taxpayer if it actually rented/leased the cabs to the drivers, then the rental amounts along with payments for insurance, and possibly administrative and dispatch services, would result in retail sales tax, Retailing business and occupation (B&O) tax and possibly Service B&O tax owing, thereby

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[1]The taxpayer apparently has abandoned the issue whether it leased/rented the cabs to the drivers as it insisted to the auditors. The auditors did not find such leases.

considerably increasing its tax liability. WAC 458-20-180 and WAC 458-20-211 (Rules 180 and 211).

In the present appeal, the taxpayer still insists the drivers are independent contractors, but it makes no mention of renting cabs to them or weekly rental agreements. Instead it claims the drivers are members of a joint venture along with it and [the cab company], thereby entitling it to deductions from its gross income. In short, the taxpayer wants to keep the Urban Transportation tax rate rather than pay Retailing B&O and retail sales taxes which cab rentals require. However, it does not want to pay Urban Transportation on its gross income without deductions as the auditor assessed it.

The taxpayer was assessed under Chapter 82.16 RCW - the public utility tax. The tax is imposed by RCW 82.16.020:

> (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:
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> ***
>
> (d) Urban transportation business: Six-tenths of one percent;

RCW 82.16.010(12) defines "gross income" as:

> ... the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but <u>without any deduction</u> on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. (underling added).

However, RCW 82.16.050(3) does permit a deduction if services are furnished jointly in a limited circumstance:

> Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for services furnished jointly by both, if the total amount has been credited to and appears in the gross income reported for tax by the former;

Although the taxpayer has not cited this statutory subsection, it apparently is the basis for the taxpayer's claim that it is entitled to deduct amounts earned by the drivers and amounts paid to [the cab company].

[1] Despite the taxpayer's statement that it has a joint venture with the drivers and [the cab company], it has not shown such an arrangement exists. The taxpayer failed to show [the cab company] and the drivers participate in decision making regarding the taxpayer's operation. For example, the taxpayer did not submit a written joint venture agreement between the parties. No minutes or other written record of a joint venture was presented. The taxpayer did not offer any affidavits from the drivers or [the cab company] supporting the contention.
There is no evidence [the cab company] and the drivers share profits and losses with the taxpayer, let alone a proportionate sharing by all parties based on their contributions of money, property and/or labor. There is no offering of proof on what each party in particular has contributed to the joint venture. We have no evidence the funds were handled as a joint venture rather than as the separate funds of the taxpayer. Det. No. 88-14, 5 WTD 19 (1988), Det. No. 87-93, 2 WTD 411 (1987).

Instead, the facts show the taxpayer merely leased the cabs from the lessor [the cab company] for fixed rental amounts and it paid the lessor for other items such as dispatching, insurance and administrative services. We find there was no joint venture between, or transportation services jointly rendered by, the taxpayer and [the cab company].

Similar to [the cab company], we cannot find the drivers were joint venturers with the taxpayer due to the complete lack of proof supporting this claim. Furthermore, the taxpayer took the prior inconsistent position that the drivers were leasing the vehicles rather than acting as joint venturers. Subsequently, the auditors informed the taxpayer during their second meeting it would have a greater tax liability if it leased the cars to the drivers. Now, the taxpayer insists it, the drivers and [the cab company] have been joint venturers all along.

As noted, the auditors found the drivers were the taxpayer's employees and the taxpayer has insisted throughout they were not. However, we do not need to decide that issue because, either way, the results are the same in this appeal. If the drivers were employees, the taxpayer may not deduct the costs of labor from its gross proceeds. RCW 82.16.010(12). This position was taken by the auditors.

Alternatively, if the drivers were independent contractors, then they were hired by the taxpayer merely to drive the cabs because we found the drivers did not rent or lease the cars. Second, there was no joint venture and, furthermore, the drivers themselves did not provide the cabs. Thus, we do not consider the drivers and the taxpayer as having provided jointly rendered services under the Public Utility Tax of RCW 82.16.050(3).

Instead, if the drivers are independent contractors, they would be taxable under Service B&O because they were simply providing personal services to the taxpayer taxi company and not urban transportation services to the customers. Therefore, we do not allow a deduction in this matter for payments to the drivers whether they were employees or independent contractors.

Even if the drivers could qualify under different facts for the urban transportation classification, they must be registered with the Department of Revenue. Additionally, the taxpayer taxi cab company must report the gross income from all the fares before the deductions for payments to the drivers would be permitted. RCW 82.16.050(3). Neither of these required conditions were met in this matter. Thus, the deductions would not be allowed.

[3] We find there was no joint venture and the urban transportation services were not jointly furnished by the taxpayer, the drivers and [the cab company]. The deductions under RCW 82.16.050(3) for amounts paid to the drivers and [the cab company] are not applicable. Rather, the public utility tax on gross income for urban transportation is applicable without any deduction for labor costs or any other expense whatsoever. RCW 82.16.010(12), .020(1)(c).

Finally, the taxpayer's records were very disorganized and it failed to file returns under its registration number. Under such circumstances, the Department can base an assessment upon only the facts and information it can procure. RCW 82.32.100. The auditor has done that and we see no reason to remand the matter to Audit for the claimed 10% adjustments.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

DATED this 27th day of June 1991.