Cite as 11 Det. No. 91-164, WTD 337 (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. 91-164
. . .	)	Registration No. . . .
	)	. . ./Audit No. . . .

[1] **RULE 180, RCW 82.16.010, .020:** CABULANCES -- URBAN OR MOTOR TRANSPORTATION BUSINESS. Cabulances which are not equipped or staffed to perform medical services should be classified as either Urban or Motor Transportation Business and not under Service B&O.

[2] **Rule 180, RCW 82.16.047, RCW 46.74.010**: TAXI CABS -- FOR PROFIT CORPORATION -- ELDERLY OR PHYSICALLY-CHALLENGED PASSENGERS. The taxpayer/taxi cab company is a for profit corporation. Its income from fares paid by or for elderly or physically-challenged passengers is not exempt from the public utility tax. Taxpayer must be a public social agency or a private, nonprofit entity providing ride sharing for the elderly or handicapped to qualify for such an exemption.

[3] **RULES 180 AND 211:** TAXI CAB RENTALS/LEASES -- INDEPENDENT DRIVERS/LESSEES. Income received by taxpayer taxi cab company for leasing/renting cabs to independent drivers is subject to retailing B&O and retail sales tax.

[4] **RULES 111 AND 211, ETB 358, RCW 82.04.070:** INSURANCE CHARGES -- TAXI CAB RENTALS -- RETAILING B&O -- RETAIL SALES TAX. Where taxi cab company/lessor is the insured on automobile liability policies and is obligated to pay premiums to the insurer, the money received from independent drivers/lessees for such insurance coverage is taxable under Retailing B&O and retail sales tax as a recovery of taxpayer's own costs. The payments are not exempt advances and

reimbursements. Accord: Det. No. 86-305, 2 WTD 65 (1986), Det. No. 88-377, 6 WTD 439 (1988).

[5] **RULES 180, 211 AND 224:** TAXI CABS -- INDEPENDENT DRIVERS/LESSEES -- ADMINISTRATIVE AND DISPATCH SERVICES -- SERVICE B&O -- RETAILING B&O -- SALES TAX. Dispatching and administrative services provided to independent taxi drivers/lessees for a fee are not incidental to urban transportation business because the taxi company/dispatcher itself is not hauling for hire in these instances. Rather, income from dispatching when it is an optional service to the drivers and separately charged is taxable under Service B&O. By contrast, when dispatching is required as part of the car rental, such income is taxable under Retailing B&O and retail sales tax. Similarly, income is taxable under Service B&O when administrative services are separately charged and not related to the car rentals/leases. When admininstrative services are related to the car rentals, the income is taxable under Retailing B&O and retail sales tax.

[6] **RULE 257:** CAB MAINTENANCE -- RETAILING B&O -- SALES TAX. Charges to drivers/lessees for cab maintenance are subject to Retailing B&O and retail sales tax.

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 service and retailing business and occupation (B&O) taxes and retail sales tax. The taxpayer reported its taxes under the urban transportation business classification.

FACTS:

De Luca, A.L.J. -- The Department of Revenue's Audit Division audited the taxpayer for the period January 1, 1986 through June 30, 1989. Audit provided the assessment to the taxpayer [in May 1990]. The taxpayer was assessed $ . . . in sales tax, $ . . . in retailing B&O tax, $ . . . in service B&O tax and $ . . . in use tax. Audit credited the taxpayer for $ . . . in urban transportation taxes it had paid and another $ . . . was adjusted

in its favor. With interest, the total amount due was $ . . . . The tax remains unpaid. The taxpayer filed its petition [in May, 1990] and was granted an extension to [July 1990] to present supporting materials.

The taxpayer is a Washington corporation . . . . It operates a taxi cab and cabulance service there. The taxpayer has taxicab rental agreements with drivers stipulating the drivers are independent contractors who are free from the taxpayer's control. The Department does not dispute this contention and does not claim the drivers are the taxpayer's employees. The Department and the taxpayer agree the drivers rent/lease the cabs.

The agreements state the drivers will rent the cabs for seven consecutive days. The drivers pay separately listed amounts for the car rental, liability insurance, and an administrative fee. Dispatching service is also available if the drivers wish to pay for it. The insurance is purchased by the taxpayer who is the named insured on the policies. The insurers' agents or brokers bill the taxpayer, not the drivers, for the premiums.

The taxpayer also operates cabulances which are vans equipped with wheel chair lifts for the physically challenged. Additionally, the taxpayer carries elderly and physically-challenged riders in its cabs as well. Both the cabulance and the elderly passengers are transported under contract with local and state agencies.

The taxpayer reported its income under the tax classification of urban transportation business, RCW 82.16.010. The Audit Division determined there were more appropriate tax classifications for some of the taxpayer's various activities.

Audit placed income received for dispatching and administrative services under the service B&O classification. See Schedule III of the audit report. In Schedule IV Audit reclassified cabulance fares from the public utility tax of urban transportation to service B&O because the auditor determined the cabulances were ambulances and therefore subject to RCW 82.04.290 and WAC 458-20-224 (Rule 224).

In Schedule VI Audit found the cab leases were sales under RCW 82.04.040 and subject to retailing B&O (RCW 82.04.250) and retail sales taxes (82.08.020) upon the gross income of the rental payments when they became due. Audit cited WAC 458-20-211 (Rule 211) in support of this position.

Furthermore, insurance charges were considered a recovery of the lessor's own costs rather than advances and reimbursements. These charges were subjected to retailing B&O and retail sales

tax as part of the weekly taxicab rental rate per vehicle. Audit relied on Excise Tax Bulletin (ETB) 358.04.211, since cancelled, for assessing the taxes on the insurance income.

Finally, Audit assessed the taxpayer's fare income for carrying passengers under the urban transportation classification.

ISSUES:

Should the cabulance service be treated as ambulance service and classified under service B & O (Rule 224) or should it be taxed under the urban transportation and motor transportation classifications (Rule 180) as reported by the taxpayer?

Is taxpayer's income from elderly and physically-challenged passengers exempt from the state's taxes?

Is the taxpayer's income from the rental of cabs and the charges for insurance subject to retailing B&O and retail sales tax?

Should income from dispatching and administrative services be reclassified to service B&O or retailing B&O with sales tax?

TAXPAYER'S EXCEPTIONS:

In short, the taxpayer contends all of its income should be included in the urban transportation business classification. It believes the administrative services, dispatching, car rentals, etc. are all part of the taxi business and should be classified uniformly. However, the taxpayer claims an exemption should be allowed for carrying elderly or physically-challenged persons.

The taxpayer addressed at length why cabulances are not ambulances. The taxpayer has provided an affidavit from its president along with numerous exhibits demonstrating that it is not an ambulance service. The first exhibit is a copy of the [local] County Health Department Ambulance and Advanced Life Support Rules and Regulations, (. . .). The second exhibit is a copy of Medical Transportation Billing Instructions (Sept. 1987 rev.) promulgated by the Division of Medical Assistance, Office of Provider Services, Washington Department of Social & Health Services (DSHS).

Moreover, the taxpayer argues the tax on income received from the drivers for insurance is wrongly assessed. The taxpayer claims it merely advances money to the insurers on behalf of the drivers who, in turn, reimburse it weekly.

DISCUSSION:

WAC 458-20-180 (Rule 180) and RCW 82.16.020 (9) provide that "urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, ... Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type ...."
(underlining added).

The taxpayer has amply supported its contention that it is not an ambulance service. The [local] ambulance regulations consist of twelve single-spaced pages which set compulsory minimum standards for the operation of ambulance and paramedic vehicles and services. These regulations are quite detailed in specifying the scores of medical supplies/equipment and drugs which each vehicle must carry. The supplies and drug lists alone are several pages. Moreover, the regulations require at least two persons to operate an ambulance or paramedic vehicle, and at least one of the persons on board must be a paramedic who meets statutory and regulatory standards of training. Similar complex and lengthy ambulance standards have been promulgated in regulations by DSHS. See WAC 248-17-010 et seq.

The taxpayer's president has sworn that the cabulances do not carry any of the equipment/supplies or medications required by the [local] ambulance regulations. The affiant also swore that the cabulances operate only with a driver per vehicle. The drivers are not paramedics. Conversely, the audit report contains no information to refute the affidavit.

Moreover, the DSHS Medical Transportation Billing Instructions distinguish ambulance transportation from cabulance transportation. The instructions allow the use of ambulances when specified medical (emergency or other serious) treatments have been performed on the patient.

In contrast, the instructions for cabulance service provide:

> Persons transported by cabulance must be stable, must not need administration of oxygen by the provider of transportation service, must not need to be transported by stretcher, litter, or similar device, nor require medical attention enroute.

It is noted the billing instructions allow a basic one-way charge for an ambulance patient of [$70]. In comparison, the instructions allow a basic one-way charge for a cabulance patient of [$16].

[1] We hold income received from carrying passengers in cabulances like these which are not equipped or staffed to

perform medical services should be classified under urban/motor transportation business and not service B&O.

[2] The second issue arises because the taxpayer claims an exemption from taxation for income earned by carrying elderly and physically-challenged passengers. The taxpayer has not cited any authority for this position and we know of none. Possibly the taxpayer implies the exemption contained in RCW 82.16.047 and RCW 46.74.010 and Rule 180. Those laws allow an exemption "for amounts received for providing commuter ride sharing or ride sharing for the elderly and the handicapped..." if the transportation provider is a public social service agency or a private, nonprofit entity. The exemption does not apply here, because the taxpayer is a for-profit corporation.

[3] The next issue is whether the car rental income is subject to retailing B&O and retail sales tax. Rule 180 makes it clear it is.

RETAIL SALES TAX

> Persons engaged in the business of motor transportation or urban transportation are required to collect the retail sales tax upon gross retail sales of tangible personal property sold by them. The retail sales tax must also be collected upon retail sales of services defined as "sales" in RCW 82.04.040 and "sales at retail" in RCW 82.04.050, including charges for the rental of motor vehicles or other equipment without an operator.

***

BUSINESS AND OCCUPATION TAX

> RETAILING. Persons engaged in either of said businesses are taxable under the retailing classification upon gross retail sales of tangible personal property sold by them and upon retail sales of services defined as "sales" in RCW 82.04.040 or "sales at retail" in RCW 82.04.050.

See also Rule 211(7) and (9), subjecting the leasing or rental of unoperated equipment or other tangible personal property to retailing B&O and retail sales taxes.

[4] The next issues pertain to retailing B&O and retail sales taxes assessed against the taxpayer for money received from the drivers for liability insurance premiums. The taxpayer claims it is merely a conduit for the insurance payments which the

taxpayer, in turn, pays the insurers. The taxpayer asserts it is not liable for taxes on this income because the payments are advances and reimbursements.

WAC 458-20-111 (RULE 111) governs this issue. The rule states:

> The word "advance" as used herein, means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees for the customer or client.
>
> The word "reimbursement" as used herein, means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees for the client.
>
> The words "advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily, other than as agent for the customer or client. (Underlining added).
>
> There may be excluded from the measure of tax amounts representing money or credit received by a taxpayer as reimbursement of an advance in accordance with the regular and usual custom of his business or profession. The foregoing is limited to cases wherein the taxpayer, as an incident to the business, undertakes, on behalf of the customer, guest or client, the payment of money, either upon an obligation owing by the customer, guest or client to a third person, or in procuring a service for the customer, guest or client which the taxpayer does not or cannot render and for which no liability attaches to the taxpayer. (Underlining added).

The taxpayer's insurance records which it submitted make clear the taxpayer is primarily responsible for paying the premiums. The taxpayer itself contracted with the insurers and is named the insured on the policies. The insurers' agents bill the taxpayer, not the drivers, for the premiums. Therefore, the Rule 111 deduction does not apply to the taxpayer. The insurance income paid by the drivers is taxable to the taxpayer. Det. No. 86-305, 2 WTD 65 (1986), Det. No. 88-377, 6 WTD 439 (1988).

The next issue is whether the insurance charges should be taxable under retailing B&O and retail sales taxes or be subject to service B&O. Audit relied on ETB 358 when determining retailing B&O and retail sales taxes were the appropriate taxes. ETB was

in effect at the time of the audit and is therefore applicable to this matter. ETB 358 reads in pertinent part:

> ... where insurance and delivery charges are basically a recovery of lessor's own costs rather than advances and reimbursements, such charges are subject to Retailing business and occupation tax and retail sales tax as part of the charge made ....

Because we have ruled the insurance payments were not advances and reimbursements, but a recovery of the taxpayer's own costs, Audit was correct in assessing retailing B&O and retail sales taxes. See also Rule 211 and RCW 82.04.070.

Furthermore, insurance differs from dispatching which is optional and classified under service B&O. (See below). The taxpayer is providing the dispatching service, but not the legally-required insurance. The insurer provides that to the insured taxpayer for a fee. Consequently, the insurance is directly related to the car rental rather than to the taxpayer's services. Thus, the charges for the insurance are additional compensation for renting the cars.

[5] The next matter concerns whether income for administrative and dispatch services should be taxed under urban transportation or service B&O or retailing B&O with retail sales tax. Under these circumstances, the independent drivers are providing the urban transportation to the customers. The drivers are carrying the passengers by selling their services. On the other hand, the drivers are not selling dispatching and administrative services. Instead, they are purchasing them from the taxpayer. Therefore, the dispatching and administrative services provided to the drivers for a fee are not incidental to urban transportation, because the taxpayer itself is not hauling for hire in these instances.

Because the dispatching is optional to the drivers and is separately charged to them, income from dispatching is taxable under service B&O tax. If dispatching was required as part of the cab rentals, the income would be subject to retailing B&O and retail sales tax. Similarly, if administrative services are part of or related to cab rentals/leases, such income is subject to retailing B&O and sales taxes. By contrast, if the administrative services are separate from the cab rentals and are separately charged, such income is taxable under service B&O.

[6] Lastly, we add that charges for maintenance, if any, also are subject to retailing B&O and retail sales tax. WAC 458-20-257 (2)(C)(i) reads in part:

> Maintenance agreements (service contracts) require the periodic specific performance of inspecting, cleaning, physical servicing, altering, and/or improving of tangible personal property. Charges for maintenance agreements are retail sales, subject to retailing B&O tax and retail sales tax under all circumstances.

DECISION AND DISPOSITION:

The taxpayer's petition is granted in part and denied the remainder. The taxpayer's operation of cabulances is subject to the public utility tax classifications of urban transportation business and motor transportation business, not service B & O. Because the taxpayer is engaged in the business of both urban and motor transportation, its books of account must show a proper segregation of revenue in order to report under the urban transportation classification.

The decision whether administrative services income is taxable under retailing/retail sales or service B&O will have to be made upon remand to Audit in accordance with this determination.

The remainder of the tax assessment is sustained. This matter is remanded to audit to reissue an assessment consistent with this determination. The due date will be provided thereon.

DATED this 17th day of June 1991.