BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Reconsideration of the Refund of	)	F I N A L D E T E R M I N A T I O N
	)	No. 95-052ER
. . .	)	Registration No. . . .

[1] RULE 171: PUBLIC ROAD CONSTRUCTION - "MASS PUBLIC TRANSPORTATION" - WHAT CONSTITUTES. The term "mass public transportation" refers to "urban, public transportation systems"; citing, Municipality of Metropolitan Seattle v. O'Brien, 86 Wn.2d 339, 342, 544 P.2d 729 (1976).

[2] RULE 171: PUBLIC ROAD CONSTRUCTION - "MASS PUBLIC TRANSPORTATION TERMINALS AND PARKING FACILITIES" - MUNICIPAL AIRPORT TERMINAL. An airport terminal owned and operated by a port district, which terminal does not serve an urban public transportation or transit function, is not included within the scope of the phrase "mass public transportation terminal and parking facility." Mere ownership of an airport terminal by a municipality or a political subdivision of this state does not make the terminal a "mass public transportation terminal."

[3] RULE 171: PUBLIC ROAD CONSTRUCTION -- "MASS PUBLIC TRANSPORTATION TERMINALS AND PARKING FACILITIES" -- WHAT CONSTITUTES. The phrase "mass public transportation terminals and parking facilities" used in RCW 82.04.050(6), RCW 82.04.280, and RCW 82.04.190 grants "public road construction" tax treatment to those passenger terminals and parking facilities necessary for passenger and vehicular access to and from urban "public transportation systems" that are "owned, or leased, and operated" by "municipalities" as defined by RCW 35.95.020(2), and by RTAs formed under chapter 81.112 RCW, and those terminal and parking facilities necessary for such systems.

[4] RULE 171: PUBLIC ROAD CONSTRUCTION -- "MASS PUBLIC TRANSPORTATION TERMINALS AND PARKING FACILITIES" -- PORT DISTRICT -- AIRPORT. Because a port district is not a "municipality" as defined by RCW 35.95.020, or an RTA, and because a port district is generally not

authorized to engage in a transportation business, Taxpayer, as a port district, does not qualify for "public road construction" tax treatment when it builds, repairs, or improves an airport passenger terminal which does not serve an urban public transportation system.

[5] RULE 229: REFUNDS -- ERRONEOUS WRITTEN ADVICE -- ESTOPPEL -- RELIANCE. The doctrine of estoppel will not lightly be invoked against the State to deprive it of the power to collect taxes. Three elements must be present to create an estoppel: (1) an admission, statement, or act inconsistent with the claim afterwards asserted, (2) action by the other party on the faith of such admission, statement, or act, and (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act. Reliance on erroneous advice is thus one of the necessary common law elements of estoppel

[6] RULE 229, RCW 82.32A.020: REFUNDS -- ERRONEOUS WRITTEN ADVICE -- RELIANCE --The Taxpayer's Rights and Responsibilities Act provides statutory remedies for written misinformation issued by the Department for taxpayers (1) who have been issued specific erroneous written advice/reporting instructions, and (2) who have relied on these instructions to their detriment. Further, taxpayer remedies consist only of the right to (1) the waiver of interest and penalties on an assessment, and (2) the waiver, "in certain instances," of the tax assessment itself. There is no provision for the refund of taxes already paid which were not the result of a tax deficiency assessment. Taxpayer, who was not issued specific erroneous written advice concerning its airport terminal, and had clearly not relied on erroneous advice concerning certain of its other projects, is not entitled to relief under the Act. In any event, a refund of taxes voluntarily paid is not a remedy under RCW 82.32A.020.

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.

NATURE OF ACTION:

Petition concerning the retail sales taxability of construction on the passenger terminal of a municipal airport and the right to rely on letters issued by the Department. [1]

FACTS:

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

Bauer, A.L.J. - This case is before the Appeals Division on executive reconsideration of Determination No. 95-052. Taxpayer is a port district which owns and operates a major municipal airport serving general aviation and commercial air carriers. Taxpayer requests the refund of approximately $. . . , representing retail sales taxes it paid for various construction projects from 1988 through 1993 on the airport passenger terminal. Det. No. 95-052 denied the requested refund.

Relying on Sec. 1 of the 1969 Public Mass Transportation Systems Act,[2] the Administrative Law Judge (ALJ) concluded the phrase "mass public transportation terminal or parking facility," as a whole, "meant a publicly owned terminal or parking facility used for urban mass transportation purposes." He further reasoned the legislature intended to limit the special tax treatment of "mass public transportation terminals" to urban mass public transportation systems, and held the legislature had not intended to include airport terminals and parking facilities, because they are not part of an urban mass public transportation system. In support of this conclusion, the ALJ examined legislative history, related statutes, and the rule of statutory construction which requires that, in giving effect to the legislature's intent in enacting a statute, the statute as a whole must be considered and harmonized with related statutes. Further, he cited the definition of "municipality" in RCW 35.95.020(2), and held that Taxpayer, as a port district, was not an entity which owned, or leased, and operated a public transportation system, and thus was not entitled to "public road construction" tax treatment when it built, repaired, or improved its airport terminal.

The Department, through its Taxpayer Information and Education Section (TI&E), has in the past issued written advice to Taxpayer granting "public road construction" eligibility for its airport's parking garage:[3]

- 1/25/89: Expansion, repair, and rehabilitation of Taxpayer's airport parking garage are eligible for "public road construction" treatment.

- 8/28/90: Taxi driver lounge, rental car lobby, and bus shelters in Taxpayer's airport parking garage are eligible for "public road construction" treatment.

- 4/12/91: Ground transportation and trip monitoring system at Taxpayer's airport are eligible for special treatment as "public road construction."

- 9/18/96: "Public road construction" treatment granted for Taxpayer's parking garage. (However, this letter was withdrawn on 10/25/96 because the issue was pending in the Appeals Division.)

ISSUES:

[2] Laws of 1969, 1st Ex. Sess., ch. 255.

[3] Similar letters were issued on 12/2/93 and 2/23/94 concerning certain structures and facilities at Taxpayer's waterfront pier. Another letter issued on 1/17/92 disallowed "public road construction" treatment to a parking lot on Taxpayer's property which was not adjacent to any form of other transportation; the letter cited Taxpayer's airport parking garage as an example of a qualifying parking facility.

1. Does the term "mass public transportation terminal" used in RCW 82.04.050(6), RCW 82.04.280, and RCW 82.04.190 include the passenger terminal located at a port district's municipal airport which serves general aviation and commercial air carriers?

2. Is the Department estopped from denying relief because of the letters it issued to Taxpayer indicating that its municipal airport parking garage was eligible for tax treatment as "public road construction"?

DISCUSSION:

Portions of RCW 82.04.050, RCW 82.04.190, and RCW 82.04.280[4] together provide for "public road construction" treatment of certain public construction projects, resulting in the labor and services portion of such projects not being retail sales taxable. In the 1969 Public Mass Transportation Systems Act, this special tax treatment, previously granted only to publicly-owned roads and associated structures in their right-of-ways, was expanded to include "mass public transportation terminals and parking facilities." As a result of this and later amendments, RCW 82.04.050(6) currently provides:

> The term [retail sale] shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(Emphasis added.) Under this provision,[5] when any of the enumerated construction projects are performed, contractors are required to pay retail sales/use taxes on all of the construction materials they use instead of purchasing them tax-free with resale certificates and then charging tax to their customers. This is because "public road construction" contractors, and not their customers, are considered to be the consumers of the materials used.[6] Because the labor and services on such construction projects are not taxable to consumers as retail sales, retail sales tax is not charged or collected by the contractor. Instead of reporting under the "retailing" classification of the business and occupation (B&O) tax, the "public road construction" contractor reports B&O taxes under the special rate provided in RCW 82.04.280.

The ultimate result of this statutory scheme is to remove the labor and services portion of the contract from retail sales taxability, the sales tax on materials already having been paid by the contractor (and that cost passed along to the customer in the bid price). Thus, the state receives retail

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[4] The 1969 Public Mass Transportation Systems Act similarly amended all three of these code sections to extend "public road construction" treatment to "mass public transportation terminal or parking facilities." These portions of RCW 82.04.050(6), RCW 82.04.280, and RCW 82.04.190 will be collectively referred to as the "public road construction" provisions of the Revenue Act.

[5] While we will refer primarily to the retail sales tax "public road construction" treatment in this determination, the corresponding use tax and the business and occupation (B&O) tax implications will likewise be implied.

[6] RCW 82.04.190.

sales/use tax on the value of the materials used, but receives no sales/use tax on the labor and services portion of "public road construction" projects.

The term "mass public transportation" refers to urban, public transportation systems.

At issue in this case is the meaning and scope of the term "mass public transportation terminal" in the "public road construction" provisions of the Revenue Act, and whether this term includes a port district's airport terminal serving general aviation and commercial air carriers. Det. No. 95-052 held that it did not. We agree.

The meaning of the term "mass public transportation" in the context of "public road construction" is not clearly defined by the Revenue Act. In giving effect to the legislature's intent in enacting a statute, the statute as a whole must be considered and harmonized with related statutes.[7] Det. No. 95-052 correctly considered the words at issue in connection with other words and concepts used by the legislature in the three statutes at issue and in related statutes. In so doing, the Administrative Law Judge examined the 1969 Public Mass Transportation Systems Act, which initially extended "public road construction" tax treatment to "mass public transportation terminals and parking facilities."

The goal of any statutory construction is to follow the intent of the legislature, legislative intent being ascertained from the statute as a whole. In so doing, all statutes relating to the same subject matter should be considered.[8] If a statute is unclear, and thus subject to judicial interpretation, it will be interpreted in a manner that best fulfills the legislative purpose and intent.[9] A term not defined in a statute is afforded its plain and ordinary meaning. However, when a word has no fixed, ordinary meaning, we must look to the subject matter, the context in which the word is used, and the purpose of the statute.[10] Further, when a dictionary does not conclusively point to the definition advanced by either party, we must resort to principles of statutory construction.[11] Finally, no bill submitted to the legislature shall embrace more than one subject, and that subject shall be expressed in the title,[12] and the title may be referred to as a source of legislative intent.[13]

The words "mass," "terminal," and "public" have various meanings depending on the context in which they are used. Accordingly, in this case, we must look to the subject matter, the context in which the phrase was used, and the purpose of the legislation in order to ascertain the legislative

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[7] Stewart Carpet Serv., Inc. v. Contractors Bonding & Ins. Co., supra; State v. Bernhard, 108 Wn.2d 527, 741 P.2d 1 (1987).
[8] State v. Wright, 84 Wn.2d 645, 652, 529 P.2d 453 (1974); Clark v. Pacificorp, 118 Wn. 2d 167, 176, 822 P.2d 162 (1991).
[9] Marquis v. City of Spokane, 130 Wn.2d 97, 922 P.2d 43 (1996).
[10] KSLW v. Renton, 47 Wn. App. 587, 594, 736 P.2d 664 (1986).
[11] Zachman v. Whirlpool Financial Corp., 123 Wn. 2d 667, 671, 869 P.2d 1078 (1994).
[12] Wash. Const. art. II, § 2.
[13] Washington Optometric Ass'n v. County of Pierce, 73 Wn.2d 445, 449, 438 P.2d 861 (1968).

intent. To do so, it is necessary to review the development of the laws regarding public transportation services.

In 1964, the United States Congress enacted the Urban Mass Transportation Act (UMTA).[14] The purpose of this act was to promote the development of "area-wide urban mass transportation systems needed for economical and desirable urban development." The act at that time defined the term "mass transportation" to mean:

> transportation by bus, rail, or other conveyance, either publicly or privately owned, which provides to the public general or special service (but not including school buses or charter or sightseeing services) on a regular and continuing basis."[15]

UMTA thus applied to both "public or private mass transportation" systems, as determined by local needs. Under this act, the government provided loans and grants towards the long-range planning for and the development of urban transit systems.[16]

Shortly after the federal enactment, the legislature of this state passed its own Municipal Transportation -- Tax Subsidies Act.[17] The funds generated from this original enactment proved to be insufficient and further legislative actions were taken in the 1969 Public Mass Transportation Systems Act, and then in the 1971 Financing of Public Transportation Service Act,[18] the 1973 Public Mass Transit Programs - State Financial Support - Appropriation Act,[19] the 1974 Motor Vehicle Excise Fund . . . Act,[20] and the 1975 Public Transportation Act.[21]

The Washington Supreme Court has recognized these enactments are related:

> To meet the growing need for adequately financed public transportation systems, the 1969 legislature enacted the taxing, collecting and remitting scheme which controls our decision. Subsequently, in 1971, 1973, 1974 and 1975, the legislature made substantial policy changes in its approach to the financing of public transportation, but the basic framework of the 1969 [Public Mass Transportation Systems] act remains intact so far as the issues of this case are concerned.[22]

Like its federal counterpart, the original 1965 Municipal Transportation -- Tax Subsidies Act and its subsequent amendments were intended to address "municipally-owned, or leased, and operated

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[14] 49 U.S.C. § 1601 (repealed Pub. L. 103-272 § 7(b), 108 Stat. 1379 (1994), reenacted, 49 U.S.C. § 5301 (1994).
[15] 49 U.S.C. § 1608 (repealed 1994).
[16] 49 U.S.C. § 1602.
[17] Laws of 1965, 1st Ex. Sess., ch. 111.
[18] Laws of 1971, 1st Ex. Sess., ch. 296.
[19] Laws of 1973, 1st Ex. Sess., ch. 136.
[20] Laws of 1974, 1st Ex. Sess., ch. 54.
[21] Laws of 1975, 1st Ex. Sess., ch. 270.
[22] Municipality of Metropolitan Seattle v. O'Brien, 86 Wn.2d 339, 341, 544 P.2d 729 (1976).

transportation systems."[23] For example, RCW 35.95.010 states the intent and purpose behind the 1969 Public Mass Transportation Systems Act:

> We, the legislature find that an increasing number of **municipally owned, or leased, and operated transportation systems** in the urban areas of the state of Washington . . . are finding it impossible, from the revenues derived from tolls, tariffs, and fares, to maintain the financial solvency of such systems, and as a result thereof such **municipalities** have been forced to subsidize such systems to the detriment of other essential public services.
>
> All persons in a **community** benefit from a solvent and adequate public transportation system. . ., and the responsibility of financing the operation, maintenance, and capital needs of such systems is a **community** obligation and responsibility which should be shared by all.
>
> We further find and declare that the maintenance and operation of an adequate public transportation system is an absolute necessity and is essential to the . . . growth, development and prosperity of a **municipality** and of the state and nation, and to protect the health and welfare of the residents of such **municipalities** and the public in general.
>
> We further find and declare that the appropriation of general funds and levying and collection of taxes by such **municipalities** as authorized in the succeeding sections of this chapter is necessary, and any funds so derived and expended are for a public purpose for which public funds may properly be used.

(Emphasis supplied.)[24] The 1969 Public Mass Transportation Systems Act further expressed the urban nature of the subsidy in its amendment to RCW 35.95.050:

> Provided, That the tax shall be designated and identified as a tax to be used solely for the operation, maintenance, and capital needs of the municipally owned or leased and municipally operated public transit system. . . .

In the 1971 Financing of Public Transportation Service Act, the legislature made similar findings in its amendment of the financing scheme for such systems:

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[23] Unlike its federal counterpart, however, the 1965 Municipal Transportation -- Tax Subsidies Act addressed public, but not private, mass transportation systems. It authorized "municipalities" which were then limited to incorporated first class cities, to appropriate funds and to collect certain business and occupation and excise taxes for their municipally operated public transportation systems.

[24] In addition to the provisions at issue in this case, other laws affected by the 1969 Public Mass Transportation Systems Act included: ch. 35.95 RCW (Public Transportation Systems in Cities and Metropolitan Municipal Corporations--Financing); ch. 35.58 RCW (Metropolitan Municipal Corporations), RCW 39.33.050, (Public Mass Transportation Systems--Contracts for Service or Use), which latter provision allows "the legislative body of any municipal corporation, quasi-municipal corporation, or political subdivision of the state of Washington authorized to develop and operate a public mass transportation system" to contract with other entities for public transportation services.

> The legislature finds that adequate public transportation systems are necessary to the economic, industrial and cultural development of the urban areas of this state and the health, welfare and prosperity of persons who reside or are employed in such areas or who engage in business therein and such systems are increasingly essential to the functioning of the urban highways of the state. The legislature further finds and declares that fares and tolls for the use of public transportation systems cannot maintain such systems in solvent financial conditions and at the same time meet the need to serve those who cannot reasonably afford or use other forms of transportation. The legislature further finds and declares that additional and alternate means of financing adequate public transportation service are necessary for the cities, metropolitan municipal corporations and counties of this state which provide such service.[25]

Such statements of legislative purpose are a crucial guide in understanding the intended effect of an act.[26]

[1] The term "transit" is commonly understood to mean "a system of urban public transportation," which is consistent with interpreting the statute as providing a subsidy for urban transit systems.[27] Moreover, according to the Washington Supreme Court, "the legislature acknowledged the urgent need for urban, public transportation systems," and intended to support this need in the 1965, 1969, and 1971 acts. Thus, the term "mass public transportation" clearly refers to "urban, public transportation systems."

The legislative enactments and amendments in this series of related laws concerned the authority of municipal entities to operate, and to finance and subsidize, their publicly-owned urban public transportation or transit systems. These laws did not extend either financing or subsidies to port districts which own and operate facilities to accommodate commercially owned and operated passenger systems, such as air carriers.

Airport terminals owned by port districts are not "mass public transportation terminals."

[2] There is no indication in the statutory scheme, statements of intent, or legislative history that airport terminals owned and operated by port districts, which terminals do not serve an urban public transportation or transit function, were to be included within the scope of the phrase "mass public transportation terminal" in the "public road construction" provisions of the Revenue Act. Mere ownership by a political subdivision of this state, i.e., a port district, does not make an airport terminal serving a municipal airport a "mass public transportation terminal." To hold otherwise would require us to divorce the provisions at issue from the rest of the act and to ignore the express purpose of the legislation. This we cannot do. A phrase from an enactment cannot be separated

[25] RCW 82.14.045, emphasis added.
[26] Spokane County Health Dist. v. Brockett, 120 Wn.2d 140, 151, 839 P.2d 324 (1992).
[27] Webster's New World Dictionary (2nd. college ed. 1974).

from its context, divorced from other sections of the act, and then utilized to change the very purpose of the act itself.[28]

We also do not find Taxpayer's argument concerning the 1971 Revenue and Taxation Act compelling.[29] In this act, the legislature amended certain statutory language of the "public road construction" provisions of the Revenue Act[30] as follows:

> The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any ((~~publicly owned~~))street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including ((~~publicly owned~~))mass transportation vehicles of any kind.

By removing the first "publicly owned" phrase, and adding the phrase "which is owned by a municipal corporation or political subdivision of the state" in place of the first deletion, the legislature clearly intended to make state road contracts taxable as retail sales and to leave county and city road contracts taxable as public road construction. See Governor's Bill File, SSB 897, sections 3-5 (1971). In fact, at the reconsideration hearing, Taxpayer conceded this was the reason for this first deletion.

Taxpayer contends, however, the deletion of the second "publicly owned" phrase signified a legislative intent to allow the subsidy for terminals operated by or for non-urban transportation systems. There are several problems with Taxpayer's argument. First, the second deletion neither modifies nor affects the interpretation of the phrase "mass public transportation terminal," as discussed above. Further, a more plausible explanation for the second deletion is that, in calculating whether a facility was "primarily" used for foot and vehicular traffic, the legislature wanted to include both public and private mass transportation vehicles in the equation. In other words, a terminal facility would not lose the exemption simply because a large amount of the traffic in the terminal involved privately owned transportation vehicles or because a transit authority leased, rather than owned, such vehicles. This is no indication of any intent to subsidize terminals that do not serve an urban public transportation or transit function.

Only terminals serving public transportation systems operated by "municipalities" as defined by RCW 35.95.020(2), and by RTAs formed under chapter 81.112 RCW, are entitled to the "public road construction" tax benefit.

[28] State in rel. PUD No. 1 of Skagit County v. Wylie, 28 Wn.2d 113, 147, 182 P.2d 706 (1947).
[29] Laws of 1971, 1st Ex. Sess., ch. 299.
[30] RCW 82.04.050, RCW 82.04.190, and RCW 82.04.280.

Section 1 of the 1969 Public Mass Transportation Systems Act replaced the word "cities" in the intent section of chapter 35.95 RCW[31] with the term "urban areas," a broader term which was also extensively used in UMTA:[32]

> We, the legislature find that an increasing number of municipally owned, or leased, and operated transportation systems in the ((~~cities~~)) urban areas of the state of Washington are finding it impossible, from the revenues derived from tolls, tariffs, and fares, to maintain the financial solvency of such systems, and as a result thereof such municipalities have been forced to subsidize such systems to the detriment of other essential public services . . . .[33]

Section 2 of the 1969 Public Mass Transportation Systems Act simultaneously broadened the RCW 35.95.020(2) definition of "municipality" to include "metropolitan municipal corporations":

> "Municipality" shall mean any incorporated city of the first, second or third class in the state, or any metropolitan municipal corporation created pursuant to RCW 35.58.010, et seq.

(Emphasis added.) Overall, it is clear the original intent of the 1969 Public Mass Transportation Systems Act was to provide funding and subsidies to public mass transportation systems "owned, or leased, and operated" by those "municipalities" included in the RCW 35.95.020(2) definition, i.e., "any incorporated city of the first, second or third class in the state, or any metropolitan municipal corporation."

Since the 1969 Public Mass Transportation Systems Act, RCW 35.95.010 has not been further amended. However, since 1969, the legislature has expanded the RCW 35.95.020 definition of municipality to include additional types of entities empowered to operate public transportation systems:

> "Municipality" shall mean any incorporated city, town, county pursuant to RCW 36.57.100 and 36.57.110, any county transportation authority created pursuant to chapter 36.57 RCW, any public transportation benefit area created pursuant to chapter 36.57A RCW, or any metropolitan municipal corporation created pursuant to RCW 35.58.010, et seq: *Provided*, That the term "municipality" shall mean in respect to any county performing the public transportation function pursuant to RCW 36.57.100 and 36.57.110 only that portion of the unincorporated area lying wholly within such unincorporated transportation benefit area.

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[31] RCW 35.95.010. Ch. 35.95 RCW is entitled "Public Transportation Systems in Cities and Metropolitan Municipal Corporations - Financing."

[32] In 1969, the definition of "urban area" in 49 USC app § 1608(c)(10) provided: "[T]he term "urban area" means any area that includes a municipality or other built-up place which is appropriate, in the judgment of the Secretary, for a public transportation system to serve commuters or others in the locality taking into consideration the local patterns and trends of urban growth."

[33] Amending RCW 35.95.010.

(Emphasis added.) The two additional entities - county transportation authorities and public transportation benefit areas - have been authorized by their enabling statutes[34] to own, or lease, and operate public transportation systems. Having been added to the definition of "municipality in RCW 35.95.020(2), they are entitled under that chapter to appropriate general funds, levy taxes, and to take advantage of other related subsidies in order to subsidize their systems.[35] Because the "public road construction" tax treatment for "mass public transportation terminals and parking facilities" was introduced in the 1969 Public Mass Transportation Systems Act, which benefited urban systems owned by "municipalities" as defined in RCW 35.95.020(2), the public road construction tax treatment was clearly meant to benefit those terminals and parking areas serving transportation systems owned, or leased, and operated by those entities enumerated in RCW 35.95.020(2).

In 1992, Regional Transportation Authorities (RTA) were established by chapter 81.112 RCW. In so doing, the legislature expressed the concern that:

> existing transportation facilities in the central Puget Sound area are inadequate to address mobility needs of the area . . . [because of] the geography of the region, travel demand growth, and public resistance to new roadways" [and that] a single agency would be more effective than several local jurisdictions working collectively. . . .[36]

Included in an RTA's powers is the authority to:

> acquire . . . construct, add to, improve, replace, repair, maintain, operate, and regulate the use of high capacity transportation facilities and properties within authority boundaries including surface, underground, or overhead railways, tramways, busways, buses, bus sets, entrained and linked buses, ferries, or other means of local transportation except taxis, and including escalators, moving sidewalks, personal rapid transit systems or other people-moving systems passenger terminal and parking facilities and properties . . . as may be necessary for passenger, vehicular, and vessel access to and from such people-moving systems, terminal and parking facilities and properties . . . .[37]

RTAs are not included in the RCW 35.95.020(2) definition of "municipality" because, unlike the other local transportation authorities included therein which derive their funding sources from chapter 35.95 RCW, RTAs derive their funding sources from chapter 81.104 RCW. However, RCW 81.112.100 grants RTAs:

> all rights with respect to the construction, . . . alteration, . . . [and] repair . . . of high capacity transportation system facilities . . . that any city, county, county transportation authority,

[34] Respectively, ch. 36.57 RCW and ch. 36.57A RCW.
[35] In its "Washington's Transportation Plan, April 1996," the Washington Department of Transportation estimated that 83.3% of Washington's citizens reside within the boundaries of such public transportation providers.
[36] RCW 81.112.010.
[37] RCW 81.112.080(2).

> metropolitan municipal corporation, or public transportation benefit area within the authority boundary has been previously empowered to exercise.

(Emphasis added.) Thus, RTAs are given the same rights as RCW 35.95.020(2) "municipalities" when they build, repair, and improve mass public transportation terminals and parking facilities. Because the entities included in the RCW 35.95.020(2) definition are entitled to "public road construction" tax treatment when they build, repair, and improve their terminals and parking facilities, we recognize an RTA's right to the same tax treatment in such construction projects.

Taxpayer has raised the argument that local transportation systems do not utilize "terminals," and that the legislature, in the use of that term, could not therefore have been referring to urban systems. However, there are many references to "terminals and parking facilities" in the enabling acts of such systems.

At the time of the enactment of the 1969 Public Mass Transportation Systems Act, RCW 35.58.240 already provided for the construction, repair, and maintenance of terminals and parking facilities appurtenant to public transportation systems operated by metropolitan municipal corporations:

> A metropolitan municipal corporation shall have the power to perform any one or more of the following functions . . . (3) Metropolitan public transportation.[38] If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan transportation, it shall have the following powers in addition to the general powers granted by this chapter . . .(2) . . . to . . . construct, add to, improve, replace, repair, maintain . . . passenger terminal and parking facilities . . . as may be necessary for passenger and vehicular access to and from such terminal and parking facilities and properties . . .

In the 1971 Metropolitan Municipal Corporations Act,[39] the legislature defined the meaning of "public transportation" by adding the following provision to chapter 35.58 RCW:

> (14) "Metropolitan public transportation" or "metropolitan transportation" for the purposes of this chapter shall mean the transportation of passengers only and their incidental baggage by means other than by chartered bus, sightseeing bus, or any other motor vehicle not on an individual fare-paying basis, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people-moving systems.[40]

This definition, now included in chapters both on metropolitan municipal corporations and public benefit transportation areas, has since evolved to read:

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[38] RCW 35.58.060.
[39] Laws of 1971, 1st Ex. Sess., ch. 303 (commonly known as the "Metro Act").
[40] Codified as RCW 35.58.020, emphasis added.

> The transportation of packages[41], passengers, and their incidental baggage by means other than by chartered bus, sightseeing bus, or any other motor vehicle not on an individual fare-paying basis, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people-moving systems.[42]

The powers attendant to the public transportation function of metropolitan municipal corporations and public benefit transportation areas now include the capacity:

> (2) To . . . construct, . . . improve, replace, repair, . . . passenger terminal and parking facilities and properties as may be necessary for passenger and vehicular access to and from such people-moving systems, terminal and parking facilities and properties . . . necessary for such systems and facilities.[43]

Similar provisions exist for county transportation authorities:

> "Public transportation function" means the transportation of passengers and their incidental baggage by means other than by chartered bus, sightseeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people-moving systems . . . .[44]

> Every county transportation authority . . . shall have the following powers:
> (2) To . . . construct, . . . add to, improve, replace, repair, maintain, . . . the use of any transportation facilities and properties, including terminal and parking facilities, . . .[45]

From these sections, it is clear the legislature has specifically addressed urban transportation systems' use of "terminals," as well as "parking facilities."

[3] Accordingly, for the reasons set forth above, we hold that the phrase "mass public transportation terminals and parking facilities" used in RCW 82.04.050(6), RCW 82.04.280, and RCW 82.04.190 grants "public road construction" tax treatment to those passenger terminals and parking facilities necessary for passenger and vehicular access to and from urban "public transportation systems" that are "owned, or leased, and operated" by "municipalities" as defined by RCW 35.95.020(2), and by RTAs formed under chapter 81.112 RCW, and those terminal and parking facilities necessary for such systems.

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[41] The term "packages" was originally added to the RCW 35.58.020(14) definition of "metropolitan transportation" by Substitute House Bill No. 1063, Washington Laws, 1974 1st Ex. Sess., ch. 84, § 1. The Committee on Transportation Notes explain that the addition of this term was to give Metro the authority to carry packages on its buses.

[42] RCW 35.58.020(14) and RCW 36.57A.010(8) (emphasis added).

[43] RCW 35.58.240 and RCW 36.57A.090 (emphasis added).

[44] RCW 36.57.010(3) (emphasis added).

[45] RCW 36.57.040(2) (emphasis added).

A municipal airport passenger terminal owned by a port district is not a "mass public transportation terminal."

In resolving this case, we first note that Taxpayer is a port district formed under chapter 53.04 RCW. Port districts are authorized to be established:

> for the purposes of acquisition, construction, maintenance, operation, development and regulation within the district of harbor improvements, rail or motor vehicle transfer and terminal facilities, or any combination of such transfer and terminal facilities, and other commercial transportation, transfer, hauling, storage and terminal facilities, and industrial improvements.[46]

in order to:

> provide suitable facilities for transfer of goods from shore to ship, and from ship to shore.[47]

We further note that port districts operating airports have the powers:

> to . . . operate, and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this state; . . . to construct, install and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air travelers . . . .[48]

Washington courts have determined that port districts have not been granted the statutory powers to operate and regulate airporter services to transfer passengers and goods between their airports and surrounding areas, but must limit themselves to granting concession rights to others to do so,[49] and generally have no power to operate urban transportation businesses.[50] The aircraft which such port districts serve are operated by private and commercial entities, not by the ports themselves.

The intent section[51] of chapter 35.95 RCW in the 1969 Public Mass Transportation Systems Act indicates the legislature was concerned with the financial solvency of public transportation systems

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[46] RCW 53.04.010 (emphasis added).
[47] Christie v. Port of Olympia, 27 Wn.2d 534, 179 P.2d 294 (1947).
[48] RCW 14.08.030(1).
[49] Port of Seattle v. Washington Utilities and Transportation Commission, 92 Wn.2d 789, 794, 597 P.2d 383 (1979).
[50] See Huggins v. Bridges, 97 Wash. 553, 557, 166 Pac. 780 (1917), wherein the Supreme Court noted that port districts had not been legislatively granted the power "to operate a railway or to carry on a transpiration business or act as a common carrier, except for the operation of ferries, which power is expressly granted [by RCW 53.08.295]."
[51] RCW 35.95.010.

owned, leased, or operated by "municipalities" in the "urban areas of the state." The 1969 act was concerned with "municipalities" then and now defined by RCW 35.95.020(2).

Although port districts are "municipal corporations,"[52] they are formed under the provisions of chapter 53.08 RCW. Port districts are generally formed to enhance economic development, and not to directly serve the public at large. There are no provisions in the law granting port districts the same powers as those entities included in the RCW 35.95.020(2) definition of "municipality," especially not the power to own, or lease, and operate public transportation systems.

[4] Because a port district is not a "municipality" as defined by RCW 35.95.020(2) - i.e., "any incorporated city, town, county pursuant to RCW 36.57.100 and 36.57.110, any county transportation authority created pursuant to chapter 36.57 RCW, any public transportation benefit area created pursuant to chapter 36.57A RCW, or any metropolitan municipal corporation created pursuant to RCW 35.58.010, et seq." - or an RTA, and because a port district is generally not authorized to carry on a transportation business, we hold that Taxpayer, as a port district, does not qualify for "public road construction" tax treatment when it builds, repairs, or improves an airport passenger terminal which does not serve an urban public transportation system.

Erroneous TI&E letters concerning airport parking garage do not entitle Taxpayer to refund on terminal construction.

As to the second issue, Taxpayer argues the TI&E letters concerning airport construction were official rulings upon which it is entitled to rely, and the Department is therefore bound to issue the requested refund. Taxpayer bases its argument for relief primarily on two Washington Supreme Court cases: Hansen Baking Co. v. Seattle[53] (Hansen Baking), and Group Health Co-Op v. Tax Commission[54] (Group Health). We find this argument to be without merit.

In Hansen Baking, the Court held that a 1943 letter written by Seattle's comptroller to a baker's bureau, specifically concerning the valuation of baked goods, constituted a "ruling." Hansen Baking Co. valued its baked goods for tax purposes in accordance with the specific guidelines of the 1943 letter for the next nine years. In 1953, Seattle audited Hansen Baking and assessed a deficiency, using a valuation method different than that contained in the 1943 letter. Had the valuation in the letter been used by Seattle's auditor, there would have been no deficiency assessment. Although the Tax Commission argued that the letter contained erroneous tax information, the Court concluded an administrative agency may not alter such a ruling, even when the conclusions in it might be wrong because of an error in fact, an exercise in unsound judgment, or an abuse of discretion. Reliance was implicitly at the heart of the Court's ruling that if it were permissible for a taxing agency to challenge its own rulings years after they were rendered, "taxpayers would never be able to close their books with assurance." Id at 743, 744.

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[52] Paine v. Port of Seattle, 70 Wash. 294, 126 P. 628 (1912); Tyrpak v. Daniels, 124 Wn.2d 146, 874 P.2d 1374 (1994).
[53] 48 Wn.2d 737, 296 P.2d 670 (1956)
[54] 72 Wn.2d 422, 433 P.2d 201 (1967)

In Group Health, the taxpayer had conducted business since 1949 in accordance with the Tax Commission's letter to it advising that it was eligible to deduct, under RCW 82.04.430(9), its membership dues. Group Health, relying on the 1949 letter, continued to take the deduction until the statute was amended in 1961. In 1963, the Tax Commission issued a deficiency assessment on Group Health's membership dues for prior years, reasoning that the 1949 letter contained errors of law. Following the reasoning of Hansen Baking, the Court concluded the rulings contained errors of fact, but that the Commission could not retroactively, absent a change in the law, impeach its own rulings. Like Hansen, Group Health does not specifically discuss the element of reliance or estoppel, but it is clear reliance was important to the facts of the case and the Court's ultimate ruling. Moreover, the 1949 letter upon which Group Health had relied very specifically concerned the exact same deduction of membership dues which was disallowed by the Commission in the 1963 audit.

Taxpayer in this instance places particular emphasis on the TI&E letter dated April 12, 1991, approving "public road construction" treatment for the "installation of a ground transportation and trip monitoring system" at Taxpayer's airport. In Taxpayer's letter to TI&E requesting this advice, the system was described as follows:

> The Ground Transportation System to be constructed at the . . . Airport will track and count certain public transportation vehicles as they traverse the loading and unloading ramps around the airport terminal. This data will be used to analyze traffic patterns and to establish costs for billing by [Taxpayer], for use of the ramps by the various transportation companies.

The author of the TI&E letter, in response to the above, only recalls his understanding that the system was to consist of sensors placed in the pavement of the roadway itself.[55] In any event, Taxpayer's letter to TI&E requesting the ruling does not clearly describe the Ground Transportation Monitoring System, and does not indicate that it would involve construction in or on the terminal itself.

Taxpayer also claims TI&E's letters concerning its parking garage impliedly "ruled" that construction on Taxpayer's airport terminal was likewise exempt. This is because, Taxpayer reasons, the term "mass transportation" modifies both "terminal" and "parking facilities" in the Revenue Act. Taxpayer further argues it should be able to rely on the TI&E letters, even if the Department now considers them to have been erroneous, and that the Department should be bound by them for past periods.

[5] The doctrine of estoppel will not lightly be invoked against the State to deprive it of the power to collect taxes.[56] When estoppel is invoked, three elements must be present:

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[55] Statement dated 8/27/97.

[56] Wasem's, Inc. v. State, 63 Wn.2d 67, 70, 385 P.2d 530 (1963); Harbor Air Service, Inc. v. Board of Tax Appeals, 88 Wn.2d 359, 366-67, 560 P.2d 1145 (1977); Revenue v. Martin Air Conditioning, 35 Wn. App. 678, 683, 668 P. 2d 1286 (1983).

> (1) an admission, statement, or act inconsistent with the claim afterwards asserted, (2) action by the other party on the faith of such admission, statement, or act, and
> (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act.[57]

Reliance on erroneous advice is thus one of the necessary common law elements of estoppel.[58]

The TI&E letters here at issue specifically addressed only projects related to Taxpayer's airport parking facilities and/or roads, and made no mention of proposed construction on the airport passenger terminal itself. The TI&E letters did not provide Taxpayer with inconsistent erroneous specific written advice or instructions concerning Taxpayer's airport passenger terminal. Furthermore, because Taxpayer paid the retail sales taxes on the total construction costs of its airport passenger terminal as a matter of course throughout all the years for which it now requests refund, it obviously did not rely on the TI&E letters

[6] Moreover, the Taxpayer's Rights and Responsibilities Act provides statutory remedies for written misinformation issued to a taxpayer by the Department. The pertinent portion of this act provides:

> The taxpayers of the state of Washington have . . . (2) The right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their detriment.[59]

Under this section, only taxpayers: (1) who have been issued specific erroneous written advice/reporting instructions, and (2) who have relied on these instructions to their detriment, have the right to a remedy. The only remedies available are the right to (1) the waiver of interest and penalties on an assessment, and (2) the waiver, "in certain instances," of the tax assessment itself. There is no provision for the refund of taxes already paid which were not the result of a tax deficiency assessment.

Here, the Taxpayer fails to meet the established criteria for relief under both the common law theory of estoppel and the Taxpayer's Rights and Responsibilities Act. Taxpayer is therefore not entitled to a refund.

DECISION AND DISPOSITION:

Taxpayer's request for refund is denied.

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[57] Harbor Air Service, Inc. v. Board of Tax Appeals, supra at 366-67.
[58] See also Det. No. 90-231A, 6 WTD 305 (1990); Det. No. 89-77, 7 WTD 171 (1989); Det. No. 88-234, 6 WTD 065 (1988); Det. No. 88-205, 5 WTD 387 (1988).
[59] RCW 82.32A.020.

Dated this 3rd day of April, 1998.