

Cite as Det. No. 05-0288, 26 WTD 143 (2007)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of )	<u>D E T E R M I N A T I O N</u>
Assessment of )	
)	No. 05-0288
)	
. . . )	
)	Registration No. . . .
)	Doc. No. . . . /Audit No. . . .
)	Docket No. . . .
)	

RULE 180; RCW 82.16.020; 49 U.S.C. § 14505: MOTOR TRANSPORTATION PUT -- URBAN TRANSPORTATION PUT -- INTERSTATE COMMERCE COMMISSION TERMINATION ACT OF 1995 - TRANSPORTING RAILROAD CREWS WITHIN WASHINGTON BY MOTOR VEHICLES. The Department of Revenue is not preempted by federal law (49 U.S.C. § 14505) from assessing public utility tax on the taxpayer's gross receipts earned from transporting railroad crews by motor vehicles between points within the state of Washington.

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.

De Luca, A.L.J. – A foreign corporation doing business in the state of Washington as a contract carrier of passengers protests the assessment of public utility tax on its gross receipts earned from transporting railroad crews between points wholly within this state. . . . We hold: one, Washington is not preempted by federal law in taxing income from such transportation activity; . . . .<sup>1</sup>

### ISSUES

1. Is the Department of Revenue (DOR) preempted by federal law (49 U.S.C. § 14505) from assessing public utility tax on the taxpayer's gross receipts earned from transporting railroad crews by motor vehicles between points within the state of Washington?

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410. Nonprecedential portions of this determination have been deleted.

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### FINDINGS OF FACT

The taxpayer is a foreign corporation engaged in the business of providing transportation services in several states, including Washington. The taxpayer's customers in Washington during the audit period were interstate railroad companies. The railroad companies hired the taxpayer to transport their train crews from rail yard to rail yard, from hotels to rail yards, and from rail yards and hotels to other points along rail lines.

The taxpayer is authorized by the U.S. Department of Transportation to operate as both a common carrier and a contract carrier of passengers . . . and is certified by the Washington Utilities and Transportation Commission as a "Charter Party Passenger (Bus) Carrier." In Washington, the taxpayer used vans and sport utility vehicles to transport the train crews. . . .

With respect to the taxpayer's business activities pertaining to Washington, about 18% of its services involved transporting crews from points within Washington to points without this state, or vice versa. Approximately 82% of its transportation services did not involve transporting persons across state lines. Rather, those services were wholly between points within Washington. But the taxpayer adds that a large percentage of the in-state transportation of train crews results in either the conclusion or beginning of train trips that cross this state's boundaries.

The Audit Division of the Department of Revenue (DOR) reviewed the taxpayer's records for the period January 1, 2000 through December 31, 2003 and assessed the taxpayer as follows. The Audit Division credited the taxpayer \$. . . in service & other activities business and occupation (service B&O) tax that the taxpayer had reported on its gross receipts for transporting the train crews within Washington. In place of the service B&O tax, the Audit Division assessed the taxpayer \$. . . in motor transportation business public utility tax, and \$. . . in urban transportation business public utility tax on income earned from transporting the crews between places within Washington. The Audit Division did not assess the income earned for transporting the train crews across Washington's boundaries. . . . The net assessment of taxes, interest, and a 5% assessment penalty amounted to \$. . . , which remains unpaid. The taxpayer protests the assessment of the public utility tax on its gross proceeds . . . .

### ANALYSIS

The Audit Division assessed the public utility tax on what it found to be the taxpayer's urban transportation business pursuant to RCW 82.16.020(1)(d) and on what it found to be the taxpayer's motor transportation business pursuant to RCW 82.16.020(1)(f).<sup>2</sup>

The taxpayer argues its transportation services are in-state legs of continuous interstate journeys by the train crew members. It contends the public utility tax does not apply to its gross receipts

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<sup>2</sup> See Det. No. 96-134, 16 WTD 102 (1996), for an explanation of the differences between the two classifications.

because of the interstate nature of its transportation services.<sup>3</sup> Specifically, the taxpayer asserts the Interstate Commerce Commission Termination Act of 1995, U.S. Public Law 104-88 (ICCTA) provides an exemption from state and local gross receipts taxes for motor carriers engaged in the business of transporting passengers traveling in interstate commerce by preempting this state's public utility tax. That statute provides:

A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on—

- (1) a passenger traveling in interstate commerce by motor carrier;
- (2) the transportation of a passenger traveling in interstate commerce by motor carrier
- (3) the sale of passenger transportation in interstate commerce by motor carrier; or
- (4) the gross receipts derived from such transportation

49 U.S.C. § 14505.

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### **Federal Preemption**

We hold that Washington is not preempted by 49 U.S.C. § 14505 from taxing the taxpayer's gross receipts earned from its transportation services. . . . [However, WAC 458-20-193D] provides that income earned from transporting persons or property in interstate or foreign commerce is exempt from tax. . . . Thus, if the taxpayer's gross income is exempt from Washington's public utility tax (Chapter 82.16 RCW), it is because of Washington law and not due to federal preemption.

We will first address the taxpayer's claim that 49 U.S.C. § 14505 preempts Washington from imposing its public utility tax on the taxpayer's gross receipts derived from the in-state transportation services it provided the train crews. . . .

The issue of federal preemption stemming from 49 U.S.C. § 14505 has been addressed by at least two courts, but not by a Washington court or DOR. In *Tri-State Coach Lines, Inc. v. Metropolitan Pier & Exposition Authority*, 315 Ill. App.3d 179, 732 N.E. 1137 (Ill. App. 2000), the Illinois Court of Appeals addressed the issue of whether the federal statute (ICCTA), prohibiting the states or their political subdivision from levying a tax on the transportation of passengers traveling in interstate commerce by motor carrier, preempted a metropolitan authority

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<sup>3</sup> The taxpayer recognizes that the service B&O tax it reported was not applicable to the transportation services it rendered. Nonetheless, the taxpayer claims no tax is due on its gross proceeds because it contends its transportation services were interstate in nature.

from imposing an airport departure tax upon ground transportation operators that carried passengers from Chicago-area commercial airports to locations either within Illinois or beyond Illinois. The Illinois Court of Appeals decided that the ICCTA did not preempt the metropolitan authority from imposing its tax on the ground transportation services from the airports to points either within or without Illinois. 732 N.E.2d at 1151. The court reached its decision by closely examining the law's legislative history after it determined the statutory language to be ambiguous. The court found that Congress' purpose in enacting §14505 of the ICCTA in 1995 was to override the then-recent U.S. Supreme Court decision in *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S.175 (1995). In *Jefferson Lines*, the U.S. Supreme Court permitted Oklahoma to levy a sales tax on the full price of bus tickets for travel from Oklahoma to another state. 514 U.S. at 200.

The Illinois court in *Tri-State Coach* then declared:

It was within this jurisdictional background and climate that Congress enacted section 14505 of the ICCTA. This background, coupled with the clear legislative declaration disclosed within the committee and conference reports, reveals a congressional purpose designed to prevent states and their political subdivisions from collecting or levying taxes on bus fares for interstate travel. Accordingly, we find that Congress' exclusive focus in enacting section 14505 was to ensure that the tickets for interstate city-to-city bus trips, trips often passing through multiple states and having minimal contact with the state of origin, were not taxed by the originating state in a manner disproportionate to the benefits received in that state. Stated another way, the "particular evil" that section 14505 was intended to remedy was a state's imposition of a sales tax upon the whole price of an interstate bus ticket where the contact of the interstate bus trip with the taxing state was minor.

732 N.E. at 1147. The Illinois court then determined that section 14505 of the ICCTA did not apply to the local departure tax on the types of travel provided by the ground transportation businesses operating at the Chicago airports because those services were not city-to-city interstate bus trips like the ones addressed in *Jefferson Lines*. 732 N.E. at 1147-50. *See also Jalbert Leasing, inc. v. Massachusetts Port Authority*, Slip Copy, 2005 WL 1288108 (D. Mass., May 18, 2005) (favorably citing the analysis in *Tri-State Coach*.)

We find the reasoning stated in *Tri-State Coach* to be persuasive in the present appeal. The taxpayer in this appeal, like the ground transportation operators in *Tri-State Coach*, does not provide the type of city-to-city interstate bus trips like the ones described in *Jefferson Lines*. We conclude that Washington is not preempted by 49 U.S.C. § 14505 from imposing its public utility tax on the type of transportation services provided by the present taxpayer for the railroad crews.

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DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 15th day of November 2005.