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Cite as Det. No. 01-167E, 21 WTD 272 (2002)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	F I N A L D E T E R M I N A T I O N
	)	
	)	No. 01-167E
. . .	)	Registration No. . . .
	)	FY . . . /Audit No. . . .
	)	Docket No. . . .

[1] RULE 261; RCW 82.16.047, RCW 82.04.355: PUBLIC UTILITY TAX – B&O TAX -- EXEMPTIONS – RIDE SHARING – SPECIAL TRANSPORTATION NEEDS. Income from operating a transit agency's paratransit service is not exempt from PUT or B&O tax, because the exemption for companies transporting persons with special transportation needs applies only to public social service agencies or private nonprofit transporters.

[2] RULE 179; RCW 82.16.050: PUBLIC UTILITY TAX – DEDUCTIONS – JOINTLY PROVIDED SERVICES. A taxpayer can not deduct from its gross income amounts paid to another service provider for jointly provided services when the taxpayer reports no income from the jointly provided services.

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.

DIRECTOR'S DESIGNEE: Janis P. Bianchi, Policy and Operations Manager

Mahan, A.L.J. – A public transit agency protests a deficiency assessment and contends that revenues from paratransit services are exempt from the public utility tax (PUT) and payments to a subcontractor providing paratransit services are deductible from the taxpayer's gross income.[1]

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

ISSUES:

1. Whether a public transit agency's income from the operation of a paratransit service is exempt from PUT.
2. Whether a public transit agency may deduct from its gross income amounts paid to a subcontractor for paratransit services when it reports no income from paratransit services.

FACTS:

The taxpayer is a municipal corporation, created pursuant to RCW Ch. 36.57A. It operates a public transit system . . . .

In order to comply with the anti-discrimination requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 1201, *et seq.*, and related statutes and regulations, the taxpayer provides "paratransit" services. The ADA requires providers of fixed route public transportation systems to provide paratransit services to disabled persons on a basis comparable to service provided to the general public. 42 U.S.C. § 12143(a) (1995). Under the United States Department of Transportation (DOT) regulations, the term "paratransit**"** means "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems." *49 CFR 37.3* (1998). In its contract documents, the taxpayer states that its services are "for individuals who are functionally unable to use the fixed-route system." In contrast to a fixed-route system, the taxpayer provides paratransit services for a qualified passenger for any purpose within the paratransit service boundaries.[2]

The taxpayer's fare revenues cover less than 5% of the cost of providing paratransit services. The paratransit services are subsidized through grants and tax revenues.

Historically, the taxpayer provided paratransit services through a combination of vehicles driven by the taxpayer's employees and vehicles operated under contract with private, for-profit vendors. The most recent contract anticipates that vendors will have the capacity to meet all

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[2]In *Fell v. Spokane Transit Authority*, 128 Wn.2d 618, 629, 911 P.2d 1319 (1996), the court described paratransit services as follows:

> DOT adopted very explicit regulations to define precisely what agencies must do to provide comparable services to disabled persons. *See* 49 C.F.R. §§ 37.121 - 37.173 (1994). DOT noted in adopting the regulations that paratransit service was "not intended to be a comprehensive system of transportation for individuals with disabilities." 56 Fed. Reg. 45,601 (1991). DOT emphasized comparability of service for the disabled: "The ADA does not attempt to meet all the transportation needs of individuals with disabilities . . . The ADA is intended simply to provide to individuals with disabilities the same mass transportation service opportunities everyone else gets, whether they be good, bad, or mediocre." 56 Fed. Reg. 45,601 (1991). The DOT regulations define the paratransit service corridor as three-quarters of a mile on either side, and at the end, of each fixed route. 49 C.F.R. § 37.131(a)(1)(i) (1994). Transit agencies are not required to provide paratransit services outside the boundaries in which they operate. 49 C.F.R. § 37.131(a)(3) (1994). [Footnote omitted.]

paratransit service demands during specified service periods. When services were provided by vendors, the vendors drove, operated, supplied, and maintained the paratransit vans. With respect to such services, the taxpayer received all applications for service, screened users for eligibility, and scheduled required van usage. The taxpayer paid the vendors on an hour-of-service basis. When vendors collected cash fares from passengers, the vendors applied those receipts against payments due from the taxpayer.

The Department of Revenue (Department) audited the taxpayer's records for the January 1, 1996 through December 31, 1999 period and issued a deficiency assessment in the amount of $ . . . . Under Schedule 7 of the assessment, the Department disallowed deductions from the PUT taken by the taxpayer for amounts paid to vendors for jointly providing services to persons with special transportation needs. The Department stated: "You did not report the income; therefore, you are not afforded a deduction."

The taxpayer appealed the disallowed deduction. It contends that both an exemption from tax and a deduction from gross income apply to the income at issue in this case. It contends that income from providing services to persons with special transportation needs is exempt from taxation under RCW 82.16.020 and, therefore, such income, whether received directly or indirectly through vendors, does not need to be reported. Further, the taxpayer contends that the deduction provided under RCW 82.16.050(3) for payments to vendors for jointly provided services applies against its entire gross income, not just against income from providing paratransit services.

ANALYSIS:

1. Is the Taxpayer's income from the operation of paratransit services exempt from PUT?

RCW 82.16.020 imposes the PUT for the privilege of engaging in certain businesses in Washington, including motor transportation (subsection (d)) and urban transportation (subsection (f)) businesses. RCW 82.16.047 provides the following "ride sharing" exemption from PUT:

> This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010.

In relevant part RCW 46.74.010(3) defines the term "ride sharing for persons with special transportation needs" to mean "an arrangement whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010(3) in a passenger motor vehicle . . . ."[3] *See also* WAC 458-20-261(3) ("Amounts received from providing commuter ride

[3] RCW 81.66.010(3) defines the term "private, nonprofit transportation provider" to mean "any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs." The term "persons with special transportation needs" is further defined to mean "those persons, including their

sharing and ride sharing for persons with special transportation needs are exempt from the business and occupation tax and from the public utility tax. RCW 82.04.355 and 82.16.047").

Reading RCW 82.16.047 in conjunction with RCW 46.74.010(3), in order for the exemption to apply funds must be: (1) received "in the course of . . . ride sharing"; (2) "whereby a group of persons with special transportation needs, and their attendants, is transported" (3) "by a public social service agency or a private, nonprofit transportation provider."

Public transit agencies do not qualify for the exemption for income from transporting persons with special transportation needs, because they are not public social service agencies or private nonprofit transporters. *See* Det. No. 00-064, 19 WTD 1013 (2000); *Dave Transportation Services, Inc. v. Department of Rev.*, Doc, No. 55579 (Bd. Tax Appeals 2001). In response to these cases, the taxpayer asks us to overrule Det. No. 00-064 and to not follow the Board of Tax Appeals decision. The taxpayer further notes that, because a public transit agency was not a party in those cases, any holding with respect to transit agencies should be considered dicta.

In interpreting statutes, we must determine legislative intent. To do so we look first to the language of the statute. *Lacey Nursing v. Department of Rev.*, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). Absent ambiguity, we rely on the plain language of the statute. *City of Spokane v. Department of Rev.*, 104 Wn. App. 253, 258, 17 P.3d 1206 (2001). If ambiguous, we engage in statutory construction. *Id.* A statute is ambiguous if it is susceptible to more than one reasonable interpretation. *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 608, 998 P.2d 884 (2000).

In the present case, the term "public social service agency" is not defined in the statute. When statutory terms are not defined, we turn to their "ordinary dictionary meaning." *Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 609, 998 P.2d 884 (2000). The term "social service" is used in a general and specific sense and is defined to mean: "an activity designed to promote social welfare; *specif* **:** organized philanthropic assistance to the sick, destitute, or unfortunate (as by a hospital, church or charitable agency)." Webster's Third New International Dictionary 2162 (1993). The more specific usage lists a synonymous cross-reference to "welfare work," which is defined to mean: "organized efforts by a community, organization, or individual for the social betterment and general improvement in the welfare of a group in society (as underprivileged or disabled persons)." *Id.* at 2594. In a similar manner, the term "social welfare" is defined to mean "organized public or private social service for the assistance of disadvantaged classes or groups, *spec.* **:** SOCIAL WORK." *Id.* The term "social work" is then defined to mean "any of various professional services, activities or methods concretely concerned with the investigation, treatment, and material aid of the economically underprivileged and socially maladjusted. . . . ." *Id.*

To determine whether the taxpayer is organized or engaged in providing such services, we start with its authority to conduct business. Under the taxpayer's authorizing statute, the public

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personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase appropriate transportation." RCW 81.66.010(4).

transportation services it provides are defined as "the transportation of packages, passengers, and their incidental baggage by means other than by chartered bus, sight-seeing bus, together with the necessary passenger terminals and parking facilities. . . ." RCW 36.57A.010(8).[4] The taxpayer is engaged in organized efforts to provide transit services. There is nothing in this statutory authorization to indicate it is engaged in organized efforts for the social betterment of disabled persons.

In support of its argument that it should be considered a "public social service agency," the taxpayer points to anti-discrimination requirements that it faces under state and federal law. The ADA "addresses discrimination in public transportation" by requiring public transit agencies to provide "comparable" services. *Fell v. Spokane Transit Authority*, 128 Wn.2d 618, 628, 911 P.2d 1319 (1996). Washington's anti-discrimination statute, RCW 49.60, and applicable regulations, WAC ch. 162-26, although not setting specific standards with respect to public transportation, would also bar discrimination in matters involving public accommodations. *Id.* at 627.[5] However, the taxpayer has not explained how providing services in a nondiscriminatory manner converts a public transit agency into a public social service agency, as that term is ordinarily used. Accordingly, we find the Department reasonably interpreted the term "public social service agency" as not applying to the taxpayer's operation.

Even if we found that the taxpayer's broad interpretation was also reasonable, rules of statutory construction do not favor the taxpayer in resolving the ambiguity created by two differing interpretations. At issue is an exemption statute. When we interpret exemption provisions, the burden is upon the taxpayer to show the exemption applies and any ambiguity is "construed strictly, though fairly and in keeping with the ordinary meaning of their language, against the taxpayer." *Simpson Inv. Co.*, 141 Wn.2d 139 at 149-50 (quoting *Group Health Coop. of Puget Sound, Inc. v. Washington State Tax Comm'n*, 72 Wn.2d 422, 429, 433 P.2d 201 (1967)). In construing the exemption provision strictly and against the taxpayer, the taxpayer would not be considered a public social service agency entitled to the exemption. Considering narrowly the specific usage of the term "social service" and related terms, the taxpayer is not engaged in professional or organized efforts for the social betterment of disabled persons. The taxpayer provides transportation services to the public. Because it provides such services to the pubic, the ADA imposes the duty to provide paratransit services to disabled persons. Because it provides such services does mean it is engaged in professional or organized efforts to promote social welfare.

The legislative history of RCW 82.16.047 also does not support the taxpayer's position. When a statute is ambiguous, "legislative history of the statute is an important tool to ascertain intent."

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[4] For a discussion of the development of public transportation in Washington, see generally Det. No. 95-052ER, 17 WTD 278 (1998).

[5] In support, the taxpayer refers to WAC 162-26-080. As noted in *Fells*, 128 Wn.2d at 627, n. 10: "The dissent properly notes that this [paratransit case] is an 'arranged service' case (WAC 162-26-060(3) and 162-26-090), and not a 'reasonable accommodation' case (WAC 162-26-060(2) and 162-26-080)."

In re Sehome Park Care Center v. Washington, 127 Wn.2d 774, 778, 903 P.2d 443 (1995). The relevant legislative history was summarized in Det. No. 00-064, as follows:

> The PUT exemption was part of Substitute House Bill 96, which was signed into law as Chapter 111 of the Laws of 1979. The Bill Analysis for SHB 96 stated:
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> > [B]ecause many ride sharing arrangements involve compensation of one form or another, uncertainty has arisen as to whether or not the vehicles being used for ride sharing are "for hire vehicles." A very high standard of care could be applied to operators or ride sharing vehicles if they are "for hire vehicles." Because insurers believe they will be paying numerous claims, ride-sharing operators are finding it difficult and expensive to obtain insurance. Ride sharing plays an important role in promoting fuel conservation, decreases traffic congestion, improves air quality, makes better use of existing highways and parking facilities and provides the only means of transportation to certain persons such as the handicapped. Barriers to greater use of ride sharing should be removed yet limited regulations should be set to protect elderly and handicapped persons who depend upon ride sharing for transportation.
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> To address these issues, the law provided: (1) a reduced standard of care for operators and drivers of commuter ride sharing vehicles—but not for vehicles for ride sharing for persons with special transportation needs (RCW 46.74.030); (2) an exemption from the for-hire vehicle provisions for all ride sharing vehicles "whether or not the ride-sharing operator receives compensation" (RCW 46.74.020); (3) licensing provisions for private non-profit transporters of persons with special needs (RCW 81.66); and (4) tax exemptions for compensation received "in the course of" ride sharing (RCW 82.04.355 and 82.16.047).

It is clear that the exemption at issue, RCW 82.16.047, was part of an enactment that was intended to meet specific goals. The granting of an exemption to transit agencies for transporting persons with special transportation needs does not appear to have been one of those goals. Transit agencies were already providing transportation to the elderly and handicapped, and there is no indication of any actual or perceived barriers that needed to be lowered in order to promote greater use.[6]

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[6]The law with respect to transporting the elderly and handicapped was amended in 1996. Those amendments primarily deal with retail sales tax and motor vehicle excise tax (MVET) exemptions for both commuter and special transportation needs ride sharing vehicles. Final Legislative Report, SSB 6694, Laws of 1996, Chapter 244. Under RCW 82.08.0287, vehicles to be used for special transportation needs as defined in RCW 46.74.010 and used for 36 months or more are exempt outright. Several additional alternative requirements apply to vehicles for commuter ride sharing; one of which is that the vehicle be operated by public transportation agency for the general public. That restriction does not apply to vehicles for special transportation needs. Sections 2 of the bill, which applied to the retail sales tax exemption, and Section 5 of the bill, which applied to a motor vehicle excise tax exemption, removed a requirement in both statutes that vehicles must weigh less than 10,000 pounds to be exempt. The legislative history to the bill noted that the amendment was prompted by the ADA, the requirements of which caused some vehicles to

Further, the language of a statute must also be read in context with the entire statute and construed in a manner consistent with the general purpose of the statute. *Graham v. State Bar Ass'n*, 86 Wn.2d 624, 627, 548 P.2d 310 (1976). Unlike the exemption at issue, which is specifically limited to social service agencies and private, nonprofit transporters, other parts of the legislation made specific reference to public transportation services. For example, the term "ride-sharing operator" was broadly defined to mean:

> [T]he person, entity, or concern, not necessarily the driver, responsible for the existence and continuance of commuter ride sharing, flexible commuter ride sharing, or ride sharing for persons with special transportation needs. The term "ride-sharing operator" includes but is not limited to an employer, an employer's agent, an employer-organized association, a state agency, a county, a city, a public transportation benefit area, or any other political subdivision that owns or leases a ride sharing vehicle.

RCW 46.74.010(4) (emphasis added).

The provision concerning reduced liability for commuter ride share operators also provides that such entities are "not subject to ordinances or regulations which relate exclusively to . . . public transit carriers." RCW 46.74.030. Had the legislature intended to have the PUT exemption broadly applied to public transit carriers, it clearly could have done so. It could have made the exemption applicable to a "public transportation benefit area" or to a "public transit" carrier as

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exceed 10,000 pounds. Nothing in that bill changed the public utility tax on gross income earned from funds from ride sharing for persons with special transportation needs. The bill also changed the term "elderly and handicapped" to "persons with special transportation needs." In do doing, it retained the reference to RCW 46.74.010, which includes the public social service agency restriction. Neither the bill nor the legislative history provides any clarification or explanation as to the continued use of the term "public social service agency" in RCW 46.74.010.

Prior to 1996, RCW 46.74.010(2) provided:

> (2) "Ride sharing for the elderly and the handicapped" means a car pool or van pool arrangement whereby a group of elderly and/or handicapped persons and their attendants, not exceeding fifteen persons including passengers and driver, is transported by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010(3): PROVIDED, That the driver need be neither elderly nor handicapped.

In 1996 the definition was revised and recodified to read:

> (3) "Ride sharing for persons with special transportation needs" means an arrangement whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010(3) in a passenger motor vehicle as defined by the department to include small buses, cutaways, and modified vans not more than twenty-eight feet long: PROVIDED, That the driver need not be a person with special transportation needs.

See Laws of 1996, ch. 244, sec. 2. The Laws of 1999 ch. 358, § 8 also substituted the phrase "persons with special transportation needs" for "the elderly and handicapped" in the exemption provided by RCW 82.04.355.

well as to a "public social service agency or a private, nonprofit transportation provider." It chose not to do so.

Accordingly, we decline to either overrule Det. No. 00-064, 19 WTD 1013, or to not follow *Dave Transportation Services, Inc. v. Department of Rev.*, Doc, No. 55579 (Bd. Tax Appeals 2001), as the taxpayer requests. We find the taxpayer was not entitled to the exemption from tax for income from transporting persons with special transportation needs. Whether received directly or indirectly through its vendors, such income would be subject to PUT and must be reported.

2. *Can the taxpayer deduct from its gross income amounts paid to a subcontractor for paratransit services when it reports no income from paratransit services?*

RCW 82.16.050(3) provides the following deduction from the PUT:

> 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 . . . .

In order to qualify for the deduction, under the plain reading of the deduction, three elements must be met: (1) the taxpayer must have paid an amount to a vendor subject to the PUT; (2) the amount must be for the vendor's portion of the consideration due from furnishing jointly provided services; and (3) the taxpayer must report the total amount of the income as part of its gross income.

The Department does not dispute that the first element was met in this case. As to the second and third elements, issues exist as to what was the vendor's portion of the consideration due from furnishing jointly provided services and what was the total amount that was credited to and appeared in the taxpayer's gross income.

Under the plain reading of the statute, the amounts subject to the deduction are related to the consideration due from furnishing jointly provided services, not to any amounts that might be paid to a vendor. Amounts in excess of the consideration due from furnishing jointly provided services would not be subject to the deduction. With the exception of the fares that the taxpayer received or was entitled to receive through its vendors, there was no consideration from furnishing jointly provided services. Those fares at most would constitute the vendor's portion of the "consideration due for services furnished jointly by both." Accordingly the second element of the deduction was not met in this case with respect to amounts in excess of the fare revenue.

Contrary to the taxpayer's argument, the specific deduction provision requires income from jointly provided services to be reported before a deduction from gross income can be taken. The taxpayer cannot simply take the deduction against gross income without reporting the income to which the deduction applies. Absent the fares from passengers, the taxpayer would not have any

income from the jointly provided services to be credited to its gross income. Because the taxpayer considered the amounts it received or was entitled to receive as being exempt, it did not report any income from the jointly provided services. Accordingly the third element of the deduction was not met in this case.

The taxpayer contends that such an interpretation results in a "windfall" to the state. When the taxpayer receives or is entitled to receive fare income from passengers, it must report the income. To the extent that income is considered the vendor's portion of the income from jointly provided services and the taxpayer paid such an amount to the vendor, the taxpayer could deduct this amount from its gross income. Under such a scenario, the state would not receive any tax from the taxpayer on the fare income from jointly provided services. We fail to see how this would result in a windfall to the state. Accordingly, we find the Department reasonably interpreted the deduction at issue.

Even were we to find the taxpayer's interpretation of the deduction provision also to be reasonable, the result would not be in the taxpayer's favor. When we construe deduction provisions, the burden is upon the taxpayer to show the deduction applies and any ambiguity is "construed strictly, though fairly and in keeping with the ordinary meaning of their language, against the taxpayer." *Simpson Inv. Co*., 141 Wn.2d at 149-50. In construing the deduction provision strictly and against the taxpayer, the taxpayer would not be entitled to deduct from its gross income all payments to its vendor as it seeks to do in this case.

Although the previously unreported fare income was subject to tax, as discussed above, such income, had it been reported, would likely have been offset by the deduction for amounts paid to its vendor as the vendor's portion of the consideration due from furnishing jointly provided services. As a consequence, the amount of the tax assessment would remain unchanged.

DECISION AND DISPOSITION:

The taxpayer's petition for correction of the assessment is denied and the amount of the Department's assessment is affirmed.

Dated this 31st day of October, 2001.