

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. 97-104R
)	
...)	Registration No. . . .
)	FY. . . /Audit No. . . .
)	
)	

RULE 178; RCW 82.12.0282: USE TAX -- EXEMPTION -- RIDE-SHARING VEHICLES -- PARATRANSIT VEHICLES -- WEIGHT LIMIT. The use tax exemption for ride-sharing vehicles used for transporting the elderly and the handicapped contained in RCW 82.12.0282 does not require that the vehicle weigh less than 10,000 pounds.

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:

A county transportation authority asks for reconsideration of a letter determination denying its request for a refund of use taxes paid on six paratransit vehicles used primarily to transport the elderly and the handicapped.¹

FACTS:

Okimoto, A.L.J.-- Taxpayer is a public transportation agency serving the general public of a county in Washington. In addition to regular bus service, Taxpayer offers point-to-point transportation services to disabled and handicapped persons in specially-designed paratransit vehicles. In May of 1995, Taxpayer purchased six paratransit vehicles to be used primarily for transporting elderly and handicapped passengers. On May 18, 1995, the Special Programs Division (Special Programs) of the Department of Revenue (Department) sent Taxpayer a use

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

tax assessment on its purchase of paratransit vehicles. Taxpayer paid the assessment, and then petitioned for a refund pursuant to WAC 458-20-100 (Rule 100) claiming that its six vehicles were exempt from use tax under RCW 82.12.0282.

Special Programs denied Taxpayer's refund request on the grounds that the vehicles were not entitled to the exemption allowed by RCW 82.12.0282 because they exceeded a 10,000 pound weight limit required by the exemption.

Taxpayer timely appealed that decision to this division. After two telephone conferences, the Administrative Law Judge denied Taxpayer's petition. Taxpayer timely appealed that denial and now asks for reconsideration. Taxpayer argues in its petition:

Paratransit vehicles used primarily for ride-sharing for the elderly and handicapped, as defined by RCW 46.74.010(2), are exempt from the use tax under RCW 82.12.0282. The subject vehicles qualify for this exemption because each vehicle is operated by the Whatcom Transportation Authority and carries no more than fifteen persons, as provided by RCW 46.74.010(2). Moreover, the weight limitation of 10,000 pounds gross vehicle weight contained in RCW 82.44.015 and RCW 82.12.0282 does not apply to these vehicles because this limitation applies only to passenger motor vehicles "where the primary usage is for commuter ride-sharing as defined in RCW 46.74.010(1)."

Because the paratransit vehicles at issue in this appeal are used primarily for ride-sharing for the elderly and handicapped rather than "commuter ride-sharing," the 10,000 pounds limitation is not applicable. This interpretation also makes sense as a practical matter because the excess weight over 10,000 pounds is largely attributed to the additional equipment necessary for such paratransit vehicles of this size. Thus, these vehicles are exempt from the use tax under RCW 82.12.0282.

In support of its position, Taxpayer states that the Department of Licensing has already determined that the paratransit vehicles are exempt from use tax and motor vehicle excise tax and has issued the appropriate registration. In addition, Taxpayer submitted an opinion letter dated February 12, 1986, issued by the Department to Spokane Transit Authority stating that their purchases of special transportation vehicles were exempt from sales tax under RCW 82.08.0287².

Taxpayer also submitted an opinion letter, dated July 24, 1996, issued by the Department's Taxpayer Information and Education Section (TI&E) to the another county's Auditor's office stating that purchases of 17 paratransit vehicles by a transit company would be exempt from retail sales tax under RCW 82.08.0287 only if they were used for ride sharing for the elderly and handicapped for at least thirty-six months and weighed under 10,000 pounds excluding special rider equipment. Although Taxpayer does not concede that the 10,000 pound limit applies to vehicles purchased primarily to transport elderly and handicapped persons, it nevertheless

² RCW 82.08.0287 is the companion retail sales tax exemption for RCW 82.12.0282.

submitted evidence that the paratransit vehicles weighed 10,340 pounds with a driver and 1/2 tank of fuel. Taxpayer argues that when the special lift-equipment weighing 400 pounds is subtracted from gross weight, the total weight falls under the 10,000 pound limit.

ISSUE:

Does the use tax exemption for ride-sharing vehicles purchased primarily for transporting the elderly and the handicapped contained in RCW 82.12.0282 require the vehicle to weigh less than 10,000 pounds?

DISCUSSION:

RCW 82.12.0282 allows a use tax exemption for ride-sharing vehicles. It states:

The tax imposed by this chapter shall not apply with respect to the use of passenger motor vehicles used as ride-sharing vehicles, as defined in RCW 46.74.010(3), by not less than five persons, including the driver, with a gross vehicle weight not to exceed 10,000 pounds where the primary usage is for commuter ride-sharing, as defined in RCW 46.74.010(1), or passenger motor vehicles where the primary usage is for ride-sharing for the elderly and the handicapped, as defined in RCW 46.74.010(2), if the vehicles are exempt under RCW 82.44.015 for thirty-six consecutive months beginning within thirty days of application for exemption under this section.

(Emphasis ours).

RCW 82.12.0282 creates two use tax exemptions. The first exemption is for passenger motor vehicles primarily used for commuter ride sharing as defined in RCW 46.74.010(1). These vehicles clearly cannot exceed 10,000 pounds. The second exemption is for passenger motor vehicles used primarily for ride sharing for the elderly and the handicapped as defined in RCW 46.74.010(2). In addition, both exemptions require that the motor vehicle must also be exempt under RCW 82.44.015 for thirty-six consecutive months to maintain the use tax exemption.

Although Special Programs acknowledges that there is no 10,000 pound limit for vehicles primarily used for ride sharing for the elderly and the handicapped under RCW 82.12.0282, it contends that the 10,000 pound limit is imposed by RCW 82.44.015.

RCW 82.44.015 states:

For the purposes of this chapter, in addition to the exclusions under RCW 82.44.010, "motor vehicle" shall not include: (1) Passenger motor vehicles used primarily as ride-sharing vehicles, as defined in RCW 46.74.010(3), by not fewer than five persons, including the driver, or not fewer than four persons including the driver, when at least two of those persons are confined to wheelchairs when riding; or (2) vehicles with a seating capacity greater than fifteen persons which otherwise qualify as ride-sharing vehicles under RCW 46.74.010(3) used exclusively for ride sharing for the elderly or the handicapped by not fewer than seven

persons, including the driver. This exemption is restricted to passenger motor vehicles with a gross vehicle weight not to exceed 10,000 pounds where the primary usage is for commuter ride-sharing as defined in RCW 46.74.010(1).

(Emphasis ours).

Special Programs points to the underlined language and argues that it imposes a 10,000 pound limit on all ride-sharing vehicles under this exemption. Taxpayer points to this language and states that this restriction applies only to those ride-sharing vehicles used for commuter ride sharing and does not apply to ride-sharing vehicles for the elderly and the handicapped. Consequently, Taxpayer contends that the 10,000 pound limit does not apply to ride-sharing vehicles used for transporting the elderly and the handicapped.

We believe that Taxpayer's interpretation is correct. RCW 46.74.010(3) defines "ride-sharing vehicles" to include vehicles used in two distinct ways. It states:

"Ride-sharing vehicle" means a passenger motor vehicle with a seating capacity not exceeding fifteen persons including the driver, while being used for commuter ride sharing or for ride sharing for the elderly and the handicapped.

RCW 46.74.010(1) defines commuter ride sharing as:

. . . a car pool or van pool arrangement whereby a fixed group not exceeding fifteen persons including passengers and driver is transported between their places of abode or termini near such places, and their places of employment or educational or other institutions, in a single daily round trip where the driver is also on the way to or from his or her place of employment or educational or other institution.

RCW 46.74.010(2) defines ride sharing for the elderly and the handicapped as:

. . . 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 . . .

The exemption contained in RCW 82.44.015 retains the two separate ride-sharing exemptions. Furthermore, the language in RCW 82.44.015 that imposes the 10,000 pound weight limitation specifically refers to only commuter ride-sharing vehicles. It does not mention ride sharing for the elderly and the handicapped. Therefore, we find that the 10,000 pound weight limit contained in RCW 82.44.015 applies only to commuter ride-sharing vehicles and not to ride sharing vehicles used to transport the elderly and the handicapped.³ Accordingly, Taxpayer's

³ We note that this interpretation is consistent with subsequent statutory changes. In 1996 the legislature enacted Substitute Senate Bill 6699 (SSB 6699) to clarify the existing ride-share exemptions contained in RCW 82.44.015

petition for refund of use taxes paid on ride-share vehicles used primarily to transport the elderly and the handicapped is granted.

DECISION AND DISPOSITION:

Taxpayer's petition for refund is granted. This matter is remanded to the Special Programs Division for processing of the appropriate refund amount.

DATED this 22nd day of May, 1997.

and 82.08.0287. SSB 6699 deleted all references to a 10,000 pound weight limitation for the exemption from the motor vehicle excise tax and retail sales tax statutes and placed a 10,000 pound limitation in the definition of "commuter ride-sharing" contained in RCW 46.74.010(1). No 10,000 pound limit was placed into the definition of "ride sharing for the elderly and the handicapped" which was redefined as "ride sharing for persons with special transportation needs."