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Cite as Det. No. 00-064, 19 WTD 1013 (2000)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 00-064
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. . .	)	Registration No. . . .
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RULE 261; RCW 82.16.047; RCW 82.04.355: PUBLIC UTILITY TAX – B&O TAX -- EXEMPTIONS – RIDE SHARING – SPECIAL TRANSPORTATION NEEDS. A private, for-profit company's 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 companies providing services through public social service agencies or private nonprofit transporters.

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.

Mahan, A.L.J. – Private, for-profit transportation company, under contract with a public transit agency, seeks a refund of public utility tax (PUT) imposed on income from providing transportation services to persons with disabilities.[1]

ISSUE

Whether income received by a for-profit company operating a paratransit service on behalf of a public transit agency is exempt from taxation.

FACTS

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

In order to comply with the requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 1201, *et seq.*, and related statutes and regulations, . . . County provides paratransit services through . . ., a division of the . . . County Department of Transportation (transit agency). The ADA requires providers of public transportation to provide service to people with disabilities that is comparable to service provided to the general public.[2]

The taxpayer entered into a contract with the transit agency to provide transportation services to persons with disabilities. Under the terms of this agreement, the transit agency purchases vans, which the taxpayer uses to provide transportation services. The transit agency's name is on the vans and the vans are licensed with the Department of Licensing as vanpool vehicles.

The taxpayer's employees dispatch, drive, operate, and maintain the vans. Passengers pay with tickets or with cash. The taxpayer destroys the tickets and provides an accounting to the transit agency. It retains the cash receipts and applies those receipts against the monthly payments due from the transit agency. The taxpayer is paid according to the number and length of the trips it operates, not the number of passengers. With respect to taxes, the agreement provides the taxpayer shall be "liable for all taxes (except sales tax), fees, licenses and costs as may be required by federal, state and local laws. . . ." (§ 1.15)

The taxpayer reported income from the transit agency under the public utility tax (PUT) as either urban or motor transportation services. In 1998, the taxpayer sought a ruling from the Department of Revenue's (Department) Taxpayer Information and Education Section (TI&E) on whether this income is exempt from PUT under RCW 82.16.047. By letter dated October 19, 1998, TI&E ruled that the income was not exempt because the taxpayer was a for-profit company. The taxpayer then sought a refund of tax from the Department's Audit Division, which denied the refund request, based on the TI&E ruling. The taxpayer then appealed the denial of the refund request. It estimates the scope of the refund request to be $. . . .

ANALYSIS

RCW 82.16.020 imposes the PUT for the privilege of engaging in certain listed businesses in Washington, including motor transportation (subsection (d)) and urban transportation (subsection (f)) businesses. In the absence of an exemption to the PUT, the taxpayer states it owes PUT under either the motor or urban transportation provisions.

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.

[2] Under the United States Department of Transportation 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).

See also WAC 458-20-261(3) ("Amounts received from providing commuter ride 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").

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]

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." It is undisputed in this case that the second element was met and that transportation was not by a private, nonprofit transportation provider. At issue is whether the taxpayer received funds "in the course of" ridesharing and whether transportation was by a "public social service agency." The terms "public social service agency" and "in the course of" are not defined in the statute or related statutes.[4]

The goal of any statutory construction is to follow the intent of the legislature. Legislative intent is to be ascertained from the statute as a whole, and all statutes relating to the same subject matter should be considered. *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). With an unambiguous statute, "its meaning must be derived from its language alone." *Everett Concrete, Inc. v. Department of Labor & Indus.*, 109 Wn.2d 819, 822, 748 P.2d 1112 (1988), *citing Stewart Carpet Serv. v. Contractors Bonding & Ins. Co.*, 105 Wn.2d 353, 358, 715 P.2d 115 (1986). When a statute is ambiguous or the language unclear, as is the case here, "legislative history of the statute is an important tool to ascertain intent." *In re Sehome Park Care Center v. Washington*, 127 Wn.2d 774, 778, 903 P.2d 443 (1995).

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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[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 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).

[4] The taxpayer recognizes that a for-profit company acting by itself would not qualify for the exemption. *See* Det. No. 91-164, 11 WTD 337 (1992) (Because the taxpayer/taxi cab company was a for profit corporation, its income from fares paid by or for elderly or physically-challenged passengers was not exempt from the public utility tax).

> [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.

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).

Based on the legislative history, it appears the exemptions from tax were intended to involve compensation received by ride-share operators or drivers, whether they were for-profit or nonprofit operators. The term "ride-sharing operator" for purposes of both commuter ride sharing and ride sharing for persons with special transportation needs was broadly defined to include:

> [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).

Under this statutory framework, a transit agency could clearly qualify as a ride-share operator. For example, in the context of commuter ride-sharing arrangements, compensation received by persons operating or driving a transit agency vanpool would be exempt from PUT or B&O tax. To the extent the drivers or operators of a transit agency's paratransit vans received compensation, such compensation initially would also appear to be exempt income, as the taxpayer has argued. However, the provisions with respect to ride sharing for persons with special transportation needs were further limited. Those provisions apply only to transportation by public social service agencies and private nonprofit companies. RCW 46.74.010(3). Had the legislature intended to include all public agency transporters, and their drivers and operators, as

qualifying for the exemption provisions, it clearly could have done so, in the same manner as it broadly defined the term "ride-share operator."[5] Instead, the legislature chose to limit the exemption to public social service agency or private nonprofit transporters.

Undefined terms in a statute, like the term "public social service agency," are to be given their usual and ordinary meaning. *See, e.g., Garrison v. Washington State Nursing Bd.*, 87 Wash. 2d 195, 196, 550 P.2d 7 (1976). Undefined terms are given their "plain, ordinary and popular" meaning, and courts look to English language dictionaries to determine the ordinary meaning of such terms. *Boeing Co. v. Aetna Cas. & Sur. Co.*, 113 Wash. 2d 869, 877, 784 P.2d 507 (1990) (quoting *Farmers Ins. Co. v. Miller*, 87 Wash. 2d 70, 73, 549 P.2d 9 (1976)). The term "social service" is ordinarily defined to mean: "1. Organized efforts to advance human welfare . . . . Welfare services, as free school lunches, provided by a government for its needy citizens." *Webster's II New Riverside University Dictionary* 1103 (1984). In this case the transit agency does not provide health or welfare types of services, but provides transit services or, more specifically, comparable transit services for persons with disabilities.

Based on our review of the law and available legislative history, we conclude the taxpayer's income from operating the vans on behalf of the transit agency would not be exempt from PUT or B&O tax. The transit agency, for which the taxpayer was providing operators or drivers, was providing public paratransit services (comparable transit services for persons with disabilities), not acting as a public social service agency transporter, as required by the statute for the exemption to apply.[6]

DECISION AND DISPOSITION:

The taxpayer's petition for refund is denied.

Dated this 31st day of March, 2000.

[5] Although the legislative history is silent as to why a public transit agency was not included in the transporters qualifying for the exemption, under RCW 35.58.560 the transit agency received a credit or offset against any state tax obligation for its expenditures in providing public transportation services. It may have not needed such an exemption.

[6] As to the taxpayer's receipt of funds in "the course of" ridesharing, even if we found that some of the funds were received in the course of providing exempt services, this does not mean all payments from the transit agency would qualify. Under the taxpayer's expansive reading of the exemption, not only would the funds received from the transit agency for driving and operating the vans be subject to the exemption, monies for dispatch and repair services would qualify for the exemption. Such an expansive reading is contrary to the principal that statutes granting an exemption from taxation must be narrowly construed. *See, e.g., Budget Rent-A-Car, Inc. v. Department of Rev.*, 81 Wn.2d 171, 174-75, 500 P.2d 764 (1972).