

Cite as 9 WTD 277 (1990)

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition )	<u>D E T E R M I N A T I O</u>
<u>N</u>	
For Correction of Assessment )	
of )	No. 90-126
)	
. . . )	Registration No. . . .
)	
)	. . ./Audit No. . . .
)	. . ./Audit No. . . .

[1] RULE 180: PUBLIC UTILITY TAX -- MOTOR  
TRANSPORTATION -- VAN TRANSPORTATION OF PASSENGERS  
TO/FROM AIRPORT -- INTRASTATE -- INTERSTATE AIRLINE  
TRAVELERS. Any transportation of passengers, in  
this case by van, performed within the state prior  
to the point of origin of the interstate movement by  
airline or subsequent to the point of arrival in  
this state after interstate travel by airline are  
wholly intrastate and within the taxing jurisdiction  
of this state. . . . .

[2] RULE 228: RCW 82.32.050 -- RCW 82.32.090 -- RCW  
82.32.105 -- PENALTY -- MANDATORY -- LATE PAYMENT OF  
TAX DUE -- UNREGISTERED TAXPAYER -- UNAWARE OF TAX  
LIABILITY. Taxpayer's unawareness of requirement to  
register and pay taxes is not a circumstance beyond  
its control to justify waiver of penalty mandated by  
statutes. . . . .

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Petition protesting the assessment of Motor Transportation Public Utility Tax upon income from ground transportation of passengers to/from airports who are involved in interstate airline journeys. The assessment of penalties upon late payment of taxes is also protested.

#### FACTS AND ISSUES:

Krebs, A.L.J. -- [The taxpayer] is engaged in a van service business transporting passengers for hire to and from the . . . International Airport with origination/destination points being . . . , Idaho, and . . . , Washington.

Prior to 1987, the taxpayer was not registered with the Department of Revenue (Department). For purposes of an audit, the Department registered the taxpayer in . . . . The Department had been attempting to examine the taxpayer's records since June, 1987 but was unsuccessful. Therefore, the Department obtained the taxpayer's gross income figures on business done in Washington from the Washington Utilities and Transportation Commission (WUTC).

Based on the gross income figures supplied by the taxpayer to WUTC, the Department issued a tax assessment on . . . for the period from . . . through . . . asserting Motor Transportation Public Utility Tax (PUT) liability in the amount of \$. . . and interest (\$. . .) and penalty (\$. . .) due for a total sum of \$ . . . . The Department issued another tax assessment on . . . for the period from . . . through . . . asserting Motor Transportation PUT liability in the amount of \$ . . . and interest (\$. . .) and penalty (\$. . .) due for a total sum of \$ . . . . The taxpayer has made no payments and the combined total sum of \$ . . . remains due.

At an informal conference held on . . . with the audit supervisor, the taxpayer described how most of its passenger revenue is earned. Most of the passengers are residents of . . . County, Washington. When they wish to travel from their location in Washington to an out-of-state destination and return, they contact a travel agent who sells them a ticket for transportation by the taxpayer to and from . . . International Airport. In addition, the travel agent arranges for the passenger's air travel on a separate airline ticket. The travel agent pays over the amount, less retained commission, to the taxpayer for transportation to and from the airport.

The taxpayer asserts that its transportation of passengers is incidental to airline transportation. The taxpayer further asserts that because "it is the almost universal practice of airlines not to sell through tickets covering ground as well as air transportation," through ticketing should not be a requirement for exemption from taxation." The taxpayer points out that it sells most of its tickets after arrangements through an interstate reservation network service and that it is the first stage in "through" interstate and/or international travel service. Accordingly, the taxpayer believes it should be exempt from Washington state taxation.

The taxpayer further contends that WUTC should share in the responsibility for any tax imposed because of the failure of WUTC to inform and advise the taxpayer at its inception when it specifically requested all required forms and tax information applicable to the State of Washington. The taxpayer further contends that any penalties for late payment of taxes should be eliminated "due to this mitigating factor of non-information and advice from the WUTC."

The primary issue is whether the taxpayer's income from transporting persons by van from locations inside Washington to the . . . International Airport or vice versa are subject to the PUT tax when the persons are destined to or from locations outside Washington via airline transport. The second issue is whether WUTC bears any responsibility for payment of the tax, if imposed, because it allegedly failed to advise the taxpayer of its tax obligations. The third issue is whether the penalty for late payment of the tax can be waived based upon the alleged conduct of WUTC.

#### DISCUSSION:

[1] The Public Utility Tax (PUT) is imposed upon the "motor transportation business" and other named utility businesses for the "act or privilege" of engaging in such business within this state. RCW 82.16.020 and WAC 458-20-180 (Rule 180).

"Motor transportation business" means the business of operating any motor propelled vehicle by which persons or property of others are conveyed for hire. RCW 82.16.010(8).

RCW 82.16.050(6) allows a deduction/exemption of amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States, i.e., the interstate commerce clause.

The Department of Revenue has consistently taken the view that, with respect to transporting persons into or out of the state, the interstate movement originates or terminates at the point where the transport obligation of the interstate carrier begins or ends. Any transportation performed within the state of Washington prior to the point of origin of the interstate movement or subsequent to the point of destination within this state, such points being reflected in the ticketing of the passengers, are wholly intrastate and are within the taxing jurisdiction of this state.

In this case, since all of the taxpayer's activities upon which the tax is imposed are carried on in this state, there is no due process objection to the tax. The tax does not discriminate against interstate commerce in favor of competing intrastate commerce of like character. There is no attempt to tax interstate activity carried on outside this state's borders. No other state can repeat the tax on the taxpayer's gross receipts. See Convoy Company v. Taylor, 53 Wn 2d 439 (1959).

In the U. S. Supreme Court case, Central Greyhound Lines Inc. v. Mealey, 334 U.S. 653, the Court permitted New York to impose a tax on the gross receipts from the operation of an interstate bus line, provided that tax was apportioned according to mileage traveled within the state.

In this case, the taxpayer is being taxed solely on gross receipts from operations within the state. It is then of no consequence that the passengers carried by the taxpayer's van continued on their journey by airline transportation out of state or that the passengers prior to being carried by the taxpayer's van arrived by airline transportation from out of state. Accordingly, the assessment of Motor Transportation PUT must be sustained.

In any event, even if the airlines changed their procedures to sell through tickets covering ground transportation between points inside Washington as well as air transportation, the ground transportation within Washington would still be subject to the PUT as an activity entirely intrastate.

As to the taxpayer's contention that the WUTC shares responsibility for the tax because it allegedly failed to give applicable tax information to the taxpayer when requested to do so, that is a matter strictly between the taxpayer and WUTC. It is each individual's responsibility to be aware of

any tax implications resulting from activities conducted within this state. Department of Revenue personnel are available to answer any inquiries pertaining to such matters and information is readily available. The taxes imposed by the Revenue Act are of a self-assessing nature and the burden is placed upon a person to correctly inform himself/herself of his/her obligations under the Act.

[2] With respect to the waiver of the late payment penalty based upon the "non-information and advice from the WUTC," the resolution of this issue is controlled by the decision rendered in Determination No. 88-168, 5 WTD 253 (1988), . . . , where the taxpayer in that case also was unaware of the requirement to register with the Department and pay taxes when doing business in this state.

DECISION AND DISPOSITION:

The taxpayer's petition is denied.

DATED this 23rd day of March 1990.