Supreme Court No. 101232-2

Court of Appeals No. 83548-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ECHO GLOBAL LOGISTICS, INC.,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

APPELLANT'S PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

The Petitioner is Echo Global Logistics, Inc. ("Echo").

II. COURT OF APPEALS' DECISION

Echo seeks review of the published decision filed on August 1, 2022, by Division I of the Court of Appeals in *Echo Global Logistics, Inc. v. Department of Revenue*, No. 83548-1-I. A copy of the decision is attached as Appendix A.

III. INTRODUCTION

This case involves the meaning of the undefined word "operating" in the public utility tax ("PUT") definition of "motor transportation business," RCW 82.16.010(6).[1] The Court of Appeals' interpretation of "operating" is inconsistent with the well-established statutory PUT scheme, is contrary to Department of Revenue's long-standing interpretation of the PUT statute, and has significant impact on all motor transportation providers operating in Washington. By limiting its interpretation of the word "operating" to mean only direct, physical control of a vehicle, the Court of Appeals has dramatically changed the way motor carriers, freight forwarders, and freight brokers will pay taxes for transporting property—rendering a statutory deduction for jointly furnished motor transportation a nullity. Echo respectfully requests that

[1] A copy of RCW 82.16.010 is attached as Appendix B.

this accept review of this matter to ensure that "operating" is given a plain meaning that is consistent with the statutory PUT scheme and the Department's long-standing interpretation of the motor transportation business classification.

The Department has long advised that motor carriers and freight forwarders "operate" vehicles and are subject to PUT as motor transportation businesses when they contract with third-party carriers for the physical transportation of their customers' property. In such circumstances, taxpayers report the entire amount received for transportation on their PUT return under the motor transportation business classification and deduct "amounts actually paid … to another person … as the latter's portion of the consideration due for services jointly furnished by both." RCW 82.16.050.

Contrary to this long-standing administrative treatment, the Court of Appeals held that the motor transportation business classification of the PUT applies only to taxpayers that physically control motor vehicles. App. A at 5. According to the Court of Appeals, contracting with third-party carriers for the transportation of property is "too attenuated from the physical movement of a motor propelled vehicle" to fall within the definition of motor transportation business. *Id.*

In evaluating alternative definitions for the undefined term "operating," the Court of Appeals failed to consider the

Department's long-standing interpretation and application of the term to motor carriers and freight forwarders that "operate" motor vehicles by contracting with third-party carriers. *See First Student, Inc. v. Dep't of Revenue*, 194 Wn.2d 707, 451 P.3d 1094 (2019) (resolving the ambiguity in the meaning of "for hire" in the definition of "motor transportation business" based on the Department's long-standing interpretation). The Court of Appeals' decision also ignores the broader context of the PUT scheme, including the "jointly furnished service" deduction, which contemplates that motor transportation businesses will be subject to PUT even though all or part of the physical transportation may be provided by another taxpayer. *See* RCW 82.16.050(3).

This petition raises both (i) a conflict between the decision of the Court of Appeals and this Court's decisions regarding the interpretation of statutes and (ii) an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(1) and (4).

Unless corrected by this Court, the impact of the Court of Appeals published decision will be widespread.

First, motor carriers and freight forwarders have long reported and paid PUT as "motor transportation businesses" when they contract with third-party carriers to transport their customers' property. The Court of Appeals' decision concludes

that contracting with third-party carriers is "too attenuated from the physical movement of a motor propelled vehicle" to be constitute part of a motor transportation business. App. A at 5. Not only will freight brokers like Echo lose the benefit of taxation under the "motor transportation business" classification of the PUT, so will all motor carriers and freight forwarders that contract with third-party carriers.

Second, the Court of Appeals' decision frustrates the broader PUT scheme by effectively eliminating the "jointly furnished service" deduction for motor transportation businesses. Under the Court of Appeals' interpretation of "operating," the very act of contracting with a third-party carrier for the transportation of the taxpayer's customers' property removes the taxpayer from the motor transportation business PUT classification.

Third, the Court of Appeals' decision will significantly impact the Washington tax costs of motor transportation services and distort the motor transportation marketplace in favor of large motor carriers.

This Court should accept review and confirm the Department's long-standing position that a taxpayer may "operate" motor vehicles within the meaning of the "motor transportation business" PUT definition by contracting with third-party carriers.

IV. ISSUE PRESENTED FOR REVIEW

When considering alternative definitions of an undefined statutory term, may a court adopt the meaning that is inconsistent with an administrative agency's long-standing interpretation, renders a statutory deduction superfluous, and distorts the market for motor transportation services?

V. STATEMENT OF THE CASE

A. Echo's Business

Echo is registered and regulated as a freight broker with the Federal Motor Carrier Safety Administration, a subdivision of the U.S. Department of Transportation, and the Washington Utilities and Transportation Commission. AR 114. Freight brokers are "motor carriers" and "common carriers" under chapter 81.80 RCW (motor freight carriers). RCW 81.80.010(3) and (6).

Echo provides motor transportation services to business customers across a wide range of industries. AR 114. Some customers hire Echo on a shipment-by-shipment basis and others enter longer-term contracts, typically for periods of one to three years. *Id.*

Echo has established a large network of motor carriers that provide the physical transportation of Echo's customers' property. AR 114. Echo's carrier network ranges in size from

large national trucking companies to owner-operators of a single truck. *Id.*

When a customer needs to transport property, Echo generally selects a carrier for the load from its network based on a range of factors that may include the carrier's capabilities, geographic coverage, service quality, reliability, and price. *Id.* Echo accepts tender of its customers' shipment and arranges the selected carrier to transport the property from the point of origin to the destination. AR 118, 126, 131.

Echo charges the customer for the motor transportation based on the rate negotiated and agreed by Echo and the customer. AR 115. Echo separately pays the carrier that physically transports the property based on rates negotiated and agreed by Echo and the carrier. AR 115. Customers are not generally informed or aware of the price Echo pays to the carrier, and carriers are not informed or aware of the price that Echo charges its customer. AR 115.

For accounting and tax purposes, Echo records the entire transportation charge that it receives from its customers as transportation revenue. AR 115. Echo records payments to carriers as transportation costs that are included as part of Echo's "costs of goods sold" for income tax purposes. AR 115-116.

B. Procedural History

The Department conducted an audit of Echo for the period January 1, 2010 through June 30, 2014. AR 139. The Department classified Echo's income under the service and other activities B&O tax classification and issued an assessment of $1,201,941 in B&O tax, penalties, and interest. AR 138. This assessment was affirmed in the Department's informal review process. AR 166-171. Echo appealed the Department's determination to the Board of Tax Appeals pursuant to RCW 82.03.190. AR 296-299.

The parties presented the case to the Board on cross-motions for summary judgment. The Board issued its final decision granting the Department's motion for summary judgment on July 23, 2020. AR 23-34. The superior court affirmed the Board's decision in an order dated June 30, 2021. CP 185-189.

C. The Court of Appeals' Decision

The Court of Appeals affirmed the Board of Tax Appeal's summary judgment order. First, it determined the statutory term, "operate," is undefined and, accordingly, can be defined by looking at dictionary definitions of the term. App. A at 4. However, selecting among definitions, the Court failed to select the definition that could be reconciled with the context of the PUT scheme and the Department of Revenue's regulations

and published guidance concluding that freight forwarders and other motor carriers "operate" motor vehicles when they contract with other carriers for the physical transportation of their customers' property. App. A at 5.

VI. ARGUMENT IN FAVOR OF REVIEW

A. The Court of Appeals' Decision Conflicts with This Court's Rules of Statutory Construction.

Review of this matter is necessary to assure the proper application of this Court's statutory interpretation precedent, including *First Student, Inc. v. Dep't of Revenue*, 194 Wash. 2d 707, 710, 451 P.3d 1094, 1096–97 (2019), a recent decision of this Court involving the interpretation of a different phrase in the same statutory definition at issue in this case. The undefined term "operating" in RCW 82.16.010(6) should be given its plain meaning consistent with the statutory PUT scheme and the Department's long-standing interpretation of the PUT.

"Motor transportation business" is defined as "operating any motor propelled vehicle by which persons or property of others are conveyed for hire" and includes "the operation of any motor propelled vehicle" as a common or contract carrier. RCW 82.16.010(6). The terms "operating" and "operation" are not defined by statute. An undefined term is "given its plain

and ordinary meaning unless a contrary legislative intent is indicated." *State v. Brown*, 194 Wn.2d 972, 976, 454 P.3d 870, 872 (2019) (quoting *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 920-21 (1998)). "To determine the plain meaning of an undefined term, we may look to the dictionary." *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297, 300 (2009). The plain language of the statute must be considered with "the text of the provision, the context of the statute, related provisions, … and the statutory scheme as a whole." *First Student, Inc. v. Dep't of Revenue*, 194 Wash. 2d 707, 710, 451 P.3d 1094, 1096–97 (2019).

The Court of Appeals acknowledged that there are multiple dictionary definitions that meet the grammatical structure of the RCW 82.16.010(6). App. A at 5. The parties put forth two alternative transitive definitions of "operate." According to the Department, the "best" definition of "operate" is "to cause to function usu. by direct personal effort." Department's Br. at 17 (citing definition 2 of the transitive verb "operate"). Part b of the same transitive definition also fits grammatically within RCW 82.16.010(6) while providing a better fit with the PUT scheme as a whole: "to manage and put or keep in operation ***whether with personal effort or not***." Webster's Third New International Dictionary 1581 (2002) (emphasis added).

1. The Court of Appeals' decision fails to consider the context of the PUT scheme.

When interpreting statutes, courts "derive legislative intent solely from the plain language of the statute, considering the text of the provision, the context of the statute, related provisions, amendments to the provision, and the statutory scheme as a whole." *First Student, Inc. v. Dep't of Revenue*, 194 Wash. 2d 707, 710, 451 P.3d 1094, 1096–97 (2019). In selecting the definition of "operate" that requires "direct personal effort," the Court of Appeals failed to consider the context of the PUT definition and the broader PUT scheme.

First, PUT is imposed on businesses, not drivers. RCW 82.16.020(1). Except in the case of a sole proprietor owner-operator, motor transportation businesses *always* cause motor vehicles to function by contracting with others. Sometimes those contracts are with employees; sometimes, as here, those contracts are with independent contractors.

Second, the Court of Appeals' interpretation ignores the deduction available to motor transportation businesses in RCW 82.16.050(3) and renders the deduction a nullity. PUT system requires taxpayers to report and pay PUT on their "gross income" from the motor transportation business. RCW 82.16.020(1)(f). However, motor transportation businesses are permitted to deduct from gross income "[a]mounts actually paid

by a taxpayer to another person taxable under [the PUT] as the latter's portion of the consideration due for services furnished jointly by both ...." RCW 82.16.050(3). *See also* WAC 458-20-180(7)(b) (noting the application of the jointly furnished services deduction to motor transportation businesses). Under the Court of Appeals' interpretation of "operates," no motor transportation would ever be entitled to a deduction for jointly furnished services because any taxpayer contracting with another carrier for all or part of the transportation service would not be causing vehicles to function through direct personal effort.

In contrast, the second transitive definition of "operate"—"to manage and put or keep in operation ***whether with personal effort or not***"—reflects the context of the PUT scheme and avoids rendering the jointly furnished services deduction a nullity in connection with motor transportation businesses. Webster's Third New International Dictionary 1581 (2002) (emphasis added). Under this definition, a motor transportation business may "operate" motor vehicles by contracting with third-party carriers and may deduct amounts paid to such carriers as a jointly furnished service. RCW 82.16.050(3).

2. The Court of Appeals' decision ignores the Department of Revenue's long-standing administrative interpretation of the PUT statute.

The Department has long held that taxpayers are subject to PUT as motor transportation businesses (and, thus, "operate" motor vehicles) when they provide transportation services to customers through contracts with third-party motor carriers.

Since 1994, the Department's PUT regulations have included an example in which a taxpayer is subject to PUT as a motor transportation business and is permitted a deduction for jointly furnished services despite subcontracting with another carrier for part of the physical transportation:

> Manufacturing Company hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett, where the goods are loaded into ABC's truck and transported to Bellingham. ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by Manufacturing Company for transportation services furnished jointly by both ABC and XYZ.

WAC 458-20-179(201)(f)(example 1). *See* WSR 94-13-034 (filed June 6, 1994) (adding the current example with minor difference in language to WAC 458-20-179). *See also* WAC

458-20-180(7)(b) (providing a similar subcontracting example in the Department's motor carrier rule).

For over twenty years, the Department has held that taxpayers are subject to PUT as motor transportation businesses even when a third-party carrier performs all the transportation service. For example, in a decision that the Department designated precedential pursuant to RCW 82.32.410, the Department held that a public transit agency was subject to PUT on gross income from paratransit services where the agency contracted out the physical transportation to private, for-profit carriers. Washington Dep't of Revenue Det. No. 01-167E, 21 Wash. Tax Det. 272 (2002).[2] In that case, "the vendors drove, operated, supplied, and maintained the paratransit vans" and the taxpayer "received all applications for service, screened users for eligibility, and scheduled required van usage." *Id.*

In 2009, the Department published an excise tax advisory advising that freight forwarders are "motor transportation businesses" subject to PUT based on "contractual responsibility to move freight" even though they "own[] no rolling stock and contract[] with others for the actual handling and transportation

[2] The determination was subsequently withdrawn by the Department because of uncertainty over whether the taxpayer might qualify for a PUT exemption under RCW 82.16.047.

of the goods (including pickup and deliver)." Excise Tax Advisory 3149.2009 (copy attached at Appendix C).[3] As in the examples in WAC 458-20-179, WAC 458-20-180, and Determination 01-167E, the Department's excise tax advisory concludes that the "operating" element of RCW 82.16.010(6) can be satisfied by "be[ing] contractually (but not necessarily physically) responsible for transporting the property using motor vehicles." Excise Tax Advisory 3149.2019 (copy attached as Appendix D).

The examples in WAC 458-20-179 and 458-20-180, Determination No. 01-167E, and Excise Tax Advisories 3149.2009 and 3149.2019, all confirm that taxpayers may "operate" motor vehicles and are subject to PUT as "motor transportation businesses" when they are "contractually (but not necessarily physically) responsible for transporting the property using motor vehicles." Excise Tax Advisory 3149.2019.[4]

In *First Student, Inc. v. Department of Revenue*, 194

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[3] Excise Tax Advisories are interpretive and policy statements issued by the Department pursuant to RCW 34.05.230. They carry a similar weight and effect as the Department's interpretative rules in that they serve as advanced notice of the Department's position and are not legally binding on taxpayers or courts. *See Ass'n of Washington Bus. v. Dep't of Revenue*, 155 Wn.2d 430, 447, 120 P.3d 46, 54 (2005).

[4] While the Department has attempted to distinguish freight brokers from freight forwarders and other motor carriers, those distinctions have no bearing on the meaning of "operating."

Wn.2d 707, 719, 451 P.3d 1094, 1101 (2019), this Court addressed an ambiguity in the meaning of "for hire" in RCW 82.16.010(6)—the same PUT definition as is at issue in this case. The Court resolved that ambiguity "in favor of the long-standing interpretation" of the statute by the Department. The Court of Appeals erred in failing to do the same.

3. Ambiguities in tax classification statutes should be construed in favor of taxpayers.

The plain meaning of "operating" should be resolved by examining the use of the term in the context of the PUT statutory scheme and the Department's long-standing interpretation of the statute. However, if there is any ambiguity in the meaning of "operate" or the definition of "motor transportation business," it must be resolved most strongly against the Department and in favor of Echo. *Ski Acres, Inc. v. Kittitas County*, 118 Wn.2d 852, 857, 827 P.2d 1000 (1992). RCW 82.16.010 is a tax statute that defines the scope of the PUT classification for "motor transportation businesses." RCW 82.16.020(1)(f). The general rule of construction of tax statutes in favor of taxpayers applies to tax classification statutes. *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392, 399, 103 P.3d 1226, 1230 (2005) (n.1).

B. The Court of Appeals' Decision that Motor Transportation Businesses Must Cause a Vehicle to Function with Direct Personal Effort Presents an Issue of Substantial Public Importance.

The Court of Appeals' decision concludes that contracting with third-party carriers is "too attenuated from the physical movement of a motor propelled vehicle" to constitute part of a motor transportation business. App. A at 5. This conclusion impacts not only freight brokers like Echo, but other motor carriers and freight forwarders who have long reported and paid PUT as "motor transportation businesses" when they contract with third-party carriers to transport their customers' property. *See* WAC 458-20-179(201)(f), WAC 458-20-180(7)(b), Determination No. 01-167E, and Excise Tax Advisories 3149.2009 and 3149.2019.

For example, the Department has advised freight forwarders that the "operating" element of RCW 82.16.010(6) can be satisfied by "be[ing] contractually (but not necessarily physically) responsible for transporting the property using motor vehicles." Excise Tax Advisory 3149.2019. Not so under the Court of Appeals' conclusion that "operates" requires direct personal effort to cause a vehicle to function.

The Department previously advised carriers that they are subject to PUT as motor transportation businesses when they subcontract out transportation to other motor carriers. WAC

458-20-179(201)(f); WAC 458-20-180(7)(b). Not so under the Court of Appeals' decision.

The Department previously advised transit agencies that the "operating" element of the definition when it contracted with private vendors to transport the agency's passengers. Not so under the Court of Appeals' decision.

The Court of Appeals' decision further frustrates the broader PUT system by effectively eliminating the "jointly furnished service" deduction for motor transportation businesses. Under the Court of Appeals' interpretation of "operating," the very act of contracting with a third-party carrier for the transportation of the customers' property removes the taxpayer from the motor transportation business PUT classification with respect to that transportation service.

Finally, the Court of Appeals' decision will significantly increase the Washington tax costs of motor transportation services and distort the motor transportation marketplace in favor of large motor carriers. The Legislature created a PUT system for the motor transportation industry in which a single tax is paid on the transportation of property or passengers whether that transportation is physically performed by the party contracting with the customer or is performed by another carrier engaged by the taxpayer. RCW 82.16.020(1)(f); WAC 458-20-179(201)(f); WAC 458-20-180(7)(b). The Court of Appeals

decision undermines this legislative scheme and distorts the motor transportation market by favoring motor transportation businesses that transport property or passengers directly rather than by contracting with third-party carriers.

For example, assume a customer hires a taxpayer to transport its property from Tacoma to Bellingham for $1,000. If the taxpayer transports the property in its own vehicles, the taxpayer would pay $19.26 in PUT ($1,000 x 1.926%). RCW 82.16.020(1)(f) and (2). Under the Department's regulations and excise tax advisories, the same overall PUT of $19.26 would be due if the taxpayer contracting the customer contracted with a third-party carrier for the physical transportation of the property. Thus, for example, if the customer paid $1,000 to the taxpayer and the taxpayer paid $900 to the transporting carrier, the taxpayer would be subject to PUT on $100 ($1,000 - $900) and the transporting carrier would be subject to PUT on $900.

Under the Court of Appeals' decision, the overall tax in the second scenario is almost twice that of the single carrier or the Department's historic interpretation of the PUT. Under the decision, the taxpayer contracting with a third-party carrier would be thrown from the "motor transportation business" classification of the PUT to the service classification of the business and occupation (B&O) tax and would lose the

deduction for jointly furnished services. The taxpayer would pay B&O tax of $17.50 ($1,000 x 1.75%). RCW 82.04.290(2). The third-party carrier would be subject to $17.33 in PUT on its portion of the service ($900 x 1.926%). RCW 82.16.020(1)(f) and (2).

Customer Pays $1,000 for Intrastate Transportation ($900 of Which Is Paid to the Transporting Carrier)	
Under Department's Rules and Excise Tax Advisories	**Under Court of Appeals' Decision**
Contracting Taxpayer's PUT = $1.93	Contracting Taxpayer's B&O Tax = $17.50
Transporting Carrier's PUT = $17.33	Transporting Carrier's PUT = $17.33
Total Tax $19.26	**Total Tax $34.83**

Under the Court of Appeals' decision, freight forwarders, freight brokers, and carriers with limited rolling stock carry a significantly higher tax burden than carriers that directly perform the transportation using their own vehicles. This result

is not supported by the plain language of RCW 82.16.010 and is inconsistent with the statutory scheme of the PUT and the Department's longstanding interpretation of the statute.

VII. CONCLUSION

The Court of Appeals' interpretation of "operating" in the definition of "motor transportation business" ignores the context of the broader PUT scheme, upsets the Department's long-standing interpretation and application of the PUT, and significantly impacts freight brokers, freight forwarders, and other motor carriers that routinely transport their customers' property by motor vehicle by contracting with third-party carriers.

This Court should accept review, reverse the decision of the Court of Appeals, and remand the case to the Board of Tax Appeals for entry of judgment in favor of Echo.

* * *

This document contains 3,698 words, excluding the parts of the document exempted from the word count by RAP 18.17(b), and complies with the applicable word-count limits set forth in RAP 18.17(c).

* * *

RESPECTFULLY SUBMITTED this 31st day of August, 2022.

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CERTIFICATE OF SERVICE

On August 31, 2022, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED at Seattle, Washington this 31st day of August, 2022.

Jessica Flesner

Jessica Flesner

APPENDIX A

FILED
8/1/2022
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ECHO GLOBAL LOGISTICS, INC.,	)	No. 83548-3-I
Appellant,	)	DIVISION ONE
v.	)	PUBLISHED OPINION
STATE OF WASHINGTON, DEPARTMENT OF REVENUE	)	
Respondent.	)	

HAZELRIGG, J. — Echo Global Logistics, Inc. appeals a determination by the Board of Tax Appeals, arguing it is subject to a public utility tax rather than a business & occupation tax. Because Echo fails to demonstrate the Board erroneously interpreted or applied the law, we affirm.

FACTS

Echo Global Logistics, Inc. (Echo) is a freight broker; it contracts with motor carriers and customers to facilitate and coordinate the transportation of goods nationally. In November 2014, the Department of Revenue (Department) performed a desk examination of Echo's business and occupation (B&O) tax returns and reclassified the freight broker under the "service and other" business classification for tax purposes. Echo appealed this determination to the Board of Tax Appeals (Board), arguing it was subject to the public utility tax (PUT), not a

B&O tax, despite the fact that it had been paying B&O tax for approximately four years at that point. The Department moved for summary judgment, which was granted. Echo then appealed to the Clark County Superior Court, which affirmed the Board's decision. Echo timely appealed.

ANALYSIS

I. Standard of Review

This court reviews decisions by the Board under the Administrative Procedure Act (APA).[1] Steven Klein, Inc. v. Dep't of Revenue, 183 Wn.2d 889, 895, 357 P.3d 59 (2015) (citing RCW 82.03.180). "Under the APA, we may grant relief from an agency order when '[t]he agency has erroneously interpreted or applied the law.'" Id. (quoting RCW 34.05.570(3)(d)). We apply the APA "'directly to the record before the agency, sitting in the same position as the superior court.'" Dep't of Revenue v. Bi-Mor, Inc., 171 Wn. App. 197, 201–02, 286 P.3d 417 (2012) (quoting Honesty in Envtl. Analysis & Legis. (HEAL) v. Cent. Puget Sound Growth Mgmt. Hr'g Bd., 96 Wn. App. 522, 526, 979 P.2d 864 (1999)). If the Board dismissed an administrative appeal on summary judgment, "we overlay the APA 'error of law' standard of review with the summary judgment standard, and review an agency's interpretation or application of the law de novo while viewing the facts in the light most favorable to the nonmoving party." Bi-Mor, Inc., 171 Wn. App. at 202.

[1] Ch. 34.05 RCW.

II. Definition of "Operates"

Echo first asserts it is a motor transportation business under RCW 82.16.010(6) because it "operate[s]" motor vehicles by "'exert[ing] power or influence' over a motor vehicle by contracting with a third party." The Department responds Echo does not "operate" a motor vehicle because it merely "arrang[es] for transportation by a third party" rather than physically moving goods.

Statutory interpretation is a question of law reviewed de novo. Puget Sound Energy v. Dep't of Revenue, 158 Wn. App. 616, 620, 248 P.3d 1043 (2010). The court's "objective is to ascertain and carry out the legislature's intent." Id. "Generally, Washington's B & O tax applies to the act or privilege of engaging in business activities," unless those activities are "explicitly taxed elsewhere in the statutory scheme." First Student, Inc. v. Dep't of Revenue, 194 Wn.2d 707, 711, 451 P.3d 1094 (2019) (citing RCW 84.04.220, .290(2)). Businesses that are subject to the PUT are not subject to the B&O tax under RCW 82.04.310(1). Id. RCW 82.16.020(1)(f) lists businesses subject to the PUT, including "[m]otor transportation, railroad, railroad car, and tugboat businesses." "Motor transportation business" is defined in RCW 82.16.010(6) as:

> [T]he business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010.

RCW 81.80.010 in turn defines the terms "common carrier" and "contract carrier." A common carrier is "any person who undertakes to transport property for the general public by motor vehicle for compensation," and a contract carrier "includes

all motor vehicle operators not included under the terms 'common carrier' and 'private carrier,'" in addition to "any person who under special and individual contracts or agreements transports property by motor vehicle for compensation." RCW 81.80.010(1), (2). "[B]rokers and forwarders" are explicitly included as "common carriers" and "contract carriers." RCW 81.80.010(3).

While interpreting a statute, this court "'endeavor[s] to effectuate the legislature's intent by applying the statute's plain meaning, considering the relevant statutory text, its context, and the statutory scheme.'" Olympic Tug & Barge, Inc. v. Dep't of Revenue, 188 Wn. App. 949, 952, 355 P.3d 1199 (2015) (quoting Cashmere Valley Bank v. Dep't of Revenue, 181 Wn.2d 622, 631, 334 P.3d 1100 (2014)). In a plain meaning inquiry, the court "may resort to an applicable dictionary definition to determine the plain and ordinary meaning of a word that is not otherwise defined by the statute." First Student, Inc., 194 Wn.2d at 711. After investigating the plain meaning, if "the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history." Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 12, 43 P.3d 4 (2002).

The word "operate" is not defined by the statute. Echo and the Department submitted differing dictionary definitions: Echo cites the 1976 version of Webster's Third New International Dictionary, while the Department cites the 2002 version. Echo's cited definition for operate is "to perform a work or labor : exert power or influence : produce an effect." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED, 1580 (1976). The Department's cited

definition is "to cause to function [usually] by direct personal effort: work [as in operate] a car." WEBSTER THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED, 1581 (2002).

"We employ traditional rules of grammar in discerning the plain language of the statute." Diaz v. North Star Tr., LLC, 16 Wn. App. 2d 341, 353, 481 P.3d 557 (2021). As the Department notes, "operating" is a transitive verb within the statute, with "motor transportation business" as the subject and "motor propelled vehicle" as the direct object. Echo's cited dictionary definition of "produce as effect" would alter the grammatical structure of the sentence by changing the direct object from "motor propelled vehicle" to "transportation" as the effect is the transportation of goods, rather than a motor propelled vehicle. Its other two definitions do not suffer from the same grammatical shortcoming, but also do not encompass the broad reading of "operate" that Echo asks this court to find. "[T]o perform a work or labor" or to "exert power or influence" both suggest a direct connection between the performance or exertion and the consequential result on the direct object: a motor propelled vehicle. Echo's "work or labor" or "power or influence" is the coordination and management of the movement of goods, not the impact on a motor propelled vehicle. Echo's actions are too attenuated from the physical movement of a motor propelled vehicle to reasonably fall within even its own proposed grammatically appropriate dictionary definition of "operate." Under the plain language of the statute, Echo is not a motor transportation business and the Board did not err in so holding.

III. Public Service Business

Echo alternatively argues it falls within the scope of the PUT as a "'business subject to control by the state,'" or as one "'declared by the legislature to be of a public service nature.'" (Quoting RCW 82.16.010(7)(a)).

Under RCW 82.16.020(1)(f), the PUT applies to "all public service businesses other than the ones mentioned above." A public service business is defined as "any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature." RCW 82.16.010(7)(a). "It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses." Id.

A. Subject to State Control

Echo largely relies on article XII, section 13 of the Washington Constitution to argue it is subject to control by the state. This section governs the regulation of common carriers, holding "[a]ll railroad, canal and other transportation companies are declared to be common carriers and subject to legislative control." WASH. CONST. art. XII, § 13. The Board found freight brokers "are not subject to any meaningful control by the State, which is defined . . . as the control over rates charged for services rendered." Echo alleges this was error because the legislature could constitutionally exercise control over freight brokers. The Department contends that until the legislature exercises "actual 'control'" over freight broker rates or services, brokers are not subject to control by the state. It

avers that if this court held Echo is subject to state control based solely on some possible future exercise of the delegation authority of in the state constitution, there would be a "sea-change in the tax treatment of numerous businesses" because all businesses required to comply with state registration requirements would be deemed subject to state control.

In Continental Grain Company v. State, our Supreme Court found a warehouse was subject to state control because it (1) "annually applied for and received a public-grain-warehouse license," (2) filed "evidence of proper insurance, a financial statement and schedule[ ] of charges," (3) "furnish[ed] a warehouse bond," and (4) provided "warehouse receipts to its customers upon forms prescribed by the Department of Agriculture." 66 Wn.2d 194, 197, 401 P.2d 870 (1965). In Shurguard Mini-Storage of Tumwater v. Department of Revenue, Division II of this court analyzed whether a warehouse was subject to control, relying on "the rule of noscitur a scoiis,[2] which teaches that the meaning of doubtful words may be determined by reference to their relationship with other associated words and phrases." 40 Wn. App. 721, 727, 700 P.2d 1176 (1985). The court rooted its analysis in the last sentence of RCW 82.16.010(11), which gave examples of businesses regulated by the state, including those which "required licensing by the state and the filing of rates." Id. at 727–28.

Mirroring the language in the two cases set out above, WAC 458-20-179(b)(i) defines "subject to control by the state" as "control by the utilities and

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[2] "'[A] word is known by the company it keeps.'" McDonnell v. United States, 579 U.S. 550, 569, 136 S. Ct. 2355, 195 L. Ed. 2d 639 (2016) (quoting Jarecki v. G.D. Searle & Co., 367 U.S. 303, 307, 81 S. Ct. 1579, 6 L. Ed. 2d 859 (1961)).

transportation commission or any other state agency required by law to exercise control of a business of a public service nature regarding rates charged or services rendered." (Emphasis added.) As a common or contract carrier,[3] Echo is required to obtain a permit from the Washington State Utilities and Transportation Commission. RCW 81.80.070(1). In order to successfully obtain a permit, a carrier must "establish safety fitness and proof of minimum financial responsibility as provided in this chapter." RCW 81.80.070(3). Echo does not expand on what these requirements entail and it concedes it is not subject to rate regulation by law or by the Commission. This is not sufficient under the definition set out in WAC 458-20-179.

The State's potential power to regulate freight brokers is also limited by federal preemption. Under 49 USC § 14501(b)(1), "no State or political subdivision . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker." The next section of this statute provides that no state may "enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of . . . any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 USC § 14501(c)(1).

Based on the definition in WAC 458-20-179 and under federal law, freight brokers are not subject to control by the state.

[3] "Common carrier" and "contract carrier" includes freight brokers. See RCW 81.80.010(3).

B. Declared to Be of a Public Service Nature

Finally, Echo argues the legislature has declared that freight brokers are public service businesses. Under RCW 82.16.010, a public service business includes "any business hereinafter declared by the legislature to be of a public service nature."

Echo relies on RCW 81.80.010 and .020 in support of this proposition. RCW 81.80.020 states "[t]he business of operating as a motor carrier of freight for compensation along the highways of this state is declared to be a business affected with a public interest." RCW 81.80.010 defines "public service company" as "any person, firm, association, or corporation, whether public or private, operating a utility or public service enterprise subject in any respect to regulation by the utilities and transportation commission under the provisions of this title or Title 22 RCW." The Department counters that RCW 81.80.020 applies only to businesses "operating as a motor carrier of freight," which excludes freight brokers because it does not transport freight. The Department also correctly notes that neither statutory provision explicitly mentions freight brokers, but Echo contends that "motor carrier" includes common and contract carriers, which do explicitly include brokers. See RCW 81.80.010(3).

RCW 81.80.020 states that "[t]he rapid increase of motor carrier freight traffic and the fact that under the existing law many motor trucks are not effectively regulated have increased the dangers and hazards on public highways and make it imperative that regulation to the fullest extent allowed . . . should be employed." The statute focuses on the proper development and preservation of public

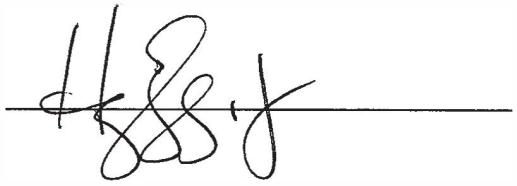
highways and the stability of public transportation services for the public. This plain language contradicts Echo's argument that the statute captures freight brokers because brokers do not directly transport goods on public highways, nor does they provide a transportation service to the public; brokers like Echo provide coordination and facilitation services between customers and carriers who do operate motor transportation vehicles.

Additionally, the Department correctly notes that "a business affected with a public interest" and a "business . . . of a public nature" are different. "We presume the legislature intends a different meaning when it uses different terms." Foster v. Dep't of Ecology, 184 Wn.2d 465, 473, 362 P.3d 959 (2015). RCW 82.16.010(7)(a) defines a public service business as "any business hereafter declared by the legislature to be of a public service nature," while RCW 81.80.020 declares that "[t]he business of operating as a motor carrier of freight for compensation along the highways of this state is declared to be a business affected with a public interest." (Emphasis added.) In Merriam-Webster Online Dictionary, the definition of "nature" includes "disposition, temperament," "the inherent character or basic constitution . . . of a person or thing: essence" or "a kind or class usually distinguished by fundamental or essential characteristics." https://www.merriam-webster.com/dictionary/nature (last visited June 10, 2022). Merriam-Webster defines "affected" as "inclined, disposed." https://www.merriam-webster.com/dictionary/affected (last visited June 10, 2022). We presume that the legislature used these different terms to mean different things; "nature" implies a

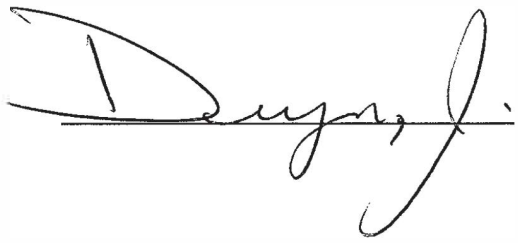
fundamental characteristic distinguishing one category from another, while "affected" is a more ancillary characteristic or inclination.

The full declaration of policy in RCW 81.80.020 highlights this distinction: the statute discusses the importance of preserving public highways and the need for "stabilized service and rate structure" of motor carriers for the public. This supports a reading of "affected with a public interest" as implicating a community-wide concern, rather than distinguishing a business category from others. Under the plain language of the statute, there is not a clear statement from the legislature that freight brokers are "of a public service nature" and therefore Echo does not qualify for the PUT.

Affirmed.



WE CONCUR:



APPENDIX B

RCW 82.16.010

Definitions.

For the purposes of this chapter, unless otherwise required by the context:

(1) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(2) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(3) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(4) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(5) "Log transportation business" means the business of transporting logs by truck, except when such transportation meets the definition of urban transportation business or occurs exclusively upon private roads.

(6) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW **81.68.010** and **81.80.010**. However, "motor transportation business" does not mean or include: (a) A log transportation business; or (b) the transportation of logs or other forest products exclusively upon private roads or private highways.

(7)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (4), (6), (8), (9), (10), (12), and (13) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW **81.04.010**. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection (7)(b) apply throughout this subsection (7).

(i) "Competitive telephone service" has the same meaning as in RCW **82.04.065**.

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet access as defined in RCW **82.04.297**, including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

(8) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(9) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(10) "Telegraph business" means the business of affording telegraphic communication for hire.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(13) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(14) The meaning attributed, in chapter **82.04** RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

[**2015 3rd sp.s. c 6 § 702**. Prior: (2010 c 106 § 224 expired June 30, 2013); **2009 c 535 § 1110**; (2009 c 469 § 701 expired June 30, 2013); **2007 c 6 § 1023**; **1996 c 150 § 1**; **1994 c 163 § 4**; **1991 c 272 § 14**; **1989 c 302 § 203**; prior: **1989 c 302 § 102**; **1986 c 226 § 1**; **1983 2nd ex.s. c 3 § 32**; **1982 2nd ex.s. c 9 § 1**; **1981 c 144 § 2**; **1965 ex.s. c 173 § 20**; **1961 c 293 § 12**; **1961 c 15 § 82.16.010**; prior: **1959 ex.s. c 3 § 15**; **1955 c 389 § 28**; **1949 c 228 § 10**; **1943 c 156 § 10**; **1941 c 178 § 12**; **1939 c 225 § 20**; **1937 c 227 § 11**; **1935 c 180 § 37**; Rem. Supp. 1949 § 8370-37.]

NOTES:

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 702 and 703: "This section is the tax preference performance statement for the tax preference contained in sections 702 and 703 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to provide tax relief for certain businesses or individuals, as indicated in RCW **82.32.808**(2)(e).

(2) It is the legislature's specific public policy objective to support the forest products industry due in part to the industry's efforts to support the local economy by focusing on Washington state based resources thereby reducing global environmental impacts through the manufacturing and use of wood. It is the legislature's intent to provide the forest products industry permanent tax relief by lowering the public utility tax rate attributable to log transportation businesses. Because this reduced public utility rate

is intended to be permanent, the reduced rate established in this Part VII is not subject to the ten-year expiration provision in RCW **82.32.805**(1)(a)." [**2015 3rd sp.s. c 6 § 701**.]

Effective date—2015 3rd sp.s. c 6 §§ 702 and 703: "Part VII of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 1, 2015." [**2015 3rd sp.s. c 6 § 2302**.]

Expiration date—2010 c 106 § 224: "Section 224 of this act expires June 30, 2013." [**2010 c 106 § 410**.]

Effective date—2010 c 106: See note following RCW **35.102.145**.

Intent—Construction—2009 c 535: See notes following RCW **82.04.192**.

Expiration date—2009 c 469 §§ 701 and 702: "Sections 701 and 702 of this act expire June 30, 2013." [**2009 c 469 § 905**.]

Effective date—2009 c 469: See note following RCW **82.08.962**.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW **82.32.020**.

Findings—Intent—2007 c 6: See note following RCW **82.14.390**.

Effective date—1996 c 150: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [**1996 c 150 § 3**.]

Effective dates—1991 c 272: See RCW **81.108.901**.

Finding, purpose—1989 c 302: See note following RCW **82.04.120**.

Effective date—1986 c 226: "This act shall take effect July 1, 1986." [**1986 c 226 § 3**.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW **82.04.255**.

Effective date—1982 2nd ex.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [**1982 2nd ex.s. c 9 § 4**.]

Intent—1981 c 144: "The legislature recognizes that there have been significant changes in the nature of the telephone business in recent years. Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the

providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title **80** RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service." [**1981 c 144 § 1**.]

Severability—1981 c 144: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [**1981 c 144 § 12**.]

Effective date—1981 c 144: "This act shall take effect on January 1, 1982." [**1981 c 144 § 13**.]

Effective date—1965 ex.s. c 173: See note following RCW **82.04.050**.

APPENDIX C

Department of Revenue Washington State

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3149.2009 Issue Date: February 2, 2009

A revised ETA 3149 was issued on May 6, 2019.

The Applicability of the Interstate Commerce Exemption to Freight Forwarders

Are the gross proceeds earned by a freight forwarder who solicits "less than carload" freight from local customers for shipment to points without this state subject to the business and occupation (B&O) tax?

WAC 458-20-193D states:

> Transporting across the state's boundaries is exempt, whereas supplying such transporters with facilities, arranging accommodations, providing funds and the like, by which they engage in such commerce is taxable.
>
> **Examples of Exempt Income:**
>
> (1) Income from those activities which consist of the actual transportation of persons or property across the state's boundaries is exempt.

Where a freight forwarder has the contractual responsibility to move the freight to its destination in interstate commerce it is an interstate carrier. Any freight forwarder claiming the exemption must have the bill of lading indicating that the freight forwarder has common carrier responsibility to the consignor from point of origin in the state to the out-of-state consignee at an out-of-state delivery point or vice versa.

Income earned by a freight forwarder from intrastate shipments is not exempt. The fact that a freight forwarder owns no rolling stock and contracts with others for actual handling and transportation of the goods (including pickup and delivery) is immaterial to the exemption.

Business activities which give rise to tax liability to the State of Washington are:

(1) Storage charges and storage charges on incoming merchandise held more than 48 hours. (warehousing B&O.)

(2) Charges for local pickup and delivery services performed before the goods have reached the origin of the interstate bill of lading or after the goods have reached the destination indicated on the interstate freight bill. (motor or urban transportation public utility tax.)

(3) C.O.D. fees. (service and other activities B&O.)

(4) The use tax applies to consumable supplies used by a local office such as freight bills, letterheads, stationery, envelopes, supplies, etc.

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APPENDIX D

Department of Revenue Washington State

Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3149.2019 Issue Date: May 6, 2019

Taxability of Gross Income Received by Freight Forwarders

Purpose

This Excise Tax Advisory (ETA) discusses the taxability of gross income received by freight forwarders and the deductions and exclusions that may apply to that gross income.

This ETA does not apply to a marketplace facilitator, as defined in RCW 82.13.010(3)[1], who arranges for the transportation of property sold on its marketplace, such as a food delivery service.[2]

What is a freight forwarder?

For the purpose of this ETA, a "freight forwarder" is a business that arranges for the transportation of its customers' property. A freight forwarder **may or may not**:

- perform the actual physical transportation of the property transported, or
- have a contractual liability to its customer for the transportation of the property.

How is gross income received by a freight forwarder taxable?

The taxability of gross income received by a freight forwarder depends on whether the activity performed qualifies the freight forwarder as a "motor transportation business" or "urban transportation business." RCW 82.16.010(6) generally defines a motor transportation business as a business that operates a motor vehicle for hire to transport people or property not owned by the business. RCW 82.16.010(12) generally defines an urban transportation business as a business that operates a motor vehicle for public use and for hire to transport people or property not owned by the business within certain specified distances of a city or town.

[1] Effective July 1, 2019, the definition of "marketplace facilitator" will be found in RCW 82.08.010.
[2] "Food delivery services" typically include restaurants and other food-delivery platforms that allow customers to place a food order to be picked up by a driver and delivered to the customer.

If a freight forwarder qualifies as a motor or urban transportation business, its income is subject to the Public Utility Tax (PUT). If a freight forwarder does not qualify as a motor or urban transportation business, its income is subject to the business and occupation (B&O) tax.

When is a freight forwarder a motor or urban transportation business?

Assuming all other statutory requirements are met, to qualify as a motor or urban transportation business and have its gross income subject to the PUT, a freight forwarder must either:

- physically transport its customer's property, **or**
- be contractually liable for the transportation of its customer's property.

The amounts received are taxable under the motor or urban transportation PUT classifications. For additional information on all of the statutory requirements and the difference between the motor and urban transportation PUT classifications, refer to RCW 82.16.010 and WAC 458-20-180 *Motor carriers*.

When is a freight forwarder not a motor or urban transportation business?

If a freight forwarder does not physically transport its customer's property (i.e., a third-party carrier provides the transportation), **and** is not contractually liable for the transportation of its customer's property, then it is not a motor or urban transportation business, and its gross income is subject to the B&O tax.

A freight forwarder that neither physically transports its customer's property nor is contractually liable for the transportation of its customer's property is considered a freight broker. Amounts received for activities engaged in by freight brokers are taxable under the service and other activities B&O tax classification. RCW 82.04.290.

Freight brokers that conduct international freight brokering activities are subject to the international freight forwarder B&O tax classifications. RCW 82.04.260.

What is contractual liability?

For purposes of this ETA generally, a freight forwarder has contractual liability for the transportation of its customer's property if it is contractually (but not necessarily physically) responsible for transporting the property using motor vehicles, and is liable for any damages or loss in the transportation of that property.

Under most circumstances, the bill of lading can be used to determine whether the freight forwarder is contractually liable.

Deduction from PUT for services jointly provided

Freight forwarders that are motor or urban transportation businesses may deduct from their gross income subject to PUT, amounts they actually pay to third-party carriers who assist in physically transporting the property as consideration for services jointly provided. These amounts may be deducted regardless of whether the third-party carrier physically transports all or a portion of the property. Refer to RCW 82.16.050(3) and WAC 458-20-179(202)(f) for more information about the services jointly provided deduction.

Exclusion from B&O tax for advances and reimbursements	The services jointly provided deduction is not available to freight broker and international freight forwarder activities. However, such businesses may exclude gross income subject to B&O tax for qualifying advances or reimbursements. To properly exclude gross income as an advance or reimbursement, the taxpayer must be acting as an agent and meet all of the requirements of WAC 458-20-111, *Advances and reimbursements*. For example, amounts received and paid to third-party carriers who physically transport the property may be deductible if all of the requirements of WAC 458-20-111 are met.
Deduction for interstate transportation	Under certain circumstances, a freight forwarder may deduct from gross income subject to the PUT, amounts charged for property transported across the state's boundaries. If a freight forwarder is a motor or urban transportation business, and its gross income is subject to the PUT, then a deduction from gross income may be taken for all amounts attributed to the transportation of property by motor transportation equipment where the origin or destination of the haul is outside of Washington. For additional information on the deduction for interstate transportation, refer to WAC 458-20-180 *Motor carriers* and WAC 458-20-193D *Transportation, communication, public utility activities, or other services in interstate or foreign commerce*. If a freight broker or international freight forwarder is not a motor or urban transportation business, and its income is subject to the service and other activities or international freight forwarder B&O tax, respectively, then income it earns from arranging for the transportation of property must be attributed consistent with WAC 458-20-19402 *Single factor receipts apportionment—Generally*.

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PERKINS COIE LLP

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