FILED
10/16/2017 4:36 PM
Court of Appeals
Division II
State of Washington

No. 96694-0

NO. 49979-7-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

FIRST STUDENT, INC.,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

For more than 80 years, respondent Department of Revenue has consistently applied the business and occupation (B&O) tax to school bus operators. And for more than 25 years, appellant First Student, Inc., a school bus operator, has paid B&O tax on its gross income from providing services to school districts. Despite this longstanding interpretation and history, First Student seeks a refund of B&O taxes on the basis that it should be taxed instead as a public utility under the public utility tax (PUT).

Enacted in 1935, the PUT applies to businesses engaged in certain public utility activities including those operating as a "motor transportation business" or "urban transportation business." Businesses subject to the PUT are exempt from the B&O tax. Since the PUT's enactment, the Department and its predecessor, the Washington State Tax Commission, have consistently interpreted the tax as not applying to school bus operators. First Student argues the PUT applies because it operates school buses in exchange "for compensation" from school districts and thus provides its school bus transportation services on a "for hire" basis.

But such a broad interpretation of the term "for hire" contradicts the legislative and administrative history of the taxation of school bus

operators, conflicts with the common legal understanding of the term at the time the legislature added it to the statute, and should be rejected. To the extent "for hire" is subject to more than one plausible meaning, it is ambiguous, and the Court should defer to the longstanding interpretation by the agency charged with its administration, to which the legislature has acquiesced for well over 60 years. The Court should affirm the trial court's summary judgment ruling in the Department's favor.

II. COUNTERSTATEMENT OF THE ISSUE

Are school bus operators properly taxed under the B&O tax and not the PUT, as the Department's rules have recognized for more than 80 years, when the services provided by school bus operators do not meet the "for hire" elements of the PUT's "motor transportation business" and "urban transportation business" classifications?

III. STATEMENT OF THE CASE

First Student, Inc. registered as a business in Washington in 1990. CP 110, ¶ 3. Through a competitive bidding process required by law, First Student entered into "Pupil Transportation Services Contracts" to provide school bus services to school districts. *See, e.g.*, CP 35. Under its contracts, First Student agrees to "operate transportation services" and "furnish labor, school buses and bus maintenance, and materials and supplies as required to provide the District with transportation service." *Id.*

In exchange, First Student bills the school district for the services provided to it during the preceding month. CP 43-44. The district "reserves the right to approve each route and route stop, and to determine which students are to be transported and the manner of transportation." CP 38.

Since first registering in 1990, First Student has consistently reported the income it received for providing services to school districts under the B&O tax classification for "other business or service activities." *See* CP 110-11, 113-23. In 2013, however, First Student requested a letter ruling from the Department's Taxpayer Information and Education Section regarding the correct tax classification for revenue received from its contracts with school districts. CP 127. First Student explained that it owns and operates school buses and that its customers are principally various school districts in Washington, including the Seattle School District. *Id.* First Student contended that the PUT, not the B&O tax, was the proper tax classification because its "school buses are motor propelled vehicles that convey students" and "are passenger vehicles for public use that convey students." CP 128-29. The Department issued a letter ruling, explaining that it had revisited the issue, but declined to change its longstanding interpretation that school bus operators are subject to B&O tax under the "other business or service activities" classification. CP 134-35.

Thereafter, First Student submitted administrative refund requests to the Department for B&O taxes paid with respect to its school bus services to school districts for the period December 1, 2008 through December 31, 2014. CP 108. The Department denied the refund requests. *Id.* First Student appealed the letter ruling and the Department's denial of its refund requests through the Department's administrative review process, arguing again for the PUT classification. The Department's Appeals Division issued a determination again concluding that the proper classification for taxing the gross income of school bus operators providing services to school districts is the B&O tax's "other business or service activities." *Id.* The Department reached the same conclusion in response to First Student's reconsideration petition. *Id.*

Pursuant to RCW 82.32.180, First Student filed a de novo refund claim in Thurston County Superior Court. CP 6-9. First Student moved for summary judgment, seeking a ruling that the B&O tax classification is inapplicable and that it is entitled to a refund of B&O taxes. CP 58. The Department also requested summary judgment that the proper tax classification is the B&O tax's "other business or service activities." CP 136. The trial court granted summary judgment in the Department's favor, ruling that "the Department of Revenue is entitled to judgment as a matter of law that First Student's income from transporting students under

contracts with school districts is properly taxed under the Business and Occupation Tax's 'other business or service activities' classification, RCW 82.04.290, not the Public Utility Tax." CP 189. This appeal followed.

IV. ARGUMENT

At issue in this case is which of two tax statutes applies to the gross income of First Student's school bus operations. The first statute is RCW 82.04.220, the B&O tax. The B&O tax applies to the act or privilege of engaging in business activities, and has a number of classifications, including "other business or service activities." RCW 82.04.290(2). The "B&O tax system is extremely broad." *Steven Klein, Inc. v. Dep't of Revenue*, 183 Wn.2d 889, 898, 357 P.3d 59 (2015). In adopting the B&O tax system, the legislature intended to impose the tax "upon virtually all business activities carried on within the state." *Id.* The B&O tax is measured by applying the applicable rate against the value of products, gross proceeds, or gross income of the business. RCW 82.04.220(1). The rate for the "other business or service activities" classification is 1.5 percent. RCW 82.04.290(2).

The second tax statute at issue is RCW 82.16.020, the public utility tax (PUT), which applies to public service businesses, including "motor transportation businesses" and "urban transportation businesses." RCW

82.16.010(6), (12). Both taxes are measured by applying the applicable rate against the gross income of the business. RCW 82.04.220(1); RCW 82.16.020(1). The base rates for the PUT classifications are 0.6 percent (urban transportation business) and 1.8 percent (motor transportation business). RCW 82.16.020(1)(d), (f).[1] Business activity taxed under the PUT is exempt from taxation under the B&O tax. RCW 82.04.310(1).

A. Standard of Review

In a tax case, the Court reviews a trial court's legal conclusions, including statutory construction, de novo. *Home Depot USA, Inc. v. Dep't of Revenue*, 151 Wn. App. 909, 916, 215 P.3d 222 (2009) (citing *Nelson Alaska Seafoods, Inc. v. Dep't of Revenue*, 143 Wn. App. 455, 461, 177 P.3d 1161 (2008)). While this Court's review is de novo, "the burden shall rest upon the taxpayer to prove that the tax as paid by the taxpayer is incorrect" and "to establish the correct amount of the tax." RCW 82.32.180. Thus, First Student must prove that its income as a school bus operator during the refund period is not subject to the B&O tax, and is instead subject to the PUT.

[1] On these base rates, the statutes impose an additional tax equal to seven percent times the base rates, so that the total rates are 0.642 percent for urban transportation businesses and 1.926 for motor transportation businesses. RCW 82.16.020(2); RCW 82.02.030.

B. School Bus Operators Have Been Subject to the B&O Tax for More Than 80 Years

In evaluating whether the Department's longstanding interpretation that the B&O tax applies to persons operating school buses is consistent with the legislative purpose and intent, the Court must consider the entire statutory context. *See Home Depot USA, Inc.*, 151 Wn. App. at 916. The business activity of operating school buses has been subject to the B&O tax since at least 1934, when Tax Commission regulations provided that the "service or other business" classification applied to the "business of transportation of school children under contract with school districts." CP 330 (Wash. State Tax Comm'n Bus. Tax Regs., Art. 294.12 (1934)). That B&O tax classification applied regardless of whether such persons leased buses with drivers to the school districts or contracted to provide the transportation and cover all expenses. *Id.* It also applied to "certified or other licensed motor vehicle carriers operating, under contract, buses carrying school children exclusively." *Id.*

The Tax Commission's 1934 regulations implemented the 1933 interim B&O tax statute that the legislature adopted in response to the Washington Supreme Court's invalidation of the state income tax. Hugh D. Spitzer, *A Washington State Income Tax--Again*, 16 UNIVERSITY OF PUGET SOUND LAW REVIEW 515, 538 (1993). The 1933 statute created a

number of B&O tax classifications, including the business of rendering or performing services, which the school bus regulation referred to as "service or other business." App. A (Laws of 1933, 1st Ex. Sess., ch. 57, § 2-a(1)); CP 330. It also created a tax classification for "passenger and freight highway transportation companies including certificated, contract and for hire carriers," a precursor to the PUT on highway transportation businesses. App. B (Laws of 1933, ch. 191, § 2(2)(e)).

The legislature subsequently enacted the Revenue Act of 1935, which thoroughly overhauled Washington's tax system and established the basic structure that remains in place today. Spitzer, *supra*, at 538. The Act included a B&O tax "for the act or privilege of engaging in business activities," with classifications for extractors, manufacturers, retailers, wholesalers, and other business activities. App. C (Laws of 1935, ch. 180, § 4). The tax was measured on gross income, and the rate for "other business activities" was 0.5 percent. *Id.* at § 4(e).

The Act also created a separate PUT applying to the act or privilege of engaging in public or private utility businesses such as railroads, water distribution, light and power, telephone and telegraph, gas distribution, urban or interurban transportation, and highway transportation businesses. CP 333-36 (Laws of 1935, ch. 180, §§ 36-37). The legislation established different PUT rates for "highway

transportation" (1.5 percent) and for "urban or interurban transportation" (0.5 percent). *Id.* at § 36.

The Act defined the term "highway transportation business" in relevant part as follows:

> The business of operating any motor propelled vehicle, as an auto transportation company, certified freight carrier, contract hauler or for hire carrier.

CP 335 (Laws of 1935, ch. 180, § 37(i)). The term "auto transportation company" was defined with cross reference to an existing definition that excluded persons operating school buses. *Id.* (referencing Laws of 1921, ch. 111, § 1(d)). The terms "certified freight carrier," "contract hauler," and "for hire carrier" were also defined with cross references to existing definitions, each of which involved the transportation of property, not passengers. *Id.* (referencing Laws of 1933, 1st Ex. Sess., ch. 55, §§ 1, 5).

The Act defined the term "urban or interurban transportation business" in relevant part as:

> [t]he business of operating any motor propelled vehicle for public use in the conveyance of persons, operating within the limits of any city or town or within the limits of contiguous cities or towns.

Id. (Laws of 1935, ch. 180, § 37(j)(3)). The statutory definition identified several means of conveyances including "busses, hotel busses, jitneys,

sight-seeing busses, taxicabs or any other passenger motor vehicles operated for public hire," but did not mention school buses. *Id.*

The following year, the Tax Commission adopted contemporaneous rules implementing the 1935 Act. CP 348 (Wash. State Tax Comm'n Rules and Regulations (1936)). These rules included Rule 180, which governed Highway Transportation Companies, and set forth the appropriate tax classifications for various activities of such business. Rule 180 specified the activities to which the PUT applied: "all revenue derived from the carriage of passengers or freight, including baggage, and revenue derived from pick-up and delivery service rendered." CP 349 (Wash. State Tax Comm'n Rules and Regulations, Rule 180 (1936)). With respect to school buses, it provided that the B&O tax classification of "service and other business activities" applied to "contracts with school districts to transport school children." *Id.*

The PUT statutory definitions remained largely unchanged until 1943, when the legislature amended the term "urban business transportation" in relevant part as follows: "the business of operating any ~~motor propelled~~ vehicle for public use in the conveyance of persons or <u>property for hire</u>." CP 354 (Laws of 1943, ch. 156, § 10A(j)(2)) (strikeout and underline added). The legislature also expanded the term's geographic scope to include such transportation taking place within five miles of the

corporate limits of cities or towns. *Id.* And it amended the list of examples, by deleting references to specific vehicle types like buses and taxicabs and instead providing in relevant part, "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, pick-up or delivery services . . ." *Id.* The legislature also amended the term "highway transportation business," but only to reflect the expanded geographic scope of "urban transportation business." *Id.* at § 10A(i) (excluding motor vehicles operating within five miles of the corporate limits of any city or town).

The Tax Commission issued revised rules soon after the 1943 legislation. Rule 180, as amended by the Tax Commission, incorporated the statutory changes to the geographic scope of the two classifications. App. D (Wash. State Tax Comm'n Rules and Regulations, Rule 180 (1943)). It also provided examples of "urban transportation businesses," including "the business of operating taxicabs, city bus systems, vehicles for intercity transfer of property, pick-up and delivery service . . ." *Id.* And it provided examples of "highway transportation businesses," which included "the business of hauling for hire upon the highways any merchantable extracted material, such as logs, poles, sand, gravel, coal, etc." *Id.* In addition, amended Rule 180 included the following: "NOTE:

Persons operating school buses for hire are taxable under the classification of "Service and Other Activities" of Title II (Business and Occupation Tax) at the rate of ½ of 1% of gross income." *Id.*

The 1949 legislature amended the PUT definitions to provide additional clarity on the geographical scope, specifically indicating that "urban transportation applies to businesses operating any vehicle for public use in the conveyance of persons or property for hire . . . <u>operating entirely within and between cities and towns whose corporate limits are not more than five miles apart</u> . . . ." App. E (Laws of 1949, ch. 228, § 10(j)) (underline added). The legislature likewise amended the definition of "highway transportation business" to reflect the geographic scope language in the definition of "urban transportation business." *Id.* (Laws of 1949, ch. 228, § 10(i))

The Tax Commission did not revise Rule 180 until 1954, when it deleted the "NOTE" in the 1943 rule referenced above and replaced it with comparable language pertaining to school buses:

> *The terms "highway transportation" and "urban transportation" do not include the businesses of operating school buses* or ambulances, the collection and disposal of refuse and garbage, or hauling for hire exclusively over public roads. *Gross income from these businesses must be reported under the "Service and Other Activities" classification of the Business and Occupation Tax.*

App. F (Wash. State Tax Comm'n Rules, Rule 180 (1954)) (emphasis added).

In 1955, the legislature amended the definition of "highway transportation business." Instead of including only motor propelled vehicles operating as an "auto transportation company, common carrier or contract carrier," the term as amended included motor propelled vehicles "by which persons or property are conveyed for hire." CP 359 (Laws of 1955, ch. 389, § 28). It continued to reference "the operation of any motor propelled vehicle operated as an auto transportation business, common carrier, or contract carrier" as illustrative examples. *Id.* No substantive change was made to the "urban transportation business" definition.

The Tax Commission amended its rules in 1956 to reflect the latest statutory change. The amended language in Rule 180 continued to provide that school bus operators are subject to the B&O tax and not the PUT:

> The terms [highway transportation and urban transportation] *do not include the businesses of operating* auto wreckers or towing vehicles, *school busses*, ambulances, nor the collection and disposal of refuse and garbage. Gross income from these businesses must be reported under the "Service and Other Activities" classification of the Business and Occupation Tax.

CP 363 (Wash. State Tax Comm'n Rules, Rule 180 (1956)) (emphasis added). In addition, the Tax Commission added language to Rule 224, which implemented the B&O tax classification for "Service and Other

Business Activities," making clear that school buses continued to be taxed under the B&O tax. Specifically, the Tax Commission added the term "school bus operators" to the illustrative list of "persons rendering professional or personal services to persons" that are taxable under the "service and other business activities" classification of the B&O tax. CP 364-65 (Wash. State Tax Comm'n Rules, Rule 224 (1956)).

Between 1956 and 2015, the legislature amended the PUT definition section an additional 18 times.[2] Two amendments resulted in substantive changes to the definition of "highway transportation business." The first amendment occurred in 1961, when the legislature replaced the term "highway transportation business" with "motor transportation business" and excluded from its application the transportation of logs or other forest products exclusively upon private roads or private highways. App. G (Laws of 1961, ch. 293, § 12). The second substantive amendment occurred in 2015, when the legislature amended the term "motor transportation" to exclude the business of "log transportation," regardless

[2] Laws of 2015, 3d Spec. Sess., ch. 6, § 702; Laws of 2010, ch. 106, § 224 (expired June 30, 2013); Laws of 2009, ch. 535, § 1110; Laws of 2009, ch. 469, § 701 (expired June 30, 2013); Laws of 2007, ch. 6, § 1023; Laws of 1996, ch. 150, § 1; Laws of 1994, ch. 163, § 4; Laws of 1991, ch. 272, § 14; Laws of 1989, ch. 302, § 203; Laws of 1989, ch. 302, § 102; Laws of 1986, ch. 226, § 1; Laws of 1983, 2d Ex. Sess., ch. 3, § 32; Laws of 1982, 2d Ex. Sess., ch. 9, § 1; Laws of 1981, ch. 144, § 2; Laws of 1965, Ex. Sess., ch. 173, § 20; Laws of 1961, ch. 293, § 12; Laws of 1961, ch. 15, § 82.16.010; Laws of 1959, Ex. Sess., ch. 3, § 15.

of whether on private roads or highways. App. H (Laws of 2015, 3d Spec. Sess., ch. 6, § 702).

The current definitions in the PUT for "motor transportation business" and "urban transportation business" provide:

> (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.
>
> . . .
>
> (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.

RCW 82.16.010.

Regarding the taxation of school bus operators, Rule 180 (WAC 458-20-180(5)) and Rule 224 (WAC 458-20-224(2)) remain largely unchanged since 1956. Thus, in answer to the question "What does 'motor transportation' and 'urban transportation' include?", Rule 180(5) continues to exclude the business of operating school buses:

> Motor and urban transportation include the business of operating motor-driven vehicles, on public roads, used in transporting persons or property belonging to others, on a for-hire basis. These terms include the business of: (a) Operating taxicabs, armored cars, and contract mail delivery vehicles, *but do not include the businesses of operating* auto wreckers or towing vehicles (taxable as sales at retail under RCW 82.04.050), *school buses*, ambulances, nor the collection and disposal of solid waste (taxable under the service and other activities B&O tax classification); ....

WAC 458-20-180(5)(a) (emphasis added).

Rule 224(2) provides a list of business activities that are subject to the "service and other business activities" classification that includes school bus operators:

> (2) Persons engaged in any business activity, other than or in addition to those for which a specific rate is provided in the statute, are taxable under a classification known as service and other business activities, and so designated upon return forms. In general, it includes persons rendering professional or personal services to persons (as distinguished from services rendered to personal property of persons) such as accountants, aerial surveyors and map makers, agents, ambulances, appraisers, architects, assayers, attorneys, automobile brokers, barbers, baseball clubs, beauty shop owners, brokers, chemists,

> chiropractors, collection agents, community television antenna owners, court reporters, dentists, detectives, employment agents, engineers, financiers, funeral directors, refuse collectors, hospital owners, janitors, kennel operators, laboratory operators, landscape architects, lawyers, loan agents, music teachers, oculists, orchestra or band leaders contracting to provide musical services, osteopathic physicians, physicians, real estate agents, *school bus operators*, school operators, sewer services other than collection, stenographers, warehouse operators who are not subject to other specific statutory tax classifications, teachers, theater operators, undertakers, veterinarians, and numerous other persons.

WAC 458-20-224(2) (emphasis added). Therefore, both rules make clear that school bus operators—as has been the case since at least 1934—remain taxable under the "other business or service activities" classification of the B&O tax.

C. School Bus Operators Are Not Subject to the PUT Because They Do Not Provide Their Services on a "For Hire" Basis

The primary question presented by this case is whether the legislature, when it added the term "for hire" to the PUT definitions in 1943 and 1955, intended to change how school bus operators would be taxed. A court's fundamental objective is to ascertain and carry out the legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 10, 43 P.3d 4 (2002). The plain meaning rule requires courts to

consider legislative purposes or policies appearing on the face of the statute as part of the statute's context. *Id.* If, after this inquiry, 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. *Id.* (internal citations omitted).

The common legal understanding of "for hire," when the legislature added the term to the PUT definitions, required that the passenger be responsible for the fare. CP 372 (*Black's Law Dictionary* 773 (4th ed. 1951)). The Department's rules, amended contemporaneously to the legislative amendments, adhered to that definition by continuing to exclude school bus operators from the PUT. Neither the statutory language nor the legislative history indicate the legislature intended a different definition of "for hire" or to change the taxation of school bus operators.

First Student offers an alternative interpretation of the term "for hire," that it merely means "for compensation," citing Webster's Third New International Dictionary (2000) for the proposition that "for hire" is "available for use or service in return for payment." Br. Appellant at 10. But the broad and general interpretation First Student offers is contrary to the more than 60 years of consistent interpretation of the statutes at issue by the Department, in which the legislature has acquiesced since at least 1955. First Student's "plain meaning" interpretation also is undermined by

its 25-year history of paying B&O taxes and renders the term "for hire" superfluous. Therefore, First Student simply does not offer the sole reasonable interpretation of the term "for hire."[3]

Because the term "for hire" in RCW 82.16.010(6) and (12) is ambiguous, the Court should defer to the contemporaneous understanding long applied by the agency charged with the statute's administration.

1. The Department's Rule is Consistent with the Contemporaneous Legal Definition of "For Hire"

Because the PUT definitions do not define "for hire" and contain no specific reference to the proper taxation of school bus operators, the Department properly implemented rules to "fill in the gap." *See State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n*, 104 Wn.2d 615, 634, 999 P.2d 602 (2000) (recognizing administrative agencies do not have the power to amend or change legislative enactments by rule, but may fill in the gaps as necessary to effect the statutory scheme). Administrative rules adopted pursuant to a grant of legislative authority are presumed to be valid and should be upheld on judicial review if they are consistent with the statute being implemented. *Id.* at 634-35.

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[3]Indeed, the trial court advanced yet a third interpretation of "for hire": "While there was some argument that for hire means that the passenger is responsible, I don't exactly agree with that. I believe, however, that 'for hire' means that there is a responsibility for individual passengers." CP 287.

The Department's rules are consistent with the meaning of "for hire" as the legislature would have understood the term when the legislature added it to the PUT definitions. When the legislature does not define a term, courts look to dictionaries in use at the time of the statute's adoption to give terms their plain and ordinary meanings. *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 519-20, 91 P.3d 864 (2004); *Jongeward v. BNSF Ry. Co.*, 174 Wn.2d 586, 595-96, 278 P.2d 157 (2012) (considering historical view of the word "trespass," not its modern view). Familiar legal terms are given their familiar legal meanings. *Cashmere Valley Bank v. Dep't of Revenue*, 181 Wn.2d 622, 634, 334 P.3d 1100 (2014) (referencing Black's Law Dictionary to define the term "secured" in the absence of a statutory definition). When the legislature amended the PUT definitions to add "for hire," Black's Law Dictionary defined the term as follows:

> **FOR HIRE OR REWARD.** To transport passengers or property of other persons than owner or operator of the vehicle for a reward or stipend, to be paid by such passengers, or persons for whom such property is transported, to owner or operator. Michigan Consol. Gas Co. v. Sohio Petroleum Co., 32 N.W.2d 353, 356, 321 Mich. 102.

CP 372 (*Black's Law Dictionary* 773 (4th ed. 1951)). That definition remained largely unchanged for four decades. CP 373-78. (*Black's Law Dictionary* 773 (4th rev. ed. 1968); *Black's Law Dictionary* 585 (5th ed.

1979); *Black's Law Dictionary* 651 (6th ed. 1990)).[4] With respect to transporting passengers, this definition contemplated that the passengers would be responsible for paying the fare.

The Michigan case cited in the definition contained this same language. It relied on a South Dakota case, which involved a baker who operated his motor truck for the sole purpose of delivering his bakery products to his customers. *City of Sioux Falls v. Collins*, 43 S.D. 311, 178 N.W. 905, 951 (1920). At issue was whether the baker had operated a motor truck without a proper license, which was required "for all drays, carts, wagons, motor trucks, baggage, and express vehicles, and all other vehicles for hire or reward." *Id.* The Court interpreted the term "for hire or reward" as meaning "to transport passengers or the property of other persons than the owner or operator of such truck for a reward or stipend, to be paid by such passengers or the persons for whom the property is transported to the person owning or operating the truck." *Id.* While the issue in dispute was not whether a third party's payment under contract constituted "for hire" transportation, the Court's definition of "for hire" as requiring the passenger pay the fare illustrates the common understanding of the term at the time.

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[4] The 1940 and 1948 definitions quoted by First Student in its briefing refer to the term "hire," a term that is distinct from "for hire." *See* Br. Appellant at 17-18. In addition, the 1969 definition of "for hire or compensation" from Ballantine's Law Dictionary at best supports that "for hire" is ambiguous.

This appears to have been the common understanding of the term in Washington State as well. In a 1956 Attorney General Opinion concluding that local school boards, not the state board of education, had the authority to adopt rules governing the use of school buses, the author offered "counsel and suggestions for [the local school boards'] consideration." AGO 1956 No. 242 at 4. One of the suggestions cautioned that charging passengers a fare would make school buses "for hire":

> 2. No charge may be made of the passengers. School buses are licensed upon a tax exempt basis under RCW 46.16.020. To charge a fare would cause such vehicles to acquire a "for hire" status as defined by RCW 46.04.190.

Id. This recommendation affirms that the common legal meaning of the term "for hire," at the time the legislature added the language to the definition of "highway transportation," was that passengers would be responsible for the fare.

A New Jersey appellate court examined the Black's Law Dictionary definition of "for hire," requiring that passengers pay the fare to the operator, in deciding that an adult medical day-care services provider was not providing its transportation "for hire." *Nebinger v. Maryland Cas. Co.*, 711 A.2d 985 (N.J. Super. App. Div. 1998). The court referred to that dictionary as providing the term's "generally accepted meaning" and concluded that the weekly fee that clients paid for multiple

services including transportation was not equivalent to paying for transportation "for hire." *Id.* at 988-89.

Applying the definition as understood when the legislature added the term to the PUT, "for hire" means something more than merely the transportation is provided in exchange for compensation, but also that the passenger is responsible for the compensation. The 1943 and 1955 legislatures, therefore, would have understood the term "for hire" to not include school bus operators receiving compensation from school districts under their contracts to provide student transportation services. Consequently, the Department's longstanding interpretation that school buses are not provided on a "for hire" basis is consistent with the tax statutes implemented by the Department's rule. *See State ex rel. Evergreen Freedom Found.*, 140 Wn.2d at 634-35 (administrative rules are presumed valid and will be upheld if reasonably consistent with the statute being implemented).

2. The Department's Longstanding Interpretation is Entitled to Deference and Should Be Given Great Weight

The Department and the Tax Commission have excluded school bus operators from the PUT since its enactment. Both Rule 180, implementing the motor carrier classifications of the PUT, and Rule 224, implementing the "other business and service activities" classification of

the B&O tax, make clear that school bus operators are taxable under the B&O tax. As detailed above, the Department adopted nearly all of the rule amendments in response to and shortly after the statutory amendments. "[A]n administrative construction nearly contemporaneous with the passage of the statute, especially when the legislature fails to repudiate the contemporaneous construction, is entitled to great weight." *State ex rel. Evergreen Freedom Found.*, 104 Wn.2d at 635-36.

In construing terms undefined in statute, courts have long turned to rules adopted by the administrative agency charged with implementing the statute. For example, in *State ex. rel. Evergreen Freedom Foundation*, the Washington Supreme Court upheld a Public Disclosure Commission (PDC) rule identifying the circumstances under which an employer must require written annual authorization prior to withholding or diverting a portion of an employee's wages or salaries for political purposes. In evaluating the validity of the rule, the Court gave great weight to the fact that the PDC adopted the rule interpreting Initiative 134 the year after voters passed the initiative, and that the legislature "has neither repudiated that interpretation by the PDC nor amended the statute." *Id.* at 636. The Court noted that the legislature "has apparently acquiesced in the PDC's interpretation" of the initiative. *Id.*

The Court has applied a similar framework to contemporaneous rules adopted by the Department. For example, in considering whether a statutory amendment allowed for-profit nursing homes to qualify for the patient services B&O tax exemption, the Court looked at the Tax Commission rules promulgated shortly after the adoption of the statute. *In re Sehome Park Care Center, Inc.*, 127 Wn.2d 774, 779, 903 P.2d 443 (1995). The legislature had amended the statute to include within the exemption "nursing homes and homes for unwed mothers operated as religious or charitable organizations." *Id.* (citing Laws of 1961, ch. 293, § 5). The Tax Commission promulgated a rule immediately after the amendment, clarifying that the exemption applied only to nonprofit nursing homes. *Id.* at 780. The Department carried forward the same interpretation in subsequent rule updates and the legislature did not repudiate that interpretation, despite having amended the statute various times over the years. *Id.*

The Court gave great weight to that contemporaneous construction and to the legislature's acquiescence over several decades. The Court recognized the importance of the longstanding interpretation, explaining:

> By 1993, the Legislature, the Department, and taxpayers had nearly fifty years of experience with the statute in general and over thirty years of experience with the words at issue here. During all that time, the Department and its predecessor commission have interpreted the statutory

> words by rule to provide an exemption only to nonprofit nursing homes. We decline to disturb that interpretation.

Id. at 780-81.

In another case involving the taxation of nursing homes, the Court of Appeals again turned to the Department's longstanding statutory interpretation. *Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 103 Wn. App. 169, 11 P.3d 839 (2000). The taxpayer nursing homes challenged the Department's position that they did not lease rooms to their residents and thus did not qualify for the B&O tax exemption for renting or leasing property. One statute at issue created a "presumption of a lease or rental based on 30-day occupancy in a hotel, rooming house, tourist court, motel trailer camp, and the granting of any similar license to use real property." *Id.* at 179. Soon after its enactment in 1951, the Department interpreted the statute as applying to "all establishments which are held out to the public as an inn, hotel, public lodging house, or place where sleeping accommodations may be obtained," and to not apply to "hospitals, sanitariums, nursing homes, rest homes, and similar institutions." *Id.* at 180. That distinction remained in the Department's rules through several statutory amendments, and nearly 50 years after the statute's enactment, the Court deferred to that contemporaneous interpretation. *Id.* at 180.

Here too the Court should afford great weight to the Department's longstanding interpretation of the PUT definitions, rather than applying a present-day, generic definition that disregards the more than 80 years of experience that the Department, the legislature, and school bus operators have had with the PUT and the B&O tax. Courts must read all words "in the context of the statute in which they appear, not in isolation or subject to all possible meanings found in a dictionary." *State v. Lilyblad*, 163 Wn.2d 1, 9, 177 P.3d 686 (2008). The best evidence of what the legislature intended when it added the phrase "for hire" to the "urban transportation" definition in 1943, and to the "highway transportation" definition in 1955, arguably is how the agency charged with implementing the amendments understood them. As recounted above, the Tax Commission explained in its updated rules after both statutory amendments that school buses continued to be taxed under the B&O tax classification for "other business and service activities."

Had the legislature disagreed with the Tax Commission's 1943 updated rule, it could have made clear in later statutory amendments that school bus operators were subject to the PUT. But it did not. Nor did it repudiate the Tax Commission after its 1956 updated rules provided that school bus operators continued to be properly taxed under the B&O tax, and not under the PUT. Now, more than 60 years later, and having

amended the PUT definition statute 18 times since 1955, including five amendments to the definition of motor/highway transportation,[5] the legislature has clearly acquiesced to the Department's interpretation.

3. The Department's Interpretation is Consistent with the Statutory Context of Other PUT Definitions

The Department's interpretation that transportation provided by school bus operators is not provided on a "for hire" basis can be harmonized with the other definitions in RCW 82.16.010. Statutes are to be read together, whenever possible, to achieve a harmonious total statutory scheme that maintains the integrity of the respective statutes. *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 588, 192 P.3d 306 (2008). First Student contends that the Department's interpretation of "for hire" is at odds with the statutory context. Br. Appellant at 21. But the fact that "for hire" is used or referenced in other PUT definitions, such as "gas distribution business," "light and power business," "network telephone service," "telegraph business," and "water distribution business," does not undermine the Department's interpretation.

Nearly all of the legislature's other uses of the term "for hire" involve public utility services unrelated to passengers. The distribution of gas and water, and the service of providing light, power, telephone

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[5] *Supra* note 2.

networks, and telegraphs do not involve charging passengers. The only other term in RCW 82.16.010 involving passengers is "railroad business," which is defined in relevant part as operating any railroad for public use in the conveyance of persons or property for hire." RCW 82.16.010(8). There would be no inconsistency in applying the interpretation that "for hire" requires the fare be paid by the passenger to this definition. Accordingly, interpreting the term "for hire" as applied in the context of passengers to mean that the passenger is responsible for paying the fare, may be harmonized with the use of the term in these other contexts.

4. The Department's Interpretation Is Consistent with the Statutory Context as Applied to Charter Bus Transportation

The Department's interpretation that charter buses provide transportation on a "for hire" basis can also be harmonized with its interpretation that school buses transporting students for school districts do not. Contrary to First Student's contention that the Department is illogically applying the PUT to charter bus operators, different statutes govern these distinct types of transportation and such transportation is provided to passengers under different legal arrangements.

The operation of charter buses is regulated under RCW 81.70, governing Passenger Charter and Excursion Carriers. First Student has a Charter and Excursion Services permit for its charter bus operations. CP

55. The statute governing charter carriers excludes from its coverage, among others, "persons or their lessees, receivers, or trustees insofar as they own, control, operate, or manage taxicabs, hotel buses, or *school buses*, when operated as such." RCW 81.70.030(1) (emphasis added). Thus, by its express terms, the operation of school buses is not governed by the charter bus statutes.

In addition, in the context of a charter bus, passengers are ultimately responsible for acquiring the bus and deciding where to travel together. The term "charter party carrier" is defined as follows:

> [E]very person engaged in the transportation over any public highways in this state of a group of persons who, pursuant to a common purpose and under a single contract, acquire the use of a motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after leaving the place of origin.

RCW 81.70.020(1). The term "excursion service carrier" means:

> [E]very person engaged in the transportation of persons for compensation over any public highway in this state from points of origin within the incorporated limits of any city or town or area, to any other location within the state of Washington and returning to that origin. The service must not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may be regularly scheduled. Compensation for the transportation offered or afforded must be computed, charged, or assessed by the excursion service company on an individual fare basis.

RCW 81.70.020(5). Accordingly, charter bus passengers must have a common purpose and acquire the vehicle to travel together to a specified place. And excursion service passengers must begin and end at the same place of origin without picking up any additional passengers, and be charged on an individual fare basis. This is the case regardless of whether passengers pay these buses directly or through their church, employer, or the group to which they belong.

In contrast, a school district's provision of school bus transportation services, whether through its own fleet or through contract with private entities, is governed by RCW 28A.160, titled "Student Transportation." In that chapter, the legislature has set forth certain requirements such as how and to what extent state funds are allocated to districts for transportation costs. RCW 28A.160.130-.192. School districts may not freely hire private bus companies to transport students.

The legislature requires that school districts, when contracting with private nongovernmental entities such as First Student to provide transportation services, solicit bids or quotations in an open competitive process at least once every five years. RCW 28A.160.140. Districts enter into "pupil transportation services contracts" "for the operation of privately owned or school district owned school buses, and the services of drivers or operators, management and supervisory personnel, and their

support personnel such as secretaries, dispatchers, and mechanics, or any combination thereof, to provide students with transportation to and from school on a regular basis." RCW 28A.160.140(2). And only when the use is "extra-curricular" is the school board required to charge an amount sufficient to reimburse it for its costs. RCW 28A.160.010. Accordingly, the transportation of students on behalf of school districts is not analogous to the provision of charter bus transportation.[6]

5. Other Courts Recognize that School Bus Transportation is Not Provided "For Hire"

Out-of-state cases have also recognized that school bus operators providing transportation services are not doing so "for hire." For example, the Illinois Court of Appeals reversed a conviction for aggravated battery against a First Student school bus monitor because the victim was not a public transportation employee. *In re Jerome S.*, 968 N.E.2d 769 (Ill. Ct. App. 2012). The Court concluded that the charge should not have been elevated to battery because First Student was not engaged in the "business of transportation of the public for hire." *Id.* at 773. The Court explained that First Student was hired to transport special education children to and from a therapeutic day school and transports "only a select group of

[6] Even if the Department were erroneously applying the PUT to charter bus operators, such an erroneous application would not be dispositive of this case because it would not mean that the Department is incorrect in applying the B&O tax to school bus operators.

students . . . which it has contracted to pick up and is not obligated to serve every person who may apply." *Id.* In reaching its conclusion, the Court cited several instances in Illinois statutes distinguishing school buses from public transportation for hire available to the general public. *Id.* at 773-74.

Similarly, the Texas Court of Appeals recognized that Durham Transportation Inc., a private bus company that contracts with school districts to operate school transportation systems, "does not run public routes nor is it available *for hire* to any person other than the school children living within the districts with which it contracts." *Durham Transp. Inc. v. Valero*, 897 S.W.2d 404, 408 (Texas Ct. App. 1995) (emphasis added). And the New York Court of Appeals held that a school bus driver was not subject to certain transportation laws that applied to "motor buses," a term defined "to mean and include any motor vehicle held and used for the transportation of passengers for hire." *Gibson v. Bd. of Educ. of Watkins Glen Central Sch. Dist.*, 414 N.Y.S.2d 791 (N.Y. Ct. App. 1979). These cases support the Department's longstanding interpretation that services provided by school bus operators are not provided "for hire."

6. The Legislature Consistently Distinguishes the Term "For Hire" from "For Compensation"

Throughout the Revised Code of Washington, the legislature consistently differentiates between "school buses" and "for hire" vehicles. That differentiation provides additional support for the Department's interpretation that school bus operators are not providing transportation services "for hire.

For example, the statute governing the minimum age of certain drivers, titled "School bus, for hire drivers—age" provides that a person who is under the age of eighteen years shall not drive: (1) A school bus transporting school children; or (2) a motor vehicle transporting persons for compensation." RCW 46.20.045. An earlier version of that statute set the minimum age for school bus drivers at eighteen and for motor vehicles transporting persons for compensation at twenty-one. Laws of 1971, Ex. Sess., ch. 292. § 43.

In addition, the statute governing child passenger restraints lists both "(a) For hire vehicles, . . . and (d) school buses" as exempt from that statutory requirement. RCW 46.61.687(5). Similarly, the statute requiring certain vehicles to stop at railroad crossings lists both "(i) A school bus or private carrier bus carrying any school child or other passenger" and "(ii) A commercial motor vehicle transporting passengers." RCW

46.61.350(1)(a). The latter term is defined as including any vehicle with a seating capacity of eight or more passengers that transports passengers for hire. RCW 46.61.350(4). The legislature separately defined "school bus" in RCW Title 46, in relevant part as "every motor vehicle used regularly to transport children to and from school or in connection with school activities" and as excluding "buses operated by common carriers in the urban transportation of school children." RCW 46.04.521.

The statutory distinctions between school buses and for hire vehicles and vehicles used in the urban transportation of school children, while not dispositive of the proper tax classification, demonstrate that the legislature deems school buses as distinct from transportation provided "for hire." They also show that when the legislature wants a particular statute to apply directly to school buses, it makes that clear. But here, over a period of many decades, and despite having revisited the PUT definitions more than a dozen times, the legislature has not amended the PUT to expressly include school buses.

D. "For Hire" and "For Compensation" are Not Synonymous

Notwithstanding the Department's more than 80-year history of consistently taxing school bus operators under the B&O tax's "other business and service activities" classification, and its own history of paying B&O tax year after year, First Student now belatedly insists that

the Department's interpretation conflicts with the PUT statute. First Student argues that the plain meaning of the term "for hire" is simply "for compensation," and the fact that school districts compensate First Student to transport school children means it is providing such transportation on a "for hire" basis. Br. Appellant at 7.

The Court should reject First Student's plain meaning argument. In addition to being inconsistent with the understanding of the term at the time the legislature amended the relevant statutory definitions, and contradicted by the Department's long-standing rules interpreting the definitions, the interpretation proposed by First Student would render the term "for hire" superfluous.

By equating the term "for hire" with "for compensation," First Student seeks to broaden the term such that it ceases to have meaning within the PUT definitions of "motor transportation business" and "urban transportation business" in RCW 82.16.010. This is because the PUT is imposed on the act or privilege of engaging within this state in certain public utility businesses. RCW 86.12.020(1). The tax is equal to the gross income of the business multiplied by the corresponding rate. *Id.* Thus, for PUT to apply, a person or entity must be engaging in business *and* receiving income.

Had the legislature intended for the motor transportation and urban transportation classifications to merely apply to entities engaging in the business of operating vehicles for compensation, it would not have included the term "for hire." It could have simply defined "motor transportation business" as "the business of operating any motor propelled vehicle by which persons or property of others are conveyed" without any reference to the phrase "for hire." Similarly, "urban transportation business" could have been defined as "the business of operating any vehicle for public use in the conveyance of persons or property."

A basic rule of statutory construction is that, whenever possible, courts must construe statutes so that no part of the statutory scheme is rendered superfluous. *See State ex rel. Evergreen Freedom Found.*, 104 Wn.2d at 639; *see also Am. Cont'l Ins. Co.*, 151 Wn.2d at 521 ("Words have meaning and words in a statute are not superfluous.").

First Student argues that the legislature's use of the term "for hire" means that payment must be received for providing the transportation service directly, rather than as part of the customer's payment for general goods or services that include transportation. Br. Appellant at 20. First Student further posits that "[m]erely transporting a company's own products as part of its general business operations is not enough to fall within the definition of 'for hire.'" *Id.* at 20. But such a distinction is

already evident in the definition of "motor transportation business," as a business transporting its own property would not be in the business of conveying the "property of others." RCW 82.16.010(6). And a business transporting its own property would not be operating a vehicle "for public use" as required by the definition of "urban transportation business." RCW 82.16.010(12). Accordingly, the term "for hire" must have another meaning aside from simply "for compensation," and that meaning is best derived from the common understanding of the term as understood at the times of relevant statutory changes and as reflected in the Department's contemporaneous rules. First Student has not met its burden of showing that it erroneously paid the B&O tax for its business as a school bus operator.

E. Even if First Student is Entitled to a Refund, It is Not Entitled to a Refund of All of the B&O Taxes It Paid

Before the trial court, First Student sought a refund of the entire amount of B&O taxes it paid to the Department during the tax periods at issue. CP 9 (praying for a refund of "all B&O taxes paid" during tax periods at issue), 72 (seeking refund of $3,127,015.53 in B&O taxes that it paid during tax periods at issue), 184-86 (arguing against PUT offset). On appeal, First Student requests a remand if it prevails with instructions that its services as a school bus operator "are taxable under the motor vehicle

and urban PUT classifications in RCW 82.16.010(6) and (12) and exempt from B&O tax." Br. Appellant at 34. First Student, therefore, now appears to acknowledge that any refunds of B&O tax that are due must be offset by any PUT it should have paid.

Its concession is judicious. This is because taxpayers must pay either the B&O tax or the PUT but not both. *See* RCW 82.04.310 (exempting persons, with respect to activities that are subject to PUT, from the B&O tax). Therefore, First Student properly concedes that under its proposed interpretation of RCW 82.16.010(6) and (12), the services it provides "clearly fall within the scope of the motor and urban transportation PUT classifications." Br. Appellant at 1.

Even if First Student were not conceding this point, the Washington Supreme Court has acknowledged that one type of tax may be offset against another type. *PACCAR, Inc. v. Dep't of Revenue*, 135 Wn.2d 301, 957 P.2d 669 (1998). In determining the amount of an excise tax refund, the "tax properly due or refundable" is calculated based on "total tax liability." *Id.* at 321. "Thus 'netting' must be allowable under RCW 82.32.060, the statute governing computation of tax refunds." *Id.*

In addition, the statute authorizing taxpayers to file excise tax refund actions in Thurston County Superior Court places the burden on taxpayers to prove both "that the tax as paid by the taxpayer is incorrect"

and "the correct amount of tax." RCW 82.32.180; *Texaco Ref. & Mktg., Inc. v. Dep't of Revenue*, 131 Wn. App. 385, 398, 127 P.3d 771 (2006). And thus far, even if this Court agrees with First Student's proposed interpretation of RCW 82.16.010, First Student will have proved only that it paid B&O tax that it did not owe; it will not have proved the correct amount of tax.

To qualify for the preferable PUT base rate of 0.6 percent for "urban transportation business," a taxpayer must establish the business was either:

> (a) operating entirely within the corporate limits of any city or town, or within five miles or 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.

RCW 82.16.010(12). If the taxpayer fails to meet these requirements, the "motor transportation business" base rate of 1.8 percent applies. WAC 458-20-180(6) ("The gross income of persons engaged in both urban and motor transportation is taxed under the motor transportation classification, unless the revenue is segregated as shown by their records.").

The rate under the B&O tax's "other business or service" classification in 1.5 percent. RCW 82.04.290(2). Consequently, applying the PUT to school bus operators operating in urban areas would result in

the lower "urban transportation business" rate, but school bus operators operating in rural areas would be subject to the higher "motor transportation business" rate.[7] Here, if the PUT applies, First Student provides services that "fall within the scope of the motor and urban transportation PUT classifications." Br. Appellant at 1. But no evidence in the record thus far provides any basis to segregate First Student's gross income between the two possible PUT rates. Therefore, even if this Court concludes that the trial court erred in granting summary judgment to the Department because the B&O tax does not apply to school bus operators like First Student, it should remand for the trial court to determine the refund, if any, to which First Student is entitled.

V. CONCLUSION

The Court should affirm the trial court's order granting summary judgment to the Department. The Department's 80-year history of taxing school bus operators under the B&O tax is supported by the statutes and the legislative history and should be affirmed.

[7] One consequence of applying the PUT to school bus operators is that cooperative agreements between school districts for school bus transportation, which are currently exempt from the B&O tax under RCW 82.04.419, would likely become taxable because the PUT provides no such comparable exemption.

RESPECTFULLY SUBMITTED this 16th day of October, 2017.

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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.

DATED this 16th day of October, 2017, at Tumwater, WA.

Susan Barton

Susan Barton, Legal Assistant

APPENDIX A

CHAPTER 57.

[H. B. 196.]

OCCUPATION TAX.

AN ACT relating to taxation; imposing tax upon persons engaging in service and other businesses; defining terms; relating to persons exempted from tax; adding two new sections to chapter 191 of the Laws of 1933 and amending section 4 thereof; and declaring that this act shall take effect immediately.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That chapter 191 of the Laws of 1933 be, and the same hereby is, amended by adding thereto a new section, to be known as section 2-a, to read as follows: Amends ch. 191, Laws 1933.

Section 2-a. (1) From and after the first day of January, 1934, and until the thirty-first day of July, 1935, there is hereby levied and there shall be collected from every person engaging or continuing within this state in the business of rendering or performing services, professional or otherwise, and from every person engaging or continuing within this state in any business not specifically taxable under section 2 of this act, an annual tax or excise for the privilege of engaging in such business; as to such persons the amount of the tax or excise shall be equal to the gross income of the business multiplied by the rate of five-tenths of one per cent; for the purposes of this act a person engaged in a business or profession shall include all persons whose services are paid from public funds holding any public office or any public position or employment with the State of Washington or any political subdivision thereof, whose monthly salary exceeds $200.00 per month. This section shall apply, also, to every person taxable under section 2 of this act with respect to any portion of the gross income of Tax levied.

the business derived from activities not taxable under the provisions of said section 2.

Exceptions from act.

(2) The provisions of this act shall not apply:

(a) To persons acting solely in the capacity of employee or servant, receiving a fixed wage or salary or a compensation determinable according to an agreed plan or formula, having no direct interest in the income or profits, or liability for expenses or losses, as such, resulting from the transaction of the business.

(b) To gross income derived from the lease or rental of real estate: *Provided, however,* That nothing herein shall be construed to except gross income derived from engaging in a hotel, warehouse or storage business or from engaging in any business wherein a mere license to use or enjoy real property is granted.

(c) To gross income derived from initiation or membership fees, dues, contributions, donations, gifts, tuition fees, investment or endowment funds. The deductions provided for in this paragraph shall not apply in the case of any person engaging in business for profit or to a corporation, association or society any part of the income of which inures to the benefit of any stockholder, member or other individual, directly, in the form of dividends or distributions or, indirectly, in the form of salary, wage, fee or commission incommensurate with the value of services rendered. The provisions of this paragraph shall not be construed to exempt any person, association or society from tax liability upon engaging in any extractive or manufacturing industry, upon selling tangible property or upon providing facilities or services for which a special charge is made to members or others.

Amends ch. 191, Laws 1933.

SEC. 2. That chapter 191 of the Laws of 1933 be, and the same hereby is, amended by adding

thereto a new section, to be known as section 1-a, to read as follows:

Section 1-a. The term "value proceeding or accruing" means the consideration, whether money, credits or other property, expressed in terms of money, actually received or accrued. The term shall be applied, in each case, in accordance with the method of accounting regularly employed in keeping the books of the taxpayer. The tax commission, by regulation, shall provide for deductions on account of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis. The tax commission also may provide by regulation that the value proceeding or accruing from sales on the installment plan under conditional contracts of sale may be reported as of the dates when the payments become due. "Value proceeding or accruing."

SEC. 3. That section 4 of chapter 191 of the Laws of 1933 be, and the same hereby is, amended to read as follows: Amends § 4, ch. 191, Laws 1933.

Section 4. The following persons shall be exempted from the provisions of this act: Persons exempt.

(1) Insurance companies which pay to the State of Washington a tax upon gross premiums.

(2) Persons engaging in the business of:

(a) Growing or cultivating for sale, profit or use any agricultural or horticultural product or crop.

(b) Breeding, hatching or raising any fowl, animal or livestock for sale, profit or use or for the milk, eggs, wool, fur or other substance obtainable therefrom.

Provided, however, That the foregoing shall not be construed to exempt any person:

(w) From tax as a retailer of tangible property.

(x) Growing, raising or cultivating oysters, clams, shrimp, crabs, fish or the like.

APPENDIX B

fees or other emoluments however designated and without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest or discount paid or any other expenses whatsoever and without any deduction on account of losses: *Provided,* The term "gross income" shall not include any payments received on accounts or notes outstanding at the time this act goes into effect.

Outstanding notes.

"Business."

(7) The word "business" shall include all activities engaged in with the object of gain, benefit or advantage either direct or indirect, and not excepting sub-activities producing marketable commodities used or consumed in the main business activity, each of which sub-activities shall be considered business engaged in taxable in the class in which it falls.

"Gross proceeds of sales."

(8) The term "gross proceeds of sales" means the value proceeding or accruing from the sale of property without any deduction on account of the cost of property sold, expenses of any kind, or losses.

"Wholesaler."

(9) The word "wholesaler" or the word "jobber" or the term "wholesaler or jobber" shall mean only a person doing a regularly organized jobbing business, known to the trade as such, or any firm doing a similar business as defined by the state tax commission.

(10) Words in the singular number shall include the plural and the plural shall include the singular. Words in one gender shall include all other genders.

Business activities.

SEC. 2. (1) Business activities, for the purpose of this act, are hereby declared to consist of the five separate and distinct functions, to-wit:

(a) The extractive function;

(b) The manufacturing and/or producing function;

(c) The wholesaling and/or jobbing function;

(d) The function of retail distribution;

(e) The function of performing and rendering services.

The taxes hereinafter imposed shall apply to all business activities within the state and to each function thereof, whether carried on separately or in combinations of two or more functions. Scope of tax.

(2) From and after the first day of August, 1933, and until the thirty-first day of July, 1935, there is hereby levied and there shall be collected from every person an annual tax or excise for the privilege of engaging in business activities. Such tax or excise shall be measured by the application of rates against values, gross proceeds of sales, or gross income, as the case may be, as follows: Tax levied.

(a) Upon every person engaging or continuing within this state in the business of mining and producing for sale, profit or use any coal, oil, natural gas, metals, limestone, sand, gravel or other mineral products and/or felling and producing timber for sale, profit or use and/or seining, trapping or catching fish, shell fish, or other sea foods or products for sale, profit or use; as to such persons the amount of the tax or excise shall be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer (except as hereinafter provided) multiplied by the respective rates as follows: Computation of rates:

I. Coal: three-tenths of one per cent; Coal.

II. Oil: one per cent; Oil.

III. Natural gas: one per cent; Natural gas.

IV. Metals, limestone, sand, gravel, clay, and any earth or mineral products: three-tenths of one per cent; Metals.

V. Timber: three-tenths of one per cent; Timber.

Fish.

VI. Fish, shell fish or other sea foods or products: three-tenths of one per cent;

Other extractive products.

VII. All other extractive products not herein covered or mentioned: three-tenths of one per cent.

The measure of this tax is the value of the entire production in this state regardless of the place of sale or the fact that deliveries may be made to points outside the state.

Manufacturing.

(b) Upon every person engaging or continuing within this state in the business of manufacturing, compounding or preparing for sale, profit or use any article or articles, substance or substances, commodity or commodities; as to such persons the amount of the tax or excise shall be equal to the value of the articles manufactured, compounded or prepared for sale, as shown by the proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same (except as hereinafter provided) multiplied by the rate of twenty-five one-hundredths of one per cent.

The measure of the tax is the value of the entire product manufactured, compounded or prepared for sale, profit or use in the state, regardless of the place of sale or the fact that deliveries may be made to points outside the state.

Vetoed.

(ba) Upon every person engaging or continuing within this state in the business of growing or raising for sale, profit or use, any article, substance, commodity, product, or crop; as to such person, the amount of the tax or excise shall be equal to the value of the articles, substances, commodities, products, or crops produced, grown, or raised for sale, as shown by the proceeds derived from the sale thereof by the grower, raiser or producer (except as hereinafter provided) multiplied by the rate of one-tenth of one per cent.

The measure of the tax is the value of the entire article, substance, commodity, product, or crop, grown, raised or produced for sale, profit or use in the state regardless of the place of sale or the fact that deliveries may be made to points outside the state. Vetoed.

(c) Upon every person engaging or continuing within this state in the business of selling, as a wholesaler or jobber, any tangible property, real or personal (except, however, bonds or other evidences of indebtedness or stocks); as to such persons the amount of the tax or excise shall be equal to the gross proceeds of sales of the business multiplied by the rate of two-tenths of one per cent. Selling at wholesale.

(d) Upon every person engaging or continuing within this state in the business of selling at retail, or other than as a wholesaler or jobber, any tangible property whatever, real or personal (except, however, bonds or other evidences of indebtedness or stocks); as to such persons the amount of the tax or excise shall be equal to the gross proceeds of sales of the business multiplied by the rate of five-tenths of one per cent. Selling at retail.

(e) Upon every person engaging or continuing within this state in the following businesses; as to such persons the amount of tax or excise shall be equal to the gross income of the business multiplied by the rate set out after the business, as follows:

I. National banking associations, state banks, trust companies, mutual savings banks, building and loan or savings and loan associations, industrial loan companies: four-tenths of one per cent; Banks.

II. Stock brokers and security houses: two per cent; Stock brokers.

III. Steam railways: one and one-half per cent; Steam railways.

IV. Electric interurban railways, street railways, and all automotive transportation systems Electric and street railways.

operating entirely within the limits of any city or town or contiguous cities or towns: five-tenths of one per cent;

Light and power.

V. Light and power companies: three per cent;

Telephone and telegraph.

VI. Telephone and telegraph companies: three per cent;

Water.

VII. Water companies, except, however, irrigation companies and district: three per cent;

Manufactured gas.

VIII. Manufactured gas companies: two per cent;

Express.

IX. Express companies: two per cent;

Car companies.

X. Car companies: two per cent;

Highway transportation.

XI. Passenger and freight highway transportation companies including certificated, contract and for hire carriers: one and one-half per cent;

Other public service.

XII. All other public service companies and utilities: one and one-half per cent;

Finance.

XIII. Finance companies engaged in the business of loaning money on retail sales or of discounting or rediscounting conditional or other sales contracts: two per cent.

Municipal corporations.

The terms of this subdivision shall apply with equal force to any municipal corporation or district engaging in any of the business activities herein mentioned: *Provided, however,* That moneys received from tax sources shall not be included in computing the gross proceeds of sales or gross income upon which such tax shall be based. This paragraph shall be so interpreted as to give effect to the intent of this act which is declared to be to impose upon municipally owned and/or operated utilities and businesses coming within the purview of this subdivision an excise at the same rate as is herein imposed upon privately owned utilities or businesses of the same type.

Tax monies.

Theatre.

(ea) Upon every person engaging in or continuing within this state in the business of operating or conducting a theater, moving or talking pic-

APPENDIX C

under, or who engages in any business or performs any act for which a tax is imposed by this act;

(c) Words in the singular number shall include the plural and the plural shall include the singular. Words in one gender shall include all other genders.

TITLE II. BUSINESS AND OCCUPATION TAX.

SEC. 4. From and after the first day of May, 1935, there is hereby levied and there shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be, as follows:

Business and occupation tax.

Measurement of tax.

(a) Upon every person engaging within this state in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products extracted for sale or commercial use, multiplied by the rate of one-quarter of one per cent;

Extractors.

The measure of the tax is the value of the products so extracted, regardless of the place of sale or the fact that deliveries may be made to the points outside the state;

(b) Upon every person engaging within this state in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of one-quarter of one per cent;

Manufacturers.

The measure of the tax is the value of the products so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state;

(c) Upon every person engaging within this state in the business of making sales at retail; as to such persons, the amount of tax with respect to such

Retailer.

business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of one-quarter of one per cent.

Wholesaler.

(d) Upon every person engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of one-quarter of one per cent.

Distributors.

The tax imposed under this subsection (d) shall likewise be imposed upon persons engaged in distributing articles of tangible personal property owned by them from a warehouse or other central location to a group of retail stores, the intent hereof being to impose the wholesaling tax upon persons performing functions essentially comparable to those of a wholesaler, but not actually making sales; as to such persons, the amount of tax, with respect to such business, shall be equal to the value of the articles distributed, multiplied by the rate of one-half of one per cent; this value shall correspond as nearly as possible to the gross proceeds from sales at wholesale in this state of similar articles of like quality and character, and in similar quantities by other taxpayers. The tax commission shall prescribe uniform and equitable rules for the purpose of ascertaining such value. If the provisions of this paragraph, for any reason, shall be adjudged invalid, such judgment shall not invalidate the provisions of the first paragraph of this subsection.

Other business enterprises.

(e) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in subsections (a), (b), (c) and (d) above; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of one-half of one per cent. This subsection includes, among others, and without limiting the

scope hereof, persons engaged in the following businesses (whether or not title to materials used in the performance of such businesses passes to another by accession, confusion or other than by outright sale); repairing, personal, business, professional, mechanical and educational service businesses; abstract and title, insurance, financial, brokerage, construction contracting and sub-contracting, advertising and hotel businesses.

SEC. 5. For the purpose of this title, unless otherwise required by the context: Definitions:

(a) The term "tax year" or "taxable year" shall mean either the calendar year, or the taxpayer's fiscal year when permission is obtained from the tax commission to use a fiscal year in lieu of the calendar year; "Tax year" or "taxable year;"

(b) The word "person" or word "company," herein used interchangeably, means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint-stock company, business trust, municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, co-operative, fraternal, non-profit or otherwise; "person" or "company;"

(c) The word "sale" means any transfer of the ownership of, or title to, property for a valuable consideration. It includes conditional sale contracts, leases with option to purchase and any other contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It shall also be construed to include the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not; "sale;"

(d) The term "sale at retail" or "retail sale" means every sale of tangible personal property other than a sale to one who purchases for the purpose of resale in the regular course of business or "sale at retail" or "retail sale;"

APPENDIX D

RULES

RELATING TO

THE REVENUE ACT

Chapter 180, Laws of 1935, as Amended by Chapters 116, 191, and 227, Laws of 1937, Chapters 9 and 225, Laws of 1939, Chapters 76, 118 and 178, Laws of 1941 and Chapter 156, Laws of 1943

OF THE

State of Washington

Issued by the Excise Tax Division of the Tax Commission of the State of Washington

T. M. Jenner, Chairman
T. S. Hedges Floyd T. McCroskey

Revised May 1, 1943

Railroad, express, railroad car, water distribution, light and power, telephone and telegraph. Rate of tax 3%.

Gas distribution. Rate of tax 2%.

Urban transportation, and vessels under 65 feet in length operating upon the waters of the State of Washington. Rate of tax, ½ of 1%.

Highway transportation, and all public service businesses other than those heretofore mentioned. Rate of tax 1½%.

The term "public service business" means 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 to be of a public service nature by the legislature of this state.

Volume Exemption—Any person engaged in one or more businesses taxable under Title V, whose gross operating revenue is less than $1,000.00 during a taxable bi-monthly period, is exempt from the payment of tax for such period.

Persons who receive a gross operating revenue of $1,000.00 or more during a taxable bi-monthly period are not permitted any deduction in computing tax.

Deductions—Amounts derived from the following sources do not constitute taxable income in computing tax under Title V, viz:

(1) Amounts derived by municipally owned or operated public service businesses directly from taxes levied for the support thereof, but not including service charges which are spread on the property tax rolls and collected as taxes.

(2) Amounts derived by persons engaged in the water distribution, light and power, or gas distribution business, from the sale of commodities to persons in the same public service business for resale as such within this state.

(3) Amounts actually paid by a taxpayer to another person taxable under Title V as the latter's portion of the consideration due for services jointly furnished by both.

(4) Amounts derived from the distribution of water through an irrigation system, solely for irrigation purposes.

(5) Amounts derived from the transportation of commodities from points of origin in the State of Washington into transit stations in Washington and thereafter forwarded in original or converted form to interstate or foreign destinations; also amounts derived from the transportation of commodities from points of origin outside the State of Washington into transit stations in Washington and thereafter forwarded in original or converted form to destinations in Washington; also amounts derived from the transportation of commodities from points of origin in the State of Washington to export elevators, docks or ship side on tidewater or the Columbia River and thereafter forwarded in original or converted form to interstate or foreign destinations.

The term "transit station," as used herein, means a point or place in respect to which a transit privilege has been granted by a common carrier to its shippers or consignees.

The term "transit privilege" means the privilege of stopping a commodity in transit at some intermediate point known as a "transit station," for the

purpose of storing, manufacturing, milling, or other processing or service, and thereafter forwarding the same commodity, or its equivalent, in the same or converted form under a through freight rate from point of origin to final destination which is lower than the freight rate from point of origin to the transit station plus the freight rate from the transit station to final destination.

When revenue derived from any of the foregoing sources is included within the reported "gross operating revenue," the amount thereof may be deducted in computing tax liability.

In addition to the foregoing deductions there may also be deducted from the reported "gross operating revenue" (if included therein), the following:

(a) The amount of cash discount actually taken by the purchaser or customer.

(b) The amount of credit losses actually sustained.

(c) Amounts received from insurance companies in payment of losses.

(d) Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(e) Amounts received from individuals and others in payment for the moving or altering the utility's plant or equipment when done for the benefit or convenience of such individuals or others. This does not include amounts received for extension of service lines.

(For specific rule pertaining to the classifications of "urban transportation" and "highway transportation," see Rule 180.)

Effective May 1, 1943.

URBAN TRANSPORTATION—HIGHWAY TRANSPORTATION

Rule 180.

The term "urban transportation business" means

(1) The business of operating any street railway for the conveyance of persons or property for hire mainly upon or within streets and other public places within one incorporated city, and

(2) The business of operating any other vehicle for public use in the conveyance of persons or property for hire, mainly within the corporate limits of an incorporated city or contiguous city and within five miles of the corporate limits of either thereof.

It includes the business of operating taxicabs, city bus systems, vehicles for intracity transfer of property, pick-up and delivery service, including the collection and distribution of property arriving from or destined to a point within or without the state and whether or not such collection or distribution be made by the person performing a local or interstate line-haul of the property which is picked up or distributed.

It does not include the business of operating any vehicle for the conveyance of persons or property for hire when such operation extends more than five miles beyond the corporate limits of all cities through which or in which a part of such operation occurs, even though such operation be within five miles of the limits of some other city or cities which are not entered by the carrier.

The term "highway transportation business" means the business of operating any motor propelled vehicle as

(1) An auto transportation company for the conveyance of persons or property for hire over any public highway in this state and between fixed termini or over a regular route, and

(2) Any other carrier for the conveyance of property for hire over any public highway, whether over regular or irregular routes, excepting only from both (1) and (2), the business of urban transportation and the operation of school buses.

It includes the business of hauling for hire upon the highways any merchantable extracted material, such as logs, poles, sand, gravel, coal, etc. Such persons will be deemed to be engaged in the business of highway transportation when the State Department of Public Service requires them to obtain a common carrier or a contract carrier permit in respect thereto.

It does not include the hauling upon streets or highways of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road or highway, by a person taxable under the classification of "public road construction" of Title II (Business and Occupation Tax) (See Rule 171.)

NOTE: Persons operating school buses for hire are taxable under the classification of "Service and Other Activities" of Title II (Business and Occupation Tax) at the rate of ½ of 1% of gross income.

Business and Occupation Tax (Title II)

Retailing—Persons engaged in either of said businesses are taxable under the classification of "retailing" at the rate of ¼ of 1% of gross retail sales of tangible personal property sold by them.

Service and Other Business Activities—Persons engaged in either of said businesses are taxable under the classification of "Service and Other Activities" at the rate of ½ of 1% of gross income received from checking service, packing and crating, commissions on sales of tickets for other lines, travelers' checks and insurance, and from rental of equipment, etc.

Persons hauling in their own equipment and for their own account, property owned or sold by them, are not taxable in respect to such operation under either Title II or Title V.

Public Utility Tax (Title V)

Persons engaged in the business of urban transportation are taxable at the rate of ½ of 1% of the gross operating revenue of such business.

Persons engaged in the business of highway transportation are taxable at the rate of 1½% of the gross operating revenue of such business.

Persons engaged in the business of both urban and highway transportation are taxable at the rate of 1½% of gross operating revenue, unless a proper segregation of such revenue is shown by the books of account of such persons.

Effective May 1, 1943.

VESSELS OPERATING UPON WATERS WHOLLY WITHIN THE STATE OF WASHINGTON, ALSO TUGS AND BARGES

Rule 181.

Business and Occupation Tax (Title II)

Retailing—Persons engaged in the business of operating such vessels and tugs are taxable under the "Retailing" classification at the rate of one-fourth of one per cent of the gross sales of meals (including meals to employees) and other tangible personal property taxable under the Retail Sales Tax.

Service and Other Business Activities—The business of operating tugs, barges and lighters is a service business taxable under the classification "Service and Other Business Activities" at the rate of one-half of one per cent of the gross income from such service.

Persons operating vessels which are common carriers are taxable under Title V.

Retail Sales Tax (Title III)

Sales of meals and other tangible personal property by persons operating such vessels and tugs are sales at retail and the Retail Sales Tax must be collected thereon. The Retail Sales Tax applies where meals are furnished to members of the crew or to other employees as a part of their compensation for services rendered.

Sales of foodstuffs and other articles to such operators for resale aboard ship are not subject to the Retail Sales Tax.

Sales to all such operators of fuel, lubricants, machinery, equipment and supplies which are not resold are sales at retail and the Retail Sales Tax must be paid thereon, unless exempt by law.

Charges made by others for the repair of any boat or barge are also sales at retail and the Retail Sales Tax must be paid upon the total charge made for both labor and materials.

Charges made for drydocking are not subject to the Retail Sales Tax provided such charges are shown as an item separate from charges made for repairing.

Compensating Tax (Title IV)

The Compensating Tax applies upon the use within this state of all articles of tangible personal property purchased at retail and upon which the Retail Sales Tax has not been paid, unless exempt by law.

Public Utility Tax (Title V)

The business of operating upon waters wholly within the State of Washington vessels which are common carriers regulated by the Department of Public Service is taxable under the Public Utility Tax as follows:

Vessels under sixty-five feet in length—one-half of one per cent of gross operating revenues;

Vessels sixty-five feet or more in length—one and one-half per cent of gross operating revenues.

The Public Utility Tax does not apply to the business of operating vessels which are not common carriers, such as tugs, barges, scows, and lighters.

Effective May 1, 1939.

APPENDIX E

such rules and regulations as the Tax Commission may prescribe;

(b) The terms "use," "used," "using" or "put to use" mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property, and shall include installation, storage, withdrawal from storage or any other act preparatory to subsequent actual use or consumption within this state; "Use," "used," "using" and "put to use."

(c) The word "taxpayer" and the word "purchaser" as used in this title, shall include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in titles II and III of this act; "Taxpayer" and "purchaser."

(d) The word "retailer," as used in this title, shall mean every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this title; "Retailer."

(e) The meaning ascribed to words and phrases in titles I, II and III and all the provisions of titles XVIII, XIX and XX of this act, in so far as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this title.

SEC. 10. Section 37, chapter 180, Laws of 1935, as last amended by section 10A, chapter 156, Laws of 1943, is amended to read as follows: Amendment.

Section 37. For the purposes of this title, unless otherwise required by the context: Definitions.

(a) The term "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: *Provided, however,* That it shall not include any business herein defined to be an urban transportation business; "Railroad business."

(b) The term "express business" means the business of carrying freight, merchandise or property for public hire on the line of any common carrier op- "Express business."

erated in this state, when such common carrier is not owned or leased by the person engaging in such business;

"Railroad car business."

(c) The term "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;

"Water distribution business."

(d) The term "water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale;

"Light and power business."

(e) The term "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;

"Telephone business."

(f) The term "telephone business" means the business of operating or managing any telephone line or part of a telephone line and exchange or exchanges used in the conduct of the business of affording telephonic communication for hire. It includes cooperative or farmer line telephone companies or associations operating an exchange;

"Telegraph business."

(g) The term "telegraph business" means the business of affording telegraphic communication for hire;

"Gas distribution business."

(h) The term "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;

"Highway transportation business."

(i) The term "highway transportation business" means the business of operating any motor propelled vehicle, as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined in chapter III, Laws of

1921, page 338, section 1, and chapter 184, Laws of 1935, page 884, section 2 and amendments thereto and includes the business of so operating within and between incorporated cities and towns whose corporate limits are more than five miles apart;

"Urban transportation business."

(j) The term "urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, in so far 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, pick-up 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;

"Public service business."

(k) The term "public service business" means 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 to be of a public service nature by the Legislature of this state. It includes, among others, without limiting the scope hereof: airplane transportation, boom, dock, ferry, pipe line, public warehouse, toll bridge, toll logging road, water transportation and wharf businesses;

"Gross operating revenue."

(l) The term "gross operating revenue" 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

APPENDIX F

RULES

RELATING TO

THE REVENUE ACT

Chapter 180, Laws of 1935, as Amended by Chapters 191 and 227, Laws of 1937, Chapter 225, Laws of 1939, Chapters 76, 118 and 178, Laws of 1941, Chapter 156, Laws of 1943, Chapters 126 and 249, Laws of 1945, Chapter 248, Laws of 1947, Chapter 228, Laws of 1949, Chapter 5, Laws of 1950, Ex. Ses., Chapters 37 and 44, Laws of 1951, Chapter 9, Laws of 1951, First Ex. Ses., Chapter 28, Laws of 1951, Second Ex. Ses., and Chapter 91, Laws of 1953.

OF THE

State of Washington

Issued by the Excise Tax Division of the Tax Commission of the State of Washington

Commissioners

E. C. Huntley, Chairman

Dinsmore Taylor H. Dan Bracken, Jr.

Jennings P. Felix
Assistant Attorney General—Counsel

Revised March 9, 1954

(4) Amounts derived from the distribution of water through an irrigation system, solely for irrigation purposes.

(5) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state, with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination; and amounts derived from the transportation of commodities to an export elevator, wharf, dock or ship side on tidewater or navigable tributaries thereto, from points of origin in the State of Washington, and thereafter forwarded by water carrier, in their original form, to interstate or foreign destinations: *Provided,* That no deduction will be allowed when the point of origin and the point of delivery to such export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town.

When revenue derived from any of the foregoing sources is included within the reported "gross operating revenue," the amount thereof may be deducted in computing tax liability.

In addition to the foregoing deductions there also may be deducted from the reported "gross operating revenue" (if included therein), the following:

(a) The amount of cash discount actually taken by the purchaser or customer.

(b) The amount of credit losses actually sustained.

(c) Amounts received from insurance companies in payment of losses.

(d) Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(For specific rule pertaining to the classifications of "urban transportation" and "highway transportation," see Rule 180.)

Effective March 1, 1954.

HIGHWAY TRANSPORTATION—URBAN TRANSPORTATION

Rule 180.

The term "highway transportation business" means the business of operating any motor propelled vehicle, as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined in chapter III, Laws of 1921, page 338, section 1, and chapter 184, Laws of 1935, page 884, section 2 and amendments thereto and includes the business of so operating within and between incorporated cities and towns whose corporate limits are more than five miles apart.

It includes the business of hauling for hire upon the highways any merchantable extracted material, such as logs, poles, sand, gravel, coal, etc. Such persons will be deemed to be engaged in the business of highway transportation when the Public Service Commission requires them to obtain a common carrier or contract carrier permit with respect thereto.

It does not include the hauling upon streets or highways of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road or highway, by a person taxable under the classification of "Public Road Construction" of Title II (Business and Occupation Tax). (See Rule 171.)

The term "urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, in so far 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 thereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pick-up 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;

It does not include the business of operating any vehicle for the conveyance of persons or property for hire when such operation extends more than five miles beyond the corporate limits of any city (or contiguous cities) through which it passes. Thus an operation extending from a city to a point which is more than five miles beyond its corporate limits does not constitute urban transportation, even though the route be through intermediate cities which enables the vehicle, at all times, to be within five miles of the corporate limits of some city.

The terms "highway transportation" and "urban transportation" do not include the businesses of operating school busses or ambulances, the collection and disposal of refuse and garbage, or hauling for hire exclusively over private roads. Gross income from these businesses must be reported under the "Service and Other Activities" classification of the Business and Occupation Tax.

Special Note Concerning Taxicab Operations: Persons engaging in the business of operating taxicabs are taxable under the "Urban Transportation" classification of the Public Utility Tax upon gross operating revenue derived from operating entirely within the corporate limits of any city, or within the five-mile urban zone, and under the "Service and Other Activities" classification of the Business and Occupation tax upon gross income from operating beyond the five-mile urban zone. The measure and basic rate of tax under each of these classifications is the same. Therefore, in order to eliminate the expense of additional bookkeeping for both the taxpayer and the Tax Commission, taxicab operators will report their entire gross operating revenue under the "Urban Transportation" classification.

Retail Sales Tax (Title III)

Persons engaged in the business of highway transportation or urban transportation are required to collect the Retail Sales Tax upon gross retail sales of tangible personal property sold by them.

Business and Occupation Tax (Title II)

Retailing—Persons engaged in either of said businesses are taxable under the "Retailing" classification upon gross retail sales of tangible personal property sold by them.

Service and Other Business Activities—Persons engaged in either of said businesses are taxable under the "Service and Other Activities" classification upon gross income received from checking service, packing and crating, the rental of equipment, commissions on sales of tickets for other lines, travelers' checks and insurance, etc.

Persons hauling in their own equipment and for their own account, property owned or sold by them, are not taxable with respect to such operation under either Title II or Title V.

Public Utility Tax (Title V)

Persons engaged in the business of urban transportation are taxable under the "Urban Transportation" classification upon the gross operating revenue of such business.

Persons engaged in the business of highway transportation are taxable under the "Highway Transportation" classification upon the gross operating revenue of such business.

Persons engaged in the business of both urban and highway transportation are taxable under the "Highway Transportation" classification upon gross operating revenue, unless a proper segregation of such revenue is shown by the books of account of such persons.

Effective March 1, 1954.

VESSELS INCLUDING TUGS AND BARGES, OPERATING UPON WATERS WHOLLY WITHIN THE STATE OF WASHINGTON

Rule 181.

Business and Occupation Tax (Title II)

Retailing—Persons engaged in the business of operating such vessels and tugs are taxable under the "Retailing" classification upon the gross sales of meals (including meals to employees) and other tangible personal property taxable under the Retail Sales Tax.

Service and Other Business Activities—The business of operating tugs, barges and lighters is a service business taxable under the "Service and Other Business Activities" classification upon the gross income from such service.

Persons operating vessels which are common carriers are taxable under Title V.

Retail Sales Tax (Title III)

Sales of meals and other tangible personal property by persons operating such vessels and tugs are sales at retail and the Retail Sales Tax must be collected thereon. The Retail Sales Tax applies where meals are furnished to members of the crew or to other employees as a part of their compensation for services rendered.

Sales of foodstuffs and other articles to such operators for resale aboard ship are not subject to the Retail Sales Tax.

Sales to all such operators of fuel, lubricants, machinery, equipment and supplies which are not resold are sales at retail and the Retail Sales Tax must be paid thereon, unless exempt by law.

Charges made by others for the repair of any boat or barge are also sales at retail and the Retail Sales Tax must be paid upon the total charge made for both labor and materials.

Charges made for drydocking are not subject to the Retail Sales Tax provided such charges are shown as an item separate from charges made for repairing.

Compensating Tax (Title IV)

The Compensating Tax applies upon the use within this state of all articles of tangible personal property purchased at retail and upon which the Retail Sales Tax has not been paid, unless exempt by law.

Public Utility Tax (Title V)

The business of operating upon waters wholly within the State of Washington vessels which are common carriers regulated by the Public Service Commission is taxable under the Public Utility Tax as follows:

Vessels under sixty-five feet in length, taxable under the classification "Vessels Under Sixty-five Feet" upon gross operating revenue.

Vessels sixty-five feet or more in length, taxable under the classification "Other Public Service Business" upon gross operating revenue.

The Public Utility Tax does not apply to the business of operating vessels which are not common carriers, such as tugs, barges, scows, and lighters.

Effective May 1, 1939.

WAREHOUSES

Rule 182.

The term "public warehouse" means every structure wherein facilities are offered to the public for the storage of tangible personal property and which are subject to regulation by the Public Service Commission or any other state department required by law to exercise control over rates and facilities.

The gross operating revenue of the business of a warehouse includes all income from the storing, handling, sorting, weighing or measuring tangible personal property.

Where a grain warehouseman purchases or owns grain stored in such warehouse, there shall be included in gross operating revenue (a) an amount equal to the charges at the customary rate for all services rendered in connection with such grains up to the time of purchase by the warehouseman, and (b) the amount of any charges for services that are rendered during the period of the warehouseman's ownership thereof billed and stated, as such, separately from the price of the grains on the invoice to the purchaser at the time of the sale by the warehouseman.

Business and Occupation Tax (Title II)

Persons engaged in the business of operating grain warehouses, cold storage plants or lockers, or any other type of warehouse, except a public warehouse, are taxable under the "Service and Other Business Activities" classification upon gross operating revenues received from such business.

APPENDIX G

an adjustment of prices, or at a price including the tax, or in any other manner whatsoever shall be guilty of a misdemeanor.

RCW 82.16.010 amended.

SEC. 12. Section 82.16.010, chapter 15, Laws of 1961 and RCW 82.16.010 are each amended to read as follows:

Public utility tax. Definitions.

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

(1) "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;

(2) "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;

(3) "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;

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

(5) "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;

(6) "Telephone business" means the business of operating or managing any telephone line or part of a telephone line and exchange or exchanges used in the conduct of the business of affording tele-

phonic communication for hire. It includes cooperative or farmer line telephone companies or associations operating an exchange;

(7) "Telegraph business" means the business of affording telegraphic communication for hire;

(8) "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;

(9) "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: *Provided,* That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways;

(10) "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;

(11) "Public service business" means any of the businesses defined in subdivisions (1), (2), (3), (4), (5), (6), (7), (8), (9), and (10) 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. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, public warehouse, toll bridge, toll logging road, water transportation and wharf businesses;

(12) "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;

(13) The meaning attributed, in chapter 82.04, to the terms "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.

RCW 82.16.020 amended.

SEC. 13. Section 82.16.020, chapter 15, Laws of 1961 and RCW 82.16.020 are each amended to read as follows:

Public utility tax imposed.

There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

APPENDIX H

NEW SECTION. **Sec. 701.** 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).

Sec. 702. RCW 82.16.010 and 2009 c 535 s 1110 are each reenacted and amended to read as follows:

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.

((~~(6)~~)) (7)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (4), ((~~(5), (7),~~)) (6), (8), (9), ((~~(11), and~~)) (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 ((~~(6)~~)) (7)(b) apply throughout this subsection ((~~(6)~~)) (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.

((~~(7)~~)) (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.

((~~(8)~~)) (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.

((~~(9)~~)) (10) "Telegraph business" means the business of affording telegraphic communication for hire.

((~~(10)~~)) (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.

((~~(11)~~)) (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.

((~~(12)~~)) (13) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

((~~(13)~~)) (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.

Sec. 703. RCW 82.16.020 and 2013 2nd sp.s. c 9 s 7 are each amended to read as follows:

(1) There is levied and ((~~there shall be~~)) collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax ((~~shall be~~)) is equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(a) Express, sewerage collection, and telegraph businesses: Three and six-tenths percent;

(b) Light and power business: Three and sixty-two one-hundredths percent;

(c) Gas distribution business: Three and six-tenths percent;

(d) Urban transportation business: Six-tenths of one percent;

(e) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;

(f) Motor transportation, railroad, railroad car, and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;

(g) Water distribution business: Four and seven-tenths percent;

(h) Log transportation business: One and twenty-eight one-hundredths percent. The reduced rate established in this subsection (1)(h) is not subject to the ten-year expiration provision in RCW 82.32.805(1)(a).

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

October 16, 2017 - 4:36 PM

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