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SUPREME COURT
STATE OF WASHINGTON
6/3/2019 4:46 PM
BY SUSAN L. CARLSON
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NO. 96694-0

SUPREME COURT OF THE STATE OF WASHINGTON

FIRST STUDENT, INC.,

Petitioner,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

DEPARTMENT OF REVENUE'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

For more than 80 years, the state has consistently taxed school bus operators providing services to school districts under the business and occupation (B&O) tax classification for “other business or service activities.” RCW 82.04.290(2). Contrary to First Student’s argument, the public utility tax (PUT) does not apply to school bus operators. Nothing in the statutory language or legislative or administrative history indicates any intent to tax school bus operators under the PUT. Moreover, if the PUT applies as First Student argues, the tax burden of school bus operators actually would increase, which undermines its claim.

This Court should reject First Student’s argument that a 1955 amendment to the PUT’s “motor transportation business” definition entitles school bus operators to qualify for the PUT’s “urban transportation business” classification. Adding the phrase “any motor propelled vehicle by which persons or property of others are conveyed for hire” to the “motor transportation business” definition in 1955, a concept already included in the “urban transportation business” definition, did not bring school bus operators within the PUT. This is reinforced by the contemporaneous definitions of the term “for hire” and the fact that the Legislature has not repudiated the Department of Revenue’s and its predecessor’s longstanding rule interpreting the PUT, including the 1955

amendment, as not expanding the PUT to apply to school bus operators. This Court should affirm the Court of Appeals.

II. ISSUE PRESENTED

Is the PUT's "motor transportation business" definition, as amended in 1955, ambiguous and if so, do the legislative history and the longstanding administrative interpretation of the PUT's "highway transportation business" and "urban transportation business" classifications establish that the Legislature intends the B&O tax to apply to school bus operators?

III. STATEMENT OF THE CASE

First Student provides school bus services to school districts pursuant to "Pupil Transportation Services Contracts" awarded through a competitive bidding process. *E.g.*, CP 34-45. First Student bills school districts monthly to operate transportation services and furnish labor, school buses, and bus maintenance. CP 35, 43-44.

Since registering in 1990, First Student has reported the income it received for providing services to school districts under the B&O tax's "other business or service activities" classification. *See* CP 110-11, 113-23. The B&O tax applies to the act or privilege of engaging in business activities, and has various classifications. RCW 82.04. The rate for the

B&O tax classification “other business or service activities” is 1.5 percent. RCW 82.04.290(2)(a).

In 2013, First Student asked the Department to issue a letter ruling on the proper tax treatment of its school bus operations. CP 127-32. First Student contended the PUT, not the B&O tax, applied. *Id.* The PUT applies to certain public service businesses including “motor transportation” and “urban transportation.” RCW 82.16.010(6), (12). The base rates for these PUT classifications are 1.8 percent (motor transportation business) and 0.6 percent (urban 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).

The Department responded that school bus operators are subject to B&O tax. CP 134-35. First Student then requested administrative refunds, which the Department denied. CP 108. First Student next filed a tax refund action in Thurston County Superior Court under RCW 82.32.180. CP 6-9. The trial court granted summary judgment to the Department, concluding that First Student’s income from transporting students under contracts with school districts is properly taxed under the B&O tax’s “other

¹ PUT base rates also are subject to an additional tax equal to seven percent times the base rates so 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.

business or service activities” classification. CP 188-89. The Court of Appeals affirmed. *First Student, Inc. v. Dep’t of Revenue*, 4 Wn. App. 2d. 857, 423 P.3d 921 (2018). This Court granted review.

IV. ARGUMENT

School bus operators are properly taxed under the B&O tax and not the PUT. This conclusion is supported by the PUT’s statutory language, context, and amendments, and the administrative history of consistently taxing school bus operators under the B&O tax. In addition, the fact that school bus operators would pay the higher rate under the PUT further supports this conclusion.

A. The B&O Tax Has Always Applied to School Bus Operators

The state has taxed school bus operators contracting with school districts to transport schoolchildren under the B&O tax since before the Legislature enacted the Revenue Act of 1935. CP 330 (Wash. State Tax Comm’n Bus. Tax Regs., Art. 294.12 (1934)). In the 1935 Act, the Legislature established Washington’s current tax system, including the B&O tax and the PUT. The B&O tax applied to the act or privilege of engaging in business activities, such extracting, manufacturing, retailing, wholesaling, and other business activities. Laws of 1935, ch. 180, § 4. The PUT applied 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. *Id.* at §§ 36, 37.

The 1935 Act defined “highway transportation business” in relevant part as “the business of operating any motor propelled vehicle, as an auto transportation company, certified freight carrier, contract hauler or for hire carrier.” *Id.* at § 37(i). The Act defined the term “auto transportation company” with cross reference to an existing definition that excluded persons operating school buses. *Id.* (referencing Laws of 1921, ch. 111, § 1(d)). It also defined the terms “certified freight carrier,” “contract hauler,” and “for hire carrier” 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 1935 Act defined “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.” Laws of 1935, ch. 180, § 37(j)(3). The statutory definition also listed included conveyances—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.*

In 1936, the Washington Tax Commission adopted rules implementing the 1935 Act. Rule 180, governing Highway Transportation Companies, specified activities to which the PUT applied: “all revenue derived from the carriage of passengers or freight, including baggage, and the 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 stated 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 definitions remained largely unchanged until 1943, when the Legislature amended “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 property for hire.” Laws of 1943, ch. 156, § 10A(j)(2) (strikeout and underline added). The Legislature also deleted the prior reference to specific vehicle types, replacing it with: “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.* Finally, the Legislature expanded the geographic scope of the “urban transportation business” definition and correspondingly restricted the

“highway transportation business” definition’s geographic scope. *Id.* at § 10A(j)(2) and (i).

The Tax Commission issued revised rules soon after the 1943 legislation. The Rule 180 revisions incorporated the statutory changes to the geographic scope of the two classifications and provided examples of urban and highway transportation businesses. App. A (Wash. State Tax Comm’n Rules and Regulations, Rule 180 (1943)). Examples of “urban transportation businesses” included “the business of operating taxicabs, city bus systems, vehicles for intercity transfer of property, pick-up and delivery service.” Examples of “highway transportation businesses” included “the business of hauling for hire upon the highways any merchantable extracted material, such as logs, poles, sand, gravel, coal, etc.” *Id.* Rule 180 also included a note indicating that “Persons operating school buses for hire are taxable under the classification of “Service and Other Activities” of Title II (Business and Occupation Tax).”² *Id.*

In 1949, the Legislature amended the PUT definitions regarding their geographical scope. Laws of 1949, ch. 228, § 10(i), (j). The Tax Commission did not revise Rule 180 until 1954, when it replaced the note in the 1943 rule referenced above with the following:

² No rulemaking file for the 1943 revisions to Rule 180 exists that might explain why the Tax Commission referred to school buses as “for hire.”

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 public roads. Gross income from these businesses must be reported under the “Service and Other Activities” classification of the Business and Occupation Tax.

CP 368 (Wash. State Tax Comm’n Rules, Rule 180 (1954)).

In 1955, the Legislature amended the definition of “highway transportation business” to include motor propelled vehicles “by which persons or property are conveyed for hire.” Laws of 1955, ch. 389, § 28. The amended definition also 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.* The Legislature did not substantively change the “urban transportation business” definition. *Id.*

The Tax Commission amended its rules in 1956 following the 1955 statutory change. Revised Rule 180 continued to provide that the B&O tax, not the PUT, applied to school bus operators:

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). Also in 1956, the Tax Commission amended Rule 224, to add "school bus operators" to the 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's definition statute 18 more times. For example, in 1961, it replaced the term "highway transportation business" with "motor transportation business" and excluded transporting logs and other forest products upon private roads or highways. Laws of 1961, ch. 293, § 12.

The current "motor transportation business" and "urban transportation business" definitions provide in relevant part:

(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. . . .

(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 [providing geographic limits]. 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

RCW 82.16.010. The current rules regarding the taxation of school bus operators have remained largely unchanged since 1956. WAC 458-20-180(5) provides in part:

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 458-20-224(2) includes school bus operators in the list of activities taxed under the B&O tax's "service and other business activities" rate.

B. The Legislature Did Not Change the Taxation of School Bus Operators When it Amended the PUT in 1955

Notwithstanding the 84-year history of taxing school bus operators providing services to school districts under the B&O tax, First Student argues the Legislature intended to change that taxation in 1955.

Specifically, First Student contends that the addition of "any motor propelled vehicle by which persons or property of others are conveyed for hire" to the "highway transportation business" definition in 1955 shows the Legislature intended to switch school bus operators to the PUT.

Br. Appellant at 12-13. First Student even contends that the 1955 amendment shows the Legislature intends the “urban transportation business” rate to apply to school bus operators even though it not change that definition’s scope. *Id* at 14. First Student cannot satisfy its burden of proving the PUT applies to school bus operators. Nothing in the PUT’s express language includes school buses, and the context of the 1955 amendment does not indicate any intent to include school bus operators within the PUT. The fact that the Tax Commission’s contemporaneous rules stated that the B&O tax still applied, and that the Legislature has acquiesced in that position for more than 60 years, further supports that the B&O tax, not the PUT, applies.

1. The PUT does not plainly apply to school bus operators

No language in the PUT definitions mentions school buses or school bus operators. When the Legislature added the phrase “for hire” to the PUT definitions in 1943 (“urban transportation business”) and in 1955 (“highway transportation business”), there is no indication the Legislature intended to bring school bus operators within the PUT. In discerning legislative intent, courts evaluate the entire context of the statute, related provisions and amendments, and the statutory scheme as a whole. *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 789, 432 P.3d 805 (2019) (internal citations omitted). The meaning of statutory terms is gleaned not

only from the terms alone, but from all the statute's provisions relating to the subject, the nature of the statute, the object to be accomplished, and the consequences that would result from construing the statute in a particular way. *Id.* at 790 (quoting *Burns v. City of Seattle*, 161 Wn.2d 129, 146, 164 P.3d 475 (2007)).

“For hire” is not defined in the PUT. 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. *Jongeward v. BNSF Ry. Co.*, 174 Wn.2d 586, 595-96, 278 P.3d 157 (2012) (applying historical view of “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). First Student contends “for hire” is synonymous with “for compensation,” based on a modern general-purpose dictionary definition. *E.g.*, Br. Appellant at 10. But, as the Court of Appeals recognized, “courts generally refrain from applying modern definitions to time worn statutes.” *First Student*, 4 Wn. App. 2d at 866-67 (citing *League of Educ. Voters v. State*, 176 Wn.2d 808, 821, 295 P.3d 743 (2013)). General-purpose dictionaries from the relevant time-period did not define “for hire” and instead contained separate definitions of “for” and “hire.” *First Student*, 4 Wn. App. 2d at 867.

In contrast, Black's Law Dictionary defined "for hire" at the time.

It referenced the passenger paying a fare:

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)). A court applied this definition to conclude that a minibus transporting senior care clients to activities was not providing transportation "for hire" because the clients did not pay a transportation fare. *Nebinger v. Maryland Cas. Co.*, 711 A.2d 985, 988 (N.J. Super. Ct. App. Div. 1998). Likewise, First Student's passengers do not pay a transportation fare so First Student would not qualify as providing transportation "for hire." This is a fair reading of "for hire" at the time of the 1955 amendment. *First Student*, 4 Wn. App. 2d at 868.

This reading is also consistent with a 1956 Attorney General Opinion that advised school districts with respect to school buses:

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.

Op. Att’y Gen. 242, at 4 (1956). Courts give AGO opinions great weight. The Legislature is presumed to be aware of them, and they may shed light on legislative intent. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 308, 268 P.3d 892 (2011). This contemporaneous AGO opinion supports that vehicles were provided “for hire” when the passenger paid a fare.³

While no published Washington case directly answers the question of whether school bus operators provide their services to school districts on a “for hire” basis, other state courts have concluded in various contexts that school bus operators do not provide transportation services for hire. *See, e.g., In re Jerome S.*, 968 N.E.2d 769, 773 (Ill. App. Ct. 2012) (First Student employee was not engaged in “transportation of the public for hire” within aggravated battery statute because the bus transported only a select group of students and was not obligated to serve every person); *Durham Transp., Inc. v. Valero*, 897 S.W.2d 404 (Tex. App. 1995) (school

³ First Student has argued that such a reading is inconsistent with applying the PUT to charter buses. The tax treatment of charter buses is not before this Court. As set forth in the briefing below, charter buses are governed by different statutes and have different legal arrangements with their passengers. They are not analogous to school bus operators and their tax treatment is not relevant to this case.

bus company was not a common carrier because it did not “pick up, deliver, or transport members of the general public for a fare”); *Gibson v. Watkins Glen Cent. Sch. Dist.*, 68 A.D.2d 967, 968-69 (N.Y. App. Div. 1979) (regulation of motor vehicles “used for the transportation of passengers for hire” did not include school buses); *Hunt v. Clifford*, 209 A.2d 182 (Conn. 1965) (school bus was not a common carrier of passengers for hire because by contract it transported only pupils); *see also* WAC 480-51-020(7) (Utility and Transportation Commission rule defining “for hire” as “transportation offered to the general public for compensation”). These cases, the Attorney General Opinion, and the UTC rule establish that “for hire” is subject to more than one reasonable interpretation. Thus, the term is ambiguous and, in addition to its statutory context, the Court should evaluate its legislative and administrative history.

2. The context of amendments to the PUT definitions and the legislative history indicate no intent to subject school bus operators to the PUT

The statutory context of the 1955 amendment to the “highway transportation business” definition and the subsequent legislative acquiescence make clear the Legislature did not intend in 1955 to change how school bus operators were taxed. Nothing in the PUT references school bus operators. In addition, at the time of the 1955 amendment, the

phrase “for hire” had already been in the “urban transportation business” definition for more than a decade. During that time, the Tax Commission’s rules excluded school bus operators from the PUT, and identified the “service and other activities” classification of the B&O tax as the applicable tax. App. A (Wash. State Tax Comm’n Rules and Regulations, Rule 180 (1943)); CP 368 (Wash. State Tax Comm’n Rules, Rule 180 (1954)). The term “for hire” was even in the Tax Commission’s 1943 rule specifying the B&O tax as applying to school buses. Given this context, had the Legislature intended for school bus operators to come within the PUT, it would have used language other than “any motor propelled vehicle by which persons or property of others are conveyed for hire.”

The fact that the Legislature retained the illustrative examples when it amended the “highway transportation business” definition in 1955 further supports this conclusion. These examples, “auto transportation company,” “common carrier,” and “contract carrier,” indisputably excluded school bus operators. This is because the statute governing auto transportation companies did not apply to taxicabs, hotel buses, and school buses, among others. Laws of 1921, ch. 111, § 1(d); *see also* RCW 81.68.015. And common and contract carriers applied to transporting property, not persons. Laws of 1937, ch. 166, § 2(e), (f). These examples

indicated no intent to include school buses within the PUT, and their retention implies the opposite.

In addition, in 1955 the statute governing “for hire vehicles” included “all vehicles used for the transportation of passengers for compensation,” but excluded “school buses operating exclusively under a contract to a school district.” Laws of 1947, ch. 253, § 1; *see also* RCW 46.72.010(1).⁴ Again, had the Legislature intended to apply the PUT to school bus operators, presumably it would have expressly said so.

3. The Tax Commission’s contemporaneous interpretation further demonstrates that the PUT does not apply

To the extent there is any question whether the Legislature intended to include school bus operators within the PUT by amending the “highway transportation business” definition in 1955, the Tax Commission’s contemporaneous rules provide certainty that it did not.

In 1956, the Tax Commission amended Rule 180, but continued to state that school bus operators are subject to the B&O tax. CP 363 (Wash. State Tax Comm’n Rules, Rule 180 (1956)). The Tax Commission also amended Rule 224 to include “school bus operators” among the list of

⁴ First Student may point out that the Legislature defined the term “for hire vehicle” in RCW 46.04.190 as “any motor vehicle used for the transportation of persons for compensation, except auto stages and ride-sharing vehicles.” But it separately defined “school bus” in RCW 46.04.521, indicating the latter term has a separate meaning. At best, these definitions support the conclusion that “for hire” is ambiguous.

persons 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)). Courts give an administrative construction, nearly contemporaneous with the statute’s passage, great weight, especially when the Legislature has not repudiated that construction. *E.g.*, *State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass’n*, 140 Wn.2d 615, 635-36, 999 P.2d 602 (2000). In the past 63 years, the Legislature has amended the PUT definitions 18 times, without repudiating the Tax Commission’s interpretation. This demonstrates that the Legislature intends the B&O tax, and not the PUT, to apply to school bus operators.

C. Accepting First Student’s Position Would Increase Taxes for School Bus Operators

In addition to upsetting settled positions with respect to the taxation of school bus operators, applying the PUT to school bus operators would increase their tax burden. If First Student’s school bus operation income were subject to the PUT, only the higher “motor transportation business” rate (1.962 percent) would apply. *See* footnote 1.

This is because First Student does not meet the “public use” element of the “urban transportation business” definition. RCW 82.16.010(12) defines this term in part as “the business of operating any motor vehicle for *public use* in the conveyance of persons or property for

hire.” (Emphasis added). School bus operators like First Student provide transportation only to certain students pursuant to their pupil transportation services contracts, not to the general public. *E.g.*, CP 38 (district reserves the right to determine which students are to be transported); RCW 28A.150.200(2)(d) (defining basic education as including transportation services for eligible students); RCW 28A.160.010 (authorizing school districts to determine which students to transport); WAC 392-145-060(2) (school bus drivers shall pick up only students and persons designated by the school district). Courts have agreed. *See, e.g., In re Jerome S.*, 968 N.E.2d at 772-73 (school bus is not “public” transportation because it is available only to a select group of individuals). Thus, if First Student is right that school bus operators provide transportation “for hire” to school districts, the only applicable PUT rate would be the higher “motor transportation business” classification. Furthermore, because the Legislature substantively amended only the “highway transportation business” definition in 1955, it did not intend in 1955 to expand the “urban transportation business” definition to include school bus operators.⁵

⁵ Even if school bus operators could meet the public use requirement and qualify for the “urban transportation business” classification’s lower rate, those in rural areas that currently pay the B&O tax would owe more taxes on their income because they do not meet the “urban transportation business” geographic requirement. *See* RCW 82.16.020(12). Thus, non-urban school bus operators would bear a higher tax burden.

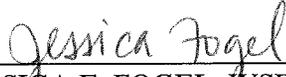
Other unanticipated consequences could result if First Student were correct that “for hire” simply means “for compensation.” Businesses subject to the B&O tax transporting persons for compensation, like ambulances and refuse collectors, would become subject to the PUT, including under the “motor transportation business” classification. In addition, revenue school districts receive from contracting with one another to provide school bus transportation is exempt from the B&O tax. RCW 82.04.419. No such exemption exists in the PUT, and thus, such revenue would become taxable for school districts. Nothing in the legislative history or otherwise indicates the Legislature intended such a result.

V. CONCLUSION

The Court should affirm the Court of Appeals and hold that the B&O tax applies to school bus operators.

RESPECTFULLY SUBMITTED this 3rd day of June, 2019.

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PROOF OF SERVICE

I certify that on June 3, 2019, I electronically filed this document with the Clerk of the Court using the Washington State Appellate Courts' e-file portal, which will send notification of such filing to all counsel of record at the following:

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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 3rd day of June, 2019, at Tumwater, WA.



Katelyn Johnson, Legal Assistant

APPENDIX

A

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, $\frac{1}{2}$ of 1%.

Highway transportation, and all public service businesses other than those heretofore mentioned. Rate of tax $1\frac{1}{2}$ %.

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 $\frac{1}{2}$ 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 $\frac{1}{4}$ 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 $\frac{1}{2}$ 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 $\frac{1}{2}$ of 1% of the gross operating revenue of such business.

Persons engaged in the business of highway transportation are taxable at the rate of $1\frac{1}{2}$ % 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 $1\frac{1}{2}$ % 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.

ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

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