

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TE-210156

PENALTY AMOUNT: \$100

Customized Tours & Charter Service, LLC,
d/b/a Customized Tours, Tours of Seattle, *et al.*
PO Box 98677
Des Moines, WA 98198

RECEIVED

The Washington Utilities and Transportation Commission (Commission) believes Customized Tours & Charter Service, LLC, d/b/a Customized Tours, Tours of Seattle, *et al.*, (Customized Tours or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 391 – Qualification of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On March 5, 2021, Commission Motor Carrier Investigator Wayne Gilbert completed a focused safety investigation of Customized Tours and documented the following violation:

- **One violation of 49 CFR § 391.15(a) – Using a disqualified driver.** The Company allowed driver Joel Mensonides to drive a commercial motor vehicle with a suspended license.

The Commission considered the following factors in determining the appropriate penalty for this violation:

1. **How serious or harmful the violation is to the public.** The violation noted is serious and potentially harmful to the public. Companies that use drivers not properly licensed put the traveling public at risk. This violation presents public safety concerns.
2. **Whether the violation was intentional.** Considerations include:
 - Whether the Company ignored Commission staff's (Staff) previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the Company knew of and failed to correct the violation.

The Company began its operations in September 1989 and the Commission's earliest record of Customized Tours' operating authority dates to 1990.

On June 18, 2019, Staff completed a routine safety investigation of Customized Tours and documented 44 violations of 383.37(a) after the Company allowed a driver to operate a commercial motor vehicle with a downgraded commercial driver's license. The Company knew or should have known about this requirement.

3. **Whether the Company self-reported the violation.** Customized Tours did not self-report this violation.
4. **Whether the Company was cooperative and responsive.** Customized Tours was cooperative throughout the investigation and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violation and remedied the impacts.** The Company corrected the violation and the driver's license for Joel Mensonides has been reinstated.
6. **The number of violations.** Staff identified one violation type with a total of one individual occurrence.
7. **The number of customers affected.** Customized Tours traveled 40,000 miles in 2019. This safety violation presented a public safety risk.
8. **The likelihood of recurrence.** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative with Staff and expressed a desire to come into compliance. In light of these factors, Staff believes that the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** On September 10, 2014, Customized Tours was penalized \$400 in Docket TE-143298 for using commercial motor vehicles not periodically inspected.

On June 21, 2016, Customized Tours was penalized \$1,000 in Docket TE-160693 for failing to file a complete annual report and pay regulatory fees.

On July 3, 2019, Customized Tours was penalized \$4,400 in Docket TE-190523 for safety violations of WAC 480-30-221. On August 13, 2019, the Commission entered Order 01, which reduced the penalty to \$2,200 and suspended an \$1,800 portion of the reduced penalty for a period of two years, subject to conditions. The Company paid the portion of the penalty that was not suspended and did not incur repeat violations.
10. **The Company's existing compliance program.** Joel Mensonides and LaToya Murrell are responsible for the Company's safety compliance program.
11. **The size of the Company.** Customized Tours currently operates nine commercial motor vehicles and employs 13 drivers. The Company reported \$-300 in gross revenue for 2020.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each

occurrence of a first-time violation.¹ The Commission generally will assess penalties by violation category, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Customized Tours \$100, calculated as follows:

- One violation of 49 CFR § 391.15(a) – Using a disqualified driver. The Commission assesses a penalty of \$100 for this violation.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of their decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violation.
- Admit the violation but request mitigation of the penalty amount.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your permit to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective March 17, 2021.

RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-210156

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred and enclose \$100 in payment of the penalty.
2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):
- a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.
- OR b) I ask for a Commission decision based solely on the information I provide above.
3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):
- a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.
- OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: 3/31/2021 [month/day/year], at Des Moines, WA [city, state]

Customized Tours & Charters
 Name of Respondent (company) – please print

[Signature]
 Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class