

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-171067

PENALTY AMOUNT: \$1,400

Bon Vivant Tours LLC
d/b/a Bon Vivant Wine Tours
22433 Marketplace Drive #C-1019
Redmond, WA 98053

The Washington Utilities and Transportation Commission (Commission) believes that Bon Vivant Tours LLC d/b/a Bon Vivant Wine Tours (Bon Vivant Tours) has committed violations of Washington Administrative Code (WAC) 480-30-221 Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 391 – Qualifications of Drivers.

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

In October 2017, Commission Motor Carrier Investigator Jason Sharp completed a routine safety investigation of Bon Vivant Tours and documented:

- **Fourteen violations of Title 49 CFR Part 391.45(b)(1) – Using a driver not medically examined and certified.** During the six months preceding the routine safety investigation, Bon Vivant Tours allowed its employee Rudy Nieuwenhuis to drive on 14 occasions without having been medically examined and certified. After Mr. Nieuwenhuis' medical certificate expired on July 15, he drove four times in July, five times in August, and five times in September, 2017

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violation is to the public.** The violations noted are serious and potentially harmful to the public. Companies that use drivers not currently medically examined and certified put the traveling public at risk. A driver with an undetected medical condition presents serious safety concerns.
2. **Whether the violation is intentional.** Considerations include:
 - Whether the company ignored Commission staff's 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.

Bon Vivant Tours began operations under its current ownership in December 2011. In the company's application to transfer authority, company partner Michael Hughes acknowledged responsibility to understand and comply with applicable safety regulations. Commission staff conducted a routine safety investigation of the company in April 2013, and noted no violations. Staff believes the company knew, or should have known about these requirements.

3. **Whether the company self-reported the violation.** The company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Bon Vivant Tours was cooperative and responsive throughout the entire scope of the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** Upon learning of the violation, the company took immediate action by removing the employee from driving assignments until he became medically re-certified.
6. **The number of violations.** In total, staff identified 11 violation types, with a total of 46 occurrences. This is a significant number of violations for a company the size of Bon Vivant Tours.
7. **The number of customers affected.** The company traveled 18,000 miles and reported \$225,000 in gross revenue for 2016. A significant number of customers, as well as members of the traveling public may have been affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Bon Vivant Tours is likely to repeat these safety violations. However, the company was cooperative and responsive to staff, and has taken the appropriate steps to correct the safety violations documented in the routine safety investigation.
9. **The company's past performance regarding compliance, violations, and penalties.** Under its current ownership, this is the company's second routine safety investigation, and the first time the Commission has assessed safety penalties. The Commission penalized the company in 2016 for untimely filing of its annual report and payment of regulatory fees.
10. **The company's existing compliance program.** Bon Vivant Tours does not have a formal compliance program.
11. **The size of the company.** Bon Vivant Tours is a small company with seven drivers and one commercial vehicle.

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 per type of violation, 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 found in future compliance investigations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Bon Vivant Tours \$1,400 for violations of WAC 480-30-221 Vehicle and Driver Safety Requirements, calculated as follows:

- Fourteen violations of Title 49 CFR Part 391.45(b)(1) – Using a driver not medically examined and certified. These are first-time violations, but they are violations of fundamental safety requirements. The Commission assesses penalties at the statutory amount of \$100 per occurrence, for a total of \$1,400.

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 any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment 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 concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of this 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 for mitigation 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(s) 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 his or her 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 violations.


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

- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

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 certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective November 13, 2017.


GREGORY J. KOPTA
Administrative Law Judge

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-171067

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 violation occurred and enclose \$ _____ 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: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

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 B felony.”