

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-230527
PENALTY AMOUNT: \$400

Bon Vivant Tours LLC
d/b/a Bon Vivant Wine Tours
23913 NE 112th Lane
Redmond, WA 98053

The Washington Utilities and Transportation Commission (Commission) believes Bon Vivant Tours LLC d/b/a Bon Vivant Wine Tours (Bon Vivant or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 C.F.R.) Part 390 – Safety Regulations, General, and 49 C.F.R. 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 June 27, 2023, Commission Motor Carrier Investigator Tracy Cobile completed a routine safety investigation of Bon Vivant and documented the following violations:

- **One violation of 49 C.F.R. § 390.19(b)(2) – Failing to file the appropriate form under 390.19(a) each 24 months according to the schedule.** Bon Vivant failed to update the MCS-150 registration form with the correct principal place of business, mailing address, vehicle miles traveled, and number of drivers.
- **One violation of 49 C.F.R. § 391.21(a) – Using a driver who has not completed and furnished an employment application.** The Company failed to maintain a complete employment application for driver Marcos Zuniga.
- **Five violations of 49 C.F.R. § 391.25(a) – Failing to make an inquiry into the driving record of each driver to the appropriate state agencies in which the driver held a commercial motor vehicle (CMV) operator's license at least once every 12 months.** Bon Vivant failed to acquire the driving records of Peter Kingsley, Michael Hughes, Rudy Nieuwenhuis, Marcos Zuniga, and Kerry Lemieux at least once every 12 months.
- **Five violations of 49 C.F.R. § 391.51(b)(8)(i) – Failing to place a note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by 49 C.F.R. § 391.23(m)(1) in driver qualification file.** The Company failed to verify the medical examiners listed on the medical certificates of drivers Peter Kingsley, Michael Hughes, Rudy Nieuwenhuis, Marcos Zuniga, and Kerry Lemieux with the national registry.

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

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Passenger transportation companies that: (1) fail to provide accurate data in their Motor Carrier Identification Report, (2) use drivers without first completing employment applications, (3) fail to obtain annual driving records for its drivers, and (4) fail to verify medical examiners' certificates with the national registry put their customers and the traveling public at risk. These violations present significant safety concerns.
2. **Whether the violations were 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.

On January 3, 2012, the Commission received the Company's application for transfer of Bon Vivant's charter and excursion authority. In the application, Michael Hughes, owner of Bon Vivant, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On October 23, 2017, Staff completed a routine safety investigation of Bon Vivant and identified violations of 49 C.F.R. § 390.19(b)(2), 49 C.F.R. § 391.21(a), 49 C.F.R. § 391.25(a), and 49 C.F.R. § 391.51(b)(9). The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Bon Vivant did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** Bon Vivant has not provided Staff with evidence that it corrected the violations.
6. **The number of violations.** Staff identified 10 violation types with a total of 21 individual occurrences during its routine safety investigation of Bon Vivant. Of those violations, Staff identified four violation types with 12 individual occurrences that warrant penalties in accordance with the Commission's Enforcement Policy.
7. **The number of customers affected.** Bon Vivant reported traveling 29,000 miles in 2022. These safety violations 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. Staff believes the likelihood of recurrence is low if the Company prioritizes safe operations.
9. **The Company's past performance regarding compliance, violations, and penalties.** On June 20, 2016, the Commission assessed a \$1,000 penalty against Bon Vivant for failing to file an annual report and pay regulatory fees in Docket TE-160689. The Company paid the penalty in full. Bon Vivant has no history of penalties as the result of safety violations.
10. **The Company's existing compliance program.** Michael Hughes is responsible for the Company's safety compliance program.
11. **The size of the Company.** Bon Vivant employs five drivers and operates two CMVs. The Company reported \$173,998 in gross revenue for 2022.

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 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 Bon Vivant \$400 (Penalty Assessment), calculated as follows:

- One violation of 49 C.F.R. § 390.19(b)(2) – Failing to file the appropriate form under 390.19(a) each 24 months according to the schedule. The Commission assesses a penalty of \$100 for this repeat violation.
- One violation of 49 C.F.R. § 391.21(a) – Using a driver who has not completed and furnished an employment application. The Commission assesses a penalty of \$100 for this repeat violation.
- Five violations of 49 C.F.R. § 391.25(a) – Failing to make an inquiry into the driving record of each driver to the appropriate state agencies in which the driver held a CMV operator's license at least once every 12 months. The Commission assesses a "per category" penalty of \$100 for these repeat violations.

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

- Five violations of 49 C.F.R. § 391.51(b)(8)(i) – Failing to place a note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by 49 C.F.R. § 391.23(m)(1) in driver qualification file. The Commission assesses a “per category” penalty of \$100 for these repeat violations.

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 the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all the violations 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(s) 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(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 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(s).
- Admit the violations 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 at <https://efiling.utc.wa.gov/Form> **within FIFTEEN (15) days** after you receive this Penalty Assessment.² 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.

If you wish to make a payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).³

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

² <https://efiling.utc.wa.gov/Form>.

³ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>

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

DATED at Lacey, Washington, and effective July 24, 2023.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TE-230527

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.
 Enclose \$400 in payment of the penalty.
 OR Attest that I have paid the penalty in full through the Commission's payment portal.
2. **Contest the violation(s).** I believe that the alleged violation(s) 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 violations, 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 or she makes a materially false statement which he or she 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 or her 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.