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May 22, 2008

**VIA ELECTRONIC FILING**

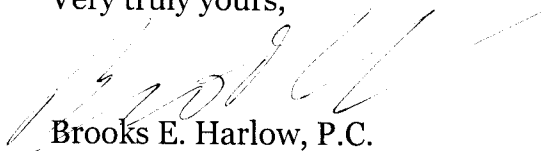
Ms. Carole J. Washburn  
Executive Secretary  
Washington Utilities and Transportation Commission  
Post Office Box 47250  
1300 S. Evergreen Park Dr. SW  
Olympia, Washington 98504-7250

Subject: Penalty Assessment: TC-072228 – Shuttle Express, Inc.

Dear Ms. Washburn:

Enclosed, for filing, is the response of Shuttle Express, Inc., to the above-referenced penalty assessment. If you have any questions, please contact the undersigned.

Very truly yours,



Brooks E. Harlow, P.C.

cc: ALJ Ann E. Rendahl (via e-mail)  
Jennifer Cameron-Rulkowski (via e-mail)  
Shuttle Express, Inc.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TC-072228

**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 \$9,500 in payment of the penalty.
2. **Request for a hearing.** I believe that the alleged violations did not occur, based on the following information, and request a hearing for a decision by an administrative law judge: See attached.

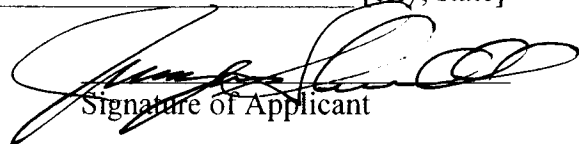
3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reason(s) set out below.

- a) I ask for a hearing for a decision by an administrative law judge  
OR  b) I waive a hearing and ask for an administrative decision on the information I present here.

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: May 22, 2008 [month/day/year], at Seattle, WA [city, state]

Shuttle Express  
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.”

Washington Utilities and Transportation Commission  
Address

Penalty Assessment: TC-072228

Shuttle Express (SE) seeks an administrative decision considering additional information provided in this request that was not provided in the WUTC investigation. We feel this information has merit to the outcome of this case. We hereby seek relief of the proposed \$9500 fine. While we do not debate most of the information provided by the investigation, there is additional information not included in the investigation report which can arguably be considered to change the outcome of this case.

All drivers of the Limo vans had completed operations and safety training and been previously driving for SE. Thus, these were seasoned drivers to SE operations and safety standards. All vans used were inspected by WUTC inspectors. Each driver/van was covered by the mandatory charter limits of insurance required by WUTC. SE carried additional insurance of \$5m on each operator. Insurance coverage provided by IC operations far exceeded the required by the WUTC. All drivers wore suits and ties. All vans were within one year old. The traveling public received an upgraded service by the Limo vans. A common response by passengers was, "this is an upgrade service".

During the time of Limo operation SE received only one public safety complaint on one of the IC drivers. An investigation was immediately made. The finding confirmed the complaint. SE immediately took the action of not offering this driver any further work. This driver at that time surrendered her charter authority to the WUTC.

As reported in the investigation report, SE submitted a letter to Gene Eckhard on August 19, 2004. This letter outlined the advantages of independent contractors (IC) to both the traveling public and the IC's. Since that date, SE has continually sought legal ways to convert the driver operation of SE to IC. Through my personal research I discovered the California Utility Commission mirrors many of the same regulations as the Washington WUTC. In their regulations they do allow IC. Their only requirement for IC operators is they must have a charter license issued by the Commission. The debate with staff and the Attorney Generals office over the legalities of the California law and its application being allowed by WUTC regulations has been expensive and time consuming.

In conclusion, SE has invested in and pursued IC operations in the interest of the traveling public since 2004. At all times SE has been working in the public's interest with this endeavor. It was not the intention to disregard regulations, but rather to move the IC debate forward to a final decision. While Commission Staff made recommendations, SE made the decision to go forward with an operation that was and is still debatably legal.

The enclosed compliance report from Employment Security Department states the 6 independent contractor shuttle van drivers in question were by law employees. SE has paid the tax on these drivers. This further attributes to the legality of the operation. In the States own definition the IC's were classified as employees, there for meeting WUTC regulations.

Shuttle Express requests the Commission suspend the proposed monetary fine. There has been substantial time and monies already invested which will now have no benefit to the public, Commission or Shuttle Express. No laws were intentionally broken. The records of SE contained in the Commission speak to the company's good reputation. This case illustrates the dedication of SE to provide the traveling public with affordable, dependable, safe service. To issue a monetary fine of any amount would fly in the face of the traveling public; Penalizing SE for seeking a remedy to higher prices is intern penalizing the traveling public. The fact that IC is classified as employees by the State of Washington fulfills the required regulation of the WUTC that drivers be employees.

As stated in our original letter to Mr. Gene Eckhard in 2004, SE intentions were honorable and in the public interest. It is unfortunate the Government sometimes stands in the way of public benefits. It is our sincere hope the Commission will not penalize SE for working to the benefit of the traveling public.

**Employment Security Department**

WASHINGTON STATE

BELLEVUE DISTRICT TAX OFFICE

1530 140th Avenue NE # 100 • Post Office Box 66 • Bellevue, Washington 98009

Phone (425) 649-4388 or Fax (425) 649-4470

April 22, 2008

SHUTTLE EXPRESS INC.  
ATTN: JIMY SHERRELL  
800 SW 16<sup>TH</sup> STREET  
RENTON, WA 98057-2612

ES REFERENCE #: 338720-00 2

Thank you, JoAnn Huntoon and Susan Stahlfeld for your cooperation and assistance during my recent visit to conduct a compliance review of your company's payroll and related accounting records.

The audit discovered 2006 and 2007 reporting errors that resulted in an estimated tax balance of \$2,129.82, including penalties and interest. The following adjustments were made to your account:

- (1) Correction of understated excess wages in quarter 3 and quarter 4 of 2006 and 2007.
- (2) Correction of transposed social security numbers of employee Noliz and Spacey in 2006.
- (3) Reclassification of 4 independent contractor town car/ limousine drivers in 2006 and 2 independent contractor town car/ limousine drivers and 6 independent contractor shuttle van drivers in 2007 to employee status.

In considering whether the contract town car/limousine drivers and contract van drivers met the definition of employment, RCW 50.04.100 was examined: "Employment", subject only to the other provisions of this title, means personal service, of whatever nature, unlimited to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied". Shuttle Express is in the business of transportation services. Therefore, the services performed by the contract drivers benefit your business, and would fall under the definition of employment established in this statute.

Besides being an employer, Shuttle Express Inc. is also a service referral agency. In considering whether the employer met the definition of service referral agency, RCW 50.04.245 was examined: "personal services performed for, or for the benefit of, a third party pursuant to a contract with a service referral agency shall be deemed to be employment for the service referral agency when the agency is responsible, under



contract or in fact, for the payment of wages in remuneration for the services performed." Services referral agency means an individual or entity (Shuttle Express Inc.) that is engaged in the business of offering the services of an individual (the independent contractor drivers) to perform specific tasks for a third party (customers). Therefore, the independent contractor drivers should be subject to unemployment insurance taxes.

However, the independent contractor exception tests of RCW 50.04.140 were considered. RCW 50.04.140 states that services shall be considered employment unless all three of the following conditions are met conjunctively:

- (1) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of services and in fact; and
- (2) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and
- (3) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

An independent contractor agreement was signed by all town car/limousine and van drivers. The contracts are almost identical. The following factors were considered in determining if the town cars/limousine drivers and van drivers working for Shuttle Express Inc. met the exception tests of RCW 50.04.140:

Exception Test 1: The contractor drivers furnish their own vehicle, driver and supervision of transportation service for customers referred by Shuttle Express. Contractor may assign or employ others in the course of their own business to complete jobs referred by Shuttle Express. Contractor is responsible to inspect and maintain his vehicle. Contractor is solely responsible for insuring its own business and its employees against injuries occurred during the performance of the job. All fares paid by customers when accepting referrals from Shuttle Express, whether paid directly to Contractor or paid directly to Shuttle Express, shall remain the property of the Contractor. Whenever the contractor collects payment directly from the customer upon completion of the job, the monies are kept by the contractor and reported to Shuttle Express for purpose of bill settlement. The financial settlement of charges occurs twice a month. Both parties may invoice the other for unexpected or extraordinary costs incurred in connection with the referrals. The marketing and referral fee paid by town car/limousine contract drivers to Shuttle Express is between 28%-32% of customer fares and 50% by the van contract drivers.

Exception Test 2: The work of the contract drivers are performed outside of Shuttle Express' business location. Shuttle Express Inc. provides marketing and scheduling services for the contract drivers. The company also provides billing service for some contractors who choose to use this service. In 2006, all the contractors went through an Arizona based company, Contractor Management Services Inc., for the purchase of insurance and other benefits and bill settlement services.

Exception Test 3: In researching whether the independent town car and limousine drivers were independently established, it was discovered that all but four individuals in 2006 and all but two in 2007 are licensed to do business in the State of Washington as a legal entity. Some are sole proprietors and others are limited liability companies. They have UBI (Unified Business Indicator) numbers and are required to maintain a separate set of books and records reflecting all items of income & expenses of its business and to file appropriate tax returns with the relevant government agencies. They may take on other businesses besides the referrals from Shuttle Express. The vans driven by the six contract drivers are the same model generally used by Shuttle Express Inc. but different in appearance. They do not have the standard logo. The van drivers were offered a fee for advertising "Limos by Shuttle Express" on the side of their vans and all 6 accepted the offer. Even though they were free to accept advertisement arrangements from other unrelated entities, they only had Shuttle Express signs on their vans. Being that the contract van service was a pilot project, the driver opportunity was not advertised or opened to the general public. The drivers were selected from the employee pool. Even though they have UBI numbers, they were not truly independently established businesses. Apparently, they did not establish its only clientele and their business were based solely on the referrals from Shuttle Express. After the pilot project ended in December 2007, five van contractors were converted back to their employee van driver status and one van contractors became an independent town car/limousine driver.

Based on the facts gathered during the audit interview, it was determined that four of the independent town car/ limousine drivers in 2006 and two in 2007 did not meet RCW 50.04.140 Exception Test 3 and are subject to unemployment insurance taxes. The six independent shuttle van drivers in 2007 also did not meet RCW 50.04.140 Exception Test 3 and are reportable as employees.

Enclosed is the Audit Recapitulation Report that summarizes the changes made to your account. Please remit the tax balance by April 30, 2008 to avoid the accrual of penalties and interest.

If you have any questions, please contact me at (425) 649-4468.

Sincerely,



Ivy Liu de Leon, Auditor  
Bellevue District Tax Office

enclosures





# Employment Security Department

WASHINGTON STATE

## AUDIT Recapitulation

Employer Name: SHUTTLE EXPRESS INC  
 ES Reference Number: 338720-00-2

Ivy Liu

Reported By Employer		Per Audit of Employer's Records			Difference (Over) or Under			Tax and Penalty				
Tot. Wages	Excess Taxable	Tot. Wages	Excess Taxable	Tot. Wages	Excess Taxable	Tax Due	Penalty	Total Due				
Year: 2006 Quarter: 1	Rate: 2.35	\$1,473,862.55	\$10,638.48	\$1,473,862.55	\$10,638.48	\$1,463,224.07	\$0.00	\$0.00	\$0.00	\$0.00		
Year: 2006 Quarter: 2	Rate: 2.35	\$1,878,533.09	\$86,300.15	\$1,895,690.37	\$86,300.15	\$1,802,780.25	\$17,057.28	\$0.00	\$10,547.31	\$247.86	\$49.57	\$297.43
Year: 2006 Quarter: 3	Rate: 2.35	\$1,805,710.22	\$160,883.30	\$1,644,826.92	\$162,722.68	\$1,666,459.43	\$58,623.09	\$1,839.38	\$21,632.51	\$508.36	\$101.67	\$610.03
Year: 2006 Quarter: 4	Rate: 2.35	\$2,036,589.19	\$421,763.07	\$1,614,826.12	\$427,606.20	\$1,608,982.99	\$0.00	\$5,843.13	(\$5,843.13)	(\$137.31)	\$0.00	(\$137.31)
Year: 2007 Quarter: 1	Rate: 1.58	\$1,612,413.87	\$28,600.00	\$1,583,813.87	\$28,600.00	\$1,585,460.38	\$1,646.51	\$0.00	\$1,646.51	\$26.01	\$10.00	\$36.01
Year: 2007 Quarter: 2	Rate: 1.58	\$2,153,145.46	\$115,165.43	\$2,037,980.03	\$115,165.43	\$2,050,798.41	\$22,818.38	\$0.00	\$22,818.38	\$360.53	\$72.11	\$432.64
Year: 2007 Quarter: 3	Rate: 1.58	\$2,098,703.99	\$181,147.68	\$1,917,556.31	\$186,658.08	\$1,912,045.91	\$0.00	\$5,510.40	(\$5,510.40)	(\$87.06)	\$0.00	(\$87.06)
Year: 2007 Quarter: 4	Rate: 1.58	\$2,263,291.72	\$495,461.41	\$1,767,830.31	\$596,111.96	\$1,808,941.79	\$216,797.41	\$100,650.55	\$41,114.49	\$649.56	\$129.91	\$779.47

Total New Tax or (Credit): **\$1,567.95**  
 Total Interest Due: **\$198.61**  
 Total Penalty Due: **\$363.26**  
 Submit This Amount: **\$2,129.82**