

# WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: TE-131923

PENALTY AMOUNT: \$7,900

2C CAPTAINS, INC.  
DBA LET'S TOUR SEATTLE  
1416 SW WEBSTER STREET  
SEATTLE, WA 98106

The Washington Utilities and Transportation Commission (Commission) believes that you have committed one or more violations of Washington Administrative Code (WAC) 480-30-221, Vehicle and driver safety requirements, which requires passenger transportation companies to comply with Title 49, Code of Federal Regulations (CFR), including Part 391 - Qualifications of drivers and Part 396 - Inspection, repair, and maintenance. Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for every such violation.

As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$7,900, as follows:

While conducting a compliance review at 2C Captain's, Inc. d/b/a Let's Tour Seattle's (2C Captains) terminal from September 5 and 18, 2013, Commission Motor Carrier Inspector Tom McVaugh documented the following violations:

- **47 violations of CFR Part 391.45(b)(1) – Using a driver not medically examined and certified during the preceding 24 months.** Company driver Dick Falkenbury's medical certificate expired on April 21, 2013, and was not renewed until September 6, 2013. Mr. Falkenbury drove on 47 occasions during that time period without medical certification.
- **Two violations of CFR Part 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance (*Critical Violation*).** 2C Captains fails to maintain any written inspection, repair or maintenance records, including due dates and nature of noted inspections or repairs for either of its buses. This CFR requirement is considered a "critical" regulation by the Federal Motor carrier Safety Administration (FMCSA). Patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and usually higher-than-average accident rates.<sup>1</sup>

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<sup>1</sup> Appendix B to CFR Part 385—Explanation of safety rating process: <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?contentid=1556>

- **29 violations of CFR Part 396.11(a) – Failing to require driver to prepare driver vehicle inspection reports (DVIR) (Critical Violation).** 2C Captains' drivers fail to complete written DVIRs at the end of each day or each shift. For the month of August 2013, drivers drove on 29 occasions and should have completed a DVIR for each drive. This CFR requirement is another regulation considered critical by the FMCSA. These are also repeat violations. Commission staff provided technical assistance and noted violations of this CFR during the company's 2010 compliance review. 2C Captains knew or should have known about this requirement.
- **One violation of CFR Part 396.17(a) – Using a commercial vehicle not periodically inspected.** Commercial motor vehicle #450 had not been inspected since June 2012. This is a repeat violation. Commission staff provided technical assistance and noted violations of this CFR during the company's 2010 compliance review. 2C Captains knew or should have known about this requirement.

This information, if proved 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 violations did not occur, you may request a hearing to contest the penalty assessment. If there is a reason for the violations that you think should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. See RCW 81.04.405.

You have the right to present your request for review or mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider your plea and notify you of his or her decision.

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

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- 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 refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective October 15, 2013.



GREGORY J. KOPTA  
Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**PENALTY ASSESSMENT TE-131923**

**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. **Request for a hearing.** I believe that the alleged violation did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:
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 based on the information presented above.
- OR  b) I waive a hearing and ask for an administrative decision on the information I present directly 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

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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.”