

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,637

IN THE MATTER OF:

Served May 25, 2018

Application of LUXURY SEDAN & LIMO )  
SERVICE, LLC, for a Certificate of )  
Authority -- Irregular Route )  
Operations )

Case No. AP-2017-203

This matter is before the Commission on the motion of applicant to waive Commission Regulation No. 62-08.

Regulation No. 62 governs vehicle leases. Under Regulation No. 62-02, no WMATC carrier may "charter, rent, borrow, lease, or otherwise operate in revenue service any motor vehicle to which such carrier does not hold title" unless the carrier has filed a lease with the Commission and the Commission has approved it.

Regulation No. 62-08 provides:

The lease of a vehicle with a driver provided by the same lessor is prohibited, except as provided by Regulation 62-12(c)(1). For the purpose of this regulation, a driver provided by the lessor shall be deemed to include the lessor, his employees, any person controlling, controlled by, or under common control with the lessor, and any person in a contractual relationship with the lessor. The lessee may operate a leased vehicle with a qualified driver who (a) is a bona fide employee of the lessee or (b) is obtained from a personnel supplier having no prohibited relationship with the lessor.

Under Regulation No. 62-08, a carrier generally may not lease a vehicle and driver from the same source. Regulation No. 62-08 is designed to prevent carriers without WMATC authority from operating in the Metropolitan District through the guise of a so-called lease arrangement.<sup>1</sup> It reflects the rebuttable presumption that an entity which furnishes both a vehicle and a driver under a lease agreement is actually a passenger carrier.<sup>2</sup>

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<sup>1</sup> *In re Ecological Transp. Group, LLC, t/a Ecological Ride & Ecological Limo.*, No. AP-11-112, Order No. 13,246 (May 2, 2012).

<sup>2</sup> *Id.*

In determining the party who in reality is performing a given transportation service, the overall test of substance involving an inquiry into all pertinent factors - including control, responsibility, and assumption of financial risk - is the decisive consideration. Usually, no single factor is by itself conclusive. See *United States v. Drum*, 82 S.Ct. 408 (1962). In the final analysis the question is: does the purported carrier assume to a significant degree the characteristic burdens of the transportation business? Hence, a lessee in a bona fide vehicle-lease arrangement resulting in private carriage must (a) control, direct, and dominate the operations and (b) assume the responsibilities, the risks, the duties and the burdens of transportation. For instance, though a lessee may have operational control over the vehicle, and driver, the lessee is not a bona fide private carrier if the lessor rather than the lessee is actually controlling and directing the transportation service.

*Washington, Va. & Md. Coach Co. v. Scenic Coach Rental, Inc.*, No. 165, Order No. 837 at 4-5 (July 10, 1968).

Applicant proposes commencing operations in vehicles leased from independent contractors. Many will be driven by the lessor. The motion is supported by vehicle leases signed by applicant and the respective lessees and by a proposed independent contractor agreement.

The Commission has waived Regulation No. 62-08 where acceptable vehicle leases have been filed with the Commission, the lessor-drivers have entered into a franchise or operating agreement with the lessee, and the leases and agreements in combination lodge sufficient control and risk in the lessee so as to overcome the aforesaid presumption.<sup>3</sup>

In this case, the parties have used the Commission's lease form to create their leases by filling in the blanks and signing it. The Commission's lease form places all control and insurance risk on the lessee through the following language:

The lessor and lessee agree by the filing of this contract of lease with the WMATC that the motor vehicle(s) named in this lease shall be operated by and under the complete control of the lessee, and no other, for the period of the lease; and for all regulatory purposes including, but not limited to, insurance, rates and charges, vehicle identification, and motor vehicle

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<sup>3</sup> See *id.* (waiving Regulation No. 62-08 after discussing control and risk provisions in operating agreement); *In re Veolia Transp. On Demand, Inc.*, No. AP-07-006, Order No. 11,862 (Feb. 24, 2009) (same as to franchisee operations manual).

fuel and road taxes, such motor vehicle(s) shall be considered as the vehicle(s) of the lessee.

Applicant's independent contractor agreement contains similar risk and control provisions. As to control, paragraph no. 3 stipulates: "This Agreement gives the company, Luxury Sedan & Limo Service, the exclusive right to the leased vehicle, and the contractor can only engage in activities arranged for, or on behalf of the company." Paragraph nos. 9 and 11 prohibit assignment of rights and delegation of duties in the absence of Luxury Sedan & Limo Service's written consent.

As for risk, paragraph no. 10 states that "Luxury Sedan & Limo Service, LLC shall provide commercial liability insurance coverage for all endorsed contract drivers . . . ."

Finally paragraph no. 6 of the agreement provides as follows:

Luxury Sedan & Limo Service, LLC will ensure that each vehicle goes through a daily inspection to confirm safe operability of vehicle brakes, lights, windows, Horn, seat belts, steering, and wheels. Luxury Sedan will not permit any contractor to operate a vehicle if it's not considered to be in good working condition, has not passed state inspection, or appears unsafe to operate.

On this record, we find that applicant has established grounds for waiving Regulation No. 62-08; provided, that applicant shall neither amend the independent contractor agreement discussed in this order nor enter into any new independent contractor agreements containing language that deviates from the independent contractor agreement discussed in this order without Commission approval.

THEREFORE, IT IS ORDERED: that Regulation No. 62-08 is waived as to any vehicle operated by Luxury Sedan & Limo Service that is both (1) leased to Luxury Sedan & Limo Service under a WMATC approved Contract of Lease form on file with the Commission and (2) covered by a WMATC approved independent contractor agreement on file with the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS RICHARD, MAROOTIAN, AND HOLCOMB:



William S. Morrow, Jr.  
Executive Director