

IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA



MAY 05 2022

UBER TECHNOLOGIES, INC.,

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Petitioner,

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Chantal Mathurin, Tax Tribunal Administrator

v.

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Docket No. 1834258

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ROBYN A. CRITTENDEN,¹ in her official
capacity as COMMISSIONER, GEORGIA
DEPARTMENT OF REVENUE,

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Respondent.

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**FINAL ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT**

This case is before the Georgia Tax Tribunal on the parties' cross-motions for summary judgment. After full briefing, oral argument on these cross-motions was held on January 7, 2022. Mr. Ronald Stay, Esq. and Melody Chapman-Caskey appeared on behalf of Respondent, Georgia Department of Revenue (the "Department"). Mr. Eric Tresh, Esq., Alla Raykin, Esq., Michele Borens, Esq., and Danyelle Dukes, Esq. appeared on behalf of Petitioner, Uber Technologies, Inc. ("Uber"). Having read and considered the briefs and arguments of the parties, Respondent's Motion for Summary Judgment, limited to general determination of liability, is hereby **GRANTED**² and judgment is entered in favor of the Department.

FINDINGS OF FACT

1.

¹ On July 1, 2021, Robyn A. Crittenden replaced Frank M. O'Connell as Commissioner of the Georgia Department of Revenue. Pursuant to O.C.G.A. § 9-11-25(d)(1), Commissioner Crittenden is automatically substituted as a party, and the case name has been updated accordingly.

² By separate order, Petitioner's motion for summary judgment is denied. The Court further notes that, by agreement of the parties, this proceeding has been bifurcated as to general determination of liability and damages. Thus, these pending motions address only liability for sales tax, not the amount due.

Uber is the parent company of the following wholly owned subsidiaries: Uber USA LLC, Raiser LLC, and Uber Logistik LLC. (Joint Ex. 6 [hereinafter “Rosenthal Dep.”] at 45:2-51:6.) Uber consolidates all of the finances for these subsidiaries for purposes of SEC filings. (Id. at 53:18-20.) Tasks completed on behalf of Uber’s wholly owned subsidiaries are performed by employees of Uber Technologies, Inc. (Id. at 55:14-56:5.) At the time of the Audit Period (“July 23, 2012 to June 30, 2015”), the internal organization of Uber changed as the company grew, but generally speaking, was organized into several departments including human resources, finance, accounting, legal, communications and policy, and operational teams. (Id. at 75:11-79:9.) The head of each department was located in San Francisco, but employees may have been located in different offices throughout the country. (Id. at 80:11-21.) At the beginning of the Audit Period, Uber had local offices around the country, but towards the end of the Audit Period, this changed to three regional hubs, with some local offices. (Id. at 81:8-82:4.) All employees in those regional hubs and local offices were Uber employees. (Id. at 82:5-15.) Uber also maintained community support centers in larger cities where they maintained operations; some of the people working in these centers were contractors. (Id. at 89:4-25.)

2.

Uber maintained an Atlanta office during the Audit Period at 201 17th Street, Suite 440, Atlanta, Georgia 30363. (Rosenthal Dep. 99:1-100:13; DOR Ex. 2 at 5.) At the beginning of the Audit Period, the Atlanta office had 1 or 2 employees and towards the end of the Audit Period, Uber employed up to 15 people. (Id. at 102:5-14.) The employees in the Atlanta office typically worked on the operation teams who oversaw the marketplace. (Id. at 102:15-23.)

3.

Uber also maintained a Partner Support Center in Georgia at the end of the Audit Period. (Rosenthal Dep. 91:3-92:17; DOR Ex. 2 at 5.) Such centers were physical locations where workers could help drivers create an account, update their insurance information, or help return a lost item to a rider. (Id. at 95:18-97:11.) Uber's Atlanta Partner Support Center was located at 1425 Ellsworth Industrial Drive, Suite 38, Atlanta, Georgia 30318 towards the end of the Audit Period. (Id. at 104:1-105:6; DOR Ex. 2 at 5.) All supplies for that service center were paid for and provided by Uber. (Id. at. 105:7-11.)

4.

Uber has two regulatory models: the livery model and the ride share network services model. (Rosenthal Dep. 41:5-18.) Ride share network drivers sublicense the app directly from Raiser LLC, and Raiser LLC sublicenses the app from Uber USA who licenses it from Uber, the parent company. (Id. at 46:14-25.) Under the livery model, prior to November 4, 2014, Uber contracted with livery companies, who had agreements with drivers, and those drivers also signed driver addendum agreements with Uber. (Id. at 42:23-43:18.) From November 4, 2014 to April 3 2015, livery drivers contracted to use the Uber app license from Uber Logistic, LLC, who sublicensed the app from Uber USA LLC, who licensed the app from Uber. (Id. at 46:14-48:2; DOR Ex. 6.) After April 3, 2015, and through the remainder of the Audit Period, livery drivers contracted for the Uber app license from Uber USA LLC, who sublicensed the app from Uber. (Id. at 48:13-22; DOR Ex. 6.) Riders entered into agreements directly with Uber through the app until February 10, 2015. (Id. at 48:3-12.) After February 10, 2015, riders began entering into agreements with Uber USA LLC. (Id.)

5.

During the Audit Period, when Uber collected fares from riders in Georgia, it did not collect sales tax. (Rosenthal Dep. 114:3-7.) Instead, Uber ██████████ on the driver to collect the sales tax owed.³ (Id. at 311:13-312:14.)

6.

To request a ride, a rider typically would first download the Uber app on their smart phone. (Rosenthal Dep. 119:18-23.) Next the rider must create an account in the app providing their name, phone number, email address, and credit or debit card information. (Id. at 124:4-19.) The rider must agree to terms and conditions and/or technology services agreement with either Uber or Uber USA LLC, depending on the time period in the audit. (Id. at 127:8-18.) During at least a portion of the Audit Period, Uber had technology in the app to anonymize both rider and driver phone numbers to keep contact details confidential. (Id. at 317:22-318:6.) The app did provide drivers with the name of the rider to help ensure the correct rider gets in the driver's car. (Id. at 318:7-15.)

7.

Next, the rider would open the app, and assuming that they are logged in, they would see driver availability nearby and a number of different transportation options potentially including UberX, Uber Black, and Uber SUV. (Rosenthal Dep. 129:8-25.) The rider could then select a service and request a ride by clicking on "select ride." (Id. at 136:10-16.) The rider cannot select which particular driver will be their driver for the trip and the pre-planning of trips between drivers and riders was a breach of Uber's Platform Access Agreement during the Audit Period. (Id.; 320:15-22.) Once the driver is offered the ride, based on proximity to the rider, then he/she has 20 seconds to accept or decline the ride from that rider. (Id. at 134:6-18; 143:13-25.) Throughout the Audit Period, when a rider requests a ride, the driver is able to see the rider's pickup location, the

³ Uber, Raiser LLC and other affiliated entities are required by law to collect sales tax in Iowa, New York State, New York City, Rhode Island, South Dakota, Wyoming and Juneau, Alaska. (Rosenthal Dep. at 114:13-16.)

rider's name, rider's star rating, the transportation option selected, and whether dynamic, i.e. surge, pricing is in effect. (Id. at 133:23-134:18.) During the beginning of the Audit Period, riders requesting a ride would see a per-minute and per-mile rate along with the base fare for the types of transportation option the rider was seeking. (Id. at 135:3-15.) Toward the end of the Audit Period, the driver also saw the rider's desired destination. (Id. at 324:2-11.)

8.

To provide riders with accurate information on which drivers are nearby, the Uber app collects and stores GPS points from the driver's device every couple of seconds. (Rosenthal Dep. 130:1-132:16.) The driver must have the app open and be logged on for the app to record their location. (Id. at 130:1-13.) When the driver and rider want the trip to begin, the driver hits the begin trip button in the Uber app. (Id. at 149:15-24.) During part of the Audit Period, the Uber app offered drivers turn by turn directions via the navigation feature in the app to the rider's entered destination. (Id. at 324:2-14.) A driver may make a detour at the rider's request. (Id. at 150:22-151:8.) The rider does not need to enter the detour into the Uber app. (Id.)

9.

Following the ride, the rider would have the option to rate the driver in the Uber app and the driver would likewise have the option to rate the rider in the app. (Rosenthal Dep. 157:24-158:4.) Both drivers and riders could see, in the Uber app, their own star ratings, i.e. the ratings given by other drivers/riders. (Id. at 158:5-20.) Uber set star rating thresholds that would result in a rider losing access to Uber's services if a rider or driver's star rating fell below that threshold. (Id. at 158:21-159:4.) If a driver is no longer allowed access to the Uber app due to a low rating, the driver could pay for and attend a third-party qualifying improvement course to regain access to the app. (Id. at 208:24-210:3.)

10.

The way in which the Uber app displayed prices to riders for different transportation options (such as UberX, Uber Black, and Uber SUV) changed during the Audit Period. (Rosenthal Dep. 135:3-15.) At the beginning of the Audit Period, the prices were displayed as a per-minute and per mile rate along with the base fare. (Id.) Towards the end of the Audit Period, the rider would type in their destination and would see an estimated price range for that trip. (Id.) The base fare was a fixed amount that varied depending on the type of transportation selected (e.g., UberX, Uber Black). (Id. at 170:4-12.) The fare displayed in the app would also have reflected surge pricing as a result of increased demand for rides. (Id. at 173:4-12.) The rider cannot enter a different price for the ride into the app. (Id. at 136:17-137:6.) Surge pricing, which reflects increased demand for rides, would charge a multiple of the default base fare, and would also impact the per-minute and per-mile rates. (Id. at 172:19-173:3.) Surge pricing is a proprietary feature of Uber that adjusts the price “to find the equilibrium of what riders are looking to purchase transportation [for] and what drivers are looking to sell transportation at.” (Id. at 173:13-19.) The Uber app does not show riders a map of where surge pricing is in effect, but would notify riders that surge pricing is in effect. (Id. at 177:3-17.)

11.

Drivers can negotiate with a rider for a higher, lower, or different rate from the fee suggested through the app. (Aff. of Brad Rosenthal in Supp. of Petitioner’s Mot. for Summ. J. [“Rosenthal Aff.”] at ¶ 47.) However, Uber’s contract states that Uber has the sole discretion to decide whether or not to accept any proposed change in the fare. (Rosenthal Aff. Ex. B at 000453.)

[REDACTED]

[REDACTED]

(Rosenthal Dep. 138:4-20.) [REDACTED]

[REDACTED] (Id. at 139:13-21.)

12.

The final fare calculated by the app will be based on the total time and distance traveled based on the GPS data collected by Uber. (Rosenthal Dep. 151:14-21.) If the trip required the payment of a toll, typically the driver would pay the toll via an EZ pass and then the rider would have a fee charged to them for the toll as a separate line item, payment of which would go to the driver. (Id. at 184:12-22.) The toll is calculated via the Uber app using the GPS coordinates from the driver's phone. (Id. at 185:9-23.) Airport fees were likewise paid by the driver and then collected via the Uber app automatically to be charged to the rider as part of the total fare. (Id. at 186:19-187:10.) During the Audit Period, riders could also be charged for messes they made in the driver's car via a cleanup fee. (Id. at 192:15-23.)

13.

During the Audit Period and under the individual driver model, Uber collected the fare from the rider, via the Uber app, then the monies flowed to [REDACTED] and [REDACTED] would have remitted payments to the driver minus the service fee that the driver paid to [REDACTED] (Rosenthal Dep. 56:7-25; 396:21 (Errata); Petitioner's Responses to Respondent's First Formal Interrogatories and Requests for Production ("ROG") ¶ 21; ROG ¶ 12.) In the case of the livery model, Uber would collect the fare from the rider, then the monies flowed to either [REDACTED] [REDACTED], and that entity would then have remitted payment to the livery company less the service fee. (Id. at 58:2-10.) At the beginning of the Audit Period the rider's card would be charged at the end of the ride. (Id. at 142:5-14.) Towards the tail end of the Audit Period, a pre-

authorization was placed as a hold on the rider's card and the final charge was made after the ride was completed. (Id. at 142:5-143:1.)

14.

Uber launched peer-to-peer ride sharing services, or the transportation network company ("TNC"),⁴ in Georgia around June 2013. (Rosenthal Aff. ¶ 24.) Transportation network drivers, or "TNC drivers," are the drivers under the ride share network regulatory model. (Rosenthal Dep. 40:10-19.) Prior to June 2013, Uber only used its livery regulatory model. (Id. at 62:15-25.) During the Audit Period, [REDACTED]

[REDACTED] (Id.) [REDACTED]

[REDACTED] (Id. at 61:10-62:3.) [REDACTED]

[REDACTED] (Id.) [REDACTED]

[REDACTED] (Id. at 180:14-21.)

15.

During the beginning of the Audit Period, if a rider canceled a ride before the driver arrived to their location, the rider was not charged. (Rosenthal Dep. 144:22-145:8.) Towards the end of the Audit Period, a rider was charged a cancellation fee if they canceled the ride after a certain period of time. (Id. at 145:13-21.) Likewise, if the rider never showed up for the trip, they would be charged a flat fee. (Id. at 145:22-146:5.) If a rider asks to be let out of the car partway through the trip, they would be charged based on the time, distance, and base fare, as calculated by the app, for the portion of the trip that was completed. (Id. at 154:4-16.) A driver can cancel a trip at any point. (Id. at 146:6-14.) If the driver cancels an egregious number of trips, Uber may restrict their

⁴ The term "TNC" is used nationally, but in Georgia, TNCs or peer-to-peer ride sharing services are called "ride share network services." (Uber Br. 14-15.)

access on the app. (Id. at 146:19-23.) Once the trip is completed, the driver selects the “end trip” button. (Id. at 154:19-22.)

16.

Following the ride, Uber emails the rider a receipt of the ride transaction. (Rosenthal Dep. 155:2-4.) The receipt contains the line items of the trip fare, mileage of the trip, trip time, type of product, and pickup and drop off locations, all information collected by the app. (Id. at 222:20-223:10.) All information from the trip receipts during the Audit Period is maintained by Uber in a database. (Id. at 224:2-8.) The emailed receipts to riders were similar for both individual and livery drivers. (Id. at 311:21-25.) Drivers are able to see a history of their trips with the fare amount charged to riders in the app. (Id. at 155:5-14.)

17.

During the beginning of the Audit Period, the Uber app was not available widely to download and therefore drivers had to get a phone from Uber to access the Uber app. (Rosenthal Dep. 340:4-22.) Drivers would put down a deposit on the phone and pay for the data plan to be able to access the Uber app. (Id.) Once the driver wanted to stop driving for Uber, they would send the phone back to Uber to get their deposit back. (Id. at 348:11-16.) Around mid-2014, the Uber app began to be widely available for download on users’ devices through the Apple App Store or the Google Play Store. (Id. at 340:18-25.) Drivers no longer have the option to receive a device from Uber. (Id. 346:4-12.)

18.

Potential drivers for Uber must provide their name, address, phone number, email address, social security or other TIN number, bank account information, driver’s license information, proof of auto liability insurance that met the state’s minimum requirements, vehicle information, and

proof of vehicle registration. (Rosenthal Dep. 244:6-22.) When a driver signs up and creates an account, they must provide their vehicle information including make, model, and year. (Id. at 260:21-261:9.) The driver would also have to provide insurance and registration information that matched the information listed in the driver's account. (Id. at 261:19-21.) [REDACTED]

[REDACTED] (Id. at 262:5-10.) Drivers could update their account information with new vehicle information, should they wish to drive a different vehicle. (Id. at 262:11-17.) Uber would also connect potential drivers with third party rental car companies and financing companies to assist potential drivers in leasing, renting, or buying a vehicle. (Id. at 339:11-24.)

19.

[REDACTED] (Rosenthal Dep. 226:13-16.) During the Audit Period, drivers provided bank account information when setting up an account with Uber and were paid for their services electronically. (Id. at 163:2-9.) [REDACTED]

[REDACTED] (Id. at 166:15-167:13.)

20.

Drivers were also required to consent to any terms and conditions set by Uber for drivers as applicable at the time, undergo a background check, and consent to a driving history check. (Rosenthal Dep. 244:6-22; 252:3-11; ROG ¶ 10.) Uber maintained written policies that specified under what conditions a driver could be “deactivated,” or lose access to the Uber platform. (ROG ¶ 15.) If a candidate's background check revealed a felony conviction, certain misdemeanors including theft, assault, or a sexual crime, or a driving while intoxicated conviction in the past seven years, the person would be denied access to become a driver authorized to use the Uber app.

(Id. at 248:10-249:9.) Potential drivers whose driving history revealed more than three minor citations in the past three years, or one major citation would be denied access to become a driver authorized to use the Uber app. (Id. at 252:12-253:2.) Uber policy during the Audit Period prohibited drivers from sharing or renting their account, logging credentials, or unique Uber ID with another driver and doing so could result in the permanent loss of access to a driver’s Uber account. (Id. at 320:23-321:7.) During the Audit Period, at least some drivers in Georgia were deactivated by Uber for a failure to abide by Uber’s policies. (ROG ¶ 27.)

21.

On January 19, 2018, the Department issued a proposed sales tax assessment against Uber, via its Notice of Proposed Assessment Letter ID L0205340688 for the Audit Period of July 23, 2012 to June 30, 2015. (Joint Ex. 3.) Uber timely filed a protest to dispute the proposed assessment, and the Department denied that protest on February 23, 2018. (Joint Ex. 1; Joint Ex. 2.) The Department ultimately issued its official assessment (“the Assessment”) on February 23, 2018. (Joint Ex. 3.) On March 25, 2018, Uber appealed the Assessment by timely filing its Petition to this Court.

CONCLUSIONS OF LAW

I. STANDARD OF REVIEW

To prevail on a motion for summary judgment, the moving party must demonstrate that there is no genuine issue as to any material fact as to each element of its claim and the undisputed facts, when viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. O.C.G.A. § 9-11-56(c); Tax Tribunal Rule 616-1-3-.19(a); see also Lau’s Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991); Scholastic Book Clubs, Inc. v. Comm’r, 2017-2 (Ga. Tax Tribunal, Feb. 14, 2017). It is well-settled that a tax assessment by the Department of Revenue is

deemed prima facie correct, and the burden of persuasion in an appeal thereof is put on the taxpayer to show errors or unreasonableness in the assessment. Blackmon v. Ross, 123 Ga. App. 89 (1970); Hawes v. LeCraw, 121 Ga. App. 532 (1970); Hawes v. Foster, 118 Ga. App. 296 (1968). As the Court of Appeals explained in Undercofler v. White:

[T]he burden of proof is on the taxpayer from the beginning . . . and that burden remains on him to . . . show clear and specific error or unreasonableness in the Commissioner's deficiency assessment. This placing of the burden is justified by the fact that the taxpayer is the moving party in contesting the validity of the assessment and has in his possession the information necessary for such contest.

Undercofler v. White, 113 Ga. App. 853, 855 (1966) (citations omitted).

II. THE GEORGIA RETAILERS AND CONSUMERS SALES AND USE TAX ACT

The Georgia Retailers and Consumer Sales and Use Tax Act (the “Act”) imposes a tax on the “retail purchase, retail sale, rental, storage, use, and consumption of tangible personal property” in Georgia. O.C.G.A. § 48-8-1. Sales of certain enumerated services, including transportation services, are subject to sales and use tax. O.C.G.A. §§ 48-8-30, 48-8-2(31)(A); Executive Limousine Transp., Inc. v. Curry, TAX-S&UT-1904992 (Ga. Tax Tribunal 2019).⁵ Until August 5, 2020, Georgia subjected transportation services to sales tax. H.B. 105, 155th Gen. Assemb., Reg. Sess. (Ga. 2020), 2020 Ga. Laws 606 (eff. Aug. 5, 2020) (repealing the imposition of sales tax on transportation services and imposing an excise tax on rides).

With respect to taxable services, O.C.G.A. § 48-8-30(f)(1) imposes the sales tax collection obligation on the person furnishing a taxable service. O.C.G.A. § 48-8-30(f)(1). O.C.G.A. § 48-8-30(f)(1) also says that “the tax shall be paid by the person purchasing or receiving the service to the person furnishing the service.” Id. The person furnishing a service is the dealer liable for a tax

⁵ Affirmed by Fulton County Superior Court and the Georgia Court of Appeals. Executive Limousine Transp., Inc. v. Curry, 361 Ga. App. 626 (2021).

on “the sales price made for furnishing the service, or the amount of taxes collected by him from the person to whom the service is furnished, whichever is greater.” Id. The Department argues that Uber furnished transportation via its complete control, hereinafter the “control theory,” over the rideshare transaction. Dep’t Br. 1, 8. The parties do not dispute that Uber is a “dealer” pursuant to O.C.G.A. § 48-8-2(8) and had nexus in Georgia. Transcript of Proceedings, Jan. 7, 2022 [“Tr.”] at 135:18-136:5. The parties do, however, dispute the extent to which Uber “controls” the transportation service, among other facts as well. Dep’t Br. 12-13; Uber Resp. 10-11. An inconclusive factual record, allegations, or statements made on information and belief cannot sustain a summary judgment motion. Seals v. Hygrade Distrib. & Delivery Sys., Inc. 249 Ga. App. 574 (2001). Accordingly, the Tribunal is unable to grant Respondent’s motion for summary judgement solely on the basis of the Department’s “control theory” of liability.

III. THE DEPARTMENT REGULATION FOR “HEADQUARTERS OPERATORS”

Regardless of whether Uber is found to control the ride transaction to such an extent that it is furnishing transportation services under the Act, the Tribunal finds that Petitioner is independently liable for sales tax collection and remittance under the Department Regulation 560-12-2-.84 (the “Regulation”). The Regulation requires that “headquarters operators” register as “dealers” and collect sales tax on fares pursuant to Department Rules in effect during the Audit Period. Ga. Comp. R. & Regs. 560-12-2-.84. The Regulation applies under the following circumstances:

(4) Taxicab “headquarters” operators. Any person operating a headquarters for taxicabs and supervising or directing taxicab drivers, or receiving and relaying calls to cab driver members, shall register as a dealer. . .

....

(6) Cars for hire. For the purpose of this regulation, cars for hire are taxable in the same manner as taxicabs.

....

(7)(b) . . . [H]eadquarters operators and lessors of taxicabs shall collect the tax on fares for transportation of persons from their drivers as required above, and the term “headquarters operators” includes not only any person operating a headquarters for taxicabs and supervising taxicab drivers, or receiving and relaying calls to cab driver members, but also any person or entity allowing use of the trade name of the headquarters or allowing any driver to hold himself out as being associated with the headquarters.

Ga. Comp. R. & Regs. 560-12-2-.84. The Regulation was first considered and upheld by the Georgia Supreme Court in Collins v. Adam Cab, 261 Ga. 305 (1991), cert. denied, 503 U.S. 960 (1992). In that case, the Supreme Court’s rationale in applying the Regulation was:

It is clear that one who meets the regulatory definition of . . . headquarters operator is in a better position to arrange with the individual drivers with whom it does business for the collection and remittance of the tax on fares than is the State, and that the regulation places that burden on the . . . headquarters operator.

Id. at 306-307. The Regulation was again upheld just months ago by the Court of Appeals in Executive Limousine Transp. v. Curry, 2021 Ga. App. LEXIS 522 (Oct. 26, 2021). For purposes of this appeal, the Tribunal focuses on two key elements of the Regulation, to wit: first, “cars for hire are taxable in the same manner as taxicabs,” and second, the Regulation clearly sets out what is required to be deemed a headquarters operator. Ga. Comp. R. & Regs. r. 560-12-2-.84.

A. Cars For Hire

Paragraph (6) of the Regulation states that “cars for hire are taxable in the same manner as taxicabs.” Ga. Comp. R. & Regs. r. 560-12-2-.84(6). While the term “cars for hire” is not further defined in the Regulation, this Court, in the Executive Limousine case, has previously held that for-hire car services are subject to sales tax. Executive Limousine Transp. v. Curry, TAX-S&UT-1904992 (Ga. Tax Tribunal 2019); see also O.C.G.A. § 40-5-1(9) (defining for hire as “to operate a motor vehicle in this state for the purpose of transporting passengers for compensation or donation as a limousine carrier”). The company in Executive Limousine was a licensed limousine carrier that described itself as providing a “paid-for” “chauffeured transportation service.” Id. at 4-

5. The company contracted with both independent contractor drivers and operators who hired their own drivers to provide this transportation service. Id. at 2.

Uber describes the service that it provides as “providing the electronic infrastructure to bring Riders and the Drivers together.” Rosenthal Aff. ¶ 80. To accomplish this, Uber and its affiliates contract with independent contractor drivers, who are operating their own business, to provide transportation services. While the company in Executive Limousine described itself as providing transportation services and Uber does not, in order for Uber to provide its service, of providing the infrastructure to bringing riders and drivers together, Uber contracts with independent contractors in substantially the same manner as the company in Executive Limousine. Since the Regulation applied to the independent contractor drivers who worked with the company in the Executive Limousine case, it follows that the Regulation should apply to rideshare drivers utilizing the Uber app in this case. Thus, the Tribunal finds that rideshare drivers utilizing the Uber app are cars for hire for purposes of the Regulation. Since cars for hire are taxable in the same manner as taxicabs, rideshare drivers utilizing the Uber app are, likewise, taxable in the same manner as taxicabs.

Regarding the tax implications of this finding, Paragraph (1) of the Regulation states that taxicab owners and operators must register as dealers and “pay the tax at the time of purchase on tangible personal property used or consumed in the operations.” Ga. Comp. R. & Regs. r. 560-12-2-.84(1). Taxicab owners and operators are also required to collect tax on fares of transportation of persons in accordance with Department Rules in effect during the Audit Period and remit the tax collected to the State Revenue Commissioner. Id. Under Paragraph (5), independent taxicab owners and operators are also required to collect and remit tax on fares of transportation of persons. Ga. Comp. R. & Regs. r. 560-12-2-.84(5). Independent taxicab operator is defined as “a person

who is totally unassociated with any headquarters operation and with any lessors of taxicabs and with any other taxicab business or driver.” Ga. Comp. R. & Regs. r. 560-12-2-.84(7)(a). Thus, cars for hire, like taxicabs, are required to collect tax on fares of transportation of persons. Whether the tax is remitted directly to the State Revenue Commissioner or to a headquarters operator (who then must remit the tax to the State Revenue Commissioner), depends on whether or not the car for hire has any association with any headquarters operation.

B. Defining “Headquarters Operator”

The question before the Tribunal is whether Uber meets the regulatory definition of a “headquarters operator.” Generally, courts should construe regulations in the same way that they interpret statutes, by beginning with the plain language. Grand Canyon Educ., Inc. v. Ward, 358 Ga. App. 412, 417 (2021). Additionally, in construing regulations, “even if words are apparently plain in meaning, they must not be read in isolation and instead, must be read in the context of the regulation as a whole.” Altamaha Riverkeeper, Inc. v. Rayonier Performance Fibers, LLC, 346 Ga. App. 269, 272 (2018). Thus, the Regulation should be interpreted based on a plain meaning understanding of its terms, while also considering the context in which the terms appear.

The Regulation applies in the disjunctive; one can meet the criteria necessary to be considered a “headquarters operator” by satisfying one of two definitions. Under Paragraph (4) of the Regulation, a taxicab headquarters operator is any person who operates a headquarters for taxicabs and supervises or directs taxicab drivers, or receives and relays calls to cab driver members. Ga. Comp. R. & Regs. 560-12-2-.84(4). Paragraph 7(b) adds that the term “headquarters operators” includes not only any person or entity who meets the elements listed in Paragraph (4), but also any person that allows use of the trade name of the headquarters or allows any driver to hold himself out as being associated with the headquarters. Ga. Comp. R. & Regs. r. 560-12-2-

.84(7)(b). Thus, reading the terms of the Regulation in their full context, any person or entity operating a headquarters for taxicabs who a) supervises or directs taxicab drivers, or receives and relays calls to cab driver members, or b) allows use of the trade name of the headquarters or allows any driver to hold himself out as being associated with the headquarters, meets the regulatory definition of a “headquarters operator.”⁶ Any person or entity meeting the regulatory definition of “headquarters operator” must register as a dealer and remit the tax collected by its drivers on fares of transportation of persons to the State Revenue Commissioner in accordance with Department rules in place during the Audit Period. Ga. Comp. R. & Regs. 560-12-2-.84.

i. The Uber App is a Headquarters

The term “headquarters” can generally be understood as a “central office” or an administrative center from which functions are performed. Headquarters, Merriam-Webster’s Online Dictionary, <https://www.merriam-webster.com/dictionary/headquarters>. Uber describes the service that it provides as follows: “Uber or its affiliates contract with Drivers to help facilitate their sale of transportation services by providing the electronic infrastructure to bring Riders and the Drivers together.” Rosenthal Aff. ¶ 80. The Tribunal finds that the Uber app itself is the administrative center from which Uber’s functions are performed. Uber performs its function, of providing the electronic infrastructure to bring riders and drivers together, through the administrative center that is the Uber app. Thus, the Uber app is a headquarters under the Regulation.

ii. The Uber App Directs Drivers and Receives and Relays Calls

⁶ It is important to note that the two definitions of “headquarters operator” in the Regulation are disjunctive themselves, with each definition capable of being met by a person or entity who performs one of two different functions. Under Paragraph (4), one can i) supervise or direct taxicab drivers, or ii) receive or relay calls to cab driver members. Under paragraph (7)(b), one can i) allow use of the trade name of the headquarters, or ii) allow any driver to hold himself out as being associated with the headquarters. Ga. Comp. R. & Regs. 560-12-2-.84.

Under Paragraph (4) of the Regulation, one can meet the regulatory definition of taxicab headquarters operator by i) supervising or directing taxicab drivers, or ii) receiving or relaying calls to cab driver members. Ga. Comp. R. & Regs. 560-12-2-.84(4). Generally, the term “direct” means “to cause to turn, move, or point undeviatingly or to follow a straight course.” Direct, Merriam-Webster’s Online Dictionary, <https://www.merriam-webster.com/dictionary/direct>.

Uber’s app receives ride requests (or “calls”) from prospective riders to find nearby rideshare drivers utilizing the Uber app, and Uber tracks drivers’ and riders’ locations within the app to relay those requests to the nearest rideshare driver utilizing the Uber app at that time. If a ride request is accepted by the driver, the prospective rider’s pickup location is shared with the driver. The sharing of the prospective rider’s pickup location after the driver accepts the ride request causes the driver to move to said pickup location. This sequence constitutes “directing” in accordance with the Regulation.

Uber’s receiving and relaying of calls duplicates the functions of a human dispatcher via the Uber app, directing rideshare drivers utilizing the Uber app where to pick up riders once a ride request is accepted. The Tribunal finds that the Department’s regulation is unambiguously intended to include both, the directing of drivers, as well as the receiving and relaying of calls in the manner conducted by Uber. As stated by the Court of Appeals in Executive Limousine, “transportation is at the core of what a for-hire driver and service sells to its customers.” Executive Limousine Transp., 2021 Ga. App. LEXIS 522 (Oct. 26, 2021) at 8. Thus, Uber meets the first of the two disjunctive definitions of “headquarters operator” because it performs either of the two alternative functions in Paragraph (4) of the Regulation.

iii. Associated with Uber

Under paragraph (7)(b) of the Regulation, one can meet the regulatory definition of headquarters operator by i) allowing use of the trade name of the headquarters, or ii) allowing any driver to hold himself out as being associated with the headquarters. Ga. Comp. R. & Regs. 560-12-2-.84(7)(b). Notwithstanding the fact that Petitioner alleges that rideshare drivers utilizing the Uber app are not permitted to hold themselves out as associated with Uber, the Tribunal finds, as a practical matter, that in every transportation transaction contemplated by the Uber app, both the rideshare driver utilizing the Uber app and the prospective rider must identify themselves to each other. For the driver, this means that use of the Uber name is not only permitted, but is in fact required once a ride request is accepted, and the parties meet at the designated pickup location. This is tantamount to an association with Uber in compliance with the Regulation. Thus, Uber also meets the second of the two disjunctive definitions of “headquarters operator.”

CONCLUSION

For all the forgoing reasons, the Department’s Motion is hereby **GRANTED** and judgment, limited as to liability, is entered in favor of the Department.

SO ORDERED this 5th day of April, 2022.



HONORABLE LAWRENCE E. O’NEAL, JR.
CHIEF JUDGE
GEORGIA TAX TRIBUNAL