

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment)	
)	No. 88-377
)	
)	Registration No. . . .
. . .)	. . . /Audit No. . . .
)	

RULE 159 AND RULE 224: B&O TAX -- GROSS INCOME --
AGENT -- BILLING FEE. A personal service corporation which had an agreement with an affiliate, a partnership, to do the billing for itself and the partnership and retain a portion of the amount collected on behalf of the partnership as a billing fee is liable for Service B&O on the amount received for its charges for services rendered and for the billing fees retained from the partnership's charges. The corporation is not liable for Service B&O on amounts collected for the partnership.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .
. . .

DATE OF HEARING: August 9, 1988

NATURE OF ACTION:

The taxpayer protests the assessment of Service B&O on amounts it collected on behalf of an affiliate.

FACTS AND ISSUES:

Roys, A.L.J. -- The taxpayer's records were examined for the period January 1, 1983 through December 31, 1986. The audit disclosed taxes and interest owing in the amount of \$ X . Assessment No. . . . in that amount was issued on October 15, 1987.

. . . (hereinafter referred to as the taxpayer) is a personal service corporation. An affiliate, . . . is a partnership which was formed in 1986. (hereinafter referred to as the partnership). At the time the partnership was formed, the taxpayer and the partnership entered into an agreement which provided, inter alia, that:

[Taxpayer] shall read, interpret and evaluate all scans and x-ray films and other materials exposed by [partnership]. [Taxpayer] shall also provide full management services for [partnership], including but not limited to hiring, firing and supervising employees subject to the direction of [partnership]. [Taxpayer's] services shall include billing and bookkeeping for [partnership's] business.

. . .

[Partnership] shall pay [taxpayer] for management services rendered by [taxpayer] to [partnership] five percent (5%) of all gross receipts collected by [partnership] for x-ray and magnetic imaging services rendered to patients by [partnership] with the assistance of [taxpayer]. Payment shall be made by [partnership] to [taxpayer] once each month on or before the 10th day of each month based on receipts collected during the immediately preceding month. Payment shall be made pursuant to a report of gross receipts prepared by [taxpayer] and reviewed by [partnership's] business manager.

[Taxpayer] shall charge patients for reading, interpreting and evaluating scans performed by [partnership] technicians using [partnership's] technicians using [partnership's] equipment on the basis of [taxpayer's] regular fee schedule for the same or comparable services.

As agreed, the taxpayer bills a patient for its professional services and for the partnership's services. During the audit period, the invoices did not break out the amounts due each entity. The auditor assessed Service B&O on the total amount

received. He relied on the fact the invoice stated to make the check payable to the taxpayer and the patient did not know the portion of the invoiced amount that was due for the partnership's services.

The taxpayer was advised that for the future it could avoid Service B&O on the payments collected for the partnership if the billings to the patients clearly indicated the amount due each entity. In addition, the taxpayer was advised that the written agreement between itself and the partnership must indicate how the funds are to be split and that the taxpayer will be the collection agent for the partnership as well as itself.

The taxpayer protests the assessment of Service B&O (Schedule II) on payments it collected on behalf of the partnership. The taxpayer contends it merely acts as the collection agent for the partnership. The partnership's revenue is kept separate and submitted to the partnership at least monthly. The taxpayer stated that both its name and the partnership's name appear on the invoice and on the doors to the medical center.

DISCUSSION:

RCW 82.04.080 defines the "gross income of the business" as

. . . the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. (Emphasis added.)

The issue is whether the amounts billed and collected by the taxpayer for the partnership represent gross proceeds of the taxpayer's business. We agree with the taxpayer that the fact that the customer may not have known the portion of the bill that was due for the partnership's services and the amount that was due the taxpayer for its services is not dispositive. Nor does the fact that the billing invoices state that payment

is to be made to the taxpayer mean that the total amount received is gross income of the taxpayer's business.

This case is distinguishable from those where a business pays costs on behalf of a customer and receives payment from the customer for the costs. In such a case, the amounts received are included as part of the gross proceeds of the business unless the costs are not part of the businesses' costs in performing its services and the business is not primarily or secondarily liable for payment of the costs, other than as agent of the customer. WAC 458-20-111.

In the present case, the agreement between the taxpayer and the partnership provides that the taxpayer shall do the billing for the partnership and be entitled to 5% of the partnership's gross receipts for its billing and other management services. The taxpayer does not have a right to retain the full amount of the invoiced amount. Nor is the taxpayer liable to the partnership if the patient fails to pay the bill. The taxpayer only is liable for service B&O upon the gross income derived from its business--in this case the amount received for its services to patients and the amount received or retained from the partnership's gross receipts for management services. The partnership is liable for B&O tax on 100% of its gross receipts with no deduction for the five percent paid to the taxpayer.

DECISION AND DISPOSITION:

The taxpayer's petition is granted. The assessment of Service B&O on amounts collected by the taxpayer for the partnership shall be cancelled.

DATED this 7th day of October 1988.