

Cite as Det. No. 14-0330R, 35 WTD 388 (2016)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of	)	<u>D E T E R M I N A T I O N</u>
Assessment of	)	
	)	No. 14-0330R
	)	
...	)	...
	)	

[1] RULE 183; RCW 82.04.4282: B&O TAX – BONA FIDE FEES AND DUES – SERVICES FOR WHICH PERSONS EXPECT TO PAY A CHARGE IN THE MARKETPLACE. If customers would expect to pay a charge for certain services in the marketplace, the charge for such fees cannot qualify as deductible bona fide fees and dues. Instead, charges are only deductible as bona fide fees and dues if such charges are solely for the benefit of being a member of a club or similar organization.

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.

Yonker, A.L.J. – A singles club that offers organized activities for its customers seeks reconsideration of Determination No. 14-0330, which affirmed the disallowance of a claimed deduction of [initiation] fees and dues from [its] measure of business and occupation (B&O) tax. We deny Taxpayer’s request for reconsideration.<sup>1</sup>

ISSUE

Is any portion of its gross income deductible as bona fide fees and dues under RCW 82.04.4282?

FINDINGS OF FACT

We issued Determination No. 14-0330 on October 16, 2014, affirming the findings of the Department of Revenue’s (Department) Audit Division against [Taxpayer] and the associated tax assessment as originally issued by the Department on December 27, 2013. Taxpayer subsequently petitioned for reconsideration. The facts of this case are set forth in Determination No. 14-0330. We incorporate those facts by reference herein, and do not fully restate them here, but instead, discuss only those facts relevant to Taxpayer’s argument on reconsideration.

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

Taxpayer enters into Membership Agreements with its individual members. Taxpayer provided an example of an executed Membership Agreement, which includes the following member obligations:

**Initiation Amount** – You agree to pay the amount of \$\_\_\_\_\_ which includes any applicable sales tax (the “Initiation Fee”) for your Membership today. Your Initiation Fee pays for the costs spent to offer you [a membership with Taxpayer] and to pay [Taxpayer] for services already and immediately delivered to you. By signing this Agreement and paying the Initiation Fee, you become a Member of [Taxpayer].

**Dues/Membership** – You agree to pay the dues set forth above for the Membership program selected by you (the “Monthly Dues”) in advance until [Taxpayer] terminates your Membership in the manner set forth herein. . . . Payment of dues entitles you to notification of upcoming events and attendance rights at events per your membership. Some events will require additional costs to attend. If dues payments become delinquent, you may not be permitted entry to any [Taxpayer] events and your continued notification of upcoming event shall be at [Taxpayer’s] discretion.

In the sample Membership Agreement, the member agreed to pay a \$ . . . initiation fee and monthly dues of \$ . . . for 36 months. The sample Membership Agreement stated the following regarding the benefits of being a member:

[Taxpayer] will make available to you, as a Member of [Taxpayer], a minimum of fifteen (15) activities or events each month provided you continue to pay your Monthly Dues and remain eligible. Events will be announced in our newsletter or by other means and materials. You will generally have a chance to sign up for these activities or events on a first come, first served basis. You understand that not all events and activities will always have enough openings for all Members who wish to take part. The selection of activities sponsored by [Taxpayer] shall be made by [Taxpayer] at its sole discretion. While many activities and events will be made available to you at no additional cost (beyond your Monthly Dues), you understand that other events require that you pay additional costs, called Event Fees in this Agreement, to partake in certain activities, either in advance at the time you register for the activity, or upon arrival at the event.

On reconsideration, we granted Taxpayer’s request for a hearing. At that hearing, Taxpayer presented the testimony of two members. Those members made the following statements at the Hearing:

- With their membership” they received admission to a certain number of monthly activities that required no additional charge.
- With their membership, they also received admission to a certain number of monthly activities that required some additional charge.
- The initiation fees and monthly dues were “worth it” for the following reasons: (1) to have Taxpayer schedule all of the events to relieve the individual members from having to plan their own events for socializing, (2) “for the people you meet,” and (3)

Taxpayer's event planners were often able to get group rates and other better values for certain events that the members could get on their own.

- Some members participate in member meetings to give input into the types of events that Taxpayer should plan.
- Most members do not receive any other rights with their membership besides admission to the events.
- Through attendance at the scheduled events, members received a "built-in group of friends."

### ANALYSIS

As we discussed in Determination No. 14-0330, RCW 82.04.4282 allows a taxpayer to deduct "amounts derived from bona fide (1) initiation fees, (2) dues . . ." WAC 458-20-183 (Rule 183) provides definitions for both initiation fees and dues. Under Rule 183(2)(i), initiation fees are defined as follows:

[T]hose amounts paid solely to initially admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which **genuinely represent the value of membership in a club or similar organization**. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

(Emphasis added). Also, under Rule 183(2)(e), dues are defined as follows:

[T]hose amounts periodically paid by members solely for the purpose of entitling those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

Thus, a taxpayer may not deduct any amounts that are paid in exchange for goods or for services. Rule 183(4)(a)(i) further states that the deduction for bona fide initiation fees and dues are for amounts "derived from activities and charges of essentially a **nonbusiness nature**." (Emphasis added). We have also previously addressed the issue of bona fide initiation fees and dues in past determinations. In Determination No. 86-310, 2 WTD 91 (1986), we stated that "amounts which are paid to an organization in return for measurable, compensable goods and services for which persons expect to pay a charge in the marketplace are excluded from the deduction." *See also* Det. No. 03-0252, 23 WTD 223 (2004) ("Here, no evidence has been produced to show the fees . . . are not based on the nature and extent of services required or expected by the member.").

In its reconsideration petition, Taxpayer stated the following:

The sole issue is what if anything does [Taxpayer] provide in exchange for the fees and dues sought to be deducted. The answer is the "right to belong to [Taxpayer]." Thus, the fees and dues are deductible.

Taxpayer concedes that it does provide its members with a certain number of monthly events at no additional charge. However, Taxpayer argues that any goods or services that it provided to its members were so “insignificant” that Taxpayer should be entitled to deduct the full amount of the initiation fees and monthly dues it received.

For a variety of reasons, we disagree that Taxpayer provides its members with merely the “right to belong” to Taxpayer, and hold that Taxpayer’s members paid the full amount of initiation fees and monthly dues for various services.

First, Taxpayer’s Membership Agreement with its members states that a member pays the initiation fee for (1) “**costs spent** to offer” a membership to that member, and (2) “for **services already and immediately delivered** to” that member. (Emphasis added). Similarly, the Membership Agreement states that a member pays monthly dues for (1) entitlement to “notification of upcoming events” and (2) “attendance rights at events.” Thus, Taxpayer’s own Membership Agreement identifies various services – as opposed to the mere right to be a member – that its members receive in exchange for the initiation fee and monthly dues that those members pay to Taxpayer.

Second, the members [who] testified at [the] hearing acknowledged that they received more than just the “right to belong” to Taxpayer by paying the initiation fee and the monthly dues. They stated they receive admission to a certain number of events at no additional charge. For those events that have additional charges, members get the benefit of the “best value” for those events as a result of Taxpayer’s event planner obtaining favorable rates from third-party vendors. They also stated that the initiation fee and monthly dues are worth it for Taxpayer’s event planner to schedule and plan all of the events so that the individual members do not have to arrange social events themselves.<sup>2</sup>

These services [here] are not [essentially] of a “nonbusiness” nature, as required under Rule 183(4)(a)(i). Instead, these are “services for which persons expect to pay a charge in the marketplace.” Put differently, Taxpayer’s members are willing to pay the full initiation fee and monthly dues for the services of (1) getting admission into a certain number of monthly events at no additional charge, (2) getting admission into a certain number [of] additional monthly events at additional cost, but with assurances that charges for such events are reduced to more favorable rates due to Taxpayer’s efforts, and (3) having Taxpayer plan and host all of the events, thereby, relieving the members of having to plan their own social calendars. All of these services are the essence of Taxpayer’s business activity.

While the members stated at [the] hearing that they felt the initiation fees and monthly dues were worth it “for the people” they meet through Taxpayer’s events, this does not negate the fact that the members received distinct services, primarily consisting of attendance to a variety of scheduled events, for such fees and dues. Indeed, if Taxpayer did not offer the various events it plans and hosts, there is no other apparent benefit for merely being a member. There is no way for the members to socialize except through admission to the scheduled events, for which the members are apparently willing to pay Taxpayer. As such, we conclude, as we did in

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<sup>2</sup> While some members participate in the planning of events, and some members receive compensation for hosting events themselves, the vast majority of members simply receive the benefit of attending the events.

Determination No. 14-0330, that there is no evidence that Taxpayer's members pay any portion of their initiation fees or their monthly dues simply for the right to be a member, and, therefore, no portion of those fees and dues are bona fide initiation fees or dues. [*See Automobile Club of Washington v. Dep't of Revenue*, 27 Wn. App. 781, 786, 621 P.2d 760 (1980) (applying predecessor statute in light of the purpose of the dues deduction to exclude from taxation "only revenue exacted for the privilege of membership" and the design of the B&O tax to reach virtually all business activities in the state).]

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 23rd day of February, 2016.