

Cite as Det. No. 13-0198R, 33 WTD 204 (2014)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 13-0198R
...	)	
	)	Registration No. . . .
	)	

[1] RCW 82.04.080(1); RCW 82.04.260(10): GROSS INCOME - PUBLIC/NONPROFIT HOSPITAL B&O TAX – MEDICAL SERVICES PROVIDED UNDER AN EMPLOYEE MEDICAL PLAN. Taxpayer’s gross income includes all income from transactions under its employee medical plan where it provides medical services to its employees, exclusive of any deductions, and regardless of whether such income represents gains on such transactions.

[2] RCW 82.04.080(1); DET. NO. 88-250, 6 WTD 113 (1988): GROSS INCOME – PUBLIC/NONPROFIT HOSPITAL B&O TAX – EFFECT THAT SOURCE OF COMPENSATION HAS ON TAXABILITY. For purposes of B&O tax, the source of compensation does not affect tax liability. Taxpayer owes B&O tax on amounts it receives from employees for services rendered to them under the employee medical plan. Taxpayer cannot deduct labor costs from the measure of its B&O tax liability.

[3] RCW 82.04.080(1); RULE 108(5): DISCOUNT – PUBLIC/NONPROFIT HOSPITAL B&O TAX – WHETHER TAXPAYER’S EMPLOYEES RECEIVED A BONA FIDE DISCOUNT FOR SERVICES UNDER THE EMPLOYEE MEDICAL PLAN. Taxpayer’s employees do not receive a bona fide discount on medical services under the employee medical plan. Taxpayer never reduces the amount it bills employees for services under the plan. Therefore, Taxpayer must report B&O tax on the full amount of funds it receives from the plan for providing medical services to employees.

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.

Pardee, A.L.J. – A nonprofit hospital petitions for reconsideration of Determination No. 13-0198 (Determination), which affirmed the Department of Revenue’s denial of a refund of business and occupation (B&O) taxes it paid on revenues it received for providing medical services to employees under its employee medical benefit plan, and which sustained the B&O tax assessed on amounts the hospital excluded from its gross income as alleged discounts to its employees. We deny the hospital’s petition for reconsideration.<sup>1</sup>

### ISSUES

1. Does income Taxpayer receives from providing services to its employees under an employee medical plan represent gross income under RCW 82.04.080(1) for which Taxpayer owes Public/Nonprofit Hospital B&O tax under RCW 82.04.260(10)?
2. Because the funding source of Taxpayer’s compensation for providing medical services to employees under the employee medical plan is itself, does that make such compensation nontaxable?
3. Has Taxpayer shown that its employees under the plan receive a bona fide discount under WAC 458-20-108(5), which should be excluded from its measure of B&O tax?

### FINDINGS OF FACT

On July 29, 2013, [Taxpayer] petitioned for reconsideration of Determination, issued July 2, 2013, which affirmed denial of a refund and sustained the assessment of B&O taxes on unreported income. For the purposes of continuity, we restate many of the facts outlined in the original determination, and specifically note where additional facts have been provided by the Taxpayer on reconsideration.

[Taxpayer] operates a nonprofit hospital in . . . Washington. Taxpayer provides a medical benefit plan (Plan) to its employees.<sup>2</sup> Taxpayer is the Plan Administrator and contracts with [the Plan Supervisor], to receive, process, and pay claims for payment for medical services provided. [Plan Supervisor] contracts with [Sub-Contractor] to issue payments to providers. Neither [Plan Supervisor] or [Sub-Contractor] are affiliates of Taxpayer.

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

<sup>2</sup> Factually, in its post hearing submittal in support of its request for reconsideration, Taxpayer clarified that the funding medium of the medical benefit plan (Plan) it provides its employees is not an IRC 501(c)(9) trust as both its Plan and the Determination states. Taxpayer provided correspondence from its outside legal counsel and copies of Forms 5500 filed with the Internal Revenue Service (IRS), which shows that the Plan is funded by the general assets of Taxpayer, and not a separate trust. Given this evidence, we conclude that the funding medium of the Plan is Taxpayer’s own assets and not an IRC 501(c)(9) trust. While this is a factual correction to the content of the Determination, it is not a material one which affects that outcome of the Determination.

Taxpayer funds the Plan, and [Plan Supervisor] uses these funds to pay medical services providers. When Taxpayer is the medical service provider for its employees, [Plan Supervisor] pays Taxpayer with funds from the Plan. In its post-hearing submittal in support of reconsideration, Taxpayer explains that it is simply paying itself under the Plan when it provides services to employees under the Plan. Taxpayer further explains how it is paid for services rendered to employees under the Plan:

- When Taxpayer provides medical services to an employee, the Plan generates a medical record and opens a claim; Taxpayer reviews the medical records to assure that the claim is properly coded and, if so, the claim is marked as ready for billing;
- In Taxpayer's billing department, the claim is reviewed to be sure that it is complete and includes all information necessary for payment;
- Since Taxpayer is a Medicare provider it must bill charges at the same rate. For this reason, all claims, whether for services provided to employees or others, are billed at 100 percent of billed charges;
- Once the claim is deemed complete, Taxpayer submits it electronically to [Plan Supervisor]. At this point, for internal accounting purposes, Taxpayer records a sale, credits gross patient revenue, and debits accounts receivable in the same amount;
- Once [Plan Supervisor] receives the claim, it assures that the claim is for medically necessary age appropriate services, and is otherwise appropriate to pay;
- [Plan Supervisor] prices the claim according to Taxpayer's instructions. Taxpayer has historically instructed [Plan Supervisor] to price the employee claims at 100 percent of billed charges;<sup>3</sup>
- Once priced, the claim is marked for payment. [Plan Supervisor] may hold claims marked for payment for up to six days before sending them to [Sub-Contractor] for payment;
- On Tuesday of each week, [Plan Supervisor] puts all the held claims in a file and sends them to [Sub-Contractor]. Simultaneously, [Plan Supervisor] sends an e-mail to Taxpayer requesting that Taxpayer transfer funds (equal to claim amounts) to an account in Taxpayer's name on which [Plan Supervisor] can draw;
- When Taxpayer transfers the funds, [Plan Supervisor] notifies [Sub-Contractor] that funds are available to pay the claims; and
- After verifying the availability of funds, [Sub-Contractor] then pays Taxpayer for services Taxpayer provides to employees under the Plan.

Taxpayer explains that, generally, the time lapse from Taxpayer's release of funds to pay employee claims under the plan to [Plan Supervisor]'s payment of those same amounts back to Taxpayer on behalf of the employee, is roughly three days.

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<sup>3</sup> Taxpayer claims that it bills its medical services to the employees under the Plan at 100 percent for reasons of administrative convenience. When a claim is paid, the cash balance is increased and accounts receivable debit is cleared. By instructing [Plan Supervisor] to price its claims for services to employees at 100 percent, Taxpayer avoids the internal administrative process of dealing with the write-down or write-off of accounts receivable recorded at 100 percent of billed charges when the claim was transmitted to [Plan Supervisor]

On December 14, 2011, Taxpayer requested a refund of \$. . . of Public/Nonprofit Hospital B&O tax that Taxpayer paid during the tax period 2007-2010, claiming that it incorrectly paid B&O tax on amounts it received for medical services it provided to its employees under the Plan. On July 18, 2012, the Department's Audit Division (Audit) denied Taxpayer's refund request,<sup>4</sup> concluding that Taxpayer's refund claim was based on Taxpayer's attempt to exclude from the measure of the B&O tax labor costs attributable to services it rendered to the employees under the Plan. On that same date, Audit issued an assessment for tax year 2011 totaling \$. . .,<sup>5</sup> comprised of \$. . . Public/Nonprofit Hospital B&O tax, and \$. . . in interest. The assessment was a result of Audit's disallowance of discounts Taxpayer took against amounts it received under the Plan for medical services it provided in 2011 to employees. On August 3, 2012, Taxpayer paid the assessment in full. Taxpayer also petitions for refund of the amount assessed and paid.

### ANALYSIS

1. Whether amounts Taxpayer receives from the Plan for services rendered to employees should be included in its measure of B&O tax.

In Washington, persons engaged in business activities must pay B&O tax measured by the application of rates against, among other things, gross income of the business:

(1) There is levied and collected from every person that has a substantial nexus with this state a tax for the act or privilege of engaging in business activities. The tax is measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

RCW 82.04.220 (emphasis added). For purposes of the B&O tax, "business" is defined as follows:

"Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

RCW 82.04.140 (emphasis added). "Engaging in business" means:

[C]ommencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

RCW 82.04.150 (emphasis added).

In summarizing the application of RCW 82.04.220 and RCW 82.04.140 to business activities in Washington, the Washington Supreme Court has stated as follows:

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<sup>4</sup> Document No. . . .

<sup>5</sup> Document No. . . . .

In adopting our State's B&O tax system “the legislature intended to impose the business and occupation tax upon virtually all business activities carried on within the state,” *Time Oil Co. v. State*, 79 Wn.2d 143, 146, 483 P.2d 628 (1971), and to “leave practically no business and commerce free of ... tax.” *Budget Rent-A-Car of Washington-Oregon, Inc. v. Dep’t of Revenue*, 81 Wash.2d 171, 175, 500 P.2d 764 (1972). This point is evidenced by the sweeping language of RCW 82.04.220 . . .

RCW 82.04.140 provides even greater breadth to the above provision [RCW 82.04.220] by broadly defining business. . . .

*Simpson Inv. Co. v. Dep’t of Revenue*, 141 Wn.2d 139, 149, 3 P.3d 741, 746 (2000) (brackets added). See also Det. No. 05-0376, 26 WTD 40 (2007) (“The B&O tax is extensive and is intended to impose . . . tax upon virtually all business activities carried on in the State.”) (citing *Analytical Methods, Inc. v. Dep’t of Revenue*, 84 Wn. App. 236, 241, 928 P.2d 1123 (1996)).

As stated at page 2 of the Determination, RCW 82.04.260 explains that nonprofit hospitals engaging within this state in business as a hospital must report and pay to the Department Public/Nonprofit Hospital B&O tax equal to the gross income of their business multiplied by a specific rate. Under the broad definition of business, and the intended long reach of the B&O tax outlined above, Taxpayer is engaged in business as a hospital when it provides services to its employees under the Plan. Any monies Taxpayer receives for providing such services to its employees represent taxable gross income of its business for B&O tax purposes.

RCW 82.04.080 defines the gross income of the business (i.e., the measure of B&O tax owed) as:

(1) "Gross income of the business" means 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.

RCW 82.04.080(1) (emphasis added).<sup>6</sup> “Value proceeding or accruing” is defined, in relevant part, as: “[T]he consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued.” RCW 82.04.090.

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<sup>6</sup> Under the “plain meaning” rule, examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act in which the provision is found, is appropriate as part of the determination whether a plain meaning can be ascertained. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 10, 43 P.3d 4 (2002); *C.J.C. v. Corporation of the Catholic Bishop of Yakima*, 138 Wn.2d 699, 708-09, 985 P.2d 262 (1999). When statutory language is plain the statute is not open to construction or interpretation. *N.W. Steel v. Dep’t of Revenue*, 40 Wn. App. 237, 240, 698 P.2d 100, rev. denied, 104 Wn.2d 1006 (1985).

While value proceeding or accruing is an instance of gross income of the business under RCW 82.04.080(1), everything after the word “includes” in that statute, such as compensation for the rendition of services, and other emoluments however designated, are also instances of gross income of the business. Further, under RCW 82.04.080(1), neither labor costs nor losses can be deducted from the measure of the gross income of the business. The funds Taxpayer receives from [Plan Supervisor] are the consideration<sup>7</sup> Taxpayer receives for providing medical services to its employees under the Plan. Taxpayer, however, does not agree that the payments are compensation for the services it renders its employees because it makes no profit or gain on these transactions. Whether Taxpayer incurs gains on such transactions is irrelevant because labor costs and losses cannot be deducted from the measure of gross income of the business.<sup>8</sup> On reconsideration,<sup>9</sup> Taxpayer argues that *Rho Co. v. Dep’t of Revenue*, 113 Wn.2d 561, 566, 782 P.2d 986 (1989) . . . stands for the proposition that a business is taxed *only* on the *gain* it accrues from its transactions.

To the contrary, what that decision held, in part, is that a business is taxed on the entire gain it accrues from its transactions, and is allowed no deduction for expenses involved in conducting the business.<sup>10</sup> *Rho*, 113 Wn.2d at 566. The *Rho* decision never concludes that gross income of a business only includes gains. Such a position would be contrary to the broad definition of gross

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Generally, in interpreting statutory definitions, “includes” is construed as a term of enlargement. *Queets Band of Indians v. State*, 102 Wn.2d 1, 4, 682 P.2d 909, 911 (1984) (citing 2A C. Sands, *Statutes and Statutory Construction*, § 47.07, at 82 (4th ed. 1973)); see also *Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 359, 20 P.3d 921 (2001); *Wheeler v. Dep’t of Licensing*, 86 Wn. App. 83, 88, 936 P.2d 17 (1997) (“Generally, the term ‘include’ is construed as a term of enlargement, not as a term of limitation.”); *Publishers Bldg. v. Miller*, 25 Wn.2d 927, 939, 172 P.2d 489 (1946) (“The term ‘including,’ as used in the lease, is not a word of limitation or enumeration, but one of enlargement and signifies that something else is comprehended beyond the general language which precedes it.”).

See also Det. No. 87-143, 3 WTD 91 (1987) (“[I]t is useful to observe that ‘includes’ when appearing in a statutory definition is construed as a term of enlargement, not limitation.”).

<sup>7</sup> The term “consideration” is not defined in the Revenue Act. When a term is used but not defined in a statute or regulation, it must be given its usual and ordinary meaning usually ascertained from dictionaries. *Marino Property v. Port of Seattle*, 88 Wn.2d 822, 567 P.2d 1125 (1977); *Sellen Construction v. Dept. of Revenue*, 87 Wn.2d 878, 558 P.2d 1342 (1976). The term “consideration” is generally defined as:

Some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other.

BLACK’S LAW DICTIONARY 306 (6th ed. 1990). .

<sup>8</sup> Taxpayer’s reference at page 3 of its petition for reconsideration to the definition of emolument equating to actual pecuniary gain, and the Court’s decision in *State Ex. Rel. Todd v. Reeves*, 196 Wash. 145, 148, 82 P.2d 173 (1938) as support for this proposition, is misplaced. In *Reeves* the Court addressed the meaning of the word “emoluments” in Article 2, § 13 of the Wash. St. Const. which referred specifically to “emoluments of which shall have been increased.” Therefore, the constitutional provision concerned increases in emoluments, which is why the court concluded that the word emolument was employed in the constitution as implying actual pecuniary gain. There is no similar mention of increase in emoluments in RCW 82.04.080(1). Rather, the language of that provision mandates that gross income shall include, among other things, “other emoluments however designated.”

<sup>9</sup> Taxpayer’s post-hearing submittal in support of reconsideration of the Determination, page 6.

income of the business in RCW 82.04.080(1). Moreover, if gains were intended to be the measure of B&O tax, there would be no need to prohibit taxpayers from deducting losses from the measure of their B&O tax, as RCW 82.04.080(1) does. We conclude that Taxpayer's gross income includes all income from its transactions under the plan, exclusive of any deductions, regardless of whether that income represents gains on such transactions.

We now address whether Taxpayer's payment of claims for services it renders employees under the Plan is a nontaxable transaction because it, not a third party, is the source of such compensation.

2. Whether the source of Taxpayer's compensation for medical services rendered to employees under the Plan renders such compensation nontaxable.

On reconsideration, Taxpayer argues it engages in nontaxable transactions with itself when it pays claims for services provided to its employees under the Plan, thus arguing that it is both the seller and purchaser of the medical services it provides to its employees under the Plan. Taxpayer reasons that it does not earn or receive consideration under such an arrangement, and therefore the transactions are not subject to tax. Specifically, Taxpayer cites to *Rena-Ware Distributors, Inc. v. State*, 77 Wn.2d 514, 463 P.2d 622 (1970), in which the Washington Supreme Court implicitly recognized that where an event or transaction upon which tax is sought to be imposed involves only a single taxpayer/entity, imposition of tax would be improper.<sup>11</sup> Leaving aside the reality that Taxpayer's argument that it should not be taxed for paying itself ignores the fact that Taxpayer is performing services for its employees covered by the Plan, and

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<sup>11</sup> At page 4 of its petition for reconsideration, Taxpayer also attempts to use the Court's decision in *Verd v. Superior Court for King County*, 31 Wn.2d 625, 198 P.2d 663 (1948), for the proposition that a transaction of business by an entity must involve that entity engaging in commerce with other separate entities. However, in that decision, the Court admitted that what amounts to the transaction of business can differ by the statutes involved, especially the broader meaning given to the activity of business in the taxing statutes:

The decision as to what constitutes transacting business necessarily depends upon the issues involved.

'The decisions on the question as to what constitutes doing business disclose a tendency on the part of some courts to treat the question as an indivisible one, overlooking the fact that the phrase 'doing business' does not and cannot have a uniform and unvarying meaning, but is governed largely by the connection and in view of the object of the statutes under construction or the particular issues involved. This tendency has been productive of much confusion. If the question relates to the right to subject a foreign corporation to the jurisdiction of the courts in the state through service of process, the point presented is different from the one presented where it relates to the power of the state to impose conditions, restrictions, or regulations upon the corporation's activities in the state. If it relates to the right to impose a tax on the corporation, still different considerations may be pertinent, and a broader meaning may sometimes be attributed to the words 'doing business' as used in a tax statute, the fact that interests or activities of the corporation receive the protection of the local laws being of weight where this issue is involved.' 23 Am.Jur. 339, § 362.

*Id.* at 627-28 (emphasis added).

billing them for such services, we conclude that Taxpayer mischaracterizes the holding in *Rena-Ware Distributors*.

*Rena-Ware Distributors* involved an appellant that received income from wholly-owned subsidiaries for providing management services. Appellant contended that the Department's taxation of that income was improper because the officers, directors, and sales managers of the three companies were the same. Appellant argued that all of the companies taken as a whole (parent and subsidiaries) were one and the same. The Court in *Rena-Ware Distributors* disagreed, stating the familiar rule that the taxation of separately incorporated entities is fundamental to our tax system:

The appellant asks us to disregard its separate existence, not in order to prevent fraud or injustice, but in order to gain an advantage. This we cannot do. The legislature has not seen fit to exclude transactions between affiliated corporations, and we find in the facts of this case nothing which would justify the judicial engrafting of such an exclusion upon the statute.

In that case, the parent was selling goods to its subsidiary. Here the appellant is selling its services. There is no other significant distinction between the cases. What we said there is applicable here. The appellant is rendering valuable services to its subsidiary and is receiving remuneration for them. This activity is taxable under the statutes. The trial court correctly sustained the Department of Revenue's ruling on this matter.

*Id.* at 518.

. . . Further, the Department has stated that “[f]or business and occupation tax purposes the source of the compensation for business activities does not affect tax liability.” Det. No. 88-250, 6 WTD 113 (1988). Therefore, under 6 WTD 113, the fact that Taxpayer's compensation originates from its own coffers does not render such compensation non-taxable.

As we concluded at Page 3 of the Determination, under RCW 82.04.080(1), Taxpayer owes B&O tax on amounts it receives from the Plan for services it renders to employees. In effect, Taxpayer is asking to exclude labor costs, which cannot be deducted from its measure of B&O tax. Therefore, we conclude that the Department's denial of Taxpayer's refund request, and its issuance of the Assessment for 2011, was correct.<sup>12</sup>

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<sup>12</sup> In a case where the Board of Tax Appeals addressed similar claims to those in this case, the Board also held that payments a hospital received from a self-funded medical care plan for medical services provided to employees were subject to B&O tax. *Sacred Heart Medical Center v. Dep't of Revenue*, Final Decision, Docket No. 07-365 (2008). As the Board emphasized, “The Hospital may not exclude the medical expenses because they are labor costs, not interdepartmental charges.” *Id.* at 16. See also *id.* at 21, Conclusion of Law no. 5 (“When the Hospital receives compensation for providing health care services, it is “gross income of the business” because the compensation is “value proceeding or accruing by reason of the transaction of the business” of being a hospital, irrespective of whether some patients also happen to be its employees.”).



Finally, we address Taxpayer's argument that if it is taxable on monies it receives for services rendered to employees under the Plan, that the measure of B&O tax should be discounted to reflect what similarly situated insurers pay providers of similar services.

3. Whether Taxpayer provides its employees with a bona fide discount under the Plan, which should be excluded from the measure of its B&O tax liability.

At page 3 of its petition for reconsideration Taxpayer argues that if the Department is going to subject funds it receives from [Plan Supervisor] for providing services to its employees to B&O tax, the measure of that tax should not be one hundred percent of its billed charges. Rather, Taxpayer argues that the taxable amount should be a lesser percentage of its billed charges, reflective of what similarly situated insurers pay providers of similar services:

In this instance, where [Taxpayer] was paying itself money for services provided employees, the simplest process was for [Taxpayer] to pay itself at the billed charge rate. Similarly situated commercial insurers pay providers of similar services at approximately 62% of billed charges. [Taxpayer] submits that had the funds at issue in this appeal been paid in the context of a commercial transaction between parties, payments would have been approximately 62% of billed charges and that is the level of gross income of the business on which any tax should be measured.

Petition for Reconsideration, at 3 (brackets added). Taxpayer argues that it should only be taxed on 25 percent of billed charges for services it provides to its employees under the Plan. Taxpayer reasons that this 25 percent figure equates to the labor figure fully loaded with benefits which it actually incurs.

Taxpayer billed its employees a flat amount for medical services, and was paid that amount. Taxpayer's structuring of how it billed and was paid for medical services it provided its employees is binding on it. Taxpayer's reason for doing so, including avoiding the internal administrative process of dealing with the write-down or write-off of accounts receivable, does not alter this. In general, the doctrine of substance over form is not available to a taxpayer to eliminate the taxpayer's structured form of the transaction. Det. No. 04-0284, 24 WTD 269 (2005); Det. No. 85-112A, 1 WTD 343 (1985) (citing *Higgins v. Smith*, 308 U.S. 473 (1940)). Third parties may question the resolutions of parties to a contract, but in the absence of fraud it is not ordinarily open to the bargainers to do so. *Rogers v. U.S.*, 290 F.2d 501 (9<sup>th</sup> Cir. 1961); *Barran v. C. I. R.*, 39 T.C. 515, 530 (1962) ("It may be that the petitioners now find themselves at a disadvantage taxwise, but in the absence of fraud it is not ordinarily open to the parties to question their own contractual agreements"); *Yandell v. U.S.*, 208 F.Supp. 306, 309 (Or. 1962) ("Ordinarily, the creator of a plan does not have a right to disregard an arrangement which he has selected after due deliberation.") (citing *Higgins v. Smith*, 308 U.S. 473, 477, 60 S.Ct. 355, 80 L.Ed. 406); *Pacific Rock & Gravel Co. v. U.S.*, 297 F.2d 122, 125 (9<sup>th</sup> Cir. 1961) ("Normally, the tax man can take the instrument as the parties put it together.").

Furthermore, as we explain at pages 3-4 of the Determination, Taxpayer's employees receive no bona fide discount from the full billing price which would allow Taxpayer to pay B&O tax on less than the full amount of billed charges:

WAC 458-20-108 (Rule 108) is the Department regulation concerning discounts, and reads in relevant part:

(5) **Discounts.** The selling price of a service or of an article of tangible personal property does not include the amount of bona fide discounts actually taken by the buyer and the amount of such discount may be deducted from gross proceeds of sales providing such amount has been included in the gross amount reported.

(Emphasis added).

As Det. No. 88-208, 5 WTD 403 (1988) explains: “[The Department has recognized that bona fide discounts may be granted for reasons other than simply timely payment by the buyer.” In Det. No. 05-0142, 26 WTD 256 (2007) the Department explained what qualifies as a bona fide discount under Rule 108(5), stating:

The Department recognizes that “discounts” qualify as bona fide when they are merely “reduced prices,” i.e., the seller's selling price was merely reduced before the sale is made and there is no requirement for the purchaser to do anything in return. Det. No. 88-208, 5 WTD 403 (1988). Any discount given with “strings attached” by the vendor is therefore deemed to be consideration given in exchange for a service, and, as such, is B&O taxable to the purchaser. Det. No. 98-183, 18 WTD 220 (1999); Det. No. 98-172E, 18 WTD 387 (1999).

Under Rule 108(5) and the precedent immediately above, we conclude that Taxpayer's employees do not receive a bona fide discount on medical services under the Plan. Taxpayer never reduces the price it bills for medical services it renders to employees under the Plan.<sup>13</sup> Therefore, the price to the buyer of services is not reduced. Accordingly, under RCW 82.04.080(1) and Rule 108(5), the requested discount is not a bona fide discount and Taxpayer must report B&O tax on the full amount of funds it receives from the Plan for providing medical services to employees.

We affirm the holding of the Determination.

#### DECISION AND DISPOSITION

We deny Taxpayer's petition.

Dated this 31<sup>st</sup> day of January 2014.

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<sup>13</sup> As stated above, on reconsideration taxpayer is arguing it should receive a roughly 75% discount.