Cite as Det. No. 01-089E, 21 WTD 219 (2002)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of	)	F I N A L E X E C U T I V E L E V E L D E T E R M I N A T I O N
	)	No. 01-089E
. . .	)	Registration No. . . . FY . . . /Audit No. . . . Docket No. . . .

RULE 111, RULE 164; RCW 82.04.080, RCW 48.96, RCW 48.17.010: SERVICE B&O TAX -- MOTOR VEHICLE SERVICE CONTRACTS -- GROSS INCOME -- AMOUNTS COLLECTED AS PREMIUMS AND REMITTED TO INSURER. A seller/provider of motor vehicle service contacts must include in its gross income amounts collected and remitted to an insurer of the service contracts because the seller/provider is not an insurance agent, but, as the obligor, is a party to the service contracts and remains personally liable on them, and not merely as an agent, to the contract holders.

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.

NATURE OF ACTION:

A foreign corporation (the taxpayer) doing business in Washington protests the assessment of service business and occupation (B&O) tax on insurance premiums it collects from Washington customers and remits to a third party insurance company.[1]

FACTS:

De Luca, A.L.J. -- The taxpayer sells motor vehicle service contracts (warranties) through used car dealers to customers who purchase used cars from the dealers. In short, the contracts provide

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

mechanical breakdown coverage for the used cars. The contracts are guaranteed by reimbursement insurance policies issued by a foreign insurance company - . . . (Insurance Company) - to the taxpayer as the insured. Insurance Company is authorized to do business in Washington by the Washington State Insurance Commissioner. The taxpayer is licensed in . . . and . . . as an insurance agent, but is not licensed in Washington as an insurance agent. Apparently, the Insurance Commissioner does not require the taxpayer to be licensed as an insurance agent in Washington because the taxpayer is listed as the "Obligor" in the motor vehicle service contracts that it sells to the customers. The taxpayer asserts it is the obligor because the auto dealers did not want liability under the vehicle service contracts.

Under its Administration Agreement with Insurance Company that was in effect during the audit period, the taxpayer, by its sales representatives, solicited sales of the service contracts to car buyers through the used car dealers. The taxpayer received applications from the car buyers and issued them vehicle service contracts upon the taxpayer's approval of the applications. The used car buyers who purchased motor vehicle service contracts are known as "service contract holders." RCW 48.96.010(6). The Administration Agreement required the taxpayer to collect for each service contract sold a designated sum of money. That sum of money consisted of: (1) a "premium" due Insurance Company; (2) a "servicing fee" for the taxpayer; and (3) a "marketing fee" due the sales representative who sold the contract. The taxpayer had the responsibility to pay the sales representatives their fees. After the end of each year, the taxpayer was entitled to a share of Insurance Company's profits based on a specific formula. The Administration Agreement required the taxpayer to endorse and deposit all checks and/or remittances received from the customers into a specific checking account in which Insurance Company and the taxpayer had joint signature authority. The taxpayer twice each month then had to remit the premiums to Insurance Company.

The taxpayer's other duties under the Administration Agreement included processing and investigating claims from the customers and determining whether the claims were covered by the service contract and reimbursement insurance policy. The taxpayer then decided whether to approve or reject the claims. If it approved a claim, the taxpayer either paid the repair shop directly or reimbursed the customer from funds provided by Insurance Company in a bank account. The taxpayer's duties of processing and settling claims under the Administration Agreement were consistent with its duties to customers under the vehicle service agreements.[2]

The Taxpayer Account Administration (TAA) section of the Department of Revenue (the Department) reviewed the taxpayer's excise tax returns and records for the period January 1, 1995 through December 31, 1998. TAA assessed $ . . . in service B&O tax and interest in Document No. FY . . . . TAA determined the taxpayer was liable on the total amount of funds the taxpayer collected, including the premiums, because the taxpayer was not licensed as an

[2] Effective October 1, 1999, the taxpayer and Insurance Company entered into a revised agreement entitled "Managing General Agency Agreement." The taxpayer states the California Insurance Commissioner required the new agreement because the Commissioner viewed the relation between the parties as that of insurer-managing agent. Many of the requirements in both agreements are similar, such as the collection and remittance of premiums by the taxpayer on the Insurance Company's behalf.

insurance agent in Washington and was the obligor on the vehicle service contracts. TAA determined the taxpayer was not actually selling insurance to the dealerships or customers.

The taxpayer appealed the tax assessment to the Department's Appeals Division, which granted the taxpayer's request that the appeal be heard at the executive level. A hearing was held and the Department issued a Proposed Executive Level Determination. The taxpayer timely filed its objections to the proposed determination. The objections are stated below along with the taxpayer's initial exceptions to the tax assessment. This Final Executive Level Determination addresses the exceptions and objections raised by the taxpayer for both the tax assessment and the proposed determination.

TAXPAYER'S EXCEPTIONS:

The taxpayer explains it operates under an exclusive contract with Insurance Company to underwrite the used car warranty program insured by Insurance Company in Washington. The taxpayer states its duties as agent, as described above, include collecting premiums and remitting them to Insurance Company, as well as processing and settling claims as agent for Insurance Company. The taxpayer notes the Administration Agreement between it and Insurance Company provided that no vehicle service contract would be in force, and Insurance Company did not have any liability under the insurance policy, until the taxpayer received the insurance premiums in full.

The taxpayer contends it functioned as an agent for Insurance Company with respect to funds designated as insurance premiums that the taxpayer collected from the customers. The taxpayer quotes an authoritative text with regard to the nature of insurance premiums collected by an agent:

> Premiums, upon collection by an agent, become a trust fund and thereupon, in the absence of an agreement or course of dealing to the contrary, arises a trust relation and not a relation of debtor and creditor between the agent and the insurer, and the premiums are held in a fiduciary capacity and must be accounted for without set-off by the agent.

43 Am. Jur. 2d, *Insurance* §134 (1982) (citations omitted).

The taxpayer further explains Insurance Company is registered with the Washington Insurance Commission pursuant to RCW 48.14.080. Therefore, the insurance premiums earned by Insurance Company are not subject to B&O tax under RCW 82.04.320, which provides:

> **Exemptions--Insurance business.** This chapter shall not apply to any person in respect to insurance business upon which a tax based on gross premiums is paid to the state: PROVIDED, That the provisions of this section shall not exempt any person engaging in the business of representing any insurance company, whether as general or local agent, or acting as broker for such companies

Moreover, the taxpayer cites WAC 458-20-164 (Rule 164), which declares insurance agents pay B&O tax on their commissions, but not on the premiums they collect. The taxpayer contends it functions as an insurance agent because by law and contract what the taxpayer collects from the customers includes a portion designated as premiums. In addition, RCW 48.96.020 provides that motor vehicle service contracts shall not be issued unless the provider of the service contract is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state. Furthermore, RCW 48.96.025(1) provides that every insurer issuing a reimbursement insurance policy shall include as part of the policy the motor vehicle service contract(s) that the insurance policy is intended to cover.

In other words, the taxpayer explains it cannot legally sell a vehicle service contract without the insurance policy, and the insurance policy must incorporate the terms of the service contract, so that the sale of the service contract binds coverage under the reimbursement policy.

Additionally, RCW 48.96.025(2) mandates the insurer to require the provider of the service contract (the taxpayer as "Obligor") pay the premiums directly to the insurer or its agent. Again, the taxpayer declares that under general agency principles it holds these premiums as a fiduciary and need not include them in its income.

The taxpayer states that both the statutory framework and the Administration Agreement required the taxpayer have authority to bind Insurance Company as a reimbursement insurer when the taxpayer collected from customers sums specifically designated as premiums. The taxpayer believes the insurance agent analogy is direct because insurance agents bind their insurer principal to coverage at such time as they extend promise of coverage to the insured. For example, when the taxpayer issues a vehicle service contract, the taxpayer makes, and is statutorily required and authorized to make, a promise of coverage on the Insurance Company's behalf. Thus, the taxpayer believes the collection of premiums in exchange for issuance of the insured service contracts must be deemed the collection of insurance premiums in trust for Insurance Company. As trust funds, the taxpayer argues the premiums should not be included in the taxpayer's B&O tax base.

Following issuance of the proposed determination the taxpayer raised the following exceptions to it. The taxpayer contends the proposed determination is inconsistent with *Rho Co. v. Department of Rev.*, 113 Wn.2d 561, 782 P.2d 986 (1989). The taxpayer explains the Supreme Court in *Rho* ruled that a party may have liability on a contract (as Rho did to its employees), but such liability may be shown to be solely as agent. The taxpayer declares the decisive criterion for agency in *Rho* was whether Rho and its clients consented – either expressly or impliedly - that Rho would act under the clients' control.

Accordingly, the taxpayer claims it was acting under Insurance Company's control in administering the service contracts as Insurance Company instructed the taxpayer in the Administration Agreement. For example, all literature the taxpayer used first had to be reviewed and approved by Insurance Company. Additionally, Insurance Company authorized the taxpayer to place on deposit for interest or income-producing purposes all remittances held by the

taxpayer, as well as depositing all collected premiums into an account over which Insurance Company had concurrent control. The taxpayer argues such authorization and control by Insurance Company demonstrates the parties understood that the funds collected belonged to Insurance Company.

The taxpayer further asserts that the Administration Agreement executed in 1990 was only an agency agreement because it predated the time the taxpayer became the "Obligor," which the taxpayer claims occurred in 1992. The taxpayer notes the administration agreement remained in effect until the parties replaced it in 1999 with the Managing General Agency Agreement. Prior to 1992, the taxpayer claims the car dealers were the obligors and the taxpayer was only the claims administrator. The taxpayer believes its prior course of conduct with Insurance Company and the fact it acted only as insurance agent and not as obligor in other states support its claim it was only an agent for the principal Insurance Company.

The taxpayer further contends the written declaration by the president of Insurance Company makes clear that the taxpayer paid amounts due under the service contracts with funds made available by Insurance Company to the taxpayer from an account established by Insurance Company. The taxpayer argues because it was the sole administrator of claims it would have been odd and inconsistent for the taxpayer to have purchased insurance to cover its own liabilities since the taxpayer would have been administering the claims for Insurance Company that the taxpayer itself made.

The taxpayer asserts the proposed determination errs in finding under both the Administration Agreement and the Service Contract Reimbursement Insurance Policy the taxpayer was insured for all sums the taxpayer became legally obligated to pay the contract holders. The taxpayer states the Administration Agreement does not reference the taxpayer as the "Obligor."[3] Instead, the Agreement refers to the dealers as the obligors who were legally obligated to pay the holders of the contracts at that time. The taxpayer notes the parties did not change the terms of the Administration Agreement when the taxpayer became the obligor. The taxpayer believes such a change to the Agreement would have resulted in the taxpayer investigating, settling, paying, or rejecting payment of valid claims owed to it as the obligor, which would have been a conflict of interest. The taxpayer contends the absence of change in the Administration Agreement evidences that whether or not the taxpayer bore the title "Obligor," the taxpayer had an agent's duty to promptly investigate, settle, and pay all such claims according to the terms of the Agreement.

The taxpayer argues any claims it paid from its own funds, it paid only as Insurance Company's agent. The taxpayer explains under RCW 48.96.040 the service contracts can be marketed only with a clear indication that payment under the contract is guaranteed by an identified insurance policy. The taxpayer contends this provision makes Insurance Company the payor to the contract holders because the service contract informs the contract holders they could make their

[3] We agree the Administration Agreement does not refer to the taxpayer as the "Obligor," but the motor vehicle service contracts do refer to the taxpayer as the "Obligor."

claims directly to Insurance Company. Furthermore, the taxpayer notes RCW 48.96.025(2) mandates that every insurance policy requires the provider pay the premiums to the insurer. Thus, the taxpayer claims, as in *Rho*, it performed only administrative functions while Insurance Company. (like the third-party employers in *Rho*) controlled the substance of the transactions.

ISSUE:

For B&O tax purposes, is the taxpayer merely an agent of Insurance Company and may the taxpayer exclude from its gross income the amounts it collects as premiums from its customers and remits to Insurance Company?

DISCUSSION:

Chapter 48.96 RCW governs motor vehicle service contracts (service contracts) sold in this state. RCW 48.96.010(1) defines such contracts as . . .

> given for consideration over and above the lease or purchase price of a motor vehicle that undertakes to perform or provide repair or replacement service, or indemnification for that service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear . . . .

RCW 48.96.010(2) defines "motor vehicle service contract provider" or "provider" as "a person who issues, makes, provides, sells, or offers to sell a motor vehicle service contract." The taxpayer is a "provider" under this definition.

Further, RCW 48.96.010(4) declares:

> 'Motor vehicle service contract reimbursement insurance policy' or 'reimbursement insurance policy' means a policy of insurance providing coverage for all obligations and liabilities incurred by a motor vehicle service contract provider under the terms of motor vehicle service contracts issued by the provider. (Underlining added.)

In light of these definitions, RCW 48.96.020 requires a provider selling service contracts to obtain a reimbursement insurance policy by stating:

> A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the provider of the service contract is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state.

Additionally, RCW 48.96.025(1) requires the reimbursement insurance policy to include, as part of the policy, the motor vehicle service contracts that the reimbursement policy is intended to cover. The insurer issuing the reimbursement insurance policy also must require that the premiums be paid directly by the provider to the insurer or its agent. RCW 48.96.025(2). The

taxpayer and Insurance Company have met both of these requirements because, first, the sample insurance policy we reviewed declared the purpose of the insurance policy was to reimburse the repair claims that the taxpayer approved under the vehicle service contracts. Second, the Administration Agreement between the taxpayer and Insurance Company required the taxpayer to remit the sums identified as premiums that the taxpayer collected to Insurance Company twice each month.

Furthermore, RCW 48.96.030 provides that no reimbursement insurance policy may be issued or sold…

> unless the reimbursement insurance policy conspicuously states that the issuer of the policy shall pay on behalf of the provider all sums which the provider is legally obligated to pay according to the provider's contractual obligations under the motor vehicle service contracts issued or sold by the provider. (Underlining added.)

The sample reimbursement insurance policy provided by the taxpayer has statements in its Sections I and IV that conform to the requirements of RCW 48.96.030.

Similarly, RCW 48.96.040 provides that

> A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the contract conspicuously states the obligations of the provider to the service contract holder are guaranteed under the reimbursement insurance policy, and unless the contract conspicuously states the name and address of the issuer of the reimbursement insurance policy, the applicable policy number, and the means by which a service contract holder may file a claim under the policy.

The taxpayer and Insurance Company have met these statutory requirements as well. As required by RCW 48.96.020, the taxpayer sold vehicle service contracts that were guaranteed by reimbursement insurance policies issued by an insurer authorized to do business in this state. We reviewed a sample vehicle service contract, which identifies the taxpayer as the "Obligor" and states in part:

> The obligations of this Contract are guaranteed under the reimbursement insurance policy number shown above by [Insurance Company, followed by Insurance Company's address]. The Selling Dealer who sold You the covered vehicles is acting as agent for [the taxpayer] and is not a principal party to this Contract. You can make a direct claim to the Insurance Company. To do so, please call [Insurance Company's telephone number]. [The taxpayer's] policy number is shown above.

We find the taxpayer was a motor vehicle service contract provider because, as the "Obligor" it sold such service contracts to service contract holders. The service contracts were guaranteed by reimbursement insurance policies issued by the Insurance Company to the taxpayer as the "Insured."

The taxpayer cited Rule 164 in support of its argument that it is an insurance agent. The rule provides in part:

> (2) **Definition.** The words "agent," "broker," and "solicitor" mean a person licensed as such under the provisions of chapter 48.17 RCW.
> (3) **Business and occupation tax.** Every person engaging in business as an insurance agent, broker, or solicitor is taxable under the insurance agents and brokers classification upon the gross income of the business.
>
> (a) The gross income of the business is determined by the amount of gross commissions received, not by the gross premiums paid by the insured. The term "gross income of the business" includes gross receipts from commissions, fees or other amounts which the agent, broker, or solicitor receives or becomes entitled to receive. The gross income of the business does not include amounts held in trust for the insurer or the client. (See also WAC 458-20-111, Advances and reimbursements.)
>
> (b) No deduction is allowed for commissions, fees, or salaries paid to other agents, brokers, or solicitors nor for other expenses of doing business.
>
> (c) Every person acting in the capacity of agent, broker, or solicitor is presumed to be engaging in business and subject to the business and occupation tax unless such person can demonstrate he or she is a bona fide employee. The burden is upon such person to establish the fact of his or her status as an employee. (See WAC 458-20-105, Employees.)

RCW 48.17.010 defines "agent" for purposes of insurance and Rule 164 as . . .

> any person appointed by an insurer to solicit application for insurance on its behalf. If authorized to do so, an agent may effectuate insurance contracts. An agent may collect premiums on insurances so applied for or effectuated.

The taxpayer is not an insurance agent under this definition because it was not appointed by Insurance Company to solicit applications for insurance on Insurance Company's behalf. Indeed, the taxpayer is not licensed as an insurance agent in this state. Rather than selling insurance, the Administration Agreement between the taxpayer and Insurance Company declares the taxpayer will "market service contracts" to used car dealers and their car buyers (the service contract holders). The Administration Agreement also states that the taxpayer "will solicit, negotiate, and execute Dealer Agreements for the sale of service contracts." As noted, the Service Contract Reimbursement Insurance Policy provides that the taxpayer is insured for all sums that the taxpayer becomes legally obligated to pay the service contract holders for repairs, parts replacements, etc. pursuant to the service contracts the taxpayer sold to them. Thus, instead of selling insurance as an agent for Insurance Company, the taxpayer actually bought insurance to cover its own liabilities under the service contracts.

Such a situation conflicts with the usual role of an agent. Unless otherwise agreed, a person making or purporting to make a contract with another person as agent for a disclosed principal does not become a party to the contract. Restatement (Second) of Agency §320 (1958).

Accordingly, a person who seeks recovery on a contract has the burden of proving that the defendant was a party to the contract. If and when that fact is established, the burden shifts to the defendant who, to escape liability, must show that his/her promise was made solely in the capacity of agent for a disclosed principal. *Matsko v. Dally*, 49 Wn.2d 370, 373, 301 P.2d 1074 (1956). Thus, an insurance agent who sells insurance policies as agent for a disclosed insurer is not a party to the insurance contract and avoids liability on the contract.

Similarly, it is well-established that an agent whose status is not communicated to a third person with whom he/she is conducting business is acting for an undisclosed principal, and both the agent and principal are liable for any contractual obligations incurred by the agent. *Maxwell's Electric, Inc. v. Hegeman-Harris Company of Canada, Ltd.*, 18 Wn. App. 358, 567 P.2d 1149 (1977), *overruled in part on other grounds by Crown Controls, Inc. v. Smiley*, 110 Wn.2d 695, 756 P.2d 717 (1988). *See also* Det. No. 88-7, 4 WTD 423 (1987). Thus, it is a third party's knowledge and acceptance that it is dealing with an agent, and not just the existence of the agency relationship itself, which finally relieves the agent from liability. 4 WTD 423.

In the present matter, the taxpayer purchased insurance to cover claims it receives on the service contracts it sold. The taxpayer cannot avoid liability on the contracts as a mere agent of Insurance Company because the taxpayer, as the "Obligor," is a party to the contracts. In other words, if for some reason Insurance Company could not fulfill its obligations to the taxpayer under the insurance policies, the service contract holders can rightfully sue the taxpayer to satisfy their claims. By contrast, if the taxpayer were a mere agent, the service contract holders could not successfully sue the taxpayer. Consequently, unlike insurance agents described in Rule 164, the total amounts the taxpayer received from the service contract holders, including "premiums," were amounts paid for services for which the taxpayer is personally liable. Therefore, the amounts collected by the taxpayer and remitted to Insurance Company are not exempt from the taxpayer's tax liability. Instead, the amounts are part of the taxpayer's gross income and are non-deductible costs of doing business. RCW 82.04.080.

Additionally, WAC 458-20-257 (Rule 257) addresses the tax classification for amounts paid for warranties not included in the retail-selling price of the article being sold. Rule 257(2)(b)(i) provides:

> (b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.
>
> (i) When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the charge is reported in the service and other activities classification of the B&O tax.

Likewise, the Department's Auto Dealer Guide (1993) explains at 41-1 - 41-2 that separate charges for warranties not included in the selling price of a car are reported under the service B&O tax classification. The taxpayer, as the "Obligor," sold such warranties. Accordingly, TAA correctly assessed service B&O tax on the taxpayer's gross receipts without deductions for amounts paid to Insurance Company.

We conclude by responding to the taxpayer's exceptions to the proposed determination that are stated above. We disagree with the taxpayer that this determination is inconsistent with *Rho* and WAC 458-20-111 (Rule 111). Rule 111 provides in pertinent part:

> The word "advance" as used herein, means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees for the customer or client.
>
> The word "reimbursement" as used herein, means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees for the client.
>
> The words "advance" and "reimbursement" apply only when the customer or client alone is liable for the payment of the fees or costs and when the taxpayer making the payment has no personal liability therefor, either primarily or secondarily, other than as agent for the customer or client.
>
> There may be excluded from the measure of tax amounts representing money or credit received by a taxpayer as reimbursement of an advance in accordance with the regular and usual custom of his business or profession.
>
> The foregoing is limited to cases wherein the taxpayer, as an incident to the business, undertakes, on behalf of the customer, guest or client, the payment of money, either upon an obligation owing by the customer, guest or client to a third person, or in procuring a service for the customer, guest or client which the taxpayer does not or cannot render and for which no liability attaches to the taxpayer. It does not apply to cases where the customer, guest or client makes advances to the taxpayer upon services to be rendered by the taxpayer or upon goods to be purchased by the taxpayer in carrying on the business in which the taxpayer engages.

(Underlining ours.) The Supreme Court in *Rho* declared:

> This court has summarized the operation of Rule 111 by stating that the rule allows an exclusion from income for a "pass through" payment when the following three conditions are met: (1) the payments are "customary reimbursements for advances made to procure a service for the client"; (2) the payments "involve services that the taxpayer did not or could not render"; and (3) the taxpayer "is not liable for paying the associate firms except as the agent of the client." Christensen, O'Connor, Garrison & Havelka v. Department of Rev., 97 Wn.2d 764, 769, 649 P.2d 839 (1982); see Walthew, Warner, Keefe, Arron, Costello & Thompson v. Department of Rev., 103 Wn.2d 183, 186, 691 P.2d 559 (1984).

113 Wn.2d 567-68.

In order for payments to be considered non-taxable pass through payments all three parts of the test must be met. We review the three parts for the present matter. First, although the service contract holders customarily pay the taxpayer, the taxpayer is not procuring services for them. Instead, the taxpayer uses part of that money to purchase a reimbursement insurance policy to back-up the

service contracts it sells to them. We do not find these payments meet the definitions of advance and reimbursement. Second, the payments involve services the taxpayer did and could render. In part, those services include the taxpayer selling the service contracts in its own name to the contract holders and administering those contracts, including determining whether to pay the claims. Third, as discussed above and in RCW 48.96.030 and .010(4), the taxpayer, by statute and contract, is primarily or secondarily liable to pay the claims to the contract holders because the taxpayer is the obligor on the service contracts. We again quote RCW 48.96.030 in pertinent part where it provides no reimbursement insurance policy will be issued . . .

> unless the reimbursement insurance policy conspicuously states that the issuer of the policy shall pay on behalf of the provider all sums which the provider is legally obligated to pay according to the provider's contractual obligations under the motor vehicle service contracts issued or sold by the provider. (Underlining added.)

The taxpayer is not a mere agent. It is a party to the service contracts with all attendant obligations under the contracts.

The fact that the Administration Agreement required the taxpayer to place the funds it collected into an account with Insurance Company's concurrent control does not make the taxpayer merely an agent. As discussed earlier, RCW 48.96.025(2) mandates that insurers issuing reimbursement insurance policies require the provider/obligor pay the premiums directly to the insurer or its agent. As noted, the Administration Agreement complies with the statute's requirements.

Merely because the taxpayer became the obligor after it executed the Administration Agreement does not diminish the fact that the taxpayer is the obligor under the motor vehicle service contracts with personal liability to the contract holders. Moreover, the taxpayer's course of dealings with Insurance Company prior to becoming the obligor is not material to this discussion because once the taxpayer became the obligor it was not merely an agent. Finally, the fact that the taxpayer is not an obligor in other states, but is a licensed insurance agent there presents different facts and laws that are not before us.

In sum, the taxpayer, as the obligor/provider, is personally liable to the service contract holders. Payments it receives from the contract holders are part of its gross income. The taxpayer may not exclude or deduct from its gross income the amounts it pays to Insurance Company.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 22nd day of June, 2001.