

2301 ✓

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

DOCTORS' BOOKKEEPING ASSOCIATION,)	
)	
Petitioner,)	
)	
v.)	Docket No. 503
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

Before: Cyric W. Cain, Jr., Harry E. Deppert, Henry J. Donnelly, and Charlotte Snyder, Board Members.

Joseph I. Haggerty, C. P. A., Haggerty & Haggerty, Wilmington, for Petitioner.

James T. Perry, Esq., Deputy Attorney General, for Respondent.

DECISION AND ORDER

Henry J. Donnelly, Chairman: This proceeding involves the question whether Petitioner is a collection agency within the meaning of 30 Del. C. section 2301.¹ The years involved are the license years 1969-1970, 1970-1971, and 1971-1972 for each of which Respondent has assessed the prescribed amount of \$150.

Petitioner is a Delaware corporation, organized in 1966. It maintains its place of business in Wilmington. At its inception, Petitioner had two shareholders each of which was a partnership. One partnership consisted of ten radiologists, all connected with the Wilmington Medical Center. It held 51 shares of stock. The second partnership consisted of six anesthesiologists, also of the Wilmington Medical Center. This partnership held 23 shares of stock. Each

partnership subsequently became a professional corporation with each partner, in effect, exchanging his interest in his particular partnership for a corresponding interest in his respective professional corporation. The remaining 26 shares of Petitioner's authorized (but originally unissued) capital stock were then issued to the professional corporation that had succeeded the partnership of radiologists. Thus, at the time of this hearing, Petitioner's total authorized stock was issued and outstanding, 77 shares owned by the radiologists' professional corporation and 23 shares owned by the anesthesiologists' professional corporation.

Each professional corporation still represents the same number of doctors that originally were members of the predecessor partnership (i.e., ten radiologists and six anesthesiologists). However, there have been some "goings and comings" so that some of the original partners are no longer associated with the particular successor professional corporation, having been replaced by others affiliated with the Wilmington Medical Center.

Two anesthesiologists, who disaffiliated when they left Wilmington Medical Center to join the staff at St. Francis Hospital, formed a new partnership at St. Francis Hospital. This new partnership also is serviced by Petitioner and, at the time of the hearing, had added a third partner in the person of a staff anesthesiologist at St. Francis Hospital who had not previously been affiliated with any of the other groups involved here.

For the periods under consideration, Petitioner served only the two professional corporations and the St. Francis partnership.

It did not hold itself out as ready to serve the public or even other groups of physicians. It is alleged in the petition that Petitioner was created " * * * as a convenience for billing patients in an orderly and systematic manner. * * *" At the hearing, Petitioner's General Manager testified, in part, as follows:

Besides sending bills to patients, as I mentioned, we complete Blue Cross forms, Medicare forms, insurance forms; we contact attorneys with regard to settling estates, automobile accidents, liabilities, third parties, etcetera. We contact the State of Delaware with regard to compensation claims, etcetera. We handle all their incoming mail, all their correspondence. We handle all telephone calls whether it be relating to the bill or the medical services rendered. We also give them administrative advice with regard to their own setup at the hospital - things of that nature.

The facts also show that patients receiving bills made payment direct to Petitioner with checks from patients of the St. Francis partnership being deposited by Petitioner in the partnership's bank account whereas checks from patients of either of the professional corporations were deposited in Petitioner's bank account. Amounts received from Blue Cross, Medicare, or insurance companies were similarly treated. Petitioner's remuneration was based on a prearranged charge per billing. It made no charges for services other than billings.

Petitioner made no investigation of the credit status or financial standing of patients. It utilized the services of what it termed "bona fide" collection agencies for the collection of slow moving or doubtful accounts. For the two professional corporations, Petitioner paid bills to discharge accounts payable. It did not render this service to the St. Francis partnership.

It is Petitioner's contention that it does not fall within the definition of a collection agency for the purpose of this tax for the reasons that it does not offer its services to the general public, it makes no investigations of credit ratings or financial status,² and that it is, in actuality, an administrative agency - or service bureau - performing for its three clients the range of services they would receive if they maintained their own offices.

Respondent, on the other hand, argues that Petitioner does fall within the definition of a collection agency as set forth in 30 Del. C. section 2301. Respondent points out that Petitioner was organized primarily to take care of its clients' billing problems, that collection is not a function restricted to delinquent accounts, and that the service is furnished "to others" since Petitioner and its two incorporated clients are separate entities, despite their stockholding relationship, and that there are no ties other than the service contract between Petitioner and the St. Francis partnership and its members.

Our edition of Black's Law Dictionary defines a collection agency as a "* * * concern which collects all kinds of claims for others." With respect to collection it states, " * * * to collect

a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings." From these, read in conjunction with 30 Del. C. section 2301, we see nothing that would exclude from the scope of the tax a concern which collected current accounts, as opposed to past due accounts, or which turned over to another entity the task of collecting the more seriously delinquent accounts.

Nowhere can we find a requirement that a collection agency must hold itself out as available to the general public. While it is true that many collection agencies perform services for numerous and diverse clients, the very fact that it is an agency relationship means that it is consensual in nature and ordinarily cannot exist unless both parties are willing. In this case, Petitioner has entered into that relationship with three clients, two professional corporations and one partnership.

Despite the fact that all of Petitioner's outstanding stock is owned by the two professional corporations, the three corporations are distinct and different legal entities. In our view the professional corporations, therefore, meet the requirement that the accounts were collected for "others." The real parties at interest in Petitioner (i.e., the individual practitioners) created the corporations and we believe they are estopped from denying them merely because it may be to their interest in this action to do so. The St. Francis partnership obviously falls within the definition of "others" since the only current relationship between it and Petitioner is the agency contract.

This leaves us the final question. Does the fact that Petitioner renders other services, in addition to the collecting of accounts for others, take it beyond the scope of the definition of a collection agency?

Under the facts of this case, we believe it does not. The admitted prime reason for establishing Petitioner was to provide an efficient means for billing patients - and as an essential consequence collecting the money. While it is true Petitioner performs other services, most if not all these flow naturally from this basic service of collection. Indeed, collection could not be effected unless there were records containing data on which charges were based and continuous dealings with insurance carriers and others. Finally, the pervasive character of the collection process is attested to by the fact that Petitioner charges its clients on a so-much-per-bill basis and makes no separate charge for any other type service. On the record before us, we hold that Petitioner's other services do not take it outside the scope of the definition of a collection agency. However, we do not in so holding express any opinion on whether a single entity may or may not be subject to more than one type of occupational license tax.

It follows that Respondent's assessments are sustained.

IT IS SO ORDERED.

Alvin J. Borne

Eric W. Cain

Charlotte Snyder

Date July 10, 1972

Footnotes

1. Sec. 2301 *** Mercantile Agency or Collection Agency, \$150.

"Mercantile Agency or Collection Agency" includes every person engaged in the business of investigation of financial ratings and credit and/or the collection of commercial accounts for other persons, except attorneys-at-law having a license to practice such profession in this State.

2. The collecting of information relating to the credit or financial status of others, which information is supplied to subscribers, matches the usual definition of a mercantile agency. Respondent has made no claim that Petitioner is a mercantile agency and the facts as developed at the hearing do not so characterize Petitioner.