

Cite as Det. No. 91-166, 11 WTD 345 (1992).

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

In the Matter of the Petition	)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of	)	
Beneficial Liability of	)	No. 91-166
	)	
. . .	)	Registration No. . . .
	)	Warrant No. . . .
	)	

[1] RULE 217: UNPAID TAXES -- LIABILITY OF THIRD PARTY WITH BENEFICIAL INTEREST IN BUSINESS. An oil company which leases a service station to an operator and sells its products to the operator for resale has a beneficial interest in the operation of the station. The oil company's property leased to the operator is subject to lien for the unpaid liability, including interest and penalties, even though the liability was not the fault of the oil company.

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 TELEPHONE CONFERENCE: . . .

NATURE OF ACTION:

Taxpayer protests assessment where its liability is based on a finding that it had a "beneficial interest" in lessee's business.

FACTS AND ISSUES:

Adler, A.L.J. (successor to Potegal, A.L.J.) -- Taxpayer is an oil company which leases or subleases service stations to operators who provide services to customers and sell taxpayer's products exclusively or in addition to products of other sellers. Among other possibilities, the lease was subject to cancellation if the oil company or its lessor chose not to renew the oil company's lease of the premises, which expired thirteen months

after commencement of the lease between the oil company and the operator. In this case, partially due to the sequence of events, the station was closed at the expiration of the oil company's lease and is no longer in operation.

The chronology of events is as follows:

1. Prior to 1985, the service station and tire center was operated by a marital community under a lease with the taxpayer. Taxpayer had on file a UCC security agreement covering

all present and hereafter acquired inventory, including, not by way of limitation motor fuel, motor oil, tires, batteries and automotive accessories.

all present and hereafter acquired equipment including, not by way of limitation furniture, tools and machinery.

all present and hereafter acquired accounts and notes receivable.

2. After the husband's death, the wife and taxpayer signed a Retail Service Station Lease and Sales Agreement [in November 1987].

3. On the same date, the wife, as president of the corporation, ("President") executed a resolution approving the sale of the corporation to another marital community ("Debtor"). That transfer closed [in January 1986].

4. [In November 1985], President and Debtor signed a handwritten agreement stating that President would be responsible for all debts up to [November], and Debtor would be responsible for all debts after that date. The agreement acknowledged that the sale would be completed upon receipt of the contract and approval from taxpayer.

5. [In June 1986], the Department issued [a warrant] for unpaid taxes, covering the period from December, 1985-May, 1986.

6. [In August 1986], President informed Debtor that it was repossessing the property due to Debtor's default on the sales agreement.

7. [In October 1986], the Department issued a Notice of Intent to Revoke the business license, which was delivered to the station.

8. [In October 1986], the Department issued [a warrant] for unpaid taxes, covering the period from June, 1986-October, 1986.

9. [In November 1986], an administrative hearing regarding the Notice of Intent to Revoke was held at the Department's [field] office. The corporation was represented by President, Debtor, and their respective representatives. At that time, an order was issued revoking the business license.

10. [In December 1986], the Department notified taxpayer of "beneficial liability" for the warrants incurred by debtor, as provided under RCW 82.32.210, covering property owned by third parties and used by a debtor to operate its business, which taxpayer appeals.

11. [In February 1987], the Department notified taxpayer that the lien would affect only the property or value thereof used by the business and asserted its collection authority up to the amount of Warrant No. . . . , discontinuing efforts to hold the taxpayer liable for the amount of Warrant . . . .

#### TAXPAYER'S EXCEPTIONS:

Taxpayer contends it is not liable for the lessee's taxes under a "beneficial interest" theory, because the station operator was an independent dealer. Additionally, it contests the method used to assess liability, claiming it is improper under Washington law.

#### DISCUSSION:

[1] WAC 458-20-217 (Rule 217) implements RCW 82.32.210. It has the same force and effect of the law itself unless overturned by a court of law. Such has not occurred in this case. The rule states that warrants for unpaid taxes, interest and penalties against delinquent taxpayers become specific liens

upon all goods, wares, merchandise, fixtures, equipment or other personal property used in the conduct of the business of the taxpayer, including property owned by third persons who have a beneficial interest, direct or indirect in the operation thereof, and no sale or transfer of such personal property in any way affects the lien. (Emphasis supplied.)

Under the law, a third person whose property is subject to such a lien must have a beneficial interest in the operation of the business. Because of this requirement, there is a rational connection between the third person who owns the property and the business activity which led to the tax liability. The legislature, by enacting the law, has determined that it is reasonable that property owned by that third person and used in

the business should be available to satisfy a tax liability arising out of the business activity.

The rule gives the following as an example of a "beneficial interest:"

where an oil company leases a filling station and other equipment to an operator under conditions whereby the operator is required to sell, or does sell, the products of the lessor, the lien will attach to the personal property leased by the oil company.

That is the situation in this case; as a result, taxpayer's appeal must be denied.

Taxpayer's contention that the dealer was independent or that other sellers' products were also sold from the premises is without merit. The status of the station operator's agreement with regard to the types of products or services to be offered is immaterial under the law. It subjects to liability, and the lien attaches to, all property belonging to any third parties having a beneficial interest in the business, without regard to whether more than one third party exists. The liability is limited to the value of the property which is used by the person conducting the activity. The Department discontinued attempts to assess liability for one of the outstanding warrants because of this statutory limitation.

Taxpayer's claim that the Department is acting illegally in exercising its rights under the statute must also be denied. An administrative agency does not have the authority to determine the constitutionality of the law it administers; only the courts have that power. Bare v. Gorton, 84 Wn.2d 380, 383 (1974). The Department followed standard and uniformly-acceptable collection procedures in seeking compliance and payment from the station operator and in obtaining the warrants from the court. Every reasonable avenue of collection was pursued. When these attempts are unsuccessful, the Department uniformly proceeds to collect the tax under 82.32.210's "beneficial interest" provision and to satisfy warrants as permitted under RCW 82.32.220. The existence of the statute providing for attachment of the property of third parties is presumed to be notice to persons who permit others use of their property in a business operation in which the third party has a qualifying "beneficial interest."

#### DECISION AND DISPOSITION:

Taxpayer's petition is denied. The file will be remanded to the Compliance Division for collection of the Warrant No. . . . up

to an amount representing the value of the property which was on the property at the time that the warrant was issued.

DATED this 18th day of June 1991.