

Cite as Det. No. 92-306, 12 WTD 473 (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)	
)	No. 92-306
)	
. . .)	Registration No. . . .
)	
as Successor to)	
)	
. . .)	Registration No. . . .
)	Warrant No. . . .
)	

RULE 216 -- RCW 82.32.140 -- SUCCESSOR -- NOTICE. The Department is only barred from issuing an assessment of successorship liability if the successor has given written notice to the department of the acquisition of a business and no assessment is issued within six months of receipt of the successor's notice.

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: . . .

NATURE OF ACTION:

A successor to a business protests the assessment of successorship liability on grounds that the Department had notice of the acquisition more than six months prior to the issuance of the assessment.

FACTS AND ISSUES:

Roys, Sr. A.L.J.-- . . . [hereinafter business A] a corporation doing business in Washington, failed to pay its taxes due for the periods of April, 1990 and May, 1990 timely. The Compliance Division assigned the account to a Revenue Officer who collected the amounts due from [business A] for those periods. Later, in

November of 1990, when the taxes for July and August of 1990 were delinquent, the Revenue Officer notified [business A] and was told the business was closed as of November 1, 1990 and to contact a certain law firm. The Revenue Officer believes that an attorney for the law firm told him that [the successor hereinafter referred to as taxpayer] purchased the assets of [business A]. [In November 1990] the law firm sent a letter with a check for \$. . . out of its trust account stating that amount "was in payment of the outstanding balance owed by [business A]." The Revenue Officer subsequently sent [business A's] attorney a letter stating how the \$. . . was applied to the delinquent account and that there was still a balance due. The letter also requested payment of delinquent penalties and payment of the September tax and payment of four delinquent penalties. Finally, the Revenue Officer advised that the October, 1990 return would be due November, 1990. [In November 1990] the revenue officer received copies of the actual returns of [business A] for July and August 1990. There was no indication on the returns that the business was closed or that there was a successor.

Following a conversation with the former accountant for [business A], [in January 1991], the Revenue Officer sent a letter to [business A] in care of . . . advising them of the outstanding liabilities of [business A] and requesting payment. In a phone conversation, [they] advised the Revenue Officer that [taxpayer] possessed [business A's] records. [In February 1991], the Revenue Officer issued a tax warrant against [business A] for the outstanding balances.

[In March 1991], the revenue office sent the taxpayer a letter stating that it "may be a successor to the business of [business A]." The letter enclosed a copy of WAC 458-20-216, the Department's rule on successorship liability. [In April 1991] the Department sent the taxpayer a continuing levy for taxes owing by [business A].

[In April 1991], the taxpayer's Controller responded to the order to withhold and deliver. The letter stated:

In response to your order dated [April 1991] be advised that [taxpayer] is not and does not intend to become indebted to [business A].

In addition, [taxpayer] does not have in its possession any funds, property or effects of [business A].

The revenue office made subsequent phone calls to try to collect the amounts due. [In September 1991], he sent the taxpayer an ASSESSMENT OF SUCCESSOR LIABILITY (. . .) for [business A] in the amount of \$. . . for unpaid tax.

The taxpayer contends that the assessment is barred by the statute of limitations under RCW 82.32.140. It states that the Department had successorship notice no later than March 1, 1991. The taxpayer has been unable to locate a copy of any written notice sent to the Department of Revenue of its acquisition of [business A] and none is in the taxpayer's file.

Issue: [Is an assessment of successorship liability invalid if issued more than six months after the Department notified the successor that it had information indicating the business may be a successor?]

DISCUSSION:

RCW 82.32.140 provides that a successor to a taxpayer quitting business may be liable for taxes owed by the previous business. The statute states:

Whenever any taxpayer quits business, or sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the department of revenue showing payment in full of any tax due or a certificate that no tax is due and, if such tax is not paid by the taxpayer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the taxpayer.

No successor shall be liable for any tax due from the person from whom he has acquired a business or stock of goods if he gives written notice to the department of revenue of such acquisition and no assessment is issued by the department of revenue within six months of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor.

The Department has no record that [taxpayer] sent it written notice of acquiring [business A]. Based on oral communications, the Department suspected that [taxpayer] was a potential successor to [business A]. The [March 1991] letter sent by the Revenue Officer states:

Information obtained by the Department indicates that [taxpayer] may be a successor to the business of [business A] as defined in Revised Code of Washington 82.04.180.

(Emphasis supplied.)

RCW 82.32.140 is clear. Only if a successor gives written notice to the department must the assessment be issued by the department within six months. The taxpayer was asked to provide a copy of any notice that it sent to the Department of its acquisition of [business A]. Its representative stated the taxpayer has no record of sending written notice to the Department that it did acquire the business of [business A]. The only written information in the file from the taxpayer was its [April 1991] letter which stated it was not a successor. Therefore, the department, upon further investigation, was not barred from assessing successor liability against the taxpayer.

The purpose of the Department's [March 1991] letter was to advise the taxpayer that it might be a successor. A copy of Rule 216 was enclosed which explained successorship liability. The first two paragraphs of Rule 216 are the same as RCW 82.32.140 quoted above. Although the letter stated it constituted a "NOTICE OF SUCCESSORSHIP," the letter clearly stated that the information obtained by the Department only indicated the taxpayer may be a successor. The Rule and the imposing statute clearly state that the only bar to the Department's assessing successorship liability is where the successor gives written notice to the department that it has acquired a business or a stock of goods from a person going out of business. A letter from the Department of possible successorship liability is not a bar. If it were, the Department would simply wait until it had done more investigation and issue an assessment of successorship liability.

We do not think the Department should be prevented from issuing an assessment in this case because it informed the taxpayer that it had information that indicated the taxpayer might be a successor, but failed to issue an assessment until six months and 17 days later. The only grounds for relief would be if the taxpayer were to show that it was not a successor as defined by RCW 82.32.140. It has made no such argument or showing.

DECISION AND DISPOSITION:

[Taxpayer's] petition is denied. This matter is remanded to our Compliance Division for collection.

DATED this 30th day of October, 1992.