

Cite as 2 WTD 131 (1986)

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

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| In the Matter of the Petition for) | <u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u> |
| Notice of Successorship Liability of) | |
|) | No. 87-5 |
|) | |
| . . .) | Registration No. . . . |
|) | |
|) | |
|) | |
| As Successor to:) | |
|) | |
| . . .) | Registration No. . . . |
|) | Warrant No. . . . |
|) | Tax Assessment No. . . . |

- [1] **RULE 216:** RCW 82.32.140 AND RCW 82.04.180 -- B&O TAX -- SUCCESSOR -- LIABILITY OF. The successor of a business is liable for excise taxes left unpaid by the former owner of the business as provided by RCW 82.32.140 and RCW 82.04.180. The successor liability provisions provide constitutionally valid means of collecting taxes.
- [2] **RULE 211:** RETAIL SALES TAX -- USE TAX -- LEASE PAYMENTS. Persons who rent or lease tangible personal property are required to collect from their lessees the retail sales tax (RST) measured by the gross income from rentals as each rental payment falls due. If RST is not collected, the lessee is liable for use tax on the amount of the rental payments.
- [3] **RULE 107, RCW 82.08.050:** RETAIL SALES TAX -- SELLING PRICE -- SEPARATELY STATED.
As proof that the retail sales tax was collected on rental payments, the invoices or lessor's records must show the sales tax separately stated from the payment for the rental.

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 HEARING: July 31, 1986

NATURE OF ACTION:

The taxpayer is a Washington limited partnership which owns a hotel. It protests the assessment of successorship liability of the tax liability of the prior owner of the hotel. It also protests the calculation of sales tax in the assessment, contending the assets were leased rather than purchased as fixed assets.

FACTS AND ISSUES:

Frankel, A.L.J. -- The taxpayer purchased the . . . Hotel and Convention Center in December of 1982. In 1985, the Department audited the former owner's records for the period December 1, 1981 through December 31, 1982. The audit disclosed taxes owing for that period in the amount of \$. . . . Additional interest of \$. . . was added and Tax Assessment No. . . . was issued on December 5, 1985.

As the former owners had ceased operation of the hotel, the taxpayer was sent a Notice of Successorship on February 19, 1986. The notice advised the taxpayer that it might be held liable for the tax due. A subsequent Notice of Successorship Liability was sent to the taxpayer after the Department obtained more information establishing that the taxpayer had succeeded to the business of the former owner. The notice demanded payment of the \$. . . in taxes due.

The taxpayer raised two issues in its letter protesting the successorship liability. First, the taxpayer disagrees with the Department's position that it is liable as a successor to the tax liability of the prior owner of the . . . Hotel.

Second, the taxpayer protests the assessment in Schedule IV of the assessment. The auditor assessed \$. . . in use tax and/or deferred sales tax on purchases of equipment on which no sales tax had been paid to the original vendors. The auditor found the assets had been included in the cost ledger and then the amounts had been credited to that account.

The taxpayer protests the assessment, contending the acquisition of these assets was financed by a leasing company and leased by the hotel from the time they were placed in service. The taxpayer stated the assets were erroneously recorded on the hotel's books and records as fixed assets, but the entries were reversed when the errors were discovered.

DISCUSSION:

[1] Successorship: RCW 82.04.180 defines a "successor" as:

. . . any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, a major part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer.

Successorship liability is imposed by RCW 82.32.140 which provides:

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 evidence relied on by the Department includes a Hotel Acquisition Agreement executed on December 28, 1982 in which the taxpayer, the . . . Limited Partnership, was named as the "Purchaser." The agreement was for the purchase of the hotel and all of the seller's interest in the hotel names, contracts, leases, building service equipment, consumables, operating equipment, and other assets (. . .). A real estate excise tax affidavit also lists the taxpayer as the new owner as of December 28, 1982. It states the gross sale price was

Clearly, the evidence indicates that the taxpayer succeeded to the business of the hotel. The taxpayer produced no evidence indicating it gave written notice to the Department of the acquisition or any basis for its position that it should not be

held liable for the tax. The imposition of successorship liability is a constitutionally valid means of collecting taxes which might otherwise be uncollectible and has a valid legislative purpose. Tri-Financial Corporation v. Department of Revenue, 6 Wn.App. 637 (1972). Accordingly, the assessment of successorship liability is upheld. RCW 82.32.140 and WAC 458-20-216.

[2] A retail sales tax is imposed on each retail sale in this state, including successive retail sales of the same property. RCW 82.08.020. The term "retail sale" includes the renting or leasing of tangible personal property to consumers. RCW 82.04.050(4). If a person purchases property, uses it, and then executes a sale/leaseback, the retail sales tax applies to the initial retail purchase and the subsequent lease payments. Pursuant to the above statutes, the two transactions are separate and independent taxable events.

In this case, however, the taxpayer stated the property was purchased by financing from the leasing company and was leased from the beginning. Retail sales tax should have been collected by the leasing company measured by the gross income of the rental payment at the time each rental payment fell due. WAC 458-20-211. If that was done, the assessment in Schedule IV shall be deleted. If not, the taxpayer shall be liable for use tax on the amount of the rental payments.

[3] The taxpayer was given additional time after the hearing to provide evidence regarding the lease payments. It did provide a copy of a letter of commitment to the managing partner of the hotel indicating the equipment at issue was leased (letter of October 30, 1981). No information has been provided showing sales tax was collected or paid on the lease payments, however. The assessment, therefore, is upheld.

The taxpayer may provide evidence regarding the lease payments to the auditor within the statutory time limit imposed by RCW 82.32.060 (four years). It shall be entitled to receive a credit or refund of the amount assessed in Schedule IV, if it produces evidence showing the leasing company collected sales tax. As proof that the retail sales tax was collected, the invoice or other records from the leasing company must show the sales tax separately stated from the rental payments. RCW 82.08.050; WAC 458-20-107.

If no such evidence is provided, the assessment shall be recomputed on the amount of the rental payments rather than the purchase price of the equipment, if the hotel's books show that the equipment was leased from the beginning. Such evidence should also be presented to the auditor and the taxpayer shall receive a credit or refund for any amount it overpaid.

DECISION AND DISPOSITION:

The assessment of successorship liability is upheld. . . .

If the taxpayer is able to document its position that the assessment in Schedule IV of Assessment No. . . . should be cancelled or reduced, such evidence should be presented to the auditor as provided herein.

DATED this 12th day of January 1987.