

Cite as Det. No. 05-0313, 26 WTD 27 (2007)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 05-0313
)	
...)	
)	Registration No. . . .
)	Successorship Liability
)	Docket No. . . .
)	

RULE 216; RCW 82.04.180; RCW 82.32.140: EXCISE TAXES – LIABILITY OF SUCCESSOR. Effective July 1, 2003, the legislature amended the definition of "successor" in RCW 82.04.180 for excise tax purposes to include a person who acquires fifty percent of the fair market value of *either* the tangible assets *or* intangible assets of a business. Hence the taxpayer is the successor of her predecessors, if: (1) they quit, sold out, exchanged, or disposed of their business; (2) they sold or otherwise conveyed, directly or indirectly; (3) in bulk and not in the ordinary course of their businesses; (4) more than fifty percent of the fair market value of either their (i) tangible assets or (ii) intangible assets; (5) to the taxpayer.

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.

De Luca, A.L.J. – A sole proprietor of a . . . service business protests the assessment of successorship liability. We find the taxpayer is a successor and conclude that she is liable for the tax in the outstanding warrants filed against her predecessors.¹

ISSUE

Is the taxpayer a successor to defunct businesses if she acquired more than half of the value of their intangible assets, but did not acquire them through insolvency proceedings or regular legal proceedings to enforce a lien, security interest, or judgment?

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

FINDINGS OF FACT

The taxpayer is a sole proprietor of a . . . service business in Washington. The Compliance Division of the Department of Revenue (DOR) issued to her . . . two notices of assessment of successorship liability for tax liabilities incurred by [Previous Sole Proprietor] and [Corporation] (the predecessors.) The taxpayer timely filed an appeal protesting the assessments by claiming that she is not a successor to those businesses.

[Previous Sole Proprietor] operated a . . . service business in [Washington] as a sole proprietor from . . . 1990 until he closed it [in] 2000. During that time [Previous Sole Proprietor] failed to pay his excise taxes for eight quarterly reporting periods. . . . The Compliance Division issued a tax warrant [in] 2000 [Previous Sole Proprietor] has made a partial payment towards the penalties and interest

[In] 2000 [Previous Sole Proprietor] incorporated his business into [Corporation]. The corporation failed to pay its excise taxes for five reporting periods. . . . The Compliance Division issued a tax warrant . . . against the corporation for those unpaid taxes [in] 2002 [Previous Sole Proprietor] has made a partial payment towards the penalties and interest

[In] 2002, the Compliance Division issued an assessment of successorship liability against the corporation for the tax liability incurred by [the Previous Sole Proprietor]. The corporation neither paid the tax nor appealed the assessment. Consequently, the Compliance Division amended the tax warrant filed against [Previous Sole Proprietor] to include the [Corporation].

[Previous Sole Proprietor's] corporation operated until . . . 2003 when the Compliance Division revoked the certificates of registration of the corporation and that of [the Previous Sole Proprietor] because of their failure to pay their tax obligations.

[In] 2003 the Compliance Division issued a tax warrant . . . against the corporation for its failure to pay excise taxes for three more reporting periods. . . . The warrant remains unpaid.

As noted, the Compliance Division [in] 2004 issued to the taxpayer two assessments of successorship liability. . . . Both successorship assessment notices state that amounts in them represent the tax due contained in the warrants, excluding penalties and interest. But our discussion with the Revenue Agent who issued them confirmed that the amounts due in the successorship assessment notices actually exceed the amounts of the taxes due. . . . The Revenue Agent agrees that the amounts in the successorship assessments need to be adjusted to reflect only the tax due. . . .

The taxpayer opened her business [in] 2003 by registering with DOR. The Compliance Division determined the taxpayer was a successor to the [Previous Sole Proprietor] and [Corporation] because it found she operates the same business as the predecessors. Specifically, she has used their customer list. She uses "[Previous sole proprietor's name] . . . Service" as her Corporation and listed that name as her trade name on her business license application. She has the same

business address and business telephone number/answering service as the predecessors. But on her business application she did not disclose the prior business and owner's name and answered "no" to the application's question whether she bought, acquired, or leased anything from the prior owner. And she did not notify DOR in writing that she was acquiring the predecessors' businesses. She later admitted in her petition that she leased some of [Previous Sole Proprietor's] equipment in exchange for rent and storage fees. She continues to deny having purchased [Previous Sole Proprietor's] businesses or any of his equipment. We note she did not acquire the intangible assets of [the Previous Sole Proprietor] and his corporation either through insolvency proceedings or regular legal proceedings to enforce a lien, security interest, or judgment. She added that she and [Previous Sole Proprietor] are roommates and he now works for her business.

ANALYSIS

The taxpayer contends that she is not a successor to [Previous Sole Proprietor] or his corporation. She states she did not purchase their businesses or tangible assets. And she asserts that any tax obligations incurred by [Previous Sole Proprietor] and his corporation were his and his former wife's responsibilities and not the taxpayer's.

Successorship liability is imposed by RCW 82.32.140:

- (1) Whenever any taxpayer quits business, or sells out, exchanges, or otherwise disposes of more than fifty percent of the fair market value of either its tangible or intangible assets, 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.
- (2) . . . If any 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.

Accordingly a successor is liable for a predecessor's tax obligations, but not the interest or penalties owed by the predecessor. Det. No. 88-171, 5 WTD 277 (1988), Det. No. 99-278, 20 WTD 15 (2000).

Prior to July 1, 2003, the definition of "successor" in RCW 82.04.180 included only persons who acquired a major part of the "materials, supplies, merchandise, inventory, fixtures, or equipment of a taxpayer." The definition did not address the acquisition of intangible assets. Intangible assets were not considered. Therefore, a person could acquire the Corporation, customer lists, contract rights, licenses, money, and other intangible assets that constituted the major value of a business and not be a "successor," unless the person also bought a major part of the physical assets of the business. Laws of Washington, 2003 1st Sp. Sess. Ch. 13, however, amended the definition of "successor" for excise tax purposes to include a person who acquires fifty percent of

the fair market value of *either* the tangible assets *or* intangible assets of a business.² As noted, the taxpayer began her business [in] 2003, which was after the effective date of the statutory amendment.

RCW 82.04.180, as amended, defines "successor," in part, as:

(a) 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, more than fifty percent of the fair market value of either the (i) tangible assets or (ii) intangible assets of the taxpayer

Here, the taxpayer is the successor of the corporation and [Previous Sole Proprietor], if: (1) they quit, sold out, exchanged, or disposed of their business; (2) they sold or otherwise conveyed, directly or indirectly; (3) in bulk and not in the ordinary course of their businesses; (4) more than fifty percent of the fair market value of either their (i) tangible assets or (ii) intangible assets; (5) to the taxpayer.

There is no dispute that the corporation and [Previous Sole Proprietor] quit or disposed of their businesses no later than . . . 2003 when DOR revoked their certificates of registration. They also conveyed directly or indirectly in bulk and not in the ordinary course of their businesses more than fifty percent of the intangible assets of their businesses to the taxpayer. Specifically, the taxpayer acquired the predecessors' business/trade name, business address, business telephone number/answering service, customer lists, and goodwill. Conveying such assets was not in the ordinary course of the predecessors' . . . service business. Furthermore, the acquisition of property subjecting a taxpayer to successorship liability does not have to be by virtue of a direct conveyance or sale by a predecessor. Det. No. 86-304, 2 WTD 053 (1986).

In sum, we conclude that the taxpayer is a successor to the businesses of [Previous Sole Proprietor] and [Corporation] and is liable for the taxes assessed against them. But . . . the successorship assessments against the taxpayer need to be reduced to the amounts of the unpaid taxes The file will be remanded to the Compliance Division to issue amended successorship assessments consistent with this conclusion.

DECISION AND DISPOSITION

Taxpayer's petition is granted in part, and denied in part. The file is remanded to the Compliance Division to issue an amended assessment consistent with this Determination.

Dated this 6th day of December 2005.

² WAC 458-20-216, the administrative regulation addressing successorship liability, has not yet been revised to reflect the 2003 statutory changes. Hence, we restrict our analysis to the controlling statutes.