

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. 88-171
)	
)	Registration No. . . .
. . .)	
)	
)	

- [1] **RULE 216, RCW 82.04.180 AND RCW 82.32.140:**
SUCCESSORSHIP -- TRANSFEREE -- AFFILIATE -- SUCCESSOR --
WHAT CONSTITUTES. A taxpayer that liquidates its
business and transfers its assets to an affiliate company
creates successorship liability in the affiliate
business.
- [2] **RULE 216:** RCW 82.32.140 -- SUCCESSORSHIP -- LIABILITY.
A successor is liable for the full amount of the previous
owner's tax liability. A successor is not liable for the
interest and/or penalties associated with the previous
owner's tax liability.
- [3] **RULE 216:** SUCCESSORSHIP -- NOTICE. A successor is not
liable for the interest assessed in an audit of the
business records of the previous owner. The successor is
liable only for the tax assessed in the audit report. A
taxpayer can raise its successorship status for the first
time upon appeal, thereby exempting itself from any
interest and/or penalties imposed against the previous
owner.

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.

NATURE OF ACTION:

The taxpayer protests the assessment of interest in an audit
assessment. The taxpayer claims that it is a "successor" to a
previous business and, consequently, not liable for the payment of
interest on a tax assessment.

FACTS AND ISSUES:

Mastrodonato, A.L.J. -- [A] was (see below) an Oregon Corporation making sales of computer hardware and software to customers in Washington. [A]'s business primarily consisted of selling "canned" software to law firms.

The Department of Revenue audited [A]'s business records for the period from January 1, 1984, through December 31, 1986. As a result of this audit, the Department issued Tax Assessment No. . . . on December 29, 1987, in the amount of \$ The assessment consisted of \$. . . in tax liability and \$. . . in interest. [A] made a partial payment of \$. . . (the amount of the tax due) on January 7, 1988; it withheld payment of the interest (\$. . .) assessed in the audit report.

In a letter dated January 7, 1988, Mr. . . . , Staff Accountant for [B], explained that [A] was liquidated on December 31, 1986, and all of [A]'s assets were transferred to [B] on that same day. Consequently, Mr. . . . argues that [B] is a "successor," under the express terms of the Department of Revenue's administrative rule WAC 458-20-216 (Rule 216), to [A]. As a "successor," [B] does not believe that it is liable for the interest portion of the assessment since Rule 216 does not make a successor liable for the interest of a taxpayer quitting business.

Therefore, [B] has appealed the portion of the assessment relating to interest. This Determination responds to [B]'s appeal.

DISCUSSION:

[1] Under the Washington Revenue Act (Title 82 RCW) a "successor" is defined by RCW 82.04.180 to mean

. . . 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. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

RCW 82.32.140 addresses the tax liability of a Washington taxpayer quitting business, and also the liability of a "successor." The statute states, in part, as follows:

Whenever any taxpayer quits business, or sells out, exchanges, or otherwise disposes of his business or his

stock of goods, any tax payable [under the Revenue Act] shall become immediately due and payable, . . .

RCW 82.32.140 goes on to state, with respect to the liability of a successor, as follows:

. . . [A]ny person who becomes a successor shall become liable for the full amount of the tax . . . 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 . . . (Emphasis supplied.)

As previously stated, the successorship statutes are implemented by Rule 216. The rule summarizes the provisions of the statutes, by stating in pertinent part as follows:

Whenever any taxpayer quits business, 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. Any person who becomes a successor to such business 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. If the tax is not paid by the taxpayer within ten days from the date of sale, exchange or disposal, the purchaser or successor shall become liable for the payment of the full amount of tax. The payment thereof by the purchaser or successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due the purchaser or successor from the taxpayer.

A successor shall not 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 such acquisition and no assessment is issued by the department within six months of receipt of such notice against the former operators of the business and a copy thereof mailed to such successors.

The word "successor" means any person who shall, through direct or mesne conveyance, purchase or succeed to the business, or portion thereof, or the whole or any part of the stock of goods, wares, merchandise or fixtures or any interest therein of a taxpayer quitting, selling out,

exchanging or otherwise disposing of his business. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

The word "successor" includes all persons who acquire the taxpayer's equipment or merchandise in bulk, whether they operate the business or not, unless the property is acquired through insolvency proceedings or regular legal proceedings to enforce a lien, security interest, judgment, or repossession under a security agreement. (Emphasis supplied.)

In this case, the taxpayer, [A], liquidated its business and all of the company's assets were transferred to an affiliate corporation, [B]. Under the express terms of RCW 82.04.180 and Rule 216, [B] is a "successor" to [A] under the excise tax laws of Washington State. The only question is whether [B], as a "successor," is liable for [A]'s tax and interest liability or only the tax liability incurred by [A]. We believe that [B] has correctly determined that, under the state tax successorship laws, it is only liable for the unpaid tax liability.

[2] RCW 82.32.140 states that any person who becomes a "successor" to a taxpayer that is quitting business, is liable for the full amount of the previous owner's tax. The law does not state that the "successor" is also liable for the interest and/or penalties of a taxpayer quitting business (see, for example, RCW 82.32.050 which addresses deficient and delinquent tax payments, penalties, and interest); it provides only that the successor is liable for the tax of the taxpayer quitting business. Thus, while [A] can be held liable for tax, penalties, and interest (again, see RCW 82.32.050; see also RCW 83.32.080 and RCW 82.32.090), it is clear that RCW 82.32.140 imposes liability for the tax only on the successor ([B]). Consequently, a successor cannot be held liable for interest or penalties assessed against a taxpayer quitting business, but only the tax liability of that taxpayer.

Furthermore, the express mention of one thing in a statute excludes others not mentioned. Dominick v. Christensen, 87 Wn.2d 25, 548 P.2d 959 (1976); Swanson v. White, 83 Wn.2d 175, 517 P.2d 959 (1973). Words in a statute will be given their ordinary meaning, absent a statutory definition. Garrison v. State Nursing Bd., 87 Wn.2d 195, 550 P.2d 7 (1976). Thus, the express mention of only the word "tax," indicates that penalties and interest are not included. See Simpson v. State, 26 Wn.App. 687, 615 P.2d 1297 (1980).

[3] One additional point is in order. The Department has always recognized that it is precluded from assessing interest and/or penalties against successors. In fact, as a matter of routine

practice and procedure, the Department does not attempt to hold a successor liable for any penalties and/or interest liability of a taxpayer quitting business.

However, this case presented a unique set of facts. [A] was audited by the Department after it liquidated its business and merged or consolidated with [B]. There is no evidence that either [A] or [B] notified the Department of this transaction, nor has the Department ever formally notified [B] of its successorship liability.

Nevertheless, the "successorship" status of [B] arose by operation of law and it is clear from the facts that [B] voluntarily assumed successorship liability. There is nothing to preclude [B] from raising the issue for the first time on appeal, thereby exempting itself from the interest assessed against the previous owner, [A]. Consequently, [B] is entitled to be treated as a "successor," notwithstanding the fact that it was never formally notified by the Department of Revenue that it was, in fact, a "successor" under Washington law.

DECISION AND DISPOSITION:

The petition for correction of assessment submitted by [B] is hereby sustained. The balance due on Tax Assessment No. . . . , consisting of \$. . . in interest, is cancelled.

DATED this 31st day of March 1988.