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

In the Matter of the Petition For Cancellation of Successorship Liability of	)	D E T E R M I N A T I O N
	)	No. 88-399
	)	Registration No. . . .
. . .	)	
As Successor to:	)	
. . .	)	Registration No. . . .
	)	Tax Warrant Nos. . . .

RULE 216: SUCCESSOR LIABILITY: Landlord is a successor where he takes bill of sale, partly in satisfaction of past-due rent, for all equipment of tenant who has quit business several months prior to the sale and where tenant is now disposing of the assets of the business, even though the landlord does not step in to operate a similar business or to continue tenant's business. However, liability will be limited to the value of the property acquired by the successor.

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 21, 1986

NATURE OF ACTION:

The taxpayer petitions for cancellation of a notice of successorship liability, in which he is assessed taxes as a "successor" to the business of his former lessee.

FACTS:

Johnson, A.L.J. (successor to Chandler, A.L.J.)--The facts can be most easily understood by reciting them in chronological order:

1. Sometime before 1966, the taxpayer bought a wood-framed building which had been used as a service station and as a coal mine office. Tenants of his converted it to what he calls "an unpretentious" cafe.

2. A number of different cafe operations followed. The last one began in 1982. The owner of that business is a key player in this case. Hereafter, she will be known as "the operator."

3. The operator ran the cafe until May of 1985, when she, in the words of the taxpayer, "closed the doors." During her tenancy, states the taxpayer, "the building deteriorated, as did her credit standing." When she quit the business, she owed $14,257.42 in state taxes. She also owed the taxpayer/lessor $7,200 in back rent.

4. At the time of, or shortly after, closing down the business, the operator sold her restaurant inventory, i.e., her stock of goods, to a third party for $300. The third party presumably used the goods in his own unrelated restaurant business.

5. After selling the stock of goods, the operator, at least in theory, had these assets to sell: her good will, business name, leasehold rights (if any), accounts receivable (if any), and the cafe equipment and fixtures. The equipment and fixtures will hereafter be referred to as the "equipment."

6. On July 31, 1985, the operator's business account with the Department of Revenue was closed by the Department.

7. In what the taxpayer refreshingly admits was "not his smartest move," on September 12, 1985, more than three months after the operator quit her business, he bought her equipment for $10,600 as evidenced by a bill of sale.

The purchase price was broken down into two parts: $7,200 was for cancellation of the back rent, and the other $3,400 was paid in cash.

The taxpayer bought only the specified equipment. He did not buy the stock of goods, good will, business name, or any other business asset.

8. On October 21, 1985, the Department issued the Notice of Successorship Liability. At that time, the operator owed $14,257.62 in back taxes. All was assessed to the taxpayer.

9. On March 28, 1986, the taxpayer, no doubt in a fit of pique, offered to give the equipment to the state. The Department declined the offer.

10. The taxpayer has remodeled the building, with the intention of leasing it to another cafe operator. (As of August, 1986, it had not reopened.) During the remodel, the taxpayer learned, to his dismay, that all of the equipment (the purchase of which is claimed by the Department to have given rise to successorship liability) was unusable, as it was not up to code. The King County Department of Public Health has provided written verification of this.

The result of all of the above is that the taxpayer:

a. Cancelled the back rent of $7,200;

b. Paid cash of $3,400 to the operator; and

c. If the successorship assessment is upheld, will be liable for over $14,000 of the operator's taxes.

DISCUSSION:

RCW 82.32.140 imposes taxes on a successor of a business. In pertinent part, it reads 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 hereunder shall become immediately due and payable . . . and any person who becomes a successor shall become liable for the full amount of the tax . . . . (Emphasis supplied.)

The word "successor" is defined in RCW 82.04.180. The present version of that statute became effective on July 28, 1985, which was prior to the equipment purchase by the taxpayer. It states as follows:

> "Successor" means 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 . . . (Emphasis supplied.)

As it applies to this case, a "successor" is one who:

1. buys or otherwise has conveyed to him,

2. a major part of the equipment,

3. of a person quitting, selling out, or disposing of a business. (Emphasis supplied.)

The taxpayer did buy a major part of the equipment. Thus, elements 1 and 2 are present. In addition, element 3 is satisfied, because the operator disposed of the equipment of the business when the sale was made in September. Although the business had already been closed for over three months, the operator had not, previously, disposed of it.

WAC 458-20-216 (Rule 216) is the administrative rule designed to implement the successorship statute, and it has the full force and effect of law. RCW 82.32.300. RCW 82.04.180 and Rule 216 are clear and unambiguous in their provisions about what acts will result in successorship status and liability. The Department has previously stated that

> [a]lthough the result may appear onerous, it is so because the legislature settled upon heavily burdensome measures to prevent persons from avoiding tax liabilities simply by going out of business. Those who purchase from such persons or otherwise acquire their properties must beware, because in such cases the state must protect its interests, and thus the interests of its citizens, to assure full and uniform payment of the taxes owed.

Rule 216 (5)(c), cited by the taxpayer, does not apply in this case. That section only applies in cases where the landlord retakes possession of any empty building or space and proceeds, either personally or by leasing to a third party, to operate a like business in that location. Such is not the case here.

Rule 216 (5)(a) clearly states that

> [i]f the landlord, instead of foreclosing his lien, takes a bill of sale to all of the taxpayer's [operator's] interest in the business or stock of goods in satisfaction of rent, he is a successor. (Brackets supplied.)

Taxpayer took a bill of sale for equipment, which, at the time, he and the operator valued at $10,600. At the time of the sale, the parties apparently felt that this selling price was a fair representation of the goods' value. That the buyer of the goods later found their value to be less than the selling price is, unfortunately, a risk in any transaction and cannot be a factor in determining successorship status. Additionally, that the seller accepted, as partial consideration, a cancellation of back rent does not alter the stated value for which the contract was made.

However, Rule 216 (8), which applies to successors in contractors' cases, states that a bonding company is liable only to the extent

of the contractor's liability on that particular contract. If the bonding company is a "successor" but is only liable for the unpaid tax pertaining to one contract defaulted, why is a landlord, who acquires only a small remaining stock of goods, liable for the unpaid taxes of the predecessor which may pertain to years of unrelated business activity. In this case, we believe that fairness and the language contained in section (8) dictate that application in this case should be consistent: taxpayer should be a successor to the operator's tax liability only for an amount equalling the selling price of the equipment. Public policy, the spirit and intent of successorship statutes in para materia, and uniform and consistent tax administration dictate this result.

This manner of administering the taxing statutes and Rule 216, under the unique factual circumstances of this case, neither endangers the interests or the right of the state to collect taxes owed nor should it be taken as precedential for all such cases. Clearly the balancing of rights and interests in such cases must be done based upon the applicable rule provisions as applied to the peculiar facts of each case. The state's right to collect taxes is left intact, as is its authority, granted by the legislature, to impose successorship status in this case. However, this landlord is not being accorded treatment differing from that which a bonding company would receive under similar circumstances. As to valuation in this case, as stated previously, we are satisfied that, at the time of contracting, taxpayer and the operator agreed that $10,600 was a fair representation of the equipment's value. As a result, taxpayer shall be liable as a successor up to this amount.

DECISION AND DISPOSITION:

Taxpayer's petition is denied in part and granted in part.

DATED this 27th day of October 1988.