

Cite as Det. No. 01-170, 21 WTD 254 (2002)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Notice of Successorship of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 01-170
	)	
...	)	Registration No. ...
	)	
	)	Notice of Successorship Liability
	)	As Successor To
	)	...
	)	Registration No. ...
	)	Warrant Nos. ... & ...
	)	Docket No. ...

RULE 100; RCW 82.32.160: PETITION FOR CORRECTION OF ASSESSMENT – REQUIREMENT FOR TIMELY WRITTEN FILING. Taxpayers must file a written petition for correction of a tax assessment, and they must file the petition within 30 days after issuance of the tax assessment, or within the period covered by any extension given by the Department of Revenue. Any tax assessment for which a written petition for correction is not timely filed shall become final.

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:

An individual appeals a notice of successorship liability, claiming that his appeal was timely and that he is not a successor because he repossessed the property in question.<sup>1</sup>

FACTS:

Gray, A.L.J -- [Motel owner] owned a motel and restaurant in . . . , Washington. He operated the motel and leased the restaurant to [lessee] (“the [lessee] lease”).<sup>2</sup> [Motel owner] and . . .

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

[LLC] signed a purchase and sale agreement on April 7, 1999 for the . . . Motel and Restaurant. The documents submitted by . . . (the taxpayer) identify the taxpayer as . . . [LLC]'s managing member.<sup>3</sup> On August 13, 1999, [Motel owner] assigned the [lessee] lease to . . . [LLC].<sup>4</sup> [Taxpayer] is the taxpayer in this appeal because the Compliance Division issued the notice of successorship liability to him, not . . . [LLC].

There is a factual dispute whether the taxpayer bought the restaurant inventory and fixtures from [lessee], or whether he took possession of abandoned property. The Compliance Division contends that [lessee] twice told a Revenue Agent that the taxpayer bought the equipment and inventory but had not paid her.<sup>5</sup> We do not have copies of any documents evidencing a transaction between [lessee] and the taxpayer. The taxpayer contends that [lessee] abandoned the restaurant and that he took possession of the restaurant in his capacity as the owner of the . . . Motel and Restaurant that he purchased from [Motel owner]. The [lessee] lease, §11.2, defines “default or breach” to include abandonment of the premises.<sup>6</sup>

The Compliance Division determined that the taxpayer was a successor to [lessee] and issued a notice of successorship liability (notice) to the taxpayer on December 29, 1999.<sup>7</sup> The taxpayer did not appeal the notice until August 11, 2000.<sup>8</sup> The taxpayer argues that its attorney had telephone conversations with the Revenue Agent within the time period for the appeal, and that the Revenue Agent told him an appeal would not be necessary. The taxpayer argues the Department is estopped from denying the petition was timely filed.

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<sup>2</sup> The lease between [Motel owner] and [lessee] is dated March 5, 1998.

<sup>3</sup> The documents do not include the actual purchase [and] sale agreement of April 7, 1999. They consist of the August 13, 1999 Assignment of Leases, Contracts, Records & Permits, a Bill of Sale dated August 13, 1999 signed by the seller, a copy of the [lessee] lease, and exhibits to a security agreement. The taxpayer did not provide a copy of the security agreement itself.

<sup>4</sup> In the correspondence and briefs submitted by taxpayer's counsel, and in correspondence from the Compliance Division, the taxpayer is identified as the purchaser of the . . . Motel and Restaurant, not . . . LLC. The documents, however, show the buyer to be . . . LLC.

<sup>5</sup> The Washington Rules of Evidence do not apply in informal hearings. Even in a hearing under the Administrative Procedure Act, hearsay is admissible if “it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.” RCW 34.05.452(1).

<sup>6</sup> “If Lessee abandons the premises. For these purposes, the absence of Lessee from or the failure by Lessee to conduct business on the premises for a period of in excess of seven (7) consecutive days shall constitute abandonment.”

<sup>7</sup> On or about December 16, 1999, the taxpayer submitted a Master Application to operate the . . . Motel Restaurant as a sole proprietorship. He received a registration number of . . . . However, on February 10, 2000, the Department concluded that the taxpayer had earlier registered with the Department as a sole proprietor to operate the . . . Motel and Restaurant, and closed the . . . account.

<sup>8</sup> The taxpayer's lawyer sent a letter, dated March 6, 2000 to the Compliance Division in . . . , Washington. The letter asked for the cancellation of the tax assessment. It was not, however, an appeal directed to the Appeals Division under Rule 100.

## ISSUES:

1. Whether the taxpayer filed an appeal timely approximately 8 months after receiving the notice of successorship liability; and
2. If the appeal is timely, whether the taxpayer is a successor as defined in RCW 82.04.180?

## DISCUSSION:

RCW 82.32.160 establishes a 30-day period in which any person may petition for correction of a tax assessment issued by the Department. WAC 458-20-100 (Rule 100) contains the requirements for timely filing a petition for correction of assessment. The December 29, 1999 assessment of successorship liability included a copy of Rule 100 at the time the Compliance Division sent the assessment to the taxpayer. The conversations that form the taxpayer's estoppel argument were between the taxpayer's attorney and the Revenue Agent. Even if we assume that everything the taxpayer says is true and that the Revenue Agent said an appeal is unnecessary, we also find that the tax assessment itself referred expressly to Rule 100 and included a copy of Rule 100. Rule 100(2) repeats the 30-day appeal period found in RCW 82.32.100. RCW 82.32.160 declares that the assessment becomes final if no appeal is filed within the 30-day period.

The taxpayer's allegation that a Department employee stated that a written appeal is unnecessary to preserve the attorney's client's rights is unfounded. The taxpayer argues estoppel based on claimed oral statements from a Department employee. We have often held that oral comments from Department employees do not estop the Department. For example, in Det. No. 94-047, 14 WTD 210 (1994), we said:

The Department of Revenue has taken the position that oral instructions alone do not provide the quantum of proof necessary to sustain an estoppel claim. It set forth its reasons in Excise Tax Bulletin 419.32.99 (ETB 419), as follows:

- (1) There is no record of the facts which might have been presented to the agent for his consideration.
- (2) There is no record of instructions or information imparted by the agent, which may have been erroneous or incomplete.
- (3) There is no evidence that such instructions were completely understood or followed by the taxpayer.

This position has consistently been upheld by the Board of Tax Appeals. Professional Promotion Services, Inc. v. Department of Revenue, BTA Docket No. 36912, 9 WTD 219 (1990); see also, Det. No. 92-004, 11 WTD 551 (1992) and the determinations cited therein.

Even if we were to agree with the taxpayer that the Revenue Agent made such a statement (denied by the Revenue Agent), the taxpayer also failed to cite any legal authority that estoppel cures a failure to file a timely appeal. The defect is jurisdictional. The Compliance Division

issued the notice of successorship liability on December 29, 1999. The appeal of that notice of successorship liability is postmarked August 11, 2000. We conclude that the appeal is untimely. The assessment of successorship liability became final on January 28, 2000.

Because we have found that the appeal was untimely filed, we have no jurisdiction to resolve the second, substantive, issue of whether the taxpayer is a successor.

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 13<sup>th</sup> day of November 2001.