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BEFORE THE DIRECTOR
OF THE DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of Successorship Liability of	)	FINAL DETERMINATION
	)	No. 85-215A
. . . [Taxpayer]	)	Registration No. . . .
As Sucessor to:	)	
. . .	)	
As Successor to:	)	
. . .	)	Registration No. . . .
	)	Tax Warrant No. . . .

[1] RULE 216 - MISC - RCW 82.04.180 - RCW 82.32.140 - SUCCESSORSHIP - DEFACTO CORPORATION AS PREDECESSOR - SUCCEEDING TO TAX LIABILITY
Purchasing a business from a corporation which has not registered with the Secretary of State does not defeat one's successorship liability if the taxpayer had knowledge that he was dealing with a corporation, defacto or otherwise. The taxpayer is estopped from asserting lack of capacity. American Radiator Co. v. Kinnear, 56 Wn. 210, 105 P. 630 (1909).

[2] RULE 216 - MISC - RCW 82.04.180 - RCW 82.32.140 - SUCCESSORSHIP - DEFINITION - OVERLY BROAD
The definition of successorship is not overly broad. It is a rational means of collecting taxes which might otherwise be uncollectible. Tri-Financial v. Dept. of Rev., 6 Wn. App. 637, 495 P.2d 690 (1972).

These 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 was served with a Notice of Successorship Liability dated June 12, 1985, Notice and Order to

Withhold and Deliver dated June 12, 1985 and Notice of Use Tax Due dated July 2, 1985. The taxpayer's petition was considered and a determination was issued on September 17, 1985 upholding the assessment. The taxpayer appeals that decision.

FACTS AND ISSUES:

GARRY G. FUJITA, CHIEF - This petition involves the application of the successorship provisions under RCW 82.04.180 and 82.32.140 as well as the withhold and deliver provisions of RCW 82.32.235. In order to fully understand the relationship of these provisions and as explained in rule 216 (WAC 458-20-216), it is also necessary to understand the sequence of events predating the above notices.

The AC partnership operated a restraurant and cafe from approximately April 1, 1982 through October 31, 1984. It then sold the business to the R. Corp. (hereinafter referred to as "corporation") who operated it from November 1, 1982 through March 31, 1985.

On April 9, 1985, the business was sold to the taxpayer pursuant to a purchase and sale agreement. In the agreement, the seller is specifically identified as the corporation and the buyer as the taxpayer. The corporation apparently had not been duly formed under the laws of this state.

EXCEPTIONS:

The taxpayer argues that tax was paid on the transaction between the taxpayer and the seller. We gather from that argument that the taxpayer believes that no further taxes should be assessed against him.

Also, the taxpayer argues that the "true" seller was someone other than the corporation or its shareholders. The gravamen of the taxpayer's argument is that since the corporation was not in existence at the time of the transaction, it could not be the seller of the business; thus, the taxpayer concludes that if the taxpayer is a successor, the taxpayer is a successor to the AC partnership and not the corporation.

The taxpayer lastly argues that the definition of a "successor" is overly broad.

ISSUES:

ISSUE ONE: Does the failure to incorporate a business mean that the corporation's transactions are to be ignored?

ISSUE TWO: Is the definition of a "successor" overly broad?

DISCUSSION:

The taxpayer does not take issue in the petition for review with the mechanical operation of the successorship statutes, but rather, the taxpayer argues that the facts distinguish this case from the situation intended by the legislature. First argued by the taxpayer is a technical matter as to who can transfer property and therefore be a person from whom the taxpayer can become a successor. Second, it is argued on an interpretative matter as to the breadth of the statute.

ISSUE ONE: Does the failure to incorporate a business mean that the corporation's transactions are to be ignored?

CONCLUSION: Whether the predecessor corporation was duly formed under the laws of the State of Washington does not impact transactions entered into between the corporation and the taxpayer if the taxpayer knew that the dealings were with a corporation, defacto or otherwise.

An argument of which is capable of rapid disposition is the issue regarding the taxpayer's payment of the excise tax on the transaction with the allegedly defunct corporation. It does not matter whether the taxpayer paid excise tax on the transaction he had with the corporation, because it is not this tax that is in issue. The issue in this case is the past outstanding tax liability of the corporation which the department is arguing became the tax liability of this taxpayer as the successor of the predecessor. Thus, we rule that such a payment, without ruling that it has been made, is not relevant for purposes of resolving the successorship issue.

[1] The taxpayer further contends that since the corporation never formally filed with the Secretary of State, the taxpayer could not have purchased the property from it as it lacked legal capacity. The taxpayer does not cite any case law to support this conclusion and our legal research would conclude that the failure to file is of little moment under circumstances such as these.

Where a person knowingly deals with a corporation, that person is estopped from asserting that corporation's lack of capacity. In American Radiator Co. v. Kinnear, 56 W. 210, 105 P. 630 (1909), the court cited to Whitney v. Wyman, 101 U.S. 392 which involved a contract that was entered into before the articles of association were filed, in violation of a statute. That case is quoted therefrom as follows:

> The corporation having assumed by entering into the contract with the plaintiff to have the requisite power, the parties are estopped to deny it.... The restriction imposed by the statute is a simple inhibition. It did not declare that what was done should be void, nor was any penalty prescribed. No one but the state could object. The contract is valid as to the plaintiff, and he has no right to raise the question of its invalidity.

Succinctly put, if the corporation lacked capacity, the corporation could not assert the doctrine of ultra vires except in limited circumstances not pertinent here. See RCW 23A.08.040. If the corporation lacked capacity, the party dealing with the corporation is estopped from asserting a lack of capacity if the party knew that it was dealing with a defacto corporation.

In this case, the taxpayer acknowledges that the agreement recited the seller as a corporation to establish the chain of title. Thus, taxpayer knew he was dealing with a corporation, or at least a defacto corporation, and he can not now be heard to disregard it. The laws of this state simply do not allow the taxpayer to do so. On this issue, we hold that the fact that the corporation failed to properly register with the Secretary of State is of little value to the taxpayer in determining whether the taxpayer is a successor under the law.

ISSUE TWO: Is the definition of a "successor" overly broad?

CONCLUSION: The successorship statute is not overly broad. It provides the state the same protection that other creditors of a business might be similarly afforded and it provides the taxpayer with the proper ability to limit exposure for another taxpayer's delinquent taxes.

The taxpayer argues that the definition of a successor is overly broad, but he does not present any arguments as to what the minimum or maximum level of inclusion should be. We are not aware of any cases would cause the successorship statutes to be invalidated.

[2] The statement of RCW 82.04.180 with respect to successors is clear and it does not require our interpretation. Where a statute is plain, unambiguous and clear on its face, there is no room for construction. State v. Gough, 2 Wn. App. 733, 469 P.2d 468 (1970). The definition of successorship is not read narrowly. Tri-Financial Corp. v. Dept. of Rev., 6 Wn. App. 637, 495 P.2d 690 (1972).

The fact that this method of collecting taxes may seem onerous to the taxpayer in this case is not a criteria that we can consider under the language of the statute. These successorship provisions are designed to insure the collectibility of taxes remaining unpaid by a taxpayer who quits business. There is nothing constitutionally infirm about this chosen method. Tri-Financial Corp. v. Dept. of Rev., supra.

In order for the state to protect itself from dealings that could, on the part of the seller, defraud the state from revenues, the legislature requires the taxpayer, who purchased a business from a delinquent taxpayer (corporation), to assure the state that the money paid for that business would first be used to satisfy the seller's delinquent tax obligations. The legislature also provided this taxpayer a protection from this corporation's unwelcome tax liability; this protection was available by giving written notice to the Department. See RCW 82.32.140. While this may seem to be an onerous burden in the world of commercial dealings, such responsibilities for another party's debt is rational and based upon reason and therefore, is acceptable.

In the case at hand, the taxpayer purchased a business. As indicated in the original Determination, this taxpayer meets all of the necessary criteria to be a successor under the statute. The petition is denied on this issue as well.

Thus, we hold that this provision is not overly broad and is not unique in its way that it protects the state's rights as a creditor of taxpaying businesses.

Tax Warrant No. . . . representing successorship liability is due for payment by . . . Extension interest will be waived from . . . through the new due date.

DATED this 15th day of July 1986.