

Cite as 1 WTD 239 (1986)

BEFORE THE DIRECTOR
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	
For Correction of Assessment of)	<u>F</u> <u>I</u> <u>N</u> <u>A</u> <u>L</u>
<u>N</u>)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u>
)	
)	No. 86-266
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . .
.)	

[1] RULE 203 - MISC - CORPORATIONS - LEGAL ENTITY - SHAREHOLDERS - STANDING - STAY OF COLLECTION. Only the taxpayer who has been issued an assessment has standing to seek a stay of collection; shareholders are not the same person as the corporation.

NATURE OF ACTION:

The taxpayer was issued an assessment for the period beginning on January 1, 1982 through December 31, 1985. The assessment was dated August 7, 1986 and a payment due date was set for September 1, 1986.

FACTS AND ISSUES:

Garry Fujita, Chief--The taxpayer is a corporation whose original owners were . . . Anderson (hereinafter referred to as Stockholder 1) during many of the audit years in issue. The purchasers, . . . (hereinafter referred to as Stockholder 2 or petitioner), bought the controlling stock of the taxpayer in the spring of 1985.

After the sale was consummated, difficulty developed in the sales agreement between Stockholder 1 and Stockholder 2. The result was a lawsuit with complaints and counterclaims filed by both parties. The suit was filed in Pierce County Superior Court on January 23, 1986. The gravamen of the lawsuit is to

put in issue the ownership of the stock of the taxpayer. This matter has been set for trial on March 16, 1987.

During this period of time, the Department audit staff reviewed the taxpayer's books and issued an assessment which is at issue in this case. Neither the taxpayer, Stockholder 1 or Stockholder 2 have protested the assessment. Stockholder 2 who is currently in control and possession of the taxpayer's assets has petitioned the Department for what is essentially a stay of collection pending the litigation. The purpose is to wait to see how the stock ownership question is finally determined.

DISCUSSION:

RCW 82.04.030 is the statutory definition of "person" which upon review, one can easily determine is quite expansive. WAC 458-20-203 (Rule 203) is brief, but does more specifically address the issue of corporate status here involved. As relevant, it says:

Each separately organized corporation is a "person" within the meaning of the law, . . .

Each corporation shall file a separate return and include therein the tax liability accruing to such corporation. . . .

Corporations in this state are afforded the privilege of legal existence. RCW 23A.08.020. It is hornbook law that one of the purposes for recognizing the corporate existence is to afford the stockholders a shield from various types of operating liability.¹ It is not the usual case that a shareholder would willingly give up this protection and therefore, we do not interpret the petitioner's request in that fashion.

The petitioner argues that the ownership of the stock is in question and thus, pursuing collection of the tax is not now

¹ The law will on occasions disregard the corporate entity under legal fictions such as piercing the corporate veil (J. I. Case Credit Corp. v. Stark, 64 Wn. 2d 470 392 P.2d 215 (1964)) or sham transactions (Higgins v. Smith, 308 U.S. 473 (1940)). These principles have no application at this point in time in these proceedings.

ripe. The argument goes that after the matter has gone to trial, all parties including the Department will know whom the stockholders will legally be.

[1] The argument does not follow. The Department has not filed an assessment against the petitioner; it filed the assessment against the corporate taxpayer. The taxpayer and the petitioner are separate entities. The owner of the stock is of little significance unless there was evidence that the Department was attempting to reach the petitioners personally. Unless and until that should occur, there is no basis upon which to order the Department to refrain from further collection efforts. The petitioner singly has no standing.

DECISION AND DISPOSITION:

The petition is denied.

Dated this 10th day of October 1986.