

Cite as Det. No. 03-0066R, 23 WTD 243 (2004)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Correction of	)	<u>F I N A L</u>
Trust Fund Accountability Assessment of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 03-0066R
	)	
...	)	Registration No. . . .
	)	Docket No. . . .
	)	Portion of Tax Assessment No. . . .
	)	TRUST FUND ACCOUNTABILITY
	)	ASSESSMENT
	)	For
	)	Registration No. . . .
	)	. . .
	)	Warrant Nos. . . .

- [1] RULE 100(2); RCW 82.32.160: APPEALS – FAILURE TO FILE – FINALITY. If a petition for correction of an assessment is not filed within thirty days after issuance or within the period covered by any extension, the assessment becomes final, and the Department loses jurisdiction to accept a petition for correction.
- [2] RULE 217; RCW 82.32.145: TRUST FUND ACCOUNTABILITY ASSESSMENT – OFFSET FOR BAD DEBTS NOT ALLOWED. The Department will not allow a bad debt offset against delinquent retail sales tax in a TFAA when the TFAA is for taxes that were included in a notice of balance due issued to the original taxpayer and not timely appealed.
- [3] RULE 217; RCW 82.32.145: TRUST FUND ACCOUNTABILITY ASSESSMENT – WILFUL FAILURE TO PAY. The fact that a person legally responsible for remitting collected retail sales tax to the Department chose not to accept that responsibility and assumed that someone else was properly carrying it out does not preclude a finding that the person willfully failed to pay the tax or cause the tax to be paid.

- [4] RULE 217; RCW 82.32.145: TRUST FUND ACCOUNTABILITY ASSESSMENT – EFFECT ON DEPARTMENT OF RESPONSIBLE PERSONS AGREEING AMONG THEMSELVES WHO WILL BE LIABLE FOR UNREMITTED TAX. A person upon whom the TFAA statute imposes personal liability cannot relieve himself or herself of liability by entering into agreements to which the Department is not a party.

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.

Prusia, A.L.J. – Taxpayer to whom the Department of Revenue (DOR) has allocated a portion of a Trust Fund Accountability Assessment (TFAA) requests reconsideration of *Det. No. 03-0066*, which sustained the assessment against Taxpayer. On reconsideration, Taxpayer asserts three new reasons why the TFAA against him should be canceled: 1) some or all of the retail sales taxes that are included in the assessment were taxes on sales the business financed, which the business never collected because the buyers defaulted; 2) the Taxpayer did not really control the business while he owned it, but relied on others; 3) the prior/subsequent owner agreed, when he bought back the business, to take responsibility for all debts, including taxes. We conclude the first reason asserted is not supported, and the other new reasons asserted for relief provide no basis for relief. We deny the petition for reconsideration.<sup>1</sup>

### ISSUES

1. Is Taxpayer entitled to offset, against the unpaid retail sales taxes, retail sales taxes due on debts that turned out to be bad debts?
2. If Taxpayer relied on others to handle financial matters, does that relieve him of liability for unpaid retail sales tax due from the corporation?
3. If a third party agreed to assume Taxpayer's liability for unpaid retail sales taxes, does that agreement relieve Taxpayer of liability?

### FINDINGS OF FACT

On June 30, 1996, . . . (hereinafter “Taxpayer”) purchased from . . . (hereinafter “seller”) the stock of a corporation called . . . , and from that date until the end of October 1997, Taxpayer owned and was president of the corporation. Taxpayer sold the corporation back to [seller] at the end of October 1997 and resigned as president. At all relevant times, the corporation was engaged in the retail sale and repair of motor vehicles in [Washington].

After Taxpayer purchased the corporation, the corporation was delinquent in reporting and paying taxes for several tax reporting periods. The corporation filed some returns and paid some

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

current and delinquent taxes, but not all, while Taxpayer owned it. When Taxpayer sold the business back to [seller], the corporation was still delinquent in the payment of taxes that had become due while Taxpayer owned it.

The Department of Revenue (DOR) issued balance due notices for the delinquencies that occurred while Taxpayer owned the business. Eventually all outstanding balances were assumed by two tax warrants, which DOR issued against the corporation. DOR issued one warrant while Taxpayer owned the corporation, and one after. The latter warrant included the last two months Taxpayer owned the corporation. . . . .

On July 5, 2000, DOR's Compliance Division issued Trust Fund Accountability Assessment (TFAA) No. . . . against Taxpayer and [seller] for the balances due on the retail sales tax portions of the two warrants. The amount of the TFAA was \$ . . . . In 2002, the Compliance Division divided the TFAA into two portions, allocating to Taxpayer the tax obligations that came due during the period Taxpayer owned the corporation, i.e., the third quarter of 1996 through October 1997, and crediting to Taxpayer payments made while he owned the corporation. A September 25, 2002 letter informed Taxpayer that the balance due on his portion of the TFAA was \$ . . . .

Taxpayer appealed the TFAA, contending he had not been given full credit for the payments made while he owned the corporation, and contending he had not willfully failed to pay the taxes. *Det. No. 03-0066* found against Taxpayer on those issues, and held that Taxpayer was personally liable to DOR for collected and unpaid retail sales taxes, plus interest and penalties on those taxes, as set out in DOR's September 25, 2002 letter to Taxpayer.

Taxpayer seeks reconsideration of *Det. No. 03-0066*, asserting three new bases for cancellation of the TFAA as to him. First, Taxpayer asserts that most of the retail sales taxes that are included in the assessment were taxes on sales that the business financed and never collected, because the buyers defaulted. The business was a used car lot, and self-financed most of the retail sales. On most retail sales, the buyer did not separately pay the retail sales tax at the time of purchase. The tax was part of the amount financed, the business agreeing to accept installment payments of the total financed. The buyers usually paid some amount down, but that often did not even cover the amount of sales tax due. Many of the buyers defaulted, and the business never collected all the retail sales tax due on the sale. It is Taxpayer's understanding that a seller can deduct retail sales tax on a debt that has gone bad. Taxpayer believes most or all of the unpaid retail sales tax that is covered by the TFAA was never collected because the debts went bad. Taxpayer is unable to prove how much of the TFAA corresponds to bad debts, because when he sold the business back to [seller] all business records remained at the business.

Second, Taxpayer asserts that, although he owned the corporation on paper, [seller] and [seller's] girlfriend actually controlled it, and Taxpayer relied on them. Taxpayer states he trusted the girlfriend to keep the finances straight, because she had handled the books before Taxpayer became owner.

Third, Taxpayer asserts that [seller] agreed to take care of all liabilities, including taxes, when he took the business back from Taxpayer. Taxpayer states [seller] paid Taxpayer nothing for the business, other than agreeing to assume all liabilities.

### ANALYSIS

When a corporation has failed to pay retail sales taxes due from the corporation, and has been terminated or abandoned, DOR may hold officers or other responsible persons personally liable for the unpaid sales taxes and interest and penalties on those taxes, and may proceed directly against such persons. The personal liability of such persons is imposed by RCW 82.32.145.

Taxpayer was the owner and president of the corporation during a period when retail sales taxes were due from the corporation and were not paid. Under the above statute, he is personally liable for any unpaid retail sales taxes, and interest and penalties on those taxes, if he willfully failed to pay or to cause to be paid such taxes to DOR. *Det. No. 03-0066* held that he willfully failed to pay the taxes.

Taxpayer now asserts that some or all of the taxes included in the TFAA were not collected in the first place, because the corporation financed the sales and agreed to accept payment of the taxes in installments, and the debts went bad. He argues the TFAA should be canceled or reduced because of the bad debts.

[1], [2] We cannot grant such an offset in a TFAA appeal. The original taxpayer, the business, had an opportunity to contest the amount of taxes assessed when DOR issued the notices of balance due. RCW 82.32.160. It did not appeal. The statutory consequence is that “[i]f no such petition is filed within the thirty-day period the assessment covered by the notice shall become final.” RCW 82.32.160. Generally, once a tax assessment become final, there is no jurisdiction for DOR to accept a petition for correction of the assessment. *See Det. No. 87-39*, 2 WTD 189 (1987) and *Det. No. 86-268*, 1 WTD 245 (1986). The taxpayer can, however, pay the assessment and petition for a refund, and contest its liability for the tax in the refund proceeding.

It might be argued that this general rule should not apply when the challenge to the assessment is that the taxes were never collected because the installment debtors defaulted, since the defaults would have occurred after the taxes came due, and possibly after DOR issued a notice of balance due, and after the appeal deadline. However, this dilemma is one of the taxpayer’s own making; a taxpayer in this dilemma has failed to follow the mandatory procedure for reporting and paying taxes on installment sales. Two Department rules address the installment sale/bad debt situation. WAC 458-20-198 (Rule 198) states that when a seller makes an installment sale of tangible personal property, the seller must report the total selling price in the tax period in which the sale is made, even when the seller arranges to receive payment of the tax in installments. That is, the seller must treat the tax as collected at the time of sale, and remit the tax. A seller who has arranged to receive payment of the retail sales tax in installments, and whose buyer has defaulted, leaving the tax uncollected, is granted the remedy set out in RCW 82.08.037 and WAC 458-20-196 (Rule 196): “A seller is entitled to a credit or refund for sales taxes previously paid on debts, which are deductible as worthless for federal income tax purposes.”

A taxpayer who has followed the required procedure will not be issued a notice of balance due in the first place, nor will anyone associated with the business be issued a TFAA. To apply the general rule regarding finality of assessments to the taxpayer who has failed to properly report and pay retail sales tax, and require the taxpayer to pay the tax and seek refund before he can raise the bad debt issue, is an appropriate procedure.

Even if we could allow a bad debt offset against delinquent retail sales tax in a TFAA assessment, we could not allow Taxpayer an offset in this case. The burden is on taxpayers to prove entitlement to, and the amount of, a credit or refund. *Group Health Co-op. v. Tax Comm'n*, 72 Wn.2d 422, 433 P.2d 201 (1967). To receive an offset, Taxpayer would have to prove the amount he would have been entitled to as a credit or refund had he remitted the tax. Taxpayer has provided no evidence of how much, if any, of the unremitted retail sales tax was uncollected due to bad debts, claiming he has no access to the business records necessary to establish the facts he asserts. Because Taxpayer cannot meet his burden of proof, we could not allow any offset against the retail sales tax reported, even if an offset were permissible in a TFAA appeal.

[3] The second basis for relief asserted on reconsideration, that Taxpayer relied on others to properly handle the company's finances, is addressed in *Det. No. 03-0066*, specifically in the following quotation from *Det. No. 93-114*, 13 WTD 249 (1993):

Perhaps, the officers ("B", "C" and "A") were not as actively engaged in the management of the taxpayer as they should have been. Nonetheless, the officers had the legal responsibility for the management of the corporation, and one of the obligations of a corporate taxpayer is the remittance of collected sales tax to the Department. These officers also had the authority and the responsibility under the by-laws to sign the checks drawn on the corporate checking account. Under their management (with the limitation as noted for "B"), the taxpayer disbursed funds to other creditors but not the sales tax to the Department. We conclude that "A", "B", and "C" "willfully failed" to pay the tax or cause the tax to be paid to the Department.

*See also Bjur v. Department of Rev.*, BTA Docket No. 56659 (2002).

[4] The third basis for relief asserted on reconsideration, that [seller] agreed to take responsibility for back taxes when he bought back the business, is not a basis on which we can relieve Taxpayer of liability on his portion of the TFAA. RCW 82.08.050 imposes personal liability on all officers or other persons having control of collected retail sales tax funds or who are responsible for filing returns. A person upon whom the statute imposes personal liability cannot relieve himself or herself of liability by entering into agreements to which the state is not a party.

**DECISION AND DISPOSITION**

Taxpayer's petition for reconsideration is denied.

Dated this 31st day of December 2003