

Cite as Det. No. 14-0153, 33 WTD 534 (2014)

BEFORE THE APPEALS DIVISION
 DEPARTMENT OF REVENUE
 STATE OF WASHINGTON

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| In the Matter of the Petition for Correction of) | <u>D E T E R M I N A T I O N</u> |
| Assessment of Successorship Liability of) | |
|) | No. 14-0153 |
|) | |
| ...) | Registration No. . . . |
|) | |

[1] RULE 216; RCW 82.32.140, RCW 82.32.180: SUCCESSOR – ASSUMPTION OF DEBT. A person who acquires most of the assets of a business and assumes the business’ debt is a successor, liable for the business’ tax liability.

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.

M. Pree, A.L.J. – A taxpayer appeals a successorship assessment after it assumed the debts of an insolvent company in exchange for most of the company’s assets. Because the taxpayer was a successor of the company, it was liable for the company’s unpaid taxes. We deny the petition.¹

ISSUE

Under RCW 82.32.140 and WAC 458-20-216 (Rule 216), was the taxpayer a successor when it acquired the assets of a company in exchange for assuming the company’s debt?

FINDINGS OF FACT

[The Predecessor] operated retail outlet stores in Washington. The predecessor owed its creditors a substantial amount of money. The Department assessed tax against the predecessor. When the predecessor did not pay the assessment, on July 25, 2013, the Department’s Compliance Division issued a warrant ([A]) against the predecessor. That warrant totaled \$. . . , and specified that the tax due was \$. . . plus a delinquent penalty of \$. . . , a warrant penalty of \$. . . , audit interest of \$. . . , additional interest of \$. . . , and an additional penalty of \$ On August 27, 2013, the Compliance Division issued a second warrant ([B]) against the predecessor, which totaled \$ That warrant consisted of \$. . . in tax, plus a delinquent penalty of \$. . . , a

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

warrant penalty of \$. . . , audit interest of \$. . . , and additional interest of \$. . . (there was no additional penalty included on warrant [B]).

[Taxpayer] agreed to assume \$. . . of the predecessor's nontax debt in exchange for most of the predecessor's stores. When the predecessor did not pay the tax assessment, the Compliance Division investigated and concluded that the taxpayer was the predecessor's successor. On September 11, 2013, the Compliance Division assessed the taxpayer as the successor to the predecessor for the periods April 1, 2013 through June 30, 2013, in the amount of \$ The Compliance Division indicated that it would add the taxpayer's name to the warrants. After obtaining an extension, the taxpayer timely appealed the notice of successorship. The assessment has not been paid and we have placed it in abeyance, staying collection and extending the due date.

The taxpayer contends that it did not purchase the predecessor's stores. According to the taxpayer, there was no sales price. The taxpayer only assumed the predecessor's debt. Because the taxpayer did not pay funds to the predecessor, the taxpayer argues that there was nothing to withhold from the purchase price to pay the predecessor's taxes.

The Compliance Division notes that it is undisputed that the taxpayer acquired more than 50% of the predecessor's assets. The taxpayer faxed the Compliance Division a "NOTICE OF SALE" dated July 1, 2013, that the predecessor would sell more than 50% of its assets with an estimated fair market value of \$ While the [taxpayer] did not include any funds from the [predecessor], it did assume \$. . . of the predecessor's debt. The Compliance Division sent a notice and order to withhold and deliver, to which the taxpayer responded that there were no funds.

Next, the taxpayer contends that the Department lacks the authority to amend the warrant to include the taxpayer. The taxpayer claims that it had been named on the warrant, and one of its competitors began handing copies of the warrant out to its customers, claiming that the taxpayer was going out of business and would be closing down. This was meant to discourage customers from making purchases from the taxpayer, and the taxpayer claims that its sales decreased. Additionally, the taxpayer claims that the warrant impaired its ability to finance its operations and lease property necessary to expand its operations.

However, the taxpayer has yet to be named on the warrants. We note that the copies of news clippings provided by the taxpayer name the predecessor, not the taxpayer. We note that the taxpayer operated at ten of the same locations as its predecessor, selling the same products, mattresses. The taxpayer also does business (d.b.a.) under the name, ". . ." The d.b.a. is similar to that of its predecessor, Customers may confuse the predecessor with the taxpayer, but the taxpayer's name has yet to be added to the predecessor's warrant.²

² The taxpayer also argues that the successorship assessment should be limited to the taxes assessed against predecessor. See RCW 82.32.140. In this case, the Department properly limited the successorship assessment to the taxes assessed against predecessor and did not include any penalties and interest in the assessment.

ANALYSIS

Whenever any taxpayer quits business or sells out, exchanges, or otherwise disposes of more than fifty percent of the fair market value of either its tangible or intangible assets, any tax payable under RCW Ch. 82.32 shall become immediately due and payable. RCW 82.32.140(1). RCW 82.32.140(2) contains the trigger for liability of a successor, and states:

Any person who becomes a successor shall withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the department of revenue showing payment in full of any tax due or a certificate that no tax is due. If any tax is not paid by the taxpayer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax The burden of establishing the fair market value of the assets acquired is on the successor.³

RCW 82.32.140(2); see also Rule 216(4), (5)(a) and (c). A “successor” is defined in RCW 82.04.180 as:

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, more than fifty percent of the fair market value of either the (i) tangible assets or (ii) intangible assets of the taxpayer;

RCW 82.04.180(1)(a) (emphasis added); see also Rule 216(2)(a)(i)(A).

The effect of RCW 82.32.140 is to place on the successor of a business the burden of providing for any outstanding tax liability incurred by its predecessor, and thereby to make the successor secondarily liable for such tax. *Tri-Financial Corp. v. Dep’t of Revenue*, 6 Wn. App. 637, 640 (1972). The successor provisions enacted by the legislature are intended to ensure the collection of excise taxes remaining unpaid by a taxpayer who quits, sells out, exchanges, or otherwise disposes of his business or stock of goods. *Id.* at 642. The definition of successorship is not read narrowly. Det. No. 85-215A, 1 WTD 13 (1986); citing *Tri-Financial Corp.*, 6 Wn. App. 637.

The acquisition of property that subjects a taxpayer to successorship liability does not have to be by virtue of a direct conveyance or sale by a predecessor. Det. No. 05-0313, 26 WTD 27 (2007) (citing Det. No. 86-304, 2 WTD 53 (1986)); see also *Tri-Financial Corp. v. Dep’t of Revenue*, 6 Wn. App. at 642. The taxpayer argues that since it did not purchase the predecessor’s assets for cash, there was no purchase price, and therefore, it was not liable as a successor because RCW 82.32.140(2) requires successors, “to withhold from the purchase price.”

³ On the other hand, no successor shall be liable for any tax due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the Department of such acquisition, and no assessment is issued by the Department within six months of receipt of such notice against the former operator of the business, and a copy mailed to the successor, or provided electronically to the successor in accordance with RCW 82.32.135. RCW 82.32.140(4).

However, neither RCW 82.32.140 nor RCW 82.04.180 require that the party acquire more than 50% of the predecessor's assets in a formal sale. A "successor" includes individuals that acquire the previous business by sale, exchange, or other direct or indirect conveyance. RCW 82.04.180(1)(a). RCW 82.32.140(2) also refers to the triggering event for successorship liability as a "sale, exchange, or disposal" of 50% or more of the tangible or intangible assets of the predecessor. The reference to "purchase price" in RCW 82.32.140(2) only states that any person who becomes a successor shall withhold from the purchase price a sum sufficient to pay any tax due. RCW 82.32.140(2) does not rule out one being a successor if there is no purchase price, only that if there is a purchase price, the successor shall withhold the requisite amount of tax due. Here we have a purchase price of \$623,000, the value of the assets acquired. The taxpayer could not choose to be liable for the debt to acquire those assets from the predecessor only and not also be liable for the tax debt incurred by the predecessor.

In general, "[s]trained, unlikely or unrealistic" statutory interpretations are to be avoided. *Bour v. Johnson*, 122 Wn.2d 829, 835, (1993); *Christie-Lambert v. McLeod*, 39 Wn. App. 298, 302 (1984) (A statutory provision should be interpreted to avoid strained or absurd consequences that could result from a literal reading). The taxpayer's reading of RCW 82.32.140(2) leads to incongruous consequences, whereby one can avoid becoming a successor simply by not paying cash for a predecessor's business. This result must be avoided. We are also required, when possible, to give effect to every word, clause, and sentence of a statute. Det. No. 04-0180E, 26 WTD 206 (2007). No part should be deemed inoperative or superfluous unless the result of obvious mistake or error. *Id.* (citing *Cox v. Helenius*, 103 Wn.2d 383, 387-88 (1985)). Statutory provisions must be also read in their entirety and construed together. *ITT Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 807, (1993). The taxpayer's reading of RCW 82.32.140(2) would render the language in RCW 82.04.180 ("or otherwise conveys") superfluous. The plain language of RCW 82.04.180(1)(a) states that someone can legally be a successor without having acquired a predecessor's assets in a purchase or sale scenario. Similarly, the language of RCW 82.32.140(2) supports this result because it clearly creates liability for the successor when it acquires more than 50% of the tangible or intangible assets of the taxpayer through a "sale, exchange, or disposal" of those assets.

We conclude that the taxpayer was a successor. Further, we do not agree with the taxpayer's argument that it is not a successor because it did not pay cash, and, therefore, it could not "withhold" the predecessor's tax liability. RCW 82.32.140(2) explicitly provides, "If any tax is not paid by the taxpayer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax." As the successor, the taxpayer is clearly liable for the amount of tax.

The Compliance Division's successor assessment was for tax only. . . . Under RCW 82.32.140, successors are liable for the tax of their predecessors, not the interest and penalties. In this case, the Compliance Division has only required the taxpayer to pay the tax portion of the warrants, \$. . . . It has not asked the taxpayer to pay the interest or penalties assessed against the predecessor. We conclude that the Compliance Division has properly limited the taxpayer's successorship liability to the tax due.

DECISION AND DISPOSITION

Taxpayer's petition is denied and the Assessment of Successorship Liability is upheld.