

Cite as Det. No. 15-0042, 35 WTD 169 (2016)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of )	DETERMINATION
Assessment of )	
)	No. 15-0042
)	
... )	Registration No. . . .
)	

[1] RULE 216; RCW 82.04.180; RCW 82.32.140: SUCCESSOR – LIABILITY FOR PREDECESSOR’S UNPAID TAXES – EQUITABLE ESTOPPEL – SUCCESSOR RELIANCE ON DEPARTMENT RECEIPT OR PREDECESSOR ASSURANCES. Under the common law doctrine of equitable estoppel, successor’s reliance on predecessor’s assurances and a Department receipt showing no taxes due as of sale date is not a basis for relief from liability for predecessor’s unpaid tax liability due prior to sale but not assessed until after sale.

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.

LaMarche, A.L.J. – [Taxpayer] appeals an Assessment of Successorship Liability imposed after it acquired all of the assets of a business from [Predecessor], against which the Department of Revenue (the Department) made an assessment within six months after receiving the taxpayer’s written notice of the sale. We deny the petition.<sup>1</sup>

ISSUE

Under RCW 82.32.140, RCW 82.04.180, and WAC 458-20-216 (Rule 216), is Taxpayer liable as a successor for an acquired business’s unpaid taxes, assessed within six months after Taxpayer gave notice of the sale to the Department, when Taxpayer relied on a Department screen (Receipt) showing a \$0.00 tax balance for the business, and seller’s contractual assurances no more taxes were owed?

FINDINGS OF FACT

Predecessor operated a restaurant in . . . , Washington under UBI No. . . . , from September 1, 2012 to July 15, 2013. On August 15, 2013, . . . , owner of Predecessor, visited a Department field office in . . . and paid the outstanding balance on Tax Warrant No. . . . , invoice . . . , which the Department had issued for non-payment of taxes for the periods January 1, 2013 through

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

May 31, 2013.<sup>2</sup> At that time [the owner of Predecessor] received a copy of the invoice . . . screen (Receipt) showing that he had paid the warrant in full. Agents also informed [the owner of Predecessor] that he needed to pay the June and July 2013 taxes as well, and he indicated this would be done. [The owner of Predecessor] then informed the agents that the business had closed on July 15, 2013, and that he was in the process of selling the business, but did not know the identity of the purchaser, or when they would purchase the business.<sup>3</sup>

On August 29, 2013, the Department received a completed Successorship Notice Form, which indicated Taxpayer had purchased the business assets of Predecessor for the sum of \$ . . . on August 14, 2013.<sup>4</sup>

On October 30, 2013, the Department issued an assessment, Document No. . . . , against Predecessor in the amount of \$ . . . , due December 02, 2013. Predecessor did not pay the assessment by the due date, and the assessment was later assumed in Tax Warrant No. . . . The Department came to the conclusion that it had exhausted all avenues of collection against Predecessor for the final taxes owing for the period of June 1, 2013 through July 15, 2013, which included the service . . . of a Notice and Order to Withhold and Deliver on any payments owed by Taxpayer to Predecessor.<sup>5</sup>

On January 21, 2014, the Department sent Notice of Assessment of Successorship Liability<sup>6</sup> against Taxpayer in the amount of \$ . . . , for taxes owed in Tax Warrant No. . . . for the periods of June 1, 2013 through July 15, 2013.<sup>7</sup> Because written notice of the purchase had been provided, the Department included a copy of Tax Warrant No. . . . with the Notice of Successorship Liability. The Department mailed the Notice of Successorship Liability and Tax Warrant No. . . . within six months of its receipt, on August 29, 2013, of the written notice of the purchase.

## ANALYSIS

RCW 82.04.180 sets out the definition of a “successor” as follows:

1. "Successor" means:

(a) 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; . . .

Because Taxpayer does not dispute its status as a successor, we assume without deciding that Taxpayer is a successor as defined under RCW 82.04.180.

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<sup>2</sup> Compliance Division response to petition dated March 4, 2014, Exhibit 1.

<sup>3</sup> *Id.*, Exhibit 2.

<sup>4</sup> *Id.*, Exhibit 3.

<sup>5</sup> *Id.*, Exhibit 4.

<sup>6</sup> *Id.*, Exhibit 5.

<sup>7</sup> *Id.*, Exhibit 6.

RCW 82.32.140 imposes an immediate deadline for payment of any taxes the predecessor owes. It requires the successor to withhold a certain amount from the purchase price to pay any unpaid taxes of the [predecessor. *See* RCW 82.32.140(2).] It also imposes liability upon the successor for the full amount of tax, if the predecessor fails to pay all taxes owing, including any assessment the Department issues against the predecessor in the six month period following the date the Department receives notice of the sale. [*See* RCW 82.32.140(4).] Finally, it provides a process by which a successor may obtain protection from predecessor's tax liability, as follows:

- (1) 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 hereunder shall become immediately due and payable, . . .
- (2) 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. . . .
- . . .
- (3) 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 revenue of such acquisition and no assessment is issued by the department of revenue within six months of receipt of such notice against the former operator of the business and a copy thereof mailed to the successor or provided electronically to the successor in accordance with RCW 82.32.135.

[RCW 82.32.140] (emphasis added).

Taxpayer contends that it should not be liable for the Assessment of Successorship Liability because it was entitled to rely on Predecessor's copy of a receipt from the Department (Receipt), and Predecessor's contractual representations showing all tax liability for the business had been paid in full, and that if the taxes had not been paid in full, the Department should have indicated that on the receipt. Taxpayer is essentially claiming that the Department should be estopped from collecting tax on the basis of Taxpayer's reliance on the statements made by a third party. .

..

First, Taxpayer claims justifiable reliance on Predecessor's contractual representation and its copy of a Department receipt. However, the Department was not, and is not party to the private contract between Taxpayer and Predecessor, and had no part in representations made by either party. The Department made no statements to Taxpayer about Predecessor's tax liability, prior to the Notice of Successorship Liability issued after Taxpayer had purchased Predecessor's interest in the business. Moreover, the receipt the Department gave Predecessor, upon which Taxpayer claims reliance, was not a Department statement to Taxpayer; furthermore, the receipt reflected Predecessor's payment on taxes for a different tax period than the one included in the

Notice of Successorship Liability. The Department simply made no statements to Taxpayer prior to the sale. Therefore, we conclude that Taxpayer's reliance on Predecessor's representations, and Predecessor's receipt for payment of taxes for a different time period, were misplaced . . . .<sup>[8]</sup>

Second, RCW 82.32.140(4) provides an exception from a predecessor's tax liability only if the successor gives written notice to the Department of the acquisition of a predecessor's interest *and* if "no assessment is issued by the department of revenue within six months of receipt of such notice against the former operator of the business and a copy thereof mailed to the successor . . . ." RCW 82.32.140(4) (emphasis added). Here, although Taxpayer sent notice of the sale to the Department, received on August 29, 2013, the Department still had the right under RCW 82.32.140(4) to issue an assessment against Predecessor for a full six months *after* the Department received notice of the sale. The Department issued the Notice of Successorship Liability against Predecessor on December 26, 2013. We conclude the Department properly assessed tax against Predecessor and mailed a copy to Taxpayer as successor within six months from the date the Department received Taxpayer's notice of the sale. RCW 82.32.140(4).

Finally, Taxpayer argues that the Department should have disclosed that Predecessor owed additional tax. However, the Department had no duty to provide information about Predecessor to Taxpayer, including whether or not additional taxes were due, and indeed, absent written authorization from Predecessor, was barred by statute from releasing any confidential tax information about Predecessor. RCW 82.32.330. There is one exception to the statute for a successor that allows disclosure of certain tax information to a person who has been assessed for successorship liability, once that assessment has been issued. RCW 82.32.330(3)(o). The Department did disclose that tax information about Predecessor to Taxpayer when it issued the Notice of Successorship Liability against Taxpayer.

We conclude that Taxpayer has not shown that it is entitled to relief. Accordingly, we must deny the petition and uphold the Assessment of Successorship Liability.

Although Taxpayer started the process that might have provided protection from Predecessor's tax liability, by giving written notice of the sale to the Department under RCW 82.32.140(4), it appears Taxpayer failed to also take into account the statutory provision that grants the Department six additional months after receipt of the notice of sale to assess tax against a predecessor; that tax liability if unpaid, becomes liability of the successor. RCW 82.32.140. Finally, to its detriment, Taxpayer did not follow RCW 82.32.140(2), which instructs, "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."

To fully protect itself from a predecessor's tax liability under the provisions of RCW 82.32.140(2), a successor should give written notice of the sale to the Department, and withhold a sum from the purchase price sufficient to pay tax liability of the [predecessor], including any liability that the Department may later assess against the predecessor in the six months following the Department's receipt of the notice of sale.

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<sup>8</sup> [See RCW 82.32A.020(2) (taxpayers have the right to rely on "specific, official written advice . . . to that taxpayer . . . .)].

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 20th day of February, 2015.