

Cite as Det. No. 18-0139, 37 WTD 254 (2018)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of )	<u>D E T E R M I N A T I O N</u>
Trust Fund Accountability Assessment of )	
)	No. 18-0139
)	
... )	Registration No. ...
)	

RCW 82.32.145: TRUST FUND ACCOUNTABILITY ASSESSMENT – RESPONSIBLE INDIVIDUAL OF A CLOSED BUSINESS. A president of a corporation is a “responsible individual” for the purpose of imposing personal liability for unpaid trust fund taxes following the issuance of a tax warrant against a business, regardless of fault or whether the individual was or should have been aware of the unpaid trust fund tax liability of the corporation.

Fisher, T.R.O. – A former president . . . of a disbanded corporation petition[s] for review a trust fund accountability assessment [(TFAA)] against [him] . . . . The petition is denied.<sup>1</sup>

ISSUE

Under RCW 82.32.145, [is the] president of a closed corporation [a] “responsible individual,” and therefore, personally liable for collected and unremitted retail sales tax?

FINDINGS OF FACT

On January 14, 2006, . . . (“Entity”) filed articles of incorporation with the Secretary of State along with an initial annual report, naming . . . as Director and President of Entity and naming . . . as Director, Secretary, and Treasurer of Entity.

Throughout 2011, Entity filed monthly tax returns stating it had no business to report. In 2012, Entity amended each of its 2011 monthly tax returns to report income and collected retail sales tax, but did not remit payment for taxes owing. On May 9, 2012, the Department of Revenue (“Department”) issued balance due notices for the February through December periods of 2011; on May 10, 2012, the Department issued a balance due notice for the January 2011 period.

When Entity did not pay the balance due notices, the Department issued Tax Warrant No. . . . on June 8, 2012, against Entity.

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

In a conversation with a Department employee on March 18, 2013, . . . advised the Department Entity was no longer doing business. The Department closed Entity's business registration, effective December 31, 2013.

In September 2017, the Department issued a [TFAA] against . . . and . . . (collectively, "Taxpayers"). Taxpayers timely sought administrative review, attacking the assessment against Entity asserting that their old accountant gave them bad advice and reported the wrong numbers to the Department. Taxpayers separately argue that the imposition of the [TFAA] would cause a substantial financial hardship on Taxpayers.

#### ANALYSIS

RCW 82.08.050 requires businesses that make retail sales to collect retail sales tax from their customers and hold it in trust until they pay it to the Department. Sellers who fail to remit collected retail sales tax to the Department are personally liable to the state for the amount of the tax. RCW 82.08.050(3). When a limited liability business entity is dissolved or otherwise terminated owing retail sales tax to the state, and the Department issues a tax warrant for the collection of the unpaid retail sales tax . . . , the Department may pursue collection of the entity's unpaid trust fund taxes, including penalties and interest on those taxes, against certain "responsible individuals," including the imposition of a [TFAA]. RCW 82.32.145(1). Det. No. 17-0127, 36 WTD 601 (2017). Personal liability under RCW 82.32.145 may be imposed for state and local trust fund taxes. RCW 82.32.145(2).

Here, the Department issued Tax Warrant No. . . . against Entity on June 8, 2012, which included amounts for collected and unremitted retail sales tax. Entity was terminated on December 31, 2013 while the warrant was still unpaid. . . . [T]he Department properly determined that Entity was terminated, and that personal liability could be properly imposed under RCW 82.32.145 against any or all of the responsible individuals.

A "responsible individual" is "any current or former officer, manager, member, partner, or trustee of a limited liability business entity, with an unpaid tax warrant issued by the department." RCW 82.32.145(9)(g)(i). RCW 82.32.145 imposes personal liability for unpaid trust fund taxes on those specified individuals, in relevant part, as follows:

For a responsible individual who is the current or former chief executive or chief financial officer, liability under this section applies regardless of fault or whether the individual was or should have been aware of the unpaid trust fund tax liability of the limited liability business entity.

RCW 82.32.145(3)(a). "Chief executive" means the president of a corporation. RCW 82.32.145(9)(a). . . .

. . . was the President of Entity, he was the chief executive of Entity and therefore a responsible individual subject to personal liability under RCW 82.32.145(1). . . . Under RCW 82.32.145(3)(a), it does not matter that Taxpayers' accountant gave them bad advice, Taxpayers are liable for the collected and unremitted retail sales tax.

Taxpayers make several arguments related to the assessment against Entity. However, the period in which Entity could have challenged the assessment has passed. “If no [petition for review] is filed within the thirty-day period covered by the assessment the assessment shall become final.” RCW 82.32.160. The Department’s longstanding position is that Taxpayers subject to a [TFAA] may only challenge matters as to the issuance of the trust fund accountability itself, and not the underlying tax assessment. Det. No. 14-0340, 34 WTD 244 (2015); Det. No. 03-0066R, 23 WTD 243 (2004); *see also* Det. No. 87-39, 2 WTD 189 (1987); Det. No. 86-268, 1 WTD 245 (1986). Accordingly, we decline to consider Taxpayers’ arguments related to the underlying assessment.<sup>2</sup>

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 24th day of May 2018.

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<sup>2</sup> Under RCW 82.32.060(1), Taxpayers may pay the assessment and challenge the underlying assessment within four years of the payment, following the procedures of WAC 458-20-100 and/or RCW 82.32.180.