

Cite as Det. No. 18-0245, 39 WTD 152 (2020)

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>
Assessment of )	
)	No. 18-0254
)	
... )	Registration No. ...
)	

RCW 82.32.145: LIMITED LIABILITY COMPANY – PERSONAL LIABILITY OF RESPONSIBLE INDIVIDUALS FOR UNPAID TRUST FUND TAXES. Whenever a limited liability company is terminated, dissolved, or abandoned, or becomes insolvent, the company’s responsible individuals are personally liable for the LLC’s unpaid trust fund taxes and financial hardship cannot be used as grounds for relief from such 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.

Farquhar, T.R.O. – The sole member of a now-defunct construction company petitions for the correction of a Trust Fund Accountability Assessment . . . . During the company’s life, it collected retail sales tax from its customers, but failed to remit the taxes to the Department. Prior to the company’s dissolution, the Department issued four tax warrants. . . . [W]hen the company was dissolved, the Department pursued the member personally for the outstanding balances pursuant to RCW 82.32.145. The member argues that the company was unable to pay its tax debt due to financial hardship caused by its customers failing to pay for work the company performed. Petition denied.<sup>1</sup>

ISSUE

Whether the sole member of a now-defunct limited liability company that had unpaid tax warrants at the time of its dissolution due to financial hardship can be held personally responsible for the company’s unpaid trust fund taxes pursuant to RCW 82.32.145.

FINDINGS OF FACT

... (“Taxpayer”) is the former sole member and owner of . . . (“the Company”). Taxpayer formed the Company in Washington on October 1, 2009, and listed himself as the sole member on the Company’s initial business license application, as well as its October 2015 renewal application.

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

Taxpayer was the only authorized signer on the Company’s bank account. Taxpayer also personally managed the Company’s books and prepared and filed the Company’s tax returns.

While the Company was active, it filed monthly excise tax returns. On eight returns filed between February 2015 and November 2016,<sup>2</sup> the Company reported that it had collected retail sales tax . . . from its customers, but did not remit the full amount of the taxes to the Department. The Company also reported, but failed to fully pay, business & occupation (“B&O”) taxes, penalties, and interest during the same periods.

During and after the subject periods, the Department of Revenue’s Compliance Division (“Compliance”) engaged in collections efforts against the Company. Compliance first discussed the overdue amounts with the Company and attempted to set up payment plans. After the Company failed to pay its tax liabilities in full for several months, Compliance began issuing tax warrants. Between July 2, 2015, and January 30, 2017, Compliance issued four warrants against the Company, then filed the warrants in . . . County Superior Court. The warrants are summarized in the table below:

Warrant No.	Issue Date	Filing Date	Period(s)	Total Due (Taxes, Penalties & Interest)
...	7/2/15	7/21/15	November 2014 – April 2015	\$ . . .
...	10/13/16	11/1/16	June – July 2016	\$ . . .
...	11/29/16	12/13/16	August 2016	\$ . . .
...	1/30/17	2/16/17	October – November 2016	\$ . . .

During a conversation about the warrants between Compliance and Taxpayer on July 31, 2015, Taxpayer admitted that the Company used approximately \$ . . . in collected [retail sales taxes] to pay its workers’ wages. The Company made partial payments after the warrants were issued, and the Department obtained additional funds by placing a levy on the Company’s bank account, but the Company failed to pay any of the warrants in full. The Company was dissolved on January 9, 2017, when Taxpayer filed a Certificate of Dissolution with the Secretary of State. On January 12, 2017, the Department revoked the Company’s tax registration endorsement.

On September 5, 2017, Compliance issued a Trust Fund Accountability Assessment (“TFAA”) against Taxpayer. The TFAA stated, in part, that “the Department of Revenue has established that you are personally liable for retail sales tax, interest and penalties on those taxes collected by [the Company.]” The TFAA comprises \$ . . . in unremitted trust fund taxes, \$ . . . in penalties, and \$ . . . in interest, for a total amount due of \$ . . . .

On October 5, 2017, Taxpayer submitted a petition for review. Taxpayer did not articulate an argument in his petition as to why the TFAA should be corrected or cancelled. At the September 4, 2018, hearing, Taxpayer stated that the Company was unable to pay its taxes because some of its customers failed to pay for work the Company performed. Taxpayer stated that he hoped the

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<sup>2</sup> The period at issue includes February-April 2015, June-July 2016, August 2016, and October-November 2016.

Department would assist him in collecting the unpaid amounts from the Company's customers so that it could pay the tax debt.

### ANALYSIS

Sellers that make retail sales are required to collect retail sales tax . . . from their customers on all taxable transactions. RCW 82.08.050(1). [Retail sales tax] funds collected by a seller are "deemed to be held in trust by the seller until paid to the Department." RCW 82.08.050(2). While in the seller's possession, the [collected retail sales taxes] are known as "trust fund taxes." RCW 82.32.145(9)(h). Sellers who fail to collect [retail sales taxes], or fail to remit trust fund taxes to the Department after collection, are personally liable to the state for the amount of tax that should have been collected and remitted, regardless of whether the failure to collect . . . or remit was the result of the seller's actions or conditions beyond the seller's control. RCW 82.08.050(3).

In the event a taxpayer fails to pay "any fee, tax, increase, or penalty or any portion thereof" within 15 days after it becomes due, the Department may issue a tax warrant. RCW 82.32.210(1). The warrant will include any unpaid sums, together with interest from the date the warrant is issued until the date of payment. *Id.* The Department "must file a copy of the warrant with the clerk of the superior court of any county of the state in which real and/or personal property of the taxpayer may be found." RCW 82.32.210(2).

When a limited liability business entity, such as a limited liability company . . . , is dissolved or otherwise terminated, and the Department has issued a tax warrant against the entity, the Department has statutory authority under RCW 82.32.145 to collect certain types of taxes from the entity's "responsible individuals." RCW 82.32.145 states, in pertinent part, as follows:

- (1) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid trust fund taxes from a limited liability business entity and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the department may pursue collection of the entity's unpaid trust fund taxes, including penalties and interest on those taxes, against any or all of the responsible individuals. . . .
- (2) Personal liability under this section may be imposed for state and local trust fund taxes.

The statutory definition of "responsible individual" includes "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). Any "responsible person" who "willfully fails to pay or to cause to be paid to the department the trust fund taxes due from the limited liability business entity" will be found personally liable for the unpaid trust fund taxes. RCW 82.32.145(3)(b). To the extent a "responsible individual" was a chief executive or chief financial officer of the limited liability business entity, a strict liability standard applies. RCW 82.32.145(3)(a). Under the strict liability standard, the individual is liable regardless of fault or whether the individual was or should have been aware of the liability. RCW 82.32.145(3)(a). The

definition of “chief executive” includes the highest ranking executive manager or administrator in charge of the management of the company or organization. RCW 82.32.145(9)(a).

. . . While active, the Company made retail sales to its customers and, as evidenced by the Company’s tax returns, collected [retail sales taxes] on those sales. Pursuant to RCW 82.32.145(9)(h), the [collected tax] funds were to be held in trust by the Company until they were paid to the Department. However, as Taxpayer admitted, the funds were used for other purposes, including making payroll. Taxpayer argues that the Company faced a financial hardship caused by its customers refusing to pay for the Company’s services, but the Company’s motivation for choosing not to remit the [retail sales taxes] is irrelevant. *See* Det. No. 16-0058, 35 WTD 531 (2016) ([stating that] “[t]he willful failure to pay retail sales taxes does not require an intent to defraud or bad motive”). As stated in RCW 82.08.050(3), the Company will be held liable for the unremitted [retail sales taxes] “whether [such] failure [is] the result of the seller’s [own] acts or [the result of acts or] conditions beyond the seller’s control . . . .” When the Company failed to pay the [retail sales taxes] due, the Department properly issued and filed four tax warrants against the Company pursuant to RCW 82.32.210.

Because the Company was [a limited liability company] with unpaid tax warrants when it dissolved, the Department had the authority, under RCW 82.32.145, to pursue the Company’s “responsible individuals” for the Company’s unpaid trust fund taxes. Thus, the critical issue before us is whether Taxpayer meets the definition of a “responsible individual.” Taxpayer was the Company’s owner, sole member, and sole signer on the Company’s bank account. He also handled the Company’s finances, managed its books, and prepared and filed its tax returns. As the sole member of the Company with unilateral control over all of the Company’s actions and finances, Taxpayer acted as the Company’s “chief executive” described in RCW 82.32.145(9)(a) ([providing that] “the highest ranking executive manager or administrator in charge of the management of the company or organization”). *See also* Det. No. 15-0212, 34 WTD 549 (2015) ([finding that a] taxpayer who identified himself as the sole owner of a company in filings with the Department and banks was . . . the company’s “chief executive”); and Det. No. 15-0081, 34 WTD 431 (2015) ([finding that a] taxpayer who identified herself as “President” and “Managing Partner” of company with no other officers was . . . the company’s “chief executive”). Thus, we conclude that Taxpayer meets the definition of a “chief executive” found in RCW 82.32.145(9)(a) and is subject to the strict liability standard found in RCW 82.32.145(3)(a).

At the second hearing in this case, Taxpayer did not dispute that he was the sole member of the Company. He also admitted that the taxes were properly assessed against the Company. While he argued that the Company’s failure to pay the taxes was due to financial problems . . . , financial hardship is not a grounds for relief from [retail sales taxes] or TFAA liability. Thus, we conclude that the TFAA was properly issued and Taxpayer is personally liable for the full amount of the TFAA.

#### DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this 20th day of September 2018.