

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment of)	
)	No. 88-304
)	
)	
. . .)	Registration No. . . .
)	
)	
As Successors to:	
)	
)	
. . .)	Registration No. . . .
)	Warrant No. . . .

[1] **RULE 216:** RCW 82.32.180 -- SUCCESSOR -- LIABILITY FOR TAX -- CONTRACT PROVISIONS -- "HOLD HARMLESS" CLAUSE. A successor is liable for the full amount of the previous owner's tax liability. A contract provision claiming to "hold harmless and defend purchasers against any and all claims. . ." is insufficient to avoid the successorship 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.

FACTS AND ISSUES:

Hesselholt, A.L.J. -- On July 26, 1986, . . . (partners) agreed to purchase from . . . (B) the business B then owned. The contract contained a provision that "[B] to hold harmless and defend purchasers against any and all claims and causes of action, both known and unknown at date of closing, arising out of the operation of [B's business] prior to the date of closing. . ." The partners registered the business with Washington and began doing business approximately August 15, 1986.

On August 19, 1986, a warrant for unpaid taxes was issued against B. It has never been paid, and is considered to be uncollectible by the Department of Revenue. On October 6, 1986, the Department sent the partners a "Notice of Assessment," asserting that the

partners were successors under RCW 82.04.180 and that if the Department was unable to collect the unpaid taxes from B, it would look towards the partners for payment. On December 24, 1986, a notice was sent to the partners stating that collection procedures against B had not been successful and that the Department "must look to you for payment of \$. . . in tax." The partners appeal the notice.

DISCUSSION:

[1] RCW 82.04.180 defines a successor 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, a major part of the materials, supplies, merchandise, inventory, fixtures, or equipment. . . .

RCW 82.32.140 explains the liability of a successor as well as how to avoid that liability:

and any person who becomes a successor shall become liable for the full amount of the tax and 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 and if such 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 payment of the full amount of tax, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the taxpayer . . . no successor shall be liable for any tax due from the person from whom he has acquired a business or stock of goods if he 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. . . .

Rule 216, the administrative rule implementing the above statute, explains that a successor is a person who "acquire(s) the taxpayer's [in this case, B] equipment or merchandise in bulk, whether they operate the business or not. . . ."

The partners are successors to B and are liable for the amount of B's unpaid tax liability. The "hold harmless" clause in the sale contract does not operate to insulate the partners from successorship liability. The statute, cited above, provides a

method by which one can deduct a seller's unpaid tax liability from the purchase price, and provides a method by which one can insulate one's self from later liability. The partners did neither of the things outlined in the statute. They are therefore liable for B's unpaid taxes in the amount of \$

DECISION AND DISPOSITION:

The petition is denied. The partners are liable for B's unpaid tax liability as successors under RCW 82.04.180.

DATED this 28th day of July 1988.