

Cite as 3 WTD 81 (1987)

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

|                                  |  |
|----------------------------------|--|
| In the Matter of the Petition )  | <u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u> |
| For Correction of Assessment of) |  |
| )                                | No. 87-140   |
| )                                |  |
| . . . )                          | Registration No. . . .   |
| )                                | Successorship Liability  |
| )                                |  |
| As Successor to:                 | )  |
| )                                |  |
| )                                |  |
| . . . )                          | Registration No. . . .   |
| )                                | Tax Warrant No. . . .  |

**RULE 216 AND RCW'S 82.32.140 & 82.04.180:** SUCCESSORSHIP. A "successor" is one who buys a major part of the equipment, supplies, merchandise, inventory, fixtures, or materials from a person who is quitting, selling out, or disposing of a business.

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.

TAXPAYER REPRESENTED BY: . . .  
  . . .  
  . . .

DATE OF HEARING: March 20, 1985

NATURE OF ACTION:

The taxpayer, which is claimed to be the successor to another business, petitioned for correction of an assessment issued to it under the successorship statute, RCW 82.32.140.

FACTS:

Normoyle, A.L.J. (successor to Chandler, A.L.J.) -- The taxpayer, at all pertinent times, sold and serviced business

machines. Another business, which will be referred to throughout this Determination as the "ABC" company, did the same. The taxpayer and ABC entered into a contract on August 1, 1985, whereby the taxpayer bought ABC for \$ . . . . The taxpayer did not require that ABC provide a tax status report from the Department of Revenue prior to the sale; nor did the taxpayer require that the purchase price be held in escrow pending such tax clearance.

The contract first recited that the seller (ABC) conducted a business of sales and maintenance of typewriters and other office machines, and that the buyer (taxpayer) desired to purchase the business.

Paragraph one contains this language:

. . . Buyer hereby buys all that certain business known as (ABC Company) consisting of typewriters, parts, tools, office equipment, office fixtures and tangible personal property of every kind and nature located at the time of this sale at the business address  
. . . .

Paragraph two of the original contract provided that the sale included the name, goodwill, and accounts, other than accounts receivable prior to the contract date. However, this paragraph was crossed out by the parties and did not become part of the final agreement.

Paragraph three stated that the taxpayer was not responsible for ABC's debts.

Paragraph four stated that the taxpayer was to negotiate its own lease with ABC's lessor.

Paragraph five read as follows:

Buyer is entitled to possession of the business premises on August 1, 1985 and will be entitled to continue the operation of (ABC) Company effective of (sic) said date and shall in all matters be the owner of said business effective said date and entitled to all of the accounts, monies, profits, benefits, etc., subsequent to that date.

At the time of the sale, the owners of ABC owed state taxes of over \$ . . . , dating back to October 1, 1983. A warrant for

unpaid taxes had been issued in February of 1985, months before the sale. ABC did not disclose any of this to the taxpayer. On the day of the sale, August 1, 1985, ABC's business account with the Department of Revenue was closed. Neither ABC nor its owners has re-registered to do business in this state. The Department has been unsuccessful in collecting the back taxes from them.

Additional facts are summarized below, in chronological order:

1. August 26, 1985: The taxpayer's lawyer wrote to the Department stating that the taxpayer "just purchased" the ABC company, and requested information regarding ABC's tax status, as to delinquencies and current taxes.
2. September 12, 1985: The Department wrote to the taxpayer, at the ABC address, stating that ABC then owed over \$ . . . in back taxes, and that the taxpayer may be liable, as a successor, for part of those taxes.
3. September 17, 1985: Use tax was assessed on the typewriters and other personal property purchased by the taxpayer. The value of the articles was determined by the Department to be \$ . . . . The use tax was paid on October 28, 1985.
4. February 12, 1986: The Department advised ABC that an earlier warrant for the back taxes was going to be entered as a Judgment in Superior Court.
5. February 21, 1986: The Department assessed the taxpayer for \$ . . . of ABC's taxes, by sending a Notice of Successorship Liability.

The taxpayer argues that it is not a "successor" as that word is defined in RCW 82.04.180. It states that the personal property that it purchased from ABC was junk, worth only \$ . . . ; and that the \$ . . . was actually paid for "the right to use the (ABC) business location to gain customer contacts for two months, and shift customer accounts that could be established back" to the taxpayer's store in a neighboring city.

Further, the taxpayer claims that ABC simply moved its business to another location. Also, the taxpayer states that ABC sold some other personal property, prior to the sale. The

taxpayer admits, however, that it does not know the extent of liquidation prior to the August 1, 1985 sale. Finally, the taxpayer states, ABC took some of its personal property with it to its new location.

In summary, the taxpayer argues that, except for the nominal supplies and equipment left on the premises, ABC kept its name, goodwill, and accounts. All that was left was the right to negotiate a new lease for use of the business location and "the opportunity to solicit new (ABC) customers."

#### ISSUE:

Was the taxpayer a successor to ABC Company?

#### DISCUSSION:

RCW 82.32.140 imposes taxes on a successor. In pertinent part, it reads as follows:

Whenever any taxpayer (here, ABC) quits business, or sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable . . . 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 . . . and, if such tax is not paid by the taxpayer within ten days from the date of sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax . . . .

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 against the former operator of the business and a copy thereof mailed to such successor.

RCW 82.04.180 defines "successor." The version in effect on the date of sale reads as follows, in pertinent part:

'Successor' means 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 of the taxpayer.

As it applies to this case, the inquiry is:

1. Did the taxpayer buy a major part of the supplies, merchandise, and equipment?
2. Was ABC quitting, selling out or disposing of its business at the time of the sale?

We answer both in the affirmative. As to the first question, there is no proof, other than the taxpayer's unsubstantiated statements, that the personal property purchased was not a major part of ABC's supplies, merchandise, and equipment. The fact that the taxpayer paid, without contest, use tax based on a value of over \$ . . . belies the claim that only \$ . . . of equipment was purchased. Also, the contract itself expressly provides that the taxpayer bought all of the personal property then located at the business. In the absence of some verification that the personal property then on the premises did not constitute a major part of ABC's personal property, we must find that they did, based on the known facts.

Concerning the second question, we find that ABC was "quitting, selling out, or disposing" of the business when it made the sale. Three facts support this conclusion. First, its business account was closed by the Department of Revenue on the very day that the contract was signed. Second, it has not re-registered to do business. Third, paragraph five of the contract, in unequivocal language, provided for a sale to the taxpayer of the entire business. The fact that paragraph two of the contract was deleted does not render paragraph five ineffective.

Under the last paragraph of RCW 82.32.140, quoted above, a taxpayer may notify the Department that it has purchased a business. This was done on August 26, 1985. If the Department had not assessed ABC within six months of that notice, the taxpayer, under that statute, would not have been liable for the taxes. However, ABC had already been assessed the taxes and a tax warrant had been issued. Further, on February 12, 1986, just prior to the expiration of the six month period, the Department again advised ABC that it owed the taxes, and stated that the warrant would be filed as a Judgment in Superior Court. We conclude, therefore, that an

assessment was issued to ABC prior to expiration of the six month period, that the taxpayer also received notification (the February 21, 1986, Notice of Successorship Liability), and that the last paragraph of RCW 82.32.140 is, under these facts, of no assistance to the taxpayer.

We note that the successorship statutes have withstood a constitutional challenge. Tri-Financial Corp. v. Dep't of Rev., 6 Wash App 637 (1972).

Finally, we are aware that the enforcement of these statutes sometimes causes a harsh result. However, that is a criticism which should be directed to the legislature.

#### DECISION AND DISPOSITION

The taxpayer's petition for correction of the assessment contained in the February 21, 1986, Notice of Successorship Liability is denied. The assessment of \$ . . . is due by May 19, 1987.

DATED this 29th day of April 1987.