

Cite as Det. No. 01-019, 22 WTD 22 (2003)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON¹

In the Matter of the Notice of Successorship of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 01-019
)	
...)	Registration No. . . .
)	Docket No. . . .
)	Notice of Successorship Liability
)	As successor to
)	
)	...
)	Registration No. . . .
)	Warrant No. . . .

- [1] RULE 216; 82.32.140: SUCCESSORSHIP – EQUIPMENT – TRANSFER. When newly-acquired equipment was knowingly and intentionally placed in an existing corporation in order to take advantage of its limited liability and corporate insurance coverage pending the formation of a new corporation, passing only briefly through the names of the shareholders, the equipment was indirectly acquired by the newly-formed corporation, and its designation as a successor was justified.

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.

NATURE OF ACTION:

Challenge to the Department's characterization of Taxpayer's status as a successor to another corporation.²

¹ NON-PRECEDENTIAL PORTIONS OF THIS DETERMINATION HAVE BEEN DELETED.

² Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

FACTS:

Bauer, A.L.J. -- The Compliance Division (Compliance) of the Department of Revenue (Department), by letter dated March 31, 2000 advised . . . (Taxpayer) that it would be considered to be a successor to . . . (Corporation X) under the provisions of RCW 82.04.180.

Corporation X was a general and speculative contractor that built mostly single family houses (both custom and speculative) and did some custom remodeling. Corporation X ceased operations, leaving unpaid taxes for the period of January 1, 1995 through January 31, 1998 in the amount of \$ The major tax assessed in that audit was use tax on Corporation X's "spec" jobs. Retail sales taxes had not been properly paid because the suppliers – possibly having resale certificates on file and not knowing that some of Corporation X's jobs were speculative in nature -- had not included retail sales tax on their billings. Taxpayer does not disagree with the accuracy of the Corporation X audit assessment.

In late 1998, . . . , Corporation X's owners, decided to stop doing business as Corporation X. Their son . . . , working as a sole proprietor, had also been doing contracting work and had his own projects. As a result, Corporation X and [Son] were competing for subcontractors.

[Owner-husband] and [Son] decided to go into business together. [Son] wanted increased income and responsibility, and they both wanted to increase their profit margin by doing some land development and by purchasing the equipment necessary to do their own excavating, land clearing, back-filling, etc. (these jobs had always been subcontracted out to third parties). The new business – which would eventually be Taxpayer – was envisioned to be different from that conducted by Corporation X.

Taxpayer, however, was not incorporated until January 1, 1999. Taxpayer's corporate owners were [Owner-Husband] (26%), [Son] (26%), [Owner-Wife] (24%), and [Son's Wife] (24%).

In October 1998 – before Taxpayer was formed – [Owner-Husband] and [Son] acquired at a cost of \$. . . a used dump truck (\$. . .), tilt trailer (\$. . .), and bulldozer (\$. . .).³ [Owner-Husband] and [Son] each paid one-half. [Owner-Husband] took money from his business, and [Son] borrowed his portion of the purchase price. This equipment, according to Taxpayer, was purchased for the sole purpose of being used in the new business that had not yet been incorporated. Because the new business had not yet been formed, [Owner-Husband] didn't want the equipment in his own individual name because his liability would not have been limited, so all three pieces of equipment were placed in the name of Corporation X so they would be covered under the corporate insurance policy. Testimony indicates that, while in Corporation X's name, the equipment was stored at [Son]'s house, who worked on it and used it to build a motorcycle practice track.

³ The cost figures are taken from Taxpayer's "Tax Asset Detail 1/01/99 – 12/31/99."

Neither [Son] nor [Son's Wife] had any ownership interest in Corporation X, and Corporation X gave nothing in exchange for their interest in the equipment. When Corporation X ceased to do business, the equipment went into their personal names and then was simultaneously contributed into the newly-formed corporate Taxpayer on the date it was incorporated. It is also conceded that certain office equipment (the value of which in 1992 was less than \$1,000) might have found its way into the assets of the newly-created Taxpayer.

Taxpayer's office space is in the same complex as Corporation X, except, according to Taxpayer, in a different suite. Taxpayer asserts that Corporation X did not have many assets, and was dissolved administratively through the nonpayment of corporate fees. [Owner-Husband] states no bankruptcy was involved, and that he took care of unpaid debts personally, but still owes his parents for funds expended by Corporation X.

ISSUE:

Is Taxpayer a successor to a Corporation X when equipment, prior to the formation of Taxpayer, was purchased and transferred into Corporation X for insurance reasons, and then into Taxpayer when it was incorporated?

TAXPAYER'S ARGUMENTS:

Taxpayer argues that the dump truck, trailer, and bulldozer were never Corporation X assets. They were transferred into that corporation only on the advice of their accountant because of the liability insurance issue. . . .

DISCUSSION:

RCW 82.04.180 provides for successorship liability as follows:

"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. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

(Emphasis added.) WAC 458-20-216(2)(a)(i) further states:

(2) "**Successor**" **defined.** For purposes of this rule, the term "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, a major part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. RCW 82.04.180.

Persons acquiring only intangible assets such as copyrights and trademarks are not "successors."

(i) A person is a successor if he or she acquires a major part of the taxpayer's materials, supplies, merchandise, inventory, fixtures, or equipment in bulk, whether he or she operates the business or not. A person acquires a "major part" of the materials, supplies, merchandise, inventory, fixtures, or equipment if he or she acquires more than fifty percent of the fair market value of any such property at the time of conveyance.

(Emphasis added.) It is not argued that the bulldozer, tilt trailer, and dump truck did not constitute more than fifty percent of the fair market value of Corporation X's equipment. It is, instead, argued that these pieces of equipment were never really assets of Corporation X.

[1] This argument is not well-founded. Titles/ownership to these three pieces of equipment were knowingly and intentionally placed by both purchasing marital communities into Corporation X's name in order to take advantage of the limited liability and corporate insurance coverage provided by Corporation X. The pieces of equipment at issue were not removed from Corporation X's name until the day they were placed under the ownership of the newly-formed Taxpayer, passing only briefly through the names of the individual shareholders. We are constrained to hold that the bulldozer, tilt trailer, and dump truck were a major part of the equipment of Corporation X, which was quitting business. The bulldozer, tilt trailer, and dump truck were indirectly acquired by Taxpayer. Accordingly, Taxpayer has been lawfully designated a successor to Corporation X in accordance with the successorship provisions of RCW 82.04.180. . . .

DECISION AND DISPOSITION:

Taxpayer's petition is denied.

Dated this 31st day of January 2001.