

Cite as 10 WTD 173

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. 90-377
)	
("Corporation B"))	
. . .	)	Registration No. . . .
	)	Notice of Successorship
	)	Liability
as successor to)	
)	
)	
("Corporation A"))	
. . .	)	Registration No. . . .
	)	Warrants No. . . .
	)	and . . .

[1] RULE 216: SUCCESSORSHIP - REGULAR LEGAL PROCEEDING TO ENFORCE A LIEN - USC § 6325(b)(2)(A) - "RELEASE OF LIEN OR DISCHARGE OF PROPERTY." The procedure to obtain a release of IRS lien on property under USC § 6325(b)(2)(A) is a "regular legal proceeding to enforce a lien."

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: . . .

NATURE OF ACTION:

Petition concerning successorship liability.

FACTS:

Bauer, A.L.J.-- The taxpayer ("Corporation B") was first issued a Notice of Successorship Liability on . . .; \$. . . of previously unpaid taxes were assessed. It timely appealed after the Successorship Liability Conference was held [in] 1987.

Corporation B, an electrical service and construction company, was incorporated [in] 1987. It purchased assets from "Corporation A" - incorporated [in] 1984 - which was in the process of liquidating.

Both corporations shared the same incorporator and president - a natural person.

Corporation A had incurred unpaid state and federal tax liabilities. The Internal Revenue Service ("IRS") had not yet seized Corporation A's assets, but liened them for \$. . . of outstanding taxes [in] 1987. The Department issued the above-referenced tax warrants in February and May of . . . in the respective amounts of \$. . . and \$¹

Corporation A sold its vehicles and office equipment (liened by the IRS) to Corporation B in a private sale for their appraised value. A "Certificate of Discharge of Property From Federal Tax Lien" was obtained from the IRS [in] 1987 under Sec. 6325(b)(2)(A) of the Internal Revenue Code (Taxpayer Instructions given in IRC Publication 783 (Rev. 1-84)). By this procedure, the IRS allowed Corporation B to pay the equity in the equipment to the IRS after paying off superior encumbrances (. . .) and costs related to the property's appraisal and sale (. . .).

The Department assessed successorship liability on Corporation B based on the theory that it had acquired a major share of the interest in the Corporation A, but did not obtain these assets through "regular legal proceedings to enforce a lien" in accordance with WAC 458-20-216 ("Rule 216"). The IRS, having never seized Taxpayer A's assets, allowed Corporation B to purchase the IRS's equity in the equipment in exchange for a discharge of the lien.

TAXPAYER'S EXCEPTIONS:

The taxpayer contends that it obtained Taxpayer A's assets through "regular legal proceedings to enforce a lien" in accordance with Rule 216.

DISCUSSION:

WAC 458-20-216 provides, in pertinent part, as follows:

The word "successor" means any person who shall, through direct or mesne conveyance, purchase or succeed to the business, or portion thereof, or the whole or any part of the stock of goods, wares, merchandise or fixtures or any interest therein of a taxpayer quitting, selling out, exchanging or otherwise disposing of his business. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the

¹ The warrant issued February . . . was for the period of July 1 through July 31, . . . and November 1 through December 31, The warrant issued May . . . was for the period of August 1 through August 31, . . . and January 1 through March 31,

performance of any contract as to which such person is a surety or guarantor.

The word "successor" includes all persons who acquire the taxpayer's equipment or merchandise in bulk, whether they operate the business or not, unless the property is acquired through insolvency proceedings or regular legal proceedings to enforce a lien, security interest, judgment, or repossession under a security agreement.

The taxpayer contends that it obtained Corporation A's property in accordance with USC § 6325(b)(2)(A), constituting "regular legal proceedings to enforce a lien, security interest...." That code section, which entitled "Release of Lien or Discharge of Property," provides as follows:

(b) Discharge of Property.--

. . .

(2) Part payment; interest of United States valueless.--

Subject to such regulations as the Secretary may prescribe, the Secretary may issue a certificate of discharge of any part of the property subject to the lien if--

(A) there is paid over to the Secretary in partial satisfaction of the liability secured by the lien an amount determined by the Secretary, which shall not be less than the value, as determined by the Secretary, of the interest of the United States in the part to be so discharged, . . .

IRS Publication 783 (Rev. 1-84), "Certificate of Discharge of Property from Federal Tax Lien," sets forth procedures for taxpayers to apply for discharge. The taxpayer followed these procedures, briefly described in the "Facts" above, and received a Certificate of Discharge from the District Director of the IRS.

[1] The procedure used by the taxpayer in this case was a "regular legal [albeit nonjudicial] proceeding to enforce a lien" provided for by the Internal Revenue Code itself. In so using this procedure, the Corporation B first fully satisfied the outstanding purchase money security interests on Corporation A's vehicles, which liens had first priority. An amount equal to the remaining equity in the property then went to partially satisfy the IRS lien, which, having been filed first, had priority over both the Department's warrants. The IRS, by virtue of this procedure, is able to enforce its lien without seizure and sale. Because Corporation B procured the property via this method, we reluctantly hold that it is not a successor.

The fact that Corporation A and Corporation B shared common incorporators/shareholders - absent proof of fraud - is not of

consequence. Corporations, under this state's tax law, are separate persons.

Likewise, RCW 82.32.145, which imposes personal liability on corporate officers and other key persons in control of a business for sales taxes collected but not remitted, was not enacted until 1987 and is not effective for the tax periods here in question.

Accordingly, Corporation B is not held to be a successor.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 31st day of October, 1990.