

Cite as Det. No. 14-0314, 34 WTD 179 (2015)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition for Correction of ) DETERMINATION  
Assessment of )  
 ) No. 14-0314  
 )  
... ) Registration No. . . .  
 )

[1] RCW 82.04.220; RCW 82.08.020; RCW 82.04.030: LIMITED LIABILITY COMPANY (LLC) – CHOICE OF BUSINESS ENTITY RESPECTED – MEMBER OF LLC SEPARATE FROM THE BUSINESS ENTITY. An LLC that is sold to new owners, but maintains its business form, business name, business location, and UBI number, is liable for taxes accrued prior to the sale, because the LLC is the entity that accrued the tax liability and remains the entity liable for the tax after the entity is sold.

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.

Weaver, A.L.J. – A limited liability company (LLC) that was assessed retail sales tax, business and occupation (B&O) tax, penalties, and interest, protests the assessment on the grounds that its current owners purchased the LLC from a prior owner during the audit period. The LLC's current owners claim that they should not be held accountable for periods when the LLC was owned by someone else. Because the LLC was engaged in business as a separate legal entity for the entire audit period, we hold that the change in ownership of the LLC is immaterial, and that the LLC owes the tax, penalties, and interest that it accrued through its business activities. Taxpayer's petition is denied.<sup>1</sup>

## ISSUE

Whether, under RCW 82.04.220 and RCW 82.08.020, the Department can collect taxes accrued by an LLC when the change in ownership of that LLC occurred after the taxes were due, but before the taxes were assessed.

## FINDINGS OF FACT

[Taxpayer] was audited for the period of January 1, 2011, through March 31, 2013, by the Audit Division of the Department of Revenue (Department). The audit resulted in an assessment totaling \$. . . , which was issued on August 29, 2013. The assessment consisted of \$. . . in retail

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

sales tax, \$. . . in retailing business and occupation (B&O) tax, \$. . . in service and other activities B&O tax, \$. . . in use tax, a credit of \$. . . in syrup tax, interest of \$. . . , and a 5% assessment penalty of \$. . . .

On appeal, the Taxpayer's sole argument is that its current owners bought the business on January 24, 2012. After the ownership change, Taxpayer continued operating under the same business name, at the same business location, and under the same UBI number. Taxpayer takes the position that any taxes owed for periods prior to the ownership change are rightfully owed by Taxpayer's prior owner. On appeal, Taxpayer argues that because the current owner was not made aware of its tax liability until after the owner purchased the business, it is unfair for the Department to collect from Taxpayer, instead of the prior owner.

## ANALYSIS

Washington imposes a business and occupation tax "for the act or privilege of engaging in business" in this state. RCW 82.04.220. Washington also imposes a retail sales tax on each retail sale in this state. RCW 82.08.020. If the seller fails to collect the tax, the seller must pay the tax to the Department. Taxpayer was formed as a limited liability company (LLC). An LLC is a separate entity or "person," under the law, from the persons or entities which comprise its membership. RCW 25.15.070(2)(c); RCW 82.04.030. Washington courts and the Department generally will respect [an individual's] choice of business entity. *See, e.g.*, Det. No. 05-0200, 25 WTD 12 (2006). . . .

In this case, there is no dispute that Taxpayer was the business entity engaged in business in this state and is therefore liable for B&O tax on the gross income of its business. *See* RCW 82.04.080. There is also no dispute that Taxpayer was the business entity that sold goods in this state and is therefore liable for retail sales tax on the sale of those goods. *See* RCW 82.08.050. Finally, there is no dispute that Taxpayer was the business entity to whom the assessment of retail sales tax and B&O taxes was issued. Taxpayer operated in its current form, under its current business name, in its current location, and under its current UBI number, for the entire audit period.

Taxpayer's appeal is based on the [perceived] unfairness of taxing it for periods prior to when it was sold to its current owners. But it is immaterial who owned Taxpayer and that Taxpayer's ownership structure may have changed. Taxpayer was the entity that accrued the tax liability at issue in this case and Taxpayer is therefore the party liable for that liability.<sup>2</sup>

Taxpayer has raised no legal argument why it should not be held liable for taxes, penalties, and interest that it accrued in the course of its operations. Having found that the ownership structure of Taxpayer is immaterial for purposes of determining whether Taxpayer is liable for taxes accrued as a result of its own business operation, we sustain the assessment.

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<sup>2</sup> Alternatively, even if the Taxpayer was a successor business after the ownership change, it would still owe the tax. *See* RCW 82.32.140; Det. No. 05-0313, 26 WTD 27 (2007). On these facts, however, we find that Taxpayer is not a successor, but was, itself, engaged in business during the entire audit period.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 30<sup>th</sup> day of September, 2014.