

Cite as Det No. 11-0280, 32 WTD 107 (2013)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 11-0280
)	
...)	Registration No. . . .
)	Document Nos. . . .
)	Audit Nos. . . .
)	Docket Nos. . . .
...)	
)	Registration No. . . .
)	Document No. . . .
)	Audit No. . . .
)	Docket No. . . .

- [1] RCW 82.08.050: RETAIL SALES TAX – BUYER'S LIABILITY. When a retail sale is made and the retail sales tax is not paid by the buyer, the Department may proceed against the buyer or seller for payment of unpaid sales tax. The buyer is the person who is legally obligated to pay the seller in any transaction. Where a taxpayer retained construction and labor services and was identified as the purchaser on sales invoices, the taxpayer was the buyer and liable for payment of retail sales tax due on the sales even though a corporate entity made payment on the invoice.
- [2] RCW 82.08.050: RETAIL SALES TAX – CORPORATE DISREGARD – ALTER EGO DOCTRINE. Where a corporate shell with no function beyond holding title to assets that are for the exclusive benefit of its only shareholders, has operated as the mere alter ego of the shareholders, and regarding it as separate from its shareholders would aid in the consummation of a wrong on the State, the Department may look beyond the legal fiction of distinct corporate existence, disregard the corporate entity, and hold the shareholders responsible for unpaid retail sales tax on purchases for which the corporate entity made payment.
- [3] RCW 82.08.050: RETAIL SALES TAX – CORPORATE DISREGARD – ALTER EGO DOCTRINE -- PROTECTIVE ASSESSMENT. Where a corporate entity is disregarded and shareholders are held liable for unpaid retail sales tax on

purchases for which the corporate entity made payment, the Department may also issue a protective assessment for the unpaid taxes against the corporate entity.

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.

Eckholm, A.L.J. – This appeal involves two taxpayers: a sole proprietor and a limited liability company (LLC). The sole proprietor, engaged in the business of investing in real property, protests an assessment for retail sales tax on construction and laborer services provided on properties held in trust. The sole proprietor asserts that it is not liable for tax on the transactions because it was not the buyer. The LLC, an administrative entity for the trusts holding title to the properties, protests the protective assessment issued against it for the same tax. The LLC asserts that the sales of the services were not retail sales subject to retail sales tax. We affirm the assessments.¹

ISSUES

1. Whether the sole proprietor was the buyer of the construction and labor services provided on the trust properties and, therefore, liable for the unpaid retail sales tax.
2. Whether, in the alternative, the sole proprietor, as the alter ego of the trust LLC beneficiaries, is liable for the unpaid retail sales tax on the construction and labor services provided on the trust properties.
3. Whether the protective assessment against the LLC was properly issued.

FINDINGS OF FACT

[Taxpayer Sole Proprietors, a married couple], dba [Business Name] describe their business activities in Washington as “flipping” real estate, i.e., purchasing property at a relatively low price, performing any necessary renovations and repairs, and attempting to make a profit by selling the property within a short period of time at a higher price. [Taxpayer Sole Proprietors] also purchase residential and commercial rental properties that they do not “flip.” The [Taxpayer Sole Proprietors] refer to the rental properties as the “long-term” properties and the “flipped” properties as the “short-term” properties.

[Taxpayer Sole Proprietors] created revocable trusts and transferred title of the long-term properties to the trusts. [Taxpayer Sole Proprietors] were the grantors and initial beneficiaries of all the trusts but later transferred their beneficial interests in each trust to one of three Washington LLCs . . . (trust LLCs), formed by [Taxpayer – Sole Proprietors] for the purpose of

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

receiving the transfers of beneficial interests. [Taxpayer Sole Proprietors] created the trusts and trust LLCs to limit any liabilities that may arise from the ownership of rental properties. [Taxpayer Sole Proprietors] are the sole members of the trust LLCs. It does not appear that the trust LLCs conduct any business activities or hold any assets, aside from the trust LLCs' beneficial interests in the trusts. [Taxpayer Sole Proprietors] provided a trust document . . . representative of all the revocable trusts they created. [Wife] is appointed as trustee for each trust. The trustee's powers include the power, with the consent of the beneficiaries, to manage, lease or sell the trust property. . . . The beneficiaries of the trust have the right to manage and control the trust property, receive proceeds from the rental, sale or mortgage of the trust property, direct the trustee to convey title of the property, and terminate the trust. . . .

[Taxpayer Sole Proprietors] created another Washington LLC, [Taxpayer LLC]. [Taxpayer Sole Proprietors] created [Taxpayer LLC] to serve as an administrative entity to manage the cash flow and expenses related to the trust properties. [Wife] is the Manager of [Taxpayer LLC]. [Husband] is not an officer, manager or member of [Taxpayer LLC]. Ownership of [Taxpayer LLC] is held by [an out-of-state] "C" Corporation, [Corporation]. [Corporation] was formed by the [Taxpayer Sole Proprietors] and they are the sole shareholders and officers of the corporation. The . . . Secretary of State's website indicates that [Corporation] holds \$100 in capital. . . . There is no evidence that [Corporation] engages in any business activities.

The Audit Division (Audit) of the Department of Revenue (Department) conducted three separate audits of the [Taxpayers'] business activities and records. The first audit was for tax period January 1, 2005, through December 31, 2005, the second audit covered tax period January 1, 2006, through June 30, 2009, and the third audit was of [Taxpayer LLC's] records for tax period January 1, 2006, through June 30, 2009.

[Taxpayer Sole Proprietors] described for the auditor the above summarized organization of [their] business and the interrelationship among the [Taxpayer Sole Proprietors, Taxpayer LLC] and the various trusts and trust LLCs they created. Audit found that the [Taxpayer Sole Proprietors] hired various licensed contractors, and a large number of unlicensed, unregistered laborers, to provide construction and labor services for repairs and improvements to the trust properties. Audit reviewed the available records of the construction and labor retail sale transactions, including sales invoices and hourly work summaries. The sales invoices that Audit reviewed were for services provided by licensed, registered contractors, and indicated [Husband] or [Business Name] as the purchaser of the services. There were no invoices or billings for the services provided by the unlicensed, unregistered laborers. The laborer payments were logged in the [Taxpayer LLC] check registers and vendor detail logs in QuickBooks. The vendor detail logs included the name of the vendor and an associated list of all the disbursements for that vendor. The auditor cross-referenced the vendor detail logs with the check registers to confirm [Taxpayer LLC's] payments to the laborers. [Taxpayer LLC] issued Form 1099s to the contractors and laborers for federal income tax purposes.

[Taxpayer Sole Proprietor's] records substantiated that the [Taxpayer Sole Proprietors] paid all but a few of the licensed, registered contractors retail sales tax for their services, but retail sales tax was not paid to the unlicensed, unregistered laborers. [Taxpayer Sole Proprietors] indicated

to the auditor that the costs related to the repairs and maintenance of the trust properties were generally paid from property rental receipts and/or proceeds from loans on the properties that were deposited in the [Taxpayer LLC's] accounts. Audit concluded that even though the retail construction and labor services were paid for by checks issued on the [Taxpayer LLC's] accounts, that the [Taxpayer Sole Proprietors] were the purchasers of the retail construction and labor services. Audit also concluded that even if [Taxpayer LLC] or the trusts were deemed to have purchased the services by virtue of the source of the funds used for payment, [Taxpayer Sole Proprietors] remain liable for the unpaid retail sales tax because they are the parties who controlled the trust properties and the LLC entities they created.

Audit issued two assessments² against [Taxpayer Sole Proprietors], and a duplicate protective assessment³ against [Taxpayer LLC]. The assessments issued against [Taxpayer Sole Proprietors] consist primarily of use tax and/or deferred sales tax and total \$.... [Taxpayer Sole Proprietors] and [Taxpayer LLC] filed timely appeals.

In their appeal petition, [Taxpayer Sole Proprietors] assert that: they were not the buyer of the retail services, therefore, Audit incorrectly assessed the retail sales tax against them; that neither use tax nor deferred sales tax is applicable; and that the Department has not evaluated whether the registered service providers had already remitted the unpaid retail sales tax in question based on their obligation as sellers of the services.⁴ In its appeal petition, [Taxpayer LLC] asserts that retail sales tax is not due on the amounts [Taxpayer LLC] paid to the laborers because the laborers were deemed [Taxpayer LLC's] employees by the Washington Employment Security Department (ESD) and retail sales tax does not apply to services provided by employees.

[Wife] and the representative for [Taxpayer Sole Proprietors] and [Taxpayer LLC] attended the hearing. The ALJ asked [Wife] how the contractors and laborers were contacted to retain their services. [Wife] replied that [Husband] retained the service providers and that [Husband] gave the service providers [the Taxpayers Sole Proprietors' business card]. [Wife] also indicated that the service providers contacted [Husband] at the telephone number for [Business Name]. When asked why the service providers did not call [Taxpayer LLC], [Wife] indicated that [Taxpayer LLC] did not have a main contact telephone number. [Wife] explained that the business name [Business Name] was used for advertising purposes and was the public face for their business

² Document No. . . . issued to [Taxpayer Sole Proprietors] for tax period January 1, 2005 through December 31, 2005 includes \$. . . in use tax and/or deferred sales tax, \$. . . , in interest, and a \$. . . assessment penalty, for a total of \$ Document No. . . . issued to [Taxpayer Sole Proprietors] for tax period January 1, 2006 through June 30, 2009 includes \$. . . in use tax and/or deferred sales tax, \$. . . in interest, and a \$. . . assessment penalty, for a total of \$

³ Document No. . . . issued to [Taxpayer LLC] for the tax period January 1, 2006 through June 20, 2009, in the amount of \$. . . , is a protective assessment. The amount of the assessment is slightly higher than the second assessment issued to [Taxpayer Sole Proprietors] for the same tax period because it includes additional accrued interest. A protective assessment was issued to preserve the Department's ability to pursue collection of the tax from [the fourth LLC] in the event the original assessments against [Taxpayer Sole Proprietors] are not upheld.

⁴ Originally [Taxpayer Sole Proprietors] also alleged that certain services were janitorial and were exempt from retail sales tax under RCW 82.04.050(2)(d). The auditor acknowledged that janitorial services are exempt and invited [Taxpayer Sole Proprietors] to provide substantiating records for any such services. [Taxpayer Sole Proprietors] have abandoned this argument on appeal.

and that is why they used their business card and phone number in obtaining the services. [Wife] went on to say that the service providers must have made up their invoices with [Business Name] or [Husband] as the customer based on the [Business Name] business card provided.

At the hearing, [Wife] indicated that [Taxpayer LLC] maintains two bank accounts: one bank account contains the rental income from the trust properties, and the other bank account contains proceeds from loans on the properties, profits from the sale of the flipped properties, and funds [Taxpayer Sole Proprietors] describe as “capital contributions” by [Taxpayer Sole Proprietors]. [Taxpayer Sole Proprietors] did not provide any additional description or verifying information regarding the capital contributions or other funds deposited in the account. [Wife] indicated that expenses for repairs and maintenance of the trust properties were generally paid from the bank account containing the trust property rental receipts, but that on occasion if there were insufficient funds in the rental receipts account she paid expenses out of [Taxpayer LLC’s] other bank account.

[Taxpayer Sole Proprietors] explained that based on advice from their accountant they did not understand that retail sales tax was due on the services of the unlicensed, unregistered laborers. [Taxpayer Sole Proprietors] represent that they have since corrected their business practices and now ensure all contractors are licensed and registered, that retail sales tax is paid for all construction and labor services, and that [Taxpayer LLC] is indicated as the purchaser on the invoices.

ANALYSIS

Washington imposes a retail sales tax on each retail sale within this state. RCW 82.08.020. The term “retail sale” is defined in RCW 82.04.050 and includes the sale of or charge made for labor and services rendered in respect to constructing, repairing or improving buildings or other structures upon “real property of or for consumers.” RCW 82.04.050(2)(b). The term “consumer” is defined in RCW 82.04.190 and includes “[a]ny person who is an owner, lessee or has the right of possession to … real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business.” RCW 82.04.190(4).

The construction and labor services provided on the trust properties constitute constructing, repairing or improving buildings or other structures upon real property for consumers. The consumers are the trusts and trust LLCS because they are the owners and persons having the right to possession of the real property.⁵ Thus, the sales of construction and labor services on the trust properties constitute retail sales subject to retail sales tax.

⁵ “Person” is defined at 82.04.030 as:

... any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

1. [Taxpayer Sole Proprietors] are liable for the unpaid retail sales tax on the construction and labor services provided on the trust properties because they were the buyers of the services.

[1] When a retail sale is made, the seller must collect retail sales tax from the buyer. RCW 82.08.050(1). Where the buyer has failed to pay the seller the sales tax, the Department may proceed directly against the buyer for collection of the tax. RCW 82.08.050(6). “Buyer” is defined as:

“Buyer,” “purchaser,” and “consumer” include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

RCW 82.08.010(3).

The Washington State Supreme Court has interpreted “buyer” to mean “the person who is legally obligated to pay the seller in any transaction.” *Murray v. State*, 62 Wn.2d 619, 624, 384 P.2d 337 (1963). The Court explained that the “buyer” and not the consumer is the party liable for payment of the retail sales tax:

One of the purposes of RCW 82.04.050 is to define the event that gives rise to a taxable transaction, which is the rendition of labor and services in the construction of new buildings upon real property of or for consumers. RCW 82.04.190 establishes the means by which the consumer is identified. These sections do not designate the party liable for payment of the tax in any given transaction. RCW 82.08.050 provides that the retail sales tax shall be borne by the buyer, who is primarily liable for payment of the tax. *Kaeser v. Everett*, 47 Wn.2d 666, 289 P.2d 343 (1955).

Murray, 62 Wn.2d at 623.

Here, [Husband] retained the services of the registered contractors and the unregistered laborers and the service providers invoiced [Husband] or [Business Name] for the services. Based on these facts, we find that the [Taxpayer Sole Proprietors] were legally obligated to pay the contractors and laborers for the services provided and were the buyers within the meaning of RCW 82.08.050.

The law is clear on the issue of a buyer's responsibility to pay retail sales tax. RCW 82.08.050(1) requires the buyer to pay, and the seller to collect, retail sales tax when it is properly due. In cases where a buyer fails to pay to the seller retail sales taxes due, RCW 82.08.050(10) provides that the Department may proceed directly against the buyer for collection of the tax. The buyer is required to pay retail sales tax whether it is charged by the seller or not. Here, the seller failed to collect the retail sales tax, so Audit acted in conformity with the law and properly assessed the unpaid retail sales tax directly against [Taxpayer Sole Proprietors], the buyer of the retail construction and labor services.⁶

2. [Taxpayer Sole Proprietors] are liable for the unpaid retail sales tax on the construction and labor services provided on the trust properties even if we assume the trusts and trust LLCs were the buyers of the services.

[2] Even if we assume that the trusts or trust LLCs were the buyers of the construction and labor services because the trust funds were used to pay for the services, we find that [Taxpayer Sole Proprietors], as officers and owners of the trust LLCs are, in substance, the owners of the trust funds and, therefore, still liable for the unpaid tax.

We have ruled, and so have the courts, that the substance of a transaction must be considered and not just the form when those transactions may lack economic reality. Det. No. 89-331, 8 WTD 53 (1989); Det. No. 90-397, 10 WTD 341 (1990); *Time Oil Co. v. State*, 79 Wn.2d 143, 483 P.2d 628 (1971); *Fidelity Title Co. v. Dep't. of Revenue*, 49 Wn. App. 662, 745 P.2d 530 (1987), *review denied* 110 Wn.2d 1010 (1988).

In 10 WTD 341 we held:

In essence, the taxpayer asks the Department to evaluate these transactions based strictly on its form without examining the substance of the matter. This, we must decline to do. The U.S. Supreme Court, in *Higgins v. Smith*, 308 U.S. 473 (1940) when faced with a similar problem stated:

. . . A taxpayer is free to adopt such organization for his affairs as he may choose and having elected to do some business as a corporation, he must accept the tax disadvantages.

On the other hand, the government may not be required to acquiesce in the taxpayer's election of that form of doing business which is most advantageous to

⁶ The assessment identifies the unpaid retail sales tax as "use tax and/or deferred retail sales tax. See Document Nos. . . . [Taxpayer Sole Proprietors] assert that use tax does not apply to construction and labor services, and that deferred retail sales tax is improperly assessed because a retail sale did not occur and/or [Taxpayer Sole Proprietors] were not the buyers in the transaction. We have already concluded that retail sales occurred and that [Taxpayer Sole Proprietors] were liable as the buyers in the transactions at issue. We do not find any error in Audit identifying the unpaid retail sales tax as deferred retail sales tax and by a category phrased in the alternative as "use tax and/or deferred retail sales tax." Because we have concluded that Audit properly assessed the unpaid retail sales tax we do not address [Taxpayer Sole Proprietors] use tax argument.

him. The government may look at actualities and upon determination that the form employed for doing business or carrying out the challenged tax event is unreal or a sham may sustain or disregard the effect of the fiction as best serves the purpose of the tax statutes. To hold otherwise would permit the schemes of taxpayers to supersede the legislation in the determination of the time and manner of taxation.

...

Here, we must look to the substance of the creation of the trusts and trust LLCs to determine if they have any economic reality.

When property is transferred into a standard revocable living trust and the grantors act as the sole trustees and are the sole current beneficiaries of the trust, the substance of the transaction is that absolute ownership of the trust assets remains in the grantors who established the trust and who, as its beneficiaries, retain actual use of its assets. Such a trust will not shelter its grantors from Washington's excise taxes. Det. No. 92-133, 12 WTD 171 (1993)⁷; Det. No. 02-0145R, 22 WTD 257 (2003).

In 22 WTD 257, we held that a taxpayer who was grantor, trustee and beneficiary of a revocable living trust, was in substance the owner of the yacht held in trust, and liable for use tax on the yacht even though title to the yacht was held by the trust. We based our holding on the facts that the taxpayer was the sole beneficiary of the trust, had the right to revoke that trust at any time, held legal title to the yacht as trustee, and had the exclusive right to use the yacht.

Here, [Taxpayer Sole Proprietors] were the grantors of the trusts, initially were the trust beneficiaries, and [Wife] is trustee. Though [Taxpayer Sole Proprietors] later transferred their beneficial interests in the trusts to the trust LLCs, [Taxpayer Sole Proprietors] are the members and officers of the trust LLCs and control the actions and assets of those LLCs. Washington courts and the Department generally will respect taxpayers' use of the corporate form, such as an LLC, but there are circumstances in which the courts and the Department will not recognize a corporation as separate from its shareholders, and will employ the doctrine of disregard.

In order to apply the doctrine of disregard, two elements must be met. *Rogerson Hiller Corp., v. Port of Port Angeles*, 96 Wn. App. 918, 924, 982 P.2d 131 (1999). First, there must be an abuse of the corporate form to violate or evade a duty. Such abuse typically involves "fraud, misrepresentation, or some form of manipulation of the corporation to the stockholder's benefit and creditor's detriment." *Truckweld Equip. Co. v. Olson*, 26 Wn. App. 638, 645, 618 P.2d 1017 (1980). Second, disregard of the corporate entity must be "necessary and required to prevent unjustified loss to the injured party." *Rogerson*, 96 Wn. App. at 924. Washington courts have applied the doctrine on a case-by-case basis with each case being decided upon its own peculiar facts. Harris, *Washington's Doctrine of Disregard*, 56 Wash. L. Rev. 253 (1981).

⁷ In 12 WTD 171, we held that a Washington resident who created a revocable trust to purchase a motor home in Oregon was liable for use tax on the purchase because the substance of the trust was that the taxpayer owned the motor home. Though we concluded that the revocable trust was created to avoid excise tax, that additional conclusion was not necessary to the outcome. See 22 WTD at 261.

One situation in which it is proper to disregard a corporate entity is when the corporation is used merely as an instrumentality of the entities that own it in the conduct of their own business, generally referred to as the alter ego situation, and a third party suffers injury thereby. *Grayson v. Nordic Construction Co., Inc.*, 92 Wn.2d 548, 553, 599 P.2d 1271 (1979); *Garvin v. Matthews*, 193 Wash. 152, 74 P.2d 990 (1938); *Platt v. Bradner Co.*, 131 Wash. 573, 230 P. 633 (1924). In *Platt*, 131 Wash. at 539, the court explained the doctrine of alter ego, as follows:

It is also well-settled law that, while in general, a corporation is a separate legal entity, nevertheless when one corporation so dominates and controls another as to make that other a simple instrumentality or adjunct to it, the courts will look beyond the legal fiction of distinct corporate existence, as the interests of justice require; and where stock ownership is resorted to not for the purpose of participating in the affairs of the corporation in the customary and usual manner, but for the purpose of controlling the subsidiary company so that it may be used as a mere agency or instrumentality of the owning company, the court will not permit itself to be blinded by mere corporate form, but will, in a proper case, disregard corporate entity, and treat the two corporations as one....

[Taxpayer Sole Proprietors], as owners and officers of the trust LLCs, and [Wife] as trustee of the trusts, exercise dominion and control over the trust properties and are the ultimate beneficiaries of the proceeds emanating from the trust properties. After [Taxpayer Sole Proprietors] created the multitude of trust and LLC entities, [Taxpayer Sole Proprietors] continued to operate their real property investment business under their sole proprietor name. This is a classic alter ego situation where [Taxpayer Sole Proprietors] are merely conducting their own business through the corporate entities and a third party, the Department of Revenue, will suffer if it will be left to collect the unpaid sales tax from shell LLCs with no distrainable assets or income.

The substance of the trust vehicles created by [Taxpayer Sole Proprietors] is that [Taxpayer Sole Proprietors] are the only persons who have any authority to manage the trust properties and are, in essence, the beneficial interest holders of the income from the trust properties. Therefore, even if we were to assume that the owner of the funds used to pay for the construction and labor services was the buyer of the services, [Taxpayer Sole Proprietors] would still be the parties liable for the unpaid retail sales tax.⁸

⁸ Furthermore, even if we did not find that [Taxpayer Sole Proprietors] were the alter egos of the trust LLCs and instead were acting as agents on behalf of the trusts and/or trust LLCs in purchasing the services, [Taxpayer Sole Proprietor] would still be liable for the retail sales tax because they did not disclose the trusts or trust LLCs as their principals. An agent for an undisclosed principal is personally liable in his or her own right when contracting on behalf of an undisclosed principal. *Vinye v. American Auto. Co. of Seattle*, 165 Wash. 161, 163 (1931); *Maxwell's Electric, Inc. v. Hegeman-Harris Company of Canada, Ltd., et al*, 18 Wn. App. 358, 362, 567 P.2d 1149 (1977). Where a taxpayer operates for an undisclosed principal, both the principal and agent are liable for any contractual obligations incurred by the agent. Such liability, once the principal is revealed, is in the alternative. *Maxwell's Electric*, 18 Wn. App. at 363. It is a third party vendor's knowledge and acceptance that it is dealing with an agent,

3. The protective assessment was properly issued against [Taxpayer LLC].

[3] [Taxpayer Sole Proprietors] assert that [Taxpayer LLC] is the buyer of the services because [Taxpayer LLC] paid for the construction and labor services. We have already concluded that the sales at issue were retail sales, that [Taxpayer Sole Proprietors] were the buyers and, that they were liable for the retail sales tax at issue. However, we also conclude that when [Taxpayer LLC] paid the independent workers for their retail services, it was also liable to pay the retail sales tax due on those charges and, therefore, the protective assessment issued against [Taxpayer LLC] was proper. Because we have already determined that the sales at issue were retail sales, we will not address [Taxpayer LLC's] argument that they were not retail sales because ESD allegedly determined that the independent workers were [Taxpayer LLC's] employees and, therefore, their charges were not subject to retail sales tax. We have no evidence that for excise tax purposes, ESD's treatment of independent contractors as employees for employment security taxes would change the retail nature of the transactions at issue here. Therefore, until the taxes are paid under either assessment, both assessments shall remain due and collectible.

Lastly, in regards to [Taxpayer Sole Proprietors'] assertion that Audit did not verify whether the registered contractors had already remitted the retail sales tax to the Department, the [Taxpayer Sole Proprietors] are incorrect. To the extent that Audit could verify that the retail sales tax was remitted by the registered contractors (whether charged on invoices or not) Audit did not assess retail sales tax on those invoices.

In summary, we conclude [Taxpayer Sole Proprietors] were the buyers of the construction and laborer services provided on the trust properties and are, therefore, liable for the retail sales tax on those transactions. Even if we were to assume that the owner of the funds used to pay for the construction and labor services was the buyer of the services, [Taxpayer Sole Proprietors], as alter egos of the trust LLCs, remain the liable parties. We also affirm the protective assessment issued against [Taxpayer LLC].

DECISION AND DISPOSITION

The taxpayers' petitions are denied.

Dated this 29th day of September, 2011.

and not just the existence of the agency relationship itself, which finally relieves the agent from liability. Det. No. 88-7, 4 WTD 423 (1977).