

Cite as Det. No. 15-0042R, 35 WTD 174 (2016)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of) FINAL
Assessment of) DET E R M I N A T I O N
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...) No. 15-0042R
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) Registration No. . . .

[1] RULE 216; RCW 82.32.140 : SUCCESSOR – LIABILITY FOR TAXES OF PREDECESSOR ASSESSED AFTER SALE. A successor is liable for taxes of its predecessor due before sale, but not assessed until after the sale.

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.

LaMarche, A.L.J. - [Taxpayer] petitions for reconsideration of [Determination No. 15-0042, 34 WTD 169 (2016) (Det. No. 15-0042)], which affirmed an Assessment of Successorship Liability imposed on Taxpayer after it acquired all of the assets of a business, against which the Department of Revenue (the Department) made an assessment within six months after receiving Taxpayer's written notice of the sale. In Det. No. 15-0042 we concluded that Taxpayer was a successor to predecessor's liability. Taxpayer timely filed for reconsideration. We deny Taxpayer's petition for reconsideration.¹

ISSUE

Under RCW 82.32.140, is Taxpayer liable for taxes of its predecessor due before sale, but not assessed until after the sale?

FINDINGS OF FACT

On March 19, 2015, Taxpayer petitioned for reconsideration of Det. No. 15-0042, which affirmed an Assessment of Successorship Liability imposed on Taxpayer after it acquired all of the assets of a business from [Predecessor], against whom the Department issued an assessment within six months after receiving Taxpayer's written notice of the sale. For purposes of continuity, we restate the facts outlined in Det. No. 15-0042.

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

Predecessor operated a restaurant in . . . , Washington under UBI No. . . . , from September 1, 2012 to July 15, 2013. On August 15, 2013, . . . , owner of Predecessor, visited a Department field office in Port Angeles and paid the outstanding balance on Tax Warrant No. . . . , Invoice No. . . . , which the Department had issued for non-payment of taxes for the periods January 1, 2013 through May 31, 2013. At that time, [owner of Predecessor] received a copy of the invoice . . . screen (Receipt) showing that he had paid the warrant in full. Agents also informed [owner of Predecessor] that he needed to pay the June and July 2013 taxes as well, and he indicated this would be done. [Owner of Predecessor] then informed the agents that the business had closed on July 15, 2013, and that he was in the process of selling the business, but did not know the identity of the purchaser, or when they would purchase the business.

On August 29, 2013, the Department received a completed Successorship Notice Form, which indicated Taxpayer had purchased the business assets of Predecessor for the sum of \$. . . on August 14, 2013.

On October 30, 2013, the Department issued an assessment, Document No. . . . , against Predecessor in the amount of \$. . . , due December 2, 2013. Predecessor did not pay the assessment by the due date, and the assessment was later assumed in Tax Warrant No. The Department came to the conclusion that it had exhausted all avenues of collection against Predecessor for the final taxes owing for the period of June 1, 2013 through July 15, 2013, which included the service, . . . , of a Notice and Order to Withhold and Deliver on any payments owed by Taxpayer to Predecessor.

On January 21, 2014, the Department sent Notice of Assessment of Successorship Liability against Taxpayer in the amount of \$. . . , for taxes owed in Tax Warrant No. . . . , for the periods of June 1, 2013 through July 15, 2013. Because written notice of the purchase had been provided, the Department included a copy of Tax Warrant No. . . . with the Notice of Successorship Liability. The Department mailed the Notice of Successorship Liability and Tax Warrant No. . . . within six months of its receipt, on August 29, 2013, of the written notice of the purchase.

ANALYSIS

RCW 82.32.140(2) provides that

. . . a successor shall withhold a sum sufficient to pay any tax due from the predecessor until such time as the [predecessor] shall produce a receipt from the department of revenue showing payment in full of any tax due. If any tax is not paid by the [predecessor] within ten days from the date of such sale, the successor shall become liable for the payment of the full amount of tax. . . . (Emphasis added.)

In its petition for reconsideration, Taxpayer contends that at the time of closing of the sale, “the only tax due was the tax that was paid [by Predecessor].” Taxpayer argues that because the Department did not issue Document No. . . . until October 30, 2013, with a due date of December 2, 2013—long after the sale on August 14, 2013—Predecessor could not have possibly paid the tax within ten days of the date of the sale. Taxpayer states, “This scenario creates a circumstance

wherein the successor has no notice whatsoever of possible tax liability permitting them to withhold a portion of the purchase price where there is no determinate estimate of ‘tax due.’” We disagree with Taxpayer’s assertion and its interpretation of the statute.

Under RCW 82.32.045(1), “payments of the taxes imposed . . . are due monthly within twenty-five days after the end of the month in which the taxable activities occur.” *Id.* However, RCW 82.32.140 states that when any taxpayer sells its business, “any tax payable hereunder shall become immediately due and payable, . . .” RCW 82.32.140(1).

As Taxpayer indicates, Warrant No. . . . covered periods January 1, 2013 through May 31, 2013. However, Predecessor continued to operate its business another two months, June and July, 2013, for which it was later assessed. The excise tax returns and payment for June was due and payable July 25, 2013. RCW 82.32.140(1). When Predecessor sold the business in August, the deadline for the June taxes had already passed, and the July 2013 taxes, which normally would have been due on August 25, 2013, became *immediately* due and payable, pursuant to RCW 82.32.140, on the date of sale, August 14, 2013. RCW 82.32.045(1). Taxpayer confuses the original due date of the taxes with the due date of the assessment; the taxes later assessed against Predecessor were actually due and payable prior to the date of sale.

The purpose of RCW 82.32.140 is simply to impose the predecessor’s tax liability on the successor as well, if the predecessor’s liability has not been paid after ten days from the date of sale. We address the legislative intent underlying RCW 82.32.140 in Det. No. 14-0153, 33 WTD 534 (2014), and explain,

The effect of RCW 82.32.140 is to place on the successor of a business the burden of providing for any outstanding tax liability incurred by its predecessor, and thereby to make the successor secondarily liable for such tax. *Tri-Financial Corp. v. Dep’t of Revenue*, 6 Wn. App. 637, 640 (1972). The successor provisions enacted by the legislature are intended to ensure the collection of excise taxes remaining unpaid by a taxpayer who quits, sells out, exchanges, or otherwise disposes of his business or stock of goods. *Id.* at 642. The definition of successorship is not read narrowly. Det. No. 85-215A, 1 WTD 13 (1986); citing *Tri-Financial Corp.*, 6 Wn. App. 637.

Nothing in RCW 82.32.140 implies that a successor is not liable for a predecessor’s tax liability if the Department issues an assessment against the predecessor more than beyond ten days after the date of sale. To the contrary, RCW 82.32.140(4) creates some protection, for successors that give notice of the sale to the Department, by limiting to a six-month period after the sale, the Department’s window in which to impose additional tax. This provision would not make sense and would not be necessary if RCW 82.32.140(1) simply absolved successors of any predecessor liability assessed more than ten days after the sale. Moreover, such a reading of the statute undermines the legislative intent to ensure that all taxes of the predecessor are paid. 33 WTD 534, *supra*.

RCW 82.32.140(4) states,

No successor shall be liable for any tax due from the person from whom the successor has acquired a business or stock of goods if the successor 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 the successor or provided electronically to the successor in accordance with RCW 82.32.135.

Because the assessment against the Predecessor was for taxes due prior to sale, but not paid within ten days after the sale, the assessed taxes also become a liability of the successor pursuant to RCW 82.32.140(2). The assessment against taxpayer occurred within six months of the Department's receipt of the transfer Successorship Notice Form, and is not barred by RCW 82.32.140(4).

Accordingly, we conclude that Taxpayer has not shown a basis for relief, and uphold our decision in Determination No. 15-0042. We deny the Taxpayer's petition for reconsideration.

DECISION AND DISPOSITION

Taxpayer's petition for reconsideration is denied.

Dated this 18th day of September, 2015.