

Cite as Det. No. 15-0212, 34 WTD 549 (2015)

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. 15-0212
	)	
...	)	Registration No. . . .
	)	

RCW 82.32.145: TRUST FUND ACCOUNTABILITY ASSESSMENT – RESPONSIBLE PERSON – Taxpayer’s assertions that he was no involved in the day-to-day operations of the business, is insufficient to rebut written evidence that indicates Taxpayer served in the role of chief executive officer – namely, an Amended Report filed with the Secretary of State that identified Taxpayer as the President and sole officer, and filings with the Department and business’ bank, that identified Taxpayer as the sole owner.

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.

Anderson, A.L.J. – The owner [(“Taxpayer”)] of a now defunct used car dealership [(“LLC”)] appeals a trust fund accountability assessment (“TFAA”) on the basis that he was not responsible for the collection and payment of trust fund amounts and had no control over trust fund amounts. Petition denied.<sup>1</sup>

ISSUE

Has the owner of a now defunct used car dealership shown that he was not a responsible person under RCW 82.32.145, and thus, not liable for unpaid trust fund amounts?

FINDINGS OF FACT

[LLC] operated as a used car dealership from . . . . During this time, it did not report to the Washington State Department of Revenue (the “Department”).

The Department’s Compliance Division (“Compliance”) contacted [LLC] about its failure to report and remit retail sales tax on retail sales of used cars. On December 31, 2013 and March 20, 2014, Compliance issued Tax Warrant No. . . . for \$ . . . and Tax Warrant No. . . . for \$ . . . , respectively (collectively, the Tax Warrants), against [LLC].<sup>2</sup>

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

<sup>2</sup> Tax Warrant No. . . . was adjusted from \$ . . . to \$ . . . .

After [LLC] failed to pay the Tax Warrants, Compliance determined that [Taxpayer] was a responsible individual in [LLC] and issued a TFAA against Taxpayer for the amount of collected but unremitted retail sales tax (trust fund taxes).

As relevant here, Taxpayer explains that he started [LLC] with his brother, . . . , because [his brother] could not secure a required bond and Taxpayer was able to secure such a bond. On November 14, 2012, Taxpayer filed a Certificate of Formation for [LLC] with the Washington State Secretary of State (“Secretary of State”). Also on November 14, 2012, Taxpayer filed [LLC’s] Initial Report with the Secretary of State; the Initial Report identified Taxpayer as Registered Agent and [Taxpayer’s brother] as Member/Manager, of [LLC].

On January 16, 2013, Taxpayer opened a bank account with [Bank]. The signature card lists the account owner as follows: . . . . On April 15, 2013, Taxpayer wrote and signed the following statement on [Bank] Letterhead: “I [Taxpayer] am the only owner of [LLC].” On May 1, 2013, Taxpayer added [his brother] as a signor to the bank account; the amended signature card lists the account owner as follows: . . . . As relevant here, the address listed on the signature cards is Taxpayer’s residence.

On June 18, 2013, Taxpayer submitted a Business License Application to the Department; it listed Taxpayer as the sole owner of [LLC].

On June 19, 2013, Taxpayer submitted an Amended Report to the Secretary of State; it listed Taxpayer as President of [LLC] and no other officers or members or managers were listed.

[LLC] began selling cars in . . . and closed in . . . . [Taxpayer’s brother] completed the June, July, August, September, and October 2013 returns filed with the Department.<sup>3</sup> [LLC’s] tax returns were submitted with balances owing. The Department began contacting [LLC], Taxpayer, and [Taxpayer’s brother] to make payment arrangements for the outstanding balances on November 13, 2013.

On March 3, 2014, a Certificate of Administrative Dissolution was filed with the Secretary of State for [LLC].

On May 12, 2014, the Department revoked [LLC’s] Certificate of Registration.

On August 18, 2014, the Department issued a TFAA against Taxpayer for \$ . . . – the amount of retail sales tax that [LLC] had collected but not remitted to the Department. Taxpayer paid the TFAA on September 16, 2014 and appeals the assessment on the basis that he was not a responsible individual. Taxpayer states that he was not involved with the day to day management of [LLC] – he wrote no checks and collected no funds and had no control over collected retail sales tax. Taxpayer states that he merely used his credit to assist his brother in starting a business that required a substantial bond in order to get a license and was not even a member of the LLC. Taxpayer states that [his brother] was the sole member and manager, and, as such, handled the money and banking and filed tax returns. As relevant here, there is no

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<sup>3</sup> The June 2013 and July 2013 returns were filed on May 7, 2014; the August 2013 return was filed on September 24, 2013; and the September 2013 and October 2013 returns were filed on May 5, 2014.

written operating agreement for [LLC] – any division of governance responsibilities was handled verbally.

### ANALYSIS

Retail sales tax is paid by the buyer to the seller and held in trust, by the seller, until paid to the Department. RCW 82.08.050. RCW 82.32.145 authorizes the Department, under certain circumstances, to attempt to collect unpaid trust fund taxes by issuing a TFAA. RCW 82.32.145 states as follows:

(1) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid trust fund taxes from a limited liability business entity and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the department may pursue collection of the entity's unpaid trust fund taxes, including penalties and interest on those taxes, against any or all of the responsible individuals. For purposes of this subsection, "insolvent" means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The department may presume that an entity is insolvent if the entity refuses to disclose to the department the nature of its assets and liabilities.

(Emphasis added.) "Responsible individual" is statutorily defined and ". . . includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with an unpaid tax warrant issued by the department." RCW 82.32.145(9)(g)(i). In the Amended Report, filed with the Secretary of State on June 19, 2013, Taxpayer was identified as [LLC's] sole officer – President. Thus, under RCW 82.32.145(9)(g)(i), Taxpayer is a "responsible individual."

To the extent a "responsible individual" was also a current or former chief executive or chief financial officer – of the limited liability business entity – a strict liability standard applies, and that person is liable regardless of whether the individual was or should have been aware of the liability. RCW 82.32.145(3)(a). "Chief executive" means, "The president of a corporation; or for other entities or organizations other than corporations or if a corporation does not have a president as one of its officers, the highest ranking executive manager or administrator in charge of the management of the company or organization." WAC 458-20-217(8)(b)(iii). If a "responsible individual" was not a current or former chief executive or chief financial officer, in order for that person to be responsible for the unpaid trust fund taxes, the individual must have willfully failed to pay or cause to be paid to the Department, the trust fund taxes. RCW 82.32.145(3)(b).

Here, Taxpayer asserts that he really did not serve in the role of President because he was not involved in day-to-day operations and [Taxpayer's brother] served as the manager. The weight of the evidence points otherwise. While [Taxpayer's brother] was initially listed as the manager of [LLC] in its Initial Report filed with the Secretary of State, an Amended Report filed prior to [LLC's] commencement of business activities identifies Taxpayer as President and the sole officer. This Amended Report indicates that Taxpayer was serving in the role of chief executive officer for [LLC]. There is no evidence – other than Taxpayer's assertion – that shows

[Taxpayer's brother] was actually the chief executive of [LLC]. Further, Taxpayer identified himself as the sole owner of [LLC] in filings with the Department and [Bank]. Thus, based on a weighing of the evidence, we conclude that Taxpayer served as the chief executive officer of [LLC], and, as both a "responsible individual" and chief executive officer, he is strictly liable for the unpaid trust fund taxes. Accordingly, we sustain the TFAA with respect to Taxpayer.

#### DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 3rd day of August, 2015.