WAC 458-20-216 Successors, quitting business. (1) **Introduction.** RCW 82.32.140 requires a taxpayer to remit any outstanding tax liability to the department of revenue (department) within ten days of quitting business. If this tax is not paid by the taxpayer, any successor to the taxpayer becomes liable for the outstanding tax. This rule explains under what circumstances a person is considered a successor to a person quitting business. It explains the successor's responsibility for payment of an outstanding tax liability owed by the taxpayer quitting business, whether that liability is known at the time of purchase or not. This rule also provides examples illustrating when successorship does or does not apply.

(2) **Who is a "successor"?**

(a) **"Successor" on or after July 1, 2003.**

(i) RCW 82.04.180 provides that a "successor" is:

(A) Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, more than fifty percent of the fair market value of either the (I) tangible assets or (II) intangible assets of the taxpayer;

(B) Any surviving corporation of a statutory merger; or

(C) Any person obligated to fulfill the terms of a contract as a surety or guarantor of a defaulting contractor, in which case the person is deemed a successor only to tax liability arising out of that contract.

(ii) A person, however, is not a "successor" if the person acquires more than fifty percent of the fair market value of the tangible or intangible assets of the taxpayer through insolvency proceedings, regular legal proceedings to enforce a lien, security interest, or judgment, or by repossession under a security agreement.

(b) **"Successor" prior to July 1, 2003.**

(i) For the periods prior to July 1, 2003, a "successor" is:

(A) Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of business, a major part of the taxpayer's materials, supplies, merchandise, inventory, fixtures, or equipment, whether he or she operates the business or not. RCW 82.04.180. A person acquires a "major part" of the taxpayer's materials, supplies, merchandise, inventory, fixtures, or equipment if he or she acquired more than fifty percent of the fair market value of such property at the time of the sale or conveyance;

(B) Any person obligated to fulfill the terms of a contract as a surety or guarantor of a defaulting contractor, in which case the person is deemed a successor only to tax liability arising out of that contract.

(ii) A person, however, is not a "successor" if the person acquires a major part of a taxpayer's materials, supplies, merchandise, inventory, fixtures, or equipment through insolvency proceedings, regular legal proceedings to enforce a lien, security interest, or judgment, or by repossession under a security agreement.

(c) **Surviving corporation of statutory merger taken effect prior to July 1, 2003.** A surviving corporation of a statutory merger that takes effect prior to July 1, 2003, is liable for the full tax liability of the nonsurviving corporation, plus any interest or penalties due, under RCW 23B.11.060 or similar laws in other jurisdictions.

(3) **What are tangible and intangible assets for purposes of this rule?**

(a) **Tangible assets.** "Tangible assets" include, but are not limited to, materials, supplies, merchandise, inventory, equipment, or other tangible personal property.

(b) **Intangible assets.** "Intangible assets" include, but are not limited to, all moneys and credits including mortgages, notes, accounts, certificates of deposit; tax certificates; judgments; state, county and municipal bonds; bonds of the United States and of foreign countries; bonds, stocks, or shares of private corporations; personal service contracts; trademarks; trade names; brand names; patents; copyrights; trade secrets; franchise agreements; licenses; permits; core deposits of financial institutions; noncompete agreements; business name; telephone numbers and internet addresses; customer or patient lists; favorable contracts and financing agreements; reputation; exceptional management; prestige; good name; integrity of a business; or other intangible personal property.

(4) **What are taxpayer's responsibilities for outstanding tax liability?** Whenever a taxpayer quits business, or sells out, exchanges, or otherwise disposes of more than fifty percent of the tangible or intangible assets of the business, any tax administered by the department and for which the taxpayer is liable is immediately due and payable. The taxpayer must, within ten days, complete a tax return and pay the tax due. RCW 82.32.140.

(5) **What are successor's responsibilities for taxpayer's outstanding tax liability?**

(a) Withholding tax or obtaining documentation that no tax is due from taxpayer. A successor must withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until the taxpayer produces either a statement of tax status from the department showing payment in full of any tax due or a certificate from the department that no tax is due. If the tax is not paid by the taxpayer within ten days from the date of sale, exchange, or disposal of the business, the successor will become liable for the payment of the full amount of tax. A successor as defined in RCW 82.04.180 is not liable for interest or penalties associated with the taxpayer's tax liability. RCW 82.32.140.

(b) **Payment of successor liability is payment against purchase price.** The payment of the taxpayer's tax liability by the successor is deemed a payment upon the purchase price. If the sum of the payment to the department plus any payments made, directly or indirectly, to the taxpayer is greater in amount than the purchase price, the amount of the difference becomes a debt due the successor from the taxpayer. RCW 82.32.140.

(c) **Limitation on successor's responsibility for taxpayer's outstanding tax liability.** Effective July 1, 2003, if the fair market value of the assets acquired by a successor is less than fifty thousand dollars, the successor's liability for payment of the unpaid tax is limited to the fair market value of the assets acquired from the taxpayer. The burden of establishing the fair market value of the assets acquired is on the successor.

(6) **Can a successor avoid responsibility for taxpayer's outstanding tax liability?**

(a) **What must a successor do to avoid responsibility for tax due by a taxpayer?** A successor is not liable for any tax due from the taxpayer if the successor provides written notice of the acquisition to the department and within six months of receiving the written notice, the department has not issued a tax assessment against the taxpayer and mailed a copy of a notice of tax due to the successor. RCW

82.32.140. The six-month period begins upon the department's receipt of the written notice, or the date the person becomes a successor, whichever is later.

If there are circumstances that prohibit an audit from being completed within six months of the department receiving a proper written notice, the successor and the department may execute a Liability of Successor Waiver Agreement (Form Rev 31 0068) to extend the time in which the department may issue a tax assessment, and the successor will remain liable for the taxes. In lieu of executing such agreement, the department may issue a protective assessment under RCW 82.32.100 if the records cannot be made available for examination in a timely manner.

(b) **How does a successor notify to the department of the acquisition of a taxpayer?** Written notice of the acquisition must be made on a form prescribed by the department, or it must contain substantially the same information. The written notice must be provided by mailing to the Department of Revenue, Attn: Successorship Notices, P.O. Box 47476, Olympia, Washington 98504-7476.The written notice is available on the department's internet website at www.dor.wa.gov under forms. The written notice must contain the following information:

(i) The (predecessor) taxpayer's name, business name, address, and UBI number;

(ii) The successor's name, business name, address, and UBI number;

(iii) The date of the acquisition;

(iv) Whether or not the successor acquired more than fifty percent of the tangible or intangible assets of the (predecessor) taxpayer;

(v) A description of the assets acquired and their estimated fair market value;

(vi) The total costs of acquisition; and

(vii) How the person became a successor (i.e., asset purchase, merger, guarantor of a defaulting contractor, etc.).

(7) **Disclosure.** The department is not prohibited from disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded. RCW 82.32.330. For example, a successor is liable under RCW 82.32.140 for payment of an outstanding tax liability of the predecessor taxpayer. The department is only authorized to provide the successor return or tax information related to that outstanding tax liability.

(8) **Tax deferrals not terminated.** A tax deferral granted to a (predecessor) taxpayer may be transferred to the successor if the successor meets the eligibility requirements for the remaining periods of the deferral and the parties agree in writing that the successor will assume liability for the tax deferral. RCW 82.60.060, 82.63.045, 82.68.050 and 82.69.050. If the deferral is transferred, the successor of the investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral. If the deferral is not transferred, the successor's liability for deferred tax is limited to the deferred taxes due at the time of the transfer. Refer to WAC 458-20-24001 and 458-20-24001A (Sales and use tax deferral—Manufacturing and research/development activities in distressed areas), 458-20-24002 (Sales and use tax deferral—New manufacturing and research/development facili-

ties), and 458-20-24003 (Tax incentives for high technology businesses) for further reference regarding successors of deferral investment projects.

(9) **Examples.** The following factual situations illustrate the application of successorship. These factual situations should be used only as a general guide. The successorship status of each situation depends on all the facts and circumstances. Assume all the examples below occur on or after July 1, 2003.

(a) **Example 1.** Taxpayer quits business and sells all equipment and inventory to one purchaser. The taxpayer may be either solvent or insolvent at the time of sale. The purchaser is a successor.

(b) **Example 2.** Taxpayer quits business, selling all of its intangible assets consisting of customer lists and a covenant not to compete. The purchaser is a successor.

(c) **Example 3.** Taxpayer sells its entire business, including all equipment (60% of its tangible assets) to Purchaser A, and all inventory (40% of its tangible assets) to Purchaser B. Purchaser A is a successor. Purchaser B is not a successor.

(d) **Example 4.** Taxpayer sells its entire business, including all assets as follows to three purchasers on January 1, 2004:

PURCHASER A	PURCHASER B	PURCHASER C
Inventory of $200,000	Equipment of $100,000	Receivable of $45,000

Purchaser A is a successor because it has acquired more than 50% of the fair market value, of the tangible assets of the taxpayer. Purchaser B is not a successor because it has acquired less than 50% of the fair market value of the tangible assets of the taxpayer. Purchaser C is a successor because it has acquired more than 50% of the intangible assets of the taxpayer. Purchaser C's tax liability is limited to $45,000 because the fair market value of the assets acquired is less than $50,000.

(i) On February 1, 2004, Purchaser C provides a proper written notice to the department regarding its purchase from the taxpayer. Purchaser A does not provide any written notice to the department regarding its purchase from the taxpayer. On September 30, 2004, the department issues a tax assessment to the taxpayer for $100,000 in taxes owed, plus penalties and interest. A copy of the tax assessment is also mailed to Purchaser A as a successor to the taxpayer. Purchaser A is liable for the $100,000 in taxes owed by the taxpayer since it did not provide a proper written notice to the department. Purchaser C is not liable for the $100,000 in taxes because it provided a proper written notice, and the department did not issue an assessment within six months of receiving the notice.

(ii) Same facts as in the previous example except the department issues its tax assessment on July 15, 2004, and mails a copy of the tax assessment to both Purchasers A and C as successors. Both Purchasers A and C are liable as successors for the taxes owed by the taxpayer. However, Purchaser C's liability is limited to $45,000 in taxes since the fair market value of the assets it acquired was less than $50,000.

(e) **Example 5.** Taxpayer obtains a loan from a financial institution to purchase equipment and inventory. The financial institution secures the loan by taking a security interest in the equipment and inventory. Taxpayer quits business, leaving the equipment and inventory behind. The financial institution repossesses these items. The financial institution is not a successor.

(f) **Example 6.** Taxpayer purchases all equipment and inventory under a line of credit extended by a bank and guaranteed by a third party. The third party perfects a security interest in the equipment and inventory. Taxpayer quits business, surrendering the equipment and inventory to the third party guarantor. The third party guarantor is not a successor.

(g) **Example 7.** Taxpayer leaves business, including equipment, materials, and inventory, which the landlord holds for unpaid rent. The landlord forecloses the landlord's lien using the summary foreclosure provisions of RCW 60.10.030, or holds a foreclosure sale by the sheriff, or accepts a bill of sale in satisfaction of the landlord's lien for rent created by RCW 60.72.010. The landlord is not a successor.

(h) **Example 8.** Taxpayer purchases all equipment and inventory under a security agreement.

(i) If the property is repossessed by the vendor, the vendor is not a successor.

(ii) If the taxpayer sells his or her equity under the security agreement to a third person, the third person is a successor.

(iii) If the equipment and inventory is not repossessed and the vendor buys back the interest of the taxpayer without following the summary foreclosure provisions of RCW 60.10.030, the vendor is a successor.

(i) **Example 9.** Taxpayer dies or becomes bankrupt, goes into receivership, or makes an assignment for the benefit of creditors. The executor, administrator, trustee, receiver, or assignee is not a successor but stands in the place of the taxpayer and is responsible for payment of tax out of the proceeds derived upon disposition of the assets. A purchaser from the executor, administrator, trustee, receiver, or assignee is not a successor, unless under the terms of the purchase agreement the purchaser assumes and agrees to pay taxes and/or lien claims.

(j) **Example 10.** Taxpayer is a contractor and is required to post a bond to insure completion of the contract. Taxpayer defaults on the contract and the bonding company completes it. The bonding company is a successor to the contractor to the extent of the contractor's liability for that particular contract and is also liable for taxes incurred in the completion of the contract.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 05-14-107, § 458-20-216, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 82.32.300. WSR 99-08-034, § 458-20-216, filed 3/31/99, effective 5/1/99; Order ET 70-3, § 458-20-216 (Rule 216), filed 5/29/70, effective 7/1/70.]