Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Finance Committee

HB 1633

Brief Description: Changing the definition of successor for state excise tax purposes.

Sponsors: Representatives McIntire, Gombosky and Conway; by request of Department of Revenue.

Brief Summary of Bill

- Modifies the definition of "successor" for purposes of liability for unpaid excise taxes after a business or its assets are sold.
- Provides that a successor is a person who acquires 50 percent of the fair market value of either the tangible assets or intangible assets of the taxpayer, or is the surviving corporation of a statutory merger.
- Limits successor's liability for unpaid taxes to the value of the assets acquired if that value is less than $50,000.

Hearing Date: 2/13/03

Staff: Bob Longman (786-7139).

Background:

A person buying a business or a major part of the physical assets of a business is known as a successor. A successor becomes liable for any unpaid excise tax of the business. Successors are required to withhold money from the purchase price of the business sufficient to pay the taxes. However, the successor's liability for unpaid taxes could exceed the purchase price of the business or the assets acquired. If the successor gives written notice of the purchase to the Department of Revenue, and the Department does not issue a tax assessment within six months, the successor is no longer liable for the tax.

Only physical assets are considered when determining the tax liability of a successor. Intangible assets are not considered. Thus, a person might buy the business name, customer lists, contract rights, licenses, and other intangible assets that constitute the major value of a business and not be considered a successor, unless the person also bought a major part of the physical assets of the business.

In some circumstances, being treated as a successor has tax advantages. A successor is liable for the unpaid taxes of a purchased business, but not penalties and interest on the unpaid taxes. A question arose as to whether the surviving corporation after a statutory merger was a successor. A statutory merger is one where one of the merging companies continues to exist as a legal entity, rather than being replaced by a new entity. The Board of Tax Appeals ruled that a surviving corporation after a statutory merger is not a successor. Under the Board of Tax Appeals ruling, the surviving corporation is liable for the taxes, penalties, and interest of the merged corporation. Before this ruling, the Department of Revenue treated the surviving corporation as a successor that was liable for tax, but not liable for penalties and interest.

Summary of Bill:

A successor for excise tax purposes is a person who acquires 50 percent of the fair market value of either the tangible assets or intangible assets of a business.

The surviving corporation of a statutory merger is defined as a successor. Thus, a surviving corporation of a statutory merger is liable for the unpaid taxes of a purchased business, but not penalties and interest on the unpaid taxes.

If the fair market value of the assets acquired by a successor is less than $50,000, the successor's liability for 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect ninety days after adjournment of session in which bill is passed.