

SALT INSIGHTS

Jurisdiction: Texas
Tax Type: Sales and Use Tax
Issue: Texas Successor of Business Liable for Predecessor's Tax Liability
Date: February 1, 2017

SYNOPSIS:

On January 19, 2017, the Texas Third Court of Appeals ruled in favor of the Comptroller in *Agri-Plex Heating and Cooling, LLC v. Hegar* that a successor or purchaser of a business may be liable for Texas sales and use tax against the business for tax periods prior to the purchase date.

In 2006, Agri-Plex Heating and Cooling (“Agri-Plex”) was purchased in an asset sale. At the time of purchase, the Comptroller had not audited or assessed any tax against the seller and there was no known tax liability. Furthermore, the successor did not withhold any amount from the purchase price or request a certificate of no tax due from the Comptroller.

Following the purchase, the Comptroller audited the books and records of Agri-Plex for tax periods during which the seller owned the business. The Comptroller made an assessment of sales and use taxes, as well as interest and penalties against the successor, Agri-Plex, pursuant to the successor liability statute.

Under Texas’ statute covering successor liability, if a taxpayer who is liable for amounts owed to the Comptroller sells a business or the stock of goods of the business, the purchaser must withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt from the Comptroller showing that the amount has been paid or a certificate stating that no amount is due.

Agri-Plex argued that the amount required to be withheld was unknown and unascertainable at the time of closing, releasing them from the liability. Agri-Plex focused on the word “amount” in the successor liability statute and argued it needs specificity as it did not specifically refer to “liability” or “tax owed by the taxpayer” and the amount known by Agri-Plex at the time of closing was \$0 (zero). The Court held that the “amount” in the statute does not refer to an amount known at the time of purchase, but to the amount of actual tax liability, which can be determined through the Comptroller’s audit after the purchase for taxes due up to four years before the purchase. The Court stated that the plain language of the statute put the successor on notice that a tax liability determination could be made after the purchase and that the assessment could include taxes determined to be due up to four years before the purchase.

INSIGHT:

If you are purchasing a business, stock or assets, and such company has nexus with Texas, successor liability should be a priority when engaging in pre-acquisition due diligence. The Comptroller has been aggressive in its collection efforts under the Texas successor liability statute. Consulting with a state tax professional is crucial during due diligence in order to identify such successor liabilities and provide guidance when determining value.

CONTACT:

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