

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. S. 89-139

WALTER O. THOMPSON, As  
successor to Charles & Evie Coates  
2901 North Memorial Parkway  
Huntsville, AL 35801,

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Taxpayer.

ORDER

The Revenue Department assessed sales tax against Walter O. Thompson ("Taxpayer"), as successor in business to Charles and Evie Coates, for the period -March 1, 1988 through June 30, 1988. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on June 13, 1988. James R. Hodges was present for the Taxpayer. Assistant counsel Duncan Crow represented the Department. The following findings of fact and conclusions of law are hereby entered based on the evidence and arguments presented by the parties.

FINDINGS OF FACT

The issue in this case is whether the Taxpayer can be held liable as a successor in business pursuant to Code of Ala. 1975, §40-23-25 for sales tax owed by Charles and Evie Coates.

Charles and Evie Coates opened Tootsie's Country and Western Nightclub in Huntsville, Alabama in November, 1986. The business license and sales tax license were both in the name of Charles and Evie Coates.

The Taxpayer initially loaned the Coates \$3,700.00 to purchase

the equipment necessary to open the business. The Taxpayer subsequently loaned the Coates more money to keep the business open and thus protect his investment, and also on occasion directly paid the rent and sales and liquor tax liabilities of the business.

The Taxpayer and Evie Coates signed an agreement on August 3, 1988 whereby the Taxpayer agreed to pay the business' sales and liquor tax liabilities not to exceed \$8,400.00, but disclaimed liability for any other bills owed by Tootsie's. Thereafter, the Taxpayer took over management of the business, changed the name to "Doc's Place" (Doc is the Taxpayer's nickname), and paid the current sales tax due on the business for July, August and September, 1988.

Evie Coates continued to work at the business, but left in early September, 1988. The business subsequently closed in late September, 1988 and the sales tax license was canceled on September 30, 1988.

The Department contends that the Taxpayer was a successor in business to the Coates and thus is liable under the sales tax successor in business statute. Code of Ala. 1975, §40-23-25 for the past due sales tax owed by the Coates. The Taxpayer argues that he did not buy the business and thus should not be held liable for any past due taxes.

#### CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-25 reads as follows:

Any person subject to the provisions hereof who shall sell out his business or stock of goods, or shall quit business, shall be required to make out the return provided for under section 40-23-7 within 30 days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the department of revenue showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock or goods shall fail to withhold purchase money as above provided the taxes shall be due and unpaid after the 30-day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner. If in such cases the department deems it necessary in order to collect the taxes due the state, it may make a jeopardy assessment as herein provided. (Acts 1959, 2nd Ex. Sess., No. 100, p. 298, §23.)

The scope of the above statute has not been defined by any appellate court in Alabama. The general purpose of the section is that a person buying out a business will become liable for the delinquent sales tax owned by his predecessor. However, the statute specifies that the successor in business "shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due", and that "[I]f the purchaser . . . shall fail to withhold purchase money as above provided . . . , he shall be personally liable for the payment of the taxes".

Thus, a successor is liable only if purchase money is paid to the prior owner and the successor fails to withhold a sufficient amount to pay the prior owner's sales tax liability. If the successor merely takes over the business and no money is paid to the prior owner, as in the present case, then the successor cannot

withhold any money and thus cannot be held liable. Consequently, the Taxpayer cannot be held liable for the Coates' sales taxes accrued for March through June, 1988 because no purchase money was paid to the Coates.

The above considered, the assessment in issue should be reduced and made final showing no tax due by the Taxpayer.

Entered this the 20th day of June, 1989.

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BILL THOMPSON  
Chief Administrative Law Judge