

BLC Trucking

ASSESSMENTS

Successor liability

The three-year statute of limitation, as set forth in RCW 51.16.190(3), on actions to collect a delinquent assessment does not apply when the successor firm fails to file a report of sale as contemplated by RCW 51.16.200. ...*In re BLC Trucking, BIA Dec., 98 11140 (2000)* [*Editor's Note: The Board's decision was appealed to superior court under Thurston County Cause No. 00-2-00689-3.*]

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: BLC TRUCKING, INC.**) **DOCKET NO. 98 11140**
2)
3 **FIRM NO. 873,814-01**) **DECISION AND ORDER**
4 _____)

5 **APPEARANCES:**

6
7 Employer, BLC Trucking, Inc., by
8 Anderson, Burns & Hostnik, per
9 Charles R. Hostnik

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11 Department of Labor and Industries, by
12 The Office of the Attorney General, per
13 Kay A. Germiot, Assistant
14

15 The firm, BLC Trucking, Inc., filed an appeal with the Board of Industrial Insurance Appeals
16 on July 22, 1997, from a June 12, 1997 Notice and Order of Assessment, issued by the Department
17 of Labor and Industries, that found that BLC Trucking, Inc. was the successor of Pacific
18 Transportation Group, Inc., and assessed industrial insurance taxes due and owing in the sum of
19 \$147,051.51 for the second quarter of 1992 through the first quarter of 1996. The June 12, 1997
20 Notice and Order of Assessment was communicated to the firm on July 10, 1997. **REVERSED**
21 **AND REMANDED.**
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DECISION

29 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
30 and decision on timely Petitions for Review filed by the firm and the Department of Labor and
31 Industries to a Proposed Decision and Order issued on October 18, 1999, in which the Notice and
32 Order of Assessment of the Department dated June 12, 1997, was reversed and remanded to the
33 Department with directions to issue an order finding that BLC Trucking, Inc. is the successor to
34 Pacific Transportation Group and, as such, BLC is ordered to pay their unpaid industrial insurance
35 premiums of \$64,173.78 for the period from the second quarter of 1994 through the first quarter of
36 1996.
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1 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
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3 no prejudicial error was committed and the rulings are affirmed.
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5 This appeal raises a number of issues. First, is BLC Trucking, Inc. a successor to Pacific
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7 Transportation Group, as contemplated by RCW 51.08.177 and therefore liable for the unpaid
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9 industrial insurance premiums in the sum of \$119,273.33 due by Pacific Transportation Group,
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11 pursuant to RCW 51.16.200? Second, was the auction of Pacific Transportation Group property,
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13 conducted by the Department of Labor and Industries, done in a reasonable manner? Third, is the
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15 Department of Labor and Industries limited to a three-year statute of limitations, as set forth in
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17 RCW 51.16.190 when collecting unpaid premiums from a successor, defined in RCW 51.08.177?
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19 We agree with the analysis and result reached by our industrial appeals judge in the
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21 Proposed Decision and Order regarding the first and second issues. We find that BLC Trucking,
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23 Inc. is a successor to Pacific Transportation Group, as contemplated by RCW 51.08.177, and
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25 therefore BLC Trucking, Inc. is liable for unpaid taxes assessed against Pacific Transportation
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27 Group, pursuant to RCW 51.16.200 in the sum of \$119,273.33. This figure represents the amount
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29 owed by Pacific Transportation Group as of the date of the hearing. (See 2/17/99 Tr. at 30). We
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31 also believe that the Department acted reasonably and within its authority when it seized and
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33 auctioned property owned by Pacific Transportation Group to satisfy the unpaid premium
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35 assessments.
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37 We have granted review solely to address the issue of the effect of the three-year statute of
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39 limitations found in RCW 51.16.190. We disagree with the decision reached in the Proposed
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41 Decision and Order. We do not believe the limitation set forth in RCW 51.16.190 applies to the
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43 action brought under the successor liability statute, RCW 51.16.200, as it applies in this case.
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45 While RCW 51.16.190 provides for a three-year limitation on commencement of an action to collect
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47 delinquent premiums, subsection (3) of the statute provides an exception to this limitation.

1 Subsection (3) of RCW 51.16.190 provides: "In case of a false or fraudulent report with intent to
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3 evade premiums, assessments, contributions, penalties, interest, or other sums, or in the event of a
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5 failure to file a report, action may be begun at anytime."
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7 RCW 51.16.200 provides that a successor shall become liable for the full amount of the tax.
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9 However, this statute provides that the successor will not be liable for the tax if the successor gives
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11 a written notice to the Department of Labor and Industries of the acquisition of the business and no
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13 assessment is issued by the Department of Labor and Industries within 180 days of receipt of the
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15 notice. When the provision of RCW 51.16.190(3) is read in conjunction with RCW 51.16.200, we
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17 are convinced that the Department is not limited to a three-year period for beginning an action to
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19 collect the assessments due in this case. BLC Trucking, Inc. did not comply with the provisions of
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21 RCW 51.16.200. There is nothing in the record to establish that BLC Trucking, Inc. gave a written
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23 report as a successor to Pacific Transportation Group. Absent the filing of this report by
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25 BLC Trucking, Inc., the protection afforded the successor in RCW 51.16.200 and the statute of
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27 limitations found in RCW 51.16.190(3) do not apply.
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29 The Notice and Order of Assessment is reversed and the matter remanded to the
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31 Department of Labor and Industries to issue a Notice and Order of Assessment that assesses
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33 unpaid premiums against BLC Trucking, Inc. in the sum of \$119,273.33.
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35 **FINDINGS OF FACT**

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- 37 1. On June 12, 1997, the Department of Labor and Industries issued a
38 Notice and Order of Assessment (NOA) against BLC Trucking, Inc.,
39 alleging taxes due and owing in the amount of \$147,051.51 as
40 BLC Trucking is a successor to Pacific Transportation Group (PTG).
41 The NOA was mailed on or about July 9, 1997, and communicated to
42 the firm on July 10, 1997. On July 22, 1997, the firm filed an appeal
43 from the June 12, 1997 NOA. On February 20, 1998, the Board entered
44 an order granting the appeal effective February 19, 1998, assigned
45 Docket No. 98 11140, and ordered that proceedings be held.
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- 1 2. Before it ceased operations in September 1996, PTG owed unpaid
2 industrial insurance premiums in the sum of \$147,051.51. This debt
3 was brought to a judgment and warrants were issued.
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- 5 3. BLC Trucking, Inc. became a successor to PTG as defined in
6 RCW 51.08.177 when PTG ceased operations. This successorship is
7 shown through BLC Trucking, Inc.'s purchase of equipment, free storage
8 by BLC Trucking, Inc. of many fixtures and office equipment owned by
9 PTG, together with common business purposes, a common location, the
10 same employees, and the use by BLC Trucking, Inc. of customer lists
11 owned by PTG.
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- 13 4. PTG's purpose in ceasing operations and the creation of BLC Trucking,
14 Inc. was to avoid payment of industrial insurance premiums and was not
15 within the ordinary course of business.
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- 17 5. BLC Trucking, Inc. did not file a report of sale as a successor to PTG as
18 contemplated by RCW 51.16.200 and RCW 51.16.190.
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- 20 6. The Department of Labor and Industries' auction of assets seized from
21 PTG was done after proper advertisement. All of the seized assets
22 were sold at the auction at a current market price for the 50 to 75 people
23 who attended the auction. None of the seized assets were given away
24 or lost. No credit need be given PTG because of the broken glass on
25 the 1949 International, as this damage did not reduce its sale price. The
26 Department correctly transferred an impounded trailer to the impounding
27 company so that PTG would receive the most credit for their seized
28 assets.
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- 30 7. The Department correctly applied the net auction proceeds to the PTG
31 debt.
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- 33 8. The correct amount of the premium assessment due from BLC Trucking,
34 Inc. is \$119,273.33.
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CONCLUSIONS OF LAW

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- 38 1. The Board of Industrial Insurance Appeals has jurisdiction over the
39 parties and the subject matter of this appeal.
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- 41 2. BLC Trucking, Inc. is a successor of PTG for payment of industrial
42 insurance premiums under RCW 51.08.177 and RCW 51.16.200.
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- 44 3. The Department of Labor and Industries auction of the assets seized
45 from PTG was performed in a commercially reasonable manner.
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