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Hartford CT 06106-5032

INFORMATIONAL PUBLICATION

Successor Liability for Sales and Use Taxes, Admissions and Dues Tax, and Connecticut Income Tax Withholding

Purpose: This Informational Publication explains successor liability and describes the requirements and procedures for the purchaser of a business or stock of goods to request a tax clearance certificate for sales and use taxes, admissions and dues tax, and Connecticut income tax withholding.

Effective Date: Upon issuance and applicable to sales of a business or stock of goods occurring on or after July 1, 2011.

Statutory Authority: Conn. Gen. Stat. §12-424, Conn. Gen. Stat. §12-15(b)(6), Conn. Gen. Stat. §12-546, and Conn. Gen. Stat. §12-707, as amended by 2011 Conn. Pub. Acts 61, §58.

1. What is successor liability?

Successor liability is the obligation of the purchaser of a business or stock of goods (successor) to withhold a sufficient amount of the purchase price to cover any sales and use tax liability, admissions and dues tax liability, or income tax withholding liability, plus interest and penalties on such liability, owed and unpaid by the seller as of the time of such sale until the purchaser obtains one or more tax clearance certificates from the Department of Revenue Services (DRS). The tax clearance certificates are: **Form AU-712**, *Tax Clearance Certificate for Sales and Use Taxes*, **Form AU-712AD**, *Tax Clearance Certificate for Admissions and Dues Tax*, or **Form AU-712WTH**, *Tax Clearance Certificate for Connecticut Income Tax Withholding*.

A purchaser who fails to withhold a sufficient amount of the purchase price as required, is liable, to the extent of the purchase price, valued in money, for the seller's sales and use taxes, admissions and dues tax or income tax withholding liability.

For Connecticut sales and use taxes, admissions and dues tax, and income tax withholding purposes, successor liability applies where:

- One or more persons purchase the business or stock of goods of a seller (including a seller who quits the business or transfers it for little or no consideration); **or**
- One or more persons purchase a portion of the business or stock of goods of a seller (including a seller who quits the business or transfers it for little or no consideration).

Successor liability arises only in the case of the purchase of a business or stock of goods under a written contract providing for the payment to the seller (or a person designated by the seller) of a purchase price in money or property or providing for the assumption of liabilities of the seller or taking property subject to a liability. Successor liability does not arise in connection with the transfer of a business or stock of goods in a foreclosure, repossession, or in a bankruptcy, or receivership. Successor liability does arise, however, in the case of a sale made to avoid an imminent foreclosure, repossession, bankruptcy, or receivership.

2. How is the purchase price of a business computed?

The purchase price of a business or stock of goods is valued in money, whether or not the purchase price is paid in money.

The purchase price may be paid directly or indirectly to the seller.

The purchase price includes (i) the amount of any liability of the seller assumed by the purchaser, (ii) any obligation of the seller to which any assets transferred by the seller to the buyer are subject, and

(iii) the amount of any outstanding debt that the seller owes the buyer, prior to the sale, if the debt is cancelled or offset against the purchase price.

3. Will the purchase of a controlling interest in a legal entity that operates a business result in successor liability for the purchaser?

No. The purchase of a controlling interest in a legal entity that operates a business does not trigger successor liability because the same legal entity owns the business; only the ownership of the legal entity has changed.

However, a person purchasing a controlling interest in a legal entity may be liable for controlling interest transfer tax. For more information see **Informational Publication 2010(20)**, *Business Taxes*.

4. Will a change in the form of ownership or organization of a business result in successor liability for the new entity?

Yes. For example, if there is a change in the form of ownership or organization from a sole proprietorship to an LLC, from a partnership to an LLC, or from a sole proprietorship to a corporation, the new entity is a successor to the old entity.

However, if a corporation merges into another corporation (and is not the surviving corporation) the surviving corporation is not a successor but assumes, as a matter of law, the tax liability of the disappearing corporation.

5. How may a purchaser avoid successor liability?

To avoid successor liability, a purchaser of a business or of a stock of goods should request a tax clearance certificate. The purchaser may request the tax clearance certificate on or after the date the purchaser commits to purchasing the business or stock of goods and before the date of the closing. If the purchaser receives an escrow letter from DRS, DRS will not issue a tax clearance certificate until the amount required to be withheld has been paid by the purchaser to DRS.

6. Who may request a tax clearance certificate?

Only the purchaser of a business may request a tax clearance certificate. However, the purchaser may authorize another person to be the purchaser's representative before DRS in connection with the tax

clearance certificate request. In such case, a properly completed **Form LGL-001**, *Power of Attorney*, must be included with the request.

7. What is a tax clearance certificate?

A tax clearance certificate is the certificate issued by DRS upon request by the purchaser, releasing the purchaser, as successor of a business, from any sales and use tax liability (Form AU-712), admissions and dues tax liability (Form AU-712AD), or Connecticut withholding tax liability (Form AU-712WTH) of the seller. The certificate relieves the purchaser of a business from any further liability for the seller's taxes listed above.

8. What is an escrow letter?

An escrow letter (**Form AU-711**, *Tax Clearance Letter Request*) is the notice that DRS issues to the purchaser, advising the purchaser of the amount required to be withheld from the purchase price (Total Amount to be Withheld) to cover the liability of the seller for taxes due and unpaid as of the time of the sale.

Upon the purchaser's request for a tax clearance certificate, DRS will issue an escrow letter to the purchaser if DRS determines that the seller has an unpaid sales and use tax, admissions and dues tax or income tax withholding liability. The amount specified in the escrow letter may not exceed the purchase price of the business and is the maximum amount of the seller's taxes for which the purchaser will be liable.

9. What information must be included with the request for a clearance certificate?

When requesting a tax clearance certificate, the purchaser must include the following information with the request:

- The name and address of the purchaser (or the name and address of the practitioner representing the purchaser, if applicable, along with a properly executed Form LGL-001);
- The Connecticut Tax Registration Number that DRS has assigned to the purchaser, if any;
- The seller's name and address;
- The name and address of the seller as registered with DRS;
- The Connecticut Tax Registration Number of the seller;

- A letter signed in the original by the purchaser (or its practitioner) that clearly and unambiguously indicates that there is an agreement by the purchaser to purchase the business or stock of goods of the seller;
- A copy of the purchase agreement, including all schedules, addenda, and attachments;
- The purchase price of the business;
- The expected closing date of the sale; **and**
- The physical location at which the purchaser will operate the business.

10. Where should the request for a tax clearance certificate be sent?

Mail your request and the information listed under Question 9 to:

Department of Revenue Services
 Audit Division – RCA Unit
 Request for Clearance Certificate
 25 Sigourney St Ste 2
 Hartford CT 06106

11. What if all the required information is not submitted within the specified time?

If a request does not meet all of the requirements described in this publication, **Form AU-716, Acknowledgement of Clearance Request - Not Accepted**, will be issued identifying all of the additional documentation needed. If the purchaser does not submit all additional documentation to DRS within **45 days from the date on Form AU-716**, the request will be considered withdrawn. DRS will send **Form AU-941, Tax Clearance Request Considered Withdrawn**.

12. When will a purchaser receive a tax clearance certificate or escrow letter?

Once a complete request for a tax clearance certificate, which includes all the information listed under Question 9, is received by DRS from the purchaser, DRS has 60 days from the date of receipt to send either the tax clearance certificate or an escrow letter.

The date of receipt is the date DRS actually receives the request which includes all the information listed under Question 9. If the request is sent by certified or registered mail, the date of receipt is the postmark date.

The tax clearance certificate or the escrow letter may be sent by first class mail and is deemed to have been sent by DRS on the date that DRS deposits such tax clearance certificate or escrow letter in the U.S. Post Office or mail box. The date of deposit in the U.S. Post Office or mail box shall be the date shown by the U.S. Postal Service cancellation stamp or the like.

If DRS does not send a tax clearance certificate or an escrow letter within 60 days of the receipt of all required information, the purchaser is released from any obligation to withhold from the purchase price and cannot be liable for any unpaid sales and use tax, admissions and dues tax, or income tax withholding of the seller.

13. Is the purchaser required to notify DRS of the actual closing date?

Yes. A purchaser who makes a request for a clearance certificate and receives an escrow letter from DRS must notify DRS of the actual date of closing by sending a copy of the closing statement. Once notified of the closing date, DRS may issue a revised escrow letter reducing the liability that the purchaser is required to pay in order to receive the clearance certificate. Or, if there are no outstanding liabilities of the seller, DRS will issue the tax clearance certificate.

14. What if a purchaser fails to obtain a tax clearance certificate or an escrow letter?

If a purchaser fails to obtain a tax clearance certificate or an escrow letter, the purchaser is **liable** for any sales and use tax, admissions and dues tax or income tax withholding liability of the seller, up to the purchase price of the business. A successor liability assessment, not to exceed the amount of the purchase price, may be made at any time against the purchaser.

15. Can a purchaser protest a successor liability assessment?

Once a successor liability assessment has been made, the purchaser may only protest:

- Whether it is a successor;
- The amount of the purchase price of the business;
- Whether the purchaser properly requested a tax clearance certificate; **and**
- Whether the purchaser properly withheld a sufficient amount from the purchase price.

Under limited circumstances, the purchaser may protest an audit assessment made against the seller as described under Question 17.

16. Does a request for a tax clearance certificate trigger an audit?

No.

17. Can a purchaser protest the audit of a seller?

Yes, under certain conditions. In order to protest an audit of a seller, the purchaser must acknowledge itself to be a successor within the meaning of Conn. Gen. Stat. §12-424, §12-546, or §12-707 **and** the statutory appeal rights available to the seller in connection with the subject liability have not lapsed or otherwise expired. However, be aware that acknowledging oneself to be a successor does not create, grant or otherwise establish any appeal rights.

As an interested party, the purchaser may receive returns, return information, and audit information pertaining to the seller's business.

Effect on Other Documents: This Informational Publication modifies and supersedes **Informational Publication 2002(16), Successor Liability for Sales and Use Taxes and Admissions and Dues Tax.**

Effect of This Document: An Informational Publication issued by the Department of Revenue Services (DRS) addresses frequently-asked questions about a current position, policy, or practice, usually in a less technical question and answer format

IP 2011(16)
Sales and Use Taxes
Admissions and Dues Tax and
Connecticut Income Tax Withholding
Successor Liability
Issued: 8/18/2011

For More Information: Call DRS during business hours, Monday through Friday:

- **1-800-382-9463** (Connecticut calls outside the Greater Hartford calling area only); **or**
- **860-297-5962** (from anywhere).

TTY, TDD, and Text Telephone users only may transmit inquiries anytime by calling 860-297-4911.

Forms and Publications: Visit the DRS website at www.ct.gov/DRS to download and print Connecticut tax forms and publications.

Paperless Filing/Payment Methods (fast, easy, free, and confidential):

Business and individual taxpayers can use the **Taxpayer Service Center (TSC)** at www.ct.gov/TSC to file a variety of tax returns, update account information, and make payments online.

File Electronically: You can choose first-time filer information and filing assistance or log directly into the **TSC** to file returns and pay taxes.

Pay Electronically: You can pay taxes for tax returns that cannot be filed through the **TSC**. Log in and select the *Make Payment Only* option. Designate a payment date up to the due date of the tax and mail a paper return to complete the filing process.

DRS E-Alerts Service: Get connected to the latest news from DRS. Receive notification by email of changes to legislation, policies, and procedures. **DRS E-Alerts** provide information for employer's withholding tax, News – Press Releases, and Top 100 Delinquency List. Visit the DRS website at www.ct.gov/DRS and select *e-alerts* from the left navigation bar.
