



ILLINOIS STATE  
BAR ASSOCIATION

# CORPORATION, SECURITIES & BUSINESS LAW FORUM

The newsletter of the ISBA's Section on Corporation, Securities & Business Law

## A business planning guide to successor liability laws, part 2

By Janette M. Lohman and Coauthors

*This article was the result of a collective effort by Janette M. Lohman and her students in the Seminar on State and Local Taxation held during the Spring Semester 2008 at the Saint Louis University School of Law. Those who participated in this ambitious endeavor include Janette M. Lohman, assistant adjunct professor, coauthor, and partner at Thompson Coburn LLP; Nicholas H. Kappas, coeditor, coauthor, and associate at Thompson Coburn LLP; Niccole M. Garner, coeditor, co-author, and student; and the following student coauthors: Evan Bettag, Amy Cooper, Joseph Forward, Laura Hawk, Katie Helton, Ethan Huizenga, Meghan Kelly, Christopher Luzecky, Gregory Murphy, Kyle Murray, Brendon Sanders, Lan Sasa, Danielle Schrupf, Laura Schwarz, Jeffrey Shaw, and Andrew Westerfeld.*

*This is the second part of a two-part article. The first part appeared in the December 2008 issue of the ISBA's Corporations, Securities & Business Law newsletter.*

### Introduction

Before a purchaser buys either all or substantially all of the assets or stock of a business, the purchaser needs to ensure that it is not also

acquiring that business's old tax troubles. Under the laws of most states, the purchaser can, in fact, be held personally liable for up to either the purchase price or sometimes the entire amount of the seller's unpaid state tax liabilities until those liabilities are extinguished. Thus, a purchaser that is unaware of the applicable state successor liability statutes and that does not perform the proper due diligence regarding the seller's state tax history may well incur personal liability for the seller's unpaid state taxes and, in many cases, for the related penalties and interest.

Most states impose some form of successor liability by statute and generally identify the types of taxes to which that liability attaches. Likewise, most states prescribe procedures for purchasers to avoid successor liability by instructing the purchaser to notify the relevant tax authority of the transaction details, request tax clearance regarding the seller's tax history, and withhold from the purchase price money for the unpaid taxes pending clearance by the tax authority. With sufficient advanced planning, a purchaser can determine whether a particular state tax jurisdiction has enacted some form of successor liability statute for particular tax types and identify the applicable procedures for minimizing or eliminating the risk of such liability before closing the acquisition.

Students who participated in the Seminar on State and Local Taxation at the Saint Louis University School of Law during the spring semester of

2008 researched the successor liability laws (or lack thereof) of all 50 states to provide a general state-by-state guide for prospective purchasers. The result is the following detailed summary of each state's approach to successor liability on the sale or transfer of a business within that state. The summaries are based on the relevant state rules, regulations, and court decisions, as well as informal and nonbinding discussions with representatives of the state tax authorities. Readers are cautioned that this article is intended to serve as a general reference guide only. Prospective purchasers are strongly encouraged to consult their own tax advisers, perform their own legal research, and contact the relevant state taxing authorities directly with any questions about their particular circumstances.

### Missouri

Mo. Rev. Stat. section 144.150 governs successor liability in the case of a sale of all or substantially all of a business or its goods, or in the case of the cessation of a business. The statute's language is repeated in the context of a successor employer's employee withholding taxes, and its general framework is repeated in Mo. Rev. Stat. section 142.899, governing business license transfers. Missouri's successor liability provides that any tax due, including interest and penalties, should follow the business, its assets, or any portion of them. If a purchaser acquires property without purchasing the property, Missouri's successor liability statute

### IN THIS ISSUE

- A business planning guide to successor liability laws, part 2 ..... 1
- Upcoming CLE programs ..... 8

does not apply.<sup>1</sup>

A seller that sells all or substantially all of its business or stock of goods or quits the business must file a final return along with payment of any outstanding tax within 15 days of such action to the Missouri Department of Revenue.<sup>2</sup> Before the sale, the seller is required to request from the DOR a statement of the amount of tax owed by the seller or a certificate showing that no taxes are due. The DOR must furnish that statement or certificate within 15 days. The seller must present the statement or certificate to the purchaser and must secure the purchaser's signature on the statement or certificate. Failure to do so causes the seller to be liable for an additional penalty of 25 percent of its outstanding tax liabilities at the time of sale. That penalty is the sole liability of the seller but does not alter any other liability of the purchaser. The purchaser, in turn, may rely on the certificate for a period of 120 days from the date of issuance.

The purchaser is required to withhold from the purchase money an amount sufficient to satisfy the seller's outstanding taxes, penalties, and interest, if any, until the seller produces the statement from the director saying the taxes have been paid or a certificate that no taxes are due. The purchaser will be personally liable if it fails to withhold that amount at the time of purchase and to remit that amount to the DOR. The amount of the purchaser's liability is not limited to the purchase price. Thus, the duty to withhold is placed on the purchaser, and the statute's application to immediate or nonimmediate predecessor liability precludes the avoidance of tax liability by successive transfers. Even if the statute of limitations precludes the DOR from collecting the liability from the seller, the purchaser will be held liable.<sup>3</sup>

To the extent that the purchaser has obtained a certificate of no taxes due or withholds and pays the unpaid taxes of the seller in compliance with the requirements of the law, the purchaser will not be liable for additional taxes assessed against the seller as a result of a subsequent audit.

If the director of revenue fails to respond within 15 days to a creditor's request for a statement of taxes owed by a taxpayer or a certificate of no taxes due, it is presumed that no outstanding liabilities exist. Any purchaser that acquires the business or stock of goods of the business as a result of an enforcement action by a creditor is not subject to the duty to

withhold an amount equal to a taxpayer's outstanding liability. Although collections by creditors do not affect the taxpayer's liability, they do take precedent over the DOR's claim to the tax liabilities. The DOR may collect back tax liabilities from the assets remaining only after collection by other creditors. The burden is on the taxpayer to prove that the assessment is improper.<sup>4</sup>

### Montana

Under Mont. Code Announcement section 15-68-808, when a seller quits a business, or sells, exchanges, or otherwise disposes of a business or of a stock of goods, the seller must file a return and pay all taxes due within 10 days. A purchaser is liable for the full amount of any unpaid tax, including interest and penalties, and must withhold from the sales price an amount sufficient to pay any taxes due until the seller provides either a receipt from the DOR showing payment in full of any taxes due or a statement from the DOR that no tax is due. The purchaser's liability for the seller's unpaid taxes is not limited to the purchase price and includes interest and penalties. Any payment of the tax by the purchaser is considered a payment on the sales price, and if the tax payment is greater than the sales price, the seller is, under the terms of Mont. Code Announcement section 15-68-808, liable to the purchaser for the amount in excess of the sales price.

However, a purchaser of a business or stock of goods is not liable for any tax for which the seller is liable if the purchaser gives written notice to the DOR of the acquisition and the DOR does not issue an assessment against the seller within six months of receipt of the notice from the purchaser. The DOR must mail a copy of any assessment against the seller to the purchaser as well. If the DOR fails to mail a copy of the assessment to the purchaser, the purchaser will not be liable for any taxes due.

Mont. Code Announcement section 15-31-552 provides that upon final withdrawal or dissolution, the DOR, on request, will furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and has paid all taxes through the corporation's final year of existence in Montana. The DOR does not impose an obligation on either the purchaser or the seller to request a certificate. A tax certificate request may be accessed on the DOR's Web site<sup>5</sup> and may be submitted via mail, e-mail, or fax to the DOR.<sup>6</sup> If the state reports back that the seller

owes taxes, the purchaser is liable under the above-described terms. There is no authority regarding whether a purchaser can use a seller's defenses to argue that a seller was not liable for the back taxes it is alleged to owe. The burden of proof is on Montana to prove the tax liability and on the purchaser to prove defenses.<sup>7</sup>

### Nebraska

Neb. Rev. Stat. sections 77-2707 and 77-27,110 extend successor liability to sales and use taxes and income taxes, including interest and penalties. Successor liability applies to asset purchases as well as stock purchases if the sale of stock was sufficient to allow the purchaser to acquire a controlling interest in the seller.<sup>8</sup>

The purchaser's liability for the seller's taxes, interest, and penalties is limited to the purchase price of the seller. To avoid potential tax liability, the purchaser should acquire a tax clearance letter from the Nebraska Department of Revenue before the sale occurs. Either the tax clearance letter will say that no taxes are due, or the DOR will notify the purchaser of the amount of taxes that must be paid to receive the tax clearance letter. The tax clearance letter may be requested by either the purchaser or the seller through the Nebraska exemption application for sales and use tax form on the DOR's Web site.<sup>9</sup> If the purchaser requests the letter, the purchaser must verify its status as purchaser by including a copy of the contract or other evidence. If the seller requests the letter and would like the letter sent to the purchaser, the seller must include the purchaser's address and Nebraska identification number. The form should be mailed to the DOR.<sup>10</sup>

Within 60 days of either the date the DOR receives the request for the clearance letter or the date the seller's records are made available for audit, the DOR will release the tax clearance letter to the purchaser. Failure of the DOR to mail the letter relieves the purchaser of successor or transferee liability. If the letter says that the seller owes taxes, the purchaser must withhold the entire amount of taxes owed from the purchase price. The money is withheld until the seller presents a receipt of taxes paid to the purchaser. Failure to withhold from the purchase price will cause the purchaser to be personally liable for the amount of taxes, penalties, and interest of the seller to the extent of the purchase price. Nebraska courts broadly interpret the successor liability statute, so that the state can collect the liability owed.<sup>11</sup>

The period within which successor liability may be enforced against the purchaser starts on the later of the date the seller sells out the business or stock of goods or the date the DOR's determination against the seller becomes final.

### Nevada

Nev. Rev. Stat. section 360.525 and Nev. Admin. Code section 360.430 set forth the provisions regarding the successor liability of a purchaser of a business regarding the seller's unpaid tax liability. Successor liability extends to all taxes administered by the Nevada Department of Taxation as well as to interest and related penalties. Further, successor liability applies to transfers involving any portion of a business or any stock of goods, so long as the transfer is outside of the seller's ordinary course of business. Successor liability does not apply to transfers involving assignments for the benefit of creditors, foreclosures of mortgages or sales by trustees in bankruptcy. The department cannot impose successor liability on the purchaser in excess of the purchase price of the business.

A purchaser must withhold from the purchase price a sufficient amount to cover the taxes, penalties, and interest owed by the seller if the sale is made for money. If the sale is not made for money, the purchaser must withhold a sufficient portion of the transferred assets equal to the amount of tax due. That withholding requirement lasts until the seller provides the purchaser with a receipt or certificate from the tax department showing that the tax was paid. Also, the purchaser may make a written request to the department for a certificate of amount due.<sup>12</sup> The department has the later of either 60 days from receipt of the purchaser's request for a certificate or 60 days from the receipt of auditable records of the seller, if necessary, to provide a response. However, in all events, the department must respond no later than 90 days after receiving the purchaser's request. If the department fails to respond within that period, the purchaser is released from any obligation to withhold from the purchase price.

If the purchaser fails to withhold the amount required, and the seller is liable for the taxes, penalties, and interest, the purchaser will be personally liable for the tax payment to the extent of the purchase price of the business or stock of goods. If the purchaser partially complies with the statute and withholds a portion of the purchase price, the purchaser

will be liable for the remainder of the liability not to exceed the purchase price. Finally, the purchaser bears the burden if the liability is not withheld from the purchase price and a certificate is not issued. However, if the purchase price is withheld and the purchaser receives a certificate from the tax department (or no certificate after the allotted response time), the burden of proof shifts to the department to prove liability.<sup>13</sup>

The period within which successor liability may be enforced against the purchaser starts on the later of the date the seller sells out the business or stock of goods or the date the department's determination against the seller becomes final.

### New Hampshire

New Hampshire does not impose a successor liability statute for any state taxes. New Hampshire does not impose a general sales tax, but the state does tax business profits, business enterprises, transfers of real property, and imposes taxes on specific products and services such as tobacco, and meals and rentals.<sup>14</sup> Although the New Hampshire Department of Revenue Administration will not assess successor liability for any of a target's delinquent taxes, there are some procedures necessary for the acquired company to follow to avoid tax liens.

The acquired company (target) is required to file a final return with the department declaring that all sales taxes are paid. In addition, the purchaser should request that the target file with the department a Form AU-22, "Certificate Request Form," which now costs \$30. The request can be accessed on the department's Web site.<sup>15</sup> The request should be mailed or faxed to the department.<sup>16</sup> Although the purchaser cannot be held liable for any of the target's delinquent taxes, a certificate of good standing will prove to the purchaser that the target has paid all current taxes and accordingly that no liens will attach to the property. In absence of a certificate, the department may issue a lien against the property, which would discourage potential buyers from acquiring the property.<sup>17</sup>

### New Jersey

Under N.J. Stat. Announcement section 54:50-38, on purchase or acquisition of bulk assets, whether in whole or in part, other than in the ordinary course of business, the purchaser must notify the Division of Taxation at least 10 days

## Corporations, Securities, & Business Law Forum

Published at least four times per year.

Annual subscription rate for ISBA members: \$20.

To subscribe, visit [www.isba.org](http://www.isba.org) or call (217)525-1760

### Office

Illinois Bar Center  
424 S. 2nd Street  
Springfield, IL 62701  
Phones: (217) 525-1760 OR 800-252-8908

Web site: [www.isba.org](http://www.isba.org)

### Co-Editors

David E. Doyle  
10 S. LaSalle St., Ste. 3500  
Chicago, IL 60603

Alan J. Goldstein  
55 E. Monroe St., 40th Floor  
Chicago, IL 60603

### Managing Editor/Production

Katie Underwood  
[kunderwood@isba.org](mailto:kunderwood@isba.org)

### Corporations, Securities, & Business Law Forum Section Council

William T. Kaplan, Chair  
Philip N. Hablutzel, Vice-Chair  
Tanya Solov, Secretary  
William A. Price, Ex-Officio

Kenneth J. Ashman  
Zane M. Cohn  
Howard Z. Gopman  
Patricia C. Holland  
Edward Jarot, Jr.  
Jean A. Kenol  
Markus May  
Tracy J. Nugent  
Amy L. Pauls  
David F. Rolewick  
Donald L. Shriver  
Alan R. Singleton  
Derek P. Usman

Bernard Wysocki, Board Liaison  
Mary M. Grant, Staff Liaison  
William T. Kaplan, CLE Committee Liaison  
Brent H. Gwillim, CLE Coordinator  
Charles W. Murdock, CLE Coordinator

Disclaimer: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

before taking possession of the property to be sold. The purchaser must notify the Division by registered mail on Form C-9600, "Notification of Sale, Transfer or Assignment in Bulk."<sup>18</sup> Form C-9600 requires the purchaser to set forth the price, terms, and sale conditions; whether the seller has represented or informed the purchaser that it owes any sales tax; whether the purchaser has knowledge that such taxes are owing; and whether any such taxes are, in fact, owing. Form C-9600 should be sent to the division.<sup>19</sup>

If Form C-9600 is received at least 10 days before the purchaser pays or takes possession of the property, and the division fails to provide notice within the 10 days to the purchaser of the existence of any tax liabilities, including penalties and interest, the transaction may be completed and the purchaser will not be held personally liable for the tax liabilities of the seller.

If the purchaser fails to timely give notice to the division, or if the division informs the purchaser of a potential claim for unpaid tax against the seller, the consideration to be transferred by the purchaser to the seller will be subject to a first priority lien for the amount of the seller's unpaid taxes. The purchaser is prohibited from transferring to the seller any consideration to the extent of the unpaid tax claim.<sup>20</sup> Also, if the purchaser fails to comply with the above requirements, the purchaser will be personally liable for full payment of the seller's delinquent taxes, even if the sales tax liabilities exceed the price the purchaser paid for the business assets.

If the statute of limitations precludes the division from collecting the liability from the seller, the division cannot collect it from the purchaser. If the purchaser can show that it substantially complied with the relevant statutes, it will not be held liable. It is the purchaser's burden to show that it would be improper for the division to collect the assessment.<sup>21</sup>

### New Mexico

Under N.M. Stat. Announcement sections 7-1-61 through 7-1-64, successor liability applies to all taxes except for the personal income tax and possibly the corporate income tax, depending on the corporate structure.<sup>22</sup> The statute applies to both stock and assets sales. The purchaser's liability is limited to the value of the property transferred, except for some statutorily enumerated instances in which the business has been transferred to evade taxes, the transfer constitutes a de facto merger or continuation of

the old business, or the purchaser has assumed the liability. In those cases, the purchaser is liable for the full amount of taxes assessed.

The purchaser must make a written request to the New Mexico Taxation and Revenue Department for a tax clearance certificate before the sale of the business to receive notice of any outstanding taxes owed by the seller or confirmation that no taxes are due. No express permission is needed from the seller in order to request the tax clearance certificate.<sup>23</sup> The form for the application for tax clearance letter can be found at the department's Web site and should be mailed to the department.<sup>24</sup> Within 30 days after receiving the purchaser's request for a certificate, or 30 days after the seller's records are made available for audit, but in no event later than 60 days after the receipt of the purchaser's request, the department must either issue a certificate that no taxes are due or a notice of unpaid taxes due by the seller. The department's failure to issue a notice of tax due within the required time releases the purchaser from the obligation to withhold.

If the department issues a notice that the seller owes taxes, the purchaser must place a sufficient amount of money from the purchase price into a trust account to cover the amount of the unpaid taxes. The purchaser is required to pay the entire tax amount due to the department within 30 days of the department's notice of tax due. If the purchaser fails to pay the tax amount due, the department will assess the purchaser for the full amount due and pursue the normal collection processes against the purchaser.

The purchaser may protest the assessment of the tax liability or pay the liability and request a refund. The purchaser can step into the shoes of the seller so long as the statute of limitations on challenging the original assessment has not passed. If the statute of limitations has run, the purchaser can no longer challenge the underlying liability. If the purchaser timely challenges the original assessment, the purchaser has the burden of proof because of the presumption of correctness of the original assessment.<sup>25</sup>

### New York

N.Y. Tax Law section 1141 extends successor liability to sales and use taxes. Liability may arise when a selling company makes a sale, transfer, or assignment in bulk of any part of its business assets, other than in the ordinary course of business.<sup>26</sup> Tax Law section 1141 requires

potential buyers to notify the New York Department of Taxation and Finance of the proposed bulk sale transaction 10 days before taking possession or paying for the assets. When the department receives a properly filed bulk sale notice more than 10 days before the date of sale, it will consider the date of receipt to be the 10th day before the sale date. Notification of sale, transfer, or assignment in bulk form may be made in person or through certified mail.<sup>27</sup> The form must be delivered to the department.<sup>28</sup> Failure to timely file that notice creates successor liability for the purchaser.

After receiving notice of the transfer, the department will respond within five days, usually with an order requiring the purchaser to withhold the entire purchase price in an escrow account for up to 90 days. The department will investigate the seller's tax liabilities during that time so it can issue a determination as to the tax liability, if any, of the seller. If the department does not respond within either the five- or 90-day period, the purchaser is relieved from liability for the seller's overdue taxes. The purchaser may release the remaining funds to the seller at that time. If the department reports that the seller has outstanding tax obligations, the purchaser must pay the amount of the taxes claimed before completing the transaction. If a purchaser fails to comply with the statute, the purchaser will be personally liable for the seller's outstanding sales and use tax obligations to the extent of either the purchase price or the fair market value of the assets transferred, whichever is higher. Although the department may seek the outstanding amount from a purchaser who receives notification but fails to pay the outstanding tax, it is unclear whether the department can recover interest and penalties against the purchaser. Although 20 N.Y.C.R.R. section 537.4(b) provides that interest and penalties may be recovered against the purchaser, one New York appellate court has held that the imposition of penalties and interest exceeds the permissible scope of Tax Law section 1141 and that a purchaser's liability does not extend to the payment of interest and penalties.<sup>29</sup>

Purchasers who wish to challenge the seller's liability for back taxes are entitled to a hearing with the Division of Tax Appeals or a conference with the division's Bureau of Conciliation and Mediation Services. Purchasers must apply for the hearing or conference within 90 days after notification of the seller's tax liability. After paying the

seller's outstanding tax, the purchaser may also request a review of its request for a refund. The purchaser has 90 days to apply for a hearing after the division denies the purchaser's refund request. It is the purchaser's burden to prove that the assessment is incorrect.<sup>30</sup>

### North Carolina

N.C. Gen. Stat. section 105-164.38 and 17 N.C. Admin. Code 7B.0120 govern successor liability and apply only to sales and use taxes. Under those provisions, a purchaser of a business or stock of goods must withhold from the purchase price an amount sufficient to cover any unpaid taxes owed by the seller until the seller provides a statement from the North Carolina Department of Revenue that taxes have been paid or that no taxes are due. If the purchaser fails to withhold, and the taxes are unpaid after 30 days from the date of sale (the period within which the seller must file a final return), the purchaser will be personally liable for the unpaid taxes.<sup>31</sup> Liability for the purchaser of any unpaid taxes is limited to the greater of the consideration paid by the purchaser for the business or stock of goods or the fair market value of the business or stock of goods transferred.

The purchaser will be excused from paying any unpaid taxes if the statute of limitations has run. The statute of limitations for assessing liability against the purchaser expires one year after the statute of limitations for assessing liability against the seller has expired. If the purchaser fails to comply with the successor liability statute, the statute allows the purchaser to step into the shoes of the seller and take advantage of any other remedies for the collection of taxes, the same as if it had incurred the original tax liability itself.<sup>32</sup>

### North Dakota

North Dakota does not have statutory successor liability. Issues of successor liability depend on the facts of the specific situation. According to the North Dakota State Tax Department, an asset purchase will not trigger the successor liability of the purchaser. A stock purchase of the business may lead to successor liability if the seller continues to use the same taxpayer identification number. A stock purchase that ultimately results in a new TIN and termination of the old business may or may not lead to successor liability, depending on the contract between the two parties. Generally, the department will pursue payment for the tax liability from the previous owner.<sup>33</sup>

The purchaser can acquire a tax clearance letter from the North Dakota Office of State Tax Commissioner by submitting an application to obtain a contractor's request for clearance.<sup>34</sup> The department designed the clearance for contractors wishing to do business with the state of North Dakota, but the commissioner uses the clearance as a procedure for purchasers and sellers of a business to receive tax clearance letters under N.D. Cent. Code section 43-07-11.1 (2008). The clearance should be submitted directly to the department.<sup>35</sup>

### Ohio

Ohio Rev. Code Announcement section 5739.14 and section 5741.14 extend successor liability for sales or use taxes to all sales of a business or stock of merchandise when the seller was responsible for the remittance of sales or use taxes. The seller must make a final return and pay all taxes, interest, and penalties within 15 days of the date of sale. The purchaser's liability is not limited to the purchase price of the seller, but extends to the taxes, interest, and penalties accrued and unpaid during the operation of the business by the seller.<sup>36</sup> The purchaser is liable for the taxes, penalties, and interest owed by both the seller and the seller's predecessors.<sup>37</sup>

Before closing the sale, the purchaser must request that the seller obtain a sales tax release certificate from the Department of Taxation. The certificate indicates that all sales taxes, use taxes, additional charges, interest, and penalties have been paid. The department will issue the certificate to the seller only after the seller has filed a final sales or use tax return, and paid all outstanding tax liabilities. The seller must submit Form ST 915, "Request for Sales Tax Release," which is available on the department's Web site, to the department.<sup>38</sup>

The purchaser must withhold in escrow a sufficient amount of the purchase price to satisfy any outstanding tax liabilities of the seller until the seller provides either a receipt of taxes paid or a certificate indicating that no taxes are due. If the purchaser fails to withhold, the purchaser will be personally liable for any outstanding taxes, penalties, and interest owed by the seller on the expiration of the 15-day period. After receiving the certificate, the purchaser may release the remaining funds to the seller. Note, however, that the seller remains liable for any sales tax, interest, or penalties discovered after the certificate has been issued. The statute imposes a duty of due diligence

on the purchaser to determine that the seller's sales and use taxes are either paid or that provision has been made for payment.

If a purchaser that is found personally liable for the seller's tax liabilities wishes to dispute the amount of the assessed tax, it must first pay the taxes and then file a claim for a refund. If the purchaser seeks to appeal the successor liability assessment, the purchaser must follow Ohio's standard process for requesting a refund.

In an enforcement action against the purchaser, the department has the burden of proving four elements:

- the previous ownership of the business;
- the sale of the business;
- the seller's failure to comply with the statutory provisions; and
- the amount of the taxes for which the purchaser is liable.

A sales tax assessment is prima facie evidence for the amount that the purchaser owes. The purchaser has the burden of proving that the assessment is inaccurate and does not reflect the purchaser's true liability.<sup>39</sup>

### Oklahoma

Under Okla. Stat. Announcement 68 section 1364 and Okla. Admin. Code section 710:65-9-4, a purchaser is not subject to successor liability for any of a seller's Oklahoma taxes when the purchaser purchases or acquires substantially all of the seller's business assets or stock of goods. However, the purchaser will not be able to acquire a sales tax registration permit issued by the Oklahoma Tax Commission until the seller settles all tax claims due to Oklahoma. Those tax claims come due on the sale of the fixtures and equipment.<sup>40</sup>

The purchaser has no duty to contact the commission; the seller alone is liable for its outstanding tax liabilities. However, if the seller fails to settle all tax claims, the purchaser cannot continue or conduct the business because it will be unable to procure the necessary sales tax permit. The purchaser may assume the seller's liability and arrange to make payments to the commission of the seller's liabilities. The commission also provides a more attractive option, which permits the prospective purchaser to request public records, warrants that have not been filed of record, or information regarding liabilities, delinquencies, and assessments, insofar as the information relates to the seller's business.<sup>41</sup> Along with the written request, the purchaser

must include a written authorization between the parties and a copy of the purchase contract.<sup>42</sup>

According to the commission, if the sale goes through and the seller either refuses to or is unable to settle all tax claims, the purchaser cannot step into the shoes of the seller to argue against the liabilities, because liabilities are always considered to be those of the seller. The purchaser's best alternative to prevent that circumstance is to obtain the information specified above that is available to a prospective purchaser, reduce the purchase price by the amount of the total liabilities shown, if any, and pay the tax liabilities out of pocket.<sup>43</sup>

### Oregon

Oregon does not impose a sales or use tax and therefore has no successor liability provisions for that tax.<sup>44</sup> Regarding all other taxes, the Oregon Department of Revenue may transfer liability for taxes, interest, and penalties from the business that incurred them to a reorganized business entity under Or. Rev. Stat. section 305.330. A reorganized business entity is a business entity that operates substantially the same business as the entity originally liable for taxes and that has been converted to a different form of business entity from that of the entity originally liable for taxes or that has changed ownership from that of the entity originally liable for taxes. A reorganized entity does not include a change of ownership solely due to a transfer of assets or a transfer of the interests of passive investors (that is, without management rights).

The DOR may transfer the amount due from the entity that incurred the liability to the reorganized entity. Besides interest, the amount will not exceed the amount incurred by the previous corporate entity. Because the transferee is treated as the transferor, partial compliance is not accepted, according to the DOR.

Once there is a determination that the tax liability will be transferred to the reorganized entity, the DOR will send a notice of liability to the reorganized entity indicating the total amount due. The reorganized entity must pay the amount due within 30 days or raise written objections with the department. If the entity objects, the DOR will affirm, cancel, or adjust the amount due by letter. That letter serves as the notice of assessment to the reorganized entity. However, if the entity does not object to the notice of liability, it becomes final after 30 days.<sup>45</sup>

The DOR does provide tax clearance letters, which may be obtained by contacting the DOR.<sup>46</sup>

### Pennsylvania

Under 72 Pa. Stat. Announcement section 1403 and 61 Pa. Code section 151.4, if at least 51 percent of the assets of a business are sold or transferred, the seller or purchaser is required to give notice of the proposed sale to the Pennsylvania Department of Revenue at least 10 days before the date of sale or transfer. It is also the duty of the seller to present to the purchaser a tax clearance certificate from the DOR saying that all state tax reports have been filed and that all state taxes are paid as of the date of the proposed sale or transfer. The certificate applies to liability for sales and use tax, withholdings from individual income tax, and all corporate taxes.

To obtain a certificate, the seller must complete Form REV-181, "Application for Tax Clearance Certificate," which can be accessed on the DOR's Web site.<sup>47</sup> The seller must attach appropriate tax reports and returns and pay all outstanding taxes, interests, and penalties. Also, the seller must provide a completed Distribution of Assets Schedule, including any gains or losses resulting from the sale.

The DOR and Pennsylvania's Department of Labor and Industry will issue certificates. A copy of the form along with the relevant attachments should be sent to both the DOR<sup>48</sup> and the Labor Department.<sup>49</sup>

The purchaser's failure to require that certificate causes the purchaser to be liable for all state taxes owed by the seller through the date of sale or transfer, regardless of whether the taxes have been assessed or determined at that time. The purchaser's liability is not limited to the purchase price of the assets or stock of goods. Also, a purchaser who fails to require a certificate will be barred from challenging any assessments made against the seller.<sup>50</sup>

### Rhode Island

Under R.I. Gen. Laws sections 44-19-22 and 44-11-29, the sale or transfer of the major part in value of the seller's assets, other than in the ordinary course of business, is fraudulent and void unless the seller has, at least five days before the date of sale or transfer, notified the Rhode Island Division of Taxation Tax Administrator of the proposed sale and terms and character and location of assets.<sup>51</sup> The seller must pay all remaining outstanding taxes, penalties, and

interest at the time the seller notifies, or should have notified, the administrator of the proposed sale. If the seller fully complies with these requirements, the division will issue a letter of good standing to the seller. If the seller fails to comply with one or more of these requirements, the sale or transfer is void and the property remains subject to the claims of the division.

Generally, a purchaser is not liable for any taxes of the seller corporation because any failure to comply with notice or payment requirements renders the sale void, and therefore no liability passes to the purchaser. The exceptions to the general rule are if the deal involves fraud or if the purchaser is a mere continuation of the seller. The mere continuation of the previous business exception aims to prevent tax avoidance through corporate restructuring. The division uses five common-law criteria to determine if there was a mere continuation:

- a transfer of corporate assets;
- less than adequate consideration;
- the new company continues the business of the seller;
- both companies have at least one common officer or director who leads the transfer; and
- the transfer renders the seller incapable of paying its creditors.<sup>52</sup>

The exception for fraud applies in cases in which the purchaser made a misrepresentation with the intent to induce reliance from the seller.<sup>53</sup> In instances of fraud, the purchaser would be liable for damages, which may include the seller's tax liabilities. In those situations, the purchaser may be held liable for the full amount of the seller's tax liability, including interest and penalties, at the time of the sale.<sup>54</sup>

In addition to the statutes cited above, regulation CT 03-03 provides that if the seller fails either to provide notice to the administrator or to make tax payments before the sale, the sale is void.<sup>55</sup> According to informal guidance provided by the division, whether the purchaser or the seller pays the outstanding taxes is a matter of contract. The purchaser may negotiate making the tax payment for the seller into the purchase price in order to avoid statutory voiding of the sale.<sup>56</sup> To verify that the seller has paid all taxes, the purchaser may request a letter of good standing from the division by submitting form LGS-1.<sup>57</sup> By issuing the clearance, the division confirms that the seller is in full compliance with the law.<sup>58</sup>

### South Carolina

Under S.C. Code Announcement section 12-54-124, any tax generated by a seller's business that was due on or before the date of any transfer of a majority of the assets of the business constitutes a lien against those assets in the hands of a purchaser until the taxes are paid. A seller of a business is required to return all licenses issued by the DOR for cancellation and remit all unpaid or accrued taxes. The DOR may not issue a license to the purchaser to continue the business until all taxes of the seller are paid, even if the liability due exceeds the purchase price of the business.

Prospective purchasers should request that the seller obtain, or authorize obtainment of, Form C-268, "Certificate of Tax Compliance Request Form." The certificate covers all tax types, including tax types with quarterly or monthly filing requirements.<sup>59</sup> Form C-268 should be sent directly to the DOR with the \$60 processing fee.<sup>60</sup> If the purchaser receives a certificate from the DOR saying that all tax returns have been filed and all taxes generated by the business have been paid, no lien will attach and the DOR will not hold the purchaser responsible for outstanding tax liability.<sup>61</sup> To be valid, the certificate must be obtained no more than 30 before the sale.

The purchaser cannot step into the shoes of the seller to defend itself from the assessment, which will preclude the purchaser from getting a business license. The certificate of compliance exception does not apply to the returning of licenses.<sup>62</sup>

### South Dakota

South Dakota does not hold successors liable for predecessors' tax liabilities. South Dakota's Department of Revenue and Regulation, Business Tax Division, holds a taxpayer liable for all sales, use, and contractors' excise taxes for the time period during which the taxpayer has owned the business.<sup>63</sup> The tax liability does not pass from the seller to the purchaser. The department may collect the taxes owed within three years from the date the taxpayer filed the return. However, the statute of limitations does not begin to run if the taxpayer fails to file a return. If the taxpayer files a fraudulent return, the statute of limitations does not begin to run until the department detects the fraud. Therefore, the department must assess a tax liability against the seller within three years of the sale date provided that the seller has filed a

required return and the seller has not committed fraud.<sup>64</sup>

### Tennessee

Under Tenn. Code Announcement section 67-6-513, successor liability arises on the sale of a seller's business or stock of goods or when the seller otherwise quits the business.<sup>65</sup> The purchaser's liability is limited to the purchase price paid to the seller for the business or stock of goods. A seller must file a final return to the Tennessee Department of Revenue and pay any outstanding business tax or any sales tax liabilities within 15 days of selling or quitting the business. The purchaser is required to withhold sufficient amounts of the purchase price to cover the amount of unpaid taxes, interest, or penalties due until the seller either produces a receipt from the DOR showing that the taxes, interest, or penalties have been paid, or the seller produces a certificate issued by the DOR saying that no taxes, interest, or penalties are due. The clearance must be obtained before the seller's business is sold, and the DOR will not issue the clearance until all delinquent state taxes are paid in full.<sup>66</sup> The purchaser should require the seller to provide an affidavit attesting to the amount, if any, of taxes due, and that affidavit should be mailed to the DOR.<sup>67</sup>

The DOR has 15 days from the date of receipt of the affidavit to respond to the purchaser regarding the accuracy of the seller's affidavit. If the DOR confirms the existence of unpaid taxes, the purchaser is required to withhold a sufficient amount from the purchase price to cover the amount of such taxes. If the purchaser fails to comply with the successor liability requirements, or only partially complies, the DOR will hold the purchaser personally liable for the seller's unpaid taxes, penalties, and interest to the extent of the purchase price. A purchaser who in good faith and without knowledge of any false statement received from the seller an affidavit stating the amount of the seller's unpaid taxes, interest, and penalties (or received from the seller a statement that no taxes, interest, and penalties are due), and who withholds from the purchase money an amount sufficient to pay the stated amount of unpaid taxes, interest, or penalties, is entitled to relief from the DOR of any liability in excess of that shown on the affidavit. However, the purchaser is not entitled to relief if the DOR notifies the purchaser of the correct tax liability within 15 days of receipt of the affidavit.<sup>68</sup>

The DOR may proceed to collect any

tax debt from the purchaser, in the same manner as the DOR would have collected such debt from the seller. If the statute of limitations would preclude the DOR from enforcing tax collection against the seller, the DOR will not issue either a receipt for taxes paid or the clearance until the taxes have been paid in full, even if the DOR would be precluded from collecting the liability from the seller because of the tolling of the statute of limitations.<sup>69</sup>

### Texas

Under Texas Tax Code section 111.020, the purchaser of a business must withhold from the purchase price an amount equal to the seller's total state tax liability from all sources, including penalties and interest. The purchaser must withhold this amount until the seller produces a certificate from the comptroller of public accounts showing that all liabilities have been paid. If the purchaser fails to withhold the entire amount due, the purchaser becomes personally liable for the seller's liability for taxes, penalties, and interest.

Under 34 Texas Admin. Code section 3.7, successor liability applies only to the sale of a business, so the comptroller will consider the facts surrounding a transaction to determine whether a sale has occurred. Although the purchaser can be held personally liable for the seller's tax liability, that liability is limited to the purchase price. The purchase price includes the cash value of any property transferred and any assumption, forgiveness, or issuance of debt.<sup>70</sup>

To avoid successor liability, the purchaser must obtain a certificate of clearance from the comptroller before completion of the sale. The seller, the seller's assignee, or the purchaser must submit a written request for a clearance to the comptroller.<sup>71</sup>

The comptroller may take up to 90 days to respond. Once an authorized party has requested the clearance, the comptroller will respond by providing one of three documents: a certificate of no tax due, a letter detailing the amount due, or a notification of audit results. If the comptroller reports that the seller still owes taxes, penalties, and interest, the purchaser must continue to withhold a sufficient amount from the purchase price to cover that liability until the seller provides the purchaser with a second document from the comptroller showing that no tax is due. The comptroller's failure to timely issue the letter detailing amounts due, or the certificate of no taxes due to the seller, releases the pur-

chaser from any obligation to withhold from the purchase price.

If the purchaser fails to comply with the statute and is judged to be personally liable for the seller's tax, interest, and penalties, the purchaser may challenge the assessment of that liability on the grounds that the statute does not apply. The comptroller has held that the tax division holds the initial burden to show that the purchaser is a successor to the seller. If the division can carry that burden, the purchaser must show that it is not liable as a successor by preponderance of the evidence.<sup>72</sup>

The statute of limitations against the purchaser, regarding the purchaser's successor liability, begins on the later of the date the seller sells the business or stock of goods or when a determination is made against the seller.

### Utah

Utah Code Announcement section 59-12-112 provides that a successor in business shall withhold enough of the purchase price to cover the amount of any sales and use tax, withholding tax, and some fuel taxes due and unpaid, including penalties and interest, until the seller produces a receipt from Utah State Tax Commission showing that the taxes have been paid, or a certificate that no taxes are due. The purchaser must withhold that amount when the seller sells the entire business, and its stock of goods, or quits the business. A partial change of corporate ownership does not constitute a sale and would not incur successor liability. If the purchaser fails to withhold such money and the taxes are unpaid 30 days after the sale, the purchaser is personally liable for payment of all of the outstanding taxes owed by the former owner, not just the purchase price.<sup>73</sup> Although the purchaser is personally liable for the unpaid taxes, the commission places a lien on the property for the entire amount of the taxes due and unpaid, including penalties and interest.<sup>74</sup>

The purchaser should ensure that the seller makes a final return within 30 days after the date of sale. The application for tax clearance may be accessed on the commission's Web site and requires a \$50 fee.<sup>75</sup> The application should be mailed directly to the commission.<sup>76</sup> The purchaser should place in an escrow account enough funds from the purchase price to cover all of the seller's unpaid taxes. The purchaser should release the escrow funds only when the seller provides the

purchaser with a tax clearance letter from the commission saying that the seller has filed all returns and paid all taxes. If the commission reports back that the seller owes taxes to the commission and the seller does not pay the taxes within 30 days of the sale, the purchaser is personally liable for payment of the seller's unpaid taxes. If the purchaser fails to comply with the statute or only partially complies and the commission determines, postacquisition, that the seller owes taxes from the preacquisition period, the purchaser is liable for the payment of seller's unpaid taxes. If the purchaser cannot produce a clearance letter, it bears the burden to prove that the liability should not be collected.

### Vermont

Under Vermont Stat. Announcement 32, section 3260, successor liability statutes apply to "trust taxes," which include sales tax, use tax, employer withholding tax, and meal and room tax. The sale, transfer, long-term lease, or assignment of any part or all of the assets of a business not in the ordinary course of business triggers compliance with the successor liability provisions. A purchaser failing to comply with that section will be personally liable for all unpaid taxes, interest, and penalties.

A purchaser must notify the Vermont Department of Taxes of the transfer at least 10 days before taking possession of the assets of a business or making payment for those assets, whichever occurs first. The purchaser must notify the department, in writing, of the date of the sale, the name of the seller, and the price, terms, and conditions. The purchaser must also specify whether the seller informed the purchaser of the seller's outstanding obligations for unpaid sales, use, and meals and rooms taxes.<sup>77</sup> The department does not use a particular form for the purchaser's notification, but the purchasers should specify that the notice is a "3260 escrow letter." The purchaser must escrow a portion of the purchase price sufficient to cover any outstanding tax liabilities, interest, and penalties that the seller may have. The department will notify the purchaser of any unpaid taxes after processing the seller's final tax returns. If those liabilities exist, the purchaser must release the escrowed funds to the department. That process may take several months, depending on the frequency with which the seller remits its taxes.

If a purchaser fails to give proper notice to the department, or if the department informs the purchaser of outstanding tax liabilities, the department may collect the outstanding taxes through a first priority lien on any consideration transferred from the purchaser to the seller. The purchaser is forbidden from transferring its consideration to the seller to the extent of the amount of the state's claim. If the statute of limitations prevents the department from collecting the liability from the seller, it cannot collect the liability from the purchaser. The purchaser can step into the shoes of the seller to defend itself from an assessment, but it has the burden of proof to show that no liability exists.<sup>78</sup>

### Virginia

Under Va. Code Announcement sections 58.1-629 and 58.1-660, successor liability for general sales and use taxes and services tax arises when a seller quits a business or sells a stock of goods to the purchaser. The purchaser may be liable for the business or stock of goods for the total amount of tax, penalties, and interest owed by the seller. Virginia allows an exemption for such taxes against tangible personal property for rental or lease and special equipment for the handicapped.<sup>79</sup>

A dealer that sells or quits a business must make a final return and final tax payment within 15 days. When filing a final return, the dealer should return the sales tax certificate of registration and report on the return the full name of the purchaser. The purchaser must withhold a sufficient portion of the purchase money to cover the amount of any taxes due until the former owner produces either a receipt from the Virginia Department of Taxation showing that all taxes, penalties, and interest have been paid, or a certificate stating that no taxes are due.<sup>80</sup>

The purchaser must apply for the certificate of registration with the department, explaining the acquisition of the business and giving the name and certificate number of the seller. The purchaser may then request from the department either a receipt of the payment of the taxes owed by the seller or a certificate that no taxes are due, either of which will allow the purchaser to release the withholding of payment to the seller. The department will not issue a certificate of registration to the purchaser until all outstanding taxes are paid in full. If

the purchaser fails to withhold a sufficient portion of the purchase money, it is personally liable for the payment of taxes, penalties, and interest. The purchaser bears the burden to prove that the assessment is improper, but the purchaser can step in the shoes of the seller to fend off the liability assessment.<sup>81</sup>

### Washington

Wash. Rev. Code Announcement section 82.32.180 extends successor liability to any unpaid taxes of the seller, including sales taxes on inventory, goodwill and other intangible property, personal property taxes, and real estate excise taxes. Successor liability, however, does not encompass interest and penalties.<sup>82</sup> Successor liability arises on the seller's quitting a business, selling out, exchanging or disposing, not in the ordinary course of the business, of more than 50 percent of the intangible or tangible assets of the business. A successor may also be a surviving corporation in a statutory merger. The Washington Department of Revenue may take the position that the statute applies to sales of stock that include a disposition of more than 50 percent of a seller's assets.

The seller must file a final return and pay all taxes due within 10 days of sale, unless an extension is granted. The purchaser is required to withhold from the purchase price a sufficient amount to pay any taxes due from the seller until the seller provides a receipt from the DOR showing that all taxes have been paid.

If the seller fails to pay the taxes within 10 days of the date of sale or disposition of the business, the purchaser is liable for the full amount of tax unless the fair market value of the assets acquired is less than \$50,000, in which case the purchaser's liability is limited to the FMV of the assets acquired. The payment of any taxes by the purchaser is treated as a payment on the purchase price. However, if the payment of taxes is greater than the purchase price, the difference becomes a debt due from the seller to the purchaser.

The purchaser has two methods to avoid liability for the seller's taxes. First, the purchaser may require the seller to file a request for tax status, which is available on the DOR's Web site, with the DOR.<sup>83</sup> The request is free and should be mailed or faxed to the DOR.<sup>84</sup> If the DOR reports that there is tax due, the purchaser will be liable for any amount of tax not paid by the seller within 10 days after the date of sale. Alternatively, the purchaser

may give written notice to the DOR of the acquisition. After receipt of the notice, the DOR must issue an assessment of tax due, if any, to the seller within six months. If the DOR fails to make an assessment in that time frame, the DOR cannot hold the purchaser liable for the seller's unpaid taxes, if any.

If the purchaser fails to comply with the above-described requirements, it will be liable for all of the seller's delinquent taxes, excluding interest and penalties. The purchaser has the burden of proving that it received a clearance or that its liability is lower than assessed. The purchaser cannot step into the shoes of the seller to defend itself from an assessment.<sup>85</sup>

### West Virginia

W.Va. Code section 11-10-11(f) establishes the procedures for West Virginia's successor liability in the case of a transfer or cessation of a business.<sup>86</sup> Successor liability arises on the sale, transfer, assignment, or other acquisition of all or substantially all of the assets of a business or its stock of goods. Successor liability may also arise in connection with the change in form of a business. Successor liability does not arise in connection with transfers or assignments lacking purchase money consideration, such as assignments for the benefit of creditors.

A seller of the assets of a business or stock of goods or a seller that quits a business must file a final return and pay any tax liability, including penalties and interest, within 30 days of the transfer or termination of the business. Any unpaid tax liabilities automatically constitute a lien on the seller's property without regard to the purchase price.<sup>87</sup> A purchaser becomes personally liable for the seller's outstanding tax liabilities, including penalties and interest, not limited to the purchase price, left unpaid after the 30-day period unless the purchaser withholds sufficient consideration from the purchase price to satisfy the seller's unpaid tax liabilities until the seller produces a receipt from the West Virginia Department of Revenue showing satisfaction of these liabilities or a certificate that no taxes are due. When tax liabilities do attach to a purchaser, they constitute a lien on the property of the purchaser. The purchaser's liability extends to all taxes that are required to be paid before the sale or transfer of the business or stock of goods, even though liability of the seller may not be determined until after the transaction is closed.

### Wisconsin

Under Wis. Stat. Announcement section 77.52(18) and Wis. Admin. Code Tax section 11.91, a purchaser or assignee of a business or stock of goods will be personally liable, to the extent of the purchase price, for any retailer seller's unpaid sales or use taxes if the purchaser fails to withhold a sufficient amount from the purchase price to cover the taxes due, unless the seller provides a receipt from the Wisconsin Department of Revenue indicating that all taxes have been paid or a certificate that no taxes are due.

It is the purchaser's duty to request a certificate from the DOR to ensure that the seller has filed all sales and use tax returns and paid all taxes due.<sup>88</sup> The DOR must act on the request by either issuing the certificate or issuing a notice of potential successor liability at the latest within 90 days of receiving the completed request for the certificate. If the DOR does not respond within 90 days, the purchaser is relieved from any liability.

Successor liability cannot be contracted away by agreement between the parties.<sup>89</sup> Moreover, should the sale go through without following the proper procedures and with a remaining tax balance, the DOR will first direct collection against the seller before resorting to successor liability. A demand for a purchaser to pay a seller's tax liability is subject to the right of appeal by the purchaser. The certificate relieves the taxpayer of its burden to show that the liability does not exist, but without the certificate, the burden of proof falls on the purchaser to show that the liability cannot be collected.<sup>90</sup>

Successor liability extends only to the liability of immediate predecessors. A successor shall be liable only for the amount of the tax liability, not for penalties and interest. The statute of limitations as to the successor liability of the purchaser extends to four years from the later of the date of sale of the business or stock of goods or the date that the determination against the seller becomes final.<sup>91</sup>

### Wyoming

Under Wyoming Stat. Announcement section 39-15-103, successor liability applies only to sales and use taxes, as well as to related penalties and interest. The statute applies to asset sales but not stock sales because stock is considered intangible personal property under Wyoming Stat. Announcement section 39-15-101 and is not subject to Wyoming

sales tax.

A seller must file a final return within 30 days after discontinuing or selling its business. The purchaser of the business must withhold sufficient amounts from the purchase price to pay the taxes, penalties, and interest owed by the seller until the seller provides either a receipt from the Wyoming Department of Revenue indicating that all taxes have been paid or a certificate from the DOR indicating that no taxes are due. The certificate should be obtained from the DOR.<sup>92</sup> However, if the purchaser fails to follow those procedures and does not withhold from the purchase price, the seller and the purchaser will both be liable for the payment of the unpaid taxes, penalties, and interest, and that liability is not limited to the purchase price.<sup>93</sup> It is the taxpayer's burden to prove that the DOR should not collect the liability.<sup>94</sup>

This article originally appeared in the October 20, 2008 issue of *State Tax Notes*, published by Tax Analysts.

1. *Bates v. Director of Revenue*, 691 S.W.2d 273, 276 (Mo. 1985).
2. Contact information: Missouri Department of Revenue, Sales/Use Tax Division, P.O. Box 840, Jefferson City, MO 65105-0840. Telephone: (573) 751-2836. Fax: (573) 522-1722. E-mail: salesuse@dor.mo.gov.
3. *Bates*, supra note 1.
4. *Surrey on the Plaza v. Director of Revenue*, 128 S.W.3d 508 (Mo. 2004).
5. Montana Department of Revenue, Form CR-T, "Tax Certificate Request," available at <[http://mt.gov/revenue/formsandresources/07forms/2007\\_Form\\_CR-T\\_Fill-in.pdf](http://mt.gov/revenue/formsandresources/07forms/2007_Form_CR-T_Fill-in.pdf)> (last visited July 13, 2008).
6. Contact information: Montana Department of Revenue, Attn: Certificates, P.O. Box 8021, Helena, MT 59604-8021. Fax: (406) 444-6642. E-mail: DORTaxCertificates@mt.gov.
7. Telephone interview with senior tax counsel, Montana Department of Revenue (Feb. 28, 2008).
8. *Gottsch Feeding Corp. v. State of Nebraska*, 621 N.W.2d 109 (Neb. 2001).
9. Nebraska Department of Revenue, Form 4, "Nebraska Exemption Application for Sales and Use Tax," available at <[http://www.revenue.ne.gov/tax/current/f\\_4.pdf](http://www.revenue.ne.gov/tax/current/f_4.pdf)> (last visited July 9, 2008).
10. Contact information: Nebraska Department of Revenue, Nebraska State Office Building, 301 Centennial Mall South, P.O. Box 94818, Lincoln, NE 68509-4818. Telephone: (402) 471-5729. Nebraska Department of Revenue, E-mail Forum, available at <[www.revenue.ne.gov/mail/ndrmail.phtml](http://www.revenue.ne.gov/mail/ndrmail.phtml)> (last visited July 9, 2008).
11. *Gottsch Feeding Corp.*, supra note 8.
12. Contact information: Nevada

Department of Revenue, 4600 Kietzke Lane, Building L, Suite 235, Reno, NV 89706. Telephone: (775) 688-1295. Fax: (777) 688-1303.

13. Nev. Rev. Stat. section 360.525 (2007) and Nev. Admin. Code section 360.430 (2007).
14. N.H. Rev. Stat. Announcement sections 78:7, 78-A:6, 78-B:1, 77-A:2, and 77-E:2 (2008).
15. New Hampshire Department of Revenue Administration, Form AU-22, "Certification Request Form," available at <[http://www.nh.gov/revenue/forms/Fill\\_Forms/documents/au\\_22.pdf](http://www.nh.gov/revenue/forms/Fill_Forms/documents/au_22.pdf)> (last visited July 13, 2008).
16. Contact information: New Hampshire Department of Revenue Administration, Audit Division, 45 Chenell Drive, P.O. Box 457, Concord, NH 03302-0457. Telephone: (603) 271-2191. Fax: (603) 271-6121.
17. N.H. Rev. Announcement Stat. section 80:59 (2008).
18. State of New Jersey, Division of Taxation, Form C-9600, "Notification of Sale, Transfer, or Assignment in Bulk," available at <[http://www.state.nj.us/treasury/taxation/pdf/other\\_forms/misc/c9600.pdf](http://www.state.nj.us/treasury/taxation/pdf/other_forms/misc/c9600.pdf)> (last visited June 29, 2008).
19. Contact information: State of New Jersey, Division of Taxation, P.O. Box 81, Trenton, NJ 08695. Telephone: (800) 323-4400.
20. N.J. Stat. Announcement section 54:50-38 (2008).
21. N.J. Stat. Announcement section 54:32B-22 (2008); *Bunting v. Director, Division of Tax*, 422 A.2d 815 (N.J. Tax Ct. 1980); *GABECO v. Director, Division of Taxation*, 23 N.J. Tax 38 (N.J. Tax Ct. 2006).
22. Telephone interview with deputy director, Audit and Compliance Division, New Mexico Taxation and Revenue Department (May 29, 2008).
23. E-mail from Cindy Stearns, deputy director, Audit and Compliance Division, New Mexico Taxation and Revenue Department, to author (Mar. 6, 2008) (on file with author).
24. New Mexico Public Regulation Commission, "Application for Tax Clearance for Dissolution/Withdrawal," available at <[www.nmprc.state.nm.us/forms.htm](http://www.nmprc.state.nm.us/forms.htm)> (last visited June 15, 2008). Contact information: The Public Regulation Commission, Tax Compliance Division, P.O. Box 1269, Santa Fe, NM 87504-1269. Telephone: (505) 827-4510. Fax: (505) 827-0331.
25. N.M. Stat. Announcement section 7-1-61 (West 2008); E-mail from Cindy Stearns, deputy director, Audit and Compliance Division, New Mexico Taxation and Revenue Department, to author (Mar. 6, 2008, 6:35) (on file with author).
26. N.Y. Tax Law section 1141 (McKinney 2008); N.Y. Comp. Codes R. & Regs. tit. 20 section 537.1-537.4 (2008).
27. New York Department of Taxation and Finance, Form AU-196.10, "Notification of Sale, Transfer, or Assignment in Bulk," available at <[http://www.nystax.gov/pdf/2002/st/au196\\_10\\_1002.pdf](http://www.nystax.gov/pdf/2002/st/au196_10_1002.pdf)> (last visited July 8, 2008).
28. Contact information: New York State

Tax Department, Bulk Sales Unit, Sales Tax Desk Audit, W.A. Harriman Campus, Albany, NY 12227. Telephone: (518) 457-4164.

29. *Valez v. Div. of Taxation of Dep't of Taxation & Fin.*, 547 N.Y.S.2d 444 (N.Y. 1989).
30. N.Y. Tax Law section 1141 (McKinney 2008); *Harcel Liquors v. New York State Department of Taxation and Finance*, 48 N.Y.2d 503 (N.Y. 1979).
31. Contact information: North Carolina Department of Revenue, P.O. Box 25000, Raleigh, NC 27640-064. Telephone: (877) 255-3052. The department does not accept faxed forms.
32. N.C. Gen. Stat. section 105-164.38 (2008) and 17 N.C. Admin. Code 7B.0120 (2008).
33. Telephone interview with an auditor in the Office of the State Auditor of North Dakota (February 2008).
34. North Dakota State Tax Department, Form 21884, "Application to Obtain Contractor's Request for Clearance," available at <<http://www.nd.gov/tax/genforms/contractors-clearance.pdf>> (last visited July 9, 2008).
35. Contact information: North Dakota State Tax Department, 600 E. Boulevard Ave., Department 127, Bismarck, ND 58505-0599. Telephone (701) 328-2770. E-mail: taxinfo@nd.gov.
36. Ohio Rev. Code Announcement sections 5739.14 and 5741.14 (West 2008). Note that under Ohio Rev. Code Announcement section 5751.10 for the commercial activity tax, successor liability arises on the sale of at least 75 percent of the assets of the business. The purchaser is liable only up to the purchase and the seller has up to 45 days after the sale in which to pay the tax.
37. *Armes v. Liquor Control Comm'n*, 322 N.E.2d 297, 298 (Ohio Ct. App. 1974).
38. Ohio Department of Taxation, Form ST 915, "Request for Sales Tax Release," available at <[http://tax.ohio.gov/documents/forms/sales\\_and\\_use/Generic/ST%20915.pdf](http://tax.ohio.gov/documents/forms/sales_and_use/Generic/ST%20915.pdf)> (last visited July 8, 2008). Contact Information: Release Unit, P.O. Box 350, Columbus, OH 43216. Fax: (614) 466-9610. Telephone: (614) 995-4754.
39. *State v. Sloan*, 132 N.E.2d 460 (Ohio 1956).
40. Oklahoma Tax Commission, Oklahoma Tax Commission Rules, Chapter 65, "Sales and Use Tax," available at <<http://www.tax.ok.gov/rules/rule6507.pdf>> (last visited June 15, 2008).
41. Id.; Okla. Stat. Announcement tit. 68 section 1364 (West 2007); Oklahoma Admin. Code section 7 10:65-9-7, Oklahoma Tax Commission, Oklahoma Tax Commission Rules, Chapter 65, "Sales and Use Tax," available at <<http://www.tax.ok.gov/rules/rule6507.pdf>> (last visited June 15, 2008).
42. Contact information: Oklahoma Tax Commission, 2501 North Lincoln Blvd., Oklahoma City, OK 73194. Telephone: (405) 521-3160. E-mail: otcmaster@tax.ok.gov.
43. Telephone interview with a tax analyst,

Oklahoma Tax Commission (Mar. 2, 2008).

44. Oregon Department of Revenue, Sales Tax Information, available at <<http://www.oregon.gov/DOR/salestax.shtml>> (last visited June 14, 2008).

45. Or. Rev. Stat. section 305.330 (2008).

46. Contact Information: Oregon Department of Revenue, 995 Center Street NE, Salem, OR 97301. Telephone: (503) 378-4988. E-mail: [questions.dor@state.or.us](mailto:questions.dor@state.or.us).

47. Pennsylvania Department of Revenue, Form REV-181 CM, "Application for Tax Clearance Certificate," available at <<http://www.revenue.state.pa.us/revenue/lib/revenue/rev-181.pdf>> (last visited July 12, 2008).

48. Pennsylvania Department of Revenue, Bureau of Compliance, Corporate Clearance Section, P.O. Box 280947, Harrisburg, PA 17128-0947. Telephone: (717) 787-1064. Pennsylvania Department of Revenue, Submit a Question, available at <[http://revenue-pa.custhelp.com/cgi-bin/revenue\\_pa.cfg/php/enduser/ask.php](http://revenue-pa.custhelp.com/cgi-bin/revenue_pa.cfg/php/enduser/ask.php)> (last visited July 17, 2008).

49. Pennsylvania Department of Labor and Industry, Office of Unemployment Compensation, Tax Services, E-Government Unit, Labor and Industry Building, Room 916, Seventh and Forster Streets, Harrisburg, PA 17121. Telephone: (888) 313-7284.

50. 72 Pa. Stat. Announcement section 1403 (West 2007); *Commonwealth v. Qwest Transmission, Inc.*, 765 A.2d 818 (Pa. Commw. Ct. 2001).

51. Contact information: Tax Administrator, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908. Telephone: (401) 574-8922. E-mail: [clarocque@tax.ri.gov](mailto:clarocque@tax.ri.gov).

52. *H.J. Baker & Bro. v. Organics et al.*, 554 A.2d 196, 205 (R.I. 1989).

53. *Asermely v. Allstate Ins. Co.*, 728 A.2d 461, 464 (R.I. 1999).

54. *Ed Peters Jewelry Co., Inc. v. C&J Jewelry Co., Inc.*, 215 F.3d 182, 189 (1st Cir. 2000).

55. State of Rhode Island — Division of Taxation, regulation CT 03-03, Letters of Good Standing, available at <[http://www.rules.state.ri.us/rules/released/pdf/DOTAX/DOTAX\\_2443.pdf](http://www.rules.state.ri.us/rules/released/pdf/DOTAX/DOTAX_2443.pdf)> (last visited June 15, 2008).

56. Telephone interview with the Rhode Island Division of Corporate Taxation (Mar. 2, 2008).

57. State of Rhode Island, Division of Taxation, "Request for Letter of Good Standing," available at <[www.tax.state.ri.us/form/2001/corp/lgs.pdf](http://www.tax.state.ri.us/form/2001/corp/lgs.pdf)> (last visited June 15, 2008).

58. R.I. Gen. Laws section 44-11-29 (2008).

59. South Carolina Department of Revenue, Form C-268, "Certificate of Tax Compliance Request Form," available at <<http://www.sctax.org/NR/rdonlyres/A2BFA7C6-806D-4A4D-974F-E00ACF1FBDC4/0/c268.pdf>> (last visited July 12, 2008).

60. Contact information: South Carolina Department of Revenue, Tax Compliance Officer, Columbia, SC 29214-0027. Telephone: (803) 898-5729. E-mail: [salestax@sctax.org](mailto:salestax@sctax.org).

61. Certificate of Compliance Exception to a Lien Placed on Assets Transferred, S.C. Rev. Proc. No. 03-5, 2003 WL 23335056 (Nov. 19, 2003).

62. S.C. Code Announcement sections 12-54-124 and 12-54-126 (2008).

63. Contact information: South Dakota Department of Revenue and Regulation, Business Tax Division, 445 East Capital Ave., Pierre, SD 57501-3100. Telephone: (605) 773-3311. Fax: (605) 773-6729. E-mail: [bustax@state.sd.us](mailto:bustax@state.sd.us).

64. RIA State and Local Taxes South Dakota, Responsibility for Payment and Collection (2008) section 23,150, Business Successor Liability for Paying Tax (Westlaw RIA SLT SD 23,150). E-interview with senior revenue agent, South Dakota Department of Revenue and Regulation (Feb. 13, 2008).

65. Tenn. Code Announcement section 67-4-72 1 extends successor liability to county and city taxes as well.

66. Telephone interview with a representative of Tennessee Department of Revenue's Franchise and Excise Tax Division. (Feb. 2008).

67. Contact Information: Tennessee Department of Revenue, Attn: Tax Enforcement Division, 500 Deaderick St., 4th Floor, Nashville, TN 37242. Telephone: (615) 741-7071. E-mail: [TN.Revenue@state.tn.us](mailto:TN.Revenue@state.tn.us).

68. Tenn. Code Announcement section 67-6-513 (2008).

69. Tenn. Code Announcement section 67-1-1444 (2008); telephone interview with a representative of the Tennessee DOR's Franchise and Excise Tax Division (Feb. 2008).

70. Texas Tax Code section 111.020 (Vernon 2007).

71. Contact information: Certificate of No Tax Due, Audit Division Headquarters, Texas Comptroller of Public Accounts, P.O. Box 13528, Austin, TX 78711-3528. Telephone: (800) 344-7916. Fax: (512) 475-0349. E-mail: [comptroller\\_help@cpa.state.tx.us](mailto:comptroller_help@cpa.state.tx.us).

72. 34 Texas Admin. Code section 3.7 (2008).

73. Utah Code Announcement section 59-12-112 (2008); Telephone interview with collection compliance specialist, Utah State Tax Commission (Feb. 26, 2008).

74. Utah Code Announcement section 59-1-705 (2008).

75. Utah State Tax Commission, Form TC-2001, "Application for Tax Clearance," available at <<http://www.tax.utah.gov/forms/current/tc-2001.pdf>> (last visited July 13, 2008).

76. Contact information: Utah State Tax Commission, 210 North 1950 West, Salt Lake City, UT 84134. Telephone: (800) 662-4335. Fax: (801) 297-7699. E-mail: [taxmaster@utah.gov](mailto:taxmaster@utah.gov).

77. Contact information: Vermont Department of Taxes, Sales and Use Tax, 133 State St., Montpelier, VT 05633. Telephone: (802) 828-2551. Fax: (802) 828-5787. Vermont Department of Taxes — Agency of Administration. Contact the department by e-mail, available at <<http://www.state.vt.us/>

[tax/contactemail.shtml](mailto:tax/contactemail.shtml)> (last visited July 17, 2008).

78. Vt. Stat. Announcement tit. 32, section 3260 (2007).

79. Va. Code Announcement sections 58.1-629, 58.1-660, and 58.609.10 (2008)

80. Contact information: Virginia Department of Tax, Office of Customer Services, P.O. Box 1115, Richmond, VA 23218-1115. Telephone: (804) 367-8037. Fax: (804) 254-6111. E-mail: [TaxBusQuestions@tax.virginia.gov](mailto:TaxBusQuestions@tax.virginia.gov).

81. 23 Va. Admin. Code section 10-210-3090 (2008); RIA State & Local Taxes Virginia, Responsibility for Payment and Collection (2008) section 23,150 Business Successor Liability for Paying Tax (Westlaw RIA SLT VA, 23,150).

82. Wash. Admin. Code section 458.20-216 (2008).

83. Washington Department of Revenue, Form REV 42 2443e, "Request for Tax Status," available at <[http://dor.wa.gov/Docs/Forms/Misc/RequestForTxStatus\\_E.pdf](http://dor.wa.gov/Docs/Forms/Misc/RequestForTxStatus_E.pdf)> (last visited July 13, 2008).

84. Contact information: Tax Status Desk, Department of Revenue, Taxpayer Account Administration, P.O. Box 47476, Olympia, WA 98504-7476. Telephone: (800) 647-7706. Fax: (360) 902-7064. Department of Revenue Washington State Request General Tax Information, available at <<https://fortress.wa.gov/dor/efile/content/contactus/email/communications.aspx>> (last visited July 17, 2008).

85. Wash. Rev. Code Announcement section 82.32.180 (West 2008).

86. W.Va. Code section 23-2-14 of the workers' compensation laws sets forth West Virginia's procedures for successor liability for transfers of a business by an employer for workers' compensation.

87. W.Va. Code section 11-10-11(f) (2008); W.Va. Code of State Rules section 110-15-4.9.1 et seq.

88. Contact information: Wisconsin Department of Revenue, P.O. Box 8901, Madison, WI 53708-8901. Telephone: (608) 261-6261. Fax number: (608) 267-1037. E-mail address: [delnqtax@revenue.wi.gov](mailto:delnqtax@revenue.wi.gov).

89. *Kastengren v. Department*, 179 Wis. 2d 587 (Wis. 1993).

90. Wis. Admin. Code Tax section 11.91 (West 2008).

91. Wis. Stat. Announcement section 77.52 (West 2007).

92. Contact information: Wyoming Department of Revenue, Herschler Building, Second Floor West, Cheyenne, WY 82002-0110. Telephone: (307) 777-796. E-mail: [DirectorOfRevenue@wy.gov](mailto:DirectorOfRevenue@wy.gov).

93. E-mail from Karen Vaghn, program coordinator, Excise Tax Division, State of Wyoming, Department of Revenue, to author (Apr. 4, 2008) (on file with author).

94. Wyo. Stat. Announcement section 39-15-103 (2007); *Buehner Block Co. v. Wyoming Department of Revenue*, 139 P.3d 1150 (Wyo. 2006).

## Upcoming CLE programs

To register, go to [www.isba.org/cle](http://www.isba.org/cle) or call the ISBA registrar at 800-252-8908 or 217-525-1760.

### February 2009

**Thursday, 2/05/09 – Webinar—** Conducting Legal Research on Fastcase. Presented by the Illinois State Bar Association. *\*An exclusive member benefit provided by ISBA and ISBA Mutual. Register at: <<https://www1.gotomeeting.com/register/667835449>>.*

**Friday, 2/06/09 – Bloomington, Doubletree—** Agricultural Law Update 2009. Presented by the ISBA Agricultural Law Section, co sponsored by the ISBA General Practice, Solo & Small Firm Section. 8:30-5.

**Wednesday, 2/11/09 – Chicago, Union League Club—** LESSONS IN PROFESSIONAL RESPONSIBILITY. From the Illinois Law Practice of Abraham Lincoln. A Master Series Video Production Presented by the Illinois State Bar

Association. 11:30-5:00.

**Thursday, 2/12/09 – Webinar—** Employment Law for the General Practitioner. Presented by the Illinois State Bar Association. 12-2.

**Friday, 2/13/09 – Chicago, ISBA Regional Office—** Fool for a Client: A Guide to Representing Yourself in ARDC Proceedings. Presented by the ISBA Standing Committee on Attorney, Registration & Disciplinary Commission. 9-11:15.

**Friday, 2/20/09 – Springfield, Old State Capitol—** LESSONS IN PROFESSIONAL RESPONSIBILITY. From the Illinois Law Practice of Abraham Lincoln. A Master Series Video Production Presented by the Illinois State Bar Association. 12:30-5:00 (*cap. 100*).

**Friday, 2/20/09 – Champaign, Hawthorn Suites—** Fool for a Client: A Guide to Representing Yourself in ARDC Proceedings. Presented by the ISBA Standing Committee on Attorney, Registration & Disciplinary Commission. 9-11:15.

**Friday, 2/27/09 – Chicago, ISBA Regional Office—** Sharpen Your Trial Skills. Presented by the ISBA Tort Law Section. 8:55-4.

### March 2009

**Thursday, 3/05/09 – Chicago, ISBA Regional Office—** Legal Technology for Non-Techies: Topics, Trends, and Tips to Help Your Practice. Presented by the ISBA Standing Committee on Legal Technology.



Non-Profit Org.  
U.S. POSTAGE  
PAID  
Springfield, Ill.  
Permit No. 820

Corporations, Securities  
& Business Law Forum  
Illinois Bar Center  
Springfield, Illinois 62701-1779  
January 2009  
Vol. 54 No. 3