

# BLC Trucking

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## ASSESSMENTS

### **Successor liability - Limitation of action (RCW 51.16.190)**

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

Scroll down for order.

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

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

5 **APPEARANCES:**

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

10  
11 Department of Labor and Industries, by  
12 The Office of the Attorney General, per  
13 Kay A. Germiot, Assistant  
14

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

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30 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
31 and decision on timely Petitions for Review filed by the firm and the Department of Labor and  
32 Industries to a Proposed Decision and Order issued on October 18, 1999, in which the Notice and  
33 Order of Assessment of the Department dated June 12, 1997, was reversed and remanded to the  
34 Department with directions to issue an order finding that BLC Trucking, Inc. is the successor to  
35 Pacific Transportation Group and, as such, BLC is ordered to pay their unpaid industrial insurance  
36 premiums of \$64,173.78 for the period from the second quarter of 1994 through the first quarter of  
37 1996.  
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1 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
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3 no prejudicial error was committed and the rulings are affirmed.  
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5 This appeal raises a number of issues. First, is BLC Trucking, Inc. a successor to Pacific  
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7 Transportation Group, as contemplated by RCW 51.08.177 and therefore liable for the unpaid  
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9 industrial insurance premiums in the sum of \$119,273.33 due by Pacific Transportation Group,  
10  
11 pursuant to RCW 51.16.200? Second, was the auction of Pacific Transportation Group property,  
12  
13 conducted by the Department of Labor and Industries, done in a reasonable manner? Third, is the  
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15 Department of Labor and Industries limited to a three-year statute of limitations, as set forth in  
16  
17 RCW 51.16.190 when collecting unpaid premiums from a successor, defined in RCW 51.08.177?  
18

19 We agree with the analysis and result reached by our industrial appeals judge in the  
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21 Proposed Decision and Order regarding the first and second issues. We find that BLC Trucking,  
22  
23 Inc. is a successor to Pacific Transportation Group, as contemplated by RCW 51.08.177, and  
24  
25 therefore BLC Trucking, Inc. is liable for unpaid taxes assessed against Pacific Transportation  
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27 Group, pursuant to RCW 51.16.200 in the sum of \$119,273.33. This figure represents the amount  
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29 owed by Pacific Transportation Group as of the date of the hearing. (See 2/17/99 Tr. at 30). We  
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31 also believe that the Department acted reasonably and within its authority when it seized and  
32  
33 auctioned property owned by Pacific Transportation Group to satisfy the unpaid premium  
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35 assessments.  
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37 We have granted review solely to address the issue of the effect of the three-year statute of  
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39 limitations found in RCW 51.16.190. We disagree with the decision reached in the Proposed  
40  
41 Decision and Order. We do not believe the limitation set forth in RCW 51.16.190 applies to the  
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43 action brought under the successor liability statute, RCW 51.16.200, as it applies in this case.  
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45 While RCW 51.16.190 provides for a three-year limitation on commencement of an action to collect  
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47 delinquent premiums, subsection (3) of the statute provides an exception to this limitation.

1 Subsection (3) of RCW 51.16.190 provides: "In case of a false or fraudulent report with intent to  
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3 evade premiums, assessments, contributions, penalties, interest, or other sums, or in the event of a  
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5 failure to file a report, action may be begun at anytime."  
6

7 RCW 51.16.200 provides that a successor shall become liable for the full amount of the tax.  
8  
9 However, this statute provides that the successor will not be liable for the tax if the successor gives  
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11 a written notice to the Department of Labor and Industries of the acquisition of the business and no  
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13 assessment is issued by the Department of Labor and Industries within 180 days of receipt of the  
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15 notice. When the provision of RCW 51.16.190(3) is read in conjunction with RCW 51.16.200, we  
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17 are convinced that the Department is not limited to a three-year period for beginning an action to  
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19 collect the assessments due in this case. BLC Trucking, Inc. did not comply with the provisions of  
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21 RCW 51.16.200. There is nothing in the record to establish that BLC Trucking, Inc. gave a written  
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23 report as a successor to Pacific Transportation Group. Absent the filing of this report by  
24  
25 BLC Trucking, Inc., the protection afforded the successor in RCW 51.16.200 and the statute of  
26  
27 limitations found in RCW 51.16.190(3) do not apply.  
28

29 The Notice and Order of Assessment is reversed and the matter remanded to the  
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31 Department of Labor and Industries to issue a Notice and Order of Assessment that assesses  
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33 unpaid premiums against BLC Trucking, Inc. in the sum of \$119,273.33.  
34

### 35 **FINDINGS OF FACT**

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- 37 1. On June 12, 1997, the Department of Labor and Industries issued a  
38 Notice and Order of Assessment (NOA) against BLC Trucking, Inc.,  
39 alleging taxes due and owing in the amount of \$147,051.51 as  
40 BLC Trucking is a successor to Pacific Transportation Group (PTG).  
41 The NOA was mailed on or about July 9, 1997, and communicated to  
42 the firm on July 10, 1997. On July 22, 1997, the firm filed an appeal  
43 from the June 12, 1997 NOA. On February 20, 1998, the Board entered  
44 an order granting the appeal effective February 19, 1998, assigned  
45 Docket No. 98 11140, and ordered that proceedings be held.  
46  
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- 1 2. Before it ceased operations in September 1996, PTG owed unpaid  
2 industrial insurance premiums in the sum of \$147,051.51. This debt  
3 was brought to a judgment and warrants were issued.  
4
- 5 3. BLC Trucking, Inc. became a successor to PTG as defined in  
6 RCW 51.08.177 when PTG ceased operations. This successorship is  
7 shown through BLC Trucking, Inc.'s purchase of equipment, free storage  
8 by BLC Trucking, Inc. of many fixtures and office equipment owned by  
9 PTG, together with common business purposes, a common location, the  
10 same employees, and the use by BLC Trucking, Inc. of customer lists  
11 owned by PTG.  
12
- 13 4. PTG's purpose in ceasing operations and the creation of BLC Trucking,  
14 Inc. was to avoid payment of industrial insurance premiums and was not  
15 within the ordinary course of business.  
16
- 17 5. BLC Trucking, Inc. did not file a report of sale as a successor to PTG as  
18 contemplated by RCW 51.16.200 and RCW 51.16.190.  
19
- 20 6. The Department of Labor and Industries' auction of assets seized from  
21 PTG was done after proper advertisement. All of the seized assets  
22 were sold at the auction at a current market price for the 50 to 75 people  
23 who attended the auction. None of the seized assets were given away  
24 or lost. No credit need be given PTG because of the broken glass on  
25 the 1949 International, as this damage did not reduce its sale price. The  
26 Department correctly transferred an impounded trailer to the impounding  
27 company so that PTG would receive the most credit for their seized  
28 assets.  
29
- 30 7. The Department correctly applied the net auction proceeds to the PTG  
31 debt.  
32
- 33 8. The correct amount of the premium assessment due from BLC Trucking,  
34 Inc. is \$119,273.33.  
35

### **CONCLUSIONS OF LAW**

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- 37
- 38 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
39 parties and the subject matter of this appeal.  
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- 41 2. BLC Trucking, Inc. is a successor of PTG for payment of industrial  
42 insurance premiums under RCW 51.08.177 and RCW 51.16.200.  
43
- 44 3. The Department of Labor and Industries auction of the assets seized  
45 from PTG was performed in a commercially reasonable manner.  
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- 1 4. The Department of Labor and Industries is not barred by the limitation of  
2 action set forth in RCW 51.16.190 when collecting the premiums owed  
3 by BLC Trucking, Inc., as a successor to PTG.  
4  
5 5. The June 12, 1997 Notice and Order of Assessment the Department of  
6 Labor and Industries is reversed. This claim is remanded to the  
7 Department with directions to issue an order finding that BLC Trucking,  
8 Inc. is the successor to PTG and to order BLC Trucking, Inc. to pay  
9 unpaid industrial insurance premiums of \$119,273.33.

10  
11 It is so **ORDERED**.

12  
13 Dated this 15th day of March, 2000.

14  
15 BOARD OF INDUSTRIAL INSURANCE APPEALS

16  
17  
18 /s/ \_\_\_\_\_  
19 THOMAS E. EGAN Chairperson

20  
21  
22 /s/ \_\_\_\_\_  
23 FRANK E. FENNERTY, JR. Member

24  
25  
26 /s/ \_\_\_\_\_  
27 JUDITH E. SCHURKE Member