Cite as Det. No. 91-259, 11 WTD 419 (1992).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Ruling of	D E T E R M I N A T I O N
	No. 91-259
. . .	Registration No. . . .

[1] RULE 224 -- OIL & CHEMICAL SPILL CLEANUP. Receipts from site remediation contracts for removing contaminants from soil and water are taxable under the Service business and occupation tax classification. ETB 553.04.172/224.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .

DATE OF HEARING: September 3, 1991

NATURE OF ACTION:

The taxpayer petitions for interpretation of hazardous waste cleanup activities.

FACTS AND ISSUES:

Pree, A.L.J. -- The taxpayer is an out-of-state corporation which is involved in the removal of hazardous (non-nuclear) material from soil and water. Most of the taxpayer's cleanup involves ongoing, long-term contamination where oil or chemicals have accumulated over a number of years. The taxpayer will design, engineer, and build a system to remove contaminants from the soil by mechanical means or by introducing bacteria to the soil.

The taxpayer does not resell the contaminants, but takes them to special dumps or otherwise disposes of them. Occasionally, the soil may be resold after it has been cleaned. The taxpayer

states that it is primarily cleaning contaminated areas rather than extracting products for resale.

The taxpayer has been informed by the Department that such activities are subject to the Service classification of the business and occupation tax. It reported the income under that classification in the past. The taxpayer contends that such income should be reclassified to another tax category such as "Extraction."

DISCUSSION:

On July 31, 1991, the Department of Revenue issued ETB 553.04.172/224 (. . .) clarifying its position regarding oil and chemical spill cleanup. Chemical spill cleanup is taxable under the Service classification of the business and occupation tax. For past periods reporting under either the Service or Retailing classification (with retail sales tax) will be accepted.

WAC 458-20-135 (Rule 135) defines "extractor" as:

> . . . every person who, from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product, or fells, cuts or takes timber, Christmas trees or other natural products, or takes fish . . . .
>
> (Emphasis supplied.)

The taxpayer does not qualify as an extractor for two reasons. First, the contaminants are not removed for sale or for commercial or industrial use. Second, generally they are not a natural resource product or other natural product, but an artificial product inadvertently introduced to the area that the taxpayer has contracted to clean.

The taxpayer is properly taxable under the Service Business and Occupation tax classification. It is primarily engaged in cleaning contaminated soil or water, not extracting a natural product for sale or other use.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(9) and is based

upon only the facts that were disclosed by the taxpayer. In this regard the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed were actually true. This legal opinion shall bind this taxpayer and the department upon those facts. However, it shall not be binding if there are relevant facts which are in existence but not disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future, however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 17th day of September, 1991.