

Cite as Det. No. 00-067R, 20 WTD 356 (2001)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For	)	<u>F I N A L</u>
Reconsideration of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 00-067R
	)	
...	)	Registration No. . . .
	)	FY. . . /Audit No. . . .
	)	
...	)	Registration No. . . .
	)	FY. . . /Audit No. . . .

RULE 172; RCW 82.04.050(2)(d): B&O TAX -- RETAIL SALES TAX -- JANITORIAL SERVICE. Pressure washing and roof clean-up are not janitorial services and are thus subject to the payment of retailing B&O tax and the collection of retail sales tax.

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.

NATURE OF ACTION:

Taxpayers protest the Department of Revenue's ("Department") reclassification of certain janitorial service type income from the service business and occupation (B&O) tax classification to the retailing B&O and retail sales tax classifications.<sup>1</sup>

FACTS:

Lewis, A.L.J. – Taxpayers provide general janitorial and maintenance services to shopping centers. Besides traditional "inside" janitorial services, Taxpayers provide "external" clean-up services, such as pressure washing sidewalks and walls and removing trash and debris from roofs and building gutters.

The Department's Audit Division audited Taxpayers' books and records.<sup>2</sup> On March 31, 1999, the Department issued tax assessments for both entities.<sup>3</sup> Most of the tax due arose from the

---

<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

Audit Division's determination that the income Taxpayers derived from pressure washing of sidewalks and walls and the clean-up of trash and the removal of debris from roofs and building gutters was not a normal and customary janitorial service and thus was a retail activity.<sup>4</sup>

In making the income reclassification, the Audit Division cited a ruling contained in Det. No. 90-124, 9 WTD 259 (1990). Det. No. 90-124 ruled that the hosing, sweeping or picking up litter, loose dirt or debris from entryways and sidewalks which are adjacent to subject buildings are normal janitorial services and thus exempt from the payment of retail sales tax or use tax. However, in making that ruling Det. No. 90-124 distinguished the facts of its case from that of a prior determination which involved a mobile cleaning service. In the earlier case, the Appeals Division ruled that a retail activity occurred when the business used high pressure washing techniques to clean the exterior parts of buildings and outside structures including sidewalks, walls, and roofs.

In this case, the Audit Division assessed retail sales tax on Taxpayers' pressure washing of sidewalks relying on that portion of Det. No. 90-124 that stated:

In view of Rule 172, which expressly excludes the cleaning of exterior walls from janitorial services, as well as the taxpayer's use of high pressure apparatus to clean those walls and adjoining sidewalks, that determination reached the proper conclusion that those services were subject to the retail sales tax.

On April 30, 1999, Taxpayers filed a petition for correction of the assessments. Taxpayers, while agreeing to collect retail sales tax on its "external" janitorial services on a prospective basis, maintained that any retroactive application of retail sales tax would be unfair due to their good faith reliance on the Department's verbal reporting instructions.<sup>5</sup>

On April 10, 2000, the Department's Appeals Division issued Det. No. 00-067, which affirmed the Audit Division's reclassification of Taxpayers' income. Det. No. 00-067 sustained the tax assessment consistent with a prior determination that had ruled that the use of a power washer to clean sidewalks was not a normal janitorial service. Det. No. 00-067 also ruled that Taxpayers' collection of debris from the roofs and gutters of its customers' buildings was more a maintenance function than a normal janitorial service.

---

<sup>2</sup> [Taxpayer 1]'s books and records were audited for the period January 1, 1995 through June 30, 1998. [Taxpayer 2]'s books and records were audited for the period January 1, 1998 through September 30, 1998.

<sup>3</sup> [Taxpayer 1] was issued a \$ . . . assessment. [Taxpayer 2] was issued a \$ . . . assessment.

<sup>4</sup> Income derived from providing "cleaning and caretaking services ordinarily performed by a commercial janitor service business" is considered a service activity subject to the service B&O tax and exempt from collection of the retail sales tax. WAC 458-20-170(4)(b) ("Rule 170") specifically states that the retail sales tax applies to the cleaning of "the exterior walls of buildings".

<sup>5</sup> Taxpayers maintained that the Department of Revenue had verbally told Taxpayers that the external janitorial services such as collecting trash from around the outside of a building or from the roof is a traditional janitorial service whose [sic] income is reportable under the service-other B&O tax classification.

On May 10, 2000, Taxpayers filed an appeal for reconsideration. Taxpayers' petition maintained the decision in Det. No. 00-067 was flawed because:

- The decision erroneously excluded outside activities such as the power washing of the sidewalks and collecting debris from roofs from the normal and customary activities performed by janitors.
- "Cleaning is cleaning" and the method of "cleaning" is irrelevant in determining whether a janitorial service activity has been performed.
- Det. No. 00-067's interpretation of Rule 217 is overly restrictive.

#### ISSUE:

Is the pressure washing of sidewalks and walls or the removal of trash and other debris from a building's roof a service ordinarily performed by a commercial janitor service business?

#### DISCUSSION:

RCW 82.04.050(2)(d) excludes janitorial services from the definition of "retail sale" or "sale at retail." "Janitorial services" are defined in that statute:

[F]or purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting.

(Emphasis added.)

WAC 458-20-172 ("Rule 172") specifically excludes the cleaning of exterior walls from the definition of janitorial service.

The term "janitorial services" does not include, among others, cleaning the exterior walls of buildings, the cleaning of septic tanks, special clean up jobs required by construction, fires, floods, etc., painting, papering, repairing, furnace or chimney cleaning, snow removal, sandblasting, or the cleaning of plant or industrial machinery or fixtures.

Thus, the cleaning of exterior walls is an activity subject to payment of retailing B&O tax and the collection of retail sales tax.

Det. No. 00-067, relying on a prior determination, found that the use of a pressure washer to clean sidewalks was a retail activity. Taxpayers disagreed. In support of its position Taxpayers cited Pringle v. State, 77 Wn.2d 569, 464 P.2d 425 (1970), where the Court rejected the trial court's basis for affirming the Tax Commission's classification of the Pringle's furnace cleaning activities as retailing under RCW 82.04.050. In reversing the trial court, the Supreme Court said:

How a janitor cleans a furnace does not determine taxability. The method or equipment used makes no difference, as long as the object is the same. For example, it is painting whether done by brush, roller, or spraygun. If one waxes a floor, it is the same whether he waxes by hand, rag, mop, or machine. Technological advances in a particular pursuit do not necessarily change the essential nature and object of that calling. Cleaning furnaces is a janitorial function as indicated by the trial court. The method used does not change the nature of that function. To clean is to clean, whether by hand or machine. Thoroughness is not a valid criterion of taxability.

(Emphasis added.)

The Supreme Court made clear in Pringle that “to clean is to clean whether by hand or machine.” And Det. No. 90-124 found that the “hosing, sweeping or picking up litter, loose dirt or debris from entryways and sidewalks which are adjacent to the subject buildings” is a normal and customary janitorial service. Thus, we agree with Taxpayer that the cleaning of sidewalks adjacent to a customer’s building would normally be a janitorial service that is not subject to the retail sales tax or use tax. However, in this case Audit has presented evidence that Taxpayers’ pressure washing activities are much more extensive than the incidental cleaning of sidewalks adjacent to its customers’ buildings. We make this conclusion based on several facts.

First, Taxpayer advertises itself as providing more than traditional janitorial services. Taxpayers’ business card listing of the “Commercial Maintenance” services it provides include:

- 24 hour on-call service
- Pressure Washing
- Parking Lot Maintenance
- Janitorial Services
- Landscaping
- Building maintenance

Second, as part of the audit examination, the Audit Division recapped Taxpayers’ sales income by date, invoice number, customer, and classification of income. As an example, select listings for the period January through December 1997 included:

8/13/97	1838	Janitorial:Pressure washed weekly areas	200.00
9/11/97	1871	Janitorial:Pressure washed walls from . . .	150.00
9/11/97	1885	Janitorial:Pressure washed, Paint Ball vandals, c	100.00
10/6/97	1943	Janitorial:Pressure washed . . . walls, m.	100.00
11/1/97	1967	Janitorial:Pressure washed canopy and sidewalk...	3,790.50
11/17/97	1996	Janitorial:Pressure washed entire center	1,200.00
11/21/97	2033	Janitorial:Pressure washed Planter boxes	320.00
11/21/97	2064	Janitorial: Pressure washed garbage enclosures...	200.00
11/21/97	2064	Janitorial:Pressure washed downspouts 2 <sup>nd</sup> half	250.00

From the above listing, we note that Taxpayer receives income from pressure washing walls, canopies, sidewalks, garbage enclosures, downspouts, etc. While we have no doubt that Taxpayers may, in some instances, provide the limited cleaning of a sidewalks adjacent to its customers' buildings part of a "traditional" janitorial service, it is apparent from the substantial charges billed that the income from pressure washing areas does not come from the incidental cleaning associated with providing a janitorial service. Accordingly, we affirm the decision contained in Det. No. 00-067 as it relates to Taxpayers' pressure washer income.

Taxpayers also appealed Det. No. 00-067's finding that the collection of debris from a customer's building roof or gutter was not a janitorial service. Taxpayers maintained that the roof cleaning activities were limited to the occasional removal of debris, such as bags or cups, that shoppers have thrown onto the low-lying roofs of their customers' buildings. We agree that the removal of a stray cup from a roof top may be similar in function to the collection of debris from a building's hall or lobby and thus qualify as part of a traditional janitorial provided service. However in this case, it appears that Taxpayers' rooftop clean-up service includes much more.

The Audit Division recapped Taxpayers' sales income by date, invoice number, customer, and classification of income. As an example, listings for the period April and May 1998 included:

5/14/98	2397	Janitorial:Roof/Gutter Cleaning	400.00
5/14/98	2400	Janitorial:Clean/ Metal Roofing	500.00
5/14/98	2403	Janitorial:Roof/Gutter/DrainCleaning	800.00

From the above listing, we note that Taxpayers received substantial income from cleaning gutters, roofing, and drains. The amount of money Taxpayers bill for such roof cleaning services is substantial, much more than we could expect to be charged for the collection of the occasional stray cup or plastic bag. While we have no doubt that Taxpayers may in some instances provide rooftop trash pick-up as part of a "traditional" janitorial service, it is apparent that the income the Audit Division reclassified was far outside the incidental pick-up associated with providing a janitorial service. Accordingly, we affirm the decision contained in Det. No. 00-67 as it relates to income derived from cleaning its customers' buildings' roofs.

#### DECISION AND DISPOSITION:

Taxpayers' petition is denied.

Dated this 17<sup>th</sup> day of January, 2001.