

Cite as Det. No. 12-0348, 33 WTD 101 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Correction of Assessment)	<u>D E T E R M I N A T I O N</u>
of)	
)	No. 12-0348
...)	
)	Registration No. . . .
)	
)	

[1] RULE 172; RCW 82.08.020(2)(d): RETAIL SALES TAX; RETAILING B&O TAX – JANITORIAL SERVICES – WATER DAMAGE CARPET RESTORATION “Janitorial services,” for purposes of Rule 172 and RCW 82.04.050(2)(d), are services regularly and normally performed by commercial janitor services businesses. Water damage clean up jobs resulting from flooding or some other unforeseen cause are “special clean up jobs,” are not performed in the course of a “regular” and “normal” janitorial service, and are therefore properly characterized as retail-taxable.

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.

Weaver, A.L.J. – A business that performs “water damage restoration” on behalf of customers whose carpets were damaged by water as a result of flooding protests the retail sales tax and retailing business and occupation (“B&O”) tax assessed on such activity. We affirm the assessment.¹

ISSUE

Whether, under RCW 82.04.050(2)(d) and WAC 458-20-172, water damage carpet restoration resulting from flooding qualifies for the “janitorial services” exclusion from retail sales. RCW 82.04.050(2)(d) and WAC 458-20-172.

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

FINDINGS OF FACT

. . . (“Taxpayer”) is in the business of carpet cleaning and water damage restoration. Taxpayer specializes in emergency water damage, flood, and fire damage restoration. Taxpayer performs various cleaning and repair services including, but not limited to: water damage restoration, carpet cleaning, tile and grout cleaning, fire damage restoration, allergy control, pet urine stains odor control, upholstery cleaning, and fabric protection.

Taxpayer advertises its ability to respond to water damage emergency calls. Taxpayer’s water damage services consist of “drying, deodorizing, and disinfecting” flooded areas. Taxpayer uses high-tech mounted and portable extraction units to perform water removal. Submersible and gas-powered pumps are used for continuous pumping of deep water situations.

Taxpayer also uses deodorizers and disinfectants to control odors emanating from microorganisms and bacteria which flourish in excessive moisture by deterring the growth of bacteria, fungi, mildew, and other harmful microorganisms. After deodorizing and disinfecting areas affected by water damage, Taxpayer uses cutting-edge drying equipment. Industrial-grade dehumidification units are used to reduce humidity levels, producing dry air and minimizing secondary water damage. High-speed turbo dryers create airflow across walls, carpets, pads, and furniture, evaporating moisture. Taxpayer’s state-of-the-art drying equipment controls temperature and humidity, helping to prevent swelling and warping of floors, walls, and furniture.

Taxpayer was audited for the period January 1, 2007, through December 31, 2010. The Audit Division examined Taxpayer’s books and records and re-characterized Taxpayer’s flood cleanup income as retail-taxable . . . The income re-characterized as retail-taxable by the Audit Division came from “Flood Serviced Calls.” . . . The Audit Division then computed “Retail Sales Tax Due on Flood Cleanup Services.” . . .

A list of the activities performed by the Taxpayer that were listed as “Flood Cleanup Services” by the Audit Division includes, but is not limited to, the following [descriptions]: Flood Service Call After Hours, Flood Service Call Normal Hours, Extract Carpet, Pull Pad, Pull Carpet, Pull Doors, Haul Pad and Carpet to Dump, Sanitize Wall, Sanitize Floor, Sanitize Carpet, Sanitize Ceiling, Clean Carpet, Fan, Dehumidifier, Steam Clean Floor, Extract Floor, Clean Floor, Enzyme Treatment.

On October 6, 2011, the Audit Division issued Assessment No. . . . for the period January 1, 2007, through December 31, 2007. Assessment No. . . . includes \$. . . in retail sales tax, . . . in retailing business and occupation (“B&O”) tax, a \$. . . service and other B&O tax credit, \$. . . in use tax/deferred sales tax, \$. . . in interest, and a 5% assessment penalty of \$. . . , for a total of \$. . . . On February 3, 2012, the Audit Division issued Assessment No. . . . for the period January 1, 2008, through December 31, 2010. Assessment No. . . . includes \$. . . in retail sales tax, \$. . . in retailing B&O tax, a \$. . . service and other B&O tax credit, \$. . . in interest, and a 5% assessment penalty of \$. . . , for a total of \$. . . .

Taxpayer petitioned for correction of the assessment. The petition alleges that the Audit Division erred in re-characterizing Taxpayer's flood and water damage cleanup services as retail sales and that Taxpayer properly characterized all its flood and water damage cleanup services as "janitorial services" subject to the service and other B&O tax. The Audit Division's position is that the re-characterized income came from flood and water damage cleanup services and is therefore retail-taxable.

ANALYSIS

All retail sales in the State of Washington are subject to retail sales tax, unless there is a specific exemption. RCW 82.08.020, .050. RCW 82.04.050(2)(d) provides that the term "sale at retail" or "retail sale" includes:

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for 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

RCW 82.04.050(2)(d) (emphasis added).

In this case, the issue is whether the "flood and water damage cleanup services" performed by Taxpayer constitutes "janitorial services" that are "ordinarily performed" by "commercial janitorial businesses." See RCW 82.04.050(2)(d). The Department has previously held that services that are "ordinarily performed" by commercial janitorial businesses are services which are fundamentally janitorial in nature and are performed "regularly and normally." See Det. No. 01-196, 22 WTD 56 (2003); see also Det. No. 07-227, 27 WTD 154 (2008). For example, in 27 WTD 154, the cleaning of restaurant kitchen hoods, vents, ducts, and fans was held not to constitute "janitorial services," in part because the cleaning constituted "maintenance" rather than "janitorial services." See 27 WTD 154. The Determination found the fact that the cleaning was not done "daily or even weekly" but sporadically as evidence that it was not janitorial in nature.

In this case, Taxpayer only performed "flood and water damage cleanup services" after customers had experienced flooding. Taxpayer's "flood and water damage cleanup services" jobs are neither regular nor normal janitorial services, but are carpet maintenance necessitated by an accident or emergency. Emergency flood damage cleaning using specialized equipment is not a cleaning service ordinarily performed by a commercial janitorial service. Here, the taxpayer's own description of its services emphasizes the specialized nature of the equipment required to do the job. The fact that a cleaning of a rug in place occurs at the end of the process does not make the activity as a whole a janitorial service ordinarily performed by a commercial janitorial business.

This conclusion is supported by WAC 458-20-172 (“Rule 172”), the Department’s administrative rule addressing the taxation of janitorial services and other services described in 82.04.052(2)(d). Rule 172 defines “janitorial services” as follows:

The term “janitorial services” includes activities performed regularly and normally by commercial janitor service businesses. Generally, these activities include the washing of interior and exterior window surfaces, floor cleaning and waxing, the cleaning of interior walls and woodwork, the cleaning in place of rugs, drapes and upholstery, dusting, disposal of trash, and cleaning and sanitizing bathroom fixtures. 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.

Rule 172 (emphasis added). Rule 172 specifically states that “special clean up jobs required by . . . floods” are not janitorial services. Rule 172.

...

Because Taxpayer’s water damage clean up jobs result from flooding or some other unforeseen cause necessitating clean up, the Department holds that they are “special clean up jobs.” In so holding, the Department’s position follows its earlier precedents where the “janitorial services” exclusion was predicated on the service being a “regular” and “normal” janitorial service. *See* Det. No. 01-196, 22 WTD 56 (2003); *see also* Det. No. 07-227, 27 WTD 154 (2008). Because the amounts re-characterized as retail-taxable by the Audit Division were income from “Flood Cleanup Services,” the income at issue in this appeal is properly characterized as retail-taxable.

DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this 3rd day of December 2013.