

Cite as Det No. 07-0227, 27 WTD 154 (2008)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of Assessment of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 07-0227
...)	
)	Registration No. . . .
)	Doc. No. . . . /Audit No. . . .
)	Docket No. . . .
)	

RULE 172, RULE 173; RCW 82.04.050(2): - RETAIL SALES TAX – RETAILING B&O TAX - PERIODIC CLEANING OF RESTAURANT KITCHEN HOODS, VENTS, DUCTS, EXHAUST FANS. The periodic cleaning of hoods, vents, ducts, exhaust fans, etc. in restaurant kitchens is the cleaning of tangible personal property or fixtures. In either case, the activity is subject to retail sales tax and retailing B&O tax. Such cleaning is not janitorial services.

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.

De Luca, A.L.J. – A business that pressured-washed and otherwise cleaned hoods, vents, ducts, and fans in restaurant kitchen exhaust systems protests the assessment of retail sales tax on such activity. . . . We affirm the assessment in full.¹

ISSUES

1. Are the pressure washing and cleaning of hoods, vents, ducts, and fans in restaurant kitchen exhaust systems janitorial services or the cleaning of a building or fixtures as described under RCW 82.04.050(2)(d), or are they the cleaning of tangible personal property under RCW 82.04.050(2)(a)? . . .

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410. Nonprecedential portions of this determination have been deleted.

FINDINGS OF FACT

During the audit period the taxpayer . . . was in the business of pressure washing and otherwise cleaning hoods, vents, ducts, and fans in kitchens of various restaurants in this state. . . . The purpose of the cleaning and pressure washing is to maintain sanitary conditions, prevent fires, and allow kitchen equipment and fixtures to operate efficiently. The pressure washing and other cleaning took place inside the restaurant kitchens and not outside the buildings. The taxpayer visited the individual kitchens about once every four to ten weeks with an average of once every six weeks. The taxpayer had reported its gross income from cleaning the kitchen exhaust systems under the service and other business activities B&O tax. . . .

The Audit Division timely audited the taxpayer for the period April 1, 2002 through June 30, 2006 and reclassified its gross income from the service and other business activities B&O tax to retailing B&O tax and retail sales tax. . . .

ANALYSIS

The taxpayer asserts it provided a janitorial service by cleaning the kitchen exhaust systems in the restaurants, which it insists should not subject to retail sales tax. By contrast, the Audit Division contends the taxpayer was cleaning tangible personal property for the restaurants, which is subject to retail sales tax.

“Retail sales” are defined in pertinent part as follows:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers

(d) The sale of or charge made for labor and services rendered in respect to 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;

(Underlining ours.) RCW 82.04.050(2). DOR adopted WAC 458-20-173 (Rule 173) to administer RCW 82.04.050(2)(a). Rule 173 provides:

RETAILING [B&O TAX]. Persons installing, cleaning, decorating, beautifying, repairing or otherwise altering or improving tangible personal property of consumers or for consumers are taxable under the retailing classification upon the gross proceeds received from sales of tangible personal property and the rendition of services.

RETAIL SALES TAX Persons engaged in the business of installing, cleaning, decorating, beautifying, repairing or otherwise altering or improving tangible personal property of consumers or for consumers are required to collect the retail sales tax upon the total charge made for the rendition of such services, even though no tangible personal property in the form of materials or supplies is sold or used in connection with such services.

The Audit Division relied on Rule 173 to support its position that the taxpayer was cleaning tangible personal property for the restaurants and is therefore subject to retail sales tax and retailing B&O tax.

DOR also adopted WAC 458-20-172 (Rule 172), in part, to administer RCW 82.04.050(2)(d) for the cleaning of buildings and janitorial services. The rule declares in part:

Taxable under the classification service and other activities upon gross income from contracts to perform janitorial services....

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.

(Underlining ours.) The rule continues by stating "The retail sales tax is not applicable to charges for janitorial services"

The taxpayer argues that it was performing janitorial services according to this statutory subsection and Rule 172 by cleaning fixtures that have become part of the buildings in which they are located and it was not cleaning tangible personal property in accordance with Rule 173.

We will address whether the taxpayer was performing "janitorial services" in light of the definitions and examples in the statute and rule. The taxpayer, for example, was not cleaning windows, floors, rugs, upholstery, drapes, walls, woodwork, and bathroom fixtures. It was not dusting and disposing of trash. Instead, it was only cleaning very specific items and only in restaurant kitchens. And, unlike common janitorial services, it was not performing its cleaning services daily or even weekly, but it cleaned any particular kitchen only once every four to ten weeks depending on the restaurant.

These services are much more akin to what the statute and Rule 172 describe as activities that are not included in the definition "janitorial services." Those non-janitorial services include, among others, "furnace or chimney cleaning" and the cleaning of "plant or industrial machinery or fixtures." We find that the cleaning of kitchen hoods, vents, ducts, and fans to be similar in

nature to cleaning other types of exhaust systems such as chimneys, or cleaning plant or industrial fixtures, which can include ducts, vents, fans, etc. We find the taxpayer was engaged in the periodic maintenance of these items rather than performing janitorial services. Whether they are fixtures (as the taxpayer contends) or tangible personal property (as the Audit Division contends) is not controlling. Janitorial services can include cleaning fixtures (such as bathroom fixtures) as well as non-fixtures (such as floor rugs and furniture). In either case, in order to avoid sales tax liability, the activities must be janitorial services. Other wise, the cleaning of fixtures or tangible personal property is subject to retail sales tax. RCW 82.04.050(2)(a) and (d), Rules 172 and 173. . . .

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 28th day of August 2007.