

Cite as Det. No. 03-0278, 23 WTD 249 (2004)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Letter Ruling)	
)	No. 03-0278
)	
...)	Registration No. . . .
)	Appeal of Letter Ruling
)	Docket No. . . .

RULE 172; RCW 82.04.050(2)(d): RETAIL SALES TAX -- USE OF OZONE FOR CLEANING INDOOR AIR AND SURFACES -- FUMIGATING. Pumping high levels of pure ozone into homes, buildings, motor vehicles, boats, etc. to cleanse indoor air and surfaces is fumigating, which is a retail activity.

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. -- An individual, who is considering starting a business to cleanse indoor air and surfaces in homes by using ozone generators, appeals a letter ruling by the Taxpayer Information and Education (TI&E) section of the Department of Revenue (DOR) that stated such an activity would be more like pest removal services rather than janitorial services and would be subject to retail sales tax and retailing business and occupation tax. We agree that the activity is not a janitorial service and is subject to retail sales tax and retailing business and occupation (B&O) tax.¹

ISSUE:

Is the cleansing of air and surfaces in houses or other buildings by the use of ozone, fumigating, which is a retail sale, or a janitorial service, which is subject to the service B&O tax?

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

FACTS:

In January of this year, an individual wrote to TI&E informing it that he was considering starting a business and requesting information regarding how three activities are taxed. Two activities not in dispute included carpet cleaning and window cleaning.² The third, and disputed, activity concerns cleansing indoor air and surfaces by using ozone generators. TI&E replied that the ozone services “appear to be more closely related to pest removal services than regular janitorial services” and concluded they were subject to retail sales tax and retailing B&O tax. TI&E cited WAC 458-20-172 (Rule 172) in support of its decision. The taxpayer appealed the section of the ruling pertaining to the use of ozone to clean the air and surfaces in homes.

The taxpayer provided us with the website of the manufacturer of the ozone generators The website contains information, articles and has links to other sites. The manufacturer calls the service “ . . . ” that uses proprietary ozone generators that produce high levels of pure ozone that are pumped into homes, buildings, cars, boats, RVs to cleanse indoor air and surfaces. The treatment eliminates all odors, molds, mildews, funguses, germs, viruses, bacteria, and dust mites within the treated area.

ANALYSIS:

A retail sale includes:

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)(d). *See also* Rule 172, which adds that dusting, disposal of trash, and cleaning and sanitizing bathroom fixtures are janitorial services, but cleaning exterior building walls and special clean up jobs required by construction, fires, floods, etc. are not janitorial services. Thus, janitorial services are not retail sales and are subject to service B&O tax.

TI&E compared the use of ozone with “pest removal services.” The word “pest” is commonly defined as: “**2** : something resembling a pest esp. in destructiveness or noxiousness; *esp.* : a plant or animal detrimental to man or to his interests” Webster’s Third New International

² TI&E answered that carpet cleaning done in place is subject to service B&O tax. If the carpet is removed and cleaned at another facility, the cleaning is subject to retailing B&O tax and retail sales tax. TI&E stated that window cleaning is a janitorial service that is subject to service B&O tax.

Dictionary 1689 (1993). For this appeal, our understanding is that the primary purpose of using ozone is to purify indoor air of odors and clean indoor surfaces by killing germs, dust mites, etc., rather than killing plants and animals for pest control.³

To more accurately describe the proposed activity, we review the word “fumigate” that is contained in RCW 82.04.050(2)(d), *supra*. We first note that the word is not defined in the statute. Thus, we will use a dictionary definition. “Words in a statute are given their ordinary and common meaning absent a contrary statutory definition.” *John H. Sellen Constr. Co. v. Department of Rev.*, 87 Wn.2d 878, 882, 558 P.2d 1342 (1976). “Fumigate” means:

b : to treat (as a house or a room) with a gas for the purpose of disinfecting or of destroying pests **c** : to make an odor imperceptible in (as a room) esp. by permeation with aromatic fumes

Webster’s Third International Dictionary 920 (1993). The proposed activity fits this definition perfectly. The person in question intends to treat homes by permeating them with a gas (ozone) to disinfect them and to make odors in them imperceptible. We conclude that the proposed activity of using ozone to purify indoor air and clean indoor surfaces is fumigating.

As noted, RCW 82.04.050(2)(d) declares the activity of “fumigating” existing buildings or structures is a retail sale. Thus, any gross income received for treating homes, offices, or other buildings or structures with ozone to eliminate odors, germs, dust mites, molds, pests, etc. is subject to retail sales tax and retailing B&O tax. Likewise, any income received from treating RV’s, boats, automobiles, trucks, etc. with ozone for similar purposes is also subject to retail sales tax and retailing B&O tax. *See* RCW 82.04.050(2)(a).

DECISION AND DISPOSITION:

The petition is denied.

Dated this 15th day of September 2003.

³ But, it appears that pest control could be a by-product of the treatment. According to the articles on the manufacturer’s web site animals, plants, and humans would be harmed if exposed to the ozone during the purifying process. Consequently, the manufacturer instructs that plants, animals, and humans be removed from the areas before treatment.