

Cite as Det. No. 14-0277, 34 WTD 51 (2015)

BEFORE THE APPEALS DIVISION
 DEPARTMENT OF REVENUE
 STATE OF WASHINGTON

In the Matter of the Petition for Refund of)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 14-0277
...)	
)	Registration No. . . .
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[1] RULE 172; RCW 82.04.050(2)(d); ETA 3034: RETAIL SALES TAX; RETAILING B&O TAX – JANITORIAL SERVICES – EXTERIOR MAINTENANCE SERVICES. “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. For the most part, janitorial services are activities performed inside buildings. Exterior maintenance services that are not associated or incidental to the interior building services ordinarily performed by commercial janitor service businesses are distinguishable from the activities which Rule 172 specifically lists as “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.

Eckholm, A.L.J. – A business that provides exterior maintenance services for commercial building owners seeks a refund of retail sales tax and retailing business and occupation (B&O) tax, asserting that its services should not be classified as a retailing activity because they constitute janitorial services taxable as a service activity. The taxpayer’s petition is denied.¹

ISSUE

Whether exterior maintenance services provided to commercial building owners constitute janitorial services, pursuant to RCW 82.04.050(2)(d) and WAC 458-20-172, taxable under the service and other activities B&O tax classification.

FINDINGS OF FACT

[Taxpayer] provides exterior maintenance services to commercial building owners. The services provided by the taxpayer include sweeping and cleaning up litter from sidewalks, building entrances, parking lots, landscaped areas, drainage ditches, holding ponds, and dumpster enclosures. The taxpayer also occasionally removes illegally dumped debris and provides seasonal snow shoveling services. The taxpayer reports his income under the retailing B&O tax classification and

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

remits retail sales tax on his sales. The taxpayer indicated that he does not collect retail sales tax from his customers because the payment of retail sales tax for his services was not a negotiated term of the service contracts.

On July 17, 2013, the taxpayer submitted amended excise tax returns and a refund request for overpayment of taxes for the period January 1, 2008, through December 31, 2011.² The taxpayer's amended returns reclassified his income under the service & other activities B&O tax classification. The taxpayer requested a refund of retail sales tax and retailing B&O tax paid, asserting that he should have been reporting under the service and other activities B&O tax classification because his services constitute janitorial services, citing Excise Tax Advisory 3034.2009 – Snow Removal and Power Sweeping of Parking Lots and Roads (ETA 3034). The Department of Revenue's (Department's) Taxpayer Account Administration Division (TAA) denied the taxpayer's request, explaining that ETA 3034 describes commercial janitorial services as including incidental removal of litter and debris from sidewalks, and that:

The language in [ETA 3034] contemplates a commercial janitorial service providing cleaning services inside of a building. It would be a customary part of the service to sweep the entryways and walkways adjacent to the building. If in addition to these services, litter and debris are picked up from the parking area, this is simply incidental to the janitorial service of the building itself. . . . While some of the services you perform may fall within the definition of "janitorial service," this is only with respect to sweeping of entryways and sidewalks. It appears a majority of your work is performed in the cleaning of parking lots, dumpster enclosures, landscaped areas, and the removal of illegally dumped debris. Your activities are beyond the scope of cleaning and caretaking services ordinarily provided by commercial janitorial businesses and therefore does not qualify for the "janitorial services" exclusion from retailing B&O tax and retail sales tax.³

The taxpayer appealed the refund denial. The taxpayer asserts that he does not use any power equipment in his maintenance of parking lots or seasonal snow shoveling services, and that his services fall within the definition of "janitorial services," as explained in ETA 3034.

ANALYSIS

Washington imposes a retail sales tax on each retail sale in this state. RCW 82.08.020. The term "sale at retail" or "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 services 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.

² The portion of the taxpayer's refund request for taxes paid in 2008 is beyond the four-year statutory refund period prescribed by RCW 82.32.060(1).

³ Letter from TAA to the taxpayer denying the taxpayer's refund request, dated July 17, 2013.

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

Washington also imposes a B&O tax “for the act or privilege of engaging in business” in this state. RCW 82.04.220. Washington’s B&O tax applies to various tax classifications, including making sales at retail pursuant to RCW 82.04.250, making wholesale sales under RCW 82.04.270, and providing services pursuant to RCW 82.04.290. Persons engaged in any business activities that are not specifically included in a tax classification under chapter 82.04 RCW, are taxable under the service and other business activities B&O tax classification. RCW 82.04.290.

WAC 458-20-172 (Rule 172) is the Department’s administrative rule addressing the taxation of janitorial services and other services described in RCW 82.04.050(2)(d). Rule 172 states that persons engaging in performing contracts for cleaning buildings or structures must collect the retail sales tax upon the full contract price, but the retail sales tax is not applicable to charges made for janitorial services. 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.

ETA 3034 provides guidance as to when snow removal and power sweeping of parking lots, and roads, qualify for the janitorial services exclusion from “retail sales.” ETA 3034 states, in part:

RCW 82.04.050(2)(d) specifically identifies snow removal to be an activity which is not included within the definition of “janitorial services.” For the purposes of [the] janitorial service exclusion, “snow removal” generally refers to the removal of snow from streets, alleys, or parking lots or removal from walkways where power equipment is used. The removal of snow and ice from pedestrian entryways and sidewalks adjacent to buildings by shoveling and sweeping, or by application of sand, salt, or similar substances to improve traction for pedestrians, [are] cleaning and caretaking services ordinarily performed by commercial janitorial businesses. These activities are subject to the service and other business activities of the business and occupation (B&O) tax.

The sweeping or picking up of litter, loose dirt, or debris from pedestrian entryways and sidewalks adjacent to buildings is considered a normal and customary service performed by commercial janitorial service businesses. If in addition to these activities litter and debris are also picked up from an adjacent parking lot, such activities are considered to be incidental to the janitorial services and also subject to the service and other business activities B&O tax.

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(Emphasis added) (bracketed terms added).

ETA 3034 provides specific information regarding power sweeping and snow removal from parking lots:

The snow removal and/or power sweeping of parking lots is not, however, considered a cleaning or caretaking activity ordinarily performed by commercial janitor service businesses. These activities often require the use of plows or other mechanized equipment in the case of snow removal, and vacuum or power sweepers in the case of the cleaning of parking lots. These activities are often performed by businesses specializing in these services who do not generally perform interior janitorial services. These activities are retail in nature and subject to the retailing B&O and retail sales taxes when performed for consumers.

(Emphasis added.)

ETA 3034 describes customary commercial janitorial cleaning services as including services performed on the sidewalks and entryways adjacent to buildings, emphasizing that the services are an extension of the interior building services ordinarily performed by commercial janitorial businesses specified in RCW 82.04.050(2)(d). ETA 3034 again emphasizes the importance of the fact that customary commercial janitorial cleaning services are performed within the interior of a building in its discussion of snow removal from parking lots. In the excerpt noted above, ETA 3034 clarifies that snow removal and power sweeping of parking lots are specialized services that “are often performed by businesses specializing in these services who do not generally perform interior janitorial services.”

The taxpayer does not provide any interior cleaning or caretaking services to its commercial building customers. The Department has previously held that the definition of “janitorial services” in RCW 82.04.050(2)(d) requires that the services be those “ordinarily performed by commercial janitor services businesses,” and that the regular and normal tasks of janitors are, with few exceptions, inside activities. Det. No. 01-047, 21 WTD 189, 194 (2002). In 21 WTD 189, the Department held that the cleaning of building awnings is an activity performed on the exterior of a building, and that the services regularly and normally performed by commercial janitor businesses are performed inside buildings. 21 WTD at 194. In determining that cleaning of awnings did not qualify as “janitorial services” as defined by RCW 82.04.050(2)(d) and Rule 172, the Department in 21 WTD 189 explained:

The statute and rule are clear, and the line they draw is between cleaning and caretaking services ordinarily performed by commercial janitor services businesses (i.e., activities performed regularly and normally by commercial janitor service businesses), and other cleaning of buildings and structures.

What are regular and normal janitorial activities? *Webster’s II New College Dictionary* 592 (1995), defines “janitor” as “[o]ne who attends to maintenance, cleaning, and repairs in a building.” *Webster’s Third New International Dictionary* 1209 (1993), defines “janitor” as “one that keeps the premises of an apartment, office, or other building clean and free of refuse, tends the heating system, and makes minor repairs.” *VGM’s Career Encyclopedia* 203 (Fourth Edition 1997), describes the job of a janitor as follows:

Janitors, or building custodians, clean and maintain many types of buildings, including offices, hotels, stores, homes, apartments, and hospitals.

Janitors have a variety of duties, depending on their employer and the extent of their responsibilities. Some janitors are responsible only for cleaning while others have maintenance responsibilities as well. Some typical janitorial duties include mopping floors, vacuuming carpets, emptying garbage cans, dusting, cleaning bathrooms, making beds, and dusting furniture. Light maintenance work may include changing light bulbs, painting, carpentry, and repairing leaky faucets.

The U. S. Department of Labor's *Occupational Outlook Handbook* 324 (1994-95 Edition) describes the working conditions of janitors as follows, in pertinent part: "Janitors and cleaners usually work inside heated, well-lighted buildings. However, sometimes they work outdoors sweeping walkways, mowing lawns, or shoveling snow."

The above definitions and descriptions indicate the regular and normal tasks of janitors are, with few exceptions, inside activities. The few outside activities identified as ones janitors regularly perform – keeping the entryways and walkways around the building clear, and other tidying up around the building – are light cleaning that must be performed regularly and frequently, and are natural extensions of activities janitors perform inside. That is consistent with Rule 172's listings. The only outside activity Rule 172 lists as a "janitorial service" is the cleaning of the exterior surfaces of windows. There is an obvious reason why janitors might regularly and normally clean both surfaces of a window. The interior surface of a window does not appear clean if the exterior surface is dirty. Windows are unique in that regard.

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21 WTD at 193-194 (footnotes removed).

The taxpayer's services are not "natural extensions of activities janitors perform inside" a building. See 21 WTD at 194. The taxpayer's services, though they do not involve the use of power equipment discussed in ETA 3034, are not "janitorial services" as defined by RCW 82.04.050(2)(d) and Rule 172, as they are not associated or incidental to the interior building services ordinarily performed by commercial janitor services businesses. The taxpayer's exterior maintenance services are retail sales, pursuant to RCW 82.04.050(2)(d) and Rule 172, subject to retail sales tax and retailing B&O tax. The taxpayer's request for refund is denied.

DECISION AND DISPOSITION

The taxpayer's petition is denied.

Dated this 27th day of August 2014.