

Cite as Det. No. 20-0136, 41 WTD 108 (2022)

BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS 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. 20-0136
)	
...)	Registration No. . . .
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ETA 3209.2018; WAC 458-20-172; RCW 82.04.050; RCW 82.12.020 – JANITORIAL SERVICES. Sweeping and cleaning floors provided in a unique location are “janitorial services” when those services are provided regularly and are normally provided by a commercial janitorial business.

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 THE CASE

Gabriella Herkert, T.R.O. – A mill operator claims payments made to a janitorial company for sweeping its facility are not subject to retail sales tax We grant taxpayer’s petition for refund, in part, limited to the amount of [deferred sales] . . . tax imposed on its purchase of janitorial services.¹

ISSUE

Under RCW 82.04.050, RCW 82.12.020, WAC 458-20-172 and Excise Tax Advisory (ETA) 3209.2018, were amounts paid for sweeping floors in taxpayer’s mill janitorial services exempt from retail sales tax?

FINDINGS OF FACT

. . . . (Taxpayer) runs a lumber mill in . . . , Washington. A local landscaper (Vendor) provided landscaping services to Taxpayer. Vendor charged Taxpayer retail sales tax on landscaping services. Vendor approached Taxpayer when Taxpayer professed a need to have the floor of its facility cleaned of sawdust and other particulates on a daily basis. Every working day, after the last shift, Taxpayer used hydraulic lifts to raise milling equipment in its facility. Vendor then removed sawdust and other detritus generated during the shift using brooms and air blowers. The next day, Taxpayer returned milling equipment to its original position.

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

While no written contract was executed to reflect the additional duties at the time, Vendor began cleaning the floor. Vendor sent Taxpayer a separate billing for these services and received payment from Taxpayer for those duties separate from the payments made for its pre-existing landscaping duties.² Vendor did not charge Taxpayer retail sales tax on monthly amounts received for performing its floor cleaning activities.³

The Department of Revenue's (Department) Audit Division (Audit) conducted a field audit of Taxpayer's activities. In conjunction, Audit reviewed Taxpayer's books and records for the period January 1, 2015 through December 31, 2017. Included in Audit's review was payment documentation showing that Taxpayer did not pay retail sales tax on amounts paid to Vendor for cleaning the mill floors. For the tax period January 1, 2015 through December 31, 2017, Taxpayer paid \$. . . to Vendor without retail sales tax. On March 5, 2020, the Department issued [an assessment]. . . to Taxpayer, assessing \$. . . , including \$. . . in tax, \$. . . in interest and \$. . . in penalties. Included in the . . . [assessment] . . . was . . . [deferred sales tax] imposed on . . . purchases from Vendor for the provision of cleaning services.⁴

Taxpayer timely requested review. With its request, Taxpayer provided three competitive bids it received for the provision of cleaning services from unrelated vendors. The bids included both routine floor cleaning like that done by Vendor and limited additional available services, none of which was provided by Vendor in this case. All three competitive bids were higher than the amount paid to Vendor strictly to clean the mill floors.

ANALYSIS

Washington law imposes retail sales tax on every "retail sale" in this state, unless a specific exemption applies. RCW 82.08.020; RCW 82.04.050. The term "retail sale" is further defined by statute and specifically includes the sale of, or charge made for labor and services rendered in respect to:

(d) *The cleaning, fumigating, razing, or moving of existing building or structures, but does not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" means 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). . . .

² The parties do not dispute the retail sales tax treatment of landscaping services provided by Vendor.

³ Since all charges for providing floor cleaning duties were segregated from charges for landscaping services subject to retail sales tax, we do not consider bundling under RCW 82.08.195.

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WAC 458-20-172 (Rule 172), the Department's administrative rule addressing the taxation of janitorial and related services, provides additional clarification, stating:

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.

The statute and rule delineate a line between cleaning services ordinarily provided by commercial janitorial businesses (a non-retail service), on the one hand, and other more specialized services associated with the cleaning of existing buildings and structures (a retail service) on the other. Accordingly, the resolution of this case depends on whether the . . . [Vendor] engages in routine janitorial services when it cleans the floors of Taxpayer's mill or whether the removal of sawdust comprises a specialized service.

The Department provided additional guidance in Excise Tax Advisory 3209.2018 (ETA 3209.2018), where, in specifically addressing the distinction, it stated that, "janitorial services . . . involve light cleaning . . . performed ordinarily (regularly and normally) by commercial janitorial service businesses." *Id.* at 2. Non-routine or specialized services to clean or restore an existing building, in contrast, are not janitorial services and therefore fully subject to retail sales tax. ETA 3208.2018 provides a number of examples of "janitorial services," including floor cleaning and waxing "if the activities involve light cleaning similar to examples identified above and the activity is of a type performed ordinarily (regularly and normally) by commercial janitorial service businesses as opposed to sporadically."

While Vendor does perform services in a unique location and the Taxpayer uses hydraulic lifts to allow cleaning around its equipment, the actual services Vendor provides are ordinary, regular and normal. Vendor provides the services daily. Sawdust is removed using brooms and air blowers. Taxpayer provided competitive bids from commercial janitors offering to do substantially the same work as that provided by Vendor but for more money, along with quotes for some additional services Vendor did not provide. Therefore, we conclude that sweeping services provided by Vendor are "janitorial services" under RCW 82.04.050, WAC 458-20-172 and ETA 3209.2018 and not subject to retail sales tax We grant Taxpayer's petition to the extent the assessment reflects [deferred sales tax] . . . imposed on Taxpayer's purchase of janitorial services.

DECISION AND DISPOSITION

Taxpayer's petition is denied in part and granted in part. We grant the petition with respect to the amount of . . . [deferred sales] tax imposed on Taxpayer's purchase of janitorial services from Vendor. We deny the petition with respect to remaining issues reflected in

Dated this 8th day of May 2020.