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BEFORE THE ADMINISTRATIVE REVIEW AND HEARINGS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON¹

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. 22-0026
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)	Registration No. . . .
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RCW 82.08.020; RCW 82.04.050; WAC 458-20-173: RETAIL SALES TAX – SERVICES TO TANGIBLE PERSONAL PROPERTY OF CONSUMERS – WATER. The water contained in a “closed loop” heating, ventilation, and cooling (“HVAC”) system constitutes the tangible personal property of the HVAC system’s owner and, therefore, repairing or altering the water by adding chemicals is a retail service subject to retail sales tax.

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.

Farquhar, T.R.O. – A business that operates a hotel in Washington seeks a refund of retail sales tax it paid to a water treatment company on charges related to servicing the water in the hotel’s heating, ventilation, and air conditioning (“HVAC”) system. The business argues that the water treatment company provided consulting, testing, and analysis services, which are professional services not subject to retail sales tax. However, because the water treatment company was hired to service the water in the HVAC system, and the water in the system is tangible personal property, we conclude that the services are, indeed, subject to retail sales tax. As such, the business is not entitled to a refund of the tax. Petition denied.

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

ISSUE

Whether a taxpayer must pay retail sales tax on charges related to servicing the water contained in the taxpayer's "closed loop" heating, ventilation, and air conditioning system pursuant to RCW 82.04.050, RCW 82.08.020, and WAC 458-20-173.

FINDINGS OF FACT

. . . ("Taxpayer") is a Washington company that operates a hotel in . . . Taxpayer's hotel utilizes a "closed loop" heating, ventilation, and air conditioning ("HVAC") system. The system contains a fixed volume of treated water that circulates through pipes in the building to heat and cool the building's interior.

In order for the HVAC system to operate properly, the water contained in [the] system must be regularly monitored and maintained. Occasionally, chemicals are added to the water to prevent damage to the system. During the periods at issue here, Taxpayer hired a company named . . . ("the Company") to service the water in the HVAC system on a monthly basis. The Company issued an invoice to Taxpayer each month stating, generally, the nature of the services it performed and the cost of the services. The Company collected retail sales tax from Taxpayer on the full value of each invoice.

During the Department's review of this matter, Taxpayer provided a spreadsheet describing 50 transactions that occurred between Taxpayer and the Company between October 2015 and August 2019 ("the Refund Period"). One of the columns in the spreadsheet is titled "Description of Item Purchased." For 47 of the transactions, the description states "monthly water treatment services." Of the remaining three transactions, two are described as "PASL testing chemicals" and one as "PVT validation kit #1." The total amount charged for the 50 transactions was \$. . . , which includes \$. . . in sales and \$. . . in retail sales tax.

Taxpayer also provided two invoices it received from the Company. The invoices are dated July 16, 2018, and May 15, 2019. The July 2018 invoice states that the Company provided "limited water treatment for the month of Aug, 2018/monthly water treatment services." The May 2019 invoice states that the Company provided "monthly water treatment." Neither invoice describes what specific tasks the Company performed with respect to those transactions.

On June 12, 2020, Taxpayer requested a refund ("the Refund Request") of the \$. . . in retail sales tax it paid to the Company during the Refund Period. Taxpayer asserted that the charges from the Company were for "technical consulting, testing and analysis to determine what is needed to properly treat the water used by . . . [the HVAC system]" and that the services included "providing chemicals and introducing those chemicals into the water in the system." Refund Request, pg. 1. Taxpayer argues that the Company provides "water treatment services," which should be considered a "professional or personal service" that is not subject to retail sales tax. As such, Taxpayer contends that it paid the tax in error and the Department should refund the full amount.

On October 6, 2020, the Department denied Taxpayer's refund request. *See* Letter No. . . . The Department concluded that the services the Company provided were, indeed, subject to retail sales

tax pursuant to RCW 82.04.050 and RCW 82.08.020 because the Company was hired to “install, repair, clean, alter, improve, construct, or decorate real or personal property” belonging to Taxpayer.

On February 4, 2021, Taxpayer submitted a timely petition for review (“the Petition”). In the Petition, Taxpayer protests the Department’s denial of the Refund Request and again requests a refund of the . . . retail sales tax it paid to the Company. Taxpayer did not raise any new arguments in the Petition and, instead, referenced the arguments from the Refund Request as the basis for the Petition. Along with the Petition, Taxpayer provided a “Seller’s Declaration” from the Company, in which the Company attests that it collected the subject retail sales tax and remitted it to the Department, and that it has not previously refunded the amount of the tax to Taxpayer.

ANALYSIS

Washington imposes a retail sales tax on all retail sales in this state. RCW 82.08.020(1). Specifically, all sales of tangible personal property are subject to retail sales tax unless an exclusion or exemption applies. RCW 82.08.020(1)(a). Similarly, sales of “[s]ervices, other than digital automated services, included within the RCW 82.04.050 definition of retail sale” are also subject to retail sales tax. RCW 82.08.020(1)(c).

RCW 82.04.050 defines “retail sale” as including “every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business” RCW 82.04.050(1)(a). The definition also includes “the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to . . . installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers” RCW 82.040.050(2)(a).

WAC 458-20-173 (“Rule 173”) is the Department’s administrative rule regarding “[i]nstalling, cleaning, repairing or otherwise altering or improving personal property of consumers.” The “Retail Sales Tax” section of Rule 173 reads, in pertinent part, as follows:

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. Where tangible personal property in the form of materials and supplies is sold or used in connection with such services, the retail sales tax applies to the total charges made for the sale of the materials and supplies and the services rendered in connection therewith.

(Emphasis added.)

For the purposes of Washington’s retail sales and use taxes, RCW 82.08.010(7) defines “tangible personal property” as “personal property that can be seen, weighed, measured, felt, or touched, or

that is in any other manner perceptible to the senses. *Tangible personal property includes . . . water . . .*” (Emphasis added).

RCW 82.04.290 states that “any business activity other than or in addition to an activity taxed explicitly under” RCW 82.04.050 is subject to the service and other activities business and occupation (“B&O”) tax classification and is not subject to retail sales tax. *See also* WAC 458-20-224 (“Rule 224”).

Here, Taxpayer hired the Company to monitor and treat the water contained in the HVAC system. Of the 50 transactions at issue, 47 of them pertained to monthly treatment of the HVAC water. Taxpayer states that the monthly water treatment services involved testing the water and adding necessary chemicals. Refund Request, pg. 1. The other three transactions appear to be sales of tangible personal property in the form of testing materials. We will address the taxability of the two types of transactions in turn.

Regarding the transactions related to monthly water testing, RCW 82.04.050(2)(a) states that sales of “labor and services rendered in respect to . . . installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers” are retail sales, which are subject to retail sales tax under RCW 82.08.020(1)(c). The water that the Company treated is a critical component of Taxpayer’s HVAC system. It is stored in the “closed loop” system and is treated (i.e., altered) with chemicals to meet the specific performance requirements of that system. Pursuant to RCW 82.08.010(7), the water constitutes Taxpayer’s tangible personal property. Because the Company was hired to repair or alter Taxpayer’s tangible personal property by adding chemicals to the water, we conclude that the Company’s services are subject to retail sales tax pursuant to RCW 82.08.020(1)(c) and RCW 82.04.050(2)(a). *See also* Rule 173, “Retail Sales Tax” section. As such, the Company properly collected retail sales tax from Taxpayer on those transactions and Taxpayer is not entitled to a refund of those amounts.²

Taxpayer argues that the transactions related to monthly water testing constitute the sale of non-retail professional services because the Company provided “technical consulting, testing and analysis to determine what is needed to properly treat the water . . .” Refund Request, pg. 1. In effect, Taxpayer is arguing that the Company’s services are taxable under RCW 82.04.290 and Rule 224. If Taxpayer were correct, this would mean the income the Company derived from the services performed for Taxpayer would be subject to service and other B&O tax and Taxpayer would not owe retail sales tax on those sales because the services would not be retail services. However, Taxpayer admits that the Company altered the water by “providing chemicals and introducing those chemicals into the water in the system.” *Id.* The Company was not merely offering consulting services or advice on maintaining the HVAC water – it actually performed the maintenance work by testing the water and adding chemicals. As discussed above, altering or improving tangible personal property is a retail service subject to retail sales tax, thus we reject

² We also note that the definition of “retail sale” also includes sales of “tangible personal property consumed and/or for labor and services rendered in respect to . . . constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers . . .” RCW 82.04.050(2)(a). Therefore, even if the Company were considered to be servicing the HVAC system itself, which, presumably, is a fixture that has become part of Taxpayer’s real property, sales of such services would also be subject to retail sales tax under RCW 82.08.020(c) because they fall under the definition of “retail sale” found in RCW 82.04.050(2)(a).

Taxpayer's argument that the Company's services are not retail services. RCW 82.08.020(1)(c), RCW 82.04.050(2)(a).

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As for the testing materials, under RCW 82.04.050(1)(a) and RCW 82.08.020, all sales of tangible personal property are subject to retail sales tax. Three of the subject transactions involved the sale of tangible personal property in the form of testing materials. RCW 82.08.010(7) [(definition of "tangible personal property")]. Because the materials are tangible personal property, sales of those materials to Taxpayer (the consumer) are subject to retail sales tax under RCW 82.08.020(1)(a). As such, the Company properly collected retail sales tax from Taxpayer and Taxpayer is not entitled to a refund of those amounts.

To conclude, we find that the Company properly collected retail sales tax from Taxpayer on all of the subject transactions and the Department was correct to deny the Refund Request.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 4th day of February 2022.