

Cite as 3 WTD 59 (1987)

BEFORE THE INTERPRETATION AND APPEALS SECTION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D</u> <u>E</u> <u>T</u> <u>E</u> <u>R</u> <u>M</u> <u>I</u> <u>N</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
For Correction of Assessment of)	
)	No. 87-130
)	
. . .)	Registration No. . . .
)	Tax Assessment No. . . .
)	
)	

[1] **MISCELLANEOUS:** ORAL REPRESENTATION. A taxpayer will not be relieved of tax liability because of a claimed oral representation of the Department.

[2] **RULE 173, RULE 174 and RCW 82.04.050(1)(2):** CLEANING SERVICE -- JANITORIAL -- UNCOLLECTED RETAIL SALES TAX. Charges for cleaning beer taps, lines, and heads are retail sales. This type of activity is not a service ordinarily performed by a commercial janitorial business. A "seller" of such services is liable for uncollected retail sales tax, even if he did not know of the obligation to collect the 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.

TAXPAYER REPRESENTED BY: Pro Se

DATE OF HEARING: May 27, 1986

NATURE OF ACTION:

The taxpayer petitioned for correction of assessment of retail sales and Retailing B&O taxes. The assessments were the result of the Department reclassifying the taxpayer's activities from "Service" to "Retailing."

FACTS:

Normoyle, A.L.J. (successor to M. Clark Chandler, A.L.J.)--The taxpayer performs cleaning services for taverns and lounges. His business consists of cleaning out hoses and heads of beer taps. He states that, when he first started his business, he was orally informed by a Department of Revenue employee that he should report his income under the Service classification, because his business was akin to a janitorial service. He states that it was because of that representation that he did not collect retail sales tax from his customers.

The taxpayer's account was examined for the period from April 1, 1984, through December 31, 1985. The Department concluded that he was conducting a retail cleaning business, reclassified him for retail sales and B&O purposes, and assessed back taxes for the unremitted retail sales tax. The basis for the reclassification was that the service consisted of cleaning tangible personal property. Among other things, the taxpayer uses a steam cleaning device and trisodium phosphate in the performance of his service.

The taxpayer appeals the reclassification. In the alternative, he requests that the retail sales tax assessment be waived, as he did not know that he was required to collect the retail sales tax and cannot afford to pay it himself.

ISSUES:

1. May the taxpayer be relieved of a tax obligation because of the claimed oral representation of the Department?
2. Was the taxpayer properly reclassified from "Service" to "Retailing?"
3. May the taxpayer be relieved of a tax obligation because he did not know he was to collect the tax and is now unable to pay it himself?

DISCUSSION:

ISSUE NO. 1.

The Department's long established policy regarding oral representations is contained in Excise Tax Bulletin (ETB) 419.32.99. In pertinent part, it states:

The Department of Revenue gives consideration, to the extent of discretion vested in it by law, where

it can be shown that failure of a taxpayer to report correctly was due to written instructions from the department or any of its authorized agents. The department cannot give consideration to claimed misinformation resulting from telephone conversations or personal consultations with a department employee.

There are three reasons for this ruling:

(1) There is no record of the facts which might have been presented to the agent for his consideration.

(2) There is no record of instructions or information imparted by the agent, which may have been erroneous or incomplete.

(3) There is no evidence that such instructions were completely understood or followed by the taxpayer.

Here, there was no written representation. Therefore we are unable to rule in the taxpayer's favor on this issue.

ISSUE NO. 2.

WAC 458-20-173 states in pertinent part, as follows:

BUSINESS AND OCCUPATION TAX

RETAILING. Persons . . . cleaning . . . tangible personal property of consumers or for consumers are taxable under the retailing classification upon the gross proceeds received from . . . the rendition of services.

. . .

RETAIL SALES TAX

Persons engaged in the business of . . . cleaning . . . 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.¹

The taxpayer does clean tangible personal property for consumers, and we conclude that the Department properly reclassified his activities.

The taxpayer's business does not fall within the statutory or administrative exclusion for janitorial services. Under WAC 458-20-172, "The term 'janitorial services' includes activities performed regularly and normally by commercial janitor service businesses." The rule is consistent with RCW 82.04.050(2). The Department has held, in other Determinations, that cleaning taps is not one of the services ordinarily performed by a commercial janitorial business. We adhere to that holding.

ISSUE NO. 3.

Washington law does not allow the Department to release a taxpayer from the duty of collecting and remitting sales tax simply because a taxpayer (a) did not know he had a tax obligation, and (b) cannot now pay the tax. RCW 82.08.050 provides that "In case any seller fails to collect the tax herein imposed . . . whether such failure is the result of his own acts or the result of acts or conditions beyond his control, he shall, nevertheless, be personally liable to the state for the amount of the tax."

That statute does, however, clearly establish the liability of a buyer to a seller, stating that "The amount of tax, until paid by the buyer to the seller . . . shall constitute a debt from the buyer to the seller" Thus, if the buyers of his service refuse to reimburse him for the sales taxes which the buyers should have paid, the taxpayer has a legal remedy. Subject to possible statute of limitations problems, and depending upon the amount owing by each customer, the taxpayer may be able to pursue collection through small claims court.

DECISION AND DISPOSITION:

The petition for correction of assessment is denied. Because the delay in the issuance of this Determination was for the

¹ This rule is consistent with RCW 82.04.050(1) and (2). The legislature has defined retail sale to include cleaning of tangible personal property.

sole convenience of the Department, interest will be waived from August 16, 1986 through the date of this Determination. The balance owing under the assessment, \$. . . , plus unwaived interest of \$. . . , for a total of \$. . . , is due by May 14, 1987.

DATED this 24th day of April 1987.