

Cite as Det. No. 01-196, 22 WTD 56 (2003)

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>
Assessment of )	
)	No. 01-196
)	
... )	Registration No. . . .
)	FY . . . /Audit No. . . .
)	Docket No. . . .
)	

RULE 172; RCW 82.04.050: RETAIL SALES TAX -- DEFINITION OF  
RETAIL SALE -- JANITORIAL SERVICES -- CONSTRUCTION CLEAN-UP.  
Cleaning services billed to a speculative builder for re-cleans of finished homes  
held for sale were janitorial services and not 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.

NATURE OF ACTION:

A speculative builder protests the assessment of use tax on cleaning services performed on newly  
built speculative homes.<sup>1</sup>

FACTS:

Okimoto, A.L.J. -- . . . (Taxpayer) is a construction company primarily engaged in the business  
of building and selling speculative residential homes. Taxpayer's books and records were  
examined by the Audit Division (Audit) of the Department of Revenue (Department) for the  
period January 1, 1996 through March 31, 2000. As a result of that examination additional taxes  
and interest were found owing in the amount of \$ . . . and Doc. No. FY . . . was issued in the  
amount on March 8, 2001. Taxpayer has protested the assessment and it remains due.

Schedules 3 through 11 – Use Tax/Deferred Sales Tax (Spec Home Cleaning, Various Local Tax  
Codes)

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

In these schedules, Audit assessed use and/or deferred retail sales tax on charges made by two cleaning services, . . . and . . . . Audit considered all such services to be for final construction clean-up that occurred prior to the sale of the houses. As such, Audit believed that these specialized cleaning services fell within the definition of a retail sale under RCW 82.04.050(2)(d) as the cleaning of existing buildings or structures. Although Audit recognized that janitorial services were specifically excluded from the definition of a retail sale under RCW 82.04.050(2)(d), it believed that the above services fell outside the scope of a normal janitorial service because they were post-construction special clean-up services.

#### TAXPAYER'S EXCEPTIONS:

Taxpayer states in its petition:

The taxpayer primarily builds new single-family residences, most often in small to mid-sized subdivisions. The subcontractors are required to, and do, clean up all of their construction debris. When construction is completed, and all permits for occupancy have been issued, the taxpayer hires their regular housecleaning service to clean the house. Immediately prior to this point, there is no construction debris remaining in the house. The house is at that point an existing residence, no different than a home that has been recently vacated by occupants. The cleaning company, which primarily engages in cleaning of single-family residences and commercial offices, enters the premises and performs the following tasks (see their statement, attached): detailing of the bathtubs, showers, and toilets, cleaning the kitchen of any dust, wipe down appliances and any other woodwork, clean windows, vacuum, and mop the floors. All of these are tasks typically performed by commercial janitorial services on a regular and routine basis. The houses are also cleaned in the same manner every three to four weeks after the original cleaning, to ensure that they are highly presentable to prospective purchasers.

Construction on the homes has been completed by the time that the household cleaning company begins their cleaning. Indeed, the homes have received their final sign-off from the building inspector (e.g. permit for occupancy) prior to the time the homes are cleaned. The activities that occur cannot be considered "services rendered in respect of construction" as the construction has been completed by that point.

At the hearing Taxpayer submitted house inspection reports, invoices and a statement from [Cleaning Co.] describing its services. The statement said:

I am subcontracted to simply clean, which includes the detailing of the bathtubs, Showers and toilets, I clean the kitchen of any dust and wipe down all appliances and any other woodwork. I clean all the windows, Vacuum and mop the floors.

After the hearing, Taxpayer presented evidence that showed that the initial charge for a "whole-house" cleaning cost up to \$250 whereas re-cleans normally cost about \$40 a piece. Taxpayer

explained that the difference in price was because re-cleans usually only involve vacuuming and mopping of floors. Both the initial cleaning and re-cleans took place after all sub-contractor work had been completed.

ISSUE:

Are cleaning activities on a “spec” home subject to retail sales tax when performed by a cleaning service after all sub-contract construction work has been completed?

DISCUSSION:

All retail sales in the State of Washington are subject to retail sales tax, unless there is a specific exemption. RCW 82.08.020 and 82.04.050. RCW 82.04.050(2)(d) provides that 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. (Underlining added.)

In this case, Taxpayer acknowledges that [Cleaning Cos.] clean existing structures for Taxpayer and that Taxpayer is a consumer of those services. Instead Taxpayer argues that the activity is excluded from the definition of retail sale because it is a janitorial service.

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 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.

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

regularly and normally by commercial janitor service businesses), and other cleaning of buildings and structures.

The above definition and descriptions indicate the regular and normal tasks of janitors are to clean and maintain buildings and structures in a pre-existing condition. It is generally not the normal and ordinary duties of a janitor to improve, construct or repair a structure into a new condition. We believe that it is partly that distinction that Rule 172 utilizes to differentiate between a “special clean up” job and normal and ordinary janitorial services.

As Taxpayer points out, the Department’s Q4/1990 Tax Topics publication contained an article that discussed the difference between special clean up jobs and “janitorial services.” The article stated, in part:

While janitorial services are not subject to retail sales tax, special clean up activities are taxed as a retail sale. Special clean up jobs consist of the activities that are required after construction, fires, floods or other calamities and extend beyond the normal activities performed by janitorial service businesses.

...

Special clean up jobs performed for persons other than consumers are wholesale sales. Income received from wholesale sales is subject to the Wholesaling B&O tax classification. For example, a person contracting with a general contractor to clean up after construction is making a wholesale sale. . . . The general contractor must provide a resale certificate.

We believe that the above article is consistent with our interpretation of RCW 82.04.050 and Rule 172. Applying that interpretation to Taxpayer’s case, we find that amounts billed by [Cleaning Cos.] for re-cleans are clearly janitorial services and not subject to the retail sales tax. This is because re-cleans only maintain the existing condition of the newly constructed homes. On the otherhand, we find that amounts billed by [Cleaning Cos.] for final construction clean up, i.e., those detailing and cleaning services which initially transform newly constructed homes into a not previously-existing condition, constitute special construction clean up jobs and beyond the normal duties of a janitorial service. Such services are subject to retail sales tax. For purposes of this audit examination, we will presume that either [Cleaning Cos.] performed the final construction cleanup on their first invoice on each construction site, unless Taxpayer can document that the final construction clean up was performed by another contractor. Accordingly, this issue is remanded to Audit for deletion of re-clean charges and for further investigation on final construction clean up charges.

DECISION AND DISPOSITION:

Taxpayer's petition is granted in part and remanded in part.

Dated this 31<sup>st</sup> day of December, 2001.