

Cite as Det. No. 13-0265, 33 WTD 522 (2014)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Correction of) **D E T E R M I N A T I O N**
Assessment of)
) No. 13-0265
...)
)
) Registration No. . . .
)

[1] RCW 82.04.4298: HOUSEKEEPING FEES – TIMESHARE CONDOMINIUM – RESIDENTIAL STRUCTURES – COMMONLY HELD PROPERTY – CLEANING. Housekeeping fees collected for cleaning the interiors of timeshare condominium units are not collected for the maintenance of residential structures or commonly held property. The fees are used to pay for cleaning the interior space of each unit and not the edifice of the building itself. Moreover, because the individual units can be used by only one owner at a time and are not “common areas” available to all condominium owners, the residences themselves are not “commonly held property.”

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.

Weaver, A.L.J. – A timeshare association management company petitions for the correction of an assessment of service and other activities business and occupation (B&O) tax collected on housekeeping fees it charged to timeshare owners after their stay to clean the residences before the next timeshare owner takes possession of the unit. We hold that only the fees collected for the cleaning of common areas are deductible from Taxpayer’s B&O tax base, which means that the housekeeping fees collected for the cleaning of the residences themselves are not deductible. Taxpayer’s petition is denied.

ISSUE

Whether, under RCW 82.04.4298, housekeeping fees collected by a timeshare management company for the cleaning of timeshare condominium units are used solely for the maintenance of commonly held property and are therefore deductible.

FINDINGS OF FACT

[Taxpayer] is engaged in the business of operating a time-share association management company in . . . Washington. Taxpayer's books and records were examined by the Audit Division of the Department of Revenue for the period January 1, 2008 through March 31, 2012. The audit resulted in an assessment totaling \$. . . , which includes an assessment of service and other business and occupation (B&O) tax of \$. . . , a small business credit of \$. . . , interest totaling \$. . . , and a 5% assessment penalty of \$

The properties Taxpayer manages are part of a building complex that consists of 174 individual condominiums in 15 condominium buildings. Some condominiums are owned by a single individual owner (termed "full-share" condominiums) and some are owned as time-share condominiums. Each condominium building has a separate condominium association and the individual owners in each condominium are responsible for the affairs of their own condominium association. Each condominium association is financially responsible for the safety and maintenance of its building and the grounds in accordance with their own bylaws. Individual condominium owners are responsible for the safety, maintenance, contents and liability insurance of their respective condominium units.

Taxpayer is a separate association responsible for administering the 43 timeshare condominiums. Three buildings . . . are the timeshare buildings, and the units are 100% owned as time-shares. Two other buildings have specifically designated timeshare units, but also have individually owned full-share condominiums. Each timeshare condominium has 12 ownerships, called "segments." Each segment comprises four weeks of timeshare ownership. Usage is arranged so that ownership is allocated for one week of use every 12 weeks.

Paragraph 8.07 of Taxpayer's bylaws requires it to bill the costs for cleaning the condo units as a separate charge, above and beyond the "Common Expenses" and "Periodic Assessments" that are routinely charged to the time share owners. These cleaning costs are booked by Taxpayer as "housekeeping fees" on its books and records. After a timeshare owner stays at a condominium, Taxpayer bills that owner a housekeeping fee. The services that are included for this fee include: vacuuming, bathroom cleaning, replacement of used linens, dishwashing, replacement of consumable goods used in the condo units, deck sweeping, and bed making. These services are provided in preparation for the next timeshare owner's stay at the same unit.

If the time share owner did not stay at the condo unit during its designated stay, the housekeeping fee was not charged. Often, approximately 30 percent of the time, time share owners trade their designated stay times with other time share owners. When an original time share owner trades its allotted time to a "guest," the original timeshare owner is charged the housekeeping fee. The Audit Division assessed service and other activities B&O tax on the housekeeping fees collected by Taxpayer. Taxpayer filed a timely appeal.

ANALYSIS

Washington levies a B&O tax for the act or privilege of engaging in business activities in Washington. RCW 82.04.220. The tax is measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business. *Id.* RCW 82.04.290 specifically imposes the service and other B&O tax rate on “every person engaging within this state in any business activity other than or in addition to an activity taxed explicitly under another section in this chapter.” RCW 82.04.290(2)(a).

RCW 82.04.080 states that:

“Gross income of the business” means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

RCW 82.04.080 (emphasis added). All retail sales in the State of Washington are subject to retail sales tax, unless there is a specific exemption. RCW 82.08.020, .050. RCW 82.04.050(2)(d) provides that the term “sale at retail” or “retail sale” includes:

(d) 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 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). In this case, the Audit Division assessed service and other activities B&O tax on the housekeeping fees collected by Taxpayer from member timeshare owners. The Audit Division determined that the housekeeping fees were not retail-taxable and assessed service and other activities B&O tax on the housekeeping fees collected by Taxpayer. *See* RCW 82.04.290.

Taxpayer argues that the housekeeping fees should not be taxed at all, however, because they are deductible under a specific exemption statute. That [deduction] statute, RCW 82.04.4298 reads as follows:

(1) In computing tax there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or

charges are made for use by the public who are not guests accompanied by a member, which are derived by:

- (a) A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership;
- (b) An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or
- (c) An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area who all hold the same property in common within the area.

(2) For the purposes of this section "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

RCW 82.04.4298 (emphasis added).

There is no dispute that Taxpayer is a qualifying organization under RCW 82.04.4298(1)(b). Taxpayer argues that the housekeeping fees at issue in this case are deductible under RCW 82.04.4298, because the fees are collected for the maintenance of the timeshare units. The Audit Division disallowed the deduction because it determined that the housekeeping fees were not collected for the maintenance of "residential structures" or "commonly held property."

The Audit Division takes the position that the housekeeping fee is not for the maintenance of "residential structures," as the money is used to clean the interior space of the condominium, rather than the edifice of the building itself. We agree with this analysis.

RCW 82.04.4298 does not define the term "residential structures." When construing a statute, we first look to the plain meaning of the statute. "The "plain meaning" of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005) (quoting *Wash. Pub. Ports Ass'n v. Dep't of Revenue*, 148 Wash.2d 637, 645, 62 P.3d 462 (2003); *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 10-11, 43 P.3d 4 (2002)). If not otherwise defined by statute, the ordinary meaning includes the dictionary definition. *Campbell & Gwinn*, 146 Wash.2d at 9, 11, 43 P.3d 4; *Amalgamated Transit Union Local 587 v. State*, 142 Wash.2d 183, 11 P.3d 762, 27 P.3d 608 (2000).

Webster's New Third International Dictionary definition of "structure" is as follows:

2a: something constructed or built . . . : a building of imposing size : EDIFICE

WEBSTER'S NEW THIRD INTERNATIONAL DICTIONARY 2267 (1993). The housekeeping services at issue in this appeal are: vacuuming, bathroom cleaning, the replacement of used linens, dishwashing, replacement of consumable goods used in the condo units, deck sweeping, and bed making. Clearly, the replacement of linens, dishwashing, and making of beds have nothing to do with the building itself. Vacuuming likewise does not constitute maintenance of the building, as it is the cleaning of carpeting, and has nothing to do with the structure itself.¹ [One could argue that] cleaning bathrooms and sweeping decks . . . relates to the [building edifice], but . . . those activities are more analogous to vacuuming, as [they] are performed to clean the living space and not . . . maintaining the structure of the residential building.

Taxpayer argues that the timeshare condo unit residences are technically “commonly held property,” because, as timeshares, they are, by definition, owned by multiple owners. However, Taxpayer’s argument fails to account for the manner in which the term “commonly held property” is defined by the statute. Under RCW 82.04.4298, only “areas required for common access” meet the definition of “commonly held property.” RCW 82.04.4298. The condo units themselves can only be used by one owner at a time. The residences themselves are specifically designated for an individual owner and are not “required for common access.”

The statutory examples of “commonly held property” support this interpretation as well. The statutory examples of “commonly held property” include reception areas, halls, stairways, parking, recreation rooms, and swimming pools. The statute does not list the actual residences as qualifying areas. Washington courts follow the statutory construction principle of *noscitur a sociis*, which translates as “it is known from its associates.” The Court of Appeals, in *Port of Seattle v. Dep’t of Revenue*, 101 Wn. App. 106, 1 P.3d 607 (2000), explains:

We are to construe the statute as a whole and consider the subject matter and the context in which particular words are used . . . Under the doctrine of *noscitur a sociis*, “the meaning of words may be indicated or controlled by those with which they are associated.” . . . In applying this doctrine to determine the meaning of a word in a series, “[i]t is . . . familiar policy in the construction of terms of a statute to take into consideration the meaning naturally attaching to them from the context, and to adopt the sense of the words which best harmonizes with the context.”

Port of Seattle, 101 Wn. App. at 113, 1 P.3d at 611 (internal quotations omitted).

In this case, all the terms used as examples of the term “commonly held property” are examples of “common areas” available to all condo owners. Therefore, the maintenance fees that are

¹ We note, parenthetically, that the “cleaning in place of rugs” is a “janitorial service” exempted from the retail taxation of the “cleaning of . . . existing buildings or structures.” RCW 82.04.050(2)(d). [Thus, in a related provision to RCW 82.04.4298, the Legislature has created a distinction between cleaning buildings or structures and the routine cleaning of occupied spaces within a building or structure.]

collected to clean the communal hallways, stairways, conference rooms, and common areas available to all the residents would be deductible under RCW 82.04.4298. Indeed, the Audit Division allowed Taxpayer a deduction for fees collected for the maintenance of the common areas.

However, the housekeeping fees at issue in this case are collected by Taxpayer for the cleaning of the timeshare units themselves. Under the statutory construction principle of *noscitur a sociis*, the statutory examples of “commonly held property” are limited to common areas and cannot be read to include the condo unit residences. In general, exemptions [and deductions] from a taxing statute must be narrowly construed. Det. No. 08-0050, 27 WTD 189 (2008) (citing *Budget Rent-A-Car, Inc. v. Dep’t of Revenue*, 81 Wn. 2d 171, 174, 500 P.2d 764 (1972); *Evergreen-Washelli Memorial Park Co. v. Dep’t of Revenue*, 89 Wn.2d 660, 663, 574 P.2d 735 (1978)) and *N. Cent. Wash. Respiratory Care Servs. v. Dep’t of Revenue*, 165 Wn. App. 616, 625, 268 P.3d 972 (2011). The taxpayer claiming a tax exemption has the burden of proving that he or she qualifies for it. 27 WTD 189 (citing *Group Health Cooperative of Puget Sound, Inc. v. State Tax Commission*, 72 Wn.2d 422, 433 P.2d 201 (1967)). Taxation is the rule; exemption is the exception. 27 WTD 189 (citing *Spokane County v. City of Spokane*, 169 Wash. 355, 358, 13 P.2d 1084 (1932)). A narrow reading of RCW 82.04.4298 cannot support a holding that the housekeeping fees collected by Taxpayer in this case are deductible as maintenance of commonly held property.²

For these reasons, we sustain the assessment.

DECISION AND DISPOSITION

Taxpayer’s petition is denied.

Dated this 22nd day of August, 2013.

² . . .