

Cite as Det. No. 20-0012, 41 WTD 24 (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. 20-0012
	)	
...	)	Registration No. ...
	)	

WAC 458-20-172; RCW 82.04.050(2)(d); Excise Tax Advisory 3209.2018: RETAIL SALES TAX – RETAILING B&O TAX – SPECIALIZED OR NON-ROUTINE CLEANING SERVICES AND RESTORATION ACTIVITIES. A company’s hot tub cleaning service is a non-routine or specialized service that is not a janitorial service and, therefore, fully subject to retail sales tax and retailing B&O 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.

Peña, T.R.O. – Taxpayer disputes the denial of its amended excise tax returns wherein it sought to change the classification of its revenue that had previously been reported as retail sales. Taxpayer argues its hot tub cleaning services are janitorial services subject to the service and other activities business and occupation tax classification and not subject to retail sales tax. Taxpayer’s petition is denied.<sup>1</sup>

ISSUE

Are residential hot tub cleaning services properly classified as janitorial services subject to service and other activities business and occupation (B&O) tax under RCW 82.04.290, or are such services non-routine or specialized cleaning and restoration activities subject to retailing B&O tax and retail sales tax under RCW 82.04.050(2)(d), WAC 458-20-172, and Excise Tax Advisory 3209.2018?

FINDINGS OF FACT

... Taxpayer provides hot tub cleaning and maintenance services. Taxpayer is an annual filer and reported its B&O tax revenue under the retailing classification on its ... excise tax returns (Returns).

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

. . . Taxpayer filed amended excise tax returns for the Returns, changing its reporting from retail sales to the service and other activities B&O tax classification. Taxpayer stated it originally filed under the wrong category and did not collect retail sales tax. The Department's Taxpayer Account Administration Division denied Taxpayer's amended returns because it concluded that hot tub cleaning and maintenance were not janitorial services and thus not subject to service and other activities B&O tax.

Taxpayer timely petitioned for review of the denial. It argues that the Department's Excise Tax Advisory (ETA) 3209.2018 defines the cleaning and maintenance of indoor/outdoor hot tubs as services that are not performed by a commercial janitor. Because it cleans residential, not commercial hot tubs, Taxpayer argues it should be considered as performing janitorial services under WAC 458-20-172 and not subject to retail sale tax. Taxpayer additionally argues that it performs janitorial services because WAC 296-17A-6602-03 includes the cleaning of spas and hot tubs in its definition of "janitorial cleaning services, N.O.C." [2] Finally, Taxpayer argues that the majority of the services it provides are on three month, six month, or annual repeating contracts; therefore, its services are routine.

#### ANALYSIS

Washington imposes the B&O tax on every person for the act or privilege of engaging in business activities in Washington. RCW 82.04.220. The tax is measured by applying particular rates against the value of products, gross proceeds of sale, or gross income of the business, as the case may be. *Id.*; see also Det. No. 16-0094, 35 WTD 557, 560 (2016).

Income from any business activity that is not expressly classified in Chapter 82.04 RCW is taxed under the "catch all" service and other business activities B&O tax classification. RCW 82.04.290(2). This tax is measured by the gross income of the business. RCW 82.04.290(2)(a).

Sales of tangible personal property and certain services are defined as "retail sales." RCW 82.04.050(1). "Retail sales" and "sales at retail" also include the sales or charge made for tangible personal property consumed or labor and services rendered for:

(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; . . .

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<sup>2</sup> Chapter 296-17A WAC classifies jobs for the purposes of Washington workers' compensation insurance. WAC 296-17A-6602-03 is the classification for "janitorial cleaning services, N.O.C." [This is the classification for providing janitorial services to commercial businesses or to combined commercial and residential customers. "N.O.C." means "not otherwise classified." WAC 296-17-31002. The rule provides a separate classification for "janitorial cleaning services – residential." WAC 296-17A-6602-04.]

RCW 82.04.050(2)(d) (emphasis added). When a taxpayer makes a retail sale in Washington, the gross proceeds from the sale are subject to the retailing B&O tax and the taxpayer is required to collect retail sales tax, measured by the selling price of the sale, from the buyer. RCW 82.04.250; RCW 82.08.020; RCW 82.08.050. If a seller fails to collect retail sales tax on a retail sale, and no exemption applies, the seller becomes liable for the tax. RCW 82.08.050(3).

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

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.

ETA 3209.2018 addresses the distinction between specialized cleaning and restoration services that are subject to retail sales tax and the retailing B&O classification and janitorial services subject to the service and other B&O classification. "[A]ctivities will constitute janitorial services if the activities involve light cleaning similar to examples identified [in RCW 82.04.050(2)(d) and Rule 172] and the activity is of a type performed ordinarily (regularly and normally) by commercial janitor service businesses." ETA 3209.2018 at 2. Non-routine or specialized services to clean or restore an existing building or structure, in contrast, are not janitorial services and hence fully subject to retail sales tax and retailing B&O tax. *Id.* ETA 3209.2018 further provides a non-exhaustive list of specialized or non-routine cleaning services and restoration activities:

- Grout or tile repair or re-grouting
- Refinishing floors, countertops, cabinets, furniture, etc.
- Mold abatement
- Hood cleaning
- Tap cleaning
- Removing and/or cleaning drain clogs
- Deep fryer oil filtration/cleaning
- Duct cleaning
- Smoke smell removal
- Hoarder cleanup
- Cleanup of asbestos, biohazard, hazmat, meth lab, crime scene, etc.
- Cleaning fish tanks
- Indoor/outdoor hot tub or pool cleaning and chemical maintenance

(Emphasis added). Here, Taxpayer provides hot tub cleaning, a service specifically listed in ETA 3209.2018 as a non-routine or specialized service that is not a janitorial service and, therefore, fully subject to retail sales tax and retailing B&O tax.

We find Taxpayer’s argument regarding the significance of the term “commercial janitor” inconsistent with RCW 82.04.050(2)(d), WAC 458-20-172, and ETA 3209.2018 and unconvincing. On one hand, Taxpayer argues ETA 3209.2018’s list of non-routine cleaning services defines services by someone other than a commercial janitor. Because Taxpayer considers itself a residential, not commercial janitor, it argues the ETA list does not apply to it. On the other hand, Taxpayer argues the Department should consider it as performing janitorial services under RCW 82.04.050(2)(d) and Rule 172, even though both use the term “commercial janitor service business.” . . .

In determining the meaning of statutes, we must ascertain and carry out the Legislature’s intent. *G-P Gypsum Corp. v. Dep’t of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010); *City of Spokane v. County of Spokane*, 158 Wn.2d 661, 672-73, 146 P.3d 893 (2006). Washington courts employ a “plain meaning” approach to interpreting statutes. Where a statute’s meaning is “plain on its face,” we must “give effect to the plain meaning as an expression of legislative intent.” *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002); Det. No. 13-0191, 33 WTD 116 (2014). The “plain meaning” of a statute “is discerned from all that the Legislature has said in the statute.” *Jongeward v. BNSF R. Co.*, 174 Wn.2d 586, 594, 278 P.3d 157 (2012) (quoting *Campbell & Gwinn*, 146 Wn.2d at 9-10).

Here, RCW 82.04.050 does not define the term “commercial.” Black’s Law Dictionary defines commercial as “Of, relating to, or involving the buying and selling of goods; mercantile.” Black’s Law Dictionary (11th ed. 2019). We find that the plain meaning of the statute is that a “commercial janitor service business” is a business that sells janitorial services and that the statute makes no distinction between sales to “residential” and “commercial” customers. Taxpayer’s reliance on the word “commercial” is unfounded.

Regarding Taxpayer’s other arguments, Taxpayer is correct that WAC 296-17A-6602-03 does include the cleaning of spas and hot tubs in a definition of “janitorial cleaning services, N.O.C.” However, the purpose of WAC 296-17A-6602-03 is to establish job classifications for Washington workers’ compensation insurance. This rule was promulgated by the Department of Labor & Industries and has no bearing on the correct classification of Taxpayer’s B&O tax revenue.

Finally, Taxpayer argues its hot tub cleaning services are routine and therefore janitorial services. However, the non-exhaustive list from ETA 3209.2018 includes hot tub cleaning because it is by its nature non-routine *or* specialized. Taxpayer does not establish that hot tub cleaning itself is a janitorial service in contradiction of ETA 3209.2018.

For the reasons stated above, we deny Taxpayer’s petition.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 13th day of January 2020.