

# OHIO SUPREME COURT CLEANS UP DEFINITION OF JANITORIAL SERVICES

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In its last Tax Commissioner decision of 2018, the Ohio Supreme Court reversed a long-standing and aggressive position by the Ohio Department of Taxation related to the sales and use tax on “building maintenance and janitorial services.” In *Great Lakes Bar Control, Inc. v. Testa*, Slip Opinion No. 2018-Ohio-5207, the Court held that the cleaning of beer-tap lines did not constitute a taxable building maintenance and janitorial service. Businesses should note that the decision has a very broad application, well beyond the cleaning of beer-tap lines, and should consider cleaning up the potential tax refunds generated by the decision.

Building maintenance and janitorial services are one of the enumerated taxable services found in Ohio Revised Code (R.C.) 5739.01(B)(3) and are defined in R.C. 5739.01(I) to be the “cleaning the interior or exterior of a building and any tangible personal property located therein or thereon\* \* \*.” The Court noted that the taxability of beer-tap line service would hinge upon the meaning of “cleaning” found in R.C. 5739.01(I).

Unfortunately, “cleaning” is not defined in the statute. The Court refused to apply the plain and ordinary meaning of the term “cleaning” in isolation, stating that

it was required to interpret the term as it is used in the surrounding text of the statute. Therefore, the Court considered the meaning of “cleaning” in the context of providing a “janitorial service.” The Court reasoned that janitorial cleaning services are generally understood to encompass activities such as washing floors or windows, removing garbage, vacuuming, dusting, and the like. Inspecting and flushing beer-tap lines would not be included in the ordinary meaning of janitorial cleaning.

The Court made a point to distinguish its decision from that of the dissent by noting that using a hyperliteral reading and disregarding the importance of the text as whole would mean that a “whole swath of obviously nonjanitorial “cleanings” could be brought within the scope of the janitorial-service tax.” The court noted several examples of such obvious nonjanitorial cleanings:

- A tech-service provider that specializes in cleaning computer hard drives;
- A professional data-cleansing service that scrubs database errors;
- A business that dry-cleans clothes; and
- A fish-cleaning house on Lake Erie.

Using the Court’s interpretation in *Great Lakes*, numerous cleaning services that have historically been taxed by the Ohio Department of Taxation may now be exempt from sales tax. Businesses should analyze their purchases of cleaning services to ensure the proper treatment prospectively and look to see if any refunds are available.

If you would like to discuss *Great Lakes* or any other state and local tax matter, please contact [John Trippier](#), [Rich Farrin](#), or [any of the other professionals](#) at Zaino Hall & Farrin LLC.

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