

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2015-3

[CHARTERED CREDIT UNION],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

I. Background

[Chartered Credit Union] (the “Credit Union”) appeals from Maine Revenue Services’ (“MRS’s”) denial of its requests for refund of Maine sales tax under 36 M.R.S. § 2011 and Maine service provider tax (“SPT”) under 36 M.R.S. § 2555. An Appeals Conference was held on [date], with [Representative] representing the Credit Union and [Representative] representing MRS.

II. Facts

The Credit Union is both a federally-chartered and a Maine-chartered credit union that is exempt from Maine sales tax and SPT. 36 M.R.S. §§ 1760(71), 2557(26). From [date] through [date], the Credit Union erroneously paid Maine sales tax and SPT on its purchases from various retailers and service providers (the “Sellers”), and on [date], the Credit Union requested that MRS refund the erroneously collected tax with interest pursuant to 36 M.R.S. §§ 2011 and 2555. At the time of the Credit Union’s refund requests, it had made overpayments of Maine sales tax in the amount of \$[amount] and Maine SPT in the amount of \$[amount]. In support of its refund requests, the Credit Union submitted a copy of its permanent exemption certificate issued by MRS, a spreadsheet detailing each transaction between [date] and [date] in which sales tax or

SPT was erroneously collected, and copies of receipts documenting the amounts of sales tax and SPT erroneously collected. MRS denied the Credit Union's refund requests on [date].

Following the denial of its refund requests, but before requesting reconsideration, the Credit Union requested and obtained refunds of a portion of the erroneously collected taxes from several of the Sellers, without interest. The Credit Union then requested that MRS reconsider the denial of its sales tax refund request; the Credit Union did not ask MRS to reconsider the denial of its SPT refund request. At the time the Credit Union requested reconsideration, the amount of the unrefunded sales tax and interest was [less than \$1,000].

The issues raised on appeal are numerous, and include: (1) whether MRS may deny a sales tax refund under 36 M.R.S. § 2011 solely because the taxpayer has not first sought refunds of erroneously collected tax from the Sellers; (2) whether a taxpayer that receives a refund from a retailer is nonetheless entitled to interest pursuant to section 2011; (3) whether the Credit Union is a "taxpayer" with respect to the Maine SPT, entitled to a refund of tax and interest under section 2555; and (4) whether the Credit Union is entitled to a refund of erroneously collected SPT and interest under section 2555 as a successor in interest of the service provider that erroneously collected the tax. It is the Credit Union's burden to show that it is more likely than not that MRS erred in denying its refund request. Because we determine that the Credit Union's appeal is not properly before us, however, we dismiss the appeal.

III. Discussion

Under Maine tax law, a taxpayer whose request for a refund of sales tax or SPT has been denied by MRS is entitled to reconsideration by MRS of that denial. 36 M.R.S. §§ 151(1), 2011, 2555. If MRS then subsequently denies the taxpayer's request for reconsideration, the taxpayer is entitled to appeal the denial of refund to the Maine Superior Court. *Id.* § 151(2)(E).

Alternatively, if the refund amount at issue was \$1,000 or more at the time of the reconsideration request, the taxpayer has the option of appealing the denial of refund to the Maine Board of Tax Appeals (the “Board”). *Id.* In the present case, because the Credit Union had recouped some of the sales tax overpayments from the Sellers before it requested reconsideration of MRS’s refund denial, there was [less than \$1,000] of unrefunded sales tax at issue when the Credit Union requested reconsideration. That amount, being less than \$1,000, does not meet the statutory amount necessary to confer jurisdiction upon the Board to consider the Credit Union’s appeal, and the appeal must be dismissed.

The Credit Union persists in arguing, however, that the provisions of 36 M.R.S. § 144(1) provide it with a basis for satisfying the jurisdictional amount required to support an appeal to the Board under section 151(2)(E). In pertinent part, section 144(1) provides that “a claim for refund is *deemed* to be a request for reconsideration of an assessment under section 151.” (Emphasis added). The Credit Union argues that under section 144(1), the denial of its request for a refund of SPT was thereby also the denial of a *deemed request* for reconsideration. The Credit Union contends that, as such, the unrefunded balance of SPT may therefore be added to the unrefunded sales tax balance for purposes of meeting the \$1,000 threshold for an appeal to the Board. Contrary to the Credit Union’s position, however, the application of section 144(1) is limited by section 144(2), which states in pertinent part that the provisions of section 144(1) “[do] not apply in the case of . . . sales and use taxes . . . and any other tax imposed by this Title for which a specific statutory refund provision exists.” *Id.* § 144(2) (“Exceptions”). Because Maine’s SPT law contains “a specific statutory refund provision”—section 2555—section 144(2) specifically excludes SPT from the purview of section 144(1). Consequently, the refund

provisions of section 144(1) do not assist the Credit Union in meeting the jurisdictional threshold amount necessary for an appeal to the Board.

The amount of the Credit Union's sales tax refund request of \$[amount] is, by itself, insufficient to invoke the jurisdiction of the Board. We are therefore without jurisdiction to consider the merits of this appeal and the appeal must be dismissed.

IV. Decision

The Credit Union's appeal from the denial of its requests for refund of sales tax and service provider tax is hereby dismissed for lack of jurisdiction.

The Board may, in limited circumstances, reconsider its decision on any appeal. If either party wishes to request reconsideration, that party must file a written request with the Board within 20 days of receiving this decision. Contact the Appeals Office at 207-287-2864 or see the Board's rules, available at <http://www.maine.gov/boardoftaxappeals/lawsrules/>, for more information on when the Board may grant reconsideration. If no motion for reconsideration is filed within 20 days of the date of this proposed decision, it will become the Board's final administrative action. If either party wishes to appeal the Board's decision in this matter to the Maine Superior Court, that party must do so within 60 days of receiving this decision.

Issued by the Board: April 7, 2016