

[CORPORATE TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Corporate Taxpayer] (the “Company”), appeals from an assessment of Maine income tax made by Maine Revenue Services (“MRS”) for tax year [year 4], and from MRS’s denials of income tax refunds for tax years [year 5] through [year 7], all totaling \$[amount]. After considering the law and the evidence presented, we reverse the assessment and the denials of the refund claims in full.

#### I. Issue

At all relevant times, the Company was a [non-Maine] corporation engaged in retail sales. In [month, year 1], the Company opened a new store in [Town], Maine (the “Store”), investing at least \$5,000,000 and creating at least 100 new jobs in Maine. The Company filed a Maine income tax return for [year 1] but did not claim a Maine Jobs and Investment Tax Credit (“the Credit”) against its Maine income tax liability in that year. On [date, year 8], the Company filed an amended [year 4] Maine income tax return, claiming the Credit and requesting a refund of \$[amount], which MRS paid on [date, year 8]. The Company then filed amended Maine returns for [years 5 through 7], claiming the Credit and requesting additional refunds totaling \$[amount]. MRS examined the amended returns and determined that the Company failed to demonstrate that the commercial result of its opening the Store did not or would not “result in a

substantial detriment to existing businesses in the State,” and that the Company did not qualify for the Credit. 36 M.R.S. § 5215(2)(A-1). As a result, MRS denied the Company’s refund requests for [years 5 through 7] and issued an assessment to recover the refund that it paid to the Company for [year 4]. MRS upheld the assessment and refund denials on reconsideration, and the Company then filed this appeal with the Board.

A taxpayer is entitled to a *de novo* appeal to this Board from a decision of Maine Revenue Services, whereupon the Board “shall conduct a de novo hearing and make a de novo determination of the merits of the case.” *Id.* § 151(2)(G). *See Victor Bravo Aviation, LLC v. State Tax Assessor*, 2011 ME 50, ¶ 26, 17 A.3d 1237 (discussing the requirement of determining the merits of the case *de novo* rather than undertaking traditional appellate review). Accordingly, the Board must determine whether the Company has shown, by a preponderance of the evidence, that the commercial result of its project did not result “in a substantial detriment to existing businesses in the State.” *Id.* § 5215(2)(A-1).

## II. Discussion

The Maine Jobs and Investment Tax Credit is an income tax credit established by the Legislature to encourage major industrial growth and promote substantial capital investment in Maine. 36 M.R.S. § 5215(1), (7). The Credit is allowed where a taxpayer makes a “qualified investment” in Maine of at least \$5,000,000 and creates at least 100 new Maine jobs. *Id.* § 5215(3). Excluded from the definition of “qualified investment,” however, is

an investment related to a retail facility, unless the taxpayer can demonstrate to the satisfaction of the State Tax Assessor that the commercial result of the project or projects to which the credit relates has not or will not result in a substantial detriment to existing businesses in the State.

*Id.* § 5215(1), (2)(A-1). The parties do not dispute that the Company made a capital investment in the required amount and created the necessary number of new jobs in Maine for Credit

eligibility. The parties disagree, however, on whether the Company has shown that the opening of its Store did not result in a substantial detriment to existing Maine businesses.

#### A. The Evidence Presented

The parties submitted a number of documentary exhibits in support of their respective positions on appeal:

- United States Department of Labor employment and wage information, showing increases in annual total employment, total number of business establishments, total wages, and average annual pay between [year 2] and [year 8]
- United States Census Bureau industry average information showing a decline in statewide sales from [year 1] through [year 3], and increases in [year 4] and [year 5]
- State of Maine Department of Labor town-by-town employment and wage information, showing that “retail trade”<sup>1</sup> employment increased in [Town], where the Store was located, from [year 1] through [year 4], but decreased in some other towns in those years
- Maine Revenue Services statewide “general merchandise”<sup>2</sup> taxable sales information, showing decreases in statewide sales in [year 1], [year 2], and [year 4], and increases in statewide sales in [year 3] and [year 5].
- Maine Revenue Services statewide taxable sales information for “other retail”<sup>3</sup> businesses, showing increases in [year 1], [year 3], [year 4], and [year 5], and a decrease in [year 2]
- Maine Revenue Services town-by-town taxable sales information showing that taxable sales increased in [Town] for [years 1 through 6] but decreased in some other towns in [years 1 and 2]

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<sup>1</sup> “Retail Trade” encompasses (A) motor vehicle and parts dealers, (B) furniture and home furnishings stores, (C) electronics and appliance stores, (D) building material and garden equipment and supplies dealers, (E) food and beverage stores, (F) health and personal care stores, (G) gasoline stations, (H) clothing and clothing accessories stores, (I) sporting goods, hobby, musical instrument, and book stores, (J) general merchandise stores, (K) miscellaneous store retailers, and (L) non-store retailers.

<sup>2</sup> According to MRS, “general merchandise” includes stores carrying product lines generally carried by large department stores. It includes (A) clothing, (B) furniture, (C) shoes, (D) radio-t.v., (E) household durable goods, (F) home furnishings, (G) etc.

<sup>3</sup> According to MRS, “other retail” consists of all retailers that do not fit into any other MRS retail category. Examples provided by MRS of those “other retailers” include: (A) antique dealers, (B) book stores, (C) drug stores, (D) dry goods stores, (E) gift shops, (F) jewelry stores, (G) morticians, (H) photo supply stores, (I) sporting goods stores, (J) etc.

B. Analysis

The Company submitted evidence showing that existing businesses in Maine prospered following the opening of its Store. The evidence it submitted demonstrates that between [year 2] and [year 8], there was a statewide increase in annual total employment, number of business establishments, total wages, and average annual pay. Thus, the Company has shown that the opening of its Store has not resulted in “a substantial detriment to existing businesses in the State.”

MRS argues that the opening of the Store deprived the Company’s competitors of sales, resulting in a “substantial detriment” to those competitors. In support of its argument, MRS relies primarily on MRS town-by-town “other retail” sales information and State of Maine Department of Labor town-by-town “retail trade” employment and wage information, all showing increases in [Town] for [years 1 through 4], and decreases for that period in towns where some of the Company’s competitors were located.

The evidence relied upon by MRS does not fairly support a finding that the opening of the Company’s Store in [year 1] deprived its competitors of sales. The town-by-town level of detail does not show increases or decreases of sales by any specific retailer as urged by MRS. Furthermore, the “other retail” and “retail trade” categories comprising the MRS and Maine Department of Labor data, respectively, broadly include many types of retailers, such as antique dealers, book stores, drug stores, gift shops, jewelry stores, morticians, photo supply stores, motor vehicle and parts dealers, furniture and home furnishings stores, electronics and appliance stores, building material and garden equipment and supplies dealers, food and beverage stores, health and personal care stores, gasoline stations, clothing and clothing accessories stores, sporting goods, hobby, musical instrument, and book stores, general merchandise stores,

miscellaneous store retailers, and non-store retailers, further diminishing the data's value to MRS's contention. None of the evidence relied upon by MRS shows that the Store had a detrimental effect upon any existing Maine businesses.

### C. Conclusion

We find that the Company invested at least \$5,000,000 in Maine, created at least 100 new jobs in Maine, and has demonstrated to the Board's satisfaction, by a preponderance of the evidence, that the opening of its Store did not result in a detriment to existing Maine businesses. Consequently, the Company has met all the requirements necessary to qualify for the Maine Jobs and Investment Tax Credit. We therefore cancel the assessment and reverse the refund denials in full.

### III. Decision

For the reasons set forth more fully above, we hereby cancel in full MRS's assessment of income tax, interest, and penalties for tax year [year 4], reverse MRS's denials of the requested refunds for tax years [year 5] through [year 7], and grant those refunds together with applicable interest.

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. During

the 60-day period in which an appeal may be filed with the Superior Court, the Company may contact Maine Revenue Services at 207-624-9725 for the amount of tax that is currently due, together with any interest or penalties owed. After that 60-day period has expired, Maine Revenue Services will contact the Company with an updated amount of tax and any interest or penalties due at that time.

Issued by the Board: November 21, 2017