STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2018-3

[CORPORATE TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Corporate Taxpayer] (the "Company"), appeals from an assessment of sales tax and interest issued by Maine Revenue Services ("MRS") for the period [month, year 1] through [month, year 3]. The issues presented are (1) whether certain separately stated charges for services are part of the taxable sale price of rentals of living quarters in a trailer camp, and (2) whether the interest contained in the assessment should be abated. After considering the arguments and evidence, we adjust the assessment and uphold it as adjusted.

## I. Background

At all relevant times, the Company was a Maine corporation that owned and leased several seasonal cottages to vacationers in Maine. The Company also leased campsites that were furnished with electricity and could accommodate either a tent or a camper trailer. Because the electricity provided at each cottage and campsite was not separately metered, the Company charged a separately stated electricity fee (the "cottage electricity fee" and the "campsite electricity fee," respectively). The Company charged the electricity fee regardless of whether the lessee used electricity. In addition, the Company also charged the following separately stated fees:

- An air conditioning electrical service fee, applicable only to those tenants choosing to use their camper trailer air conditioning units, if so equipped
- A pet fee, applicable to all pets at campsites and cottages

In computing its sales tax returns, the Company excluded all separately stated fees from the taxable sale price of its rentals.

Pursuant to an audit, MRS determined that all of the fees charged by the Company were includable in the taxable sale price of the Company's rentals and, consequently, issued an assessment for sales tax and interest in the total amount of $[amount]. This appeal followed.

On appeal, the Company argues that the assessment must be cancelled for the reasons discussed below. It is the Company's burden to show that the assessment is incorrect. 36 M.R.S. § 151-D(10)(F).

## II. Discussion

### A. Failure to issue a decision on reconsideration within 90 days

As a preliminary matter, the Company argues that the assessment must be cancelled because MRS failed to issue its decision on reconsideration within 90 days of the Company's reconsideration request, as provided by 36 M.R.S. § 151(2)(B).[1]

Section 151 sets a 90-day deadline for MRS to issue its decision on reconsideration, and it also prescribes the consequences should MRS fail to meet that deadline. Section 151(2)(C) states that "[i]f the matter between the division and the petitioner is not resolved within the 90-day period, and any extension thereof, *the petitioner may consider the petition for reconsideration denied.*" *Id.* § 151(2)(C) (emphasis added). Thus, the statutory remedy for

[1] MRS issued its decision on reconsideration two months beyond the 90-day deadline.

MRS's failure to meet the 90-day deadline is that a taxpayer may deem its request for reconsideration denied and may file an appeal with either the Superior Court or the Board. In the present case, the Company opted to wait for MRS to issue its decision on reconsideration rather than deeming its request denied. These circumstances do not invalidate the assessment. Cancellation of the assessment on this ground is not warranted.

B. Taxation of fees

The Company argues that the assessment should be cancelled because the separately stated fees that it charged were not part of the sale price of its rentals of living quarters. According to the Company, the sales of services that are not otherwise subject to sales tax are only taxable if sold as part of a retail sale.

It is MRS's position that, as for campsites, the sales tax law is more expansive, and that"[t]he rental price includes all service charges paid to the lessor." 36 M.R.S. § 1752(20) (definition of "trailer camp"). According to MRS, all services sold by the lessor of a campsite are therefore taxable, regardless of the relationship between such services and the living quarters rental.

A brief recitation of the applicable sales tax law is in order.

Maine sales tax is imposed on the sale price of the "the rental of living quarters in a hotel, rooming house or tourist or trailer camp," including any "services that are a part of [the] retail sale." *Id.* §§ 1811 (imposition of tax), 1752(14)(a)(1) (definition of "sale price"), 1752(17-B)

(definition of taxable service).[2] At issue in this case are rentals of campsites and cottages, which Maine tax law defines as "trailer camps" and "tourist camps," respectively:[3]

- A "trailer camp" is "a place with or without service facilities where space is offered to the public for tenting or for the parking and accommodation of camper trailers, motor homes or truck campers used for living quarters. *The rental price includes all service charges paid to the lessor*." *Id.* § 1752(20) (emphasis added).
- The term "tourist camp" means "a place where tents or tent houses, or camp cottages or other structures are located and offered to the public or any segment thereof for human habitation." *Id.* § 1752(19).

Because it rented cottages as well as campsites for use as living quarters, the Company was both a tourist camp under section 1752(19) (cottages) and a trailer camp under section 1752(20) (campsites). In either case, the Company is liable for sales tax on its rentals of living quarters. The question remains, however, whether the sale of a given service may be taxed as part of the sale price of living quarters if sold by the Company as a trailer camp lessor but not as a tourist camp or other lessor of living quarters.

We begin our analysis by first considering the plain language of the statute "in the context of the whole statutory scheme, and construe the statute to avoid absurd, illogical, or inconsistent results." *Eagle Rental, Inc. v. State Tax Assessor,* 2013 ME 48, ¶ 11, 65 A.3d 1278,

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[2] For purposes of the tax, "living quarters" are defined as "sleeping rooms, sleeping or housekeeping accommodations, and tent or trailer space." *Id.* § 1752(6). In this context, the sale of rentals of living quarters means the transfer, for a consideration, of the right to possession and use of them. *Id.* § 1752(13) (definition of "sale").

[3] Maine tax law defines other locations where "living quarters" may be rented as follows:

> The term "hotel" means "every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests and tenants . . . ." *Id.* § 1752(4).
>
> The term "rooming house" means "every house, cottage, condominium unit, vacation home, boat, vehicle, motor court, trailer court or other structure or any place or location kept, used, maintained, advertised or held out to the public to be a place where living quarters are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings." *Id.* § 1752(12).

1281 (citations and quotation marks omitted). As stated by Maine's Law Court, "we construe a tax statute 'most strongly against the government and in the [taxpayer's] favor' and will not extend the statute's reach 'beyond the clear import of the language used.'" *State Tax Assessor v. MCI Commc'ns Servs., Inc.,* 2017 ME 119, ¶ 7, 164 A.3d 952, 955 (citing *BCN Telecom, Inc. v. State Tax Assessor*, 2016 ME 165, ¶ 10, 151 A.3d 497.)

We find that to interpret the term "rental price" as used in section 1752(20) more broadly than the term "sale price" under section 1752(14) would impose sales tax on services that are not part of the sale of rental of living quarters and that are not otherwise taxable, and would extend the reach of the sales tax beyond the clear import of section 1811. We therefore conclude that, in the context of the rental of living quarters in a trailer camp, the term "rental price" in section 1752(20) has the same meaning as "sale price" as defined in section 1752(14). Rather than surplusage, however, the language in section 1752(20) clarifies that services sold in connection with the rental of campsites are taxed as part of the sale of the rental.

MRS has addressed the taxability of fees associated with living quarters in one of its sales tax instructional bulletins. We find that MRS's reasoning contained in its Bulletin 32, quoted below, is consistent with our reading of the tax law and is helpful when determining whether services "are a part of a retail sale," and whether the consideration paid for those services is part of the taxable "sale price."

> When a hotel offers separate facilities or services (such as a golf course, tennis courts, telephones, internet access and pay-per-view movies) that are not part of the rental of living quarters, and where any charges for those facilities or services are in fact extra and are paid only by persons who make use of them, those charges are not subject to sales tax. However, if a rental fee is inclusive of these services *and the customer has no option to exclude some or all of the services*, the entire rental fee is subject to tax.

Maine Revenue Services, *Sales, Fuel & Special Tax Division Instructional Bulletin No. 32: Rental of Living Quarters* § 4(A) (January 17, 2012) ("Bulletin 32") (emphasis added).

In this light, we next examine each of the fees at issue to determine whether they were for services that were "part of the retail sale" of rentals of living quarters by the Company.

1. Campsite Electrical Service Fee

The Company charged a campsite electrical service fee on the rental of each campsite, the payment of which was a condition of the rental of a campsite regardless of whether the electrical service was used. The fee was not based upon a customer's metered usage, but was a standard amount charged per day, per week, or per season in accordance with the purchased rental period. The Company argues that this fee was an incidental charge for a utility service that was not part of the rental of living quarters, similar to a hotel telephone fee, described in Bulletin 32 as being nontaxable. We disagree.

Bulletin 32 describes the hotel telephone service as a separate service, the use and purchase of which is optional, and which is therefore not part of the rental of living quarters. Unlike the optional telephone service, the customer is charged for the campsite electrical service whether or not the service is used. As described in Bulletin 32, services that the customer must pay for, whether used or not, are part of the rental of living quarters and the charges for those services are part of the sale price of the rental.

Because, in the present case, campsites could not be rented without payment of the fee, we find that that fee was part of the taxable sale price of the rental of the campsite as living quarters. *See id.* § 1752(14)(A)(1) (services that are part of a retail sale); *see also, e.g., A.H.*

*Benoit & Co. v. Johnson,* 160 Me. 201, 202 A.2d 1 (1964).[4] Consequently, the electrical service fee is part of the sale price of the campsite rentals.

The Company also argues that imposing sales tax on the campsite electrical service fee constitutes double taxation because both the Company's purchases and sales of that electricity are taxed. Double taxation occurs when two taxes are imposed "on the same property during the same period and for the same taxing purpose." *Taxation,* Black's Law Dictionary (9th ed. 2009). Maine's Law Court has held that no double taxation exists when "two impositions of taxation are levied on different parties and on different transactions." *American Tel. & Tel. Co. v. State Tax Assessor,* 652 A.2d 107, 110 (Me. 1995). In the present case, sales tax was imposed upon the Company when it purchased the electricity, and upon the customer when he or she purchased the rental of living quarters. Thus, the sales tax is imposed upon two different sale transactions and levied on two different parties. There is no impermissible double taxation under these circumstances. No adjustment to the assessment on the grounds asserted is warranted.

2. Air Conditioning Electrical Service Fee

In addition to the campsite electrical service fee, the Company charged an air conditioning electrical service fee to those customers electing to use their camper trailer air conditioning units. Customers having air conditioning units but electing not to use them were not charged the fee. Based on the evidence presented, we find that, unlike the electrical service fee, the payment of which was a condition of the rental of a campsite regardless of whether the

[4] Simply including a separately stated charge for a service on the bill for a taxable sale does not make that service a part of the taxable sale. In *Benoit,* the Law Court held that a service is part of a taxable sale when the sale would not occur but for the performance or purchase of the service. MRS contends that *Benoit* is obsolete because it construes the Uniform Sales Act, which is no longer in effect. We find, however, that the Law Court's reference to the now-repealed Act in no way impairs the soundness of its reasoning clarifying when a service constitutes "part of a retail sale."

electrical service was used, the air conditioning electrical service fee was charged only to those campers who chose to use the electrical service to run their air conditioner. Thus, the fee was charged for a separate service that was not part of the rental of living quarters.

MRS argues that there is no substantive difference between the electrical service fee and the air conditioning electrical service fee, whereas both are charged by the Company to recover its costs of providing electrical service. In support of its position, MRS points to certain language in the definition of "sale price," which provides that all amounts paid on a sale are included in the taxable price "without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or any other expenses." 36 M.R.S. § 1752(14).

Contrary to MRS's contention, the air conditioning electrical service fee did not constitute a deduction for the cost of property, materials, labor, or any other item. The air conditioning electrical service fee is not a condition of the rental of living quarters and was not part of the sale price of the sale of those rentals. Conversely, the electrical service fee was a required condition of the rental of a campsite and was therefore part of the consideration for the taxable service of rental of living quarters.

We find that the air conditioning electrical service fee is not part of the taxable sale price of the rental of living quarters. Consequently, the assessment is adjusted to remove the amount of sales tax attributable to air conditioning electrical service fees and the related amount of interest. No further adjustment on this basis is warranted.

3. Cottage Utilities Fee

By way of comparison, during the period at issue the Company also sold rentals of living quarters in cottages that it owned and maintained. In doing so, the Company operated as a

tourist camp, that is, "a place where tents or tent houses or camp cottages or other structures are located and offered to the public or any segment thereof for human habitation." 36 M.R.S. § 1752(19). The Company charged a mandatory cottage utilities fee to all of its customers renting a cottage. Because cottages could not be rented without payment of the fee, we find that that fee was part of the taxable sale price of the rental of the cottages as living quarters. No adjustment to the assessment is warranted as to this item.

4. Pet Fee

Finally, the Company charged a mandatory pet fee to all customers having pets accompanying them at either a cottage or a campsite. Unlike the fees discussed above, this fee is not charged for a service separate from the rental of living quarters. The pet fee is charged to expand the limited right to possess and use the cottage or campsite as living quarters to include the right to be accompanied by a pet in that living quarters for the rental period. Consequently, the pet fee is part of the sale price of the rental of living quarters and therefore taxable. No adjustment to the assessment is warranted as to this item.

C. Abatement of Interest

The Company also argues that interest contained in the assessment should be cancelled under the circumstances of this case,

Interest accrues automatically on the amount of tax due but unpaid, calculated from the last date prescribed for payment and compounded monthly. 36 M.R.S. § 186. The purpose of interest is "to assure that the investment value of money inures to the benefit of the party that should have been paid the money when the payment obligation arose." *Victor Bravo Aviation, LLC v. State Tax Assessor (Victor Bravo II),* 2012 ME 32, ¶ 14, 39 A.3d 65. Interest may be waived or abated, however, if the failure to pay the tax at issue "is explained to the satisfaction"

of MRS or, on appeal, to the Board. *Id*. §§ 186, 151(2)(G), *Victor Bravo*, 2012 ME 32, ¶ 12-15, 39 A.3d 65. The language of section 186 "indicates a highly discretionary standard that is not easily met by the taxpayer." *Victor Bravo*, 2012 ME 32, ¶ 14, 39 A.3d 65.

Based on the arguments and evidence, we find that the Company has not established grounds warranting abatement of interest. No adjustment to the interest contained in the assessment is warranted.

## III. Decision

We find that the air conditioning service fee was not part of the sale price of the rental of living quarters. Accordingly, we adjust the assessment by cancelling the tax assessed on the amount of that fee collected, as well as the interest associated with that amount. In all other regards, we uphold the assessment in full.

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 request 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 207-624-9595 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: October 20, 2020