

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2018-19

[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 January 1, 2015, through December 31, 2017. The Company seeks cancellation of the assessment. Following consideration of the arguments and the evidence presented, we uphold the assessment in full.

I. Background

At all relevant times, the Company was a Maine corporation and registered Maine retailer selling tangible personal property at retail. At issue in this appeal is the Company’s sales of cakes for off-premises consumption during the period of the assessment. At the time the Company began selling cakes, those food items were not subject to Maine sales tax.¹

Effective September 1, 1991, the Legislature amended the sales tax law applicable to food products so as to differentiate between taxable “prepared food,” taxable “snack food,” and nontaxable “grocery staples.” P.L. 1991, ch. 591, Part WW. Through that legislation, cakes were made taxable as “snack food.” However, upon the repeal of the snack food tax, effective August 11, 2000, sales of cakes for off-premises consumption were again made nontaxable, a

¹ In fact, sales of cakes for off-premises consumption had been exempt from Maine’s general sales tax since its inception in 1951. P.L. 1951, ch. 250.

status that would continue for the next 15 years.² Subsequently, effective January 1, 2016, the Legislature again amended the sales tax law for food products, specifically removing cakes from the exemption for “grocery staples” provided under 36 M.R.S. § 1760(3). P.L. 2015 ch. 267 § 0000-2 (amending the definition of sales tax-exempt “grocery staples”).

In 2018, MRS conducted a sales tax audit of the Company and determined that the Company had not collected or remitted sales tax on its sales of cakes. Consequently, MRS issued the subject assessment consisting of sales tax of \$[amount] and interest of \$[amount].

On appeal, the Company argues that its failure to collect the tax was inadvertent, and that it would have collected and remitted the tax had MRS notified it of the most recent change in the tax law. The Company also argues that the interest contained in the assessment should be cancelled. It is the Company’s burden to show that the assessment is incorrect and that the Company is entitled to the relief that it seeks. 36 M.R.S. § 151-D(10)(F).

II. Discussion

A. Sales tax

For the period at issue, sales tax was imposed on sales of tangible personal property, including sales of cakes for off-premises consumption. 36 M.R.S. § 1811. The Company argues that the Board should cancel or reduce the assessment of sales tax because its failure to collect and remit the tax was based on its misunderstanding of the law, and MRS never informed it of the change in the law.³ However, the Company points to no statutory provision or other

² We note that the Legislature amended the definition of “prepared food” in 2001. P.L. 2001, ch. 439, Part TTTT. However, that amendment did not make sales of cakes for off-premises consumption subject to sales tax. *See, e.g.*, Maine Revenue Services, *Sales Fuel & Special Tax Division, Instructional Bulletin No. 12*, § 2(C)(2)(a) (October 1, 2013).

³ Although it was not required to do so, MRS took several steps to inform retailers of the January 1, 2016, sales tax law change, including issuing monthly Maine Tax Alerts, issuing a General Information Bulletin (No. 105, dated September 1, 2015, and updated December 21, 2015), sending emails to taxpayers, presenting a webinar, and conducting four live sales tax symposium presentations in the fall of 2015 (Augusta, Portland, Bangor, and

authority that would permit the Board to cancel or abate the tax on this ground, and we are aware of none. We acknowledge that the Company's failure to collect and remit the assessed tax was inadvertent, however, that fact does not constitute a ground upon which we are able to provide the requested relief. We therefore do not adjust or modify the assessment on the basis of this argument.

Where circumstances warrant, MRS may abate a tax liability "if justice requires." 36 M.R.S. § 142. Relief under section 142 may be granted "whenever a written request has been submitted by a taxpayer within 3 years of the date of assessment." *Id.* MRS also has the authority to settle a tax liability for a lesser amount "upon the grounds of doubt as to liability or doubt as to collectability, or both" 36 M.R.S. § 143. We believe that the present case, where the taxpayer, in good faith, failed to collect and remit a lawfully imposed tax because of a reasonable misunderstanding, would be an appropriate one for MRS to consider exercising its powers under sections 142 or 143. However, as provided by each of those sections, MRS's decision to deny relief under sections 142 and 143 is not subject to appeal to the Board. *Id.*

B. Interest

The Company also seeks abatement of the interest contained in the assessment. 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. Interest may be waived or abated 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 Aviation, LLC v. State Tax Assessor*, 2012 ME 32, ¶¶ 12-15, 39 A.3d 65. The purpose of interest is "to assure that the investment value

Caribou). On the other hand, as of the date of this Decision, the January 1, 2016, change to the sales tax law is conspicuously absent from MRS's historical summary of the changes to the sales tax law located on MRS's website.

of money inures to the benefit of the party that should have been paid the money when the payment obligation arose.” *Victor Bravo*, 2012 ME 32, ¶ 14, 39 A.3d 65.

In the present case, the Company did not collect and remit sales tax as required by law because it was unaware of a change in the law making its sales taxable. Although it is unfortunate, that circumstance does not change the fact that MRS was entitled to the time value of the tax from the date it was due. No adjustment to the assessment on this point is warranted.

III. Decision

Based upon the evidence presented and the applicable law, we uphold the assessment of Maine sales tax and interest for the period January 1, 2015, through December 31, 2017.

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 owed. After that 60-day period has expired, Maine Revenue Services will contact the Company with an updated amount of tax and any interest due at that time.

Issued by the Board: February 24, 2020