

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2015-6

[CORPORATE TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

I. Background

[Corporate Taxpayer (the “Company”)], appeals from an assessment of use tax, interest, and penalties made against it by Maine Revenue Services (“MRS”) regarding [the Company]’s purchases of [a number of forklifts] (collectively, the “Forklifts”), without paying sales tax. [The Company] argues that neither sales nor use tax accrued on its purchases of the Forklifts because it purchased them at casual sale, rather than at retail sale, and no exceptions applied so as to make the purchases taxable. Because we agree with [the Company], we cancel that portion of the assessment imposing use tax on [the Company]’s purchases of the Forklifts, as well as the associated penalties and interest.

II. Facts

[The Company purchased the Forklifts at casual sale, that is, “isolated transaction[s] in which tangible personal property . . . is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale.” 36 M.R.S. § 1752(1-D); *cf. id.* § 1752(11) (retail sale). MRS conducted an audit of the purchases and issued the subject

assessment. MRS subsequently upheld the assessment on reconsideration and the Company then filed this appeal with the Board.]

An Appeals Conference was held on [date], at which [the Company] and MRS were represented. The sole issue presented on appeal is whether[,] [as MRS contends,] the Forklifts constitute “special mobile equipment” as defined in 36 M.R.S. § 1752(14-B), and are therefore subject to use tax when purchased at casual sale pursuant to 36 M.R.S. § 1764. It is [the Company]’s burden to show that it is more likely than not that MRS erred in making the assessment. 36 M.R.S. § 151-D(10)(F).

III. Analysis

A “retail sale,” as defined for purposes of sales and use tax, is “any sale of tangible personal property . . . in the ordinary course of business,” while a “casual sale” is defined as “an isolated transaction in which tangible personal property . . . is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale.” 36 M.R.S. § 1752(11), (1-D). With certain exemptions not applicable here, retail sales are subject to sales tax, while casual sales are generally not subject to sales tax. 36 M.R.S. §§ 1811, 1760, 1764. Where sales tax is not collected by the seller and remitted to MRS on a taxable sale, as is typically the case in taxable casual sales, the purchaser is liable for use tax. *Id.* § 1861. Of specific relevance to the present case, section 1764 provides that casual sales of special mobile equipment are subject to sales tax. The term “special mobile equipment” is defined, in relevant part, as “any self-propelled vehicle not designed or used primarily for the transportation of persons or property that may be operated or moved only incidentally over the highways” *Id.* § 1752(14-B).

[The Company] argues on appeal that MRS incorrectly assessed use tax on the Forklifts. Specifically, [the Company] contends that the Forklifts are not special mobile equipment as defined in 36 M.R.S. § 1752(14-B), because they are designed and were used by [the Company] primarily for the transportation of property. In support of its position, [the Company] points to the definition of “forklift” found in The Merriam-Webster Online Dictionary: “a self-propelled machine for hoisting and transporting heavy objects by means of steel fingers inserted under the load” *Merriam-Webster Dictionary available at <http://www.merriam-webster.com/dictionary/forklift>*. [The Company] contends that the word “transportation” in section 1752(14-B) should be given its plain and natural meaning, and concludes that the Forklifts, being designed and used for the transportation of property, are not “special mobile equipment” subject to tax under section 1764.

MRS disagrees, arguing that even though the Forklifts move property, “they are not . . . designed or used primarily to *transport* property.” In support of this contention, MRS points to the difference between merely moving property and the “transportation” of property as defined under the Maine Transportation Act, Title 23, Maine Revised Statutes: “Transportation means any form of transportation for [sic] people or goods within, to or from the State, whether by highway, air, water or rail.” 23 M.R.S. § 4203(3) (quotation marks omitted). Although MRS concedes that the definition of “transportation” in Title 23 is limited to application within that Title, yet it urges the Board to look to that definition in determining whether the Forklifts perform the function of “transportation of property.” Alternatively, MRS reasons that because the Forklifts move property within a confined space, such as a warehouse, they constitute taxable special mobile equipment. In support of its position, MRS points to certain Maine decisions

construing the term “transportation” as used in other statutes, and certain non-Maine decisions involving either “transportation” or “special mobile equipment.”

It is well-established Maine law that “[t]he State’s power to tax is strictly construed in favor of the taxpayer . . . [and] [t]he interpretation of statutes levying taxes should not extend their provisions by implication beyond the clear import of the language used.” *Cnty.*

Telecomms. Corp. v. State Tax Assessor, 684 A.2d 424, 426 (Me. 1996) (quotation marks and citations omitted). This appeal turns upon the meaning of “special mobile equipment” under 36 M.R.S. §§ 1752(14-B), 1762. The Law Court has held that when interpreting statutes “we are required to give words their ‘plain and natural meaning’ and construe them in accordance with their ‘natural import in common and approved usage.’” *Great Northern Nekoosa Corp. v. State Tax Assessor*, 540 A.2d 770, 772 (Me. 1988) (quoting from *Moyer v. Board of Zoning Appeals*, 233 A.2d 311, 317 (Me. 1967)). Where the Legislature intends to give a word a different, more specialized meaning, it will enact a specific definition of that word, as it did when it defined the term “transportation” for purposes of Title 23 of the Maine Revised Statutes. Because the Legislature chose not to define “transportation” in Title 36, we must conclude that it did not intend that word to be given anything other than its plain and natural meaning under that Title. “In construing a statutory term that is undefined in the statute itself, our primary obligation is to determine its plain meaning. We often rely on the definitions provided in dictionaries in making this determination.” *Apex Custom Lease Corp. v. State Tax Assessor*, 677 A.2d 530, 533 (Me. 1996) (citations omitted).

“Transportation” is defined as “an act, process or instance of transporting or being transported.” *Webster’s Third New International Dictionary* 2430 (1993). “Transport” is defined as “to transfer or convey from one person or place to another.” *Id.* Contrary to MRS’s

contention, the dictionary's definition does not restrict "transportation" to movement between two places separated by a certain minimum distance. We find that, based on the plain language of section 1752(14-B), the Forklifts do not meet the definition of "special mobile equipment"¹ and are not subject to tax at casual sale under section 1764. The cases cited by MRS are inapposite.

MRS argues alternatively that the word "transportation" in the definition of "special mobile equipment" is ambiguous, but must be construed to include the Forklifts. If, however, the definition of "special mobile equipment" is ambiguous, then we must exclude the Forklifts from any associated tax. *See Cmty. Telecomms.*, 684 A.2d 424, 426 (Me. 1996) (limiting the reach of taxing statutes to "the clear import of the language used").

Consequently, we cancel the use tax assessed on [the Company]'s purchases of the Forklifts, together with the related interest and penalties. No further adjustment to the assessment is warranted on this basis.

IV. Decision

As set forth above, the assessment of the use tax and associated interest and penalties regarding [the Company]'s purchases of the Forklifts is hereby cancelled 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

¹ Because the Forklifts are designed and were used primarily to transport property, they are distinguishable from the examples listed in section 1752(14-B) which constitute "special mobile equipment," including but is not limited to "road construction or maintenance machinery, farm tractors, lumber harvesting vehicles or loaders, ditch-digging apparatus, stone crushers, air compressors, power shovels, cranes, graders, rollers, well drillers and wood sawing equipment."

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: March 24, 2016