STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2022-3

[CORPORATE TAXPAYER] and affiliates

Petitioner

v.

DECISION ON RECONSIDERATION

MAINE REVENUE SERVICES,

Respondent

On [month and day], [year], [Corporate Taxpayer] and its Maine-nexus unitary affiliates, namely [N.A.], LLC, [N.B.], LLC,[1] and [N.T.], LLC (the "Company," collectively) appealed from a decision on reconsideration issued by Maine Revenue Services ("MRS") upholding the assessment of Maine income tax and interest for fiscal years ending June 30 of [year 1], [year 2], and [year 3] (the "Audit Period"). At issue was the Company's use of the Maine Capital Investment Credit (MCIC), 36 M.R.S. § 5219-NN generated by one member of its unitary group to offset the tax liability of the whole. On [date], we issued a decision which canceled that assessment. On [date], MRS requested that the Board reconsider our decision. On reconsideration, we reverse our prior decision, and we uphold the assessment in full.

I. Background

At all relevant times, the Company produced and sold [tangible goods] within the United States, including Maine. During the Audit Period, [N.B.] owned and operated a production facility in Maine.[2] As a result of its operation of this facility, [N.B.] generated an MCIC for each of the years at issue in the respective amounts of $[amount], $[amount], and $[amount].

[1] [N.B.], LLC, filed its federal and Maine income tax returns as a corporation.
[2] We note that [N.B.], LLC, and its assets are a wholly owned subsidiary and treated as a disregarded entity for tax purposes.

For each of the years of the Audit Period, the Company filed a single Maine corporate income tax return and Combined Report where the separate Maine income tax liabilities of each member of the unitary group were combined into a single amount. In so doing, the Company claimed the entire amount of the MCIC generated by [N.B.] each year as a credit against the tax liability of the unitary group. On audit, MRS determined that the MCIC was only available to offset the tax liability of [N.B.], the member of the unitary group that generated the MCIC. Based upon the information provided by the Company, MRS apportioned the tax liability of the Company amongst the various members of the unitary group in the following percentages for each of the years at issue:

	FYE 1	FYE 2	FYE 3
[Corporate Taxpayer]	6x.xx%	6x.xx%	7x.xx%
[N.A.]	3x.xx%	2x.xx%	2x.xx%
[N.B.]	2.xx%	1.xx%	1.xx%
[N.T.]	0%	0%	0%

MRS reached these percentages by dividing the sales of each member by the total sales of the unitary group. Before doing this calculation, however, MRS eliminated intercompany sales. Applying these percentages to the aggregated Maine Net Income of the unitary group, MRS determined that [N.B.] had the following income tax liabilities for each year of the Audit Period: $[amount], $[amount], and $[amount]. MRS then subtracted the income of [N.B.] from the total MCIC claimed each year, and then reduced the MCIC claimed by the Company by the difference in the following fashion:

	FYE 1	FYE 2	FYE 3
MCIC	$ [amount]	$ [amount]	$ [amount]
Income of N.B.	$ [amount]	$ [amount]	$ [amount]
Reduction	$ [amount]	$ [amount]	$ [amount]

After the foregoing and other minor adjustments not at issue, MRS assessed the Company tax of $ [amount] and interest of $ [amount], for a total of $ [amount]. The Company timely asked for reconsideration, and MRS upheld the assessment. The Company appealed. On appeal, we canceled the assessment. MRS timely moved for reconsideration alleging errors of facts and law in our decision. 18-674 C.M.R. ch. 100 § 305(1)(B). Thereafter, we granted reconsideration, and we requested additional briefings and scheduled additional arguments. *Id.* § 305(2)(B). As on the initial appeal, it is the Company's burden to show that it is entitled to relief. 36 M.R.S. § 151-D(10)(F). We consider the matter de novo as to facts and law. *Id.* § 151(2)(G).

II. Discussion

At issue here is the Company's use of the MCIC for each year of the Audit Period. Section 5219-NN provides:

> 1. Credit allowed. A taxpayer that claims a depreciation deduction under the Code, Section 168(k) for property placed in service in the State during a taxable year that begins on or after January 1, 2015, and before January 1, 2020, is allowed a credit as follows:
>
> > A. A taxable corporation is allowed a credit against the taxes imposed by this Part in an amount equal to 9% of the amount of the net increase in the depreciation deduction reported as an addition to income for the taxable year under section 5200-A, subsection 1, paragraph CC, subparagraph (1) with respect to that property, except for excluded property under subsection 2;
>
> ….
>
> 3. Limitations; carry-forward. The credit allowed under subsections 1 and 1-A may not reduce the tax otherwise due under this Part to less than zero. Any unused portion of the credit may be carried forward to the following year or years for a period not to exceed 20 years.

36 M.R.S. § 5219-NN. MRS has also engaged in rulemaking to clarify Section 5219-NN. MRS Rule 810.07 provides:

> A tax credit generated by a taxable corporation that is a member of an affiliated group engaged in a unitary business may be applied only against the Maine income tax liability of that corporation, and not against the Maine income tax liability of the other members of the unitary business, unless otherwise specifically permitted by law.

18-125 C.M.R. ch. 810 § .07. The Company argues that the statute allows for the MCIC credit generated by one member of a unitary group to be used to offset the taxable liability of the entire unitary group based upon the plain meaning of the statute and the intent of the Legislature, and that a contrary reading is inconsistent with the unitary business principle. Further, the Company argues that Rule 810.07 should be invalidated as contrary to the meaning of the statute.[3]

"In interpreting a statute, we first look to the plain meaning of the statutory language to give effect to the Legislature's intent, and only if the statute is ambiguous will we look beyond that language to examine other indicia of legislative intent, such as legislative history." *State Tax Assessor v. TracFone Wireless, Inc.*, 2022 ME 36, ¶ 12, 276 A.3d 521 (internal quotations and citations omitted). "A tax credit, like a tax exemption, must be construed narrowly because such special privileges are in conflict with the universal obligation of all to contribute a just proportion toward the public burdens." *Goggin v. State Tax Assessor*, 2018 ME 111, ¶ 14, 191 A.3d 341 (internal quotations and citations omitted). Further, the taxpayer seeking the credit "must show that it is unmistakably within the spirit and intent of the statute." *DaimlerChrysler Servs., N. Am., LLC v. State Tax Assessor*, 2003 ME 27, ¶ 7, 817 A.2d 862 (quotation marks omitted); *see also* 36 M.R.S. § 151-D(10).

[3] MRS is directed by statute to "administer and enforce the tax laws enacted under [Title 36] and under Title 29-A" and empowered to "adopt rules and require such information to be reported as necessary." 36 M.R.S. § 112(1). Duly adopted agency rules are judicially enforceable. 5 M.R.S. § 8002(9). A taxpayer may challenge the validity of a rule adopted by MRS when making an appeal to the Board when the rule is applied in a decision on reconsideration. 36 M.R.S. § 151; *see also* 5 M.R.S.A. § 8058.

The plain language of the statute limits the MCIC to use by a "taxable corporation."[4] A "taxable corporation" is defined as:

> for any taxable year, a corporation that has nexus with this State pursuant to section 5200-B, including any corporation with income subject to federal tax under the Code, Section 1374 or 1375, and that has, at any time during that taxable year, realized Maine net income.

36 M.R.S. § 5102(10). Construing section 5219-NN narrowly and in conjunction with the above definition, we believe it is clear that "taxable corporation" as used in the MCIC means a single corporate entity. This interpretation is supported by language elsewhere in the statutory scheme. In imposing and setting the rates of the corporate income tax, section 5200 differentiates between a single "taxable corporation" and a "group of corporations that derives income from a unitary business carried on by 2 or more members of an affiliated group." *See id.* § 5200(1)-(1-A). Further, the definition of the phrase "Maine net income" as used in the definition of "taxable corporation" also differentiates between a single corporate entity and a unitary group. "Maine net income" is defined as:

> for any taxable year for any corporate taxpayer, the taxable income of that taxpayer for that taxable year under the laws of the United States as modified by section 5200-A and apportionable to this State under chapter 821. With respect to a unitary business carried on by 2 or more members of an affiliated group, "Maine net income" means the taxable income of the unitary business under the laws of the United States as modified by section 5200-A and apportionable to this State under chapter 821.

Id. § 5102(8). Therefore, we do not find the statute to be ambiguous, and we need not look beyond the plain language of the statute to find its meaning. No change to the assessment is

[4] Though not relevant here, we note that the MCIC may be utilized by an "individual" as well. 36 M.R.S. § 5219-NN(1)(B)

warranted on this basis. Further, because we have found that the plain language of the statute is unambiguous, we need not address whether Rule 810.07 is invalid.[5]

The Company next argues that MRS erred in eliminating intercompany sales from the sales of each member of the unitary group in arriving at the sales percentages it used to apportion the Maine net income of the entire group amongst the various constituent entities. We disagree. Section 5219-NN provides "a credit against the taxes imposed by [Part 8: Income Taxes]." The taxes imposed by Part 8 are computed upon the Maine net income of the unitary group. *See* 36 M.R.S. §§ 5200(1), (2); 5102(8). Put another way, the credit is against that portion of the Maine corporate income tax actually imposed and applicable to the sales activity of the member which generated the credit. In computing the Maine income tax liability of the unitary group intercompany eliminations are made as necessary to avoid the duplication of income. *See, e.g.,* 18-125 C.M.R. ch. 810 §§ .05, .06. In computing the MCIC, it is similarly necessary to eliminate intercompany sales. Therefore, we do not find that the Company has shown the computation made by MRS to be incorrect.

Despite this finding, we note that the methodology employed to apportion the Maine tax liability of the unitary group amongst its constituent parts in computing the allowable amount of the MCIC largely eliminated the MCIC solely because the sales of [N.B.] were made primarily to other members of the group. The Board believes that this methodology does not reflect [N.B.]'s true economic contribution to the Maine tax liability of the Company nor its business

[5] The standard of review for a challenge to the validity of a rule is contained in 5 M.R.S.A. § 8058(1). If the rule exceeds the rule-making authority of MRS, it is invalid. *Id.* § 8058(1). If a rule does not exceed the rule-making authority of MRS, we next review any other procedural error related to the promulgation of the rule. *Id.* Finally, if the rule is within MRS' rule-making authority and procedurally correct, it is reviewed substantively "to determine whether the rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." *Id*., s*ee also Conservation Law Found. v. Dep't of Envtl. Prot.,* 2003 ME 62, ¶ 21, 823 A.2d 551.

activity in Maine. This methodology, therefore, frustrates the purpose of the MCIC, to stimulate the Maine economy by encouraging businesses to expedite capital investments in Maine. However, and unfortunately for the Company, the methodology employed by MRS has not been shown to be invalid under the statute or rule. No adjustment to the assessment is warranted on this basis. We uphold the assessment in full.

III. Decision

Based upon the evidence presented and the applicable law, we reverse our previous decision and uphold the assessment of Maine corporate income tax and interest for the Audit Period.

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 taxpayer may contact Maine Revenue Services at 207-624-9595 for a statement of the amount then due. After that 60-day period has expired, Maine Revenue Services will contact the taxpayer with an updated statement of the amount or amounts due at that time.

BY ORDER OF THE BOARD

Date: _____ _____, Chair/Member