

[CORPORATE TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Corporate Taxpayer] (“the Company”) appeals from Maine Revenue Services’ (“MRS’s”) denial of its request for reimbursement of personal property taxes that it paid for April 1, [year 3], through March 31, [year 4] (“Property Tax Year [year 3]”). Based upon the evidence presented and the applicable law, we reverse MRS’s denial of the Company’s reimbursement request.

I. Background

This appeal concerns the right to receive property tax reimbursement under the Business Equipment Tax Reimbursement (“BETR”) program, 36 M.R.S. §§ 6651-65, upon the demise of the subject business equipment.

At all relevant times, the Company was a [non-Maine] corporation doing business in [town], Maine (the “Town”). In October [year 5], the Company filed its application with MRS for reimbursement under the BETR program of personal property tax in the amount of \$[amount] that it paid to the Town in [year 4] for tax that it owed regarding a certain article of business equipment (the “Equipment”) for Property Tax Year [year 3].¹ MRS denied the Company’s

¹ Under the BETR program, a reimbursement application must be filed with MRS between “August 1st and . . . the following December 31st *for property taxes paid* during the preceding calendar year.” 36 M.R.S. § 6654 (emphasis added).

reimbursement request and subsequently reaffirmed its denial on reconsideration. This appeal followed.

A brief chronological summary of events is helpful to an understanding of this complex case:

- By deed dated [date, year 1], and recorded in the [Maine] County Registry of Deeds in Book [number], Page [number],² [the Company's predecessor] transferred to the Company the land, buildings, and appurtenances located in the Town, including the Equipment.
- The Company never used the Equipment, but maintained it in usable condition at all relevant times. The Equipment was housed in a building (the "Building") that had been specially built to accommodate the Equipment. The Building was part of a larger business complex, also owned by the Company, of which the Company never made business use.
- For Property Tax Years [year 1] and [year 2], the Company applied for and received BETR reimbursement from MRS for taxes that it paid to the Town regarding the Equipment.
- At some point in [year 4], the Company paid the personal property taxes for the Equipment that were assessed by the Town for Property Tax Year [year 3].
- From November [year 3], through November [year 4], the Company attempted to sell the Equipment, both with and without a lease arrangement for the Building.
- On [date, year 4], the Company offered the Equipment for sale at a public auction, without success.

² We take official notice of this public record, which neither party provided to the Board on appeal. 18-674 C.M.R. ch. 100, § 203(5).

- Subsequently in [year 4], the Company transferred ownership of the Equipment to a sister entity, a [non-Maine] limited liability company (the “LLC”), and on [date, year 4], the LLC contracted to sell the Equipment to a commercial salvage company (the “Scrap Dealer”) as scrap metal. The LLC reserved the right to sell the Equipment pending demolition, and in fact a purchase offer was made on November [day, year 4], several days after the LLC transferred ownership of the Equipment to the Scrap Dealer. However, no sale resulted.
- In February [year 5], the Scrap Dealer took possession of the Equipment by dismantling it and removing it from the Building.

In October [year 5], the Company filed its application with MRS under the Business Equipment Tax Reimbursement (“BETR”) program for reimbursement of personal property taxes regarding the Equipment, assessed by the Town against the Company for [year 3] and paid to the Town by the Company in [year 4]. After review, MRS denied the Company’s reimbursement request on the ground that

the facility [where the Equipment was located] permanently ceased all productive operations prior to April 1, [year 3][,] [n]o productive operations were taking place at the facility within 12 months prior to the date reimbursement was requested, and the facility was not being advertised as available for sale or lease within that time.

MRS’s denial of BETR reimbursement dated [date] (paraphrasing the BETR exclusionary provisions of 36 M.R.S. § 6662).

An Appeals Conference was conducted pursuant to 18-674 C.M.R. ch. 100 § 201(3) (Board Rule section 201(3)), after which MRS asserted for the first time a new ground for denying the Company’s BETR reimbursement request. Specifically, MRS now also contends that because the Company transferred the Equipment to the LLC prior to August 1, [year 5], the

Company is disentitled to its right to reimbursement under 36 M.R.S. § 6652(1) (providing for successor eligibility). The Company responds that it would be unfair to permit MRS to assert a new basis for its position that MRS did not raise during its reconsideration process under 36 M.R.S. § 151. The Company also maintains that it was in full compliance with the requirements of the BETR program and is entitled to reimbursement of the property tax listed in its request.

The Company has the burden of showing that it is more likely than not that MRS erred in denying its reimbursement request. 36 M.R.S. § 151-D(10)(F).

II. Discussion

With certain exceptions not applicable here, Maine property tax law provides that “all personal property of residents of [Maine] and all personal property within [Maine] of persons not residents of the State is subject to taxation on the first day of each April” 36 M.R.S. § 502. In 1995, the Legislature enacted the BETR program, Chapter 915 of Title 36, Maine Revised Statutes, to stimulate capital investment in business equipment by means of a property tax incentive. *Id.* § 6659.³ Under BETR, “[a] person against whom [municipal property] taxes have been assessed . . . with respect to eligible property⁴ and who has paid those taxes is entitled to reimbursement of a portion of those taxes from the State” *Id.* § 6652(1).

³ In full, the Legislative Findings provision of the BETR program states as follows:

The Legislature finds that encouragement of the growth of capital investment in this State is in the public interest and promotes the general welfare of the people of the State. The Legislature further finds that the high cost of owning qualified business property in this State is a disincentive to the growth of capital investment in this State. The Legislature further finds that the program set forth in this chapter is a reasonable means of overcoming this disincentive and will encourage capital investment in this State.

36 M.R.S. § 6659.

⁴ In relevant part, “eligible property” under the BETR program is defined as depreciable tangible personal property “used or held for use exclusively for a business purpose by the person in possession of it” 36 M.R.S. § 6651(1), (3).

In the present case, we find that the Equipment meets the definition of eligible property under the BETR program and, further, that the Company was assessed and paid the personal property taxes with respect to the Equipment. We therefore conclude, absent any disqualifying factors or events, that the Company is entitled to reimbursement of the property taxes as set forth in its BETR request.

A. Denial of BETR under 36 M.R.S. § 6662

Following the original 1995 enactment of BETR, the Legislature imposed the following limitation which became effective on September 21, 2001:

Reimbursement under this chapter may not be made for property tax payments made with respect to property located at a facility that has permanently ceased all productive operations on April 1st of the year for which the property taxes are assessed and where no productive operations have been conducted for at least 12 months before the date that reimbursement is requested. . . .

36 M.R.S. § 6662. At the same time, the legislature qualified that limitation with the following exception:

This section does not apply if the owner of the facility has publicly advertised that the facility is available for sale or lease and has made a good faith effort to market and sell or lease the facility to prospective buyers or lessees.

Id. It is the above-quoted limitation (which formed the basis for MRS's denial of the Company's request for BETR reimbursement) and the above-quoted exception to the limitation that are at issue here. We consider each in turn.

1. The Section 6662 Limitation

Under the facts of this case, unless an exception applies, 36 M.R.S. § 6662 provides that BETR reimbursement is unavailable if two conditions are met: (1) the Equipment was located at a "facility" that had "permanently ceased all productive operations" as April 1, [year 3], and (2) no

productive operations were conducted at the facility for 12 months prior to the Company's October [year 5] BETR reimbursement request.

When construing a statute, our purpose is to give effect to the intent of the legislature. To determine the legislative intent,

we look first to the plain meaning of the statutory language, and we construe that language to avoid absurd, illogical or inconsistent results. In addition to examining the plain language, we also consider the whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved.

Schaefer v. State Tax Assessor, 2008 ME 148, ¶ 7, 956 A.2d 710 (internal quotation marks and citations omitted). “Only if the language of a statute is ambiguous will we look beyond it to the legislative history or other external indicia of legislative intent.” *Irving Pulp & Paper, Ltd. v. State Tax Assessor*, 2005 ME 96, ¶ 8, 879 A.2d 15.

The term “facility” is not defined in Chapter 915. When construing a statutory term that is undefined in the statute itself, the Maine courts “often rely on the definitions provided in dictionaries” to determine the plain meaning of the term. *Apex Custom Lease Corp. v. State Tax Assessor*, 677 A.2d 530, 533 (Me. 1996) (citations omitted). The dictionary defines a “facility” as “something (as a hospital, machinery, plumbing) that is built, constructed, installed, or established to perform some particular function or to serve or facilitate some particular end.” *Webster's Third New International Dictionary of the English Language Unabridged* 812-813 (3rd ed. 1993). Both parties to this appeal agree that the Equipment at issue was located at a “facility” on April 1, [year 3],⁵ and, further, both parties agree that the facility at which the

⁵ MRS contends that the “facility” at which the Equipment was located was the entire defunct business complex in which the Equipment was located, while the Company contends that the subject “facility” was the Building located at that complex. Under either of these contentions, the analysis and the result of whether the facility had “permanently” ceased productive operations is the same.

Equipment was located had “ceased all productive operations” as of that April 1st date.⁶ The parties disagree, however, on whether the facility had “*permanently* ceased all productive operations” as of April 1, [year 3], within the meaning of section 6662. Specifically, the Company argues that productive operations had not “permanently” ceased because the Equipment could be restarted at any time.

The term “permanent” is not defined in Chapter 915. However, the dictionary defines the term “permanent” as “continuing or enduring (as in the same state, status, place) without fundamental or marked change: not subject to alteration or fluctuation: fixed, or intended to be fixed; lasting, stable.” *Webster’s Third New International Dictionary of the English Language Unabridged* 1683 (3rd ed. 1993).⁷ We find that by its the reference in section 6662 to a “facility that has permanently ceased all productive operations on April 1st of the year for which the property taxes are assessed and where no productive operations have been conducted for at least 12 months before the date that reimbursement is requested,” the Legislature clearly expressed its intention to limit reimbursement under the BETR program and clearly described the parameters of that limitation. In this case, the Company has not shown that the facility at which the Equipment was located had not “permanently ceased all productive operations” as of April 1, [year 3]. Accordingly, we find—absent any applicable exception—that BETR reimbursement is correctly disallowed under the limitation provision of section 6662.

⁶ The parties also agree that no productive operations were conducted at the facility between October [day, year 4], and October [day, year 5], which is the second prong of section 6662’s disqualification provision.

⁷ We note that the term “permanently” is not synonymous with the term “perpetual.” *Webster’s Third New International Dictionary of the English Language Unabridged* 1684 (3rd ed. 1993) (“continuing forever: everlasting, eternal, unceasing”).

2. The Exception to Limitation

The BETR reimbursement limitation described above does not apply where “the owner of the facility [at which the BETR-eligible property is located] has publicly advertised that the *facility* is available for sale or lease and has made a good faith effort to market and sell or lease the facility to prospective buyers or lessees.” 36 M.R.S. § 6662 (emphasis added). Under the exception provision, the term “facility” is ambiguous, that is, “susceptible to more than one meaning.” *Hebron Acad., Inc. v. Town of Hebron*, 2013 ME 15 ¶ 8, 60 A.3d 774. It may be, as MRS contends, that the exception requires the advertisement and attempted sale or lease of the entire business complex located in [Town], or, as argued by the Company, that the provision requires advertisement and a good faith effort to sell or lease the Building at that complex that housed and provided functional support for the Equipment. Neither the dictionary nor the legislative history provides guidance preferring either position, however the context of the “whole statutory scheme of which the section at issue forms a part” supports a finding, and we so find, that the term “facility” as used in section 6662 refers to the Building—“built, constructed, installed, [and] established to perform [the] particular function” of supporting the Equipment’s use—and not the entire business complex upon which the Equipment was incidentally but not functionally located. *Webster’s Third New International Dictionary of the English Language Unabridged* 812-813 (3rd ed. 1993).

From November [year 3] through November [year 4], the Company advertised the Equipment for sale, with or without a lease arrangement regarding the Building. Prospective purchasers toured the premises where the Equipment was located and inspected the Equipment. The Company also maintained the Equipment in functional condition so as to be able to market

and sell it as an operational whole. We conclude that the Company advertised and “made a good faith effort to market and sell or lease the facility” where the Equipment was located, within the meaning of the exception provision of section 6662. Consequently, section 6662 does not deprive the Company of reimbursement for the personal property taxes as applied for under the BETR program.

Finally, MRS argues that because the exclusionary provision of section 6662 requires the subject facility to be idle for “at least 12 months before the date that reimbursement is requested,” the exception provision of section 6662 carries an implicit, identical timeframe within which the Company was required to advertise the facility for sale or lease. Specifically, MRS contends that for the exception under section 6662 to apply, the Company must have publicly advertised the facility for sale or lease and made a good faith effort to market and sell or lease the facility between October [day, year 4] and October [day, year 5], when the Company requested BETR reimbursement. MRS argues that because the Company’s marketing efforts predated October [day, year 4], the Company is not entitled to the benefit of the exception. We disagree.

“[W]e do not read exceptions, limitations, or conditions into an otherwise clear and unambiguous statute.” *Adoption of M.A.*, 2007 ME 123, ¶ 9, 930 A.2d 1088 (citations omitted). Had the Legislature intended to prescribe a timeframe within which action must occur under the exception provision of section 6662, it could have simply stated one, or it could have adopted by reference the timeframe described in the limitation section of section 6662, immediately preceding. Instead, however, the Legislature chose to impose a “good faith effort” requirement to the exception, which we hereby acknowledge to be reasonable and appropriate when addressing an attempted sale of property under the circumstances described in section 6662.

Because the actions of the Company come within the exception provided under section 6662, we hold that the exclusion provisions of that section do not operate to deprive the Company of its entitlement to BETR reimbursement as requested.⁸

B. Denial of BETR under 36 M.R.S. § 6652(1)

MRS raises for the first time on appeal that 36 M.R.S. § 6652(1) operates to deprive the Company of BETR reimbursement in this case. The Company argues that it is unfair, at this stage of the proceedings, to allow MRS to present a new basis for denying its request for BETR reimbursement.

As we recently discussed in *Corporate Taxpayer v. Me. Revenue Servs.*, BTA-2015-17 (Me. Bd. Tax App. Jun. 20, 2016), the Board serves as a forum of origin regarding MRS's determination on reconsideration. As such, the scope of the Board's review is not limited to "the issues identified by the parties on MRS reconsideration." *Id.* at 6. *See also* Board Rule section 202(1) (recommended decision to resolve "all material issues in the appeal"). We therefore overrule the Company's objection and proceed to address the merits of the MRS's argument.

Section 6652(1) provides in pertinent part that

[a] successor in interest of a person against whom taxes have been assessed with respect to eligible property is entitled to reimbursement pursuant to this section, whether the tax was paid by the person assessed or by the successor, as long as a transfer of the property in question to the successor has occurred and the successor is the owner of the property as of August 1st of the year in which a claim for reimbursement may be filed pursuant to section 6654. For purposes of this subsection, "successor in interest" includes the initial successor and any subsequent successor. When an *eligible* successor in interest exists, the successor is the *only* person to whom reimbursement under this chapter may be made with respect to the transferred property.

Id. (emphasis added). The term "successor in interest" is not defined in Chapter 915, however Black's Law Dictionary defines the term as meaning "one who follows another in ownership or

⁸ We also note that on or about November [day, year 4], within the window urged by MRS, the Company's marketing efforts produced an offer to purchase the Equipment.

control of property.” *Black’s Law Dictionary* 1570 (9th ed. 2009). Thus, under the facts of this case, the LLC, as the owner of the Equipment when it entered into the Contract with the Scrap Dealer on [date, year 4], was a successor in interest to the Company on that date. The question remains, however, whether section 6652(1) disentitles the Company of its requested BETR reimbursement under these circumstances. We find that it does not.

We initially recognize that section 6652(1) does not operate to deprive a claimant from BETR reimbursement but rather operates to identify the proper claimant. Consistent with, and in furtherance of the legislative purpose set forth in section 6659, the successor-in-interest provision of section 6652(1) ensures that the reimbursement is paid to the current owner or user of the qualified business property. *Cf. id.* § 6661 (“A lessor of eligible property shall pay over to the lessee . . . reimbursement of property taxes received by the lessor . . . to the extent that the lessor has been reimbursed . . . by the lessee.”). In the present case, section 6652(1) directs that BETR reimbursement must be paid only to the successor “[w]hen an eligible successor in interest exists.” We may not ignore the word “eligible” when construing the language of section 6652(1). *See, e.g., Stromberg-Carlson Corp. v. State Tax Assessor*, 2001 ME 11 ¶ 9, 765 A.2d 566 (“Words must be given meaning and not treated as meaningless and superfluous.”); *Linnehan Leasing v. State Tax Assessor*, 2006 ME 33 ¶ 21, 898 A.2d 408 (“[W]e will not treat any provision of a statute as surplusage when a reasonable construction of a statute can provide meaning to each provision.”). The question becomes whether an eligible successor exists under the facts of the present case, and whether section 6652(1) is therefore applicable.

The existence of an “eligible” successor in interest entitled to BETR reimbursement under section 6659(1) depends upon two requirements: (1) a transfer of the property in question to the successor must have occurred, and (2) the successor must be the owner of the property as

of August 1st of the year in which a claim for reimbursement may be filed pursuant to section 6654. The evidence presented supports a finding that the Company transferred ownership of the Equipment to the LLC on or before [date, year 4], the date that the LLC entered into the Contract with the Scrap Dealer. However, the evidence does not support a finding that the LLC was the owner of the Equipment on August 1, [year 5]. Rather, the evidence shows that the Equipment ceased to exist prior to August 1, [year 5], and that there was no eligible successor in interest within the meaning of section 6652(1) in October [year 5], when the Company requested BETR reimbursement. There is no provision of the BETR law that deprives the Company of reimbursement under the facts presented. Therefore, in accordance with the legislative purpose set forth in section 6659, we reverse MRS's denial of the Company's request for reimbursement under the BETR program.

III. Decision

For the reasons set forth above, we reverse MRS's denial of the Company's request for BETR reimbursement of property tax paid for Property Tax Year [year 3].

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.

Issued by the Board: March 17, 2017