

STATE OF MAINE  
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS  
DOCKET NO. BTA-2016-6

[LIMITED LIABILITY COMPANY],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Limited Liability Company] (the “Company”) appeals from an assessment of Maine sales tax, use tax, and interest issued by Maine Revenue Services (“MRS”) for the period [year 1] through [year 3] in the total amount of \$[amount]. The Company timely filed a request for reconsideration of the assessment, upon which MRS reduced the amount of the assessment to \$[amount]. The Company then timely filed this appeal, contending that the remaining balance of sales tax due under the assessment is overstated.<sup>1</sup> After considering the evidence presented and the applicable law, we uphold the assessment as modified by MRS on reconsideration.

#### I. Background

At all relevant times, the Company operated a restaurant in Maine, making retail sales of prepared food and beverages, including alcoholic beverages (collectively, the “Prepared Food”). The Company maintained a function room at the restaurant (the “Function Room”) for use by its patrons for a set fee (the “Function Room Fee” or the “Fee”). The Company collected and remitted sales tax to MRS based on the sale price of the Prepared Food that it sold, but not on the Fee.

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<sup>1</sup> The Company does not contest the amount of use tax contained in the adjusted assessment.

Whenever a patron purchased a certain threshold dollar amount of Prepared Food in connection with a function, the Company would not impose the Function Room Fee and would collect sales tax only on the sale price of the Prepared Food sold. When it computed, reported, and remitted sales tax to MRS, the Company would first subtract the Fee amount from the sale price of the Prepared Food to determine the sale price subject to tax. The Company reasoned that when a patron purchased the requisite threshold dollar amount of Prepared Food, the Company's profit from the sale made up for its not collecting the Fee. The Company did not separately state the charges for Prepared Food and the Fee on its bills.

During this same period, the Company also provided catering services, selling Prepared Food to customers at the customers' location. However, the Company did not collect or remit Maine sales tax on its catered sales.

Following an audit of the Company's books and records, MRS determined that the Company should not have subtracted the Fee from the sale price of the Prepared Food in computing the sales tax that it remitted to MRS. MRS also determined that the Company should have collected and remitted sales tax on its catered sales of the Prepared Food.

The Company argues on appeal that it correctly reported and remitted sales tax net of the Fee, and that the assessment in this regard should be cancelled. The Company also argues that the remainder of the assessment should be cancelled because the majority of its catered sales of Prepared Food were made at its own cost, without profit. The Company further contends that the assessment must be adjusted to allow credit for sales tax that it paid when it purchased the Prepared Food for resale. It is the Company's burden to show that it is more likely than not that the assessment, as modified by MRS on reconsideration, is incorrect. 36 M.R.S. § 151-D(10)(F).

## II. Discussion

Sales tax “is imposed on the value of all tangible personal property . . . sold at retail in this State.” 36 M.R.S. § 1811. The value upon which the tax is based is generally measured by the “sale price,” that is, “the total amount of the retail sale valued in money, whether received in money or otherwise.” *Id.* §§ 1811, 1752(14). In computing the tax, no deduction from the sale price is allowed for any expenses of the seller. *Id.* § 1752(14)(A)(2). Retailers are required to collect sales tax and remit it to MRS. *Id.* §§ 1753, 1754-B(1). However,

[w]henver the tax collected by a retailer for any period exceeds that provided by law, whether the excess is attributable to the collection of tax on exempt or nontaxable transactions or erroneous computation, the total amount collected, excluding only that portion of the excess that has been returned or credited to the person or persons from whom it was collected, constitutes a tax liability of the retailer that must be reported and paid [to MRS].

36 M.R.S. § 1814(1).

### A. Function Room Fee

By itself, the sale of Function Room usage is not subject to sales tax as a sale of tangible personal property or a taxable service. The Company argues that because the Fee was not subject to sales tax, the Company correctly subtracted the Fee from the sale price of Prepared Food in computing sales tax. The issue presented on appeal is not whether sales tax is required to be collected on the Fee amounts but whether the Company is required to remit the tax that it collected to MRS. Regardless of whether the Fees were subject to sales tax or whether the tax was correctly or erroneously collected, section 1814 requires that the full amount of the tax collected be remitted to MRS, less any amounts returned to the customer.<sup>2</sup>

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<sup>2</sup> The Company does not contend that it returned to a patron any amount of tax collected in connection with the Function Room Fees.

Accordingly, we find that the Company is liable for the full amount of Maine sales tax that it collected in connection with its sale of Prepared Food to Function Room patrons, including the portion of the tax that it attributed to the sale price of Function Room usage and did not report or remit to MRS. No adjustment to the assessment on this basis is warranted.

#### B. Catered Sales

The Company next argues that sales tax did not accrue on its catered sales of Prepared Food because most of its catered sales were made at cost to an organization that then gave away the Prepared Food to guests without charge. The Company points to no exemption or exception from sales tax under such circumstances, and we are not aware of any. The Company has not shown that its catered sales of Prepared Food were not subject to sales tax.

Lastly, the Company argues that it is entitled to a credit against the sales tax contained in the assessment for the sales tax that it paid on its purchases of Prepared Food that it later resold through its catering business. The Company did not, however, provide any evidence showing that it paid Maine sales tax on any of its purchases entitling it to a credit. Accordingly, no adjustment to the assessment on this basis is warranted.

### III. Decision

Based on the evidence submitted and the applicable law, and for the reasons explained above, we uphold in full the assessment as modified by MRS on reconsideration.

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. During the 60-day period in which an appeal may be filed with the Superior Court, the Company may contact Maine Revenue Services at 207-624-9725 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: December 13, 2016