STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2017-13

[INDIVIDUAL TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayer (the "Taxpayer")] appeals from an assessment of use tax and interest in the total amount of $[amount], issued by Maine Revenue Services ("MRS") for the period [month, year]. Based upon the evidence presented and the applicable law, we cancel the assessment in full.

I. Background

At all relevant times, [the Taxpayer] was engaged in the business of renting camper trailers in Maine for occupancy on a short-term, on-site basis. On [date], as part of the sale of a business where the seller was previously also engaged in the business of renting the Trailers for short-term, on-site occupancy in Maine, [the Taxpayer] purchased all of the seller's used camper trailers (the "Trailers").[1] [The Taxpayer] did not pay Maine sales or use tax on his purchase of the Trailers, but registered with MRS as a retailer and began renting the Trailers and collecting

[1] As is relevant to the present appeal, a "camper trailer" is a

> trailer or semitrailer . . . primarily designed and constructed to provide temporary living quarters for recreational, camping, travel or other use, [and a] manufactured or homemade tent trailer, so called, which consists of a platform, shelf or box, with means of permanently or temporarily attaching a tent, used to provide temporary living quarters for recreational, camping, travel or other use.

36 M.R.S. §§ 1752(22), 1481.

and remitting Maine sales tax on the rentals. On audit, MRS determined that, in addition to sales tax on their subsequent rentals, [the Taxpayer] was liable for use tax on his purchase of the Trailers. Consequently, MRS issued the subject assessment of use tax and interest.

[The Taxpayer] argues that the assessment must be cancelled because his purchase of the Trailers was exempt from use tax as a purchase for resale "as rentals at retail sale." It is [the Taxpayer's] burden to show that the assessment is incorrect. 36 M.R.S. § 151-D(10)(F).

II. Discussion

Use tax is imposed under 36 M.R.S. § 1861 "on the storage, use or other consumption in this State of tangible personal property or a service, the sale of which would be subject to tax under section 1764 or 1811." Section 1861 imposes use tax in two situations: (1) where sales tax under section 1811 has accrued but has not been collected and (2) where tax is imposed under section 1764 on certain specific taxable services and property sold at casual sale. [The Taxpayer] argues that Maine law exempts purchases of tangible personal property ("TPP") made for resale "as lease or rental at retail sale" from tax under section 1811 (on retail sale of "TPP") and tax under section 1764 (on casual sale of certain kinds of TPP). According to [the Taxpayer], the exemption prevents taxing both a retailer's purchase of TPP and its subsequent retail sale on lease or rental.

A. Retail Sale Exemption

[The Taxpayer] first argues that his purchase of the Trailers is not subject to tax upon the retail sale of TPP. In support of his contention, [the Taxpayer] cites both 36 M.R.S. § 1752(11)(B)(16) and Maine Revenue Services, *Sales, Fuel, & Special Tax Division Instructional Bulletin No. 20: Lease and Rental Transactions* (October 1, 2013) ("Bulletin No. 20"). Section 1752(11)(B)(16) provides, in relevant part, that the term "retail sale" does not include "[t]he sale,

to a person engaged in the business of renting or leasing . . . camper trailers, of . . . camper trailers for rental." *Id.* § 1752(11)(B)(16). The effect of excluding such sales from the definition of "retail sale" is to exempt them from both sales and use tax. The version of Bulletin No. 20 in effect at the time the Trailers were purchased, advised taxpayers as follows:

> **C. Motor Homes and Camper Trailers.** The rental or lease of a camper trailer or a motor home is a taxable service subject to the general sales tax rate established by 36 M.R.S. § 1811. The statutory definition of "retail sale" excludes the sale of a camper trailer or a motor home to a person engaged in the business of renting these items. Therefore, such businesses need not pay sales tax when they purchase motor homes and camper trailers for subsequent rental nor accrue use tax when withdrawing a unit out of resale inventory or when locating a unit in Maine for rental. If these products are eventually sold after having been rented for a period of time, such sales are subject to sales tax.

Bulletin 20 § 2(C).

While MRS agrees that the effect of sub-paragraph 16 is to exempt such sales from taxation, it contends that sub-paragraph 16 is inapplicable to [the Taxpayer's] circumstances for three reasons. The first is that [the Taxpayer] has not provided evidence that he has registered as a Maine retailer and is renting the Trailers, the second is that the sub-paragraph 16 exemption does not apply because [the Taxpayer] rents the Trailers as "living quarters" and not as camper trailers, and the third is that [the Taxpayer's] purchase of the Trailers was at casual sale and not at retail sale.

Following MRS's submission of its arguments, [the Taxpayer] submitted copies of his retailer registration documents, as well as copies of some of the Maine sales tax returns that he filed with MRS. We find, based upon the evidence presented by [the Taxpayer], that, contrary to MRS's assertions, [the Taxpayer] made rentals of the Trailers and registered as a retailer with MRS. There is no merit to MRS's first argument.

MRS's second argument is that sub-paragraph 16's exemption of the purchase of camper trailers for lease or rental does not apply because [the Taxpayer] rents the Trailers as "living quarters" and not as camper trailers. Specifically, MRS asserts that "the [sub-paragraph 16] exclusion was not enacted to apply to the subsequent lease or rental of a camper trailer as living quarters . . . ." MRS's submission dated October 12, 2017, at 6 n.3. The term "living quarters" is defined as "sleeping rooms, sleeping or housekeeping accommodations, and tent or trailer space." 36 M.R.S. § 1752(6).

MRS notes that P.L. 2011, ch. 684, (effective October 1, 2012), which began as legislative document 1809 ("LD 1809") of the 125th Maine Legislature, not only enacted sub-paragraph 16 but also added the rental of motor homes and camper trailers to the definition of "taxable service." MRS cites the title and summary of LD 1809 in support of its assertion that sub-paragraph 16 does not apply to the rental of camper trailers as "living quarters." The title of LD 1809 is "An Act to Apply the Sales Tax on Camper Trailers and Motor Homes Purchased for Rental in the Same Manner as Automobiles Purchased for Rental," and the Summary states: "This bill provides that camper trailers and motor homes are not subject to sales tax when purchased by a person engaged in the renting or leasing of those items and subjects the rental of those items to sales tax at the rate of 5%." Based upon the fact that LD 1809 sets the tax rate applicable to rentals of camper trailers at 5%, like that applicable to long-term automobile rentals, and not at the rate of 7% applicable to rentals of living quarters "in any hotel, rooming house or tourist or trailer camp[,]" MRS asserts that the sub-paragraph 16 exemption only applies to purchases of camper trailers for rentals for use as something other than "living quarters." 36 M.R.S. § 1811. We disagree with MRS's contention.

The term "camper trailer" is defined as a "trailer or semitrailer . . .primarily designed and constructed to provide temporary living quarters . . . ." *Id.* § 1481. Thus, renting a camper trailer for use as a camper trailer necessarily means renting it for use as "living quarters." The mere fact that the Legislature decided it wished to tax the rental of camper trailers and motor homes, both of which are designed to provide "living quarters," at a lower rate than the rental of "living quarters" in a "*hotel, rooming house or tourist or trailer camp*" does not mean that the exemption only applies to purchases of camper trailers for lease or rental outside of trailer camps. *Id.* § 1811 (emphasis added). MRS's argument that rental of camper trailers for use as "living quarters" is distinguishable from rental of camper trailers for purposes of the sales tax exemption under section 1752(11)(B)(16) is without merit.

MRS's third argument is that sub-paragraph 16's retail sale exemption is inapplicable because the sale of the Trailers was a casual sale and not a retail sale. However, contrary to MRS's contention, the sale of the Trailers is a sale that fits squarely into the retail sale described in section 1752(11)(A)(4). Section 1752(11)(A)(4) provides, in part, that:

> A. "Retail sale" includes:
> . . . .
> (4) The sale or liquidation of a business or the sale of substantially all of the assets of a business, to the extent that the seller purchased the assets of the business for resale, lease or rental in the ordinary course of business, except when:
> . . . .
> (b) The sale is to a person that purchases the assets for resale, lease or rental in the ordinary course of business[.]

36 M.R.S. § 1752(11)(A)(4). The sale of the Trailers was a sale of the trailer camp business, and [the Taxpayer] purchased all of the Trailers owned by the seller. In turn, the seller had previously purchased the Trailers for "lease or rental in the ordinary course of business . . . ." *Id.* Whereas such sales are retail sales, they are not casual sales. The exclusion of the sales

described in section 1754(11)(A)(4) from the definition of "retail sale" when made "to a person that purchases the assets for resale, lease or rental in the ordinary course of business" exempts such sales from taxation, just as section 1752(11)(B)(16)'s exclusion of sales of camper trailers to persons engaged in the business of leasing or renting camper trailers exempts those sales from taxation.[2] Consequently, we find that MRS's third argument is also without merit, as the sale at issue was a retail sale—not a casual sale—which, because it was made to [the Taxpayer] for taxable rental in the ordinary course of [the Taxpayer's] business, is exempt from sales and use tax.

B. Casual Sale Exemption

[The Taxpayer] alternatively argues, and MRS agrees, that the sale of the Trailers to [the Taxpayer] was made at casual sale. As defined in Maine sales and use tax law, a "casual sale" is "an isolated transaction in which tangible personal property or a taxable service 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). [The Taxpayer] maintains, however, that because he purchased the Trailers for resale as rentals at retail, his purchase was tax-exempt under the plain language of 36 M.R.S. § 1764.

As stated previously, use tax is imposed under section 1861 "on the storage, use or other consumption in this State of tangible personal property or a service, the sale of which would be subject to tax under section 1764 or 1811." As is applicable to this appeal, section 1764 imposes tax "upon all casual sales involving the sale of trailers . . . unless the property is sold for resale at retail sale . . . ." *Id.* § 1764. The evidence presented shows that [the Taxpayer] purchased the

[2] Section 1752(11) consistently exempts from taxation sales made for resale at retail sale of lease or rental of tangible personal property, and such exemptions are effected by excluding the sale from section 1752(11)'s definition of "retail sale." *See, e.g.*, 36 M.R.S. §§ 1752(11)(B)(3)–(7), (10)–(13), (15), (16).

Trailers at liquidation sale for resale as taxable rentals at retail sale. If we agree with the parties that the seller sold the Trailers to [the Taxpayer] in "an isolated transaction . . . other than in the ordinary course of repeated and successive transactions of like character," then [the Taxpayer's] purchase falls squarely within the use tax exception in section 1764, i.e., "unless the property is sold for resale at retail sale."

MRS argues that the use tax exclusion under section 1764 applies only where property is purchased for resale as tangible personal property but not where it is purchased for resale as a rental at retail. Specifically, MRS contends that [the Taxpayer] is liable for use tax on his purchase of the Trailers because he did not purchase them "to resell them to a third party as property in a retail sale . . . ." MRS's submission dated October 12, 2017, at 4. Upon inspection, however, the limitation urged by MRS appears nowhere in section 1764.

It is well-established under Maine law that "[t]he State's power to tax is strictly construed in favor of the taxpayer [and] interpretation of statutes levying taxes should not extend their provisions by implication beyond the clear import of the language used." *Community Telecommunications Corp. v. State Tax Assessor,* 684 A.2d 424, 426 (Me. 1996) (citations omitted). Consequently, the Law Court has refused to add language to statutes which the legislature did not include. *See Stromberg-Carlson Corp. v. State Tax Assessor*, 2001 ME 11 ¶ 9, 765 A.2d 566; *Koch Refining Co. v. State Tax Assessor*, 1999 ME 35, ¶ 9, 724 A.2d 125; *UAH-Hydro Kennebec, L.P. v. State Tax Assessor*, 659 A.2d 865, 867 (Me. 1995).

In the *UAH-Hydro* case, the taxpayer claimed that certain "gates" that it purchased were exempt from sales tax as having been purchased for use in production. MRS argued that the gates were purchased to be affixed to real property and could not be considered machinery and

equipment "purchased for use in the production of tangible personal property" within the meaning of the subject exemption. In rejecting MRS's argument, the Court reasoned

> [MRS's] assumption that the status of the gates as fixtures precludes an exemption appears nowhere in the plain language of the statute. The statute requires only that the property in question be "machinery and equipment" that is used "primarily in the production of tangible personal property." 36 M.R.S.A. § 1760(31). If so, it is immaterial whether that machinery or equipment is affixed to the realty. *The Assessor's interpretation of section 1760(31) would add a requirement that the machinery and equipment remain tangible personal property*.

UAH-Hydro, 659 A.2d at 867 (emphasis added). We think that the Court's rejection of MRS's attempt to add a requirement to the statute in *UAH-Hydro* which the Legislature did not provide supports our rejection of MRS's attempt to add a requirement to section 1764 in the present case.

MRS argues that the Law Court's decision in *Dowling v. State Tax Assessor,* 478 A.2d 1123 (Me. 1984) supports its position that tangible personal property purchased for lease or rental is not excepted from use tax under section 1764. That case, however, is inapposite on that point of law. In *Dowling*, the taxpayer purchased two aircraft without paying sales or use tax, and then leased them to his wholly-owned corporation for use in Maine. At the time *Dowling* was decided, section 1764 applied only to casual sales of automobiles and aircraft but not to camper trailers.[3] Casual sale purchases of camper trailers were not subject to use tax until September 29, 1987, more than three years after the *Dowling* case was decided. P.L. 1987, ch. 49. Furthermore, there was no tax on retail rentals of camper trailers—and no exemption for

[3] As considered by the *Dowling* court, section 1764 provided in full as follows:

> The [sales and use] tax imposed by chapters 211 to 225 shall be levied upon all isolated transactions involving the sale of motor vehicles or aircraft excepting those sold for resale, and excepting an isolated transaction involving the sale of motor vehicles or aircraft to a corporation when the seller is the owner of a majority of the common stock of such corporation.

36 M.R.S. § 1764 (1978); *see Dowling* at 1124 n.3.

purchases of camper trailers for rental—until October 1, 2012. P.L. 2011, ch. 684. Consequently, the *Dowling* court was not called upon to consider or decide those issues.

In light of the plain language of the tax exclusion under section 1764 and the Law Court's refusal to insert language into an otherwise clear statute, we find that [the Taxpayer's] purchase of the Trailers at casual sale for resale as rentals at retail were not subject to use tax.

Accordingly, we cancel the use tax assessment in full.

III. Decision

Based on the evidence presented and the applicable law, we find that [the Taxpayer] is not liable for use tax on his purchase of the Trailers at issue. Accordingly, we cancel the assessment 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 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.

Issued by the Board: June 11, 2018