

[CORPORATE TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Corporate Taxpayer] (the “Company”), appeals from an assessment of use tax and interest issued by Maine Revenue Services (“MRS”) for the period July 1, 2014, through September 31, 2015. The Company does not dispute the assessed tax but requests abatement of the interest. Following consideration of the parties’ arguments and the evidence presented, we abate the assessed interest as set forth below.

#### I. Background

At all relevant times, the Company was a Maine corporation engaged in interstate and intrastate transportation of cargo. During 2014 and 2015, the Company purchased a motor vehicle (the “Vehicle”) outside of Maine for use in interstate commerce. Taking advantage of an exemption from sales and use tax provided by Maine law for vehicles used in interstate commerce, the Company did not pay use tax on the Vehicle when it registered it in Maine, but immediately placed it into service in interstate commerce and used it in interstate commerce, periodically, over the two-years following its date of purchase. At the conclusion of the two-year periods, the Company had used the Vehicle in interstate commerce only 76% of the time. On audit, MRS determined that the Company’s use of the Vehicle was subject to tax and issued

the subject assessment for tax and interest in the total amount of \$[amount]. The Company paid the assessment in full and this appeal followed.

In preparing the assessment, MRS computed interest on the assessed tax from the purchase date of the Vehicle through the date of the assessment. The Company argues that MRS incorrectly computed the interest and that the assessment is therefore overstated. It is the Company's burden to show that the assessment is incorrect. 36 M.R.S. § 151-D(10)(F).

## II. Discussion

The Maine Law Court has concisely described Maine's sales and use tax as follows:

The sales tax statute, 36 M.R.S.A. § 1811, imposes a 5% tax [now 5.5%] on the value of all tangible personal property sold at retail sale in Maine. Where no sales tax is collected and paid, 36 M.R.S.A. § 1861 imposes a use tax on the storage, use, or other consumption in Maine of tangible personal property purchased at retail sale at the same rate as the sales tax. The use tax is a necessary complement to the sales tax.

*James Katz d/b/a Portsmouth Lino-Mart v. State Tax Assessor*, 472 A.2d 428, 429-30 (Me. 1984).

As is applicable to the present case, the Legislature has provided an exemption from sales and use tax for vehicles used in interstate commerce:

[N]o tax on sales, storage or use may be collected upon or in connection with:

....

[t]he sale of a vehicle, railroad rolling stock, aircraft or watercraft that is placed in use by the purchaser as an instrumentality of interstate or foreign commerce within 30 days after that sale and that is used by the purchaser *for not less than 80% of the days in use* during the next 2 years as an instrumentality of interstate or foreign commerce.

36 M.R.S. § 1760(41-A) (emphasis added).<sup>1</sup> Because, in the present case, the Vehicle was not used in interstate commerce 80% of the time during the first two years, use tax was ultimately due on it.

Under Maine tax law, interest accrues where a person fails to pay the tax “on or before the last date prescribed for payment.” The person is liable for interest on the tax “calculated from *that* date and compounded monthly.” *Id.* § 186 (emphasis added). However, section 1760(41-A) does not prescribe the date that the tax is “due”—and, therefore, the date on which interest begins to accrue—where it is later determined that the requirements for exemption have not been met.

On appeal, we must determine whether the interest contained in the assessment was correctly computed pursuant to section 186. MRS has provided a rule that construes the exemption under 36 M.R.S. § 1760(41) and that is helpful on this point.

A. MRS’s Rule 318

Under Maine law, a duly adopted rule “implements, interprets or makes specific the law administered by the agency” and is judicially enforceable. 5 M.R.S. § 8002(9). In keeping with its duties to administer the tax laws of the State, MRS is expressly authorized to “adopt rules and require such information to be reported as necessary.” 36 M.R.S. § 112(1). MRS’s Rule 318, 18-125 C.M.R. ch. 318, was first adopted July 11, 1980, and was most recently amended on November 25, 2008. The applicable provisions of Rule 318 have not been expressly or

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<sup>1</sup> Section 1760(41-A), effective August 1, 2018, repealed and replaced 36 M.R.S. § 1760(41) and was made retroactive to January 1, 2012. P.L. 2017, ch. 375, § I-1 to -2. The above-quoted language is virtually identical to the language of the replaced section 1760(41). The revisions to the exemption now provided under section 1760(41-A) do not relate to the issues presented in the present appeal. Consequently, when referring to the statute providing the exemption, we will reference section 1760(41-A).

impliedly revoked at the time of this appeal, even though 36 M.R.S. § 1760(41-A) did not exist when the Company purchased the Vehicle or when MRS issued the subject assessment.

Rule 318 recites the requirements for exemption set forth in section 1760(41) and explains that no tax is due where the purchaser complies with all of those requirements. Rule 318 also addresses the issue of when use tax accrues on a prematurely terminated exempt use:

If the purchaser later finds that the vehicle has become ineligible for the exemption because it was not placed in use as an instrumentality of interstate or foreign commerce within 30 days (90 days with good cause) or because it was not or will not be used 80% of the time as an instrumentality of interstate or foreign commerce during the first 2 years from the date of purchase, the purchaser is responsible for reporting use tax directly to Maine Revenue Services.

Rule 318 § 6(B). Thus, under Rule 318, the purchaser is required to report and pay use tax at the time the vehicle “has become ineligible for the exemption.” *Id.* That is “the last date prescribed for payment” of the tax for purposes of section 186.

In the present case, the Company followed the prescribed procedure for registering the Vehicle exempt from sales tax, and placed it into service in interstate or foreign commerce within 30 days of the date of purchase. Thus, the Vehicle was exempt from tax on the date of registration and no tax was due at that time. Rather, under Rule 318, no tax became due on the Vehicle until it was mathematically impossible for the Vehicle to be used 80% of the time in interstate or foreign commerce within the two-year period immediately following the date of its purchase, at which point use tax then became due.<sup>2</sup> Because MRS computed interest from the Vehicle’s date of purchase, the interest portion of the assessment is overstated. The correct interest amount must be recomputed based on the qualifying and non-qualifying use of the Vehicle within the two-year period following its purchase.

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<sup>2</sup> Because the issue was not raised by either party to the appeal, we do not address whether use tax is imposed under 36 M.R.S. § 1861 on the purchase price of the vehicle or on the fair market value of the vehicle when the use tax liability accrued.

MRS argues that Rule 318 has no applicability to the present case because P.L. 2017, ch. 375, § I repealed and replaced section 1760(41) upon which Rule 318 is based. As stated above, we find that those provisions of Rule 318 that are applicable to this case have not been abrogated, either expressly or impliedly. However, even if, as MRS contends, Rule 318 has lost its authority over the subject of this case, we further find that the laws and procedures providing for collecting the use tax under the circumstances of this case, as discussed below, lead to the same conclusion for the accrual of interest as set forth above.

#### B. Collection of the Tax

Under Maine sales and use tax law, whenever tangible personal property—such as the Vehicle at issue in this case—is required to be registered for use within the State, the applicant for registration must either pay the tax, show that the tax has already been paid to the seller, or show that the tax is not otherwise due. 36 M.R.S. § 1755. If the tax has not been paid to the seller, then “the tax must be collected by the Secretary of State and transmitted to the Treasurer of State as provided by Title 29-A, section 409” at the time of registration. *Id.* § 1952-A. However, if the person registering the vehicle claims that no tax is due, then the person must provide the Secretary of State with a certificate in a form prescribed by MRS, showing that the sale or use of the vehicle is not subject to tax. 29-A M.R.S. § 409(2)(B). Where a vehicle is purchased from a vehicle dealer at retail and the registrant claims an exemption under 36 M.R.S. § 1760(41-A), MRS’s Form ST-A-111 provides:

If the property is withdrawn from interstate or foreign commerce within two years so that it will not be used 80% of the time in interstate or foreign commerce for the 2-year period, the purchaser is required to report and pay the use tax to Maine Revenue Services, based on the original purchase price.

Alternatively, where a vehicle is purchased at casual sale and the same exemption is sought, MRS’s Form ST-A-110 sets forth an identical statement of liability. We conclude that, under

MRS's procedure as authorized by statute, the "last day prescribed for payment" of the tax for purposes of imposition of interest under 36 M.R.S. § 186 is the date that "it will not be used 80% of the time in interstate or foreign commerce for the 2-year period," and the purchaser is required to report and pay the tax at that time.

In the present case, use tax became due on the day that it became mathematically impossible for the Vehicle to be used 80% of the time in interstate or foreign commerce within the two-year period immediately following the date of its purchase. To the extent that the interest contained in the assessment was computed from an earlier date, the assessment is overstated. Accordingly, interest contained in the assessment is hereby reduced. The correct interest amount must be recomputed based on the qualifying and non-qualifying uses of the Vehicle within the two-year period following the date of its purchase. No other relief is warranted on the facts presented.

### III. Decision

We find that interest on the tax contained in the assessment began to accrue when it became mathematically impossible for the Vehicle to meet the 80% exemption threshold, and we cancel the excess interest contained in the assessment accordingly. The Company is due a refund in the amount of the overpaid interest.

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. If the Company wishes to contact Maine Revenue Services during the 60-day period, the correct contact number is 207-624-9595.

Issued by the Board: March 22, 2019