

STATE OF MAINE  
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS  
DOCKET NO. BTA-2021-12

INDIVIDUAL TAXPAYER

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayer] (the “Taxpayer”) appeals from decision on reconsideration issued by Maine Revenue Services (“MRS”) denying them requests for refunds for Maine sales tax paid for the period between [date in year 6] and [date in year 7] as untimely. Based on the evidence and the applicable law, we uphold the denial in full.

#### I. Background

The Taxpayer is the owner of certain real property located at [address] (the “Property”). In [month in year 6], the Taxpayer entered into a Rental Management Agreement (the “Agreement”) with a management company, (the “Management Company”) to manage the rental of the Property to the general public for profit. As relevant here, the Agreement provided that the Management Company would be paid from the gross rental proceeds for services rendered and would deliver the net rental proceeds to the Taxpayer on a monthly basis. Agreement at ¶¶ 3

& 4. Further, the Agreement provided that

[e]xcept as expressly provided herein, Owner shall be responsible for paying all costs and expenses associated with the maintenance and operation of the Property as a transient rental accommodation. Such expenses include but may not be limited to. . . *taxes*. . . and any costs associated with keeping the Property in compliance from time to time with the laws, ordinances and administrative rules governing public lodging establishments and transient rental accommodations.

Agreement, ¶ 9(a) (emphasis added).

In [month in year 6], the Taxpayer began making online sales tax payments to MRS based upon the monthly net rental figures reported to the Taxpayer by the Management Company. For the period at issue, the Taxpayer made the following payments: [Redacted]

In the summer of [year 11], the Taxpayer learned that contrary to the Agreement, it was the Management Company's practice to collect and remit all sales taxes due on the rentals that it managed, and the rental proceeds delivered to the Taxpayer were net of the sales tax remitted to the State of Maine by the Management Company. In response, the Taxpayer filed amended sales tax returns on [date in year 11], seeking refunds of the sales tax they paid to MRS for the period between [date in year 6] and [date in year 7]. Subsequently, MRS denied the Taxpayer's requests as untimely. This appeal followed.

It is the Taxpayer's burden to show that the assessment is incorrect. 36 M.R.S. § 151-D(10)(F). We consider the matter on appeal de novo as to both facts and law. *Id.* § 151(2)(G).

## II. Discussion

Sales "tax is imposed on the value of all . . . taxable services sold at retail in this State." 36 M.R.S.A. § 1811. Taxable services sold at retail include the "rental of living quarters in a hotel, rooming house or tourist or trailer camp." *Id.* § 1752(17-B). "Value is measured by the sale price." *Id.* § 1811(1). Where sales or use tax "has been paid more than once or has been erroneously or illegally collected or computed," the tax must be refunded or credited, however,

no such credit or refund may be allowed unless within 3 years from the date of overpayment either a written petition stating the grounds upon which the refund or credit is claimed is filed with the assessor or the overpayment is discovered on audit.

*Id.* § 2011.

The sales tax overpayments at issue here were made between [month in year 6] and [month in year 7]. The Taxpayer filed their amended sales tax returns requesting refunds for those overpayments on [date in year 11]. Because the Taxpayer's requests were made in excess of three years after the overpayments were made, no refund or credit is allowed under Maine's statutory scheme. Even so, the Taxpayer argues that allowing MRS to retain their overpayments is unfair.

Although we are sympathetic to the Taxpayer's situation, we must give effect to the intent of the Legislature as evidenced by the plain meaning of the statute. *See DaimlerChrysler Corp. v. Exec. Dir., Me. Revenue Serv.*, 2007 ME 62, ¶ 9, 922 A.2d 465. Here, the Legislature explicitly contemplated situations, such as the Taxpayer's, where a tax "has been paid more than once," and the Legislature chose to disallow credits or refunds requested by similarly situated taxpayers more than three years after the overpayment. Further, we note that, even if the Taxpayer's situation had not been specifically contemplated by the Legislature, the Maine Supreme Judicial Court has consistently recognized that "[s]tatutes of limitation are strictly construed." *See Dowling v. Salewski*, 2007 ME 78 ¶ 11, 926 A.2d 193, *Stromberg-Carlson Corp. v. State Tax Assessor*, 2001 ME 11 ¶ 13, 765 A.2d 566. Accordingly, no adjustment on this basis is warranted. We uphold the refund denials in full.

### III. Decision

Based on the law and evidence presented, we uphold MRS's denials of refunds for the overpayment of sales tax for the period between [date in year 6] and [date in year 7] 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.

BY ORDER OF THE BOARD

Date: \_\_\_\_\_, Chair/Member