

[LIMITED LIABILITY COMPANY]

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Limited Liability Company] (the “Company”) appeals from a Decision on Reconsideration issued by Maine Revenue Services (“MRS”) upholding the assessment of Maine sales tax and interest for the period from July 1, 2018, to December 31, 2020. While the Company concedes that the computation and assessment of sales tax and interest made by MRS are correct, the Company requests that the assessment be canceled or reduced for the reasons discussed in turn, below. After considering the parties’ arguments and the evidence presented, we uphold the assessment in full.

#### I. Background

At all relevant times, the Company was a [state other than Maine] limited liability company making remote sales of tangible personal property into every state, including Maine. The Company maintained no physical retail locations. Instead, the Company made sales exclusively through its website, and it shipped its products to its customers using a common carrier. Further, for the period at issue, the Company had no physical presence in Maine.

Prior to the period at issue, longstanding United States Supreme Court precedent prevented states from requiring sellers to collect sales tax unless the sellers maintained a physical presence within the taxing state. *See Quill Corporation v. North Dakota*, 504 U.S. 298 (1992).

Because the Company did not have physical presence in Maine, the Company was not required to collect, and did not collect, sales tax on its Maine sales. However, on June 21, 2018, the United States Supreme Court reversed *Quill*, holding that an out-of-state seller could be required to collect and remit sales tax even without a physical presence in the taxing state. *South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_\_, 138 S. Ct. 2080 (2018). In response to this ruling, on August 7, 2018, MRS posted guidance online. In relevant part, that guidance provided that, for sales occurring on or after July 1, 2018, MRS would begin to enforce previously adopted Maine statutory provisions requiring remote sellers without physical presence in Maine to collect and remit sales tax. We note, here, that a number of other states also moved to enforce previously adopted statutes requiring the collection and remittance of sales tax on the part of remote sellers.

According to the Company, it remained unaware of the changes to the law in the wake of *Wayfair* until, in December of 2019, the sales tax management firm employed by the Company informed the Company by email that the Company was now required to collect sales tax by one or more states. Thereafter, in April of 2020, the Company registered as a remote seller of tangible personal property in Maine and began collecting sales tax on its Maine sales. As a result of this delay, the Company collected and remitted sales tax on less than half of its \$[amount] in Maine sales for the period at issue. Consequently, MRS issued the Company an assessment for \$[amount] in sales and use tax and \$[amount] in interest; the assessment included no penalties.

On appeal, the Company requests that the assessment be canceled or reduced because the Company's delay in collecting the sales tax was unintentional and due to communications problems with its sales tax management firm. Further, the Company argues that payment of the assessed amounts in conjunction with assessments made by other states for the same issue will result in the Company's insolvency. It is the Company's burden to show that it is entitled to relief. 36 M.R.S. § 151-D(10)(F). We consider the matter de novo as to facts and law. *Id.* § 151(2)(G).

## II. Discussion

### A. Sales Tax.

For the period at issue, a remote seller of tangible personal property was required to collect and remit sales tax on their Maine sales if the seller's gross sales from delivery of tangible personal property into this Maine in the previous calendar or current calendar year exceeded \$100,000 or the seller sold tangible personal property into Maine in at least 200 separate transactions in the previous or current calendar year. *See* 36 M.R.S.A. § 1951-B(3) (repealed September 19, 2019); *see also id.* § 1754-B(1-B) (effective September 19, 2019).<sup>1</sup> Although sales tax is a levy on the consumer, it is required to be collected by the retailer. *Id.* §§ 1753, 1812.

The Company argues that the Board should cancel or reduce the assessment of sales tax because its failure to collect and remit the tax was based on its lack of knowledge of changes to the law and because its sales tax management firm failed to inform the Company of said changes timely. However, the Company points to no statutory provision or other authority that would empower the Board to cancel or abate the tax on the grounds asserted, and we are aware of none. Although we acknowledge that the Company's failure to collect and remit the assessed tax was unintentional and that MRS posted guidance after the enforcement date, the Company has not established grounds upon which we are able to cancel, abate, or reduce the tax assessed. We therefore do not adjust or modify the assessment on this basis.

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<sup>1</sup> These economic thresholds are substantially similar to those in *South Dakota v. Wayfair, Inc.* *See* 585 US \_\_\_, 138 S. Ct. 2080, 2099 (2018) (finding sufficient nexus where sellers "deliver more than \$100,000 of goods or services into South Dakota or engage in 200 or more separate transactions for the delivery of goods and services into the State on an annual basis").

We note, however, that where circumstances warrant, MRS may abate a tax liability “if justice requires.” *Id.* § 142. Relief under section 142 may be granted “whenever a written request has been submitted by a taxpayer within 3 years of the date of assessment.” *Id.* MRS also has the authority to settle a tax liability for a lesser amount “upon the grounds of doubt as to liability or doubt as to collectability, or both . . . .” *Id.* § 143. As provided by each of those sections, however, MRS’s decision to deny relief thereunder is not subject to appeal to the Board. *Id.* §§ 142, 143.

B. Interest

The Company also seeks abatement of the interest contained in the assessment. Interest accrues automatically on the amount of tax due but unpaid, calculated from the last date prescribed for payment and compounded monthly. 36 M.R.S. § 186. Interest may be waived or abated if the failure to pay the tax at issue “is explained to the satisfaction” of MRS or, on appeal, to the Board. *Id.* §§ 186, 151(2)(G), *Victor Bravo Aviation, LLC v. State Tax Assessor*, 2012 ME 32, ¶ 12-15, 39 A.3d 65. The purpose of interest is “to assure that the investment value of money inures to the benefit of the party that should have been paid the money when the payment obligation arose.” *Victor Bravo*, 2012 ME 32, ¶ 14, 39 A.3d 65.

In the present case, the Company did not collect and remit sales tax on its Maine sales because it was unaware of the changes in the law requiring it to do so and because it was not timely informed of such change by its sales tax management firm. Although unfortunate, these circumstances do not change the fact that MRS was entitled to the time value of the tax from when it was due. No adjustment to the assessment on this point is warranted. We uphold the assessment in full.

### III. Decision

Based upon the evidence presented and the applicable law, we uphold the assessment of Maine sales and use tax and interest for the period from July 1, 2018, to December 31, 2020.

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. During the 60-day period in which an appeal may be filed with the Superior Court, the taxpayer may contact Maine Revenue Services at 207-624-9595 for a statement of the amount then due. After that 60-day period has expired, Maine Revenue Services will contact the taxpayer with an updated statement of the amount or amounts due at that time.

BY ORDER OF THE BOARD

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