

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2025-03

[CORPORATE TAXPAYER]

Petitioners

v.

RECOMMENDED DECISION

MAINE REVENUE SERVICES,

Respondent

[Corporate Taxpayer], LLC (the “Company”) appeals from a decision on reconsideration issued by Maine Revenue Services (“MRS”) upholding a denial of a claim for a refund of Maine sales tax for the period April 1, [year 1], through September 30, [year 2]. The only issue before the Board is whether MRS correctly determined that the Company is not entitled to claim the bad-debt credit pursuant to 36 M.R.S.A. §1811-A for bad debts that an affiliate, [], LLC (the “Affiliate”), charged off as worthless on its accounts. Based on the evidence and the applicable law, we uphold the determination of MRS in full.

I. Background

At all relevant times the Company was a limited liability company selling telecommunications equipment (the “Equipment”) in Maine. In turn, the Affiliate was a limited liability company selling telecommunications service for the equipment sold by the Company (the “Service”). Both the Company and the Affiliate are disregarded entities for federal income tax purposes and subsidiaries of [], LLC (the “Parent”).

Specific to this case, the Affiliate sold the Services to certain Maine customers. These Maine customers also chose to purchase Equipment compatible with the Services from the Company on an installment basis. After receipt of the customers' initial payment, the Company reported the sale and remitted the sales tax on the full purchase price to Maine Revenue Services. The Company then transferred the accounts receivables related to the Equipment to the Affiliate for no consideration. According to the Company, this was done to facilitate a unitary billing system for the convenience of the customers.

With respect to the refund claim at issue, certain customers defaulted on installment contracts after the transfer of the accounts receivable to the Affiliate. After the Affiliate determined the accounts in default to be worthless, the Affiliate wrote off the accounts as worthless and reflected the associated losses on its books. Thereafter, the Affiliate transferred the accounts back to the Company for no consideration. We note that the Affiliate did not take further action to collect on the accounts after the accounts were written off, nor did the Affiliate transfer any of the accounts receivable at issue to a third-party debt collection agency.

On or about [date], [year 3] the Company submitted a claim for a refund of sales tax to MRS in the amount of \$[amount] for the period from [date], [year 1], to [date], [year 2]. By letter dated [date], [year 3], MRS denied the Company's claim for refund of sales tax. The Company timely sought reconsideration of the denial. On reconsideration dated [date], [year 3], MRS upheld the denial. The Company timely appealed to the Board by letter postmarked [date], [year 4].

It is the Taxpayers' burden to show that the determination of MRS 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. Law

A Maine retailer must collect and remit sales tax to the State on the full amount of the sale price at the time of sale even if it is an installment sale and the full purchase price has not yet been paid to the retailer. *See* 36 M.R.S.A. §§ 1752 (10)-(11), 1811, 1952. Ostensibly to avoid causing hardship to retailers that ultimately are not paid in full on installment contracts after having remitted the sales tax associated therewith, the Legislature chose to allow a pro rata credit for sales taxes paid on installment contracts which become worthless. *Id.* § 1811-A.

Specifically,

The tax paid on sales represented by accounts charged off as worthless may be credited against the tax due on a subsequent return filed within 3 years of the charge-off, but, if any such accounts are thereafter collected by the retailer, a tax must be paid upon the amounts so collected.

Id. § 1811-A.

A “retailer” as used in Section 1811-A is defined as “a person who makes retail sales or who is required to register by Section 1754-B or who is registered under section 1756. *Id.* § 1752(10). A “person” as used in Section 1752(10) is defined as “an individual, firm, partnership, association, society, club, corporation, financial institution, estate, trust, business trust, receiver, assignee or any other group or combination acting as a unit, the State or Federal Government or any political subdivision or agency of either government.”¹ *Id.* § 111-3.

In interpreting a statute, we look first to the “plain meaning of the statutory language to give effect to the Legislature's intent.” *State Tax Assessor v. TracFone Wireless, Inc.*, [year 1] ME 36, ¶ 12, 276 A.3d 521, 525. We look beyond that language to examine other indicia of legislative intent only if the language is ambiguous. *Id.* Further, we construe tax credits narrowly because “[s]uch special privileges are in conflict with the universal obligation of all to

¹ We note the definition of “person” in Section 1752 was repealed by PL 2003, c. 390, §6.

contribute a just proportion toward the public burdens.” *Goggin v. State Tax Assessor*, 2018 ME 111, ¶ 14, 191 A.3d 341, 345.

The Maine Law Court first considered the application of Section 1811-A in *Daimlerchrysler Servs. N. Am. v. State Tax Assessor*, 2003 ME 27, 817 A.2d 862. Therein, a retailer related to Daimlerchrysler sold automobiles at retail to Maine customers. To facilitate the sale, the retailer entered into an installment contract with the customers. Once the sale was completed and sales tax paid, the retailer transferred the installment contracts to Daimlerchrysler. When customers defaulted under the contracts, Daimlerchrysler suffered losses and charged off the related accounts as worthless on its books. The Law Court found Daimlerchrysler could not claim the Section 1811-A credit under these circumstances. The Law Court explained:

The only actor recited in the statute is the “retailer,” and, thus, a logical and reasonable interpretation is that the Legislature intended the "retailer" to be the actor for all of the verbs. Thus, the statute can be read as follows:

The tax paid [by the retailer] on sales represented by accounts charged off [by the retailer] as worthless may be credited [by the retailer] against the tax due on a subsequent report filed [by the retailer] within 3 years of the charge-off, but, if any such accounts are thereafter collected by the retailer, a tax shall be paid [by the retailer] upon the amounts so collected.

Id. 2003 ME 27, ¶ 12, 817 A.2d 862, 865. The Law Court further explained:

A plain reading of section 1811-A reveals that a person seeking a benefit from it must demonstrate: (1) a tax was paid on sales; (2) the tax was paid on accounts that the person has charged-off as worthless; and (3) the charge-off was made within three years of filing a sales tax report. Furthermore, by its plain language the statute allows only for a credit. If the Legislature had intended to provide for a refund instead of a credit or in addition to a credit, it knew how to do so.

Id. 2003 ME 27, ¶ 8, 817 A.2d 862, 864.

The Maine Law Court again revisited the interpretation of Section 1811-A in the context of automobile retailers in *Linnehan Leasing v. State Tax Assessor*, 2006 ME 33,

898 A.2d 408. In *Linnehan*, as in *Daimlerchrysler*, a retailer of automobiles sold cars to customers under an installment contract which it then transferred to a related financing company. When customers defaulted, the related company charged off the debts as worthless on its accounts. However, in *Linnehan*, it was the retailer and not the financing company that sought to avail itself of the Section 1811-A credit. Nevertheless, because the retailer, *Linnehan*, had not charged off the debts as worthless on its accounts, the Law Court found *Linnehan* could not avail itself of the credit. *Linnehan Leasing*, 2006 ME 33, ¶ 3, 17-26, 898 A.2d 408, 413-415. The Law Court also rejected the argument that the retailer be able to claim the credit under a theory that *Linnehan*, the retailer, and the related financing company might somehow constitute a single “retailer” for the purposes of Section 1811-A. *Id.* 2006 ME 33, ¶¶ 22-23, 898 A.2d 408, 414.

Linnehan’s argument that the retailer and related financing company constituted one person for purposes of Section 1811-A hung on the statutory definition of “person.” As discussed above, a “person” for purposes of Section 1811-A and with respect to the definition of the term “retailer” under Section 1752(10) is defined as “an individual, firm, partnership, association, society, club, corporation, financial institution, estate, trust, business trust, receiver, assignee or any other group or combination acting as a unit...” 36 M.R.S.A. § 111(3). The Law Court opined:

Linnehan's interpretation of the statutory definition of person ignores the word “other” and would read all the individually named entities out of [] section 111(3), leaving a definition of “person” that would read "any individual . . . or any . . . group or combination acting as a unit." Such an interpretation would be inconsistent with our rules of statutory construction. Those rules require that the word “corporation” within section 1752(9) or section 111(3) have a separate meaning. The reference in the law to “other” groups or combinations is a catch-all phrase, applying to any other possible organizational entities that may be identified; it is not a device to allow separate corporations to be treated as a single entity under the tax code when such single entity treatment suits their purpose.

Linnehan Leasing, 2006 ME 33, ¶¶ 22-23, 898 A.2d 408, 414.

III. Discussion

The Company wishes to distinguish the present case from *Linnehan* through two arguments. First, the Company argues that the Company, Affiliate, and Parent constitute a unitary business and, therefore, should constitute a single retailer. Second, the Company argues that it should not fail the second part of the *Daimlerchrysler* test—that the tax was paid on accounts that the person has charged-off as worthless—because the accounts were transferred back to the Company by the Affiliate. We consider each argument, in turn, below.

A unitary business “means a business activity which is characterized by unity of ownership, functional integration, centralization of management and economies of scale.” 36 M.R.S.A. § 5102(10-A). Annually, Maine imposes a tax on the income of “each group of corporations that derives income from a unitary business carried on by two or more members of an affiliated group.” 36 M.R.S. § 5200(1).

The Maine Board of Tax Appeals previously considered a similar issue of statutory interpretation in *Corporate Taxpayer v. Me. Revenue Servs.*, BTA-2022-3 (Me. Bd. Tax App. March 3, 2024). At issue was the Corporate Taxpayer’s use of the Maine Capital Investment Credit (MCIC), 36 M.R.S. § 5219-NN,² generated by one member of its unitary group to offset the tax liability of the whole. Construing the plain language of the statute in light of the definition of “taxable corporation”³ as used therein, and other language within the statutory

² 36 M.R.S. § 5219-NN provides:

I. Credit allowed. A taxpayer that claims a depreciation deduction under the Code, Section 168(k) for property placed in service in the State. . . is allowed a credit as follows:

A. A taxable corporation is allowed a credit against the taxes imposed by this Part in an amount equal [9% of the net increase in the depreciation deduction reported as an addition to income] with respect to that property...

³ A “taxable corporation” is defined by 36 M.R.S. § 5102(10) as:

scheme,⁴ we found the MCIC was limited to use by a single taxable corporation and unavailable for use to offset the tax liability of other entities within the unitary business. *Id.*

In the present matter, we find that a plain reading of the section 1811-A and the surrounding statutory scheme in conjunction with the prior decisions of the Law Court compel the conclusion that “the retailer” as used in Section 1811-A and defined in Section 1752(10) does not include the entire unitary business of which the retailer forms a part. *See Linnehan Leasing*, 2006 ME 33, ¶¶ 22-23, 898 A.2d 408, 414. No adjustment is warranted on this basis.

We next consider whether the transfer by the Affiliate finance company of the worthless accounts back to the Company, which was the original retailer, allows for the Company to claim the Section 1811-A credit. We find that it cannot. The statute requires that it be the retailer that charges off as worthless the accounts related to the sales taxes paid. *See Daimlerchrysler*, 2003 ME 27, ¶¶ 8-12, 817 A.2d 862, 864-5. Here, according to the facts presented, the Affiliate charged off as worthless the accounts at issue and then transferred the worthless accounts back to the Company for no consideration. Therefore, the Company necessarily fails the second prong of the *Daimlerchrysler* test. *See id.* No adjustment is warranted on this basis. We uphold the decision of MRS in full.

for any taxable year, a corporation that has nexus with this State pursuant to section 5200-B, including any corporation with income subject to federal tax under the Code, Section 1374 or 1375, and that has, at any time during that taxable year, realized Maine net income.

⁴ We observed:

In imposing and setting the rates of the corporate income tax, [36 M.R.S.A.] 5200 differentiates between a single “taxable corporation” and a “group of corporations that derives income from a unitary business carried on by 2 or more members of an affiliated group.” *See id.* § 5200(1)-(1-A). Further, the definition of the phrase “Maine net income” as used in the definition of “taxable corporation” also differentiates between a single corporate entity and a unitary group. [*Id.* § 5102(8).]

III. Decision

Based on the law and evidence presented, we uphold the Decision on Reconsideration issued by MRS denying the Company's claim for a refund of Maine sales tax for the period [date], [year 1], through [date], [year 2], in full. The Company is not entitled to claim the bad-debt credit pursuant to 36 M.R.S.A. §1811-A for bad debts that the Affiliate charged off as worthless on its accounts and transferred back to the Company.

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 from 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