SUPREME JUDICIAL COURT OF MAINE

State Tax Assessor v. Fifth Generation, Inc.

2026 ME 30 · No. Ken-24-490 · Decided April 2, 2026

SUMMARY

The Maine Supreme Judicial Court affirmed summary judgment reinstating a $748,531.95 withholding-tax, interest, and penalty assessment against Fifth Generation, Inc., a Texas-based liquor manufacturer. The court held that Fifth Generation had a Maine tax nexus because it retained title to spirits stored in an in-state bailment warehouse and sold them to the State within Maine. The court further held that the federal interstate-commerce tax exemption under 15 U.S.C. § 381(a) did not apply and rejected the company's Commerce Clause challenge to Maine's regulatory scheme.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Mead, J.; Stanfll, C.J.; Connors, J.; Lawrence, J.; Douglas, J.
JURISDICTION	Maine Supreme Judicial Court
DECIDED	April 2, 2026
DOCKET	Ken-24-490
DISPOSITION	affirmed
PROCEDURAL POSTURE	Fifth Generation appealed from a Superior Court summary judgment vacating the Maine Board of Tax Appeals decision and reinstating the State Tax Assessor's assessment of withholding tax, interest, and penalties.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, viewing the evidence in the light most favorable to the nonmoving party; summary judgment is proper when no genuine issue of material fact exists and the prevailing party is entitled to judgment as a matter of law. Constitutional issues are reviewed de novo, and statutes are presumed constitutional unless the challenger demonstrates a convincing conflict with the Constitution.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Fifth Generation, Inc. v. State Tax Assessor

TOPICS

pass-through taxation · state and local tax · tax penalties · commerce clause · tax court procedure

PRACTICE AREAS

state and local taxation · administrative law · constitutional law · appellate procedure

QUESTIONS PRESENTED

1. Whether Fifth Generation had a sufficient nexus with Maine to be subject to Maine pass-through-entity income-tax withholding requirements.
2. Whether Fifth Generation qualified for the federal Interstate Income Tax Act exemption under 15 U.S.C. § 381(a).
3. Whether Maine's delayed-transfer-of-title and bailment-warehouse requirements violated the Commerce Clause.
4. Whether the Superior Court properly declined to waive or abate penalties based on substantial authority justifying Fifth Generation's failure to file or pay.

HOLDINGS

1. Fifth Generation had a nexus with Maine because it retained title to tangible goods stored in Maine and sold those goods to the Bureau through transactions occurring in Maine.
2. Fifth Generation was not entitled to the exemption under 15 U.S.C. § 381(a) because its compelled storage of spirits in Maine and delayed transfer of title served the independent business function of selling alcohol, rather than merely soliciting or facilitating requests for sales.
3. Maine's delayed-transfer-of-title and bailment-warehouse requirements did not unlawfully evade 15 U.S.C. § 381(a) because they served legitimate state purposes in regulating the sale and distribution of alcohol.
4. The delayed-transfer-of-title and bailment-warehouse requirements did not violate the Commerce Clause because they applied equally to in-state and out-of-state suppliers and did not discriminate against interstate commerce.
5. The Superior Court properly declined to waive or abate the penalties because Fifth Generation failed to establish substantial authority justifying its failure to file or pay Maine withholding tax.

KEY QUOTATIONS

> *"Because Fifth Generation owned and sold tangible property in Maine, it had a nexus with Maine for income-tax purposes."* (¶ 17)

> *"As a result of the firm nexus with the state and the still-good law of Heublein, we conclude that § 381(a) does not provide an exemption from state tax."* (¶ 35)

> *"Here, the Bureau's requirements delaying the transfer of title and storing spirits in a bailment warehouse do not discriminate between in-state and out-of-state businesses and individuals."* (¶ 38)

FACTUAL BACKGROUND

Fifth Generation, a Texas-based S corporation and producer of Tito's Vodka, supplied increasing quantities of spirits to Maine from 2011 through 2017 but filed no Maine pass-through-entity withholding or income-tax returns. Maine's three-tiered alcohol-distribution system required Fifth Generation to ship its products to a state-contractor-operated bailment warehouse, maintain inventory there, and delay transfer of title to the State until the spirits were removed for shipment to agency liquor stores. Fifth Generation retained title while the spirits were in the warehouse, and its licensed broker accessed the warehouse and withdrew spirits several times per year. The State assessed $748,531.95 in withholding tax, interest, and penalties.

PROCEDURAL HISTORY

Maine Revenue Services audited Fifth Generation for 2011 through 2017 and assessed withholding tax, interest, and penalties totaling $748,531.95. The Board of Tax Appeals cancelled the assessment after concluding that Fifth Generation lacked an income-tax nexus with Maine. The State Tax Assessor sought de novo judicial review in the Superior Court, which granted summary judgment for the Assessor and reinstated the assessment. The Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Avis Rent A Car Sys., LLC v. Burrill, 2018 ME 81, ¶ 2, 187 A.3d 583
- Badler v. University of Maine System, 2022 ME 40, ¶ 5, 277 A.3d 379
- Frost v. Chaplin Motor Co., 138 Me. 274, 25 A.2d 225 (1942)
- Cadwallader v. Clifton R. Shaw, Inc., 127 Me. 172, 142 A. 580 (1928)
- Peterson v. State Tax Assessor, 1999 ME 23, 724 A.2d 610
- Wisconsin Department of Revenue v. William Wrigley, Jr., Co., 505 U.S. 214 (1992)
- Heublein, Inc. v. South Carolina Tax Commission, 409 U.S. 275 (1972)
- Tennessee Wine & Spirits Retailers Ass'n v. Thomas, 588 U.S. 504 (2019)
- North Dakota v. United States, 495 U.S. 423 (1990)
- Granholm v. Heald, 544 U.S. 460 (2005)
- John Swenson Granite, Inc. v. State Tax Assessor, 685 A.2d 425 (Me. 1996)
- State Tax Assessor v. Kraft Foods Group, Inc., 2020 ME 81, 235 A.3d 837