

STATE OF MAINE  
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS  
DOCKET NO. BTA-2017-12

[INDIVIDUAL TAXPAYER]

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayer (the “Taxpayer”)] appeals from an assessment of potato tax, interest, and failure-to-file penalties issued by Maine Revenue Services (“MRS”) for the period [year 1] through [year 3], on the ground that the assessment is overstated. Based upon the evidence presented and the applicable law, we uphold the assessment in full.

#### I. Background

At all relevant times, [the Taxpayer] was a sole proprietor seller of potatoes, purchasing potatoes from growers and vendors, both in Maine and out-of-state, and selling them to various retailers. [The Taxpayer] did not register as a potato “shipper” as required by 36 M.R.S. § 4605(4), and neither filed potato tax returns nor paid potato tax as required by subsections 4605(1), (6).

MRS conducted an audit of [the Taxpayer]’s books and records for the period at issue. According to his sales records, [the Taxpayer] sold [n4] pounds of potatoes during those three years, of which [n1] pounds were purchased tax-paid from Maine growers or vendors and [n2] were purchased tax-exempt from out-of-state growers. The balance—[n3] pounds—represents untaxed Maine-grown potatoes sold by [the Taxpayer] during the subject period. Consequently,

MRS issued an assessment of potato tax in the amount of \$[amount], interest of \$[amount], and failure-to-file penalties of \$[amount], for a total assessment of \$[amount]. [The Taxpayer] requested that MRS reconsider the assessment, upon which MRS upheld the assessment in full. [The Taxpayer] then filed this appeal with the Maine Board of Tax Appeals (the “Board”).

On appeal, [the Taxpayer] argues that the assessment is overstated because MRS taxed him on potatoes that he did not sell or that were not subject to tax. MRS argues that [the Taxpayer]’s appeal must be dismissed as untimely-filed. It is [the Taxpayer]’s burden to show that his appeal is timely and that the assessment is incorrect. 36 M.R.S. § 151-D(10)(F).

## II. Discussion

Maine imposes potato tax “at the rate of \$.06 per hundredweight<sup>1</sup> on all potatoes grown in [Maine].” 36 M.R.S. § 4605(1). Excepted from the tax, however, are potatoes kept by the grower “for seed purposes or for home consumption” and potatoes “certified as unmerchantable by a federal state inspector.” *Id.* Each shipper of potatoes is required to register with the State Tax Assessor and, “on or before the last day of each month, [to] report to the State Tax Assessor the quantity of potatoes received, sold or shipped by the shipper during the preceding calendar month.” *Id.* § 4605(4), (6). A “shipper” of potatoes includes an agent or broker who sells potatoes on behalf of others, a dealer or processor licensed under Title 7 M.R.S., and a grower when selling to anyone other than an agent, broker, dealer, or processor. 36 M.R.S. § 4602(9).

MRS is authorized to inspect a shipper’s books and records “for the purpose of determining what potatoes are taxable . . . and for the purpose of verifying any statement or return made by any shipper.” *Id.* § 4605(7).

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<sup>1</sup> A “hundredweight” is defined as “a unit equal to 100 pounds—called also short hundredweight.” *Webster’s Third New International Dictionary* 1102 (1993). It may be abbreviated “CWT.” *Id.* 562.

## A. Timeliness of the Appeal

We first consider whether, as MRS argues, [the Taxpayer]’s appeal is untimely and must be dismissed. An appeal filed with the Board is timely if the taxpayer files “a written statement of appeal with the board within 60 days after receipt of the reconsidered decision.” 36 M.R.S. § 151(2)(F). MRS contends, however, that under 36 M.R.S. § 111(2), [the Taxpayer]’s appeal was untimely because he filed it 70 days after the date the Decision on Reconsideration was mailed to him. We disagree.

Section 111(2) of Title 36 provides in pertinent part, that

“[n]otice” means written notification served personally, sent by certified mail or sent by first-class mail to the last known address of the person for whom the notification is intended. . . . Notice by first-class mail is deemed to be received 3 days after the mailing, excluding Sundays and legal holidays.

*Id.* Circumstances to which section 111(2) applies include the issuance of an assessment,<sup>2</sup> the issuance of an estimated assessment,<sup>3</sup> the declaration of jeopardy for purposes of issuing a jeopardy assessment,<sup>4</sup> the requesting of reconsideration of an assessment or other determination,<sup>5</sup> the scheduling of an appeals conference,<sup>6</sup> and the issuance of a demand to pay taxes owed.<sup>7</sup>

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<sup>2</sup> “If the assessor determines that the amount of tax shown on the return is less than the correct amount, the assessor shall assess the tax due the State and provide notice to the taxpayer of the assessment.” 36 M.R.S. § 141(1).

<sup>3</sup> “If a person who has failed to file a return does not provide to the assessor, within 60 days of receipt of notice, information that the assessor considers necessary to determine the person’s tax liability for that period, the assessor may assess an estimated tax liability based upon the best information otherwise available.” 36 M.R.S. § 141(2)(C).

<sup>4</sup> “If the State Tax Assessor determines that the collection of any tax will be jeopardized by delay, the assessor, upon giving notice of this determination to the person liable for the tax by personal service or certified mail, may demand an immediate return with respect to any period or immediate payment of any tax declared to be in jeopardy, or both, and may terminate the current reporting period and demand an immediate return and payment with respect to that period.” 36 M.R.S. § 145.

<sup>5</sup> “A person who is subject to an assessment by the State Tax Assessor or entitled by law to receive notice of a determination of the assessor and who is aggrieved as a result of that action may request in writing, within 60 days after receipt of notice of the assessment or the determination, reconsideration by the assessor of the assessment or the determination. If a person receives notice of an assessment and does not file a petition for reconsideration within the specified time period, a review is not available in Superior Court or before the board regardless of whether the taxpayer subsequently makes payment and requests a refund.” 36 M.R.S. § 151(1).

Conversely, the plain language of the appeal statute provides that an appeal from an adverse determination on reconsideration may be taken “within 60 days after receipt of the reconsidered decision.” 36 M.R.S. § 151(2)(F). The only evidence presented regarding the date of [the Taxpayer]’s receipt of the reconsidered decision was [the Taxpayer]’s credible oral statement that he received it on [date], which renders his appeal timely filed on [date]; the 59<sup>th</sup> day.

Contrary to MRS’s contention, section 111(2) has no bearing on the time within which a taxpayer may file an appeal with the Board, which is entirely governed by section 151(2)(F). We will not observe a different filing deadline for appealing an MRS assessment or determination than that imposed by the Legislature.<sup>8</sup> Accordingly, the request to dismiss the appeal is denied.

#### B. Assessment of Potato Tax

Based on [the Taxpayer]’s records, MRS determined that he was liable for potato tax on [n3] CWT of Maine-grown potatoes for the years at issue. [The Taxpayer] argues that the assessment is overstated and must be cancelled in full. He contends that he is “being charged for potatoes that never went to market,” and that the assessment is based on an “excessively high yield [of potatoes] with no allowance for potatoes of off grade or potatoes that were dumped.” However, the assessment was based on [the Taxpayer]’s own records of potatoes that he sold, with allowances for potatoes that were tax-paid and for potatoes that were tax-exempt. [The

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<sup>6</sup> “The appeals office shall provide a petitioner with at least 10 working days' notice of the date, time and place of an appeals conference.” 36 M.R.S. § 151-D(10)(B).

<sup>7</sup> “If any tax imposed by this Title is not paid on or before its due date and no further administrative or judicial review of the assessment is available under section 151, the assessor, within 3 years after administrative and judicial review have been exhausted, may give the taxpayer notice of the amount to be paid, specifically designating the tax, interest and penalty due, and demand payment of that amount within 10 days of that taxpayer's receipt of notice. The notice must be given by personal service or sent by certified mail. . . .” 36 M.R.S. § 171(1).

<sup>8</sup> We note that even if the provisions of section 111(2) were applicable to the present case, MRS did not show that it actually deposited the Decision on Reconsideration in the United States Mail, postage prepaid, on [date].

Taxpayer]’s arguments do not establish that the assessment of potato tax, as thus computed, is incorrect. No adjustment to the assessment is warranted.

### III. Decision

We find that the appeal in this matter was timely-filed. After considering the evidence submitted and the applicable law, we uphold the assessment 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. During the 60-day period in which an appeal may be filed with the Superior Court, [the Taxpayer] may contact Maine Revenue Services at 207-624-9725 for the amount of tax that is currently due, together with any interest or penalties owed. After that 60-day period has expired, Maine Revenue Services will contact [the Taxpayer] with an updated amount of tax and any interest or penalties due at that time.

Issued by the Board: March 29, 2018