

[INDIVIDUAL TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayer (the “Taxpayer”)] appeals from an assessment of Maine individual income tax, interest, and penalties in the total amount of \$[amount], issued by Maine Revenue Services (“MRS”) for tax year 2017. After considering the procedural history of the case, we dismiss the appeal as untimely filed.

I. Background

At all relevant times, the Taxpayer was a Maine resident individual, residing in [Town], Maine. The Taxpayer timely filed his 2017 Maine income tax return, claiming certain credits and reporting no Maine income tax liability. MRS disallowed the Taxpayer’s claim of credit and issued the subject assessment. The Taxpayer timely requested that MRS reconsider its assessment and, on October 10, 2018, MRS issued a reconsidered decision cancelling the assessed penalties but otherwise upholding the assessment in full. The Taxpayer received MRS’s reconsidered decision on October 18, 2018, and sent a Statement of Appeal to the Board on December 12, 2018, using the United Parcel Service Ground (“UPS Ground”) courier service. However, the Board did not receive the Taxpayer’s Statement of Appeal until January 3, 2019.

MRS argues that the Board must dismiss the Taxpayer’s appeal as untimely filed with the Board. It is the Taxpayer’s burden to show that his appeal was timely filed. 36 M.R.S. § 151-D (10)(F).

II. Discussion

As provided under 36 M.R.S. § 151(2)(F)(1), a taxpayer must file an appeal to the Board “within 60 days after receipt” of MRS’s reconsidered decision. If the taxpayer does not file an appeal within the 60-day period, “the reconsidered decision becomes final and no further review is available.” *Id.* § 151(2)(F). Where a taxpayer files a Statement of Appeal by mail, “the date of the United States Postal Service postmark stamped on the envelope is deemed to be the date of filing” *Id.* § 153(1). The reference in section 153(1) to the United States Postal Service “is deemed to include a reference to any delivery service designated by the United States Secretary of the Treasury pursuant to section 7502(f)(2) of the [Internal Revenue] Code,” and the reference to a postmark “is deemed to include a reference to any date recorded or marked as described in section 7502(f)(2)(C) of the Code by any such designated delivery service.” *Id.* § 153(1).

The IRS has listed all private delivery services designated pursuant to I.R.C. § 7502(f)(2), in Notice 2016-30, Designation of Private Delivery Services. According to the IRS, “[o]nly the specific delivery services enumerated in this list are designated delivery services for purposes of section 7502(f).” IRS Notice 2016-30, p. 2. According to IRS Notice 2016-30, seven United Parcel services are listed as section 7502(f)(2) designated delivery services. Unfortunately, UPS Ground service is not among those seven listed United Parcel services. As a result, the filing provisions of section 153 do not apply in this case, and the Taxpayer’s appeal was not filed with the Board until January 3, 2019, when the Board actually received the Statement of Appeal.

Because the Taxpayer received MRS's reconsidered decision on October 18, 2018, the deadline for filing the appeal was December 17, 2018. 36 M.R.S. § 151(2)(F)(1). The date on which the appeal was filed with the Board, January 3, 2019, was 17 days beyond the statutory deadline. We therefore dismiss the Taxpayer's appeal as untimely filed without reaching the underlying merits of the case. No other ruling is warranted.

III. Decision

The appeal is dismissed as untimely filed.

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. If the Taxpayer wishes to contact Maine Revenue Services during the 60-day period, the correct contact number is 207-624-9595.

Issued by the Board: October 2, 2019

Part III - Administrative, Procedural, and Miscellaneous

Designation of Private Delivery Services

Notice 2016-30

This notice updates the list of designated private delivery services (“designated PDSs”) set forth in Notice 2015-38, 2015-21 I.R.B. 21, for purposes of the timely mailing treated as timely filing/paying rule of section 7502 of the Internal Revenue Code, and provides rules for determining the postmark date for these services. These changes are effective April 11, 2016.

BACKGROUND

Section 7502(f) authorizes the Secretary to designate certain private delivery services (“PDSs”) for the timely mailing treated as timely filing/paying rule of section 7502. Revenue Procedure 97-19, 1997-1 C.B. 644, provided rules to apply to be a designated PDS, as well as setting forth the criteria for eligibility for designation as a PDS. Originally, under Rev. Proc. 97-19, there was a semi-annual application period for designation as a PDS with set dates for announcing the list of designated PDSs to the public. The current rules provide that there is one annual application period to apply for designation, ending on June 30th, and the list of designated PDSs is updated

as PDSs are added or removed from the list. See Notice 97-50, 1997-2 C.B. 305, and Notice 99-41, 1999-2 C.B. 325. In addition, the address for submitting applications listed in Rev. Proc. 97-19 was updated in Notice 2015-38, 2015-21 I.R.B. 21.

Notice 97-26, 1997-1 C.B. 413, provided the first list of designated PDSs as well as special rules to determine the date that will be treated as the postmark date for purposes of section 7502, including certain presumption rules and rules for overcoming the presumption. The list of designated PDS services was updated by Notice 97-50, Notice 99-41, Notice 2001-62, 2001-2 C.B. 307, Notice 2002-62, 2002-2 C.B. 574, Notice 2004-83, 2004-2 C.B. 1030, and Notice 2015-38, 2015-21 I.R.B. 21.

NATURE OF CHANGES

The IRS is adding eight new delivery services to the list of designated delivery services. DHL Express: DHL Express 9:00, DHL Express 10:30, DHL Express 12:00, DHL Express Worldwide, DHL Express Envelope, DHL Import Express 10:30, DHL Import Express 12:00, and DHL Import Express Worldwide are added to the list published in Notice 2015-38.

This notice also extends the rules provided in Notice 2015-38 for determining the postmark date for documents delivered by a designated delivery service to the newly designated delivery services referenced above.

LIST OF DESIGNATED PDSs

Effective April 11, 2016, the list of designated PDSs is as follows:

DHL Express:

1. DHL Express 9:00
2. DHL Express 10:30
3. DHL Express 12:00
4. DHL Express Worldwide
5. DHL Express Envelope
6. DHL Import Express 10:30
7. DHL Import Express 12:00
8. DHL Import Express Worldwide

FedEx:

1. FedEx First Overnight
2. FedEx Priority Overnight
3. FedEx Standard Overnight
4. FedEx 2 Day
5. FedEx International Next Flight Out
6. FedEx International Priority
7. FedEx International First
8. FedEx International Economy

UPS:

1. UPS Next Day Air Early AM
2. UPS Next Day Air

3. UPS Next Day Air Saver
4. UPS 2nd Day Air
5. UPS 2nd Day Air A.M.
6. UPS Worldwide Express Plus
7. UPS Worldwide Express.

Only the specific delivery services enumerated in this list are designated delivery services for purposes of section 7502(f). DHL Express, FedEx, and UPS are not designated with respect to any type of delivery service not enumerated in this list. Taxpayers are cautioned that merely because a delivery service is provided by DHL Express, FedEx, or UPS, it does not mean that the service is designated for purposes of the timely mailing treated as timely filing/paying rule of section 7502.

This list of designated PDSs and designated services will remain in effect until further notice. The IRS will publish a subsequent notice setting forth a new list only if a designated PDS (or service) is added to, or removed from, the current list, or if there is a change to the application and/or appeal procedures. Delivery services requesting to be designated in time for an upcoming filing season must submit applications by June 30th of the year preceding that filing season, as required by Rev. Proc. 97-19, as modified by Notice 97-50.

SPECIAL RULES FOR DETERMINING POSTMARK DATE IN THE CASE OF A PDS

Section 7502(f)(2)(C) requires a PDS to either (1) record electronically to its data

base (kept in the regular course of its business) the date on which an item was given to the PDS for delivery or (2) mark on the cover of the item the date on which an item was given to the PDS for delivery. Under section 7502(f)(1), the date recorded or the date marked by the PDS under section 7502(f)(2)(C) is treated as the postmark date for purposes of section 7502.

For each PDS designated in this notice, the delivery service records electronically the date on which an item was given to it for delivery, which is treated as the postmark date for purposes of section 7502. Under this notice, the postmark date for an item delivered after the due date is presumed to be the day that precedes the delivery date by an amount of time that equals the amount of time it would normally take for an item to be delivered under the terms of the specific type of delivery service used (*e.g.*, two days before the actual delivery date for a two-day delivery service).

Taxpayers who wish to overcome this presumption must provide information that shows that the date recorded in the delivery service's electronic database is on or before the due date, such as a written confirmation produced and issued by the delivery service. Each delivery service stores the date recorded in its database only for a finite period, but for no less than six months. Senders or recipients using a designated delivery service can obtain information concerning the date recorded by contacting the designated delivery service. Contact information for each delivery service is available on the company's website.

ADDRESS FOR SUBMITTING APPLICATIONS

The application address first provided in Rev. Proc. 97-19 and modified by Notice 2015-38 remains in effect. Applications must be submitted to:

Internal Revenue Service
Postal and Transport Policy Section, PDS
MC 7015 NDAL
4050 Alpha Road
Dallas, TX 75244

The above address is also where a PDS may write to: (1) obtain administrative review of a letter of denial of designation under section 9.03 of Rev. Proc. 97-19; (2) appeal a letter confirming the denial of designation under section 9.06 of Rev. Proc. 97-19; (3) provide prompt written notification to the IRS of any change in application information under section 10.01 of Rev. Proc. 97-19; and (4) appeal the issuance of a proposed revocation letter under section 12.03 of Rev. Proc. 97-19.

EFFECT ON OTHER DOCUMENTS

Notice 2015-38, 2015-21 I.R.B. 21, is modified and, to the extent modified, superseded.

EFFECTIVE DATE

This notice is effective on April 11, 2016.

FOR FURTHER INFORMATION

The principal author of this notice is Steven L. Karon of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this

notice contact Steven L. Karon at (202) 317-6834 (not a toll-free call).