

STATE OF MAINE
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS
DOCKET NO. BTA-2019-3

[INDIVIDUAL TAXPAYER],

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Individual Taxpayer] (the “Taxpayer”) appeals from an assessment of sales tax (responsible person), interest, and penalties, issued by Maine Revenue Services (“MRS”) for the period August 1, 2017, through October 31, 2017. The Taxpayer argues that the assessment must be cancelled in full. As discussed below, we conclude that we are without jurisdiction to decide this appeal and we therefore dismiss it.

I. Background

Prior to the period at issue, the Taxpayer operated a small retail store in [Town], Maine. In April 2017, the business was purchased by a Maine corporation (the “Company”) and the Taxpayer became a 10% owner of the Company. In May 2017, the Company registered with MRS for sales tax purposes, and on June 1, 2017, the Company began doing business. The Company timely filed its 2017 and 2018 Annual Reports with the Secretary of State and listed the Taxpayer as its Secretary and Treasurer in each year.

In late 2017 or early 2018, MRS determined that the Company had failed to pay sales tax on its August, September, and October 2017 sales. Consequently, in May 2018, MRS issued an

assessment against the Company for the tax due, together with interest and penalties. MRS also determined that the Taxpayer was a person responsible for the sales tax liability of the Company, and so, in June 2018, it issued the subject assessment against him personally in the total amount of \$[amount]. According to MRS, notice of the assessment against the Taxpayer was sent to him by first-class mail, correctly addressed, in June 2018, however MRS did not receive a request to reconsider the assessment until October 2018. MRS subsequently denied the Taxpayer's request for reconsideration as untimely filed and the Taxpayer then submitted his timely appeal to the Board.

An Appeals Conference was conducted in November 2019 at which both the Taxpayer and MRS participated. The Taxpayer explained at the conference that, during 2018, all mail addressed to him was deposited by the United States Postal Service into the mailbox located at his residence. The Taxpayer stated that he did not specifically recall receiving the subject assessment, however his routine practice was to bring everything "official" that he received to his accountant on the day after he received it. The Taxpayer acknowledged that his accountant had submitted to MRS, on his behalf, a request to reconsider the assessment, but that he did not know when this had been done.

Based on the facts presented, the threshold issue in this case is whether the Board has jurisdiction to consider the appeal. It is the Taxpayer's burden to show by a preponderance of the evidence that the appeal is properly before the Board. 36 M.R.S. § 151-D(10)(F).

II. Discussion

The procedure for appealing a tax assessment is set forth in 36 M.R.S. § 151. A person who receives notice of an assessment may, "within 60 days after receipt," request MRS to

reconsider it. *Id.* § 151(1).¹ The statute further provides, however, that if the person does not request reconsideration within the specified time period, an appeal to the Board is “not available.” *Id.* In the present case, the above information was included on the face of the assessment to the Taxpayer.

The purpose of the tax appeals process is “to provide taxpayers with a fair system of resolving controversies with the bureau [of Revenue Services] and to ensure due process.” 36 M.R.S. § 151-D(1). However, where the controversy involves an assessment of tax,² the law clearly requires that MRS be given an opportunity to reconsider the assessment before an appeal may be taken. Furthermore, the Legislature has clearly prescribed the time within which a request for reconsideration must be made to MRS as a prerequisite to an appeal, and where a timely request for MRS to reconsider an assessment has not been made, the Legislature has provided that an appeal is “not available.” In such cases, we are without jurisdiction to consider the legality or propriety of the assessment.

The Taxpayer does not dispute that MRS mailed a copy of the assessment to him in June 2018 and he does not dispute that he received it. However, he has submitted insufficient evidence to show that a written request for reconsideration was sent to MRS within 60 days after he received notice of the assessment. Although unfortunate, we have no alternative but to dismiss the present appeal on this basis.

III. Decision

Based on the evidence presented and the applicable law, we dismiss the appeal on the ground that we are without jurisdiction to decide it.

¹ As used in section 151, “notice” of the assessment means written notification “sent by first-class mail to the last known address of the person for whom the notification is intended.” 36 M.R.S. § 111(2) (definition of “notice”).

² The term “tax” also includes any assessed interest and penalties provided by law. 36 M.R.S. § 111(5).

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.

Issued by the Board: February 19, 2020