

STATE OF MAINE  
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS  
DOCKET NO. BTA-2021-8

[CORPORATE TAXPAYER]

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Corporate Taxpayer] (the “Company”) appeals from a Decision on Reconsideration issued by Maine Revenue Services (“MRS”) rejecting the Company’s tax year [year 1] Business Equipment Tax Reimbursement (“BETR”) application (the “Application”) as untimely filed. The Company requests that the application be accepted as timely filed for the reasons discussed below. After considering the parties’ arguments and the evidence presented, we uphold MRS’s Decision on Reconsideration.

### I. Background

At all relevant times, the Company was a Maine corporation and a division of [a Canadian company]. Before further discussion of the background, a brief overview of the BETR program is warranted.

The BETR program encourages capital investment in Maine by providing a reimbursement scheme for certain taxes imposed on eligible property. 36 M.R.S.A. §§ 6652, 6659, 6653. BETR applications are typically due on December 31 of the year in which the taxes are paid. *Id.* § 6654. However, section 6654 gives MRS the power to extend the time for filing by a period not exceeding 60 days. For the tax year at issue, the Company requested, and MRS granted, a 60-day filing extension. Accordingly, the Company’s tax year [year 1] Application

was due on or before March 1, [year 2]. However, MRS advised the Company that it would accept its application if filed on or before March 2, [year 2].

The Company prepared its tax year [year 1] Application on the form provided by MRS and placed the Application in an envelope addressed to “Maine Revenue Services, P.O. Box 1064, Augusta, ME 04332-1064,” being the address printed upon the Application itself. According to an affidavit made by the Company employee charged with preparing the Application (the “Affidavit”), they delivered the Application to a Company administrative assistant charged with processing the outgoing mail on February 22, [year 2]. Further, also according to the Affidavit, they used this same procedure successfully in prior years without complication. Thereafter, the Application was mailed from [province in Canada] via the Canada Post.<sup>1</sup> However, the application was not delivered to MRS.

In early April, for reasons unknown to the parties, the Company received the Application back marked “return to sender, not deliverable as addressed, unable to forward,” and dated March 16, [year 2] by the United States Postal Service (“USPS”).<sup>2</sup> We note that, the address used by the Company, “Maine Revenue Services, P.O. Box 1064, Augusta, ME 04332-1064,” was, and is still, a valid MRS mailing address, and that said address was clearly and legibly printed on the envelope.<sup>3</sup> Though the address was clearly printed, both the postage and postmarks on the envelope were damaged and illegible. Upon return receipt of the Application, the Company resent the Application, this time addressed to “Maine Revenue Services, Property

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<sup>1</sup> We note that Canada Post is a Crown Corporation of Canada and the primary postal operator in Canada.

<sup>2</sup> The return label contained the word “NIXIE,” which indicates that it was generated by USPS’s Postal Automated Redirection System. See United States Postal Service, *Undeliverable as Addressed Process Flow*, available at [https://www.gsa.gov/cdnstatic/UAA\\_Mail\\_Process\\_Flow-Secure\\_Destruction.pdf](https://www.gsa.gov/cdnstatic/UAA_Mail_Process_Flow-Secure_Destruction.pdf) (last accessed June 1, 2022).

<sup>3</sup> See Maine Revenue Services, *Mailing Addresses for Forms and Applications*, available at [www.maine.gov/revenue/about/contact/mailling-addresses](http://www.maine.gov/revenue/about/contact/mailling-addresses) (last accessed June 1, 2022).

Tax Division, P.O. Box 9106, Augusta, ME 04332.” After receipt of the Application, MRS denied it as untimely filed after March 2, [year 2]. This appeal followed.

On appeal the Company argues that the Application was timely filed. In the alternative, the Company argues that it’s Application should be accepted because the use of the mailing address printed on the form resulted in the Company’s Application being returned as undeliverable by USPS. It is the Company’s burden to show that it is entitled to relief. 36 M.R.S. § 151-D(10)(F). We consider the matter de novo as to facts and law. *Id.* § 151(2)(G).

## II. Discussion

A document required or permitted to be filed by Title 36 is treated as filed on the day it is received by MRS. However, where a document is transmitted to MRS using the USPS, “the date of the [USPS] postmark stamped on the envelope is deemed to be the date of filing.” 36 M.R.S.A. § 153(1). Section 153(1) further provides that any reference to the USPS is deemed to include a reference to any delivery service designated by the United States Secretary of the Treasury pursuant to I.R.C. 7502(f)(2). Consistent with IRS guidance regarding I.R.C. 7502, we interpret section 153(1) to include documents mailed through Canada Post. *See* Rev. Rul. 2002-23, 2002-1 CB-811 (5/3/2002). Unfortunately, the postmark upon Company’s Application envelope is illegible, and the initial Application was returned to the Company.

Where the postmark is illegible, the sender must establish by competent evidence that the document was deposited with a designated delivery service, postage prepaid, and properly addressed on or before the due date. 36 M.R.S.A. § 153(1). The parties agree that the Company deposited the Application with a designated delivery service and that it was properly addressed within the meaning of the statute, though the Application was returned undeliverable. Accordingly, we examine whether the Company affixed sufficient postage to the Application and

whether the Company deposited the Application with the designated delivery service on or before the March 2, [year 2] due date.

In this case, the postage marks are illegible. However, the initial envelope was returned to the Company marked “return to sender, not deliverable as addressed, unable to forward” by the USPS. The Domestic Mail Manual provides various reasons for non-delivery by USPS. These reasons include both “not deliverable as addressed – unable to forward” and “returned for postage.” Domestic Mail Manual, United States Postal Service, 507.1.4.1, updated November 1, 2021. We find the return to sender label affixed to the envelope by the USPS to be sufficient evidence to establish that the Company’s Application was sent postage prepaid.<sup>4</sup>

Next, the postmark is illegible, and there is nothing printed upon the envelope which might indicate the date upon which it was mailed. In the absence of such evidence, the Company has produced the Affidavit of the employee charged with completion of the Application. As discussed above, the Affidavit asserts that the Application was delivered to a Company administrative assistant on February 22, [year 2] for mailing to MRS, and that the same procedure to file materials with MRS was “successfully used in prior years without complication.”

Although we are not bound by the rules of evidence, we frequently look to those rules for guidance. *See* 18-674 C.M.R. ch. 100, § 203 (2014). Generally, a person’s habit or an organization’s routine practice may be admitted “to prove that on a particular occasion the person or organization acted in accordance with that habit or routine practice.” *See* M.R. Evid. 406(a); *see also* *Levesque v. Cent. Me. Med. Ctr.*, 2012 ME 109, ¶ 27, 52 A.3d 933. Habit or

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<sup>4</sup> We further note that, as the Application was initially deposited in the Canada Post, the rate of postage was set and retained by Canada Post. *See* Universal Postal Union, *Terminal Dues*, available at <https://www.upu.int/en/Postal-Solutions/Programmes-Services/Remuneration/Terminal-Dues#terminal-dues-system> (last accessed June 1, 2022).

routine practice may be proved by showing "specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine." M.R. Evid. 406(b). As observed by the Maine Supreme Judicial Court, "[i]t is the notion of the invariable regularity that gives habit [or routine practice] evidence its probative force." *Arel v. Poirier*, 533 A.2d 1285, 1287 (Me. 1987). Here, we find the assertion of the affiant that delivering the BETR applications to an administrative assistant was "successfully used in prior years without complication" as insufficient to establish the presence of a habit or routine practice. Accordingly, we find that the Company has not shown that the Application was deposited with the designated delivery service on or before the due date.

Further, the Company must show that, within 15 days of its receipt of notification of MRS's nonreceipt of the of the Application, the Company filed a duplicate with MRS as measured by the same mailing rules discussed above. 36 M.R.S.A. § 153(1). Here, the Company has provided insufficient evidence to establish this fact. Therefore, no adjustment to MRS's decision is warranted on this basis.

Finally, the Company argues that its Application should be accepted because use of the mailing address supplied by MRS resulted in the Application being returned by USPS. Even so, the Company must establish, as discussed above, that the Company mailed the Application before the due date and that it filed a duplicate with MRS within 15 days of its receipt of notification of MRS's nonreceipt of the of the Application. *Id.* As the Company has not done so, no adjustment on this basis is warranted. We uphold the assessment in full.

### III. Decision

Based upon the evidence presented and the applicable law, we uphold MRS's Decision on Reconsideration rejecting the Company's BETR Application 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. During the 60-day period in which an appeal may be filed with the Superior Court, the taxpayer may contact Maine Revenue Services at 207-624-9595 for a statement of the amount then due. After that 60-day period has expired, Maine Revenue Services will contact the taxpayer with an updated statement of the amount or amounts due at that time.

BY ORDER OF THE BOARD

Date: \_\_\_\_\_, Chair/Member