

TAX APPEAL BOARD OF THE STATE OF DELAWARE

MARTIN BRUHL and DEBRA BRUHL,)
)
 Petitioners,)
)
 v.) Docket No. 1743
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

BEFORE: Todd C. Schiltz, Esq., Steven R. Director, Esq., Joan M. Winters,
CPA, Robert Slavin and M. Lynn Fuller

Martin Bruhl and Debra Bruhl, *pro se*, for Petitioners

Elizabeth R. McFarlan, Esq. Deputy Attorney General, for
Respondent

DECISION AND ORDER

1. The issue in this case is whether petitioners timely appealed the Director of Revenue’s August 18, 2018 Notice of Determination. While we are sympathetic to petitioners’ situation as they missed the appeal deadline by just one day, we are constrained by clear statutory language that requires the petitioners to appeal the Notice of Determination within a specified time. Petitioners failed to file a timely appeal, and, as a result, their appeal must be dismissed.

2. On August 18, 2018, the Director mailed the petitioners a Notice of Determination denying their protest of the Notice of Assessment for tax year 2016.

3. Pursuant to 30 *Del. C.* §§ 525 and 544, the petitioners had 60 days to file a petition with this Board challenging the Notice of Determination. 30 *Del. C.* § 525 (Notice of Determination becomes final 60 days after it is mailed unless a taxpayer seeks review thereof pursuant to section 544); 30 *Del. C.* § 544 (a Notice of Determination is subject to review by the Tax Appeal Board if the taxpayer files a petition with the Board prior to 60 days after the Notice of Determination is mailed to the taxpayer).

4. Sixty days after August 18, 2018 is October 17, 2018.

5. Petitioners concede that their “formal petition was postmarked October 18, 2018.” Petitioners’ Response to Motion to Dismiss.¹ This is outside the statutory 60 day window and, thus, untimely.

6. This Board routinely holds that it lacks jurisdiction over untimely petitions. *See Davis v. Director of Revenue*, Dkt. No. 1639 (Del. Tax. App. Bd. May 11, 2016) (ORDER at 2) (“As the petition was not timely filed, this Board lacks subject matter jurisdiction over this appeal and it must be dismissed.”).

7. We appreciate that the petitioners’ appeal was just one day late; however, the applicable statutes are clear as to when petitioners had to file their petition and the Board cannot ignore clear statutory language or create case-by-case exceptions thereto.

¹ The Tax Appeal Board uses the “mailbox rule” for purposes of determining whether a document is timely filed. Under this rule, a document mailed to the Board is filed timely if the postmark stamped on the envelope in which the document is mailed is dated on or before the due date. Tax Appeal Board Rule 4b.

8. Petitioners also appear to contend that the Board's secretary advised them that their petition was timely. This is incorrect. The secretary merely advised the petitioners that, per Tax Appeal Board Rule, they had to file seven copies of their petition, which they had not done, and that if they submitted six additional copies after they filed the original, she would deem all seven copies filed on October 18, 2018. The secretary is not responsible for determining the timeliness of submissions and has no authority to address or resolve that issue.

9. For the foregoing reasons, the Board dismisses the appeal.

Paul C. Seib

Robert W. Slaw

John M. Winter

M. Lynn Lauer

Cher R. West

SO ORDERED this 26th day of August, 2019.