

**BEFORE THE TAX APPEAL BOARD
OF THE STATE OF DELAWARE**

TERRY Z. DONOVAN and JOANNE	)	
L. DONOVAN,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 1888
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

DECISION AND ORDER

Respondent has moved to dismiss this proceeding arguing that the petition that petitioners Terry Z. Donovan and Joanne L. Donovan filed with this Board was untimely because it was filed more than 60 days after the July 29, 2025 Notice of Determination was mailed to petitioners. The postmarked envelope in which petitioners mailed their petition makes clear that their petition was untimely under the relevant statutes. Accordingly, the petition must be dismissed.

BACKGROUND

Petitioners filed a 2023 income tax return with the State of Delaware. Petitioners filed a Schedule C, business expense deductions, with the 2023 return claiming expense deductions associated with a landscaping business. The landscaping business generated a loss in 2023.

Upon review, an auditor for the State asked petitioners to submit proof of the claimed deductions on their Schedule C, contending that petitioners “have been taking losses for so many years that the IRS would immediately reclassify this as a hobby.” Thereafter, petitioners provided some receipts for 2023, but the auditor confirmed petitioners did not have a business license for landscaping in 2023 and confirmed his decision to classify the landscaping work as a hobby.

Petitioners protested that assessment and on July 29, 2025, the tax conferee issued a Notice of Determination rejecting petitioners’ protest. Among other things, the Notice of Determination stated:

If the taxpayer does not agree with this determination, Sections 525 and 544 of Title 30 of the Delaware Code provide that it may seek review of the determination by filing a written Petition with the Tax Appeal Board, within required form, within sixty days, Section 525 of Title 30 of the Delaware Code provides that this proposed assessment will constitute a final assessment, and the taxpayer will have no further rights to review of the proposed assessment.¹

¹ The Board believes the quoted paragraph contains a grammatical error and may fail to include other text. The Board believes the paragraph is clearer if written as follows:

If the taxpayer does not agree with this determination, Sections 525 and 544 of Title 30 of the Delaware Code provide that it may seek review of the determination by filing a written Petition with the Tax Appeal Board, within required form, within sixty days. **If a timely written Petition is not filed with the Tax Appeal Board,** Section 525 of Title 30 of the Delaware Code provides that this proposed assessment will constitute a final assessment, and the taxpayer will have no further rights to review of the proposed assessment.

While the paragraph is not as clear as it might be, the obligation to file a written petition within sixty days is clear and, at the very least, the paragraph puts petitioners on notice of Section 525. In addition, the Board does not believe that errors of this nature override the clear timelines mandated by the applicable Delaware statutes.

The Notice of Determination provided additional information regarding how to file a petition with this Board.

The Tax Appeal Board received petitioners' petition for review on November 3, 2025, more than sixty days after the issuance of the Notice of Determination. The envelope in which the petition arrived is postmarked October 29, 2025, again more than sixty-days after the Notice of Determination was issued.²

ANALYSIS

Section 524 of Title 30 of the Delaware Code provides that a Notice of Determination must be mailed to the taxpayer. 30 *Del. C.* § 524.

Section 525 of Title 30 of the Delaware Code provides that the Notice of Determination issued pursuant to Section 524 “shall be final (and such determination shall constitute a final assessment of any amount determined by the Director to be due) upon the expiration of 60 days (30 days in the case of withholding taxes or retail marijuana taxes, or, in the case of other taxes imposed by Chapter 11 of this title, 120 days if the taxpayer is outside the United States) from the date when the Director mails notice of the determination to the taxpayer, unless within such period the

² The Board applies the post box rule, meaning that if the petition is postmarked as being mailed before the expiration of the sixty-day period, it is timely. *See* TAB Rule 4a (“The date of the . . . postmark stamped on the cover in which such document is mailed shall be deemed the date of delivery of such document.”). Here, the petition was neither mailed nor received before the expiration of the sixty-days.

taxpayer seeks review of the Director’s determination pursuant to § 544 of this title.”

30 *Del. C.* § 525 (underlining added).

In pertinent part, Section 544 of Title 30 of the Delaware Code states, “A determination by the Director . . . shall be subject to review by the taxpayer’s filing a petition with the Tax Appeal Board . . . within the time limits specified in § 525 . . . of this title” 30 *Del. C.* § 544 (underlining added).

Here, the Notice of Determination was issued on July 29, 2025. The petition was not mailed until October 29, 2025 and the Tax Appeal Board did not receive petitioners’ petition until November 3, 2025, both of which are more than sixty days after the Notice of Determination was issued.

Petitioners’ opposition to the motion to dismiss contends they were not aware of the sixty-day deadline and that they mailed their petition on time. Petitioners offer no proof of a timely mailing and the postmark on the envelope that included their petition shows it was not mailed until October 29, 2025, after the sixty-day deadline. As for petitioners’ knowledge of the sixty-day deadline, they are responsible for understanding the deadlines that apply to petitions they wish to file with the Board.³

This Board has repeatedly held that it lacks subject matter jurisdiction to address untimely petitions. *See, e.g., Smallwood v. Director of Revenue*, Dkt. No.

³ Although the Notice of Determination was less than completely clear, it put petitioners on notice of Section 525 and its deadline.

1655, Delaware Tax Appeal Board (May 11, 2016) *citing Dye v. Director of Revenue*, Dkt. No. 1261, Delaware Tax Appeal Board (Mar. 7, 1997).

The petition was untimely and this Board lacks subject matter jurisdiction over the dispute. Accordingly, petitioners' petition is dismissed.

SO ORDERED this 9th day of September, 2026.

Paul C. Self

Joan Winters/PCS

Robert W. Sloan
