

TAX APPEAL BOARD OF THE STATE OF DELAWARE

WARPEX, INC.,)
)
 Petitioner,)
)
 v.) Docket No. 1757
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

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

Min Sung Kim, President of Warpex, Inc., for Petitioner

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

DECISION AND ORDER

1. The issue before the Board is whether petitioner timely appealed the Director of Revenue’s March 2, 2019 Notice of Determination. For the reasons set forth below, the Board finds petitioner did not file a timely appeal.

2. On March 2, 2019, the Director mailed the petitioner a Notice of Determination denying its protest of assessed gross receipts taxes, penalties and interest.

3. Pursuant to 30 *Del. C.* §§ 525 and 544, the petitioner had 60 days to file a petition with this Board appealing 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 March 2, 2019 is May 1, 2019.

5. Petitioner's petition is dated July 30, 2019 and the Board received the petition on August 1, 2019. Both dates are outside the statutory 60-day window.

6. After the Director moved to dismiss the petition, the Board set a briefing schedule establishing the date by which the petitioner was required to file its answering brief in opposition to the motion. Petitioner did not file an answering brief in opposition to the motion.

7. Although petitioner's failure to respond to the motion to dismiss is sufficient grounds to grant the motion, the Board grants the motion on the merits as well. Petitioner did not file its appeal within the 60-day period set by 30 *Del. C.* §§ 525 and 544. The appeal was untimely and this Board lacks jurisdiction over untimely appeals. *Bruhl v. Director of Revenue*, Dkt. 1743 (Del. Tax. App. Bd. Aug. 26, 2019) (ORDER at 2). *See also 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.").

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

Robert W. Slav

John M. Winter

Lucy S. Slav

M. Lynn Fuller

SO ORDERED this 23rd day of January, 2020.