

**Sears, Roebuck and Company**

**v.**

**Department of Revenue Administration**

**Docket No.: 21492-05BP**

**ORDER**

On December 23, 2005, the board issued a Preliminary Order (“Preliminary Order”) acknowledging receipt of the “Taxpayer’s” appeal, summarizing certain undisputed facts and issuing a preliminary finding. Based upon the undisputed facts, and its review of the applicable statutes and rules, the board made a preliminary finding that the date shown on the Taxpayer’s certified mail receipt (September 19, 2005) is the operative date for determining the timely mailing of the Taxpayer’s motion for reconsideration to the department of revenue administration (“DRA”), but gave the parties 30 days to submit briefs on this issue. The board received a written submission to the Preliminary Order from the DRA and then proceeded to schedule a limited hearing, which was held on March 10, 2006.

Based on the evidence and arguments presented, the board finds the Taxpayer’s motion for reconsideration was timely because it should be deemed filed as of September 19, 2005, the date shown on the certified mail receipt, which is within the 15 days for such motions prescribed in the DRA’s rules (see Rev 206.02). The board finds the Taxpayer proceeded diligently and in

good faith. Any delay in receiving the motion for reconsideration at the DRA was probably due to an inadvertent 23 cent postage error corrected by the Taxpayer's mail room (after submittal and initial acceptance by the United States Postal Service) without the knowledge of the Taxpayer's Tax Department. See Taxpayer Exhibit 1 (Affidavit of Robert Paul Weatherford). This is the most likely explanation for the October 4, 2005 postmark date shown on State's Exhibit A.

In light of this ruling regarding timely filing, the board remands this matter to the DRA for consideration of the merits of the Taxpayer's reconsideration motion. The board will keep this docket open, however, pending further written notification from the parties regarding the DRA's ruling on the reconsideration motion and whether the Taxpayer wishes to proceed with, or withdraw, the appeal at that time.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid to: Philip S. Olsen, Esq., Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116, Taxpayer's Representative; and John F. Hayes, Esq., New Hampshire Department of Revenue Administration, 45 Chenell Drive, Concord, NH 03301.

Date:

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Anne M. Stelmach, Clerk