

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

REG-115433-98

RIN 1545-AW81

Timely Mailing Treated as Timely Filing/Electronic Postmark

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; and, withdrawal of previous notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to timely mailing treated as timely filing and paying under section 7502. The proposed regulations generally reflect changes to the law made since 1960. The proposed regulations affect taxpayers that file documents or make payments or deposits. This document also withdraws a previous notice of proposed rulemaking published in the **Federal Register** of December 11, 1979.

DATES: Written comments and requests for a public hearing must be received by April 15, 1999. The notice of proposed rulemaking published at 44 FR 71430, December 11, 1979, is withdrawn as of January 15, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-115433-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of

8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-115433-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Michael Slaughter, (202) 622-7180; concerning the regulations, Charles A. Hall, (202) 622-4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 7502 relating to timely mailing treated as timely filing and paying. As originally enacted in the Internal Revenue Code of 1954, Public Law 591, ch. 736 (68A Stat. 895 (1954)), section 7502 provided that if any claim, statement, or other document is delivered to the appropriate agency, officer, or office after the filing date, the date of the United States postmark will be deemed to be the date of delivery if the postmark date is on or before the filing due date. In the case of registered mail, section 7502 provided that the registration will be prima facie evidence of delivery and the date of registration will be deemed the postmark date. At the time,

section 7502 did not apply to the mailing of tax returns or payments.

The Technical Amendments Act of 1958, Public Law 85-866 (72 Stat. 1665 (1958)), amended section 7502 by authorizing the Secretary to provide by regulations the extent to which the provisions with respect to prima facie evidence of delivery and the postmark date will apply to certified mail.

Section 5(a) of the Act of November 2, 1966, Public Law 89-713 (80 Stat. 1110 (1966)), amended section 7502 to apply the timely mailing rules to returns and the payment of taxes.

Section 106(a) of the Revenue and Expenditure Control Act of 1968, Public Law 90-364 (82 Stat. 266 (1968)), extended these rules to the mailing of deposits of tax. The Deficit Reduction Act of 1984, Public Law 98-369 (98 Stat. 695 (1984)), limited the timely mailing rules to deposits of less than \$20,000 in the case of any person who is required to deposit more than once a month.

Minor changes were also made to section 7502 by the Tax Reform Act of 1976, Public Law 94-455 (90 Stat. 1831 and 1834 (1976)), the Act of October 28, 1977, Public Law 95-147 (91 Stat. 1228 (1977)), and the Tax Reform Act of 1986, Public Law 99-514 (100 Stat. 2833 (1986)).

The existing regulations (TD 6232) under section 7502 were last amended on October 25, 1960 (25 FR 10247) to implement changes made by the Technical Amendments Act of 1958. The regulations provide that the prima facie evidence of delivery and postmark date rules apply to certified mail.

A notice of proposed rulemaking (REG-209351-71, formerly LR-1406) was published on December 11, 1979 (44 FR 71430) to implement changes made by the Act of November 2, 1966, the Revenue and Expenditure Control Act of 1968, the Tax Reform Act of 1976, and the Act of October 28, 1977. The proposed regulations would have conformed the existing regulations to these changes. Because the proposed changes are incorporated in this document, the earlier notice of proposed rulemaking is withdrawn.

In 1996, section 1210 of The Taxpayer Bill of Rights 2, Public Law 104-168 (110 Stat. 1474 (1996)), added section 7502(f) to provide that the term United States mail includes a designated delivery service and that the term postmark includes the date recorded or marked by a designated delivery service. The provision allows the IRS to determine whether a service of a private delivery service (PDS) is a designated delivery service. Section 7502(f) also allows the IRS to provide a rule that equates a service provided by a PDS to United States registered or certified mail. The IRS has determined that certain delivery services of four PDSs are designated for purposes of section 7502(f). However, the IRS has not yet determined that any service of a PDS is substantially equivalent to United States registered or certified mail. See Notice 98-47 (1998-37 I.R.B. 8 (September 14, 1998)).

Finally, section 7502(c)(2) was amended by section 2003(b)

of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 725 (1998)), to authorize the Secretary to provide the extent to which the prima facie evidence of delivery and postmark date rules apply to electronic filing.

Explanation of Provisions

These proposed regulations propose to add a new §301.7502-1(d) to provide that the date of an electronic postmark given by an authorized electronic return transmitter will be deemed the filing date if the date of the electronic postmark is on or before the filing due date. It also permits the Commissioner to enter into an agreement with an electronic return transmitter or to prescribe in forms, instructions, or other appropriate guidance the procedures under which the electronic return transmitter is authorized to provide taxpayers with an electronic postmark to acknowledge the date and time that the electronic return transmitter received the electronically filed document.

An electronic return transmitter is defined for purposes of the regulation the same as in the revenue procedures governing the Electronic Filing Program, currently Rev. Proc. 98-50 (1998-38 I.R.B. 8 (September 21, 1998)), and the On-Line Filing Program, currently Rev. Proc. 98-51 (1998-38 I.R.B. 20 (September 21, 1998)). An electronic postmark is a record of the date and time that an authorized electronic return transmitter receives the transmission of the taxpayer's electronically filed document on its host system.

For tax year 1998, the rules on electronic postmarks are effective for income tax returns filed through electronic return transmitters authorized to provide an electronic postmark pursuant to an agreement under the Electronic Tax Administration's Request for Agreement released on November 26, 1997. For taxable years beginning after 1998, the rules on electronic postmarks are effective for documents submitted to electronic return transmitters that are authorized to provide an electronic postmark pursuant to §301.7502-1(d)(2).

The remainder of the changes contained in §§301.7502-1 and 301.7502-2 conform the regulations to the expanded scope of section 7502 as amended over the years. For instance, §301.7502-1 provides that the timely mailing treated as timely filing rule extends to the mailing of tax returns and payments. Additionally, §301.7502-2 provides guidance on the timely mailing of deposits.

In 1980, IRS and the Treasury Department received comments in response to the notice of proposed rulemaking. Comments have not been requested since that time. Accordingly, the public is encouraged to make comments regarding this notice of proposed rulemaking, including comments regarding whether section 7502 should apply to claims for refunds made on delinquent original income tax returns or whether the prima facie evidence of delivery rule for registered mail should be extended to services of a PDS or to electronic filing of documents.

Effect on other Documents

The notice of proposed rulemaking published in the **Federal Register** for December 11, 1979 (REG-209351-71, formerly LR-1406, 44 FR 71430) is withdrawn as of January 15, 1999.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person that timely submits comments. If a

public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Charles A. Hall, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.7502-1 also issued under 26 U.S.C. 7502 * * *

Section 301.7502-2 also issued under 26 U.S.C. 7502 * * *

Par. 2. Section 301.7502-1 is revised to read as follows:

§301.7502-1 Timely mailing of documents and payments treated as timely filing and paying.

(a) General rule. Section 7502 provides that, if the requirements of that section are met, a document or payment

(within the meaning of paragraph (b) of this section) is deemed to be filed or paid on the date of the postmark stamped on the envelope or other appropriate wrapper (envelope) in which the document or payment was mailed. Thus, if the envelope that contains the document or payment has a timely postmark, the document or payment is considered timely filed or paid even if it is received after the last date, or the last day of the period, prescribed for filing the document or making the payment.

However, if a document or payment is not considered timely filed or timely paid under section 7502, the document or payment is not deemed to be filed or paid on the date of the postmark stamped on the envelope in which the document or payment was mailed. Thus, section 7502 does not apply to determine the period of time during which there is a failure to file a return or pay a tax for purposes of computing the penalties and additions to tax imposed by section 6651. Except as provided in section 7502(e) and §301.7502-2, relating to the timely mailing of deposits, and paragraph (d) of this section, relating to electronically filed documents, section 7502 is applicable only to those documents or payments as defined in paragraph (b) of this section and only if the document or payment is mailed in accordance with paragraph (c) of this section and is delivered in accordance with paragraph (e) of this section.

(b) Definitions--(1) Document defined. (i) The term

document, as used in this section, means any return, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws, except as provided in paragraph (b)(1)(ii), (iii), or (iv) of this section.

(ii) The term does not include returns, claims, statements, or other documents that are required under any provision of the internal revenue laws or the regulations thereunder to be delivered by any method other than mailing.

(iii) The term does not include any document filed in any court other than the Tax Court, but the term does include any document filed with the Tax Court, including a petition for redetermination of a deficiency and a petition for review of a decision of the Tax Court.

(iv) The term does not include any document that is required to be filed with a bank or other depository under section 6302. However, see §301.7502-2 for special rules relating to the timeliness of deposits and documents required to be filed with deposits.

(2) Payment defined. (i) The term payment, as used in this section, means any payment required to be made within a prescribed period or on or before a prescribed date under the authority of any provision of the internal revenue laws, except as provided in paragraph (b)(2)(ii), (iii), (iv), or (v) of this

section.

(ii) The term does not include any payment that is required under any provision of the internal revenue laws or the regulations thereunder to be delivered by any method other than mailing. See, for example, section 6302(h) and the regulations thereunder regarding electronic funds transfer.

(iii) The term does not include any payment, whether it is made in the form of currency or other medium of payment, unless it is actually received and accounted for. For example, if a check is used as the form of payment, this section does not apply unless the check is honored upon presentation.

(iv) The term does not include any payment to any court other than the Tax Court.

(v) The term does not include any deposit that is required to be made with a bank or other depository under section 6302. However, see §301.7502-2 for rules relating to the timeliness of deposits.

(3) Last date or last date prescribed. As used in this section, the term the last date, or the last day of the period, prescribed for filing the document or making the payment includes any extension of time granted for that action. When the last date, or the last day of the period, prescribed for filing the document or making the payment falls on a Saturday, Sunday or legal holiday, section 7503 applies. Therefore, in applying the rules of this paragraph (b)(3), the next succeeding day that is

not a Saturday, Sunday, or legal holiday is treated as the last date, or the last day of the period, prescribed for filing the document or making the payment.

(c) Mailing requirements--(1) In general. Section 7502 does not apply unless the document or payment is mailed in accordance with the following requirements:

(i) Envelope and address. The document or payment must be contained in an envelope, properly addressed to the agency, officer, or office with which the document is required to be filed or to which the payment is required to be made.

(ii) Timely deposited in U.S. mail. The document or payment must be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid. For this purpose, a document or payment is deposited in the mail in the United States when it is deposited with the domestic mail service of the U.S. Postal Service. The domestic mail service of the U.S. Postal Service, as defined by the Domestic Mail Manual as incorporated by reference in the postal regulations, includes mail transmitted within, among, and between the United States of America, its territories and possessions, and Army post offices (APO), fleet post offices (FPO), and the United Nations, NY. (See Domestic Mail Manual, section G011.2.1, as incorporated by reference in 39 CFR 111.1.) Section 7502 does not apply to any document or payment that is deposited with the mail service of any other country.

(iii) Postmark--(A) U.S. Postal Service postmark. If the postmark on the envelope is made by the U.S. Postal Service, the postmark must bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment. If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment, the document or payment is considered not to be timely filed or paid, regardless of when the document or payment is deposited in the mail. Accordingly, the sender who relies upon the applicability of section 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment. See, however, paragraph (c)(2) of this section with respect to the use of registered mail or certified mail to avoid this risk. If the postmark on the envelope is made by the U.S. Postal Service but is not legible, the person who is required to file the document or make the payment has the burden of proving the date that the postmark was made. Furthermore, if the envelope that contains a document or payment has a timely postmark made by the U.S. Postal Service but it is received after the time when a document or payment postmarked and mailed at that time would ordinarily be received, the sender may be required to prove that it was timely mailed.

(B) Postmark made by other than U.S. Postal Service--(1) In

general. If the postmark on the envelope is made other than by the U.S. Postal Service--

(i) The postmark so made must bear a legible date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment; and (ii) The document or payment must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document or payment contained in an envelope that is properly addressed, mailed, and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Postal Service on the last date, or the last day of the period, prescribed for filing the document or making the payment.

(2) Document or payment received late. If the document or payment is received after the time when a document or payment so mailed and so postmarked by the U.S. Postal Service would ordinarily be received, the document or payment is treated as having been received at the time when a document or payment so mailed and so postmarked would ordinarily be received if the person who is required to file the document or make the payment establishes--

(i) That it was actually deposited in the U.S. mail before the last collection of the mail from the place of deposit which was postmarked (except for the metered mail) by the U.S. Postal Service on or before the last date, or the last day of the

period, prescribed for filing the document or making the payment;

(ii) That the delay in receiving the document or payment was due to a delay in the transmission of the U.S. mail; and

(iii) The cause of the delay.

(3) U.S. and non-U.S. postmarks. If the envelope has a postmark made by the U.S. Postal Service in addition to the postmark not so made, the postmark that was not made by the U.S. Postal Service is disregarded, and whether the envelope was mailed in accordance with this paragraph (c)(1)(iii)(B) will be determined solely by applying the rule of paragraph (c)(1)(iii)(A) of this section.

(2) Registered or certified mail. If the document or payment is sent by U.S. registered mail, the date of registration of the document or payment is treated as the postmark date. If the document or payment is sent by U.S. certified mail and the sender's receipt is postmarked by the postal employee to whom the document or payment is presented, the date of the U.S. postmark on the receipt is treated as the postmark date of the document or payment. Accordingly, the risk that the document or payment will not be postmarked on the day that it is deposited in the mail may be eliminated by the use of registered or certified mail.

(d) Electronically filed documents--(1) In general. A document filed electronically with an electronic return transmitter (as defined in paragraph (d)(3)(i) of this section and authorized pursuant to paragraph (d)(2) of this section) in

the manner and time prescribed by the Commissioner is deemed to be filed on the date of the electronic postmark (as defined in paragraph (d)(3)(ii) of this section) given by the authorized electronic return transmitter. Thus, if the electronic postmark is timely, the document is considered filed timely although it is received by the agency, officer, or office after the last date, or the last day of the period, prescribed for filing such document.

(2) Authorized electronic return transmitters. The Commissioner may enter into an agreement with an electronic return transmitter or prescribe in forms, instructions, or other appropriate guidance the procedures under which the electronic return transmitter is authorized to provide taxpayers with an electronic postmark to acknowledge the date and time that the electronic return transmitter received the electronically filed document.

(3) Definitions--(i) Electronic return transmitter. For purposes of this paragraph (d), the term electronic return transmitter has the same meaning as contained in section 3.02(4) of Rev. Proc. 98-50 (1998-38 I.R.B. 8 (September 21, 1998)) and section 3.02(3) of Rev. Proc. 98-51 (1998-38 I.R.B. 20 (September 21, 1998))(See §601.601(d)(2) of this chapter.) or in procedures subsequently prescribed by the Commissioner.

(ii) Electronic postmark. For purposes of this paragraph (d), the term electronic postmark means a record of the date and

time (in a particular time zone) that an authorized electronic return transmitter receives the transmission of a taxpayer's electronically filed document on its host system. However, if the taxpayer and the electronic return transmitter are located in different time zones, it is the time in the taxpayer's time zone that controls the timeliness of the electronically filed document.

(e) Delivery. (1) Except as provided in section 7502(f) and paragraph (d) of this section, section 7502 is not applicable unless the document or payment is delivered by U.S. mail to the agency, officer, or office with which the document is required to be filed or to which payment is required to be made. However, in the case of a document (but not a payment) sent by registered or certified mail, proof that the document was properly registered or that a postmarked certified mail sender's receipt was properly issued and that the envelope was properly addressed to the agency, officer, or office constitutes prima facie evidence that the document was delivered to the agency, officer, or office.

(2) Section 7502 is applicable only when the document or payment is delivered after the last date, or last day of the period, prescribed for filing the document or making the payment. Thus, section 7502 is applicable when a claim for credit or refund is delivered after the last day of the period specified in section 6511 or in any other corresponding provision of law

relating to the limit on the amount of credit or refund that is allowable. For example, taxpayer A was required to file an income tax return for 1993 on or before April 15, 1994, but A secured an extension until August 15, 1994, to file such return. A filed the return on August 15, 1994, but no tax was paid at that time because the tax liability disclosed by the return had been completely satisfied by the income tax that had been withheld on A's wages. On August 14, 1997, A mailed in accordance with the requirements of this section a claim for refund of a portion of this 1993 tax. The envelope containing the claim was postmarked on August 14, 1997, but it was not delivered to the Service Center until August 18, 1997. Under section 6511, A's claim for refund is timely if filed within three years from August 15, 1994. Thus, since A's claim for refund was mailed in accordance with the requirements of this section and was delivered after the last day of the period specified in section 6511, section 7502 is applicable and the claim is deemed to have been filed on August 14, 1997.

(f) Effective date--(1) In general. This section applies to any payment or document mailed and delivered in accordance with the requirements of this section in an envelope bearing a postmark dated after January 15, 1999.

(2) Electronically filed documents--(i) For taxable year 1998. For taxable year 1998, this section only applies to

electronically filed income tax returns transmitted to an electronic return transmitter that was authorized to provide an electronic postmark pursuant to an agreement entered into in response to submissions received in reply to the Electronic Tax Administration's Request for Agreement released on November 26, 1997.

(ii) For taxable years after 1998. For taxable years after 1998, this section applies to any electronically filed return, claim, statement, or other document transmitted to an electronic return transmitter that is authorized to provide an electronic postmark pursuant to paragraph (d)(2) of this section.

Par. 3. Section 301.7502-2 is added to read as follows:

§301.7502-2 Timely mailing of deposits.

(a) General rule--(1) Two day rule. Section 7502(e) provides that, if the requirements of that section are met, a deposit is deemed to be received on the date the deposit was mailed even though it is received after the date prescribed for making the deposit. The requirements of the section are met if the person required to make the deposit establishes that the date of mailing was on or before the second day preceding the date prescribed for making the deposit. If the date of mailing was not established to be on or before the second day preceding the date prescribed for making the deposit, the deposit will not be considered timely received unless it is actually received on or before the date prescribed for making the deposit. Section

7502(e) only applies to a deposit mailed to the bank, trust company, domestic building and loan association, or credit union authorized to receive that deposit. Thus, section 7502(e) does not apply to any remittance mailed to an internal revenue service center.

(2) Deposits of \$20,000 or more. Paragraph (a)(1) of this section does not apply with respect to any deposit of \$20,000 or more by any person required to deposit any tax more than once a month. Any such deposit must be made by the due date for such deposit, regardless of the method of delivery.

(b) Deposit defined. The term deposit, as used in this section, means any deposit of tax required to be made on or before a prescribed date pursuant to regulations prescribed under section 6302. For information regarding the making of deposits by electronic funds transfer, see section 6302(h) and the regulations thereunder.

(c) Mailing requirements--(1) In general. Section 7502(e) does not apply unless the deposit is mailed in accordance with the requirements of paragraph (c)(2) of this section.

(2) Requirements. The date of mailing must fall on or before the second day preceding the prescribed date for making a deposit (including any extension of time granted for making the deposit). For example, if a deposit is due on or before January 15, the date of mailing must fall on or before January 13. The deposit must be contained in an envelope or other appropriate

wrapper approved for use in the mails by the U.S. Postal Service, properly addressed to the bank, trust company, domestic building and loan association, or credit union authorized to receive the deposit. The deposit must be deposited with sufficient postage prepaid on or before the second day in the mail in the United States within the meaning of §301.7502-1.

(3) Registered and certified mail. The provisions of §301.7502-1(c)(2) apply to a deposit sent by U.S. registered mail or U.S. certified mail as if the deposit were a payment, except that the date of registration or the date of the postmark on the sender's receipt is considered the date of mailing of such deposit.

(d) Delivery. Section 7502(e) does not apply unless a deposit is actually delivered by U.S. mail to the authorized financial institution with which the deposit is required to be made and is accepted by that financial institution. For rules relating to the acceptance of deposits by authorized financial institutions (see 31 CFR 203.18). The fact that a deposit is sent by U.S. registered or U.S. certified mail does not constitute prima facie evidence that the deposit was delivered to the financial institution authorized to receive the deposit. Section 7502(e) does not apply unless the deposit is delivered after the date prescribed for making the deposit.

(e) Effective date. This section applies to all deposits required to be made after January 15, 1999.

Robert E. Wenzel

Deputy Commissioner of Internal Revenue