

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PA:B06:LThomas
POSTN-140360-07

date: December 6, 2007

to: Paul Etherington
Tax Analyst, BMF Code & Edit/ERS Section
Wage & Investment SE:W:CAS:SP:MBF:CE

from: Richard G. Goldman
Chief, Branch 6
Procedure & Administration CC:PA:06



subject: Received Date Procedures for Mail Containing a Private Meter Postmark

By Technical Assistance Request dated September 10, 2007, our views were requested to assist your office in establishing correct and straightforward procedures for tax examiners to follow in determining whether a return or other document is timely when there is a privately metered envelope involved. In the example you described, a second-quarter Form 941, Employer's Quarterly Federal Tax Return, bearing a received date of August 10, 2007 at the Cincinnati Campus, was mailed in an envelope reflecting a private postmeter date of July 12, 2007 from Clifton, New Jersey. Noting that the envelope in this situation had appeared to have been postmarked well before it was mailed, you expressed concern about the potential for fraud and questioned the correctness of processing the return in the example as timely.

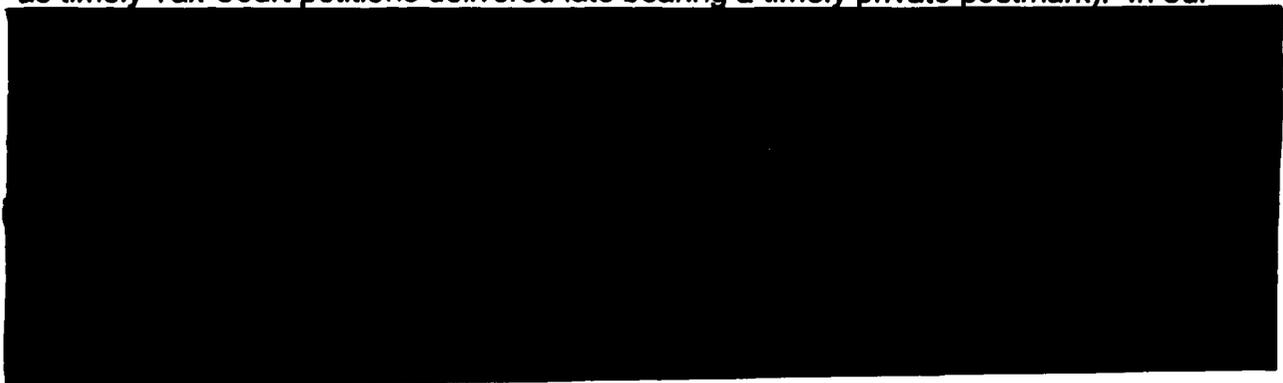
Returns and other documents required to be filed under the internal revenue laws that are sent through the U.S. Postal Service or via one of the designated private delivery services are eligible for timely-mailing-timely-filed treatment as provided in I.R.C. § 7502. In accordance with Treasury regulations, privately metered mail is entitled to timely-mailing-timely-filing treatment if (1) the private postmark bears a timely date, that is, a date on or before the due date of the document, and (2) the document is received no later than the time ordinarily required for the delivery of the document, if it were postmarked at the same point of origin by the U.S. Postal Service on the last day for timely filing the document. That is, the "ordinary delivery time" for the subject document is measured not from the private postmark date, but from the last day of the period for timely filing. Treas. Reg. 301.7502-1(c)(1)(iii)(B)(1). Even if a return or other document is not received within the ordinary mailing time as measured from the due date, the document may still be entitled to timely mailing treatment if the taxpayer can establish (1) that the document was actually deposited in the mail on or before the last day of the period for timely filing, (2) any delay in delivery was due to delay in transmission of mail, and (3) the cause of the delay. Treas. Reg. 301.7502-1(c)(1)(iii)(B)(2); see IRM 25.6.2.4.15 (2)(b).

PMTA : 01576

This regulation takes into account the possibility that taxpayers or representatives may prepare mailing envelopes and apply private meter marks well in advance of the due date. The crucial inquiry is not whether the postmark date was applied in advance of mailing, but whether the return or other document was timely mailed. The evidence of timely mailing is a postmark date on or before the due date, whether the postmark is applied privately or by the U.S. Postal Service. In the case of privately metered mail in which the postmark date can be manipulated by the sender, the mailing date that is required to occur on or before the due date is confirmed by the requirement that the document be delivered within a reasonable time after the due date. The potential for fraud is minimized because private postmark date must be corroborated by timely delivery. It is irrelevant how far in advance of the due date the privately metered mark is dated as long as it is dated on or before the due date, and delivery occurs within a reasonable amount of time as if the document were mailed on the due date.

In the example you described, the due date for a second-quarter 2007 Form 941 was July 31, 2007. The July 12, 2007 postmark date was a date on or before the due date of July 31, 2007. Although there is no well-established precise measure of the ordinary delivery time between two cities, the August 10, 2007 date of receipt appears to us to be within a reasonable amount of time for a document that would have been mailed on the due date of July 31, 2007 from Clifton, New Jersey to be delivered to Cincinnati, Ohio. Since the return bore a timely postmark date (albeit a private postmark date), and was delivered within the ordinary delivery time as measured from the due date of the return, this return satisfies the requirements of the private postmark regulations under section 7502, and therefore was properly processed as timely.

Given the myriad types of delays that can occur even with properly addressed and metered mail, the Service should allow a generous period of time for delivery before disregarding a private postmark date. For example, we believe the 7-day time frame set forth in former IRM 25.6.2.4.12(1)3 (01-01-2003) was too abbreviated a period. See, e.g., Grossman v. Commissioner, T.C. Memo. 2005-164 (Tax Court accepted petition as timely when delivered 50 days after the due date due to Postal Service delays); see also Chief Counsel Notice 2002-17, Procedures to be Followed in Light of Mail Delivery Issues with the Tax Court (Jan. 31, 2002) (instructing Chief Counsel attorneys to accept as timely Tax Court petitions delivered late bearing a timely private postmark). In our



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