



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE TECHNICAL ASSISTANCE

MEMORANDUM FOR Assistant Commissioner (International)
Director (Overseas Operations) OP:IN:OO

FROM: W. Edward Williams, Senior Technical Reviewer, Branch 1
CC:INTL:Br.1

SUBJECT: Timely Mailing/Timely Filing and Foreign Postmarks

This Technical Assistance responds to an inquiry from the Revenue Service Representative (London) asking for clarification as to whether a foreign postmark satisfies the requirements of the timely mailing/timely filing rule in I.R.C. § 7502 with respect to returns. Technical Assistance is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

ISSUE:

Whether a foreign postmark satisfies the requirements of the timely mailing/timely filing rule in I.R.C. § 7502 with respect to returns.

CONCLUSION:

Internal Revenue Service policy is that returns mailed by taxpayers in foreign countries will be accepted as timely if postmarked on or before midnight of the last date prescribed for filing, including any extension of time for such filing. If the last day for filing falls on a Saturday or Sunday, returns will be considered timely if postmarked on or before midnight of the next business day.

FACTS:

The Revenue Service Representative requested clarification of Service position to respond to inquiries from practitioners. These practitioners are concerned that the long standing Service position that foreign postmarks will be accepted as evidence of a

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timely filed return has been called into question by the recent Tax Court opinion in *Pekar v. Commissioner*, 113 T.C. 158 (1999).

DISCUSSION:

Internal Revenue Service position is that federal tax returns mailed by taxpayers in foreign countries will be accepted as timely filed if they bear an official postmark dated on or before midnight of the last date prescribed for filing.¹ In Rev. Rul. 80-218, 1980-2 C.B. 386, the Service determined that federal tax returns mailed by taxpayers in foreign countries will be accepted as timely filed if they bear an official postmark dated on or before midnight of the last date prescribed for filing, including any extension of time for such filing.

The conclusion in Rev. Rul. 80-218 is based on the Commissioner's broad authority to enforce and administer the federal tax laws, including those sections dealing with timeliness of filing of federal tax returns. *See, e.g.*, I.R.C. § 6081(a) which provides:

The Secretary may grant a reasonable extension of time for filing any return, declaration, statement or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

The decision to accept a return as timely when it is mailed and officially postmarked in a foreign country is a reasonable and proper exercise of the Commissioner's administrative authority.

In addition to Rev. Rul. 80-218, the Service's position is reflected in Policy Statement P-2-9 (July 27, 1967), IRM Handbook 1218, page 1218-50 (5-7-93). Policy Statement P-2-9 entitled "Timely mailed returns bearing foreign postmarks to be accepted" provides:

Returns mailed by taxpayers in foreign countries will be accepted as timely if postmarked on or before midnight of the last date prescribed for filing, including any extension of time for such filing. If the last day for filing falls on a Saturday or Sunday, returns will be considered timely if postmarked on or before midnight of the next day. Whenever appropriate

¹ Individual Federal income tax returns are generally due on or before April 15 of the year following the close of the calendar year. *See* I.R.C. § 6072(a). However, there are exceptions to this general rule, including an exception for U.S. citizens whose tax homes are outside the United States and Puerto Rico. *See* Treas. Reg. § 1.6081-5(a)(5). An extension to file returns of citizens in foreign countries (up until the 15th day of the 6th month following close of the taxable year—generally June 15) will be granted for those U.S. citizens who have properly requested one. *See* Treas. Reg. § 1.6081-5(a). To obtain an extension under Treas. Reg. § 1.6081-5, taxpayers must attach a statement to their return showing eligibility for the extension. *See* Treas. Reg. § 1.6801-5(b).

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for the answering or anticipation of public inquiries, all offices of the Service are authorized to announce this policy.

In *Pekar v. Commissioner*, 113 T.C. 158 (1999), the Internal Revenue Service mistakenly took the position pursuant to I.R.C. § 7502 that the taxpayer filed his 1995 Federal income tax return late because it was received by the Service after the due date and the return was mailed in a package that had an official postmark of a foreign country that indicated that the return was mailed on the date the return was due. The Service mistakenly sought the imposition of the late-filing addition to the tax under I.R.C. § 6651(a)(1). 113 T.C. at 167-68.

As explained above, I.R.C. § 6081(a), and not I.R.C. § 7502, is the authority for the Service accepting a return as timely when it is mailed and officially postmarked in a foreign country on or before its due date. I.R.C. § 7502 does not apply to returns mailed in foreign countries because one of the mailing requirements of I.R.C. § 7502(a)(2)(B) is that the return be “deposited in the mail in the United States.” This conclusion is also reflected in Treas. Reg. § 301.7502-1(c)(1)(ii) which states in part that “a document is deposited in the mail in the United States when it is deposited with the domestic mail service of the United States Post Office.”²

Please contact this office if you have any questions regarding this memorandum.

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² Section 1210 of the Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452, 1474-75 (1996) amended I.R.C. § 7502 by adding subsection (f) which authorized the Service to expand the timely mailing, timely filing rule to documents and payments delivered by certain designated private delivery services. Rev. Proc. 97-19, 1997-1 C.B. 644 set out procedures for a private delivery service to apply for designation under I.R.C. § 7502(f). Designation is determined with respect to each type of delivery service offered by the private delivery service. As of this date, no private delivery services have qualified their international delivery under the application process of Rev. Proc. 97-19. See Notice 97-26, 1997-1 C.B. 413; modified by Notice 97-50, 1997-2 C.B. 305; Notice 98-47, 1998-2 C.B. 319; and Notice 99-41, I.R.B. 1999-35, 325. In addition, for the reasons set forth above, I.R.C. § 7502 may not apply to items delivered from abroad even for private delivery services.