

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

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to: Associate Area Counsel (Denver)
(Large Business & International)
CC:LBI

from: Blaise Dusenberry
Senior Technician Reviewer, Branch 1
(Procedure & Administration)
CC:PA:2

subject: Timeliness of Rejected Amended e-filed Return

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

Taxpayer =
A =
B =
C =
D =
E =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Partner =
Statement =

ISSUE

Under the unique facts of this case, did the taxpayer timely file its 2010 amended federal income tax return.

CONCLUSION

Yes, under the unique facts of this case, the taxpayer timely filed its 2010 amended federal income tax return because the amended return would have been timely filed at the time the electronic amended return was transmitted to the Internal Revenue Service (Service) and rejected, and the paper amended return was postmarked within ten days of the date of the Service's e-file rejection notice. Although in general, taxpayers should contact the e-Help desk and make a waiver request when filing an amended return on paper, no waiver request is required for an amended Form 1120 where the Service no longer can accept such a return electronically.

BACKGROUND**2012 RETURN ADJUSTMENTS**

The taxpayer files a consolidated Form 1120, U.S. Corporation Income Tax Return, on a calendar year basis. The taxpayer's federal income tax return for 2012 is currently under audit by Exam. During the audit, the taxpayer submitted adjustments to Exam for its 2012 tax return. The taxpayer's adjustments for 2012 included the use of section 41 research credit carryforwards from its 2010 and 2011 amended returns. Specifically, the taxpayer is claiming that it is entitled to carry forward \$A of research credits to 2012 from 2010. The taxpayer is also claiming that it is entitled to carry forward \$B out of a total of \$C of research credits from 2011 to 2012. In addition, the taxpayer increased its alternative minimum tax ("AMT") credit carryforward to 2012 by \$D due to the amendment of its 2010 return. Finally, the taxpayer decreased its net operating loss carryforward to 2012 by \$A due to the amendment of its 2010 return.

The taxpayer received a six month extension to file its 2010 Form 1120. The extended due date was September 15, 2011. The taxpayer filed its 2010 original return electronically on Date 1.

2010 AMENDED RETURN ADJUSTMENTS

The taxpayer filed its 2010 amended return to claim research credits in the amount of \$A based on the alternative simplified method under Treas. Reg. § 1.41-9T. Under this method, no deduction was allowed for certain research expenses equal to the amount of the credit. Therefore, the taxpayer increased its taxable income by \$A on the 2010 amended return. This increase to taxable income resulted in an increase of the taxpayer's net operating loss utilized by \$A and triggered additional AMT tax of \$D. The 2010 amended paper return included a payment of \$E related to the changes in tax due from these adjustments.

FILING OF THE 2010 AMENDED RETURN

The taxpayer attempted to file a 2010 amended return electronically on Date 2. The taxpayer received notification that the electronically submitted return was rejected. The amended return was rejected because when the taxpayer attempted to file its return the Modernized e-file platform was no longer accepting 2010 returns. Me-F accepts the current year Form 1120 and two prior years. As a result, the taxpayer then mailed the 2010 amended return via certified mail on Date 3. Included with the mailed return was a statement that the electronic transmission was rejected and therefore the taxpayer was filing a paper return. The taxpayer also included a copy of the "RS Electronic Filing Reject View" with the paper return. The 2010 amended paper return was received by the Ogden Service Center on Date 4.

SERVICE CENTER ACTIONS

The Ogden Service Center determined that the taxpayer's statute of limitations on assessment for 2010 expired on Date 5, which was three years from the filing date of the original return. Because the Ogden Service Center received the taxpayer's 2010 amended paper return with additional tax liability due on Date 4, which was after the Date 5 statute, it rejected the amended return and posted the payment of \$E to the taxpayer's account but did not make an assessment. The taxpayer's transcript shows a payment of \$E posted on Date 3. In rejecting the return, it appears the Ogden Service Center was relying on the reasoning provided in Issue 2 of Service Center Advice Memoranda 1998-001.

On Date 6, the Ogden Service Center sent the taxpayer a Letter 2765C. The letter appears to contain numerous errors, including the tax period (the letter refers to 2009 rather than 2010) and date of correspondence from the taxpayer (the letter refers to Date 7 rather than Date 3). However, it appears that the intent of the letter was to inform the taxpayer that its 2010 amended return was rejected and the payment of \$E was untimely.¹ The letter indicates that, as a result, the Service will not assess tax for

¹ The Ogden Service Center and the TEFRA Technical Unit are relying on Service Center Advice Memoranda 1998-001 (the "1998 SCA") in concluding that the taxpayer's 2010 amended paper return was not timely filed and therefore the IRS may not make the assessment. Among the issues in the 1998 SCA was Issue 2, which was whether the Service Center can make assessments for amended returns mailed on or before the expiration of the period of limitation, but received after the period has expired. The conclusion to Issue 2 was that Service Centers cannot make assessments based on amended returns received after the period of limitations has run, even if the amended return was mailed on or before the expiration date. This conclusion was reached because section 7502 applies only to returns "required to be filed." The 1998 SCA reasoned that section 7502 does not apply to timely mailed amended returns that show additional tax due because these returns are not required to be filed by any internal revenue law.

We question the conclusion reached in SCA 1998-001 that section 7502 does not apply to timely mailed amended returns that show additional tax due because these returns are not required to be filed by any internal revenue law. Although citing *Jacobson v. Commissioner*, 73 T.C. 610 (1979), the SCA ignores the holding in that case that provided:

the additional income reported and the payment will be returned to the taxpayer in a separate letter. The letter also states that the law requires the Service to deduct from the amount of the payment any other debts the taxpayer may owe. Exam sent out an email inquiry to the manager from the Ogden Service Center who signed the letter to confirm that the letter relates to the 2010 amended return.

REQUEST FOR ADVICE

Exam requested Associate Area Counsel (LBI) assistance as to whether rejection of the 2010 amended paper return is proper and if so whether the payment of \$E should be returned to the taxpayer. Specifically, Exam inquired as to how section 7502, section 7503, and Notice 2010-13, 2010-4 I.R.B. 327 apply. Exam has also asked whether the taxpayer may carry forward its research credits from 2010 to future years if the 2010 amended paper return is rejected and the \$E payment is returned to the taxpayer. Finally, Exam asked about the proper treatment of the AMT credit carryforward and the net operating loss carryforward if the 2010 amended paper return is rejected and the \$E payment is returned to the taxpayer.

In considering these issues, Associate Area Counsel (LBI) asked Exam if the taxpayer contacted the e-Help Desk for assistance in correcting the rejected electronic return before filing a paper return and whether the taxpayer got authorization to file its 2010 amended return by paper. Associate Area Counsel (LBI) also asked whether the taxpayer received a case number from the e-Help Desk. Exam contacted the taxpayer for information related to these questions. The taxpayer's representative, Partner, responded as follows: "Statement."

On June 16, 2015, Exam emailed the Ogden Service Center and requested that no further correspondence be sent to the taxpayer with respect to its 2010 tax year and that the payment not be returned to the taxpayer until a determination was made as to the timeliness of the 2010 amended return. On June 19, 2015, Associate Area Counsel (LBI) also emailed the Ogden Service Center and requested that the payment not be released until a determination was made.

Respondent contends that section 7502(a) is not applicable to "amended" returns. The plain language of the statute indicates otherwise. Section 7502(a) encompasses "any return" required to be filed by a prescribed date but which is delivered subsequent to that date. (Emphasis supplied.) Respondent has not offered any authority for his position, nor does the legislative history of section 7502 support such a narrow reading. H. Rept. 6958, 89th Cong., 2d Sess. (1966), 1966-2 C.B. 803, 809. We hold that "any return" means just that, and the absence of language explicitly mentioning amended returns does not foreclose petitioner's use of this section.

Id. at 615 (Citations omitted).

LAW AND ANALYSIS

FILING DATE OF TAXPAYER'S ORIGINAL 2010 RETURN

Income tax returns of corporations made on the basis of the calendar year must be filed by the 15th day of March following the close of the calendar year. I.R.C. § 6072(b). Corporations are allowed an automatic six-month extension of time to file income tax returns if certain specified requirements are met. I.R.C. § 6081; Treas. Reg. § 1.6081-3.

In general, the period of limitations on assessment is within three years after the return was filed. I.R.C. § 6501(a). In the case of an amended return showing additional tax due that is filed within the 60-day period ending on the day on which the time for assessment would otherwise expire, the period for assessment of such additional amount shall not expire before the day 60 days after the day on which the IRS receives the amended return. I.R.C. § 6501(c)(7).

A return filed on an extension is treated as filed on the day it is received, in the case of a return received on or before the extended due date, or on the postmark date, in the case of a return mailed before but received after the extended due date. *See, e.g., First Charter Financial Corp. v. United States*, 669 F.2d 1342 (9th Cir. 1982); *Pace Oil Co. v. Commissioner*, 73 T.C. 249, 255 (1979).²

In this case, the original due date of the taxpayer's 2010 return was March 15, 2011. Since the taxpayer received a six month extension, the extended due date was September 15, 2011. The taxpayer electronically filed its original 2010 return which was received by the Service on Date 1. Under *First Financial Corp.* and *Pace Oil*, the date of filing of the original return was Date 1.

TIMELY FILING OF REJECTED E-FILED RETURNS

The taxpayer attempted to electronically file its 2010 amended return on Date 2, which was prior to the three year expiration on the assessment statute. The taxpayer received notice that the electronic transmission was rejected. The taxpayer's representative has asserted that the e-Help Desk was contacted, but the taxpayer does not have a record

² Unless an exception applies, a return is typically considered filed on the date the IRS receives it. *See, e.g., Estate of Mitchell v. Commissioner*, 103 T.C. 520 (1994), *aff'd*, 250 F.3d 696 (9th Cir. 2001). One exception is if a return is received by the Service before the original due date, ignoring extensions. In that case, the return is deemed filed on the due date rather than the date received. I.R.C. § 6501(b)(1); Treas. Reg. § 301.6501(b)-1(a). Another exception is if a return is postmarked on or before the due date, including extensions, but the Service receives it after the due date. In that case, the return is deemed filed on the date of mailing. I.R.C. § 7502(a)(1); Treas. Reg. § 301.7502-1(a). A third exception is when the last day prescribed for performing an act under the Internal Revenue Code falls on Saturday, Sunday, or a legal holiday. In that case, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday. I.R.C. § 7503. As a result, when the due date for a return, including extensions, falls on a weekend or holiday and a taxpayer mails a return on the next day that is not a weekend or holiday, the date of mailing is the deemed filing date.

of the contact or a case number. The taxpayer mailed the 2010 amended return on Date 3, and the IRS received it on Date 4.

NOTICE 2010-13 AND PUBLICATION 4163

Notice 2010-13³ provides rules regarding the timely filing of rejected e-filed returns. Notice 2010-13 provides that if the return required to be filed electronically is transmitted on or before the due date (including extensions) and is rejected, but the electronic return originator or the filer comply with certain requirements for timely submission of the return, the return will be considered timely filed and any elections attached to the return will be considered valid.

Notice 2010-13 provides that for returns filed on or after January 1, 2010, the Service will allow the filer 10 calendar days from the date of first transmission to perfect the return for electronic resubmission. If the electronic return cannot be accepted for processing electronically, the filer must file a paper return with the Service Center where it would normally be filed. In order for the paper return to be considered timely, it must be postmarked by the U.S. Postal Service,⁴ or delivered to the Service by the later of the due date of the return (including extensions), or 10 calendar days after the date the Service last gives notification to the filer that the return has been rejected, as long as:

- (1) The first transmission was made on or before the due date of the return (including extensions) and
- (2) The last transmission was made within 10 calendar days of the first transmission.

Notice 2010-13 provides that the paper return must be completed consistent with the instructions to file the return. Corporations, partnerships, and tax-exempt organizations that are required to e-file must contact the e-Help Desk for assistance in correcting rejected returns before filing a paper return. If the taxpayer cannot correct the rejected return errors, they must receive authorization from the e-Help Desk prior to filing a paper return.⁵

Notice 2010-13 also provides that if the paper return is postmarked after its due date (including extensions), then the paper return should include an explanation of why the return is being filed after the due date and include a copy of the Service's final rejection

³ 2010-4 I.R.B. 327.

⁴ Under Notice 2010-13, the return may also be postmarked by a foreign postal service, or in the case of private delivery services designated by Notice 2004-83, have a postmark date as determined by Notice 97-26.

⁵ In this case, however, the taxpayer is not otherwise required to complete a request for waiver of the electronic filing requirement.

notification. Similarly, if the paper return is being submitted by a corporation, partnership, or tax-exempt entity that is required to e-file the return, then the return should include an explanation of why the return is being filed in paper form and include a copy of the Service's final rejection notification. A paper return filed in accordance with the above procedures will be considered timely filed, any elections attached to the return will be considered valid, and no penalty will be imposed for failing to e-file the return.

Similarly, Publication 4163, *Modernized e-File (MeF) Information for Authorized IRS e-file Providers for Business Returns* (Rev. 1-2014), restates the rules regarding rejected e-filed returns and provides that for those returns to be considered timely filed, the paper return must be postmarked by the later of the due date of the return, including extensions, or 10 calendar days after the date the Service last gives notification the return was rejected.

Publication 4163 advises filers to follow the following steps "to ensure that the paper return is identified as a rejected electronic return and the taxpayer is given credit for the date of the first rejection within the 10-day transmission perfection period".⁶

1. The taxpayer must call the IRS e-help Desk, 1-866-255-0654, to advise that they have not been able to have their return accepted. The e-help Desk will provide an e-Case number to the taxpayer.
2. The taxpayer should prepare the paper return and include the following:
 - An explanation of why the paper return is being filed after the due date
 - A copy of the reject notification; and
 - A brief history of actions taken to correct the electronic return.
3. Write in red at the top of the first page of the paper return - REJECTED ELECTRONIC RETURN – (DATE). The date will be the date of first rejection within the 10-day transmission perfection timeframe.
4. The paper return must be signed by the taxpayer. The PIN that was used on the electronically filed return that was rejected may not be used as the signature on the paper return.

If the return is rejected, it is recommended that the following documents are retained:

- A copy of the Submission Receipt received from IRS (Transmitter),
- A copy of the rejected Transmission File (Transmitter),
- A copy of the rejected Acknowledgement (Everyone).⁷

⁶ Pub. 4163 at 59 (Rev. 1-2014).

⁷ *Id.* at 59-60.

Taxpayer had an electronic filing requirement under Treas. Reg. § 301.6011-5.⁸ If a taxpayer is required to file their Form 1120 electronically, then they generally must file their amended return electronically.⁹ The Service's Modernized *e-file* Platform, however, will only accept returns for the most recent tax year and two prior tax years. For that reason, in cases where the Me-F Platform will no longer accept an amended Form 1120, no waiver is needed to file the amended return on paper.¹⁰

In this case, the taxpayer mailed a paper return to the Ogden Service Center within 10 calendar days after the date the Service gave notification the return was rejected. Included with the mailed return was a statement that the electronic transmission was rejected and therefore the taxpayer was filing a paper return. The taxpayer also included a copy of the "RS Electronic Filing Reject View" with the paper return.

It is not clear whether the taxpayer or its Authorized *e-file* Provider contacted the e-Help desk. Neither the taxpayer nor the Service has a record of obtaining an e-Case number for the paper filed return. Although in general, taxpayers should contact the e-Help desk to obtain help in perfecting their e-Filed return, to obtain an e-Case number, and receive permission to paper file their returns, such an attempt would be fruitless in this case when the Modernized e-File Platform could not accept the amended return. Moreover, guidance on the IRS website advises that no waiver request is required for an amended Form 1120 where the Me-F Platform no longer accepts amended return.

⁸ Treas. Reg. § 301.6011-5 generally require corporations with \$10 million or more in total assets and that file 250 or more returns a year to electronically file their Form 1120 and Form 1120X. The return preparer mandate under Treas. Reg. § 301.6011-7 does not apply because that mandate only applies to the Form 1040. See Treas. Reg. § 301.6011-7(b).

⁹ Treas. Reg. § 301.6011-5(d)(4).

¹⁰ See IRS Web Frequently Asked Question page, FAQ B14, <http://www.irs.gov/Businesses/e-file-for-Large-and-Mid-Size-Corporations-Frequently-Asked-Questions-Corporations-Required-to-e-file-Tax-Year-2014>. FAQ B14 states:

If the corporation is required to file their Form 1120, 1120S, or 1120-F under TD 9363, are they also required to e-file any amended or superseding tax returns?

Yes, if the taxpayer is required to file electronically based on the regulations, then they must also electronically file their TY2012, 2013 and 2014 amended and superseding returns. A taxpayer must receive an approved waiver to file that particular return on paper. In Processing Year 2015, MeF will process TY2012, 2013 and 2014 returns. Only those tax years may be filed electronically in Processing Year 2015. TY 2011 and prior returns cannot be filed electronically after December 27, 2014. Any amended TY 2011 return must be filed on paper, since the MeF system can no longer process these returns. *No waiver is needed to file the amended TY2011 on paper.* (Emphasis added).

Although contacting the e-Help desk would have ensured “that the paper return is identified as a rejected electronic return and the taxpayer is given credit for the date of the first rejection within the 10-day transmission perfection period,”¹¹ in our view, the failure to do so in this case should not deprive the taxpayer of the administrative grace afforded in Notice 2010-13 and Publication 4163 of the additional 10-day period to timely file a return when a taxpayer is unable to e-file a return due to technological barriers. No waiver request was required, the taxpayer substantially complied with the requirements of Notice 2010-13 and Publication 4163, and the failure by the taxpayer to electronically file their amended 2010 return was caused by the Service’s failure to accept an amended return during a period which would have been timely for paper filed returns.

Accordingly, it is our view that under the unique facts of this case, the taxpayer timely filed its 2010 amended federal income tax return because the amended return would have been timely filed at the time the electronic amended return was transmitted to the Service and rejected, and the paper amended return was postmarked within ten days of the date of the Service’s e-file rejection notice.

Please call (202) 317-5417 if you have any further questions.

¹¹ Pub. 4163 at 59.