

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

CC:PA:B03:KEBriscoe
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date: September 12, 2008

to: Janis L. Suchyta
CDP Policy Analyst
Appeals Tax Policy and Procedure

from: Pamela Wilson Fuller
Branch Chief, Branch 3 (Procedure & Administration)

subject: Timeliness of CDP Hearing Requests Submitted By Fax

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

FACTS

Your inquiry presented the following scenarios:

The notice and TC971-069 are dated 05/02/2008. The 30-day deadline ends on 6/01/2008 which is a Sunday. The taxpayer faxed the CDP request on 6/02/2008, the 31st day.

Example 1: The 30th day was Sunday. The taxpayer lives in California and at 10pm (PST) on the 31st day faxes the CDP request to the Philadelphia campus. The Philadelphia campus "receives" the CDP request at 1am on the 32nd day.

Example 2: The 30th day was Sunday. The taxpayer lives in Philadelphia and at 1am (EST) on the 32 day faxes the CDP request to the Fresno campus. The Fresno campus "receives" the request at 10pm on the 31st day.

ISSUES

1. When is a faxed CDP hearing request considered to be timely?
2. When is the transmission date relevant in determining the timeliness of a faxed CDP hearing request?

CONCLUSIONS

1. A faxed CDP request is timely if it is received by the Service on or before the last day of the 30-day response period. If the last day of the 30-day response period falls on a weekend or legal holiday, the response is timely if it is performed on the next succeeding day which is not a weekend or legal holiday.
2. When the faxed CDP request is not timely received, the taxpayer's transmission date is relevant in determining the timeliness of the faxed CDP hearing request.

LAW AND ANALYSIS

A CDP hearing request must be submitted no later than 30 days from the date of the CDP notice. Treas. Reg. §§ 301.6320-1(b)(1), 301.6330-1(b)(1). Any written request for a CDP hearing should be filed with the Service's office that issued the CDP notice at the address indicated on the notice. Treas. Reg. §§ 301.6320-1(c)(2) Q&A-C6, 301.6330-1(c)(2) Q&A-C6. If this address (or other address authorized in the regulations) is used and the written request is postmarked within the applicable 30-day response period, then in accordance with section 7502, the request will be considered timely even if it is not received by the Service's office that issued the CDP notice until after the 30-day period. Treas. Reg. §§ 301.6320-1(c)(2) Q&A-C4, 301.6330-1(c)(2) Q&A-C4.

The rules and regulations under section 7502 and 7503 apply to determine the timeliness of a taxpayer's request for a CDP hearing. Treas. Reg. §§ 301.6320-1(c)(2) Q&A-C4, 301.6330-1(c)(2) Q&A-C4. If the last day of the 30-day response period falls on a weekend or legal holiday, the response is timely if it is performed on the next succeeding day which is not a weekend or legal holiday. Sec. 7503; Treas. Reg. §§ 301.6320-1(c)(2) Q&A-C4, 301.6330-1(c)(2) Q&A-C4. Typically, a CDP hearing request is submitted on Form 12153, Request for a Collection Due Process Hearing. Form 12153 states that it may be submitted by facsimile. The regulations do not address the timeliness of a faxed CDP hearing request.

IRM 5.19.8.4.7.1, Determining Timeliness, addresses how to make a determination regarding the timeliness of a CDP hearing request. IRM 5.19.8.4.7.1(3) states, in pertinent part as follows:

- (e) Use the IRS received date if the CDP request is received within the period for requesting a hearing.
- (f) If the IRS received date is after the time frame for filing a timely CDP hearing request, use the postmark date. Keep the envelope in which the hearing request was mailed attached to the hearing request.

- (g) If the deadline of the 30th day is a Saturday, Sunday or federal holiday and the postmark is the next business day, then it is timely.

- (n) A taxpayers' request for a CDP or equivalent hearing can be submitted via facsimile (FAX). The transmission date will be received date. The transmittal sheet should be retained along with the hearing request.

Our research has revealed no legal authority that addresses the timeliness of a faxed CDP hearing request. Nevertheless, an analogy can be made to Treas. Reg. § 301.7502-1(d)(3)(ii), which addresses electronic postmarks from authorized electronic return transmitters. An electronic postmark is 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. The regulation specifies that if an electronic return transmitter and a taxpayer are located in different time zones, it is the taxpayer's time zone that controls the timeliness of the electronically filed document. Therefore, not only the taxpayer's transmission date, but also the transmission time are evaluated in determining the timeliness of the submission.

We believe it is the best practice to have consistent timeliness rules wherever possible.

- Where the taxpayer faxes a CDP hearing request and it is received by the Service on or before the statutory deadline, including applicable weekends or legal holidays, the request is timely and the inquiry ends.
- Where the request is not received by the Service on or before the statutory deadline, including applicable weekends or legal holidays, the request is untimely and the inquiry must continue.
- Where the Service receives a faxed CDP hearing request after the due date, the transmission date must be considered. Then, if the transmission date is prior to the statutory deadline, including applicable weekends or legal holidays, the request is timely.

Based on the foregoing, our responses to the examples in your inquiry are as follows:

Example 1: The 30th day was Sunday. The taxpayer lives in California and at 10pm (PST) on the 31st day faxes the CDP request to the Philadelphia campus. The Philadelphia campus "receives" the CDP request at 1am on the 32nd day.

Because the Service did not receive the request until the 32nd day, the Service must inquire further. Under section 7503, this request is considered timely because the

taxpayer's transmission date reflects the 31st day which is the next succeeding day which is not a weekend or legal holiday.

Example 2: The 30th day was Sunday. The taxpayer lives in Philadelphia and at 1am (EST) on the 32 day faxes the CDP request to the Fresno campus. The Fresno campus receives the request at 10pm on the 31st day.

Under section 7503, this request would be considered timely because the 30th day was a Sunday and the Service received the request on the 31st day which is the next succeeding day which is not a weekend or legal holiday.

In conclusion, if the IRS receives the faxed CDP hearing request on or before the due date, treat the CDP hearing request as timely. If the Service receives the CDP hearing request after the due date, the date it was faxed by the taxpayer should be considered in determining timeliness. If the taxpayer's transmission date and the date the Service received the document are significantly dissimilar - and there is evidence that the Service's machine is properly maintained, keeps good time, etc., then there is good argument to treat the request as untimely.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

If you have any questions regarding this advice, please contact the attorney assigned to this case at (202) 622-3600.