

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

CC:PA:04:TADurrett
TIGTA-127061-12

date: December 7, 2012

to: Michael J. Smith
Program Analyst
Appeals Tax Policy & Procedure
Collection & Processing

from: Laurence K. Williams Williams
Senior Counsel Laurence K. Williams
(Procedure & Administration)

Digitally signed by Williams
Laurence K. Williams
Date: 2012.12.07 11:34:05 -0500

subject: Determining timeliness of a CDP hearing request when it is mailed to an incorrect address

In response to a recommendation by the Treasury Inspector General for Tax Administration, you requested written guidance from Chief Counsel about the issue discussed herein. The recommendation was made in TIGTA Report 2012-10-077, "Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist."

ISSUE

Is a misaddressed Collection Due Process (CDP) hearing request timely if it is received in the service center mailroom prior to the due date for requesting a hearing but it does not reach the office responsible for processing the request until after the due date?

CONCLUSION

Yes. If the hearing request is received in the service center mailroom on or before the due date for submitting the hearing request, the request is timely.

FACTS

Taxpayer received a CP 90, which is a combined I.R.C. §§ 6331(d) and 6330(a) notice (CDP notice) sent to taxpayers whose accounts are assigned to the Federal Payment Levy Program. The CP 90 is used for individual taxpayers. These notices, like all CDP notices, are sent certified mail, return receipt requested, and include as enclosures Form 12153, Request for Collection Due Process or Equivalent Hearing, and Publications 594 and 1660. The CP 90 in this case included a pre-addressed insert that directed Taxpayer to mail the Form 12153 to "Internal Revenue Service, P.O. Box 57, Bensalem, PA 19020-057." At the time the CP 90 was issued, the post office box, city, state and zip code was the address of the post office box at the United States Post

Office located in Bensalem, PA that was designated for the receipt of CDP hearing requests. Requests received at this box were delivered by the United States Postal Service to the Philadelphia Service Center.

Taxpayer sent the completed Form 12153 by certified mail to "Department of the Treasury, Internal Revenue Service, Philadelphia, PA 19154." At the time Taxpayer mailed his Form 12153, "Philadelphia, PA 19154" was the city, state and United States postal zip code used for the Service Center's street address.¹ Taxpayer's hearing request was received by the mailroom for the Service Center to which all mail pieces are delivered regardless of their ultimate destination within the Service Center. The date stamped on the Form 12153 by the mailroom was within 30 days after the date of the CP 90. Although the mailroom attempted to direct the Form 12153 to the Automated Collection System Support CDP Unit, the office responsible for processing the request, it was misdelivered to one or more other offices. The request finally arrived in the ACS Support CDP Unit 62 days after the due date of the hearing request. ACS and Internal Revenue Service Office of Appeals personnel used the date Taxpayer's request was received by the Service Center mailroom to determine the timeliness of the request rather than the date it was received by the ACS Support CDP Unit. Taxpayer was granted a CDP hearing because his hearing request was treated as timely.

BACKGROUND

Both today and when Taxpayer's hearing request was filed, the United States Postal Service delivers on a daily basis the contents of the post office box specified in the CDP notice to the Philadelphia Service Center loading dock. Upon receipt of a hearing request at the Service Center loading dock, an Accounts Management employee accepts the delivery and transfers the hearing request to the Service Center's mailroom. Postal Service employees are not permitted to enter the Service Center building. In the mailroom, an Accounts Management employee opens each mail piece, staples each hearing request and other contents to the envelope and stamps the hearing request with that day's date. The hearing requests are then bundled and the package is marked with the building locator number (BLN) for the ACS Support CDP Unit. The package is delivered to the BLN by a private contractor working within the Service Center.

A CDP hearing request not addressed to post office box specified by the CDP notice but with sufficient delivery information will also be brought by the United States Postal Service to the Service Center loading dock. After the mail is transferred to the mailroom, an Accounts Management employee opens the mail piece, staples the hearing request and other contents to the envelope and stamps the hearing request with that day's date. Then, using a job aid, the employee identifies the mail piece as a CDP hearing request and sorts it into a basket designated for CDP hearing requests. The contents of the basket are either added to the package containing the hearing

¹ The Philadelphia Service Center has since moved to downtown Philadelphia, and CDP hearing requests are to be addressed to P.O. Box 42346, Philadelphia, PA 19101-2346. This post office box is located at a Post Office across the street from the Service Center.

requests addressed to the post office box as directed by the CDP notice or placed in a separate package. Regardless of which package the misaddressed hearing request is placed in, the package is marked with the BLN for the ACS Support CDP Unit and delivered to the BLN by a private contractor.

LAW AND ANALYSIS

Section 6330(a) provides that at least 30 days prior to levying on a taxpayer's property the IRS must notify the taxpayer in writing of his or her right to a hearing with Appeals. In order for the hearing request to be timely, the taxpayer must request the hearing in writing within 30 days after the date of the CDP levy notice. Treas. Reg. § 301.6330-1(c)(2), Q & A-C1, Q&A-C3.

Section 6330 does not specify the method or location taxpayers should use to file written requests for a CDP hearing. Section 6091(a) provides that when not otherwise provided for by the Internal Revenue Code, the Secretary shall by regulations prescribe the place for the filing of any return or other document required by the Code or regulations. See also Section 1.6091-1(a). The regulations under section 6330 require the written hearing request to be "sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice." Section 301.6330-1(c)(2) Q&A-C6. If the written request is properly addressed, with postage prepaid, and is postmarked within the 30-day period for requesting a hearing, in accordance with section 7502, the request will be considered timely if it is not received until after the 30-day response period. Section 301.6330-1(c)(2), Q & A-C4; Section 7502(a)(2). If the request is not properly addressed, it must be filed with the correct office within the 30-day period in order to be timely. Section 301.6330-1(b)(1). The word "filed" as used in federal statutes is generally defined to mean "delivered." United States v. Lombardo, 241 U.S. 73, 76 (1916); Hotel Equities Corp. v. Commissioner, 65 T.C. 528, 531 (1975), aff'd. 546 F.2d 725 (7th Cir. 1976).

Section 7502(a)(1) states in pertinent part that if any return or other document required to be filed within a prescribed period is delivered after such date by the United States mail to the officer or office with which the return or document is required to be filed, then the date of the United States postmark stamped on the cover in which such return or document is mailed shall be deemed to be the date of delivery. Section 7502(a)(2) adds that the return or other document must be placed in an envelope or other appropriate wrapper and properly addressed to the officer or office with which such return or document is required to be filed. See also Section 301.7502-1(c)(1)(ii).

Taxpayer's CDP hearing request was required to be mailed to "Internal Revenue Service, P.O. Box 57, Bensalem, PA 19020-05." Taxpayer, however, did not send the hearing request to this address. Because the hearing request was not properly

addressed, the taxpayer is not eligible for the benefit of the postmark rule of section 7502. As a result, Taxpayer's request must have been filed on or before the end of the 30-day period for requesting a hearing with the "office and address as directed on the CDP Notice" in order to be timely. See Section 301.6330-1(c)(2), Q&A-C6.

For the purpose of determining timeliness of a hearing request under the CDP regulations, receipt by the service center (and not the unit within the service center responsible for processing the request) is considered receipt by "the office and address directed on the CDP notice." When the IRS directs that a document be filed by mailing it to a post office box designated for ultimate delivery to a location within a service center, the document is deemed filed when the United States Postal Service delivers the document to the service center and can not deliver it any further. See William Howard Doriss v. Commissioner, 3 T.C. 219 (1944) (estate tax return was deemed filed with collector when Postal Service delivered return to collector's post office box at the United States Post Office in same building as collector's office; Postal Service had carried the return as far as it was obligated); see also Central Paper Co. v. Commissioner, 199 F.2d 902 (6th Cir. 1952)(Tax Court petition was deemed filed when left on ledge next to post office box because the box was full; Postal Service had carried the return as far as it was able). The United States Postal Service is only permitted to deliver mail pieces addressed to the post office box specified in the CDP notices to the Philadelphia Service Center's loading dock at which point the mail pieces are taken to mailroom to be opened and date stamped. The Postal Service has delivered the hearing requests as far as it is able. The IRS by regulations has permitted filing through the use of the United States mail and taxpayers are dependent upon the Postal Service to deliver documents to be filed. It would be unreasonable to require, for the purpose of determining timeliness of the filing of a CDP hearing request, delivery to an office the Postal Service is not able to reach.

In addition, using the date a misaddressed hearing request arrives at the service center (and not the ACS Support CDP Unit) as the date for determining timeliness ensures equal treatment of taxpayers. In the absence of clear congressional intent to the contrary, tax statutes and implementing regulations must be interpreted in a way to ensure the equal treatment of taxpayers. See United States v. Gilmore, 372 U.S. 39, 48 (1963); Colgate-Palmolive-Peet Co. v. United States, 320 U.S. 422, 425 (1943); First-Charter Financial Corp. v. United States, 669 F.2d 1342, 1349 (9th Cir. 1982). If the date used for determining timeliness is the date of delivery of the hearing request to the service center, then a misaddressed hearing request and a properly addressed hearing request are timely if each arrive at the service center within the 30-day period required for timely filing. Section 7502 does not apply to the properly addressed request because by its terms section 7502 only applies if the mailed document is delivered after the required filing date. Section 7502(a)(1); Miller v. United States, 784 F.2d 728, 730 & n. 3 (6th Cir. 1986). Using the receipt date of a hearing request in the service mailroom to determine timeliness results in the equal treatment of identically situated taxpayers.

By contrast, if the applicable timeliness determination date is the date received by the ACS Support CDP Unit, these taxpayers would be treated unequally if each of their hearing requests are delivered to the ACS Support CDP Unit after the end of the 30-day period. The misaddressed hearing request would be untimely while the properly addressed, timely postmarked hearing request would be timely because of the operation of section 7502. Without section 7502 and the application of the postmark date within the required 30-day filing period, the properly addressed hearing request would also be untimely. However, the purpose of section 7502 is not to protect taxpayers from mishandling of mail within service centers. Section 7502 was enacted “as a remedial provision to alleviate inequities arising from differences in mail delivery from one part of the country to another.” Miller v. United States, 784 F.2d 728, 730 (6th Cir. 1986), citing Sylvan v. Commissioner, 65 T.C. 548, 551 (1975). Although each of the hearing requests arrived late at the ACS Support CDP Unit, the risk of errors by IRS and private contractor personnel would fall on one taxpayer but not the other due to the unintended application of section 7502. The result is that identically situated taxpayers are treated unequally. There is no evidence that Congress intended this unequal treatment and there is no logical explanation of why these taxpayers should be treated differently. The date a misaddressed hearing request is received by a service center should be the date for determining timeliness because it results in the equal treatment of taxpayers.

This interpretation of the CDP regulations is reinforced by the purpose of sections 6320 and 6330. The purpose of the CDP statutes is not only to make IRS collection actions subject to a hearing with Appeals but also to make Appeals’ determination as a result of that hearing subject to judicial review. A timely filed hearing request is a prerequisite to judicial review by the United States Tax Court. Craig v. Commissioner, 119 T.C. 252 (2002). Treating as untimely a hearing request that reaches the service center on time but not the ACS Support CDP Unit would frustrate the statute’s remedial purpose of providing judicial review. Despite Taxpayer’s failure to properly address his CDP hearing request to the post office box specified in the CDP notice, his request was delivered by the United States Postal Service to the Philadelphia Service Center mailroom within the 30-day period for requesting a hearing. The request was timely.

Please call Andrew Durrett at (202) 622-3630 if you have any further questions.