



Timely Mailing

The American Society of Tax Problem Solvers
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Timely Mailing-The Code

IRC §7502 “General Rule-Date of Delivery”

If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, **the date of the United States postmark** stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed **shall be deemed to be the date of delivery or the date of payment**, as the case may be.

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Documents Defined: *Treas. Reg. §301.7502-1(b)(1)*

- (i) The term document, as used in this section, **means any return, claim, statement, or other document required to be filed** within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws, except as provided in paragraph (b)(1)(ii), (iii), or (iv) of this section.
- (ii) The term **does not include** returns, claims, statements, or other documents that are required under any provision of the internal revenue laws or the regulations thereunder to be delivered by any method other than mailing.
- (iii) The term **does not include any document filed in any court other than the Tax Court**, but the term does include any document filed with the Tax Court, including a petition and a notice of appeal of a decision of the Tax Court.
- (iv) The term **does not include any document that is mailed to an authorized financial institution under section 6302**. However, see Section 301.7502-2 for special rules relating to the timeliness of deposits and documents required to be filed with deposits.

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Claims for Refund: *Treas. Reg. §301.7502-1(b)(2)*

Section 7502 is applicable to the determination of whether a claim for credit or refund is timely filed for purposes of section 6511(a) if the conditions of section 7502 are met, irrespective of whether the claim is also a return. Section 7502 is also applicable when a claim for credit or refund is delivered after the last day of the period specified in section 6511(b)(2)(A) or in any other corresponding provision of law relating to the limit on the amount of credit or refund that is allowable.

Payment Defined: *Treas. Reg. §301.7502-1(b)(3)*

The term payment, as used in this section, means *any payment required to be made* within a prescribed period or on or before a prescribed date under the authority of any provision of the internal revenue laws.

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Mailing Requirements: *Treas. Reg. §301.7502-1(c)(1)*

- ✓ Envelope & Address
- ✓ Timely Deposited in U. S. Mail.

Postmark: *Treas. Reg. §301.7502-1(c)(1)(iii)*

- ✓ The postmark must bear a date before the last date, or the last day of the period, prescribed for filing the document or making the payment.

Document/Payment Received Late:

- ✓ If not sent by “Registered or Certified Mail” the sender must establish that-
 - The document or payment was actually deposited in the U. S. Mail before the last collection of mail from the place of deposit.
 - That the delay in receiving the document was due to a delay in the transmission of the U. S. Mail, and:
 - The cause of the delay.

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Last Day or Last Day Prescribed:

- ✓ As used in this section, the term the last date, or the last day of the period, prescribed for filing the document or making the payment includes any extension of time granted for that action.
- ✓ When the last date, or the last day of the period prescribed for filing the document or making the payment falls on a Saturday, Sunday or legal holiday section 7503 applies.
- ✓ Therefore, in applying the rules of this paragraph (b)(4), the next succeeding day that is not a Saturday, Sunday, or legal holiday is treated as the last date, or the last day of the period, prescribed for filing the document or making the payment.

Treas. Reg. §301.7502-1(b)(4)



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Registered or Certified Mail: *Treas. Reg. §301.7502-1(b)(4)*

- ✓ If the document or payment is sent by U.S. registered mail or by U.S. certified mail and the sender's receipt is postmarked by the postal employee to whom the document or payment is presented, the date of the U.S. postmark on the receipt is treated as the postmark date of the document or payment.
- ✓ Accordingly, the risk that the document or payment will not be postmarked on the day that it is deposited in the mail may be eliminated by the use of registered or certified mail.

Private Delivery Services (PDS): *Treas. Reg. §301.7502-1(c)(3)*

- ✓ Pursuant to IRC §7502(f)(1), a service of a private delivery service (PDS) *may be treated as an equivalent to United States mail for purposes of the postmark rule* if the Commissioner determines that the service satisfies the conditions of section 7502(f)(2).
- ✓ Refer to “[Notice 2015-38](#)” & “[Notice 2016-30](#)” to obtain an updated list of authorized PDS providers.



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Electronically Filed Documents:

In general, a document filed electronically with an electronic return transmitter in the manner and time prescribed by the Commissioner **is deemed to be filed on the date of the electronic postmark.**

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Delivery General Rule Except as provided in IRC §7502(f) and paragraphs (c)(3) and (d) of this section, section 7502 is not applicable unless the document or payment is delivered by U.S. mail to the agency, officer, or office with which the document is required to be filed or to which payment is required to be made.

In Layman's Terms:

The “*General Rule*” noted above simply means that the document, return, form, or payment must be sent or mailed to the **proper or correct address** (and/or addressed to the proper IRS employee) to apply the protection of IRC §7502.

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Exceptions to Actual Delivery: Treas. Reg. §301.7502-1(e)(2)

- ✓ In the case of a document (***but not a payment***) sent by **registered or certified mail**, proof that the document was properly registered or that a postmarked certified sender's receipt was properly issued and that the envelope was properly addressed to the agency, officer, or office **constitutes prima facie evidence** that the *document was delivered* to the agency, officer, or office.

U. S. Tax Court Petition Issues:

- ✓ Taxpayers are now allowed to file U. S. Tax Court petitions "electronically", and in some cases may be deemed the most efficient method. However, several taxpayers have experienced when filing the petition on the "last date" prescribed for filing the petition, filing the petition electronically have proven to be detrimental and may warrant some taxpayers to continue to use the U. S. Mail system regarding this matter.

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U. S. Tax Court Petition Issues:

Consideration of filing via U. S. Certified Mail v. Registered Mail, compared to filing a U. S. Tax Court Petition electronically:

The Tax Court dismissed a case for lack of subject-matter jurisdiction where a taxpayer had electronically filed a tax court petition five (5) minutes late from the time zone where the Court was located (Washington, DC). It was deemed to be irrelevant that the petition was filed timely from the time zone where the taxpayer was located. Nutt v. Comm, 160 T.C. No 10 (May 2023)

The U. S. Tax Court also dismissed a case for lack of subject-matter jurisdiction where the taxpayer electronically filed the petition only eleven seconds late. Sanders v. Comm, 160 T. C. No. 16 (June 2023)

Observation:

Both case as noted above provide an excellent demonstration where U. S. Certified mail would have proven to be more beneficial.

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Other Timely Mailing Issues

Marcus Scaggs v. Comm, TC Memo 2012-258, 104 T.C.M. 277 (Sept. 2012)

- The Tax Court lacked jurisdiction to hear the taxpayers' petition because it was not timely filed. The taxpayers sent their petition on the deadline date through Federal Express utilizing the "Express Saver 3rd Business Day" service. The taxpayer's petition was received five days later. Even though the FedEx Airbill indicated the petition was mailed by the due date (July 7, 2011), the taxpayer utilized the wrong FedEx service.

Robert J. Eichelburg v. Comm, TC Memo 2013-269, 106 T.C.M. 606 (Nov. 2013)

- The Tax Court lacked jurisdiction to re-determine an individual's tax deficiency because his petition was filed two days after the expiration of the 90-day period. The Taxpayer claimed that the petition was timely filed because he mailed it on the last day for filing the petition using a Federal Express delivery service, "FedEx Express Saver", and that, under the "timely mailed, timely filed" rule, his petition should be considered as filed timely. However, "FedEx Express Saver" is not an approved PDS.

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Other Timely Mailing Issues

Douglas & Rebecca Dodson v. Comm, 162 T.C. No. 1 (January 2024)

- The IRS mailed a notice of deficiency (first notice dated **October 7, 2021**) to the taxpayers specifying a deadline for filing a petition to redetermine the proposed deficiency. However, the **specified deadline** was over one year from the date on which the IRS mailed the first notice (being **December 5, 2022**). Subsequent to discovering their error one day later, the IRS mailed a second notice of deficiency (dated October 8, 2021) to the taxpayers that purported to correct the deadline for filing a petition (which is now **January 6, 2022**). The taxpayers filed their Petition for review of the first notice before the petition filing deadline specified in the first notice (on **March 3, 2022**) but after the petition filing deadline specified in the second notice **and** after the 90-day period for filing a petition provided by the first sentence of I.R.C. Sec. 6213(a), which states "within 90 days".
- **Attendees:** Without reviewing the case on-line, how do you think the Court ruled in this case & why?

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Take Aways

- IRC §7502 is controlling for taxpayers & the IRS
- IRC §7502 is controlling only when the document or payment are remitted to the correct/proper address
- Certified Mail & Registered Mail constitutes prima facie evidence of mailing & delivery for documents
- Certified Mail or Registered Mail does not constitute prima facie evidence of mailing & delivery for a payment
- The use of a PDS is allowed but is narrowly or specifically defined

Polling Question