J. EDGAR MURDOCH AMERICAN INN OF COURT

March 13, 2018 (Team Five)

The rule and limits of *Abeles v. Commr*., 91 T.C. 1019 (1988)

**INTRODUCTION**

Tonight’s presentation focuses on the rule and limitations of *Abeles v. Commr*., 91 T.C. 1019 (1988).

THE HOLDING OF THAT CASE is:

[a] Taxpayer’s last known address is that address which appears on the taxpayer’s most recently filed return, unless respondent has been given clear and concise notification of a different address.

WHY IT MATTERS:

1. The IRS’ Notice of Deficiency will be treated as invalid if not sent out to the proper address.

2. Moreover, generally speaking, the Tax Court has jurisdiction over a petition only if (i) there was a valid notice of deficiency and (ii) a timely filed Petition, within 90 days thereafter (150 days, in the case of a taxpayer located outside the United States.)

NOTE: If the Notice of Deficiency is mailed to the correct address by certified or registered mail it does not matter whether or not the taxpayer received it or not. *King v. Commr*., 857 F. 2d 676, 679 (9th Cir. 1988), aff’g 89 T.C. 1042 (1987).

OUR PRESENTATION TONIGHT:

Among the issues addressed by our various scenes tonight are:

1. What has to be proven by the taxpayer under *Pearson v. Commr*., adopting the Seventh Circuit’s position in *Tilden,* to show a Petition was timely filed? What constitutes a sufficient Affidavit re: the time of mailing? And, when a Petition is mailed by either a postage meter in the law offices of Petitioner’s counsel, or purchased from an internet postage seller, such as Stamps.com, necessarily control, not via the USPS itself, what must be shown, to establish that the Petition was timely, absent a solid Affidavit or other acceptable evidence? (Scenes 1&2);
2. What represents “clear and concise” notice to the Commissioner of a taxpayer’s change in address (Scenes 3 and 4); and
3. A proposed Tax Court rule change of relevance (Scene 5)

Scene One

(Note, the dates below, on purpose, “look into the future”)

In Scene I, Perry Mason, a tax lawyer in Boise, Idaho, and somewhat of a procrastinator, prepares a Tax Court Petition on the 90th day after his client, Mr. Paul Drake, received a Notice of Deficiency. Mason instructs his administrative assistant, Mr. Dell Street, to get the package posted by midnight, on March 13, 2018. The assistant promises to mail the Petition on his/her way home, and gets the Petition stamped, using postage bought online from Stamps.com that very day, March 13, 2018. Mr. Mason’s assistant, Mr. Street, never tells Mason that Street stayed out so late drinking with a colleague from work, on the way home, that he actually reached the Boise post office, and mailed the Petition from there, after a night of drinking.

The Petition is received in Washington, D.C. on March 21, 2018, eight (8) days after the Stamps.com postage date.

Scene Two

Courtroom scene, same general facts. The IRS moves to dismiss, for lack of jurisdiction, on the basis that the USPS tracking system says the package actually entered the Postal system on March 15, 2018, a full two (2) days later than the date marked by the Postal meter, so was not timely. Petitioner’s counsel, Mr. Mason, in good faith, blames the USPS for delay in entering the tracking data, and proffers as evidence an Affidavit from his assistant, Mr. Street. Unfortunately, while Mr. Street’s affidavit is clear that the Stamps.com date was March 13th, and that Mason had instructed Street to mail the Petition that same day, and, in fact, that Street did mail the Petition at the post-office on his way home (after his night of drinking), the Affidavit is not express that, when Street dropped the Petition package in the mail slot, it was still the evening of March 13th. (As opposed to early in the morning of the 14th). Mr. Mason and his client rely on the Affidavit, as well as, in the alternative, concessions/stipulations made earlier by the IRS, in *Tilden v. Commr*., that it takes eight (8) days to mail a package from Salt Lake City to Washington, D.C., asking the court to take judicial notice thereof. Boise being further West than Salt Lake, they say, the Petition was timely. The Respondent disagrees and argues that the Petition must be dismissed for lack of jurisdiction, as untimely, as: (i) there is no stipulation here as to mailing time, as in Tilden, and (ii) the taxpayer fails the two tests set forth in in *Pearson v. Commr*., 2017 U.S. Tax Ct. LEXIS 59, 149 T.C. No. 20 20 (Nov. 29, 2017), because (a) the Affidavit from Mr. Street is not sufficiently specific, as to when the Petition was actually, physically, mailed at the Boise Post Office; (ii) the USPS tracking system shows the Petition was actually mailed on March 15, 2018, two days later, and took only six (6) days for the Petition to arrive in Washington, on March 21, 2018; (iii) Boise is not Salt Lake City, and the Service is not bound by its earlier concession in *Tilden*, where technology (and mail speed) have both since accelerated, and (iv) the Stamps.com date on the envelope, which shows only when Mason’s administrative assistant, Mr. Street, *bought the postage*. NOT when the Petition, itself, *was actually mailed*. The Hon. Judge A. Tragg of the U.S. Tax Court hears the matter.

Additional question for the Inn

Would it matter if, in casual office conversation, Petitioner’s counsel, Mr. Mason, learned, a few days after the Tax Court hearing, from another staff member, that due to some “hard partying” back on March 13, 2018, Mason’s Administrative Assistant, Dell Street, actually got to the Post Office after midnight, early on the 14th? Does Petitioner’s counsel have an ethical duty to advise the court of this new fact? Or, does it matter at all, if counsel believes the “eight day rule” from *Tilden* should still control?

Scene Three

In this scene, the Petitioner is the Governor of Virginia, Ms. Lauren Charles. Gov. Charles, single, is a (claimed) multi-millionaire former heart surgeon, from Tysons Corner, VA, who holds key medical patents, among her many other business ventures, beyond her surgical practice, before taking office. Before being elected Governor, she claimed a large NOL in tax year 2015, arising from her non-medical business affairs, and carried over the NOL to her 2016 tax year, where it was fully used. Ms. Charles is now the Governor of the Virginia, having been elected to that office in November, 2017, being sworn in during January, 2018. The 2017 tax return of Ms. Charles is on extension, not due until Aug. 15, 2018.

On audit of both the original 2015 and the 2016 returns of Gov. Charles, in early March, 2018, the IRS finds that the original tax loss she claimed in 2015 was significantly overstated. On April 25, 2018, the following month, the IRS issues a Notice of Deficiency for 2016, sent to the address filed on the last joint tax return filed by the Governor, as shown on her 2016 tax return. That address was at the Penthouse, Vista View Condominium building, McLean, VA 22182. Since that time, of course, in January, 2018, the Governor moved, officially, to the Virginia Governor’s Mansion, better known as the Executive Mansion, on Capitol Square, in Richmond .

Gov. Charles, her assistant, Ms. Maura Flanders, and the Governor’s Tax Counsel, Jessie Smith, Esq., meet to discuss the situation and the Governor’s knowledge of the Notice of Deficiency, or lack thereof. Smith received the Notice of Deficiency in an envelope, mailed from McLean, VA, on August 1, 2018, a little over 90-days from its date. Ms. Smith immediately contacts the Governor, and they meet just a day or so later about the situation.

Note:

Thereafter, a Petition is filed by Gov. Charles with the Tax Court on August 5, 2018, a few days beyond 90-days after the date of the Notice of Deficiency, as had been mailed to McLean.

Scene Four

In Scene IV, in open court, the Respondent has moved to dismiss the Petition, filed in early August, 2018, as untimely. Tax Counsel to Gov. Charles, Ms. Jesse Smith, argues to the Hon. Judge Bernie Dandy of the U.S. Tax Court that the IRS did not exercise “due diligence,” and that the Petition is, in fact, timely, because the IRS only sent the Notice of Deficiency to the Governor at the address provided on her 2016 individual tax return, The Penthouse, Vista View Condominium, McLean, VA 22182. Meaning, Gov. Charles argues, her Petition has never, effectively, been legally received. Or, if it was too late, it is the government’s fault, not hers. Rather, Ms. Smith asserts, the IRS should have *also* sent a duplicate copy of the Notice of Deficiency for Gov. Smith’s 2016 tax year to her at The Executive Mansion, Capitol Square, Richmond, VA. Therefore, she claims, on behalf of Gov. Charles, that the Motion to Dismiss should be rejected and the Petition treated as timely.

Respondent disagrees.

Scene Five (no formal skit)

Discussion of a proposed new Tax Court Rule which would tie the timeliness of a Petition filed electronically to the time zone in which the Petitioner is located.

CAST

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| --- | --- | --- | --- |
| SCENE No. | Character | Played By | Notes |
|  |  |  |  |
| Introduction | Narrator | Patrick Tricker |  |
|  |  |  |  |
| Scene One | Perry Mason, Counsel to Mr. Paul Drake, the taxpayer | Sean Akins |  |
|  | Dell Street, Admin. Ass’t to Mr. Mason | Stephen Scheaffer |  |
|  |  |  |  |
| Scene Two | Narrator | Patrick Tricker |  |
|  | Petitioner’s Counsel, Perry Mason | Sean Akins |  |
|  | Respondent’s Counsel, H. Burger | Julian Lee |  |
|  | Hon. Judge Tragg | Judge Lauber |  |
|  |  |  |  |
| Scene Three | Narrator | Patrick Tricker |  |
|  | Mrs. Lauren Charles, Gov. of Va. | Nancy Knapp |  |
|  | Ms. Jessie Smith, Tax Counsel to Gov. Lauren Charles | Jennifer Breen |  |
|  | Ms. Mara Flanders, Business Advisor to Gov. Charles, for her non-medical affairs | Diana Erbsen |  |
|  |  |  |  |
| Scene Four | Narrator | Patrick Tricker |  |
|  | Ms. Jessie Smith, Tax Counsel to Gov. Charles | Jennifer Breen |  |
|  | Respondent’s counsel, Ms. Megan Bailey | Jennifer Potts |  |
|  | Judge Bernie Dandy | Judge Lauber |  |
|  |  |  |  |
| Scene Five | Narrator | Elizabeth Blickley |  |

SELECTED STATUTES, REGULATIONS, RULES AND CASES OF RELEVANCE

**I. STATUTES**

26 U.S.C. §6213:

1. Time for filing petition and restriction on assessment

Within 90 days, or 150 days if the notice is addressed to a [person](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-991716523-296179319&term_occur=1461&term_src=title:26:subtitle:F:chapter:63:subchapter:B:section:6213) outside the [United States](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-2032517217-1988633697&term_occur=1240&term_src=title:26:subtitle:F:chapter:63:subchapter:B:section:6213), after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency…..

26 U.S.C. §7442:

The [Tax Court](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-154249366-1199109693&term_occur=86&term_src=title:26:subtitle:F:chapter:76:subchapter:C:part:I:section:7442) and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the [Internal Revenue Code of 1939](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1425449771-1199109691&term_occur=31&term_src=title:26:subtitle:F:chapter:76:subchapter:C:part:I:section:7442), by title II and title III of the Revenue Act of 1926 ([44 Stat. 10–87](https://www.law.cornell.edu/rio/citation/44_Stat._10-87)), or by laws enacted subsequent to February 26, 1926.

26 U.S.C. §7502 (timely mailing is treated as timely filing and paying):

**a) General rule**

**(1) Date of delivery**

If any [return](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-934396624-1472614131&term_occur=764&term_src=title:26:subtitle:F:chapter:77:section:7502), claim, statement, or other document required to be filed, or any [payment](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-786681338-372838452&term_occur=1224&term_src=title:26:subtitle:F:chapter:77:section:7502) 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](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-2032517217-1988633697&term_occur=1601&term_src=title:26:subtitle:F:chapter:77:section:7502) 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](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-2032517217-1988633697&term_occur=1602&term_src=title:26:subtitle:F:chapter:77:section:7502) 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.

**(2) Mailing requirements**This subsection shall apply only if—

**(A)** the postmark date falls within the prescribed period or on or before the prescribed date—

**(i)**

for the filing (including any extension granted for such filing) of the [return](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-934396624-1472614131&term_occur=765&term_src=title:26:subtitle:F:chapter:77:section:7502), claim, statement, or other document, or

**(ii)**

for making the [payment](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-786681338-372838452&term_occur=1225&term_src=title:26:subtitle:F:chapter:77:section:7502) (including any extension granted for making such [payment](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-786681338-372838452&term_occur=1226&term_src=title:26:subtitle:F:chapter:77:section:7502)), and

**(B)**

the [return](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-934396624-1472614131&term_occur=766&term_src=title:26:subtitle:F:chapter:77:section:7502), claim, statement, or other document, or [payment](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-786681338-372838452&term_occur=1227&term_src=title:26:subtitle:F:chapter:77:section:7502) was, within the time prescribed in subparagraph (A), deposited in the mail in the [United States](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-2032517217-1988633697&term_occur=1603&term_src=title:26:subtitle:F:chapter:77:section:7502) in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the return, claim, statement, or other document is required to be filed, or to which such payment is required to be made.

**(b) Postmarks**

This section shall apply in the case of postmarks not made by the [United States](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-2032517217-1988633697&term_occur=1604&term_src=title:26:subtitle:F:chapter:77:section:7502) Postal Service only if and to the extent provided by regulations prescribed by the Secretary.

**(c) Registered and certified mailing; electronic filing**

**(1) Registered mail.** For purposes of this section, if any [return](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-934396624-1472614131&term_occur=767&term_src=title:26:subtitle:F:chapter:77:section:7502), claim, statement, or other document, or [payment](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-786681338-372838452&term_occur=1228&term_src=title:26:subtitle:F:chapter:77:section:7502), is sent by [United States](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-2032517217-1988633697&term_occur=1605&term_src=title:26:subtitle:F:chapter:77:section:7502) registered mail—

**(A)**

such registration shall be prima facie evidence that the [return](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-934396624-1472614131&term_occur=768&term_src=title:26:subtitle:F:chapter:77:section:7502), claim, statement, or other document was delivered to the agency, officer, or office to which addressed; and

**(B)**

the date of registration shall be deemed the postmark date.

**(2) Certified mail; electronic filing**

The [Secretary](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1264422296-1293213338&term_occur=3380&term_src=title:26:subtitle:F:chapter:77:section:7502) is authorized to provide by regulations the extent to which the provisions of paragraph (1) with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail and electronic filing.

**(d) Exceptions**This section shall not apply with respect to—

**(1)**

the filing of a document in, or the making of a [payment](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-786681338-372838452&term_occur=1229&term_src=title:26:subtitle:F:chapter:77:section:7502) to, any court other than the [Tax Court](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-154249366-1199109693&term_occur=252&term_src=title:26:subtitle:F:chapter:77:section:7502),

**(2)**

currency or other medium of [payment](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-786681338-372838452&term_occur=1230&term_src=title:26:subtitle:F:chapter:77:section:7502) unless actually received and accounted for, or

**(3)**

[returns](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-934396624-1472614131&term_occur=769&term_src=title:26:subtitle:F:chapter:77:section:7502), claims, statements, or other documents, or [payments](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-786681338-372838452&term_occur=1231&term_src=title:26:subtitle:F:chapter:77:section:7502), which are required under any provision of the internal revenue laws or the regulations thereunder to be delivered by any method other than by mailing.

**(e) Mailing of deposits**

**(1) Date of deposit**

If any [deposit](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1554454174-1979634344&term_occur=95&term_src=title:26:subtitle:F:chapter:77:section:7502) required to be made (pursuant to regulations prescribed by the [Secretary](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1264422296-1293213338&term_occur=3381&term_src=title:26:subtitle:F:chapter:77:section:7502) under section 6302(c)) on or before a prescribed date is, after such date, delivered by the [United States](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-2032517217-1988633697&term_occur=1606&term_src=title:26:subtitle:F:chapter:77:section:7502) mail to the bank, trust company, [domestic building and loan association](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-7321316-1199109722&term_occur=10&term_src=title:26:subtitle:F:chapter:77:section:7502), or credit union authorized to receive such deposit, such deposit shall be deemed received by such bank, trust company, [domestic building and loan association](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-7321316-1199109722&term_occur=11&term_src=title:26:subtitle:F:chapter:77:section:7502), or credit union on the date the deposit was mailed.

**(2) Mailing requirements**Paragraph (1) shall apply only if the [person](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-991716523-296179319&term_occur=1615&term_src=title:26:subtitle:F:chapter:77:section:7502) required to make the [deposit](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1554454174-1979634344&term_occur=96&term_src=title:26:subtitle:F:chapter:77:section:7502) establishes that—

**(A)**

the date of mailing falls on or before the second day before the prescribed date for making the [deposit](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1554454174-1979634344&term_occur=97&term_src=title:26:subtitle:F:chapter:77:section:7502) (including any extension of time granted for making such [deposit](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1554454174-1979634344&term_occur=98&term_src=title:26:subtitle:F:chapter:77:section:7502)), and

**(B)**

the [deposit](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1554454174-1979634344&term_occur=99&term_src=title:26:subtitle:F:chapter:77:section:7502) was, on or before such second day, mailed in the [United States](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-2032517217-1988633697&term_occur=1607&term_src=title:26:subtitle:F:chapter:77:section:7502) in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the bank, trust company, [domestic building and loan association](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-7321316-1199109722&term_occur=12&term_src=title:26:subtitle:F:chapter:77:section:7502), or credit union authorized to receive such deposit.

In applying subsection (c) for purposes of this subsection, the term “[payment](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-786681338-372838452&term_occur=1232&term_src=title:26:subtitle:F:chapter:77:section:7502)” includes “deposit”, and the reference to the postmark date refers to the date of mailing.

**(3) No application to certain deposits**

Paragraph (1) shall not apply with respect to any [deposit](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1554454174-1979634344&term_occur=100&term_src=title:26:subtitle:F:chapter:77:section:7502) of $20,000 or more by any person who is required to [deposit](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1554454174-1979634344&term_occur=101&term_src=title:26:subtitle:F:chapter:77:section:7502) any tax more than once a month.

**(f) Treatment of private delivery services**

**(1) In general**

Any reference in this section to the [United States](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-2032517217-1988633697&term_occur=1608&term_src=title:26:subtitle:F:chapter:77:section:7502) mail shall be treated as including a reference to any [designated delivery service](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1991149095-2066565304&term_occur=1&term_src=title:26:subtitle:F:chapter:77:section:7502), and any reference in this section to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked as described in paragraph (2)(C) by any [designated delivery service](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1991149095-2066565304&term_occur=2&term_src=title:26:subtitle:F:chapter:77:section:7502).

**(2) Designated delivery service**For purposes of this subsection, the term “[designated delivery service](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1991149095-2066565304&term_occur=3&term_src=title:26:subtitle:F:chapter:77:section:7502)” means any delivery service provided by a trade or business if such service is designated by the Secretary for purposes of this section. The Secretary may designate a delivery service under the preceding sentence only if the Secretary determines that such service—

**(A)**

is available to the general public,

**(B)**

is at least as timely and reliable on a regular basis as the [United States](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-2032517217-1988633697&term_occur=1609&term_src=title:26:subtitle:F:chapter:77:section:7502) mail,

**(C)**

records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item referred to in this section is to be delivered, the date on which such item was given to such [trade or business](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-223729503-2018757202&term_occur=626&term_src=title:26:subtitle:F:chapter:77:section:7502) for delivery, and

**(D)**

meets such other criteria as the [Secretary](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1264422296-1293213338&term_occur=3382&term_src=title:26:subtitle:F:chapter:77:section:7502) may prescribe.

**(3) Equivalents of registered and certified mail**

The [Secretary](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1264422296-1293213338&term_occur=3383&term_src=title:26:subtitle:F:chapter:77:section:7502) may provide a rule similar to the rule of paragraph (1) with respect to any service provided by a [designated delivery service](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=26-USC-1991149095-2066565304&term_occur=4&term_src=title:26:subtitle:F:chapter:77:section:7502) which is substantially equivalent to United States registered or certified mail.

**II. REGULATIONS**

**Treas. Reg. §301.7502**

**§ 301.7502-1 Timely mailing of documents and** [**payments**](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) **treated as timely filing and paying.**

(a)General rule. Section 7502 provides that, if the requirements of that section are met, a document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is deemed to be filed or paid on the date of the postmark stamped on the envelope or other appropriate wrapper (envelope) in which the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=3&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) was mailed. Thus, if the envelope that contains the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=4&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) has a timely postmark, the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=5&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is considered timely filed or paid even if it is received after the last date, or the last day of the period, prescribed for filing the document or making the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=6&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1). Section 7502 does not apply in determining whether a failure to file a return or pay a [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) has continued for an additional month or fraction thereof for [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of computing the penalties and additions to [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) imposed by section 6651. Except as provided in section 7502(e) and [§ 301.7502-2](https://www.law.cornell.edu/cfr/text/26/301.7502-2), relating to the timely mailing of deposits, and [paragraph (d)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#d) of this section, relating to electronically filed documents, section 7502 is applicable only to those documents or [payments](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=7&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) as defined in [paragraph (b)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#b) of this section and only if the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=8&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is mailed in accordance with [paragraph (c)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#c) of this section and is delivered in accordance with [paragraph (e)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#e) of this section.

(b)Definitions -

(1)Document defined.

(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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=3&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) Court, but the term does include any document filed with the [Tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=4&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) Court, including a petition and a [notice](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=9305176902d69fb2a1eaa0b062ec26be&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of appeal of a decision of the [Tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=5&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) Court.

(iv) The term does not include any document that is mailed to an authorized [financial institution](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=65a4dde009cd0e1e9cdcac7018a23e7b&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) under section 6302. However, see [§ 301.7502-2](https://www.law.cornell.edu/cfr/text/26/301.7502-2) for [special rules](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e1e4d8526a7c950cddf88e150b56d88c&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) relating to the timeliness of deposits and documents required to be filed with deposits.

(2)Claims for refund -

(i)In general. In the case of certain taxes, a return may constitute a claim for credit or refund. Section 7502 is applicable to the determination of whether a claim for credit or refund is timely filed for [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of section 6511(a) if the conditions of section 7502 are met, irrespective of whether the claim is also a return. For rules regarding claims for refund on late filed [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=6&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) returns, see [paragraph (f)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#f) of this section. 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.

(ii)Example. The rules of [paragraph (b)(2)(i)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#b_2_i) of this section are illustrated by the following example:

**Example.**

(A) Taxpayer A, an individual, mailed his 2004 Form 1040, “U.S. Individual Income Tax Return,” on May 10, 2005, but no tax was paid at that time because the tax liability disclosed by the return had been completely satisfied by the income tax that had been withheld on A's wages. On April 15, 2008, A mails, in accordance with the requirements of this section, a Form 1040X, “Amended U.S. Individual Income Tax Return,” claiming a refund of a portion of the tax that had been paid through withholding during 2004. The date of the postmark on the envelope containing the claim for refund is April 15, 2008. The claim is received by the IRS on April 18, 2008.

(B) Under section 6511(a), A's claim for refund is timely if filed within three years from May 10, 2005, the date on which A's 2004 return was filed. As a [result](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=fe21e6e57c3298b181fb228ee53cccfd&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of the [limitations](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=43e4bf217ad8850f0e0dc97480730c37&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of section 6511(b)(2)(A), if A's claim is not filed within three years after April 15, 2005, the date on which A is deemed under section 6513 to have paid his 2004 [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=7&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1), A is not entitled to any refund. Because A's claim for refund is postmarked and mailed in accordance with the requirements of this section and is delivered after the last day of the period specified in section 6511(b)(2)(A), section 7502 is applicable and the claim is deemed to have been filed on April 15, 2008.

(3)Payment defined.

(i) The term payment, as used in this section, means any [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=9&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) 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, except as provided in paragraph (b)(3)(ii), (iii), (iv), or (v) of this section.

(ii) The term does not include any [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=10&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) that is required under any provision of the internal revenue laws or the regulations thereunder to be delivered by any method other than mailing. See, for [example](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d5445d557f1503834f315a4ff883e611&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1), section 6302(h) and the regulations thereunder regarding electronic funds transfer.

(iii) The term does not include any [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=11&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1), whether it is made in the form of currency or other medium of [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=12&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1), unless it is actually received and [accounted](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=c3b57a31fc226d7b84e26175afe251f2&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) for. For [example](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d5445d557f1503834f315a4ff883e611&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1), if a check is used as the form of [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=13&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1), this section does not apply unless the check is honored upon presentation.

(iv) The term does not include any [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=14&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) to any court other than the [Tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=8&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) Court.

(v) The term does not include any deposit that is required to be made with an authorized [financial institution](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=65a4dde009cd0e1e9cdcac7018a23e7b&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) under section 6302. However, see [§ 301.7502-2](https://www.law.cornell.edu/cfr/text/26/301.7502-2) for rules relating to the timeliness of deposits.

(4)Last date 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=03b60a097aeaa7e6824a6a443f4f7dce&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1). When the last date, or the last day of the period, prescribed for filing the document or making the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=15&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=17&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1). Also, when the last date, or the last day of the period, prescribed for filing the document or making the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=16&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) falls within a period disregarded under section 7508 or section 7508A, the next succeeding day after the expiration of the section 7508 period or section 7508A period 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=18&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1).

(c)Mailing requirements -

(1)In general. Section 7502 does not apply unless the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=19&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is mailed in accordance with the following requirements:

(i)Envelope and address. The document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=20&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) must be contained in an envelope, properly addressed to the agency, officer, or office with which the document is required to be filed or to which the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=21&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is required to be made.

(ii)Timely deposited in U.S. mail. The document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=22&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) must be deposited within the prescribed time in the mail in the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) with sufficient postage prepaid. For this [purpose](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=3&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1), a document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=23&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is deposited in the mail in the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) when it is deposited with the domestic mail service of the U.S. Postal Service. The domestic mail service of the U.S. Postal Service, as defined by the Domestic Mail Manual as incorporated by reference in the postal regulations, includes mail transmitted within, among, and between the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=3&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of America, its territories and possessions, and Army post offices (APO), fleet post offices (FPO), and the United Nations, NY. (See Domestic Mail Manual, section G011.2.1, as incorporated by reference in [39 CFR 111.1](https://www.law.cornell.edu/cfr/text/39/111.1).) Section 7502 does not apply to any document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=24&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) that is deposited with the mail service of any other country.

(iii)Postmark -

(A)U.S. Postal Service postmark. If the postmark on the envelope is made by the U.S. Postal Service, the postmark must bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=27&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1). If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=28&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1), the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=25&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is considered not to be timely filed or paid, regardless of when the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=26&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is deposited in the mail. Accordingly, the sender who relies upon the applicability of section 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document or making the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=29&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1). See, however, [paragraph (c)(2)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#c_2) of this section with respect to the use of registered mail or certified mail to avoid this risk. If the postmark on the envelope is made by the U.S. Postal Service but is not legible, the [person](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=410ee21553e0d34d7bb982c847a9800b&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) who is required to file the document or make the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=30&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) has the burden of proving the date that the postmark was made. Furthermore, if the envelope that contains a document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=31&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) has a timely postmark made by the U.S. Postal Service, but it is received after the time when a document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=32&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) postmarked and mailed at that time would ordinarily be received, the sender may be required to prove that it was timely mailed.

(B)Postmark made by other than U.S. Postal Service -

*(1)*In general. If the postmark on the envelope is made other than by the U.S. Postal Service -

*(i)* The postmark so made must bear a legible date on or before the last date, or the last day of the period, prescribed for filing the document or making the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=33&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1); and

*(ii)* The document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=34&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=35&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) contained in an envelope that is properly addressed, mailed, and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Postal Service on the last date, or the last day of the period, prescribed for filing the document or making the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=36&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1).

*(2)*Document or payment received late. If a document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=37&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) described in paragraph (c)(1)(iii)(B)(1) is received after the time when a document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=38&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) so mailed and so postmarked by the U.S. Postal Service would ordinarily be received, the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=39&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is treated as having been received at the time when a document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=40&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) so mailed and so postmarked would ordinarily be received if the [person](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=410ee21553e0d34d7bb982c847a9800b&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) who is required to file the document or make the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=41&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) establishes -

*(i)* That it was actually deposited in the U.S. mail before the last collection of mail from the place of deposit that was postmarked (except for the metered mail) by the U.S. Postal Service on or before the last date, or the last day of the period, prescribed for filing the document or making the [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=42&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1);

*(ii)* That the delay in receiving the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=43&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) was due to a delay in the transmission of the U.S. mail; and

*(iii)* The cause of the delay.

*(3)*U.S. and non-U.S. postmarks. If the envelope has a postmark made by the U.S. Postal Service in addition to a postmark not so made, the postmark that was not made by the U.S. Postal Service is disregarded, and whether the envelope was mailed in accordance with this paragraph (c)(1)(iii)(B) will be determined solely by applying the rule of [paragraph (c)(1)(iii)(A)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#c_1_iii_A) of this section.

(2)Registered or certified mail. If the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=44&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is sent by U.S. registered mail, the date of registration of the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=45&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is treated as the postmark date. If the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=46&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is sent by U.S. certified mail and the sender's receipt is postmarked by the postal employee to whom the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=47&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is presented, the date of the U.S. postmark on the receipt is treated as the postmark date of the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=49&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1). Accordingly, the risk that the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=48&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) 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.

(3)Private delivery services. Under section 7502(f)(1), a service of a private delivery service (PDS) may be treated as an equivalent to United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=4&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) mail for [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=4&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of the postmark rule if the Commissioner determines that the service satisfies the conditions of section 7502(f)(2). Thus, the Commissioner may, in guidance published in the Internal Revenue Bulletin (see [§ 601.601(d)(2)(ii)](https://www.law.cornell.edu/cfr/text/26/601.601#d_2_ii)(b) of this chapter), prescribe procedures and [additional rules](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=6873e6f237b23cba56d97f822547b36a&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) to designate a service of a PDS for [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=5&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of the postmark rule of section 7502(a).

(d)Electronically filed documents -

(1)In general. A document filed electronically with an electronic return transmitter (as defined in [paragraph (d)(3)(i)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#d_3_i) of this section and authorized pursuant to [paragraph (d)(2)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#d_2) of this section) in the manner and time prescribed by the Commissioner is deemed to be filed on the date of the electronic postmark (as defined in [paragraph (d)(3)(ii)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#d_3_ii) of this section) given by the authorized electronic return transmitter. Thus, if the electronic postmark is timely, the document is considered filed timely although it is received by the agency, officer, or office after the last date, or the last day of the period, prescribed for filing such document.

(2)Authorized electronic return transmitters. The Commissioner may enter into an agreement with an electronic return transmitter or prescribe in forms, instructions, or other appropriate guidance the procedures under which the electronic return transmitter is authorized to provide [taxpayers](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=1b081dcbc3a49a9a1753e65dfe8cc1ac&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) with an electronic postmark to acknowledge the date and time that the electronic return transmitter received the electronically filed document.

(3)Definitions -

(i)Electronic return transmitter. For [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=6&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of this paragraph (d), the term electronic return transmitter has the same meaning as contained in [section 3.01(4](https://www.law.cornell.edu/cfr/text/26/3.01#4)) of Rev. Proc. 2000-31 (2000-31 I.R.B. 146 (July 31, 2000))(see [§ 601.601(d)(2)](https://www.law.cornell.edu/cfr/text/26/601.601#d_2) of this chapter) or in procedures prescribed by the Commissioner.

(ii)Electronic postmark. For [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=7&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of this paragraph (d), the term electronic postmark means a record of the date and time (in a particular time zone) that an authorized electronic return transmitter receives the transmission of a [taxpayer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=1b081dcbc3a49a9a1753e65dfe8cc1ac&term_occur=3&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1)'s electronically filed document on its host system. However, if the [taxpayer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=1b081dcbc3a49a9a1753e65dfe8cc1ac&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) and the electronic return transmitter are located in different time zones, it is the [taxpayer](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=1b081dcbc3a49a9a1753e65dfe8cc1ac&term_occur=4&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1)'s time zone that controls the timeliness of the electronically filed document.

(e)Delivery -

(1)General rule. Except as provided in section 7502(f) and paragraphs (c)(3) and (d) of this section, section 7502 is not applicable unless the document or [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=50&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=51&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is required to be made.

(2)Exceptions to actual delivery -

(i)Registered and certified mail. 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 mail 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. Other than direct proof of actual delivery, proof of proper use of registered or certified mail, and proof of proper use of a duly designated PDS as provided for by [paragraph (e)(2)(ii)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#e_2_ii) of this section, are the exclusive means to establish prima facie evidence of delivery of a document to the agency, officer, or office with which the document is required to be filed. No other evidence of a postmark or of mailing will be prima facie evidence of delivery or raise a presumption that the document was delivered.

(ii)Equivalents of registered and certified mail. Under section 7502(f)(3), the Secretary may extend the prima facie evidence of delivery rule of section 7502(c)(1)(A) to a service of a designated PDS, which is substantially equivalent to United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=ce15809edeb1ba34ad35438ab4f8283a&term_occur=5&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) registered or certified mail. Thus, the Commissioner may, in guidance published in the Internal Revenue Bulletin (see [§ 601.601(d)(2)(ii)](https://www.law.cornell.edu/cfr/text/26/601.601#d_2_ii)(b) of this chapter), prescribe procedures and [additional rules](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=6873e6f237b23cba56d97f822547b36a&term_occur=2&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) to designate a service of a PDS for [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=8&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of demonstrating prima facie evidence of delivery of a document pursuant to section 7502(c).

(f)Claim for credit or refund on late filed tax return -

(1)In general. Generally, an original income [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=9&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) return may constitute a claim for credit or refund of income [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=10&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1). See [§ 301.6402-3(a)(5)](https://www.law.cornell.edu/cfr/text/26/301.6402-3#a_5). Other original [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=11&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) returns can also be considered claims for credit or refund if the liability disclosed on the return is less than the amount of [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=12&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) that has been paid. If section 7502 would not apply to a return (but for the operation of [paragraph (f)(2)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#f_2) of this section) that is also considered a claim for credit or refund because the envelope that contains the return does not have a postmark dated on or before the due date of the return, section 7502 will apply separately to the claim for credit or refund if -

(i) The date of the postmark on the envelope is within the period that is three years (plus the period of any extension of time to file) from the day the [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=13&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is paid or considered paid (see section 6513), and the claim for credit or refund is delivered after this three-year period; and

(ii) The conditions of section 7502 are otherwise met.

(2)Filing date of late filed return. If the conditions of [paragraph (f)(1)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#f_1) of this section are met, the late filed return will be deemed filed on the postmark date.

(3)Example. The rules of this paragraph (f) are illustrated by the following example:

**Example.**

(i) Taxpayer A, an individual, mailed his 2001 Form 1040, “U.S. Individual Income Tax Return,” on April 15, 2005, claiming a refund of amounts paid through withholding during 2001. The date of the postmark on the envelope containing the return and claim for refund is April 15, 2005. The return and claim for refund are received by the Internal Revenue Service (IRS) on April 18, 2005. Amounts withheld in 2001 exceeded A's tax liability for 2001 and are treated as paid on April 15, 2002, pursuant to section 6513.

(ii) Even though the date of the postmark on the envelope is after the due date of the return, the claim for refund and the late filed return are treated as filed on the postmark date for [purposes](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7336a9bece1f6a04e99414e7b0c782e7&term_occur=9&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) of this paragraph (f). Accordingly, the return will be treated as filed on April 15, 2005. In addition, the claim for refund will be treated as timely filed on April 15, 2005. Further, the entire amount of the refund attributable to [withholding](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=1789d378e9bfec2a276a29e18c2f4ae4&term_occur=1&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) is allowable as a refund under section 6511(b)(2)(A).

(g)Effective date -

(1)In general. Except as provided in paragraphs (g)(2) and (3) of this section, the rules of this section apply to any [payment](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=f1e2a7503017484dbd31554ac520a5a4&term_occur=52&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) or document mailed and delivered in accordance with the requirements of this section in an envelope bearing a postmark dated after January 11, 2001.

(2)Claim for credit or refund on late filed tax return. [Paragraph (f)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#f) of this section applies to any claim for credit or refund on a late filed [tax](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=4213e3004a09e65224a9cea553071bb1&term_occur=14&term_src=Title:26:Chapter:I:Subchapter:F:Part:301:Subpart:0:Subjgrp:67:301.7502-1) return described in [paragraph (f)(1)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#f_1) of this section except for those claims for credit or refund which (without regard to [paragraph (f)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#f) of this section) were barred by the operation of section 6532(a) or any other law or rule of law (including res judicata) as of January 11, 2001.

(3)Electronically filed documents. This section applies to any electronically filed return, claim, statement, or other document transmitted to an electronic return transmitter that is authorized to provide an electronic postmark pursuant to [paragraph (d)(2)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#d_2) of this section after January 11, 2001.

(4)Registered or certified mail as the means to prove delivery of a document. [Section 301.7502-1(e)(2)](https://www.law.cornell.edu/cfr/text/26/301.7502-1#e_2) will apply to all documents mailed after September 21, 2004.

**III. TAX COURT RULES**

Tax Ct. Rules 13(a) and (c):

**RULE 13. JURISDICTION**

**(a) Notice of Deficiency or of Transferee or Fiduciary**

**Liability Required:** Except in actions for declaratory

judgment, for disclosure, for readjustment or adjustment

of partnership items, for administrative costs, for review of

failure to abate interest, for redetermination of employment

status, for determination of relief from joint and several liability,

for lien and levy, or for review of whistleblower

awards (see Titles XXI, XXII, XXIV, and XXVI through

XXXIII), the jurisdiction of the Court depends: (1) In a case

commenced in the Court by a taxpayer, upon the issuance by

the Commissioner of a notice of deficiency in income, gift, or

estate tax or, in the taxes under Code chapter 41, 42, 43, or

44 (relating to the excise taxes on certain organizations and

persons dealing with them), or in the tax under Code chapter

45 (relating to the windfall profit tax), or in any other taxes

which are the subject of the issuance of a notice of deficiency

by the Commissioner; and (2) in a case commenced in the

Court by a transferee or fiduciary, upon the issuance by the

Commissioner of a notice of liability to the transferee or fiduciary.

See Code secs. 6212, 6213, 6901.

**(b) Declaratory Judgment, Disclosure, Partnership,**

**Administrative Costs, Review of Failure To Abate Interest,**

**Redetermination of Employment Status, Determination**

**of Relief From Joint and Several Liability,**

**Lien and Levy, or Whistleblower Action:** For the jurisdictional

requirements in an action for declaratory judgment,

for disclosure, for readjustment or adjustment of partnership

items, for administrative costs, for review of failure to abate

interest, for redetermination of employment status, for determination

of relief from joint and several liability, for lien and

levy, or for review of whistleblower awards, see Rules 210(c),

220(c), 240(c), 270(c), 280(b), 290(b), 300(c), 310(c), 320(b),

330(b), and 340(b), respectively.

**(c) Timely Petition Required:** In all cases, the jurisdiction

of the Court also depends on the timely filing of a petition.

See Code sections 6213 and 7502; with respect to administrative

costs actions, see Code section 7430(f); with respect

to declaratory judgment actions, see Code sections

6234, 7428, 7476, 7477, 7478, and 7479; with respect to determination

of relief from joint and liability actions, see Code

section 6015(e); with respect to disclosure actions, see Code

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section 6110; with respect to lien and levy actions, see Code

sections 6320 and 6330; with respect to partnership actions,

see Code sections 6226, 6228, and 6247; with respect to redetermination

of employment status actions, see Code section

7436; with respect to review of failure to abate interest actions,

see Code section 6404(h); and with respect to whistleblower

actions, see Code section 7623(b)(4).

**(d) Contempt of Court:** Contempt of Court may be

punished by fine or imprisonment within the scope of Code

section 7456(c).

**(e) Bankruptcy and Receivership:** With respect to

the filing of a petition or the continuation of proceedings in

this Court after the filing of a bankruptcy petition, see 11

U.S.C. section 362(a)(8) and Code section 6213(f)(1). With respect

to the filing of a petition in this Court after the appointment

of a receiver in a receivership proceeding, see

Code section 6871(c)(2).

**IV. SELECTED CASES**

*Tadros v. Commr*., 763 F.2d 89 (2d Cir. 1985) (taxpayer who lived in New York when he filed his 1981 return later moved to New Jersey in 1983. He argued that he had told the Commr. of this move in a letter written that month, printed with his New Jersey address. Held, the letter was not a mere “routine inquiry” and did not amount to an official notice of change of address where nothing in the letter indicated that he had permanently moved, nor that the new address was his new place of residence. Nor did it mention the old address or indicate that it was no longer to be used.)

*Abeles v. Commr*., 91 T.C. 1019 (1988) (see holding on pg. 1, above)

*Taylor v. Commr*., T.C. Memo 2016-81, 2016 Tax Ct. Memo LEXIS 78, 111 T.C.M. 1371 (Respondent’s motion to dismiss the Petition as untimely was granted. The Notice of Deficiency was mailed to the address reported on the taxpayer’s most recently filed return, from 2010. While the taxpayer testified that he moved to a different address, and had also provided a change of address form to the U.S. Postal Service, there was no evidence that the Respondent know about that change of address, nor was any corroborating evidence about the USPS notice of change of address introduced; thus, Petition was sent to the last known address and, moreover, was untimely).

*Williams v. Commr*., T.C. Memo 2017 58, 2017 U.S. Tax Ct. Memo LEXIS 59, 113 T.C.M. 1277 (upholding a levy where the taxpayer, a tax protester, had not specified where else the IRS should have mailed the Notice of Deficiency, nor shown that his last return of record, from 2000, had a different address than the one employed by the Service, nor offered any other evidence establishing that he gave the IRS “clear and concise” notification of a different address. Moreover, the record showed that an examining agent made significant effort to ascertain the petitioner’s correct address, a problem made harder by the continued failure to file returns).

*Tilden v. Commr*., T.C. Memo 2015-188, 2015 Tax Court Memo LEXIS 192, 110 T.C.M. 314, *rev’d*, 846 F.3d 882 (7th Cir. 2017). (Tax Court held, originally, that Stamps.com “postmark” and certified mail receipt filled out by a secretary in the office of Petitioner’s counsel, showing a mailing date of April 21, 2015, 90-days after the date of the Notice of Deficiency), did NOT control over USPS tracking data showing the packages actually entered the US Postal System two days later, on April 23, 2015. The Seventh Circuit *reversed*, on the basis that the Petition arrived at the Tax Court in eight (8) days’ time, within the normal time frame for mailing a package from Utah, assuming it was, in fact, mailed on the Stamps.com postal date, as the testimony stated was the case, where the Commr. had, by the time of the appeal, *stipulated* that the envelope had been handed to the Postal Service on April 21, 2015, and, moreover, stipulated that it often took certified mail sent from Salt Lake City Utah eight (8) days to reach Washington, D.C.)

*Pearson v. Commr*., 2017 U.S. Tax Ct. LEXIS 59, 149 T.C. No. 20 20 (Nov. 29, 2017) (Marvel, Foley, Vasquez, Goeke, Holmes, Paris, Lauber, Nega, Puth and Ashford, J.J.; Buch, J., concurring; Gustafson and Morrison, J.J., dissenting) (finding that Petition sent by certified mail, which did not have a USPS postmark, but did have a postmark from Stamps.com, an online postage provider, of April 21, 2015, was timely, even though first tracked in the USPS system two days later, April 23, 2015, where it was received by the Tax Court on April 29, 2015, eight (8) days after the Stamps.com date, where the Commr. had earlier stipulated, in *Tilden*, that the envelope with the Petition there, mailed by the same secretary of the same lawyer, for another taxpayer, had been deposited with the Postal Service on April 21, 2015, in Salt Lake City, where there was a sworn Affidavit to that effect in the record from the very same legal secretary, and both Petitions were received by the Tax Court minutes apart, within this eight (8) day period that, the Commr. had stipulated in *Tilden*, it often took certified mail from Salt Lake City, UT to reach Washington D.C.)

**V. ABA comments to proposed Tax Court Rule change**

Under which the timeliness of a Petition electronically filed would be tied to the time zone of the Petitioner’s residence (see attached ABA comments).