

Notice of Proposed Rulemaking

Timely Mailing Treated As Timely Filing

REG-138176-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations amending Treasury Regulation §301.7502-1 to provide that, other than direct proof of actual delivery, a registered or certified mail receipt is the only *prima facie* evidence of delivery of documents that have a filing deadline prescribed by the internal revenue laws. The proposed regulations are necessary to provide greater certainty on this issue and to provide specific guidance. The proposed regulations affect taxpayers who mail Federal tax documents to the Internal Revenue Service or the United States Tax Court.

DATES: Written or electronic comments and requests for a public hearing must be received by December 20, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-138176-02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-138176-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically, via the IRS Internet site at: www.irs.gov/regs or via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS — REG-138176-02).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Charles A. Hall, (202) 622-4940; concerning submissions, Sonya Cruse, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 22, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §301.7502-1(e). This collection of information is voluntary. The likely recordkeepers are taxpayers who want to have evidence to establish the postmark date and *prima facie* evidence of delivery when using registered or certified mail.

Estimated total annual recordkeeping burden: 1,084,765 hours.

Estimated average annual burden hours per recordkeeper: 6 minutes (.10 hours).

Estimated number of recordkeepers: 10,847,647.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed regulations amending 26 CFR part 301 under section 7502 of the Internal Revenue Code. Section 7502(a) first appeared as part of the recodification of the Code in 1954. Section 7502(a) is commonly known as the timely mailing/timely filing rule. Section 301.7502-1 of the Procedure and Administration Regulations provides rules for taxpayers to follow to qualify for favorable treatment under section 7502. There is a conflict among the Circuits of the United States Court of Appeals as to whether the provisions in section 7502 provide the exclusive means to establish *prima facie* evidence of delivery of a document to the IRS or the United States Tax Court. In particular, courts have reached differing conclusions regarding whether a taxpayer may raise a presumption of delivery of Federal tax documents to the IRS and the United States Tax Court only in situations in which the taxpayer uses registered or certified mail. These proposed regulations clarify the existing regulations and provide guidance on the need to use registered or certified mail to file documents with the IRS and the United States Tax Court to enjoy a presumption of delivery.

Explanation of Provisions

These proposed regulations amend §301.7502-1(e)(1) to clarify that, other than direct proof of actual delivery, the exclusive means to establish *prima facie* evidence of delivery of Federal tax documents to the IRS and the United States Tax

Court is to prove the use of registered or certified mail. The IRS currently accepts only a registered or certified mail receipt to establish a presumption of delivery if the IRS has no record of ever having received the document in question. This policy not only is consistent with section 7502(c) but also provides taxpayers with certainty that, under the Code, a certified or registered mail receipt will establish *prima facie* evidence of delivery. Accordingly, the proposed regulations merely clarify and confirm current IRS practice under the existing regulations. These proposed regulations provide that the final regulations, to which these proposed regulations relate, will be effective for all documents mailed after the publication date of these proposed regulations.

Under section 7502(f)(3), the IRS may extend to a service provided by a private delivery service (PDS) a rule similar to the *prima facie* evidence of delivery rule applicable to registered and certified mail. To date the IRS has not received any comments or suggestions for extending this rule even though the IRS and the Treasury Department previously requested comments in a prior notice of proposed rulemaking under section 7502. *See* 64 FR 2606 (Jan. 15, 1999). As the IRS is clarifying what documentation it will accept as proof of delivery, it is appropriate to solicit comments on this issue again. Accordingly, the IRS and the Treasury Department encourage the public to make comments regarding whether the IRS and the Treasury Department should extend the *prima facie* evidence of delivery rule to a service provided by a PDS. These comments should address the reasons why the IRS should treat a service provided by a PDS as substantially equivalent to registered or certified mail, including a comparison of the benefits to taxpayers and the IRS of the PDS service with the benefits of registered and certified mail.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations.

It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Although the collection of information in this notice of proposed rulemaking affects a substantial number of small entities, the economic impact on these small entities is not substantial. If a small entity uses registered or certified mail to file a document with the IRS, the additional burden (filling out the appropriate United States Postal Service forms) over and above using regular mail is not substantial. Furthermore, the extra cost to use registered or certified mail is not substantial as certified mail costs only \$2.30 and registered mail can be used for as little as \$7.50. Finally, the added burden of retaining the certified or registered mail sender's receipt will be minimal as the receipt can be associated with the small entity's copy of the document that it filed with the IRS.

Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the regulations is Charles A. Hall of the Office of the Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301B—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7502-1 is amended by:

1. Adding two new sentences at the end of paragraph (e)(1).
2. Adding paragraph (g)(4).

The additions read as follows:

§301.7502-1 Timely mailing of documents and payments treated as timely filing and paying.

* * * * *

(e) * * * (1) * * * Other than direct proof of actual delivery, proof of proper use of registered or certified mail is 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.

* * * * *

(g) * * *

(4) *Registered or certified mail as the means to prove delivery of a document.* The last two sentences of paragraph (e)(1) of this section, when published as final regulations, will apply to all documents mailed after September 21, 2004.

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on September 20, 2004, 8:45 a.m., and published in the issue of the Federal Register for September 21, 2004, 69 F.R. 56377)