

#12 REVISE THE “MAILBOX RULE” TO APPLY TO ELECTRONICALLY SUBMITTED DOCUMENTS AND PAYMENTS IN THE SAME MANNER AS IT APPLIES TO MAILED SUBMISSIONS

Present Law

IRC § 7502(a)(1) provides that if the requirements set forth in the section are met, a document or payment is deemed to be filed or paid on the date of the postmark stamped on the envelope. If the postmark date is on or before the last day of the period prescribed for filing the document or making the payment, the document or payment is considered timely filed or paid even if it is received after the due date. IRC § 7502(b) and (c) provide that this timely mailed/timely filed rule (commonly referred to as the “mailbox rule”) applies to documents sent by U.S. postal mail, private delivery services, and electronic filing through an electronic return transmitter. The Secretary is authorized to promulgate regulations describing the extent to which the mailbox rule shall apply to certified mail and electronic filing.⁷⁶ To date, the only regulations the Secretary has promulgated dealing with electronically filed documents cover documents filed with an electronic return transmitter.⁷⁷

Reasons for Change

The statutory “mailbox rule” in IRC § 7502 does not apply to the electronic transmission of payments to the IRS. In addition, the “mailbox rule” does not apply to electronic filing of time-sensitive documents (except documents filed electronically with an electronic return transmitter).⁷⁸ If the IRS does not receive an electronically submitted document (including a facsimile transmission) or payment until after the due date, it is considered late even if the taxpayer can produce a confirmation that she transmitted the payment or document before the due date. The comparatively unfavorable treatment of electronically submitted documents and payments undermines the IRS’s efforts to encourage greater use of digital services and creates additional cost and burden for taxpayers and the IRS alike.

Along similar lines, the IRS encourages U.S. taxpayers to make payments electronically using the Treasury Department’s Electronic Federal Tax Payment System (EFTPS). However, the EFTPS website displays the following warning: “Payments using this Web site or our voice response system must be scheduled by **8 p.m. ET the day before the due date** to be received timely by the IRS. The funds will move out of your banking account on the date you select for settlement.”⁷⁹ (Emphasis in original.) This limitation applies to all payments. Assume a taxpayer owes a balance that is due on April 15. If she mails the payment to the IRS before midnight on April 15, the payment will be considered timely, even though it will probably take about a week until the IRS receives, opens and processes the check. If she submits the payment on EFTPS, the payment will be considered late if she submits the transaction after 8:00 p.m. on April 14 (28 hours earlier), even though the payment would be debited from her account on April 16 — about one week earlier than if she submits it by mail.

This disparity in the treatment of mailed and electronically submitted payments makes little sense. As compared with a mailed check, an electronic payment is received more quickly, is cheaper to process, and

76 IRC § 7502(c)(2).

77 Treas. Reg. § 301.7502-1(d).

78 See Treas. Reg. § 301.7502-1(d)(3)(i) for a definition of an electronic return transmitter. See also Rev. Proc. 2007-40, 2007-1 C.B. 1488, for a list of documents that can be filed electronically with an electronic return transmitter.

79 See www.eftps.gov (last visited Dec. 17, 2017).

eliminates the risk a mailed check will be lost or misplaced. Yet rather than encouraging taxpayers to use EFTPS, the relative deadlines serve as a deterrence.

Recommendation

Amend IRC § 7502 to direct the Secretary to issue regulations that apply the mailbox rule comparably to documents and payments submitted by a taxpayer regardless of whether they are submitted electronically or by mail.