

IMPROVE THE FILING PROCESS

Legislative Recommendation #3

Treat Electronically Submitted Tax Payments and Documents as Timely If Submitted on or Before the Applicable Deadline

SUMMARY

- *Problem:* If a taxpayer mails a payment or tax return to the IRS that is postmarked by midnight on the due date, the payment or tax return will be considered timely even if it is received a week later. If the taxpayer submits the same payment or return to the IRS electronically on the due date, however, it may be considered late if the IRS receives and processes it the next day. This dichotomy can harm taxpayers who make timely electronic submissions, and it favors paper transmission over electronic transmission – exactly the opposite incentive the rules should provide.
- *Solution:* Provide that a payment or document submitted by midnight on the due date will be considered timely even if the IRS does not receive and process it that day.

PRESENT LAW

IRC § 7502(a)(1) provides that if certain requirements are satisfied, a mailed document or payment is deemed filed or paid on the date of the postmark stamped on the envelope. Therefore, if the postmark shows a document or payment was mailed by the due date, it will be considered timely, even if it is received after the due date.

IRC § 7502(b) and (c) provide only that this timely-mailed/timely-filed rule (commonly known as the “mailbox rule”) applies to documents and payments sent by U.S. postal mail, designated private delivery services, and electronic filing through an electronic return transmitter. It does not apply to all filings and payments. With respect to electronic filing, the Secretary is authorized to issue regulations describing the extent to which the mailbox rule shall apply.¹ To date, the only regulations the Secretary has issued relating to electronic filing cover documents filed through an electronic return transmitter (*i.e.*, documents that are e-filed).²

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 the electronic filing of time-sensitive documents (except documents filed electronically through an electronic return transmitter), including those transmitted by fax, email, the digital communication portal, or upload via an online account.³ If the IRS does not receive an electronically submitted document or payment until after the due date, the document or payment

¹ IRC § 7502(c)(2). While this provision authorizes the Secretary to extend the mailbox rule for electronic filing, it does not authorize the Secretary to extend the mailbox rule for electronic payments.

² Treas. Reg. § 301.7502-1(d).

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

is considered late, even if the taxpayer can produce confirmation that they transmitted the payment or document on or before the due date. This comparatively unfavorable treatment of electronically submitted documents and payments undermines the IRS's efforts to encourage greater use of digital services and imposes additional cost and burden on taxpayers and the IRS.

Along similar lines, the IRS encourages U.S. taxpayers to make payments electronically, often by 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" (emphasis in original).⁴ This limitation applies to all payments.

Example: Based on the bolded language on the EFTPS website, if a taxpayer owes a balance due on April 15 and mails the payment to the IRS before midnight on April 15, the payment will be considered timely, even if it takes a week or longer for the IRS to receive, open, and process the check. If the same taxpayer submits the payment using EFTPS, the payment will be considered late if submitted after 8 p.m. on April 14 (28 hours earlier), even though the payment generally would be debited from the taxpayer's account on April 16 – often a week sooner than if submitted by postal 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 eliminates the risk that a mailed check will be lost or misplaced. Yet, rather than encouraging taxpayers to use EFTPS, an earlier deadline serves as a deterrent.

Despite the bolded warning on the main EFTPS website, the related FAQs describe circumstances in which the IRS will credit both business and individual tax payments on the date the payment is made.⁵ For example, the FAQs state that business tax payments of \$1 million or less made before 3 p.m. Eastern Time (ET) on the due date will be considered timely. While 3 p.m. ET on the due date is certainly better than 8 p.m. ET the day before the due date, the parameters detailed in the FAQs do not go far enough. In addition, it is unclear why the Treasury Department has chosen to bury the more flexible time periods in the FAQs. Given these limitations and the temporary nature of FAQs and website information, the National Taxpayer Advocate recommends that Congress amend the mailbox rule in IRC § 7502 to add permanence and common sense, so taxpayers can rely on the timeliness of electronically submitted payments.

RECOMMENDATION

- Amend IRC § 7502 to apply the statutory mailbox rule to all time-sensitive documents and payments electronically submitted to the IRS in a manner comparable to similar documents and payments submitted through the U.S. Postal Service or a designated delivery service and direct the Secretary to issue regulations implementing this requirement.⁶

4 See U.S. Dep't of the Treasury, Electronic Federal Tax Payment System (EFTPS), <https://www.eftps.gov/eftps> (last visited Sept. 19, 2024).

5 EFTPS, *Frequently Asked Questions, What if I have to make a payment that is due today?*, <https://www.eftps.gov/eftps/direct/FAQGeneral.page> (last visited Sept. 19, 2024).

6 For legislative language generally consistent with this recommendation, see Tax Administration Simplification Act, S. 5316, 118th Cong. § 4 (2024), and H.R. 8864, 118th Cong. § 2 (2024).