#5 TREAT ELECTRONICALLY SUBMITTED TAX PAYMENTS AND DOCUMENTS AS TIMELY IF SUBMITTED BEFORE THE APPLICABLE DEADLINE

Present Law

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

IRC § 7502(b) and (c) provide that this timely mailed/timely filed rule (commonly known as the "mailbox rule") applies to documents sent by U.S. postal mail, private delivery services, and electronic filing through an electronic return transmitter. However, the statutory mailbox rule does not apply to all filings and payments. With respect to certified mail and electronic filing, the Secretary is authorized to promulgate regulations describing the extent to which the mailbox rule shall apply.[28] To date, the only regulations the Secretary has promulgated relating to electronic filing cover documents filed through an electronic return transmitter.[29]

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 with an electronic return transmitter).[30] If the IRS does not receive an electronically submitted document (including a facsimile transmission) or payment until after the due date, the document or payment is considered late, even if the taxpayer can produce a confirmation that he or 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 imposes additional cost and burden on 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" (emphasis in original).[31] This limitation applies to all payments.

Example: 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 though it will probably take about a week until the IRS receives, opens, and processes the check. If the same taxpayer submits the payment on 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 — about one week sooner than if submitted 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

28 IRC § 7502(c)(2).

29 Treas. Reg. § 301.7502-1(d).

30 *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).

31 *See* www.eftps.gov (last visited Aug. 29, 2019).

eliminates the risk that a mailed check will be lost or misplaced. Yet rather than encouraging taxpayers to use EFTPS, the earlier deadline serves as a deterrent.

Recommendation

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