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Re: Mailing Tax Documents – Does the Mail Box Rule Exist Anymore?

Dear Clients, Colleagues, and Friends:

Taxpayers have been receiving increasingly more tax notices that their tax returns, extensions, tax payments, S-elections, etc. were never received or not timely received by the IRS.¹ Hence, it is now more important than ever to be able to prove the date of a tax filing. In the past a taxpayer could rely on the common law “mail box rule (MBR)” to prove timely filing. Under MBR, proof of timely filing could include testimonial or circumstantial evidence.² The result was MBR created a presumption that helped taxpayers. But, MBR only applied if the IRS could actually find the document; and currently the IRS is misplacing more documents than it previously did. To exasperate the problem, in August 2011 the IRS promulgated a regulation that reverses MBR. Recently courts are ruling in the IRS’s favor that MBR is no longer valid.

Briefly the regulation states: Other than direct proof of actual delivery to an IRS office (proof is an IRS date stamp on an exact copy of the filing), a taxpayer must have: (a) proof of proper use of registered or certified mail, or (b) proof of proper use of a duly designated private delivery service; and the above are the sole means to prove a document has been delivered to the IRS. No other evidence of a postmark or of mailing proves delivery or raises a presumption that the document was delivered. A harsh rule considering IRS is misplacing documents.

Accordingly, additional efforts are now required to prove tax filings, especially when penalties, additional taxes, and other time sensitive tax matters are at issue, such as: (1) Tax Due Extensions; (2) Tax Court Petitions; (3) Amendments; and (4) Perhaps all income tax returns. E-file services can provide electronic proof of filing, but we are seeing lapses in that too. Thus, our office recommends when mailing important tax documents, use certified mail, return receipt. We further file our tax court petitions via Federal Express. We fax S-elections, and then confirm “fax received” by the IRS; and we are also reviewing client IRS Transcripts, etc. to verify filings, payments, etc. In short, our office will continue to evolve to address the proof of tax filing issue.

¹ My opinion is IRS budget cuts (thus antiquated equipment and processes), and at times its inefficiencies, are increasingly causing documents not to be ‘logged in’ and thus never delivered for practical purposes.

² Testimonial or circumstantial evidence can include credible testimony of a taxpayer timely placing the document in the mail, and perhaps well-documented mailing procedures or a complete professional file indicating mailing.