

Title: Can You Prove Your Tax Return Was Filed on Time?

By: Joshua S. Kreitzer

Copyright: The Law Offices of Marc J. Lane, A Professional Corporation

Date: November 1, 2011

The Lane Report: November 2011

With the rise in electronic filing of tax returns — nowadays, almost 80% of individual tax returns are filed electronically — it can be easy to forget that millions of tax returns, ranging from individual to corporate, are still prepared on paper and need to be mailed to the Internal Revenue Service for filing. And having to mail returns to the IRS can create problems — in the form of interest and penalties — when the IRS won't accept that a return you filed was submitted on time.

How do you know if you've satisfied the deadline? The Internal Revenue Code helps answer this question. Section 7502(a) provides a rule that if a return is delivered to the IRS after the due date, the return will be deemed to have been filed on the date of the postmark on the return's envelope, provided that that date was no later than the due date. (In other words, if your return is due by April 15, you mail it and have it postmarked on April 15, and the IRS receives it on April 22, your return will be deemed filed on April 15 and won't be considered late. But if the same return was mailed and postmarked on April 16 and received by the IRS on April 23, it will be considered eight days late, not just one day late — you wouldn't benefit from the postmark rule in that case. This can be significant when penalties are assessed for each day that a return is late.) Also, the postmark will only count toward your benefit if it's a U.S. Postal Service postmark. If you're living, working, or traveling abroad and need to file a United States tax return, don't wait until the last minute before taking your return to a foreign post office — the return won't arrive on time, and you won't benefit from even a timely foreign postmark.

Of course, if it gets to the point where your postmark date will make a difference, you'll be at a disadvantage in dealing with the IRS — they'll have your postmarked envelope, and you won't. Consequently, many taxpayers prefer to send their returns to the IRS via certified or registered mail. (Certified mail provides proof of mailing at the time of mailing and the date and time of delivery or attempted delivery, while registered mail provides maximum protection and security for valuables, providing the sender with a mailing receipt and having the Postal Service maintain a delivery record. Certified mail is less expensive than registered mail, even after taking into account the fee for a return receipt.)

Under IRS regulations, if you send a document or payment by U.S. certified mail and have the sender's receipt postmarked by the Postal Service, the date of the postmark on the receipt is treated as the postmark date. By contrast, some businesses keep a supply of certified mail forms and receipts, attach

the forms to outgoing mail, apply metered postage, and drop the mail in a mailbox, without taking the certified mail to the post office. This isn't recommended if you need to mail something to the IRS; doing so won't get the sender's receipt postmarked, and it will make it difficult to prove timely mailing if necessary.

IRS regulations provide that in the case of a document (but not a payment) sent by registered or certified mail, proof that the document was properly registered or that a postmarked certified mail sender's receipt was properly issued and that the envelope was properly addressed to an agency, officer, or office constitutes *prima facie* evidence that the document was delivered to that agency, officer, or office. In fact, IRS regulations (issued in August of this year) now provide that other than direct proof of actual delivery, the only ways to establish *prima facie* evidence of delivery of a document are (a) proof of proper use of registered or certified mail, or (b) proof of proper use of a designated private delivery service (such as certain services provided by DHL, Federal Express, or United Parcel Service). No other evidence of a postmark or of mailing can serve as *prima facie* evidence of delivery, nor will any other evidence raise the presumption that the document was delivered.

By establishing such a presumption, the IRS should have the burden to prove that what the taxpayer claims to have sent to the IRS via certified mail, evidenced by a postmarked sender's receipt, is the item that was supposed to have been sent. If the IRS assesses a penalty against you for late filing of a return, and you provide evidence in the form of a postmarked sender's receipt that you sent the return timely, the IRS ought not be able to just speculate that what you sent certified mail was, for example, an empty envelope.

A situation along those lines arose in a state tax case in Missouri, where the taxpayer mailed a tax return and a check to the state Director of Revenue on April 14, 2003, via certified mail, return receipt requested. The Director of Revenue apparently lost the return and check and attempted to assess interest against the taxpayer for late filing. The taxpayer provided evidence that she had mailed "something" to the Director by certified mail, that "something" cost 60 cents to mail before certified mail and return receipt fees, the Director received the "something," and her check had never cleared. The Director refused to accept the taxpayer's explanation that the "something" she mailed was her tax return and check, but offered no explanation as to what the mailing might have been. The Missouri Administrative Hearing Commission found in favor of the taxpayer, noting that "[c]ommon experience shows that when people mail something to the Director around April 15 of each year, it is likely to be tax related." The Commission noted that what the taxpayer had sent cost 60 cents to mail – the postage rate at the time for mailings between 1 and 2 ounces – and that a postcard, an empty envelope, or a one-page letter would each have cost less than that to mail. Hence, the Commission found that the taxpayer had met her burden of proof to show that she timely paid her income tax.

As we move into the future of electronic filing, it's unlikely that returns filed on paper will disappear completely any time soon. If you'd like to talk with us about preparing your next return – or need help

dealing with the IRS regarding a return you've already filed – please call Marc Lane at (312) 372-1040 or (800) 372-1040, or e-mail him at mlane@MarcJLane.com.

Joshua S. Kreitzer is a Senior Associate Attorney with The Law Offices of Marc J. Lane, a Professional Corporation. Mr. Kreitzer is a graduate of Northwestern University (J.D.), the University of South Florida (M.A.), and Harvard University (B.A.)

The Lane Report newsletter is a publication of The Law Offices of Marc J. Lane, a Professional Corporation. We attempt to highlight and discuss areas of general interest that may result in planning opportunities. Nothing contained in The Lane Report should be construed as legal advice or a legal opinion. Consultation with a professional is recommended before implementing any of the ideas discussed herein. Copyright © 2011 The Law Offices of Marc J. Lane, A Professional Corporation. Reproduction, in whole or in part, is forbidden without prior written permission.

"Protecting Today's Wealth. Building Tomorrow's." and the Marc J. Lane Wealth Group logo are trademarks of The Law Offices of Marc J. Lane, a Professional Corporation Registered in U.S. Patent and Trademark Office and may be registered in certain other jurisdictions. "Marc J. Lane Wealth Group" is a trademark of The Law Offices of Marc J. Lane, a Professional Corporation and may be registered in certain jurisdictions.

Any tax information or written tax advice contained herein is not intended or written to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on your or any other person. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice).