
Developing Interim Requirements for Designated Delivery Services Under Section 7502(f) of the Internal Revenue Code

Announcement 96-108

SUMMARY: This announcement invites comments, and provides notice of a public hearing, with respect to interim criteria for designating private delivery services for purposes of the “timely mailing as timely filing/paying” rule of § 7502 of the Internal Revenue Code.

BACKGROUND: The Internal Revenue Service currently accepts mail from both the United States Postal Service (“USPS”) and private delivery services. However, the “timely mailing as timely filing/paying” rule of § 7502(a) has applied only to documents and payments delivered by the USPS. Thus, taxpayers who assumed that using a private delivery service was adequate to show timely filing of their documents or timely making of their payments could inadvertently fail to qualify under the “timely mailing as timely filing/paying” rule. Similarly, the rule of section 7502(c) that proof of proper registration of a document, or that a postmarked certified mail sender’s receipt was properly issued for a document, is prima facie evidence of delivery applies only to documents sent by United States registered or certified mail.

Section 1210 of the Taxpayer Bill of Rights 2 authorized the Service to expand the “timely mailing as timely filing/paying” rule to documents and payments delivered by certain private delivery services that meet the USPS’s ability to deliver items timely, reliably, and securely. A private delivery service must be designated by the Service before it will qualify for the “timely mailing as timely filing/paying” rule. The new statute also authorized an additional designation under § 7502(f)(3) for those private delivery services that provide a service equivalent to United States registered or certified mail. The

new statute is not intended to limit the mailing options that taxpayers currently use, but rather to expand the “timely mailing as timely filing/paying” rule to more delivery services.

After consideration of public comments received in response to this announcement, the Service intends to issue interim guidance that will establish the criteria to be used to designate private delivery services for a limited period of time, starting in the first quarter of 1997. Once that interim guidance is issued, private delivery services will be able to apply to the Service to become “designated delivery services” under § 7502(f). After consideration of those applications, the Service will publish a list of the designated delivery services for the interim period. That list will indicate whether the designation is solely for purposes of § 7502(f)(2) (timely mailing as timely filing/paying) or whether it is also for purposes of § 7502(f)(3) (services that are equivalent to United States registered or certified mail).

Following its designation of private delivery services for the interim period, the Service intends to publish permanent guidance.

INTERIM REQUIREMENTS: Section 7502(f)(2) provides that the Service may designate a private delivery service only if it meets the following requirements:

(A) it must be available to the general public,

(B) it must be at least as timely and reliable on a regular basis as United States mail,

(C) it must record electronically to its data base (kept in the regular course of its business) the date on which the item was given to the private delivery service for delivery, or mark such date on the cover of the item to be delivered, and

(D) it must meet such other criteria as the Service may prescribe.

Congress intended to allow the designation of private delivery services which meet the USPS’s ability to deliver documents quickly and securely. *See* H.R. Rep. No. 506, 104th Cong., 2d Sess. 51 (1996).

The Service is developing guidance that will implement the statutory criteria during the interim period in accordance with Congress’s intent. For example, the USPS postmarks First-Class Mail on the date an item is received for delivery by indelibly marking such date on the

cover of the item so that it is readable by the human eye without mechanical assistance. The Service anticipates that a similar marking or labeling requirement may be appropriate under clause (C) above, even for a private delivery service that records the date of receipt electronically to its data base. Further, there are special rules under § 7502 for United States mail that has a postmark made other than by the USPS. *See* Treas. Reg. § 301.7502-1(c)(1)(iii)(b). For example, if privately metered mail is incorrectly dated, an envelope may have a postmark made by the USPS in addition to the postmark from a private postage meter. In that situation, the postmark made by the private postage meter is disregarded and the USPS postmark is used for purposes of § 7502. Similarly, if a private delivery service permits the sender (or the sender's agent or intermediary) to identify the date under (C), the private delivery service may be required to have established procedures to verify the date and to correct the date if the item is incorrectly dated.

The Service invites written comments concerning the additional criteria that should be prescribed, under clause (D) above, in order to guarantee the same levels of timeliness, reliability, security, and scope of delivery as are available from the USPS. Comments are also requested on what, if any, different or additional criteria should be applied to determine the equivalence of a private delivery service to United States registered or certified mail within the scope of § 7502(f)(3).

Taxpayers should note that no private delivery service has yet been designated pursuant to § 7502(f), nor will the Service accept applications for designation until the interim guidance is issued. Until such designation is announced, the "timely mailing as timely filing/paying" rule of § 7502 is available only with respect to items sent by United States mail.

COMMENTS AND PUBLIC HEARING: In order to meet the Service's objective of publishing a list of the designated delivery services for the interim period in the first quarter of 1997, it is necessary to receive comments and hold the public hearing (discussed below) as soon as possible. Accordingly, a signed original and eight copies of all comments should be submitted by November 22, 1996, by either mailing them to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Attn: CC:DOM:CORP:T:R:IT&A
(Branch 4) Room 5228
Washington, D.C. 20044,

or hand delivering them between the hours of 8:00 a.m. and 5:00 p.m. to:

Courier's Desk
Internal Revenue Service
1111 Constitution Avenue, N.W.
Attn: CC:DOM:CORP:T:R:IT&A
(Branch 4) Room 5228
Washington, D.C.

Alternatively, comments may be submitted electronically via the Service's Internet site at "http://www.irs.ustreas.gov/prod/tax_regs/comments.html". All comments will be available for public inspection and copying.

A public hearing has been scheduled for Friday, December 6, 1996, at 10:00 a.m. in Room 3313; Internal Revenue Building; 1111 Constitution Avenue, N.W.; Washington, D.C. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts. Persons who wish to present oral comments at the hearing must submit written comments as well as an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight copies) by November 22, 1996. Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation, exclusive of the time consumed by the questions from the panel and the answers thereto. An agenda showing the scheduling of the speakers will be made after the outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

FOR FURTHER INFORMATION: For further information regarding the substance of this announcement, contact Robert J. Basso of the Office of Assistant Chief Counsel (Income Tax and Accounting) at (202) 622-6232 (not a toll-free call). For further information regarding the submission of comments and the public hearing, contact Evangelista Lee of the Regulations Unit, Office of Assistant Chief Counsel (Corporate) at (202) 622-7190 (not a toll-free call).