

# It's In the Mail, Right? Recent Decision Emphasizes Limitations On The Mailbox Rule

---

Hale E. Sheppard

---

The consequences of using the wrong service at the right time...

---



**Hale E. Sheppard** (B.S., M.A., J.D., LL.M., LL.M.T.) is a shareholder in the Atlanta office of Chamberlain Hrdlicka specializing in federal and state tax audits, administrative tax appeals, tax litigation, and tax collection defense. You can reach Hale by e-mail at [hale.sheppard@chamberlainlaw.com](mailto:hale.sheppard@chamberlainlaw.com)

**IN THIS MODERN WORLD OF PERVERSIVE GREED** and declining accountability, there are half-truths aplenty. Among the most common of these dubious statements is “the check (or some other important item) is in the mail.” This *could* mean that the item is already en route. More often, though, it indicates that the person plans to send the item shortly. The latter may suffice in many contexts, but not when dealing with federal tax issues. This article examines a recent case demonstrating that, in determining whether a taxpayer is entitled to benefit from the so-called mailbox rule, the IRS and the courts are sticklers for punctuality and precision. Therefore, to avoid the potentially disastrous consequences of missing a filing deadline, taxpayers and their tax advisors must possess more than a superficial understanding of the mailbox rule.

**OVERVIEW OF THE MAILBOX RULE** • Deadlines may be arbitrary, but they are absolutely necessary to administer a complex tax system. Sometimes these cut-off dates help the taxpayer, other times they favor the IRS—it all depends on the situation. For instance, the IRS ordinarily has three years from the date on which a taxpayer files her return to select her for audit, conduct the necessary

review, and assess any additional taxes and penalties. Internal Revenue Code (“Code”) §6501(a). (All section references are to the Code unless otherwise indicated.) This general three-year limit is a saving grace for those taxpayers whose tax-related shortcomings are not discovered by the IRS until later. On the other hand, filing deadlines frequently work to a taxpayer’s detriment. Taxpayers must file a variety of documents with the IRS by a certain date or within a certain period. Those that fail to act within these time limits normally face stiff penalties and/or waive certain rights.

Let’s look at a few examples for the sake of clarity. Generally, an individual must “file” her annual Form 1040 (U.S. Individual Income Tax Return) by April 15 of each year. §6072(a). If the taxpayer later discovers that she made an overpayment of tax, she must “file” a claim for refund within three years from the time the original return was “filed” or two years from the time the tax at issue was paid, whichever period expires later. §6511(a). Similarly, if the IRS issues the taxpayer a notice of deficiency, she must “file” a petition with the U.S. Tax Court within 90 days. §6213(a). The preceding three examples make one thing clear: determining the date a document is “filed” is pivotal. What is not so clear, particularly to the nonlawyer, is when something is considered “filed” for federal tax purposes.

Section 7502 contains the “mailbox rule,” which is also known as the “timely-mailing-equals-timely-filing rule.” Section 7502(a) generally provides that when a taxpayer properly *mails* certain documents *before* the deadline (regardless of whether it is the original deadline or an extended deadline), but the IRS does not *receive* such document until *after* the deadline, the date on which the taxpayer mailed the document is treated as the date that the return was “filed.” The relevant statutory language is as follows:

If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date

under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be. §7502(a)(1).

This taxpayer-friendly rule proves tremendously helpful to those who tend to procrastinate. For evidence thereof, one need look no further than the annual pseudo-news stories on television showing droves of people depositing Forms 1040 at the post office shortly before midnight on April 14th.

Although the general rule under section 7502(a) is clear enough, it tells only a portion of the story. Some of the more obscure aspects of the mailbox rule are discussed in *Gibson v. Commissioner*, a recent case in the Tenth Circuit Court of Appeals. *Gibson v. Commissioner*, 2008-1 U.S. Tax. Cas. (CCH) ¶50184 (10th Cir. 2008).

### **RECENT CASE—GIBSON V. COMMISIONER**

• On August 31, 2005, the IRS issued the taxpayer a notice of deficiency concerning various taxable years. The taxpayer generally has 90 days from the issuance of the notice of deficiency to “file” a petition with the Tax Court. §6213(a). If the taxpayer fails to do so within this 90-day period, then the IRS assesses the tax liability set forth in the notice of deficiency and begins collection actions. §6213(c). The 90-day period in *Gibson* expired on November 29, 2005.

On that final day, the taxpayer visited a United Parcel Service (“UPS”) mail packing store and paid to have his petition sent to the Tax Court via certified mail, return receipt requested. One of the UPS employees on duty at the time date-stamped a U.S. Postal Service Form 3800 (Certified Mail Receipt) as of November 29, 2005, and gave it to the taxpayer. The employee also handed the taxpayer a

receipt indicating that the transaction had occurred at 1:01 p.m. on November 29, 2005.

For some unknown reason, the UPS employee did not place the taxpayer's petition in the mail until the *next* day, November 30, 2005. The U.S. postage meter reflected this date. The Tax Court received the petition several days later, on December 5, 2005. Once the case was placed on the Tax Court docket, the IRS filed a motion to dismiss the taxpayer's petition based on the fact that it was untimely. The Tax Court granted the motion dismissing the case, and the taxpayer appealed.

The appellate court began its analysis by emphasizing that the Tax Court is a court of limited jurisdiction, and as such, it cannot consider a petition that is filed outside the 90-day deadline. This is consistent with the Tax Court rules, which state that “[t]he period fixed by statute, within which to file a petition with the Court to redetermine a deficiency or liability, cannot be extended by the Court.” Tax Court Rule 25(c). The appellate court explained that generally a petition is considered “filed” with the Tax Court on the date it is “received.” The appellate court then acknowledged that there are several exceptions to the general rule—such as the mailbox rule—but declined to find that such exception applied in *Gibson* for the reasons discussed below.

First, section 7502(a)(1) generally provides that if a petition is delivered by U.S. mail to the Tax Court after the applicable deadline, then the “date of the United States postmark stamped on the cover in which [the petition] is mailed” shall be deemed to be the date of delivery. The appellate court pointed out that, here, the U.S. postage date was November 30, 2005, which was one day after the 90-day deadline. Accordingly, the court found that reliance on this exception was misplaced.

Second, under section 7502(c)(1), if a petition is sent by *registered* mail, then the registration date shall be considered the postmark date. The taxpayer argued that this exception applied to his case

because the date placed on the U.S. Postal Service Form 3800 (Certified Mail Receipt) by the UPS employee was November 29, 2005, *i.e.*, the final day of the 90-day period. The appellate court focused on the fact that the taxpayer sent his petition with *certified* mail, not registered mail. Section 7502(c)(2) authorizes the IRS to create regulations regarding the extent to which the rules apply to items sent by certified mail. In the case of documents sent by registered mail, the pertinent regulations state that the date of the registration of the document is treated as the postmark date. Treas. Reg. §301.7502-1(c)(2). The rules vary, though, in the case of documents sent by certified mail. If the document is sent by certified mail “and the sender’s receipt is postmarked by the postal employee to whom the document or payment is presented,” then the date of the U.S. postmark on the receipt is deemed the postmark date. Treas. Reg. §301.7502-1(c)(2). Interpreting the regulation narrowly, the appellate court explained that the special rules for certified mail only apply when a “postal employee” places the postmark on the certified-mail receipt. In *Gibson*, the person who date-stamped the Form 3800 (Certified Mail Receipt) was a UPS worker, not an employee of the U.S. Postal Service. Consequently, his actions did not allow the taxpayer to benefit from the regulations applicable to documents sent via certified mail.

Third, the taxpayer argued that his petition was timely filed under the rules aimed at “designated private delivery services.” Section 7502(f)(1) basically allows the postmark of certain private companies to be treated the same as the official U.S. postmark for purposes of determining when a document was filed. Section 7502(f)(2) empowers the IRS to identify the companies and services to which the special rules apply. According to the most recent IRS pronouncement in this regard, certain delivery options offered by DHL Express, Federal Express and UPS are eligible. Notice 2004-83, 2004-2 C.B. 1030. With respect to the latter, the ac-

ceptable options include UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express, and UPS Worldwide Express Plus. Notice 2004-83, 2004-2 C.B. 1030. The appellate court held that the designated-private-delivery-service exception had no bearing in *Gibson* because the taxpayer may have sent his petition from a UPS mail packing store, but he did not choose to send it using one of the acceptable UPS methods. He opted to send it via certified mail instead.

Since the mailbox rule did not apply in *Gibson*, the appellate court upheld the Tax Court's decision to dismiss the taxpayer's petition. (In reaching its conclusion, the appellate court also determined that the "common law" mailbox rule was also inapplicable.)

**CONCLUSION** • The taxpayer in *Gibson* seemed to do many things right: he properly addressed the petition to the Tax Court, he opted to send his petition via certified mail to have proof of mailing, and he obtained two documents—the U.S. Postal Form 3800 (Certified Mail Receipt) and UPS store receipt—indicating that he had indeed attempted to mail the petition on the last day of the 90-day

filing period. Much to his chagrin, the taxpayer was either at the right store ordering the wrong service or the wrong store ordering the right service. If he had chosen to send his petition from the UPS store using one of the approved methods (such as UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express, and UPS Worldwide Express Plus), his petition would have been considered timely thanks to the application of the mailbox rule to designated private delivery services in section 7502(f). Likewise, if the taxpayer had decided to send his petition by certified mail but did so at a U.S. post office (where a "postal employee" would have placed the postmark on the certified-mail receipt), his petition would have been deemed timely pursuant to the rules under section 7502(c)(2). The outcome is undoubtedly harsh for the taxpayer in *Gibson*, but there is a silver lining, at least for *other* taxpayers and their advisors. In particular, the case serves as a reminder to them that filing deadlines are extraordinarily important and that one needs to analyze the key tax provisions, regulations and IRS pronouncements to ensure that when an item is "in the mail" it is truly "in the mail" for federal tax purposes.

## PRACTICE CHECKLIST FOR

### It's In the Mail, Right? Recent Decision Emphasizes Limitations On The Mailbox Rule

The mailbox rule allows taxpayers generally to have key documents—like Tax Court petitions—considered filed as of the postmark date of the document. But be aware of the details of the rule.

- \_\_\_ Private carriers' postmarks will count—if you use their service for the entire delivery process.
- \_\_\_ Registered mail's filing date is the date the mail is registered.
- \_\_\_ Certified mail's filing date is the date that a post office employee postmarks the mailing.
- \_\_\_ The best approach: don't wait till the last minute, and be sure you understand the filing rules for the document you have to submit.

To purchase the online version of this outline, go to [www.ali-aba.org](http://www.ali-aba.org).