

SECTION 9. DEFINITIONS

Except as otherwise provided in this revenue procedure, the following terms have the meaning given to them by Rev. Proc. 92-20:

Under examination (See section 3.02 of Rev. Proc. 92-20);

Year of change (See section 3.03 of Rev. Proc. 92-20); and

Filed (See section 3.04 of Rev. Proc. 92-20).

SECTION 10. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 85-8, 1985-1 C.B. 495, is modified.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective only for accounting method changes by a bank for which the 1997 tax year is the year of change.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Laura Howell of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) and Nicholas Bogos of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact Ms. Howell at (202) 622-3060 or Mr. Bogos at (202) 622-3920 (not toll-free calls).

26 CFR 301.7502-1: Timely mailing treated as timely filing.

Rev. Proc. 97-19

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SECTION 1. PURPOSE

This revenue procedure provides the criteria that will be used during the interim period (defined in section 3.01 of this revenue procedure) to determine whether a private delivery service (“PDS”) qualifies as a designated private delivery service (“designated PDS”) under § 7502(f) of the Internal Revenue Code. This revenue procedure also provides the procedures under which a PDS can apply to become a designated PDS during the interim period.

SECTION 2. BACKGROUND

.01 Generally, a document is considered filed when it is received. *See, e.g., Emmons v. Commissioner*, 92 T.C. 342, 345-47 (1989), *aff’d*, 898 F.2d 50 (5th Cir. 1990) (tax returns were filed on the date received because § 7502 did not apply). Section 7502 provides special rules that apply when a document is required to be filed (or a payment is required to be made) within a prescribed period or on or before a prescribed date under the authority of any provision of the internal revenue laws. These rules can apply to documents filed at offices of the Internal Revenue Service (“Service”) as well as the United States Tax Court.

.02 Section 7502(a) provides the general rule that if a document (or payment) is delivered by the United States mail after the due date in a postage prepaid, properly addressed envelope, then the date of the United States postmark is deemed to be the date of delivery (or the date of payment) if the date of the postmark is on or before the

due date. (See § 7502(e) for special rules regarding the mailing of deposits.)

.03 Section 7502(c) and §§ 301.7502-1(c)(2) and (d)(1) of the Procedure and Administration Regulations provide the rules applicable to registered and certified mail. If a document or payment is sent by registered mail, the date of the registration is treated as the postmark date. If a document or payment is sent by certified mail, the date of the postmark on the sender’s receipt is treated as the postmark date. Proof of proper registration of a document, or that a postmark certified mail sender’s receipt was properly issued for a document, is prima facie evidence of delivery of that document. For payments sent by registered or certified mail, however, proof of proper registration of an item, or that a postmark certified mail sender’s receipt was properly issued for an item, is not prima facie evidence of delivery.

.04 Section 7502(d) provides exceptions to the general rule of § 7502. The special filing and payment rules of § 7502 do not apply to the following:

(1) documents filed in, or payments made to, any court other than the United States Tax Court;

(2) currency or other medium of payment unless actually received and accounted for; and

(3) documents or payments that are required to be delivered by any method other than by mailing.

.05 Section 1210 of the Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452, 1474-1475 (1996), amended § 7502 by adding subsection (f). Prior to the amendment, the “timely mailing as timely filing/paying” rule of § 7502(a) could not apply to documents and payments delivered other than by United States mail. Section 7502(f) authorizes the Service to expand the “timely mailing as timely filing/paying” rule to documents and payments delivered by certain PDSs. A PDS must be designated by the Service before it will qualify for the “timely mailing as timely filing/paying” rule. Section 7502(f) also grants the Service authority to accept the equivalent of registered or certified mail services from designated PDSs.

.06 In Announcement 96-108, 1996-44 I.R.B. 15, the Service invited comments, and provided notice of a public hearing, with respect to developing interim criteria for designating PDSs for purposes of the “timely mailing as timely filing/paying” rule of § 7502. A

public hearing was held on December 6, 1996. All comments were considered during the drafting of this revenue procedure. The comments will also be considered during the drafting of permanent guidance.

SECTION 3. SCOPE

.01 This revenue procedure provides the rules for designating a PDS during the interim period. The interim period begins on February 25, 1997, and ends on the date on which the Service issues guidance superseding this revenue procedure.

.02 This revenue procedure provides rules applicable for designation solely for purposes of § 7502(f)(2). During the interim period, there will be no designation for purposes of § 7502(f)(3) (services that are equivalent to United States registered or certified mail).

.03 Designation will be determined with respect to each type of delivery service offered by a PDS (e.g., next business morning delivery, next business day delivery, etc.).

.04 PDSs will not be designated until the time specified in section 8.01 of this revenue procedure. 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.

SECTION 4. CRITERIA FOR DESIGNATION

The following criteria must be satisfied for each type of delivery service for which designation is sought.

.01 The delivery service offered must be available to the general public.

.02 The delivery service offered must be at least as timely and reliable on a regular basis as United States First-Class Mail.

.03 The delivery service offered must provide for the recording or marking of the date on which an item was given to the PDS for delivery (the "received date") under one of the following methods.

(1) The PDS must record electronically to its data base (kept in the regular course of its business) the received date and enter into, and comply with, a written agreement with the Service that addresses the period for which such data must be maintained and the terms and conditions under which the Service will be provided with such data.

(2) The PDS must indelibly mark the received date on the cover of the item

so that it is readable by the human eye without mechanical assistance. A method does not qualify if only the sender or the sender's agent (instead of the PDS) marks the received date.

.04 The delivery service offered must provide for delivery to all street addresses within the United States to which documents and payments subject to § 7502 must be sent (e.g., all Service offices and the United States Tax Court).

.05 The delivery service offered must have established security procedures that prevent unauthorized access to the contents of an item by any person (e.g., employees, contractors/agents, and third parties).

.06 The name of the PDS and the type of delivery service being used must always be clearly identified on each item delivered by the PDS to an office described in § 7502.

.07 The PDS must comply with all requirements of the Private Express Statutes (18 U.S.C. §§ 1693–1699 and 39 U.S.C. §§ 601–606). (See generally 39 C.F.R. Parts 310 and 320.)

SECTION 5. CONTENT OF APPLICATION

.01 To receive designation, a PDS must submit a written application. If a PDS uses a single application to request designation with respect to more than one type of delivery service it offers, the PDS must include all of the required information for each type of delivery service.

.02 The application must include the name and address of the principal place of business of the PDS and the name and telephone number of a contact person.

.03 The application must describe how the PDS satisfies each of the requirements of section 4 of this revenue procedure. In particular, an application should address the following topics.

(1) In addressing the requirement under section 4.02 of this revenue procedure, the PDS should discuss whether it guarantees delivery within the time specified for the type of delivery service and, if so, it should provide information on that program.

(2) In addressing the requirement under section 4.03 of this revenue procedure, the PDS must discuss its recording or marking procedures, including the security procedures that prevent falsification of the recording or marking of

the received date. The PDS must also submit an example of a cover of an item. If the PDS is applying for qualification under section 4.03(1), it must describe its current data storage periods and all of the methods it currently provides for senders or recipients to obtain information concerning the received date (e.g., toll-free telephone number, Internet access, software/modem connection).

(3) In addressing the requirement under section 4.04 of this revenue procedure, the PDS must discuss how often and under what circumstances it uses contractors/agents in providing nationwide delivery.

(4) In addressing the requirement under section 4.07 of this revenue procedure, the PDS must include a statement that it certifies it is in compliance and will remain in compliance.

.04 A PDS should identify any information within its application that it considers to be confidential trade secrets.

.05 The application must include the following statement:

Under the penalties of perjury, I declare that I have examined this application and any accompanying information, and to the best of my knowledge and belief it is true, correct, and complete. This applicant will provide prompt written notification to the Service if any application information changes during the time it is under consideration for designation. This applicant will comply with all of the provisions of Rev. Proc. 97–19 during the time it is a designated private delivery service if it is designated during the interim period. I understand that noncompliance will result in the revocation of designation. I am authorized to make and sign this statement on behalf of this applicant.

.06 The application must be signed and dated by an authorized official of the private delivery service (not the applicant's representative) who has personal knowledge of the application information and whose duties are not limited to making the application. A stamped signature is not permitted.

.07 A PDS must submit an original and two copies of its application.

SECTION 6. APPLICATION ADDRESSES

A PDS may submit its written application by either mailing it to:

Internal Revenue Service
Attn: Chief, Taxpayer Service T
Room 3408
1111 Constitution Avenue, N.W.
Washington, D.C. 20044,
or hand delivering it between the hours
of 8:00 a.m. and 5:00 p.m. to:
Courier's Desk
Internal Revenue Service
Attn: Chief, Taxpayer Service T
Room 3408
1111 Constitution Avenue, N.W.
Washington, D.C.

SECTION 7. APPLICATION PERIODS

.01 During the interim period, there will be an initial application period and subsequent application periods.

(1) The initial application period ends on March 14, 1997.

(2) Subsequent application periods will end on each June 30th and December 31st thereafter.

.02 Once a PDS is designated, it does not need to reapply during the interim period unless it desires to receive designation with respect to a new type of delivery service it offers.

SECTION 8. NOTIFICATION OF DESIGNATION

.01 After reviewing those applications filed during the initial application period, the Service anticipates that by March 31, 1997, it will issue the first notice that lists the PDSs that are designated under these interim procedures. That notice will specify the period during which the designated PDSs will be designated. This period will not begin earlier than the date the notice is issued, and the period may begin either on the date the notice is issued or shortly thereafter. Except as provided in section 12 of this revenue procedure, this period will not end earlier than March 1, 1998, regardless of the time permanent guidance is issued.

.02 The Service will issue additional notices providing a revised list of the designated PDSs on or before September 1st and March 1st of each year of the interim period.

.03 In unusual circumstances, the Service may issue additional notices at other times. (See, for example, section 12.06 of this revenue procedure.)

SECTION 9. ADMINISTRATIVE REVIEW AND APPEAL PROCESS FOR DENIAL OF DESIGNATION

.01 A PDS that has been denied designation has the right to an administra-

tive review and appeal. During the administrative review and appeal process, the denial of designation remains in effect.

.02 If the Service has denied designation with respect to any type of delivery service offered by a PDS, the Service will issue a letter of denial that explains to the applicant why the Service rejected the request for designation.

.03 An applicant that receives a letter of denial may obtain administrative review by mailing or delivering, within 30 calendar days of the date of the letter of denial, a written response to the Service at one of the application addresses listed in section 6 of this revenue procedure. The applicant's response must address the Service's explanation for the denial of designation.

.04 Upon receipt of an applicant's written response, the Service will reconsider its denial of designation. The Service may (1) designate the applicant by issuing a notice that provides a revised list of the designated PDSs, or (2) confirm its denial of designation by issuing a letter to the applicant.

.05 If an applicant receives a letter confirming the denial of designation, the applicant is entitled to an appeal, in writing, to the National Director of Appeals.

.06 The appeal must be mailed or delivered to the Service at one of the application addresses listed in section 6 of this revenue procedure within 30 calendar days of the date of the letter confirming the denial of designation. An applicant's written appeal must contain a detailed explanation, with supporting documentation, of why the denial should be reversed. In addition, the applicant must include a copy of the applicant's original application, a copy of the letter of denial, a copy of the applicant's request for administrative review, and a copy of the letter confirming the denial.

.07 Failure to respond within the 30-day periods described in sections 9.03 and 9.06 of this revenue procedure irrevocably terminates an applicant's right to an administrative review or appeal.

.08 A PDS that has been denied designation during any application period may reapply during the next application period.

SECTION 10. SPECIAL RULES

.01 A PDS is required to provide prompt written notification to the Service at one of the application addresses listed in section 6 of this revenue proce-

dure if any application information changes during the time the PDS is under consideration for designation or during the time it is a designated PDS.

.02 If a designated PDS delivers an item that is sent by itself, a related person within the meaning of § 267, or a member of an affiliated group of which the designated PDS is also a member within the meaning of § 1504, such item will not qualify under the "timely mailing as timely filing/paying" rule unless the item is received by the addressee no later than two business days after the due date.

.03 For purposes of the postage prepaid requirement of § 7502(a)(2)(B), a sender is permitted to use a billing method other than advance payment if a designated PDS offers such billing method in accordance with established industry practices and the recipient is not charged without its permission. An item will not qualify under the "timely mailing as timely filing/paying" rule if the recipient is charged without its permission. Moreover, the Service will not accept delivery of an item if the Service is billed for the delivery charge without its permission. Similarly, the United States Tax Court may not accept delivery of an item if it is billed for the delivery charge without its permission.

SECTION 11. ADVERTISING STANDARDS FOR DESIGNATED DELIVERY SERVICES

.01 No designated PDS may, in any way, use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive, or unfair statement or claim.

.02 A designated PDS must adhere to all relevant federal, state, and local consumer protection laws that relate to advertising and soliciting.

.03 A designated PDS must not use the name of the Treasury Department, the Service (e.g., "Internal Revenue Service" or "IRS"), or the United States Tax Court within its name.

.04 Advertising materials shall not carry the seal of any office within the Treasury Department or of the United States Tax Court.

.05 If a designated PDS uses any audio or video media (including radio, television, and the Internet) to advertise its status as a designated PDS, the broadcast must be pre-recorded. The designated PDS must keep a copy of such pre-recorded advertisement for a

period of at least 36 months from the date of the last transmission or use.

.06 If a designated PDS uses any written media (including newspapers, direct mail, billboards, and fax communications) to advertise its status as a designated PDS, the designated PDS must retain a copy (or example) of such advertisement, along with a list or other description of the persons to whom the communication was directed, for a period of at least 36 months from the date of the last communication.

SECTION 12. MONITORING OF DESIGNATED DELIVERY SERVICES AND REVOCATION PROCEDURES

.01 The Service may monitor designated PDSs to ensure compliance with the requirements of this revenue procedure. If the Service finds that a designated PDS failed to comply with the requirements of this revenue procedure, the Service will issue a warning letter that describes specific corrective action that must be taken in order to retain designation.

.02 If the designated PDS fails to take the appropriate corrective action within the time specified in the warning letter, a proposed revocation letter will be issued. If a designated PDS receives a proposed revocation letter, the designated PDS is entitled to an appeal, in writing, to the National Director of Appeals.

.03 The appeal must be mailed or delivered to the Service at one of the application addresses listed in section 6 of this revenue procedure within 30 calendar days of the date of the proposed revocation letter. A designated PDS's written appeal must contain a detailed explanation, with supporting documentation, of why the revocation should not be made. In addition, the designated PDS must include a copy of the warning letter and a copy of the proposed revocation letter. Failure to appeal within the 30-day period irrevocably terminates a designated PDS's right to an appeal.

.04 If a designated PDS fails to file a timely appeal or if an appeal is denied, the Service will revoke the designation. The revocation may be either with respect to a single type of delivery service offered by the designated PDS or with respect to all types of delivery services offered, depending on the nature of the violation. The revocation will be effective after issuance of a notice that provides a revised list of the designated PDSs.

.05 A PDS is not permitted to reapply for designation under the provisions of this revenue procedure if, after consideration of an appeal if timely requested, there has been a complete or partial revocation of its status as a designated PDS. The permanent guidance may also preclude such a PDS from reapplying for an additional specified period of time.

.06 In exceptional circumstances, the Service may revoke the status of a designated PDS before the appeals process is completed. Such revocation will be effective after issuance of a notice that provides a revised list of the designated PDSs. If, after consideration of an appeal, it is determined that a PDS is qualified for designation, the PDS will be redesignated. Such redesignation will be effective after issuance of a notice that provides a revised list of the designated PDSs.

SECTION 13. EFFECTIVE DATE

This revenue procedure is effective February 25, 1997.

SECTION 14. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduc-

tion Act (44 U.S.C. § 3507) under control number 1545-1535.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 4.03, 5, 9.03, 9.06, 10.01, 11.05, 11.06, and 12.03. This information is required for the Internal Revenue Service to determine whether a private delivery service should be a "designated" private delivery service. This information will be used to ensure that a private delivery service conforms to the requirements set forth in this revenue procedure. The collections of information are required to obtain a benefit. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 3,069 hours.

The estimated average annual burden per respondent/recordkeeper is 614 hours. The estimated number of respondents and/or recordkeepers is five.

The estimated frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

SECTION 15. DRAFTING INFORMATION

The principal authors of this revenue procedure are Robert J. Basso and Renay France of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. France at (202) 622-6232 (not a toll-free call).