

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8807]

RIN 1545-AW82

Timely Mailing Treated as Timely Filing/Electronic Postmark

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary and final regulations relating to timely mailing treated as timely filing and paying under section 7502. The temporary regulations generally reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998. The temporary regulations affect taxpayers that file documents or make payments or deposits. The text of the temporary regulations is also set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective date: These regulations are effective January 15, 1999.

Applicability date: For dates of applicability, see §301.7502-1T(f)(3).

FOR FURTHER INFORMATION CONTACT: Charles A. Hall (202) 622-4940 (not a toll-free call).

## SUPPLEMENTARY INFORMATION:

**Background**

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 7502 relating to timely mailing treated as timely filing and paying. Section 7502(c)(2) was amended by section 2003(b) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 725 (1998)), to authorize the Secretary to provide the extent to which the prima facie evidence of delivery and postmark date rules apply to electronic filing.

**Explanation of Provisions**

These temporary regulations add §301.7502-1T(d) to provide that the date of an electronic postmark given by an authorized electronic return transmitter will be deemed the filing date if the date of the electronic postmark is on or before the filing due date. It also permits the Commissioner to enter into an agreement with an electronic return transmitter or to prescribe in forms, instructions, or other appropriate guidance the procedures under which the electronic return transmitter is authorized to provide taxpayers with an electronic postmark to acknowledge the date and time that the electronic return transmitter received the electronically filed document.

An electronic return transmitter is defined for purposes of the regulation the same as in the revenue procedures governing the Electronic Filing Program, currently Rev. Proc. 98-50 (1998-

38 I.R.B. 8 (September 21, 1998)), and the On-Line Filing Program, currently Rev. Proc. 98-51 (1998-38 I.R.B. 20 (September 21, 1998)). An electronic postmark is a record of the date and time that an authorized electronic return transmitter receives the transmission of the taxpayer's electronically filed document on its host system.

For tax year 1998, the rules on electronic postmarks are effective for income tax returns filed through electronic return transmitters authorized to provide an electronic postmark pursuant to an agreement under the Electronic Tax Administration's Request for Agreement released on November 26, 1997. For taxable years beginning after 1998, the rules on electronic postmarks are effective for documents submitted to electronic return transmitters that are authorized to provide an electronic postmark pursuant to §301.7502-1T(d)(2).

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to

the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Charles A. Hall, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 301.7502-1T also issued under 26 U.S.C. 7502(c)

\* \* \*

Par. 2. Section 301.7502-1 is amended by:

1. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively.

2. Adding new paragraph (d).

The addition reads as follows:

§301.7502-1 Timely mailing treated as timely filing.

\* \* \* \* \*

(d) [**Reserved**]. For further guidance regarding timely filing of electronically filed documents for taxable years beginning after December 31, 1997, see §301.7502-1T(d).

\* \* \* \* \*

Par. 3. Section 301.7502-1T is added to read as follows:

§301.7502-1T Timely mailing treated as timely filing (temporary).

(a) through (c) [**Reserved**]. For further guidance, see §301.7502-1(a) through (c).

(d) Electronically filed documents--(1) In general. A document filed electronically with an electronic return transmitter (as defined in paragraph (d)(3)(i) of this section and authorized pursuant to paragraph (d)(2) of this section) in the manner and time prescribed by the Commissioner is deemed to be filed on the date of the electronic postmark (as defined in paragraph (d)(3)(ii) of this section) given by the authorized electronic return transmitter. Thus, if the electronic postmark is timely, the document is considered filed timely although it is received by the agency, officer, or office after the last date, or the last day of the period, prescribed for filing such document.

(2) Authorized electronic return transmitters. The Commissioner may enter into an agreement with an electronic

return transmitter or prescribe in forms, instructions, or other appropriate guidance the procedures under which the electronic return transmitter is authorized to provide taxpayers with an electronic postmark to acknowledge the date and time that the electronic return transmitter received the electronically filed document.

(3) Definitions--(i) Electronic return transmitter. For purposes of this paragraph (d), the term electronic return transmitter has the same meaning as contained in section 3.02(4) of Rev. Proc. 98-50 (1998-38 I.R.B. 8 (September 21, 1998)), and section 3.02(3) of Rev. Proc. 98-51 (1998-38 I.R.B. 20 (September 21, 1998))(See §601.601(d)(2) of this chapter.), or in procedures subsequently prescribed by the Commissioner.

(ii) Electronic postmark. For purposes of this paragraph (d), the term electronic postmark means a record of the date and time (in a particular time zone) that an authorized electronic return transmitter receives the transmission of a taxpayer's electronically filed document on its host system. However, if the taxpayer and the electronic return transmitter are located in different time zones, it is the time in the taxpayer's time zone that controls the timeliness of the electronically filed document.

(e) through (f)(2) [**Reserved**]. For further guidance, see §301.7502-1(e) through (f)(2)

(f)(3) Electronically filed documents--(i) For taxable year 1998. For taxable year 1998, paragraph (d) of this section only applies to electronically filed income tax returns transmitted to an electronic return transmitter that was authorized to provide an electronic postmark pursuant to an agreement entered into in response to submissions received in reply to the Electronic Tax Administration's Request for Agreement released on November 26, 1997.

(ii) For taxable years after 1998. For taxable years after 1998, paragraph (d) of this section applies to any electronically filed return, claim, statement, or other document transmitted to an electronic return transmitter that is authorized to provide an electronic postmark pursuant to paragraph (d)(2) of this section. This section expires on January 14, 2002 .

Robert E. Wenzel

Deputy Commissioner of Internal Revenue

Approved: December 30, 1998

Donald C. Lubick

Assistant Secretary of the Treasury