



## **Mailing Late Tax Returns Or Payments A Tax Trap For The Unwary**

By Edward Beeby, Esq.

October 17, 2017

Another tax season is finally over and you mailed all of your clients' returns on time. Relax. You have earned it.

But not everyone makes the tax filing and payment deadline, extended or otherwise. It happens.

If a return or payment is late, failure to file or pay penalties may be assessed.<sup>i</sup> Maybe both.<sup>ii</sup> These penalties are an additional five percent or half a percent, respectively, added on to your taxes for each month the return is late.<sup>iii</sup> (Fortunately they max out at 25 percent.<sup>iv</sup>) Most people think they have got just under a month to mail their return or payment before incurring another month of penalties. Paying interest may not be a big deal<sup>v</sup> and November 15, 2017<sup>vi</sup> is a long way away. But do not delay in getting that return or payment in the mail!

Some people think that they file or pay their taxes on the day they drop their return or check in the mail, and that it does not matter when the IRS actually receives the return or check. This is called the mailbox rule<sup>vii</sup> and it is the reason the Post Office has a line out of the door every April 15.

At first, the mailbox rule does essentially say that a filing or payment occurs on its postmark date.<sup>viii</sup> And herein lies the confusion. However, it goes on to limit itself to say only that a timely mailing is a timely filing or payment.<sup>ix</sup>

So what is the difference between “the filing or payment date is its postmark” and “a timely mailing is a timely filing or payment”?

The difference is the deadline has already past. It came and went October 16, 2017. The mailbox rule only says that a timely mailing is a timely filing or payment.<sup>x</sup> Since the return or payment is being mailed after its due date, the mailing will never be timely, so the late filing or payment will not be timely either.<sup>xi</sup> When mailing a late return or late payment, the mailing is treated as filed or paid on the date the IRS actually gets your letter.<sup>xii</sup>

Let me give you an example. If you mail the return or check on November 15, 2017, the IRS will not receive it until at least November 16, 2017. On November 16, 2017,

you or your client will incur not one month's worth of failure to file penalties and/or failure to pay penalties, but two months.<sup>xiii</sup> Instead of being assessed five percent or half a percent more, respectively, you or your client will actually be assessed ten percent or one percent more.<sup>xiv</sup>

Many experienced and talented tax accountants fall into this trap every year, much to their chagrin. And their clients. It is a very easy mistake to make.

So what is a taxpayer to do? If you have the option, mail the return or payment a few days before November 15, 2017.<sup>xv</sup> Hopefully the IRS will receive it on or before November 15, 2017. However, e-filing is even better because it gets to the IRS almost instantaneously.

See you next tax season!



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**Edward Beeby** is a tax attorney at Murphy Pearson Bradley & Feeney whose practice focuses on representing businesses and individuals in tax controversies before the IRS and other taxing authorities. Mr. Beeby represents accountants, accounting firms, enrolled agents, tax preparers, and attorneys in professional liability defense. He has handled a wide variety of litigation and controversy matters, at all stages, including pre-litigation counseling, discovery, dispositive motion practice, trial, and appeal. In addition to litigation, Mr. Beeby counsels businesses and individuals regarding the tax implications of planned and completed business transactions.

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<sup>i</sup> I.R.C. § 6651(a)(1), (2).

<sup>ii</sup> *Id.* at (c)(1) (reducing amount of failure to file penalty by amount of failure to pay penalty).

<sup>iii</sup> *Id.* at (a)(1), (2).

<sup>iv</sup> *Id.*

<sup>v</sup> If you are not all paid up you are racking up interest on your underpayment. I.R.C. § 6601(a). But you probably already know that and we are not talking about interest. We are talking about penalties.

<sup>vi</sup> This year's extended return deadline was October 16, 2017 because October 15, 2017 was a Sunday. I.R.C. §§ 6081, 7503. However, the extended return deadline is still considered to be October 15, 2017 for purposes of computing penalties. Treas. Reg. § 301.6651-1(b)(3).

<sup>vii</sup> I.R.C. § 7502.

<sup>viii</sup> 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.

*Id.* at (a)(1).

<sup>ix</sup> This [rule] shall apply only if-- (A) the postmark date falls within the prescribed period or on or before the prescribed date-- (i) for the filing (including any extension granted for such filing) of the return, claim, statement, or other document, or (ii) for making the payment (including any extension granted for making such payment), and (B) the return, claim, statement, or other document, or payment was, within the time prescribed in subparagraph (A), deposited in the mail in the United States...

*Id.* at (a)(2).

<sup>x</sup> *Id.*

<sup>xi</sup> *Id.*

<sup>xii</sup> *First Charter Fin. Corp. v. United States*, 391 F.2d 653 (Ct. Cl. 1968); Rev. Rul. 81-269.

<sup>xiii</sup> I.R.C. § 6651(a)(1), (2). The penalties increase each additional month "or fraction thereof." *Id.* So a return or payment that is one month and one day late is penalized the same amount as a return that is a full two month's late.

<sup>xiv</sup> *Id.*

<sup>xv</sup> See footnote vi.