

Mailing Your Tax Return by the Due Date Is Not Enough

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A recent United States Tax Court memorandum decision demonstrates once again the importance of understanding the rules for timely filing your tax return. See [*John P. Zaimes v. Commissioner of Internal Revenue*](#). If a tax return is sent by regular mail on or before the due date, IT MUST BE RECEIVED BY THE IRS to be treated as timely filed. Proving that it was postmarked on or before the due date is not enough. If a tax return is sent by registered or certified mail or by certain private delivery services, however, it will be treated as timely filed if it is sent on or before the due date, even if the IRS never receives it. In the case of tax returns that are electronically filed with the IRS, they are deemed to be filed on the date of the electronic postmark given by the authorized electronic return transmitter.

Taxpayers often mistakenly believe that if they mail their tax return with their payment on or before the due date, the tax return will be treated as timely filed and the payment timely made. What if the U.S. Postal Service (USPS) never delivers the tax return to the IRS? The tax return is not treated as filed, and the payment is not treated as made.

John Zaimes Learned This the Hard Way

Mr. Zaimes timely mailed his 2015 tax return by regular mail with a payment, but the tax return and payment were never received by the IRS. (The IRS contended that Mr. Zaimes never mailed the tax return or check, but the Tax Court believed Mr. Zaimes's testimony that he did mail them on October 17, 2016, the due date for the 2015 tax return on extension.) When Mr. Zaimes learned that his tax return and payment had not been received, he filed his 2015 tax return electronically on November 17, 2016, in which he reported an unpaid balance of \$110,693. (Mr. Zaimes and the IRS did not dispute the unpaid balance.) As a result of the late electronic filing and late payment, the IRS issued Mr. Zaimes a Notice of Federal Tax Lien Filing. In addition to being liable for the unpaid tax, the IRS contended that Mr. Zaimes was liable for the late-filing penalty and the late-payment penalty.

Mr. Zaimes challenged the imposition of the penalties in an IRS Collection Due Process Hearing. During the hearing, he asserted that the IRS should abate the late-filing and late-payment penalties because, he alleged, he had timely filed his 2015 tax return and had timely paid *a portion* of his 2015 tax liability by mailing the check by the due date. The IRS officer at the hearing disagreed and did not abate the penalties.

Mr. Zaimes appealed the IRS findings to the United States Tax Court. He raised two arguments for why he was not liable for the late-filing penalty. First, he argued that the tax return was not late. Second, even if the tax

return was late, he had reasonable cause for the late filing. After reviewing the law, the Tax Court held that the return was late and that Mr. Zaimes did not have reasonable cause for filing late.

Mr. Zaimes filed his tax return by regular mail. A taxpayer's tax return sent by regular mail is only considered filed if it is *actually delivered* to the IRS. IRC § 7502 and its related regulations, which the Tax Court reviewed, provide rules by which a tax return will be deemed delivered when it is mailed.

Tax Return Was Filed Late

- **Regular mail.** If a tax return is mailed by regular mail, the tax return is treated as timely delivered, even if it is delivered to the IRS after the due date, if the following conditions are met:
 1. The postmark is on or before the due date;
 2. The tax return and payment are in an envelope and properly addressed;
 3. The envelope has enough postage; and
 4. *The IRS actually receives the tax return and payment.*
- **Registered and certified mail.** If a tax return is mailed by registered or certified mail, the mailing will constitute prima facie evidence that the tax return was *delivered* to the IRS if the following conditions are met:
 1. The taxpayer has proof that the tax return was properly registered or that a postmarked certified mail sender's receipt was properly issued; and
 2. The envelope was properly addressed to the IRS.
- **Private Delivery Services.** The IRS has recognized certain private delivery services as the equivalent of registered and certified mail. See [Private Delivery Services PDS](#). These include delivery services offered by DHL Express, FedEx, and UPS.

The key difference between regular mail, on the one hand, and registered or certified mail (and equivalent private delivery services), on the other hand, is that the tax return is treated as delivered to the IRS if sent by registered or certified mail (or equivalent private delivery service). If the taxpayer can show that they properly used registered or certified mail (or an equivalent private delivery service) on or before the due date of the tax return, the taxpayer will be treated as having filed the tax return timely, even if it is never received by the IRS. If Mr. Gaines had used registered or certified mail, his 2015 tax return would have been treated as timely filed, and the payment included with his tax return would have been treated as paid at that time.

Because he used regular mail, the Tax Court held that the tax return and payment were not filed because they were not actually delivered to the IRS. When he learned that his paper tax return had not been delivered to the IRS, Mr. Gaines filed his 2015 tax return electronically after the due date, which made it late.

No Reasonable Cause for Late Filing

Mr. Zaimes argued he had four reasons for failing to file on time. The Tax Court rejected each reason.

First, Mr. Zaimes argued that he had reasonable cause because the IRS instructions to Form 1040 do not expressly state that a tax return must be sent by registered or certified mail or that the taxpayer bears the risk of

non-delivery when regular mail is used. The Tax Court found that Mr. Zaimes did not see or rely on the instructions when he mailed his tax return, and, accordingly, the instructions did not cause his failure to timely file his tax return.

Second, Mr. Zaimes argued that he had reasonable cause because the IRS did not notify him until December 4, 2017, the date it processed his electronic tax return, that his 2015 tax return had been filed late. The Tax Court found that the IRS's action or inaction after October 17, 2015, did not cause Mr. Zaimes's failure to timely file his tax return on or before October 17, 2016.

Third, Mr. Zaimes argued he had reasonable cause because the USPS worker with whom he spoke never advised him to mail his tax return by registered or certified mail, but on cross-examination, Mr. Zaimes acknowledged that she suggested he do that. The USPS worker did not suggest filing the tax return electronically. Mr. Zaimes deduced from this that he was advised that filing by regular mail would be sufficient. The Tax Court did not conclude that the USPS worker advised Mr. Zaimes that a regular mailing was sufficient to avoid the risk that the tax return would not be delivered to the IRS.

Finally, Mr. Zaimes argued that he had reasonable cause for failing to timely file his tax return because the USPS did not deliver his tax return. The Tax Court did not accept this reason because Mr. Zaimes failed to prove that (1) he correctly addressed the envelope in which he mailed his tax return or (2) he placed sufficient postage on the envelope.

No Reasonable Cause for Late Payment

Mr. Zaimes's undisputed tax liability for 2015 was \$185,615. He made an estimated payment of \$40,000 on February 1, 2016, and a payment of \$38,000 on April 15, 2016, with his extension to file his tax return. He mailed a payment of \$58,145 with the tax return on October 17, 2016. Mr. Zaimes argued that he had reasonable cause for not paying the \$58,145 after he mailed the check. That is, the late-payment penalty should not apply to the \$58,145 after he mailed the check, even though the IRS did not receive it. The Tax Court found that he lacked reasonable cause for two reasons. First, there must be reasonable cause for not making the *entire* payment. Mr. Zaimes did not dispute that he owed \$110,693, and he did not make a payment of this entire amount. Second, the payment was due April 18, 2016, the original due date without extension. An extension to file a tax return does not extend the time by which the tax due must be paid. The Tax Court found that the fact that he mailed a check on October 17, 2016, does not explain why he did not pay the tax shown on the return on or before April 18, 2016.

Takeaway

Use registered or certified mail. The case demonstrates once again the importance of mailing a paper tax return by registered or certified mail (or an equivalent private delivery service), especially when tax is due with the tax return. This eliminates the risk that the IRS might not receive the tax return and payment, even though it was mailed on or before the due date. In lieu of registered or certified mail, taxpayers can ensure delivery to the IRS by filing electronically.

An extension to file is not an extension to pay. To avoid a late-filing penalty, the *entire* taxes due must be paid on or before the due date of the tax return. If an extension to file the tax return is going to be filed, pay the tax that will be due with the extension. This will require estimating the tax that will be due, and it is better to overestimate than underestimate.

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