

Tax Document Danger: Not All Delivery Services Are Safe for Filing

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Another taxpayer has been stung by using the wrong version of a private delivery service, FedEx “Express Saver,” resulting in the late filing of an important tax document.

Filing Requirements for U.S. Tax Court Petitions

Tax documents generally must be filed by a certain date. One such document is a petition filed by a taxpayer with the United States Tax Court. If a taxpayer wishes to challenge a notice of deficiency (a notice from the IRS stating that it has determined that the taxpayer owes additional tax), the taxpayer must file a petition in the United States Tax Court within 90 days after the notice of deficiency is mailed by the IRS to the taxpayer. (The period is 150 days if the notice is addressed to a person outside the United States. Saturdays, Sundays, and legal holidays in the District of Columbia are not counted as the last day of the 90-day period.)

The Internal Revenue Code establishes the 90-day (or 150-day) filing requirement. If the Tax Court does not receive the petition within the required time frame, it has no authority to hear the case. This means the taxpayer cannot challenge the IRS determination in court without first paying the tax the IRS says it owes and then suing the government for a refund.

Failing to Timely File

In [*Lynch v. Commissioner of Internal Revenue*](#), No. 1398-24, 2024 BL 133102 (T.C. Apr. 18, 2024), the Tax Court found that the taxpayer failed to timely file a petition because it used FedEx Express Service, and the petition was received and filed by the Tax Court after the 90-day period. The due date for the petition was January 22, 2024, and the envelope for the petition showed a ship date of January 22, 2024, but the petition was not received and filed by the Tax Court until January 24, 2024, two days after the due date. Accordingly, the court held it could not hear the taxpayer’s case.

Exceptions to the Timely Filing Rule

There are two types of exceptions to the timely file rule. Under the first exception, a tax document that is sent on or before a due date will be treated as received by the due date *if it is actually received*. Under the second exception, a tax document that is sent on or before a due date will be treated as received by the due date, whether or not it is actually received, if specific delivery methods are used.

When does the first exception apply?

U.S. Regular mail. If a tax document is mailed by regular mail, the tax document is treated as timely delivered, even if it is delivered after the due date, if the following conditions are met:

- The postmark is on or before the due date.
- The tax return and payment are in an envelope and properly addressed.
- The envelope has enough postage.
- The tax document is actually received.

When does the second exception apply?

U.S. 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 document was *delivered* if the following conditions are met:

- The taxpayer has proof that the tax document was properly registered or that a postmarked certified mail sender's receipt was properly issued.
- The envelope was properly addressed to the IRS.

Private Delivery Services and IRS Guidelines

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. Because the taxpayer used FedEx Express Service, which is neither U.S. mail nor a *designated* private delivery service, the taxpayer could not benefit from the first or second exception.

Other taxpayers have made the same mistake. The danger with DHL Express, FedEx, and UPS is that taxpayers sometimes mistakenly believe that any of the services provided by these private delivery services will satisfy the timely-filed requirement if sent on or before the due date. [IRS Notice 2016-30](#), which provides the IRS "Designation of Private Deliver Services," cautions that "[o]nly the specific delivery services enumerated in this list are designated delivery services . . . DHL Express, FedEx, and UPS are not designated with respect to any type of delivery service not enumerated in this list. Taxpayers are cautioned that merely because a delivery service is provided by DHL Express, FedEx, or UPS, it does not mean that the service is designated for purposes of the timely mailing treated as timely filing/paying rule. . ."

For another unfortunate case involving an untimely filing, see [Mailing Your Tax Return by the Due Date Is Not Enough](#).

The Takeaway for Timely Filing Tax Documents

When filing tax documents, choose the mailing method that best ensures a timely filing. Registered or certified U.S. mail is always a safe choice.

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