A Personal Touch to the Mailbox Rule

By Robert B. Jackson

Introduction

Business communication has unquestionably evolved with technology. Emails are more common than telephone calls; Zoom/Teams meetings are as common as in-person meetings (if not more so); DocuSign is often used in lieu of traditional closings. Regardless of this evolution, businesses still need to send and receive documents and packages. In 2022, an estimated 21.2 billion parcels were delivered in the United States. The United States Postal Service ("USPS") had the largest share of the market at 32%, followed by UPS with 24.3% and FedEx at 19.1%.[1]

Mail (regardless of the carrier) remains integral to day-to-day business operations. Private carriers, such as UPS or FedEx, are gaining market share but the USPS continues to be the *de facto* carrier for sending and receiving mail.

This is, in large part, due to the prevalence of private postage meter machines. The machines are efficient, easy to use, and simplify sending something through the USPS. Virtually every business that corresponds through the USPS uses an "in-office" postage meter machine. One manufacturer—Pitney Bowes—is so ubiquitous that it has arguably become the industry standard. It calculates the correct amount of postage, applies a date stamp to the package, and the USPS accepts the Pitney Bowes postage stamp as though the package was stamped directly at a Post Office.[2] Moreover, Pitney Bowes, *stamps.com*, and other vendors can utilize technology that integrates with the USPS to generate certified mail numbers and transmit the initial tracking data to the USPS computer systems.[3]

It is surprising, then, that a postage stamp by Pitney Bowes (generically speaking) can create sufficient controversy to generate rulings by the federal courts. This article examines the use of Pitney Bowes postage machines in light of the longstanding "Mailbox Rule" and its interaction with the Internal Revenue Service ("IRS") and the U.S. Tax Court.

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The Mailbox Rule and the IRS

The Mailbox Rule is typically straightforward: a pleading or other document is deemed to have been filed on the date the envelope is stamped and placed into the mailbox at the Post Office.[4] It has been indoctrinated into virtually every state's laws and procedures and remains the foundation for calculating deadlines under the Federal Rules of Civil Procedure.[5]

In the world of federal tax law, the Mailbox Rule is codified at Code Sec. 7502(a). A tax return (or other document) is presumed to be received by the IRS on the date the envelope is physically placed in the mail at the Post Office and postmarked by the USPS.[6] The presumption remains even if delivery delays occur within the USPS. The presumption is elevated to prima facie evidence of receipt when the parcel is sent by certified or registered mail, even if it is not actually received by the recipient.[7]

As discussed above, most businesses contract with a vendor like Pitney Bowes or *stamps.com* to streamline business correspondence. These vendors are licensed and regulated by the USPS and they provide businesses with the postage machine or the appropriate Internet credentials. The postmark from these vendors, however, is *not* a postmark "made by the United States Postal Service."[8] This complicates the seemingly straightforward application of the Mailbox Rule because the blanket presumption of timely receipt by the IRS is negated.[9]

The Mailbox Rule is typically straightforward: a pleading or other document is deemed to have been filed on the date the envelope is stamped and placed into the mailbox at the Post Office. It has been indoctrinated into virtually every state's laws and procedures and remains the foundation for calculating deadlines under the Federal Rules of Civil Procedure.

Generally speaking, businesses use Pitney Bowes to send parcels in one of the two ways: standard first-class mail or registered/certified mail. The Mailbox Rule does not apply to either method unless the sender physically delivers the items to the Post Office and obtains postage from a USPS employee or a stamped sender's receipt for registered/certified mail.[10]

If the IRS challenges the timeliness of a metered parcel sent by standard first-class mail, the sender is subject to the highest burden of proof: the sender must prove the item was *actually delivered* to the IRS.[11] This is an onerous (and arguably untenable) burden because first-class mail does not contain a USPS tracking number. By way of example, if the IRS loses or misplaces a tax return before it is logged into the IRS computer system, the Treasury Regulations place the burden on the sender to somehow provide "direct proof of actual delivery" to the IRS.[12]

Additional complications arise when a parcel is sent by registered/certified mail that is generated or stamped by a private postage meter. Pitney Bowes calls the feature "E-Certified mail", and the machine can generate the certified number, apply the postage, and transmit the data to the USPS.[13] Many businesses use this method when deadlines are not a concern, and they want to track the parcel or verify its delivery.

Although E-Certified mail is virtually identical in appearance and recognition by the USPS, the Treasury Regulations prohibit the application of the Mailbox Rule unless the sender physically delivers the item to the Post Office and obtains a sender's receipt postmarked by a USPS employee.[14]

Legal and accounting firms are particularly at risk when they use E-Certified mail because of the plethora of deadlines that govern our professions. What happens if the IRS challenges the timeliness of a parcel sent by E-Certified mail and the sender only deposited the item in the Post Office mailbox instead of securing a stamped sender's receipt from the USPS? This was the central issue in a November 2023 ruling by the U.S. Tax Court.

A Real-World Example

In *Salas*, the IRS computer system mismatched the taxpayer's name with a different person's social security number.[15] The IRS then mailed a statutory Notice of Deficiency to the taxpayer on September 13, 2021.[16]

The deadline for the taxpayer to timely file a Petition for Redetermination ("Petition") with the U.S. Tax Court was December 13, 2021.[17] The envelope containing the taxpayer's *pro se* Petition was sent by E-Certified mail and the postmark was dated December 13, 2021.[18] The Tax Court received the Petition on December 22, 2021, and it was docketed as filed on the same day.[19]

The Commissioner, in lieu of filing an answer to the Petition, filed a motion to dismiss the case for lack of jurisdiction, arguing the Petition was not filed within the statutory 90-day deadline.[20] The Commissioner acknowledged that the envelope used to mail the Petition contained an E-Certified mail number and a postage meter mark dated December 13, 2021. However, while the "pre-shipment information" was sent to the USPS on December 13, 2021, the USPS tracking data showed it was not accepted at a USPS facility until December 14, 2021.[21] As a result, the Commissioner argued the Petition was not timely filed because the Mailbox Rule does not apply to an envelope containing a private postage meter mark that was not deposited with the USPS within the prescribed filing period.[22] Without the benefit of the Mailbox Rule, the Petition was one day late.

The Petitioner retained tax counsel and subsequently filed a Notice of Objection.[23] The Petitioner argued the Mailbox Rule *does* apply because an exception exists in the Treasury Regulations for envelopes postmarked by a private postage meter.[24] The Petitioner cited the following section of the Treasury Regulation:

> (B) Postmark made by other than U.S. Postal Service—(1) In general. If the postmark on the envelope is made other than by the U.S. Postal Service—
> (i) The postmark so made must bear a legible date on or before the last date, or the last day of the period, prescribed for filing the document or making the payment; and
> (ii) The document or payment must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document or payment contained in an envelope that is properly addressed, mailed, and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Postal Service on the last date, or the last day of the period, prescribed for filing the document or making the payment.[25]

The Petitioner argued he met both criteria: the postage mark was timely made on December 13, 2021 *and* the Petition was received on December 22, 2023, which is within the ordinary timeframe it would take a document to be mailed from Plano, Texas to Washington, D.C. Accordingly, the Petitioner should benefit from the application of the Mailbox Rule codified in Code Sec. 7502 and the court possessed jurisdiction to hear the case.[26]

The Petitioner supported his position with citations to two Tax Court cases that acknowledge timely receipt of a Petition within 8–10 days from mailing.[27] The Petitioner also cited non-binding authority from the Seventh Circuit with a semi-analogous fact pattern of certified mail postage applied by *stamps.com*.[28] The Seventh Circuit recognized that the Postal Service could take two days to enter tracking information and the Tax Court had erred in disregarding the parties' agreement that the taxpayer's Petition was timely filed.[29]

The *Salas* Court ordered both parties to submit additional briefing on the issue. The Tax Court then denied the Commissioner's argument that "the Petition arrived a day later than the normal time it takes for mail to arrive."[30] The court stated: "[Petitioner] therefore met his burden to show the Petition was mailed timely and therefore filed timely."[31] As a result, the court possessed jurisdiction and the case could proceed.[32]

Code Sec. 7502 is an important statute for all tax professionals sending time-sensitive documents to the IRS or the Tax Court. The parcel needs to be stamped by the clerk at the USPS, or tax professionals run the risk of a costly mistake. Clearly, the IRS Office of Chief Counsel takes the position that eight days is normal transit time. Or perhaps now it is nine days.

The *Salas* case may appear to be little more than a jurisdictional skirmish between counsel. It is not a landmark ruling by the Tax Court, nor does it set case law. There are, however, larger implications. First, if the court had granted the Commissioner's motion to dismiss, the taxpayer would be unable to avail himself of the Tax Court's power to redetermine an erroneous income tax deficiency prior to the tax being assessed.[33] On a broader scale, the court would have implicitly ruled the private postage meter exception to the Mailbox Rule is governed by a hard and fast rule instead of the objective standard established in the Treasury Regulation.

The Takeaway Lesson: Get the Stamp

Millions of businesses rely on postage meter technology to streamline outgoing mail. Pitney Bowes, *stamps.com*, and other vendors are continually improving their products and integrating their software with the U.S. Postal Service. E-Certified mail from Pitney Bowes is a prime example.

Businesses can and should use technology to maximize efficiency. New technology *does* expedite daily tasks like applying the correct amount of postage and transmitting the tracking data to the USPS. What, then, is the lesson to be learned from *Salas*? In short, there are no "easy" shortcuts.

In FYE 2022, there were 29,002 cases filed and 32,290 cases closed in the U.S. Tax Court.[34] The applicable statutes and long-standing precedent are clear the 90-day limit to file in Tax Court is absolute.[35] It is therefore understandable that counsel will scrutinize the date on the Notice of Deficiency and the date the Petition is filed. If a Petition is one day late, the sender may expect the IRS to argue the court does not have jurisdiction.[36]

Many law firms and accounting firms take advantage of features like E-Certified mail offered by private postage meters. If they wish to benefit from the application of the Mailbox Rule with their outgoing mail, the best business practice is to hand deliver certified mail to the Post Office. Most locations will have a separate line for businesses to have their certified mail receipts stamped by a USPS employee to avoid waiting in long lines.

Importantly, one should not forget the underlying principle of certified or registered mail: the USPS is *certifying* it received a correctly addressed parcel on a particular date. That shifts the onus for delivery from the sender to the Postal Service because the sender has a safe harbor when he or she receives the stamped sender's receipt for that item.

The *Salas* case appears to be an attempt by the IRS to define the private postage meter exception under the Mailbox Rule as eight days for a Petition sent by certified mail to "ordinarily be received" by the Tax Court. The court declined to find eight days was the limit and reaffirmed its interpretation that the Treasury Regulations may be satisfied because "a Petition can take as little as 8 business days and up to 15 business days to arrive at the Tax Court after being mailed."[37]

Code Sec. 7502 is an important statute for all tax professionals sending time-sensitive documents to the IRS or the Tax Court. The parcel needs to be stamped by the clerk at the USPS or tax professionals run the risk of a costly mistake. Clearly, the IRS Office of Chief Counsel takes the position that eight days is normal transit time. Or perhaps now it is nine days.

ENDNOTES

1 *www.pitneybowes.com/content/dam/pitneybowes/us/en/shipping-index/23-mktc-03596-2023_global_parcel_shipping_index_ebook-web.pdf.*

2 *faq.usps.com/s/article/What-is-a-Postage-meter#:~:text=Can%20I%20pay%20for%20Extra,%C2%AE%20and%20Certified%20Mail%C2%AE*).

3 *www.pitneybowes.com/us/carriers/usps.html#:~:text=When%20you%20handle%20your%20USPS,weigh%20up%20to%2020%20pounds.*

4 *See generally* Black's Law Dictionary 964 (7th ed. 1999).

5 *See, e.g.*, Fed. R. Civ. P. 5(b)(2)(C); 6.

6 Code Sec. 7502(a).

7 Code Sec. 7502(c); Reg. §301.7502-1(e)(2).

8 Code Sec. 7502(b).

9 Reg. §301.7502-1(e)(1).

10 *See generally* Reg. §301.7502-1(e).

11 Reg. §301.7502-1(e)(1).

12 Reg. §301.7502-1(e)(2).

13 *www.pitneybowes.com/us/support/article/000086453/sending-e-certified-mail.html.*

14 Reg. §301.7502-1(c)(2).

15 *Salas*, Docket No. 37377-21 at Doc. 13, ¶5.

16 *Id.* at Doc. 4.

17 Code Secs. 6213(a) and 7503.

18 *Salas* at Doc. 4.

19 *Id.* at Doc. 1.

20 *Id.* at Doc. 4.

21 *Id.*

22 *Id.*

23 *Id.* at Doc. 6.

24 *Id.*

25 Reg. §301.7502-1(c)(1)(iii)(B).

26 *Salas* at Doc. 6.

27 *Pearson*, 149 TC 424, 434 (2017); *D. Grimm*, 113 TCM 1197, Dec. 60,850(M), TC Memo. 2017-44 at *8.

28 *Tilden*, CA-7, 2017-1 USTC ¶50,130, 846 F3d 882, 885.

29 *Id.* at 887.

30 *Salas* at Doc. 15.

31 *Id.*

32 *Id.*

33 Both parties agreed the proposed tax was a result of an IRS computer error. *Id.* at Doc. 13, ¶ 5.

34 *www.ustaxcourt.gov/resources/budget_justification/FY_2024_Congressional_Budget_Justification.pdf* at p. 19.

35 Code Secs. 6213(a), 7502, and 7442. *See also I.P. Monge*, 93 TC 22, 27, Dec. 45,827 (1989).

36 *Id.*

37 *Salas* at Doc. 15, p. 3 (quoting *M.J. Seely*, 119 TCM 1031, Dec. 61,609(M), TC Memo. 2020-6 at *8, n.3 (2020)).