



Tax Reduction Letter

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Notice 97-26

SUMMARY:

This notice provides the first list of private delivery services ("PDSs") that are designated private delivery services ("designated PDSs") during the interim period described in Rev. Proc. 97-19, 1997-10 I.R.B. 55. The interim period ends on the date on which the Service issues guidance superseding Rev. Proc. 97-19. Designation is for purposes of the "timely mailing as timely filing/paying" rule of § 7502 of the Internal Revenue Code. This notice also provides special rules for determining the date that will be treated as the postmark date for purposes of § 7502.

BACKGROUND:

Section 7502 provides rules that apply when a document is required to be filed (or a payment is required to be made) within a prescribed period or on or before a prescribed date under the authority of any provision of the internal revenue laws. Section 7502 provides what is commonly called the "timely mailing as timely filing/paying" rule. For example, an individual income tax return is considered timely filed even though it is received by the Service after the April 15 due date if the return was delivered to the Service by United States mail in a postage prepaid, properly addressed envelope that had a post office postmark dated on or before the April 15 due date.

Prior to the amendment made by the Taxpayer Bill of Rights 2 (TBOR 2), the "timely mailing as timely filing/paying" rule applied only to documents and payments sent by United States mail. TBOR 2 amended § 7502 by adding subsection (f), which authorizes the Secretary to designate certain PDSs for the "timely mailing as timely filing/paying" rule.

Rev. Proc. 97-19 provides the criteria that are being used during the interim period described in Rev. Proc. 97-19 to determine whether a PDS qualifies as a designated PDS under § 7502 (f). This notice provides the first list of the designated PDSs for the interim period.

LIST OF DESIGNATED PDSs AND TYPES OF SERVICES:

The following PDSs and the following specific types of delivery services are designated for purposes of § 7502 (f):

1. Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, and Second Day Service
2. DHL Worldwide Express (DHL): DHL "Same Day" Service and DHL USA Overnight

3. Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, and FedEx 2Day
4. United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, and UPS 2nd Day Air A.M.

Airborne, DHL, FedEx, and UPS are not designated with respect to any type of delivery service not identified above. Consequently, the "timely mailing as timely filing/paying" rule of § 7502 does not apply to any other type of delivery service offered by the designated PDSs.

Designation under this notice is effective until the Service issues a revised list of designated PDSs. On or before September 1st and March 1st of each year of the interim period, the Service will issue other notices that provide a revised list of designated PDSs. In unusual circumstances, the Service may issue additional notices at other times.

If taxpayers use a business that provides mailing services of a designated PDS, but the business itself is not a designated PDS, taxpayers should be aware that the "timely mailing as timely filing/paying" rule will not apply unless an item is actually given to, or picked up by, a designated PDS on or before the due date. Taxpayers should take appropriate precautions to ensure that the item will be given to, or picked up by, a designated PDS on or before the due date.

SPECIAL RULES FOR DETERMINING POSTMARK DATE:

Section 7502 (f) (2) (C) requires a PDS to either (1) record electronically to its data base (kept in the regular course of its business) the date on which an item was given to the PDS for delivery or (2) mark on the cover of the item the date on which an item was given to the PDS for delivery. Under § 7502 (f) (1), the date recorded or the date marked under § 7502 (f) (2) (C) is treated as the postmark date for purposes of § 7502.

This notice provides rules for determining the date that is treated as the postmark date for purposes of § 7502. There is one set of rules for the designated PDSs that qualified for designation because their "postmark date" is recorded electronically to their data bases. There is another set of rules for the designated PDS that qualified for designation because its "postmark date" is marked on the cover of an item.

Airborne, DHL, and UPS

The date on which an item is given to Airborne, DHL, or UPS is recorded electronically to the data base of these designated PDSs. Accordingly, the date recorded in the electronic data base of these designated PDSs is treated as the postmark date for purposes of § 7502.

For items that are delivered after their due dates, there is a presumption that the postmark date is the day that precedes the delivery date by an amount of time that equals the amount of time it would normally take for an item to be delivered under the terms of the specific type of delivery service used (e.g., two days before the actual delivery date for a two day delivery service). This presumption applies to items sent by tax-payers and, in appropriate cases, items sent by the Government.

Taxpayers who wish to overcome this presumption will need to provide information that shows that the date recorded in the electronic data base is on or before the due date. For example, a taxpayer could obtain such information in the form of a written confirmation produced and issued by the designated PDS before the expiration of the period for storing the date recorded in its electronic data base. If taxpayers wish to maintain this type of proof for their records, they should make a timely request to receive this information from the designated PDS before the expiration of that designated PDS's data storage period.

Airborne, DHL, and UPS entered into agreements pursuant to Rev. Proc. 97-19 that require these designated PDSs to store (electronically or by microfiche) the dates recorded in their electronic data bases for at least 6 months. Although Airborne, DHL, and UPS may choose to store the dates for more than 6 months, the agreements do not require them to do so. Prior to the expiration of the data storage period, senders or recipients can obtain information concerning the date recorded to the electronic data base by contacting Airborne, DHL, or UPS. The toll-free telephone numbers for these designated PDSs are as follows: Airborne, 1-800-247-2676; DHL "Same Day" Service, 1-800-345-2727; DHL USA Overnight, 1-800-225-5345; and UPS, 1-800-742-5877.

FedEx

An electronically generated label is applied to the cover of all items delivered by FedEx, including those items that already have an airbill attached. The date on which an item is given to FedEx for delivery is marked on the label. There are two types of labels (which are distinguishable from each other). One type of label is generated and applied to an item by a FedEx employee. The other type of label is generated (using computer software and/or hardware provided by FedEx) and applied to an item by a customer.

The date that will be treated as the postmark date for purposes of § 7502 is determined under the following rules:

- (1) If an item has a label generated and applied by a FedEx employee, the date marked on that label is treated as the postmark date for purposes of § 7502, regardless of whether the item also has a label generated and applied by the customer.
- (2) If an item has a label generated and applied by a customer, the date marked on that label is treated as the postmark date for purposes of § 7502 if the item is received within the normal delivery time. (Normal delivery time is one day for FedEx Priority Overnight and FedEx Standard Overnight, or two days for FedEx 2 Day.) If an item is not delivered within the normal delivery time, the person required to file the document or to make the payment must establish (a) that the item was actually either given to, or picked up by, a FedEx employee on or before the due date and (b) the cause of the delay in delivery of the document or payment. These rules are similar to the rules for United States mail that has a postmark made other than by the United States Postal Service. (See Treas. Reg. § 301.7502-1 (c) (1) (iii) (b).)
- (3) The information recorded electronically to the data base of FedEx (in the regular course of its business) can be used to show that the item was actually either given to, or picked up by, a FedEx employee on or before the due date when (a) an item has a label

generated and applied by a customer or (b) an item has a label generated and applied by a FedEx employee, but the date is illegible or otherwise unavailable.

EFFECTIVE DATE:

Designation under this notice is effective for documents and payments that are given by taxpayers to a designated PDS on or after April 11, 1997. Designation is not effective for documents and payments that are given by taxpayers to a designated PDS before April 11, 1997, even if such documents and payments are delivered by the designated PDS on or after April 11, 1997.