

A Series of Unfortunate Events: Mishandled Mail Bars A Refund.

Refund claims are subject to a strict limitations period: they must be submitted to the IRS within three years of filing of the return or two years of payment, whichever is later. I.R.C. § 6522(a). If a refund claim is not submitted to the IRS, the taxpayer is precluded from filing suit for a refund by Section 7422(a) of the Code. As a consequence, proof of the timely submission of the refund claim is an important issue in any refund action, as I discussed earlier in reviewing the [Maine Medical Center case](#).

In *Stocker v. United States*, 2013 U.S. App. LEXIS 1089 (6th Cir. Jan. 17, 2013), the taxpayers sought a tax refund of approximately \$64,000 for 2003, which was denied by the IRS because the refund claim was not submitted on a timely basis.

The Stockers' accountant tried to handle the refund claim the right way, providing Mr. Stocker with prepaid certified mail envelopes with return receipt requests for the amended 2003 federal return and a similar state amendment. Mr. Stocker was also provided with prepaid regular mail envelopes for the 2006 returns, which were due at the same time. 2013 U.S. App. LEXIS 1089, slip op. at *3-*4. Mr. Stocker was sent to the post office, as all of the returns were due that day. There was just one problem: the accountant's office manager had accidentally retained the customer receipts for certified mail, which precluded Mr. Stocker from getting them date stamped when he went to the post office. *Id.* at *4-*5.

The Stockers' amended 2003 state tax return and 2006 state tax return were received on a timely basis and they received their state refund. The IRS acknowledged that the 2006 federal return was filed timely, but it indicated that the 2003 amended return that formed the basis for the refund claim was not filed on a timely basis. *Id.* at *5. Instead, the IRS indicated that the amended return was received on October 25, 2007, ten days after Mr. Stocker had mailed it, and its records indicated that it was post-marked October 19, 2007. *Id.* To make matters worse, the returned receipt card was left blank when it was returned. *Id.* at *6. As a consequence, the IRS denied the tax refund, and the Stockers filed suit.

In the district court, the focus was upon whether the 2003 amended return was timely mailed, and the Stockers submitted Mr. Stocker's testimony about mailing it, along with evidence of the timely mailing of other returns on the same day. They also sought an adverse inference because the IRS had failed to retain the original envelope in which the return had been mailed. The district court rejected this evidence and dismissed the case. *Id.* at *7.

On appeal, the Sixth Circuit concluded that the Stockers' evidence was insufficient under the provisions of Section 7502 of the Code, which provides a statutory "mailbox rule." First, they could not produce the post-marked envelope to verify the postmark date under Section 7502(a)(1). Second, lacking a receipt, they could not rely upon Section 7502(c)(2) and the related regulation, which provide that the stamped receipt for certified mail supplies proof of mailing. *Id.* at *13-*14. In this context the Sixth Circuit simply followed its pre-existing precedent, holding that Section 7502 supplants the common law mail box rule. Other courts handle this differently, as there is a circuit split on the issue. *See Philadelphia Marine Trade Ass'n, In'tl Longshoremen's Ass'n Pension Fund v. Comm'r*, 523 F.3d 140, 150 (3d Cir. 2008) (recognizing continue vitality of common law mail box rule).

The Sixth Circuit also rejected the Stockers' argument that an adverse inference should be drawn from the failure of the IRS to retain the envelope in which the amended return was mailed, concluding that there was not sufficient evidence of culpable conduct to warrant a spoliation sanction.

The lesson is a simple one: mail early and get a date-stamped certified mail receipt.

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