

## Partnership Extension Filing Date Not Proven

Jones, Bell, Abbott, Fleming & Fitzgerald, LLP said it timely filed an extension Form 7004 in connection with its partnership tax return. The partnership return was filed by the extended due date in mid-September. We'll refer to the partnership as "Jones" in this article.

IRS stated it received the extension form on April 26, 2016, eight days after the due date of April 18, 2016 (the normal due date for 2015 returns due to holidays and a weekend. Eight days difference between the reported mailing date and the delivery date is longer than normal delivery time for the United States Postal Service. IRS assessed a late filing penalty of \$9,360.

The issue in front of the District Court is whether the extension form was timely filed as stated by the partnership.

Review of the rules – The "old common law physical delivery rule" said tax documents must be physically received by IRS by the unextended due date to be timely filed. This means the extension had to be received by IRS on April 18, 2016, to be timely. However Congress created Section 7502 to make it easier by stating something that is postmarked by the United States Postal Service (USPS) postmark stamped on its cover will be considered delivered on the date it is postmarked. Section 7502 does not include private mail meters. (One large difference between these two postmarks is that an envelope with a private meter stamping does not have to be put into a USPS mailbox or office, but instead can be left laying around while an envelope given to the USPS to meter immediately goes into the mail and is extremely hard to get back from the USPS employee.)

The Court stated Certified or Registered mail would satisfy the requirement of being timely mailed, but Jones used their own postage meter. If a taxpayer cannot produce the USPS postmark, registered mail receipt, or a certified-mail receipt, the taxpayer can still prove the envelope was timely mailed by producing other evidence of such mailing. The burden of proof is on the taxpayer.

Mr. Lickhalter, the CPA at Jones who took care of their tax filing requirements, stated he always filed for an extension every year. He testified he completed the Form 7004, placed it in an envelope, and placed the envelope in the office's mailing system. Mr. Tisnado, the office services clerk, testified he is responsible for collecting mail, causing it to be stamped using a postage machine, then depositing it into the USPS receptacle at approximately 2:45 each day located inside Jones' building, early enough for the 3:00 pick up. He also testified he collects additional envelopes, adds postage, and takes them directly to the USPS office that collects outgoing mail each weekday after 5:30.

This sounds good BUT Mr. Lickhalter did not indicate when he placed the envelope into the office mailing system so it is uncertain whether it was in the

system in time to be processed for the 2:45 pickup or even the 5:30 drop off. Mr. Tisnado testified he had never been advised that mail was not collected, lost, or otherwise not properly processed for mailing, but he did not specifically remember seeing an envelope to the IRS in the mail that he processed on April 18.

District Court the testimony was not specific enough to prove the extension request was mailed by the unextended due date. IRS testimony that the envelope was received April 26, eight days after its supposed mailing, implies the actual mailing date was likely to be after the April 18 deadline. Therefore the Court ruled Jones was liable for the penalty.

Jones, Bell, Abbott, Fleming & Fitzgerald, LLP, District Court, U.S. District Court, C.D. California, (June 15, 2018)

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