



T.D. 8807

DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Part 301

Timely Mailing Treated as  
Timely Filing/Electronic  
Postmark

AGENCY: Internal Revenue Service  
(IRS), Treasury.

ACTION: Final and temporary regula-  
tions.

SUMMARY: This document contains  
temporary and final regulations relating to  
timely mailing treated as timely filing and  
paying under section 7502. The tempo-  
rary regulations generally reflect changes  
to the law made by the **Internal Revenue  
Service Restructuring and Reform Act  
of 1998**. The temporary regulations affect  
taxpayers that file documents or make  
payments or deposits. The text of the  
temporary regulations is also set forth in  
the notice of proposed rulemaking on this  
subject in the Proposed Rules section of  
this issue of the **Federal Register**.

DATES: *Effective date:* These regula-  
tions are effective January 15, 1999.

*Applicability date:* For dates of applic-  
ability, see §301.7502-1T(f)(3).

FOR FURTHER INFORMATION CON-  
TACT: Charles A. Hall (202) 622- 4940  
(not a toll-free call).

SUPPLEMENTARY INFORMATION:

*Background*

This document contains amendments to  
the Regulations on Procedure and Admin-  
istration (26 CFR part 301) under section  
7502 relating to timely mailing treated as  
timely filing and paying. **Section  
7502(c)(2) was amended by section  
2003(b) of the Internal Revenue Service  
Restructuring and Reform Act of 1998,  
Public Law 105-206 (112 Stat. 725  
(1998)), to authorize the Secretary to  
provide the extent to which the prima  
facie evidence of delivery and postmark  
date rules apply to electronic filing.**

*Explanation of Provisions*

These temporary regulations add

§301.7502-1T(d) to provide that the date  
of an electronic postmark given by an au-  
thorized electronic return transmitter will  
be deemed the filing date if the date of the  
electronic postmark is on or before the fil-  
ing due date. It also permits the Commis-  
sioner to enter into an agreement with an  
electronic return transmitter or to pre-  
scribe in forms, instructions, or other ap-  
propriate guidance the procedures under  
which the electronic return transmitter is  
authorized to provide taxpayers with an  
electronic postmark to acknowledge the  
date and time that the electronic return  
transmitter received the electronically  
filed document.

An electronic return transmitter is de-  
fined for purposes of the regulation the  
same as in the revenue procedures gov-  
erning the Electronic Filing Program, cur-  
rently Rev. Proc. 98-50 (1998-38 I.R.B.  
8 (September 21, 1998)), and the On-Line  
Filing Program, currently Rev. Proc. 98-  
51 (1998-38 I.R.B. 20 (September 21,  
1998)). An electronic postmark is a  
record of the date and time that an autho-  
rized electronic return transmitter re-  
ceives the transmission of the taxpayer's  
electronically filed document on its host  
system.

**For tax year 1998, the rules on elec-  
tronic postmarks are effective for in-  
come tax returns filed through elec-  
tronic return transmitters authorized  
to provide an electronic postmark pur-  
suant to an agreement under the Elec-  
tronic Tax Administration Request  
for Agreement released on November  
26, 1997. For taxable years beginning  
after 1998, the rules on electronic post-  
marks are effective for documents sub-  
mitted to electronic return transmitters  
that are authorized to provide an elec-  
tronic postmark pursuant to §301.7502-  
1T(d)(2).**

*Special Analyses*

It has been determined that this Treas-  
ury decision is not a significant regula-  
tory action as defined in EO 12866.  
Therefore, a regulatory assessment is not  
required. It also has been determined that  
section 553(b) of the Administrative Pro-  
cedure Act (5 U.S.C. chapter 5) does not  
apply to these regulations, and because  
these regulations do not impose a collec-  
tion of information on small entities, the  
Regulatory Flexibility Act (5 U.S.C.

Section 7502.—Timely Mailing  
Treated as Timely Filing and  
Paying

26 CFR 301.7502-1: Timely mailing treated as  
timely filing.

1999-9 I.R.B.

March 1, 1999

chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

*Drafting Information*

The principal author of these regulations is Charles A. Hall, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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*Adoption of Amendments to the Regulations*

Accordingly, 26 CFR part 301 is amended as follows:

**PART 301—PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 301.7502-1T also issued under 26 U.S.C. 7502(c) \* \* \*

Par. 2. Section 301.7502-1 is amended by:

1. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively.

2. Adding new paragraph (d).

The addition reads as follows:

§301.7502-1 *Timely mailing treated as timely filing.*

\* \* \* \* \*

(d) [Reserved]. For further guidance regarding timely filing of electronically filed documents for taxable years beginning after December 31, 1997, see §301.7502-1T(d).

\* \* \* \* \*

Par. 3. Section 301.7502-1T is added to read as follows:

§301.7502-1T *Timely mailing treated as timely filing (temporary).*

(a) through (c) [Reserved]. For further guidance, see §301.7502-1(a) through (c).

(d) *Electronically filed document s—(1) In general.* A document filed electronically with an electronic return transmitter (as defined in paragraph (d)(3)(i) of this section and authorized pursuant to paragraph (d)(2) of this section) in the manner and time prescribed by the Commissioner is deemed to be filed on the date of the electronic postmark (as defined in paragraph (d)(3)(ii) of this section) given by the authorized electronic return transmitter. Thus, if the electronic postmark is timely, the document is considered filed timely although it is received by the agency, officer, or office after the last date, or the last day of the period, prescribed for filing such document.

(2) *Authorized electronic return transmitters.* The Commissioner may enter into an agreement with an electronic return transmitter or prescribe in forms, instructions, or other appropriate guidance the procedures under which the electronic return transmitter is authorized to provide taxpayers with an electronic postmark to acknowledge the date and time that the electronic return transmitter received the electronically filed document.

(3) *Definitions—(i) Electronic return transmitter.* For purposes of this paragraph (d), the term electronic return transmitter has the same meaning as contained in section 3.02(4) of Rev. Proc. 98-50 (1998-38 I.R.B. 8 (September 21, 1998)), and section 3.02(3) of Rev. Proc. 98-51 (1998-38 I.R.B. 20 (September 21, 1998))(See §601.601(d)(2) of this chapter.), or in procedures subsequently prescribed by the Commissioner.

(ii) *Electronic postmark.* For purposes of this paragraph (d), the term *electronic postmark* means a record of the date and time (in a particular time zone) that an authorized electronic return transmitter receives the transmission of a taxpayer's electronically filed document on its host system. However, if the taxpayer and the electronic return transmitter are located in different time zones, it is the time in the taxpayer's time zone that controls the timeliness of the electronically filed document.

(e) through (f)(2) [Reserved]. For further guidance, see §301.7502-1(e) through (f)(2)

(f)(3) *Electronically filed document s—(i) For taxable year 1998.* For taxable year 1998, paragraph (d) of this section only applies to electronically filed income

tax returns transmitted to an electronic return transmitter that was authorized to provide an electronic postmark pursuant to an agreement entered into in response to submissions received in reply to the Electronic Tax Administration's Request for Agreement released on November 26, 1997.

(ii) *For taxable years after 1998.* For taxable years after 1998, paragraph (d) of this section applies to any electronically filed return, claim, statement, or other document transmitted to an electronic return transmitter that is authorized to provide an electronic postmark pursuant to paragraph (d)(2) of this section. This section expires on January 14, 2002.

Robert E. Wenzel,  
Deputy Commissioner of  
Internal Revenue.

Approved December 30, 1998.

Donald C. Lubick,  
Assistant Secretary of  
the Treasury.

(Filed by the Office of the Federal Register on January 14, 1999, 8:45 a.m., and published in the issue of the Federal Register for January 15, 1999, 64 F.R. 2568)