

**ACTION ON DECISION**

SUBJECT: Paul Pekar v. Commissioner  
113 T.C. 158 (1999)  
T.C. Dkt. No. 15289-97

**Issue:** Whether the late filing addition to tax under I.R.C. § 6651(a)(1) applies to a return received by the Internal Revenue Service after its prescribed filing date, when the return was mailed in an envelope bearing an official postmark of a foreign country showing the return had been mailed on the date it was due.

**Discussion:** The Service determined that the taxpayer was liable for an addition to tax under section 6651(a)(1) for having failed to file his 1995 federal income tax return on or before the date prescribed for filing, notwithstanding that the foreign postmark date appearing on the envelope containing the return was the due date for the return. The Tax Court upheld the Service's imposition of the addition to tax, rejecting the taxpayer's contention that his return should be considered timely filed because it was mailed on the due date. The Tax Court held that the timely-mailing timely-filing provisions of section 7502 do not apply to foreign postmarks, and that "foreign postmarks do not effectively cause the filing date of a document to be the postmark date." *Id.*, at 168. In order for a return timely mailed to be timely filed under section 7502, the postmark date appearing on the envelope containing the return must not only fall within the prescribed period for filing the return, but the envelope must be deposited in the mail of the United States. I.R.C. § 7502(a)(2)(A) and (B). Section 7502 does not apply to any document that is deposited with the mail service of any other country. Treas. Reg. § 301.7502-1(c)(1)(ii).

In this case, however, the Service filed a motion requesting that the Tax Court modify its opinion to follow Rev. Rul. 80-218, 1980-2 C.B. 386. In accordance with Rev. Rul. 80-218, federal tax returns mailed by taxpayers in foreign countries will be accepted as timely filed if they bear an official postmark dated on or before midnight of the last date prescribed for filing, including any extension of time for such filing. The Tax Court granted the Service's motion by allowing the decision document in the case to reflect the Service's administrative exercise of its discretion to consider the taxpayer's return timely filed. While the Tax Court's decision under T.C. Rule 155 reflects the Service's concession, the court's opinion, as reported at 113 T.C. 158 (1999), remains unchanged. The position of the Service is reflected in the decision. The Service will not follow the opinion issued in this case on the issue of whether the late-filing addition to tax applies.

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It is the Service's position that federal tax returns mailed by taxpayers in foreign countries will be accepted as timely filed if they bear an official postmark, dated on or before the due date for the return. Rev. Rul. 80-218, 1980-2 C.B. 386. The Service's position is also reflected in Policy Statement P-2-9 (July 27, 1967), Internal Revenue Manual (IRM) 1.2.1.3.4 (returns mailed by taxpayers in foreign countries will be accepted as timely if postmarked on or before midnight of the last date prescribed for filing, including any extension of time for such filing). Thus, the Service accepts a return as timely filed when the return has been mailed and officially postmarked in a foreign country on or before the due date for the return. If the due date falls on a Saturday, Sunday, or a legal holiday within the meaning of section 7503, returns are considered timely if postmarked on or before the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term "legal holiday" as used herein and in section 7503 means a legal holiday in the District of Columbia in the United States, or a Statewide legal holiday in the State where the federal tax return is required to be filed. The term does not include legal holidays in foreign countries unless such holidays are also legal holidays in the District of Columbia or applicable State, as described above.

**Recommendation:**

Acquiescence in result, as modified, only.

**Reviewers:**

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David A. Abernathy  
Attorney

Approved:

B. JOHN WILLIAMS, JR.  
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