

Taxpayers denied refund in spite of next business day mailing rule

Who knew the concept of “next succeeding day” could be so complex?

By David Ellis, CPA
Guest Contributor

When it comes to matters such as insurance claims, lawsuits, and tax refunds, it's a pretty good general rule not to wait until the absolute very last day possible to put the envelope in the mail.

This point was recently driven home by the United States District Court for the District of Maryland when it denied a married couple's tax refund claim for being filed a day late.¹ This was in spite of the fact that the last day of the statute of limitations period fell on a weekend, and the taxpayers filed their tax return on the next business day.

But how can this be? The “next business day” rule has been around since Moses came off the mountain with the stone tablets. The answer lies in a close reading of the relevant statutes.

The lookback period

The Khafras filed their 2011 tax return, which claimed a refund, on April 16, 2015. The IRS refused the refund claim on the grounds that it was filed one day too late.

In order for a refund claim to be considered timely filed, it must comply with the provisions of IRC §6511(a),² which provides that where a taxpayer is seeking “credit or refund of an overpayment of any tax imposed [the claim] shall be filed by the taxpayer within three (3) years from the time the return was filed.”

The government acknowledged that the simultaneous filing of the Khafra's return and refund claim met the timing requirements of §6511(a). However, §6511(b) limits the amount that can be recovered as follows: “if the claim was filed by the taxpayer during the three year period prescribed in Subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to three years plus the period of any extension of time for filing the return [emphasis added].”

It should also here be noted that a properly executed income tax return is considered to be a claim for refund when the return displays an overpayment.³ Further, for purposes of §6511, taxes that have been withheld during the calendar year are deemed to have been paid on April 15 of the following year.⁴

The Khafras mailed their joint tax return on April 16, 2015. The IRS argued that since the taxpayers filed their tax return (and hence their refund claim) more than three years after paying the taxes at issue (their 2011 taxes were deemed to be paid April 15, 2012, and the return was not mailed until April 16, 2015), the taxes were paid one day outside of the lookback period provided in §6511(b) and their claim was barred.

Do or do not, there is no try (in taxes)

The Khafras however were not quite ready to give up the ship and contended that since the initial due date for filing the return, April 15, 2012, was a Sunday, and April 16, 2012, was a legal holiday, the return was actually due on April 17, 2012. Accordingly, since they filed the return on April 16, 2015, their claim was not barred by the three-year statute. Like Wyatt Earp drawing his trusty Colt revolver, they pulled out the venerable 26 U.S.C. §7503, which provides:

“When the last day prescribed under authority of the Internal Revenue laws for performing any act falls on a Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday.”

Unfortunately for the taxpayers, the court responded with the legal equivalent of “right church, wrong pew.” To be specific, the court pointed out that “the plain language of Section 7503 extends the time to file the tax return to the ‘next succeeding day’ where the act in question — filing the return — is actually performed [emphasis added].” To apply §7503 to acts **not** performed on the next succeeding day would contravene the plain meaning of this statute since the Khafras did not file their 2012 tax return until April 16, 2015, which was almost three years past the actual next succeeding day of April 17, 2012.

To characterize it another way, since the Khafras did not, in point of fact, file their 2011 tax return on or before April 17, 2012, they do not get the benefit of the “next succeeding [business] day” extension provided by §7503.

In light of the above, the court ruled that the taxpayers mailed their refund claim more than three years after paying their 2011 taxes, and pursuant to §6511(b), the court did not have jurisdiction⁵ to hear the case, and the United States’ Motion to Dismiss was granted.

The taxpayers in this case may not have been a dollar short, but they were a day late, and as a consequence forfeited their refund forever.

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¹ *Khafra, et. al. v. Internal Revenue Service* (November 6, 2018) U.S. District Court, Dist. of Maryland, Case No. 8:17-CV-03100-PX

² *United States v. Clintwood Elkhorn Mining Co., et al.* (2008) 533 U.S. 1, 8

³ Treas. Regs. §301.6402-3(a)(5)

⁴ IRC §6513(b)(1)

⁵ *Comm. v. Lundy* (1996) 516 U.S. 235, holding that the lookback period in §6511(b) is jurisdictional