

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-97
(07)C Corporation Tax
(02)I Income Tax
(07)M Miscellaneous Tax
(02)R Real Estate Taxes
(10)S Sales Tax
November 25, 1997

**Designated Delivery Services To Mail
Tax Returns, Payments, and
Other Documents
To The NYS Tax Department**

Effective on and after September 10, 1997, taxpayers can use certain private delivery services, in addition to the U.S. Postal Service, with the assurance that timely mailed returns, payments, etc., will be considered timely filed. This TSB-M explains the mailing rules for determining "postmark dates" when using a designated delivery service. Please note that this TSB-M **does not** address filings with the Division of Tax Appeals.

The Taxpayer Bill of Rights Act of 1997 amended:

<u>Tax Law Section</u>	<u>Title</u>
289-d, Article 12-A	Tax on Gasoline and Similar Motor Fuel
315, Article 13-A	Petroleum Business Tax
528, Article 21-A	Fuel Use Tax
434-a, Article 18	Alcoholic Beverage Taxes
514-a, Article 21	Highway Use Tax
691, Article 22	Personal Income Tax
1091, Article 27	Corporate Tax Procedure
1147, Article 28	Sales and Use Taxes
1419, Article 31	Real Estate Transfer Tax
11-1791, Chapter 17 New York City Administrative Code	Mailing rules; holidays; miscellaneous

These amendments provide that a private delivery service that is designated by the U.S. Secretary of the Treasury will be treated as the United States mail, and dates recorded or marked in the manner prescribed in 26 USC §7502 are included within the meaning of "postmark" for purposes of these rules.

Currently, the U.S. Secretary of the Treasury has designated four private delivery companies that filers can use. The four private delivery companies and the specific type(s) of delivery service

TSB-M-97
(07)C Corporation Tax
(02)I Income Tax
(07)M Miscellaneous Tax
(02)R Real Estate Taxes
(10)S Sales Tax
November 25, 1997

offered by each that qualify under §7502 of the Internal Revenue Code (IRC) are as follows:

1. Airborne Express (Airborne): Overnight Air Express Service; Next Afternoon Service; and Second Day Service
2. DHL Worldwide Express (DHL): DHL “Same Day” Service and DHL USA Overnight
3. Federal Express (FedEx): FedEx Priority Overnight; FedEx Standard Overnight; and FedEx 2 Day
4. United Parcel Service (UPS): UPS Next Day Air; UPS Next Day Air Saver; UPS 2nd Day Air; and UPS 2nd Day Air A.M.

The “timely mailing as timely filing and/or timely paying” rule of §7502 does not apply to any other type of delivery service offered by these designated private delivery services.

Special Rules For Determining Postmark Date

Section 7502(f)(2)(C) of the IRC requires a private delivery service to either (1) record electronically to its data base, the date on which an item was given to the private delivery service for delivery, or (2) mark that date on the cover of the item. Under §7502(f)(1), the date recorded or the date marked under §7502(f)(2)(C) is treated as the postmark date for purposes of §7502.

Note that there is one set of rules for the designated private delivery services whose “postmark dates” are recorded electronically to their data bases, and another set of rules for the designated private delivery service whose “postmark dates” are marked on the cover of an item.

Airborne, DHL, and UPS

The date on which an item is given to Airborne, DHL, or UPS is recorded electronically to the data base of these delivery services. That date is treated as the postmark date for purposes of §7502.

For items that are delivered after their due dates, the postmark date is presumed to be the day that

precedes the delivery date by an amount of time that equals the amount of time it would normally take for an item to be delivered under the terms of the specific type of delivery service used (e.g., two days before the actual delivery date for a two day delivery service).

Taxpayers who wish to prove otherwise will need to show that the date recorded in the electronic data base is on or before the due date. For example, a taxpayer could obtain written confirmation, produced and issued by the designated private delivery service, before the expiration of the period for storing the date recorded in its electronic data base. Taxpayers who wish to maintain this type of proof for their records should request it from the designated private delivery service before the expiration of that service's data storage period.

Airborne, DHL, and UPS are required to store (electronically or by microfiche) the dates recorded in their electronic data bases for at least 6 months. Although Airborne, DHL, and UPS may choose to store the dates for more than 6 months, the agreements do not require them to do so. Prior to the expiration of the data storage period, senders or recipients can obtain information concerning the date recorded to the electronic data base by contacting Airborne, DHL, or UPS as follows:

Airborne	1 800 247 2676
DHL	
"Same Day" Service	1-800-345-2727
USA Overnight	1-800-225-5345
UPS	1-800-742-5877

FedEx

FedEx applies an electronically generated label to the cover of all items it delivers, including those items that already have an airbill attached. The date on which an item is given to FedEx for delivery is marked on the label. There are two types of distinguishable labels. One is generated and applied to an item by a FedEx employee; the other is generated (using computer software and/or hardware provided by FedEx) and applied to an item by a customer.

The date that will be treated as the postmark date will be determined under the following rules:

1. If an item has a label generated and applied by a FedEx employee, the date marked on that label is treated as the postmark date for purposes of §7502,

TSB-M-97
(07)C Corporation Tax
(02)I Income Tax
(07)M Miscellaneous Tax
(02)R Real Estate Taxes
(10)S Sales Tax
November 25, 1997

regardless of whether the item also has a label generated and applied by the customer.

2. If an item has a label generated and applied by a customer, the date marked on that label is treated as the postmark date for purposes of §7502 if the item is received within the normal delivery time. (Normal delivery time is one day for FedEx Priority Overnight and FedEx Standard Overnight, or two days for FedEx 2Day.) If an item is not delivered within the normal delivery time, the person required to file the document or to make the payment must establish (a) that the item was actually either given to, or picked up by, a FedEx employee on or before the due date and (b) the cause of the delay in delivery of the document or payment. These rules are similar to the rules for United States mail that has a postmark made other than by the United States Postal Service.
3. The information recorded electronically to the data base of FedEx (in the regular course of its business) can be used to show that the item was actually given to, or picked up by, a FedEx employee on or before the due date when (a) an item has a label generated and applied by a customer or (b) an item has a label generated and applied by a FedEx employee, but the date is illegible or otherwise unavailable.

Effective Date

These rules are effective for documents and payments that are given by taxpayers to a designated private delivery service **on or after September 10, 1997**. Designation is not effective for documents and payments that are given by taxpayers to a designated private delivery service before September 10, 1997, even if the documents and payments are delivered by the designated private delivery service on or after September 10, 1997.

The Commissioner of Taxation and Finance may withdraw any designation enumerated above if the Commissioner finds that the designated service is inadequate. The Commissioner may also designate additional delivery services meeting the criteria of §7502 of the IRC and withdraw that designation if he finds any of the additional delivery services inadequate.