

The \$64,000 Tax Return Question

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The United States Sixth Circuit Court of Appeals was actually presented earlier this year with the "\$64,000 Question." In **Robert W. Stocker, II and Laurel A. Stocker v. U.S.**, 111 AFTR 2d 2013-556 (705 F3d 225) (6th Cir., January 17, 2013), the court examined what sort of evidence a taxpayer must introduce in order to support the timely filing of a tax return in which a \$64,000 refund was claimed.

In this case, Bob and Laurel Stocker filed an amended 2003 return, seeking a \$64,000 refund. The Service denied the claim on the ground that they did not file the return within the 3-year statutory period.

The Stockers filed suit in District Court. The court quickly dismissed the case for lack of subject matter jurisdiction-the Stockers could not establish the jurisdictional prerequisite of timely filing the return by methods recognized by the Service or the courts.

The taxpayers argued that testimony and circumstantial evidence may support the timely filing requirement. Mr. Stocker and his office manager, Karrin Fennell, testified that the return was timely deposited at a United States post office, postage prepaid. They forgot, however, to attach the registered mail customer return receipt. The taxpayers were, however, able to produce evidence that the Department of Revenue timely received the amended return. So, they argued the IRS must have likewise received the federal return on time. Unfortunately, the IRS' records showed the return was postmarked 4 days after its due date.

The court surveyed the law to determine when a return is deemed filed. There are two basic ways to establish when a return is filed under Section 7502:

- the date of the US postmark; or
- for registered mail, the date stamped on the registration.

In this case, because the return was not filed by registered mail, and because the physical postmark showed that it was 4 days late, the taxpayer lost its \$64,000 refund.

The moral to the story is: File all returns or tax reporting filings by registered mail, return receipt. It is that simple!

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