

# TAX UPDATE

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All IRS Employees Are Not Equal—At Least When You Try To File  
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## How Not to File Your Return

This week we look at the story of a taxpayer who found out that when you are hand filing a tax return at an IRS office, how you do it can be important in ways that may be not be obvious to the taxpayer. The ruling we are looking at came down from the Fourth Circuit Court of Appeals in the case of *Allnut, Sr. v. Commissioner*, 2008-1 USTC ¶150,310.

The matter became important because the date that Mr. Allnut filed his returns would determine whether or not the IRS's assessment had been issued after the statute of limitations had expired. If the date Mr. Allnut delivered the return to the District Counsel's office and handed a copy to an employee in the IRS offices counted, the IRS was out of luck—but if, instead, Mr. Allnut was found to have failed in his tasks, the return didn't count as filed until it later (through means that aren't entirely clear) made its way to the IRS Service Center, a later date that

would make the IRS assessment timely.

## Hand Filing a Return

Most taxpayers mail in their returns, and we've previously discussed the issues involving proof of filing for such returns (as well as the unsettled view of how §7502 comes into play in such a case) in prior podcasts. But there is another way available to file your returns—you can hand carry them in to the IRS. That less traveled road has its own rules.

IRC Section 6091 governs the filing, and §6091(b) provides the following:

(b) Tax returns

In the case of returns of tax required under authority of part II of this subchapter--

(1) Persons other than corporations

(A) General rule

Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary--

(i) in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or

(ii) at a service center serving the internal revenue district referred to in clause (i),

as the Secretary may by regulations designate.

The Secretary has provided us with regulations that govern that filing at the local IRS district office when a taxpayer doesn't want to take the risk that return will get lost in the mail. Today the hand carried return regulations found at §1.6091-2(d) reads as follows:

(d) Hand-carried returns.

Notwithstanding paragraphs (1) and (2) of section 6091(b) and paragraph (c) of this section:

(1) Persons other than corporations.

Returns of persons other than corporations which are filed by hand carrying shall be filed with any person assigned the responsibility to receive hand-carried returns in the local Internal Revenue Service office as provided in paragraph (a) of this section.

(2) Corporations.

Returns of corporations which are filed by hand carrying shall be filed with any person assigned the responsibility to receive hand-carried returns in the local Internal Revenue Service office as provided in paragraph (b) of this section.

See section 301.6091-1 of this chapter (Regulations on Procedure and Administration) for provisions relating to the definition of hand carried.

When Mr. Allnut filed his return the wording was slightly different, though for the point of law discussed in this case it likely doesn't matter. At that time, Reg. §1.6091-2(d)(1) read:

(1) Persons other than corporations. Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone or local office constituting a permanent post of duty within the internal revenue district of such director) as provided in paragraph (a) of this section.

Mr. Allnut's aim for the year in question was the District Director of his district—but it turns out that the lunch schedule of the director would end up thwarting Mr. Allnut's attempt to deliver the return to that individual.

## Allnut Case

Mr. Allnut had failed to file his returns for a number of years, and the IRS came to notice this fact, resulting in an investigation of Mr. Allnut. Mr. Allnut obtained counsel to assist him in dealing with this issue now that he had come to the attention of the IRS, and he hired an accounting firm to prepare his returns for 1981 through 1995.

His attorney was, not surprisingly, in contact with the Department of Justice. His counsel informed Mr. Allnut to file his returns by hand with the District Counsel's office in Baltimore (where Mr. Allnut lived). The court doesn't say so, but it seems likely given the number of years in question that his counsel was at the time concentrating on avoiding criminal action against Mr. Allnut. However, in a

footnote the Court of Appeals does take a verbal swipe at the advice given, noting:

As Allnut later realized, this advice was ill-given. The District Counsel's office is part of the IRS's legal department which, with the help of the United States Justice Department, represents the IRS in certain court proceedings. It does not have the authority to accept tax returns for filing. In 1997, a Baltimore, Maryland resident, such as Allnut, wishing to file his federal income tax returns by hand was required to deliver the returns to the District *Director's* Office in Baltimore, not the District *Counsel's* Office. See 26 C.F.R. 1.6091-2 (1997). The District Director's Office, now defunct, was responsible for the administration of all IRS operations within a given tax district.

But, as we shall see, delivery of the returns to the District Counsel's office wasn't going to be the issue, at least as far as the Court of Appeals is concerned, though at the time Mr. Allnut believed that delivery was the filing of his returns.

However, Mr. Allnut almost got lucky—he decided he would “as a courtesy” provide a copy of the returns to the IRS District Director. These copies were signed again by Mr. Allnut in blue ink. Both copies of the return were accompanied by a letter that stated:

Dear Mr. Harrington and Mrs. Henn,

I am delivering to District Counsel with this letter original filings of 1040 tax returns for the year 1981 and for each year thereafter up through and including 1995. My attorney, Mr. Jeffrey Dickstein, has spoken with Mr. Gregory S. Hrebiniak, Department of Justice, who instructed him to have me file said returns with District Counsel.

Paul Harrington was the IRS District Director for the Baltimore area, while Elizabeth Henn was the IRS District Counsel for the Baltimore area. Had he actually gotten that “courtesy copy” to Paul Harrington, Mr. Allnut would have succeeded in filing his return exactly as the regulations prescribed on February 21, 1997. That date is established for the return delivered to Ms. Henn, as her secretary stamped the transmittal letter “received 2/21/97” and signed her name under the stamp. Those returns eventually made their way to the Special Procedures Office of the Baltimore District on March 10, 1997. These returns were never processed by the IRS.

After making this delivery, Mr. Allnut took the copies of the return and the transmittal over to IRS office building where the District Director's office was

located, placing the returns in an envelope marked solely “Attention Mr. Paul Harrington” intending to deliver them to Mr. Harrington so he was made aware that Mr. Allnut had filed the returns in question, though he testified he did so “as a courtesy more than as a filing.”

These returns had all of the information of the ones Mr. Allnut intended to file, and he had clearly signed them, it is possible they would have functioned as tax returns that would be filed as soon as they were placed in the hands of the right individual or office as noted in the regulations.<sup>1</sup> So Mr. Allnut may have been extremely close, through dumb luck, in accomplishing the goal he needed to accomplish to set February 21, 1997 as the date the returns were filed.

However, events would conspire to snatch defeat out of the jaws of victory for Mr. Allnut. Wanting to make a delivery to Mr. Harrington, Mr. Allnut took the obvious first step of asking directions to the District Director’s office. He asked a security guard for directions to Mr. Harrington’s office, though he did not tell the guard why he wanted to see Mr. Harrington. He also did not consult the IRS employees working at the “Taxpayer Services” walk-in area on the first floor of the building, which is the normal first stop for taxpayers that come in wanting to hand file returns.

The security guard informed Mr. Allnut that Mr. Harrington was at lunch, but he might want to go see a different individual. Unfortunately, Mr. Allnut didn’t not make a record of who this person was, nor did he recall that person’s name or title. However, he did go in search of this person at the IRS office.

Mr. Allnut’s odyssey in the IRS offices continued, and he found this person. This person was not located on the same floor as Mr. Harrington’s offices, which would suggest it was not Mr. Harrington’s secretary—another important issue that come back to haunt Mr. Harrington. The gentleman that Mr. Allnut did find again informed him that the District Director was at lunch and he offered to take the package and give it to the District Director when he got back from lunch. Mr. Allnut asked this individual if he had the authority to accept packages on behalf of Mr. Harrington, and he responded that he did.

Mr. Allnut gave him the package, and then asked him if he would be sure to give the package to Mr. Harrington personally, a request to which this unknown IRS employee agreed. Mr. Allnut did not ask for a date stamp at this office, unlike at the District Counsel’s office, believing the stamp he had from the District Counsel’s office confirmed the filing date.

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<sup>1</sup> While the Tax Court did, in fact, base its original decision in part on the fact that he did not intend for the copies to be returns, the Court of Appeals specially refused to rule on whether such an additional requirement would have existed, finding that Mr. Allnut failed to show compliance regardless of whether such other requirements might exist.

## 1997-A Tax Return Odyssey

We do know that the IRS at some point received this package, because the copies of the returns would eventually be processed as tax returns by the IRS, but the route they took to get to the Service Center isn't very clear based on the records the IRS has of this mystery envelope. We do know that sometime between February 21, 1997 and May 9, 1997 the returns were forwarded to the IRS Philadelphia Service Center. The Court of Appeals notes that:

On the front page of each return appears: (1) "IRS Received from District 052197"; (2) "Postmark 050997" and "Received 051497"; (3) "Delinquent Original Cleared for Processing by 285" on June 16, 1997; and (4) "Resort Received" on June 27, 1997. See *Allnut v. C.I.R., T.C.M. (RIA) 2002-311, 2002 WL 31875119, at \*3 (2002)*. On the bottom left corner of the front page of each return, "POS sorted for statute review, 5-14-97," also appears, but is struck out in an attempt to make it indistinguishable. *Id.* On a date not specified in the record, an unidentified IRS employee also added a document locator number to the upper right corner of the first page of each photocopied return. The government admits that these returns, rather than the originals delivered to the District Counsel's office, were those processed by the IRS.

However, what we don't have is any record that Mr. Harrington received those returns on February 21, 1997. His secretary, Susan Arczynski, testified that she typically processed all deliveries to the District Director and that if someone from the IRS had brought in a package for Mr. Harrington, it would have been delivered to her. She testified that:

Her usual practice was to stamp an item with the time and date that she received it, and to use Harrington's routing stamp on the item if there was room to do so. If there was no room on the document, she would ordinarily staple to the item a small routing slip containing the same information as the routing stamp. According to Arczynski, she always used a routing stamp if the item was an income tax return. She also testified that personnel in the District Director's offices usually directed persons who wanted to file a tax return to the walk-in area of the Taxpayer Services office located on the entry level, or first floor.

Unfortunately, Mr. Allnut never mentioned to anyone in the IRS that what was in the envelope were his delinquent income tax returns. What we do know is that Ms. Arczynski did not recall receiving this package on February 21, and that none of the markings nor a routing slip attached to the return from her.

## The Assessment

The IRS issued a notice of deficiency for 1987-1990 and 1992-1995 on March 20, 2000, which would be outside of the three year statute under §6501 for issuing the assessment if February 21, 1997 were the date Mr. Allnut filed his returns. However, if we rather looked to the May dates, then the assessment was timely and Mr. Allnut will lose on this issue.

The IRS file for Mr. Allnut initially seemed to bolster his case. The Court of Appeals notes that IRS employees are charged with tracking the expiration dates of the statute, and the employee initially responsible for Mr. Allnut's file recorded the received date as February 20, 2007. That date was based on the date Mr. Allnut signed the return, a procedure given by the Internal Revenue Manual to be used by IRS employees in cases where no postmark is available—and, in this case, there was no such information. Of course, from the IRS perspective this is a protective move—the taxpayer is going to have trouble arguing for an earlier date, since by their own hand they have said they had the return on that date, so it establishes evidence for the earliest possible statute expiration.

That date would be revised—on February 20, 2000 the date was changed to March 10, 2000, which was three years from the date the original returns were received by the Special Procedures Office in Baltimore.

## The Court's Ruling

The Court of Appeals was hearing an appeal from an initial ruling on this matter from the United States Tax Court. It summarizes the Tax Court's ruling as follows:

The Tax Court ultimately found the following: (1) Allnut was a credible witness and did deliver the photocopied returns with original signatures to "someone in the building containing the District Director's offices on February 21, 1997"; (2) Allnut did not, however, "file" those photocopied returns on that date because he did not "honestly and reasonably" intend those returns to be "his filed returns," and "[a] taxpayer may not, by his or her ambiguous conduct, even if unintentional, secure the benefit of the limitations period"; and (3) Allnut's "returns were filed on March 10, 1997, when the Special Procedures Office of the Baltimore District Director stamped them received." See *Allnut v. C.I.R.*, T.C.M. (RIA) 2002-311, 2002 WL 31875119, at \*4-5 (2002). Therefore, the court held that the notice of deficiency, sent by the IRS on March 6, 2000, was properly issued within the three-year limitations period beginning on March 10, 1997 --the date that Allnut's returns were deemed filed. After the Tax Court issued its

final decision on other issues in Allnut's case not applicable here, Allnut filed a timely appeal.

The Court of Appeals outlined its view of what had to be shown for Mr. Allnut to prevail in this case:

It is well established that "a statute of limitation runs against the United States only when [it] assent[s] and upon the conditions prescribed." *Lucas v. Pilliod Lumber Co.*, 281 U.S. 245, 249 (1930). "Statutes of limitation sought to be applied to bar rights of the Government, [therefore] must receive a strict construction in favor of the Government." *Badaracco*, 464 U.S. at 391-92. (quoting *E.I. Du Pont de Nemours & Co. v. Davis*, 264 U.S. 456, 462 (1924)). Thus, a taxpayer seeking to "secure the benefit of the limitation" must demonstrate "*meticulous compliance* ...with all named conditions" and applicable requirements of the Code and the Treasury Regulations. *Lucas*, 281 U.S. at 249 (emphasis added).

And, continuing...

Thus, to prevail here, Allnut first must demonstrate that he "*meticulously complied*" with the Code's and Regulation's requirement that he or his agent deliver his "hand-carried returns" to the Baltimore district director or administrative supervisor, not to some other individual regardless of his or her proximity to the prescribed person. See *Lucas*, 281 U.S. at 249; *Helvering*, 139 F.2d at 868; 26 C.F.R. 1.6091-2 (1997). To avail himself of the protections of the statute of limitations, Allnut must further show that he filed the returns in such a manner on or before March 6, 1997. See 26 U.S.C. 6501 (requiring that taxes be assessed or a notice of deficiency issued within three years of the filing date).

Now the Court outlines the problems that will prevent Mr. Allnut from showing that "meticulous compliance" with the Code and Regulations.

First, the Court notes that Mr. Allnut admits that the delivery of the returns to the District Counsel's office did not constitute a filing under the regulations, even though that was the one document that he had detailed evidence of delivery for.

The Court found a number of problems with his delivery to the District Director's office that removed any chance of finding meticulous compliance with the delivery requirements.

- The photocopies were never delivered directly to District Director

Harrington, his assistance or even his office

- He did not take the photocopied returns to the Taxpayer Services area of the office where hand filed returns are normally handled
- Since he was under the mistaken assumption that the delivery had constituted filing of the returns, he left a sealed envelope containing the returns with an unidentified man of an unknown title, did not obtain a receipt and simply hoped the gentleman would “keep his word and deliver the package to District Director Harrington.”

But what about that internal document that showed a date of February 20, 2000 for expiration of the statute? Well, the court dismissed that for a number of reasons

First, as Allnutt admits and as is evident from the dates inscribed on the form, Blum (the IRS agent initially responsible for Allnutt's file) ascertained the February 20th received and expiration dates based upon Allnutt's self-declared date of signature on his returns, not from any other evidence that Allnutt delivered the returns directly to the District Director at that time. In fact, as Allnutt also admits, Blum used this date specifically because there were no other dates indicating when the returns had been filed. Furthermore, although the statute-of-limitation date on IRS internal documentation may be used as evidence of the appropriate filing date, contrary to Allnutt's intimation, the IRS is not bound by their own internal documents or self imposed due dates. See, e.g., *Smith v. C.I.R.*, T.C. Summ. Op. 2001-130, 2001 WL 1922722 (2001) (using Form 895 only as additional evidence of the tax return's received date when the actual postmarked return was also in evidence). Here, the IRS noticed the supposed error and changed the filing date to March 10, 1997 --the only verified date available indicating when Allnutt's returns, original or photocopied, were actually received by an office affiliated with the Baltimore District Director. Allnutt provides no documentation demonstrating with any degree of certainty that his returns were filed prior to this date.

The Court does indicate that it sympathetic to Mr. Allnut's situation, and notes that it “cannot help but observe that the IRS could have obviated the problem here by proceeding more expeditiously.” However, the Court notes that they are bound to strictly construe a statute of limitations, and due to that they have to conclude the assessments were not issued after the statute had expired.