

No. 13-278

IN THE
Supreme Court of the United States

ROBERT W. STOCKER II, ET UX.,
Petitioners,

v.

UNITED STATES.

**On Petitions for a Writ of Certiorari
to the United States Court of Appeal
for the Sixth Circuit**

**BRIEF OF TAX FOUNDATION
AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Tax Foundation submits this brief as *amicus curiae* in support of Petitioner in the above-captioned

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici*, their members, or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2(a), counsel for *amici* represent that all parties were provided notice of *amici*'s intention to file this brief at least 10 days before its due date. Letters from the parties consenting to the filing of the brief have been filed with the Clerk of the Court.

matter.

The Tax Foundation is a non-partisan, non-profit research organization founded in 1937 to educate taxpayers on tax policy. Based in Washington, D.C., we seek to make information about government finance more accessible to the general public. Our analysis is guided by the principles of sound tax policy: simplicity, neutrality, transparency, and stability. The Tax Foundation's Center for Legal Reform furthers these goals by educating the legal community about economics and principled tax policy.

This Court's decision will provide guidance on the application of a statute that affects all taxpayers: how to prove that taxes were filed on time. Because *Amicus* have testified and written extensively on taxpayer protections and because this Court's decision may resolve a significant dispute over the interpretation of the governing statute, *Amicus* has an institutional interest in this Court's ruling.

SUMMARY OF ARGUMENT

The court below added a restrictive evidentiary rule not present in the statute. This Court should grant the petition and consider this matter because Congress added the provisions of § 7502 as a taxpayer protection, because the effect of the restrictive evidentiary rule is to stack the deck against taxpayers, and because of the circuit split causing uneven application of a federal statute.

ARGUMENT**I. THE PETITION SHOULD BE GRANTED TO PROTECT TAXPAYERS FROM THE HARM OF AN EVIDENTIARY LIMITATION THAT IS NOT IN THE STATUTE.**

Under common law, a timely filed document must be in the physical possession of the entity receiving it as of the deadline date. Congress has enacted two exceptions to this physical delivery requirement. One exception deems “the date of the United States postmark stamped on the cover . . . to be the date of delivery or the date of payment, as the case may be.” 26 U.S.C. § 7502(a)(1). The other exception deems that for a certified mail registration, “the date of registration shall be deemed the postmark date.” 26 U.S.C. § 7502(c)(1).

Petitioners seek to introduce evidence demonstrating that the postmark date on their federal tax return envelope was October 15, 2007, the deadline for this particular filing. This evidence includes contemporaneous filings with the IRS and the state of Michigan that bore a timely postage timestamp, declarations by the taxpayers and their accountant, and evidence from the accountant’s postage meter machine. The IRS has lost or destroyed the actual tax return envelope in question, in violation of IRS policy, but through a statement by a clerk claims that the envelope bore a postmark date of October 19, 2007.

The court below accepted that the tax return would be deemed timely filed if the Petitioners could prove a postmark date of October 15, but the only evidence that the court would consider is the physical envelope, which the IRS has lost or destroyed. *See*

Stocker v. United States, 705 F.3d 225, 234 (6th Cir. 2013), *citing* *Miller v. United States*, 784 F.2d 728, 729 (6th Cir. 1986) (“In that case, as here, the plaintiff taxpayer was unable to produce the evidence called for under the statutory “postmark” exception—namely, proof of “the date of the United States postmark stamped on the cover” of the envelope or package in which the plaintiff taxpayer mailed his refund claim.”).

This interpretation reads a restrictive evidentiary limitation into the statute, stacking the deck against the taxpayer without statutory basis. While a taxpayer mailing his tax return on the date due *ought* to obtain a registered mail receipt and *ought* to keep some record of the postmark date on the envelope, the court below elevates such practices to necessities compelled by the statutory language. If the IRS makes a mistake, as it often does, and loses the only evidence in the case, as it apparently does, the taxpayer automatically loses notwithstanding the mantra that taxpayers should win when the statutory command is ambiguous.

Four circuit courts and the U.S. Tax Court have rejected this interpretation of the statute. *See Philadelphia Marine Trade Ass’n—Int’l Longshoremen’s Ass’n Pension Fund v. Comm’r*, 523 F.3d 140, 150 (3d Cir. 2008) (“[W]e find nothing in the legislative history of § 7502 to support the preemption argument.”); *Sorrentino v. IRS*, 383 F.3d 1187, 1193 (10th Cir. 2004) (Baldock, J.) (“If Congress wishes to restrict the taxpayers’ means of proving delivery of tax documents, Congress can easily amend § 7502 to establish “an easily applied, objective standard.”), *cert. denied*, 546 U.S. 812 (2005); *Lewis v. United States*, 144 F.3d 1220, 1223 (9th Cir. 1998) (“If it were

otherwise, the postmark rule enacted by Congress would have effect, when the Service destroyed the envelope, only in the rare instance in which the postal clerk was perceived in the act of affixing the postmark.”); *Estate of Wood v. Comm’r*, 909 F.2d 1155, 1160-61 (8th Cir. 1990) (“[I]f Congress intended that subsection (c) was to be the exclusive instance in which a presumption of delivery could apply, we think that it would have said so.”); *Boone v. Comm’r*, 73 T.C.M. 2132 (T.C. 1997). See also S. Rep. No. 90-9014 (1968), 1968 U.S.C.C.A.N. 2354, 2373; H.R. Rep. No. 90-1104 (1968), 1968 U.S.C.C.A.N. 2341, 2354 (stating in reference to nearby 26 U.S.C. § 7502(e) that “[t]he taxpayer, of course, could also establish the date of mailing by other competent evidence.”). Two other circuit courts join the Sixth Circuit in its interpretation. See *Maine Medical Center v. United States*, 675 F.3d 110, 116 (1st Cir. 2012); *Deutsch v. Comm’r*, 599 F.2d 44 (2nd Cir. 1979), cert. denied, 444 U.S. 1015 (1980).

The statute in question applies nationally, but instead of the uniform application anticipated by Congress, taxpayers now face harsher treatment in certain regions. In the First, Second, and now Sixth Circuits, taxpayers filing at the last minute must hope that the IRS keeps their envelope and records the information correctly, because their government considers their own assertions and other evidence to be so untruthful as to be inadmissible. In the Third, Eighth, Ninth, and Tenth Circuits, such formalism is rejected in favor of a recognition that what matters is the truth of when the tax return was postmarked, which can be determined by the finder of fact using any information available.

For many citizens, paying taxes is one of the few ways they interact directly with the government. Tax policy widely perceived as unusual and unfair threatens to foster a general disenchantment with the government, creating tensions between the law and citizens. This Court should take the opportunity to grant the petition as a chance to resolve the circuit split, remedy this uncertainty and uneven application of a national law, and uphold the congressional text as a taxpayer protection.

CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests that this Court grant the petition for certiorari.

Respectfully submitted,

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