

ID: CCA_2025051609591500

[Third Party Communication:

UILC: 6651.00-00, 6721.00-00,
6722.00-00

Date of Communication: Month DD, YYYY]

Number: **202534003**

Release Date: 8/22/2025

From:

Sent: Thursday, April 3, 2025 10:16:59 AM

To:

Cc:

Bcc:

Subject: Re: Request for assistance on 6651 & 6721/6722 penalties and FATCA

The common law mailbox rule provides that the proper and timely mailing of a document raises a rebuttable presumption that the document has been received by the addressee in the usual time. *Schikore v. BankAmerica Supplemental Ret. Plan*, 269 F.3d 956, 961 (9th Cir. 2001) (citing *Hagner v. U.S.*, 285 U.S. 427, 430 (1932)).

In the deficiency procedure context, the Service relies on the presumption of regularity to establish the timely mailing of a SNOD. The presumption of official regularity generally applies to IRS actions that are required to comply with official procedure. If the IRS follows its own procedures, then it is entitled to the presumption of official regularity. See *Ruddy v. Comm'r of Internal Revenue*, T.C. Memo. 2017-39, aff'd., 727 F. App'x 777 (4th Cir. 2018) ("A properly completed USPS Form 3877 represents direct documentary evidence of the date and fact of mailing and demonstrates IRS compliance with its established procedures for sending deficiency notices. Exact compliance with the Form 3877 mailing procedures raises in favor of the IRS a presumption of official regularity that shifts the burden of going forward to the taxpayer.") (internal citations omitted); *Coleman v. Comm'r*, 94 T.C. 82, 90 (1990) ("A properly completed Postal Service Form 3877 also reflects compliance with IRS established procedures for mailing deficiency notices. [...] More specifically, exact compliance with the Form 3877 mailing procedures raises a presumption of official regularity in favor of respondent. [...] To prevail, petitioners must rebut the presumption by affirmatively showing that respondent failed to follow his established procedures.") (internal citations omitted). In the absence of established mailing procedures to comply with Treas. Reg. § 1.1471-3(e)(2), this presumption would not apply.

If there are no established procedures to create a presumption of regularity, the Service may still be entitled to a presumption of actual delivery based on evidence of mailing the documents. See *Portwine v. Comm'r*, T.C. Memo. 2015-29, aff'd, 668 F. App'x 838 (10th Cir. 2016) ("Petitioner correctly points out that respondent is not entitled to the presumption of official regularity in this case because the certified mailing lists are incomplete. Respondent may still prevail, however, if the evidence of mailing is otherwise sufficient.") (finding that the dated copies of the notices of deficiency combined with

incomplete certified mailing lists were sufficient to show that the notices of deficiency were sent to the taxpayer's last known address.); Ruddy, T.C. Memo. 2017-39 at *5 ("Even if the presumption of official regularity were somehow thought inapplicable here, respondent would still prevail because he has provided 'otherwise sufficient' evidence of mailing."). For domestic mail, the IRS sends correspondence through certified mail as it provides proof of mailing and delivery. The Service can use the mailing and delivery receipts to establish the presumption of the mailbox rule, in which there is a presumption that certified mail sent to the last known address is treated as delivered unless there is evidence to rebut that presumption.