

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WISCONSIN**

---

**MARK W. HARRISON  
and ELLEN C. HARRISON,**

**Plaintiffs,**

**Case No: 19-CV-00194**

**vs.**

**INTERNAL REVENUE SERVICE,  
COMMISSION OF INTERNAL REVENUE,  
COMMISSIONER OF INTERNAL REVENUE  
and UNITED STATES DEPARTMENT OF JUSTICE**

**Defendants.**

---

**MOTION FOR RECONSIDERATION OF A COURT ORDER AND OPINION DATED  
JANUARY 9, 2020 PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 59**

---

Mark W. Harrison and Ellen C. Harrison, his wife, Plaintiff's, by their attorneys PITTMAN & PITTMAN LAW OFFICES, LLC by Galen W. Pittman hereby move the Court for Reconsideration of the Court's Order Granting the Defendants Motion for Summary Judgment and denying the refund claim of Mark W. Harrison and Ellen C. Harrison, his wife. This Motion is brought pursuant to Federal Rules of Civil Regulations 59 in which the Plaintiff believe that the Court erred in the application and understanding of the law relating to mail box rules and refunds under administrative claims. We believe that the Opinion issued by the District Court is wrong and that all parties failed to cite the relevant authority and the Judge didn't cite the case either.

**ARGUMENT**

The relevant case is *Weisbart vs. United States Dept. of Treasury 222 F.3d 93 (2d Cir. 2000)*. The *Weisbart* case is in all points pertinent with the Harrison case above. In the *Weisbart* case, the Court stated: "Emanuel Weisbart's 1991 income tax return was due on April 15, 1992,

but he obtained an automatic extension until August 17, 1992. Despite the extension, Weisbart did not file his return by the August 1992 deadline. Three years later, he mailed his 1991 return to the IRS on August 17, 1995. The tax return was submitted on the customary Form 1040 and included a refund claim for \$4,867 from the \$12,477 in taxes that had been previously withheld from Weisbart's 1991 wages. The IRS received the return on August 21, 1995."

The *Weisbart* court, relying on regulations that have since been clarified and expanded, reasoned that the rules of section 7502 apply in this case to make the amount paid on the due date within the period provided by section 6511(b)(2)(A)-i.e. that the lookback date is the date of mailing, not the date the IRS received the refund claim. The Court continued to state as follows: "The Service argues, and the District Court held, that the "prescribed" period applicable to Weisbart's tax return should also apply to the fund clam. Applying this construction, Weisbart's refund claim would not enjoy the benefit of the mailbox rule and would therefore be barred."

Taken together, these two Treasury Regulations provide that the applicability of the mailbox rule to the refund claim should be analyzed independently of the timeliness of the tax return itself, regardless of whether they are in the same document. As such, even though Weisbart's tax return was untimely filed, his refund claim enjoys the benefit of the mailbox rule, and is deemed filed on August 17, 1995. Because that date is within 3 years of the date when Weisbart is deemed to have paid his withheld employment taxes, he may recover any overpayment included in those taxes under the lookback provisions of section 6511(b)(2)(A).

Shortly thereafter, the Treasury decided to accept the *Weisbart* holding and so in 2001 promulgated *T.D. 8932, 66 FR 2257*. The Treasury decision stated:

"[T]he IRS and the Treasury Department have determined that, in certain situations, a claim for credit or refund made on a late filed original income tax return should be treated under

section 7502 as timely filed on the postmark date for purposes of section 6511(b)(2)(A). This is consistent with the opinion of the United States Court of Appeals for the Second Circuit in *Weisbart v. United States Department of Treasury and Internal Revenue Service*, 222 F.3d 93 (2d Cir. 2000), rev'g 99-1 USTC (CCH) P50, 549 (E.D.N.Y. 1999), AOD-CC-2000-09 (Nov. 13, 2000)."

In Federal Rule 66 FR at 2258, The Treasury Decision added a new subsection (f) to Reg. Section 301.7502-1 which in part read as follows:

- (i) Taxpayer A, an individual, mailed his 2001 Form 1040, "U.S. Individual Income Tax Return," on April 15, 2005, claiming a refund of amounts paid through withholding during 2001. The date of the postmark on the envelope containing the return and claim for refund is April 16, 2005. The return and claim for refund are received by the Internal Revenue Service (IRS) on April 18, 2005. Amounts withheld in 2001 exceeded A's tax liability for 2001 and are treated as paid on April 15, 2002, pursuant to section 6513.
- (ii) Even though the date of the postmark on the envelope is after the due date of the return, the claim for refund and the late filed return are treated as filed on the postmark date for purposes of this paragraph (f). Accordingly, the return will be treated as filed on April 15, 2005. In addition, the claim for refund will be treated as timely filed on April 15, 2005. Further, the entire amount of the refund attributable to withholding is allowable as a refund under section 6511(b)(2)(A).

As a result, the claim for the refund of the Harrisons fits within the parameters of Federal Rule 66 FR 2257. This is where the Harrisons by Certified Mail (nobody questioned the date of mailing) as of October 11, 2016 which was well within the time period for seeking the

administrative claim for refund for the year of 2012. This mailbox rule applies to the claim for the refund. It is no longer the date that the IRS receives the tax return for the lookback period but the date of mailing (Mail box rule). As a result, the Harrison claim for a refund was timely filed and should be granted.

As a result, the Plaintiff's Request that the Court reverse its Decision in reference to Opinion and deny the Motion for Summary Judgment and unilaterally grant the claim for the Harrison's Administrative Tax Refund for the year of 2012 in the amount of \$7,386.48 plus interest.

Dated this 15<sup>th</sup> day of January, 2012 at La Crosse, Wisconsin.

PITTMAN & PITTMAN LAW OFFICES, LLC

By:   
s/Galen W. Pittman

**Galen W. Pittman**  
**Attorney for Plaintiff's**  
**Attorney No: 1010058**  
**712 Main Street**  
**La Crosse, WI 54601**  
**(608) 784-0841**