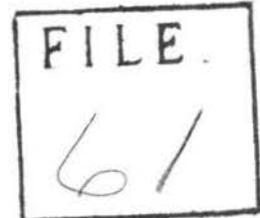


MOTOR VEHICLE FUELS: Payment to be made on or before the 25th day of the month, mailing payment on last day is not sufficient.
GASOLINE TAXES:

March 24, 1942

Mr. George Metzger
State Oil Inspector
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter of March 21, 1942, which is as follows:

"The Motor Fuel Law requires payment of the 2¢ road tax to be made on or before the 25th day of the month, and Section 8419 fixes a penalty of five per cent thereof for each calendar month or fraction thereof that the distributor is delinquent in the performance of any duty imposed by Sections 8416, 8417, 8418 and 8437, said penalties to be cumulative to the amount of twenty-five per cent of such tax.

"The question has been raised as to whether a person, distributor or dealer has complied with the law if he places his report and remittance in the mail on or before the 25th of the month, regardless of the date on which the report and remittance reach this department.

"I would like to have your opinion as to whether placing the report and remittance in the mail on or before the 25th is sufficient to comply with the requirements of the law."

Under the provisions of Article 2, Chapter 45, R. S. Missouri, 1939, which is known as the Motor Vehicle Fuel Tax Law, there are two types of taxpayers. One may be classed as the person paying his gasoline tax on the "sales" basis and who under the provisions of Section 8418, R. S. Missouri, 1939, "must on or before the 25th day of each month * * * * * pay to the State Treasurer the amount of license tax shown by such statement to be due for the month for which the statement is made."

The other type of taxpayer is the person who pays his taxes on the "receipts" basis. Section 8437, R. S. Missouri, 1939, fixes the day upon which this person must pay his taxes in the following language: "* * * if such person, distributor or dealer shall thereafter on or before the 25th day of each and every month make and file with said inspector * * * a statement under oath of the total number of gallons of motor vehicle fuels so received * * * during the preceding calendar month accompanied with a draft payable to the State Treasurer for the payment of taxes thereon, * * * * *."

It thus appears that the time for the payment of this tax on either type of taxpayer is fixed as on or before the 25th day of the month. As to the taxpayer who pays his tax upon the "receipt" basis, it will be noted that the statute requires him to "file" a statement accompanied by a draft, while on the taxpayer who pays his taxes on the "sales" basis, is only required to "pay" the taxes to the State Treasurer. We think there is no essential difference in either of these methods, and that each requires that a draft be placed in the hands of the proper official on or before the last day, and that mailing on the last day is not sufficient. Our authority for this is found in Words and Phrases (perm. ed.) Vol. 16, wherein the word "filed" is defined. We hereinafter set forth some of those definitions:

"Mailing to State Industrial Commission of claim for compensation under the Workmen's Compensation Law, which was not received, was not such filing

as is required by section 28.
Cheesman v. Cheesman, 139 N. E. 775,
236 N. Y. 47.

"Motion for new trial deposited with
postal authorities for delivery to
court clerk is not 'filed' until
delivery to clerk and any delay is that
of movant. 12 Okl. St. Ann. Sec. 653.
City of Maud v. Tulsa Rig, Reel & Mfg.
Co., 25 P 2d 792, 165 Okl. 181.

"Deposit in mail of claim addressed to
Veterans' Bureau for benefits under
war risk policy held not 'filing' of
claim in bureau within provision sus-
pending limitation while claim is
pending in bureau. 38 U.S.C.A. Sec.
445. Weaver v. U. S., C.C.A.N.C.,
72 F. 2d 20, 21.

"The term 'filed,' as used in subdivision
1 of section 4360, requires that the
paper sought to be filed must be
deposited with or placed in the custody
of the officer whose duty it is to re-
ceive it, and is not complied with by
depositing such paper in the postoffice
addressed to the officer. Pender v.
Brennan, 169 P. 174, 175, 31 Idaho 54.

"The filing of a document is not com-
plete until it is received by the proper
officer, evidence that it was properly
mailed to him, not being evidence that
it was filed; and the word 'file' as used
in Ky. St. sec. 571, requiring corporations
to file certain statements in the office
of the Secretary of State means their
actual delivery in the office of the Sec-
retary of State to some one authorized
to receive them. Commonwealth v. O'Bryan
Utley & Co., 155 S. W. 1126, 1128, 153 Ky.
406.

"Running of statute of limitations against claim of veteran under war risk policy is suspended when claim is 'filed' in Bureau of War Risk Insurance of Veterans' Administration and not when it is deposited in mails
* * * * * World War Veterans' Act 1924, sec. 19, as amended, 38 U.S. C.A. sec. 445. Tyson v. U.S.C.C.A.N.C., 76 F. 2d 533, 534.

"Under Conservancy Act authorizing property owners to file exceptions to an appraisal within ten days, receipt of exceptions by proper officer within time prescribed was necessary to constitute 'filing' in compliance with statute, and Conservancy Court properly refused to consider exceptions not so received, notwithstanding that they were mailed within such time that they would ordinarily have been received, and that an unprecedented flood condition prevented their delivery. Gen. Code, secs. 6828-32. Muskingum Watershed Conservancy Dist. v. Steinmetz, 15 N. E. 2d 164, 166, 57 Ohio App. 502.

"Under Gen. St. 1913, Sec. 339, providing for an affidavit initiatory of a candidacy for office at the primary election and requiring it to be 'filed' at least 40 days before the date of the election, an affidavit which was mailed on the last day for filing, but which did not reach the State Auditor's office until the next day was not 'filed' within the required 40 days and hence was ineffective. State v. Erickson, 188 N. W. 736, 152 Minn. 349."

Mr. George Metzger

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March 24, 1942

CONCLUSION

It is, therefore, our opinion that a person who is liable for the license taxes imposed under the provisions of Article 2, Chapter 45, R. S. Missouri, 1939, does not discharge his tax liability within the time required by law by placing his remittance to cover said tax in the mails on the 25th day of the month. In order for that liability to be discharged within the time required by law, the remittance must be in the hands of the State Treasurer of Oil Inspector on or before the 25th day of the month.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

LLB/rv