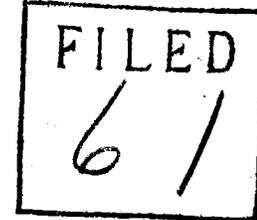


MOTOR FUEL TAX: Power to waive penalties and interest.

March 28, 1945



Mr. George Metzger  
State Inspector of Oils  
Jefferson City, Missouri

Dear Mr. Metzger:

Your letter of March 27, 1945 requesting an opinion from this department as to the extent of your authority to waive accrued interest and penalties on delinquent motor vehicle fuel taxes due the State of Missouri from distributors, has been received.

Your letter states:

"Regarding our conversation referring to delinquent tax account of Carter & Lawson Oil Company of Lebanon, Missouri:"

"The records of this department show the following amounts due:"

	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>
"October, 1942	\$358.32	\$161.40	\$52.28
November, 1942	881.88	220.45	
December, 1942	<u>257.16</u>	<u>64.30</u>	
Totals	\$1,497.36	\$446.15	\$52.28."

"There is a total of \$1,995.79, in taxes, penalties and interest, due the State, plus interest accumulative at the rate of 1 per cent per month."

"The last payment of \$50.00 to apply on this account was made March 21, 1945."

"The writer has been in contact with the above company, regarding liquidation of this account, and is of the opinion that he can effect a settlement by

securing payment of the amount of taxes due the State, amounting to \$1,497.36, on or before June 1, 1945, if the penalty and interest charges assessed against this account can be waived."

"Is it your opinion that Section 10 of our present Motor Fuel Tax Law gives the administrator authority to waive said penalties and interest charges in this particular case?"

Section 10 of the Laws of 1943, page 683 in the act popularly known as the Motor Vehicle Fuel Tax Law, is as follows:

"SECTION 10. Administrator may waive penalties and interest, when.--  
When any distributor shall fail to pay to the administrator the amount of taxes due under this act when the same shall be payable, and by reason thereof, penalties and interest accrue as provided in Section 9(b), if it appears to said administrator that the delay in payment was due to conditions beyond the control of the distributor and the same is paid within ten (10) days after the last date the tax should have been paid, he may, in his discretion, waive said penalties and interest."

Subsection (c) of Section 7, page 680, Laws of Missouri 1943 fixes the time when each distributor, under the act, shall pay the tax due from him. Part of said Subsection (c) must be read with said Section 10 in order to arrive at the proper understanding of the extent of your authority in the matter submitted. That part of said Subsection (c) so applying to the terms of said section 10 is as follows:

"(c) At the time of filing each monthly report with the administrator, each

distributor shall enclose with such report to the administrator a bank draft, certified check, or postal, express or telegraph money order, payable to the administrator in the full amount of the motor fuel tax due from such distributor for the next preceding calendar month which shall be computed as follows:" \* \* \*."

From the statement of facts given in your letter, the last dates on which the several items of tax due from the Carter & Lawson Oil Company, of Lebanon, Missouri should have been paid were the last day of October, 1942, the last day of November, 1942 and the last day of December, 1942. Subsection (e) of said Section 7, provides that a bank draft, certified check, or postal, express or telegraph money order in payment of the tax due for the last preceding calendar month shall accompany the monthly report due from each distributor to the office of the inspector.

Section 10, of said act, as it will be observed, provides that upon the failure of any distributor to pay the amount of tax due when the same shall be payable, and if, by reason thereof, penalties and interest accrue as provided in Section 9 (b), page 682, Laws of Missouri, 1943, and with other conditions being satisfactory to the inspector and the tax is paid within ten (10) days after the last date the tax should have been paid, the inspector may, in his discretion, waive said penalties and interest.

While said Section 10 does give the administrator of the act (The Inspector of Oils) discretion as to his judgment of conditions causing the tax to become delinquent, it denies him altogether the power and authority to waive such penalties and interest unless the delinquent tax be paid within ten (10) days after the last date the tax should have been paid.

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The fact that the Carter & Lawson Oil Company paid, as it is said, on March 21, 1945, the sum of \$50.00 on this account does not alter the case. That payment cannot relieve said company of its delinquency in the payment of said tax. Such payment could not substitute March 21, 1945 for any of the days of any of said three months in 1942 when the tax should have been paid so as to be claimed by the said company as a basis for waiving the penalties and interest on such taxes.

CONCLUSION

It is, therefore, the opinion of this department that when taxes on motor fuels have become delinquent the administrator may only waive said penalties and interest if and when said taxes are paid within ten (10) days after the last date the tax should have been paid, and that Section 10 of the present Motor Vehicle Fuel Tax Law does not give the administrator authority now to waive said penalties and interest charges in the case of the Carter & Lawson Oil Company of Lebanon, Missouri.

Respectfully submitted

GEORGE W. CROWLEY  
Assistant Attorney General

APPROVED

J. E. TAYLOR  
Attorney General

GWC/mw