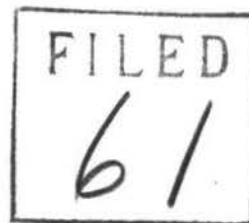


MOTOR VEHICLE
FUEL TAX;

Three questions relative to time within which
payment of tax can be made; whether delivery
to P.O. box is sufficient.

December 29, 1942

2 p (D)
Honorable George Metzger
State Inspector of Oils
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter of
November 2, 1942, which is as follows:

"On March 24, 1942, you wrote an opinion, ap-
proved by the Attorney General, the concluding
paragraph of which read as follows:

'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 lia-
bility 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 or Oil Inspector
on or before the 25th day of the month.'

"I would appreciate receiving an opinion from you,
covering the following questions with regard to
the said paragraph:

"(1) What is your interpretation of: 'The re-
mittance must be in the hands of the State Treas-
urer or Oil Inspector on or before the 25th day
of the month.' Should this be construed to mean
that the remittance must be received during the
regular business hours of the day? If so, has
there been an opinion rendered, or is there some
provision in the state laws defining what consti-

tutes the regular business hours of a day?

"(2) Would you consider as having been received on time any mail placed in the Post Office box of this department after the regular business hours and before 12 o'clock midnight of the 25th day. If in your opinion the remittance should be in the hands of the State Inspector of Oils before the close of business on the 25th day of the month, would it be proper to assess a penalty on a remittance placed in this department's Post Office box during the period between the close of business and 12 o'clock midnight of said 25th day of the month?

"(3) Upon opening the office of this department at 8 o'clock on the morning of the 26th day, we invariably find that several notices have been shoved underneath the door, informing us that the Post Office is holding one or more pieces of registered or special delivery mail. There is no way of determining whether these notices were placed there before or after 12 o'clock midnight of the 25th day. On the morning of the 26th, we receive these articles at the register-and special-delivery window, for which we sign a receipt. Would it be proper to assess a penalty against these remittances, as being delinquent?

"All mail addressed to this department ordinarily is deposited in box rented for this purpose at the Post Office in Jefferson City.

"Business hours of this office are from 8 A.M. to 5 P.M., daily, except Saturday, on which day the hours are from 8 A.M. to 12 o'clock noon."

Directing our attention to your first question, it appears that Section 8418 R. S. Mo. 1939 dealing with distributors reporting on the sales basis, and Section 8437 R. S. Mo. 1939 dealing with distributors reporting on the receipts basis, each requires that the tax payments be made "on or before the 25th day" of the month. In 62 C. J. Section 27 page 978, it is said:

"As a general rule, in the computation of time, a day is to be considered as an indivisible unit, or period of time, which has its beginning coincident with the first moment of the day, and the law will not, unless there is a sufficient reason therefor, recognize or take cognizance of fractions of a day, * * * * *

And at page 979 it is further stated:

"Under this rule, a person who is required to perform an act on or by a particular day is entitled to the whole of that day in which to act, * * * * *."

The above rule has been applied in Missouri. In Williams v. Williams 30 S. W. (2d) 69 (Mo. Sup.) at l. c. 71, it is stated:

"The natural or solar day consists of twenty-four hours, the space of time which elapses while the earth makes a complete revolution on its axis; as ordinarily considered, it is the space of time which elapses between two successive midnights. * * * * *

"But ordinarily the law does not consider fractions of a day. A day is an indivisible point of time; it has neither length nor breadth, but simply position, without magnitude. * * * * *

The rule that the law knows no fractions of a day has been applied to the time within which a debt may be paid. (Anglo-American Provision Co. v. Prentis, Ill., 42 N.E. 157, 161; National Park Bank v. Concordia Land and Timber Co. La., 105 So. 234, 242). Also said rule has been applied to the payment of taxes. (Fenlason v. Shedd, Me., 84 Atl. 409). Our examination of the statutes applicable to Motor Vehicle Fuel Taxes does not disclose any provision attempting to break down into divisible parts the last day on which tax payments may be made.

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Therefore, in answer to your first question, we are of the opinion that the taxpayer has until midnight of the last day within which to pay his taxes.

In answer to your second question, we find that in *Hartford Accident & Indemnity Co. v. Middletown National Bank* 10 Atl. (2d) 604 (Conn.) a similar situation was considered. There, a check was mailed to one Doreen, P.O. Box 315, Chester, Connecticut. The box designated, belonged to Callander but Doreen had given that box as her address. Doreen was a fictitious person, while one Pulver was a person who had been introduced to the bank as Doreen, by Callander. All this was part of a scheme to defraud the State of Connecticut on false bills for goods not delivered. The check was delivered to the Post Office box, received by Callander and handed over to Pulver, who endorsed it as Doreen and cashed the same. In the suit to recover, it was contended that there was no delivery to Doreen (Pulver). The court stated, l. c. 606:

"* * * There is no good ground for the plaintiff's contention that delivery of the checks was not made to Pulver, as the court concluded, but to Callander because they were mailed, as directed by her, to a post office box which proved to have been rented by Callander, * * * * *."

As we understand this, the court ruled that delivery of a check by mail to a Post Office box designated by a person as a place to send his mail, was delivery of the same to such person.

Therefore, in answer to your second question, we are of the opinion that a remittance placed in your Post Office box before midnight of the last day on which the tax can be paid, is delivered to you in so far that it would bar the assessment of any penalty for delinquency.

Your third question presents more of a factual question than a legal one. We have consulted with the Assistant Postmaster of the Jefferson City Post Office and are advised that

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where a party holds a box, no notice slip, on registered mail, would be sent out to the office address of such person; that in those circumstances the notice slip is invariably placed in the Post Office box. However, we are also advised that if attempted delivery was made of such notice slip and the addressee is not present to receive the same, that the date and approximate hour of such attempted delivery is noted upon the notice slip that is left. We should think that preservation of these notice slips until the parcel is actually received, should be sufficient proof upon which you can determine whether there was constructive delivery to you before midnight of the last day on which the taxes can be timely paid. If the notice slip shows constructive delivery before that time, we are of the opinion that the taxpayer is not subject to penalties.

Respectfully Submitted

LAWRENCE L. BRADLEY
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

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