



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 26, 1976

ATTORNEY GENERAL OPINION NO. 76-160

Mr. David L. Thompson
County Attorney
Montgomery County Courthouse
Independence, Kansas 67301

RE: Taxes--Payment By Mail--Computation of Time.
K.S.A. 79-332, 79-5a02, 79-802, 79-908, 79-332,
79-3607, 79-1422; K.S.A. 1975 Supp. 79-210, 79-306,
79-307b, 79-6a02, 79-1502, 79-2004, 79-2004a, 79-3221.

Synopsis: When paying taxes by mail, the statutory deadline for payment is met if the postmark on the envelope carrying the return and remittance is on or before the due date. The deposit in the mail is constructive delivery on the date it is deposited. It is not necessary that the taxpayer physically deliver taxes to the tax collector.

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Dear Mr. Thompson:

You state that recently the County Assessor of your county assessed a 10% penalty under K.S.A. 79-1422 upon a taxpayer because the taxpayer's report was received after the date deadline. It came in an envelope which was postmarked prior to such deadline, but actual mail delivery was after the deadline. The taxpayer appealed to the Board of Tax Appeals which held that deposit in the mail constituted "good faith" and struck down the penalty.

You ask if the Board of Tax Appeals has authority to so interpret statutes. You also ask if that ruling might have application to other tax paying deadlines.

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When tax returns are not filed on or before the statutory deadline, penalties are mandatory, and the Board of Tax Appeals has no jurisdiction to abate the penalty. Walkemeyer v. Stevens County Oil & Gas Co., 205 Kan. 486, 492, 470 P.2d 730 (1970).

However, in Walkemeyer there was no question about timely filing. The return was physically filed on April 11, when the due date in the statute was April 1. There was nothing in that case about mailing, nor evidence of an earlier attempt to file.

Here the question is whether a taxpayer, by mailing his return and remittance in payment of taxes in an envelope postmarked on or before the statutory due date, is in compliance with tax laws setting deadlines for the "filing" of returns.

It is our opinion that the decision of the Board of Tax Appeals was proper and that the principal should be applied generally to all tax payment statutes.

First, we must distinguish between "filing" necessary papers with the Court under K.S.A. 1975 Supp. 60-205(e), and the service by mail under K.S.A. 60-206(e). City of Overland Park v. Nikias, 209 Kan. 643, 498 P.2d 56 (1972) has held:

"The legislature employed the phrase 'by filing a notice of appeal'. The word 'file' contemplates the deposit of a writing with the proper official. (State v. Heth, 60 Kan. 560, 57 Pac. 108; Rathburn v. Hamilton, 53 Kan. 470, 37 Pac. 20.) See also K.S.A. 60-205(e)." (P. 647)

The timely filing of papers with a Court is jurisdictional in nature. Only penalty and interest is involved for failure to file timely a tax return.

There is this rather broad statute pertaining strictly to a party doing a required act within a prescribed period, and the doing of such act is permissible by mail, "three (3) days shall be added to the prescribed period." K.S.A. 60-206(e). The Kansas Supreme Court has liberally construed this subsection:

a) In construing compliance by mailing of a petition for review of a Kansas Corporation Comm. order, the Kansas Supreme Court cited K.S.A. 60-205(b) and 60-206(e) and said: "Receipt by mail may take one day or may take five days for service by mail, but three days additional time is to be allowed in all cases." Wheat State Telephone Co. v. State Corporation Commission, 195 Kan. 268, 272, 403 P.2d 1019 (1965).

b) Service of a transcript, allowed to be done by mail, makes the additional three day period provided in K.S.A. 60-206 applicable: "We do feel that allowing an additional three days where material is delivered by mail will not unduly slow the wheels of justice..." State v. Nelson, 208 Kan. 404, 406, (1972). But, to show its liberal construction of K.S.A. 60-206, the Court further said: "While in some cases three days may be more than ample, we can take judicial notice that such a period will in many instances be a wholly inadequate allowance for a piece of mail, posted late in the day, to reach its destination. Counsel faced with a deadline should not be unnecessarily penalized by that delay." (P. 406) (Emphasis added)

c) Compliance with statutory deadline in filing an application for review of an experience rating by the Department of Labor was being considered by the Supreme Court. Neither the petition nor the envelope disclosed a date, but in the body of the petition it stated that "it was mailed January 18, 1972". The hearing officer had found "So I think we can safely assume here that it was filed, it was a timely filed appeal". This last line was emphasized by the Kansas Supreme Court, when it reversed the district court and the Labor Commissioner for dismissing the appeal because there was no showing of a timely mailing of notice. Bill George Chrysler-Plymouth, Inc. v. Carlton, 216 Kan. 365, 367, 532 P.2d 1351 (1975).

Where a person is required by statute to do an act or take some procedure within a prescribed period after service of notice or paper upon him by mail, such person may comply by return mail and three days will be added to the prescribed period. K.S.A. 60-206(e). The Kansas Supreme Court has applied this very general Rule of Civil Procedure to a number of situations and has evidenced a very liberal attitude, together with the acceptance of any evidence that a citizen has acted in good faith. In the last case above cited, the Court took the citizen's word that he timely mailed a paper, when that word was accepted by a hearing officer. Further, the Court has expressed a feeling that a person should not be unnecessarily penalized by a delay in mail delivery, when mailing is allowed.

Mailing is allowed in the filing of tax returns. In ad valorem and income tax, and in several of the excise taxes, the collecting officer mails the form return to the taxpayer, with notice and

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instruction to file by the statutory deadline. The mailing of such return by the taxpayer is not only allowed, it is encouraged. The standing in line outside a cashier's window is not only avoided, but a smaller staff can take the time, sometimes several weeks, to process the returns which are postmarked timely. By the media of press, radio and TV, taxpayers are cautioned to meet the "mailing" deadline, which is the statutory date. It has become an accepted part of tax life to mail a return by the statutory date, both for State and Federal taxes.

We believe that when a tax return is deposited in the mail and is postmarked, a process of filing has commenced. The mail is an agency of the taxing authority. The taxpayer could not later recall the postmarked envelope or stop its delivery. The taxing officer knows this and should rely on it, especially after inducing taxpayers to use such a method of filing.

"The word 'filed' is customarily used in connection with judicial documents...Generally the word "filed" applies only where there is a writing, and where the paper, instrument or document has been actually delivered, rather than merely deposited in the mail...However, for some purposes a paper such as a notice may be considered as having been 'filed' when it is mailed." (Citing decisions from four states.) 36A C.J.S. 396-398 "Filed".

It is our opinion that K.S.A. 60-206(e) does apply to the mailing of tax returns with a prescribed statutory date and, when postmarked on or before the deadline, the returns should be accepted without penalty or interest for at least three additional days. We believe that a taxpayer who files his return by mail, timely postmarked, should not be unnecessarily penalized by slow delivery of the mail, and that the good faith of the taxpayer should be recognized, as was done by the Board of Tax Appeals in the instant matter.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/CJM/cgm