

*No release
given*

March 26, 1954
Letter Opinion
No. 54-82-L

The Honorable Richard G. Kleindienst
House of Representatives
Capitol Building
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Re: The incident upon which a
penalty is imposed by the
Excise Revenue Act of 1935,
as amended.

Dear Mr. Kleindienst:

The question of when the twenty per cent civil penalty,
provided by the Excise Revenue Act is imposed by operation of
law, must be answered by examination of the statute.

Section 73-1314, in part, is as follows:

"73-1314. Tax payable monthly--Return
required.--* * * Any taxpayer who shall have
failed to pay such tax within five (5) days
from the date upon which such payment shall
have become due shall be subject to and shall
pay a penalty of twenty (20) per cent of the
amount of such tax."

This statutory language is clear and unambiguous and the
incident of the penalty is the failure to have paid the tax
imposed by the Act within five days from the date the tax
became due.

The penalty is loosely spoken of as applying to a late
filing since, under the provisions of the law, it is the filing
of a return, generally, that determines when the tax is due.

No. 54-82-L

Another part of Section 73-1314 provides:

"73-1314. Tax payable monthly--Return required.--The taxes levied under this article shall be due and payable monthly on or before the fifteenth day of the month next succeeding the month in which the tax accrues, and shall be delinquent five (5) days thereafter. The taxpayer shall on or before the fifteenth day of the month make out a return showing the amount of the tax for which he is liable, for the preceding month, and shall mail the same together with a remittance, in the form required by section 21 (§73-1322) of this article, for the amount of the tax, to the office of the commission. Such return shall be verified by the oath of the taxpayer, or his or its authorized agent."

However, the Commission, "for good cause", has the authority to extend the time for making a return which operates to also extend the date the tax is due to a period not to exceed thirty days. This results from the language of Section 73-1314, in part, when read in connection with the material above quoted.

"73-1314. Tax payable monthly - Return required.--* * *but the time for filing such return shall not be extended beyond the fifteenth day of the second month next succeeding the regular due date of such return."

When a person who owes the privilege tax, by virtue of having operated a business within the state, either wholly fails or refuses to make a return, the Tax Commission is charged with the responsibility of determining the amount of the person's tax liability and is given authority to examine all records and make other inquiries. The Tax Commission's assessment thus made becomes final after a hearing when notice and other requisites of due process are met. See Section 73-1316.

Since the incident of the penalty is the failure to have paid the tax within five days from the date the tax became due, the civil penalty is imposed by the law as the tax became due under the provisions of 73-1314, quoted and discussed supra, even though the assessment, which gives the Tax Commission

The Honorable Richard G. Kleindienst
House of Representatives

March 26, 1954
Page Three

the right to begin its collection procedure, was not made final until such hearing.

Yours very truly,

ELDON R. CLAWSON
Assistant to
The Attorney General

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54-82-L