

Phoenix, Arizona  
July 27, 1933. -

Mr. E. M. Whitworth,  
Superintendent, Motor Vehicle Division,  
Arizona Highway Department,  
Phoenix, Arizona.

My dear Mr. Whitworth:

This will acknowledge receipt of your letter of the 26th inst., in which you request my opinion as to the application of the penalty of twenty-five per cent for failure on the part of motor carriers to make their proper reports and pay the taxes due from them within the time prescribed by law.

Section 17, Chapter 100, Laws of Arizona, Eleventh Legislature, Regular Session, as amended by Chapter 10, Laws of Arizona, Eleventh Legislature, First Special Session, provides as follows;

"License tax: determining gross receipts.

In addition to all other taxes and fees every common motor carrier of property and every contract motor carrier of property shall pay to the state, on or before the fifteenth day of each month, a license tax of two and one-half per cent of the gross receipts from his operations within this state for the next preceding calendar month, as such carrier, and every common motor carrier of passengers and every contract motor carrier of passengers shall pay to the state, on or before the fifteenth day of each month, a license tax of two and one-quarter per cent of the gross receipts from his operations within this state for the next preceding calendar month, as such carrier.

When any carrier shall operate partly within and partly without this state, the gross receipts of such carrier within

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this state shall be deemed to be all receipts of business beginning and ending within this state, and a proportion based upon the proportion of the mileage within this state to the entire mileage over which business is done, of receipts on all business passing through, into, or out of the state. Upon receipt of such taxes the vehicle superintendent shall forthwith transmit the same to the state treasurer, who shall credit such taxes to the state highway fund."

Section 19 of said Chapter 100 supra provides in part as follows;

"If any motor carrier shall fail or refuse to pay the tax or to file any report provided for or required under the provisions of this act, within five days from the date when such tax or report is due, the certificate or permit issued to such carrier shall be revoked by the commission. A penalty of twenty-five per cent shall be added to any tax not paid on or before the day prescribed for the payment thereof."

In view of the foregoing, it is my opinion that the mere placing by a motor carrier of his report together with the amount of the tax due from him under the provisions of said Chapter 100 in the mails on or before the 15th day of the month is not sufficient to relieve him of the penalty of twenty-five per cent imposed under provisions of said Section 19 supra, unless as a matter of fact such reports and tax actually are received by the Motor Vehicle Division on or before the closing of business on the 15th. Any motor carrier using the United States mail to forward his report and remittance to the division accepts the mail as his agent and, in the event of the failure of the agent to deliver such report and remittance within the time prescribed by law, such failure must be treated as the failure of the carrier to report and remit on time and the penalty must, therefore, be added to the amount of the tax due. All motor carriers

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should see to it that their reports and remittances are in the office of the Motor Vehicle Division on or before the 15th of the month following the month for which the report is made and the tax paid.

It has been brought to my attention that on the 15th instant, the division closed at noon with the result that several carriers were unable to deliver their reports and remittances to the division. The law requires that all public offices be kept open between the hours of 10 A.M. and 4 P. M. on all days except holidays. The 15th instant not having been a holiday, the office should have been open until 4 o'clock at least and if any carrier was unable to make his report or pay the taxes due from him as such carrier on the 15th but reason of the fact that the office of the division was closed on that day before 4 o'clock, then in my opinion no penalty may be added to the amount of the tax due if such tax was paid on the next succeeding day on which the office of the division was open for the transaction of business.

Very truly yours,

RS/DN.

Assistant Attorney General.