

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

§

DOCKET NO. MISC. 88-148

W.L. PETREY WHOLESALE CO., INC.
P.O. Box 68
Petrey, AL 36062,

§

Taxpayer.

§

ORDER

The Taxpayer, W. L. Petrey Wholesale Company, Inc., filed a petition for refund of tobacco tax discount on May 3, 1988, relating to the month of July, 1987. The Revenue Department denied the petition on May 9, 1988, and the Taxpayer timely appealed to the Administrative Law Division. A hearing was conducted in the matter on September 13, 1988. Richard C. Belser, Esq. was present and represented the Taxpayer. The Revenue Department was represented by assistant counsel J. Wade Hope. Based on the evidence submitted the Administrative Law Judge entered a Recommended Order on September 27, 1988, which was forwarded along with the record in the case to the Commissioner of Revenue for review and entry of a final order. After review of the record and the Recommended Order, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The relevant facts are undisputed.

On August 20, 1987, the Taxpayer prepared its July, 1987, tobacco tax payment for remittance to the Revenue Department. The

Taxpayer normally mails the monthly payment at the U.S. Post Office in Petrey, Alabama. However, the Taxpayer missed the 4:00 p.m. Petrey deadline and thus deposited the payment at the Luverne Post Office prior to the 5:30 closing time.

The Department agrees that the subject payment was deposited by the Taxpayer with the Luverne Post Office prior to 5:00 p.m. August 20, 1987. However, the envelope was postmarked August 21, 1987 by the Luverne Post Office. The envelope and enclosed payment was received by the Department on August 25, 1987.

The Taxpayer subsequently petitioned the Department for the 7 1/2% discount allowed by Code of Ala. 1975, §40-25-5. The Department disallowed the discount because the payment was not received by August 20th and the envelope was postmarked after August 20th.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-1-45 is titled "Timely mailing treated as timely filing and paying", and provides in substance that if any document is required to be filed (or payment made) with the Department by a specific date, but is received after such date, the document will be deemed timely filed (or payment timely made) if (1) the document is postmarked on or prior to the due date, and (2) the document was actually filed with the U.S. Post Office within the prescribed due date.

The Taxpayer argues that the subject tobacco tax payment should

be treated as timely filed under §40-1-45 because it was actually deposited with the U.S. Post Office in Luverne on August 20, 1987.

But §40-1-45 is satisfied only if the document is actually mailed on the due date and also postmarked on or before the due date. Thus, because the envelope was postmarked August 21, the statute was not satisfied and the payment cannot be deemed as timely filed under §40-1-45.

However, §40-1-45 applies only where a document is required to be filed with the Department or payment actually made on a prescribed date. The tobacco tax discount statute, §40-25-5, provides only that payment shall be remitted on or before the 20th of each month.

The statute reads in pertinent part as follows:

Every wholesaler or jobber purchasing stamps on consignment as described herein, shall be required to make a full and complete accounting and remittance on or before the twentieth of each month for all stamps used on taxable tobaccos during the preceding month. Every wholesaler or jobber refusing or failing to comply with this section shall forfeit the commission or discount on stamps used which he failed or refused to account or remit for in the time allowed

Black's Law Dictionary, Revised Fourth Edition, defines "remittance" as "Money sent by one person to another, either in specie, bill of exchange, check, or otherwise." That same source defines "remit" as "To send or transmit; as to remit money". Further, the American Heritage Dictionary, Second College Edition, defines "remittance" as "Money or credit sent to someone; The act of sending money or credit". "Remit" is defined as "To send

(money); transmit."

Thus, by the specific language of §40-25-5, the tobacco tax payment must only be transmitted or sent, i.e., mailed, on or before the 20th of each subsequent month. The statute does not require that payment must be actually filed with or received by the Department by the 20th.

Whether payment is remitted by the prescribed date thus is a question of fact. In the present case, the Department agrees that payment was mailed on August 20th. Accordingly, the Taxpayer timely remitted the July, 1987 payment to the Department and thus should be allowed the discount provided by §40-25-5.

The above considered, it is hereby determined that the petition for refund should be granted.

This order constitutes the final order for purpose of judicial review under Code of Ala. 1975, §41-22-20.

Entered this 30th day of September, 1988.

JAMES M. SIZEMORE, JR., Commissioner