

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. U. 89-148

UNIVERSITY OF ALABAMA HEALTH
SERVICES FOUNDATION, P.C.
P.O. Box 55407
Birmingham, AL 35255,

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Taxpayer.

ORDER

The Revenue Department assessed use tax against University of Alabama Health Services Foundation, P.C., ("Taxpayer") for the period July 1, 1988 through September 30, 1988. The Taxpayer appealed to the Administrative Law Division and the matter was submitted on a joint stipulation of facts entered into by Samuel W. Jackson, Jr., Esq., on behalf of the Taxpayer, and Gwendolyn B. Garner, Esq., for the Department. The following findings of fact and conclusions of law are hereby entered based on the stipulated facts and arguments submitted by the parties.

FINDINGS OF FACT

The Taxpayer owed use tax for the period July 1, 1988 through September 30, 1988 in the amount of \$26,687.42. Said amount was due on or before October 20, 1988, but payment was not postmarked until October 21st and was not received by the Department until October 22nd.

The Department billed the Taxpayer for a full month's interest of \$221.51, and a 10 percent late penalty of \$2,668.74. The penalty was subsequently waived.

The Taxpayer remitted \$8.02 to the Department on December 2, 1988 representing one day's interest on the delinquent payment. The Department credited the \$8.02 to the Taxpayer's account and entered a preliminary assessment for the balance due of \$213.49. The Taxpayer subsequently appealed to the Administrative Law Division.

CONCLUSIONS OF LAW

The question to be decided is whether the Taxpayer should be required to pay interest for only the one day that the payment was late, or for an entire month, as argued by the Department.

Code of Ala. 1975, §40-23-77(a) was enacted in 1939 and provides that interest shall accrue on any use tax deficiency "at the rate of one-half of one percent per month, or fraction thereof, from and after the date when the same becomes due and payable until paid." Under §40-23-77(a), interest was computed monthly by the Department, and a full month's interest was charged if payment was delinquent for any part of the month.

However, Code of Ala. 1975, §40-1-44 was enacted in 1981 and provides that "the annual rate of interest to be added to all taxes shall be at the same rate established by the secretary of the treasury under the authority of 26 USCA §6621. Consequently, §40-23-77(a) as "amended" by §40-1-44 should read as follows:

"(a) All taxes or amounts herein required to be collected not paid to the department of revenue on the date when the same becomes due and payable shall bear interest at the rate established by the secretary of the treasury under the authority of 26 USCA §6621.

Section 6621 provides for an annual rate of interest based on the federal short term rate as computed by 26 U.S.C.A. §1274(a).

Such interest is compounded daily, see Treas. Regs. §§301.6621-1, 301-6621-2T, and 301-662-1, and also 26 U.S.C.A. §6622.

Consequently, interest on any use tax deficiency must be computed on a daily basis, which results in one day's interest due in the present case.

The Department contends that §40-1-44 changes only the actual percentage rate to be charged on a deficiency, but that interest should still be computed on a monthly basis. However, computing interest on a monthly basis instead of daily as required by §6621 would substantially change the effective rate of interest on a deficiency. As pointed out in the Taxpayer's brief, at page 4, the \$221.51 in interest charged by the Department for the one day delinquency in the present case is equal to an annual rate of over 300 percent, which is clearly inconsistent with the annual rate required by §40-1-44 and §6621. The Department's interpretation is also inequitable in that it would require the same interest to be paid on a one day delinquency as on a twenty-nine day delinquency.

The above considered, the assessment in issue should be reduced and made final showing no additional interest due.

Entered this the 9th day of August, 1989.

BILL THOMPSON
Chief Administrative Law Judge