



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

Memorandum

February 22, 2000

TO: Karen Hawkins
Department of Finance

VIA: Marc Hansen, Chief *MPH*
General Counsel Division

FROM: Jared Littmann *JL*
Assistant County Attorney

RE: Interest charges for improper documentation accompanying disposal facility payments

QUESTION

You have requested an opinion from this office concerning the handling of payments tendered without identifying documentation from private users of the County's disposal facilities. The Director states in each invoice that the payor is to submit both the payment and certain identifying documentation to a particular bank. Payors often fail to provide the requested documentation which causes a time lapse before the checks can be credited to the proper account. You have proposed various methods of changing this system to avoid the unnecessary imposition of interest charges and to improve the efficiency of the administration of these unmatched payments. Accordingly, you ask if and when the Director can charge interest during these delays. You also ask whether the requirement of a payor to "pay" an invoice by a due date requires delivery or just mailing by the due date.

SHORT ANSWER

The Code does not authorize the imposition of interest or penalties when payment is made without identifying documentation because the Code does not require proper documentation with the tendered payment. Further, timely payment requires delivery of payment by the due date.

BACKGROUND

The Director renders invoices to users of the solid waste disposal facilities and instructs the

users or payors to submit payment to a particular bank with certain identifying documents. These documents are used to determine which account is to be credited. Unfortunately, the bank often receives payments without these identifying documents. Under the current system, those payments are sent to the Department of the Treasury ("Department"). The Department matches the checks with their records to retrieve the proper account information. The checks are subsequently deposited into the correct account, but only after some delay since the bank initially received the checks. The delay results in the accrual of interest and penalty charges against the payor. If the payor challenges the interest and penalty charges, the Director attempts to determine when the payor initially made the payment and credits the payor accordingly.

DISCUSSION

Identifying documents are not required

The Code does not require payments of solid waste charges to be presented with any documentation. Although the Director currently states in the invoices that the payments should be accompanied by certain documentation, the requested information is not contemplated by the Code or in regulations. The Director may only charge a person for interest on a solid waste charge if the person does not pay the invoice within 15 days after the County renders the monthly invoice. See §48-36. Once the person pays the charges, the Director is not authorized to charge the person for interest, regardless of the level of documentation accompanying the payment.

Timely payment requires delivery by the due date

While a user of the disposal facilities must "pay any solid waste charges within 15 days after the County renders a monthly invoice" to avoid an interest charge, the Code does not explicitly state whether "pay" indicates that the user must submit (perhaps by mail), or the bank must receive, the required payment within 15 days. Although not explicit, the legislative intent of this provision should be interpreted as requiring payment to be received within 15 days after the County renders a monthly invoice. The Code states that the Director is to apply interest and penalties "in the same manner and to the same extent as are other tax penalties." See §48-35(c). The County and the State both commence tax penalties beginning on the date payments are due. For instance, real property taxes due to Montgomery County are "overdue 30 days after the tax bill is mailed or made available, and bear interest and penalties as specified" See §52-1(d)-(f). Likewise, a person is liable for interest and penalties on state property tax "from the date the property tax payment is required to be paid" Md. Code Ann., Tax-Prop. § 14-605, § 14-703 (1994).

The Court of Appeals' decision in *Comptroller of Treasury v. Jameson*, 332 Md. 723, 633 A.2d 93 (1993) also supports this interpretation. In *Jameson*, the court considered the offset credited against Maryland estate taxes for "State taxes paid." *Id.* at 732 (quoting Maryland Code (1957, Rep. Vol. 1983) Art. 62A § 2). Within Art. 62A § 2, the legislature provided that, "'State taxes' will be considered 'paid' only when and as payment or payments thereof have been made and received by the appropriate agency or official of the State of Maryland." *Id.* The court recognized the legislative intent to consider "State taxes" "paid" when those taxes were actually received, rather

than just submitted. *Id.*

In a case more factually apropos to the situation contemplated by your question, the Court of Special Appeals in *American Cas. Co. of Reading, Pennsylvania v. Department of Licensing and Regulation, Ins. Div.* considered whether a requirement to “file” taxes by March 15th in a given year permitted the mailing of the taxes on March 14th or rather required “physical delivery” on or before March 15th. 52 Md. App. 157, 159, 447 A.2d 484 (1982). The court concurred with the Tax Court’s conclusion that “the term ‘file’ was unambiguous and that it ‘clearly and explicitly means that there be a delivery . . ., not just a mailing.’” *Id.* at 159-161.

The legislative intent in requiring a user of the disposal facilities to “pay” by a required date can be derived by the reference to other tax penalties. Other tax penalties require payment to be delivered on or by the due date. Accordingly, the Director should interpret the term “pay” to require delivery of a required payment to the bank on or by the date due.

CONCLUSION

It is my recommendation that the Director apply each payment of the solid waste charges to the appropriate account as of the date the bank receives the payment. There is no current authority for charging for interest or penalties if the bank receives a payment without identifying documents. The Code could be revised, however, to require each payor to supply the desired identifying information with each payment. Alternatively, the Director could provide a coded return envelope with each invoice which would indicate the appropriate account information. Similarly, the Director could provide a unique P.O. Box return address on each invoice so that each payment would be directed to a unique address.