

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF )  
SUNGSUK SEO ) OAH Case No. 13-1034-GAM  
d/b/a CDGia & Company )  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

This is an appeal before the Office of Administrative Hearings of the June 4, 2013 Informal Conference by the Tax Division of the Alaska Department of Revenue (Division). That decision denied the request of Sungasuk Seo doing business as the CDGia & Company (Mr. Seo) not to pay the Bethel Sprints Musher Club \$1200 in 2006 net proceeds and \$3,220 in 2007 net proceeds plus interest for charitable gaming activities. Mr. Seo was the licensed charitable gaming operator for these activities. Bethel Sprints Musher Club was the charity with the permit for gaming that Mr. Seo was operating under.

Administrative Law Judge Mark T. Handley was assigned to hear the appeal. The parties appeared at a pre-hearing conference, status conferences and the hearing by phone. Todd Araujo, Assistant Attorney General, represented the Taxation Division of the Alaska Department of Revenue (Division). Revenue Appeals Officer Stanley Blodgett from the Division also participated. Mr. Seo, who is doing business as CDGia & Company, represented himself.

Mr. Seo argued at the hearing that the Division should not charge him for the proceeds or interest on the net proceeds that he failed to pay Bethel Sprints Musher Club for 2006 and 2007 because he made overpayments in 2008 and because he had posted more in his bond than was required and this excess could have been applied to his underpayments. Because the overpayments and bond were appropriately not applied to the underpayments the Division's decision is affirmed.

**II. Facts**

Mr. Seo does not dispute that he failed to timely pay the Bethel Sprints Musher Club \$1200 in 2006 net proceeds and \$3,220 in 2007 net proceeds for charitable gaming activities that he collected as the operator of that organization's charitable gaming and was required to timely

disburse.<sup>1</sup>

In 2012, the Division discovered these underpayments in its review of Mr. Seo's charitable gaming operator records. The Division also discovered that Mr. Seo had made payments to the Bethel Sprints Musher Club in 2008 of \$10,300 in excess of the required minimum portion of the net proceeds that he collected using the permit that year. During these years, Mr. Seo also posted \$25,000 in excess of the minimum bond he was required to post for his activities as the operator for two charitable gaming permits. In 2010, Mr. Seo posted an additional \$75,000 bond in excess of the minimum required for his gaming activities.<sup>2</sup>

The Division asked Mr. Seo to file amended Operator Annual Reports for 2006, 2007 and 2008 because of the discrepancies in these reports that the Division had discovered. Mr. Seo filed the requested amended reports. The Division review these amended reports and notified Mr. Seo that he was required to pay \$1200 in 2006 net proceeds and \$3,220 in 2007 net proceeds plus interest to the Bethel Sprints Musher Club. This notice also informed Mr. Seo that the payments of 2008 net proceeds that exceeded the minimum required by law could not be used to offset the underpayments for 2006 and 2007.<sup>3</sup>

Prior to the hearing, Mr. Seo had asked for a continuance to hire an attorney. At the hearing, Mr. Seo decided to represent himself. Mr. Seo explained that he was concerned that he had to pay five years of interest for 2006 and 2007 even though he had what he characterized as an overpayment in 2008. Mr. Seo was also concerned that this overpayment of over \$10,000 of the minimum amount due for 2008, had not been applied to the shortfalls for 2006 and 2007. Mr. Seo testified that he had some problems with his CPA at the time, and was not aware of the 2008 overpayment when it was made.<sup>4</sup>

### **III. Discussion**

Mr. Seo argued that because he forwarded the email from his accountant asking him what he wanted to do in regards to the overpayment to the Division, he was entitled to have the overpayment applied to the underpayment and interest due for 2006 and 2007. Mr. Seo argued that since he does not have an accounting background his accountant was responsible for the underpayments. Mr. Seo also argued that he should not have to pay interest for the four years

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<sup>1</sup> Recording of Hearing & Division's Informal Conference Decision at page 1.

<sup>2</sup> Recording of Hearing & Agency Record at 19.

<sup>3</sup> Mr. Seo's operator reports are in the Agency Record at 45 -67.

<sup>4</sup> Recording of Hearing.

that past after he first filed his report until the Division discovered the problems in those reports. Mr. Seo argued that it is just unfair to make him to make pay for interest when he has paid these permittees more than he had to over the years and it is not his fault that these mistakes were made.

At the hearing, the Division expressed its concern for the inequities of Mr. Seo predicament, and admitted that there were no malicious actions on his part. The Division had agreed to stop cut off interest effective August 31, 2013, making the total due in underpayments and interest, \$9,019.43.

The Division argued that under the law, it is clear that Mr. Seo was require to pay 30% of the adjusted gross revenue to his permittee with the required interest due until the payment is made. The Division argued that operator claims for money paid over the minimum net proceeds that were due for any year is an issue that must be dealt with between the operator and the permittee.

Under AS 05.15 the Division is charged with ensuring that the charitable gaming laws are followed, that authorized expenses are limited as defined in the law, and that net proceeds collected by an operator are being properly determined and distributed to the permittee charity.<sup>5</sup> The Division is empowered to determine whether expenses are unauthorized expenses, payable to the permittees. If the Division finds that an operator has withheld net proceeds that are not authorized by law, the Division is required to order the operator to refund the amount of unauthorized expenses plus interest to the permittees.<sup>6</sup>

Mr. Seo's confusion and frustration is somewhat understandable. He did not intentionally pay his permittee less than he was required to. During the time period of 2006-2008, three years that he had bookkeeping errors in his original reports, he actually paid his permittee more, overall, than he was required under the gaming laws.

However, Alaska's gaming laws do not include mechanism to would allow an operator to have a payment that was in excess of the minimum required re-characterized and recouped from a permittee or re-characterized as a reimbursement payment of prior year underpayments years after these payments and underpayments were made.<sup>7</sup> Allowing such a credit would be contrary to the requirements that net proceeds be paid to the charity at the end of the month they are

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<sup>5</sup> See esp. AS 05.15.060.

<sup>6</sup> AS 05.15.165.

<sup>7</sup> See Alaska Department of Revenue Decision number 960812 issued June 1997 at Page 22.

collected and, the provisions that prohibit an operator from advancing credit to the charity.

The gaming laws require minimum net proceeds to be paid when they are due. Net proceeds must also be accounted for in the monthly report that the operator is required to file with the permittee. Under AS 05.15.087(a), a check for the net proceeds collected that month must be sent with the monthly report. Under AS 05.15.087(b) & (c) the operator must file quarterly and annual reports, but there is no provision that would allow an overpayment even made for just one month prior to be carried forward to reduce an operator's obligation to pay the net proceeds for the next month. Interest for a shortfall begins to start from the time that the monthly payment that was short came due, not from the date of the Division's or the operator's discovery that there was a shortfall. There is no mechanism to apply any overpayment to an earlier shortfall. The gaming laws require operators to file accurate reports. This requires that operators keep accurate records.

#### **IV. Conclusion**

Informal Conference by the Tax Division of the Alaska Department of Revenue issued on June 4, 2013 is affirmed.

#### **V. Order**

Mr. Seo must pay his permittee \$9,019.43.

DATED: March 17, 2014.

By: Signed  
Mark T. Handley  
Administrative Law Judge

#### **ADOPTION**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 22<sup>nd</sup> day of April, 2014.

By: Signed  
Signature  
Angela Rodell  
Name  
Commissioner  
Title

[This document has been modified to conform to the technical standards for publication.]