

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of )  
 )  
L CORPORATION & SUBSIDIARIES )  
 ) OAH No. 11-0409-TAX  
2009 Corporate Income Tax )

**ORDER GRANTING SUMMARY ADJUDICATION**

**I. Introduction**

This case is the Alaska Corporate Income Tax appeal of L Corporation & Subsidiaries (L). The Alaska Department of Revenue (DOR) made failure-to-timely-pay penalty assessments totaling \$13,007 for late payments of the Alaska Corporate Income Tax for taxes due March 15, 2010, which were upheld in an informal conference decision issued on September 15, 2011.<sup>1</sup>

Because the undisputed explanation for L’s late payment, namely that the company had relied on erroneous advice of its tax advisor, does not meet the strict requirements for a showing of reasonable cause to abate the penalties for the late payment, DOR’s motion for summary adjudication is granted and the penalty is upheld.

**II. Undisputed Facts**

L owed Alaska Corporate Income Tax in the amount of \$260,135.00, due on March 15, 2010. L paid \$230,000.00 of this tax obligation on April 15, 2010. L later paid the difference between the amount due on and the amount paid on March 15, 2011, as well as the interest and penalties that resulted from the under-payment.

The dispute in this case is confined to the penalties for the original payment of \$230,000.00 being made 30 days late. The reason that this payment was made on April 15, 2010, rather than on March 15, 2010 when it was due, was an error by L’s tax advisor, Grant Thornton, in the instructions gave with a Form 04-709 that he had prepared. These instructions advised L to send a check for \$230,000.00 to DOR with the signed form, “on or before April 15, 2010.”<sup>2</sup> There is no dispute that L followed these instructions in good faith. There is also no dispute that DOR correctly calculated the penalties due, absent a showing of reasonable cause, for the late payment.

The deadline in question is readily ascertainable by using the statutory wording (“at the same time and in the same manner as the tax payable to the United States Internal Revenue

---

<sup>1</sup> DOR’s informal conference decision is attached to L’s appeal.

Service”<sup>3</sup>) and is even more plainly stated in the instructions for Alaska Corporation Net Income Tax Returns (“on or before the 15<sup>th</sup> day of the third month after the close of the tax year.”<sup>4</sup>

### III. Discussion

#### A. Summary Judgment

Only when the parties genuinely dispute a material fact is it necessary to hold an evidentiary hearing.<sup>5</sup> The parties in this case have agreed that there are no material facts in dispute.

#### B. Standard of Review

The only questions to be resolved in this case are questions of law as this case is being decided on summary adjudication based on the undisputed facts. In deciding issues of law, the administrative law judge is required to exercise independent judgment.”<sup>6</sup>

#### C. Penalties

There is a penalty of five percent of the total tax due for failing to timely file the required tax returns and pay a required tax. The failure-to-pay penalties under Alaska Statute 43.05.220(a) must be added unless there was reasonable cause for the failure to pay or file. 15 AAC 05.210(c) states that when both the failure to file and the failure to pay penalties under Alaska Statute 43.05.220(a) apply to the same period, only the failure to file penalty will be imposed. This five percent penalty is added after each thirty days passes without the tax being paid. This penalty cannot exceed 25% of the total tax due.

#### D. Reasonable Cause

As a general rule, a taxpayer's failure to timely file may be due to reasonable cause if he has exercised ordinary business care and prudence to prevent the late filing. Also as a general rule, a taxpayer's failure to timely pay may be due to reasonable cause if he has exercised ordinary business care and prudence to avoid the late payment.<sup>7</sup> In order to demonstrate reasonable cause for a late filing or payment, a taxpayer must be able to show that the

---

<sup>2</sup> H U’s instructions to L are found on Attachment A, which is included with L’s brief.

<sup>3</sup> AS 43.20.030(c).

<sup>4</sup> Form 0405-611.

<sup>5</sup> A fact is not “material” unless it would make a difference to the outcome. *Whaley v. State*, 438 P.2d 718, 720 (Alaska 1968).

<sup>6</sup> AS 43.05.435(2). There are no matters of statutory or regulatory interpretation in this case on which DOR has sought deference. *Cf. In re ConocoPhillips Alaska, Inc.*, OAH No. 09-0018-TAX (2009), at 5-8 (<http://aws.state.ak.us/officeofadminhearings/Documents/TAX/TAX090018.pdf>).

<sup>7</sup> *Ayres v. Commissioner*, 45 T.C.M. (CCH) 1299, 1311 (1983); *Dustin v. Commissioner*, 53 T.C. 491, 507 (1969), *affd.* 467 F.2d 47 (9th Cir. 1972).

circumstances surrounding the late filing or payment were beyond the taxpayer's control.<sup>8</sup>

The definition of “reasonable cause” is found in Alaska Regulation 15 AAC 05.200, which provides:

Reasonable cause for delay

(a) The civil penalty under AS 43.05.220 will not be imposed if the taxpayer shows reasonable cause for delay in filing the return or paying the tax.

(b) A taxpayer who wishes to avoid the penalty established by AS 43.05.220 for failure to file a tax return or pay a tax must make an affirmative showing of all facts alleged as a reasonable cause for her or her failure to file the return or pay the tax on time in a written statement containing a declaration that it is made under penalty of perjury. The statement should be filed with the return or filed with the Department of Revenue as soon as possible thereafter. In determining whether the delinquency was due to reasonable cause and not to willful neglect, the department will apply the administrative and judicial interpretations of Internal Revenue Code § 6651 and the Treasury Regulation § 301.6651-1(c).

(c) Circumstances which may constitute reasonable cause under AS 43.05.220 include, but are not limited to, the following:

(1) war, riot, rebellion, act of God or other disaster which rendered it impossible to make the filing or payment or which made delay unavoidable in making the filing or payment; or

(2) acts or omissions by a third party which were beyond the control of the person making the filing or payment and which made delay unavoidable in making the filing or payment; or

(3) the person took in good faith all steps and precautions reasonably necessary to ensure the timeliness of the filing or payment.

15 AAC 05.200(b) directs the Department to apply the administrative and judicial interpretations of Internal Revenue Code § 6651 and Treasury Regulation § 301.6651-1(c) in determining whether a failure to pay was due to reasonable cause. In general, under these interpretations, reasonable cause exists if a taxpayer can demonstrate that ordinary business care and prudence was exercised in paying its tax.

The fact that a deficiency in timely paying or reporting one’s tax liability is caused by the tax advisor rather than the taxpayer will generally not excuse the deficiency and is not reasonable cause. This is because the duty to timely file returns and pay tax is nondelegable in the sense that a taxpayer’s agent’s mistakes are the generally the taxpayer’s mistakes for the purpose of determining whether the penalties should be abated.<sup>9</sup>

There are, however, exceptions to this rule. The most common exception is when good

---

<sup>8</sup> *State, Dept. of Revenue v. DynCorp and Subsidiaries*, 14 P.3d 981, 988, (Alaska, 2000).

<sup>9</sup> *U.S. v Boyle*, 469 U.S. 241, 245 (1985).

faith reliance on a tax advisor's mistake on a complex area of tax law causes the deficiency.<sup>10</sup> However, reasonable cause is seldom established in cases involving easy tax determinations.<sup>11</sup>

Determining the deadline at issue in this case was an easy tax determination. Further, reliance on the advice of an expert on a matter of tax law is only reasonable cause for a late tax payment when the advice is on an issue of tax law that a person who is not a tax professional could not ascertain himself without special training or effort. Indeed, the U.S. Supreme Court case that established the standard for when reasonable cause is the result of reliance on the advice of a tax professional involved a missed filing deadline, and the court held that there was no reasonable cause despite reliance on a tax professional's advice, because the need to file implies a deadline and deadlines are reasonable ascertainable by lay people.<sup>12</sup> A federal appeals court described this holding as a bright line rule, and explained its reasoning as follows:

The duty to file a return and to pay taxes on time is plainly placed upon the taxpayer. Unlike a substantive issue of tax law for which a taxpayer must rely on an expert, the deadline for filing a return is unambiguous and easily ascertainable. It requires no special training or effort to understand.<sup>13</sup>

The distinction between a filing deadline and substantive issue of tax law undermines the argument L made in its brief that IRC Treas. Reg. 1.6664-(4)(b)(2) supports L's position that its reliance on its advisor's advice on the deadline was reasonable cause. L provided example 1 from that regulation in support of this argument, which reads as follows:

Example 1. A, an individual calendar year taxpayer, engages B, a professional tax advisor, to give A advice concerning the deductibility of certain state and local taxes. A provides B with full details concerning the taxes at issue. B advises A that the taxes are fully deductible. A, in preparing his own tax return, claims a deduction for the taxes. Absent other facts, and assuming the facts and circumstances surrounding B's advice and A's reliance on such advice satisfy the requirements of paragraph (c) of this section, A is considered to have demonstrated good faith by seeking the advice of a professional tax advisor, and to have shown reasonable cause for any underpayment attributable to the deduction claimed for the taxes. However, if A had sought advice from someone that A knew, or should have known, lacked knowledge in the relevant aspects of Federal tax law, or if other facts demonstrate that A failed to act reasonably or in good faith, A would not be considered to have shown reasonable cause or to have acted in good faith.

This example explains that an expert's mistaken advice about whether certain taxes are fully deductible may be reasonable cause for an underpayment. The deductibility of taxes, however,

---

<sup>10</sup> *Id.*; *Van Camp & Bennion v. U.S.*, 251 F.3d 862 (9<sup>th</sup> Cir. ,2001); *Gross v. Commissioner*, 7 T.C. 837 (1946).*U.S. v Boyle*, 469 U.S. at 245; *Gross v. Commissioner*, 7 T.C. 837 (1946).

<sup>11</sup> *See U.S. v. Archer*, 174 F.2d 353 (1st Cir.1949).

<sup>12</sup> *U.S. v. Boyle*, 469 U.S. 241.

<sup>13</sup> *McMahan v. C.I.R.*, 114 F.3d 366, 369 (2d Cir. 1997).

as explained in this example is a substantive issue of tax law for which a taxpayer must rely on an expert, not a filing or payment deadline.

There might be circumstance in which a payment or date is not readily discernible, such as a payment due date that is set as a certain number from some legal change that may be difficult to pinpoint. In such a situation, it is possible that reliance on a tax advisor would be reasonable cause for failing to meet a deadline.<sup>14</sup> The deadline that L missed was a fixed deadline that was readily ascertainable without expert tax advice. The mistake that led to the late payment was an honest mistake by its tax advisor, and that mistake is imputed to L.

#### **IV. Conclusion**

The circumstances of L's late payment do not meet the legal requirements to show reasonable cause for the late payment. DOR's Informal Conference Decision issued on September 15, 2011 is AFFIRMED.

#### **NOTICE**

1. This is the hearing decision of the Administrative Law Judge under Alaska Statute 43.05.465(a). Unless reconsideration is ordered, this decision will become the final administrative decision 60 days from the date of service of this decision.<sup>15</sup>
  2. A party may request reconsideration in accordance with Alaska Statute 43.05.465(b) within 30 days of the date of service of this decision.
  3. When the decision becomes final, the decision and the record in this appeal become public records unless the Administrative Law Judge has issued a protective order requiring that specified parts of the record be kept confidential.<sup>16</sup>
  4. A party may file a motion for a protective order, showing good cause why specific information in the record should remain confidential, within 30 days of the date of service of this decision.<sup>17</sup>
  5. Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Statute 43.05.480 within 30 days of the date of this decision becomes final.<sup>18</sup>
- DATED this 8<sup>th</sup> day of October 2012.

By: Signed  
Mark T. Handley  
Administrative Law Judge

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

---

<sup>14</sup> See *Sanderling, Inc. v. C. I. R.*, 571 F.2d 174, 178 (3d Cir. 1978).

<sup>15</sup> Alaska Statute 43.05.465(f)(1).

<sup>16</sup> Alaska Statute 43.05.470.

<sup>17</sup> Alaska Statute 43.05.470(b).

<sup>18</sup> Alaska Statute 43.05.465 sets out the timelines for when this decision will become final.