BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of	)	
	)	
HALLIBURTON ENERGY SERVICES, INC.	)	
	)	OAH No. 14-1619-TAX
Oil & Gas Corporate Net Income Tax	)	

DECISION

I. INTRODUCTION

This is an appeal from a Department of Revenue Informal Conference Decision (ICD) dated August 28, 2014, addressing a series of amended Corporation Net Income Tax returns for tax years 2000-2003 and 2007. Halliburton Energy Services, Inc. ("Halliburton") contests three adverse rulings in the ICD.

No facts are in dispute. The parties agreed to submit the case for decision upon a written record, briefs, and oral argument.

II. BACKGROUND

A number of issues were resolved in the ICD, some in Halliburton's favor. Only the facts relevant to rulings challenged on appeal will be reviewed.

Halliburton filed tax returns for 2000 and 2001 on October 15, 2001 and 2002 respectively. The Department of Revenue received amended returns from Halliburton for both of these years on March 3, 2006. A pair of amended returns for tax year 2000 sought refunds of $46,241 and $16,770. An amended return for tax year 2001 sought a refund of $138,221. The department denied all three of these refund claims on the ground that they were barred by the statute of limitations.[1]

The $138,221 refund claim filed for 2001 was based on a net operating loss ("NOL") carryback from 2004. As an additional basis for denying that refund claim, the department ruled that the carryback could not be allowed because an NOL can only be carried back two years.[2]

In various amended returns for tax years 2000-2003 that it filed in 2010 and 2011, Halliburton reported and paid additional tax liabilities of about $275,000, broken down as $13,409 (2000), $86,512 (2001), $115,308 (2002), $27,687 (2003), and $33,047 (2003). Halliburton paid the principal amount owing with each of these amended returns, but did not pay

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[1] ICD at 2.

[2] *Id.*

any interest. The department calculated interest owing on these amounts from the time they were due until the end of 2013 using an interest rate of 11 percent, compounded quarterly. Beginning January 1, 2014, it applied an interest rate of 3.75 percent, without further compounding. The accrued interest the department calculated was much larger than the original tax owing.[3]

Halliburton contends on appeal (1) that the statute of limitations does not bar the 2000 and 2001 refunds, because Halliburton had valid waivers of the limitations periods; (2) that the NOL carryback to 2001 ought to be allowed because the department delayed too long in identifying it as an error; and (3) that the use of a compounding interest calculation was improper.

III. ANALYSIS

A. Statute of Limitations Waivers for 2000 and 2001

By executing and obtaining IRS approval of a Form 872, Consent to Extend the Time to Assess Tax, a taxpayer avoids the statute of limitations for federal taxes[4] and extends the statute of limitations for refunds.[5] In *Louisiana-Pacific Corp. v. State, Dept. of Revenue*,[6] the Alaska Supreme Court concluded that because Alaska law incorporates provisions of Internal Revenue Code (IRC),[7] federal waivers obtained by a taxpayer are effective with regard to Alaska taxes.[8]

In order to extend the statute of limitations for a refund, a Form 872 must be executed prior to the expiration "of the limitations period for filing claims for credit or refund."[9] Before the assessment period has expired, the taxpayer may submit a subsequent extension agreement to further extend the assessment period. If no subsequent agreement is executed, the limitations extension ends when the assessment period expires.[10] After the assessment period has expired, the taxpayer has six months to file a claim for a refund.[11]

At the time of the Informal Conference, Halliburton had not yet supplied its early Form 872s. Accordingly, Halliburton could not demonstrate an unbroken train of extensions; the 872s it submitted seemed to purport to revive a limitations period that had already expired, which is

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3 ICD appendix. The amount of interest on the five amended return payments at issue, as of October 31, 2014, was a little more than $525,000. Because of countervailing credits, not all of this was still owed.

4 *See* 26 U.S.C. § 6501(c)(4).

5 *See* 26 U.S.C. § 6511(c).

6 26 P.3d 422 (Alaska 2001).

7 *See* AS 43.20.021.

8 *Louisiana-Pacific*, 26 P.3d at 427.

9 *Berry v. Comm'r of Internal Revenue*, 97 T.C. 339, 350 (1991); *see also* 26 U.S.C. § 6511(c).

10 *See Id.* (consent agreement executed after the fact will not revive an expired claim period).

11 26 U.S.C. § 6511(c)(2); *cf.* AS 43.05.275(b).

impermissible.[12] On the record before it, therefore, the department acted appropriately in declining to honor the Form 872 extensions. However, the early forms are now in the record. At oral argument, the Department of Revenue acknowledged that *Louisiana-Pacific* controls the case at this level, and that under the holding of that case, Halliburton validly extended the limitations period by means of a suitable train of Forms 872.[13]

1. As applied to the 2000 Tax

Halliburton filed its 2000 tax return on October 15, 2001. Pursuant to AS 43.05.275(a)(1)(A), Halliburton had until October 15, 2004 to file an amended return or obtain a statute of limitations waiver. Halliburton obtained IRS approval of a Form 872 on February 23, 2004, about eight months before the limitations period would have expired.[14] From then, the assessment period was continuously extended until September 15, 2007.[15] In early 2006, Halliburton filed two amended returns for the 2000 tax year. Because these filings occurred well before the extended limitations period ended, they are not time-barred. The parties agree that the amount of the refund due, if this filing was timely, is $46,241 on Halliburton's first amended return and $16,770 on Halliburton's second amended return, together with accrued interest to be calculated by the department on remand.

2. As applied to the 2001 Tax

Halliburton filed its 2001 tax return on October 15, 2002. Pursuant to AS 43.05.275(a)(1)(A), Halliburton had until October 15, 2005 to obtain a statute of limitations waiver. Halliburton obtained IRS approval of several Forms 872 that extended the assessment period to September 15, 2007.[16] In early 2006, Halliburton filed amended returns for the 2001 tax year, including one seeking a refund of $138,221. Because the filing occurred within the limitations period, this refund would also be due, together with accrued interest, unless disallowed on another basis.

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12 *Estate of Chism v. Comm'r of Internal Revenue*, 322 F.2d 956, 962 (9th Cir. 1963).

13 The department did not waive the legal issue for appeal; it reserved the right to argue in a court appeal that the holding in *Louisiana-Pacific* ought to be reconsidered. However, counsel for the department stated that the department would ask only for a prospective change of law, and would not seek to apply any revision of the *Louisiana-Pacific* holding retroactively to Halliburton's past returns. Oral Argument at minute 12.

14 Exhibit A.

15 *Id*.

16 *Id.*

B. NOL Carryback for 2001

The entirety of the $138,221 refund sought in the amended 2001 return stemmed from a carryback of a 2004 net operating loss. Under IRC §172(b)(1)(A)(i), adopted by reference in Alaska,[17] a NOL for any tax year can only be carried back to the two years preceding the tax year of the loss. Halliburton's carryback to 2001 exceeded this limit. Halliburton concedes that the carryback to 2001 was simply an error; the loss should have been carried back to 2002.[18]

Halliburton suggests that the department should be estopped to disallow the carryback now. It points out that the return with the impermissible carryback was filed in 2006, and the department did not complete its audit of that tax year and deny the carryback until 2014. Had the disallowance been communicated by the end of 2010, Halliburton could apparently have reallocated the carryback to a more recent tax year.[19]

In general, estoppel against the government is available when a member of the public has reasonably acted in reliance on misinformation provided by the government. To be able to recover under this doctrine, Halliburton would have to prove each of the following elements:

> (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.[20]

In this case, however, the first element was not met: the department never asserted a position regarding the carryback. The mistake was Halliburton's alone.[21] Therefore, the department's disallowance of the $138,221 NOL carryback on the amended 2001 return must be affirmed.

At oral argument, the administrative law judge (ALJ) queried the parties on whether the doctrine of equitable tolling might apply, tolling the limitations period that would otherwise bar Halliburton from now (in 2015 or 2016) filing an amended 2002 return to use the NOL carryback from 2004. This would be a different kind of equitable relief from estoppel: it would allow the 2001 disallowance to stand, but would permit Halliburton to pursue relief by reopening a

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17 AS 43.20.021(a).

18 Halliburton Reply Brief at 2 ("HESI concedes that it carried back its 2004 NOL to the incorrect year").

19 See Ex. I.

20 *Crum v. Stalnacker* , 936 P.2d 1254, 1256 (Alaska 1997) (applying estoppel against the government test in a Teachers' Retirement System case).

21 Notably, if Halliburton felt it needed a ruling on the carryback, it could have filed a protest as soon as the refund claim for the 2001 tax year had languished for six months or more. *See* 15 AAC 05.050.

different year. The short answer to the ALJ's question is that it is not properly before this tribunal at this time. Halliburton has not filed an amended 2002 return with respect to the $138,221 NOL, and there has been no disallowance of a refund claim for that year and no appeal of such a disallowance. In any event, it is unlikely that equitable tolling would be available to Halliburton in this context. [22]

In its reply brief, Halliburton suggests that it should be allowed to carry the 2004 NOL forward to its 2014 return. Again, the 2014 return is not properly before this tribunal in the present case. Any carry-forward, if appropriate, will have to be addressed with the Tax Division in the first instance.

C. Compounding Interest

In 2010 and 2011, Halliburton paid the original, underlying tax owed for years 2000-2003. However, Halliburton did not pay accrued interest. In applying Alaska's interest statute for Title 43 taxes, AS 43.05.225, the Department of Revenue continued to charge interest on the remaining balance at a rate of 11 percent, compounding it quarterly. Starting in 2014, the department ceased compounding, applying the following provisions of a new regulation, 15 AAC 05.330, which became effective that year:

> (b) For purposes of this section, delinquent tax consists only of the balance of unpaid tax on or after December 31, 2013 and does not include any accrued and unpaid interest the taxpayer owes on that date.
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> (d) On or after January 1, 2014, any accrued and unpaid interest owed by or to a taxpayer as of December 31, 2013 does not accrue further interest.

Halliburton challenges the use of compounding prior to 2014. In Halliburton's view, the approach taken in the 2014 regulation—that "unpaid interest . . . does not accrue further interest"—was the proper way to interpret AS 43.05.225 all along. To assess this contention, a brief detour into the history of that statute is needed.

From 1996 to 2013, the relevant portion of AS 43.05.225 read as follows:

> (1) when a tax levied in this title becomes delinquent, it bears interest in a calendar quarter at the rate of five percentage points above the annual rate charged member

[22] *See United States v. Brockamp*, 519 U.S. 347, 352 (1997) (no equitable tolling in refund cases; "[t]ax law . . . is not normally characterized by case-specific exceptions reflecting individualized equities"); *Sumner v. United States*, 71 Fed. Cl. 627, 627 (2006) (refusing to apply equitable tolling where couple made honest mistake on tax paperwork).

> banks for advances by the 12th Federal Reserve District as of the first day of that calendar quarter, or at the annual rate of 11 percent, whichever is greater, compounded quarterly as of the last day of that quarter . . . .

In 2013 the legislature revised the statute so that it now reads:

> (1) A delinquent tax under this title,
> (A) before January 1, 2014, bears interest in each calendar quarter at the rate of five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District as of the first day of that calendar quarter, or at the annual rate of 11 percent, whichever is greater, compounded quarterly as of the last day of that quarter; or
> (B) on and after January 1, 2014, bears interest in each calendar quarter at the rate of three percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District as of the first day of that calendar quarter[.][23]

Halliburton's main argument, crystalized in its reply brief, is the following:

> What the Department fails to [acknowledge] is that the legislative change to the statute only changed the rate of interest imposed. It did not change any other language. The Department took the interest rate change as authority to attempt to limit its liability to taxpayers for all periods prior to December 31, 2013 as it had been incorrectly imposing interest on top of interest as a general practice.[24]

Halliburton has simply misread the statute. Former Section 225(1)—as well as new Section 225(1)(A), which still applies to pre-2014 liabilities—both contain the phrase "compounded quarterly."[25] Thus it was not merely permissible, but *required,* that the department use compounding in calculating interest prior to 2014.[26] New Section 225(1)(B) does not "only change the rate of interest imposed." It also drops any provision for compounding. When the department adopted the implementing regulation, 15 AAC 05.330, it preserved this dichotomy, eliminating compounding as of January 1, 2014, but not before that date.

Halliburton suggests that the compounding of interest is punitive. It should first be noted that the compounding provision was evenhanded, applying equally to taxpayer liabilities to the state and state liabilities to the taxpayer. In any event, this tribunal has already held that

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[23] Sec. 2, ch. 10 SLA 2013.

[24] Halliburton Reply Brief at 3 (underlining in original).

[25] The department did not directly challenge Halliburton's core premise, leaving it to the ALJ to discover that more than the rate of interest had in fact been changed in the 2014 revision.

[26] At oral argument, Halliburton contended that the department did not consistently interpret the prior version of Section 225 to require compounding, citing 15 AAC 21.730 (adopted in 1982) as an example of a contrary application of the statute. The ALJ has reviewed that regulation and does not see anything inconsistent with the charging of interest upon interest, bearing in mind, as discussed below, that unpaid interest becomes part of the tax owed.

characterization of the fairness or unfairness of the interest scheme is not the issue; the question is simply what Alaska law requires.[27] Here, it required compounding. Compounding is consistent with the way the IRS has administered federal tax law. The IRS has devised the following formula for calculating compounded interest.

- Interest (I) equals delinquent tax (DT) times the annual interest rate (R), or I = DT x R
- New delinquent tax (New DT) equals interest plus delinquent tax, or New DT = I + DT and "continues over the number of [quarters] until the [delinquent tax/new delinquent tax] are paid." [28]

The methodology accords with and applies IRC § 6601(e)(1), which, except as expressly overridden elsewhere, has been adopted by AS 43.20.021. Compounded interest results in an ever-growing delinquent *tax* on which interest continues to accrue until the taxpayer pays the entire balance.

IV. CONCLUSION

Halliburton is entitled to tax year 2000 refunds in the amount of $46,241 and $16,770, together with accrued interest. This matter is remanded to the Department of Revenue to calculate the interest owed to Halliburton on these refund amounts. In all other respects, the Informal Conference Decision dated August 28, 2014 is affirmed.

Dated this 31st day of December, 2015.

Signed
Christopher Kennedy
Administrative Law Judge

[27] *In re Granite Construction, Inc.*, OAH No. 12-0004-TAX (Office of Admin. Hearings 2014), Decision at 4.
[28] IRS Manual 20.2.6.2.

NOTICE

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.[29]

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.

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.[30] 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.[31]

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 this decision becomes final.[32]

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

[29] AS 43.05.465(f)(1).
[30] AS 43.05.470.
[31] AS 43.05.470(b).
[32] AS 43.05.465 sets out the timelines for when this decision will become final.