

mind between a tax return and a tax payment, and she assumed they were both due together at the same time, in spite of the fact that the previous year the department had sent back Bristol Leader's return but kept its payment. At the hearing, Ms. Utter testified as follows:

The only year that I am concerned about is the late payment in 2003. I based that payment on a conversation that I had with a representative from the Department of Revenue. Years prior, and I've been working for this company, this is my sixteenth year, and years prior I had always filed the return, which, the return to me is the payment, the return itself, to the Department of Revenue and then did a revised return in June or whenever we got the Statewide Average Price List, at that time. Well the particular year which was I believe 2002 I got my return back. And I had no explanation as to why I received my return back so I picked up the phone and talked with the representative at that time, which I cannot remember her name after Edie left. And I asked why I had received my return back and she said because they hadn't had the Statewide Average Price List out we had an extension and it wasn't due until June 30th. I wasn't aware of that but it made sense to me since we don't have the numbers anyway and we're always relying on prior year information, the following year that's what I did. And that's why we filed late. And that's my only explanation for why we did what we did.

After she made this statement, the division asked Ms. Utter a number of questions, including the following line:

Q. I assume you get every year the tax instruction booklets?

A. Mm-hmm.

Q. And did you get a tax instruction booklet in 2003?

A. Of course.

Q. Okay. Do you review those tax instruction booklets?

A. Well, not as good as I should.

Q. And why do you say that?

A. Well because then I would have known I was supposed to be paying quarterly.

Q. Okay. Do you know if that tax return instruction booklet also would have told you when your tax payments were due?

A. Well, it still says March thirty-first.

Q. Have you reviewed it after the fact, is that what I am gathering?

A. Yes.

Q. Okay. So had you reviewed that tax instruction booklet you probably would have discovered that tax due date?

A. Of course.

Q. Okay. And it sounds like you also would have discovered your estimated tax payment due dates.

A. Mm-hmm.

Q. So apparently you didn't review that instruction booklet very carefully.

A. Not as carefully as I should have, no, you're correct.

Q. And did you in 2003 consult with a lawyer and say "hey, have there been any changes in tax law that I need to be aware of?"

A. No, we did not.

Q. Okay. So you based your payment on June 30 of 2004 entirely on this conversation you had with the Department of Revenue employee in 2003?

A. Yes.

III. Discussion

Bristol Leader asserts that the department's actions in 2003 regarding the 2002 calendar year, specifically returning Leader's tax return without explanation and then stating that the return was not due until June 30, without also clarifying that the payment was still due on March 31 and that extensions granted in 2003 would not necessarily also be granted in 2004, constitute reasonable cause under AS 43.05.220 for late filing of the calendar year 2003 tax return and payment. Bristol Leader bears the burden of establishing that the department erred in assessing interest and penalties against it.¹ Whether "reasonable cause" exists under these circumstances is a question of law. The independent judgment standard applies to questions of law in this appeal.² Deference is accorded to the department's informal conference decision only "as to a matter for which discretion is legally vested in the Department of Revenue."³

Alaska Statute 43.77.020 states in part:

(a) A person subject to the tax under this chapter shall file a return stating the value of fishery resources landed in the state that are subject to the tax, the point of landing of the fishery resource, and other information the department requires by regulation.

(b) The return shall be made on the basis of the calendar year and is due before April 1 after the close of the calendar year, and any unpaid tax shall be paid with the return.

¹ AS 43.05.455(c).

² AS 43.05.435(2).

³ AS 43.05.435(3).

(c) The department may, under regulations it adopts, grant a reasonable extension of time for the filing. A grant of an extension of time for filing does not extend the time for payment of the tax.

Penalties for late payment of tax are contained in Alaska Statute 43.05.220, which reads in part:

(a) Five percent shall be added to a tax for each 30-day period or fraction of the period during which the taxpayer fails to file at the time or times required by law or regulation a return or report, or pay the full amount of the tax, or a portion or a deficiency of the tax, as finally determined by the department and required by this title, unless it is shown that the failure is due to a reasonable cause and not to wilful neglect. The penalty may not exceed 25 percent in the aggregate. The penalty is computed only on the unpaid balance of the tax liability as determined by the department. The department shall prescribe by regulation circumstances which constitute reasonable cause for purposes of this section.

The issue arising in this case is whether Leader had “reasonable cause” under the above statute to pay tax after the April 1 deadline. Since the statute does not define “reasonable cause,” one may look to the division’s regulations. 15 AAC 05.200 addresses what can be regarded as “reasonable cause” for late payment of taxes:

(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 his 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.

Whether “reasonable cause” exists under a particular case may therefore be evaluated either under federal tax law, or by looking at whether the circumstances in the case are listed in subparagraph (c) or are similar to the circumstances listed in subparagraph (c).

The circumstances in Bristol Leader’s case are not listed in subparagraph (c), nor are they similar to those listed. There was no war, riot, rebellion or natural disaster that prevented Bristol Leader from paying tax on time. There was no act or omission by a third party that prevented Bristol Leader from paying on time. The division concedes that its actions the previous year might have created some confusion, but nothing that couldn’t be figured out by someone acting with due diligence. In considering whether Bristol Leader took “all steps and precautions reasonably necessary to ensure the timeliness of the...payment” the division argues that Bristol Leader could have 1. consulted an attorney; 2. read the directions with the tax forms; or 3. called the division to clarify when the filing and payment deadline would be for that year. Bristol Leader concedes it did none of these things. It is difficult to say that Bristol Leader took all steps and precautions reasonably necessary when it didn’t read the directions provided by the division provided that clearly stated the payment deadline.

In looking at federal standards for reasonable cause, the division correctly points out that there is a very large body of law on the subject. A well-established principle arising from all this law is that the taxpayer must exercise “ordinary business care and prudence.”⁴ Taxation is generally complex enough and important enough that even less-sophisticated businesses and individuals know that deadlines matter, and that it is prudent to make inquiries when in doubt, either from a tax professional, a publication of the taxing authority, or by a telephone call to the taxing authority. While the division might have been more thorough in its explanation of the filing extension for 2003, Bristol Leader made no inquiry to confirm its own assumption that the filing extension one year meant that it no longer needed to pay tax before April 1 the next year, as it had been doing for more than a decade previously. With a large amount of money at stake in the operation of a business, ordinary care and prudence would call at least for a reading of the instruction provided by the taxing authority before making such an assumption. Bristol Leader was accustomed to consulting the division when uncertainties arose, and any doubt left after reading the instructions could have easily been resolved with a phone call. Finally, consultation with a tax professional, such as an attorney, was always an available option. Reliance on an

⁴ See *U.S. v. Boyle*, 469 U.S. 241, 245, 105 S.Ct. 687, 83 L.Ed.2d 622 (1985).

assumption that the tax payment deadline had been extended because the previous year's filing deadline had been extended, without verification of some kind, does not constitute ordinary care and prudence in the operation of a business. The appellant has not its burden of demonstrating reasonable cause for its failure to make the tax payments in this case before the statutory deadline.

IV. Conclusion

Bristol Leader Fisheries, LLC and Alaska Leader Partnership have not demonstrated reasonable cause for their failure to timely pay taxes due for the 2003 calendar year. The Department of Revenue's assessments of penalties are AFFIRMED.

DATED this 4th day of October, 2007.

By: _____

Dale Whitney

Administrative Law Judge

NOTICE

This is the decision of the Administrative Law Judge under AS 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.⁵

A party may request reconsideration in accordance with AS 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.⁶ 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.⁷

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 43.05.480 within 30 days after the date on which this decision becomes final.⁸

Certificate of Service

The undersigned certifies that on 4 October 2007, this order was mailed to the following: Deborah Utter for Alaska Leader Partnership & Bristol Leader, LLC; Chris Poag, Assistant Attorney General.



Neil Roberts

⁵ AS 43.05.465(f)(1).

⁶ AS 43.05.470.

⁷ AS 43.05.470(b).

⁸ AS 43.05.465 set out the timelines for the decision becoming final.