

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

IN THE MATTER OF

DOROTHY L. DOUBLEDAY

OAH No. 08-0239-TAX

**DECISION AND ORDER**

**I. Introduction**

Dorothy L. Doubleday is appealing an informal conference decision that resulted in an assessment by the Tax Division of the Alaska Department of Revenue (Division) of \$2,859.89 in unpaid excise taxes, interest and penalties on cigarettes that she had shipped to Alaska in 2005, and an additional total of \$884.34 due as of December 20, 2007 for cigarettes that she imported in 2006.<sup>1</sup> Christopher Poag, Assistant Attorney General, represented the Taxation Division of the Alaska Department of Revenue (Division). Ms. Doubleday represented herself.

Because the law does not allow these taxes, penalties and interest to be abated, based on the facts of this case, the Administrative Law Judge denies Ms. Doubleday's appeal.

**II. Facts**

The relevant facts in this case are not in dispute. Unless another source is cited, all facts below are drawn from testimony at the recorded hearing.

Ms. Doubleday is not sure that the Division is correct that she imported 13,400 cigarettes to Alaska in 2005 and 4,200 cigarettes to Alaska from January through March of 2006.<sup>2</sup> Ms. Doubleday admits that she had cigarettes delivered to her home in Anchorage, Alaska. Ms. Doubleday admits that she did not pay any tax to the Division at the time she purchased these cigarettes. Ms. Doubleday does not assert that she had an Alaska license to bring tobacco into the state. Ms. Doubleday admits that she did not file any tobacco purchase tax returns or pay the

<sup>1</sup> See Division's Informal Conference Decision at agency record at pages 1-3.

<sup>2</sup> See Agency Record pages 10, 12, 61-75, for documentation of the number of cigarettes that Ms. Doubleday imported in 2005 and 2006, and the taxes, penalties and interest that the Division assessed for these cigarettes.

tax due.

The Division's informal conference decision that is being appealed is titled "Re: Appeal to Informal Conference, Cigarette Tax, Penalty & Interest." The Informal Conference Decision is dated April 17, 2008. In that informal conference decision, the Division assessed Ms. Doubleday a total of \$2,859.89, due as of January 9, 2007, for the cigarettes that she imported in 2005 and an additional total of \$884.34, due as of December 20, 2007, for cigarettes that she imported in 2006.<sup>3</sup>

Ms. Doubleday explained at the hearing that she is not sure if she ordered all the cigarettes that the Division determined that she imported in 2005 and 2006, but she did not dispute that these amounts were correct. Based on the evidence in the record, I find that it is more likely than not that Ms. Doubleday imported 13,400 cigarettes to Alaska in 2005 and 4,200 cigarettes to Alaska from January through March of 2006, without a license to import cigarettes to Alaska, without paying tax on those cigarettes, and without filing the required returns.

Ms. Doubleday explained at the hearing, and in her letter dated May 13, 2008, that she did not realize that these purchases were illegal or subject to additional tax. Ms. Doubleday explained that she has been living in Alaska making out-of-state catalog purchases since 1963. Ms. Doubleday asserted that the information sent to her by the company that she ordered the cigarettes from did not inform her that there might be any tax liability associated with this purchase. The Division did not dispute this assertion. Ms. Doubleday stated that she made her first order of out-of-state cigarettes in response to an advertisement that was mailed to her. Ms. Doubleday made this first purchase by mailing in an order form. She made her subsequent purchases by orders placed over the phone.

### **III. Discussion**

#### ***A. The Division Determined the Correct Number of Cigarettes***

Ms. Doubleday argued that she should be treated as innocent until proven guilty. Ms. Doubleday is not being charged with a crime. The presumptions and standards of proof in a criminal prosecution do not apply to this appeal. As a party appealing the Division's tax assessment, Ms. Doubleday had the burden to show by a preponderance of the evidence that the

<sup>3</sup> Agency Record at pages 1-3,12 & 42-44

factual determinations on which the Division based its assessment were incorrect.<sup>4</sup> The only one of the Division's factual determinations potentially in dispute in this case is the number of cigarettes that Division determined that Ms. Doubleday purchased. Ms. Doubleday did not directly dispute the Division's numbers. The Division determined the number of cigarettes purchased from reports filed with the Division by the company that sold Ms. Doubleday the cigarettes.<sup>5</sup> Ms. Doubleday simply failed to meet her burden of proof to show that the Division's determination about the number of cigarettes she imported, which was based on these reports, was incorrect.

***B. Division Must Tax These Cigarettes***

Ms. Doubleday argued that the company that sold her the cigarettes should be liable for any tax due as the result of the sale. Ms. Doubleday argues that it is not legal for the Division to charge people who buy cigarettes extra taxes. Ms. Doubleday's understanding is that the retailer who sells items through the mail is responsible for any Alaska taxes due as the result of the sale.

Under AS 43.50.090 and AS 43.50.190, the person who first acquires cigarettes in Alaska must pay a tax on each cigarette. In this case Ms. Doubleday first acquired the cigarettes by purchasing through the mail and over the phone from an out-of-state supplier, who shipped them directly to her. The Division assessed the cigarette tax for each of the untaxed cigarettes that Ms. Doubleday purchased.<sup>6</sup> There is no legal provision that allows the Division to waive the tax charged for the cigarettes that Ms. Doubleday imported.<sup>7</sup>

***C. Division Must Charge Interest***

Ms. Doubleday argued that the interest rate that the Division assessed was unfairly high and that she should not have to pay interest on tax that she did not know was due. Under AS 43.05.225 interest, compounded quarterly, is charged on any delinquent state tax due. Again, the statute simply states the requirement for interest, giving no alternatives. The interest rate is set by law. The "reasonable cause" defenses to the imposition the Failure-To-Pay penalty, which will

<sup>4</sup> Alaska Statute 43.05.435.

<sup>5</sup> See Agency Record at pages 1-3, 12 & 42-44.

<sup>6</sup> See Agency Record pages 7-43. The Division assessed a tax of \$0.05 per cigarette.

<sup>7</sup> Alaska Statute 43.05.220(a).

be discussed below, does not apply to the interest on delinquent taxes which the Division is required to assess for unlicensed purchase of untaxed cigarettes.<sup>8</sup>

***D. Unlicensed Importation Penalty Must be Assessed***

Ms. Doubleday argued that it is unfair to assess a penalty for failing to obtain a license that she did not know was required. Ms. Doubleday pointed out that she had not needed to obtain a license to make out-of-state catalog purchases of other products.

Under AS 43.50.100(d) a person who has untaxed cigarettes shipped into Alaska without first obtaining a license allowing them to do so must pay a penalty of 100% of the tax due, that is, an additional charge equal to the tax on each cigarette. No alternatives to assessing the full penalty appear in the statute. The Division assessed this penalty for each of the untaxed cigarettes that Ms. Doubleday purchased.<sup>9</sup>

***E. Failure-To-Pay and Failure-To-file Penalties***

Ms. Doubleday explained that she had not filed any returns or paid any tax for her cigarette purchases because she did not know that any tax was due.

There is an additional penalty of five percent of the total tax due for failing to timely file the required tax returns and pay the required tax. Under 15 A A C 50.190, anyone who imports cigarettes must file the required returns. Ms. Doubleday was required to both timely file returns and pay the tax due.

Under AS 43.50.090(a) those who do not have a license are explicitly made subject to the tax and are also required to pay the tax at the end of the month following the month that the cigarettes were acquired. Under AS 43.05.220(a), this penalty of five percent of the total tax due is assessed if there is a failure to pay a tax when due.

Ms. Doubleday was, therefore, subject to both the failure to file and failure to pay penalties under Alaska Statute 43.05.220(a). However, 15 A A C 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 of time, 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.

<sup>8</sup> Alaska Statute 43.50.100 & Alaska Statute 43.05.220(a).

<sup>9</sup> See Agency Record pages 7-43. The Division assessed a "Failure to have a License Penalty" that was equal to the cigarette taxes due.

### ***E. Ignorance of the Tax Was Not Reasonable Cause***

The failure to file and failure to pay penalties under Alaska Statute 43.05.220(a), which are reduced to just the failure to file penalty in this case, must be added unless there was reasonable cause for the failure to pay and file. The definition of "reasonable cause" is found in Alaska regulation 15 A A C 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.

Ms. Doubleday's failure to realize that she was engaged in activity that required her to pay taxes was not reasonable cause for late payments. The regulation quoted above provides examples that indicate that "reasonable cause" requires causes that are outside the taxpayer's control. It should come as no surprise to any Alaskan, especially one who consumes these products, that the sale and importation of tobacco products, like the sale and importation of alcohol, are heavily regulated, and taxed, by the state of Alaska. Ms. Doubleday should have inquired with the Alaska Department of Revenue about the consequences of purchasing untaxed cigarettes from out of state, or otherwise checked on the legal restrictions on importing tobacco

products to Alaska; this was a reasonable step that she should have taken to ensure timely filing of required returns and payment of Alaska taxes. Taking this step would have avoided Ms. Doubleday's failure to file and to pay the tax.<sup>11</sup>

Based on the facts of this case, Ms. Doubleday's failure to file returns and pay the tax was not due to reasonable cause.

**IV. Conclusion**

Based on the undisputed facts in the record, the taxes, interest and penalties assessed Ms. Doubleday by the Division must be upheld.

**V. Order**

The Division's Informal Conference Decision in this case, titled "Re: Appeal to Informal Conference, Cigarette Tax, Penalty & Interest," dated April 17, 2008, is AFFIRMED.

DATED this 3<sup>rd</sup> day of September 2008.

By: Mark T. Handley  
Administrative Law Judge

**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>12</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>13</sup>

<sup>12</sup> Alaska Statute 43.05.465(f)(1).

<sup>13</sup> Alaska Statute 43.05.470.

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>14</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>15</sup>

The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals:

Case Parties  
9/3/08

<sup>14</sup> Alaska Statute 43.05.470(b).

<sup>15</sup> Alaska Statute 43.05.465 sets out the timelines for when this decision will become final.