

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of )  
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ALTROL, INC. ) OAH No. 10-0049-TAX  
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**DECISION AND ORDER**

**I. Introduction**

The taxpayer, Altrol, Inc. (Altrol), appeals a penalty assessment for tax year 2008, which was upheld in an informal conference decision of the Alaska Department of Revenue Tax Division (Division) issued on January 6, 2010.<sup>1</sup>

The Division assessed penalties for both the 2007 and 2008 tax years because Altrol had failed to timely pay taxes due under the Alaska Corporate Net Income Tax. The penalties totaled \$9,004.90. Altrol appealed the assessment, and these penalties were upheld in the Division’s informal conference decision.

Altrol appealed the Division’s informal conference decision only for the \$6,471 in penalties attributed to the 2008 tax year. An evidentiary hearing was held by teleconference. David A. Bridges, president of Altrol, testified at the hearing.

The single issue in this case is whether the Altrol met its burden of proof to show that there was reasonable cause for its failure to timely pay, so that the 2008 penalty should be abated. This decision concludes that the Division correctly assessed penalties for Altrol’s late tax payment because the evidence shows that, although late payment was in part the result of the unexpected death of Altrol’s long-serving bookkeeper, there were reasonable steps that Altrol failed to take to prevent the late payment.

**II. Facts**

Altrol does not dispute the fact that it failed to timely pay the taxes for the 2008 tax year that resulted in the assessment of the appealed penalty. Altrol requested an extension to file its 2008 return. Altrol did not send its payment for its 2008 tax liability with its request for an extension, but rather made its payment with its return, which it filed on the extended deadline.

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<sup>1</sup> The informal conference decision on appeal is found in the Agency Record at DOR 000001- DOR 000003.

The 2008 tax payment, which had been due on March 15, 2009, was not received by the Division until September 17, 2009. The payment was therefore late.<sup>2</sup>

Altrol also does not dispute that it failed to timely pay Alaska Corporate Net Income Tax and paid penalties for the 2002, 2005, 2006 and 2007 tax years.<sup>3</sup> Altrol appeals the assessment of \$6,471 in penalties for the 2008 tax year, arguing that the deficiency that led to these penalties was due to reasonable cause, namely the circumstances surrounding the death of Altrol's sole bookkeeper shortly after the March 15, 2008 tax payment was due.<sup>4</sup>

At the hearing, Mr. Bridges explained the facts surrounding Altrol's deficiencies and the steps that Altrol took to determine its tax liability after the death of its bookkeeper. Mr. Bridges was a very credible witness, and his testimony has been accepted for this decision.<sup>5</sup>

Altrol is a local heating and air conditioning contractor businesses. Mr. Bridges is the president of Altrol. Altrol has about thirty employees. Altrol's bookkeeper was Linda Pruss. She worked for Altrol for 13 years. Only ten days before her death on April 11, 2009, Ms. Pruss notified Mr. Bridges that she would not be coming to work because she had learned that she had pancreatic cancer. Mr. Bridges never heard from Ms. Pruss again.<sup>6</sup>

In a letter to the Division dated December 7, 2009, Altrol's present accountant, Mr. Granberry explained that when Ms. Pruss died, Altrol's books were months behind. Mr. Granberry estimated there were about eight months of bookkeeping to catch up on before the information was complete enough to file a return for the 2008 tax year.<sup>7</sup>

At the hearing, Mr. Bridges explained that he had not been aware of all the late tax payments that had been made before Ms. Pruss died. Mr. Bridges explained that in hindsight he realizes that the size and complexity of Altrol's activities had probably outgrown Ms. Pruss's bookkeeping abilities, and that her health must have also prevented her from being as reliable an employee as she had been in the past. Mr. Bridges explained that Ms. Pruss was responsible for filing Altrol's tax returns and making Altrol's tax payments prior to her death. Mr. Bridges also admitted that he now realizes that he was not paying as much attention to the financial affairs of Altrol as he should have done and does now.<sup>8</sup>

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<sup>2</sup> Recording of Hearing & Division's informal conference at page 1 - Agency Record at DOR 000001.

<sup>3</sup> Mr. Granberry's testimony & Altrol's request for a formal hearing in the letter from Mr. Granberry dated February 3, 2010.

<sup>4</sup> Recording of Hearing - Mr. Bridges' testimony.

<sup>5</sup> Recording of Hearing - Mr. Bridges' and Mr. Granberry's testimony.

<sup>6</sup> Recording of Hearing - Mr. Bridges' and Mr. Granberry's testimony.

<sup>7</sup> Agency Record at DOR 000008.

Mr. Bridges and Mr. Granberry explained why it took months after Ms. Pruss's death to figure out Altrol's finances, including its tax obligations. Ms. Pruss was Altrol's only bookkeeping staff.<sup>9</sup> After Ms. Pruss's death, Mr. Bridges first hired a new bookkeeper who had good credentials, with both legal and accounting training, but Mr. Bridges soon discovered that this replacement bookkeeper was not able to manage Altrol's bank accounts or sort out its records. Mr. Bridges then called in Mr. Granberry's firm to help get Altrol's financial records in order, and hired his present bookkeeper to replace the employee who was unable to perform her duties.<sup>10</sup>

Mr. Granberry explained that Altrol did not attempt to make a timely estimated payment, erring on the side of overpayment in order to avoid liability for penalties, because it took Altrol until well after the deadline to determine its tax liability due to the suddenness and timing of Ms. Pruss's death and the state of the Altrol's records. Mr. Granberry testified that Altrol was not able to get its general ledger bookkeeping for 2008 completed until the summer of 2009. Mr. Bridges' recollection was that Altrol was unable to get the year-end bookkeeping for 2008 to Mr. Granberry until July or August of 2009.<sup>11</sup> Mr. Granberry emphasized that the late tax payment was not a case where bad things happened in January, giving a taxpayer time to take steps to prevent a late payment by putting extra resources toward getting the books up to date before the tax was due. Instead, there was just no time for Altrol to catch up before the tax was due.<sup>12</sup>

### **III. Discussion.**

#### *A. Altrol's Position*

Altrol argues that the penalties should be abated because the late payment was due to Ms. Pruss's deteriorating health, late diagnosis, and sudden death, all of which came as a surprise to Altrol. Altrol asks that the penalties be abated because these unusual circumstances made it impossible for Altrol to ascertain its 2008 income so that it could calculate the correct payment until it filed its return.

#### *B. Division's Position*

The Division maintains the penalties should not be abated. The Division argues that as a matter of law Altrol reliance on its employee, Ms. Pruss, to ensure that its taxes were paid, was

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<sup>8</sup> Recording of Hearing - Mr. Bridges' testimony.

<sup>9</sup> Recording of Hearing - Mr. Bridges' and Mr. Granberry's testimony.

<sup>10</sup> Recording of Hearing - Mr. Bridges' testimony.

<sup>11</sup> Recording of Hearing - Mr. Bridges' and Mr. Granberry's testimony.

<sup>12</sup> Recording of Hearing - Mr. Granberry's testimony.

not reasonable cause for the late filings and payments because the duty to timely pay was Altrol's, not Ms. Pruss's.

The Division argues that even if Ms. Pruss's sudden illness and death had caused the sort of disability that could legally excuse a late tax payment, the circumstance in this case would not justify an abatement because Altrol was on notice that it needed to take additional reasonable steps that would have prevented the late filing despite the circumstances surrounding Ms. Pruss's death. The Division's view is that Altrol's filing history for 2008 was no different from its filing history for the 2002, 2005, 2006 and 2007 tax years, in the sense that Altrol filed its request for extensions and its return on time but did not file its payment for the deficiency until its return was filed on the extension date.

The Division argues that this history shows that Altrol was on notice as far back as 2002 that Ms. Pruss's bookkeeping and the timeliness of her tax payments on Altrol's behalf was not up to the standard required to avoid liability for penalties. The Division argues that the provisions of Internal Revenue Code § 6651 and Alaska Regulation 15 AAC 05.200 require that in order to show reasonable cause Altrol would have to show that it was unable to meet its responsibilities despite the exercise of ordinary business care and prudence. The Division maintains that Altrol has not shown that it took all the steps and precautions reasonably necessary to ensure the timeliness of its 2008 tax payment.

*C. Penalties*

Alaska Statute 43.05.220(a) establishes a monthly penalty of five percent of the total tax due for failure to pay the tax when due. The penalties under AS 43.05.220(a) must be added unless there was reasonable cause for the failure to pay. 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*

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

- (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.

Subsection (b) of the regulation 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.<sup>13</sup> In order to demonstrate reasonable cause for a late payment, a taxpayer must be able to show that the circumstances surrounding the late payment were beyond the taxpayer's control.<sup>14</sup>

The Division correctly points out that generally the fact that a deficiency in timely paying one's tax liability is caused by the taxpayer's employee, agent or tax advisor rather than the taxpayer itself will not excuse the deficiency and is not reasonable cause. The duty to timely file returns and pay tax is nondelegable in the sense that a taxpayer's agent's mistakes are generally the taxpayer's mistakes for the purpose of determining whether the penalties should be abated.<sup>15</sup>

There are exceptions to this rule, the most common being when good faith reliance on a tax advisor's mistake on a complex area of tax law causes the deficiency.<sup>16</sup> Another exception to this general rule is when the actions of the individual that caused deficiency cannot be imputed to the taxpayer because the individual's crime against the taxpayer cannot be characterized as part of the agency relationship.<sup>17</sup>

Reasonable cause based on lack of agency usually does not apply where the late payment was due to agent or employee malfeasance that did not rise to the level of a crime against the

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<sup>13</sup> *Ayres v. Commissioner*, 45 T.C.M. (CCH) 1299, 1311 (1983); *Dustin v. Commissioner*, 53 T.C. 491, 507 (1969), *affid.*, 467 F.2d 47 (9th Cir. 1972).

<sup>14</sup> *State, Dept. of Revenue v. DynCorp and Subsidiaries*, 14 P.3d 981, 988 (Alaska 2000), *In the Matter of Taxpayer, Inc.* Alaska Department of Revenue Decision No. 85-1, 1985 WL 15595 (January 31, 1985).

<sup>15</sup> *U.S. v. Boyle*, 469 U.S. 241, 245 (1985)

<sup>16</sup> *See id.*; *Gross v. Commissioner*, 7 T.C. 837 (1946).

taxpayer. For example, one federal court declined to find reasonable cause based on a negligent agent's lack of control over the taxpayer's tax obligations.<sup>18</sup> Altrol's late payments were not due to any crime, but rather in part on the under-performance of a key employee, which reasonable oversight would have detected in time to take corrective action, and in part to the less foreseeable circumstances of the employee's sudden departure and death.

Even when a taxpayer's dependence on an employee might result in a disability that would excuse a late payment, the extent of an agent or employee's control over a taxpayer's ability to meet its tax obligation is only one potential factor in analyzing whether the taxpayer took all steps and precautions reasonably necessary to insure the timeliness of the filing or payment.<sup>19</sup> The Division is correct that even under unusual circumstances where a taxpayer might be excused for late payments caused by an agent or employee, the taxpayer must still show that it exercised ordinary business care and prudence to prevent the deficiency, by taking such reasonable steps as implementing careful hiring practices and providing adequate supervision of its record keeping and tax preparation.<sup>20</sup>

The circumstances of Ms. Pruss's illness and death and its immediate consequences were beyond Altrol's control. The evidence also shows that Ms. Pruss either hid the seriousness of her illness from Altrol, or that she was unaware of it herself until shortly before her death. The evidence shows that Ms. Pruss failed to keep Altrol's financial records up to date for several months before her departure, failed to inform Altrol of the bad state of the record keeping, and did not request additional assistance. However, the Division is correct that the evidence shows that despite these circumstances, the late payment was not entirely due to circumstances beyond Altrol's control. There were reasonable steps that Altrol could have taken, both before and after Ms. Pruss's departure that would have prevented the deficiency.

Prior to Ms. Pruss's sudden departure and subsequent unexpected death, Altrol failed to exercise ordinary business care and prudence to prevent the late payment. Because of the history of late payments prior to the 2008 tax year, it would have been a reasonable step to have provided Altrol's bookkeeping function more oversight during the 2008 tax year. Had this reasonable step been taken, Altrol could have ensured that the books were up-to-date throughout the tax year and ready to send to Mr. Granberry before Ms. Pruss's departure.

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<sup>17</sup> *In re American Biomaterials Corp.*, 954 F.2d 919, 926 (3d Cir.1992).

<sup>18</sup> *Mason Motors Co. v. U.S.*, 8 F. Supp.2d 1177, 181 (D. Minn., 1998).

<sup>19</sup> *Biomaterials.*, 954 F.2d at 923.

<sup>20</sup> *Biomaterials.*, 954 F.2d at 926.

Even if no additional oversight was provided, it would clearly have been a reasonable step, given Altrol's history of late tax payments, to dedicate more resources to ensuring timely payment for Altrol's tax liability for the 2008 tax year. This is not a case where a taxpayer had a reliable system in place to ensure timely payment of its tax liability, and failed to pay its taxes on time because this reliable system failed due to circumstance beyond the taxpayer's control. The evidence shows that the system Altrol had in place, its exclusive reliance on Ms. Pruss, was far from reliable. Altrol should have realized that it needed to devote additional resources and oversight to keep the books up to date.

Altrol would have provided additional oversight and devoted adequate resources to the management of its financial records had ordinary business care and prudence been exercised. If these steps had been taken, Altrol could have paid its taxes on time despite Ms. Pruss's illness and death. Altrol's president, Mr. Bridges, admitted that he had not been paying enough attention to performance in Altrol's bookkeeping function.

Altrol also failed to take reasonable steps that would have prevented a portion of the delay even after Ms. Pruss's departure. Although Altrol explained at the hearing that the books were in such a bad state that Altrol did not believe it could make a payment of its estimated tax liability when it filed its request for an extension, Altrol failed to provide persuasive evidence that it could not have avoided most of the delay in the payment by using the information at hand, including information from prior tax years, to make a timely payment based on a rough estimate of its tax liability prior to the due date, which included enough to cover the margin of error and prevent any shortfall that might reasonably be expected to be caused by an underestimate.<sup>21</sup>

#### **IV. Conclusion**

Altrol failed to show that it met these responsibilities in regards to timely payment of its 2008 tax liability. Altrol did not show it maintained reasonable internal controls of its bookkeeping and tax preparation functions. Altrol did not show that it made reasonable use of external auditors to ensure the timely tax filings and payments. Altrol did not show that it took all the steps and precautions that were reasonably necessary to prevent the late payment. The late payment was not wholly due to circumstances beyond Altrol's control. Moreover, Altrol did not show that it took reasonable steps after it lost its bookkeeper to make an estimated payment as soon as possible, thereby minimizing any lateness.

Because there is not reasonable cause for the late payment, the imposition of the failure-to-timely-pay penalties should be upheld.

**V. Order**

The Division's Informal Conference Decision issued on January 6, 2010 is AFFIRMED. DATED this 22<sup>nd</sup> day of March 2010.

By: Signed  
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>22</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>23</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>24</sup>

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>25</sup>

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

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<sup>21</sup> To support a reasonable cause finding, a taxpayer must show it met its responsibility to devote adequate resources to its record keeping and tax return preparation to prevent a late payment or filing. *See State of Alaska DOR v. Dyncorp and Subsidiaries* 14 P.3d 981 (Alaska 2000).

<sup>22</sup> Alaska Statute 43.05.465(f)(1).

<sup>23</sup> Alaska Statute 43.05.470.

<sup>24</sup> Alaska Statute 43.05.470(b).

<sup>25</sup> Alaska Statute 43.05.465 sets out the timelines for when this decision will become final.