

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of)
)
 WELFARE & PENSION ADMINISTRATION, INC.) OAH No. 11-0078-TAX
)
 Corporate Income Tax - Tax year 2009)

DECISION AND ORDER

I. Introduction

This case is the Alaska Corporate Net Income Tax appeal of Welfare & Pension Administration, Inc (Welfare & Pension Administration). The Alaska Department of Revenue (DOR) made a failure-to-timely-pay penalty assessment of \$577 plus interest for tax year 2009 against Welfare & Pension Administration, which was upheld in an informal conference decision issued on March 1, 2011.

Welfare & Pension Administration appealed this decision to the Alaska Office of Administrative Hearings (OAH). Administrative Law Judge Mark T. Handley was assigned to hear the appeal. Tony Ibrahim participated on behalf of Welfare & Pension Administration, Inc. Scott Taylor, Assistant Attorney General, represented DOR. The parties agreed that the appeal would be decided on the written record, and that the written record would be limited to Mr. Ibrahim’s letter dated February 14, 2011, requesting an informal conference, DOR’s Informal Conference Decision dated March 1, 2011, and Mr. Ibrahim’s appeal of that decision dated March 4, 2011. The only one of these three items that was not already on file is Mr. Ibrahim’s letter dated February 14, 2011. DOR provided a copy of this letter on March 29, 2011.

Because the reasons that Welfare & Pension Administration provided to excuse its late tax payment, including, its reliance on its understanding of advice given by DOR, do not meet the strict requirements for making a showing of reasonable cause to abate the penalties for a late tax payment, the disputed penalty is upheld and DOR’s Informal Conference Decision is affirmed.

II. Facts

Welfare & Pension Administration explained that in 2009 there was a transition of the employees who were assigned to do its accounting. Welfare & Pension Administration admitted

that, while it had timely filed a request for an extension to file its return, it did not pay what it describes as its “estimated” Alaska corporate income taxes in March of 2010. Mr. Ibrahim wrote that he had called DOR in March of 2010 and was told that if Welfare & Pension Administration filed an extension it did not need to pay until September of 2010. Welfare & Pension Administration indicated that it now understands it was required to pay its 2009 Alaska corporate net income tax by March 15, 2010, but requests a one-time exception for the penalties and interest assessed on its 2009 taxes. Welfare & Pension Administration wrote that this problem would not happen again and asserted it would timely pay its “estimated” 2010 taxes.¹

The 2009 taxes that were owed by Welfare & Pension Administration by March 15, 2010 were paid on the extension deadline of September 15, 2010 when Welfare & Pension Administration timely filed its return under the extension. Welfare & Pension Administration received notification from DOR of the assessment of interest and penalties for late payment of some of its 2009 taxes on February 14, 2011. There is no dispute that Welfare & Pension Administration paid its 2009 Alaska corporate net income taxes late. There is also no dispute that that DOR correctly calculated the penalties due, absent a showing of reasonable cause, for Welfare & Pension Administration’s late payments for tax years 2009.²

III. Discussion

DOR challenges Welfare & Pension Administration’s assertion that one of its employees advised Welfare & Pension Administration’s its 2009 payment would be timely if it was sent in with its return before the extended return deadline in September of 2010. DOR finds in its informal conference decision that Welfare & Pension Administration did not provide evidence that convinced DOR that Welfare & Pension Administration had been given an inaccurate description of the law by one of its employees.

AS 43.05.435(1) sets out the burdens of proof in the tax appeal:

Sec. 43.05.435. Scope and standards for decision. The administrative law judge shall hear all questions *de novo* under AS 43.05.405-43.05.499. The administrative law judge shall

¹ See Welfare & Pension Administration’s letter dated February 14, 2011.

² See DOR’s Informal Conference Decision & Welfare & Pension Administration’s letter dated February 14, 2011.

- (1) resolve a question of fact by a preponderance of the evidence or, if a different standard of proof has been set by law for a particular question, by that standard of proof

Based on the evidence in the record it is more likely that there was some miscommunication between Mr. Ibrahim and the DOR employee he spoke with that left Mr. Ibrahim with the incorrect impression that Welfare & Pension Administration could pay its 2009 taxes on September 15, 2010 without incurring any interest or penalties. Based on the evidence in the record it is also more likely that the misunderstanding was the fault of Mr. Ibrahim rather than the DOR employee he spoke with. DOR correctly points out that an extension to file is not an extension to pay. This is such a fundamental and broad-based rule for the timing of tax payments that it is unlikely that any DOR employee fielding Mr. Ibrahim's inquiry would not be familiar with it. Furthermore, the fact that Mr. Ibrahim consistently characterizes the late payment as a late payment of "estimated" taxes makes it more likely that there was some miscommunication between Mr. Ibrahim and DOR. Welfare & Pension Administration was not assessed penalties and interest for its failure to timely pay estimated taxes.

"Estimated taxes" are required to be paid quarterly by certain taxpayers, so that DOR does not have wait until the end of the tax year to receive all of the taxes due for that year. Like income tax withholding of federal taxes for most individual employee taxpayers, the requirement that certain taxpayers make quarterly estimated tax payments helps to ensure that DOR actually receives taxes before a taxpayer is no longer able to pay the taxes and gives DOR the use of the tax revenue sooner. Welfare & Pension Administration was not assessed penalties for underpaying quarterly estimated taxes during the 2009 tax year. Welfare & Pension Administration was assessed penalties for not paying its actual 2009 taxes before the due date of March 15, 2010.

Mr. Ibrahim may have characterized the payment for 2009 taxes due on March 15, 2010 as "estimated" taxes because when Welfare & Pension Administration had requested an extension to file its return, it had not calculated its actual tax liability by that deadline, and hence any payment of its 2009 taxes at that time would necessarily be based on an estimate of its 2009 tax liability. Of course, the very fact that an estimate would need to be made implies that the tax was due before the return would be filed.

Mr. Ibrahim's apparent confusion about the nature of tax payments that were due may have contributed to the miscommunication about when those payments were due. Mr. Ibrahim's letter of February 14, 2011, demonstrates unfamiliarity with general principals of federal and Alaska tax payments. This lack of familiarity makes it more likely that it was Mr. Ibrahim, rather than DOR, that was responsible for any confusion that resulted from their communications.

Mr. Ibrahim further demonstrated his unfamiliarity with tax law when he requested that the interest be waived as well as the penalty. Interest cannot be abated on a showing that a late tax payment was due to reasonable cause.³ Interest for late taxes merely compensates the taxing authority for the value of the use the taxes that the taxpayer improperly maintained possession of and for the risk inherent in what was effectively an involuntary loan to the taxpayer of the amount of unpaid tax.

Mr. Ibrahim again demonstrates his unfamiliarity with tax law when he implies that the penalties and should be abated because Welfare & Pension Administration will make future payments on time. Late payments are subject to the failure to pay penalties absent a showing of reasonable cause.⁴ Corrective action taken after the late payment is not reasonable cause for the late payment. Corrective action serves only to help the taxpayer avoid future late payments and subsequent penalties.

Reasonable Cause

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.⁵ The penalties under AS 43.05.220(a) must be added unless there was reasonable cause for the failure to pay. The definition of "reasonable cause" is found in Alaska Regulation 15 AAC 05.200. It is difficult to show reasonable cause. The circumstances surrounding a late tax payment must have been beyond the taxpayers control, despite the taxpayer having taken every reasonable step needed to prevent the payment being late.

³ Alaska Statute 43.50.100 & Alaska Statute 43.05.220(a).

⁴ Alaska Statute 43.05.220(a) & 15 AAC 05.200.

⁵ 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.

Welfare & Pension Administration failed to show that there was reasonable cause for its late tax payments. Welfare & Pension Administration failed to show that the circumstances surrounding its late payments were beyond its control. The circumstances surrounding Welfare & Pension Administration's failure to timely determine its tax status were within its control. Welfare & Pension Administration simply failed to properly exercise sufficient control over its business affairs by devoting sufficient resources to gain an accurate understanding of when its 2009 tax payment was due.

Welfare & Pension Administration failed to show that it took every reasonable step to prevent the late payment. Welfare & Pension Administration did not take the reasonable step of determining the correct deadline for its 2009 tax payment, and making payment before the deadline. Welfare & Pension Administration failed to ensure that it had properly communicated its payment status or understood whatever advice it was given. Even if Welfare & Pension Administration had relied on incorrect advice, 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. Tax deadlines can be ascertained without special training or effort.⁶

IV. Conclusion

The circumstances of Welfare & Pension Administration's late payment do not meet the legal requirements to show reasonable cause. DOR's Informal Conference Decision issued on March 1, 2011 is AFFIRMED.

DATED this 14th day of April 2011.

By: *Signed* _____
Mark T. Handley
Administrative Law Judge

⁶ *U.S. v. Boyle*, 469 U.S. 241, 251 (1985).

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.⁷
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.⁸
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.⁹
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.¹⁰

DATED this 14th day of April 2011.

By: *Signed* _____
Mark T. Handley
Administrative Law Judge

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

⁷ Alaska Statute 43.05.465(f)(1).

⁸ Alaska Statute 43.05.470.

⁹ Alaska Statute 43.05.470(b).

¹⁰ Alaska Statute 43.05.465 sets out the timelines for when this decision will become final.