

also imported 5,600 cigarettes to Alaska between January 2006 and February 2007. Mr. Haen entered into a payment plan with DOR to pay the taxes and interest on those cigarettes on November 27, 2007.⁵

The subject of the informal conference decision is Mr. Haen's failure to report or pay taxes on the cigarettes he had purchased over the Internet after February of 2007. Although he stopped purchasing cigarettes over the Internet after he was contacted by DOR about the first 5,600 cigarettes he had imported, Mr. Haen did not attempt to report or pay Alaska taxes on the 12,000 cigarettes he bought from CD2U over the Internet after February of 2007, despite the notice he received—as the result of working out the payment plan on the 5,600 cigarettes he purchased between January 2006 and February 2007—that reporting was required and Alaska tax was due on cigarettes purchased from an out-of-state seller. DOR learned that Mr. Haen had imported additional cigarettes to Alaska without a license, filing returns, or paying Alaska taxes from another source after the payment plan on the earlier purchased cigarettes had been agreed to.⁶

III. Discussion

In his appeal, Mr. Haen appeared to hope to limit his liability to DOR for the 12,000 cigarettes he purchased after February of 2007. What he had to pay on the 5,600 cigarettes he purchased between January 2006 and February 2007 was just the Alaska taxes and interest, with no penalties. Mr. Haen hoped to receive the same result for the additional 12,000 cigarettes that he had worked out in his earlier settlement agreement with DOR.

Understandably, no such settlement agreement was offered by DOR to Mr. Haen for the 12,000 cigarettes he purchased after February 2007 and failed to report to DOR even after learning of his obligation to do so. Absent such a settlement offer, Mr. Haen is liable for all the taxes, interest, and penalties due for his unlicensed, unreported and unpaid tobacco purchases that are established by law.

The law imposes a tax on the person who first acquires cigarettes in Alaska on each cigarette imported to the state.⁷ The law imposes interest, compounded quarterly, on any delinquent tax due.⁸ Finally, the law imposes a penalty of 100% of the tax due, that is, an

⁵ See Division's Informal Conference Decision at page 2.

⁶ Division's Informal Conference Decision at pages 2-3.

⁷ Alaska Statute 43.50.090 & Alaska Statute 43.50.190.

⁸ Alaska Statute 43.05.225.

additional charge equal to the tax on each cigarette,⁹ and 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. This penalty cannot exceed 25% of the total tax due.¹⁰ Only the failure-to-file and failure-to-pay penalties may be abated, and those penalties may only be abated when the taxpayer shows that there was reasonable cause for the failure to pay and file.¹¹

Mr. Haen was directly notified by DOR that he had engaged in activity that required him to pay taxes to Alaska after he agreed to a payment plan for the taxes and interest due on his earlier Internet cigarette purchases, but he failed to report those purchases. Even before he received that direct notification, Mr. Haen's unfamiliarity with the licensing, reporting and timely tax payment requirements for importing cigarettes is not reasonable cause for his failure to timely report his purchases and pay the tax due.

In order to show "reasonable cause" for the failure to timely file tax returns or pay Alaska taxes, a taxpayer must show that he took all reasonable steps to avoid the late filing or payment.¹² Mr. Haen's asserted ignorance of the licensing requirements for importing cigarettes into Alaska for personal consumption does not meet this test. Mr. Haen's failure to familiarize himself with his responsibilities under the Alaska tax code before he began importing cigarettes into Alaska was a failure to take a reasonable step he could have taken, and is therefore a mistake that is not reasonable cause for abatement of the tax penalties.¹³

IV. Conclusion

Based on the evidence in the record, the taxes, interest and penalties assessed to Mr. Haen by DOR must be upheld.

V. Order

The Division's Informal Conference Decision in this case, dated February 28, 2012, is AFFIRMED.

⁹ Alaska Statute 43.05.100(d).

¹⁰ Alaska Statute 43.05.220(a).

¹¹ Alaska Statute 43.50.100 & Alaska Statute 43.05.220(a).

¹² Alaska Regulation 15 AAC 05.200.

¹³ *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.¹⁴
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.¹⁵
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.¹⁶
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 this decision becomes final.¹⁷

DATED this 8th day of October, 2012.

By: Signed
Mark T. Handley
Administrative Law Judge

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

¹⁴ Alaska Statute 43.05.465(f)(1).

¹⁵ Alaska Statute 43.05.470.

¹⁶ Alaska Statute 43.05.470(b).

¹⁷ Alaska Statute 43.05.465 sets out the timelines for when this decision will become final.