

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of )  
 )  
 HALLIBURTON ENERGY )  
 SERVICES, INC )  
 ) OAH No. 15-0652-TAX  
 Oil and Gas Production Tax )

**DECISION**

**I. Introduction**

The Department of Revenue audited a tax credit claim submitted by Halliburton Energy Services, Inc. Revenue issued audit findings, and Halliburton appealed those findings 64 days later. Revenue denied the appeal as untimely. Halliburton timely appealed that denial to the Office of Administrative Hearings.

This appeal, which has been submitted on briefs, stipulated facts, and a short documentary record, presents two issues: Did Halliburton file a timely appeal at the initial stage and, if not, should the appeal deadline be relaxed? Based on the evidence in the record as well as the applicable statutes and regulations, Halliburton’s appeal was untimely, but the deadline will be relaxed and the matter will be remanded to Revenue to conduct an informal conference.

**II. Facts**

The relevant facts are not in dispute. The core facts were stipulated as follows:<sup>1</sup>

On February 5, 2015, Revenue completed an audit of a Halliburton tax credit claim and mailed its findings to Halliburton in Houston, Texas. The Anchorage United States Postal Service . . . postmarked Revenue’s final decision to Halliburton February 5, 2015. The audit letter explained that Halliburton had to appeal the audit conclusions no later than sixty days after the postmark or sixty days after hand delivery of the [audit findings].

On April 10, 2015 – sixty-four days after USPS postmarked the envelope – Halliburton appealed via email.<sup>[2]</sup>

The envelope containing Revenue’s final decision has a legible USPS postage sticker showing the mailing date.<sup>3</sup> There is also a sticker on the envelope showing receipt in Houston on

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<sup>1</sup> “Halliburton does not contest the findings of fact outlined in the OAG’s Initial Brief.” Halliburton Reply Brief at 1.

<sup>2</sup> Revenue’s Opening Brief at 2 (internal footnote and citations to administrative record omitted).

<sup>3</sup> R. 28.

February 10, 2015.<sup>4</sup> This certainly appears to be a Halliburton internal routing sticker, but the parties have stipulated that it was a USPS sticker affixed in Houston,<sup>5</sup> and hence it will be assumed to be such in this decision. The parties believe the envelope arrived at Halliburton's offices a day or two later.

### **III. Discussion**

#### **A. *Applicable Law***

A taxpayer may appeal a Revenue determination by requesting an appeal.<sup>6</sup> Upon receipt of a written request for appeal, Revenue holds an informal conference.<sup>7</sup> This can lead, through procedural steps that are not at issue in this case, to a formal hearing before the Office of Administrative Hearings (OAH). Under Revenue regulation 15 AAC 05.010, for the *initial* hearing request to be timely,

if the request for appeal concerns a . . . tax credit . . . matter under AS 43, . . . the request must be filed with the appropriate division within 60 days after the mailing date of the department's notice of the action to which the person objects or within 60 days after the department's notice is delivered in person . . . .<sup>[8]</sup>

Although Revenue has contended in this case that the appeal deadline is immutable, Revenue's regulations make it clear that this is not the case. Under Revenue regulation 15 AAC 05.030(k), once the case reaches the formal hearing stage, the hearing officer—that is, the OAH administrative law judge—may waive the 15 AAC 05.010 appeal deadline “if it appears to the officer that strict adherence to the deadline or requirement would work an injustice[.]” In accordance with its plain language, this regulation has long been understood to permit a waiver of the initial appeal deadline.<sup>9</sup>

#### **B. *The Request for Appeal was Untimely***

Halliburton argues that the notice of appeal rights in the audit findings was confusing. That notice says, in part, “If you disagree with the adjustments, you must give notice and request an informal conference with the Department within 60 days of the mailing date, or date of

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<sup>4</sup> *Id.*

<sup>5</sup> R. 8; Revenue's Opening Brief at 2.

<sup>6</sup> 15 AAC 05.010(a).

<sup>7</sup> 15 AAC 05.020.

<sup>8</sup> 15 AAC 05.010(b)(1).

<sup>9</sup> *See, e.g., In re A. & J.C.*, OAH No. 11-0287-PFD (Dep't of Revenue 2011), at 2 (published at <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD110287.pdf>).

personal delivery of this letter.”<sup>10</sup> The appeal notice essentially tracks the above-quoted deadline regulation. Halliburton suggests that it would be reasonable to count the appeal deadline from the date it received the Revenue decision. Halliburton interprets that date to be the date of “personal delivery” of the item because that is the date the USPS mail carrier personally carried the item into Halliburton’s office.

Halliburton’s interpretation of the regulatory language is rejected as unreasonable. If letters sent by USPS were considered “personal delivery,” then there would be no reason to include both clauses. The regulation would simply say that the appealing taxpayer had 60 days from delivery of the adverse decision.

Revenue’s decisions may be sent either by mail or by personal delivery. These are mutually exclusive methods of sending a decision. The decision at issue in this case was sent by mail, and therefore any appeal was due within 60 days of the date it was mailed. Halliburton’s appeal was untimely.

### ***C. Strict Adherence to the Appeal Deadline Will Be Waived***

Because the appeal was untimely, it may be entertained only if the deadline can be relaxed under the waiver regulation mentioned above, 15 AAC 05.030(k). Neither party has cited or discussed this regulation in its briefing, although Halliburton has made a factual argument that implicates the waiver analysis.

Notably, in deciding the waiver issue, the administrative law judge is not reviewing a Revenue decision made under that regulation, and deference to the agency’s handling of the deadline in proceedings below does not come into play. Instead, the regulation vests the waiver decision in the administrative law judge in the first instance. It must be evaluated *de novo*.

Historically, Revenue appeal deadlines have been interpreted quite strictly, and an appellant who misses the deadline by a significant margin has typically found relief only when confusing behavior or notices by Revenue contributed to the appellant’s failure to meet the deadline. Among the factors to be considered in a waiver request, however, is the length of the delay beyond the deadline.<sup>11</sup> In this case, the deadline was missed by an extraordinarily short four days, a span so short that it is hard to find a comparable case in the many prior decisions

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<sup>10</sup> R. 21.

<sup>11</sup> *In re K.C.*, OAH No. 11-0372-PFD (Dep’t of Revenue 2012), at 2 (noting the duration factor, and observing that a one-time delay of about a month could have been excused under 15 AAC 05.030(k)); *In re J.J.G.*, OAH No. 09-0363-PFD (Dep’t of Revenue 2009).

applying 15 AAC 05.030(k).<sup>12</sup> Moreover, there was no prejudice at all to Revenue. This is because Halliburton could have filed a timely appeal by mailing its appeal letter with a postmark of April 6 (Revenue’s appeal deadline is satisfied by a mere postmark).<sup>13</sup> Instead, Halliburton sent in its appeal electronically on the morning of April 10,<sup>14</sup> and thus it arrived in Alaska at about the same time, or perhaps sooner, than it would have had it been timely mailed. Consequently, the purpose of an appeal deadline—to allow the agency to put matters to rest after a predictable period of time—is not implicated in this case. Halliburton’s failure was purely technical.

Another factor in the waiver decision is whether the appellant has a colorable claim for reversal of the decision below.<sup>15</sup> This factor is considered because many of those who appeal Revenue decisions late lay out bases for appeal that are, on their face, legally insubstantial. This is not so in Halliburton’s case: the appeal letter raises what appear to be serious and substantive questions about inferences and regulatory interpretations the auditors made in disallowing certain expenditures from the Exploration Tax Credit.<sup>16</sup> At the very least, the questions would be worthy of discussion and explanation in the informal conference Halliburton was trying to initiate.

What seems to have happened here is that a Halliburton tax accountant, who was not an attorney, misunderstood the appeal calculation and thought it should be calculated from February 10 rather than February 5. This may be because he thought February 10 was the date of delivery and the deadline ran from delivery, or because he mistook the date on the purported USPS sticker on the envelope to be the postmark. The misunderstanding was not reasonable, but it seems to have been honest.

This is a close case. Were the delay in appealing anything more than insubstantial, or were the rationale for an appeal deadline implicated at all by the circumstances of the case, a mistake of this kind by the taxpayer would not be excused, however compelling the taxpayer’s

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<sup>12</sup> The undersigned has not been able to locate one. Somewhat instructive, however, is *North Star, Inc. v. Fairbanks North Star Borough*, 621 P.2d 1335 (Alaska 1981), a case presenting a deadline-waiver issue under a similar standard set by court rule. The appeal deadline had been missed by 13 days. In that case, although the majority found the Superior Court’s decision not to waive the deadline to be within the range of its discretion, Justice Rabinowitz would have reversed, finding the 13-day delay to be “slight.”

<sup>13</sup> 15 AAC 05.010(c).

<sup>14</sup> R. 31.

<sup>15</sup> *In re J.J.G., supra.*

<sup>16</sup> R. 1-6.

underlying case on the merits. Here, however, the accountant's misunderstanding led to an inconsequential error in transmitting the appeal. The scales for prevention of injustice tip slightly in favor of allowing Halliburton's serious questions on appeal to receive a hearing on the merits.

#### **IV. Conclusion**

Halliburton incorrectly calculated a deadline, resulting in the filing of an untimely appeal. Nonetheless, the deadline will be waived pursuant to 15 AAC 05.030(k). This matter is remanded to the Department of Revenue for an informal conference on the merits.

Dated this 28<sup>th</sup> day of September, 2015.

*Signed* \_\_\_\_\_  
Christopher Kennedy  
Administrative Law Judge

#### **NOTICE**

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>17</sup>

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.

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>18</sup> 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>19</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 this decision becomes final.<sup>20</sup>

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

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<sup>17</sup> AS 43.05.465(f)(1).

<sup>18</sup> AS 43.05.470.

<sup>19</sup> AS 43.05.470(b).

<sup>20</sup> AS 43.05.465 sets out the timelines for when this decision will become final.