

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of	)	
	)	
ALASKA AUTO RENTAL, INC.	)	
	)	
Tax Period Ending December 2011	)	OAH Case No. 12-0146-TAX
<u>Vehicle Rental Tax</u>	)	

**DECISION**

**I. Introduction**

This case is the Alaska Vehicle Rental Tax appeal of Alaska Auto Rental, Inc. The Alaska Department of Revenue (DOR) made failure-to-timely-pay penalty assessments of \$428.30 for late payments of the Alaska Vehicle Rental Tax for the quarter ending December 31, 2011, which were upheld in an informal conference decision issued on May 23, 2012.

Because circumstances that led to Alaska Auto Rental’s late payment, namely that the company had several problems working with DOR to register for online tax payments, do not meet the strict requirements for a showing of reasonable cause to abate the penalties for the late payment, the disputed penalties are upheld.

**II. Facts**

Unless another source is cited, all facts below are drawn from testimony at the recorded hearing. Andrew Chapman, vice president and operations manager of Alaska Auto Rental, explained that he was having difficulty trying to register Alaska Auto Rental with DOR’s Online Taxpayer Information System (OTIS) in order to be able to make tax payments through the Internet. Mr. Chapman explained that he had worked for Alaska Auto Rental when it had previously operated as another company that paid its taxes through OTIS. Mr. Chapman testified that he had made at least ten unanswered and unreturned phone calls to DOR to request assistance before he spoke with a DOR employee while on vacation on the day before the tax payment was due. Mr. Chapman remembers that in that phone conversation he was informed that there had been a delay in processing his request, but that Alaska Auto Rental’s registration was activated and set up to allow payment through OTIS that day.<sup>1</sup>

Mr. Chapman had to travel back to his hotel to get to his computer to make the tax payment. Mr. Chapman was still unable to log in to OTIS and make the tax payment for Alaska Auto Rental when he returned to his hotel. Later, Mr. Chapman learned that there was still an

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<sup>1</sup> Recording of Hearing-Testimony of Andrew Chapman.

additional step of filing a signature before Alaska Auto Rental could make payments through OTIS. When the website indicated that he could not make the payment, Mr. Chapman made other attempts to complete the OTIS registration process while he was on vacation, but he was not successful until he returned to Alaska.<sup>2</sup>

The taxes were paid once Mr. Chapman was successful in registering with OTIS, but this occurred after the deadline for making the payment. There is no dispute that DOR correctly calculated the penalties due, absent a showing of reasonable cause, for the late payment for the tax year of 2012.<sup>3</sup>

Based on the evidence in the record, however, Alaska Auto Rental failed to show that it is more likely than not that Alaska Auto Rental took every reasonable step to prevent the late tax payments. Alaska Auto Rental failed to show that it took the reasonable step of finding an alternative means of making the tax payment before the deadline when Mr. Chapman was experiencing difficulty registering with OTIS so that payments could be made through the Internet, or the reasonable step of having another employee take responsibility for ensuring timely payment of the tax while the employee primarily responsible for the payment was on vacation.<sup>4</sup>

### **III. Discussion**

DOR does not challenge Alaska Auto Rental's explanation of the difficult circumstance surrounding Alaska Auto Rental's late payment. Alaska Auto Rental agrees that the payment was late and that DOR correctly calculated the penalty due. The parties do not agree about whether the circumstances surrounding Alaska Auto Rental's late payment justify an abatement of the 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.<sup>5</sup> 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, 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

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<sup>2</sup> Recording of Hearing-Testimony of Andrew Chapman.

<sup>3</sup> DOR's Informal Conference Decision & Recording of Hearing-Testimony of Andrew Chapman.

<sup>4</sup> Recording of Hearing-Testimony of Andrew Chapman.

<sup>5</sup> 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.

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.

As can be seen from the language of Paragraph (c) in the regulation above, it is difficult to show reasonable cause.

Alaska Auto Rental argues that there was reasonable cause for the late payments. Mr. Chapman took particular exception to DOR's implication that he had been guilty of "willful neglect," given his efforts and frustrations in trying to get Alaska Auto Rental registered with OTIS. The words "willful neglect" in 15 AAC 05.220(b) are not, however, set out as the standard for lack of reasonable cause. The words "willful neglect" are used in the sentence, "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)." This sentence merely incorporates federal interpretations of the reasonable cause abatement requirements into Alaska law.

As can be seen from 15 AAC 05.220(c), which is the next paragraph of the regulation—and is the part of the regulation that actually sets out the requirements for showing reasonable cause—there are many situations in which a late payment that was not due to willful neglect would still not be reasonable cause. Although a taxpayer's willful neglect would never be reasonable cause, the failure to have reasonable cause for a late payment does not always mean that the late payment was due to the taxpayer's willful neglect.

Mr. Chapman's frustration with the circumstances surrounding Alaska Auto Rental's payments is understandable. In the context of this appeal, however, it is important to keep in

mind that the taxpayer is Alaska Auto Rental, not Mr. Chapman. Alaska Auto Rental is a corporation doing business in Alaska. In order to avoid tax penalties, Alaska Auto Rental must take all reasonable steps needed to avoid late payment of its Alaska taxes. These steps include having a system in place that would ensure timely payment of its taxes when problems arise and the employee primarily responsible for ensuring timely payment of taxes is not able to respond effectively. Another step is to ensure that a tax payment is timely made by mail or other less than instantaneous methods if a quicker method has not been arranged before it is too late to pay by more traditional means. The circumstances surrounding Alaska Auto Rental's failure to timely make this payment was within its control.

#### **IV. Conclusion**

The circumstances of Alaska Auto Rental's late payment do not meet the legal requirements to show reasonable cause for the late payment. DOR's Informal Conference Decision issued on May 23, 2012 is AFFIRMED.

#### **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>6</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>7</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>8</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>9</sup>

DATED this 3<sup>rd</sup> 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.]

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<sup>6</sup> Alaska Statute 43.05.465(f)(1).

<sup>7</sup> Alaska Statute 43.05.470.

<sup>8</sup> Alaska Statute 43.05.470(b).

<sup>9</sup> Alaska Statute 43.05.465 sets out the timelines for when this decision will become final.