

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

In the Matter of:)
)
 RECYCLING OUR AREA'S) OAH No. 13-0829-PFC
 RESOURCES, INC.)
)
 _____)

DECISION

I. Introduction

The Permanent Fund Dividend Division denied the application of Recycling Our Area's Resources, Inc., (ROAR) to participate in the 2014 Pick.Click.Give program because ROAR's application was not postmarked on time, and it did not include a copy of ROAR's Internal Revenue Service Form 990. ROAR appealed. Because ROAR's application was late and incomplete, the Division's decision is affirmed.

II. Facts

ROAR is an organization based in Glennallen, a rural community near the junction of the Glenn and Richardson Highways, and it has members who live in communities or remote sites in the surrounding area.¹ ROAR has no paid staff, and relies completely on volunteer labor.²

ROAR has participated in the Department of Revenue's "Pick.Click.Give" program, which allows eligible organizations to be on a list for receiving electronic contributions from Alaska residents through the permanent fund dividend program.³ In 2013, ROAR determined that it would apply to participate again for the 2014 dividend. When the Division received ROAR's application for the 2014 dividend year, however, the application was postmarked April 25, 2013.⁴ In addition, the application did not include a copy of ROAR's Internal Revenue Service Form 990.⁵ Accordingly, on June 4, 2013, the Division denied ROAR's application as untimely and incomplete. ROAR appealed.

A telephonic hearing was held on June 25, 2013. Mabel Wimmer, the President of ROAR, represented ROAR. Bethany Thorsteinson represented the Division.

¹ Flint testimony.

² Flint testimony.

³ AS 43.23.

⁴ Division Exhibit 2 at 22.

⁵ Division Exhibit 2.

Ms. Wimmer explained that she lives outside of Glennallen, and that the mail delivery to her home is handled by a contract carrier.⁶ Ms. Wimmer testified that the mail service in the Glennallen area is unreliable, and that items that are mailed at the post office can be overlooked by postal employees, and either lost or delayed in being processed and postmarked.⁷ She also testified that the contract carrier who services her rural route can sometimes forget to deposit the outgoing mail that the carrier has picked up from rural mailboxes.⁸ She described a situation that had happened to her personally in which the Glennallen post office had lost an important letter she had mailed, which caused problems for her.⁹

Ms. Wimmer testified that she filled out ROAR's 2014 Pick.Click.Give application, and that she mailed it by placing it in her outgoing mailbox, for pickup by the contract carrier.¹⁰ She testified that she did this before the March 31, 2013, deadline.¹¹ She testified that she remembered mailing it, and she likely paper clipped five dollars to the envelope, which was heavier than a normal letter, so that the contract carrier could weigh it at the post office, put the correct postage on the envelope, and then return the change to her.¹² She said that the reason it was postmarked April 25 was that either the contract carrier had forgotten to process it for several days, or the post office had temporarily lost it.¹³

Linda Flint, the treasurer of ROAR, also testified at the hearing. She explained that it was her responsibility to provide the Form 990, and she agreed that ROAR was required to file a Form 990 with the IRS.¹⁴ The Form 990, however, was not due to the IRS until May 15, which is when she filed it.¹⁵ She had not provided a 990 to Ms. Wimmer to include in the 2014 application because she knew that the Division had a 990 from previous years on file, and did not know that it needed a new 990 to process the Pick.Click.Give application.¹⁶

6 Wimmer testimony.

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 Flint testimony.

15 *Id.*

16 *Id.*

III. Discussion

Eligible charitable organizations may participate in a program that allows applicants for Alaska permanent fund dividends (PFDs) who file electronically the opportunity to contribute some of their PFD money to the charitable organization.¹⁷ The Permanent Fund Dividend Division has named this program the “Pick.Click.Give” program.¹⁸

Under statute, the Department of Revenue will include an eligible charitable or educational organization or community foundation on the list of organizations participating in Pick.Click.Give “only if the organization (1) before March 31 of the qualifying year, files an application for inclusion on the list for that dividend year on the form required by the department.”¹⁹ The regulations governing the program make clear that the department will consider an “organization to have filed an application if that application is complete and timely.”²⁰ The regulations require that “an application is (1) timely if is postmarked on or before March 31 of the qualifying year.”²¹ Neither the statute nor the regulations provide for an exception to this requirement.

The regulation is very explicit in using the term “postmark,” rather than more ambiguous terms like “filed” or “mailed.” By using the term “postmark,” the regulations are requiring the applicant to ensure that the application receives a timely postmark stamp. Under this regulation, an applicant cannot guarantee compliance merely place the application in a mailbox.²² To ensure timeliness, the applicant must take whatever steps are necessary to ensure that the application is, in fact, postmarked or received on time. In rural Alaska, or other places where mail service may be unreliable, this may mean that an applicant should do more than merely placing the application in a mailbox.

Here, Ms. Wimmer testified that she knew that rural mail pickup and delivery was not reliable. She explained that for the previous year’s application, she had driven to Anchorage and hand delivered the application.²³ She was unable to do that this year, however, because she was too

¹⁷ AS 24.23.062.

¹⁸ <http://www.pfd.alaska.gov/>

¹⁹ AS 43.23.062(d)(1).

²⁰ 15 AAC 23.310(c).

²¹ 15 AAC 23.310(c)(1).

²² *Cf., e.g., In re G.W. and M.E.*, OAH No. 07-0605-PFD (Commissioner of Revenue 2007) at 10 (“The proof lies in the postmark. The applicant, not the postal service, bears the ‘responsibility to ensure that an application is timely delivered to the department.’” (citation omitted)).

²³ Wimmer testimony.

busy.²⁴ Yet, under the regulation, an organization must ensure timeliness, and an organization that relies on the postal delivery service for a timely postmark does so at its peril. In short, because the application was not postmarked on or before March 31, 2013, it was not timely under the regulation, even though Ms. Wimmer actually mailed it on or before March 31, 2013.

Even if the application had been timely, however, an eligible organization must also comply with the requirement that its application must include certain attached documents. One document that the regulations require is “a copy of the beneficiary organization’s current Internal Revenue Service Form 990 on file with the Internal Revenue Service for the most recently completed fiscal year.”²⁵ The Division uses this document to ensure compliance with AS 43.23.062(d)(4), which requires eligible organizations to file the 990 with the IRS unless they are exempt. If the organization has an extension for filing the 990, it may submit the extension and the most recent 990 to the Division.²⁶ The regulation allows organizations to comply with its requirements by filing, where applicable, the online filing confirmation, the 990 EZ, or first page of the Form 990.²⁷

At the hearing, some confusion was expressed about the difference between the IRS deadline of May 15 and the Pick.Click.Give deadline of March 31. Here, however, ROAR did not attach any copy of any year’s 990 to its application, so no argument can be made that ROAR substantially complied with the requirement of a 990. Thus, ROAR’s omission of the 990 provides a second reason for the Division to reject ROAR’s application.

IV. Conclusion

ROAR filed its application to participate in 2014 Pick.Click.Give late, and it did not include a current IRS Form 990. Under the applicable statute and regulation, ROAR’s application was not timely or complete. Therefore, the Division’s decision is affirmed, and ROAR is not eligible to participate in Pick.Click.Give for the 2014 permanent fund dividend.

Dated this 26th day of June, 2013.

Signed

Stephen C. (Neil) Slotnick
Administrative Law Judge

²⁴

Id.

²⁵

15 AAC 23.310(e)

²⁶

Id.

²⁷

Id.

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of August, 2013.

By: Signed
Signature
Stephen C. Slotnick
Name
Administrative Law Judge
Title

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