

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of)
)
 PARKWOOD HOTEL, INC.)
)
 Corporate Income Tax Tax years 2007 & 2008)

OAH No. 10-0437-TAX

DECISION AND ORDER

I. Introduction

This case is the Alaska Corporate Net Income Tax appeal of Parkwood Hotel, Inc (Parkwood Hotel). The Alaska Department of Revenue (DOR) made failure-to-timely-pay penalty assessments of \$1,106 for tax year 2007 and \$834 for tax year 2008 against Parkwood Hotel, which were upheld in an informal conference decision issued on July 14, 2010.

Parkwood Hotel appealed this decision to the Alaska Office of Administrative Hearings (OAH). Administrative Law Judge Mark T. Handley was assign to hear the appeal. April Cooley represented Parkwood Hotel, Inc. Scott Taylor, Assistant Attorney General, represented DOR. The parties agreed to have the appeal decided based on the written record. An order setting a briefing schedule was issued and the record closed on October 26, 2010.

Because Parkwood Hotel’s honest mistake regarding its C-corporation tax status, which led to the late payment, does 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

Parkwood Hotel explained that Voltec Inc., an S-corporation owned by Randy and Sharon Comer, purchased Parkwood Hotel, a C-corporation, in 2006. Voltec Inc. indicated to its tax preparers that the Parkwood Hotel C-corporation was essentially absorbed into Voltec Inc. when the purchase was made. When the tax preparers for Voltec Inc. received requests to file 1120 returns for the Parkwood Hotel C-corporation from the IRS, the tax preparers asked Voltec Inc. for copies of the paperwork related to the purchase of the Parkwood Hotel C-corporation. This paperwork revealed that Parkwood Hotel was still a C-corporation that was liable for taxes on the income it earned. The tax preparers for Voltec Inc. promptly filed the appropriate state

and federal returns for Parkwood Hotel.¹

The taxes that were owed by Parkwood Hotel were promptly paid once the mistake was recognized, but there is no dispute that Parkwood Hotel paid its 2007 and 2008 corporate income taxes late. There is also no dispute that that DOR correctly calculated the penalties due, absent a showing of reasonable cause, for Parkwood Hotel's late payments for tax years 2007 and 2008.²

Based on the evidence in the record, however, Parkwood Hotel failed to show that it is more likely than not that Parkwood Hotel took every reasonable step to prevent the late tax payments. Parkwood Hotel failed to show that it took the reasonable step of having someone with the requisite expertise examine the purchase agreement paperwork to confirm its new owner's understanding of its changed tax status before it would owe taxes as a C-corporation doing business in Alaska.³

III. Discussion

DOR does not challenge Parkwood Hotel's explanation of the circumstance surrounding Parkwood Hotel's late payment. Parkwood Hotel agrees that the payment was late and that DOR correctly calculated the penalty due. DOR admits that Parkwood Hotel paid the taxes late due to an honest mistake. The parties do not agree about whether the circumstance surrounding Parkwood Hotel's late payment justify an abatement of the penalties.

Parkwood Hotel argues that the business transaction involving the transfer of ownership of the Parkwood Hotel to Voltec Inc. could have confused anyone. Parkwood Hotel argues its owners' confusion in regards to its status as a C-corporation, which created its Alaska corporate tax liability and caused the late payment, was not willful neglect. Parkwood Hotel argues its confusion in regards to its status as a C-corporation was just a misunderstanding that led to an honest mistake.

Timeliness of Parkwood Hotel's Appeal

The Division first points out that there is an issue of timeliness regarding Parkwood Hotel's appeal. Although the appeal is dated August 2, 2010, the appeal was stamped received by OAH on August 30, 2010, which is two weeks after the appeal deadline. However, in addition to

¹ See DOR's Informal Conference Decision & Parkwood Hotel's Notice of Appeal, dated August 2, 2010.

² See DOR's Motion for Summary Judgment, DOR's Informal Conference Decision & Parkwood Hotel's Notice of Appeal, dated August 2, 2010.

³ See Parkwood Hotel's Notice of Appeal, dated August 2, 2010 & Parkwood Hotel's request for abatement, dated May 6, 2010 at DOR exhibit A, page 6.

Parkwood Hotel having dated its appeal August 2, 2010, that is also the date on the private meter postal stamp on the envelope that the appeal was sent in. This private meter date was not over-stamped with another cancellation date, so it appears that the private meter date was either accepted or missed by the postal service.

15 AAC 05.010(c) provides in pertinent part:

A request for appeal is filed on the date it is personally delivered, or, if delivered to the department by United States mail, the date of the United States postmark or official postmark of a foreign country stamped on the properly addressed cover in which the request is mailed. If the postmark is not the official postmark of a foreign country or the United States Postal Service, such as that made by a private postage or mailing machine, the postmark date will be the filing date only to the extent provided for by the United States Treasury in 26 C.F.R. 301.7502-1(c)(1)(iii)(b).

26 C.F.R. § 301.7502-1(c)(1)(iii) (b), provides:

If the postmark on the envelope or wrapper is made other than by the U. S. Post Office, (1) the postmark so made must bear a date on or before the last date, or the last day of the period, prescribed for filing the document, and (2) the document must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document contained in an envelope or other appropriate wrapper which is properly addressed and mailed and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U. S. Post Office on the last date, or the last day of the period, prescribed for filing the document. However, in case the document is received after the time when a document so mailed and so postmarked by the U. S. Post Office would ordinarily be received, such document will be treated as having been received at the time when a document so mailed and so postmarked would ordinarily be received, if the person who is required to file the document establishes (i) that it was actually deposited in the mail before the last collection of the mail from the place of deposit which was postmarked (except for the metered mail) by the U. S. Post Office on or before the last date, or the last day of the period, prescribed for filing the document, (ii) that the delay in receiving the document was due to a delay in the transmission of the mail, and (iii) the cause of such delay. If the envelope has a postmark made by the U. S. Post Office in addition to the postmark not so made, the postmark which was not made by the U. S. Post Office shall be disregarded, and whether the envelope was mailed in accordance with this subdivision shall be determined solely by applying the rule of (a) of this subdivision.

It is not clear that Parkwood Hotel's appeal was received after it would ordinarily be have been received if it had been postmarked in Anchorage the last date for filing the appeal, which would have been August 13, 2010. Furthermore, since DOR is entitled to have its decision affirmed on the merits, it is not necessary to rule on the timeliness of the appeal.

Division's Motion Summary Judgment

Although the parties had agreed to have this appeal decided on the written record, DOR filed a motion for summary adjudication. In administrative adjudications such as a tax appeal, the right to a hearing does not require development of facts through an evidentiary hearing when no factual dispute exists.⁴ Either party can move for summary adjudication by alleging that no material facts are in dispute and arguing that the moving party is entitled to the relief it seeks as a matter of law. In this case, however, it is not necessary to rule on whether DOR met the requirements for summary adjudication because as noted above, DOR is entitled to have its decision affirmed on the merits, and because the parties agreed to a decision, which includes any appropriate factual findings, based on the written record.

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, 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 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

⁴ See *Smith v. Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990).

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.

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.

Reasonable Cause v. Willful Neglect

In its appeal, Parkwood Hotel's argues that in there was reasonable cause for the late payments because the timeliness was not due to "willful neglect." The words "willful neglect" in 15 AAC 05.220(b) are not 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 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.

A taxpayer who does not willfully neglect his duty to timely pay his taxes will not be able to show that there is reasonable cause for the late payment if there was at least one reasonable step that the taxpayer could have taken that would have prevented the delay. The use of the term "willful neglect" in 15 AAC 05.220(b), is therefore misleading to the extent that it implies that the failure to timely pay penalty only applies to taxpayers who willfully neglect to pay their taxes on time. Even taxpayers who are not willfully neglectful of their duty to timely pay their taxes, but who make honest mistakes that lead to a late payment, may be subject to the late payment penalty. In order to demonstrate reasonable cause for a late payment, a taxpayer must be able to show that the circumstances surrounding the late payment were beyond the taxpayer's control.⁶

⁶ *State, Dept. of Revenue v. DynCorp and Subsidiaries*, 14 P.3d 981, 988 (Alaska 2000) ; *Matter of Taxpayer, Inc.* Alaska Department of Revenue Decision No. 85-1, 1985 WL 15595 (January 31, 1985).

DOR admitted in its motion for summary adjudication that it does not doubt that the late tax payment was due to an honest mistake. It may also be inferred from the fact that DOR did not assess an additional negligence penalty under 15 AAC 05.220 against Parkwood Hotel that DOR agreed that the late payment was not caused by Parkwood Hotel's willful neglect.

Parkwood Hotel, however, failed to show that there was reasonable cause for its late tax payments. Parkwood Hotel failed to show that the circumstances surrounding its late payments were beyond its control. The circumstances surrounding Parkwood Hotel's failure to timely determine its tax status were within its control. Parkwood Hotel simply failed to properly exercise its control over its business affairs by devoting sufficient resources to gain an accurate understanding the tax consequences of the change in its ownership. Parkwood Hotel failed to show that it took every reasonable step to prevent the late payment. Parkwood Hotel did not take the reasonable step of having someone with the requisite expertise examine the purchase agreement paperwork determine its tax status before its taxes as a C-corporation doing business in Alaska were due.

IV. Conclusion

The circumstances of Parkwood Hotel's honest mistake that caused the late payment do not meet the legal requirements to show reasonable cause for the late payment. DOR's Informal Conference Decision issued on July 14, 2010 is AFFIRMED.

DATED this 22nd day of November 2010.

By: _____

Mark T. Handley
Administrative Law Judge

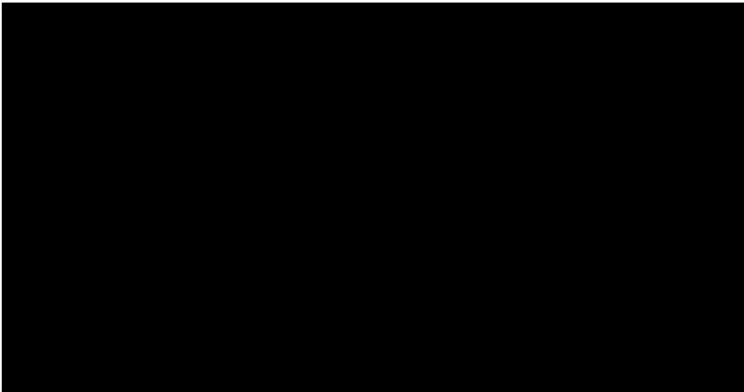
NOTICE

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 22nd day of November 2010.

By: 

Mark T. Handley
Administrative Law Judge



⁷ Alaska Statute 43.05.465(i)(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.