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

In the Matter of	)	
	)	
ACCESS ALASKA, INC.	)	OAH No. 24-0431-PFC
	)	

DECISION

I. Introduction

Access Alaska, Inc. is a charitable organization that applied to participate in the Alaska Permanent Fund's "Pick.Click.Give" (PCG) charitable giving program for the 2025 dividend year. When filing this application, however, Access Alaska did not include required materials to show the filing status of its Form 990, which is an annual filing that the Internal Revenue Service requires of most tax-exempt charitable organizations. Though the omission was pointed out, Access Alaska was not able to cure this deficiency before the March 31 filing deadline. Eventually, the Permanent Fund Dividend Division considered the application in the eligibility review it conducts in May, and denied it as incomplete. Access Alaska filed an administrative appeal and, two months later, supplied the missing documentation.

Several prior decisions of the Department of Revenue have held that the application deadline is strict with respect to both the application and all supporting documents and materials. However, several years ago the Director of the PFD Division embraced a policy that permitted documents like the Form 990 to be submitted after the deadline. The policy somewhat alters the landscape in which Access Alaska's late submissions must be evaluated. Nonetheless, no agency policy or practice and no prior decision supports overturning the denial of an application that was not completed until after consideration and denial.

II. Legal Background

The "Pick.Click.Give." program was created by the Alaska Legislature in 2008 to provide a means by which Alaskans could donate a portion of their PFD's to eligible educational and charitable organizations.[1] Since 2018 the Alaska Community Foundation ("ACF") has administered the program under a contract with the PFD Division.[2]

Organizations wanting to participate in the PCG program must submit an application form, along with a fee and supporting documents showing compliance with various statutory eligibility requirements. Alaska Statute 43.23.130(d)(1) unequivocally requires *the form* to be filed by March 31 of the dividend year. AS 43.23.130(d)(4) provides that the applicant, unless exempted by federal law, must also show that it has:

> a current Internal Revenue Service Form 990 on file with the United States Department of the Treasury, Internal Revenue Service, or, if the Internal Revenue Service has granted a filing extension for the current year, has on file that form for the immediately preceding year; . . . .

It does not specify how or exactly when this demonstration must be provided. One could interpret it to be a requirement for the demonstration to occur at the time of application, *i.e,,* before March 31, or one could interpret it to allow the Form 990 demonstration to occur at some later point prior to consideration of the application.

The Department of Revenue has adopted a regulation at 15 AAC 23.310 that also touches on administration of the PCG program. Among the requirements imposed by this regulation is the following:

> [T]he department will consider an educational organization, community foundation, or charitable organization to have filed an application only if that application is complete and timely. For the purposes of this subsection, an application is
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> > (1) timely if it is postmarked on or before March 31 of the qualifying year; and
> >
> > (2) complete if . . . it contains all the information required for the department to make the determinations required by AS 43.23.130(d)(2) - (9), including copies of documents necessary to determine eligibility.[3]

The regulation does not say unequivocally that an application must be complete as of March 31. It just says that the application, to be eligible for consideration, must be filed timely, and must be complete.[4]

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1 AS 43.23.130 is the authorizing statue for this program.
2 Testimony of Jessica Lavoie.
3 15 AAC 23.310(c).
4 Because AS 43.23.130(i) flatly prohibited the Department from adopting regulations to "interpret" or "make specific" the requirements of AS 43.23.130 *unless* required to do so "by the federal government"—and because federal law and guidance certainly do not tell the PFD Division how to administer its deadline—this

Since approximately 2018 (up to and including the 2024 application period), ACF—by explicit policy direction from former PFD Division Director Anne Weske—permitted applicants who file their application forms by March 31 to complete the submission of supporting materials through the first week of April.[5] This is a longstanding, consistent, and relatively high-level departmental interpretation of 43.23.130(d). On the other hand, the limited grace period is in some tension with prior appeal decisions adopted by the Commissioner's Office, notably *In re Hospice of Homer*,[6] a 2015 case involving an application that was filed timely on line but for which all of the supporting documents were submitted a day late. That decision applied the March 31 date as an absolute cutoff for all materials. But, significantly, it suggested the outcome might have been different had Hospice of Homer been able to back up its statement that the Division "allowed" applicants to send a "'missing' document . . . after the deadline."[7]

III. Facts

Access Alaska is an Anchorage-based charitable organization providing services to senior and disabled Alaskans. It has total revenues of about $7 million per year.[8] In the past, it has taken in about $5,000 per year through the PCG program.[9]

On March 27, 2024, Access Alaska submitted an electronic PCG application for the 2025 dividend year.[10] The organization's 2021 Form 990 was uploaded with the application, along with an extension form—with 2023 due dates—for its 2022 Form 990.[11] The parties agree that these were not current documents. This occurred because Access Alaska's accountants were behind and could not supply current documents.[12]

On March 27, 2024—the same day the application was submitted—PCG Program Manager Jessica Lavoie[13] emailed Access Alaska requesting current Form 990 documents

regulation has to be construed and applied with caution. It may be construed to *reflect* the requirements of the statute, but cannot be interpreted to refine, alter, add specificity to, or augment them.

5 Testimony of Jessica Lavoie.

6 OAH Case No. 15-0962-PFC (publication pending).

7 *Id.* at 4.

8 Ex. 2, p. 10.

9 Testimony of Steve Garritson.

10 Ex. 2.

11 Ex. 2, pp. 9, 54-55.

12 Testimony of Steve Garritson and Linda Soriano.

13 Ms. Lavoie works for the Alaska Community Foundation, which administers the PCG application process under contract to, and under the direction of, the PFD Division.

by midnight on March 31.[14] Another reminder was sent two days later.[15] On the afternoon of March 31, Access Alaska's grant writer emailed:

> Access Alaska is transitioning from one accounting firm to another, and we have not been able to obtain a copy of the FY24 from either company. Is there anything else I can do to ensure that we qualify?[16]

Ms. Lavoie responded on April 2, 2024:

> If you cannot provide the extension that is dated 2024, you may be ineligible this next year. When we send out determination letters in May, for those who don't initially qualify, next steps about an appeals process directly with the PFD Division and state of Alaska will also be included.
>
> Sorry for the bummer news.[17]

On May 14, 2024, the PCG Program denied Access Alaska's application based on the Form 990 deficiency.[18] On July 5 or 9, 2024, Access Alaska provided a Form 990 extension approval indicating that the organization's 2023 Form 990 would have been due May 15, 2024.[19]

The 2024 Access Alaska Form 990 was submitted to the IRS on June 5, 2024.[20] Thus, between May 15 and June 5, 2024, Access Alaska not only had not submitted its supporting documentation but also had a real-world deficiency in its financial circumstances, in that it had neither has current Form 990 on file with the IRS nor an operative extension for the current form.

IV. Discussion

Under AS 43.23.130(d), "the department may include . . . [a] charitable organization on the contribution list only if the organization" meets a list of nine requirements. The fourth of these is the one relating to "a current Internal Revenue Service Form 990 on file with the United States Department of the Treasury."[21] Access Alaska undisputedly did not have a current Form 990 on file. This leads us to the single exception to that requirement: an applicant need not show a current form on file "if the Internal Revenue Service has

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14 Ex. 3, p. 3.
15 Ex. 3, p. 6.
16 Ex. 3, p. 7.
17 Ex. 3, pp. 10-11.
18 Ex. 3, p. 1.
19 Ex. 1, pp. 2, 4, 6.
20 Testimony of Steve Garritson.
21 AS 43.23.130(d)(4).

granted a filing extension for the current year" and the applicant "has on file that form [990] for the immediately preceding year."[22]

For an applicant that is (like Access Alaska) on a July 1-June 30 fiscal year, in the context of an application due in the first months of 2024, the "current" Form 990 would be the one due for the year ending June 30, 2023.[23] Access Alaska needed to show that it had been granted an extension for that form. This is the necessary gateway document for the exception to apply.

The "immediately preceding year" would be the year ending June 30, 2022. To qualify for the exception, Access Alaska had to also show that it has the Form 990 for the year ending June 30, 2022 "on file" with the IRS. It did this with its original application.[24]

The problem in this case is that Access Alaska did not submit the gateway document—the one entitling it to support its application with the 2022 Form 990 instead of the 2023 one—until July 2024.[25] Could the document be accepted that late?

If the gateway document had been available and could have been submitted soon after the March 31 deadline, this might present a difficult issue. This is because, notwithstanding earlier commissioner guidance to the contrary, the Division has been applying a policy of accepting some marginally late materials, but has not been disclosing the parameters of that policy to applicants.[26]

In this case, however, Access Alaska knew the Division evaluates and acts on applications in May, but did not obtain and submit the document until July.[27] There is no evidence that the Division has ever interpreted the submission deadline to allow submissions, not merely after the due date, but after the time when applications are evaluated and acted upon. Under these circumstances, the prior commissioner decisions disallowing late materials remain binding precedent.

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22 *Id*.

23 *See* Ex. 4.

24 Ex. 2, pp. 10-53.

25 Ex. 1, pp. 2 and 4-6.

26 The issues this raises are explored in a proposed decision in OAH Case No. OAH No. 24-0427-PFC, which likely will be before the Commissioner of Revenue in August of 2024.

27 Ex. 1, pp. 2 and 4-6.

V. Conclusion

Given the undisputed failure of Access Alaska to provide a key supporting document required for its “Pick.Click.Give” application prior the application deadline or prior to consideration of its application, the Division’s decision to deny the organization’s application must be AFFIRMED.

Dated: August 13, 2024

SIGNED
Christopher Kennedy
Administrative Law Judge - Tax

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 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 20th day of August, 2024.

By: <u>SIGNED</u>
Signature
<u>Adam Crum</u>
Name
<u>Commissioner of Revenue</u>
Title