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

In the Matter of	)	
	)	
ALZHEIMER'S DISEASE RESOURCE AGENCY OF ALASKA, INC.	)	OAH No. 24-0490-PFC
	)	
	)	

DECISION

I. Introduction

The Alzheimer's Disease Resource Agency of Alaska, Inc. ("ADRA"), 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.[1] In doing so, ADRA failed to provide a copy of an Internal Revenue Service ("IRS") filing that is statutorily required of all PCG applicants. This omission was attributable to ADRA's failure to file any tax forms with the IRS during 2023, which meant the organization had nothing it could submit to the Department of Revenue's Permanent Fund Division (the "Division") before the application deadline passed. The Division later denied ADRA's application on this basis. After being notified of this denial, ADRA asked the Division to consider documents it had filed with the IRS roughly three weeks after the application deadline had passed. The Division refused to do so, and this administrative appeal followed.

While acknowledging its failure to timely submit the IRS filing at issue here, ADRA claims that, under the legal doctrine of substantial compliance, the Division was obligated to accept and consider the tax documents that it filed with the IRS after the application deadline passed. ADRA also argues that an informal policy where the Division has allowed some PCG applicants to submit tax documents up to a week after the application deadline should be extended to allow it to submit these documents up to 30 days late.

As explained below, the substantial compliance doctrine cannot be applied to these facts. Even if it could, the amount of leniency sought by ADRA exceeds the limited amount of leeway the doctrine allows. Accordingly, the Division's denial of ADRA's application is AFFIRMED.

[1] ADRA operates its programs under the common name of "Alzheimer's Resource of Alaska."

II. Legal Background

The PCG program was created by the Alaska Legislature in 2008 to provide a means by which Alaskans could donate a portion of their annual dividends to eligible educational and charitable organizations.[2] The program has proven to be a great success, and in 2023 over $3.2 million was donated to various charitable organizations by PFD recipients.[3] For the past several years the Alaska Community Foundation ("ACF") has administered the program under a contract with the Division.[4]

Organizations wanting to participate in the PCG program must submit a completed application form to the Division, along with a filing fee and supporting documents showing compliance with statutory eligibility requirements. One of the most important documents applicants must provide is a current Form 990 on file with the IRS.[5] The Form 990 – which has the official title of "Return of Organization Exempt from Tax" – must be filed annually by charitable organizations. The information organizations provide in this form is used by the IRS to verify their ongoing compliance with the rules governing tax-exempt charitable organizations under §501(c)(3) of the Internal Revenue Code. In situations where a PCG applicant has obtained an extension of time from the IRS for filing its Form 990, it must provide "a copy of the request for an extension and a copy of the Internal Revenue Service Form 990 for the next most recently completed fiscal year."[6]

Alaska Statute 43.23.130(d)(1) sets an application deadline of March 31 of the year proceeding the dividend year for which donations will be sought,[7] with the application period opening on February 1.[8] Nothing in the statutory language suggests any discretion on the Division's part to waive or extend this deadline on account of an applicant's hardship or excusable neglect.

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2 AS 43.23.130.

3 Information regarding the program is accessible at: https://www.pickclickgive.org/about-pick-click-give/#:~:text=Give.--Pick.,eligible%20charitable%20and%20educational%20organizations.

4 Pete Scott testimony.

5 AS 43.23.130(d)(4).

6 15 AAC 23.310(e).

7 AS 43.23.130(d)(1). This lead time allows the Division to finalize the list of participating charitable organizations finalized before the PFD application period opens on January 1 of the following year.

8 *See* https://www.pickclickgive.org/nonprofit-central/.

III. Facts

ADRA is a charitable organization with offices in Anchorage, Palmer, and Fairbanks that has provided support and services to elderly Alaskans facing the challenges of dementia since its founding in 1984.[9] In 2022 the organization's total revenues were approximately $3.2 million.[10] Since ADRA utilizes a fiscal year that ends on June 30, under IRS requirements it must file its Form 990 – or alternatively, request an extension of time for filing that form – by November 15.[11] It appears ADRA has participated in the PCG program most years since the program's inception.[12]

The chain of events leading to this appeal began in 2023 when ADRA's executive director, chief financial officer, and multiple staff members left the organization in the span of just a few months. During the turbulent transition that followed, ADRA's new management team failed to recognize that the organization had not filed its 2022 Form 990 (covering operations between July 1. 2022 and June 30, 2023) or submitted a request to the IRS for an extension of time to file that form.[13]

Due in large measure to this organizational turbulence, ADRA's management team failed to recognize the need to file a PCG application until the last few days of March 2024. ADRA employee April Gunther was assigned this task, and she submitted an online PCG application on ADRA's behalf on Friday, March 29.[14] With this application Ms. Gunther provided a copy of the ADRA's 2021 Form 990.[15]

Several hours after Ms. Gunther submitted this application, she received an email from ACF employee Jessie Lavoie which advised as follows:

> Thank you for submitting your 2025 PCG Eligibility Application. Upon review, we noticed that you submitted a 2021 IRS Form 990 with no extension. If your 2021 990 is the latest you have, an IRS extension is required.[16]

Ms. Gunther responded to this message with an email sent at 6:18 p.m. on March 29 in which she explained that ADRA's former chief financial officer had failed to file the

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9 ADRA Hearing Brief at p. 1.
10 Exhibit 2 at p. 9.
11 *See* https://www.irs.gov/charities-non-profits/return-due-dates-for-exempt-organizations-annual-return.
12 Ms. Gunther testimony.
13 Ms. Gunther testimony.
14 Ms. Gunther testimony.
15 Exhibit 3 at pp. 10 – 21.
16 Exhibit 5 at p. 3.

organization's 2022 Form 990.[17] After offering assurances that ADRA was working to resolve the issue, Ms. Gunther asked Ms. Lavoie to "call me as soon as possible to see what we can do."

Ms. Lavoie replied to this message with an email sent the next day in which she explained that "it's all law[,] it's clear that you will need an extension or updated 990." She ended her message with the comment, "I'm sorry, our hands are tied here as we cannot deviate from the state statute."[18]

Ms. Gunther replied to this message through an email sent the morning of April 1, in which she advised:

> I understand and appreciate your explanation. Fortunately, we did find an extension and I uploaded that to our application yesterday. Yay![19]

Unfortunately, however, what Ms. Gunther actually submitted was the first page of a request ADRA had filed with the IRS to extend the filing deadline for its 2021 Form 990.[20] The second page of this form – which would have disclosed the date it was actually filed with the IRS, and the identity of the person who submitted it – was apparently not found in ADRA's files.[21] As indicated by the email correspondence, Ms. Gunther did not realize that she had provided the Division with an out-of-date extension request.

In the following weeks ADRA worked with an Anchorage accounting firm to prepare its overdue 2022 Form 990, which was filed with the IRS on April 23, 2024.[22] There is no indication that Ms. Gunther, or anyone else employed by ADRA, saw any need to provide the Division with a copy of this IRS filing. This makes sense given Ms. Gunther's belief that she had already provided everything needed for approval of the ADRA's PCG application.

On May 14, 2024, ADRA received notice that its application to participate in the PCG program had been denied due to its failure to submit a current Form 990, or proof that it had filed an extension request with the IRS.[23] After receiving this notification ADRA

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17 Exhibit 5 at p. 2. As Ms. Gunther testified during the hearing, prior to this point ADRA's new management team was unaware that the prior CFO had not filed the organization's 2022 Form 990 or an extension request.

18 Exhibit 5 at p. 1.

19 *Id.*

20 Exhibit 1 at p. 16.

21 The full two-page form can be downloaded at https://www.irs.gov/pub/irs-pdf/f8868.pdf.

22 Exhibit 2 at p. 3.

23 Exhibit 4 at p. 12.

attempted to submit a copy of its recently filed 2022 Form 990. This was refused by the Division on the grounds that the organization's only recourse was to file an appeal,[24] which ADRA subsequently submitted on July 29, 2024.[25]

The hearing in this matter was held on August 19, 2024, with closing comments from the parties taken on August 28. PFD Specialist Pete Scott appeared for the Division and offered sworn testimony regarding the Division's processing of the ADRA's application. ADRA, which was represented by attorney Anna Cometa, offered the testimony of Ms. Gunther. Seven exhibits were offered by the parties and admitted into evidence.

IV. Related Developments in Recently Decided PCG Program Appeals

Prior to the hearing in this matter, hearings were held by the Office of Administrative Hearings in two other appeals filed in 2024 by organizations challenging denials of their PCG applications: *In re Perseverance Theatre,*[26] and *In re Access Alaska Inc.*[27] In both those matters the Division called Ms. Lavoie as a witness. During her testimony she advised that the Division had informally adopted a policy of accepting application fees and supporting documents from some PCG applicants for approximately one week after the March 31 deadline.[28]

Based on the existence of this policy, in *Perseverance Theatre* the Commissioner for the Department of Revenue (the "Commissioner") overturned the Division's decision to reject an otherwise fully compliant application because the filing fee was paid through a check received three weeks after the deadline. This ruling hinged on the factual finding that, if the applicant had been notified of the informal seven-day grace period, it would have likely found some alternate means for paying the fee within that timeframe.[29]

In *Access Alaska*, the Commissioner affirmed the Division's denial of a PCG application due to the applicant lacking a current Form 990. While the applicant later filed a Form 990 with the IRS that it provided to the Division in July 2024, this was deemed insufficient since "[t]here is no evidence that the Division has ever interpreted the

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24 Ms. Gunther testimony.
25 Exhibit 1 at p. 1.
26 OAH No. 24-0427-PFC (Comm. of Revenue 2024).
27 OAH No. 24-0431-PFC (Comm. of Revenue 2024).
28 *Perseverance Theatre* at p. 3; *Access Alaska* at p. 3 (noting that this weeklong grace period has been "a longstanding, consistent interpretation of AS 43.23.130(d)" by the Division).
29 *Perseverance Theatre* at p. 8.

submission deadline to allow submissions, not merely after the due date, but after the time when applications are evaluated and acted upon."[30]

While no direct evidence of this informal policy was introduced here, the Division's acknowledgement of it in two related cases requires that it be considered here as well.[31]

V. Discussion

A. ADRA is not entitled to relief under the doctrine of substantial compliance.

ADRA acknowledges that nothing in AS 43.23.130 directly authorizes the Division to consider materials submitted by PCG applicants after the March 31 application deadline. Despite this, however, ADRA argues that the Division should accept tax documents submitted up to 30 days after the deadline under the doctrine of substantial compliance as set out in *North Slope Borough v. State*.[32] There, the Alaska Supreme Court noted that the doctrine's purpose is to "carry out legislative intent and give meaning to all parts of a statute without producing harsh and unrealistic results."[33] The doctrine is to be applied in situations where a party's conduct falls short of strict compliance with statutory requirements, but nevertheless "affords the public the same protections that strict compliance would offer."[34]

Application of this doctrine requires analysis of AS 43.23.130, and the purposes the legislature was attempting to serve with the PCG eligibility criteria set out in subparagraphs (d)(1) – (d)(9) of the statute. The plain language of the statute makes it clear that the legislature wanted participation in the PCG program limited to § 501(c)(3) charitable organizations who had a current Form 990 (or a prior year's Form 990 accompanied by proof of an extension) demonstrating their ongoing compliance with IRS requirements.[35] As reflected in the statute's legislative history, these requirements were adopted to (1) spare the Division the time-consuming task of independently verifying an organization's charitable status; (2) ensure that organizations using donor funds for private or political purposes were ineligible to participate in the program; and (3) create a system where PFD

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30 *Access Alaska* at p. 5.

31 Notably, by the date of the hearing in this matter Ms. Lavoie was no longer employed by ACF and was thus unavailable to testify.

32 484 P.3d 106, 118 (Alaska 2021).

33 *Id.* (internal quotes omitted).

34 *Id.,* quoting *Jones v. Short*, 696 P.2d 665, 667 n.10 (Alaska 1985)

35 AS 43.23.130(d)(2)-(4).

recipients could be confident that any donations they made would be tax deductible.[36] By additionally requiring applicants to provide a current Form 990, the legislature wanted to relieve the Division of the burden of independently verifying that an applicant remained in good standing with the IRS with respect to its § 503(c)(3) status.[37]

This analysis demonstrates that the legislature did not want charitable organizations who were out of compliance with IRS requirements to participate in the PCG program. Requiring applicants to provide current tax filings is more than just a simple procedural hurdle; it is rather a key substantive requirement that directly serves the legitimate objective of screening out applicants who are unable to maintain ongoing compliance with the IRS rules governing § 503(c)(3) organizations.

The facts show that ADRA was unable to provide the required IRS filings by the March 31 deadline for the simple reason that those documents did not exist. This is not a situation where ADRA had current documents that it failed to provide due to clerical oversight or other inadvertence. Instead, the ultimate problem here was a breakdown of organizational management and governance that went unrecognized until Ms. Gunther began working on the organization's PCG application.

The question of whether the doctrine of substantial compliance can be asserted under these facts is largely answered by the holding of *Jones v. Short*.[38] There, a construction contractor argued that its efforts to pursue a lawsuit for unpaid compensation from a landowner should not be barred by the terms of Alaska's contractor registration statutes. These statutes provide that a construction contractor cannot conduct business in the state – or pursue legal claims for compensation – unless it provides proof of being properly bonded and insured as part of a mandatory registration process.[39] While the contractor in *Jones* had paid all required fees and was properly bonded and insured, the renewal of its contractor registration was not completed due to a clerical oversight on the part of its insurer. The Alaska Supreme Court held that this oversight was excusable under the substantial compliance doctrine, noting that:

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36 Hearing on HB 166, House State Affairs Committee (March 20, 2007) (testimony of Rasmuson Foundation President Diane Kaplan).

37 Hearing on HB 166, House State Affairs Committee (March 22, 2007) (comments on behalf of bill sponsor).

38 696 P.2d at 668.

39 *See* AS 08.18.011 and .151.

> When a bonded, insured and registered contractor does business under an unregistered name, later action on the contract is not barred . . . . However, a contractor who is not registered, insured or bonded is denied access to the courts under the same section.[40]

Working from this proposition, the Court went on to hold that since the people the contractor dealt with had been protected by valid bonding and insurance policies, the substantial compliance doctrine could be applied as the "legislative intent is effectuated."[41]

In the case cited by ADRA – *North Slope Borough v. State* – similar logic was utilized in rejecting a municipality's argument that it had substantially complied with the requirements of a school bond reimbursement program. As the Court noted:

> Substantial compliance by its terms *assumes that the party asserting its application must have largely satisfied relevant requirements*. Where, as here, the party asserts a position that is actually contrary to the stated requirements and would undermine the legislature's intent in passing the law, the doctrine of substantial compliance does not apply.[42]

Here, ADRA effectively argues that charitable organizations that have failed to file the IRS documents required to maintain their tax-exempt status should be granted an extra 30 days after March 31 to get their proverbial house in order. The problem with this proposed approach, however, is that it would undermine the legislature's objective of limiting participation in the PCG program to charitable organizations who are fully compliant with applicable IRS requirements as of the application deadline. Accordingly, ADRA's argument that it substantially complied with the requirements of AS 43.23.130(d) must be rejected.[43]

B. ADRA would not be entitled to relief even if the substantial compliance doctrine was applicable here.

Even if the doctrine of substantial compliance could be applied to allow PCG applicants an extra 30 days after the application deadline to submit overdue tax filings to the IRS – and thereafter provide copies to the Division – this would still not help ADRA here. This is because there is no evidence of ADRA attempting to provide the Division with a copy of its 2022 Form 990 during this supposed 30-day window. The reason for this can be

40 *Jones*, 696 P.2d at 667 (cites omitted).
41 *Id.* at 668.
42 484 P.3d at 120 (emphasis added).
43 It should also be noted that if ADRA had not waited until the end of March to file its PCG application, it may well have had time to correct deficiencies with its tax filings before the application deadline passed.

readily inferred from the email Ms. Gunther wrote on April 1, 2024, in which she advised Ms. Lavoie that "we did find an extension and I uploaded that to our application yesterday." Based on this mistaken belief that everything required for approval of ADRA's application had been timely provided, there is no indication that Ms. Gunther (or anyone else associated with ADRA) saw need to provide additional documents to the Division. While ADRA clearly tried to provide the Division with a copy of its 2022 Form 990 *after* being notified that its application had been denied, this occurred approximately six weeks after the statutory deadline had passed. Thus, even if ADRA was entitled to an extra 30 days to provide the Division with documents required by AS 43.23.130(d), it would have missed this secondary deadline as well.

Nor does the Division's unofficial policy of accepting application fees and tax documents for roughly a week after the March 31 deadline alter the outcome here. Even if ADRA had recognized that the tax documents it provided to the Division were insufficient, it would have been impossible for ADRA to submit its 2022 Form 990 during that grace period since that document was not filed with the IRS until April 23, 2024. This stands in sharp contrast to the facts referenced in the *Perseverance Theatre* decision, where it was determined that the applicant would have likely paid its application fee during that one-week period had it been aware of the Division's informal policy.

The facts here are instead more aligned with those in the *Access Alaska* decision, which held that there is nothing to indicate "that the Division has ever interpreted the submission deadline to allow submissions, not merely after the due date, but after the time applications evaluated and acted upon."[44] Notably, the applicant in that matter also failed to provide the Division with a current Form 990 because it had neglected to file one with the IRS before the application deadline passed.

In the same manner as the applicant in the *Access Alaska* decision, what ADRA seeks is the opportunity to correct deficiencies in its PCG application *after* the Division has evaluated and denied it. ADRA does not point to any facts or offer any legal authority supporting entitlement to such expansive relief. Therefore, the Division correctly based its decision on the information and materials ADRA submitted prior to passage of the

[44] Decision at p. 5.

application deadline. And, as ADRA itself acknowledges, the materials it provided fall short of the requirements set by the legislature in AS 43.23.120(d).

VI. Conclusion

Given ADRA's undisputed failure to timely provide the IRS filings required by AS 43.23.130(d) in support of its PCG application, and the absence of circumstances that might entitle it to relief under the substantial compliance doctrine, the Division's decision to deny the organization's application is AFFIRMED.

Dated: September 13, 2024

SIGNED
Max Garner
Administrative Law Judge

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 02 day of October, 2024.

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

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