



ORDER NUMBER R 11-02

August 26, 2011

ORDER REFUSING DEMAND FOR HEARING

Background:

On August 17, 2011, the division received a letter dated August 16, 2011 from Philip H. Mink, Compliance Officer of The Insurance Center. The letter was addressed to Barbara Karl, Paralegal with the Division of Insurance, Department of Commerce, Community, and Economic Development, State of Alaska, with a copy to Linda S. Hall, Director of the Division of Insurance. In his letter Mr. Mink made written demand for a hearing to the director "concerning Alaska Regulation # AAC 21.560" regarding first quarter 2011 late payment for license #7770.

The Director of the Division of Insurance finds:

1. On March 8, 2005, the division notified Mr. Mink that payment of the annual 2004 premium taxes for The Insurance Center were received on March 2, 2005, one day later than required under 3 AAC 21.550 and, as a result, a late payment fee of \$975 was required to be paid. 3 AAC 21.570 requires these payments to be made by using the automated clearinghouse debit or credit system (ACH.) These requirements have been effect since 1998. The division's web page has the ACH booklet, which states several times that a payment must be initiated no later than 5:00 pm Eastern Standard Time on the last business day prior to the due date of the payment. After communications between Mr. Mink and the division regarding the payment requirements, Mr. Mink paid the required late payment fee under protest. Notably, although he paid under protest, Mr. Mink never pursued any remedy.
2. On June 3, 2011, the division notified Mr. Mink that the first quarter 2011 estimated premium tax for The Insurance Center was received on June 1, 2011, one day later than required under 3 AAC 21.560 and, as a result, a late payment fee of \$177.44 was required to be paid. 3 AAC 21.570 requires these payments to be made by using the automated clearinghouse debit or credit system (ACH.) The ACH instruction booklet is downloadable from division's web page. The booklet states several times that a payment must be initiated no later than 4:00 pm Eastern Standard Time on the last business day prior to the due date of the payment. Further, a statement regarding penalties for late payment is located on the division's web page.
3. Mr. Mink replied to the division by letter on June 9, 2011 asserting an apparent inconsistency in the division's regulations. He also provide a copy of the ACH payment receipt that states: "Your Quarterly Estimated Premium Tax payment in the amount of \$2,124.05 will be processed: 6/1/2011" The division replied by letter on June 15, 2011, which quoted the statement that appears on the first screen of the ACH payment system:

IMPORTANT:

An ACH debit transaction must be initiated no later than 4:00 pm Eastern Standard Time on the last business day prior to the due date of the payment in order for the payment to be received in the State of Alaska's bank account by the due date. A transaction can be initiated up to 30 days in advance of the effective date. The payment will be rejected by the receiving bank if the submission contains inaccurate information and the payer will be subject to a penalty if the subsequent payment is received after the due date.

4. Mr. Mink again wrote on June 21, 2011 questioning the ACH processing of payments and suggesting that the director needed to decide "on what day payment is due (regulation or some processing date not in the regulation)."

5. By letter dated August 12, 2011, the division stated its unwillingness to waive the late payment penalty and referred Mr. Mink to AS 21.06.170 – 21.06.230 should he wish to contest the division's decision.

6. On August 17, 2011, the division received Mr. Mink's demand for a hearing as referenced above in the background section of this order.

7. Mr. Mink's history of making payments late through the ACH system and communications with the division is proof that he is or should be aware of the requirements for making payments timely.


8. This order is issued pursuant to AS 21.06.180(c), which provides for the director to either grant or refuse a demand for hearing.

The Director of Insurance Hereby Orders:

Under AS 21.06.180(c), the written demand for hearing by Philip H. Mink, Compliance Officer of The Insurance Center, dated August 16, 2011 is hereby refused. The late payment fee of \$177.44 referenced in paragraph 2 above is still due to the division.

Pursuant to AS 21.06.230 and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

This order is effective August 26, 2011.


Linda S. Hall
Director of Insurance