

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

IN THE MATTER OF

C.B.

Case No. OAH 05-0170-PFD

1998 - 2004 Permanent Fund Dividends

**DECISION & ORDER**

**I. Introduction**

C.B. timely applied for permanent fund dividends in the years from 1998 through 2004. The Permanent Fund Dividend Division initially granted all but the 2004 applications. The division later determined that Ms. B. was not eligible for any of the years in question, and it denied the applications and assessed the 1998 through 2003 dividends. Ms. B. requested an informal hearing, and the division affirmed its decision. Ms. B. then requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on April 5, 2005. Ms. B. appeared by telephone. Thomas Cote represented the PFD Division by telephone. The administrative law judge finds that Ms. B. is eligible for 1998 through 2004 permanent fund dividends.

**II. Facts**

Upon consideration of the entire written record and the content, tone and demeanor of the applicant's testimony, I find the following facts to be true.

Ms. B. came to Alaska in 1990 and worked aboard an Icicle Seafoods ship out of Dutch Harbor. In 1996 she moved to a land-based job for Icicle in Petersburg. Since coming to Alaska, Ms. B. has lived in housing provided by Icicle. It is unknown what Ms. B.'s intent was when she first arrived in Alaska, but before long she had developed the requisite intent to remain in Alaska indefinitely and make her home in this state. The entire time Ms. B. has been in Alaska, she has traveled back to Minnesota for Memorial Day and the winter holidays. Ms. B.'s cumulative time out of Alaska has ranged from thirty to sixty days per year. In Minnesota, Ms. B. visits her mother, who is now 93, and other relatives. Ms. B.'s son and daughter-in-law live in Anchorage, and when she has finished her career with Icicle Ms. B. plans to move to Anchorage.

When she applied for her first dividend in 1991, Ms. B. disclosed that she owned real estate in another state. In response to directions to "list the type of property and the state(s) where it is located," Ms. B. wrote, "Lake Shore, Minnesota." When Ms. B. bought this property in 1988, it was an unimproved lakefront lot. Ms. B. financed the purchase through a bank, and the bank paid taxes on the land out of an escrow account funded by Ms. B.'s monthly payments.

The parcel of land in question is located close to Ms. B.'s mother's house in Otter Tail County, Minnesota. When she first bought the land, Ms. B. and her relatives would gather on the land and pitch tents by the lake. As Ms. B.'s mother aged and suffered declines in her health, the family decided it was necessary for one of the relatives to be close by. At this point Ms. B. had become established in Alaska and was employed full-time. Her sister, on the other hand, was retired and living in Minnesota. It was agreed that Ms. B.'s sister would move a single-wide mobile home onto the property and live there, where she could be available to assist the mother.

When Ms. B. paid off the loan on the property, the responsibility for paying the property taxes fell directly on her for the first time. Ms. B. began receiving an annual notice or bill of some kind from the assessor's office. The evidence suggests that to this day Ms. B. is not entirely clear precisely what kind of notices these were, but she has received them each year, and made it her custom to pay the taxes while visiting her mother each January. When paying her taxes, Ms. B. has consistently disclosed that she lives in Alaska year-round, that she does not own any other real estate, and that she does not pay resident income tax in the State of Minnesota. Over the years, Ms. B. has gone to the Otter Tail County courthouse in Fergus Falls four times and to the Otter Tail County Records Department twice to repeat this process. Each time she paid the amount of tax the assessor's office instructed her to. The assessor's records show that Ms. B. has received a homestead exemption for the property since 1990.

In July 2004 the Otter Tail County Assessor, apparently acting on an anonymous tip, became suspicious that Ms. B. may have been claiming residency in Petersburg. The assessor sent Ms. B. the "Homestead Application" form that is usually only used when a Minnesota resident first purchases property. Ms. B. signed and returned the form on July 1, 2004. The form stated,

Property purchased for occupancy as a homestead is eligible for a full homestead if owned and occupied by January 2. Property purchased and used for homestead purposes after January 2 but by December 1 may be eligible for a mid-year homestead. Upon application,

the Assessor will determine if this property is eligible for homestead classification. The information you provide on this application will be verified. If you are married, you must include your spouse's name and social security number. THIS FORM MUST BE COMPLETED AND RETURNED TO THE COUNTY ASSESSOR'S OFFICE NO LATER THAN DECEMBER 15 TO QUALIFY FOR CURRENT YEAR HOMESTEAD CLASSIFICATION.

Owner's Name: C.B.

I/We do hereby declare under the penalties of perjury that I/We am/are the owner(s) of the property located at: Rush Lake Township Section 5 and that I/We maintain this property as my/our only homestead, receive no homestead benefits anywhere else in the United States, keep the majority of my/our personal effects at this residence and this is my/our primary place of residence.

Ms. B. signed the form, entered the property address as her mailing address, and returned it to the assessor.

After receiving the form back, the assessor continued to be suspicious. To determine whether Ms. B. was claiming residency in Petersburg, the assessor for unknown reasons contacted the City and Borough of Juneau, who referred him to a PFD fraud investigator. Based on the information the assessor provided, the PFD Division denied the dividends that are the subject of this case on September 16, 2004. Sometime after the division sent Ms. B. the denial letters that initiated this case but before the end of 2004, Ms. B. either withdrew the 2004 homestead application or the Otter Tail County assessor denied it. Ms. B. paid the full amount of tax on the property in 2004 without the exemption, and the exemption has been removed for 2005.

### **III. Discussion**

A person is not eligible for a permanent fund dividend if the person has claimed or maintained a claim of a homestead property tax exemption in another state.<sup>1</sup> If a PFD has been paid in error, the division may recover the dividend if notice that the dividend was improperly paid is sent to the applicant within three years after the payment is sent.<sup>2</sup> If the applicant has exercised gross negligence or recklessly disregarded a material fact in connection with a false statement made in an application, the division must notify the applicant that payment was improper within six years after payment of the dividend.<sup>3</sup>

<sup>1</sup> 15 A A C 23.143(d)(6).

<sup>2</sup> AS 43.23.035(b)(1).

<sup>3</sup> AS 43.23.035(b)(2).

### **1998 - 2000 Dividends:**

The division asserts that Ms. B. "willfully misrepresented material facts regarding her eligibility to receive the 1998 through 2004 dividends by failing to disclose to the Division that she was maintaining a claim of homestead property tax exemption in Minnesota." But the division never asked Ms. B. if she had maintained a claim of a homestead property tax exemption. The closest it ever came to asking this question was back in 1991, when the division asked if Ms. B. owned real property in another state. Ms. B. answered in the affirmative, and fully disclosed everything that was asked about the Minnesota lot. She provided enough information for the division to discover the homestead exemption by very simple investigation. It cannot be said that Ms. B. failed " to disclose that she had claimed a homestead exemption in another state when she had no reason to think the division might be interested in this information.

Ms. B. is not a particularly unsophisticated person, but there does appear to be some truth to her claim that her understanding of what a "homestead" is has been limited to what she learned from reading western novels. Not every member of the public is fully aware of the term's meaning in the contexts of bankruptcy, probate, debtor/creditor, and tax law. It is probable that if the division had asked whether she claimed a homestead tax exemption on the Minnesota property, Ms. B. would have answered truthfully to the best of her ability, without realizing that the answer could directly affect her PFD eligibility. I find credible Ms. B.'s testimony that she told the assessor's office more than once that she lived in Alaska and did not pay resident income tax in Minnesota. Ms. B. recounted the kinds of questions the assessor's office asked her, which seemed to focus on whether she owned real estate in Alaska. Based on her truthful statements, it seems that the assessor's office not Ms. B. determined that she qualified for the homestead exemption.

Though she has consistently signed the pre-printed statement on the PFD application forms stating that "I haven't claimed residency in another state," Ms. B. has not "exercised gross negligence or recklessly disregarded a material fact in connection with a false statement made in an application." Even if the facts make Ms. B. ineligible for PFDs for all the years in question, the division may only recover dividends for which it has sent notice of improper payment within three years, which would be the dividends from 2001 forward. The 1998 through 2000 dividends are not at issue in this case.

**2001 - 2003 Dividends:**

The division has provided a copy of the Minnesota statutes applicable to homestead exemptions.<sup>4</sup> The first paragraph of MS 273.124 states as a general rule, "residential real estate that is occupied and used for the purposes of a homestead by its owner, who must be a Minnesota resident, is a residential homestead." The statute grants the assessor the authority to access Minnesota Department of Revenue records that will show whether the owner pays resident income tax, which Ms. B. does not. Subdivision 1(c) of the statute states that

Residential real estate that is occupied and used for purposes of a homestead by a relative of the owner is a homestead but only to the extent of the homestead treatment that would be provided if the related owner occupied the property. For purposes of this paragraph and paragraph (g), "relative" means a...sister....

According to subdivision 7 of the statute, homesteads include "buildings and appurtenances used by the occupant as a permanent residence which are located upon land the title to which is vested in a person or entity other than the occupant...."

The word "homestead" is not defined as it is used in 15 A A C 23.143(d)(6). The absence of a definition within Alaska law does not grant other states the right to define terms for purposes of Alaska cases. The context of the word's use, within a regulation treating Alaska residency, suggests the intended meaning of "homestead" is a claim of a benefit that is only available to residents of the other state in which the property is located, a claim that would be inconsistent with Alaska residency. If an Alaskan resident is entitled to claim an exemption because the Alaskan's relative or spouse lives on the property, the homestead claim is made on behalf of the person actually living on the property. In this case, the Alaskan resident has not violated the rule of 15 A A C 23.143(d)(6) by personally claiming a homestead in another state. The division points out that the assessor's web page clearly states that a person must be a Minnesota resident to claim a homestead exemption. The division overlooks the fact that the page continues to say that "relatives of the property owner can also receive a homestead under current law."<sup>5</sup>

Ms. B. did not present an argument that the homestead exemption on her property had been claimed on behalf of her sister, and it does not appear that either she or the division had been aware of this provision in the statute. In her written statements and in her testimony on the record, Ms. B. merely talked about her sister's occupancy of the land as part of her explanation of what the overall facts were surrounding this piece of property. Ms. B. also stated that she

<sup>4</sup> Exhibit 11, pp. 1-23.

<sup>5</sup> Exhibit 13.

conveyed all these same facts to the Otter Tail County assessor. In her formal hearing request, Ms. B. stated that she did not know what a homestead exemption was when she started paying the taxes herself, but she stated that "I truly believe that I did the right thing by going to the Otter Tail Court house and the Department of Records explaining each and every step as I went along, after my loan was paid off at the bank. I didn't try to hide anything...."

Considering Ms. B.'s statements and the explicit advice on the county assessor's website that relatives living on the property can claim a homestead, I find it more likely than not that when she went to the Otter Tail County courthouse to pay her tax, Ms. B. included the information about her sister's occupancy of the land in her discussion with the assessor's office. I find it more likely than not that, after questioning her to see if she had claimed a homestead exemption anywhere else, the assessor's office determined that Ms. B. was entitled to the exemption because her sister was occupying the property, or because her sister owned the building on the property, or for both reasons. Ms. B. may not understand the legalities supporting the assessor's decision, leaving it instead to the assessor's office to make the correct legal determination based on the truthful factual information she provided. But she did not claim to be a Minnesota resident, and she did not receive a homestead exemption on her own behalf. The homestead exemption that Ms. B. and her sister received from 2001 through 2003 does not violate the rule of 15 A A C 23.143(d)(6); Ms. B. is eligible for dividends for these years.

**2004 Dividend:**

The division relies heavily on the homestead application form that Ms. B. signed in June 2004 as evidence of her untruthfulness. Ms. B.'s signed certification that "I/We...keep the majority of my/our personal effects at this residence and this is my/our primary place of residence" is not such a clear statement that it eliminates the possibility of good faith confusion. But the plain language of the form could serve as the basis of a conclusion that Ms. B. has been untruthful. Ms. B.'s testimony suggests that while her intent may have been to properly claim the homestead exemption through her sister, she may have also understood that the information she was certifying on the form was not correct. Ms. B. testified,

Well, I'm not claiming ignorance on the part, but I did, when I got your packet I realized at that point what you were talking about, that sheet of paper that I did sign. And I did sign it, and I was thinking more of, I'm not living there, but, and there wasn't a house there, there is no house there, but my sister has a trailer on that lot, and I just signed it, and that's all I can say.

I find it unnecessary to determine whether Ms. B. signed this form untruthfully. Ms. B. vigorously asserted her honesty and innocence up to the time she received this form in 2004, at which point her testimony became more guarded. Regardless of whether Ms. B. was less than truthful or more careless than she should have been when she signed this form, this would represent a departure from her previous actions. The June 2004 form does not provide a basis to evaluate Ms. B.'s truthfulness before then.

Several other facts regarding this form should be considered. Ms. B. received this form after her 2004 PFD application was complete. This form, therefore, does not affect the 2004 application any more than it would affect the previous applications. Second, even if this form represented complete fraud, it would not show that Ms. B. has "exercised gross negligence or recklessly disregarded a material fact in connection with a false statement made in an application." Ms. B. sent this form to the Otter Tail County assessor, not the division.

Finally, it cannot be overlooked that Ms. B. did not receive a homestead exemption in 2004, and she will not receive one in 2005. It is not clear whether the assessor contacted Ms. B. after learning that she was an Alaska resident, or whether Ms. B. contacted the assessor after receiving a stack of denial letters for seven consecutive years of PFDs in September 2004. Whether Ms. B. withdrew her application or whether she accepted the assessor's determination that she did not qualify for it, the fact is that the matter was corrected and Ms. B. paid the full tax before the end of the 2004 tax year. Under these circumstances, I find that Ms. B. did not claim or maintain a claim of a homestead exemption in 2004. To the extent she did make such a claim, it should be regarded as merely an error that was timely corrected.

#### **IV. Conclusion**

Ms. B. has not claimed or maintained a claim of a homestead property tax exemption in another state on her own behalf. She is an Alaska resident, she has not been unallowably absent, and there are no other impediments to her eligibility for 1998 through 2004 permanent fund dividends.

**V. Order**

IT IS HEREBY ORDERED that Ms. B.'s applications for 1998 through 2004 permanent fund dividends be GRANTED.

DATED this 3rd day of November, 2005.

By: DALE WHITNEY  
Administrative Law Judge

**Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010.1, Dale Whitney, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of C.B. for 1998 through 2004 permanent fund dividends be adopted and entered in her file as the final administrative determination in this appeal.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the date of this decision, pursuant to 15 A A C 05.035(a). The motion must state specific grounds for relief, and, if mailed, should be addressed to: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 3rd day of November, 2005.

By: DALE WHITNEY  
Administrative Law Judge

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

PFD Division  
11/3/05