

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

IN THE MATTER OF

A.C. and his children M. and I.

2004 Permanent Fund Dividend

Case No. O A H 05-0357-PFD

DECISION & ORDER

I. Introduction

A.C. timely applied for 2004 permanent fund dividends for himself and his children M.C. and I.C. ("the children"). The Permanent Fund Dividend Division determined that the applicants are not eligible, and it denied the applications initially and at the informal appeal level. Mr. C. requested a formal hearing by written correspondence. The administrative law judge finds that Mr. C. is eligible for a 2004 dividend, but the children are not.

II. Facts

A.C. drove to Alaska in October 2002 in his family's Toyota 4Runner, carrying a large portion of the family's household belongings. Upon his arrival, Mr. C. immediately went to work at a permanent full-time job, opened a local bank account and obtained an Alaska driver's license. For about six months, Mr. C. stayed with friends in Anchorage. In April of 2003 he rented his own apartment in Anchorage. In October of 2003, Mr. C. and his wife, J.C., bought a house in Anchorage.

When Mr. C. first came to Anchorage, Ms. C. and their two children, M. and I. remained behind in California. Ms. C. continued to work at her job in California, and also worked on selling the family's California mobile home. On December 21, 2002, Ms. C. and the children flew to Anchorage on roundtrip tickets, bringing more of their household belongings. On January 6, 2003, Ms. C. and the children returned to California and continued to reside in their mobile home. In May of 2003 Ms. C. and the children came back to Alaska to stay. On June 23, 2003, Ms. C. went to work at a full-time permanent job in Anchorage.

Mr. and Ms. C. filed a joint resident state income tax return in California for the year 2003. They later attempted to amend the return to reflect nonresident status, but had some difficulty

ascertaining the correct forms to use to do this. They eventually submitted evidence demonstrating that they had completed the correct forms to amend their status to nonresident, and had filed the forms with the California Franchise Tax Board on May 27, 2005.

III. Discussion

In order to qualify for a permanent fund dividend, a person must be an Alaska resident all through the qualifying year.¹ A person becomes an Alaska resident by being physically present in the state with the intent to remain indefinitely and to make a home in the state.² A person is not eligible for a dividend if the person has filed a resident tax return in another state, unless the person files an amended return claiming nonresident status and provides proof that the amended return was actually filed in the other state.³

Although they originally attempted to amend their California tax return using forms that did not clearly show their nonresident status, Mr. and Ms. C. ultimately did file the correct form, which is Form 540NR. Mr. C. submitted a copy of the form and a copy of a return receipt showing that the form had been sent to the Franchise Tax Board in Sacramento by certified mail. In a submission to the record of June 20, 2005, the division argues that Mr. C. has not provided proof that the California Franchise Tax Board accepted the amended return and changed his residency status to that of California non-resident."

There is no requirement that Mr. C. show that the other state has "accepted" his amended return. The applicable regulation, 15 A A C 23.143(d)(5), requires the applicant to provide "proof that the amended return was actually filed in the other state or country." Mr. C. has done this. Besides not being supported by the plain language of the law, the division's interpretation of the regulation sets a bar that may be impossible to meet in many states. If an amended filing does not impose a higher tax burden on the applicant, it is unlikely many states would actually take any action that could be regarded as "acceptance" of the amended return.

More importantly, another state's view of a person's residency is irrelevant to how Alaska applies its own laws. In this case, it does not matter if California considers Mr. C. to be a resident of that state. The issue is what Mr. C. himself has done and claimed. With the exception of an error in his taxes that he has since corrected, Mr. C. has consistently claimed to be an Alaska resident since he arrived in the state in 2002. His actions and physical

¹ AS 43.23.005(a)(3).

² AS 01.10.055(a).

³ 15 A A C 23.143(d)(5).

presence in the state corroborate his claim. There is no reason Mr. C.'s application for a 2004 dividend should not be granted.

The children in this case present a different situation. Although the children came to Alaska in 2002, they did not intend to remain indefinitely. They intended to return to California on January 6, 2003, and to remain there for an indefinite period of time that depended on the sale of the family's mobile home. It is clear that Ms. C. and the children intended to end their California residency and to join Mr. C. in Alaska. But they did not know for certain when they would be able to do so.

Mr. C. correctly points out that the children were present in Alaska for at least 72 hours in 2002 and that they were not absent from Alaska for more than 180 days in 2003. By being present for at least 72 hours in 2002 or 2003, the children do meet one of the eligibility requirements of AS 43.23.005. But the issue in this case is whether they also meet the requirement that an applicant have been an Alaska resident all through the qualifying year. Because they were not absent for more than 180 days in 2003, the children's absence would have been allowable if they were Alaska residents. Again, whether they were residents is the issue in this case.

At the beginning of 2003, the children intended to eventually make their home in Alaska. But the intent to eventually come to Alaska to remain indefinitely is not the same as being present in the state with the intent to remain indefinitely. Ms. C. and the children were not present in Alaska with the intent to remain indefinitely until they arrived in May 2003. That is when they became Alaska residents. Before that, they were still California residents who intended to become Alaska residents when their mobile home was sold. Because they were not Alaska residents all through the qualifying year, the children are not eligible for 2004 dividends.

IV. Conclusion

Mr. C. meets all of the eligibility requirements for a 2004 permanent fund dividend, and his application should be granted. The children were not Alaska residents all through the qualifying year, and the division was correct to deny their applications.

V. Order

IT IS HEREBY ORDERED that the application of A.C. for a 2004 permanent fund dividend be GRANTED.

IT IS FURTHER ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of M.C. and I.C. for 2004 permanent fund dividends be AFFIRMED.

DATED this 9th day of December, 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 A., M., and I. C. for 2004 permanent fund dividends be adopted and entered in their 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 9th day of December, 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:

Case Parties
12/9/05