

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

IN THE MATTER OF

S.Z. and Y.L. and their children  
S.Z. and B.Z.

Case No. OAH 06-0457-PFD

2005 Permanent Fund Dividends

**DECISION & ORDER**

**I. Introduction**

S.Z. and Y.L. applied for 2005 permanent fund dividends (PFD) for themselves and their children, S.Z. and B.Z. The Permanent Fund Dividend Division (Division) determined that Mr. Z., Ms. L., and their children<sup>1</sup> were not eligible, and it denied the applications initially and at the informal appeal level. Mr. Z., Ms. L., and their children all requested formal hearings.

Administrative Law Judge Mark T. Handley reviewed the appeal. Mr. Z. and Ms. L. have submitted a letter dated August 10, 2006 for the hearing. Susan Lutz represented the Division and had submitted a position paper. The administrative law judge finds the Division correctly denied Mr. Z.'s and Ms. L.'s 2005 PFD applications. Because Ms. Z.'s application was correctly denied and because he is the adult sponsor of his children, the administrative law judge finds the Division correctly denied the children's application as a matter of law.<sup>2</sup>

**II. Facts**

It is undisputed that Mr. Z. and Ms. L. answered "No" to the question, "...Are you in Alaska today?"<sup>3</sup> Mr. Z. and Ms. L. and their children left Alaska on August 18, 2004 and moved to Lincoln Nebraska so that Mr. Z. could take a position with the University of Nebraska. Prior to moving to Nebraska, Mr. Z. was a professor at the University of Alaska. He left his position because of a "tense relationship" with his supervisors. The family intends to return to Alaska if and when "opportunities show up." They maintain a bank account at a credit union in Fairbanks. Mr. Z. and Ms. L. filed a joint state income tax return. On the Nebraska form they claim to be

<sup>1</sup> Both children are sponsored by their father S|

<sup>2</sup> 15 A A C 113(b)(1) and (e).

<sup>3</sup> Ex.1.

residents of Nebraska for a portion of calendar year 2004. Ms. L. argues that she has earned no income in Nebraska, maintained her Alaska drivers license through out 2004 and only filed a joint tax return because she wanted to "make sure that she has a continuous tax record." Ms. L. only moved to Nebraska to accompany her husband. The family has not maintained their principal home or stored the majority of their household belongings in Alaska since December 31, 2003.<sup>4</sup> They sold their house prior to moving to Nebraska. Finally, when asked when the family planed to return to Alaska to reside indefinitely, Mr. Z. and Ms. L. responded "in two years."<sup>5</sup>

Based on the evidence in the record, I find it is more likely than not that in 2004, Mr. Z. and Ms. L. moved to Nebraska without definite plans to return to Alaska.

### **III. Discussion**

Mr. Z. and Ms. L. as the parties challenging the Division's action, have the burden of proving that the Division is in error.<sup>6</sup>

In order to qualify for a permanent fund dividend, a person must be an Alaska resident on the date of application.<sup>7</sup> Mr. Z. and Ms. L. do not dispute that they sold their home and moved Nebraska in August of 2004. Before they left, Mr. Z. had taken a permanent position with the University of Nebraska. They no longer had their principal home in Alaska. They assert that they intended to return to Alaska in two years "when an opportunity shows up."<sup>8</sup> Mr. Z. and Ms. L.'s absence from Alaska is extended and indefinite. They have claimed residency in Nebraska for tax purposes. On the record presented, their absence is inconsistent with the intent to remain in the State indefinitely. The fact that Mr. Z. and Ms. L. maintained their principal home outside Alaska for part of 2004 also made their absence disqualifying.<sup>9</sup>

### **IV. Conclusion**

Having reached the finding that Mr. Z. and Ms. L. were not Alaska residents when they applied for 2005 PFDs and maintained their principle home outside Alaska in 2004, the only possible result of this case is to conclude that Mr. Z.'s and Ms. L.'s 2005 PFD applications for themselves and their children, S. and B., should be denied.

<sup>4</sup> Exhibit 2 at 1.

<sup>5</sup> Exhibit 2 at 1.

<sup>6</sup> 15 A A C 05.030(h).

<sup>7</sup> AS 43.23.005(a)(2)-(3).

<sup>8</sup> Exhibit 5.

<sup>9</sup> 15 A A C 23.143(d)(1).

**V. Order**

IT IS HEREBY ORDERED that the applications of S.Z. and Y.L. their children, S. and B. Z. for 2005 permanent fund dividends be DENIED.

DATED this 6th day of April, 2007.

By: Mark T. Handley  
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 and Order 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 2nd day of May, 2007.

By: Mark T. Handley  
Administrative Law Judge

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

PFD Division  
5/2/07