

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

IN THE MATTER OF
D.B.

Case No. OAH 06-0699-PFD

2001, 2003, 2004, 2005 Dividends

DECISION & ORDER

I. Introduction

D.B. timely applied for 2001 through 2005 permanent fund dividends. The Permanent Fund Dividend Division initially granted the 2001, 2003 and 2004 dividends. It denied the 2002 application, and Mr. B. did not appeal that decision. The division denied the 2005 application, and also determined that Mr. B. was not eligible for the 2001, 2003 and 2004 dividends. It then denied those applications and assessed the dividends that it asserts were paid in error. The division affirmed its decision on all applications at the informal appeal level. Mr. B. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on November 29, 2006. Mr. B. appeared by telephone. His attorney, Robert Spitzfaden, appeared in person in Juneau. Thomas Cote also appeared in person in Juneau.

Mr. B. is eligible for 2001, 2003 and 2004 dividends. Before his legal "date of application" for a 2005 dividend, Mr. B. ended his Alaska residency, and he is therefore ineligible for a 2005 dividend.

II. Facts

The material facts in this case cover the span of time from the beginning of 2000 through sometime in the middle of 2004. The facts are rather complicated because of the nature of Mr. B.'s business and a somewhat mobile lifestyle that goes with it.

Mr. B. owns a company called E.O. which is in the business of providing guided tours, mostly by river raft. The company has also provided bus tours when there is a market. In 1999, Mr. B. bought some river rafts from a supplier in Idaho and transferred E.O. from Ketchikan to Haines. In February of 1999 Mr. B. bought a home in Haines on Helms Loop, and he and his wife J. moved there in April, 1999. For part of the time between 2000 and 2004 Mr. B. and his wife used the house as a bed and breakfast. The B.'s still own the house in Haines.

In addition to the house in Haines, Mr. B. has owned or occupied several different homes over the years. In 1999 he rented a home for a short time in Grants Pass, Oregon, located on the Rogue River, a popular rafting site. Mr. B. owns a house in Sedro Woolley, Washington that he keeps as investment rental property. This house has been rented out for as long as Mr. B. has owned it. In 2002 or 2003 Mr. B. bought a house in Arizona that he intended to use as a vacation home and as an investment. Mr. B. sold this home in March of 2004. After selling the Arizona home, Mr. B. and his wife bought a home in Burlington, Washington. Mr. B.'s wife went to Washington to set up housekeeping in this home in September, 2004, and Mr. B. went to live there in the middle of October, 2004.

In 1999, five cruise ships were calling in Haines, and E.O. did a fair business running sightseeing tours to Chilkat Lake for bear viewing. In 2001 the business obtained a permit to run rafting tours, and the company did that until 2004. Typically, E.O. would begin to set up for the tourist season near the end of April, and begin operating tours in the first week of May through the month of September. E.O. would also run tours during the bald eagle festival in the first or second week of November. Mr. B. would typically leave Alaska around Christmas and spend the next few months promoting his business in Washington and Arizona. He also would run weekend raft tours on the Skagit River in Washington during January and February when bald eagles were feeding on salmon. Mr. B. would return to Haines in April to begin gearing up again for the tourist season.

In 2004, E.O. apparently came into conflict with the Haines Borough, and the borough unsuccessfully attempted to revoke the company's permit. In March, 2004, the borough notified E.O. that it did not intend to renew its permit to operate tours on the river or to Chilkat Lake the following year. E.O. applied for renewal anyway, and the borough denied the application as promised. E.O. did no business in 2005.

Mr. B.'s parents were longtime residents of Sedro Woolley, which is about three miles from Burlington in Washington State. In July of 2004, Mr. B.'s father passed away, leaving Mr. B.'s mother in need of some assistance. Mr. B.'s sister lives in the area, but she usually spends winters in Arizona. Mr. B.'s sister cared for their mother until October of 2004, when Mr. B. moved to Burlington. After arriving in Burlington, Mr. B. spent a great deal of time helping his mother with shopping, taking care of her yard, maintaining her house maintenance, and generally providing emotional support following the death of his father.

Mr. B. testified that although he was not running tours in the state during the summer of 2005, his "heart was still in Alaska" and he continued to look for other opportunities to serve the cruise industry. Mr. B. did have a valid permit to run tours in Skagway and he had operated there in the past. He also owned a boat that made it feasible for him to commute to Skagway from his house in Haines. Early in 2006 Mr. B. boughty some Zodiac inflatable boats, and beginning in May of that year he ran tours in Skagway. Mr. B. testified that he is still attempting to obtain a permit in Haines, and that if he succeeds he will go back to running tours there. If not, his testimony is that he intends to continue operating tours in Skagway, while living in Haines.

Besides still owning the house in Haines and doing business in Alaska during summers, Mr. B. maintains other ties to Alaska. He remains registered to vote in Haines. He has maintained an Alaska driver's license since 1990, and has obtained a resident sport fishing license every year since 1999.

On his 2005 PFD application, Mr. B. did not answer a question asking whether he was in Alaska on the day he was filling out the application. Although he indicated that he had been absent from Alaska for more than 90 days in 2004, Mr. B. did not answer a question on the form asking if he had been absent for more than 180 days in 2004. The division requested more information, and in April, 2005, a division representative called Mr. B. to clarify information relevant to his eligibility. During this call, Mr. B. candidly admitted that he was living in Washington at the time. Mr. B. testified at the hearing as follows:

Q. "Was it your intention in this call with Mr. H. to indicate to him that your primary residence was in Washington?"

Mr. B.: At that time, during the phone call, yes. That we had made plans to transfer from Haines even though we still owned the property, but we moved into our home that I'm calling from now in Burlington, Washington."

Q. "And was that moving a direct result of the Borough's actions with respect to your permit?"

Mr. B.: "Yes, it was."

III. Discussion

In order to qualify for a permanent fund dividend, a person must be a resident of Alaska all through the qualifying year and on the date of application.¹ The "date of application" is the date

¹ AS 43.23.005(a)(2)-(3).
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that the applicant has provided all information that the division requires in order to evaluate the applicant's eligibility, including material requested by the division after the initial application form has been submitted.² An Alaska resident is someone who is physically present in the state with the intent to remain indefinitely and to make a home in the state, or if absent from the state, intends to return to the state to remain indefinitely and to make a home.

From 1999 until the fall of 2004, Mr. B. was an Alaska resident. In spite of the fact that he traveled during the winter and at various times had residences in other places, Mr. B. was spending most of the year in Alaska and his principal home appears to have been in Haines. There is a seasonal aspect to Mr. B.'s business, which by its nature has an annual cycle. But Mr. B. cannot reasonably be compared with a seasonal worker who comes to Alaska for a few months to work in the summer, while maintaining a principal home in another state. Until October 2004, there is no other place that could reasonably be regarded more of a home to Mr. B. and his wife than Haines. Although he traveled in the winters, in every respect Mr. B. was based in Haines, and there is no reason to regard him as ineligible for 2001, 2003 and 2004 dividends.

In 2004, the qualifying year for a 2005 dividend, Mr. B.'s situation underwent a significant change. Mr. B. and his wife bought the house in Burlington, and as Mr. B. has testified, he and his wife intended to move there and make that house their principal home. Mr. B.'s statement at the hearing that "we had made plans to transfer from Haines even though we still owned the property, but we moved into our home that I'm calling from now in Burlington" is a clear statement of intent to maintain his principal home in Washington. Mr. B. testified that his heart was still in Alaska, he was (and is) still registered to vote in Alaska, and it appears that he had some ideas about restarting E.O.'s activities in Alaska. Further, he actually did return to Skagway to run tours in 2006. But when one looks at Mr. B.'s intent and state of mind in the fall of 2004, it is apparent that Mr. B. was not an Alaska resident at that time. He and his wife were absent making principal home in Washington, and they intended to remain in Washington for an indefinite period. These circumstances are inconsistent with the intent to return to Alaska to remain indefinitely and to make a home.

Because Mr. B. severed his Alaska residency in the fall of 2004, he is ineligible for a 2005 dividend. The scope of this decision ends with the 2005 dividend year, and it may be that by this time Mr. B. has already begun to reestablish Alaska residency; this decision is not intended

² 15 A A C 23.993(b)(2).

³ AS 43.23.095(7); AS 01.10.055.

to provide guidance for future applications, beyond establishing that Mr. B. was not an Alaska resident for parts of 2004 and 2005.

IV. Conclusion

Mr. B. is eligible for 2001, 2003 and 2004 dividends. Because he severed his Alaska residency late in 2004, he is not eligible for a 2005 dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of D.B. for 2001, 2003, and 2004 dividends be REVERSED, and that the dividends for those years not be assessed;

IT IS FURTHER ORDERED that the decision of Permanent Fund Dividend Division to deny the application of D.B. for a 2005 permanent fund dividend be AFFIRMED.

DATED this 12th day of June, 2007.

By: DALE WHITNEY
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 of the date of this decision.

DATED this 10th day of July, 2007.

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
7/10/07