

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

In the Matter of)	
)	
L. H.)	
)	
2004, 2005, and 2006 Permanent)	OAH No. 07-0324-PFD
<u>Fund Dividends</u>)	

DECISION AND ORDER

I. Introduction

L. H. timely applied for the 2004, 2005, and 2006 permanent fund dividends (PFDs). The division originally paid, but later denied and assessed, Mr. H.'s 2004 and 2005 PFDs. The division denied Mr. H.'s 2006 PFD before it was paid. The denials were upheld at the informal appeal level because the division found that during the years in question Mr. H. had claimed or maintained a homestead property tax exemption in another state, an act which, by regulation makes a person ineligible for a PFD.¹ Mr. H. requested a formal hearing which was held on July 9, 2007. He appeared in person and represented himself; Thomas Coté appeared telephonically and represented the division. The unusual facts of this matter do not support a finding that Mr. H. claimed or maintained a claim of a homestead property tax exemption in California; therefore, the decision of the division is reversed.

II. Facts

Mr. H. has considered himself an Alaska resident since 1994 even though he did not permanently move here on a full time basis until he retired from the California education system in October 2001.² He now resides on a full-time permanent basis in his home on the Kenai River in Soldotna.³ Prior to his retirement, when not working in California, Mr. H. would travel to Alaska and take steps to establish Alaska residency.⁴ He opened a bank account in June 1995; registered a vehicle in July 1996; obtained an Alaska drivers license or ID in August 1997 and

¹ 15 AAC 23.143(d).

² Exhibit 1, p.3; Exhibit 7, p.2.

³ Exhibit 11, p. 6; H. Testimony.

⁴ See e.g., Exhibit, 1 p. 3; H. Testimony.

registered to vote in Alaska in 2002. He also has had Alaska resident fishing licenses.⁵ Mr. H. did not file a California Income Tax return for tax years 2003, 2004, 2005, or 2006.⁶

When in California Mr. H. lived in a home he purchased in 1983 located in Los Angeles County (LAC). The LAC “home” exemption was granted when he purchased the house and it was automatic every year thereafter. It was identified on his tax bill only as an exemption for “home.”⁷

Based on the information provided by Mr. H. in his 2004 and 2005 PFD applications, the division found him eligible to receive a PFD in 2004 and 2005. On his 2004, 2005, and 2006 Adult Supplemental Schedules, Mr. H. answered “no” to the question had he, during the qualifying year, “[o]btained benefits as a result of establishing or maintaining a claim of residency in another state or country.”⁸ On his 2006 Adult Supplemental Schedule he answered “yes” to the question asking if he would “be required to file a 2005 resident or part-year resident income, personal property, or excise tax return in another state...” listing California as the state and attaching a copy of his property tax bill which indicated that he received a “home” exemption.⁹ Upon further investigation, the division discovered that the exemption was a “homeowner’s exemption”¹⁰ and based on that information concluded that Mr. H. was a resident of California. The division therefore denied Mr. H.’s application for a 2006 PFD and requested repayment of the 2004 and 2005 PFDs previously issued to him.¹¹

When Mr. H. found out that receiving the homeowner’s exemption on his California property was deemed incompatible with claiming Alaska as his principal place of residence he requested the exemption be cancelled effective July 1994.¹² In his request, Mr. H. stated that the California house ceased being his principal place of residence as of July 1994, when he first came to Alaska. He has now reimbursed LAC all the amounts owing as a result of the retroactive cancellation.¹³

⁵ H. Testimony.

⁶ Exhibit 9.

⁷ Exhibit 1, p. 13.

⁸ Exhibit 1, pp. 4, 8 and 12.

⁹ Exhibit 1, pp. 12 and 13.

¹⁰ Exhibit 4; Exhibit 5.

¹¹ Exhibit 5.

¹² Exhibit 7, p. 2. Mr. H. signed the request for cancellation on November 20, 2006; it was stamped received by the Los Angeles County Assessors office on December 4, 2006.

¹³ H. Testimony.

III. Discussion

The division asserts that, during the qualifying years in question, Mr. H. maintained his principal place of residence in California, that he was a resident of California, and that he received a benefit, a homestead property tax exemption, because of his residency in California. The division argues that these are actions that by regulation preclude an individual from being eligible to receive a PFD.

To be qualified to receive an Alaska Permanent Fund dividend two criteria must be met: an applicant must be an Alaska resident as defined by law and, in addition, must meet the eligibility requirements established by the division in its regulations.

To meet the definition of “state resident” for purposes of a PFD an applicant is required to have been a state resident during the entire qualifying year¹⁴ through the date of application.¹⁵ A person establishes residency in Alaska by being physically present with the intent to remain in Alaska indefinitely.¹⁶ By regulation, the Department of Revenue has determined that an individual demonstrates the intent to remain in Alaska indefinitely “through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere.”¹⁷

The Department of Revenue has also promulgated regulations that provide guidance to the division when evaluating an applicant’s eligibility.¹⁸ 15 AAC 23.143(d) lists 17 actions that are so typically indicative of residency in another state or country that any one of the actions renders the applicant ineligible for a PFD without a detailed inquiry into the Alaska residency criteria. This regulation provides in part: “An individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has...(6) *claimed or maintained a claim* of a homestead property tax exemption in another state or country;”¹⁹ A “homestead property tax exemption” is a term of art identifying a benefit received by a property owner because the property is that person’s principal place of residence.

¹⁴ AS 43.23.095(6) (“[Q]ualifying year’ means the year immediately preceding January 1 of the current dividend year;”

¹⁵ 15 AAC 143(d).

¹⁶ AS 01.10.055(a).

¹⁷ 15 AAC 23.143(a).

¹⁸ 15 AAC 23.143(d).

¹⁹ 15 AAC 23.143(d)(6) (emphasis added).

Accordingly, an individual who has claimed or maintained a claim of homestead property tax exemption in another state is not eligible for a PFD.

In this case, Mr. H. did not claim or maintain a claim of a homestead property tax exemption. The word “claim” means “[t]o demand as one’s own or as one’s right; to assert; to urge; to insist... Means by or through which a claimant obtains possession or enjoyment of privilege or thing....”²⁰ Similarly, the word “maintained” means “[c]arried on; kept possession and care of; kept effectively; commenced and continued.”²¹ Therefore, 15 AAC 23.143(d)(6) requires the applicant have taken some affirmative action to commence the homestead property tax exemption and through action or inaction continued to receive the exemption; it is not enough to simply “receive homestead property tax exemption.” The regulation requires an applicant to have taken some affirmative action or a knowing inaction, for example, to intend, by continuing the status quo, to receive the homestead property tax exemption as a benefit of maintaining a principal place of residence in another state. “A person acts ‘intentionally’ if he desires to cause consequences of his act or he believes consequences are substantially certain to result.”²²

Mr. H. has presented substantial evidence that he did not intend to claim or maintain the exemption. Mr. H. convincingly testified it was his belief he received the homeowner exemption because he owned residential property, not because he was a resident of California or because he was claiming or maintaining a claim of a homestead exemption property tax exemption.²³ Mr. H. was a credible witness. He testified that he was unaware that the exemption for “home” was for anything more than owning a piece of residential property in LAC. Here, Mr. H.’s belief that the exemption was based on owning residential property and not his principal place of residence is reasonable. It had been close to 20 years since he first received the exemption and he was not required to take any affirmative action to continue to receive the exemption. The exemption was automatic and required no action on his part.²⁴ The exemption on Mr. H.’s tax notice was labeled simply as “home.” This can reasonably be interpreted to mean a residential versus commercial property tax exemption, not an exemption tied to a principal place of residence.

²⁰ BLACK’S LAW DICTIONARY p. 169 (Abridged 6th ed. 1991).

²¹ BLACK’S LAW DICTIONARY p. 657 (Abridged 6th ed. 1991).

²² BLACK’S LAW DICTIONARY p. 560 (Abridged 6th ed. 1991).

²³ Exhibit 7, p. 1.

²⁴ “Once granted, the exemption remains in effect until terminated.” Exhibit 13, p. 3.

Mr. H.'s credibility is bolstered by the notice of cancellation of homeowner's exemption where he states that the California house was not his principal residence as of July 1994. By stating that it was not his principal place of residence as of July 1994, Mr. H. was subjecting himself to a financial commitment to pay back the benefit he received from 1994 until it was cancelled in 2006, in addition to a 25% penalty. If Mr. H. had intended to receive a benefit from Los Angeles County, he could have indicated that it ceased to be his principal place of residence as of October 2001, the date he claims his most recent period of Alaska residency began. He would not have had to relinquish all the reimbursement funds back to LAC. Mr. H. testified that he reimbursed LAC for all the benefit received. On the record presented, Mr. H. has also established that it is more likely than not that he did not claim or maintain a claim of a homestead property tax exemption.

Mr. H. has also established, by a preponderance of the evidence that he is "state resident" for purposes of a 2004, 2005, and 2006 PFD. He has demonstrated the intent to remain in Alaska indefinitely by establishing ties indicative of Alaska residency (maintaining a principal place of residence, voting, motor vehicle registration, hunting and fishing license),²⁵ and the absence of those ties elsewhere. Therefore, Mr. H. is eligible to receive a PFD for the years in question.

IV. Conclusion

It is more likely than not that, under the unique facts presented, that Mr. H. did not claim or maintain a claim for the homeowner's exemption; therefore, he is not disqualified under 15 AAC 23.143(d)(6). He has also established that he is a state resident for purposes of the 2004, 2005, and 2006 PFDs by maintaining customary ties indicative of Alaska residency and severing those ties elsewhere. Accordingly, Mr. H. is eligible to receive a 2004, 2005, and 2006 PFD.

²⁵ See 15 AAC 23.173(g).

V. Order

IT IS HEREBY ORDERED that the decision of the division that L. H. is not eligible for a 2004, 2005, and 2006 PFD is REVERSED.

DATED this 2nd day of October, 2007.

By: Signed
Rebecca L. Pauli
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 30th day of October,2007.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]