

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

IN THE MATTER OF  
M. and V. E.

Case No. OAH 07-0650-PFD

2006 Permanent Fund Dividend

DECISION

I. Introduction

M. and V. E. timely applied for 2006 permanent fund dividends. The Permanent Fund Dividend Division determined that the E.'s were not eligible, and it denied the applications initially and at the informal appeal level. The E.'s requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on December 10, 2007. Mr. and Ms. E. appeared by telephone. Susan Pollard represented the PFD Division by telephone. The division's decision is affirmed.

II. Facts

In 2005 Mr. and Ms. W. were living in Michigan because Mr. E. had been stationed there by the Coast Guard. Mr. E. maintained Alaska as his home of record and as his state of legal residence in his military personnel records. The E.'s also maintained a number of other ties to Alaska, including driver's licenses and other paper ties.

In 2005, Mr. and Ms. E. purchased a house in Michigan and signed a "Homeowner's Principal Residence Exemption Affidavit" in which they stated that the house would be their principal residence.<sup>1</sup> A box on this form marked "local government use only" asks "what is the first year this exemption will be posted to the tax rolls," with the handwritten answer indicating the tax year 2006.

At the time of the hearing, the E.'s had moved to New York in accordance with Mr. E.'s latest orders. They continue to own the house in Michigan.

In 2005 the E.'s filed a Michigan state income tax return indicating that they were part-year residents. They have since filed an amended nonresident return.<sup>2</sup> Their original return claimed a tax credit of \$77.00 for a "homestead property tax credit." The amended return removed this credit.<sup>3</sup>

<sup>1</sup> Exhibit 8, page 2.

<sup>2</sup> Exhibit 9, page 5.

<sup>3</sup> *Id.*

### III. Discussion

According to 15 A A C 23.143(d), "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...."

The division takes the position that the Homeowner's Principal Residence Exemption Affidavit that the E.'s signed in 2005 constitutes a claim of a homestead property tax exemption. The E.'s argue that a homeowner's principal residence exemption is different than a homestead exemption, and that at any rate by amending their Michigan state income tax return and giving up the homestead property tax credit, they have effectively rescinded the principal residence exemption affidavit, to the extent it constituted a homestead exemption. The E.'s also point out that under 15 A A C 23.143(d)(1), they are entitled to maintain their principle residence in another state under the kind of allowable absence they are claiming, *i.e.* for military service under AS 43.23.008(a)(3).

"Homestead property tax exemption" as it is used in 12 A A C 23.143(d) is not defined by law. As a matter of property tax, such an exemption should not be confused with the more common legal definition of a "homestead exemption," which is generally a statutory limit on property that may be attached by creditors. Property tax laws vary by state and within states by local jurisdiction. A typical example of a statutory provision for homestead exemptions is Alaska's provision in AS 29.45.050(a), which provides that

a municipality may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at an election. An exclusion or exemption authorized by this subsection may be applied with respect to taxes levied in a service area to fund the special services. An exclusion or exemption authorized by this subsection may not exceed the assessed value of \$20,000 for any one residence.

Though generally authorized by state statues, property tax homestead exemptions are usually granted by local property taxing jurisdictions, such a municipality or a borough in Alaska, or a county, city, or parish in other states. The requirements for a homestead exemption may vary. In some cases the owner must use the homestead as the owner's principal residence, while in other cases the owner will qualify so long as a relative or immediate family is using the home as a principal residence, and in still other jurisdictions all residential property qualifies, regardless of who is living in the home. Some jurisdictions provide special homestead exemptions for elderly, disabled, veteran or low-income homeowners. Still other jurisdictions provide no exemption at all.

The use of the term "homestead exemption" in Michigan is complicated by use of a similar term in Michigan's state income tax scheme. Recognizing that Michigan homeowners must pay

both state income tax and local property tax, the state income tax scheme provides a "homestead property tax credit" to Michigan homeowners which partially offsets the amounts they pay in local property taxes for the home that they live in. This homestead income tax credit is not a homestead property tax exemption.<sup>4</sup>

Local Michigan taxing authorities do have homestead exemptions, but they are not called "homestead exemptions" in Michigan, apparently to prevent confusion with the homestead property tax credit that is available in the income tax code. According to a bulletin to assessors released by the Michigan State Tax Commission on October 8, 2003,

Public Act 105 of 2003 was signed by Governor Granholm on July 24, 2003 with an effective date of July 24, 2003.

Public Act 140 of 2003 was signed by Governor Granholm on July 31, 2003 with an effective date of January 1, 2004.

These laws make various changes to the administration of the Homestead Exemption and the Qualified Agricultural Property Exemption both of which are exemptions from the 18 mills of local school operating tax.

PA 140 of 2003 provides that, effective January 1, 2004, the word **Homestead** has been removed from the exemption statutes and has been replaced by the words **Principal Residence**. While P.A. 140 of 2003 uses the words **Principal Residence**, the exemption will be known as the **Homeowner's Principal Residence Exemption** so that a renter does not mistakenly file for the exemption.

^ ^ ^

PA 140 of 2003 will cause the Department of Treasury to change the name of its Homestead Exemption Forms to Homeowner's Principal Residence Exemption Forms... (Bold in original).<sup>5</sup>

The Homeowner's Principal Residence Exemption Affidavit that the E.'s signed (Exhibit 8, page 2) states on its face that it was "issued under authority of P.A. 105 of 2003." In an email of November 19, 2007, the assessor for the City of St. Clair, in which the E.'s property is located, confirmed that the "Homeowner's Principal Residence Exemption Affidavit is filed to in order for the homeowner to receive an exemption from paying a portion (in this case 18 mills) of the local

<sup>4</sup> Although it is not a homestead property tax exemption, claiming a homestead tax credit on a Michigan state income tax return might make a PFD applicant ineligible under 15 A A C 23.143(d)(17) if the applicant obtained a benefit in Michigan as a result of maintaining a claim of residency in that state. Because the E.'s amended their tax return, they ultimately did not obtain the benefit of the income tax credit.

<sup>5</sup> State of Michigan, Department of Treasury, State Tax Commission, Bulletin 9 of 2003: CHANGES TO THE HOMESTEAD EXEMPTION AND THE QUALIFIED AGRICULTURAL PROPERTY EXEMPTION (October 8, 2003).

[http://www.michigan.gov/treasury/0,1607,7-121-1751\\_2228\\_2230\\_22482-77625-,00.html](http://www.michigan.gov/treasury/0,1607,7-121-1751_2228_2230_22482-77625-,00.html) (accessed January 3, 2008).

school operating tax."<sup>6</sup> The assessor clarified that she is not associated with the Michigan Department of Revenue.

It appears that Ms. E. is incorrect in her assertion that by amending her state income tax return, she and Mr. E. rescinded their Homeowner' Principal Residence Exemption Affidavit. While the E.'s are no longer eligible for the homestead property tax credit of \$77.00 against the income tax they pay to the State of Michigan, they remain eligible for the 18 mill exemption to the local school tax they must pay to the City of St. Clair. The St. Clair city assessor has kept their affidavit on record, and it remains in full effect, regardless of what income tax forms the E.'s may have filed with the Michigan State Department of Revenue.

#### **IV. Conclusion**

In spite of the fact that Michigan municipalities refer to their homestead exemptions as "homeowner's principal residence exemptions," such exemptions constitute a "homestead property tax exemption" as that term is used in 15 A A C 23.143(d)(6). Mr. and Ms. E. claimed such a homestead property tax exemption in Michigan in 2005, the qualifying year for a 2006 dividend. They are, therefore, ineligible for 2006 permanent fund dividends.

#### **V. Order**

Upon adoption of this decision as the final administrative determination in this matter, the decision of the Permanent Fund Dividend Division to deny the applications of M. and V. E. for 2006 permanent fund dividends shall be AFFIRMED.

DATED this 7th day of January, 2008.

By: DALE WHITNEY  
Administrative Law Judge

<sup>6</sup> Exhibit 13.

## **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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 7th day of February, 2008.

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  
2/8/08