

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

In the Matter of)	
)	
G. L. S.)	OAH No. 09-0015-PFD
)	Agency No. 2007-029-5847
<u>2007 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

G. S.'s application for a 2007 Permanent Fund Dividend (PFD) was denied by the Permanent Fund Dividend Division in late 2007 because the Division's investigation had revealed that Mr. S. used a Nevada address in certain tax records. The Division concluded that he maintained his principal home in Nevada, a status inconsistent with Alaska residency and eligibility for a PFD.¹ Mr. S. pursued an informal appeal, in which the Division again ruled that he was not an Alaska resident and suggested additional disqualifying circumstances, including the claiming of a homestead exemption in Nevada and acceptance of benefits based on a claim of residency in Nevada.²

This formal appeal followed. Mr. S. appeared in person. The record was kept open for additional submissions from both sides relative to Mr. S.'s tax status in Nevada.³

The denial of Mr. S.'s 2007 dividend is affirmed because, regardless of his legal residency, he claimed a homestead exemption in another state and accepted a financial benefit of residency in another state during the qualifying year for the dividend at issue. By doing so, he disqualified himself from the PFD.

II. Facts

G. S. is a construction superintendent. He spends most of his time at remote construction sites. In 2006, the qualifying year for the 2007 dividend, he worked for VECO and was posted the entire year at the Kensington Mine site north of Juneau. He had 12 weeks off during the year, which he spent checking on 16 rental units he owns in Palmer and Seward and on vacation outside Alaska.⁴

¹ Ex. 3, p. 1 (2007 Denial Letter).

² Ex. 5 at 1-2 (2007 Informal Appeal Decision). The allusions to some of the additional grounds are oblique.

³ Because of this, and because of difficulties in scheduling the hearing because of the nature of Mr. S.'s work, resolution of this appeal has taken somewhat longer than is customary.

⁴ Testimony of G. S.

This decision makes no finding as to where Mr. S. maintained his principal home in 2006. One candidate for principal home would be one of the units he owns in Seward. There may be other candidates. Mr. S.'s wife spends more than six months each year outside Alaska visiting relatives and also accompanies him to construction camps.⁵ This is a couple whose principal place of abode at any given time might be difficult to pin down.

In 2003, Mr. S. and his wife acquired a condominium unit on R. H. Drive in Las Vegas.⁶ In 2006, the couple had some expectation that their renter was moving out, and they also thought they might decide eventually to use the unit as a retirement home.⁷ They did not then (nor at any time since) actually move to the unit, however.⁸ On June 2, 2006, they applied for and received a property tax abatement for that unit by certifying, over Mr. S.'s signature as "Property Owner," that the property was the "Owner's Primary Residence."⁹ In the ensuing fiscal year from July 1, 2006 through June 30, 2007, this abatement reduced their property taxes on the R. H. unit by \$788.31.¹⁰

There is apparently an abatement of equal size available to owners of rental property that is rented below a certain level. There is no evidence that the R. H. property could qualify for this similar program. The program requires an application. The S.s have not applied for it. Indeed, they have never changed the status of the R. H. property from "owner's primary residence."¹¹

III. Discussion

A Department of Revenue regulation, 15 AAC 23.143(d), lists a number of specific acts or circumstances that make an individual ineligible for a given year's dividend. One of the exclusions provides that "[a]n 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" In the context of property taxation, "homestead" means owner-occupied, that is, the owner's principal residence.¹² Another exclusion provides that, with the exception of Medicaid benefits, "[a]n individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the

⁵ *Id.* Because she spends so much time outside Alaska, she does not apply for the PFD.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Ex. 10, p. 2 (Clark County Assessor's records).

¹⁰ Ex. 17, p.3 (Real Property and Special Tax Statement for Fiscal Year 2006-2007).

¹¹ Ex. 13, p. 1 (statement of T. Poff, Customer Service Manager, Clark County Assessor).

¹² *See, e.g., Wick v. McLeod County*, 1988 WL 31671 (Minn. Tax Ct.); *Proviso Township High School Dist. No. 209 v. Hynes*, 417 N.E.2d 1290, 1293-95 (Ill. 1980).

individual has . . . (17) obtained any . . . benefit or benefits as a result of establishing or maintaining any claim of residency in another state”

The qualifying year for a 2007 permanent fund dividend was 2006. On June 2, 2006, Mr. S. claimed a homestead property tax exemption in another state. Over the course of the fiscal year spanning the second half of 2006 and the first half of 2007, he reaped a financial benefit of \$788.31 as a result of his certification that a Nevada property was his “primary residence.” Each of these events disqualified Mr. S. from a 2007 dividend. The Department of Revenue is bound by its own regulations, and it cannot pay him the dividend for which he has applied.

IV. Conclusion

Because he claimed, and accepted the benefits of, a homestead exemption in another state in 2006, G. S. is ineligible for a 2007 PFD. The decision of the Permanent Fund Dividend Division to deny his application is affirmed.

DATED this 1st day of June, 2009.

By: Signed
Christopher Kennedy
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 29th day of June, 2009.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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