

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

IN THE MATTER OF)
)
 E., M., S., C.,)
 & B. V.)
) Case No. OAH 09-0017-PFD
)
2007 Permanent Fund Dividend)

DECISION

I. Introduction

E. V. timely applied for a 2007 permanent fund dividend for himself and on behalf of his four children. The Permanent Fund Dividend Division (“the division”) determined that the applicants were not eligible, and it denied the application initially and at the informal appeal level. Mr. V. requested a formal hearing by written correspondence only. The record shows that the applicants are eligible for 2007 permanent fund dividends.

II. Facts

Mr. V. and his family began visiting Alaska in 1994, visiting family members in Girdwood. In 2000 the V.s bought a house in Girdwood, but they continued to live principally in California, visiting Alaska for longer periods of time. In 2005, Mr. V. and the children began spending most or all of their time in Alaska. Mr. V., who is not employed, enrolled in the University of Alaska Anchorage, although he continued to be the primary caregiver for the couple’s four children. The children began attending school in the Anchorage school district in the fall of 2005, and have attended school in Alaska ever since.

Although most of the family now lives in Alaska, Mr. V.’s wife continues to claim residency in California, where she has what appears to be a very good job working for S. M. in Santa Clara. Ms. V. continues to live mostly in the home the V.s still own in Los Gatos, California. Mrs. V. has not applied for a permanent fund dividend.

The V.s appear to have owned their house in Los Gatos since 1988.¹ Both Mr. and Mrs. V. are listed in the tax records and the recorded deed as owners. The division has submitted local tax assessment information for the house for the years 2006, 2007, and 2008.² These records show that the V.s have benefited from a homestead tax exemption each of these three years. In 2006 the billing address and the property address were identical, but for 2007 and 2008 the billing address

¹ Exhibit 15.

² Id.

was for a post office box in Girdwood. The division has also submitted a screen print of a web page for the Santa Clara County assessor's office, which lists the eligibility for a homestead exemption as follows:

You must be a property owner, co-owner or a purchaser named in a contract of sale. You must occupy your home as your principal place of residence as of 12:01 a.m., January 1 each year.

- Principal place of residence generally means where:
- You return at the end of the day
- Your vehicle is registered
- You are registered to vote
- Your mail is delivered

In the V.s' case, the exemption lowers the taxable value of their home by a little over one percent. According to the assessor's web page, a homestead exemption will generally result in a tax savings of approximately \$70 to \$80 per year.

III. Discussion

According to 15 AAC 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 asserts that "as long as E. V.'s name appears on the deed for the property at...Los Gatos, California, and the homeowners continue to receive the homeowners' exemption, Mr. V. remains ineligible as well as his minor children for the 2007 dividends and future dividends."

There is no dispute that Mrs. V. lives primarily in the Los Gatos home, is not claiming Alaska residency or attempting to collect dividends, and is therefore entitled to the homestead exemption in California. The division's position appears to be that either Mr. V. should deed the house to Mrs. V. so that she is the only person benefiting from the exemption (which may not be legally possible in California, a community property state), or that both the V.s should forgo the exemption even though Mrs. V. lives in the house. Such a step is unnecessary. The division's evidence regarding the laws of Santa Clara County shows that any person may claim the homestead exemption if they are a co-owner of the home and it is the person's principal place of residence. Mrs. V. is therefore entitled to the exemption. There is no provision for declaring to the assessor which co-owner is claiming the homestead exemption, but there is no apparent reason that Mrs. V.

should be denied an exemption to which she is legally entitled.³ As for Mr. V., marriage to a person eligible for a homestead exemption in another state is not a disqualifying condition.

The division further asserts that Mr. V. did not take any step to establish Alaska residency before 2006 and that he has maintained his principal home in California during the qualifying year. In 2005 Mr. V. moved into the home he owns in Alaska on a full-time basis, he enrolled in the University of Alaska, and he enrolled his children in Alaska schools. These are all significant steps toward Alaska residency.

Although Mr. V. checked a box on his application stating that at some time since December 31, 2005, he had been maintaining his principal home at the California house; it appears that this was a matter of Mr. V. taking extra precaution to disclose every bit of information that might be of interest to the division. On the same application Mr. V. indicated that he had filed a resident tax return in California, but reference to the actual return he filed showed that Mr. V. had filed a return in California as a nonresident. A preponderance of the evidence shows it is more likely than not that since June of 2005 Mr. V. and his children had been maintaining their principal residence at their Girdwood home.

IV. Conclusion

Mr. V. is a named owner on his family's house in California and his wife, a California resident who lives in the home, claims a homestead exemption on the house. The records of Santa Clara County do not indicate which co-owner of property has claimed an exemption. A preponderance of the evidence shows that the exemption claim is maintained by Mr. V.'s wife, not Mr. V. Mr. V. and his children established Alaska residency in 2005 and have not maintained their principal home outside of Alaska since 2005. The applicants are eligible for 2007 dividends.

The applications of E. V. and M., S., C., and B. V. for 2007 permanent fund dividends shall be GRANTED.

DATED this 13th day of March, 2009.

By: Signed
DALE WHITNEY
Administrative Law Judge

³ It is well-established that a homestead exemption that is legally claimed on behalf of a relative living in the applicant's out-of-state house will not disqualify an applicant. ITMO C.H., OAH 04-0071-PFD (February 2005); ITMO C.B., OAH 05-0170-PFD (November 2005). This case does not appear to present any issues that not have not already been litigated and decided at the formal hearing level.

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 9th day of April, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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