

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

IN THE MATTER OF	)	
	)	
G. L. S.	)	
	)	OAH No. 10-0128-PFD
<u>2009 Permanent Fund Dividend</u>	)	Agency No. 2009-063-6762

**DECISION**

**I. Introduction**

G. L. S. challenged the Permanent Fund Dividend Division's denial of his application for a 2009 PFD. The reason given by the division for the denial was the holding in Mr. S.'s 2007 formal appeal concluding he was ineligible as for a 2007 PFD because he claimed a homestead exemption in another state and accepted a financial benefit of residency during 2006, the qualifying year for the 2007 PFD (*S. I.*).<sup>1</sup> This formal appeal followed. Mr. S. appeared in person. The record was kept open for additional submissions from Mr. S. regarding his tax status in Nevada and to provide the parties with an opportunity to present written closing arguments. The Division submitted a closing argument but Mr. S. did not.<sup>2</sup>

After reviewing the evidence and the law, it is concluded that Mr. S. is bound by the holding in *S. I.* Because he is bound by that decision, he could not be eligible for a 2009 PFD unless he had cured the disqualification prior to January 1, 2008, the qualifying year for the 2009 PFD. It is undisputed that Mr. S. did not apply to remove the homestead exemption until May 21, 2009 and that the application was not effective until July 1, 2009. Therefore, Mr. S. is ineligible for the 2009 PFD.

**II. Facts**

Mr. S. is a construction superintendent who spends most of his time at remote construction sites. He lists an address in Seward as his residence for purposes of the PFD. He owns residential rental units in Palmer, Seward and Nevada.

It is the legal status of the Nevada property that made Mr. S. ineligible for a 2007 PFD. In 2006, Mr. S. and his wife applied for and received property tax abatement for that property. As part

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<sup>1</sup> *IMO G. L. S.*, OAH No. 09-0015-PFD (June 29, 2009) (*S. I.*).

<sup>2</sup> On June 9, 2010 Mr. S. emailed the division that he had received its closing argument, would be moving to a remote site in the next few weeks, and he was unsure if there would be phone or internet service. The division forwarded Mr. S.'s email to OAH on June 10, 2010. Mr. S. did not contact OAH nor did he request an extension of time. This decision has issued without further submission from Mr. S.

of the abatement process Mr. S. certified that he was the property owner and it was his primary residence.<sup>3</sup> By claiming a homestead exemption the property taxes for that parcel were reduced by \$788.31. He could have received an abatement of equal size had he claimed the property not as his primary residence, but rather as a rental property and applied for a rental abatement. However, he did not. Mr. S. elected to claim the property as his primary residence and receive a homestead exemption.

Because Mr. S. received this benefit from claiming residency in another state in 2006, the division denied his application for a 2007 PFD. The division's decision was affirmed in 2009 by Administrative Law Judge Kennedy who concluded that by claiming a homestead exemption in another state and accepting a financial benefit of residency in another state during the qualifying year, Mr. S. had "disqualified himself from the PFD."<sup>4</sup> On May 21, 2009, shortly after the 2007 hearing and before Judge Kennedy's decision issued his decision, Mr. S. applied to remove the homestead exemption and replace it with a rental cap exemption available to owners of rental property who charge below a certain level. The reclassification was effective July 1, 2009.

Mr. S. did not apply for a 2008 PFD. The division denied his 2009 PFD application because in 2008, the qualifying year for the 2009 PFD, the legal status of Mr. S.'s property and the benefit received as a result of that status remained unchanged from 2006. This, the division concluded, made Mr. S. ineligible for the 2009 PFD as a matter of law.

### **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.<sup>5</sup> 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 individual has . . . (17) obtained any . . . benefit or benefits as a result of establishing or maintaining any claim of residency in another state . . . ."

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<sup>3</sup> *S. I* at 2.

<sup>4</sup> *S. I*.

The qualifying year for a 2009 PFD was 2008. On June 2, 2006, Mr. S. claimed a homestead property tax exemption in another state. He did not apply to change the legal status of the property until May 21, 2009. In 2008, he received tax abatement as a result of his certification that a Nevada property was his “primary residence.” Mr. S. emphasizes that the amount of abatement would have been the same had he elected to claim the rental cap abatement. His argument is unpersuasive. Mr. S. affirmatively applied for the homestead exemption and decreed it was his primary residence and as a result he received a financial benefit. Each of these events disqualified Mr. S. from a 2009 dividend. The Department of Revenue is bound by its own regulations, and it cannot pay him the dividend for which he has applied. This decision makes no finding as to where Mr. S. maintained his principal home in 2008.

The decision on his 2007 PFD application controls the ruling in this appeal. The decision is controlling because of a doctrine called collateral estoppel, designed to prevent people from litigating issues that have already been decided. In essence, when the same parties have disputed an issue in the past, and the issue was resolved by a final decision in a proceeding that either takes place in court or offers “an adequate substitute for judicial procedure,” that issue is resolved when it arises in the future between those same parties.<sup>6</sup> In this case, the formal appeal afforded to Mr. S. on his 2007 PFD application gave him an opportunity to present his arguments and evidence in a proceeding commensurate with the significance of the dispute, culminating in a decision with findings of fact and conclusions of law. It provided “an adequate substitute for judicial procedure” and can fairly be used to bind those who participated in it.

An administrative law judge cannot ignore, set aside, or reverse the prior finding in an earlier decision. In the decision on his 2007 PFD, the administrative law judge found that Mr. S. claimed, and accepted the benefits of a homestead exemption in another state in 2006, which was the qualifying year for the 2007 PFD. It is undisputed that throughout 2008, which was the qualifying year for the 2009 PFD, Mr. S. maintained his claim and accepted the benefits of a homestead exemption in another state. He did not apply to change the legal status of the property until May 2009, after he became aware of the negative impact on his PFD eligibility. As a matter of law, he is ineligible for a 2009 PFD.

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<sup>5</sup> 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).

<sup>6</sup> See generally *Alaska Contracting & Consulting, Inc. v. Alaska Dep’t of Labor*, 8 P.3d 340, 344-45 (Alaska 2000); *Aloha Lumber Corp. v. University of Alaska*, 994 P.2d 991, 1001-02 (Alaska 1999); *Briggs v. State, Dep’t of Motor Vehicles*, 732 P.2d 1078, 1081-82 (Alaska 1987).

**IV. Conclusion**

Because he claimed, and accepted the benefits of, a homestead exemption in another state in 2008, G. S. is ineligible for a 2009 PFD. The decision of the Permanent Fund Dividend Division to deny his application is AFFIRMED.

DATED this 12<sup>th</sup> day of July, 2010.

By: Signed  
Rebecca 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 9<sup>th</sup> day of August, 2010.

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

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