

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

In the Matter of :)	
)	
N and K T)	
)	OAH No. 12-0018-PFD
<u>2011 Alaska Permanent Fund dividend</u>)	DOR Nos. 2011-024-4769/4676

DECISION and ORDER

I. Introduction

N and K T filed timely applications for 2011 Alaska Permanent Fund dividends. The Permanent Fund Dividend Division denied the applications on the grounds that at the time they applied, the Ts were not residents of Alaska.¹ The Ts appealed and the assigned administrative law judge conducted a telephonic hearing on March 6, 2012. The Ts participated and the Division was represented by Pete Scott.

Because the Ts did not prove by a preponderance of the evidence that they were residents of Alaska at the time they filed their applications, their applications are denied.²

II. Facts³

N T’s parents were in the Marine Corps, and he moved around a lot as a youngster; he was living in North Carolina when he enlisted in the United States Air Force at age 19 in 2000. His first duty station was in New Mexico. While stationed there he met K T, a young woman from New Mexico who was attending college there. The couple married in 2004.

Mr. T wanted to travel and see the world. When Mr. T filled out his “dream sheet” for his next posting after New Mexico, his top choice was Italy. Number six (of eight) was Alaska. The Air Force sent him to Alaska. The couple and their two-year-old son⁴ arrived in Alaska in April, 2006.⁵ They lived in base housing on Elmendorf Air Force Base. K T got a job with the State of Alaska. They registered to vote in 2006,⁶ but neither of them has ever voted in Alaska

¹ Ex. 5, p. 1 (N T; issues A, B), p. 6 (K T; issues A, B). The Division’s other asserted reasons for denial are inapplicable if the Ts are residents, and are irrelevant if they are not.

² In addition to filing applications for themselves, the Ts filed applications for their two minor children. The appeal in this case does not include those applications.

³ Except as otherwise indicated, the facts are taken from the testimony of N and K T.

⁴ Ex. 6, p. 1.

⁵ Ex. 7, pp. 2, 4.

⁶ Ex. 7, pp. 2, 4 (Q2D).

(Mr. T has never voted, anywhere).⁷ Their second child was born in Alaska in 2009. The family enjoys fishing and other outdoor Alaskan activities. Mr. T plans to remain in the military for at least another 8 years and to retire in 2020 after 20 years' service, or perhaps after 30 years if he is promoted enough.⁸

When N T's posting to Alaska came to an end in 2010, the Air Force sent him to South Dakota. The family left Alaska for South Dakota in August, 2010. Because they qualified for a first-time home buyer's credit, and desirable base housing was unavailable,⁹ rather than living on base (which they would have preferred to do) they bought a house. Neither of them has returned to Alaska for a visit since they left, and they have no specific plans for a visit or for their eventual return. They spent a week in Denver as their family vacation last year. Mr. T's current "dream sheet" preferred posting is to Korea.

K T filled out the family's 2010 Permanent Fund dividend applications. At the time, N was deployed. Because the couple could not return to Alaska unless posted there, and was unable to say exactly when they would be returning, she answered "no" to a question on the application form asking: "Are you returning to Alaska to remain indefinitely?"¹⁰

III. Discussion

The Division argues that the Ts did not retain the intent to return to Alaska and remain indefinitely based primarily on their answer to the question on the application asking about their intent to return, and secondarily based on their relative absence of ties to Alaska. The Ts assert that they answered the question as they did because they did not have any control over when they would be able to return, and that they intend to return "at the first chance that we get."¹¹

The burden of proof in this case is on the Ts to prove by a preponderance of the evidence that they retained at all times the intent to return to Alaska and remain indefinitely.¹² The direct evidence of their intent is mixed. On the one hand, the Ts answered "no" to the question whether they intended to return; on the other hand, they provided sworn testimony that they do intend to return and a plausible explanation for their answer to the written question.

⁷ Ex. 8.

⁸ Testimony of M. T; Ex. 3, p. 2.

⁹ Testimony of M. T; Ex. 3, p. 2.

¹⁰ Ex. 2, p. 1. That is a quite different question than is asked on the current form, which asks: "are you planning to return to Alaska to stay and make a home at some point in the future?"

<http://pfd.alaska.gov/forms/2012Forms/04003ASFormDIVISIONREQUESTED2012.pdf> (accessed May 24, 2012).

¹¹ Testimony of J. T.

¹² 15 AAC 23.173(i).

Beyond the direct evidence of the Ts' intent lies a substantial body of indirect evidence. The indirect evidence is similarly mixed. While it is true that the Ts have no substantial ties to Alaska, it is also true that they do not have any substantial ties to any other state, other than a house in South Dakota which they bought for financial reasons that have nothing to do with their future plans. Mr. T moved around a lot before he enlisted in the Air Force, and Ms. T left behind her home state, where she has family, when she married him. While in Alaska they acquired paper ties to the state, which they have maintained, but such ties are of relatively little significance in determining their long term intentions. Ms. T stays in touch with co-workers from her Alaska job, but neither she nor her husband ever voted in Alaska or otherwise demonstrated any community ties or commitments that would support their assertion that they intend to return. On the other hand, again, they have no such ties to any other locale, either.

IV. Conclusion

Contrary to their stated intent to return to Alaska and remain indefinitely "at the first chance that we get," Mr. T has not requested a posting to Alaska and the couple has no specific plans to visit or to make a home in the state after retirement. In light of the absence of meaningful ties to Alaska or to any other particular community or locale, the Ts' stated intent to return to Alaska and remain indefinitely is highly contingent on future events.¹³ Under the circumstances of this case, the Ts have not shown grounds to disregard their express response to a direct question about their future plans on the Permanent Fund dividend application. They did not prove by a preponderance of the evidence that they maintain the intent to return to Alaska and remain indefinitely.

V. Order

The applications of N and K T for the 2011 Alaska Permanent Fund dividend are **DENIED**.

DATED May 25, 2012

Signed _____

Andrew M. Hemenway
Administrative Law Judge

¹³ See *In Re T. & E. C., et al.*, at 8, note 46, OAH No. 11-0404-PFD (Commissioner of Revenue 2012) ("A stated intent to return at a relatively distant date might be considered inherently conditional, in the sense that 'it is difficult to predict where life will take a person a decade or two in the future.' *In Re E. & W. M.*, at 3, OAH No. 09-0003-PFD (Commissioner of Revenue 2009).").

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 2nd day of July, 2012.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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