

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

In the Matter of :	)	
	)	
N B	)	OAH No. 13-1808-PFD
_____	)	DOR No. 2012-064-0114

**DECISION**

**I. Introduction**

N B applied for and was paid a 2012 Alaska Permanent Fund dividend. After paying the dividend, on May 29, 2013, the Permanent Fund Dividend Division issued a letter denying the dividend and demanding repayment.<sup>1</sup> Following an informal appeal, on November 8, 2013, the division issued a decision sustaining the denial of the application and the assessment of the dividend.<sup>2</sup> Mr. B filed a timely appeal and the assigned administrative law judge conducted a telephonic hearing on January 21, 2014.

Because Mr. B was not required to be a resident of Florida in order to receive a homestead property tax exemption on his jointly-owned residential property in that state, he is eligible for the 2012 dividend.

**II. Facts**

N B and his wife, K, have been the joint owners of a house in Florida since in 2004.<sup>3</sup> The property has been provided a homestead tax exemption since that time. In 2009, the couple separated when Mr. B joined the military. The couple was financially separated from that time forward.<sup>4</sup> Mr. B established residence in Alaska in 2010. He was deployed abroad from May, 2011, through April, 2012. After his return to Alaska, he was assigned to a new duty station in No Name, Florida.

Mr. B applied for and was paid the 2012 Alaska Permanent Fund dividend. In 2013, the division assessed the dividend based on Mr. B's receipt of a homestead property tax exemption. Mr. B requested that his name be removed from the homestead tax exemption. His name was

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<sup>1</sup> Ex. 6, pp. 1-3.  
<sup>2</sup> Ex. 10, pp. 1-4.  
<sup>3</sup> Ex. 11, p. 1.  
<sup>4</sup> Mr. B so testified, and the division accepted his testimony.

removed effective for the calendar year 2013, but not for the calendar year 2012.<sup>5</sup> Mr. B and his wife have filed the completed the paperwork for a divorce, but it is not yet final.

### III. Discussion

Under 15 AAC 23.143(d)(6), in effect since 1993, eligibility for the Alaska Permanent Fund dividend is denied to individuals who claim certain property tax exemptions outside of Alaska. As originally promulgated, the regulation denied eligibility to individuals who “claimed a homestead property tax exemption in a state other than Alaska.”<sup>6</sup> It was amended in 1999 to deny eligibility to individuals who claimed or maintained a claim<sup>7</sup> and in 2000 to extend to exemptions claimed or maintained in another country.<sup>8</sup> It was amended again in 2008, to require that the exemption be one “that required the individual [claiming or maintaining it] to be a resident of...the state or country [providing the exemption].”<sup>9</sup> Finally, the regulation was most recently amended in 2009, to extend to homeowner’s exemptions,<sup>10</sup> and in 2010 to provide for eligibility for individuals who delete the claim of residency.<sup>11</sup>

As the regulation (since the 2008 amendment) clearly states, an individual who claims or maintains a homestead exemption in another state is ineligible only if the exemption required that individual to be a resident of the other state.<sup>12</sup> This means that where property is co-owned, and a homestead exemption is available to all of the co-owners based on the residence of any of the co-owners, this regulation does not apply. This is true for spouses, regardless of whether

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<sup>5</sup> See Ex. 13, p.1.

<sup>6</sup> Eff. 1/1/1993, Register 124, am. 6/26/1993, Register 126, am. 12/24/1993, Register 128.

<sup>7</sup> Am. 1/1/1999, Register 148. That an individual continues to receive the exemption does not necessarily mean they have “maintained” the claim, within the meaning of 15 AAC 23.143(d)(6). See In Re L.H., at 4, OAH No. 07-0324-PFD (Commissioner of Revenue 2007) (denial of dividend reversed based on applicant’s “belief the exemption was based on owning residential property”).

<sup>8</sup> Am. 1/1/2000, Register 152.

<sup>9</sup> Am. 1/1/2008, Register 184.

<sup>10</sup> Am. 1/1/2009, Register 188. This amendment in effect incorporates a 2008 decision. See In Re M. & V. E., OAH No. 07-0650-PFD (Commissioner of Revenue 2008) (rejecting applicant’s argument that Michigan municipal “homeowner’s principal residence exemption” is not a “homestead property tax exemption” within the meaning of 15 AAC 23.143(d)(6)).

<sup>11</sup> Am. 1/1/2010, Register 192. This amendment in effect incorporates a 2009 decision. See In Re C. & K. T., OAH No. 09-0008-PFD (Commissioner of Revenue 2009). In that case, reviewing a number of prior cases, the administrative law judge had permitted the applicants, over the objection of the division, to submit evidence that they had retroactively updated their out of state property tax exemption status.

<sup>12</sup> The 2008 amendment in effect incorporates a 2005 decision. See In Re C.B., at 5, OAH No. 05-0170-PFD (Commissioner of Revenue 2005) (“If an Alaska resident is entitled to claim an exemption because the Alaskan’s relative or spouse lives on the property, the homestead claim is made on behalf of the person actually living on the property.”).

they are legally or financially separated.<sup>13</sup> Moreover, leaving aside the fact that the property is co-owned, the Florida homestead property tax exemption is available to a person who permanently resides in the premises or to a person whose legal or natural dependents permanently reside in the premises.<sup>14</sup> Thus, under Florida law, a person who has never even been in Florida may receive the homestead property tax exemption, so long as a dependent of that person resides in the Florida property. In this particular case, Mr. B was not required to be a resident of Florida in order to maintain the exemption, because his wife, a co-owner of the property, continued to occupy the premises.<sup>15</sup>

#### **IV. Conclusion**

Mr. B received a homestead property tax exemption that did not require him to be a resident of the state providing the exemption. He was therefore not disqualified from eligibility for the 2012 dividend by 15 AAC 23.143(d)(6).

DATED April 4, 2014.

Signed  
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Andrew M. Hemenway  
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 2<sup>nd</sup> day of May, 2014.

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

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

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<sup>13</sup> See In Re. E., M., S., C., & B. V., OAH No. 09-0017-PFD (Commissioner of Revenue) (wife, resident of California, occupies jointly-owned home in California; husband and children are residents of Alaska).

<sup>14</sup> See Florida Statutes, Title XIV, Ch. 196, Sec. 031 (“A person who...makes the property his or her permanent residence or the permanent residence of another or others legally or naturally dependent on him or her, is entitled to an exemption...”).

<sup>15</sup> Because Ms. B is a co-owner, it is not necessary to consider whether she was “legally or naturally dependent” on Mr. B at the time in question.