

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

In the Matter of)
)
Q H)
)
2018 Permanent Fund Dividend) OAH No. 18-1044-PFD
 Agency No. 2018-030-3820

DECISION

I. Introduction

Q H’s application for a 2018 Permanent Fund Dividend (PFD) was denied initially and at the informal appeal level by the PFD Division. The Division based its determination on two grounds: it found that he had lost his Alaska residency during the qualifying year, and it found that he had also taken a disqualifying act, namely, filing a tax return as a part-year resident in another state. Mr. H requested a formal hearing by correspondence.

Mr. H did not participate actively in his own appeal, and therefore the decision must be made on the written file.¹ That file clearly shows the disqualifying act of filing a part-year tax return elsewhere, and the denial will be upheld on that basis. It is not necessary to adjudicate the slightly more ambiguous question of residency.

II. Facts

Mr. H has worked in Alaska, at least part of the time, for several years, and has received PFDs in 2014 through 2017.² For the 2018 dividend, he applied in the month of February from Arizona, listing a location in that state as his home and mailing address.³ He indicated on the application that he “moved out of Alaska on 10/10/2017”, but also indicated that “I will be in Alaska on 03/31/2018.”⁴ In his supplemental schedule, he revealed that he had filed a resident or part-year resident tax return in California.⁵ This was later confirmed when the PFD Division requested and obtained the return: for calendar year 2017, he filed an income tax return with the California Franchise Tax Board designating himself as a part-year resident in that state, with

¹ 15 AAC 05.030(j).
² Ex. 7, p. 1; Ex. 10.
³ Ex. 1, p. 1.
⁴ *Id.*, p. 2.
⁵ *Id.*, p. 3.

October 10, 2017 as the date “I became a CA resident.”⁶ The tax return offers filers the opportunity to report and pay tax as a nonresident, but Mr. H did not select that option.⁷

The tax return contained additional puzzling information that raised concerns about Mr. H’s residency and absence history. It indicated that he was “domiciled in” Colorado and gave a Colorado address.⁸ It also reported that he had spent 121 days in California in 2017, whereas Mr. H had only revealed 81 days of absence from Alaska in his PFD application.⁹

As noted previously, Mr. H’s PFD application was denied both because of the tax return and because, more broadly, the PFD Division concluded that once he “moved” to California Mr. H did not have the requisite intent to remain in Alaska that is necessary for legal residence in this state. In his appeal form seeking a formal hearing, Mr. H contested the latter conclusion, stating that he had intended to retain Alaska residency and be absent a maximum of 180 days.¹⁰

The formal appeal to this office was opened on October 15, 2018. By notice dated October 17, Mr. H was given until November 16, 2018 to send any additional documents or correspondence for consideration in this formal appeal. The division was given the same deadline. Both were given until November 30, 2018 to respond to any documents received from the other. The Division filed a position statement. Mr. H filed nothing on either of these two opportunities.

III. Discussion

A department regulation, 15 AAC 23.143(d)(5), establishes, *subject to two exceptions*, that an individual is not eligible for a dividend if, at any time during the qualifying year or during the dividend year up to the date of application, the individual

filed a resident or part-year resident income tax return in another state or country and the claim of residency on the return is for any period of time beginning January 1 of the qualifying year through the date of application

The qualifying year for the 2018 dividend was 2017.¹¹ Since Mr. H filed a 2017 California income tax return designating himself as a “part-year” resident of that state, with California residence beginning in October of that year, this regulation makes him ineligible for a 2018 dividend unless he fits into one of the two exceptions.

⁶ Ex. 2, p. 22.

⁷ *Id.*

⁸ *Id.*

⁹ Compare Ex. 2, p. 22 with Ex. 2, p. 3.

¹⁰ Ex. 8. This form, which was prepared in October of 2018, listed an Anchorage mailing address.

An exception to this exclusion has been carved out for individuals who “were required” by the other state’s laws to file a return claiming full or part-year resident status.¹² Nowhere in the course of his informal or formal appeals has Mr. H claimed that California required him to file as a full or part-year resident, rather than as a nonresident. Therefore, this exception does not apply.

There is another exception to the exclusion, for an individual who “files in the other state . . . an amended return claiming nonresident tax status and provides proof to the department that the amended return was actually filed”¹³ Again, Mr. H has given no indication that he has taken this step, even though the issue of the part-year resident tax return has been raised with him repeatedly throughout the denial and appeal process. Therefore, this exception does not apply, either.

Before leaving the second exception, we should note that in at least one prior case this office, acting for the Commissioner of Revenue, has given the appealing party an opportunity to file an amended return after hearing but before the case went to final decision.¹⁴ That case was different, however, because the applicant had genuinely, but wrongly, believed the law of the state where she had filed her return forbade her to file as a nonresident. Thus she felt she could not repair the tax return problem, until told by this tribunal that she could. There is no indication that Mr. H has had any such misconception. As far as one can tell from the record, he has been content to leave himself as a part-year California resident in the records of the California Franchise Tax Board.

Because the tax return is disqualifying, it is not necessary to consider whether Mr. H legal residency has changed to another state.

IV. Conclusion

The denial of a 2018 Permanent Fund Dividend to Q H is affirmed.

December 19, 2018.

By: Signed _____
Name: Christopher Kennedy
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

¹¹ AS 43.23.095(5).

¹² 15 AAC 43.143.(d)(5)(A).

¹³ 15 AAC 23.143(d)(5)(B).

¹⁴ *In re J.S.*, OAH Case No. 06-0107-PFD (Interim Order, May 1, 2006).

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 16th day of January, 2019.

By: Signed
Signature
Cheryl Mandala
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]