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

In the Matter of	)	
	)	
B. C.	)	OAH No. 23-0173-PFD
	)	
2021 Permanent Fund Dividend	)	

DECISION

I. Introduction

When B. C. applied for a 2021 Permanent Fund Dividend (PFD), the Permanent Fund Dividend Division found her ineligible, denying the application initially and at the informal appeal level. Ms. C. requested a formal hearing by correspondence, which was changed at the administrative law judge's request to a telephonic hearing. The hearing took place on April 12, 2023, with Ms. C. providing testimony and subjecting herself to cross-examination by a Division representative.

Ms. C. had a unique life situation, and that the Division's initial skepticism about her eligibility was understandable. However, the evidence at hearing showed that she indeed properly established Alaska residency and maintained it over a period of many years, even though she was not eligible for a dividend in most years because she spent too few months at home. In the qualifying period for the 2021 dividend, her residency remained unbroken and she continued to maintain her principal home in Alaska. In that year, she had enough time in-state to be eligible for a PFD. She took no disqualifying actions, and she was, in fact, eligible.

Ms. C.'s federal tax return for 2020 listed a mailing address in another state. A 2022 decision by former Administrative Law Judge Sullivan, relating to another applicant, held that to be a disqualifying act. The decision relied on a PFD regulation that prohibits filing a resident income tax return in another state. This decision rejects Judge Sullivan's holding as a legally incorrect interpretation of that regulation.

II. Background Facts[1]

B. C. and her life partner jointly own a film production company that has produced

1 Findings are drawn from Ms. C.'s testimony unless otherwise attributed.

various outdoor series over the last 25-30 years.[2] Most prominent among these was a well-known series centered solely in Alaska; it began shooting in 1997 and continued for 16 seasons. Thereafter, the company produced series that were partly, but not wholly, about Alaska. While the company is still active, it appears that the couple is now at least semi-retired.

Ms. C. is and has been an officer of the production company, and during production of the Alaska series she was also employed as Executive Producer. Most of her work was done in Alaska. The company had offices in Alaska and elsewhere. Editing on the series was done in Alaska and Ohio.

Ms. C. first purchased a home in Anchorage in 2005. She purchased a home in City A. in 2011, and then replaced that home with a 4000-square-foot dwelling that she and her partner built, also in City A., in 2018. In recent years, she has also owned a smaller home in Florida. She owns no property in Ohio.

Ms. C. seems to have gradually put down more roots in Alaska over this period. She registered a vehicle in Alaska in 2005, and in 2011 she moved her driver's license and voter registration to Alaska.[3]

The pattern Ms. C. and her partner followed was to be in Alaska in the summer, as well as for a few weeks in the winter, with the total time in Alaska always more than four but rarely more than six months. The remainder of the year was spent in various locations, including Ohio, Florida, and filming locations. At some point no later than 2012 Ms. C. spent six continuous months in Alaska.[4] She was deemed eligible for the 2013 PFD.[5] After 2011 and prior to late 2021, Ms. C. did not take any act requiring or establishing residency in another state. However, between 2014 and 2019 she reverted to the pattern of spending less than half the year in Alaska. In 2020 that pattern reversed: Ms. C. spent 7½ months in Alaska, 4½ months in Florida, and no time in any other location.[6]

Ms. C. realized that because she had spent the majority of 2020 in Alaska, she could be

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2 The company may have progressed through various corporate incarnations; for purposes of this decision, it is treated as a single entity.
3 Ex. 7, p.3.
4 Ex. 7, p. 5.
5 Ex. 1, p. 9.
6 Ex. 1, p. 4.

eligible for the 2021 dividend. She filed a paper application on February 23, 2021.[7]

Ms. C. credibly testified that she viewed herself as an Alaska resident from the early 2000s and regarded the successive Alaska homes she owned as her primary ones. She did not form an intent to leave the state permanently until the event described in the next paragraph.

In 2021, Ms. C.'s mother in Florida became quite ill. Because of that development, in about June of 2021 Ms. C. and her partner decided to relocate full-time to the home they own in that state. They sold their last Alaska home in the mid to late fall of 2021.

For tax year 2020, B. C. filed a federal Form 1040 listing a P.O. box in City A, Ohio in the home address box at the top of the form.[8] She authorized her tax preparer to file a return on her behalf on September 13, 2021[9] (lining up with a common date for filing for people who require an extension), but the preparer did not file the form until 2023.[10] The Ohio P.O. box is the address of a family employee who handles all of Ms. C.'s and her partner's correspondence. While Ms. C. owns no real estate in Ohio, her partner has owned a farm there for about 50 years.

Ms. C. has been advised by her accountant (correctly, as will be seen), that listing an address on a federal tax form does not establish state residency. Ms. C. did not file a 2020 resident or part-year resident income tax return in another state or country.[11]

III. Discussion

Although the Division appeared more comfortable with its understanding of Ms. C.'s life pattern by the conclusion of the hearing, it did not formally concede any aspect of the case at that time. Thus, each of the arguments the Division had raised in the past will be addressed at least briefly here. Understandably, the Division unquestionably continues to press the argument discussed in part III-E below, which is based on a recent decision from this office that, if followed, would preclude eligibility for Ms. C.

A. Establishment of Residency

"A person establishes residency in the state by being physically present in the state with

7 Ex. 1, p. 4.
8 Ex. 11, p. 9.
9 Ex. 11, p. 8.
10 Ex. 11, p. 10.
11 Ex. 1, p. 2.

the intent to remain in the state indefinitely and to make a home in the state."[12] The exact time that Ms. C. became an Alaska resident is difficult to pin down, as there seems to have been a gradual process of progressively stronger ties. However, all evidence indicates that by 2012, the qualifying year for the 2013 dividend, the City A. residence Ms. C. had purchased in 2011 was her principal home—a more significant residence than any other—and that she intended to make Alaska her home indefinitely. The Division recognized this progression when it paid her a 2013 dividend, and there is no basis to undo that determination.

B. Continued Residency

"A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent [to remain in the state indefinitely and to make a home in the state]."[13] Ms. C.'s pattern between 2014 and 2019 was not inconsistent with Alaska residency. She established residency in no other state, and she continued to maintain her primary home in City A. (building a new one in 2018), spending between four and six months of the year there. Thus, her state residency continued during her annual absences to multiple other locations. She was not eligible for a dividend because eligibility rules (not residency rules) required someone in her situation to spend more time in the state, but there is no basis to conclude that her residency was impaired.

C. 30-Day Rule

In a footnote in its written Position Statement[14] and in its oral opening, the Division raised the possibility that Ms. C., during the long series of years when she did not apply for a PFD, might have lost residency under the so-called "Five Year Rule," also called the "30 Day Rule." This is a statutory provision in which the Legislature required the Department to presume a person had lost residency for PFD purposes if the person had not spent at least 30 days in the state over the course of a five-year span.[15]

At the hearing, questioning made it clear that Ms. C. spent at least four months in Alaska

12 AS 01.10.055(a). *See also* 15 AAC 23.173(g).
13 AS 01.10.055(c).
14 Division's Position Statement at 4 n.14.
15 AS 43.23.008(d).

in every year, and thus the required 30 days was satisfied many times over. The Division did not appear to contest this evidence.

D. Principal Home

In general, a person is disqualified from receiving a PFD if, at any time during the qualifying year and up to the date of application, the person "maintained the individual's principal home in another state."[16] For some types of allowable absences, there is an exception whereby the absent PFD applicant may maintain the person's principal home outside Alaska.[17] This is true, for example, if the principal home was moved outside the state for military service or to serve in Congress.[18] But there is no such exception for individuals whose time out of state either does not fall under an allowable absence or falls under the catchall provision allowing individuals to spend up to 180 days out of state and still retain eligibility.[19] To retain eligibility for a given year, someone not falling within the exceptions must keep their Alaska as their principal home at all times.

The qualifying year for the 2021 dividend was 2020.[20] The evidence in this case showed that during that year and up to the time of her application in February of 2021, Ms. C.'s home in City A. was her largest and most significant single residence. The Florida home was smaller and less central to her activities and work. It did not become her principal home until the summer of 2021, after the time period relevant to this decision.

E. Address on Federal Tax Return

An additional reason Ms. C. was deemed ineligible was that her 2020 Form 1040 showed a P.O. box in Ohio as her home address. In finding this item to be disqualifying, the Division relied on a decision recently issued by this office in the case of *In re T.J.*[21] *T.J.* was adopted by an administrative law judge without involvement of the Commissioner of Revenue.[22]

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16 15 AAC 23.143(d)(1)

17 *Id*.

18 *Id*.

19 *Id*. (not listing AS 43.23.008(a)(17), the catchall absence provision).

20 AS 43.23.295(6).

21 OAH Case No. 22-0701-PFD (adopted Dec. 20, 2022) (included in the Record at Ex. 10).

22 In general, pursuant to a delegation from the Commissioner of Revenue, administrative law judges can adopt PFD decisions as final if—as was the case in *T.J.*—neither party has filed a Proposal for Action under AS 44.64.060(e). However, an administrative law judge is not supposed to exercise the adoption power if the case raises an issue of "first impression," that is, an issue of law that has not been decided before. What appears to have happened in *T.J.* is that the administrative law judge, who was not experienced in tax matters, failed to recognize

The regulation applied in *T.J.*, and the one applicable here, is 15 AAC 23.143(d)(5). It provides:

> (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 . . .
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> (5) 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, unless the individual
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> (A) was required by the other state or country to file a return claiming resident tax status in that state or country even though the individual was a state resident as defined in AS 43.23.095; or
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> (B) files in the other state or country an amended return claiming nonresident tax status and provides proof to the department that the amended return was actually filed in the other state or country; . . . .

The text of this regulation refers to two kinds of tax returns. One is a resident income tax return, and the other is a part-year resident income tax return. Putting aside taxpayers residing abroad, these are clearly references to *state* tax returns. Alaskans send their federal tax returns to one of several processing centers—none of which is located in Alaska—but they file exactly the same kind of return as people in other states. One does not file a resident federal income tax return specific to Alaska or any other state. There is no such thing.

T.J. held, with no analysis, that when an individual puts an address in another state on a federal tax return, the individual is filing a resident tax return in another state. Nothing in the text of 15 AAC 23.143(d)(5) supports this expansive interpretation. Indeed, if the Department of Revenue had intended to encompass that act in the regulation, it could easily have done so by, for example, disqualifying individuals who "provide an address in another state or country on a federal income tax return." But it did not, and it is reasonable to surmise that it did not write the regulation that way because doing so would not make sense as a matter of federal tax law. The "home address" on a federal return is simply a contact address.[23] No federal instruction or

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that expanding the scope of 15 AAC 23.143(d)(5) to encompass the addresses entered on *federal* tax returns was a significant, unprecedented change in legal interpretation, such that adopting the decision in the Commissioner's place exceeded the scope of his delegation.

23 Line Instructions for Forms 1040 and 1040-SR, at 14 (https://www.irs.gov/pub/irs-pdf/i1040gi.pdf).

regulation requires that address to correspond to the person's state of legal residence. P.O. boxes are permitted if the post office does not deliver mail to the person's home, for whatever reason. There is no requirement that the P.O. box be in the same state as the person's home or homes, nor that it be in the state of legal residence.[24]

As the Division's representative acknowledged at hearing, prior to *T.J.* this regulation had never been construed to relate to the address entered on a federal tax return.[25] And, indeed, the Division did not advocate that it be so interpreted in *T.J.*[26] The administrative law judge made the reinterpretation on his own, without input from the Division.

This decision rejects the interpretation of 15 AAC 23.143(d)(5) in *T.J.*, and interprets that regulation to apply to the filing of a (1) resident state tax return in another state; (2) part-year resident state tax return in another state; (3) resident tax return in another country; and (4) part-year resident state tax return in another country. 15 AAC 23.143(d)(5) does not disqualify an applicant based on the address entered on a United States federal tax return.

Accordingly, by listing the Ohio P.O. box where all of her mail is delivered to a family employee on her federal Form 1040 for 2020 (which was filed in 2023), Ms. C. did not take an action disqualifying her from eligibility for the 2021 PFD.

IV. Conclusion

Because, during the qualifying year and up to the time of application, B. C. remained an Alaska resident, maintained her principal home in Alaska, and was not otherwise disqualified, she was eligible for the 2021 PFD. The decision of the Permanent Fund Dividend Division to deny the application of Ms. C. for a 2021 Permanent Fund Dividend is therefore REVERSED.

DATED this 28th day of April, 2023.

By: SIGNED
Christopher Kennedy
Administrative Law Judge - Tax

24 *Id*.

25 Opening Statement of Peter Scott.

26 This ALJ has examined the record in *T.J.* to confirm that the holding was not advocated by the Division. Indeed, the Division stated—correctly, in my view—that it was "stymied" on the issue of tax filings, because the state where T.J. resided when not in Alaska does not have an income tax.

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 9th day of June, 2023.

By: SIGNED
Signature
Adam Crum
Name
Commissioner, Department of Revenue
Title

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