

## Chapter 23

### Alaska Permanent Fund Dividend (Select Regulations)

#### **15 AAC 23.143. Establishing and maintaining Alaska residency**

##### Statute text

(a) An individual's intent to establish residency, remain indefinitely in Alaska, or to return to Alaska and remain indefinitely is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere. Acts that are required by law or contract or are routinely performed by temporary residents of Alaska are not by themselves evidence of residency. In evaluating whether an individual claiming Alaska residency has demonstrated an intent to remain indefinitely in Alaska, the department will consider whether or not an individual has:

- (1) taken steps to establish Alaska residency and sever residency in a previous state or country;
- (2) ties to another state or country that indicate continued residency in the other state or country; and
- (3) taken other action during the qualifying year, through the date of application, that is inconsistent with an intent to remain in Alaska indefinitely.

(b) An individual may not become a resident while absent from Alaska.

(c) Physical presence in Alaska is not, by itself, sufficient to establish residency. Before January 1 of the qualifying year, an individual must have taken at least one step beyond physical presence in Alaska to establish residency. The department will not consider external indicators, including those listed in 15 AAC 23.173(g), established less than six months before December 31 of the qualifying year as evidence of the establishment of Alaska residency in time to qualify for the current year dividend.

(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

(1) maintained the individual's principal home in another state or country, regardless of whether the individual spent a majority of time at that home, except while absent for a reason listed

(A) in AS 43.23.008(a)(1) - (3), (9) - (11), or (16); or

(B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph;

(2) claimed or maintained a claim of residency in another state or country in the individual's employment personnel records; if the individual claims an error or a delay was made in processing by the personnel office, the individual must submit

(A) from the personnel office, a certified copy of the individual's request to change the individual's state of legal residence; or

(B) a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay, in processing the individual's personnel records; the personnel officer must state the exact date the records show the original request was received and why the request was not processed timely;

- (3) claimed a non-resident motor vehicle tax exemption in Alaska;
- (4) accepted full-time, permanent employment in another state or country except while on an absence listed
  - (A) in AS 43.23.008(a)(1) - (3), (9) - (11), or (16); or
  - (B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph;
- (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
  - (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
  - (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;
- (6) claimed or maintained a claim of a homestead or homeowner's property tax exemption in another state or country, that required the individual to be a resident of that state or country, unless the individual
  - (A) files an amended homestead or homeowner's property tax exemption claim deleting the claim of residency; and
  - (B) provides evidence from the other state or country that the individual filed an amended homestead or homeowner's property tax exemption claim deleting the claim of residency;
- (7) applied for or received an education loan from another state or country that required an individual to be a resident of that state or country;
- (8) disclosed in a court proceeding or affidavit that the individual is a resident of another state or country;
- (9) executed a will that described residency in another state or country;
- (10) moved from Alaska,
  - (A) for a reason other than one listed
    - (i) in AS 43.23.008(a)(1) - (3), (9) - (11), or (16); or
    - (ii) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (i) of this subparagraph; and
  - (B) claiming moving expenses as a deduction on the individual's federal income tax return, unless the individual
    - (i) files an amended federal income tax return deleting the claimed moving expenses as a deduction; and
    - (ii) provides proof from the Internal Revenue Service that the individual filed an amended return;
- (11) accepted admission under resident tuition provisions to a college or university in another state or country, unless
  - (A) there was no difference between resident and nonresident tuition;

(B) nonresident tuition was waived as part of an interstate exchange agreement such as the Western Interstate Commission for Higher Education (WICHE) student exchange program or the Washington Wyoming Alaska Montana Idaho (WWAMI) medical education program; or

(C) the individual was granted admission under resident tuition provisions for any other reason that did not require the individual to be a resident of the state or country in which the college or university is located;

(12) registered to vote in another state or country, except if the individual

(A) registered to vote in another state no more than 60 days before a presidential election solely for the purpose of voting in that election and did not vote in any other election in another state other than for president of the United States; or

(B) registered to vote in another country for which the individual was not required to claim residency of the country in order to register to vote;

(13) voted in another state's or country's state, country, or local election, except if the individual voted in an election described in this paragraph and the individual was not required to claim residency in order to vote;

(14) obtained a resident hunting, fishing, or trapping license from another state or country;

(15) filed for divorce, dissolution, or legal separation in another state or country that required the individual to be a resident of that state or country in order to file the action;

(16) repealed 1/1/2010;

(17) obtained any other benefit or benefits as a result of establishing or maintaining any claim of residency in another state or country or by disclaiming Alaska residency, except that the department will not deny a dividend to an individual solely because the individual received Medicaid benefits from another state if the individual's application for Medicaid was consistent with the intent to maintain residency in Alaska.

(e) Regardless of alienage, a child born outside Alaska to an eligible resident on an allowable absence, adopted by an eligible resident, or whose adoption by an eligible resident is pending during the qualifying year, establishes Alaska residency in the child's own right immediately upon the child's arrival in Alaska if the child's custodial parent or guardian is an eligible resident at the time of the child's arrival in Alaska.

(f) An individual absent from Alaska as a dependent of an eligible resident who as soon as reasonably possible, as determined by the department, after emancipation does not return to Alaska and establish Alaska residency as an adult is not eligible for a dividend. A newly emancipated individual who was absent from Alaska as a dependent of an eligible resident who returns to Alaska as soon as reasonably possible, as determined by the department, after emancipation and who establishes external indicators of Alaska residency as an individual is not subject to the six month physical presence requirements of 15 AAC 23.163(b).

(g) A resident who marries a nonresident while physically present in Alaska is considered to have the intent to remain indefinitely in Alaska until the resident takes steps or actions to depart Alaska.

(h) An individual who on the date of application knows the individual will be moving from Alaska at a specific time to a specific destination for a reason other than one allowed by AS 43.23.008(a) does not have the intent to remain indefinitely in Alaska and is not eligible for a dividend.

(i) The eligibility of a resident who marries a nonresident while absent from Alaska is not changed by the marriage, so long as the resident is absent for the resident's own allowable reason.

(j) The fact that an individual's spouse has not declared Alaska residency does not establish a presumption that an individual is not a resident.

(k) Repealed 1/1/2000.

#### History

History: Eff. 1/1/93, Register 124; am 6/26/93, Register 126; am 12/24/93, Register 128; am 10/8/94, Register 131; am 11/20/96, Register 140; am 4/18/97, Register 142; am 1/1/99, Register 148; am 1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2003, Register 164; am 1/1/2005, Register 172; am 1/1/2008, Register 184; am 1/1/2009, Register 188; am 1/1/2010, Register 192; am 1/1/2011, Register 196; am 1/1/2013, Register 204

#### Annotations

Authority: AS 01.10.055

AS 43.23.005

AS 43.23.008

AS 43.23.015

AS 43.23.055

Editor's note: As of Register 153 (April 2000), the regulations attorney made technical revisions under AS 44.62.125(b)(6), changing cross-references in 15 AAC 23.143(d)(1), (4), and (10)(A) to reflect changes to the paragraph numbering in AS 43.23.008(a), effective January 1, 2000.

As of Register 160 (January 2002), the regulations attorney made a technical revision under AS 44.62.125(b)(6), and in accordance with ch. 85, sec. 45, SLA 2001, to change "student loan" to "education loan" in 15 AAC 23.143(d)(7).

15 AAC 23.163. Allowable absences

#### Statute text

(a) Except as provided in AS 43.23.005(c), an individual who has never been physically present in Alaska may not claim an allowable absence under AS 43.23.008.

(b) An individual who was absent from Alaska for more than 180 days is not eligible for a dividend if the individual

(1) was not a state resident for at least 180 days immediately before departure from Alaska;

(2) repealed 1/1/2000.

(c) For purposes of

(1) AS 43.23.008(a)(1), receiving secondary or postsecondary education on a full-time basis means enrollment and attendance in good standing as a full-time student where participation requires absence from this state

(A) at an academic institution for any of the 7th - 12th grades consistent with (d) of this section;

(B) for the purpose of pursuing a vocational certificate, associate, baccalaureate, or graduate degree, as a full-time student at a college, university, junior or community college, or postsecondary vocational institution accredited by an accrediting agency that the United States Secretary of Education recognizes under 34 C.F.R. Part 602, or full-time participation in an internship program if the internship is required by the college or university as part of the student's academic program; for the purposes of this subparagraph, an individual in the last academic year before graduation who was carrying enough credits to graduate, but fewer than full-time credits for any one term, semester, or quarter, is considered to have been a full-time student at that time; or

(C) for the purpose of pursuing a vocational certificate, associate, baccalaureate, or graduate degree, as a full-time student

(i) at a Title IV institution recognized under 20 U.S.C. 1001 - 1155 (The Higher Education Act of 1965) and 34 C.F.R., Part 600; or

(ii) at a non-accredited college or university if students attending the college or university may qualify as eligible to receive a student loan from Nellie Mae, or if the college or university's credits or degrees are accepted by at least three Title IV institutions recognized under 20 U.S.C. 1001 - 1155 (the Higher Education Act of 1965) and 34 C.F.R., Part 600;

(D) for the purposes of completing an internship or residency program at a hospital or medical clinic;

(2) AS 43.23.008(a)(2), receiving vocational, professional, or other specific education on a full-time basis means attending a program for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state at an educational institution eligible to participate in financial aid programs administered by the Alaska Commission on Postsecondary Education.

(d) An individual clearly demonstrates that the primary reason for the individual's absence is to obtain a secondary education by living at a boarding school while attending grades 7 - 12 at an out-of-state institution. An individual who lives with an ineligible parent or ineligible permanent legal guardian while attending an out-of-state institution has not demonstrated that the primary reason for the individual's absence is to obtain a secondary education.

(e) Repealed 10/8/94.

(f) An individual whose absence or combination of absences, under a provision of AS 43.23.008 other than AS 43.23.008(a)(9) - (10) and (13), if the eligible resident whom the individual accompanies is absent for a reason specified in AS 43.23.008(9) or (10), totals more than five consecutive years is presumed not to have the intent to return to Alaska and remain indefinitely in Alaska. In such a case, the individual is not eligible for a dividend payment unless the individual provides, with the individual's application or in a timely response to a request by the department, documentation that demonstrates to the department's satisfaction an intent at all times during the absence or absences to return to Alaska and remain indefinitely in Alaska.

(g) When considering whether an individual who has been absent for more than five years has rebutted the presumption that the individual does not have the intent to return to Alaska and remain indefinitely in Alaska, the department will consider one or more of the following factors, as applicable:

- (1) the length of the individual's absence compared to the time the individual spent in Alaska before departing on the absence;
- (2) the frequency and duration of return trips to Alaska during the absence; the fact that the individual has returned to Alaska in order to meet the physical presence requirement of AS 43.23.005(a)(4) is not sufficient in itself to rebut the presumption of ineligibility;
- (3) whether the individual's intent to return or remain is conditioned upon future events beyond the individual's control, such as economics or finding a job in Alaska;
- (4) any ties the individual has established outside Alaska, such as maintenance of homes, payment of resident taxes, vehicle registrations, voter registration, driver's licenses, or receipt of benefits under a claim of residency in another state;
- (5) the priority the individual gave Alaska on an employment assignment preference list, such as those used by military personnel;
- (6) whether the individual made a career choice or chose a career path that does not allow the individual to reside in Alaska or return to Alaska; and
- (7) any ties the individual has maintained in Alaska, such as ownership of real and personal property, voter registration, professional and business licenses, and any other factors demonstrating the individual's intent.

(h) When considering whether an individual who has been absent for more than five years has rebutted the presumption that the individual does not have the intent to return to Alaska and remain indefinitely in Alaska,

- (1) the department will give greater weight to the claim of an individual who makes frequent voluntary return trips to Alaska during the period of the individual's absence than to the claim of an individual who does not;
- (2) the department will generally consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years has not rebutted the presumption; however, this consideration does not apply if the individual shows to the department's satisfaction that unavoidable circumstances prevented that individual from returning for at least 30 cumulative days during the past five years.

(i) Repealed 1/1/2000.

(j) The department will count whole days when determining the number of days an individual was absent from Alaska. The department will count the day an individual arrives or returns to Alaska as a day absent unless the individual previously left Alaska that same day. The department will count the day an individual leaves Alaska as a day an individual was in Alaska, unless the individual previously arrived or returned to Alaska that same day.

(k) For the purposes of AS 43.23.008(c), an individual is not considered otherwise eligible if the individual was absent from the state for more than 180 days in each of the preceding 10 qualifying years.

#### History

History: Eff. 1/1/93, Register 124; am 6/26/93, Register 126; am 12/24/93, Register 128; am 10/8/94, Register 131; am 11/20/96, Register 140; am 4/18/97, Register 142; am 1/1/99, Register 148; am 1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2003, Register 164; am 5/9/2003, Register 166; am 1/1/2005, Register 172; am 1/1/2008, Register 184; am 1/1/2010, Register 192; am 1/1/2011, Register 196

#### Annotations

Authority: AS 43.23.005

AS 43.23.008

AS 43.23.015

AS 43.23.055

AS 43.23.095

Editor's note: As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Education to the Department of Education and Early Development made by ch. 58, SLA 1999, and the corresponding title change of the commissioner of education.

As of Register 153 (April 2000), the regulations attorney made technical revisions under AS 44.62.125(b)(6), changing a cross-reference in 15 AAC 23.163(f) to reflect changes to the paragraph numbering in AS 43.23.008(a), effective January 1, 2000.

15 AAC 23.173. Proof of eligibility

#### Statute text

(a) An individual must indicate, on forms prescribed by the department, information required by the department that will support the claim of residency and physical presence in Alaska as required by AS 43.23.005. The information must include the names, addresses, and telephone numbers of adult Alaska residents who can attest to facts relating to the individual's length of residence and physical presence in Alaska.

(b) The department will, in its discretion, require an individual to provide other information to accompany the individual's application. If the department notifies an individual that the information included on, or provided with, the application form is insufficient for any reason, the individual must provide the additional information as requested by the department. If the other information requested by the department is not available at the time of application or the request, the individual must specify why the information is not available, and the date by which the information will be submitted to the department.

(c) An individual must provide all information requested by the department for processing within 30 days after the date of the request. Information delivered to the department or postmarked within 30 days after the date of the request is considered timely. An individual may request, for good cause, an extension of the 30 days to respond to a department request for information. If the department determines that good cause exists and grants an extension, the department will determine the time period of the extension on a case-by-case basis. Information not timely received will not be considered in the initial eligibility determination; however, it may be considered on subsequent appeal.

(d) If an individual has not provided all information for processing requested by the department within 30 days after the date of the request or the time period granted in an extension under (c) of this section, the application will be denied.

(e) An individual whose spouse is not a resident eligible for a dividend must provide documentation that demonstrates an intent to remain indefinitely in Alaska despite the nonresidency of the individual's spouse. The department will, in its discretion, require additional proof of the individual's intent to remain in Alaska.

(f) An individual described in this subsection may be eligible to receive a dividend if, with the application, the individual provides documentation that demonstrates to the department's satisfaction an intent to remain indefinitely in Alaska despite the nature of the individual's employment in Alaska. The department may require additional proof of the individual's intent to remain in Alaska. This subsection applies to

(1) an individual transferred to Alaska on temporary assignment by the individual's employer for a definite period of time;

(2) an individual who is employed in Alaska on a seasonal basis;

(3) an individual who is working in Alaska under a contract that requires the employer to return the individual to a place outside of Alaska at the end of the contract; or

(4) an individual who is employed in Alaska but who maintains a home or other abode outside Alaska to which the individual regularly travels.

(g) Proof bearing on an individual's intent to remain indefinitely in Alaska might be any proof acceptable to the department, including



(1) a contract to move household goods to Alaska, except when there is a contract to move household goods from Alaska at the end of the individual's employment;

(2) proof of home ownership, a home purchase contract, rent receipts, or other proof that the individual maintains a principal place of abode in Alaska, except when housing is provided as a part of an employment contract;

(3) employment and unemployment records, including a copy of the leave and earnings statement of a military member for

(A) December of the year before the qualifying year; and

(B) the most recent month;

(4) tax records;

(5) school records;

(6) voter registration and voting records;

(7) motor vehicle registration records;

(8) licensing records such as those for hunting and fishing licenses;

(9) court or other government agency records; or

(10) birth or other vital statistics records.

(h) Proof of physical presence in Alaska might be any proof acceptable to the department, including

(1) records or receipts of airlines, the Alaska Marine Highway system, or other carriers;

(2) hotel receipts;

(3) traffic citations;

(4) repealed 1/1/2002;

(5) affidavits or certifications by adult residents acquainted with or related to the applicant who have personal knowledge of the applicant's physical presence in Alaska.

(i) The burden of proof rests on an individual claiming an allowable absence to prove that the individual has maintained, at all times during the absence, the intent to return and remain indefinitely in Alaska.

(j) If an individual is denied under (d) of this section, the department will reverse the denial if the

(1) only reason the individual was denied was because the individual failed to provide requested information for processing timely;

(2) individual timely requests an informal conference under 15 AAC 05.020; and

(3) requested information is provided by the time of the individual's informal conference;

(4) repealed 8/24/95;

(5) repealed 8/24/95.

#### History

History: Eff. 1/1/93, Register 124; am 12/28/93, Register 128; am 10/8/94, Register 131; am 8/24/95, Register 135; am 1/1/99, Register 148; am 1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2005, Register 172