

December 8, 1997

The Honorable Vic Kohring  
Alaska State Legislature  
600 East Railroad Avenue  
Wasilla, AK 99654

Re: Response to Rep. Kohring's Letter on PFD  
Gift Public Ownership  
A.G. file no: 663-98-0177

Dear Representative Kohring:

This letter responds to your letter of November 29, 1997, to Nanci Jones, Director of the Permanent Fund Dividend Division. That letter inquires whether the State of Alaska could declare the annual dividend a gift and thereby avoid federal income tax liability. A second question asks for documentation showing ownership of the Alaska Permanent Fund by the public as individuals. As these are legal questions, Ms. Jones asked that I provide you with a response.

The answers to both questions are contained in *Beattie Through Beattie v. United States*, 635 F. Supp. 481 (D. Alaska 1986) and *Griesen By and Through Griesen v. United States*, 831 F.2d 916 (9th Cir. 1987), the latter being the decision on appeal of *Beattie* to the Ninth Circuit Court of Appeals.

The plaintiffs in *Beattie* argued that the Permanent Fund Dividend (PFD) is a gift and, therefore, not income subject to federal taxation. The District Court quoted extensively from the leading case concerning whether a transfer of property is a gift, *Commissioner of Internal Revenue v. Duberstein*, 363 U.S. 278, 285-86, 80 S.Ct. 1190, 1196-97 (1960). The U.S. Supreme Court in *Duberstein* quoted from *Bogardus v. Commissioner of Internal Revenue*, 302 U.S. 34, 41, 58 S.Ct. 61, 65 (1937) in which it was held that if a "payment proceeds primarily from the 'constraining force of any moral or legal duty,' or from 'the incentive of anticipated benefit' or an economic nature, it is not a gift." In contrast, the *Duberstein* court also held that "[a] gift in the statutory sense, . . . proceeds from a 'detached and disinterested generosity out of affection, respect, admiration, charity or like impulses.'" 363 U.S. 278 at 1197 quoting *Commissioner of Internal Revenue v. LoBue*, 351 U.S. 243, 246, 76 S.Ct. 800, 803 (1956).

The *Beattie* court then examined the preamble to the legislation that created the

PFD program in which the legislature “expressly characterizes its undertaking [distributing the state’s natural resources wealth] as being one arising out of ‘the duty and policy of the state with respect to the natural resources belonging to it.’” 635 F.Supp at 489, quoting § 1(a), ch. 21 SLA 1980. The court went on to observe: “What is important is that the legislature clearly conveyed the notion that it felt constrained – that is, required – to make the payments. Such is not the stuff of which ‘gifts’ are made.” *Id.* Finally, the court specifically held that PFD payments are not gifts, but transfers of public money for a public purpose and simply not a gift. *Id.* One important holding of the U.S. Supreme Court in the *Duberstein* case is that the “donor’s characterization of his action is not determinative. . . .” 363 U.S. at 286, 80 S.Ct. at 1197, citing *Bogardus*, 302 U.S. at 40, 58 S.Ct. at 64.

The Ninth Circuit affirmed the *Beattie* decision in *Griesen By and Through Griesen*, 831 F.2d 916 (9th Cir. 1987). One of the issues in that appeal, raised by Griesen, one of the plaintiffs in *Beattie*, was the assertion that the ownership of the state’s natural resources was vested in the people of Alaska. The *Beattie* court held:

Neither the resources in question, nor the proceeds from the same, nor the income from those proceeds, are the “property” of any person who resides in the State of Alaska. In adopting their constitution, the people of the State of Alaska have very clearly constituted the *state* as owner of the natural resources which give rise to the fund in question. Alaska Const. art. VIII, §§ 1 and 2.

635 F.Supp. at 491. The Ninth Circuit affirmed this holding, observing that “if all Alaska citizens owned equal shares of a corporation that leased out the rights to the natural resources of Alaska, they still could be taxed on any dividends paid to them by the corporation.” 831 F.2d at 918.

Thus, our best legal advice is that PFD payments are not gifts, but are income subject to federal income taxation, and that there is nothing the legislature could do to change this outcome, as the donor’s declaration of intention is not determinative. Additionally, it seems clear that the state is the owner of Alaska’s natural resources and the Permanent Fund created from the exploitation of those resources, not the individual people of the state.

We believe this answers your questions. Should you have any further question or wish any amplification, please do not hesitate to contact the undersigned.

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

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