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The Honorable Fred Dyson, Chair – Senate State Affairs Committee
Alaska State Capitol Room 121
Juneau, AK 99801

Re: CSSB 73 (CRA) questions

Senator Dyson:

This is in response to several questions you asked our office regarding CCSB 73(CRA) after last week's Senate State Affairs Committee meeting. The questions and our answers follow.

- 1. Does this language remove local control? In other words, if a municipality does NOT pass an ordinance by popular vote would it be subjected to provide this exemption anyway? Does this language only mandate the exemption if and when voters pass an ordinance?**

Short answer: The language in current law and as proposed in CSSB 73(CRA) does not remove local control. Certain property tax exemptions are currently optional in AS 29.45.030(e) and under the control of the municipality to provide for them. A municipality will retain local control over allowing for the current optional exemptions and the new exemptions provided for in the current version of CSSB 73(CRA).

Discussion: AS 29.45.030 establishes the criteria as to types and categories of property required to be exempt--in whole or in part--from general municipal taxation. AS 29.45.030(e), in its current form, has both mandatory and optional provisions. One, a municipality is *required* to exempt from taxation the first \$150,000 of the assessed value of

“[t]he real property owned and occupied as the primary residence and permanent place of abode by a resident who is (1) 65 years of age or older; (2) a disabled veteran; or (3) at least 60 years of age and the widow or

widower of a person who qualified for an exemption under (1) or (2) of this subsection...”

This provision is mandatory on a municipality that levies a property tax without exception.

Two, AS 29.45.030(e) “allows” a municipality, if it has an ordinance approved by the voters, to extend the property tax exemption for the widow or widower of a disabled veteran to a widow or widower who is “under” 60 years of age. This is an optional exemption.

Three, AS 29.45.030(e) “allows” a municipality, in a case of hardship, to provide for property tax exemption beyond the first \$150,000 of assessed value in accordance with regulations of the department. This is also an optional exemption.

The proposed additional language to AS 29.45.030(e) in CSSB 73(CRA) would “allow” a municipality, if it has an ordinance approved by the voters, to extend the \$150,000 assessed value property tax exemption to:

“a resident who is the widow or widower of a member of the armed forces of the United States who dies because of illness or injury suffered while serving on active duty service, or complications relating to the treatment of the illness or injury suffered while serving on active duty service of the United States.”

If CSSB 73 (CRA) passes, this language would create an additional optional exemption that would require voter approval.

The fact that the existing optional exemption language is under a statute that provides for required exemptions, does not automatically convert an optional exemption to a mandatory exemption. The language in AS 29.45.030(e) makes clear as to what is mandatory and what is optional. Under rules of statutory construction, statutes are to be read and interpreted to effectuate their purpose.

You also ask about AS 29.45.050, which sets out specific optional taxation exemptions and exclusions. Of particular note is AS 29.45.050(s), which provides for an optional municipal property tax exemption but the exemption is limited to the:

“widow or widower of a member of the armed forces of the United States injured serving on active duty while eligible for hostile fire or imminent danger pay who dies because of the injury or complications related to the injury or its treatment.”

This is a narrower class of beneficiaries than proposed in AS 29.45.030(e) in CSSB 73(CRA). The optional exemption in AS 29.45.050(s) may be a partial or whole value exemption of the assessed value of property and this exemption is not tied to the first \$150,000 of assessed value of the property in AS 29.45.030(e).

2. How is the term “active duty” interpreted in our state statutes? Is there a standard definition? Are members of the National Guard considered on active duty? Are Coast Guard members on active duty?

With regard to United States military service, there is no definition or interpretation of “active duty” in the Alaska Statutes. Although numerous references are made to active duty status in various contexts, the term is not defined in the Alaska Statutes.

Under federal law, active duty means:

“full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.”¹

The Coast Guard is part of the United States military, and members of the Coast Guard are part of the armed forces of the United States.² Therefore, the same definition applies to them as well.

Members of the National Guard are not generally on active duty. As stated above, the definition of active duty excludes even full time National Guard duty. However, National Guard members can be called to active duty by the secretary of defense under 10 U.S.C. § 12301(d). Additionally, members of the Alaska National Guard, as part of the organized militia of Alaska can be called to active state service by the governor.³ However, SB 73 as written, applies only to the armed forces of the United States, and therefore would not apply to a member of the militia called to state service.

¹ 10 U.S.C. § 101(d)(1).

² 10 U.S.C. § 101(a)(4).

³ AS 26.05.070.

3. **How would the AG's office interpret the section that reads "who dies because of an illness or injury suffered while serving on active duty service, or complications relating to the treatment of the illness or injury suffered while serving..."? Would it be interpreted that the injury or illness is a direct result of the requirements associated with their military service, or would this apply to a service member who suffers a recreational accident on a weekend (or car accident, etc.)? Would suicide be included?**

In Alaska the courts interpret statutes "according to reason, practicality, and common sense, considering the meaning of the statute's language, its legislative history, and its purpose." The courts "adopt 'the rule of law that is most persuasive in light of precedent, reason, and policy.'"⁴

Based on the language of the bill, we would interpret it to apply to all members of the armed forces who die as a result of illness or injury suffered while on active duty. This would include a person who dies in a recreational accident or car accident that occurs when the person is momentarily off duty. The federal statutes do often make distinctions between injuries suffered by active duty military personnel in the line of duty and those not suffered in the line of duty.⁵ Because this bill makes no such distinction, it would presumably apply to all members of the armed forces who die because of an injury or illness suffered while on active duty, whether or not that the incident occurs in the line of duty. Because the bill makes no distinction between a member of the armed forces who dies by suicide and a member of the armed forces who dies by any other means, the bill would apply to a member who dies by suicide as well.

4. **If an injury or illness while on active duty means "directly related to the requirements of their active duty service," would the state argue that a particular threshold be met, i.e., could a widow/er argue that they qualify for the exemption because their spouse died as a result of a recreational skiing accident while serving in Alaska, because they would not have been skiing otherwise in Alaska (base assignment)? Would the state argue that a particular causality would need to exist between the requirements of their service and the cause of the injury/illness? How would that proportionality be measured?**

⁴ *RC TEC Services v. Cummings*, 295 P.3d 916 (Alaska 2013)(Internal citations omitted).

⁵ *See, e.g.* 10 U.S.C. § 1076(a)(2)(C)(Medical care for dependents of members of military killed in the line of duty).

It is unlikely that the State would be in a position to argue about this statute at all. The statute provides that a municipality may allow a property tax exemption for the primary residence of some individuals. For the exemption to apply, a municipality would first have to adopt an appropriate ordinance, and any dispute about whether an individual should receive an exemption would be between the individual and the municipality.

Nonetheless, as currently written the State would not advance the position that there needs to be any connection or causality between a person's service and their injury/illness. As written, the bill would apply to any person who dies because of an injury or illness suffered while serving on active duty, whether or not that injury or illness was related to their duty, or suffered in the line of duty.

- 4a. Another example for question #4: If a service member is exposed to carcinogens as a direct result of their active duty service, and after leaving service live for 30 (or 2 or 15 or 40, etc.) more years and develop cancer and die as a result, how would the state interpret the language in the bill? Would there have to be a "likelihood" that the exposure during service caused the cancer and death, or would there have to be "direct evidence," etc.?**

This would be a factual question. If the taxing authority and an individual seeking the tax exemption could not resolve the question, it would probably end up in court, to be resolved by a trier of fact. Additionally, a municipality could provide some standards for dealing with this issue in the ordinance adopting the exemption. The easiest way to resolve these questions would be to piggyback off any military determination of the person's status. If for purposes of military benefits, the United States government agrees that a particular death was the result of an illness or injury sustained while on active duty, that determination could be controlling here as well.

Follow Up Questions:

- 5. Does SB 73 create anything new that isn't already covered by AS 29.45.050(s)? Section 050 provides wholly optional/discretionary exemptions that municipalities may enact. SB 73 seeks to put what looks to be an almost identical discretionary exemption, but within an otherwise mandatory statute (AS 29.45.030);**

Yes, CSSB 73 (CRA) creates something new that is not already covered by AS 29.45.050(s). CSSB 73(CRA) expands the available exemption to the widow or widower of any person who dies as a result of injury or illness sustained while on active duty, whether or not that person was eligible for hostile fire or imminent danger pay.

6. **Related to question 1 below and to the above, an observation more than anything else—it seems confusing to put discretionary language in an otherwise mandatory statute (AS 29.45.030). However, SB 73 just tacks on to existing discretionary language within subsection (e). I think the nut of question 1 below arises from this generally confusing construction found in AS 29.45.030(e).**

As noted in response to the first question, there are both mandatory and optional provisions in AS 29.45.030(e) and they are distinctly set out in the subsection. Each part of subsection (e) relates to the initial exemption from taxation for first \$150,000 assessed value of “the real property owned and occupied as the primary residence and permanent place of abode by a resident” and specifies which persons are given the exemption as a mandatory exemption; and specifies those who may receive it as an optional exemption. While some may find it confusing to have mandatory exemptions and optional exemptions in the same subsection, it does not violate rules of statutory construction. It would be up to the legislature to decide if moving the optional provisions to another section in AS 29.45 is desirable or necessary.

Respectfully,

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MV/tjd