

LEGAL SERVICES

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MEMORANDUM

February 11, 2022

SUBJECT: Federal Tax Standard Deduction: Unconstitutional Delegation?
(CSHB 37(W&M); Work Order No. 32-LS0275\B.4)

TO: Representative Adam Wool
Attn: Ken Alper

FROM: Emily Nauman
Deputy Director 

Attached is the amendment you requested. You asked that the state standard deduction against income tax be adjusted each year for inflation so that it remains equal to the federal standard deduction. It may be an unconstitutional delegation of the Alaska Legislature's power to enact state laws that change automatically upon a change in federal law because it effectively allows the federal government to change Alaska law.¹

Delegation of tax law also raises a special concern. The Constitution of the State of Alaska requires that the power of taxation, with limited exceptions, never be relinquished; art. IX, sec. 1, states "[t]he power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article." Under art. X, sec. 2, Constitution of the State of Alaska, the state may not delegate its taxing power to an entity other than a city or organized borough.

Because the federal standard deduction inflation adjustment is adopted by reference, the actions of the federal government will determine the amount of state tax owed, a surrender of the state's autonomy to tax. While discussing the taxing power of the state, in *State v. Alex*, the Alaska Supreme Court stated that ". . . the legislature may not delegate its taxing power to an entity other than a borough or a city."² A court may interpret the delegation of the amount of the standard deduction to the federal government, which is not a borough or city, to be unconstitutional.

¹ For a discussion on the delegation of legislative authority to a private group, see *N. Lights Motel, Inc. v. Sweaney*, 561 P.2d 1176 (Alaska 1977), *reh'g. denied*, 563 P.2d 256. While the federal government is not a private group, a similar due process concern arises.

² 646 P.2d 203, 211 (Alaska 1982) (emphasis added).

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Another alternative may be to adopt the language in federal law used to calculate the inflation adjustment to the federal deduction in federal law. While this would avoid the delegation problem, if the federal government were ever to change the inflation calculation, the state and federal deductions would no longer match.

If I may be of further assistance, please advise.

ELN:mjt

22-061.mjt

Attachment