

SENATE CS FOR CS FOR HOUSE BILL NO. 341(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/30/96

Referred: Rules

Sponsor(s): REPRESENTATIVES GREEN, James

SENATORS Salo, Donley, Halford, Taylor, Kelly, Torgerson, Leman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative adjudication and judicial appeals and to the
2 informal resolution of certain factual disputes between taxpayers and the
3 Department of Revenue; establishing the office of tax appeals as a quasi-judicial
4 agency in the Department of Administration; revising the procedures for hearing
5 certain tax appeals, including appeals regarding seafood marketing assessments;
6 relating to consideration and determination by the superior court of disputes
7 involving certain taxes and penalties due, and amending provisions relating to
8 the assessment, levy, and collection of taxes and penalties by the state and to
9 the tax liability of taxpayers; providing for the release of agency records
10 relating to formal administrative tax appeals; relating to litigation disclosure of
11 public records; clarifying administrative subpoena power in certain tax matters;
12 and providing for an effective date."

1 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

2 * **Section 1.** AS 43.05 is amended by adding new sections to read:

3 **ARTICLE 4. OFFICE OF TAX APPEALS.**

4 Sec. 43.05.400. **OFFICE OF TAX APPEALS ESTABLISHED.** The office of
5 tax appeals is established within the department.

6 Sec. 43.05.405. **JURISDICTION.** The office of tax appeals has original
7 jurisdiction to hear formal appeals from informal conference decisions of the
8 Department of Revenue under AS 43.05.240. Appeal to the office may be taken only
9 from an informal conference decision under AS 43.05.240. Jurisdiction of the office
10 is limited to, and AS 43.05.400 - 43.05.499 applies to and governs, an administrative
11 appeal regarding

12 (1) electric and telephone cooperative taxes under AS 10.25;
13 (2) a seafood marketing assessment under AS 16.51;
14 (3) all taxes levied under AS 43, except the property tax assessed under
15 AS 43.56; and

16 (4) any other taxes administered by the Department of Revenue.

17 Sec. 43.05.410. **APPOINTMENT; TERM; REAPPOINTMENT.** (a) The
18 governor shall appoint a chief administrative law judge of the office of tax appeals
19 from among two or more persons nominated as most qualified for that position by the
20 Alaska Judicial Council. If one or more additional administrative law judges are
21 established in the office of tax appeals, the governor shall appoint additional
22 administrative law judges from among two or more persons nominated as most
23 qualified for each position by the judicial council.

24 (b) The initial term for an administrative law judge, including the chief
25 administrative law judge, is three years. The governor may reappoint a person
26 appointed to serve as an administrative law judge, including the chief administrative
27 law judge, to subsequent terms of four years each.

28 (c) A reappointment of a person appointed to serve as an administrative law
29 judge, including the chief administrative law judge, shall be made as follows:

30 (1) if an administrative law judge seeks reappointment, the governor
31 shall notify the judicial council of the impending end of the administrative law judge's

1 term at least 150 days before the end of the term;

2 (2) in reviewing the performance of the administrative law judge, the
3 judicial council shall collect and review sufficient information to thoroughly evaluate
4 the administrative law judge; the review by the judicial council must include a
5 published notice requesting written comments on the administrative law judge whose
6 performance is being evaluated;

7 (3) the judicial council shall review the performance of the
8 administrative law judge and submit by at least 60 days before the vacancy a
9 recommendation to the governor on whether the administrative law judge should be
10 reappointed;

11 (4) the governor has discretion to reappoint or not reappoint an
12 administrative law judge whom the judicial council recommends for reappointment;
13 however, the governor may not reappoint a person as administrative law judge if the
14 judicial council recommends against that reappointment.

15 (d) Upon notice of an administrative law judge opening and request by the
16 governor for nominations under this section, including a vacancy caused by the
17 decision of a sitting administrative law judge to not seek reappointment, a vacancy
18 caused by the removal or resignation of an administrative law judge, or an
19 administrative law judge opening resulting from the decision to add an additional
20 administrative law judge position to the office, the judicial council shall advertise and
21 invite applications for the position. The judicial council shall meet and make
22 nominations under this section for the position within 120 days of the governor's
23 notice and request for nominations, unless the 120-day period is extended by the
24 judicial council with the concurrence of the governor.

25 (e) Nominations made by the Alaska Judicial Council under this section shall
26 be made after the judicial council has reviewed the qualifications of applicants for
27 administrative law judges. The judicial council shall collect and review sufficient
28 information to thoroughly evaluate each applicant. The review by the judicial council
29 must include a published notice requesting written comments on the list of applicants
30 for an administrative law judge opening.

31 (f) In reviews by the Alaska Judicial Council under this section,

1 (1) comments, references, or survey responses that request
2 confidentiality, or for which the judicial council promises confidentiality, shall be kept
3 confidential, but the judicial council shall provide the applicant for administrative law
4 judge or administrative law judges seeking reappointment a summary of the concerns
5 raised in the comments, references, and survey responses that are kept confidential;

6 (2) the judicial council has authority to review confidential Alaska Bar
7 Association files, including bar complaint files, on applicants for administrative law
8 judge and on administrative law judges seeking reappointment whose applications or
9 reappointment evaluations are under review; the judicial council shall maintain the
10 confidentiality of these files; and

11 (3) the judicial council shall send to the governor with its nominees or
12 reappointment recommendations copies of all nonconfidential materials that it gathers
13 on applicants for administrative law judge and administrative law judges seeking
14 reappointment whose applications or reappointment evaluations are under review, and
15 shall provide the governor with summaries of concerns raised in the comments,
16 references, and survey responses that are kept confidential.

17 Sec. 43.05.415. REMOVAL. (a) The chief administrative law judge may be
18 disciplined or removed from office by the commissioner only for good cause.

19 (b) An administrative law judge other than the chief administrative law judge
20 may be disciplined or removed from office by the chief administrative law judge only
21 for good cause.

22 (c) In this section, "good cause" includes

23 (1) violation of the Alaska code of judicial conduct adopted by the
24 Alaska Supreme Court;

25 (2) conviction of a crime of moral turpitude;

26 (3) unjustified failure to handle the caseload assigned or similar
27 nonfeasance of office;

28 (4) failure to meet the requirements of AS 43.05.425 relating to
29 qualification for office; and

30 (5) unreasonable failure to comply with the statutes or regulations
31 regarding the confidentiality of taxpayer information.

1 Sec. 43.05.420. ADMINISTRATION. (a) The chief administrative law judge

2 (1) shall exercise general supervision of the office; and

3 (2) may select and hire staff for the office.

4 (b) An administrative law judge, including the chief administrative law judge,
5 may preside over a proceeding and carry out any procedures authorized under
6 AS 43.05.400 - 43.05.499.

7 (c) The chief administrative law judge may adopt regulations implementing or
8 interpreting AS 43.05.400 - 43.05.499, including rules of procedure and evidence for
9 proceedings before the office.

10 Sec. 43.05.425. QUALIFICATIONS; CODE OF CONDUCT. (a) An
11 administrative law judge, including the chief administrative law judge, at the time of
12 appointment, must

13 (1) be licensed to practice law in this state or another state; and

14 (2) have experience in the field of tax law or tax administration.

15 (b) A person appointed as an administrative law judge under AS 43.05.410
16 who is not licensed to practice law in this state at the time of appointment must
17 become licensed to practice law in this state within 12 months after appointment or
18 shall cease to hold office.

19 (c) An administrative law judge, including the chief administrative law judge,
20 shall comply with the Alaska code of judicial conduct and, except as provided in (b)
21 of this section, shall be and remain licensed to practice law in this state.

22 Sec. 43.05.430. NOTICE OF APPEAL FROM INFORMAL CONFERENCE
23 DECISION. An appeal under the jurisdiction of the office is initiated by filing with
24 the office, and serving upon the commissioner of revenue, a notice of appeal from an
25 informal conference decision of the Department of Revenue under AS 43.05.240. A
26 notice of appeal from the informal conference decision may be filed or amended after
27 the time for filing has expired only if good cause is shown.

28 Sec. 43.05.435. SCOPE AND STANDARDS FOR DECISION. The
29 administrative law judge shall hear all questions de novo under AS 43.05.400 -
30 43.05.499. The administrative law judge shall

31 (1) resolve a question of fact by a preponderance of the evidence or,

1 if a different standard of proof has been set by law for a particular question, by that
2 standard of proof;

3 (2) resolve a question of law in the exercise of the independent
4 judgment of the administrative law judge;

5 (3) defer to the Department of Revenue as to a matter for which
6 discretion is legally vested in the Department of Revenue, unless not supported by a
7 reasonable basis.

8 Sec. 43.05.440. SERVICE OF DOCUMENTS. Service of documents required
9 under AS 43.05.400 - 43.05.499 may be accomplished in any manner authorized under
10 the Alaska Rules of Civil Procedure. If service is done only by mail, the date of
11 service is determined by the date of mailing. If service is done by both mail and hand
12 delivery, the date of service is determined by the earlier of the date of mailing or
13 actual receipt of the documents.

14 Sec. 43.05.445. DISCOVERY. (a) In an appeal under AS 43.05.405,
15 discovery may take place only under a plan for discovery approved by the
16 administrative law judge. The administrative law judge shall approve a plan for
17 discovery to the extent consistent with the efficient, just, and speedy conduct of the
18 appeal. The plan may limit or set conditions on discovery and must include provisions
19 for stipulations of fact by the Department of Revenue and the taxpayer. Discovery
20 shall be limited to information that is relevant to the determination of the correct tax
21 or penalty, unless the Department of Revenue or the taxpayer makes a showing that
22 the discovery is reasonably calculated to lead to admissible information.

23 (b) Requests by the taxpayer for disclosure of public records relating to the
24 appeal are governed by, and the records are disclosed only in accordance with, the plan
25 approved under this section.

26 (c) Legislative history, reported court decisions, statutes, regulations, or similar
27 documents available for public inspection at a library or the office of the lieutenant
28 governor or through a publicly accessible database must be obtained through those
29 means and may not be sought through discovery.

30 Sec. 43.05.450. SUBPOENAS. An administrative law judge may issue a
31 subpoena to compel attendance of a witness or the production of a document or thing.

1 A subpoena may compel attendance of a witness or production of a document or thing,
2 located either inside or outside the state, to the maximum extent permitted by law. A
3 subpoena may be used for the purpose of discovery or for the purpose of presenting
4 evidence at a formal hearing. A subpoena shall issue upon request of a party, subject
5 to reasonable limitation or conditions set in the subpoena. A subpoena may be
6 enforced by petition to or other appropriate legal proceeding brought in a court of this
7 state or another jurisdiction.

8 Sec. 43.05.455. FORMAL HEARING. (a) At or before the formal hearing,
9 a party may present argument and evidence relevant to the amount of the tax or
10 penalty. The administrative law judge shall administer oaths and permit inquiry
11 necessary to determine the proper amount of the tax or penalty.

12 (b) Each party and witness shall be present during the formal hearing, except
13 that

14 (1) with the consent of the taxpayer, the administrative law judge may
15 conduct all or part of the hearing by telephone, audio or video teleconference, or other
16 electronic medium; and

17 (2) with the consent of the parties and the administrative law judge, all
18 or part of the hearing may be conducted through correspondence.

19 (c) The taxpayer bears the burden of proof on questions of fact by a
20 preponderance of the evidence unless a different standard of proof has been set by law
21 for a particular question.

22 (d) The formal hearing before the administrative law judge is not required to
23 be conducted with strict adherence to the Alaska Rules of Evidence. Relevant
24 evidence must be admitted if it is probative of a material fact in controversy.
25 Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence is
26 admissible if it is the kind of evidence on which responsible persons are accustomed
27 to rely in the conduct of serious affairs, regardless of the existence of a common law
28 or statutory rule that makes improper the admission of the evidence over objection in
29 a civil action. Oral evidence may be taken only on oath or affirmation. The rules of
30 privilege are effective to the same extent that they are recognized in a civil action in
31 the courts of this state, except that relevant documents and other material items that

are public records under AS 09.25.100 - 09.25.220 shall be admissible.

(e) The administrative law judge shall make a record of the proceedings of the appeal, including recordation of the proceedings of a formal hearing by electronic or stenographic means.

(f) The administrative law judge may grant exceptions to the requirements of this section in the interest of justice.

Sec. 43.05.460. ENFORCEMENT. (a) The administrative law judge and each party is responsible for the efficient, just, and speedy conduct of the formal hearing. The administrative law judge may impose sanctions on the parties for failure to comply with a subpoena, an order respecting discovery, and any other matter regarding conduct of the appeal. In imposing sanctions, the administrative law judge shall be guided by the practices of the courts of this state in imposing sanctions for similar offenses in civil proceedings.

(b) The administrative law judge may

(1) remand the matter for consideration of material new information or material information withheld by a party;

(2) prohibit a party from introducing information previously withheld without good cause, and any other evidence dependent upon the information;

(3) enter an order, upon a showing of good cause,

(A) barring a designated claim or defense;

(B) striking part or all of a pleading of a party; or

(C) dismissing part or all of the appeal; or

(4) grant any other relief that the administrative law judge considers appropriate.

(c) In addition to the remedies of (a) and (b) of this section, a party may seek enforcement of a subpoena or other order of an administrative law judge by the superior court under AS 44.62.590.

Sec. 43.05.465. DECISION; RECONSIDERATION; FINALITY. (a) Within 180 days after the record on the appeal is closed, the administrative law judge shall issue a decision in writing. The decision must contain a concise statement of reasons for the decision, including findings of fact and conclusions of law. In the decision, the

1 administrative law judge may grant relief, provide remedies, and issue any order that
2 is appropriate. The administrative law judge shall serve each party in the case with
3 a copy of the decision. Unless reconsideration is ordered under (c) of this section, the
4 decision under this subsection is the final administrative decision.

5 (b) A party may request reconsideration of a decision issued under (a) of this
6 section within 30 days after the date of service shown in the certificate of service of
7 the decision. The request must state specific grounds for reconsideration.
8 Reconsideration may be granted if, in reaching the decision, the administrative law
9 judge has

10 (1) overlooked, misapplied, or failed to consider a statute, regulation,
11 court or administrative decision, or legal principle directly controlling;

12 (2) overlooked or misconceived some material fact or proposition of
13 law;

14 (3) misconceived a material question in the case; or

15 (4) applied law in the ruling that has subsequently changed.

16 (c) The administrative law judge may issue an order for reconsideration of all
17 or part of the decision upon request of a party. Reconsideration is based on the record,
18 unless the administrative law judge allows additional evidence and argument. A
19 hearing on reconsideration at which additional evidence or argument is offered or
20 received is subject to the procedures applicable to a hearing under AS 43.05.455.

21 (d) The power to order reconsideration expires 60 days after the date of
22 service, as shown on the certificate of service, of a decision issued under (a) of this
23 section. If the administrative law judge does not issue an order for reconsideration
24 within the time allowed for ordering reconsideration, a motion for reconsideration is
25 considered denied.

26 (e) Within 60 days after the close of the record on reconsideration, the
27 administrative law judge shall issue a written decision upon reconsideration. The
28 administrative law judge shall serve each party in the case with a copy of the decision
29 upon reconsideration. The decision upon reconsideration is the final administrative
30 decision.

31 (f) A final administrative decision becomes final either on the date

1 (1) 60 days after the date of service of a decision issued under (a) of
2 this section if an order for reconsideration is not issued; or

3 (2) the decision upon reconsideration is served, as shown by the
4 certificate of service executed by the administrative law judge under (e) of this section.

5 Sec. 43.05.470. PUBLIC PROCEEDINGS AND RECORDS. (a) Records,
6 proceedings, and decisions under AS 43.05.400 - 43.05.499 are confidential, except
7 that the records, proceedings, and decisions become public records and open to the
8 public when the final administrative decision is issued and becomes final.

9 (b) Upon a showing of good cause, an administrative law judge shall issue a
10 protective order requiring that specified parts of the records, proceeding, or decision
11 shall be kept confidential in a particular appeal. If a protective order is issued, the
12 final administrative decision shall be made public after redacting by deletion or
13 substitution of information as required by the protective order.

14 (c) The department, in consultation with the chief administrative law judge,
15 shall maintain, index, and make available for public inspection the final administrative
16 decisions, proceedings, and records of the office made public under this section.

17 Sec. 43.05.475. CONSISTENCY OF DECISIONS. (a) As to questions of
18 law, a final administrative decision issued under AS 43.05.400 - 43.05.499, unless
19 reversed or overruled, has the force of legal precedent.

20 (b) To promote consistency among legal determinations issued under
21 AS 43.05.400 - 43.05.499, the chief administrative law judge may review and circulate
22 among the other administrative law judges the drafts of formal decisions, decisions
23 upon reconsideration, and other legal opinions of the other administrative law judges
24 in the office. The drafts are confidential documents and are not subject to disclosure
25 under AS 09.25.100 - 09.25.220 or this chapter.

26 Sec. 43.05.480. JUDICIAL REVIEW. (a) Judicial review by the superior
27 court of a final administrative decision may be had by a party to the appeal under
28 AS 43.05.400 - 43.05.499 by filing a notice of appeal in accordance with the
29 applicable rules of court governing appeals to that court in civil matters. The notice
30 of appeal shall be filed within 30 days after an administrative decision becomes final
31 under AS 43.05.465. The right to judicial review under this subsection is not affected

1 by the failure to seek reconsideration before the administrative law judge.

2 (b) The amount due must be paid or refunded within 30 days after the date
3 that the final administrative decision becomes final under AS 43.05.465. In place of
4 payment of the amount due, a taxpayer who has appealed a final administrative
5 decision may file a bond with the court or otherwise obtain relief from payment in
6 accordance with the Alaska Rules of Appellate Procedure.

7 (c) Appeals under this section are reviewed under AS 44.62.560 and 44.62.570.

8 (d) If, after the appeal is heard, it appears that the final administrative decision
9 was correct, the court shall affirm the decision. If the final administrative decision is
10 incorrect, the court shall determine the amount due. If the taxpayer is entitled to a
11 refund, the court shall order the repayment and the Department of Revenue shall pay
12 the amount due and attach a certified copy of the judgment to the payment. If the
13 court determines that the taxpayer owes an additional amount, the court shall order the
14 payment and the taxpayer shall pay the amount due and attach a certified copy of the
15 judgment to the payment. Any payment required under this subsection shall be paid
16 by the 30th day following the expiration of the time within which an appeal from the
17 superior court decision may be filed, unless the party appealing files a bond or
18 otherwise obtains relief from payment in accordance with the Alaska Rules of
19 Appellate Procedure.

20 Sec. 43.05.499. DEFINITIONS. In AS 43.05.400 - 43.05.499, unless the
21 context otherwise requires,

22 (1) "administrative law judge" means an administrative law judge
23 appointed under AS 43.05.410;

24 (2) "commissioner" means the commissioner of administration;

25 (3) "department" means the Department of Administration;

26 (4) "discovery" means the use of subpoenas, subpoenas duces tecum,
27 interrogatories, requests for production, requests for admission, depositions, and other
28 methods of civil procedure by which one party to an action may discover information
29 within the knowledge and control of another person;

30 (5) "legislative history" means the documents of the legislature
31 recording the background and events, including draft bills, correspondence and

1 memoranda, committee reports, tapes and transcripts of hearings, and tapes and
2 transcripts of floor debate concerning consideration of a bill;

3 (6) "office" means office of tax appeals in the department;

4 (7) "party" means the Department of Revenue or the taxpayer;

5 (8) "proceeding" means only a proceeding under the jurisdiction of the
6 office;

7 (9) "subpoena" means a command to appear at a certain time and place
8 to testify, or to appear at a certain time and place to produce books, papers, and other
9 things, and testify;

10 (10) "tax" means a tax described in AS 43.05.405, including a seafood
11 marketing assessment under AS 16.51;

12 (11) "taxpayer" means a person required to pay a tax, including a
13 person required to pay a seafood marketing assessment under AS 16.51.

14 * **Sec. 2.** AS 09.25.100 is amended to read:

15 Sec. 09.25.100. DISPOSITION OF TAX INFORMATION. Information in the
16 possession of the Department of Revenue that discloses the particulars of the business
17 or affairs of a taxpayer or other person is not a matter of public record, except for
18 purposes of investigation and law enforcement. The information shall be kept
19 confidential except when its production is required in an official investigation,
20 administrative adjudication under AS 43.05.400 - 43.05.499, or court proceeding.

21 These restrictions do not prohibit the publication of statistics presented in a manner
22 that prevents the identification of particular reports and items, [OR] prohibit the
23 publication of tax lists showing the names of taxpayers who are delinquent and
24 relevant information that may assist in the collection of delinquent taxes, or prohibit
25 the publication of records, proceedings, and decisions under AS 43.05.400 -
26 43.05.499.

27 * **Sec. 3.** AS 09.25.122 is amended to read:

28 Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is subject
29 to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record
30 subject to disclosure and copying even if the record is used for, included in, or relevant
31 to litigation, including law enforcement proceedings, involving a public agency, except

1 that with respect to a person involved in litigation, the records sought shall be
2 disclosed in accordance with **the rules of procedure** applicable **in a court or an**
3 **administrative adjudication** [RULES]. In this section, "involved in litigation" means
4 a party to litigation or representing a party to litigation, including obtaining public
5 records for the party.

6 * **Sec. 4.** AS 22.10.020(d) is amended to read:

7 (d) The superior court has jurisdiction in all matters appealed to it from a
8 subordinate court, or administrative agency when appeal is provided by law. The
9 hearings on appeal from a final order or judgment of a subordinate court or
10 administrative agency, **except an appeal under AS 43.05.242**, shall be on the record
11 unless the superior court, in its discretion, grants a trial de novo, in whole or in part.
12 **The hearings on appeal from a final order or judgment under AS 43.05.242 shall**
13 **be on the record.**

14 * **Sec. 5.** AS 37.10.410 is amended to read:

15 Sec. 37.10.410. "ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES"
16 DEFINED. (a) The following money received by the state is considered to be
17 received as a result of the termination of an administrative proceeding for purposes of
18 applying art. IX, sec. 17(a), Constitution of the State of Alaska:

19 (1) past due taxes that are received by the state for each tax year for
20 which a request for an informal conference under **AS 43.05.240** [AS 43.05.240(a)] is
21 made to the Department of Revenue, together with penalties and interest on the taxes;

22 (2) past due taxes that are received by the state after a request for a
23 formal hearing under **AS 43.05.241** [AS 43.05.240(b)(1)] is made to the Department
24 of Revenue, together with penalties and interest on the taxes.

25 (b) Money received by the state under the following conditions is not
26 considered to be received as the result of the termination of an administrative
27 proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of
28 Alaska:

29 (1) taxes that are not due at the time the request for the proceeding was
30 made under **AS 43.05.240, 43.05.241, or 43.05.242** [AS 43.05.240(a) or (b)(1)];

31 (2) taxes set out in a return not audited by the Department of Revenue

1 at the date of collection; or

2 (3) taxes collected for a tax year for which the taxpayer did not give
3 notice of appeal of an assessment made by the Department of Revenue.

4 * **Sec. 6.** AS 39.25.110 is amended by adding a new paragraph to read:

5 (31) the chief administrative law judge and any other administrative law
6 judges appointed to the office of tax appeals of the Department of Administration
7 under AS 43.05.400 - 43.05.499.

8 * **Sec. 7.** AS 43.05.010 is amended to read:

9 Sec. 43.05.010. DUTIES OF COMMISSIONER. The commissioner of
10 revenue shall

11 (1) exercise general supervision and direct the activities of the
12 Department of Revenue;

13 (2) supervise the fiscal affairs and responsibilities of the department;

14 (3) prescribe uniform rules for investigations and hearings;

15 (4) keep a record of all departmental proceedings, record and file all
16 bonds, and assume custody of returns, reports, papers, and documents of the
17 department;

18 (5) [REPEALED

19 (6)] adopt a seal and affix it to each order, process, or certificate issued
20 by the commissioner;

21 (6) [(7)] keep a record of each order, process, and certificate issued by
22 the commissioner, and keep the record open to public inspection at all reasonable
23 times;

24 (7) [(8)] hold hearings and investigations necessary for the
25 administration of state tax and revenue laws;

26 (8) except as provided in AS 43.05.400 - 43.05.499, [(9)] hear and
27 determine appeals of a matter within the jurisdiction of the Department of Revenue
28 [INVOLVING INCOME, EXCISE, LICENSE, OR OTHER TAXES LEVIED UNDER
29 STATE LAWS] and enter orders on the appeals that are final unless reversed or
30 modified by the courts;

31 (9) issue subpoenas to [(10)] require the attendance of witnesses and

1 the production of necessary books, papers, documents, correspondence, and other
2 things [EVIDENCE AT HEARINGS];

3 (10) [(11)] order the taking of depositions before a person competent
4 to administer oaths;

5 (11) [(12)] administer oaths and take acknowledgments;

6 (12) [(13)] request the attorney general for rulings on the interpretation
7 of the tax and revenue laws administered by the department;

8 (13) [(14)] call upon the attorney general to institute actions for
9 recovery of unpaid taxes, fees, excises, additions to tax, penalties, and interest;

10 (14) [(15)] issue warrants for the collection of unpaid tax penalties and
11 interest and take all steps necessary and proper to enforce full and complete
12 compliance with the tax, license, excise, and other revenue laws of the state;

13 (15) [(16)] audit reports, payments, and payments due relating to
14 royalty and net profits under oil and gas contracts, agreements, or leases under
15 AS 38.05 [;

16 (17) REPEALED].

17 * **Sec. 8.** AS 43.05.040 is amended to read:

18 Sec. 43.05.040. INSPECTION OF RECORDS OR PREMISES AND
19 ISSUANCE OF SUBPOENAS. (a) The department may examine the books, papers,
20 records, or memoranda of any person to ascertain the correctness of a return filed or
21 to determine whether a tax or a payment for oil or gas royalty or net profits shares
22 under a contract, agreement, or lease under AS 38.05 is due, or in an investigation or
23 inspection in connection with tax matters or matters relating to oil and gas royalty or
24 net profits under contracts, agreements, or leases under AS 38.05. The records and the
25 premises where a business is conducted shall be open at all reasonable times for
26 official inspection, and the department may subpoena any person to appear and
27 produce books, records, papers, or memoranda bearing upon tax matters or matters
28 relating to oil and gas royalty or net profits under contracts, agreements, or leases
29 under AS 38.05, and to give testimony or answer interrogatories under oath respecting
30 tax matters or matters related to oil and gas royalty or net profits under contracts,
31 agreements, or leases under AS 38.05, and the department may administer oaths to

persons who are so subpoenaed. A subpoena issued under this section may compel attendance of a witness or production of a document or thing, located either inside or outside the state, to the maximum extent permitted by law.

(b) A subpoena may be served by the commissioner of public safety or a peace officer designated by the commissioner of public safety, [OR] by a person designated by the Department of Revenue, or as otherwise provided by law. A subpoena may also be served by registered or certified mail for delivery restricted only to the person subpoenaed. The return delivery receipt must be addressed so that the receipt is returned to the department.

(c) If a person who is subpoenaed neglects or refuses to obey the subpoena issued as provided in this section, the department may report the fact to the superior court or the appropriate court of another jurisdiction, and may seek an order from the court compelling obedience to the subpoena. The [AND THE] court, to the maximum extent permitted by law, may compel obedience to the subpoena to the same extent as witnesses may be compelled to obey the subpoenas of the court.

* **Sec. 9.** AS 43.05.230(a) is amended to read:

(a) It is unlawful for a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under this title, except

(1) in connection with official investigations or proceedings of the department, whether judicial or administrative, involving taxes due under this title;

(2) in connection with official investigations or proceedings of the child support enforcement agency, whether judicial or administrative, involving child support obligations imposed or imposable under AS 25 or AS 47;

(3) as provided in AS 38.05.036 pertaining to audit functions; [AND]

(4) as provided in AS 43.05.400 - 43.05.499; and

(5) as otherwise provided in this section.

* **Sec. 10.** AS 43.05.240 is repealed and reenacted to read:

Sec. 43.05.240. TAXPAYER REMEDIES. (a) A taxpayer aggrieved by the action of the department in fixing the amount of a tax or penalty may apply to the department within 60 days after the date of mailing of the notice required to be given

1 to the taxpayer by the department, giving notice of the grievance, and requesting an
2 informal conference to be scheduled with an appeals officer. The taxpayer shall be
3 given access to the taxpayer's file in the department in the matter for preparation for
4 the informal conference. At the informal conference, the taxpayer may present to the
5 appeals officer arguments and evidence relevant to the amount of tax or penalty due
6 the state. If the department determines that a correction is warranted, the department
7 shall make the correction.

8 (b) A party who believes that the appeals officer is unduly delaying a hearing
9 process may notify the commissioner in writing. Within 30 days after being notified
10 by a party, the commissioner may issue an order prescribing a schedule for the appeals
11 officer to complete the informal conference or setting a meeting at which that schedule
12 will be discussed and prescribed. The schedule may be subsequently modified by
13 consent of the parties. If the commissioner fails to issue an order within 30 days after
14 receiving notice of a party's belief of undue delay, the department's action in fixing
15 the amount of tax or penalty shall be considered to have been summarily affirmed by
16 the appeals officer the same as if an informal conference decision to that effect were
17 issued on the last day of that 30-day period.

18 * **Sec. 11.** AS 43.05 is amended by adding new sections to read:

19 Sec. 43.05.241. ADMINISTRATIVE APPEAL. For a matter within the
20 jurisdiction of the office of tax appeals under AS 43.05.405, the taxpayer aggrieved
21 by an informal conference decision entered under AS 43.05.240 may file with the
22 office of tax appeals a notice of appeal for formal hearing, as provided in
23 AS 43.05.430, no later than 30 days after service of the decision resulting from an
24 informal conference.

25 Sec. 43.05.242. JUDICIAL APPEAL CHALLENGING VALIDITY OF TAX.

26 (a) Within 30 days after a decision resulting from the informal conference, a person
27 aggrieved by the action of the department under AS 43.05.240 on a ground specified
28 in this section may appeal to the superior court.

29 (b) An appeal under this section may be taken from an informal conference
30 decision only with respect to an issue in the assessment for tax, interest, and penalties
31 that the taxpayer raises upon the ground that a tax statute or tax regulation is

1 (1) violative of the United States Constitution;
2 (2) violative of the state constitution; or
3 (3) preempted by federal statute, regulation, or treaty.
4 (c) An appeal of an issue under this section may not be taken from an informal
5 conference decision if
6 (1) there is a dispute of material fact;
7 (2) a factual record is necessary to decide the question of law raised;
8 (3) development of a factual record will render it unnecessary to reach
9 the question of law raised; or
10 (4) the taxpayer challenges the assessment of the tax related to the issue
11 on a ground other than one listed in (b) of this section.
12 (d) An issue may not be presented to the superior court unless the issue first
13 has been presented in writing to the department at or before the informal conference.
14 The department shall prepare a record of that portion of the informal conference
15 relevant to the issue on appeal. The superior court shall
16 (1) resolve a question of law in the exercise of the independent
17 judgment of the superior court judge;
18 (2) defer to the department on a question of law for which discretion
19 is legally vested in the department unless not supported by a reasonable basis.
20 (e) An appeal of the informal conference decision under this section is
21 exclusive as to the issue raised. The taxpayer electing to appeal under this section
22 may not pursue an appeal of the issue under AS 43.05.241 or pursue any other action
23 under another statute on the issue.
24 (f) When an appeal is taken under this section, the taxpayer shall be given
25 access to the file of the department in the matter for preparation of the appeal.
26 (g) In an appeal under this section, the amount due shall be paid within 30
27 days after the date of the service of the informal conference decision. In place of
28 payment of the amount due, the taxpayer may file a bond with the court or otherwise
29 obtain relief from payment in accordance with the Alaska Rules of Appellate
30 Procedure.
31 (h) Venue for an appeal filed under this section shall be set under rules

1 adopted by the supreme court.

2 (i) If it is determined that appeal was improperly filed under this section, the
3 appeal shall be transferred to the office of tax appeals for further proceedings under
4 AS 43.05.400 - 43.05.499.

5 * **Sec. 12.** AS 43.05.245 is amended to read:

6 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES,
7 AND INTEREST. If a taxpayer fails to file a return or report required by this title in
8 the time required by law or regulation, or makes an erroneous or fraudulent return, the
9 department shall proceed to assess the license fees, tax, penalties, or interest and make
10 a return from information that [WHICH] it obtains. An assessment or a [A] return
11 [MADE AND] subscribed by the department in accordance with this section is presumed
12 sufficient for all legal purposes. However, nothing prevents a taxpayer from presenting
13 evidence or other information in [ON] an informal conference [APPEAL] under
14 AS 43.05.240 or in an appeal under AS 43.05.241 in order to rebut the presumed
15 sufficiency of an assessment or [A] return [MADE AND] subscribed by the department,
16 nor does the presumption of sufficiency alter the parties' respective burdens of proof
17 once the taxpayer has presented evidence or other material information to rebut that
18 presumption. The assessment of license fees, tax, penalties, or interest under this section
19 occurs when the department issues a notice and demand for payment of the license fees,
20 tax, penalties, or interest. The notice and demand for payment is issued when the notice
21 and demand is delivered to the taxpayer in person or placed in the United States mail,
22 addressed to the last known address of the taxpayer. Penalties and interest assessed
23 under this title shall be collected in the same manner as provided in this title for the
24 collection of tax or license fees.

25 * **Sec. 13.** AS 43.05.275 is amended by adding new subsections to read:

26 (c) A taxpayer who has filed a return, paid the full amount due on the return,
27 and made a claim under this section may, without exhausting administrative remedies,
28 file an action in superior court to recover on the claim if the sole ground for appeal is
29 that a tax statute is

- 30 (1) violative of the United States Constitution;
31 (2) violative of the state constitution; or
32 (3) preempted by federal statute, regulation, or treaty.

(d) An action may not be brought under (c) of this section if

- (1) there is a dispute of material fact;
- (2) a factual record is necessary to decide the appeal;
- (3) development of a factual record will render it unnecessary to reach a question of constitutional law or federal preemption; or
- (4) the taxpayer challenges the assessment of the tax on a ground other than one listed in (c) of this section.

* **Sec. 14.** AS 43.20.270(a) is amended to read:

(a) The department may collect taxes, with interest, penalties, and other additional amounts permitted by law, by distraint and sale, in the manner provided in this section, of the property of a person liable to pay the taxes, interest, penalties, or other additional amounts, who neglects or refuses to pay them within 10 days from the mailing of notice and demand for payment of them, and who has not appealed from the assessment of the taxes, interest, penalties, and other additional amounts **determined** under AS 43.05.240 **or following appeal taken under AS 43.05.241 or 43.05.242.**

* **Sec. 15.** AS 43.55.013(g) is amended to read:

(g) The monthly production at the economic limit for a lease or property is presumed to be 3,000 Mcf times the number of well days for the lease or property during that month for which the tax is to be paid. The taxpayer may rebut this presumption [AT A FORMAL HEARING UNDER AS 43.05.240] by providing clear and convincing evidence of a different monthly production rate at the economic limit for the lease or property. The hearing shall be held before February 15 of the year or within six months after commencement of gas production for a lease or property. The monthly production rate at the economic limit for the lease or property based upon the clear and convincing evidence of the taxpayer shall be calculated by dividing the value determined under (i) of this section into the average monthly direct operating cost determined under (h) of this section.

* **Sec. 16.** AS 43.55.040 is amended to read:

Sec. 43.55.040. POWERS OF DEPARTMENT OF REVENUE. **Except as provided in AS 43.05.400 - 43.05.499, the** [THE] department may

(1) require a person engaged in production and the agent or employee of the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil or

1 gas to furnish additional information that is considered by the department as necessary
2 to compute the amount of the tax;

3 (2) examine the books, records, and files of such a person;

4 (3) conduct hearings and compel the attendance of witnesses and the
5 production of books, records, and papers of any person; and

6 (4) make an investigation or hold an inquiry that is considered necessary
7 to a disclosure of the facts as to

8 (A) the amount of production from any oil or gas location, or of
9 a company or other producer of oil or gas; [,] and

10 (B) the rendition of the oil and gas for taxing purposes.

11 * **Sec. 17. EFFECT ON EXISTING REMEDIES AND PROCEDURES.** This Act does not
12 affect the remedies and procedures

13 (1) specified in AS 04.11, including AS 04.11.560; AS 05.15, including
14 AS 05.15.610; AS 42.05, including AS 42.05.551; or AS 43.56, including AS 43.56.120 and
15 43.56.130; or

16 (2) adopted by regulation by the Department of Revenue governing appeal of a
17 decision of the Department of Revenue regarding

18 (A) a game of chance or skill made under AS 05.15;

19 (B) a permanent fund dividend under AS 43.23;

20 (C) a coin-operated device or punchboard under AS 43.35; or

21 (D) a child support obligation under AS 25.27.

22 * **Sec. 18. TRANSITIONAL PROVISIONS.** (a) The remedies and procedures provided
23 by this Act apply to all revenue tax appeals in which a request for formal hearing is filed with
24 the Department of Revenue on or after the effective date of this subsection. The remedies and
25 procedures existing before the effective date of this subsection apply to all revenue tax appeals
26 in which a request for formal hearing was filed with the Department of Revenue before the
27 effective date of this subsection, unless all of the parties to an appeal agree in writing to the
28 remedies and procedures established by this Act.

29 (b) Notwithstanding AS 43.05.405, enacted by sec. 1 of this Act, unless the office of
30 tax appeals has a full caseload, and with the approval of the chief administrative law judge,
31 the chief administrative law judge or any other administrative law judge of the office of tax
32 appeals may be appointed by the governor, by the commissioner of administration, or by the

1 commissioner of another department to serve as a special hearing officer or special
2 administrative law judge on another matter outside the scope of this Act and arising from
3 another department of the executive branch. Appointment under this subsection may not
4 interfere with the primary mission of the office of tax appeals under this Act of the
5 expeditious resolution of administrative tax appeals under its jurisdiction.

6 (c) Until 15 AAC 05.001 - 15 AAC 05.320 and other Department of Revenue
7 regulations in effect on the effective date of this subsection are revised as necessary, those
8 regulations continue to govern an administrative appeal of a Department of Revenue decision
9 not within the jurisdiction of the office of tax appeals, including a decision regarding a

10 (1) game of chance or skill under AS 05.15;

11 (2) permanent fund dividend under AS 43.23; and

12 (3) coin-operated device or punchboard under AS 43.35.

13 (d) Notwithstanding sec. 20 of this Act, upon receipt of a notice and request for
14 nominations by the governor, the Alaska Judicial Council shall immediately proceed to
15 advertise the position, invite applications, give public notice of applications received, invite
16 public comment on the applications, evaluate the applicants, and make nominations as
17 provided in AS 43.05.410, added by sec. 1 of this Act.

18 (e) In this section,

19 (1) "chief administrative law judge" means the chief administrative law judge
20 of the office of tax appeals appointed under AS 43.05.410, enacted by sec. 1 of this Act;

21 (2) "office of tax appeals" means the office established in AS 43.05.400,
22 enacted by sec. 1 of this Act.

23 * **Sec. 19.** Section 18(d) of this Act takes effect immediately under AS 01.10.070(c).

24 * **Sec. 20.** Except as provided in sec. 19, this Act takes effect July 1, 1996.