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M E M O R A N D U M February 14, 2012

SUBJECT: Taxable property of the natural gas pipeline in CSHB 9( )
(Work Order No. 27-LS0075\U)

TO: Representative Mike Chenault
Speaker of the House of Representatives
Attn: Tom Wright

FROM: Emily Nauman
Legislative Counsel

You have asked three questions related to taxable property and the natural gas pipeline project created under HB 9.

1. What can state and local governments tax?
AS 43.56.210(5) outlines what property the state and municipal governments[1] can tax by defining "taxable property" as

> (5) "taxable property"
> (A) means real and tangible personal property used or committed by contract or other agreement for use within this state primarily in the exploration for, production of, or pipeline transportation of gas or unrefined oil (except for property used solely for the retail distribution or liquefaction of natural gas), or in the operation or maintenance of facilities used in the exploration for, production of, or pipeline transportation of gas or unrefined oil; "taxable property" includes
> (i) machinery, appliances, supplies, and equipment;
> (ii) drilling rigs, wells (whether producing or not), gathering lines and transmission lines, pumping stations, compressor stations, power plants, topping plants, and processing units;
> (iii) roads, tank farms, tanker terminals, docks and other port facilities, and air strips;
> (iv) aircraft and motor vehicles owned by a person whose principal business in the state is the exploration for, production of, or pipeline transportation of gas or unrefined oil and whose operation of the aircraft or motor vehicle directly relates to the conduct of that business;
> (v) maintenance equipment and facilities, and maintenance camps and other related facilities; and

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[1] AS 29.45.080, outlining what property a municipality can tax, refers to the "taxable property" definition listed in AS 43.56.210(5).

> (vi) communications facilities owned by a person whose principal business in the state is the exploration for, production of, or pipeline transportation of gas or unrefined oil and whose operation of the communications facilities directly relates to the conduct of that business;
> (B) does not include
> (i) permanent residences;
> (ii) office buildings requiring substantial local government services;
> (iii) oil and gas pipeline systems owned and operated by a public utility that is certificated under AS 42.05.221 and is regulated by the Regulatory Commission of Alaska;
> (iv) aircraft and motor vehicles, except aircraft and motor vehicles taxable under (A)(iv) of this paragraph; and
> (v) communications facilities, except communications facilities taxable under (A)(vi) of this paragraph;

Beyond the exceptions listed in AS 43.56.210(5)(B), additional property exempted from state taxation under AS 43.56.020 includes:

> Before the construction commencement date, property that is committed by contract or other agreement for use in this state primarily for the production or pipeline transportation of gas or unrefined oil, or in the operation or maintenance of facilities for the production or pipeline transportation of gas or unrefined oil.

AS 29.45.030 lists additional exceptions to municipal taxes including "state property" to the extent that was not "property acquired by an agency, corporation, or other entity of the state through foreclosure or deed in lieu of foreclosure and retained as an investment of a state entity."

In addition, both AS 29.45.080(c) and AS 43.56.010 place a statutory cap on the value of oil and gas property subject to tax.[2] If you would like more information about this cap, or how it functions, please let me know.

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[2] AS 29.45.080(c) states:

> A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality.

Application of this cap and its relation to AS 42.56.010(c) was clarified in <u>Bullock v. State, Dept. of Cmty. & Reg'l Affairs</u>, 19 P.3d 1209 (Alaska 2001).

2. Is there anything currently in statute that prevents the taxation of the natural gas pipeline project created under HB 9 after the "commencement of commercial operations"?

No. In my research I was unable to find any statutory provision that would prevent the state or municipal taxation of a natural gas pipeline project created under HB 9 after the "commencement of commercial operations."

3. How could a natural gas pipeline project created under HB 9 be exempted from tax after the "commencement of commercial operations"?

A tax exemption could be included in statute for a natural gas pipeline either in AS 29.45, AS 43.56, or both.

If I may be of further assistance, please advise.

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