

HOUSE BILL NO. 341

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE GREEN

Introduced: 5/9/95

Referred: Resources, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing a tax court to consider and determine certain taxes and
2 penalties due and collateral matters, and amending provisions relating to taxpayer
3 challenges to the assessment, levy, and collection of taxes by the state; and
4 providing for an effective date."

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

6 * **Section 1.** AS 22 is amended by adding a new chapter to read:

7 CHAPTER 12. TAX COURT.

8 ARTICLE 1. TAX COURT ESTABLISHED.

9 Sec. 22.12.010. ESTABLISHMENT OF TAX COURT. There is established
10 the tax court, consisting of one judge. The tax court is a court of record.

11 Sec. 22.12.020. JURISDICTION. (a) The tax court has exclusive jurisdiction

12 (1) in all appeals by a taxpayer from a decision of the Department of

13 Revenue in matters relating to fixing the amount of, or imposing a penalty on, a tax

14 levied and collected by the state under

- 1 (A) AS 43.19 and AS 43.20;
- 2 (B) AS 43.21;
- 3 (C) AS 43.55;
- 4 (D) AS 43.65; and
- 5 (E) AS 43.75;

6 (2) in claims brought in the small claims division of the tax court
7 relating to a tax, or a penalty on a tax, described in (1) of this subsection; and

8 (3) in proceedings brought under AS 44.62.300(a)(1) to obtain a
9 judicial determination of the validity of a regulation adopted to implement, interpret,
10 or make specific a provision of a tax set out in (1) of this subsection.

11 (b) The jurisdiction of the tax court extends over the whole state.

12 (c) The tax court and its judge may issue injunctions, writs of review,
13 mandamus, prohibition, and all other writs necessary or proper to the complete exercise
14 of its jurisdiction.

15 Sec. 22.12.030. WHERE ACTIONS ARE TO BE BROUGHT. Venue for all
16 actions shall be set under rules adopted by the supreme court.

17 Sec. 22.12.040. CHANGE OF VENUE. The tax court in which the action is
18 pending may change the place of trial in an action from one place to another place in
19 the same judicial district or to a designated place in another judicial district for any of
20 the following reasons:

21 (1) when there is reason to believe that an impartial trial cannot be had;

22 (2) when the convenience of witnesses and the ends of justice would
23 be promoted by the change;

24 (3) when for any cause the judge is disqualified from acting, but, if the
25 judge of another judicial district is assigned to try the action, a change of place of trial
26 need not be made;

27 (4) if the court finds that a party will be put to unnecessary expense
28 and inconvenience.

29 Sec. 22.12.050. GENERAL POWERS AND SESSIONS. (a) The tax court
30 shall always be open, except on judicial holidays as determined by rule of the supreme
31 court. Injunctions, writs of prohibition, and mandamus may be issued and served on

1 holidays and nonjudicial days.

2 (b) The tax court is vested with all power and authority necessary to carry into
3 complete execution all its judgments, decrees, and determinations in all matters within
4 its jurisdiction according to the constitution, the laws of the state, and the common
5 law.

6 (c) The tax court shall hold regular sessions at the times and places as may be
7 designated by rule or order of the supreme court.

8 Sec. 22.12.060. EFFECT OF ADJOURNMENT. An adjournment from day
9 to day, or from time to time, is a recess in the session and does not prevent the tax
10 court from sitting at any time.

11 Sec. 22.12.070. PROCESS. Process of the tax court shall be in the name of
12 the State of Alaska, signed by the clerk of the court or the deputy clerk in the judicial
13 district where the process is issued, dated when issued, sealed with the seal of the
14 court, and made returnable according to rule prescribed by the supreme court.

15 Sec. 22.12.080. QUALIFICATIONS OF JUDGES. (a) A judge of the tax
16 court shall be a citizen of the United States and of the state, a resident of the state for
17 four years immediately preceding appointment, have been engaged for not less than
18 four years immediately preceding appointment in the active practice of tax law, and,
19 at the time of appointment, be licensed to practice law in the state.

20 (b) A person may not be appointed to serve as a judge of the tax court if the
21 person was employed by the Department of Revenue or the Department of Law at any
22 time within four years preceding the date on which a vacancy exists in the position of
23 tax court judge for which the person seeks appointment.

24 (c) In this section, "active practice of tax law" means

25 (1) serving as a tax court judge in a state or territorial court;

26 (2) being actually engaged in advising and representing clients in
27 matters of tax law;

28 (3) rendering legal services of a tax character to an agency, branch, or
29 department of a civil government within the United States or a state or territory of the
30 United States in an elective, appointive, or employed capacity; or

31 (4) serving as a professor, associate professor, or assistant professor in

1 the area of tax in a law school accredited by the American Bar Association.

2 Sec. 22.12.090. VACANCIES. (a) The governor shall fill a vacancy or
3 appoint a successor to fill an impending vacancy in the office of tax court judge within
4 45 days after receiving nominations from the judicial council by appointing one of two
5 or more persons nominated by the council for each actual or impending vacancy. An
6 appointment to fill an impending vacancy becomes effective upon the actual
7 occurrence of the vacancy.

8 (b) The office of a tax court judge becomes vacant upon the death or
9 resignation of the judge or 90 days after the election at which the judge is rejected by
10 a majority of those voting on the question or for which the judge fails to file a
11 declaration of candidacy. Upon the occurrence of (1) an actual vacancy; (2) the
12 certification of rejection following an election; or (3) the election following failure of
13 a judge to file a declaration of candidacy, the judicial council shall meet within 90
14 days and submit to the governor the names of two or more persons qualified for the
15 judicial office; except that this 90-day period may be extended by the council with the
16 concurrence of the supreme court. In the event of an impending vacancy other than
17 by reason of rejection or failure to file a declaration of candidacy, the council may
18 meet at any time within the 90-day period immediately preceding the effective date of
19 the vacancy and submit to the governor the names of two or more persons qualified
20 for the judicial office.

21 Sec. 22.12.100. OATH OF OFFICE. The tax court judge, upon entering
22 office, shall take and subscribe to an oath of office required of all officers under the
23 constitution and any further oath or affirmation as may be prescribed by law.

24 Sec. 22.12.110. APPROVAL OR REJECTION. The tax court judge is subject
25 to approval or rejection as provided in AS 15 (Alaska Election Code). The judicial
26 council shall conduct an evaluation of the judge before the retention election and shall
27 provide to the public information about the judge and may provide a recommendation
28 regarding retention or rejection. The information and any recommendation shall be
29 made public at least 60 days before the retention election. The judicial council shall
30 also provide the information and any recommendation to the office of the lieutenant
31 governor in time for publication in the election pamphlet under AS 15.58.050. If a

1 majority of those voting on the question rejects the candidacy of the judge, the rejected
2 judge may not for a period of four years thereafter be appointed to fill any vacancy
3 in the supreme court, court of appeals, superior court, tax court, or district court of the
4 state.

5 Sec. 22.12.120. IMPEACHMENT. The tax court judge is subject to
6 impeachment by the legislature for malfeasance or misfeasance in the performance of
7 official duties. Impeachment shall originate in the senate and must be approved by
8 two-thirds vote of its members. The motion for impeachment must list fully the basis
9 for the proceeding. Trial on impeachment shall be conducted by the house of
10 representatives. A supreme court justice designated by the court shall preside at the
11 trial. Concurrence of two-thirds of the members of the house is required for a
12 judgment of impeachment. The judgment may not extend beyond removal from office,
13 but does not prevent proceedings in the courts on the same or related charges.

14 Sec. 22.12.130. RESTRICTIONS. (a) The tax court judge while holding
15 office may not practice law, nor engage in the conduct of any other profession,
16 vocation, or business for profit or compensation if the conduct would interfere with the
17 performance of the judicial duties of the judge, nor may a judge hold office in a
18 political party, or hold any other office or position of profit under the United States,
19 the state, or its political subdivisions.

20 (b) A tax court judge filing for another elective public office other than
21 delegate to a constitutional convention of this state or the United States forfeits the
22 judicial position.

23 Sec. 22.12.140. COMPENSATION. (a) The monthly base salary for the tax
24 court judge is the same as for a superior court judge under AS 22.10.190(a). The
25 monthly base salary of the tax court judge may be increased under AS 22.10.190(d)
26 as for a superior court judge.

27 (b) A salary warrant may not be issued to the tax court judge until the judge
28 has filed with the state officer designated to issue salary warrants an affidavit that no
29 matter referred to the judge for opinion or decision has been uncompleted or undecided
30 by the judge for a period of more than six months.

31 (c) In addition to the monthly salary, the tax court judge is entitled to receive

1 a geographic cost-of-living adjustment under AS 22.35.010 based on the location of
2 the judge's primary office assignment. Retirement contributions and benefits shall be
3 computed only on the monthly base salary not including the geographic cost-of-living
4 adjustment.

5 ARTICLE 2. PROCEDURES.

6 Sec. 22.12.200. PROCEDURE FOR TAKING AN APPEAL FROM A FINAL
7 DECISION OF THE DEPARTMENT OF REVENUE. (a) The supreme court may
8 adopt rules for taking an appeal to the tax court.

9 (b) Until rules are adopted under (a) of this section, the procedures for taking
10 an appeal to the tax court shall be the same as those set out in the Alaska Rules of
11 Appellate Procedure that are applicable to appeals from administrative decisions to the
12 superior court.

13 Sec. 22.12.210. PROCEEDINGS TO BE WITHOUT JURY AND DE NOVO;
14 ISSUES REVIEWED. (a) Proceedings before the tax court shall be tried de novo
15 and, to the extent permissible under the constitution, without a jury.

16 (b) In appeals from final decisions of the Department of Revenue, the issues
17 of fact and law, including constitutional issues, shall be restricted to those raised by
18 the parties before the Department of Revenue. If the court finds that other issues are
19 important to the full adjudication of the controversy, it shall remand the entire matter
20 to the Department of Revenue for further consideration unless the parties stipulate to
21 the administrative determination or to the adjudication of the other issues by the tax
22 court without a remand.

23 (c) A matter remanded to the Department of Revenue under (b) of this section
24 is subject to AS 22.12.220(b)(1).

25 Sec. 22.12.220. STANDARD OF EVIDENCE AND BURDEN OF PROOF IN
26 TAX COURT PROCEEDINGS. (a) In proceedings before the tax court, the party
27 having the burden of proof must meet the burden by a preponderance of the evidence.

28 (b) In proceedings before the tax court, the appellant, or the plaintiff in a
29 matter brought in the small claims division, has the burden of proof. However,

30 (1) in respect to new matter raised after the final assessment has been
31 issued, an increase in the alleged tax deficiency, or an affirmative defense pleaded in

1 the answer, the appellee, or the defendant in a matter brought in the small claims
2 division, has the burden of proof; and

3 (2) the Department of Revenue has the burden of proof as to an issue
4 in which the department has, in formal or informal conference, found in favor of the
5 taxpayer either in a written decision or in the record of the case.

6 Sec. 22.12.230. HEARINGS TO BE OPEN TO PUBLIC; REPORT OF
7 PROCEEDINGS; EXCEPTION; CONFIDENTIAL INFORMATION. (a) Except as
8 provided in (b) and (c) of this section, hearings before the tax court are open to the
9 public. Proceedings in the court, except those in the small claims division, shall be
10 reported unless waived by the parties with the consent of the court.

11 (b) If information that is confidential is offered into evidence in a hearing
12 before the tax court, the court may issue orders necessary to protect the confidentiality
13 of the information.

14 (c) In a case involving confidential business records, including trade secrets,
15 upon motion of a party to the suit, the court may issue protective orders necessary to
16 protect the confidentiality of the records. If, under this subsection, the court grants or
17 denies a protective order and interlocutory review of the grant or denial is sought, the
18 tax court may stay the case on the merits until a resolution of the protective order issue
19 is determined by the supreme court.

20 Sec. 22.12.240. TAX COURT DECISION. (a) The judge of the tax court,
21 except when sitting as the small claims division, shall prepare a proposed decision in
22 writing. The proposed decision must contain a concise statement of the facts found
23 and the conclusions of law reached.

24 (b) Unless modified by the court before it becomes final, the proposed decision
25 shall become the final decision of the tax court within 30 days from the date shown
26 in the clerk's certificate of distribution. In its final decision, the tax court may grant
27 relief, invoke remedies, and issue any order that is appropriate in accordance with its
28 decision.

29 Sec. 22.12.250. USE OF PANEL OF MASTERS. (a) To make findings of
30 fact and recommendations of law with respect to one or more issues in controversy,
31 the tax court may designate a panel of masters. The panel consists of three

1 individuals, at least one of whom is an attorney who is a member of the bar of any
2 state.

3 (b) The tax court shall pay the costs of the panel, including staff costs and
4 compensation of the masters in amounts to be fixed by the tax court. The costs and
5 compensation shall be charged each of the parties as ordered by the court or paid out
6 of any fund that is in the custody of the tax court or as otherwise established by court
7 rule.

8 (c) The panel shall appoint one of its members to preside over hearings and
9 other matters of case administration.

10 (d) The panel

11 (1) has all of the powers of the tax court necessary to carry out its role
12 as fact finder, including the power to

13 (A) establish schedules for hearing;

14 (B) determine admissibility of evidence; and

15 (C) create a record for review;

16 (2) does not have authority to exercise powers of enforcement,
17 including issuance of subpoenas, ordering sanctions, and compelling attendance at
18 hearings, but may make applications for the exercise of an enforcement power to the
19 tax court.

20 (e) The panel shall issue a written opinion setting out detailed findings of fact,
21 recommendations of law, and the application of law to the facts. A member dissenting
22 from a majority opinion may write a dissenting opinion describing with particularity
23 the reasons on which the member differs from the majority opinion. If it is not
24 possible for the panel to issue a majority opinion, then each member shall write an
25 opinion.

26 Sec. 22.12.260. PUBLICATION OF DECISION. The supreme court may
27 provide for the publication of tax court decisions that are of general public interest in
28 a permanent and advance sheet form it considers best adapted for public convenience.

29 ARTICLE 3. SMALL CLAIMS.

30 Sec. 22.12.300. SMALL CLAIMS DIVISION. (a) The tax court shall have
31 a small claims division.

1 (b) The judge of the tax court shall sit as the judge of the small claims
2 division.

3 (c) The small claims division has jurisdiction of cases if

4 (1) the taxpayer elects to have the matter heard in the small claims
5 division; and

6 (2) the amount in controversy does not exceed \$15,000, exclusive of
7 interest and penalties.

8 Sec. 22.12.310. NOTICE TO TAXPAYER. In cases in which the amount in
9 controversy does not exceed \$15,000, exclusive of interest and penalties, at the time
10 that the Department of Revenue issues a decision that is adverse to the taxpayer, the
11 department shall also notify the taxpayer in writing of the taxpayer's right to file a
12 complaint in the small claims division and of the process by which the complaint may
13 be filed.

14 Sec. 22.12.320. FILING COMPLAINT IN SMALL CLAIMS DIVISION. A
15 taxpayer shall commence a proceeding in the small claims division by filing with the
16 clerk of the tax court a complaint in the form prescribed by the rules for the tax court.
17 The complaint must state the nature of the taxpayer's claim and request that it be heard
18 by the small claims division. The complaint shall be filed within the time for
19 otherwise appealing from a decision of the department.

20 Sec. 22.12.330. NOTICE TO DEPARTMENT OF REVENUE. When a
21 taxpayer files a claim in the small claims division, the clerk of the tax court shall give
22 notice of the filing to the Department of Revenue. Receipt of notice establishes the
23 department as a party to the proceeding and, at the hearing, may appear in opposition
24 to the proceeding.

25 Sec. 22.12.340. TAXPAYER'S DISMISSAL OF CASE. At any time before
26 entry of judgment, a taxpayer may dismiss a case in the small claims division by
27 notifying the clerk of the tax court in writing. Dismissal initiated by a taxpayer under
28 this section is a dismissal with prejudice.

29 Sec. 22.12.350. INFORMAL HEARING. The hearing in the small claims
30 division is informal. The tax court judge may hear testimony and receive evidence the
31 judge considers necessary or desirable for a just and equitable determination of the

1 case, except that all testimony shall be given under oath. A party may appear on the
2 party's own behalf or may be represented or accompanied by an attorney, licensed
3 accountant, or another person that the court may permit to be present and participate
4 in the proceeding before the small claims division.

5 Sec. 22.12.360. JUDGMENT. The judgment in the small claims division shall
6 be conclusive on the parties, is not to be considered as judicial precedent or be given
7 any force or effect in any other case, hearing, or proceeding. The judgment may
8 include an order to the Department of Revenue to modify or cancel an assessment, pay
9 or allow a refund, or to take other action as may be necessary to carry out the
10 judgment.

11 * **Sec. 2.** AS 15.15.030(10) is amended to read:

12 (10) A nonpartisan ballot shall be designed for each judicial district in
13 which a justice or judge is seeking retention in office. The ballot shall be divided into
14 four parts and each part must bear a heading indicating the court to which the
15 candidate is seeking approval. Within each part the question of whether the justice or
16 judge shall be approved or rejected shall be set out in substantially the following
17 manner: (A) "Shall be retained as justice of the supreme court for 10
18 years?"; (B) "Shall be retained as judge of the court of appeals for eight
19 years?"; (C) "Shall be retained as judge of the superior court for six years?";
20 **(D) "Shall be retained as judge of the tax court for six years?";** or
21 **(E) [(D)] "Shall be retained as judge of the district court for four years?"**
22 Provision shall be made for marking each question "Yes" or "No."

23 * **Sec. 3.** AS 15.35 is amended by adding new sections to read:

24 Sec. 15.35.092. APPROVAL OR REJECTION OF TAX COURT JUDGE.

25 The tax court judge shall be subject to approval or rejection at the first general election
26 held more than three years after the judge's appointment. If approved, the judge shall
27 thereafter be subject to approval or rejection in a like manner every sixth year.

28 Sec. 15.35.094. FILING DECLARATION BY TAX COURT JUDGE. A tax

29 court judge seeking retention in office shall file with the director a declaration of
30 candidacy for retention no later than August 1 before the general election at which
31 approval or rejection is requisite.

1 Sec. 15.35.096. REQUIREMENT OF FILING FEE FOR TAX COURT
2 JUDGE CANDIDATE. At the time the declaration is filed, each candidate for
3 retention as a tax court judge shall pay a filing fee to the director. The filing fee for
4 a candidate for retention on the tax court is \$30.

5 Sec. 15.35.098. PLACING NAME OF TAX COURT JUDGE ON BALLOT.

6 The director shall place the name of a tax court judge who has properly filed a
7 declaration of candidacy for retention on the ballot in each judicial district of the state
8 for the general election at which approval is sought.

9 * **Sec. 4.** AS 15.58.050 is amended to read:

10 Sec. 15.58.050. INFORMATION AND RECOMMENDATIONS ON
11 JUDICIAL OFFICERS. No later than August 7 of the year in which the state general
12 election will be held, the judicial council shall file with the lieutenant governor a
13 statement including information about each supreme court justice, court of appeals
14 judge, superior court judge, **tax court judge**, and district court judge who will be
15 subject to a retention election. The statement shall reflect the evaluation of each
16 justice or judge conducted by the judicial council according to law and shall contain
17 a brief statement describing each public reprimand, public censure, or suspension
18 received by the judge under AS 22.30.011(d) during the period covered in the
19 evaluation. A statement may not exceed 600 words.

20 * **Sec. 5.** AS 15.58.060(a) is amended to read:

21 (a) Each general election candidate shall pay to the lieutenant governor at the
22 time of filing material under this chapter the following:

23 (1) President or Vice-President of the United States, United States
24 senator, United States representative, governor, lieutenant governor, supreme court
25 justice, [AND] court of appeals judge, **and tax court judge**, \$150 each;

26 (2) superior court judge and district court judge, \$75 each;

27 (3) state senator and state representative, \$50 each.

28 * **Sec. 6.** AS 22.05.010(a) is amended to read:

29 (a) The supreme court has final appellate jurisdiction in all actions and
30 proceedings. However, a party has only one appeal as a matter of right from an action
31 or proceeding commenced in [EITHER] the district court, [OR] the superior court, **or**

1 the tax court.

2 * **Sec. 7.** AS 22.05.010(c) is amended to read:

3 (c) A decision of the superior court on an appeal from an administrative
4 agency decision may be appealed to the supreme court as a matter of right. A
5 decision of the tax court on an appeal from the Department of Revenue may be
6 appealed to the supreme court as a matter of right.

7 * **Sec. 8.** AS 22.05.100 is amended to read:

8 Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice
9 is subject to approval or rejection as provided in AS 15 (Alaska Election Code). The
10 judicial council shall conduct an evaluation of each justice before the retention election
11 and shall provide to the public information about that justice and may provide a
12 recommendation regarding retention or rejection. The information and any
13 recommendation shall be made public at least 60 days before the retention election.
14 The judicial council shall also provide the information and any recommendation to the
15 office of the lieutenant governor in time for publication in the election pamphlet under
16 AS 15.58.050. If a majority of those voting on the question rejects the candidacy, the
17 rejected justice may not be appointed to fill any vacancy in the supreme court, court
18 of appeals, superior court, tax court, or district court [COURTS] of the state for a
19 period of four years thereafter.

20 * **Sec. 9.** AS 22.07.060 is amended to read:

21 Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of
22 appeals is subject to approval or rejection as provided in AS 15 (Alaska Election
23 Code). The judicial council shall conduct an evaluation of each judge before the
24 retention election and shall provide information to the public about the judge and may
25 provide a recommendation regarding retention or rejection. The information and any
26 recommendation shall be made public at least 60 days before the election. The judicial
27 council shall also provide the information and any recommendation to the office of the
28 lieutenant governor in time for publication in the election pamphlet as required by
29 AS 15.58.050. If a majority of those voting on the question rejects the candidacy of
30 a judge, the rejected judge may not for a period of four years thereafter be appointed
31 to fill a vacancy in the supreme court, the court of appeals, the superior court, the tax

1 court, or the district court of the state.

2 * **Sec. 10.** AS 22.10.020(d) is amended to read:

3 (d) The superior court has jurisdiction in all matters appealed to it from a
4 subordinate court, or, **except as provided by AS 22.12.020(a)(1), in all matters**
5 **appealed to it from an** administrative agency when appeal is provided by law. The
6 hearings on appeal from a final order or judgment of a subordinate court or
7 administrative agency shall be on the record unless the superior court, in its discretion,
8 grants a trial de novo, in whole or in part.

9 * **Sec. 11.** AS 22.10.150 is amended to read:

10 Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge is
11 subject to approval or rejection as provided in AS 15 (Alaska Election Code). The
12 judicial council shall conduct an evaluation of each judge before the retention election
13 and shall provide to the public information about the judge and may provide a
14 recommendation regarding retention or rejection. The information and any
15 recommendation shall be made public at least 60 days before the retention election.
16 The judicial council shall also provide the information and any recommendation to the
17 office of the lieutenant governor in time for publication in the election pamphlet under
18 AS 15.58.050. If a majority of those voting on the question rejects the candidacy of
19 a judge, the rejected judge may not for a period of four years thereafter be appointed
20 to fill any vacancy in the supreme court, court of appeals, superior court, **tax court**,
21 or district **court** [COURTS] of the state.

22 * **Sec. 12.** AS 22.15.195 is amended to read:

23 Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge is
24 subject to approval or rejection as provided in AS 15 (Alaska Election Code). The
25 judicial council shall conduct an evaluation of each judge before the retention election
26 and shall provide to the public information about the judge and may provide a
27 recommendation regarding retention or rejection. The information and the
28 recommendation shall be made public at least 60 days before the election. The judicial
29 council shall also provide the information and any recommendation to the office of the
30 lieutenant governor in time for publication in the election pamphlet under
31 AS 15.58.050. If a majority of those voting on the question rejects the candidacy of

1 a judge, the rejected judge may not for a period of four years thereafter be appointed
2 to fill any vacancy in the supreme court, court of appeals, superior court, **tax court**,
3 or district **court** [COURTS] of the state.

4 * **Sec. 13.** AS 22.20.010 is amended to read:

5 Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial officer"
6 means a supreme court justice, including the chief justice, a judge of the court of
7 appeals, a judge of the superior court, **a judge of the tax court**, a district judge, and
8 a magistrate.

9 * **Sec. 14.** AS 22.20.022(a) is amended to read:

10 (a) If a party or a party's attorney in a district court action or a superior court
11 action, civil or criminal, files an affidavit alleging under oath the belief that a fair and
12 impartial trial cannot be obtained, the presiding district court or superior court judge,
13 respectively, shall at once, and without requiring proof, assign the action to another
14 judge of the appropriate court in that district, or if there is none, the chief justice of
15 the supreme court shall assign a judge for the hearing or trial of the action. **If a party**
16 **or a party's attorney in a tax court action files an affidavit alleging under oath**
17 **the belief that a fair and impartial trial cannot be obtained, the chief justice of**
18 **the supreme court shall assign a judge for the hearing or trial of the action.** The
19 affidavit shall contain a statement that it is made in good faith and not for the purpose
20 of delay.

21 * **Sec. 15.** AS 22.20.040 is amended by adding a new subsection to read:

22 (c) The provisions of (a) of this section do not apply to proceedings
23 commenced by a taxpayer in the small claims division of the tax court to the extent
24 permitted by AS 22.12.

25 * **Sec. 16.** AS 22.20.110 is amended to read:

26 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF
27 APPEALS, THE SUPERIOR COURT, **THE TAX COURT**, AND **THE** DISTRICT
28 **COURT** [COURTS]. When required by the supreme court, and except as otherwise
29 provided in AS 25.35.040, the commissioner shall serve and execute all process issued
30 by the court of appeals, the superior court, **the tax court**, and the district **court**
31 [COURTS]; attend to and wait upon grand and petit juries; maintain order; attend the

1 sessions of the courts; and exercise the power and perform the duties concerning all
2 matters within the jurisdiction of the courts as may be assigned. The commissioner
3 is the executive officer of the court of appeals, the superior court, **the tax court**, and
4 **the** district **court** [COURTS].

5 * **Sec. 17.** AS 22.25.010(g) is amended to read:

6 (g) The word "justice" means a supreme court justice, and the word "judge,"
7 unless the context clearly indicates otherwise, means a judge of the court of appeals,
8 a superior court judge, **the tax court judge**, or **a** district court judge.

9 * **Sec. 18.** AS 22.30.080(2) is amended to read:

10 (2) "judge" means a justice of the supreme court, a judge of the court
11 of appeals, a judge of the superior court, **the judge of the tax court**, or a judge of the
12 district court who is the subject of an investigation or proceeding under sec. 10,
13 art. IV, Constitution of the State of Alaska and this chapter, including a justice or
14 judge who is serving in a full-time, part-time, permanent, or temporary position.

15 * **Sec. 19.** AS 43.05.240(d) is amended to read:

16 (d) Within 30 days after the formal hearing and decision by the department,
17 a person aggrieved by the decision of the department

18 **(1) as to a tax set out in this paragraph, may appeal to the tax**
19 **court; the taxpayer shall be given access to the file of the department in the**
20 **matter for preparation of the appeal; if after the appeal is heard it appears that**
21 **the tax was correct, the tax court shall confirm the tax; if incorrect, the tax court**
22 **shall determine the amount of the tax and if the person aggrieved is entitled to**
23 **recover the tax or part of it, the tax court shall order the repayment and the**
24 **department shall immediately pay the amount due and attach a certified copy of**
25 **the judgment to the payment; the provisions of this paragraph apply to a matter**
26 **relating to fixing the amount of, or imposing a penalty on, a tax levied and**
27 **collected by the state under**

28 **(A) AS 43.19 and AS 43.20;**

29 **(B) AS 43.21;**

30 **(C) AS 43.55;**

31 **(D) AS 43.65; and**

1 (E) AS 43.75;

2 (2) as to a tax other than a tax set out in (1) of this subsection, may
3 appeal to the superior court in the judicial district in which the person resides; the [.
4 THE] taxpayer shall be given access to the file of the department in the matter for
5 preparation of the appeal; if [. IF] after the appeal is heard it appears that the tax was
6 correct, the superior court shall confirm the tax; if [. IF] incorrect, the superior court
7 shall determine the amount of the tax and if the person aggrieved is entitled to recover
8 the tax or part of it, the superior court shall order the repayment and the department
9 shall immediately pay the amount due and attach a certified copy of the judgment to
10 the payment.

11 * **Sec. 20.** AS 43.05.240 is amended by adding a new subsection to read:

12 (e) For purposes of (d)(1) of this section, a decision by the department is final
13 if the decision disposes of either the entire case or an issue in controversy, and may
14 include an order entered on a motion for summary or partial summary judgment if the
15 order constitutes the final disposition of an entire issue in controversy.

16 * **Sec. 21.** AS 43.05 is amended by adding new sections to read:

17 Sec. 43.05.242. TAX, PENALTY, AND INTEREST PAYABLE BEFORE
18 APPEAL. (a) In an appeal from a decision of the department involving a deficiency
19 of taxes levied and collected by the state under a tax described in AS 43.05.240(d)(1),
20 the taxpayer shall pay to the state the full amount of the tax, penalty, and interest in
21 respect of the amount of tax assessed that is not in dispute. The taxpayer shall post
22 a bond, obtain a letter of credit, or provide other evidence satisfactory to the tax court
23 that it is able to pay the amount of tax assessed that is in dispute and that is the basis
24 of the taxpayer's appeal.

25 (b) The tax and interest due under this section are the amounts stated in the
26 final order of the department from which the appeal is taken, or if the final order
27 appealed from is a summary judgment or partial summary judgment, the amount shall
28 be as originally assessed on the issue or issues disposed of.

29 Sec. 43.05.244. OVERPAYMENT. If it has been finally determined that an
30 overpayment exists, either the taxpayer or the commissioner may elect within 60 days
31 to credit the overpayment, including any interest accruing on the overpayment, against

1 the tax liability of the taxpayer for the current tax year and subsequent tax years. The
2 amount of the refund not credited within three years of the date of the election shall
3 be paid to the taxpayer, with interest accrued at the rate established in AS 43.05.280.

4 * **Sec. 22.** AS 44.62.300 is amended to read:

5 Sec. 44.62.300. JUDICIAL REVIEW OF VALIDITY. **(a)** An interested
6 person may get a judicial declaration on the validity of a regulation

7 **(1) adopted to implement, interpret, or make specific a tax set out**
8 **in AS 22.12.020(a)(1) by bringing an action for declaratory relief in the tax court;**

9 **(2) other than a regulation described in (1) of this subsection** by
10 bringing an action for declaratory relief in the superior court.

11 **(b)** In addition to any other ground, the **tax court or the superior court, as**
12 **applicable,** may declare the regulation invalid

13 (1) for a substantial failure to comply with AS 44.62.010 - 44.62.320;

14 or

15 (2) in the case of an emergency regulation or order of repeal, upon the
16 ground that the facts recited in the statement do not constitute an emergency under
17 AS 44.62.250.

18 * **Sec. 23.** TRANSITION. (a) A matter relating to fixing the amount of, or imposing a
19 penalty on, a tax levied and collected by the state under a tax set out in AS 22.12.020(a)(1),
20 added by sec. 1 of this Act, that, on the effective date of this Act, had been appealed to the
21 superior court but for which notice of appeal had not been filed with the Alaska Supreme
22 Court shall be transferred to the tax court for review under AS 22.12.010 - 22.12.360.

23 (b) Notwithstanding AS 22.12.210(a), a matter transferred to the tax court under (a)
24 of this section must be determined based upon the record of the proceedings before the
25 Department of Revenue, but upon the application of a party, the tax court may allow the
26 presentation of additional evidence that was excluded or precluded during the course of the
27 administrative proceeding.

28 (c) Notwithstanding (b) of this section, a party for which a case is referred to the tax
29 court under (a) of this section may move for consideration of the case by a panel of masters
30 under AS 22.12.250, added by sec. 1 of this Act.

31 * **Sec. 24.** This Act takes effect July 1, 1996.