

**CS FOR HOUSE BILL NO. 341(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 3/12/96  
Referred: Finance**

**Sponsor(s): REPRESENTATIVE GREEN**

**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 the  
8 assessment, levy, and collection of taxes and penalties by the state and to the tax  
9 liability of taxpayers; providing for the release of agency records relating to  
10 formal administrative tax appeals; relating to litigation disclosure of public records;  
11 clarifying administrative subpoena power in certain tax matters; and providing for  
12 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.** (a) The office  
5 of tax appeals is established within the department. The office of tax appeals is a  
6 quasi-judicial agency, headed by a Board of Tax Appeals.

7 (b) The Board of Tax Appeals consists of the chief administrative law judge,  
8 who is the chair of the board, and additional administrative law judges as may be  
9 appointed; however, the Board of Tax Appeals shall have at least two members.

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

- 16 (1) electric and telephone cooperative taxes under AS 10.25;  
17 (2) a seafood marketing assessment under AS 16.51;  
18 (3) all taxes levied under AS 43, except the property tax assessed under  
19 AS 43.56; and  
20 (4) any other taxes administered by the Department of Revenue.

21 Sec. 43.05.410. **APPOINTMENT.** (a) The governor shall appoint a chief  
22 administrative law judge of the office of tax appeals, and may appoint additional  
23 administrative law judges in the office of tax appeals.

24 (b) The initial term for an administrative law judge is two years. A person  
25 appointed to serve as an administrative law judge, including chief administrative law  
26 judge, may be appointed to subsequent terms of four years each.

27 (c) The initial appointment and any reappointment of an administrative law  
28 judge, including the chief administrative law judge, is subject to confirmation by the  
29 legislature in joint session.

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

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

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

5 (1) violation of the Alaska code of judicial conduct adopted by the  
6 Alaska Supreme Court;

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

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

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

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

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

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

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

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

20 (c) The board may adopt regulations implementing or interpreting  
21 AS 43.05.400 - 43.05.499, including rules of procedure and evidence for proceedings  
22 before the office.

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

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

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

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

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

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

10 Sec. 43.05.435. SCOPE AND STANDARDS FOR DECISION. The  
11 administrative law judge shall hear all questions de novo under AS 43.05.400 -  
12 43.05.499. The administrative law judge shall

13 (1) resolve a question of fact by a preponderance of the evidence or,  
14 if a different standard of proof has been set by law for a particular question, by that  
15 standard of proof;

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

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

21 Sec. 43.05.440. SERVICE OF DOCUMENTS. Service of documents required  
22 under AS 43.05.400 - 43.05.499 may be accomplished in any manner authorized under  
23 the Alaska Rules of Civil Procedure. If service is done only by mail, the date of  
24 service is determined by the date of mailing. If service is done by both mail and hand  
25 delivery, the date of service is determined by the earlier of the date of mailing or  
26 actual receipt of the documents.

27 Sec. 43.05.445. DISCOVERY. (a) In an appeal under AS 43.05.405,  
28 discovery may take place only under a plan for discovery approved by the  
29 administrative law judge. The administrative law judge shall approve a plan for  
30 discovery to the extent consistent with the efficient, just, and speedy conduct of the  
31 appeal. The plan may limit or set conditions on discovery and must include provisions

1 for stipulations of fact by the Department of Revenue and the taxpayer. Discovery  
2 shall be limited to information that is relevant to the determination of the correct tax  
3 or penalty, unless the Department of Revenue or the taxpayer makes a showing that  
4 the discovery is reasonably calculated to lead to admissible information.

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

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

12 Sec. 43.05.450. SUBPOENAS. An administrative law judge may issue a  
13 subpoena to compel attendance of a witness or the production of a document or thing.  
14 A subpoena may compel attendance of a witness or production of a document or thing,  
15 located either inside or outside the state, to the maximum extent permitted by law. A  
16 subpoena may be used for the purpose of discovery or for the purpose of presenting  
17 evidence at a formal hearing. A subpoena shall issue upon request of a party, subject  
18 to reasonable limitation or conditions set in the subpoena. A subpoena may be  
19 enforced by petition to or other appropriate legal proceeding brought in a court of this  
20 state or another jurisdiction.

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

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

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

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

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

4 (d) The formal hearing before the administrative law judge is not required to  
5 be conducted with strict adherence to the Alaska Rules of Evidence. Relevant  
6 evidence must be admitted if it is probative of a material fact in controversy.  
7 Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence is  
8 admissible if it is the kind of evidence on which responsible persons are accustomed  
9 to rely in the conduct of serious affairs, regardless of the existence of a common law  
10 or statutory rule that makes improper the admission of the evidence over objection in  
11 a civil action. Oral evidence may be taken only on oath or affirmation. The rules of  
12 privilege are effective to the same extent that they are recognized in a civil action in  
13 the courts of this state, except that relevant documents and other material items that  
14 are public records under AS 09.25.100 - 09.25.220 shall be admissible.

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

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

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

27 (b) The administrative law judge may

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

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

- 1 (3) enter an order, upon a showing of good cause,  
2 (A) barring a designated claim or defense;  
3 (B) striking part or all of a pleading of a party; or  
4 (C) dismissing part or all of the appeal; or  
5 (4) grant any other relief that the administrative law judge considers  
6 appropriate.

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

10 Sec. 43.05.465. DECISION; RECONSIDERATION; FINALITY. (a) Within  
11 180 days after the record on the appeal is closed, the administrative law judge shall  
12 issue a decision in writing. The decision must contain a concise statement of reasons  
13 for the decision, including findings of fact and conclusions of law. In the decision, the  
14 administrative law judge may grant relief, provide remedies, and issue any order that  
15 is appropriate. The administrative law judge shall serve each party in the case with  
16 a copy of the decision. Unless reconsideration by the full board is ordered under (c)  
17 of this section, the decision under this subsection is the final administrative decision.

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

- 23 (1) overlooked, misapplied, or failed to consider a statute, regulation,  
24 court or administrative decision, or legal principle directly controlling;  
25 (2) overlooked or misconceived some material fact or proposition of  
26 law;  
27 (3) misconceived a material question in the case; or  
28 (4) applied law in the ruling that has subsequently changed.

29 (c) The board may issue an order for reconsideration of all or part of the  
30 decision upon request of a party. Reconsideration is based on the record, unless the  
31 board allows additional evidence and argument. A hearing on reconsideration at which

1 additional evidence or argument is offered or received is subject to the procedures  
2 applicable to a hearing under AS 43.05.455.

3 (d) The power to order reconsideration expires 60 days after the date of  
4 service, as shown on the certificate of service, of a decision issued under (a) of this  
5 section. If the board does not issue an order for reconsideration within the time  
6 allowed for ordering reconsideration, a motion for reconsideration is considered denied.

7 (e) Within 60 days after the close of the record on reconsideration, the board  
8 shall issue a written decision upon reconsideration. The board shall serve each party  
9 in the case with a copy of the decision upon reconsideration. The decision upon  
10 reconsideration is the final administrative decision.

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

12 (1) 60 days after the date of service of a decision issued under (a) of  
13 this section if an order for reconsideration is not issued; or

14 (2) the decision upon reconsideration is served, as shown by the  
15 certificate of service executed by the board under (e) of this section.

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

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

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

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

31 (b) To promote consistency among legal determinations issued under

1 AS 43.05.400 - 43.05.499, the chief administrative law judge may review and circulate  
2 among the other administrative law judges the drafts of formal decisions, decisions  
3 upon reconsideration, and other legal opinions of the other administrative law judges  
4 in the office. The drafts are confidential documents and are not subject to disclosure  
5 under AS 09.25.100 - 09.25.220 or this chapter.

6 Sec. 43.05.480. JUDICIAL REVIEW. (a) Judicial review by the superior  
7 court of a final administrative decision may be had by a party to the appeal under this  
8 chapter by filing a notice of appeal in accordance with the applicable rules of court  
9 governing appeals to that court in civil matters. The notice of appeal shall be filed  
10 within 30 days after an administrative decision becomes final under AS 43.05.465.  
11 The right to judicial review under this subsection is not affected by the failure to seek  
12 reconsideration before the administrative law judge.

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

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

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

31 Sec. 43.05.499. DEFINITIONS. In AS 43.05.400 - 43.05.499, unless the

1 context otherwise requires,

2 (1) "administrative law judge" means an administrative law judge  
3 appointed under AS 43.05.410;

4 (2) "board" means the Board of Tax Appeals established under  
5 AS 43.05.410;

6 (3) "commissioner" means the commissioner of administration;

7 (4) "department" means the Department of Administration;

8 (5) "discovery" means the use of subpoenas, subpoenas duces tecum,  
9 interrogatories, requests for production, requests for admission, depositions, and other  
10 methods of civil procedure by which one party to an action may discover information  
11 within the knowledge and control of another person;

12 (6) "legislative history" means the documents of the legislature  
13 recording the background and events, including draft bills, correspondence and  
14 memoranda, committee reports, tapes and transcripts of hearings, and tapes and  
15 transcripts of floor debate concerning consideration of a bill;

16 (7) "office" means office of tax appeals in the department;

17 (8) "party" means the Department of Revenue or the taxpayer;

18 (9) "proceeding" means only a proceeding under the jurisdiction of the  
19 office;

20 (10) "subpoena" means a command to appear at a certain time and  
21 place to testify, or to appear at a certain time and place to produce books, papers, and  
22 other things, and testify;

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

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

27 \* **Sec. 2.** AS 09.25.100 is amended to read:

28 Sec. 09.25.100. DISPOSITION OF TAX INFORMATION. Information in the  
29 possession of the Department of Revenue that discloses the particulars of the business  
30 or affairs of a taxpayer or other person is not a matter of public record, except for  
31 purposes of investigation and law enforcement. The information shall be kept

1 confidential except when its production is required in an official investigation,  
2 **administrative adjudication under AS 43.05.400 - 43.05.499**, or court proceeding.  
3 These restrictions do not prohibit the publication of statistics presented in a manner  
4 that prevents the identification of particular reports and items, [OR] prohibit the  
5 publication of tax lists showing the names of taxpayers who are delinquent and  
6 relevant information that may assist in the collection of delinquent taxes, **or prohibit**  
7 **the publication of records, proceedings, and decisions under AS 43.05.400 -**  
8 **43.05.499**.

9 \* **Sec. 3.** AS 09.25.122 is amended to read:

10 Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is subject  
11 to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record  
12 subject to disclosure and copying even if the record is used for, included in, or relevant  
13 to litigation, including law enforcement proceedings, involving a public agency, except  
14 that with respect to a person involved in litigation, the records sought shall be  
15 disclosed in accordance with **the rules of procedure** applicable **in a court or an**  
16 **administrative adjudication** [RULES]. In this section, "involved in litigation" means  
17 a party to litigation or representing a party to litigation, including obtaining public  
18 records for the party.

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

20 (d) The superior court has jurisdiction in all matters appealed to it from a  
21 subordinate court, or administrative agency when appeal is provided by law. The  
22 hearings on appeal from a final order or judgment

23 **(1)** of a subordinate court [OR ADMINISTRATIVE AGENCY] shall  
24 be on the record unless the superior court, in its discretion, grants a trial de novo, in  
25 whole or in part;

26 **(2) of the Department of Revenue in matters relating to fixing the**  
27 **amount of, or imposing a penalty on, a tax levied and collected by the state when**  
28 **appeal is taken under AS 43.05.242 shall be heard as a trial de novo as a matter**  
29 **of right;**

30 **(3) of an administrative agency, except for a matter described in**  
31 **(2) of this subsection, shall be on the record unless the superior court, in its**

1            **discretion, grants a trial de novo, in whole or in part.**

2        \* **Sec. 5.** AS 37.10.410 is amended to read:

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

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

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

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

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

19          (2) taxes set out in a return not audited by the Department of Revenue  
20        at the date of collection; or

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

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

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

27        \* **Sec. 7.** AS 43.05.010 is amended to read:

28          Sec. 43.05.010. DUTIES OF COMMISSIONER. The commissioner of revenue  
29        shall

30          (1) exercise general supervision and direct the activities of the  
31        Department of Revenue;

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

- 1 (3) prescribe uniform rules for investigations and hearings;
- 2 (4) keep a record of all departmental proceedings, record and file all
- 3 bonds, and assume custody of returns, reports, papers, and documents of the department;
- 4 (5) [REPEALED
- 5 (6)] adopt a seal and affix it to each order, process, or certificate issued
- 6 by the commissioner;
- 7 (6) [(7)] keep a record of each order, process, and certificate issued by
- 8 the commissioner, and keep the record open to public inspection at all reasonable times;
- 9 (7) [(8)] hold hearings and investigations necessary for the administration
- 10 of state tax and revenue laws;
- 11 (8) **except as provided in AS 43.05.400 - 43.05.499**, [(9)] hear and
- 12 determine appeals **of a matter within the jurisdiction of the Department of Revenue**
- 13 [INVOLVING INCOME, EXCISE, LICENSE, OR OTHER TAXES LEVIED UNDER
- 14 STATE LAWS] and enter orders on the appeals that are final unless reversed or
- 15 modified by the courts;
- 16 (9) **issue subpoenas to** [(10)] require the attendance of witnesses and the
- 17 production of necessary books, papers, documents, correspondence, and other **things**
- 18 [EVIDENCE AT HEARINGS];
- 19 (10) [(11)] order the taking of depositions before a person competent to
- 20 administer oaths;
- 21 (11) [(12)] administer oaths and take acknowledgments;
- 22 (12) [(13)] request the attorney general for rulings on the interpretation
- 23 of the tax and revenue laws administered by the department;
- 24 (13) [(14)] call upon the attorney general to institute actions for recovery
- 25 of unpaid taxes, fees, excises, additions to tax, penalties, and interest;
- 26 (14) [(15)] issue warrants for the collection of unpaid tax penalties and
- 27 interest and take all steps necessary and proper to enforce full and complete compliance
- 28 with the tax, license, excise, and other revenue laws of the state;
- 29 (15) [(16)] audit reports, payments, and payments due relating to royalty
- 30 and net profits under oil and gas contracts, agreements, or leases under AS 38.05 [;
- 31 (17) REPEALED].

32 \* Sec. 8. AS 43.05.040 is amended to read:

1           Sec. 43.05.040.   INSPECTION OF RECORDS OR PREMISES AND  
2   ISSUANCE OF SUBPOENAS. (a) The department may examine the books, papers,  
3   records, or memoranda of any person to ascertain the correctness of a return filed or to  
4   determine whether a tax or a payment for oil or gas royalty or net profits shares under  
5   a contract, agreement, or lease under AS 38.05 is due, or in an investigation or  
6   inspection in connection with tax matters or matters relating to oil and gas royalty or net  
7   profits under contracts, agreements, or leases under AS 38.05. The records and the  
8   premises where a business is conducted shall be open at all reasonable times for official  
9   inspection, and the department may subpoena any person to appear and produce books,  
10  records, papers, or memoranda bearing upon tax matters or matters relating to oil and gas  
11  royalty or net profits under contracts, agreements, or leases under AS 38.05, and to give  
12  testimony or answer interrogatories under oath respecting tax matters or matters related  
13  to oil and gas royalty or net profits under contracts, agreements, or leases under  
14  AS 38.05, and the department may administer oaths to persons who are so subpoenaed.

15   **A subpoena issued under this section may compel attendance of a witness or**  
16   **production of a document or thing, located either inside or outside the state, to the**  
17   **maximum extent permitted by law.**

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

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

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

31           (a) It is unlawful for a current or former officer, employee, or agent of the state  
32   to divulge the amount of income or the particulars set out or disclosed in a report or

1 return made under this title, except

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

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

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

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

9 (5) as otherwise provided in this section.

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

11 Sec. 43.05.240. TAXPAYER REMEDIES. (a) A taxpayer aggrieved by the  
12 action of the department in fixing the amount of a tax or penalty may apply to the  
13 department within 60 days after the date of mailing of the notice required to be given  
14 to the taxpayer by the department, giving notice of the grievance, and requesting an  
15 informal conference to be scheduled with an appeals officer. The taxpayer shall be given  
16 access to the taxpayer's file in the department in the matter for preparation for the  
17 informal conference. At the informal conference, the taxpayer may present to the  
18 appeals officer arguments and evidence relevant to the amount of tax or penalty due the  
19 state. If the department determines that a correction is warranted, the department shall  
20 make the correction.

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

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

32 Sec. 43.05.241. FORMAL APPEAL. For a matter within the jurisdiction of the

1 office of tax appeals under AS 43.05.405, the taxpayer aggrieved by an informal  
2 conference decision entered under AS 43.05.240 may file with the office of tax appeals  
3 a notice of appeal for formal hearing, as provided in AS 43.05.430, no later than 60 days  
4 after service of the decision resulting from an informal conference.

5 Sec. 43.05.242. JUDICIAL APPEAL. (a) Within 60 days after decision  
6 resulting from the informal conference, a person aggrieved by the action of the  
7 department under AS 43.05.240 in fixing the amount of a tax or in imposing a penalty  
8 may appeal to the superior court.

9 (b) The superior court, sitting without a jury, shall hear all questions de novo.  
10 As used in this section, "de novo" has the same meaning as in AS 43.05.400 - 43.05.499.  
11 The court shall

12 (1) resolve a question of fact by a preponderance of the evidence or, if  
13 a different standard of proof has been set by law for a particular question, by that  
14 standard of proof;

15 (2) resolve a question of law in the exercise of the independent judgment  
16 of the superior court judge;

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

20 (c) When an appeal is taken under this section,

21 (1) the taxpayer shall be given access to the file of the department in the  
22 matter for preparation of the appeal;

23 (2) if, after the appeal is heard,

24 (A) it appears that the tax was correct, the court shall confirm the  
25 tax;

26 (B) it appears that the tax was incorrect, the court shall determine  
27 the amount of the tax; if the person aggrieved is entitled to recover the tax or  
28 part of it, the court shall order the repayment, and the department shall  
29 immediately pay the amount due and attach a certified copy of the judgment to  
30 the payment.

31 Sec. 43.05.244. TAX, PENALTY, AND INTEREST PAYABLE BEFORE  
32 APPEAL. (a) In an appeal from a decision of the department involving a deficiency of

1 taxes levied and collected by the state, whether in a formal hearing under AS 43.05.241  
2 and 43.05.400 - 43.05.499 or under a judicial appeal authorized by AS 43.05.242, the  
3 taxpayer shall pay to the state the full amount of the tax, penalty, and interest in respect  
4 of the amount of tax assessed that is not in dispute. The taxpayer shall post a bond,  
5 obtain a letter of credit, or provide other evidence satisfactory to the department that it  
6 is able to pay the amount of tax, penalty, and interest in respect of the amount of tax  
7 assessed that is in dispute and that is the basis of the taxpayer's appeal.

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

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

13 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES,  
14 AND INTEREST. If a taxpayer fails to file a return or report required by this title in  
15 the time required by law or regulation, or makes an erroneous or fraudulent return, the  
16 department shall proceed to assess the license fees, tax, penalties, or interest and make  
17 a return from information **that** [WHICH] it obtains. A return made and subscribed by  
18 the department in accordance with this section is presumed sufficient for all legal  
19 purposes. However, nothing prevents a taxpayer from presenting evidence or other  
20 information on an **informal conference** [APPEAL] under AS 43.05.240 **or in an appeal**  
21 **under AS 43.05.241 or 43.05.242** in order to rebut the presumed sufficiency of a return  
22 made and subscribed by the department, nor does the presumption of sufficiency alter  
23 the parties' respective burdens of proof once the taxpayer has presented evidence or other  
24 material information to rebut that presumption. The assessment of license fees, tax,  
25 penalties, or interest under this section occurs when the department issues a notice and  
26 demand for payment of the license fees, tax, penalties, or interest. The notice and  
27 demand for payment is issued when the notice and demand is delivered to the taxpayer  
28 in person or placed in the United States mail, addressed to the last known address of the  
29 taxpayer. Penalties and interest assessed under this title shall be collected in the same  
30 manner as provided in this title for the collection of tax or license fees.

31 \* **Sec. 13.** AS 43.20.270(a) is amended to read:

32 (a) The department may collect taxes, with interest, penalties, and other

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

7 \* **Sec. 14.** AS 43.55.013(g) is amended to read:

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

19 \* **Sec. 15.** AS 43.55.040 is amended to read:

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

22 (1) require a person engaged in production and the agent or employee of  
23 the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil or  
24 gas to furnish additional information that is considered by the department as necessary  
25 to compute the amount of the tax;

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

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

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

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

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

2 \* **Sec. 16.** EFFECT ON EXISTING REMEDIES AND PROCEDURES. This Act does not  
3 affect the remedies and procedures

4 (1) specified in AS 04.11, including AS 04.11.560; AS 05.15, including  
5 AS 05.15.610; AS 42.05, including AS 42.05.551; or AS 43.56, including AS 43.56.120 and  
6 43.56.130; or

7 (2) adopted by regulation by the Department of Revenue governing appeal of a  
8 decision of the Department of Revenue regarding

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

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

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

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

13 \* **Sec. 17.** TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided by  
14 this Act apply to all revenue tax appeals in which a request for formal hearing is filed with the  
15 Department of Revenue on or after the effective date of this Act. The remedies and procedures  
16 existing before the effective date of this Act apply to all revenue tax appeals in which a request  
17 for formal hearing was filed with the Department of Revenue before the effective date of this  
18 Act, unless, on the effective date of this Act,

19 (1) there has been an informal conference, but there has not been material  
20 discovery by either party and substantive motions have not been filed;

21 (2) there has not been an informal conference, nor has there been material  
22 discovery by either party and substantive motions have not been filed, but the taxpayer stipulates  
23 to proceed to an informal conference under the remedies and procedures established by  
24 AS 43.05.240, as amended by sec. 10 of this Act; or

25 (3) the parties stipulate to use the remedies and procedures established by this  
26 Act; consent to that stipulation may not be unreasonably withheld by either party.

27 (b) Until regulations authorized under this Act take effect, 15 AAC 05.001 -  
28 15 AAC 05.320 govern appeals within the jurisdiction of the office of tax appeals filed after the  
29 effective date of this Act, except to the extent the regulations are inconsistent with this Act.

30 (c) Notwithstanding AS 43.05.405, enacted by sec. 1 of this Act, until the office of tax  
31 appeals has a full caseload, and with the approval of the chief administrative law judge, the chief  
32 administrative law judge or any other administrative law judge of the office of tax appeals may

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

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

- 11 (1) game of chance or skill under AS 05.15;
- 12 (2) permanent fund dividend under AS 43.23; and
- 13 (3) coin-operated device or punchboard under AS 43.35.

14 (e) In this section,

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

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

19 \* **Sec. 18.** This Act takes effect July 1, 1996.