

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

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

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 4/22/96  
Referred: Finance**

**Sponsor(s): REPRESENTATIVES GREEN, James**

**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 two years. The governor may reappoint a person appointed  
26 to serve as an administrative law judge, including the chief administrative law judge,  
27 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 120 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 30 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, but  
13 the governor may not reappoint a person as administrative law judge if the judicial  
14 council recommends against that reappointment.

15 (d) Nominations made by the Alaska Judicial Council under (a) of this section  
16 shall be made after the judicial council has reviewed the qualifications of applicants  
17 for administrative law judges. The judicial council shall collect and review sufficient  
18 information to thoroughly evaluate each applicant. The review by the judicial council  
19 must include a published notice requesting written comments on the list of applicants  
20 for an administrative law judge opening.

21 (e) In reviews by the Alaska Judicial Council under (c) and (d) of this section,

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

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

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

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

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

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

13 (1) violation of the Alaska code of judicial conduct adopted by the  
14 Alaska Supreme Court;

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

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

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

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

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

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

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

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

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

31 Sec. 43.05.425. QUALIFICATIONS; CODE OF CONDUCT. (a) An

1 administrative law judge, including the chief administrative law judge, at the time of  
2 appointment, must

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

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

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

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

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

18 Sec. 43.05.435. SCOPE AND STANDARDS FOR DECISION. The  
19 administrative law judge shall hear all questions de novo under AS 43.05.400 -  
20 43.05.499. The administrative law judge shall

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

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

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

29 Sec. 43.05.440. SERVICE OF DOCUMENTS. Service of documents required  
30 under AS 43.05.400 - 43.05.499 may be accomplished in any manner authorized under  
31 the Alaska Rules of Civil Procedure. If service is done only by mail, the date of

1 service is determined by the date of mailing. If service is done by both mail and hand  
2 delivery, the date of service is determined by the earlier of the date of mailing or  
3 actual receipt of the documents.

4 Sec. 43.05.445. DISCOVERY. (a) In an appeal under AS 43.05.405,  
5 discovery may take place only under a plan for discovery approved by the  
6 administrative law judge. The administrative law judge shall approve a plan for  
7 discovery to the extent consistent with the efficient, just, and speedy conduct of the  
8 appeal. The plan may limit or set conditions on discovery and must include provisions  
9 for stipulations of fact by the Department of Revenue and the taxpayer. Discovery  
10 shall be limited to information that is relevant to the determination of the correct tax  
11 or penalty, unless the Department of Revenue or the taxpayer makes a showing that  
12 the discovery is reasonably calculated to lead to admissible information.

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

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

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

29 Sec. 43.05.455. FORMAL HEARING. (a) At or before the formal hearing,  
30 a party may present argument and evidence relevant to the amount of the tax or  
31 penalty. The administrative law judge shall administer oaths and permit inquiry

1 necessary to determine the proper amount of the tax or penalty.

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

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

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

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

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

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

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

28 Sec. 43.05.460. ENFORCEMENT. (a) The administrative law judge and each  
29 party is responsible for the efficient, just, and speedy conduct of the formal hearing.  
30 The administrative law judge may impose sanctions on the parties for failure to comply  
31 with a subpoena, an order respecting discovery, and any other matter regarding conduct

1 of the appeal. In imposing sanctions, the administrative law judge shall be guided by  
2 the practices of the courts of this state in imposing sanctions for similar offenses in  
3 civil proceedings.

4 (b) The administrative law judge may

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

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

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

10 (A) barring a designated claim or defense;

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

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

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

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

18 Sec. 43.05.465. DECISION; RECONSIDERATION; FINALITY. (a) Within  
19 180 days after the record on the appeal is closed, the administrative law judge shall  
20 issue a decision in writing. The decision must contain a concise statement of reasons  
21 for the decision, including findings of fact and conclusions of law. In the decision, the  
22 administrative law judge may grant relief, provide remedies, and issue any order that  
23 is appropriate. The administrative law judge shall serve each party in the case with  
24 a copy of the decision. Unless reconsideration is ordered under (c) of this section, the  
25 decision under this subsection is the final administrative decision.

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

31 (1) overlooked, misapplied, or failed to consider a statute, regulation,

1 court or administrative decision, or legal principle directly controlling;

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

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

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

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

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

16 (e) Within 60 days after the close of the record on reconsideration, the  
17 administrative law judge shall issue a written decision upon reconsideration. The  
18 administrative law judge shall serve each party in the case with a copy of the decision  
19 upon reconsideration. The decision upon reconsideration is the final administrative  
20 decision.

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

22 (1) 60 days after the date of service of a decision issued under (a) of  
23 this section if an order for reconsideration is not issued; or

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

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

30 (b) Upon a showing of good cause, an administrative law judge shall issue a  
31 protective order requiring that specified parts of the records, proceeding, or decision

1 shall be kept confidential in a particular appeal. If a protective order is issued, the  
2 final administrative decision shall be made public after redacting by deletion or  
3 substitution of information as required by the protective order.

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

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

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

16 Sec. 43.05.480. JUDICIAL REVIEW. (a) Judicial review by the superior  
17 court of a final administrative decision may be had by a party to the appeal under  
18 AS 43.05.400 - 43.05.499 by filing a notice of appeal in accordance with the  
19 applicable rules of court governing appeals to that court in civil matters. The notice  
20 of appeal shall be filed within 30 days after an administrative decision becomes final  
21 under AS 43.05.465. The right to judicial review under this subsection is not affected  
22 by the failure to seek reconsideration before the administrative law judge.

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

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

29 (d) If, after the appeal is heard, it appears that the final administrative decision  
30 was correct, the court shall affirm the decision. If the final administrative decision is  
31 incorrect, the court shall determine the amount due. If the taxpayer is entitled to a

1 refund, the court shall order the repayment and the Department of Revenue shall pay  
2 the amount due and attach a certified copy of the judgment to the payment. If the  
3 court determines that the taxpayer owes an additional amount, the court shall order the  
4 payment and the taxpayer shall pay the amount due and attach a certified copy of the  
5 judgment to the payment. Any payment required under this subsection shall be paid  
6 by the 30th day following the expiration of the time within which an appeal from the  
7 superior court decision may be filed, unless the party appealing files a bond or  
8 otherwise obtains relief from payment in accordance with the Alaska Rules of  
9 Appellate Procedure.

10 Sec. 43.05.499. DEFINITIONS. In AS 43.05.400 - 43.05.499, unless the  
11 context otherwise requires,

12 (1) "administrative law judge" means an administrative law judge  
13 appointed under AS 43.05.410;

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

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

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

20 (5) "legislative history" means the documents of the legislature  
21 recording the background and events, including draft bills, correspondence and  
22 memoranda, committee reports, tapes and transcripts of hearings, and tapes and  
23 transcripts of floor debate concerning consideration of a bill;

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

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

26 (8) "proceeding" means only a proceeding under the jurisdiction of the  
27 office;

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

31 (10) "tax" means a tax described in AS 43.05.405, including a seafood

1 marketing assessment under AS 16.51;

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

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

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

11 These restrictions do not prohibit the publication of statistics presented in a manner  
12 that prevents the identification of particular reports and items, [OR] prohibit the  
13 publication of tax lists showing the names of taxpayers who are delinquent and  
14 relevant information that may assist in the collection of delinquent taxes, **or prohibit**  
15 **the publication of records, proceedings, and decisions under AS 43.05.400 -**  
16 **43.05.499**.

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

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

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

28 (d) The superior court has jurisdiction in all matters appealed to it from a  
29 subordinate court, or administrative agency when appeal is provided by law. The  
30 hearings on appeal from a final order or judgment of a subordinate court or  
31 administrative agency, **except an appeal under AS 43.05.242**, shall be on the record

1 unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

2 **The hearings on appeal from a final order or judgment under AS 43.05.242 shall**  
3 **be on the record.**

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

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

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

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

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

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

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

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

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

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

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

30 Sec. 43.05.010. DUTIES OF COMMISSIONER. The commissioner of  
31 revenue shall

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

1 interest and take all steps necessary and proper to enforce full and complete  
2 compliance with the tax, license, excise, and other revenue laws of the state;

3 ~~(15)~~ [(16)] audit reports, payments, and payments due relating to  
4 royalty and net profits under oil and gas contracts, agreements, or leases under  
5 AS 38.05 [;

6 (17) REPEALED].

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

8 Sec. 43.05.040. INSPECTION OF RECORDS OR PREMISES AND  
9 ISSUANCE OF SUBPOENAS. (a) The department may examine the books, papers,  
10 records, or memoranda of any person to ascertain the correctness of a return filed or  
11 to determine whether a tax or a payment for oil or gas royalty or net profits shares  
12 under a contract, agreement, or lease under AS 38.05 is due, or in an investigation or  
13 inspection in connection with tax matters or matters relating to oil and gas royalty or  
14 net profits under contracts, agreements, or leases under AS 38.05. The records and the  
15 premises where a business is conducted shall be open at all reasonable times for  
16 official inspection, and the department may subpoena any person to appear and  
17 produce books, records, papers, or memoranda bearing upon tax matters or matters  
18 relating to oil and gas royalty or net profits under contracts, agreements, or leases  
19 under AS 38.05, and to give testimony or answer interrogatories under oath respecting  
20 tax matters or matters related to oil and gas royalty or net profits under contracts,  
21 agreements, or leases under AS 38.05, and the department may administer oaths to  
22 persons who are so subpoenaed. **A subpoena issued under this section may compel**  
23 **attendance of a witness or production of a document or thing, located either**  
24 **inside or outside the state, to the maximum extent permitted by law.**

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

31 (c) If a person who is subpoenaed neglects or refuses to obey the subpoena

1 issued as provided in this section, the department may report the fact to the superior  
2 court or the appropriate court of another jurisdiction, and may seek an order  
3 from the court compelling obedience to the subpoena. The [AND THE] court, to  
4 the maximum extent permitted by law, may compel obedience to the subpoena to  
5 the same extent as witnesses may be compelled to obey the subpoenas of the court.

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

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

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

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

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

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

17 (5) as otherwise provided in this section.

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

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

29 (b) A party who believes that the appeals officer is unduly delaying a hearing  
30 process may notify the commissioner in writing. Within 30 days after being notified  
31 by a party, the commissioner may issue an order prescribing a schedule for the appeals

1 officer to complete the informal conference or setting a meeting at which that schedule  
2 will be discussed and prescribed. The schedule may be subsequently modified by  
3 consent of the parties. If the commissioner fails to issue an order within 30 days after  
4 receiving notice of a party's belief of undue delay, the department's action in fixing  
5 the amount of tax or penalty shall be considered to have been summarily affirmed by  
6 the appeals officer the same as if an informal conference decision to that effect were  
7 issued on the last day of that 30-day period.

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

9 Sec. 43.05.241. ADMINISTRATIVE APPEAL. For a matter within the  
10 jurisdiction of the office of tax appeals under AS 43.05.405, the taxpayer aggrieved  
11 by an informal conference decision entered under AS 43.05.240 may file with the  
12 office of tax appeals a notice of appeal for formal hearing, as provided in  
13 AS 43.05.430, no later than 60 days after service of the decision resulting from an  
14 informal conference.

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

16 (a) Within 60 days after a decision resulting from the informal conference, a person  
17 aggrieved by the action of the department under AS 43.05.240 on a ground specified  
18 in this section may appeal to the superior court.

19 (b) An appeal under this section may be taken from an informal conference  
20 decision only upon the ground that a tax statute or tax regulation is

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

24 (c) An appeal under this section may not be taken from an informal conference  
25 decision if

- 26 (1) there is a dispute of material fact;  
27 (2) a factual record is necessary to decide the question of law raised;  
28 (3) development of a factual record will render it unnecessary to reach  
29 the question of law raised; or  
30 (4) the taxpayer challenges the assessment of the tax on a ground other  
31 than one listed in (b) of this section.

1 (d) An issue may not be presented to the superior court unless the issue first  
2 has been presented in writing to the department at or before the informal conference.  
3 The department shall prepare a record of that portion of the informal conference  
4 relevant to the issue on appeal. The superior court shall

5 (1) resolve a question of law in the exercise of the independent  
6 judgment of the superior court judge;

7 (2) defer to the department on a question of law for which discretion  
8 is legally vested in the department unless not supported by a reasonable basis.

9 (e) An appeal of the informal conference decision under this section is  
10 exclusive. The taxpayer electing to appeal under this section may not pursue an appeal  
11 under AS 43.05.241 or pursue any other action under another statute.

12 (f) When an appeal is taken under this section, the taxpayer shall be given  
13 access to the file of the department in the matter for preparation of the appeal.

14 (g) In an appeal under this section, the amount due shall be paid within 60  
15 days after the date of the service of the informal conference decision. In place of  
16 payment of the amount due, the taxpayer may file a bond with the court or otherwise  
17 obtain relief from payment in accordance with the Alaska Rules of Appellate  
18 Procedure.

19 (h) Venue for an appeal filed under this section shall be set under rules  
20 adopted by the supreme court.

21 (i) If it is determined that appeal was improperly filed under this section, or  
22 if the superior court rules against the taxpayer, the appeal shall be transferred to the  
23 office of tax appeals for further proceedings under AS 43.05.400 - 43.05.499 without  
24 prejudice to any claims or defenses of the taxpayer that were barred from being raised  
25 in court by (c)(4) of this section.

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

27 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES,  
28 AND INTEREST. If a taxpayer fails to file a return or report required by this title in  
29 the time required by law or regulation, or makes an erroneous or fraudulent return, the  
30 department shall proceed to assess the license fees, tax, penalties, or interest and make  
31 a return from information that [WHICH] it obtains. An assessment or a [A] return  
32 [MADE AND] subscribed by the department in accordance with this section is presumed

1 sufficient for all legal purposes. However, nothing prevents a taxpayer from presenting  
2 evidence or other information in [ON] an informal conference [APPEAL] under  
3 AS 43.05.240 or in an appeal under AS 43.05.241 in order to rebut the presumed  
4 sufficiency of an assessment or [A] return [MADE AND] subscribed by the department,  
5 nor does the presumption of sufficiency alter the parties' respective burdens of proof  
6 once the taxpayer has presented evidence or other material information to rebut that  
7 presumption. The assessment of license fees, tax, penalties, or interest under this section  
8 occurs when the department issues a notice and demand for payment of the license fees,  
9 tax, penalties, or interest. The notice and demand for payment is issued when the notice  
10 and demand is delivered to the taxpayer in person or placed in the United States mail,  
11 addressed to the last known address of the taxpayer. Penalties and interest assessed  
12 under this title shall be collected in the same manner as provided in this title for the  
13 collection of tax or license fees.

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

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

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

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

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

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

30 (a) The department may collect taxes, with interest, penalties, and other  
31 additional amounts permitted by law, by distraint and sale, in the manner provided in this  
32 section, of the property of a person liable to pay the taxes, interest, penalties, or other

1 additional amounts, who neglects or refuses to pay them within 10 days from the mailing  
2 of notice and demand for payment of them, and who has not appealed from the  
3 assessment of the taxes, interest, penalties, and other additional amounts **determined**  
4 **under AS 43.05.240 or following appeal taken under AS 43.05.241 or 43.05.242.**

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

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

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

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

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

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

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

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

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

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

32 \* **Sec. 17.** EFFECT ON EXISTING REMEDIES AND PROCEDURES. This Act does not

1 affect the remedies and procedures

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

5 (2) adopted by regulation by the Department of Revenue governing appeal of a  
6 decision of the Department of Revenue regarding

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

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

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

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

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

18 (b) Notwithstanding AS 43.05.405, enacted by sec. 1 of this Act, unless the office of  
19 tax appeals has a full caseload, and with the approval of the chief administrative law judge, the  
20 chief administrative law judge or any other administrative law judge of the office of tax appeals  
21 may be appointed by the governor, by the commissioner of administration, or by the  
22 commissioner of another department to serve as a special hearing officer or special  
23 administrative law judge on another matter outside the scope of this Act and arising from another  
24 department of the executive branch. Appointment under this subsection may not interfere with  
25 the primary mission of the office of tax appeals under this Act of the expeditious resolution of  
26 administrative tax appeals under its jurisdiction.

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

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

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

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

2           (d) In this section,

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

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

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