

**SENATE BILL NO. 224**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/17/96

Referred: RES, JUD, FIN

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act establishing the office of tax appeals in the Department of  
2 Administration; revising the procedures for formal hearing of certain tax appeals,  
3 including appeals regarding seafood marketing assessments; providing for the  
4 release of agency records relating to formal administrative tax appeals; relating  
5 to litigation disclosure of public records; clarifying administrative subpoena power  
6 in certain tax matters; and providing for an effective date."

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

8 \* **Section 1.** FINDINGS AND PURPOSES. (a) The legislature finds, with respect to  
9 appeals of taxes assigned to the Department of Revenue, that  
10 (1) while courts have traditionally upheld the power of administrative agencies  
11 to perform the combined functions of tax audit and adjudication of tax appeals, certain  
12 taxpayers have perceived the combination of these functions within the Department of  
13 Revenue as unfair;

1 (2) the commissioner of revenue is frequently faced with the question of  
2 withdrawal from the management of or participation in a tax matter in order to maintain quasi-  
3 judicial independence when the matter is appealed to the commissioner; and

4 (3) these tax appeal proceedings should be made public in order to promote  
5 open government and because the public has an interest in the proceedings.

6 (b) The purposes of this Act are to

7 (1) provide a forum not subject to the supervision of the commissioner of  
8 revenue in which tax matters may be heard de novo in a formal recorded proceeding;

9 (2) help ensure that adjudicative decisions on formal administrative appeals of  
10 tax matters assigned to the Department of Revenue will be free from political influence and  
11 based upon the facts and the law;

12 (3) preserve for the commissioner of revenue the traditional role of policy  
13 formulation for revenue tax matters;

14 (4) not interfere with the proper exercise of the discretion of the commissioner  
15 of revenue in revenue tax matters;

16 (5) encourage taxpayers to provide all information pertinent to their taxes to  
17 the Department of Revenue, so that its auditors and other staff may properly determine the  
18 correct tax before the matter is appealed; and

19 (6) streamline tax appeal procedures and resolve disputes more efficiently by  
20 encouraging earlier exchange of information between the taxpayer and the Department of  
21 Revenue.

22 \* **Sec. 2.** AS 44.21 is amended by adding new sections to read:

23 **ARTICLE 9. OFFICE OF TAX APPEALS.**

24 **Sec. 44.21.600. OFFICE OF TAX APPEALS ESTABLISHED.** The office of  
25 tax appeals is established within the department.

26 **Sec. 44.21.605. JURISDICTION.** The office of tax appeals has original and  
27 exclusive jurisdiction to hear formal appeals from informal conference decisions of the  
28 Department of Revenue under AS 43.05.240. Appeal to the office may be taken only  
29 from an informal conference decision under AS 43.05.240. Jurisdiction of the office  
30 is limited to, and this chapter applies to and governs, an administrative appeal  
31 regarding

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

6 Sec. 44.21.610. ADMINISTRATION. (a) The commissioner shall appoint a  
7 chief administrative law judge of the office of tax appeals. The initial term for a chief  
8 administrative law judge is two years. A chief administrative law judge may be  
9 appointed to subsequent terms of four years each. The chief administrative law judge  
10 may be removed only for cause during the term of appointment. The chief  
11 administrative law judge shall exercise general supervision of the office.

12 (b) The chief administrative law judge may, with the approval of the  
13 commissioner, select and appoint additional administrative law judges and other staff  
14 for the office.

15 (c) The chief administrative law judge may adopt regulations implementing or  
16 interpreting AS 44.21.600 - 44.21.675, including rules of procedure and evidence for  
17 proceedings before the office.

18 (d) An administrative law judge, including the chief administrative law judge,  
19 may preside over a proceeding and carry out any procedures authorized under  
20 AS 44.21.600 - 44.21.675.

21 Sec. 44.21.615. QUALIFICATIONS; CODE OF CONDUCT. (a) An  
22 administrative law judge, including the chief administrative law judge, at the time of  
23 appointment, must

- 24 (1) be licensed to practice law in this state or another state; and  
25 (2) have experience in the field of tax law or tax administration.

26 (b) A person appointed as an administrative law judge under AS 44.21.610  
27 who is not licensed to practice law in this state at the time of appointment must  
28 become licensed to practice law in this state within 12 months after appointment or  
29 shall cease to hold office.

30 (c) Except as provided in (b) of this section, an administrative law judge,  
31 including the chief administrative law judge, shall comply with the Alaska code of

1 judicial conduct and remain licensed to practice law in this state.

2 Sec. 44.21.620. NOTICE OF APPEAL FROM INFORMAL CONFERENCE  
3 DECISION. An appeal under the jurisdiction of the office is initiated by filing with  
4 the office, and serving upon the commissioner of revenue, a notice of appeal from an  
5 informal conference decision of the Department of Revenue under AS 43.05.240. A  
6 notice of appeal from the informal conference decision may be filed or amended after  
7 the time for filing has expired only if good cause is shown.

8 Sec. 44.21.625. SCOPE AND STANDARDS FOR DECISION. The  
9 administrative law judge shall hear all questions de novo. The administrative law  
10 judge shall

11 (1) resolve a question of fact by a preponderance of the evidence, or  
12 by a different standard of proof that has been set by law for a particular question; the  
13 findings of fact of the informal conference decision are presumed correct unless the  
14 taxpayer rebuts the findings;

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

17 (3) defer to the Department of Revenue on a question as to a matter  
18 committed to the discretion of the Department of Revenue, unless not supported by a  
19 reasonable basis.

20 Sec. 44.21.630. SERVICE OF DOCUMENTS. Service of documents required  
21 under AS 44.21.610 - 44.21.675 may be accomplished in any manner authorized under  
22 the rules of civil procedure for a court of this state. If service is done only by mail,  
23 the date of service is determined by the date of mailing. If service is done by both  
24 mail and hand delivery, the date of service is determined by the earlier of the date of  
25 mailing or actual receipt of the documents.

26 Sec. 44.21.635. DISCOVERY. (a) In an appeal under AS 44.21.605,  
27 discovery may take place only under a plan for discovery approved by the  
28 administrative law judge. The administrative law judge may approve a plan for  
29 discovery to the extent consistent with the efficient, just, and speedy conduct of the  
30 appeal. The plan may limit or set conditions on discovery. If discovery is permitted,  
31 it shall be limited to information relevant to the determination of the correct tax or

1 penalty. The administrative law judge may grant exceptions to the requirements of this  
2 subsection in the interest of justice.

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

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

10 Sec. 44.21.640. SUBPOENAS. An administrative law judge may issue a  
11 subpoena to compel attendance of a witness or the production of a document or thing.  
12 A subpoena may compel attendance of a witness or production of a document or thing,  
13 located either inside or outside the state, to the maximum extent permitted by law. A  
14 subpoena may be used for the purpose of discovery or for the purpose of presenting  
15 evidence at a formal hearing. A subpoena shall issue upon request of a party, subject  
16 to reasonable limitation or conditions set in the subpoena. A subpoena may be  
17 enforced by petition to or other appropriate legal proceeding brought in a court of this  
18 state or another jurisdiction.

19 Sec. 44.21.645. FORMAL HEARING. (a) At or before the formal hearing,  
20 a party may present argument and evidence relevant to the amount of the tax or  
21 penalty due to be paid to the state. The administrative law judge may administer oaths  
22 and permit inquiry necessary to determine the amount of the tax or penalty due to be  
23 paid to the state.

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

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

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

30 (c) The taxpayer bears the burden of proof on questions of fact by a  
31 preponderance of the evidence, unless a different standard of proof has been set by law

1 for a particular question.

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

12 (e) Evidence on the following subjects is irrelevant and may not be admitted:

13 (1) history of legislative provisions that have not been enacted;

14 (2) history of a draft regulation that has not been adopted;

15 (3) information of a taxpayer, other than the taxpayer whose tax  
16 liability is the subject of the appeal, that is confidential under state law, including AS  
17 43.

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

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

23 Sec. 44.21.650. ENFORCEMENT. (a) The administrative law judge and each  
24 party is responsible for the efficient, just, and speedy conduct of the formal hearing.  
25 The administrative law judge may impose sanctions on the parties for failure to comply  
26 with a subpoena, an order respecting discovery, and any other matter regarding conduct  
27 of the appeal.

28 (b) The administrative law judge may

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

31 (2) prohibit a party from introducing the new information or

1 information previously withheld, and any other evidence dependent upon the  
2 information;

3 (3) enter an order

4 (A) barring a designated claim or defense;

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

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

7 (4) grant such other relief as the administrative law judge considers  
8 appropriate.

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

12 Sec. 44.21.655. DECISION; RECONSIDERATION; FINALITY. (a) Within  
13 180 days after the record on the appeal is closed, the administrative law judge shall  
14 issue a decision in writing. The decision shall contain a concise statement of reasons  
15 for the decision, including findings of fact and conclusions of law. In the decision, the  
16 administrative law judge may grant relief, provide remedies, and issue any order that  
17 is appropriate. The administrative law judge shall serve each party in the case with  
18 a copy of the decision. Unless reconsideration is ordered under (c) of this section, the  
19 decision under this subsection is the final administrative decision.

20 (b) A party may request reconsideration of a decision issued under (a) of this  
21 section within 10 days after the date of service shown in the certificate of service of  
22 the decision. The request must state specific grounds for reconsideration.  
23 Reconsideration may be granted if, in reaching the decision, the administrative law  
24 judge has

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

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

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

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

31 (c) The administrative law judge may issue an order for reconsideration of all

1 or part of the decision upon request of a party, or on the administrative law judge's  
2 own initiative. Reconsideration is based on the record, unless the administrative law  
3 judge allows additional evidence and argument. A hearing on reconsideration at which  
4 additional evidence or argument is offered or received is subject to the procedures  
5 applicable to a hearing under AS 44.21.645.

6 (d) The power to order reconsideration expires 30 days after the date of  
7 service, as shown on the certificate of service, of a decision issued under (a) of this  
8 section. If the administrative law judge does not issue an order for reconsideration  
9 within the time allowed for ordering reconsideration, a motion for reconsideration is  
10 considered denied.

11 (e) Within 60 days after the close of the record on reconsideration, the  
12 administrative law judge shall issue a written decision upon reconsideration. The  
13 administrative law judge shall serve each party in the case with a copy of the decision  
14 upon reconsideration. The decision upon reconsideration is the final administrative  
15 decision.

16 (f) An administrative decision becomes final either on the date

17 (1) 30 days after the date of service of a decision issued under (a) of  
18 this section, if no order for reconsideration is issued; or

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

21 Sec. 44.21.660. PUBLIC PROCEEDINGS AND RECORDS. (a) Records,  
22 proceedings, and decisions under AS 44.21.600 - 44.21.675 are public records and  
23 open to the public. Upon a showing of good cause, an administrative law judge may  
24 issue a protective order requiring that specified parts of the records, proceeding, or  
25 decision shall be kept confidential in a particular appeal. If a protective order is  
26 issued, the final administrative decision shall be made public after redacting by  
27 deletion or substitution of information as required by the protective order.

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

31 Sec. 44.21.665. CONSISTENCY OF DECISIONS. (a) As to questions of

1 law, a final administrative decision issued under AS 44.21.600 - 44.21.675, unless  
2 reversed or overruled, has the force of legal precedent.

3 (b) To promote consistency among legal determinations issued under  
4 AS 44.21.600 - 44.21.675, the chief administrative law judge may review and circulate  
5 among the other administrative law judges the drafts of formal decisions, decisions  
6 upon reconsideration, and other legal opinions of the other administrative law judges  
7 in the office. The drafts are confidential documents and are not subject to disclosure  
8 under AS 09.25.100 - 09.25.220 or this chapter.

9 Sec. 44.21.670. JUDICIAL REVIEW. (a) Judicial review by the superior  
10 court of a final administrative decision may be had by a party to the appeal under this  
11 chapter by filing a notice of appeal in accordance with the applicable rules of court  
12 governing appeals to that court in civil matters. The notice of appeal shall be filed  
13 within 30 days after an administrative decision becomes final under AS 44.21.655.  
14 The right to judicial review under this section is not affected by the failure to seek  
15 reconsideration before the administrative law judge.

16 (b) The amount due must be paid or refunded within 30 days after the date  
17 that the final administrative decision becomes final under AS 44.21.655. In place of  
18 payment of the amount due, a taxpayer who has appealed a final administrative  
19 decision may file a bond with the court or otherwise obtain relief from payment in  
20 accordance with the Alaska Rules of Appellate Procedure.

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

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

1 relief from payment in accordance with the Alaska Rules of Appellate Procedure.

2 Sec. 44.21.675. DEFINITIONS. In AS 44.21.600 - 44.21.675, unless the  
3 context otherwise requires,

4 (1) “administrative law judge” means an administrative law judge  
5 appointed under AS 44.21.610;

6 (2) “commissioner” means the commissioner of the Department of  
7 Administration;

8 (3) “de novo” means a new trial of record before an administrative law  
9 judge with opportunity for each party to present evidence and argument according to  
10 rules of procedure and evidence under AS 44.21.600 - 44.21.675;

11 (4) “department” means the Department of Administration;

12 (5) “discovery” means the use of subpoenas, subpoenas duces tecum,  
13 interrogatories, requests for production, requests for admission, depositions, and other  
14 methods of civil procedure by which one party to an appeal may discover information  
15 within the knowledge and control of another person;

16 (6) “legislative history” means the documents of the legislature  
17 recording the background and events, including draft bills, correspondence and  
18 memoranda, committee reports, tapes and transcripts of hearings, and tapes and  
19 transcripts of floor debate, concerning consideration of a bill;

20 (7) “office” means office of tax appeals in the department;

21 (8) “party” means the Department of Revenue and the taxpayer;

22 (9) “proceeding” means only a proceeding under the jurisdiction of the  
23 office;

24 (10) “subpoena” means a command to appear at a certain time and  
25 place to testify, or to appear at a certain time and place to produce books, papers and  
26 other things, and testify;

27 (11) “tax” includes a seafood marketing assessment under AS 16.51;

28 (12) “taxpayer” includes a person required to pay a seafood marketing  
29 assessment under AS 16.51.

30 \* **Sec. 3.** AS 09.25.100 is amended to read:

31 Sec. 09.25.100. DISPOSITION OF TAX INFORMATION. Information in the

1 possession of the Department of Revenue that discloses the particulars of the business  
2 or affairs of a taxpayer or other person is not a matter of public record, except for  
3 purposes of investigation and law enforcement. The information shall be kept  
4 confidential except when its production is required in an official investigation,  
5 **administrative adjudication under AS 44.21**, or court proceeding. These restrictions  
6 do not prohibit the publication of statistics presented in a manner that prevents the  
7 identification of particular reports and items, [OR] prohibit the publication of tax lists  
8 showing the names of taxpayers who are delinquent and relevant information that may  
9 assist in the collection of delinquent taxes, **or prohibit the publication of records,**  
10 **proceedings, and decisions under AS 44.21.**

11 \* **Sec. 4.** AS 09.25.122 is amended to read:

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

21 \* **Sec. 5.** AS 39.25.120(c) is amended by adding a paragraph to read:

22 (25) the chief administrative law judge and any other administrative law  
23 judges appointed to the office of tax appeals of the Department of Administration  
24 under AS 44.21.

25 \* **Sec. 6.** AS 43.05.010 is amended to read:

26 Sec. 43.05.010. DUTIES OF COMMISSIONER. The commissioner of  
27 revenue shall

- 28 (1) exercise general supervision and direct the activities of the  
29 Department of Revenue;
- 30 (2) supervise the fiscal affairs and responsibilities of the department;
- 31 (3) prescribe uniform rules for investigations and hearings;

1 (4) keep a record of all departmental proceedings, record and file all  
2 bonds and assume custody of returns, reports, papers, and documents of the  
3 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  
9 times;

10 (7) [(8)] hold hearings and investigations necessary for the  
11 administration of state tax and revenue laws;

12 (8) [(9)] **except as provided in AS 44.21**, hear and determine appeals  
13 **of a matter within the jurisdiction of the Department of Revenue** [INVOLVING  
14 INCOME, EXCISE, LICENSE, OR OTHER TAXES LEVIED UNDER STATE  
15 LAWS] and enter orders on the appeals that are final unless reversed or modified by  
16 the courts;

17 (9) [(10)] **issue subpoenas to** require the attendance of witnesses and  
18 the production of necessary books, papers, documents, correspondence and other **things**  
19 [EVIDENCE AT HEARINGS];

20 (10) [(11)] order the taking of depositions before a person competent  
21 to administer oaths;

22 (11) [(12)] administer oaths and take acknowledgments;

23 (12) [(13)] request the attorney general for rulings on the interpretation  
24 of the tax and revenue laws administered by the department;

25 (13) [(14)] call upon the attorney general to institute actions for  
26 recovery of unpaid taxes, fees, excises, additions to tax, penalties, and interest;

27 (14) [(15)] issue warrants for the collection of unpaid tax penalties and  
28 interest and take all steps necessary and proper to enforce full and complete  
29 compliance with the tax, license, excise, and other revenue laws of the state;

30 (15) [(16)] audit reports, payments, and payments due relating to  
31 royalty and net profits under oil and gas contracts, agreements, or leases under

1 AS 38.05[;

2 (17) REPEALED].

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

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

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

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

1 the same extent as witnesses may be compelled to obey the subpoenas of the court.

2 \* **Sec. 8.** AS 43.05.230(a) is amended to read:

3 (a) It is unlawful for a current or former officer, employee, or agent of the  
4 state to divulge the amount of income or the particulars set out or disclosed in a report  
5 or return made under AS 43 [THIS TITLE], except

6 (1) in connection with official investigations or proceedings of the  
7 department, whether judicial or administrative, involving taxes due under AS 43 [THIS  
8 TITLE];

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

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

13 (4) as provided in AS 44.21; and

14 (5) as otherwise provided in this section.

15 \* **Sec. 9.** AS 43.05.240 is repealed and reenacted to read:

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

25 (b) For a matter within the jurisdiction of the office of tax appeals under  
26 AS 44.21.605, the taxpayer aggrieved by an informal conference decision may file with  
27 the office of tax appeals a notice of appeal for formal hearing, as provided in  
28 AS 44.21, no later than 30 days after service of the decision resulting from an informal  
29 conference.

30 \* **Sec. 10.** AS 43.55.040 is amended to read:

31 Sec. 43.55.040. POWERS OF DEPARTMENT OF REVENUE. Except as

1 **provided in AS 44.21, the** [THE] department may

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

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

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

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

11 (A) the amount of production from any oil or gas location, or  
12 of a company or other producer of oil or gas, and

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

14 \* **Sec. 11.** EFFECT ON EXISTING REMEDIES AND PROCEDURES. This Act does not  
15 affect the remedies and procedures specified in AS 04.11, including AS 04.11.560; AS 05.15,  
16 including AS 05.15.610; AS 42.05, including AS 42.05.551; or AS 43.56, including  
17 AS 43.56.120 and 43.56.130. This Act does not affect the remedies and procedures adopted  
18 by regulation by the Department of Revenue governing appeal of a decision of the Department  
19 of Revenue regarding a game of chance or skill made under AS 05.15, a permanent fund  
20 dividend under AS 43.23, a coin-operated device or punchboard under AS 43.35, or a child  
21 support obligation under AS 25.27.

22 \* **Sec. 12.** TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided  
23 by this Act apply to all revenue tax appeals in which a request for formal hearing is filed with  
24 the Department of Revenue on or after the effective date of this Act. The remedies and  
25 procedures existing before the effective date of this Act apply to all revenue tax appeals in  
26 which a request for formal hearing was filed with the Department of Revenue before the  
27 effective date of this Act, unless all of the parties to an appeal, by written stipulation approved  
28 by the chief administrative law judge, agree to the remedies and procedures established by this  
29 Act.

30 (b) Until regulations authorized under this Act take effect, 15 AAC 05.001 -  
31 15 AAC 05.320 govern appeals within the jurisdiction of the office of tax appeals filed after

1 the effective date of this Act, except to the extent the regulations are inconsistent with this  
2 Act.

3 (c) Notwithstanding AS 44.21.605, enacted by sec. 2 of this Act, until the office of  
4 tax appeals has a full caseload, and with the approval of the chief administrative law judge,  
5 the chief administrative law judge or any other administrative law judge of the office of tax  
6 appeals may be appointed by the governor, by the commissioner of administration, or by the  
7 commissioner of another department to serve as a special hearing officer or special  
8 administrative law judge on another matter outside the scope of this Act and arising from  
9 another department of the executive branch. Appointment under this subsection may not  
10 interfere with the primary mission of the office of tax appeals under this Act of the  
11 expeditious resolution of administrative tax appeals under its jurisdiction.

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

- 16 (1) a game of chance or skill under AS 05.15;
- 17 (2) a permanent fund dividend under AS 43.23;
- 18 (3) a coin-operated device or punchboard under AS 43.35; and
- 19 (4) a child support obligation under AS 25.27.

20 (e) In this section,

21 (1) "chief administrative law judge" means the chief administrative law judge  
22 of the office of tax appeals appointed under AS 44.21.610, enacted by sec. 2 of this Act;

23 (2) "office of tax appeals" means the office established in AS 44.21.600,  
24 enacted by sec. 2 of this Act.

25 \* **Sec. 13.** This Act takes effect July 1, 1996.