

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS**

May 9, 2003

7:06 a.m.

MEMBERS PRESENT

Representative Mike Hawker, Co-Chair
Representative Jim Whitaker, Co-Chair
Representative Cheryll Heinze
Representative Vic Kohring
Representative Norman Rokeberg
Representative Bruce Weyhrauch
Representative Peggy Wilson
Representative Max Gruenberg
Representative Carl Moses

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Paul Seaton
Representative Dan Ogg
Representative Sharon Cissna

COMMITTEE CALENDAR

HOUSE BILL NO. 293

"An Act levying and collecting a state sales and use tax; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 293

SHORT TITLE: STATE SALES AND USE TAX

SPONSOR(S): WAYS & MEANS

Jrn-Date	Jrn-Page		Action
04/30/03	1202	(H)	READ THE FIRST TIME - REFERRALS
04/30/03	1202	(H)	W&M, FIN
04/30/03	1202	(H)	REFERRED TO WAYS & MEANS

05/01/03	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
05/01/03	(H)	Heard & Held -- Teleconference -- MINUTE(W&M)
05/06/03	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
05/06/03	(H)	Heard & Held MINUTE(W&M)
05/07/03	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
05/07/03	(H)	Heard & Held -- Recessed to a call of the chair -- MINUTE(W&M)
05/08/03	(H)	W&M AT 7:00 AM HOUSE FINANCE 519
05/08/03	(H)	Heard & Held -- Recessed to a call of the Chair -- MINUTE(W&M)
05/09/03	(H)	W&M AT 7:00 AM HOUSE FINANCE 519

WITNESS REGISTER

LARRY PERSILY, Deputy Commissioner
Office of the Commissioner
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 293.

ROBYNN WILSON, Revenue Auditor
Tax Division
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 293.

ACTION NARRATIVE

TAPE 03-26, SIDE A

Number 0001

CO-CHAIR WHITAKER called the House Special Committee on Ways and Means meeting to order at 7:06 a.m. Representatives Hawker, Whitaker, Kohring, Wilson, and Moses were present at the call to order. Representatives Heinze, Rokeberg, Weyhrauch, and Gruenberg arrived as the meeting was in progress. Representatives Seaton, Ogg, and Cissna were also present.

HB 293-STATE SALES AND USE TAX

CO-CHAIR WHITAKER announced that the only order of business would be HOUSE BILL NO. 293, "An Act levying and collecting a state sales and use tax; and providing for an effective date." He indicated that the committee would continue work on HB 293 over the weekend and would bring it back Monday morning.

CO-CHAIR WHITAKER recalled that the last hearing left off with discussion of the "isolated" concept.

Number 0244

LARRY PERSILY, Deputy Commissioner, Office of the Commissioner, Department of Revenue, recalled that the discussion was regarding the exemption on isolated or occasional sales [page 13, lines 5-12]. He further recalled that one of the points discussed yesterday was whether the committee, as a policy, wanted to assess a sales and use tax on an individual sale of a used car. That is one of the items that is being changed such that if an individual sold a used vehicle, it wouldn't be subject to the sales tax so long as the sale was on an occasional basis as opposed to those in the business of used car sales.

CO-CHAIR WHITAKER requested discussion with regard to the meaning of "person" in relation to these isolated or occasional sales.

Number 0348

ROBYNN WILSON, Revenue Auditor, Tax Division, Department of Revenue, specified that the definition of "person" includes a corporation. "The idea here is that occasional sell where that person or organization is not in the business of selling that particular item," she explained.

MR. PERSILY clarified that in the context of HB 293 the language "person" doesn't mean an individual but rather a corporate entity.

Number 0431

CO-CHAIR HAWKER asked if the paragraph applies to larger transactions such as the sale and purchase of a business.

MS. WILSON replied yes that would be the case under the definition of "occasional."

MR. PERSILY turned to page 13, line 13, the exemption of personal effects brought into the state, and recalled that was discussed yesterday. He then turned to page 13, line 18, which is the limit on sales tax liability that would apply to the purchase of motor vehicles, watercraft, aircraft, and mobile homes. The tax would be paid on only the first \$5,000 of the purchase price, regardless of the total purchase price.

Number 0526

CO-CHAIR HAWKER inquired as to how the list of items was derived.

MS. WILSON explained that under the Streamlined Sales Tax Act caps are prohibited after 2005, except for the items listed. She noted that these items are commonly capped by states and localities.

MR. PERSILY added that of those communities that currently have a cap for the sales tax, there are many [caps] above and below \$5,000.

CO-CHAIR HAWKER related his understanding that the \$5,000 cap is the [legislature's] policy call as opposed to a guideline specified in the Streamlined Sales Tax Act.

MS. WILSON agreed.

Number 0624

REPRESENTATIVE OGG related his impression that a person who is not in the business of selling cars sells a car is exempt [as specified on page 13, lines 5-12]. Therefore, he inquired as to whether an individual in a similar situation with watercraft or aircraft would be exempt as well.

MR. PERSILY answered that the intent of the discussions held with the co-chair was that any individual not in the business of selling any of a vehicle, watercraft, or aircraft would be completely tax exempt when it's an isolated or occasional sale.

CO-CHAIR WHITAKER interjected that it wouldn't be a requisite to purchase a new [vehicle, watercraft, or aircraft] in order to occasionally sell the old one.

Number 0836

REPRESENTATIVE SEATON posed a situation in which a rental car company sells cars on a fairly regular basis, although selling cars is not its prime business. In such a situation would the rental car company have to pay sales tax on the sale of those cars.

MS. WILSON answered that it would depend upon the extent of the definition of "occasional," which could be part of the legislation or the regulatory package.

REPRESENTATIVE SEATON posed another situation in which a oil company operates a fleet of vehicles for a few years, sells them, and replaces them with new vehicles. Under the "occasional" definition would the aforementioned transactions not be taxable.

MS. WILSON replied, per her understanding of the current intent of the section as it will be redrafted, the oil company's transactions would be exempt.

MR. PERSILY said he would consider an oil company or construction company that purchases new equipment and sells the used equipment as occasional and isolated. However, a rental car company that annually purchases new vehicles and has a used car sale one to three times a year every year would not be an isolated or occasional event but rather is part of the company's business. Therefore, those rental car transactions would be taxable and thus the buyer of the used vehicle would be responsible for sales tax.

Number 1037

MR. PERSILY returned to review of [CSHB 293] and turned attention to page 13, line 22. He explained that the point of that section is that if a business is purchasing something to resell it, the sales tax would only be paid on the final retail sale. The same [logic] would apply to the provision on page 13, line 26. Mr. Persily moved on to page 14, line 1, which he characterized as a tight exemption that applies only to the property purchased as a component of a mining or manufacturing process. As written, the [exemption] would not apply to the equipment used in the manufacturing process. As the fiscal note specifies, this tight exemption would mean that in the oil and gas industry the equipment used would be subject to sales tax

because those items aren't an ingredient or component in the manufacturing of the product. He recognized the aforementioned as a policy call of the legislature.

Number 1211

REPRESENTATIVE HEINZE related her understanding that the pieces that go into a module wouldn't be taxed. However, once the module is built and sold to industry, the industry would pay tax on that module.

MR. PERSILY said that would be his understanding.

REPRESENTATIVE HEINZE suggested that this situation with the modules needs to be reviewed. Currently, modules are being built in Anchorage, Kenai, and Fairbanks. For the Northstar Unit project alone, \$400 million was spent on modules. The tax on the aforementioned would be \$12 million. Representative Heinze pointed out that the gas pipeline is "coming up" and she suggested there would be billions of dollars in modules. In Oregon there is no tax and it has taken 15 years to get [the construction of] modules from Oregon to Alaska. Therefore, she suggested that without an exemption for modules [the construction of the modules] will return to Oregon.

REPRESENTATIVE GRUENBERG posed a scenario in which he manufactures boxes. He surmised that all the office equipment and paper he uses would be exempt from the sales tax.

MR. PERSILY replied, "It's not if that is not a component or an ingredient in the process." He acknowledged that this is one of the bigger policy calls in this legislation.

MS. WILSON pointed out that it's common for states to exempt a manufacturing process rather than the approach encompassed in the legislation. However, it's often defined as the actual direct process. In states where this exemption is broad, the exemption generally doesn't exempt office equipment and consumables.

Number 1453

CO-CHAIR HAWKER requested that Representative Heinze's question be put in the context of the Stranded Gas Development Act.

MR. PERSILY explained that [this year's amendments to the] Stranded Gas Development Act give the state authority to negotiate with the sponsors of the project a contract for

payment in lieu of taxes, which would include corporate income taxes, production taxes, and sales taxes. Therefore, as far as the gas line project, the aforementioned could be addressed in the negotiations.

REPRESENTATIVE HEINZE surmised that it wouldn't apply to exploration on the North Slope or other fields and modules.

CO-CHAIR WHITAKER said such authority to negotiate only applies to the gas line.

Number 1607

REPRESENTATIVE OGG inquired as to how the provision encompassed in page 14, lines 1-4, would apply to commercial fishing.

MS. WILSON explained that as currently written, she didn't she that it would apply to [commercial fishing].

MR. PERSILY interjected, "Except for the purpose of purchasing fish as the ingredient." Mr. Persily specified that it wouldn't apply to the equipment used to process the fish.

REPRESENTATIVE OGG posed a scenario in which a commercial fishermen catches a fish and the tender boat purchases the fish, which is a point of sale. How would this legislation impact such a situation, he asked.

MS. WILSON answered that if further processing is performed, then it would be an exempt sale to that purchaser because it would be a sale for manufacturing.

MR. PERSILY clarified that if the purchaser is purchasing the fish to sell it directly to retail, then it would be considered a purchase for resale. Therefore, there would be no sales tax on that purchase.

REPRESENTATIVE OGG recalled that there is already a 1.5-cent fish sales tax at the point of sale between the fisherman and processor or tender that the fisherman must pay. He inquired as to how this legislation would impact that sale of fish.

MR. PERSILY said that he couldn't conceive of a situation in which there would be sales tax on that transaction because the fish is being sold to either a processor or distributor, in both cases it would be tax exempt. "Fishermen and sales tax just would not mix," he said. In further response to Representative

Ogg, Mr. Persily said that if a fisherman sold fish to the public on the dock and that's the first and final sale, sales tax would be collected.

Number 1943

CO-CHAIR HAWKER related his vision and intent that the above [understanding] is the line that is drawn. The regular and recurring activity of selling directly to the consumer would be subject to the sales tax. However, he remarked that the idea is not to tax the isolated or occasional sale.

REPRESENTATIVE WILSON, with regard to fishermen selling fish directly to the public, said that she would hate to have fishermen turn into tax collectors.

CO-CHAIR WHITAKER remarked that the committee will have to work its way through it the best way it can.

CO-CHAIR HAWKER posed a situation in which a fisherman owns a small business, and should, as a component of the fisherman's business, engage in regular and recurring [selling of fish], which would be a taxable transaction. He pointed out that since the burden is placed on the collector and remitter of the sales tax, that entity is allowed to keep a remuneration for providing that service to the state.

Number 2243

MS. WILSON turned to the provision on page 14, lines 8-16, and stated that this is effectively a sale for resale situation. Therefore, a company in the business of leasing equipment can purchase the equipment for that purpose without paying tax.

MR. PERSILY moved on to page 14, lines 17-18, which specifies that the motor fuel that is subject to the motor fuel tax is exempt from the sales and use tax.

CO-CHAIR HAWKER noted that the intention of this provision is that the motor fuel exemption would apply to all fuel transactions that are subject to the excise tax provisions within the larger scope of motor fuel taxes.

MR. PERSILY clarified that if an excise tax is already being collected, the intent with this provision is not to also collect a sales and use tax at the pump.

MS. WILSON continued with the provision on page 14, lines 19-25, which she pointed out is similar to the provision on page 14, line 8. This provision is also a sale for resale exemption.

Number 2448

MR. PERSILY addressed page 14, lines 26-28, which he characterized as a catchall. Basically, this provision specifies that an interstate commerce transaction is exempt if imposition of the sales and use tax violates the United States constitution.

REPRESENTATIVE GRUENBERG remarked that this would be a full employment provision for lawyers because he surmised that people wouldn't know what this provision exempts. He asked if the department will publish regulations defining [interstate commerce for which the imposition of the sales and use tax would be in violation of the United States constitution].

MS. WILSON remarked that the department would expect to write regulations. In further response to Representative Gruenberg, she said she didn't know if such an exemption is common in other states. However, many states don't place an exemption on the books that they can't tax. For example, this legislation addresses food stamps, while Florida doesn't even specify food stamps as an exemption because the state knows it can't be taxed. Therefore, Ms. Wilson said that this provision on page 14, lines 26-28, says that the state will tax [interstate commerce] to the extent possible under the constitution.

REPRESENTATIVE GRUENBERG, upon hearing that Ms. Wilson has never seen a statute like this, informed the committee that this is a fast-evolving area in the U.S. Supreme Court. The [U.S. Supreme Court] is changing long-standing rules in this area, which are quite complex. He opined that the state will have to hire new attorneys to defend this.

CO-CHAIR HAWKER acknowledged that this is a bit of a conundrum that needs examination.

Number 2804

REPRESENTATIVE SEATON returned to the provision on page 4, lines 8-11, and inquired as to why furniture, appliance, rental or lease of mobile homes, et cetera would not be exempt.

MS. WILSON commented that the provision certainly could be adjusted. She indicated that the original intent was to deal with leases.

CO-CHAIR WHITAKER noted agreement with Representative Seaton that the provision would be a policy call.

REPRESENTATIVE WILSON said that she remains unclear with regard to the provisions on page 14, lines 8-16, and lines 19-25. She related her understanding that the provisions mean that furniture, appliances, and the rental and lease of mobile home property are not exempt.

MR. PERSILY said Representative Wilson's understanding is correct.

REPRESENTATIVE WILSON surmised then that anything someone leases other than those items listed is exempt.

MS. WILSON said that if she leases a car and Representative Wilson purchases the same car, the [two transactions] should be treated similarly. She explained that the reasons lines 8 and 19 are included on page 14 are so that a car rental company can purchase the car for subsequent leasing just as the car dealership can purchase the car to sell to it to an individual and not initially pay the tax.

MR. PERSILY clarified that the sales tax would be paid once at the final lease.

REPRESENTATIVE WILSON inquired as to how leasing an apartment would be treated.

MS. WILSON explained that this legislation specifically taxes sales and rentals of tangible personal property. An apartment isn't tangible personal property but rather real property, and therefore wouldn't be taxed.

REPRESENTATIVE WILSON related her understanding that although in Wrangell there is a sales tax on every rental, this legislation would specify that there can't be.

MR. PERSILY replied yes in that this legislation doesn't tax the rental of residential or office space; this legislation doesn't impose a sales and use tax on the tax of real property. However, he pointed out that Wrangell could have a special local

tax on the rental of property similar to the bed tax, liquor tax, or fuel transfer tax found in some communities.

Number 3235

MS. WILSON, in response to Representative Gruenberg, explained that in regard to the language on page 14, line 14, an exemption certificate would be used. Therefore, it wouldn't be incumbent on the seller to know what is specified on page 14, lines 14-16.

CO-CHAIR HAWKER recalled the extensive discussions on the exemption certificate last night. There was discussion that some substantial improvements to this language should be done.

REPRESENTATIVE WILSON remarked that every place where the committee has questions, it probably means the language isn't as clear as it could be. She asked if the language would be changed such that the ordinary person would be able to understand it.

CO-CHAIR WHITAKER said that the committee would do the best it can.

Number 3408

REPRESENTATIVE SEATON returned the earlier issue of taxing apartments and related his belief that many taxing authorities tax services, including apartment rentals. If this isn't exempt here, unless there is language specifying that every community can start a new and separate taxing authority it will have a large fiscal impact. Therefore, he suggested review of that.

CO-CHAIR WHITAKER expressed his desire for committee members to bring forward their concerns, but he pointed out that there are a number of pages to review.

Number 3515

MR. PERSILY continued with page 14, line 29 through page 15, line 10, which he characterized as a policy call requiring more work. This provision addresses interstate transportation, interstate commerce, which the state isn't limited in its ability to tax. This provision specifies that the transportation of property from one point within the state to another point in the state is exempt if the property is being transported in interstate commerce under a single contract. Therefore, under the current language, if the contract for the

transportation of oil from Prudhoe Bay to refineries in the Lower 48 is a single contract, the sales tax wouldn't apply. Mr. Persily related his understanding that the state can't tax interstate transportation while in-state transportation services can be taxed.

REPRESENTATIVE HEINZE asked if the [oil] industry has a single contract for moving the oil down to the refinery.

MR. PERSILY said he didn't know, but pointed out that in many cases the oil is being moved to the company's own refineries through its own transportation company.

REPRESENTATIVE HEINZE inquired as to the impact of this sales tax if a gas line that goes through Canada is built.

MR. PERSILY opined that it would be a single contract because it's a single carrier; once the gas is put in the pipe in Prudhoe Bay the next stop is Alberta, Canada. Therefore, it would be exempt. However, he said he wasn't sure whether oil that moves through a pipe to a holding tank and ultimately pumped into a tanker is under a single contract or two contracts. Again, this would be a policy call with regard to whether the legislature wants to impose a sales tax on the tariff charged on the transportation of oil.

Number 3739

REPRESENTATIVE OGG inquired as to how the provision on [page 14, line 29 through page 15, line 10] would impact the fishing industry.

MR. PERSILY related his understanding that under this legislation transportation services are subject to sales tax. Therefore, one moving fish only within the state would be subject to sales tax.

REPRESENTATIVE OGG surmised then that a tender operator who is paid on a contractual basis by a processing entity would have to pay sales tax on his contract.

MR. PERSILY clarified that the tender wouldn't pay if a processor contracts with a tender to provide the service, the processor, as the buyer, would pay the sales tax.

MS. WILSON interjected, "Unless it's being further processed." She pointed out that the provision on manufacturing discusses

adding value, and therefore there is no requirement for a finished product.

MR. PERSILY, in further response to Representative Ogg, specified there would be a sales tax only if [the fish is] moved to final the retail purchaser.

REPRESENTATIVE OGG commented that sometimes the focus tends to be on the oil and gas industry because it's simpler. However, he expressed the need to be assured [that this legislation] doesn't make it harder for the fishing and processing industries to be competitive.

Number 4041

REPRESENTATIVE MOSES inquired as to how this legislation would impact a scenario in which a fisherman delivers fish to the tender which is then delivered directly to the airport.

MR. PERSILY related his understanding of the above situation that the tender would take the fish to the airport to be shipped to its final destination.

MS. WILSON identified this as another policy call. She indicated that the next provision, page 15, lines 11-30, addresses the concern. She said she wasn't clear whether Representative Moses' concern is regarding fish going out-of-state or within the state.

MR. PERSILY clarified that the concern is regarding whether the freight charge would be subject to sales tax in a situation in which someone is being paid to transport the fish to the airport for delivery to the airfreight company to ship it out-of-state to the buyer.

MS. WILSON responded that [under the current language in the legislation] the freight charge wouldn't be subject to sales tax. Again, it is a policy call.

Number 4222

CO-CHAIR WHITAKER surmised if the transportation services are within the confines of the company owned by the tender or the shipper, [the freight charges] would not be subject to sales tax. However, if a transportation service is provided by a transportation company [the freight charge] is subject to the

sales tax because it is intrastate transport. He asked if that is correct.

MS. WILSON remarked that as currently written, the provision focuses on whether the [product/fish] would be resold or reprocessed, not the entities doing the selling.

MR. PERSILY interjected that the point is whether it's part of the process of the item being handled for resale or is it the final sale.

CO-CHAIR HAWKER noted that he has provided the drafter with detailed information on the issue of services that might be contemplated [in this legislation]. This is an area in which he believes this CS needs clarification. He mentioned that the value-added transportation in an ultimate process is something that would clearly be delineated as opposed to transportation as a service in and of itself.

Number 4437

REPRESENTATIVE WILSON recalled the committee's discussion at a previous hearing about a salad. She explained that the finished product is the salad a customer pays for and eats. All the ingredients aren't finished products and aren't sold as such until all mixed [to form the salad]. She likened the salad to the fish that travels from place to place and is changed, and the finished product is when the fish is purchased in the store.

REPRESENTATIVE GRUENBERG identified Alaska as the beginning point of the "salad," the place of primary extraction for oil, gas, and fish. The aforementioned items are consumed outside. However, he said he understood [the provision on page 15, lines 11-30] to tax only the salads eaten in Alaska. However, shouldn't [the objective be] to tax the salads eaten in New York, he asked. If the tax was imposed at the beginning of the process, it would be added to the price in New York. Therefore, New Yorkers would be taxed rather than Alaskans.

CO-CHAIR WHITAKER announced that such is a policy decision and that broader policy discussion will be addressed as the committee works its way through the process. However, today the committee will continue to get the explanation of the CS before it and any concerns will be addressed [at a later hearing].

TAPE 03-26, SIDE B

Number 0703

REPRESENTATIVE MOSES returned to the discussion of the situation of the tender transporting the fish to the airport. He pointed out that many municipalities have tax on the fish ticket. He asked if that would be exempt.

MR. PERSILY surmised that the question is whether there would be a tax on a tax to which he responded no. Furthermore, there would be no tax on the sale of the raw fish to the tender because that isn't the final sale, it would be considered a sale for resale.

REPRESENTATIVE MOSES asked if the above would supercede the municipality's ability to tax that [raw] fish.

MR. PERSILY replied no, adding that the municipality could still charge the raw fish tax.

MR. PERSILY returned to review of the CS by directing attention to page 15, lines 11-30.

Number 4521

MS. WILSON said this provision is about exporting. She agreed that this provision probably needs some clarification.

MR. PERSILY specified that the intent of the provision is that there is an exemption for those selling services out-of-state. Mr. Persily continued with page 15, line 31 through page 16, line 9, regarding the exemption for property used for leasing.

MS. WILSON said that this provision is basically the example of the car being leased. In this case, if the car dealer brought up the car from Seattle, Washington, and subsequently leased the car, that wouldn't be a use subject to the use tax.

Number 4429

MR. PERSILY turned to page 16, lines 10-12, which would give credit for taxes paid in another state for goods.

MS. WILSON explained that if one purchases a car in Seattle, Washington, and pays the sales tax in Seattle and brings the car to Alaska, the Alaskan tax would only apply above what was paid in Seattle. Therefore, there would be a credit and the consumer wouldn't pay the sales tax twice.

MS. WILSON, in speaking to the provision on page 16, lines 13-20, explained it as follows:

The direct pay permit is a situation where a company would be expected to purchase a lot of things tax exempt and a lot of things that probably should be taxable. For example, say a manufacturing concern. ... what typically happens is if that company is big enough - and we would set up some criteria - but for example, they have to have an accounting system robust enough to accrue their own use tax. We basically put the onus then on that company to report their own tax. And so we issue the company a permit based on criteria. That's how that works. And then they would buy all of their goods and services, tax off. They would accrue their own tax and pay it just like retailers would.

MS. WILSON moved on to the provision on page 16, line 21 through page 17, line 4, which is a sale for resale. This provision requires sellers be registered so that they could purchase inventory without paying the tax.

REPRESENTATIVE WILSON returned to the direct pay permit and inquired as to how the state tracks this.

MS. WILSON answered that such would be the subject of an audit. In a manufacturing situation, the sellers wouldn't have to determine what was directly used in the manufacturing process; the onus on manufacturing concern. Therefore, it would then be up to the Department of Revenue to audit that concern on a regular basis, similar to auditing retailers. The aforementioned is why criteria is specified.

CO-CHAIR HAWKER noted he anticipates further clarifications regarding the issues of collection, remittance permits, resale exit certificates, and exemption certificates.

Number 3959

MR. PERSILY pointed out that page 17, lines 5-23, addresses permit applications from businesses so that the state knows who is in the business of sales and services in Alaska. The provision specifies that if the business has a number of locations, the application may specify multiple locations.

Furthermore, this provision recognizes that there could be place(s) of business or offices that have vending machines in multiple locations [which is of no consequence]. Page 17, line 24 through page 18, line 7, deals with the revocation or suspension of a seller's permit. This provision sets out opportunities for hearings under the Administrative Procedure Act (APA) and [rules regarding the] enforcement of someone in noncompliance.

MS. WILSON, in speaking to page 18, lines 8-20, explained that it imposes a penalty for someone who improperly uses an exemption certificate. For example, someone in business obtains a seller's permit, establishes an exemption certificate, and then goes out of business on June 30th while continuing to use the exemption certificate to purchase goods for resale for the remainder of the year, although the business is no longer in business.

MR. PERSILY highlighted that the penalty payable to the state would be \$100 or 100 percent of the tax due, whichever is greater.

REPRESENTATIVE WILSON remarked that doesn't make sense. If someone is doing something illegal, the individual [company] should be punished. However, this merely requires that the tax be paid. She emphasized her belief that a penalty should be imposed.

MS. WILSON returned to the provision dealing with the penalty for the improper use of an exemption certificate. She clarified that the 100 percent of the tax isn't just recouping the tax rather it's a penalty on top of the tax. "It just measures the penalty," she specified.

Number 3713

MS. WILSON continued with page 18, lines 21-28, and related that this provision deals with commingling of homogenous products.

MR. PERSILY moved on to page 18, line 29 through page 19, line 15, which addresses the department's ability to require a retailer who doesn't maintain a place of business in the state to furnish security for the payment of taxes. Therefore, there would be something to go after, if an out-of-state business doesn't pay its taxes. Furthermore, the provision imposes a penalty over and above the tax due.

REPRESENTATIVE WILSON inquired as to the definition of fungible goods, which is mentioned on page 18, line 23.

MS. WILSON responded that as the legislation is written there is no specific definition for fungible, although she guessed that there is probably a definition [already] in law.

REPRESENTATIVE GRUENBERG recalled that [fungible] is a term that's used in the uniform commercial code.

Number 3416

MR. PERSILY moved on to page 19, lines 16-18, which requires someone engaged in transportation shall register and pay the taxes. In response to Co-Chair Whitaker, Mr. Persily specified that this legislation requires a separate registry, beyond a business license, with the Department of Revenue for a seller's permit. He noted that there is no charge for that seller's permit.

REPRESENTATIVE ROKEBERG related his understanding that any activity engaged in the transportation of goods, such as UPS, would be a taxable event in Alaska. However, the transshipment of any goods and redistribution would be exempt, he presumed.

MR. PERSILY said that was his understanding of what the committee wants, although it isn't clear in the legislation. Therefore, there would be no sales tax on goods passing through the state. In further response, Mr. Persily specified that his assumption is that the committee doesn't want to impose a sales tax on the services [enabling goods to pass through the state].

CO-CHAIR HAWKER remarked that he believes the above is already addressed in the distinctions between intrastate and interstate. He noted that it needs major clarification.

Number 3131

REPRESENTATIVE SEATON used the example of a gallon of milk in the Bush and asked if the transportation of the milk to the community is taxed as a sales tax and the increased value [cost] of milk in the village is also taxed at the 2 percent.

CO-CHAIR WHITAKER responded in the affirmative.

REPRESENTATIVE WILSON turned to businesses such as Federal Express for which there is no tax, only a charge for that

[transportation] service. She inquired as to how that would work with the sales tax.

CO-CHAIR WHITAKER clarified that intrastate would be taxed. It's a transportation service, he said. There would be [no tax] on the U.S. Post Office.

Number 3017

MS. WILSON moved on to page 19, lines 19-25, which allows a retailer to use an accrual basis method of accounting on application to the department.

REPRESENTATIVE GRUENBERG recalled that under the Internal Revenue Code, one can normally chose a cash or accrual basis without an application.

MS. WILSON recalled that the Internal Revenue Code specifies parameters about who can use the cash basis. A large corporation can't use a cash basis, he said.

Number 2916

MR. PERSILY continued with the provision on page 19, line 26 through page 20, line 12, which is another policy call. Currently, the provision specifies that tax returns are to be filed on a quarterly basis. This provision allows sampling methods in its audits rather than pulling 100 percent of the records. On page 20, lines 13-19, if a business is paying taxes on the accrual basis, the tax paid has to be written off because of a bad debt that [business] can deduct on a subsequent tax payment to the state. Therefore, the state wouldn't collect taxes on business that was never received. The provision on page 20, lines 20-25, would be another policy call in terms of the amount. This provision dictates how much the business may keep from the collections as reimbursement or partial reimbursement for the cost of being the tax collector. The provision specifies that amount retained could be 2 percent or \$75 a month, whichever is less.

MS. WILSON turned to page 20, line 26 through page 21, line 14, which deals with forfeiture of security and sale of the deposit at auction if the taxpayer is not complying.

MR. PERSILY addressed page 21, line 15 through page 22, line 6, what happens when a taxpayer quits or sells the business. The successor is not liable for the tax due from the seller of the

business if [the purchaser] provides the department with written notice of the transaction and acquisition.

MS. WILSON continued with page 22, lines 7-22, and characterized this as a policy call. She pointed out that subsection (c) applies to corporate officers, directors, and shareholders.

Number 2635

MR. PERSILY pointed out that on page 22, lines 23-25, the department is directed to adopt regulations that are consistent with the Streamlined Sales and Use Tax agreement. With regard to the definition provision on page 22, line 26 through page 26, line 1, Mr. Persily acknowledged that there are probably some definitions that are missing and some that need to be clarified. For example, on page 24, lines 3-6, the definition of "manufacturing" would be one in which the committee would want to consider how broad, how tight, and what policy calls to make in this area. He mentioned that there may be the need for policy discussion in relation to page 24, line 15 through page 25, line 10.

MR. PERSILY turned to page 26, lines 3-4, which provides an exemption for the car rental tax. He explained that, assuming the car rental tax is adopted, car rentals subject to the car rental tax aren't subject to the sales and use tax. Section 11 on page 26 is an uncodified law of the state specifying that the department is authorized to enter into the Streamlined Sales and Use Tax [Act].

MR. PERSILY concluded with the effective dates of the legislation. He specified that the sales tax would take effect January 1, 2004, while the motor fuel tax takes effect July 1, 2003. The vehicle rental exemption, Section 14, only goes into effect if the vehicle rental tax passes.

Number 2334

REPRESENTATIVE ROKEBERG noted that he has provided committee staff with an amendment.

CO-CHAIR WHITAKER announced that tomorrow would be the appropriate time to bring forward amendments and concerns.

REPRESENTATIVE ROKEBERG explained that the amendment is such that if the natural resource income increases above 110 percent, then there would be an inverse reduction in any statewide tax.

CO-CHAIR WHITAKER surmised that under Representative Rokeberg's amendment the tax would be indexed to natural resource revenue.

REPRESENTATIVE WEYHRAUCH noted that he passed out a number of amendments to the committee yesterday. He mentioned that he wanted to refine the handwritten amendment.

Number 2052

CO-CHAIR WHITAKER announced that tomorrow as there are ongoing discussions and rewrites, the committee's input will be put in the rewrites. Therefore, there will be a CS, which is subject to amendment by any committee member.

[HB 293 was held over]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned at 8:18 a.m.