

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

May 12, 2003

7:30 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 Ralph Samuels
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."

- MOVED CSHB 293(W&M) OUT OF COMMITTEE

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
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
05/09/03	(H)	Heard & Held MINUTE(W&M)
05/10/03	(H)	W&M AT 8:30 AM HOUSE FINANCE 519
05/10/03	(H)	Heard & Held MINUTE(W&M)
05/11/03	(H)	W&M AT 5:00 PM HOUSE FINANCE 519
05/11/03	(H)	Heard & Held MINUTE(W&M)
05/12/03	(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 about the proposed
committee substitute (CS) for HB 293, Version Q.

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

POSITION STATEMENT: Answered questions about the proposed CS for HB 293, Version Q.

KATHRYN KURTZ, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As drafter of the legislation, answered questions about the proposed CS for HB 293, Version Q.

ACTION NARRATIVE

TAPE 03-31, SIDE A
Number 0001

CO-CHAIR JIM WHITAKER called the House Special Committee on Ways and Means meeting to order at 7:30 a.m. Representatives Hawker, Whitaker, Heinze, Kohring, Rokeberg, Weyhrauch, Wilson, Gruenberg, and Moses were present at the call to order. Representatives Samuels, 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 confirmed that the proposed committee substitute (CS), Version Q was before the committee for purposes of amendments.

REPRESENTATIVE WEYHRAUCH noted that in addition to his written amendments, he has several conceptual amendments he would like to discuss. He received permission to propose conceptual amendments as well.

Number 0227

CO-CHAIR HAWKER moved Amendment 1, labeled 23-LS1064\Q.1, which read:

Page 9, line 10:

Delete "The"

Insert "Except as provided in (d) of this section, the"

Page 9, following line 27:

Insert a new subsection to read:

"(d) A municipality may levy a general sales and use tax or increase the rate of an existing sales and use tax so that the combined state and municipal sales tax rate exceeds eight percent if it is approved by the voters in a referendum election under AS 29.45.670. The proposed total combined rate as well as the proposed municipal rate must be clearly stated to the voters in the referendum question. In a municipality that imposes a general sales and use tax at a rate that, combined with a three percent state sales and use tax rate, exceeds eight percent, the rate of the state sales and use tax imposed under this chapter shall be three percent, notwithstanding any other provision of this chapter or AS 29."

Number 0257

CO-CHAIR WHITAKER objected for purposes of discussion.

REPRESENTATIVE ROKEBERG requested that copies of the amendments be made available before they are moved.

The committee took an at-ease from 7:33 a.m. to 7:49 a.m. to distribute amendments.

CO-CHAIR WHITAKER noted that each amendment will be numbered as the committee proceeds.

Number 0503

CO-CHAIR HAWKER reiterated that he moved Amendment 1, introduced by Representatives Hawker and Whitaker.

CO-CHAIR WHITAKER noted that he objected for the purpose of discussion.

CO-CHAIR HAWKER explained that this amendment, developed in part by Representative Ogg, addresses the concerns of municipalities that may choose to impose a sales and use tax in excess of the cap, which aggregates the state and local taxes to 8 percent. This allows the municipalities, through the referendum election, to override that cap. It promotes the concept of local control and self-determination. It, as a counterbalancing measure, also prevents any municipality that chooses to override the 8 percent cap from benefiting during the rate phase-in.

Number 0612

REPRESENTATIVE ROKEBERG offered a friendly amendment to Amendment 1. On line 9, after "voters", insert "for the purposes of capital improvements". He said the way the amendment is drafted now it allows any municipality to set its tax rate higher than the [8 percent] limit. This change would allow an increased tax rate for a specific purpose such as a bonded indebtedness for a particular project.

Number 0723

REPRESENTATIVE WEYHRAUCH objected to the proposed amendment to Amendment 1 for purposes of discussion. He explained that voters may want capital improvements or general government services to implement or maintain a capital project. He said he does not favor tying the hands of local government; this proposed amendment would take away local control.

REPRESENTATIVE ROKEBERG said that if legislators are trying to generate public acceptance of the sales tax, a cap with meaning is important.

Number 0948

A roll call vote was taken. Representatives Rokeberg and Wilson voted in favor of the amendment to Amendment 1. Representatives Hawker, Whitaker, Gruenberg, Moses, Weyhrauch, and Heinze voted against it. Therefore, amendment to Amendment 1 failed by a vote of 2-6.

[With no further objection, Amendment 1 passed.]

Number 1008

CO-CHAIR HAWKER moved Amendment 2, which read [original punctuation provided]:

New Sec # ____

State field offices: State may enter into contractual agreements with municipalities that have sales taxes on the effective date of this Act to be field officer for that geographical area of the state.

CO-CHAIR HAWKER identified the Amendment 2 as one submitted by Representative Ogg and introduced by Representatives Hawker and

Whitaker. He stated that the amendment was conceptual but it will be to page 26, line 8, and the a new subsection will be subsection (d).

CO-CHAIR WHITAKER objected for discussion purposes.

Number 1108

CO-CHAIR HAWKER explained that this clarifying provision indicates that the state may enter into contractual agreements with municipalities to act as the field offices or [conduct other] administrative duties.

Number 1124

CO-CHAIR HAWKER corrected his earlier statement, saying Amendment 2 is still a conceptual amendment with details as suggested.

REPRESENTATIVE WEYHRAUCH stated that he supports Amendment 2. He noted that to the extent that the legislature and local communities can work together as cohesive units rather than adversaries, everyone is better off.

Number 1203

REPRESENTATIVE GRUENBERG questioned whether the subtitle is "offices" or "officers".

REPRESENTATIVE OGG clarified that the word is "offices".

Number 1257

CO-CHAIR WHITAKER removed his objection. There being no other objection, Amendment 2 passed.

Number 1248

REPRESENTATIVE MOSES moved Amendment 3, which read [original punctuation provided]:

On page 4, line 6: between "levy" and "specific"
insert "and collect"

CO-CHAIR WHITAKER objected for discussion purposes.

Number 1312

REPRESENTATIVE MOSES identified his amendment and clarified that the municipalities will be able to collect any special taxes such as bed taxes and fish taxes.

CO-CHAIR HAWKER noted that he supports this amendment.

CO-CHAIR WHITAKER removed his objection. Hearing no further objections, he stated that Amendment 3 was adopted.

Number 1412

REPRESENTATIVE HEINZE indicated she did not have any amendments at this time.

REPRESENTATIVE GRUENBERG identified his six amendments.

Number 1643

REPRESENTATIVE GRUENBERG moved to adopt Amendment 4, which read [original punctuation provided]:

page 13 line 25
delete: "under a single contract"

CO-CHAIR WHITAKER objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG said he offered Amendment 4 because, as the committee discussed last night, there was no reason given for exempting a sale only because it is under a single contract. He said a good lawyer could group several transactions under a single contract.

Number 1741

LARRY PERSILY, Deputy Commissioner, Office of the Commissioner, Department of Revenue, commented at the request of Co-Chair Whitaker. He said the main issue in terms of the dollar value is the transportation of oil. If the legislature assessed a 3 percent tax on the tariff paid on the transportation of oil through TAPS (Trans-Alaska Pipeline System), there would be \$35 to \$40 million a year in sales tax revenue; the state would probably clear, after the reduced wellhead value, \$30 million a year. It's a question of how the legislature wants to treat [the transportation of oil]. If the legislature exempts single contracts, because the oil is moving under a single contract, it is exempted from sales tax. If the legislature wants to tax the

oil moving from Prudhoe Bay to Valdez, then legislators would write the bill so it becomes taxable.

REPRESENTATIVE GRUENBERG explained that he doesn't want to affect the taxes collected [from TAPS] by doing this. If this amendment is adopted, will it affect the amount of taxes collected, he asked.

MR. PERSILY said yes, he believes it would.

Number 1855

ROBYNN WILSON, Revenue Auditor, Tax Division, Department of Revenue, said that if she understands Amendment 4 correctly, it would expand the exemption [for transportation services]. Regarding whether the state taxes TAPS tariffs, there is a question about whether [subsection (a)] needs to be in or out of the bill completely. She said she didn't think Amendment 4 would change whether TAPS would be taxed.

REPRESENTATIVE GRUENBERG restated Ms. Wilson's answer that she doesn't think the amendment would make a difference but she's not sure.

Number 1954

MR. PERSILY observed that the [proposed CS] as written states that transportation of property within the state is exempt if it is being transported interstate under a single contract. If the words "under a single contract" are eliminated, TAPS is still exempt because its [oil] is eventually being transported interstate. So removing the words "under a single contract" would not affect [the current taxes on TAPS]. He said that Amendment 4 clarifies that the single contract is no longer an issue; [TAPS] is still going to be exempt [from sales taxes under HB 293] because it transports oil for interstate commerce. He retracted his earlier answer.

Number 2034

REPRESENTATIVE SEATON asked if this [intrastate transportation issue] only applies to the TAPS tariff. The section covers transportation of persons or property. He asked if the exemption would apply to in-state airline tickets if the traveler was eventually going out of state.

MR. PERSILY said that federal law prohibits putting a general sales and use tax on airline tickets. But if a person is moving personal goods or freight [the exemption from sales tax would apply]. TAPS is the largest single item. But Mr. Gruenberg is correct in that removing the single contract [language] still exempts transportation services if they're being transported interstate or foreign commerce eventually.

Number 2121

REPRESENTATIVE SEATON pointed out the problem that any items - such as logs or other materials bound for a mill - being transported within the state under multiple contracts could qualify for the exemption because the items would eventually be shipped out of state. He cautioned that it's opening a can of worms to say that at some point in time through many contracts the items will go interstate.

MR. PERSILY said, as the [CS] is drafted now, the company has to have the single contract to [transport the goods] out of state to be tax exempt. Under Amendment 4, the company would not need that single contract; the company would have to show the department that [the goods] are destined for interstate or foreign commerce.

Number 2244

REPRESENTATIVE WILSON asked if those moving out of state would have to pay [sales tax] on shipping their goods.

MR. PERSILY said that is his understanding.

Number 2315

REPRESENTATIVE GRUENBERG withdrew Amendment 4 and asked the co-chairs to offer the amendment in the House Finance Committee. He said his intention was to stop litigation, not cause problems.

Number 2346

REPRESENTATIVE GRUENBERG moved Amendment 5, which read [original punctuation provided]:

page 11 line 6
after "by" insert "the state or"

CO-CHAIR HAWKER objected for discussion.

REPRESENTATIVE GRUENBERG said the committee talked last night about the fact that the instrumentalities of the state in Title 39 [Public Officers and Employees] include the [State of Alaska]. [Section 17 of the CS] is in Title 43 [Revenue and Taxation]. He explained that in order to eliminate any question, Amendment 5 lists the [State of Alaska] in this section. He mentioned that the definition section could clarify that instrumentalities of the state have the same definition as the one Co-Chair Hawker read from Title 39. He said he just wanted to be sure that sales to or uses by the State of Alaska are also exempt [from sales and uses taxes]. He said he could call the amendment conceptual in order to allow the drafter the ability to insert it in the bill however [it is appropriate].

Number 2448

CO-CHAIR HAWKER removed his objection to Amendment 5.

REPRESENTATIVE ROKEBERG asked if Amendment 5 is redundant.

CO-CHAIR WHITAKER replied that it serves the purpose of being absolutely certain [that the State of Alaska is exempted from the sales tax.] Hearing no other objections, he said Amendment 5 was adopted.

Number 2515

REPRESENTATIVE GRUENBERG moved Amendment 6, which read [original punctuation provided]:

1. page 8 line 20, after "property" add:
"and intangible personal property that is not exempted under this chapter"

2. page 21 line 26, add a new subsection
"(3) intangible personal property means personal property other than tangible personal property as defined in this chapter."

renumber subsequent subsections.

CO-CHAIR HAWKER objected for purposes of discussion.

Number 2526

REPRESENTATIVE GRUENBERG noted that the committee has discussed several times whether intangible personal property should also be taxed. There is an exemption on page 11, starting on line 19, AS 43.44.110 [Exemption for intangibles.]

REPRESENTATIVE GRUENBERG asked to return to Amendment 5. He requested that the bill drafter not include the language "the state" if the drafter believes it isn't necessary.

REPRESENTATIVE GRUENBERG, returning to Amendment 6, said he would like to be sure the state can tax intangible personal property that is not exempted. Tangible personal property is already defined in the bill in the definitional section, on page 24, lines 25-28. He said his definition states that intangible personal property is personal property other than tangible personal property as defined in the bill. Intangibles can include patents, copyrights, software, and other [nonphysical] items that have a lot of value.

Number 2713

REPRESENTATIVE ROKEBERG said he is concerned about [remuneration for personal services for] independent contractors and whether that would be considered a commission; the bill's drafter will be looking into this area. He said it's a problem if this amendment requires that the exempted intangible personal property must be listed [in the bill]. If the committee isn't careful, it will be at cross-purposes with AS 43.44.110, he said. He noted that software that is sold is a [taxable] item, but asked whether a license to use software is intangible property.

REPRESENTATIVE GRUENBERG replied that [a license to use software] would be considered [intangible property].

Number 2823

REPRESENTATIVE ROKEBERG suggested that [a license to use software] be listed as non-exempt, rather than making a broad stroke [of intangible personal property]. [Amendment 5] causes contradictions from one section to another, he said.

REPRESENTATIVE GRUENBERG stated that the way the proposed CS is drafted, Section 43.44.110 lists some types of intangible personal property that are exempt. He said his intention reflects the way the bill is currently drafted, which is that things are taxed unless they are specifically exempted.

Number 2915

REPRESENTATIVE ROKEBERG replied that the committee must be clear about which intangibles it doesn't want taxed.

MR. PERSILY said the Department of Revenue has some concerns about taxing intangible property.

MS. WILSON said that the situs of the intangible is an important consideration. She suggested [inserting] the clarifying language, intangible personal property "used in the state". For example, if a person owns and then sells a trademark, the state could not tax it unless it was used in the state.

Number 3007

REPRESENTATIVE GRUENBERG said he would consider that suggestion a friendly amendment and thus [in the first section of Amendment 6] after "and intangible personal property", he added "used in the state".

Number 3030

CO-CHAIR HAWKER addressed Amendment 6 overall. He said that this amendment completely restructures the concept upon which this bill was founded. The subject of Amendment 6, the language on page 8, line 20, is the [foundation] of the entire bill: There is a sales tax and it shall be on tangible personal property and services. The sponsors did not anticipate defining intangible goods. The second paragraph of Amendment 6 states that intangibles mean everything except what is defined in the bill. Attempting to exclude inappropriate intangibles would require creating a huge laundry list. He noted that while taxing intangible property is a worthy subject, he recommended focusing on the concept [of tangible property]. He said that the subject of intangibles is a research project unto itself and needs more scrutiny than the committee can give it.

Number 3238

REPRESENTATIVE GRUENBERG asked if Co-Chair Hawker prefers that he withdraw Amendment 6.

CO-CHAIR HAWKER said yes, he would appreciate Representative Gruenberg withdrawing Amendment 6. He said he'd be happy to consider it at a later date.

REPRESENTATIVE GRUENBERG withdrew Amendment 6.

Number 3341

REPRESENTATIVE GRUENBERG moved Amendment 7, which read [original punctuation provided]:

(insert a new section to read):

Sec. 43.44___ Exemption for sales to Alaska residents 65 years of age and older. Sales of services and of goods for personal use and consumption to residents of Alaska sixty-five years of age and older shall be exempt from the provisions of the sales tax and use tax. Provision shall be made for said exemption to apply to transactions made on behalf of exempt seniors by the care-givers who shop for them and pay bills for them.

CO-CHAIR HAWKER objected.

Number 3407

REPRESENTATIVE GRUENBERG explained that the next three amendments are exemptions for three distinct groups of people. Amendment 7 [co-sponsored by Representative Rokeberg] exempts sales to Alaska residents 65 years or older. He said these are people who live on fixed incomes, who are going to find life more difficult now that the state is either eliminating or creating a means test on the longevity bonus. Many communities already receive exemptions from various types of taxation. It is appropriate to exempt seniors from the statewide sales tax, he said.

Number 3503

REPRESENTATIVE WILSON asked what percentage of the people in the state are seniors. She pointed out that "baby boomers," which could amount to about half of the people in the state, are aging and thus the exemption in Amendment 7 could cut [the sales tax revenue] in half.

MR. PERSILY said he did not know the percentage of seniors in the state.

Number 3539

REPRESENTATIVE WEYHRAUCH opposed Amendment 7. He said this is exactly what legislators will face as they implement this kind of tax. The people are going to be lining up because they have great reasons for exemptions. He said the people in this state have a duty to help close the fiscal gap, and the legislature has to apply this tax as broadly and as fairly as possible. Given that taxes are inherently unfair and unpopular, everybody ought to be inherently treated unfairly by having a tax assessed on them.

REPRESENTATIVE HEINZE said that if medical and drugs were not already exempt in the proposed CS, she said she would vote for Amendment 7. She asked if a 65-year-old tourist would be exempt under this amendment.

REPRESENTATIVE GRUENBERG said Amendment 7 applied to Alaska residents only.

Number 3716

REPRESENTATIVE ROKEBERG spoke in support of Amendment 7. He asked if the department could research the impact of tax collections of a senior exemption. He's considering a provision adding qualifying for social security, at least 65 years of age. He said he'd like to know which communities exempt 65 year olds from local sales tax.

REPRESENTATIVE SEATON opposed Amendment 7 because he believes it opens a huge loophole in the bill. He predicted that many seniors would shop for their family members.

REPRESENTATIVE SAMUELS agreed that anyone with a friend over 65 would shop for them [and use their senior exemption].

Number 3907

REPRESENTATIVE KOHRING said he supports Amendment 7 because it moves in the direction of exempting everyone from the sales tax.

A roll call vote was taken. Representatives Gruenberg, Moses, Rokeberg, and Kohring voted in favor of Amendment 7. Representatives Hawker, Whitaker, Wilson, Weyhrauch, and Heinze,

voted against it. Therefore, Amendment 7 failed by a vote of 4-5.

Number 3950

REPRESENTATIVE GRUENBERG moved Amendment 8, which read [original punctuation provided]:

Add a new section to read:

AS 43.44.____ Exemption for sales on Military Post Exchanges. Sales on military post exchanges shall be exempt.

CO-CHAIR HAWKER objected.

Number 4003

REPRESENTATIVE GRUENBERG stated that people in the military are serving their country; they're an important part of the economy, and frankly, most of them do not make much money. He asked if sales on post exchanges are included or excluded in the CS.

MR. PERSILY said that under federal law, sales on post exchanges are excluded from sales tax. For example, Alaska cannot collect cigarette taxes on sales on military bases. He suggested that this amendment probably is not necessary.

REPRESENTATIVE GRUENBERG withdrew Amendment 8.

Number 4043

REPRESENTATIVE GRUENBERG moved Amendment 9, which read [original punctuation provided]:

Add a new section to read:

AS 43.44.____ Sales to Alaska residents with incomes below 200 percent of the federal poverty level. Sales to Alaska residents with incomes below 200 percent of the federal poverty level shall be exempt.

CO-CHAIR HAWKER objected.

REPRESENTATIVE GRUENBERG said this sales and use tax is a regressive tax because people who have little money find it harder to pay 3 cents on a carton of milk than a person with

more money. A sales tax may be less regressive in Alaska than in other states because of the permanent fund dividend. Amendment 9 makes the sales tax less regressive for people who are on the very margins of society; it makes it a little fairer, he said.

Number 4301

CO-CHAIR HAWKER said Amendment 9 goes to the core of the distinction between a consumer-based revenue system and an income-based revenue system. The intent of this bill requires that every person who benefits from public services - regardless of the degree of the benefit - shall share some element of the cost of public services. He pointed out that the contribution by someone of lesser means who is consuming less would be smaller than for someone who is consuming more. He said he has grave concerns about implementing this provision which would require ID cards, which would document people as a certified impoverished. He said he's not prepared to open a Pandora's box to define that poverty line. He said the state offers many other alternate programs that accommodate the most vulnerable members of Alaskan society. He said the permanent fund dividend program is the most progressive offsetting factor that the State of Alaska provides to folks of lesser means. He said he opposes Amendment 9 because it is inconsistent with the concept of this bill.

Number 4432

REPRESENTATIVE ROKEBERG asked what number of dependents it would take for people with \$50,000 to \$75,000 incomes to qualify [at 200 percent of the federal poverty level for the exemption].

MR. PERSILY said he didn't know but offered to research the question.

REPRESENTATIVE WILSON suggested that a family of four at 200 percent of the poverty level earns up to \$54,000.

CO-CHAIR WHITAKER suggested that this number includes the permanent fund dividend.

Number 4526

CO-CHAIR HAWKER concurred with both observations. He said one illustration of the unworkableness of this proposal is that larger families with six or seven children can earn as much as

\$80,000 and still be exempted at the 200 percent level. He reminded that committee that HB 293 is a revenue measure. He said the legislature needs to separate revenue measures from social policy issues. He advocated keeping this bill as a revenue measure rather than turning it into an instrument of social policy.

REPRESENTATIVE GRUENBERG replied that the bill already provides for exemption certificates, and he said the department could develop a certificate for qualifying income levels.

TAPE 03-31, SIDE B

Number 4642

REPRESENTATIVE GRUENBERG stated that HB 293 is already an instrument of social policy. He said it is the only revenue legislative measure of any significance, which is a decision of social policy. He said if there were other less regressive [revenue] measures being considered, HB 293 wouldn't be so essential. This bill will fall more heavily on the poor than on the more wealthy members of society. The permanent fund [dividend] could conceivably go away, but Amendment 9, if adopted, would become an integral part of the sales tax legislation.

A roll call vote was taken. Representatives Moses, Gruenberg, and Kohring voted in favor of Amendment 9. Representatives Whitaker, Hawker, Wilson, Weyhrauch, Heinze, and Rokeberg voted against it. Therefore, Amendment 9 failed by a vote of 3-6.

Number 3900

REPRESENTATIVE WEYHRAUCH moved to adopt Amendment 10, which read [original punctuation provided]:

Page 3, Line 3, after, "tangible"
INSERT: "or intangible"

CO-CHAIR HAWKER objected for purposes of discussion.

Number 3852

REPRESENTATIVE WEYHRAUCH noted that he had a friendly amendment to his Amendment 10: on page 3, line 3, delete "personal". With the friendly amendment, Amendment 10 would amend the language on page 3, lines 1-3 to read: "Except as provided in

AS 04.21.010(c) and AS 29.45.750, a borough may levy a general sales tax on the sale and rental of tangible or intangible property." He explained that municipalities already levy taxes on tangible or intangible property. Therefore, this amendment would allow municipalities the leeway to define it [as] personal so they could tax other kinds of property. This makes the language a little broader; that's what boroughs already do, he said. The general intent of this bill is to accommodate those communities that have [local sales taxes], allowing them to segue to the state's [sales tax system].

Number 3725

CO-CHAIR WHITAKER determined that the amendment to Amendment 10 was conceptual; if Amendment 10 passes, its amendment will pass as well.

REPRESENTATIVE WILSON asked for examples of intangible property besides patents and manuscripts.

REPRESENTATIVE WEYHRAUCH said examples of intangibles are legal services, computer advice, and musicians singing.

Number 3617

MR. PERSILY said the department defines Representative Weyhrauch's examples as services. Selling goodwill, a copyright, or trademark are examples of intangibles, he said. Work on a computer is the same as working on a car; it's a service. He addressed the earlier question about Amendment 10. He surmised that Amendment 10 allows municipalities to continue their current practices during the first two years of the phase-in of HB 293. After those two years, when municipalities have to start collecting under state rules, they would no longer be able to tax items that are not considered taxable under the state sales tax code.

REPRESENTATIVE WEYHRAUCH agreed with Mr. Persily's summary of Amendment 10.

Number 3534

REPRESENTATIVE SEATON asked if taxi permits, harbor slips, or individual fishing quotas or permits are examples of intangibles.

MR. PERSILY said a taxi permit is intangible, but he wasn't sure about a boat slip.

MS. WILSON said that answering the question about a boat slip may need additional research because there may be real property rights.

REPRESENTATIVE SEATON explained he raised those examples because boroughs and cities currently tax harbor slips.

Number 3431

CO-CHAIR HAWKER withdrew his objection to Amendment 10.

CO-CHAIR WHITAKER, hearing no other objections, said that Amendment 10 is adopted.

Number 3405

REPRESENTATIVE WEYHRAUCH moved to adopt Amendment 11, which read [original punctuation provided]:

Page 4, Line 6, after, "municipality may levy specific"
INSERT: "sales or"

Page 4, Line 7, after, "of tangible"
INSERT: "or intangible"

Page 4, Line 7, "before "property or services"
DELETE: "personal"

CO-CHAIR HAWKER objected for purposes of discussion.

REPRESENTATIVE WEYHRAUCH said Amendment 11 accommodates municipalities as they levy their own local sales and excise taxes. It also governs how communities will have to deal with [their taxes] through the transition period. On page 4, line 6, the language reads with Amendment 3 [as passed earlier], "Except as specifically prohibited or limited, a municipality may levy and collect specific sales or excise taxes".

Number 3244

MR. PERSILY commented that this [Section 10] on page 4 is not affected by the transition; this is the continuing authority after the transition for cities and boroughs to have their own

specific levies. [Amendment 11] carves out as much authority as possible for municipalities to have their own special taxes after the transition to [the tax proposed in] this legislation. He said he's still looking to see if the department has any concerns about Amendment 11.

Number 3158

CO-CHAIR HAWKER said he is concerned about putting the word "sales" in this paragraph because it violates the concept that the general sales tax shall be the providence of this legislation. He said he believes that the language excise tax is sufficiently broad to accommodate all sorts of other taxes that a municipality might levy.

REPRESENTATIVE WEYHRAUCH said he offered Amendment 11 to clarify that under this law, a community may continue to adopt taxes; this avoids lawsuits over a municipality's ability to levy its own excise or sales taxes. It allows the municipalities to determine if they want to continue their own taxes or go with the state's tax, he said.

Number 3056

The committee took an at-ease from 9:50 to 9:51 a.m.

CO-CHAIR HAWKER commented that Representative Weyhrauch has not addressed the other two components of Amendment 11.

Number 3039

REPRESENTATIVE ROKEBERG suggested that there may be a drafting problem with Amendment 11. He suggested it belongs in the uncodified law section of the bill, in Sections 19 or 20.

REPRESENTATIVE WEYHRAUCH said he would defer to the bill drafter to determine how to achieve his intent.

MR. PERSILY stated that the department has an idea on the first part of Amendment 11 with regard to achieving Representative Weyhrauch's goal without calling the [locally-levied] tax a sales tax.

Number 2918

MS. WILSON suggested adding a definition of excise tax. An excise tax is a sales tax on a specific commodity. She recommended that this approach would get to the heart of Amendment 11 without the general misinterpretation that it is a sales tax.

Number 2942

REPRESENTATIVE WEYHRAUCH objected to that solution, saying he preferred to be more specific. Defining excise tax and sales tax would open a can of worms later, he said.

CO-CHAIR HAWKER asked if it would accomplish his mission to eliminate the word "excise" on page, 4 line 6.

REPRESENTATIVE WEYHRAUCH said that [eliminating the word "excise"] did not [accomplish his intent]. He said that communities need to know the ramifications [of continuing their own sales and excise taxes]. They have the choice to levy taxes or not. If [municipalities choose to levy taxes], then it is clearly allowed [with this amendment].

Number 2709

CO-CHAIR HAWKER said he is trying to follow Representative Weyhrauch's intent. Allowing municipalities to levy and collect specific taxes on single categories of property and services is an excise tax, he said. He predicted that a definition of excise tax will show up in the next version of HB 293. He offered deleting the word "excise" on page 4, line 6, as a friendly amendment.

REPRESENTATIVE WEYHRAUCH accepted this friendly amendment, noting it will be worked on in the House Finance Committee.

Number 2605

CO-CHAIR WHITAKER summarized that Amendment 11 has a friendly amendment, which will be subject to further review.

CO-CHAIR HAWKER moved the friendly amendment to Amendment 11, on page 4, line 7. After the word "specific" delete "excise". There being no objection, the amendment to Amendment 11 was adopted.

Number 2536

REPRESENTATIVE WEYHRAUCH explained that the second portion of Amendment 11, page 4, line 7, after "of tangible" inserts "or intangible", to be consistent in referencing tangible and intangible. [The third piece of Amendment 11] on page 4, line 7, deletes "personal" before "property or services". Page 4, line 7, would then read [in part] "single categories of tangible or intangible property or services".

REPRESENTATIVE ROKEBERG asked if it's necessary to divide the question. He said this moves into the earlier debate with intangibles.

CO-CHAIR WHITAKER invited Mr. Persily to comment before the committee looked at dividing the question.

Number 2445

MR. PERSILY said the department's understanding is that this is a local issue, that the city could have its own specific tax on whatever it chooses. The department has no objection to this [part of the] amendment. This is the portion of the bill that continues on; it is not the transition period. The intent here is that once the state takes over, cities can continue to have their own specific tax, and this would allow them to tax intangibles.

Number 2401

CO-CHAIR WHITAKER specified that is why he asked the question; Amendment 11 is not time specific. Co-Chair Whitaker asked if the committee wishes to divide the question [on sections 2 and 3 of Amendment 11].

CO-CHAIR HAWKER objected.

Number 2335

CO-CHAIR HAWKER asked and was told the question regarding whether to divide the question is debatable. After reviewing Amendment 11 he withdrew his objection to the entire amendment as it is posed, undivided.

CO-CHAIR WHITAKER noted that objection to Amendment 11 has been withdrawn. He asked if there were any other objections. He clarified that the question to divide Amendment 11 is not officially before the committee. He asked if Representative Rokeberg would still like to divide the question.

Number 2319

REPRESENTATIVE ROKEBERG maintained his concern about the intangibles issue which would be reviewed in future committees. If this amendment is adopted, he requested that the sponsors keep this issue in mind.

CO-CHAIR WHITAKER, hearing no further objections, stated that Amendment 11 was adopted.

Number 2152

REPRESENTATIVE ROKEBERG asked to return to the third section of Amendment 11, which deletes "personal" before "property or services." He asked if the purpose of the third section is to encompass real property.

Number 2135

REPRESENTATIVE WEYHRAUCH replied that tangible or intangible property is whatever a community may chose. It may or may not include personal property, he said.

Number 2127

REPRESENTATIVE ROKEBERG replied that he strongly objects to the [third section of] Amendment 11.

CO-CHAIR WHITAKER confirmed that the committee has returned to Amendment 11 and an objection has been raised.

REPRESENTATIVE ROKEBERG asked if the intention [of the third section of Amendment 11] is to include real property.

REPRESENTATIVE WEYHRAUCH replied that the intention is to accommodate local communities that chose to sweep in real property [as part of what they tax].

Number 2050

REPRESENTATIVE ROKEBERG moved to divide the motion, designate the bottom section of Amendment 11 as Amendment 11B and the upper two provisions as Amendment 11A. He said he has no objections to 11A but does object to Amendment 11B.

CO-CHAIR WHITAKER ruled that the question has been divided. Amendment 11A has been accepted.

CO-CHAIR WHITAKER, in response to Representative Gruenberg, clarified that Amendment 11A consists of [the first two sections]: page 4, line 6, and page 4, line 7. Amendment 11B is [the third section], page 4, line 7, before "property or services" delete "personal". He asked if there were any objections to Amendment 11A; there being none, Amendment 11A was adopted.

Number 1935

REPRESENTATIVE ROKEBERG spoke to his objection on Amendment 11B. He explained that this language opens the ability of the communities to place single category taxes on real property, and he strongly objects to that.

CO-CHAIR WHITAKER said he was having difficulty understanding the affect of real property being included in this section, given that municipalities currently tax real property through property taxes.

Number 1844

REPRESENTATIVE ROKEBERG said [adding real property to this section of the bill] corrupts the intention of this section of the bill which looks at single taxes.

CO-CHAIR HAWKER stated that the purpose of Amendment 11B is not to create ambiguity but to affirm the broad-reaching powers that are reserved for municipalities, which he characterized as appropriate.

Number 1734

REPRESENTATIVE ROKEBERG said there may other amendments on the table that will address his concerns and thus he withdrew his objection to Amendment 11B.

CO-CHAIR WHITAKER asked if there were any other objections to Amendment 11B.

Number 1705

REPRESENTATIVE OGG reminded members that there are two types of property: personal and real. When "sales" is removed from the

bill, that changes the nature of the sales tax. The bill no longer limits [municipalities to levying] sales tax to personal property; Amendment 11B expands [municipalities' taxing power] to include real property. Taking out the word "personal" allows that expansion, he said.

REPRESENTATIVE ROKEBERG said Representative Ogg clearly makes his point, and he reiterated his objection [to Amendment 11B].

A roll call vote was taken. Representatives Hawker, Gruenberg, Moses, Weyhrauch, Kohring, Heinze, and Wilson voted in favor of Amendment 11B. Representatives Whitaker and Rokeberg voted against it. Therefore, Amendment 11B passed by a vote of 7-2.

Number 1517

REPRESENTATIVE WEYHRAUCH asked to set aside Amendment 12 for the time being. He moved to adopt Amendment 13, which read [original punctuation provided]:

Section 43.44.140

Page 12, line 4 is amended by adding after "organizations."

Additionally, a sale by a commercial enterprise may only considered "isolated or occasional" under this section if the sale value of the item is less than \$1000.

CO-CHAIR WHITAKER objected for discussion purposes.

REPRESENTATIVE WEYHRAUCH explained that he moved Amendment 13 at the request of Representative Seaton. He explained that the language clarifies the words "occasional" and "isolated."

Number 1333

REPRESENTATIVE SEATON said Amendment 13 addresses the occasional sale of a particular item by a business that competes with an existing business that routinely sells the item. For example, a contractor with a big project sells off 15 graders for \$30,000 each on the open market, competing with a used equipment company. In the current bill, a buyer would pay sales tax if purchasing a bulldozer from a used equipment company but no sales tax if buying it from a contractor who is closing down a project. He said the state should not forego sales tax on this large purchase just because it's being sold by a commercial enterprise outside its normal course of business.

CO-CHAIR HAWKER said Amendment 13 does not really address the occasional sale; it states that a commercial enterprise may not be exempted under the isolated or occasional section unless it is selling something for less than \$1,000. Amendment 13 provides that all of a business's merger and acquisition activity will be fully taxed, a poor fiscal policy, he added. He said he strongly opposed Amendment 13.

Number 1120

CO-CHAIR WHITAKER suggested Amendment 13 could cover a merger, acquisition, or liquidation.

REPRESENTATIVE OGG used the example of the sale of a fishing boat that is worth \$30,000 - \$40,000. If the owner goes out of business and sells the boat, no sales tax is charged. But a commercial fishermen selling the boat must charge a sales tax because the fishing business is a commercial enterprise. He said this is wrong.

Number 1036

REPRESENTATIVE WILSON noted that Amendment 13, line 2, is missing the word "be" after the word "only" so it reads, "may only be considered".

CO-CHAIR WHITAKER noted the grammatical correction.

A roll call vote was taken. Representatives Moses, Kohring, Weyhrauch, and Heinze voted in favor of Amendment 13. Representatives Whitaker, Hawker, Gruenberg, Wilson, and Rokeberg voted against it. Therefore, Amendment 13 failed by a vote of 4-5.

Number 0928

REPRESENTATIVE WEYHRAUCH moved to adopt Amendment 14, which read [original punctuation provided]:

Page 1, line 1
Insert after "...use tax;"
"relating to a real property sales and use tax;"
[Title change]

Page 2, line 16,
A new section is added to read:

***Sec.5. AS _____ Real property sale and use tax.**

A sales tax of one (1) percent is applied to all real property sales within the state. Verification of payment of the real property transfer tax is required before real estate sales are recorded by the State Recorder's Office.

*Renumber sections and add conforming language as appropriate.

CO-CHAIR WHITAKER objected for discussion purposes.

REPRESENTATIVE WEYHRAUCH said Amendment 14 adds a 1 percent tax to all real property sales in the state.

Number 0910

REPRESENTATIVE ROKEBERG said that almost all municipalities and organized boroughs assess some kind of property tax. With the 8 percent cap [on the sales tax], other municipalities may have to raise mill rates on real property taxes to offset a loss of income. Amendment 14 is not necessary, he said, and was not contemplated in the initial draft of the bill. It does not follow the guidelines for the streamlined sales tax system.

Number 0759

REPRESENTATIVE SEATON noted that real estate has been described as the biggest business second to oil in Alaska. The tax on vehicles that is now collected by the state and paid to local governments is an example of a property tax. Amendment 14 would be an analogous situation; it is a transfer tax or sales tax when [real property] is transferred. There's no reason to exempt this large category of sales, he said.

REPRESENTATIVE ROKEBERG stated he didn't think the public would buy into this provision.

Number 0623

REPRESENTATIVE WILSON proposed a conceptual amendment to Amendment 14. Then she withdrew her conceptual amendment, noting she was referring to a different amendment.

A roll call vote was taken. Representatives Moses and Weyhrauch voted in favor of Amendment 14. Representatives Whitaker,

Hawker, Gruenberg, Kohring, Wilson, Heinze, and Rokeberg voted against it. Therefore, Amendment 14 failed by a vote of 2-7.

Number 0435

REPRESENTATIVE WEYHRAUCH moved to adopt Amendment 15, which read [original punctuation provided]:

Section 16. AS 43.40.030(a) is amended to read:

Page 8 line 9,
delete 18
insert 15

CO-CHAIR HAWKER objected.

Number 0411

CO-CHAIR HAWKER explained the proposed increase on motor fuel tax in the bill. He said lowering the tax 3 cents would not [help] consumers or the state's [budget]. He then said he was discussing a different aspect of the motor fuel tax and asked to rephrase his comments.

REPRESENTATIVE WEYHRAUCH noted this debate will be repeated many times in the future.

REPRESENTATIVE GRUENBERG asked whether Amendment 15 increases the fuel tax because it decreases the refund.

Number 0158

MS. WILSON noted that the proposal to increase the motor fuel tax, as currently written, doesn't affect the net tax due on off-road [fuel]. She reiterated that fuel used in off-road equipment is taxed at a net of 2 cents. The [proposed CS for HB 293] as it is currently drafted, exempts those items that are taxed under the motor fuel tax chapter. This means that fuel used on the highway, fuel used for marine use, and fuel used off-road will not be assessed a sales tax. She said as she understands Amendment 15, the off-road user would pay some sales tax for fuel.

MR. PERSILY added that it's the equivalent of sales tax.

Number 0035

MS. WILSON said Amendment 15 is not an exact calculation, it's a simplified approach, assuming that the price of a gallon of gas is \$1. When an off-road fuel user files a claim for a refund with the department, the user is required to produce the invoices for the fuel. So the department has the information to calculate the rebate, but Amendment 15 has the off-road user pay some sales tax

TAPE 03-32, SIDE A

Number 0010

MR. PERSILY explained that under Amendment 15, the off-road fuel user would pay 5 cents instead of the 2 cents currently specified in the legislation. When the tax is paid at the wholesaler, it's not known what community [the tax] will go to, but he said it would not matter under this provision. The amendment would increase the state excise tax on off-road motor fuel from 2 cents to 5 cents.

Number 0048

REPRESENTATIVE SEATON said that the state is now charging 8 cents and rebating 6 cents. Amendment 15 means that if the user is not paying the 20 cents road tax, then the user will pay the sales tax. This is another way to collect the money if the department has the information and it would make more sense for them to do a 3 percent calculation. It's another way to spread the tax [across the public], he said.

Number 0148

REPRESENTATIVE GRUENBERG asked whether Amendment 15 would have a disparate effect on the people in the Bush; he said he thought it would be harmful to them.

[There was a mistake in the vote tally of the initial roll call vote and thus the vote was taken again with the results below.]

A roll call vote was taken. Representatives Moses, Weyhrauch, Wilson, Gruenberg voted in favor of Amendment 15. Representatives Hawker, Whitaker, Rokeberg, Heinze, voted against it. Therefore, Amendment 15 failed by a vote of 4-4.

Number 0407

REPRESENTATIVE WEYHRAUCH moved to adopt Amendment 16, which read [original punctuation provided]:

Sec. 43.33.155

Page 12, line 10 through 13.

Delete entire section.

CO-CHAIR WHITAKER objected for discussion purposes.

REPRESENTATIVE WEYHRAUCH explained that Amendment 16 deletes the exemption for motor vehicles, watercraft, aircraft, and mobile homes. He said that if the high-income people can afford these items, they should be paying the taxes.

Number 0440

CO-CHAIR HAWKER spoke against Amendment 16 because it would delete and remove the cap from these purchases. He explained that these four items can be capped under the streamlined sales tax system. He said that these items don't have to be capped, but the cap is fair because most everyone depends on a motor vehicle.

REPRESENTATIVE SEATON said a sales tax is a consumption tax; but the current bill allows a person to consume a lot and buy expensive toys without having to pay [the full 3 percent tax] on them. With the 3 percent tax capped at \$5,000, if a person buys a used car for \$4,999, the 3 percent sales tax is \$150. But if a person buys a Lexus for \$85,000, [the 3 percent tax on the \$5,000 cap results in \$150 tax] or 0.17 percent sales tax. The legislature should carry through its philosophy of taxing people's choices. He said it removes the equity part of the sales tax by saying that people don't have to pay as much [tax] for expensive things.

Number 0632

REPRESENTATIVE ROKEBERG expressed concern about removing the cap [of \$5,000 on purchases on these four items] because of the impact on buying patterns and shifting [purchases to out-of-state businesses]. If the state plans to follow the multi-state compact [for the streamlined sales tax system], it should avoid encouraging buying in one jurisdiction over another, he said. Under HB 293, a person may purchase something out of state and therefore [owe the state] a use tax, although collecting that tax will be difficult. Amendment 16 could have a major [negative] affect on buying patterns.

Number 0747

REPRESENTATIVE SAMUELS asked about the discussion point on Amendment 16 that references a \$200,000 cap for commercial aircraft. He noted that Beavers, Otters, and Saratogas - small commercial aircraft - all cost less than \$200,000. He noted that all of the small commercial aircraft across the state will be affected by Amendment 16.

REPRESENTATIVE SEATON said the example of \$200,000 for commercial vehicles should be in Amendment 12, not Amendment 16.

REPRESENTATIVE SAMUELS said if the \$200,000 cap is lifted, jet airplanes would be subject to sales tax.

Number 1002

REPRESENTATIVE OGG commented that the [\$200,000 cap on commercial vehicles] applies to [watercraft used in] the fishing industry. There are lots of vessels that start at \$10,000, he noted. He described two policy [considerations]. One policy makes sure that anybody who buys anything shares [the cost of government by paying full sales tax]. The other policy concerns the fishing communities and their existing business infrastructure. He said that Amendment 16 would close every car dealer in the outlying communities that [already] have an existing sales tax because [the residents] would go to Anchorage [to buy their cars]. That's not a policy the legislature should adopt lightly, he said; the legislature needs to protect the existing economies of the outlying areas. He stated his opposition to Amendment 16.

Number 1120

REPRESENTATIVE ROKEBERG reiterated that under Amendment 16, there would be no cap on any items purchased. He noted that there is already a federal luxury tax of 6 percent on high priced items like cars.

REPRESENTATIVE HEINZE noted that air charter services buy aircraft that are not "expensive toys."

A roll call vote was taken. Representative Weyhrauch voted in favor of Amendment 16. Representatives Hawker, Whitaker, Gruenberg, Rokeberg, Kohring, Heinze, and Wilson voted against it. Therefore, Amendment 16 failed by a vote of 1-7.

Number 1307

REPRESENTATIVE WEYHRAUCH moved to adopt Amendment 12, which read [original punctuation provided]:

Page 12, line 12
Delete "\$5,000"
Insert "\$200,000"

CO-CHAIR WHITAKER objected.

REPRESENTATIVE WEYHRAUCH explained that Amendment 13 [introduced at the request of Representative Seaton] increases the tax cap from \$5,000 to \$200,000 [on motor vehicles, watercraft, aircraft, and mobile homes].

A roll call vote was taken. Representative Weyhrauch voted in favor of Amendment 12. Representatives Hawker, Whitaker, Gruenberg, Kohring, Wilson, Heinze, and Rokeberg voted against it. Therefore, Amendment 12 failed by a vote of 1-7.

Number 1417

REPRESENTATIVE WILSON moved to adopt Amendment 17, which read [original punctuation provided]

Amend by adding the following

Section 43.44.115 Exemptions-Medical Related
Services

Charges for medical services provided by licensed health care providers as defined in AS 09.55.560(1) for the treatment of a medical condition, illness, or injury and the supplies, prescriptions or equipment used in that treatment are exempt from the sales tax and use tax.

CO-CHAIR WHITAKER objected for purposes of discussion.

Number 1501

REPRESENTATIVE WILSON noted that page 14 of CSHB 293 contains the exemption for health care. She asked if the current exemption in the bill covers medical care, services, supplies, and equipment.

MR. PERSILY said the current bill exempts health care services provided by someone who is licensed or certified under AS 08 [Business and Professions]. Amendment 17 refers to AS 09.55.560, with which he said he was not familiar.

Number 1653

CO-CHAIR HAWKER explained that AS 09.55.560 [Definitions] is a health care provider such as an acupuncturist, audiologist, speech language pathologist, chiropractor, dental hygienist, all of which are licensed under AS 08.

MR. PERSILY noted that Amendment 17 is a duplication because it references the health care professionals already licensed under AS 08 and covered by this exemption.

REPRESENTATIVE ROKEBERG suggested that [AS 09.55.]560 might be the section listing the allowable reimbursements under insurance.

Number 1743

REPRESENTATIVE GRUENBERG explained this is a definitional section under [Chapter 55 of Title 9 Code of Civil Procedure] and is in the medical malpractice statute. It's the definition of health care providers under medical malpractice, which he said he thinks is a narrower definition than Title 08. For example, he didn't think it includes such professionals as marriage and family therapists. He recommended that the committee not use the narrower definition of Amendment 17.

Number 1829

REPRESENTATIVE WILSON withdrew Amendment 17.

Number 1844

REPRESENTATIVE ROKEBERG moved to adopt Conceptual Amendment 18 which read [original punctuation provided]:

Page 12 Line 14

Add as new Se. 43.44.160

Exemption for the conveyance and Improvement of Real Property. The sale, lease or rental, and improvements depreciable under (U.S. Tax Code cite)

to, real property is exempt from the sales and use tax.

Renumber accordingly.

REPRESENTATIVE ROKEBERG noted that real estate transactions are intended to be exempt under this [bill]. For clarity, he said he wanted to make it black letter law. He said he also wanted to add the provisions of improvements. He said that those items that are depreciable under the U.S. Tax Code are usually part and parcel of a real property assessment. So they are taxed under real property theories, he didn't want to have a double tax situation. It does not include furniture and fixtures which would be added to property, particularly in a leasehold situation.

Number 2117

The committee took an at-ease from 9:45 to 9:50 a.m.

REPRESENTATIVE ROKEBERG reiterated that the intention of Amendment 18 is to exempt real property transactions from the sales and use tax.

CO-CHAIR HAWKER asked if his intent is to exempt real property for commercial purposes [and] impose a tax on noncommercial real property.

REPRESENTATIVE ROKEBERG replied not really.

CO-CHAIR HAWKER asked about the impact of this amendment.

REPRESENTATIVE ROKEBERG said it's a policy call. He suggested deleting "depreciable" from the term "improvements."

Number 2413

REPRESENTATIVE GRUENBERG questioned the term "improvement," because an improvement could be a new stove or a new refrigerator. He said those things are taxable now, but would not be under Amendment 18.

REPRESENTATIVE ROKEBERG agreed. He reiterated that Conceptual Amendment 18 includes commercial depreciable property as well as similar attached property that would be considered real property by a tax assessor - but not chattel or personal property.

Improvements on commercial and residential property should be included in this exemption.

REPRESENTATIVE GRUENBERG asked if he intended to tax the purchase or sale of a stove that is put into the property.

REPRESENTATIVE ROKEBERG replied yes, unless it was part of the property at the time it was purchased.

REPRESENTATIVE GRUENBERG said that would be a change because [under the current bill] a stove would be taxed.

REPRESENTATIVE ROKEBERG clarified that refrigerators typically are not [taxed], although stoves are.

Number 2539

REPRESENTATIVE GRUENBERG said that right now he would pay a sales tax on the stove and hoped he would continue to do that.

REPRESENTATIVE ROKEBERG said the question then would be whether the item for resale is still exempt as a component part.

MR. PERSILY asked if a homeowner buys a new window or a new door to install in the home, is that purchase tax exempt under Conceptual Amendment 18.

REPRESENTATIVE ROKEBERG replied that [such a purchase] would normally be repair or maintenance, not necessarily an improvement. Something that is a repair and maintenance item should be taxable, but if it's purchased by a homebuilder, it should not be taxable.

Number 2729

MR. PERSILY noted some definition problems between improvements and maintenance.

REPRESENTATIVE ROKEBERG proposed removing the improvement aspect for residential issues, and leave commercial aspects in Conceptual Amendment 18 because those are clearer textbook definitions. He said he would try to sort the issue out later, so it doesn't delay the bill. In response to Co-Chair Whitaker, Representative Rokeberg said he would leave in commercial improvements as defined by the U.S. Tax Code.

Number 2809

REPRESENTATIVE GRUENBERG objected to Conceptual Amendment 18. He said it is too complex to put in as a conceptual amendment. He suggested Representative Rokeberg have it drafted by Legislative Legal and Research Services and offer it in next committee of referral.

REPRESENTATIVE ROKEBERG said he would remove the entire [reference to] "improvement," because he wants to make sure the next draft of HB 293 has the real estate exemption in it.

REPRESENTATIVE WILSON commented that if an owner makes improvements on a rental property, for example, building on a sunroom, that would be an improvement to the property. However, it is deductible from the owner's income tax. She asked why the legislature would exempt the owner from paying sales tax when the state could collect sales tax and the owner would get the deduction.

REPRESENTATIVE ROKEBERG agreed that if an owner added a sunroom, the real property assessor would increase property taxes because of the improvement. It's those kinds of items, he said, he wants to exempt because it avoids a double taxation situation.

Number 2944

REPRESENTATIVE WILSON asked whether Conceptual Amendment 18 covers commercial or residential improvements.

REPRESENTATIVE ROKEBERG said he wants to leave in commercial improvements but remove residential improvements from the exemption.

REPRESENTATIVE SEATON said he has the same question. He used the example of a person who buys materials to build a fence or has a contractor come out to build the fence. Since this improvement would be depreciable if it's commercial or become part of the property assessment, the amendment would make that tax exempt. Since the state doesn't tax real property, which is only done by municipalities or boroughs, Conceptual Amendment 18 exempts from sales tax a large category of contracts for improvements to buildings.

Number 3100

REPRESENTATIVE ROKEBERG emphasized that the state does have a real property tax. The state sets the mill rate, taxes the

pipeline, and the state assessor reassesses the local area if the local tax assessors aren't doing their job. Therefore, the state has a vested interest to closely follow local real property tax assessments.

MS. WILSON expressed concern that as [Conceptual Amendment 18] is currently drafted it exempts rentals while the bill as drafted includes transient lodging rentals in services. Therefore, there appears to be some conflict.

MR. PERSILY interjected that this could be interpreted to prohibit sales tax on hotel and motel rooms because that is the rental of real property.

Number 3222

CO-CHAIR HAWKER surmised that [Conceptual Amendment 18] is trying to do clarify that this bill doesn't include sales tax on the sale, lease, or rental of real estate, with the exception of transient [lodging]. Furthermore, [Conceptual Amendment 18] is trying to make something explicit that is already implicit in the legislation. In doing the aforementioned, Co-Chair Hawker feared that there would be complications and the intent of this bill would be violated. Co-Chair Hawker reminded the committee that earlier it turned down an amendment that imposed a 1 percent tax on the sale of real estate. Therefore, it would seem clear that this bill doesn't tax these real estate transactions and thus [Conceptual Amendment 18] may be redundant. Co-Chair Hawker suggested withdrawing [Conceptual Amendment 18] and working with the Legal and Research Services Division to incorporate language to make explicit what is already implicit.

REPRESENTATIVE ROKEBERG said that he would stand by his amendment because the improvements are only related to commercial property, and therefore the drafter could be left to work on these additional issues. Representative Rokeberg said the debate that just occurred is precisely why this needs to be defined. He indicated that the public would have the same debate and that the problem with the entire bill is that in order to be clear the pages start growing. Representative Rokeberg said he wanted Conceptual Amendment 18 adopted as drafted and he offered to work with the House Finance Committee on this matter.

UNIDENTIFIED SPEAKERS objected to Conceptual Amendment 18.

A roll call vote was taken. Representatives Whitaker, Hawker, Heinze, Rokeberg, and Kohring voted in favor of the adoption of Conceptual Amendment 18. Representatives Gruenberg, Moses, Wilson, and Weyhrauch voted against it. Therefore, Conceptual Amendment 18 was adopted by a vote of 5-4.

Number 3614

REPRESENTATIVE ROKEBERG moved that the committee adopt Conceptual Amendment 19, which read [original punctuation provided]:

Page 14 Line 3

Add new subsection

(c) Intrastate transportation of oil and gas products by pipelines are exempt from the sales and use tax.

CO-CHAIR WHITAKER objected for discussion purposes.

REPRESENTATIVE ROKEBERG recalled testimony that the intrastate transportation of products, particularly to a refinery for resale were already exempt under statute. He expressed the need to clarify the aforementioned. He noted that it may raise a question regarding the end use. Under the definition of manufacturing the word refinery is included. For example, transportation of gas to a hub point for further distribution shouldn't be taxed for intrastate consumption. Representative Rokeberg reiterated that he wanted to make sure it's clear.

Number 3755

MR. PERSILY related his understanding that the question is whether [transportation services] for oil moving instate to a refinery to be processed would be subject to a tax.

MS. WILSON said that at this point she didn't believe it was not exempted.

MR. PERSILY clarified that at this point it isn't exempt and thus Conceptual Amendment 18 would ensure that it is exempt.

REPRESENTATIVE OGG questioned whether fish products proceeding through their pipeline would be exempt as drafted.

MS. WILSON said she believes the intrastate transportation in the current draft isn't exempt. However, she recalled that the matter is being reviewed as part of the manufacturing and industrial research that is occurring.

REPRESENTATIVE ROKEBERG noted his willingness to withdraw Conceptual Amendment 18 if the matter is still being massaged. Upon Co-Chair Whitaker's request, Representative Rokeberg withdrew Conceptual Amendment 19.

REPRESENTATIVE WILSON commented that the oil industry is being taken care of and thus she wanted to make sure to take care of the fishing industry.

CO-CHAIR WHITAKER emphasized that no one is being taken care of but rather [the committee] is ensuring that commerce isn't being stifled.

Number 4111

REPRESENTATIVE WEYHRAUCH asked if the fiscal note prepared by the department would be negatively affected in terms of revenue to the state by adoption of this type of amendment. He asked that the aforementioned be kept in mind.

MR. PERSILY related his understanding that as the committee attempts to craft something to deal with manufacturing, that definition could be written to include the transportation of the raw materials in order to cover the issues discussed earlier. He said that [the intrastate transportation issue] is better dealt with in the discussion of how to define a manufacturing exemption and the components of the manufacturing process.

Number 4311

REPRESENTATIVE HEINZE moved that the committee adopt Amendment 20, which read [original punctuation provided]:

Page 12

Add to line 24: **Exemption for a sale to a miner, manufacturer, or oil and gas producer, explorer, developer, refiner, or transporter.**

Insert Subsection (C) **For the purposes of this section sales or use of both manufactured and raw components, services, and data employed in the production, exploration, development, refining or transportation**

of oil or natural gas is exempt from the general state sales and use tax.

CO-CHAIR WHITAKER objected for discussion purposes.

REPRESENTATIVE HEINZE read from the fall 2002 Revenue Resource book as follows:

The Department of Revenue estimates there could be 8.5 billion barrels of additional production from currently discovered North Slope fields, which are Prudhoe, Kuparuk, Milne Point, Badami, et cetera. Approximately 3.8 billion of those 8.5 could be recovered with modest investment. Production of the other 4.7 billion would require significant additional investment. About one-half of that oil in this forecast will require major additional investment. If that investment is not made, is delayed, or is less than anticipated, production will fall short.

REPRESENTATIVE HEINZE expressed the need to be careful that "we're not trading off a tax for more business, more oil, more exploration."

CO-CHAIR WHITAKER informed the committee that there the administration and representatives of the oil and gas industry as well as the leadership of both houses [are involved in significant discussions on this matter].

Number 4520

CO-CHAIR HAWKER noted that this issue is clearly on the radar screen and falls under the purview of the House Finance Committee. Co-Chair Hawker related his belief that the committee could be comfortable passing a broad bill in order to continue the process. Therefore, he requested that Representative Heinze withdraw Amendment 20 in order not to constrain the process.

REPRESENTATIVE HEINZE asked if Amendment 20 can be refined in the House Finance Committee if it is adopted. She inquired as to the best scenario.

CO-CHAIR WHITAKER pointed out that the committee could vote Amendment 20 up or down.

TAPE 03-32, SIDE B

CO-CHAIR WHITAKER specified that whether to maintain the amendment or withdraw it is the decision of the amendment's sponsor.

REPRESENTATIVE KOHRING said that he supports the amendment. As the chair of the House Special Committee on Oil and Gas, Representative Kohring noted his agreement to encourage the oil and gas industry. Oil and gas is the centerpiece of our economy and any additional tax burden on that industry will impact Alaska's "golden egg." [The legislature] needs to do what it can to encourage more development of the industry and one way to do so is to keep taxes low.

REPRESENTATIVE WILSON noted that she agrees with Amendment 20. However, she reiterated her concern that "we" aren't going to take care of the timber and fishing industries, which, in her district, is just as important as the oil industry.

REPRESENTATIVE OGG noted his agreement with [Representative Wilson's comments]. He pointed out that agriculture would also need something similar. Therefore, he expressed the need to have more generic [language] that covered all natural resources.

Number 4411

REPRESENTATIVE HEINZE withdrew Amendment 20.

REPRESENTATIVE KOHRING remarked that many seem to recognize that taxes have a detrimental affect on various industries. Therefore, he believes that passage of a tax of this nature will result in a negative impact on the overall growth of Alaska's economy. From an economic perspective, this tax hurts more than it helps.

Number 4138

REPRESENTATIVE KOHRING moved that the committee adopt Amendment 21, which read:

Add a new section to read:

"This act shall sunset on January 1, 2007."

CO-CHAIR WHITAKER objected for discussion purposes.

REPRESENTATIVE KOHRING explained that Amendment 21 applies a sunset date to the legislation that would extend it to 2007. On

January 1, 2007, the legislature would revisit the issue and decide whether to continue with the sales tax.

Number 4028

CO-CHAIR HAWKER remarked that in 2007 the sales tax would barely be implemented. Furthermore, he said that he didn't see any economic development or alternate sources of revenue on the horizon that would compensate for the financial projection that the Constitutional Budget Reserve (CBR) would be exhausted within the next 3 years. Therefore, Co-Chair Hawker asked if Representative Kohring would be willing to change the sunset date to 2012, which he viewed as enough time to pursue alternative revenue development.

REPRESENTATIVE KOHRING commented that he senses there is some support for including a sunset date, and therefore he said he was amenable to changing the sunset to 2012.

CO-CHAIR WHITAKER, upon hearing no objection to the friendly amendment to change the sunset to 2012, Amendment 21 was amended to implement a sunset on January 1, 2012.

REPRESENTATIVE WEYHRAUCH remarked that often sunsets allow [the legislature] to delve deeper into the act and do more things. He pointed out that another way to sunset something is to introduce legislation to repeal it. Representative Weyhrauch predicted that if the sunset is 2012, there will be another "Christmas tree" of amendments and special exemptions. Therefore, as a general policy, he opposed sunseting legislation.

A roll call vote was taken. Representatives Whitaker, Hawker, Moses, Rokeberg, Wilson, Heinze, and Kohring voted in favor of the adoption of Amendment 21, as amended. Representatives Gruenberg and Weyhrauch voted against it. Therefore, Amendment 21, as amended, was adopted by a vote of 7-2.

Number 3749

REPRESENTATIVE KOHRING moved that the committee adopt Amendment 22, which read [original punctuation provided]:

Add a new section to read:

"This act shall take effect subject to a vote of the public at the next General Election."

CO-CHAIR WHITAKER objected.

REPRESENTATIVE KOHRING explained that Amendment 22 would require that before this legislation is enacted that it be approved by the voters because "after all we are spending their money." He acknowledged that at the ballot, the initial reaction to being taxed would be negative. Representative Kohring related that the correspondence he has received is heavily opposed to new taxes and suggests that the focus be on the spending side. Furthermore, he recalled that the overriding theme during the last campaign was no new taxes, which seemed to reflect the public's desire.

REPRESENTATIVE HEINZE highlighted that the state has a critical fiscal gap and something has to be done as quickly as possible.

REPRESENTATIVE WILSON mentioned that through the deliberations on this bill everyone has changed their minds after receiving the facts. The reason legislators come to Juneau is to gather together and obtain the facts [on issues], and therefore the legislature should make the decision. She indicated that [the general public] doesn't always have the facts to [use as a basis for] a statewide vote. If the general public is dissatisfied with the legislature's actions, the general public can vote out its representative in the next election. Representative Wilson announced her opposition to Amendment 22.

REPRESENTATIVE ROKEBERG said that he is conflicted by this because his suspicion is that Representative Kohring's wish will come true in a different form.

A roll call vote was taken. Representatives Gruenberg and Kohring voted in favor of Amendment 22. Representatives Hawker, Whitaker, Moses, Wilson, Weyhrauch, Rokeberg, and Heinze voted against it. Therefore, Amendment 22 failed by a vote of 2-7.

Number 3255

REPRESENTATIVE ROKEBERG expressed concern about the exemptions for intangibles and turned attention to page 11, line 27. He pointed out that individuals pay commissions to brokers under different types of arrangements and in some cases pay fees. There seems to be some ambiguity and thus he said he would almost like to go all the way and try to exempt financial services. However, he offered Conceptual Amendment 23, which would [on page 11, line 27, after "securities"] add a new

paragraph 5 that says, "financial services related to the sale or purchase of stocks, bonds, or securities." He specified that he was concerned that there would be sales tax when one purchases shares on stock.

MR. PERSILY related the department's understanding that brokerage services, similar to safety deposit boxes, would be taxable.

CO-CHAIR HAWKER noted that he and Ms. Wilson had that discussion during the drafting process and examined other state's statutes on this subject. The conclusion and the intent is that the overall exclusion of intangible items would cover the sale of stocks, bonds, or equity security because what is being transacted is an intangible right of ownership or an intangible right to receive or an intangible obligation to pay.

MS. WILSON recalled that there was discussion with regard to what could be handled through statute and what could be handled through regulation. She also recalled that safety deposit fees would fall under the exempt financial transactions while brokerage fees for selling stocks and bonds wouldn't be exempt.

CO-CHAIR HAWKER agreed with Ms. Wilson. He said that the intent, which hasn't been fully flushed out, is that the broad exemption would include bank charges, brokerage accounts, and the use of safety deposit boxes. However, the sale of something truly tangible such as the sale of personalized imprinted checks wouldn't be included. The aforementioned is consistent with what other states have done.

Number 2924

REPRESENTATIVE ROKEBERG pointed out that this issue hasn't been discussed before the committee. Representative Rokeberg noted his concern with regard to capital formation, financial consulting businesses, and individual portfolios. Therefore, he said he believes it needs to be addressed and clarified. Representative Rokeberg asked if individuals would take "a pasting" on the service related to the sale.

MR. PERSILY specified that the question is whether sales tax would be charged on the brokerage fee for the provider when securities are sold.

MS. WILSON answered that as drafted, the above would be included in services, which she believes to be consistent with her conversation with Co-Chair Hawker.

REPRESENTATIVE ROKEBERG clarified that Conceptual Amendment 23 is that the financial services related to the sale or purchase of stocks, bonds, and securities be exempt.

Number 2710

REPRESENTATIVE SEATON asked if "financial services" in Conceptual Amendment 23 would include tax preparation and CPA services.

REPRESENTATIVE ROKEBERG specified that only those financial services related to the sale or purchase of stocks, bonds, and securities.

CO-CHAIR HAWKER suggested using the language "financial instruments" rather than "financial services".

Number 2650

REPRESENTATIVE WEYHRAUCH objected because again [exemptions] are being carved out. He announced that he wanted this legislation as broad as possible.

REPRESENTATIVE SEATON noted his objection to carving out an exemption in professional services.

Number 2548

CO-CHAIR WHITAKER spoke in favor of Conceptual Amendment 23 because as policymakers there are times to make policy calls. "As such, I think to compound the problems inherent to transaction of potential loss in commerce is regrettable at best, egregious at most," he said. Therefore, everyone needs to be cautious and exercise some judgment.

A roll call vote was taken. Representatives Whitaker, Hawker, Gruenberg, Heinze, Wilson, Rokeberg, and Kohring voted in favor of Conceptual Amendment 23. Representatives Moses and Weyhrauch voted against it. Therefore, Conceptual Amendment 23 was adopted by a vote of 7-2.

CO-CHAIR HAWKER informed the committee that before the vote he came to the conclusion that a brokerage fee on any transactions

becomes a part of the basis of the item being transferred. Therefore, [a brokerage fee] is truly part of the intangible and should be exempted.

Number 2308

REPRESENTATIVE WEYHRAUCH directed attention to page 14 of Version Q, which specifies two types of services and equipment that are exempt from the sales and use tax. He asked if this provision would include those who provide healing services through spiritual means such as a Christian Science practitioner.

MR. PERSILY answered that those practitioners wouldn't be exempt if they aren't licensed by the state under AS 08. However, [a Christian Science practitioner serving under] a 501(c)(3) nonprofit would be exempt.

Number 2124

CO-CHAIR HAWKER moved to report CSHB 293, Version 23-LS1064\Q, Kurtz, 5/11/03, as amended, out of committee with individual recommendations and the accompanying fiscal notes, which will be updated to reflect the amendments.

Number 2058

REPRESENTATIVE GRUENBERG objected. He explained that he is objecting because all the possible components haven't been considered. Furthermore, there is no overall fiscal plan in place. Moreover, the public hasn't been heard on this. Therefore, Representative Gruenberg expressed the need to take this legislation, as part of the fiscal plan, to public in the interim and address it during the interim or at the beginning of the next session. He related his belief that this legislation lacks a number of amendments that weren't incorporated. Representative Gruenberg specified his belief that the issue of intangible personal property should be included and properly defined. Therefore, this legislation needs more work done in this committee.

Number 1907

REPRESENTATIVE WEYHRAUCH announced that he will vote for this legislation with individual recommendations. Although the original legislation wasn't palatable, the committee's changes have allowed the state to work with municipalities to develop a

segue that would provide a "soft landing." He noted his belief that this is still a work in progress. While a larger fiscal plan hasn't been articulated, the [legislature] is doing the best it can to recognize the problem and develop ways in which to deal with the state's fiscal problem. Movement on this bill is a significant policy step as a state and is something that is necessary as part of the fiscal plan. Representative Weyhrauch said that the public has been heard from through e-mails and telephone calls. He recognized that many people want an income tax to be considered; an income tax should be considered in the context of other measures of which a sales tax is a component. Representative Weyhrauch noted that his primary concern is how this becomes an exemption bill rather than a sales tax bill. However, he expressed the need to move forward.

Number 1630

REPRESENTATIVE WILSON said this is difficult for her and she wanted to echo Representative Weyhrauch's comments. She noted her appreciation of all the hard work with this. Representative Wilson announced that she is going to introduce an income tax bill because there need to be options. She expressed her hope that her income tax bill will receive the same consideration as HB 293. Having said that, Representative Wilson said she will allow HB 293 to move from committee, although it has a long way to go before she would consider it a good bill.

Number 1457

REPRESENTATIVE ROKEBERG remarked that Alaskans have to recognize the state's serious financial condition. He agreed with Representative Wilson that this bill needs lots of work and he has great concerns about it. Although he indicated that moving this bill forward will be difficult for him, he said that it needs to be moved along. He, too, agreed that the committee has done good work in that it has focused the people of the state of Alaska on the issue.

Number 1402

REPRESENTATIVE HEINZE said that she is going to vote for this bill with trepidation. She mentioned that she had hoped to have the summer to review this and address some of the major issues she had. However, she realized that at some point she has to trust the system and believe in the next committee of referral and her colleagues. Therefore, she announced that she would vote to move the bill out of committee.

Number 1301

REPRESENTATIVE KOHRING remarked that it's apparent that this legislation is going to pass, although he is opposed to it. Representative Kohring related his belief that the legislature should emphasize the notion of reforms and cuts to the bureaucracy because he believes the perception of the public is that the legislature is too preoccupied with major taxes and the revenue source. Therefore, it needs to be clear that if [the legislature is going to move in the direction of taxes] then it has to be in tandem with spending reductions and bureaucratic efficiencies. He acknowledged that both co-chairs have emphasized the spending cap and thanked them for that.

Number 1150

CO-CHAIR HAWKER remarked that he didn't believe that anyone takes any pleasure in this bill and what it does because it is asking Alaskans to contribute to public service in a way that they haven't done in the past. However, he said he believes it's the appropriate thing. First and foremost, the House of Representatives has recognized the fiscal situation as the gravest concern, which is why this committee was formed. The committee was charged with finding efficiencies and revenues. He said he believes that the committee has brought forth the components of a broad fiscal plan, although he recognized that this legislation isn't a silver bullet. [The committee] brought forth a five-point fiscal plan. In fact, the first element of that fiscal plan was the containment in cost and growth of government. He reminded the committee that the first item passed out of this committee was HJR 9, a constitutional spending limit. The second element of the fiscal plan, HJR 26, was to improve the management of the permanent fund in a manner conducive to helping to resolve the state's fiscal issues without compromising the dividend. The third step was a broad base revenue structuring, which involved many bills. He highlighted that this committee took on a significant component of the general revenue system of the state in the form of the statewide [sales tax, HB 293]. Everything that has been forwarded, he believes to be mindful of the affects. He stressed that there will be more hearings and more input and process before this legislation comes close to becoming the law. Lastly, Co-Chair Hawker pointed out that item 5 of the fiscal plan is a mechanism that reconciles the fact that Alaska lives in an oil and gas economy; it specifies the need to incorporate a mechanism to mitigate the volatility of the oil and gas

industry. Co-Chair Hawker related his sincere belief that what has been brought forth is a fair, complete, and adequate fiscal plan and HB 293 is one component of that plan. He concluded by requesting everyone's support for this legislation.

Number 0558

MR. PERSILY, in response to Representative Wilson, confirmed that a sales tax would be charged to a charter boat service because it is a service. However, it's not subject to the [sales and use] tax because one isn't buying the boat regardless of the fee for the charter for the day. He clarified that there would be a sales tax on charter services like any other service, unless exempted.

A roll call vote was taken. Representatives Hawker, Whitaker, Wilson, Weyhrauch, Heinze, and Rokeberg voted in favor of CSHB 293 [Version 23-LS1064\Q, Kurtz, 5/11/03], as amended. Representatives Moses, Gruenberg, and Kohring voted against it. Therefore, CSHB 293(W&M) was reported out of the House Special Committee on Ways and Means by a vote of 6-3.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned at 11:00 a.m.