

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSSHB 157(L&C)
 (H) Publish Date: 4/26/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
 Title Elec/Phone Coop & Other Entities RDU Tax and Treasury
 Component Tax
 Sponsor Rep. Anderson, Thomas
 Requester (H) CRA Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	*	*	*	*	*	*
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

* See page 2

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 Division Tax Division Date/Time 4/5/05 4:34 PM
 Approved by: Tom Boutin, Deputy Commissioner Date 4/5/2005
 Agency Revenue

FISCAL NOTE #2

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSSHB 157(L&C)

ANALYSIS CONTINUATION

We are unable to estimate the revenue impact, if any, of the bill.

AS 10.25.540(b) exempts telephone and electric cooperatives from all state taxes other than the cooperative tax under AS 10.25.550 or .555. We do not believe that this exclusion is intended to avoid requirements for collection or remittance of taxes on their members or other customers.

New section AS 10.25.020(8) specifies that cooperatives may own, in whole or in part, LLCs or corporations organized for any lawful purpose. Revenue does not have the expertise to opine whether the bill clarifies existing law or establishes new rights for the cooperatives. To the extent that the activities of these LLCs or corporations are attributed to the cooperative and not taxed as a separate entity, the cooperatives' tax exemption will shelter the LLC/Corporate activity from state taxation. The activity thus sheltered from tax would be limited to the portion of the LLC/Corporation's activity that is attributed to a cooperative.

Excise, ad valorem, and property taxes are imposed at the entity level and are not attributed to the owners of the entity. The LLC or corporation will pay any applicable motor fuel tax, property tax, local sales tax, or other non-income taxes. Therefore, the arrangement allowed under the bill will not avoid these taxes.

In contrast, income taxes are commonly attributed to the owner of the operating entity instead of the entity itself. An LLC that is either a single member LLC (owned wholly by the cooperative) or a multi-member LLC that elects to be treated as a partnership for tax purposes, the income of the LLC will be attributed to the owners. The LLC's activity will not be subject to corporate income taxes to the extent that the income is allocated to a cooperative. Thus, the income of a single member LLC owned by a cooperative, and the cooperatives' share of the income of a multi-member LLC electing partnership treatment, will be sheltered from state corporate net income tax.

This same "loophole", that of sheltering income through attribution to an exempt entity, is used by the majority of businesses operating in the state. Every S-corporation and every partnership or LLC electing partnership treatment and having individual partners/members achieves the same result under Alaska law.

New section AS 10.25.020(9) authorizes cooperatives to sell fuel that is not needed to generate electric energy. We believe that the state tax exemption for cooperatives does not extend to excuse cooperatives from collection and reporting requirements applicable to dealers of motor fuel. Cooperatives could experience financial hardship if they fail to collect tax on sales of taxable fuel and are later forced to pay the uncollected tax along with any interest owing. We recommend that the committee consider adding language to clarify the cooperatives' obligation to collect and remit motor fuel tax as a dealer under AS 43.40.010.