

1 IN THE SENATE

BY FAIKS

2

SENATE BILL NO. 401

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to appeals of information requests
7 in the administration of state tax laws; to audits,
8 investigations, and inspections for certain taxes and
9 for oil- and gas-related royalties and net profits;
10 amending provisions relating to administrative and
11 judicial review of decisions relating to taxes,
12 penalties, tax refunds, and assessments in the
13 administration of state tax laws; and providing for
14 an effective date."

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

16 * Section 1. AS 43.05 is amended by adding a new section to read:

17 Sec. 43.05.055. APPEAL OF REQUEST TO PROVIDE INFORMATION. (a)

18 The provisions of this section apply with respect to an audit, inves-
19 tigation, or inspection under AS 43.05.010, 43.05.040, or AS 43.55.040
20 in connection with

21 (1) determination of a tax, penalty, tax refund, or assess-
22 ment under AS 43.20, AS 43.55, AS 43.57, or former AS 43.21, to ascer-
23 tain the correctness of a return filed or to determine whether a tax
24 payment or tax refund is due; and

25 (2) tax matters under AS 38.05 or a matter relating to oil
26 and gas royalty or net profits under contracts, agreements, or leases
27 under AS 38.05.

28 (b) If in the course of an audit, investigation, or inspection
29 to which this section applies, the department requests a taxpayer or

1 another person to provide information or materials to the department
2 or to make the information or materials available for inspection by
3 the department, the person of whom the request is made may appeal the
4 reasonableness of the request under AS 43.05.240 as a person aggrieved
5 by the action of the department in making the request.

6 * Sec. 2. AS 43.05.240(a) is amended to read:

7 (a) Except as to a matter for which procedures are provided in
8 AS 43.05.246 - 43.05.248, a [A] person aggrieved by the action of the
9 department in fixing the amount of a tax, [OR] in imposing a penalty,
10 in denying a request for refund of tax, or in requesting information
11 or materials subject to AS 43.05.055 may apply to the department
12 within 60 days from the date of mailing the notice required to be
13 given to the person by the department, giving notice of the grievance
14 [,] and requesting an informal conference. At the conference the
15 person aggrieved may present arguments and evidence relevant to the
16 grievance [AMOUNT OF TAX OR PENALTY DUE THE STATE]. If the department
17 determines that a correction is warranted, the department shall make
18 the correction.

19 * Sec. 3. AS 43.05.240(b) is amended to read:

20 (b) Except as to a matter for which procedures are provided in
21 AS 43.05.246 - 43.05.248, a [A] person aggrieved by the action of the
22 department in fixing the amount of a tax, [OR] in imposing a penalty,
23 in denying a request for refund of tax, or in requesting information
24 or materials subject to AS 43.05.055 may apply to the department and
25 request a formal hearing

26 (1) in place of the informal conference provided for in (a)
27 of this section, within 60 days from the date of mailing the notice
28 required to be given to the person by the department; or

29 (2) within 30 days after decision resulting from an

1 informal conference.

2 * Sec. 4. AS 43.05.240(c) is amended to read:

3 (c) At the formal hearing the department may subpoena witnesses
4 and may administer oaths and make inquiries necessary to consider and
5 decide the grievance [DETERMINE THE AMOUNT OF THE TAX OR PENALTY DUE
6 THE STATE]. The person aggrieved may present arguments and evidence
7 relevant to the amount of the tax or penalty due the state. If the
8 department determines that a correction is warranted, the department
9 shall make the correction.

10 * Sec. 5. AS 43.05.245 is amended to read:

11 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES, AND
12 INTEREST. If a taxpayer fails to file a return or report required by
13 this title in the time required by law or regulation, or makes an
14 erroneous or fraudulent return, the department shall proceed to assess
15 the license fees, tax, penalties, or interest and make a return from
16 information which it obtains. A return made and subscribed by the
17 department in accordance with this section is presumed sufficient for
18 all legal purposes. However, nothing prevents a taxpayer from pre-
19 senting evidence or other information on an appeal under AS 43.05.240
20 or under procedures provided by AS 43.05.246 - 43.05.248 in order to
21 rebut the presumed sufficiency of a return made and subscribed by the
22 department, nor does the presumption of sufficiency alter the parties'
23 respective burdens of proof once the taxpayer has presented evidence
24 or other material information to rebut that presumption. The assess-
25 ment of license fees, tax, penalties, or interest under this section
26 occurs when the department issues a notice and demand for payment of
27 the license fees, tax, penalties, or interest, when a notice and
28 demand for payment becomes final under AS 43.05.246(g), or when the
29 department issues a final notice and demand for payment under

1 AS 43.05.247(f). The notice and demand for payment is issued when the
2 notice and demand is delivered to the taxpayer in person or placed in
3 the United States mail, postage-paid and addressed to the last known
4 address of the taxpayer. Penalties and interest assessed under this
5 title shall be collected in the same manner as provided in this title
6 for the collection of tax or license fees.

7 * Sec. 6. AS 43.05 is amended by adding new sections to read:

8 Sec. 43.05.246. CLOSING CONFERENCE AND PRELIMINARY ASSESSMENT.

9 (a) The procedures under this section apply to taxes under AS 43.20,
10 AS 43.55, AS 43.57, and former AS 43.21.

11 (b) Before issuing a notice and demand for payment for a tax
12 described in (a) of this section, the department shall give the tax-
13 payer a written draft of its preliminary conclusions. The draft of
14 the preliminary conclusions must contain the following:

15 (1) a draft of any notice and demand for payment that the
16 department preliminarily concludes may be in order;

17 (2) a draft narrative fully explaining how and why the
18 preliminary assessment of tax or penalty has been determined; and

19 (3) schedules or worksheets in written or computer-readable
20 format setting out the calculations for the preliminary assessment.

21 (c) The department shall schedule a closing conference with the
22 taxpayer, to be held not less than 60 nor more than 90 days after the
23 department delivers its preliminary audit conclusions under (b) of
24 this section to the taxpayer in person or places those materials in
25 the United States mail, postage-paid and addressed to the last known
26 address of the taxpayer. The parties may extend the date for the
27 closing conference by mutual agreement.

28 (d) The purpose of the closing conference is to conclude the
29 audit process and allow the parties to review and discuss the

1 preliminary results and conclusions of that process informally so that
2 any mistaken assumptions, misunderstandings, and other errors or
3 mistakes can be identified and eliminated as much as possible and so
4 that incomplete information and unsubstantiated items can be
5 supplemented and substantiated. Although the interests of the parties
6 are divergent, the closing conference is not an adversarial
7 proceeding. At the closing conference, the taxpayer may submit
8 written and oral evidence, materials, and statements. The depart-
9 ment's employee in immediate charge of the audit, investigation, or
10 inspection may also submit written and oral evidence, materials, and
11 statements at the closing conference. By agreement, written materials
12 may be submitted at other times before or after the closing
13 conference.

14 (e) The taxpayer may send one or more representatives to the
15 closing conference. The auditor or other person in immediate charge
16 of the audit, investigation, or inspection upon which the preliminary
17 assessment has been made shall attend the closing conference, and the
18 director of the division proposing the assessment or the director's
19 immediate subordinate designated for this purpose other than the
20 person in immediate charge of the audit, investigation, or inspection
21 shall preside at the closing conference. The department may have
22 additional representatives at the closing conference. The person in
23 immediate charge of the audit, investigation, or inspection may be
24 excused from attending the closing conference with the consent of the
25 taxpayer or because of serious illness or injury, incapacitation,
26 death, or termination of employment with the department.

27 (f) Not more than 60 days after the conclusion of the closing
28 conference, the presiding officer shall issue a written decision. If
29 the presiding officer determines that additional tax is owed or that a

1 penalty should be assessed, or both, the closing conference decision
2 shall include a proposed notice and demand for payment for the addi-
3 tional tax and interest and any penalty. The proposed notice and
4 demand for payment shall include a written narrative fully explaining
5 how and why the assessment of tax or penalty has been determined,
6 together with schedules or worksheets in written or computer-readable
7 format setting out the calculations for the proposed assessment. If
8 the presiding officer determines that no assessment is in order, the
9 taxpayer shall be given written notice to that effect within this
10 60-day period. By agreement, the parties may extend the date for
11 issuing a notice of assessment and demand for payment or a notice of
12 no assessment.

13 (g) A proposed notice and demand for payment issued under (f) of
14 this section is final 30 days after its issuance unless the taxpayer
15 requests a policy review hearing under AS 43.05.247.

16 Sec. 43.05.247. POLICY REVIEW HEARING. (a) A person aggrieved
17 by the action of the department in issuing a closing conference deci-
18 sion under AS 43.05.246(f) or in denying a request for refund of tax
19 under AS 43.20, AS 43.55, AS 43.57, or former AS 43.21 may request a
20 policy review hearing within 30 days after the date of mailing of the
21 notice required to be given under AS 43.05.246(f) or the denial of the
22 request for refund. For purposes of this section, a failure by the
23 department to grant or deny a request for refund within 60 days from
24 the time the request is made shall be considered a denial of that
25 request unless the parties have extended the period by agreement.

26 (b) The department shall schedule the policy review hearing to
27 be held within 30 days after the aggrieved person's request for it.
28 The parties may extend the date for the policy review hearing by
29 agreement.

1 (c) The purpose of the policy review hearing is to allow the
2 commissioner to determine whether the action causing the grievance
3 under (a) of this section reflects and incorporates the correct pol-
4 icies of the department, and if so, whether those policies are being
5 applied correctly to the aggrieved person's circumstances.

6 (d) The commissioner or an authorized representative of the
7 commissioner other than an employee in the division taking the action
8 causing the grievance shall preside at the policy review hearing. The
9 aggrieved person, acting in person or through one or more authorized
10 representatives, may explain the nature of the grievance and the
11 relief sought. If the person is aggrieved by a proposed assessment
12 based on facts that the person believes are incorrect or incomplete,
13 the person may present written and oral evidence and materials to
14 correct or complete the facts. After the presentation of the ag-
15 grieved person's case, the director of the division taking the action
16 causing the grievance or another authorized representative of the
17 division may explain that action and the policies and reasons for it.
18 The division may present written and oral evidence and materials to
19 prove facts that it has asserted and that the aggrieved person has
20 challenged as incorrect and to rebut or disprove any supplemental
21 facts that the aggrieved person has sought to establish. The formal
22 rules of evidence do not apply to either party's presentations on
23 factual issues, but the presiding officer may require witnesses for
24 both parties to give their testimony under oath and shall allow each
25 party's witnesses to be examined by the other party. The proceedings
26 of the policy review hearing shall be recorded and made part of the
27 administrative record, together with any materials that may be submit-
28 ted for the policy review in advance of, or after, the hearing.

29 (e) Not more than 90 days after the conclusion of the policy

1 review conference the commissioner shall issue a policy review deci-
2 sion. The policy review decision must

3 (1) state what relief, if any, is being granted to the
4 aggrieved person, and state which portions, if any, of the depart-
5 ment's action giving rise to the grievance are being upheld;

6 (2) state which additional facts, if any, that the ag-
7 grieved person sought to show at the hearing are being recognized and
8 which additional facts are being disregarded;

9 (3) for each disputed fact when there is a dispute as to
10 one or more facts, state what is being taken as being the actual fact;
11 and

12 (4) state, as specifically as possible, which statutory and
13 regulatory provisions are being relied on in granting or denying
14 relief to the aggrieved person, how those provisions are being inter-
15 preted and applied, and the specific policy considerations for the
16 particular interpretation and application of these provisions; broad,
17 unspecific policies, such as maximizing the state's tax revenue, are
18 not sufficient for justifying a particular interpretation or applica-
19 tion of a statute or regulation.

20 (f) If the policy review decision concludes that a notice and
21 demand for payment should be made for additional tax and interest, or
22 penalties, if any, a final notice and demand assessing the tax and
23 interest, or penalties, if any, shall be issued at the same time as,
24 and as part of, the policy review decision. The final notice and
25 demand shall include a narrative fully explaining how and why the
26 final assessment of tax and any penalty has been determined, together
27 with schedules or worksheets in written or computer-readable format
28 setting out the calculations for the final assessment. For purposes
29 of AS 43.05.260, a final notice and demand for payment is not

1 considered made until the narrative and the schedules or worksheets
2 setting out the calculations for the final assessment have been served
3 on the aggrieved person.

4 Sec. 43.05.248. APPEAL. Within 30 days after the issuance of
5 the commissioner's policy review decision under AS 43.05.247, a person
6 aggrieved by the decision may file an action in the superior court in
7 the judicial district where the person resides or conducts business,
8 for a trial de novo of those portions of the policy review decision
9 giving rise to the grievance. A party may not raise as a claim,
10 counterclaim, or defense any portion or portions of the policy review
11 decision that are not contested and do not give rise to the grievance.
12 The aggrieved person shall be given access to the files of the depart-
13 ment in the matter for preparing the appeal. If the court determines
14 that the assessment or the tax payment was correct, it shall confirm
15 the tax. If the assessment or tax payment was incorrect, the court
16 shall determine the amount of the tax and order the payment of the
17 deficiency or the refund of the excess, as the case may be. The
18 department shall immediately pay any refund due and attach a certified
19 copy of the judgment to the payment.

20 * Sec. 7. TRANSITIONAL PROVISIONS. (a) The provisions of AS 43.05.-
21 055, added by sec. 1 of this Act, apply to all requests to provide informa-
22 tion with respect to an audit, investigation, or inspection of a matter
23 specified in that section that are pending as of the effective date of this
24 Act.

25 (b) A person aggrieved by an action of the department with respect to
26 a tax under AS 43.20, AS 43.55, AS 43.57, or former AS 43.21 whose griev-
27 ance, as of the effective date of this Act, has not been fully heard in a
28 formal hearing under AS 43.05.240(b) may, within 60 days after the effec-
29 tive date of this Act, elect to have a closing conference under

1 AB 43.05.246, added by sec. 6 of this Act. If the person requesting a
2 closing conference is aggrieved by the closing conference decision, the
3 person may invoke the appropriate procedures provided for under the
4 provisions of AS 43.05.247 - 43.05.248, added by sec. 6 of this Act.

5 (c) The provisions of AS 43.05.248, added by sec. 6 of this Act,
6 apply to any grievance with respect to a tax under AS 43.20, AS 43.55,
7 AS 43.57, or former AS 43.21 that, on the effective date of this Act, has
8 not been appealed to superior court under AS 43.05.240(d).

9 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).