

Original sponsor: Faiks

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

CS FOR SENATE BILL NO. 401 (Finance)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to disclosure to the legislature of

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tax returns and return information for certain crit-

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ical taxes; providing for procedures, penalties, and

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other safeguards to ensure the continued confiden-

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tiality of tax returns and return information; relat-

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ing to audits, investigations, and inspections for

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certain taxes; allowing a person to seek administra-

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tive review of a denial of a tax refund request;

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providing for informal, nonadversarial review of an

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assessment with the taxpayer for certain taxes before

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the assessment becomes final; providing for depart-

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mental review of the policies reflected in assess-

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ments or denials of refund requests for certain taxes

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before those assessments and denials become final

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administrative actions subject to judicial review;

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providing for the judicial review of the

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administrative policy review hearing for certain

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taxes; amending the statute of limitations period for

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certain taxes; amending Rule 609 of the Alaska Rules

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of Appellate Procedure to require de novo review of

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certain final administrative tax decisions, and

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restricting the claims, counterclaims, and defenses

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that may be raised; and providing for an effective

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date."

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

2 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature
3 finds that

4 (1) tax revenue is necessary to enable the state to provide
5 essential services for its citizens and to ensure the public health and
6 welfare;

7 (2) the great majority of the state's tax revenue is derived
8 from certain critical taxes imposed on taxpayers in the oil and gas indus-
9 try, including in particular, the production taxes levied under AS 43.55
10 and AS 43.57, the income tax levied under AS 43.20 when AS 43.20.072 ap-
11 plies, and the income tax levied under former AS 43.21;

12 (3) the relatively small number of taxpayers of these critical
13 taxes often makes it difficult or impossible for the Department of Revenue
14 to review the administration and operation of these taxes with the legisla-
15 ture without disclosing information that allows a particular taxpayer to be
16 identified;

17 (4) the legislature must be able to review and oversee the
18 administration and operation of these critical taxes in order to be assured
19 that the state is receiving its proper tax revenue and that these critical
20 tax laws are operating in the manner intended by the legislature;

21 (5) the legislature must exercise its review authority to ensure
22 that the collection of this critical tax revenue by the Department of
23 Revenue is efficient, fair, prompt, and in the best interest of the state;

24 (6) tax returns and return information are confidential and
25 often contain information of a proprietary or sensitive business nature;

26 (7) taxpayers are entitled to protections against public disclo-
27 sure of their tax returns and return information;

28 (8) exchange agreements with the Internal Revenue Service pre-
29 vent certain tax information from being disclosed;

1 (9) protection of tax returns and return information fosters and
2 allows for full disclosure by taxpayers to taxing authorities and, there-
3 fore, promotes effective administration of, and compliance with, tax pro-
4 grams;

5 (10) legislators and legislative employees who are given access
6 to tax returns and return information and who improperly breach confiden-
7 tiality by disclosing or allowing the information to be disclosed should be
8 subject to the same sanctions that are imposed for the violations by em-
9 ployees of the executive branch;

10 (11) because of the natural resource revenue sharing provisions
11 under 43 U.S.C. 1606(i) - (j), disclosure of tax returns or tax information
12 with respect to oil and gas activities by Alaska Native corporations would
13 intrude into the affairs and privacy not only of the Alaska Native regional
14 corporations actually engaging in oil and gas activities, but also of all
15 other Alaska Native regional corporations except the 13th regional corpo-
16 ration, all Alaska Native village corporations, and Alaska Natives who own
17 stock in one of the original 12 regional corporations but not in a village
18 corporation;

19 (12) the taxes that have been and are being paid under AS 43.20,
20 AS 43.55, AS 43.57, and under former AS 43.21 with respect to oil and gas
21 activities by Alaska Native corporations represent too small a fraction of
22 the total amount of these taxes paid to the state to warrant the degree of
23 intrusion into the affairs and privacy of Alaska Natives and Alaska Native
24 corporations that would be caused by disclosure of tax returns or tax
25 information to the legislature;

26 (13) the Department of Revenue has issued assessments against
27 approximately two dozen oil and gas taxpayers for additional taxes, pen-
28 alties, and interest that total more than \$2,500,000,000, primarily for oil
29 and gas production taxes under AS 43.55 and AS 43.57 before 1983, for

1 corporate income taxes under separate accounting under former AS 43.21
2 during the 1978 - 1981 period, and under modified apportionment, particu-
3 larly under AS 43.20 and AS 43.20.072, for subsequent periods;

4 (14) excessive delays have occurred within the Department of
5 Revenue in the handling of administrative appeals regarding these taxes;

6 (15) the penalties and interest associated with these assess-
7 ments are, on the average, approximately equal to the amount of additional
8 tax being claimed under the assessments, so that for each dollar's change
9 in the underlying tax claim, there is a change of approximately two dollars
10 in the total figure of \$2,500,000,000 for these assessments;

11 (16) very large assessments regarding these taxes have been made
12 with inadequate prior review within the Department of Revenue and with the
13 taxpayers involved;

14 (17) the sheer magnitude of these assessments affects the fi-
15 nances and operations of the state government itself, and the collection of
16 the taxes due, plus interest and penalties that may be appropriate, will
17 significantly affect the ability of the state to provide for the public
18 health and welfare of its citizens;

19 (18) for later tax periods that are still under audit and for
20 tax periods in the future, the best interest of the state and its citizens
21 requires that the audits, the administrative review, and the collection of
22 additional assessed taxes be conducted and completed in a more orderly and
23 expeditious fashion than is currently the case; and

24 (19) to avoid the risks and delays that could arise from taxpay-
25 er challenges to the administrative appeal process within the Department of
26 Revenue on the ground that the department's hearing officers are not disin-
27 terested and impartial, Alaska Rule of Appellate Procedure 609 must be
28 changed to provide for mandatory instead of discretionary de novo review by
29 the superior court of disputed factual issues in the department's final

1 decisions regarding these critical oil and gas taxes.

2 (b) The purposes of this Act are to ensure that

3 (1) the public health and welfare of the citizens of the state
4 are provided for through the receipt and expeditious collection of all tax
5 revenue that the state is entitled to receive under its tax laws;

6 (2) the legislature is able to fulfill effectively its respon-
7 sibilities to monitor and review the administration of the state's tax laws
8 and to consider changes that may become necessary or desirable from time to
9 time for those laws;

10 (3) taxpayers are protected from improper disclosure of tax
11 returns and return information;

12 (4) the exchange agreements with the Internal Revenue Service
13 regarding tax information are not jeopardized;

14 (5) the tax laws of the state are administered fairly and uni-
15 formly; and

16 (6) the right to privacy is recognized, respected, and properly
17 protected.

18 * Sec. 2. AS 24.10 is amended by adding a new section to article 2 to
19 read:

20 Sec. 24.10.070. CONFIDENTIALITY OF INFORMATION. A present or
21 former employee or agent of the legislature may not disclose tax
22 information contained in a report or return filed under AS 43 without
23 the prior consent of the person whose tax information would be dis-
24 closed.

25 * Sec. 3. AS 24.60.060 is amended by adding a new subsection to read:

26 (b) A person to whom this chapter applies may not disclose or
27 use for personal gain or for the personal gain of another person any
28 confidential tax information contained in a report or a return filed
29 under AS 43 and furnished to the person under AS 43.05.231 -

1 43.05.239. A violation of this subsection is one of the most serious
2 breaches of the standards of conduct established by this chapter.

3 * Sec. 4. AS 24.60 is amended by adding a new section to read:

4 Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE. (a)

5 If a complaint before the committee involves an allegation that a
6 person to whom this chapter applies has disclosed confidential tax
7 information contained in a report or return filed under AS 43 with the
8 Department of Revenue and furnished to the person under AS 43.05.231 -
9 43.05.239, the proceedings of the committee under AS 24.60.170 are
10 modified as follows:

11 (1) the complaint may be initiated and filed at any time
12 within one year of the alleged disclosure;

13 (2) proceedings on the complaint that are pending before
14 the committee on the 60th day before a state primary or general elec-
15 tion are not stayed.

16 (b) Unless the taxpayer or a third party whose tax information
17 is alleged to have been improperly disclosed consents to the public
18 disclosure of the tax information or of the person's identity, the
19 proceedings of the committee under AS 24.60.170 are further modified
20 as follows:

21 (1) the hearing may not be held in open session;

22 (2) before being made public, a transcript containing the
23 information shall be edited to prevent the disclosure of the informa-
24 tion and the identity of the taxpayer or the third party;

25 (3) a decision, if made public, shall be edited to prevent
26 the disclosure of the information and to protect the identity of the
27 taxpayer or the third party; and

28 (4) a public statement may not contain information identi-
29 fying the taxpayer, a third party, or the tax information.

1 (c) A person whose tax information is alleged to have been
2 improperly disclosed may consent to the public disclosure of the
3 person's identity and of certain portions of the information without
4 waiving the right to keep confidential the remainder of the tax infor-
5 mation. The release must be in writing unless given orally by the
6 person on the record before the committee. The information released
7 from confidentiality under this subsection may be disclosed in the
8 materials released to the public under (b)(2) - (4) of this section.

9 * Sec. 5. AS 43.05.230(a) is amended to read:

10 (a) It is unlawful for a current or former officer, legislator,
11 employee, or agent of the state to divulge the amount of income or the
12 particulars set out or disclosed in a report or return made under this
13 title, except

14 (1) in connection with official investigations or proceed-
15 ings of the department, whether judicial or administrative, involving
16 taxes due under this title;

17 (2) in connection with official investigations or proceed-
18 ings of the child support enforcement agency, whether judicial or
19 administrative, involving child support obligations imposed or im-
20 possible under AS 25 or AS 47;

21 (3) as provided in AS 38.05.036 pertaining to audit func-
22 tions; and

23 (4) as otherwise provided in this section or in AS 43.-
24 05.231 - 43.05.239.

25 * Sec. 6. AS 43.05.230(f) is repealed and reenacted to read:

26 (f) A person who knowingly violates a provision of this section
27 is guilty of a class C felony. If the negligence of a member or
28 former member of the legislature or a present or former employee or
29 agent of the legislature results in a violation of this section, the

1 member, employee, or agent of the legislature is subject to a civil
2 penalty of \$5,000. The department shall enforce this section and
3 collect the civil penalty established by this subsection. This sub-
4 section is not intended to impair, limit, or abolish a right, claim,
5 or cause of action that a person may have whose information is unlaw-
6 fully disclosed.

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

8 Sec. 43.05.231. LEGISLATIVE REQUEST FOR TAX INFORMATION. Sub-
9 ject to AS 43.05.233, after a legislative committee identifies the
10 scope of an investigation or inquiry relating to taxes, and after
11 adoption by either house of the legislature of a simple resolution
12 giving the committee authority to receive tax information about crit-
13 ical taxes, the committee chair or co-chair may request tax returns
14 and return information relating to critical taxes, and the commis-
15 sioner of revenue shall provide the requested tax returns or return
16 information under AS 43.05.231 - 43.05.239. The request shall be in
17 writing and may identify a particular taxpayer.

18 Sec. 43.05.232. COMMISSIONER'S TRANSFER OF UNREQUESTED TAX
19 INFORMATION. (a) Subject to AS 43.05.233, the commissioner may
20 transfer unrequested tax returns or return information regarding
21 critical taxes to a legislative committee after making a written
22 determination that the transfer of the tax returns or return informa-
23 tion is in the best interest of the state.

24 (b) In making a determination under (a) of this section, the
25 commissioner shall consider

26 (1) if the legislative committee is reviewing the adminis-
27 tration of a critical tax, whether the tax returns or return informa-
28 tion would demonstrate the application of a critical tax more clearly
29 than a hypothetical example would, and if so, whether the aspects of

1 tax administration that would be more clearly demonstrated are materi-
2 al and significant to the committee's review;

3 (2) if the legislative committee is considering adding a
4 new tax or amending an existing tax, how necessary it is to transfer
5 tax returns or return information regarding critical taxes in order to
6 demonstrate the effect on taxpayers of the tax law change being con-
7 sidered;

8 (3) whether the tax returns or return information would
9 clarify or rectify information provided by a taxpayer to a legislative
10 committee;

11 (4) the potential harm the taxpayer may suffer if the
12 taxpayer's tax returns or return information is subsequently disclosed
13 illegally;

14 (5) any other interest of the taxpayer in avoiding the
15 transfer of the tax returns or return information;

16 (6) if a taxpayer's tax returns or return information is
17 being transferred at the taxpayer's request under AS 43.05.235(e),
18 whether it is necessary or appropriate to supplement the tax returns
19 or return information in order to give the committee a balanced and
20 complete presentation.

21 Sec. 43.05.233. GENERAL LIMITATIONS ON REQUESTS AND TRANSFERS.

22 (a) Tax returns and return information for critical taxes may be
23 requested by a legislative committee under AS 43.05.231 or transferred
24 to a legislative committee under AS 43.05.232 only if the purpose of
25 the committee's request or transfer is to assist the committee in
26 carrying out its responsibilities to

27 (1) consider tax legislation; or

28 (2) oversee the effective and efficient administration of
29 the state's laws regarding critical taxes, including the review of

1 audits, litigation, or settlements.

2 (b) A request or transfer may not be made under AS 43.05.231 or
3 43.05.232 if the purpose of the request or transfer is to direct the
4 executive branch in its audit, litigation, or settlement efforts, or
5 to collect information to embarrass, harass, or discriminate against a
6 taxpayer.

7 (c) AS 43.05.231 - 43.05.239 do not permit the transfer to a
8 legislative committee of tax returns and return information provided
9 by the Internal Revenue Service under exchange agreements with the
10 department, or the transfer to a legislative committee of tax returns
11 and return information for taxes other than critical taxes.

12 Sec. 43.05.234. PREPARATION AND TRANSMITTAL OF TAX INFORMATION.

13 (a) Before providing tax returns or return information in response to
14 a legislative request under AS 43.05.231 or under a commissioner's
15 determination made under AS 43.05.232, the commissioner shall review
16 the purpose of the proposed transfer of the tax returns or return
17 information to determine what type of tax return or return information
18 will provide the needed information. If more than one type of tax
19 return or return information will provide the needed information, the
20 commissioner shall choose the return or return information that, in
21 the commissioner's discretion, is the least commercially sensitive.
22 Whenever possible, instead of transactional documents, the commission-
23 er shall transfer summary documents or analyses that have been pre-
24 pared by the department. In this subsection, "summary documents or
25 analyses" includes audit narratives, informal conference decisions,
26 and formal hearing decisions.

27 (b) When the period for submitting additional analysis, comment,
28 or information under AS 43.05.235(b) has expired, the commissioner
29 shall transfer to the committee the tax return or return information,

1 including the additional analysis, comment, or information, if any,
2 received by the commissioner from the taxpayer under AS 43.05.235(b).

3 (c) If a taxpayer submits analysis, comment, and other written
4 information to a committee under AS 43.05.235(d), the department shall
5 transfer the analysis, comment, or other information to the committee
6 within 24 hours after receiving it and the request.

7 (d) The commissioner shall transfer all the tax returns and
8 return information requested to be transferred by the taxpayer under
9 AS 43.05.235(e) within 24 hours after receiving the request, except
10 for return information that needs to be extracted or compiled by the
11 department from other materials. Return information that needs to be
12 extracted or compiled by the department shall be transferred within
13 five days after the request. The chair or co-chair of the committee
14 to which the return information is to be transferred may for good
15 cause grant a reasonable extension of time for making the transfer and
16 shall immediately notify the taxpayer of the extension.

17 (e) The department has exclusive responsibility for duplicating
18 and numbering the copies of tax returns and return information pro-
19 vided to a legislative committee under AS 43.05.231 - 43.05.235.

20 Sec. 43.05.235. TAXPAYER NOTIFICATION AND SUBMISSION OF TAX
21 INFORMATION. (a) Before transferring a tax return or return informa-
22 tion under AS 43.05.231 or 43.05.232, the commissioner shall notify
23 the taxpayer whose tax return or return information is to be trans-
24 ferred of the proposed transfer and the content of the tax return or
25 return information to be transferred, and, if the transfer is under
26 AS 43.05.232, shall provide the taxpayer with a copy of the commis-
27 sioner's determination.

28 (b) Within seven days after receiving the notice of a transfer
29 proposed under AS 43.05.231 or the notice and determination of a

1 transfer proposed under AS 43.05.232, the taxpayer may submit addi-
2 tional analysis, comment, or other information to the department for
3 transfer under AS 43.05.234(b).

4 (c) A taxpayer may waive the provisions of (a) - (b) of this
5 section by providing the commissioner with a written waiver signed by
6 the taxpayer.

7 (d) If, in addition to the additional analysis, comment, and
8 other information filed by the taxpayer with the department under (b)
9 of this section, a taxpayer wants to provide the legislative committee
10 with analysis, comment, and other written information regarding the
11 taxpayer's tax return or return information being considered by the
12 committee, the taxpayer shall file the analysis, comment, or other
13 information with the department and request that the department trans-
14 fer the information to the legislative committee.

15 (e) A taxpayer may at any time request the commissioner to
16 transfer the taxpayer's tax returns or return information to a legis-
17 lative committee. The request must be in writing, must state which
18 tax returns or return information is to be transferred, and must state
19 the legislative committee to which the tax returns or return informa-
20 tion is to be transferred. The taxpayer shall pay the department the
21 reasonable cost of duplicating the material for the transfer.

22 (f) A taxpayer's request under (e) of this section is not a
23 waiver of confidentiality, and the tax returns and return information
24 transferred under (e) of this section are subject to the same sanct-
25 ions and safeguards against disclosure as other tax returns and return
26 information transferred under AS 43.05.231 - 43.05.235.

27 Sec. 43.05.236. CONSIDERATION OF TAX INFORMATION BY LEGISLATIVE
28 COMMITTEE. (a) A legislative committee shall consider tax returns
29 and return information transferred under AS 43.05.231 - 43.05.235 in

1 executive session only, unless the taxpayer and any third party whose
2 tax return or return information is being considered in conjunction
3 with the taxpayer's tax return or return information consent in writ-
4 ing to a disclosure in open session. The executive session must be
5 open to all legislators.

6 (b) The committee chair or co-chair may designate legislative
7 employees and agents to inspect the tax returns and return informa-
8 tion, but the chair or co-chair shall limit the number of designated
9 employees and agents to the fewest number necessary that is consistent
10 with the need of the committee and its individual members to analyze
11 and understand the tax return and return information fully. Legisla-
12 tive employees and agents who are not designated under this subsection
13 may not attend the executive session.

14 (c) If a tax return or return information regarding only one
15 taxpayer is being presented to the committee or is being discussed by
16 it, the chair or co-chair shall allow the taxpayer to attend the
17 portions of the executive session when the taxpayer's tax return or
18 return information is presented or discussed, and the taxpayer shall
19 have a reasonable opportunity to address the committee at the conclu-
20 sion of the presentation or discussion.

21 (d) If a tax return or return information regarding more than
22 one taxpayer is being presented to or considered by the committee at
23 one time, a transcript of the executive session shall be prepared and
24 presented to each taxpayer within 48 hours after the executive ses-
25 sion. The portions of the transcript pertaining to tax returns and
26 return information of a taxpayer other than the one to whom it is
27 presented shall be blanked out or otherwise deleted while at the same
28 time preserving the coherence of the transcript as much as possible.

29 (e) At the request of the taxpayer, a taxpayer receiving an

1 edited transcript under (d) of this section shall be given a reason-
2 able opportunity as soon as practicable to address the committee in
3 executive session about the presentation and discussion of the tax-
4 payer's tax returns and return information.

5 Sec. 43.05.237. PROHIBITION AGAINST DISCLOSURE. (a) Disclosure
6 contrary to the provisions of AS 43.05.231 - 43.05.239 by a member or
7 former member of the legislature or by a present or former employee or
8 agent of the legislature of all or part of a tax return or return
9 information that is confidential under AS 43.05.230 and transferred to
10 a legislative committee under AS 43.05.231 - 43.05.235 is a violation
11 of AS 43.05.230.

12 (b) Before receiving or reviewing a return or return information
13 provided by the commissioner under AS 43.05.231 - 43.05.235, a member
14 of the legislature or an employee or agent of the legislature shall,
15 on a form prepared by the commissioner,

16 (1) acknowledge that the return or return information is
17 confidential and that a disclosure of part or all of the return or
18 return information contrary to the provisions of this section is
19 prohibited by law; and

20 (2) execute an agreement with the department to keep the
21 return or return information confidential, to abide by regulations
22 adopted by the department under AS 43.05.238, and to return the docu-
23 ments to the department.

24 Sec. 43.05.238. REGULATIONS. To ensure confidentiality, the
25 commissioner shall adopt regulations governing the transmittal, re-
26 ceipt, safekeeping, removal from storage or filing location, account-
27 ing for possession, and return to the department of tax returns and
28 return information transferred under AS 43.05.231 - 43.05.235.

29 Sec. 43.05.239. DEFINITIONS. In AS 43.05.231 - 43.05.239

- 1 (1) "critical tax" means
2 (A) a tax imposed under AS 43.55 or AS 43.57;
3 (B) the tax imposed under former AS 43.21, unless the
4 taxpayer is a corporation established under 43 U.S.C. 1606; and
5 (C) the tax imposed under AS 43.20 if AS 43.20.072
6 applies when determining the amount of the tax and the taxpayer
7 is not a corporation established under 43 U.S.C. 1606;
- 8 (2) "return" has the meaning given in 26 U.S.C. 6103(b)(1),
9 except that "secretary" is read as "department" and "this title" means
10 AS 43;
- 11 (3) "return information" has the meaning given in 26 U.S.C.
12 6103(b)(2)(A), except that "secretary" is read as "department" and
13 "this title" means AS 43; "return information" does not include trans-
14 actional documents prepared during a tax period that ended within two
15 years of the date of the transfer of the "return information" under
16 AS 43.05.231 - 43.05.235;
- 17 (4) "transactional document" means a document that relates
18 to the sale, exchange, or other transfer by a taxpayer of real proper-
19 ty or tangible or intangible personal property and that
- 20 (A) constitutes all or part of a contract or agreement
21 concerning the sale, exchange, or other transfer, including
22 contract amendments, billings, and invoices; or
- 23 (B) summarises one or more of the terms of the sale,
24 exchange, or other transfer.

25 * Sec. 8. AS 43.05.240(a) is amended to read:

- 26 (a) Except as to a matter for which procedures are provided in
27 AS 43.05.246 - 43.05.248, a [A] person aggrieved by the action of the
28 department in fixing the amount of a tax, [OR] in imposing a penalty,
29 or in denying a request for refund of tax may apply to the department

1 within 60 days from the date of mailing the notice required to be
2 given to the person by the department, giving notice of the grievance
3 [,] and requesting an informal conference. At the conference the
4 person aggrieved may present arguments and evidence relevant to the
5 grievance [AMOUNT OF TAX OR PENALTY DUE THE STATE]. If the department
6 determines that a correction is warranted, the department shall make
7 the correction.

8 * Sec. 9. AS 43.05.240(b) is amended to read:

9 (b) Except as to a matter for which procedures are provided in
10 AS 43.05.246 - 43.05.248, a [A] person aggrieved by the action of the
11 department in fixing the amount of a tax, [OR] in imposing a penalty,
12 or in denying a request for refund of tax may apply to the department
13 and request a formal hearing

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

17 (2) within 30 days after decision resulting from an in-
18 formal conference.

19 * Sec. 10. AS 43.05.240(c) is amended to read:

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

27 * Sec. 11. AS 43.05.245 is amended to read:

28 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES, AND
29 INTEREST. If a taxpayer fails to file a return or report required by

1 this title in the time required by law or regulation, or makes an
2 erroneous or fraudulent return, the department shall proceed to assess
3 the license fees, tax, penalties, or interest and make a return from
4 information which it obtains. A return made and subscribed by the
5 department in accordance with this section is presumed sufficient for
6 all legal purposes. However, nothing prevents a taxpayer from pre-
7 senting evidence or other information on an appeal under AS 43.05.240
8 or under procedures provided by AS 43.05.246 - 43.05.248 in order to
9 rebut the presumed sufficiency of a return made and subscribed by the
10 department, nor does the presumption of sufficiency alter the parties'
11 respective burdens of proof once the taxpayer has presented evidence
12 or other material information to rebut that presumption. The assess-
13 ment of license fees, tax, penalties, or interest under this section
14 occurs when the department issues a notice and demand for payment of
15 the license fees, tax, penalties, or interest, when a notice and
16 demand for payment becomes final under AS 43.05.246(g), or when the
17 department issues a final notice and demand for payment under AS 43.-
18 05.247(f). The notice and demand for payment is issued when the
19 notice and demand is delivered to the taxpayer in person or placed in
20 the United States mail, addressed to the last known address of the
21 taxpayer. Penalties and interest assessed under this title shall be
22 collected in the same manner as provided in this title for the collec-
23 tion of tax or license fees.

24 * Sec. 12. AS 43.05 is amended by adding new sections to read:

25 Sec. 43.05.246. CLOSING CONFERENCE AND PRELIMINARY ASSESSMENT.

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

28 (b) Before issuing a notice and demand for payment for a tax
29 described in (a) of this section, the department shall give the

1 taxpayer a written draft of its preliminary conclusions. The draft of
2 the preliminary conclusions must contain the following:

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

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

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

9 (c) The department shall schedule a closing conference with the
10 taxpayer, to be held not less than 60 nor more than 90 days after the
11 department delivers its preliminary audit conclusions under (b) of
12 this section to the taxpayer in person or places those materials in
13 the United States mail, addressed to the last known address of the
14 taxpayer. The parties may extend the date for the closing conference
15 by agreement.

16 (d) The purpose of the closing conference is to conclude the
17 audit process and allow the parties to review and discuss the prelimi-
18 nary results and conclusions of that process informally so that any
19 mistaken assumptions, misunderstandings, and other errors or mistakes
20 can be identified and eliminated as much as possible and so that
21 incomplete information and unsubstantiated items can be supplemented
22 and substantiated. Although the interests of the parties are diver-
23 gent, the closing conference is not an adversarial proceeding. The
24 taxpayer may submit written and oral evidence, materials, and state-
25 ments, but may not be required to do so. The department's employee in
26 immediate charge of the audit, investigation, or inspection may also
27 submit written and oral evidence, materials, and statements at the
28 closing conference. By agreement, written materials may be submitted
29 at other times before or after the closing conference.

1 (e) The taxpayer may send one or more representatives to the
2 closing conference. The auditor or other person in immediate charge
3 of the audit, investigation, or inspection upon which the preliminary
4 assessment has been made shall attend the closing conference, and the
5 director of the division proposing the assessment or the director's
6 immediate subordinate designated for this purpose other than the
7 person in immediate charge of the audit, investigation, or inspection
8 shall preside at the closing conference. The department may have
9 additional representatives at the closing conference. The person in
10 immediate charge of the audit, investigation, or inspection may be
11 excused from attending the closing conference with the consent of the
12 taxpayer or because of serious illness or injury, incapacitation,
13 death, or termination of employment with the department.

14 (f) Not more than 60 days after the conclusion of the closing
15 conference, the presiding officer shall issue a written decision. If
16 the presiding officer determines that additional tax is owed or that a
17 penalty should be assessed, or both, the closing conference decision
18 shall include a proposed notice and demand for payment for the addi-
19 tional tax and interest and any penalty. The proposed notice and
20 demand for payment shall include a written narrative fully explaining
21 how and why the assessment of tax or penalty has been determined,
22 together with schedules or worksheets in written or computer-readable
23 format setting out the calculations for the proposed assessment. If
24 the presiding officer determines that no assessment is in order, the
25 taxpayer shall be given written notice to that effect within this
26 60-day period. By agreement, the parties may extend the date for
27 issuing a notice of assessment and demand for payment or a notice of
28 no assessment.

29 (g) Unless the taxpayer requests a policy review hearing under

1 AS 43.05.247, a proposed notice and demand for payment issued under
2 (f) of this section is final 30 days after its issuance and may not
3 thereafter be made the subject of judicial review.

4 Sec. 43.05.247. POLICY REVIEW HEARING. (a) A person aggrieved
5 by the action of the department in issuing a closing conference deci-
6 sion under AS 43.05.246(f) or in denying a request for refund of tax
7 under AS 43.20, AS 43.55, AS 43.57, or former AS 43.21 may request a
8 policy review hearing within 30 days after the date of mailing of the
9 notice required to be given under AS 43.05.246(f) or the denial of the
10 request for refund. For purposes of this section, a failure by the
11 department to grant or deny a request for refund within 60 days from
12 the time the request is made shall be considered a denial of that
13 request, unless the parties have extended the period by agreement.

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

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

23 (d) The commissioner or an authorized representative of the
24 commissioner other than an employee in the division taking the action
25 causing the grievance shall preside at the policy review hearing. The
26 aggrieved person, acting in person or through one or more authorized
27 representatives, shall have the opportunity to explain the nature of
28 the grievance and the relief sought. If the person is aggrieved by a
29 proposed assessment based on facts that the person believes are

1 incorrect or incomplete, the person shall present written and oral
2 evidence and materials to correct or complete the facts. After the
3 presentation of the aggrieved person's case, the director of the
4 division taking the action causing the grievance or another authorized
5 representative of the division shall have the opportunity to explain
6 that action and the policies and reasons for it. The division shall
7 have the opportunity to present written and oral evidence and mate-
8 rials to prove facts that it has asserted and that the aggrieved
9 person has challenged as incorrect and to rebut or disprove any sup-
10 plemental facts that the aggrieved person has sought to establish.
11 The formal rules of evidence do not apply to either party's presen-
12 tations on factual issues, but the presiding officer may require
13 witnesses for both parties to give their testimony under oath and
14 shall allow each party's witnesses to be examined by the other party.
15 The proceedings of the policy review hearing shall be recorded and
16 made part of the administrative record, together with any materials
17 that may be submitted for the policy review in advance of, or after,
18 the hearing.

19 (e) Not more than 90 days after the conclusion of the policy
20 review hearing the commissioner shall issue a policy review decision.
21 The policy review decision must

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

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

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

1 and

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

10 (f) If the policy review decision concludes that a notice and
11 demand for payment should be made for additional tax and interest, or
12 penalties, if any, a final notice and demand assessing the tax and
13 interest, or penalties, if any, shall be issued at the same time as,
14 and as part of, the policy review decision. The final notice and
15 demand shall include a narrative fully explaining how and why the
16 final assessment of tax and any penalty has been determined, together
17 with schedules or worksheets in written or computer-readable format
18 setting out the calculations for the final assessment. For purposes
19 of AS 43.05.260, a final notice and demand for payment is not con-
20 sidered made until the narrative and the schedules or worksheets
21 setting out the calculations for the final assessment have been served
22 on the aggrieved person.

23 Sec. 43.05.248. APPEAL. Within 30 days after the issuance of
24 the commissioner's policy review decision under AS 43.05.247, a person
25 aggrieved by the decision may file an action in the superior court in
26 the judicial district where the person resides or conducts business,
27 for a trial de novo of those portions of the policy review decision
28 giving rise to the grievance. Neither party may raise as a claim,
29 counterclaim, or defense any portion or portions of the policy review

1 decision that are not contested and do not give rise to the grievance.
2 The aggrieved person shall be given access to the files of the depart-
3 ment in the matter for preparing the appeal. If the court determines
4 that the assessment or the tax payment was correct, it shall confirm
5 the tax. If the assessment or tax payment was incorrect, the court
6 shall determine the amount of the tax and order the payment of the
7 deficiency or the refund of the excess, as the case may be. The
8 department shall immediately pay any refund due and attach a certified
9 copy of the judgment to the payment.

10 * Sec. 13. AS 43.05.260(a) is amended to read:

11 (a) Except as provided in (c) and (d) of this section and
12 AS 43.20.200(b), the amount of a tax imposed by this title must be
13 assessed within three years after the return was filed, whether or not
14 a return was filed on or after the date prescribed by law. If the tax
15 is not assessed before the expiration of the three-year period, a
16 proceeding [NO PROCEEDINGS] may not be instituted in court for the
17 collection of the tax.

18 * Sec. 14. AS 43.05.260(c) is amended to read:

19 (c) The following exceptions apply to the limitation periods
20 [PERIOD] in (a) and (d) of this section:

21 (1) in the case of a false or fraudulent return with the
22 intent to evade tax, the tax may be assessed, or a proceeding in court
23 for collection of the tax may be begun without assessment, at any
24 time;

25 (2) in the case of a failure to file a return, the tax may
26 be assessed, or a proceeding in court for the collection of the tax
27 may be begun without assessment, at any time;

28 (3) if, before the expiration of the time prescribed in
29 this section for the assessment of a tax imposed by this title, both

1 the department and the taxpayer have consented in writing to the
2 assessment after the expiration of the time, the tax may be assessed
3 at any time before the expiration of the period agreed upon; however,
4 the period agreed upon may be extended by a subsequent agreement in
5 writing made before the expiration of the period previously agreed
6 upon.

7 * Sec. 15. AS 43.05.260 is amended by adding a new subsection to read:

8 (d) For a tax to which the procedures under AS 43.05.246 -
9 43.05.248 are applicable, the limitation period is four years.

10 * Sec. 16. COURT RULE CHANGE. AS 43.05.248, added by sec. 12 of this
11 Act, amends Rule 609 of the Alaska Rules of Appellate Procedure by making
12 trial de novo mandatory rather than discretionary in appeals relating to
13 taxes to which AS 43.05.248 is applicable and restricting the claims,
14 counterclaims, and defenses that may be raised.

15 * Sec. 17. TRANSITIONAL PROVISIONS. (a) AS 43.05.231 - 43.05.239, as
16 added by sec. 7 of this Act, apply to all tax returns and return informa-
17 tion for critical taxes, as defined in AS 43.05.239, in the possession of
18 the Department of Revenue on or after the effective date of this Act.

19 (b) The Department of Revenue shall adopt the regulations required by
20 AS 43.05.238, enacted by sec. 7 of this Act, before the department trans-
21 fers a tax return or return information to a legislative committee under
22 AS 43.05.231 - 43.05.239. Initial regulations adopted as directed under
23 this subsection to implement or interpret AS 43.05.231 - 43.05.239 may not
24 be adopted as emergency regulations.

25 (c) The provisions of AS 43.05.248, added by sec. 12 of this Act,
26 apply to any grievance with respect to a tax under AS 43.20, AS 43.55,
27 AS 43.57, or former AS 43.21 that, on the effective date of this Act, has
28 not been appealed to superior court under AS 43.05.240(d).

29 * Sec. 18. This Act takes effect immediately under AS 01.10.070(c).