

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S - JUNEAU 99511

JAY S. HAMMOND, GOVERNOR

March 30, 1976

The Honorable Jalmar Kerttula
Chairman
Senate Commerce Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

Re: Senate Bill No. 702

Dear Senator Kerttula:

Senate Bill No. 702, an Act providing for state taxes and revenues concerning Land Gains Tax, was introduced in the Senate on March 16, 1976 and was referred to the Senate Commerce and Finance Committees.

For the consideration of the Senate Commerce Committee, I am enclosing a Fiscal Note and accompanying memorandum prepared by Darrell D. Knox, Deputy Director, Audit Division advising of estimated administrative costs and suggesting some language changes in the bill.

If you or any members of the Senate Commerce Committee have any questions on the material submitted, please telephone the writer at 465-2397 and I will contact Mr. Knox for further information or testimony at a hearing.

Very truly yours,

R. D. Stevenson
Special Assistant

cc: The Honorable Bill Ray
Chairman
Senate Finance Committee

Darrell D. Knox
Deputy Director, Audit Division
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE

Second Session - Ninth Legislature

I. REQUEST

Bill No. Senate Bill 702
 Title: Land Gains Tax
 Requested by: Senate Commerce Committee Date: March 16, 1976
 Return Date Requested: _____
 Agency: Revenue Program: Audit Division

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Audit Division, Department of Revenue

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES		61.2	134.6	148.0	162.8	179.0
200 TRAVEL		3.0	7.0	7.5	8.0	8.0
300 CONTRACTUAL		86.2	57.6	63.3	69.6	76.5
400 COMMODITIES		1.2	2.4	2.5	2.6	2.7
500 EQUIPMENT		6.4	--	--	--	--
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		158.0	201.6	221.3	243.0	266.2

B. FUNDING: (Thousands of dollars)

GENERAL FUND		158.0	201.6	221.3	243.0	266.2
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	8 /	8 /	8 /	8 /	8 /
MAN MONTHS (P./T.)	/	48 /	96 /	96 /	96 /	96 /

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. ATTACHMENTS See memo to R. D. Stevenson dated March 25, 1976

V. DATE: March 25, 1976 PREPARED BY: Darrell D. Knox
 Deputy Director, Darrell D. Knox

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

MEMORANDUM

State of Alaska

TO: R. D. Stevenson
Special Assistant

DATE: March 26, 1976

FILE NO:

TELEPHONE NO:

SUBJECT: Senate Bill 702

FROM: Darrell D. Knox *DKC*
Deputy Director
Audit Division

Upon reviewing Senate Bill 702, Land Gains Tax, several areas were noted which should be clarified before passage of this bill. The following suggestions are offered for further consideration.

A. This Act amends AS 34 (Property) which concerns itself with Property provisions within the State of Alaska. However, the Act involves state taxes and revenues which maybe more appropriate in AS 43 (Revenue and Taxation).

B. Page 2 "AS 34.12.020(c)" The following words should be deleted since they are covered under the Federal Internal Revenue Code Section 1223. [If a husband and wife are tenants by the entirety there may be added to the holding period the amount of time the land was held by one spouse alone before that spouse created the tenancy by the entirety. Notwithstanding a provision to the contrary under the Federal Internal Revenue Code, if a tenancy by the entirety is dissolved by reason of death, the holding period during the tenancy by the entirety will be added to the holding period of the surviving spouse owning the property in his or her own name.].

It is also suggested that "AS 34.12.020(d)" be deleted since it also is covered by the Federal Internal Revenue Code Section 1223.

C. Page 3 "AS 34.12.020(f)" This section would allow certain tax free exchanges which would be recognized at some future date. We suggest that the gain be completely recognized when the taxpayer leaves the State of Alaska. This is due to the fact that once the taxpayer leaves the state it is almost impossible to locate the taxpayer when the gain is recognized for Federal purposes.

D. Page 3 "AS 34.12.020(g)" If the intent of this Act is to tax each land gain transaction separately then there is no problem. However, if the intent of this Act is to combine all land transactions of a given taxpayer then there is no provision to offset any loss transaction. We suggest that this provision address itself to specifically what the intent maybe, which excludes all operating losses and land transaction losses or to include certain losses.

E. Page 5 "AS 34.12.040(e)" We suggest adding the following phrase.
"...At the time a payment is made to the seller or transferor, the amounts withheld shall be remitted within 10 days by the buyer or transferee to the commissioner."

F. Page 6 and 8 "AS 34.14.050 and AS 34.12.100" Both deal with penalties and violations; it is suggested that they be combined under one section for convenience.

G. Page 7 "AS 34.12.080" Requires a separate Shared Revenue program to be generated. Cost of Administration is noted in the Effect on Treasury section of this memorandum.

H. Page 8 "AS 34.12.100(a)" We suggest the word misdemeanor be changed to felony. This would provide better compliance of the Act.

I. The compliance work required on this Act is viewed at this point in time as rather extensive due to the nature of the tax and background needed to provide for proper auditing of these transactions. There are many transactions under this chapter which occur in Alaska which would have to be properly examined. At the present time we foresee the following personnel requirements to perform all the compliance of this Act.

- One(1) Clerk II for filing returns and information
- One(1) Clerk Typist III for correspondence
- Two(2) Tax Examiner II for basic compilation of return information
- Two(2) Revenue Auditor II for performing office audits on returns and field audits under the direction of a Revenue Field Auditor I
- One(1) Revenue Field Auditor to perform as a working supervisor of the land tax section, and lead all audit activity.

Effects on the Treasury

Because of the limited statistical information readily available to us on this type of transaction no estimate of revenues generated by this Act is provided.

Estimated administrative costs of this program:

1. Shared Revenue program;
 - (a) Systems design and programming costs approximately \$50,000 (one time cost).
 - (b) One(1) Accountant II (full-time) with related benefits, equipment and commodities.
2. Audit Program - Seven(7) personnel as noted previously in report.

TOTAL ADMINISTRATIVE COST (A)

FY 77	\$158,000	(Six Months Only)
FY 78	\$201,600	
FY 79	\$221,300	
FY 80	\$243,000	
FY 81	\$266,200	

(A) Inflation rate of 10% assumed.

DDK:lc

Introduced: 3/16/76
Referred: Commerce and
Finance

BY THE RULES COMMITTEE BY RE-
QUEST OF THE SPECIAL COMMITTEE
ON REVENUE AND TAXATION

1 IN THE SENATE

2 SENATE BILL NO. 702

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing for state taxes and revenues; and
7 providing for an effective date."

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

9 * Section 1. AS 34 is amended by adding a new chapter to read:

10 CHAPTER 12. LAND GAINS TAX.

11 Sec. 34.12.010. TAX ON GAIN FROM SALE OR EXCHANGE OF LAND. A tax
12 is levied on gain from the sale or exchange of land in the state. The
13 seller or other transferor is liable for the tax, except as provided in
14 sec. 30(b) of this chapter. The tax is levied according to the follow-
15 ing schedule:

Holding period of transferor	Gain from sale or exchange, as a percentage of basis (tax cost) (rounded to the next highest whole percentage)		
	0 - 99%	100 - 199%	200% and more
less than 1 year	30%	45%	60%
1 year, but less than 2	25%	37.5%	50%
2 years, but less than 3	20%	30%	40%
3 years, but less than 4	15%	22.5%	30%
4 years, but less than 5	10%	15%	20%
5 years, but less than 6	5%	7.5%	10%

16 Sec. 34.12.020. COMPUTATION OF GAIN SUBJECT TO TAX. (a) The
17 gain from the sale or exchange of land which is subject to tax under
18 this chapter is the amount realized minus the basis (tax cost) of the
19

1 land. The amount realized is the full actual consideration paid or to
2 be paid under the sale or exchange, including the amount of any liens or
3 encumbrances on the land existing before the sale or exchange and not
4 removed by it, and is the gross amount realized minus any expenses of
5 sale and commissions.

6 (b) The basis (tax cost) of the land sold or exchanged shall be
7 determined according to the provisions of the federal Internal Revenue
8 Code of 1954, as amended, Title 26, Chapter 1, Subchapters O and P. If
9 land is sold or exchanged together with buildings, structures, or other
10 physical improvements, or together with land included in exemptions
11 accorded under sec. 30 of this chapter, the basis (tax cost) shall be
12 allocated among the land and the improvements or exempted land on a fair
13 market basis, in accordance with regulations prescribed by the depart-
14 ment.

15 (c) The land sold or exchanged shall be considered to have been
16 held as determined under the federal Internal Revenue Code. However, as
17 to a person whose holding period is claimed by the seller or transferor,
18 the holding period may not exceed the time for which the person has had
19 actual and recorded title in his own name to the land sold or exchanged,
20 and shall include the time the land was so held before the effective
21 date of this chapter. If a husband and wife are tenants by the entirety
22 there may be added to the holding period the amount of time the land was
23 held by one spouse alone before that spouse created the tenancy by the
24 entirety. Notwithstanding a provision to the contrary under the federal
25 Internal Revenue Code, if a tenancy by the entirety is dissolved by
26 reason of death, the holding period during the tenancy by the entirety
27 will be added to the holding period of the surviving spouse owning the
28 property in his or her own name.

29 (d) In the case of a gift, the holding period of the donee shall

1 include the time that actual and recorded title was held by the donor.

2 (e) In the case of a lease-purchase agreement under which any part
3 of the rental payments constitute a portion of the purchase price of the
4 land, the end of the holding period with respect to the sale or exchange
5 shall be determined as of the date of the agreement.

6 (f) No gain may be recognized under this chapter where gain is not
7 recognized under the federal Internal Revenue Code in relation to the
8 sale or exchange of capital assets.

9 (g) The taxable gain under this chapter shall not be reduced by
10 any losses incurred in other transactions.

11 Sec. 34.12.030. EXEMPTIONS. (a) A sale or exchange of the
12 following land is exempt from the tax levied under this chapter:

13 (1) land sold or exchanged before the effective date of this
14 chapter;

15 (2) land exempt to the seller or transferor from all state or
16 local taxation under other provisions of law;

17 (3) land in a contiguous ownership of 20 or more acres
18 devoted primarily to the production of livestock or agricultural com-
19 modities for commercial purposes by the seller or transferor for at
20 least three years in the aggregate before the sale or exchange while in
21 the ownership of the seller or transferor;

22 (4) a parcel of land five acres or more but less than 20
23 acres devoted primarily to agricultural uses, which has produced a gross
24 income to the seller or transferor from agricultural uses of \$50 or more
25 per acre per year for at least three years in the aggregate before the
26 sale or exchange while in the ownership of the seller or transferor;

27 (5) a parcel of land less than five acres devoted primarily
28 to agricultural uses which has produced a gross income to the seller of
29 \$500 or more per year for at least three years in the aggregate before

1 the sale or exchange while in the ownership of the seller or transferor;

2 (6) land, not exceeding five acres, necessary for a dwelling
3 to be used as the principal dwelling of the person acquiring the land by
4 the sale or exchange and whose domicile is or will be established in the
5 state, subject to (b) of this section.

6 (b) If, under (a)(6) of this section, there is not on the land a
7 dwelling completed or fit for occupancy as the principal residence of
8 the person acquiring the land at the time of transfer of title to the
9 land, the person acquiring the land shall certify that construction of
10 the dwelling shall commence within three years of the date of transfer
11 of title to the land, and that it will be completed and occupied within
12 five years of the date of transfer. The deed or other transfer instru-
13 ment shall state that the amount of tax which would otherwise have been
14 due from the transferor is a lien running with the land in favor of the
15 state until either (1) the person acquiring the land has filed with the
16 commissioner a statement under penalties of perjury that the dwelling
17 was constructed and occupied within the terms and conditions previously
18 certified, or (2) the amount of tax has been paid by the person acquir-
19 ing the land. If the commissioner determines that certifications under
20 this section were untrue, he shall collect from the person acquiring the
21 land the tax upon the gain attributable to the sale or exchange of the
22 land.

23 Sec. 34.12.040. PAYMENT OF TAX AND WITHHOLDING OF CONSIDERATION TO
24 PAY TAX. (a) The tax levied under this chapter is payable to the
25 department on a return and in a manner prescribed by the department,
26 consistent with the provisions of (b) - (i) of this section.

27 (b) Except as provided in (e) - (f) of this section with respect
28 to sale or exchange of land held by the seller or transferor for less
29 than six years, if the sale or exchange of land giving rise to the tax

1 is financed by a mortgage, deed of trust, or other financing arrangement
2 in which the seller or other transferor is paid in full on the date of
3 the sale or exchange, the tax is payable in full by the seller or
4 transferor within 30 days of the date of the sale or exchange or in
5 installments at the times and under conditions the department may by
6 regulation require.

7 (c) Except as provided in (e) - (f) of this section with respect
8 to sale or exchange of land held by the seller or transferor for less
9 than six years, the tax on an installment sale (as defined in sec.
10 110(3) of this chapter) shall be due from the seller or transferor
11 within 30 days of the date of payment of each installment paid to the
12 seller or transferor.

13 (d) In an installment sale the total amount of taxes due under this
14 chapter shall be the amount that would have been due had the total pur-
15 chase price been paid on the date the sale or exchange took place. The
16 amount of taxes due on each separate installment, including the first
17 installment, shall bear the same proportion to the total amount of taxes
18 due as the amount of that installment bears to the total consideration.

19 (e) The buyer or transferee of land held by the seller or trans-
20 feror for less than six years shall withhold 10 per cent of all con-
21 sideration paid to the seller or transferor for the land, including 10
22 per cent of all partial payments made under installment sales. At the
23 time a payment is made to the seller or transferor, the amounts withheld
24 shall be remitted by the buyer or transferee to the commissioner.

25 (f) Within 30 days of the sale or exchange of land for which
26 withholding is required under this section, the seller or transferor
27 shall file a return with the commissioner setting out the amount of the
28 tax due and the amount withheld by the buyer or transferee under (e) of
29 this section. The seller shall either remit with the return the balance

1 of the tax due or make claim for a refund. A refund not made by the
2 commissioner within 15 days of receipt by him of a valid claim shall
3 accrue interest at the rate of one-half of one per cent per month.

4 (g) The provisions of (e) or (f) of this section notwithstanding,
5 the seller or transferor may, in advance of the sale or exchange, pay
6 the tax levied in this chapter or obtain a written ruling from the
7 commissioner that no tax is due under this chapter. In either case the
8 commissioner shall certify to the seller or transferor that the payment
9 has been made or that no tax is due. Upon receipt by the buyer or
10 transferee of such certification from the seller or transferor, the
11 buyer or transferee shall not be required to withhold under (e) of this
12 section.

13 (h) For good cause shown and upon conditions set by him, the
14 commissioner may extend the time for filing the return and paying the
15 tax as required in this section.

16 (i) Nothing in this section prevents the department from providing
17 by regulation for the voluntary prepayment of taxes other than as pro-
18 vided in (g) of this section.

19 Sec. 34.12.050. PENALTY. Five per cent shall be added to the tax
20 to be paid or withheld under this chapter for each 30-day period or
21 fraction of that period during which a return or payment required under
22 this chapter is not filed or a portion or a deficiency of a payment due
23 as finally determined by the department and required by this chapter is
24 not made or paid, unless it is shown that the failure is due to a
25 reasonable cause and not to wilful neglect. The penalty may not exceed
26 25 per cent in the aggregate. The penalty shall be collected at the
27 same time, in the same manner and as a part of the original tax to be
28 paid or withheld, but if the original tax is paid, or tax withheld is
29 remitted, before the neglect is discovered, the penalty shall be col-

1 lected in the same manner as the original tax to be paid or withheld.
2 The department shall prescribe by regulation circumstances which consti-
3 tute reasonable cause for purposes of this section.

4 Sec. 34.12.060. INTEREST. When the tax to be paid or withheld
5 under this chapter becomes delinquent, it bears interest at the rate of
6 eight per cent a year.

7 Sec. 34.12.070. ENFORCEMENT OF TAX. (a) The tax required to be
8 paid or withheld under this chapter, together with penalty and interest,
9 constitutes a personal debt of the person liable to pay or withhold the
10 tax. The amount of the tax, with penalty and interest, may be collected
11 in a personal action brought by the state.

12 (b) The tax required to be paid or withheld under this chapter,
13 together with penalty and interest, is a lien in favor of the state upon
14 property and interests in property, whether real or personal, belonging
15 to the person liable to pay or withhold the tax. The lien is prior and
16 paramount to all other liens and encumbrances against the property
17 except liens for other taxes. Enforcement of the lien shall be carried
18 out in the same manner and with the same effect as provided for enforce-
19 ment of property tax liens under AS 34.10.070 - 34.10.220.

20 (c) The remedy of distraint of property set out in AS 43.20.270
21 applies to the tax, with penalty and interest, required to be paid or
22 withheld under this chapter.

23 Sec. 34.12.080. PROCEEDS OF TAX. The department shall deposit
24 money collected by it under this chapter in a special land gains tax
25 account in the general fund. There is authorized to be appropriated
26 each fiscal year for allocation to municipalities having power to levy
27 real property taxes an amount equal to 75 per cent of the amount of
28 money in the account. A sum appropriated shall be allocated to a
29 municipality according to the ratio which the tax, penalty and interest

1 collected under this chapter in the prior fiscal year from gains on land
2 located in the municipality bears to the total amount of money collected
3 under this chapter in that year.

4 Sec. 34.12.090. REGULATIONS. The department may adopt regulations
5 it considers necessary and appropriate to administer and enforce this
6 chapter.

7 Sec. 34.12.100. VIOLATIONS AND PENALTIES. (a) A person who
8 wilfully defeats or evades, or attempts to defeat or evade, the tax
9 levied in this chapter is guilty of a misdemeanor and upon conviction is
10 punishable by a fine of not more than \$10,000 or five times the amount
11 of the tax defeated or evaded or attempted to be defeated or evaded,
12 whichever is larger, or by imprisonment for not more than one year, or
13 by both. A corporation or other taxable entity which is not a natural
14 person is subject to the fine provided by this section.

15 (b) An officer, employee, director, trustee or other responsible
16 person of a corporation or other taxable entity, and any other person
17 who counsels, aids, abets, participates in, or conceals the defeat or
18 evasion of the tax, or the attempted defeat or evasion of the tax, is
19 subject to the penalties of (a) of this section.

20 (c) Returns and other forms for payment of the tax under this
21 chapter shall set out in large type the penalties provided by this
22 section.

23 Sec. 34.12.110. DEFINITIONS. In this chapter

24 (1) "commissioner" means the commissioner of revenue;

25 (2) "department" means the Department of Revenue;

26 (3) "installment sale" means a sale or exchange of land for
27 which the total tax due under this chapter is greater than \$2,000 and in
28 which the parties agree in advance that payments shall be received by
29 the seller or transferor in more than one installment on a date other

1 than the date of closing; the term excludes a sale financed by a mort-
2 gage, deed of trust, or other financing arrangement in which the seller
3 or transferor is paid in full on the date of the sale or exchange; the
4 term includes but is not limited to a lease-purchase agreement under
5 which any part of the rental payments constitute a portion of the
6 purchase price of the land;

7 (4) "land" includes improved and unimproved land, but does
8 not include buildings, structures or other physical improvements;

9 (5) "sale or exchange" means, for a consideration, any
10 transfer of title conveying a fee estate or fractional interest in real
11 estate other than solely to provide or release security for a debt or
12 obligation; the term includes but is not limited to

13 (A) transfer of an option for sale or exchange of land;

14 (B) sale or exchange of shares in a corporation or other
15 entity, or of comparable rights or property interests in another
16 form of organization or legal entity, which effectively entitles
17 the purchaser or transferee to the use or occupancy of land;

18 (C) contracts for the sale or exchange of land, but only
19 at such time as some consideration has passed under the contract to
20 or for the benefit of the seller or transferor; the sale or ex-
21 change is considered to take place at the time any consideration
22 whatsoever, of whatever nature, first passes under the contract,
23 but a mere promise to purchase, and amounts paid as earnest money,
24 or amounts paid in deposit or amounts paid in escrow to which the
25 seller or transferor has no immediate right, do not constitute the
26 passing of consideration which results in a sale or exchange under
27 this paragraph.

28 * Sec. 2. This Act takes effect January 1, 1977.
29