

HB

138

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, Governor

POUCH S—JUNEAU 99801

February 14, 1975

The Honorable Terry Gardiner  
Chairman, House Judiciary Committee  
Alaska State Legislature  
State Capitol Building  
Juneau, AK 99801

Dear Mr. Gardiner:

re House Bill No. 138

House Bill No. 138, an Act relating to the collection of civil penalty under the Alaska Net Income Tax Act was introduced in the Alaska State House of Representatives on February 11, 1975 by Representative Richard Eliason by request and was referred to the House Judiciary Committee.

Since the proposed legislation will assist the State through the Department of Revenue in the collection of the Alaska Net Income Tax withheld from employees by corporations but not paid to the State, I have requested Mr. Ralph Kimlinger, Director, Collection Division of the Department of Revenue to prepare a memorandum outlining the problem of the Collection Division and the effect of the remedial legislation as contained in House Bill No. 138.

The Federal Internal Revenue Code provides similar language for use as an effective collection tool in securing payments of delinquent Federal Income Tax withheld from employees but not paid by corporations to the Internal Revenue Service.

Basically there have been numerous cases in which corporations which have unsound financial structures have withheld state income tax from employees and then diverted the proceeds to pay operating bills with these "trust" funds and not pay over to the state the tax withheld from employees wages.

The civil penalty referred to amounts to an assessment of 100% or an amount equal to the state income tax withheld from employees but not paid over to the state. The civil penalty is assessed against the officer responsible for the collection of and payment of the income tax withheld from employees of the corporation.

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The State presently has the authority to make the civil penalty assessment but does not have the statutory authority to effect collection by use of a Warrant for Distrain to levy upon the individual bank account or file liens upon the assets of the individual corporate officer responsible for the failure to collect or pay the income tax withheld.

Should you or members of the House Judiciary Committee have any questions concerning Mr. Kimlinger's memo dated February 14, 1975, copy of which is attached, kindly advise the writer by telephone at 465-2397 so that I can arrange for Committee testimony by Mr. Ralph Kimlinger, Director, Collection Division of the Department of Revenue and members of his staff.

Respectfully yours,



R. D. Stevenson  
Special Assistant

RDS:sp

Enclosures

cc The Honorable Richard Eliason  
Member, House Labor & Management Committee  
Alaska State Legislature  
State Capitol Building  
Juneau, AK 99801

Ralph Kimlinger  
Director, Collection Division  
Department of Revenue  
State Office Building  
Juneau, AK 99801

# MEMORANDUM

# State of Alaska

TO: R. D. Stevenson  
Special Assistant  
Department of Revenue

DATE: February 14, 1975

THRU: Ralph Kimlinger, Director  
Collection Division

FILE NO:

FROM: Marilla Gemmer  
Enforcement Officer  
Supervisor  
Collection Division

TELEPHONE NO: 465-2318

SUBJECT: House Bill No. 138  
Collection of Civil Penalty  
under the Alaska Net Income  
Tax Act

House Bill No. 138 amends Alaska Statute 43.20.335(g) by adding the following language:

The civil penalty shall be paid upon demand by the commissioner or his designee, and shall be assessed and collected in the same manner as taxes are assessed and collected under this chapter. Any reference in (a) - (f) of this section to "tax" imposed refers also to the civil penalty provided under this subsection.

In effect, what this amendment does is to enable the department to proceed with the collection of 100 percent penalty assessments against officers of corporations for withholding taxes which have not been paid to the state.

Title 43.20.335(g) gives the department the authority to levy a civil penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. The procedure for levying this penalty is through the use of a Warrant for Distraint. Under the present language we have no authority to enforce this Warrant for Distraint. In other words, we cannot levy on the bank accounts of the responsible officers or file enforceable liens against his property. The amendment we have requested will authorize the department to collect these 100 percent penalties in the same manner as other taxes and provides for the fair and equitable treatment of this class of taxpayer with all others.

MG:go