

HB

256

COMMITTEE REPORT

2-23-77

FINANCE

HOUSE

3/15

Date

Mr. Speaker:

The Committee on C.S.R.A. has had HB 256

under consideration. A majority of the members of the Committee

- recommends it do pass
- recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for HB 256 and that CS for HB 256 do pass
- (and) recommends it be referred to the _____ committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Ridd - do pass _____ R. D. Self 100% _____

W. A. Anderson _____ 70% _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

Adams recommends: No Rec.

_____ recommends: _____

_____ recommends: _____

Ridd
Chairman

A M E N D M E N T

OFFERED IN THE HOUSE:

BY: C&RA COMMITTEE

To: CS for HOUSE BILL No. HB 256

SENATE BILL No. _____

PAGE: 1

LINE: 8

Delete *Section 1. + Sec. 2

Replace with the following material:

*Section 1. AS 43.75.130 is amended to read:

Sec. 43.75.130. REFUND TO LOCAL GOVERNMENTS. The Commissioner of revenue shall pay to each municipality ORGANIZED BOROUGH AND EACH CITY OF THE FIRST CLASS 20 10 percent of the amount of tax revenue collected in the ^{municipality} ~~borough or city~~ from taxes levied by secs. 10-90 of this chapter.

*Section 2.

AS 43.75.135 is repealed.

§Section 3.

This act takes effect January 1, 1979.

A M E N D M E N T

OFFERED IN THE HOUSE:

Representative Snider by request of:
BY: C&RA COMMITTEE

To: CS for _____ HOUSE BILL No. HB 256 _____

SENATE BILL No. _____

PAGE: 1 _____

LINE: 8 _____

Delete *Section 1.

Replace with the following material:

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Sec. 43.75.130. REFUND TO LOCAL GOVERNMENTS. The Commissioner of revenue shall pay to each municipality ~~ORGANIZED~~ BOROUGH AND EACH CITY OF THE FIRST CLASS ~~7~~ 20 ~~10~~ percent of the amount of tax revenue collected in the borough or city from taxes levied by secs. 10-90 of this chapter.

*Section 2.

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*Section 3.

This act takes effect January 1, 1979.

53539

1974 SHARED FISH TAX REFUNDS TO LOCAL GOVERNMENTS

Shared 7/75

	<u>CITY</u>	<u>BOROUGH</u>
Anchorage	7,489.57	
* Anchorage Borough		10,120.99
Bristol Bay Borough		4,843.30
Cordova	42,307.50	
Craig	4,753.38	
Dillingham	9,177.14	
* Haines Borough		62.76
Hoonah	1,246.02	
Homer	1,983.02	
Hydaburg	1,809.38	
* Juneau, City & Borough		7,270.50
King Cove	28,407.90	
Kenai	9,880.08	
* Kenai Borough		26,431.45
Ketchikan	11,296.21	
* Ketchikan Borough		24,650.89
Kodiak	32,344.14	
* Kodiak Borough		66,349.80
Petersburg	41,038.32	
Pelican	10,376.98	
Seldovia	1,950.43	
Seward	9,407.64	
Sitka	1,778.00	
* Sitka Borough		4,864.94
Unalaska	48,397.16	
Wrangell	5,234.04	
Valdez	794.00	
Yakutat	<u>2,222.24</u>	
TOTAL	271,893.15	144,594.63

CITIES	271,893.15
BOROUGHS	<u>144,594.63</u>
TOTAL	416,487.78

5.010

§ 43.75.010

REVENUE AND TAXATION

§ 43.75.010

in connection with the state's commercial fisheries shall first obtain a license on the basis of the following license taxes which are hereby levied.

(1) Salmon canneries, both shore-based and floating, shall pay an annual tax equal to three per cent of the value of the raw fish purchased or obtained for canning during the year. For the purpose of this license, the raw fish value of each kind of salmon is considered to be a dollar value equal to the average wholesale price obtained for the finished product by Alaska salmon canneries during the months of August, September, October, November and December of the last five years immediately preceding the license year. Salmon received by salmon canneries and diverted for purposes other than canning are valued at the average prevailing price on the fresh fish market for that fish and are subject to an annual license tax of one per cent of the value.

(2) Herring processing plants in the business of canning, curing, salting, freezing, or making meal or oil or other processed products including sale of bait herring by either processing plant or bait herring fisherman shall pay an annual license tax equal to one per cent of the value of the raw herring. The value of the raw material under this license is the actual price paid for the herring including indirect considerations such as fuel or supplies furnished by the processor or offsets to the cash value for gear furnished. This value applies to herring caught in company-owned or subsidized boats operated by employees of the processor or under lease or other agreement.

(3) Crab canneries, both shore based and floating shall pay an annual license tax equal to two per cent of the value of the raw crabs. The raw crab value for the purpose of this license is the actual price paid for the raw crab either by cash or its equivalent according to (2) of this section for herring processing plants.

(4) Clam canneries shall pay a license tax equal to two per cent of the value of the raw clams, with the value to be determined according to (3) of this section for crab canneries, on razor clams. Butter clams are taxed in the same manner at the rate of one per cent of the value of the raw clams.

(b) "Wholesale price" includes all receipts whether in the form of money, credits, or other valuable considerations received from the sale of the finished product without deduction for the cost of property sold, the cost of the material used, insurance costs, labor or service costs, label and labeling costs, transportation and storage cost, interest paid, taxes, losses, or any other expense except cash discounts allowed on sales not to exceed one and one-half per cent, commissions actually paid to independent brokers not to exceed five per cent, and swell allowance not to exceed one-tenth of one per cent.

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(c) The person, firm, or corporation engaging or attempting to engage in the above lines of business who actually and physically cans or processes the above fishery resources shall be liable for and shall pay to the department the whole tax imposed by this section. In determining this tax liability the person, firm, or corporation may not deduct from the value of the raw fishery resources canned or processed the value of any raw fishery resources canned or processed for other persons, firms, or corporations, but shall include this as a part of the value of the raw product obtained for canning or processing. (§ 1 ch 82 SLA 1949; am § 1 ch 113 SLA 1951; am § 1 ch 146 SLA 1962; am §§ 1, 2 ch 84 SLA 1967)

Revisor's note. — Section 1 ch 113 SLA 1951 began "Subsection (a) of Section 1 of Chapter 82, Session Laws of Alaska 1949, is hereby amended to read as follows:" and after these words appeared subsection (a), incorporating the rate amendment, but eliminating a paragraph numbered (1) which appeared in ch 82 SLA 1949. Section 1 ch 146 SLA 1962 makes a similar amendment, again without mentioning the paragraph numbered (1). This paragraph appears in AS 43.75.010 as the last sentence of subsection (1) and is included in the revision on the assumption that there was no legislative intention to omit it.

Effect of amendment. — The 1967 amendment substituted "three per cent" for "six per cent" in the first sentence of subsection (a) (1), deleted "50 per cent of" preceding "the average wholesale price" in the second sentence of such subsection, inserted "the last five years immediately preceding" in such sentence, and added subsection (c).

A tax on the business of catching and canning salmon is not a property tax. *Pacific Am. Fisheries v. Territory of Alaska*, 2 F.2d 9 (9th Cir. 1924), aff'd, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270 (1925).

"Canning" is activity of salmon cannery which is taxed.—Under this section the salmon cannery activity which is taxed is that of "canning," whether the raw fish are "purchased or otherwise obtained." *Arctic Maid v. Territory of Alaska*, 277 F.2d 120 (9th Cir. 1960), rev'd on other grounds in 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

No discrimination in favor of local cannery against freezer ships. — As between the tax laid on local cannery

by this section and those laid on "freezer ships," by AS 43.75.060 there is no discrimination in favor of the former and against the latter. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

...Since tax on freezer ships did not exceed six per cent.—No matter how the tax on "freezer ships" is computed, it did not exceed the six per cent tax on local cannery imposed by this section. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

And any difference does not violate commerce clause.—If there is a difference between the taxes imposed on freezer ships and the taxes imposed on their competitors, they are not so "palpably disproportionate" as to run afoul of the commerce clause. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

For case discussing priority of claims for license taxes under prior law in a bankruptcy proceeding, see *In re King Salmon Fisheries Co.*, 7 Alaska 97 (1923).

Constitutionality of former provisions taxing salmon cannery on basis of number of cases packed.—See *Territory of Alaska v. Pacific Am. Fisheries*, 7 Alaska 160 (1924), aff'd, 2 F.2d 9 (9th Cir. 1924), aff'd, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270 (1925).

Applied in *Schlotham v. Territory of Alaska*, 276 F.2d 605 (9th Cir. 1960), cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960): *Territory of Alaska v. Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D. Ala. 1956), aff'd, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

Am. Jur. reference.—51 Am. Jur. Taxation, § 594.

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Sec. 43.75.020. Application for license. (a) Application for a li-
cense shall be filed with the Department of Revenue and accompa-
nied by an initial fee of \$25. A separate initial fee is required for
each plant specified in the application covered by the license. The
application shall contain the name of the applicant, the line of
business to be licensed, place of business, and other facts which
the department prescribes. The applicant shall state that he agrees
to pay the license tax, and that he will make a return and pay the
tax at the time provided by law.

(b) Upon receipt of the application in proper form accompanied
by the initial fee, the department shall issue the license as of the
date the application is filed or mailed, and the applicant may carry
on the business from the date the application was actually made.
(§ 2 ch 82 SLA 1949)

✓ Sec. 43.75.030. Filing return and payment of tax. (a) A person
subject to the tax shall file a return stating the value of raw fish-
eries products processed during the license year, computed as re-
quired by §§ 10—50 of this chapter, and such other information
as the department prescribes by regulation. The return shall show
the license number and shall be signed by the taxpayer or his au-
thorized agent, under penalty of perjury. If a receiver, trustee,
or assign is operating the property or business, he shall file the
return for the person. A tax due on the basis of such a return
shall be collected in the same manner as if collected from the per-
son of whose business he has custody and control.

(b) The return shall be made on the basis of the calendar year
to the Department of Revenue at Juneau before April 1 after the
close of the calendar year.

(c) The department may prescribe regulations for the granting
of a reasonable extension of time for filing and may grant an ex-
tension of time for filing.

(d) The tax shall be paid before April 1 after the close of the
calendar year.

(e) Every person engaging or attempting to engage in a busi-
ness for which a license is required under §§ 10—50 of this chap-
ter shall keep such records, make such statements under oath, file
such returns, and comply with such regulations as the commis-
sioner of revenue may prescribe.

(f) When the department considers it is necessary, it may re-
quire a person, by notice served upon him, to file a return, make
such statements under oath, or keep and display to it such records
as it considers sufficient to show the tax for which the person is
liable. If a person fails to file a return as prescribed by law or by
regulation, or makes, wilfully or otherwise, a false or fraudulent re-
turn, the department shall make the return from the information
which it can obtain. A return made by the department is prima

facie good and sufficient for all legal purposes. (§ 3 ch 82 SLA 1949; am §§ 2, 3 ch 146 SLA 1962)

Applied in *Schlothan v. Territory* 1960), cert. denied, 362 U.S. 990, 80 of Alaska, 276 F.2d 836 (9th Cir. S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

Sec. 43.75.050. Violations and penalties. (a) If a person fails to file a return within the time prescribed by law or regulation, unless the failure is due to reasonable cause and not to wilful neglect, five per cent is added for each 30 days or fraction of 30 days during which the failure continues, not exceeding 25 per cent in the aggregate. The amount added to the tax shall be collected at the same time, in the same manner and as a part of the tax. If the tax is paid before discovery of the neglect, the amount added shall be collected in the same manner as the tax.

(b) If the tax is not paid when due, a penalty of five per cent of the total amount of the tax deficiency shall be assessed, collected and paid in the same manner as if it were a tax deficiency.

(c) If a part of a deficiency in the tax is due to fraud with intent to evade tax, 50 per cent of the total amount of the deficiency, in addition to the deficiency, shall be assessed and collected.

(d) Interest upon the amount determined as a deficiency in the tax shall be assessed at the same time as the deficiency. The interest shall be paid upon notice and demand by the department, and shall be collected as a part of the tax at the rate of six per cent a year from the time prescribed for payment of the tax to the date the deficiency is paid.

(e) A tax under §§ 10—55 of this chapter and the penalties and interest on the tax are a lien prior, paramount, and superior to all other liens, mortgages, hypothecations, conveyances, and assignments, upon all the real and personal property of the person liable for the tax, and upon all the real and personal property used with the permission of the owner to carry on the business. The special remedy provided for the recovery of license taxes set out in §§ 10—55 of this chapter is not exclusive of other civil or criminal remedies provided by law for the recovery of license taxes.

(f) A person who wilfully fails to obtain a license, pay a tax, make a return, keep or display a record, or supply the information at the time required by law or regulation, in violation of §§ 10—55 of this chapter, is, in addition to other penalties provided by law, guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both, together with the cost of prosecution.

(g) A person who wilfully makes and subscribes a return which he does not believe to be true and correct as to every material matter is guilty of a felony, and, upon conviction, is subject to the penalty prescribed for perjury.

(h) In this section "person" includes an officer, agent, or em-

ployee of a corporation who, as an agent, is under a duty to perform the same. (§ 4 ch 82 SLA 1949; am 1968)

Effect of amendment 1968 amendment revised (b).

The second 1968 amendment "§§ 10—55" for subsections (e) and (f) Legislative committee report on ch. 55, SLA see 1968 House Journal

Subsection (e) is copied from the authority of *Harvester Credit Corp* 350 U.S. 537, 76 S. Ct. 681 (1956), the constitutionality of subsection (e) of this section challenged on the ground of unconstitutionality must be upheld. *Territory of Alaska*, 271 U.S. 447, 26 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

The fact that Alaska has imposed a lien to secure fees on other businesses of a creditor of a salmon processor in the Territory of Alaska. *9th Cir.* 1960), cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

Lien provision is law insuring collection of tax provision of subsection (e) is a lawful means of collection of taxes from taxpayer from the prosecution of the taxpayer. *Territory of Alaska*, 16 Alaska 126, 190 (D. Alaska 1956), 199, 81 S. Ct. 929, 6 L. Ed. 2d 1022 (1961).

The power to impose a lien subject to the test of "necessity" and is not unlimited in the broad scope of "necessity" the taxpayer is dependent upon the legislature to liens as he is with tax itself. *Schlothan v. Territory of Alaska* 253 (1957), aff'd 9th Cir. 1960), cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

Lien reaches total value of tax. — It is the total

Article 3. Taking of Fisheries Products Which Are Sold Outside Taxing Jurisdiction.

Section	Section
100. Tax imposed on taking of fisheries products	110. Duty of taxpayer and payment of tax
	120. Violations and penalties

✓ **Sec. 43.75.100.** Tax imposed on taking of fisheries products. A person taking the fisheries products enumerated in §§ 10—50 or 60—90 of this chapter who sells the products to freezer ships, floating cold storages or floating canneries outside the taxing jurisdiction of the state is subject to the tax set out in §§ 10—50 of this chapter for the fisheries products enumerated in §§ 10—50 of this chapter, and is subject to the tax set out in §§ 60—90 of this chapter for the fisheries products enumerated in §§ 60—90 of this chapter. (§ 1 ch 190 SLA 1959)

Am. Jur. references.—1) Am. Jur., Commerce, § 119; 5) Am. Jur., Taxation, §§ 202, 206.

✓ **Sec. 43.75.110.** Duty of taxpayer and payment of tax. A person subject to taxes under §§ 100—120 of this chapter shall make a return stating the value of raw fisheries products taken during the license year for sale to freezer ships, floating cold storages, or floating canneries outside of the taxing jurisdiction of the state computed as required by §§ 100—120 of this chapter, and other information to carry out the provisions of §§ 100—200 of this chapter as may be prescribed by the department. The return shall contain the license number and shall be signed by the taxpayer or his authorized agent, under penalty of perjury. If a receiver, trustee, or assign is operating the property or business, he shall make the return for the person. A tax due on the basis of such return shall be collected in the same manner as if collected from the person of whose business he has custody and control. The requirements for time and place of payment of tax, and the obligation to keep records and make the records available to the commissioner of revenue are the same as those prescribed in the business license tax law for salmon canneries. (§ 2 ch 190 SLA 1959)

Sec. 43.75.120. Violations and penalties. (a) The liability to file returns and pay interest and deficiency assessments, and the subjection of property to liens is the same as prescribed in the business license tax law for salmon canneries.

(b) A violation of §§ 100—120 of this chapter or the regulations issued under §§ 100—120 of this chapter is a misdemeanor subject to punishment as prescribed in the business license tax law for salmon canneries. (§ 3 ch 190 SLA 1959)

Article 4. General Provisions.

Section 130. Refund to local governments

Section 135. Additional refund to boroughs and cities

✓ Sec. 43.75.130. Refund to local governments. The commissioner of revenue shall pay to each organized borough and each city of the first, second, and third classes 10 per cent of the amount of tax revenue collected in the borough or city from taxes levied by §§ 10—90 of this chapter. (§ 6 ch 155 SLA 1962; am § 75 ch 69 SLA 1970)

Effect of amendment. — The 1970 amendment inserted "and each," deleted "incorporated or independent school district, and public utility district" preceding "10 per cent," and substituted "borough or city" for "municipality or district."

Legislative committee report.—For report on ch. 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

✓ Sec. 43.75.135. Additional refund to boroughs and cities. In addition to the payment allowed in § 130 of this chapter, the commissioner of revenue shall pay to each organized borough 10 per cent of the amount of tax revenue collected in the borough from taxes levied by §§ 10—90 of this chapter and shall pay to each city of the first, second, and third classes located in the unorganized borough 10 per cent of the amount of the tax revenue collected in the city from taxes levied by §§ 10—90 of this chapter. (§ 1 ch 89 SLA 1963; am § 1 ch 120 SLA 1969)

Effect of amendment. — The 1969 amendment, effective January 1, 1970, added the language beginning "and shall pay to each city."

Editor's note. — Section 2, ch. 89, SLA 1963, provides: "This Act applies retroactively to January 1, 1963."

Chapter 80. General Provisions.

Section 10. Accounts to be kept by persons subject to tax
20. Prosecution for failure to secure license

Section 30. Production of license
40. Definition

Sec. 43.80.010. Accounts to be kept by persons subject to tax. A person subject to a tax shall keep in permanent form at his principal place of business or occupation within the state correct accounts in a manner which will readily disclose, upon examination, the amount of tax due the state. The department may adopt regulations for the making and keeping of these records. (§ 35-1-15 ACLA 1949)

Sec. 43.80.020. Prosecution for failure to secure license. (a) A person engaging in or carrying on or attempting to engage in or carry on a business, trade, profession or occupation for which a license is required as a condition precedent, without obtaining the

§ 43.80.030

license, is guilty of a misdemeanor. (b) All fines and expenses, shall not exceed \$100. (1949)

Am. Jur. references Licenses, § 75 et seq.

Sec. 43.80.030. Under § 20 of this chapter, a person who procures the services of another that he did not

Sec. 43.80.040. Department of

Chapter

Revisor's note: publication of this Act to the Alaska Statutes

STATE OF ALASKA

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING

POUCH SA - JUNEAU 99811

March 7, 1977

Attn Judith

JAY S. HAMMOND, GOVERNOR

The Honorable Lisa Rudd
Chairman
House Community & Regional Affairs
Committee
Alaska State Legislature
Room 620 - Court Building
Juneau, Alaska

Re: House Bill No. 256

Dear Representative Rudd:

House Bill No. 256, an Act relating to the raw fish tax was introduced in the House on February 23, 1977 and was referred to the House Community & Regional Affairs and Finance Committees.

For the consideration of the House Community & Regional Affairs Committee, I am enclosing a Fiscal Note prepared by Mr. P. A. Wall, Director, Administrative Services Division, Department of Revenue, Juneau concerning the proposed legislation.

Very truly yours,



R. D. Stevenson
Special Assistant

Enclosure

cc: The Honorable Steve Cowper
Chairman
House Finance Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

P. A. Wall, Director
Administrative Services Division
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSHB 256
 Title Relating to raw fish tax
 Requested by House C & RA ext. 3370 Date 5/11/78

II. FISCAL DETAIL
 Agency Affected Revenue
 Program Category Affected Development
 Budget Request Unit(s) Affected Shared taxes

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES	*336.0	*336.0	*336.0	*336.0	*336.0	*336.0
700 GRANTS, CLAIMS, ETC.						

TOTAL
 *Raw Fish Tax revenue varies with harvest each year. The amount of sharing will vary accordingly.

FUNDING (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
GENERAL FUND		(336.0)	(336.0)	(336.0)	(336.0)	(336.0)
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
FULL TIME						
PART TIME						
TEMPORARY						

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

The assumption is that CSHB 256 will be amended with the result that AS43.75.135 is abolished, that AS43.75.130 is changed by deleting the first class city restriction thereby broadening the section to include second class cities and by increasing payments from 10 to 20 percent. The effect of the amendment would be that each borough will be paid 20 percent of the Fish Tax Revenue collected in that borough and that each city (First or Second class) will be paid 20 percent of the Fish tax revenue collected in that city.

Boroughs received 489.9 from Fish Tax Revenues in FY 77. Sharing to Boroughs would have been 640.0, an increase of 150.0, if the amendment were applied to FY 77. First class cities received 529.7 from Fish Tax Revenues in FY 77. Second class cities were not eligible for sharing in FY 77. Sharing to First and Second class cities would have been 715.6, an increase of 185.9, if the amendment were

IV. DATE May 15, 1978 PREPARED BY [Signature]
 AGENCY Department of Revenue
 PHONE 465-2313
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

using these increase the effect upon the general fund would be a decrease of 336.0 in FY 79.

There is no additional cost in administering the Bill.