

HB

227

2/26 Tabled after hearing

Held to be considered along with bill being introduced by Revenue Dept. which would raise all processor ~~tax~~ taxation to 6%

3/8 Tabled after hearing





This section relates to the license tax imposed on salmon canneries. Territory of Alaska v. Arctic Maid, 16 Alaska 126, 140 F. Supp. 190 (D. Alas. 1956), aff'd, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961)

Qualifying as taxpayer under duress. — One need not incur the risk of penalties, while the validity of the tax is being ascertained judicially, in order to qualify as a taxpayer under duress. State v. Wakefield Fisheries, Inc., Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972).

For cases construing former provisions similar to repealed subsection (e), see Territory of Alaska v. Arctic Maid, 16 Alaska 126, 140 F. Supp. 190 (D. Alaska

1956), aff'd, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961); Schlothman v. Einstoss, 17 Alas. 253 (1957), aff'd, 276 F.2d 806 (9th Cir.), cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960); Schlothman v. Territory of Alaska, 276 F.2d 806 (9th Cir.), cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

Applied in Territory of Alaska v. American Can Co., 14 Alaska 534, 117 F. Supp. 819 (D. Alas. 1954); Territory of Alaska v. Arctic Maid, 15 Alaska 667, 135 F. Supp. 164 (D. Alas. 1955).

Quoted in Territory of Alaska v. Craig Enterprises, Sup. Ct. Op. No. 14 (File No. 3), 355 P.2d 397 (1960).

Sec. 43.75.055. Security for collection of taxes. Each applicant for a license under this chapter shall in or with his application state under oath the amount of each of the products which he expects to produce during the license year. The applicant shall further state the extent of lienable real property owned by the applicant in the state against which the tax may be collected and other information with respect to description, location and value of the property which the department prescribes. If the lienable value of the property is not equal to three times the amount of the tax for which the applicant will probably be liable under this section, the department may not issue the license until the applicant files with the department a surety bond approved by the attorney general in a penal sum equal to twice the probable amount of the tax for which the applicant will be liable, conditioned upon payment of the tax in full when due, with interest if not paid before delinquency. The department may waive the bond requirement if the applicant posts other security in the form of collateral acceptable to the department. (S 4 ch 84 SLA 1967)

Article 2. Cold Storages and Other Fish Processors.

- Section 60 Fisheries business licenses
- 70 License application and fee
- 80. Duty to pay tax and keep records.

- Section 90 Violations and penalties
- 95 Security for collection of taxes

Sec. 43.75.060. Fisheries business licenses. A person engaging or attempting to engage in any of the following lines of business in connection with the state's commercial fisheries shall first obtain a license.

(1) Shore-based cold storages and other fish processors, except salmon canneries, herring processing plants, crab canneries, and clam canneries otherwise licensed shall pay an annual license tax equal to one per cent of the value of the raw halibut, halibut livers and viscera.

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salmon and bottom fish, shellfish or other fishing resource bought or obtained for processing through freezing, salting, or other method. The value of the raw material under §§ 60 — 90 of this chapter is the actual price paid for it, including indirect considerations such as fuel or supplies furnished by the processor or offsets to the cash value for gear furnished. The value applies to the raw material procured in company-owned or subsidized boats operated by employees of the processor or under lease or other arrangement.

(2) Freezer ships and other floating cold storages shall pay an annual license tax equal to four per cent of the value of the raw halibut, halibut livers and viscera, salmon and bottom fish, shellfish, or other fishing resource bought or obtained for processing through freezing, salting, or other method, or the taking of crab for export without such processing. The value of the raw material under §§ 60 — 90 of this chapter is the actual price paid for it including indirect considerations such as fuel or supplies furnished by the processor or offsets to the cash value for gear furnished. The value applies to the raw material procured in company-owned or subsidized boats operated by employees of the processor or under lease or other arrangement.

(3) In (1) of this section, "shore-based cold storages and other fish processors" mean those cold storages and processing plants which are permanently attached to the land or have remained in the same location for a period of not less than one calendar year. Any cold storage or processing plant removed from the state is a floating cold storage under (2) of this section from the day of removal.

(4) Cold storages and fish processing plants which are not shore-based under (3) of this section are "floating cold storages" under (2) of this section.

(5) The person, firm, or corporation engaging or attempting to engage in the above lines of business who actually and physically 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 processed the value of any raw fishery resources processed for other persons, firms, or corporations, but shall include this as a part of the value of the raw product obtained for processing. (S 1 ch 97 SLA 1949; am § 1 ch 116 SLA 1951; am § 1 ch 102 SLA 1955; am § 1 ch 88 SLA 1966; am § 3 ch 84 SLA 1967)

**History of section.** — See *State v Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972); *State v Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

**Effect of 1966 amendment.** — Prior to the 1966 amendment, the legislature

The higher tax was directed at those particular floating processors who could otherwise evade local regulation and taxation, yet exploit a valuable state resource. *State v Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972).

It was the 1966 amendment to the statute

based solely on the movements and locations of the vessels. *State v Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

Prior to 1966, the primary distinguishing feature of the "floating" processor was its method of processing its catch, rather than its movement in the waters. At that time, the higher four percent tax was directed only at floating freezer or "cold storage" ships which took crab for export without processing it in Alaska. All other processors, both ashore and afloat, were taxed at the lower rate of one percent. *State v Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

**Characterization of legislative intent in State v. Wakefield Fisheries, Inc., no longer meaningful.** — The characterization of the legislative intent in *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972), which was based on an earlier version of this section, is no longer meaningful since this section was amended to remove the distinction between types of processors and to widen the class of processors to be subject to the higher tax. *State v Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

**This section imposes no burden on interstate commerce, or any artificial rigidity on the salmon industry, by requiring the catching of salmon in Alaska and imposing restrictions on the shipment of fish out of Alaska prior to canning.** *Territory of Alaska v Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D. Alas. 1956), aff'd, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

This section, which imposes a higher tax upon "floating" processors than upon "shore-based" processors, is not unconstitutional as applied to floating processors on the ground that it violates the commerce clause of the United States Constitution. *State v Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

Since the classification of processing ships as "floating" processors is based not upon their interstate movement, but upon their movement within Alaskan waters, for the purposes of application of this section, there is no interstate movement, and, therefore, there is no burden nor even an incidental impact upon interstate commerce. *State v Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

Nor does it affect fish laws of United States. — The imposition by the Alaska legislature of license taxes under this section relating to the commercial fisheries of Alaska to provide revenue does not in any way alter, amend, modify, or repeal the existing fish laws of the United States applicable to Alaska. *Territory of Alaska v Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D. Alas. 1956), aff'd, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**Classification of section does not deny equal protection.** — The classification which imposes different tax rates on "floating" and "shore-based" processors does not constitute a violation of the federal and state guarantees of equal protection. *State v Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

It was not arbitrary for the legislature to conclude that "shore-based" processors, with at least a year's commitment to one location, were to be preferred over floating processors, which distributed economic benefits over several locations. *State v Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

The distinction between mobile and stationary processors can easily be characterized as a tax incentive, to encourage "shore-based" processors, and in this light, the tax differential bears a fair and substantial relationship to the goal of encouraging societal contributions of the type made by "shore-based" processors, especially since conversion from "floating" to "shore-based" is a simple matter of remaining in one location for a calendar year. *State v Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

**It is valid legislative classification.** — Imposing a tax of one per cent on the value of fish taken on the line of business of shore-based cold storages, while imposing a four per cent tax on the line of business of freezer ships and other floating cold storages is a valid legislative classification. *Territory of Alaska v Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D. Alas. 1956), aff'd, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**And there is no discrimination in this section between residents and nonresidents.** *Territory of Alaska v Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D. Alas. 1956), aff'd, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**Not between freezer ship operators and local canners under AS 43.75.010.** — As

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**Article 2. Cold Storages and Other Fish Processors.**

Section  
60 Fisheries business licenses  
70 License application and fee  
80 Duty to pay tax and keep records

Section  
90 Violations and penalties  
95 Security for collection of taxes

**Sec. 43.75.060. Fisheries business licenses.** A person engaging or attempting to engage in any of the following lines of business in connection with the state's commercial fisheries shall first obtain a license.

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(2) Freezer ships and other floating cold storages shall pay an annual license tax equal to four per cent of the value of the raw halibut, halibut livers and viscera, salmon and bottom fish, shellfish, or other fishing resource bought or obtained for processing through freezing, salting, or other method, or the taking of crab for export without such processing. The value of the raw material under §§ 60 — 90 of this chapter is the actual price paid for it including indirect considerations such as fuel or supplies furnished by the processor or offsets to the cash value for gear furnished. The value applies to the raw material procured in company-owned or subsidized boats operated by employees of the processor or under lease or other arrangement.

(3) In (1) of this section, "shore-based cold storages and other fish processors" mean those cold storages and processing plants which are permanently attached to the land or have remained in the same location for a period of not less than one calendar year. Any cold storage or processing plant removed from the state is a floating cold storage under (2) of this section from the day of removal.

(4) Cold storages and fish processing plants which are not shore-based under (3) of this section are "floating cold storages" under (2) of this section.

(5) The person, firm, or corporation engaging or attempting to engage in the above lines of business who actually and physically 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 processed the value of any raw fishery resources processed for other persons, firms, or corporations. This shall include fish as a part of the value of the raw product obtained from processing fish. (ch 97 SLA 1949, am § 1 ch 116 SLA 1951; am § 1 ch 102 SLA 1955; am § 1 ch 88 SLA 1966, am § 3 ch 84 SLA 1967)

*History of section* — See State v Wakefield Fisheries, Inc. Sup. Ct. Op. No. 779 (file Nos. 1397, 1398, 495 P.2d 166) and State v. Greer King Co. Sup. Ct. Op. No. 744 (file Nos. 2005, 2006, 2007) 495 P.2d 166 (1972).

*History of 1966 amendment* — From the 1966 amendment to the statute.

The higher tax was directed at those particular floating processors who could otherwise evade local regulation and taxation, yet exploit a valuable state resource. State v. Wakefield Fisheries, Inc., Sup. Ct. Op. No. 779 (file Nos. 1397, 1398), 495 P.2d 166 (1972).

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(2) Freezer ships and other floating cold storages

license tax equal to four per cent of the value of the fish, crabs, shellfish, livers and viscera, salmon and bottom fish, shellfish, or other fishing resource bought or obtained for processing through freezing, salting, or other method, or the taking of crab for export or other processing. The value of the raw material under this chapter is the actual price paid for it including indirect considerations such as fuel or supplies furnished by the processor or offsets to the processor furnished. The value applies to the raw material processed in company-owned or subsidized boats operated by the processor or under lease or other arrangement.

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(4) Cold storages and fish processing plants which are under (3) of this section are "floating cold storages" under (2) of this section.

(5) The person, firm, or corporation engaging or attending in the above lines of business who actually and physically processes above fishery resources shall be liable for and shall pay to the department the whole tax imposed by this section. In determining tax liability the person, firm, or corporation may not deduct the value of the raw fishery resources processed the value of other fishery resources processed for other persons, firms, or corporations but shall include this as a part of the value of the raw material for processing. (S 1 ch 97 SLA 1949; am S 1 ch 116 SLA 1954; am S 1 ch 102 SLA 1955; am S 1 ch 88 SLA 1966; am S 3 ch 84 SLA 1966)

History of section. — See State v Wakefield Fisheries, Inc., Sup. Ct. Op. No. 779 (File Nos 1307, 1398), 495 P 2d 166 (1972); State v Reefer King Co. Sup. Ct. Op. No. 1344 (File Nos 2605, 2606, 2607), 559 P 2d 56 (1976).

Effect of 1966 amendment. — Prior to the 1966 amendment, the legislature intended to distinguish between types of processes as well as locale of the operation.

The higher tax rate applied to a particular floating processor who otherwise evade local taxation, yet exploit a valuable resource. State v Wakefield Fisheries, Inc., Sup. Ct. Op. No. 779 (File No. 1307, 1398), 495 P 2d 166 (1972)

It was the 1966 amendment which first created a distinction between "shore-based" and "floating"

Title 21  
Public Officers  
and Employees

Title 43  
Revenue and Taxation

Title 49  
Public Accounts  
and Accounting

Title 41  
Public Services

Title 47  
Public Utilities  
and Carriers

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF REVENUE

STATE OFFICE BUILDING

POUCH SA - JUNEAU 99811

February 26, 1979

The Honorable Alvin Osterback,  
Co-Chairman  
House Resources Committee  
Room 118 - Capitol Building  
Juneau Alaska

Dear Mr. Osterback:

HOUSE BILL NUMBER 227

House Bill number 227, an Act relating to fisheries business licenses, was introduced in the House on February 15, 1979 and was referred to the House Resources and Finance Committees.

For the consideration of the House Resources Committee, I am enclosing a copy of a Fiscal Note prepared by Mr. Gary Jenkins, Director, Audit Division, Department of Revenue concerning the proposed legislation.

Sincerely,

R. D. Stevenson  
Special Assistant

cc: The Honorable Bill Miles  
Co-Chairman  
House Resources Committee

The Honorable Russ Meekins  
Chairman  
House Finance Committee

John Messenger  
Acting Commissioner  
Department of Revenue

Gary Jenkins, Director  
Audit Division  
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill 227  
 Title Audit Relating to Fisheries Business Licenses  
 Requested by House Resources Committee Date 2/26/79

II. FISCAL DETAIL

Agency Affected Revenue  
 Program Category Affected Fiscal Services  
 BRU, Program, or Subprogram(s) Affected Audit Division  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars) - None

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars) - None

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS - None

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
FULL TIME						
PART TIME						
TEMPORARY						

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

See attached memo to R.D. Stevenson dated 2/26/79.

IV. DATE 2/26/79 PREPARED BY [Signature]  
 AGENCY Revenue, Audit Division  
 PHONE 465-2124  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)


# MEMORANDUM

TO:  R. D. Stevenson  
Special Assistant

DATE February 26, 1979

FILE NO:

TELEPHONE NO

FROM: Gary L. Jenkins   
Director, Audit Division

SUBJECT HB 227

This bill would eliminate the 4 percent rate on fish processors who do not qualify as shore based. Passage of this bill would result in a loss of revenue to the State of approximately \$1,000,000, \$50,000 of which is shared back to communities in which the processing is done.

There will be no additional costs of administration due to this proposed bill.

It should be noted that there is a minor technical error in the bill on lines 16 and 17. The reference to Sec. 60-90 of the code have been modified and the words "of this Chapter" have been omitted. If this was a deliberate change, perhaps the committee will want to show those changes in correct format.