

H B

306

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AGO 126051

Mtg 3/8/79 - Tabled after testimony

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A M E N D M E N T

Offered in the HOUSE

By Osterback

TO: HOUSE BILL NO. 306

Page 3, line 7:

After "by-products," delete the remainder of the paragraph and insert:

except fish species which have been designated by the commissioner of fish and game as a developing commercial species under AS 16.05.050(12);

Page 6, following line 20, insert:

* Sec. 13. AS 16.05.050 is amended by adding a new paragraph to read:

(12) not later than October 31 of each year, designate and provide to the commissioner of revenue the names of those species of fish of which there is a significant supply and for which there is a developing commercial market.

Renumber subsequent sections.

COMMITTEE REPORT

HOUSE

FURTHER: C&RA and then
FINANCE

February 27, 1979

Date: _____

Mr. Speaker:

The Committee on RESOURCES has had HB 306

"An Act relating to fisheries taxes; eff. date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

PR 306

February 27, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting at the direction of Governor Jay S. Hammond a bill revising Alaska's fisheries tax.

This bill standardizes the tax rate and tax base for the fishery tax statute at six per cent of the raw value regardless of the species of fish being processed or method of processing.

Currently the tax statute contains several different rates and tax bases depending upon the type of fish processed and the type of processing used. For example, salmon canneries are currently taxed the heaviest based upon three per cent of the average wholesale price during the last five years. Freezer ships and floating cold storages are taxed at four per cent of the raw value while other canneries are taxed at two per cent of the raw value. Shore-based cold storages on the other hand are taxed at only one per cent of the raw value. This bill more equitably imposes a single rate for all processing operations and raises the rate to six per cent.

It is estimated that this change will raise approximately an additional 12 million dollars in the first year. The bill proposes to use this additional revenue to fund fishery enhancement projects at both the state and municipal level.

First of all, the bill provides that 1/3 of the revenue collected in a municipality will be shared with that municipality. Of that amount, 1/2 is general revenue sharing while the other 1/2 must be used for docks and other fishery enhancement programs. It is estimated that all municipalities will receive more revenue sharing under this bill than under current law by at least two times and in most cases by even more.

Secondly, the bill provides that 1/3 of the revenue may be appropriated by the legislature to the Commercial Fishing and Agriculture Bank until the bank is fully capitalized based upon the projected capital needs of the bank. This will provide badly needed capital for funding resident fishermen and fish processing needs. Without additional funding as proposed in this bill, it is doubtful that the state can afford additional appropriations into the Commercial Fishing and Agriculture Bank or other fishery enhancement projects this year.

Thirdly, the bill provides that the remaining 1/3 of the revenue would go to the general fund to maintain the present level of general fund revenues to the state.

I am concerned, under our present fiscal condition, about providing a funding source for future fishery enhancement programs in the state and this bill would provide that source at both the state and municipal level while at the same time making a badly needed reform of the outdated fishery tax statute.

Sincerely,

S/KD

Kent Dawson
Executive Assistant
to the Governor

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HOUSE BILL NO. 306 Page 1 of 3
 Title An Act relating to fisheries taxes
 Requested by _____ Date _____

II. FISCAL DETAIL
 Agency Affected Department of Revenue
 Program Category Affected Revenue Collection and Management
 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)

	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	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)


GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

It is estimated that this bill will raise an additional 12 million dollars and bring total fish tax collections to 20 million dollars. These collections will be split evenly among the general fund, revenue sharing to municipalities, and the commercial fishing and agriculture bank, until fully capitalized. It is estimated that revenue sharing to municipalities would be increased by about 4 million dollars as shown in the attached breakdown. It would also allow an annual appropriation to the commercial fishing and agriculture bank of approximately 7 million dollars. Revenue to the general fund would be increased by approximately 1 million dollars and then by a greater amount when the commercial fishing and agriculture bank is fully capitalized. A breakdown of the distribution of revenues is shown in the attached pages.

IV. DATE 2/26/79 PREPARED BY 
 AGENCY Department of Revenue
 PHONE: 467-300
 Original Legislative Finance
 cc: Budget and Management
 (Prime Sponsor (Print Name of Legislator Named))

FISH TAX PROPOSAL
(1977-1978)

COMMUNITIES	TOTAL REVENUE COLLECTED		REVENUE SHARED	
	EXISTING	PROPOSED	EXISTING - (20%)	PROPOSED (33-1/3%)
ANCHORAGE CITY & BOROUGH	\$ 202,598.29	\$ 529,886.46	\$ 40,519.66	\$176,452.19
STOL BAY	463,903.02	636,982.85	92,780.60	212,115.28
CORDOVA	558,723.88	988,707.05	111,744.77	329,239.44
CRAIG	14,073.75	84,192.50	2,814.75	28,036.10
DILLINGHAM	164,010.31	983,561.86	32,802.06	327,526.09
HAINES BOROUGH*	177,336.56	320,918.67	35,471.84	106,890.40
HAINES	45.34	147.04	4.53	24.48
HOMER	64,678.37	255,447.72	6,467.84	42,532.05
HOONAH	11,196.27	67,052.62	2,239.25	22,328.52
HYDABURG	7,820.15	46,795.90	1,564.03	15,583.03
JUNEAU CITY & BOROUGH	40,163.84	240,608.04	8,032.77	80,122.48
KENAI BOROUGH*	327,087.01	782,202.92	132,326.36	523,952.65
KENAI	340,080.00	593,964.91	34,008.00	98,895.16
KETCHIKAN GATEWAY BOROUGH*	273,231.39	405,771.01	70,299.04	195,012.13
KETCHIKAN	156,529.09	359,702.06	15,652.76	59,890.39
KING COVE	58,042.28	251,198.56	11,608.46	83,649.12
KLAWOCK	113,605.53	153,100.14	22,721.11	50,982.35
KODIAK BOROUGH*	416,239.21	562,447.54	182,757.95	753,621.31
KODIAK	995,101.01	3,401,359.50	99,510.10	566,326.35
NENANA	69.63	292.78	13.93	97.50
PELICAN	59,580.57	357,108.42	11,916.11	118,917.10
PETERSBURG	498,258.45	1,084,785.50	99,651.69	361,233.57
ST. MARY'S	1,175.00	6,925.00	235.00	2,306.03
SELDOVIA	11,513.43	68,830.58	1,151.34	11,460.29
SEWARD	252,817.79	664,213.70	25,281.78	110,591.58
SITKA CITY & BOROUGH	36,542.35	218,879.10	7,308.47	72,886.74
UNALASKA	701,343.38	2,915,587.34	140,269.07	970,890.60
WRANGELL	57,829.92	146,603.37	11,565.98	48,818.92
YAKUTAT	7,302.94	43,442.64	1,460.59	14,466.40
and Point			14533.00	87,200.00

* Includes additional Revenue Sharing from cities within borough.

Figures are based upon 1978 collections for the 1977 tax year and may differ from budget figures based upon fiscal year cutoff.

GENERAL FUND PORTION
(1977-1978)

EXISTING SYSTEM

\$7,088,926

PROPOSED SYSTEM

\$8,235,133

COMMERCIAL FISHING AND AGRICULTURE BANK
(1977-1978)

EXISTING SYSTEM

\$ -

PROPOSED SYSTEM

\$6,834,368

REVENUE SHARING
(1977-1978)

EXISTING SYSTEM

\$1,211,074

PROPOSED SYSTEM

\$5,432,761

TOTALS
(1977-1978)

EXISTING SYSTEM

\$8,300,000

PROPOSED SYSTEM

\$20,502,263

ALASKA STATE LEGISLATURE

ELEVENTH Legislature FIRST Session

HOUSEBILL..... NO.306

By ..THE RULES COMMITTEE BY...
REQUEST OF THE GOVERNOR

"An Act relating to fisheries taxes; and providing for an effective date."

Fisheries taxes

Introduced in the House 2-27, 1979

HISTORY IN THE HOUSE

19 79

Feb. 27

Read first time and referred to Committee on

Resources and C&RA and Finance
Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by Speaker
Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
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Reported correctly engrossed
Signed by President
Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Received from Senate

Concurred in Senate amendment thus adopting:
VOTE

Failed to concur in Senate amendment; asked Senate to recede
VOTE

Senate receded from amendment
VOTE

Senate failed to recede from amendment
VOTE

CC appointed by House

CC appointed by Senate

CC adopted by House
VOTE

CC adopted by Senate
VOTE

To enrolling
Reported correctly enrolled
Sent to Governor

by Governor

Filed with Lt. Governor

Chapter No.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HOUSE BILL NO. 306 Page 1 of 3
 Title An Act relating to fisheries taxes
 Requested by _____ Date _____

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 Program Category Affected Revenue Collection and Management
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 PHONE 465-2100
 Original: Legislative Finance
 cc: Budget and Management
 Print Sponsor (First Legislator Named)

FISH TAX PROPOSAL
(1977-1978)

COMMUNITIES

TOTAL REVENUE COLLECTED
EXISTING ----- PROPOSED

REVENUE SHARED
EXISTING - PROPOSED
(20%) (33-1/3%)

<u>COMMUNITIES</u>	<u>TOTAL REVENUE COLLECTED</u> EXISTING ----- PROPOSED		<u>REVENUE SHARED</u> EXISTING - PROPOSED (20%) (33-1/3%)	
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Pr 306

February 27, 1979

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Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

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It is estimated that this change will raise approximately an additional 12 million dollars in the first year. The bill proposes to use this additional revenue to fund fishery enhancement projects at both the state and municipal level.

First of all, the bill provides that 1/3 of the revenue collected in a municipality will be shared with that municipality. Of that amount, 1/2 is general revenue sharing while the other 1/2 must be used for docks and other fishery enhancement programs. It is estimated that all municipalities will receive more revenue sharing under this bill than under current law by at least two times and in most cases by even more.

LOCAL 2111

30

Secondly, the bill provides that 1/3 of the revenue may be appropriated by the legislature to the Commercial Fishing and Agriculture Bank until the bank is fully capitalized based upon the projected capital needs of the bank. This will provide badly needed capital for funding resident fishermen and fish processing needs. Without additional funding as proposed in this bill, it is doubtful that the state can afford additional appropriations into the Commercial Fishing and Agriculture Bank or other fishery enhancement projects this year.

Thirdly, the bill provides that the remaining 1/3 of the revenue would go to the general fund to maintain the present level of general fund revenues to the state.

I am concerned, under our present fiscal condition, about providing a funding source for future fishery enhancement programs in the state and this bill would provide that source at both the state and municipal level while at the same time making a badly needed reform of the outdated fishery tax statute.

Sincerely,

S/KD

Kent Dawson
Executive Assistant
to the Governor

HB 306

§ 43.75.010

REVENUE AND TAXATION

§ 43.75.010

Article 1. Salmon Canneries and Certain Fish Processors.

Section

- 10. Fisheries business licenses
- 20. Application for license
- 30. Filing return and payment of tax

Section

- 50. Violations and penalties
- 55. Security for collection of taxes

Sec. 43.75.010. Fisheries business licenses. (a) 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 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 percent, commissions actually paid to independent brokers not to exceed five per cent, and swell allowance not to exceed one-tenth of one per cent.

(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 Law 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 provision 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*, 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 canneries 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, 270 (11)
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aff'd, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 276 (1925).

Applied in *Schlotham v. Territory of Alaska*, 276 F.2d 806 (9th Cir. 1960), cert. denied, 362 U.S. 890, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960); *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).

Cited in *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972).

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

Sec. 43.75.020. Application for license. (a) Application for a license shall be filed with the Department of Revenue and accompanied 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 fisheries products processed during the license year, computed as required 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 authorized 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 person 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 extension 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 business for which a license is required under §§ 10 — 50 of this chapter shall keep such records, make such statements under oath, file such returns, and comply with such regulations as the commissioner of revenue may prescribe.

(f) When the department considers it is necessary, it may require 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 return, 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 of Alaska*, 276 F 2d 806 (9th Cir.), cert. denied. 362 U.S 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

Sec. 43.75.050. Violations and penalties. (a) Repealed by § 3 ch 166 SLA 1976.

(b) Repealed by § 3 ch 166 SLA 1976.

(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) Repealed by § 3 ch 166 SLA 1976.

(e) Repealed by § 4 ch 94 SLA 1976.

(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 employee of a corporation or a member, agent, or employee of a partnership who, as an officer, agent, employee, or member, is under duty to perform the act in respect to which the violation occurs. (§ 4 ch 82 SLA 1949; am § 1 ch 17 SLA 1968; am §§ 1, 2 ch 55 SLA 1968, am § 4 ch 94 SLA 1976; am § 3 ch 166 SLA 1976)

Cross references. — For civil penalty imposed for failure to file a return or report, or pay the full amount of a tax, or a portion of a deficiency of the tax, see AS 43.05.220. As to interest on taxes, see AS 43.05.225. For provisions creating a lien for unpaid taxes or license fees, see AS 43.10.035.

Effect of amendments. — The first 1976 amendment repealed subsection (e), which made a tax under this article and the penalties and interest on the tax a lien, and provided generally for such lien.

The second 1976 amendment repealed subsections (a), (b) and (d), which provided for an additional amount to be added to the tax for failure to file a return within the time prescribed by law or regulation due to wilful neglect, for a penalty if the tax is not paid when due, and for the assessment and collection of interest on the amount determined as the deficiency in the tax, respectively.

Legislative committee report. — For report on ch. 55, SLA 1968 (HR 484), see 1968 House Journal, p. 324.

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); Schlothan 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); Schlothan 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. (§ 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,

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. (§ 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), 493 P 2d 166 (1972); *State v Reefer King Co.*, Sup Ct Op No 1344 (File Nos 2605, 2606, 2607), 559 P 2d 38 (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 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), 493 P 2d 166 (1972).

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

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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).

Nor between freezer ship operators and local cannery operators under AS 43.75.010. — As between the tax laid on local cannery operators by AS

43.75.010 and those laid on "freezer ships," by this section there is no discrimination in favor of the former and against the latter, for no matter how the tax on "freezer ships" is computed, it did not exceed the six per cent tax on the local canners. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

And any difference is not invalid under the commerce clause. — If there is a difference between the taxes imposed on these 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).

The tax imposed by this section is an occupation tax. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

It is computed on the "value" of the fish bought or obtained for processing through freezing. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

"Value" is the measure of the tax, not the taxable event. — *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

The taxable event is "processing" the "business" of "freezer ships and other floating cold storages." *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

In freezer ship operations there is a preliminary local business being conducted, an occupation made up of a series of local activities which the state can constitutionally reach. Catching the fish or obtaining them in other ways from the local market is but an extension of the freezer ship's operations within Alaska's waters. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

The process of gathering fish either through the catcher boats that are a part of a freezer ship fleet or through independent operators is a "local activity." *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

Which state may tax. — Alaska's jurisdiction to tax freezer ship operations within her territorial waters — whether those activities are taking fish or purchasing fish taken by others — is clear. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

Where some of the fish taken by freezer ship operators were taken in Alaska's waters or otherwise acquired there, the freezer ship operators were engaged in

business in Alaska when they operated their freezer ships. *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

"Freezer ships" and "factory ships" distinguished. — See *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972).

The test contained in subsection (3) is clear and unequivocal. A broad reading of this provision is not demanded. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

The type of attachment contemplated by subsection (3) is some palpable physical attachment or a permanent berthing. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

Vessel situated in such a manner as to permit pedestrian access from land onto the processing vessel would meet this test. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

Removal of vessels for repairs. — Removal of vessels from the state for drydock repairs does not require reclassification under the higher rate of taxation. *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972).

Removal of vessels for periodic repairs and maintenance should not destroy the continuity of the period during which the vessels are deemed to be at fixed locations for one calendar year. *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972).

Processors disqualified from "shore-based" status. — Where, in addition to the yearly trips to Seattle for maintenance, the processors also sailed among several Alaskan communities to conduct their processing operations, they were disqualified from "shore-based" status under this section. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

To the extent that the continued operations of a processing vessel demand out-of-state ship maintenance, vessel movement will not be deemed to eliminate a processor's "shore-based" status. But a processor which engages in the type of activity as do processors sailing among several Alaskan communities to conduct their processing operations cannot expect to be able to claim "shore-based" status. *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

No showing that state selectively enforced this section against certain floating processors. — See *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

Applied in *Arctic Maid v. Territory of Alaska*, 277 F.2d 120 (9th Cir. 1960), rev'd

in 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

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

Sec. 43.75.070. License application and fee. (a) Application for a license shall be filed with the Department of Revenue and accompanied by an initial fee of \$25. A separate initial fee is required for each plant specified in the application. The application shall contain the name, the line of business, place where the business is to be carried on, and other facts which the department prescribes. The applicant shall state that he agrees to pay the license tax, make a true return, and pay the tax at the time provided by law.

(b) Upon receipt of the application in the 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 97 SLA 1949)

Sec. 43.75.080. Duty to pay tax and keep records. The requirements for making returns, the time and place for payment of tax, and the obligation to keep records and make them available to the department are the same as prescribed in the business license tax law for salmon canneries. (§ 3 ch 97 SLA 1949)

Sec. 43.75.090. Violations and penalties. (a) The liability to file returns and pay interest and deficiency assessments, and the subjection of property to liens are the same as prescribed in the license tax law for salmon canneries.

(b) A violation of §§ 60 — 95 of this chapter or the regulations issued under §§ 60 — 95 of this chapter is a misdemeanor subject to punishment as prescribed in the business license tax law for salmon canneries. (§ 4 ch 97 SLA 1949; am § 1 ch 30 SLA 1968)

Cross reference. — See note to AS 43.5050

Legislative committee report. — For report on ch 30, SLA 1968 (HB 412), see 1968 House Journal, p. 144

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)

Sec. 43.75.095. 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. However, if the applicant purchases salmon for export from Alaska in the round, the amount of the bond shall be \$50,000 unless the applicant is the owner of lienable real property in the state of a value of at least \$50,000, and the bond shall be conditioned upon payment to the fisherman of the full purchase price for the salmon and the payment of the tax in full when due. The department may waive the bond requirement if the applicant posts other security in the form of collateral acceptable to the department or prepays the estimated tax. (5 5 ch 84 SLA 1967)

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

<p>Section 100 Tax imposed on taking of fisheries products</p>	<p>Section 110 Duty of taxpayer and payment of tax 120 Violations and penalties</p>
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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. (5 1 ch 190 SLA 1959)

Am. Jur. references. — 11 Am Jur., Commerce, ¶ 119, 51 Am Jur., Taxation, ¶ 262, 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
- 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 class 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; am § 10 ch 218 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "city of the first class" for "city of the first, second, and third classes". **Legislative committee report.** — For report on ch. 69, SLA 1970 (HB 364), 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 class 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; am § 11 ch 218 SLA 1976)

Effect of amendment. — The 1976 amendment substituted "city of the first class" for "city of the first, second, and third classes".

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5 - JUNEAU 99811

March 8, 1979

The Honorable Alvin Osterback
Co-Chairman
House Resource Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Osterback:

You have requested the Department of Revenue look at fish tax receipts that would be collected if a tax rate based on the effective current canned salmon rate was applied uniformly.

The breakdown of revenues on the attached sheets is based on a tax rate of 4.45 percent. This rate was arrived at by taking the raw value of salmon used by canneries, \$121,758,700 (based on Fish And Game Catch Estimates) and dividing it by the FY 1978 tax collected from canneries, \$5,420,438.

The total amount of revenue that would be collected using a 4.45 percent rate would be \$15,205,850. A further breakdown of this total is attached for your information.

Sincerely,



John R. Messenger
Acting Commissioner

GENERAL FUND PORTION
(1977-1978)
Based on 4.45%

EXISTING SYSTEM

\$7,097,820

PROPOSED SYSTEM

\$6,139,472

COMMERCIAL FISHING AND AGRICULTURE BANK
(1977-1978)

EXISTING SYSTEM

\$ -0-

PROPOSED SYSTEM

\$5,068,617

REVENUE SHARING
(1977-1978)

EXISTING SYSTEM

\$1,202,180

PROPOSED SYSTEM

\$3,997,761

TOTALS
(1977-1978)

EXISTING SYSTEM

\$8,300,000

PROPOSED SYSTEM

\$15,205,850

FISH TAX PROPOSAL
(1977-1978)
Based on 4.45%

COMMUNITIES	REVENUE SHARED	
	EXISTING (20%)	PROPOSED (33-1/3%)
ANCHORAGE CITY & BOROUGH	\$ 40,519.66	\$130,868.76
BRISTOL BAY	92,780.60	157,318.90
CORDOVA	111,744.77	244,183.72
CRAIG	2,814.75	20,793.45
DILLINGHAM	32,802.06	242,915.29
HAINES BOROUGH*	35,471.84	79,277.08
HAINES	4.53	18.16
HOMER	6,467.84	31,544.62
HOONAH	2,239.25	16,560.33
HYDABURG	1,564.03	11,557.42
JUNEAU CITY & BOROUGH	8,032.77	59,424.20
KENAI BOROUGH*	132,326.36	388,598.39
KENAI	34,008.00	73,347.27
KETCHIKAN GATEWAY BOROUGH*	70,299.04	144,634.06
KETCHIKAN	15,652.76	44,418.73
KING COVE	11,608.46	62,039.79
KLAWOCK	22,721.11	37,811.93
KODIAK BOROUGH*	182,757.95	558,936.10
KODIAK	99,510.10	420,025.56
NENANA	13.93	72.31
PELICAN	11,916.11	88,196.89
PETERSBURG	99,651.69	267,915.01
ST. MARY'S	235.00	1,710.31
SAND POINT	14,533.00	60,817.00
SELDOVIA	1,151.34	8,499.72
SEWARD	25,281.78	82,022.13
SITKA CITY & BOROUGH	7,308.47	54,057.69
UNALASKA	140,269.07	720,077.51
WRANGELL	11,565.98	36,207.38
YAKUTAT	1,460.59	10,729.25

* Includes additional Revenue Sharing from cities within borough.

Figures are based upon 1978 collections for the 1977 tax year and may differ from budget figures based upon fiscal year cutoff.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. _____
 Title An Act relating to fisheries taxes
 Requested by Representative Alvin Osterback Date _____

II. FISCAL DETAIL

Agency Affected Department of Revenue
 Program Category Affected Revenue Collection and Management
 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)

	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	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

If a tax rate of 4.45 percent is used as a base, an additional \$7 million would be raised bringing the total fish tax collections to \$15.2 million. These collections will be split evenly among the general fund, revenue sharing to municipalities, and the commercial fishing and agriculture bank, until fully capitalized. It is estimated that revenue sharing to municipalities would be increased by about 3 million dollars as shown in the attached breakdown. It would also allow an annual appropriation to the commercial fishing and agriculture bank of approximately 5 million dollars. With a 4.45 percent rate, revenue to the general fund would decrease by about \$1 million dollars, but would increase considerably when the commercial fishing and agriculture bank is fully capitalized in a few years. A breakdown of the distribution of revenue is shown on the attached pages.

IV. DATE _____ PREPARED BY John T. Messenger
 AGENCY Department of Revenue
 PHONE 465-2300
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

City of Seldovia

P. O. DRAWER B

TELEPHONE 234-7643

SELDOVIA, ALASKA 99663

March 15, 1979

CSSB 132
HB 306

Honorable Representative Alvin Osterback
Co-Chairman, House Resource Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Osterback:

Enclosed is City of Seldovia's Resolution #79-9. A Resolution in opposition of House Bill 306 - Raw Fish Tax and any related Senate bills.

Sincerely

CITY OF SELDOVIA



Donald G. Caswell

City Manager

ck

Enclosure

A RESOLUTION IN OPPOSITION OF HB 306 - RAW FISH TAX

WHEREAS, HB 306 has been introduced which would standardize the raw fish tax at 6% of raw value regardless of species of fish being processed or the method of processing, and

WHEREAS, the fishing industry is the major economy of Seldovia and this industry is presently depressed in this area, and

WHEREAS, increases in taxation of this industry will bring harm to processor and fisherman alike, and will further depress the economy of our area,

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Seldovia, that this municipality hereby urges a vote of Do Not Pass on HB 306, and any related Senate bills.

PASSED AND APPROVED THIS _____ day of March, 1979.

Darlene Crawford

Darlene Crawford,
Mayor

ATTEST:

Elaine M. Giles

Elaine M. Giles
City Clerk

(SEAL)

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6442

BUREAU, ALASKA 99502

1979 MAR 13 AM 4 24

HB 306

02337 NL TDA CORDOVA ALASKA 50 03-12 430P AST
PMS REP ALVIN OSTERBACK

'UN

THE CORDOVA DISTRICT FISHERIES UNION OPPOSES HB306, TO
IMPOSE SUCH A DRAMATIC TAX INCREASE ON FISHERIES PRODUCTS BEFORE
EVALUATING THE IMPACT ON THE FISHING INDUSTRY COULD BE CATASTROPHIC.
WE DO SUPPORT HB36 WHICH CALLS FOR AN APPROPRIATION FOR A STUDY
OF ALASKA FISHERIES TAX LAWS IN WHICH THE IMPACT OF HB306 SHOULD
BE ADDRESSED.

CORDOVA DISTRICT FISHERIES UNION BOX 939 CORDOVA

BOB BLAKE, CHAIRMAN

TELETYPE *CSSB/3*

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6442
JUNEAU, ALASKA 99802

HB306

02080 POM TDA KODIAK ALASKA 15 03-10 ~~18707447A 10~~ PM 5 26

PMS REP ALVIN OSTERBACK

JUN AK

PLEASE OPPOSE SB132 HB306 AND HB193. THESE BILLS ARE UNFAIR TO
OUR FISHERMEN.

PEGGY CROSS

BOX 2541

KODIAK ALASKA 99615

Alaska Shrimp Trawlers Association

POST OFFICE BOX 991
KODIAK, ALASKA 99615



QSSB 132

HB 306

March 9, 1979

Rep. Alvin Osterback

In response to House Bill 306 and Senate Bill 132 - Raw Fish Tax

We strongly object to the proposed increase in the Raw Fish Tax and the way it is being handled. We feel that above and beyond disagreeing with the terms of this bill, even more outrageous is the denial of due process of law presently taking place. (In regard to the butchering and railroading of Senate Bill 132.)

Already crippled by excess licenses, permits, taxes and other regulations, this behind-the-back attack on the fisheries could be the death blow for the Alaskan fishing industry.

In effect, this Bill would force the progressive Alaskan fishermen to become part of the Seattle-based fleet in an effort to maintain even a minimal profit margin. Although legislative action at this date indicates otherwise, the fisheries represent a major industry with a heavy impact on the continued economic stability of this state.

With the passage of this Bill, the presently under-utilized bottomfish fishery will never get off the ground as a shore-based fishery, and at best, would never come close to reaching its full potential.

We request you, our representative, to make known our extreme disapproval of the terms and concepts set forth in this Bill, and our disappointment in the way it is being handled.

Thank you for your consideration in this matter.

I am,

Alvin R. Burch
Manager

cc: Senators Bennett, Bradley, Colletta, Dankworth, Fahrenkamp, Ferguson, Hackney, Hohman, Kelly, Kertula, Meland, Mulcahy, Ray, Rodey, Sackett, Stimson, Sturgulewski, Sumner, Tillion, Ziegler. Rep. Zharoff, Gov. Hammond, Keith Specking, United Fishermen's Marketing Assn., Fishermen's Wives Assn., Kodiak, Rep. Terry Gardiner, Rep. Brian Rogers, United Fishermen of Alaska, Kodiak Seafood Processors Assn.

CS58132

KODIAK AREA CHAMBER OF COMMERCE

HB 306



March 9, 1979

AN OPEN LETTER TO THE GOVERNOR OF ALASKA AND THE MEMBERS OF THE STATE LEGISLATURE:

Gentlemen:

The Kodiak Area Chamber of Commerce strongly opposes the proposed increase in the Raw Fish Tax, and deplores the ram-rod methods used to push this measure into law.

The increased tax will have a most serious impact on the economy of Kodiak and all the other fishing communities in the State. It will not only immediately affect the fishermen and the processors, it will be most detrimental to every person in the fishing communities, and the snow-ball effect will ultimately lower the economy of the entire State and all its citizens.

The carrot on the stick, calling for returning a larger percentage of the tax to local governments, is an obvious ploy designed to gain support from Legislators representing districts that would benefit financially. While they grab the free lunch carrot, Kodiak and the other fishing communities are being beaten with the stick.

The Chamber urges the Legislators to stop all debate on this issue until public hearings are held in all fishing communities, including Kodiak, in order to more fully understand the impact on the fishing communities and the ultimate effect the increased Raw Fish Tax will have on the economy of the State.

Sincerely,


Art Jordan, Manager
KODIAK AREA CHAMBER OF COMMERCE

AJ/bz

CSSB 102

HB 306

P. O. Box 37
Kodiak, AK 99615
March 10, 1979

Senator Robert Mulcahy
Alaska State Senate
Pouch V
Juneau, AK 99811

RE: SB 132/HB 306

Dear Senator Mulcahy:

We are writing this letter to state our strong objections to the above-mentioned bill which would up the raw fish tax to 6% from its present 1%.

First of all, the most obvious fact is that the increase is so pronounced as to raise the question why the jump of 5%? But beyond that is the point that we as individuals are for less taxation regardless of the limitation in services. If Proposition 13 in California last year was any example, we certainly aren't the only ones for less taxation.

There is a theory which we believe is very valid, namely that government can't tax a company. Companies only pass any taxes on to the consumer by marking up the price of their product. A solution to the problem of inflation is not further taxation, which was stipulated as being one of the reasons that this bill was initiated in the first place.

Most of the seafood that comes from Alaskan fisheries (i.e. crab and shrimp) are already very high-priced products, barely in competition with the same foreign products. This proposed increase in the fish tax should help substantially in putting Alaskan seafood products out of the market completely. Being a luxury item, people in the United States are going to stop buying it if the price becomes too exorbitant.

Alaska's fishery resources are extremely important to a good many people in this State: fishermen and their families, cannery employees, and all the services and suppliers connected with seafood processing. To see Alaska's fisheries become too inhibited or slow down all together would certainly not help the State or the livelihoods of those who derive their income from fisheries.

As far as providing revenue to the municipalities, Kodiak for one is an example of a city who has more than enough money at present. A fact that was made clear in the arguments the City used in trying to persuade the Joint Committee on Community and Regional Affairs that it should be allowed to annex parts now in the borough. We sincerely hope that you take a good look at this bill and consider just how destructive it could be.

Sincerely,

Cynthia M. Pistorese

Cynthia M. Pistorese
Secretary (Pacific Pearl Seafoods)

DR Pistorese

David R. Pistorese
(Fisherman)

cc: Representative Alvin Osterback
Alaska House of Representatives



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

CSSB 132 *Kulow*
signed

Pouch V
State Capitol
Juneau, Alaska 99811

March 12, 1979

"Analysis"
CS!

HB
306

CSSB
132

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature

Re: CSSB 132

Dear Mr. President:

On March 9, 1979, you requested me, in my capacity as chairman of the Senate Judiciary committee, to review the captioned bill and to report to the Senate as to its constitutionality.

At the outset, I should state that the following comments are mine and mine alone; I do not profess to speak for the other members of the Judiciary committee. It should likewise be noted that I do not claim any special expertise in the field of constitutional law, nor have I had sufficient time to devote to the research which would ordinarily be entailed in analyzing this bill.

A close reading of CSSB 132 indicates two sections of the bill would run afoul of the Alaska Constitution. Those two are 43.75.136, providing for payments to the Commercial Fishing and Agriculture Bank, and 43.75.131, making increased refunds to local government.

Article IX, sec. 7 of the Alaska Constitution provides as follows:

"The proceeds of any state tax or license shall not be dedicated to any special purpose except when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of the constitution by the people of Alaska."

I was assisted in my efforts to check the constitutionality of the questioned sections of the bill by the opinions of two Attorneys General dated, respectively, April 4, 1969 and May 2, 1975. Both opinions not only considered the case law of this and other jurisdictions, sparse as it is, but they also reviewed the minutes of the Alaska Constitutional Convention and committees thereof. It is evident, in both these opinions, that the framers of our constitution did not want to have additional taxes earmarked or dedicated to special purposes.

The Honorable Clem Tillion
March 12, 1979
Page Two

CSB 174

A dedication of ten per cent of the fish tax existed at the time of the ratification of the Constitution, and the dedication clearly falls within the exemption. Problems arise when that ten per cent is increased, as in the instant bill, to thirty-three and one-third per cent. The issue of the constitutionality of increasing the percentage of an existing dedicated fund was not specifically addressed by either of the opinions reviewed. However, material contained in these opinions strongly suggests that increasing an existing dedicated fund was not intended by the Constitution.

It is equally clear that payments to the Commercial Fishing and Agriculture Bank and earmarking state tax revenue for the construction of docks, etc. by local governmental units would do violence to the Constitution of the State of Alaska.

The Attorney General's opinion of April 4, 1969 holds:

"The proceeds of any state tax or license which must be shared with local governmental units are dedicated to a special purpose and are in violation of Article IX, sec. 7 of the Alaska Constitution."

The Attorney General's opinion of May 2, 1975 states:

"Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs."

Conclusion: CSSB 132, as written, is patently unconstitutional.

Respectfully submitted,

3 copies
Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee

RHZ/pk.z