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Introduced: 3/13/81  
Referred: Judiciary and  
Finance

1 IN THE HOUSE

BY MALONE AND CARNEY

2 HOUSE BILL NO. 337

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing reimbursement for attorney fees  
7 incurred by individuals in connection with state  
8 administrative actions."

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

10 \* Section 1. AS 44.77 is amended by adding new sections to read:

11 ARTICLE 2. CLAIMS FOR ATTORNEY FEES.

12 Sec. 44.77.072. CLAIMS AUTHORIZED. (a) A person may claim reim-  
13 bursement of the attorney fees he incurs and pays in order to respond  
14 to an administrative action, investigation, or inquiry conducted by the  
15 state, if the action, investigation, or inquiry is resolved in his  
16 favor.

17 (b) This chapter does not apply to a claim for attorney fees  
18 which is specifically authorized by statute or rule of court. *or leave  
or amend*

19 Sec. 44.77.074. PRESENTATION OF CLAIM. (a) A claim for attorney  
20 fees under this chapter must be presented to the department within six  
21 months of the date of the last attorney services upon which the claim  
22 is based.

23 (b) Within six months of presentation of a claim under this  
24 chapter the department shall allow or disallow the claim.

25 Sec. 44.77.076. ALLOWANCE OF CLAIMS. The department shall allow  
26 a claim under this chapter if

27 (1) proof is presented that the claimed fees were actually  
28 paid by the claimant;

29 (2) the claimant establishes that the fees for which the

*Sum  
Purkey  
Royalty  
Audits  
Oil Comp  
Pay*

*Div. of Alas  
Sec. 44.77  
1978*

Susan Burke - What about companies having salaried attorneys?

1 claim is made were necessarily incurred in the claimant's response to  
2 the state administrative action, investigation, or inquiry; and

3 (3) the state administrative action, investigation, or  
4 inquiry was resolved in favor of the claimant.

5 Sec. 44.77.078. LIMITATION ON CLAIMS. (a) A claim for attorney  
6 fees under this chapter may not exceed \$75 an hour for services actually  
7 performed by the claimant's attorney and may not exceed a total of  
8 \$5,000.

9 (b) The claimant may receive reimbursement for attorney fees  
10 incurred and paid in order to present his claim under this chapter, if  
11 the department allows the claim, but the reimbursement may not exceed  
12 \$75 an hour for services actually performed, or 15 percent of the  
13 allowed claim, whichever is less.

14 Sec. 44.77.080. REGULATIONS. The department shall adopt regula-  
15 tions providing for the claims review process under AS 44.77.072 -  
16 44.77.090.

17 Sec. 44.77.082. APPEAL. If the claimant does not accept the  
18 decision of the department, he may bring an action in the superior  
19 court within 30 days after he receives notice of the decision of the  
20 department. A claimant may also bring an action in the superior court  
21 at any time more than six months after he has presented his claim under  
22 this chapter, if no decision has been made by the department.

23 Sec. 44.77.090. DEFINITIONS. In AS 44.77.072 - 44.77.090

24 (1) "administrative action, investigation, or inquiry" means  
25 a state examination of the acts of a person which does not result in  
26 litigation or a formal administrative hearing;

27 (2) "department" means the Department of Administration;

28 (3) "person" includes a natural person, trust or estate,  
29 partnership, or corporation.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

MAR 24 1981

JAY S. HAMMOND, GOVERNOR

POUCH 5  
JUNEAU, ALASKA 99811

March 23, 1981

The Honorable Fred E. Brown  
Chairman  
House Judiciary Committee  
Room 124 - Capitol Building  
Juneau, Alaska

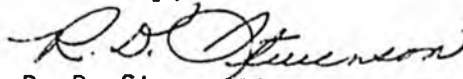
Dear Mr. Brown:

Re: House Bill No. 337

House Bill No. 337, an Act authorizing reimbursement for attorney fees incurred by individuals in connection with state administrative actions, was introduced in the House on March 13, 1981 and was referred to the House Judiciary and Finance Committees.

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

Sincerely,



R. D. Stevenson  
Special Assistant

RDS/rdh

cc: The Honorable Samuel R. Cotten  
Chairman  
House Finance Committee

Joseph K. Dunbar  
Deputy Commissioner  
Department of Revenue

Gary L. Jenkins, Director  
Audit Division  
Department of Revenue

# MEMORANDUM

# State of Alaska

TO: R. D. Stevenson  
Legislative Assistant

DATE: March 23, 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins  
Director  
Audit Division

SUBJECT: HB 337

This bill would provide for a person to obtain reimbursement for attorney fees incurred in preparing an administrative appeal with any department in state government. My comments will be limited to the application of this law to tax appeals under Title 43.

This bill provides for a taxpayer to recover the attorney fees incurred in preparing and presenting an administrative appeal of any tax assessment issued by the Department of Revenue, if the taxpayer prevails at any level of appeal up through and including the U.S. Supreme Court.

There are several factors which should be evaluated when considering this legislation. First, it should be remembered that a taxpayer can write off under current tax law the total expense incurred to prepare an appeal of any tax issue. Thus, a taxpayer is afforded an opportunity to recoup the expense incurred in presenting his case.

Secondly, there are several problems which arise in attempting to anticipate actual implementation of this law. These issues which it would be most appropriate to have the law address are as follows:

(1) Why are only attorney fees eligible for reimbursement? A person may incur other professional fees in the preparation of an appeal such as for CPA's or engineers.

(2) What is to be done when there are several issues under appeal and the taxpayer prevails on one of the issues but loses on all the other issues? In that case, would the taxpayers be reimbursed based on the direct expenses related to that issue or be allowed to take a percentage of the total expenses related to the appeal or not be allowed any reimbursement since he did not prevail on most or all of the issues?

(3) Will the reimbursement provisions apply to appeals now in process or only to those filed after the effective date of the act?

It is very difficult to ascertain the fiscal impact of this bill because a taxpayer may not prevail until the case has reached the Alaska Supreme Court or the United States Supreme Court. The Department of Revenue currently has approximately 600 informal administrative appeals each year. If the Permanent Fund Dividend program survives the court challenge, we anticipate a minimum of 250 additional appeals for a total of 850. In addition, the Commissioner's office is presently holding 50 formal hearings each year. Based on our prior experience a taxpayer will prevail on a portion of their appeal about 25% of the time. It is estimated that on the average appeal the taxpayer will have incurred \$2,500 in attorney fees. As I understand the limitation provided in the proposed AS 44.77.078(b), only 15% of that amount would be actually reimbursed.

Based on the forgoing, the potential amount which would be reimbursed would be \$84,375. The language of the proposed bill would imply that the Department of Administration would be totally responsible for the administration of this act to include the actual payment of the fees from their budget. A fiscal note has not been prepared since it is assumed that the funds to cover this cost will be appropriated to the Department of Administration.

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