

H B

37

COMMITTEE REPORT

HOUSE

FURTHER: FINANCE

⁴
2/2/81

(5)

Date: 3/9/82

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 37

"An Act repealing all state taxes except the oil and gas corporate income tax (AS 43.21); and providing for an effective 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)

[X] replace with CS for HB37 ~~[]~~ same title
and recommends DO PASS ~~[]~~ new title

[] AND attaches a "Letter of Intent" [] New Fiscal Note

[] reports it back without recommendation

[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

No Rec No Rec

[Signature]

[Signature]
CHAIRMAN

A M E N D M E N T

OFFERED IN THE HOUSE:

BY: State Affairs

To: amend

HOUSE BILL No. CS HB 37

SENATE BILL No. _____

PAGE: 1

LINE: 14

after 'fuel' insert "that has been or will be"

Please do a3 a final version

AMENDMENT

OFFERED IN THE HOUSE:

By: State Affairs

To: amend

HOUSE BILL No. 37

SENATE BILL No. _____

PAGE: _____

LINE: _____

Prepare draft alternate amendments to HB 37 as follows:

1. Require the collection of the motor fuel tax to be with the user
2. Remove all material except for the motor fuel tax provision and forgive any motor fuel tax uncollected for the past 2 years.

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By: State Affairs

To: amend HOUSE BILL No. 37

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will be as CS

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

March 11, 1982

The Honorable Ray H. Metcalfe
Chairman
House State Affairs Committee
Room 102 - Capitol Building
Juneau, Alaska

Dear Mr. Metcalfe:

Re: CS for House Bill No, 37 (State Affairs)
Work Draft

At the request of the House State Affairs Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Robert R. Kessel, Director, Audit Division, Department of Revenue concerning the attached Work Draft Paper of CS for House Bill No. 37 (State Affairs), an Act relating to the motor fuel tax (AS 43.40).

Sincerely,



R. D. Stevenson
Special Assistant

Enclosures

cc: The Honorable Albert P. Adams
Chairman
House Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Robert R. Kessel, Director
Audit Division
Department of Revenue

FILED MAR 11 1982

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB37
 Title An Act relating to the motor fuel tax
 Requested by Randolph, Bairne, Pettisworth Date 3-8-82

II. FISCAL DETAIL

Agency Affected Department of Revenue
 Program Category Affected Revenue Collections 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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		22.0	23.5	25.0	27.0	29.5
200 TRAVEL		1.6	1.8	2.0	2.2	2.4
300 CONTRACTUAL						
400 COMMODITIES		.5				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		24.1	25.3	27.0	29.2	31.9

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		24.1	25.3	27.0	29.2	31.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		1	1	1	1	1
PART TIME						
TEMPORARY						

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

See attached memo to R. D. Stevenson dated 3-9-82.

Robert R. Kessel

IV. DATE March 9, 1982 PREPARED BY Robert R. Kessel
 AGENCY Audit Division
 Original: Legislative Finance PHONE 465-2320
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

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EXPENDITURES (Thousands of Dollars) None

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND		(1.4)	(1.4)			
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

See attached copy of memo to R. D. Stevenson dated March 9, 1982.

Robert R. Kessel

IV. DATE March 9, 1982 PREPARED BY Robert R. Kessel

AGENCY Audit Division

PHONE 465-2320

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

MEMORANDUM

State of Alaska

Department of Revenue

TO R. D. Stevenson
Special Assistant

DATE: March 9, 1982

FILE NO:

TELEPHONE NO

FROM Robert R. Kessel
Director, Audit Division

SUBJECT Work Draft -
CSHB 37

The work draft would allow motor fuel dealers (distributors/jobbers) to buy a portion of their fuel tax free from the manufacturer/ supplier and would allow the distributor to sell that same portion to consumers tax free in those instances when such consumption is for exempt use. Exempt use includes a) fuel used for heating purposes and b) fuel used by exempt organizations such as the Federal Government, State agencies, charitable organizations, etc.

The distributors/jobbers must provide the manufacturer/supplier with a certificate of use for ex-tax purchases. The distributors/jobbers must obtain a certificate of use from every person purchasing fuel not intended for use as a motor fuel. The distributors/jobbers must retain the certificates for examination by the Department of Revenue.

The bill expands the term "user" (taxpayer) to include a person consuming or using diesel fuel who purchases or receives the fuel within the State that was not taxed at the time of purchase or receipt because it was sold as heating fuel.

Section 3 of the work draft provides, in essence, that all audit assessments against dealers for failure to collect the tax from a purchaser or transferee could not be collected by the Department of Revenue nor could further audits be conducted nor assessments made. This section is arguably unconstitutional. In addition, the State would lose about \$2.8 million because of abatement of current audit assessments and forfeiture of other audit efforts for prior years.

The work draft as written would apparently continue to require dealers and users to file motor fuel tax returns. The sponsors of this bill might not be aware of this requirement.

There would literally be thousands of certificates of use issued. The effort to audit under the certificate concept would require an additional revenue auditor.

Section 3 essentially punishes those 50% of the dealers who have conformed to the law and properly collected tax. The State of Alaska has a substantial amount of dollars impacted by the dealers' failure to collect when required.

RRK/gb

Thurston

HB37

CUMULATIVE SUMMARY OF REVENUE
COLLECTED 07/01/81 THRU 01/31/82
7/12 OR 58.32%

CODE NO	TYPE OF TAX	GROSS RECEIPTS	REFUNDS	NET RECEIPTS	ESTIMATE	NET RECEIPTS % OF ESTIMATE
001	OIL & GAS PROPERTY TAX	\$ 2,098,031.98	\$ 719,266.16	\$ 1,378,765.82	\$155,000,000.00	.89
016	ALCOHOLIC BEVERAGE EXCISE TAX	5,535,401.40	0.00	5,535,401.40	8,500,000.00	65.12
017	CIGARETTE TAX (GF)	1,073,693.32	13.84	1,073,679.48	1,800,000.00	59.65
018	CIGARETTE TAX (SF)	1,789,488.52	0.00	1,789,488.52	3,000,000.00	59.65
020	ELECTRIC & TELEPHONE	2,897.00	0.00	2,897.00	1,100,000.00	.26
021						
022						
036	INDIVIDUAL INCOME TAX	1,018,814.49	319,904.86	698,909.63	0.00	0.00
037	FIDUCIARY INCOME TAX	57.03	5,341.00	(5,283.97)	0.00	0.00
038	CORPORATION INCOME TAX	21,478,387.05	9,720,497.00	11,757,890.05	31,000,000.00	37.93
039	OIL & GAS CORP. INCOME TAX	351,049,574.00	660,794.00	350,388,780.00	713,000,000.00	49.14
046	BUSINESS LICENSE	1,891,291.68	4,601.36	1,886,690.32	5,500,000.00	34.30
052	ESTATE	241,934.97	5,067.00	236,867.97	500,000.00	47.37
057	SCHOOL TAX	1,634.99	0.00	1,634.99	0.00	0.00
060	SALMON ENHANCEMENT TAX	2,137,089.14	53,649.92	2,083,439.22	2,000,000.00	104.17
061	MINES & MINING TAX	133,090.38	0.00	133,090.38	200,000.00	66.55
062	SALMON CANNERY-SHORE BASED TAX	630,669.95	0.00	630,669.95	6,200,000.00	10.17
063	SHORE-BASED FISHERIES TAX	938,740.33	77,341.00	861,399.33	11,200,000.00	7.69
064	FLOATING FISHERIES TAX	950,447.67	7,112.00	943,335.67	4,000,000.00	23.58
065	OIL PRODUCTION TAX	941,173,141.72	5,605.84	941,167,535.88	1,708,400,000.00	55.09
066	OIL & GAS CONSERVATION	497,834.38	0.00	497,834.38	700,000.00	71.12
067	GAS FLARING PENALTY	0.00	0.00	0.00	0.00	0.00
068	GAS PRODUCTION TAX	7,118,737.16	0.00	7,118,737.16	9,600,000.00	74.15
096	PREPAID TAX	5,042.00	0.00	5,042.00	0.00	0.00
106	LIQUOR LICENSE APPLICATION	73,450.00	0.00	73,450.00	150,000.00	48.97
107	PUB LIQUOR LICENSE	400.00	0.00	400.00	600.00	.67
108	BREWERY LICENSE	0.00	0.00	0.00	0.00	0.00
109	DISTILLERY LICENSE	0.00	0.00	0.00	0.00	0.00
110	BEVERAGE DISPENSARY LICENSE	722,050.00	6,350.00	715,700.00	775,000.00	92.35
111	CLUB LICENSE	36,700.00	600.00	36,100.00	34,200.00	105.56
112	COMMON CARRIER LICENSE	26,075.00	0.00	26,075.00	28,000.00	93.13
113	RESTAURANT LICENSE	57,100.00	400.00	56,700.00	65,000.00	87.23
114	ROAD HOUSE LICENSE	0.00	0.00	0.00	0.00	0.00
115	RETAIL LICENSE	315,525.00	2,450.00	313,075.00	330,000.00	94.87
116	RETAIL STOCK SALE LICENSE	0.00	0.00	0.00	0.00	0.00
117	WHOLESALE GENERAL LICENSE	17,000.00	0.00	17,000.00	145,000.00	11.72
118	WHOLESALE MALT BEV. LICENSE	1,400.00	0.00	1,400.00	14,000.00	10.00
119	MISC. LIQUOR LICENSE	21,030.50	0.00	21,030.50	32,000.00	65.72
145	COIN OPER. AMUSE. & GAM. DVC. TAX	64,933.45	60.21	64,873.24	75,000.00	86.50
146	GAMES OF CHANCE & SKILL FEES	16,097.51	0.00	16,097.51	42,000.00	38.33
402	MISCELLANEOUS REVENUE	3,410.70	265.00	3,145.70	0.00	0.00
692	REDISTRIBUTED REVENUE	0.00	0.00	0.00	0.00	0.00
	TOTAL	\$1,365,079,374.98	\$ 6,864,193.23	\$1,348,215,181.75	\$2,689,290,800.00	50.13
843	VESSELS & GEAR	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	0.00
137-844	COMM. FISH LIC.-RES.	91,549.15	20.00	91,529.15	161,000.00	56.85
139-945	COMM. FISH LIC.-N-RES.	177,206.08	660.00	176,546.08	257,000.00	68.73
140	COMM. FISH. EXT. FEE	2,835.00	0.00	2,835.00	2,500.00	113.40
120-230	SPORT FISH., HUNT & TRAP LIC.	3,933,771.48	6,591.96	3,927,179.52	5,095,600.00	77.07
	SUB-TOTAL	\$ 4,205,461.71	\$ 7,271.96	\$ 4,198,189.75	\$ 5,516,100.00	76.11
	TOTAL TAXES	\$1,369,284,836.69	\$16,871,465.19	\$1,352,413,371.50	\$2,694,806,900.00	50.19
	INTEREST					
575	INTEREST ON LOANS	\$ 2,980,368.27	\$ 0.00	\$ 2,980,368.27	\$ 3,000,000.00	99.35
576	INTEREST ON INVESTMENTS	151,213,538.63	0.00	151,213,538.63	200,000,000.00	75.61
	TOTAL INTEREST	\$ 154,193,906.90	\$ 0.00	\$ 154,193,906.90	\$ 203,000,000.00	75.96
	TOTAL REVENUE	\$1,523,478,743.59	\$16,871,465.19	\$1,506,607,278.40	\$2,897,806,900.00	51.99

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

JAY S. HAMMOND, GOVERNOR

POUCH D
JUNEAU ALASKA 99811
PHONE: 465-2515

LEGISLATIVE POSITION PAPER
HB 37
March 9, 1982

The Division of Insurance is not in favor of HB 37. There are basically three arguments that should be considered before such a repeal is enacted. These are:

1. The first argument is admittedly the weakest of the three. Insurance is interstate commerce as was confirmed in *United States vs South East Underwriters Association*, 322 U.S. 533 (1944). Its regulation and taxation have been preserved to the states in the McCarran-Ferguson Act, Public Law 15, 59 Stat. 33, 15 U.S.C. Secs. 1011-1015. There is a concern that to the degree that we as a state abdicate our taxation of the insurance industry, it will present an invitation to the Federal Government to step in and tax in a like fashion thus no savings would occur with our repeal.
2. A far stronger argument is that the present tax structure favors and encourages the formation and operation of domestic insurers. The rate structure of an insurer includes an expense provision of 3% for premium tax. This is the amount that a foreign or alien property, casualty, life or disability insurer must pay. The domestic insurer, recognizing that it incurs a higher level of expense just by being in Alaska including physical facilities and employment of Alaskans, pays tax at a reduced rate of 1 1/2% except during its first five years when the tax is 0%. This tax advantage helps to offset other disadvantages and allows the domestic to compete.

Repeal of the tax would require that we disallow the tax provision in the rate structure which has no effect on foreign and alien insurers but reduces the income of domestics from 1 1/2% to 3%. This may be enough to render formation of domestics unattractive.

3. The premium tax structure allows the state to provide for investment incentives that are not otherwise feasible. In the past proposals have been considered that offer tax reductions if certain Alaska investment levels are reached and maintained. Applied in this way, Alaska could encourage as much as \$1.7 billion in private investment capital with a tax revenue loss of about \$4.9 million.

Tax revenue loss with enactment of HB 37.

FY 83	\$12,700,000
FY 84	\$13,970,000
FY 85	\$15,367,000
FY 86	\$16,903,000
FY 87	\$18,593,000

DIESEL FUEL TAX

1. General.

A Federal excise tax is imposed at the retail level on diesel fuel sold for use or used as a fuel in a diesel-powered highway vehicle.^{1/} The rate of tax is 4 cents per gallon, although for certain off-highway uses (explained in paragraph 3B) the rate is 2 cents per gallon. If the diesel fuel is not used in a highway vehicle, on or off the highways, there is no tax on its sale. For example, the sale of diesel fuel for use as a weed-killer is not taxable.^{2/}

The tax is payable by the seller if he makes a taxable sale, or by the user if he acquires fuel on which the tax has not been paid and uses it for a taxable purpose.

2. Definitions.

- A. "Diesel fuel".^{3/}The term "diesel fuel" means any liquid (other than a product taxable as gasoline) which is sold for use or used as a fuel in a diesel-powered highway vehicle.
- B. "Highway vehicle".^{4/}The term "highway vehicle" refers to the type of vehicle, not to the use which is made of it, and means any motor vehicle which is of the type used for transportation on the highways. It includes automobile trucks, buses, highway tractors, trolley buses, and other similar types of vehicles.

Excluded from the term is any vehicle, which, although propelled by means of its own motor, is of a type designed and manufactured for a purpose other than highway transportation. For example, vehicles such as earth movers, power shovels, trench diggers and bulldozers, which are designed and manufactured as self-propelled units for off-the-road operations, are not highway vehicles. Neither are such motorized vehicles as roadgraders or rollers, which are designed and manufactured for the construction or maintenance of roads. Likewise, farm tractors, cotton pickers and other motorized agricultural implements are not highway vehicles. Diesel-powered logging vehicles operated on private lands within the confines of company-owned timber lands, and which are not registered or required to be registered for highway use, are not considered to be highway vehicles. This holds true even when the vehicles have been covered for emergency use on the highways under special permit provisions of the State in which they are operated.^{5/} Similarly, vehicles which are operated mostly in mine pits and other off-highway locations, and which are not capable of running at normal highway speeds, are not of the type used for

2.

highway transportation, even though in certain emergency situations they are allowed by the State to operate overloaded on the highway by special permit.^{6/} However, the fact that equipment or machinery having a specialized use such as an air compressor, crane or specialized oil field machinery, is mounted on a vehicle which, apart from such equipment, is of a type used for highway transportation, will not exclude such vehicle from the term "highway vehicle".

If it is necessary to convert a vehicle so that it can be put to a different use, the conversion may also change the type of vehicle it is. For example, vehicles with replaceable, overwidth log bunks can neither be registered for use on the highways nor issued special permits for such use; accordingly, diesel fuel used in such vehicles is not subject to tax. However, when the overwidth bunks are replaced with smaller bunks and operated as highway-type cargo carriers, they are then classified as highway vehicles, and tax is imposed on diesel fuel sold for use or used in such vehicles during the time they are adapted for use as highway-type cargo carriers.^{7/}

Vehicles which have certain characteristics or features which make them suitable for use over rough terrain (so that they are often used in logging, quarrying, mining, concrete mixer service, dumping service, and oil field service), but which are also designed to perform efficiently in transporting extra-heavy loads over public roads at normal highway speeds, with special permits from the State, are also classified as highway vehicles.^{8/}

The diesel fuel tax does not apply to diesel fuel used in a vehicle which is not a "highway vehicle" even though such vehicle may occasionally use the highways. However, actual use of the highways is immaterial if the vehicle using the fuel is classified as a highway vehicle, since the applicability of the tax depends solely on whether the vehicle is registered or required to be registered for highway use.

- C. "Highway". ^{9/} The term "highway" includes any road in the United States which is not a private roadway. It is immaterial whether it is designated as a Federal highway, a State highway, a city street, or otherwise.
- D. "Registered". ^{10/} The term "registered" means either:
- (1) Actually registered for highway use under the laws of any State, District of Columbia, or foreign country, or
 - (2) Required to be registered for highway use under the law of the State, District of Columbia, or foreign country in which it is operated or situated.

2.

Any highway vehicle which is operated under a dealer's tag, license, or permit is considered to be registered. However, a vehicle is not considered to be registered solely because it has been issued a special permit for its operation at particular times and under specified conditions.

3. Rate of tax. 11/

- A. Registered highway vehicles. The tax is 4 cents per gallon on the use, or the sale for use, of diesel fuel for a diesel-powered highway vehicle which is registered or required to be registered for highway use, or in such a vehicle owned by the United States which is used on the highway.

The 4-cent rate also applies to the use, or the sale for use, of diesel fuel to a local transit system, even though it is known that it will be used by the transit system in the type of operations for which a credit or refund of 2 cents of the 4 cents per gallon tax may be obtained. (Chapter 14)

The 4-cents per gallon tax applies to all fuel sold for use or used in a diesel-powered highway vehicle which is registered or required to be registered even though it is seldom or never used on the highway, and regardless of the proportion of the fuel used off the highway.

- B. Nonregistered vehicles. The tax is 2 cents per gallon on the use, or the sale for use, of diesel fuel in a diesel-powered highway vehicle which is not registered and is not required to be registered, or in a diesel-powered highway vehicle owned by the United States which is not used on the highway.

The regulations give the following example of the application of the tax to the sale of diesel fuel: The M Corporation is engaged in the construction of a power dam at a site removed from all public highways. Part of its construction equipment consists of diesel-powered shovels, bulldozers, and highway-type dump trucks. Some of the trucks are registered for highway use and are used both on and off the public roads. Others are not registered and under the applicable State law are not required to be registered for highway use inasmuch as they are used entirely on the construction site. The diesel fuel sold for use in the registered dump trucks is all subject to the 4 cents per gallon tax, even though a portion of it is used off the public highway. The fuel sold for use in the non-registered trucks, which are operated entirely off the highway, is taxable at the 2 cents per gallon rate. No tax is payable with respect to the diesel fuel sold for use in the power shovels and bulldozers, since they are not vehicles which may be operated in general use over a public highway. 12/

4.

(1)

4. Who pays the tax and when it applies.

A. Liability for tax. 13/ The tax is payable by the person who makes a taxable sale as defined below, or by a person who acquires diesel fuel otherwise than by means of a taxable sale and uses it for a taxable purpose or resells it for a taxable purpose.

B. Taxable sales. 14/ The sale of diesel fuel to an owner, lessee, or other operator of a diesel-powered highway vehicle is considered a taxable sale -

(1) if it is delivered by the seller into the fuel supply tank of the vehicle, or

(2) where the fuel is not so delivered, the purchaser gives the seller a written statement, prior to or at the time of the sale, that the entire quantity of fuel covered by the sale is for use by him for a taxable purpose. If such a statement is not furnished by the purchaser, he is liable for the tax on any of the fuel acquired by him tax free and used for a taxable purpose, or resold by him for a taxable purpose. If the purchaser maintains a storage facility from which fuel is withdrawn exclusively for use as fuel for a taxable purpose, he may indicate to the seller in writing once every four calendar quarters that the entire quantity of the fuel to be purchased by him during that period is delivered to that particular facility for use as fuel for a taxable purpose. 15/

*

If the purchaser does tender such a statement at the proper time, the supplier is liable for the tax on the sale, whether or not he either acknowledges receipt of the purchaser's statement, or notifies the buyer that he (the supplier) will be responsible for reporting and paying the tax. 16/

Where a person purchases diesel fuel for a non-highway vehicle use and notifies his vendor in writing of such proposed use, the 2 cent rate applies.

Where a purchaser of diesel fuel is unable to determine, at the time of purchase, what portion of the liquid delivered into his bulk storage tanks will be used as a fuel in diesel-powered highway vehicles, the vendor will sell the fuel on a tax-free basis, and the buyer will become liable for tax on whatever quantity of the liquid he uses for such purpose. On the other hand, if the purchaser furnishes a statement, prior to or at the time of the vendor's sale, indicating that the liquid is for use as a fuel in diesel-powered highway vehicles, the vendor is liable for tax on the entire quantity of fuel sold. 17/

(1)

*C. Sales for resale. Sales to a dealer or other reseller are not subject to tax even though it is known at the time of sale that the fuel will be resold by such dealer for use as fuel in diesel-powered highway vehicles. The dealer is required to file returns and remit the tax on his taxable sales. 18/

D. Consignments. The tax is payable by the person who makes the taxable sale. Thus, where diesel fuel is consigned to a person for sale and the consignor retains ownership of such fuel until it is disposed of by the consignee, the consignor is the person liable for the tax when a taxable sale of the fuel is made by the consignee. If the consignor does not retain ownership, the consignee is the person liable for the tax upon his taxable sale of the fuel. 19/

E. Taxable use. 20/ If a person acquires any diesel fuel other than through a taxable sale as described above, and uses it or resells it for use as fuel in a diesel-powered highway vehicle, he is liable for the tax on such sale or use, and must file a return and remit the tax to the government.

If a person acquires any diesel fuel by means of a transaction taxable at 2 cents per gallon and uses it for a purpose which makes the fuel taxable at 4 cents per gallon, he is liable direct to the government for the additional 2 cents per gallon, and is required to file a return and remit such additional tax.

The tax applies to all fuel used in the motor which is used to propel a vehicle, even though the motor is also used to run special equipment such as air-conditioning units, pumping units, generators, and cranes, mounted on the vehicle. Thus, where the motor of a vehicle also operates special equipment by means of a power take-off or power transfer, the tax applies to all fuel used for such purpose. However, the tax does not apply to fuel used in a separate motor to operate special equipment, or during the period a vehicle is considered as not having the essential characteristics of a motor vehicle (See paragraph 3E of Chapter 2), and the equipment is performing the operation for which it is primarily adapted, even though the fuel may be drawn from the same tank as the one which supplies fuel for propulsion of the vehicle. For refund purposes, the taxpayer must keep reasonable records to support the allocation, which may be based on actual consumption or actual operating experience. 21/

5. Tax-free sales.

Any sale, which would otherwise be taxable, may be made tax free:

A. To any State or local government for its exclusive use. (Chapter B)

- 6.
- B. To nonprofit educational organizations. (Chapter 9)
 - C. To accredited diplomatic representatives of foreign nations and members of United Nations delegations. (Chapter 9)
 - D. For export or for shipment to a possession of the United States. (Chapter 10)
 - E. For use on a farm for farming purposes. (Chapter 14)

6. Credits or refunds.

Purchasers who use tax-paid diesel fuel for nontaxable purposes, such as in certain local transit systems, for farming, or in non-registered vehicles, may obtain credits or refunds by following the procedures outlined in Chapter 14.

7. Registration.

No formal registration is required of either the seller or the user.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB-37

Title An act repealing All State Taxes Except the Oil and Gas Corporate Income Tax (AS 43.21)

Requested by Randolph Date _____

II. FISCAL DETAIL

Agency Affected Department of Commerce and Economic Development

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected Division of Insurance

(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 81	FY 82	FY 83	FY 84	FY 85	FY 86
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	0	0	(12,000)	(13,970)	(15,367)	(16,903)
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

This bill repeals all tax revenues from insurance premium tax.

IV. DATE 2/11/81

PREPARED BY Kenneth C. Moore Director

AGENCY Division of Insurance

PHONE 465-2515

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 6
 Title An Act relating to historical districts and to loans qualifying under the
 Requested by Historical District Loan Act. Date _____

II. FISCAL DETAIL
 Agency Affected Commerce & Economic Development
 Program Category Affected Development
 BRU, Program, or Subprogram(s) Affected Division of Business Loans
 (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 81	FY 82	FY 83	FY 84	FY 85	FY 86
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)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This bill would have no fiscal impact on this BRU.

IV. DATE February 10, 1981 PREPARED BY Sharon Traylor, Director
 AGENCY Department of Commerce & Economic Development
 PHONE 465-2510 Division of Business Loans
 Original: Legislative Finance
 cc: Budg. and Management
 Prime Sponsor (First Legislator Named)

Delivered Rep Metcalfe

To: Linn Asper
Legislative Counsel
Pouch Y
Juneau, Alaska 99811

Re: HB 37
Sec. 3

" Until July 1, 1982, any vendor or supplier who in good faith, during the period January 1, 1978 through June 30, 1982, relied on (i) verbal or written assurances from purchasers or transferees as to the intended use of fuel sold or transferred or (ii) a consistent business practice of not classifying such fuel as motor fuel, and (iii) the absence of any clear and convincing evidence the fuel sold or transferred was to be used as motor fuel, shall be deemed to have procured a written certificate as contemplated in Section (1), and accordingly not to have made a sale or transfer of motor fuel."

From: S. H. Reitman

REC'D APR 5 1982

HB 37

§ 43.40.010 Alaska Statutes § 43.40.010

Chapter 40. Motor Fuel Tax.

Article

- 1. General Tax Levy on Transfers or Consumption of Motor Fuel (§§ 43.40.010-43.40.100)
- 2. Additional Tax Levy on Transfers or Consumption of Motor Fuel (Repealed)

Article 1. General Tax Levy on Transfers or Consumption of Motor Fuel.

Section	Section
10. Tax on transfers or consumption of motor fuel and expenditure of proceeds	50. Refund claim by affidavit
20. Penalty for violation	60. Separate invoices
30. Refund for nonhighway use	70. Refund warrants
40. Applications and permits for refund	80. Examination of books and records
	85. Preservation of books and records
	90. Criminal violation
	100. Definitions

STATE OF ALASKA

DEPARTMENT OF REVENUE

Motor Fuel Tax

March, 1978

[Handwritten signature]

Sec. 43.40.010. Tax on transfers or consumption of motor fuel and expenditure of proceeds. (a) There is levied a tax of eight cents a gallon on all motor fuel sold or otherwise transferred within the state, except that

(1) The tax on aviation gasoline is four cents a gallon,

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

(1) the tax on aviation gasoline consumed is four cents a gallon,

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and

COLL MARINER

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(c) Every dealer who sells or otherwise transfers motor fuel in the state shall collect the tax at the time of sale, and remit the total tax collected during each calendar month of each year to the Department of Revenue by the last day of each succeeding month. Every user shall likewise remit the tax accrued on motor fuel actually used by him during each month. At the time the remittance is made, each dealer or user shall submit a statement to the Department of Revenue showing all motor fuel which he has distributed or used during the month.

(d) Repealed by § 3 ch 166 SLA 1976.

(e) Sixty percent of the proceeds of the revenue from the taxes on aviation fuel, excluding the amount determined to have been spent by the state in its collection, shall be refunded to a municipality owning and operating or leasing and operating an airport in the proportion that the revenue was collected at the municipal airport. All other proceeds of the taxes on aviation fuel shall be paid into a special aviation fuel tax account in the state general fund. The legislature may appropriate funds from this account for aviation facilities.

(f) The proceeds from the revenue from the tax on motor fuel used in boats and watercraft of all descriptions shall be deposited in a special watercraft fuel tax account in the general fund. The legislature may appropriate from this account for water and harbor facilities.

(g) The proceeds of the revenue from the tax on all motor fuels, except as provided in (e), (f), and (j) of this section, shall be deposited in a special highway fuel tax account in the state general fund. The legislature may appropriate funds from it for expenditure by the Department of Public Works directly or as matched with available federal-aid highway money for maintenance of highways, construction of highway projects and

ferries included in the program provided for in AS 19.10.150, including approaches, appurtenances and related facilities and acquisition of rights-of-way or easements, and other highway costs including surveys, administration, and related matters. All departments of the state government authorized to spend funds collected from taxes imposed by §§ 10-100 of this chapter shall perform, when feasible, all construction or reconstruction projects by contract after the projects have been advertised for competitive bids, except that, when feasible, arrangements shall be made with political subdivisions to carry out the construction or reconstruction projects. If it is not feasible for the work to be performed by state engineering forces, the commissioner of transportation and public facilities may contract on a professional basis with private engineering firms for road design, bridge design, and services in connection with surveys. If more than one private engineering firm is available for the work the contracts shall be entered into on a negotiated basis.

(h) All motor fuel tax receipts shall be paid into the general fund and distributed to the proper accounts in the general fund. Valid motor fuel tax refund claims shall be paid from the highway fuel tax account in the general fund.

(i) Within 30 days after the legislature convenes the Department of Transportation and Public Facilities shall submit an annual budget covering anticipated revenues and their expenditure, for the consideration and approval by the legislature. The budget shall cover all money collected or anticipated to be collected under §§ 10-100 of this chapter for the year following the adjournment of each regular session of the legislature.

(j) The proceeds from the tax on motor fuel used in snow vehicles and, unless a tax refund is applied for under § 40 of this chapter, other internal combustion engines not used in or in conjunction with a motor vehicle licensed to be operated on public ways shall be deposited in a

§ 43.40.010 Revenue and Taxation § 43.40.030

special nonpublic highway use account in the general fund. The legislature may appropriate from this account to the Department of Transportation for trail staking and shelter construction and maintenance.

(k) The tax on the transfer or consumption of motor fuel provided for in this section does not apply to liquified petroleum gas. (§ 48-5-2 ACLA 1949; am § 1 ch 80 SLA 1951; am § 1 ch 47 SLA 1955; am §§ 1, 2 ch 27 SLA 1957; am § 1 ch 134 SLA 1957; am § 1 art VI title II ch 152 SLA 1957; am § 2 art V title III ch 152 SLA 1957; am § 2 ch 124 SLA 1959; am §§ 1, 2 ch 20 SLA 1960; am § 1 ch 150 SLA 1960; am § 1 ch 110 SLA 1961; am § 1 ch 136 SLA 1961; am §§ 1-3 ch 131 SLA 1962; am § 1 ch 130 SLA 1968; am § 10 ch 143 SLA 1968; am §§ 1, 2 ch 216 SLA 1968; am §§ 1-3 ch 158 SLA 1970; am § 3 ch 58 SLA 1971; am §§ 1, 2 ch 124 SLA 1971; am §§ 2, 3 ch 125 SLA 1971; am §§ 1-3 ch 153 SLA 1972; am § 3 ch 166 SLA 1976; am §§ 1, 2 ch 116 SLA 1977)

Sec. 43.40.020. Penalty for violation. (a) A person who violates a provision of §§ 10-100 of this chapter upon conviction is punishable for each violation by a fine of not less than \$50 nor more than \$5,000, or by imprisonment for not more than one year, or by both. Each day's violation is a separate offense.

(b) Repealed by § 3 ch 116 SLA 1977. (§ 48-5-3 ACLA 1949; am § 4 ch 153 SLA 1972; am § 3 ch 116 SLA 1977)

Sec. 43.40.030. Refund for nonhighway use.

(a) Except as specified in § 10 (j) of this chapter, a person who uses motor fuel to operate an internal combustion engine is entitled to a refund of six cents a gallon if

- (1) the tax on the motor fuel has been paid;
- (2) the motor fuel is not aviation fuel, or motor fuel used in or on watercraft; and
- (3) the internal combustion engine is not

§ 43.40.030 Alaska Statutes § 43.40.050

used in or in conjunction with a motor vehicle licensed to be operated on public ways.

(b) The entire tax levied by §§ 10-100 of this chapter shall be refunded to the purchaser on that part of the motor fuel used in a foreign country on which duty is paid when the fuel is sold and delivered in the state for nonhighway use in a foreign country.

(c) The Department of Revenue shall establish the necessary regulations and prescribe the appropriate forms to prove that the motor fuel is taken to and used in foreign countries. (§ 2 ch 47 SLA 1955; am § 3 ch 27 SLA 1957; am § 2 ch 136 SLA 1961; am § 4 ch 158 SLA 1970; am § 3 ch 124 SLA 1971; am § 4 ch 125 SLA 1971; am § 4 ch 116 SLA 1977)

Sec. 43.40.040. Applications and permits for refund. A person who desires to claim a refund shall obtain an annual permit from the Department of Revenue by application on a form prescribed by the department. The application shall contain the name, address, and occupation of the applicant, the nature of the business, and a sufficient description for identification of the machines or equipment in which the motor fuel is to be used for which refund may be claimed under the permit. The permit shall be obtained no later than the time that the first application for refund is made under §§ 10-100 of this chapter. The permit expires at midnight of June 30 following the date it is issued. (§ 3 ch 47 SLA 1955; am § 4 ch 131 SLA 1962)

Sec. 43.40.050. Refund claim by affidavit.

(a) A person who claims a refund as provided in §§ 10-100 of this chapter shall present his claim to the commissioner of revenue by affidavit upon a form provided by the commissioner with the information the commissioner requires. The claim shall be accompanied by each invoice issued to the claimant at the time the motor fuel is purchased. The commissioner may require any additional information

§ 43.40.050 Revenue and Taxation § 43.40.085

which he considers necessary for the administration of §§ 10-100 of this chapter.

(b) A claim for refund shall be filed within one year from the date of the purchase of the motor fuel as indicated on the invoice, and failure to file within the one year period is a waiver of the right to the refund. A claim is considered to be filed when the claim is mailed or personally presented to an office of the Department of Revenue. (§ 4 ch 47 SLA 1955; am § 1 ch 139 SLA 1960)

Sec. 43.40.060. Separate invoices. The Department of Revenue may require the issuance of separate invoices for fuel sold, distributed, or transferred when the invoices will be the basis for a refund claim. (§ 6 ch 47 SLA 1955)

Sec. 43.40.070. Refund warrants. Upon approval of a refund claim by the Department of Revenue, a warrant shall be drawn on the highway fuel tax account in the general fund in favor of the applicant in the amount of the claim. (§ 7 ch 47 SLA 1955; am § 5 ch 131 SLA 1962)

Sec. 43.40.080. Examination of books and records. (a) To determine the validity of a claim for refund, the Department of Revenue may examine the books and records of the claimant and the books and records of a distributor of motor fuel. The Department of Revenue may cancel the refund permit of the claimant relying upon a fraudulent invoice for a period of not more than one year.

(b) If an invoice relied upon for a refund claim is fraudulent, the claimant is guilty of a misdemeanor and is punishable by a fine of not more than \$500. (§ 5 ch 47 SLA 1955)

Sec. 43.40.085. Preservation of books and records. Dealers and users shall preserve for three years all books and records pertaining to sales, transfers, and uses of motor fuel which are taxed under this chapter. (§ 5 ch 158 SLA 1970)

§ 43.40.090 Alaska Statutes § 43.40.100

Sec. 43.40.090. Criminal violation. A person who uses motor fuel with knowledge that the tax has not been paid is guilty of a misdemeanor, and is punishable by a fine of not more than \$500, or by imprisonment for not more than one year, or by both. (§ 11 ch 47 SLA 1955; am § 4 ch 27 SLA 1957)

Sec. 43.40.100. Definitions. In §§ 10-100 of this chapter

(1) "dealer" means a person who sells or otherwise transfers in this state motor fuel upon which the taxes imposed by this chapter have not been paid;

(2) "motor fuel" means fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose or in a stationary engine, machine or mechanical contrivance which is run by an internal combustion motor; "motor fuel" does not include

(A) fuel consigned to foreign countries,

(B) fuel sold for use in jet propulsion aircraft operating in flights to foreign countries,

(C) fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public,

(D) fuel used by nonprofit power associations or corporations for generating electric energy for resale, or

(E) fuel used by charitable institutions;

(3) "user" means a person consuming or using motor fuel, who either purchases the fuel out of the state and ships it into the state for his own use within the state or manufactures the fuel in the state. (§ 48-5-1 ACLA 1949; am § 1 ch 56 SLA 1949; am § 9 ch 47 SLA 1955; am § 26 ch 70 SLA 1964; am §§ 6, 7 ch 158 SLA 1970; am § 1 ch 74 SLA 1972; am § 5 ch 116 SLA 1977)

Article 2. Additional Tax Levy on Transfer
Consumption of Motor Fuel. JR

§ 43.40.110 Revenue and Taxation § 43.60.011

Section
110-120. (Repealed)

Secs. 43.40.110-43.40.120.
Repealed by § 8 ch 158 SLA 1970.

MEMORANDUM

Date: March 31, 1982

From: Stanley H. Reisman of Delaney, Wiles, Hayes, Reisman & Brubaker, Inc. in Support of HB 37

Re: Constitutionality of Sec. 3 of HB 37
(Motor Fuel Tax)

Highly oversimplified, the basic constitutional standards pertaining to tax legislation and the administration thereof are:

1. Each taxpayer must be treated in a manner comparable to other similarly situated taxpayers--this is the essence of the equal protection clause (federal and state).
2. Each taxpayer must be treated fairly--this is the essence of the due process provision (federal and state)-- (a vague or ambiguous statute makes for uncertainty and uneven or improper administrative and hence invites unfairness).

In evaluating or analyzing Sec. 3, it is imperative to first consider the backdrop for the current problem(s).

- a) The existing statute enacted in the mid-40's is not comprehensive, lacks precision and is vague.
- b) This statute has never been constitutionally reviewed by our judiciary.
- c) The statute does not follow the more comprehensive, logical and workable pattern of federal motor fuel taxes, which are also applicable to the affected Alaskan business people and consumers.
- d) The Department of Revenue, although it has had a duty to develop motor fuel tax regulations has never done so although the statute has been in force for roughly 35 years.
- e) To a large extent the industry practice throughout Alaska over the years has been to follow the federal pattern in interpreting the Alaska statute.
- f) More particularly, absent a clear and convincing indication that the fuel was to be used for a taxable purpose,

the Alaska tax was not asserted or collected by the Alaska small business intermediaries (wholesalers and jobbers) in accordance with the federal pattern.

g) The sketchy Alaskan statute has not and does not currently have sufficient armament in it to get at the end user at whom the tax is clearly targeted.

h) The Department of Revenue has been aware of the problem for a number of years--for at least five to seven years ago according to one Department employee who testified recently in a hearing on HB 37.

i) In or about the early part of 1981, Department personnel (whether they were new personnel or old personnel, we have no knowledge of at the moment) took a fresh look at the statute and (i) determined there was a gap in the statute allowing certain end users to possibly avoid or evade the tax, and (ii) as a gap-closing measure, conveniently and unjustifiably decided the Alaskan small business concerns acting as intermediaries were not interpreting the statute correctly thereby failing to collect the tax.

j) Without any dissemination for comment to the industry or consumers, of the new Department interpretation, the Department then began retroactively applying the new interpretation in an audit program affecting Alaskan dealers principally in the southcentral area. At the moment we are not sure how many audits, if any, were conducted in the First, Second and Fourth Judicial Districts.

Now, a brief oversimplified constitutional and legal critique of the Department's newly adopted erroneous interpretation of the subject tax statute:

I. The present statute because of its vagueness, is subject to constitutional challenge because it does not afford the taxpayer or administrator sufficient certainty or knowledge of what the law is and how it is to be applied--this is a due process defect.

II. The recent application by the Department of this new and unexpected erroneous interpretation to past years moreover is (a) arbitrary, (b) it departs from reasonable expectations of a taxpayer, (c) it constitutes an abuse of

discretion, and (d) is punitive and confiscatory--all of which constitutes due process defects.

III. Also to be considered is a long standing principle that a prior settled administrative interpretation acquires the force of law and cannot be unilaterally retroactively revoked.

IV. The essence of this entire matter clearly is unfairness and overreaching by the Department.

V. What the Legislature is being asked to do is not to expunge a tax that had validly and properly accrued, rather it is an attempt to prevent the overzealous, arbitrary and unreasonable Department of Revenue from using its power to assess crushing back taxes against small business concerns who are (i) not the persons against whom the tax is targeted, and (ii) not financially equipped to handle the onslaught. Such small business concerns are accordingly compelled to hire lawyers at significant cost and spend considerable time and effort to meet the Department's tactics.

VI. Any person or lawyer at minimal cost and effort can file an action in court. Whether or not that suit is sound ultimately is resolved by the courts. Similarly, any person or lawyer can, at minimal cost and effort, assert the unconstitutionality of a particular piece of legislation. Whether in fact the legislation is unconstitutional is a matter to be judged by a neutral umpire--namely, the courts and not by the proponent, the opponent or their advocates.

VII. The Department of Revenue (1) acting as a pseudo legislature, and (2) under the guise of ostensible administrative authority, is placing numerous Alaskan small business concerns in unnecessary and unwarranted financial jeopardy.

VIII. The Legislature clearly has the power and under the circumstances the duty to appropriately protect Alaskan citizens by a legislative tool (corrective legislation) from unfair and confiscatory treatment by the Department of Revenue.

March 31, 1982.

Stanley H. Reitman