

COMMITTEE REPORT
SENATE

FURTHER: None

6/20/81

Date: 2/23/82

Mr. President:

The Committee on FINANCE has had HB 187 am
tax credits and penalties

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 ^SCS for HB 187 same title
 new title
- and recommends DO PASS
- 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]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

CHAIRMAN

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. 6CSHB 187 (Fin)
 Title An Act relating to computation of tax penalties; effective date.
 Requested by _____ Date 2/23/82

II. FISCAL DETAIL
 Agency Affected Department of Revenue
 Program Category Affected Revenue Collection and Management
 BRU, Program, Or Subprogram(s) Affected _____
 (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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars) NONE

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

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



IV. DATE 2/23/82 PREPARED BY Senator Don Bennett, Chairman
 AGENCY Senate Finance Committee
 Original: Legislative Finance PHONE 465-3714
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

DRAFT

2/22/82

2 SENATE CS FOR HOUSE BILL NO. 187 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to computation of tax penalties; and
7 providing for an effective date."

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

9 * Section 1. AS 43.05.220(a) is amended to read:

10 (a) Five percent shall be added to a tax for each 30-day period or
11 fraction of the period during which the taxpayer fails to file at the
12 time or times required by law or regulation a return or report, or pay
13 the full amount of the tax, or a portion or a deficiency of the tax, as
14 finally determined by the department and required by this title, unless
15 it is shown that the failure is due to a reasonable cause and not to
16 wilful neglect. The penalty shall not exceed 25 percent in the aggregate.
17 The penalty is computed only on the unpaid balance of the tax
18 liability as determined by the department. The department shall pre-
19 scribe by regulation circumstances which constitute reasonable cause for
20 purposes of this section.

21 * Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-
22 070(c).

DRAFT

2/22/82

2 SENATE CS FOR HOUSE BILL NO. 187 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to computation of tax penalties; and
7 providing for an effective date."

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

9 * Section 1. AS 43.05.220(a) is amended to read:

10 (a) Five percent shall be added to a tax for each 30-day period or
11 fraction of the period during which the taxpayer fails to file at the
12 time or times required by law or regulation a return or report, or pay
13 the full amount of the tax, or a portion or a deficiency of the tax, as
14 finally determined by the department and required by this title, unless
15 it is shown that the failure is due to a reasonable cause and not to
16 wilful neglect. The penalty shall not exceed 25 percent in the aggre-
17 gate. The penalty is computed only on the unpaid balance of the tax
18 liability as determined by the department. The department shall pre-
19 scribe by regulation circumstances which constitute reasonable cause for
20 purposes of this section.

21 * Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-
22 070(c).

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 187 am

Title An Act relating to tax credits and penalties; and providing for an
~~Request~~ effective date Date February 22, 1982

Requested by: Senate Finance

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) 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) None

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

See attached memo to R. D. Stevenson dated February 22, 1982.

IV. DATE February 22, 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)

MEMORANDUM

State of Alaska

Department of Revenue

TO: R. D. Stevenson
Legislative Assistant

DATE: February 22, 1982

FILE NO:

TELEPHONE NO:

FROM: Robert R. Kessel
Director, Audit Division *RRK*

SUBJECT: HB 187 am

The amended version of HB 187 retains (in section 1) the language which would restrict the civil penalty for failing to file a tax return to a percentage of "the unpaid balance of the tax liability as determined by the Department." The Department's objection to this statutory change is explained in detail in Gary Jenkins' memo of February 27, 1981.

Section 2 of this amended version was adopted verbatim, section 1 of SLA 81, Chapter 117 (copy attached) and should be removed from this bill.

RRK/EJ/gb

MEMORANDUM

State of Alaska

TO: R. D. Stevenson
Legislative Assistant

DATE February 27, 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT HB 187

This bill would make two changes to AS 43.05.220(a) which would significantly alter the functioning of the penalty provision. The first change would give all delinquent taxpayers an additional 30 days in which to file a return or pay a tax before either a failure to file penalty or a failure to pay penalty could be assessed. If for some reason the Legislature feels the filing deadline for filing any particular tax return is not appropriate, then the specific filing deadline should be amended and not permit a carte blanche extension of 30 days before any penalties can be assessed.

The second proposed change in the section would limit either the failure to file or the failure to pay penalty to being computed using only the unpaid balance as a computational base. Our current regulations provide that the failure to pay penalty is computed on the unpaid balance so the only penalty affected by this provision is the failure to file penalty. This provision would seriously thwart our efforts to obtain proper and timely filings of tax returns. This penalty is in the law to insure that taxpayers will meet the statutory requirements to file sufficient information with the department in order that we might ascertain the correctness of the amount of tax which they have paid. All of our statutes have adequate lead times for the filing of returns as well as provisions for obtaining an extension of time to file, most of which are up to six months. If this provision is enacted into law, a taxpayer could pay us a tax, take the position that that is all the tax that was due and refuse to file a return. To ascertain whether he was correct or not, we would be required to expend hundreds of manhours to gather enough information to determine if his original ascertainment was correct. If it was correct, then we would not be able to assert any penalty because there would be no additional tax liability. The end result would be that taxpayers could completely destroy any attempt that we might make at effective tax administration by employing these kind of tactics.

MEMORANDUM

State of Alaska

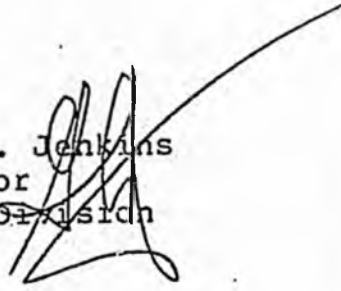
TO: R. D. Stevenson
Legislative Assistant

DATE: March 26 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division



SUBJECT: CS HB 187

The amended version of HB 187 deletes one of the proposals in the original bill regarding which we had expressed concern in my memorandum of February 27, 1981. The second area of concern which I mentioned in that memorandum has been retained in the committee substitute and my original comments are still applicable.

AGO 787378 +

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 187 am
Title An Act relating to tax credits and penalties
Requested by Senate Finance Committee Date 02/22/82

II. FISCAL DETAIL

Agency Affected Department of Revenue
Program Category Affected _____
BRU, Program, Or Subprogram(s) Affected _____
(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)
The second paragraph of this bill appears to replicate SCS CS HB 460 (Fin) passed last session as Chapter No. 117 SLA 81. A copy of that chapter and the fiscal note analyzing SCS CS HB 460 are attached.

IV. DATE 02/22/82 PREPARED BY Vince Wright
AGENCY Department of Revenue
Original: Legislative Finance PHONE 465-2173
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

I. REQUEST
Bill/Resolution No. SCS CS HB 460 (Fin)
Title An Act relating to taxes
Requested by Resources Committee Date June 22, 1981

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected _____
BRU, Program, or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars) NONE

	FY 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						

FUNDING (Thousands of Dollars)

GENERAL FUND	(15,530.0)	(7,000)	(7,500.0)	(7,930.0)
FEDERAL FUNDS				
OTHER (Specify Fund Source)				

POSITIONS

NONE

FULL TIME					
PART TIME					
TEMPORARY					

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

This investment credit provisions of this bill will primarily benefit multistate/multinational corporations as well as larger domestic corporations. The estimated loss of revenue for the credit is 5 to 7 million dollars of corporate income tax per year. The effect is so large in FY 82 because of the retroactive provision back to 1/1/79.

The total includes what the state would have obtained if the property exempted under this bill is taxed under AS 43.56. The lost revenue constitutes 2% of assessed value of the property less that amount (about 16%) which is credited for municipal levies. Municipalities could tax the exempted property under local law.

IV. DATE June 22, 1981 PREPARED BY Gary L. Jenkins
AGENCY Department of Revenue
PHONE 465-2320
Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)



LAWS OF ALASKA

1981

Source

SCS_GSHB 460(Fin) am S (efd am H)

Chapter No.

117

AN ACT

Relating to taxes; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDEPLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: July 30, 1981
Actual Effective Dates: Secs. 1 - 9, and 11 - 23 take effect July 31, 1981. Sec. 10 takes effect July 1, 1982.
Secs. 24 - 25 take effect October 28, 1981.

AGO 787381 +

AN ACT

Relating to taxes; and providing for an effective date.

* Section 1. AS 43.20.036(b) is amended to read:

(b) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against his tax liability the [JOB DEVELOPMENT] investment credit allowed as to federal taxes under Internal Revenue Code sec. 38 (26 U.S.C. 38) [50] upon only the first \$20,000,000 [\$500,000] of qualified investment put into use in the state for each taxable year [(26 U.S.C. SEC. 50)]. This limitation does not apply to the amounts invested in equipment which meets the definition of a certified pollution control facility as defined under Internal Revenue Code sec. 169 (26 U.S.C. sec. 169) as in effect on June 19, 1975, [THE EFFECTIVE DATE OF THIS ACT] except that the date specified in Internal Revenue Code [THAT] section 169(d) as a condition of qualifying a certified pollution control facility for a deduction does not apply.

* Sec. 2. AS 43.56.210(6)(A)(iii) is amended to read:

(iii) roads, tank farms, tanker terminals, docks and other port facilities, and air strips [AND COMMUNICATION EQUIPMENT AND FACILITIES];

* Sec. 3. AS 43.56.210(6)(A) is amended by adding a new subparagraph to read:

(vi) communications facilities owned by a person whose principal business in the state is the exploration for,

Chapter 117

1 production of, or pipeline transportation of gas or unrefined
2 oil and whose operation of the communications facilities
3 directly relates to the conduct of that business;

4 * Sec. 4. AS 43.56.210(6)(B) is amended by adding a new subparagraph to
5 read:

6 (v) communications facilities, except communica-
7 tions facilities taxable under (A)(vi) of this paragraph;

8 * Sec. 5. AS 43.75.015(b) is amended to read:

9 (b) Instead of the taxes levied by (a) of this section, a person
10 who processes [ENGAGED IN A FISHERY BUSINESS WHICH INCLUDES PROCESSING]
11 a developing commercial fish species is liable for and shall pay a tax
12 equal to

13 (1) one percent of the value of the developing commercial
14 fish species processed by a shore-based fisheries business during the
15 year; and

16 (2) three percent of the value of the developing commercial
17 fish species processed by a floating fisheries business during the
18 year.

19 * Sec. 6. AS 43.75.015(c) is amended to read:

20 (c) A person engaging or attempting to engage in a fisheries
21 business who first actually and physically processes the fishery re-
22 source, or a person who purchases a fishery resource that is frozen
23 from a person excluded by AS 43.75.017 from liability for the tax, is
24 liable for and shall pay to the department the entire tax imposed by
25 this section. In determining this tax liability, the person may [NOT]
26 deduct from the value of the fishery resources processed the value of
27 fishery resources that are canned or processed for other fisheries
28 businesses. A person taking the deduction authorized by this subsection
29 shall report all information relating to the deduction in accordance

1 with regulations issued by the department [, BUT SHALL INCLUDE THAT
2 VALUE AS PART OF THE VALUE OF THE FISHERY RESOURCES PROCESSED].

3 * Sec. 7. AS 43.75 is amended by adding a new section to read:

4 Sec. 43.75.017. EXCLUSION FROM FISHERIES BUSINESS TAX. A person
5 is not liable for the fisheries business tax under AS 43.75.015 when
6 the fishery resource is frozen aboard a fishing vessel if

7 (1) the vessel is operated as a commercial fishing vessel
8 under a valid commercial fishing license;

9 (2) the fishery resource is not processed beyond heading,
10 gutting or cleaning, freezing and glazing;

11 (3) the fishery resource that is frozen was caught by the
12 vessel; and

13 (4) the fishery resource is sold by the person claiming an
14 exclusion from the tax to a fisheries business licensed under AS 43.75.

15 * Sec. 8. AS 43.75.100(a) is amended to read:

16 (a) A person taking, purchasing, or otherwise acquiring a fishery
17 resource covered by this chapter which has not been subject to the tax
18 imposed in AS 43.75.015 is subject to the tax levied in AS 43.75.015 on
19 the value of the fishery resource [SOLD] if the person

20 (1) transports the fishery resource to a point outside the
21 taxing jurisdiction of the state for subsequent processing or sale [TO
22 A FISHERIES BUSINESS] outside the taxing jurisdiction of the state; [OR]

23 (2) sells the fishery resource [TO A FISHERIES BUSINESS]
24 outside the taxing jurisdiction of the state; or

25 (3) has the fishery resource processed by a fisheries busi-
26 ness inside the state.

27 * Sec. 9. AS 43.75.100(b) is repealed and reenacted to read:

28 (b) The rate of tax that shall be paid by a person whose liability
29 for the tax is established by this section is the rate of tax that

Chapter 117

would have been due under AS 43.75.015 if the fisheries business that first actually and physically processed the fish had been liable to pay the tax.

* Sec. 10. AS 43.75.130 is amended to read:

Sec. 43.75.130. REFUND TO LOCAL GOVERNMENTS. The commissioner of revenue shall pay

(1) to each municipality unified under AS 29.68.240 - 29.68.-440, and to each city located in the unorganized borough, 50 [20] percent of the amount of tax revenue collected in the municipality from taxes levied by AS 43.75;

(2) to each city located within a borough, 25 [10] percent of the amount of tax revenue collected in the city from taxes levied by AS 43.75; and

(3) to each borough

(A) 50 [20] percent of the amount of tax revenue collected in the area of the borough outside cities from taxes levied by AS 43.75; and

(B) 25 [10] percent of the amount of tax revenue collected in cities located within the borough from taxes levied by AS 43.75.

* Sec. 11. AS 43.75.140(7) is amended to read:

(7) "value" means the actual price paid for the fisheries resource by the fisheries business, including indirect consideration such as fuel, supplies, or gear, whether paid at the time of purchase of the fisheries resource or tendered as a deferred or delayed payment, except that "value" means the market value of the fishery resource if the taking of the fishery resource is done [PROCURED] in company-owned or company-subsidized boats operated by employees of the fisheries business or in boats which are operated under lease or other arrange-

1 ment;

2 * Sec. 12. AS 43.75.140 is amended by adding a new paragraph to read:

3 (9) "taking" means pursuing, fishing, capturing, or harvest-
4 ing a fisheries resource in any manner.

5 * Sec. 13. AS 43.76.010(a) is amended to read:

6 (a) A person holding a limited entry permit under AS 16.43 shall
7 pay a salmon enhancement tax at the rate of three percent of the value
8 of salmon, as defined in AS 43.75.140(7), that the person removes from
9 the state or transfers to a buyer in the state. The buyer [SELLS TO A
10 PROCESSOR LICENSED UNDER AS 43.75.011. THE PROCESSOR] shall collect
11 the salmon enhancement tax at the time [OF] the salmon is acquired by
12 the buyer [SALE].

13 * Sec. 14. AS 43.76.011(a) is amended to read:

14 (a) A person holding a limited entry permit under AS 16.43 shall
15 pay a salmon enhancement tax at the rate of two percent of the value of
16 salmon, as defined in AS 43.75.140(7), that the person removes from the
17 state or transfers to a buyer in the state. The buyer [SELLS TO A
18 PROCESSOR LICENSED UNDER AS 43.75.011. THE PROCESSOR] shall collect
19 the salmon enhancement tax at the time [OF] the salmon is acquired by
20 the buyer [SALE].

21 * Sec. 15. AS 43.76.020(a) is amended to read:

22 (a) The salmon enhancement tax levied under AS 43.76.010 or 43.-
23 76.011 may be terminated by the commissioner of revenue upon majority
24 vote at an election held under AS 43.76.015 in the region in which the
25 salmon enhancement tax is levied.

26 * Sec. 16. AS 43.76.025(a) is amended to read:

27 (a) A buyer [PROCESSOR] who acquires [BUYS] fisheries resources
28 which are subject to the salmon enhancement tax imposed by AS 43.76.010
29 or 43.76.011 shall collect the salmon enhancement tax at the time of

Chapter 117

1 purchase, and shall remit the total salmon enhancement tax collected
2 during each month to the Department of Revenue by the last day of the
3 next month.

4 * Sec. 17. AS 43.76.025(b) is amended to read:

5 (b) A buyer [PROCESSOR] who collects the salmon enhancement tax
6 shall

7 (1) maintain records reflecting the region designated under
8 AS 16.10.375 in which the fishery resource was caught; and

9 (2) report to the Department of Revenue by March 1 of each
10 year the total value, as defined in AS 43.75.140(7), of the salmon
11 caught in each region designated under AS 16.10.375 which the buyer
12 [PROCESSOR] has acquired [PURCHASED] during the preceding year.

13 * Sec. 18. AS 43.76 is amended by adding a new section to read:

14 Sec. 43.76.028. LIABILITY FOR TAX ON SALMON SHIPPED FROM STATE.

15 (a) The owner of salmon removed from the state is liable for payment
16 of the salmon enhancement tax imposed by AS 43.76.010 or 43.76.011 if,
17 at the time the salmon are removed from the state, the tax payable on
18 the salmon has not been collected by a buyer.

19 (b) If the owner of salmon is liable for payment of the salmon
20 enhancement tax under (a) of this section, he shall comply with the
21 requirement of AS 43.76.025(b) to report his liability for payment of
22 the tax.

23 * Sec. 19. AS 43.76 is amended by adding a new section to read:

24 Sec. 43.76.040. DEFINITION. In this chapter, unless the context
25 otherwise requires, "buyer" means a person who acquires possession of
26 salmon from the person who caught the salmon regardless of whether
27 there is an actual sale of the salmon but excluding a transfer to a
28 person engaged solely in interstate transportation of goods for hire.

29 * Sec. 20. AS 43.75.136 is repealed.

1 * Sec. 21. TRANSITIONAL REVENUE SHARING. Notwithstanding AS 43.75.130,
2 during the fiscal year ending June 30, 1982, the commissioner of revenue
3 shall pay

4 (1) to each municipality unified under AS 29.68.240 - 29.68.440,
5 and to each city located in the unorganized borough, 30 percent of the
6 amount of tax revenue collected in the municipality from taxes levied by
7 AS 43.75;

8 (2) to each city located within a borough, 15 percent of the
9 amount of tax revenue collected in the city from taxes levied by AS 43.75;
10 and

11 (3) to each borough

12 (A) 30 percent of the amount of tax revenue collected in the
13 area of the borough outside cities from taxes levied by AS 43.75; and

14 (B) 15 percent of the amount of tax revenue collected in
15 cities inside the borough from taxes levied by AS 43.75.

16 * Sec. 22. TRANSITION. The taxes paid for the 1980 calendar year under
17 AS 43.75 shall be shared with municipalities in accordance with AS 43.75.130
18 as that section read before its amendment by sec. 10 of this Act. The taxes
19 paid for the 1981 calendar year shall be shared with municipalities in
20 accordance with sec. 21 of this Act. The taxes paid for the 1982 calendar
21 year and for each succeeding calendar year shall be shared with municipali-
22 ties in accordance with AS 43.75.130 as amended by sec. 10 of this Act.

23 * Sec. 23. SEVERABILITY. If a provision of this Act, or the application
24 of a provision of this Act to any person or circumstance, is held invalid,
25 the remainder of this Act and the application of it to other persons or
26 circumstances is not affected by the invalidation of the section.

27 * Sec. 24. Section 1 of this Act is retroactive to July 1, 1980, and
28 applies to expenditures that qualify for the investment credits that are
29 made on or after that date.

Chapter 117

1 * Sec. 25. Sections 2 - 4, 6, 7, 11, and 12 of this Act are retroactive
2 to January 1, 1981, and apply to tax years beginning after December 31,
3 1980.

4 * Sec. 26. Section 21 of this Act takes effect July 1, 1981.

5 * Sec. 27. Section 10 of this Act takes effect July 1, 1982.

6 * Sec. 28. Sections 1 - 9, 11 - 20, and 22 - 23 of this Act take effect
7 immediately in accordance with AS 01.10.070(c).

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution NCS HB 187

Title An Act relating to the penalty on tax.

Requested by House Finance Committee

Date March 19, 1981

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Revenue Collections & 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) -NONE-

	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						

FUNDING (Thousands of Dollars) -NONE-

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS -NONE-

FULL TIME						
PART TIME						
TEMPORARY						

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

See attached memo to R. D. Stevenson dated March 26, 1981.

IV. DATE March 27, 1981

PREPARED BY Gary L. Jenkins

AGENCY Audit Division

PHONE (907) 465-2320

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

AGO 787390

MEMORANDUM

State of Alaska

TO: R. D. Stevenson
Legislative Assistant

DATE: March 26 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: CS HB 187

The amended version of HB 187 deletes one of the proposals in the original bill regarding which we had expressed concern in my memorandum of February 27, 1981. The second area of concern which I mentioned in that memorandum has been retained in the committee substitute and my original comments are still applicable.

MEMORANDUM

State of Alaska

TO: R. D. Stevenson
Legislative Assistant

DATE February 27, 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT HB 187

This bill would make two changes to AS 43.05.220(a) which would significantly alter the functioning of the penalty provision. The first change would give all delinquent taxpayers an additional 30 days in which to file a return or pay a tax before either a failure to file penalty or a failure to pay penalty could be assessed. If for some reason the Legislature feels the filing deadline for filing any particular tax return is not appropriate, then the specific filing deadline should be amended and not permit a carte blanche extension of 30 days before any penalties can be assessed.

The second proposed change in the section would limit either the failure to file or the failure to pay penalty to being computed using only the unpaid balance as a computational base. Our current regulations provide that the failure to pay penalty is computed on the unpaid balance so the only penalty affected by this provision is the failure to file penalty. This provision would seriously thwart our efforts to obtain proper and timely filings of tax returns. This penalty is in the law to insure that taxpayers will meet the statutory requirements to file sufficient information with the department in order that we might ascertain the correctness of the amount of tax which they have paid. All of our statutes have adequate lead times for the filing of returns as well as provisions for obtaining an extension of time to file, most of which are up to six months. If this provision is enacted into law, a taxpayer could pay us a tax, take the position that that is all the tax that was due and refuse to file a return. To ascertain whether he was correct or not, we would be required to expend hundreds of manhours to gather enough information to determine if his original ascertainment was correct. If it was correct, then we would not be able to assert any penalty because there would be no additional tax liability. The end result would be that taxpayers could completely destroy any attempt that we might make at effective tax administration by employing these kind of tactics.

ARTHUR YOUNG

HB 187
ARTHUR YOUNG & COMPANY
730 I STREET
ANCHORAGE, ALASKA 99501

February 5, 1981

Mr. Tom Williams
Commissioner of Revenue
Department of Revenue
Pouch SA
Juneau, Alaska 99811

Dear Tom:

In introducing legislation in the U.S. Senate to correct a Revenue Procedure, Senator Lloyd Benston said that the IRS had stretched the law to the breaking point. He went on to say that that particular revenue procedure was "a good example of the way in which IRS sometimes takes a statute aimed at correcting a simple problem and stretches it with a closely tailored interpretation in order to extract revenues and inflict undue burdens on taxpayers". The Department of Revenue has recently done exactly the thing that Senator Benston accused the IRS of doing when it issued Regulations 15 AAC 05.210. These regulations purport to interpret Alaska Statute Section 43.05.220. This Section in the Statute reads as follows:

"Five percent shall be added to a tax for each thirty-day period or fraction of the period during which the taxpayer fails to file at the time or times required by law or regulation a return or report, or pay the full amount of the tax, or a portion or a deficiency of the tax, as finally determined by the Department and required by this title..."

The offensive part of the new regulation regards the failure to file penalty and states:

"The failure to file penalty is computed on the total tax liability (total tax liability means the total tax disregarding prepayments or withholding credits) reported by the taxpayer or as subsequently determined by the Department."

An example in the same regulations demonstrates the application of this provision. In the example, the tax return showed a tax of \$1,000. The taxpayer had prepaid (either through estimated tax

AGO 787393 +

ARTHUR YOUNG

February 5, 1981
Mr. Tom Williams
Commissioner of Revenue
Department of Revenue
page 2

payments or withholding) \$800, leaving a balance due of \$200. The tax return in the example was filed 33 days after the due date. The example concludes that the penalty in this instance would be \$100 (10% of \$1,000). It can be seen, therefore, that the penalty has been charged on the \$1,000 tax liability rather than the \$200 tax due, an effective penalty of 50% of the tax due rather than 10% as provided by law. A further extension of this line of reasoning would indicate that a taxpayer who had overpaid his state taxes, but was late filing his return, would also be subject to a penalty. For example, a corporation with a tax liability of \$50,000 and estimated tax payments of \$75,000 would have an overpayment of \$25,000; however, under the State's regulations any penalties for late filing would be calculated on the \$50,000 tax.

Unfortunately, when Section 43.05.220 was passed by the Legislature it did not make clear the amount to which 5% should be applied to calculate the penalty. One only has to look, however, at the Department of Revenue's past practice and the practice of the Internal Revenue Service and every other taxing authority of which the writer has knowledge, to see how this kind of a penalty statute is always interpreted. Throughout its entire history, the Department of Revenue has assessed a late filing penalty based on the balance of tax due. The balance of tax due is also the measuring sticks for the assessment of late filing penalties asserted by the Federal Government, the State of California, and all other states of which I am aware.

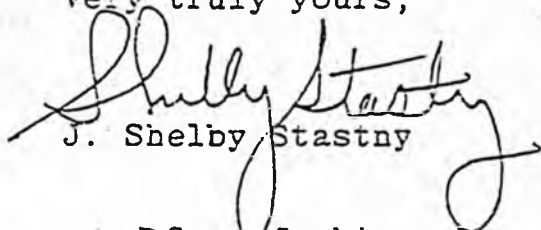
This unwarranted interpretation of the Statute is obviously aimed at extracting revenues and inflicting undue burdens upon taxpayers in a manner beyond the bounds of any reason. If a taxpayer has paid his tax liability, there is no particular state interest served by penalizing that taxpayer for not filing a form with the State on time. It is my sincere desire that the State Department of Revenue, through administrative decision, will rescind this onerous provision in the Regulations. If, however, the Department of Revenue does not see fit to take this action, I am requesting by copies of this letter to the Senate Finance Committee and the House Finance Committee that remedial legislation be enacted. I do not believe for a minute the remedial legislation is necessary, however, if that is the only avenue available to correct this obvious injustice, it will be pursued.

ARTHUR YOUNG

February 5, 1981
Mr. Tom Williams
Commissioner of Revenue
Department of Revenue
page 3

Please feel free to call if I can answer any further questions concerning this position.

Very truly yours,



J. Shelby Stastny

cc: - Gary Jenkins, Department of Revenue
- Rep. Sam Cotten, House Finance Committee
- Rep. Joe Hayes
- Rep. Joe Montgomery
- Senator Ed Dankworth, Senate Finance Committee
- Senator Don Bennett, Senate Finance Committee
Alaska Society of CPAs Taxation Committee
Alaska Bar Association Taxation Committee

JSS/pf

AGO 787395

Introduced: 2/19/81
Referred: Judiciary and Finance

1 IN THE HOUSE

BY MONTGOMERY, HAYES, ANDERSON,
BARNES, COTTEN, AND HALFORD

2 HOUSE BILL NO. 187 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to tax credits and penalties; and
7 providing for an effective date."

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

9 * Section 1. AS 43.05.220(a) is amended to read:

10 (a) Five percent shall be added to a tax for each 30-day period
11 or fraction of the period during which the taxpayer fails to file at
12 the time or times required by law or regulation a return or report, or
13 pay the full amount of the tax, or a portion or a deficiency of the
14 tax, as finally determined by the department and required by this
15 title, unless it is shown that the failure is due to a reasonable cause
16 and not to wilful neglect. The penalty shall not exceed 25 percent in
17 the aggregate. The penalty is computed only on the unpaid balance of
18 the tax liability as determined by the department. The department
19 shall prescribe by regulation circumstances which constitute reasonable
20 cause for purposes of this section.

21 * Sec. 2. AS 43.20.036(b) is amended to read:

22 (b) For purposes of calculating the income tax payable under this
23 chapter, the taxpayer may apply as a credit against his tax liability
24 the [JOB DEVELOPMENT] investment credit allowed as to federal taxes
25 under Internal Revenue Code sec. 38 (26 U.S.C. 38) [50] upon only the
26 first \$20,000,000 [\$500,000] of qualified investment put into use
27 in the state for each taxable year [(26 U.S.C. SEC. 50)]. This limita-
28 tion does not apply to the amounts invested in equipment which meets
29 the definition of a certified pollution control facility as defined

1 under Internal Revenue Code sec. 169 (26 U.S.C. sec. 169) as in effect
2 on June 19, 1975 [THE EFFECTIVE DATE OF THIS ACT] except that the date
3 specified in Internal Revenue Code [THAT] section 169(d) as a condition
4 of qualifying a certified pollution control facility for a deduction
5 does not apply.

6 * Sec. 3. Section 2 of this Act is retroactive to July 1, 1980, and
7 applies to expenditures which qualify for the investment credit which are
8 made on or after that date.

9 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
10 070(c).

ARTHUR YOUNG

HB 187

ARTHUR YOUNG & COMPANY
730 I STREET
ANCHORAGE, ALASKA 99501

February 5, 1981

Mr. Tom Williams
Commissioner of Revenue
Department of Revenue
Pouch SA
Juneau, Alaska 99811



Dear Tom:

In introducing legislation in the U.S. Senate to correct a Revenue Procedure, Senator Lloyd Benston said that the IRS had stretched the law to the breaking point. He went on to say that that particular revenue procedure was "a good example of the way in which IRS sometimes takes a statute aimed at correcting a simple problem and stretches it with a closely tailored interpretation in order to extract revenues and inflict undue burdens on taxpayers". The Department of Revenue has recently done exactly the thing that Senator Benston accused the IRS of doing when it issued Regulations 15 AAC 05.210. These regulations purport to interpret Alaska Statute Section 43.05.220. This Section in the Statute reads as follows:

"Five percent shall be added to a tax for each thirty-day period or fraction of the period during which the taxpayer fails to file at the time or times required by law or regulation a return or report, or pay the full amount of the tax, or a portion or a deficiency of the tax, as finally determined by the Department and required by this title..."

The offensive part of the new regulation regards the failure to file penalty and states:

"The failure to file penalty is computed on the total tax liability (total tax liability means the total tax disregarding prepayments or withholding credits) reported by the taxpayer or as subsequently determined by the Department."

An example in the same regulations demonstrates the application of this provision. In the example, the tax return showed a tax of \$1,000. The taxpayer had prepaid (either through estimated tax

AGO 787398 +

5-15-81

ARTHUR YOUNG

February 5, 1981
Mr. Tom Williams
Commissioner of Revenue
Department of Revenue
page 2

payments or withholding) \$800, leaving a balance due of \$200. The tax return in the example was filed 33 days after the due date. The example concludes that the penalty in this instance would be \$100 (10% of \$1,000). It can be seen, therefore, that the penalty has been charged on the \$1,000 tax liability rather than the \$200 tax due, an effective penalty of 50% of the tax due rather than 10% as provided by law. A further extension of this line of reasoning would indicate that a taxpayer who had overpaid his state taxes, but was late filing his return, would also be subject to a penalty. For example, a corporation with a tax liability of \$50,000 and estimated tax payments of \$75,000 would have an overpayment of \$25,000; however, under the State's regulations any penalties for late filing would be calculated on the \$50,000 tax.

Unfortunately, when Section 43.05.220 was passed by the Legislature it did not make clear the amount to which 5% should be applied to calculate the penalty. One only has to look, however, at the Department of Revenue's past practice and the practice of the Internal Revenue Service and every other taxing authority of which the writer has knowledge, to see how this kind of a penalty statute is always interpreted. Throughout its entire history, the Department of Revenue has assessed a late filing penalty based on the balance of tax due. The balance of tax due is also the measuring stick for the assessment of late filing penalties asserted by the Federal Government, the State of California, and all other states of which I am aware.

This unwarranted interpretation of the Statute is obviously aimed at extracting revenues and inflicting undue burdens upon taxpayers in a manner beyond the bounds of any reason. If a taxpayer has paid his tax liability, there is no particular state interest served by penalizing that taxpayer for not filing a form with the State on time. It is my sincere desire that the State Department of Revenue, through administrative decision, will rescind this onerous provision in the Regulations. If, however, the Department of Revenue does not see fit to take this action, I am requesting by copies of this letter to the Senate Finance Committee and the House Finance Committee that remedial legislation be enacted. I do not believe for a minute the remedial legislation is necessary, however, if that is the only avenue available to correct this obvious injustice, it will be pursued.

AGO 787399 +

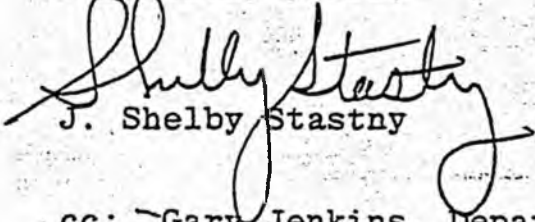
5-15-81

ARTHUR YOUNG

February 5, 1981
Mr. Tom Williams
Commissioner of Revenue
Department of Revenue
page 3

Please feel free to call if I can answer any further questions concerning this position.

Very truly yours,



J. Shelby Stastny

cc: - Gary Jenkins, Department of Revenue
- Rep. Sam Cotten, House Finance Committee
- Rep. Joe Hayes
- Rep. Joe Montgomery
- Senator Ed Dankworth, Senate Finance Committee
- Senator Don Bennett, Senate Finance Committee
Alaska Society of CPAs Taxation Committee
Alaska Bar Association Taxation Committee

JSS/pf

AGO 787400 †

5-15-81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS HB 187

Title An Act relating to the penalty on tax.

Requested by House Finance Committee

Date March 19, 1981

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Revenue Collections & 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) -NONE-

	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

FUNDING (Thousands of Dollars)

-NONE-

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

-NONE-

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME						
PART TIME						
TEMPORARY						

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

See attached memo to R. D. Stevenson dated March 26, 1981.

IV. DATE March 27, 1981

PREPARED BY Gary L. Jenkins

AGENCY Audit Division

PHONE (907) 465-2320

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

CSHB 187

MEMORANDUM

State of Alaska


TO: R. D. Stevenson
Legislative Assistant

DATE: March 26 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division



SUBJECT: CS HB 187

The amended version of HB 187 deletes one of the proposals in the original bill regarding which we had expressed concern in my memorandum of February 27, 1981. The second area of concern which I mentioned in that memorandum has been retained in the committee substitute and my original comments are still applicable.

MEMORANDUM

State of Alaska

TO: R. D. Stevenson
Legislative Assistant

DATE February 27, 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT HB 187

This bill would make two changes to AS 43.05.220(a) which would significantly alter the functioning of the penalty provision. The first change would give all delinquent taxpayers an additional 30 days in which to file a return or pay a tax before either a failure to file penalty or a failure to pay penalty could be assessed. If for some reason the Legislature feels the filing deadline for filing any particular tax return is not appropriate, then the specific filing deadline should be amended and not permit a carte blanche extension of 30 days before any penalties can be assessed.

The second proposed change in the section would limit either the failure to file or the failure to pay penalty to being computed using only the unpaid balance as a computational base. Our current regulations provide that the failure to pay penalty is computed on the unpaid balance so the only penalty affected by this provision is the failure to file penalty. This provision would seriously thwart our efforts to obtain proper and timely filings of tax returns. This penalty is in the law to insure that taxpayers will meet the statutory requirements to file sufficient information with the department in order that we might ascertain the correctness of the amount of tax which they have paid. All of our statutes have adequate lead times for the filing of returns as well as provisions for obtaining an extension of time to file, most of which are up to six months. If this provision is enacted into law, a taxpayer could pay us a tax, take the position that that is all the tax that was due and refuse to file a return. To ascertain whether he was correct or not, we would be required to expend hundreds of manhours to gather enough information to determine if his original ascertainment was correct. If it was correct, then we would not be able to assert any penalty because there would be no additional tax liability. The end result would be that taxpayers could completely destroy any attempt that we might make at effective tax administration by employing these kind of tactics.