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SUMMARY SB 200:

PROBLEM: Certain fisherman who freeze and glaze fish aboard their boats, yet are not processors, are taxed under the fisheries business tax law.

Section 1: A person who buys fish from a fisherman exempted under Sec 2, must pay the tax, so that the tax is not lost to the State.

Section 2: Exempts fisherman who freeze and glaze fish aboard their boats from the Raw fish tax. A person is not processing fish (within the Tax Statute) if he operates a commercial fishing vessel with a valid commercial license, does no more than head, gut, clean, freeze, and glaze those fish which he has caught himself.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811

March 11, 1981

The Honorable Bob Mulcahy
Chairman
Senate Labor and Commerce Committee
Room 207 - Capitol Building
Juneau, Alaska

Dear Senator Mulcahy:

Re: Senate Bill No. 200

Senate Bill No. 200, an Act relating to the fisheries business tax (AS 43.75.015) was introduced in the Senate on February 23, 1981 and was referred to the Senate Labor and Commerce and Finance Committees.

For the consideration of the Senate Labor and Commerce Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Gary L. Jenkins, Director, Audit Division and Mr. Robert W. Elliott, Research Section of the Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

RDS/rdh

cc: The Honorable Don Bennett
The Honorable M. E. Dankworth
Co-Chairmen
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Gary L. Jenkins, Director
Audit Division
Department of Revenue

Robert W. Elliott
Research Section
Department of Revenue

MEMORANDUM

State of Alaska

TO: R. D. Stevenson
Legislative Assistant

DATE: March 9, 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: SB 200

This bill would provide an exemption from the Fisheries Business Tax for those fishermen who catch and freeze salmon aboard the catching vessel. This provision is being proposed to exempt a group of trollers who have installed freezing equipment on their vessels in order to maximize the quality of their salmon by freezing it immediately after it is caught.

The proposed legislation will cause some potentially serious administrative problems in that if one of the exempted fishermen sells his catch to a buyer who is not a licensed processor, then the buyer will be liable for the tax. Under the current law, a buyer is not liable for the tax unless he performs some processing function. Thus, if a buyer acquires salmon from an exempted fisherman, we will have to attempt to keep track of these buyers to insure that the tax is paid. Since the only record we have of a buyer is a business license, if one was obtained, and the name and business description may not identify him as a buyer at all, we will have very little information available to use as we attempt to insure that the tax is paid on these transactions. It is impossible to estimate to potential revenue loss which might result from these transactions since we do not know the dollar volume of sales which an excluded fisherman might make to a buyer.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 20, 1981

SUBJECT: Analysis of bill amending fisheries business
tax (Work Order Number 12-0461) *SB 200*

TO: Senator Richard I. Eliason

FROM: *LHA* Linn H. Asper
Legislative Counsel

You have asked for a brief analysis of the bill which I drafted to exempt certain fishing operations from the fisheries business tax (AS 43.75). The problem addressed was that certain commercial fishermen who freeze and glaze fish aboard their boats, but who are not really fish "processors" are being taxed under the fisheries business tax law as "persons engaging in a fisheries business who first process a fisheries resource".

Section 2 of the bill exempts the fishermen described above from the fisheries business tax by stating that a person is not processing fish within the meaning of the tax statute if he operates a commercial fishing vessel under a valid commercial fishing license, does no more to process fish than heading, gutting, cleaning, freezing and glazing and only freezes fish that he has caught himself.

Section 1 is in the bill to insure that a person who buys frozen fish from a fisherman exempted under Sec. 2 will pay the tax, so that the tax revenue is not lost to the state. This result is fair in that the purchaser of the frozen fish is actually getting processed or partially processed fish.

As it reads now, the bill applies only to the salmon fishery.

LHA:ljb

back-up material
for SB 200
November 14, 1980

Richard Eliason
1513 Halibut Point Road
Box 143
Sitka, Alaska 99835

Dear Dick;

Greetings! I hope things are going well for you this winter. We are enjoying a rather prolonged fall here in Haines-- so far no snow.

Well, I am faced with kind of a problem. You have probably seen by now the little stack of paper from the Department of Revenue that I have enclosed. It seems that the State is now considering those fishermen who freeze their catch aboard to be "floating" processors and liable for the "processing tax" (five percent of the gross). It looks like we are supposed to file and pay for both the 1979 and 1980 seasons. The "real" processors have always paid this in the past and of course this new interpretation was not anticipated by us or the fish buyers. There was not any adjustment figured into the prices for either of these years. H.P.C. will return to us the 3% tax that they paid on these fish which the State returned to them (us "floating" processors pay the higher rate of 5%) but I am not sure what the other buyers will do. We will have to readjust our 1979 income taxes if, indeed, we are required to pay this tax.

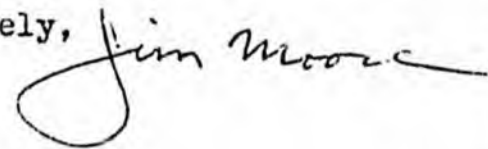
Since it was all so new and hit us so hard, I decided not to pay initially. I sent the forms back with the reply (on page 3 of 4) requesting a copy of the law and appeals procedure.

I suspect our only hope of relief will be legislation clarifying the law or exempting freezer boats.

What do you think? Is this worth looking into? I feel a very awkward and painful situation has developed here with this new interpretation.

Looking forward to hearing from you.

Sincerely,



Jim Moore
F/V Aljac
Box 655
Haines, Alaska 99827

phone: 766-2534

STATE OF ALASKA
DEPARTMENT OF REVENUE

SCHEDULE _____

TAX TYPE Fisheries Business	EXPLANATION OF ITEMS	S.S.N./EIN
NAME OF TAXPAYER James Moore		YEAR/PERIOD ENDED 7912

CONCLUSION:

Conclusion is that taxpayer was the person who first actually and physically processed the fishery resource and is liable for the tax under A.S. 43.75.015(a)(3) at a rate of five per cent for resource frozen aboard fishing vessel and later sold to Sitka Sound Seafoods.

TAXPAYER'S POSITION: It is the taxpayer's position that he is not the taxpayer. Freezing of fish aboard the vessel is more in the line of preserving the catch than processing for market and it is in fact and has been for years considered "normal commercial fishing activities". There is a distinction between a fishing operation and what is meant by "fisheries business" under A.S. 43.75.015. and the tax levied in this case is not in line with the intent of the law. I don't believe that we are any more liable for this tax than is my crew member (who "first actually and physically" processed the catch). Quite clearly HPC is the licensed processor - we are the licensed fishing boat. Preparation of the product for marketing or processing begins when the fish is stunned in the water and brought aboard the fishing vessel. The degree to which the fish is brought to final marketing condition varies with different commercial fishing operations- some are sold in the round- some dressed- some fresh- some iced- some frozen, but the final stages of processing are done by or under contract by the processor (in this case HPC). Sea frozen fish should not be considered fully processed. Often it has to be reglazed. Frozen fish must now be landed "heads-on" and the head must be taken off and the fish glazed again or reportedly in some instances stripped of its protective sea-frozen glaze and completely re-glazed. The new interpretation of the law and the new position of the State is impractical. It seems much more reasonable that the tax should be levied at the HPC level rather than at the fishing fleet

(continuation of TAXPAYER'S POSITION)

level. One tax levied to HPC would certainly be more easily implimented than to "onehundred and one" individual fishermen. Ex vessel prices for sea-frozen fish did not reflect this new position and the hardship to the fishermen caused by this is considerable especially since the 1979 season was unusually good and the 1980 season unusually poor. IN the case of HPC, since it is a cooperative, I am paying this tax at any rate. The HPC board of directors will most likely pass on the refunded 3% tax to offset a 5% tax in this case, however what policy the other processors will adapt is unknown. Federal and State Income Tax returns would all have to be adjusted as would crew shares. In all I see mountain of paperwork and considerable hardship and expense to both the State and the taxpayers. I'm not convinced that this is the intent of the law. Please send me a copy of the legislation and inform me as to the appeals proceedure.

Sincerely,

James Moore

Box 655

Haines, Alaska

99827

*The Honorable Dick Eliason
State Senate Building
Juneau, Alaska 99811*

P. O. Box 127
La Conner, Washington
January 22, 1981

Dear Senator Eliason

I am writing concerning the recent reinterpretation of an Alaska law to classify salmon trollers who freeze their own catch as processors. I oppose this reinterpretation and am asking that legislative action be taken to exempt salmon trollers from being declared processors if they freeze their own catch.

My wife and I operate a 44' trolling boat on which salmon have been preserved by both icing and freezing. When icing, the fish are cleaned immediately after being caught and then are stored on ice for up to ten days before being delivered to a cold storage. At the cold storage they are headed, cleaned further and frozen. When I am freezing, the initial cleaning is much more thorough and within 6 to 8 hours, after all the blood has been removed from the fish by washing and cleaning several more times, the fish are frozen. Within several days of freezing the fish are glazed and then stored. Throughout the entire handling process special care is taken to maintain the highest quality. In many cases the fish are eventually unloaded to the same cold storages as the iced fish.

I do not believe I should be classified as a processor because I preserve my fish by freezing instead of icing. I do not buy fish from other fishermen. I do not hire a crew. The main difference between my operation when I freeze rather than ice is quality. Sea frozen troll salmon are the highest quality salmon produced anywhere. Considering the bad publicity that some Alaska fish products have received in the past few years one would expect the state to encourage quality. Classification of sea freeze trollers as processors, however, will result in many of these boats abandoning freezing and returning to icing.

Under the new ruling, these trollers will have to obtain permits from and/or be inspected by the Department of Labor, Department of Revenue, Department of Environment and Department of Fish and Game. A 5% gross receipts tax will have to be paid on the total value of the catch. At present the cold storages pay a 3% tax on these fish. An estimate of this tax will have to be paid prior to the start of the season or a bond posted for the amount. Out-of-state boats will have to

pay or post a bond of twice the estimated tax. In addition, one or two bonds of \$10,000.00 will also have to be posted.

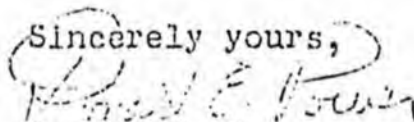
In contrast, by catching the same number of fish in the same places by the same methods but icing instead of freezing, the troller eliminates a huge beaurocratic morass, saves bonding fees and saves on the landing tax. In return the troller gets to land an inferior quality product for which he will get a lower price than if he landed a frozen product.

Considering the recent actions of the Board of Fisheries and the NPFMC that have resulted in the reduction of the troll season by 45 days in the past two years the economic impact of this tax ruling on the trollers that have invested in freezing equipment is going to be considerable.

In 1976 a Mr. Kirkland of the Alaska Department of Revenue ruled that trollers who freeze their own catch are not processors. In 1979 this ruling was changed but I wonder if the Department understood what it was doing. In December of 1980 two trollers talked to the present head of the Department of Revenue about this matter and had to spend the better part of an hour explaining to him the difference between trollers and trawlers!

I wish you would give this matter some serious thought and I hope you would remedy this situation by submitting legislation to exempt sea freeze trollers from the processor classification.

Sincerely yours,


Donald E. Power

STATE OF ALASKA

JAY S. HAMMOUD, GOVERNOR

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING

POUCH SA - JUNEAU 99811

September 26, 1980

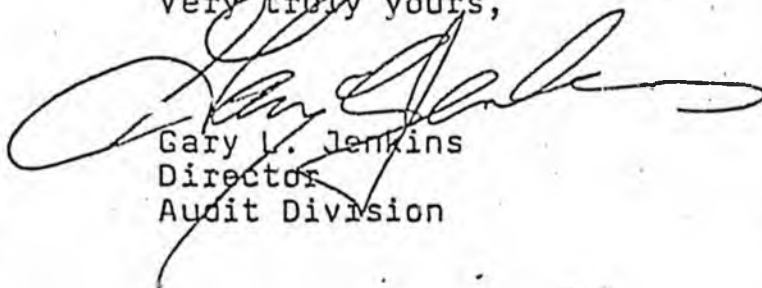
To Whom it May Concern:

Re: Cancellation of ALASKA TAX RULING #77-3
Dated 4/29/77.

During a recent review of our outstanding Revenue Rulings, it was determined that Ruling #77-3 is in error and should be canceled immediately. It is very clear in the statutes that any freezing operation is considered processing and the person performing that act will definitely be considered the processor for the purposes of the imposition of the tax. The statement in the Ruling that freezing which is necessary for the preservation of the product does not constitute processing, is clearly in error.

If you have any questions regarding this ruling, please feel free to contact me. In the very near future, the Department of Revenue will be holding hearings on regulations dealing with several aspects of the fisheries business tax, including defining who is a processor and what constitutes processing.

Very truly yours,



Gary L. Jenkins
Director
Audit Division

Attachment

STATE OF ALASKA

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING

PLUCH SA - JUNEAU 99811

ALASKA TAX RULING #77-3

CANCELLED

DATE 9-26-80
JAY S. HAMMOND, GOVERNORREFERENCE *Memorandum 9-26-80*SUBJECT: Definition of Freezership under AS 43.75.SPECIFIC ISSUE:

Is a fishing vessel, equipped with freezing facilities, which freezes its catch, processes (filleting and packaging) and sells its catch, subject to the statutes applicable to freezerships and other floating cold storage facilities? No fish are purchased.

APPLICABLE LAW:

Alaska Statute 43.75.060 states in part:

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

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

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

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

ALASKA

DISCUSSION:

The fact that a vessel, rigged for fishing, freezes its catch instead of icing does not subject the vessel or its operators and owners to the statutes applicable to freezer ships because the mere preservation of the catch until it can be processed does not constitute processing.

However, any activity that goes beyond the preservation of the quality of the catch until it can be processed begins to enter into the processing function. In the specific issue, where the fish are filleted and packaged, the process definitely is beyond the mere preservation of the catch and the activity of filleting and packaging would result in a finished product for sale and would, therefore, become taxable under the fish processing statutes.

POSITION:

The processing function beyond that normally associated with fishing, is a processing activity under AS 43.75.050. Any processing done aboard a mobile or floating vessel is taxable under the provisions of those statutes applicable to the 4% tax under AS 43.75.060(2) relating to mobile processing facilities.

Prepared by:

Eloise Herrick
Eloise Herrick
Tax Examiner

4-28-77
Date

Approved by:

Gary L. Jenkins
Gary L. Jenkins
Director
Audit Division

4-29-77
Date

MEMORANDUM

State of Alaska *paper*

TO: John Valentine
Department of Fish & Game
Ketchikan, Alaska

DATE: January 26, 1976

FILE NO:

101.3

TELEPHONE NO:

FROM: Richard Kirkland
Office Operations Supervisor
Audit Division
Department of Revenue

SUBJECT: Taxable status of fishing
vessels freezing fish

The question appears to be: Is a fishing vessel which carries freezing facilities aboard (and which freezes caught fish) subject to tax provisions applying to freezer ships?

The facts present are: 1) the vessels in question are of a size normally associated with salmon fishing in Southeast Alaska (40-60 feet), 2) the vessels are rigged for commercial fishing; carry proper gear license, and the skipper holds a valid Limited Entry Permit, 3) the only processing of the fish is that essential to preservation of quality (gutting), and 4) no buying of fish is done, and all fish carried in storage aboard were caught in fact by the vessel operator and crew.

On a vessel as described, the primary purpose of the vessel is fishing, and the fact that the caught fish are stored aboard in frozen condition, rather than packed in ice, appears to be incidental.

In the case of a freezer ship a different set of circumstances prevail, and the primary purpose of the vessel is processing.

Therefore, in my opinion, the fact that a fishing vessel preserves quality by freezing does not constitute freezer ship or floating cold storage operation, and the vessels described in the fact summary above would not be subject to the tax levied on freezer ships.

RK/lam

cc: Lou Nelson
Frank Blackwell
Eloise Merrick

907-465-2328

Return to: *Frank*

COMMITTEE REPORT
SENATE

FURTHER: Finance

2/23/81

Date: 23 MARCH 1981

Mr. President:

The Committee on LABOR & COMMERCE has had SB 200
fisheries business tax

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

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

MEMBERS SIGNING
DO PASS

Bob Mulvihill

John

Mark

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Do Not Pass with retroactive

date clause #2

Do Not Pass with retroactive

date clause Schenker

Bob Mulvihill

CHAIRMAN

AMENDMENT

OFFERED IN THE SENATE:

By: Senate Labor and Commerce

To: Labor and Commerce

SENATE BILL No. 200

HOUSE BILL No. _____

PAGE: 1

LINE: 28

Sec 43.75.017

(4) the salmon are sold to a fisheries business licensed
under AS 43.75



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

March 23, 1981

COMMITTEE MEETING MINUTES

The meeting was called to order at 3:09 P.M. by Chairman Mulcahy. Those present were: Senators Hohman, Ziegler, Fahrenkamp and Rodey.

First on the agenda was SB 200 "An Act relating to the fisheries business tax (AS 43.75.015); and providing for an effective date."

Senator Dick Eliason addressed SB 200, explaining the background of the fisheries business tax, and that the tax is retroactive for two years. (tape reading 010 to 272)

Mr. Gary Jenkins, Director of the Audit Division, Department of Revenue testified on the problems with administering the bill; fish buyers are not always identifiable. Suggested language-salmon must be sold to a licensed processor; easier to administer. (tape reading 275 to 458)

Mr. Lewis Schnaper representing the Alaska Trollers Association testified in support of SB 200, stating that the class of fishermen who have made substantial investments, 50 to 75 trollers with freezing capacities would be impacted; less economical to freeze but the quality speaks to the need. The Canadians recognize the value of sea frozen salmon, and it is the most effective use of a fishermans fuel.

Senator Pat Rodey offered proposed language; frozen salmon must be transferred to a licensed buyer.

Chairman Mulcahy moved we accept Senator Rodeys amendment and move SB 200 as amended. (tape reading 570)

Next on the agenda was SB 81 "An Act increasing the number of directors of the Alaska Housing Finance Corporation."

This bill was brought up for discussion; Senator Ziegler questioned the need for the bill, Senator Mulcahy offered background on the bill, and it was decided to hold the bill for later. (tape reading 580 to 630)

page 2
Senate L & C minutes
March 23, 1981

Next on the agenda was SB 85 "An Act permitting a minor under the age of 18 to be employed in an occupation in which a strike or lockout is in progress."

Chairman Mulcahy offer background testimony, and addressed the constitutionality of the rights of minors to picket. Chairman Mulcahy proposed we move the bill and Senator Hohman recommended the bill move from Committee. (tape reading 634 to 653)

Next on the agenda was SB 282 "An Act relating to the legal rate of interest."

Mr. Fred Koken, First Vice-President of Foster and Marshall testified on SB 282, elaborating on the problems with SB 19 usury rates, and how the bill did not reflect the needs of his industry. The policy on interest at Foster & Marshall is dictated by competition in the industry. (tape reading 678 to 830)

~~Committee action on~~ ^{moved} SB 282 was ~~"Do Pass"~~

Next on the agenda was SB 172 "An Act relating to Uniform Commercial Code filings; and providing for an effective date."

There was no testimony and it was recommended that we hold the bill for further work. (tape reading 660 to 669)

The meeting was adjourned by Chairman Mulcahy at 3:50 P.M.

ALASKA STATE LEGISLATURE - SENATE



SENATOR RICHARD I. ELIASON

P.O. BOX 143

SITKA, ALASKA 99835

POUCH V

JUNEAU, ALASKA 99811

COMMITTEES

FINANCE

RESOURCES

STATE AFFAIRS

March 20, 1981

Mr. Thomas K. Williams, Commissioner
Department of Revenue
Pouch S
Juneau, Alaska 99811

Dear Commissioner Williams,

I have received your letter of March 17 concerning Senate Bill 200, amending the Fisheries Business Tax statutes. The goal of S.B. 200 is to clear up the problem of unfair taxation to salmon fishermen who freeze their catch rather than icing it before taking it in to sell. My staff and I worked with people in your department in trying to find a way to accomplish that in a way that would be as simple to administer and enforce as possible. We re-drafted the bill a number of times at the suggestions of your staff but were unable to come up with any solutions better than the approach used in the present version of S.B. 200.

I appreciate your suggestion of an amendment to help solve what you see as a compliance problem. Although I wish your department had come up with the idea back when we asked for input, I don't see a problem with the extra requirement you suggest, and feel that it could easily be added to the bill in committee.

My concern is over your comment that this bill amounts to writing an exemption into tax law which provides a benefit for a small select group of taxpayers. On the contrary, I am trying to protect a group of taxpayers who have been suffering due to inconsistent interpretations of statute by the Revenue Department.

Please look over the attached documents. The first is by Mr. Richard Kirkland, Audit Division, dated January 26, 1976. In that letter he states that "the fact that a fishing vessel preserves quality by freezing does not constitute a freezership or floating cold storage operation, and . . . would not be subject to the tax levied on freezerships."

Commissioner Williams
March 20, 1981
Page 2

The next document is Alaska Tax Ruling #77-3 which states that, "The fact that a vessel, rigged for fishing, freezes its catch instead of icing does not subject the vessel or its operators and owners to the statutes applicable to freezerships because the mere preservation of a catch until it can be processed does not constitute processing." This is signed by Gary Jenkins.

The third document is the "Cancellation of Alaska Tax Ruling #77-3" by Gary Jenkins. This was dated September 26, 1980, after the end of the 1980 salmon season. This document declares that the Revenue Department's interpretation of the statutes (regarding boats freezing their catch) has been in error for the last several years. In other words, anyone who had or was considering installing freezing capacity on their boat over the last few years and had contacted Revenue to find out what taxes they would be liable for, would have been told they would not have to pay the processor's tax. They would even have been told that an official, numbered tax ruling provided for their exclusion from the tax.

It would seem that a citizen is entitled to depend upon an opinion (in fact, a ruling) from officials of a state department concerning applicability of statutes. In this case after people fished for two seasons with the understanding that they were not being charged a tax, the Revenue Department reversed its interpretation of the tax law and rather than charging the tax from the date of the new interpretation sent notices to fishermen saying they owed back taxes for two seasons.

I strongly object to this tactic. The change in interpretation was Revenue's mistake and fishermen who acted in good faith on the Department's ruling should certainly not have to pay. It is unfair for a fisherman investing in freezing equipment to believe he is not liable for a tax and later be hit with an unexpected 5% tax right off his gross income. Knowledge of this factor would certainly play a part in the initial decision about whether to add the freezing capabilities.


I would like to know how many fishermen were sent these retroactive tax bills and how many have paid it. It seems to me that anyone who has paid it deserves a refund from the Revenue Department. Please let me know your feelings on this.

Commissioner Williams
March 20, 1981
Page 3

It is apparent that if the Revenue Department, itself finds the statutes vague enough in their definition of "processor" to completely reverse its own interpretation, then the statute is indeed unclear and needs some fine tuning. I do hope that S.B. 200 can help to clarify the law, make it fair to fishermen who are freezing their own catch but clearly not in the processing business, and will help avoid inconsistencies in interpretations from year to year which result in some expensive surprises.

Please let me know right away if my understanding of this whole situation is correct and what thoughts you have on the matter. As S.B. 200 is already scheduled for its first committee hearing on Monday, March 23, it is important that we get some answers and get to work on finding appropriate solutions to these problems.

Sincerely yours,



Dick Eliason
State Senator
District B

Enclosures

cc: Gary Jenkins, Director
Division of Audit

DE:sp

STATE OF ALASKA THE LEGISLATURE


POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
967-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 25, 1981

SUBJECT: Retroactive tax exclusion under SB 200
(Work Order Number 12-1263)

TO:  Senate Labor and Commerce Committee
Attn: Michael Thill
Administrative Assistant

FROM: Linn H. Asper
Legislative Counsel

You have asked if there would be any legal difficulty in making the tax exclusion contained in Sec. 2 of SB 200 retroactive for the prior two years. It is my opinion that there is a substantial difficulty with retroactive application of the SB 200 tax exclusion. It is the same difficulty that was raised when the legislature was considering making refunds of state income taxes collected before 1979. I assume that a refund of fisheries business tax is contemplated for the excluded fishermen; otherwise there would be no purpose in making the exclusion retroactive. However, a refund of taxes already collected by the state is likely to be held to be an dedication of public funds to a private purpose, in violation of Article IX, section 6 of the state constitution.

The problem has been addressed by several courts in other jurisdictions where retroactive repeals of tax laws accompanied by refunds of the taxes validly collected have been attempted. The Washington Supreme Court, applying the Washington constitutional provisions which prohibit making gift of public money or credit (Article 8, sections 5 and 7), stated its holding succinctly:

We are holding only that, where a tax ordinance has been previously validly enacted, it cannot be repealed retroactively, and the tax money heretofore collected validly cannot be refunded simply on the basis of the

retroactive repeal. City of Yakima v. Huza, 407 P.2d 814, 820 (Wash. 1965); see also, Utz v. Newport, 252 S.W.2d 434 (Ky. 1952).

The court did note that the "situation might well be treated differently if . . . some duty existed on the part of the city to refund part of the taxes." 407 P.2d at 820.

The Wisconsin Supreme Court, construing Wisconsin's constitutional requirement that public funds be spent only for a public purpose, reached the same conclusion -- that a refund of validly collected taxes would be an appropriation of public monies to private ends and, thus, constitutionally impermissible unless there exists a moral obligation to support the refund. State v. Giessel, 64 N.W.2d 421 (Wis. 1954). The court noted the following cases which found refunds of taxes to be permissible:

Will of Heinemann, 230 N.W. 698 (Wis. 1930) (refund of inheritance tax voluntarily paid under a statute imposing the tax which was later declared unconstitutional and void by the United States Supreme Court); State ex rel. Adams v. Crawford, 121 A. 800 (Conn. 1923) (refund of a portion of liquor license fees covering that portion of the license period when the licensees were prohibited from selling intoxicating liquors under their licenses because of the enactment of World War I federal prohibition law); Raleigh County Bank v. Sims, 73 S.E.2d 526 (W. Va. 1952) (refund of business and occupation taxes paid pursuant to a tax statute later declared to be unconstitutional and void, when such claim for refund was already barred by the statute of limitations).

In the situation presented in SB 200 there seems to be no compelling moral duty to refund the taxes.

There are California cases which indicate that a refund of taxes before those taxes have become due is permissible. The California Supreme Court in In re Skinker's Estate, 303 P.2d 745 (Calif. 1956) stated:

"The Legislature cannot by a subsequent act increase or decrease the rate, remit the tax, or in any way surrender, impair or limit rights that have become fixed. (In re Estate of Stanford, 126 Cal. 112, 118 et seq., 54 P.

259, 58 P. 462, 45 L.R.A. 788; In re Estate of Rossi,
169 Cal. 148, 149, 146 P. 430.)

"Where a tax has become due, a subsequent act of the Legislature reducing the tax by reason of the change in the exemptions, tax rates, or for that matter in any way, is held to be a gift of state monies and is prohibited by Article IV, section 31, of the California Constitution.

"Retroactive effect of such legislation is therefore prohibited." (Footnotes omitted)

In the cited cases it is important to determine the time when the rights relating to the taxes become fixed. With regard to the fisheries business tax it is clear that the taxes are due at the time the fish are processed (AS 43.-75.015). This means that the taxes collected or due under AS 43.75 in prior years have been committed to the state and may not be refunded.

It is my conclusion that making the exclusion stated in SB 200 retroactive would not permit the refund of taxes paid by excluded persons and would therefore be a meaningless gesture.

LHA:ljb

Introduced: 2/23/81
Referred: Labor & Commerce
and Finance

1 IN THE SENATE

BY ELIASON

2 SENATE BILL NO. 200

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 the fisheries business tax (AS 43.-
7 75.015); and providing for an effective date."

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

9 * Section 1. AS 43.75.015(c) is amended to read:

10 (c) A person engaging or attempting to engage in a fisheries
11 business who first actually and physically processes the fishery re-
12 source, or a person who purchases frozen salmon from a person excluded
13 by AS 43.75.017 from liability for the tax, is liable for and shall pay
14 to the department the entire tax imposed by this section. In determin-
15 ing this tax liability, the person may not deduct from the value of the
16 fishery resources processed the value of fishery resources that are
17 canned or processed for other fisheries businesses, but shall include
18 that value as part of the value of the fishery resources processed.

19 * Sec. 2. AS 43.75 is amended by adding a new section to read:

20 Sec. 43.75.017. EXCLUSION FROM FISHERIES BUSINESS TAX. (a) A
21 person is not processing a fisheries resource under AS 43.75.015 when
22 salmon are frozen aboard a fishing vessel if

23 (1) the vessel is operated as a commercial fishing vessel
24 under a valid commercial fishing license;

25 (2) the salmon are not processed beyond heading, gutting or
26 cleaning, freezing and glazing; and

27 (3) the salmon which are frozen were caught by the vessel.

28 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-

29 070(c).

(1) the salmon are sold or transferred to a buyer
licensed under AS 43.00.000.

§ 43.70.070

in (b) of this of the tax due applies shall ns which the perjury. (§ 5 1 SLA 1960; ch 144 SLA

day of the third of the tax year" "lowing," and the e for filing" for the time until April upon appli- tention is neces- tant to ascertain ney due."

1978, provides: ES FOR REVE- THIS ACT. The AS 43.70 which dar year (includ- e March 1, 1978 gross receipts for returns filed in (d) is the source a 1979 in accord- The increase in which goes into e of revenue to be alities under AS subsequent years. e any organized y class to revenue 0.080 and AS period of time."

LA 1980.

LA 1980, effective he repeal of this uary 1, 1980, and beginning after

1978.

§ 43.70.080

REVENUE AND TATION

§ 43.75.010

Editor's note. — The repealed section SLA 1976, and subsection (b) was repealed derived from § 9, ch. 43, SLA 1949. by § 5, ch. 144, SLA 1978. Subsection (a) was repealed by § 4, ch. 94.

Sec. 43.70.080. Disposal of money. All money collected by the department under this chapter shall be deposited in the general fund. (§ 11 ch 43 SLA 1949; am § 4 ch 155 SLA 1962; am § 74 ch 69 SLA 1970; am § 4 ch 144 SLA 1978)

Effect of amendment. — The 1978 amendment deleted the former second sentence, which read "The Department of Revenue shall refund to each organized borough and each city of any class 60 per cent of the money collected in the local government."

Sec. 43.70.100. Penal provisions. Repealed by § 46 ch 113 SLA 1980.

Cross reference. — For present Editor's note. — The repealed section provisions concerning criminal penalties, derived from § 10, ch. 43, SLA 1949. see AS 43.05.290.

Chapter 75. Fisheries Taxes.

Article

- 1. Taxes and Licenses (§§ 43.75.010 — 43.75.055)
- 4. General Provisions (§§ 43.75.130 — 43.75.140)

Editor's note. — As to legislative 1979 Temporary and Special Acts and findings and purpose relating to AS 43.75 Resolutions and editor's note following AS see §§ 1 and 2, ch. 79, SLA 1979 in the 43.75.011.

Article 1. Taxes and Licenses.

Section	Section
10. [Repealed]	30. Filing return and payment of tax
11. Fisheries business license	50. [Repealed]
15. Fisheries business tax	55. Security for collection of taxes

Sec. 43.75.010. Fisheries business licenses. Repealed by § 13 ch 79 SLA 1979.

Cross reference. — For present general gross receipts tax of Alaska provisions covering the subject matter of Business License Act. — See Liberati v. U. repealed section, see AS 43.75.011. Bristol Bay Borough, Sup. Ct. Op. No. 1755 (File No. 3365), 584 P.2d 1115 (1978).

Editor's note. — The repealed section derived from § 1, ch. 82, SLA 1949; § 1, ch. 113, SLA 1951; § 1, ch. 146, SLA 1962; §§ 1, 2, ch. 84, SLA 1967. There is no general prohibition against like municipal and state taxes. Liberati v. Bristol Bay Borough, Sup. Ct. Op. No. 1755 (File No. 3365), 584 P.2d 1115 (1978).

State license tax on salmon canneries with its revenue sharing provision is not different in kind from

Sec. 43.75.011. Fisheries business license. A person engaging or attempting to engage in a fisheries business shall first apply for and obtain a license as provided in AS 43.75.020. (§ 3 ch 79 SLA 1979)

Editor's note. — Section 1, ch. 79, SLA 1979, provides: "FINDINGS. The legislature finds that the state has
 "(1) funded and implemented several fisheries-related development programs;
 "(2) funded and implemented fishery loan programs;
 "(3) increased its fishery protection and management program;
 "(4) funded and implemented a limited entry program; and
 "(5) embarked on a program of encouraging the development of a bottom fishing industry."

Section 2, ch. 79, SLA 1979, provides: "PURPOSE. The purposes of this Act are to
 "(1) insure that the state is able to continue its efforts toward overall fisheries-related development programs by raising additional revenue to pay for the programs;
 "(2) make the imposition of the fisheries tax more uniform among fisheries businesses; and
 "(3) provide funding for the development of new fisheries."

Sec. 43.75.015. Fisheries business tax. (a) A person engaged in a fisheries business is liable for and shall pay the tax levied by this section on the value of each of the following fisheries resources processed during the year at the rate set out after each:

- (1) salmon canned at a shore-based cannery — four and one-half per cent;
 - (2) salmon processed by a shore-based fisheries business, except salmon for which the tax is due under (1) of this subsection, and all other fisheries resources processed by a shore-based fisheries business — three per cent;
 - (3) fisheries resources processed by a floating fisheries business — five per cent.
- (b) Instead of the taxes levied by (a) of this section, a person engaged in a fishery business which includes processing a developing commercial fish species is liable for and shall pay a tax equal to
- (1) one per cent of the value of the developing commercial fish species processed by a shore-based fisheries business during the year; and
 - (2) three per cent of the value of the developing commercial fish species processed by a floating fisheries business during the year.

(c) A person engaging or attempting to engage in a fisheries business who first actually and physically processes the fishery resource is liable for and shall pay to the department the entire tax imposed by this section. In determining this tax liability, the person may not deduct from the value of the fishery resources processed the value of fishery resources that are canned or processed for other fisheries businesses, but shall include that value as part of the value of the fishery resources processed. (§ 3 ch 79 SLA 1979)

Sec. 43.75.030. Filing return and payment of tax. (a) A person subject to the tax shall file a return stating the value of fisheries

resources processed under this chapter, as provided by regulation. The return shall be signed by the taxpayer or a duly authorized agent. If a receipt is required, the taxpayer shall file such a return with the person of whom the resources were obtained. (e) Every person who obtains a license under this chapter shall file statements under which the commissioner may determine compliance with §§ 5, 6 ch

Effect of amendment. The amendment to AS 43.75.010 is effective from the first sentence "AS 43.75.010 — this chapter" in subsection (a) and the word "such" is deleted.

Sec. 43.75.011. Repealed by ch 113 SLA 1979.

Cross reference. Provisions concerning AS 43.05.220 concerning criminal offenses AS 43.05.290.

Editor's note. Derived from § 4, 17, SLA 1968; § 4, ch. 94, SLA 1976; § 7, ch. 79

Sec. 43.75.011. License. A person engaged in a fisheries business shall first actually and physically process the fishery resource under oath and shall file a return with the department to produce during the year. The return shall be in the form and to the extent of license required by regulation. The return shall be filed against which the department may determine compliance with respect to the license. The department may suspend the license for a period of up to three months if the licensee fails to file a return. The license shall be reinstated upon approval by the department.

firm, association, organization, business trust, or society, as well as a natural person;

(8) "personal property" includes money, goods, chattels, things in action, and evidences of debt;

(9) "property" includes real and personal property;

(10) "real property" is coextensive with land, tenements, and hereditaments;

(11) Repealed by § 2 ch 66 SLA 1965.

(12) "signature" or "subscription" includes mark when the person cannot write, with his name written near the mark by a witness who writes his own name near the person's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto;

(13) "statute" means the State of Alaska unless applied to the different parts of the United States and in the latter case it includes the District of Columbia and the territories;

(14) "writing" includes printing. (§ 4 ch 62 SLA 1962; am § 2 ch 66 SLA 1965; am § 10 ch 117 SLA 1968)

Cross references. — For additional definition of "peace officer," see AS 11.30.100. For further definition of "person," see AS 15.55.250. For additional definitions, see AS 15.60.010.

Effect of amendments. — The 1965 amendment repealed paragraph (11).

The 1968 amendment substituted "state troopers" for "state police" in paragraph (6).

Quoted in *Matanuska-Susitna Borough v. King's Lake Camp*, Sup. Ct. Op. No. 472 (File No. 857), 439 P.2d 441 (1968); *Stroh v. State Housing Authority*, 7 Alas. L.J. No. 9, p. 647 (Sept., 1969); *Stroh v. Alaska State Housing Authority*, Sup. Ct. Op. No. 496 (File No. 924), 459 P.2d 480 (1969).

Sec. 01.10.065. Certified mail. When the use of registered mail is authorized or required by the laws of the state, certified mail, with return receipt requested, may be used. (§ 1 ch 66 SLA 1965)

Article 3. Effect of Statutes.

Section 70. Time statutes take effect
80. Computation of time

Section 90. Retrospective statutes
100. Effect of repeals or amendments

Sec. 01.10.070. Time statutes take effect. (a) All laws passed by the legislature become effective 90 days after enactment. The legislature may by concurrence of two-thirds of the membership of each house, provide for another effective date.

(b) The actual effective date of a bill having no effective date clause is determined by starting with the day after signature by the governor or the day on which he gives written notice that he is allowing it to become law without his signature, and counting

law at 12:01 a.m., on the day after it is signed by the governor or on the day after he has given written notice that he is allowing the law to become effective without his approval.

(d) A law which specified a definite effective date becomes effective at 12:01 a.m., Pacific Standard time, on the date specified. (§ 5 ch 62 SLA 1962; am § 8 ch 126 SLA 1966)

Effect of amendment.—The 1966 amendment rewrote this section.

Sec. 01.10.080. Computation of time. The time in which an act provided by law is required to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded. (§ 6 ch 62 SLA 1962)

This section was taken from the laws of Oregon: *Mahan v. Sparks*, 10 Alaska 292 (1942); *Lowe v. Hess*, 10 Alaska 174 (1941).

It merely states the common-law rule. *Lowe v. Hess*, 10 Alaska 174 (1941).

This statutory computation is declaratory of the common-law rule in Alaska. *Turnbull v. Bonkowski*, 274 F. Supp. 733 (D. Alas. 1967).

Alaska's computation-of-time statute merely expresses the common law. *Turnbull v. Bonkowski*, 419 F.2d 104 (9th Cir. 1969).

Common law.—At common law it was established if the last day on which an act was to be performed fell on a Sunday, then that Sunday was excluded and the time was extended to the following day *Wade v. Dworkin*, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1966).

The common-law rule is that when the period of time within which an act is to be performed exceeds one week, an intervening Sunday is included in the computation. *Wade v. Dworkin*, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1966).

Legislative intent.—The legislature, by virtue of its enactment of this section, manifested its intent to exclude Sundays in the computation of time only when Sunday falls on the last day of a period in question. *Wade v. Dworkin*, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1966).

Exception in common law as to computation of person's age.—There

counted, not from the day of birth, but from the preceding day when limitation is figured. *Turnbull v. Bonkowski*, 274 F. Supp. 733 (D. Alas. 1967).

The computation-of-time statute is expressive of only the general common-law rule and does not presume to abrogate the well-established exception thereto governing the computation of a person's age. It follows that the statute has no application in calculating a person's age. *Turnbull v. Bonkowski*, 419 F.2d 104 (9th Cir. 1969).

The supreme court is enjoined by the legislature to observe the provisions of AS 01.10.020, in resolving any issue relating to this section and its applicability to the five-day recourt provision of AS 15.20.430. *Wade v. Dworkin*, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1966).

Computing limitation under AS 15.20.420.—In computing the five-day period of limitation prescribed by AS 15.20.420, an intervening Sunday is to be included. *Wade v. Dworkin*, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1966).

Computation of the limitations period provided by AS 09.10.070 subsequent to the removal of the disability of minority is to be made by excluding the first day and including the last. *Turnbull v. Bonkowski*, 274 F. Supp. 733 (D. Alas. 1967).

Filing appeal.—Under this section, the day on which the judgment is entered should be excluded in comput-

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. SB 200
 Title An Act Relating to the Fisheries Business Tax
 Requested by Senate Labor and Commerce Committee Date 3/3/81

II. FISCAL DETAIL
 Agency Affected _____
 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 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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

There would be no change in revenues due to transfer of the tax liability from the salmon catcher/processor to the salmon purchaser.

IV. DATE 3/3/81 PREPARED BY Robert W. Elliott
 AGENCY Revenue
 PHONE 465-2309
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 200

Title An Act relating to the fisheries business tax

Requested by Senate Labor and Commerce Committee Date Feb. 24, 1981

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 (The 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 the attached memorandum to R. D. Stevenson dated March 9, 1981.

IV. DATE March 9, 1981

PREPARED BY Gary L. Jenkins

AGENCY Audit Division

PHONE 465-2320

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)