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532

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

sh 532

March 21, 1984

The Honorable Jalmar Kerttula
Alaska State Senate
Pouch V
Juneau, AK 99811


Dear Senator Kerttula:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to amend AS 43, the Revenue and Taxation Code, by repealing AS 43.20.031(d) and AS 43.70.030(b).

This bill repeals AS 43.20.031(d), which exempts banks and savings and loan associations from taxation under AS 43.20, the corporate income tax chapter. It also repeals AS 43.70.030(b), which taxes banks, trust companies, and savings and loan associations under AS 43.70, the Business License Act.

Currently, banks and savings and loan associations are specifically exempted from the corporate income tax under AS 43.20 because of federal restrictions which required states to tax national banks and savings and loan associations separately from other corporations. Those federal restrictions no longer exist. Therefore, we may now tax banks under AS 43.20 along with all other corporate taxpayers, and that is what this bill will accomplish.

Sincerely,


Bill Sheffield
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date _____

REQUEST

Bill/Resolution No: _____
Title: State taxation of national banks

Sponsor: Governor

Requestor: _____

Date of Request: _____

FISCAL DETAIL

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

BRU, Program of Subprogram(s) Affected: Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<u>TOTAL</u>	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Maureen C Brien *Maureen C Brien*
Division: Audit Division

Phone: 465-2320

Date: March 20, 1984

Approved by Commissioner: *R. H. Heston*
Agency: Revenue

Date: 3/20/84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Fiscal Note

Currently banks are required to file returns and pay tax under a statute separate from all other corporations (AS 43.70). This results in significant administrative and legal problems. The Department of Revenue therefore recommends that banks be taxed under the same income tax statutes as other corporations (AS 43.20).

Although state and municipal interest is currently taxable under AS 43.70 and would not be subject to tax under AS 43.20, we estimate that requiring banks to file under AS 43.20 rather than AS 43.70 will result in no loss of revenue to the State. The Department's position is that under IRC sec. 265(2), which is adopted by reference in AS 43.20.021(a), no deduction is allowed for expenses and interest incurred or continued to purchase or carry obligations the interest on which is exempt from tax. This includes not only expenses and interest related to tax exempt state and municipal interest income, but also expenses and interest related to tax exempt U.S. interest income. Therefore, the total amount of nondeductible expenses under AS 43.20 will be close to the amount of nontaxable income.



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OFFICE OF THE GOVERNOR
JUNEAU

SB 532

March 21, 1984

The Honorable Jalmar Kerttula
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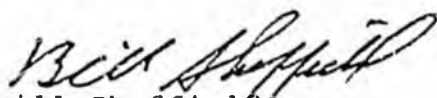
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Sincerely,


Bill Sheffield
Governor



SB 532

SENATE BILL 532 AMENDS AS 43, THE REVENUE AND TAXATION CODE, TO ALLOW THE DEPARTMENT OF REVENUE TO TAX BANKS AS CORPORATE ENTITIES. CURRENTLY, BANKS AND SAVINGS AND LOAN ASSOCIATIONS ARE SPECIFICALLY EXEMPTED FROM THE CORPORATE INCOME TAX UNDER AS 43.20 BECAUSE OF FEDERAL RESTRICTIONS WHICH REQUIRED STATES TO TAX NATIONAL BANKS AND SAVINGS AND LOAN ASSOCIATIONS SEPARATELY FROM OTHER CORPORATIONS. THOSE FEDERAL RESTRICTIONS NO LONGER EXIST. THEREFORE, THE STATE MAY NOW TAX BANKS ALONG WITH ALL OTHER CORPORATE TAXPAYERS.

SB 532 IS SUPPORTED BY THE ADMINISTRATION. THE ALASKA ASSOCIATION OF BANKERS HAS A NEUTRAL POSITION ON THIS LEGISLATION.

I RECOMMEND PASSAGE OF SB 532.

ADDITIONAL INFORMATION

1) THE DEPARTMENT OF REVENUE STATED THAT THIS LEGISLATION HAS TWO MAIN GOALS:

A) TAXING BANKS AS CORPORATIONS WOULD BE CONSISTENT WITH THEIR TAXING POLICY.

B) THIS CHANGE WILL AVOID ANY POSSIBLE LITIGATION REGARDING WHETHER THE STATE CAN TAX INTEREST ON U.S. SECURITIES, IE. TREASURY BONDS. EVIDENTLY, OTHER STATES HAVE BEEN BROUGHT TO COURT BY THE BANKS AND SEVERAL SUPREME COURTS HAVE RULED THAT IT IS UNCONSTITUTIONAL TO TAX THIS INTEREST.

2) THE CORPORATE TAX RATE IS HIGHER THAN THE CURRENT TAX RATE BUT SINCE INTEREST ON U.S. SECURITIES IS NOT GOING TO BE TAXED, THE AMOUNT OF MONEY TO BE TAXED WILL BE LESS.

3) THE DEPARTMENT OF REVENUE ESTIMATES THAT THIS CHANGE WILL NOT REDUCE THE AMOUNT OF REVENUE AVAILABLE TO THE STATE.

(e) The department may credit or refund overpayments of taxes, taxes erroneously or illegally assessed or collected, penalties collected without authority, and taxes that are found unjustly assessed or excessive in amount, or otherwise wrongfully collected. The department shall set limitations, specify the manner in which claims for credits or refunds are made, and give notice of allowance or disallowance. When a refund is allowed to a taxpayer, it shall be paid out of the general fund on a warrant issued under a voucher approved by the department.

(f) [Repealed, § 10 ch 1 SSSLA 1980.]

(g) [Repealed, § 10 ch 1 SSSLA 1980.] (§ 7 ch 115 SLA 1949; am § 2 ch 132 SLA 1951; am § 4 ch 5 SLA 1953; am § 2 ch 169 SLA 1972; am § 3 ch 70 SLA 1975; am § 2 ch 22 SLA 1980; am §§ 6, 10 ch 1 SSSLA 1980; am §§ 6, 9 ch 2 SSSLA 1980)

Cross references. — For legislative findings and purposes of the second and third 1980 amendments, see § 1, ch. 1, SSSLA 1980, and § 1, ch. 2, SSSLA 1980, in the Temporary and Special Acts.

Effect of amendments. — The second 1980 amendment substituted "If a partnership which has a corporation as a partner or a corporation is" for "Every individual, fiduciary, partnership and corporation"

and inserted "it" in the introductory paragraph of subsection (a) and repealed subsections (f) and (g), added by the first 1980 amendment, which concerned the tax credit for political campaign contributions and the credit for household and dependent care services, respectively.

The third 1980 amendment made the same changes as the second 1980 amendment.

NOTES TO DECISIONS

Delegation of legislative authority valid. — The legislative authority conferred by this section appears to be within the test laid down in *Bowles v. Willingham*, 321 U. S. 503, 64 S. Ct. 641, 88 L. Ed. 892 (1944), in which the administrator of the Office of Price Administration was empowered to fix maximum rents which, in his judgment, would be generally fair and equitable in any defense rental area whenever in his judgment that action was necessary or proper in order to effectuate the purposes of the act, and further empowered to make adjustments for such relevant factors as he may determine and deem to be of general applicability, and to provide for such adjustments and reasonable exceptions as in his judgment are necessary and proper in order to effectuate the purposes of the act. *Alaska S.S. Co. v. Mullaney*, 12 Alaska 433, 84 F. Supp. 561 (D. Alaska 1949), aff'd, 12 Alaska 594, 180 F.2d 805 (9th Cir. 1950).

Subsection (d) of this section creates a duty to speak when it requires a notice of modification of a taxpayer's federal

income tax return. *Stevenson v. Burgess*, Sup. Ct. Op. No. 1514 (File No. 2791), 570 P.2d 728 (1977).

Taxpayers estopped from asserting statute of limitations due to failure to notify regarding modification of federal tax liability. — The failure of certain taxpayers to notify the department of the modification in their federal income tax liability for two years constitutes a breach of the duty to give notice of modification pursuant to this section and amounts to the concealment of a material fact. Where the state, to its detriment, relying on that lack of notice, as it reasonably could, failed to institute the statutory mechanism for collection of additional taxes, the taxpayers are estopped from asserting the protection of the statute of limitations embodied in AS 43.20.200(b). *Stevenson v. Burgess*, Sup. Ct. Op. No. 1514 (File No. 2791), 570 P.2d 728 (1977).

Quoted in *Hickel v. Stevenson*, Sup. Ct. Op. No. 351 (File No. 624), 416 P.2d 236 (1966).

These are to be repealed

Sec. 43.20.031. Taxable income of residents; deductions; exemptions. (a) [Repealed, § 10 ch 1 SSSLA 1980.]

(b) [Repealed, § 10 ch 1 SSSLA 1980.]

(c) In computing the tax under this chapter, the taxpayer is not entitled to deduct any taxes based on or measured by net income.

(d) Banks and savings and loan associations chartered by the federal government or the state are exempt from income tax under this chapter.

(e) An affiliated group of corporations may make or the commissioner may require them to make a consolidated return for the taxable year in place of separate returns. For purposes of calculating the amount of tax payable by the group under a consolidated filing, 26 U.S.C. 1501 — 1552 (Internal Revenue Code), as amended, apply.

(f) [Repealed, § 10 ch 1 SSSLA 1980.]

(g) [Repealed, § 10 ch 1 SSSLA 1980.]

(h) [Repealed, § 10 ch 1 SSSLA 1980.]

(i) A corporation which is a member of a group of unitary corporations which collectively has income from business activity taxable both inside and outside the state, or income from other sources both inside and outside the state, shall determine its income from sources in this state by use of the combined method of accounting. (§ 5 ch 70 SLA 1975; am §§ 3 — 5 ch 125 SLA 1976; am § 8 ch 73 SLA 1977; am § 6 ch 133 SLA 1977; am § 1 ch 8 SLA 1978; am § 235 ch 100 SLA 1980; am §§ 14 — 17 ch 113 SLA 1980; am § 10 ch 1 SSSLA 1980; am § 9 ch 2 SSSLA 1980)

Cross references. — For legislative findings and purpose of the third and fourth 1980 amendments, see § 1, ch. 1, SSSLA 1980, and § 1, ch. 2, SSSLA 1980, in the Temporary and Special Acts; for disclosure of contributions, see AS 24.45.121; for tax exemption for permanent fund dividends, see AS 43.23.090.

The second and fourth 1980 amendments affected subsections (a) and (h) repealed by the third 1980 amendment, deleted "or combined" following "make a consolidated" in the first sentence of subsection (e), and added subsection (i).

The third 1980 amendment repealed subsections (a), (b), (f), (g), and (h).

Sec. 43.20.033. Taxable income of fiduciary. [Repealed, § 10 ch 1 SSSLA 1980.]

Sec. 43.20.035. Taxable income of nonresidents and part-year residents. [Repealed, § 10 ch 1 SSSLA 1980.]

Sec. 43.20.036. Federal tax deductions and credits. (a) For purposes of calculating the income tax payable under this chapter, the taxpayer may not apply as a credit against his tax liability the foreign tax credit allowed as to federal taxes under 26 U.S.C. 33 (Internal Revenue Code).

(b) For purposes of calculating the income tax payable under this chapter, the taxpayer may apply as a credit against tax liability the investment credit allowed as to federal taxes under 26 U.S.C. 38 (Inter-

license. 1960 Op. Att'y Gen., No. 27.

AS 43.70.110 and this section make no provision for the exemption from the license requirement of a religious corporation which is doing business. 1960 Op. Att'y Gen., No. 25.

A religious corporation receiving rents from the renting of an apartment or apartments must obtain an Alaska business license as a condition precedent to

engaging in such business. 1960 Op. Att'y Gen., No. 25.

The state may revoke the license of a collection agency which does not have a proper bond on file with the tax commission. 1960 Op. Att'y Gen., No. 27.

A guide to a workable procedure for license revocation is found in chapter 2 of the Alaska Administrative Procedure Act. 1960 Op. Att'y Gen., No. 27.

NOTES TO DECISIONS

A license confers no right of property. *Thlinket Packing Co. v. Harris & Co.*, 5 Alaska 471 (1916).

It merely authorizes the holder to carry on a certain business, but does not grant to the holder any place of business, any more than the issuance of a saloon license grants to the holder a building in which to conduct a saloon, or the issuance of a mercantile license, a building in which to conduct a store. *Columbia Salmon Co. v.*

Berg, 5 Alaska 538 (1916).

Purpose of tax. — Although this section requires a license for the "privilege" of engaging in a business in Alaska, this language does not render it invalid nor destroy the legislative intent that the purpose of the tax is to raise revenue, and not to regulate any business. *Territory of Alaska v. Journal Printing Co.*, 15 Alaska 676, 135 F. Supp. 169 (D. Alaska 1955).

Sec. 43.70.030. Levy and computation of license fee. (a) The license fee for each business is \$25.

(b) The license fee for each national bank and state bank, trust company and savings and loan association is seven percent of its net income. Net income means the taxable income of each taxpayer before net operating loss deduction and special deductions, computed as required under the Internal Revenue Code of the United States and includes all other income including income from federal, state or municipal obligations. Each of these taxpayers required to make a return under the provisions of the Internal Revenue Code shall at the same time file with the department a return setting out the amount of tax due under this chapter, and other information for the purpose of carrying out the provisions of this chapter which the department requires. Each of these taxpayers shall also at the same time file a true and correct copy of the tax return which it has filed with the Internal Revenue Service. A taxpayer filing under this subsection shall use the same tax year as the taxpayer uses for federal income tax purposes. Any approved extension of time to file the taxpayer's federal income tax return automatically extends the time for filing under this chapter. Any agreement which a taxpayer enters into with the Internal Revenue Service which extends the statute of limitations for any federal income tax return will apply to returns filed under this chapter. The department may, in its discretion, grant an extension of time to file or an extension of the statute of limitations independent of federal action. Every taxpayer shall notify the department in writing, within 90 days, of any alteration in, or modification of its federal income tax return and

of a recomputation of tax or determination of deficiency. For purposes of applying the statute of limitations, this notification constitutes a separate return, and failure to file this notification will have the same effect as the failure to file a return under this title.

(c) The license for the privilege of taking orders through use of catalogs and by mail order offices in the state is the same as set out in this chapter for business generally.

(d) The fee of \$25 applies to all of the provisions of this section, and shall accompany the application. The balance is due and payable on the last day of the taxpayer's tax year and shall be paid before the 15th day of the third month following the end of the tax year, except that the time for filing the return may be extended as provided in (b) of this section. To enable accurate determination of the balance of the tax due at the end of each year, each person to whom this chapter applies shall keep records, give statements under oath, and make returns which the department requires. Returns are made under penalty of perjury. (§ 5 ch 43 SLA 1949; am § 1 ch 128 SLA 1955; am § 1 ch 101 SLA 1960; am § 1 ch 68 SLA 1973; am § 1 ch 50 SLA 1975; am § 3 ch 144 SLA 1978)

NOTES TO DECISIONS

Tax imposed on state obligations and bonds. — To the extent that all federal obligations are subject to the business license tax, including those obligations afforded a specific tax exemption by Congress, subsection (b) of this section must equally impose the tax on state obligations and bonds, which are otherwise tax exempt pursuant to specific state tax exemptions, in order to avoid any unlawful discrimination against federal securities. *National Bank v. State, Dep't of Revenue, Sup. Ct. Op. No. 2480 (File No. 5482), 642 P.2d 811 (1982).*

The legislature intended to define the term "net income" broadly for business license tax calculation purposes. *National Bank v. State, Dep't of Revenue, Sup. Ct. Op. No. 2480 (File No. 5482), 642 P.2d 811 (1982).*

The "all other income" category in subsection (b) is interpreted as an attempt by the legislature to reach those types of income, such as bond interest, which are not otherwise subject to federal income taxation. *National Bank v. State, Dep't of Revenue, Sup. Ct. Op. No. 2480 (File No. 5482), 642 P.2d 811 (1982).*

Alaska State Housing Authority and Alaska Housing Finance Corporation bonds are not "state obligations" for purposes of subsection (b) of this section.

National Bank v. State, Dep't of Revenue, Sup. Ct. Op. No. 2480 (File No. 5482), 642 P.2d 811 (1982).

Alaska State Housing Authority and Alaska Housing Finance Corporation bond interest falls within the meaning of the phrase "all other income" in subsection (b) of this section and is to be considered as "net income" of the banks for purposes of determining their business license tax liability pursuant to subsection (b). *National Bank v. State, Dep't of Revenue, Sup. Ct. Op. No. 2480 (File No. 5482), 642 P.2d 811 (1982).*

The purpose of excluding "insurance businesses" from the coverage of subsection (a) by virtue of the definition in AS 43.70.110(1) is apparently to avoid taxing these businesses twice, since insurers are subject to a premiums tax imposed by AS 21.09.210. *Northern Adjusters, Inc. v. Department of Revenue, Sup. Ct. Op. No. 2332 (File No. 5128), 627 P.2d 205 (1981).*

Adjusters. — Because adjusters are not "insurers" subject to the premiums tax, they should not be viewed as "insurance businesses" exempt from the general license tax. *Northern Adjusters, Inc. v. Department of Revenue, Sup. Ct. Op. No. 2332 (File No. 5128), 627 P.2d 205 (1981).*

SB 532 TITLE & SPONSOR SUMMARY

16:47 6/04/84 PAGE 1 OF 3

PROPOSED TITLE:

AN ACT RELATING TO STATE TAXATION OF NATIONAL BANKS, STATE BANKS, TRUST COMPANIES, AND SAVINGS AND LOAN ASSOCIATIONS, AND PROVIDING FOR AN EFFECTIVE DATE

GENERAL DOLLARS: \$0 (F. NOTE)
 OTHER DOLLARS: \$0

CO-SPONSORS:

CURRENT STATUS: 5/31/84 TRANSR TO GOVERNOR

SB 532 SENATE ACTION

16:47 6/04/84 PAGE 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/21/84	01	2414	FIRST READING -- COMMITTEE REPORTS
03/21/84	02	2414	GOV TRANSMITTAL LETTER
03/21/84	03	2414	F/NOTE EQUALS ZERO
03/21/84	04	2414	DEPT REVENUE ANALYSIS
04/13/84	05	2722	L&C -- DP01, NR03
05/07/84	06	2751	FIN -- DP05, NR02
05/25/84	07	3281	RLS -- OTHER04 TAKEN UP IMMEDIATELY
05/25/84	08	3281	SECOND READING
05/25/84	09	3282	ADVANCED TO 3RD READING BY UNAN CONSENT
05/25/84	10	3282	THIRD READING
05/25/84	11	3282	PASSED BY DIV 16-00-04
05/25/84	12	3282	EFFECTIVE DATE VOTE SAME AS PASSAGE
05/25/84	13	3282	NOTICE OF RECONSIDERATION GIVEN
05/25/84	14	3282	RECONSIDERATION NOT TAKEN UP
05/31/84	25	3433	TRANSMITTED TO GOVERNOR
***	**	**	*** ** *

SB 532 HOUSE ACTION

16:48 6/04/84 PAGE 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
05/20/84	15	4095	FIRST READING -- COMMITTEE REPORTS
05/29/84	16	4135	L&C -- DP06 TAKEN UP IMMEDIATELY
05/29/84	17	4132	SECOND READING
05/29/84	18	4132	ADVANCED TO 3RD READING BY UNAN CONSENT
05/29/84	19	4132	THIRD READING
05/29/84	20	4132	PASSED BY DIV 37-02-01
05/29/84	21	4133	EFFECTIVE DATE VOTE SAME AS PASSAGE
05/29/84	22	4133	NOTICE OF RECONSIDERATION GIVEN
05/30/84	23	4152	PASSED ON RECONSIDERATION BY DIV 35-01-04
05/30/84	24	4152	EFFECTIVE DATE VOTE SAME AS PASSAGE
***	**	**	*** ** *

COMMITTEE REPORT
SENATE

FURTHER:

FINANCE

Date

4/12/89

Mr. President

The Committee on LABOR & COMMERCE considered SB 537

relating to state taxation of national banks, state banks, trust companies, and savings and loan associations; etc.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title _____
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Don't know

McLean

Chairman

Do Pass

Chairman recommendation