

**HOUSE  
COMMITTEE REPORT**

(11)

Date referred: 1/22/86

FURTHER REFERRALS:

DATE: 3-3-86

The FINANCE Committee has considered HB 502

"An Act relating to the disclosure of state tax assessments of the Department of Revenue."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 502 (FINANCE)  same title  new title

and recommends no recommendation

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

Arthur Adams  
Michael S. ...  
Pat ...  
Jim ...

SIGNING OTHER RECOMMENDATIONS:

John ... (no rec)  
... (NO REC)  
... (NO REC)  
... (NO REC)  
... (NO REC)

Arthur Adams  
Chairman

Original sponsor: Rules/Legislative  
Budget and Audit

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 502 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to confidential tax information of  
7 the Department of Revenue; and providing for an  
8 effective date."

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

10 \* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature  
11 finds that

12 (1) the majority of the state's revenue is derived from taxa-  
13 tion;

14 (2) tax revenue enables the state to provide essential services  
15 to the citizens of the state to ensure the public health and welfare;

16 (3) the elected representatives of the people of the state must  
17 be assured that the state is receiving all of the income to which it is  
18 entitled and that the tax laws are operating in the manner intended by the  
19 legislature;

20 (4) the legislature must exercise its oversight authority to  
21 assure that tax revenue collection by the Department of Revenue is effi-  
22 cient, fair, prompt and in the best interest of the state;

23 (5) there is a legitimate and compelling governmental interest  
24 in the legislature having adequate access to tax related information to  
25 allow responsible oversight;

26 (6) without sufficient information, the legislature cannot  
27 adequately determine that the state's tax revenue collection functions are  
28 properly administered and that tax revenue due the state is promptly re-  
29 ceived;

1 (7) tax returns and return information contain confidential  
2 information, often regarding sensitive business information;

3 (8) taxpayers have protections against public disclosure of  
4 certain tax information;

5 (9) exchange agreements with the Internal Revenue Service re-  
6 quire that certain tax information not be publicly disclosed;

7 (10) protection of confidentiality fosters full disclosure by  
8 taxpayers to taxing authorities and therefore promotes effective adminis-  
9 tration of tax programs; and

10 (11) legislators and legislative employees who improperly dis-  
11 close confidential tax information should be subject to the same sanctions  
12 imposed against executive branch employees.

13 (b) The purpose of this Act is to ensure that

14 (1) the state is receiving all the tax revenue due the state;

15 (2) oversight of the tax revenue collection function is effec-  
16 tively provided; and

17 (3) tax revenue due to the state is available to provide for the  
18 public health and welfare of the citizens of the state;

19 (4) taxpayers have protections against improper disclosure of  
20 tax information;

21 (5) the exchange agreements with the Internal Revenue Service  
22 regarding tax information are not jeopardized; and

23 (6) tax programs are administered fairly.

24 \* Sec. 2. AS 24.10 is amended by adding a new section to article 2 to  
25 read:

26 Sec. 24.10.070. CONFIDENTIALITY OF INFORMATION. A present or  
27 former employee or agent of the legislature may not disclose tax  
28 information contained in a report or return filed under AS 43 with the  
29 Department of Revenue and furnished to the person under

1 AS 43.05.230(h).

2 \* Sec. 3. AS 24.60.060 is amended by adding a new subsection to read:

3 (b) A person to whom this chapter applies may not disclose tax  
4 information contained within a report or a return filed under AS 43  
5 with the Department of Revenue and furnished to the person under  
6 AS 43.05.230(h).

7 \* Sec. 4. AS 24.60 is amended by adding a new section to read:

8 Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE.

9 Notwithstanding AS 24.60.170, if a complaint before the committee  
10 involves an allegation that a person to whom this chapter applies has  
11 violated AS 43.05.230(i) and the taxpayer or a third party whose tax  
12 information is alleged to have been improperly disclosed does not  
13 agree to the public disclosure of the identity of the taxpayer, the  
14 third party, or the tax information,

15 (1) the hearing may not be held in open session;

16 (2) a transcript containing confidential tax information  
17 must be edited to prevent the disclosure of the confidential informa-  
18 tion;

19 (3) a decision, if made public, must be edited to prevent  
20 the disclosure of the tax information and to protect the identity of  
21 the taxpayer or the third party; and

22 (4) a public statement may not contain information identi-  
23 fying the taxpayer, a third party, or the tax information.

24 \* Sec. 5. AS 43.05.230(f) is amended to read:

25 (f) A wilful violation of the provisions of this section is a  
26 felony and is punishable by a fine of not more than \$5,000, or by  
27 imprisonment for not more than two years, or by both.

28 \* Sec. 6. AS 43.05.230 is amended by adding new subsections to read:

29 (h) A legislative committee, after identifying the scope of an

1 investigation or inquiry relating to matters of taxation and the  
2 adoption by either house of a simple resolution giving the committee  
3 authority to receive confidential tax information, may request the  
4 commissioner of revenue to provide confidential taxpayer returns or  
5 return information; the request by the committee shall be in writing  
6 and may identify, directly or indirectly, a particular taxpayer. On  
7 adoption of the resolution, the commissioner of revenue shall provide  
8 the committee with the requested returns or return information. If  
9 specific returns or return information concerning a particular taxpay-  
10 er are provided to a legislative committee under this subsection, the  
11 commissioner of revenue shall notify the particular taxpayer of the  
12 request and of the delivery to the committee of the information. The  
13 committee may designate legislative employees or agents to inspect  
14 returns and return information. The committee may consider informa-  
15 tion made available under this subsection only in executive session  
16 unless the taxpayer and a third party whose tax information is being  
17 considered consent in writing to a disclosure in open session.

18 (i) Notwithstanding art. II, sec. 6, Constitution of the State  
19 of Alaska, the disclosure of information made confidential by this  
20 section by a present or former member of the legislature or by a  
21 present or former employee or agent of the legislative committee  
22 constitutes a violation of this section. Each member of the legisla-  
23 ture and each employee or agent of the committee, before receiving or  
24 reviewing information provided by the commissioner under (h) of this  
25 section, shall acknowledge, on a form prepared by the commissioner,  
26 that the information is confidential, that a disclosure of the infor-  
27 mation is prohibited by law, and that the member, employee, or agent  
28 is waiving rights granted by art. II, sec. 6, Constitution of the  
29 State of Alaska.

1 (j) The legislative committee and the commissioner of revenue  
2 shall establish procedures governing the transmittal, receipt, safe-  
3 keeping, and use of the confidential information provided by the  
4 commissioner under (h) of this section.

5 (k) This section does not permit the disclosure to the legisla-  
6 ture of confidential information provided by the Internal Revenue  
7 Service under exchange agreements with the department.

8 \* Sec. 7. This Act takes effect immediately in accordance with AS 01.-  
9 10.070(c).

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 1/22/86

**REQUEST**

Bill/Resolution No: (SHB 502 (FILL))  
 Title: "An act relating to the disclosure of state tax assessments of the Department of Revenue."  
 Sponsor: Legislative Budget and Audit  
 Requestor: \_\_\_\_\_  
 Date of Request: 1/23/86

**FISCAL DETAIL**

Agency Affected: Department of Revenue  
 BRU: Audit  
 Components: Audit Administration

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 86	FY 87	FY 88	FY 89	FY 90	F. 91
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

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

**ANALYSIS:** Attach a separate page if necessary

Prepared By: Steven E. Kette  
 Division: Audit Division

Phone: 465-2320  
 Date: 1/23/86

Approved by Commissioner: [Signature]  
 Agency: \_\_\_\_\_

Date: January 23, 1986

Distribution (by Agency preparing fiscal note):

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

Binkley

February 28, 1986

PROPOSED AMENDMENT TO CS FOR HOUSE BILL 502 (FINANCE)

Page 3 Line 24: After the word "may" delete from word "with" through "Senate," and replace with the word "resolution".

by  
Simple

PROPOSED AMENDMENT FOR CS FOR HOUSE BILL 502 (FINANCE)

Page 3 Line 29 delete word "request" and replace with word "resolution".

PROPOSED DRAFT CS HB 502 (FIN)

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

\* Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that

(1) the majority of the state's revenue is derived from taxation;

(2) taxes enable the state to provide a wide range of essential services to the citizens of the state to ensure the public health and welfare.

(3) the elected representatives of the people of the state must be assured that the state is receiving all of the income to which it is entitled and that the tax laws are operating in the manner intended by the legislature;

(4) the legislature must exercise its oversight authority to assure that tax revenue collection by the Department of Revenue is conducted efficiently, fairly, promptly and in the best interest of the state;

(5) there is a legitimate and compelling governmental interest in the legislature having adequate access to tax related information to allow responsible oversight; and

(6) without sufficient information, the legislature cannot adequately determine that the state's tax

revenue collection functions are properly administered and that tax revenue due the state is promptly received.

(b) The purpose of this Act is to ensure that

(1) the state is receiving all the tax revenue due the state;

(2) oversight of the tax revenue collection function is sufficiently provided; and

(3) tax revenue due to the state is available to provide for the public health and welfare of the citizens of the state.

\*Sec. 2. AS 24.60.060 is amended by adding a new subsection to read:

(b) A person to whom this chapter applies may not disclose the amount of income or the particulars set out in a report or return filed with the Department of Revenue under AS 43 and furnished to that person by that department under AS 43.05.230(c).

\* Sec. 3 AS 43.05.230 is amended by adding a new subsection to read:

(h) The department, upon written request of the speaker of the house or the president of the senate, shall provide to a committee designated by the speaker or president the return or return information specified in the request,

including information that can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. The committee designated by the speaker or the president, after identifying the scope of an investigation or inquiry, may appoint legislative employees to receive and inspect returns and return information on behalf of the committee, and to report back to that committee.

Information made available by this subsection may be considered by the committee only when sitting in closed executive session unless the taxpayer consents in writing to disclosure in open session. Notwithstanding AS 24.40.010, it is unlawful for any committee or member of the legislature, or any employee thereof, to divulge the amount of income or the particulars set out or disclosed in a return or return information furnished by the department under this subsection. Each member or employee of the legislature, before receiving or reviewing information provided by the department under this subsection, shall acknowledge, on a form provided by the department, that he or she understands that the information is confidential, and that disclosure of the information is prohibited.

\* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c).

Effect of amendments. — The 1985 repealed paragraph (3), which defined amendment, effective January 1, 1986, "municipality."

**Sec. 24.55.340. Short title.** This chapter may be cited as The Ombudsman Act. (§ 1 ch 32 SLA 1975)

## Chapter 60. Standards of Conduct.

### Section

- 10. Legislative findings and purpose
- 20. Applicability
- 30. Conflicts of interest
- 40. Contracts or leases
- 45. Hazardous waste contracts
- 50. State loans
- 60. Confidential information
- 70. Interests between public officials
- 80. Gifts
- 90. Nepotism
- 100. Representation

### Section

- 110. Action on a conflict of interest
- 120. State property and funds
- 130. Select committee on legislative ethics
- 140. Authority of the committee
- 150. Duties of the committee
- 160. Advisory opinions
- 170. Proceedings before the committee
- 180. Cooperation by state agencies
- 190. Definition of "committee"

**Cross references.** — For limitation of applicability of this chapter to acts committed after July 18, 1984, see § 4, ch. 36, SLA 1984 in the Temporary and Special Acts.

**Sec. 24.60.010. Legislative findings and purpose.** The legislature finds that it is essential in the conduct of public business that legislators hold the respect and confidence of the people. Legislators must avoid conduct that even appears to violate the trust the people have placed in them. To ensure and preserve public confidence, legislators should have the benefit of specific standards to guide their conduct. Article II, sec. 12, Constitution of the State of Alaska grants to each house of the legislature the power to judge the qualifications of its members. It is the purpose of this act to establish standards of conduct for state legislators and legislative employees and to establish the Select Committee on Legislative Ethics to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.020. Applicability.** (a) This chapter applies to a member of the legislature and to a permanent or temporary employee of an agency of the legislature. This chapter does not apply to

(1) a former member of the legislature or to a person formerly employed by a member of the legislature or an agency of the legislature unless the provision specifically states that it so applies;

(2) a person elected to the legislature who at the time of election is not a member of the legislature;

(3) a person employed by the legislature or an employee of an agency of the legislature whose compensation is below Step A, Range 18 of the state salary schedule established in AS 39.27.011(a).

(b) The provisions of this chapter specifically supersede the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature, a person employed by a member of the legislature, or to a permanent or temporary employee of an agency of the legislature. They do not supersede or repeal provisions of the criminal laws of the state. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.030. Conflicts of interest.** (a) A person to whom this chapter applies may not use public office for private advancement or gain.

(b) A conflict of interest exists when a person to whom this chapter applies takes or withholds official action or exerts official influence that could substantially benefit or harm a financial matter in which the person has a direct or indirect private interest.

(c) Conflicts of interest are prohibited but there is not a conflict of interest if, as to a specific matter, there is no substantial impropriety or appearance of impropriety because

(1) the person's interest is relatively insignificant;

(2) the person's authority is relatively far removed from any official action that could reasonably be affected by the potential conflict of interest, provided that no attempt has been made to remove the appearance of impropriety by delegating responsibility for official action.

(d) A conflict exists if benefits accrue to a person to whom this chapter applies beyond that which may accrue uniformly to members of the profession, occupation or group to which the person belongs, or to the public at large.

(e) It is not a conflict of interest under this section if a person to whom this chapter applies accepts

(1) hospitality at another person's residence within the state, including meals, lodging or transportation;

(2) discounts that are generally available to the public or a large class of persons to which the person belongs;

(3) an invitation to attend a meal or social event;

(4) food and foodstuffs indigenous to the state that are generally shared as a cultural or social norm;

(5) gifts from the person's family; or

(6) gifts of nominal value given by a nonprofit organization in recognition of public service by the recipient.

(f) It is a conflict of interest for a member of the legislature to accept money from an event held within the capital city during the session if a substantial purpose of the event is to raise money on

behalf of the member for state legislative campaign purposes or for other state legislative political purposes.

(g) Members of the legislature elected to represent the capital city are exempt from the requirements of (f) of this section. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.040. Contracts or leases.** (a) A person to whom this chapter applies may not be a party to or have an interest in a state contract or lease unless the contract or lease is let under AS 37.05.230 or the total annual amount of the state contract or lease is \$1,000 or less, or is a standardized contract or lease which was developed under publicly established guidelines and is generally available to the public at large, members of a profession, occupation or group. A person has an interest in a state contract or lease under this section if the person receives direct or indirect financial benefits.

(b) In this section, "direct or indirect financial benefits" means income, profits or other financial benefits under a state contract, without regard to whether the income, profits or other financial benefits ensue to the person as a partner, shareholder, investor, agent, employee, consultant, or joint venturer of the contractor. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.045. Hazardous waste contracts.** A legislative staff member may not solicit or receive a contract concerning hazardous waste from a state agency or department other than the legislature during the interim following a session in which the person worked. This section applies to legislative staff members Range 18 or higher. In this section "hazardous waste" has the meaning given in AS 46.03.900. (§ 10 ch 77 SLA 1984)

**Sec. 24.60.050. State loans.** (a) It is not a conflict of interest for a person to whom this chapter applies to participate in a state program or to receive a loan from the state if the program or loan is generally available to members of the public, is subject to fixed eligibility standards, and minimal discretion is exercised in determining qualification. The committee shall issue a list of those state programs and loans from the state that it considers to meet the standards of this paragraph within 30 days after July 19, 1984. It shall annually issue a revised list.

(b) In determining whether a conflict of interest exists with respect to a state program or to a state loan other than those described in (a) of this section, because a person to whom this chapter applies may be in a position to influence the loan agency, the committee must consider, but is not limited to, the adequacy of existing administrative procedures for granting and reviewing loans to legislators.

(c  
chap  
pers  
Offi  
app  
to fi  
disc  
loan  
to  
con  
(  
of  
exc  
of  
of i  
in t  
(  
loa  
det  
or  
ler  
fin  
(  
tar  
ar  
19  
  
in  
kr  
in  
pe  
  
w  
a  
cc  
fo  
jo  
of  
m  
  
re  
p  
e

(c) Upon application for a state loan by a person to whom this chapter applies, other than loans described in (a) of this section, the person shall send a notice of the application to the Alaska Public Offices Commission, which will incorporate the material into the applicant's financial disclosure statement, if the applicant is required to file a disclosure statement or if the applicant is not required to file a disclosure statement will place the notice in a legislative employee loan file that is open to the public. All records relating to a state loan to a person to whom this chapter applies may be disclosed to the committee.

(d) Each February 1, each state loan agency must deliver a listing of all outstanding loans to persons to whom this chapter applies, except for loans described in (a) of this section, to the presiding officer of each house. The list must include the name of the person, the date of issuance and current status of the loan. The list shall be published in the supplemental journal.

(e) The division of legislative audit shall annually review state loans granted to or held by persons to whom this chapter applies to determine whether appropriate procedures were observed in granting or reviewing the loans and whether loan conditions imposed by the lending agency are being enforced. The division shall report its findings to the committee by April 1.

(f) In this section "state program" means a program in which tangible assets of the state or a right to use tangible assets of the state are transferred from the state to a private person. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.060. Confidential information.** It is a conflict of interest if a person to whom this chapter applies willfully discloses, or knowingly uses, for personal gain or for the personal gain of another, information that by law is not available to the public and that the person acquired in the course of official duties. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.070. Interests between public officials.** A person to whom this chapter applies shall disclose in the journal of the appropriate body or if the legislature is not in session to the committee, which shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session, the formation or maintenance of a close economic association involving a substantial financial matter with

(1) a supervisor who is not a member of the legislature who has responsibility or authority, either directly or indirectly, over the person's employment, including preparing or reviewing performance evaluations, or granting or approving pay raises or promotions;

- (2) legislators;
- (3) a public official in another branch, if the public official is required to file a financial disclosure statement under AS 39.50;
- (4) a registered lobbyist who is not a member of the immediate family of the person. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.080. Gifts.** Unless otherwise provided for under AS 24.60.030, a person to whom this chapter applies may not solicit a gift in any amount, or accept or receive, directly or indirectly, a gift, whether in the form of money, services, a loan, travel, entertainment, hospitality, or other form, if the gift was intended as a reward or inducement for an official action by the person. A gift of travel and hospitality within the state received by a member of the legislature in obtaining information on matters of legislative concern is not prohibited by this section, nor are political contributions received and reported under AS 15.13.040. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.090. Nepotism.** (a) A spouse or an individual other than a spouse who is related to a member of the legislature may not be employed in the house in which the legislator is a member, by an agency of the legislature established under AS 24.20, or in either house during the interim between sessions. An individual who is related to an employee of the legislature may not be employed in a position over which the employee has supervisory authority. In this subsection, "an individual who is related to" means a child, stepchild, husband, wife, mother, father, sister, or brother.

(b) For purposes of this section an individual is not employed if no compensation is received from the state for the services provided.

(c) For purposes of this section, a legislator is not an employee of the legislature. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.100. Representation.** A person to whom this chapter applies who represents another person for compensation before an agency, board, or commission of the state shall disclose the name of the person represented, the subject matter of the representation, and the body before which the representation is to take place in the journal of the appropriate body or if the legislature is not in session to the committee. The committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.110. Action on a conflict of interest.** A legislator who knowingly has a conflict of interest or has been notified of a conflict of interest shall immediately

- (1) resign the conflicting position;
- (2) divest the interest that has resulted in the conflict or potential conflict; or
- (3) disclose the conflict of interest in the journal of the appropriate body or if the legislature is not in session to the committee; the committee shall maintain a public record of the disclosure and forward the disclosure to the respective house for inclusion in the journal for the first day of the session but disclosure does not remove the conflict of interest. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.120. State property and funds.** A person to whom this chapter applies may not use state property, except property under lease from the state, or state funds for private gain. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.130. Select committee on legislative ethics.** (a) There is established within the legislative branch of state government the Select Committee on Legislative Ethics.

(b) The committee consists of seven members, in two subcommittees, as follows:

- (1) the senate subcommittee consists of three members of the senate, appointed by the president of the senate with the concurrence by roll call vote of two-thirds of the full membership of the senate; and
- (2) the house subcommittee consists of three members of the house, appointed by the speaker of the house with the concurrence by roll call vote of two-thirds of the full membership of the house; and
- (3) one public member, who is selected by two-thirds of each subcommittee and who is ratified by two-thirds of the full membership of the senate and two-thirds of the full membership of the house, shall serve on both the full committee and each subcommittee.

(c) No more than two legislative members of each subcommittee may be members of the same political party or the same organizational caucus.

(d) The members of each subcommittee shall elect a chair. The chair selected by the senate subcommittee shall chair the full committee in odd-numbered years and the chair selected by the house subcommittee shall chair the full committee in even-numbered years.

(e) A vacancy on the committee shall be filled under (b) of this section.

(f) The committee or a subcommittee may contract for professional services and may employ staff as it considers necessary.

(g) Each member serves for the duration of the legislature during which the member is appointed.

(h) A member is disqualified from participating as a member in any proceeding before the committee involving a complaint against the member or an advisory opinion requested by the member. When a legislative member is disqualified under this subsection, the presiding officer of that member's house shall, with the concurrence by roll call vote of two-thirds of the full membership of that house, appoint another member from that house to act as a member of the committee in the proceeding. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.140. Authority of the committee.** (a) The senate subcommittee has authority over proceedings concerning conduct by a member or former member of the senate or a person employed by a member or a committee of the senate.

(b) The house subcommittee has authority over proceedings concerning the conduct by a member or former member of the house or a person employed by a member or a committee of the house.

(c) The full committee has authority

(1) over proceedings concerning the conduct by an employee of an agency of the legislature;

(2) to review any matter arising under this chapter that would result in action being required by both houses of the legislature; and

(3) to issue advisory opinions under AS 24.60.160. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.150. Duties of the committee.** (a) The committee shall

(1) adopt procedures to facilitate the receipt of inquiries and prompt rendition of its opinions;

(2) publish semi-annual summaries of decisions, advisory opinions and informal advisory opinions, with sufficient deletions in the summaries to prevent disclosing the identity of the persons involved in the decisions or opinions that have remained confidential.

(b) The committee may

(1) recommend legislation to the legislature the committee considers desirable or necessary to promote and maintain high standards of ethical conduct in government;

(2) subpoena witnesses, administer oaths, and take testimony relating to matters before the committee, and may require the production for examination of any books or papers relating to any matter under investigation before the committee. (§ 1 ch 36 SLA 1984)

Sec. advisor the cha particu period not mo opinion any sul the par the rec chapter a writt the con

Sec. commi violati (b) T procee and wi subsec prever (c) I section vote o scope on a co

(d) comm shall compl two-th perio procee state electi at lea shall filed c stay t

(e) a cor expla commr facts

**Sec. 24.60.160. Advisory opinions.** The committee shall issue an advisory opinion within 30 days on the request of a person to whom the chapter applies as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. The 30-day period for issuing an opinion may be extended by the committee for not more than an additional 10 days if the person requesting the opinion consents. The opinion issued is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. Except as provided in this chapter an advisory opinion is confidential but may be made public if a written request by the person who requested the opinion is filed with the committee. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.170. Proceedings before the committee.** (a) The committee may initiate, receive and consider complaints alleging a violation of this chapter.

(b) The committee may investigate a violation of this chapter in a proceeding begun within two years after the alleged violation occurs and within one year after termination of state service. Nothing in this subsection bars proceedings against a person who intentionally prevents discovery of a violation of this chapter.

(c) Before the committee may exercise power authorized in this section, the committee shall by resolution supported by a majority vote of the full membership of the committee, define the nature and scope of the inquiry. The committee shall investigate all complaints on a confidential basis.

(d) A proceeding is commenced by the filing of a complaint with the committee. A complaint may be initiated by any person. A complaint shall be in writing and signed under oath by the person making the complaint. No complaint, other than a complaint initiated by at least two-thirds of the members of the committee, may be filed within a period of 60 days preceding a state primary or general election. All proceedings pending before the committee on the 60th day preceding a state primary or general election are stayed until certification of the election unless the proceedings are based on a complaint initiated by at least two-thirds of the members of the committee. The committee shall notify in writing a person against whom a complaint has been filed of a stay of the proceeding. If the person objects in writing to the stay the proceedings shall continue.

(e) The committee shall notify in writing each person against whom a complaint is received and afford the person an opportunity to explain the conduct alleged to be a violation of this chapter. If the committee determines that a complaint does not contain allegations of facts sufficient, if the alleged facts are treated as true, to constitute a

violation of this chapter, the committee may summarily dismiss the complaint.

(f) The committee shall investigate the charges filed under this section and issue an opinion to the person alleged to have violated a provision of this chapter.

(g) If the committee determines that a probable violation exists that may be corrected by action of the person and that does not warrant sanctions other than correction, the opinion shall recommend corrective action. The person against whom the complaint was made may comply with the opinion or may request a hearing before the committee. After the hearing the committee may amend or affirm the opinion.

(h) If the person fails to comply with the opinion or if a majority of the members of the committee determine that there is probable cause for belief that a violation of this chapter that may not be corrected under (g) of this section has occurred, the committee shall formally charge the person. The charge and statement of the alleged violation shall be personally served on the person charged. The alleged violator has 20 days after service of the charge and statement to respond in writing to the committee.

(i) The committee may set a time and place for a hearing before the committee with a minimum of 10 days notice to the complainant, if any, and to the person charged with a violation of this chapter. A representative of the committee and the person charged with a violation of this chapter shall have an opportunity to be heard, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to have the right of cross-examination. Each witness shall testify under oath. Hearings are closed to the public unless the person charged with a violation of this chapter requests an open hearing. The committee is not bound by the rules of evidence but the committee's findings must be based upon competent and substantial evidence. Testimony taken at the hearing shall be recorded and evidence shall be maintained. The testimony and evidence are available only to the committee and its staff and to the person charged with a violation of this chapter. If the person charged with the violation of a provision of this chapter requests a copy of the transcript of testimony, the copy shall be furnished by the committee without charge.

(j) A decision of the committee shall be in writing and signed by the majority of the members of the committee. Each decision of the committee must be accompanied by a written order of the committee determining that a violation of this chapter exists or does not exist. The order is confined to this determination. This order is a public record.

(k) If the committee issues a decision finding that a member of the legislature has violated a provision of this chapter or that a legislator

has  
the  
shall  
viola  
tions  
The  
refer  
appr  
(  
decis  
form  
viola  
stat  
legis  
case  
disr  
take  
(  
divu  
this

So  
the  
perr  
or a  
disc  
pote

So  
mitt  
appi

has declined or failed to cooperate with the committee, it shall refer the decision to the presiding officers of the legislature. The decision shall contain a statement of the facts determined to constitute the violation or the failure to cooperate and may contain recommendations concerning any penalties the legislature may lawfully impose. The committee shall make the decision public 30 days after the referral. The legislature shall act on the decision as it considers appropriate.

(l) If the majority of the members of the committee agree to a decision that a former member of the legislature or an employee or a former employee of a legislator or of an agency of the legislature has violated a provision of this chapter, the committee shall issue a public statement of its decision 30 days after the date of the decision. The legislature shall act on the decision as it considers appropriate. In the case of an employee the action may include suspension, demotion, or dismissal. The employee is entitled to a hearing before final action is taken.

(m) A committee member or member of the committee staff who divulges information concerning a proceeding, except as permitted by this chapter, is guilty of a class A misdemeanor. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.180. Cooperation by state agencies.** Each agency of the executive branch of state government shall, to the extent permitted by state or federal law, cooperate fully with the committee or a subcommittee by providing information and assistance, including disclosure of financial material and other records relating to a potential violation of this chapter. (§ 1 ch 36 SLA 1984)

**Sec. 24.60.190. Definition of "committee."** In this chapter, "committee" means the Select Committee on Legislative Ethics or where appropriate, the applicable subcommittee. (§ 1 ch 36 SLA 1984)

### Chapter 35. Printing and Distribution of Legislative Enactments.

*Secs. 24.35.010 and 34.35.020. [Renumbered as AS 24.08.300 — 24.08.330]*

### Chapter 37. Review of Administrative Regulations by Standing Committees of the Legislature

*Sec. 24.37.010. [Renumbered as AS 24.05.182]*

### Chapter 40. Judicial Proceedings Involving Legislators.

<p><b>Section</b>          10. Immunities          20. Continuance in a criminal proceeding where defendant, defense attorney or witness is a member of the legislature</p>	<p><b>Section</b>          31. Postponement of civil proceedings when a party or attorney is a member of the legislature</p>
---	--

**Sec. 24.40.010. Immunities.** A legislator may not be held to answer before any other tribunal for any statement made in the exercise of legislative duties while the legislature is in session. A member attending, going to, or returning from legislative sessions is not subject to civil process and is privileged from arrest except for felony or breach of the peace. The immunities provided in this section extend to a legislator attending, going to, or returning from a meeting of an interim standing or special committee of the legislature of which the legislator is a member. For the purposes of going to and returning from a session or meeting, the immunities provided extend to a legislator for a period of five days immediately preceding and following the legislator's attendance at the session or meeting. (§ 8 ch 157 SLA 1959)

**Opinions of attorney general. — A "session" is the sitting of the legislature during the period of time that it is convened as a legislature to do business as a legislative body. 1959 Op. Att'y Gen., No. 8.**

The privilege from arrest does not extend to those violations of our law which constitute a "felony or breach of the peace." In these two categories a member of the state legislature stands in the eyes of the law as any other citizen. 1959 Op. Att'y Gen., No. 8.

Members of the state legislature, while

"going to," "attending" or "returning from" a legislative session enjoy an absolute immunity against civil process. 1959 Op. Att'y Gen., No. 8.

Immunity against civil process cannot be waived by the legislator since the Alaska immunity is intended to protect the public as well as serve the convenience of the legislators. 1959 Op. Att'y Gen., No. 8.

Members of the legislature have only a "privilege" from arrest, which must be asserted or it may be deemed waived. See 1959 Op. Att'y Gen., No. 8.

(e) A penalty imposed by this section shall be collected at the same time, in the same manner, and as a part of the original tax. However, if the original tax is paid before neglect or fraud is discovered, the penalty shall be collected in the same manner as the original tax. Interest may not be collected on a penalty imposed by this section. (§ 2 ch 166 SLA 1976; am § 1 ch 113 SLA 1980; am § 1 ch 39 SLA 1982)

**Effect of amendments.** — The 1980 amendment, in subsection (a), inserted "at the time or times required by law or regulation" in the first sentence and deleted the former third sentence, which read: "The penalty shall be collected at the same time, in the same manner and as a part of

the original tax; but if the original tax is paid before the neglect is discovered, the penalty shall be collected in the same manner as the original tax", and added subsections (b)-(e).

The 1982 amendment, added the present third sentence of subsection (a).

**Sec. 43.05.225. Interest on taxes.** Unless otherwise provided, when a tax levied in this title becomes delinquent it bears interest at the rate of 12 percent a year. (§ 2 ch 166 SLA 1976; am § 2 ch 82 SLA 1982)

**Effect of amendments.** — The 1982 amendment increased the rate of interest from eight percent to 12 percent.

**Sec. 43.05.230. Disclosure of tax returns and reports.** (a) It is unlawful for a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under this title, except

(1) in connection with official investigations or proceedings of the department, whether judicial or administrative, involving taxes due under this title;

(2) in connection with official investigations or proceedings of the child support enforcement agency, whether judicial or administrative, involving child support obligations imposed or imposable under AS 25 or AS 47;

(3) as provided in AS 38.05.036 pertaining to audit functions; and

(4) as otherwise provided in this section.

(b) The department, upon written request, shall furnish to the taxpayer a copy of the taxpayer's tax return upon payment of a fee of \$1 per page.

(c) The department may permit the proper officer of the United States or of a state, territory or possession of the United States or of the Dominion of Canada or of a province or territory of Canada, or the officer's authorized representative, to inspect tax returns or reports filed with the department, or may furnish to the officer or representative a copy of the tax return, if the other jurisdiction grants substantially similar privileges to the department or its representative or to counsel for the state; and if the department determines that the

other jurisdiction provides adequate safeguards for the confidentiality of the returns and reports, and that the returns and reports will be used for tax purposes only. The department may also permit the employment security division of the Alaska Department of Labor to inspect tax returns or reports filed with the department or may furnish a copy of the tax returns for tax purposes only.

(d) The commissioner of revenue may furnish to the Multistate Tax Commission or other authorized agent information contained in the tax returns, reports, related schedules and documents filed under an audit or investigation of a multistate business made by the department. This information may be furnished for tax purposes only. The Multistate Tax Commission or other authorized agent may make the information available to the tax officials of other states, the District of Columbia, the United States and its territories for tax purposes only.

(e) Nothing in this section prohibits the publication of statistics so classified as to prevent the identification of particular returns or reports or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with other relevant information which in the opinion of the department may assist in the collection of delinquent taxes.

(f) A wilful violation of the provisions of this section is punishable by a fine of not more than \$5,000, or by imprisonment for not more than two years, or by both.

(g) The information contained in a license issued by the commissioner of revenue under AS 43.50, 43.60, 43.65, 43.70, and 43.75 is public information. (§ 2 ch 166 SLA 1976; am § 32 ch 126 SLA 1977; am § 5 ch 61 SLA 1980; am §§ 2, 3 ch 113 SLA 1980)

**Revisor's notes.** — The two 1980 amendments have been reconciled.

**Cross references.** — For purpose of 1977 amendatory act, see § 1, ch. 126, SLA 1977 in the Temporary and Special Acts.

**Effect of amendments.** — The first 1980 amendment rewrote subsection (a).

The second 1980 amendment substituted "a current or former" for "an" preceding "officer" near the middle of subsection (a) as it existed prior to the first 1980 amendment and added subsection (g).

**Opinions of attorney general.** — Division of audit to have access to records of state agencies, whether confidential or not. 1972 Op. Att'y Gen., issued under former AS 43.20.190.

A legislative auditor may not examine confidential records on file for state income tax returns and wage information submitted by employees and employers to the Department of Labor in connection with the administration of the State Employment Security Act to determine if persons receiving assistance from the Department of Health and Social Services under their Adult Public Assistance and Aid to families with dependent children were eligible. Such data is within the ambit of protection intended to be afforded the right of privacy under § 22, art. I, of the Alaska Constitution. 1972 Op. Att'y Gen., issued under former AS 43.20.190.

Agreement between DOR & Leg. Audit on  
access to confidential info. for audit purposes,  
only. Not allowed to disclose info to anyone,  
including LB+A members.

# STATE OF ALASKA

THE LEGISLATURE  
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811

January 31, 1984

Robert D. Heath  
Commissioner  
Department of Revenue  
Pouch S  
Juneau, Alaska 99811

RECEIVED  
ALASKA DEPARTMENT OF REVENUE

JAN 31 1984

Dear Commissioner Heath:

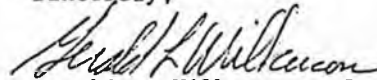
OFFICE OF THE COMMISSIONER

This is to reaffirm the working relationship under which the Division of Legislative Audit will have access to confidential information during the course of its financial compliance audit of the Alaska Department of Revenue's Fiscal Year 1983 operations.

The inter-agency agreement between the Alaska Department of Revenue and the Division of Legislative Audit dated December 1, 1980, permits the Division of Legislative Audit access to confidential records for audit purposes only, and provides that no confidential information shall be released in any audit reports or other reports, or by verbal communication.

If you agree to continue this agreement, please sign below and return the original copy of this letter to us.

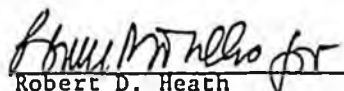
Sincerely,




Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

Department of Revenue

Division of Legislative Audit

By:   
Robert D. Heath  
Commissioner of Revenue

By:   
Gerald L. Wilkerson, CPA  
Legislative Auditor

# STATE OF ALASKA

THE LEGISLATURE  
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION  
POUCH W—ALASKA OFFICE BUILDING

JUNEAU, ALASKA 99811

April 7, 1982

Joseph K. Donohue  
Deputy Commissioner -  
Taxation  
Department of Revenue  
Pouch S  
Juneau, Alaska 99811

Dear Commissioner Donohue:

This is to reaffirm the working relationship under which the Division of Legislative Audit will have access to confidential information during the course of its audit of the shared taxes program in the Alaska Department of Revenue.

The inter-agency agreement between the Alaska Department of Revenue and the Division of Legislative Audit dated December 1, 1980, permits the Division of Legislative Audit access to confidential records for audit purposes only, and provides that no confidential information shall be released in any audit reports or other reports, or by verbal communication.

If you agree to continue this agreement please sign below and return the original copy of this letter to us.

Sincerely,

*Gerald L. Wilkerson*  
For Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

Department of Revenue

Division of Legislative Audit

By: *Thomas K. Williams*  
Thomas K. Williams  
Commissioner of Revenue

By: *Gerald L. Wilkerson*  
For Gerald L. Wilkerson  
Legislative Auditor

INTER-AGENCY AGREEMENT

This agreement entered into this 2nd day of December, 1980, is made by and between the Department of Revenue of the State of Alaska, hereinafter referred to as the "Department", and the Legislative Audit Division hereinafter referred to as the "Division."

WHEREAS, under AS 24.20.271 the Division is empowered to have access at all times to the books, accounts, reports, or other records, whether confidential or not, of every state agency.

WHEREAS the Department is prohibited from disclosing or permitting the disclosure of tax information under AS 09.25.100 and AS 43.05.230.

WHEREAS tax information is required to be kept confidential under AS 09.25.100 and AS 43.05.230 and

WHEREAS the Attorney General has determined in an Opinion dated November 21, 1972 which opinion was reaffirmed orally on November 27, 1980 that the conflicting responsibilities of the Department and the Division may be reconciled in a carefully drawn set of procedures regarding the audit of the Department by the Division and its access to Department files.

NOW THEREFORE the Department and the Division agree as follows:

- I. The Department agrees that the auditors of the Division may have access to the records and files of the Department when it is conducting an audit of the Department of Revenue and at no other time.

2. If the Division in the conduct of its audit determines that it must have access to information made confidential by AS 43.05.230 and AS 09.25.100, it will select a large sample of files on a random basis for use in the audit.
3. The Department will designate those persons of the department who shall be responsible for locating and delivering files to the auditors at the Division and the Division will obtain files and records only through these designated persons.
4. The Department shall provide the sample of files for the auditors in a secured area within the offices of the department of Revenue.
5. The Department shall provide a lockable file cabinet in the Department of Revenue's secured file area for the purpose of storing the Division work papers, records, and files used in the audit. The Division shall be given all keys to that cabinet and the cabinet shall remain in the possession of the Department.

## II. RECORDS

1. All records, files, work papers, and other material which disclose the particulars of the taxpayer shall not be removed from the possession of the Department.
2. All records, files, work papers, and other materials used by the Division in its audit shall be kept in a locked file cabinet in the Department's secure file area of which the Division has the only keys.
3. After an audit has been completed, the Division and the Department shall go through all files, records, and

work papers to determine those items which may be removed from the Department without disclosing the particulars of a taxpayer. The Department and the Division shall excise all identifying particulars from the work papers and supporting documents which are removed. The Commissioner of the Department of Revenue shall make the final determination on what materials may be removed from the Department; however, all Division work papers not containing taxpayer identifying information may be removed from the Department to be held by the Division.

### III. NONDISCLOSURE OF INFORMATION

The Division agrees that it will not disclose the particulars of any taxpayer's tax return or report which are revealed during an audit. Confidential information shall not be included in any report, statement or other disclosure of the Division or its employees and shall not be disclosed to anyone outside the Division including members of the Legislative Budget and Audit Committee. As stipulated in the Legislative Budget and Audit Committee policies and procedures, the Division will notify the Committee that an audit is scheduled that will include information considered confidential by law. The Division will obtain written waivers from each member of the Committee which will allow the Division to withhold all confidential information from the Committee. The Department may request proof of such waivers prior to releasing confidential records and particulars.

IV. DECLARATIONS OF CONFIDENTIALITY BY EMPLOYEES OF THE DIVISION

All employees of the Division conducting an audit or having access to information of the audit shall sign a confidentiality statement provided by the Department which shall remain on file with the Department.

DEPARTMENT OF REVENUE

By: Thomas K. Williams  
Thomas K. Williams  
Commissioner of Revenue

DIVISION OF LEGISLATIVE AUDIT

By: Gerald L. Wilkerson  
Gerald L. Wilkerson  
Legislative Auditor

APPROVED:

WILSON L. CONDON  
ATTORNEY GENERAL

By: Susan Burke  
Susan Burke  
Assistant Attorney General

Revenue

CONFIDENTIALITY STATEMENT

I acknowledge that I have read and understand the following and that I will be subject to any penalties provided by law for breach of this trust.

In accordance with AS 43.05.230 and Internal Revenue Code Section 7213, it is in violation of Alaska Statutes and federal code for any person having information relating to a taxpayer which is obtained during the performance of duties in the Department of Revenue to discuss this information with anyone not having a need and legal right to know.

Paul R. Smith  
Signature

1-16-84  
Date

RECEIVED  
ALASKA DEPARTMENT OF REVENUE  
JAN 26 1984  
OFFICE OF THE COMMISSIONER

# MEMORANDUM

# State of Alaska

TO: Louann Cutler  
House Finance Committee

DATE: February 21, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown  
Attorney General

SUBJECT: Disclosure of  
confidential tax  
information

By: Deborah Vogt *DV*  
Assistant Attorney General  
Oil, Gas and Mining-Juneau

HB 502, as currently drafted, would permit the Department of Revenue to disclose to the legislature the name of a taxpayer and the amount of an assessment levied against that taxpayer by the Department. You have asked me to look into what the United States and other states permit in the way of legislative oversight of tax matters, and to consider whether Alaska might follow those examples. You have further asked me to draft a proposed committee substitute for HB 502 permitting disclosure to the legislature, but prohibiting disclosure to the public.

26 U.S.C. 6103 is the Internal Revenue statute dealing with the confidentiality of tax information on the federal level. Like AS 43.05.230, it generally requires that information on a federal tax return be kept confidential. Section (f) of that statute permits the IRS to disclose otherwise confidential material to designated committees of Congress. Those committees are the "tax writing" committees -- House Ways and Means, Senate Finance and the Joint Committee on Taxation. Like Alaska's law, if the information does not identify particular taxpayers, it may simply be given to Congress. If, however, the information would disclose or identify a particular taxpayer, it may only be provided to those committees in executive session. Taxpayer-specific information may also be provided to the chief of staff of the joint committee, to other committees under more limited circumstances, and to the "agents" of the tax-writing committees (staff) that are designated by the chairman.

I have made a cursory survey of the laws of other states, and have located one (California) which permits disclosure to the legislature. Corporate income tax information is disclosable under California Statute § 26453, and personal income tax information under § 19285. I have attached copies of those statutes for your review. California provides that it is a misdemeanor for a member of

a committee or its staff to disclose the particulars of tax information.

Considerations.

1. Accountability. The present confidentiality statute imposes criminal penalties for unauthorized disclosure of tax information. That criminal penalty is probably an effective deterrent to unintentional disclosure: I know it makes me take very seriously the confidentiality of taxpayer information. It may be that here in Alaska it is especially important to consider accountability since our major taxpayers are few in number, and as a result the contents of their tax returns may be more memorable than would be any particular return in a state like California or at the federal level. Although neither California nor the United States appear to have dealt with the question of legislative immunity, I believe it is appropriate to consider whether a criminal penalty would have any effect should a legislator disclose confidential tax information in the course of legislative debate. (I do not believe that any question of immunity arises in the event that a legislator were to disclose information in another context -- for example, to a friend or relative in a social context.)

The speech and debate immunity appearing in the Alaska Constitution, like that in the United States Constitution, was designed to "preserve the constitutional structure of separate, coequal, and independent branches of government. The English and American history of the privilege suggests that any lesser standard would risk intrusion by the Executive and the Judiciary into the sphere of protected legislative activities." United States v. Helstoski, 442 U.S. 477, 490. Thus, the immunity is more than an individual privilege protecting legislators; its purpose is to protect, as well, the constituents of those legislators, who have an interest in ensuring free debate by their legislature. As a result, since it is not a personal privilege, it is not clear whether the immunity may be waived by a legislative body.

In Helstoski, the Court suggested (but did not decide) that Congress could "enlist the aid of the Executive Branch and the courts" in disciplining its members by a "narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its

members." Id. at 492. Although the issue apparently has never arisen, the Internal Revenue Service takes the position that Congress has done just that in section 6103, so that members of Congress are not immune from penalties for disclosure. The attached draft bill, then, specifically provides that a legislator would not be immune from penalties for unauthorized disclosure of tax information.

The legislature may, of course, take any action it deems appropriate to regulate the conduct of its own members. The draft bill, then, provides that disclosure of tax information is a violation of the standards of conduct set out in AS 24.60. Thus, even if a legislator who disclosed confidential information were to successfully argue that he or she was immune from the penalties of AS 43.05.230, that legislator would nonetheless have violated the legislature's standards of conduct, and would be subject to the provisions of that chapter.

2. Information exchange with the Internal Revenue Service. The state is currently entitled to information from the IRS, so long as the state has certain confidentiality protections. In amending the confidentiality provisions, it is appropriate to consider whether the exchange of information with the IRS would be affected. There are two relevant provisions of federal law.

The first is 26 U.S.C. § 6103 (d), which authorizes the IRS to disclose information generated by the IRS directly to the states so long as the information is protected by the state. An example of this type of information would be the results of a federal a Windfall Profit Tax audit. The information is available only to the agency charged with administering the tax laws; it may not even be disclosed to the governor. Thus, information received by Alaska under this section would not be available to the legislature under the draft bill. However, the draft bill would not effect the receipt of this information by the state.

The second relevant provision is more indirect, and deals with federal tax information that is provided to the state by the taxpayer. For example, a state may require that the federal return be attached to the state return, or that certain information from the federal return be entered on the state return. Since this information comes directly

from the taxpayer, the United States has no control over the use to which the information is put. However, § 6103(p)(8) provides that if the state does not protect the confidentiality of this information, the IRS will no longer provide the direct information under § 6103(d). I have checked with the IRS disclosure attorneys in Washington, and they tell me that disclosure to the legislature, but not to the public, should have no effect on the exchange of information. They have also said that the IRS will work with us to determine the potential effect of any legislation before it is passed. I also spoke with California, which discloses information to its legislature, and the attorney there told me that disclosure did not effect the exchange of information with the IRS.

3. Effect of proposed bill on legislative involvement in settlement of tax disputes. The confidential nature of the recent settlement of severance tax issues with Arco raises the question of what the the effect of the proposed bill would be on the settlement process. The bill would permit (subject to the restrictions against public disclosure) legislators to review settlements to the extent that they now may do so with respect to non-tax matters. In other words, the bill removes the bar of tax confidentiality, no more and no less. The bill would not expand the legislature's ability to participate in the settlement process beyond its present parameters in non-tax matters.

#### Summary of the Proposed Bill

The draft bill provides that confidential information will be provided to a committee designated by the speaker of the house or the senate president. For example, the speaker might request that information be provided to the house finance committee. The committee may review and consider confidential information only in a closed, executive session (unless the taxpayer consents to an open hearing). If the committee desires that legislative staff have access to materials, it must first define the scope of an inquiry or investigation and then designate specific staff members who are authorized to review otherwise confidential information. Legislative employees would include, for example, the house research agency, so long as the committee, acting as a whole, designated those employees. The proposed bill restates that disclosure of information received under the subsection is not permitted,

and specifically notes that this is true notwithstanding the statute setting out legislative immunity. 1/ It further would require that any individual, before receiving or reviewing information, must sign a statement acknowledging that he or she knows the information is confidential and that disclosure is prohibited.

The bill would add a new subsection in the legislative standards of conduct chapter, prohibiting disclosure of information received under the amendments proposed in the bill. Thus, even if a legislator successfully argued immunity under the speech and debate clause, he or she would still be subject to the provisions of that chapter.

DV:jf

---

1/ The intent, here, is to waive the speech and debate immunity, not the protections from being subjected to court proceedings during the legislative session. A court would probably find that the latter protection was not waived by the draft bill, but it may be that this should be clarified.

it shall be a misdemeanor for such committee or any member, clerk or other officer or employee thereof to divulge or make known in any manner any particulars of the information so furnished except to law enforcement officers for the purpose of aiding the detection or prosecution of crimes committed in violations of this part.

Added Stats 1949 ch 557 § 1, effective July 1, 1951.

**Prior Law:**

(a) Stats 1929 ch 13 § 35 subd (a) 1st par 1st sent p 34, as amended by Stats 1931 ch 1066 § 8 p 2229, Stats 1935 ch 275 § 24 p 983, Stats 1939 ch 1050 § 20 p 2972, Stats 1943 ch 37 § 21 p 212, ch 352 § 25 p 1464.

(b) Stats 1937 ch 765 § 29 subd (a) 1st par 1st sent p 2201, as amended by Stats 1939 ch 1049 § 22 p 2932, Stats 1943 ch 38 § 21 p 349, ch 351 § 23 p 1400.

**Cross References:**

Definition of misdemeanor and penalties therefor: Pen C §§ 17, 19, 19a.

**Collateral References:**

71 Am Jur 2d State and Local Taxation §§ 590, 601.

Corresponding federal statute: 26 USCS § 6103(d).

**§ 26453b. Inspection of returns by Attorney General or other legal representatives of State**

The Attorney General or other legal representatives of the state may inspect the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this part. In addition, the Attorney General may inspect any report or return required under this part when required in the enforcement of any public or charitable trust or in compelling adherence to any charitable purposes for which any nonprofit corporation is formed.

Added Stats 1949 ch 557 § 1, effective July 1, 1951; Amended Stats 1969 ch 603 § 8.

**Prior Law:**

(a) Stats 1929 ch 13 § 35 subd (a) 1st par 2d sent p 34, as amended by Stats 1931 ch 1066 § 8 p 2229, Stats 1935 ch 275 § 24 p 983, Stats 1939 ch 1050 § 20 p 2972, Stats 1943 ch 37 § 21 p 212, ch 352 § 25 p 1464.

(b) Stats 1937 ch 765 § 29 subd (a) 2d par 1st sent p 2201, as amended by Stats 1939 ch 1049 § 22 p 2932, Stats 1943 ch 38 § 21 p 249, ch 351 § 23 p 1400.

**Amendments:**

1969 Amendment: Added the second sentence.

*Note*—See note 1 to § 24837 respecting the applicability of the provisions of Stats 1969 ch 603 effecting changes in the computation of taxes.

**Cross References:**

Nonprofit corporation generally: Corp C §§ 9000 et seq.

Attorney General's powers generally: Gov C §§ 12510 et seq.

CALIFORNIA  
ADMINISTRATION OF TAX

§ 19285

Added Stats 1943 ch 659 § 1, effective June 5, 1945.

Prior Law: Stats 1935 ch 329 § 33 subd (a) 1st sent p 1122, as amended by Stats 1937 ch 668 § 19 p 1860, Stats 1939 ch 915 § 21 p 2565, Stats 1941 ch 1226 § 21 p 3084.

Collateral References:

Witkin Evidence 2d pp 805, 806.  
Cal Jur 2d Income Taxes § 48.

NOTES OF DECISIONS

Copies of income tax reports filed with State and federal government, as best evidence procurable, were competent, in grand jury investigation of lobbying and bribery of State legislators. *Samish v Superior Court* (1938) 28 CA2d 685, 83 P2d 305.

Purpose of this section and § 19282 is to facilitate tax enforcement by encouraging taxpayer to make full and truthful declarations in his return without fear that his statements will be revealed or used for other purposes; such privilege should not be nullified by permitting third parties to obtain information by adopting indirect procedure of demanding copies of the tax returns. *Webb v*

*Standard Oil Co.* (1957) 49 C2d 569, 319 P2d 621; *Vogan v McLaughlin* (1959) 172 CA2d 65, 342 P2d 18; *Davis v Lucas* (1960) 180 CA2d 407, 4 Cal Rptr 479.

In action by buyer of motel against sellers for fraud in inducing sale, sellers, not having objected to producing copies of their income tax returns, or to offer of copies in evidence, on ground that copies were privileged or were inadmissible could not raise such questions on appeal and waived right to claim on appeal that copies were inadmissible or privileged, and it was error to admit copies of returns in evidence. *Vogan v McLaughlin* (1959) 172 CA2d 65, 342 P2d 18.

§ 19284. Furnishing information to committee of Legislature: Disclosure by committee a misdemeanor

Such information may upon request of a committee appointed by either the Assembly or the Senate, or both, be furnished to the committee, but it is a misdemeanor for the committee or any member, clerk, or other officer or employee thereof to disclose in any manner any particulars of the information so furnished except to law enforcement officers for the purpose of aiding the detection or prosecution of crimes committed in violation of this part.

Added Stats 1943 ch 659 § 1, effective June 5, 1945.

Prior Law: Stats 1935 ch 329 § 33 subd (a) 1st sent p 1122, as amended by Stats 1937 ch 668 § 19 p 1860, Stats 1939 ch 915 § 21 p 2565, Stats 1941 ch 1226 § 21 p 3084.

Collateral References:

Cal Jur 2d Income Taxes § 48.

§ 19285. Inspection by Attorney General or other legal representative of state

The Attorney General or other legal representatives of the state may inspect the report or return of any taxpayer who brings an action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this part. In addition, the Attorney General may inspect any report or return required under this part when required in the enforcement of any public or charitable trust or in compelling

# CALIFORNIA

## ADMINISTRATIVE PROCEDURE

## § 26453a

### § 26452. "Business affairs"

The term "business affairs," as used in this article means the details relative to the business activities of the taxpayer as disclosed by the return but shall exclude extraneous matters, such as the exact corporate title, corporate number, the date of commencement of business in this State, taxable year adopted, filing date of return, name, date and title of persons signing affidavit to the return, due date of taxes, taxes unpaid, taxpayer's address, private address of officers and directors.

Added Stats 1949 ch 557 § 1, effective July 1, 1951.

#### Prior Law:

(a) Stats 1929 ch 13 § 35 subd (a) 2d par p 34, as amended by Stats 1931 ch 1066 § 8 p 2229, Stats 1935 ch 275 § 24 p 983, Stats 1939 ch 1050 § 20 p 2972, Stats 1943 ch 37 § 21 p 212, ch 352 § 25 p 1464.

(b) Stats 1937 ch 765 § 29 subd (a) 3d par p 2201, as amended by Stats 1939 ch 1049 § 22 p 2932, Stats 1943 ch 38 § 21 p 249, ch 351 § 23 p 1400.

### § 26453. Disclosure of information under judicial order

Such information may be disclosed in accordance with proper judicial order in cases or actions instituted for the enforcement of this part or for the prosecution of violations of this part.

Added Stats 1949 ch 557 § 1, effective July 1, 1951.

#### Prior Law:

(a) Stats 1929 ch 13 § 35 subd (a) 1st par 1st sent p 34, as amended by Stats 1931 ch 1066 § 8 p 2229, Stats 1935 ch 275 § 24 p 983, Stats 1939 ch 1050 § 20 p 2972, Stats 1943 ch 37 § 21 p 212, ch 352 § 25 p 1464.

(b) Stats 1937 ch 765 § 29 subd (a) 1st par 1st sent p 2201, as amended by Stats 1939 ch 1049 § 22 p 2932, Stats 1943 ch 38 § 21 p 349, ch 351 § 23 p 1400.

#### Collateral References:

*Witkin Evidence* 2d p 806.

*Cal Jur 2d Taxation* § 384.

    71 *Am Jur 2d State and Local Taxation* §§ 590, 601.

### NOTES OF DECISIONS

The "cases or actions" are those brought by the state. *Franchise Tax Board v Superior Court* (1950) 36 C2d 538, 225 P2d 905.

A taxpayer in asserting a claim for a refund does not "enforce" the statute within the exception of

this provision permitting disclosure, in actions to enforce the statute, of certain information required in tax returns. *Franchise Tax Board v Superior Court* (1950) 36 C2d 538, 225 P2d 905.

### § 26453a. Furnishing information to Assembly and Senate committees

Such information may upon request of the committee appointed by either the Assembly or the Senate be furnished to the committee, but

HOUSE BILL 502  
CONFIDENTIALITY

THE SOHIO ALASKAN PETROLEUM COMPANY RECOGNIZES THE STATE OF ALASKA'S LEGITIMATE RIGHT TO ADMINISTER THE AUDIT, ASSESSMENT AND COLLECTION OF REVENUES FOUND LEGALLY DUE AND OWING. HOWEVER, WE OPPOSE ANY LEGISLATION THAT WOULD RELAX THE REQUIREMENTS OF CONFIDENTIALITY IMPOSED UPON THE STATE IN MATTERS RELATING TO THE ASSESSMENT AND COLLECTION OF TAXES.

WE OPPOSE HB 502 NOT ONLY BECAUSE IT WOULD ESTABLISH A BAD PRECEDENT AND UNDERMINE THE STATE'S AUDIT PROCESS, BUT BECAUSE THE BILL WOULD NOT ACCOMPLISH ANY OF THE OBJECTIVES STATED IN THE "LEGISLATIVE PURPOSE" OF THE BILL.

THE BILL WOULD PERMIT THE PUBLICATION OF TAX ASSESSMENTS MADE BY THE DEPARTMENT OF REVENUE EVEN THOUGH THEY ARE NOT DELINQUENT. IN FACT, THEY ARE TAXES THAT ARE NOT EVEN DUE AND OWING. WE DO NOT OBJECT TO THE PUBLICATION OF NAMES OF TAXPAYERS THAT ARE DELINQUENT IN PAYING TAXES THAT ARE DUE AND WE WOULD EXPECT THE STATE TO PURSUE THOSE TAXPAYERS. HOWEVER, THE PUBLICATION OF ASSESSMENTS AGAINST TAXPAYERS WOULD SERVE NO USEFUL PURPOSE OTHER THAN TO VIOLATE, WE BELIEVE, THE TAXPAYER'S RIGHTS TO PRIVACY AND DUE PROCESS. THE INITIAL ASSESSMENT IS SIMPLY A STARTING POINT. THE TAXPAYER MAY NOT

EVEN HAVE HAD AN OPPORTUNITY TO REVIEW THE ASSUMPTIONS ON WHICH IT IS BASED. IN A LETTER TO MEMBERS OF THE HOUSE FINANCE COMMITTEE ON JANUARY 20, 1986, OPPOSING THE COLLECTION OF ASSESSMENTS PRIOR TO FINAL ADJUDICATION, THE DEPARTMENT OF REVENUE FOUND THAT: "IN CASES INVOLVING DESK AUDITS, THE TAXPAYER MAY NEVER HAVE EVEN BEEN CONTACTED BY THE DEPARTMENT UNTIL THE ASSESSMENT NOTICE IS RECEIVED."

THE PUBLICATION OF ASSESSMENTS AGAINST THE TAXPAYER, PRIOR TO FINAL ADJUDICATION, WOULD SERVE TO EMBARRASS THE CITIZEN. THE INITIAL ASSESSMENTS MADE AGAINST TAXPAYERS ARE BASED ON ASSUMPTIONS MOST FAVORABLE TO THE STATE'S POSITION ON VALUATION, CALCULATION AND INTERPRETATION OF STATUTE AND REGULATIONS. THESE INITIAL ASSESSMENTS ARE CHALLENGED, COMPROMISED AND OFTEN COMPLETELY ELIMINATED WHEN THE TAXPAYER HAS HAD A CHANCE TO EXPLAIN THE FACTS. THE FINAL TAX FOUND DUE AND OWING OFTEN BEARS LITTLE RESEMBLANCE TO THE INITIAL ASSESSMENT. HOW THEN DOES THE PUBLICATION OF THE ASSESSMENT AND THE TAXPAYER'S NAME SERVE TO ENSURE THAT "THE STATE IS RECEIVING ALL REVENUE DUE THE STATE," AS STATED IN THE "LEGISLATIVE PURPOSE" OF THE BILL? HOW WILL THE EMBARRASSMENT TO THE CITIZEN ENSURE THAT "REVENUE DUE TO THE STATE IS AVAILABLE..." WHEN IT IS ACKNOWLEDGED THAT THE INITIAL

ASSESSMENT OF REVENUE IS NOT DUE TO THE STATE AT THAT TIME NOR IS IT LIKELY EVER TO BE DUE IN THE FULL AMOUNT.

BUT IN FAILING TO ACHIEVE THEIR LEGISLATIVE PURPOSE, THE BILL IS NOT MERELY INNOCUOUS. THEY COULD BE A SOURCE OF REAL HARM AND ECONOMIC HARDSHIP TO THE TAXPAYER. AS NOTED IN THE JANUARY 17, 1986 LETTER FROM THE ATTORNEY GENERAL'S OFFICE TO THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE:

"THE DEPARTMENT OF REVENUE HAS EXPRESSED CONCERN THAT SIMPLE DISCLOSURE OF THE AMOUNT OF AN ASSESSMENT MIGHT REVEAL SENSITIVE INFORMATION ABOUT TAXPAYERS....IN THE OIL INDUSTRY, IT IS POSSIBLE THAT DISCLOSURE OF ASSESSMENTS COULD ALLOW ONE TAXPAYER TO LEARN VALUABLE INFORMATION ABOUT THE TRANSPORTATION COSTS OR VALUATION PRACTICES OF ITS COMPETITORS."

FINALLY, WE RECOGNIZE THE DESIRE OF THE LEGISLATURE TO FULFILL ITS OVERSIGHT RESPONSIBILITIES OF THE REVENUE COLLECTING FUNCTION BUT WE SUBMIT THAT THE LEGISLATURE ALREADY HAS THE TOOLS IN HAND TO FULFILL THAT FUNCTION THROUGH OVERSIGHT OF THE DEPARTMENT OF REVENUE. THE LEGISLATURE MAY AND SHOULD ENSURE THAT THE DEPARTMENT OF REVENUE IS AUDITING AND COLLECTING REVENUES IN AN EFFICIENT AND EXPEDITIOUS MANNER. BUT IT CAN DO SO WITHOUT BREACHING THE CONFIDENTIALITY THAT PRESENTLY EXISTS BETWEEN THE DEPARTMENT OF REVENUE AND THE TAXPAYER.

Alaska State Legislature  
House of Representatives

Al Adams  
Chairman  
Committee on Finance

January 30, 1986

Official Business

WHILE IN SESSION  
Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3706

OUT OF SESSION  
P.O. Box 333  
Kotzebue, Alaska 99752  
(907) 442-3320

1024 W. 6th  
Anchorage, Alaska 99501  
(907) 274-0615

MEMORANDUM

TO: Representative Sam Cotten  
FROM: Louann Cutler *Louann*  
SUBJ: HB 502

Attached are proposed amendments to HB 502. The changes are presented in the form of a proposed committee substitute so that they are readily understood. They were drafted in consultation with Deborah Vogt.

The major change suggested is that the bill apply only to taxation of oil and gas production and pipeline activity instead of taxation of all corporate activity. This change is proposed to narrow the scope of the bill to those taxpayers with which the legislature is most concerned. Thus, the findings and purpose sections (1 and 2) are amended to reflect this change, and the language of sections 3 and 4 permitting disclosure refer specifically to AS 43.55 (the severance tax), AS 43.20.072 (the modified apportionment section of the corporate income tax), and former AS 43.21 (the separate accounting income tax).

Two technical amendments are proposed. A new section 3 is added in order to amend another part of the statutes referring to tax information so that disclosure is allowed. Also, an immediate effective date has been included.

Attachment

PROPOSED CS HB 502 (FIN)

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

\* Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that

(1) the state's oil and gas resources are exploited only to benefit the citizens of the state;

(2) oil and gas production and pipeline activities in the state presently dwarf all other taxable economic activities in the state;

(2) the majority of the state's revenue is derived from taxation of oil and gas production and pipeline activities;

(3) state government provides a wide range of essential services to the citizens of the state to ensure the public health and welfare.

(b) The legislature further finds that

(1) the citizens of the state must be assured that the state is receiving all of the income to which it is entitled;

(2) since revenue from oil and gas production and pipeline activities is derived from relatively few taxpayers, the consequences of any error or delay in the collection of taxes from those taxpayers are significant;

(3) the legislature must exercise its oversight authority to assure that tax revenue collection by the Department of Revenue is conducted efficiently, fairly, promptly and in the best interest of the state;

(4) there is a legitimate and compelling governmental interest in the legislature and the public having adequate access to information regarding the tax revenue owed to the state from oil and gas production and pipeline activities to allow responsible oversight;

(5) without sufficient information, the legislature cannot adequately determine that the state's tax revenue collection functions are properly administered and that tax revenue due the state is promptly received; and

(6) the public interest may best be served if, when the Department of Revenue has made an assessment against a taxpayer under former AS 43.55, AS 43.20.072 or AS 43.21, the identity of the taxpayer and the amount of the assessment is disclosed, whether or not the taxpayer agrees that the amount is due and whether or not any amount is delinquent.

\*Sec. 2. LEGISLATIVE PURPOSE. Pursuant to the findings set out in section 1 of this Act, the legislature adopts this Act to ensure that

(1) the state is receiving all the tax revenue due the state;

(2) oversight of the tax revenue collection function is sufficiently provided; and

(3) tax revenue due to the state is available to provide for the public health and welfare of the citizens of the state.

\*Sec. 3. AS 09.25.100 is amended to read:

DISPOSITION OF TAX INFORMATION. Information in the possession of the Department of Revenue which discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, or prohibit the publication of assessments made by the Department of Revenue against taxpayers under AS 43.55, AS 43.20.072, or former AS 43.21 or prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information which may assist in the collection of delinquent taxes.

\*Sec. 4. AS 43.05.230(e) is amended to read:

(e) \*This section does not prohibit [NOTHING IN THIS SECTION PROHIBITS] the publication of statistics [SO] classified [AS] to prevent the identification of particular returns or reports, the publication of assessments made by the department against taxpayers under AS 43.55, AS 43.20.072 or former AS 43.21 or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with other relevant information

which in the opinion of the department may assist in the collection of delinquent taxes.

\* Sec. 5. This Act takes effect immediately in accordance with AS 01.10.070(c).

DEPT OF LAW: <sup>changing law on</sup> Confidentiality  
of current taxpayer info.

BILL SHEFFIELD, GOVERNOR

REPLY TO:

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

January 16, 1986

Mike Greany, Director  
Legislative Finance Division  
Legislative Budget and Audit Committee  
Pouch WF - State Capitol  
Juneau, Alaska 99811

Dear Mr. Greany:

You have asked whether the Departments of Law and Revenue are prohibited, under AS 43.05.230, from disclosing to the Legislature or the public information relating to outstanding assessments against corporate taxpayers, including the identity of those taxpayers. You have further asked whether, if the statute currently prohibits that disclosure, it would be legal to amend it to permit disclosure. We conclude that AS 43.05.230 prohibits the contemplated disclosure, but that, within certain limitations, it might be possible to amend the statute to permit some disclosure to the Legislature.

AS 43.05.230 provides that, with certain exceptions, it is unlawful to divulge the particulars set out or disclosed on a return or report made under Title 43. The exceptions include disclosure to the taxpayer or in connection with an official investigation of the Department of Revenue, and exchange agreements with other states, the United States and the Multistate Tax Commission. The exceptions, then, do not include disclosure to the Legislature or to the public.

AS 43.05.230(e) provides that the section does not prohibit the publication of statistics that do not disclose particular taxpayers. Thus, under this language, the Department may disclose the aggregate amounts that have been assessed against categories of taxpayers under various taxes. I understand that this information is currently available to the Legislature.

That subsection further permits publication of the names of delinquent taxpayers. Our office has recently analyzed this section, and concluded that publication should not be made until the appeal period under AS 43.05.240 has run. Inf. A.G. Op. August 21, 1985. Thus, a taxpayer who has filed a protest and appealed an assessment is not a "delinquent taxpayer" for the purposes of this section.

Thus, AS 43.05.230, as presently drafted, prohibits the release of the contemplated information to the Legislature or to the public. Your question then becomes whether the constitutions of Alaska and the United States would permit amendment of the statute to authorize the disclosure.

Before turning to the constitutional analysis, it will be helpful to set out the rationale for laws protecting the confidentiality of tax information. There are several. The most obvious is the protection of the privacy interest of the taxpayer, coupled with concern with protection from self-incriminatory demands. Since tax returns are mandatory, governments have long been sensitive to the "substantial and difficult constitutional questions [posed by obligatory reports which] touch upon intimate areas of an individual's personal affairs [and which] can reveal much about a person's activities, associations, and beliefs." California Bankers Assn. v. Shultz, 416 U.S. 21, 78-79 (1973). Thus, tax confidentiality statutes reflect legislative protection of an individual's Fifth Amendment (self-incrimination), Fourth Amendment (search and seizure), and First Amendment (free association) rights, as well as the right to privacy.

Tax confidentiality statutes are also based on a legislative recognition that our tax laws rely heavily on voluntary assessment and compliance, and that compliance is enhanced when the information provided is protected. Thus, the "purpose of ... statutory provisions prohibiting disclosure is to facilitate tax enforcement by encouraging a taxpayer to make full and truthful declarations in his return, without fear that these

statements will be revealed or used against him for other purposes." Webb v. Standard Oil Co., 319 P.2d 621, 624.

The constitutional underpinnings of confidentiality statutes primarily protect the rights of individuals. At least under the United States Constitution, these protections are may not as strong for corporations. California Bankers, supra, at 55, 65-66. However, the United States Supreme Court has held that the Fourth Amendment protection from unreasonable searches and seizures extends to business premises at least to the extent of requiring a warrant before a search. G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977). Probably the strongest constitutional protection at issue here would be the right to privacy set out in the Alaska Constitution, article I, section 22.

Former Attorney General John Havelock expressed the opinion that Alaska's tax confidentiality statute protected information "within the ambit of the protection intended to be afforded by the Right of Privacy" in the Alaska Constitution. 1972 Op. Att'y Gen. #8. It is not clear whether that provision protects corporations. In Hilbers v. Municipality of Anchorage, 611 P.2d 31, 43 (Alaska 1980), the court held that the "[c]ommercial and public" aspects of appellants' massage parlor activities remove the shield of privacy from these activities." However, in Woods & Rohde, Inc. v. State, Dept. of Labor, 565 P. 2d 138 (Alaska 1977), the court, in holding that the Alaska constitution prohibits warrantless searches of business premises, stated that its conclusion was "bottomed on the amendment to our constitution found in article I, section 22..." We will assume that Alaska's privacy protection extends, at least to some degree, to corporations. It may be that our court would hold, for example, that the constitutional provision protects a corporation's proprietary or sensitive information. In addition, the line between personal activity and corporate activity may be a thin one, particularly in the case of small, closely held corporations.

Further, a business may have a privacy interest unrelated to proprietary information: it could be argued that the simple disclosure of the existence of an assessment could be embarrassing, since it might imply delinquency or tax evasion. The Department of Revenue tells me that a great many assessments against taxpayers are reduced during the review process within the department. That is, the taxpayer may prevail, before the department, on one or more issues at the informal conference

level, after a formal conference, or after a hearing. A taxpayer who is making a legitimate, good faith (and perhaps successful) argument that an assessment is not due is in a very different position from one against whom the issues have been decided and who still does not pay. If the Department were to disclose the amounts of contested assessments, taxpayers would likely challenge that disclosure as an invasion of a privacy interest.

The test for interests protected under the Alaska Constitution's privacy amendment is that a person have an actual expectation of privacy, and that the expectation be one society is prepared to recognize as reasonable. Hilbers, supra, 611 P.2d at 42. If a privacy interest is implicated, then that interest must be balanced against the public interest in disclosure. At least as far as certain competitive information is concerned, it is likely that our court would hold that the privacy interest in non-disclosure is fairly strong -- at least unless and until a taxpayer is actually delinquent. Your request for an opinion does not articulate any particular legislative need-to-know, or public interest, against which to balance this privacy interest. As a result, it is difficult to predict how our court would balance the competing interests.

The Department of Revenue has expressed concern that the simple disclosure of the amount of an assessment might reveal sensitive information about taxpayers. As an example, the fisheries business tax involves a very simple calculation, and revealing a taxpayer's liability under that act would be tantamount to revealing the volume of fish processed by the taxpayer. Similarly, in the oil industry, it is possible that disclosure of assessments could allow one taxpayer to learn valuable information about the transportation costs or valuation practices of its competitors.

It is possible that some disclosure could be made to the legislature that would not reveal sensitive or proprietary information. At least in the case of a large, publicly held corporation, whose shareholders are often entitled to tax records (see, 26 U.S.C. 6103(e)), an expectation of privacy with regard to at least some tax information might not be very strong, and might be outweighed by legitimate public interest. However, in view of the potential for the inadvertent revelation of sensitive information, I believe that the legislature should approach any amendment to the non-disclosure statute with caution.

One final consideration should be discussed. The state presently receives tax information from the United States -- and is authorized to receive information from other states -- so long as that information is kept strictly confidential. Federal regulations adopted under 26 U.S.C. 6103 authorize the IRS to terminate the exchange of information if the state makes unauthorized disclosure of federal tax return information received under the agreement. The Department of Revenue is concerned that the disclosure contemplated by this opinion request may jeopardize the exchange agreement with the IRS.

In conclusion, without an articulation of the public purpose to be accomplished by the proposed changes, it is impossible to assess whether our supreme court would find a violation of the state's privacy amendment. It is possible that a fairly strong public purpose would outweigh the privacy interests of at least some types of corporate taxpayers, with respect to at least some types of information. If this legislation is pursued, the public purpose sought to be accomplished should be clearly articulated. It then would be advisable to limit an amendment to AS 43.05.230 to the narrowest range of situations that would meet the legislature's need for information. The Department of Revenue should be consulted concerning the potential for inadvertent disclosure of proprietary information. Legislation might be limited to public corporations, and/or to assessments in excess of a certain dollar amount, or in excess of a certain fraction of the taxpayer's reported income. In any event, disclosure should be limited to the name of the taxpayer and the amount of the assessment, and not include the underlying data or calculations that went into making the assessment, since that information is often proprietary.

Please let me know if our office can be of any further assistance.

Sincerely,

HAROLD M. BROWN  
ATTORNEY GENERAL

By: Deborah Vogt  
Assistant Attorney General

DV:jf

LEGISLATIVE LEGAL: changing  
law on confidentiality of current  
taxpayer information

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITAL  
JUNEAU ALASKA 99801  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 17, 1985

SUBJECT: Legislative access to certain taxpayer  
information  
(Work Order No. 14-1468)

TO: Mike Greany, Director  
Legislative Finance Division

FROM: Richard A. Bradley  
Legislative Counsel

You have requested that we comment on the extent of legislative and public access to certain information regarding taxpayers. The information that you seek is the identity of corporate taxpayers against whom assessments have been issued. I gather that the disclosure you seek is not of a confidential legislative oversight character and that your request is essentially that there be a public disclosure of the facts involved.

Your request notes the provisions of AS 43.05.230(1); the section establishes criminal penalties for

a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under this title, except

(1) in connection with official investigations or proceedings of the department, whether judicial or administrative, involving taxes due under this title;

\* \* \*

While considering this section, however, note the provisions of sec. 230(e); it provides, in part:

Mike Greany, Director  
Legislative Finance Division  
Page 2  
December 17, 1985

(e) Nothing in this section prohibits the publication of . . . delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with other relevant information which in the opinion of the department may assist in the collection of delinquent taxes.

This latter subsection appears to reflect a present legislative determination that information regarding taxpayers who are delinquent in their responsibilities to the state does not enjoy a privileged status and the Department of Revenue may disclose that information if the department believes that the disclosure will assist in the collection of the taxes.

In my opinion, the department may disclose that information under existing law on the date that the taxes due are delinquent. I agree that an assessment will typically occur before there is any delinquency and thus sec. 230(e) is not wholly responsive to your request; I also agree that a disclosure that remains within the discretion of the Department of Revenue is not a solution to your request.

A solution is to provide that the identity of a taxpayer against whom an assessment has been made is a public record, whether the taxpayer agrees that the amount is due or not and regardless of delinquency.

It should be noted that the timing of the disclosure of the assessment raises valid public policy issues that may be complex considering the different kinds of taxes collected by the state. As the economic and business incidents that become the occasion of a tax become more complex and perhaps more ambiguous, the time at which the events give rise to an assessment may similarly become more ambiguous.

What I consider clear is that the taxpayer has no valid claim for protection from this disclosure under the "privacy amendment" [art. 1, sec. 22 of the Alaska Constitution] or under similar provisions or concepts of the U.S. Constitution. While the Alaska Constitution offers an explicit guarantee of privacy (art. I, sec. 22), unlike the Federal Constitution, the tests for the existence of the right to privacy in a particular context are first, whether the person has exhibited an actual (or subjective) expectation of privacy and, second, whether there is an expectation that

Mike Greany, Director  
Legislative Finance Division  
Page 3  
December 17, 1985

society is prepared to recognize that as a reasonable right. Hilbers v. Municipality of Anchorage, 611 P.2d 31 (Alaska 1980). Whether a corporation has a lesser expectation of privacy than an individual in the matters that are the subject of this memorandum or not, it is clear that the assessment of taxation by properly constituted taxing authorities is a responsibility of government that, once done, is not expected to remain private and, in fact, public policy concerns demand that it be done publicly.

The department may, of course, maintain as confidential proprietary information submitted by a taxpayer in appropriate circumstances.

A bill amending sec. 230(e) in the manner suggested is enclosed.

If I may be of further assistance, please advise.

RAB:mkr  
M1:141

Enclosure

Introduced: 1/22/86  
Referred: Finance

BY THE RULES COMMITTEE BY  
REQUEST OF THE LEGISLATIVE  
BUDGET AND AUDIT COMMITTEE

1 IN THE HOUSE

2

HOUSE BILL NO. 502

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the disclosure of state tax  
7 assessments of the Department of Revenue."

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

9 \* Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that

10 (1) the natural resources of land owned by the state belong to  
11 the citizens of the state;

12 (2) natural resource extraction presently dwarfs all other  
13 taxable economic activity in the state;

14 (3) the vast majority of the state's revenue is derived from the  
15 extraction of natural resources; and

16 (4) state government provides a wide range of critical services  
17 to the citizens of the state to ensure the public health and welfare.

18 (b) The legislature further finds that

19 (1) the citizens of the state must be assured that the state is  
20 receiving all of the income to which it is entitled;

21 (2) since the revenue from the extraction of natural resources  
22 is derived from only a relatively few taxpayers, the consequences of error  
23 in each case are magnified.

24 (3) the legislature must exercise its oversight authority to  
25 assure that the administration of revenue collection by the Department of  
26 Revenue is conducted efficiently, fairly, promptly and in the best inter-  
27 ests of the citizens of the state;

28 (4) there is legitimate and compelling governmental interest for  
29 the legislature and the public to have adequate access to information

1 regarding the revenue owed to the state from the extraction of natural  
2 resources to allow responsible oversight;

3 (5) without sufficient information, the legislature cannot  
4 adequately determine that the state's revenue collection functions are  
5 properly administered and that revenue due the state is promptly received;  
6 and

7 (6) the public interest may best be served if the identity of a  
8 corporate taxpayer and the amount assessed against the corporate taxpayer  
9 is available at the time of assessment, whether or not the corporate tax-  
10 payer agrees that the amount is due and whether or not any amount is delin-  
11 quent.

12 \* Sec. 2. LEGISLATIVE PURPOSE. The legislature adopts sec. 3 of this  
13 Act in response to concerns identified by the findings in sec. 1 of this  
14 Act to ensure that

15 (1) the state is receiving all revenue due the state;

16 (2) oversight of the revenue collecting function is sufficiently  
17 provided; and

18 (3) revenue due to the state is available to provide for the  
19 public health and welfare of the citizens of the state.

20 \* Sec. 3. AS 43.05.230(e) is amended to read:

21 (e) This section does not prohibit [NOTHING IN THIS SECTION  
22 PROHIBITS] the publication of statistics [SO] classified as to prevent  
23 the identification of particular returns or reports, together with  
24 other relevant information that, in the opinion of the department, may  
25 assist in the collection of taxes. The assessments made by the de-  
26 partment against corporate taxpayers and [OR THE PUBLICATION OF]  
27 delinquent lists showing the names of taxpayers who have failed to pay  
28 their taxes at the time and in the manner provided by law are public  
29 records [, TOGETHER WITH OTHER RELEVANT INFORMATION WHICH IN THE

1        OPINION OF THE DEPARTMENT MAY ASSIST IN THE COLLECTION OF DELINQUENT  
2        TAXES].

Introduced: 2/14/86  
Referred: Resources  
and Finance

1 IN THE HOUSE BY LARSON AND JENKINS  
2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 510  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL  
6 For an Act entitled: "An Act relating to game farming."  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
8 \* Section 1. AS 16.05.340(a)(14) is amended to read:  
9 (14) Fish [OR GAME] farming biennial license..... 200  
10 \* Sec. 2. AS 16.05.340(a) is amended by adding a new paragraph to read:  
11 (18) Game farming:  
12 (A) Game mammal or game reptile farming biennial  
13 license ..... 200  
14 (B) Game bird farming biennial license ..... 20