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HB 546

Section 1

The first section of the bill amends state law to define the 7(i) revenues received by Native Regional Corporations as contributions to a corporation's capital. The reason for this change is to ensure that the intent of ANCSA to equally distribute the earnings from resource development revenues among all Alaska Native Corporations is met; under current law this is not possible due to manner the in which the depletion allowance for resource extraction is computed.

Native corporations which own the resources and retain 30% of the income therefrom are able to shelter this income from taxation through the use of a depletion allowance. However, the corporate recipients of the remaining 70%, because they are not owners of the resources, are not eligible for the same favorable tax treatment; this subverts the concept of equality upon which the 7(i) provision of ANCSA is based. By defining these payments as contributions to capital, rather than income, balance is restored.

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HB 546

Section 2

Section 2 has been added to the legislation to make state law consistent with federal law. Because state tax regulations reference the internal revenue code, it may not be technically necessary to include this provision, but we have done so on the advice of Mr. Beattie of Peat Marwick.

The provision allows Native corporations to file consolidated tax returns for their subsidiary businesses. Since 1928 American corporations have been able to file consolidated tax returns for their subsidiaries, thus sheltering the earnings of their profitable subsidiaries with the losses of their poor performers; the losses generated were able to be "sold" to other profitable concerns in order to reduce the purchasers' tax liability.

This practice increased dramatically in 1981 with the passage of more liberal depreciation requirements. In 1984 Congress substantially limited this practice through the creation of more ^{ON-ER-ous} onerous ownership requirements for subsidiaries whose losses companies claimed for tax purposes. Alaska Native corporations were exempted from this provision due to their inability to sell stock to generate additional capital.

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Questions And Answers On HB 546

Do Alaska Native Corporations pay taxes on their incomes?

Yes.

Are all Alaskan corporations which develop their natural resources able to take a depletion allowance?

Yes.

What advantages does the ability to file a consolidated tax return confer on a corporation?

It allows the corporation to "shelter" some or all of the profits it makes from a subsidiary with the losses incurred by another subsidiary.

How will the provisions of section 2 help the Alaskan Economy?

Through the "sale" of corporate losses income will be generated by the corporation. This money will be spent within the Alaskan economy. When losses are "sold" they will not be available to the Native corporation to carry forward and "shelter" future profits. This will hasten the day when profitable Native corporations pay state taxes.

Why is it necessary to define "capital" in state law?

There is no definition of "capital" in federal law. It is anticipated that the IRS will accept this definition, based upon advice from tax professionals.

Isn't it unfair that corporations which distribute earnings to the 7(i) fund may have the 30% which they retain taxed, while those which are recipients of a share of the 70% will be fully protected from taxation?

No. While it is true that there is a potential for this to occur, the fact is that all corporations are recipients of their per capita share of the 7(i) funds, although not all are contributors to the fund. In the long run it is believed that any tax liability incurred by the contributing corporations will be balanced out by their receipt of these new "contributions to capital".

Why should Alaska Native Corporations have special privileges to file consolidated tax returns and sell their losses?

These are not special privileges. Alaska Native corporations incurred substantial losses due to the inability of the federal government to transfer their lands quickly and efficiently so they could be developed. In addition a typical corporation which has losses can sell stock to obtain additional contributions to capital. Alaska Native corporations do not have this ability.

What is 7(i)?

This is a provision of the Alaska Native Claims Settlement Act which requires that regional Native corporations distribute 70% of their earnings from resource development to a fund, which in turn redistributes the money to the other regional corporations on a per capita basis.

Do village corporations get money from the 7(i) fund?

Yes, 50% of the 7(i) funds received by a regional corporation are required to be distributed to the village corporations.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 3/24/86

REQUEST

Bill/Resolution No: CS HB 546 (C+RA)
Title: Taxation of Native Corporations

Sponsor: Fuller
Requestor: (H) C & RA
Date of Request: March 24, 1986

FISCAL DETAIL

Agency Affected: Department of Revenue
BRU: Audit

Components:
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

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-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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: Please see attached.

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Division: Audit Division

Phone: 465-2343
Date: March 24, 1986

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 3/25/86

Distribution (by Agency preparing fiscal note):

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

Offered: 4/9/86
Referred: Finance

Original sponsor: Fuller and
Binkley

1 IN THE HOUSE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 546 (C&RA)

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 capital and the taxation of
7 Native corporations."

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

9 * Section 1. AS 10.05.005(e) is amended to read:

10 (a) A corporation organized under 43 U.S.C. 1601 - 1628 (Alaska
11 Native Claims Settlement Act), except a village corporation which may
12 be incorporated under either this chapter or AS 10.20, shall be incor-
13 porated under and is subject to this chapter, except

14 (1) each corporation shall issue without further considera-
15 tion the number of shares of common stock necessary to comply with the
16 requirements of the Alaska Native Claims Settlement Act and all stock
17 so issued is considered fully paid and nonassessable when issued;

18 (2) unless otherwise provided in the articles of incorpora-
19 tion approved by the secretary of the interior,

20 (A) the capital is considered the consideration for
21 the initial issuance of shares; and

22 (B) the capital of a corporation organized under 43
23 U.S.C. 1601 - 1628 includes

24 (i) the land or interests in it conveyed to the
25 corporation by the United States under the federal Act,
26 except that which is required to be conveyed under 43 U.S.C.
27 1613(c)(1), (3), and (4), entered at its fair value to the
28 corporation upon receiving the conveyance of it; and

29 (ii) the money, when received under 43 U.S.C.

1 1605, 1606(i), and 1608. that [WHICH] is retained by the
2 corporation and that [WHICH] is not immediately distributed
3 or required to be distributed under 43 U.S.C. 1606(j).

4 * Sec. 2. AS 43.20.031 is amended by adding a new subsection to read:

5 (j) The department shall apply the exception contained in sec.
6 60(b)(5) of P.L. 98-369 (Deficit Reduction Act of 1984) to a consoli-
7 dated return filed by a Native corporation under this chapter. In
8 this subsection, "Native corporation" means a corporation organized
9 under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act).