

SB

500

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act exempting low-income housing from municipal taxation."  
Sponsor: Senate C&RA Committee  
Requestor: Senate C&RA Committee

Agency Affected: Department of Education  
BRU: K-12 Support

Components: Foundation Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	-0-	-0-	-0-	355.4	373.2	391.9
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	355.4	373.2	391.9

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	355.4	373.2	391.9
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	355.4	373.2	391.9

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

It is estimated the property tax exemptions required under SB 500 would reduce the Full Value Determination statewide by \$88,841,750. At the four mill requirement for education funding under AS 14.17.025, local effort would subsequently be reduced by \$355,400.

Prepared by: Mark Rutledge for DuPlas Phone: 465-4750  
Division: Municipal & Regional Assistance Date: \_\_\_\_\_

Approved by Commissioner: Mark Rutledge Date: 4/11/88  
Agency: Community & Regional Affairs

Distribution (by preparer):

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

NOME	3,876	Apply average per capita difference	\$34,725
PELICAN	273	Apply average per capita difference	\$2,446
ST. MARY'S	458	Apply average per capita difference	\$4,103
SAND POINT	890	Apply average per capita difference	\$7,974
SKAGWAY	712	Apply average per capita difference	\$6,379
TANANA	418	Apply average per capita difference	\$3,745
UNALASKA	1,331	Apply average per capita difference	\$11,924
YAKUTAT	456	Apply average per capita difference	\$4,085
			<hr/>
			\$355,367

MUNICIPALITY	POPULATION	REAL PROPERTY ONLY FULL VALUE DETERMINATION INCLUDING	OBLIGATION FOR EDUCATION	REAL PROPERTY ONLY FULL VALUE DETERMINATION EXCLUDING	OBLIGATION FOR EDUCATION	DIFFERENCE
		ASBA OR NRHA		ASBA OR NRHA		
ANCHORAGE	248,263	\$11,768,570,800	\$47,074,283	\$11,761,689,000	\$47,046,756	\$27,527
BRISTOL BAY BOROUGH	1,326	\$63,258,700	\$253,035	\$62,558,860	\$250,235	\$2,799
FAIRBANKS NORTH STAR BORO	75,079	Apply average per capita difference				\$10,167
HAINES BOROUGH	1,991	\$79,043,000	\$316,172	\$77,954,360	\$311,817	\$4,355
C&B OF JUNEAU	29,370	Apply average per capita difference				\$3,977
KENAI PENINSULA BOROUGH	43,612	\$3,012,330,700	\$12,049,323	\$3,011,145,500	\$12,044,582	\$4,741
KETCHIKAN GATEWAY BOROUGH	12,982	\$663,563,300	\$2,654,253	\$662,330,300	\$2,649,321	\$4,932
KODIAK ISLAND BOROUGH	14,127	\$398,049,400	\$1,592,198	\$394,589,032	\$1,578,356	\$13,841
MATANUSKA-SUSITNA BOROUGH	44,280	Apply average per capita difference				\$5,997
NORTH SLOPE BOROUGH	8,308	\$187,163,100	\$748,652	\$157,163,100	\$628,652	\$120,000
NORTHWEST ARCTIC BOROUGH	6,696	\$163,045,800	\$652,183	\$160,017,470	\$640,070	\$89,500
C&B OF SITKA	8,160	Apply average per capita difference				\$1,105
DILLINGHAM	2,153	\$79,064,200	\$316,257	\$77,120,200	\$308,481	\$7,776
GALENA	998	Apply average per capita difference				\$8,941
HOONAH	906	\$14,472,000	\$57,888	\$11,672,640	\$46,691	\$11,197
HYDABURG	475	\$6,854,600	\$27,418	\$5,493,800	\$21,975	\$5,443
KING COVE	713	Apply average per capita difference				\$6,388
KLAWOCK	760	\$8,199,200	\$32,797	\$5,749,760	\$22,999	\$9,798

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An act..exemptions..low-income housing from municipal taxation.."  
Sponsor: C&RA Committee  
Requestor: \_\_\_\_\_

Agency Affected: Community & Regional Affairs  
BRU: \_\_\_\_\_

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director  
Division: Municipal & Regional Assistance

Phone: 465-4750  
Date: 4/19/88

Approved by Commissioner: [Signature]  
Agency: Community & Regional Affairs

Date: 4/19/88

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: ...exempting certain interests  
from municipal taxation.  
Sponsor: Community & Regional Affairs  
Requestor: Senate Finance

Agency Affected: Education  
BRU: K-12 Support  
Components: Foundation Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		Ø	Ø	Ø	Ø	Ø
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		Ø	Ø	Ø	Ø	Ø
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Steve Hole Phone: 465-2800  
Division: Commissioner's Office Date: 4-28-88  
Approved by Commissioner: William G. Demmert Date: 4-28-88  
Agency: Department of Education

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
TIM KELLY, Vice Chairman  
RICK HALFORD  
MIKE SZYMANSKI  
FRED ZHAROFF



P O BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4989

## Senate Community and Regional Affairs Committee

April 11, 1988

TO: Senator Halford  
Co-Chair, Finance Committee

FROM: Senator Sturgulewski <sup>AS</sup>  
Chair, Community and Regional Affairs Committee

RE: SB 500 - "An Act exempting certain interests in low  
income housing from municipal taxation, Efd."

SB 500 is in the Senate Finance committee. I would appreciate it if you could schedule it for a hearing as soon as possible. I have tried to explain the need for the bill in the remainder of this memo and I have attached backup material for your information.

Both the Alaska State Building Authority and Native Regional Housing Authorities receive federal funds for the provision of low-income housing. Both of these programs transfer ownership to the residents if they live in the house for a designated number of years (usually 25), pay a monthly sum determined by their income, and abide by the other terms of the program.

While living in such housing, residents gradually acquire a possessory interest in the unit. Federal law states that if this possessory interest is taxed by the municipality the federal funds will be withdrawn. Municipalities have traditionally signed agreements with Regional Housing Authorities exempting these interests from taxation.

A draft AG's opinion has been prepared which says that without a specific statutory exemption, municipalities must tax this interest. The proposed CS, which is attached, provides an optional tax exemption for such possessory interests. This bill will allow the continuation of federal funding for low-income housing in Alaskan municipalities.

The Departments of Community and Regional Affairs and Education will deliver zero fiscal notes to your committee based on the proposed Finance CS. Thank you for your assistance.

# STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

- P.O. BOX B  
JUNEAU, ALASKA 99811-2100  
PHONE: (907) 465-4700
- 949 E. 38TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 563-1073

April 15, 1988

## POSITION PAPER

RE: CSSB 500: "An Act allowing exemptions for certain interests in low-income housing from municipal taxation; and providing for an effective date."

SPONSOR: Community & Regional Affairs Committee

### Program Effects of Bill

The bill would allow the exemption of the privately held property interests in Alaska State Building Authority (ASBA) and Regional Native Housing Authority (RNHA) from municipal property taxes.

The committee substitute (CS) for SB 500 resolves the concern with the original bill regarding fiscal impact to the State. By making the exemption optional rather than mandatory, the Full Value Determinations for affected municipalities will not be altered. As a result, the CS has eliminated any obligation of the Department of Education to provide additional education foundation funding to make up for decreased local contributions.

### Departmental Position

Support passage.

### Comments

In a draft legal opinion dated January 21, 1988, the Department of Law took the position that the privately held interests in RNHA property are currently taxable by municipalities under Alaska law. Although municipalities do not levy against those property interests at this time, it is certain they will begin doing so under that draft opinion. In the event CSSB 500 does not become law, and municipalities do begin to levy property taxes against those interests, the draft opinion stated further that the possibility exists that, under federal law, HUD would be required to withdraw funding for the RNHA projects.

CSSB. 500  
April 15, 1988  
Page Two

The department does not believe a tax should be levied against the low income occupants of RNHA or ASBA housing. Coupled with that belief, we are very concerned about the possibility that Alaska could lose federal funding for RHNA projects across the State. The CS for this bill would resolve those problems if it became law. The department is in full support of its passage.

  
Marty Rutherford  
Acting Deputy Commissioner

Municipality  
of  
Anchorage



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
(907) 264-4311

Joe Evans  
1127 West 7th Avenue, Anchorage, Alaska 99501 (Work)  
4741 Southpark Bluff Drive, Anchorage, Alaska 99516 (Home)  
Work (907) 263-7251; Home (907) 345-3688

April 18, 1988

Dear Assembly Members:

Re: SENATE BILL 500. "AN ACT EXEMPTING CERTAIN INTERESTS IN  
LOW-INCOME HOUSING FROM MUNICIPAL TAXATION."

On Tuesday, April 19, 1988, I intend to introduce a resolution for Assembly action supporting passage of Senate Bill 500. I would request your support of this resolution.

A copy of Senate Bill 500 is attached. In addition, I have attached a copy of a statement prepared in support of Senate Bill 500 and a copy of the testimony of Joseph G. Wilson, who testified on behalf of the Association of Alaska Housing Authorities. These materials explain the reason for Senate Bill 500. I believe they also provide justification for the resolution that I will introduce.

If you have any questions about my proposed resolution, please talk to me at your soonest possible convenience. I would hope that we could have unanimous support of this resolution. Thank you.

Sincerely,

MUNICIPAL ASSEMBLY,  
Seat 6-J

Joe Evans

a\all.ltr/pj

cc: Senator Arliss Sturgulewski ]  
Senator Tim Kelly ]  
Senator Rick Halford ]w/cc of proposed Resolution  
Senator Fred F. Zharoff ]  
Senator Mike Syzmanski ]

Submitted by: Joe Evans  
Prepared by: Joe Evans  
For Reading: April 19, 1988

Anchorage, Alaska  
AR No. 88-\_\_\_\_\_

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING  
SENATE BILL NO. 500 EXEMPTING CERTAIN INTERESTS IN  
LOW-INCOME HOUSING FROM MUNICIPAL TAXATION

---

WHEREAS, Senate Bill No. 500 was introduced on April 7, 1988 by the Senate Community and Regional Affairs Committee;

WHEREAS, this Bill provides for the exemption of certain interests in low-income housing from municipal taxation;

WHEREAS, the past practice of the Department of Community and Regional Affairs has to date not ordered municipalities to levy taxes upon Regional Native Housing Authorities due in part to a 1985 Attorney General's opinion concluding that such taxation would be contrary to the intent of the RNHA enacting statute;

WHEREAS, the Department of Community and Regional Affairs has recently sought a second opinion on the taxation of occupant's interests and that opinion states that an occupant's interest is taxable and municipalities have no authority to exempt such interests in the RNHA property;

WHEREAS, the Department of Community and Regional Affairs will now require municipalities to assess taxes against participants in the low-income ownership opportunity programs;

WHEREAS, the results of such a requirement would be disastrous, because it would impose an unexpected tax burden upon project residents and would cause the bankruptcy of every RNHA

currently administering this projects;

WHEREAS, the United States Department of Housing and Urban Development will immediately withdraw its funds from any project that is taxed, because federal law mandates that HUD cannot fund any project unless that project is exempt from "all real or personal property taxes";

NOW, THEREFORE BE IT RESOLVED:

Section 1. The Anchorage Municipal Assembly strongly supports the passage of Senate Bill 500 as presently drafted.

Section 2. The Anchorage Municipal Assembly would request an effective date on this legislation of January 1, 1989.

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_ day of \_\_\_\_\_, 1988.

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Municipal Clerk

a\bill500.res/pj



April 12, 1988

The Honorable Arliss Sturgulewski  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Re: Outstanding Debt Financed by HUD  
in Homeownership Programs (SB500)

Dear Senator Sturgulewski:

The Alaska State Building Authority has participated in the development and construction of several homeownership programs in rural Alaska. There remains considerable outstanding debt concerning two of these programs, Bethel and Nome. The debt is paid through annual contributions under contractual arrangement with the U.S. Department of Housing and Urban Development.

The remaining amount expected to be paid with federal funding for the Nome program is \$2,041,986. The remaining amount expected to be paid with federal funding at the current level for the Bethel program is \$5,642,661.

We have been informed by the U.S. Department of Housing and Urban Development that, if the property is not exempt from local taxation of possessory interests, HUD will be precluded from making the annual contributions necessary to retire these debts of the Authority. We, therefore, urge passage of SB500.

Sincerely,

ALASKA STATE BUILDING AUTHORITY

Barbara Morse-Quinn  
Executive Director

BMQ/laj

STATEMENT RE SB 500

My name is Joseph G. Wilson, and I am testifying today on behalf of the Association of Alaska Housing Authorities. That Association represents 14 regional Native housing authorities which together own and operate approximately 4,700 low income housing units throughout the State of Alaska. I wanted, at the outset, to thank both houses for holding a hearing on SB 500 so promptly. This action shows that your committees recognize the gravity of the situation that has developed over the past few weeks, and is very encouraging.

The purpose of SB 500 is to avert a crisis in low income housing in Alaska that has been caused by the apparent change in the Attorney General's position on whether municipalities are required to tax individual interests in low income housing projects. The purpose of this bill is to preserve the status quo by continuing the existing exemption for those interests. Without the bill,

the U.S. Department of Housing and Urban Development will not make any additional funds available for low income housing projects in the state, and will cease funding of existing projects.

All of the Association's low income housing projects are funded by HUD. Congress has required, as a condition of HUD funding of the construction or operation of these projects, that the project be exempt from municipal real and personal taxation. As a further condition of that funding, housing authorities are required to execute a so-called Cooperation Agreement with the city involved, in which the city agrees, and I quote, that it "will not levy or impose any real or personal property taxes or special assessment upon such project or upon the authority with respect thereto."

Until now, these requirements have not presented a problem. Unquestionably, housing authorities themselves are exempt from municipal property taxation. And, up until now, the interest of individual occupants of these homes has also been exempt. This is because, in 1985, Assistant Attorney General John Rubini concluded that individual interests were

exempt from taxation. Rubini said that because the whole purpose of the legislature's creation of regional housing authorities was to receive HUD financing, that it wouldn't make any sense to interpret those statutes in a way that would prevent those authorities from receiving federal grants.

As a result, until now, no municipality has ever levied a tax on whatever property interests individual residents might have in a low income housing project. That doesn't mean that municipalities aren't receiving direct revenues from these projects. Under federal law, municipalities receive payment in lieu of taxes equal to 10% of the total monthly payments that the housing authority receives for each low income project.

Now, however, the attorney general has issued a draft opinion saying that individual interests are taxable. HUD has made it clear to us that if this reversal becomes the law, and municipalities are forced to begin taxing individual interests, that low income housing funding in the state will cease. That means not only will there be no

funds for any new low income housing; it also means that no funds will be available to maintain existing units.

By "individual interests," I mean that, under federal law, people who reside in low income units have a portion of their monthly payment set aside in what is essentially a savings account. Eventually, that savings account may be used to purchase the home from the authority, and over time that account may grow to several thousand dollars. It is this savings account which the attorney general now says must be taxed. Of course, everyone recognizes that if the savings account were ever withdrawn, or if the home were ever purchased, that it would be fully taxable. What is at issue here is whether a tax should now be levied on that savings account while it remains in the custody and control of the housing authority.

The fiscal effect on the State of Alaska from this legislation is zero. In fact, the fiscal effect on the municipalities is zero, since no city currently taxes these individual interests. The economic and social consequences of not enacting this legislation, however, are severe. A number of regional housing authorities in the state are

considering new low income projects this year. My own housing authority has a proposal to convert 25 foreclosed, urban area homes into HUD financed low income units. This proposal will not only provide critically needed low income housing in a time of economic distress; it will also take about 25 housing units out of a glutted housing market. Unfortunately, the tendency of the attorney general's opinion has clouded the future of this project, as I am sure it has other projects in the state.

Let me say, in closing, that we are sorry to have to come to you so late in the session; however, this development is a very recent one, and we should be thankful, at least, that it arose while the legislature was still here to deal with it. We appreciate the speed with which you have taken on this issue, and hope this legislation can be enacted as soon as possible.

LAW OFFICES

BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON

A PROFESSIONAL CORPORATION

ONE SEALASKA PLAZA, SUITE 301 • JUNEAU, ALASKA 99801 • TELEPHONE (907) 586-2890 • TELECOPIER (907) 586-9814

KEVIN J. ANDERSON  
LLOYD V. ANDERSON\*\*  
LUANN E. BAILEY  
RONALD G. BIRCH\*\*  
WILLIAM M. BITTNER\*\*  
KATHRYN A. BLACK  
SCRY R. BORGESON  
RODNEY B. CARMAN\*\*  
JOSEPH M. CHOMSKI\*\*  
PATRICK B. COLE  
PAUL L. DILLON

KIM DUNN  
ERIC A. EISEN\*\*  
JOSEPH W. EVANS\*\*  
WILLIAM W. GARNER\*  
JOHN W. GRIGGS\*\*  
RICHARD G. HAGGART\*\*  
HAL R. HORTON\*\*  
MARC W. JUNE  
PAMELA R. KELLEY  
HINDY R. HORNBERG\*\*  
GARY R. LETCHER

STANLEY T. LEWIS  
JEFFREY R. LOWENFELS\*\*  
JEFFREY M. MILLER\*  
MICHAEL J. PARISE  
SUZANNE C. PESTINGER\*\*  
TIMOTHY J. PETUMENOS  
MARCY M. REHBERGER\*  
MICHAEL V. REUSING  
ELISABETH H. ROSS\*\*  
E. BUDD SIMPSON  
STEPHEN F. SORENSEN

SHERIDAN STRICKLAND\*\*  
JONATHAN R. TILLINGHAST  
DANIEL W. WESTERBURG  
T. HENRY WILSON

\*D.C. BAR ONLY  
\*\*D.C. AND ALASKA BAR  
ALL OTHERS ALASKA BAR ONLY

1127 WEST SEVENTH AVENUE  
ANCHORAGE, ALASKA 99801  
1907) 276-1550  
TELECOPIER (907) 276-2622  
TELEX 25-336

FIRST NATIONAL BANK BUILDING  
100 CUSHMAN STREET, SUITE 311  
FAIRBANKS, ALASKA 99701  
1907) 452-1666  
TELECOPIER (907) 456-5055

155 CONNECTICUT AVE., N.W.  
SUITE 1200  
WASHINGTON, D. C. 20036  
1202) 659-5800  
TELECOPIER (202) 659-1027

April 11, 1988

Statement in Support of Senate Bill 500  
"An Act exempting certain interests in  
low-income housing from municipal taxation;  
and providing for an effective date."

This proposed amendment to AS 29.45.030(a), governing municipal tax exemptions, states that interests in federally funded low-income housing projects are exempt from general taxation, so long as the projects are owned or managed by Regional Native Housing Authorities.

The need for the legislation arises as follows. In 1971, the legislature authorized the formation of 15 Regional Native Housing Authorities (RNHA's) to build, administer, and own public housing. Unquestionably, RNHA property is exempted from municipal taxation by statute.<sup>1</sup> However, the question of taxation has arisen in connection with certain home-ownership incentive programs designed and funded by the Department of Housing and Urban Development (HUD) and administered by RNHAs. This amendment is designed to prevent the occupants of such low-income ownership opportunity projects from being taxed prior to the time that they receive actual conveyance of the homes.

Under these programs, an occupant of a "Mutual Help" or "Turnkey III" RNHA project executes a lease agreement with a purchase option. Over a period of years, if the occupant complies with the agreement, making monthly income-based payments and maintaining the home, the cost of exercising the purchase option steadily decreases. Generally, the projects are designed to enable eligible participants to purchase the homes no later than 25 years from construction or acquisition of the project. Until the occupant successfully exercises the purchase option, the RNHA retains legal title to or legal control of the home. These homeownership opportunity programs are limited to low-

<sup>1</sup> AS 18.55.996(b), AS 18.55.250.

income participants, pursuant to HUD regulations and RNHA guidelines.

Although they are exempt from municipal taxation, RNHA's pay property tax equivalents, which, in accordance with federal law, are calculated at 10 per cent of the monthly payments made by project residents.<sup>2</sup>

Apparently, for several years the Department of Community and Regional Affairs has taken the position that while the RNHA --the legal owner of these homes -- is exempt from taxation, the low-income occupants may nevertheless be taxed by virtue of their possessory interest. Up til now, the Department has not ordered municipalities to levy taxes upon RNHA project occupants, due in part to a 1985 Attorney General's opinion concluding that taxation would be contrary to the intent of the RNHA enacting statute.<sup>3</sup> However, the Department recently asked for a second Attorney General's opinion regarding the taxability of occupants' interests. The draft version of that opinion states that an occupant's interest is taxable, comparing the occupant's interest to that of a mortgagor. Further, the draft opinion concludes that municipalities have no authority to exempt occupants' interests in RNHA property absent specific statutory authority. Once the opinion is finalized, the Department will require municipalities to assess taxes against participants in these low-income ownership opportunity programs.

The results of such a requirement would be disastrous. In addition to the fact that an unexpected tax burden would suddenly be cast upon project residents, taxation would cause the bankruptcy of every RNHA currently administering these projects. This is because HUD, the funding agency for these projects, will immediately withdraw its funds from any project that is taxed. Federal law prohibits HUD from funding any project that is not exempt from "all real or personal property taxes."<sup>4</sup> To HUD, it makes no difference that the municipality would be taxing the interest of the individual occupant, rather than the RNHA. HUD's regional counsel states that HUD is powerless to authorize the funding of taxed projects, regardless of the impact that withdrawal of funds would have on Alaska's low income housing. The moment a tax is assessed, HUD will withdraw its funds. Without HUD funds, the RNHAs cannot operate.

---

<sup>2</sup> 42 U.S.C. 1437d(d)

<sup>3</sup> Op. Attorney General, July 24, 1985, "Municipal property taxation of private leasehold interests."

<sup>4</sup> 42 U.S.C. 1437d(d).

To illustrate, Tlingit Haida Housing Authority owns and manages over 375 low-income ownership opportunity units in Southeast. Each of these households would suddenly be required to pay and to be personally liable, from an extremely limited income, for this unforeseen tax burden. Without HUD funds, THRHA could not maintain or operate its Turnkey III and Mutual Help projects. Across the state, the impact upon RNHAs and project residents would be the same.

Moreover, since the taxation issue has become known, municipalities have been hesitant to authorize the building or acquisition of new projects by RNHA's. As a prerequisite to applying to HUD for new housing units, the RNHA must obtain the municipality's agreement to exempt the proposed project from taxation. So long as the state advises that exemptions are not authorized for the occupants of such homes, municipalities are understandably reluctant to sign such agreements, no matter how desirable and necessary the new housing may be. For example, the application and municipal approval process for initiating a Juneau acquisition project is being delayed pending the decision on this bill. Until this question is resolved, new projects will be stalled, potentially lost through delay, or rejected by municipalities.

# DRAFT

Hon. David G. Hoffman  
Commissioner  
Department of Community &  
Regional Affairs  
AND  
Mike Worley, State Assessor

January 21, 1988

663-88-0103

465-3600

Taxation of privately  
held possessory interests  
in RNHA property

Marjorie L. Odland  
Assistant Attorney General  
Governmental Affairs-Juneau

You have asked us to review and expand on our opinion of July 24, 1985 (1985 Inf. Op. Att'y Gen. (663-85-0449; July 24)), and address the state constitutional issue as to whether private possessory interests in regional Native housing authorities (RNHA) projects, particularly those private interests created when a person enters into a federally-authorized homeownership incentive program (homebuyer agreement), are subject to municipal property taxation and, if so, whether the federal requirement that "low income projects" be exempt from municipal taxation applies to projects that encompass homeownership incentive programs. In short, it is the opinion of this office that the homebuyer agreements create private possessory interests that are subject to taxation by a municipality. Furthermore, we believe there is a possibility that federal law requires that the private interests created under homebuyer agreements are to be exempt from local taxation in order to receive federal aid because they are assisted by annual contributions until such time the homebuyer has fee simple title in the property.

## I. ALASKA CONSTITUTIONAL ISSUES

In your opinion request, you made reference to article IX, section 5, of the Alaska Constitution, as being a mandate that private interests in RNHA property must be taxed to the extent of the interests. Article IX, section 5 reads as follows:

Interests in Governmental Property. Private leaseholds, contracts, or interests in land or property owned or held by the United States, the State, or its political subdivisions, shall be taxable to the extent of the interests.

This section of the constitution refers solely to "governmental" property. It requires that if the United States, the state, or a political subdivision, in its proprietary capacity, conveys an interest in its land for private use (e.g., lease of state owned airport property) that the holder of the interest in

the property must be taxed to the extent of the interest the same as other private property that is taxed by the government. However, this section of the constitution is inapplicable to property of an RNHA. This office has previously opined that RNHA's are not state agencies. 1982 Inf. Op. Att'y Gen. (J66-220-82A; June 8) (RNHA's do not have any characteristics common to a state agency even though RNHA's are established pursuant to statutory authority: (1) they are not placed in a department in the executive branch; (2) their members of the board are not appointed nor serve at the pleasure of the governor; and (3) no annual report of the RNHA is required to be given to the state government.). Therefore, the property at issue is not "governmental property" and the mandate that private interests in the property is taxable is not governed by article IX, section 5 of the Alaska Constitution.

Under article X, section 2 of the Alaska Constitution, taxing powers may be delegated to cities and boroughs. Additionally, article X, section 11 states that "a home rule borough or city may exercise all legislative powers not prohibited by law or by charter." In spite of the broad grant of legislative powers given by the constitution, it is a general rule that a municipality has no inherent power to exempt from taxation property which it is authorized by statute or charter to tax. However, the legislature may delegate to municipalities the power to exempt certain property from taxation, or it may itself exempt certain property from taxation. 16 E. McQuillin, The Law of Municipal Corporations § 44.65 (3d ed. rev. 1984). In Alaska, the statutory provisions concerning exemptions are found in AS 29.45, et seq. The established rules of statutory construction are, for the most part, applicable to laws prescribing exemptions from municipal taxation. Such laws are to be strictly construed. Id., § 44.66. A grant of exemption is never presumed. On the contrary, no presumption in favor of exemptions will be made unless plainly or unmistakably warranted by the letter and spirit of the law granting the exemption. Id., § 44.67.

At present, there is no express law exempting private property interests held in property of a housing authority, and more particularly, property of an RNHA. Therefore, for a borough or city to exempt by ordinance such private interests in property, an express, enabling law would have to be enacted by the legislature.

A discussion of the private possessory interests in RNHA property created by the homebuyer agreements occurs in section III of this memorandum.

II. FEDERAL LAW

Federal statute regulates the taxability of low income housing projects as it concerns the taxability of the property of a housing authority and whether the federal government will provide aid to the housing authority. 42 U.S.C. § 1437d(d) reads, in pertinent part:

(d) EXEMPTION FROM PERSONAL AND REAL PROPERTY; PAYMENTS IN LIEU OF TAXES; CASH CONTRIBUTION OR TAX REMISSION. Every contract for annual contributions with respect to a lower income housing project shall provide that no annual contributions by the Secretary shall be made available for such project unless such project (exclusive of any portion thereof which is not assisted by annual contributions under this chapter) is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision; and such contract shall require the public housing authority to make payments in lieu of taxes equal to 10 per centum of the sum of the annual shelter rents, .... If any such project is not exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision, such contract shall provide, in lieu of the requirement for tax exemption and payments in lieu of taxes, that no annual contributions by the Secretary shall be made available for such project unless and until

....

(Emphasis added.)

42 U.S.C. § 1437d(c)(4)(D) is the enabling statute to establish homeownership opportunity programs, and reads as follows:

(D) the development of local housing authority managements of viable homeownership opportunity programs for low-income families capable of assuming the responsibilities of homeownership.

An important question arises as to the definition of "project" in 42 U.S.C. § 1437d(d), and whether a project is of the type required to be exempt from local taxation in order for the RNHAs to receive funding from the federal government. 42

U.S.C. § 1437d(d), states that "such project ... (exclusive of any portion thereof which is not assisted by annual contributions under this chapter), must be exempt from taxation to qualify for federal aid." It is evidently not at issue, for the purposes of this opinion, whether "low income rental RNHA housing projects are exempt from local taxation under this federal statute, since title to the property is considered to be held by the RNHA. At issue is whether "project" includes the homeownership incentive programs authorized under 42 U.S.C. § 1437d(c)(4)(D) since they are programs "assisted by annual contributions."

According to counsel from HUD, virtually all of the homeownership incentive programs in the state are under the Mutual Help Ownership Opportunity Program. 24 C.F.R. 905, et seq. The other type of program in Alaska is Turnkey III. 24 C.F.R. 904, et seq. Both programs are assisted by annual contributions on the property which is the subject of a homebuyer agreement. The benefit of the annual contributions assists the potential "homebuyer" in achieving homeownership; the contributions do not just benefit the RNHA.

Therefore, under a literal interpretation of 42 U.S.C. § 1437d(d), it appears likely that the federal government would discontinue aid to RNHA homeownership incentive programs if a municipality taxed the privately held interest in the property.

### III. PRIVATE INTERESTS IN RNHA PROPERTY

You have requested our opinion as to whether the "homebuyer agreements" used under the Mutual Help Homeownership Opportunity Program (MHHOP) and the Turnkey III program create a private possessory interest in the property that is taxable by a municipality. As stated earlier, it is our opinion that the agreements create such a private interest in the property.

Counsel for Housing and Urban Development (HUD) has stated that the federal government considers both the MHHOP and Turnkey III homebuyers' agreements to be "lease-purchase" agreements that do not create any taxable interest in the property until such time the homebuyer is deeded the property in fee. However, HUD has not cited any federal law or regulation that supports this conclusion.

A taxing authority may penetrate the form of a transaction to determine its substance. Sisters of Providence in Washington v. Municipality of Anchorage, 672 P.2d 446 (Alaska 1983). A review of the homebuyer agreements approved by HUD (whether MHHOP or Turnkey III programs), provide that the home-

buyer will achieve "homeowner" status and fee simple title to the property if the homebuyer satisfies certain contractual conditions.

±

In our opinion, it is insignificant that HUD refers to the agreements as lease-purchase agreements. It is also irrelevant that the homebuyer may never build up any actual "monetary" equity in the property since that is not an absolute requirement to achieving title to the home. If contractual conditions are met, the homebuyer will be deeded the property in the future, and, similar to a mortgagor, he has possessory rights to the property pending satisfaction of the conditions of a contract to be deeded the property.

ML0/pjg



Copy is in ASMA with 18.55.996

## Tlingit-Haida Regional Housing Authority

P. O. Box 2237 • Juneau, Alaska 99803 • (907) 780-6442



### COOPERATION AGREEMENT

THIS AGREEMENT made this \_\_\_\_ DAY of \_\_\_\_\_, 19\_\_\_\_

BY AND BETWEEN Tlingit-Haida Regional Housing Authority herein called the "Authority".

AND City of Juneau, herein called the "City".

#### WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the parties hereto do agree as follows:

1. Whenever used in this agreement:
  - (a) The term "Project" shall mean any low-rent housing hereinafter developed or acquired by the Authority with financial assistance of the United States of America acting through the Secretary of Housing and Urban Development (herein called the "Government"); excluding, however, and low-rent housing project covered by any contract for loans and annual contributions entered into between the Authority and the Government, or its predecessor agencies, prior to the date of this Agreement;
  - (b) The term "Taxing Body" shall mean the State or any political subdivision or taxing unit thereof in which a Project is situated and which would have authority to assess or levy real or personal property taxes or to certify such taxes to a taxing body or public officer to be levied for its use and benefit with respect to a Project if it were not exempt from taxation;
  - (c) The term "Shelter Rent" shall mean the total of all charges to all tenants of a Project for dwelling rents and nondwelling rents (excluding all other income of such Project), less the cost to the Authority of all dwelling and nondwelling utilities;
2. The Authority shall endeavor to secure a contract with the Government for loans and annual contributions covering one or more Projects consisting of approximately 50 units. The Authority shall plan, develop or acquire and administer the Project which shall be located within the corporate limits of the City. The obligations of the parties hereto shall apply to each such Project and the City shall have no contractual responsibility with respect to the Project other than as expressly provided in this Agreement.
3. (a) Under the Constitution and laws of the State of Alaska, the Project is exempt from all real and personal property taxes and special assessments levied or imposed by any Taxing Body. So long as either (i) the Project is owned by a public body or governmental agency and is used for low rent housing purposes, or (ii) any contract between the Authority and the Government for loans or annual contributions, or both, in connection with such Project remains in force and effect, or (iii) any bonds issued in connection with such Project or any monies due to the Government in connection with such Project remain unpaid, whichever period is the longest, the City agrees that it

Cooperation Agreement  
Page 2

will not levy or impose any real or personal property taxes or special assessment upon such Project or upon the Authority with respect thereto. During such period, the Authority shall make annual payments (herein called "Payments in Lieu of Taxes") in lieu of such taxes and special assessments and in payment for the public services and facilities furnished from time to time without other cost or charge for or with respect to such Project.

- (b) Each such annual Payment in Lieu of Taxes shall be made after the end of the fiscal year established for such Project, and shall be in an amount equal either (i) ten percent (10%) of the Shelter Rent charged by the Authority in respect to such Project during such fiscal year or (ii) the amount permitted to be paid by applicable State law in effect on the date such payment is made, whichever amount is the lower.
  - (c) No payment for any year shall be made to the City in excess of the amount of the real property taxes which would have been paid to the City for such year if the Project were not exempt from taxation.
  - d) Upon failure of the Authority to make any Payment in lieu of Taxes, no lien against any Project or assets of the Authority shall attach, nor shall any interest penalties accrue or attach on account thereof.
4. During the period commencing with the date of the acquisition of any part of the site or sites of any Project and continuing so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Authority and the Government for loans or annual contributions, or both, in connection with such Project remains in force and effect, (iii) any bonds issued in connection with such Project or any monies due to the Government in connection with such Project remain unpaid, whichever period is the longest, the City, without cost or charge to the Authority or the tenants of such project (other than the Payments in Lieu of Taxes), shall:
- (a) Furnish or cause to be furnished to the Authority and the tenants of such Project public services and facilities of the same extent as are furnished from time to time without cost or charge to other dwelling and inhabitants in the City;
  - (b) Notwithstanding the date of acquisition the City shall vacate such streets, roads, and alleys within the area of such Projects as may be necessary in the development thereof, and convey without charge to the Authority, such interest as the City may have in such vacated areas; and insofar as the City is lawfully able to do so without cost or expense to the Authority or to the City, cause to be removed from such vacated areas, insofar as it may be necessary, all public or private utility lines and equipment;
  - (c) Insofar the City may lawfully do so, (i) grant such deviation from the building code as are reasonable and necessary to promote economy and efficiency in the development and administration of such Project, and at the same time, safeguard health and safety; and (ii) make such changes in any zoning of the site and surrounding territory of such Project as are reasonable and necessary surrounding territory;

Cooperation Agreement  
Page 3

- (d) Accept grants of easements necessary for the development of such Project; and
  - (e) Cooperation with the Authority by such other lawful action or ways as the City and the Authority may find necessary in connection with the development and administration of such Project.
5. In respect to any Project, the City further agrees that within a reasonable time after receipt of a written request therefor from the Authority:
- (a) It will accept the dedication of all interior streets, roads alleys, and adjacent sidewalks within the area of such Project, together with all storm and sanitary sewer mains in such dedicated areas, after the Authority or its Developer has completed the grading, improvements, paving and installation thereof, in accordance with specification acceptable to the City;
  - (b) It will accept necessary dedications of land for, and will grade, improve, pave and provide sidewalks for, all streets bounding such Project or necessary to provide adequate access thereto (in consideration whereof the Authority or its Developer shall pay to the City such amounts as would be assessed against the Project sites for such work if such site were privately owned); and
  - (c) It will provide, or cause to be provided, water mains and storm and sanitary sewer mains, leading to such Project and serving the bounding streets thereof (in consideration whereof the Authority or its Developer shall pay to the City such amounts as would be assessed against the Project site for such work if such site were privately owned).
6. If by reason of the City's failure or refusal to furnish or cause to be furnished any public services or facilities which it has agreed hereunder to furnish or cause to be furnished to the Authority or to the tenants of any Project, the Authority incurs any expense to obtain such services or facilities, then the Authority may deduct the amount of such expenses from any Payment in Lieu of Taxes due or to become due to the City in respect to any Project or any other low-rent housing projects owned or operated by the Authority.
7. The City agrees to exempt the tenants of the Project and the Authority from the payment of sales taxes in conjunction with rents.
8. No Cooperation Agreement heretofore entered into between the City and the Authority shall be construed to apply to any Project covered by this Agreement.
9. No member of the governing body of the City or any other public official of the City who exercises any responsibilities or functions with respect to any Project during his tenure or for one year thereafter shall have any interest, direct or indirect, in any project or any property included or planned to be included in any Project, or any contracts in connection with such Projects or property. If any such governing body member or such other public official of the City involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, he shall immediately disclose such interest to the Authority.

5-2124B  
Cook  
4/14/88

Original sponsor: Community and Regional  
Affairs Committee

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 500 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to an exemption from municipal  
7 taxation for certain interests in federally funded  
8 low-income housing; and providing for an effective  
9 date."

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

11 \* Section 1. AS 29.45.050 is amended by adding a new subsection to  
12 read:

13 (1) A municipality may by ordinance exempt from taxation an  
14 interest, other than record ownership, in real property of an indi-  
15 vidual residing in the property if the property has been developed,  
16 improved, or acquired with federal funds for low-income housing and  
17 is owned or managed as low-income housing by the Alaska State Building  
18 Authority or a regional housing authority formed under AS 18.55.996.  
19 This section does not prohibit a municipality from receiving payments  
20 in lieu of taxes authorized under federal law.

21 \* Sec. 2. This Act takes effect January 1, 1989.

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

2

SENATE BILL NO. 500

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act exempting certain interests in low-income  
7 housing from municipal taxation; and providing for an  
8 effective date."

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

10 \* Section 1. AS 29.45.030(a) is amended to read:

11 (a) The following property is exempt from general taxation:

12 (1) municipal, state, or federally owned property, except  
13 that a private leasehold, contract, or other interest in the property  
14 is taxable to the extent of the interest;

15 (2) household furniture and personal effects of members of  
16 a household;

17 (3) property used exclusively for nonprofit religious,  
18 charitable, cemetery, hospital, or educational purposes;

19 (4) property of a nonbusiness organization composed entire-  
20 ly of persons with 90 days or more of active service in the armed  
21 forces of the United States whose conditions of service and separation  
22 were other than dishonorable, or the property of an auxiliary of that  
23 organization;

24 (5) money on deposit;

25 (6) the real property of certain residents of the state to  
26 the extent and subject to the conditions provided in (e) of this  
27 section;

28 (7) real property or an interest in real property that is  
29 exempt from taxation under 43 U.S.C. 1620(d), as amended;

1           (8) an interest, other than record ownership, in real  
2           property of an individual residing in the property if the property has  
3           been developed or improved with federal funds for low-income housing  
4           and is owned or managed as low-income housing by the Alaska State  
5           Building Authority or a regional housing authority formed under  
6           AS 18.55.996; this paragraph does not prohibit a municipality from  
7           receiving payments in lieu of taxes authorized under federal law.

8           \* Sec. 2. This Act takes effect January 1, 1989.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 040788 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

\*\*FISCAL NOTE(S) ATTACHED yes \*\*  
IN ACCORDANCE WITH AS 24.08/035  
(see below)

4/7/88  
Mr. President:

DATE TURNED INTO OFFICE 4/13/88

C&RA Committee considered SB 500

exempting certain interests in low-income housing from municipal taxation;  
efd

and recommended:

- replace with CS \_\_\_\_\_  same title
- attached amendment(s) and  new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_
- letter of intent adopted and attached

*FN*

\*\* Committee  attached or  adopted fiscal note(s)  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

*Paul J. Gaudin*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS

2 Tim Kelly - Do Not Pass  
unless amended.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Adrian Sturgulewski Do Pass*  
Chairman signature and recommendation

Committee Backup Attached

*Senate C&RA Report*