

S B

366

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

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

FURTHER: Finance

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

1/25/88 DATE TURNED INTO OFFICE _____
Mr. President:

Resources _____ Committee considered SB 366

establishing rebates for motor fuel taxes for fuel used in watercraft outside the state; and limiting the authority of the attorney general and the Department of Revenue to recover refunds paid before the effective date of this Act; efd and recommended:

[] replace with CS _____ [] same title
[] new title

[] attached amendment(s) and

majority
 do pass

[] do not pass

[] no recommendation

~~[]~~ individual recommendations

[] further referral to _____

[] letter of intent adopted and attached

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

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Ken Ferguson
Carliss Juncos
Paul Frick

Needs amending
Jim Duncan - No Rec

[Signature]
Chairman signature and recommendation

[] Committee Backup Attached

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulevski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

February 2, 1988

To: Senator Malford and Senator Binkley
Senate Finance Co-Chairmen

From: Senator Coghill
Senate Resources, Chairman

Re: SB 366, "An Act establishing rebates for motor fuel taxes for fuel used in watercraft outside the state; and limiting the authority of the attorney general and the Department of Revenue to recover refunds paid before the effective date of this act."

The Senate Resources Committee heard SB 366, sponsored by Sen. Zharoff, on Monday and passed the bill out with individual recommendations. Commissioner Hugh Malone of the Department of Revenue testified against the bill, primarily because it would cost the state \$2,000,000 a year.

Comm. Malone informed the committee that a user tax on fuel purchased out of state but used within the state's waters would create the revenues needed to support the program in SB 366 and also add revenue to the general fund.

It was the committee's desire to pass SB 366 on to the Finance Committee and have your members look at this issue in conjunction with SB 366.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 366
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: February 1, 1988
 Title: An Act establishing rebates for fuel used in watercraft outside the state.
 Sponsor: Zharoff
 Requestor: Resources
 Agency Affected: Revenue
 BRU: Income and Excise Audit
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		34.0	34.0	34.0	34.0	34.0
TRAVEL						
CONTRACTUAL		2.0	2.0	2.0	2.0	2.0
SUPPLIES						
EQUIPMENT		2.5	.0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		38.5	36.0	36.0	36.0	36.0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		[2000.0]	[2000.0]	[2000.0]	[2000.0]	[2000.0]
FEDERAL FUNDS						
OTHER						
TOTAL		[2000.0]	[2000.0]	[2000.0]	[2000.0]	[2000.0]

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached.

Prepared by: Steven E. Kettel *Steven E. Kettel* Phone: 465-2320
 Division: Income and Excise Audit Date: 2/1/88
 Approved by Commissioner: J. Malone Date: 2/1/88
 Agency: REVENUE

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

Prepared by Steven E. Kettel
Director, Income & Excise Audit
Department of Revenue
February 1, 1988

Analysis of SB 366

Prior to July, 1984, the Department of Revenue did not issue motor fuel tax refunds to in-state purchasers, such as fishermen and fish processors that used the fuel outside the state's 3-mile taxing jurisdiction. In July, 1984 the Department began issuing the refunds, and at the same time assessing the motor fuel tax against out-of-state fuel purchasers that imported untaxed fuel and used the fuel in state waters. Several recent U.S. Supreme Court decisions allowing a properly apportioned tax were the basis for the change in the Department's watercraft tax policy.

This policy, which placed the incidence of the tax on the use of the fuel in-state was overturned by a Departmental Hearing Decision #87-07 dated March 20, 1987. This decision was based on the lack of a specific regulation, as well as some underlying lack of clarity in the law. Later in September of 1987, the Attorney General's office advised this Department that additional statutory authority was necessary to support the tax refunds to those purchasing fuel inside but consuming it outside the 3-mile limit.

SB 366 would provide the necessary authority for the Department to issue refunds of tax to out-of-state consumers. The legislation, however, does not provide a mechanism for taxing fuel imported and consumed by a vessel in this state. Passage of this legislation without consideration of the importation issue is strongly opposed.

Department's Position on SB 366

The Department opposes this legislation for the following reasons:

- 1) The legislation further narrows the state's tax base by approximately \$2 million per year.
- 2) The recipients of these refunds are, by an overwhelming majority, non-resident individuals and businesses. Based upon our 18 month refunding project, only 14% of the claimants listed in-state addresses.
- 3) Purchasers of out-of-state fuel do not pay the 5¢ tax and thus have a competitive advantage over their Alaska resident competitors.
- 4) We have not seen evidence showing that without the refund legislation, motor fuel purchasers will move off-shore to make their fuel purchases. We have no evidence that fuel sold on the high seas is significantly cheaper than fuel sold on-shore.
- 5) The watercraft tax account in the general fund has historically been used as a benchmark for appropriations to harbor facilities around the state. A decrease in marine fuel tax may reduce funding for these essential services and facilities.
- 6) A preliminary indication from the Department of Transportation & Public Facilities is that:
 - A) there are deferred maintenance costs on the order of three or four times the annual income from this source;
 - B) debt service costs alone for watercraft facilities exceed \$1,000,000 per year, without allowing for any new construction;
 - C) these refunds come directly from the highway fuel tax account and the Administration has legislation pending to increase these revenues.



**North Pacific
Fishing Vessel
Owners' Association**

January 28, 1988

Hon. Fred Zharoff
Alaska State Senate
Juneau, Alaska 99802

Dear Senator Zharoff:

As individual boat owners and as Directors of the North Pacific Fishing Vessel Owners' Association we write to ASSURE you that the members of our industry are standing firmly behind you in your efforts to pass Alaska State Bill 366 on the subject of Maritime Fuel Tax Rebate.

Very truly yours,

Arne Aadland	F/V ARCTIC WIND
Roy Johnson	F/V POLAR SEA
Frank Bohannon	F/V NEAHKAHNE
Kjell Fjortoft	F/V NORSEMEN II
Russ Moore	F/V NORTH PACIFIC
Barry Ohai	F/V STARLITE
Dennis Peterson	F/V OCEAN SPRAY
Alf Sorvik	F/V RAIER
Dave Stanchfield	F/V MORNINGSTAR
Joe Wabey	F/V AMERICAN EAGLE

TESTIMONY OF DALE LINDSEY
HARBOR ENTERPRISES, INC.
SENATE BILL 366
February 1, 1988
Before
SENATE RESOURCES COMMITTEE

Good afternoon. My name is Dale Lindsey and I am the President of Harbor Enterprises, Inc. To provide you with a bit of background on the company, myself and my support of Senate Bill 366, I offer the following information for your assimilation.

Harbor Enterprises, Inc. (HEI) was founded in Seward in 1936 and is one of the oldest petroleum marketing firms in Alaska. Our company continues to base its operations in Seward. We presently have bulk plant facilities located at Nikiski, where we have three employees; Kodiak, 6 employees; Dutch Harbor, 11 employees; and Seward, 15 employees. In addition, we have marketing offices located in Anchorage, 4 employees and Seattle, 1 employee. We also distribute petroleum products to coastal communities located in Southcentral Alaska, Kodiak Island, Alaska Peninsula, Aleutians and Bering Sea via barge. In a poll conducted by Alaska Business Monthly, we ranked 14th in Alaska in terms of fiscal 1986-87 gross sales revenue. HEI is also the largest Alaskan owned and Alaskan based fuel distributor.

At the personal level, I was born and raised in Seward as was my wife, Carol and our four children. After a brief stint as a locomotive fireman and engineer with the Alaska Railroad, I acquired a heating fuel distributorship in Seward in 1959 and have overseen its growth and expanded operations since. In addition to HEI, I own two crab fishing vessels which currently operate out of Dutch Harbor. Let

me assure you that although I am both a seller of fuel and a consumer of fuel, my preference lies in selling the stuff rather than in buying it! Irrespective of which side of the fence that I periodically find myself on, we are without question---Alaskan and I am quite proud of this fact.

HEI markets and operates as Petro Marine Services. As our trade name indicates we are a marine oriented company. Accordingly, we focus a good deal of our marketing effort toward serving the marine industry in Alaska of which a majority is commercial fishing related and this brings us to the reason that I am appearing before you today.

In June 1985 I came to Juneau to discuss specific inequities in the State's motor fuel tax regulations with officials with the Department of Revenue. The crux of the issue then and now again, is the \$0.05 (five cents) per gallon tax charged on sales of motor fuel for marine use consumption. What prompted these discussions was a provision in the statutes which allowed foreign flag tankers to purchase fuel from Alaskan refiners exempt all taxes. These foreign tanker operators would then transport this fuel beyond the State's three-mile jurisdiction and sell to foreign and domestic fishing vessels ex the five cent marine fuel tax which we shoreside distributors were subject to. While I was unsuccessful in convincing revenue officials that they ought to either close the exemption to the foreigners or repeal the tax altogether, they did mention that a refund would be allowed on taxed fuel purchased within Alaska but consumed in waters outside the State's three-mile limit. In essence the rebate procedure represented a significant departure from the

Department of Revenue's traditional position that the place of delivery takes tax precedence over where the fuel is consumed. The net result of this decision was that approximately 95% of the tax revenue generated from fuel sold to the high seas fleet operating in waters outside Alaska's jurisdiction was refunded between January 1, 1985 and May 1, 1987.

Following a Department of Revenue internal policy review in the Spring of 1987, the Rebate Program was placed in temporary suspension. This was followed with permanent suspension in September 1987 after a legal opinion by the Attorney General stated Department of Revenue had exceeded their statutory authority when they implemented the rebate program in Alaska.

Unfortunately, by virtue of the aforementioned opinions, the inequities to the shoreside fuel distributor which existed prior to June 4, 1985 are prevalent once more. In view of this fact my recommendation is that this committee support Senate Bill 366 as drafted and introduced by Senator Zharoff.

The impact of the marine fuel tax now falls disproportionately on Alaska fishermen and other fishermen who choose to do business with Alaska shoreside suppliers. I would like to underscore this point. Those who participate in the Alaskan economy by home-porting here or operating in Alaska waters, bear the burden of the tax.

The rebate program tended to provide some relief for fishermen who patronized Alaska shoreside businesses, but had to compete with the high seas operators.

The current situation -- without rebates -- tends to penalize

those fishing ventures from which Alaskans benefit the most. It tends to increase the costs associated with doing business in Alaska.

It should be kept in mind that the rebate program was suspended because of unanticipated legal considerations ... not because it was poor public policy or lacked merit. In fact, to the best of my knowledge the policy considerations which prompted the Department of Revenue to begin the rebates remain the same now as they were in 1985.

I have distributed to you, with my written testimony, a list of practical and economic reasons that the rebate program continues to be sound public policy. It certainly seems consistent with the many efforts to "Alaskanize" the off-shore fishery.

Alaska's public officials and government agencies have undertaken several initiatives aimed at increasing our participation in the enormous economic benefits of the off-shore fishing activity.

For example, the legislature is now considering SJR 51 and HJR 45. These Resolutions embody important policy statements urging the North Pacific Fisheries Management Council to adopt requirements that Alaskan shore-side support services be utilized.

Governor Cowper has appointed a fisheries mini-cabinet to ensure maximum participation by Alaskans in the seafood industry. This group will be studying impediments to shore-side infrastructure development, including State and local tax policy.

The Department of Commerce study of Bering Sea support services was released last Fall. It notes that the manner in which the off shore fisheries are being developed is not meeting the expectations of many Alaskans. I quote:

"Americanization from foreign to domestic production is taking place at a pace no one envisioned, largely through expansion at over-the-side joint ventures and factory trawl harvests. This has been a frustrating experience for Alaskans because much of this economic activity leaves only minimal in-state economic benefit."

The study also concludes that availability of fuel is the single most important reason for choice of port. It also found that owners did not hesitate to compare at-sea prices with those in Dutch Harbor. I have also found this to be true. For example, last year (while the rebate program was in effect) the high-seas price for #2 marine diesel was \$0.71 per gallon. We sold fuel in Dutch Harbor for 0.69 per gallon. With the marine fuel tax of \$0.05 per gallon we have to charge \$0.74; however, as long as the rebate program was available I could be more competitive, which is crucial to our economic survival.

I appreciate having this opportunity to present my views to the Senate Resources Committee. Once again, I respectfully urge your support of this legislation.

I would be pleased to answer any questions that you may have concerning my position as this relates to Senate Bill 366.

WHY THE REBATE PROGRAM MAKES SENSE,
IS GOOD PUBLIC POLICY, AND SHOULD BE REINSTITATED.

- I. THE REBATE PROGRAM REMOVES A SIGNIFICANT COMPETITIVE DISADVANTAGE EXPERIENCED BY ALASKA FISHERMEN AND FISHERMEN DOING BUSINESS WITH ALASKA SHORE-SIDE SUPPLIERS
 - a. High seas fuel suppliers are not subject to the tax...only Alaska-based fishermen and users of Alaska suppliers pay the tax, which tends to increase their expenses compared to exclusively high seas fishing enterprises.
- II. BECAUSE THE REBATE PROGRAM TENDS TO EQUALIZE THE COSTS OF AT SEA FUEL WITH SHORE-SIDE FUEL, IT REMOVES A DISINCENTIVE FOR DOING BUSINESS WITH ALASKA SHORE-SIDE SUPPLIERS OF FUEL, SHIP REPAIRS, PROCESSING, TRANSPORTATION, AND COLD STORAGE (see SJR 51).
 - a. Lower shore-side fuel costs resulting from rebates may create greater opportunities for Alaska businesses, employment, improved infrastructure and community tax revenues.
- III. THE REBATE PROGRAM MAY HELP MAKE ALASKA PROCESSED FISH PRODUCTS MORE COMPETITIVE BY REMOVING AN EXPENSE WHICH HIGH SEAS OPERATORS DO NOT NECESSARILY INCUR.
- IV. THE REBATE PROGRAM SHOULD HELP ENCOURAGE DEVELOPMENT OF AN ALASKA-BASED CATCHER-PROCESSOR FLEET AND CAPTURE A LARGER PORTION OF THE OFF-SHORE RESOURCE.
 - a. Bringing the on-shore fuel costs into a better competitive position with high seas costs will help Alaska communities secure home-porting of catcher-processors. (For example, the City of Homer's efforts to secure home-porting of "ocean trawl" vessels.)
- V. THE REBATE PROGRAM IS CONSISTENT WITH THE GOALS OF THE COWPER ADMINISTRATION, THE ALASKA LEGISLATURE, THE FISHING INDUSTRY, THE ALASKA BUSINESS COMMUNITY, AND MUNICIPAL GOVERNMENTS.
 - a. Governor Cowper has appointed a fisheries mini-cabinet to formulate a fisheries development policy designed to maximize Alaska ownership and employment in the seafood industry and to promote support service development in Alaska communities. Important aspects of this undertaking include identification of constraints to shore-side infrastructure development and potential methods to mitigate the negative aspects of State and local tax policy.

The rebate program is consistent with these objectives.

- b. The Legislature's stated policy is similar if not identical to the executive branch. In 1987, the Legislature passed a fisheries business tax credit program designed to facilitate greater on-shore processing capacity. Currently pending before the Legislature are SJR 51 and HJR 45, which are important policy statements relative to increasing Alaska's participation in the economic benefits of off-shore fishing activities.
- c. The North Pacific Fisheries Management Council is reviewing a recent proposal, sponsored by the Southwest Municipal Conference, to require use of shore-side fuel suppliers, processors, transportation companies and the like.
- d. The rebate program compliments all of these efforts and should be reinstated in law.

FOOTNOTES:

1. In 1986, 500 foreign flag vessels spent 34,000 vessel days in U.S. EEZ, but used only marginal amounts of U.S. shipping capacity and other support services (SJR 51 and HJR 45).

2. The amount of bulk fuel consumed in U.S. EEZ by foreign fleets is estimated to exceed 160million gallons annually. Purchases of fuel by foreign vessels from U.S. firms is estimated to be less than 10 percent of the fuel consumed. At-sea refueling is a common practice not only for foreign operators but for U.S. joint venture trawlers (Southwest Municipal Conference Proposal to NPFMC).

3. The Alaska Department of Commerce and Economic Development, Division of Business Development, recently published a study of Bering Sea support services for 1985. It reached the following conclusions.

- a. "The most important reasons for choice of port are, in order, fuel, vessel maintenance and repair facilities."
- b. "Ports interested in attracting these ships must have substantial fuel available and repair facilities, as well."
- c. "Owners tend to compare at-sea fuel prices with those in Dutch Harbor."



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Jack Coghill
Chairman
Senate Resources Committee

FROM: Senator Fred F. Zharoff *FZ*

DATE: January 29, 1988

RE: Senate Bill 366 -- "An Act establishing rebates for motor fuel taxes for fuel used in watercraft outside the state; and limiting the authority of the attorney general and the Department of Revenue to recover refunds paid before the effective date of this Act; and providing for an effective date."

SB 366 amends 43.40.033 to reinstitute a motor fuel tax refund program that existed, through regulation, from 1985 through March, 1987.

The program allowed watercraft owners and operators to apply for tax refunds (five cents per gallon) on motor fuel purchased in Alaska but used outside state's three mile offshore limit. This created a tax structure where Alaska-based fishermen and fuel suppliers were treated the same as offshore fishermen and high seas fuel bunkering operators.

Under present statutes and regulations, fuel purchased in Alaska and transported outside of state waters to be "sold or otherwise transferred to watercraft which operate exclusively in international waters...." is tax exempt, due to the U.S. Constitution's commerce clause. This creates a situation where high seas fuel operators can come into Alaskan ports, purchase tax exempt fuel, and then sell it offshore in competition with the Alaskan fuel suppliers. There is also nothing to stop offshore fuel operators from purchasing cheaper fuel in Asia or Seattle and bringing it up for sale on the fishing grounds outside state waters. The refund program helped Alaska's fuel suppliers compete with the offshore operators.

The program was dropped in 1987 when a Department of Revenue hearing officer and the Department of Law determined that no statutory authority existed for it.

If reinstated, the refund program would encourage marine vessels to do more business in Alaskan coastal communities. When the vessels, particularly fishing vessels, come into port to purchase fuel they also purchase food, clothing and other supplies. This would boost the economies of the coastal

communities and help Alaska's fuel suppliers provide a product that is competitive in price with that offered by the high seas fuel suppliers.

Since a legal question was raised about the original program, SB 366 clarifies that the previous refunds were legal, and the state may not take action to recover them.

Backup information for SB 366 is attached, as follows:

1. Sectional analysis, prepared by the Division of Legal Services.
2. Letter from Mr. Dale Lindsey, president of Harbor Enterprises Company, to Mr. Hugh Malone, commissioner of the Department of Revenue, explaining concerns about the suspension of the marine fuel refund program.
3. Position paper, provided by Mr. Lindsey, about the background and reasons for the marine fuel refund program.
4. Letter of support from the North Pacific Fishing Vessel Owners' Association, dated Jan. 28, 1988.
5. Copy of the application form for the motor fuel tax refund.
6. Letter from the Department of Revenue explaining that refunds will no longer be granted, dated April 29, 1987.
7. An attorney general's opinion determining that statutory authority does not exist for the refund program.
8. Section of the Alaska Administrative Code listing motor fuel exemptions. Number (10) provides an exemption for motor fuel transported out of state waters and sold in international waters.
9. Motor fuel tax statutes.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 22, 1988

SUBJECT: Sectional analysis, W.O. 5-1622B:
Rebates of motor fuel taxes for fuel used in
certain watercraft

TO: Senator Fred Zharoff

FROM: Jack Chenoweth
Legislative Counsel

This bill proposes to authorize rebates or refunds of motor fuel taxes when the fuel is used or consumed in the operation of watercraft outside the state.

Bill section 1 adds a new section, AS 43.40.033, authorizing the refund of watercraft motor fuel taxes, and directing the Department of Revenue to adopt necessary regulations and to prescribe forms to assure proper operation of the refund program.

Bill section 2 amends an existing section, AS 43.40.050(b), limiting to one year the filing period for refund claims for watercraft motor fuel taxes; the one year limitation is currently applicable to the department's other refund and credit programs.

Section 5 gives the Act a July 1, 1988 effective date. By section 3, the watercraft motor fuel rebate program, established by this Act, is made applicable to motor fuel sold and delivered in the state, and used and consumed in watercraft outside the state after June 30, 1988.

As I understand, between 1985 and March, 1987, the Department of Revenue made refunds of watercraft motor fuels (within the limits of and in a manner substantially similar to what is being proposed in this bill). The department stopped that program apparently after it was advised by the Department of Law that there was no legal basis for the refund program.

Senator Fred Zharoff
Page 2
January 22, 1988

Bill section 4, in a sense, "ratifies" those payments that were apparently made in error by declaring that the attorney general and the Department of Revenue may not recover these refunds. The provision is drafted in a manner that recognizes the payments that have already been made; it does not authorize any additional refunds to persons who might have applied under that defunct program.

JBC:bb
WKB1/087

MEMORANDUM

State of Alaska

Department of Law

TO: The Hon. Hugh Malone
Commissioner
Department of Revenue

THRU:

FROM: Deborah Vogt *DV*
Assistant Attorney General
Department of Law

DATE: July 24, 1987

FILE NO.:

TELEPHONE NO.: 465-3600

SUBJECT: Motor fuel tax
opinion

As I told you on the telephone today, I have not completed the motor fuel tax opinion because it is deserving of a little more attention than I have been able to give it since the Bristol Bay case was finished on Thursday. I told you my preliminary conclusions, which I am reiterating here:

1. While the law is not entirely clear, it is my opinion that a court applying the modern commerce clause decisions would find that a tax imposed on the in-state use of fuel purchased out of the state is permissible.

2. As long as the use tax remains a compensating tax for the sales tax (as it is now), we would have to grant a credit for sales taxes paid to another state on fuel that was used within the state.

3. I do not believe that we would have to grant a credit against the sales tax for fuel either simply used outside the state, or fuel the use of which is taxed outside the state. I would like to look into this question further.

4. I do not believe that we currently have the statutory authority to impose the use tax on in-state use. Because the old commerce clause analysis so clearly prohibited such a tax, it cannot have been the intent of the legislature to tax that use.

As far as the sales tax refunds for out of state use are concerned, I told you that I had located a cases dealing with the erroneous granting of unauthorized exemptions. In Delta Air Lines, Inc. v. Commonwealth of Kentucky, 689 S.W.2d 14 (Ky. 1985) the Department had prorated its motor fuel tax so as to exempt use outside the state. It was not directed to do so by the legislature, but apparently concluded that the proration was constitutionally required. The airline argued that because of the prior interpretation of the statute by the Department, the statute was ambiguous and therefore prior agency interpretation should be given deference. After holding that the statute was not ambiguous, and did not provide for proration, the court held that the agency could and should enforce the correct interpretation:

RECEIVED
ALASKA DEPARTMENT OF REVENUE

JUL 28 1987

OFFICE OF THE COMMISSIONER

The Hon. Hugh Malone, Commissioner
Department of Revenue

July 24, 1987
Page 2

The failure of a public officer to correctly administer the law does not prevent a more diligent and efficient public administrator to bring into the revenue proper subjects of taxation. An erroneous interpretation of the law will not be perpetuated.

Id. at 20. 1/

You should discontinue (and have discontinued) refunds for use outside the state, because there is no statutory authority for the refunds, and because they are not constitutionally required. Wardair Canada, Inc. v. Florida, 477 U.S. ___, 106 S.Ct. 2369 (1986). You are not required to initiate proceedings to collect refunds already granted.

DV:jf

1/ I don't mean to imply that any prior administrator was less diligent or efficient; commerce clause law was changing dramatically in the late '70's and early '80's, and Alaska was not alone in reading the cases to require proration.

DRAFT POSITION PAPER

RE: State of Alaska Marine Fuel Tax Rebates

I. HISTORICAL BACKGROUND

In 1985 the Alaska Department of Revenue (DOR) instituted a rebate program for taxes paid on marine fuel purchased from shoreside fuel facilities in Alaska but consumed in waters beyond the State of Alaska three-mile territorial limit. By filing appropriate documents with DOR a consumer would receive a pro-rated rebate of the \$0.05 (five cent) per gallon tax. In other words the consumer paid the tax at the time of purchase but the tax was later refunded on that portion of the fuel estimated to be consumed beyond State of Alaska jurisdiction. In establishing the rebate procedure the state adopted the position that where the fuel was consumed took precedence over where the fuel was purchased.

Another pertinent provision of Alaska law provides an exemption from the marine fuel tax at the time of purchase. This exemption applies to marine fuel sold in Alaska and transported as "cargo out of the state into international waters if the fuel is sold or otherwise transferred to watercraft which operate exclusively in international waters and which do not enter state territorial waters, ports or facilities". This exemption allows high seas bunkering suppliers, which primarily are foreign flag tankers, to purchase marine fuel tax-free and refuel the fishing and processing fleet as long as the consuming vessels do not enter state waters.

Functioning together, the rebate procedure and the tax exemption for high seas bunkering activities created a tax structure whereby American based fisherman and fuel suppliers were treated on the same basis as high seas bunkering operators.

In April 1987 an internal assessment by DOR resulted in first a temporary suspension which in September 1987 became permanent after the Attorney

General reviewed the legality of the rebate program. In essence the Attorney General confirmed DOR lacked the statutory authority to rebate marine fuel taxes. Without the rebate program significant economic inequities resurfaced which penalized the shore-based fuel supplier and American flag vessels either operating in or re-entering state waters.

II. THE PROBLEM

Fundamentally, Alaska now has a marine fuel tax structure which tends to discourage the high-seas fleet from entering Alaska waters and simultaneously increases the operating expenses of the Alaskan based fishing operators to a level above their foreign competitors. Additionally, there is substantial basis for asserting that the tax generates an economic disincentive to establish shore-based fishing operations in Alaska. In essence this particular tax discourages the high seas fleet operators from calling on Alaska ports as they then lose the tax exempt status on fuel purchased beyond the three-mile limit. The net effect is that Alaskan ports and the Alaskan economy lose the benefits generated through the harvestation of our fish resources. These benefits include food purchases, crew changes, port berthing fees, tug assists, pilotage, repairs, maintenance supplies, personal purchases and in general all of the expenses vessels incur when calling on one of our coastal communities.

III. DISCUSSION

While Alaska continues to be in the throes of a devastating recession there is a bright light on our economic horizon. The shining star is the most traditional of Alaska's basic resources, commercial fishing, and specifically the bottom and intermediate trawl fishery. There is a consensus among those knowledgeable of the industry that if this resource is properly managed and regulated to the best interests of Americans this fishery will become the very mainstay of the seafood industry.

The Cowper Administration is undertaking an enormous effort to Alaskanize the bottom fish industry. The Governor has appointed a fisheries mini-cabinet to draft a fisheries policy which consists of goals and strategies for developing Alaska's seafood industry. One of the specific charges to this group is to examine and identify tax impediments to attracting shore-side processing. Unquestionably, the suspension of the rebate program has created an impediment and accordingly appears to be inconsistent with the Cowper Administrations commitment to the industry.

The North Pacific Fisheries Management Council is gradually phasing in a larger percentage of their recommended guide line harvest allocations to American fishing and processing firms. Organized groups such as the Southwest Municipal Conference are working diligently to encourage more shore based participation so Alaska can share in the economic benefits derived from the fish resources within our 200-mile Exclusive Economic Zone (EEZ).

The domestic fishing industry has been, historically, under capitalized and, of consequence, the additional fuel cost generated by the marine fuel tax may be a determining factor in decisions such as shore based plants vs floater and whether or not to base, re-supply and even repair vessels in Alaska. For example, the total amount of fuel consumed in U.S. waters by foreign flag vessels is estimated to be 160 million gallons annually. Purchases of fuel by these vessels operating within our waters from shore side fuel suppliers is estimated to be less than 10% or 16 million gallons. At sea refueling is a common practice not only for foreign flag vessels but also for American joint venture trawlers.

IV. POSSIBLE SOLUTIONS

There are two obvious solutions to the problem.

One is to repeal the exemption on fuel purchased in Alaska and consumed exclusively in international waters. This policy would subject all

Page Four

purchases of fuel in Alaska to the fuel tax and place the domestic based fishing vessels and the high seas bunkering operator on equal terms. Under the aforementioned situation we are assuming the high seas foreign flag refueler purchased fuel from an Alaskan based supplier rather than importing the fuel from a foreign country or transporting the fuel from another state. In reality, this approach would accomplish very little in terms of encouraging either the domestic or foreign consumer to utilize shoreside fuel suppliers.

The second option is to simply reinstate the rebate program. This procedure requires the legislature to enact a statute specifically authorizing DOR to implement a rebate system. Based on reasonable assumptions this approach would result in approximately 1.5 to 2 million dollars less revenue to the state treasury. The potential loss in revenue is a bonafide concern, however, this loss may well be more than offset by increased economic benefits associated with attracting the fishing industry shoreside.

The latter approach is consistent with the efforts of the Cowper Administration, North Pacific Fisheries Management Council, Southwest Municipal Conference and Alaska businesses all of who are attempting to create a positive business environment in Alaska.

STATE OF ALASKA

DEPARTMENT OF REVENUE

STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING
P.O. BOX 5A
JUNEAU, ALASKA 99811-0400

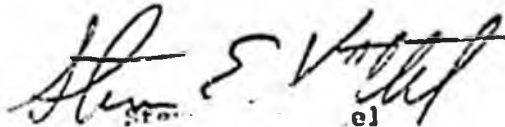
April 29, 1987

Westward Limited Partnership
715 N.E. Northlake Way
Seattle, WA 98105

Gentlemen:

We have received your claim for refund of motor fuel tax paid for the tax period 04/15/87. Although we have been routinely granting refunds since 1985 for motor fuel tax paid of fuel purchased in Alaska but consumed outside the State, a recent Department of Revenue Hearing Decision, #87-07 has given us reason to believe that the Department does not have the regulatory authority to issue those refunds. We are currently seeking the advice of the Attorney General's Office and will inform you of our final determination. In the meantime your claim for refund will be held pending that decision.

Sincerely,



Steven E. Voth
Director, Department of Revenue
(907) 585-2320

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9488



PETRO MARINE SERVICES

A HARBOR ENTERPRISES COMPANY

P.O. Box 389 • Seward, Alaska 99664 • (907) 224-3190

December 10, 1987

Anchorage
(907) 278-7586

Hugh Malone, Commissioner
State of Alaska
Department of Revenue
P.O. Box S
Juneau, Ak 99811-0400

Re: Marine Fuel Tax Rebate Program

Dear Commissioner Malone:

I want to take this opportunity to thank you and your staff for the generous commitment of time spent discussing the Alaska Marine Fuel Tax issue with Ray Gillespie and me on November 23rd. As we indicated during our meeting this letter represents a follow-up to apprise you of subsequent meetings held with various state officials concerning the suspension of the marine fuel tax rebate program.

In this regard, Ray and I met and described the inequities and economic consequences resulting from the suspension of the aforementioned rebates with Bob Evans and Rod Swope of Governor Cowper's office. We also discussed the matter with Paul Peyton, Director of Commercial Fisheries Development in the Department of Commerce and Economic Development. In each case these officials seemed sympathetic to and understanding of the problem and recognized a genuine need to address the issue.

As we move forward in our effort to reinstitute the rebate program it appears that administratively there is little that can be accomplished other than identifying the economic ramifications, without legislative involvement. In assessing the situation, each agency seems short of staff and other support resources necessary to collectively resolve the problem in the short term. For instance, Paul Peyton's department now consists of two specialists, both who are presently inundated with a full realm of fisheries related issues. The Governor's mini-cabinet is currently examining, among a myriad of other projects, state and local tax structures as these relate to fishing industry decisions and expansion philosophy.

One of the principal goals identified in the mini-cabinet's Draft Policy is to "maximize benefits for Alaskans in developing fisheries and support service industries within the Exclusive Economic Zone (EEZ)". While the means necessary to accomplish these goals remains somewhat vague, I am convinced that the Cowper Administration would glean positive acclaim from the marine community by supporting our position with this particular cause. This move would most certainly be viewed in a supportive light and is consistent with the Administration's commitment to assist the domestic flag fishery in Alaska.

Nikiski
(907) 776-8000

Kodiak
(907) 486-3421

Dutch Harbor
(907) 581-1350



Page Two

Given the fact that the Department of Revenue lacks the administrative authority to reinstate marine fuel tax rebates, we are seriously considering a request to the legislature to enact a bill to grant such authority to DOR. Before we adopt this approach, however, I respectfully urge that you and the department lend your support and/or endorsement to our concept. Realistically, I perceive little chance of passage via the legislative process without support from your office and the Governor.

As a long-standing businessman in Alaska, let me assure you that your concern over the negative impact rebate reinstatement would have on state revenues is entirely legitimate and understandable. Conversely, however, the economic disincentives and inequities generated through the marine fuel tax are significant and accordingly should warrant immediate attention. I am hopeful that with a cooperative effort we can jointly pool our creative abilities to offset the potential 1.5 to 2.0 million dollar loss in revenue to the state.

For your assimilation I have enclosed a copy of a position paper drafted to provide you with the pertinent information related to the marine fuel tax issue. Please review the draft and feel free to contact either Ray Gillespie or me personally should you have any questions concerning its contents.

Again, it was a pleasure to meet with you and I appreciate your taking time from your busy schedule to discuss this important issue with us.

Sincerely,


Dale R. Lindsey, President
HARBOR ENTERPRISES, INC.

DRL:tc

Enclosure

cc: Bob Evans

Paul Peyton

Rod Swope

Ray Gillespie ✓

**CLAIM FOR REFUND
OF MOTOR FUEL TAX**

DUE DATE: All claims must be filed within one year from the date the fuel was purchased. (AS 43.40.050)

Send Refund To: (Name and Address)	Business or Occupation	Fuel on which refund is claimed (Purchase Receipt #)
	Business Location (City and State)	Through

INSTRUCTIONS:

1. Complete Form 04-545 Invoice Listing.
2. Detach and complete Schedule A Statement of Motor Fuel Use Upon Which Refund Is Claimed. This Schedule is part 3 of this form.
3. Complete sections I and II below.
4. Sign and date the claim. Please note that a fraudulent claim is a felony punishable by a maximum fine of \$25,000.00 or three years imprisonment, or both.

I. SUMMARY OF GALLONS PURCHASED AND USED	APPLICANT'S USE	REVENUE USE ONLY
	a. Total gallons purchased as reported on Form 04-545 Invoice Listing	
b. Total gallons used in or in conjunction with a licensed vehicle, no matter where operated in Alaska, and marine fuel used in or on watercraft		
c. Net gallons used upon which a refund is claimed. (Subtract line (b) from line (a). This figure must equal the total gallonage reported on Schedule A.)		

II. SUMMARY OF AMOUNTS CLAIMED FOR REFUND. Enter the gallons claimed at each refund rate as reported on Form 04-545 Invoice Listing. Check the box to indicate the type of fuel. Multiply the Gallons Claimed by the Refund Rate and enter the result in the Refund Claimed column.

NOTE: The total gallons claimed in (g) below must equal the total gallonage reported on Schedule A.	GALLONS CLAIMED	GASOLINE	DIESEL	REFUND RATE	REFUND CLAIMED	REVENUE USE ONLY
	a.				¢ \$	
b.				¢ \$		
c.				¢ \$		
d.				¢ \$		
e.				¢ \$		
f.				¢ \$		
g. Total Gallons Claimed Add lines a-f		2168.89	2168.89			
h. Total Refund Claimed. Add lines a-f					\$	
REVENUE USE ONLY						
Adjustments						
Net Amount of Refund						
Claim Paid	Warrant Number		Warrant Amount			

III. SIGNATURE

I declare under penalty of perjury that I have examined this claim, and to the best of my knowledge and belief the fuel was purchased on the dates and in the amounts shown on each invoice, that the fuel was used in the manner set forth and that none of the fuel on which a tax refund is claimed was used for operating an internal combustion engine in, or in conjunction with, a motor vehicle licensed to be operated on public ways and that no part of the tax refund claimed has already been paid.

Signature	Printed Name of Person Who Signed	Title	Date
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Revenue Use Only	Audited By
	Approved:

REMEMBER TO ATTACH FORM 04-545 INVOICE LISTING, ORIGINAL INVOICES, AND SCHEDULE A.

- 6. (Reserved)
- 7. (Reserved)
- 8. (Reserved)
- 9. General Provisions (15 AAC 40.900)

ARTICLE 1. APPLICATION OF TAX

Section	Section
10. Tax return filing requirements	40. Qualified dealer license
20. Fuel subject to tax and exemptions	50. Bonding requirement for qualified dealer license
30. Certificate requirements for certain sales	60. Revocation of qualified dealer license
	70. Records

15 AAC 40.010. Tax Return Filing Requirements. Each dealer and each user must submit monthly to the department a return showing all motor fuel sold or transferred by the dealer or consumed by the user in the state, including all tax-exempt sales, transfers and uses. The return must be signed by the dealer or user under penalty of perjury and must show to whom fuel was sold or transferred and the reasons for any tax exemption. The return, supporting documentation, and the tax collected or accrued must be remitted by the last day of the month following the month the motor fuel was sold, transferred or used. One percent of the total monthly tax due and remitted, up to \$100, may be deducted and retained if the return is timely filed. (Eff. 7/19/82, Reg. 83; am. 8/12/84, Reg. 91)

Authority: AS 43.05.080
AS 40.40.010

15 AAC 40.020. Fuel Subject to Tax and Exemptions.

(a) All motor fuel sold or transferred in the state or consumed by a user in the state is subject to the motor fuel tax under AS 43.40.010 — 43.40.100, unless exempted under (b) of this section. For purposes of AS 43.40.010 — 43.40.100 and this chapter, "motor fuel" is fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, or in a stationary engine, machine or mechanical contrivance which is run by an internal combustion motor, including bulk or other transfers of fuel between producing, refining, importing or exporting companies and gasoline separated from a mixture of gasoline and alcohol that was not taxed in its combined state. All bulk sales of fuel to a person who uses a common storage tank servicing both taxable and nontaxable uses, except bulk sales of jet fuel to a person who exclusively flies directly from the state to a foreign country, are subject to the motor fuel tax under AS 43.40.010 — 43.40.100, but the portion actually used for nontaxable purposes is eligible for a tax refund upon application to the department.

(b) Fuel meeting the following requirements is exempt from the motor fuel tax under AS 43.40.010 — 43.40.100:

(1) fuel sold to, transferred to, or used by United States, Alaska, or local government agencies for official use, except motor fuel sold to a contractor who purchases motor fuel either for its own account or as the agent of a government agency for use in the performance of a contract with that agency;

(2) fuel sold to, transferred to, or used by auxiliary military units for official use, not including fuel purchased by a volunteer member of an auxiliary unit for use in a private vehicle;

(3) fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;

(4) fuel used exclusively for a domestic purpose in single or multiple unit private dwellings including mobile homes, but not including watercraft;

(5) fuel sold exclusively for use for heating commercial buildings or facilities;

(6) fuel used in stationary power plants that generate electrical energy exclusively for private residential consumption;

(7) fuel used in stationary commercial power plants of 100 kw or less;

(8) fuel used by nonprofit power associations or corporations for generating electrical energy for resale;

(9) fuel used by charitable institutions;

(10) refined fuel transported as cargo out of the state into international waters if the fuel is sold or otherwise transferred to watercraft which operate exclusively in international waters and which do not enter state territorial waters, ports, or facilities;

(11) refined fuel transported as cargo out of the state on a vessel from a port in this state to a port outside this state, unless the fuel is purchased for use within state territorial waters;

(12) fuel consigned to foreign countries;

(13) fuel sold to, transferred to, or used on jet propulsion aircraft operating flights from the state to a foreign country, except flights to a foreign country, with intermediate stops within the United States;

(14) fuel which is at least 10 percent alcohol by volume;

(15) fuel sold to or transferred between licensed qualified dealers;

(16) actual losses of volume which occur during handling, transporting or storing motor fuel, including shrinkage and losses from fire and other accidents;

(17) additives that are used for improving existing characteristics of fuel, not including blended fuels; and

(18) fuel used for any other purpose which the department determines is not motor fuel as defined by AS 43.40.100(2) if the purpose is fully disclosed on the monthly motor fuel tax return.

(c) For purposes of (b)(1) and (2) of this section, "official use" does not include sales of fuel. (Eff. 7/19/82, Reg. 83; am 11/14/84, Reg. 84; am 8/12/84, Reg. 91)

Authority: AS 43.05.080
AS 43.40.010
AS 43.40.100

Sec. 43.35.140. Gambling not legalized. AS 43.35.100 — 43.35.150 do not legalize gambling. (§ 4 ch 116 SLA 1949; am § 1 ch 53 SLA 1951)

Cross references. — For limitations on authorized gaming activities, see AS 05.15.180.

Sec. 43.35.150. Violations and penalties. (a) It is unlawful for a person to (1) distribute in the state a punchboard for which the license tax provided in AS 43.35.100 — 43.35.150 is not paid; or (2) maintain for use, or permit the use of, in a place or premises occupied by the person a punchboard upon which the license stamp is not affixed.

(b) A person violating a provision of AS 43.35.100 — 43.35.150 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500. (§ 5 ch 116 SLA 1949; am § 1 ch 53 SLA 1951)

Chapter 40. Motor Fuel Tax.

Section

- 10. Tax on transfers or consumption of motor fuel and expenditure of proceeds
- 30. Refund for nonhighway use
- 35. Other refunds and credits
- 50. Refund claim by affidavit

Section

- 60. Separate invoices
- 70. Refund warrants
- 80. Examination of books and records
- 85. Preservation of books and records
- 100. Definitions

Collateral references. — 71 Am. Jur. 2d, State and Local Taxation, ¶ 616 — 634; 53 Am. Jur. 2d, Licenses, ¶ 30, 46 — 58.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase, 4 ALR2d 244.

Loading or unloading interstate freight in performance of obligation resting upon one other than interstate carrier as inter-

state commerce as regards local taxation, 10 ALR2d 651.

State taxation of motor carriers as affected by commerce clause, 17 ALR2d 421.

Power of legislature to remit, release, or compromise tax claim, 28 ALR2d 1425.

Financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax, 65 ALR2d 350.

Sec. 43.40.010. Tax on transfers or consumption of motor fuel and expenditure of proceeds. (a) There is levied a tax of eight cents a gallon on all motor fuel sold or otherwise transferred within the state, except that

- (1) the tax on aviation gasoline is four cents a gallon,
- (2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

(1) the tax on aviation gasoline consumed is four cents a gallon,

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(c) Every dealer who sells or otherwise transfers motor fuel in the state shall collect the tax at the time of sale, and remit the total tax collected during each calendar month of each year to the department by the last day of each succeeding month. Every user shall likewise remit the tax accrued on motor fuel actually used by the user during each month. If the monthly tax return is timely filed, one percent of the total monthly tax due, limited to a maximum of \$100, may be deducted and retained to cover the expense of accounting and filing the monthly tax return. At the time the remittance is made, each dealer or user shall submit a statement to the department showing all fuel which the dealer or user has distributed or used during the month.

(d) *[Repealed, § 3 ch 166 SLA 1976.]*

(e) Sixty per cent of the proceeds of the revenue from the taxes on aviation fuel, excluding the amount determined to have been spent by the state in its collection, shall be refunded to a municipality owning and operating or leasing and operating an airport in the proportion that the revenue was collected at the municipal airport. All other proceeds of the taxes on aviation fuel shall be paid into a special aviation fuel tax account in the state general fund. The legislature may appropriate funds from this account for aviation facilities.

(f) The proceeds from the revenue from the tax on motor fuel used in boats and watercraft of all descriptions shall be deposited in a special watercraft fuel tax account in the general fund. The legislature may appropriate from this account for water and harbor facilities.

(g) The proceeds of the revenue from the tax on all motor fuels, except as provided in (e), (f) and (j) of this section, shall be deposited in a special highway fuel tax account in the state general fund. The legislature may appropriate funds from it for expenditure by the Department of Transportation and Public Facilities directly or as matched with available federal-aid highway money for maintenance of highways, construction of highway projects and ferries included in the program provided for in AS 19.10.150, including approaches, appurtenances and related facilities and acquisition of rights-of-way or easements, and other highway costs including surveys, administration, and related matters. All departments of the state government authorized to spend funds collected from taxes imposed by this chapter shall perform, when feasible, all construction or reconstruction projects by contract

after the projects have been advertised for competitive bids, except that, when feasible, arrangements shall be made with political subdivisions to carry out the construction or reconstruction projects. If it is not feasible for the work to be performed by state engineering forces, the commissioner of transportation and public facilities may contract on a professional basis with private engineering firms for road design, bridge design, and services in connection with surveys. If more than one private engineering firm is available for the work the contracts shall be entered into on a negotiated basis.

(h) All motor fuel tax receipts shall be paid into the general fund and distributed to the proper accounts in the general fund. Valid motor fuel tax refund claims shall be paid from the highway fuel tax account in the general fund.

(i) Within 30 days after the legislature convenes the Department of Transportation and Public Facilities shall submit an annual budget covering anticipated revenues and their expenditure, for the consideration and approval by the legislature. The budget shall cover all money collected or anticipated to be collected under this chapter for the year following the adjournment of each regular session of the legislature.

(j) The proceeds from the tax on motor fuel used in snow vehicles and, unless a tax refund is applied for under AS 43.40.040, other internal combustion engines not used in or in conjunction with a motor vehicle licensed to be operated on public ways shall be deposited in a special nonpublic highway use account in the general fund. The legislature may appropriate from this account to the Department of Transportation and Public Facilities for trail staking and shelter construction and maintenance.

(k) The tax on the transfer or consumption of motor fuel provided for in this section does not apply to liquified petroleum gas.

(l) If a dealer has a reasonable belief at the time of sale or transfer that fuel that is sold or transferred is not to be used as motor fuel, the dealer need not collect the motor fuel tax. If the tax is not collected, the dealer shall obtain a certificate of use from the buyer or transferee stating that the fuel that has been or will be purchased or received is not intended for use as motor fuel. The department may not collect the motor fuel tax from a dealer for fuel for which a certificate of use has been properly obtained under this subsection. A certificate of use is not required for fuel for any domestic purpose in a single or multiple unit private dwelling, including mobile homes, or for fuel which is at least 10 percent alcohol by volume. An annual certificate of use is required for all other exemptions listed under AS 43.40.100(2), except certificate of use needs under AS 43.40.100(2)(K) will be determined by the department. The dealer shall retain a copy of each certificate of use obtained under this subsection for examination or audit on request by the department. The form of a certificate of use may be prescribed by

regulation adopted by the department. (§ 48-5-2 ACLA 1949; am § 1 ch 80 SLA 1951; am § 1 ch 47 SLA 1955; am §§ 1, 2 ch 27 SLA 1957; am § 1 ch 134 SLA 1957; am § 1 art VI title II ch 152 SLA 1957; am § 2 art V title III ch 152 SLA 1957; am § 2 ch 124 SLA 1959; am §§ 1, 2 ch 20 SLA 1960; am § 1 ch 150 SLA 1960; am § 1 ch 110 SLA 1961; am § 1 ch 136 SLA 1961; am §§ 1 — 3 ch 131 SLA 1962; am § 1 ch 130 SLA 1968; am § 10 ch 143 SLA 1968; am §§ 1, 2 ch 216 SLA 1968; am §§ 1 — 3 ch 158 SLA 1970; am § 3 ch 58 SLA 1971; am §§ 1, 2 ch 124 SLA 1971; am §§ 2, 3 ch 125 SLA 1971; am §§ 1 — 3 ch 153 SLA 1972; am § 3 ch 166 SLA 1976; am §§ 1, 2 ch 116 SLA 1977; am § 4 ch 82 SLA 1982; am §§ 1, 2 ch 87 SLA 1983)

Cross references. — For civil penalty imposed for failure to file a return or report, or pay the full amount of a tax, or a portion or a deficiency of the tax, see AS 43.05.220.

Effect of amendments. — The 1982 amendment added subsection (1).

The 1983 amendment, in subsection (e), added the present third sentence and deleted "motor" preceding "fuel" in the last sentence, and in subsection (h), added the present fourth and fifth sentences.

OPINIONS OF ATTORNEY GENERAL

The purpose of the dedication of the taxes on motor fuels contained in subsection (g) of this section is public highways. 1959 Op. Att'y Gen., No. 9.

A proposed alteration going to the geographical area of expenditure rather than to the special purpose of a dedication, does not contravene the constitution. 1959 Op. Att'y Gen., No. 9.

The 1957 amendment to this section, which reduced the tax on motor fuel used in commercial fishing crafts for purposes of commercial fishing from five cents to two cents per gallon, effected no change in

the dedication inasmuch as the reduction in the tax was coupled with an exemption from the refund of three cents per gallon formerly allowed to users of fuel in commercial fishing craft for commercial purposes. Nothing has been done which increased or decreased the dedication. 1959 Op. Att'y Gen., No. 14.

The Civil Air Patrol is exempt from taxation under the Alaska Motor Fuel Oil Tax Act because it is an instrumentality of the federal government, but volunteer members of Civil Air Patrol are not exempt. 1961 Op. Att'y Gen., No. 26.

Sec. 43.40.020. Penalty for violation. [Repealed. § 46 ch 113 SLA 1980. For criminal penalties, see AS 43.05.290.]

Sec. 43.40.030. Refund for nonhighway use. (a) Except as specified in AS 43.40.010(j), a person who uses motor fuel to operate an internal combustion engine is entitled to a refund of six cents a gallon if

- (1) the tax on the motor fuel has been paid;
- (2) the motor fuel is not aviation fuel, or motor fuel used in or on watercraft; and
- (3) the internal combustion engine is not used in or in conjunction with a motor vehicle licensed to be operated on public ways.

(b) The entire tax levied by this chapter shall be refunded to the purchaser on that part of the motor fuel used in a foreign country on which the tax has been paid when the fuel is sold and delivered in the state for non-highway use in a foreign country.

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(c) The department shall establish the necessary regulations and prescribe the appropriate forms to prove that the motor fuel is taken to and used in foreign countries.

(d) If a person obtains motor fuel on which the tax levied by this chapter has been paid and the motor fuel is exempt from the tax, the person is entitled to a refund of the tax paid. (§ 2 ch 47 SLA 1955; am § 3 ch 27 SLA 1957; am § 2 ch 136 SLA 1961; am § 4 ch 158 SLA 1970; am § 3 ch 124 SLA 1971; am § 4 ch 125 SLA 1971; am § 4 ch 116 SLA 1977; am §§ 35, 36 ch 113 SLA 1980; am § 5 ch 82 SLA 1982)

Effect of amendments. — The 1980 amendment substituted a reference to this chapter in subsection (b), and added subsection (d). The 1982 amendment substituted "the tax has been" for "duty is" in subsection (b).

Sec. 43.40.035. Other refunds and credits. (a) A person who resells fuel on which the tax under AS 43.40.010(a) or (b) was previously paid is entitled to a credit or refund of the tax if (1) the resold fuel is not motor fuel and the requirements of AS 43.40.010(f) have been fulfilled; or (2) the amount of tax previously paid exceeds the tax due on the resale. The amount of the credit or refund under this section is equal to the amount of tax previously paid on the resold fuel less the amount of tax prescribed by AS 43.40.010(a) or (b).

(b) A reseller may elect, with the express written consent of the supplier of the resaler, to receive the credit or refund under this section directly from the supplier rather than by filing a claim for the credit or refund with the department. When an election is properly made under this subsection, the supplier may claim the credit or refund from the department. To be effective an election under this subsection must be signed in quadruplicate by the reseller and by the supplier. The reseller and the supplier shall each file one copy of the election, with original signatures, with the department. The reseller and supplier shall each retain a copy of the election with original signatures for audit review by the department. If an election is made under this subsection, it may not be revoked without the express written consent of the supplier. (§ 6 ch 82 SLA 1982; am § 3 ch 87 SLA 1983)

Effect of amendments. — The 1983 amendment substituted "the requirements of AS 43.40.010(f) have been fulfilled" for "a certificate of use is acquired under AS 43.40.010(f)" in the first sentence of subsection (a).

Sec. 43.40.040. Applications and permits for refund. (Repeated, § 45 ch 113 SLA 1980. For current law, see AS 43.40.050(a).)

Sec. 43.40.050. Refund claim by affidavit. (a) A person who claims a refund under AS 43.40.030 shall present the claim for the refund to the commissioner of revenue by affidavit upon a form provided by the commissioner. The claim shall include the name, address

and occupation of the applicant, the nature of the business of the applicant, and a description sufficient to identify the machinery or equipment in which the motor fuel for which the refund is claimed was used. The claim shall be accompanied by each invoice issued to the claimant at the time the motor fuel was purchased. The commissioner may require any additional information which the commissioner considers necessary for the administration of this subsection.

(b) A claim for refund under AS 43.40.030 or 43.40.035 shall be filed within one year from the date of the purchase of the motor fuel as indicated on the invoice, and failure to file within the one-year period is a waiver of the right to the refund. A claim is considered to be filed when the claim is mailed or personally presented to an office of the department.

(c) A reseller who claims a refund or credit under AS 43.40.035 shall present the refund claim to the department or to the supplier of that reseller by affidavit on a form provided by the department. The claim shall include the name, address, and occupation of the applicant, the nature of the business of the applicant, and a description sufficient to identify the reason for the refund or credit. The claim shall be supported by documentation required by the department. (§ 4 ch 47 SLA 1955; am § 1 ch 139 SLA 1960; am § 37 ch 113 SLA 1980; am §§ 7 — 9 ch 82 SLA 1982)

Effect of amendments. — The 1980 amendment in subsection (a), changed a reference to this chapter at the beginning and at the end of the subsection, substituted the present second sentence for the former material, which read: "with the information the commissioner requires", and substituted "was" for "is" preceding "purchase" at the end of the present third sentence.

The 1982 amendment substituted "under AS 43.40.030" for "as provided in

AS 43.40.010 — 43.40.100" and "the claim for the refund" for "his claim" in the first sentence of subsection (a), substituted "the commissioner" for "he" and "this subsection" for "AS 43.40.010 — 43.40.100" in the last sentence of subsection (a), inserted "under AS 43.40.030 or 43.40.035" in the first sentence of subsection (b), and added subsection (c).

Collateral references. — 53 C.J.S., Licenses, § 62.

Sec. 43.40.060. Separate invoices. The department may require the issuance of separate invoices for fuel sold, distributed, or transferred when the invoices will be the basis for a refund claim. (§ 6 ch 47 SLA 1955)

Sec. 43.40.070. Refund warrants. Upon approval of a refund claim by the department, a warrant shall be drawn on the highway fuel tax account in the general fund in favor of the applicant in the amount of the claim. (§ 7 ch 47 SLA 1955; am § 5 ch 131 SLA 1962)

Sec. 43.40.080. Examination of books and records. (a) To determine the validity of a claim for refund, the department may examine the books and records of the claimant and the books and records of a distributor of motor fuel. The department may cancel the refund permit

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of the claimant relying upon a fraudulent invoice for a period of not more than one year.

(b) *[Repealed, § 46 ch 113 SLA 1980.]* (§ 5 ch 47 SLA 1955; am § 46 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment repealed subsection (b).

Sec. 43.40.085. Preservation of books and records. Dealers and users shall preserve for three years all books and records pertaining to sales, transfers, and uses of motor fuel which are taxed under this chapter. (§ 5 ch 158 SLA 1970)

Sec. 43.40.090. Criminal violation. *[Repealed, § 46 ch 113 SLA 1980.]*

Sec. 43.40.100. Definitions. In this chapter

(1) "dealer" means a person who sells or otherwise transfers in this state motor fuel upon which the taxes imposed by this chapter have not been paid;

(2) "motor fuel" means fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, or in a stationary engine, machine or mechanical contrivance which is run by an internal combustion motor; "motor fuel" does not include

(A) fuel consigned to foreign countries;

(B) fuel sold for use in jet propulsion aircraft operating in flights to foreign countries;

(C) fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;

(D) fuel used by nonprofit power associations or corporations for generating electric energy for resale;

(E) fuel used by charitable institutions;

(F) fuel which is at least 10 percent alcohol by volume;

(G) fuel sold or transferred between qualified dealers;

(H) fuel sold to federal, state, and local government agencies for official use;

(I) fuel used in stationary power plants that generate electrical energy for private residential consumption;

(J) fuel used to heat private or commercial buildings or facilities;

(K) fuel used for other nontaxable purposes as prescribed by regulations adopted by the department; or

(L) fuel used in stationary power plants of 100 kw or less that generate electrical power for commercial enterprises not for resale;

(3) "qualified dealer" means a person who (A) refines, (B) imports, (C) manufactures, (D) produces, (E) compounds, or (F) wholesales motor fuel, who satisfies criteria for qualified dealers established by the department by regulation and who obtains a qualified dealer's license from the department;

(4) "user" means a person consuming or using motor fuel, who either (A) purchases the fuel out of the state and ships it into the state for personal use in the state;

(B) manufactures the fuel in the state; or

(C) purchases or receives fuel in the state that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010. (§ 48-5-1 ACLA 1949; am § 1 ch 56 SLA 1949; am § 9 ch 47 SLA 1955; am § 26 ch 70 SLA 1964; am §§ 6, 7 ch 158 SLA 1970; am § 1 ch 74 SLA 1972; am § 5 ch 116 SLA 1977; am § 10 ch 83 SLA 1980; am §§ 10 — 12 ch 82 SLA 1982; am § 4 ch 87 SLA 1983)

Revisor's notes. — Paragraphs (3) and (4) were renumbered in 1983 to achieve alphabetical order.

Effect of amendments. — The 1980 amendment added subparagraph (F) in paragraph (2).

The 1982 amendment, in paragraph (2), added subparagraphs (G)-(K); in paragraph (3) added the subparagraphs (A) and

(B) designations, substituted "personal use" for "his own use" and deleted "or" from the end, in subparagraph (A), added "or" to the end of subparagraph (B), and added subparagraph (C); and added paragraph (4).

The 1983 amendment added paragraph (2)(L).

Secs. 43.40.110 — 43.40.120. Additional tax levy on transfers or consumption of motor fuel. [Repealed, § 8 ch 158 SLA 1970.]

Chapter 43. Disaster Taxes.

Secs. 43.43.010 — 43.43.060. Disaster relief tax. [Repealed, § 1 ch 48 SLA 1969.]

Secs. 43.43.110 — 43.43.160. Disaster Severance tax. [Repealed, § 2 ch 247 SLA 1970.]

Chapter 45. School Tax.

[Repealed, § 3 ch 166 SLA 1976; § 2 ch 64 SLA 1980; § 46 ch 113 SLA 1980.]

Chapter 50. Tobacco Tax.

Article

- 1. Cigarette Tax Act (§§ 43.50.010 — 43.50.180)
2. Additional Cigarette Tax (§ 43.50.190)

Collateral references. — 51 Am. Jur. 2d, State and Local Taxation, § 615; 2d, Licenses and Permits, §§ 5, 16; 71 Am. Jur. 2d, C.J.S., Licenses, § 30.

Section 10. Li 20. Se 30. Li 35. W 40. Ex 50. Tr 60. Re 70. Re

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of notice, notwithstanding the provisions of AS 43.05.260, AS 2 ch 24 SLA 1970; § 117 ch 6 SLA 1983)

Effect of amendments. — The 1984 amendment changed the internal reference in the last sentence.

Chapter 35. Coin-Operated Devices and Punchboards.

Article

Coin-Operated Amusement and Gaming Devices (§ 43.35.030)

Article 1. Coin-Operated Amusement and Gaming Devices.

Section

43.35.030. Distributor fees

Sec. 43.35.030. Distributor fees. A distributor of coin-operated equipment shall

(1) pay an annual permit fee of \$50 to the department, to be deposited by it in the general fund; and

(2) file an affidavit that the distributor is a citizen of the United States, a bona fide resident of the state for at least one year, and has never been convicted of a felony; in the case of a corporation an affidavit is required from each stockholder and employee of the corporation. (§ 48-3-4 ACLA 1949; am § 4 ch 142 SLA 1960; am § 118 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "department" for "Department of Revenue" in paragraph (1) and "a bona fide resident of the state for at least one year" for "and a bona fide resident of the state for more than three years" in paragraph (2).

Chapter 40. Motor Fuel Tax.

Section

43.40.035. Other refunds and credits

Sec. 43.40.035. Other refunds and credits. (a) A person who resells fuel on which the tax under AS 43.40.010(a) or (b) was previously paid is entitled to a credit or refund of the tax if (1) the resold fuel is not motor fuel and the requirements of AS 43.40.010(d) have been fulfilled; or (2) the amount of tax previously paid exceeds the tax due on the resale. The amount of the credit or refund under this section is equal to the amount of tax previously paid on the resold fuel less the amount of tax prescribed by AS 43.40.010(a) or (b).

(b) A reseller may elect, with the express written consent of the supplier of the reseller, to receive the credit or refund under this

section (credit or made in fund from section supplier election and signature under then com: 1983)

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section directly from the supplier rather than by filing a claim for the credit or refund with the department. When an election is properly made under this subsection, the supplier may claim the credit or refund from the department. To be effective an election under this subsection must be signed in quadruplicate by the reseller and by the supplier. The reseller and the supplier shall each file one copy of the election, with original signatures, with the department. The reseller and supplier shall each retain a copy of the election with original signatures for audit review by the department. If an election is made under this subsection, it may not be revoked without the express written consent of the supplier. (6 ch 82 SLA 1982; am § 3 ch 87 SLA 1983)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Chapter 50. Tobacco Tax.

Article

2. Additional Cigarette Tax (§ 43.50.190)

Article 1. Cigarette Tax Act

Sec. 43.50.140. Disposition of proceeds.

NOTES TO DECISIONS

Distribution to particular recipients not required. — There is no express requirement in this section that school fund proceeds be distributed to any particular recipient and, in the view of the Alaska

Supreme Court, there are no grounds for implying such a requirement. *Southwest Region School Dist. v. Department of Educ.*, Sup. Ct. Op. No. 3099 (File No. S-1030), P.2d (1986).

Article 2. Additional Cigarette Tax.

Section

190. Additional tax levy on cigarettes

Sec. 43.50.190. Additional tax levy on cigarettes. (a) There is levied an excise tax of five and one-half mills on each cigarette imported or acquired in this state.

(b) The tax levied by this section is in addition to the tax levied by AS 43.50.010 — 43.50.180. The tax shall be administered and collected in the same manner as the tax levied by AS 43.50.010 — 43.50.180, except that receipts from the tax shall be deposited in the general fund. The penalties provided in AS 43.05 apply to the tax levied in this section. (SS 1, 2 ch 53 SLA 1961; am § 40 ch 113 SLA 1980; am § 2 ch 21 SLA 1985)