

HB

41

HOUSE COMMITTEE REPORT

(7)
Date Referred: January 9, 1989
Date of Committee Action: 3/21/89
FURTHER REFERRALS: RESOURCES
FINANCE

The LABOR & COMMERCE Committee recommends that:

HOUSE BILL NO. 41 [BUSINESS LICENSE EXEMPTION FOR FARMING]
"An Act exempting farming from the business license requirement."

- [] be replaced with _____ [] the same title
- [] have attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [] fiscal impact
- [] zero fiscal note
- [] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published:
- [] zero fiscal notes(s) published:

SIGNING DO PASS:

Arew A. Lemaw

W. M. ...

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

David D. ... (NO REC)

Bill ... (no rec)

... no rec

... NO REC

Mark Boyer no rec

David D. ...
Chairman's signature

Alaska State Legislature

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House of Representatives

MEMORANDUM

TO: Representative Dave Donley
Chairman, House Labor & Commerce Committee

FROM: Representative Mike Miller

RE: Scheduling request for HB 41

DATE: 2/9/89

I respectfully request that House Bill 41, An Act exempting farming from the business license requirement, be scheduled before the House Labor and Commerce Committee at your earliest possible convenience.

Following transfer of the business license authority from the Department of Revenue to the Department of Commerce and Economic Development in July of 1988, the governing statutes and regulations were reinterpreted to require business licenses for farmers. This reinterpretation is based on the contention that farmers are exempt from a possible business license tax but not from the license requirement itself. However, this argument does not hold up to a long-standing Attorney General's opinion dating back to February 25, 1959 which is currently referenced by our Alaska Statutes. This opinion states:

"A review of the Alaska Business License Act shows that it is an Act providing for a tax measured by gross receipts. It is nothing more than that. The statute is a tax statute."

Therefore, the Department of Commerce and Economic Development should not be allowed to argue that farmers were once exempt from the business license tax but not the license itself since the two are one in the same.

The House Research Agency has determined that business licenses have never been required by farmers in Alaska. In addition, the Agency could find no state in the country that requires farmers to hold business licenses. I do agree that our statutes are somewhat muddled on this topic and believe House Bill 41 will correct this problem.

Attachments: Backup materials

February 25, 1959

Mr. Robert Stevenson
Commissioner of Taxation
Department of Taxation
Alaska Office Building
Juneau, Alaska

Re: Taxation of Gross Receipts Derived from
Business Done on Military Reservations

Dear Mr. Stevenson:

On February 20, 1959, you requested an opinion as to whether gross receipts derived from business done on military reservations are taxable under the Alaska Business License Tax. In my opinion, such income is clearly taxable. The right to tax income received by businesses for services performed on a military reservation is granted by Title 4, USC §§ 105-110, known as the "Duck Act." Section 106 of this Act reads as follows:

"§ 106. Same; income tax

(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940."

Section 110(c) defines "income tax" as follows:

"(c) The term 'income tax' means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts."
(Italics mine)

I will closely paraphrase the language appearing in Howard v. Commissioners of the Sinking Fund of the City of Louisville, (1953) 344 US 624, 73 S. Ct. 465, 97 L ed 617. This is from page 621 of that case as reported in 97 L ed with references to "Kentucky" and "Louisville" deleted and replaced by "State of Alaska:"

"Thus the right is specifically granted to the (State of Alaska) as a taxing authority of (the State of Alaska) to levy and collect a tax measured by the income or earnings of any party 'receiving income from transactions occurring or services performed in such area . . . to the same extent and with the same effect as though such area was not a Federal area.' In other words, (the State of Alaska) was free to tax earnings just as if the Federal Government were not there."

In the Kentucky case, the City of Louisville started to collect a license tax for the privilege of working in the city, measured by one percent of all salaries, wages and commissions earned in the city by employees of a naval ordnance plant located on federally owned land within the City of Louisville. It was argued that the city's occupational tax or license fee was not an "income tax" within the meaning of the "Buck Act," since in an earlier case the Supreme Court of Kentucky had construed this tax as not being an income tax within the meaning of the Constitution of Kentucky, but rather a tax upon the privilege of working in the City of Louisville. The U. S. Supreme Court was not concerned how the State classified this tax. The court stated on page 621 of 97 L ed:

"But the right to tax earnings within the area was not given Kentucky in accordance with the Kentucky law as to what is an income tax. The grant was given within the definition of the Buck Act, and this was for any tax measured by net income, gross income, or gross receipts."

It will be noted that the term, "measured by . . . gross receipts." is expressly used in this opinion by the United States Supreme Court. See also State v. Pearson Construction

Company, (Ind. 1957) 141 NE 2d 448, where the Court found that the gross income of a Michigan corporation derived from a contract to erect buildings for the United States Government on federally owned property was taxable under the Indiana Gross Income Tax Law.

~~A review of the Alaska Business License Act shows that it is an Act providing for a tax measured by gross receipts. It is nothing more than that. The statute is a tax statute.~~
It has no regulatory features and is not designed to limit the doing of business in Alaska on the basis of any determination of the fitness of the person subject to the tax to engage in his business or profession. The District Court for the District of Alaska recognized the actual nature of the Alaska Business License Tax in Territory of Alaska v. Journal Printing Company, (1955), 135 F. Supp. 109, 15 A 676. The case held among other things that the business of newspaper publishing was not exempt from taxation under the First and Fourteenth Amendments to the Constitution on the ground that such taxation would abridge the freedom of the press. On page 686 of 15 Alaska Reports, the Court observed:

"It is true that Sec. 4 of the Act requires a license for the 'privilege' of engaging in a business in the Territory. But this language does not render it invalid nor destroy the legislative intent that the purpose of the tax is to raise revenue, and not to regulate any business. City of Corona v. Corona Daily Independent, supra; Giragi v. Moore, supra. The tax in question is clearly a revenue measure, as has been held relating to the previous two license taxes mentioned above. Binns v. United States, 194 U.S. 486, 24 S. Ct. 816, 48 L.Ed. 1087, 2 Alaska Fed. 291; Alaska Pacific Fisheries v. Territory of Alaska, 236 F. 52, 4 Alaska Fed. 432."

In Leslie Miller v. State of Arkansas, 1956, 352 U.S. 187, 77 S. Ct. 257, 1 L ed. 2d 231, the Court found that the State could not regulate and limit the Federal Government in its employment of contractors or persons to do work for the Government on federal facilities. The State of Arkansas had convicted a contractor working on a federal facility because he did not have the license required by Arkansas law. The Supreme Court reversed this conviction on the narrow ground that the instrumentalities of the United States are immune from state regulation which would interfere with the performance of their federal duties. Under the standards set forth in the state licensing statute, the state's Licensing Board

Mr. Robert Stevenson
Commissioner of Taxation

February 25, 1959

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would, if the contractor were subject to the licensing statute, have a virtual power of review over the federal determination whether an award of a contract or particular contractor is consonant with the policy that bids be awarded the lowest "responsible" bidder. The Federal Government has extensive rules and regulations concerning the letting of bids to contractors. If Arkansas could also subject the federal contractors to its standards, then the State's Licensing Board would have power to override a federal determination that the contractor is "responsible." This case had nothing to do with the power of the State to tax incomes derived from military reservations. There is no discussion or holding as to that issue. The case is; therefore, of no relevance in any consideration of the power of the State to tax gross business receipts.

In City of Chicago v. L. J. Sheridan and Co., Inc.,
(Ill. 1958) 151 N. E. 2d 451, the Court, on page 455, pinpointed the basic distinction between the Howard case and the Miller case as follows:

"The cases cited . . . turn on the question . . . whether or not the Federal Government can achieve its objective within the framework of the local law. If it can, it becomes subject to such laws; if it cannot, such laws must yield to the superior interest of the Federal Government . . . The reasoning in the Howard decision is pertinent to the circumstances here: 'The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim.'"

There is nothing in the Alaska Business License Act which is in conflict with any interest of the Federal Government. It does not restrict the powers or activities of the Federal Government in any way. It is a tax act which clearly falls within the ambit of the "Buck Act." Any other interpretation of the "Buck Act" would frustrate the intent of Congress to equalize the state tax burdens of those doing business outside of military property with those doing business on military property.

Very truly yours,

J. GERALD WILLIAMS
ATTORNEY GENERAL

By:

Gary Thurlow
Assistant Attorney General

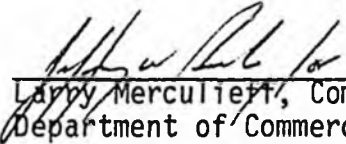
GT:bb

HB 41: An Act exempting farming from the business license requirement.

The bill proposes to exempt farming from the Alaska business license requirement. Although licensing requirements have not been enforced on farmers who commercially sold their products, current regulations do not exempt commercial farmers/farms from having to hold a business license. Many of the regulations are no longer applicable since they referenced a tax liability which has been long since removed; 15 AAC 70.080 entitled "Farmers," which succinctly states, "Farmers not liable under the Alaska Business License Act" clearly references a tax liability exemption, and not an exemption for the need to hold a business license. Farmers have been incorrectly exempted from the business licensing requirement for some years.

The department feels that the requirement for farmers to obtain business licenses is, above all else, an equity issue. Any person engaging in a business in the state is first required to have a business license. Some 51,000 businesses are licensed in the state; farmers who sell their products, goods and services commercially should also be licensed.

In the absence of a statutory amendment as proposed in the bill, the department intends to require the farming community to meet the business licensing requirement.


Larry Merculieff, Commissioner
Department of Commerce and
Economic Development

Date: 1/27/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act exempting farming from the business license requirement.
Sponsor: Representative Miller
Requestor: House Labor & Commerce

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
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: Jennifer Strickler, Administrative Officer
Division: Occupational Licensing

Phone: 465-2144
Date: January 20, 1989

Approved by Commissioner: Larry Mercurieff
Agency: Commerce and Economic Development

Date: 1/21/89

Distribution (by preparer):

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Alaska State Legislature

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House of Representatives

MEMORANDUM

TO: Representative Dave Donley
Chairman, House Labor & Commerce Committee

FROM: Representative Mike Miller

RE: Scheduling request for HB 41

DATE: 2/9/89

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Attachments: Backup materials



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

January 26, 1989

MEMORANDUM

TO: Representative Mike Miller

ATTN: Gene Therriault

FROM: Maria Gladyszewski *M. Gladyszewski*
Legislative Analyst

RE: Business Licenses for Farmers: 15 AAC 70.080
Research Request 89.145

You asked us to provide 1) a history of 15 AAC 70.080, which has been the basis for exempting Alaska farmers from business license requirements, 2) information about business license requirements for farmers since statehood, and 3) information about licensing farmers in other states. According to Steven M. White, Assistant Attorney General, 15 AAC 70.080 is in direct conflict with the interpretation of the statute from which its authority comes (AS 43.70.090). As far as I can determine, business licenses have never been required of farmers in Alaska. Sources that I contacted knew of no state which requires farmers to have business licenses. ¶

15 AAC 70.080 and AS 43.70.090

The authority to issue business licenses was transferred from the Alaska Department of Revenue to the Alaska Department of Commerce and Economic Development in July, 1988. The subject of business licenses and farmers came to the attention of the Director of the Division of Occupational Licensing, Randall Burns. Mr. Burns said that he then looked up the current regulation about farmers written by the Department of Revenue and in place before Statehood (15 AAC 70.080 -- Attachment A). "Farmers not liable under the Alaska Business License Act" is the entire text of the regulation. Since he was unsure of the meaning of the regulation, Mr. Burns called for an interpretation from the Attorney General. The opinion of Steven M. White, Assistant Attorney General, is that a person can be liable for a tax but not for a license. The regulation, then, would exempt farmers from taxes collected under the Business License Act. Mr. White also said, however, that the regulation conflicts with its statutory authority so is superseded by the statute.

Representative Miller
January 26, 1989
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The statutory authority (AS 43.70.090 -- Attachment B) cited in the regulation (15 AAC 70.080) says the "department may adopt regulations necessary to determine and collect the fees imposed by this chapter." The regulation exempting farmers presumably exempts them from license fees. Because the statute specifically defines business to exclude certain well-defined activities (fisheries businesses, fishermen, liquor licenses, insurance businesses, mining, and coin-operated amusement and gaming machines), it implies that all others not excluded are included. Since farmers are not mentioned, farming is defined as a business subject to licensing.

According to the regulation, "Farmers [were determined] not liable." I was unable, however, to determine how farmers came to be determined not liable by the Department of Revenue. Farmers are not mentioned in the territorial license tax provisions¹ (in effect before 1949) or in the original Alaska Business License Act (approved March 18, 1949).²

Business Licenses for Farmers in Alaska and Elsewhere

As far as I can determine, business licenses have never been required of farmers in Alaska. Farmers may be required to hold licenses for conducting certain activities (e.g., pesticide application, vegetable dealership, etc.) and their products are inspected by the USDA.

Several sources reported that they knew of no states that required farmers to obtain business licenses.³ No one knew why farmers were not required to hold business licenses.

I hope this information is helpful. Please call if you have additional questions.

Attachments

¹See §§ 35-1-1--35-1-3 and §§ 35-1-11--35-1-22 (Attachment C).

²See § 12 Ch. 43 SLA 1949 (Attachment D).

³Persons versed in agricultural issues at the Council of State Governments and the National Conference of State Legislatures; representatives from the office of public information at the U.S. Department of Agriculture and the National Association of State Departments of Agriculture in Washington, D.C.