

H J R

93

HOUSE COMMITTEE REPORT

(9)

Date Referred: March 16, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 3/19/90

The RESOURCES Committee considered:

HJR 93

HOUSE JOINT RESOLUTION NO. 93

IRS SALE OF LIMITED ENTRY PERMITS

Relating to the seizure and forced sale of Alaska commercial fisheries limited entry permits by the Internal Revenue Service.

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

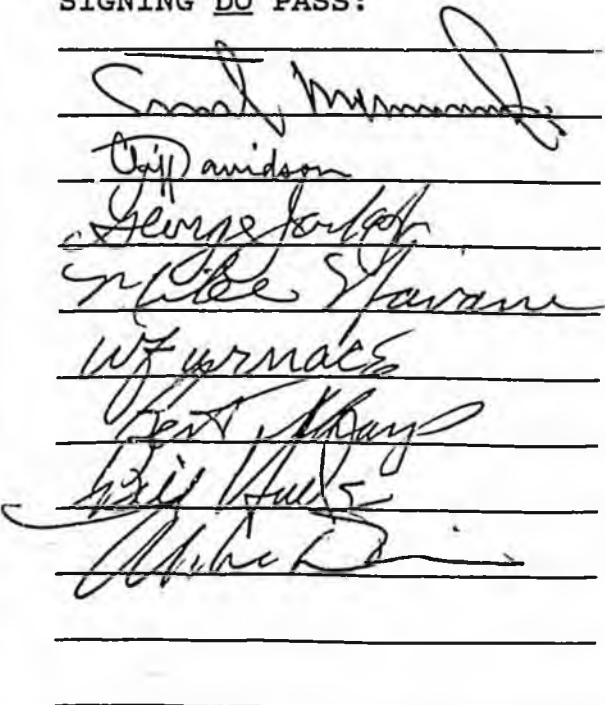
APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
- [X] zero fiscal note HRC
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

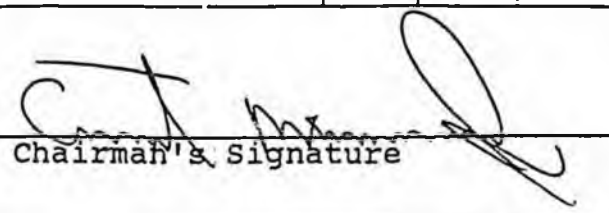
SIGNING DO PASS:



SIGNING:

(Check approp. column)

Do Not
 Pass
 No Rec
 Amend



 Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: IRS Sale Of Limited Entry
 Permits
 Sponsor: Resources Committee
 Requestor: House Resources Committee

Agency Affected: All Agencies
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: House Resources Committee Phone: 465-3715
 Division: Representative Cliff Davidson Date: 3/19/90

Approved by Commissioner: *Cliff Davidson* Date: _____
 Agency: _____

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

MEMORANDUM

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

TO: Hon. Swack Swackhammer
House of Representatives
Attn: Tom Wright

DATE: March 7, 1990

FILE NO:

TELEPHONE NO: 465-4081

FROM: Commercial Fisheries Entry
Commission
Bruce Twomley, Chairman
Rich Listowski, Commissioner
Phil Smith, Commissioner

SUBJECT: Status of IRS
seizure and forced
sale of entry
permits

Thank you for your phone call yesterday in which you inquired about the IRS and its desire to seize and sell entry permits currently in the hands of Alaska fishermen. As we discussed, the IRS is attempting to seize and force the sale of Alaska limited entry permits. A public auction of eight such permits is scheduled to occur in Anchorage on March 29.

The IRS action is contrary to State law: the Alaska Legislature has made it clear that entry permits are use privileges and not property generally subject to seizure and forced sale by creditors. AS 16.43.150

Additionally, the IRS action is unnecessarily destructive. To an Alaskan fisherman, an entry permit is a necessary tool of the trade required by State law. Entry permits were initially issued only to those fishermen most dependent upon their, respective, fisheries. The IRS has alternative means to collect tax obligations (for instance, payment plans, seizure of assets, and attachment of earnings). Forcibly depriving a fisherman of her or her entry permit creates the grave risk of destroying -- for all time -- that fisherman's livelihood.

Attached is a copy of the recent letter from the Attorney General to the IRS setting forth the State's position. (Exh. A) In compliance with State law, the Commission will not transfer entry permits merely as the result of the IRS' auction. The IRS has anticipated this response and has been informing prospective buyers that they may have to sue the State.

Also attached is our letter to those permit holders whose permits the IRS proposes for auction. (Exh. B) We warn the permit holders that they must help themselves. The Commission's action may hurt them by further driving down the price that buyers are prepared to pay at

anction (the IRS is already offering some shockingly low prices). In turn, unless they help themselves by pursuing individual remedies, if the IRS finds a way to roll over the State's opposition, the individual permit holders will have to live with the results of the sale.

The IRS has taken a curious approach to its proposed sale, as reflected in the attached newspaper article (Exh. C) The IRS suggests that winning bidders file a class action suit to pry permits away from the State. The IRS is offering bargain basement prices (for example, an Alaska Peninsula seine permit valued at more than \$200,000 is being offered by the IRS for \$26,000).

IRS' approach suggests, at least, two possibilities. First, they appear to be making an effort to build public sentiment against the State by creating this group of interested, successful bidders. Second the IRS is so tentative that it may suggest that IRS officials may not be united on how hard to push on this issue.

Generally, the IRS has been made sensitive to public opinion. The IRS is now forced to operate under the recently adopted federal Taxpayer's Bill of Rights. Additionally, a series of reports culminating in a recent publication are extremely critical of the IRS (Exh. D)

Ultimately, it appears almost inevitable that this issue will end up in court. Until that time, the Commission will remain steadfast in our effort to uphold State law.

Thanks, again, for your interest in this issue. Please let us know if we can offer additional information, and be assured that we will keep you informed as the issue unfolds.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1990

Richard A. Schult
Revenue Officer
Internal Revenue Service
P.O. Box 101500
Anchorage, AK 99510-1500

Re: Proposed forced sale of
commercial fishing limited entry
permits and notices of intent
filed by the Internal Revenue
Service -- Our file 663-90-0325

Dear Mr. Schult:

From an article and advertisements in the Anchorage Daily News, we have learned that the Internal Revenue Service ("IRS") proposes to force the sale of eight (8) Alaska commercial fishing limited entry permits. (A list of the permit numbers and the names of their holders is attached.) Apparently in support of the proposed sale, you have signed and submitted to the Alaska Commercial Fisheries Entry Commission ("CFEC") a number of "Notice of Intent to Transfer" forms with respect to each of the permits. None of those forms have been signed by the permitholders.

The State of Alaska has informed the IRS on several occasions that, in limiting entry to Alaska's fisheries, the Alaska Legislature declared that limited entry permits are use privileges subject to revocation without compensation and not property. AS 16.43.150(e). Consistent with that definition of the nature of entry permits, the Alaska Legislature placed a number of restrictions upon the holder of an entry permit and generally prohibited forced transfer of an entry permit: "Except [under limited circumstances], an entry permit may not be . . . attached, distrained, or sold on execution of judgment or under any other process or order of any court." AS 16.43.150(g).

As a consequence, state procedures allow only the holder of an entry permit to initiate a transfer of that permit. No provisions exist for a forced transfer. Accordingly, we are returning to you each of the "Notice of Intent to Transfer" forms that you have filed on behalf of the IRS.

It also has been reported that, in light of the absence of any provisions in state law for forced transfer of entry

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

EXH. A

Richard A. Schult
Revenue Officer
Internal Revenue Service

March 2, 1990
Page 2.

permits, the IRS may suggest to prospective bidders at any sale that, if successful, they should sue the state to gain possession of the permits. We presume from this that the IRS will at least inform prospective bidders that there may be a problem in obtaining possession of the permits.

Beyond that, however, we seriously question the wisdom of the IRS attempting to wash its hands of any legal questions surrounding the proposed sale and transfer any risk to prospective bidders. The depressing effect this action will have on potential bids is obvious. The social and economic costs such action will inflict on potential bidders, the permitholders, and the state are not so obvious, but nonetheless substantial.

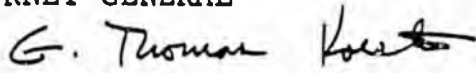
These questions become even more significant if, as we understand, many of the permitholders involved are actively seeking ways other than forced sales to pay their tax obligations. Given the legal uncertainties surrounding the proposed forced sales, sound policy would seem to dictate that all other potential alternative remedies be exhausted before embarking on such a questionable approach.

We therefore urge the IRS to reconsider its attempts to force sales of entry permits and to look to alternative means to enforce tax obligations, such as attachment of assets and earnings and negotiating payment plans. At the same time, we recognize the obligation all citizens have to support their government. Should a fisherman be persuaded to sell his or her permit to obtain funds to pay a tax obligation, the CFEC remains ready to transfer the permit at the request of the holder. Absent a request to transfer by the holder, however, our hands are tied.

We hope you will reconsider the proposed forced sales.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

Richard A. Schult
Revenue Officer
Internal Revenue Service

March 2, 1990
Page 3

GTK:dlm

Enclosure

cc: Robert W. Brock
District Director
Anchorage District Internal Revenue Service
949 East 36th Avenue
Anchorage, Alaska 99508

Commercial Fisheries Entry Commission

February 26, 1990

Permit holders and entry permit numbers with respect to which the
IRS has filed Notices of Intent to Transfer:

Malcolm J. Brown	S01E 59399E
Malcolm J. Brown	S03E 59179U
William Shellikoff	S01M 64041X01ER
Steve E. Williams	S04T 314I01KN
Chris A. Gundersen	S01M 58154X
Wilbur M. McGlashan	S01M 60579E01 HR
Andy Kalmakoff	S01L 61370VO1MR
George L. Gatter	S03T 56879M

PERMITS AS TO WHICH THE IRS HAS SERVED
NOTICES OF SEIZURE ON THE ENTRY COMMISSION

<u>HOLDER</u>	<u>PERMIT NUMBER</u>	
Olga Chukwak General Delivery Levelock, AK 99625	S04T 56856Q	Bristol Bay set gill net
Robert C. Clucas SR 2, Box 900 Clam Gulch, AK 99568	S04H 60756N	Cook Inlet set gill net
<u>George L. Gatter</u> Box 82 Naknek, AK 99635	S03T 56879M	Bristol Bay drift gill net
<u>Chris Gundersen</u> Box 76 Sand Point, AK 99661	S01M 58154X	Peninsula-Aleutians purse seine
Paul K.J. Gundersen Box 91 Sand Point, AK 99661	S03M 61677G	Peninsula-Aleutians drift gill net
Leroy E.J. Harris HC 2, Box 528 Kasilof AK 99610	S01K 61000C	Kodiak purse seine
<u>Andy Kalmakoff</u> General Delivery Chignik Lake, AK 99564	S01L 61370V	Chignik purse seine
<u>Wilbur M. McGlashan</u> Box 31 Sand Point, AK 99661	S01M 60579E	Peninsula-Aleutians purse seine
Harry E. Shipman Box 1985 Cordova, AK 99574	S03E 58715Q	Prince William Sound drift gill net
Charles T. Vanderende troll Box 71 Point Baker, AK 99927	S15B 55805E	Statewide power
Robert L. Vest Box 613 Soldotna, AK 99669	S03H 656570	Cook Inlet drift gill net
<u>Steven E. Williams</u> Box 375 King Salmon, AK 99613	S04T 60314I	Bristol Bay set gill net

*Underlining of names indicates permits which the IRS proposes to auction on March 29, 1990.

PERMITS AS TO WHICH IRS HAS SERVED NOTICE OF IRS LIENS
UPON THE ENTRY COMMISSION

<u>Holder</u>	<u>Permit Number</u>	
Knute Anderson General Delivery False Pass, AK 99583	S03M 56622U	Peninsula-Aleutians drift gill net
Randall M. Bos Box 1125 Chickaloon, AK 99674	S03E 55391X	Prince William Sound drift gill net
Alec Constantine Box 82005 Tyonek, AK 99682	S04H 59116G	Cook Inlet set gill net
Aleck Constantine Box 49047 Port Heiden, AK 99549	S03T 57218F	Bristol Bay drift gill net
Johnny S. Constantine General Delivery Chignik Lake, AK 99564	S01L 57808I	Chignik purse seine
Robert G. Deigh Box 66 Egegik, AK 99579	S03T 58116K	Bristol Bay drift gill net
Lorraine C. Evans Box 70065 South Naknek, AK 99670	S04T 56213V	Bristol Bay set gill net
Todd W. Granger Box 1292 Cordova, AK 99574	S03E 56553I	Prince William Sound drift gill net
Peter M.J. Gronholdt Box 87 Sand Point, AK 99661	S03M 58155U	Peninsula-Aleutians drift gill net
Bernard C. Joe Box 32321 Mountain Village, AK 99632	S04Y 62666S	Lower Yukon gill net
Nick J. Katelnikoff Box 3863 Kodiak, AK 99615	S01K 60249S	Kodiak purse seine
Kenneth G.J. Kirkman 217 Heintzleman Anchorage, AK 99503	S01E 60874E	Prince William Sound purse seine

Donald P.S. Kompkoff 621 Cato Street Chenega Bay, AK 99576	S03E 60513C	Prince William Sound drift gill net
Paul J. Kompkoff Box 1732 Cordova, AK 99574	S03E 596950	Prince William Sound drift gill net
Michael A. Lopez Box 1004 Petersburg, AK 99833	S01A 57288B	Southeast purse seine
<u>John P. Lorentzen</u> Box 380 Cordova, AK 99574	S03E 61653B	Prince William Sound drift gill net
Edward A. Mack Box 95 King Cove, AK 99612	S03M 57432Z	Peninsula-Aleutians drift gill net
Charles A. Nelson Box 72 Egegik, AK 99579	S03T 59874W	Bristol Bay drift gill net
Johnny A. Nelson General Delivery Nelson Lagoon, AK 99571	S03M 57344X	Peninsula-Aleutians drift gill net
William R. Reid Box 1234 Cordova, AK 99574	L21E 65740R	Prince William Sound herring pound
Harold F. Roberts 213 E 8th Avenue #6 Anchorage, AK 99501	S03T 56571W	Bristol Bay drift gill net
<u>William G. Shellikoff</u> General Delivery False Pass, AK 99583	S01M 64041	Peninsula-Aleutians purse seine
Steven R. Smith Box 1724 Cordova, AK 99574	S03T 56724C G01E 64545R	Bristol Bay drift gill net PWS herring purse seine
Daniel R. Thistle Box 521235 Big Lake, AK 99652	S04H 597540	Cook Inlet set gill net
James P. Totemoff Box 1232 Cordova, AK 99574	S01E 59472U	Prince William Sound purse seine

*Underlining of names indicates permits which the IRS proposes to auction on March 29, 1990.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

P.O. BOX KB
JUNEAU, ALASKA 99811-0302
PHONE (907) 465-4081

March 2, 1990

Re: Internal Revenue Service
Forced Sale of Your Entry Permit

Dear Permit Holder:

As we trust you are fully aware at this point, the Internal Revenue Service (IRS) proposes to force the sale of your entry permit on March 29, 1990.

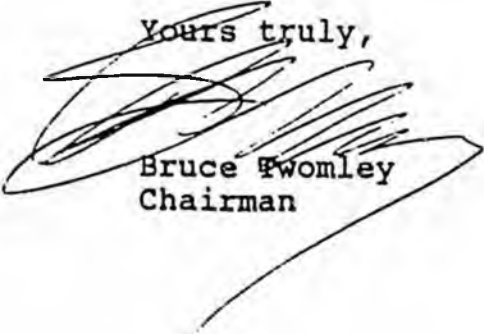
The State has been resisting this kind of action by the IRS since at least 1981 and will continue to do so. Enclosed is a copy of a letter the Attorney General has sent to the IRS concerning your entry permit.

The fact that the State is resisting the IRS may not help you: in fact it may hurt you unless you take action on your own behalf. The State's opposition will likely discourage higher bids at the IRS auction. If the IRS finds a way to roll over the State's opposition, you will have to live with the results of the sale, unless you have protected yourself.

Therefore, if you have not already done so, we urge you to get qualified professional help and to take action on your own behalf. The situation varies from case to case, and there may be helpful remedies that you could pursue on your own. Therefore, we urge you to seek the help of a lawyer, accountant, or other advocate qualified to address IRS issues.

You, or anyone on your behalf, is welcome to call me to discuss these matters. Please act quickly.

Yours truly,



Bruce Twomley
Chairman

BT:dan
Enclosure

STEVE CLWPER

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 24, 1986

The Honorable Lawrence B. Gibbs
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Dear Commissioner Gibbs:

Re: IRS Seizure and Forced Sale of Alaska Limited
Entry Permits

I am writing to request your assistance in resolving a longstanding problem facing Alaska fishermen and the state. The Internal Revenue Service (IRS) is attempting to seize and force the sale of Alaska limited entry permits to satisfy alleged tax obligations of Alaska fishermen. From the specific example below, involving an Alaska Native set net fisherman from Yakutat, you can see that the IRS is not being very selective in employing this draconian measure.

You may recall that the Alaska Legislature, under Alaska Statute 16.43.150(g), sought to protect from creditors and court orders limited entry permits as the necessary tool of trade of a fisherman. Under Alaska Statute 16.43.150(e), the Alaska Legislature also declared that entry permits were no more than a use privilege which the Legislature could modify or revoke at will; that is, entry permits are something less than property subject to IRS enforcement measures. State law governs the underlying legal question as to whether an Alaska limited entry permit is property. Aquilino v. United States, 363 US 509, 513, 4 L. Ed. 2d 1365, 80 S. Ct. 1277 (1960). Additionally, Article I, Section 1, of our Alaska Constitution guarantees to individuals a right to the rewards of their own industry.

Legal arguments aside, IRS seizure and sale of Alaska limited entry permits can work a terrible hardship on Alaska

EXHIBIT E (1 OF 3)

December 24, 1986

fishermen and can result in the transfer out of state of Alaska limited entry permits. For example, the IRS is presently attempting to force the sale of a Yakutat set gill net entry permit belonging to an Alaska Native named George Ramos. Mr. Ramos' entry permit is worth about \$27,625. on the open market. Mr. Ramos has made regular payments toward his obligation, and the IRS concedes that his tax liability is now reduced to \$9,500. Mr. Ramos, with the help of a tax preparer, filed an amended return indicating the amount he owes the IRS is now \$4,000. The IRS has refused to evaluate the amended return and is insisting upon payment of \$9,500 before it will determine the exact amount owing. Mr. Ramos cannot afford to pay the \$9,500. The IRS is going forward with the forced sale of Mr. Ramos' entry permit and is prepared to sell the permit for as little as \$9,561.70. The forced sale of Mr. Ramos' entry permit will destroy his ability to make a modest living. Additionally, the forced sale raises the risk that the permit will transfer to someone outside the state. The IRS has already been in touch with at least one permit broker in connection with this sale.

From a purely federal standpoint, it would seem clear that the destruction of a fisherman's means to earn a living would undermine a continuing source of revenue to the United States.

This issue affects a number of Alaska fishermen. The IRS has filed a series of federal tax liens with the Alaska Commercial Fisheries Entry Commission.

Necessarily, the state is preparing to litigate the issues, but I would prefer not to wager the well-being of Alaska fishermen upon a favorable outcome in court. It occurs to me that, in the short term, with your help, the IRS might agree to guidelines whereby Alaska limited entry permits are an enforcement target of last resort only after all other reasonable measures have been exhausted (for example, agreed upon payment schedules). For the longer term, federal legislation could exempt Alaska limited entry permits as a necessary tool of trade from federal tax enforcement.

You are undoubtedly aware that the United States Department of Health and Welfare and the Social Security Administration have taken a more reasonable approach to Alaska limited entry permits. Pursuant to 20 CFR Sec. 416.1222, Alaska limited entry permits are largely exempt from consideration as a cash resource. 50 Fed. Reg. 42,684 (October 22, 1985).

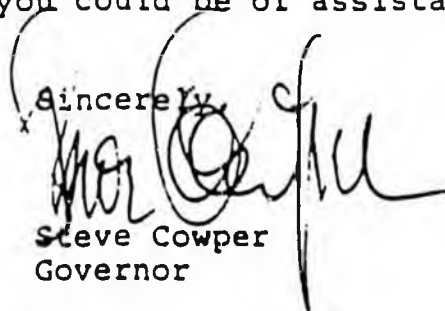
Hon. Lawrence B. Gibbs

-3-

December 24, 1986

I would be very grateful if you could be of assistance in this matter.

Sincerely,



Steve Cowper
Governor

cc: John Katz, Special Counsel
State/Federal Relations
Attention: Eric Laschever
Policy and Program Specialist
Office of the Governor

Joseph W. Geldhof
Assistant Attorney General
Department of Law
M/S 0300

EXHIBIT E (3 OF 3)

Penetrating book gives frightening view of IRS' inner workings

A LAW UNTO ITSELF:
Power, Politics and the IRS, by
David Burnham; Random House
(420 pages, \$22.50)

By JACK A. SEAMONDS
Knight-Ridder Newspapers

Stunning — there is no other way to describe investigative reporter David Burnham's penetrating and often intimidating look inside one of America's most feared and most pervasive agencies — the Internal Revenue Service.

With 123,000 employees — five times the size of the Federal Bureau of Investigation and twice the size of the Central Intelligence Agency — the IRS also has at its disposal the investigative powers of huge computers and laws in the U.S. tax code that make it a small, stand-alone government.

Burnham — for 15 years an award-winning reporter for the New York Times — probes areas of the IRS where no reporter has so thoroughly dug before.

For example:

Virtually every U.S. president from Herbert Hoover to Richard Nixon has used the investigative powers for political goals.

Senior IRS officials, using their own or an administration's political agenda, have harassed

With 123,000 employees the IRS also has at its disposal the investigative powers of huge computers and laws in the U.S. tax code that make it a small, stand-alone government. The IRS has an arrogance that is backed up with legal authority.

various groups lobbying on behalf of homosexual rights, the environment and civil rights. When a New York lawyer was hired in 1975 to form a tax-exempt educational foundation on behalf of homosexuals, called the Fund For Human Dignity, the IRS set down four conditions that had to be met for the designation. Among them: that the Fund for Human Dignity include in any discussion panel an "avowed enemy" of homosexuality and avoidance of "social interchange" at group meetings. The tax-exempt status wasn't granted until the Carter administration ushered in a new IRS director.

Perhaps most chilling because it dealt with millions of middle-class Americans, IRS mismanagement and poor computer systems led to improper, widespread and incorrect enforcement actions. Some of the examples cited in Burnham's book are merely amusing; others are

tragic.

In 1987, 10-year-old Shannon Burns of San Jose, Calif., had accumulated \$604 in her savings account when the IRS slapped a lien on the money. Because Shannon was a minor, her father's name was also on the account — and her father owed the IRS \$1,000. The agency was determined to get the money, even from a 10-year-old child. An IRS spokesperson said that the IRS collection division took the action because "They're pretty hardened. That's their job."

In another case, the IRS literally stole money, falsely deposited it and, when the error came to light, refused to return the money. A retired postal worker, Donald Thurow, sent a \$1,300 mortgage payment in July 1966 to his bank. Somehow, eight days later, the check arrived at the IRS Fresno, Calif., service center, where Internal Revenue Service was stamped over the name of Thurow's bank and the check

was deposited in the U.S. Treasury. Thurow didn't learn of the error until his bank called looking for the mortgage payment.

Because Thurow didn't owe the IRS money, he and his lawyer filed for a refund of the \$1,300. The IRS ignored Thurow's pleas for six months. So Thurow filed suit against the IRS for the \$1,300, attorney fees, interest — and \$50,000 in punitive damages. The IRS was so incensed at the demand for punitive damages that the agency asked a federal judge to force Thurow's lawyer to pay the government's legal fees in the suit. Thurow ultimately got his money back.

An isolated case? Unlikely. Thurow's lawyer, Montie Day, says that after the story was published in San Francisco newspapers, he was approached by others who had checks stolen and deposited by the IRS.

The IRS' 1988 annual report says the agency processed 194 million tax returns during the

year. That's a huge undertaking by any bureaucracy, and mistakes are inevitable.

But the IRS has an arrogance that is backed up with legal authority, Burnham contends. If your car insurance company makes mistakes, you can complain, write the company, tell your agent to fix the problem or go to another insurance company. But there is only one IRS.

That arrogance and the enormous power of the IRS — the presumption that the IRS is right and it is a taxpayer's burden to prove innocence, for instance — is perhaps the overriding theme of Burnham's book.

Virtually all income taxes in America paid by individuals are paid in advance by payroll deduction. To that extent, the voluntary compliance by Americans in paying taxes is largely involuntary. Burnham suggests that mismanagement, corruption and arrogance in the IRS in dealing with taxpayers may lead the average citizen to rethink, say, reporting all income, paying taxes on dividends and correctly listing all dependents.

The underlying danger, Burnham concludes, is that an IRS which loses the faith of the American people is on a collision course with disaster.

TAXPAYERS' NIGHTMARE



PERMITS: IRS, state conflict

Continued from Page C-1

Those whose permits have been seized still have more than a month to pay up their back taxes and regain their fishing rights. At least one fisherman intends to do just that.

"I owe \$130,000 in back taxes," said Chris Gundersen, a Sand Point fisherman. "It's kind of a bum deal. I'm not going to let them sell it (the permit) at auction. I will pay it off."

Other fishermen with seized permits could not be reached for comment Thursday.

Limited entry permits were created in 1983 by a state legislature desperate to find a way to curb the number of fishery participants at a time when salmon stocks were near record lows. The legislation created complex criteria (largely based on past experience) to determine who could participate in each of Alaska's regional salmon fisheries.

Fishermen who received those permits were free to fish them for as long as they chose, or sell or give the permits away.

But legislators, according to a state House Research Agency memorandum, didn't want an asset that could be acquired by speculators or canneries. So they defined the permits as a privilege that could "not be pledged, leased or encumbered in any way," although they later amended the act to allow two state lending agencies to use the permits as collateral.

A 1979 state attorney general's opinion declared the permits were not a property right. Therefore, if the legislature chose to revoke or otherwise tamper with the limited entry system, it would not have to compensate fishermen for any losses in permit values.

In the '80s, values of more than 12,000 salmon and herring permits soared as stocks rebounded to record levels and markets improved. The permits currently have a combined market value of more than \$1 billion, according to a House Research Agency study.

For years, the Internal Revenue Service has sought to seize the permits of fishermen who owe back taxes, according to Listowski. Several times in the past they seized permits, but fishermen always paid off the back taxes before the issue ended up in the courts.

BUSINESS

Anchorage Daily News

FRIDAY

SECTION C Feb. 23, 1990

Fishing permits up for sale

IRS stirs debate with state over auction of seized papers

By HAL BERNTON
Daily News reporter

The Internal Revenue Service is trying to sell eight limited-entry fishing permits worth more than \$1.4 million at a first-of-a-kind auction. The March 29 sale appears certain to trigger a major clash with the state, which views these fishing rights as a privilege — not property — and exempt from federal seizure.

The state Commercial Fisheries Limited Entry Commission controls the permits that regu-

late access to Alaska salmon and herring harvests. And commission officials say they will not approve any transfers to the auction's winning bidders.

"There is no value without the transfer papers," said Rich Listowski, a commercial fisheries commissioner.

IRS officials insist that a permit is property — subject to seizure for unpaid taxes just like real estate, automobiles and jewelry.

"Our position is that it's a

valuable asset that we are entitled to seize, and would expect the state to transfer the permits," said Marilyn Steen, an IRS spokeswoman.

The IRS is suggesting to prospective winning bidders that they could file a class action suit to pry the permits away from the state, she said.

State officials say they are prepared to defend their position in court.

In the meantime, to ensure

there will be plenty of bidders at the March auction, the IRS is advertising the permit sale nationwide, Steen said. Due to the conflict with the state, the IRS expects the permits to sell at well below current market values.

The permits up for sale offer access to some of Alaska's most lucrative salmon fisheries — Bristol Bay, False Pass Chignik and Prince William Sound.

Please see Page C-4 **PERMITS**

MEMORANDUM

STATE OF ALASKA

TO: Hon. Cliff Davidson
Hon. Curt D. Menard
Co-Chairmen
and Members
House Resources Committee
M/S 3100

DATE: March 18, 1990

FILE NO:

TELEPHONE NO:

SUBJECT: Internal Revenue
Service (IRS)
Forced Sale of
Alaska Limited
Entry Permits

FROM: Alaska Commercial Fisheries
Entry Commission
Bruce Twomley, Chairman
Rich Listowski,
Commissioner
Phil Smith, Commissioner
M/S 0302

Status of the Issue/Position of the State

Next week, on March 29, 1990, the IRS is attempting to force the sale of eight (8) Alaska limited entry permits. (Attach. A)

Each of the permits is held by an Alaskan. All but one of the permit holders received his permit by original issue from the State of Alaska under the system developed by the Alaska legislature to award permits to these fishermen most dependent upon their fisheries.

Following Alaska law, the State has resisted IRS' seizure and forced sale of Alaska limited entry permits for nearly ten years. On March 2, 1990, the Attorney General for the State of Alaska again wrote to the Internal Revenue Service to make clear the State's position. (Attach. B)

IRS' Forced Sale of Alaska Limited Entry Permits is Contrary to Alaska Law

When the Alaska legislature created Alaska limited entry permits as a legally required tool of trade for Alaska fishermen, it was careful to declare that entry permits were use privileges subject to revocation without compensation and not property. AS 16.43.150(e). Consistent with its view of the nature of entry permits, the legislature placed a number of restrictions upon the holder of an entry permit and generally prohibited forced transfer of an entry permit: "Except [under limited circumstances], an entry permit may not be . . . attached, distrained, sold on execution of judgment or under any other process or order of any court." AS 16.43.150(g).

Under federal law, it is clear that State law governs whether a particular taxpayer has property or rights to property upon which the IRS may levy. Aquilino v. United States, 363 U.S. 509, 512-514 (1960).

IRS Seizure and Forced Sale of Alaska Limited Entry Permits Threatens to Inflict Irreparable Harm Upon Alaska Fishermen

Seven, of the eight individual permit holders facing IRS' forced sale, received their entry permits by initial issue from the State. (Actually, all eight did, but one of them transferred to an alternative fishery.) Under the system established by the Alaska legislature for issuance of limited entry permits, each of these individuals has shown himself to be more dependent upon his fishery than other competing applicants.

The State of Alaska has made entry permits a required tool of trade for Alaska fishermen. Prices that fishermen are willing to pay for entry permits have risen dramatically over the last fifteen years. Therefore, a fisherman whose permit is sold by the IRS today will be unlikely to be able to replace that permit.

IRS' forced sale of a fisherman's entry permit creates the grave risk of destroying that individual's means of earning a living. In turn, there will likely be a harmful effect upon families and communities dependent upon the earnings of that fisherman.

In cases that have come to our attention, the IRS has failed to use due care in applying this draconian enforcement tool.

Example 1. "George" is a setnetter from a Southeast Alaska village, whose set net entry permit was valued at approximately \$30,000. Serious personal problems led to his failure to file tax returns for 1982-1983. IRS issued George an assessment of approximately \$20,000. Through regular payments, by IRS' calculations, George reduced the assessment to \$9,500. George filed an amended return and asked the IRS to recalculate his debt. The IRS refused and seized his entry permit. George offered to sell his house and his boat, but the IRS refused his offer and went forward with preparations to sell his entry permit. IRS insisted upon full payment of the \$9,500, and refused to calculate whether George was entitled to any refund until after the full \$9,500 was paid. George avoided the forced sale of his entry permit by obtaining a loan and paying the full amount. Only then did IRS recalculate the amount due and found that George owed the IRS less than \$2,100.

Example 2. "Anna" is a senior citizen living in a Western Alaska village who neither reads nor writes English. Some years ago, a well-intended Vista volunteer prepared her tax return but under-reported her taxes owing. Years later, following an IRS audit and assessment of additional taxes due, Anna did not have cash available to make an immediate payment to the IRS. IRS responded by seizing her Bristol Bay set net entry permit, which remains under seizure at this time.

Additionally, as the Alaska Attorney General has pointed out (Attach. B), the IRS approach to this particular sale is grossly unfair. To start with, IRS is offering permits for sale at bargain basement prices. For example, a Peninsula-Aleutian purse seine entry permit is valued at more than \$200,000. IRS proposes to sell such a

permit for as little as \$26,000 (enough to cover its assessment and costs). Additionally, IRS acknowledges that the legal issue raised by its action has not yet been resolved by a court; therefore, IRS is offering successful bidders the opportunity to pay into an escrow account (Attach. A) and to file suit against the State. (Attach. C)

IRS' approach to this sale can only further drive down the amounts that prospective buyers are willing to bid. Therefore, CFEC has warned individual permit holders of the risks they are facing and has urged them to obtain help for themselves. (Attach. D)

These problems highlight the fact that the IRS has other effective means available to collect taxes: it can seize earnings; it can seize homes, vessels and other property; and it can negotiate payment plans. Indeed, some of the individuals who now face loss of their permits have offered the IRS each of these alternatives.

Conclusion

We fully support the IRS in its worthy efforts to collect taxes. However, the means which the IRS chooses to employ are open to question. Irrespective of the outcome of the legal issue, IRS seizure of an entry permit--the required tool of trade for an Alaska fisherman--would appear to be one of the most questionable means to enforce a tax obligation. It threatens the livelihood of the fisherman and those dependent upon him, and it threatens a future source of revenue to the State and the federal government.

Attachments

I.R.S. AUCTION

BY INTERNAL REVENUE SERVICE

Thursday, March 29th, 1990

**Egan Civic and Convention Center
550 W. 5th Ave. Anchorage, AK 99501**

PROPERTY DESCRIPTION

Three Aleutian Peninsula Limited Entry Salmon Purse Seine Permits
One Bristol Bay Limited Entry Salmon Set Net Permit
One Bristol Bay Limited Entry Salmon Drift Gillnet Permit
One Chignik Limited Entry Salmon Permit
Two Prince William Sound Limited Entry Permits (1 Salmon Purse
Seine, 1 Salmon Drift Gillnet)

SALE TERMS

The successful bidder may place the bid amount in an escrow account pre-approved by the Chief of Special Procedures pending transfer by the State of Alaska Limited Entry Commission.

The successful bidder must certify in writing at the time the successful bid is announced that he/she meets the conditions for transfer of the permit prescribed in AS.05.1720.

PAYMENT TERMS

Deferred payment as follows: \$10,000 at the time of sale and full payment of the bid amount by April 19, 1990 at 1:00 p.m. All payments must be by cash, certified check, cashier's or treasurer's check or by a United States postal, bank, express, or telegraph money order. Make check or money order payable to the Internal Revenue Service.

**For more information contact:
Richard Schult at (907) 261-4481.
Dept. of the Treasury/Internal Revenue Service
P.O. Box 101500 Anchorage, AK 99510-1500
Attn: RO 1207**

ATTACH. A

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1990

Richard A. Schult
Revenue Officer
Internal Revenue Service
P.O. Box 101500
Anchorage, AK 99510-1500

Re: Proposed forced sale of
commercial fishing limited entry
permits and notices of intent
filed by the Internal Revenue
Service -- Our file 663-90-0325

Dear Mr. Schult:

From an article and advertisements in the Anchorage Daily News, we have learned that the Internal Revenue Service ("IRS") proposes to force the sale of eight (8) Alaska commercial fishing limited entry permits. (A list of the permit numbers and the names of their holders is attached.) Apparently in support of the proposed sale, you have signed and submitted to the Alaska Commercial Fisheries Entry Commission ("CFEC") a number of "Notice of Intent to Transfer" forms with respect to each of the permits. None of those forms have been signed by the permit holders.

The State of Alaska has informed the IRS on several occasions that, in limiting entry to Alaska's fisheries, the Alaska Legislature declared that limited entry permits are use privileges subject to revocation without compensation and not property. AS 16.43.150(e). Consistent with that definition of the nature of entry permits, the Alaska Legislature placed a number of restrictions upon the holder of an entry permit and generally prohibited forced transfer of an entry permit: "Except [under limited circumstances], an entry permit may not be . . . attached, distrained, or sold on execution of judgment or under any other process or order of any court." AS 16.43.150(g).

As a consequence, state procedures allow only the holder of an entry permit to initiate a transfer of that permit. No provisions exist for a forced transfer. Accordingly, we are returning to you each of the "Notice of Intent to Transfer" forms that you have filed on behalf of the IRS.

It also has been reported that, in light of the absence of any provisions in state law for forced transfer of entry

ATTACH. B.

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE. (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE. (907) 465-3600

Richard A. Schult
Revenue Officer
Internal Revenue Service

March 2, 1990
Page 2

permits, the IRS may suggest to prospective bidders at any sale that, if successful, they should sue the state to gain possession of the permits. We presume from this that the IRS will at least inform prospective bidders that there may be a problem in obtaining possession of the permits.

Beyond that, however, we seriously question the wisdom of the IRS attempting to wash its hands of any legal questions surrounding the proposed sale and transfer any risk to prospective bidders. The depressing effect this action will have on potential bids is obvious. The social and economic costs such action will inflict on potential bidders, the permitholders, and the state are not so obvious, but nonetheless substantial.

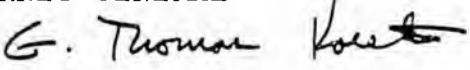
These questions become even more significant if, as we understand, many of the permitholders involved are actively seeking ways other than forced sales to pay their tax obligations. Given the legal uncertainties surrounding the proposed forced sales, sound policy would seem to dictate that all other potential alternative remedies be exhausted before embarking on such a questionable approach.

We therefore urge the IRS to reconsider its attempts to force sales of entry permits and to look to alternative means to enforce tax obligations, such as attachment of assets and earnings and negotiating payment plans. At the same time, we recognize the obligation all citizens have to support their government. Should a fisherman be persuaded to sell his or her permit to obtain funds to pay a tax obligation, the CFEC remains ready to transfer the permit at the request of the holder. Absent a request to transfer by the holder, however, our hands are tied.

We hope you will reconsider the proposed forced sales.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

Richard A. Schult
Revenue Officer
Internal Revenue Service

March 2, 1990
Page 3

GTK:dlm

Enclosure

cc: Robert W. Brock
District Director
Anchorage District Internal Revenue Service
949 East 36th Avenue
Anchorage, Alaska 99508

Commercial Fisheries Entry Commission

February 26, 1990

Permit holders and entry permit numbers with respect to which the
IRS has filed Notices of Intent to Transfer:

Malcolm J. Brown	S01E 59399E
Malcolm J. Brown	S03E 59179U
William Shellikoff	S01M 64041X01ER
Steve E. Williams	S04T 314I01KN
Chris A. Gundersen	S01M 58154X
Wilbur M. McGlashan	S01M 60579E01 HR
Andy Kalmakoff	S01L 61370VO1MR
George L. Gatter	S03T 56879M

BUSINESS

Anchorage Daily News

SECTION C Feb 23, 1990

Fishing permits up for sale IRS stirs debate with state over auction of seized papers

By HAL BERNTON
Daily News reporter

The Internal Revenue Service is trying to sell eight limited-entry fishing permits worth more than \$14 million at a first-of-its-kind auction. The March 29 sale appears certain to trigger a major clash with the state, which views these fishing rights as a privilege — not property — and exempt from federal seizure.

The state Commercial Fisheries Limited Entry Commission controls the permits that regu-

late access to Alaska salmon and herring harvests. And commission officials say they will not approve any transfers to the auction's winning bidders.

"There is no value without the transfer papers," said Rich Listowski, a commercial fisheries commissioner.

IRS officials insist that a permit is property — subject to seizure for unpaid taxes just like real estate, automobiles and jewelry.

"Our position is that it's a

valuable asset that we are entitled to seize, and would expect the state to transfer the permits," said Marilyn Steen, an IRS spokeswoman.

The IRS is suggesting to prospective winning bidders that they could file a class action suit to pry the permits away from the state, she said.

State officials say they are prepared to defend their position in court.

In the meantime, to ensure

there will be plenty of bidders at the March auction, the IRS is advertising the permit sale nationwide, Steen said. Due to the conflict with the state, the IRS expects the permits to sell at well below current market values.

The permits up for sale offer access to some of Alaska's most lucrative salmon fisheries — Bristol Bay, False Pass, Chignik and Prince William Sound.

Please see Page C-4 PERMITS

PERMITS: IRS, state conflict

Continued from Page C-1

Those whose permits have been seized still have more than a month to pay up their back taxes and regain their fishing rights. At least one fisherman intends to do just that.

"I owe \$130,000 in back taxes," said Chris Gundersen, a Sand Point fisherman. "It's kind of a bum deal. I'm not going to let them sell it (the permit) at auction. I will pay it off."

Other fishermen with seized permits could not be reached for comment Thursday.

Limited entry permits were created in 1983 by a state legislature desperate to find a way to curb the number of fishery participants at a time when salmon stocks were near record lows. The legislation created complex criteria (largely based on past experience) to determine who could participate in each of Alaska's regional salmon fisheries.

Fishermen who received those permits were free to fish them for as long as they chose, or sell or give the permits away.

But legislators, according to a state House Research Agency memorandum, didn't want an asset that could be acquired by speculators or canneries. So they defined the permits as a privilege that could "not be pledged, leased or encumbered in any way." Although they later amended the act to allow two state lending agencies to use the permits as collateral.

A 1978 state attorney general's opinion declared the permits were not a property right. Therefore, if the legislature chose to revoke or otherwise tamper with the limited entry system, it would not have to compensate fishermen for any losses in permit values.

In the '80s, values of more than 12,000 salmon and herring permits soared as stocks rebounded to record levels and markets improved. The permits currently have a combined market value of more than \$1 billion, according to a House Research Agency study.

For years, the Internal Revenue Service has sought to seize the permits of fishermen who owe back taxes, according to Listowski. Several times in the past they seized permits, but fishermen always paid off the back taxes before the issue ended up in the courts.

Commission officials have negotiated with IRS officials in an effort to forestall new seizures. But the IRS now appears determined to force the issue, Listowski said.

ATTACH. C.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

P.O. BOX KB
JUNEAU, ALASKA 99811-0302
PHONE: (907) 465-4081

March 2, 1990

Re: Internal Revenue Service
Forced Sale of Your Entry Permit

Dear Permit Holder:

As we trust you are fully aware at this point, the Internal Revenue Service (IRS) proposes to force the sale of your entry permit on March 29, 1990.

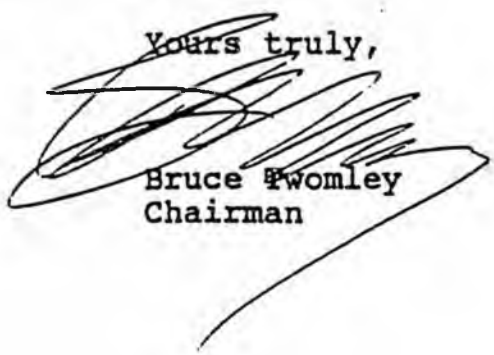
The State has been resisting this kind of action by the IRS since at least 1981 and will continue to do so. Enclosed is a copy of a letter the Attorney General has sent to the IRS concerning your entry permit.

The fact that the State is resisting the IRS may not help you: in fact it may hurt you unless you take action on your own behalf. The State's opposition will likely discourage higher bids at the IRS auction. If the IRS finds a way to roll over the State's opposition, you will have to live with the results of the sale, unless you have protected yourself.

Therefore, if you have not already done so, we urge you to get qualified professional help and to take action on your own behalf. The situation varies from case to case, and there may be helpful remedies that you could pursue on your own. Therefore, we urge you to seek the help of a lawyer, accountant, or other advocate qualified to address IRS issues.

You, or anyone on your behalf, is welcome to call me to discuss these matters. Please act quickly.

Yours truly,



Bruce Twomley
Chairman

BT:dan
Enclosure

ATTACH. D.