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SENATE FINANCE COMMITTEE REPORT

DATE: 2/16/90

FURTHER:

DATE TURNED INTO OFFICE: 3/30/90

The Finance Committee considered SB 180

Exemptions from the motor fuel tax, and extending the exemption from the requirements of obtaining a certificate of use to fuel used to heat commercial premises; efd.

and recommended:

[x] replace with CS SB 180 (Finance) [x] same title
[] or adopt CS [] new title
[] attached amendment(s) [] technical title change (HB only)
[] letter of intent adopted

[x] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

[x] fiscal note(s) Dept/Date: DOR 3/29/90 25.0

[] fiscal note(s) Dept/Date:

[] zero fiscal note(s)

[] zero fiscal note(s)

[] appropriation-no fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Handwritten signatures for 'SIGNING DO PASS' including names like 'Peace' and 'Paul'.

Handwritten signatures and notes for 'OTHER RECOMMENDATIONS' including 'No Rec'.

1. [Signature] No Rec. -- 2. Co-Chairs: Signatures and Recommendations

740 JFC 3-30-90

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CS SB 180 (Finance)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: Motor Fuel Tax and its
exemptions
Sponsor: Senator Coghill
Requestor: Finance

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	25.0	25.0	25.0	25.0	25.0	25.0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	25.0	25.0	25.0	25.0	25.0	25.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	25.0	25.0	25.0	25.0	25.0	25.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	25.0	25.0	25.0	25.0	25.0	25.0

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: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320
Division: Income and Excise Audit Date: March 29, 1990

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: March 29, 1990
Agency: Department of Revenue

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

CS SB 180
Analysis
March 29, 1990

Introduction

The Department supports this compromise legislation provided additional resources are granted to ensure that compliance with the motor fuel tax law is not diminished. The \$25,000 fiscal note is for increased field audit efforts on a regional basis to ensure strong compliance with the new law.

Problem

The problem this legislation addresses is the alleged burdensome requirements placed upon heating fuel dealers to obtain a signed statement from their heating fuel customers each year that the fuel is to be used for heating purposes only and not converted to a taxable use. This statement, a certificate of use form developed by the Department has been required by law and regulation since the early 80's.

Present Law

Under present law, if a dealer sells fuel "tax off" to a customer, the dealer must receive a signed certificate of use from the customers stating the intended tax exempt use. The certificates are to be obtained annually from the customer and kept on file by the dealer. The dealer cannot be held liable for the tax if the customer converts the untaxed fuel to a taxable use.

Amendments

Section 1, paragraph (a), states that if a dealer fails to obtain a certificate of use for fuel that is subsequently used in a taxable manner, the dealer must pay the tax and a failure to timely pay penalty, regardless of whether the dealer made a good faith effort (reasonable belief) to determine whether the fuel sold was to be used in a tax exempt manner.

Paragraphs (b) and (c) restates current law, except for referencing the new provisions in (d)

Paragraph (d) provides

- 1) a certificate of use is not required to be obtained by a dealer for sales of fuel to stationary power plants (new law), fuel that is 10% alcohol by volume (existing law) or other fuel determined by the department by regulation to be exempt (existing law);

- 2) that a certificate of use is not required for the sale of heating fuel to heat private or commercial buildings, but requires a certificate of use to be on file for heating fuel sold to businesses engaged in construction and mining activity (new law).

Adopted
by SF
3/29/90
U-0011J
— SF

Original sponsor(s): SEN. COGHILL, Frank

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 180 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the motor fuel tax and its ex-
7 emptions; and providing for an effective date."

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

9 * Section 1. AS 43.40 is amended by adding a new section to read:

10 Sec. 43.40.015. EXEMPTION FROM COLLECTION OF TAX. (a) A dealer
11 who has a reasonable belief at the time of sale or transfer that fuel
12 that is sold or transferred is not to be used as motor fuel need not
13 collect the motor fuel tax. However, as to fuel for which the tax was
14 not collected and for which a certificate of use was not obtained, if
15 the department determines that the fuel was put to a use that is
16 taxable under this chapter, the dealer is liable for the tax and
17 subject to a civil penalty under AS 43.05.220(a) whether or not the
18 dealer's belief that the fuel sold or transferred would not be used as
19 motor fuel was reasonable.

20 (b) Except for sale or transfer of fuel under (d) of this sec-
21 tion, if the motor fuel tax is not collected, the dealer shall obtain
22 a certificate of use from the buyer or transferee at the time of the
23 first sale or transfer of the fuel stating that the fuel that has been
24 or will be purchased or received is not intended for use as motor
25 fuel. The form of the certificate of use shall be prescribed by the
26 department by regulation. The department may not collect the motor
27 fuel tax from a dealer for fuel for which a certificate of use has
28 been properly obtained under this subsection.

29 (c) A certificate of use must be renewed annually for exemptions

1 listed under AS 43.40.100(2).

2 (d) A certificate of use is not required

3 (1) for fuel exempted under AS 43.40.100(2)(C), (F), or
4 (K); and

5 (2) for fuel exempted under AS 43.40.100(2)(J) other than
6 fuel sold or transferred under this exemption to a person who is
7 engaged in construction or mining activity.

8 * Sec. 2. AS 43.40.035(a) is amended to read:

9 (a) A person who resells fuel on which the tax under AS 43.40.-
10 010(a) or (b) was previously paid is entitled to a credit or refund of
11 the tax if (1) the resold fuel is not motor fuel and the requirements
12 of AS 43.40.015 [AS 43.40.010(1)] have been fulfilled; or (2) the
13 amount of tax previously paid exceeds the tax due on the resale. The
14 amount of the credit or refund under this section is equal to the
15 amount of tax previously paid on the resold fuel less the amount of
16 tax prescribed by AS 43.40.010(a) or (b).

17 * Sec. 3. AS 43.40.010(1) is repealed.

18 * Sec. 4. This Act takes effect July 1, 1990.
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Senator John B. (Jack) Coghill

Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862



MEMORANDUM

DATE: March 27, 1990

TO: Senator Rick Uehling
Senate Finance Committee Co-Chair

Senator John Binkley
Senate Finance Committee Co-Chair

FROM: Senator Jack Coghill

SUBJECT: CS SB 180; An Act relating to the motor fuel tax and its exemptions ETC; and providing for an effective date.

BILL SUMMARY

This bill proposes to allow tax collection exemptions to fuel dealers "who have 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 need not collect the motor fuel tax." A certificate of use, verifying the nontaxable use is required for all uses except, fuel used in stationary power plants (AS 43.40.100(2)(C)), fuel which is at least 10% alcohol (AS 43.40.100(2)(F)), heating fuel for private and commercial building or facilities (AS 43.40.100(2)(J)) or fuels for nontaxable purposes prescribed by regulation.

FISCAL IMPACT

The Department of Revenue has indicated this bill has ZERO fiscal impact.

ABOUT THE BILL

The bill is supported by fuel distributors because it will reduce the amount of paper work they are required to file with the department.

We have been working closely with Representative Sharp, who first introduced this legislation on the House side.

It has come to our attention that House Finance Committee will be adopting a Committee Substitute, we have taken the liberty to attach a blank Senate CS to this memorandum. We have contacted several distributors who have been following this legislation and

March 27, 1990

they continue to strongly support the attached blank CS for CS SB 180.

The blank CS for SB 180 addresses several concerns the Department of Revenue has repeatedly expressed in committee hearings in the House recently.

Changes, besides the drafting format and the simpler title, included in the blank CS are:

1) In Section 43.40.015(a), a sentence has been added, beginning on line 13 with the word "However." This sentence spells out what fuel distributors are already responsible for under AS 43.05, and it makes no change to the liability distributors operate under. The department of revenue recommends this change, and we join the fuel suppliers in concurring.

2) In Section 43.40.015(d)(2), we have disallowed the annual certificate of use filing exemption for construction and mining activity, because of the mobile nature of these operations. This is also jointly supported by us, the department, and the suppliers.

RECOMMENDATION

I recommend that the committee adopt the attached blank CS, as a Finance Committee Substitute, and pass the bill from committee with do pass recommendations.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

February 22, 1990

Hon. Bert Sharp
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: Department of Revenue amendment
of 15 AAC 40.030, motor fuel tax
regulation
(Our file 993-90-0043)

Dear Rep. Sharp:

Thank you for your February 9, 1990 memo on this subject. On February 7, 1990, the regulation at issue was approved by this department and submitted to the lieutenant governor.

You are correct that a regulation may not be in conflict with a statute. I.e., a regulation that is inconsistent with a statute is invalid. You are also correct that the recently amended version of 15 AAC 40.030(c) (copy of final enclosed) is, in part, invalid. I mistakenly approved it for the Department of Law, and am now expressly withdrawing that approval (see enclosed memo of this date to the lieutenant governor).

The statute you cite -- AS 43.40.010(1) -- says in relevant part:

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 [that] certificate of use needs under AS 43.40.100(2)(K) will be determined by the department.

Hon. Bert Sharp
Alaska House of Representatives
Our file 993-90-0043

February 22, 1990
Page 2

(Emphasis added and the missing "that" in front of "certificate" in the third line from the bottom added.)

Your memo quoted only the first seven words of that second sentence -- "An annual certificate of use is required." However, these two sentences set out three different types of exemptions from the annual certificate requirement: (1) fuel for domestic purposes, (2) fuel that is at least 10 percent alcohol, and (3) needs determined by the department under AS 43.40.100(2)(K).

After listing exemptions from the definition of "motor fuel," AS 43.40.100(2)(K) adds "fuel used for other nontaxable purposes as prescribed by regulations adopted by the department." Implementing that statute, the Department of Revenue has adopted 15 AAC 40.020(c), which lists exemptions. Paragraph (5) of that subsection's list exempts from AS 43.40.010 -- 43.40.100 "fuel sold exclusively for use for heating commercial buildings and facilities" (essentially repeating AS 43.40.100(2)(J)).

The defect in 15 AAC 40.030(c) lies in its paragraph (2), which would relieve dealers from the requirement for an annual certificate of use for fuel used for heating commercial buildings and facilities. Since that kind of fuel is exempted from the definition of "motor fuel" by AS 43.40.100(2)(J), it is not one of those exempted from the annual certificate-of-use requirement by AS 43.40.010(1). As quoted above, this latter statute exempts from the annual requirement those determined by the department under AS 43.40.100(2)(K). Thus, under the statutes, this type of fuel is one for which an annual certificate is required and is not within the exemption authority of the department. This conclusion also renders the first amendment of 15 AAC 40.030(a) (i.e., the addition of "or (c)") meaningless, so its approval is also being withdrawn.

The second point in your memo mentions fuel dealers' concern about "(c)(2) of the proposed regulation changes." They told you that "this change would place greater compliance burdens on fuel dealers. . . ." I do not see how that could be the case. That paragraph of the proposed amended regulation attached to your memo is virtually identical to 15 AAC 40.030(c) as it existed before the recent amendment. (The provision is identified as 15 AAC 40.030(c)(1) in the final version, enclosed.) A copy of the pre-amendment version that is still on the books is also enclosed for your convenience.

Therefore, as to your first point, we believe that part of the amended 15 AAC 40.030(c) is invalid, and I am withdrawing

Hon. Bert Sharp
Alaska House of Representatives
Our file 993-90-0043

February 22, 1990
Page 3


the Department of Law's February 7, 1990 approval of it. The amended regulation has not yet been published in the Alaska Administrative Code. As to your second point, there must have been some misunderstanding on the part of the fuel dealers who contacted you. Their comment simply is not correct.

If you should have any question about this matter, please feel free to contact Assistant Attorney General Jeff Bush or me.

Yours truly,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:


Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

AHP:ahp

cc w/enc.: Hon. Hugh Malone, Commr.
Department of Revenue

Jeff Bush, Asst. Atty. Genl.
Juneau

15 AAC 40.030(a) is amended to read:

(a) Except as provided by (b) ~~or (c)~~ of this section, a dealer or fuel reseller who sells or transfers fuel that is exempt under 15 AAC 40.020(c) shall obtain a certificate of use from the buyer or transferee at the time of the first sale in each calendar year, stating that the fuel that is purchased or received is not intended for use as motor fuel subject to tax under AS 43.40.010. A dealer or fuel reseller must use a certificate-of-use form prescribed by the department. ~~(Eff. 7/19/82, Register 83; am 11/14/82, Register 84; am 8/12/84, Register 91; am 1/19/86, Register 97; am / / , Register)~~

~~Authority: AS 43.05.080
AS 43.40.010
AS 43.40.035
AS 43.40.050
AS 43.40.085
AS 43.40.100~~

15 AAC 40.030(c) is amended to read:

(c) With respect to an exemption under 15 AAC 40.020(c)(5),

(1) the certificate of use must itemize and show the location of each tank or other facility that stores fuel used exclusively for heating commercial buildings and facilities;

(2) the certificate of use obtained upon the first sale need not be renewed annually unless the location of a tank or other facility that stores heating fuel is changed, or the intended use of any fuel stored in the tanks or facility is changed to another exempt use under 15 AAC 40.020. (Eff. 7/19/82, Register 83; am 11/14/82, Register 84; am 8/12/84, Register 91; am 1/19/86, Register 97; am / / , Register)

Authority: AS 43.05.080
AS 43.40.010
AS 43.40.035
AS 43.40.050
AS 43.40.085
AS 43.40.100

MEMORANDUM

State of Alaska
Department of Law

TO Stephen McAlpine
Lieutenant Governor

DATE February 22, 1990

FILE NO 993-90-0043

TEL NO 465-3600

SUBJECT Withdrawal of approval of
15 AAC 40.030(c)(2) --
certificate-of-use
requirements for certain
fuel exempt from fuel tax

FROM


Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

On February 7, 1990, the Department of Law approved 15 AAC 40.030(c)(2), along with certain other amendments of the motor fuel tax regulations by the Department of Revenue. I was in error in issuing that approval. See AS 43.40.010(1) and 43.40.100(2)(J) and (K).

Therefore, I am withdrawing that approval. Please instruct your staff to note in the margin next to that paragraph "Disapproved per AHP, 2/22/90" and then initial the note. This should be done before that regulation is sent to The Michie Company for publication in the next Alaska Administrative Register. If it has already been sent, Michie must be instructed not to print that paragraph.

In conjunction with that disapproval, it will be necessary to delete the paragraph (1) designation for the material following the lead-in line of 15 AAC 40.030(c) and preceding the disapproved paragraph (2). What was paragraph (1) should simply follow the lead-in language without a paragraph break. In addition, the new reference in 15 AAC 40.030(a) to "or (c)" must be deleted.

The error was brought to my attention by Representative Bert Sharp, and I have replied to him in a relatively detailed letter today.

AHP:ahp

cc: Hon. Bert Sharp
Alaska House of Representatives

Hon. Hugh Malone, Comr.
Department of Revenue

Jeffrey W. Bush
Assistant Attorney General
Juneau

Alaska State Legislature

REPRESENTATIVE
BERT SHARP

DISTRICT 2C

COMMITTEE
RESOURCE

FINANCE SUBCOMMITTEE
DEPARTMENT OF NATURAL RESOURCES



FAIRBANKS
115 N CUSHMAN
FAIRBANKS ALASKA 99701
(907) 452-7885 / 7886

WHILE IN JUNEAU
PO BOX V
STATE CAPITOL
JUNEAU ALASKA 99911
(907) 465-3004 / 3018

House of Representatives

MEMORANDUM

TO: Arthur H. Peterson, Assistant Attorney General
FROM: Representative Bert Sharp *BMS*
DATE: February 9, 1990
SUBJ: Proposed regulation changes to 15 AAC 40.030

It is my understanding that the proposed regulation changes to 15 AAC 40.030, Certificate Requirements for Certain Sales, are awaiting regulatory review and approval by the Attorney General's Office. (A copy is attached for your convenience).

These changes were drafted after legislation was introduced in response to requests from fuel distributors to do away with the certificate of use requirement presently in statute (A.S. 43.40.015). There are a couple of areas of concern that I bring to your attention regarding to the proposed regulation changes.

First, the amendment as proposed in (c) is in direct conflict with current law. Alaska Statute 43.40.010(1) states that "an annual certificate of use is required..." and that the dealer "shall retain a copy of each certificate...". (Emphasis added). The proposed amendment states: (c)(1) "the certificate of use obtained upon the first sale need not be renewed annually...". (Emphasis added). I do not believe that a department can propose



REPRESENTING
GOLDEN HEART
OF ALASKA

Arthur H. Peterson
February 9, 1990
Page 2

regulations which are in conflict with specific sections of an existing law.

Secondly, many of the fuel dealers have expressed their concern with (c)(2) of the proposed regulation changes. They tell me that this change would place greater compliance burdens on fuel dealers than which they are currently subject. In some instances where fuel is delivered to bush communities, Section (2) would be virtually impossible to comply with, and would thus subject fuel dealers and consumers to needless penalties.

I request that these concerns be taken into consideration and, because of these concerns, believe HB183 provides the best solution for all concerned.



HALLIBURTON SERVICES

J. D. GIVENS
DISTRICT MANAGER

6900 ARCTIC BLVD.
ANCHORAGE, ALASKA 99518
PHONE NUMBER: 207-7111

February 21, 1990

The Honorable John B. "Jack" Coghill
The State Senate
Room 30 - Capital
P. O. Box V
Juneau, Alaska 99811

Dear Sir:

I would like to say that I fully support your Bill (SB-180) to stop the unnecessary certification work. It is a needed change and one that will help improve doing business in Alaska.

If I can be of any assistance with this matter, please advise.

Respectfully,

Jim Givens
Alaska District Manager

JG:am





P.O. BOX 1947, SITKA, ALASKA 99835
PHONE (907) 747-8460

February 5, 1990

Representative Bert Sharp
P.O. Box V
Juneau, Ak.

RE: HB-183, SB-180

Dear Representative Sharp:

As a fuel dealer, we support your effort to exempt fuel dealers from obtaining a certificate of use for fuel sold to heat commercial buildings.

Heating fuel sales are exempt from fuel tax by statute, yet the regulation appears to require that exempt certificates, which are intended to exempt certain sales of taxable fuels, be obtained annually and maintained in seller's files. This requirement creates a tremendous administrative burden on fuel dealers. We should only be required to obtain a certificate of use if we have a doubt about what the customer will use the fuel for.

HB-183 and SB-180 will eliminate a large portion of the cost of the certificate of use program with no reduction in fuel tax collection.

We appreciate your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Don Brown".

Don Brown
President

P.C. Jack Coghill
Dick Eliason



MAPCO ALASKA PETROLEUM INC.

A. L. Buki Wright, Jr.
VICE PRESIDENT — ALASKA
(907) 452-5318

January 22, 1990

Senator Jack Coghill
P.O. Box V
Juneau, AK 99811

Dear Senator Coghill:

I fully support SB 180, exempting fuel dealers from obtaining a certificate of use for fuel oil sold to heat commercial facilities. Under SB 180, dealers would be relieved of the burden of collecting numerous certificates of use for sales which are obviously nontaxable. However, the use of certificates, for sales they feel are potentially taxable, would be preserved.

At the present time, fuel dealers are not required to charge the motor fuel tax for fuel sold to heat commercial or private facilities. A certificate of use must be obtained, however, for fuel sold to heat commercial buildings. That certificate is signed by the customer certifying that he is using the fuel for a tax exempt purpose.

Under AS 43.40.010(1), motor fuel tax does not have to be collected if a dealer believes at the time of the sale that the fuel will not be used for a taxable purpose. A dealer will usually know, by sight, how the purchaser will use the fuel.

Heating fuel is exempt from motor fuel tax and should also be exempt from the requirements of the certificate of use. If a dealer has doubts about the use of the fuel, he will obtain a certificate of use for protection against the liability of paying tax at a later date.

Sincerely

A.L. Buki Wright, Jr.



PO Box 268
Juneau, Alaska 99760
907-586-5476

January 22, 1990

Senator Jack Coghill
PO Box V, Room 30C
Juneau, Alaska 99811

Dear Senator Coghill:

We would like to take this opportunity to express our support for SB180 exempting fuel oil dealers from obtaining a Certificate of Use for fuel oil sold to heat commercial facilities.

As it stands now, motor fuel tax need not be collected if a dealer has reasonable belief that at the time of the sale the fuel is not to be used for taxable purposes. Since heating fuel is exempt from the motor fuel tax, it should also be exempt from the requirements of the Certificate of Use.

SB180 would relieve fuel oil dealers of the burden of collecting Certificates of Use for those sales which are obviously untaxable.

We hope you will support this piece of legislation.

Sincerely,

A handwritten signature in cursive script that reads "Dean Ojala".

Dean Ojala
Terminal Manager

DO/abh

Express FUELS

•• A DIVISION OF MARCO ALASKA PETROLEUM

January 22, 1990

Senator Jack Coghill
PO Box V, Room 30C
Junuea, Alaska 99811

Dear Senator Coghill:

We would like to let you know of our support for SB #180, concerning Certificates of Use for heating oil sold to heat commercial facilities.

As you already know, motor fuel tax is not collected on heating oil if it is not to be used for taxable purposes. This is based upon the dealers belief of what the fuel will be used for. In almost every case, a dealer will know by sight what the purchaser will use the fuel for.

Therefore, we believe that fuel oil dealers should only be required to obtain a Certificate of Use if there is a doubt as to what the fuel will be used for.

SB #180 would relieve the dealers of the burden of collecting Certificates of Use for those sales which are obviously untaxable, yet would preserve the use of the Certificates for those sales which we feel could be potentially taxable.

We hope you will support this piece of legislation.

Sincerely,

Charlie Croan
Charlie Croan, *for*
Operations Manager

CC/abh

A/B

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 180
PUBLISH DATE: 2/16/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the
exemptions from the motor fuel tax
Sponsor: Coghill and Frank
Requestor: Transportation and Finance

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
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
LANDS & 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
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: See attached.

Prepared By: Steven E. Kettel
Division: Income and Excise Audit

Phone: (907) 465-2320
Date: February 21, 1989

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: February 21, 1989

Distribution (by preparer):

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

ANALYSIS

Section 1 of the bill amends AS 43.40 by adding a new section to generally provide that a dealer is not required to collect the motor fuel tax if a certificate of use is obtained from the buyer representing that the fuel is not for use as motor fuel. The certificate of use prohibits the department from trying to collect from the dealer in the event the fuel was taxable motor fuel.

The bill also provides that certificates of use need not be obtained in certain instances. A certificate of use need not be obtained by a dealer for fuel which is at least 10% alcohol, for fuel used to heat private or commercial buildings or facilities, and for fuel used for nontaxable purposes as determined by the department in regulations. A dealer only needs a reasonable belief that the fuel is not to be used as motor fuel in order to sell the motor fuel without collecting the tax. Reasonable belief is not defined.

The amendment essentially follows current law with one major exception. Current law provides that a certificate of use is not required for fuel for any domestic purpose in a single or multiple unit private dwelling or for fuel which is at least 10% alcohol. Therefore, the amendment extends the exemption from obtaining the certificate of use to all fuel for heating purposes.

Section 2 amends AS 43.40.035(a). This provision gives a credit or refund to a person who resells fuel previously taxed that is not motor fuel. The amendment will allow a dealer to obtain a refund of any taxes paid on fuel for which he has obtained a certificate of use or possesses a reasonable belief that the fuel is not to be used as motor fuel.

Section 3 repeals AS 43.40.010(1). The repealed section previously provided instances where the dealer was not required to obtain certificates of use.

Section 4 provides for a July 1, 1989 effective date.

This fiscal note did not accompany the bill into committee.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 180

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: February 2, 1990
Title: An act relating to the exemptions from the motor fuel tax
Sponsor: Coghill and Frank
Requestor: Transportation and Finance

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
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
LANDS & 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
REVENUE	88-440.0	88-440.0	88-440.0	88-440.0	88-440.0	88-440.0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: See attached.

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320
Division: Income and Excise Audit Date: February 2, 1990

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: February 2, 1990
Agency: Department of Revenue

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

SB 180
February 2, 1990
Prepared by Income
and Excise Audit Division
Department of Revenue

Analysis

Section 1 of the bill amends AS 43.40 by adding a new section to generally provide that a dealer is not required to collect the motor fuel tax if a certificate of use is obtained from the buyer representing that the fuel is not for use as motor fuel. The certificate of use prohibits the department from trying to collect from the dealer in the event the fuel was taxable motor fuel. Paragraphs (a) and (b) are identical to AS 43.40.010(1) which is repealed in Section 3 of the bill.

Paragraph (c) provides that certificates of use need not be obtained in certain instances. A certificate of use need not be obtained by a dealer for fuel which is at least 10% alcohol, for fuel used to heat private or commercial buildings or facilities, and for fuel used for nontaxable purposes as determined by the department in regulations. A dealer only needs a reasonable belief that the fuel is not to be used as motor fuel in order to sell the motor fuel without collecting the tax. Reasonable belief is not defined.

The amendment essentially follows current law with one major exception. Current law provides that a certificate of use is not required for fuel for any domestic purpose in a single or multiple unit private dwelling or for fuel which is at least 10% alcohol. Therefore, the amendment extends the exemption from obtaining the certificate of use to all fuel for heating purposes.

Section 2 amends AS 43.40.035(a). This provision gives a credit or refund to a person who resells fuel previously taxed that is not motor fuel. The amendment will allow a dealer to obtain a refund of any taxes paid on fuel for which he has obtained a certificate of use or possesses a reasonable belief that the fuel is not be used as motor fuel.

Section 4 provides for a July 1, 1989 effective date which needs to be updated.

Comment

Prior to 1982, dealers were not required to collect motor fuel tax if they had a reasonable belief the fuel was to be used in a tax-free manner. Several dealers failed to collect tax in situations which the department and eventually the court held the dealer did not exercise reasonable care in determining whether tax should be collected. These decisions left dealers unprotected against customers that told a dealer they qualified to purchase fuel tax off yet used the fuel for a taxable purpose. To protect dealers, the certificate of use provisions were added to statutes in 1982. Dealers were no longer required to use their

SB 180
February 2, 1990
Prepared by Income
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independent judgment to determine a sales taxability. By obtaining a certificate of use from their customer, the dealer effectively transferred responsibility for collection of the tax to the customer. This provision also assisted the Department in increasing compliance with the motor fuel tax law. Customers were not as willing to sign a statement under perjury that the fuel was to be used in a tax-exempt manner as they were in orally communicating it to the dealer.

In recent days heating fuel distributors in the interior have become reluctant to obtain certificates of use from their commercial heating fuel customers. It at times is an arduous task and in their minds a lot of unnecessary paperwork. The Department addressed the situation in 1989 with regulations which eased the certificate of use reporting burden. Under new rules, dealers were only required to obtain a certificate with the first purchase of heating fuel made by a customer. So long as that customer's operation did not change, i.e., the fuel continued to be used for heating purposes, additional certificates of use are not required to be obtained. The department believes the regulations have adequately responded to the dealers needs and that the bill will take us back to the problems we faced prior to 1982.

Fiscal Impact

Statewide, approximately 110 million gallons of tax exempt heating fuel are sold annually. It is unknown how much of this fuel may actually be converted to taxable use without the state receiving the revenues. We anticipate that between 0-5% of heating fuel may be converted to taxable use if the bill passes. Assuming that the majority of it is consumed in diesel engines on highway, the potential tax loss would be \$88,000 per 1% leakage.