

S B

181

Alaska State Legislature

Al Adams
District L

WHILE IN SESSION
P.O. Box V
State Capitol
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(907) 465-3707

OUT OF SESSION
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Kotzebue, Alaska 99752
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Anchorage, Alaska 99503
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Official Business

MAR 06 1989

TO: BETTYE FAHRENKAMP, CHAIR
SENATE RESOURCES COMMITTEE

FROM: AL ADAMS, CHAIR *AA*
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

RE: SB 181, "AN ACT RELATING TO AN EXEMPTION FROM
MUNICIPAL PROPERTY TAXATION FOR NATURAL RESOURCES
IN PLACE; AND PROVIDING FOR AN EFFECTIVE DATE."

DATE: MARCH 3, 1989

THIS IS TO REQUEST SCHEDULING OF THE AFOREMENTIONED LEGISLATION
IN THE SENATE RESOURCES COMMITTEE AT YOUR EARLIEST CONVENIENCE.

THE DOCUMENTS IN THE REFERRAL FILE CLEARLY IDENTIFY THE NEED FOR
THIS LEGISLATION. IT IS A LEGISLATIVE PRIORITY OF THE ALASKA
MUNICIPAL LEAGUE AND BENEFITS MANY MUNICIPALITIES IN THE
STATE.

THE BILL WAS HEARD IN THE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE THIS WEEK AND A COMMITTEE SUBSTITUTE MADE A MINOR
CHANGE IN THE DATE THE TEMPORARY ACT WOULD BE REPEALED FROM
JANUARY 1, 1992 TO JULY 1, 1991.

IF YOU OR YOUR STAFF HAVE QUESTIONS PLEASE DO NOT HESITATE TO
CONTACT MY AIDE MARTHA STEWART AT 465-3707.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

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

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

FURTHER RES
FIN
DATE TURNED INTO OFFICE _____

2/17/89

Mr. President:

C&RA

Committee considered SB 181

exemption from municipal property taxation for natural resources
in place; efd

and recommended:

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

FISCAL NOTE(S) attached zero fiscal impact
 appropriation no FN attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]

[Signature] - no rec
[Signature] no rec.

[Signature] - DO PASS
Chairman signature and recommendation

Committee backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act..exemption from municipal
 property taxation for natural resources.."
 Sponsor: Senator Adams
 Requestor: Senate C&RA Committee

Agency Affected: Community & Regional Affairs
 BRU: State Assessor
 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						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasmany Deputy Director
 Division: Municipal & Regional Assistance

Phone: 465-4750
 Date: 2/24/89

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

Date: 24 Feb 89

Distribution (by preparer):


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

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325
FAX 463-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

TO: Senator Al Adams, Chair
Members of the Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

DATE: February 28, 1989

SUBJECT: SB 181 - Municipal Property Tax Exemption for In Place Resources

The Alaska Municipal League supports SB 181. Recognizing the significance of the issue of municipalities imposing or not imposing a property tax on natural resources in place, the AML membership passed Resolution No. 89 - 21 (attached) at the annual business meeting in November 1988. After further analysis, the AML Board of Directors added the legislative resolution of the concern raised by the Department of Community and Regional Affairs earlier this year to its 1989 legislative priorities outlined in the AML Municipal Platform. SB 181 reflects the approach supported by the AML and the AML urges passage by the Legislature.

As outlined in AML Resolution No. 89 - 21, municipalities and the State of Alaska are required by law to include the values of natural resources in place (e.g. minerals, timber etc.) on local assessment rolls and in the full value determination, respectively, for purposes of taxation. Neither does because neither has the staff or fiscal resources to value the resources, and the inclusion of values for those resources would likely have a negative impact on residential property and on municipalities under the state revenue sharing and education funding formulas. Exempting the resources from property tax would recognize the difficulty of taxing natural resources in place and the status quo.

However, given the decline in state aid to municipalities and the increasing demand to provide additional local services with local tax dollars, limiting a potential tax base should be approached with caution. When the issue of taxing in place resources was raised earlier this year, the Department of Community and Regional Affairs stimulated significant discussion and debate around the State, especially among the municipalities and with the Department of Revenue. SB 181 calls for a temporary, two-year property tax exemption on natural resources in place to recognize the status quo, and it also calls for a study by the Department of Community and Regional Affairs to compare the potential effects of total exemption, partial exemption, no exemption and optional exemption. In conducting the study, DC&RA will consult with the Department of Revenue and the AML. The approach outlined in SB 181 with a temporary exemption and a study will take care of the immediate situation and provide for more understanding of the issue, a discussion of alternatives, and the development of a consensus on a long-term or permanent solution.

AML Testimony on SB 181
February 28, 1989
Page 2

In order to meet the legislative session and to adequately prepare for changes in the assessment process, the AML would request one amendment to the legislation:

Amend Sec. 3, page 2, line 1 as follows:

"This Act is repealed July 1, 1991 [January 1, 1992]."

This would provide adequate time for the study to develop recommended long-term legislative solutions (two years) and for the legislature to act. Assessment roles are determined as of January 1st of each year; therefore, in order for the municipality to add property to the assessment rolls if required by legislation passed in 1991 session and to assess in 1992, the assessors would have to do their work during the summer and fall of 1991 and have the property on the rolls by January 1, 1992.

Finally, the AML wants clarification either in testimony or in legislation that municipalities have the authority under law to place a severance tax on natural resources whether or not natural resources in place are exempt from property tax.

Again, the AML supports SB 181 as a legislative priority of municipalities across the State.

Attachment

MEMORANDUM

State of Alaska

Department of Law

TO: Bob Evans, Legislative Liaison
Office of the Governor

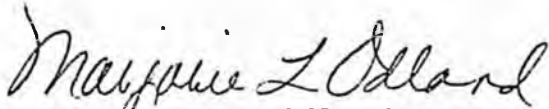
DATE: April 26, 1988

FILE NO: 663-88-0410

TEL. NO: 465-3600

SUBJECT: Exemption of "in place"
natural resources

FROM:



Marjorie L. Odland
Assistant Attorney General
Governmental Affairs-Juneau

You have requested our opinion regarding a draft bill exempting "in place" natural resources from municipal taxation (Our file: 773-88-0061). You have several concerns regarding the effect and necessity of this bill which will be addressed individually below.

1. What is the state's current obligation regarding the assessment of "in place" natural resources in the full-value determination of a borough or municipality?

The standard by which a local assessor must assess property is set out in AS 29.45.110(a), which reads:

The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section, AS 29.45.060 and 29.45.230. The full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

Under the above statute, a local assessor must assess all taxable property in accordance with the standard. The determination as to whether "in place" natural resources must be included in the assessment of property and the state's liability for insuring the inclusion of assessment of "in place" natural resources by municipalities is central to your question.

To date, municipalities have not assessed "in place" natural resources. Additionally, the state has not required municipalities to include these resources when determining full and true value of property under AS 29.45.110. There is no case law in Alaska interpreting AS 29.45.110 with respect to assessment requirements of "in place" natural resources nor is there a case

in Alaska holding that it is mandatory for these resources to be included in property assessment. However, it is the opinion of this office that "in place" natural resources may correctly be included in the full value determination of a municipality under AS 29.45.110(a) and that the Alaska Supreme Court would support this opinion.

Looking to other states' court opinions and treatise law, it is generally held that the right to tax is purely of statutory creation, and practically all of the authorities are to the effect that assessors, in valuing property, may take into consideration the fact that property contains undeveloped minerals in such quantity as to enhance the value of the land over its mere surface value. See 2 A.L.R. 1550-1553 and cases cited therein. It has also been held that minerals in place are not rendered nontaxable merely because of lack of legislative method and regulation for determining their value. Greene County v. Lattas Creek Coal Co., 100 N.E. 561 (Ind. 1913); 72 Am.Jur.2d State and Local Taxation § 764.

There is case law supporting the view that assessors are required to value for taxation all real property according to its market value. Under those decisions, value is measured by all the circumstances and advantages that tend to enhance it, of which underlying minerals, if accessible, are most important items, so that they must necessarily be included in the valuation. See, e.g., Logan v. Washington County, 29 Pa. 373, 14 Mor. Min. Rep. 108 (Penn. 1857). Any element of value tending to affect selling price "may" be taken into consideration by the assessor in arriving at a proper valuation for assessment purposes. Washington County v. Marquis, 82 Atl. 756 (Penn. 1912). The decisions of the courts in these two cases appear to have been based upon statutes similar in wording to AS 29.45.110(a).

Of main import, is that none of the authorities we found held for the premise that liability attaches to the state or local taxing entity for failure to include "in place" natural resources in their assessments. The authorities we found were based upon cases where a taxpayer was challenging the authority of the taxing jurisdiction to include the value of "in place" natural resources in the assessment of their property.

Furthermore, we found no cases holding that local or state assessors are required to search out "in place" natural resources in order to include them in the assessment of property. The cases mainly hold that it is correct for assessors to take into consideration all "facts" directly affecting the value. It is our opinion that this general rule concerns facts which affect

of deprivation of due process or equal protection against the state must fail. The Alaska Supreme Court recently ruled that a municipality is not a "person" and therefore may not assert due process or equal protection claims against its creator, the state. Kenai Peninsula Borough v. State, ___ P.2d ___, Op. No. 3277 (Alaska, Mar. 4, 1988).

If the state changes its application of AS 29.45.110-(a), rules of contemporaneous construction generally hold that a reversal in interpretation of a statute by the administering agency will be applied only prospectively. 2A N. Singer, Sutherland Statutory Construction § 49.05, (4th ed. 1984 rev.) (hereafter "Sutherland"). In other words, if the state reverses its interpretation and administration of AS 29.45.100(a) requiring municipalities to assess "in place" natural resources in their determinations of full value, the state's new interpretation most likely will apply only to future years; not retroactively.

We note that there is caselaw in other states supporting the following viewpoint:

the mere failure of public officers charged with the duty to enforce statutory and constitutional provisions in respect to the levy and collection of taxes, or the acquiescence of public officers in conditions that exempted certain property from taxation, should not be permitted to stand in the way of the "correct" administration of the law, or be construed to estop more diligent and efficient public officers when they attempt to perform their duty by bringing in to the revenue proper subjects of taxation that had theretofore been allowed to escape the payment of taxes.

Sutherland § 49.05 (citing Louisville v. Board of Education, 154 S.W. 379, 380-381 (Ky. 1913)).

Based upon the above viewpoint, we believe that the present state assessor has correctly pointed out that "in place" natural resources may be included in municipal assessments, and properly should be included. However, as noted above, it is the opinion of this office that no liability attaches to the state for failure to insist on the assessment of these resources at this time.

3. Is it your opinion that this exemption from municipal resources is necessary?

Bob Evans, Legislative Liaison
Office of the Governor
663-88-0410

April 26, 1988
Page #5

Probably yes, for the main purpose of addressing the issue and clarifying the state's application and interpretation of AS 29.45.110(a). We do not believe any retroactive liability will attach if the state does not immediately provide for this exemption in the law. Additionally, the state may wish to consider whether it wants to make the exemption of "in place" natural resources from municipal taxation mandatory upon the municipalities or whether to allow municipalities the option of providing for the exemption of these resources from taxation.

We hope this addresses your concerns. Please do not hesitate to contact us if you need further assistance on this matter.

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§ 29.45.103

MUNICIPAL GOVERNMENT

§ 29.45.110

Sec. 29.45.103. Taxation records. (a) Municipal records dealing with assessment, valuation or taxation may be inspected by the State Assessor or a designee.

(b) If a municipality's assessment and valuation has been done by a private contractor, records concerning the municipality's valuation and assessment shall be made available to the State Assessor or a designee on request. (§ 12 ch 74 SLA 1985)

Sec. 29.45.105. Errors in taxation procedures. (a) If a municipality receives a notice from the State Assessor that major errors have been found in its assessment, valuation or taxation procedures, the municipality shall correct its procedures before the beginning of the next fiscal year or file an appeal under (b) of this section.

(b) A municipality may appeal a notice from the State Assessor that it has made a major error in assessment, valuation or taxation procedures by filing an appeal with the commissioner within 30 days after receipt of notice of error.

(c) The commissioner, after consulting with the Alaska Association of Assessing Officers, shall render a decision within 60 days after the receipt of a request under (b) of this section. If the commissioner determines that a major error has been made in assessment, valuation or taxation procedures the commissioner shall notify the municipality of changes that must be made and the municipality shall correct its procedures before the beginning of the next fiscal year.

(d) If errors in its assessment, valuation or taxation procedures have resulted in a loss of revenue to the state, the municipality shall reimburse the state for the amount of revenues lost. (§ 12 ch 74 SLA 1985)

Sec. 29.45.110. Full and true value. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section, AS 29.45.060, and 29.45.230. The full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the governing body.

(c) In the case of cessation of business during the tax year, the municipality may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by

this section, the municipality may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes. (§ 12 ch 74 SLA 1985)

Opinions of attorney general. — Valuation of boats and vessels on the basis of registered or certified tonnage rather than full and true value does not limit the

application of the full and true value as to boats and vessels. 1962 Op. Att'y Gen. No. 18, decided under former, similar law.

NOTES TO DECISIONS

Editor's notes. -- The cases cited in the notes below were decided under former, similar provisions.

The equal protection clause does not compel the adoption of an iron rule of equal taxation. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

The equal protection clause does not prohibit inequality in taxation which is not shown to be the result of an intentional or systematic undervaluation of some but not all of the taxed property in a single class. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

And it does not forbid differences in tax burdens founded upon substantial and reasonable differences between the objects taxed. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

A borough has discretion to appraise by whatever recognized method of valuation it chooses, so long as there is no fraud or clear adoption of a fundamentally wrong principle of valuation. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Income from property is not sole standard of value. — Although the income from property may be a legitimate factor to consider in fixing value for tax purposes, it is not the sole standard to apply. *Twentieth Century Inv. Co. v. City of Juneau*, Sup. Ct. Op. No. 42 (File No. 42), 359 P.2d 783 (1961).

Computing reconstruction cost and depreciation of dissimilar buildings. — Where two buildings are dissimilar in size, age, and basic construction, it would be entirely reasonable for the assessor to use different factors in computing reconstruction cost and depreciation, and thus achieve substantial equality and fair equivalence. *Hoblit v. Greater Anchorage*

Aren Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Differences in construction materials between given structures are obvious distinctions sufficient to warrant the difference in treatment accorded by the assessor, and to nullify the charge that his actions were arbitrary and resulted in a lack of uniformity. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Assessor is empowered to reduce assessments in later years where the results of disasters have reduced market value. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

The borough assessor had the power to grant earthquake decrements. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Property was not entitled to an earthquake decrement for tax assessment purposes where there was an absence of evidence indicating that its market value was reduced. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Statutory deadlines are directory. — Statutory deadlines for assessment of taxes, setting of mill levy, and mailing of tax statements should be construed as directory; and a city's failure to meet such statutory deadlines does not automatically invalidate its decisions. *City of Yakutat v. Ryman*, Sup. Ct. Op. No. 2581 (File Nos. 6033, 6099), 654 P.2d 785 (1982).

Burden of proof. — When a taxpayer establishes a violation of "directory" procedures regarding assessment of taxes, setting of mill levy, and mailing of tax statements, the burden should be on the taxing authority to demonstrate substantial compliance with requirements and purposes of the statute; but once a show-

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Official Business

APR 5 1989

TO: Senator Bettye Fahrenkamp, Chair
Senate Resources Committee

FROM: Senator Al Adams, Chair ^{AAA}
Community and Regional Affairs Committee

RE: Senate Bill 181 and House Bill 159

DATE: March 31, 1989

Senate Bill 181 regarding tax exemptions for natural resources in place was referred to the Senate Resources Committee on March 6. A request for scheduling and committee back up material was provided on the same date. Given that the bill has not been scheduled, I am left to assume it died in your committee.

Identical legislation sponsored by Representative Eileen MacLean will be waived from Senate Community and Regional Affairs Committee as we heard the Senate version already. The next committee of referral is the Senate Resources committee.

This letter is to ask your cooperation in scheduling Representative MacLean's bill at your earliest convenience. It is a benign piece of legislation that warrants a hearing and eventual passage during this session.

cc: Representative MacLean