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HOUSE COMMITTEE REPORT

(7) Date Referred: 1/13/92 FURTHER REFERRALS: Finance

Date of Committee Action: 1/22/92

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HB 373

HOUSE BILL NO. 373 MUNICIPAL TAX EXEMPTION FOR NATURAL RESOU

"An Act relating to an exemption from municipal property taxation for natural resources in place; and providing for an effective date."

RECOMMENDATIONS:
 be replaced with CS HB 373 (CIRA) the same title
 a new title

- have attached amendments(s)
- do pass
- do not pass
- no recommendations
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____ fiscal note(s) _____

zero fiscal note _____ zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Cheris Davis</i>	✓				
<i>J. B. Douglas</i>	✓				
<i>Jim M.</i>	✓				
<i>Tom M. Baker</i>	✓				
<i>Bettye Davis</i>	✓				
<i>John Phillips</i>	✓				
<i>Richard G. Gosey</i>	*				

Jim M.

 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 373

Revision Date: _____
Title: "...exemption from property taxation for natural resources in place"
Sponsor: Representative MacLean
Requestor: _____

Department Affected: Community and Regional Affairs
BRU: Local Government Assistance
Component: State Assessor

COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: *Ronald Henderson*
Division: Administrative Services Division

Phone: 465-4708
Date: 1/13/92

Approved by Commissioner: *E. J. ...*
Agency: Department of Community and Regional Affairs

Date: 1-14-92

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

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January 17, 1992

POSITION PAPER

RE: House Bill 373

SPONSOR: Representative MacLean

Program Effects of Bill

The passage of this bill would cause all natural resources in place, as defined in the legislation, to become mandatorily exempt from municipal property taxation. The passage of this measure would make the temporary exemption for natural resources in place enacted by HB 159 in 1990 permanent. That exemption expires July 1, 1992.

Comments

The Department strongly supports the passage of HB 373. This position is the result of our recent study conducted under CH 127, SLA 1990. The full report of that study, along with our conclusions and recommendations, has already been delivered to the Committee. A suggestion for a minor technical amendment is attached to this position paper.

E. Blatchford

Edgar Blatchford, Commissioner

Attachment

HB 373
Representative MacLean

DCRA
January 17, 1992

SUGGESTED AMENDMENT

Page 2, Line 20

(9) Natural resources in place including, but not limited to, coal, ore bodies, mineral deposits, and other proven and unproven deposits of valuable materials laid down by natural processes, unharvested aquatic plants and animals, and timber stumpage.

**Report to the Alaska Legislature
on
The Taxation of Natural Resources In Place**

January 1992

**by
The Department of Community
and Regional Affairs**

**Walter J. Hickel, Governor
State of Alaska**

**Edgar Blatchford, Commissioner
Department of Community and Regional Affairs**



**Report to the Alaska Legislature
on
The Taxation of Natural Resources in Place**

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in the States and Provinces



**REPORT TO THE ALASKA LEGISLATURE
ON
THE TAXATION OF NATURAL RESOURCES IN PLACE**

I. Introduction

In 1990, the Alaska Legislature passed an act creating a temporary exemption from property taxation for natural resources in place. (HB 159, enacted as CH 127 SLA 1990, hereafter "the Act".) The temporary exemption in the Act expires July 1, 1992.

In the Act, the Legislature required the Department of Community and Regional Affairs (DCRA) to conduct a study of the potential effects of various natural resource taxation options. This report represents DCRA's effort to fulfill this directive. The purpose of this report is to raise the relevant policy issues and highlight some of the major ramifications for local governments, the state, and resource industries of various taxation strategies. Volumes could be written on the pros and cons of the various taxation strategies to be considered and how they might impact the various resource industries and the various municipalities. However, this study does not purport to be an in-depth discussion of all the possible implications of the taxation strategies examined. If the Legislature determines there is sufficient interest in, or need to further examine the questions raised, it may choose to allocate additional resources to studying those questions. However, at this time there appears to be a statewide consensus in support of totally exempting natural resources in place from local taxation.

Alaska statutes pertaining to property taxation by local governments, while presently exempting certain kinds of property from taxation, do not (except for the temporary exemption in the Act) exempt natural resources in place from taxation. Consequently, natural resources in place are required to be taxable property. As long as the resources remain in place, they could only be taxed through the method of property taxation. Thus, the basic issue of this study was:

Should natural resources in place be taxable by municipalities? Or, in other words, should natural resources be subject to municipal property taxation?

The Legislature also asked DCRA to examine natural resource taxation options other than total taxability of natural resources in place or total exemption of natural resources in place from municipal property taxation. Consequently, the study also examined the following questions:

1. **Should natural resources in place be partially exempt from local taxation?**
2. **Should natural resources in place be totally or partially exempt from local taxation at the option of the local government?**
3. **What other forms of taxation, if any, should municipalities be able to apply to natural resources?**

To answer these questions the study examined several major policy concerns:

- ✓ Fairness among taxpayers
- ✓ Fairness among municipalities
- ✓ Stimulation of economic development
- ✓ Cost-effectiveness of taxation methods
- ✓ Municipal revenue needs/sources

In particular, the study looked at the consequences of various options for taxation of natural resources on municipalities, the resource industries, and the state government (in particular the State Assessor's Office). A survey of other states and provinces was also conducted. An addendum at the end of this report discusses the results of the questionnaire on the subject of natural resources taxation in the other states and provinces.

The Act mandated that DCRA conduct the study in concert with the Department of Revenue (DOR) and the Alaska Municipal League (AML), and with the participation of representatives of municipalities and unincorporated communities in boroughs and in the Unorganized Borough. After initial meetings with technical and more broadly based working groups in 1990 and early 1991, and teleconferences specifically with the AML working group in August and September 1991, DCRA issued a Preliminary Report on The Study of Taxation of Natural Resources in Place on September 13, 1991. The report was sent to all members of the technical and other working groups for comment. Presentations on the approach to the study and its tentative results were made at the Southeast Conference in Juneau, the Alaska Forest Association convention in Sitka, during the Alaska Federation of Natives convention in Anchorage, at the Alaska Miners Association convention in Anchorage, and at the Alaska Municipal League conference in Fairbanks during the fall of 1991. Before the AML conference, a Draft Report on The Taxation of Natural Resources in Place, dated November 1, 1991, was circulated to all of the members of the various working groups and the people who expressed interest in being on the mailing list as a result of the live presentations on the study. The result of the study process is a consensus that natural resources in place should be totally exempted from local property taxation. Without legislative action during the 1992 legislative session, however, the temporary exemption from municipal taxation for natural resources in place will expire July 1, 1992, and natural resources in place will once again be taxable.

To encourage reasoned discussion of the focal issues of the study, the draft report and the live presentations discussed the existing framework of municipal taxation in Alaska, the potential effect of the assessed value of resources in place (if deemed taxable) on the state education foundation aid and state revenue sharing monies to be received by local governments, and the local revenue generation required in order to qualify for those monies under the existing formulas. Both of these formula-based programs are tied to the full and true value of real and personal property within municipalities. Certain aspects of these programs and their terminology had to be understood to lay the groundwork for discussion of the central issue of taxation of resources in place.

The balance of this report follows the format and provides the information circulated to the public as part of the study. It explains the framework for municipal taxation in Alaska, the state foundation aid program for schools, and the state revenue sharing program before returning to the specific issue of the taxation of natural resources in place. The report also examines assessing issues and the policy concerns listed above in relation to the taxation options DCRA was directed to study. This final report will also be circulated to the public before the 1992 legislative session begins.

II. The Legal Framework for Municipal Taxation in Alaska

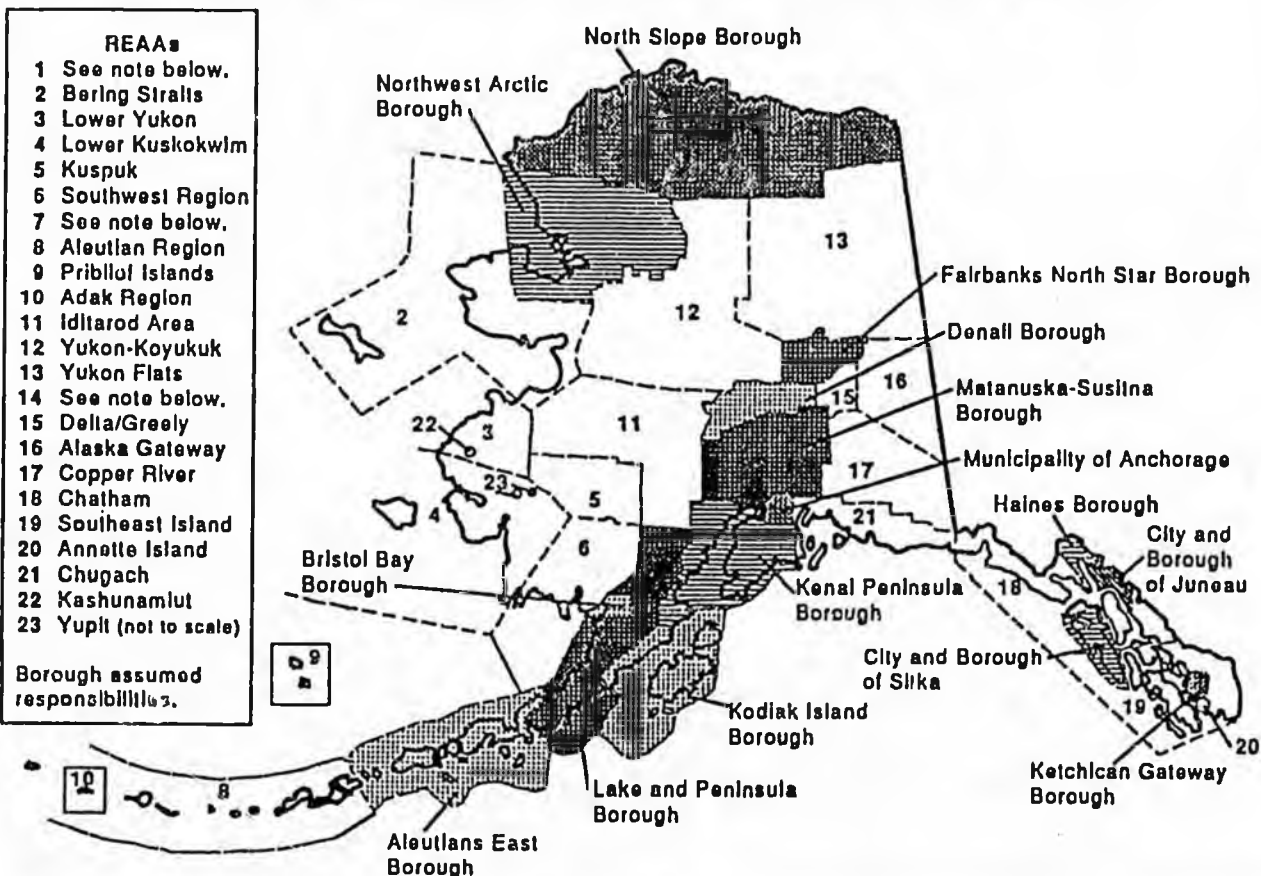
Articles IX and X of the Alaska Constitution and Title 29 of the Alaska Statutes establish the framework for municipal taxation in Alaska. Home rule municipalities are granted broad governmental powers by the Alaska Constitution, while general law municipalities are, among other specified powers, granted the right to levy a tax or special assessment, and impose a lien for its enforcement (AS 29.35.010). Home rule and general law municipalities are subject to limita-

tions on their taxing powers found in Chapter 29.45 of the Alaska Statutes. Within Chapter 29.45 there are provisions on property taxes, sales taxes and use taxes. Section 29.45.010 authorizes cities, boroughs, and unified municipalities to levy a property tax. If a tax is levied on real or personal property, it must be assessed, levied, and collected as provided in Chapter 29.45. Nowhere in Chapter 29.45, however, is there a statement of what is taxable. Instead, the assumption is that all real and personal property is taxable unless it is exempted from property taxation. That assumption is supported by Section 1 of Article X of the Alaska Constitution, which provides that "a liberal construction shall be given to the powers of local government." The following two sections describe the geographic distribution of municipal taxing powers and discuss the concept of taxability. Part IX of this report discusses various property taxation options and other taxation options that the Legislature directed DCRA to study.

A. The geographic distribution of municipal taxing powers

Natural resources in place, in order to be subject to municipal property taxation, have to be located within a city, borough or a unified municipality. The map below indicates the boroughs, the unified municipalities, and the unorganized borough. Not shown on the map are many cities located within the Unorganized Borough. Most cities do not contain many natural resource properties because of the limited area included within their boundaries. Nevertheless, any natural resource properties located within their boundaries could be affected by legislation (or lack thereof) pertaining to the taxation of resources in place. The issue of taxation of resources in place is also of significance to residents and property owners in the Unorganized Borough because, upon borough formation, whatever is taxable under state law will be taxable by the new borough, whether or not the new borough elects to levy a property tax.

Borough and Rural Education Attendance Areas (REAA)



B. What is taxable?

The focal issue of this study is: should natural resources in place be taxable by municipalities? As explained above, under the statutory framework for municipal taxation in Alaska, all real and personal property is taxable unless it is exempted from property taxation. Required exemptions from municipal property taxation are specified in AS 29.45.030. Examples from the laundry list of property exempted from property taxation by AS 29.45.030 are household furniture and personal effects of members of a household, and property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes. Property owned by ANCSA Native corporations is also exempt from municipal taxation until development occurs or it is leased to a third party. In addition to these exemptions from property taxation, AS 43.56 provides for certain exemptions of oil and gas production and pipeline property, including oil and gas in place. All of the exemptions discussed in this paragraph are mandatory exemptions. In other words, the property mentioned in the above-referenced statutes is simply not taxable at all.

Section 29.45.050 of the Alaska Statutes provides for optional exemptions and exclusions from local property taxation. The exemptions and exclusions are at the option of the local government which levies the property tax. Two examples of optional exemptions are the exemption from property taxation of personal property and the exemption of up to \$10,000 of value in a residence. The exemptions in AS 29.45.050 require action by the local government and they sometimes also require approval of the voters.

Since there are existing mandatory exemptions and optional exemptions, and since there is a mandatory exemption from property taxation for oil and gas in place in particular, it is reasonable to consider some form of exemption for some other, or all natural resources in place. If a mandatory or optional exemption is to be considered, however, we must have a working definition of the term "natural resource in place."

III. What is a "Natural Resource in Place"?

The term "natural resources in place" does not correspond to any commonly used assessment terminology and appears to be very broad. The term "natural resources in place" is used several times in the Act, but only Section 2 gives an indication of what the term means. Section 2 of the Act reads as follows:

Sec.2. Temporary Tax Exemption. Natural resources in place, including proven or unproven mineral and other deposits of valuable materials and timber stumpage, are exempt from property taxation by a municipality. (emphasis added)

By the language of Section 2, the term "natural resources in place" covers 1) unproven mineral and other deposits of valuable materials, 2) proven mineral and other deposits of valuable materials, 3) timber stumpage, 4) and a category best described as "other." The "other" category arises from the wording of the Act that says natural resources in place "including" the named categories that are listed. Apparently, something in addition to the named categories in the Act was contemplated by the Legislature. Another ambiguous term in the Act is the phrase "other deposits of valuable materials." This term probably includes sand and gravel, but does it include glacial ice, for instance?

For the purposes of the study, the term "natural resources in place" was defined as:

Any material in its native state before it has been severed or extracted.

With that working definition of "natural resources in place," we looked at the effect of having natural resources in place taxable, as they were before the temporary exemption went into place in 1990. An important effect of taxability of a natural resource in place is that its market value must be included in the "full value determination" for the municipality in which the resource is located. The value of all taxable real and personal property in a municipality is included in its full value determination. The obvious question, then, is: What is a full value determination?

IV. What is a "Full Value Determination" ?

In brief, a full value determination is the sum total for a municipality of the full and true value established for each piece of taxable real and personal property within a municipality. AS 29.45.110 (a) specifies that the full and true value (FTV) 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." AS 29.45.110 (a) also requires the assessor to assess property at its full and true value as of January 1 of the assessment year.

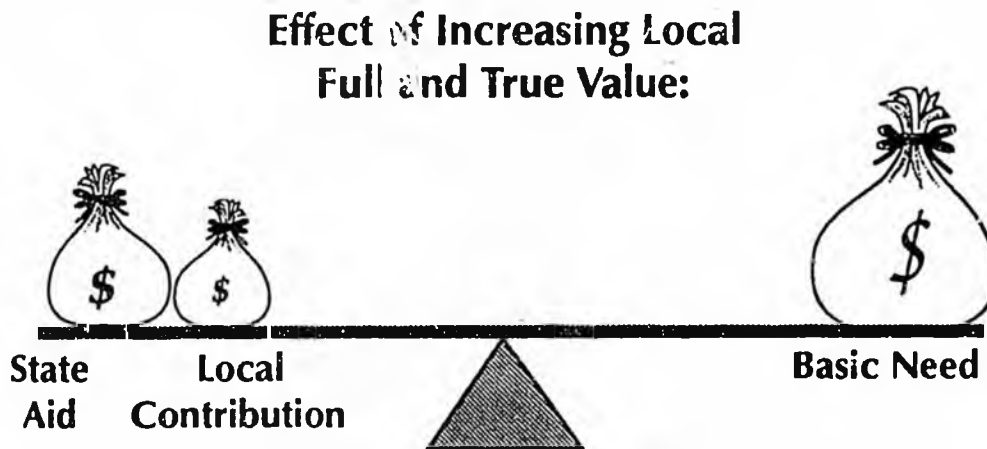
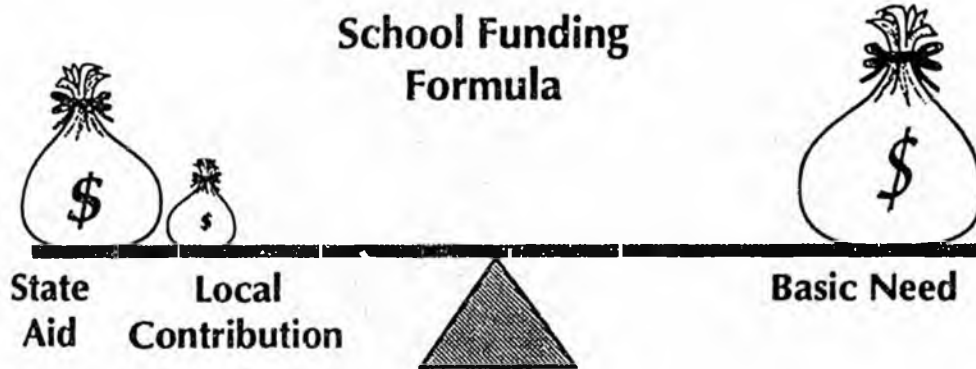
The education title of the Alaska Statutes, specifically AS 14.17.140, requires the Department of Community and Regional Affairs, in consultation with the assessor for each school district, to establish the full value of the taxable real and personal property in each city and borough school district. Not all cities and boroughs have property taxes, however, and, consequently, not all cities and boroughs have assessors. For those that do not, the State Assessor, located in the Department of Community and Regional Affairs, must estimate the full value of the taxable real and personal property without the consultation of a local assessor.

The State Assessor then compiles the full value determination for each municipality annually and notifies each municipality. As discussed below, the full value determination plays a significant role in the calculation of both the state foundation aid for education and the state revenue sharing programs. It is critical to municipalities, as well as property owners, whether natural resources in place are taxable (i.e., whether the value of natural resources in place will be added to the full and true value of the property in or on which these resources are located). The full and true value of all taxable property, whether the property is actually taxed or not, must be included in the full value determination for the municipality.

V. How does the Full Value Determination Affect State Foundation Aid?

Chapter 14.17 of the Alaska Statutes establishes the Public School Foundation Program. Under that program, a school is determined to have a "basic need" determined according to a formula spelled out in AS 14.17.021 (b). The local government is required to make a "local contribution" toward this basic need. The local contribution is defined in AS 14.17.025 as at least the equivalent of a 4 mill tax levy on the full and true value (FTV) of the taxable real and personal property in the district, unless a 4 mill tax levy on the FTV exceeds 35% of the district's basic need. A municipality will not receive its school foundation aid payment unless it makes its local contribution. AS 14.17.025 (e).

In other words, the higher the municipality's FTV, the greater the amount of money the municipality must raise to satisfy the local contribution requirement, up to the point where a 4 mill levy on the FTV exceeds 35% of the district's basic need. Historically, only in the North Slope Borough and the City of Valdez has the 4 mill equivalent exceeded 35% of basic need. This year, for the first time, a 4 mill levy on the FTV in the City of Unalaska will also exceed 35% of basic need. The following illustrations depict the relationship between state aid, local contribution and basic need, and demonstrate the effect on this relationship of increasing the local full and true value.



To further illustrate the point, assume that the FTV of the municipality is presently \$1 million. A 4 mill levy on \$1 million is \$4,000. If the FTV for the municipality increases to \$2 million, then the equivalent of a 4 mill levy will require the municipality to raise \$8,000. This may or may not be a problem for the municipality depending on the basis for the increase in FTV.

In summary, under the public school foundation program, assuming that basic need remains constant, as the FTV increases, the amount of the local contribution increases, and the amount of state foundation aid decreases. The question for the municipality is then: how will it raise the additional money to meet its local contribution requirement if the municipality's FTV increases?

VI. How does the Full Value Determination Affect State Revenue Sharing?

Sections 29.60.010–29.60.080 establish a program for municipal tax resource equalization. This tax equalization program is part of what is commonly referred to as the state revenue sharing program. Its purpose is to even out differences in taxable wealth among the municipalities in the state by paying relatively more shared revenues to those municipalities that have little taxable property.

The formula for determining a municipality's tax equalization entitlement is fairly complex. It is based on the municipality's population, actual generation of revenue, and the local tax base. The formula requires the equivalent of a local contribution. In this case, it is called "locally generated revenue."

The formula multiplies the population by the product of the locally generated revenue (LGR,) divided by one-tenth of one percent of the full and true value of the assessed property in the municipality. The formula for the product to be multiplied by the population is as follows:

$$\left(\frac{\text{LGR}}{0.1\% \text{ of FTV}} \right)$$

If we plug in some numbers, the formula looks like this:

$$\frac{100}{0.1\% \text{ of } 1,000} = 100$$

Obviously, the product will decrease if the FTV is increased unless the LGR is also increased. For example:

If local revenues are unchanged:

$$\frac{100}{0.1\% \text{ of } 2,000} = 50$$

If local revenues are increased to the same degree as the FTV:

$$\frac{200}{0.1\% \text{ of } 2,000} = 100$$

If local revenues are increased to a greater degree than the FTV:

$$\frac{400}{0.1\% \text{ of } 2,000} = 200$$

With this background in the two major funding formulas by which municipalities obtain state shared revenues, we can return to the focal issue of this study:

Should "in place" natural resources be taxable by municipalities?

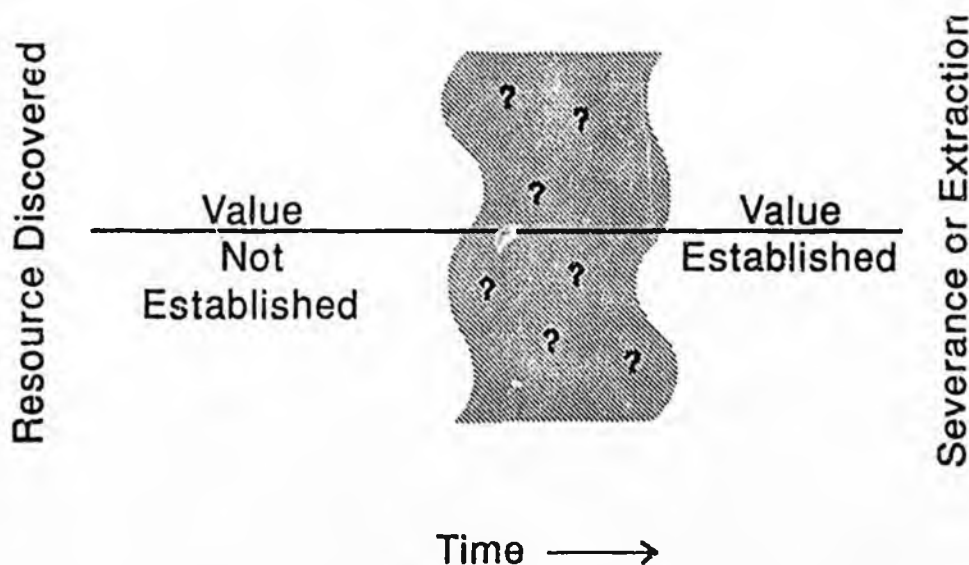
If natural resources in place — meaning resources that are not severed or extracted — are taxable, then the value of those resources in place must be added to the full and true value of the property in or on which they are located. As a consequence, the full value determination for the municipality will increase. The value of natural resources in place, however, can only be added to the assessment rolls at the point when an assessor using standard assessing practices could defensibly establish that value.

VII. The Problem of Assessing Natural Resources in Place.

Under the present temporary exemption from local property taxation, or if a permanent exemption from local property taxation is enacted, there is no issue of assessing natural resources in place. It is only an issue if the present temporary exemption expires and we return to the pre-existing status, which was that all taxable real and personal property must be assessed and included in the full value determination for the municipality in which the property is located.

When we speak of assessing natural resources in place, however, it should be clearly understood that the value of every resource in place would not be added to the assessment rolls on January 1, 1993. Assessors only put property on an assessment roll when a value for that property can be established according to commonly accepted standards and practices.

The figure below illustrates this point. The passage of time is indicated by the arrow at the bottom of the illustration. On the left of the illustration is the indication that a resource has been discovered. At the time of discovery so little is probably known about its dimensions, marketability and costs of production, that no value can yet be placed on the resource by the assessor. On the right hand side of the illustration is the indication severance or extraction. At the point of severance or extraction, we are no longer talking about assessment of a natural resource in place because the resource is no longer in place.



Logically, at some time before severance or extraction, it was possible to put a value on the resource in place according to standard assessing practices. The point at which a defensible value can be determined is the point at which the value should go on the assessment roll. Actually, the property may have already been on the assessment roll but with a minimal value based on use of the surface only. What we are really talking about is the point at which the in place resource value will be added to the assessed value of the property.

Assessors determine value by one of three methods: direct sales comparison, the cost approach, and the income (or income capitalization) approach. The cost approach is normally not applicable to valuing raw land. The direct sales comparison approach may be applicable to the valuation of natural resource properties in the rare instances where comparable sales of mineral properties can be found or where comparable timber stumpage values can be established. The third approach, the income approach to value, is the only realistic approach by which resources in place could routinely be valued, and it has certain inherent problems when one is dealing with income that has not yet been generated. The income approach to value involves developing an estimated net income (gross income less operating expenses) which is then capitalized using an appropriate capitalization (discount) rate. The following example illustrates the problem involved when an ore body, for instance, has not yet been developed.

In attempting to value an undeveloped ore body, it is first necessary to know, or estimate, the type and grade of ore, its volume, and its configuration. If the ore body has been discovered, but has not been extensively drilled, it would most likely be impossible to know these things. If the ore body has been adequately drilled, the information from the drilling may or may not be made available to the appraiser. (There is no requirement in Alaska for such information to be made available to state or local governments.) If the information were made available, the geologist/appraiser would still be facing the problems of estimating a potential income stream from development of the ore body, while considering fluctuations in the world market for that aggregate of ores. In addition, the appraiser would have to estimate the cost of extraction, including road construction, the actual extraction process, cost of drilling, separation of the metal from the host rock, shipping, and so forth. This exercise would be extremely subjective and speculative in nature.

A great deal of feedback has been received by the DCRA staff conducting this study about the difficulty and the cost of attempting to value natural resources in place so that their value can be added to the surface value of property for property tax purposes. Indeed, cost-effectiveness of having resources in place taxable is one of the important policy issues to be considered by the Legislature in determining the action to take with regard to the taxability of natural resources in place. The issue is: will it cost more than it is worth to permit the taxation of natural resources in place by local governments? This question is examined more fully in the discussion of the policy issues in Section IX. If the Legislature decides that natural resources in place should be taxable, another question that must be addressed is who should perform the assessment? That question is discussed in Section XIII, immediately following. There is general agreement that many assessments of natural resources in place would have to be performed by assessors with special expertise different than the expertise of most assessors.

VIII. Who Should Assess Natural Resources in Place?

If natural resources in place are taxable by local governments, their value must be included in the full value determination for the municipality in which they are located. To do that, natural resources in place must be assessed by someone. Before looking into the question of who should assess natural resources in place, it is useful to look at the present process of property tax assessment by the municipalities.

Municipalities that levy a property tax either have a staff assessor or hire a contract assessor to perform the assessments for the municipality. The State Assessor then reviews the municipal assessments and makes any necessary adjustments, including addition of the value of property optionally exempted by the municipality from property taxation. The value of all taxable real and personal property, as adjusted by the State Assessor, is included in the full value determination for that municipality.

Not all municipalities empowered to levy a property tax actually do so. Those that do not levy a property tax do not assess the property within their jurisdiction. Nevertheless, by statute, the State Assessor must establish the full and true value of that municipality for purposes of the state foundation aid program and the tax equalization (revenue sharing) program. Therefore, the state has to be prepared to assess all taxable real and personal property within the municipalities in the state. If natural resources in place are taxable, the State Assessor will have to be prepared to assess them whether or not the municipality does so.

Before the temporary exemption went into effect in 1990, the municipalities did not routinely include in their assessments the value of natural resources in place and the State Assessor did not routinely add their value to the full value determinations of the municipalities. Now, however, if the temporary exemption is allowed to expire and the pre-existing law is again in effect, the full and true value of each municipality will have to include the value of natural resources in place within its boundaries because awareness of this issue has now been heightened statewide. Someone will have to establish that in place natural resource value. Under our present statutory structure, either the value will be established initially by the municipal assessor and reviewed by the State Assessor or, if the municipality does not levy a property tax, and therefore does not establish an assessment roll, the State Assessor will have to establish an estimated assessment in order to arrive at the full value determination for the municipality.

Municipal assessors are not generally trained to assess the value of mineral ore, coal, gravel, rock or timber in place. The two appraisers presently working in the State Assessor's office do not possess the necessary qualifications or experience either.

Typically, an economic geologist is hired by a mining company to determine the value of an ore body. Specially qualified forest appraisers are hired by timber companies to value timber resources. People with comparable skills will be necessary at the local and/or state level to assess natural resources in place, whether those people be hired as staff or hired under contract to provide assessing services.

The difficulty of assessing an ore body is illustrated by the Red Dog mine example where the State and the Northwest Arctic Borough hired a geologist and appraisal consultant at the rate of \$150 per hour to use the income approach and estimate the value of the entire mining operation, including the ore body under development. Under a separate agreement, the Borough contracted with the same geologist/appraiser for an appraisal of the mine utilizing the cost approach. The cost

approach appraisal was conducted in order to estimate the value of the mine improvements without the value of the ore body. By comparing the two appraisals, the consultant concluded that the value of the ore body was approximately \$30,000,000. The same consultant stated, however, that before certain metallurgical problems with smelting the ore were encountered, the value of the ore body had been \$100,000,000. He expected that within two to three years, when the metallurgical problem was solved, the value of the ore body would then again be \$100,000,000, absent some dramatic change in the world price for the mineral. This example illustrates the dramatic increases and decreases in the value of an ore body which often occur because of variable factors beyond the control of the industry.

Municipal assessors are not typically knowledgeable about the geology of mineral ores, smelting and metallurgy, world mineral prices and the other factors that go into appraising a mining property. In fact, the economic geologist who performed the Red Dog mine appraisal has stated it is easier to train a geologist to become a mining appraiser than to train an appraiser to become a mining appraiser. Likewise, appraisers of timber resources must have the training to estimate types and grades of timber, calculate the costs of road construction, harvesting, transportation, storage and loading, among other things, as well as world timber prices. Again, it is not expected that a municipal assessor will have had this training and experience.

At least two other states in which natural resources in place are taxable have gone to a centralized assessment of natural resource properties by the state. (More details on the practices of other states are found in the addendum.) If natural resources in place are to be taxable, the issue of who is going to perform the assessments of those properties will need to be resolved. If the assessments are to be performed by the State Assessor's office, additional staff with the required expertise will have to be hired or, in the alternative, funding for contract assessors with the necessary training will have to be allocated.

IX. Taxation Options and Policy Considerations

The act mandating the study asked DCRA to examine five taxation options:

1. Total exemption from municipal property taxation.
2. Partial exemption from municipal property taxation.
3. No exemption from municipal property taxation.
4. Total or partial exemption from municipal property taxation at the option of each municipality.
5. Taxation other than property taxation.

A discussion of these options pertaining to natural resource taxation must include a discussion of at least the following policy considerations:

- ✓ Fairness among taxpayers
- ✓ Fairness among municipalities
- ✓ Stimulation of economic development
- ✓ Cost-effectiveness of taxation methods
- ✓ Municipal revenue needs/sources

These policy considerations are examined, followed by a discussion of the five taxation options in the context of the present legal framework for municipal taxation and the policy considerations.

A. Policy Considerations

Fairness Among Property Owners

This policy consideration raises the issue of fairness among owners of various types of property. Upon whom should the tax burden to support government services within a municipality fall? Upon only the owners of personal property? Upon only the owners of real property? Upon only the owners of zoned real property? Should the owners of real property that is zoned have their assessment reflect the value of the particular zoning classification? Should owners of natural resource property have their assessment reflect the value of the resource in place? How can you be fair to all potential taxpayers? If one group of potential taxpayers is eliminated, does the burden fall unfairly on the remaining groups of taxpayers?

Fairness Among Municipalities

Fairness among municipalities is an issue because not all municipalities in Alaska are equally endowed with a tax base from which to raise revenues. Should those municipalities with a potential tax base of natural resources in place be permitted to not include the value of those natural resources in their full value determinations? If they are not required to include the value of those natural resources in their full value determinations, those municipalities will not have to increase their local contribution to schools, even though they actually have a tax base from which they could generate local revenue. As a consequence, municipalities that could raise more local revenue will still get their same share of the school foundation aid from the state. Municipalities that have no possibility of raising more revenue for their schools would be disadvantaged under this scenario in which municipalities with resources in place are not required to make a local contribution commensurate with their actual wealth.

Stimulation of Economic Development

With this policy consideration, the issue is whether or not making natural resources in place taxable would be a disincentive for economic development. It is necessary to keep in mind that taxability of natural resources in place does not necessarily mean that the taxing jurisdiction will choose to levy a property tax. If a property tax is levied, however, it must be levied equally against all taxable property. Consequently, one must contemplate whether levying a property tax on the assessed value of resources in place will act as a deterrent to economic development. What specific impacts might such a tax have on economic development? Will it discourage exploration for minerals? Will it encourage the exploitation of only the highest grades of ore? Will it encourage the rapid cutting of forests in order to eliminate the source of a higher property tax? DCRA was told by the resource industries and the Department of Commerce and Economic Development that the impact of making natural resources in place taxable will be uniformly detrimental to economic development. No contrary evidence was provided and DCRA does not have the means to hire economists to make an independent assessment of these assertions.

Cost-Effectiveness

Cost-effectiveness is an important policy consideration because assessment of natural resources in place is expected to be much more complicated and costly than the municipal property assessments typically performed now. All sources indicate that ore bodies are extremely difficult to evaluate, even for the professionals hired by mining companies to perform evaluations on the

basis of which millions of dollars may or may not be invested. Assessment of timber stumpage is also a highly specialized skill not normally possessed by municipal assessors or state assessors whose job it is to review standard municipal assessments. Assessments of both of these categories of natural resources in place would have to be accomplished either by extensive particularized investigations of specific resource properties, or through elaborate computer modeling for which both the data and the programs are not now available either to municipal assessors or to the state assessor.

If such assessments of natural resources in place are performed by the municipalities, they might sometimes have to be confirmed by the State Assessor's Office. In that case, presumably both the municipalities and the State Assessor's Office will face additional costs for contracted expert help or additional staff possessing the necessary expertise. If the municipality does not intend to levy a property tax and, therefore, does not assess property, the State Assessor's Office would still have to assess the natural resources in place in order to add their value to the full value determination for the municipality.

Several agencies and the Alaska Miners Association have commented that because of the difficulty of assessing ore bodies, serious disputes over assessed values of minerals in place can be expected, with the associated probability of litigation. At least two states have attempted to deal with the problem of assessing resources in place by centralizing the function in a state agency. (See the addendum on the results of the survey of states and provinces.) It is a policy question for both local governments and the state as to whether it would be cost-effective to have to assess natural resources in place in order to have the possibility of taxing them.

Municipal Revenue Needs and Sources

Municipalities are being required by the federal and state governments to assume more responsibilities. Most often these additional responsibilities are not accompanied by sufficient funds to cover the cost of the new activity. At the same time, municipalities are seeing the state cut the amount of money allocated to state revenue sharing and municipal assistance. While municipalities are facing these problems, they may also face the impacts of natural resource development in their area. Natural resource development may provide long-term economic benefits, but it may also require extension of roads, water lines, sewer lines, and power lines as well as the development of additional housing, schools and commercial infrastructure. In this situation, municipalities might be hesitant to give up a taxing power that would potentially provide a present revenue stream for the payment of present infrastructure costs.

Several agencies and natural resource owners have stated that if there must be taxation of natural resource development, the taxation should not begin before severance or extraction of the resource takes place. While this may be preferable for the natural resource industries, it could leave the municipalities without the revenue needed to develop the infrastructure necessary to deal with impacts and provide support for economic development that is needed before the natural resource industry is in production. In the worst case, a community might experience impacts for many years during pre-production activities and the enterprise might never go into production with the consequence that there is never any revenue derived from a severance tax.

With these five policy considerations in mind, the five taxation options the Legislature asked to have studied were examined. A synopsis of the thinking developed on each option during the study is provided below.

B. Taxation Options

Option One: Total Exemption from Municipal Property Taxation

Total exemption from municipal property taxation means that natural resources in place would not be taxable by local governments. This is the option for which there appears to be a statewide consensus.

Those who commented in favor of this option include the Department of Natural Resources, the Department of Commerce and Economic Development, the Department of Revenue, and the State Assessor, among state agencies. Support for this option was also voiced by the Alaska Miners Association, Sealaska Corporation, Chugach Forest Products, Afognak Native Corporation, Konkor Forest Products Corporation and NANA Corporation, among other individuals and organizations.

At the Alaska Municipal League conference, the AML unanimously adopted a resolution in support of a total exemption. In the view of the local governments, the value to be derived from having natural resources in place taxable is not worth the cost and difficulties arising from the need to assess natural resources in place, municipalities would have to increase their local contribution and locally generated revenue to obtain state monies, and, finally, the municipalities do not want to risk impeding economic development that might benefit their communities.

One potential benefit to local governments from a total exemption is that municipalities will not be required to assess natural resources in place, and they will not face possibly dramatic changes in their full value determinations that might result if natural resources in place are assessed. (For example, based on Robert Paschall's studies, the Northwest Arctic Borough could face an increase in its full value determination from \$30,000,000 to \$100,000,000 as soon as metallurgical problems at the Red Dog Mine are resolved.) Dramatic changes in full value determinations for some municipalities arising from the taxability of natural resources in place would require that those municipalities increase the absolute amount of their local contribution to the basic need for their schools. (Remember the required local contribution under the school foundation aid formula is the equivalent of a four mill levy or 35% of basic need.)

On the one hand, a property tax provides a revenue stream as soon as a value can be placed on property. It avoids the situation described above where a community may have had to deal with resource development impacts for years and then have production never start so that reliance on a severance tax would provide no revenue. (See, however, the discussion below under Option Five.)

On the other hand, owners of natural resource properties point out that a property tax is the worst possible tax for stimulating economic development. They say a property tax on resources in place will discourage exploration and encourage cutting trees prematurely. It will also encourage closing mines when only the highest grade ore has been extracted.

Option Two: Partial Exemption from Municipal Property Taxation

The Legislature asked that a partial exemption from municipal property taxation be one of the options considered in this study. The Legislature did not indicate, however, what it meant by partial.

A partial exemption could mean that some natural resources are exempted from property taxation while others are not. Alternatively, a partial exemption could mean that a portion of the assessed value of the natural resource in place would be exempted from property taxation. The former interpretation raises serious questions of taxpayer equity. The latter interpretation triggers serious concerns about the cost-effectiveness of a partial exemption.

An exemption of some natural resources in place but not others would obviously have a differential impact on potential taxpayers. Owners of timber land might question whether it was fair to exempt mineral land from taxability but not their timber land, for example. There would also be a differential impact on municipalities since natural resources are not all distributed evenly across the state. Municipalities whose resources were exempted from taxability would no longer be able to raise revenue by levying a property tax on the value of those resources in place. On the other hand, municipalities whose natural resources were not exempted would have to add the assessed value of those natural resources in place to their full and true value. The consequent increase in the full value determination means those municipalities would have to raise more revenue in order to meet their local contribution requirement for state foundation aid. Those municipalities might not have a large tax base from which to raise revenue other than by a property tax, and yet they might feel that levying a property tax would be detrimental to economic development and also to their residents who might live a largely subsistence life style.

The cost-effectiveness issue discussed above is even more persuasive against the other interpretation of "partial exemption," by which a portion of the assessed value of all natural resources in place would be not taxable. The same difficult and costly assessing work would be required to correctly assess the property, but in return only a certain portion of the assessed value would be put on the tax rolls. Under this scenario, the revenue to be derived from a property tax would be lower, while the amount and cost of the assessment work would remain the same.

Option Three: No Exemption from Municipal Property Taxation

The option of no exemption from municipal property taxation will be the conscious or unconscious result if the Legislature takes no action on the issue of the taxation of natural resources in place during the coming legislative session. As mentioned above, the temporary exemption in the Act expires July 1, 1992. On that date, if no legislation has changed the law on taxability, natural resources in place will once again be taxable. The difference is that now people are very conscious of this issue and there is a statewide consensus that natural resources in place should not be taxable.

If there is no exemption from taxation for natural resources in place after July 1, 1992, it is unlikely that resources in place that have an assessable value will be kept off the assessment rolls. Taxpayers who feel they are unfairly carrying the tax burden in their municipality might sue to put assessable resource properties on the tax rolls. If the municipality does not put assessable resource properties on the assessment rolls, the State Assessor will still be obligated to include the full and true value of those properties in the full value determination for the particular municipality. That will have differential impacts on the municipalities' shares of education and state revenue sharing funds depending on whether the municipalities have or do not have assessable natural resources in place. Taxability of natural resources in place will also impact the staffing and funding necessary for municipal assessing offices and the State Assessor's Office.

The resource industries have commented that if natural resources in place are taxable, that will have a detrimental impact on economic development within the state. The cost of the property

tax, if one is levied, will have to be factored into the cost of development in a situation where fluctuating market prices and high development costs make long term investment risky. It will not be enough to say that although the natural resource in place is taxable, the local government will not levy a tax, because the next council or assembly could change that policy, particularly since the value of the resource in place will be included in the municipality's full value determination with the resultant impact on state program formula requirements to raise the local contribution and locally generated revenue. In addition, the resource industries have commented that the next worst thing to taxation is instability in taxation policies. Since they have to plan for long term investment, they need to know what to factor into their plans.

At the same time, it should be pointed out that as long as the natural resource in place is not assessable according to standard assessing techniques, it will not go onto the assessment rolls. Furthermore, much of the natural resource land that might be susceptible to property taxation is held by Native corporations that are insulated from taxation by federal law until development occurs. Leases of Native corporation land are not so protected, however. Nor are leases of state or federal land.

Option Four: Total or Partial Exemption from Municipal Property Taxation at the Option of Each Municipality

The discussion of the framework for municipal taxation found at the beginning of this report explained that the present statutory scheme contains provision for local option with regard to property tax exemptions. The local option exemptions are found in AS 29.45.050. It is conceivable, therefore, to enact an optional exemption, either total or partial, for natural resources in place. That decision should not be made, however, without consideration of all of the consequences.

On the one hand, local option is often favored because it allows local governments maximum control. Local option exemptions, however, do not exclude the property exempted from a municipality's full value determination. A local decision to exempt natural resources in place from taxation would still leave them taxable as far as the State Assessor is concerned. An increase in the full value determination would mean an increase in the absolute amount of the local contribution and the locally generated revenue required. If natural resources in place were locally exempted from property taxation, the local contribution and the locally generated revenue would have to be raised from other property tax payers or through sales and/or excise taxes. This, of course, raises the issue of fairness among tax payers. It also raises the issue of cost-effectiveness. Is it cost-effective to create a situation where the State Assessor must assess natural resources in place, while the municipality may optionally exempt resources in place from taxation?

Option Five: Taxation other than Property Taxation

In the Act, the Legislature asked that the study examine options for taxation of natural resources other than the property tax. As discussed above, of the types of tax that can be levied by a local government, only a property tax can be levied against the value of a natural resource in place. As long as it remains in place, the natural resource is part of the property. This section looks at other forms of taxation that local governments might levy against some aspect of natural resource production.

At the time a natural resource is severed or extracted, a local government can levy a severance tax. In fact, two boroughs (the Denali Borough and the Kodiak Island Borough) have already done so since the temporary exemption from property taxation went into effect. These boroughs levy a tax against the value or tonnage of the resource that has been severed or extracted.

The Kodiak Island Borough adopted what it feels is a long term progressive tax policy that levies against the gross production value of natural resources that have been severed or extracted. While this tax currently targets timber and fish harvesting operations, it can accommodate any resource development activity where a value-by-unit can be established. The value of the severed or extracted resource is multiplied by the local property tax mill levy as determined annually by the borough assembly. The borough maintains that this assures consistency and equity of taxation between natural resource property owners and the owners of other property within the borough that is taxable by the property tax method.

The Denali Borough has also adopted a natural resource severance tax. This tax targets coal, limestone or gravel that has been extracted. The tax is based on a flat rate per unit of production. The tax levy for coal and limestone is \$0.05 per ton of gross production. For gravel the tax is \$0.05 per cubic yard of production.

A severance tax is but one form of excise tax. Other forms of excise tax that might be levied include a tax on exploration activities, transportation activities, processing activities, storage activities, and the like. While a severance tax is recommended by the natural resource industries in lieu of a property tax on natural resources in place, it should be pointed out that excise taxes and property taxes are not mutually exclusive and could be levied at the same time.

Under the Alaska Constitution, Title 29, and the Alaska Supreme Court cases, local government authority to tax is very broad. According to a 1986 Attorney General's opinion, interpreting the above authorities in the context of a question about severance taxation, the provisions of Title 29, other than AS 29.45.010, are limitations on local government authority to tax. Following that interpretation, one concludes that there are no statutory or case law limitations on the power of local governments to enact excise taxes. Only property taxes and sales and use taxes are covered by Title 29 and Alaska Supreme Court cases.

X. CONCLUSIONS

The study on the issue of taxation of natural resources in place has been concluded and it is now clear that the Legislature must provide an explicit resolution to this taxation issue during the coming legislative session. The temporary exemption for resources in place expires July 1, 1992. Unless the Legislature totally exempts natural resources in place from local taxation during this session, a state of confusion will ensue for the municipalities, the State Assessor's Office and the resource industries. The study raised the consciousness of these interested parties about the meaning of taxability of natural resources in place and the implications which this taxability holds for all concerned. There is a statewide consensus that the Legislature should adopt an amendment to AS 29.45.030 totally exempting natural resources in place from local property taxation.



**Appendix A:
Property Taxation of Natural Resources
in the States and Provinces**

The Department of Community and Regional Affairs surveyed Alaska, the other forty-nine states, and the Canadian provinces regarding property taxation of natural resources. The survey questionnaire was formulated into technical and policy sections and was intended to identify resource taxation policies and procedures currently in use throughout North America. The questionnaire was mailed to state and provincial property tax officials in the spring of 1991 and responses were received over a several month period. No questionnaires were mailed to local assessors or to tax officials at the city or county level, as we thought state and provincial agencies would have a better overall picture of what is taking place, in terms of resource taxation, within their jurisdictions.

Many responses to the questionnaires were inadequate or simply raised more questions. Also, some states did not respond at all to the questionnaire. Therefore, we often made follow-up contact by phone. It was interesting, although not altogether surprising, that the phone interviews revealed that resource property taxation practice does not always conform to law or stated policy. Officials were occasionally more candid on the phone than they were in completing the questionnaire and admitted that property taxation on natural resources may not always be administered to the letter of the law. The primary reason for this was that natural resource taxation was not a significant issue in their jurisdiction because of limited resources and, therefore, the time and expense to administer such a tax aggressively could not be justified.

Through the use of the questionnaire, we also hoped to discover specific resource taxation problems or successes that may be shared by various taxing jurisdictions. After our review of the questionnaires and as a result of our phone interviews we found that problems which taxing jurisdictions share are usually of a technical nature. It is generally the old story of lack of market data and lack of comparability between subject properties that makes the job difficult for the appraiser. Lack of adequate training in the appraisal of special purpose properties such as mines and quarries is also a common problem among taxing agencies.

The policy similarities between states and provinces are simply that severance taxes and property taxes are the two most common forms of natural resource taxation. They are used, in some form, in nearly every state and province. This is really where the policy similarities end between states and provinces, however, because the extent and manner in which these two forms of taxation are implemented in each taxing jurisdiction varies so much as to make each unique.

One survey question asked if states and provinces levied taxes against natural resources that are "completely undeveloped." The term "completely undeveloped" was not defined in the questionnaire, however, generally the answer that we received on this question was no. Only eight of the states that responded to the questionnaire answered yes to this question and two of those assess undeveloped resources at a flat rate per acre; \$75 per acre in Illinois and \$60 per acre in Indiana. Four of the states that answered yes to this question only assess against mineral rights that have been severed from the fee ownership. Although several other states answered no to this question, they do in fact assess standing forest lands to some degree (generally some set amount on a per acre basis.)

For those states and provinces that stated they did not assess against undeveloped resources, a follow up question asked officials to describe at what point in the production process was taxability triggered. Most stated that taxability was triggered at the point of production or harvest. The terms to describe this point of taxability vary. For example, taxation is triggered in the Yukon Territory "when production starts" in Wyoming resources are taxable "when the mineral reaches the mouth of the mine," and in Michigan, "sometimes, the trigger is severance."

A general summary and some specific highlights of the survey follow.

General Summary:

- Thirty-one states can legally tax natural resources in place, but only twelve states actually do to varying degrees. Those states are: Arizona, Colorado, Indiana, Kentucky, Michigan, Mississippi, Missouri, South Dakota, Texas, Virginia, West Virginia and Wisconsin. Of the states that currently include in place natural resource value in real property assessments, only a few do so aggressively. This may be due to the lack of expertise at the local and state level to reliably value and defend assessed values for resources. It may also be that where there is little natural resource value, it is not cost effective to undertake the valuation of natural resources that do exist.
- Nineteen states statutorily exempt the in place natural resource value from the assessment of real property.
- The states with the most advanced programs of natural resource assessment are those resource rich states that can generate enough tax revenue to justify the staff to assess resource properties. Arizona and Kentucky are both very active in resource assessment, and both centralize the assessment activity. Assessments are made by state agencies, and tax collection can either take place at the state level with revenues being passed through to local governments, as is the case in Kentucky, or, assessed values can be provided by the state to local governments for local tax collection, which is the current policy in Arizona.
- Taxing agencies in other states that indicated they do assess and tax natural resources apply several different approaches. Many rely on the market data or sales comparison approach to value. Officials stated, however, that actual sales of resource properties are rare, hard to verify, and are often not very comparable to other properties being assessed. This results in a general disregard for assessing this type of property or at least minimizes their value estimates. Many states are aided by mandatory sales disclosure laws which require sales information on all transactions to be provided to assessment officials. Unfortunately sales information is still generally inadequate to result in reliable assessments for resource properties. Alaska does not have any mandatory sales disclosure law at this time.
- The general nature of natural resource taxation in Canada is similar to ours in the United States. Active natural resource developments are subject to federal, provincial and local government taxes mostly in the form of income and severance taxes. In British Columbia minerals are not subject to property tax, and other natural resources, such as water and timber, are taxed at the time of use or harvest.

Specific Highlights:

- Within the area of property taxation there are nearly as many different levels of assessments and applications of millage rates as there are states and provinces.
- Policies for taxation of natural resources also vary from state to state since different states have different types of resources. Taxing jurisdictions adopt taxing policies that best suit their individual needs, kinds of resources, and resource availability. Arizona assesses all recoverable minerals in the ground, Indiana values mineral ownership at \$60 per acre, Michigan exempts ore bodies up to 10 years or until they become part of an operating mine, and Montana values unproductive mining claims as agricultural grazing land.
- Across the country, in states which have elected to levy property taxes against natural resource properties, varying degrees of sophistication exist within agencies responsible for resource assessment. Kentucky has developed an elaborate geographical information system (GIS) for its resource management. They have identified and quantified their natural resources and have developed an assessment scheme that considers current economic and market conditions. The GIS is designed to manipulate resource data to create a three dimensional geographic map of the state which allows for the assessment of each coal seam or mineral deposit of taxable value parcel by parcel. Kentucky was actually forced into developing this assessment system as a result of a state supreme court case. The case determined that state constitutional restrictions did not allow the State Department of Revenue to assess natural resources at levels lower than other types of property. State officials found themselves in the position of being required to assess the resources of the state at full value with very limited resource information. They now have the GIS and a staff of 35 to value natural resources.
- Other states such as Hawaii and Rhode Island have limited mineral deposits and as a result have no specific statutes pertaining to the taxation of these resources and no resource assessment staff. Some states that exempt natural resources from property taxation levy other kinds of taxes on these resources. For example, most states levy some type of excise tax based on the production value of a severed resource or on its production unit (i.e. tax per ton.) In addition, it is common for states to levy income taxes on the resource industry.

Municipal "in place" resource tax issue will be back before lawmakers in 1992

A Special Analysis
by
Tim Bradner

Valuation of resources could impact many things ?

Municipal taxation of resources "in-place" will be before the Alaska legislature again in 1992 — a two-year exemption enacted by 1990 will expire next July. If the legislature does not extend the exemption, municipalities will face the question of whether they should impose these kinds of taxes. Because of the way local assessments affect formulas for state school revenue-sharing, the issue directly affects the amount of money local school districts get from the state.

State lawmakers may establish a framework for assessments, or impose limitations, on the ways local governments impose resource taxes. The State Dept. of Community and Regional Affairs has a study of the issue now underway, which will include the experiences other states have had with natural resources property taxes.

State law appears to require valuation of resources in place

Resource "in place" taxes are property taxes placed on the value of raw, undeveloped natural resources. Alaska statutes exempt certain kinds of property — oil and gas — from in-place taxes, although surface facilities related to oil and gas are subject to tax. But the law is silent as to other types of resources, such as minerals or timber.

The issue mainly affects mining developers most directly because several major projects — the AJ Mine eventually Greens Creek Mine in Juneau, Red Dog Mine in northwest Alaska, the Usibelli and Wishbone Hill coal mines, Fort Knox in Fairbanks — are within municipal boundaries. The companies developing these projects are concerned over uncertainties that arise from different theories of municipal appraisals on undeveloped mineral properties. Some of these projects are economically marginal, and new local government taxes would affect the economic viability of the projects. Sand and gravel owners and operators should also be concerned. Timber properties would also be affected, but trees are easier to appraise simply because they can be seen, counted and graded. They are more "quantifiable."

How the issue complicates state school revenue-sharing

The complication with state school funding arises because the state assessor is required to prepare a statement of the full and true real and personal property in the state (AS 14.17.140), and must yearly do a full value determination for each municipality. The full value determination is a basic element of the formulas for school funding and state revenue sharing. If statutes do not specifically exempt resources in place from local taxation, the implication is that they should be subject to local taxation, and thus a part of the "full value" determination. *(Cont'a page 4)*

(Continued from page 3) But if the value of resources, having been determined, is added to the basic assessment of municipalities, the result will be changes in the amount of education revenue sharing. For the Northwest Arctic Borough, which includes the Red Dog Mine, this could have dramatic financial consequences, for example.

Implied taxability of resources has always existed in state law

The implied taxability of undeveloped resources has always existed in Alaska law, but in practice most municipalities did not attempt such taxes because they felt the values would be hard to determine and, if undeveloped, had little or no value. Where they were taxed, market-value appraisal techniques were applied. In Fairbanks North Star Borough, for example, the value of surface lands on some mining claims have been taxed.

But major mining projects within municipalities do have undeveloped ore reserves of some value. Determining that value is a major issue. If state law appears to require "full value" assessments, the value of those ore bodies should be included in local tax bases. The problem faced by municipalities is that even if they choose not to impose property taxes on resources, the state assessor may be required to include them in his or her own determination of municipal assessed value, in which case the municipality loses state education funds.

Local governments may also be subject to citizen lawsuits by failing to tax in-place resources. Alternatively, the state assessor may be under legal challenge by other municipalities without natural resources who would argue they are losing state education money because other local governments with resources are not being appraised fairly, under state law.

How to define "resources in place"

One problem is how to clearly define the term. The phrase "in place resources" does not correspond to any commonly used assessment terminology, and appears to be very broad. Chapter 127, SLA 1990 (which imposed the temporary two-year moratorium on taxation) refers only to natural resources in place as, "including proven or unproven mineral and other deposits of valuable materials and timber stumpage...".

What is ambiguous in that definition is the phrase "other deposits of valuable materials." This very likely includes sand and gravel, but would it, for example, also include glacier ice, if it had some form of economic value? The Dept. of Community and Regional Affairs, for the purpose of its own study, uses the definition "Any material in its native state before it has been severed or extracted."

(Continued next page)

This article on "in place" resource taxation first appeared in our special Digest supplement publication for special small communities, municipalities, and schools published in late November (No. 21/91).

The CRA study is 'evolving'

(Continued from page 4) As the C&RA study is now evolving, two discreet positions are developing, not only over the question of whether such taxes should be imposed, but over the definition. Some state agencies, and appraisal experts retained by them, feel the definition of mining properties should be linked to the term "proven reserves" because that phrase has well-established meaning in the mining industry (it means ore reserves definitely established by drilling, as compared to more general estimates). Municipal appraisers, on the other hand, want a very broad interpretation. For them, "resources in place" should be defined as "any material in its native state without regard to quantity, quality or economic value." Appraisers want the term defined broadly so others will not misinterpret it in a limiting way.

Two positions that have formed up over the definition are these:

(1) Natural resources should not be subject to municipal tax before they are severed because it is technically infeasible or impractical, and because taxation of an ore body before development takes place will hamper development of the resource. The State Departments of Commerce and Economic Development, Natural Resources, Revenue and the Office of the State Assessor (CRA) hold this position.

A contrary view is:

(2) Taxation of resources in place before extraction takes place should be available to municipalities if the resource has a measurable value that can be demonstrated by accepted appraisal practices. Alaska Municipal League and Alaska Assoc. of Assessing Officers takes this position.

What some municipalities now do

Several municipalities tax resources in various ways, but always at the point of extraction or in a manner where values are clearly demonstrated. In Ketchikan Gateway Borough, City and Borough of Sitka and Kodiak Island Borough, timber is a resource but most of it is owned by Alaska Native corporations exempt from taxation under federal law, and from local property taxation until development occurs. In other jurisdictions, such as Haines and Juneau, municipal assessors have not valued timber separately from surface estate.

Other marketable timber in Southeast Alaska is outside local government areas. Until 1986 mining claims were assessed at a flat \$200 for every 20 acres. After 1986, mining claims were to be valued at their full and true value, but in practice, values were based on the value of surface holdings, with no regard to subsurface resources.

Four boroughs that encompass large areas, including mineralized regions, do not have property taxes: Northwest Arctic, Aleutians East, Lake & Peninsula and Denali. However, Kodiak and the Denali Borough have resource excise taxes that tax as the resource as extracted. Kodiak's tax applies mainly to fish and timber, but it broad enough to apply to minerals as well. Denali Borough has a specific resource extraction tax levied on coal — \$.05 cents per ton of production, and gravel, \$.05 cents per cubic yard of production.

(Continued page 8)

Problems of assessing natural resources

(Cont'd from page 5) One problem municipalities face in imposing taxes on resources in place is administrative cost. Appraisals require expertise in several professional fields, and the going rate for these kind of services is \$150/hour. If several natural resources in a municipality were to be appraised, it would be extremely expensive. An alternative would be for the state to perform a uniform appraisal, similar to the process now used for oil and gas properties subject to the state oil and gas property tax. Both municipalities and the state levy property taxes on petroleum facilities (the local tax is credited against the state tax by the taxpayer) but the valuation is done by the state.

If resource-in-place taxes were to be allowed, private industry might prefer this approach because it would avoid a patchwork of different appraisal methods used across the state. Uniformity in the state assessor's full value determination, for school revenue sharing, might also require it. More serious is the problem of actual establishing value.

Robert Paschall, a consultant retained by both the state and the Northwest Arctic Borough to do assessments of the Red Dog Mine, noted that metallurgical problems being experienced by Cominco Alaska, the operator, would result in the value of the ore body dropping from \$100 million to \$30 million. In two to three years, when those problems are solved, the value would increase again to \$100 million. Dramatic swings which are typical in world metals prices will also affect the in-place value of ore reserves. Obviously, such fluctuations in assessed value would make property tax collections very unpredictable, and add uncertainty to annual state school revenue-sharing.

Northwest Arctic example portrays the 'uncertainties'

An illustration of how this would affect the Northwest Arctic Borough: If the approximate state Full Value Determination for Northwest Arctic Borough is \$446,850,000, the addition of \$100 million to its tax base would increase its Full Value Determination by 22 percent, resulting in a decrease of \$400,000 in annual school funding. Against this uncertainty, timber presents a different issue. Timber is easier to value because it can be seen and measured, although market prices can also be volatile, and in-place value is also affected by its location (more remote, difficult to access stands would have higher costs, thus lower in-place values).

What other states do

Thirty one states can legally tax natural resources in place but only 12 states actually do it, in varying ways. Arizona, Colorado, Indiana, Kentucky, Michigan, Mississippi, Missouri, South Dakota, Texas, Virginia, West Virginia and Wisconsin now have different forms of resource in-place taxes. Nineteen states exempt natural resources in place from property assessments.

States that do have active resource in-place taxes have resources sufficient to generate the revenue to justify staff and expenditure. Arizona and Kentucky are very active, but both centralize the assessment function with state government, to assure uniformity. Kentucky assessed and taxes at the state level, then passes the revenues through the local governments. Arizona provides assessments to local governments, which then levy the tax.

(Continued next page 9)

Sales approach to value hard to "verify"

(Cont'd from page 8) In other states that allow in-place taxes, many rely on the market, or sales approach to valuation, a traditional method in real estates appraisal. But actual sales of resource properties are rare, hard to verify, and are often not comparable to other properties being assessed. Many states have mandatory sales disclosure laws, which requires sale prices to be provided to assessment offices. Still, sales data is considered generally inadequate to reliably assess resource properties. Generally, many states that allow in-place taxes disregard them because of lack of reliable data. In Canada, resource taxation is generally similar to that of the U.S. Resource development projects are subject to federal, provincial and local taxes in the form of income and severance taxes.

A complex impact on projects

The Department of Commerce and Economic Development pointed out that states with the highest taxes, including in-place taxes, offer more in the way of infrastructure for industrial development than does Alaska. Alaska mining operators now pay a mining license tax, state corporate income taxes, and rents and royalties, such that the total burden on mining places Alaska in the upper 1/3 of states with taxes on mining. The department also said: "A tax on unmined, in-place reserves would seriously penalize a company for pursuing the sensible, longer-term, in-depth approach to evaluation of an ore body. Companies now often take a slow methodical approach to proving up properties. A tax might discourage programs to define reserves. Instead such a tax might encourage a company to make a quicker, less-informed decision that could result in costly mistakes or, just as bad, the abandonment of a good project that simply needed more work to demonstrate its economic viability." DCED also questioned whether a tax on standing timber would encourage premature harvesting of the resource to avoid taxes, or otherwise distort harvest planning based on market criteria.

Comments from state agencies included in the C&RA study

The State Assessor pointed out that, based on the Red Dog experience, the complexity of valuing ore bodies is beyond the experience of local governments and state agencies in Alaska. Alaska Municipal League contested this assertion, and said that Alaska assessors are capable of valuing resources if market criteria can be developed. If minerals are to be taxed, the state assessor said, "proven reserves" should be the criteria and the assessment function should be centralized in state government. Municipal League also opposed this: "Only the state perceives a problem with current assessment practices. Municipalities do not want the state to determine local values or increase the regulation of local taxation," AML said in correspondence to the C&RA study team.

The state assessor also said the state does not now have adequate staffing or trained personnel to undertake a central assessment task. Alaska has other problems, the assessor pointed out: Adequate maps and complete property ownership information are not available. Municipal League said: "The question of taxation refers only to known natural resources that have measurable market value. The broad definition of in-place natural resources includes known and unproven deposits of material that may not have any measurable market value. By definition, ad valorem taxation is based on value. No value - no tax.

(Continued on page 10)

Other thoughts: "Community tax inequities will remain"

(Cont'd from page 9) There are other perspectives in the shadows of debate over taxation of resources "in place." One such issue is the inequities between "have and "have not" Alaska local governments. Some have rich tax bases, some have little, some no hopes of a tax base. Naturally, every local government is looking for a high value/per capita industrial tax base. However, Alaska has many local governments with marginal tax bases, and even whole regions denied choice of real local government because they have no hope of a tax base. The resources "in place" tax issue is an initiative by some local governments looking for badly needed tax resources. As a matter of principle they would like to bring their fellow governments along for the philosophical ride. However, as the Alaska map fills up with local governments, these local governments will sooner or later turn to look at each other, and examine the sizable tax inequities between them.

Industrial tax base sharing ?

If inequities become glaring enough there may well be a movement to construct a kind of state law provision that would allow 'have not' local communities to share in the benefits of a defined state industrial tax base. The problem with industrial and resource tax wealth is they tend to center on a few areas. In terms of philosophy, a tax sharing provision would be a cousin to what Congress constructed in the controversial 7(i) feature of federal native land claims legislation, a provision that requires the sharing of a portion of resource revenues between all corporations..

There is already a great disparity of tax wealth between Alaskan communities. For example, the North Slope Borough may well be the richest local tax base in the North America. In 1990 the North Slope Borough was at the top of the Alaska tax value list with a value of \$1.53-million per capita (oil property). At the bottom of tax value cities was Hooper Bay with \$8,943 per capita. Second in value in 1990 was the City of Valdez at \$280,739 per capita (oil transp facilities), followed by other boroughs and cities with some measure of industrial tax value, such as the Kenai Borough with \$86,111 per capita (oil facilities), Bristol Bay Borough, \$92,566 per capita (fish plants), Sitka and Ketchikan (pulp plants) with \$54,349 and \$63,597 per capita. However, the new Aleutians East Borough has only \$32,077, and the Lakes and Peninsula Borough has \$34,447. Municipalities with virtually no industrial base generally fall between \$25,000/\$45,000 per capita. Fairbanks and Anchorage are only in the \$42,000/per capita range, but these two communities are commercial centers that, should need require, have potential access to high yield revenue through a sales tax. A sales tax in St. Mary's, Hooper Bay, Dillingham, or Nome offers no similar high yield.

Direct resource tax load and trade "contradictory" ???

Another perspective --a direct resource tax load and international trade may not mix. Remember taxes must generally be "uniformly applied." One resource may be able to stand a tax load, while another bound into extremely competitive international markets cannot stand a high tax load. A government may not be able to legally differentiate. Some economists suggest that the term "Pacific Rim" trade, with regard to any expectation of very high resource royalty or tax yield, is simply an economic contradiction. The increasingly competitive world trade market suggests that taxes, other than taxes related to management and environmental cost, must come from indirect taxation, from income taxes and sales taxes, not from a front end load on the product.

One of our year long feature issues ?

Can resources pay tax load, or must people pay taxes too ?

Throughout 1992 we will examine the ongoing issue of expanding the state's tax base. Alaskans are fond of talking about the need to diversify their economy. Implied in this rhetoric is the suggestion that somehow 'new revenues' associated with this diversification will replace lost oil revenue.

The reality we will discuss throughout the year is whether it is realistic for Alaska to expect that many other resources can really be taxed directly, or pay royalties that provide significant revenue. Some types of resources may only be able to afford to pay for their own management and some social and rehabilitation costs. This discussion will surface intermittently throughout our publication year in Legislative Digest. We do not suggest that other resources should be 'taxless,' but we will explore whether there are other resources that can replace skidding petroleum production revenue earnings. At the bottom of this review is the reality of whether we can add much tax load to natural resources that already carrying high Alaska production costs, and still expect to be competitive in the market --especially international markets. Facing tough international competition, some resources will only be able to pay payroll, but will employ people who will, in turn, pay taxes for public services.

In this context we will discuss:

- (1) Where other states get their taxes?
- (2) Keeping state and local taxes separate!
- (3) Problems with direct resource taxation.
- (3) The stake of the business community in insuring that the state over the long-haul adopts a 'fair' agenda of taxes.
- (4) The stake of the citizen and local communities in insuring that Alaska adopts a fair tax agenda, that avoids the kind of tax competition and loading that has occurred in other states!
- (5) Public understanding of direct resource tax load and the ability of high cost Alaska to compete in the international market.

MEMORANDUM

State of Alaska

Department of Law

RECEIVED

TO: Bob Evans, Legislative Liaison
Office of the Governor

DATE: April 26, 1988

FILE NO.: 663-88-0410

APR 27 1988

TEL. NO.: 465-3600

MRAD

DEPT. OF COMMUNITY

SUBJECT: Exemption of ~~and~~ ^{in place} natural resources
MUNICIPAL AFFAIRS

FROM:

Marjorie L. Odland

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

the value of the property that are known or prospective; not sought or speculative.

There is authority supporting the view that assessors may take into consideration prospective value of property as well as present value in making assessments and that an added value may be given property for purposes of taxation where there is "sufficient reason" to believe that the property contains mineral deposits in sufficient quantity to give it a value as a prospective mine. However, there is also authority to the effect that not only must property be valued at its present value at the time of the assessment, but that such value cannot be based on a speculative prospective value. See generally 72 Am.Jur.2d State and Local Taxation, §§ 763-764.

In summary, it is our opinion that AS 29.45.110(a) allows for "in place" natural resources to be assessed and included in the full value determination of a municipality. The issue of whether the state is mandated to assess these resources will be included under the next section dealing with any potential state liability for failure to include assessment of "in place" natural resources in the full value determination of a municipality.

2. If "in place" natural resources are not currently exempted from the full value determination, what liability may the state face if the state assessor does not include these in his assessments?

As pointed out above, the state has never required municipalities to assess "in place" natural resources in order to arrive at the full and true value of property in the municipality. The issue is not whether AS 29.45.110(a) can be interpreted to allow for assessment of "in place" natural resources, since we believe that the Alaska Supreme Court would rule that it does. The issue here centers around the state's longstanding application of this statute in not requiring these resources to be assessed and whether the state faces liability for not including "in place" resources in the assessments. In short, we do not believe that the state faces any present liability for failure to require municipalities to assess "in place" natural resources without a specific exemption in the law.

We are assuming that the liability anticipated by your question concerns a situation where one municipality complains that the state should be requiring another municipality to assess its known "in place" natural resources in the full value determination as it affects the distribution of municipal revenue sharing and education funding. However, a municipality's claim

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.

MLO/pjg

Resolution of the Alaska Municipal League
Resolution No. 92-6

A RESOLUTION RECOMMENDING TAX-EXEMPT STATUS OF
"IN PLACE" RESOURCE RESERVES

WHEREAS, under Chapter 127, SLA 1990, there is a temporary exemption for natural resources in place until July 1, 1992, and

WHEREAS, under the same statute, the Department of Community and Regional Affairs (DCRA), in concert with the Alaska Municipal League and the Department of Revenue, is required to prepare a study and recommendations by January 15, 1992, on municipal property taxation of natural resources in place, and

WHEREAS, the AML President appointed a working group of municipal officials and other individuals which has worked with DCRA to represent the views of municipalities, and

WHEREAS, previously, Alaska law required municipalities that levy a property tax to assess, levy, and collect property taxes on natural resources in place, except oil and gas resources, which are mandatorily exempted, and

WHEREAS, without the exemption, the Office of the State Assessor may be required to include values for those natural resources in place in the full value determination for municipalities across the state, and

WHEREAS, prior to the temporary exemption, neither municipalities nor the Office of the State Assessor included values for those resources on local assessment rolls or in the full value determination, and neither has the staff or fiscal resources to value natural resources in place, and

WHEREAS, the inclusion of values for those resources on local property tax rolls or in the full value determination would be likely to have substantial negative tax impacts on farms, ranches, homesteads, and other residential property and substantial negative impacts on municipalities under the state revenue sharing and education funding formulas, and

WHEREAS, under the Alaska Constitution and existing statutes, municipalities have broad powers to impose a variety of taxes on such industries, including sales, use, severance, excise, property, and income taxes, in order to provide services and mitigate the impacts of development, and

WHEREAS, in the "Draft Report on the Study of Taxation of 'In Place' Natural Resources" dated November 1, 1991, and prepared by DCRA, natural resources in place are defined as *"any material in its native state before it has been severed or extracted"*;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports the passage of legislation that would require, under AS 29.45.030, the exemption from municipal property taxes of all natural resources in place, as defined in the DCRA Draft Report of November 1, 1991, together with language that would insure preservation of the power of municipalities to levy other types of taxes, including severance and sales taxes against the development and sale of those natural resources.

Adopted at Annual Business Meeting o November 15, 1991 o Fairbanks, Alaska



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

October 24, 1991

Ms. Sandra J. Wicks
Deputy Director
Municipal and Regional Assistance Division
Department of Community and Regional Affairs
P.O. Box BH
Juneau, AK 99811-2110

RECEIVED

OCT 28 1991

MRAD
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

Re: In Place Taxation of Resources

Dear Ms. Wicks:

It was my pleasure to meet you on Friday at the workshop here in Anchorage. With several mining industry people in the audience I am sure you now realize that we are not the rowdy bunch you had been led to expect.

The purpose of this letter is to relate some of our concerns regarding the taxation of minerals in place. Taxation of minerals in place is detrimental for the mineral industry for many reasons and we urge that the report to the Legislature clearly define these reasons and recommend that the existing statute be changed to exempt in place resources from taxation. That report should also list the many other avenues that are now open to the municipalities for taxation of resource industries.

The first and most compelling reason for not taxing minerals in place is that it is extremely difficult to place a value on minerals before they are actually extracted from the ground. Major mining companies employing scores of exploration, financial, environmental, engineering, and management people have a very difficult time defining the value of a deposit.

These companies have extensive institutional experience with many hundreds of years of combined expertise. They have state of the art equipment, procedures and computers that are used in their evaluation process. They have operating mines, often around the world, for comparison and history as basis for determining mining and processing costs. They work to predict metal market changes and spend many years establishing a management track record and developing markets.

Because of the difficulty encountered in making profits in mining, many companies focus on only one or two metals, or focus only on base metals of copper, lead and zinc. Some companies focus on the precious metals of gold and silver while others search for and mine only platinum or diamonds or coal. Each of these commodities has a sufficiently different and complex set of exploration, mining, metallurgical, financial, and marketing problems that necessitate specialization in order to produce profits.



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Given an industry with these characteristics and boards of directors intimately concerned with the profitability of each operation, the question becomes: How can local or state tax assessors or their staffs even begin to determine the value of a mineral deposit when these companies have such difficulties determining the value?

The second major problem with the taxation of minerals in place is that it discourages exploration in two ways. First, it discourages exploration in any jurisdiction that utilizes a scheme of in place minerals taxation, and second, it discourages exploration even if in place taxation is on the books but not being used. It will discourage exploration of areas where little is currently known (grass roots exploration) and it will discourage a company from fully evaluating deposits that are already well defined or are already in production. In this instance the tax would discourage the most efficient management of the mine.

Mining companies and financial institutions that loan to them typically have a checklist of items that they consider at each step in their search for new mines. Before a company begins more than a cursory review of mineral prospects in Alaska, they will compare Alaska to the other states, provinces and countries where they may wish to invest their exploration dollars. The items on the checklist will include - regulations, regulatory stability, types of taxes, existing tax levels, tax stability, fiscal stability of the state or country that may affect taxes, etc. The checklist will also address political stability, labor force availability, labor force attitudes, and operating cost considerations.

These items are reviewed before approval is given to spend money in a particular state or country. The exploration business is one of finding likely exploration targets and developing sufficient information to determine if that target can ever become a mine. This process requires many years. For Greens Creek, the largest silver mine in North America, it took 17 years from the initial discovery until first production. For Red Dog, the largest zinc deposit in the world, it took 21 years from initial discovery until first production. For Diamond-Chuitna Coal Co., it has thus far taken 14 years and the first ton of coal has yet to be mined and sold.

If an in place tax had been charged on these minerals before they were mined, there is a high likelihood that no mining would ever have taken place. The cost burden in the early years of a project and the uncertainty as to how long this ongoing cost burden would continue before the mine could start would have been a significant argument against continuing exploration.



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Each year a mining company re-evaluates the various projects around the world where it can invest its exploration dollars. Within overall corporate objectives, each prospect/project will compete with every other project for funding for the next year. Each year the checklist comes out and further investment is weighed against the results of this year's exploration findings and any changes to the regulatory, tax, political, etc climates. A project in Alaska will have to compete for funding with prospects in Mexico, Bolivia, Indonesia, USSR, etc. If the Alaskan project carries with it a tax on in place minerals, that project will be at a disadvantage.

Because of the lack of transportation infrastructure in Alaska, it is simply more expensive to conduct minerals exploration and develop and operate a mine here than in many other places of the world. In place taxation, and the scary prospect of being taxed on a resource before it is economic, is just one more disincentive to doing business in Alaska.

Alaska is already at a severe disadvantage for a variety of reasons. These include the cost of operating in the north and the lack of infrastructure. They also include the fact that most mining companies have, at least up until the past two years, seen Alaska as a bad place to do business. They have seen Alaska as a place where they will be harassed by all manner of preservationist groups that have claimed Alaska as their big park. They have watched as the state has milked the oil industry at every turn. They have watched some past state administrations thumb their nose at mining and even target mining companies for harassment.

Because of these and many other factors, there are now only five mines in the entire state with more than 100 employees. From World War II until 1989 when Greens Creek and Red Dog began operation there had been effectively no hard rock mining in the State of Alaska. There are 3000 coal mines in the U.S. and in spite of the fact that Alaska has as much coal as the other states combined, there is only one operating coal mine in Alaska. We are, however, now seeing many companies return to look for minerals in Alaska. It is as if Greens Creek and Red Dog have shown the world that it is possible to start a major mine in Alaska. This notion had been in question for many years. Taxation of minerals in place will act to negate the positive changes that have occurred.

A third fact to consider is that taxation of minerals in place is an additional burden on local communities that are already struggling to encourage creation of new jobs and expand their real property tax base. For much of Alaska the only opportunity for economic development and creation of new jobs is through development of the mineral resources. Many parts of the state do not have timber or fish or oil. The only opportunity in those areas for good-paying, skilled, close-to-home, year-around jobs is the development of the minerals. It should also be noted that on a nation-wide average, mining jobs are higher paying than comparable jobs in other industries.



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If in place minerals are taxed, local communities will be hurt without even knowing it. Many of the mining companies that have the expertise to find and develop the minerals will not even go out in Alaska to look for new mines. They will not be there to provide exploration jobs in the early years of a project nor will they be there to provide mine operating jobs and long term employment.

During the meeting here in Anchorage, State Assessor Mr. Mike Worley described the assessment of value as a combination of many factors. He described this as the value of the facilities and improvements along with the value of a particular piece of land based on its location or setting. The value of an undeveloped lot therefore includes the potential value of the lot for the highest and best use to which it could be placed. A fourth major problem with in place taxation is therefore: How will the value of the non-tangible natural resources that exist due to location or setting be determined? For the lot in town, this non-tangible value is determined and it will have to be determined for all areas of the state.

For example, how will "wilderness character" be valued? This is clearly a natural resource that is in place and it too will have to be taxed. What is the value of "wilderness character" for a remote area where one can see wildlife on a consistent basis? What is the increased value of a parcel of land that has a fabulous view of Mt. McKinley or Mt. Saint Elias? Those sites have a natural resource value based on their location just as the lot in town has a value based on its location.

This is an "opportunity value" that exists for many different resources. A tremendous opportunity may exist if a lodge were to be constructed and marketed for European or Japanese customers at \$5000 per week. Until that lodge is built and has developed its niche in the market it will be impossible to determine what that opportunity value really is. It will be easier to calculate for lodges and resorts that are already in operation and are benefitting from the opportunity value of the natural resources around them.

Mr. Worley also discussed several tax policy considerations. These included fairness between taxpayers and fairness between municipalities. If natural resources are to be taxed in place and taxation is to be fair, all areas of the state will be subject to taxation of their scenic values, wilderness character, wilderness proximity, and other such resource values.



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What about hunting and fishing lodges? What about lodges that focus on hiking or mountain climbing? These often occupy and utilize the most beautiful parts of the state. They will be subject to taxation of the resources they utilize even if the resources are not consumed, just as in the case of minerals that are not extracted from the ground. Of course it could be argued that the hunting and fishing lodges do indeed consume some of the resources.

In a similar vein, a fifth problem with taxation of natural resources in place involves how will the fish resources available to fishing sites be taxed? The fish are clearly a natural resource. The "lot" where the fish site is located has a measurable market value but it also has an "opportunity value" by virtue of the fish that pass the site. If the fisherman is diligent and fishes every minute of every opening he will likely have a greater profit than if he fishes only the best or most convenient openings. What then is the basis for taxing the in place resource that is available to him?

A sixth problem is whether or not it would be cost effective to attempt taxation of in place resources. The above examples show some of the difficulties that will be encountered. What will be the cost of assessing the in place resource values for fish, timber, wilderness character, scenic views, lodges, and minerals? The direct financial costs to the municipalities and the state will be very high as will the indirect costs that will result.

The direct costs are not a one time charge either. Value assessment of in place resources will in many instances require a yearly re-evaluation. Fish resources available to the fisherman will vary from year to year as will the cost of operation and the price that he can get for the resource. From a minerals standpoint the "value" of ore deposits also change each year. Some ore is mined (hopefully), additional drilling may add to the ore reserves, changes in the metallurgy of the ore being mined (the difficulty of removing the metal from the rock) may increase cost other factors may increase costs, and the prices received for the metals will always fluctuate. Each of these changes means the "value" of the minerals in place will change.

The issue of annual re-evaluation should be a concern. I believe Arizona is one of only two states that still attempts to tax ore reserves in place. I talked with mining industry officials there and learned that in Arizona there are five major mining companies that have 14 operating properties with copper and gold being the primary commodities produced. The assessed value of the ore reserves are re-evaluated each year based on metal prices, operating costs and profits and the process is a very strenuous one for all concerned.



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The indirect costs will include disagreements between the lodges, fishermen, loggers, miners, etc. seeking to operate, and the municipalities. Arguments and discontent between these groups and the municipalities would become a very divisive factor for the communities. We need only look at the problems that arise right now when assessors seek to place a value on real property that can be seen, touched and measured. Therefore, what will it be like to value resources that cannot be seen, touched or measured?

A seventh problem will arise when a company that has been taxed for several years on the in place natural resources decides that the project is not economic and asks for reimbursement of the taxes that had been paid. This could be a lodge developer that sees his potential market change or it could be a mining company that concludes that the metallurgy of the ore is too complex and costly for a mine to be profitable.

The above points show the extreme difficulty of in place taxation of resources. For some resources the valuation process (assessing) is more difficult than for other resources. Considering minerals, it is nearly impossible for these to be valued for taxation and if they are taxed the ultimate effect will be less exploration in Alaska and there will be fewer jobs generated.

In considering taxation of in place resources, all of these resources will have to be valued and taxed. This would be a herculean task. We therefore urge you to provide the State Legislature a recommendation that the statute be changed to exempt all resources in place from taxation.

Sincerely,

Steven C. Borell, P.E.
Executive Director

Original sponsor(s): REP. MACLEAN, Cato, Zawacki

1 IN THE HOUSE BY THE C&RA COMMITTEE
2 SENATE CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 159 (C&RA)
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 an exemption from municipal
7 property taxation for natural resources in place; and
8 providing for an effective date."

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

10 * Section 1. PURPOSE. It is the primary purpose of the legislature in
11 providing for a temporary tax exemption for natural resources in place to
12 gain the time necessary for an orderly and comprehensive study of the
13 issues relating to exempting natural resources in place from municipal
14 property taxation.

15 * Sec. 2. TEMPORARY TAX EXEMPTION. Natural resources in place, includ-
16 ing proven or unproven mineral and other deposits of valuable materials and
17 timber stumpage, are exempt from property taxation by a municipality.

18 * Sec. 3. STUDY AND REPORT. (a) The Department of Community and
19 Regional Affairs shall study and compare the potential effects of various
20 natural resource taxation options including

21 (1) total exemption from municipal property taxation for natural
22 resources in place;

23 (2) partial exemption from municipal property taxation for
24 natural resources in place;

25 (3) no exemption from municipal property taxation for natural
26 resources in place;

27 (4) total or partial exemption from municipal property taxation
28 for natural resources in place at the option of each municipality;

29 (5) taxation of natural resources in place by municipalities

1 other than property taxation for purposes of determining whether a perma-
2 nent exemption from property taxation is the most desirable approach.

3 (b) The Department of Community and Regional Affairs shall select
4 representatives of municipalities and of unincorporated communities in
5 boroughs and in the unorganized borough to advise in the design and exe-
6 cution of the study under (a) of this section. The Department of Community
7 and Regional Affairs shall conduct the study in concert with the Department
8 of Revenue and with the Alaska Municipal League. The study must include
9 consideration of

10 (1) tax treatment by other states of natural resources in place;

11 (2) the point in time that natural resources in place acquire a
12 value for tax purposes; and

13 (3) methods for determining the value of natural resources in
14 place that may be applied on a uniform basis in all municipalities.

15 (c) By January 15, 1992, the Department of Community and Regional
16 Affairs shall report to the legislature its findings and recommendations
17 regarding municipal property taxation of natural resources in place.

18 * Sec. 4. This Act is repealed July 1, 1992.

19 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

January 22, 1992

The Honorable Jerry Mackie, Chair
House Community and Regional Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Mackie:

Subject: HB 366, HB 373, which relate to an exemption from municipal property taxation for natural resources in place.

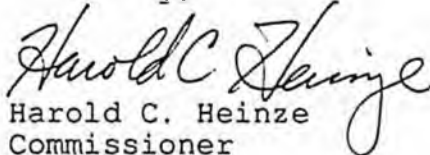
Position: Although these bills do not directly affect the Department of Natural Resources, we offer our support for the taxation policy they establish.

Background: The valuation of natural resources in place is an extremely difficult and costly task to accomplish, and the results are rarely acceptable to all involved parties. Resource development depends as much on markets, timing, and location as it does on the resource itself. Not exempting natural resources in place from municipal property taxation could further discourage natural resource development in Alaska and depress the price the state receives when offering its resources for sale.

In addition, not exempting natural resources in place from property taxation would raise the value of property within municipalities which, in turn, would negatively affect state education foundation aid and revenue sharing monies municipalities are eligible to receive.

Recommendation: Consider the report on taxation of natural resources in place prepared by the Department of Community and Regional Affairs, and adopt its recommendations.

Sincerely,


Harold C. Heinze
Commissioner

cc: Representative Cherie Davis
Representative Eileen MacLean
Committee Members
Paul Fuhs, Legislative Liaison, Office of the Governor
Edgar Blatchford, Commissioner, Department of Community and Regional Affairs

HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
1/22/92

SPONSOR STATEMENT BY REP EILEEN P. MACLEAN

FOR HB 373 - RELATING TO AN EXEMPTION FROM
MUNICIPAL PROPERTY TAXATION FOR NATURAL
RESOURCES IN PLACE

Thank you, Mr. Chairman. The purpose of HB 373 is to place a permanent exemption into statutes to exclude the value of resources in place from municipal taxation. This bill is necessary because taxation of in-place resources is implied by law but has never been implemented. Alaska statutes exempt certain kinds of property from in-place resource taxation, such as oil and gas properties, but is silent as to other types of resources, such as mineral and timber. An AG opinion written in 1988, and enclosed in your back-up, stated that the value of in place resources should properly be included in the assessed values of municipalities. The State Assessor raised the issue in 1989 and asked the legislature to clarify the statutes by either clearly requiring that resources in place be taxable, or to exempt them altogether. Common practice in the state had been to exclude the value of resources in place because it is technically impractical to value mineral bodies under ground. Although large deposits of resources may exist, they often cannot be developed at a profit. It is difficult, if not impossible, to predict whether or not a resource will ever be economically developed.

In 1989, I sponsored HB 159, which enacted a two year temporary exemption, to allow the Department of Community and Regional Affairs time to study issues of taxing resources in place. HB 159 defined resources in place as "proven or unproven mineral and other deposits of valuable materials". A report was due to the legislature by January 15, 1992.

The DCRA report included in your back-up concludes on page 17, that "unless the Legislature totally exempts natural resources in place from local taxation during this session, a state of confusion will ensue for the municipalities, the State Assessor's Office and resource industries. There is a statewide consensus that the Legislature should adopt an amendment to AS 29.45.030 totally exempting natural resources in place from local property taxation".

HB 373 will make permanent the temporary exemption enacted in 1989 and removes an ambiguous and impractical requirement from the statutes. The passage of HB 373 does not preclude any other taxing options after extraction or development, it only prevents in place resources from being taxed while in their natural state, and removes a substantial negative incentive for all types of mineral development.

For the record, I would like to state that the definition of natural resources in place includes sand and gravel materials. A question arose yesterday in the Senate C&RA committee about

the sand and gravel issue. I have been informed by the Legal Services Division that sand and gravel is already included in the existing definition of resources in place as "other proven and unproven deposits of valuable materials".

The Alaska Municipal League supports this legislation. Your back-up includes a copy of the resolution passed at the AML Conference in November, the DCRA final report and position paper, a copy of HB 159, a 1988 AG opinion on the taxation of in place resources, a comment paper by the Alaska Miner's Association, and a Legislative Digest analysis of the issue.

I fully support the technical amendment submitted by the department. There is one other minor amendment I would like to offer for the Committee Substitute. On page 2, line 22, I would like to delete the word "stumpage" from the phrase "timber stumpage". I've been informed that this is the preferred language. The Senate version of the bill will also be modified to include this wording change.

Thank you for the prompt scheduling of HB 373. I ask for the committee's support and would be happy to answer any questions you have at this time.



attachment 1

ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

House Bill No. 373

Exemption from municipal property taxation for natural resources in place.

My name is Steven C. Borell and I am the Executive Director of the Alaska Miners Association.

Thank you Mr. Chairman and committee members for the opportunity to comment on this important issue. Thank you also for scheduling this bill early in the session.

The AMA supports this legislation and the need for passing an exemption for the taxation of natural resources in place during this session of the Legislature. We are concerned that if taxation of natural resources in place is begun, the affect will be to discourage if not totally close down exploration in those areas where this form of taxation occurs.

We also wish to commend the Alaska Municipal League for taking the lead in support of an exemption from taxation for resources in place. We were very pleased to learn that the AML passed a resolution favoring exemption of taxation of natural resources in place and that the resolution passed on a unanimous vote. The AML recognized that in place taxation would have a very serious negative affect on local economies in several different ways.

Rather than addressing in detail all of the arguments why in place taxation is not a good policy, I shall list and summarize the major problems with this form of taxation.

The first and possibly most compelling reason for not taxing minerals in place is that it is extremely difficult to place a value on minerals before they are actually extracted from the ground. Major mining companies employing scores of exploration, financial, environmental, engineering, and management people have a very difficult time defining the value of a deposit.

The second major problem with the taxation of minerals in place is that it discourages exploration. Mining companies will not even look for minerals if they will be taxed for the many years that are required to determine if they have an economic deposit. For Greens Creek, the largest silver mine in North America, it took 17 years from the initial discovery until first production. For Red Dog, possibly the largest zinc deposit in the world, it took 21 years from initial discovery until first production. If an in place tax had been charged on these minerals before they were mined, there is a high likelihood that no mining would ever have taken place.

 ALASKA MINERS ASSOCIATION, INC.

A third fact to consider is that taxation of minerals in place is an additional burden on local communities that are already struggling to encourage creation of new jobs and expand their real property tax base. For much of Alaska the only opportunity for economic development and creation of new jobs is through development of mineral resources. If in place minerals are taxed, local communities will be hurt without even knowing it because the mining companies that have the expertise to find and develop the minerals will not even go out and explore for them.

A fourth problem involves the taxation of non-tangible natural resources that exist due to location or setting. For the city lot this non-tangible value is determined and under the doctrine of equal treatment, the value of non-tangible natural resources such as wilderness character, wilderness proximity, scenic values, proximity to rivers for rafting or floating, etc. would have to be taxed. Hunting and fishing lodges would have to be taxed for the fish and wildlife resources that are in their area.

A fifth problem involves how will the fish resources available to fishing sites be taxed? The fish are clearly a natural resource and the fish site has a measurable market value but it also has an opportunity value by virtue of the fish that pass the site.

A sixth problem is whether or not it would be cost effective to attempt taxation of in place resources. The above examples show some of the difficulties that will be encountered.

A seventh problem will arise when a company that has been taxed for several years on the in place natural resources decides that the project is not economic and asks for reimbursement of the taxes that had been paid. This could be a lodge developer that sees his potential market change or it could be a mining company that concludes that the metallurgy of the ore is too complex and costly for a mine to be profitable.

For all of the above reasons, a permanent exemption for taxation of natural resources in place is necessary during this session of the Legislature.

Thank you again and please feel free to contact me if you have any questions.

Testimony
HB 373
January 22, 1992

attachment 2

MY NAME IS KENT DAWSON. I AM HERE TODAY REPRESENTING THE ALASKAN PRODUCERS COUNCIL, WHICH IS A GROUP OF LARGE MINERAL PRODUCERS WITH AN INTEREST IN ALASKA DEVELOPMENT, INCLUDING SUCH FIRMS AS COMINCO, GREENS CREEK, ECHO BAY, AMERICAN COPPER AND NICKEL, AMAX, NORTH PACIFIC MINING, AND ALASKA GOLD.

THE ALASKAN PRODUCERS COUNCIL JOINS WITH THE MUNICIPAL LEAGUE IN SUPPORTING THIS LEGISLATION AND APPRECIATES THAT ALASKA MUNICIPALITIES HAVE ACKNOWLEDGED THE DETRIMENTAL EFFECT TO MINING DEVELOPMENT A TAX ON MINERALS IN PLACE WOULD CAUSE.

THE ALASKAN PRODUCERS COUNCIL WISHES TO ACKNOWLEDGE THE EXCELLENT JOB THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS HAS DONE WITH THEIR RATHER DIFFICULT STUDY.

MEMORANDUM

State of Alaska

To: The Honorable Walter J. Hickel
Governor

December 16, 1991

From: Rural Development Sub-cabinet

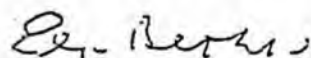
Phone: 465-4700

Re: Support for legislation exempting natural resources in place
from local property taxation

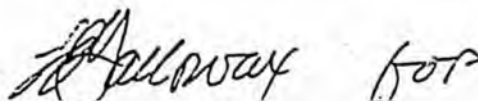
The rural development sub-cabinet has been following with concern the issue of whether or not natural resources in place should be subject to local property taxation. A study of the issue was conducted by the Department of Community and Regional Affairs, and a report will be submitted to the Legislature before January 13.

There is now consensus around the state that natural resources in place should be totally exempt from local property taxation. Legislation to effect a total exemption (with the exception of oil and gas which are treated separately under existing statutes) will be proposed in the forthcoming legislative session. Natural resource industries and associations, Native corporations, local governments, and the Alaska Municipal League have all endorsed a total exemption.

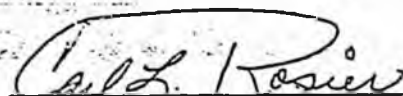
The rural development sub-cabinet supports a total exemption of natural resources in place from local property taxation, and urges the Governor to actively support legislation that will so amend Title 29 of The Alaska Statutes.



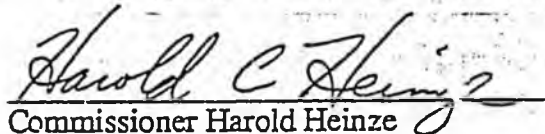
Commissioner Edgar Blatchford, Chair
Community & Regional Affairs



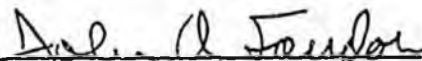
Commissioner Glenn A. Olds
Commerce & Economic Development



Commissioner Carl L. Rosier
Fish and Game



Commissioner Harold Heinze
Natural Resources



Commissioner John A. Sandor
Environmental Conservation

HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
1/22/92

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