

HB 287

() USE COMMITTEE REPORT

(11)

Date Referred: April 17, 1991

FURTHER REFERRALS:

Date of Committee Action: 5/6/91

The FINANCE Committee considered:

HB 287

HOUSE BILL NO. 287

LIMIT TAX DEDUCTION FOR OIL SPILL CLEANUP

"An Act disallowing under the Alaska Net Income Tax Act a portion of the deduction authorized by the Internal Revenue Code for certain oil and hazardous substance discharge related expenditures; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 287 (FIN) 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 DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Mike Savane</i> NAUARDI	✓	<i>Scott Sharp</i> Sharp		✓	
<i>MOMMY SOYER</i> Boyer	X	<i>RODNEY R. PHILLIPS</i> Phillips		✓	
<i>Fay Brown</i> BROWN	✓	<i>Donald J. Larson</i> Larson		X	
<i>Kaponek</i> KAPONEK	✓	<i>Eileen P. MacLean</i> MacLean		✓	
<i>James A. Barnes</i> JAMES A. BARNES	X	<i>Tamara A. Barnes</i> Barnes		X	
<i>Umu</i> Umu	X				

Mike Savane NAUARDI
Eileen P. MacLean MACLEAN
CHAIRMAN'S SIGNATURE

CS FOR HOUSE BILL NO. 287 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ELLIS, Brown, Gruenberg, Navarre

A BILL

FOR AN ACT ENTITLED

1 "An Act disallowing under the Alaska Net Income Tax Act a portion of the deduction
2 authorized by the Internal Revenue Code for certain oil and hazardous substance discharge
3 related expenditures; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 43.20.036 is amended by adding a new subsection to read:

6 (k) For purposes of determining the tax payable under this chapter, a taxpayer who owns
7 or who has control over oil or a hazardous substance may deduct expenses not to exceed
8 \$1,000,000 incurred during the tax year to contain, clean up, and mitigate the effects of the
9 discharge of that oil or hazardous substance. The limitation of this subsection also applies to
10 payments, whether compensatory or remedial in nature or otherwise, if made to the state or the
11 federal government or to a trust to which the state is a party when required by a court order
12 entered under 33 U.S.C. 1251 - 1376 (Federal Water Pollution Control Act of 1972, as amended
13 by the Clean Water Act of 1977, as amended) or 42 U.S.C. 9601 - 9657 (Comprehensive
14 Environmental Response, Compensation, and Liability Act of 1980, as amended) or in settlement

1 of litigation by the state against the taxpayer made under one of those Acts or other law. The
2 limitations of this subsection do not apply to a hazardous substance response action contractor,
3 as that term is defined by AS 46.03.823, unless the oil discharge or the discharge of the
4 hazardous substance is caused by an act or omission of the contractor that under AS 46.03.823(a)
5 is negligent or grossly negligent or that constitutes intentional misconduct.

6 * Sec. 2. This Act is retroactive to January 1, 1991, and applies to taxes payable under the Alaska
7 Net Income Tax Act (AS 43.20) after December 31, 1990.

8 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 287 (FIN)

Revision Date: _____
Title: Limiting the deduction for oil and hazardous substance discharge expenditures
Sponsor: Ellis, Brown, Gruenberg, Navarre
Requestor: _____

Department Affected: Department of Revenue
BRU: Revenue Operations
Component: Income and Excise Audit
COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
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	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: Attach a separate page for analysis.

SEE ATTACHED

Prepared By: Larry E. Meyers *Larry E. Meyers* Phone: (907) 465-2320
Division: Income and Excise Audit Division Date: May 7, 1991

Approved by Commissioner: Lee E. Fisher *Lee E. Fisher*
Agency: Department of Revenue Date: 5-7-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

May 7, 1991

CSHB 287
FISCAL NOTE ANALYSIS
DEPARTMENT OF REVENUE

CSHB 287 would add a new subsection (k) to AS 43.20.036 that would place a \$1,000,000 cap on deductible business expenses incurred to contain, clean up, or mitigate the effects of an oil or hazardous substance discharge. The cap would also apply to compensatory and remedial payments made to the state, the federal government, or a trust to which the state is a party when required by court order entered under 33 U.S.C 1251-1376 or 42 U.S.C. 9601-9657, as well as to payments by taxpayers in settlement of litigation by the state.

AS 43.20.021(a) generally incorporates certain provisions of the federal income tax law including those provisions that would currently allow spill or discharge expenses to be deducted. However, AS 43.20.021(a) also provides that specific provisions in AS 43.20 shall modify or limit the application of the federal provisions to Alaska law. Therefore, CSHB 287 would effect a modification to the incorporation of federal law and would result in placing a yearly cap on all deductions for oil and hazardous substance discharges.

The Department previously estimated the fiscal impact of HB 287 based on the proposed Exxon oil spill settlement. However, that settlement has since been rejected and terminated. Therefore, the Department is unable to predict what the overall impact will ultimately be and that uncertainty is reflected in the zero fiscal note.

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. HB287

Revision Date: _____
 Title: Disallowing deduction for oil and hazardous substance discharge expenditures
 Sponsor: Ellis, Brown, Gruenberg, Navarre
 Requestor: _____

Department Affected: Department of Revenue
 BRU: Revenue Operations
 Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97-02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	487.0	814.0	542.0	378.0	378.0	378.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	487.0	814.0	542.0	378.0	378.0	378.0
FEDERAL FUNDS						
OTHER						
TOTAL	487.0	814.0	542.0	378.0	378.0	378.0

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: Attach a separate page for analysis.
 SEE ATTACHED

Prepared By: Carl Meyer *Carl Meyer* Phone: (907) 465-2320
 Division: Income and Excise Audit Division Date: April 18, 1991

Approved by Commissioner: Lee E. Fisher *Lee E. Fisher*
 Agency: Department of Revenue Date: 4-19-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

April '18, 1991

HB 287
FISCAL NOTE ANALYSIS
DEPARTMENT OF REVENUE

HB 287 would add a new subsection (k) to AS 43.20.036 that would place a \$500,000 cap on deductible business expenses under 26 U.S.C. 162 incurred to contain, clean up, or mitigate the effects of an oil or hazardous substance discharge. The cap would also apply to compensatory and remedial payments made to the state, the federal government, or a trust to which the state is a party when required by court order entered under 33 U.S.C 1251-1376 or 42 U.S.C. 9601-9657, as well as to payments by taxpayers in settlement of litigation by the state.

AS 43.20.021(a) generally incorporates certain provisions of the federal income tax law including those provisions like IRC Sec. 162 that would currently allow spill or discharge expenses to be deducted. However, AS 43.20.021(a) also provides that specific provisions in AS 43.20 shall modify or limit the application of the federal provisions to Alaska law. Therefore, HB 287 would effect a modification to the incorporation of federal law and would result in placing a yearly cap on all deductions under IRC Sec. 162 for oil and hazardous substance discharges.

Although the Department is of the opinion the expenses would properly be subject to IRC Sec. 162, there remains a possibility a taxpayer could take the position that a deduction is authorized under another provision of the Internal Revenue Code thereby effectively avoiding the limitation. That possibility could be addressed and foreclosed, for example, by deleting on line 7 "under 26 U.S.C. 162 expenses" and replacing with more general language such as "an amount".

The estimated fiscal impact of HB 287 is based on the Exxon oil spill settlement. That settlement provides for payments of \$90,000,000 this summer or fall, \$150,000,000 on September 1, 1992, \$100,000,000 on September 1, 1993, and \$70,000,000 on September 1 of 1994 through 2001. Additional amounts to be paid as fines or penalties are not reflected in the fiscal note as these amounts are not deductible under current law. Also, the fiscal note does not take into account the provision providing for an additional \$100,000,000 payment if the settlement agreement is reopened to consider currently unknown injuries.

AMENDMENT I

OFFERED IN THE HOUSE
TO: HB 287

BY REPRESENTATIVE ELLIS

Page 1, line 6:

Delete "the taxpayer"

Insert "a taxpayer who owns or who has control over oil or a hazardous substance"

Page 1, line 8:

Delete "of an oil discharge or of a discharge of a"

Insert "the discharge of that oil or"

Page 2, line 1, after "law.":

Insert "The limitations of this subsection do not apply to a hazardous substance response action contractor, as that term is defined by AS 46.03.823, unless the oil discharge or the discharge of the hazardous substance is caused by an act or omission of the contractor that under AS 46.03.823(a) is negligent or grossly negligent or that constitutes intentional misconduct."

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ALASKA STATE HOUSE



CHAIR
RULES COMMITTEE

JUDICIARY

SPECIAL COMMITTEE ON INTERNATIONAL
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

MEMORANDUM

TO: Members of the House Finance Committee
FROM: Rep. Johnny Ellis *J.E.*
RE: House Bill 287
DATE: April 29, 1991

Thank you for your consideration of HB 287. The purpose of this bill is to disallow a deduction from state corporate income taxes for the costs related to the clean up of oil or hazardous substance spills, including the types of payments structured in the Exxon oil spill settlement.

After the announcement of the proposed settlement between the state, the federal government and Exxon over the Exxon Valdez oil spill there was mixed public reaction on whether or not the settlement was in the best interest of Alaskans. The actual settlement provisions aside, I found the greatest negative reaction to be that Exxon could deduct their settlement payments from their federal income taxes. The effect is that federal taxpayers would be underwriting the costs of a negligent, criminal act by the Exxon Corporation. There is legislation in Congress to prevent this deduction and I have introduced HJR 34 to encourage its passage.

During the consideration of HJR 34 it became apparent that, since the state corporate income tax relies on the net income determination on the federal tax form, Exxon's tax payments to the state would be reduced based on their settlement payments. I consider this to be adding "insult to injury" and was thus motivated to introduce HB 287.

House Bill 287 allows for the deduction of clean up costs up to \$500,000 so that the clean up of small spills will not be discouraged.

Based on the figures in the proposed settlement, the passage of HB 287 would forestall a loss in state revenue of \$487,000 in FY 92, \$814,00 in FY 93, \$542,000 in FY 94 and \$378,000 in FY95 through FY02 for a total of \$4.86 million.



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ALASKA STATE HOUSE



CHAIR
RULES COMMITTEE

JUDICIARY

SPECIAL COMMITTEE ON INTERNATIONAL
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

MEMORANDUM

TO: House Finance Committee Members

FROM: Rep. Johnny Ellis 

RE: HB 287

DATE: May 6, 1991

Thank you for considering House Bill 287. The testimony on April 29th by Mr. Tom Williams of BP Exploration suggested to me an amendment which will more clearly achieve my intent with this bill.

Mr. Williams was concerned that this bill would discourage a company which did not cause a spill from helping out with a clean up, or would be unfair to a company which is contracted to clean up a spill. He gave the example of "Service City" on the North Slope where several bankrupt oil service companies left behind "an ugly and dangerous mess". BP and other companies cleaned up the site, although they apparently had no responsibility for doing so.

The amendment I am offering (Chenoweth 7-LS1205/A.1) would change the bill so that only a spiller who is negligent would be disallowed deductions for the costs of a cleanup. A non-spiller who cleans up (a response action contractor) would be allowed the full deduction currently allowed under law.

Under this bill, even a negligent, small spiller would be allowed to deduct clean up costs up to \$500,000. I encourage the committee to boost this figure up to \$1 million.

I remain firmly committed to the bill after this amendment. I believe the public is adamantly opposed to helping to pay for the clean up costs of a negligent oil or hazardous substance spiller. Cleaning up after a spill that a company negligently caused should not be just another cost of doing business for that company.



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(907) 586-2323
FAX (907) 463-5515



April 24, 1991

Representative Mike Navarre
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Navarre:

The Alaska State Chamber of Commerce has reviewed HB 287, and act disallowing under the Alaska net income tax portions of expenses for the clean up and mitigation of discharges of oil or hazardous substances.

The reasoning behind the bill seems to be one of insuring that some of the costs of cleanup and mitigation do not result in an offsetting tax deduction; in effect, costing the liable party little or nothing while simultaneously reducing state revenues.

Our objections to this bill are twofold. First, this bill is part of a continuing pattern which seems to be based on the premise that if you create enough financial hardship and risk you can punish spill mishaps out of existence. This is the sort of approach which led, however inadvertently, to the situation which made spill cleanup contractors liable for spill impacts. Somewhat rhetorically, why not consider the development of legislation which provides positive incentives for spill prevention, cleanup and mitigation. Tax deductions for the costs of those activities is certainly an example of a positive motivator.

Our second objection to the bill is the provision which sets the limits to the deductible expenses at \$500,000. Depending on the nature and circumstances of a spill, it wouldn't take much to incur \$500,000 in cost. It maybe, as rumored, that HB287 is another "Exxon" bill. We would argue that the net that has been cast covers a large school of fish, many of whom are quite small. For example, line 8 on page 1 reads "oil discharge", not "crude oil discharge". In effect, this impacts every single carrier of petroleum products and hazardous substances.

We would encourage you and the other members of the House to carefully consider whether there is adequate justification for HB287. We wish you well in your deliberations.

Sincerely,

A handwritten signature in black ink, appearing to be "E. Polley". The signature is written in a cursive style with some loops and a long tail.

E. Polley
Government Relations