

HB

448

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING
P O BOX SA
JUNEAU, ALASKA 99811-0400

March 5, 1991

The Honorable Mike Navarre
Co-Chairman, House Finance Committee
Alaska State Legislature
Capital Room 515
P.O. Box V
Juneau, Alaska 99811

The Honorable Gail Phillips
House Finance Committee
Alaska State Legislature
Court Room 605
P.O. Box V
Juneau, Alaska 99811

Re: Fisheries Taxes

Dear Representative Navarre and Representative Phillips:

The Division of Income and Excise Audit was requested last session to audit fisheries businesses in the Cook Inlet region and to report our findings to the House Finance Committee. We have now concluded those audits and are forwarding the findings to the Committee. The audit findings are reflected in Appendix A. A number of the adjustments resulting from the audits have been protested and are pending before the Department.

The delivery fee or tendering fee issue is the most disputed audit finding. Delivery or tendering fees are customary in the industry and are paid by processors to fishermen or third parties for moving the product from the fishing vessel or beachsite to the facilities of the processor. The position of some processors is that these fees are a transportation cost rather than a part of the value of the fisheries resources. The processors argue the value of the resource is based on the ex vessel price for purposes of computing the fisheries taxes. A Department hearing officer, in one administrative decision in 1984, indirectly ruled that value is based on the ex vessel price. The Division takes the position, however, that all amounts paid to fishermen to acquire fish are includable in value, and that position is reflected in the audits.

During the course of several recent audits we discovered the tendering fee issue is not confined to the Cook Inlet area. Furthermore the tendering fee issue itself has broader implications than might be apparent at first glance.

The Honorable Mike Navarre
The Honorable Gail : lllps
House Finance Committee
March 5, 1991
Page Two

Taxpayers are utilizing a "net back" approach to valuing fisheries resources. Typically, a processor will start with the sales price of the processed resource and back out various imputed costs in addition to tendering/delivery fees, such as spotting fees, finding fees, purchase management fees, unloading fees, and other costs. These costs, in addition to a processing fee are subtracted from the sales price of finished product to arrive at a value of the resource.

We find these arrangements to be common among cooperatives, where the fishermen own the processing facility. We also found this arrangement in other cases where, apparently due to scarcity of resource, the processor shares the processing profits with a consortium of fishermen to guarantee an adequate supply of resource for processing.

Taxpayers have argued that such net backs and adjustments are proper to arrive at an "ex vessel price" which they believe is the proper tax base for fisheries business tax.

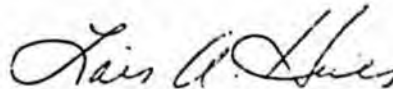
We believe the proper interpretation of the statute requires that all values and costs incurred prior to processing should be included in the taxable value. Since the fisheries business tax under AS 43.75 is placed on the processing activity, it seems logical that taxable value should include all costs incurred prior to processing. Stated another way, all costs incurred by the processor to procure resources for processing at the processor's facilities should be included in value.

This approach would also require that processors who own and operate tenders include the costs of operating the tenders in the taxable value.

Given the industry's view that the fisheries business tax is on ex vessel value, a clarifying amendment to AS 43.75 could be helpful to more clearly set out the all inclusive nature of the fisheries business tax base. The department intends to proceed to notice regulations in the near future that will reflect this interpretation.

The bonus or retro payment adjustment is based on additional payments for the resources to fishermen after the season. It appears these payments are clearly intended to be a part of the taxable value of the resources.

Sincerely,



Lois A. Hicks
Acting Director
Income and Excise Audit Division

LAH:CM

91-18

RESULTS OF AUDIT
COOK INLET FISHERIES BUSINESSES

ADJUSTMENTS

<u>Total Adjustments</u>	<u>3,253.307</u>	<u>1,260.930</u>	<u>554.875</u>	<u>65.729</u>
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TAX EFFECT

TOTAL TAX

ASSESSMENT

Fisheries Tax	97,599	37,828	16,646	1,972	154,045
Salmon Enhancement Tax	65,066	25,219	11,098	1,315	102,698
AK Seafood Marketing	<u>9,760</u>	<u>3,783</u>	<u>1,665</u>	<u>197</u>	<u>15,405</u>
 Total Tax Assessed	 <u>172,425</u>	 <u>66,830</u>	 <u>29,409</u>	 <u>3,484</u>	 <u>272,148</u>

More Than one years - '87 '88 '89

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE LEMAN

TO: HB 448

Page 1, lines 4 - 11:

Delete all material and insert:

"* Section 1. AS 43.75.290(11) is repealed and reenacted to read:

(11) "value" means

(A) the market value of the fishery resource if the taking of the fishery resource is done in company-owned or company-subsidized boats operated by employees of the fisheries business or in boats that are operated under lease or other arrangement;
or

(B) for fisheries resources other than those described in (A) of this paragraph, the actual price paid for the fisheries resource by the fisheries business to the fisherman, including indirect consideration and bonus amounts paid for fuel, supplies, gear, ice, handling, tender fees, or delivery, whether paid at the time of purchase of the fisheries resource or tendered as a deferred or delayed payment; in this subparagraph, "delivery" means

(i) transportation of the fishery product from the boat or vessel on which the product was taken to a tender; or

(ii) if delivery was not to a tender, transportation of the fishery product from the boat or vessel on which the product was taken to a shore-based facility in which delivery of the fishery product is normally accepted."

facility



Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE GAIL PHILLIPS

STATE CAPITOL
JUNEAU, ALASKA
99801-1182

Official Business
PHONE: (907) 465-2689
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HOUSE BILL 448

PRESENTED TO HOUSE RESOURCES COMMITTEE

MARCH 10, 1992

House Bill 448 is titled "An Act amending the definition of 'value' for purposes of administration of fisheries taxes, and providing for an effective date." I introduced this bill to clarify the amounts to be covered by fisheries taxes because, in the past, processors and fishermen have disputed the definition of value in an attempt to avoid paying the full amount of taxes due.

One argument used by those attempting to avoid paying the full tax due is that "bonuses" are not part of the actual amount paid fishermen for the fish. This interpretation leaves an opening for processors to pay lower prices for the fish, and make up for this lower amount to the fishermen by giving bonuses for services such as delivery or handling. HB 448 makes the point about whether bonuses are covered completely indisputable.

In addition, HB 448 sets out more specifically those services provided by the fishermen that are to be taxed. Previous language in the statute used the term "such as" and left the services to be covered up to differing interpretations. The amendment proposed by my bill tightens up this language, again to leave no doubt as to which services are to be covered by fisheries taxes.

If passed, HB 448 will go into effect on January 1, 1993.

In addition, I would like to mention that HB 448 is supported by several levels of government and by several aquaculture associations as well. We will be hearing from a few of these associations by teleconference today.

Thank you for the opportunity to present this bill.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 448

Revision Date: March 5, 1992
Title: Amending the definition of 'value'
.... fisheries taxes
Sponsor: G. Phillips
Requestor: HS RESOURCES

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 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE	10.0	550.0	550.0	550.0	550.0	550.0

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						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS:

This bill clarifies the definition of taxable value for fisheries business tax, salmon enhancement taxes and seafood marketing assessment. This bill will not take effect until January 1, 1993. Revenues in FY93 will not be substantial because most 1993 returns are not due until FY94.

Prepared By: Paul E. Dick *PE* LET 3-5-92 Phone: _____
Division: Income and Excise Audit Dates: March 5, 1992

Approved by Commissioner: Darrel J. Rexwinkel *DJR* _____
Agency: Department of Revenue Date: March 5, 1992

Prince William Sound Aquaculture Corporation



P.O. Box 1110 Cordova, Alaska 99574-1110 Phone (907) 424-7511 FAX (907) 424-7514
821 N St. #101B Anchorage, Alaska 99501-3285 Phone (907) 274-6066 FAX (907) 274-1959

February 14, 1992

Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Members of the Legislature:

Prince William Sound Aquaculture Corporation (PWSAC) is pleased to support House Bill No. 448, which amends the definition of "value" in AS 43.75.290(11), for purposes of administration of fisheries taxes, and provides for an effective date.

Representative Gail Phillips has introduced HB448 to facilitate the collection of fisheries taxes in a fair and timely manner. With fisheries practices changing rapidly in all parts of the state, the language of the statute needs to be brought up to date to ensure that the original legislative intent will continue to be carried out.

We encourage your active support of Representative Phillips' House Bill No. 448.

Best regards,

John McMullen
President



FEB 10 1992

COOK INLET
AQUACULTURE ASSOCIATION

HC 2, BOX 849
SOLDOTNA, AK 99669-9707
(907) 283-5761

February 5, 1992

Rep. Gail Phillips
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Rep. Phillips and other members of the Alaska Legislature:

I have reviewed "An Act amending the definition of 'value' for purposes of administration of fisheries taxes" and support passage. The bill addresses a growing problem with revenue implications for Regional Aquaculture Associations and several levels of government.

Department of Revenue interprets the existing definition of "value" to mean any type of compensation a buyer gives to a fisherman as part of a fish sale transaction. As you know, the problem under existing law is that some processors and certain fishermen dispute this interpretation and seek to avoid proper taxation.

People seeking to avoid raw fish and salmon enhancement taxes argue that "value" is only what is paid fishermen for the fish; "bonus" amounts paid for icing, using RSW systems, delivery, prompt delivery, exclusivity (selling all fish to a single buyer), loyalty (selling to the same processor over several years) and others, do not count as "value" for tax purposes.

People seeking to avoid tax simply establish a low price for the fish and dream up a series of "bonuses" which can comprise as much as 50% of the amount paid to fishermen. This bill, by expanding the list of examples of things which are to be included as "value" makes clear that the original Department of Revenue interpretation is correct.

I am greatly interested in the progress of this bill and am available to answer questions or provide additional information.

Sincerely,

Thomas E. Mears,
Executive Director

cc: Senator Fischer
Representative Navarre

ACTION NARRATIVE

*Special Committee on Fisheries
May 1, 1986 Meeting*

TAPE #36 SIDE ONE
Recording

Number 002

Chairman Goll called the meeting to order at 8:40 a.m. He announced calendar and asked Director of Boards, Beth Stewart, to address the February 13, 1986 letter from Ron Jolin, Chairman, Alaska Board of Fisheries, to the Special Committee on Fisheries. (Letter follows:)

Dear Representative Goll:

At the 1985 Southeast finfish meeting, the Hoonah Advisory Committee's Proposal #338 requested that the Alaska Board of Fisheries ask the Legislature to identify charter vessel operations as a separate user group for which separate regulations could be written. The board agreed, and so I am writing to you as the Chairman of the House Special Committee on Fisheries and Hoonah's representative. The board also asked the Southeast Regional Council members to make their views known to their legislators.

For the past several years we have received a number of proposals which address charter boat fishing. It is apparent that most people view charter operations as a discrete classification. However, since AS 16.05.251, which outlines the board's authority, does not refer to charter operations, the Department of Law has told us that we are on very shaky legal ground when we adopt regulations like the six line limit for charter vessels in Southeast.

This regulation was strongly supported by the Southeast charter vessel operators, who continue to be concerned that this regulation could be overturned in court. As this industry grows, I believe that more and more fishermen will want the board to address it separately. In order to avoid at least some confusion, it would be helpful if the board's authority to do so were clear.

If the board can provide any further clarification, please do not hesitate to contact us.

Sincerely,

Ron Jolin, Chairman
Alaska Board of Fisheries