

HB

451

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. HB 451

Revision Date: February 12, 1992  
Title: An Act relating to state and local taxation...Alaska Native Claims Settlement  
Sponsor: Reps. MacLean, Lincoln  
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 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	0.0	0.0	0.0	0.0	0.0	0.0
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						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0.0

ANALYSIS: Attach a separate page if necessary.

This bill brings Alaska statutes in conformity with ANCSA laws as amended by Congress in 1991, which extended the tax exemption of ANCSA property from 20 years to perpetuity.

Prepared By: Paul E. Dick *pid* Phone: (907) 465-2320  
Division: Income and Excise Audit Date: February 12, 1992

Approved by Commissioner: Darrel J. Rexwinkel *Darrel Rexwinkel*  
Agency: Department of Revenue Date: 2/15/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

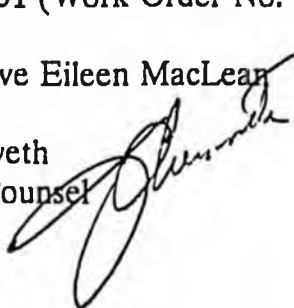
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240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

MEMORANDUM

February 26, 1992

**SUBJECT:** House Bill 451 (Work Order No. 7-LS1722\G)  
**TO:** Representative Eileen MacLean  
**FROM:** Jack Chenoweth  
Legislative Counsel



As I reviewed the bill file in preparation for this afternoon's committee meeting, I noticed that a few words had been dropped from AS 43.80.015(e). To insert the original intent and correct the omission, page 4, line 18 should be amended to read:

. . . includes the amendments and additions to any of those sections  
that are made by

JBC:mi  
92-029.mai

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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### MEMORANDUM

February 7, 1992

**SUBJECT:** House Bill 451, relating to state and local taxation and other state regulation under the Alaska Native Claims Settlement Act, as amended; and providing for an effective date — sectional analysis (Work Order No. 7-LS1722/G)

**TO:** Representative Eileen MacLean

**FROM:** Jack Chenoweth  
Legislative Counsel

This measure amends various provisions of state law that exempt from certain forms of state and local taxation the property that is exempted from taxation by the Alaska Native Claims Settlement Act. The amendments set out in this bill generally reflect the inclusion of changes made by federal law since passage of the original Alaska Native Claims Settlement Act in December, 1971, and the adoption of the first state law exemptions shortly thereafter.

A principal change in the federal Act was the addition of 43 U.S.C. 1636(d) by the Alaska National Interest Lands Conservation Act of 1980. Sec. 1636(d) broadened the various protections for lands conveyed under the 1971 Act, but did not necessarily replace the federal tax exemption provided in the original Act. Since 43 U.S.C. 1636(d) did not supersede the exemptions and protections provided by the earlier-enacted 43 U.S.C. 1620, I have recommended that, where reference appears in state law only to sec. 1620 that it be followed by a second reference to sec. 1636(d) as well.

Throughout the measure, the words "as amended" are added. The intent is to conform the state tax exemptions to any further changes to the federal Act in the event the federal Act undergoes further revision in this subject matter area.

Bill section 1, an amendment to AS 29.45.030(a), a provision setting out mandatory municipal property tax exemptions, incorporates a reference to 43 U.S.C. 1636(d), as amended, behind the existing reference 43 U.S.C. 1620(d) for the reasons noted two paragraphs above.

Bill section 2, also an amendment to the law applicable to municipalities, makes technical corrections. In context, the terms that are being defined appear in 43 U.S.C. 1636(d), not in 43 U.S.C. 1620. The terms defined are revised to reflect the language actually used in the federal provision expressed in a manner that is consistent with Alaska's drafting style.

Bill section 3 revises AS 43.80.015, the principal provision of state law extending an exemption from state taxes to certain property. Specifically:

- the caption change at page 3, lines 11 and 12, substitutes the full proper name of the federal Act for the Public Law reference;

- deletion of reference to "the original issue" of shares in line 12 is a substantive change; all share transactions--not just the original issues--are made non-taxable events;

- in lines 13 and 14, "state" substitutes for "Alaska" and the exact cite for the federal Act is inserted for the older reference; these are technical changes to conform to the state's drafting style;

- substitution of "person" for "Native" in line 15 is a substantive change; shares, as I understand, may now be transferred to a person other than an Alaska Native; these transfers would be non-taxable transactions;

- the changes made at lines 17 and 19 replace existing references with the exact federal Act cites;

- the change made by substitution of the phrase on line 22 conforms state law to the requirement of the federal Act as to how the basis of land received for purposes of equalization (in the event of land trades) is to be computed; it will be computed as the federal Act directs;

- the changes made on lines 24 - 28 are in the nature of substitutions of accurate cites and references;

- the long addition on lines 29 - 31 and the deletion of the December, 1991, date reflect substantive changes made by 43 U.S.C. 1636(d), a provision that expands and extends the protection from taxation given Native land under the amended federal Act; and

- the changes made to the balance of bill section 3 on page 4 of the bill either substitute accurate federal law cites or make minor stylistic changes.

Representative Eileen MacLean

February 7, 1992

Page 3

Bill section 4, adding a new subsection (e) to AS 43.80.015, enumerates the specific federal legislation that have modified the original Alaska Native Claims Settlement Act, and further allows for changes affecting the tax treatment of property that may be made future federal amendments.

The bill is given an immediate effective date by bill section 6. Out of an abundance of caution, bill section 5 makes these changes retroactive to December 18, 1991, the 20-year anniversary date of the Alaska Native Claims Settlement Act's taking effect. In the original Act, on that date a number of safeguards initially enacted would have expired. All the safeguards that are of concern for purposes of this legislation have been expanded and extended in the two later federal Acts, especially the addition made by 43 U.S.C. 1636(d).

JC:gc

92-114.glc

Enclosure

✓  
**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
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MEMORANDUM

January 27, 1992

**SUBJECT:** Taxation of interests under Alaska Native Claims Settlement Act, as amended (Work Order No. 7-LS1722G)

**TO:** Representative Eileen MacLean

**FROM:** Jack Chenoweth  
Legislative Counsel

I have read Larry Kimball's critique of the earlier draft and have redrafted based on points made in that letter. Since Larry clearly preferred dealing with only the longer of the two earlier drafts, I have reworked only it.

You will note that I have, in several places, combined references to "43 U.S.C. 1620(d), as amended, and 43 U.S.C. 1636(d), as amended." These two code provisions were added to the United States Code in two different pieces of federal legislation. The later-enacted 43 U.S.C. 1636(d) appears by my reading to cover at least all the situations set out in the earlier-enacted 43 U.S.C. 1620(d). Despite the apparent overlap, I'm not certain that all the circumstances identified in sec. 1620(d) fit within those enumerated in sec. 1636(d). Out of an abundance of caution, I have included both references.

There are some local taxation references to these provisions that appear in AS 29.45 that I have added to this bill. In the amendment to AS 29.45.030(m), the proper reference to the federal legislation should be only to 43 U.S.C. 1636(d), for that is, in fact, where the terms are used. In addition, I modified the definitions in state law to more nearly comport with those now actually set out in the existing federal statute, replacing "property" with "land or an interest in land" and replacing "lease" with "leased."

I'd encourage further Alaska Federation of Natives review of this draft.

JBC:lmb  
92-011.lmb

Enclosure

# Alaska Federation of Natives, Inc.

January 23, 1991

Representative Eileen MacLean  
Alaska State Legislature  
Capitol Office Building  
Juneau, AK 99811

RE: AMENDMENTS TO AS 43.80.015

Dear Representative MacLean:

The following comments will provide you with the Alaska Federation of Natives suggested amendments to AS 43.80.015. Included within these comments is the Federation's reasoning for said amendments.

The prime reason amendments to AS 43.90.015 are being requested is to prevent an inconsistency with AS 29.45.030(m) and bring AS 43.80.015 into conformity with the Alaska Native Claims Settlement Act (ANCSA), as amended.

Initially the effort only focused on omitting the language "until December 18, 1991" from 43.80.015. Replacement language could be as simple as "to the extent provided in 43 USC 1620(d), as amended". To lessen confusion that may occur in tracking the proper reference it would be appropriate to refer to 43 USC 1636(d), as amended rather than 43 USC 1620(d). 43 USC 1636(d) is in reference to the latest amendment of 43 USC 1620(d) per the 1987 ANCSA amendments (PL 100-241).

ANCSA provisions are controlling and thus amending AS 43.80.015 would simply limit the potential for conflict and litigation expenses in the future. The problem is not one of the viability of the ANCSA provisions, but rather one of avoiding the necessity to litigate the issue due to the State's provision failing to parallel federal law.

REQUESTED AMENDMENTS TO AS 43.80.015:

AS43.80.015(a)

Subsection (a), as it presently exists, limits the state exemption to the "receipt of the original issue of shares of stock " (emphasis added). Section 21(b) of ANCSA, which is the controlling federal law, provides:

"The receipt of shares of stock in the regional or village corporations by or on behalf of any Native shall not be subject to any form of federal, state or local taxation."

ANCSA does not restrict the tax exempt status only to "original issue". In keeping with the 1987 amendments to ANCSA, almost every corporation is reissuing its stock. Thus the issue of whether such an issue of stock was or was not an "original issue" may be raised if clarification is not forthcoming.

Also, the Chenoweth draft of subsection (a) creates another problem by limiting the exemption to stock issued to persons enrolled as a Native, a provision not found in ANCSA.

It is requested that the words "of the original issue" be deleted and Mr. Chenoweth's reference to "persons enrolled as a Native" not be included.

AS 43.80.015(b)

Subs ction (b), as it currently exists, fails to track the amendment to ANCSA adopted by Subsection 1408 of the Alaska National Interests Lands Conservation Act (ANILCA), which expands upon the manner in which an ANCSA corporation's basis in the land is determined.

To conform with ANCSA/ANILCA, the last sentence of 43.80.015(b) should be reworded as follows:

The basis for computing gain or loss on subsequent sale or other disposition of this land or interest in land for purposes of a state or local tax imposed on or measured by income shall be determined in accordance under 43 USC 1601-1642, as amended.

AS 43.08.015(c)

Omit "until December 18, 1991" replacing it with "to the extent provided in 43 USC 1620(d), as amended".

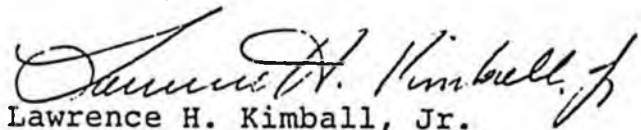
With regard to Mr. Chenoweth's comments, the draft including changes to subsections (a), (b) and (c) appears the most appropriate subject to the changes as requested by this letter.

I agree with Mr. Chenoweth's assessment that there is the potential for ensuing problems when versions drafted refer only to the two federal acts that are specifically identified. I trust language can be applied that reference these acts, as amended. Not being an attorney I suggest we leave the drafting of language that would accomplish that goal to Legislative Council.

Please contact me if you have questions or concern on this matter.

The Federation appreciates your interest and efforts in sponsoring this legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence H. Kimball, Jr.", written in dark ink.

Lawrence H. Kimball, Jr.  
Staff to AFN Legislative Committee

(3) by amending subsections (c), (d), and (e) to read as follows:

"(c) BENEFITS TO PRIVATE LANDOWNERS.—(1) In addition to any requirement of applicable law, the appropriate Secretary is authorized to provide technical and other assistance with respect to fire control, trespass control, resource and land use planning, and the protection, maintenance, and enhancement of any special values of the land subject to the agreement, all with or without reimbursement as agreed upon by the parties, so long as the landowner is in compliance with the agreement.

"(2) The provision of section 21(e) of the Alaska Native Claims Settlement Act shall apply to all lands which are subject to an agreement made pursuant to this section, so long as the parties to the agreement are in compliance therewith.

"(d) AUTOMATIC PROTECTIONS FOR LANDS CONVEYED PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.—(1)(A) Notwithstanding any other provision of law or doctrine of equity, all land and interests in land in Alaska conveyed by the Federal Government pursuant to the Alaska Native Claims Settlement Act to a Native individual or Native Corporation or subsequently reconveyed by a Native Corporation pursuant to section 39 of that Act to a Settlement Trust shall be exempt, so long as such land and interests are not developed or leased or sold to third parties from—

"(i) adverse possession and similar claims based upon estoppel;

"(ii) real property taxes by any governmental entity;

"(iii) judgments resulting from a claim based upon or arising under—

"(I) title 11 of the United States Code or any successor statute,

"(II) other insolvency or moratorium laws, or

"(III) other laws generally affecting creditors' rights;

"(iv) judgments in any action at law or in equity to recover sums owed or penalties incurred by a Native Corporation or Settlement Trust or any employee, officer, director, or shareholder of such corporation or trust, unless this exemption is contractually waived prior to the commencement of such action; and

"(v) involuntary distributions or conveyances related to the involuntary dissolution of a Native Corporation or Settlement Trust.

"(B) Except as otherwise provided specifically provided, the exemptions described in subparagraph (A) shall apply to any claim or judgment existing on or arising after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987.

"(2) DEFINITIONS.—(A) For purposes of this subsection, the term—

"(i) Developed means a purposeful modification of land, or an interest in land, from its original state that effectuates a condition of gainful and productive present use without further substantial modification. Surveying, construction of roads, providing utilities, or other similar actions, which are normally considered to be component parts of the development process but do not create the condition described in the preceding sentence, shall not constitute a developed state within the meaning of this clause. In order to terminate the exemptions listed in paragraph (1), land, or an interest in land, must be developed for purposes other than exploration, and the exemp-

tions will be terminated only with respect to the smallest practicable tract actually used in the developed state;

"(ii) 'Exploration' means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources; and

"(iii) 'Leased' means subjected to a grant of primary possession entered into for a gainful purpose with a determinable fee remaining in the hands of the grantor. With respect to a lease that conveys rights of exploration and development, the exemptions listed in paragraph (1) shall continue with respect to that portion of the leased tract that is used solely for the purposes of exploration.

"(B) For purposes of this subsection—

"(i) land shall not be considered developed solely as a result of—

"(I) the construction, installation, or placement upon such land of any structure, fixture, device, or other improvement intended to enable, assist, or otherwise further subsistence uses or other customary or traditional uses of such land, or

"(II) the receipt of fees related to hunting, fishing, and guiding activities conducted on such land;

"(ii) land upon which timber resources are being harvested shall be considered developed only during the period of such harvest and only to the extent that such land is integrally related to the timber harvesting operation; and

"(iii) land subdivided by a State or local platting authority on the basis of a subdivision plat submitted by the holder of the land or its agent, shall be considered developed on the date an approved subdivision plat is recorded by such holder or agent unless the subdivided property is a remainder parcel.

"(3) ACTION BY A TRUSTEE.—(A) Except as provided in this paragraph and in section 14(c)(3) of the Alaska Native Claims Settlement Act no trustee, receiver, or custodian vested pursuant to applicable Federal or State law with a right, title, or interest of a Native individual or Native Corporation shall—

"(i) assign or lease to a third party,

"(ii) commence development or use of, or

"(iii) convey to a third party,

any right, title, or interest in any land, or interests in land, subject to the exemptions described in paragraph (1).

"(B) The prohibitions of subparagraph (A) shall not apply—

"(i) when the actions of such trustee, receiver, or custodian are for purposes of exploration or pursuant to a judgment in law or in equity (or arbitration award) arising out of any claim made pursuant to section 7(i) or section 14(c) of the Alaska Native Claims Settlement Act; or

"(ii) to any land, or interest in land, which has been—

"(I) developed or leased prior to the vesting of the trustee, receiver, or custodian with the right, title, or interest of the Native Corporation; or

"(II) expressly pledged as security for any loan or expressly committed to any commercial transaction in a valid agreement.

"(4) EXCLUSIONS, REATTACHMENT OF EXEMPTIONS.—(A) The exemptions listed in paragraph (1) shall not apply to any land, or interest in land, which is—

## Land Protections

The land protections described in this section are probably the most significant gains for Alaska Natives contained in the "1991" law.

The "1991" law provides that all "undeveloped" land owned by village, urban and regional corporations automatically have the following protections:

1. The land cannot be taxed.
2. The land cannot be taken by trespassers who otherwise might acquire rights to the land through adverse possession (also known as trespassers or squatters' rights).
3. The land cannot be taken by creditors to pay a debt owed by the corporation.
4. The land cannot be lost if the corporation files bankruptcy.
5. The land cannot be lost even if the corporation is involuntarily dissolved.

Because these land protections are so important, they are now automatic. The corporation's board of directors does not need to take action, unless an activity creating "development" has already occurred. Shareholders do not need to vote in order to protect the corporation's undeveloped land.

### LAND AUTOMATICALLY PROTECTED FROM...



Taxes on undeveloped land



Bad debts



Adverse possession

## Loss of Land Protections

Members of a Native corporation board of directors must understand that actions they take could result in the loss of these land protections. Land protections can be lost in three ways:

1. Leased: If the board of directors leases the land, the protections are lost. Even though the leased land is not "developed," it can be taxed, taken by adverse possession or sold by creditors or a bankruptcy judge to pay the corporation's debts.

*Exception: If the purpose of the lease is to allow oil, gas or mineral exploration, then the land protections continue to apply.*

2. Pledged: Protections can be lost if the board of directors mortgages or pledges the land as security in a commercial transaction, such as a bank loan. If the land is

pledged, it can be taxed and it can be sold by creditors or a bankruptcy judge to pay the corporation's debts.

3. Developed: If the board of directors develops the land, it loses the automatic protections. The land can be taxed, taken by adverse possession, or, if the corporation gets into trouble, the land can be seized and sold by creditors or a bankruptcy judge to pay the corporation's debts.

### WAYS TO LOSE LAND PROTECTIONS



Leased



Pledged



Developed

Native corporations should be very cautious about pledging their undeveloped land to a bank or anyone else.

## Definition of "Developed" Land

The "1991" law defines "developed" as *"a purposeful modification of land from its original state that effectuates a condition of gainful and productive present use without further substantial modification."*

Because this definition is complicated, it is important that a board of directors be very cautious when it makes decisions about using the corporation's land. If there is any question that a board action or decision might result in losing land protections, the board should seek advice from an attorney before a final decision is made.

Some things can be done on the land without losing the protections. In some circumstances, land can be surveyed, and roads, electricity lines and sewers can be built. Whether such actions are "safe" can only be determined on a case by case basis.

Finally, land is automatically considered to be "developed" if it is subdivided, even if no changes are made to the land. For that reason, the corporation should never subdivide any of its land without careful study of the impacts on the status of its land.

To protect important subsistence uses, the law says that hunting and fishing on village and regional corporation land do not make the land "developed." For that reason, fish camps, trapping cabins and other structures may be built and used on the land if they are needed for subsistence hunting, fishing or gathering. The corporation may also charge a fee to hunters, fishermen and guides without losing the protections of "undeveloped" land.

## Regaining Land Protections

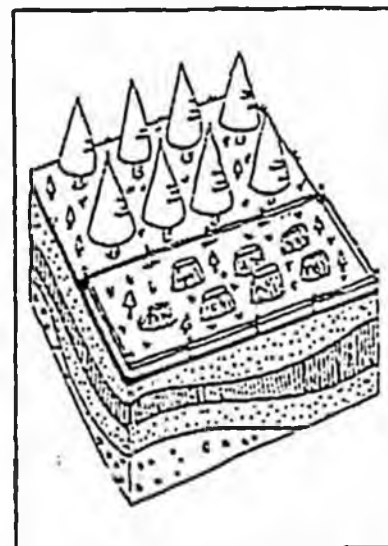
Even if land is mortgaged, leased or "developed," the protections automatically resume when the mortgage or lease expires or the development ends. For example, if a village corporation leases some of its land for five years, during the years it is leased, the land can be taxed or sold to pay the corporation's debts. However, when the five years are over and the lease expires, the land is again automatically protected from taxation and creditors.

*Example: A corporation runs a gold-mining operation on otherwise-undeveloped land. During the years that the mining takes place, the land can be taxed or taken to pay a debt. But if the corporation closes down the mining operation, and restores the land to its original condition, the land then qualifies as "undeveloped" and gains back the protection lost when the venture began.*

If a corporation has already subdivided land, it can be returned to "undeveloped" status if the land is resubdivided back to its original state. The resubdivision must be approved by whichever platting authority has jurisdiction. In these cases, the protections do apply to land that was previously subdivided.

## Timber Development

The "1991" law makes an important change on how protections apply to timber development. For example, if a village corporation cuts timber on its land, only the approximate area where timber is actually cut can be taxed. Under the old law, a larger area of land would lose the protections and thus become vulnerable to taxes and loss by other means. Now, protections are lost only on the parcel of land where timber cutting and development are actually occurring and only during the period of harvest.



Only area where  
timber is cut  
loses protection

Timber lands can also regain land protection. During the years a village corporation cuts timber for commercial sale, the land is considered "developed," and thus can be taxed, if the corporation is in a taxing jurisdiction, or taken to pay creditors. When the commercial harvest ends, though, the land is no longer considered to be "developed" and the land is automatically protected.

## Tax Recapture on Subdivided Land

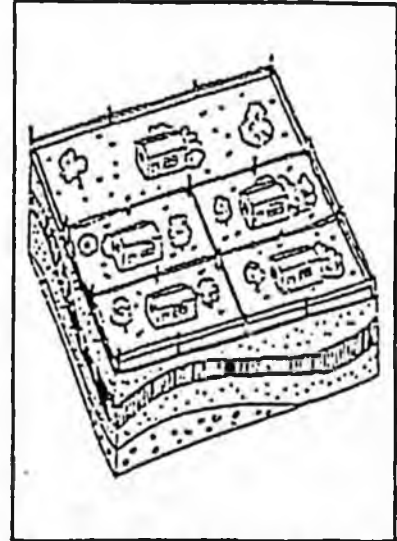
If a Native corporation is in a taxing jurisdiction and its land is subdivided, the corporation must pay the amount of taxes that would have been

levied during the 30 months before the subdivision plat is recorded. The back taxes must be paid in semi-annual installments. The entire amount must be paid off within 30 months of the date the plat is recorded.

Before the final plat is approved, the government with tax jurisdiction must notify the corporation of the taxes it will owe.

*Example: Corporation Z decides to subdivide 50 acres on a scenic river site. Until now, the land has been "undeveloped" and exempt from property taxes. On September 1, 1990, the subdivision plat is recorded. The corporation must pay an amount equal to property taxes it would have paid on that 50 acres from March 1, 1988 to September 1, 1990. The total tax bill on the 50 acres is \$10,000. Corporation Z must make its first \$2,000 payment March 1, 1991. The total bill must be paid off by March 1, 1993.*

### TAX RECAPTURE



*Subdivided land*

Tax recapture applies only if the land being subdivided is within the boundaries of a taxing jurisdiction, such as a borough or municipality with the power to tax.

### Summary

One of the most important changes made by the "1991" law is that Land Bank protections are now automatic. No board action is required because the land protections automatically apply to all undeveloped ANCSA lands. Native land, so long as it remains undeveloped, is protected from property taxes, from squatters, from being taken to pay a bad debt and from bankruptcy.

Before, corporations had to apply to the federal government to get these protections. Now, they're automatic; nothing else is required. A corporation loses these protections if its land is pledged, leased, developed or subdivided. Native corporation board members must recognize the types of actions that may result in losing land protections.

Board members may want to review the status of their lands in light of the definition of "developed," to determine whether any of the corporation's land does not qualify for automatic protections.

Even if the land protections are lost, they can be regained if the lease ends or development activity stops.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 451(CRA)

Page 3, lines 15 - 16:

Delete "person [NATIVE (AS DEFINED IN THE FEDERAL ACT)]"

Insert "Native, as defined in 43 U.S.C. 1602(b), or by or on behalf of a descendant of a Native, as defined in AS 43 U.S.C. 1602(r), [(AS DEFINED IN THE FEDERAL ACT)]"

Page 3, line 27:

Delete "individual"

Insert ", as defined in 43 U.S.C. 1602(b), [INDIVIDUAL]"

Page 3, line 27, after "to a":

Insert "Native"

MAR 04 1992

# Alaska Federation of Natives, Inc.

March 2, 1992

Representative Eileen MacLean  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative *Eileen* MacLean:

On Wednesday, February 26, I had the opportunity to testify on HB451 before the House Community and Regional Affairs Committee. Testimony was presented via tele conference from Anchorage. Mr. Robert Price, Legal Counsel for the Bristol Bay Native Corporation also participated

During the testimony there were receiving and transmitting problems with the tele conferencing equipment, thus I was not able to fully hear Committee comments nor respond adequately to questions being asked by Committee members.

Due to the communication problem, I feel that an issue raised by Representative Cheri Davis warrants further clarification.

Representative Davis questioned the reference to "person" on page 3, line 15 of HB 451. Specifically, Representative Davis questioned the application of the tax exemption to persons other than Alaska Natives.

The 1987 amendments (Public law 100-241) to the Alaska Native Claims Settlement Act (ANCSA) provide the authority whereby an ANCSA corporation may issue stock to identifiable groups of descendants of Natives. Beneficiaries of such an issue may not necessarily be Native as defined by ANCSA.

The Arctic Slope Regional Corporation has, in fact, generated such benefits on behalf of descendants of Natives irrespective of the ANCSA definition of Native. Congressional intent is clearly that of providing equity to descendants of Native people.

To clarify Congressional intent, the Federation has included a proposed amendment in HR 3157 (ANCSA Technical Amendments bill) which adds the language "and, at its further option, descendants of Natives born after December 18, 1971" to ANCSA, Section 7(g)(1)(B)(i)(I). A copy of the proposed amendment and Section 4. Subsection (g) of Section 7 (43 U.S.C. 1606(g)) is enclosed.

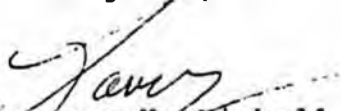
The authority provided in the 1987 amendments focuses on direct descendants of Natives thus omitting the opportunity for abuse by other non-natives.

Representative Cheri Davis is correct in her assessment that the term "persons" may not be appropriate in this situation.

To best conform the language in HB 451 with current federal law and pending language in HB 3157, the AFN respectfully requests that the term "person" on page 3, line 15 be omitted and replaced with the language "Native or a descendent of a Native".

Thank you for your continued interest and effort in this matter.

Best regards,



Lawrence H. Kimball, Jr., Staff  
AFN Legislation Committee

cc: Representative Jerry Mackie  
Representative Cheri Davis  
Representative Cliff Davidson  
Representative Georgianna Lincoln  
Senator Al Adams  
Jack Chenoweth, Legislative Counsel

102D CONGRESS  
1ST SESSION

# H. R. 3157

I

To provide for the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1991

Mr. YOUNG of Alaska (for himself and Mr. MILLER of California) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

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## A BILL

To provide for the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Alaska Land Status  
5 Technical Corrections Act of 1991".

6 SEC. 2. FORT DAVIS NATIVE ALLOTMENT.

7 (a) APPROVAL.—Section 905(a)(1) of the Alaska Na-  
8 tional Interest Lands Conservation Act (43 U.S.C.  
9 1634(a)(1)) is amended—

1 acres, to the Rabbit Creek Lions Club. The fair market  
2 value appraisal shall be conducted in accordance with the  
3 Uniform Appraisal Standards for Federal Land Acquisi-  
4 tions and shall not include any improvements currently on  
5 the lot. The conveyance shall—

6 (1) preserve valid existing rights-of-way and  
7 easements;

8 (2) reserve all minerals to the United States;  
9 and

10 (3) require that title to the lot revert to the  
11 United States if, within 25 years from the date of  
12 enactment of this Act, the lot ceases to be used for  
13 charitable or civic purposes:

14 **SEC. 8. ISSUANCE OF NEW STOCK TO AFTER BORN.**

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15 Section 7(g)(1)(B)(i)(I) of the Alaska Native Claims  
16 Settlement Act (43 U.S.C. 1606(g)(1)(B)(i)(I)) is amend-  
17 ed by adding at the end thereof the following: "and, at  
18 its further option, descendants of Natives born after De-  
19 cember 18, 1971."

20 **SEC. 9. SITKALIDAK ISLAND.**

21 (a) **AMENDMENT.**—Section 303(5)(A) of the Alaska  
22 National Interest Lands Conservation Act (94 Stat. 2391)  
23 is amended by striking "1978." and inserting "1978, and  
24 all public lands on Sitkalidak Island, and on associated  
25 islands, islets, rocks, reefs, and spires immediately adja-

"(s) 'Alienability restrictions' means the restrictions imposed on Settlement Common Stock by section 7(h)(1)(B);

"(t) 'Settlement Trust' means a trust--

"(1) established and registered by a Native Corporation under the laws of the State of Alaska pursuant to a resolution of its shareholders, and

"(2) operated for the sole benefit of the holders of the corporation's Settlement Common Stock in accordance with section 39 and the laws of the State of Alaska."

#### ISSUANCE OF STOCK

SEC. 4. Subsection (g) of section 7 (43 U.S.C. 1606(g)) is amended to read as follows:

"(g)(1) SETTLEMENT COMMON STOCK.—(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this Act) as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5.

"(B)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock to—

"(I) Natives born after December 18, 1971,

"(II) Natives who were eligible for enrollment pursuant to section 5 but were not so enrolled, or

"(III) Natives who have attained the age of 65,

for no consideration or for such consideration and upon such terms and conditions as may be specified in such amendment or in a resolution approved by the board of directors pursuant to authority expressly vested in the board by the amendment. The amendment to the articles of incorporation may specify which class of Settlement Common Stock shall be issued to the various groups of Natives.

"(ii) Not more than one hundred shares of Settlement Common Stock shall be issued to any one individual pursuant to clause (i).

"(iii) The amendment authorized by clause (i) may provide that Settlement Common Stock issued to a Native pursuant to such amendment (or stock issued in exchange for such Settlement Common Stock pursuant to subsection (h)(3) or section 37(d)) shall be deemed canceled upon the death of such Native. No compensation for this cancellation shall be paid to the estate of the deceased Native or to any person holding the stock.

"(iv) Settlement Common Stock issued pursuant to clause (i) shall not carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m) unless, prior to the issuance of such stock, a majority of the class of existing holders of Settlement Common Stock carrying such rights separately approve the granting of such rights. The articles of incorporation of the Regional Corporation shall be deemed to be amended to authorize such class vote.

"(C)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon each outstanding share of Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

"(ii) The amendment authorized by clause (i) may provide that shares of Settlement Common Stock issued as a dividend or other

distribution shall constitute a separate class of stock with greater per share voting power than Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

"(2) OTHER FORMS OF STOCK.—(A) A Regional Corporation may amend its articles of incorporation to authorize the issuance of shares of stock other than Settlement Common Stock in accordance with the provisions of this paragraph. Such amendment may provide that—

"(i) preemptive rights of shareholders under the laws of the State shall not apply to the issuance of such shares, or

"(ii) issuance of such shares shall permanently preclude the corporation from—

"(I) conveying assets to a Settlement Trust, or

"(II) issuing shares of stock without adequate consideration as required under the laws of the State.

"(B) The amendment authorized by subparagraph (A) may provide that the stock to be issued shall be one or more of the following—

"(i) divided into classes and series within classes, with preferences, limitations, and relative rights, including, without limitation—

"(I) dividend rights,

"(II) voting rights, and

"(III) liquidation preferences;

"(ii) made subject to one or more of—

"(I) the restrictions on alienation described in clauses (i), (ii), and (iv) of subsection (h)(1)(B), and

"(II) the restriction described in paragraph (1)(B)(iii); and

"(iii) restricted in issuance to—

"(I) Natives who have attained the age of sixty-five;

"(II) other identifiable groups of Natives or identifiable groups of descendants of Natives defined in terms of general applicability and not in any way by reference to place of residence or family;

"(III) Settlement Trusts; or

"(IV) entities established for the sole benefit of Natives or descendants of Natives, in which the classes of beneficiaries are defined in terms of general applicability and not in any way by reference to place of residence, family, or position as an officer, director, or employee of a Native Corporation.

"(C) The amendment authorized by subparagraph (A) shall provide that the additional shares of stock shall be issued—

"(i) as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon all outstanding shares of stock of any class or series, or

"(ii) for such consideration as may be permitted by law (except that this requirement may be waived with respect to issuance of stock to the individuals or entities described in subparagraph (B)(iii)).

"(D) During any period in which alienability restrictions are in effect, no stock whose issuance is authorized by subparagraph (A) shall be—

"(i) issued to, or for the benefit of, a group of individuals composed only or principally of employees, officers, and directors of the corporation; or

"(ii) issued more than thirteen months after the date on which the vote of the shareholders on the amendment authorizing the issuance of such stock occurred if, as a result of the

issuance, the outstanding shares of Settlement Common Stock will represent less than a majority of the total voting power of the corporation for the purpose of electing directors.

"(3) DISCLOSURE REQUIREMENTS.—(A) An amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2) shall specify—

"(i) the maximum number of shares of any class or series of stock that may be issued, and

"(ii) the maximum number of votes that may be held by such shares.

"(B)(i) If the board of directors of a Regional Corporation intends to propose an amendment pursuant to paragraph (2) which would authorize the issuance of classes or series of stock that, singly or in combination, could cause the outstanding shares of Settlement Common Stock to represent less than a majority of the total voting power of the corporation for the purposes of electing directors, the shareholders of such corporation shall be expressly so informed.

"(ii) Such information shall be transmitted to the shareholders in a separate disclosure statement or in another informational document in writing or in recorded sound form both in English and any Native language used by a shareholder of such corporation. Such statement or informational document shall be transmitted to the shareholders at least sixty days prior to the date on which such proposal is to be submitted for a vote.

"(iii) If not later than thirty days after issuance of such disclosure statement or informational document the board of directors receives a prepared concise statement setting forth arguments in opposition to the proposed amendment together with a request for distribution thereof signed by the holders of at least 10 per centum of the outstanding shares of Settlement Common Stock, the board shall either distribute such statement to the shareholders or provide to the requesting shareholders a list of all shareholder's names and addresses so that the requesting shareholders may distribute such statement.

"(4) SAVINGS.—(A)(i) No shares of stock issued pursuant to paragraphs (1)(C) and (2) shall carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m). No shares of stock issued pursuant to paragraph (1)(B) shall carry such rights unless authorized pursuant to paragraph (1)(B)(iv).

"(ii) Notwithstanding the issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2), a Regional Corporation shall apply the ratio last computed pursuant to subsection (m) prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 for purposes of distributing funds pursuant to subsections (j) and (m).

"(B) The issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2) shall not affect the division and distribution of revenues pursuant to subsection (i).

"(C) No provision of this Act shall limit the right of a Regional Corporation to take an action authorized by the laws of the State unless such action is inconsistent with the provisions of this Act."

#### SETTLEMENT COMMON STOCK

SEC. 5. Subsection (h) of section 7 (43 U.S.C. 1606(h)) is amended to read as follows:

# DIVISION OF LEGAL SERVICES

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### MEMORANDUM

February 27, 1992

**SUBJECT:** Amendment of "Native" to "person" in the exemption from taxation of certain stock transactions under proposed revision of AS 43.80.015 made by sec. 3, House Bill 451 (Work Order No. 7-LS1722\G)

**TO:** Representative Cheri Davis

**FROM:** Jack Chenoweth  
Legislative Counsel

I don't think I responded to your question at Wednesday's House Community & Regional Affairs Committee meeting to consider House Bill 451 as fully as I should have. Let me try again.

Your question concerned the change proposed at page 3, line 15 of the measure under which the exemption from taxation for certain stock issues would be expanded from transactions in which the recipient is a "Native" to transactions involving any "person."

Leaving in place the current language in AS 43.80.015(a) would limit the state tax exemption to "the original issue of shares of stock . . . by or on behalf of a Native . . ." The sponsor asked that this provision be modified, relying in part on 43 U.S.C. 1620(b) (sec. 21(b) of the original Alaska Native Claims Settlement Act), which reads:

(b) The receipt of shares of stock in the regional or village corporations by or on behalf of any Native shall not be subject to any form of federal, state or local taxation.

The proponents of the amendment represent that the Alaska Native Claims Settlement Act "does not restrict the tax exempt status only to 'original issue'." They note that the 1987 amendments of the original Act have prompted a number of corporations to re-issue or to consider the re-issue of corporation stock, and asked

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that state law be clarified to avoid debate as to whether a re-issuance of the stock would be treated as a taxable or tax exempt transaction. Hence, reference to "the original issue of" shares of stock now appearing in AS 43.80.015(a) is to be deleted.

The proposed substitution of "person" for "Native" addresses a concern arising out of this first change. AS 43.80.015(a) currently parallels the language of 43 U.S.C. 1620(b) by referring to "Native."

However, 43 U.S.C. 1606(g), newly-added by the 1987 Act amending the original Alaska Native Claims Settlement Act, authorizes the regional corporations to issue a new class of stock--settlement common stock--to Natives not enrolled under the original Act, and further authorizes the regional corporations, at their discretion, to make that stock available to, among others, "Natives or descendants of Natives." See 43 U.S.C. 1606(g)(2)(B)(iii)(II) and 43 U.S.C. 1606(g)(2)(B)(iii)(IV). The intent of this change in federal law was, as I understand, to authorize a regional corporation's conveyance of some portion of the benefits of the Alaska Native Claims Settlement Act to the lineal descendants of Natives originally qualifying even though the descendant's blood quantum did not permit the descendant to qualify as an Alaska Native.

Similarly, 43 U.S.C. 1606(h)(3), an amendment also added by the same 1987 Act, authorizes issuance of "replacement common stock" under certain conditions generally relating to the termination of alienability restrictions set out in the original 1971 Act. As with the change discussed in the previous paragraph, 43 U.S.C. 1606(h)(3)(D) also contemplates that some recipients of replacement common stock may be persons who are descendants of a Native but who are not themselves Natives who would be eligible under the original Act. See 43 U.S.C. 1606(h)(3)(D)(i).

Accordingly, the authorization in the 1987 federal amendments contemplates issuance of "settlement common stock" or of "replacement common stock" by a recipient who may not qualify as a Native under the definition of that word as set out in the original federal Act. Thus, replacement of reference to "Native" with "person" would allow non-Native recipients of the settlement common stock and the replacement common stock to receive that stock on the same terms--that is, as a non-taxable (under state law) transfer--as was the receipt of the original shares by Native recipients from

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whom the non-Native's right to receive derives. Given the parameters of 43 U.S.C. 1606(g)(2) and 43 U.S.C. 1606(h)(3) and the circumstances under which settlement common stock and replacement common stock would issue, this change in state law would almost certainly affect only a relatively small group of people.

I trust this is responsive on the point.

JBC:mi:gc  
92-030.mai

cc: Representative Eileen MacLean