

SB 158

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/1/91

FURTHER:

Date of 5-Day Notice: 3-13-91 DATE TURNED INTO OFFICE: 4-2-91  
(required under Uniform Rule 23) 3-26-91

The Finance Committee considered SB 158

Relating to the interest rate on unpaid and overpaid taxes and to the due dates for and interest on unpaid and overpaid royalties and net profit share payments from state resources; efd.

and recommended:

replace with \_\_\_\_\_ CS SB 158 (Fix)  same title  
 or adopt \_\_\_\_\_ CS \_\_\_\_\_  new title  
 attached amendment(s)  technical title change (HB only)  
 \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

fiscal note(s) Dept/Date: DOR - 3/29/91  
Dept. 52.0 Rev.

fiscal note(s) Dept/Date: \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Al Adams  
Jim DeWilde  
[Signature]

Dick Stally No Rec  
Fate Welch (No Rec)

AGO 10050594

1. [Signature] 2. [Signature]  
Co-Chairs: Signatures and Recommendations

## FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CS SB 158

Revision Date: March 28, 1991

Department Affected: Revenue

Title: "An Act relating to the Interest

BRU:

Rate on Unpaid &amp; Overpaid Taxes..."

Component:

Sponsor: Senate Rules/Governor

Requestor:

COMPONENT (SERIAL NO. 

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)

## Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	52,000	72,000	94,000	118,000	145,000	146,000
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## FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

## POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared By: Charles L. Logsdon

Phone: 277-5627

Division: Oil &amp; Gas Audit

Date:

Approved by Commissioner: 

Agency:

Date: 3-28-91

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

Rev 10/90

Page \_\_\_ of \_\_\_

### Fiscal Note Analysis of Bill to Change Interest Rate Statute

This bill would make two fundamental changes in the interest rates on unpaid and overpaid taxes and royalties from state resources. First, instead of a fixed rate of 12 percent the interest rate would be set at 5 percentage points above the rate charged member banks for short term advances by the 12th Federal Reserve District effective the first day of the calendar quarter, or a fixed rate of 11 percent, whichever is greater. Second, instead of simple annual interest, interest will be computed on a quarterly compounded basis as of the effective date. Accrued interest on taxes and royalties due prior to the effective date of this bill would be subject to compounding.

The short term rate quoted by the 12th Federal Reserve District in effect on March 1, 1991 was 6.0%. This means that under this bill, if the current rate does not change on or before July 1, the applicable rate would be 11% for the third quarter of 1991, the first quarter effected by this bill.

Obviously the current floating rate is lower than the current law provides. However, the real impact of the proposed change contained in this bill is in the change from simple to compounded interest. Because the interest on outstanding taxes or royalties due and accrued interest prior to the effective date is charged interest quarterly, the amount of interest due builds at an accelerating rate over time.

The revenue impact outlined in this Fiscal Note assumes an interest rate of 11 percent, \$1000 million in overdue/overpaid taxes or state royalties and accrued interest of \$500 million. This is roughly 50% of current outstanding tax assessments plus interest, a conservative assumption to allow for partial resolution and payments. The following table shows the impact for other higher interest rates possible under this bill.

Analysis of CS SB158  
 March 28, 1991  
 Page 2

Compound Interest Example for Interest Statute  
 (Millions \$)

Amount Overdue/Overpaid = 1000  
 Prior Accrued Interest = 500

	CURRENT INTEREST DUE (12% SIMPLE)	PROPOSED INTEREST LAW DUE (FED DIS + 5% COMP QUART)					
		11% Dif	12% Dif	13% Dif	14% Dif		
Year 1	120	172	52	188	68	205	85
2	120	192	72	212	92	233	113
3	120	214	94	238	118	264	144
4	120	238	118	268	148	300	180
5	120	265	145	303	183	341	221
Total	600	1081	481	1210	610	1344	744

As can be seen from the table, the use of compounding can be a powerful additional monetary incentive to speed the resolution of disputes over the correct amount of taxes.

**CS SENATE BILL NO. 158 (FIR)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/1/91  
Referred: Finance

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to the interest rate on unpaid and overpaid taxes and to the due dates  
2 for and interest on unpaid and overpaid royalties and net profit share payments from  
3 state resources; and providing for an effective date."

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

5 \* Section 1. AS 38.05.135 is amended by adding new subsections to read:

6 (c) Payment of a royalty or a net profit share payment to the state under a lease issued  
7 under AS 38.05.135 - 38.05.181 becomes due on the date and in the manner specified in the lease  
8 or in a regulation adopted by the commissioner.

9 (d) If a royalty or net profit share payment to which the state is entitled under  
10 AS 38.05.135 - 38.05.181 is not paid when it becomes due under (c) of this section, the royalty  
11 or payment bears interest in a calendar quarter at the rate of five percentage points above the  
12 annual rate charged member banks for advances by the 12th Federal Reserve District as of the  
13 first day of that calendar quarter, compounded quarterly as of the last day of that quarter.

14 (e) Interest at the rate and in the manner provided in (d) of this section shall be allowed

See Amends #2

1 and paid on an overpayment of a royalty or net profit share payment made under AS 38.05.135 -  
2 38.05.181.

3 \* Sec. 2. AS 43.05.225 is amended to read:

Sec. 43.05.225. INTEREST [ON TAXES]. Unless otherwise provided,

4 *See Amend #1* → ~~(1) when a tax levied in this title is not paid by the date prescribed for its~~  
5 ~~payment, [BECOMES DELINQUENT] it bears interest in a calendar quarter at the rate of five~~  
6 ~~percentage points above the annual rate charged member banks for advances by the 12th~~  
7 ~~Federal Reserve District as of the first day of that calendar quarter, compounded quarterly~~  
8 ~~as of the last day of that quarter;~~  
9

10 (2) the interest rate is 12 percent a year for

11 (A) delinquent fees payable under AS 05.15.095(c);

12 (B) arrearages for child support as provided in AS 25.27.025 unless  
13 a lesser rate authorized by that section applies; and

14 (C) unclaimed property that is not timely paid or delivered, as allowed  
15 by AS 34.45.470(a).

16 \* Sec. 3. AS 43.05.280(a) is amended to read:

17 (a) Interest shall be allowed and paid on an overpayment of a tax under this title at the  
18 rate and in the manner provided [PRESCRIBED] in AS 43.05.225(1) [AS 43.05.225].

19 \* Sec. 4. AS 43.31.141 is amended to read:

20 Sec. 43.31.141. WHEN TAX DUE, EXTENSION AND INTEREST. The tax imposed  
21 by this chapter is due and payable 15 months after the decedent's death [,] and shall be paid by  
22 the executor to the department. If the department finds that the payment on the due date of tax  
23 or any part of the tax would impose undue hardship upon the estate, the department may extend  
24 the time for payment of any part, but no extension may be for more than one year and the  
25 aggregate of extensions with respect to an estate may not exceed five years from the due date.  
26 In that case, the amount in respect of which the extension is granted shall be paid on or before  
27 the date of the expiration of the period of the extension unless a further extension is granted.  
28 If the time for the payment is extended, there shall be collected, as part of this amount, interest  
29 on the tax as [AT THE RATE] provided in AS 43.05.225(1) [AS 43.05.225] from the due date  
30 of the tax to the date the tax is paid.

31 \* Sec. 5. AS 43.55.060 is amended to read:

AGO 10050599

1           Sec. 43.55.060. DELINQUENCY. When the tax provided for in this chapter becomes  
2 delinquent, it bears interest as provided [AT THE RATE PRESCRIBED] in AS 43.05.225(1)  
3 [AS 43.05.225]. If any person fails to make a report required by this chapter, within the time  
4 prescribed by law for the report, the department shall examine the books, records, and files of  
5 the person to determine the amount and value of the production to compute the tax, and the  
6 department shall add to the tax the cost of the examination, together with any penalties accrued.  
7 \* Sec. 6. APPLICABILITY OF COMPOUNDED INTEREST. Beginning on the effective date of  
8 this Act, interest accrues on underpayments and overpayments of royalties, net profit share payments,  
9 and taxes, and on any interest accrued on them before the effective date of this Act, at the rates and in  
10 the manner specified in AS 38.05.135(d), added by sec. 1 of this Act, and AS 43.05.225, as amended  
11 by sec. 2 of this Act.  
12 \* Sec. 7. This Act takes effect July 1, 1991.

A M E N D M E N T

AA  
Adopted  
3-26-91  
#1

TO: SB 158

Part A  
Adopted  
A only

Page 2, lines 5 and 6:

Delete all material and insert:

(1) when a tax levied in this title becomes delinquent it bears interest in a calendar quarter at the rate of five

Part B

~~Page 3, line 9:~~

~~Delete all material and insert:~~

~~and taxes, but not on any interest accrued on them before the effective date of this Act, at the rates and in~~

3-26-91  
Cotten per  
Fisher.

#2  
Adopted.

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 158

Page 1, line 13, after "calendar quarter,"

Insert: "or at the annual rate of 11 percent, whichever  
is greater."

Page 2, line 8, after "calendar quarter."

Insert: "or at the annual rate of 11 percent, whichever  
is greater."

3/22/91  
SFC

SENATE BILL NO. 158

Sectional Analysis

Section 1. Clarifies the date upon which royalties are due. Sets the rate of interest for unpaid royalty payments under AS 38.05.145 - 38.05.181 at five percentage points above the rate charged member banks by the 12th Federal Reserve District, compounded quarterly. Without the amendment, royalty interest is determined under AS 09.30.070 (Interest on Judgments), currently 10.5%, and does not compound. If an interest rate is set in a lease, the contract rate would be unaffected by this provision. Provides that interest on overpayments is the same as interest on underpayments.

Section 2. Sets the rate of interest for unpaid taxes under AS 43 at five percentage points above the rate charged member banks by the 12th Federal Reserve District, compounded quarterly. Without the amendment, the rate is 12% simple interest. This statutory section has historically applied to the charitable gaming program; to the unclaimed property program; and to the child support enforcement program. The amendment retains the old 12% simple interest provision for those programs.

Section 3. Conforming amendment to ensure that interest on overpayments remains the same as interest on underpayments.

Sections 4 and 5. Conforming amendments necessary to refer other sections of the tax laws to the tax portion of the section providing for interest.

Section 6. Applies the new floating interest rate and the compounding provision to the principal of royalties and taxes that were outstanding on the effective date of the act and to interest that has accrued on those royalties and taxes on that date.

Section 7. Provides for a July 1, 1991 effective date.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029


Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

March 21, 1991

**SUBJECT:** May the legislature constitutionally authorize compounding of interest due on delinquent taxes? (SB 158)

**TO:** Senator Sam Cotten  
ATTN: Deborah Vogt

**FROM:** Jack Chenoweth  
Legislative Counsel 

Bill section 2 of Senate Bill 158 amends the manner of computing the interest rate on delinquent taxes from a simple interest to a compounded interest basis. Bill section 6 of the measure directs that, from the measure's effective date, July 1, 1991, interest will compound as well on the interest due and payable on unpaid taxes that has accrued to that date.

There is no question in my mind that the legislature may change the manner of computing interest on unpaid taxes as is proposed by bill section 2. Shifting from a simple to a compound rate (or vice versa) is theoretically and arguably no different than amending or adjusting the interest rate. In the absence of any express prohibition on doing so, the rate may be changed. There is ample authority to support that legislative action.

The change proposed by bill section 6 would also seem to be unobjectionable as a constitutional matter. The ex ction of a penalty or interest, or both, for delinquency in the payment of taxes does not make the penalty or interest payment part of the tax. Penalty and interest are remedial and, generally, may be constitutionally applied to taxes which have already become delinquent at the time of amendment of the statute. League v. Texas, 184 U.S. 156, 46 L.Ed. 478, 22 S.Ct. 475 (1902) (finding a Texas statute providing that delinquent taxes should bear interest from the time of delinquency applicable to taxes already delinquent at the time the statute took effect). In similar manner, the amendment of a tax payment enforcement provision by the change of the penalty or interest, including the manner of determination of the interest, will apply to all taxes, whether levied and due before or after the amend-

AGO 10050615

Senator Sam Cotten  
March 21, 1991  
Page 2

ment. Henry v. McKay, 3 P.2d 145 (Wash. 1931) (statutory interest rate reduction held applicable to taxes delinquent at the time of the rate reduction).

In my judgment, the legislature may properly and constitutionally require the compounding of interest on the interest due on delinquent or unpaid taxes levied and collected by the state under AS 43 if that interest has accrued before the effective date of the act. The measure proposed a change in the manner of calculation that is uniformly applicable to all taxpayers. Taxpayers who are delinquent on the effective date of the act may not properly claim the right to have the penalty and interest due for the asserted tax delinquency remain unaltered until the delinquency's clearance. See also Webster v. Auditor General, 80 N.W. 705 (Mich. 1899) (statute changing the interest rate on delinquent taxes upheld, the court concluding that the taxpayer in delinquency did not have a vested right to have interest on the delinquency remain unchanged); Plankinton Packing Co. v. Wisconsin Tax Commn., 224 N.W. 121 (Wisc. 1929) (change in the rate of interest applicable to back income taxes held retroactive to taxes assessed on income prior to the bill's passage, it being said by the court that it was well settled that a state may impose retrospective penalties on delinquent taxes); O'Shaughnessy v. Wolfe, 685 P.2d 361 (Mont. 1984) (increased rate of interest on delinquent tax payments given retroactive effect and the retroactive effect of the provision offends no state or federal constitutional due process or equal protection provision).

I trust this is sufficient for your purposes.

JBC:pl  
91-198.plm

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

March 20, 1991

**SUBJECT:** Retroactive effect given to interest rate increases and compounding of interest on taxes

**TO:** Senator Sam Cotten

**FROM:** Jack Chenoweth  
Legislative Counsel

It is well settled that a legislature may, constitutionally, enact a statute, retrospective in its effect, to increase the rate of interest due on delinquent taxes. Webster v. Auditor General, 80 N.W. 705 (Mich. 1899); O'Shaughnessy v. Wolfe, 685 P.2d 361 (Mont. 1984); 4 ALR 2d 954, note.

My research disclosed no cases in which a legislature acted by statute, retrospective in its effect, to shift the interest rate applicable to delinquent taxes from a simple interest application to one that provided for compounding. Nevertheless, on the contention that the application of interest to delinquent taxes is an enforcement mechanism, it is difficult for me to understand that a court would favor an interest rate increase but find reason not to favor a shift in the manner of computation. Clearly, the substitution of a compounding feature for what had previously been a simple interest factor results in an increase, and increases have been allowed.

The ability to change, retrospective in effect, the manner of computing interest on delinquent taxes and the rate of interest on those overdue taxes is not without limits. And, as I advised in the debate over retroactive adjustments to the economic limit factor (ELF) in early 1989, the courts will consider the extent of the "reach back." We can only be reasonably certain that the courts would approve a retroactive application to the beginning of the current tax year or, arguably, the current fiscal year, whichever would be earlier. Retroactive application to a date before the earlier of either of those would render the likelihood that the court would sustain the legislature's action more doubtful.

JBC:lmb  
91-092.lmb

AGO 10050617

3/22/91  
SFC

# MEMORANDUM

## State of Alaska

### Department of Law

TO: Hon. Lee Fisher, Commissioner  
Department of Revenue

DATE: March 20, 1991

FILE NO:

TEL. NO: 465-3600

SUBJECT: Re: Proposed amendments  
to SB 158

FROM: *JWB*  
Jeffrey W. Bush  
Assistant Attorney General  
Legislation and Regulations Section

Pursuant to your request, we have prepared proposed amendments to Senate Bill 158, relating to the interest rate to be charged on delinquent taxes and royalty payments. I understand that you intend to offer these amendments at the Senate Finance Committee meeting on Friday, March 22.

Please contact me if you need any further assistance on this bill.

JWB:cl

cc w/ enc: ✓ Senator Pat Pourchot, Co-Chair  
Senate Finance Committee

Bruce Kendall, Legislative Liaison  
Office of the Governor

*See Amend. #1.*

## EFFECT OF A COMPOUND INTEREST PROVISION

Under current Alaska statute (Title 43), a simple interest calculation is used to determine interest owed on tax liabilities. Simple interest assesses interest on principal only; no interest is charged on accrued interest. The attached graphic illustrates the fiscal effect of changing the current statutory simple interest calculation to a compound interest formula—the usual method of financial institutions and modern business transactions. Compounding assesses interest on accrued interest as well as outstanding principal. To illustrate the effect of compounding, a 12 percent interest rate on a tax liability of \$10 million is assumed for all four cases. In each case the tax was due in FY 85 and paid at the end of FY 98. Where applicable, the compounding statute is enacted at the beginning of FY 92.

### Case One - Simple Interest

Under the first case, simple interest is used throughout the 14-year period. This case shows the tax and interest liability under current state statute. Using a simple interest formula, the total tax and interest liability is \$26.8 million.

### Case Two - Compounding on Only the Tax Portion of Liability Starting in FY 92

This scenario calculates simple interest on the tax liability for the years FY 85 through FY 91. In FY 92 when the compound interest provision becomes effective, compounding applies only to the \$10 million principal owed in FY 85. Compounding does not occur on interest accrued from FY 85 through FY 91. Compounding on principal and interest occurs from FY 92 through FY 98. The total tax and interest liability under this case is \$31.3 million.

### Case Three - Compounding the Tax and Interest Liability Beginning in FY 92

The third case calculates the tax liability and interest owed using simple interest from FY 85 through FY 91. In FY 92 when the compound interest provision becomes effective, the outstanding tax liability of principal (\$10 million) and accrued interest (\$8.2 million) are subject to compounding. The tax and interest liability under this case is \$39.4 million.

#### Case Four - Compounding Retroactive to FY 85

This final case shows the effect of compounding over the entire period of analysis, i.e., if the compound interest provision were retroactive to the initial tax liability date. If the state of Alaska used this more usual form of interest calculation, the total tax and interest liability would be \$52.3 million.

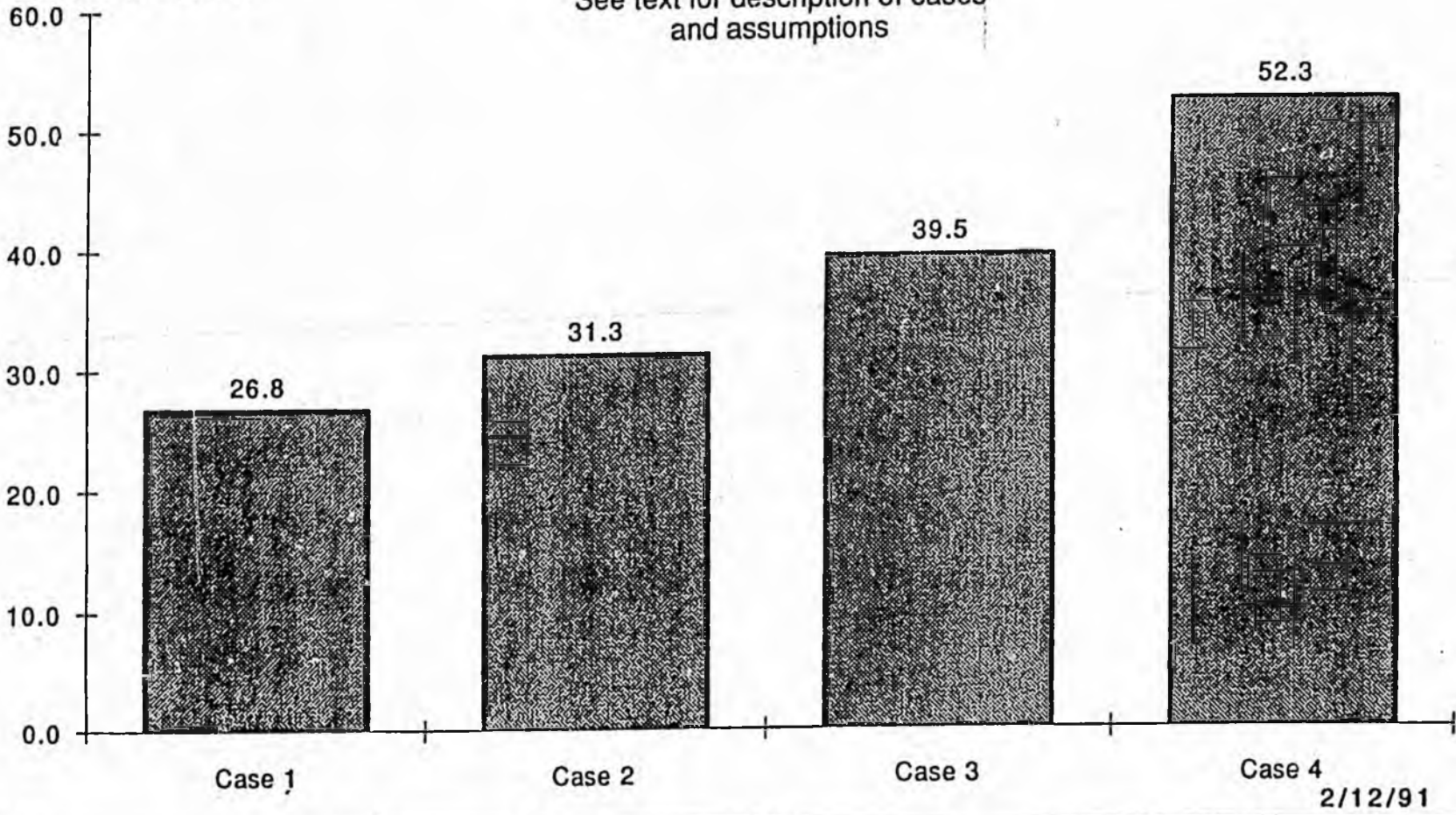
The difference between cases one and four (\$25.5 million) illustrates the financial disincentive to the timely payment of taxes owed under Alaska's current statutes. Essentially, investing the \$10 million would result in a return of \$52.3 million after 14 years under the usual compounding of interest. These proceeds could then be used to pay the tax and interest liability of \$26.8 million assessed using simple interest. The \$25.5 million is the "profit" on the alternative investment.

revised 2/12/91

### Fiscal Effects of Compound Interest Provisions on Tax Liability

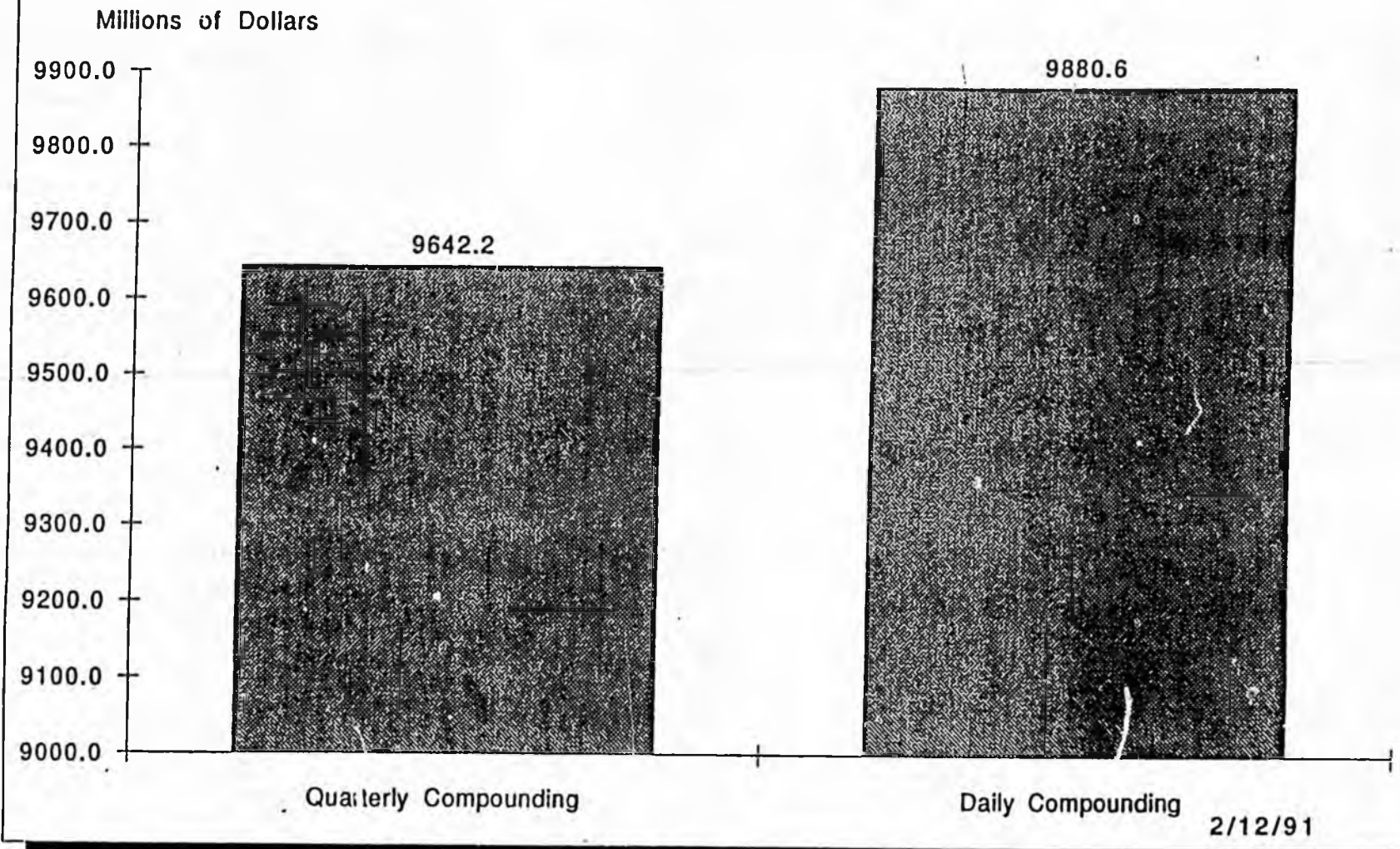
Millions of Dollars

See text for description of cases and assumptions



2/12/91

### 15-Year Difference Between Daily and Quarterly Compounding



ANNUAL INTEREST RATE CHARGED MEMBER BANKS FOR ADVANCES  
BY 12TH FEDERAL RESERVE DISTRICT

<u>Date</u>	<u>Rate</u>	<u>Rate + 5%</u>
1/1/85	8%	13%
4/1/85	8%	13%
7/1/85	7.5%	12.5%
10/1/85	7.5%	12.5%
1/1/86	7.5%	12.5%
4/1/86	7%	12%
7/1/86	6.5%	11.5%
10/1/86	5.5%	10.5%
1/1/87	5.5%	10.5
4/1/87	5.5%	10.5%
7/1/87	5.5%	10.5%
10/1/87	6%	11%
1/1/88	6%	11%
4/1/88	6%	11%
7/1/88	6%	11%
10/1/88	6.5%	11.5
1/1/89	6.5%	11.5%
4/1/89	7%	12%
7/1/89	7%	12%
10/1/89	7%	12%
1/1/90	7%	12%
4/1/90	6.5%	11.5%
7/1/90	6.5%	11.5%
10/1/90	6.5%	11.5%
1/1/91	6.5%	11.5%
Current (2/1/91)	6%	11%

ANNUAL INTEREST RATE CHARGED MEMBER BANKS FOR ADVANCES  
BY 12TH FEDERAL RESERVE DISTRICT

<u>Date</u>	<u>Rate</u>	<u>Rate + 5%</u>
1/1/85	8%	13%
4/1/85	8%	13%
7/1/85	7.5%	12.5%
10/1/85	7.5%	12.5%
1/1/86	7.5%	12.5%
4/1/86	7%	12%
7/1/86	6.5%	11.5%
10/1/86	5.5%	10.5%
1/1/87	5.5%	10.5
4/1/87	5.5%	10.5%
7/1/87	5.5%	10.5%
10/1/87	6%	11%
1/1/88	6%	11%
4/1/88	6%	11%
7/1/88	6%	11%
10/1/88	6.5%	11.5
1/1/89	6.5%	11.5%
4/1/89	7%	12%
7/1/89	7%	12%
10/1/89	7%	12%
1/1/90	7%	12%
4/1/90	6.5%	11.5%
7/1/90	6.5%	11.5%
10/1/90	6.5%	11.5%
1/1/91	6.5%	11.5%
Current (2/1/91)	6%	11%

## CHART 1

This chart shows the effect of various interest provisions over time on a hypothetical liability of \$10,000,000 that arose in 1982. In all cases, the interest rate used is 12%. Note that S.B. 158 would change the rate to a floating rate tied to the Federal Reserve Bank rate to member banks. The Federal Reserve rate went to 6% on February 1, 1991, making the rate that would be required under the bill 11% (Federal Reserve rate plus 5 percentage points).

Case 1. Simple interest of 12%. This is current law.

Case 2. Simple interest of 12% until July 1, 1992. After July 1, interest compounds on the principal that is outstanding on that date, but does not compound on the interest that has accrued before that date.

Case 3. Simple interest of 12% until July 1, 1991. After that date, interest compounds on the entire liability that is outstanding on that date.

Case 4. Compound interest of 12% beginning in 1982. This shows how the liability would have grown if the compound interest provision had been in effect throughout the period.

## CHART 2

This chart starts with actual outstanding liabilities as provided by the Department of Revenue. Currently, outstanding tax assessments total about \$1.77 billion; accrued interest on these outstanding assessments is about \$1.64 billion. The chart shows how liabilities would accrue under various interest provisions. Note that there is no attempt to predict when liabilities will be paid, or what portion of taxes and interest assessed will actually be found to be owed.

Case 1. Simple interest of 12%. This is current law.

Case 2. Interest compounds on the principal that is outstanding as of July 1, 1991 but does not compound on the interest that has accrued before that date.

Case 3. Interest compounds on the entire liability outstanding on July 1.

Chart 1

# DEBT ON FY 82 \$10 MILLION LIABILITY

Interest Statute Effective FY 92

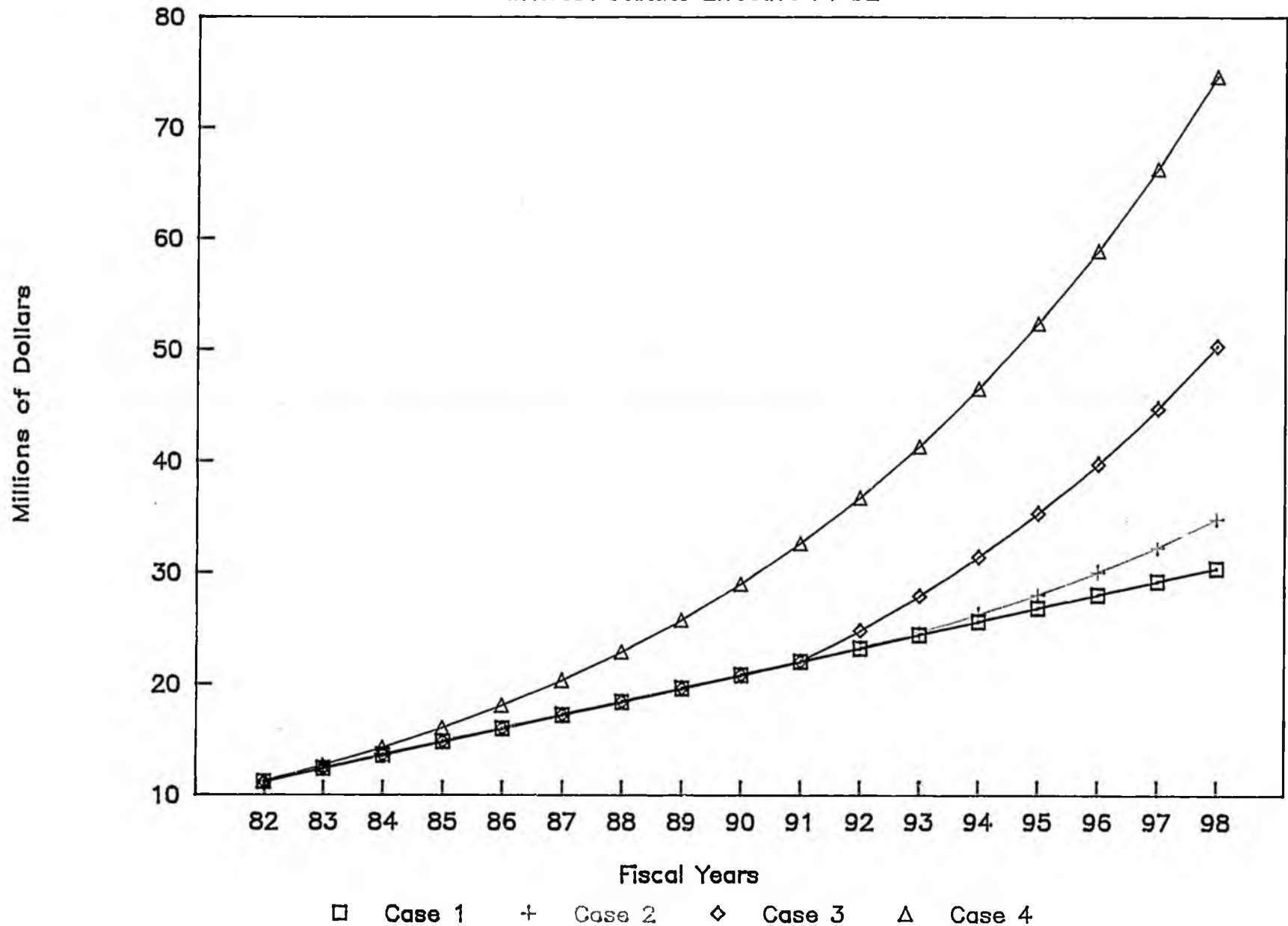
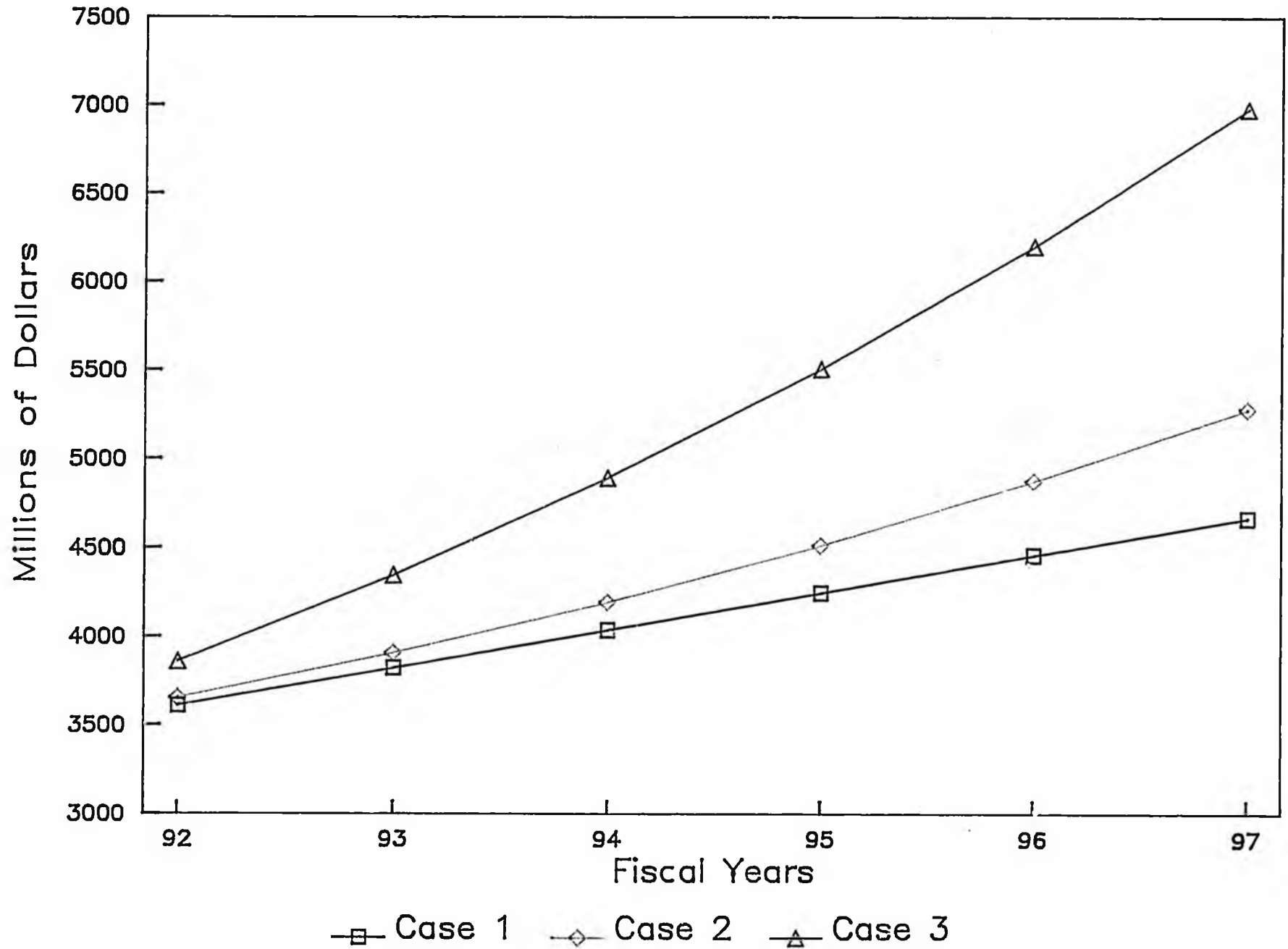


Chart 2

### Effect of Interest Provision on Current Outstanding Tax Liabilities



AGD 10050647

# Hickel, revenue chief cross wires

## Governor's 'vague' style leads Fisher to think he's defying administration

By DAVID POSTMAN  
Daily News reporter

JUNEAU — Revenue Commissioner Lee Fisher thought he was defying Gov. Wally Hickel Friday when he called an administration oil-tax proposal an "immoral business practice."

"That's just how independent I am," Fisher said after he testified against a provision in a bill that he and the Senate Finance Committee he was talking to, thought Hickel supported.

But by day's end, what had appeared as a schism in the administration was being written off as confusion.

"The governor and Commissioner Fisher are in complete accord with

each other," said Jeff Logan, the governor's acting deputy press secretary.

Fisher attributed the mix-up to Hickel's trying to be polite to a lunch guest from the Senate who thought Hickel was giving him a commitment.

The bill Fisher was testifying on would change the way interest is accrued to the \$3.9 billion in taxes and interest the state says is owed by the oil industry. The oil companies dispute the amount.

The bill calls for interest to be compounded on the entire debt, back taxes and back interest. Fisher said it should be changed so that interest is not compounded on top of the old interest, which is estimated to be

close to half the \$3.9 billion.

"While I'm advised it is probably legal to do it the way it is presently drafted, I view it as kind of an immoral business practice, in my view at least, and not worth the negative image it would portray," Fisher told the Finance Committee.

Tax officials with BP Exploration (Alaska) and Exxon Corp. testified in favor of Fisher's amendments, agreeing with the revenue commissioner that they should not be charged interest on top of the interest they may already owe.

After Fisher finished his testimony, he was taken aside by Sen. Sam Cotten, D-Eagle River, who was sit-

Please see Page B-3, FISHER

## FISHER: Governor, revenue chief cross wires on tax

Continued from Page B-1

ting in on the meeting, for a private chat.

Cotten then asked Senate Finance Co-chairman Pat Pourchot, D-Anchorage, if he could bring Fisher back to the table for more questions.

Cotten said Hickel had told him at lunch on Thursday that he supported the bill as it is written. The senator then asked Fisher what the administration's position was.

Fisher said Chief of Staff Max Hodel had told him the night before that the governor wanted the bill to stay the way it was.

"If the position of the administration is represented by Governor Hickel

on this matter, it is to leave it as it is," Fisher said. "If the position of the administration is to take my advice on it, it is to change it."

Fisher said after the meeting that he would try to change Hickel's mind.

"I've never had the opportunity to argue with him about it and I plan to do that," Fisher said.

But late Friday afternoon, Fisher was laughing about the "brouhaha that is really much ado about nothing."

"I don't think the governor ever supported anything else," he said. "What happened, in a social context, in a lunch with a very persuasive, very articulate senator by the name of Sam Cotten

describing his viewpoint of the legislation, the governor said something like, 'That's right. I support that,' and passed on down the line to the next person, the next subject or the next course of the meal.

"I cannot believe the governor gave any great thought to this in his luncheon conversation."

Fisher said Hodel must also have thought Hickel supported the bill and called "so I wouldn't get blindsided."

Cotten was traveling Friday evening and could not be reached for comment. Neither could Hickel.

"This is all very plausible to me," Pourchot said. "Many of us have been in

meetings with Hickel and he has a conversational style that is in ready agreement with you and then he moves on to the next agenda item. The governor's conversational style is oftentimes vague."

But Pourchot said he was more concerned with why Fisher opposed the bill.

"I'm nervous why he would want to take that position as the prime tax man for the state," he said. "I would expect the tax man to take a very strong, aggressive and fair stance on a major tax issue like this."

In the end, the Finance Committee did not act on the issue and will deal with it again next week.

**FISCAL NOTE**

Bill Version: SB 158  
 (S) Publish Date: 3/1/91  
 Replaced by Revenue 3-28-91 note

**STATE OF ALASKA  
 1991 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Department Affected: Revenue  
 Title: Interest Rate on Unpaid and Over- BRU: Oil and Gas Audit Division  
paid Taxes and to the Due Dates for and... Component: \_\_\_\_\_  
 Sponsor: Hickel  
 Requester: \_\_\_\_\_ COMPONENT SERIAL NO. 

1	1	5
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Expenditures/Revenue: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	See Analysis.					
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: See Analysis.

ANALYSIS: (Attach a separate page if necessary.) Although it is not possible to estimate the revenue impact of this bill, it will increase the interest due on outstanding taxes and royalties. It will also increase the cost of both non-compliance and delayed resolution of tax and royalty disputes which may speed up the resolution of outstanding cases.

Prepared By: Charles L. Logsdon Phone: 277-5627  
 Division: Oil and Gas Audit Division Date: 2-22-91  
 Approved by Commissioner: \_\_\_\_\_ Date: 2-22-91  
 Agency: Revenue

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

## Fiscal Note Analysis of Bill to Change Interest Rate Statute

This Bill would make two fundamental changes in the interest rate on unpaid and overpaid taxes and royalties from state resources. First, instead of a fixed rate of 12 percent the interest rate would be set at 5 percentage points above the rate charged member banks for short term advances by the 12th Federal Reserve District effective the first day of the calendar quarter. Second, instead of simple annual interest, interest will be computed on a quarterly compounded basis. Accrued interest on taxes and royalties due prior to the effective date of this Act would not be subject to compounding.

The short term rate quoted by the 12th Federal Reserve District in effect on January 1, 1991 was 6.5%. The current rate as of February is 6%. This means that under this Act, the applicable interest rate for the first quarter of 1991 would be 11.5%. If the current rate does not change on or before April 1, the applicable rate would be 11% for the second quarter of 1991.

Obviously the floating rate for the first quarter of 1991 is lower than the current law provides and unless there is a change in Federal monetary policy, the rate for the second quarter would be even lower. The real impact of the proposed change contained in this Bill is in the use of compounded interest. Because the interest on outstanding taxes or royalties due is charged interest quarterly, the amount of interest due builds at an accelerating rate over time. The following table illustrates the power of compounding compared to the current simple interest provision assuming \$1000 in overdue/overpaid taxes or state royalties.

	Simple Interest 12%	Quarterly Compound Interest		
		11%	12%	13%
Year 1	\$120	\$115	\$126	\$136
2	120	128	141	155
3	120	142	159	176
4	120	159	179	200
5	120	176	202	228
Total	600	720	806	896

As can be seen from the table, the use of compounding can be a powerful incentive to speed the resolution of disputes over the correct amount of taxes and royalties due.

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 1, 1991

The Honorable Richard I. Eliason  
President of the Senate  
P.O. Box V  
Juneau, AK 99811

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the interest rate on certain unpaid and overpaid taxes, royalties, and net profit share payments. This bill addresses a significant problem in current law that creates an incentive for taxpayers and others to withhold payments due the state and prolong disputes indefinitely.

Under present AS 43.05.225, the interest rate chargeable on certain unpaid and overpaid taxes is a simple interest rate of 12 percent. Because the interest is not compounded, taxpayers have an incentive to under-report and prolong disputes over back taxes, since the longer that back taxes remain unpaid, the lower the effective interest rate becomes. As a result, the state ends up loaning billions of dollars to its taxpayers at very low interest rates.

With respect to unpaid royalties and net profit share payments, current law does not specify the applicable rate of interest. Under this bill, the interest rate for unpaid taxes, royalties, and net profit share payments is set at five points above the Federal Reserve rate, adjusted and compounded quarterly. New AS 38.05.135(d) and amended AS 43.05.225. Under new AS 38.05.135(e) and amended 43.05.280(a), this same rate will also apply to interest that the state must pay for overpayment of a tax, royalty, or net profit share payment. This interest rate is similar to the federal (IRS) system and systems used by other states.

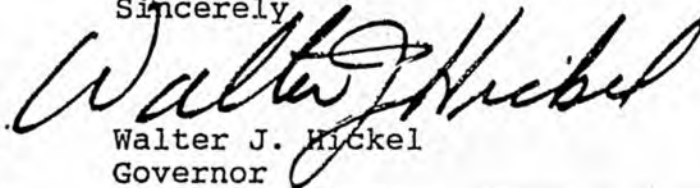
AGO 10050623

The Honorable Richard Eliason - 2 -

In addition, new AS 38.05.135(c) provides for a due date for royalties and net profit share payments so that interest on an underpayment or overpayment can be accurately calculated.

The bill will not affect the rate of interest charged on delinquent charitable gaming fees, delinquent payments under the Uniform Disposition of Unclaimed Property Act, and delinquent child support payments. I urge your support of this legislation.

Sincerely

A handwritten signature in cursive script, reading "Walter J. Hickel".

Walter J. Hickel  
Governor