SCOMM

87:18

15 AAC is amended by adding a new chapter to read:

CHAPTER 77. FISHERY RESOURCE LANDING TAX

15 AAC 77.005. PURPOSE AND INTENT. (a) The landing tax is both designed and intended to be a compensatory tax to complement the fisheries business tax under AS 43.75. The landing tax is intended to compensate the state for the burdens that the Exclusive Economic Zone ("EEZ") catcher/processor fleet imposes upon the state and local communities, as well as for the benefits the EEZ catcher/processor fleet receives from the state and local communities.

(b) The state has various research, management and enforcement responsibilities in connection with the offshore fisheries, and the EEZ catcher/processor fleet has a significant presence in the state including transferring the processed product, taking on and disembarking crew, taking on fuel and supplies, obtaining repairs, discharging waste, and seeking sheltered waters. The state and local communities are impacted through the additional burdens placed upon educational systems, road maintenance, public safety, airports, docks, hospitals, and other social programs.

(c) Fisheries businesses in the state pay for these benefits and burdens through the fisheries business tax which applies to fisheries resources harvested or processed in Alaska. The landing tax is a substantially equivalent levy designed to impose a comparable burden on interstate commerce. In a real sense, the EEZ catcher processors are conducting fisheries businesses in the state to no less a degree than in-state operators. The landing tax is not a fee on the fisheries resources simply moving through the state, it is instead a quid pro quo for the services and benefits conferred upon the processed resources whereby they pay their own way. The landing tax thus achieves an equality of treatment between local and interstate commerce conducting fisheries businesses in the state. (Eff. / / /, Register)

Authority: AS 43.77.010
AS 43.77.070

15 AAC 77.010. RETURN, PAYMENT, AND REQUIRED INFORMATION. (a) A person subject to the fishery resource landing tax shall file one return for all taxable landings of fishery resources in the state. The return shall be filed before April 1 after the close of the calendar tax year, using the forms provided by the department, and shall include all locations at which fishery resources were landed in the state. The tax shall also be paid before April 1 after the close of the calendar tax year.

(b) A person must state the following information in the places prescribed on the form:

(1) name of the person subject to the tax that is filing the return;

(2) the mailing address of the person;

(3) the federal employer identification number or social security number of the person;

(4) the calendar year covered by the return;

(5) the precise locations in the state where fishery resources were landed, including a specification by weight and species for each location;

(6) the precise locations in the state where fishery resources harvested under the provisions of a community development quota were landed, including a specification by weight and species for each location;

(7) an Alaska Fisheries Business License number or the Alaska Business License number of the person;

(8) the value of the fishery resources;

(9) the amount of credits claimed for other taxes paid and for approved contributions;

(10) the amount of tax liability and tax payments; and,

(11) other information required on the tax return form. (Eff. / / /, Register)

Authority: AS 43.77.020
AS 43.77.070

15 AAC 77.015. AUTOMATIC EXTENSION OF TIME TO FILE RETURN AND PAY TAX. (a) A person who has timely filed a request with the department for

information on the value of fisheries resources as provided in 15 AAC 77.040(c) shall automatically be granted an extension of the time in which to file the return and pay the tax required by this chapter if the value of the unprocessed fishery resources is not transmitted at least 30 days before the due date of the return.

(b) An automatic extension under this section is effective until the last day of the month following the month in which the information on value is transmitted.

(c) The tax is not considered delinquent during the period the automatic extension of time to file the return and to pay the tax is in effect and interest and penalties do not accrue during this period. (Eff. / / /, Register)

Authority: AS 43.77.020
AS 43.77.070

15 AAC 77.020. REQUEST FOR EXTENSION OF TIME TO FILE RETURN.(a) Upon a showing of good cause, the department in its discretion may grant reasonable extensions of time from the due date, or the automatic extension of time to file due date, for the filing of the return. The extensions, excluding automatic extensions, shall not exceed 90 days in the aggregate.

(b) A request for an extension of time to file the return shall be in writing, contain a full statement of the reasons supporting the request, and must be received by the department no earlier than March 1 and no later than 10 calendar days before the date the return is due, including extensions. A facsimile telephone number shall be provided if the applicant requests a response by facsimile transmission.

(c) If an extension of time for filing the return is granted, the return must be filed before the expiration of the period of the extension. A return filed after the period of the extension voids all extensions under this section.

(d) If an extension of time for filing the return is denied, the return must be filed within 10 calendar days after the date the notice of denial is sent by facsimile transmission or mailed by the department, or by the March 31 due date or automatic extension due date, whichever is later. (Eff. / / /, Register)

Authority: AS 43.77.020
AS 43.77.070

15 AAC 77.025. ELECTION TO MAKE ESTIMATED TAX PAYMENTS. (a) In lieu of the bond or security required of nonresident persons in AS 43.10.160, a person may elect to make estimated tax payments of the tax estimated to be due for the year. The estimated tax payments shall be made in equal quarterly installments on or before March 31, June 30, September 30, and December 31 of each calendar year.

(b) A person who makes the election in (a) of this section who fails to make estimated tax payments in equal installments that total at least 90% of the tax liability for the year shall pay an estimated tax penalty computed for each quarter. The estimated tax penalty is determining by applying the interest rate specified in AS 43.05.220 to the underpayment in each quarter.

(c) A person who makes estimated tax payments in equal installments that equal or exceed the liability of the person for tax under AS 43.77 in the previous tax year shall not be subject to the estimated tax penalty.

(d) The election under this section shall be made prior to the landing of fishery resources in the state or June 2 of each year, whichever is earlier, on a form provided by the Department.

(e) The election under this section applies only to the Fisheries Resource Landing Tax and does not relieve a person from complying with the requirements of AS 43.10.160 with respect to other taxes to which the person may be subject. (Eff. / / /, Register)

Authority: AS 43.10.160(b)-(c)
AS 43.77.070

15 AAC 77.030. LIABILITY FOR TAX. (a) The person owning the fishery resource at the moment it is first landed in Alaska shall file the return and pay the tax imposed by AS 43.77.010.

(b) The person owning the fishery resource is the person with the legal title and the risk of loss at the moment the act of landing begins in the state. For purposes of this section, and notwithstanding any contract provision to the contrary, a person in possession of the fishery resource who harvested or processed the fishery resource, or a related person or agent in possession of the fishery resource from the person who harvested or processed the fishery resource, retains legal title and risk of loss until the fishery resource is delivered and actual physical possession is transferred to an unrelated third-party buyer.

(c) The tax imposed under AS 43.77.010 does not apply to a fishery resource that becomes subject to tax under AS 43.75. The provisions of AS 43.75 control and take precedence if a fishery resource, or the value of the fishery resource, may be subject to both AS 43.77 and AS 43.75.

(d) The tax imposed under AS 43.77.010 does not apply to the landing of a secondary product where the secondary product is included in the round weight of the primary product and the primary product is subject to the tax under this chapter.

(e) The tax does not apply if the fishery resource is first landed in the territorial jurisdiction, as recognized by the United States, of another state or foreign country. A first landing outside the jurisdiction of a state or foreign country, such as in United States jurisdictional waters, is not a first landing for purposes of AS 43.77.010 and does not preclude the tax under this chapter.

(f) The tax applies to a fishery resource that is first landed in Alaska without regard to the final destination of the resource.

(Eff. / / /, Register)

Authority: AS 43.77.010
AS 43.77.070

15 AAC 77.035. CREDIT FOR OTHER TAXES PAID. (a) A credit is allowed for taxes paid to another jurisdiction in which the fishery resource was caught, processed, or sold. The credit is only available if the taxes paid to another jurisdiction are equivalent in nature to the taxes imposed by AS 43.75 and AS 43.76. A tax is equivalent in nature to AS 43.75 if it is in the nature of an occupational tax on the conduct of a fisheries business as measured by the value of resources harvested or processed within the jurisdiction, or a tax otherwise imposed on the harvesting or processing of fisheries resources within a jurisdiction. A tax is equivalent in nature to AS 43.76 if it is imposed on the harvesting of salmon within a jurisdiction and the tax is intended to be used to promote or enhance salmon production within that jurisdiction. Sales taxes, import or export fees or taxes, income taxes, and similar taxes and fees are not considered to be equivalent in nature to AS 43.75 and AS 43.76.

(b) For purposes of this section, jurisdiction includes other states, foreign countries, and the United States.

(c) The amount of the credit for taxes paid to another jurisdiction on the fishery resource shall not exceed the liability of the person for the tax on the same resource under AS 43.77.

(d) If taxes paid to another jurisdiction are subsequently refunded or credited to the person, the amount of the credit previously allowed under this chapter shall be recaptured as additional tax in the year the taxes were refunded or credited.

(e) The credit must be claimed on the return and the person shall attach a statement to the return attesting that the tax has been paid, indicating the date of payment, identifying the jurisdiction to which the payment was made, and describing the nature of the tax and providing citation to the statutory authority in the jurisdiction for imposition of the tax. A copy of the return or report filed in the other jurisdiction shall be submitted with the Alaska return and statement. (Eff. / / /, Register)

Authority: AS 43.77.030
AS 43.77.070

15 AAC 77.040. VALUE AND NOTICE OF VALUE. (a) The value of the fishery resource is the statewide average price paid per pound for unprocessed fishery resources of the same species as reported to the Department of Fish and Game under AS 16.05.690. The department may adjust the statewide average prices paid for fisheries resources to eliminate high and low prices, and to take into account tendering fees, price adjustments, and deferred payments such as bonuses.

(b) In the absence of a Department of Fish and Game statewide average price for a particular species, the department may use information from other governmental agencies, such as the United States National Marine Fisheries Service, or other sources, such as Department of Revenue Fisheries Business Tax Return information, to arrive at a statewide average price for that species. The department statewide average price must be used to file the return and pay the tax required under this chapter but a person may protest the price determined under this subsection at the time of filing the return and seek a refund. The department statewide average price determination shall only be overcome with clear and convincing proof submitted by the person of the full market value of the unprocessed fisheries resources.

(c) Each person required to file a return and pay the tax under this chapter shall notify the department in writing by January 31 and request notice of the value for each species of fishery resources landed in the state in the previous calendar year. The notification shall be made on a form provided by the department. The department shall transmit the information by United States mail, telephone or facsimile transmission to the person requesting it as soon as practicable after the information becomes available. The information is considered to be transmitted by the department on the date of the facsimile transmission, telephone contact, or on the date on the letter, whichever is earlier. The department is not required to publish the information.

(d) A person that is not required to file a return and pay the tax under this chapter, such as a tax return preparer, may informally request information at any time concerning the values for fishery resources landed in the state. A person subject to (c) of this section may not rely on another person to timely obtain information of the value of each species of fisheries resources landed in the state.

(Eff. / / /, Register)

Authority: AS 43.77.010
AS 43.77.070
AS 43.77.200

15 AAC 77.045. WEIGHTS AND RECOVERY RATES. (a) The unprocessed weight of the fishery resource for purposes of the tax under this chapter is determined by actual scale weight, or in the absence of an actual scale weight by volumetric measurement or by a product recovery rate as imposed or required by the United States National Marine Fisheries Service to determine the extent of resources taken by a person in a fishery.

(b) Except as provided in (a) of this section, for purposes of determining the tax on a fishery resource which was processed prior to landing in the state and that is subject to tax under this chapter, the processed weight of the fishery resource at the time it becomes subject to tax must be converted to an unprocessed weight. Secondary products must be included in the conversion to an unprocessed weight. The person's actual recovery rate experience, or the industry average recovery rate if the person's processing activities are consistent with the activities underlying the industry average recovery rate, may be used in making the conversion if the rates are reliable and verifiable. The department may audit and adjust the recovery rate under this subsection.

(c) A person shall disclose with the return, for each species, the nature of the recovery rate used, the percentage of recovery, and shall maintain such records necessary to support the rate utilized. (Eff. / / /, Register)

Authority: AS 43.77.010
AS 43.77.070
AS 43.77.200

15 AAC 77.050. CREDIT FOR COMMUNITY DEVELOPMENT QUOTA CONTRIBUTIONS. (a) A person who has made a contribution to a nonprofit corporation incorporated in the state that qualifies for the credit authorized by AS 43.77.040 must apply to the department no later than January 31 of the year following the year of the contribution for authority to take the credit on the tax return. A person that fails to make a timely and complete application as required by this section waives the credit.

(b) The application must be made on the form prescribed by the department and shall contain the following information:

(1) the applicant's name, federal employer identification number or social security number, telephone number and mailing address;

(2) the name of the nonprofit corporation receiving the contribution;

(3) the amount of the contribution, a receipt from the nonprofit corporation for the amount of the contribution, and a statement from the nonprofit

corporation specifying how the contribution will be used and agreeing to allow the department to audit its accounts;

(4) documentation regarding the authority of the person to harvest under a community development quota;

(5) the fishery resources, by weight and species, harvested under the community development quota;

(6) a statement that the contribution to the nonprofit was expressly conditioned upon its use exclusively for one or more purposes authorized by AS 43.77.040; and,

(7) other information required on the application form.

(c) The department shall approve or disapprove an application to take the credit within 30 days of receipt of a timely and complete application. A person may consider the application approved and tentatively take the credit on the tax return if the department does not disapprove the application within the 30 day period and prior to the filing of the tax return.

(d) A contribution that qualifies for the credit is a cash contribution. Contributions in kind and of services do not qualify for the credit.

(e) A contribution allowed as a credit may not be claimed as a credit or deduction under any other provision of AS 43. (Eff. / / /, Register)

Authority: AS 43.77.040

AS 43.77.070
AS 43.77.200

15 AAC 77.055. REQUIREMENTS FOR NONPROFIT CORPORATIONS. (a) As a condition to a person obtaining a credit under AS 43.77.040, a nonprofit corporation must separately account for the amount of the contribution and agree to allow the department to audit all accounts.

(b) The nonprofit corporation, in order to separately account for the expenditure of the contribution, must establish the following special accounts as applicable in its accounting system:

(1) CDQ fisheries scholarships;

(2) CDQ fisheries industry training;

(3) CDQ fisheries transportation grants;

(4) CDQ fisheries transportation loans;

(5) CDQ fisheries facilities grants;

(6) CDQ fisheries facilities loans; and,

(7) CDQ fisheries research grants.

(c) The use of funds in the special accounts shall be determined on a first in first out (FIFO) basis. All contributions, with the exception of those initially placed in loan accounts, must be distributed from the account and used for a qualified purpose by the end of the calendar year following the calendar year of receipt. Contributions placed in a loan account may be accumulated without the requirement for distribution within any specified time period. A contribution initially accounted for in a loan account that is transferred to another account must be distributed from the account by the end of the calendar year following the calendar year of the transfer. Contributions may not be transferred from a non-loan account to a loan account.

(d) A nonprofit corporation may not make a loan or grant to a person, or to any related party of the person, who has made a contribution to the nonprofit corporation that qualifies for the credit, unless the person first obtains written authorization from the department.

(e) A nonprofit corporation, to accommodate potential contributors, may apply to the department and request a determination that the intended use of contributions for a specifically designated program satisfies one or more of the requirements of AS 43.77.040. (Eff. / / /, Register)

Authority: AS 43.77.040
AS 43.77.070
AS 43.77.200

15 AAC 77.060. CLAIMING CREDITS AND REVOCATION OF CREDITS. (a) A person that is entitled to claim a credit shall take the credit on the tax return for the year of the contribution. The credit is a direct reduction of the tax liability for the tax year.

(b) The department shall, within the limitations period applicable by statute to the tax year, deny or revoke at any time a tax credit authorized by AS 43.77.040, and recover by assessment a tax credit authorized by AS 43.77.040 that was claimed on a tax return, if it is later determined by the department that:

(1) the contribution does not qualify or there has been a violation of AS 43.77.040; or,

(2) the person claiming the credit is in arrears in the payment of any tax levied in AS 43. For purposes of this subpart, tax includes penalties and interest. A tax is not in arrears if the tax has been timely appealed and is not subject to collection under AS 43.

(c) A tax credit that properly has been denied or revoked under (b) of this section shall not be reinstated.

(Eff. / / /, Register)

Authority: AS 43.77.040
AS 43.77.070
AS 43.77.200

15 AAC 77.065. ACCOUNTING FOR REVENUE SHARING. (a) The annual balance in the separate account in the general fund that is available for revenue sharing under AS 43.77 is reduced by all tax credits claimed on returns as a reduction of the tax liability. The effect of this reduction for the tax credits is to reduce dollar for dollar the amount that otherwise would have been paid to municipalities.

(b) The department shall attempt to specifically allocate the reduction in the amount of revenue sharing as a result of the tax credits to those municipalities in which the fishery resources harvested under the provisions of a community development quota were landed. In the event information is not available for that purpose, the department shall apportion the reduction to all areas in the state in which fishery resources were landed. (Eff. / / /, Register)

Authority: AS 43.77.050
AS 43.77.060
AS 43.77.070

15 AAC 77.070. TAXABLE NEXUS. A person, buying a processed fishery resource from an unrelated person in an arms-length transaction, and who obtains a transfer of the legal title, risk of loss, and the physical possession of the resource outside the jurisdiction of the state, who thereafter merely lands the fishery resource in the state for transshipment to another jurisdiction, may apply to the department and shall provide such factual information regarding the person's presence in the state as may be required for a determination of whether the person has a taxable nexus for purposes of AS 43.77. (Eff. / / /, Register)

Authority: AS 43.77.070

15 AAC 77.905. DEFINITIONS. In AS 43.77 and 15 AAC 77.005 - - 15 AAC

77.900,

(1) "average price" is the mean of two or more prices and may be computed in the discretion of the state as a simple average or a weighted average reflecting a volume by price and weight; the average price may also be computed to take into account seasonal differences in prices;

(2) "department" means the Department of Revenue;

(3) "filed" means, unless otherwise indicated, the date of personal delivery or, if mailed, the United States postmark date;

(4) "taxable nexus" means a sufficient connection to the state for tax purposes to satisfy the Due Process and Commerce Clauses of the United States Constitution;

(5) "person" means an individual, a trust, estate, partnership, association, company or corporation;

(6) "related person or party" has the meaning of related person in 26 U.S.C. 267 and 26 U.S.C. 318;

(7) "weight" means the poundage of an unprocessed fishery resource after the application of a recovery rate to a processed fishery resource. (Eff. / / /, Register)

Authority: AS 43.77.070

15 AAC 116.600 is amended by adding new subsections to read:

(c) A processor is liable for the tax under AS 16.51 on the value of a seafood product processed for a person not licensed under AS 43.75.

(d) A person taking, purchasing, or otherwise acquiring a seafood product that has not been subject to the tax imposed in AS 16.51, who transports the seafood product to a point outside the taxing jurisdiction of the state for sale or processing, is liable for the tax under AS 16.51 on the value of the seafood product.

PUBLIC HEARING

DIVISION OF INCOME & EXCISE AUDIT

DEPARTMENT OF REVENUE

October 14, 1993

Juneau, Alaska

ORIGINAL

THURSDAY, OCTOBER 14, 1993

9:10 A.M.

MR. MEYER: On the record.

We're going to go ahead and get started.

Today is October the 14th, 1993. It is approximately 9:10 a.m. We are on the 11th floor in the conference room of the commissioner's office in the Department of Revenue.

The purpose of this public hearing today is to discuss the Department of Revenue's proposed regulations regarding the landing tax and a couple of amendments that we have proposed to the seafood marketing provisions.

My name is Carl Meyer. I'm the Chief of Appeals with the Income and Excise Audit Division. Also here today on my right is Larry Meyers, the Director of the Income and Excise Audit Division.

We have an attendance sheet I think everyone has signed or will be signing, and when we get around in a few minutes to asking for testimony, we'll go according to the attendance sheet, here, and I will ask people to come up and provide their testimony.

The landing tax was passed by the legislature in May of 1993. The Department of Revenue, thereafter, within a couple of weeks, actually put together the first draft of these regulations.

The regulations that you have are probably about the third draft that we did, but they're substantially the same as what we did in the first draft that really was completed prior to the time the governor actually signed this legislation in June of 1993.

The provisions under the landing tax are not effective until January of 1994. We will not see tax returns until 1995.

The Department of Revenue, in 1991, conducted a study, a fish tax study, and part of that study, the department recommended the imposition of a landing tax.

So the landing tax legislation that the legislature passed last year is not really anything new to the department. It's something that we have been involved in from the beginning and were involved in the legislative process, as well, last session.

The legislation in the landing tax

provision actually had given the department the authority to issue legislative-type regulations. So, therefore, we have taken the position that the authority that the department has to issue these regulations goes beyond the general authority that we have in AS 43.05 to issue procedural regulations, but that the specific grant of legislative -- or specific grant of regulatory authority gives us the power to issue regulations more in the nature of -- with substantive effect.

The department is very interested in public comment on these regulations, and we would also be interested in the public identifying any areas that anyone may feel should be addressed in these regulations which have not been addressed, and one of those areas could be whether an estimated tax requirement, for instance, might be more preferable to a bonding requirement or another type of security-type arrangement.

At this time, I think I will go ahead and open the hearing to the public testimony.

And, Mike, if you want to come up here and state your name and who you represent for the record.

MR. SZYMANSKI: Thank you. For the record, my name is Mike Szymanski. I represent The Fishing Company of Alaska.

With your indulgence -- I don't have prepared remarks. Unfortunately, I didn't obtain a copy of the regulations until yesterday, and apparently they were sent to our office in Seward, and I didn't get a chance to get a copy of them.

Try to bear with me, if you can. I'll just kind of roll through with you the points that I think we need to maybe get clarified or cover with you.

Generally speaking, we find the regulations to be pretty straightforward. There are some concerns or questions that we'd like to raise with you.

Not going into any in-depth discussion, you've heard our presentation of the past with regard to our comments related to the purpose and intent. I think the purpose and intent as stated in the regulations is certainly -- is one position that the state takes. It is not, from our perspective, and industry perspective, realistic nor real in nature in that the stated intent and purpose behind the regulations is based on the State of Alaska providing research, management and enforcement responsibilities to offshore fisheries which we participate in.

To the best of our knowledge, the State of Alaska has no management responsibilities nor enforcement responsibilities with the fisheries with which we participate in. While it may have some in other fisheries which are associated with the State of Alaska and the EEZ, to the best of our knowledge the State of Alaska doesn't provide any of the provisions as stated in the purpose and intent section.

So I would rather not let those go uncontested or unobjected. We see no evidence of it, and there hasn't been any evidence shown in the history of the development of the law nor the regulations.

We also would take exception to the fact that there is what's stated to be a significant presence in the state, including transfer of products, so forth, stated in the purpose and intent section of the regulations.

I would note that even since the passage of this law in May, we have seen a majority, if not vast majority, of at least the longliner fleet that would be affected by this tax which works off of the coast and the EEZ tied up for almost seven months out of the year in Seattle, where less than five months of the year they even come in close proximity to the State of Alaska.

So to indicate that they would be affording themselves of educational services, road maintenance, public safety, airport, docks, hospitals and other social service programs is a little ridiculous to me, in light of the fact that they spend seven months of the year outside of the fishing activities of Alaska, and to tax them for a service that they incidentally would receive would probably be stretching the intent.

They do, indeed, probably receive some incidental services which they more than adequately pay for as part of their movement in and out of the State of Alaska. And we could certainly provide you vessel names and moorages if you're ever curious as to those vessels that have been tied up and will continue to be tied up outside the State of Alaska which have no impact on the state which really, ultimately, get a tax under it.

But not wanting to dwell on that, I thought maybe we'd turn to your 77.010, return, payment, and required information.

I have reviewed this. As a company, we think maybe an option may be to allow -- and I say an option, not necessarily the only vehicle -- but an option to allow four quarterly payments similar to your business quarterly payments, advance quarterly payments, should be made available, because I think that depending on the breadth -- or the size of the companies that participate in the fishery, it may be better for some to have that ability, and in other cases the bond provision may be a good provision.

So I think it just -- I think the more flexibility that you have, there, the better the industry has an opportunity to deal with that.

So I think an expansion of those regulations which incorporate some quarterly payment provisions would probably be received by the industry.

Now moving to 77.030, liability of taxes.

What concerns us here is an apparent inconsistency in the regulations and inconsistency with the statute, itself, which deals with, specifically, 030(b), and where it states that, "The person owing -- owning the fishery resource is the person with the legal title and risk of loss at the moment the act of landing begins in the State of Alaska."

We can concur that that certainly is

in line with what the law says, but then the extension -- or the expansion of what the written law is to now include, "For the purposes of this section, and notwithstanding any contract provision to the contrary, a person in possession of the fishery resource who harvested or processed the fishery resource, or a related person or agent in possession of the fishery resource from the person who harvested or processed the fishery resource, retains legal title and risk of loss until the fishery resource is delivered and actual physical possession is transferred to an unrelated third-party" is an extension and certainly goes beyond what the literal reading of the law was when it was written, which was clearly to state, "A person owning a fishery resource that is not subject to AS 43.75, but that is brought into the jurisdiction of and first landed in the state, is liable for and shall pay a landing tax of the value of the fishery resource.

It seems to me -- and we are a little at a loss as to why a bill of sale which may be entered into would be null and void by your regulations, which would allow for an individual that commonly buys a resource from a harvester, to have that negated by the regulations, or appears to be negating it, because, as you then look at it, it would appear that you're not going to recognize that the resource of product that can be acquired or purchased through normal trading systems is not -- is not legal for some reason.

And I guess I'm looking for some clarification from your side on that as to what -- where you were going down that road, because it, again, then becomes a little less clear when you go back into the last section of the regulations, which -- I think it's the last section of the regulations .070, which is a new provision which you cite underneath your authority under AS 77.070, which gives you the -- I guess it's your general provision of this new, broader provision of regulation drafting that allows you to come up with physical possession of the resource outside the jurisdiction of the state.

Somehow you've created a person buying a resource -- fishery resources from an unrelated person in an arm's length transaction who obtains a transfer of the legal title, risk of loss, and physical possession of the resource outside the jurisdiction of the state, who therefore merely lands the fishery resource in the State of Alaska, transferring it to another jurisdiction, may apply to the department and shall provide for such may require determination whether the tax imposed under 43.77 is applicable.

On one hand, in the front part of the law you appear to say that it is not applicable, and then in the back end of the law, under this section, you're saying it may be applicable.

It seems to me it would be -- it would be for the public's best interest to know what your intent is and what you're saying in the law as to whether or not, A, I guess a bill of sale and a legal transaction which normally and customarily occurs would or would not be standing as evidence of a sale, and/or whether or not this 070, determination of applicable tax, screws that and what it really means.

It certainly leaves us up in the air as to knowing where or how this law is going to be applied in those instances where an individual buys, purchases and maybe even trades it two or three times before it physically enters the taxing jurisdiction of the state.

So I only raise that as a concern or a question that you may want to take a look at and see whether or not you can help us with it.

The other question that arises gets

down into your (d) section of -- going back, again -- I hate to flip back and forth, but I know you guys are very well equipped to do that -- but back on 030(d), it appears what you've drafted, here, in the regulations is to say, "The tax does not apply if the fishery resource is first landed in the territorial jurisdiction, as recognized by the United States, or another state or foreign country."

So, in other words, if it's landed in another state, landed in another foreign country and then comes into the State of Alaska, the tax does not apply.

But then you go on to indicate that -- somehow you've taken the liberty, and I'm not too sure where you found it, to qualify the EEZ as -- which I'd say is three miles out to 200 miles -- as being an area that it would apply in, even though the state taxing jurisdiction doesn't apply.

And what you're saying, if I understand the regulations, is that if a transfer occurred outside the three-mile area and then you brought it back into the State of Alaska, it would then be taxable.

Well, if I read this literally, the only place that I think you could end up finding a place that becomes no man's zone is the Doughnut Hole, which is no longer within the 200-mile area, but it's not within the state and it's no longer within either a state or federal, regional area.

So the Doughnut Hole becomes a point, I guess you could -- that you could make the transfer, but I'm not too sure what your intent is behind it, but I question whether or not the state's jurisdiction to govern the federal jurisdictional area three miles out to 200 miles is allowable, nor was it even cited in the statute that you've got here.

MR. MEYER: If I could ask a question at this point, just for clarification. Is what you're saying that if a product is transferred in the EEZ, that that should be considered a first transfer and the Alaska tax should not apply?

MR. SZYMANSKI: It would seem to me that that would be logical.

MR. MEYER: Would the landing tax ever apply?

MR. SZYMANSKI: No.

MR. MEYER: It would seem to me --

MR. SZYMANSKI: No, under that circumstance -- I mean, it would never apply to a first transfer outside the three mile.

MR. MEYER: But it seems to us that -- from the testimony we heard during the -- while this was going before the legislature, that the majority of that product is transferred in some kind of way in the EEZ, and it would seem like it would be very difficult for this tax to ever have any application if a transfer in the EEZ was considered an event that would preclude the Alaska tax.

MR. SZYMANSKI: Well, there's only -- to the best of my knowledge, there's only one circumstance in which you could actually make a transfer within the EEZ outside of the three-mile area, and that's if you're transferring to an American vessel. Any foreign vessels are required to take transfer within the three-mile area or roadsteads established.

So that would be the only ones that I think would be applicable, but I'm not too sure that the regulations -- I think we'll get into an area that was never addressed in statute, nor -- again, you're making law that was not created by the lawmakers.

I guess that's pretty broad, but maybe I think you went a little bit too broad, as I think I believe you do with the definition of transactions.

But, continuing on into it, the -- how am I doing?

MS. BURKE: You're doing fine. You convinced me.

MR. SZYMANSKI: And I only had last night to read these things.

The other thing that kind of popped up to me as further expansion under the rule making versus law making -- and it is kind of a unique opportunity because this is the first time I've ever had an opportunity to comment on rule making, on law making, that I've ever been involved in, which I think was kind of interesting, is that under 77.035, credit for other taxes paid, which is kind of a favorite provision of mine, I see that you have extended this to say that it -- under your interpretation -- and I say "your interpretation," because yet to be determined is what "equivalent in nature to taxes imposed under 43.75 and 43.76" -- and what I'm really referring to is what is the real meaning of "equivalent in nature" to that mean?

The "Sales taxes, import or export fees or taxes, income taxes, or similar taxes and fees are not considered to be equivalent in nature to AS 43.75, 43.76."

By the statement that you've provided in the regulations, it's beyond me how any taxes could conceivably be considered a credit, and if you didn't want to make a credit, I don't think that the law makers would have created the provision, and I think that you've gone beyond the -- by your insertion and interpretation, that all taxes, similar taxes -- I mean, any way, shape or form, taxes that somebody else pays somewhere else, I can't see -- and maybe you can enlighten me -- as to what taxes may be similar in nature that you did not preclude by your statement in the provision.

I think you may have gone a little bit too far to exclude, rather than to allow, even beyond what would normally be allowed.

Now, we have had discussions, and I understand that the intent behind this would be is if under 75 or 76 a fishery business processing, occupational-type business tax was paid by the taxpayer in this case, then they would get some type of credit, but I'm not too sure I could see how they would be allowed to have that credit under the language you have in your regulations.

It looks like it's pretty exclusive. You've excluded everything.

MR. MEYER: That's correct. This language that you see, here, is actually the way that the

Department of Revenue testified to the legislature, and this issue really very specifically came up during the course of this legislation, and we were specifically asked what taxes would be equivalent in nature, and, in fact, this "equivalent in nature" was a legislative change because the legislature wanted that in there to really make it clear that it had to be a tax what was going to be very similar in operation to the tax under 75 or 76, which is the fisheries business tax, the salmon enhancement tax.

Now, the sales taxes, import or export taxes, income taxes, I very specifically remembered when I testified on this legislation before the legislature testifying that those were the type of taxes that Department of Revenue would consider not to be equivalent in nature, and there was no problem with the legislature at that time. That was the language they wanted, and we believe that is exactly what the legislature had in mind, that sales taxes, imported, exported fees, those were not the type of things that the legislature intended to give a credit for, and that's why it's reflected in here in this way.

MR. SZYMANSKI: Well, let me say this, that if it had been the legislature's intent, I'm not too sure they wouldn't have adopted the language that you've produced.

In other words, they've never been bashful in the past, so if it was your intent and not the legislature's intent, I'm not too sure that they were remiss in it as much as they left it open so there would be some equivalent taxation credits made.

I don't see, the way that you've drafted it, that you allow for any equivalent taxes in any way, shape or form, unless somebody has some type of new salmon processing that may occur outside in the EEZ. And I think that -- I'm just saying that you may have, in your desire to clarify what you don't want to be open, closed everything.

MR. MEYER: Well, we actually -- when we testified on this, again going back to the testimony before the legislature, that was specifically what we told the legislature, that there would be very few, if any, taxes that would really qualify; that in our view, to be equivalent in nature to a fishery business tax, for instance, it would have to be a tax on processing the fishery business, it would have to be a processing-type tax.

And I think when you read what the tax is in 75 and consider what is equivalent to the fishery business tax, that you would be hardpressed to say that an import fee or an export fee or a sales tax by any stretch of the imagination could be equivalent to the fishery business tax.

So my question to you, then, might be what would you consider to be a tax that would be equivalent to the Alaska fishery business tax? What type of tax do you think this would entail?

MR. SZYMANSKI: Well, let me use a potential example.

If another state or even a country created a fishery business processing tax which we would pay as a part of the pipeline that we are entering into in dealing in the commerce of that jurisdiction, whether state or foreign country, we should be given the opportunity to present that similar tax for consideration.

You've precluded that in the regulations that you've drafted, because I don't --

MR. MEYER: I don't think so, though, Mike.

MR. SZYMANSKI: Okay.

MR. MEYER: That type of --

MR. SZYMANSKI: What's the purpose in similar taxes? Just in case the previous three qualifiers didn't make it, you just said any other similar taxes don't -- it's contradictory to what I thought.

MR. MEYER: No. What we've said -- we've identified certain taxes that we do not consider to be equivalent, and that's consistent, like I said, with what we represented to the legislature.

We have not tried to identify the taxes that would be equivalent in nature. We don't know of any that are out there at this time.

MR. SZYMANSKI: But then what you shouldn't have done is put any of this -- I'm sorry to interrupt you.

MR. MEYER: That's okay.

MR. SZYMANSKI: You shouldn't have then said, "In any way, shape, or form, taxes, fees, exports, income taxes, similar taxes."

I just read that as being the way it is, that it precludes anything. So why even -- it's like there's a law there that says you have the opportunity to present it but then all of a sudden it doesn't give you the opportunity to present it, because your answer is always going to be --

MR. MEYER: No, that's not --

MR. SZYMANSKI: -- it's precluded.

MR. MEYER: That's not the way it is intended to operate. The operative provision is the sentence before that, which says that the credit is available if the tax is paid to another jurisdiction or equivalent in nature.

MR. SZYMANSKI: Equivalent in nature.

MR. MEYER: That is the key.

MR. SZYMANSKI: We certainly would be in a position to try to convince you that we do, if that was found to be the case.

Anyway, that was just kind of my comment on that particular section. I didn't have much more on it.

Switching down the road as we move down into 77.040, value and notice of value.

We have a concern, as I think other industry reps will indicate in some of their correspondence at least I've received copies of, that the value and notice of value -- first of all, going back to the statute itself, which reads, literally, value means the unprocessed value of fishery resources based on state-wide average price paid for the fishery resources as reported by the -- reported during the year to the Department of Fish and Game, is literally real clear.

The statute says that if it's reported to the Department of Fish and Game, that average price is the price that you -- is your value price.

Do we disagree on that?

MR. MEYER: I think we probably do. I mean, if you're saying that the department lacks any authority to adjust that price --

MR. SZYMANSKI: No. I think that the average price -- you can go high, you can go low, you can throw out the highs and the lows and you can take the average price, but it's got to be a price or a state-wide average price paid for fishery resource as reported during the year to the Department of Fish and Game, not reported to the Japanese fish market, not reported to Seattle, California, Washington, average United States price, or anything else. It's the average price.

Do we agree that it's the average price reported to the Department of Fish and Game?

MR. MEYER: We agree that the way that it's written here is that the price is the price as reported to the Department of Fish and Game. I think you can see that in (a).

MR. SZYMANSKI: That's what it says in statute.

MR. MEYER: Right. The department has the right to eliminate the high and low prices, take into account tendering fees, price adjustments, bonuses. Those are not going to normally be reflected in the initial fish tickets.

So I guess we might disagree on your terminology, at least at that point, and --

MR. SZYMANSKI: I think we agree on that.

MR. MEYER: Okay.

MR. SZYMANSKI: I think we agree up to that point.

MR. MEYER: Then in the absence of this Department of Fish and Game state-wide average price for a particular species, the department then can use information from another source to arrive at the state-wide average price, but that would be in absence of information from the Department of Fish and Game.

MR. SZYMANSKI: How do you get authority to go beyond the state Department of Fish and Game when it says clearly in the statute that you go to the State Department of Fish and Game for the average price? How can you go to other agencies? It didn't say any other agencies in the state.

MR. MEYER: Right. But in the event there is no information from the Department of Fish and Game, in essence what you would be arguing is that there would be a zero price for that species, which would not make sense.

We testified when this issue came up before the legislature, and we indicated at that time to the legislature that in the absence of that information, it was not going to be a tax break, that we would come up with the state-wide average price from some other -- in some other fashion, and that's what this really is designed to do, here.

MR. SZYMANSKI: Well, I know, again, that's what you designed it to do, but I don't read it in the law, so I thought it was kind of creative that you may --

MR. MEYER: You think it would be fair and reasonable to -- if the Department of Fish and Game --

MR. SZYMANSKI: Maybe there is no price --

MR. MEYER: -- if the Department of Fish and Game did not have a specific price for a specific species, that someone should not have to pay the landing tax on that?

MR. SZYMANSKI: If there is no price for it, what would there be -- how would you assess a value on something that has no price?

MR. MEYER: There might not be a state-wide average price because it's not being reported to the Department of Fish and Game, but I imagine it would certainly have a price to whoever is making the catch and selling it.

MR. SZYMANSKI: Let me give an example of one that has probably a negative price that's brought in. Let's use arrow-tooth flounder that's brought into Kodiak. It costs -- they have to pay a guy -- they have to pay -- it's harvested on a tonnage basis, and they have to pay a disposal process to get rid of it.

Now, do they get a tax credit for the negative price that they get for it, out of curiosity?

MR. MEYER: I don't know of any.

MR. SZYMANSKI: I didn't think you'd probably walked that far down that road.

MR. MEYER: What is that, arrow-toothed flounder?

MR. SZYMANSKI: Yeah. It's a great species.

MR. MEYER: Is somebody actually going out on purpose and catching --

MR. SZYMANSKI: Oh, yeah, they catch it on purpose. Just ask the State Department of -- right behind me. They catch hundreds of tons of this stuff. It's actually a directed fishery, too.

But, in any case, there's a good example of one that -- you've got to think through that one a little bit before you get down the road on it. I don't know how you're going to tax them on it, but I would be curious to see you do it.

Anyway, moving down the road -- you've had my comments on that.

You may want to look at broadening that to allow the industry to present the value in absence of the Department of Fish and Game information. That may be another vehicle from a more practical perspective, because, in realistic terms, there are many products that the State of Alaska never even sees. I mean, they don't know what it is because it never enters the -- it never enters the economic pipeline of the State of Alaska. It never enters the system. I mean, there's a species that are caught, processed, shipped, and it never sees Alaska.

I see you've got end-of-product recovery rates. I'll kind of allow that one to go by.

My inclination is that your new language that you've developed on recovery rates is based on National Marine Fisheries determination and specifications. It's probably little more specific than what was originally drafted, but, again, let me just introduce for you for your own information that the whole discussion of product recovery rates, at least, is not a precise science by any nature, and, as a matter of fact, the legal system is having a very difficult time dealing with this very subject because when you try to enforce regulations or you attempt to operate precise law under product recovery rates which vary widely from one vessel to another, it's going to be extremely difficult to impose standards that can't meet the legal test of being fair standards. And while the National Marine Fisheries may think that they've got the corner on doing it, you'll learn, as you hear more about that, that it's going to be very difficult for these precise standards to be used, particularly when you get into using them for tax purposes or for other things.

I don't know of any better -- I don't know of any way how you round upward the round weight, other than direct tonnage records which will be coming down the road. I understand that -- our feeling is, is that in probably two or three years you'll see direct tonnage weights made and then based on that, then you'll have something to deal with, but, in the interim, you can either take the industries' weight reports or you can try to use the product recovery rates, but it does vary from vessel -- actually, almost vessel to vessel, and it's very difficult to do.

I will again restrain my comments with regard to 77.050, which is credits for community development quotas. I will trust the information I received this morning that these -- my understanding is that the credits are only for -- can be only for those taxes which are accrued related to the specific community development quota activities, and I don't know how to say that. Am I saying that right?

What I'm saying is, is that my understanding is that the tax credit that would be brought about underneath this 050 would only potentially be available for that portion of the tax which is earned during the CDQ activities and not the year-round fishing activities.

Is that clear?

MR. MEYER: That is correct.

MR. SZYMANSKI: I think we've kind of covered the highlights of the regulations.

Anything I can help you with at this stage?

MR. MEYER: I do have one question regarding the -- just going back to the product recovery rates.

From your experience, do you know if the vessels would be capable of actually weighing all the product?

MR. SZYMANSKI: Most vessels don't have the capability of weighing a hundred percent of the product on board, but what most vessels do have the capability of doing is calculating product recovery rate with the federal observer on board.

So that if you wanted to set it up so that you could calculate a product recovery rate that would either be the standard established by National Marine Fisheries Service or a vessel-by-vessel one that could be done with the observer, federal observer on board, you could do it either way, and that's probably the one that will probably get you down to the least questionable and least challengeable level.

But, no, it will be several years, probably, before they get round-weight scales on board.

MR. MEYER: You had mentioned that you saw that there was potentially some conflict between 15 AAC 77.030 and 15 AAC 77.070 and the intent of the department with (b) where we have the provision that "notwithstanding any contract provision to the contrary, a person in possession of the fishery resource who harvested or processed the fishery resource, or a related person or agent in possession of the fishery resource from the person who harvested or processed the fishery resource, retains legal title and risk of loss until the fishery resource is delivered and actual physical possession is transferred to an unrelated third-party buyer."

The intent of that is to avoid what the department has found in the past to be a problem area, and that problem area is that we have a lot of paper transactions between related parties that transfer or appear to transfer or try to transfer the legal title. Whether that actually would occur in a court of law, whether a court would say that you can actually transfer that legal title where you have not transferred the actual possession of the product is hard to say, but in real life when the department has gone out trying to find out who the owner of the resources are, it becomes a finger-pointing exercise by the various entities involved, that they point the finger at the other and say, "They're the owner" and the other one points the finger back saying, "No, they're the owner."

It's an untenable situation. We do not want to get into that. We believe that if you harvest the resource and you still have the resource in your possession, that you should be considered to be the buyer, and we're not going to allow a contract provision which is easily manipulated to change that liability.

MR. SZYMANSKI: Could I --

MR. MEYER: Go ahead.

MR. SZYMANSKI: Could I ask you: Do you apply the same rules to oil and gas?

MR. MEYER: Well, we're not talking about oil and gas, here.

MR. SZYMANSKI: I know you're not talking about oil and gas. You're talking about resources. But I thought underneath your taxing policy of transfer of resources, that you recognized paper transfers under oil and gas purposes. A producer may be X and the actual taxpayer is not necessarily the producer at Prudhoe.

MR. MEYER: Well, I don't know precisely with regard to what tax you're talking about, whether you're talking about production tax or whether you're talking about the old income tax, or whether you're talking about modified apportionment tax.

I can tell you what the tax is that we deal with now, from 1982 on, under the corporate income tax. Paper transactions like that are of no relevance at all.

MR. SZYMANSKI: They don't exist?

MR. MEYER: They don't exist.

Now, I can't tell you what the oil and gas division out of Anchorage does. I'm not involved with that, but that's just related to another issue, anyway, but for purposes of this particular situation, it's our intent not to allow manipulation of the tax liability by allowing the title to be transferred and the tax to be shifted by merely creating a paper trail.

And the difference, I guess, too, between -- the other question you had is you saw a conflict between 30 and 70, and I think that in 70 you'll see that the actual physical possession of the resource has transferred outside the three-mile limit.

So the difference is that in 070, for -- one difference is you actually have a physical transfer of that resource on the high seas. So that's an important distinction between the two. And all 070 is really saying is that if you run into this situation where you do have that physical transfer of possession, that that individual can apply to the department to find out -- or for a determination as to whether that individual would be subject to the tax.

This is really just a nexus determination. It's not anything that you wouldn't find in the corporate income tax provisions or anything else, that the state doesn't have nexus over a taxpayer and cannot impose the tax, and this is just a clarification of that basic concept, that unless there is a nexus, that the tax would not apply.

MR. SZYMANSKI: That raises, I guess, the next question.

The person affected underneath 070 who receives their goods outside the three-mile limit but who does not come within the three-mile limit, does or does not the tax apply to them?

MR. MEYER: The tax would never apply to someone who received the product outside the state's jurisdiction, never came into the state, never transferred the product. The imposition of the tax is on the transfer of that product within the state, and if that doesn't occur, there is no tax liability.

MR. SZYMANSKI: Oh, so there's no reason to even ask you the question.

MR. MEYER: Well, no, because this is a situation where the actual -- in 070, this covers a situation where the buyer actually takes physical possession of the resource outside the three-mile limit and then brings it into the state on the transition basis, or for whatever, for shipment to another jurisdiction.

Now, on its face it may appear that it would be subject to the tax, but what we're saying is that there may be an instance -- there may be a situation where that individual may not have a specific nexus to support the tax. This person is not the person harvesting the resource and it may be a one-time operation.

We're not making a determination up front. We're merely saying that that individual can come in and ask us to determine whether there is a sufficient nexus of that person to the state so that this tax really applies.

MR. SZYMANSKI: If the -- and I guess I need clarification of that.

If a person brings it in and -- is the primary consideration whether or not a subsequent transfer occurs or not, or if they just pull in, pick up fuel and leave with the tramper -- let's call it a tramper -- if they pick up fuel and leave and head off to the Lower 48, Japan, wherever, what's your -- your feeling, then, it would or would not apply?

MR. MEYER: Well, I can't make that determination. Nexus is a very complicated determination and is based on a number of constitutional-type analyses, and it's very factually oriented.

It would depend on the facts and circumstances surrounding each case. It would depend --

MR. SZYMANSKI: What would be the circumstances by which it wouldn't apply?

MR. MEYER: By which it wouldn't apply?

MR. SZYMANSKI: Yes.

MR. MEYER: I'm not going to hazard a guess as to whether it wouldn't apply or when it would apply. All we're saying here is that if someone fits between this category, they can ask for a determination as to whether the tax applies. We will consider all the facts and circumstances at that time to the actual situation, and if --

MR. SZYMANSKI: And that's precisely the point I'm trying to make, and maybe I'm missing trying to make that point.

As the public, unless you spell out in the regulations what may or may not be the circumstances by which you can apply them, why even -- what is the purpose of the law?

I mean, you can't -- we had nothing to judge it against. Do we judge it against -- you couldn't even answer the question. How would you expect the public to answer the question?

MR. MEYER: We're not saying we can't answer the question. We're saying we cannot give you a broad answer at this time.

MR. SZYMANSKI: It's not broad. Can't you more narrowly define what is or is not --

MR. MEYER: What we have, here, is not any different than the situation we run into with every tax type that we have in the State of Alaska.

We routinely have people that come to us now and ask us to give them a determination as to whether they have a taxable nexus with the state for purposes of the corporate income tax.

And I would point out that the fishing industry, for example, is notorious for claiming that it does not have nexus with the State of Alaska.

The Sjong case a number of years ago dealt with Seattle fishermen that were fishing in the EEZ and claimed they didn't have a taxable nexus for purposes of the corporate income tax, and that's the same type of situation that we really have here.

In the Sjong case, the court held that there was a taxable nexus, but that case took many years to work its way through the process. It wasn't an easy answer either way, and we can't give you a bright-line test as to what nexus is in a particular situation.

MR. SZYMANSKI: I'm not asking for that, but I am asking for clarification of your language which says, "Apply to the department and shall provide such information as may be required for determination on whether a tax imposed under 43.77 is applicable."

I have no idea what I should submit to you to determine whether or not it is or is not applicable unless you can tell me what would or would not be applicable. I mean, should I take Christmas cards and present it in there? I mean, that's going to one extreme. Or should you take -- I mean, at some point in time it would seem that the public deserves, in regulation, some definition of what may or may not be applicable, as you have done in your other sections of the law where you certainly inserted your determination of what is or is not applicable with regard to related taxes.

MR. MEYER: Well, I can assure you that I could probably go to the law library and pull out any number of cases before the various state supreme courts and the U.S. Supreme Court over what is a taxable nexus.

It's a disputed area. It's very factually oriented, and we're just not able to specify, here, any more than we would be able to specify for purposes of any other tax, exactly what all the facts may possibly be. It's just not possible.

MR. SZYMANSKI: But you still, then, state to the public that they shall provide such information as may be required for determination on whether or not tax is imposed.

So we've got to go, then, hire an attorney to go read the law to try to determine whether or not we should do it? Is that what you're saying?

MR. MEYER: No. What we're saying here is that you provide the information to us. If we feel we need more information, we will ask you for that information. You have a requirement at that point to give us that information.

MR. SZYMANSKI: I see.

MR. MEYER: Most people, I think, understand what this is and that they have to provide all the facts that might be implied.

MR. SZYMANSKI: It doesn't give any

parameters, I guess. That is what I was looking for, is some type of parameters, similar to what you did in other sections of the regulations.

MR. MEYER: We're just not able --

MR. SZYMANSKI: You're just not prepared --

MR. MEYER: We're not prepared to do that.

Susan?

MS. BURKE: For the record, I'm Susan Burke. I can't stand this discussion anymore.

I tend to agree with Mike. I didn't know what you were getting at in that section, either, and I can understand perfectly why you can't lay out all the rules and give the correct answers for when the taxpayer has nexus and when not, but maybe if you could give a little hint somewhere in the section that talks about -- instead of determine whether the tax is applicable, because that, to me, says does the -- is there an event, here, that looks like the statutory provision covers it.

That, to me, is different from determining whether or not the state has constitutional jurisdiction to impose the tax on this particular taxpayer in this situation.

And, I mean, if you just want to use the "N" word in the regulation, I think it would provide the kind of notice that Mike is talking about. If you say that, the taxpayers will know what -- they'll know not to send you Christmas cards.

MR. MEYER: In the original draft that we had, we had this provision listed as nexus. We had it that way. It got changed later. We tried to get, probably, too cute with it, there.

MR. SZYMANSKI: I think that's touchy, but typical attorney. They do better than I can. Very good job.

MR. MEYER: Thank you.

MR. SZYMANSKI: Thank you.

MR. MEYER: John, would you like to come up and provide testimony?

MR. LETOURNEAU: My name is John Letourneau. I'm a certified public accountant with Coopers & Lybrand in Anchorage.

My comments will be very short. I really have but two points.

With respect to 15 AAC 77.040(b), the department indicates that it shall provide information to those taxpayers who are required to file the tax return.

It goes on to say the department is not required to publish information or to otherwise provide the information to any person who has failed to give notice required by this subsection.

I would like to suggest that various people, particularly certified public accountants, may have a great deal of interest in understanding exactly how the tax will be computed as they are commonly called upon by their clients to provide assistance in the computation of the tax.

So allowing a certified public accountant who would not be a person paying the tax or even required to file the return to request notice under 77.040(b) I think would be greatly beneficial and hopefully would increase the compliance with your taxing authority.

My second comment is with respect to 15 AAC 77.050(e). That section says, "A contribution allowed as a credit may not be claimed as a credit or deduction under any other provision of AS 43."

I think that this language in (e) substantially broadens the statute. Statute 43.77.040(d) included the word "credit" but did not include the word "deduction." I appreciate the department has legislative authority to draft regulations. However, I do not understand that the department has the authority to broaden upon the statute and insert a word that was clearly not included in the statute.

In my review of the legislative history, I did not see this point touched on. I obviously could be in error, but I am quite curious, and would submit that the word "deduction" in (e) is an addition that is not covered under the legislative authority granted.

Those were my questions, or comments.

MR. MEYER: Thank you.

MR. LETOURNEAU: Thank you for your time.

MR. MEYER: Thank you.

That was all that we show, here, as having -- of people that signed up to testify.

Is there anybody else that is here that would like to testify?

Susan?

MS. BURKE: Thank you. For the record, my name is Susan Burke, and I represent the American Factory Trollers Association.

I don't have any substantive testimony to give you, other than my spontaneous outbursts earlier.

I did want to say for the record what I had mentioned to you earlier, and that is that my clients in Seattle had a computer failure, and their written comments that they expected me to be able to deliver to you promptly at 9 o'clock this morning are still being word processed or perhaps beamed up to Alaska even as we speak.

As soon as they arrive and I can get copies made, I will get them over to you, and I would ask that you make those part of the hearing record. I have no reason to believe that they will not be here by the end of today, which I think is your deadline for written comments.

MR. MEYER: That's correct.

MS. BURKE: Okay.

MR. MEYER: If they make it before the end of business today --

MS. BURKE: They're in. If not, they're not. Got it. That's only fair.

Thank you. I don't have anything else.

MR. MEYER: Okay.

Thank you for the testimony and for attending, and the department will take the regulations under consideration and take whatever action is deemed necessary at that time.

Thank you.

(Hearing concluded at 10:10 a.m.)

C E R T I F I C A T E

S T A T E OF A L A S K A)
) ss.
FIRST JUDICIAL DISTRICT)

I, REBECCA L. ZIMMERMAN, Registered Professional Reporter and Notary Public duly commissioned and qualified in and for the State of Alaska, do hereby certify that the foregoing proceedings were taken stenographically before me and thereafter reduced to typewriting by me or at my direction.

That the foregoing transcript is a full, true and correct transcript of the proceedings, including questions, answers, objections, statements, motions and exceptions made and taken at the time of the foregoing proceedings.

That all documents and/or things requested to be included with the transcript of the proceedings have been annexed to and included with said proceedings.

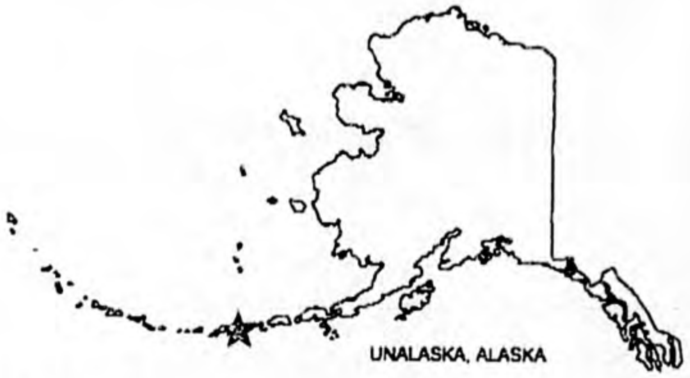
That I am not a relative or employee or attorney or counsel of any of the parties in these proceedings, nor a relative or employee of such attorney or counsel, and that I am not financially interested in said proceedings or the outcome thereof.

IN WITNESS WHEREOF, I have set my hand and affixed my Notarial Seal this 19th day of October, 1993.

Rebecca Zimmerman

REBECCA L. ZIMMERMAN, RPR,
Notary Public for Alaska
My commission expires: 2/4/94.

CITY OF UNALASKA
P.O. BOX 89
UNALASKA, ALASKA 99685
(907) 581-1251
FAX (907) 581-1417



October 14, 1993

Larry E. Meyers
Alaska Department of Revenue
Income and Excise Audit Division
P.O. Box 110420
Juneau, Alaska 99811-0420

RE: **Comments on Proposed Regulations for AS 43.77**

Dear Mr. Meyers:

Thank you for the opportunity to comment on the proposed regulations for the implementation of Chapter 77, Fishery Resource Landing Tax. The City of Unalaska offers the following comments:

Background:

The City of Unalaska supported HB264, creating a state shared landing tax for fish processed at sea and landed or transferred within Alaska state waters. This fisheries business tax program offsets financial impacts incurred by local governments and the State of Alaska from "offshore" fisheries business activities. The offshore fish processing sector has a significant presence in Unalaska and other coastal communities, with activities ranging from transferring processed fish products to changing crews to taking on fuel and supplies to discarding wastes. The offshore sector also has a direct and substantial financial impact on local governments, including increased maintenance requirements of local transportation systems, providing emergency medical and other public safety services, and expanding recreational, educational and other social programs.

Comments:

The City of Unalaska recommends that the State of Alaska support and adopt regulations for determining fish tax revenues that are based on actual fish weight as determined by certified scales, rather than relying on vessel product recovery rate ("PRR") methods, consistent with existing state fisheries business tax program regulations.

Implementing such regulations for the entire offshore fleet may not be practicable at this time; however, we understand that the National Marine Fisheries Service (NMFS) may soon be requiring the use of scales for certain factor trawler processor fisheries. State regulations for determining fisheries business tax assessments should always be based on actual fish weight rather than PRR methods, whenever possible.

Again, thank you for the opportunity to comment on the proposed regulations for the implementation of Chapter 77, Fisheries Resource Landing Tax.

Sincerely,

Mark Earnest

Mark Earnest
City Manager

cc: Mayor Kelty and Members of the Council

NOTICE OF PROPOSED CHANGE IN THE REGULATIONS OF THE DEPARTMENT OF REVENUE

Notice is given that the Department of Revenue, under authority vested by AS 43.05.080 and AS 43.77.070, proposes to adopt procedural and legislative regulations in Title 15 of the Alaska Administrative Code to implement, interpret, and make specific AS 43.77 concerning the Fishery Resource Landing Tax. Further, the Department proposes to adopt regulations under AS 16.51 under the authority vested by AS 43.05.080 to administer the Alaska Seafood Marketing Assessment. The proposed changes include the following:

15 AAC is proposed to be amended by adding new provisions in a new AS 15 AAC 77 as follows:

15 AAC 77.005 describes the purpose and intent of the fisheries resource landing tax.

15 AAC 77.010 describes the return, payment, and other information requirements for reporting the tax.

15 AAC 77.015 provides for an automatic extension of time to file the return and pay the tax in the situation where the statewide average price is not available.

15 AAC 77.020 provides for extensions of time to a maximum of 90 days to file the return upon a showing of good cause.

15 AAC 77.030 addresses the persons who are liable for the tax and provides that AS 43.75 takes precedence over AS 43.77.

15 AAC 77.035 addresses the credit for taxes equivalent in nature to the tax under AS 43.75 and AS 43.76 that are paid to other jurisdictions in which the fisheries resources were caught, processed, or sold; provides for a recapture of the credit if the taxes are subsequently refunded or credited; and establishes information requirements for claiming the credit.

15 AAC 77.040 addresses the determination of value for purposes of the tax and establishes a requirement that each taxpayer notify the department by January 31 to request notice of the value for each species landed in the state in the previous year; the value generally is the statewide average price as determined by the

Alaska Department of Fish & Game although the Department may adjust that value; the Department may instead use other information to arrive at a statewide average price if that price is not available from Fish & Game.

15 AAC 77.045 provides that the processed weight of a fishery resource must be converted to an unprocessed weight by use of a recovery rate.

15 AAC 77.050 addresses the credit for Community Development Quota ("CDQ") contributions to nonprofit corporations and provides for the manner in which the credit may be obtained.

15 AAC 77.055 provides that a nonprofit corporation must separately account for CDQ contributions, distribute the contributions for designated purposes and within certain time periods, and agree to allow the department to audit the accounts as a condition to a person obtaining the credit.

15 AAC 77.060 provides for the manner in which a CDQ credit may be claimed and the circumstances under which the credit may be revoked.

15 AAC 77.065 addresses accounting and revenue sharing for the landing tax.

15 AAC 77.070 provides that certain persons may apply to the department for a determination of whether the tax is applicable.

15 AAC 77.905 provides definitions.

15 AAC 116 is proposed to be amended by adding new provisions as follows:

15 AAC 116.600 clarifies that processors engaging in custom processing activities for persons other than licensed fisheries businesses under AS 43.75, and persons removing seafood products outside the taxing jurisdiction of the state, are liable for the seafood marketing assessment on the value of the seafood product.

Notice is also given that interested persons may present oral or written statements relevant to the proposed action at a hearing to be held at 9:00 a.m. at the following location on the date indicated.

October 14, 1993
Juneau Department of Revenue Office
State Office Building, Eleventh Floor
Commissioner's Conference Room A
Juneau, Alaska

In addition, written statements may be sent to Larry E. Meyers, Department of Revenue, Income and Excise Audit Division, PO Box 110420, Juneau, AK 99811-0420, to be received no later than October 14, 1993.

Copies of the proposed regulations may be obtained by writing to Larry E. Meyers, Department of Revenue, Income and Excise Audit Division, PO Box 110420, Juneau, AK 99811-0420.

If you are a person with a disability who may need a special modification in order to comment on the proposed regulations, please contact Larry E. Meyers at (907) 465-2320 no later than October 7, 1993 to make any necessary arrangements.

The Department of Revenue, upon its own motion or at the instance of any interested person, may, at the hearings or after them adopt proposals within the scope of this notice without further notice or may decide to take no action on them.

DATE: September 3, 1993

Darrel J. Rexwinkel
Commissioner
Alaska Department of Revenue

Notice of Proposed Change In Regulations
AS 43.77 and AS 16.51
h:74

FORM FOR ADDITIONAL REGULATIONS NOTICE INFORMATION

(AS 44.62.190(d))

1. Adopting agency: Revenue

2. General subject of regulation: Fishery Resource Landing TAX

3. Citation of regulation (may be grouped): 15 AAC 77.005 - 15 AAC 77.905

4. Reason for the proposed action:

( ) compliance with federal law

(X) compliance with new, ~~or changed~~, state statute

( ) compliance with court order

( ) development of program standards

( ) other: (please list) ______

5. Program category and BRU affected: General Fund - Income & Excise Audit Division

6. Cost of implementation to the state agency and available funding (in thousands of dollars)

	Initial Year FY 94	Subsequent Years
Cost	$ 100.0	$ 84.0
General funds	$ 100.0	$ 84.0
Federal funds	$	$
Other funds (specify)	$	$

7. The name of the contact person for the regulations:

Name Larry E. Meyers

Title Director

Address P.O. Box 110420
Juneau AK 99811

Telephone 907 465-2320

8. The origin of the proposed action:

X staff of state agency

___ federal government

___ general public

___ petition for regulation change

___ other (please list)

9. Date: Sept. 3, 1993

Prepared by: Carl A. Meyer (signature)

Name (typed) Carl A. Meyer

title (typed) Chief of Appeals

phone: 907 465-2343

FORM FOR ADDITIONAL REGULATIONS NOTICE INFORMATION

(AS 44.62.190(d))

1. Adopting agency: Revenue

2. General subject of regulation: Alaska Seafood Marketing Assessment

3. Citation of regulation (may be grouped): 15 AAC 116.600

4. Reason for the proposed action:

( ) compliance with federal law

( ) compliance with new, or changed, state statute

( ) compliance with court order

( ) development of program standards

(X) other: (please list) clarifying amendment

5. Program category and BRU affected: Income & Excise Audit Division

6. Cost of implementation to the state agency and available funding (in thousands of dollars)

	Initial Year FY 94	Subsequent Years
Cost	$ 0	$ 0
General funds	$ 0	$ 0
Federal funds	$	$
Other funds (specify)	$	$

7. The name of the contact person for the regulations:

Name Larry E. Meyers

Title Director

Address P.O. Box 110420
Juneau AK 99811

Telephone 907 465-2320

8. The origin of the proposed action:

X staff of state agency

____ federal government

____ general public

____ petition for regulation change

____ other (please list)

9. Date: Sept. 3, 1993

Prepared by: Carl A. Meyer
(signature)

Name (typed) Carl A. Meyer

title (typed) Chief of Appeals

phone: 907 465-2343

15 AAC is amended by adding a new chapter to read:

CHAPTER 77. FISHERY RESOURCE LANDING TAX

15 AAC 77.005. PURPOSE AND INTENT. (a) The landing tax is both designed and intended to be a compensatory tax to complement the fisheries business tax under AS 43.75. The landing tax is intended to compensate the state for the burdens that the Exclusive Economic Zone ("EEZ") catcher/processor fleet imposes upon the state and local communities, as well as for the benefits the EEZ catcher/processor fleet receives from the state and local communities.

(b) The state has various research, management and enforcement responsibilities in connection with the offshore fisheries, and the EEZ catcher/processor fleet has a significant presence in the state including transferring the processed product, taking on and disembarking crew, taking on fuel and supplies, obtaining repairs, discharging waste, and seeking sheltered waters. The state and local communities are impacted through the additional burdens placed upon educational systems, road maintenance, public safety, airports, docks, hospitals, and other social programs.

(c) Fisheries businesses in the state pay for these benefits and burdens through the fisheries business tax which applies to fisheries resources harvested or processed in Alaska. The landing tax is a substantially equivalent levy designed to impose a comparable burden on interstate commerce. In a real sense, the EEZ catcher processors are conducting fisheries businesses in the state to no less a degree than in-state operators. The landing tax is not a fee on the fisheries resources simply moving through the state, it is instead a quid pro quo for the services and benefits conferred upon the processed resources whereby they pay their own way. The landing tax thus achieves an equality of treatment between local and interstate commerce conducting fisheries businesses in the state. (Eff. / / /, Register)

Authority: AS 43.77.010
AS 43.77.070

15 AAC 77.010. RETURN, PAYMENT, AND REQUIRED INFORMATION. (a) A person subject to the fishery resource landing tax shall file one return for all taxable landings of fishery resources in the state. The return shall be filed before April 1 after the close of the calendar tax year, using the forms provided by the department, and shall include all locations at which fishery resources were landed in the state. The tax shall also be paid before April 1 after the close of the calendar tax year.

(b) A person must state the following information in the places prescribed on the form:

(1) name of the person subject to the tax that is filing the return;

(2) the mailing address of the person;

(3) the federal employer identification number or social security number of the person;

(4) the calendar year covered by the return;

(5) the precise locations in the state where fishery resources were landed, including a specification by weight and species for each location;

(6) the precise locations in the state where fishery resources harvested under the provisions of a community development quota were landed, including a specification by weight and species for each location;

(7) an Alaska Fisheries Business License number or the Alaska Business License number of the person;

(8) the value of the fishery resources;

(9) the amount of credits claimed for other taxes paid and for approved contributions;

(10) the amount of tax liability and tax payments; and,

(11) other information required on the tax return form. (Eff. / / /, Register)

Authority: AS 43.77.020

AS 43.77.070

15 AAC 77.015. AUTOMATIC EXTENSION OF TIME TO FILE RETURN AND PAY TAX. (a) A person who has timely filed a request with the department for information on the value of fisheries resources as provided in 15 AAC 77.040(b) shall automatically be granted an extension of the time in which to file the return and pay the tax required by this chapter if the value of the unprocessed fishery resources is not transmitted at least 30 days before the due date of the return.

(b) An automatic extension under this section is effective until the last day of the month following the month in which the information on value is transmitted.

(c) The tax is not considered delinquent during the period the automatic extension of time to file the return and to pay the tax is in effect and interest and penalties do not accrue during this period. (Eff. / / /, Register)

Authority: AS 43.77.020
AS 43.77.070

15 AAC 77.020. REQUEST FOR EXTENSION OF TIME TO FILE RETURN.(a) Upon a showing of good cause, the department in its discretion may grant reasonable extensions of time from the due date, or the automatic extension of time to file due date, for the filing of the return. The extensions, excluding automatic extensions, shall not exceed 90 days in the aggregate.

(b) A request for an extension of time to file the return shall be in writing, contain a full statement of the reasons supporting the request, and must be received by the department no earlier than March 1 and no later than 10 calendar days before the date the return is due, including extensions. A facsimile telephone number shall be provided if the applicant requests a response by facsimile transmission.

(c) If an extension of time for filing the return is granted, the return must be filed before the expiration of the period of the extension. A return filed after the period of the extension voids all extensions under this section.

(d) If an extension of time for filing the return is denied, the return must be filed within 10 calendar days after the date the notice of denial is sent by facsimile transmission or mailed by the department, or by the March 31 due date or automatic extension due date, whichever is later. (Eff. / / /, Register)

Authority: AS 43.77.020
AS 43.77.070

15 AAC 77.030. LIABILITY FOR TAX. (a) The person owning the fishery resource at the moment it is first landed in Alaska shall file the return and pay the tax imposed by AS 43.77.010.

(b) The person owning the fishery resource is the person with the legal title and the risk of loss at the moment the act of landing begins in the state. For purposes of this section, and notwithstanding any contract provision to the contrary, a person in possession of the fishery resource who harvested or processed the fishery resource, or a related person or agent in possession of the fishery resource from the person who harvested or processed the fishery resource, retains legal title and risk of loss until the fishery resource is delivered and actual physical possession is transferred to an unrelated third-party buyer.

(c) The tax imposed under AS 43.77.010 does not apply to a fishery resource that becomes subject to tax under AS 43.75. The provisions of AS 43.75 control and take precedence if a fishery resource, or the value of the fishery resource, may be subject to both AS 43.77 and AS 43.75.

(d) The tax does not apply if the fishery resource is first landed in the territorial jurisdiction, as recognized by the United States, of another state or foreign country. A first landing outside the jurisdiction of a state or foreign country, such as in United States jurisdictional waters, is not a first landing for purposes of AS 43.77.010 and does not preclude the tax under this chapter.

(e) The tax applies to a fishery resource that is first landed in Alaska without regard to the final destination of the resource.

(Eff. / / /, Register)

Authority: AS 43.77.010

AS 43.77.070

15 AAC 77.035. CREDIT FOR OTHER TAXES PAID. (a) A credit is allowed for taxes paid to another jurisdiction in which the fishery resource was caught, processed, or sold. The credit is only available if the taxes paid to another jurisdiction are equivalent in nature to the taxes imposed by AS 43.75 and AS 43.76. Sales taxes, import or export fees or taxes, income taxes, and similar taxes and fees are not considered to be equivalent in nature to AS 43.75 and AS 43.76.

(b) For purposes of this section, jurisdiction includes other states, foreign countries, and the United States.

(c) The amount of the credit for taxes paid to another jurisdiction on the fishery resource shall not exceed the liability of the person for the tax on the same resource under AS 43.77.

(d) If taxes paid to another jurisdiction are subsequently refunded or credited to the person, the amount of the credit previously allowed under this chapter shall be recaptured as additional tax in the year the taxes were refunded or credited.

(e) The credit must be claimed on the return and the person shall attach a statement to the return attesting that the tax has been paid, indicating the date of payment, identifying the jurisdiction to which the payment was made, and describing the nature of the tax and providing citation to the statutory authority in the jurisdiction for imposition of the tax. A copy of the return or report filed in the other jurisdiction shall be submitted with the Alaska return and statement. (Eff. / / /, Register)

Authority: AS 43.77.030
AS 43.77.070

15 AAC 77.040. VALUE AND NOTICE OF VALUE. (a) The value of the fishery resource is the statewide average price paid per pound for unprocessed fishery resources of the same species as reported to the Department of Fish and Game under AS 16.05.690. [The department may adjust the statewide average prices paid for fisheries resources to eliminate high and low prices, and to take into account tendering fees, price adjustments, and deferred payments such as bonuses.] In the absence of a Department of Fish and Game statewide average price for a particular species, the department may use information from other governmental agencies or other sources to arrive at a statewide average price for that species.

(b) Each person required to file a return and pay the tax under this chapter shall notify the department in writing by January 31 and request notice of the value for each species of fishery resources landed in the state in the previous calendar year. The notification shall be made on a form provided by the department. The department shall transmit the information by United States mail, telephone or facsimile transmission to the person requesting it as soon as practicable after the information becomes available. The information is considered to be transmitted by the department on the date of the facsimile transmission, telephone contact, or on the date on the letter, whichever is earlier. The department is not required to publish the information or to otherwise provide the information to any person who has failed to give the notice required by this subsection.

(Eff. / / /, Register)

Authority: AS 43.77.010
AS 43.77.070
AS 43.77.200

15 AAC 77.045. RECOVERY RATES. (a) For purposes of determining the tax on a fishery resource which was processed prior to landing in the state and that is subject to tax under this chapter, the processed weight of the fishery resource at the time it becomes subject to tax must be converted or "grossed up" to an unprocessed weight.

(b) The person's actual recovery rate experience, or the industry average recovery rate if the person's processing activities are consistent with the activities underlying the industry average recovery rate, may be used in making the conversion if the rates are reliable and verifiable. The department may audit and adjust the recovery rate.

(c) A person shall disclose with the return for each species the nature of the recovery rate used, the percentage of recovery, and shall maintain such records necessary to support the rate utilized. (Eff. / / /, Register)

Authority: AS 43.77.010

AS 43.77.070

AS 43.77.200

15 AAC 77.050. CREDIT FOR COMMUNITY DEVELOPMENT QUOTA CONTRIBUTIONS. (a) A person who has made a contribution to a nonprofit corporation incorporated in the state that qualifies for the credit authorized by AS 43.77.040 must apply to the department no later than January 31 of the year following the year of the contribution for authority to take the credit on the tax return. A person that fails to make a timely and complete application as required by this section waives the credit.

(b) The application must be made on the form prescribed by the department and shall contain the following information:

(1) the applicant's name, federal employer identification number or social security number, telephone number and mailing address;

(2) the name of the nonprofit corporation receiving the contribution;

(3) the amount of the contribution, a receipt from the nonprofit corporation for the amount of the contribution, and a statement from the nonprofit

corporation specifying how the contribution will be used and agreeing to allow the department to audit its accounts;

(4) documentation regarding the authority of the person to harvest under a community development quota;

(5) the fishery resources, by weight and species, harvested under the community development quota;

(6) a statement that the contribution to the nonprofit was expressly conditioned upon its use by the end of the following calendar year exclusively for one or more purposes authorized by AS 43.77.040; and,

(7) other information required on the application form.

(c) The department shall approve or disapprove an application to take the credit within 30 days of receipt of a timely and complete application. A person may consider the application approved and tentatively take the credit on the tax return if the department does not disapprove the application within the 30 day period and prior to the filing of the tax return.

(d) A contribution that qualifies for the credit is a cash contribution. Contributions in kind and of services do not qualify for the credit.

(e) A contribution allowed as a credit may not be claimed as a credit or deduction under any other provision of AS 43. (Eff. / / /, Register)

Authority: AS 43.77.040

AS 43.77.070

AS 43.77.200

15 AAC 77.055. REQUIREMENTS FOR NONPROFIT CORPORATIONS. (a) As a condition to a person obtaining a credit under AS 43.77.040, a nonprofit corporation must separately account for the amount of the contribution and agree to allow the department to audit all accounts.

(b) The nonprofit corporation, in order to separately account for the contribution, must establish the following special accounts in its accounting system:

(1) CDQ fisheries scholarships;

(2) CDQ fisheries industry training;

(3) CDQ fisheries transportation grants;

(4) CDQ fisheries transportation loans;

(5) CDQ fisheries facilities grants;

(6) CDQ fisheries facilities loans; and,

(7) CDQ fisheries research grants.

(c) The use of funds in the special accounts shall be determined on a first in first out (FIFO) basis. All contributions, with the exception of those initially placed in loan accounts, must be distributed from the account and used for a qualified purpose by the end of the calendar year following the calendar year of receipt. Contributions placed in a loan account may be accumulated without the requirement for distribution within any specified time period. A contribution initially accounted for in a loan account that is transferred to another account must be distributed from the account by the end of the calendar year following the calendar year of the transfer. Contributions may not be transferred from a non-loan account to a loan account.

(d) A nonprofit corporation may not make a loan or grant to a person, or to any related party of the person, who has made a contribution to the nonprofit corporation that qualifies for the credit, unless the person first obtains written authorization from the department.

(e) A nonprofit corporation, to accommodate potential contributors, may apply to the department and request a determination that the intended use of contributions for a specifically designated program satisfies one or more of the requirements of AS 43.77.040. (Eff. / / /, Register)

Authority: AS 43.77.040
AS 43.77.070
AS 43.77.200

15 AAC 77.060. CLAIMING CREDITS AND REVOCATION OF CREDITS. (a) A person that is entitled to claim a credit shall take the credit on the tax return for the

year of the contribution. The credit is a direct reduction of the tax liability for the tax year.

(b) The department shall, within the limitations period applicable by statute to the tax year, deny or revoke at any time a tax credit, and recover by assessment a tax credit that was claimed on a tax return, if it is later determined by the department that:

(1) the contribution does not qualify or there has been a violation of AS 43.77.040 and 15 AAC 77.050-15 AAC.77.055; or,

(2) the person claiming the credit is in arrears in the payment of any tax levied in AS 43. For purposes of this subpart, tax includes penalties and interest. A tax is not in arrears if the tax has been timely appealed and is not subject to a collection action under AS 43.

(c) A tax credit that properly has been denied or revoked may not be reinstated.
(Eff. / / /, Register)

Authority: AS 43.77.040
AS 43.77.070
AS 43.77.200

15 AAC 77.065. ACCOUNTING FOR REVENUE SHARING. (a) The annual balance in the separate account in the general fund that is available for revenue sharing under AS 43.77 is reduced by all tax credits claimed on returns as a reduction of the tax liability. The effect of this reduction for the tax credits is to reduce dollar for

dollar the amount that otherwise would have been paid to municipalities.

(b) The department shall attempt to specifically allocate the reduction in the amount of revenue sharing as a result of the tax credits to those municipalities in which the fishery resources harvested under the provisions of a community development quota were landed. In the event information is not available for that purpose, the department shall apportion the reduction to all areas in the state in which fishery resources were landed. (Eff. / / /, Register)

Authority: AS 43.77.050
AS 43.77.060
AS 43.77.070

15 AAC 77.070. DETERMINATION OF APPLICABILITY OF TAX. A person, buying a processed fishery resource from an unrelated person in an arms-length transaction, and who obtains a transfer of the legal title, risk of loss, and the physical possession of the resource outside the jurisdiction of the state, who thereafter merely lands the fishery resource in the state for transshipment to another jurisdiction, may apply to the department and shall provide such information as may be required for a determination on whether the tax imposed by AS 43.77 is applicable. (Eff. / / /, Register)

Authority: AS 43.77.070

15 AAC 77.905. DEFINITIONS. In AS 43.77 and 15 AAC 77.005 - - 15 AAC 77.070,

(1) "department" means the Department of Revenue;

(2) "filed" means, unless otherwise indicated, the date of personal delivery or, if mailed, the United States postmark date;

(3) "person" means an individual, a trust, estate, partnership, association, company or corporation;

(4) "related person or party" has the meaning of related person in 26 U.S.C. 267 and 26 U.S.C. 318;

(5) "weight" means the poundage of an unprocessed fishery resource after the application of a recovery rate to a processed fishery resource. (Eff. / / /, Register)

Authority: AS 43.77.070

15 AAC 116.600 is amended by adding new subsections to read:

(c) A processor is liable for the tax under AS 16.51 on the value of a seafood product processed for a person not licensed under AS 43.75.

(d) A person taking, purchasing, or otherwise acquiring a seafood product that has not been subject to the tax imposed in AS 16.51, who transports the seafood product to a point outside the taxing jurisdiction of the state for sale or processing, is liable for the tax under AS 16.51 on the value of the seafood product.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

INCOME AND EXCISE AUDIT
P. O. BOX 110420
JUNEAU, AK 99811-0420
FAX: (907) 465-2375
Telephone (907) 465-2320

September 3, 1993

Dear Recipient:

As an interested person, or an Alaska legislator or state agency to whom proposed regulations are required to be sent, you will find enclosed copies of regulation notice information and a copy of the Department of Revenue proposed regulations to implement the Landing Tax statutes that were passed by the Alaska legislature in May of 1993.

In addition, regulations are being proposed to clarify an aspect of the Alaska Seafood Marketing Assessment ("ASMI"). The ASMI provision is found at page 16 of the proposed regulations.

You will note from the notice that a public hearing will be conducted in Juneau on October 14, 1993. If you are not able to attend the hearing you may submit written comment through that date. The Department solicits and appreciates any testimony and written comment you may have regarding the proposed regulations.

Thank you for taking the time and interest in this regulation project.

Sincerely,

Larry E. Meyers

Larry E. Meyers
Director
Income & Excise Audit Division

h:125

04-D5LH

CITY OF UNALASKA
P.O. BOX 89
UNALASKA, ALASKA 99685
(907) 581-1251
FAX (907) 581-1417

UNALASKA, ALASKA

October 13, 1993

Larry E. Meyers
Alaska Department of Revenue
Income and Excise Audit Division
P.O. Box 110420
Juneau, Alaska 99811-0420

RE: **Comments on Proposed Regulations for AS 43.77**

Dear Mr. Meyers:

Thank you for the opportunity to comment on the proposed regulations for the implementation of Chapter 77, Fishery Resource Landing Tax. The City of Unalaska offers the following comments:

Background:

The City of Unalaska supported HB264, creating a state shared landing tax for fish processed at sea and landed or transferred within Alaska state waters. This fish tax program funds offset financial impacts incurred by local governments and the State of Alaska from "offshore" fisheries business activities. The offshore fish processing sector has a significant presence in Unalaska and other coastal communities, with activities ranging from transferring processed fish products to changing crews to taking on fuel and supplies to discarding wastes. The offshore sector also has a direct and substantial financial impact on local governments, including increased maintenance requirements of local transportation systems, providing emergency medical and other public safety services, and expanding recreational, educational and other social programs.

Comments:

The City of Unalaska recommends that the State of Alaska support and adopt regulations for determining fish tax revenues that are based on actual fish weight as determined by certified scales, rather than relying on vessel product recovery rate ("PRR") methods, that are consistent with existing state fisheries business tax program regulations.

October 13, 1993
Income & Excise Audit

Proposed Amendment to 15 AAC 77.045

15 AAC 77.045. RECOVERY RATES. (a) The unprocessed weight of the fishery resource for purposes of the tax under this chapter is determined by actual weight, volumetric measurement, or by a product recovery rate, as proscribed by the United States National Marine Fisheries Service to determine the extent of resources taken in a fisheries.

(b) Except as provided in (a) of this section, for purposes of determining the tax on a fishery resource which was processed prior to landing in the state and that is subject to tax under this chapter, the processed weight of the fishery resource at the time it becomes subject to tax must be converted or "grossed up" to an unprocessed weight. The person's actual recovery rate experience, or the industry average recovery rate if the person's processing activities are consistent with the activities underlying the industry average recovery rate, may be used in making the conversion if the rates are reliable and verifiable. The department may audit and adjust the recovery rate.

(c) A person shall disclose with the return for each species the nature of the recovery rate used, the percentage of recovery, and shall maintain such records necessary to support the rate utilized. (Eff. / / /, Register)

Authority: AS 43.77.010
AS 43.77.070
AS 43.77.200

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SENT BY FAX

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Comment on proposed regulations for implementation of AS 43.77.

Dear Mr. Meyers,

The Pacific Seafood Processor Association (PSPA) offers the following comment regarding proposed regulations for implementation of Chapter 77, Fishery Resource Landing Tax. PSPA supports imposition of this landing tax and the basic proposed regulatory structure. We believe a reasonable basis exists for Alaska to levy a state landing tax upon the offshore processing sector of the North Pacific fisheries in light of the fact local Alaskan communities are impacted by the presence of offshore processors, and offshore processors experience significant benefits when utilizing Alaskan facilities.

15 AAC 77.045(b) **At a minimum, Alaska regulations should require weighing all catch subject to the landing tax, and reject use of vessel product recovery rates (PRRs) in this system. As an example of a preferred system for measuring catch subject to taxation, Alaska's shorebased processors utilize certified scales and actually weigh catch purchased for processing. For years this has proven to be an effective system in shorebased Alaskan fisheries, and should be equally effective for the offshore sector. The requirement to weigh catch is appropriate and currently feasible for offshore processors - some factory trawlers operating in the Bering Sea and calling at Alaskan ports already use scales to weigh their catch. NMFS has accepted the catch records supplied by factory trawlers using scales to measure the amount of their catch. The National Marine Fisheries Service in 1994 will require offshore factory trawler processors to weigh all catch in CDQ fisheries prosecuted in the EEZ. Alaska should insist upon a weighing standard where federal regulators have already agreed to that standard - and should generally require it where possible. The state should explore every possible avenue to ensure the offshore processing fleet weighs its catch.**

In addition to building certainty into its taxing system, Alaska will protect both its environment and citizens if offshore processors are required to weigh all catch processed offshore. We urge the state recognize the bankruptcy of a PRR system and impose a weighing requirement for purposes of determining the tax on a fishery resource owed under AS 43.77, Fishery Resource Landing Tax

Why should the Department of Revenue reject a PRR system? The reasons are numerous: Offshore PRRs are not based upon fishing and processing data adequate for a timely independent audit. Variation and unreliability is the only constant where offshore processing PRRs are concerned. NMFS itself has changed the "default" offshore PRR for factory trawlers numerous times during these past several years, leaving everyone uncertain what offshore recovery rate should apply at any given time. Notably, NMFS and the North Pacific Council are in the process of abandoning the offshore PRR system in favor of a weighing requirement for the factory trawler fleet.

In practice it has been repeatedly demonstrated an offshore processing vessel's PRR is subject to manipulation by events. The reasons for this uncertainty are numerous: the condition and flesh characteristics of fish change throughout the season, effectiveness of processing equipment, fishing conditions, crew efficiency, production strategy, product form, and vessel fishing practices are all subject to change. Individual offshore processor PRRs vary wildly as a consequence, and an effective range of less than 10% to 15% is entirely probable for many vessels. Observer data and the so-called "best blend" system are not sufficient to verify offshore PRR claims.

Unlike a system requiring weighing of catch, the margin for error under a PRR system in both pounds of catch and tax dollars owed will be significant. For example:

	Finished Product Weight (lbs)	**PRR**	**Ex-vessel Price/lb**	**Tax Owed**
I	5,000,000	10%	$0.065	$325,000
II	5,000,000	12%	$0.065	$270,000
II	5,000,000	15%	$0.065	$216,000

When applied against the whole offshore pollock quota (845,000 MTs or 2,865,200,000 pounds) a 2% error in PRRs is the equivalent to a 10% error in raw fish weight. At $0.065/lb and 3% tax, the loss to the state and Alaskan coastal communities will be enormous.

The existence of offshore factory trawler impacts on Alaska coastal communities are manifested by an added financial drain and extra resources required to maintain community infrastructure and services. Services typically impacted include public safety, airports, docks, hospitals, educational systems, roads, etc. The legislature made a timely decision to require at least partial compensation via the landing tax for the significant costs imposed by the factory trawler fleet.

In order for the tax to be fair to all concerned, it is essential a sound and reliable basis be used to determine how much tax is owed. The taxing basis should be founded upon a requirement that offshore processors calculate taxes owed on the basis of weighed catch. A tax system relying on PRRs is simply inadequate, and is unnecessary since the reliable alternative of weighing catch is available.

Thank you for the opportunity to comment on this proposed regulation.

Vincent A. Curry

Vincent A. Curry
President

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