

SB

185

SFIN

FILE



Alaska State Legislature

Senate

Office of the Secretary

OFFICIAL BUSINESS

P.O. BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99801

FOR YOUR IMMEDIATE ATTENTION

DATE: ~~4-16-93~~ 2/28/94

TO SENATE COMMITTEE: FINANCE (Kathy Holmquist)

FROM: Office of the Senate Secretary

The Senate President has added/changed the referral(s) on the following bill(s):

Retrieved for J(L+C) referral prior to Finance
SB 185 LIMITATIONS PERIOD FOR TAX ASSESSMENTS

SB 185 Died in J(L+C) at end of 1994 Session.

Please give the bill file(s) and the signed letter (this note) to the page delivering this message.

Thank you for your prompt attention.

SIGNATURE OF PERSON RECEIVING THIS NOTE

JR/s

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 8, 1993

The Honorable Robin Taylor
Alaska Senate
Room 30
State Capitol
Juneau, AK 99801

Re: SB 185 ("limitations period")

Dear Senator Taylor:

We have had an opportunity to review SB 185 and found a minor technical amendment is needed. The amendment is as follows:

Page 3, line 22:

Delete "(A)"

Page 3, line 23:

following "consideration of"

Insert "(A)"

Tina Kobayashi of our staff is available to explain the need for the amendment, if you have questions.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: 

Bruce M. Botelho
Deputy Attorney General

BMB:tg

cc: Deborah Behr
Tina Kobayashi
Assistant Attorneys General

Kris Lethin, Legislative Liaison
Office of the Governor

1 remain uncollected;

2 (7) these uncollected taxes are in large part the result of disputes over value
3 at the point of production for oil and gas produced in the state; and

4 (8) substantial public revenue is at risk in the litigation to which reference is
5 made in (b)(2) of this section, and it is contrary to the public interest to allow these revenues
6 to go uncollected.

7 (b) The purpose of the amendment of AS 43.05.260(a), made by sec. 2 of this Act,
8 and of AS 43.05.270(a), made by sec. 3 of this Act, is

9 (1) to validate and affirm the longstanding administrative interpretation and
10 practices of the Department of Revenue in assessing and collecting taxes; and

11 (2) to resolve the inconsistent decisions of the state Superior Court reached in
12 Tesoro Petroleum Corporation, et al., v. State of Alaska, Department of Revenue, Superior
13 Court No. 3AN-89-7130 Civ., and State of Alaska, Department of Revenue v. Exxon
14 Corporation, et al., Superior Court No. 3AN-89-5215 Civ.;

15 * Sec. 2. AS 43.05.260(a) is amended to read:

16 (a) Except as provided in (c) of this section and AS 43.20.200(b), the amount
17 of a tax imposed by this title must be assessed within three years after the return was
18 filed, whether or not a return was filed on or after the date prescribed by law.
19 However, notwithstanding the limitation on assessments for a tax imposed by
20 former AS 43.21 or by AS 43.55, the department may increase or decrease the
21 amount of tax due by issuing or amending ↪

22 ~~(A)~~ an assessment at any time during the administrative
23 consideration of ^(A) a taxpayer grievance ... an assessment filed by the
24 taxpayer under AS 43.20.240; or

25 (B) a claim for credit or refund of a tax filed by the
26 taxpayer under AS 43.20.275 [IF THE TAX IS NOT ASSESSED BEFORE
27 THE EXPIRATION OF THE THREE-YEAR PERIOD, PROCEEDINGS MAY
28 NOT BE INSTITUTED IN COURT FOR THE COLLECTION OF THE TAX].

29 * Sec. 3. AS 43.05.270(a) is amended to read:

30 (a) When the assessment of a tax imposed by this title has been made within
31 the period of limitation under AS 43.05.260, the tax may be collected by levy or by

MEMORANDUM**State of Alaska
Department of Law**TO: Charles E. Cole
Attorney General

DATE

March 25, 1993

FILE NO.

TEL. NO.:

269-5287

SUBJECT:

Retroactive Repeal
of Tax Limitations

FROM:

Jenifer Kohout
Assistant Attorney General**CONFIDENTIAL--
ATTORNEY WORK PRODUCT****ISSUES**

May the State immediately repeal or amend time limitations in its tax code in order to eliminate existing time bars on the assessment or collection of production taxes?

CONCLUSION

It appears that the State legislature may retroactively repeal or amend statutes of limitation in the State tax code. If the legislature directs, the changes would apply to existing tax obligations barred from assessment or collection by the current limitations. To be effective immediately, the State Constitution requires approval by a two-thirds majority of each house.

The State can eliminate the time bar on production taxes by repeal or amendment. Assuming that the existence of some sort of time limitation is a desirable means of eliminating stale claims, an amendment which lengthens the time period for production taxes is recommended.

DISCUSSION

1. Can the State Retroactively Repeal or Amend Time Limitations in the State Tax Code?

A. State Law Restrictions

General Provisions in the Alaska Statutes direct that the "repeal or amendment of a law does not release or extinguish any . . . liability incurred or right accruing or accrued under the law, unless the repealing or amending act so provides expressly." AS 01.10.100(a). The provision is consistent with constitutional

cc Charles)

01085

Charles E. Cole

March 25, 1993

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C. Analysis

Extension of the time limitations in the state tax code would not violate the due process clause. First, a time bar is not a property right. See Campbell v. Holt, 115 U.S. 620, 6 S.Ct. 209, 29 L.Ed. 483 (1885).

We are unable to see how a man can be said to have property in the bar of the statute as a defense to his promise to pay.

Id., 6 S.Ct. at 214. Subsequent courts have agreed. See Chase Securities, 65 S.Ct. at 1142; International Union of Elec., Radio & Mach. Workers, AFL-CIO, Local 790 v. Myers, Inc., 429 U.S. 229, 97 S.Ct. 441, 50 L.Ed.2d 427 (1976); Bidwell, 355 P.2d at 587; Starks v. S.E. Rykoff & co., 673 F.2d 1106 (9th Cir. 1982). According to the Supreme Court in Chase Securities,

[statutes of limitations] represent a public policy about the privilege to litigate. Their shelter has never been regarded as what now is called a 'fundamental' right or what used to be called a 'natural' right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control.

Id. The Court went on to recognize the hypothesis set out in Campbell, "that statutes of limitation go to matters of remedy, not to destruction of fundamental rights." Id.

In Electrical Workers, the Supreme Court held that an Act, which expanded the limitations period for filing a wrongful discharge complaint, applied to a claim that had been time barred by the previous act. The court conceded that statutes of limitation "could be so manipulated that their retroactive effects would offend the Constitution." Id., 429 U.S. at 243. However, "lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time" was not a per se offense against the Fourteenth Amendment. Id. at 243-44.

Relying on Supreme Court cases such as Campbell v. Holt, the Alaska Supreme Court has recognized that a time bar is not a constitutionally protected property right. Bidwell, 355 P.2d at 587.

Charles E. Cole

March 25, 1993

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against change of policy before final adjudication." Id., 65 S.Ct. at 1143. Since oil producers would anticipate paying production taxes under the tax code, it is unlikely they would have behaved differently knowing the State would repeal or amend existing time limitations.

It appears that the State is free to repeal or amend statutes of limitations in the tax code. Repealing the statutory time limitations altogether would eliminate desirable aspects of those restrictions as well. However, a check on unwarranted delay by State agencies remains. A party aggrieved by inexcusable delay may "raise the equitable defense of laches to bar the claim." G.D. Searle & Co. v. Cohn, 455 U.S. 404, 411, 102 S.Ct. 113, 71 L.Ed.2d 250 (1982). Rather than completely eliminate time constraints on the State's tax collection efforts, the legislature might simply extend the limitation period.

To the extent the changes are specific to production taxes, oil producers might attempt to establish a violation of the equal protection clause. It is unlikely that this argument would succeed. Since a time bar is not a fundamental right, the State would have to establish only that the change is rationally related to a legitimate state objective. Id. at 408. Particular difficulties in the assessment and collection of production taxes and their importance for the State economy would probably provide a legitimate state objective; extension or elimination of the time limitation would be rationally related to that end.

2. Can the State Take Immediate Action?

The legal effect of any change to the tax code occurs "only after the law's effective date."⁵ ARCO Alaska, 824 P.2d at 711. According to Article II, Section 18 of the State Constitution, "[l]aws passed by the legislature become effective ninety days after enactment." The only exception to this rule occurs when the legislature provides for a different date with the "concurrence of two-thirds of the membership of each house." Alaska Const. art. II, § 18.

⁵ In ARCO Alaska, the Alaska Supreme Court explained that "[a] law's retroactive date and its effective date are distinctly different concepts." ARCO Alaska, 824 P.2d at 711. The former indicates the extent of pre-enactment conduct covered; while the later signals when the law will have legal effect. Id.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 185

Revision Date:		Dept. Affected:	Revenue
Title:	An Act clarifying limitation period for assessments and collection of certain taxes	BRU:	Revenue Operations
Sponsor:	Senator Taylor	Component:	Oil & Gas Audit
Requestor:	Senate Finance	COMPONENT SERIAL NO.	115

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**

CAPITAL						
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REVENUE FUND SOURCE:	**	**	**	**	**	**
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	**	**	**	**	**	**

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ **

ANALYSIS: (Attach a separate page if necessary)

** SB 185 relates to tax litigation and ongoing tax audit cases. While it is not possible to predict the outcome of these cases, the State believes that its claims will ultimately prevail. However, the courts have decided both ways on such cases and substantial state revenues are involved. Therefore, approval of this legislation will help protect the State's position in these cases and would reduce the risk of a loss of tax revenues.

Prepared by:	John Pilkinton	Phone: 276-1363 ext. 225
Division:	Oil & Gas Audit Division	Date: 4/13/93
Approved by Commissioner:	Darrel J. Rexwinkel	Date: 4/13/93
Agency:	Revenue	

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SENATE COMMITTEE REPORT

DMK

DATE: 4/16/93

FURTHER FINANCE

DATE TURNED INTO OFFICE: 4/23/93

JUDICIARY Committee considered SENATE BILL NO. 185

"An Act relating to the limitations period for assessments for certain state taxes and for collection, after assessment, of taxes due the state; and providing for an effective date."

and my rights in the act none

and recommends:

- replace with _____ CS _____
- or adopt previous _____ CS _____
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
Revenue	4/13/93		✓

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

Rich Halford NO REC

Raymond Tucker in Ass.

Burton letter NO REC

Adrienne Taylor NO REC

(Chair: Signature and Recommendation)



Alaska State Legislature

Senate

Office of the Secretary

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FOR YOUR IMMEDIATE ATTENTION

DATE: 4-16-93

TO SENATE COMMITTEE: FINANCE (Kathy Holmquist)

FROM: Office of the Senate Secretary

The Senate President has added/changed the referral(s) on the following bill(s):

Retained for SJUD referral

SB 185 LIMITATIONS PERIOD FOR TAX ASSESSMENTS

*before
Finance.*

Please give the bill file(s) and the signed letter (this note) to the page delivering this message.

Thank you for your prompt attention.

SIGNATURE OF PERSON RECEIVING THIS NOTE

JR/s

SENATE FINANCE COMMITTEE REPORT

DATE: 4/7/93

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: _____

The Finance Committee considered SB 185

"An Act relating to the limitations period for assessments for certain state taxes, and for collection, after assessment, of taxes due the state; and providing for an effective date."

and recommends:

- replace with _____ CS _____ (FINANCE)
or adopt previous _____ CS _____
 attaches amendment(s)

- same title
 new title
 technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

DO PASS.

OTHER RECOMMENDATIONS:

1. _____

2. _____

Co-Chair: Signature/Recommendation

Co-Chair: Signature/Recommendation