

HB

73

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 73

Revision Date: <u>January 3, 1994</u>	Dept. Affected: <u>Revenue</u>
Title: <u>State and local taxation as affected by ANCSA</u>	BRU: <u>Revenue Operations</u>
Sponsor: <u>Representative MacLean</u>	Component: <u>Income & Excise Audit</u>
Requestor: <u>Senate Judiciary</u>	COMPONENT SERIAL NO. <u>113</u>

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0
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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 (FY94) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)

This bill has no effect on the state since there is no state property tax.

Prepared by: <u>Larry E. Meyers, Director</u>	Phone: <u>465-2320</u>
Division: <u>Income and Excise Audit Division</u>	Date: <u>January 3, 1994</u>
Approved by Commissioner: <u>Darrel J. Rexwinkel</u>	Date: <u>January 3, 1994</u>
Agency: <u>Department of Revenue</u>	

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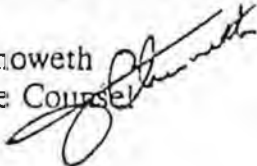
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 20, 1993

SUBJECT: House Bill 73, relating to state and local taxation and other state regulation under the Alaska Native Claims Settlement Act, as amended; and providing for an effective date — sectional analysis (Work Order No. 8-LS0402A)

TO: Representative Eileen MacLean

FROM: Jack Chenoweth
Legislative Counsel 

This measure, a reintroduction of last session's CSHB 451 (Res), amends various provisions of state law that exempt from certain forms of state and local taxation the property that is exempted from taxation by the Alaska Native Claims Settlement Act. The amendments set out in this bill generally reflect the inclusion of changes made by federal law since passage of the original Alaska Native Claims Settlement Act in December, 1971, and the adoption of the first state law exemptions shortly thereafter.

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

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

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

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

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

- the caption change at page 3, lines 19 and 20, substitutes the full proper name of the federal Act for the Public Law reference;

- deletion of reference to "the original issue" of shares in lines 20 and 21 is a substantive change; all share transactions--not just the original issues--are made non-taxable events;

- in lines 21 and 22, "state" substitutes for "Alaska" and the exact cite for the federal Act is inserted for the older reference; these are technical changes to conform to the state's drafting style;

- the changes made at lines 22 - 24 and 28 - 31 of page 3 replace existing references with the exact federal Act cites;

- the change made by substitution of the phrase on page 4, lines 2 - 4 of the bill conforms state law to the requirement of the federal Act as to how the basis of land received for purposes of equalization (in the event of land trades) is to be computed; it will be computed as the federal Act directs;

- the changes made on page 4, lines 5 - 10 are in the nature of substitutions of accurate cites and references;

- the long addition on lines 12 and 13 and the deletion of the December, 1991, date reflect substantive changes made by 43 U.S.C. 1636(d), a provision that expands and extends the protection from taxation given Native land under the amended federal Act; and

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

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

Representative Eileen MacLean
January 20, 1993
Page 3

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

JC:pl
93-031.plm

HOUSE BILL NO. 73
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MACLEAN

Introduced: 1/18/93

Referred: Community & Regional Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state and local taxation and other state regulation as affected
2 by the Alaska Native Claims Settlement Act, as amended, and related federal
3 statutes; and providing for an effective date."

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

5 * Section 1. AS 29.45.030(a) is amended to read:

6 (a) The following property is exempt from general taxation:

7 (1) municipal property, including property held by a public corporation
8 of a municipality, or state property, except that

9 (A) a private leasehold, contract, or other interest in the
10 property is taxable to the extent of the interest;

11 (B) notwithstanding any other provision of law, property
12 acquired by an agency, corporation, or other entity of the state through
13 foreclosure or deed in lieu of foreclosure and retained as an investment of a
14 state entity is taxable; this subparagraph does not apply to federal land granted

1 to the University of Alaska under AS 14.40.380 or 14.40.390, or to other land
2 granted to the university by the state to replace land that had been granted
3 under AS 14.40.380 or 14.40.390;

4 (C) an ownership interest of a municipality in real property
5 located outside the municipality acquired after December 31, 1990, is taxable
6 by another municipality; however, a borough may not tax an interest in real
7 property located in the borough and owned by a city in that borough;

8 (2) household furniture and personal effects of members of a
9 household;

10 (3) property used exclusively for nonprofit religious, charitable,
11 cemetery, hospital, or educational purposes;

12 (4) property of a nonbusiness organization composed entirely of persons
13 with 90 days or more of active service in the armed forces of the United States whose
14 conditions of service and separation were other than dishonorable, or the property of
15 an auxiliary of that organization;

16 (5) money on deposit;

17 (6) the real property of certain residents of the state to the extent and
18 subject to the conditions provided in (e) of this section;

19 (7) real property or an interest in real property that is exempt from
20 taxation under 43 U.S.C. 1620(d), as amended, and 43 U.S.C. 1636(d), as amended;

21 (8) property of a political subdivision, agency, corporation, or other
22 entity of the United States to the extent required by federal law; except that a private
23 leasehold, contract, or other interest in the property is taxable to the extent of that
24 interest;

25 (9) natural resources in place including coal, ore bodies, mineral
26 deposits, and other proven and unproven deposits of valuable materials laid down by
27 natural processes, unharvested aquatic plants and animals, and timber.

28 * Sec. 2. AS 29.45.030(m) is amended to read:

29 (m) For the purpose of determining property exempt under (a)(7) of this
30 section, the following definitions apply to terms used in 43 U.S.C. 1636(d), as
31 amended, [43 U.S.C. 1620(d)] unless superseded by applicable federal law:

1 (1) "developed" means that a purposeful modification of land, or an
2 interest in land, [THE PROPERTY] from its original state that effectuates a condition
3 of gainful and productive present use without further substantial modification has been
4 made; surveying, construction of roads, providing utilities or other similar actions
5 normally considered to be component parts of the development process, but that do not
6 create the condition described in this paragraph, do not constitute a developed state
7 within the meaning of this paragraph; developed land, or an interest in developed
8 land [PROPERTY], in order to remove the exemption, must be developed for purposes
9 other than exploration, and be limited to the smallest practicable tract of the tract
10 [PROPERTY] actually used in the developed state;

11 (2) "exploration" means the examination and investigation of
12 undeveloped land to determine the existence of subsurface nonrenewable resources;

13 (3) "leased" ["LEASE"] means that a grant of primary possession
14 entered into for gainful purposes with a determinable fee remaining in the hands of the
15 grantor has been made; with respect to a lease that conveys rights of exploration and
16 development, this exemption shall continue with respect to that portion of the leased
17 tract that is used solely for the purpose of exploration.

18 * Sec. 3. AS 43.80.015 is amended to read:

19 Sec. 43.80.015. TAXATION UNDER ALASKA NATIVE CLAIMS
20 SETTLEMENT ACT, AS AMENDED [P.L. 92-203]. (a) The receipt of [THE
21 ORIGINAL ISSUE OF] shares of stock in a corporation organized under state
22 [ALASKA] law pursuant to 43 U.S.C. 1601 - 1641, as amended, [THE FEDERAL
23 ALASKA NATIVE CLAIMS SETTLEMENT ACT (P.L. 92-203; 85 STAT. 688; 43
24 U.S.C. 1601 ET SEQ.)] by or on behalf of a Native, as defined in 43 U.S.C. 1602(b),
25 or by or on behalf of a descendant of a Native, as defined in 43 U.S.C. 1602(r),
26 [(AS DEFINED IN THE FEDERAL ACT)] is not subject to any form of state or local
27 taxation.

28 (b) The receipt of land or an interest in it under 43 U.S.C. 1601 - 1641, as
29 amended, [THE FEDERAL ACT] or of cash in order to equalize the values of
30 property exchanged under 43 U.S.C. 1621(f), as amended, [SEC. 22(f) OF THAT
31 ACT] or AS 38.50 is not subject to any form of state or local taxation. The basis for

1 computing gain or loss on subsequent sale or other disposition of this land or interest
2 in land for purposes of a state or local tax imposed on or measured by income shall
3 be determined under 43 U.S.C. 1620(c), as amended [IS THE FAIR VALUE OF
4 THE LAND OR INTEREST IN LAND AT THE TIME OF RECEIPT].

5 (c) A real property interest conveyed under 43 U.S.C. 1601 - 1641, as
6 amended, [THE FEDERAL ACT], AS 38.50, or AS 38.95.050, including land
7 received in an exchange under 43 U.S.C. 1621(f), as amended, [SEC. 22(f) OF THE
8 FEDERAL ACT] or AS 38.50, to a Native, as defined in 43 U.S.C. 1602(b),
9 [INDIVIDUAL] or to a Native corporation incorporated under state [ALASKA] law
10 pursuant to 43 U.S.C. 1601 - 1641, as amended [THE FEDERAL ACT], which
11 interest is not developed or leased to third parties, is exempt from state and local real
12 property taxes and local assessments to the extent provided in 43 U.S.C. 1620(d), as
13 amended, and 43 U.S.C. 1636(d), as amended [UNTIL DECEMBER 18, 1991].

14 However, municipal taxes, local real property taxes, or local assessments may, under
15 the laws of the state, be imposed upon leased or developed real property within the
16 jurisdiction of any governmental unit organized under the laws of the state. Easements,
17 rights-of-way, leaseholds, and similar interests in real property may be taxed in
18 accordance with state or local law. All rents, royalties, profits, and other revenues or
19 proceeds derived from property interests are taxable to the same extent as these
20 revenues or proceeds are taxable when received by a non-Native individual or
21 corporation. In 43 U.S.C. 1620(d), as amended, and 43 U.S.C. 1636(d), as amended
22 [SEC. 21(d) OF THE FEDERAL ACT], the exemption of real property interests from
23 local real property taxes includes exemption from local assessments and extends to
24 land received in an exchange under 43 U.S.C. 1621(f), as amended, [SEC. 22(f) OF
25 THE FEDERAL ACT] or AS 38.50.

26 (d) Use of the terms "corporate funds" and "dividends" [,] in 43 U.S.C. 1606(j)
27 and (m), as amended, [SEC. 7(j) AND (m) OF THE FEDERAL ACT,] does not
28 determine whether the money is a dividend, distribution to shareholders, or funds that
29 [WHICH] are property, surplus, or capital of a regional corporation for the purposes
30 of this title, [OR] AS 10.06, or other applicable state law, the provisions of sec. 8, ch.
31 70, SLA 1972 notwithstanding.

*Taxation under
P.L. 92-203*

1 * Sec. 4. AS 43.80.015 is amended by adding a new subsection to read:

2 (e) In this section, reference to 43 U.S.C. 1601 - 1641, as amended, or to any
3 of those sections includes the amendments and additions to any of those sections that
4 are made by

5 (1) P.L. 96-487 (Alaska National Interest Lands Conservation Act);

6 (2) P.L. 100-241 (Alaska Native Claims Settlement Act Amendments
7 of 1987); and

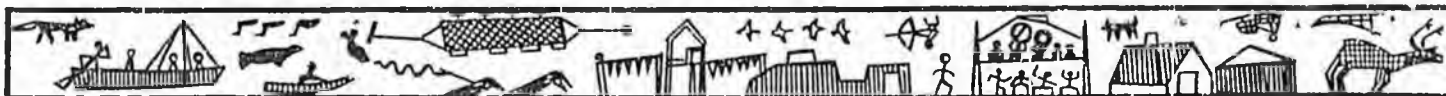
8 (3) amendments to 43 U.S.C. 1601 - 1641 (Alaska Native Claims
9 Settlement Act, as amended) after December 17, 1991.

10 * Sec. 5. The amendments made to AS 29.45.030(a)(7), amended by sec. 1 of this Act,
11 AS 29.45.030(m), amended by sec. 2 of this Act, AS 43.80.015, amended by sec. 3 of this
12 Act, and AS 43.80.015(e), added by sec. 4 of this Act, are retroactive to December 18, 1991.

13 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

liquid exemption Municipal tax

Alaska Native Claims Settlement Act



BERING STRAITS NATIVE CORPORATION

DAVID

Hon. Eileen P. MacLean
Representative
State Capitol, Room 507
Juneau, AK 99801-1182

RE: HB 73

Dear Representative MacLean:

Please inform the Senate Judiciary Committee and all members of committees at subsequent hearings that Bering Straits Native Corporation fully supports HB 73.

This bill is very important to the extent that it affords our shareholders the same protection as guaranteed by the Alaska Native Claims Settlement Act, as amended. We agree that passage of this bill will avoid misinterpretation and confusion of Alaska statutes.

Thank you for your continued assistance on these matters.

Sincerely,

Jack Carpenter, President & CEO

LETTERS OF SUPPORT

KONIAG, INC.

• 4300 B Street, Suite 407, Anchorage, AK 99503

(907) 561-2668 • FAX (907) 562-5258 •

February 1, 1994

Eileen P. MacLean
Alaska State Representative
State Capitol
Room 507
Juneau, AK 99801-1182

Dear Representative MacLean:


VIA FAX

I am in receipt of your letter of 28 January, 1994 regarding H.B. 73.

Koniag, Inc. was fully supportive of this legislation in 1993 and we continue to offer that support. We believe that it is crucial to bring the state tax code in line with that called for in the 1991 amendments as it affects Native land.

Sincerely,

KONIAG, INC



Uwe L. Gross
Chief Executive Officer

Post-It™ brand fax transmittal memo 7671		# of pages >
To Eileen Maclean	From Uwe Gross	
Co.	Co.	
Dept.	Phone # 561-2668	
Fax # 463-3241	Fax # 562-5258	



February 1, 1994

Rep. Eileen MacLean
Alaska House of Representatives
State Capitol Building, Room 507
Juneau, AK 99801-1182

Dear Representative MacLean:

The Arctic Slope Regional Corporation (ASRC) has reviewed House Bill 73, introduced by you on January 18, 1993.

We have concluded that the Bill, as currently written, operates in a narrow and technical manner to bring State Tax Statutes into conformance with the provisions of amendments to ANCSA and ANILCA. ASRC staff have been in contact with Mr. David Harding of your office and he has confirmed that our understanding of the Bill is correct. As such, ASRC supports the bill as written. However, if other provisions are being considered or amendments to the Bill are anticipated, ASRC wishes to be apprised of that and requests further opportunity to comment. We have no particular amendments we would offer at this time.

Sincerely,

A handwritten signature in cursive script that reads 'Conrad Bagne'.

Conrad N. Bagne, House Counsel and
Chief Administrative Officer

CNB/ngk



Alaska Federation of Natives, Inc

January 27, 1993

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

Dear Representative MacLean:

The Alaska Federation of Natives has reviewed House Bill 73 as introduced on January 18, 1993. This letter is intended to convey the Federation's support for the bill as introduced.

With the exception of two language changes, HB 73 is identical to CSHB (Resources) introduced in the Second Session of the 17th Alaska Legislature.

Amendments to AS 43.90.015, as HB 73 proposes, will prevent inconsistencies with AS 29.45.030 (m) and bring AS 43.90.015 into conformity with the Alaska Native Claims Settlement Act (ANCSA), as amended.

ANCSA provisions are controlling in this matter and thus amending Alaska statutes via HB 73 will serve to limit the potential for future conflict and litigation expenses.

I view HB 73 simply as an effort to conform state law with federal law.

Thank you for your interest in this matter.

Sincerely,

Julie E. Kitka
President

Land Protection

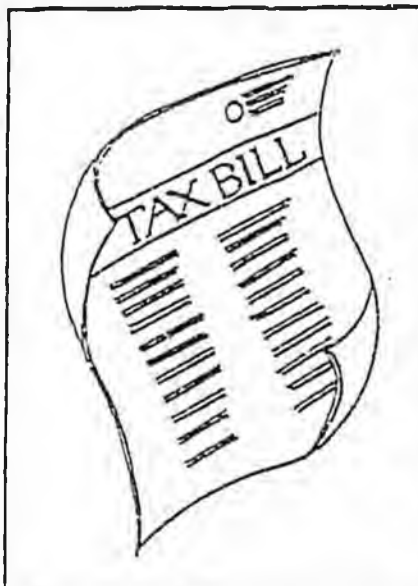
The land protections described in this section are probably the most significant gains for Alaska Natives contained in the "1991" law.

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

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

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

LAND AUTOMATICALLY PROTECTED FROM



Taxes on undeveloped land



Bad debts



Adverse possession

Loss of Land Protections

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

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

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

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

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

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

WAYS TO LOSE LAND PROTECTIONS



Leased



Pledged



Developed

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

Definition of "Developed" Land

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

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

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

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

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

Regaining Land Protections

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

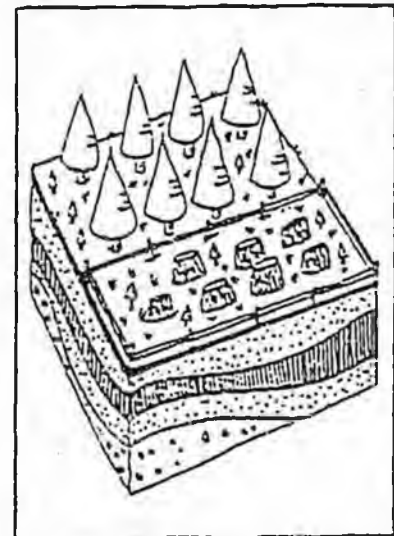
Example: A corporation runs a gold-mining operation on otherwise-undeveloped land. During the years that the mining takes place, the land can be taxed or taken to pay a debt. But if the corporation closes down the mining operation, and restores the land to its original condition, the land then qualifies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

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

Timber Development

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

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



*Only area where
timber is cut
loses protection*

Tax Recapture on Subdivided Land

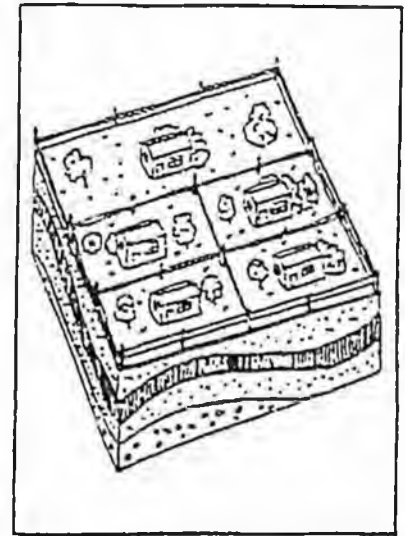
If a Native corporation is in a taxing jurisdiction and its land is subdivided, the corporation must pay the amount of taxes that would have been

levied during the 50 months before the subdivision plat is recorded. The back taxes must be paid in semi-annual installments. The entire amount must be paid off within 50 months of the date the plat is recorded.

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

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

TAX RECAPTURE



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

Subdivided land

Summary

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

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

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

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