

HB

341

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 12, 1996

FURTHER REFERRALS:

Date of Committee Action: 3/19/96

The FINANCE Committee considered:

HB 341

HOUSE BILL NO. 341

TAX APPEALS/ASSESSMENT/LEVY/COLLECTION

"An Act establishing a tax court to consider and determine certain taxes and penalties due and collateral matters, and amending provisions relating to taxpayer challenges to the assessment, levy, and collection of taxes by the state; and providing for an effective date."

recommends it be replaced with the following committee substitute (S HB 341 (FIN)) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) DOA 3/12/96

AK COMT Sys 3/12/96

zero fiscal note(s) _____ zero fiscal note(s) DOR 3/26/96

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Mark Hanley</i>	Hanley	X			
<i>Alton Mulder</i>	Mulder	X			
<i>Therriault</i>	Therriault	X			
<i>Kelly</i>	Kelly	X			
<i>Navarre</i>	Navarre				X
<i>Martin</i>	Martin	X			
<i>Kohring</i>	Kohring	X			
<i>Grussendorf</i>	Grussendorf				X
<i>Brown</i>	Brown				X

CO-CHAIR'S SIGNATURE *Mark Hanley*
Hanley

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 341 (JUD)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to consideration and determination
by the Superior Court of..." BRU: Tax Appeals *
 Sponsor: Rep. Green Component: Tax Appeals *
 Requestor: House Resources COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITUR	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	225.6	225.6	225.6	225.6	225.6	225.6
TRAVEL	8.8	8.8	8.8	8.8	8.8	8.8
CONTRACTUAL	43.0	43.0	43.0	43.0	43.0	43.0
SUPPLIES	4.5	4.5	4.5	4.5	4.5	4.5
EQUIPMENT	55.5	2.5	2.5	2.5	35.0	2.5
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	337.4	284.4	284.4	284.4	316.9	284.4
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	337.4	284.4	284.4	284.4	316.9	284.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
Total	337.4	284.4	284.4	284.4	316.9	284.4

Estimate of current year (FY 96) cost: \$ 0.0 _____

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

* New BRU and Component in the Department of Administration

(See Attached)

Prepared by: Sharon Barton, Director
 Division: Administrative Services

Phone: 465-5655
 Date: 3/12/96

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/13/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

ANALYSIS: (continued)

This bill creates an Office of Tax Appeals as a quasi-judicial board to be housed in the Department of Administration.

Personal Services - The Office of Tax Appeals will include two Administrative Law Judges (equivalent to a Limited Entry Commissioner, range 26, annual cost \$96.4) who will hear all appeals involving tax matters from the Department of Revenue, including severance tax, corporate income tax, and all fisheries taxes. The ALJs will require the support of a full-time Administrative Clerk II range 8, annual cost \$32.8, for a total cost of \$225.6.

Travel - Cost based upon an estimated seven trips (air fare \$400) with 3 days (\$120 per day) of per diem for each trip for routine hearings and an additional \$3.5 to cover two or three major hearings (lasting in excess of 3 to 5 days) at the same rate.

Contractual - Additional funding is needed to provide office space, communications (telephone/computer), legal support, other professional services, subscriptions, courier service and printing that will result from creating a new office, and devoting it entirely to tax appeals. The recurring incremental costs for these items is \$43.3.

Supplies - \$4.5 is needed for general office supplies and data processing supplies.

Equipment - In setting up the new office, equipment needs include three computers, printer, copier, FAX and office furniture. Estimated start-up costs are \$55.5. Recurring funding \$2.5 is needed for maintenance or replacement parts. We have also estimated \$35.0 in 2001 for equipment replacement or upgrade.

Revision Date: January 17, 1996

Dept Affected: Revenue

Title: Alaska Tax Court

BRU: Revenue Operations

Component: Oil and Gas Audit

Sponsor: Representative Green

Requestor:

COMPONENT SERIAL NO.

115

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by:

John E. Piddison, Director

Phone: (907) 276-1363 Ext. 225

Division:

Oil and Gas Audit

Date: January 23, 1996

Approved by Commissioner:

[Signature]

Date: January 23, 1996

Agency:

Department of Revenue

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

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As drafted, CSHB 341 will at a minimum add to our audit workload and delay current audits by reforming the "informal" proceedings within the department. It is also possible that it could eventually add an additional layer to the appeals process by altering the likelihood of trial de novo in an appeal from formal hearing, thereby increasing future costs of case resolution. The reason for both results is that CSHB 341 changes the primary purpose of the reviewing court from an appellate function to a trial function.

The change in the Court's fundamental purpose, and the fact that under AS 43.05.242(b) informal hearings now become automatic in all cases, will change the nature of the informal proceeding. Today, informal proceedings serve as a second review of the audit results and provide an informal process within which the taxpayer can attempt to resolve the matter. Although taxpayers can now bypass informal conference and go directly to formal hearing, most of the Division's past cases have been resolved at the informal level. Under existing law, an informal conference is followed by a formal administrative proceeding where the bulk of the department's work in putting our official litigation position together now takes place. Under CSHB 341, uncertainty regarding whether the taxpayer will go to formal hearing or to a civil trial de novo, will require much more "formal" and detailed preparation at the informal level. This will involve considerable time and effort from the audit and appeals staff that would normally be spent on current audits and informal resolution. Additionally, the current informal/formal procedure allows the department the opportunity to develop issues and determine which should be resolved and which litigated. Automatic appeal to civil court will allow taxpayer decisions to drive the department's litigation costs.

The change in the reviewing court's primary function could also alter the likelihood of trial de novo being granted on appeal from any cases which do go to formal hearing. Under CSHB 341, the Superior Court's review will no longer be primarily an "appellate review". Instead, the Court's primary function in these cases will be to sit as a specialized trial court for tax matters. Different rules of procedure and evidence will apply in a tax civil trials and sophisticated oil and gas taxpayers will likely have little trouble presenting "new" issues and "new" evidentiary questions to encourage the Court to exercise its independent judgment rather than defer to a Department hearing officer's decision which is portrayed as biased. Over time, the court will develop specialized tax expertise. Since these large, complex cases are almost unanimously appealed, a Judge is likely to prefer that the case go up on a record which he/she had some control in creating. Formal hearings might easily become little more than discovery and negotiation tools, with an almost automatic right to trial de novo.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 341 (RES)

Revision Date: 01/26/96
Title: An Act establishing a tax court...
Sponsor: Rep. Green
Requestor: _____

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	134.7	134.7	134.7	134.7	134.7	134.7
TRAVEL						
CONTRACTUAL	2.5	2.5	2.5	2.5	2.5	2.5
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	9.8					
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	149.0	139.2	139.2	139.2	139.2	139.2

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES (
----------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	149.0	139.2	139.2	139.2	139.2	139.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	149.0	139.2	139.2	139.2	139.2	139.2

Estimate of any current year (FY 96) cost: \$ None

POSITIONS

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Phone: 264-8228
Date: 01/26/96
Date: 01/28/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
CSHB 341 (RES)

At the present time, the superior court has jurisdiction over all tax cases appealed from the Department of Revenue's administrative hearing process. Such appeals are held on the record unless the court, in its discretion, hears a particular appeal de novo.

CSHB 341 (RES) amends the jurisdiction of the superior court with respect to certain types of tax cases. In cases relating to fixing the amount of, or imposing a penalty on, a tax levied and collected by the state under AS 43.19 and AS 43.20, former AS 43.21, AS 43.55, AS 43.65, and AS 43.75, the superior court would have the following appellate jurisdiction:

1. Final orders of the Department of Revenue in matters relating to fixing the amount of, or imposing a penalty on, a tax levied and collected by the state when appeal is taken under AS 43.05.242(c)(1) shall be heard as a trial de novo as a matter of right.
2. Final orders of the Department of Revenue in matters relating to fixing the amount of, or imposing a penalty on, a tax levied and collected by the state when appeal is taken under AS 43.05.242(c)(2) shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

Testimony indicates that many taxpayers would prefer to go directly to court rather than utilize the Department of Revenue's formal procedure followed by an on-the-record appeal. By granting taxpayers the right to a trial de novo after an informal hearing by the Department of Revenue, CSHB 341 (RES) will significantly increase the number of tax cases heard by the superior court, and will increase the length of time required for disposition of individual cases.

According to the Department of Revenue, there are approximately 24 tax cases per year to which CSHB 341 (RES) would apply: 20 in the Income and Excise Audit Division, and 4 in the Oil and Tax Audit Division. These cases vary in size and complexity, with the largest cases requiring a substantial commitment of judicial and clerical time.

As drafted, CSHB 341 (RES) arguably grants the right of jury trial. This note does not reflect jury costs, on the assumption that the bill will be amended to clarify that the de novo trial is before a judge, not a jury.

Alaska Court System

Fiscal Analysis

CSHB 341 (RES)

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge, Anchorage, PPT, 6 months 50% vested	\$24,150	\$14,890	\$39,040
Records Clerk, 10A, Anchorage, PFT, 12 months	24,012	9,762	33,774
In Court Clerk, 12A, Anchorage, PPT, 6 months	13,554	5,181	18,735
Law Clerk, 13D, Anchorage, PFT, 12 months	31,824	11,278	43,102
			<hr/>
	Total Personal Services		134,651

Contractual

Postage, telephone, annual updates to legal reference materials, copier rental, etc. 2,500

Supplies

Office, courtroom and computer supplies. 2,000

Equipment (one time item)

Office furniture, computer or data terminal, software, dictation equipment, statutes, rules of court, facsimile machine, etc. 9,800

Total Estimated Cost \$148,951

adopted N/O

A M E N D M E N T |

OFFERED IN THE HOUSE
TO: CSHB 341(JUD)

BY REPRESENTATIVE BROWN

1 Page 9, lines 7 - 8:

2 Delete "§s chapter"

3 Insert AS 43.05.400 - 43.05.499"

4 Page 16, line 31, through page 17, line 11:

5 Delete all material and insert:

6 "Sec. 43.05.244. PAYMENT ON DIRECT JUDICIAL APPEAL. In a judicial
7 appeal directly from an informal conference decision under AS 43.05.242, the amount
8 due shall be paid within 30 days after the date of the service of the informal
9 conference decision. In place of payment of the amount due, the taxpayer may file
10 a bond with the court or otherwise obtain relief from payment in accordance with the
11 Alaska Rules of Appellate Procedure."

Failed 3/8
AMENDMENT 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 341(JUD)

1 Page 2, lines 4 - 9:

2 Delete all material and insert:

3 "Sec. 43.05.400. OFFICE OF TAX APPEALS ESTABLISHED. The office
4 of tax appeals is established within the department."

5 Page 2, lines 21 - 29:

6 Delete all material and insert:

7 "Sec. 43.05.410. APPOINTMENT; TERM; REAPPOINTMENT. (a) The
8 governor shall appoint a chief administrative law judge of the office of tax appeals
9 from among two or more persons nominated as most qualified for that position by the
10 Alaska Judicial Council. The governor may appoint additional administrative law
11 judges from among two or more persons nominated as most qualified for each
12 position by the judicial council.

13 (b) The initial term for an administrative law judge, including the chief
14 administrative law judge, is two years. The governor may reappoint a person
15 appointed to serve as an administrative law judge, including the chief administrative
16 law judge, to subsequent terms of four years each.

17 (c) A reappointment of a person appointed to serve as an administrative law
18 judge, including the chief administrative law judge, shall be made as follows:

19 (1) if an administrative law judge seeks reappointment, the governor
20 shall notify the judicial council of the impending end of the administrative law judge's
21 term at least 120 days before the end of the term;

22 (2) in reviewing the performance of the administrative law judge, the
23 judicial council shall collect and review sufficient information to thoroughly evaluate
24 the administrative law judge; the review by the judicial council must include a

1 published notice requesting written comments on the administrative law judge whose
2 performance is being evaluated;

3 (3) the judicial council shall review the performance of the
4 administrative law judge and submit by at least 30 days before the vacancy a
5 recommendation to the governor on whether the administrative law judge should be
6 reappointed;

7 (4) the governor has the discretion to accept or reject the judicial
8 council's recommendation on the administrative law judge's reappointment.

9 (d) Nominations made by the Alaska Judicial Council under (a) of this section
10 shall be made after the judicial council has reviewed the qualifications of applicants
11 for administrative law judges. The judicial council shall collect and review sufficient
12 information to thoroughly evaluate each applicant. The review by the judicial council
13 must include a published notice requesting written comments on the list of applicants
14 for an administrative law judge opening.

15 (e) In reviews by the Alaska Judicial Council under (c) and (d) of this section,

16 (1) comments, references, or survey responses that request
17 confidentiality, or for which the judicial council promises confidentiality, shall be kept
18 confidential, but the judicial council shall provide the applicant for administrative law
19 judge or administrative law judges seeking reappointment a summary of the concerns
20 raised in the comments, references, and survey responses that are kept confidential;

21 (2) the judicial council has authority to review confidential Alaska Bar
22 Association files, including bar complaint files, on applicants for administrative law
23 judge and on administrative law judges seeking reappointment whose applications or
24 reappointment evaluations are under review; the judicial council shall maintain the
25 confidentiality of these files; and

26 (3) the judicial council shall send to the governor with its nominees
27 or reappointment recommendations all nonconfidential materials that it gathers on
28 applicants for administrative law judge and administrative law judges seeking
29 reappointment whose applications or reappointment evaluations are under review, and
30 shall provide the governor with summaries of concerns raised in the comments,
31 references, and survey responses that are kept confidential."

- 1 Page 3, line 20:
- 2 Delete "board"
- 3 Insert "chief administrative law judge"

- 4 Page 7, line 16:
- 5 Delete "by the full board"

- 6 Page 7, line 29:
- 7 Delete "board"
- 8 Insert "administrative law judge"

- 9 Page 7, line 31:
- 10 Delete "board"
- 11 Insert "administrative law judge"

- 12 Page 8, line 5:
- 13 Delete "board"
- 14 Insert "administrative law judge"

- 15 Page 8, line 7:
- 16 Delete "board"
- 17 Insert "administrative law judge"

- 18 Page 8, line 8:
- 19 Delete "board"
- 20 Insert "administrative law judge"

- 21 Page 8, line 15:
- 22 Delete "board"
- 23 Insert "administrative law judge"

- 24 Page 10, lines 4 and 5:

- 1 Delete all material.

- 2 Renumber the following paragraphs accordingly.

Failed 3/8
AMENDMENT 3

OFFERED IN THE HOUSE
TO: CSHB 341(JUD)

BY REPRESENTATIVE BROWN

- 1 Page 1, lines 6 and 7:
- 2 Delete "relating to consideration and determination by the superior court of
- 3 disputes involving certain taxes and penalties due, and"

- 4 Page 11, line 19, through page 12, line 1:
- 5 Delete all material.

- 6 Renumber the following bill sections accordingly.

- 7 Page 12, line 18:
- 8 Delete "AS 43.05.240. 43.05.241. or 43.05.242"
- 9 Insert "AS 43.05.240 or 43.05.241"

- 10 Page 15, line 31:
- 11 Delete "new sections"
- 12 Insert "a new section"

- 13 Page 16, line 5, through page 17, line 11:
- 14 Delete all material.

- 15 Page 17, line 21:
- 16 Delete "or 43.05.242"

- 17 Page 18, line 6:
- 18 Delete "or 43.05.242"

- 1 Page 19, line 24:
- 2 Delete "sec. 10"
- 3 Insert "sec. 9"

A Hachmut #2
3/19/94

STATE APPEAL PROCEDURES

STATES WITH INDEPEDENT TRIBUNALS

State or Tax Jurisdiction	Single Route for <u>de novo</u> review	Dual Route for <u>de novo</u> review Taxpayer must prepay all taxes ¹	Dual Route for <u>de novo</u> review No prepayment; may require bond
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Arizona	X		
Hawaii	X		
Indiana	X		
New Jersey	X		
Oregon	X		
Connecticut	X		
District of Columbia	X		
Maryland	X		
Minnesota		X	
Michigan	X		
New York State	X		
New York City	X		
California (Income and Excise)		X	
Delaware	X		
Idaho			X

¹ Many states that permit direct *de novo* review in court do so only when the taxpayer pays its tax and then, within the applicable statute of limitations, sues for a refund. The avenue is often not permitted when the tax authority has issued an assessment against the taxpayer.

Department of Revenue

Prepared from:

Federation of Tax Administrators
"State Tax Appeal Systems" 1994

Iowa	X		
Kansas		X	
Kentucky	X		
Louisiana	X	²	
Massachusetts		X	
Missouri (Income)		X	
Missouri (Sales and Use)	X		
Montana	X		
New Hampshire			X
North Carolina		X	
Ohio	X		
Pennsylvania	X		
Washington		X	
Wisconsin	X		
Wyoming	X		
Total 30 Jurisdictions	21	7	2

² In Louisiana, the taxpayer can go directly to the District Court, but the review is on the record, not *de novo*. Further, the tax agency can file suit directly in District Court.

Department of Revenue

Prepared from:

Federation of Tax Administrators
"State Tax Appeal Systems" 1994

Attachment #13
3/19/96

STATE APPEAL PROCEDURES

STATES WHERE TAX AUTHORITIES CONDUCT TAX APPEALS

State or Tax Jurisdiction	Single Route for <u>de novo</u> review	Dual Route for <u>de novo</u> review Taxpayer must prepay all taxes ¹	Dual Route for <u>de novo</u> review No prepayment; may require bond
------------------------------	---	---	---

California (Sales and Use)		X	
Mississippi	X		
Nevada		X	
Oklahoma	X		
South Carolina	X		
Utah	X		
Alabama			X
Alaska	X		
Arkansas		X	
Colorado		X	
Florida			X
Georgia			X
Illinois		X	
Maine		X	
Nebraska		X	
New Mexico		X	
North Dakota	X		

¹ Many states that permit direct *de novo* review in court do so only when the taxpayer pays its tax and then, within the applicable statute of limitations, sues for a refund. The avenue is often not permitted when the tax authority has issued an assessment against the taxpayer.

Department of Revenue

Prepared from:

Federation of Tax Administrators
"State Tax Appeal Systems" 1994

Rhode island	X		
South Dakota		X	
Tennessee			X
Texas	X		
Vermont		X	
Virginia		X	
West Virginia	X		
Total 25 Jurisdictions	9	11	5*

Department of Revenue

Prepared from:

Federation of Tax Administrators

"State Tax Appeal Systems" 1994

* amended

1

* amndmt on

pg 19

Line 30

NO 10BJ

CS FOR HOUSE BILL NO. 341(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/12/96

Referred: Finance

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative adjudication and judicial appeals and to the
2 informal resolution of certain factual disputes between taxpayers and the
3 Department of Revenue; establishing the office of tax appeals as a quasi-judicial
4 agency in the Department of Administration; revising the procedures for hearing
5 certain tax appeals, including appeals regarding seafood marketing assessments;
6 relating to consideration and determination by the superior court of disputes
7 involving certain taxes and penalties due, and amending provisions relating to the
8 assessment, levy, and collection of taxes and penalties by the state and to the tax
9 liability of taxpayers; providing for the release of agency records relating to
10 formal administrative tax appeals; relating to litigation disclosure of public records;
11 clarifying administrative subpoena power in certain tax matters; and providing for
12 an effective date."

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

2 * Section 1. AS 43.05 is amended by adding new sections to read:

3 ARTICLE 4. OFFICE OF TAX APPEALS.

4 Sec. 43.05.400. OFFICE OF TAX APPEALS ESTABLISHED. (a) The office
5 of tax appeals is established within the department. The office of tax appeals is a
6 quasi-judicial agency, headed by a Board of Tax Appeals.

7 (b) The Board of Tax Appeals consists of the chief administrative law judge,
8 who is the chair of the board, and additional administrative law judges as may be
9 appointed; however, the Board of Tax Appeals shall have at least two members.

10 Sec. 43.05.405. JURISDICTION. The office of tax appeals has original
11 jurisdiction to hear formal appeals from informal conference decisions of the
12 Department of Revenue under AS 43.05.240. Appeal to the office may be taken only
13 from an informal conference decision under AS 43.05.240. Jurisdiction of the office
14 is limited to, and AS 43.05.400 - 43.05.499 applies to and governs, an administrative
15 appeal regarding

16 (1) electric and telephone cooperative taxes under AS 10.25;

17 (2) a seafood marketing assessment under AS 16.51;

18 (3) all taxes levied under AS 43, except the property tax assessed under
19 AS 43.56; and

20 (4) any other taxes administered by the Department of Revenue.

21 Sec. 43.05.410. APPOINTMENT. (a) The governor shall appoint a chief
22 administrative law judge of the office of tax appeals, and may appoint additional
23 administrative law judges in the office of tax appeals.

24 (b) The initial term for an administrative law judge is two years. A person
25 appointed to serve as an administrative law judge, including chief administrative law
26 judge, may be appointed to subsequent terms of four years each.

27 (c) The initial appointment and any reappointment of an administrative law
28 judge, including the chief administrative law judge, is subject to confirmation by the
29 legislature in joint session.

30 Sec. 43.05.415. REMOVAL. (a) The chief administrative law judge may be
31 disciplined or removed from office by the commissioner only for good cause.

1 (b) An administrative law judge other than the chief administrative law judge
2 may be disciplined or removed from office by the chief administrative law judge only
3 for good cause.

4 (c) In this section, "good cause" includes

5 (1) violation of the Alaska code of judicial conduct adopted by the
6 Alaska Supreme Court;

7 (2) conviction of a crime of moral turpitude;

8 (3) unjustified failure to handle the caseload assigned or similar
9 nonfeasance of office;

10 (4) failure to meet the requirements of AS 43.05.425 relating to
11 qualification for office; and

12 (5) unreasonable failure to comply with the statutes or regulations
13 regarding the confidentiality of taxpayer information.

14 Sec. 43.05.420. ADMINISTRATION. (a) The chief administrative law judge

15 (1) shall exercise general supervision of the office; and

16 (2) may select and hire staff for the office.

17 (b) An administrative law judge, including the chief administrative law judge,
18 may preside over a proceeding and carry out any procedures authorized under
19 AS 43.05.400 - 43.05.499.

20 (c) The board may adopt regulations implementing or interpreting
21 AS 43.05.400 - 43.05.499, including rules of procedure and evidence for proceedings
22 before the office.

23 Sec. 43.05.425. QUALIFICATIONS; CODE OF CONDUCT. (a) An
24 administrative law judge, including the chief administrative law judge, at the time of
25 appointment, must

26 (1) be licensed to practice law in this state or another state; and

27 (2) have experience in the field of tax law or tax administration.

28 (b) A person appointed as an administrative law judge under AS 43.05.410
29 who is not licensed to practice law in this state at the time of appointment must
30 become licensed to practice law in this state within 12 months after appointment or
31 shall cease to hold office.

1 (c) An administrative law judge, including the chief administrative law judge,
2 shall comply with the Alaska code of judicial conduct and, except as provided in (b)
3 of this section, shall be and remain licensed to practice law in this state.

4 Sec. 43.05.430. NOTICE OF APPEAL FROM INFORMAL CONFERENCE
5 DECISION. An appeal under the jurisdiction of the office is initiated by filing with
6 the office, and serving upon the commissioner of revenue, a notice of appeal from an
7 informal conference decision of the Department of Revenue under AS 43.05.240. A
8 notice of appeal from the informal conference decision may be filed or amended after
9 the time for filing has expired only if good cause is shown.

10 Sec. 43.05.435. SCOPE AND STANDARDS FOR DECISION. The
11 administrative law judge shall hear all questions de novo under AS 43.05.400 -
12 43.05.499. The administrative law judge shall

13 (1) resolve a question of fact by a preponderance of the evidence or,
14 if a different standard of proof has been set by law for a particular question, by that
15 standard of proof;

16 (2) resolve a question of law in the exercise of the independent
17 judgment of the administrative law judge;

18 (3) defer to the Department of Revenue as to a matter for which
19 discretion is legally vested in the Department of Revenue, unless not supported by a
20 reasonable basis.

21 Sec. 43.05.440. SERVICE OF DOCUMENTS. Service of documents required
22 under AS 43.05.400 - 43.05.499 may be accomplished in any manner authorized under
23 the Alaska Rules of Civil Procedure. If service is done only by mail, the date of
24 service is determined by the date of mailing. If service is done by both mail and hand
25 delivery, the date of service is determined by the earlier of the date of mailing or
26 actual receipt of the documents.

27 Sec. 43.05.445. DISCOVERY. (a) In an appeal under AS 43.05.405,
28 discovery may take place only under a plan for discovery approved by the
29 administrative law judge. The administrative law judge shall approve a plan for
30 discovery to the extent consistent with the efficient, just, and speedy conduct of the
31 appeal. The plan may limit or set conditions on discovery and must include provisions

1 for stipulations of fact by the Department of Revenue and the taxpayer. Discovery
2 shall be limited to information that is relevant to the determination of the correct tax
3 or penalty, unless the Department of Revenue or the taxpayer makes a showing that
4 the discovery is reasonably calculated to lead to admissible information.

5 (b) Requests by the taxpayer for disclosure of public records relating to the
6 appeal are governed by, and the records are disclosed only in accordance with, the plan
7 approved under this section.

8 (c) Legislative history, reported court decisions, statutes, regulations, or similar
9 documents available for public inspection at a library or the office of the lieutenant
10 governor or through a publicly accessible database must be obtained through those
11 means and may not be sought through discovery.

12 Sec. 43.05.450. SUBPOENAS. An administrative law judge may issue a
13 subpoena to compel attendance of a witness or the production of a document or thing.
14 A subpoena may compel attendance of a witness or production of a document or thing,
15 located either inside or outside the state, to the maximum extent permitted by law. A
16 subpoena may be used for the purpose of discovery or for the purpose of presenting
17 evidence at a formal hearing. A subpoena shall issue upon request of a party, subject
18 to reasonable limitation or conditions set in the subpoena. A subpoena may be
19 enforced by petition to or other appropriate legal proceeding brought in a court of this
20 state or another jurisdiction.

21 Sec. 43.05.455. FORMAL HEARING. (a) At or before the formal hearing,
22 a party may present argument and evidence relevant to the amount of the tax or
23 penalty. The administrative law judge shall administer oaths and permit inquiry
24 necessary to determine the proper amount of the tax or penalty.

25 (b) Each party and witness shall be present during the formal hearing, except
26 that

27 (1) with the consent of the taxpayer, the administrative law judge may
28 conduct all or part of the hearing by telephone, audio or video teleconference, or other
29 electronic medium; and

30 (2) with the consent of the parties and the administrative law judge, all
31 or part of the hearing may be conducted through correspondence.

1 (c) The taxpayer bears the burden of proof on questions of fact by a
2 preponderance of the evidence unless a different standard of proof has been set by law
3 for a particular question.

4 (d) The formal hearing before the administrative law judge is not required to
5 be conducted with strict adherence to the Alaska Rules of Evidence. Relevant
6 evidence must be admitted if it is probative of a material fact in controversy.
7 Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence is
8 admissible if it is the kind of evidence on which responsible persons are accustomed
9 to rely in the conduct of serious affairs, regardless of the existence of a common law
10 or statutory rule that makes improper the admission of the evidence over objection in
11 a civil action. Oral evidence may be taken only on oath or affirmation. The rules of
12 privilege are effective to the same extent that they are recognized in a civil action in
13 the courts of this state, except that relevant documents and other material items that
14 are public records under AS 09.25.100 - 09.25.220 shall be admissible.

15 (e) The administrative law judge shall make a record of the proceedings of the
16 appeal, including recordation of the proceedings of a formal hearing by electronic or
17 stenographic means.

18 (f) The administrative law judge may grant exceptions to the requirements of
19 this section in the interest of justice.

20 Sec. 43.05.460. ENFORCEMENT. (a) The administrative law judge and each
21 party is responsible for the efficient, just, and speedy conduct of the formal hearing.
22 The administrative law judge may impose sanctions on the parties for failure to comply
23 with a subpoena, an order respecting discovery, and any other matter regarding conduct
24 of the appeal. In imposing sanctions, the administrative law judge shall be guided by
25 the practices of the courts of this state in imposing sanctions for similar offenses in
26 civil proceedings.

27 (b) The administrative law judge may

28 (1) remand the matter for consideration of material new information or
29 material information withheld by a party;

30 (2) prohibit a party from introducing information previously withheld
31 without good cause, and any other evidence dependent upon the information;

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- (3) enter an order, upon a showing of good cause,
 - (A) barring a designated claim or defense;
 - (B) striking part or all of a pleading of a party; or
 - (C) dismissing part or all of the appeal; or
- (4) grant any other relief that the administrative law judge considers appropriate.

(c) In addition to the remedies of (a) and (b) of this section, a party may seek enforcement of a subpoena or other order of an administrative law judge by the superior court under AS 44.62.590.

Sec. 43.05.465. DECISION; RECONSIDERATION; FINALITY. (a) Within 180 days after the record on the appeal is closed, the administrative law judge shall issue a decision in writing. The decision must contain a concise statement of reasons for the decision, including findings of fact and conclusions of law. In the decision, the administrative law judge may grant relief, provide remedies, and issue any order that is appropriate. The administrative law judge shall serve each party in the case with a copy of the decision. Unless reconsideration by the full board is ordered under (c) of this section, the decision under this subsection is the final administrative decision.

(b) A party may request reconsideration of a decision issued under (a) of this section within 30 days after the date of service shown in the certificate of service of the decision. The request must state specific grounds for reconsideration. Reconsideration may be granted if, in reaching the decision, the administrative law judge has

- (1) overlooked, misapplied, or failed to consider a statute, regulation, court or administrative decision, or legal principle directly controlling;
- (2) overlooked or misconceived some material fact or proposition of law;
- (3) misconceived a material question in the case; or
- (4) applied law in the ruling that has subsequently changed.

(c) The board may issue an order for reconsideration of all or part of the decision upon request of a party. Reconsideration is based on the record, unless the board allows additional evidence and argument. A hearing on reconsideration at which

1 additional evidence or argument is offered or received is subject to the procedures
2 applicable to a hearing under AS 43.05.455.

3 (d) The power to order reconsideration expires 60 days after the date of
4 service, as shown on the certificate of service, of a decision issued under (a) of this
5 section. If the board does not issue an order for reconsideration within the time
6 allowed for ordering reconsideration, a motion for reconsideration is considered denied.

7 (e) Within 60 days after the close of the record on reconsideration, the board
8 shall issue a written decision upon reconsideration. The board shall serve each party
9 in the case with a copy of the decision upon reconsideration. The decision upon
10 reconsideration is the final administrative decision.

11 (f) A final administrative decision becomes final either on the date

12 (1) 60 days after the date of service of a decision issued under (a) of
13 this section if an order for reconsideration is not issued; or

14 (2) the decision upon reconsideration is served, as shown by the
15 certificate of service executed by the board under (c) of this section.

16 Sec. 43.05.470. PUBLIC PROCEEDINGS AND RECORDS. (a) Records,
17 proceedings, and decisions under AS 43.05.400 - 43.05.499 are confidential, except
18 that the records, proceedings, and decisions become public records and open to the
19 public when the final administrative decision is issued and becomes final.

20 (b) Upon a showing of good cause, an administrative law judge shall issue a
21 protective order requiring that specified parts of the records, proceeding, or decision
22 shall be kept confidential in a particular appeal. If a protective order is issued, the
23 final administrative decision shall be made public after redacting by deletion or
24 substitution of information as required by the protective order.

25 (c) The department, in consultation with the chief administrative law judge,
26 shall maintain, index, and make available for public inspection the final administrative
27 decisions, proceedings, and records of the office made public under this section.

28 Sec. 43.05.475. CONSISTENCY OF DECISIONS. (a) As to questions of
29 law, a final administrative decision issued under AS 43.05.400 - 43.05.499, unless
30 reversed or overruled, has the force of legal precedent.

31 (b) To promote consistency among legal determinations issued under

1 AS 43.05.400 - 43.05.499, the chief administrative law judge may review and circulate
2 among the other administrative law judges the drafts of formal decisions, decisions
3 upon reconsideration, and other legal opinions of the other administrative law judges
4 in the office. The drafts are confidential documents and are not subject to disclosure
5 under AS 09.25.100 - 09.25.220 or this chapter.

6 Sec. 43.05.480. JUDICIAL REVIEW. (a) Judicial review by the superior
7 court of a final administrative decision may be had by a party to the appeal under this
8 chapter by filing a notice of appeal in accordance with the applicable rules of court
9 governing appeals to that court in civil matters. The notice of appeal shall be filed
10 within 30 days after an administrative decision becomes final under AS 43.05.465.
11 The right to judicial review under this subsection is not affected by the failure to seek
12 reconsideration before the administrative law judge.

13 (b) The amount due must be paid or refunded within 30 days after the date
14 that the final administrative decision becomes final under AS 43.05.465. In place of
15 payment of the amount due, a taxpayer who has appealed a final administrative
16 decision may file a bond with the court or otherwise obtain relief from payment in
17 accordance with the Alaska Rules of Appellate Procedure.

18 (c) Appeals under this section are reviewed under AS 44.62.560 and 44.62.570.

19 (d) If, after the appeal is heard, it appears that the final administrative decision
20 was correct, the court shall affirm the decision. If the final administrative decision is
21 incorrect, the court shall determine the amount due. If the taxpayer is entitled to a
22 refund, the court shall order the repayment and the Department of Revenue shall pay
23 the amount due and attach a certified copy of the judgment to the payment. If the
24 court determines that the taxpayer owes an additional amount, the court shall order the
25 payment and the taxpayer shall pay the amount due and attach a certified copy of the
26 judgment to the payment. Any payment required under this subsection shall be paid
27 by the 30th day following the expiration of the time within which an appeal from the
28 superior court decision may be filed, unless the party appealing files a bond or
29 otherwise obtains relief from payment in accordance with the Alaska Rules of
30 Appellate Procedure.

31 Sec. 43.05.499. DEFINITIONS. In AS 43.05.400 - 43.05.499, unless the

1 context otherwise requires,

2 (1) "administrative law judge" means an administrative law judge
3 appointed under AS 43.05.410;

4 (2) "board" means the Board of Tax Appeals established under
5 AS 43.05.410;

6 (3) "commissioner" means the commissioner of administration;

7 (4) "department" means the Department of Administration;

8 (5) "discovery" means the use of subpoenas, subpoenas duces tecum,
9 interrogatories, requests for production, requests for admission, depositions, and other
10 methods of civil procedure by which one party to an action may discover information
11 within the knowledge and control of another person;

12 (6) "legislative history" means the documents of the legislature
13 recording the background and events, including draft bills, correspondence and
14 memoranda, committee reports, tapes and transcripts of hearings, and tapes and
15 transcripts of floor debate concerning consideration of a bill;

16 (7) "office" means office of tax appeals in the department;

17 (8) "party" means the Department of Revenue or the taxpayer;

18 (9) "proceeding" means only a proceeding under the jurisdiction of the
19 office;

20 (10) "subpoena" means a command to appear at a certain time and
21 place to testify, or to appear at a certain time and place to produce books, papers, and
22 other things, and testify;

23 (11) "tax" means a tax described in AS 43.05.405, including a seafood
24 marketing assessment under AS 16.51;

25 (12) "taxpayer" means a person required to pay a tax, including a
26 person required to pay a seafood marketing assessment under AS 16.51.

27 * Sec. 2. AS 09.25.100 is amended to read:

28 Sec. 09.25.100. DISPOSITION OF TAX INFORMATION. Information in the
29 possession of the Department of Revenue that discloses the particulars of the business
30 or affairs of a taxpayer or other person is not a matter of public record, except for
31 purposes of investigation and law enforcement. The information shall be kept

1 confidential except when its production is required in an official investigation,
2 administrative adjudication under AS 43.05.400 - 43.05.499, or court proceeding.
3 These restrictions do not prohibit the publication of statistics presented in a manner
4 that prevents the identification of particular reports and items, [OR] prohibit the
5 publication of tax lists showing the names of taxpayers who are delinquent and
6 relevant information that may assist in the collection of delinquent taxes, or prohibit
7 the publication of records, proceedings, and decisions under AS 43.05.400 -
8 43.05.499.

9 * Sec. 3. AS 09.25.122 is amended to read:

10 Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is subject
11 to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record
12 subject to disclosure and copying even if the record is used for, included in, or relevant
13 to litigation, including law enforcement proceedings, involving a public agency, except
14 that with respect to a person involved in litigation, the records sought shall be
15 disclosed in accordance with the rules of procedure applicable in a court or an
16 administrative adjudication [RULES]. In this section, "involved in litigation" means
17 a party to litigation or representing a party to litigation, including obtaining public
18 records for the party.

19 * Sec. 4. AS 22.10.020(d) is amended to read:

20 (d) The superior court has jurisdiction in all matters appealed to it from a
21 subordinate court, or administrative agency when appeal is provided by law. The
22 hearings on appeal from a final order or judgment

23 (1) of a subordinate court [OR ADMINISTRATIVE AGENCY] shall
24 be on the record unless the superior court, in its discretion, grants a trial de novo, in
25 whole or in part;

26 (2) of the Department of Revenue in matters relating to fixing the
27 amount of, or imposing a penalty on, a tax levied and collected by the state when
28 appeal is taken under AS 43.05.242 shall be heard as a trial de novo as a matter
29 of right;

30 (3) of an administrative agency, except for a matter described in
31 (2) of this subsection, shall be on the record unless the superior court, in its

1 discretion, grants a trial de novo, in whole or in part.

2 * Sec. 5. AS 37.10.410 is amended to read:

3 Sec. 37.10.410. "ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES"
4 DEFINED. (a) The following money received by the state is considered to be
5 received as a result of the termination of an administrative proceeding for purposes of
6 applying art. IX, sec. 17(a), Constitution of the State of Alaska:

7 (1) past due taxes that are received by the state for each tax year for
8 which a request for an informal conference under AS 43.05.240 [AS 43.05.240(a)] is
9 made to the Department of Revenue, together with penalties and interest on the taxes;

10 (2) past due taxes that are received by the state after a request for a
11 formal hearing under AS 43.05.241 [AS 43.05.240(b)(1)] is made to the Department
12 of Revenue, together with penalties and interest on the taxes.

13 (b) Money received by the state under the following conditions is not
14 considered to be received as the result of the termination of an administrative
15 proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of
16 Alaska:

17 (1) taxes that are not due at the time the request for the proceeding was
18 made under AS 43.05.240, 43.05.241, or 43.05.242 [AS 43.05.240(a) or (b)(1)];

19 (2) taxes set out in a return not audited by the Department of Revenue
20 at the date of collection; or

21 (3) taxes collected for a tax year for which the taxpayer did not give
22 notice of appeal of an assessment made by the Department of Revenue.

23 * Sec. 6. AS 39.25.110 is amended by adding a new paragraph to read:

24 (31) the chief administrative law judge and any other administrative law
25 judges appointed to the office of tax appeals of the Department of Administration under
26 AS 43.05.400 - 43.05.499,

27 * Sec. 7. AS 43.05.010 is amended to read:

28 Sec. 43.05.010. DUTIES OF COMMISSIONER. The commissioner of revenue
29 shall

30 (1) exercise general supervision and direct the activities of the
31 Department of Revenue;

32 (2) supervise the fiscal affairs and responsibilities of the department;

- 1 (3) prescribe uniform rules for investigations and hearings;
- 2 (4) keep a record of all departmental proceedings, record and file all
- 3 bonds, and assume custody of returns, reports, papers, and documents of the department;
- 4 (5) [REPEALED
- 5 (6)] adopt a seal and affix it to each order, process, or certificate issued
- 6 by the commissioner;
- 7 (6) [(7)] keep a record of each order, process, and certificate issued by
- 8 the commissioner, and keep the record open to public inspection at all reasonable times;
- 9 (7) [(8)] hold hearings and investigations necessary for the administration
- 10 of state tax and revenue laws;
- 11 (8) except as provided in AS 43.05.400 - 43.05.499, [(9)] hear and
- 12 determine appeals of a matter within the jurisdiction of the Department of Revenue
- 13 [INVOLVING INCOME, EXCISE, LICENSE, OR OTHER TAXES LEVIED UNDER
- 14 STATE LAWS] and enter orders on the appeals that are final unless reversed or
- 15 modified by the courts;
- 16 (9) issue subpoenas to [(10)] require the attendance of witnesses and the
- 17 production of necessary books, papers, documents, correspondence, and other things
- 18 [EVIDENCE AT HEARINGS];
- 19 (10) [(11)] order the taking of depositions before a person competent to
- 20 administer oaths;
- 21 (11) [(12)] administer oaths and take acknowledgments;
- 22 (12) [(13)] request the attorney general for rulings on the interpretation
- 23 of the tax and revenue laws administered by the department;
- 24 (13) [(14)] call upon the attorney general to institute actions for recovery
- 25 of unpaid taxes, fees, excises, additions to tax, penalties, and interest;
- 26 (14) [(15)] issue warrants for the collection of unpaid tax penalties and
- 27 interest and take all steps necessary and proper to enforce full and complete compliance
- 28 with the tax, license, excise, and other revenue laws of the state;
- 29 (15) [(16)] audit reports, payments, and payments due relating to royalty
- 30 and net profits under oil and gas contracts, agreements, or leases under AS 38.05 [;
- 31 (17) REPEALED].

32 * Sec. 8. AS 43.05.040 is amended to read:

1 Sec. 43.05.040. INSPECTION OF RECORDS OR PREMISES AND
2 ISSUANCE OF SUBPOENAS. (a) The department may examine the books, papers,
3 records, or memoranda of any person to ascertain the correctness of a return filed or to
4 determine whether a tax or a payment for oil or gas royalty or net profits shares under
5 a contract, agreement, or lease under AS 38.05 is due, or in an investigation or
6 inspection in connection with tax matters or matters relating to oil and gas royalty or net
7 profits under contracts, agreements, or leases under AS 38.05. The records and the
8 premises where a business is conducted shall be open at all reasonable times for official
9 inspection, and the department may subpoena any person to appear and produce books,
10 records, papers, or memoranda bearing upon tax matters or matters relating to oil and gas
11 royalty or net profits under contracts, agreements, or leases under AS 38.05, and to give
12 testimony or answer interrogatories under oath respecting tax matters or matters related
13 to oil and gas royalty or net profits under contracts, agreements, or leases under
14 AS 38.05, and the department may administer oaths to persons who are so subpoenaed.
15 A subpoena issued under this section may compel attendance of a witness or
16 production of a document or thing, located either inside or outside the state, to the
17 maximum extent permitted by law.

18 (b) A subpoena may be served by the commissioner of public safety or a peace
19 officer designated by the commissioner of public safety, [OR] by a person designated by
20 the Department of Revenue, or as otherwise provided by law. A subpoena may also
21 be served by registered or certified mail for delivery restricted only to the person
22 subpoenaed. The return delivery receipt must be addressed so that the receipt is
23 returned to the department.

24 (c) If a person who is subpoenaed neglects or refuses to obey the subpoena
25 issued as provided in this section, the department may report the fact to the superior
26 court or the appropriate court of another jurisdiction, and may seek an order from
27 the court compelling obedience to the subpoena. The [AND THE] court, to the
28 maximum extent permitted by law, may compel obedience to the subpoena to the same
29 extent as witnesses may be compelled to obey the subpoenas of the court.

30 * Sec. 9. AS 43.05.230(a) is amended to read:

31 (a) It is unlawful for a current or former officer, employee, or agent of the state
32 to divulge the amount of income or the particulars set out or disclosed in a report or

1 return made under this title, except

2 (1) in connection with official investigations or proceedings of the
3 department, whether judicial or administrative, involving taxes due under this title;

4 (2) in connection with official investigations or proceedings of the child
5 support enforcement agency, whether judicial or administrative, involving child support
6 obligations imposed or imposable under AS 25 or AS 47;

7 (3) as provided in AS 38.05.036 pertaining to audit functions; [AND]

8 (4) as provided in AS 43.05.400 - 43.05.499; and

9 (5) as otherwise provided in this section.

10 * Sec. 10. AS 43.05.240 is repealed and reenacted to read:

11 Sec. 43.05.240. TAXPAYER REMEDIES. (a) A taxpayer aggrieved by the
12 action of the department in fixing the amount of a tax or penalty may apply to the
13 department within 60 days after the date of mailing of the notice required to be given
14 to the taxpayer by the department, giving notice of the grievance, and requesting an
15 informal conference to be scheduled with an appeals officer. The taxpayer shall be given
16 access to the taxpayer's file in the department in the matter for preparation for the
17 informal conference. At the informal conference, the taxpayer may present to the
18 appeals officer arguments and evidence relevant to the amount of tax or penalty due the
19 state. If the department determines that a correction is warranted, the department shall
20 make the correction.

21 (b) A party who believes that the appeals officer is unduly delaying a hearing
22 process may notify the commissioner in writing. Within 30 days after being notified by
23 a party, the commissioner may issue an order prescribing a schedule for the appeals
24 officer to complete the informal conference or setting a meeting at which that schedule
25 will be discussed and prescribed. The schedule may be subsequently modified by
26 consent of the parties. If the commissioner fails to issue an order within 30 days after
27 receiving notice of a party's belief of undue delay, the department's action in fixing the
28 amount of tax or penalty shall be considered to have been summarily affirmed by the
29 appeals officer the same as if an informal conference decision to that effect were issued
30 on the last day of that 30-day period.

31 * Sec. 11. AS 43.05 is amended by adding new sections to read:

32 Sec. 43.05.241. FORMAL APPEAL. For a matter within the jurisdiction of the

1 office of tax appeals under AS 43.05.405, the taxpayer aggrieved by an informal
2 conference decision entered under AS 43.05.240 may file with the office of tax appeals
3 a notice of appeal for formal hearing, as provided in AS 43.05.430, no later than 60 days
4 after service of the decision resulting from an informal conference.

5 Sec. 43.05.242. JUDICIAL APPEAL. (a) Within 60 days after decision
6 resulting from the informal conference, a person aggrieved by the action of the
7 department under AS 43.05.240 in fixing the amount of a tax or in imposing a penalty
8 may appeal to the superior court.

9 (b) The superior court, sitting without a jury, shall hear all questions de novo.
10 As used in this section, "de novo" has the same meaning as in AS 43.05.400 - 43.05.499.

11 The court shall

12 (1) resolve a question of fact by a preponderance of the evidence or, if
13 a different standard of proof has been set by law for a particular question, by that
14 standard of proof;

15 (2) resolve a question of law in the exercise of the independent judgment
16 of the superior court judge;

17 (3) defer to the Department of Revenue as to a matter for which
18 discretion is legally vested in the Department of Revenue, unless not supported by a
19 reasonable basis.

20 (c) When an appeal is taken under this section,

21 (1) the taxpayer shall be given access to the file of the department in the
22 matter for preparation of the appeal;

23 (2) if, after the appeal is heard,

24 (A) it appears that the tax was correct, the court shall confirm the
25 tax;

26 (B) it appears that the tax was incorrect, the court shall determine
27 the amount of the tax; if the person aggrieved is entitled to recover the tax or
28 part of it, the court shall order the repayment, and the department shall
29 immediately pay the amount due and attach a certified copy of the judgment to
30 the payment.

31 Sec. 43.05.244. TAX, PENALTY, AND INTEREST PAYABLE BEFORE
32 APPEAL. (a) In an appeal from a decision of the department involving a deficiency of

1 taxes levied and collected by the state, whether in a formal hearing under AS 43.05.241
2 and 43.05.400 - 43.05.499 or under a judicial appeal authorized by AS 43.05.242, the
3 taxpayer shall pay to the state the full amount of the tax, penalty, and interest in respect
4 of the amount of tax assessed that is not in dispute. The taxpayer shall post a bond,
5 obtain a letter of credit, or provide other evidence satisfactory to the department that it
6 is able to pay the amount of tax, penalty, and interest in respect of the amount of tax
7 assessed that is in dispute and that is the basis of the taxpayer's appeal.

8 (b) The tax and interest due under this section are the amounts stated in the final
9 order of the department from which the appeal is taken, or if the final order appealed
10 from is a summary judgment or partial summary judgment, the amount shall be as
11 originally assessed on the issue or issues disposed of.

12 * Sec. 12. AS 43.05.245 is amended to read:

13 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES,
14 AND INTEREST. If a taxpayer fails to file a return or report required by this title in
15 the time required by law or regulation, or makes an erroneous or fraudulent return, the
16 department shall proceed to assess the license fees, tax, penalties, or interest and make
17 a return from information that [WHICH] it obtains. A return made and subscribed by
18 the department in accordance with this section is presumed sufficient for all legal
19 purposes. However, nothing prevents a taxpayer from presenting evidence or other
20 information on an informal conference [APPEAL] under AS 43.05.240 or in an appeal
21 under AS 43.05.241 or 43.05.242 in order to rebut the presumed sufficiency of a return
22 made and subscribed by the department, nor does the presumption of sufficiency alter
23 the parties' respective burdens of proof once the taxpayer has presented evidence or other
24 material information to rebut that presumption. The assessment of license fees, tax,
25 penalties, or interest under this section occurs when the department issues a notice and
26 demand for payment of the license fees, tax, penalties, or interest. The notice and
27 demand for payment is issued when the notice and demand is delivered to the taxpayer
28 in person or placed in the United States mail, addressed to the last known address of the
29 taxpayer. Penalties and interest assessed under this title shall be collected in the same
30 manner as provided in this title for the collection of tax or license fees.

31 * Sec. 13. AS 43.20.270(a) is amended to read:

32 (a) The department may collect taxes, with interest, penalties, and other

1 additional amounts permitted by law, by distraint and sale, in the manner provided in this
2 section, of the property of a person liable to pay the taxes, interest, penalties, or other
3 additional amounts, who neglects or refuses to pay them within 10 days from the mailing
4 of notice and demand for payment of them, and who has not appealed from the
5 assessment of the taxes, interest, penalties, and other additional amounts determined
6 under AS 43.05.240 or following appeal taken under AS 43.05.241 or 43.05.242.

7 * Sec. 14. AS 43.55.013(g) is amended to read:

8 (g) The monthly production at the economic limit for a lease or property is
9 presumed to be 3,000 Mcf times the number of well days for the lease or property during
10 that month for which the tax is to be paid. The taxpayer may rebut this presumption
11 [AT A FORMAL HEARING UNDER AS 43.05.240] by providing clear and convincing
12 evidence of a different monthly production rate at the economic limit for the lease or
13 property. The hearing shall be held before February 15 of the year or within six months
14 after commencement of gas production for a lease or property. The monthly production
15 rate at the economic limit for the lease or property based upon the clear and convincing
16 evidence of the taxpayer shall be calculated by dividing the value determined under (i)
17 of this section into the average monthly direct operating cost determined under (h) of this
18 section.

19 * Sec. 15. AS 43.55.040 is amended to read:

20 Sec. 43.55.040. POWERS OF DEPARTMENT OF REVENUE. Except as
21 provided in AS 43.05.400 - 43.05.499, the [THE] department may

22 (1) require a person engaged in production and the agent or employee of
23 the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil or
24 gas to furnish additional information that is considered by the department as necessary
25 to compute the amount of the tax;

26 (2) examine the books, records, and files of such a person;

27 (3) conduct hearings and compel the attendance of witnesses and the
28 production of books, records, and papers of any person; and

29 (4) make an investigation or hold an inquiry that is considered necessary
30 to a disclosure of the facts as to

31 (A) the amount of production from any oil or gas location, or of
32 a company or other producer of oil or gas; [,] and

1 (B) the rendition of the oil and gas for taxing purposes.

2 * Sec. 16. EFFECT ON EXISTING REMEDIES AND PROCEDURES. This Act does not
3 affect the remedies and procedures

4 (1) specified in AS 04.11, including AS 04.11.560; AS 05.15, including
5 AS 05.15.610; AS 42.05, including AS 42.05.551; or AS 43.56, including AS 43.56.120 and
6 43.56.130; or

7 (2) adopted by regulation by the Department of Revenue governing appeal of a
8 decision of the Department of Revenue regarding

9 (A) a game of chance or skill made under AS 05.15;

10 (B) a permanent fund dividend under AS 43.23;

11 (C) a coin-operated device or punchboard under AS 43.35; or

12 (D) a child support obligation under AS 25.27.

13 * Sec. 17. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided by
14 this Act apply to all revenue tax appeals in which a request for formal hearing is filed with the
15 Department of Revenue on or after the effective date of this Act. The remedies and procedures
16 existing before the effective date of this Act apply to all revenue tax appeals in which a request
17 for formal hearing was filed with the Department of Revenue before the effective date of this
18 Act, unless, on the effective date of this Act,

19 (1) there has been an informal conference, but there has not been material
20 discovery by either party and substantive motions have not been filed;

21 (2) there has not been an informal conference, nor has there been material
22 discovery by either party and substantive motions have not been filed, but the taxpayer stipulates
23 to proceed to an informal conference under the remedies and procedures established by
24 AS 43.05.240, as amended by sec. 10 of this Act; or

25 (3) the parties stipulate to use the remedies and procedures established by this
26 Act; consent to that stipulation may not be unreasonably withheld by either party.

27 (b) Until regulations authorized under this Act take effect, 15 AAC 05.001 -
28 15 AAC 05.320 govern appeals within the jurisdiction of the office of tax appeals filed after the
29 effective date of this Act, except to the extent the regulations are inconsistent with this Act.

30 (c) Notwithstanding AS 43.05.405, enacted by sec. 1 of this Act ^{unless} until the office of tax
31 appeals has a full caseload, and ^{with} with the approval of the chief administrative law judge, the chief
32 administrative law judge or any other administrative law judge of the office of tax appeals may

Brown
amend.

conceptual amend

1 be appointed by the governor, by the commissioner of administration, or by the commissioner
2 of another department to serve as a special hearing officer or special administrative law judge
3 on another matter outside the scope of this Act and arising from another department of the
4 executive branch. Appointment under this subsection may not interfere with the primary mission
5 of the office of tax appeals under this Act of the expeditious resolution of administrative tax
6 appeals under its jurisdiction.

7 (d) Until 15 AAC 05.001 - 15 AAC 05.320 and other Department of Revenue
8 regulations in effect on the effective date of this Act are revised as necessary, those regulations
9 continue to govern an administrative appeal of a Department of Revenue decision not within the
10 jurisdiction of the office of tax appeals, including a decision regarding a

- 11 (1) game of chance or skill under AS 05.15;
- 12 (2) permanent fund dividend under AS 43.23; and
- 13 (3) coin-operated device or punchboard under AS 43.35.

14 (e) In this section,

15 (1) "chief administrative law judge" means the chief administrative law judge
16 of the office of tax appeals appointed under AS 43.05.410, enacted by sec. 1 of this Act;

17 (2) "office of tax appeals" means the office established in AS 43.05.400, enacted
18 by sec. 1 of this Act.

19 * Sec. 18. This Act takes effect July 1, 1996.



alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1981 (907) 279-2526 FAX (907) 276-5046

EXECUTIVE DIRECTOR
William T. Cotton

NON-ATTORNEY MEMBERS
David A. Dapcevic
Judice Lienhart
Vicki A. Otte

ATTORNEY MEMBERS
Mark E. Ashburn
Thomas G. Nave
Christopher E. Zimmerman

CHAIRMAN, EX OFFICIO
Allen T. Compton
Chief Justice
Supreme Court

MEMORANDUM

TO: House Finance Committee
FROM: William T. Cotton, Executive Director *w/c*
DATE: March 19, 1996
RE: CSHB 341

I have set out below the costs of having the Judicial Council screen applicants for Administrative Tax Judges much as it does for judicial applicants. I will submit a fiscal note when appropriate. As I previously testified, the Council has not taken any position on this legislation.

The costs outlined below assume one selection (or later, one evaluation) per year. They further assume that existing Council staff will perform the professional work gathering and analyzing information on applicants. Council members are not paid for their time (other than per diem).

After much thought, I believe a Bar Survey with comments would be highly advisable. While the response rate would be low, the information received would be important.¹ I have kept costs low by having existing Council staff do the analysis at no charge.

¹For example, some judicial applicants are rated by well over 500 respondents. However, even a response of less than 100 respondents is very useful. A recent applicant with a narrow bankruptcy practice was rated by 230 respondents.

House Finance Committee

March 19, 1996

Page 2

Costs

Travel

Travel and per diem for one 2-day Anchorage Council Meeting 3.5

Contractual

1. Advertising

Three small display ads in Anchorage, Juneau, Fairbanks requesting public comment 1.7

2. Temporary Secretary (30 hours/week for six weeks) 2.9

3. Mailing

a. Announcement letter (to attorneys, including Bar labels) 1.2

b. Survey (to attorneys, including Bar labels) 3.2

c. Miscellaneous (references, targeted surveys) .1

4. Credit Checks .5

Supplies

Paper, envelopes for survey .8

Total 13.9

Please feel free to contact me with any further questions.

WTC:sl

**DEPARTMENT OF REVENUE
PROPOSED MODIFICATIONS TO CSHB 341 (Judiciary)
(March 14, 1996)**

Amendment No. 1: (deleting provisions relating to the Board of Tax Appeals, and providing for appointment by the Governor upon recommendation of the Judicial Council)

- In the title, page 1, lines 3-4, delete the phrase "as a quasi-judicial agency".
- In Section 1, page 2, lines 4 - 9, delete the text and substitute the following text:

Sec. 43.05.400. OFFICE OF TAX APPEALS ESTABLISHED. (a) The office of tax appeals is established within the department.

- In Section 1, page 2, delete lines 21 - 29, and substitute the following text:

Sec. 43.05.410. APPOINTMENT; TERM; REAPPOINTMENT. (a) The governor shall appoint a chief administrative law judge of the office of tax appeals from among two or more persons nominated for that position by the judicial council. The governor may appoint additional administrative law judges from among two or more persons nominated for each position by the judicial council. Nominations by the council under this section shall be made after the judicial council has

(1) published an announcement of the governor's notice of a vacancy or impending vacancy of a position under this section that invites application for the position;

(2) published a list of those persons who have applied for the position, and invited written comments on the applicants from the public to the judicial council during a specified comment period of 30 days. Comments may be submitted anonymously, and shall be kept confidential, but the judicial council shall give the governor and each applicant a summary of the public comment; and

(3) interviewed each of the applicants for the position.

(b) The initial term for an administrative law judge, including the chief administrative law judge, is two years. The governor may decline to reappoint an administrative law judge, including the chief administrative law judge, without cause. A person appointed to serve as an administrative law judge, including the chief administrative law judge, may be appointed to subsequent terms of four years each after

(1) the governor has given the judicial council notice of intent to reappoint the administrative law judge;

(2) the judicial council has published an announcement of the governor's intent to reappoint, and invited written comments from the public to the judicial council on the reappointment during a specified comment period of 30 days. Comments may be submitted anonymously, and shall be kept confidential, but the judicial council shall give the governor and the administrative law judge a summary of the public comment; and

(3) submitted a recommendation to the governor on reappointment.

•In Section 1, page 3, line 21, delete the word "board" and replace with the phrase "the chief administrative law judge."

•In Section 1, page 7, line 17, delete the phrase "by the full board".

•In Section 1, page 7, line 30, replace the word "board" with the phrase "administrative law judge."

•In Section 1, page 8, at lines 1, 6, 8, 9, and 16, replace the word "board" in each line with the phrase "administrative law judge".

NOT
adopted
or
moved

Amendment No. : (deleting provisions relating to direct appeal to superior court)

- Delete Section 4, at pages 11-12, lines 20-2.
- Amend Section 5, page 12, line 19, by replacing the phrase "AS 43.05.240, 43.05.241, or 43.05.242" with the phrase "AS 43.05.240 or AS 43.05.241".
- In Section 11, page 16, delete text beginning on line 6 and ending on line 31 (proposed AS 43.05.242).
- In Section 11, page 17, line 2, delete the phrase ", whether".
- In Section 11, page 17, line 3, delete the phrase "or under a judicial appeal authorized by AS 43.05.042".
- In Section 12, page 17, line 22, delete the phrase "or 43.05.242".

DEPARTMENT OF REVENUE
SYNOPSIS OF ISSUES RELATING TO CSHB 341 (Jud)
(March 14, 1996)

CSHB 341(Jud) is in many respects a consensus bill that has the support of the administration and interested taxpayers. However, there are two major issues of disagreement: 1) direct appeal of tax decisions to superior court, without administrative review, and 2) method for appointment of administrative law judges.

Direct appeal to superior court

The administration opposes the provision in the bill that permits a taxpayer to avoid the administrative process set up by the bill and instead appeal directly to superior court, for a trial *de novo*. We support providing a single avenue of administrative review for all taxpayers, with appellate review by the superior court. CSHB 341(Jud) allows a taxpayer, at the taxpayer's sole option, to appeal directly to superior court from a tax assessment. This means that tax cases will be tried by a superior court judge who in many cases will have neither expertise nor interest in tax.

The administration believes it is better to have de novo trials of tax cases by administrative law judges (ALJs) who have tax expertise, with appellate review by the superior and supreme courts. ARCO has listed tax expertise as one "criterion" for de novo tax trials; Exxon has agreed that tax expertise is helpful. Paul Frankel, a nationally-recognized expert on tax law and consultant to the Department of Revenue on this bill, has listed tax expertise by the trier of fact as essential. Yet CSHB 341(Jud) would permit important tax cases, perhaps involving very significant sums of money and almost certainly involving important precedent for the state's tax program, to be tried in a forum without the expertise of the ALJs in the Office of Tax Appeals.

This means that the superior court will be required to hear tax appeals de novo in the first instance, without the benefit of an administrative record which clarifies and narrows the issues of dispute. This also means that tax appeal trials in superior court will be at the mercy of the trial court's criminal calendar, which takes precedent. For these reasons, we urge deletion of the provisions of CSHB 341(Jud) which permit direct appeal to the superior court.

Method of appointment of ALJs

CSHB 341(Jud) provides for appointment of ALJs by the Governor, subject to confirmation by the Legislature. To avoid a constitutional limitation on the legislative confirmation power, the bill would set up a "Board of Tax Appeals" consisting of at least two ALJs. We think that legislative confirmation could inject unnecessary politics into a process that all seem to agree should be apolitical. Further, the fiscal impact of creating a new board is greatly increased over a single ALJ, and is both unnecessary and avoidable. The goals of public comment, increased independence and impartiality can better be accomplished by an appointment process by which the governor appoints from a list of candidates proposed by the Judicial Council. The taxpayers - and legislators - can comment on the applicants to the Judicial Council, before appointment, and before re-appointment at the expiration of an ALJ's term.

DEPARTMENT OF REVENUE
EXPLANATION FOR PROPOSED MODIFICATIONS OF CSHB 341 (Judiciary)
(March 18, 1996)

The Department of Revenue, working with the Department of Law, has provided three suggested amendments to CSHB 341 (Judiciary)(Mar. 12, 1996).

1. **Deletion of direct appeal to superior court**

In our view, an essential feature for the resolution of tax disputes is that the person who hears the taxpayer's de novo appeal should have tax expertise. Tax laws can be complex and arcane; tax disputes can be extremely document-intensive and time-consuming to try. Because of these realities, we know that tax decisions of this state will be vastly superior if cases are tried first as administrative appeals by administrative law judges with tax expertise, and then appealed on an administrative record to a superior court judge. Superior court judges have many demands upon their time, not the least of which is a burgeoning criminal caseload. We cannot expect that superior court judges will be able in every case to provide the attention and expertise that can be achieved by requiring that de novo hearings of tax appeals take place before ALJs familiar with the law and issues.

2. **Appointment of ALJs upon nomination by the Judicial Council**

We believe it is better for ALJs to be appointed by the governor from a list of nominees provided by the Alaska Judicial Council, rather than the current proposal of a Board of Tax Appeals subject to confirmation. The Judicial Council is well-suited to this task, and can help ensure the expertise, independence and objectivity that both the taxpayers and the administration want to see in the new Office of Tax Appeals. The council consists of seven members: the chief justice of the Alaska Supreme Court, three non-attorneys, and three attorneys.

We think that legislative confirmation could inject unnecessary controversy into the selection of ALJs, and that the fiscal impact of creating a new board is both unnecessary and avoidable. Under the approach we recommend, taxpayers will have input in the appointment and reappointment process through comments submitted to the judicial council.

3. **Payment of tax pending direct appeal to superior court**

As currently drafted, the sections on judicial review are not clear concerning payments during an appeal. The ambiguous provisions are contained in proposed AS 43.05.480 (in Section 1, at page 9, lines 13-17) and in proposed AS 43.05.244 (in Section 11, at pages 16-17, lines 31 - 11).

First, we suggest that the reference to "chapter" on in proposed AS 43.05.480, at page 9, line 8 be changed to "AS 43.05.400 - 43.05.499" to clarify that the section applies only to actions under AS 43.05.400 - 43.05.499, rather than to the entire "chapter." This is necessary in case the committee decides to retain the separate avenue of direct appeal to superior court under proposed AS 43.05.242, contained in Section 11, page 16, because the payment provisions in that section differ from those in proposed AS 43.05.480.

Second, if the committee decides to keep the direct appeal option, we suggest modification of proposed AS 43.05.244 to clarify an ambiguity regarding payment of tax, penalty and interest on a direct appeal to superior court.

Ordinarily, an administrative decision is fully enforceable even though a party has appealed, and the state may proceed to execute on the decision. An appellant has the opportunity to seek a stay of enforcement of the decision during the pendency of the appeal by filing a "supersedeas bond." Alaska R. App. Proc. 602(e). This is distinct from a "cost bond," which is a bond to ensure that the costs on appeal are satisfied, should the appellant lose. See Alaska R. App. Proc. 602(d).

As currently drafted, proposed AS 43.05.244 arguably modifies Alaska R. App. Pro. 602(e) and 603(a)(2) regarding the filing of supersedeas bonds on appeal. The modifications are: 1) the Department of Revenue (rather than the court) must approve the method of security proposed by the taxpayer; and 2) a letter of credit is specifically listed as an approved method of security (the appellate rule incorporates Civil Rule 80 regarding security). We think this is the type of procedure which falls in the realm of the Alaska Supreme Court. Fedpac Intern. v. State, Dep't of Revenue, 646 P.2d 240, 241-42 n. 2 (Alaska 1982). If the intent is to modify the Alaska Rules of Appellate Procedure, this intent must be stated in the title of the bill, and the bill must be passed by a two-thirds majority of the legislature. Alaska Const., art. IV, § 1, 15.

We do not think a change in the Alaska Rules of Appellate Procedure was intended, and suggest conforming AS 43.05.244 to the Appellate Rules. We have suggested an amendment which parallels but is separate from the language of AS 43.05.480(b), so that in the event the committee adopts our recommendation to delete the avenue of direct appeal to superior court from an informal conference decision, section 43.05.244 may be deleted in its entirety without affecting the provisions for judicial review under proposed AS 43.05.480.

Alaska State Legislature

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CO-CHAIR, RESOURCES COMMITTEE
VICE CHAIR, JUDICIARY COMMITTEE
MEMBER, STATE AFFAIRS COMMITTEE

FINANCE SUBCOMMITTEES
DEPT. OF NATURAL RESOURCES
DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT
DEPT. OF ENVIRONMENTAL CONSERVATION

Representative Joe Green

District 1C

Sponsor Statement

CSHB 341 (JUD) - Tax Appeals Process

CSHB 341 establishes a new tax appeals process within the executive branch.

PROBLEM: The Commissioner of Revenue assumes several roles in his/her relationship with taxpayers. The commissioner interprets state tax law in *writing the regulations* by which taxpayers must abide. The commissioner also *enforces* state tax laws and regulations through the audit process, *issues assessments*, and if the assessment is appealed, *selects the hearing officer and/or sits in judgment* during the appeal process.

When the taxpayer requests a formal hearing the commissioner selects a departmental employee to act as a hearing officer. If the hearing officer's ruling is unsatisfactory the taxpayer may file a motion for reconsideration with the commissioner. If the commissioner denies reconsideration, or if the commissioner grants reconsideration and rules against the taxpayer, the taxpayer can appeal to Superior Court. The Superior Court, however, will only conduct an "on the record" review of the commissioner's final decision, meaning no new evidence can be introduced. Essentially, the court considers a brief, compiled by the department.

SOLUTION: HB 341 establishes a new process under which taxpayers may appeal tax assessments. Whereas the entire administrative appeal process presently takes place within the Department of Revenue, HB 341 establishes a new Office of Tax Appeals in the Department of Administration.

Under the new system, tax returns will still be filed with DOR. DOR will also audit the return and accept it or issue a bill for any additional taxes it deems owed. If the taxpayer appeals the tax bill, they can request an informal conference with a DOR appeals officer.

CSHB341(JUD)
Sponsor Statement
Page 2

A taxpayer has three options following an informal conference decision; 1) request a formal hearing before an administrative law judge in the office of tax appeals; 2) appeal straight to Superior Court for a de novo hearing; or 3) pay the tax. Formal hearing in the office of tax appeals are , it will be a de novo hearing, however, any further appeal to the Superior Court will not be a de novo proceeding.

Separating the tax audit and collection functions from the formal hearing and appeals functions introduces an important element of impartiality to our tax appeals system. Administrative Law Judges who serve on the board of tax appeals will be nominated by the Governor, confirmed by the Legislature, and removed only for good cause. HB341 will establish a system where taxpayers can stand before an impartial tribunal, instead of before a commissioner who acts as the enforcer (auditor), prosecutor (assessor), and judge (hearing officer).

**TESTIMONY OF THE
ALASKA OIL AND GAS ASSOCIATION
TO THE HOUSE FINANCE COMMITTEE
REGARDING CS HB 341 (JUD)**

Good afternoon, Mr. Chairman and Members of the Finance Committee. My name is Dan Seckers, and I am the chairman of the Tax Committee for the Alaska Oil and Gas Association ("AOGA"). AOGA is a trade association whose 19 member companies account for the majority of the oil and gas exploration, production, transportation, and refining and marketing activities in Alaska. We are grateful for this opportunity to offer our comments, which reflect the unanimous consensus of the Tax Committee.

The present tax appeals process in Alaska is, we believe, seriously flawed in practice and denies taxpayers the opportunity to have their tax appeals heard and decided by a truly independent and impartial tribunal. We in AOGA have worked hard with the members of the House Resources and Judiciary Committees and the Administration to try and develop a consensus bill which would improve the process. To a degree that surprises us, and to some extent I suspect the Administration, we have reached consensus in many areas of the Judiciary Committee Substitute, including some areas which were heavily debated. However two major areas of contention remain. One is legislative confirmation of the administrative law judges and the other is the option for taxpayers to proceed directly to Superior Court.

1. Legislative Confirmation. AOGA supports legislative confirmation of the administrative law judge who will hear appeals under the Bill. Confirmation is appropriate to ensure that these people are qualified, capable, and fair, particularly since they may decide cases involving tens or even hundreds of millions of dollars in tax claims. Confirmation also allows for public comment on a candidate before the decision to appoint him or her becomes final. This ensures that if anyone is proposed who has demonstrated bias or similar improper conduct in the past, there will be an opportunity to make people aware of those facts before the appointment becomes final. Moreover, confirmation prevents any question of improper influence by the Executive Branch over the administrative law judges through the power to appoint and reappoint them.

However, very recently, the Department of Revenue has proposed an alternative to confirmation. This alternative would provide for an open and public process through the Alaska Judicial Council, which would review candidates, receive public comments, and present a list of at least two "finalists" from which the Governor would make the final selection. This is a very interesting proposal, and AOGA applauds the Department for offering it. However, we simply have not yet had enough time to evaluate and consider it fully, and so for the time being AOGA does not have a position on it. As soon as we do, we will tell you and the Department what our position is.

314196 3
Attachment

2. Option to go directly to Superior Court. The other area of disagreement with the Department of Revenue is the option for taxpayers to appeal the informal conference decision directly to Superior Court. Superior Court judges are competent professionals who have responsibility for hearing very complex cases, such as royalty and commercial litigation. In addition, under current law, Superior Court judges review the formal hearing decisions of the Department of Revenue and, under the proposed bill, would review the decisions of the administrative law judges.

AOGA agrees with the Administration that most taxpayers will prefer having the specific tax expertise and procedural rules of the new system of administrative law judges. However, in an exceptional basis, there may be times when it would be more efficient and expedient to proceed directly to court. For example, when it is clear that a particular issue will likely be appealed to the Superior Court and beyond, the taxpayer may prefer to proceed directly to court to avoid the time and expense of going first to an administrative law judge and then to court.

Or, if a dispute includes issues that an administrative law judge cannot rule on, such as constitutional issues, it would make much more sense to allow a direct appeal of the taxpayer's case to the forum where those issues can be dealt with.

We do not agree with the Department of Revenue's suggestion that the option to go to court be restricted solely to pure constitutional issues. Tax cases generally involve factual determinations and legal determinations. A legal position is often supported by a statutory argument and a constitutional argument. Under the Department's proposal, for a disputed tax position, the taxpayer and the Department of Revenue would have to present the disputed facts and the statutory argument to the administrative law judge and present the same disputed facts and the constitutional argument to the Superior Court. Thus, under the Department's suggestion, for a given tax dispute, it is possible that the administrative law judge could decide the facts in favor of the taxpayer but rule against the taxpayer on the statutory argument. The Superior Court could decide the same facts against the taxpayer but rule in favor of the taxpayer on the constitutional argument. It is unclear what would happen next under the Department's suggestion. At best, their constitutional limitation is inefficient and costly; at worst, it is completely unworkable.

As Mr. Paul Frankel mentioned in his testimony before the joint hearing of the House Judiciary and Finance Committees on February 29th, the federal tax system offers taxpayers a choice of forums. In addition, more than fifteen states provide for this option, (e.g., New Hampshire, Florida, Georgia and Alabama). We are not aware of any state that limits the taxpayer's option to go to court to specific issues.

The option would also not cost the state additional money and may in fact result in reduced expenditures in some instances since an election to go directly to Superior Court would eliminate review of an administrative law judge's decision by the Superior Court. The Judiciary Committee Substitute also clarifies that the standards of review to

be used by Superior Court judges under this option would be the same as under the administrative law judge system.

By making the option available in Alaska, the State is saying to taxpayers that it is committed to ensuring that the tax appeals process is fair. If any taxpayer has a residual concern about the independence of the administrative law judges, the taxpayer has the other option. This check and balance safeguards the fairness and independence of the process. But I would repeat that we expect the option of going to court to be one that is used only on an exceptional basis.

3. Transition. While confirmation and the option to go directly to Superior Court are the only remaining major areas of disagreement with the Department of Revenue, we continue to have some concerns over the transition provisions of the bill. Both AOGA and the Department of Revenue agree on the principle that taxpayers who are still in the preliminary proceedings of the old formal hearing process should be allowed to use the new procedures provided if doing so would not entail an undue amount of wasted or duplicative time and effort. Although we have been unable to reach agreement with the Department on the precise wording of such a transition rule, we will continue to discuss various options with the Department.

In conclusion, Mr. Chairman and members of the Committee, AOGA applauds the efforts of the previous committees in developing the Committee Substitute for HB 341. We particularly appreciate the willingness of the Department of Revenue and the Attorney General's Office to meet with us over the last few months to try to resolve and narrow the areas of disagreement.

AOGA strongly supports the Judiciary Committee Substitute for HB 341. As it has been for a number of years, the reform of Alaska's present tax appeals system remains a priority of AOGA members. We believe that the Judiciary Committee Substitute before you will provide real reform to tax appeals. I can pledge to you that we are committed to working with this Legislature and the Administration to ensure that these reforms are enacted.

Thank you again for the opportunity to testify.

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

3122 CHANNEL DRIVE
JUNEAU, ALASKA 99901-7898TELE (907) 465-3652
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PHONE (907) 465-3900

February 23, 1996

The Honorable Rick Mystrom
Mayor, Municipality of Anchorage
P.O. Box 196650
Anchorage, Alaska 99519-6650

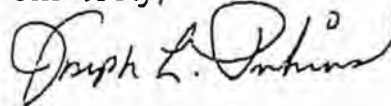
Dear Mayor Mystrom:

This letter follows up on a meeting between Kurt Parkan and Tom Jensen concerning the Anchorage Foreign Trade Zone (FTZ). As I believe you are already aware, we have requested that the State be included in a management structure to oversee the operations of the FTZ. It has been conveyed to me that a direct letter to you would be in order to clarify our position.

As the Governor's letter to you stated, we believe there is both a State interest and a Municipality of Anchorage interest in the operation of the FTZ. Our proposal is simply that both parties with an interest in the operation of the FTZ join together in a non-profit corporation to jointly manage its operations. In this regard, I have enclosed a copy of a July 1, 1987 letter written from the Department of Transportation and Public Facilities and a July 24, 1987 letter signed by Governor Cowper concerning the inclusion of Anchorage International Airport (ANC) property in the FTZ. As you will see from the letters (both included as Exhibits in the FTZ application), the condition for including the ANC property in the FTZ was that the State would retain management authority over its lands and that the FTZ would be jointly managed. We are requesting that the conditions on inclusion of ANC property in the FTZ, made part of the FTZ application, be implemented.

Thank you for your consideration and attention to this matter.

Sincerely,



Joseph L. Perkins, P.E.
Commissioner

Enclosures

STEVE LÖWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 24, 1987

RECEIVED
JUL 27 1987
MAYORS OFFICE

The Honorable Tony Knowles
Mayor
Municipality of Anchorage
P.O. Box 19-6650
Anchorage, AK 99519-6650

Dear Mayor Knowles:

As you know, the State of Alaska has been working closely with the Municipality of Anchorage toward the development of a Foreign Trade Zone (FTZ) in Anchorage. This joint application would include a large portion of land within the Alaska International Airport System (AIAS), as well as the Port of Anchorage facilities.

I recently delayed our joint application in order to have the time to assess concerns raised by the Attorney General's office on whether a joint application was possible under the Alaska statute which permits FTZ applications. After examining this issue more closely we believe that these concerns can be addressed if the State of Alaska administers the portion of the FTZ which will be designated within the AIAS. I will submit legislation during the 1988 legislative session to clarify the Alaska statute on FTZs.

I understand that if, during the FTZ application period, FTZ proposals are developed by other entities within the state, they may be accommodated under this application as amendments to our original application. I also understand that Robert [redacted] from the Department of Transportation and Public Facilities and Tyler Jones of the Port of Anchorage have recently reached a written agreement on a slightly expanded list of provisions for a joint FTZ application.

JUL 30 1987



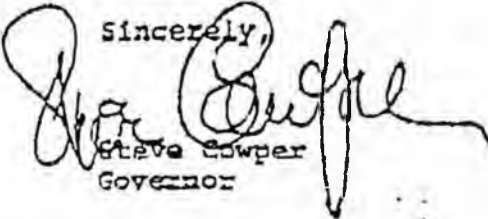
Mayor Knowles

-2-

July 24, 1987

I would like to express my support and enthusiasm for our joint efforts to establish a Foreign Trade Zone in Anchorage. This is an important step in positioning Alaska to better take advantage of its Pacific Rim trade opportunities. I look forward to personally working with you on this joint effort. Please let me know if there is anything more I can do to move this application forward.

Sincerely,



Steve Cowper
GOVERNOR

cc: Commissioner Anthony Smith
Department of Commerce and
Economic Development

Commissioner Mark Hickey
Department of Transportation
and Public Facilities

Robert Poe, Deputy Commissioner
Division of Budget and Finance

Doyle Ruff, Executive Director
International Airport System

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 2
JUNEAU, ALASKA 99811-2500
PHONE: (907) 465-3000

July 1, 1987

RECEIVED

JUL 07 1987

AIAS.

Mr. Tyler Jones
Port Director
Port of Anchorage
2000 Anchorage Port Road
Anchorage, AK 99501

Dear Tyler,

This is to confirm the points we agreed to on June 11, 1987 with respect to the participation of Alaska International Airport System (AIAS) in the Municipality of Anchorage's (MOA) application for a Foreign Trade Zone (FTZ). The following are conditions to joint application:

- The State of Alaska or its designee will be responsible for the management of AIAS properties included under the Municipality's FTZ application. ✓
- The State of Alaska will have equal representation to the Municipality of Anchorage on any board formed to oversee FTZ activities (FTZ Board). ✓
- Our joint FTZ application must allow for inclusion of FTZ proposals from Fairbanks and the Alaska Railroad as amendments to the original FTZ application. In addition, each major entity included in the FTZ application as an amendment will also receive representation on the FTZ Board.
- The State of Alaska will retain veto power over any decisions made by the FTZ Board which effects the proposed AIAS properties.
- The Department of Transportation and Public Facilities will pursue legislation during the 1988 legislative session to clarify the present Alaska Statute which allows for FTZ applications within the State of Alaska.

hat specific in MOA application but does not seem to be stated. This letter is an exhibit in the application

Tyler, we are very enthusiastic about the future opportunities which can become available to Alaska through this joint FTZ application with the Municipality, and we look forward to a close working relationship with you in the future. I have asked Gina Lindsey and Tom Middendorf to immediately begin to finalize our portion of the FTZ application.

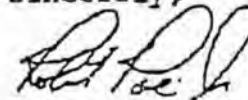
Mr. Jones

-2-

July 1, 1987

Governor Cowper will also be contacting Mayor Knowles next week to express his support for the joint application and the FTZ effort. I will be contacting you in the next few days to discuss the next steps we should be taking in this effort.

Sincerely,



Robert G. Poe, Jr.
Deputy Commissioner
Budget and Finance

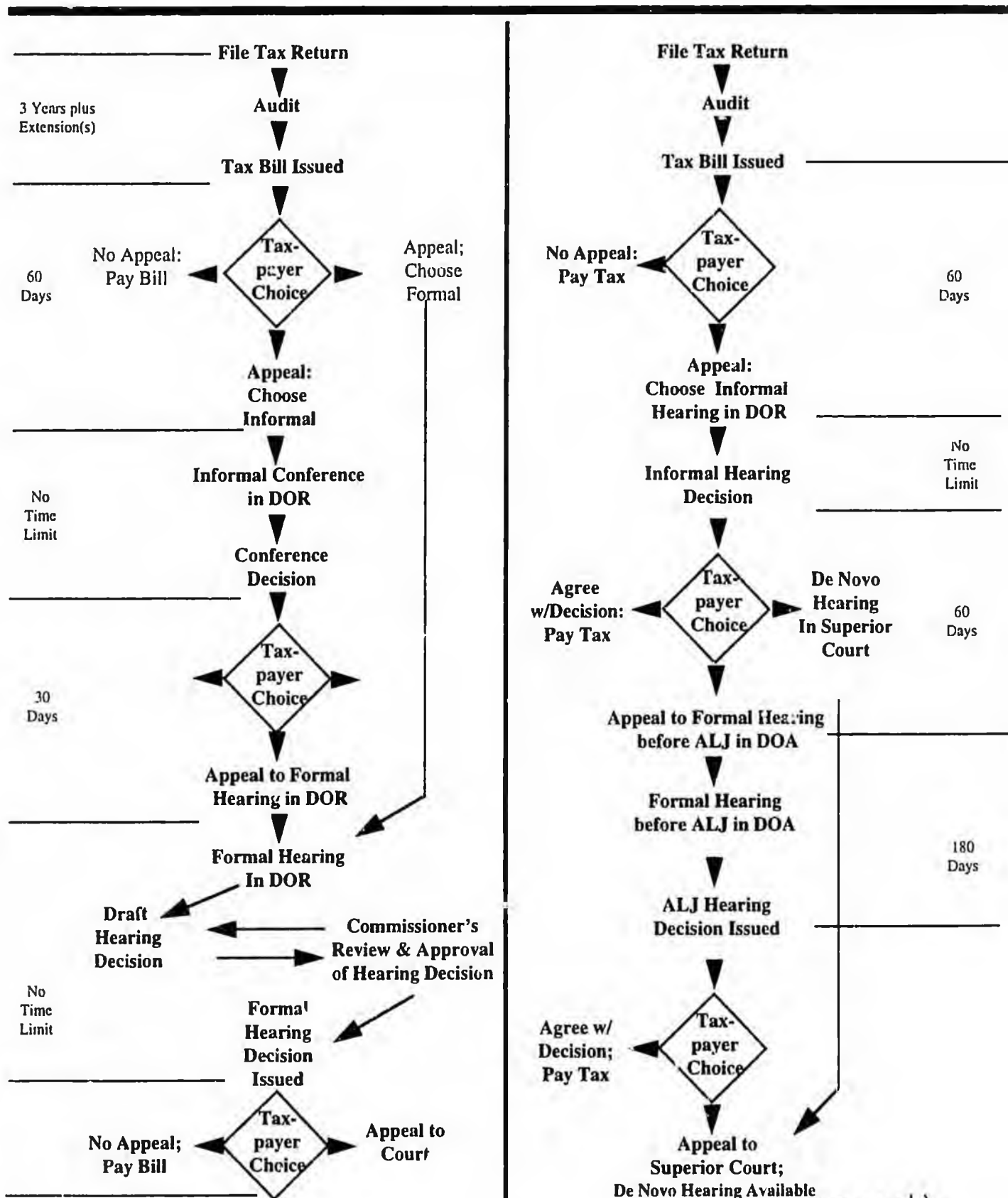
cc: The Honorable Steve Cowper, Governor
Pete Jeans, Chief of Staff, Office of the Governor
Mark S. Hickey, Commissioner, DOT&PF
Patty Kastelic, Executive Assistant, Office of the Governor
Doyle Ruff, Executive Director AIAS
Riley Snell, Regional Director, Central Region
Ray Price, Special Staff Assistant, Office of the Governor
Tony Smith, Commissioner, Department of Commerce
and Economic Development

Comparison of

Alaska's Present Tax Audit & Appeals Process

&

JUD CS HB341 (Version "U")



HB341
3/14/04
ATTACHMENT ①

**HB 341: THE AOGA TAX COMMITTEE'S
COMMENTS ABOUT TAX APPEAL REFORM
USING ADMINISTRATIVE LAW JUDGES
WITHIN THE EXECUTIVE BRANCH**

Considerations Underlying the AOGA Tax Committee's Comments.

Three key considerations bear on the drafting of a bill to reform the present system of tax appeals — 1) the independence of the tribunal hearing tax appeals from influence by the Department of Revenue, 2) the scope and standard of review to be applied by that tribunal in considering appeals from the Department's decision, and 3) efficiency in the tax appeal process without impairing Due Process.

Independence. HB 341 and CSHB 341(Res) deal with the issue of independence by having tax appeals considered *de novo* in court, either in a special tax court as proposed in the originally introduced version of HB 341, or in the Superior Court as proposed in the House Resources CS. The independence of the judge under either version is manifest. Although the governor would appoint the judge initially, there is minimal opportunity for the Executive Branch to influence the judge by virtue of this power to name him/her to the bench — judicial candidates nominate themselves for consideration, they are subject to a period of public comment and to an evaluation of their qualifications by the members of Alaska Bar Association, a slate of finalists is chosen by the Alaska Judicial Council, and the governor chooses the judge from those finalists. Once on the court, a judge is not beholden to the Executive Branch to keep his/her job. Instead, judges are accountable directly to the people through periodic retention elections, or to the legislature in situations where a judge is charged with an impeachable offense.

To afford similar protection of the independence of an administrative law judge ("ALJ") in the Executive Branch as proposed in HB 427, there would need to be safeguards both in the process by which an ALJ is appointed to the position and in the process by which the ALJ keeps that position. Accordingly, with respect to safeguarding the first area, the Tax Committee believes that the chief ALJ and all other ALJs in the Office of Tax Appeals should be subject to confirmation by the legislature, both when they are first appointed and each time they are reappointed. This will allow the legislature, as an independent body, to review the appointments and make sure they are qualified and worthy of serving.

With respect to safeguarding the ALJs from influence in order to keep their positions, all ALJs in the Office of Tax Appeals (including the chief ALJ) must be appointed for a fixed term of years and must not be subject to discipline or removal without good cause. This will minimize the opportunity for an Executive Branch that is unhappy with a decision by an ALJ to retaliate against him/her through demotion, punishment or termination. To this end, it is also essential to provide a legislative definition of what would constitute "cause" for punishment or removal from office.

Scope and Standard of Review. *De novo* consideration of the tax appeal is essential. There are three different but crucial areas where this consideration must be defined — issues of fact, issues of law, and issues where discretion is legally vested in the Department of Revenue.

On issues of fact, *de novo* consideration means they are decided as if there had been no fact-finding by the Department of Revenue in its consideration of the matter. However, the Tax Committee is not proposing to change the parties' present burdens of proof, which is by a preponderance of the evidence unless a different standard is required by law.

On issues of law, the ALJ must be free to substitute his/her own judgment for that of the Department about what the law means, and indeed this standard is already recognized by the Administration in HB 427.

On matters in which discretion is legally vested in the Department of Revenue, the Tax Committee believes that those judgments should be respected so long as they have a reasonable basis.

Efficiency. The major source of inefficiency under the existing tax-appeal procedures is in "discovery" — that is, the process by which each side tries to find out what the other side's evidence is before the matter goes to trial. Discovery reduces the chance of being surprised at trial and allows the parties to form a realistic assessment of their chances of winning before they get into the courtroom, which often helps cases settle before going to trial. Unfortunately, discovery can also be readily abused — for example, by asking for evidentiary materials already in the possession of the party asking for it, by so-called "fishing expeditions" for huge amounts of evidence in the uncertain hope of finding something somewhere in it that might be useful for the trial, or by asking the other side to look for something in the possession of a third party, instead of looking for it themselves.

The Tax Committee believes it is important to give the ALJs sufficient authority to prevent abuses in discovery and to punish them if they occur, while ensuring that discovery is not unduly limited so that one side or the other cannot obtain evidence it may need to present its case.

The AOGA Tax Committee's Specific Comments.

The AOGA Tax Committee has examined the proposal in HB 427 for a system using ALJs. If the Judiciary Committee decides that the ALJ approach is preferable to one that provides a forum for tax appeals in the Judicial Branch, then AOGA believes the system set out in HB 427 could be used, but only with safeguards as outlined above. Specifically, the Tax Committee believes the following modifications would need to be made to HB 427 if it were used as the basis of legislation to reform the tax appeal process:

Modification #1: Delete Bill Section 1 (findings and purposes) appearing on pp. 1-2 of HB 427, and renumber the remaining Bill Sections accordingly.

Comment: The findings and purposes are not necessary to the Bill, and add nothing to the arguments that one person or another might make about how the Bill should be interpreted or applied.

Modification #2: Delete proposed AS 44.21.610(a) and (b) as they appear on p. 3 of HB 427, replace them with new subsections (a) – (c) to read as follows, and redesignate the remaining subsections in AS 44.21.610 accordingly:

"Sec. 44.21.610. ADMINISTRATION. (a) The governor shall appoint a chief administrative law judge in the office of tax appeals. The governor may appoint additional administrative law judges in the office of tax appeals who are recommended by the chief administrative law judge. The initial term of the chief administrative law judge and any additional administrative law judge in the office of tax appeals is two years. A person serving as the chief administrative law judge or as an additional administrative law judge may be reappointed to subsequent terms of four years each. The initial appointment and any reappointment of the chief administrative law judge and any additional administrative law judge in the office of tax appeals shall be subject to confirmation by the legislature.

"(b) The chief administrative law judge in the office of tax appeals may be disciplined or removed from office by the commissioner only for good cause during the term of appointment. Any additional administrative law judge in the office of tax appeals may be disciplined or removed from office by the chief administrative law judge only for good cause during the term of appointment. For purposes of this subsection, "cause" includes but is not limited to violation of the Alaska Code of Judicial Conduct adopted by the Alaska Supreme Court; conviction of any crime of moral turpitude; unjustified failure to handle the caseload assigned or similar non-feasance of office; failure to meet the requirements of AS 44.21.-615(a) for holding office; and violation of the statutes or regulations regarding the confidentiality of taxpayer information.

"(c) The chief administrative law judge shall exercise general supervision of the office of tax appeals and may select and hire staff for the office."

Comment: This proposal differs from HB 427 in the following respects: 1) the terms for all the ALJs, not just the chief, are two years following the initial appointment and four years for each reappointment thereafter; 2) the chief ALJ cannot be disciplined without "cause," besides not being fired without "cause;" 3) the same protections against punishment without "cause" extend to the other ALJs besides the chief; 4) the meaning of "cause" is illustrated by examples; 5) all the ALJs are subject to confirmation by the legislature; 6) the governor, not the Commissioner of Administration, appoints the chief ALJ; and 7) the governor appoints other ALJs only if they are recommended by the chief ALJ.

Modification #3 Amend proposed AS 44.21.625(1) as it appears on p. 4 of HB 427, to read as follows (additions to HB 427 are in bold and underlined; deletions are in square brackets and fully capitalized):

"(1) resolve a question of fact by a preponderance of the evidence, or by a different standard of proof that has been set by law for a particular question; [THE FINDINGS OF FACT OF THE INFORMAL CONFERENCE DECISION ARE PRESUMED CORRECT UNLESS THE TAXPAYER REBUTS THE FINDINGS;]"

Comment: The language to be deleted is unnecessary in light of the existing presumption of correctness under AS 43.05.245 regarding the facts asserted by the auditors in a tax assessment they issue after audit.

Modification #4: Amend proposed AS 44.21.625(3) as it appears on p. 4 of HB 427, to read as follows (additions to HB 427 are in bold and underlined; deletions are in square brackets and fully capitalized):

“(3) defer to the Department of Revenue [ON A QUESTION] as to a matter for which [COMMITTED TO THE] discretion is legally vested in [OF] the Department of Revenue, unless not supported by a reasonable basis.

Comment: These technical changes make the paragraph read more easily, but do not change its substantive content.

Modification #5: Amend proposed AS 44.21.635(a) as it appears on pp. 4-5 of HB 427, to read as follows (additions to HB 427 are in bold and underlined; deletions are in square brackets and fully capitalized):

“(a) In an appeal under AS 44.21.605, discovery may take place only under a plan for discovery approved by the administrative law judge. The administrative law judge shall [MAY] approve a plan for discovery to the extent consistent with the efficient, just, and speedy conduct of the appeal. The plan may limit or set conditions on discovery. [IF] Discovery [IS PERMITTED, IT] shall be limited to information relevant to the determination of the correct tax or penalty or which is reasonably calculated to lead to admissible information. The administrative law judge may grant exceptions to the requirements of this subsection in the interest of justice.”

Comment: The version in HB 427 only allows discovery for "relevant" information, but sometimes a party cannot tell whether the information will be relevant or not until it has been discovered. To cover such situations, discovery "which is reasonably calculated to lead to admissible information" should be allowed. There is still ample authority for the ALJ to cut off "fishing expeditions" before they get out of hand.

Modification #6: Amend proposed AS 44.21.645(a) as it appears on p. 5 of HB 427, to read as follows (additions to HB 427 are in bold and underlined; deletions are in square brackets and fully capitalized):

“(a) At or before the formal hearing, a party may present argument and evidence relevant to the amount of the tax or penalty [DUE TO BE PAID TO THE STATE]. The administrative law judge shall [MAY] administer oaths and permit inquiry necessary to determine the proper amount of the tax or penalty [DUE TO BE PAID TO THE STATE].

Comment: The version in HB 427 implies that there will always be additional tax owed to the State. However, some tax appeals are over refunds that the Department of Revenue has denied, so AOGA recommends deleting the language that contemplates only the tax-owed situations. Also, all evidence at the formal hearing should be taken under oath.

Modification #7: Amend proposed AS 44.21.645(d) as it appears on p. 6 of HB 427, to read as follows (additions to HB 427 are in bold and underlined; deletions are in square brackets and fully capitalized):

“(d) The formal hearing before the administrative law judge is not required to be conducted with strict adherence to the Alaska Rules of Evidence. Relevant evidence must be admitted if it is probative of a material fact in controversy. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence is admissible if it is the kind of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Oral evidence may be taken only on oath or affirmation. The rules of privilege are effective to the same extent that they are recognized in a civil action in the courts of this state, except that documents and things that are public under AS 09.25.110 — 09.25.220 shall be admissible.”

Comment: The additional language makes clear that materials which are public under Alaska's "freedom of information act" remain public and admissible. As drafted in HB 427, proposed AS 44.21.645(d) could be interpreted in conjunction with other provisions in the Bill so as to prevent the admission of certain materials even though they are public under AS 09.25.110 — 09.25.220.

Modification #8: Delete proposed AS 44.21.645(e) as it appears on p. 6 of HB 427, and replace it with a new subsection (e) to read:

“(e) Confidential information under AS 43 of a taxpayer other than the taxpayer whose tax is the subject of the appeal may not be admitted unless the confidentiality has been waived by that other taxpayer.”

Comment: As drafted in HB 427, proposed AS 44.21.645(e) would categorically bar evidence of regulations that were not adopted or the legislative history of legislation that did not pass. However, situations have actually arisen in the past where both kinds of evidence were relevant to material issues in a tax appeal, so it would be wrong to create an absolute bar against this evidence in the future. Also, proposed AS 44.21.645(e) would bar evidence about other taxpayers, even though it could be highly relevant to show how other taxpayers have been treated by the Department of Revenue if, for example, a taxpayer is arguing that it has been singled out for discriminatory treatment on an issue. The biggest obstacle to obtaining other taxpayers' information is its confidentiality; however, if the other taxpayers are willing to waive confidentiality so that their information can be introduced, there is no reason to bar it absolutely from being introduced.

Modification #9: Amend proposed AS 44.21.650 as it appears on pp. 6-7 of HB 427, to read as follows (additions to HB 427 are in bold and underlined; deletions are in square brackets and fully capitalized):

“Sec. 44.21.650. ENFORCEMENT. (a) The administrative law judge and each party is responsible for the efficient, just, and speedy conduct of the formal hearing. The administrative law judge may impose sanctions on the parties for failure to comply with a subpoena, an order respecting discovery, and any other matter regarding conduct of the appeal. In imposing sanctions the administrative law judge shall follow the practices of the Alaska courts in imposing sanctions for similar offenses in civil proceedings.”

“(b) The administrative law judge may

“(1) remand the matter for consideration of **material** new information or **material** information withheld by a party;

“(2) prohibit a party from introducing [THE NEW INFORMATION OR] information previously **and intentionally** withheld **without good cause**, and any other evidence dependent upon the information;

“(3) enter an order **upon a showing of good cause**

“(A) barring a designated claim or defense;

(B) striking part or all of a pleading of a party; or

(C) dismissing part or all of the appeal; or

“(4) grant such other relief as the administrative law judge considers appropriate.

“(c) In addition to the remedies under (a) and (b) of this section, a party may seek enforcement of a subpoena or other order of an administrative law judge by the superior court under AS 44.62.590.”

Comment: The AOGA Tax Committee believes it is useful to provide guidance to the ALJs about imposing sanctions for violating the ALJs' orders, and for this reason, proposes in subsection (a) that they follow the practice of the Alaska courts for similar offenses in civil actions. AOGA also believes that remands in paragraph (b)(1) should not be ordered unless "material" information was not previously considered, so that remands aren't made over mere trifles. In that regard, a failure to furnish information should not be subject to punishment under paragraph (b)(2) unless there is no "good cause" for failing to produce it when requested. Finally, no order imposing a penalty under paragraph (b)(3) should be made unless it is supported by a showing of good cause.

Modification #10: Amend proposed AS 44.21.655(c) as it appears on pp. 7-8 of HB 427, to read as follows (additions to HB 427 are in bold and underlined; deletions are in square brackets and fully capitalized):

“(c) The administrative law judge may issue an order for reconsideration of all or part of the decision upon request of a party[, **OR UPON THE ADMINISTRATIVE LAW JUDGE'S OWN INITIATIVE**]. Reconsideration is based on the record, unless the administrative law judge allows additional evidence and argument. A hearing on reconsideration at which additional evidence or argument is offered or received is subject to the procedures applicable to a hearing under AS 44.21.645.”

Comment: The AOGA Tax Committee does not understand why an ALJ would want to order a reconsideration of his/her decision unless one of the parties has asked for it. Hence, the provision for the ALJ to do it on his/her own motion and in the absence of a motion by one of the parties, should be deleted.

Modification #11: Amend proposed AS 44.21.660(a) as it appears on p. 8 of HB 427, to read as follows (additions to HB 427 are in bold and underlined; deletions are in square brackets and fully capitalized):

“(a) Records, proceedings, and decisions under AS 44.21.600 — 44.21.675 **become** [ARE] public records and open to the public **when the final administrative decision is issued and becomes final**. Upon a showing of good cause, an administrative law judge **shall** [MAY] issue a protective order requiring that specified parts of the records, proceeding, or decision shall be kept confidential in a particular appeal. If a protective order is issued, the final administrative decision shall be made public after redacting by deletion or substitution of information as required by the protective order.”

Comment: As drafted, HB 427 does not specify when in the formal hearing process the record will become public. The AOGA Tax Committee believes it should be at the end of the formal hearing process, when the ALJ's decision becomes final and any further appeal would be to the Superior Court. This is the point when tax information becomes public under the present tax-appeal procedures. Moreover, the fact that information will become public after the formal hearing may be an inducement in some situations for the parties to settle a tax dispute, rather than litigate it to a final resolution.

Modification #12: Delete proposed AS 44.21.675(3) defining “de novo” on p. 10 of HB 427, and renumber the remaining definitions accordingly.

Comment: The term “de novo” is a well-understood and well-defined legal term that needs no definition in statute.

Modification #13: Delete proposed Bill Section 5 on p. 11 of HB 427 and replace it with a new section to read as follows:

“* **Sec. 5.** AS 39.25.110 is amended by adding a paragraph to read:

“(31) the chief administrative law judge and any other administrative law judges appointed to the office of tax appeals of the Department of Administration under AS 44.21.”

Comment: The AOGA Tax Committee believes the ALJs should be in the “exempt” service, not “partially exempt,” both in order to allow their salaries to be set at levels that are competitive for persons with the requisite expertise and experience in the private sector, and in order to be consistent with the proposal that all ALJs be subject to confirmation by the legislature.

Modification #14: Amend AS 43.05.240(a) as proposed to be repealed and reenacted on p. 14 of HB 427, to read as follows (additions to HB 427 are in bold and underlined; deletions are in square brackets and fully capitalized):

“(a) A taxpayer aggrieved by the action of the department in fixing the amount of a tax or penalty may apply to the department within 60 days after the date of mailing of the notice required to be given to the taxpayer by the department, giving notice of the grievance[,] and requesting an informal conference. The taxpayer shall be given access to the taxpayer’s file in the department in the matter for preparation for the informal conference. At the informal conference, the taxpayer may

present arguments and evidence relevant to the amount of tax or penalty [DUE THE STATE]. If the department determines that a correction is warranted, the department shall make the correction. A taxpayer who believes that the conference officer is unduly delaying a hearing process may notify the commissioner. The commissioner may, within 30 days after receiving such a request, issue an order prescribing a schedule for the conference officer to complete the informal conference or setting a meeting at which such a schedule will be discussed and set. If the commissioner fails to issue an order within 30 days after receiving notice of a taxpayer's belief of undue delay, the department's action in fixing the amount of tax or penalty shall be deemed to have been summarily affirmed by the conference officer the same as if an informal conference decision to that effect were issued on the last day of that 30-day period."

Comment: The AOGA Tax Committee is concerned that informal conferences may sometimes drag on excessively. If a taxpayer gets the sense that its appeal is going too slowly, this change would allow that taxpayer to receive a fixed schedule for moving forward or, in the absence of such a schedule, a summary affirmation of the outstanding audit issues so they can move forward to a formal hearing before an ALJ.

Modification #15: Amend subsection (a) of Bill Section 12 on p. 15 of HB 427, to read as follows (additions to HB 427 are in bold and underlined; deletions are in square brackets and fully capitalized):

"* Sec. 12. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided by this Act apply to all revenue tax appeals in which a request for formal hearing is filed with the Department of Revenue on or after the effective date of this Act. The remedies and procedures existing before the effective date of this Act apply to all revenue tax appeals in which a request for formal hearing was filed with the Department of Revenue before the effective date of this Act, unless the taxpayer, within 45 days of the effective date of this Act, elects [ALL OF THE PARTIES TO AN APPEAL, BY WRITTEN STIPULATION APPROVED BY THE CHIEF ADMINISTRATIVE LAW JUDGE, AGREE] to apply the remedies and procedures established by this Act."

Comment: Taxpayers should not be deprived of the opportunity to apply the reformed, more expeditious procedures provided for under the Bill merely because they happened to file a tax appeal before the Bill is enacted. Therefore, they should be afforded a reasonable time to decide, once the Bill becomes law, whether to stay with the old procedures or switch over to the new ones.

PAUL H. FRANKEL is a partner in Morrison & Foerster's New York City law office. He is a graduate of Dartmouth College, University of Virginia Law School and N.Y.U. Graduate School of Law. He has represented taxpayers in major tax controversies in nearly all of the fifty states. Prior to joining the firm he was Senior Tax Counsel, W.R. Grace & Co. Before joining W.R. Grace & Co. he was a Senior Trial Attorney for the IRS Regional Counsel's Office. He is a member of the ABA, NYSBA, NJBA, Va. State Bar and the Monmouth County (NJ) Bar Association. He has served as National Chairman of TEF's State and Local Steering Committee, Chairman of the COST Lawyer's Coordinating Subcommittee and Chairman of the National Foreign Trade Council's Worldwide Unitary Task Force. He is currently Chairman of the Monmouth Bar Association's Tax Committee; a member of the New York City Tax Appeals Tribunal Advisory Committee, the CCH State Tax Advisory Board, Tax Management Inc.'s State Tax Advisory Board, the faculty of TEF's S&L Tax School and the NYU Institute's S&L Advisory Board; Co-Chairman of the NYU State Tax Forum; and an editorial board member of the Multistate Tax Analyst and the Interstate Tax Report. He has written many pamphlets and articles, including BNA Portfolios 152 and 153 (U.S. Tax Court Procedures) and 193 (Tax Crimes) and "Basic Principles and Significant Issues in State Taxation of "Unitary" Corporate Income", The Tax Executive.

11-27-96
Finance

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 26, 1996

FURTHER REFERRALS:

Date of Committee Action: 3/11/96

The JUDICIARY Committee considered:

HB 341

HOUSE BILL NO. 341

ALASKA TAX COURT

"An Act establishing a tax court to consider and determine certain taxes and penalties due and collateral matters, and amending provisions relating to taxpayer challenges to the assessment, levy, and collection of taxes by the state; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 341 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____

(2) fiscal note(s) Courts, Revenue fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) Revenue (1-26-96)

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Brian D. Porter</i>	Porter	<input checked="" type="checkbox"/>			
<i>John Green</i>	Green	<input checked="" type="checkbox"/>			
<i>John Bunde</i>	Bunde	<input checked="" type="checkbox"/>			
<i>Wesley</i>	Trukey	<input checked="" type="checkbox"/>			
<i>David J. Fink</i>	Wesley	<input checked="" type="checkbox"/>			
<i>David J. Fink</i>	Fink/Star				<input checked="" type="checkbox"/>

CHAIR'S SIGNATURE Brian D. Porter