

HB

341

Reading record 1

TESTIMONY OF
BP EXPLORATION (ALASKA) INC.
TO THE
HOUSE RESOURCES COMMITTEE
REGARDING
HOUSE BILL NO. 341

January 24, 1996

Good morning, Mr. Chairman and Members of the Committee. My name is Tom Williams, and I am Alaska Tax Counsel for BP Exploration (Alaska) Inc. Thank you for this opportunity today to testify on behalf of BP regarding House Bill No. 341 and, in particular, on work draft "K" of a Committee Substitute for the Bill, which is dated January 17, 1996.

Alaska's present system of tax appeals needs reform. Present law makes the Commissioner of Revenue responsible for acting as prosecutor, judge and jury in tax appeals. In other states these functions may also be combined within one agency. But in those states the potential problems from combining all three functions is avoided in practice by delegating and dividing them up among several different people or divisions within the agency. In Alaska, with fewer than a dozen taxpayers paying some 80% of the State's total unrestricted General Fund revenues, the stakes in the tax appeals have often been so material to the State that the delegations of authority here have failed to maintain a necessary division of these three functions.

The dangerous overlapping, in practice, of prosecutorial, judicial and juror roles within the Department has been worsened by the considerable deference given by the courts to formal hearing decisions issued by the Department. On issues where the facts are in dispute, the factual findings by the hearing officer are upheld unless they are "not supported by ... substantial evidence in light of the whole record" in the appeal. This does not mean that *most* of the evidence has to support the hearing officer's findings, only that there be *some* credible evidence — some evidence *of substance* — which supports them. This puts an all but impossible burden of proof on the taxpayer, despite the fact that the hearing officer's findings cannot become final without the signature of the person who is statutorily responsible for taking "all steps necessary and proper to enforce full and complete compliance with the tax ... laws of the state[.]" And the fact that hearing officers serve at the pleasure of the Commissioner further undercuts their independence as fact-finders. Moreover, even on questions of legal interpretation, which the judiciary normally views as its

own particular province, the courts defer to the Department's interpretation if they decide it involves the special expertise of the agency, and few other areas of the law are so technical and subject to agency expertise as tax.

Reform of the present system can proceed along two avenues. One is to increase the actual independence of the people hearing tax appeals from influence by the Commissioner of Revenue. The other is to make the standard for reviewing the Department's decisions in court less deferential to the agency's positions.

So There are now no less than three different proposals before the Legislature to reform the present tax appeals system, each of which goes varying distances down the two avenues for reform. The first is HB 341 originally introduced. In that version, the Bill would create a new tax court in the Judicial Branch to hear tax cases. This clearly goes as far as possible toward making the tax tribunal independent of the Department's influence, and minimizes the need and opportunity for judicial deference to agency interpretations of the law.

The second proposal is the draft CS that is before the Committee today. The key feature of the CS is the opportunity for taxpayers to opt for a trial *de novo* in Superior Court after an informal conference with the Department, instead of the present process of having a formal hearing before a departmental hearing officer with a subsequent appeal to the courts to review the hearing decision. Trial *de novo* is a legal term that means having a trial of the facts as if there had been no earlier fact-finding by the agency. The CS would ensure that the "jury" role will be played by an impartial judge, instead of a departmental employee. But trial *de novo* would still allow the courts to defer to the agency's expertise in interpreting the law whenever they felt the matter was one involving agency expertise, so in this sense the draft CS does not go as far as the original Bill in providing for independence in the adjudication of tax cases.

The third proposal on the table is the legislation recently introduced by the Governor, HB 427 and SB 224. That legislation would create a panel of administrative law judges within the Department of Administration to hold the formal hearings in tax cases, and those hearings would be on a *de novo* basis. Being in a separate department, these ALJs would be considerably more independent of the Commissioner of Revenue than the hearing officers are under the present system, although they would appear to be less absolutely independent of Executive Branch influences than actual judges in the Judicial Branch would be. Offsetting this, however, is the fact that the ALJs would have tax expertise to match that of the Department of Revenue itself, so there should be less occasion to defer to the Department's interpretations of the law on the grounds of agency expertise than there would be with trial *de novo* in Superior Court.

Let me make BP's position as clear as possible. All three proposals as currently drafted have some technical issues that should be addressed before being enacted. But assuming those technical matters can be taken care of, any one of the three proposals would significantly reform and improve the tax appeals system from what Alaska has now. This means that the most important

thing, from BP's perspective, is to pass one of these reforms. Which one it is is less important than the fact that it pass. The worst possible outcome this Session would be to fail to pass anything, or to pass one and have it vetoed.

We in BP are confident in your ability to find a reasonable accommodation that will provide true reform in tax appeal procedures. We look forward to helping you in that effort in whatever way we can.

Thank you again for this opportunity to testify.

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**Testimony of Daniel M. Seckers
Before the House Resources Committee**

On CS for HB 341 and the Tax Dispute Resolution Process in Alaska

January 24, 1996

Mr. Chairman, members of the Committee, my name is Dan Seckers. I am Exxon's tax counsel here in Alaska. I want to thank you and the Committee for allowing me the opportunity to testify before you today.

At the onset, I would like to say that Exxon appreciates the willingness of this Committee to address at today's hearing the important issue of how the current tax dispute resolution process in Alaska can be improved. We believe that with certain changes a fairer and more efficient tax appeal process can be achieved that would benefit all parties to the process. We also believe that any substantive reform to the current tax dispute resolution process would be a step towards improving the business and investment climate in the state. A fair and impartial tax appeal process would enhance the working relationship between the state and the oil and gas industry and would send a clear signal to potential investors that Alaska wants to be viewed as a state willing to resolve tax disputes in a straightforward and impartial way.

Given that there have been two proposals introduced this session which address the tax dispute resolution process in Alaska, I plan to address general principles rather than comment on a specific bill. I would like to share with you some key elements that we will use to evaluate any proposal designed to improve the tax dispute resolution process in the state of Alaska.

First, Exxon believes that an appeal from the Department of Revenue's informal conference decision on a tax dispute must be heard, and the facts and law must be

developed, outside the control of the Department of Revenue. Having the collection of taxes and resolving tax disputes within the same agency can fuel the perception of unfairness. Moving the tax appeal process outside the Department of Revenue would go a long way towards persuading Alaska taxpayers that the tax appeal process contains the essential element of fairness.

Second, the person presiding over the appeal must be independent. Currently, the person assigned to hear an appeal works for the Commissioner and can be dismissed for any reason by the Commissioner. If the person presiding over the appeal believes that his or her decision may impact his or her future job security, then that person's judgment has been compromised because such person is not free to decide the appeal based solely on the weight of the evidence presented and the applicable law. To maintain his or her independence, the person presiding over the appeal should be appointed for a fixed term of years and be subject to termination during that term only for cause.

Third, the person presiding over the appeal must be required to resolve all questions of fact based on the majority of the weight of the evidence presented during the appeal. This preponderance of the evidence standard should be used to resolve all questions of fact unless another standard has been established by law for a particular question.

Fourth, we believe the standards by which questions of law will be resolved should be clearly stated. To be truly impartial, the person presiding over the appeal must be required to resolve all questions of law under the person's own independent interpretation of what the law means after hearing all the evidence submitted by the parties. The only exception to this should be for those areas of law legislatively delegated to the Commissioner by you, the members of the Legislature. With regard to these areas, deference should be given to the position taken by the Department of Revenue but only if the position has a reasonable basis in law. Any areas where judicial deference is to be

given to the Department of Revenue should be codified by you so that both the taxpayer and the Department of Revenue know such areas of deference.

Fifth, the appeal process should allow all parties to the appeal to gather relevant evidence through a fair and reasonable discovery process.

Sixth, the appeal process should allow the introduction of fair and reasonable evidence. The admissibility of any evidence should rest with the discretion of the person presiding over the appeal. No evidence should be statutorily determined to be irrelevant or inadmissible for all purposes.

Finally, it is possible to argue that it may be helpful if the person presiding over the appeal is experienced in the field of tax law. While such experience may not be essential to providing taxpayers with an impartial tax appeal process in Alaska, it could be helpful towards the efficient and speedy conduct of the appeal. Such experience, however, is not of sufficient importance to override impartiality in any appeals process.

Mr. Chairman and members of the Committee, Exxon stands ready to work with you, the Legislature, the Governor and his Administration in achieving meaningful reform to the current appeal process through incorporation of the key elements I have discussed here today. Working together we can further our objective of obtaining a fair, impartial and efficient tax dispute resolution process, one that sends a positive signal about the business climate in Alaska.

Mr. Chairman, thank you again for allowing me this time to address you and your Committee.

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**ALASKA HOUSE RESOURCES COMMITTEE
CSHB 341**

January 24, 1996

Good morning Chairman Green and members of the House Resources Committee. My name is Norma Calvert and I am here today representing Marathon Oil Company. Chairman Green, before I share with you Marathon's comments on the committee substitute to House Bill 341 (the Tax Court Bill), I would like to thank you and your staff, along with the committee members, for your dedicated efforts to improve the tax appeals process in Alaska. We believe the system can be modified for the benefit of the taxpayers and the State of Alaska.

As stated in Marathon's testimony given at the October hearing, we strongly support the modification of the appeals process. Although we believe a tax court as proposed in H.B. 341, as originally introduced, would provide the most impartial process of resolving tax disputes, we also understand the concerns raised at the October hearing by the Supreme Court system with respect to establishing a specialty court in Alaska due to the small number of taxpayers and cases to be resolved.

Our testimony in October gave a detailed synopsis of our concerns of the current system. To review, our number one concern is the empowerment within the Department of Revenue to audit, issue assessments and govern the hearings for dispute resolution. If the taxpayer does feel it necessary to appeal the DOR's decision, a de novo review is not given at the Superior Court level and great deference is given to the DOR's decision, making it nearly impossible to obtain an impartial review of the case.

Recognizing the complications in forming a tax court in Alaska, we support the Committee's substitute bill to allow for a de novo hearing outside the Department of Revenue at the Superior Court level. In continuing your efforts to improve the tax appeals process, we would like for you to consider the essential characteristics of an unbiased system: the appeals process should be independent of the audit and assessment process, outside the Department of Revenue; taxpayers should be

CSHB 341: page 2
Marathon Oil Company

allowed a de novo hearing before an impartial tribunal; and the burden of proof on questions of fact should be a preponderance of evidence standard. We believe a de novo review at the Superior Court level provides resolution to the concerns we have expressed and is a great step in moving toward an impartial tax appeals process.

There are a number of ways the current system could be improved and we support the committee substitute as an alternative to the Tax Court bill as originally introduced. We encourage this committee, the Alaska legislature and the administration to work toward a resolution that truly provides an impartial appeal process in Alaska. Such changes will lead to expedited resolution of tax issues, with benefit to all parties involved. Most importantly, it sends a message of tax fairness that is critical in encouraging future investments in Alaska.

Thank you for this opportunity to share our comments with you this morning.

Read into Record

**Testimony of ARCO Alaska, Inc. before the
House Resources Committee
January 24, 1996**

ARCO Alaska, Inc. appreciates the opportunity to present its views regarding legislation to change the procedures for hearing tax disputes and looking for ways to improve that process. This has been an area of great concern to ARCO for more than twenty years and we applaud the efforts of Representative Green and the efforts of the Knowles Administration to deal with this complex issue in a thoughtful and fair-minded manner.

ARCO believes that the present system for tax hearings is broken. It is so broken that it is rarely used because taxpayers go to great lengths to avoid it. ARCO has used the existing formal hearing process only once in the past ten years. There is a widely held perception among taxpayers that the existing system does not provide taxpayers with the opportunity for a fair and independent hearing.

In the past few weeks, we have looked at three different proposals for changing the tax hearing process: House Bill No. 341 introduced by Representative Green would establish a separate Tax Court; a newly adopted CS for House Bill No. 341 also presented by Representative Green would provide for tax hearings before the Superior Court; and House Bill No. 427 introduced by the Governor would establish an Administrative Law Court outside of the Department of Revenue.

While these bills each take different approaches, each of these proposals would be much fairer than the present system and we urge the legislature to give each of these bills a full hearing.

In judging these three proposals and any other proposals which might emerge, ARCO urges the legislature to critically examine the proposals against nine criteria which ARCO believes should be present in any tax hearing process:

- The hearing should be outside the control of the Department of Revenue.
- The hearing officer or judge should serve for a term of years rather than be subject to termination at will.
- The hearing officer or judge should be specifically required to have experience in the area of tax law.
- The hearing should be a de novo proceeding where the hearing officer or judge has original jurisdiction and hears evidence without regard to the proceedings below.
- The burden of proof on questions of fact should be preponderance of the evidence.
- The standard of review of questions of law should be substitution of judgment.
- Where authority has been legally vested in the Commissioner of Revenue to interpret a revenue provision, a reasonable basis standard should apply.
- A taxpayer should have the opportunity to conduct legitimate discovery but neither the taxpayer nor the Department of Revenue should be permitted to abuse the discovery process.
- The hearing process structure should, to the extent possible, take into account the uniqueness of Alaska's situation of very few taxpayers and tax appeals. The

hearing system should be tailored to Alaska's needs and be as efficient as possible.

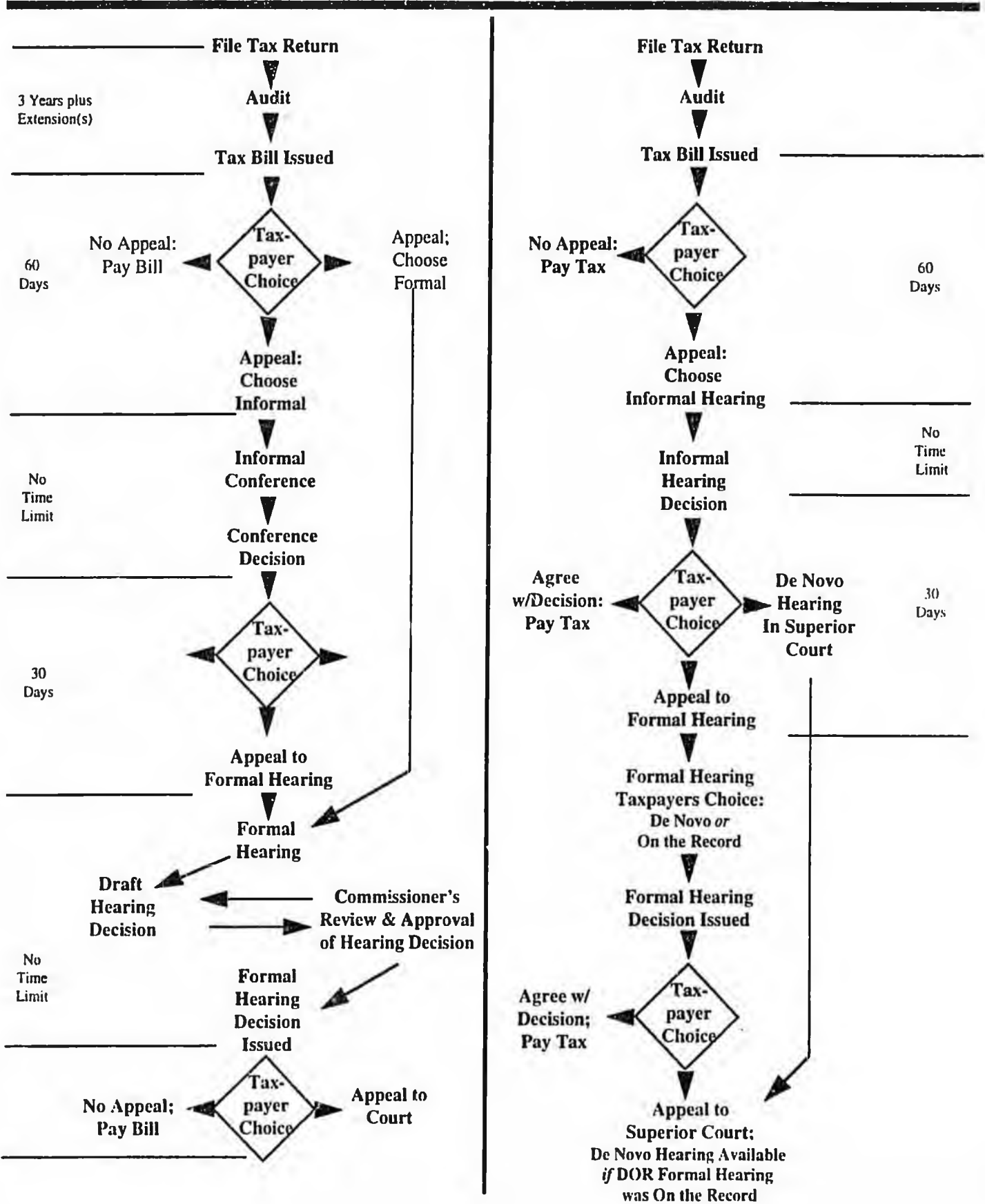
ARCO urges this committee to apply these criteria to all three proposals as well as to the existing law. We believe a proposal might emerge which meets all of these criteria and is acceptable to the stakeholders — the legislature, the administration, the court system and the Alaska taxpayers.

In closing, ARCO would like to stress two points. The first is that from our perspective this is a very important issue which has long term implications for how taxpayers will view the business climate in the state and the fairness of the playing field. The second is that this is a major opportunity where all of the stakeholders are making a bona fide attempt to establish a fair tax hearing system and every bill that has been proposed is a significant improvement over the existing system.

Once again, we applaud your efforts and the efforts of the administration. We stand ready to do whatever we can to facilitate the enactment of fair tax hearing legislation.

House Resources Committee

Comparison of Alaska's Present Tax Audit & Appeals Process RES CS HB341 (Version "K")

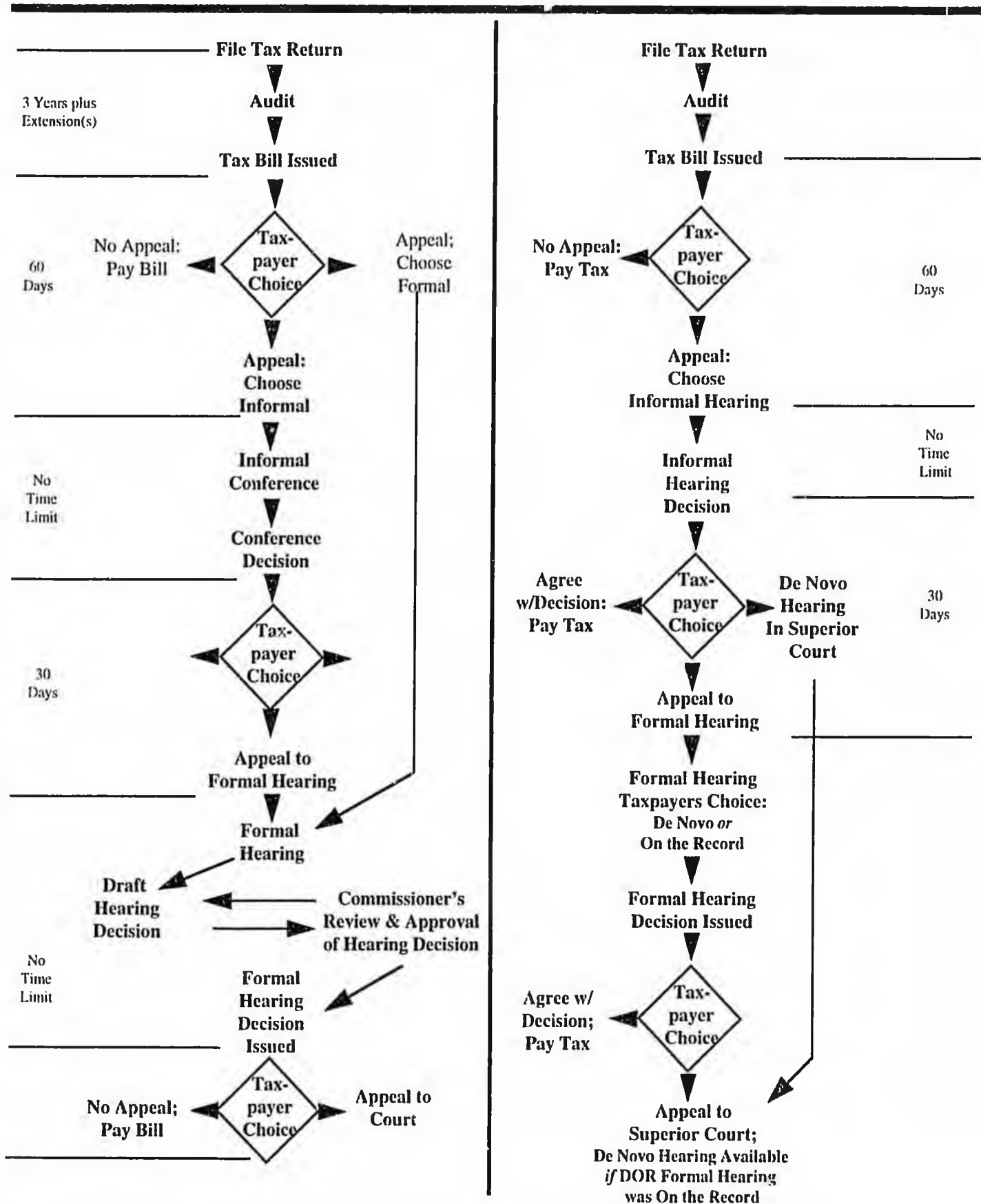


House Resources Committee

Alaska's Present Tax Audit & Appeals Process

Comparison of

RES CS HB341 (Version "K")



FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 341

Revision Date: _____
Title: An Act establishing a tax court...
Sponsor: Rep. Green
Requestor: House Resources

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	267.0	267.0	267.0	267.0	267.0	267.0
TRAVEL						
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	4.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT	17.8					
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	293.8	276.0	276.0	276.0	276.0	276.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	293.8	276.0	276.0	276.0	276.0	276.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	293.8	276.0	276.0	276.0	276.0	276.0


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


POSITIONS

FULL-TIME	4.0	4.0	4.0	4.0	4.0	4.0
PART-TIME						
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: 01/17/96
Date: 01/17/96

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

Alaska Court System

Fiscal Analysis

HB 341

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Superior Court Judge, Anchorage, PFT, 12 months	\$96,600	\$52,365	\$148,965
Secretary, 12A, Anchorage, PFT, 12 months	27,108	10,363	37,471
In Court Clerk, 12A, Anchorage, PFT, 12 months	27,108	10,363	37,471
Law Clerk, 13D, Anchorage, PFT, 12 months	31,824	11,278	43,102
			<hr/>
	Total Personal Services		267,009

Contractual

Postage, telephone, annual updates to legal reference materials, copier rental, etc. 5,000

This fiscal note assumes that the cost of the 3-master panels will be assessed to the parties.

Supplies

Office, courtroom and computer supplies. 4,000

Equipment (one time item)

Office furniture, computer or data terminal, software, dictation equipment, statutes, rules of court, facsimile machine, etc 17,800

Total Estimated Cost \$293,809

9-LS1129AK
Chenoweth
1/17/96

CS FOR HOUSE BILL NO. 341()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to consideration and determination by the superior court of
2 disputes involving certain taxes and penalties due, and amending provisions relating
3 to the assessment, levy, and collection of taxes and penalties by the state and to
4 the tax liability of taxpayers; and amending Rule 609(b) of the Alaska Rules of
5 Appellate Procedure; and providing for an effective date."

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

7 * Section 1. AS 22.10.020(d) is amended to read:

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

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

1 (2) of the Department of Revenue in matters relating to fixing the
2 amount of, or imposing a penalty on, a tax levied and collected by the state when
3 appeal is taken under AS 43.05.242(c)(1) shall be heard as a trial de novo as a
4 matter of right;

5 (3) of the Department of Revenue in matters relating to fixing the
6 amount of, or imposing a penalty on, a tax levied and collected by the state when
7 appeal is taken under AS 43.05.242(c)(2) shall be on the record unless the
8 superior court, in its discretion, grants a trial de novo, in whole or in part;

9 (4) of an administrative agency, except for a matter described in
10 (2) or (3) of this subsection, shall be on the record unless the superior court, in
11 its discretion, grants a trial de novo, in whole or in part.

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

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

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

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

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

27 (1) taxes that are not due at the time the request for the proceeding was
28 made under AS 43.05.240(a) or (b)(1) or 43.05.242(b);

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

31 (3) taxes collected for a tax year for which the taxpayer did not give

1 notice of appeal of an assessment made by the Department of Revenue.

2 * Sec. 3. AS 43.05.240 is amended by adding a new subsection to read:

3 (e) The provisions of this section do not apply to the action of the department
4 in fixing the amount of a tax or in imposing a penalty related to a tax described in
5 AS 43.05.242(a).

6 * Sec. 4. AS 43.05 is amended by adding new subsections to read:

7 Sec. 43.05.242. APPEAL OF CERTAIN TAXES AND RELATED
8 PENALTIES. (a) The provisions of this section apply to a matter relating to fixing
9 the amount of, or imposing a penalty on, a tax levied and collected by the state under

10 (1) AS 43.19 and AS 43.20;

11 (2) former AS 43.21;

12 (3) AS 43.55;

13 (4) AS 43.65;

14 (5) AS 43.75.

15 (b) A person aggrieved by the action of the department in fixing the amount
16 of a tax or in imposing a penalty may apply to the department within 60 days from the
17 date of mailing the notice required to be given to the person by the department, giving
18 notice of the grievance, and requesting an informal hearing. At the informal hearing,
19 the person aggrieved may present arguments and evidence relevant to the amount of
20 tax or penalty due the state. If the department determines that a correction is
21 warranted, the department shall make the correction.

22 (c) A person aggrieved by the action of the department under (b) of this
23 section in fixing the amount of a tax or in imposing a penalty may

24 (1) within 30 days after decision resulting from the informal hearing,
25 appeal to the superior court in the judicial district in which the person resides; when
26 an appeal is taken under this paragraph,

27 (A) the taxpayer shall be given access to the file of the
28 department in the matter for preparation of the appeal;

29 (B) if, after the appeal is heard,

30 (i) it appears that the tax was correct, the court shall
31 confirm the tax;

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(ii) it appears that the tax was incorrect, the court shall

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determine the amount of the tax; if the person aggrieved is entitled to

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recover the tax or part of it, the court shall order the repayment, and the

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department shall immediately pay the amount due and attach a certified

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copy of the judgment to the payment; or

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(2) within 30 days after decision resulting from an informal hearing,

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apply to the department and request a formal hearing; when a formal hearing is

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requested under this paragraph,

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(A) the department may subpoena witnesses, administer oaths,

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and make inquiries necessary to determine the amount of the tax or penalty due

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the state;

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(B) the person aggrieved may present arguments and evidence

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relevant to the amount of the tax or penalty due the state; and

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(C) if the department determines that a correction is warranted,

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the department shall make the correction.

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Sec. 43.05.244. TAX, PENALTY, AND INTEREST PAYABLE BEFORE

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APPEAL. (a) In an appeal from a decision of the department involving a deficiency

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of taxes levied and collected by the state under a tax described in AS 43.05.242(a), the

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taxpayer shall pay to the state the full amount of the tax, penalty, and interest in

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respect of the amount of tax assessed that is not in dispute. The taxpayer shall post

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a bond, obtain a letter of credit, or provide other evidence satisfactory to the tax court

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that it is able to pay the amount of tax, penalty, and interest in respect of the amount

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of tax assessed that is in dispute and that is the basis of the taxpayer's appeal.

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(b) The tax and interest due under this section are the amounts stated in the

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final order of the department from which the appeal is taken, or if the final order

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appealed from is a summary judgment or partial summary judgment, the amount shall

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be as originally assessed on the issue or issues disposed of.

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* Sec. 5. AS 43.05.245 is amended to read:

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Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES,

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AND INTEREST. If a taxpayer fails to file a return or report required by this title in

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the time required by law or regulation, or makes an erroneous or fraudulent return, the

1 department shall proceed to assess the license fees, tax, penalties, or interest and make
2 a return from information that [WHICH] it obtains. A return made and subscribed by
3 the department in accordance with this section is presumed sufficient for all legal
4 purposes. However, nothing prevents a taxpayer from presenting evidence or other
5 information on an appeal under AS 43.05.240 or 43.05.242 in order to rebut the
6 presumed sufficiency of a return made and subscribed by the department, nor does the
7 presumption of sufficiency alter the parties' respective burdens of proof once the
8 taxpayer has presented evidence or other material information to rebut that
9 presumption. The assessment of license fees, tax, penalties, or interest under this
10 section occurs when the department issues a notice and demand for payment of the
11 license fees, tax, penalties, or interest. The notice and demand for payment is issued
12 when the notice and demand is delivered to the taxpayer in person or placed in the
13 United States mail, addressed to the last known address of the taxpayer. Penalties and
14 interest assessed under this title shall be collected in the same manner as provided in
15 this title for the collection of tax or license fees.

16 * Sec. 6. AS 43.05 is amended by adding a new section to read:

17 Sec. 43.05.254. OVERPAYMENT. If it has been finally determined that an
18 overpayment exists, either the taxpayer or the commissioner may elect within 60 days
19 to credit the overpayment, including any interest accruing on the overpayment, against
20 the tax liability of the taxpayer for the current tax year and subsequent tax years. The
21 amount of the refund not credited within three years of the date of the election shall
22 be paid to the taxpayer, with interest accrued at the rate established in AS 43.05.280.

23 * Sec. 7. AS 43.20.200(a) is amended to read:

24 (a) As soon as practicable after a return is filed, the department may examine
25 it and determine the correct amount of the tax. If an error is disclosed by the
26 examination, the department shall so notify the taxpayer by first-class mail. The
27 taxpayer may petition for redetermination of deficiency as provided in AS 43.05.240
28 or 43.05.242.

29 * Sec. 8. AS 43.20.270(a) is amended to read:

30 (a) The department may collect taxes, with interest, penalties, and other
31 additional amounts permitted by law, by distraint and sale, in the manner provided in

1 this section, of the property of a person liable to pay the taxes, interest, penalties, or
2 other additional amounts, who neglects or refuses to pay them within 10 days from the
3 mailing of notice and demand for payment of them, and who has not appealed from
4 the assessment of the taxes, interest, penalties, and other additional amounts under
5 AS 43.05.240 or 43.05.242.

6 * Sec. 9. AS 43.55.013(g) is amended to read:

7 (g) The monthly production at the economic limit for a lease or property is
8 presumed to be 3,000 Mcf times the number of well days for the lease or property
9 during that month for which the tax is to be paid. The taxpayer may rebut this
10 presumption at a formal hearing under AS 43.05.242(c)(2) [AS 43.05.240] by
11 providing clear and convincing evidence of a different monthly production rate at the
12 economic limit for the lease or property. The hearing shall be held before February 15
13 of the year or within six months after commencement of gas production for a lease or
14 property. The monthly production rate at the economic limit for the lease or property
15 based upon the clear and convincing evidence of the taxpayer shall be calculated by
16 dividing the value determined under (i) of this section into the average monthly direct
17 operating cost determined under (h) of this section.

18 * Sec. 10. COURT RULE CHANGE; RULES OF APPELLATE PROCEDURE. The
19 provisions of AS 22.10.020(d)(2), added by sec. 1 of this Act, have the effect of changing
20 Rule 609(b) of the Alaska Rules of Appellate Procedure relating to the superior court's
21 exercise of its discretion to grant a de novo review of certain appeals of decisions of the
22 Department of Revenue involving taxes and related penalties.

23 * Sec. 11. This Act takes effect July 1, 1996.