

HB

362

HOUSE BILL NO. 362

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE THERRIAULT

Introduced: 12/29/95

Referred: Transportation, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the motor fuel tax exemption for fuel sold for use in jet
2 propulsion aircraft to fuel used in those aircraft for flights that continue from
3 a foreign country."

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

5 * Section 1. AS 43.40.100(2) is amended to read:

6 (2) "motor fuel" means fuel used in an engine for the propulsion of a
7 motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, or in a
8 stationary engine, machine, or mechanical contrivance that [WHICH] is run by an
9 internal combustion motor; "motor fuel" does not include

10 (A) fuel consigned to foreign countries;

11 (B) fuel sold for use in jet propulsion aircraft operating in
12 flights to foreign countries or in flights that continue from foreign countries;

13 (C) fuel used in stationary power plants operating as public
14 utility plants and generating electrical energy for sale to the general public;

- 1 (D) fuel used by nonprofit power associations or corporations
2 for generating electric energy for resale;
- 3 (E) fuel used by charitable institutions;
- 4 (F) fuel that [WHICH] is at least 10 percent alcohol by volume;
- 5 (G) fuel sold or transferred between qualified dealers;
- 6 (H) fuel sold to federal, state, and local government agencies
7 for official use;
- 8 (I) fuel used in stationary power plants that generate electrical
9 energy for private residential consumption;
- 10 (J) fuel used to heat private or commercial buildings or
11 facilities;
- 12 (K) fuel used for other nontaxable purposes as prescribed by
13 regulations adopted by the department; or
- 14 (L) fuel used in stationary power plants of 100 kilowatts [KW]
15 or less that generate electrical power for commercial enterprises not for resale;

Effective date: End of 97 fiscal year
(recommended)

Alaska State Legislature

REPRESENTATIVE
GENE THERRIALT
P O Box 55326
North Pole, Alaska 99705
(907) 488-0862

House District 33



White in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House Of Representatives

HB 362 Extending the motor fuel tax exemption for fuel sold for use in jet propulsion aircraft to fuel used in those aircraft for flights that continue from a foreign country

SPONSOR: Rep. Gene Therriault

SPONSOR STATEMENT:

House Bill 362 extends the motor fuel tax exemption for fuel used in aircraft for flights that continue from a foreign country. Currently, the state of Alaska provides a tax exemption for fuel used only in flights to foreign countries.

Federal law preempts state taxation of imported aviation fuel transported through a foreign trade zone for use in aircraft during foreign flights. The federal definition of "foreign flight" includes flights originating from and flights continuing to a foreign country.

Two tankers filled with tax exempt foreign-produced fuel were brought into Alaska during 1995. It is anticipated this practice will increase as airlines move to purchase the tax exempt fuel for use in foreign flights at a lower cost than taxable Alaska produced fuel.

HB 362 is needed to provide a level playing field to Alaska producers by allowing the tax exemption for all fuel used in foreign flights.

MEMORANDUM

State of Alaska
Department of Revenue

TO: File

DATE: October 31, 1995

TELEPHONE NO: 269-6620

SUBJECT: Foreign Aviation Fuel

FROM: ^{ATB}Larry E. Meyers
Director
Income and Excise Audit Division

All sales of aviation fuel in Alaska are subject to tax unless exempt by statute. One such exemption, AS 43.40.100(2)(B), excludes from taxation aviation fuel sold for use "in flights to foreign countries." This state exemption does not apply to fuel sold for use in flights from foreign countries which refuel in Alaska and travel on to U.S. destinations.

However, it appears state taxation of imported aviation fuel withdrawn from a foreign trade zone (FTZ) in Alaska for use in foreign commerce is preempted by federal law. This FTZ preemption applies to imported fuel sold for use in flights with an origin or destination in a foreign country. The federal preemption is broad because the federal definition of a "foreign flight" differs from the Alaska definition. Thus, sales of imported aviation fuel within a FTZ to flights originating in a foreign country which refuel in Alaska and continue on to another U.S. destination are exempt from the Alaska fuel tax.



Greater Fairbanks

Chamber

of Commerce

709 Second Avenue
Fairbanks, Alaska 99701

(907) 452-1105
FAX (907) 456-6768

Introduced by: Governmental Affairs Committee
Date introduced: November 6, 1995
Date passed: November 13, 1995
Date transmitted: November 14, 1995

RESOLUTION 95-1106.3

**A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF
COMMERCE IN SUPPORT OF THE 9-LS1292A. (SEE ATTACHED)**

WHEREAS, foreign trade zones (FTZ) are established to encourage value added processing in Alaska for items bound for foreign destinations; and

WHEREAS, there are several FTZ locations in Anchorage that allow such activity, including at the Anchorage International Airport; and

WHEREAS, in early October, a tanker load of foreign refined jet fuel came into Anchorage Airport fueling system for use under the FTZ; and

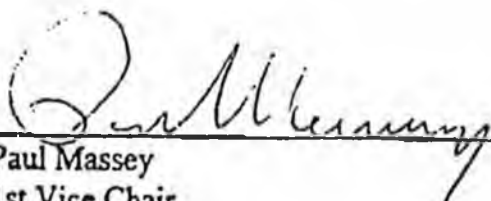
WHEREAS, this foreign processed fuel is able to take advantage of the FTZ to the disadvantage of Alaska based refiners who process Alaska royalty crude, employ Alaskans in the value added refining process, pay corporate taxes and others fees, and in some cases jet fuel to Anchorage on the State owned Alaska Railroad;

NOW THEREFORE BE IT RESOLVED that the Alaska State Chamber of Commerce goes on record in support of the attached work draft 9-LS1292A to amend AS 43.40.10 (2), thus permitting in-state refiners the same tax privileges in selling jet fuel to international carriers operating flights either to or from foreign destinations, irrespective of whether that fuel is sold through an FTZ; and


BE IT FURTHER RESOLVED that this resolution be distributed to:

The Honorable Tony Knowles, Governor of the State of Alaska
Alaska State Legislature
Alaska State Chamber of Commerce
All Alaska Chambers
Fairbanks Convention and Visitor's Bureau
City of Fairbanks
City of North Pole
Fairbanks North Star Borough

PASSED on November 13, 1995 by the Greater Fairbanks Chamber of Commerce Board of Directors.



Paul Massey
1st Vice Chair



William J. Robertson
President/CEO

WITH CONCURRENCE from the following Fairbanks area Alaska State Chamber of Commerce Representatives.

Jeff Cook
James Dodson
Dr. Hugh Fate
Bart LeBon
Paul Massey

Federal Express Corporation
Fuel Administration
2600 Montross Boulevard
Suite 307
Memphis, TN 38119

U.S. Mail PO Box 777
Memphis, TN 38119-0777

Aviation Fuel 801-927-6149
Ground Fuel 801-922-5446
Fax 801-922-4588



December 27, 1995

Ms. Bonnie J. Garner
Aviation Fuel Sales Manager
Mapco Alaska Petroleum, Inc.
1076 Ocean Dock Road
Anchorage, AK 99501-1199

Dear Bonnie:

Federal Express understands Mapco Alaska Petroleum's continuing interest in competitively supplying jet fuel in Anchorage, Alaska. We are also aware that our use of tax-exempt jet fuel through the Foreign Trade Zone has an adverse impact on Mapco's ability to remain competitive in the Anchorage market. Specifically, Federal Express is able to reduce its tax burden on inbound international flights by \$0.032 per gallon through the use of tax exempt U.S. Customs bonded jet fuel.

Federal Express has enjoyed a long term relationship with Mapco and appreciates Mapco's reliable supply and consistent quality of jet fuel at competitive prices at Anchorage International Airport. However, the \$0.032 per gallon Alaska Motor Fuel Tax gives a significant tax advantage to foreign refined turbine fuel and foreign turbine fuel suppliers through the Free Trade Zone, since those foreign suppliers are exempt from the \$0.032 per gallon tax.

If Federal Express is to continue purchasing jet fuel on a competitive basis from Alaskan in-state refiners for international flights transiting Anchorage, the \$0.032 per gallon Alaska Motor Fuel Tax applicable to in-state refiners and Federal Express must be rescinded or exempted so that parity and equal competition might return to the market. Mapco's assistance in revising the Alaska Motor Fuel Tax law would allow our company and others to continue purchasing jet fuel from in-state refiners on a competitive basis and would reduce the necessity for Federal Express to purchase jet fuel from foreign refiners or brokers, or seeking alternative airports/countries for refueling our international flights.

Sincerely,

William H. Stark
Managing Director
Fuel Administration

cc: Chris Bolen
David Carpenter
Cheryl Yates
Doug Buitrey

whs139/r



Douglas J. Podolak
President

NVCA Fuel Services Corporation 612 727-6246
A Northwest Airline 612 720-4851 Fax
Department A4180
5101 Northwest Drive
St. Paul MN 56111-5034

December 27, 1995

Ms. Bonnie Garner
MAPCO Alaska Petroleum Inc.
1076 Ocean Dock Road
Anchorage, AK 99501-1199

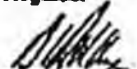
Dear Bonnie:

I am writing in regard to the Alaska Motor Fuel Tax. Northwest Airlines has enjoyed a long contractual history with MAPCO, however, as a participant in a very cost competitive industry Northwest must pursue the lowest net cost fuel supply available. As you are aware foreign refined jet fuel is offered by your competitors exempt from the 3.2 CPG Alaska Motor Fuel Tax. We are concerned that MAPCO will not be able to remain competitive for Northwest Airlines' business at ANC when facing the substantial price advantage of imported fuel.

We strongly support your efforts to effect a change in the Alaska Motor Fuel Tax to exempt all jet fuel used in international service as defined by the U. S. Customs authority. This definition includes outbound and inbound flights that include an international point in its routing. Amending the tax application to match the Federal definitions would eliminate confusion and the unintended effect of subsidizing the importation of foreign jet fuel by your competitors.

We trust you will be successful in your effort to change this tax law and would be happy to provide assistance. Northwest looks to continue MAPCO as a major supplier in ANC and hopes for your early success in this effort.

Regards,


Douglas J. Podolak

cc: M. L. Smith
R. J. Van Der Wagon



July 11/4/85

Sam Bishop, Opinion Page Editor; 456-6661 (Ext. 274)

FAIRBANKS

Daily News - Miner**"Independent in All Things ... Neutral in None"**
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Publisher EmeritusPAUL J. MASSEY
PublisherKELLY BOSTIAN
Managing EditorSAM BISHOP
Editorial Page Editor**Subsidizing foreign fuel**

The foreign trade zone fad, which swept up cities around the country during the past decade, has come back to bite Alaska.

Foreign trade zones encourage companies to bring foreign materials into the state for manufacturing, which creates jobs. The encouragement is provided by exempting the goods from customs tariffs and other taxes.

Anchorage established such a zone at its port several years ago. Not much happened until early last month, when an oil tanker full of jet fuel arrived from the island of Aruba, off the Venezuelan coast.

The owner, Kuwait Petroleum Co., promptly sold 200,000 gallons to the jet fuel distributor at Anchorage International Airport. The Kuwait company offered a very competitive price because the free trade zone exempted them from a 3.2-cent per gallon state aviation fuels tax on any fuel used for international flights.

With that advantage, the Kuwaitis beat the competition—fuel from Mapco's North Pole refinery. Mapco normally supplies a substantial portion of the jet fuel used in Anchorage's international flights.

Mapco officials are not pleased with the trade zone. Why should we be giving tax breaks to foreign companies so they can out-compete local companies? The simple answer is that we shouldn't.

Mapco is asking legislators to exempt their fuel used on international flights from the 3.2-cent state tax. State law already does just that, in part. Fuel used to power planes flying toward foreign lands is exempt from the tax. Mapco wants legislators also to exempt fuel used to fill planes coming from other countries.

That would cost the state some revenue at a time when it has serious problems balancing its budget. However, if Kuwait Petroleum takes over the Anchorage jet fuel business, the effect would be the same—no revenue from international fuel sales. And Kuwait Petroleum isn't employing refinery and railroad workers, paying state and local taxes or sponsoring numerous civic events here.

Foreign trade zone at port helps air carriers avoid state fuel tax

By Diana Campbell
For the Journal of Commerce

A state tax on motor fuel oil takes the competitive edge away from Alaska refineries, says Mapco Alaska Petroleum's top Alaska official.

Activation of foreign trade zones in Anchorage has made it possible for international air carriers to bypass a 3.2-cent-per-gallon state tax on jet fuel by purchasing foreign fuel and bringing it to the FTZ.

This is unfair to state refineries, which produce fuels subject to the tax, and it makes those fuels less attractive products, said Jeff Cook, vice president of external affairs and administration for Mapco Alaska.

"Do you want to promote foreign refineries or do you want to promote Alaska refineries?" Cook asked in a Dec. 20 interview.

The rub comes from a set of dueling government definitions, the

large and highly competitive demand for jet fuel and state refineries' ability to meet that demand.

The state tax is to be paid by air carriers on all jet fuel used for domestic flights, state officials said. However, foreign flight fuel is exempted from that tax when brought to FTZ storage. There the fuel is regulated by federal law, which has a looser set of definitions of international flights. In general, the rule says a flight is considered international if the final destination is foreign, even if there are domestic stops in between.

Alaska state law differs in that if there is a domestic stop before the final international destination, then the tax would be charged on the domestic part of the route.

Recently, a consortium of international carriers that use the Anchorage International Airport hired a fuel brokerage firm to look for a

Continued on Page 5

Foreign trade zone in Anchorage squeezes out state refineries, Mapco official says

Continued from Page 1

cheaper source of jet fuel. The brokerage struck a deal with a Kuwaiti refinery, which sent a supertanker of fuel to Aruba. The fuel was then transferred to smaller tankers, which then traveled to the Port of Anchorage. From there, the fuel was transported to the Anchorage International Airport via a pipeline for use.

The second load of 10 million gallons of fuel arrived at the beginning of December, said Tom Jenson, the FTZ's development director. In October, the first 10 million gallons arrived.

Jet fuel is in high demand and all the state's refineries have yet to meet the required amount, Cook said. There is an increasing need to import jet fuel.

Tom Mushovic, general manager of Signature Flight Support, the operator of Anchorage International's fuel transfer facility, said that the airport has used about 530 million gallons of jet fuel in 1995.

Paul Dick, operations manager with the Department of Revenue, said the state netted

\$7,142,571 for fiscal year 1995 on the motor fuel tax.

He also said an air carrier may apply for a refund of the 3.2-cent tax if the fuel is used for international flights, and the carrier has documentation to back up its claim. For fiscal 1995, there were 404,303,038 gallons of fuel exempted, he said. That means the state, in effect, refunded about \$12 million. (This includes part of the year when the tax was 2.5 cents and part of the year when it was 3.2 cents.)

The potential benefit to airlines would be to get more foreign fuel into the FTZ, and that is not fair, Cook said.

But the activation of the FTZ could have an economic impact on the Anchorage area. The zone could attract more and more carriers seeking to take advantage of tax exemptions. Thus, there would be a bigger demand for fuel and more local jobs at the port and the airport, officials say.

Cook said Mapco Alaska has worked with state legislators to draft a bill that would clarify the discrepancies. He said the bill will be introduced in the Legislature this spring.

Revision Date: _____ Dept. Affected: Revenue
 Title: Aviation Fuel Tax Exemption BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Representative Therrault
 Requestor: House Transportation COMPONENT SERIAL NO. 113

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 ()	(3,528.0)	(3,740.0)	(3,964.0)	(4,202.0)	(4,412.0)	(4,632.0)

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: Larry E. Meyers, Director
 Division: Income and Excise Audit
 Approved by Commissioner: [Signature]
 Agency: Department of Revenue

Phone: 269-6623
 Date: 1/23/96
 Date: 1/23/96

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ISSUE

The activation of a Foreign Trade Zone (FTZ) in Anchorage (Oct. 1995) allowed imported foreign aviation fuel to be sold exempt from state tax to aircraft flying directly or indirectly to a foreign country. Alaska oil refining industry believes that they will not be able to compete economically with FTZ (foreign import) fuel unless the current Alaska tax exemption for direct foreign flights is expanded to include Indirect (i.e. flights that refuel in Alaska, stop in another U.S. city and then continue on to a foreign country). Current Alaska statutes provide only for an exemption for fuel sold on flights going directly to a foreign country.

Current Law

AS 43.40 (Alaska motor fuel tax) currently imposes a 3.2 cent per gallon tax on aviation jet fuel purchased in Alaska. Fuel purchased in Alaska for use in flights directly from Alaska to a foreign country is exempt from the Alaska tax. Fuel purchased for use in flights originating in a foreign country, refueling in Alaska and continuing to a U.S. destination prior to returning to foreign country (i.e. indirect foreign flight) is taxable.

Proposed Law

HB 362 would expand the above exemption to exempt from tax fuel purchased in Alaska for all flights to or from foreign countries.

Revenue Impact

This bill will result in approximately \$3.528 million in revenue loss for FY 97 increasing at 6% through FY 2000 and 5% thereafter.

This estimate considers the effect of the recent activation of Anchorage Foreign Trade Zones (FTZ). The FTZ allows International air carriers to use imported fuel without incurring customs duties. Under the rules and regulations of the U.S. Customs Service, the operation of the FTZ allows air carriers to place imported fuel in the FTZ and withdraw the fuel for use in flights to or from a foreign country. Under federal law, the State of Alaska cannot impose tax on fuel placed in the FTZ. Alaska will lose tax revenues from the FTZ independently of HB 362.

The fiscal impact of HB 362 results from exempting fuel that could not otherwise qualify for FTZ treatment or the current foreign flight exemption. The fiscal impact is measured by the amount of domestic fuel that is used for flights that continue from foreign countries to a U.S. destination.

Fiscal Note Assumptions/Calculations

- 1) DOR economic analysis indicates that a 3.2 cent tax advantage for foreign fuel placed in the FTZ will not result in a significant increase in foreign fuel imports. Transportation costs and favorable crude price and supply will continue to make Alaska refined fuel most economical. West Coast imports will continue to be cheaper than imported foreign fuel.
- 2) According to the Alaska Center for International Business, the imports of jet fuel for the last six years has averaged 43.928 million gallons. DOR has used this average to estimate future imports of FTZ fuel. Approximately 50% of the imported fuel is used in flights that already qualify under the current foreign flight exemption. Therefore, 50% of expected imports or 21.964 million gallons will be used in continuing foreign flights. At a 3.2 cent tax rate, this equates to \$0.702 million in tax revenue lost from FTZ fuel.
- 3) Total estimated aviation fuel tax revenue to be collected in FY97 from indirect foreign flights was \$4.23 million. Estimated revenue loss due to import of FTZ fuel is \$.702 million. Thus the remaining potential revenue loss from HB 362 is \$3.528 million for FY 97.
- 4) The air carriers that will be affected by HB 362 are primarily transit cargo carriers. Transit cargo is defined as cargo that either (1) remains on an aircraft during a stopover at the Airport or (2) is off-loaded exclusively for customs clearance and/or sorting and is then reloaded. Expected increases of transit cargo- 6% through 2001 then 5%. This rate applied to FY 97 revenue loss. Source: Anchorage International Airport Master Plan Update, Fall 1995, Table 15.
- 5) Actual revenue loss is dependent on the amount of foreign fuel that will be imported and placed in FTZ. Alaska is pre-empted from taxing this fuel.

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 8, 1996

FURTHER REFERRALS:

Finance

Date of Committee Action: 1/31/96

The TRANSPORTATION Committee considered:

HB 362

HOUSE BILL NO. 362

AVIATION FUEL TAX EXEMPTION

"An Act extending the motor fuel tax exemption for fuel sold for use in jet propulsion aircraft to fuel used in those aircraft for flights that continue from a foreign country."

recommends it be replaced with the following committee substitute _____ [] 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) Revenue

[] fiscal note(s) _____

[] zero fiscal note(s) _____

[] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Beverly Masek</i>			<input checked="" type="checkbox"/>	
<i>Janette James</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE [Signature]

The Honorable Mark Hanley
The Honorable Gene Theriault
February 28, 1996
page 2

Even assuming preemption would take place, is it a realistic possibility that foreign fuel would substantially take over the Anchorage market? We wonder whether the realities of high seas economics and logistics requirements permit this possibility. We also wonder what role an attempt to avoid the current federal 4.3¢ per gallon tax may have played in the recent foreign fuel dockings. Last, we wonder if any further foreign fuel dockings are currently scheduled; and if not, why not?

Assuming preemption and assuming further a realistic potential for market takeover, is there a better solution to be found in the FTZ management? Surely there must be some simpler way to solve this perceived fuel tax problem at the Anchorage FTZ boundary. We wonder if the Legislature, the Governor's office and the Mayor's office have examined all the options involving FTZ management and operation.

Please accept these comments in the spirit of our attempts to assist in the development of sound public policy. If you have any questions or comments, please do not hesitate to call.

Sincerely,



Kimberly S. Daniels Ross
Executive Director

cc: House Finance Committee
House Transportation Committee
Commissioner Joe Perkins, DoT/PF
Larry E. Myers, DoR
AACAA Board of Directors

[N]ot only is there no indication that Congress wished to preclude state sales taxation of *airline fuel*, but, to the contrary, the Act expressly permits States to impose such taxes.... [W]hat [§40116(e)] shows is that, to the degree that Congress considered the power of the States to tax air travel, it expressly and unequivocally permitted the States to exercise that authority. In other words, rather than prohibit state regulation in the area, Congress invited it. This is not the stuff of pre-emption.

477 U.S. at 7 (emphasis added).

Second, the Court examined,

(1) the Chicago Convention on International Civil Aviation, ... to which the United States and 156 other nations ... are parties; (2) a Resolution ... adopted ... by the International Civil Aviation Organization (ICAO) ... [and] (3) more than 70 bilateral agreements ... into which the United States has entered with various foreign countries dealing with international aviation.

477 U.S. at 9. The Court then discussed these expressions of Congressional policies on international aviation:

[W]hat these documents show is while there appears to be an international aspiration on the one hand to eliminate all impediments to foreign air travel – including taxation of fuel – the law as it presently stands acquiesces in taxation of the sale of that fuel by political subdivisions of countries.

477 U.S. at 10.

[T]he United States has, since the time that the [Chicago] Convention came into force, become a party to more than 70 bilateral aviation agreements, and in not one of these agreements has the United States agreed to deny the States the power asserted by Florida in this case.

477 U.S. at 11. The *Wardair* Court concluded,

What all this makes abundantly clear is that the Federal Government has not remained silent with regard to the question whether States should have the power to impose taxes on aviation fuel used by foreign carriers in international travel.... It would turn the dormant Commerce Clause analysis upside down to apply it where the Federal Government has acted, and to apply it in such a way as to reverse the policy that the federal Government has elected to follow.

477 U.S. at 12. See also, *Itel Containers International Corporation v. Joe Huddleston, Commissioner of Revenue of Tennessee*, 507 U.S. 60 (1993).

It would turn the *McGoldrick* principles "upside down" to apply them to reach a preemption conclusion in the case of Anchorage FTZ fuel. *McGoldrick* held that New York sales tax was preempted in a case of 1934 and 1935 sales of fuel delivered alongside *foreign bound* vessels in New York City, when that fuel had originally been imported as *crude petroleum*, duty free, into *bonded warehouses*, and *refined* into fuel while in bond. The bonded fuel was *segregated* from domestic goods, and its duty free status was conditioned upon *it never being landed at any port or place in the United States or its possessions*.

The *McGoldrick* Court found, on the facts of that particular case, a *comprehensive scheme* adopted by Congress, an essential purpose of which was to "enable American refiners to meet foreign competition", through the federal tax relief. Allowing the New York sales tax would have frustrated that purpose. 309 U.S. at 427, 428.

In Anchorage, *disallowing* the state tax on foreign imported fuel would put American refiners -- such as Mapco, Petro Star, Tesoro and Arco -- at a competitive disadvantage to foreign refiners. It would also put domestic air carriers -- such as Alaska, Delta, United and Reno Air -- at a competitive disadvantage to foreign and domestic air carriers taking advantage of the tax free fuel on continuing flights. This is not consistent with the principles of *McGoldrick*. "Domestic producers and local taxpayers would thus 'subsidize' the ... [foreign producers of imported fuel and competing airlines with flights originating in foreign countries]." *R. J. Reynolds Tobacco Company v. Durham County*, 479 U.S. 130, 145 (1986).

McGoldrick relied heavily on the provisions of §309 of the Tariff Act of 1930, with its specific provisions for federal tax free status for fuel for foreign bound vessels. That statute, now 19 U.S.C. §1309, was amended in 1960, twenty years after *McGoldrick*, to include a new provision:

The provisions for free withdrawals made by this subsection (a) shall not apply to *petroleum products* for vessels or aircraft in voyages or flights exclusively between Hawaii or Alaska and any airport or Pacific coast seaport of the United States.

(Emphasis added.) This belies any Congressional intent, based on a *McGoldrick* analysis, to preempt state taxation on fuel sold for flights between Anchorage and the Lower 48.

The Anchorage FTZ situation is distinguishable from *McGoldrick* in other significant respects. The bonded fuel will not be *crude petroleum*, to be refined in a bonded warehouse. The bonded fuel will not be segregated; it will be commingled with domestic and other unbonded fuel. Some portion of it will necessarily be again landed in the United States. Some of the bonded fuel will not be exported. It will be used for flights that are not "actually engaged in foreign trade", but between U.S. airports. There is no regulation, incorporated by reference by Congress, that provides, "'imported goods in bonded warehouse are exempt from taxation under the general laws of the several States.'" There is no "comprehensive scheme ... calculated to insure the devotion of the manufactured oil exclusively to that purpose [for use in foreign bound vessels]." 309 U.S. at 426, 427.

McGoldrick simply is not good authority for the proposition that the Alaska sales tax on aviation fuel would be preempted.

In undertaking this [preemption] analysis ... we must be mindful of the principal that "federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons -- either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained."

Reynolds Tobacco, supra, at 140 (quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142). Unless and until one can demonstrate that Congress has *unmistakenly ordained* for U.S. refiners to be put at a competitive disadvantage, and that Congress has *unmistakenly ordained* for domestic air carriers to be put at a competitive disadvantage, *McGoldrick* can not credibly support a preemption argument.

It is true that *Wardair Canada* does not deal with Foreign Trade Zones, but neither does *McGoldrick*. We find nothing in the Foreign Trade Zone Act or the regulations that conflicts with the clearly expressed Congressional policies to allow state aviation fuel taxes, as elicited in *Wardair Canada*. See also, *Itel Containers International Corporation v. Joe Huddleston, Commissioner of Revenue of Tennessee*, 507 U.S. 60 (1993).

In conclusion, Alaska is free to tax aviation fuel as it may wish in the circumstances.

The Alaska Air Carriers Association



DEPARTMENT OF THE TREASURY

U S. CUSTOMS SERVICE

ANCHORAGE, ALASKA

February 20, 1996

received
2/21/96

AACA

362

Ms. Kimberly Daniels Ross
Executive Director
Alaska Air Carriers Association
1117 E. 35th Avenue, Suite 102
Anchorage, Alaska 99501

FOIA/PA-ANC-96-04
By Facsimile Only To:
907-277-0072

Dear Ms. Ross:

This responds to your Freedom Of Information Act request which was received by this office on February 20, 1996. You have requested access to records maintained in the Customs Service port of Anchorage, Alaska. Please be advised that we have no records responsive to your request.

You are advised, in accordance with 5 USC 552 (a) (6) (i), you have the right to appeal this determination within 35 days after the date of this notification. This appeal should be submitted to the FOIA Appeals Officer, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, and have the words "Freedom of Information Act Appeal" printed conspicuously on the face of the envelope. See Appendix C, 3(c) to 31 CFR, Part 1.

In the event the FOIA Appeals Officer should (1) fail to issue a determination of your appeal within 20 working days of its receipt (plus 10 additional working days if you are notified that an extension of time is required and applicable), or (2) deny your appeal, you may obtain judicial review pursuant to 5 USC 552 (a) (4) (B) in the United States district court in the district (1) in which you reside, (2) in which your principal place of business is located, (3) in which the agency records are situated, or (4) in the District of Columbia.

Under the regulations adopted pursuant to the Freedom of Information Act, there is a charge for record search time, review time and photocopying. In this case, however, because no records were provided, there will be no charge.

Sincerely,

Daniel C. Holland
Port Director

By: 
Patrick McGown
FOIA Processor

TESTIMONY OF KIM DANIELS ROSS

House Transportation Committee

via teleconference network

January 24, 1996 1:00 p.m.

Mr. Chairman and members of the committee, My name is Kim Daniels Ross and I'm Executive Director of the Alaska Air Carriers Association.

Thank you for this opportunity to comment in opposition to HB362. I speak on behalf of 140 domestic air carriers operating here in Alaska. We believe a bill that would provide a tax exemption for a few select air carriers could be unfair and encourage misuse and manipulation of the Foreign Trade Zone as well as Department of Revenue and Department of Transportation funding and accounting mechanisms. Three times now the DOT has come to domestic carriers with claims of budget shortfalls. Each time they have sought higher user fees, higher fuel taxes and other "revenue enhancements."

We are concerned that HB362 might have a tremendously adverse effect on Alaska's local domestic airline industry. The domestic industry is made up of a wide range of companies, based in Alaska, that provide service to our bush communities. These are the folks that carry passengers, mail, freight, and medevac services--basically providing whatever transportation services are necessary to support life in rural areas.

If HB362 goes into effect, the state of Alaska would lose approximately \$4.5 million dollars in current tax revenue--revenue that is being counted on to fund the rural airport maintenance and operations budget. Without the \$4.5 million dollars in tax revenue, the state will have to look to alternative revenue sources. We all know Alaska doesn't have dedicated funding, but reality tells us that a shortfall of \$4.5 million dollars can equate to substantial increases in other user revenue sources such as airport lease rates and landing fees. One domestic company estimates their portion of the shortfall bill to be \$300,000-\$400,000. Those increases cannot be absorbed by the domestic industry--the local companies I mentioned earlier. The domestic operators will be forced to pass on the increases to the flying public--Alaskans who live and work in rural areas.

Our State is facing a monstrous fiscal gap. Every day the newspaper reports work being done by special commissions and government agencies--involving politicians and people from the private sector--whose purpose is to examine alternative revenue sources to fill-in the budget gap. How would the general public respond if they knew the Legislature was considering eliminating an existing tax base? In essence, our state would be giving away \$4.5 million dollars in revenue--funds that are critical to continued airport operations in rural Alaska.

TESTIMONY OF KIM DANIELS ROSS
House Transportation Committee
January 24, 1996
page two

I represent an industry group. You can bet we don't have a problem with legitimate avoidance of taxation. But we feel there has been a lack of resolve by various state departments to challenge the FTZ fuel tax ruling by the local US Customs office. Questions need to be asked such as, "Is this how FTZ's handle fuel in other locations? How about Miami, New York, San Francisco or L.A.?" The overall intent should be consistent.

We sympathize with Alaska's oil refineries and understand they are struggling to compete with fuel suppliers that take advantage of loopholes written into the Foreign Trade Zone rulebook. But let's fix the problem, not massage the symptoms. The issue isn't removing the tax--the true fix is giving real consideration to making substantive changes to the operating rules of the FTZ.

Overall, I believe there are too many unanswered questions associated with HB362 and I ask that you consider holding the bill until we can work together to look at options. Once again, if you're going to give away a large part of our tax base, then incorporate a fiscal plan that ensures the remaining domestic industry won't bear the burden of the shortfall.

Thank you.

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

December 21, 1995

Mayor Rick Mystrom
P.O. Box 196650
Anchorage, Alaska 99519-6650

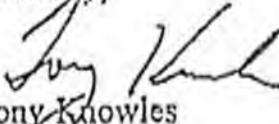
Dear Mayor Mystrom:

As you probably are aware, the Municipality of Anchorage, through an agent, recently activated a Foreign Trade Zone (FTZ) that includes State land at the Anchorage International Airport and caused a considerable loss of fuel tax revenue to the State. Because I am concerned that the State's interest may not have been fully addressed, I suggest that the State and the Municipality of Anchorage review the costs and benefits of the recent shipments of foreign oil to the Port of Anchorage and work together to develop a plan for activating and operating foreign trade zones.

Since both State interest and Municipal interest are involved at the FTZ, I believe the original intent to jointly manage the FTZ either through a non-profit organization or with a Memorandum of Understanding is still in both parties' best interest. I have asked Commissioner Joe Perkins, Department of Transportation and Public Facilities, to contact your office to begin a dialogue on Foreign Trade Zone issues. I hope you will agree with this direction and will notify your staff accordingly.

Thank you for your consideration and attention to this matter.

Sincerely,


Tony Knowles
Governor

cc: Joseph L. Perkins, Commissioner, Department of Transportation and Public Facilities

ALASKA DEPARTMENT OF REVENUE
Issue Paper on HB 362 - Aviation Fuel Tax Exemption
January 22, 1996

ISSUE

The activation of a Foreign Trade Zone (FTZ) in Anchorage (Oct. 1995) allowed imported foreign aviation fuel to be sold exempt from state tax to aircraft flying directly or indirectly to a foreign country. Alaska oil refining industry believes that they will not be able to compete economically with FTZ (foreign import) fuel unless the current Alaska tax exemption for direct foreign flights is expanded to include indirect (i.e. flights that refuel in Alaska, stop in another U.S. city and then continue on to a foreign country). Current Alaska statutes provide only for an exemption for fuel sold on flights going directly to a foreign country.

CURRENT LAW

AS 43.40 (Alaska motor fuel tax) currently imposes a ^{3.2} cent per gallon tax on aviation jet fuel purchased in Alaska. Fuel purchased in Alaska for use in flights directly from Alaska to a foreign country is exempt from the Alaska tax. Fuel purchased for use in flights originating in a foreign country, refueling in Alaska and continuing to a U.S. destination prior to returning to foreign country (i.e. indirect foreign flight) is taxable.

PROPOSED CHANGE

HB 362, Aviation Fuel Tax Exemption, would expand the current tax exemption for aviation fuel used in direct foreign flights to include indirect flights.

ANALYSIS

HB 362 is in response to the activation of an FTZ in Anchorage. Alaska imposes 3.2 cents per gallon tax on aviation jet fuel (AVJET) sold in the state. Fuel sold in Alaska for use in a direct flight to a foreign country is exempt from the tax. However, fuel sold for use in an indirect flight to a foreign country is taxable.

Federal law allows foreign merchandise, (in this instance AVJET) to be imported into an FTZ and withdrawn free of duty and federal taxes for supplies of aircraft engaged in foreign trade. Alaska is preempted from imposing its tax on direct or indirect foreign flights. The result is that domestic (any non FTZ) fuel sold in Alaska for an indirect foreign flight is taxable while FTZ fuel is not.

Certain local fuel suppliers believe that they cannot compete against the imported fuel under the present Alaska statute. It is their belief that the FTZ fuel will completely displace locally refined AVJET fuel for use in foreign flights unless the statutes are amended to expand the exemption of a foreign flight.

The Department believes the issue is one of economics. It is not convinced that cost of purchasing and transporting foreign fuel to Alaska on a regular basis offsets the 3.2 cents a gallon of tax. We believe that proponents of the bill must be able to show that local fuel suppliers can not compete against foreign imported fuel with the current tax in place. Based on preliminary review we have serious doubts that this showing can be made. The operation of an FTZ may result in a loss of state revenue. Expanding the foreign flight exemption guarantees a loss of revenue for all foreign flights.

FINANCIAL IMPACT

For FY97 the tax revenue generated on fuel sold for indirect foreign flights is estimated at \$4.2 million. Over the past five years an average of 44 million gallons annually of AVJET fuel have been imported (primarily from domestic sources) to meet supplier needs. Since roughly 50% of all aviation fuel sold in Alaska is currently exempt (direct foreign flights) from tax we are assuming that only 50% of imported fuel would reduce current taxes. Under this assumption and also assuming all imports would qualify for FTZ exemption the state would lose a minimum of \$700,000 of revenue annually. At this rate HB 362 would result in a loss of tax revenue of \$3.5 million (total tax estimated current tax of \$4.2 million less revenue loss due to FTZ exemption of \$700,000).

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652
FAX: (907) 586-8365
PHONE: (907) 465-3900

January 30, 1996

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

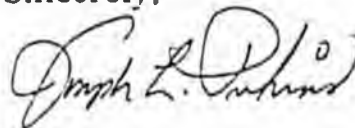
Dear Mayor Mystrom:

Thank you for your positive response to Governor Knowles' letter to you concerning the Anchorage Foreign Trade Zone (FTZ). I am particularly encouraged that you have acknowledged an appreciation for the Governor's concern. While I understand there may be a financial benefit that Anchorage realizes as a result of the delivery of foreign fuel to the FTZ, as the Governor's letter indicated we are concerned that the State's interest was not fully considered.

I have assigned my Deputy Commissioner, Kurt Parkan, to carry out the discussions with the Municipality of Anchorage on my behalf. Kurt will not only represent the Department and the Anchorage International Airport but he will also coordinate with the Department of Revenue and the Department of Law. I understand Kurt has already spoken with Tom Jensen from your staff about a meeting during the week beginning January 29th.

Again, I appreciate your personal attention to this matter and your assurance that it will receive immediate attention

Sincerely,



Joseph L. Perkins, P.E.
Commissioner

cc: Tom Jensen, FTZ Manager

TEL: 907 277 5636

P. 002

Municipality
of
Anchorage



OFFICE OF THE MAYOR

P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4431
Fax: (907) 343-4499

Rick Mystrom, Mayor



January 5, 1995

The Honorable Tony Knowles
Governor of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Tony:

Thank you for your recent letter regarding Anchorage Foreign Trade Zone activities. I understand your concerns and look forward to hearing from Commissioner Perkins of the Department of Transportation and Public Facilities.

The entire issue of an active Foreign Trade Zone is extremely important with regard to economic development as well as impact on local businesses. Please rest assured that the matter will receive our immediate attention.

Sincerely,

Rick Mystrom
Mayor

**DEPARTMENT OF REVENUE
AND
DEPARTMENT OF TRANSPORTATION**

Foreign Trade Zone Bullets

January 31, 1996

SUMMARY OF ISSUES

- The Municipality of Anchorage, through an agent, has activated a Foreign Trade Zone (FTZ) that includes land on the Anchorage International Airport. The FTZ is being used to distribute fuel purchased from a foreign company thereby avoiding State fuel taxes.
- Representative Therriault has introduced legislation that would broaden the foreign flight exemption to include flights that originate in a foreign country and refuel in Alaska in route to a destination in the lower 48.
- Total potential revenue loss from avoiding the tax at the FTZ and the expansion of the exemption by the proposed legislation could be up to \$4.1 million.

HISTORY OF THE FTZ

- An FTZ is a restricted access site, in or adjacent to a customs port of entry, operated pursuant to public utility principles under the sponsorship of a corporation granted authority by the Foreign Trade Zone Board (FTZB). State law designates the appropriate entity in an individual state to which the grant can be given.
- Negotiations between the Municipality of Anchorage (MOA) and the State over the establishment of a FTZ in Anchorage started in 1986. The original intent was to have the State and MOA jointly seek the authority but the state law, AS 45.77.010, at that time, did not authorize a joint application. (During the 1988 legislative session, AS 45.77.010 was amended to allow joint applications to the FTZB.)
- The original idea was to have the FTZ managed by a non-profit corporation made up of State members, MOA members and public members. The State did not want to relinquish control over its airport property.
- On December 15, 1987, the MOA on its own filed an application with the FTZB requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at 2 sites: the Port of Anchorage and the Anchorage International Airport. (Since amended to include additional sites.) The MOA was named as the "Grantee." A clear paper trail shows the intended purpose for the FTZ was for warehousing

in anticipation of the airport becoming a cargo hub. The application was approved on July 18, 1989, by the FTZB.

- On August 4, 1995, the MOA appointed Perman Stoler, Customhouse Broker and Fritz Company, as the FTZ operators. On October 3, 1995, Perman Stoler requested that the tank farms at the port and at the airport be activated as an FTZ.
- Foreign Aviation Jet Fuel (AVJET) has been imported into Alaska through the FTZ. This fuel cannot be taxed by Alaska due to federal preemption.
- Fuel transactions at FTZ's are normally support for other FTZ business activity. In this case, AVJET distribution is the only FTZ activity.
- Alaska imposes a 3.2 cent per gallon tax on AVJET fuel sold in the state. Fuel sold in Alaska for use in a flight directly to a foreign country is exempt from the tax. However, fuel sold for use in flights to another U.S. destination is taxable, even if that flight originated in a foreign country, refuels in Alaska and continue to a U.S. destination.
- Alaska is preempted from imposing taxes on FTZ fuel that is sold for use in flights that originate in foreign countries and continue to a U.S. destination. Federally, any flight that originates in a foreign country is considered to be engaged in foreign commerce and is not subject to state taxes until it enters into domestic commerce. The result is that domestic fuel sold for a continuing foreign flight is taxable while FTZ fuel is not.

LEGISLATION

- Legislation has been drafted by Representative Therriault to expand the current exemption for motor fuel taxes to include AVJET used in flights from foreign countries that refuel in Alaska and fly to another U.S. city ("indirect foreign" flights).

REVENUE ISSUES

- The Anchorage Daily News on October 7 reported a shipment of 10.5 millions of gallons of fuel was brought into Anchorage by a Kuwaiti company. This fuel would have been intermixed with other fuel in the fuel tanks serving international flights; the owners can designate when a particular withdrawal should be charged against this cargo. Logically, all of it will be used for "indirect foreign" flights, and thus avoid the 3.2 cent tax. Thus, this one load represents a \$336,000 tax loss to the state. The newspaper article also reported that the city of Anchorage received \$25,000 in fees for the ship's visit.
- Rationale for the legislation is that once the FTZ is operating fully, foreign fuel will completely displace in-state refined fuel for these "indirect foreign" flights. Thus, all of the revenue the state now receives in tax for "indirect foreign" flights (about \$4.1 million) will be lost anyway because of the FTZ. Therefore, the rationale goes, passing the legislation will not

affect this loss; it will only allow local refiners to compete with imported foreign AVJET.

- We don't agree that FTZ fuel will totally displace domestically refined fuel for these flights. Our best estimate of the economics of the situation is that the state will lose between \$.6 and \$2 million of the \$4.1 million in tax on those flights. Thus, the revenue impact of the legislation would be the remainder of those dollars: from \$2.1 to \$3.5 million. The legislation will guarantee loss of the entire \$4.1 million.

RECOMMENDATIONS

- Actions to modify the FTZ (including deactivation) to allow taxation of foreign AVJET for "indirect foreign" flights should be considered.
- We recommend that negotiations begin immediately with the MOA to establish an appropriate management mechanism that will restore State authority over airport lands. Initial contacts with the MOA indicate they are willing to enter into an agreement.
- Our economic analysis continues. However, we have found no evidence supporting the idea that a 3.2 cent tax savings would overcome the above costs and risks such that FTZ fuel would always be cheaper than domestic fuel. In fact, MAPCO exported significant quantities of AVJET to Japan last year. This is a strong indicator that the costs incurred by local refiners are at a level that makes them competitive in the world markets.
- We are not convinced that FTZ fuel will materially displace locally refined fuel and at this time do not support the idea of expanding the foreign flight exemption and the resulting erosion of the motor fuel tax base.

PETRO STAR INC.

Telephone: (907) 344-2661
Fax: (907) 267-6429

221 Arctic Slope Avenue, Suite 200
Anchorage, Alaska 99518-3030

January 30, 1996

STEPHEN T. LEWIS
Chairman / CEO

The Honorable Gary L. Davis
House Transportation Chair
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Re: House Bill No. 362 (to Exempt Jet Fuel Sales to
Continuing Foreign Origin Flights from Tax)

Dear Chairman Davis:

I had the opportunity to testify before the House Transportation Committee on the above bill last Wednesday, and since most of my remarks were in response to Commissioner Condon's presentation, I feel that it will be useful to reiterate the points that I made. First, Mapco is not the only refinery in Alaska.

Since 1978, when Earth Resources (the predecessor to Mapco) first began operations, I have spent my life in the Alaska refining industry in Alaska. We in the industry are now faced with the dilemma that the State taxes jet fuel that is made in Alaska, while federal law allows foreign-produced fuel to go free of the State tax. This circumstance applies to all fuel that is supplied to flights that arrive from foreign countries and continue on to United States destinations outside Alaska -- approximately one-fifth of the fuel sold at the Port of Anchorage (or 100 million gallons) is involved.

What makes this circumstance particularly galling is that it is a no-win situation for the State. Alaska refiners simply cannot meet their foreign competition when they are saddled with a 3.2 cent per gallon handicap, but the upshot isn't that the State will collect more tax, it is that the air carriers will buy foreign fuel instead of Alaskan.

The fiscal analysis supplied with HB 362 assumes that air carriers will happily pay the tax or that Alaska refiners can absorb it. Commissioner Condon's testimony supported this premise, but the assumptions that this testimony made concerning refinery economics were well off the mark.

The Honorable Gary L. Davis
January 30, 1996
Page 2

The Commissioner calculated a cost to Mapco of \$.48/gallon to produce a gallon of jet fuel and transport it to Anchorage. However, several of the assumptions that went into this calculation are incorrect for Mapco or for other refiners.

- The calculation assumes a price at Pump Station No. 1 of 27.4 cents per gallon or \$11.49 per barrel. That may be the price that Mapco pays the State under its quite favorable original royalty oil contract, but only a fraction of Mapco's crude requirements are provided by the State. Prices increasingly are based on the West Coast, and I believe that Tesoro's recent royalty oil contract with the State specifies the West Coast royalty value to Exxon. Petro Star does not purchase any royalty oil, and all of our crude pricing is based on the West Coast.
- The calculation assumes a quality bank fee of only 3.1 cents per gallon. This is approximately half what Petro Star experiences at its refineries in North Pole and at Valdez.
- The calculation assumes refinery costs of 1.2 cents per gallon. This might be an appropriate figure for a full conversion refinery, where most of the barrel can be made into product (indeed, the Commissioner used the very same figure for the foreign refinery to which he compared Mapco), but it is not appropriate for Alaska refiners that return the bulk of the barrel to TAPS. Moreover, the Commissioner seemed to believe that Mapco's plant was all old and paid up -- I do not believe that to be the case.
- Finally, the importance to the Alaska Railroad of the 7.5 cents per gallon that Mapco pays to move jet fuel to Anchorage is nowhere even discussed.

The calculation also is flawed by exaggerating the costs to the foreign refiner. The calculated cost of 52 cents per gallon to deliver jet fuel to Anchorage includes:

- Factoring the price of crude in the Caribbean *spot* market at 39.7 cents per gallon, despite the fact that refiners typically purchase their crude supplies under long-term markets at considerably less than spot.
- As already mentioned, using the same refinery costs for foreign full conversion refineries as for the simple Alaskan refineries. In fact, the

The Honorable Gary L. Davis
January 30, 1996
Page 3

costs of living and of doing business are higher in Alaska than they are in the foreign countries that will be exporting jet fuel to Alaska.

- Factoring in exorbitant tanker costs of 10.7 cents per gallon, or \$4.50 per barrel.

Finally, the calculations impute rich margins to both Alaska and foreign refiner by comparing the calculated production costs to Anchorage rack prices, although it is noted that contract prices with major carriers are lower. In fact, as I pointed out, neither Mapco nor Tesoro was competitive in the military fuel bid this year, and much of the fuel for the military is being imported from outside.

In short, the numbers simply do not support the premise that Alaskan refiners can afford to give away a 3.2 cent per gallon advantage to their foreign competitors on a substantial portion of the fuel that they sell. If the sales therefore go away, as all indications are that they will, then Alaska will still lose its revenue stream to the Foreign Trade Zone, but it also will seriously impair the economic health of its refiners and endanger hundreds of jobs.

We often say that refining is a business of pennies, because a penny price swing can be crucial for us -- indeed, competitive bids often are made to four decimal places. For us, the 3.2 cent per gallon disadvantage is enormous. Indeed, even the 0.4 cents added to the foreign refinery's costs by rounding in the administration's calculations would be important to us. For all of the above reasons, as well as those discussed on the accompanying handout, Petro Star strongly urges the legislature and the administration to support HB 362.

Sincerely,



Stephen T. Lewis
Chairman of the Board/CEO
Petro Star Inc.

Enclosure

II. EXEMPTION OF ALASKA MADE FUEL FROM THE TAX IS THE SOLUTION MOST CONSISTENT WITH THE STATE'S LONG-TERM DEVELOPMENT OBJECTIVES.

There are two possible solutions to the above disparity: allow Alaska made fuel to benefit from the same exemption as foreign fuel, or eliminate the exemption that currently applies to foreign fuel.

Of these, the first clearly is preferable, particularly if the State's long-term interests are considered. Anchorage obtained Foreign Trade Zone status for the Port to attract and maintain air traffic business. Anchorage has the ability of securing for itself the position as an important air traffic hub in the North Pacific rim, and this business will directly support Alaska's goal of diversifying its economic base. However, improvements in equipment are expected to allow air carriers greater flexibility than they now enjoy -- and certainly greater flexibility than they have enjoyed in the past. Anchorage must compete with other centers for business. Thus even if there were a way for Alaska to carve an exception from the federal rules that govern the Foreign Trade Zone and tax foreign fuel sold to inbound flights, Alaska still could not afford to do so if it wishes Anchorage to remain competitive with other sites.

In sum, the tax currently imposed on Alaska produced fuel will not be collected simply because the carriers will buy foreign fuel instead. The State will not lose money by extending to Alaska fuel

Petro Star Inc.
January 15, 1996

Page 3 of 4

the same exemption that federal law affords foreign fuel. Even if the State is able to devise a way to collect tax on foreign fuel despite the Foreign Trade Zone rules, this would create a dangerous pressure for carriers to look for alternatives to Anchorage and damage Alaska in the long run. Even now, the television monitors in Sea-Tac Airport are urging construction of a third runway at least in part to improve the attractiveness of the Seattle area as a freight hub that ultimately will draw traffic away from Anchorage. And in the meantime, Alaska refiners may already have an uphill battle to regain the sales that they already are losing in the market.

For all the above reasons, Petro Star strongly urges the Legislature and Administration to support legislation to exempt Alaska-made fuel sold to ongoing foreign-origin flights so that our fuel can compete on even terms with foreign fuel.

Petro Star Inc.
January 15, 1996

Page 4 of 4

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)279-8114
Judith M. Brady, Executive Director

January 29, 1996

The Honorable Gary L. Davis, Chairman
Transportation Committee
Alaska State House of Representatives
Room 420
State Capitol
Juneau, Alaska 99801-1182

HB 362, Aviation Fuel Tax Exemption

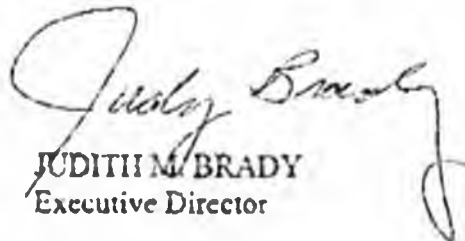
Dear Representative Davis:

The Alaska Oil and Gas Association (AOGA) is a trade association whose members account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

AOGA supports passage of HB 362. We are enclosing our statement of support for consideration by the Transportation Committee at its hearing on HB 362 scheduled Wednesday, January 31, 1996.

Please let us know if we can be of any additional assistance to you in this matter.

Sincerely,


JUDITH M. BRADY
Executive Director

Enclosure (via facsimile)

**ALASKA OIL AND GAS ASSOCIATION
POSITION ON
HB 362, AVIATION FUEL TAX EXEMPTION
January 25, 1996**

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

The Association supports passage of HB 362, an act extending the motor fuel tax exemption for fuel sold for use in jet propulsion aircraft to fuel used in those aircraft for flights that continue from a foreign country.

AOGA MEMBERS:

Anadarko Petroleum Corporation	Petro Star, Inc.
ARCO Alaska, Inc.	Petrofina Delaware, Inc.
BP Exploration (Alaska) Inc.	Phillips Petroleum Company
Chevron U.S.A. Inc.	Rowan Companies, Inc.
Cook Inlet Region, Inc.	Shell Western E&P Inc.
Exxon Company, U.S.A.	Tesoro Alaska Petroleum Co.
MAPCO Alaska Petroleum Inc.	Texaco Inc.
Marathon Oil Company	Union Texas Petroleum Ak Corp.
Mobil Oil Corporation	UNOCAL
OXY USA INC.	



Official Business

COMMITTEE:

HOUSE STANDING COMMITTEE ON
TRANSPORTATION

DATE: 1/24/96

SIGN-IN

Subject of meeting:

HB 362 Aviation Fuel Tax Exemption

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Commissioner Cowden	Dept of Rev		465-2300	Dept. of Rev	Yes
Bob Bartholomew	" "		465-4773	" "	Yes
Jess Cook	MAPCO 1150 H&H Lane Ft. Belknap, AK 99705		487-2741	MAPCO	yes
Stephen Lewis	201 Arctic Slope Ave Anch		344-2661	Petro Star/Arctic Slope	yes
Carrie Therriault					Yes
Bonnie Gunn	1076 Ocean Dock Rd MAPCO - Anchorage		257-3106	MAPCO	
Pamela LaBelle	217 Second St #201 Juneau, AK 99801		586-2323	State Chamber	Yes

01/24/96

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

13:06:07

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:60213

SCHEDULED FOR:01/24/96 13:00 TO 15:00

FOR:ANC

PUBLIC HEARING

HOUSE TRANSPORTATION

LOCATION:ANCHORAGE

HB 362

JAMES

BURNS

Peter Martin Sves

TESTIFY

HB 362

KIM

DANIELS-ROSS

AK Air Carriers Assoc

TESTIFY

Good you find out who these people represent?