

**HB**

**341**

**AMENDMENT NO. \_\_\_\_\_**

**TO: CSHB 341, Version Z**

Amend by replacing Section 17. Transitional Provisions, with the following:

**Sec. 17. TRANSITIONAL PROVISIONS.** The remedies and procedures provided by this act apply to all revenue tax appeals in which a request for formal hearing has been filed with the Department of Revenue on or before the effective date of this Act. A taxpayer who has filed a request for formal hearing on or before the effective date of this act may elect within 45 days from the enactment of this act to use the remedies and procedures existing prior to the enactment of this act.

**FISCAL NOTE**STATE OF ALASKA  
1996 LEGISLATIVE SESSIONBILL NO. CSHB 341Revision Date: 4/17/96Dept. Affected: Alaska Judicial CouncilTitle: Tax Court

BRU: \_\_\_\_\_

Component: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 0771**EXPENDITURES/REVENUES**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL	3.5					
CONTRACTUAL	9.6					
SUPPLIES	0.8					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>13.9</b>					

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	13.9					
1005 GF/Program Receipts						
1006 GF/MHTA						
Other						
<b>TOTAL</b>	<b>13.9</b>					

**POSITIONS**

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

Estimate of current year (FY 98) cost: \$ None**ANALYSIS:** (Attach a separate page if necessary)

See attached memo to House Finance Committee from William T. Cotton, dated March 19, 1996, re: CSHB 341.

Prepared by:

William T. Cotton, Executive Director

*William T. Cotton*  
*WTC*

Phone: 279-2526

Agency:

Alaska Judicial Council

Date: 4/17/96

Approved by:

William T. Cotton, Executive Director

Agency:

Alaska Judicial Council

Date: 4/17/96

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# alaska judicial council

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## MEMORANDUM

TO: House Finance Committee

FROM: William T. Cotton, Executive Director *w/c*

DATE: March 19, 1996

RE: CSHB 341

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

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

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

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

*House Finance Committee**March 19, 1996**Page 2*Costs

<b>Travel</b>		
Travel and per diem for one 2-day Anchorage Council Meeting		3.5
<b>Contractual</b>		
1. Advertising		
Three small display ads in Anchorage, Juneau, Fairbanks requesting public comment		1.7
2. Temporary Secretary (30 hours/week for six weeks)		2.9
3. Mailing		
a. Announcement letter (to attorneys, including Bar labels)		1.2
b. Survey (to attorneys, including Bar labels)		3.2
c. Miscellaneous (references, targeted surveys)		.1
4. Credit Checks		.5
<b>Supplies</b>		
Paper, envelopes for survey		.8
	<u>Total</u>	<u>13.9</u>

Please feel free to contact me with any further questions.

WTC:sl



# alaska judicial council

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## Facsimile Transmittal

To: Senate Judiciary Committee  
(See below)

Fax #: 465-3922 PLEASE DISTRIBUTE TO COMMITTEE Date: 4/18/96

Time: \_\_\_\_\_

From: Teri Carns for William T. Cotton

Number of pages (including this cover sheet) 4

If you have any problems or questions, please contact Josefa  
at (907) 279-2526.

### Comments:

Fiscal Note for Administrative Judges legislation.

To: Senate Judiciary Committee

Senator Robin Taylor

Senator Lyda Green

Senator Mike Miller

Senator Johnny Ellis

Senator Al Adams

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SC3 CSHB 341 (JUD)

Revision Date: 04/22/96 Dept. Affected: Alaska Court System  
 Title: An Act establishing a tax court... BRU: Trial Courts  
 Sponsor: Rep. Green Component: \_\_\_\_\_  
 Requestor: House Resources 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						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	.	.	.	.	.	.
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

FULL-TIME						
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: 04/22/96  
 Date: 04/22/96

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Alaska Court System  
Fiscal Analysis  
SCS CSHB 341 (JUD)

SCS CSHB 341 (JUD) amends the current method of administrative adjudication and judicial appeals relating to tax cases. It establishes the office of tax appeals as a quasi-judicial agency in the Department of Administration, and under certain conditions, gives taxpayers the right to go directly to court to challenge tax assessments in a trial de novo, rather than an on-the-record appeal.

The Department of Revenue has advised that the circumstances under which a taxpayer would be entitled to go directly to court are very limited, and that even under existing law, it would normally use its discretion to allow a taxpayer to go directly to court on those issues. Accordingly, this note does not attempt to estimate the amount of judicial and clerical time which might be spent on direct appeals authorized by this legislation.

According to the Department of Revenue, there are approximately 24 tax cases per year to which SCS CSHB 341 (JUD) would apply: 20 in the Income and Excise Audit Division, and 4 in the Oil and Tax Audit Division. These cases vary in size and complexity, with the largest cases requiring a substantial commitment of judicial and clerical time, if they come directly to court for a trial de novo.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 341(FIN)

1 Page 16, line 31, to page 17, line 4:

2 Delete all material and insert:

3 "Sec. 43.05.244. PAYMENT ON DIRECT JUDICIAL APPEAL. (a) In a  
4 judicial appeal directly from an informal conference decision under AS 43.05.242, the  
5 amount, if any, of additional tax, interest, and penalty determined to be owed by the  
6 taxpayer in the informal conference decision shall be deposited into the registry of the  
7 court no later than the day when the taxpayer files the appeal in the superior court.  
8 The taxpayer's failure to deposit this amount into the court registry when it is due is  
9 grounds for dismissal of the taxpayer's appeal.

10 (b) A deposit into the court registry under (a) of this section tolls the accrual  
11 of further interest at the rate prescribed in AS 43.05.225 during the period when the  
12 money is in the court registry, and only the actual earnings on that deposit while it  
13 is in the court registry, less the administration fee under (c) of this section, shall  
14 accrue during that period and be payable to whoever is ultimately determined to be  
15 entitled to the money deposited into the court registry. If part of the deposit into the  
16 court registry is ultimately refunded to the taxpayer and part is transferred to the state,  
17 the earnings earned while the money was in the court registry shall be divided  
18 between the taxpayer and the state in proportion to the amount of the deposit that  
19 each receives.

20 (c) Money deposited into the court registry under (a) of this section and the  
21 earnings on that money are held in trust for the benefit of whoever is ultimately  
22 determined to be entitled to it, and no expenditure or appropriation may be made from  
23 the funds held in the court registry, except that the court may annually deduct and  
24 withhold from the earnings on money on deposit in the court registry an  
25 administration fee equal to the lesser of

1                   (1) one-half of one percent per year of the amount originally deposited  
2 into the court registry under (a) of this section; or

3                   (2) one-half of the earnings actually earned on the money, including  
4 the earnings from prior years, held in the court registry during the year.

5                   (d) Upon the final adjudication or settlement of the judicial appeal, the  
6 amount deposited into the registry of the court, and all earnings on that deposit after  
7 deducting the administration fee under (c) of this section, shall be paid from the  
8 registry of the court to whoever is entitled to receive them. Payment under this  
9 subsection must be made no later than 30 days after the final judgment or settlement  
10 is entered. A judgment or settlement is final when a further appeal may not be taken  
11 from it."

9-LS1129AD  
Chenoweth  
4/16/96

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

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES GREEN, James

A BILL

FOR AN ACT ENTITLED

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

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

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

3                     ARTICLE 4. OFFICE OF TAX APPEALS.

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

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

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

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

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

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

17             Sec. 43.05.410 APPOINTMENT; TERM; REAPPOINTMENT. (a) The  
18 governor shall appoint a chief administrative law judge of the office of tax appeals  
19 from among two or more persons nominated as most qualified for that position by the  
20 Alaska Judicial Council. If one or more additional administrative law judges are  
21 established in the office of tax appeals, the governor shall appoint additional  
22 administrative law judges from among two or more persons nominated as most  
23 qualified for each position by the judicial council.

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

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

30                     (1) if an administrative law judge seeks reappointment, the governor

1 shall notify the judicial council of the impending end of the administrative law judge's  
2 term at least 120 days before the end of the term;

3 (2) in reviewing the performance of the administrative law judge, the  
4 judicial council shall collect and review sufficient information to thoroughly evaluate  
5 the administrative law judge; the review by the judicial council must include a  
6 published notice requesting written comments on the administrative law judge whose  
7 performance is being evaluated;

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

12 (4) the governor has discretion to reappoint or not reappoint an  
13 administrative law judge whom the judicial council recommends for reappointment, but  
14 the governor may not reappoint a person as administrative law judge if the judicial  
15 council recommends against that reappointment.

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

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

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

28 (2) the judicial council has authority to review confidential Alaska Bar  
29 Association files, including bar complaint files, on applicants for administrative law  
30 judge and on administrative law judges seeking reappointment whose applications or  
31 reappointment evaluations are under review; the judicial council shall maintain the

1 confidentiality of these files; and

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

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

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

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

14 (1) violation of the Alaska code of judicial conduct adopted by the  
15 Alaska Supreme Court;

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

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

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

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

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

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

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

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

29 (c) The chief administrative law judge may adopt regulations implementing or  
30 interpreting AS 43.05.400 - 43.05.499, including rules of procedure and evidence for  
31 proceedings before the office

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

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

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

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

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

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

19           Sec. 43.05.435. SCOPE AND STANDARDS FOR DECISION. The  
20 administrative law judge shall hear all questions de novo under AS 43.05.400 -  
21 43.05.499. The administrative law judge shall

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

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

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

30           Sec. 43.05.440. SERVICE OF DOCUMENTS. Service of documents required  
31 under AS 43.05.400 - 43.05.499 may be accomplished in any manner authorized under

1 the Alaska Rules of Civil Procedure. If service is done only by mail, the date of  
2 service is determined by the date of mailing. If service is done by both mail and hand  
3 delivery, the date of service is determined by the earlier of the date of mailing or  
4 actual receipt of the documents.

5 Sec. 43.05.445. DISCOVERY. (a) In an appeal under AS 43.05.405,  
6 discovery may take place only under a plan for discovery approved by the  
7 administrative law judge. The administrative law judge shall approve a plan for  
8 discovery to the extent consistent with the efficient, just, and speedy conduct of the  
9 appeal. The plan may limit or set conditions on discovery and must include provisions  
10 for stipulations of fact by the Department of Revenue and the taxpayer. Discovery  
11 shall be limited to information that is relevant to the determination of the correct tax  
12 or penalty, unless the Department of Revenue or the taxpayer makes a showing that  
13 the discovery is reasonably calculated to lead to admissible information.

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

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

21 Sec. 43.05.450. SUBPOENAS. An administrative law judge may issue a  
22 subpoena to compel attendance of a witness or the production of a document or thing.  
23 A subpoena may compel attendance of a witness or production of a document or thing,  
24 located either inside or outside the state, to the maximum extent permitted by law. A  
25 subpoena may be used for the purpose of discovery or for the purpose of presenting  
26 evidence at a formal hearing. A subpoena shall issue upon request of a party, subject  
27 to reasonable limitation or conditions set in the subpoena. A subpoena may be  
28 enforced by petition to or other appropriate legal proceeding brought in a court of this  
29 state or another jurisdiction.

30 Sec. 43.05.455. FORMAL HEARING. (a) At or before the formal hearing,  
31 a party may present argument and evidence relevant to the amount of the tax or

1 penalty. The administrative law judge shall administer oaths and permit inquiry  
2 necessary to determine the proper amount of the tax or penalty.

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

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

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

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

13 (d) The formal hearing before the administrative law judge is not required to  
14 be conducted with strict adherence to the Alaska Rules of Evidence. Relevant  
15 evidence must be admitted if it is probative of a material fact in controversy.  
16 Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence is  
17 admissible if it is the kind of evidence on which responsible persons are accustomed  
18 to rely in the conduct of serious affairs, regardless of the existence of a common law  
19 or statutory rule that makes improper the admission of the evidence over objection in  
20 a civil action. Oral evidence may be taken only on oath or affirmation. The rules of  
21 privilege are effective to the same extent that they are recognized in a civil action in  
22 the courts of this state, except that relevant documents and other material items that  
23 are public records under AS 09.25.100 - 09 25.220 shall be admissible.

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

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

29 Sec 43.05.460. ENFORCEMENT. (a) The administrative law judge and each  
30 party is responsible for the efficient, just, and speedy conduct of the formal hearing.  
31 The administrative law judge may impose sanctions on the parties for failure to comply

1 with a subpoena, an order respecting discovery, and any other matter regarding conduct  
2 of the appeal. In imposing sanctions, the administrative law judge shall be guided by  
3 the practices of the courts of this state in imposing sanctions for similar offenses in  
4 civil proceedings.

5 (b) The administrative law judge may

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

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

10 (3) enter an order, upon a showing of good cause,

11 (A) barring a designated claim or defense;

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

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

14 (4) grant any other relief that the administrative law judge considers  
15 appropriate.

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

19 Sec. 43.05.465. DECISION; RECONSIDERATION; FINALITY. (a) Within  
20 180 days after the record on the appeal is closed, the administrative law judge shall  
21 issue a decision in writing. The decision must contain a concise statement of reasons  
22 for the decision, including findings of fact and conclusions of law. In the decision, the  
23 administrative law judge may grant relief, provide remedies, and issue any order that  
24 is appropriate. The administrative law judge shall serve each party in the case with  
25 a copy of the decision. Unless reconsideration is ordered under (c) of this section, the  
26 decision under this subsection is the final administrative decision.

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

1 (1) overlooked, misapplied, or failed to consider a statute, regulation,  
2 court or administrative decision, or legal principle directly controlling;

3 (2) overlooked or misconceived some material fact or proposition of  
4 law;

5 (3) misconceived a material question in the case; or

6 (4) applied law in the ruling that has subsequently changed.

7 (c) The administrative law judge may issue an order for reconsideration of all  
8 or part of the decision upon request of a party. Reconsideration is based on the record,  
9 unless the administrative law judge allows additional evidence and argument. A  
10 hearing on reconsideration at which additional evidence or argument is offered or  
11 received is subject to the procedures applicable to a hearing under AS 43.05.455.

12 (d) The power to order reconsideration expires 60 days after the date of  
13 service, as shown on the certificate of service, of a decision issued under (a) of this  
14 section. If the administrative law judge does not issue an order for reconsideration  
15 within the time allowed for ordering reconsideration, a motion for reconsideration is  
16 considered denied.

17 (e) Within 60 days after the close of the record on reconsideration, the  
18 administrative law judge shall issue a written decision upon reconsideration. The  
19 administrative law judge shall serve each party in the case with a copy of the decision  
20 upon reconsideration. The decision upon reconsideration is the final administrative  
21 decision.

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

23 (1) 60 days after the date of service of a decision issued under (a) of  
24 this section if an order for reconsideration is not issued; or

25 (2) the decision upon reconsideration is served, as shown by the  
26 certificate of service executed by the administrative law judge under (e) of this section.

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

31 (b) Upon a showing of good cause, an administrative law judge shall issue a

1 protective order requiring that specified parts of the records, proceeding, or decision  
2 shall be kept confidential in a particular appeal. If a protective order is issued, the  
3 final administrative decision shall be made public after redacting by deletion or  
4 substitution of information as required by the protective order.

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

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

11 (b) To promote consistency among legal determinations issued under  
12 AS 43.05.400 - 43.05.499, the chief administrative law judge may review and circulate  
13 among the other administrative law judges the drafts of formal decisions, decisions  
14 upon reconsideration, and other legal opinions of the other administrative law judges  
15 in the office. The drafts are confidential documents and are not subject to disclosure  
16 under AS 09.25.100 - 09.25.220 or this chapter.

17 Sec. 43.05.480. JUDICIAL REVIEW. (a) Judicial review by the superior  
18 court of a final administrative decision may be had by a party to the appeal under  
19 AS 43.05.400 - 43.05.499 by filing a notice of appeal in accordance with the  
20 applicable rules of court governing appeals to that court in civil matters. The notice  
21 of appeal shall be filed within 30 days after an administrative decision becomes final  
22 under AS 43.05.465. The right to judicial review under this subsection is not affected  
23 by the failure to seek reconsideration before the administrative law judge.

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

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

30 (d) If, after the appeal is heard, it appears that the final administrative decision  
31 was correct, the court shall affirm the decision. If the final administrative decision is

1 incorrect, the court shall determine the amount due. If the taxpayer is entitled to a  
2 refund, the court shall order the repayment and the Department of Revenue shall pay  
3 the amount due and attach a certified copy of the judgment to the payment. If the  
4 court determines that the taxpayer owes an additional amount, the court shall order the  
5 payment and the taxpayer shall pay the amount due and attach a certified copy of the  
6 judgment to the payment. Any payment required under this subsection shall be paid  
7 by the 30th day following the expiration of the time within which an appeal from the  
8 superior court decision may be filed, unless the party appealing files a bond or  
9 otherwise obtains relief from payment in accordance with the Alaska Rules of  
10 Appellate Procedure.

11 Sec. 43.05.499. DEFINITIONS. In AS 43.05.400 - 43.05.499, unless the  
12 context otherwise requires,

13 (1) "administrative law judge" means an administrative law judge  
14 appointed under AS 43.05.410;

15 (2) "commissioner" means the commissioner of administration;

16 (3) "department" means the Department of Administration;

17 (4) "discovery" means the use of subpoenas, subpoenas duces tecum,  
18 interrogatories, requests for production, requests for admission, depositions, and other  
19 methods of civil procedure by which one party to an action may discover information  
20 within the knowledge and control of another person;

21 (5) "legislative history" means the documents of the legislature  
22 recording the background and events, including draft bills, correspondence and  
23 memoranda, committee reports, tapes and transcripts of hearings, and tapes and  
24 transcripts of floor debate concerning consideration of a bill;

25 (6) "office" means office of tax appeals in the department;

26 (7) "party" means the Department of Revenue or the taxpayer;

27 (8) "proceeding" means only a proceeding under the jurisdiction of the  
28 office;

29 (9) "subpoena" means a command to appear at a certain time and place  
30 to testify, or to appear at a certain time and place to produce books, papers, and other  
31 things, and testify;

1 (10) "tax" means a tax described in AS 43.05.405, including a seafood  
2 marketing assessment under AS 16.51;

3 (11) "taxpayer" means a person required to pay a tax, including a  
4 person required to pay a seafood marketing assessment under AS 16.51.

5 \* Sec. 2. AS 09.25.100 is amended to read:

6 Sec. 09.25.100. DISPOSITION OF TAX INFORMATION. Information in the  
7 possession of the Department of Revenue that discloses the particulars of the business  
8 or affairs of a taxpayer or other person is not a matter of public record, except for  
9 purposes of investigation and law enforcement. The information shall be kept  
10 confidential except when its production is required in an official investigation,  
11 administrative adjudication under AS 43.05.400 - 43.05.499, or court proceeding.  
12 These restrictions do not prohibit the publication of statistics presented in a manner  
13 that prevents the identification of particular reports and items, [OR] prohibit the  
14 publication of tax lists showing the names of taxpayers who are delinquent and  
15 relevant information that may assist in the collection of delinquent taxes, or prohibit  
16 the publication of records, proceedings, and decisions under AS 43.05.400 -  
17 43.05.499.

18 \* Sec. 3. AS 09.25.122 is amended to read:

19 Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is subject  
20 to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record  
21 subject to disclosure and copying even if the record is used for, included in, or relevant  
22 to litigation, including law enforcement proceedings, involving a public agency, except  
23 that with respect to a person involved in litigation, the records sought shall be  
24 disclosed in accordance with the rules of procedure applicable in a court or an  
25 administrative adjudication [RULES]. In this section, "involved in litigation" means  
26 a party to litigation or representing a party to litigation, including obtaining public  
27 records for the party.

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

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

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

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

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

11 \* Sec. 5. AS 37.10.410 is amended to read:

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

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

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

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

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

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

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

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

2 (31) the chief administrative law judge and any other administrative law  
3 judges appointed to the office of tax appeals of the Department of Administration under  
4 AS 43.05.400 - 43.05.499.

5 \* Sec. 7. AS 43.05.010 is amended to read:

6 Sec. 43.05.010. DUTIES OF COMMISSIONER. The commissioner of revenue  
7 shall

8 (1) exercise general supervision and direct the activities of the  
9 Department of Revenue;

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

11 (3) prescribe uniform rules for investigations and hearings;

12 (4) keep a record of all departmental proceedings, record and file all  
13 bonds, and assume custody of returns, reports, papers, and documents of the department;

14 (5) [REPEALED

15 (6)] adopt a seal and affix it to each order, process, or certificate issued  
16 by the commissioner;

17 (6) [(7)] keep a record of each order, process, and certificate issued by  
18 the commissioner, and keep the record open to public inspection at all reasonable times;

19 (7) [(8)] hold hearings and investigations necessary for the administration  
20 of state tax and revenue laws;

21 (8) except as provided in AS 43.05.400 - 43.05.499, [(9)] hear and  
22 determine appeals of a matter within the jurisdiction of the Department of Revenue  
23 [INVOLVING INCOME, EXCISE, LICENSE, OR OTHER TAXES LEVIED UNDER  
24 STATE LAWS] and enter orders on the appeals that are final unless reversed or  
25 modified by the courts;

26 (9) issue subpoenas to [(10)] require the attendance of witnesses and the  
27 production of necessary books, papers, documents, correspondence, and other things  
28 [EVIDENCE AT HEARINGS];

29 (10) [(11)] order the taking of depositions before a person competent to  
30 administer oaths;

31 (11) [(12)] administer oaths and take acknowledgments;

32 (12) [(13)] request the attorney general for rulings on the interpretation

1 of the tax and revenue laws administered by the department;

2 ~~(13)~~ [(14)] call upon the attorney general to institute actions for recovery  
3 of unpaid taxes, fees, excises, additions to tax, penalties, and interest;

4 ~~(14)~~ [(15)] issue warrants for the collection of unpaid tax penalties and  
5 interest and take all steps necessary and proper to enforce full and complete compliance  
6 with the tax, license, excise, and other revenue laws of the state;

7 ~~(15)~~ [(16)] audit reports, payments, and payments due relating to royalty  
8 and net profits under oil and gas contracts, agreements, or leases under AS 38.05 [;

9 (17) REPEALED].

10 \* Sec. 8. AS 43.05.040 is amended to read:

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

28 (b) A subpoena may be served by the commissioner of public safety or a peace  
29 officer designated by the commissioner of public safety, [OR] by a person designated by  
30 the Department of Revenue, or as otherwise provided by law. A subpoena may also  
31 be served by registered or certified mail for delivery restricted only to the person  
32 subpoenaed. The return delivery receipt must be addressed so that the receipt is

1 returned to the department.

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

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

9 (a) It is unlawful for a current or former officer, employee, or agent of the state  
10 to divulge the amount of income or the particulars set out or disclosed in a report or  
11 return made under this title, except

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

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

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

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

19 (5) as otherwise provided in this section.

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

21 Sec. 43.05.240. TAXPAYER REMEDIES. (a) A taxpayer aggrieved by the  
22 action of the department in fixing the amount of a tax or penalty may apply to the  
23 department within 60 days after the date of mailing of the notice required to be given  
24 to the taxpayer by the department, giving notice of the grievance, and requesting an  
25 informal conference to be scheduled with an appeals officer. The taxpayer shall be given  
26 access to the taxpayer's file in the department in the matter for preparation for the  
27 informal conference. At the informal conference, the taxpayer may present to the  
28 appeals officer arguments and evidence relevant to the amount of tax or penalty due the  
29 state. If the department determines that a correction is warranted, the department shall  
30 make the correction.

31 (b) A party who believes that the appeals officer is unduly delaying a hearing  
32 process may notify the commissioner in writing. Within 30 days after being notified by

1 a party, the commissioner may issue an order prescribing a schedule for the appeals  
2 officer to complete the informal conference or setting a meeting at which that schedule  
3 will be discussed and prescribed. The schedule may be subsequently modified by  
4 consent of the parties. If the commissioner fails to issue an order within 30 days after  
5 receiving notice of a party's belief of undue delay, the department's action in fixing the  
6 amount of tax or penalty shall be considered to have been summarily affirmed by the  
7 appeals officer the same as if an informal conference decision to that effect were issued  
8 on the last day of that 30-day period.

9 • Sec. 11. AS 43.05 is amended by adding new sections to read:

10 Sec. 43.05.241. FORMAL APPEAL. For a matter within the jurisdiction of the  
11 office of tax appeals under AS 43.05.405, the taxpayer aggrieved by an informal  
12 conference decision entered under AS 43.05.240 may file with the office of tax appeals  
13 a notice of appeal for formal hearing, as provided in AS 43.05.430, no later than 60 days  
14 after service of the decision resulting from an informal conference.

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

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

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

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

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

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

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

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

2 (A) it appears that the tax was correct, the court shall confirm the  
3 tax;

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

9 Sec. 43.05.244. PAYMENT ON DIRECT JUDICIAL APPEAL. (a) In a  
10 judicial appeal directly from an informal conference decision under AS 43.05.242, the  
11 amount, if any, of additional tax, interest, and penalty determined to be owed by the  
12 taxpayer in the informal conference decision shall be deposited into the registry of the  
13 court no later than the day when the taxpayer files the appeal in the superior court.  
14 The taxpayer's failure to deposit this amount into the court registry when it is due is  
15 grounds for dismissal of the taxpayer's appeal.

16 (b) A deposit into the court registry under (a) of this section tolls the accrual  
17 of further interest at the rate prescribed in AS 43.05.225 during the period when the  
18 money is in the court registry, and only the actual earnings on that deposit while it is  
19 in the court registry, less the administration fee under (c) of this section, shall accrue  
20 during that period and be payable to whoever is ultimately determined to be entitled  
21 to the money deposited into the court registry. If part of the deposit into the court  
22 registry is ultimately refunded to the taxpayer and part is transferred to the state, the  
23 earnings earned while the money was in the court registry shall be divided between the  
24 taxpayer and the state in proportion to the amount of the deposit that each receives.

25 (c) Money deposited into the court registry under (a) of this section and the  
26 earnings on that money are held in trust for the benefit of whoever is ultimately  
27 determined to be entitled to it, and no expenditure or appropriation may be made from  
28 the funds held in the court registry, except that the court may annually deduct and  
29 withhold from the earnings on money on deposit in the court registry an administration  
30 fee equal to the lesser of

31 (1) one-half of one percent per year of the amount originally deposited  
32 into the court registry under (a) of this section; or

1 (2) one-half of the earnings actually earned on the money, including  
2 the earnings from prior years, held in the court registry during the year.

3 (d) Upon the final adjudication or settlement of the judicial appeal, the amount  
4 deposited into the registry of the court, and all earnings on that deposit after deducting  
5 the administration fee under (c) of this section, shall be paid from the registry of the  
6 court to whoever is entitled to receive them. Payment under this subsection must be  
7 made no later than 30 days after the final judgment or settlement is entered. A  
8 judgment or settlement is final when a further appeal may not be taken from it.

9 • Sec. 12. AS 43.05.245 is amended to read:

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

28 • Sec. 13. AS 43.20.270(a) is amended to read:

29 (a) The department may collect taxes, with interest, penalties, and other  
30 additional amounts permitted by law, by distraint and sale, in the manner provided in this  
31 section, of the property of a person liable to pay the taxes, interest, penalties, or other  
32 additional amounts, who neglects or refuses to pay them within 10 days from the mailing

1 of notice and demand for payment of them, and who has not appealed from the  
 2 assessment of the taxes, interest, penalties, and other additional amounts determined  
 3 under AS 43.05.240 or following appeal taken under AS 43.05.241 or 43.05.242.

4 • Sec. 14. AS 43.55.013(g) is amended to read:

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

16 • Sec. 15. AS 43.55.040 is amended to read:

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

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

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

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

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

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

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

31 • Sec. 16. EFFECT ON EXISTING REMEDIES AND PROCEDURES This Act does not  
 32 affect the remedies and procedures

1 (1) specified in AS 04.11, including AS 04.11.560; AS 05.15, including  
 2 AS 05.15.610; AS 42.05, including AS 42.05.551; or AS 43.56, including AS 43.56.120 and  
 3 43.56.130; or

4 (2) adopted by regulation by the Department of Revenue governing appeal of a  
 5 decision of the Department of Revenue regarding

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

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

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

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

10 \* Sec. 17. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided  
 11 by this Act apply to all revenue tax appeals in which, under AS 43.05.240(b), a person has  
 12 applied to the Department of Revenue and requested a formal hearing before the effective date  
 13 of this Act. However, a person who has applied to the Department of Revenue and requested  
 14 a formal hearing before the effective date of this Act may elect by giving written notice to the  
 15 commissioner within 45 days from the enactment of this Act to use the remedies and  
 16 procedures existing immediately before the enactment of this Act.

17 (b) Notwithstanding AS 43.05.405, enacted by sec. 1 of this Act, unless the office of  
 18 tax appeals has a full caseload, and with the approval of the chief administrative law judge, the  
 19 chief administrative law judge or any other administrative law judge of the office of tax appeals  
 20 may be appointed by the governor, by the commissioner of administration, or by the  
 21 commissioner of another department to serve as a special hearing officer or special  
 22 administrative law judge on another matter outside the scope of this Act and arising from another  
 23 department of the executive branch. Appointment under this subsection may not interfere with  
 24 the primary mission of the office of tax appeals under this Act of the expeditious resolution of  
 25 administrative tax appeals under its jurisdiction.

26 (c) Until 15 AAC 05.301 - 15 AAC 05.320 and other Department of Revenue  
 27 regulations in effect on the effective date of this Act are revised as necessary, those regulations  
 28 continue to govern an administrative appeal of a Department of Revenue decision not within the  
 29 jurisdiction of the office of tax appeals, including a decision regarding a

30 (1) game of chance or skill under AS 05.15;

31 (2) permanent fund dividend under AS 43.23; and

32 (3) coin-operated device or punchboard under AS 43.35.

1 (d) In this section,

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

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

6 \* Sec. 18. RETROSPECTIVE EFFECT. (a) The provisions of sec. 17(a) of this Act apply  
7 to persons who, under AS 43.05.240(b), have applied before the effective date of this Act to  
8 the Department of Revenue and requested a formal hearing to resolve a challenge to the action  
9 of the Department of Revenue in fixing the amount of a tax or in imposing a penalty.

10 (b) This section is set out to meet the requirements of AS 01.10.090.

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

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
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130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

April 21, 1996

**SUBJECT:** SCS CSHB 341(JUD); Office of Tax Appeals

**TO:** Senator Robin Taylor, Chair  
Senate Judiciary Committee  
Attn: Chuck Achberger

**FROM:** Pamela Finley *PF*  
Revisor of Statutes

In revising the referenced bill, I noticed the following, which I wanted to bring to your attention to make sure these were deliberate choices:

1. AS 43.05.242 (bill sec. 11) refers to tax statutes and tax regulations, while AS 43.05.275(c) (bill sec. 13) refers to tax statutes only.

2. AS 43.05.242(b) (bill sec. 11) does not include a claim that a tax regulation is inconsistent with a tax statute. Because this is a question of law, I expected to see it listed in (b) and want to make sure the omission was intentional. ( If AS 43.05.275(c) should also include regulations, see #1 above, then the same comment applies to AS 43.05.275(c).)

3. Under AS 43.05.242(e) (bill sec. 11) the direct appeal to the Superior Court is "exclusive." However, under AS 43.05.242(i), if the taxpayer loses in the direct appeal, the case is sent back to the office of tax appeals. I can understand why the case would be sent back to the office if it were improperly filed in the superior court, or if the superior court's decision on the law (no matter who prevails on the legal question) makes additional factual findings necessary before the case can be finally decided. However, I do not understand why a taxpayer who loses on a purely legal question, where there are no remaining factual issues, should have the case returned to the office for further proceedings.

4. Also, I gather from the "without prejudice" language in AS 43.05.242(i) that you want a taxpayer to be able to go directly to court if the taxpayer is challenging the assessment on grounds listed in AS 43.05.242(b) and other grounds, although the court would not be allowed to consider the other grounds. However, AS 43.05.242(c)(4) says that the direct appeal may not be used if the taxpayer challenges the assessment on other grounds. It would be clearer if (c)(4) were deleted and the rules were stated in a separate subsection for cases where the taxpayer challenges an assessment on both the grounds listed in AS 43.05.242(b)

Senator Robin Taylor, Chair

April 21, 1996

Page 2

and other grounds. Also, if the "other" grounds involve a dispute of material fact, would the direct appeal be precluded under AS 43.05.242(c)(1)?

I will be out of the office Monday April 22 with knee surgery, but you can discuss any of the above with Jack Chenoweth, the drafter assigned to this bill.

PF:glc

96-239.glc

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR \_\_\_\_\_

TO: CSHB 341(FIN), Work draft D (Apr. 16, 1996)

1 Page 19, lines 10 - 16:

2 Delete all material and insert:

3 "•Sec. 17. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided  
4 by this Act apply to all revenue tax appeals in which a request for formal hearing is filed  
5 with the Department of Revenue on or after the effective date of this Act. The remedies and  
6 procedures existing before the effective date of this Act apply to all revenue tax appeals in  
7 which a request for formal hearing was filed with the Department of Revenue before the  
8 effective date of this Act, unless all of the parties to an appeal agree in writing to the  
9 remedies and procedures established by this Act."

10 Page 22, lines 6-10:

11 Delete all material and renumber remaining section accordingly.

1 (d) An appeal of the informal conference decision under this section is  
2 exclusive, and the taxpayer electing to appeal under this section may not pursue an  
3 appeal under AS 43.05.241 or pursue any other action under another statute.

4 (e) When an appeal is taken under this section, the taxpayer shall be given  
5 access to the file of the department in the matter for preparation of the appeal.

6 (f) In an appeal under this section, the amount due shall be paid within ~~30~~<sup>60</sup> days  
7 after the date of the service of the informal conference decision. In place of payment  
8 of the amount due, the taxpayer may file a bond with the court or otherwise obtain  
9 relief from payment in accordance with the Alaska Rules of Appellate Procedure.

10 (g) Venue for an appeal filed under this section shall be set under rules  
11 adopted by the supreme court.

12 (h) If it is determined that appeal was improperly filed under this section, or if  
13 the court rules against the taxpayer, the appeal shall be transferred to the office of tax  
14 appeals for further proceedings under AS 43.05.400 - 43.05.499 without prejudice to  
15 any claims or defenses of the taxpayer that were barred from being raised in court by  
16 (b)(4) of this section."

17 Page 19, lines 14-21:

18 Delete:

19 "A return made and subscribed by the department in accordance with this  
20 section is presumed sufficient for all legal purposes. However, nothing  
21 prevents a taxpayer from presenting evidence or other information on informal  
22 conference [APPEAL] under AS 43.05.240 or in an appeal under AS

1           43.05.241 or 43.05.242 in order to rebut the presumed sufficiency of a return  
 2           made and subscribed by the department, nor does the presumption of  
 3           sufficiency alter the parties' respective burdens of proof once the taxpayer has  
 4           presented evidence or other material information to rebut that presumption."

5           Insert:

6           "An assessment or [A] return [MADE AND] subscribed by the department in  
 7           accordance with this section is presumed sufficient for all legal purposes.  
 8           However, nothing prevents a taxpayer from presenting evidence or other  
 9           information in [ON] an informal conference [APPEAL] under AS 43.05.240  
 10          or in an appeal under AS 43.05.241 in order to rebut the presumed  
 11          sufficiency of a return or assessment [MADE AND] subscribed by the  
 12          department, nor does the presumption of sufficiency alter the parties'  
 13          respective burdens of proof once the taxpayer has presented evidence or other  
 14          material information to rebut that presumption."

15 Page 19, line 28:

16          Insert:

17                \*\*Sec. 13. AS 43.05.275 is amended by adding new subsections:  
 18                   (c) A taxpayer who has filed a return, paid the full amount due on the  
 19                   return, and made a claim under this section may, without exhausting  
 20                   administrative remedies, file an action in superior court to recover on the  
 21                   claim if the sole ground for appeal is that a tax statute is:  
 22                               (1) violative of the United States Constitution;

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- (2) violative of the Alaska Constitution;
  - (3) preempted by federal statute, regulation or treaty.
- (d) An action under (c) may not be brought if
- (1) there is a dispute of material fact;
  - (2) a factual record is necessary to decide the appeal;
  - (3) development of a factual record will render it unnecessary to reach a question of constitutional law or federal preemption; or
  - (4) the taxpayer challenges the assessment of the tax on a ground other than one listed in (c)."

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 341(FIN)

1 Page 19, lines 6 - 22:

2 Delete all material and insert:

3 **\*\* Sec. 17. TRANSITIONAL PROVISIONS.** (a) The remedies and procedures provided  
4 by this Act apply to all revenue tax appeals in which, under AS 43.05.240(b), a person has  
5 applied to the Department of Revenue and requested a formal hearing before the effective  
6 date of this Act. However, a person who has applied to the Department of Revenue and  
7 requested a formal hearing before the effective date of this Act may elect by giving written  
8 notice to the commissioner within 45 days from the enactment of this Act to use the remedies  
9 and procedures existing immediately before the enactment of this Act."

10 Reletter the following subsections accordingly.

11 Page 20, following line 11:

12 Insert a new bill section to read:

13 **\*\* Sec. 18. RETROSPECTIVE EFFECT.** (a) The provisions of sec. 17(a) of this Act  
14 apply to persons who, under AS 43.05.240(b), have applied before the effective date of this  
15 Act to the Department of Revenue and requested a formal hearing to resolve a challenge to  
16 the action of the Department of Revenue in fixing the amount of a tax or in imposing a  
17 penalty.

18 (b) This section is set out to meet the requirements of AS 01.10.090(c)."

19 Renumber the following bill section accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 341(FIN)

1 Page 2, lines 4 - 9:

2 Delete all material and insert:

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

5 Page 2, lines 21 - 29:

6 Delete all material and insert:

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

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

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

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

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

1 the administrative law judge; the review by the judicial council must include a  
2 published notice requesting written comments on the administrative law judge whose  
3 performance is being evaluated;

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

8 (4) the governor has discretion to reappoint or not reappoint an  
9 administrative law judge whom the judicial council recommends for reappointment,  
10 but the governor may not reappoint a person as administrative law judge if the judicial  
11 council recommends against that reappointment.

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

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

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

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

29 (3) the judicial council shall send to the governor with its nominees  
30 or reappointment recommendations all nonconfidential materials that it gathers on  
31 applicants for administrative law judge and administrative law judges seeking  
32 reappointment whose applications or reappointment evaluations are under review, and

1 shall provide the governor with summaries of concerns raised in the comments,  
2 references, and survey responses that are kept confidential."

3 Page 3, line 20:

4 Delete "board"

5 Insert "chief administrative law judge"

6 Page 7, line 16:

7 Delete "by the full board"

8 Page 7, line 29:

9 Delete "board"

10 Insert "administrative law judge"

11 Page 7, line 31:

12 Delete "board"

13 Insert "administrative law judge"

14 Page 8, line 5:

15 Delete "board"

16 Insert "administrative law judge"

17 Page 8, line 7:

18 Delete "board"

19 Insert "administrative law judge"

20 Page 8, line 8:

21 Delete "board"

22 Insert "administrative law judge"

23 Page 8, line 15:

24 Delete "board"

- 1           Insert "administrative law judge"
  
- 2   Page 10, lines 4 and 5:
- 3           Delete all material.
  
- 4   Renumber the following paragraphs accordingly.



**USIBELLI COAL MINE, INC.****TAX DEPARTMENT**

550 WEST SEVENTH AVENUE, SUITE 600

Anchorage, AK 99501

Telephone (907) 279-8008

Telecopier (907) 279-0898

12:19am

March 28, 1996

Telecopy Cover Sheet

Please notify us immediately if any pages are not received.

To: RICK HUNDRUP, KENT DAWSON

Company: UCM, DE

Telecopier Number: 1-907-683-2253; 1-907-463-3922

From: *Donna S. Romano*

Office Code: Charge Code:

Number of Pages Including this Cover Page:

Transmitted by: \_\_\_\_\_

Message:

Rick and Kent:

I tried to reach you guys a couple of times in Juneau this afternoon, but you were obviously busy influencing legislation!

I've read HB 341 and it appears that the Legislature is trying to further formalize the Formal Hearing process - perhaps in light of Knowles laying off all the hearing officers immediately upon taking office??? The process probably works as well as can be expected with hearing officers being "appointed" by one of the parties to the dispute. It would be nice if we could get some of the more egregious problems with the current system addressed in this legislation. There are two that I can think of:

1. There should be a provision to have the Administrative Law Judge, who is appointed by the governor, also approved by the people at a general election after his/her first two-year term and each subsequent four-year term - similar to what's done with Superior Court Judges.

It would also be nice if the private sector, could have some influence over who gets appointed

Page 2.

as Administrative Law Judges

2. I strongly feel that a provision **MUST** be included to allow waiver of interest against the taxpayers when the State or the Administrative Law Judge are shown to be at fault for unnecessarily or negligently prolonging the Informal and Formal hearing process. As you both know, UCM currently has two issues at the Formal Hearing level that are seriously beyond the statutory limitation for rendering decisions and have been, in our opinion, completely bungled by the State. Still, the State continues to only adopt the portions of the IRC that it finds useful and refuses to consider abatement of interest assessed against the taxpayer in such circumstances. This is ludicrous and seriously needs addressing.

I also called Mike Stone at KPMG to get his input, but he hadn't even heard about this legislation until I called him.

Rick, I'll give you a call on Thursday morning to discuss this further.

Regards,  
Donna

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

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


## MEMORANDUM

April 13, 1996

**SUBJECT:** Amendment Z.3 to CSIB 341 (Finance)  
(Work Order No. 9-LS1129/Z.3)

**TO:** Senator Robin Taylor, Chair  
Senate Judiciary Committee

**FROM:** Jack Chenoweth  
Legislative Counsel



To the enclosed amendment:

I've redrafted what was provided from your office to make use of the terms that appear in AS 43.05.240(b), the source of the current authority to seek and obtain a formal hearing.

It seems to me that this revision of the transitional provision may have retroactive effect in that it certainly changes the procedures that are to be followed by, and may affect rights of, an aggrieved taxpayer, especially one who fails to opt to protect those rights under current law by doing something within 45 days. Against that possibility, the committee may wish to add something along the lines of:

\* **Sec. 18. RETROSPECTIVE EFFECT.** (a) The provisions of sec. 17 of this Act apply to persons who, under AS 43.05.240(b), have applied before the effective date of this Act to the Department of Revenue and requested a formal hearing to resolve a challenge to the action of the Department of Revenue in fixing the amount of a tax or in imposing a penalty.

(b) This section is set out to meet the requirements of AS 01.10.090(c).

In addition, I have these questions:

1. How may a person elect within 45 days to use the old remedies and procedures? The amendment doesn't indicate what the person is to do.
2. On the amendment's second line, what is a "revenue tax appeal"? I am aware that the term comes down to you from the House-passed bill, but I don't know whether it is intended

Senator Robin Taylor

April 13, 1996

Page 2

to differentiate among kinds of appeals for some reason. It seems to me that it would be clearer to draft this having reference to the language of the comparable statute, "to all challenges to the action by the Department of Revenue in fixing the amount of a tax or in imposing a penalty" so that the transitional provision more closely parallels current law and leaves no question as to whether it is or is not applicable to a particular matter.

3. Do you understand that, as this amendment is presented, the provisions of current sec. 17(c), explicitly authorizing the interim use of administrative law judges appointed for revenue appeals to consider other kinds of administrative adjudications, will be removed from the bill? You may want to do that, but I don't want the committee to reach that end by oversight.

JBC:lmb

96-079.lmb

Enclosure

Table 1  
STATE APPEAL PROCEDURES

**STATES WHERE TAX AUTHORITIES  
CONDUCT TAX APPEALS<sup>1</sup>**

State or Tax Jurisdiction	Taxpayer Must Use Tax Forum <sup>2</sup>	Taxpayer May Skip Tax Forum- Taxpayer Must Prepay All Taxes <sup>3</sup>	Taxpayer May Skip Tax Forum- No Prepayment; May Require Bond
California (Sales and Use)		X	
Idaho (Larger cases) <sup>4</sup>	X		
Mississippi	X		
Nevada		X	
Oklahoma	X		
South Carolina	X		
Utah	X		
Alabama			X
Alaska	X		
Arkansas		X	
Colorado		X	
Florida			X
Georgia			X
Illinois		X	
Maine		X	
Nebraska		X	
New Mexico		X	
North Dakota	X		

Table 1 (Continued)

State or Tax Jurisdiction	Taxpayer Must Use Tax Forum <sup>1</sup>	Taxpayer May Skip Tax Forum- Taxpayer Must Prepay All Taxes <sup>3</sup>	Taxpayer May Skip Tax Forum- No Prepayment; May Require Bond
Rhode Island	X		
South Dakota		X	
Tennessee			X
Texas	X		
Vermont		X	
Virginia		X	
West Virginia	X		
<b>Total 25 Jurisdictions</b>	<b>10</b>	<b>11</b>	<b>4</b>

1. Includes states in which review is conducted in Tax Commissions and in Tax Departments.

2. Taxpayer must try the case first before the designated forum before appealing. Some states provide for a second *de novo* trial at another level of appeal.

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

4. In Idaho, all cases first are heard before the Idaho Tax Commission, within the state tax department. Cases involving \$25,000 or less may appeal to the Idaho Board of Tax Appeals (see other chart). Larger cases must appeal directly to court.

**Table 2**  
**STATE APPEAL PROCEDURES**  
**STATES WITH INDEPENDENT FORUMS<sup>1</sup>**

State or Tax Jurisdiction	Taxpayer Must Use Tax Forum <sup>2</sup>	Taxpayer May Skip Tax Forum- Taxpayer Must Prepay All Taxes <sup>3</sup>	Taxpayer May Skip Tax Forum- No Prepayment; May Require Bond
Arizona	X		
Hawaii	X		
Indiana	X		
New Jersey	X		
Oregon	X		
Connecticut	X		
District of Columbia	X		
Maryland	X		
Minnesota		X	
Michigan	X		
New York State	X		
New York City	X		
California (Income and Excise)		X	
Delaware	X		
Idaho (Less than \$25,000)			X
Iowa	X		
Kansas		X	
Kentucky	X		
Louisiana <sup>4</sup>	X		

Table 2 (Continued)

State or Tax Jurisdiction	Taxpayer Must Use Tax Forum <sup>2</sup>	Taxpayer May Skip Tax Forum- Taxpayer Must Prepay All Taxes <sup>3</sup>	Taxpayer May Skip Tax Forum- No Prepayment; May Require Bond
Massachusetts		X	
Missouri (Income)		X	
Missouri (Sales and Use)	X		
Montana	X		
New Hampshire			X
North Carolina		X	
Ohio	X		
Pennsylvania	X		
Washington		X	
Wisconsin	X		
Wyoming	X		
<b>Total 30 Jurisdictions</b>	<b>21</b>	<b>7</b>	<b>2</b>
<b>Alaska: CSHB 341 (Without Amendment)</b>			<b>X</b>

1. "Independent forums" include Tax Courts and Tax Tribunals within the Judicial Branch, as well as Executive Branch Courts, Tribunals and Boards, so long as they are outside the tax collective agency.

2. Taxpayer must try the case first before the designated forum before appealing. Some states provide for a second *de novo* trial at another level of appeal.

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

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

**TESTIMONY OF THE  
ALASKA OIL AND GAS ASSOCIATION  
TO THE SENATE JUDICIARY COMMITTEE  
REGARDING HOUSE BILL NO. 341**

April 12, 1996

Good afternoon, Mr. Chairman and Members of the Judiciary Committee. My name is Dan Seckers, and I am the chairman of the Tax Committee of the Alaska Oil and Gas Association ("AOGA"). 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. We are grateful for this opportunity to offer our comments, which reflect the unanimous consensus of the Tax Committee.

The present tax appeals process is, we believe, seriously flawed in practice and denies taxpayers the opportunity to have their tax appeals heard and decided by a truly independent and impartial tribunal. House Bill 341 as passed by the House would significantly reform this process by establishing a forum outside the Department of Revenue, and independent of it, where taxpayers' appeals would be heard, tried and decided. The Bill would also clarify the standards to be used in reviewing the claims and positions asserted by the Department against taxpayers, while ensuring that the Department's judgment will not be overturned in matters where discretion has been legally vested in it, so long as it has acted reasonably in the exercise of that discretion. The Bill would promote greater efficiency and speed in tax appeals by providing for greater control over the "discovery" process, which has been an area of abuse in the past.

The great majority of the provisions in CSHB 341 (Finance) reflects consensus not only within the industry, but also between the industry and the Department of Revenue. However, there are two significant areas in the Bill which the Department is still opposing and which we support — namely, legislative confirmation of the administrative law judges who would hear tax appeals, and the option for taxpayers to proceed directly to Superior Court instead of the administrative law judges. Let me address both these areas.

1. Legislative confirmation of the administrative law judges.

AOGA supports legislative confirmation of the administrative law judges. These people may decide cases involving tens or even hundreds of millions of dollars in tax claims, and their decisions could affect all Alaskan taxpayers. So it is essential that they be qualified, capable and fair.

To achieve this, AOGA believes there are three essential elements in the process by which these administrative law judges will be appointed. First, there must be an opportunity for taxpayers and others to comment on the qualifications of a potential appointee before his or her appointment becomes final. Without this, someone could be named by the governor without knowing that the person is biased or otherwise ill-suited for the position, until the appointment has already been made. Second, the process of appointing the administrative law judges must be a public and open process. And third, there must be some independent body or entity in the process to act as a check on the Executive Branch's otherwise unlimit-

ed discretion in making these appointments. Having such a check prevents an improper influence that the Executive Branch might otherwise have over an administrative law judge if it could hold out the lure of appointment or reappointment to that person. We are not saying that this has ever happened, nor that we believe it is likely to happen. But the point is, it could happen. By having an independent body involved, even the possibility of this happening is removed, since the Executive Branch would no longer be able to "deliver" on such a deal on its own.

Legislative confirmation provides all three of these essential elements in the appointment process, and therefore AOGA supports it.

When the Bill was before the House Finance Committee, the Department of Revenue proposed an alternative to legislative confirmation, which would run the appointments through the Alaska Judicial Council in a manner similar to that used in appointing judges to the state courts. A revised, more explicit proposal was presented as an amendment to the Bill on behalf of the Department by Representative Kay Brown during the Finance Committee's last hearing on HB 341.

At the time the Judicial Council approach was considered in the House, the individual members of the AOGA Tax Committee had not had sufficient time to review and consider it. However, we do have an AOGA position on it now.

AOGA believes that, properly framed, the Judicial Council approach can be a reasonable alternative to legislative confirmation. We have developed an amendment to HB 341 embodying this alternative approach, and a copy of it is attached to the written copies of this testimony. We offer this amendment to you as a possible compromise of the issue, should you find a compromise to be desirable.

Our amendment follows very closely the one that Representative Brown offered on behalf of the Department of Revenue in the House Finance Committee. In fact, there are only two differences between them. The first — in lines 9-12 on page 1 of the attachment — is really only a technical amendment in the second sentence in proposed AS 43.05.410(a), clarifying that there is no requirement to create additional administrative law judge positions besides the chief, but if additional positions are created, then the governor must choose each of them from a slate of nominees presented by the Judicial Council, the same as he must do in choosing the chief administrative law judge under the first sentence of that subsection.

The second difference is also technical in nature. Proposed AS 43.05.410(c)(4) in Representative Brown's version said, "the governor has the discretion to accept or reject the judicial council's recommendation on the administrative law judge's reappointment." Our concern over this particular language relates to the situation where the Judicial Council recommends against the reappointment of an incumbent administrative law judge. On the face of it, Representative Brown's language allows for the possibility that a governor might reject the Council's negative recommendation and reappoint the administrative law judge anyway. We do not believe this was intended, and our language (p. 2, lines 11-14 of the attachment) makes it clear that a person cannot be reappointed if the Judicial Council recommends against it.

We endorse this alternative approach because it, too, would provide for 1) an opportunity to comment before the appointment becomes final, 2) an open and public process, and 3) an independent body to act as a check on the Executive Branch — which are the three elements of the appointment process that we believe are essential if it is to work properly.

Let me make clear what our current endorsement of the Judicial Council approach means. For one thing, it does not mean we are withdrawing our endorsement of the legislative confirmation approach. Rather, it means that the legislative confirmation language currently in the Bill is just as acceptable to us as the alternative language we are offering this Committee in the attached amendment. Either one will satisfy our concerns, and we have no preference which one you choose, so long as this legislation is not jeopardized as a result. Although Governor Knowles himself has not said he would veto this Bill over the issue of legislative confirmation, you know the Department of Revenue is opposed to it, which means the possibility of a veto over this issue cannot be totally ignored. Yet on the other hand, it is very understandable to us that the Legislature might want to keep legislative confirmation in this Bill, instead of using the Judicial Council. Since we want tax-appeal reform this year and can accept either alternative as currently drafted, we defer to the judgment of you in the Legislature as to which approach should be in this Bill.

## 2. Option of going directly to court.

The second provision opposed by the Department of Revenue in the Bill as passed by the House is the one providing for the option of proceeding directly to Superior Court instead of to the new administrative law judges.

This option was not something that AOGA proposed; however, we have found merit in this proposal and accordingly endorse it.

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

Or, if a dispute involves issues that an administrative law judge cannot rule on, such as constitutional issues, it would make much more sense to allow a direct appeal to the forum where those issues can be dealt with. Otherwise, they could well end up having to be litigated twice — once before the administrative law judge anyway, in order to preserve the right to argue those issues later in the appeal, and then later a second time in court.

On February 29, Mr. Paul Frankel, a general recognized expert in the area of state tax dispute resolution procedures, appeared before a joint hearing of the House Judiciary and Finance Committees. As Mr. Frankel mentioned in his testimony during that joint hearing, the federal system offers taxpayers a choice of forums. In addition, more than one half of the states provide such an option.

Superior Court judges are competent professionals who have responsibility for hearing very complex cases, such as royalty and commercial litigation. In addition, under current law, Superior Court judges review the formal hearing decisions of the Department of Revenue and, under this Bill, would review the decisions of the administrative law judges.

The option would also not cost the state additional money and may in fact result in reduced expenditures in some instances since an election to go directly to Superior Court would eliminate review of an administrative law judge's decision by the Superior Court. This Bill also clarifies that the standards of review to be used by Superior Court judges under this option would be the same as under the administrative law judge system.

By making this option available in Alaska, the State is saying to taxpayers that it is committed to ensuring that the tax appeals process is fair. If any taxpayer has a residual concern about the independence of the administrative law judges, the taxpayer has the other option. This check and balance safeguards the fairness and independence of the process.

But I would repeat that we expect the option of going directly to court to be one that is used only on an exceptional basis. Having a choice to go either to an administrative law judge or to court will provide a balance between the two forums and will aid each other in arriving at fair, impartial decisions. One with technical expertise and the other with judicial wisdom.

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

In conclusion, let me emphasize that this is an excellent Bill. Our focus in this testimony on the few remaining areas of disagreement must not detract from the fact that there is a great deal more consensus and compromise in the Bill than controversy. It embodies a fair and balanced approach toward the process of adjudicating tax appeals, and promises to be faster and more efficient than the present system. CSHB 341 (Finance) truly is reform legislation, and its enactment will lay the foundation for Alaska's competitive investment climate in the future for economic development.

On behalf of the members of AOGA, thank you again for this opportunity to testify.

AOGA DRAFT AMENDMENT TO CSHB 341(FIN)  
ALTERNATIVE TO LEGISLATIVE CONFIRMATION  
OF TAX-APPEAL ADMINISTRATIVE LAW JUDGES

AMENDMENT

OFFERED IN THE SENATE \_\_\_\_\_ COMMITTEE

BY SENATOR \_\_\_\_\_

TO: CSHB 341(FIN)

1 Page 2, lines 4 - 9

2 Delete all material and insert:

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

5 Page 2, lines 21 - 29

6 Delete all material and insert:

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

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

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

**AOGA DRAFT AMENDMENT TO CSHB 341(FIN)  
ALTERNATIVE TO LEGISLATIVE CONFIRMATION  
OF TAX-APPEAL ADMINISTRATIVE LAW JUDGES**

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

4           “(2) in reviewing the performance of the administrative law judge, the judicial  
5 council shall collect and review sufficient information to thoroughly evaluate the administrative  
6 law judge; the review by the judicial council must include a published notice requesting written  
7 comments on the administrative law judge whose performance is being evaluated;

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

11           “(4) the governor has the discretion to reappoint or not reappoint an administrative  
12 law judge whom the judicial council recommends for reappointment, but if the judicial council  
13 recommends against the reappointment of an administrative law judge, that person shall not be  
14 reappointed.

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

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

21           “(1) comments, references, or survey responses that request confidentiality, or for  
22 which the judicial council promises confidentiality, shall be kept confidential, but the judicial  
23 council shall provide the applicant for administrative law judge or administrative law judges

**AOGA DRAFT AMENDMENT TO CSHB 341(FIN)  
ALTERNATIVE TO LEGISLATIVE CONFIRMATION  
OF TAX-APPEAL ADMINISTRATIVE LAW JUDGES**

1 seeking reappointment a summary of the concerns raised in the comments, references, and  
2 survey responses that are kept confidential;

3           “(2) the judicial council has authority to review confidential Alaska Bar  
4 Association files, including bar complaint files, on applicants for administrative law judge and  
5 on administrative law judges seeking reappointment whose applications or reappointment  
6 evaluations are under review; the judicial council shall maintain the confidentiality of these files;  
7 and

8           “(3) the judicial council shall send to the governor with its nominees or  
9 reappointment recommendations all nonconfidential materials that it gathers on applicants for  
10 administrative law judge and administrative law judges seeking reappointment whose  
11 applications or reappointment evaluations are under review, and shall provide the governor  
12 with summaries of concerns raised in the comments, references, and survey responses that are  
13 kept confidential.”

14 Page 3, line 20

15 Delete "board" and insert "chief administrative law judge"

16 Page 7, line 16

17 Delete "board" and insert "administrative law judge"

18 Page 7, line 29

19 Delete "board" and insert "administrative law judge"

20 Page 7, line 31

21 Delete "board" and insert "administrative law judge"

22 Page 8, line 5

**AOGA DRAFT AMENDMENT TO CSHB 341(FIN)  
ALTERNATIVE TO LEGISLATIVE CONFIRMATION  
OF TAX-APPEAL ADMINISTRATIVE LAW JUDGES**

- 1 Delete "board" and insert "administrative law judge"
- 2 Page 8, line 7
- 3 Delete "board" and insert "administrative law judge"
- 4 Page 8, line 8
- 5 Delete "board" and insert "administrative law judge"
- 6 Page 8, line 15
- 7 Delete "board" and insert "administrative law judge"
- 8 Page 8, line 5
- 9 Delete "board" and insert "administrative law judge"
- 10 Page 8, line 5
- 11 Delete "board" and insert "administrative law judge"
- 12 Page 8, line 5
- 13 Delete "board" and insert "administrative law judge"
- 14 Page 8, line 5
- 15 Delete "board" and insert "administrative law judge"
- 16 Page 8, line 5
- 17 Delete "board" and insert "administrative law judge"
- 18 Page 8, line 5
- 19 Delete "board" and insert "administrative law judge"
- 20 Page 10, lines 4 - 5
- 21 Delete all material and renumber the remaining paragraphs in lines 6 - 26 accordingly

DEPARTMENT OF REVENUE  
EXPLANATION FOR PROPOSED MODIFICATIONS OF CSHB 341  
(April 11, 1996)

The Department of Revenue, working with the Department of Law, has provided two suggested amendments to CSHB 341 (Fin) (March 20, 1996).

1. Deletion of direct appeal to superior court

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

2. Appointment of ALJs upon nomination by the Judicial Council

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

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

A M E N D M E N T

OFFERED IN THE SENATE  
TO: CSHB 341(FIN)

BY SENATOR \_\_\_\_\_

- 1 Page 11, line 19, through page 12, line 1:
- 2 Delete all material.
- 3 Renumber the following bill sections accordingly.
- 4 Page 12, line 18:
- 5 Delete "AS 43.05.240, 43.05.241, or 43.05.242"
- 6 Insert "AS 43.05.240 or AS 43.05.241"
- 7 Page 15, line 31:
- 8 Delete "new sections"
- 9 Insert "a new section"
- 10 Page 16, line 5, through page 17, line 4:
- 11 Delete all material.
- 12 Page 17, line 14:
- 13 Delete "or 43.05.242"
- 14 Page 17, line 31:
- 15 Delete "or 43.05.242"
- 16 Page 19, line 17:
- 17 Delete "sec. 10"
- 18 Insert "sec. 9"

A M E N D M E N T

OFFERED IN THE SENATE  
TO: CSHB 341(FIN)

BY SENATOR \_\_\_\_\_

1 Page 2, lines 4 - 9:

2 Delete all material and insert:

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

5 Page 2, lines 21-29:

6 Delete all material and insert:

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

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

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

19 (1) if an administrative law judge seeks reappointment, the

1 governor shall notify the judicial council of the impending end of the  
2 administrative law judge's term at least 120 days before the end of the term;

3 (2) in reviewing the performance of the administrative law judge,  
4 the judicial council shall collect and review sufficient information to thoroughly  
5 evaluate the administrative law judge; the review by the judicial council must  
6 include a published notice requesting written comments on the administrative law  
7 judge whose performance is being evaluated;

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

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

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

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

22 (1) comments, references, or survey responses that request

1 confidentiality, or for which the judicial council promises confidentiality, shall be  
2 kept confidential, but the judicial council shall provide the applicant for  
3 administrative law judge or administrative law judges seeking reappointment a  
4 summary of the concerns raised in the comments, references and survey responses  
5 that are kept confidential;

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

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

17 Page 3, line 20:

18 Delete "board"

19 Insert "chief administrative law judge"

20 Page 7, line 16:

21 Delete "by the full board"

22 Page 7, line 20:

- 1 Delete "board"
- 2 Insert "administrative law judge"
- 3 Page 7, line 31:
- 4 Delete "board"
- 5 Insert "administrative law judge"
- 6 Page 8, line 5:
- 7 Delete "board"
- 8 Insert "administrative law judge"
- 9 Page 8, line 7:
- 10 Delete "board"
- 11 Insert "administrative law judge"
- 12 Page 8, line 8:
- 13 Delete "board"
- 14 Insert "administrative law judge"
- 15 Page 8, line 15:
- 16 Delete "board"
- 17 Insert "administrative law judge"
- 18 Page 10, lines 4 and 5
- 19 Delete all material
- 20 Renumber the following paragraphs accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 341(FIN)

1 Page 19, lines 6 - 22:

2 Delete all material and insert:

3 "\* Sec. 17. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided  
4 by this Act apply to all revenue tax appeals in which, under AS 43.05.240(b), a person has  
5 applied to the Department of Revenue and requested a formal hearing before the effective  
6 date of this Act. However, a person who has applied to the Department of Revenue and  
7 requested a formal hearing before the effective date of this Act may elect by giving written  
8 notice to the commissioner within 45 days from the enactment of this Act to use the remedies  
9 and procedures existing immediately before the enactment of this Act "

10 Reletter the following subsections accordingly.

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 314( ), "W" version, dated 4/13/96

- 1 Page 19, line 6:
- 2 Delete "[11.56.740]"
- 3 Insert "11.56.740"

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 341(FIN)

1 Page 19, line 6, through page 20, line 11:

2 Delete all material and insert:

3 "\*\* Sec. 17. TRANSITIONAL PROVISIONS. The remedies and procedures provided by  
4 this Act apply to all revenue tax appeals in which, under AS 43.05.240(b), a person has  
5 applied to the Department of Revenue and requested a formal hearing before the effective  
6 date of this Act. However, a person who has applied to the Department of Revenue and  
7 requested a formal hearing before the effective date of this Act may elect within 45 days  
8 from the enactment of this Act to use the remedies and procedures existing immediately  
9 before the enactment of this Act."

# FISCAL NOTE

No. 4

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

Bill Version: CSHB 341(JUD)

(H) Publish Date: 3/12/96

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

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITUR	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	225.6	225.6	225.6	225.6	225.6	225.6
TRAVEL	8.8	8.8	8.8	8.8	8.8	8.8
CONTRACTUAL	43.0	43.0	43.0	43.0	43.0	43.0
SUPPLIES	4.5	4.5	4.5	4.5	4.5	4.5
EQUIPMENT	55.5	2.5	2.5	2.5	35.0	2.5
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>337.4</b>	<b>284.4</b>	<b>284.4</b>	<b>284.4</b>	<b>316.9</b>	<b>284.4</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS:**

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

**ANALYSIS:** (Attach a separate page if necessary)

\* New BRU and Component in the Department of Administration

(See Attached)

Prepared by [Signature] Director  
 Division: Administrative Services

Phone: 465-5655  
 Date: \_\_\_\_\_

Approved by Commissioner Mark Boyer [Signature]  
 Agency: Department of Administration

Date: 3/12/96

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FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 341 (RES)

**ANALYSIS: (continued)**

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

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

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

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

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

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

# FISCAL NOTE

No 3

E. Version: CSHB 341 (JUD)

(H) Publish Date: 3/12/96

**STATE OF ALASKA  
1996 LEGISLATIVE SESSION**

Revision Date: 01/26/96 Dept. Affected: Alaska Court System  
 Title: An Act establishing a tax court... BRU: Trial Courts  
 Component: \_\_\_\_\_  
 Sponsor: Rep. Green  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

**Expenditures/Revenues (Thousands of Dollars)**

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

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

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

**FUND SOURCE (Thousands of Dollars)**

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

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

**POSITIONS**

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

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel  
 Agency: Alaska Court System  
 Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System

Phone: 254-8228  
 Date: 01/26/96  
 Date: 01/26/96

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Alaska Court System  
Fiscal Analysis  
CSHB 341 (RES)

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

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

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

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

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

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

Alaska Court System  
Fiscal Analysis  
CSHB 341 (RES)

Personal Services

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

Contractual

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

Supplies

Office, courtroom and computer supplies. 2,000

Equipment (one time item)

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

Total Estimated Cost \$148,951

Revision Date: January 17, 1996 Dept. Affected: Revenue  
 Title: Alaska Tax Court BRU: Revenue Operations  
 Component: Oil and Gas Audit  
 Sponsor: Representative Green  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 115

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: John E. Patten, Director Phone: (907) 276-1363 Ext 225  
 Division: Oil and Gas Audit Date: January 23, 1996  
 Approved by Commissioner: [Signature] Date: January 23, 1996  
 Agency: Department of Revenue

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

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

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