

SB

345

SFIN

FILE

Revision Date: _____ Dept. Affected: Revenue
 Title: Apportionment of Business Income BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: (S) L&C
 Requestor: (S) FIN COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (Loss)	\$3,000.0 - \$8,500.0	\$3,000.0 - \$8,500.0	\$3,000.0 - \$8,500.0	\$3,000.0 - \$8,500.0	\$3,000.0 - \$8,500.0	\$3,000.0 - \$8,500.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL						

Estimate of any current year cost \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Brett Fried, Economist
 Division: Income and Excise Audit
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-3682
 Date: April 6, 1998
 Date: April 6, 1998

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

SB 345
Apportionment of Business Income
Fiscal Note Analysis
April 6, 1998
Page 2

SB 345 – Apportionment of Business Income

SB 345 would amend Alaska's Corporate Income Tax to specifically incorporate Section 883 of the Internal Revenue Code. Alaska would exempt from tax the income of foreign owned aircraft and ships, under the legislation.

Overview of Section 883

The Alaska Supreme Court, on February 20, 1998, decided a case that determined that the federal corporate income tax exemption that applies to income from foreign owned ships and aircraft does not apply in Alaska. The federal provision is Section 883 of the Internal Revenue Code. The court held that, while Alaska incorporates much of the code into the Alaska Corporate Income Tax (AS 43.20), Section 883 was "excepted to or modified by" Alaska's choice of the apportionment method of determining taxable income in Alaska. The decision makes it clear that these entities are subject to tax in Alaska.

Revenue Effect

The state will collect less revenue by changing the statutes to exempt income from foreign owned ships and aircraft from Alaska income tax. We have had little time and we have very limited information available to develop projections of potential corporate tax revenue from the recent court decision on the taxation of foreign shipping corporations. Consequently, we have developed a range based on estimates of Alaska corporate income tax revenue from foreign cruise ship corporations, foreign air cargo corporations and foreign corporations shipping fish. We do not have financial information available to review the other segments of the shipping industry (mining and timber). To develop this range we used publicly available financial statements, information from taxpayer returns, and other industry specific data available from State agencies and other sources.

Based on the above paragraph our estimate of the range of potential annual revenue lost due to the passage of this bill is \$3.0 million to \$8.5 million.

moved Adams
objection Sharp
FAILED 1-5
(Adams)

AMENDMENT

BY ADAMS

SB 345

ON PAGE 1, DELTE LINE 10.

SENATE FINANCE
COMMITTEE

Amendment Number: 1

Bill Number: SB 345

Sponsor: Adams Date: 4/27/96

Logged In By: Kellam

AMENDMENT

BY ADAMS

SB 345

ON PAGE 1, DELTE LINE 10.

SENATE FINANCE
COMMITTEE

Amendment Number: 1

Bill Number: SB 345

Sponsor: Adams Date: 4/27/90

Logged In By: Kellie

SENATE FINANCE
COMMITTEE

Amendment Number: 2 0-LS1674A.1
Bill Number: SB 345 Cook/Glover
Sponsor: Adams Date: 4/07/98 4/6/98
Logged In By: Koltani

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: SB 345

*Sen Adams moved
Sen Livingston objection
FAILED 1-5
(Adams)*

- 1 Page 1, line 1, following "income":
- 2 Insert "; and providing for an effective date"

- 3 Page 1, line 10:
- 4 Delete all material and insert:
- 5 "* Sec. 2. AS 43.20.021(a) is amended to read:
- 6 (a) Sections 26 U.S.C. 1 - 1399 and 6001 - 7872 (Internal Revenue Code), as
- 7 amended, are adopted by reference as a part of this chapter. These portions of the
- 8 Internal Revenue Code have full force and effect under this chapter unless excepted
- 9 to or modified by other provisions of this chapter. [HOWEVER, NOTHING IN THIS
- 10 CHAPTER OR IN AS 43.19 (MULTISTATE TAX COMPACT) MAY BE
- 11 CONSTRUED AS AN EXCEPTION TO OR MODIFICATION OF 26 U.S.C. 883.]
- 12 * Sec. 3. Section 1 of this Act is retroactive to January 1, 1993.
- 13 * Sec. 4. Section 2 of this Act takes effect January 1, 2001."

SENATE FINANCE
COMMITTEE

Amendment Number: 2
Bill Number: SB 345
Sponsor: Adams Date: 4/2/98
Logged In By: [Signature]
0-LS1674A.1
Cook/Glover
4/6/98

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: SB 345

- 1 Page 1, line 1, following "income":
- 2 Insert "; and providing for an effective date"

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- 12 * Sec. 3. Section 1 of this Act is retroactive to January 1, 1993.
- 13 * Sec. 4. Section 2 of this Act takes effect January 1, 2001."



Alaska Steamship Association

234 Gold Street • Juneau, Alaska 99801
(907) 586-3107 • Fax (907) 586-1001

April 7, 1998

Senator Bert sharp
Alaska State Senate
State Capitol
Juneau, Alaska 99801 - 1182

Re: SB - 345

Dear Senator Sharp:

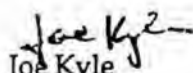
The Alaska Steamship Association (ASA) is very concerned that the Alaska Department of Revenue may, as a result of a recent decision by the Alaska Supreme Court, implement a new corporation business tax on the former, current, and future earnings of foreign, international air and sea carriers operating in the State of Alaska.

Our membership represents a broad base of marine transportation companies operating in Alaska, and their agents; who move timber, mining products, fishery products, petroleum products, and cruise ship passengers — among other products — between Alaska and overseas ports. The membership consist of the Alaska Maritime Agency, American President Lines, ANP Shipping, Marathon Oil Company, the North West Cruiseship Association, North Star Stevedoring and Terminals, Southeast Stevedoring, and Tesoro.

This new business tax, if imposed by the Department of Revenue, will adversely affect our member companies, and the companies who rely on our services for import and export products and tourists. Recently, the states of California, New York, and New Jersey have withdrawn proposals to tax foreign, international carriers because they realized such taxes were simply bad for business and the economy. We understand Alaska would be the only state in the Union imposing such a tax if it decides to move forward.

Therefore, we strongly urge that you move SB - 345 so that the Department of Revenue will be preempted from imposing this onerous, new tax.

Sincerely,


Joe Kyle
Executive Director

A.N.P. SHIPPING COMPANY

P.O. BOX 10-1300
ANCHORAGE, ALASKA 99501
(907)272-6145 FAX: (907)276-0033

April 4, 1998

Senator Bert Sharp
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Sharp,

We are writing this letter to express our concern regarding the possibility of the Alaska Department of Revenue implementing a new corporation business tax on foreign, international air and sea carriers that operate in the State of Alaska, and to express our support of HB 472.

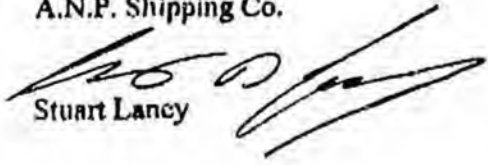
We operate a vessel agency that represents foreign flagged cargo vessels that operate in Alaskan waters loading coal, forestry products and frozen fish products from Alaskan ports and U.S. Fishing vessels and transporting these products to Asian and Pacific Rim Ports. Many of our clients' Alaskan customers depend on water borne transport exclusively to transport their products to International markets and to receive needed supplies from Japan and Korea.

Any new tax imposed on our clients by the State of Alaska would likely be passed directly on to their Alaskan customers in the form of shipping rate increases and, given the current depressed markets for all Alaskan exports in the Pacific Rim, this increase in shipping rates could very well mean lost sales in the Pacific Rim for many Alaskan Companies. Aside from the potential for Alaskan products being priced out of some Pacific Rim markets, our clients believe any new tax on shipping will only invite retaliatory taxes to be placed on domestic water borne carriers serving these same markets thus raising shipping rates to Alaskan Companies no matter what carrier they choose.

We understand that recently, the states of California, New York, and New Jersey have considered such a tax and then withdrawn these proposals due to the potential overall negative effects such a tax would have on both their own exporters and their State's economies. It is our understanding that Alaska would be the only state in the Union to impose such an onerous tax on international carriers.

In conclusion, we strongly urge that you and your colleagues in the House of Representatives move forward with HB 472 so that the Department of Revenue will be preempted from imposing a tax so potentially damaging to the competitiveness of Alaskan produced products.

Yours very truly,
A.N.P. Shipping Co.


Stuart Lancy



TRIDENT SEAFOODS CORPORATION

5303 Shilshole Ave NW, Seattle, WA 98107-4006 • (206) 783-3818 • Fax: (206) 782-7195
 Domestic Sales: (206) 783-3474 • Fax: (206) 782-7248
 Export Sales: (206) 783-3818 • Fax: (206) 782-7195

April 7, 1998

The Honorable Bert Sharp, Chairman
 Senate Finance Committee
 Alaska Senate
 State Capitol
 Juneau, Alaska 99801-1182

Dear Senator Sharp:

On behalf of Trident Seafoods Corporation I want to make you that the Alaska Department of Revenue is poised, as a result of a recent decision by the Alaska Supreme Court, to implement a new corporation business tax on foreign, international air and sea carriers operating in the State of Alaska. We oppose the new tax and respectfully request the legislature pass HB 472, to stop the Department of Revenue from imposing this cost on the industry.

Like others in the seafood industry, Trident depends on international water borne carriers to move our seafood products overseas to international markets. Given the current economic conditions on the Pacific Rim countries, any new tax on transportation will, in all likelihood, be passed directly on to us through the carriers we use. This tax will also invite retaliatory taxes on domestic water borne carriers serving the Pacific Rim--whom we also use.

We understand that the states of California, New York, and New Jersey have withdrawn proposals to tax foreign, international carriers because they realized such taxes were simply bad for business and the economy. We understand Alaska would be the only state in the Union imposing such a tax if it decides to move forward.

Therefore, we strongly urge that you move forward with HB 472, so that the Department of Revenue will be preempted from imposing this onerous, new tax on an industry that 's in a very fragile state.

Sincerely,

Joseph T. Plesha
 General Counsel

Alaska

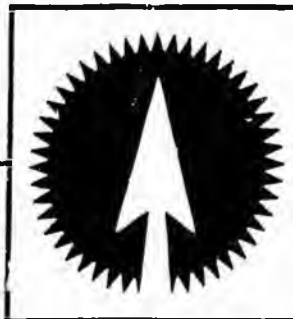
The American Connection

Washington

Akutan • Anchorage • Clarke Point • Dillingham • Dutch Harbor • Ketchikan • Naknek • Sand Point • So. Naknek • St. Paul Anacortes • Bellingham • Seattle

TOTAL P. 01

Alaska Forest Association, Inc.



111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-6599
Phone 907-225-6114
FAX 907-225-5920

April 2, 1998

The Honorable Bert Sharp
The Honorable Drue Pearce
Alaska State Senate
State Capitol
Juneau, AK 99801

Dear Senators Sharp and Pearce:

The Alaska Forest Association strongly supports Senate Bill 345, "An Act relating to apportionment of business income." The Alaska forest industry depends heavily on foreign vessels for shipments of logs and wood products to its trading partners around the Pacific Rim. The recent Alaska Supreme Court ruling that the exemption in §883 of the Internal Revenue Code does not apply in Alaska will have a significant deleterious effect on those shipments.

Fortunately, the problem can be fixed with a simple change in state statute. Senate Bill 345, introduced by the Senate Labor and Commerce Committee, provides the necessary amendment, and I urge you to take speedy action to ensure passage of this bill. I cannot emphasize enough the importance of making the change this year, before a disruption in Alaska's trade occurs.

Please move SB 345 through the Finance Committee at the earliest opportunity, and support it on the Senate floor.

Thank you for your consistent support for Alaska's resource development industries, including forestry, and thank you in advance for your help on this specific occasion.

Sincerely,

Jack E. Phelps
Executive Director

cc: Senator Donley
Senator Parnell
Senator Phillips
Senator Torgerson
Senator Adams
Senator Leman
Senator Miller
Thyes Shaub

Shrp9804_ltr.wpd, April 2, 1998

**International Air Transport Association**

IATA Centre, Route de l'Aéroport 33
P. O. Box 416
CH-1215 Geneva 15 Airport
Switzerland

Facsimile No: +1 (907) 465-2070
(2 Pages)

Senator Bert Sharp
Co-Chair, Senate Finance Committee
Alaska State Senate
State Capitol, Room 516
Juneau, Alaska 99801-1182
United States of America

6 April 1998
Ref: 045/98

Re: Senate Bill No. 345

Dear Senator Sharp,

On behalf of the International Air Transport Association (IATA), the trade association comprised of 256 member airlines from over 150 countries, I wish to express the strongest support for Senate Bill No. 345. SB 345 would ensure that the income of non-U.S. airlines serving Alaska would be exempt from the state's income tax in accordance with U.S. Internal Revenue Code Section 883.

IATA is deeply concerned with the potentially far-reaching ramifications of the recent Alaska Supreme Court decision in *Alaska v. OSG Bulk Ships, Inc.* Indeed, it is our understanding that on the basis of this decision, the Department of Revenue plans to levy Alaska corporate income tax on the income derived by non-U.S. airlines from the operation of their aircraft in international traffic.

It is widely known that U.S. IRC Section 883 exempts the income of non-U.S. airlines at the federal level on the basis of reciprocity. These reciprocal exemptions are generally embodied in numerous U.S. treaties for the avoidance of double taxation. IATA firmly believes that U.S. IRC Section 883 is intended, *inter alia*, to eliminate the risk of multiple taxation of the income derived by the aircraft of both U.S. and non-U.S. airlines in international traffic.

If the State of Alaska chooses not to adhere to the reciprocal tax exemption provisions of U.S. IRC Section 883, non-U.S. airlines will be exposed to double (and even multiple) taxation, as they are already subject to national (and often local) income taxes in their respective countries of domicile. Furthermore, one immediate consequence of this tax

Direct Dial: +41(22) 799 27 08 • Direct Fax: +41(22) 799 26 78 • TTY: GVAGBxB • E-mail: kellyt@iata.org

Telephone: +41(22) 799 25 25 • Fax: +41(22) 798 35 53 • TTY: GVAKEXB • Telex: 415586

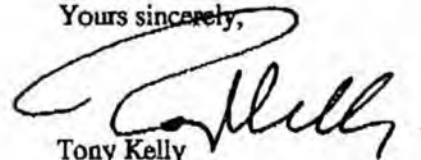
- 2 -

treatment of non-U.S. airlines will be the exposure of U.S. airlines to the reciprocal imposition of similar taxes in the many foreign jurisdictions which they serve. Ultimately, the intricate worldwide network of reciprocal tax regimes will be seriously jeopardized.

IATA also believes that any imposition of an income tax on the international operations of the non-U.S. airlines serving Alaska would ignore the taxes and charges already paid by them for their local operations as well as the significant direct and indirect contributions they make to the economy of the state. We believe that SB 345 sends a strong signal to the international airline community that the State of Alaska encourages their business on the basis of long-established international tax practice.

Based upon the foregoing, IATA strongly urges you to take all necessary steps to ensure the passage of Senate Bill No. 345.

Yours sincerely,



Tony Kelly
Director
Industry Monetary Affairs

CADWALADER

Cadwalader, Wickersham & Taft

1333 New Hampshire Ave., N.W.
Washington, DC 20036
Tel: 202 862-2200
Fax: 202 862-2400

Kenneth Klein
Direct Dial: 202-862-2482
Internet: kklein@cwt.com

New York
Washington
Los Angeles
Charlotte
London

April 3, 1998

BY FACSIMILE

Mr. Joe Kyle
Executive Director
Alaska Steamship Association
234 Gold Street
Juneau, Alaska 99801

Re: Potential Retaliatory Impact on U.S. Carriers Abroad of State
Taxation of Foreign Carriers

Dear Mr. Kyle:

You have asked me to describe the retaliatory impact abroad on U.S. shipping and air transport companies that could occur if a U.S. state or locality were to impose state or local income taxation on foreign shipping and air transport companies that are not subject to U.S. federal income taxation as a result of U.S. income tax treaties with foreign countries.

We are not aware of any U.S. state or locality that currently subjects to state or local taxation the income of foreign carriers that are eligible for the benefits of reciprocal shipping income agreements. Under such agreements, foreign countries exempt U.S. carriers from foreign tax if the United States reciprocally exempts foreign carriers from U.S. tax. U.S. income tax treaties or other agreements with over 70 countries provide such reciprocal exemptions. However, if state or local income taxes were to be imposed on foreign carriers by *even one* U.S. state or locality (as the State of Alaska currently is considering doing), retaliation by foreign jurisdictions would be permitted under U.S. income tax treaties, as discussed below.

For example, under the income tax treaties that the United States has entered into with Japan, Italy, and France, each country exempts from its national

Mr. Joe Kyle

-2-

April 3, 1998

income tax the income derived by a resident of the other jurisdiction from the operation of ships or aircraft in international traffic.¹ Moreover, through exchanges of diplomatic notes, these foreign nations also exempt the income of U.S. shipping and air transport companies from local taxes, such as the enterprise tax in Japan,² the "ILOR" in Italy,³ or the "taxe professionnelle" in France,⁴ provided that no state, county, or local government in the United States levies an income tax on shipping and air transport companies resident in such countries. So, for example, if no U.S. state or locality taxes the income of a Japanese shipping and air transport company, a U.S. shipping and air transport company that moves cargo between the United States and Japan would pay only U.S. federal, state, and local income taxes because it would be exempt from Japanese national and local income taxes. Similarly, a Japanese shipping or air transport company moving cargo between Japan and the United States would be exempt from U.S. federal, state and local income taxes and would only pay Japanese national and local income taxes. Although Congress has not enacted a statute or entered into a treaty that would require the states to exempt non-U.S. shipping and air transport companies from state and local income taxes, the U.S. Departments of State and Treasury have actively enlisted the cooperation of the U.S. states and localities in advancing this policy. For example, in recent years both the States of New York and New Jersey contemplated taxing foreign carriers. State and Treasury Department officials had discussions with tax officials from those states, encouraging them not to tax foreign carriers because of the retaliatory impact such taxation could have on U.S. carriers abroad. Both New York and New Jersey decided not to impose their taxes on foreign carriers.

If any U.S. state or locality (e.g., Alaska) were to tax the income of shipping and air transport companies residing in, Japan, Italy, or France, the equivalents of states or localities in those countries could then impose their taxes on U.S. shipping and air transport companies. To illustrate, in the 1971 exchange of diplomatic notes, the Japanese government stated that if a U.S. locality were to levy an income tax on Japanese shipping and air transport companies, the Japanese government would "take necessary measures" to let local Japanese authorities levy the Japanese enterprise tax on all U.S. shipping and air transport companies. Therefore, regardless of whether it is a resident of the state or locality that initially imposed the income tax on Japanese shipping and air transport companies, a U.S. shipping or air transport company that moves cargo or passengers between the

¹ Income Tax Convention, March 8, 1971, U.S.-Japan, Article 10. Income Tax Convention, April 17, 1984, U.S.-Italy, Article 8(1). Income and Capital Tax Convention, August 31, 1994, U.S.-France Article 8(1).

² Exchange of Notes, March 8, 1971, U.S.-Japan.

³ Exchange of Notes, April 17, 1984, U.S.-Italy.

⁴ Exchange of Notes, August 31, 1994, U.S.-France.

Mr. Joe Kyle

-3-

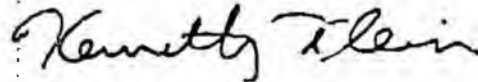
April 3, 1998

United States and Japan could become required to pay local Japanese income taxes in addition to its U.S. income taxes, although the company would still be exempt from the Japanese national income tax. The corresponding Japanese shipping and air transport company would similarly pay U.S. state and local income taxes in addition to its Japanese income taxes. Similar provisions are included in the exchanges of diplomatic notes with Italy and France.

While Japan, Italy, and France have formal agreements with the United States in this regard, we understand that informal agreements of a similar nature exist with many other of the 70 countries which provide reciprocal exemptions to U.S. carriers. Thus, the taxation of foreign carriers by Alaska could directly result in retaliatory taxes being imposed on U.S. carriers in a number of foreign jurisdictions.

If I can provide you with additional information in this regard, please let me know.

Sincerely,



Kenneth Klein

500 West Republic
Suite 201
Seattle, Washington 98101
206.283.4417
fax 206.283.3003

30 March 1998

Senator Bert Sharp
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

RE: SB - 345

Dear Senator Sharp:

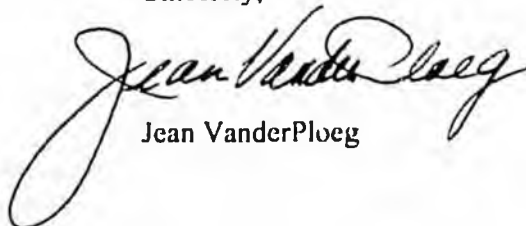
We are very concerned that the Alaska Department of Revenue is poised, as a result of a recent decision by the Alaska Supreme Court, to implement a new corporation business tax on the former, current, and future earnings of foreign, international air and sea carriers operating in the State of Alaska.

Our company depends on international water borne carriers to move products overseas to international markets, and in some instances those same carriers bring cargo to us in Alaska. Given the current economic conditions of the Pacific Rim countries, any new tax on transportation will, in all likelihood, be passed directly on to us by the carriers we use. Aside from the new tax being passed on to businesses operating in Alaska, it will invite retaliatory taxes on domestic water borne carriers serving the Pacific Rim.

Recently, the states of California, New York and New Jersey have withdrawn proposals to tax foreign, international carriers because they realized such taxes were simply bad for business and the economy. We understand Alaska would be the only state in the Union imposing such a tax.

Therefore, I strongly urge that you move SB - 345 so that the Department of Revenue will be preempted from imposing this onerous tax.

Sincerely,



Jean VanderPloeg

 **ALASKA MARITIME AGENCIES**

4341 B Street, Suite 101, Anchorage, Alaska 99503

Tel: (907) 562-8808
Fax: (907) 562-8810
Tlx: 6733427 (MCI)
Cable: ALAMARSENATOR BERT SHARP
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

30 March 1998

RE: LETTER OF SUPPORT FOR SB-345

Dear Senator Sharp:

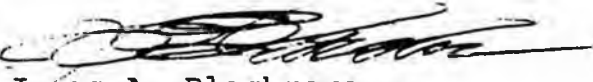
We are writing this letter in support of SB-345. It is our understanding that as a result of a recent decision by the Alaska Supreme Court, the Alaska Department of Revenue is preparing to implement a new corporate business tax on foreign, international air and sea carriers operating in the State of Alaska. As a U.S. company with six offices in Alaska which makes a living by providing service to foreign-sea carriers, we are extremely concerned about this issue.

We are particularly concerned about the effect this will have on transportation for the fisheries and logging sectors. With the current economic crisis in Asia, Asian shipping companies are barely surviving, and the markets they service are also extremely depressed. This means that foreign shipping companies are unlikely to absorb these new taxes without raising freight rates. Increased freight rates mean that Alaskan products are less competitive in markets that are already staggering from currency devaluation and a serious economic downturn.

It is also our understanding that recently, the states of California, New York and New Jersey have withdrawn proposals to tax foreign, international carriers because they realized such taxes were bad for business and bad for the economy. We've heard that Alaska would be the only state in the Union imposing such a tax if the Dept. of Revenue decides to move forward with this. We also think that some sort of retaliatory action by foreign governments against U.S. air and sea carriers would be highly probable.

Therefore, we strongly urge that you move forward with SB-345 so that the Department of Revenue will be preempted from imposing this onerous, new tax which flies in the face of international standards.

Sincerely,


James A. Blackmore
Chairman

5B345

KFP
Koncor Forest Products Company

3501 Denali, Suite 202
Anchorage, Alaska 99503
(907) 562-3335 FAX (907) 562-0599

March 30, 1998

Senator Burt Sharp
Alaska State Legislature
State Capitol Room 516
Juneau, AK 99801-1182

Dear Senator Sharp:

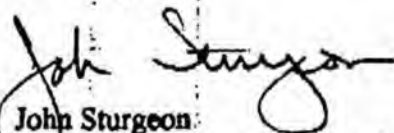
It is our understanding that due to a recent Alaska Supreme Court ruling the Department of Revenue is going to implement a new corporate business tax on foreign international air and sea carriers operating in the State of Alaska.

Koncor Forest Products Company depends on international water borne carriers to move our products overseas to international markets. Koncor charters in excess of 40 foreign cargo ships annually so this tax could have a huge impact on our business. Given the current poor economic condition of the Pacific Rim countries, any new tax on transportation will, in all likelihood, be passed directly on to us through the carriers we use. Aside from the new tax being passed on to businesses operating in Alaska, it will invite retaliatory taxes on domestic water borne carriers serving the Pacific Rim.

Recently, the states of California, New York, and New Jersey have withdrawn proposals to tax foreign, international carriers because they realized such taxes were simply bad for business and the economy. We understand Alaska would be the only state in the Union imposing such a tax if it decides to move forward.

Therefore, we strongly urge that you move forward with HB-472 so that the Department of Revenue will be preempted from imposing this onerous, new tax.

Sincerely,



John Sturgeon
President, Koncor Forest Products Company





Alaska Steamship Association

234 Gold Street • Juneau, Alaska 99801
(907) 586-3107 • Fax (907) 586-1001

TALKING POINTS OSG BULK SHIPS TAX ISSUE

SUPPORT FOR SENATE BILL 345

RELATING TO ALASKA CORPORATE INCOME TAX

PROBLEM: RECENT SUPREME COURT RULING

The Alaska Supreme Court ruled on February 20, 1998 that an exemption from Corporate Income tax for foreign international air and sea carriers, that exists at the federal level in section 883 of the IRS code, no longer applies in Alaska.

At issue in the OSG case is whether or not the Legislature intended, when it adopted section 883 into the Alaska Tax Code in 1975, for the exemption to apply as written or whether the Legislature intended to "except to" or modify the exemption when it was adopted.

Many sections of the IRS Code are directly incorporated or adopted into the Alaska State Tax Statutes. Those incorporated provisions generally stand as written unless they are expressly "excepted to" or modified when they are adopted into the State tax law.

The Superior Court (lower court) found that the section 883 exemption on foreign international air and sea carrier income was in fact adopted into the Alaska Tax Statutes by the Legislature and that the plain language of the 883 exemption applies in Alaska.

When State DOR appealed the lower court's decision, the Supreme Court reversed finding that the adoption of 883 was "impliedly" (without finding express language in the law) "excepted to" or modified by other sections of the Alaska Tax Code and therefore the 883 exemption is not applicable in Alaska. (See pages 10 and 15 of the Supreme Court decision.) **This decision permits DOR to impose a new tax on every foreign airplane or ship that brings products to or from Alaska.**

SOLUTION: PASSAGE OF SENATE BILL 345

Senate Bill 345 amends the section of Alaska Net Income Tax Act (ANITA) that adopted section 883 into Alaska law to expressly state that nothing in the Alaska Tax Statutes may be construed as an exception to modification of Section 883 of the IRS code.

Captain John Cox, President • James Fernie, Treasurer • Dan Blackmore, Secretary

WHY PASS SENATE BILL 345?

Tax is Bad for Alaska

With the price of oil in the \$10 a barrel range and with Asian markets down, this is a particularly bad time to increase business taxes. Increasing the cost of getting our resources to market will have a serious negative impact on Timber, Mining, Fishing, Gas Exports, Tourism, Airport Development and a host of Support and Supply industries.

The impact of this tax will be borne by Alaskans, not foreign corporations. The tax will translate to higher transport fees or lower purchase prices for Alaskan resources. With the significant downturn in the Asian economies, Alaska's resource industries cannot afford increased shipping costs or lower market prices.

Detriment to New Investment

An aggressive move to tax business income not only impacts the industries directly subject to the tax but also sends a negative message to prospective investors. A message that Alaska will seek to raise taxes on businesses before it considers other options will deter rather than encourage investment.

Foreign air and sea carriers will have incentive to move away from Alaska to jurisdictions that don't impose the tax. A mixed message will be sent in relation to the gas pipeline, with efforts to establish tax breaks on one hand while increasing costs on the other.

Tax Policy Inconsistent with International Agreements

The purpose of section 883 is not only to prevent the double taxation of foreign income but to insure that income earned by U.S. companies is not taxed in other nations. Section 883 upholds a logical concept in international trade.

It says foreign companies doing business in the United States won't be taxed in the United States so long as the countries the foreign companies come from don't tax U.S. companies doing business there. The reciprocal tax agreements on the taxation of air and shipping income are in place between the United States and many other nations.

When a state or local government in the United States imposes a new tax on foreign international air and sea carriers, it exposes U.S. international shipping companies to the triggering of retaliatory taxes in other countries.

Recently, the states of New York, New Jersey and California rescinded their efforts to impose similar taxes. Alaska will be the ONLY state in the Union to impose a tax on international foreign air and sea carriers if it proceeds.

**Klukwan Forest Products, Inc.**

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March 31, 1998

Senator Drue Pearce
Senator Bert Sharp
Co-Chairs
Senate Finance Committee
Alaska State Legislature
State Capitol, Room 520
Juneau, AK 99801-1182

Dear Senators Pearce and Sharp:

I am writing to support the passage of SB 345, "An Act relating to the apportionment of business income". This bill prevents the income taxation of foreign carriers by the State of Alaska.

Taxation of foreign carriers would negatively impact every important industry in Alaska, including tourism, fisheries, mining, oil and gas and timber. This, at a time when all are struggling to stay alive in some of the toughest markets we have seen in a long time.

Currently, Alaska is the only state which claims the right to levy a corporate income tax on foreign shippers. This is based on a recent Alaska Supreme Court ruling which overturned the lower court's ruling that the tax did not apply.

So now the stage is set for the application of this decision to all foreign carriers doing business here. This will likely throw the shipping situation into turmoil, as carriers try to assess the impact on them (and their freight rates to Alaskan customers). Some marginal carriers may elect to no longer participate, reducing competition and driving prices up. Finally, the application of this unitary type tax is difficult and contentious. Many court battles are likely to result.

We recognize the fiscal problems facing the state, but respectfully submit that this tax is not part of the solution. Its detrimental effect on the state's major industries will do more harm than good. Thus, we urge the passage of SB 345 which will make state tax law consistent with the federal provisions and avoid the turmoil which will result from the recent Alaska Supreme Court decision.

We appreciate your consideration of our concerns. Please feel free to call if I may be of assistance.

Sincerely,

Robert G. Loiselle
President



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FAX TRANSMITTAL

TO: Senator Bert Sharp

LOCATION: Senate Finance Committee

FAX NUMBER: 465-2070

FROM: Bob Loiselle

DATE: 3/31/98 TIME: _____

NUMBER OF PAGES (including this page): _____

If you do not receive all of the pages or you experience any problems in the transmittal, please call me at the above number.