

HB

472



Anchorage Economic Development Corporation
The Center of Opportunity

April 20, 1998

Honorable Tim Kelly
Alaska State Senate
State Capitol (MS 3101)
Juneau, AK 99801-1182

Dear Tim:

The Anchorage Economic Development Corporation supports HB 472, An Act Relating to Apportionment of Business Income. This bill will overturn the recent decision of the State Supreme Court to allow the state to tax income from ships and aircraft owned by foreign corporations doing business in Alaska. The Alaska Corporation Net Income Tax would be applied to past, present and future net operating income. The State of Alaska depends on tourism and trade as its principal economic engines. Trade includes the export of oil and gas as well as seafood, timber and air cargo. The AEDC believes the implementation of business income taxes on foreign carriers selectively will have a significant deleterious effect on trade for the State of Alaska far in excess of any direct revenue obtained by the measure.

1. The State of Alaska would be the only state in the nation to impose such a tax. This would send a negative signal to some of Alaska's most important trading partners, such as Japan. The 1972 income tax treaty between Japan and the United States would be compromised. If any American state imposes such a tax, Japan would reciprocate against all American carriers. This principle has already been tested in New Jersey and New York several years ago.
2. Imposing this tax would negate the recently secured U. S. Department of Transportation ruling for Alaskan international airports to allow expanded cargo transfer among international and domestic carriers with traffic rights in Alaska. The recently concluded bilateral aviation agreement would be compromised by this action. The promotion of the air cargo industry and related logistics and value added manufacturing would suffer a severe set back at a crucial time. The market for international cargo trade is extremely competitive, with narrow margins determining the distinctions among competing locations. The imposition of a selective tax on international carriers would have a negative effect on some of Alaska's strongest contributors to cargo trade.
3. The imposition of this tax will discourage high value job development in Alaska. For each \$50 million generated in taxes, approximately 1,000 existing jobs would be lost. Such a tax discourages investment in Alaskan projects and operations because it raises the cost of transportation to foreign destinations. Alaska depends on foreign markets for the economic value of its export products. The Alaska market is not large enough to sustain the economy here alone, and the American domestic market is not the only destination of Alaskan goods.

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4. The imposition of this tax retroactively to 1992 connotes a punitive approach to international carriers. This sends the wrong message to foreign corporations and poses troubling questions for all business investors regarding the prospective taxation policies of Alaska toward business.

The growth and diversification of the Alaska economy is essential for the long term viability of the state. A prosperous future will only occur in an environment where taxation and revenue policies are fair and evenly distributed on a sound policy basis. The imposition of a tax on foreign carriers unfairly affects Alaska's most important trading partners. This measure will have a negative effect on Alaska's competitive standing in world trade. This selective foreign carrier tax must not be implemented unilaterally by Alaska. The AEDC urges your favorable action on HB 472 to remove this impending disaster.

Please contact me should you require further information on this matter.

Sincerely,



Patricia M. DeMarco, Ph.D.
President





Alaska Steamship Association

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TALKING POINTS OSG BULK SHIPS TAX ISSUE

SUPPORT FOR HOUSE BILL 472

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 HOUSE BILL 472

House Bill 472 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, or modification of, Section 883 of the IRS code.

WHY PASS HOUSE BILL 472?

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. These 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.



United States Department of State

Washington, D.C. 20520

April 13, 1998

Honorable Tony Knowles
Governor, State of Alaska
Third Floor, State Capitol
P.O. Box 11001
Juneau, Alaska 99811-0001

Dear Governor Knowles:

Action by the Alaska State Legislature to prevent the imposition of income taxes on foreign transportation companies has recently come to our attention. This move is consistent with United States policy. We and our international trading partners agree that such taxes are not in our mutual interests. By preventing the imposition of these taxes, Alaska will join other states, most recently, New York, New Jersey, and California, in recognizing that they work against economic growth. Currently, no States apply such taxes.

This is an active area of foreign policy. The U.S. Department of State is currently engaged in maritime and aviation income tax exemption treaty negotiations with several countries. At present, the U.S. Government exempts from federal income tax, on a reciprocal basis, maritime companies and airlines from over ninety countries that accord similar treatment to our transportation companies.

The U.S. Department of State and other government agencies will gladly provide information and other assistance to you, your tax authorities and state legislators who may wish to have more details on this important international trade issue.

Sincerely,

A handwritten signature in cursive script that reads "Joel S. Stiro".

Joel S. Stiro
Deputy Assistant Secretary
for Transportation Affairs