HB

239

STATE OF ALASKA
1998 LEGISLATIVE SESSION

FISCAL NOTE

Bill Version: CSHB 239(FIN)
(H) Publish Date: 3/9/98

Revision Date:
Dept. Affected: Revenue
Title: Motor Fuel Tax Credit: Tax Not Pd by User
BRU: Revenue Operation
Component: Income and Excise Audit
Sponsor: Representative Davis
Requestor: (H) 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 (GF)	*****	*****	*****	*****	*****	*****

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY98) cost $0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

*****See Attached

Prepared by: Paul E. Dick
Phone: 465-3691
Division: Income and Excise Audit Division
Date: February 23, 1998
Approved by Commissioner: Wilson L. Condon
Date: February 23, 1998
Agency: Revenue

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

HB239FN.XLS

Alaska State Legislature

Senate

JERRY WARD

State Capitol
Juneau, AK 99801-1182
Phone (907) 465-4930
Fax (907) 465-3766

716 W. 4th Ave., Ste. 450
Anchorage, AK 99501-2133
Phone (907) 258-8183
Fax (907) 258-0820

145 Main Street Loop
Kenai, AK 99611
Phone (907) 283-7996
Fax (907) 283-3078

MEMORANDUM

DATE: April 28, 1998

TO: Legislative Legal

FROM: Lydia A. Jones
Senate Transportation Committee

RE: Senate Transportation Committee Substitute to CSHB 239 (Fin)

Please prepare a Senate Transportation Committee Substitute to CSHB 239 (FIN) in final form as follows:

Page 2, lines 5-6:
Delete ", in the aggregate, on the transactions"
Insert "in the aggregate"

Thank you.

PETRO MARINE SERVICES
Petroleum Marketing to the Marine Industry

February 24, 1998

The Honorable Gary L. Davis
Alaska State Legislature
State Capitol
Juneau, AK 99811

Re: House Bill No. 239

Dear Representative Davis,

On behalf of Petro Marine Services, I want to thank you for taking the initiative in sponsoring House Bill No. 239. Petro Marine Services is strongly supportive of this legislation. This bill would allow fuel dealers to receive a nonrefundable credit for fuel taxes paid to the state on fuel sold on credit, but ultimately not paid by purchasers who subsequently declare bankruptcy or render their debt worthless.

Alaska's motor fuel tax is an excise tax designed ultimately to be paid by the consumer or user of the fuel. For administrative reasons, state law requires the tax to be collected and paid by the motor fuel dealer at the time the fuel is sold or transferred. This transaction usually occurs at the wholesale level with businesses that subsequently resell the fuel to the consumer or user of the fuel.

In commercial transactions of this nature, it is customary and typical to extend reasonable credit terms which may result in a deferral or delay in the collection of both the debt and the motor fuel tax by the dealer. In some cases, the debt may become wholly or partially worthless because of a bankruptcy filing or other reasons.

House Bill No. 239 would allow motor fuel dealers in these cases to receive a nonrefundable credit in an amount equal to the tax previously remitted to the state. The credit would be applied against subsequent tax liabilities only, and could only be taken for sales with a total tax liability of $500 or more. Please note that a conforming amendment is needed to clarify that the proposed floor of $500 should apply to one or more transactions in the aggregate per business entity.

This legislation specifies that dealers may only apply for a bad debt credit by filing written proof of the bankruptcy petition, or following reporting the debt as worthless or partially worthless on the dealer's federal income tax return. It is our understanding that many states and local governments similarly authorize credits or deductions for taxes paid on accounts that are later found to be worthless.

P.O. Box 389 • Seward, Alaska 99664 Phone (907) 224-3190 • Fax (907) 224-3937

A HARBOR ENTERPRISES COMPANY

As a major petroleum distributor in Alaska, Petro Marine Services believes House Bill No. 239 proposes an adjustment to current law which is more fair and equitable to all parties. Thank you for this opportunity to comment. If there are any questions, please contact Mark Hickey who represents us in Juneau. He can be reached at 586-2263.

Sincerely,

Dale R. Lindsey, President & CEO
HARBOR ENTERPRISES, INC.

Alaska State Legislature

Interim:
145 Main St. Lp., 223
Kenai, Alaska 99611
907/283-7095
907/283-3075 fx
907/262-7574 hm

Session:
State Capitol
Juneau, AK 99801
907/465-2693
fx 907/465-3835
800/463-2693

Representative Gary Davis

SPONSOR STATEMENT
Committee Substitute for House Bill 239(Fin)

"An Act relating to the liability of motor fuel dealers for payment of tax imposed on certain credit transactions involving motor fuel sales or transfers that become worthless debt or on sales or transfers to persons who declare bankruptcy; and providing for an effective date"

The Alaska motor fuel tax is an excise tax designed to be paid ultimately by the consumer or user of the fuel. For administrative reasons, state law requires the tax to be collected and paid by the motor fuel wholesaler at the time the fuel is sold or transferred. As a practical matter, this transaction often occurs at the wholesale level with businesses that subsequently resell the fuel to the consumer or user of the fuel.

In commercial transactions of this nature, it is customary and typical to extend reasonable credit terms that may result in a deferral or delay in the collection of both the debt and the motor fuel tax by the dealer. In some cases, the debt may become wholly or partially worthless because of a bankruptcy filing or other similar reasons.

House Bill 239 allows motor fuel dealers in these cases to receive a nonrefundable credit in an amount equal to the tax previously remitted to the state. The credit would be applied against subsequent tax liabilities only, and could only be taken for sales with a total tax liability of $500 or more.

The language specifies that dealers may only apply for a bad debt credit by filing written proof of the bankruptcy petition, or after reporting the debt as worthless or partially worthless on the dealer's federal income tax return.

Many states and local governments authorize credits or deductions for taxes paid on accounts that are later found to be worthless. It is also typical to require the tax be repaid if the account or debt is subsequently recovered. House Bill 239 includes a provision requiring repayment of the tax if the account or debt is subsequently repaid, with partial payments to be handled on a proportional or pro rata basis.

HB239/SS/1/20/98

Representing House District 8
Cooper Landing, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna

Representative_Gary_Davis@legis.state.ak.us

Alaska State Legislature

Interim:
145 Main St. Lp., 223
Kenai, Alaska 99611
907/283-7095
907/283-3075 fx
907/262-7574 hm

Session:
State Capitol
Juneau, AK 99501
907/465-2693
fx 907/465-3835
800/463-2693

Representative Gary Davis

SECTIONAL ANALYSIS

Committee Substitute for House Bill 239 (Fin)

"An Act relating to the liability of motor fuel dealers for payment of tax imposed on certain credit transactions involving motor fuel sales or transfers that become worthless debt or on sales or transfers to persons who declare bankruptcy; and providing for an effective date"

Section 1: Adds the following new section to AS 43.40, Motor Fuel Tax:

43.40.025(a) states when the dealer will be able to determine if a debt is wholly or partially worthless. AS 43.40.025(a)(1) and (2) are trigger mechanisms that determine the value of a debt owed to the fuel dealer.

43.40.025(b) explains the entitlement of credit on a worthless or partially worthless debt and the limitations for qualification.

43.40.025(c) explains that the fuel may not claim a refund but may use the entitlement as a credit toward future motor fuel tax debts. Sections 2(c)(1) and (2) state when the dealer may take the tax credit, and the procedures required before claiming the credit.

43.40.025(d) states that when a partially or wholly worthless debt that is collected at a later date, the dealer shall return payment to the Department of Revenue for all credit received.

43.25.40(e) requires a five-year period of time between requesting a credit for a partially or wholly worthless debt originating from the same person.

43.40.025(f) disallows the collection of a credit if the fuel dealer knows that a person to whom the fuel was sold has become a debtor under 11

43.40.025(g) defines "credit transaction."

Representing House District 8
Cooper Landing, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna

Representative_Gary_Davis@legis.state.ak.us

Section 2: (a) states that this act applies to sales or transfers of motor fuel sale or transfers under AS 43.40.010-43.40.100. Section 3(b) states that the filing with the Internal Revenue Service as a deduction of income for applicability must be filed on or after the effective date of this legislation.

Section 3: repeals this legislation on July 1, 2003

Section 4: provides the effective date of the legislation.

BILL ANALYSIS

Section 1 states legislative findings that motor fuel dealers should not burdened with a motor fuel tax remittance obligation if the tax liability on a transaction is significant and the underlying debt becomes worthless or the person to whom motor fuel had been sold or transferred becomes a debtor under federal bankruptcy laws; the tax liability and payment responsibility should remain with the person.

Section 2 amends motor fuel statutes by adding a new section that entitles motor fuel dealers to a bad debt credit against their motor fuel tax liability when the dealer sells or transfers motor fuel to a person on credit and if that person (1) has become a debtor under federal bankruptcy laws (11 U.S.C.) or (2) ceased paying their debt and the dealer treats the person's debt as a worthless debt under the Internal Revenue Code (26 U.S.C. 166). Dealers would be entitled to a credit if a sale or transfer results in a tax liability of $500 or more.

The dealer may not claim a refund for the amount of credit but may claim the credit against motor fuel taxes payable. Dealers would be required to provide documentation substantiating bankruptcy or worthless debt. If, as to a credit transaction for which a credit was claimed, a person subsequently makes payment of all or part of the debt, the dealer would be required to remit all or part of the tax.

Dealers would not be allowed a credit if the dealer, within the 3-year period before making a claim above, previously reported that a credit transaction debt of the purchaser or transferee is a worthless debt. Credits would not apply to dealers who sell or transfer fuel after the dealer knows that the purchaser or transferee is a debtor under federal bankruptcy laws or treats a previous credit transaction as a worthless debt under the Internal Revenue Code.

Section 3 provides that this bill would apply to sales or transfers of motor fuel that are made after the effective date of the bill.

Section 4 provides for a July 1, 1997 effective date.

OPERATING EXPENDITURES

Department of Revenue does not anticipate additional costs for administering the provisions of this bill.

REVENUE

It is not feasible to estimate the revenue loss from the tax credit allowed under this bill because bad debt motor fuel sales data is not available. Using FY 1997 motor fuel sales data adjusted for the effects of HB 63 (enacted last session) and assuming that .1% of taxable gallons qualify for the bad debt credit under this bill, the state would lose approximately $44,300 in motor fuel tax revenue.

(1) the name and social security number of the individual whose dividend is being claimed;

(2) the amount the individual owes on a loan awarded under AS 14.43; and

(3) a statement that the loan is in default under AS 14.43.145, or, if the individual has requested review of the status of the loan under AS 14.43.145(c), that a final determination has been made that the loan is in default.

(b) The Alaska Commission on Postsecondary Education shall notify the individual of a claim under (a) of this section. The notice shall be sent to the address provided in the individual's permanent fund dividend application and must provide the following information:

(1) the amount of the claim;

(2) notice that the amount of the permanent fund dividend up to the amount of the claim shall be paid to the Alaska Commission on Postsecondary Education to be credited against the individual's loan balance; and

(3) the individual's right to a hearing under (c) of this section.

(c) Within 30 days after the date of the notice under (b) of this section, the individual may request a hearing. AS 44.62.330 — 44.62.630 apply to a hearing under this section. At the hearing, the borrower has the burden to show that

(1) the commission has not sent a notice of default in compliance with AS 14.43.145(b);

(2) the notice of default has been rescinded after review under AS 14.43.145(c); or

(3) the amount owed by the borrower is less than the amount claimed from the permanent fund dividend.

(d) If the amount owed by the borrower is determined under (c) of this section to be some amount greater than $0, but less than the amount claimed, the commission may amend its claim to the amount determined to be owing. (§ 18 ch 92 SLA 1987; am §§ 5, 6 ch 52 SLA 1992; am § 17 ch 54 SLA 1997)

Effect of amendments. — The 1997 amendment, effective July 1, 1997, rewrote this section.

Sec. 43.23.095. Definitions.

NOTES TO DECISIONS

Requirement of intent to return to state. — A serviceman who was absent more than five years failed to establish intent to return to the state where the evidence showed that he returned for a brief visit only once in a 12-year period, he maintained only motor vehicle registration, voter registration, driver's license and bar membership in Alaska, and he had not requested reassignment to Alaska. State, Dep't of Revenue v. Wilder, 929 P.2d 1280 (Alaska 1997).

Chapter 40. Motor Fuel Tax.

Sec. 43.40.010. Tax on transfers or consumption of motor fuel and expenditure of proceeds. (a) There is levied a tax of eight cents a gallon on all motor fuel sold or otherwise transferred within the state, except that

(1) the tax on aviation gasoline is four and seven-tenths cents a gallon; (2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon;

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon;

(3) the tax on all aviation fuel other than gasoline is three and two-tenths cents a gallon; and

(4) the tax rate on motor fuel that is blended with alcohol is the same tax rate a gallon as other motor fuel; however,

(A) in an area and during the months in which fuel containing alcohol is required to be sold, transferred, or used in an effort to attain air quality standards for carbon monoxide as required by federal or state law or regulation, the tax rate on motor fuel that is blended with alcohol is six cents a gallon less than the tax on other motor fuel not described in (1) — (3) of this subsection;

(B) notwithstanding (A) of this paragraph, through June 30, 2004, the tax on motor fuel sold or otherwise transferred within the state is eight cents a gallon less than the tax on other motor fuel not described in (1) — (3) of this subsection if the motor fuel

(i) is at least 10 percent alcohol by volume, has been produced from the processing of lignocellulose derived from wood, and was produced in a facility that processes lignocellulose from wood, but this reduction in the rate of tax applies to motor fuel sold or transferred that contains alcohol that was produced only during the first five years of the facility's processing of lignocellulose from wood; or

(ii) is at least 10 percent alcohol by volume, has been produced from the processing of waste seafood, and was produced in a facility that processes alcohol from waste seafood, but this reduction in the rate of tax applies to motor fuel sold or transferred that contains alcohol that was produced only during the first five years of the facility's processing of alcohol from waste seafood.

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

(1) the tax on aviation gasoline consumed is four and seven-tenths cents a gallon;

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon;

(3) the tax on all aviation fuel other than gasoline is three and two-tenths cents a gallon; and

(4) the tax rate on motor fuel that is blended with alcohol is the same tax rate a gallon as other motor fuel; however,

(A) in an area and during the months in which fuel containing alcohol is required to be sold, transferred, or used in an effort to attain air quality standards for carbon monoxide as required by federal or state law or regulation, the tax rate on motor fuel that is blended with alcohol is six cents a gallon less than the tax on other motor fuel not described in (1) — (3) of this subsection;

(B) notwithstanding (A) of this paragraph, through June 30, 2004, the tax on motor fuel consumed by a user within the state is eight cents a gallon less than the tax on other motor fuel not described in (1) — (3) of this subsection if the motor fuel

(i) is at least 10 percent alcohol by volume, has been produced from the processing of lignocellulose derived from wood, and was produced in a facility that processes lignocellulose from wood, but this reduction in the rate of tax applies to motor fuel consumed by a user that contains alcohol that was produced only during the first five years of the facility's processing of lignocellulose from wood; or

(ii) is at least 10 percent alcohol by volume, has been produced from the processing of waste seafood, and was produced in a facility that processes alcohol from waste seafood, but this reduction in the rate of tax applies to motor fuel consumed by a user that contains alcohol that was produced only during the first five years of the facility's processing of alcohol from waste seafood.

(c) Every dealer who sells or otherwise transfers motor fuel in the state shall collect the tax at the time of sale, and remit the total tax collected during each calendar month of each year to the department by the last day of each succeeding month. Every user shall likewise remit the tax accrued on motor fuel actually used by the user during each month. If the monthly tax return is timely filed, one percent of the total monthly tax due, limited to a maximum of $100, may be deducted and retained to cover the expense of accounting

and filing the monthly tax return. At the time the remittance is made, each dealer or user shall submit a statement to the department showing all fuel which the dealer or user has distributed or used during the month.

(d) *[Repealed, § 3 ch 166 SLA 1976.]*

(e) Sixty per cent of the proceeds of the revenue from the taxes on aviation fuel, excluding the amount determined to have been spent by the state in its collection, shall be refunded to a municipality owning and operating or leasing and operating an airport in the proportion that the revenue was collected at the municipal airport. All other proceeds of the taxes on aviation fuel shall be paid into a special aviation fuel tax account in the state general fund. The legislature may appropriate funds from this account for aviation facilities.

(f) The proceeds from the revenue from the tax on motor fuel used in boats and watercraft of all descriptions shall be deposited in a special watercraft fuel tax account in the general fund. The legislature may appropriate from this account for water and harbor facilities.

(g) The proceeds of the revenue from the tax on all motor fuels, except as provided in (e), (f) and (j) of this section, shall be deposited in a special highway fuel tax account in the state general fund. The legislature may appropriate funds from it for expenditure by the Department of Transportation and Public Facilities directly or as matched with available federal-aid highway money for maintenance of highways, construction of highway projects and ferries included in the program provided for in AS 19.10.150, including approaches, appurtenances and related facilities and acquisition of rights-of-way or easements, and other highway costs including surveys, administration, and related matters. All departments of the state government authorized to spend funds collected from taxes imposed by this chapter shall perform, when feasible, all construction or reconstruction projects by contract after the projects have been advertised for competitive bids, except that, when feasible, arrangements shall be made with political subdivisions to carry out the construction or reconstruction projects. If it is not feasible for the work to be performed by state engineering forces, the commissioner of transportation and public facilities may contract on a professional basis with private engineering firms for road design, bridge design, and services in connection with surveys. If more than one private engineering firm is available for the work the contracts shall be entered into on a negotiated basis.

(h) All motor fuel tax receipts shall be paid into the general fund and distributed to the proper accounts in the general fund. Valid motor fuel tax refund claims shall be paid from the highway fuel tax account in the general fund.

(i) *[Repealed, § 35 ch 126 SLA 1994.]*

(j) The proceeds from the tax on motor fuel used in snow vehicles and, unless a tax refund is applied for under AS 43.40.050(a), other internal combustion engines not used in or in conjunction with a motor vehicle licensed to be operated on public ways shall be deposited in a special nonpublic highway use account in the general fund. The legislature may appropriate from this account to the Department of Transportation and Public Facilities for trail staking and shelter construction and maintenance.

(k) The tax on the transfer or consumption of motor fuel provided for in this section does not apply to liquified petroleum gas.

(*l*) *[Repealed, § 3 ch 182 SLA 1990.]* (§ 48-5-2 ACLA 1949; am § 1 ch 80 SLA 1951; am § 1 ch 47 SLA 1955; am §§ 1, 2 ch 27 SLA 1957; am § 1 ch 134 SLA 1957; am § 1 art VI title II ch 152 SLA 1957; am § 2 art V title III ch 152 SLA 1957; am § 2 ch 124 SLA 1959; am §§ 1, 2 ch 20 SLA 1960; am § 1 ch 150 SLA 1960; am § 1 ch 110 SLA 1961; am § 1 ch 136 SLA 1961; am §§ 1 — 3 ch 131 SLA 1962; am § 1 ch 130 SLA 1968; am § 10 ch 143 SLA 1968; am §§ 1, 2 ch 216 SLA 1968; am §§ 1 — 3 ch 158 SLA 1970; am § 3 ch 58 SLA 1971; am §§ 1, 2 ch 124 SLA 1971; am §§ 2, 3 ch 125 SLA 1971; am §§ 1 — 3 ch 153 SLA 1972; am § 3 ch 166 SLA 1976; am §§ 1, 2 ch 116 SLA 1977; am § 4 ch 82 SLA 1982;

am §§ 1, 2 ch 87 SLA 1983; am § 3 ch 182 SLA 1990; am § 35 ch 126 SLA 1994; am §§ 2, ch 127 SLA 1994; am §§ 2, 4 ch 88 SLA 1997)

Delayed amendment of subsections (a) and — Under §§ 3, 5, 6, and 7, ch. 127, SLA 1994, as ended by §§ 3, 5, 10, and 12, ch. 88, SLA 1997, if Department of Transportation and Public Facili- before January 1, 2000, increases the landing fee harges under AS 02.15.090(a) for the privilege of ding aircraft at rural airports, as that term is fined in 17 AAC 40.795(2), above the amount of the in effect on January 1, 1994, subsections (a) and (b) amended to read as follows: "(a) There is levied a of eight cents a gallon on all motor fuel sold or erwise transferred within the state, except that

"(1) the tax on aviation gasoline is four cents a allon;

"(2) the tax on motor fuel used in and on watercraft all descriptions is five cents a gallon;

"(3) the tax on all aviation fuel other than gasoline two and one-half cents a gallon; and

"(4) the tax rate on motor fuel that is blended with lcohol is the same tax rate a gallon as other motor el; however,

"(A) in an area and during the months in which fuel ontaining alcohol is required to be sold, transferred, used in an effort to attain air quality standards for rbon monoxide as required by federal or state law or egulation, the tax rate on motor fuel that is blended with alcohol is six cents a gallon less than the tax on other motor fuel not described in (1) — (3) of this subsection;

"(B) notwithstanding (A) of this paragraph, through June 30, 2004, the tax on motor fuel sold or otherwise transferred within the state is eight cents a gallon less than the tax on other motor fuel not described in (1) — (3) of this subsection if the motor fuel

"(i) is at least 10 percent alcohol by volume, has been produced from the processing of lignocellulose derived from wood, and was produced in a facility that processes lignocellulose from wood, but this reduction in the rate of tax applies to motor fuel sold or transferred that contains alcohol that was produced only during the first five years of the facility's processing of lignocellulose from wood; or

"(ii) is at least 10 percent alcohol by volume, has been produced from the processing of waste seafood, and was produced in a facility that processes alcohol from waste seafood, but this reduction in the rate of tax applies to motor fuel sold or transferred that contains alcohol that was produced only during the first five years of the facility's processing of alcohol from waste seafood.

"(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

"(1) the ta on aviation gasoline consumed is four cents a gallon,

"(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon;

"(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon; and

"(4) the tax rate on motor fuel that is blended with alcohol is the same tax rate a gallon as other motor fuel; however,

"(A) in an area and during the months in which fuel containing alcohol is required to be sold, transferred, or used in an effort to attain air quality standards for carbon monoxide as required by federal or state law or regulation, the tax rate on motor fuel that is blended with alcohol is six cents a gallon less than the tax on other motor fuel not described in (1) — (3) of this subsection;

"(B) notwithstanding (A) of this paragraph, through June 30, 2004, the tax on motor fuel consumed by a user within the state is eight cents a gallon less than the tax on other motor fuel not described in (1) — (3) of this subsection if the motor fuel

"(i) is at least 10 percent alcohol by volume, has been produced from the processing of lignocellulose derived from wood, and was produced in a facility that processes lignocellulose from wood, but this reduction in the rate of tax applies to motor fuel consumed by a user that contains alcohol that was produced only during the first five years of the facility's processing of lignocellulose from wood; or

"(ii) is at least 10 percent alcohol by volume, has been produced from the processing of waste seafood, and was produced in a facility that processes alcohol from waste seafood, but this reduction in the rate of tax applies to motor fuel consumed by a user that contains alcohol that was produced only during the first five years of the facility's processing of alcohol from waste seafood."

Effect of amendments. — The 1997 amendment, effective July 1, 1997, in subsections (a) and (b), added paragraph (4) and made related stylistic changes.

Editor's notes. — Section 9, ch. 88, SLA 1997 repealed ch. 42, SLA 1994. Therefore the different tax rate described in the editor's note in the 1996 volume is not in effect after June 30, 1997.

Sec. 43.40.015. Exemption from collection of tax. (a) A dealer who has a reasonable belief at the time of sale or transfer that fuel that is sold or transferred is not to be used as motor fuel need not collect the motor fuel tax. However, as to fuel for which the tax was not collected and for which a certificate of use was not obtained, if the department determines that the fuel was put to a use that is taxable under this chapter, the dealer is liable for the tax and subject to a civil penalty under AS 43.05.220(a) whether or not the dealer's belief that the fuel sold or transferred would not be used as motor fuel was reasonable.

(b) Except for sale or transfer of fuel under (d) of this section, if the motor fuel tax is not collected, the dealer shall obtain a certificate of use from the buyer or transferee at the time of the first sale or transfer of the fuel stating that the fuel that has been or will be purchased or received is not intended for use as motor fuel. The form of the certificate of use shall be prescribed by the department by regulation. The department may not

Differences in tax base may not be prescribed for the same privilege of taxpayers in the same type of business or occupation.

Production and overhead costs are seldom deductible. The legislatures, however, have broad powers in this field. They may be selective by allowing deductions for spoils, swells and discounts to manufacturers of farm products. On the other hand, they may not allow deductions for cost of containers, brokerage, salaries or salesmen and selling expenses.

Alternative tax bases aren't invalid. The applicable base may be determined by the taxpayer's business, limiting his choice in the matter. Estimates derived from the volume of the past year's business are permissible.

The seller may have to include in his tax base sales that are less than the minimum bracket even though he's not permitted to collect these amounts from the buyer.

Gross receipts taxes are usually measured by all receipts from sales. This includes gross receipts from sideline operations such as from food and drink sold at the drug store's lunch counter. Waitress's tips may be included. A gross income tax generally covers all forms of income and the tax on sales is only a part of the tax base. As a rule, there are very few deductions or items excluded from the tax base.

Use and compensating taxes are practically equivalent. They're based on the sale or purchase price, or the value of tangible personalty sold. Valuation at the actual purchase price has been allowed. Exclusions from the tax base may be allowed for such items as installation charges and transportation charges separately paid by customers. The statutes are frequently inconsistent. For example, rented tangible personalty from out of state was valued at the out-of-state retail price, while used property brought into the state by the owner was valued at the price it would have brought at the time imported. Depreciation of autos used as demonstrators and otherwise, then sold second-hand, has been both included and excluded from the tax base. Sales and use taxes have shown divergences in their bases though their rates are the same. For instance, a use tax based upon value may specifically disallow deductions for trade-ins, transportation charges, discounts, or similar items, while allowance may be granted under sales tax law.

.94 ADMISSIONS, COVER CHARGES, ETC.

A number of statutes impose tax on admissions to places of amusement or for the use of them. The tax may apply to admissions above a minimum amount such as 10¢. Specified admissions may be exempt, such as admissions to events of nonprofit organizations, school events, plays, or movies. Minimum cover charges are often included in taxable receipts.

.95 BAD DEBTS AND LOSSES.

Many statutes and regulations permit or authorize credit or deduction for tax paid on accounts or debts found to be worthless. A condition often imposed for the credit or deduction is that the account or debt be found to be worthless for income tax purposes. There's also the requirement that the tax be repaid if the account or debt is recovered. Statutes sometimes define "sales" and "gross receipts" so as to specifically deny deduction of losses.

.96 CASH AND TRADE DISCOUNTS—TRADING STAMPS.

Commonly, discounts are excluded from taxable sales receipts. However, distinctions may be made. Discounts that a retailer grants for the purpose of encouraging prompt payment on an account, also known as early payment discounts, may not be excludable. Discounts after sale may not be allowed as deductions. Discounts representing a reduction in price—trade discount, volume discount or cash and carry discount—are often deductible in computing sales receipts.

Determination of Sales Price

In general, sales and use taxes are imposed on the total sales price of a taxable sale, without any reduction for costs of labor, raw materials, or other expenses. This rule applies whether the sale is of tangible personal property or of taxable services. The basis of measuring the sales or purchase price on which to calculate sales and use tax varies substantially among the states and often is a disputed subject. The items included in the sales/use tax base usually are specified in detail in the states' statutes and, therefore, generally are narrowly construed by the courts.

In most situations, the maximum amount upon which the tax is computed is the amount of consideration received for the taxable item or service. For example, many states provide that barter transactions are subject to the tax based on the taxable items or services received in the exchange. However, the sales price determination with respect to coupons, rebates, and discounts typically vary with a given state and also among the states. Cash discounts are generally excluded from sales price subject to tax, if paid by the seller rather than a third party and if paid as part of the sales transaction; thus, for example, manufacturer rebates and co-op patronage dividends generally do not reduce sales price subject to tax. In contrast to most states, the Pennsylvania regulations provide that an amount representing a discount allowed for prompt payment that is dependent on an event occurring after the completion of the sale is included in determining the purchase price for sales and use tax purposes, while amounts representing on-the-spot cash discounts, volume discounts, store discounts, wholesaler's or trade discounts, rebates, and store or manufacturer's coupons may be deducted in computing the tax. Trade-in allowances are treated differently from state to state: some states impose sales tax only on the difference between the total sales price and the amount allowed for trade-in, while others impose tax on the total sales price.

Generally, no reduction in sales price is allowed for excise or import taxes paid by the seller; however, the rules of each state must be consulted, since specific taxes may be given special treatment.

Sales price subject to tax generally does not include interest charged for credit, at least if the interest is separately stated. If the debt arising from a credit sale becomes worthless, the seller is usually allowed a reduction in taxable receipts or a tax credit or deduction, depending on the time of worthlessness as well as the reporting period and other specific rules of the state in question. A debt does not necessarily become worthless merely because the property sold on credit is repossessed. On the other hand, property (whether sold on credit or for cash) for which the seller accepts return and refunds the purchase price, thus can-

celling the sale, generally does give rise to a reduction in taxable receipts or a tax credit or deduction, although a particular state may impose time limits or other restrictions on such allowances. (See the chart "Sales/Use Tax Refunds" for a state-by-state listing of whether a taxpayer is permitted a credit, deduction, or refund of overpaid tax in such situations.)

Shipping charges imposed after the sale takes place are often excluded from sales price subject to tax if separately stated. However, fees identified as "shipping and handling" fees typically are taxable even where the fee relates solely to shipping charges. Sellers should always separately state shipping charges as a protective measure, and the rules of the state in question should be consulted to see if this exclusion is available. Labor, service or installations charges, generally are treated similar to shipping charges (i.e., if separately identified on the invoice, many states do not impose sales and use taxes on such charges)

When a transaction involves the provision of nontaxable services in connection with a taxable sale, the charge for the nontaxable services will usually not be subject to tax if separately stated. When a single charge is made for the entire transaction, most states will require a determination of whether: (1) the transaction was primarily a taxable sale with an incidental provision of nontaxable services; or (2) primarily the provision of nontaxable services with an incidental transfer of tangible personal property. If the change for nontaxable services is separately stated, sales tax will be imposed on the total charge; in the latter case, tax will not be imposed on the single charge but the service provider will be considered the end user of the incidental tangible personal property involved, and sales or use tax will be imposed on the cost of such property.

In the case of sales of taxable services, a few states take the position that the service provider is liable for the collection of sales or use tax from customers on the total itemized charges for performing the taxable service, including any expenses incurred by the service provider's employees, such as mileage charges, hotel expense, and auto rental charges. (See Helmel Engineering Prods. Inc., NY Commissioner of Taxation and Finance, TSB-A-92(13) Sales Tax, Feb. 26, 1992 and Texas Comptroller of Public Accounts, Hearing No. 25,57 issued Sept. 25, 1991.)

The following chart is divided into three parts for ease of presentation. The charts detail various items that are included in the sales price for determination of the sales tax liability and lists items that affect the sales tax price in computing the sales tax liability. These charts highlight the common items that generally are included in the sales price for sales tax purposes. We did not ask the states to list every possible inclusion in sales price; thus, the charts do not exhaust all the possible items that may be required to be included in the sales/use tax base by each state.

R. Mark Williamson
Foley & Lardner
Milwaukee, Wisconsin

Most responding states require the inclusion of installation charges, transportation charges, sales of repossessed property, and labor or service costs in the sales price base. Some states include these items only if they are not separately stated on the sales invoice.

Very few states allow the sales price to be reduced for other taxes, such as tobacco or federal gas taxes. However, the federal luxury tax, which is imposed on the retail sale or lease of certain luxury items, generally is excluded from gross proceeds when calculating the sales and use tax. Trade-in allowances reduce sales price in most states although many states specify the type of property that this subtraction applies to.

In the case of manufacturers' coupons and rebates, the majority of states require the amount of the coupon or rebate to be included in the sales price base.