

SCOMM

114:13

Special Committee on Fisheries

5PM

Monday, 2/7/00

Capitol 124

Representative Carl Morgan, Jr. and Representative John Harris, Co-Chairs

1. Call to Order

Today's date is February 7, 2000

The time is

2. Roll Call – (Quorum – need 4)

Representative Harris, Co-Chair

Representative Morgan, Co-Chair

Representative Dyson

Representative Whitaker

Representative Hudson

Representative Kapsner

Representative Smalley

3. Identify Teleconference Sites

Ask moderator to list sites that have persons who wish to testify.

Three minute testimony will be heard later in the meeting.

4. Purpose of the Meeting

Purpose of today's committee is to hear House Bill 238, "An Act establishing a federal tax obligation loan program under the commercial fishing loan program."

5. Presentation by Sponsor of the Bill

Invite Representative Kapsner to present bill (Invite her to the table)

6. Questions/Comments from Committee Members

7. Questions/Comments from Teleconference Sites. – Please limit comments to three minutes. *Can reverse order with No. 8*

8. Others wishing to testify. Please limit testimony to three minutes

9. Committee Action on HB 238

10. Other Business

11. Adjournment

Representative Mary Sattler Kapsner

State Capitol • Juneau, Alaska 99801-1182

Phone: (907) 465-4942 • Fax: (907) 465-4589

E-Mail: Representative_Mary_Kapsner@legis.state.ak.us



House District 39

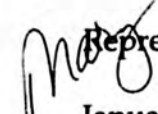
Lower Kuskowim and Upper Bristol Bay

Resources Committee
Fisheries Committee
Regulation Review Committee

Akiachak
Akiak
Aleknagik
Atmautluak
Bethel
Chefornak
Clarks Point
Dillingham
Eek
Ekuk
Ekwok
Goodnews Bay
Kasigluk
Kipnuk
Koliganek
Kongiganak
Kwethluk
Kwigillingok
Manokotak
Napakiak
Napaskiak
New Stuyahok
Nunapitchuk
Oscarville
Platinum
Portage Creek
Quinhagak
Togiak
Tuntutuliak
Twin Hills

MEMORANDUM

TO:  Representative John Harris, Co-Chair
Representative Carl Morgan, Co-Chair
House Special Committee on Fisheries

FROM:  Representative Mary Kapsner

DATE: January 13, 2000

RE: Scheduling Request – House Bill 238

I would appreciate your consideration of scheduling a hearing on HB 238, "An Act establishing a federal tax obligation loan program under the commercial fishing loan program." This bill would re-establish the loan program originally created in 1993 to assist fishermen in paying their IRS debt. I've attached my sponsor statement which provides additional background on the bill. I feel this is a valuable program that would ultimately help both individual Alaskans and the state's economy as we strive to keep our limited entry permits working in and for Alaskans. The bill will have a zero fiscal note.

Thank you.

LEGAL SERVICES

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

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 4, 2000

SUBJECT: Sectional Summary of HB 238; An Act establishing a federal tax obligation loan program under the commercial fishing loan program. (HB 238)

TO: Representative Mary Kapsner

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of HB 238; An Act establishing a federal tax obligation loan program under the commercial fishing loan program.

A sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 16.10.310(a) to authorize the commercial fishing loan program to make loans to Alaska resident fishermen to satisfy past due federal tax obligations that may result in the involuntary transfer of their entry permits.

Section 2 of the bill adds a new subsection to AS 16.10.310 to provide that a loan may not be made to satisfy past due federal tax obligations unless the person has filed past and current federal tax returns and has executed an agreement with the federal government for the payment of past due federal tax obligations. A person may obtain only one loan from the commercial fishing loan program to pay past due federal tax obligations during the person's lifetime. The maximum amount of a loan that can be made by the commercial fishing loan program to pay past due federal tax obligations is \$30,000.

GU:jdr
00-059.jdr

Representative Mary Sattler Kapsner

State Capitol • Juneau, Alaska 99801-1182

Phone: (907) 465-4942 • Fax: (907) 465-4589

E-Mail: Representative_Mary_Kapsner@legis.state.ak.us

House District 39

Lower Kuskowim and Upper Bristol Bay



Resources Committee
Fisheries Committee
Regulation Review Committee

Sponsor Statement

House Bill 238

Fishermen's Tax Obligation Loan Program

This bill would re-institute a widely supported, previously existing program to assist fishermen in paying back taxes, thereby rescuing Alaska limited entry permits from the continued threat of seizure and resale by the Internal Revenue Service.

The Tax Obligation Loan Program was initially created in 1993, in the wake of threats by the IRS to seize the permits of fishermen who were found to owe back taxes. The program draws from the existing Fishermen's Loan Fund, providing loans of up to \$30,000, with a pay-back interest rate of 10.5 percent. The money paid back returns to the fund where it becomes available for further loans.

This bill is not simply aimed to assist delinquent taxpayers. Rather, it assists all fishermen and, in turn, the economy of Alaska. When the IRS seizes commercial fishing permits, they are under no obligation to re-sell the permit for its real value. In one case in 1996, the IRS seized the \$30,000 permit of a Kenai fisherman and sold it for only \$5,005. Such an action had the effect of devaluing all commercial fishing permits.

Moreover, the IRS is under no obligation to re-sell permits to Alaskans. Due to transferability, a great number of limited entry permits are gifted or inherited from one Alaskan to another, protecting a valuable state resource. When the IRS re-sells a permit, they cannot discriminate between Alaskans and outsiders. The IRS' actions threaten to speed the movement of permits into the hands of non-Alaskans.

Before it sunsetted in 1997, the Tax Obligation Loan Program provided 288 loans, at a value of \$6.06 million, to fisherman from every region of Alaska. That year, a bill to extend the program passed the House with near unanimous support, only to die in Senate Resources as one of numerous bills held hostage in the final days of session.

Though tax compliance has dramatically improved among Alaskan fishermen since the early part of this decade, there still exists a need for the Tax Obligation Loan Program. The IRS still staunchly opposes the state's view that fishing permits cannot be legally seized. Moreover, the number of fishermen with tax delinquencies has climbed since the sun-setting of the program in 1997.

Akiachak

Akiak

Aleknagik

Atmautluak

Bethel

Chefornak

Clarks Point

Dillingham

Eek

Ekuk

Ekwok

Goodnews Bay

Kasigluk

Kipnuk

Koliganek

Kongiganak

Kwethluk

Kwigillingok

Manokotak

Napakiak

Napaskiak

New Stuyahok

Nunapitchuk

Oscarville

Platinum

Portage Creek

Quinhagak

Togiak

Tuntutuliak

Twin Hills

HOUSE BILL NO. 238

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KAPSNER

Introduced: 5/14/99

Referred: House Special Committee on Fisheries, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing a federal tax obligation loan program under the commercial
2 fishing loan program."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 16.10.310(a) is amended to read:

5 (a) The department may

6 (1) make loans

7 (A) to individual commercial fishermen who have been state
8 residents for a continuous period of two years immediately preceding the date
9 of application for a loan under AS 16.10.300 - 16.10.370, who [AND] have
10 had a crewmember or commercial fishing license under AS 16.05.480 or a
11 permit under AS 16.43 for the year immediately preceding the date of
12 application and any other two of the past five years, and who actively
13 participated in the fishery during those periods [.]

14 (i) for the purchase of entry permits; [OR]

(ii) to upgrade existing vessels and gear for the purpose of improving the quality of Alaska seafood products; or

(iii) to satisfy past due federal tax obligations that may result in the execution on and involuntary transfer of the individual commercial fishermen's entry permits, to the extent allowed under (e) of this section;

(B) to an individual for the repair, restoration, or upgrading of existing vessels and gear, for the purchase of entry permits and gear, [AND] for the construction and purchase of vessels, or, to the extent allowed under (e) of this section, to satisfy past due federal tax obligations that may result in the execution on and involuntary transfer of the individual's entry permits, if the individual has been a state resident for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370, and either

(i) because of lack of training or lack of employment opportunities in the area of residence, does not have occupational opportunities available other than commercial fishing; or

(ii) is economically dependent on commercial fishing for a livelihood and for whom commercial fishing has been a traditional way of life in Alaska;

(C) for the purchase of quota shares for fisheries in or off the state by individual commercial fishermen who

(i) have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370;

(ii) for any two of the past five years, possessed a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 and actively participated in a fishery for which the license or permit was issued;

(iii) qualify as transferees [A TRANSFEREE] for quota shares under applicable law; and

1 (iv) are not eligible for financing from other recognized
2 commercial lending institutions to purchase quota shares;
3 (2) designate agents and delegate its powers to them as necessary;
4 (3) adopt regulations necessary to carry out the provisions of
5 AS 16.10.300 - 16.10.370, including regulations to establish reasonable fees for
6 services provided;
7 (4) establish amortization plans for repayment of loans, which may
8 include extensions for poor fishing seasons or for adverse market conditions for
9 Alaska [ALASKAN] products;
10 (5) enter into agreements with private lending institutions, other state
11 agencies, or agencies of the federal government [,] to carry out the purposes of
12 AS 16.10.300 - 16.10.370;
13 (6) enter into agreements with other agencies or organizations to create
14 an outreach program to make loans under AS 16.10.300 - 16.10.370 in rural areas of
15 the state;
16 (7) allow an assumption of a loan if
17 (A) the applicant has been a state resident for a continuous
18 period of two years immediately preceding the date of the request for an
19 assumption; and
20 (B) approval of the assumption would be consistent with the
21 purposes of AS 16.10.300; an applicant for a loan assumption may not be
22 disqualified because the applicant does not meet the loan eligibility
23 requirements of (1) of this subsection;
24 (8) prequalify loan applicants for a limited entry permit loan or a quota
25 shares loan and charge a fee not to exceed \$200 for prequalification;
26 (9) charge and collect the fees established under this subsection;
27 (10) refinance a debt obligation incurred by a borrower or borrowers
28 under this section if the borrower or borrowers otherwise qualify for a loan under
29 AS 16.10.300 - 16.10.370; the department shall collect a refinancing loan origination
30 charge of one-half percent of the amount of the debt obligation that has been
31 refinanced when the first refinancing payment is due;

1 (11) refinance debt obligations, not to exceed \$300,000, incurred by a
2 borrower or borrowers for the purchase of a commercial fishing vessel or gear if the
3 borrower or borrowers otherwise qualify for a loan under AS 16.10.300 - 16.10.370;
4 the department may collect a refinancing loan origination charge as provided by
5 regulation.

6 * Sec. 2. AS 16.10.310 is amended by adding a new subsection to read:

7 (e) The department may not make a loan to an individual under (a)(1) of this
8 section to satisfy past due federal tax obligations unless the individual has filed past
9 and current federal tax returns with the federal government and has executed an
10 agreement with the federal government for repayment of past due federal tax
11 obligations. An individual may receive only one loan to satisfy past due federal tax
12 obligations during the individual's lifetime under (a)(1) of this section, including
13 former versions of (a)(1) of this section. A loan made under (a)(1) of this section to
14 satisfy past due federal tax obligations may not exceed \$30,000.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 238

Revision Date/Time (Note if correction) February 4, 2000

Dept. Affected Community and Econ. Development

Title An act establishing a federal tax obligation loan
program under the commercial fishing loan program

BRU Investments

Sponsor Representative Kapsner

Component

Requester House Special Committee on Fisheries

Component No.

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
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
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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
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FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY2000) cost:

0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This legislation establishes a new program within the Commercial Fishing Revolving Loan Fund to allow Alaskan commercial fishing harvesters to borrow funds to satisfy past due federal tax obligations that could result in the loss of a limited entry permit through a foreclosure action.

Prepared by: Martin J. Richard

Division: Investments

Approved by Commissioner

Deborah E. Sedwick

Agency

Community and Economic Development

Phone 907) 465-2510

Date/Time 2/4/00 8:07 AM

Date 02/04/2000

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Representative Ivan M. Ivan

MEMORANDUM

TO: Senator Rick Halford, Chair
Senate Resources Committee

FROM: Representative Ivan M. Ivan 

DATE: March 23, 1998

RE: Extension of the Tax Loan Obligation Program (HB 123)

The limited entry permit holders who most need an extension of the Tax Loan Obligation Program are those in rural Alaska communities whose cash earnings are often limited to commercial fishing. If they lose their entry permits to the IRS, they, their families and others who depend upon them can be left destitute. Not to mention, the possibility exists that the permit could be sold to a fisher from the Lower 48 which means the state also loses.

Tax compliance was improving, but last summer's disasters in Bristol Bay and western Alaska aggravated problems for many permit holders. Run failures coupled with market failures undermined many permit holders' ability to meet their obligations.

In addition to the benefits to permit holders and those who depend upon them, if the Tax Loan Obligation Program is not extended, the state will lose its written contract with the IRS which is conditioned on the existence of the loan program. Without it, the state loses a means of restraint.

For your information, UFA does not feel strongly one way or the other about House Bill 123. The people who really care about this legislation are those in the rural communities and those trying to help them meet their IRS obligations like Bernice Heyano in Dillingham. The Tax Loan Obligation Program has proven to be one of the best tools to bring permit holders into compliance and save their entry permits.

Therefore, I am respectfully requesting a hearing for House Bill 123 before the Senate Resources Committee at your earliest possible convenience. Attached is a proposed blank committee substitute.

I appreciate your consideration. Please do not hesitate to contact me if you need further information or if I can answer any questions.

IMI:tw

Attachment

Internal Revenue Service

Department of the Treasury

District
Director

915 Second Avenue
Seattle, WA 98174

FEB 26 1999

Representative Mary Sattler Kapsner
Attn: Aaron Spitzer
State Capitol
Juneau, AK 99801-1182

Dear Mr. Spitzer:

Enclosed are three summary sheets of limited entry permit holders who have transferable permits with value. These sheets cover the two periods you requested plus the most current information we have for 1999. Unfortunately, we do not have non-filer information for 1999 at this time. Please let me know if you need this information and we will provide it as soon as it is available.

The summary sheets have the taxpayers separated into two categories:

1. **IRS NON FILERS** - Individuals who have not filed required tax returns and have no outstanding tax liabilities (balance due).

2. **IRS BALANCE DUE** - Individuals who have tax liabilities outstanding.

NOTE: Some of these individuals also may not have filed all required tax returns. To avoid duplication we have omitted them from the "non filer" column.

We also provided a breakout for Alaska residents and residents of Washington and Oregon. The balance due is broken down into various dollar amounts with the number of individuals falling into each category.

The bottom portion of the sheet contains a listing of geographic areas with the greatest tax compliance problem among Limited Entry Permit Holders.

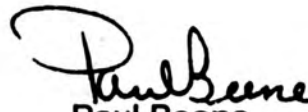
There is one flaw in the information we are providing. In 1992, we had a listing of all permit holders by name and Social Security Number. This enabled us to do a 100% match against our database of non-filers and balance due accounts. Subsequent to 1992, we have not been able to obtain a listing of permit holders with their Social Security Number. The information we recently obtained came off the public bulletin board and it does not contain the permit holders Social Security Numbers. As a result, we are not able to match the name to a Social Security Number on 1,600 of the estimated 11,000 permit holders. Therefore, we do not know if these 1,600 individuals are non-filers, have outstanding balance due, or are compliant.

Representative Mary Sattler Kapsner
State Capitol

In the event we get a listing of permit holders with Social Security Numbers from the State of Alaska, we will do a 100% match and provide you with a corrected summary sheet. I hope you find this information useful in your resurrection of the Tax Obligation Loan Program.

If you have any further questions on this subject, please contact Douglas Hartford, Collection Group Manager, at 949 E 36th Avenue, Anchorage, AK 99508, MS A201 or call him at (907) 271-6982.

Sincerely,


Paul Beene
District Director

Enclosures

cc: Bruce Twomley
Chairman, CFEC

October 1993 Summary of Tax Delinquencies Among LEP Holders					
	IRS Non Filers	** IRS Balance Due	IRS Total	LEP Holders	* Amount Due
Alaska Residents	1173	1111	2284	8,802 (Estimate)	13.7 M
Lower 48 States and Hawaii Residents	333	315	648	2,000 (Estimate)	3.9 M
TOTAL	1506	1426	2,932	11,000	17.6 M

* In 1993, the amount due only reflected the assessed balance due. Accrued penalties and interest were not calculated. Based on historical knowledge, the total amount due with accruals as is reflected in the 1997 and 1999 data would be an additional fifty to 100 percent. Therefore in 1993, the total amount due would have been between 20.5 M and 27.4 M

**** Breakdown of Alaska Resident Balance Due Taxpayers by Amount Owed**

\$0 - 10,000	\$10,001 - 20,000	\$20,001 - 50,000	\$50,001 - 100,000	\$100,000 +	TOTAL	BALANCE DUE
827	130	101	32	21	1111	13.7 M

Regions with the Greatest Incidence of Tax Delinquencies Among LEP Holders

Region

Greatest Problem(s)

Bethel
Bristol Bay and Dillingham
Haines Borough & Skagway-Yakutat-Angoon
Kenai Peninsula Borough
Kodiak Island Borough
Wade Hampton

Non Filing/Non Payment
Non Filing/Non Payment
Non Filing/Non Payment
Non Payment
Non Payment
Non Filing/Non Payment

February 1997 Summary of Tax Delinquencies Among LEP Holders					
	IRS Non Filers	* IRS Balance Due	IRS Total	LEP Holders	Amount Due
Alaska Residents	271	643	914	8,802 (Estimate)	18.6 M
Washington and Oregon Residents	23	102	125	2,000 (Estimate)	1.5 M
TOTAL	294	745	1,039	11,000	20.1 M

*** Breakdown of Alaska Resident Balance Due Taxpayers by Amount Owed**

\$1,000 - 10,000	\$10,001 - 20,000	\$20,001 - 50,000	\$50,001 - 100,000	\$100,000 +	TOTAL	BALANCE DUE
311	103	120	63	46	643	18.6 M

Regions with the Greatest Incidence of Tax Delinquencies Among LEP Holders

Region

Greatest Problem(s)

Bethel

Non Filing/Non Payment

Bristol Bay and Dillingham

Non Filing/Non Payment

Haines Borough & Skagway-Yakutat-Angoon

Non Filing/Non Payment

Kenai Peninsula Borough

Non Payment

Kodiak Island Borough

Non Payment

Wade Hampton

Non Filing/Non Payment

February 1999 Summary of Tax Delinquencies Among LEP Holders					
	IRS Non Filers	* IRS Balance Due	IRS Total	LEP Holders	Amount Due
Alaska Residents	Unknown	838	Unknown	8,802 (Estimate)	24.5 M
Washington and Oregon Residents	Unknown	108	Unknown	2,000 (Estimate)	2.0 M
TOTAL	Unknown	946	Unknown	11,000	26.5 M

*** Breakdown of Alaska Resident Balance Due Taxpayers by Amount Owed**

\$1,000 - 10,000	\$10,001 - 20,000	\$20,001 - 50,000	\$50,001 - 100,000	\$100,000 +	TOTAL	BALANCE DUE
467	117	125	71	58	838	24.5 M

Regions with the Greatest Incidence of Tax Delinquencies Among LEP Holders

Region

Bethel
Bristol Bay and Dillingham
Haines Borough & Skagway-Yakutat-Angoon
Kenai Peninsula Borough
Kodiak Island Borough
Wade Hampton

Greatest Problem(s)

Non Filing/Non Payment
Non Payment
Non Filing/Non Payment
Non Payment
Non Payment
Non Filing/Non Payment

Internal Revenue Service

Department of the Treasury

District
Director

915 Second Ave., Seattle, Wash. 98174

FEB 12 1997

► Governor Tony Knowles
Office of the Governor
P.O. Box 110001
Juneau, AK 99811-001

Dear Governor Knowles:

The Internal Revenue Service (IRS) is pleased with the results of the State of Alaska's administered Tax Obligation Loan Program (SB251). During the 2-year period that we have worked with the Alaska Department of Commerce and Economic Development, and Division of Investments (DOI), many Alaska fishers have successfully resolved their tax problems. To date, the IRS has received more than four million dollars. However, it is our understanding that new loan applications must be received no later than February 28, 1997, to insure that the applications are processed and the funds disbursed prior to May 26, 1997, when the Bill's sunset provision takes effect.

The termination of this program could not have come at a worse time. Many fishers are in the process of completing their 1996 tax returns. Many rural Alaskans have been unable to obtain assistance to prepare their returns and loan packages. For example, IRS employees were accompanied by an employee from DOI during the week-long visit where we talked to fishers in Dillingham, Manokotak, Togiak, and New Stuyahok. However, we were unable to serve all residents wishing to resolve their problems. We have scheduled additional trips in March and April, but do not know whether these individuals will be able to avail themselves of the State's loan program in time. Tax Obligation Loan applications were received from 15 individuals. The total loan amount requested was approximately \$397,000.

The Tax Obligation Loan Program has been a positive step in minimizing the need for the IRS to take enforcement action. Over the past several years we have been working together with the State of Alaska to avoid the necessity of seizing and selling permits. In July of 1996, we met with various State agencies, members of the fishing community, Native organizations, and the Alaska congressional staff in a symposium format to look at alternatives to seizure action and various methods to improve compliance in the fishing industry. We believe progress is being made toward assisting fishers and minimizing the need for the IRS to administratively seize and sell permits. When we meet again on February 19, 1997, one of the proposals on the table for discussion is the extension of the Tax Obligation Loan Program. We believe this is critical to meeting our mutual goals and would like your support in extending the program. At this time, we have approximately 1200 delinquent permit holders of whom 900 could possibly qualify for the loan program. An extension would greatly assist these Alaskan fishers. While most of these individuals are not in jeopardy of losing their permits because of tax delinquencies, it would be an easy resolution of their tax problems and enable them to concentrate on what they do best, which is contributing to the commercial fishing industry in Alaska.

We firmly believe that our partnership efforts with key participants in this industry will resolve the issues that have divided us in the past. We look forward to working with the individuals representing the State of Alaska at the February meeting and to your support in extending the Tax Obligation Loan Program.

Sincerely,

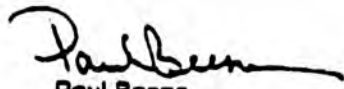

Paul Beene
District Director
Pacific-Northwest District

Exhibit C

MEMORANDUM

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

TO: The Honorable Ivan M. Ivan

DATE: February 17, 1997

FAX NO.: 789-6170

TELEPHONE NO.: 789-6160

FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION

SUBJECT: Information Concerning
the Need for an Extension
of the Tax Obligation
Loan Program (HB 123)

Dale Anderson, Commissioner
Marlene Johnson, Commissioner
Bruce Twomley, Chairman
Mail Stop: 0302

You requested information from the Commission concerning Alaskans who may be in need of an extension of the Tax Obligation Loan Program as provided for in your HB 123.

The best current information we have comes from an IRS Summons served upon the Commission in 1996. The Summons targeted Alaskans who hold entry permits and asked the Commission to report their fishery earnings for the years 1993 and 1994. The IRS identified the vast majority of individuals subject to the Summons as having failed to file returns for 1993 and 1994. Attached as Exhibit A is the number of permit holders by community we derived from the Summons. There are 684 individuals in communities throughout Alaska who are listed on the Summons. They reside all over Alaska including the urban areas. The vast majority have relatively small incomes from commercial fishing. Exhibit A. Therefore, many of their tax debts are likely manageable with some help, and many are likely well within the \$30,000 limit of the Tax Obligation Loan Program. Exhibit A.

These numbers do not show the full extent of tax compliance problems, because they are derived from only two years, 1993 and 1994. There are likely additional individuals with tax obligations arising from different years. On the other hand, the figures suggest some improvement in tax compliance. The IRS previously served the Commission with a Summons directed toward non-filing permit holders for the year 1992, and the Summons named more than 2,000 Alaskans who held entry permits. Exhibit B.

IRS recognizes the importance of the Tax Obligation Loan Program and has urged Governor Knowles to support an extension of the program. Exhibit C.

The Loan Program is part of a written agreement we have with the IRS under which IRS has promised its best efforts to ensure the benefits of the program reach those Alaskans in need. Pursuant to our agreement, we have urged the IRS to provide current data in a form that would be meaningful to the Legislature and the Governor in evaluating the Loan Program. Exhibit D.

cc: Tom Wright

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

16:48 Sunday, February 16, 199

PROJECT NUMBER : 96159

PROJECT NAME : IRS Selective Permit Information

Report #4 - Alaska Resident Permit Holders Subject To IRS Summons For 1993-94
By Alaska Census Area And City
(The Vast Majority Are Identified By The IRS As Non-Fileers)

Census Area	City	# Pmt Holders
ALEUTIAN ISLANDS	KING COVE	2
	NELSON LAGOON	2
	SAND POINT	4
-----		-----
ALEUTIAN ISLANDS		8
ANCHORAGE BOROUGH	ANCHORAGE	40
BETHEL	AKIACHAK	5
	AKIAK	5
	ATMAUTLUAK	2
	BETHEL	26
	CHEFORNAK	2
	EEK	3
	GOODNEWS BAY	13
	KALSKAG	1
	KASIGLUK	2
	KIPNUK	1
	KONGIGANAK	2
	KWETHLUK	5
	KWIGILLINGOK	3
	MEKORYUK	2
	NAPAKIAK	10
	NAPASKIAK	3
	NEWTOK	1
	NIGHTMUTE	3
	NUNAPITCHUK	3
	OSCARVILLE	1
	QUINHAGAK	11
	TOKSOOK BAY	3
	TULUKSAK	9
	TUNTUTULIAK	8
	TUNUNAK	3
-----		-----
BETHEL		127
BRISTOL BAY	KING SALMON	2
	NAKNEK	12
	SOUTH NAKNEK	6
-----		-----
BRISTOL BAY		20
DILLINGHAM	ALEKNAGIK	3
	CHIGNIK	1
	CHIGNIK LAGOON	1
	CLARKS POINT	2
	DILLINGHAM	24
	EGEGIK	5
	ILIAMNA	2
	LEVELOCK	1
	MANOKOTAK	8
	NEW STUYAHOK	2
	NONDALTON	3
	PEDRO BAY	1
	PILOT POINT	2
	TOGIAK	30
	TWIN HILLS	3
-----		-----
DILLINGHAM		88
FAIRBANKS NORTH STAR	FAIRBANKS	9

Exhibit A
(1 of 4)

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

16:48 Sunday, February 16, 1997 2

PROJECT NUMBER : 96159
PROJECT NAME : IRS Selective Permit Information

Report #4 - Alaska Resident Permit Holders Subject To IRS Summons For 1993-94
By Alaska Census Area And City
(The Vast Majority Are Identified By The IRS As Non-Fileers)

Census Area	City	# Pmt Holders
HAINES	HAINES	1
JUNEAU	AUKE BAY	3
	JUNEAU	14
-----		-----
JUNEAU		17
KENAI PENINSULA	ANCHOR POINT	2
	HOMER	8
	KASILOF	8
	KENAI	9
	NIKISHKA	2
	NIKISKI	3
	NINILCHIK	3
	PORT GRAHAM	1
	SELDOVIA	1
	SEWARD	1
	SOLDOTNA	5
	TYONEK	1
-----		-----
KENAI PENINSULA		44
KETCHIKAN GATEWAY	KETCHIKAN	11
KOBUK	KOTZEBUE	19
	NOATAK	2
	NOORVIK	1
	SELAWIK	2
-----		-----
KOBUK		24
KODIAK	KODIAK	8
	LARSEN BAY	2
	OLD HARBOR	5
	OUZINKIE	3
-----		-----
KODIAK		18
MATANUSKA-SUSITNA	PALMER	5
	TALKEETNA	2
	WASILLA	6
-----		-----
MATANUSKA-SUSITNA		13
NOME	ELIM	12
	GOLOVIN	2
	KOYUK	1
	NOME	6
	SHAKTOOLIK	3
	STEBBINS	5
	UNALAKLEET	11
	WHITE MOUNTAIN	1
-----		-----
NOME		41
NORTH SLOPE	POINT HOPE	1
PR OF WALES-OUTER KTKN	CRAIG	6
	HYDABURG	2
	KLAWOCK	2
	METLAKATLA	3

Exhibit A
(2 of 4)

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

16:48 Sunday, February 16, 1997 3

PROJECT NUMBER : 96159
PROJECT NAME : IRS Selective Permit Information

Report #4 - Alaska Resident Permit Holders Subject To IRS Summons For 1993-94
By Alaska Census Area And City
(The Vast Majority Are Identified By The IRS As Non-Filers)

Census Area	City	# Pmt Holders
PR OF WALES-OUTER KTKN	POINT BAKER	10
	PORT PROTECTION	1
-----		-----
PR OF WALES-OUTER KTKN		24
SITKA	SITKA	17
SKAGWAY-YAKUTAT-ANGOON	ANGOON	5
	ELFIN COVE	2
	GUSTAVUS	1
	HOONAH	7
	PELICAN	6
	TENAKEE	1
	YAKUTAT	16
-----		-----
SKAGWAY-YAKUTAT-ANGOON		38
SOUTHEAST FAIRBANKS	TANACROSS	1
VALDEZ-CORDOVA	CORDOVA	6
	WHITTIER	1
-----		-----
VALDEZ-CORDOVA		7
WADE HAMPTON	ALAKANUK	17
	CHEVAK	1
	EMMONAK	14
	HOOPER BAY	10
	KOTLIK	10
	MARSHALL	1
	MOUNTAIN VILLAGE	20
	PILOT STATION	2
	RUSSIAN MISSION	1
	SAINT MARYS	7
	SCAMMON BAY	11
	SHELDON POINT	11
-----		-----
WADE HAMPTON		105
WRANGELL-PETERSBURG	KAKE	3
	PETERSBURG	6
	PORT ALEXANDER	2
	WRANGELL	5
-----		-----
WRANGELL-PETERSBURG		16
YUKON-KOYUKUK	FORT YUKON	1
	GALENA	1
	GRAYLING	1
	KALTAG	3
	MANLEY HOT SPRINGS	1
	NENANA	1
	NULATO	5
	TANANA	1
-----		-----
YUKON-KOYUKUK		14

		684

Exhibit A
(3 of 4)

2/18/97

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

PROJECT NUMBER: 96159
1993-94 IRS SELECTIVE PERMIT INFORMATION

1993 COUNTS OF INCOME LEVELS FOR ALASKA RESIDENT PERMIT HOLDERS NAMED IN IRS SUMMONS

EARN	Frequency	Cumulative Frequency
> 30	82	82
00-05	181	263
05-10	108	371
10-15	53	424
15-20	29	453
20-25	13	466
25-30	13	479
UNKNOWN	164	643

479
- 82
397

397 = 8320
(4479)

1994 COUNTS OF INCOME LEVELS FOR ALASKA RESIDENT PERMIT HOLDERS NAMED IN IRS SUMMONS

EARN	Frequency	Cumulative Frequency
> 30	99	99
00-05	165	264
05-10	114	378
10-15	46	424
15-20	20	444
20-25	19	463
25-30	9	472
UNKNOWN	194	666

472
- 99
373

373 / 472 = 7920

* Note: The number of unique permit holders represented in this report is 684.

Exhibit A
(4 of 4)

289 / 479 = 6070

279 / 472 = 5970

6070
Fish
10.0 n

8020
Fish
30 n

TONY KNOWLES
GOVERNOR

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 485-3500
Fax (907) 485-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 21, 1997

The Honorable Ted Stevens
United States Senate
522 Hart Senate Office Building
Washington, DC 20510-2354

Dear Senator Stevens:

I am writing to request your administrative or legislative assistance in stopping the Internal Revenue Service (IRS) from forcing the sale of Alaska limited fishing privileges.

As you know, the IRS has persistently attempted to force the sale of Alaska limited fishing privileges for some time. Last March, the Alaska Commercial Fisheries Entry Commission (CFEC), in its *Carle* decision, denied a demand by IRS to force transfer of privileges held by an elderly Alaska Native fisherman.

Notwithstanding the *Carle* decision, on December 11, 1996, the IRS shocked the State of Alaska by conducting a pre-Christmas sale of an Alaska limited entry permit. The Cook Inlet set net permit was held by a 54-year-old Alaska Native fisherman from a small coastal community and valued at \$30,000. The IRS sold the permit for only \$5,005.

The IRS is well aware the State of Alaska stands ready to cooperate and intervene to help such individual fishermen through Alaska's secured loan program. With the help of the Alaska Business Development Center and others, the state has so far aided numerous individual fishermen in meeting their tax obligations and generated more than \$4 million in revenue to the IRS. Yet the IRS gave the state only two days' notice of its sale.

The pre-Christmas timing of this sale is deplorable. People are especially vulnerable at Christmas, both financially and emotionally. Adverse actions taken at this time can cause tragic consequences. Additionally, two days' notice effectively precludes the state from meaningful intervention and counsel to the individual fisherman.

Despite congressional direction to the IRS to avoid hardship in its collection practices, this sale appears calculated to inflict maximum harm on the taxpayer.

Exhibit D
(9 of 10)

Senator Ted Stevens
January 21, 1997
Page 2

As you know, in Alaska's small coastal communities, fishing privileges represent a right to work and a way of life for thousands of Alaskans. You are also aware the IRS led the state into talks about this issue promising a "fresh start." This pre-Christmas sale represents a giant step backward.

As the IRS knows, Alaska is in the last months of our successful tax loan program. The state and the Alaska Business Development Center are systematically traveling throughout the state to help Alaska's fishermen secure the benefits of this program. IRS' precipitous action drops a grenade into these planned efforts and causes extreme hardship to the individual fisherman. Such action can destroy a small business and force a fishing family onto public assistance.

We would welcome your help in avoiding such hardship. I invite you to work with John Katz of my Washington office, and Bruce Twomley, Chairman of the CFEC, toward this end.

Sincerely,



Tony Knowles
Governor

Exhibit D
(10 of 10)

Internal Revenue Service

Department of the Treasury

District
Director

915 Second Avenue
Seattle, WA 98174

FEB 26 1999

Representative Mary Sattler Kapsner
Attn: Aaron Spitzer
State Capitol
Juneau, AK 99801-1182

Dear Mr. Spitzer:

Enclosed are three summary sheets of limited entry permit holders who have transferable permits with value. These sheets cover the two periods you requested plus the most current information we have for 1999. Unfortunately, we do not have non-filer information for 1999 at this time. Please let me know if you need this information and we will provide it as soon as it is available.

The summary sheets have the taxpayers separated into two categories:

1. **IRS NON FILERS** - Individuals who have not filed required tax returns and have no outstanding tax liabilities (balance due).
2. **IRS BALANCE DUE** - Individuals who have tax liabilities outstanding.
NOTE: Some of these individuals also may not have filed all required tax returns. To avoid duplication we have omitted them from the "non filer" column.

We also provided a breakout for Alaska residents and residents of Washington and Oregon. The balance due is broken down into various dollar amounts with the number of individuals falling into each category.

The bottom portion of the sheet contains a listing of geographic areas with the greatest tax compliance problem among Limited Entry Permit Holders.

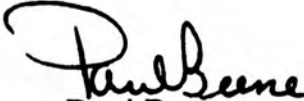
There is one flaw in the information we are providing. In 1992, we had a listing of all permit holders by name and Social Security Number. This enabled us to do a 100% match against our database of non-filers and balance due accounts. Subsequent to 1992, we have not been able to obtain a listing of permit holders with their Social Security Number. The information we recently obtained came off the public bulletin board and it does not contain the permit holders Social Security Numbers. As a result, we are not able to match the name to a Social Security Number on 1,600 of the estimated 11,000 permit holders. Therefore, we do not know if these 1,600 individuals are non-filers, have outstanding balance due, or are compliant.

Representative Mary Sattler Kapsner
State Capitol

In the event we get a listing of permit holders with Social Security Numbers from the State of Alaska, we will do a 100% match and provide you with a corrected summary sheet. I hope you find this information useful in your resurrection of the Tax Obligation Loan Program.

If you have any further questions on this subject, please contact Douglas Hartford, Collection Group Manger, at 949 E 36th Avenue, Anchorage, AK 99508, MS A201 or call him at (907) 271-6982.

Sincerely,


Paul Beene
District Director

Enclosures

cc: Bruce Twomley
Chairman, CFEC

October 1993 Summary of Tax Delinquencies Among LEP Holders					
	IRS Non Filers	* * IRS Balance Due	IRS Total	LEP Holders	* Amount Due
Alaska Residents	1173	1111	2284	8,802 (Estimate)	13.7 M
Lower 48 States and Hawaii Residents	333	315	648	2,000 (Estimate)	3.9 M
TOTAL	1506	1426	2,932	11,000	17.6 M

* In 1993, the amount due only reflected the assessed balance due. Accrued penalties and interest were not calculated. Based on historical knowledge, the total amount due with accruals as is reflected in the 1997 and 1999 data would be an additional fifty to 100 percent. Therefore, in 1993, the total amount due would have been between 20.5 M and 27.4 M

**** Breakdown of Alaska Resident Balance Due Taxpayers by Amount Owed**

\$0 - 10,000	\$10,001 - 20,000	\$20,001 - 50,000	\$50,001 - 100,000	\$100,000 +	TOTAL	BALANCE DUE
827	130	101	32	21	1111	13.7 M

Regions with the Greatest Incidence of Tax Delinquencies Among LEP Holders

Region

Greatest Problem(s)

Bethel

Non Filing/Non Payment

Bristol Bay and Dillingham

Non Filing/Non Payment

Haines Borough & Skagway-Yakutat-Angoon

Non Filing/Non Payment

Kenai Peninsula Borough

Non Payment

Kodiak Island Borough

Non Payment

Wade Hampton

Non Filing/Non Payment

February 1997 Summary of Tax Delinquencies Among LEP Holders					
	IRS Non Filers	* IRS Balance Due	IRS Total	LEP Holders	Amount Due
Alaska Residents	271	643	914	8,802 (Estimate)	18.6 M
Washington and Oregon Residents	23	102	125	2,000 (Estimate)	1.5 M
TOTAL	294	745	1,039	11,000	20.1 M

*** Breakdown of Alaska Resident Balance Due Taxpayers by Amount Owed**

\$1,000 - 10,000	\$10,001 - 20,000	\$20,001 - 50,000	\$50,001 - 100,000	\$100,000 +	TOTAL	BALANCE DUE
311	103	120	63	46	643	18.6 M

Regions with the Greatest Incidence of Tax Delinquencies Among LEP Holders

Region

Greatest Problem(s)

Bethel
Bristol Bay and Dillingham
Haines Borough & Skagway-Yakutat-Angoon
Kenai Peninsula Borough
Kodiak Island Borough
Wade Hampton

Non Filing/Non Payment
Non Filing/Non Payment
Non Filing/Non Payment
Non Payment
Non Payment
Non Filing/Non Payment

February 1999 Summary of Tax Delinquencies Among LEP Holders					
	IRS Non Filers	* IRS Balance Due	IRS Total	LEP Holders	Amount Due
Alaska Residents	Unknown	838	Unknown	8,802 (Estimate)	24.5 M
Washington and Oregon Residents	Unknown	108	Unknown	2,000 (Estimate)	2.0 M
TOTAL	Unknown	946	Unknown	11,000	26.5 M

*** Breakdown of Alaska Resident Balance Due Taxpayers by Amount Owed**

\$1,000 - 10,000	\$10,001 - 20,000	\$20,001 - 50,000	\$50,001 - 100,000	\$100,000 +	TOTAL	BALANCE DUE
467	117	125	71	58	838	24.5 M

Regions with the Greatest Incidence of Tax Delinquencies Among LEP Holders

Region

Greatest Problem(s)

Bethel

Non Filing/Non Payment

Bristol Bay and Dillingham

Non Payment

Haines Borough & Skagway-Yakutat-Angoon

Non Filing/Non Payment

Kenai Peninsula Borough

Non Payment

Kodiak Island Borough

Non Payment

Wade Hampton

Non Filing/Non Payment

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

TONY KNOWLES, GOVERNOR

8800 GLACIER HWY, #109
JUNEAU, AK 99801
(907) 789-6150 Licensing Calls
(907) 789-6160 Other Business
(907) 789-6170 FAX
(907) 789-6180 BBS

February 14, 1997

Mr. Paul Beene
District Director
Internal Revenue Service
915 Second Avenue
Seattle, WA 98174

FAX: (206) 220-6045

Dear Paul:

As I stated in our February 7th phone conversation, my Co-Commissioner Marlene Johnson and I will attend the February 19th meeting in Anchorage to continue our dialogue, conditioned by the substance of this letter. There are fundamental issues we must address.

Our Existing Agreement

First, your January 14 letter acknowledges the State of Alaska has paid the IRS more than \$4.5 million in consideration under its existing agreement with the IRS. In fact, actual expenditures in human resources and dollars have been far greater. In our most recent commemoration of our agreement, the IRS committed its "best efforts" to ensure the benefits of the Tax Obligation Loan Program are available to Alaskans through meaningful intervention by the State and third parties.

We believe the two days' notice you provided the State of your pre-Christmas sale of Alaska limited fishing privileges is an actionable breach of our existing contract. With respect to contracts of which the U.S. is a party, the Federal Government has been held liable under ordinary principles of contract law. United States v. Winstar Corp., 518 U.S. ___, 116 S.Ct. 2432, 135 L.Ed.2d 964 (1996).

Our primary concern is IRS performance of its express duty to cooperate with the State in good faith under our existing agreement. This promise is virtually the only consideration given by the Federal Government in contrast to the substantial commitment of resources and money provided by the State. Now that the Federal Government has reaped the substantial rewards of the contract,

Exhibit D
(1 of 10)

Mr. Paul Beene

-2-

February 14, 1997

including a shift of tax collection responsibilities from the Federal Government to the State, the IRS may not disregard its promises through a change of policy to obtain self relief from an agreement you may now view as improvident or to pressure the State into acting as you dictate.

Specifically, the IRS has the continuing duty to provide reasonable notice of IRS targets in order to allow for meaningful intervention and help well before an IRS seizure and attempted forced sale of a holder's interest in a permit. Under ordinary contract law, this duty precludes the IRS from taking opportunistic advantage of the State and, also, from acting in a manner which destroys or injures our right to receive the fruits of our agreement.

As your January 14 letter confirmed, the State has enjoyed notable success in assisting taxpayers to achieve IRS compliance with no loss of fishing privileges, a result which the IRS effort, alone, did not accomplish prior to our collaboration.

Your Recent Proposals

As a separate and secondary matter, your January 14 letter urges the State to respond to your recent proposals for a new, supplemental agreement.

To recount the background for your recent proposals, on May 16, 1996, during a phone conversation with former Commissioner Homan and me, you stated, in return for further commitments by the State, IRS would discuss not seizing entry permits. Subsequently, at our July 19, 1996 meeting, in the presence of more than 30 people, you offered to discuss eliminating forced sales of entry permits pursuant to an agreement under which the IRS would collect from the proceeds of fish sales instead of forcing the sale of Alaska limited fishing privileges. In consideration, I offered to discuss potential changes to state law that would support IRS' collections.

A group of participants (including at least one Representative of our Congressional Delegation) met immediately following our July meeting and

Exhibit D
(2 of 10)

Mr. Paul Beene

-3-

February 14, 1997

confirmed receiving your offer. Shortly thereafter, I sent you a letter asking you to confirm your own statement. Instead, you responded, "I appreciate your sharing your reflections" on the meeting. Despite the fact your answer failed to confirm or qualify your statement, we gave you the benefit of the doubt and pursued discussions with you.

In November, the IRS sent the State four proposals to permanently change Alaska law to require the State of Alaska to assume various new responsibilities to achieve federal tax enforcement. Clearly, the Federal government seeks to shift the costs of meeting its statutory responsibilities to the State through those IRS proposals. For the State to elect to do so, the IRS must promise something meaningful in return. The confusing discussion that followed your proposals prompted us to seek written clarification as to what you are offering the State. After more than six months, you provided the clarification we first sought in July, and it is disturbing.

Your January 14 letter refers to your November proposals for Alaska to permanently change state law and assume responsibilities for the IRS, and you assert:

[t]hese proposals are what the IRS is offering the State.

The Federal government is not the creator of State law. Therefore, nothing is conveyed in IRS' purported offer to the State.

Additionally, in support of one IRS proposal for a change in Alaska law to require the Entry Commission to withhold all seasonal fishing permits until the IRS certifies each yearly applicant for a permit is in full compliance with his federal tax obligations, you represent that Alaska law already makes the same requirement for child support obligations. This is not true. The Alaska Legislature rejected the idea: both the Legislature and our Child Support Enforcement Division recognize that in order to collect from fishermen, fishermen need to be in the water catching fish.

Exhibit D
(3 of 10)

In any event, your January 14 clarification emphasizes no matter what the State may undertake to do for the IRS, you assert the unqualified right, without reasonable notice as our contract requires, to attempt to force the sale of any property interest a delinquent fisher may have in State fishing privileges, particularly in those cases IRS subjectively classifies as "egregious." On December 4, you represented to the Alaska Congressional Delegation that the targets of your pre-Christmas sales of entry permits were such "egregious" cases.

Under 26 USC §6343, Congress created an affirmative duty on the part of the IRS to release a levy when "such levy is creating an economic hardship due to the financial condition of the taxpayer" The clear requirement of §6343 mandates a levy release in all cases of economic hardship, regardless of whether or not the IRS has subjectively designated any such case as "egregious". Despite this mandate, you have insisted the State negotiate an agreement recognizing the purported right of the IRS to attempt the forced sale in cases the IRS determines are "egregious". From your pre-Christmas actions, this amounts to a demand on the State to accept a pledge to do less than Congress has already required.

In short, your January 14 letter clarifies the IRS is not offering the State of Alaska any consideration for the changes you would like to see in State law.

Recent Events

It is clear the IRS' recent actions are an improper attempt to pressure the State. In addition, those actions demonstrate a lack of best efforts with respect to our agreement and, also, a failure to act in good faith with respect to the current negotiations.

Consistent with Part 3 of IRS Form 4585, the IRS assured a taxpayer targeted for your pre-Christmas sale: "The minimum bid price is established to protect your interests in the property." This written representation was deceptive. The IRS set the minimum bid at \$3,375, which is a fraction of the average \$30,000 for an authorized State transfer. Affidavits provided to CFEC

Exhibit D
(4 of 10)

February 14, 1997

state a Revenue Officer under your direction advised possible buyers as follows: in order to pursue the IRS' present dispute with the State, the IRS intended to sell the particular permits for "substantially below the permits' fair market value" and, once a permit was transferred, it would "open the floodgates" of State permit seizures by the IRS. The affiants stated the Revenue Officer volunteered "the Commissioner of the IRS is aware of the situation and the matter is receiving attention at the highest levels at the IRS Washington D.C., headquarters" and, also, the IRS intended to pursue its disagreement with the State of Alaska "to a conclusion that is satisfactory to the IRS." Based on these affidavits, it appears the IRS willfully breached its duties to the State in an attempt to improperly coerce the State into acting as the IRS dictated.

Moreover, your December 6, 1996 letter states, if we fail to meet your expectations for future negotiations, "fishing entry permits will continue to be seized and sold [and thereby] endanger[] the interests of Alaska taxpayers (e.g., devalued fishing permits, permits sold to non-Alaskans)." Consistent with your letter, a Revenue Officer under your direction has announced he will resell an entry permit from the pre-Christmas sale on one day's notice. A Revenue Officer has threatened the seizure of seven limited entry permits in the Dillingham area at any moment. Additionally, we received a call from a widow in Anchorage who reported a Revenue Officer threatened to sell her fishing privileges and those of her deceased husband for as little as \$3,000.

In addition to disrupting orderly implementation of the Loan Program, IRS' pre-Christmas actions and threatened actions require the Entry Commission as Administrative Law Judges to rule on any claims that result. If we are in the midst of negotiating with you, and, on 2 days' notice, we are required to rule on a related claim, we face a conflict that creates at least an appearance of impropriety. We need sufficient warning from you to be able to withdraw from negotiations before such a conflict arises.

Apart from our requirements to function as Administrative Law Judges under State law, your pre-Christmas actions damaged the climate for cooperation between

Exhibit D
(5 of 10)

February 14, 1997

the State and Federal Government. See the enclosed letter from our Governor to the Alaska Congressional Delegation.

Again, our agreement requires meaningful notice from you identifying your targets well in advance of an IRS forced sale.

Where Do We Go From Here

More than once in the past, we have discussed the possibility of extending the State's Tax Obligation Loan Program presently due to sunset this spring. We committed to explore that alternative. When we talked last Friday, you asked again about this possibility, and I told you the door was not closed to this option. Accordingly, you prepared a letter to Governor Knowles' advocating this alternative.

In contrast to the other IRS proposals, this option makes the most sense for several reasons.

First, the State-IRS "partnership" has proven effective to assist Alaskan fishers damaged by the post-1988 adverse market conditions not only in achieving federal tax compliance, but in ordering their other financial affairs.

Second, our joint cooperation has reaped rewards in cases in which the IRS, alone or through contractors, otherwise has been unsuccessful. In this regard, we are aware the IRS instituted a pilot program in 13 states, including Alaska, through which private collectors were to be hired by the IRS to collect delinquent taxes. According to a recent article, the IRS is disappointed in this program, because the five collection agencies hired by the IRS were able to contact only about 9% of the taxpayers and, according to the collection agencies involved, the poor results were "because the IRS was late in getting the files to them and the files were extremely old."

Third, our mutual cooperation has provided an opportunity to accomplish our respective goals, largely without counterproductive adversarial conflict. We

Exhibit D
(6 of 10)

believe this effect has and continues to raise our citizens' confidence in our respective governments. Specifically, the process has become less threatening and less fearsome to the lone fisher with tax problems, because we are working together.

Fourth, our cooperation has identified many Federal and State tools available to assist fishers. As a result, these tools have been more fully utilized than has been the case in the past.

Fifth, our respective efforts have put a human face on what otherwise could be characterized as mechanical processing by the IRS in relative isolation from the community. In this time of shrinking federal budgets and operations, we believe our cooperative undertakings should serve as a model for the future. In short, we continue to achieve good results and, thus, should persist on the path we know to be productive.

This week, after conferring with the Commission and the Division of Investments, State Representative Ivan introduced HB 123 to extend the Tax Obligation Loan Program. While this is a positive first step, persuading the Legislature and the Administration of the merits of this legislation will be an extremely difficult task. As you well know, there are very many worthy and competing alternative uses for the same funds. We need meaningful numbers from the IRS to show (1) the extent of the current problem; (2) the extent to which Alaskans have been helped; and (3) the extent of improvement in tax compliance since the original information presented by the former IRS Chief of Collections in 1993. This is the same information we requested more than a year ago consistent with our agreement. The numbers you employed in your January 14 letter suggest a substantial improvement of at least 58%. However, the figures you employed in your more recent letter to the Governor appear inflated. We need some real information from the IRS to present to the Legislature and the Governor.

Mr. Paul Beene

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February 14, 1997

In the interim, we have to operate with the sunset of the Loan Program in mind. We must evaluate and coordinate our outreach efforts to ensure maximizing service to Alaskans and revenue to the federal government. To further this goal, I reported to your Chief of Examination, Mel Joseph, that, on the recommendation of the IRS, the State has already modified its regulations governing permanent fund dividend recipients. Mr. Joseph and I are discussing practical ways to make use of the information that will be generated. This is an experimental work in progress, and we do not yet know whether it will prove to be a practical tool. Nonetheless, we remain committed to working through the process as we promised IRS.

Finally, as we have stressed in this letter, we must have meaningful notice of IRS' targets for seizure and sale well in advance of any action by the IRS so as (1) not to disrupt our planned cooperative efforts, and (2) to allow sufficient time for intervention and help well before an IRS seizure and forced sale.

The Legislature is in session for only 120 days. We hope you will address these points at our meeting on Wednesday, February 19.

Yours truly,

COMMERCIAL FISHERIES ENTRY COMMISSION

Dale Anderson, Commissioner
Marlene Johnson, Commissioner
Bruce Twomley, Chairman

by: 

Enclosure

Exhibit D
(8 of 10)

ALASKA

No relief for fishermen struggling to pay IRS

■ *A bill to continue state loan program didn't make it out of Senate committee*

By LORI THOMSON

THE JUNEAU EMPIRE

When legislators called it quits for the year, they also shut down one avenue for fishermen struggling to pay their taxes.

A bill that would have continued a state loan program for fishermen never made it out of the Senate Resources Committee, although the House passed the bill 34-4 on April 8. The fishermen's tax obligation loan program will expire May 25, said Greg Winegar, lending branch manager for the state Division of Investments.

That's bad news for fishermen who fear the Internal Revenue Service could take their fishing permits to pay off back taxes. About 640 Alaska fishermen are behind on federal tax payments, according to the IRS.

State officials and others were surprised in December when the IRS seized a Kenai fisherman's permit worth \$30,000 and sold it for \$5,005, said Bruce Twomley, chairman of the Commercial Fisheries Entry Commission.

"This individual just in the last year paid \$10,000 toward his tax obligation," Twomley said. "Here you have someone who may not be good dealing with paperwork, but made a good faith effort."

State representatives met with the IRS in February to request advance notice about the most critical tax cases the federal agency planned to target, Twomley said. The state also asked to be given the chance to continue the loan program to help fishermen pay back those taxes.

House Bill 123, extending the loan program, could be approved when the legislative session resumes next year. That would resurrect the loan program. But in the meantime, Winegar said the state is hurrying to process the applications that are already in-house before the program sunsets this month.

"I think with one less option available, it's going to affect some of those folks. How many I don't know," he said.

About 220 fishermen have taken out loans from \$2,500 to \$30,000 in the three years of the program, Winegar said. Fishermen must pay back the loans at 10½ percent interest, usually within five to 15 years.

Twomley said fishermen's rate of tax noncompliance is no worse than that of other small businessmen or lawyers. But the fishing industry is a tempting target for the IRS because of permits that can be seized.

Fishermen often plan to pay their taxes out of bonuses that come after the first of the year or pay the previous year's taxes out of the current year's earnings.

"When the bottom fell out of salmon prices in 1988, a lot of people fell into a trap that made them vulnerable," Twomley said.

Tax compliance among fishermen has improved in recent years. He said more than 2,000 fishermen didn't pay their taxes in 1992. That number dropped to a total of 684 fishermen who did not file for 1993 and 1994.

Fishermen who have not paid their taxes often come from rural areas and may have no other means of supporting themselves without a fishing permit, Twomley said. Language and cultural barriers have also posed problems for some in dealing with IRS paperwork.

The bill to extend the loan program was sponsored by Democratic Rep. Ivan Ivan of Akiak and Republican Rep. Bill Hudson of Juneau.

Laws for the SEA

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8 DAYS TO ADJOURNMENT

HALFORD HOLDS 10 FISH BILLS HOSTAGE FOR HIS DISCREET STOCK PLAN

Ten fisheries-related bills, including five House majority proposals, are being held hostage in the Senate Resources Committee by chairman Rick Halford in an effort to advance his so-called discreet stock assessment bill.

If Halford's chokehold on fisheries bills isn't broken the harvester's federal income tax loan program will expire at the end of this month, and Southcentral scallop fisheries will be remain open to new participants and raids by large East Coast vessels that would reduce the catch of Alaskan coastal harvesters, but few observers suggest the impasse will be settled in the remaining eight days of the session.

Sen. John Torgerson, a Resources Committee from Kaslof, said last Friday that he doesn't expect to see any more fisheries bills move out of that committee before the legislative session ends on May 13.

Halford hasn't been inclined to discuss his immediate plans. His bottleneck bill, SB 40, sets up a process under which the Board of Fisheries annually selects research projects to determine the streams of origin of salmon stocks that are the subject of allocation battles between commercial and sport harvesters.

Most commercial fleets fiercely oppose SB 40 for fear that it is the precursor to a policy that would eventually eliminate intercept fisheries where most of the commercial harvest of the state's wild salmon stocks take place. Last year's version of the bill directed the Fish Board to adopt a discreet stock management policy, but that wording was not included in this year's draft.

SB 40 was introduced on the first day of the session, but Halford has been unable to move it from the seven-person Resources Committee on its merits. Three Republicans panel members from coastal districts, including Torgerson, Robin Taylor, of Wrangell, and Loren Leman, who fishes a Kenai Peninsula setnet site, oppose the bill. Sen. Georgianna Lincoln, a Democrat from the Yukon River village of Rampart, is concerned with its funding provisions and doesn't support it.

All but two of the bills Halford is sitting on are Republican proposals.

Of the six house bills now in Halford's clutches, HB 123 has been there the longest. It extends the harvester income tax loan program for three more years from its current expiration date of May 28.

Beside the scallop moratorium bill, HB 144, the so-called generic moratorium bill, HB 204, is also among the hostages.

Both of the Knowles administration proposals for new salmon product tax credits have been in Halford's committee since they were introduced, which is no surprise in the highly partisan legislature. But SB 52, Sen. Jerry Mackie's bill to reinstitute the capital investment tax credit program for shoreside processing plants, has been stuck in Senate Resources since January 30.

Mackie is the only Democrat in the Senate Republican majority. With the absence of ailing Sen. Tim Kelly, the Republicans, at best, have exactly enough votes to override the governor's veto of any of their bills. That may give Mackie enough leverage to force SB 52, or some of the other bills, out of Senate Resources, but so far no signs of serious hostage negotiations have been found.

Only last week, HB 19 and HB 198 passed out of the House and into Halford's black hole. The former requires sport fishing guides to be licensed by the state and the latter establishes regional dive fishery associations which would tax themselves to pay the management costs of their fisheries.

Halford, a practiced deadline deal-maker, says SB 40 is in good shape and expressed no concern for its passage this year. The bill carries a \$1.5 million annual fiscal note, but two-thirds of that amount would come from new commercial fishing fees and the rest from a \$1 surcharge on sport fish licensing, or from other sport fishing funds.

News Release

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CONTACT: Aaron Spitzer, 465-4942

Legislator proposes bill to protect fish permits

Juneau—A bill that was filed last week in the state House of Representatives would re-institute a program to help fishermen pay their back taxes, thus rescuing Limited Entry Fishing Permits from the threat of seizure and resale by the Internal Revenue Service.

Rep. Mary Sattler Kapsner, D-Bethel, filed House Bill 238 on May 13. The bill received references to the House Fisheries, Resources and Finance committees.

"We in the legislature need to do all that we can to help our fishermen in times of economic adversity," Kapsner said.

HB 238 proposes to reinstate the Fishermen's Tax Obligation Loan Program, which was created in 1993 and sunsetted in 1997. During the program's lifespan it awarded 288 loans, at a value of \$6.06 million, to fishermen from every region of Alaska.

The loans helped fishermen with delinquent taxes pay off their tax debts, thus dissuading the IRS from taking away and re-selling their Limited Entry Permits. The IRS has long maintained the right to seize fishing permits, sometimes re-selling them for a fraction of their real worth, and potentially re-selling them to non-Alaskans.

The Tax Obligation Loan Program thus not only assists tax-delinquent fishermen but all Alaskans, by helping to maintain the value of Limited Entry Permits and by keeping the permits in the hands of Alaskans.

I. INTRODUCTION.

The Internal Revenue Service (IRS) administratively seized property possessed with respect to an Alaskan salmon limited entry permit held by Francis S. Carle, a 61-year-old Alaska Native fisherman from Hydaburg, Alaska. The IRS attempted to sell the right, title and interest of Mr. Carle in and to his fishing privileges at its Anchorage public auction in December of 1995.

Subsequent to this administrative seizure and sale, the IRS applied to the Commission for a voluntary transfer of the privileges completing the application forms as if it were Mr. Carle.

An Alaska limited entry permit is a use privilege that may be transferred only by the Alaska Commercial Fisheries Entry Commission (CFEC), and CFEC is required to review every request for transfer to ensure compliance with the law. AS 16.43.170.

This application for transfer is the first time CFEC has been called upon to review an IRS request for transfer arising from an IRS administrative levy and sale. We agreed to review this request as expeditiously as possible, and, toward that end, we Commissioners are taking up the request directly (without the normal, intermediate procedural levels of review).

Although we provide background and discuss additional issues raised by IRS, this request for transfer presents a simple question of IRS' statutory authority.

We have reviewed (1) IRS' application and conclude federal governing statutes do not authorize the administrative levy and sale of Alaska limited fishing privileges. Therefore, we deny IRS' request.

II. FACTS OF IRS' REQUEST FOR TRANSFER OF MR. CARLE'S FISHING PRIVILEGE.

A. Mr. Carle.

Francis S. Carle is a 61-year-old fisherman from the Alaska Native fishing community of Hydaburg on Prince of Wales Island in Southeast Alaska. As an Alaska Native elder, Mr. Carle has maintained for his lifetime a traditional dependence upon commercial fishing as his only means of earning a living to support himself and his extended family (including his wife, two sons, and daughter).

In 1975, pursuant to AS 16.43 et. seq., the State of Alaska Commercial Fisheries Entry Commission (CFEC) originally issued Mr. Carle his Southeast Alaska purse seine entry permit (2). The permit is a revocable use privilege. As 16.43.150(e) The state found Mr. Carle would have suffered "significant economic hardship" without the permit, because he was so heavily dependent upon the fishery. In fact, Mr. Carle's dependence on his salmon fishing was so substantial, the state could not have denied him the privilege even if it meant issuing more than the maximum number of entry permits (3).

Mr. Carle's Southeast salmon seine permit is one of three such permits in Hydaburg today. Mr. Carle has owned his own seine vessel since 1963. In his seine operation, Mr. Carle employs six crewmembers from Hydaburg.

B. IRS Action.

On November 13, 1995, pursuant to 26 USC 6331(a), the IRS levied upon property possessed by Mr. Carle with respect to his permit by personally serving him with a Notice of Seizure (4).

IRS published a notice (5) for its public auction of property of Mr. Carle and others in the Juneau Empire on November 29, 1995, that stated in part as follows:

Sales are subject to any and all qualifications and/or restrictions established by the Alaska Limited Entry Fishing Commission Successful bidders must meet all qualifications prior to transfer.

Mr. Carle turned to his local tax preparer and Alaska Legal Services Corporation for help. When Mr. Carle's tax preparer was out of town and unable to complete the required work in time, Mr. Carle's attorney sought help from the IRS Problem

The economy is dependent to the extent of more than two-thirds (2/3) of its income upon Federal Expenditures.

However, the prevailing view was Alaska could survive as a state, but only if Alaska controlled its own natural resources including fisheries(15)

H.R. 7999 will enable Alaska to achieve full equality with existing States, not only in a technical juridical sense, but in practical economic terms as well. It does this by making the new State master in fact of most of the natural resources within its boundaries

In order to understand clearly the necessity for certain different provisions in the Alaska statehood bill, it is advisable to have in mind some of the basic facts about Alaska's peculiar situation.

Over 99 percent of the land area of Alaska is owned by the Federal Government. [S]uch a condition is unprecedented

Much of the remaining area of Alaska is covered by glacier, mountains, and worthless tundra. Thus it appeared to the committee that this tremendous acreage of [federal] withdrawals might well embrace a preponderance of the more valuable resources needed by the new State to develop flourishing industries with which to support itself and its people.

If Alaska is to become a State, it must be a full and equal State, and not a puppet of the Federal Government.

With respect to demands on the Federal Treasury, proponents of statehood also noted(16):

Concretely, the grant of statehood will mean some saving to the Federal Government as the people of Alaska take over part of the burden of supporting certain governmental functions now borne by the United States Treasury.

The "extreme degree of Federal domination of Alaskan affairs"(17) and its deleterious effect was very evident in Alaska's salmon fisheries. As long as Alaska remained a Territory, the Federal Government managed Alaska's fisheries. Under federal management, canneries were allowed a monopoly over the Alaska salmon harvest through the use of fish traps. This federal management practice undermined sustained yield management and, over time, resulted in severe harm to the resource. Additionally, federal management of Alaska's fisheries through fish traps denied individuals, who traditionally relied on commercial fishing for their livelihood, the opportunity to fully participate in the commercial harvest. As the result of this exclusion, these individuals and those dependent upon them suffered severe economic distress. This placed a heavy burden on the Territory and the Federal Government to provide basic support to those individuals, their families and their communities.

Senator Ernest Gruening summarized the fishery situation before statehood:

The Salmon Conservation Fiasco.--Another long-standing Alaskan grievance relates to the depletion of what was once Alaska's greatest natural resource, the salmon fishery. It was also the nation's greatest fishery resource.

The Pacific salmon originate in the rivers and lakes of North America's northwest coast; they migrate to sea and return to the waters that gave them birth to spawn and then to die. The salmon industry consists of catching them as they return at the end of their life cycle and processing them, chiefly by canning. Such was the abundance of this resource that Alaska's coastal streams were once solidly red with the mass of anadromous salmon. The first cannery was established in Klawock in 1878 and others followed, financed chiefly by San Francisco capital. Conservation was undreamed of in those days. Not until 1889 did the federal government, alerted by warnings of

Alaska's limited entry system is the product of years of effort by the State beginning in 1961. Two previous attempts by the legislature to establish the means to limit entry into Alaska's fisheries failed as the result of legal challenges.

The Alaska legislature persisted, however, because Alaska's salmon fisheries were experiencing a long and threatening decline, while the number of participants continued to increase substantially, which resulted in more and more fishing pressure on a diminishing resource. A limited entry system was the only means by which the State could control a critical variable in the management of its fishery resources: the number of fishermen participating in a given fishery.

Following action by the legislature, in 1972, Alaska voters approved an amendment to Article VIII, Section 15 of the Alaska Constitution, which authorized:

the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Building upon this constitutional foundation, in 1973, the Alaska legislature adopted the Limited Entry Act, which has resulted in the largest limited entry program of its kind in the United States. Limitation of entry into all twenty-six of Alaska's salmon fisheries followed shortly. During 1976, by referendum, the voters of Alaska again supported limited entry by a margin of almost two-to-one. Today, some forty-six of Alaska's fisheries are under limitation.

As a food source important to Alaskans and the world, Alaska's fisheries are without question one of its most important renewable resources. Alaska's fisheries employ a substantial segment of the State's population, and many remote communities rely upon commercial fishing as their primary economic base. Therefore, sound management of its fisheries is crucial to the State of Alaska, and limited entry is an important part of the State's management system.

Extensive biological, economic, historic, and cultural data and analyses have been generated to aid the development, enactment, and review of entry limitation in Alaska. (A partial bibliography is set forth in Appendix A.) Thousands of hours of hearings throughout the State and before the legislature have informed the choices made in shaping Alaska's limited entry system. Alaska's courts have carefully scrutinized the program and developed a body of law governing limited entry in Alaska that is both extensive and unique. (A partial list of cases decided by the Alaska Supreme Court is set forth in Appendix B.)

In addition to direction and support from the legislature and the courts, Alaska's limited entry program has functioned only through the continuing cooperation and support of the Governor of Alaska, the Alaska Departments of Fish and Game, Law, Revenue, Administration, Commerce, and Public Safety, together with that of private citizens, economists, lawyers, scientists, processors, and, particularly, fishermen.

Under AS 16.43.140, no commercial fisherman may operate fishing gear in a limited fishery without an entry permit. The Alaska Commercial Fisheries Entry Commission (CFEC) issues entry permits and administers the program. The entry permit is the critical element of the system and, to an Alaskan fisherman, an entry permit is a legally required tool of his trade. In establishing limited entry and considering the needs of the State and its citizens, the Alaska legislature gave careful consideration to the nature of an entry permit and the privileges that a permit would extend to its holder.

In enacting a limited entry system, if the legislature had been committed only to simplicity and economy, it could have authorized auctioning of a limited number of property rights to its fisheries. The legislature rejected this approach, because it would not have been consistent with the State's most important objectives in establishing a limited entry system.

The legislature recognized that, for the purpose of conservation, the State needed to retain control of its fishery resources. Looking ahead, the legislature wished to ensure that privileges extended through an entry permit could

generating an additional and unnecessary State bureaucracy.

Consistent with its grant of only a privilege, the State through CFEC, retained control over all transfers. A permit holder may transfer his permit only upon approval by CFEC. AS 16.43.170. To ensure against intemperate transfers, the legislature requires a 60-day waiting period before a permit may be transferred. A fisherman may revoke an agreement to transfer any time during this 60-day period. A number of legal requirements must be satisfied before CFEC will approve a transfer. AS 16.43.170; 20 AAC 05.710.

Generally, AS 16.43.150(g) prohibits involuntary transfer requiring that an entry permit may not be "attached, distrained, or sold on execution of judgement or under any other process or order of any court." Additionally, a fisherman may not pledge his entry permit as security for a debt. (The legislature recognized that the absence of a property right might impair a fisherman's ability to obtain financing for the purchase of a permit and his fishing operation, and, therefore, established two State authorized loan programs. AS 16.10.333-16.10.377; 44.81.271; and 44.81.230-44.81.250.) Just as a fisherman could not, contrary to State law, create a security interest in his fishing privilege, neither can a creditor.

The legislature recognized that a fisherman's earnings were seasonal and subject to many variables from year-to-year beyond control (for example, weather, predation, and interception). If creditors with short term objectives were allowed to treat an entry permit as a fungible item of property and to seize and force its sale, a fisherman without other means of earning a living, together with those dependent upon him, could well be left destitute. In Alaska, where many communities in remote areas of the State depend upon commercial fishing as the primary basis for their cash economy, this is a very real possibility. [The legislature notes that the Social Security Administration has acknowledged the wisdom of Alaska's approach by recognizing that an entry permit is essential to self-support, and, therefore, by not considering the market value of a permit as an alternative resource in determining an individual's eligibility for Supplemental Security Income benefits. 50 Fed. Reg. 42683, 42685 (1985).]

Although the State of Alaska could not countenance a system that inexorably would sever fishermen from the source of their livelihood, nonetheless, as a privilege, the legislature has made clear that an entry permit is subject to forfeiture, if its holder fails to abide by the applicable laws. See, for example, AS 16.05.480; 16.05.665; 16.05.710; 16.43.960; 16.43.970. Ultimately, because it has granted to fishermen only a revocable privilege, the State retains the dominion and control necessary to protect and manage its fishery resources.

In conclusion, compelling State interests were served, when the legislature rejected the idea that an entry permit represent a property right belonging to the permit holder. Instead, the legislature chose to establish an entry permit as a mere privilege, subject to State control, and revocable at the will of the State without compensation.

In this manner, Alaska established fundamental policies through its comprehensive fisheries management system. Alaska directed the benefits of the system to individual fishers dependent on the resource (as opposed, for example, to processors, banks, and investment companies). From its unique circumstances giving rise to statehood, Alaska has attempted to protect individual fishers from economic coercion by nonfishers and from forced loss of their livelihood.

When too many participants threatened sustained yield and caused economic distress among fishers, Alaska established limited entry, but not an exclusive right or special privilege of fishery. AS 16.43.150(g) ensures individual fishers are fully accountable only to the state, so no third party can pressure or influence their commercial fishing activities. Consider, Alaska manages more fishery resources and more coastline than exist in the rest of the United States combined. Currently, Alaska has some 54 enforcement officers in the field. Alaska requires complete authority over fishing activities to ensure compliance with regulations necessary for sustained yield. The risk of losing fishing privileges is a critical incentive to comply with Alaska's requirements for sustained yield of its fisheries.

And Alaska's requirements are many. See, for example, AS 16.05; AS 16.10; AS 16.40; AS 16.43, and regulations adopted thereunder. As sovereign, Alaska closely regulates its fisheries, as necessary, to open and close fishing seasons, to prohibit fishing, to limit the size of vessels as well as type and amount of gear, to restrict areas of fishing, to limit the amount of harvest, to ensure escapement, to impose strict liability for certain fishing offenses, to board vessels without warrants, and to forfeit permits, vessels, gear and catch.(21)

salmon fishery through the limited entry system.

Nevertheless, the report recognizes limited entry would become a destabilizing influence in the area if permits are sold outside the area. It also notes the risks of open access fisheries:

The limited entry permit system is the other powerful force at work in the region. The loss of commercial permits to outsiders by sale alienates the local society from its resource base. With the development of the fisheries, the market value of commercial permits increases, making sales for short term gain more attractive. The opening of new commercial fisheries without limits on outside competition holds the potential for degradation of the resource or loss of the value of the resource to more heavily capitalized competitors. Further, the need to preserve a commercial resource from over-exploitation requires the application of restrictive management systems from state or federal agencies.

In summary, commercial fishing provides one of the few sources of cash income in many isolated rural fishing communities. Cash is needed in these villages both to purchase basic necessities and to purchase gear and equipment needed for subsistence harvests. Limited entry helped stabilize a source of monetary income through the initial allocation of entry permits to applicants in those communities and by preventing the dilution or destruction of that economic base through the influx of large numbers of outsiders.

The State of Alaska must preserve the economic base in such isolated rural fishing villages. With declining oil revenues, State subsidies in such communities may decline by necessity in the near future. Furthermore, Alaska is becoming increasingly responsible for the economic welfare of its citizens as the Federal government significantly downsizes its activities (in part, through reductions in public assistance) in order to balance the Federal budget. The fragile economic base in these communities is of vital importance.

Any substantial loss of permits in these villages would be devastating. Large-scale seizure of entry permits by the IRS and sales to outsiders pose such a threat to the economies of many rural fishing villages. The widespread poverty in many of these villages and the lack of cash and/or available credit means persons within such villages likely would be unable to compete with outsiders at IRS permit auctions.(28)

B. IRS has Targeted Individuals in Rural Alaskan Communities.

1. IRS asserts "unlimited supply" of limited entry permits to sell.

a. IRS data.

For more than ten years, the IRS has declared its intention to seize and force the sale of limited entry permits, making the state aware the problem is extensive throughout Alaska and heavily concentrated in isolated rural communities. As former Chief of Collections for the IRS, Dave Tucker, announced(29) in 1994: "we have an unlimited supply of entry permits to sell."

Mr. Tucker estimated as many as 4,000 limited entry permits held by Alaskans could be at risk of IRS seizure due to failure to file tax returns and failure to pay federal tax obligations.(30) Four thousand limited entry permits would constitute roughly 40% of all permits held by Alaskans.(31) The primary source of this supply of limited entry permits is rural Alaska.

In response to repeated requests from the State, in November of 1993, the IRS provided more specific estimates to the Entry Commission. Exhibit I This limited view(32) shows as many as 26%(33) of Alaska resident limited entry permit holders(34) had failed to meet some federal tax obligations. The majority of individuals did not owe an overwhelming amount of taxes. Among those not in compliance, the IRS estimated 74% owed \$10,000 or less, and 86% owed \$20,000 or less. Because some of these figures are derived from IRS forced filing of returns when an individual has not filed, the amount owing likely would be much less upon filing of actual returns with full deductions for actual expenses.

Most disturbing is the focus on isolated rural fishing communities throughout Alaska. Among others, the IRS report singles out the Dillingham, Bethel, and Wade Hampton 1990 census districts as serious problem areas.(35)

b. A glimpse behind the data.

YEAR TOTAL PERMITS GROSS AVERAGE FEDERAL PERMITS FISHED EARNINGS FISHING TAX GROSS DUE(40)

1989	60	53	\$196,690	\$3,711	0
1990	63	45	72,410	1,609	0
1991	52	42	104,522	2,489	0

c. IRS summons: a snapshot of IRS' enforcement targets.

In the summer of 1992, IRS served the Limited Entry Commission with an extensive summons demanding earnings records for more than 2,500 fishers(41) IRS stated(42) the individuals targeted by the summons were limited entry permit holders who failed to file returns for the year 1992. The information conveyed by the summons(43) is only a snapshot in time: it represents only part of the problem. As such, we need to cautiously view this information as the tip of an iceberg.

We extracted the following data from the summons to highlight the number of individuals targeted in the particular census districts and communities mentioned in the previous subsection.

Census Area	Village(s)	Number of Individuals Targeted by IRS Summons
Dillingham Census Area	Togiak	69
	Other Dillingham area communities	149
	TOTAL	218
Bethel Census Area	Kipnuk	15
	Other Bethel area communities	248
	TOTAL	263
Wade Hampton Census Area	Hooper Bay	18
	Other Wade Hampton area communities	224
	TOTAL	242

2. IRS permit seizures cause significant hardship.

a. Isolated Alaskan fishing villages depend upon commercial fishing for their survival.

All of these data underscore the importance of commercial fishing as a source of livelihood for Alaskans in many isolated fishing villages.(44) The loss of permits would reduce the monetary income of permit holders, their crewmembers, their families and households, and others in the community sustained through the village's non-commercial sharing networks.

The loss of permits and commercial fishing income would push more residents below the poverty level and increase the community's dependency on public assistance. The loss of commercial fishing income would also reduce the community's ability to purchase the gear, equipment, and supplies needed to harvest subsistence foods for survival.

b. Seizing entry permits undermines a purpose of limited entry (and may not be in the national interest).

(1) United States' special relationship to Alaska Natives

Many villages are populated largely by Alaska Natives engaged in a "mixed, subsistence-cash" economy. Commercial fishing is one of the few sources of monetary income available to people in many of these villages.

Monetary income from commercial fishing is for basic necessities and is used to purchase the gear and equipment required to harvest subsistence food needed for basic survival. Permit holders, their crewmembers, their families and households, and others who are sustained through non-commercial sharing networks would all suffer from the loss of their commercial fishing economic base.

flow of tax revenues to the U.S. Treasury.

3. IRS and CFEC experience in villages.

IRS statistics highlight isolated, rural Native Alaskan villages. Communicating with villagers has always been difficult for distant governmental entities (including our own). For example, every attorney attempting to work within these communities has experienced a similar problem. Commonly, a resident produces a small stack of official letters. The correspondence is invariably years old and unanswered. At an earlier time, the letters were often from the U.S. Department of Interior informing the village resident of the necessity to respond within thirty days or lose the resident's claim to land.

In short, for a variety of reasons, including isolation, culture, language, and lack of formal education, the individuals did not have the capacity to answer such a letter.(51) The inherent risk in governmental communications is for a distant bureaucrat to assume the individual who did not respond to the letter is a bad actor who requires a harsher measure to get his attention.(52)

Going to a village and meeting the individual can quickly dispel such a notion. Recently, Charles M. Stromme, Chief of Special Procedures for the IRS in Alaska.(53) returned from a regional village meeting held in Kasigluk (an Alaska Native village on the Yukon-Kuskokwim Delta) and announced, "my God, we're trying to collect money from people who don't even know we exist!"(54)

Individual insight, however, may not curb a bureaucratic agenda. At least one IRS supervisor has stated limited entry permit seizures should target lower valued limited entry permits in Western Alaska (representing less valuable commercial fisheries), because such lower valued permits are less likely to be rescued from the enforcement process by legal means, and, thereby, IRS could more quickly obtain ultimate legal victory over the State of Alaska.(55)

At a time when IRS is facing severe budget reductions and responding with dramatic consolidation, we fear such a bureaucratic agenda may prevail.(56)

4. State of Alaska and IRS cooperation.

In the face of IRS' threat, the state has extended itself to help IRS achieve tax compliance and avoid IRS seizures of limited entry privileges. In turn, the IRS has supported and joined these efforts. Under the leadership of IRS' District Director Michael R. Allen,(57) the IRS in Alaska committed resources to work with individual fishers to achieve voluntary compliance. The state has encouraged and joined in this effort as have private parties.(58)

The State Division of Investments (which manages the Tax Obligation Loan Program) and the Commercial Fishing and Agriculture Bank (CFAB) represent arms of the state established by the Alaska Legislature to avoid economic distress to fishermen and those who depend upon them for a livelihood. State employees have worked hand-in-hand with IRS employees to visit Rural Alaskan communities helping individuals understand and meet their tax obligations, often with the help of the State's Tax Obligation Loan Program. In slightly over a year during which the program has functioned, the state has committed more than \$3.6 million through the Tax Obligation Loan Program. This amount represents revenue the IRS would not likely have received but for the direct effort of the state.

Private individuals have helped as well. The Alaska Business Development Center works with individual permit holders throughout the state. In the Bristol Bay area, the Bristol Bay Economic Development Corporation together with the Bristol Bay Native Association have funded an office to work with local permit holders. In Western Alaska, other regional economic development corporations are looking at the Bristol Bay model in order to develop similar projects. In support, the Division of Investments, the University of Alaska, the Alaska Business Development Center, and the IRS are developing a plan through Volunteer Income Tax Assistance (VITA), to place accounting students in rural communities to assist individuals to meet their federal tax obligations.

That no individual or public officer can sell, and convey good title to, the land of another, unless authorized to do so by express law, is one of those self-evident propositions to which the mind assents, without hesitation; and that the person invested with such power must pursue with precision the course prescribed by law, or his act is invalid, is a principle which has been repeatedly recognized by this court.

2. Federal tax lien.

A lien arises by operation of law upon "all property and rights to property, whether real or personal, belonging to such person" where (1) a tax assessment has been made; (2) a taxpayer has been given notice of the assessment, stating its amount, and demanding payment; and (3) the taxpayer has failed to pay the amount demanded within ten days after the notice and demand. IRC 6321; Saltzman, *IRS Practice and Procedure*, 14.05 (2d ed. 1991). This tax lien does not seize or deprive the taxpayer of his property. It is merely a claim against the taxpayer's property comparable to a Uniform Commercial Code lien of a private creditor. H.R. Rep. No. 1884, 89th Cong., 2nd Sess., 1966-2 CB 815; Saltzman, *supra*, 14.04 (2d ed. 1991).

3. Enforcement of federal tax lien.

The IRC provides the government with two methods to enforce the lien: (1) as in the case of Mr. Carle, it may levy, and sell the property administratively without judicial intervention pursuant to IRC 6331-6343 or (2) it may institute suit to foreclose the lien pursuant to IRC 7403. *U.S. v. Hammen*, 51 F.3d 883, 887 (9th Cir. 1995); Saltzman, *supra*.

4. Statutory administrative levy and sale provisions.

The statutory authority for the IRS to levy upon and administratively sell property of a delinquent taxpayer is contained in the Internal Revenue Code (IRC), Subchapter D, Chapter 64, Subtitle F, in particular 6331 "Levy and distraint," 6335 "Sale of seized property," 6338 "Certificate of sale; deed to real property," and 6339 "Legal effect of certificate of sale of personal property and deed of real property." Related provisions are contained in Subchapter C, Chapter 64, Subtitle F governing liens for taxes, in particular 6321 "Lien for taxes" and in Subchapter A, Chapter 76, Subtitle F, governing civil actions brought by the United States, in particular 7403 "Action to enforce lien or to subject property to payment of tax."

In their relevant parts, we have set out the controlling federal statutes in this section.

IRC 6331(a). [in part]

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax.

IRC 6331(b). [emphasis added]

The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

6335(e)(1)(B). [in part, emphasis added]

If, at the sale, one or more persons offer to purchase said property for not less than the amount

required condition necessary before the IRS was entitled to administratively sell such property. Specifically, the IRS levy did not affect Mr. Carle's right, as a permit holder, to fish under State law. Alaska Statutes, Title 16, Fish and Game.

6. Administrative sales and the plain language of statutes.

Controlling law in this circuit makes clear in conducting an administrative sale, the government must strictly comply with 6335. Anderson v. U.S., 44 F.3d at 801 (holding where a sale was postponed or adjourned for a period in excess of 1 month in violation of 6335(e), the sale was invalid); Goodwin, 935 F.2d at 1065 (holding that failure to give the notice as required by 6335(a) invalidated a sale notwithstanding that the delinquent taxpayer had actual notice of the sale).

Section 6335(e) gives the IRS three possibilities at the time of sale: sell the property, buy it, or release it. Anderson, 44 F.3d at 800. The statutory language is clear that the IRS shall: (1) if a bid is made that equals or exceeds the minimum price set by the IRS, declare the property sold to the highest bidder [6335(e)(1)(B)]; and (2) give the purchaser a certificate of sale upon payment of the full price [6338(a)]. The use of the word shall leaves no room for discretion. Anderson, 44 F.3d at 799.

Specifically, the IRC requires such property "shall" be declared sold to the highest bidder at the sale. Also, the applicable federal regulations provide the property shall be sold by the IRS "as is" and "where is" and "without recourse" against the IRS with "no guarantys (sic) of warranty, including the validity of title". 26 C.F.R. 310.6335-1(c)(iii). Contrary to the explicit requirements of the IRC and the applicable regulations, the IRS conducted a sale of Mr. Carle's property subject to the condition that CFEC transfer Mr. Carle's permit to the successful bidder. The IRC does not authorize the IRS to sell Mr. Carle's property subject to the condition that the State transfer Mr. Carle's permit to the successful bidder. IRC 6335(c)(1)(B); IRC 6338(a); IRC 6339(a)(2). Accordingly, the sale is invalid under IRC as interpreted by our Ninth Circuit Court of Appeals in Anderson and Goodwin.

C. Conclusion.

In its application to transfer Mr. Carle's entry permit, IRS has raised other issues we will discuss briefly in the following section. However, at this point we conclude we must deny the requested transfer of Mr. Carle's fishing privilege. For lack of federal statutory authority, the administrative levy and sale (upon which the transfer request is based) appears to be ineffective.

V. OTHER ISSUES RAISED BY IRS.

A. Claim by IRS State Law Invalid.

In making this application, the IRS rejected the procedure required by the state⁽⁶⁴⁾ as follows:

The IRS has not completed the Request for Permanent Transfer of Entry Permit Due to Involuntary Action form as the restrictions set out in A.S. 16.43.170(g)(6) and (h) are not applicable to transfer requests by permit holders and are invalid to the extent they interfere with revenue collection. Perez v. Campbell, 402 U.S. 637, 649 (1971).

Perez v. Campbell, 402 U.S. 637, 29 L.Ed. 2d 233, 91 Sup. Ct. 1704 (1971), does not stand for the principle that state laws "are invalid to the extent they interfere with revenue collection." The IRS was not a party to Perez, and the IRC was not at issue in Perez. The case presented the U.S. Supreme Court with a glaring conflict between a specific state law and federal bankruptcy law. In short, federal bankruptcy law discharged debts in order to provide a fresh start for the debtor. 29 L.Ed. 2d at 241. Directly to the contrary, the state law in question provided certain judgment debtors were not relieved of liability by a discharge in bankruptcy. Id. at 238. The five-member majority stated the court must proceed by a 2-step process: (1) look for authoritative construction of the two statutes (federal and state); and (2) determine whether they are in conflict. Id. at 239. With ease, the court found "both statutes authoritatively construed" and concluded they were in direct conflict. Id. Due to direct conflict, the state law violated the Supremacy Clause of the Constitution and was preempted.⁽⁶⁵⁾

The word "property" is commonly equated with "things". However, in its true sense, property is a cultural concept that serves to order relations between people in organized societies. As noted legal philosopher Morris Cohen⁽⁶⁹⁾ observed (emphasis added):

Whatever technical definition of property we may prefer, we must recognize that a property right is a relation not between an owner and a thing, but between the owner and other individuals in reference to things.

The U.S. Supreme Court and the lower federal courts routinely recognize that, although the IRC sets forth the rules to assess and collect taxes on property, the IRC does not create property; rather, property is created by non IRC law. *U.S. v. Bess*, 357 US 51, 55 (1958); *Aquilino v. U.S.*, 363 US 509, 512 (1960); *U.S. v. Durham Lumber Co.*, 363 US 522, 526 (1960); *U.S. v. Rodgers*, 461 US 677, 683 (1983); *U.S. v. National Bank of Commerce*, 472 US 713, 719-720 (1985); *In re Tergwillinger's Catering Plus, Inc.*, 911 F. 2d 1168, 1171 (6th Cir. 1990) cert. den'd *Ohio Department of Taxation v. I.R.S.*, 111 S. Ct. 2815 (1991); *In re Kimura*, 969 F. 2d 806, 811 (9th Cir. 1992). Alternatively stated, property may not be created under the IRC for the sole purpose of federal seizure. *U.S. v. California*, 281 F. 2d 726, 728 (9th Cir. 1960).

Lower federal courts addressing the issue have tended to treat the license as a tangible thing (like a car) or have addressed only disposition of proceeds after a license has been transferred by a government regulator. Few courts have considered whether a federal tax lien specifically attaches itself to the license itself, or the use and enjoyment thereof, the qualified right to request the state to transfer the license, or the proceeds thereof.

Since the *Lorentzen* ruling⁽⁷⁰⁾ that an entry permit represents "property or rights to property" under the IRC, a new line of cases concerning FCC licenses has analyzed the various relationships a licensee may have with third parties and what interests those relationships may affect. The analysis addresses some of the court's remaining questions posed to the parties at the conclusion of the *Lorentzen* case.

The threshold case, *In re Ridgley Communications, Inc.*, 139 B.R. 374, 377-379 (Bkrtcy. D. Md. 1992), held a third-party creditor of the licensee may not assert a property right to force the sale of the license against the government issuer and explained its reasoning as follows:

[A] license confers certain private rights upon the licensee and that these rights may be sold for profit to a private party, subject to Commission approval. [The] rights between licensees and the Commission are to be distinguished from rights between the licensee and a private third party. It is this distinction that permits a licensee to receive a profit from the transfer of a license to a third party.

...

The case of *In re Jewel F. Smith*, 94 Bankr. 220 (Bankr. D. Ga. 1988), [held] a creditor could not take a security interest in the debtor's broadcast license.

...

In *Smith*, the creditor sought to abrogate the rights of the licensee, i.e., its ability to freely initiate a transfer of a license. The right to initiate a transfer is a right granted by the terms of the license and is seriously impaired if it is subject to the dictates of a creditor This interference in the relationship between the licensee and the [FCC] is precisely the evil the FCC was attempting to avoid by the terms of its policy against the recognition of security interests

...

[I]n the instant case [the creditor] is not asserting any interest in the rights of a licensee with respect to the FCC. The right to transfer is a right between the FCC

PBR Communications, 172 B.R. 132; Beach Television Partners, 38 F.2d 535.

Furthermore, the FCC's distinction between the license and the licensee's right to receive proceeds from an FCC approved transfer of it is the distinction between a privilege as between the licensee and the FCC and a property right as between the licensee and third parties, such as creditors. See also, U.S. v. Berkshire Street Railway Co., 219 F.Supp. 861 (DC Mass. 1963) (IRS may not enjoin Commonwealth of Massachusetts from discharging a sovereign function to revoke a franchise from the Department of Public Utilities, because the franchise was a privilege, not property); Tak, 985 F.2d 916 (As a privilege, not property, an FCC license is neither part of the bankrupt's estate nor property to which a UCC security interest may attach). Compare Brown v. Baker, 688 P.2d 943 (Alaska 1984) (A promise to retransfer an entry permit is an attempt to create a security interest in the permit and illegal under AS 16.43.150(g) and, therefore, will not be enforced by the courts); Pavone, 860 P.2d 1228.

The IRS accepts FCC policy enunciated in Chasky, 9 FCCR at 987, and does not conduct IRS administrative levy and sales of FCC licenses. The Internal Revenue Manual (IRM) directs IRS employees as follows:

56(16) 4 FCC Broadcasting Licenses

(1) Administrative seizure and sale of FCC broadcasting licenses are not feasible due to the difficulties involved in the transfer of ownership without the approval of the Federal Communications Commission. However, levy against other assets of the taxpayer business is still appropriate. Such seizures should be handled on a routine basis. As is the case with any issue of a sensitive nature, management should be apprised of pertinent developments.

Although the IRM does not have the force of law, see Anderson, 44 F.3d at 799, the IRS "manual provisions do constitute persuasive authority as to the IRS' interpretation of the IRC." Grissold v. U.S., 59 F.3d 1571, 1576 n.8 (11th Cir. 1995).

b. Nature of an Alaskan limited fishing privilege.

In Alaska, fish within the jurisdiction of the state are reserved to the people for their common use and no person may have an exclusive right in fishery resources. Article VIII., Section 5, and Section 15, Alaska Constitution. Limited entry permits do not confer an exclusive right or a special privilege of fishery upon the holders: they are a use privilege authorized under Article VIII., Section 15. Accordingly, no person may assert a property right against the State of Alaska to fishery resources. (72) State v. Hebert, 803 P.2d, 866 (Alaska 1990). The permission granted in itself represents only a revocable use privilege. AS 16.43.150(e).

As such, the permission itself is not property. AS 01. 10.060; AS 16.43.150(e); In re Harrell, 73 F.3d at 220. The nature of the permission conferred upon the holder is designed to serve fundamental purposes of the State of Alaska. To avoid economic harm, Alaska ensures access to fisheries by those dependent upon them. The State maintains and requires complete control over the holders and corresponding accountability of the holders solely to the State, free from direct economic coercion, in order to ensure compliance with laws regulating Alaska's geographically vast and biologically complex fisheries. The state reserves control over the use of the privilege that may be transferred only by the state. AS 16.43.170.

The state does not confer but reserves and strictly prohibits encumbrances, retained rights of repossession, and involuntary transfers. AS 16.43.150. These reservations attached to the permission serve the State's fundamental purposes and can not stand alone any more than the Limited Entry Act can stand apart from the state's comprehensive fisheries management system. (73)

Kimura, supra at 812, held (74) the state could impose transfer conditions on a license for the state's own benefit and did not limit the benefit to money:

by: _____



Teleconference Participants

TCN: 10323

Participant List

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Testifiers



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Participants

Unidentified Testifiers: 0

Unidentified Observers: 0

DILLINGHAM (DLG)

1

Name: Mr. Jerry Liboff

Phone:

Address:

Affiliation:

City / St / Zip:

Type: Testifier

Bill: HB 238: TAX OBLIGATION LOAN PROGRAM FOR FISHERS

2

Name: Mr. Terry Hoeffler

Phone:

Address:

Affiliation:

City / St / Zip:

Type: Testifier

Bill: HB 238: TAX OBLIGATION LOAN PROGRAM FOR FISHERS