

**HB**

**216**

# Alaska State Legislature

## House of Representatives

Session address:  
Alaska State Capitol, Room 432  
Juneau, AK 99801-1182  
1-800-465-4939 (toll free)  
1-907-465-2418 (fax)



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716 W. 4th Ave.  
Anchorage, AK 99501-2133  
1-907-269-0265  
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Representative Tom Anderson  
District 19

### MEMORANDUM

**Date:** April 1, 2003

**To:** Representative Carl Morgan, Chairman  
House Community & Regional Affairs Committee

**From:** Representative Tom Anderson *T.A.*

**Re:** House Bill 216

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I respectfully request that you schedule HB 216 for a hearing before the House Community & Regional Affairs Committee.

Enclosed are:

1. HB 216
2. Sponsor Statement
3. Sectional Summary
4. Excerpts of legal opinion from Avrum Gross

Letters of support and additional backup material will be provided as they are received.

Thank you for your consideration of this request.



# Alaska State Legislature

## House Committee on Community and Regional Affairs

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**Representative Carl Morgan, Chair**  
State Capitol Building, Room 408  
Juneau, AK 99801  
907-465-3882

### **AGENDA**

State Capitol 124  
9:00 am – 10:00 am

- **Call to Order**
  - Today's date is April 15th, 2003
  - The time is 9:00 am
  - Roll Call
  
- **On today's agenda**
  - **HB 216 Municipal Taxation of Refined Fuel Products**  
Sponsor Representative Anderson

### **ADOPT:**

**Work Draft Committee Substitute LS0822\I, Cook, 4/14/03**

*(Sponsor will explain the changes)*

- **Questions and Comments from committee members**
  
- **Other Business**
  - If there is no other business, announce next meeting announce next meeting.
  
- **No Meeting this Thursday or next Tuesday.**
- **Next Meeting – Thursday, April 24<sup>th</sup>**
  
- **Adjourn**

## **Summary of Testimony by Mark Smith, Yukon Fuel**

### **Support for Increasing Revolving Loan Fund**

- Price volatility during the last few months has shown swings of up 63 cents per gallon. If world oil prices swing to such highs again, the buying power could be eroded by 20-30%.
- With new projects coming online in some villages, fuel consumption increases rapidly. Often this demand isn't covered by village resources.
- Denali Commission farms have enough capacity to accommodate a single delivery. An increased loan limit will allow qualifying villages to use the new capacity.
- Single large deliveries typically give buyers a price advantage.
- This program has demonstrated that some of the most distressed villages can perform responsibly on loans. Increasing the limit may also assist some of the larger villages that find conventional financing difficult to obtain.
- Increasing the limit also will allow AEA staff to respond to future price fluctuations.

This program gives vital assistance to village entities which face uncertain fuel volume and price requirements. Running out of fuel and the subsequent re-supply by air is not uncommon. This burden is often borne by distressed villages who can least afford it. YFC supports the amended bill and the effort to ensure winter fuel requirements are met.

adopted 4-15-03

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS0822I  
Cook  
4/14/03

**CS FOR HOUSE BILL NO. 216( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE**

**A BILL**  
**FOR AN ACT ENTITLED**

1 "An Act relating to municipal taxation of refined petroleum products and to the bulk  
2 fuel revolving loan fund."

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

4 \* **Section 1.** AS 29.10.200(51) is amended to read:

5 (51) AS 29.45.650(c), (d), (e), [AND] (f), and (i) (sales, [AND] use,  
6 and transfer taxes [TAX]);

7 \* **Sec. 2.** AS 29.45.650(a) is amended to read:

8 (a) Except as provided in AS 04.21.010(c), AS 29.45.750, and in (f), [AND]  
9 (h), and (i) of this section, a borough may levy and collect a sales tax on sales, rents,  
10 and on services provided in the borough. The sales tax may apply to any or all of  
11 these sources. Exemptions may be granted by ordinance.

12 \* **Sec. 3.** AS 29.45.650 is amended by adding a new subsection to read:

13 (i) A borough may not levy or collect a sales, transfer, or use tax on fuel used  
14 in turbine-powered aircraft, or on wholesale sales or wholesale transfers of any refined

*Amend # 1 (attached)*

1 petroleum product. This subsection applies to home rule and general law  
2 municipalities.

3 \* Sec. 4. AS 42.45.250(e) is amended to read:

4 (e) Loans made from the bulk fuel revolving loan fund to one borrower in any  
5 fiscal year are not subject to AS 42.45.060 and

6 (1) may not exceed \$300,000 [\$200,000];

7 (2) shall be repaid in one year or less; and

8 (3) may not exceed 90 percent of the wholesale price of the fuel  
9 purchased.

10 \* Sec. 5. Section 4, ch. 100, SLA 2002, is repealed and reenacted to read:

11 Sec. 4. AS 29.45.650(a) is amended to read:

12 (a) Except as provided in AS 04.21.010(c), [AS 29.45.750,] and in (f), (h), and  
13 (i) of this section, a borough may levy and collect a sales tax on sales, rents, and on  
14 services provided in the borough. The sales tax may apply to any or all of these  
15 sources. Exemptions may be granted by ordinance.

adopted

AMENDMENT # 1 by SAMUELS

Pg 1 line 13 14

after "aircraft" : insert " , Except for fuel  
that is transferred into an aircraft at a  
municipal or private airport, "

fuel flowage fee

TESTIFIER LIST

Kevin Richie Alaska Municipal League

Mark Smith Yukon Fuel Company

Gene Kain Community & Economic Development  
(On line ?) Q

Robin Wilson Department of Revenue, Tax Division Q  
(ON TELECONFERENCE)

**\*\*There may be others on teleconference\*\***

MARCIA DAVIS, ERA (ANCHORAGE)



**SITE: FAIRBANKS LIO**

**COMMITTEE: HC&RA**

**DATE: 4/15/2003**

**SUBJECT OF MEETING:**

**HB 216**

**UPDATE # 1:**

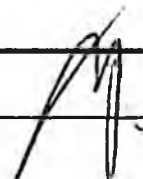
## PLEASE SIGN IN

**P R I N T YOUR NAME**

**ADDRESS (MAILING & ZIP)**

**REPRESENTING**

**DO YOU WANT  
TO TESTIFY?  
Y or N**

<b><u>P R I N T</u> YOUR NAME</b>	<b>ADDRESS (MAILING &amp; ZIP)</b>	<b>REPRESENTING</b>	<b>DO YOU WANT TO TESTIFY? Y or N</b>
<b>Jeff Cook</b>		<b>Williams</b>	<b>ANS ?s HB 216</b>
Email address:			
Email address:			
			
Email address:			
Email address:			
Email address:			
Email address:			
Email address:			

COMMITTEE: House  
Community and Regional  
Affairs Standing Committee

SUBJECT:  
HB 216 MUNI TAXATION OF REFINED FUEL  
PRODUCTS



DATE: April 15, 2003

## PLEASE SIGN IN

PLEASE PRINT: NAME & TITLE	ADDRESS	PHONE	REPRESENTING (No acronyms unless for a state agency, please)	DO YOU WANT TO TESTIFY ?
✓ Mark Smith	1904 Concord Hill, ANC 99515	336-2006	Yukon Fuel Company	Yes
E-mail address:	wmkmark@hotmail.com			
Justin Charon	8521 Golden St # 3	777-5514	Yukon Fuel Co	No
E-mail address:	JCharon@YukonFuel.com			
✓ Allan Heese	4012 R. Del Way	789-7821	Tuneau Int'l Aqpt	Yes
E-mail address:	Tuneau Allan - Heese		ci.juneau.ak.us	
✓ Kevin Ritchie	2172nd St	5861325	AK Arms League	NR
E-mail address:				
E-mail address:				





# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK 99801-1182

### SPONSOR STATEMENT FOR HB 216 BY: Representative Tom Anderson

**TITLE:** An Act relating municipal taxation of refined fuel products.

House Bill 216 clarifies local taxing authority for refined fuels sold both within and outside of a local jurisdiction. The conflict in existing State law was brought to the forefront in the Spring of 2002 when an initiative petition was approved in the Fairbanks North Star Borough to put the question of a two cent per gallon transfer tax before voters. A special election was held on June 25, 2002, and the voters overwhelmingly defeated the proposed tax by a margin of 62% no to 38% yes.

House Bill 216 clarifies that local governments have the right to tax any fuel consumed within their governmental boundaries, but do not have taxing authority for value added products refined for shipment and sale outside the local boundaries.

State and Federal law restrict taxation on jet fuel specifically. Alaska is the only state that consumes four times more jet fuel than gasoline on a daily basis and jet fuel is the number one fuel consumed in Alaska. The aviation industry is a major economic force in Alaska and it is in the state's best interest to limit taxation on such fuels and to encourage the maintenance and expansion of air cargo and passenger business in Alaska.

Clarification is also needed to limit the number of entities that can tax fuel. In the case of interior Alaska refiners, as many as eight governments could have taxed fuel locally refined and shipped by rail to Anchorage for in the Southcentral and Southeastern markets. Such taxation would discourage value added economic activity not only in Interior Alaska, but also in other areas of the state where refineries operate. This type of taxation would also result in residents from other parts of the State paying local governments costs in municipalities where they do not reside.

The clarification contained in HB 216 will also benefit local governments. There is some uncertainty now in state law about the authority to tax fuel, and HB 216 will clarify the authority to tax locally consumed fuels. In a May 29, 2002 opinion written for the Fairbanks North Star Borough, former Alaska Attorney General Avrum Gross noted the uncertainty surrounding fuel taxation. He noted that he could not give legal certainty to the question of fuel taxing as proposed in Fairbanks. He said "there is no state statutes that specifically grant or deny the borough the power to adopt such a tax." He further indicated that a broad fuel tax would be subject to "all kinds of serious challenges," and that there would be years of complicated and costly litigation.

I urge your support of HB 216.

April 1, 2003 - HB 216

23-LS0822\A

Sponsor Statement

## Sectional Analysis for HB 216

**Section 1.** Adds the restriction to the Limitation of home rule powers section of statutes.

**Section 2.** This section adds to the list of exceptions the new section 29.45.820 created in the bill.

**Section 3.** Creates the new law restricting a municipality's taxation of refined fuel products or constituents of refined fuel products for sale or distribution outside that municipality.

**Section 4.** Clarifies that a borough may levy and collect sales taxes on the sales, rents, and on services provided in the borough.

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
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TBC  
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 2, 2003

**SUBJECT:** Technical amendment (HB 216)

**TO:** Representative Tom Anderson, Chair, House Labor and Commerce  
Committee  
Attn: Josh Applebee

**FROM:** Tamara Brandt Cook  
Director

You ask about Section 4 of HB 216. That bill section is purely technical in nature, necessary to accommodate changes made in a bill passed last year, CSHB 355(CRA); ch. 100, SLA 2002.

Section 3 of HB 216 adds a new tax restriction on refined fuel products as a new statute, AS 29.45.820. Section 2 of the bill adds a reference to the new AS 29.45.820 in AS 29.45.650(a), as an exception to the power of a borough to levy a sales tax. AS 29.45.650(a) was also amended last year in ch. 100, SLA 2002, dealing with taxation of mobile telecommunications services, to exempt AS 29.45.750 from the sales tax power. However, last year's bill also contained a section, coincidentally numbered section 4, repealing AS 29.45.750 with a contingent effect date which may or may not ever come to pass. Only if a judgment based on federal law substantially limits or impairs the essential elements of 4 U.S.C. 116 - 126 will the section deleting the reference AS 29.45.750 from AS 29.45.650(a) take effect. However, if that section does take effect, I must ensure that AS 29.45.820, added in HB 216, is not dropped out. Consequently, I have amended section 4 of ch. 100, SLA 2002 in section 4 of HB 216 to reflect the change to AS 29.45.650(a) that will be made in HB 216, assuming, of course, that HB 216 is enacted into law.

Confused? I have attached a copy of sec. 4, ch. 100, SLA 2002 that is amended in HB 216 at section 4. I hope this helps.

TBC:mdr  
03-059.mdr

Enclosure

Legal Opinion  
Tam Cook

Chapter 100

(62) AS 29.45.750 (taxation of mobile telecommunications).

\* Sec. 3. AS 29.45.650(a) is amended to read:

(a) Except as provided in AS 04.21.010(c), AS 29.45.750, and in (f) and (h) of this section, a borough may levy and collect a sales tax on sales, rents, and on services provided in the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

\* Sec. 4. AS 29.45.650(a) is amended to read:

(a) Except as provided in AS 04.21.010(c) [ , AS 29.45.750, ] and in (f) and (h) of this section, a borough may levy and collect a sales tax on sales, rents, and on services provided in the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

\* Sec. 5. AS 29.45 is amended by adding a new section to read:

**Article 5A. Mobile Telecommunications Sourcing Act.**

**Sec. 29.45.750. Mobile Telecommunications Sourcing Act.** (a) The provisions of 4 U.S.C. 116 - 126 (Mobile Telecommunications Sourcing Act) are incorporated in this chapter by reference and have effect as though fully set out in this chapter.

(b) A municipality that levies and collects a sales tax on mobile telecommunications services shall do so in accordance with the provisions of 4 U.S.C. 116 - 126 (Mobile Telecommunications Sourcing Act).

(c) The procedures and remedies for correcting a tax, charge, fee, or assignment of place of primary use or taxing jurisdiction are as follows:

(1) if a customer believes that an amount of tax, charge, or fee or assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the home service provider; the customer shall notify the home service provider of the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires to process the request;

(2) within 60 days after receiving a notice under this section, the home service provider shall review the records and the electronic database or enhanced

LAW OFFICES  
**GROSS & BURKE**  
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AVRUM M. GROSS  
SUEAN A. BURKE

(907) 566-2777

May 29, 2002

Mr. Hank Bartos  
Presiding Officer  
Fairbanks North Star Borough  
309 Pioneer Road  
Fairbanks, Alaska 99701

Dear Mr. Bartos:

We have been asked to render a legal opinion to the Fairbanks North Star Borough Assembly as to the scope and validity of the proposed initiative relating to a Fuel Transfer Tax. We understand that the Assembly wants to make a preliminary evaluation as to the impact this ordinance would have on future borough revenues if it were adopted and a number of legal issues must be resolved in order to do that.

We want to say at the outset that it is very hard to provide the Assembly with the information it seeks with any real degree of certainty. There are no state statutes that specifically grant or deny the borough the power to adopt such a tax. There has never been any litigation that we have identified in this state or for that matter any state that analyzes a fuel transfer tax like the one proposed in the initiative. Accordingly, much of what we say here is a prediction as to what courts are likely to do when they are faced with the novel issues raised by passage of this ordinance. Predictions about how judges will rule by their very nature have an element of risk. Moreover, there is little doubt here that if this ordinance is adopted, there will be litigation. While a few small communities

Legal Opinion  
Gross & Burke

Mr. Hank Bartos  
May 29, 2002  
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in Alaska have adopted fuel transfer tax ordinances similar to this one<sup>1</sup> and have enforced them without having to go to court to do so, none of those communities has a facility comparable to the Williams refinery in Fairbanks that would be heavily impacted by the tax. Williams has already provided a legal opinion to the borough attorney in which it argues that the proposed tax is nearly completely barred by federal and state law. We have little doubt that if the initiative is adopted, Williams will pursue its concerns through litigation. Until that prospective litigation is resolved, which will probably take years, there can be no real certainty as to revenues that will become available to the borough. In an effort to bring some light on the problem now, we will set out and analyze the major legal issues that will be raised if the initiative passes, and give you our best judgment as to how serious those issues are, and how they will probably be resolved.

#### I. THE NATURE OF THE PROPOSED FUEL TRANSFER TAX.

The place to start, of course, is with the words of the initiative, which the sponsors have titled a Fuel Transfer Tax. Section 2 of the initiative would add new sections to the FNSB Code of Ordinances. Proposed Section 3.59.010 would levy a tax of two cents per gallon on each gallon or part of a gallon of fuel "transferred" within the Borough. Section 3.5.020 imposes liability for the payment of the tax on "that person who owned the fuel immediately prior to the transfer." "Fuel" is defined in Section 3.59.100 as:

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<sup>1</sup> Apparently, the communities of St. George in the Pribilofs and Cold Bay in the Aleutians have ordinances that are similar to this one. Those were initially drafted by Lee Sharpe who was an attorney for those communities. Mr. Sharpe also drafted a fuel transfer tax ordinance for Fairbanks approximately ten years ago in response to a request from then mayor, Jim Sampson. The ordinance was never introduced.

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## VI. CONCLUSION.

What we have said thus far concerns what we see as the major issues that will be raised about the application of this ordinance. We do not in any way mean to imply that they are the only issues that will be raised if and when the ordinance is attacked in court. For instance, some fuel is "transferred" in Fairbanks to containers for the purpose of transportation to Canada in foreign commerce. Taxing those transfers will raise issues under the commerce clause of the federal constitution, though the amount of fuel impacted will be very small. There are issues concerning how the revenues raised by this tax may be spent. Federal statutes (49 USC. Sec. 47133) do restrict the use of "local taxes on aviation" – a restriction, incidentally, that is reflected in state law which dedicates at least a part of the money raised from taxation of aviation fuel to aviation facilities.<sup>12</sup> There is no present restriction in the Transfer Tax that would limit the use of the proceeds.

We have not attempted to analyze every conceivable issue because what we can conclude about this tax is evident from the issues we have already discussed. That discussion, as confusing as it may be, forms the basis of our recommendation to the Assembly as to how it should evaluate the impact that this proposed ordinance will have on future borough revenues.

The first and most critical point we want to make is that while there is an element of uncertainty in any prospective contested legal issue, the uncertainty about this particular tax is enormous. This is a new and different kind of tax. There is no prior

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<sup>12</sup> AS 43.40.010(e)

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litigation that can provide answers with any real certainty as to just how much of this ordinance if any will survive the nearly certain litigation that will occur if it is enacted. Review of the cases cited in this opinion discloses immediately that none of them is directly on point. All of the arguments made here are by analogy; there are no cases that analyze a tax anything like this. The task is one of predicting just how doctrines developed under different circumstances will be applied to this situation.

The only thing that can be said with certainty is that there is hardly a single transaction or "transfer" under this tax that is not subject to some kind of legal challenge, ranging from the authority of the borough to tax fuel transfers at all to pre-emption of its right to tax jet fuel and other products exempted under the state fuel tax. To the extent this transfer tax covers simple sales of fuel in Fairbanks, where title to the fuel is in fact transferred or the fuel is moved into containers for sale in Fairbanks, the tax will probably be upheld against pre-emption claims based on the mere existence of a state sales or transfer tax. Even many of those sales and transfers, however, will be challenged on the basis that they tax "transfers" that are exempt under the State Fuel Tax.<sup>33</sup> The amount of revenue brought in by simply applying the tax to traditional sales will be minimal compared to the amount that would be derived from a transfer tax on all fuel produced in Fairbanks, and then shipped out for sales or use in other areas of the state. But the validity of tax on that larger category of "transfers" is subject to all kinds of serious

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<sup>33</sup> For instance, in an attachment to its legal memo to the borough attorney, Williams claims that out of the nearly 15,000 barrels of fuel "transferred" in the borough daily, only 4,500 would be subject to tax — primarily sales of gasoline. The remainder, Williams claims, would be covered by exemptions to the state fuel tax, such as those relating jet fuel, fuel sold to electrical generation plants or house heating fuel.

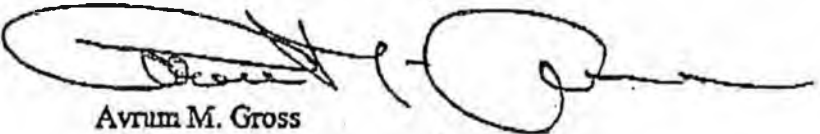
Mr. Hank Bartos  
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challenges. At best, the borough can expect that the transfer tax will be tied up in complicated litigation for years and that until at least the Alaska Supreme Court rules on the validity of the tax, there is absolutely no way the Assembly can or should rely on any revenues from the tax.

We hope this opinion is of some help to you in evaluating the impacts of this tax. We are, of course available to discuss it with you further should you so desire.

Yours very truly,

GROSS & BURKE

A handwritten signature in black ink, appearing to read 'Avrum M. Gross', is written over a horizontal line. The signature is stylized and includes a large, circular flourish on the right side.

Avrum M. Gross