

HB

104

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FILE

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 104(FISH)
 () Publish Date: _____

Revision Date/Time (Note if correction): March 20, 2003 Dept. Affected: Revenue
 Title Payment of Fisheries Business Tax BRU Revenue Operations
 Component Tax Division
 Sponsor Representative Stevens
 Requester House Finance Committee Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	11.0	22.0	22.0	22.0	22.0	22.0
Travel						
Contractual	0.4	0.7	0.7	0.7	0.7	0.7
Supplies	0.3	0.5	0.5	0.5	0.5	0.5
Equipment	2.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	14.2	23.2	23.2	23.2	23.2	23.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	**	**	**	**	**	**
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	14.2	23.2	23.2	23.2	23.2	23.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	14.2	23.2	23.2	23.2	23.2	23.2

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time	0.5	0.5	0.5	0.5	0.5	0.5
Temporary						

ANALYSIS: (Attach a separate page if necessary)

** The Department of Revenue is unable to predict with any degree of certainty if this change in security provisions for payment of the Fisheries Business Tax will result in any tax revenue loss to the state.

See attached page for further discussion.

Prepared by: Chuck Harlamert, Revenue Audit Supervisor Phone 465-4773
 Division Tax Division Date/Time 3/20/03 4:04 PM
 Approved by: Larry Persily, Deputy Commissioner Date 3/20/2003
 Agency Department of Revenue

Bill Analysis

Current Fisheries Business Tax rules allow processors to pay the tax on or before March 31 of the year following the tax year. Complimenting this deferral is a requirement that the processor provide the department with security to ensure ultimate payment of the tax.

Taxpayers have several security options available to them. A taxpayer can demonstrate equity in real property equal to three times its estimated tax, provide a bond for twice the estimated tax, prepay the estimated tax, establish a line of credit, or purchase a certificate of deposit in the amount of the estimated tax. All except the real property provide the state with a high degree of certainty the tax will be collected. With the possible exception of real property, the other existing options require a capital outlay or significant unrecoverable cost and therefore may represent a barrier to entry to new processors.

This legislation would reduce the up-front capital required to obtain a fisheries business license by providing processors the option of paying tax monthly, with a nominal bonding requirement.

Sectional Analysis

Section 1 provides for monthly payment of the Fisheries Business Tax, which is otherwise due March 31 of the following year.

Section 2 makes the monthly payment option available to all fisheries businesses. The option is currently available only to fish brokers. AS 43.75.055(c)(1) is modified to require electing taxpayers to file a report and pay fish taxes on or before the 15th day of the month following the month in which the tax is incurred. The requirement to file on a report prescribed by the department does not replace existing reporting requirements.

Section 3 modifies AS 43.75.055(d) to conform with the broadened application of the alternative security option.

Revenue and Cost Estimates

While the new monthly security option created by the bill can significantly reduce the amount of capital required to enter the industry, it remains the most expensive option under most circumstances for fulfilling the statutory requirement of ensuring payment of taxes. We therefore expect that only thinly capitalized processors will choose the new option. Acting as a counterbalance to low usage is our expectation that these processors will, as a group, could be high risk. The department will need to carefully monitor payments from this group in order to immediately identify, and close down, processors that fail to make the monthly payments. For this purpose, and for incremental collection, licensing, and processing activity we request one-half position at the Tax Technician II level (Range 12) with total ongoing personnel and associated costs of \$23,200 annually.

Joint Legislative Salmon Industry Task Force

Legislative Members
Senator Ben Stevens, Chair
Representative Gary Stevens, Vice-Chair
Senator Kim Elton
Representative Bill Williams
Senator Alan Austerman, Alternate
Representative Drew Scalzi, Alternate



Public Members
Sue Aspelund
Sam Cotten
Duncan Fields
Don Giles
John Lowrance
Robin Samuelson
Gary Slaven
Stephanie Madsen, Alternate
Chris Moss, Alternate

Sponsor Statement

House Bill 104

"An Act relating to payment of the fisheries business tax and to security for collection of the fisheries business tax."

Under current law, absent a lienable value of property equal to three times the amount of the estimated tax, a surety bond must be paid equal to twice the estimated amount of the tax. The cost of the bond can be a burden to a company operating on a small margin.

House Bill 104 amends AS 43 by providing an option for fish processing applicants who are not able to meet the requirements currently in statute. Processors may avoid posting a bond for twice the amount of the estimated taxes if the business:

- Remits all tax obligations on a monthly basis by paying the taxes due on or before the 15th day of the month following the month in which the tax liability is incurred; and
- Files a bond in the amount of \$50,000; or
- Provides the Department of Revenue with proof that the applicant is the owner of lienable real property in the state of a value of at least \$100,000.

House Bill 104 will assist processors who do not have large property assets in developing their business plans and in managing their tax payment schedule. The measure would also encourage new processing investment in a time when the seafood industry needs to expand and diversify in the processing sector.

SPONSOR STATEMENT

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SECTIONAL ANALYSIS

HOUSE BILL 104

"An Act relating to payment of the fisheries business tax and to security for collection of the fisheries business tax."

Section 1.

- Amends AS 43.75.030(d) to include the monthly tax provision included in this measure.

Section 2.

- Amends AS 43.75.055(c) to include the following provisions:
 1. A processor may elect to file a bond for \$50,000; or provide the Department of Revenue with proof of lienable property in the state with a value of at least \$100,000.
 2. A processor utilizing this option must pay the taxes due under AS 43 on or before the 15th day of the month following the month in which the liability for the payment of taxes was incurred.
- Ensures all the tax requirements of AS 43 are included in a processor's tax liability.

Section 3.

- Amends AS 43.75.055(d) to set forth the conditions of the bond issuance under (c).

SECTIONAL ANALYSIS

Department of Revenue, Tax Division: Fisheries Taxes

Fisheries Business Tax is levied on fisheries businesses and persons who process or export fisheries resource from Alaska. The tax is based on the fisheries value paid to commercial fishers or fair market value when there is not an arms length transaction. Fisheries business tax is collected primarily from licensed processors and persons who export fish from Alaska.

A **Fishery Resource Landing Tax** is levied on processed fishery resource first landed in Alaska or any processed fishery resource subject to sec. 210(f) of the American Fisheries Act. The tax is based on the unprocessed value of the resource, which is determined by multiplying a statewide average price per pound (based on Alaska Department of Fish and Game data) by the unprocessed weight. Fishery Resource Landing Tax is collected primarily from factory trawlers and floating processors which process fishery resource outside of the state's 3-mile limit and bring their products into Alaska for transshipment. The tax rate is 3%.

A **Salmon Marketing Tax** is levied on all salmon sold in or exported from Alaska. Salmon Marketing Tax is collected by processors from the commercial fishers. The tax is based on the value of the salmon at the time of sale or fair market value when there is no arms length transaction. Tax is paid directly to the Department for salmon exported from the state. Processors remit the tax collected from fishers to the Department of Revenue.

A **Seafood Marketing Assessment** is levied at a rate of 0.3% of the value of seafood products produced in Alaska. This tax is also levied on unprocessed fisheries exported from Alaska. Assessments are generally collected from fisheries processors or landing tax payers.

FY 2000 fisheries statistics and more information regarding each of these taxes are available in the Tax Division's FY 2001 Annual Report.

Our web site has quite an extensive FAQ Index where you can find answers to many fisheries related questions.

AK FISHERIES TAXES



Sec. ~~43.75.015~~. Fisheries business tax.

* (a) A person engaged in a fisheries business is liable for and shall pay the tax levied by this section on the value of each of the following fisheries resources processed during the year at the rate set out after each:

(1) salmon canned at a shore-based fisheries business - four and one-half percent;

(2) salmon processed by a shore-based fisheries business, except salmon for which the tax is due under (1) of this subsection, and all other fisheries resources processed by a shore-based fisheries business - three percent;

(3) fisheries resources processed by a floating fisheries business - five percent.

(b) Instead of the taxes levied by (a) of this section, a person who processes a developing commercial fish species is liable for and shall pay a tax equal to

(1) one percent of the value of the developing commercial fish species processed by a shore-based fisheries business during the year; and

(2) three percent of the value of the developing commercial fish species processed by a floating fisheries business during the year.

(c) A person engaging or attempting to engage in a fisheries business who first actually and physically processes the fishery resource, or a person who purchases a fishery resource that is frozen from a person excluded by AS 43.75.017 from liability for the tax, is liable for and shall pay to the department the entire tax imposed by this section. In determining this tax liability, the person may deduct from the value of the fishery resources processed the value of fishery resources that are canned or processed for other fisheries businesses. A person taking the deduction authorized by this subsection shall report all information relating to the deduction in accordance with regulations adopted by the department.

Sec. 43.75.017. Exclusion from fisheries business tax.

A person is not liable for the fisheries business tax under AS ~~43.75.015~~ when the fishery resource is frozen aboard a fishing vessel if

(1) the vessel is operated as a commercial fishing vessel under a valid commercial fishing license;

(2) the fishery resource is not processed beyond heading, gutting or cleaning, freezing and glazing;

(3) the fishery resource was caught by the vessel; and

(4) the fishery resource is sold by the person claiming an exclusion from the tax to a fisheries business licensed under this chapter.

Sec. 43.75.018. Fisheries business education credit.



Sec. 43.75.137. Additional refund.

To the extent that appropriations are available for the purpose, and notwithstanding the requirement of AS 37.07.080 (e) that approval of the office of management and budget is required, an amount equal to 50 percent of the tax revenue that is collected under this chapter from fisheries businesses and is not subject to division with a municipality under AS 43.75.130 shall be transmitted each fiscal year, without the approval of the office of management and budget, by the department to the Department of Community and Economic Development for disbursement to eligible municipalities under AS 29.60.450.

Sec. 43.75.140. [Renumbered as AS 43.75.290].

Repealed or Renumbered

Article 04. GENERAL PROVISIONS

Sec. 43.75.290. Definitions.

In this chapter,

(1) "developing commercial fish species" means those species of fish and shellfish annually designated by the commissioner of fish and game under AS 16.05.050 (a)(11);

* (2) "fisheries business" means a person who engages in processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants;

(3) "fishery resource" means finfish, shellfish, and fish by-products, including but not limited to salmon, halibut, herring, flounder, crab, clam, cod, shrimp, and pollock;

(4) "floating fisheries business" means a fisheries business which is not a shore-based fisheries business; the term includes, but is not limited to, a shore-based fisheries business as defined in (5)(B) of this section when it is removed from the state;

(5) "shore-based fisheries business" means a fisheries business

(A) operated from a facility which is permanently attached to the land; or

(B) operated from a facility which remains in the same location in the state for the entire tax year;

(6) "taking" means pursuing, fishing, capturing, or harvesting a fisheries resource in any manner;

(7) "value" means

(A) the market value of the fisheries resource if the taking of the fisheries resource is done in company-owned or company-subsidized boats operated by employees of the company or in boats that are operated under lease to or from the company or other arrangement with the company and if the fisheries resource is delivered to the company; in this subparagraph, "company" means a fisheries business, a

Sec. 43.75.030. Filing return and payment of tax.

(a) A person subject to the tax shall file a return stating the value of fisheries resources processed during the license year, computed as required by this chapter, and such other information as the department prescribes by regulation. The return must show the license number and must be signed by the taxpayer or an authorized agent, under penalty of unsworn falsification. If a receiver, trustee, or assign is operating the property or business, that person shall file the return for the person. A tax due on the basis of such a return shall be collected in the same manner as if collected from the person of whose business the receiver, trustee, or assign has custody and control.

(b) The return shall be made on the basis of the calendar year to the department at Juneau before April 1 after the close of the calendar year.

(c) The department may adopt regulations for the granting of a reasonable extension of time for filing and may grant an extension of time for filing.

(d) The tax shall be paid before April 1 after the close of the calendar year.

(e) Every person engaging or attempting to engage in a business for which a license is required under this chapter shall keep records, make statements under oath, file returns, and comply with all regulations that the commissioner may adopt.

(f) When the department considers it is necessary, it may require a person, by notice served upon the person, to file a return, make such statements under oath, or keep and display to it such records as it considers sufficient to show the tax for which the person is liable. If a person fails to file a return as prescribed by law or by regulation, or makes, wilfully or otherwise, a false or fraudulent return, the department shall make the return from the information that it can obtain. A return made by the department is prima facie good and sufficient for all legal purposes.

Sec. 43.75.055. Security for collection of taxes.

(a) An applicant for a license under this chapter shall, in or with the application, state under oath the amount of each of the products that the applicant expects to produce during the license year. The applicant shall further state the extent of lienable real property owned by the applicant in the state against which the tax may be collected and other information with respect to description, location, and value of the property that the department prescribes.

(b) Except as provided in (c) and (e) of this section, if the lienable value of the property is not equal to three times the amount of the tax for which the applicant will probably be liable under this section, the department may not issue the license until the applicant files with the department a surety bond approved by the attorney general in a penal sum equal to twice the probable amount of the tax for which the applicant will be liable, conditioned upon payment of the tax in full when due, with interest and penalties if not paid before delinquency.

(c) An applicant that does not process a fishery resource in the state may elect to avoid the requirements of (a) and (b) of this section if the applicant

(1) notwithstanding AS 43.75.030 (d), pays the taxes due under this chapter on or before the 15th day of the month following the month in which liability for the payment of the taxes was incurred;

(2) pays the taxes and assessments for which the applicant is liable under AS 16.51, AS 43.76, and AS 43.77 on or before the 15th day of the month following the month in which the liability for the payment of the taxes or assessments was incurred;

(3) remits to the department the taxes and assessments that the applicant is required to collect under AS 43.76 on or before the 15th day of the month following the month in which the taxes or assessments were required to be collected; and

(4) either

(A) files a bond in the amount of \$50,000; or

(B) provides the department with proof that the applicant is the owner of lienable real property in the state of a value of at least \$100,000.

(d) A bond filed under (c) of this section must be conditioned upon payment to the fisherman of the full purchase price for the fishery resource and the payment of the taxes, interest, and penalties in full when due. The provisions of (c) of this section do not apply to an applicant who has a relationship, as that term is defined under 26 U.S.C. 267(b), with a person that processes a fishery resource.

(e) The department may waive the bond requirement under (b) or (c) of this section if the applicant posts other security in the form of collateral acceptable to the department or prepays the estimated tax.

(f) An applicant that fails to pay amounts due under this section is subject to civil penalties set out under AS 43.05.220 .



UNITED FISHERMEN OF ALASKA

March 20, 2003

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Representative Bill Williams
Representative John Harris
Co-Chairs
House Finance Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representatives Williams and Harris,

Re: HB 104 Payment of Fishery Business Tax

United Fishermen of Alaska supports this bill.

We support this bill because of the increased flexibility it provides to processors. This flexibility provides a more accommodating payment schedule and taxation structure, and reduces security requirements.

Our desire is that this legislation will foster a more diverse, expanded, and competitive processing sector that stimulates increase economic benefit for all sectors of the seafood industry.

Your consideration of our recommendation is appreciated.

Sincerely,

Thomas M. Gemmell
Executive Director

Copy: Senator Ben Stevens
Senator Gary Stevens
Senator Fred Dyson
Senator Tom Wagoner
Representative Paul Seaton

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Alaska Trollers Association • Alsea Processors Association • Bristol Bay Preserve
Chignik Regional Aquaculture Association • Chignik Selnert Association • Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association • Cordova District Fishermen United
Crab Nationalization and Buyback Group • Douglas Island Pink and Chum • Groundfish Forum • Koni Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
Kodiak Selnert Association • North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Old Harbor Fishermen's Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Pura Seine Vessel Owners Association • Seafood Producers Cooperative
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Selnert Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • United Salmon Association • United Southeast Alaska Gillnetters • Western Gulf of Alaska Fishermen