

**HB**

**216**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
 MAY 19 2003  
 SENATE FINANCE  
 COMMITTEE

DATE: 5/18/03

FURTHER:

DATE TURNED  
 IN TO OFFICE: 19 May 2003

Finance Committee considered CS FOR HOUSE BILL NO. 216(FIN)

## HB 216 MUNI TAXATION OF REFINED FUEL PRODUCTS

"An Act relating to and limiting municipal taxation of refined fuel and wholesale sales of fuel, and to the bulk fuel revolving loan fund."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
Revenue	4/1/03		✓	#2
DCED-Community & Business Dev.	4/1/03		✓	#3
DCED-Energy Operations	4/1/03		✓	#4

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	.		✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	/			
COCHAIR: <i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>	✓			

# FISCAL NOTE

REPORTED DATE  
**MAY 19 2003**  
 SENATE FINANCE  
 COMMITTEE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSHB 216(CRA)  
 (H) Publish Date: 4/16/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Municipal Taxation BRU Revenue Operations  
of Refined Fuel Products Component Tax Division  
 Sponsor House Labor and Commerce  
 Requester Community & Regional Affairs 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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation would amend Title 29 of statute to prohibit municipalities from imposing a sales or transfer tax on motor fuel transported outside the municipality for sales or distribution.

This legislation would not have an effect on the operations of the Department of Revenue Tax Division, nor would it have a direct effect on state revenues.

Prepared by: Larry Persily, Deputy Commissioner  
 Division: Department of Revenue  
 Approved by: Larry Persily, Deputy Commissioner  
 Agency: Department of Revenue

Phone 465-5469  
 Date/Time 4/7/03 1:00 PM  
 Date 4/7/2003

MAY 19 2003

SENATE FINANCE COMMITTEE

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
Bill Version: CSHB 216(FIN)  
(H) Publish Date: 5/15/03

Revision Date/Time (Note if correction): 4/15/2003 Dept. Affected: DCED  
Title: Muni Taxation of Refined Fuel Products BRU: Comm Assist & Econ Dev (405)  
Sponsor: House Labor & Commerce Component: Community & Business Development  
Requester: House Finance Component No.: 2486

**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	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: \_\_\_\_\_  
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This Legislation would remove authority of local governments to levy a tax on gas and oil products. This is a local tax issue and would have no fiscal impact on the department. The House CRA Committee Substitute adds a new section that increases the amount of bulk fuel revolving loan funds (AS 42.45.250) to one borrower from \$200,000 to \$300,000. This would have no fiscal impact on the division.

Prepared by: Gene Kane, Director Phone 907-269-4580  
Division: Community and Business Development Date/Time 4/16/03 7:33 AM  
Approved by: Edgar Blatchford, Commissioner Date 4/16/2003  
Agency: Department of Community and Economic Development

MAY 19 2003

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 4  
Bill Version: CSHB 216(FIN)  
(H) Publish Date: 5/15/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title Muni Taxation of Refined Fuel Products BRU Rural Energy Programs (412)  
Component Energy Operations(1935)  
Sponsor House Labor & Commerce  
Requester House Finance Component No. 1935

**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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation increases the maximum amount that may be loaned annually from the Bulk Fuel Revolving Loan Fund to \$300,000 from \$200,000. The Alaska Energy Authority does not anticipate any increased administrative costs to this program.

Prepared by: Sara Fisher-Goao, Financial Analyst  
Division: Alaska Energy Authority  
Approved by: Edgar Blatchford, Commissioner  
Agency: Department of Community & Economic Development

Phone 907-269-4623  
Date/Time 4/16/03 9:56 AM  
Date 4/16/2003

HB 216: Municipal Taxation of Refined Fuel Products

Sara Fischer-Good of AIDEA called to say that the balance of the Bulk Fuel Revolving Loan fund as of 3/31/03 was \$6.04 million.

She does not believe that raising the maximum loan limit to \$300,000 will be a problem. Last year there were 24 loan applications to the loan fund. Only five of them were for the maximum amount of \$200,000 (Kotlik, Galena, McGrath, Adak and Port Heiden).

She also said that if there are more requests than money available for loans, then the loans are prorated..

She will be in the building tomorrow morning and will touch base with Finance members and be available to answer questions at the meeting if HB 216 comes up again.

Provided by Gary Wilken

5/19/03

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK 9801-1182

### SPONSOR STATEMENT FOR CS HB 216(FIN) BY: Representative Tom Anderson

**TITLE:** An Act relating to municipal taxation of refined petroleum products and to the bulk fuel revolving loan fund.

CS HB 216(FIN) clarifies local taxing authority for refined fuels sold both within and outside of a local jurisdiction. 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 the voters, they overwhelmingly defeated the proposed tax by a margin of 62% no to 38% yes.

Clarification is needed to limit the number of entities that can tax fuel. In the case of interior Alaska refiners, fuel is shipped by the Alaska Railroad to Anchorage for use in the Southcentral and Southeast markets. Before it reaches Anchorage, this fuel passes through eight different governmental taxing entities. This type of taxation would also result in residents from other parts of the state paying local government costs in municipalities where they do not reside. Imagine if the Port of Anchorage decided to place a transfer tax on all freight transiting through the Port. The cost of any products shipped through the Port of Anchorage would increase significantly and would result in residents from other areas of the state paying a tax for use in Anchorage.

CS HB 216(FIN) clarifies local government's rights 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.

We have worked closely with the Alaska Municipal League and other local communities to limit the financial impacts this legislation would have on local communities. Several small communities currently have transfer taxes. Under CS HB 216(FIN), any borough or city levying and collecting a sales or use tax under an ordinance adopted before January 1, 2003 is not subject to the provisions of CS HB 216(FIN).

The bill makes one additional change to existing statute, it raises the loan amount from the bulk fuel revolving loan fund to one borrower in any fiscal year from \$200,000 to \$300,000. This change is necessary to keep up with the increasing costs associated with construction/replacement of bulk fuel facilities.

I urge your support for this legislation.

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK 99801-1182

### Sectional Analysis for CS HB 216(FIN) BY: Representative Tom Anderson

**Sections 1 and 2.** Sections 1 and 2 are technical sections amending AS 29.10.200 by adding cross references to the substantive subsections contained in sections 5 and 7 in the list of provisions in AS 29 that apply to both home rule and general law municipalities.

**Section 3.** Section 3 prohibits a municipality from levying or collecting a property tax on refined fuel that is merely "passing through" the municipality. The purpose of the section is to prevent successive taxation of refined fuel by municipalities through which the fuel travels as it makes its way from the seller to the ultimate purchaser.

**Section 4.** This is another technical section that adds a cross reference to the substantive provisions in Section 5 of the bill to the list of other statutes dealing with limitations on sales taxes levied by boroughs.

**Section 5.** Section 5 adds two subsections to AS 29.45.650 that apply to sales and use taxes imposed by boroughs:

AS 29.45.650(i) prohibits boroughs from imposing sales or uses taxes solely on the physical transfer of refined fuel, unless the transfer is made in connection with a sale or use that occurs within the borough. This provision prevents successive taxes by Alaska municipalities in which refined fuel is merely transferred from one container to another or transferred from one mode of transport to another as the fuel moves from a refinery or wholesale distributor through the state to the ultimate consumer. It also prohibits sales or use taxes on wholesale sales or transfers of refined fuel within the borough where the fuel has been refined. This subsection also defines the point at which a sale or use takes place for purposes of imposing the tax.

AS 29.45.650(j) is a "grandfather" provision that would allow a borough that is currently imposing sales or use taxes on transfers or wholesale sales of refined fuel to continue to do so.

**Section 6.** This is another technical section that adds a cross reference to the substantive provisions in Section 7 of the bill to the list of other statutes dealing with limitations on sales and use taxes levied by cities.

**Section 7.** New subsections 29.45.700(e) and (f) are identical to subsections 29.45.650(i) and (j), but in this section the provisions are made applicable to cities.

**Section 8.** This section raises the cap on loans from the bulk fuel revolving loan fund to any one borrower in any fiscal year from \$200,000 to \$300,000.

**Section 9.** This is another technical section that adds cross references to the new subsections AS 29.45.650(i) and (j) to an amendment to AS 29.45.650(a) that has a delayed and conditional effective date.

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK 99801-1182

### Summary of Changes to HB 216, CS HB 216(CRA) and CS HB 216(FIN)

BY: Representative Tom Anderson

Initially HB 216 was written to prohibit any property, sales, or other tax on refined fuel products or constituents of fuel products. This language had been narrowed considerably in Community and Regional Affairs to prohibit the collection of wholesale sales or wholesale transfers of any refined petroleum product. In addition, the exemption of fuel used in a turbine-powered aircraft was set out explicitly. One addition has been made to this bill. Section 4 contains language design to increase the maximum amount of loans from the bulk fuel revolving loan fund from the current \$200,000 to \$300,000. This change is necessary due to the rise in fuel prices nationwide, especially in rural Alaska.

In the House Finance Committee CS HB 216(CRA) was further refined to make it very clear that the intent of the bill was to exempt the wholesale sale or transfer of fuel between municipalities, or just "passing through." The language referring to turbine-powered aircraft was removed, and language grandfathering those boroughs or municipalities who currently levy or collect taxes or payments in lieu of taxes before January 1, 2003. Additional language further defining that what is prohibited is the physical transfer of refined fuel unless the transfer is made in connection with a sale or use in the city was added.

The bulk fuel revolving loan fund amounts were left unchanged in the CS HB 216(FIN) version of the bill.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
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ORIGINAL  
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Introduced By: Board of Directors  
Date Introduced: April 15, 2003  
Date Passed: April 15, 2003  
Date Transmitted: April 16, 2003

### RESOLUTION 03-0415

#### **A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF COMMERCE SUPPORTING HOUSE BILL 216, AN ACT RELATING TO MUNICIPAL TAXATION OF REFINED FUEL PRODUCTS**

**WHEREAS** the Greater Fairbanks Chamber of Commerce strongly opposed an initiative on the Fairbanks North Star Borough ballot in June 2002 that would have imposed a fuel transfer tax in the Fairbanks North Star Borough; and

**WHEREAS** the special election in June 2002 cost the Fairbanks North Star Borough approximately \$35,000 and the initiative was defeated by 62% of the voters; and

**WHEREAS** any new revenue sources or tax for local municipalities, including the Fairbanks North Star Borough should be equitable and should be paid by those who are users of the services that are being taxed; and

**WHEREAS** the proposed legislation would prohibit local municipalities from singling out one industry in an attempt to make those who live outside the area pay a tax that would be used to provide services within their municipality; and

**WHEREAS** Alaska Statute 43.40.100 and 15AAC 40.020 which exempts certain types of fuel from taxation including, but not limited to, fuel sold for use in jets operating in flights to foreign countries or that continue from foreign countries, fuel sold to federal, state and local government agencies for official use, fuel used to heat private or commercial buildings or facilities; and

**WHEREAS** House Bill 216 would further require that local governments can only tax fuel within their governmental boundaries and prohibits taxes on potential development of value added products exported for sale beyond the local taxing jurisdiction; and

GREATER \* FAIRBANKS  
**CHAMBER**  
OF COMMERCE

250 Cushman St., Suite 2D, Fairbanks  
phone: (907) 452-1105

e-mail: s  
website:

**THEREFORE BE IT RESOLVED** the Greater Fairbanks Chamber of Commerce supports House Bill 216 and believes the legislation would prevent future ballot initiatives.

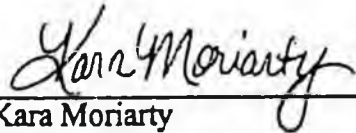
**BE IT FURTHER RESOLVED** that this resolution be distributed to the following:

Governor Frank Murkowski  
Interior Delegation  
Representative Tom Anderson  
Mayor Rhonda Boyles, Fairbanks North Star Borough  
Fairbanks North Star Borough Assembly  
Mayor Steve Thompson, City of Fairbanks  
Fairbanks City Council  
Mayor Jeff Jacobson, City of North Pole  
North Pole City Council

**PASSED** in Fairbanks, Alaska this 15th day of April, 2003 by the Greater Fairbanks Chamber of Commerce Board of Directors.



Terry Aldridge  
Board Chair



Kara Moriarty  
President/CEO

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

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 Braudt 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

Chapter 100

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

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

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

7 \* Sec. 4. 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 (h)  
9 of this section, a borough may levy and collect a sales tax on sales, rents, and on  
10 services provided in the borough. The sales tax may apply to any or all of the  
11 sources. Exemptions may be granted by ordinance.

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

13 Article 5A. Mobile Telecommunications Sourcing Act.

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

18 (b) A municipality that levies and collects a sales tax on mobile  
19 telecommunications services shall do so in accordance with the provisions of 4 U.S.C.  
20 116 - 126 (Mobile Telecommunications Sourcing Act).

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

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

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

LAW OFFICES  
**GROSS & BURKE**  
A PROFESSIONAL CORPORATION  
424 NORTH FRANKLIN STREET  
JUNEAU, ALASKA 99801

AVRUM M. GROSS  
SUSAN A. BURKE

(907) 886-8777

May 29, 2002

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

Dear Mr. Bartos:

We have been asked to render a legal opinion to the Fairbanks North 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

Mr. Hank Bartos  
May 29, 2002  
Page 2 of 33

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 Pribilofa 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.

Mr. Hank Bartos  
May 29, 2002  
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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>22</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>22</sup> AS 43.40.010(e)

Mr. Hank Bartos  
May 29, 2002  
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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>13</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>13</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.

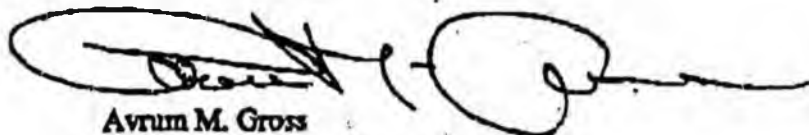
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challenges. At best, the borough can expect that the transfer tax will be tied up in complicated litigation for years and that until at least the Alaska Supreme Court rules on the validity of the tax, there is absolutely no way the Assembly can or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