

2/23/12

**PRESENTATION BY  
DEPARTMENT OF  
REVENUE: ACCESS  
TO INFORMATION  
AND FISCAL NOTE  
ANALYSIS**

<TARGET><BILL></BILL><SUBJECT>2-23-12 PRESENTATION BY  
DEPARTMENT OF REVENUE ACCESS TO INFORMATION AND FISCAL  
NOTE ANALYSIS</SUBJECT><COMM>SRES27</COMM></TARGET>

Senate Resources Committee  
Joe Paskvan, Co-Chair  
February 23, 2012

Let's call the meeting to order.

Let the record reflect that it is \_\_\_\_\_ p.m. on <sup>Thursday</sup>~~Tuesday~~, February 23.

Let the record reflect that there is a quorum. Present are

- Co-Chair Wagoner
- Senator Stedman
- Senator Stevens
- Senator Wielechowski
- Senator French
- Senator McGuire
- And myself, Senator Paskvan

During this hearing, the Senate Resources Committee will learn more about the Department of Revenue's perspective on "Access to Information" and "Taxpayer Confidentiality."

This issue first presented itself to me when I read the December 30, 2011, Decision Following Trial De Novo regarding the Assessed Valuations of TAPS.

In that decision, the judge wrote that the Alaska statutes "grant the Division certain investigative powers" but that "there was no persuasive evidence presented at the trial de novo that the Division has ever exercised these powers with respect to the valuation of TAPS."

Additionally, the judge wrote, "The Division broadly interprets what it considers 'taxpayer confidential' information under applicable statutes and will not disclose such information to the Municipalities specifically or public generally. The Division considers all information that receives from a taxpayer as 'taxpayer confidential,' even if it does not contain the particularities of a taxpayer's business affairs and is obtainable from the public domain."

There is more in the decision about this issue, and we have discussed it in detail during a prior hearing; however, today is the Department of Revenue's day. I look forward to their testimony.

Welcome back, Commissioner Butcher.

Please introduce yourself for the public record and then begin your testimony.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

BP PIPELINES (ALASKA) INC., )  
EXXONMOBIL PIPELINE COMPANY, )  
UNOCAL PIPELINE COMPANY, )  
CONOCOPHILLIPS TRANSPORTATION )  
ALASKA, INC. and KOCH ALASKA )  
PIPELINE COMPANY, Owners, and )  
ALYESKA PIPELINE SERVICE COMPANY, )  
as Agent for the Owners, )

FAIRBANKS NORTH STAR BOROUGH and )  
CITY OF VALDEZ, )

Appellants/Cross-Appellants, )

v. )

STATE OF ALASKA DEPARTMENT OF )  
REVENUE, STATE ASSESSMENT )  
REVIEW BOARD, and NORTH SLOPE )  
BOROUGH, )

Appellees. )

Case No. 3AN-06-8446 CI  
(Consolidated)  
Tax years 2007/08/09

**ORDER ON RECONSIDERATION RE EXHIBITS SOA7-11 and SOA7-110**

The Department and the Municipalities dispute the extent to which SOA7-11 and SOA7-110 should be confidential. The Municipalities submitted copies of the exhibits with proposed redactions on October 28, 2011. This Court issued an oral ruling with respect to confidentiality of those documents on October 31, 2011.<sup>1</sup> Thereafter, both parties filed motions to reconsider that order. At the request of the Court, each party filed responses to those motions to reconsider.

<sup>1</sup> Tr. 12429 – 12432  
BP Pipelines et al. v. State, et al., 3AN-06-08446 CI  
Order on Reconsideration re Exhibits SOA7-11 and SOA-110  
Page 1 of 3

This Court ordered that for all fields with three or more producers or explorers, the categories of production in that field, including under development (UD) and under evaluation (UE), would be public. For fields with less than three or more producers or explorers, only the total production would be public.

The State seeks reconsideration and argues that the individual categories should remain confidential for all fields, regardless of the number of producers within the field. The State asserts that because the UD and UE categories of production "were informed by information from the operator, ... then taxpayer confidential communications and information received from the operator could be determined."<sup>2</sup>

The Municipalities assert that the Court should not have made any of the production forecasts confidential, regardless of the number of producers in a given field. They assert that the portions of SOA7-11 and SOA7-110 that they designated to be public do not contain taxpayer information protected by any applicable statute,<sup>3</sup> that the Department changed its policy to make this information confidential in 2006 without following proper rule-making procedures,<sup>4</sup> and that they are only seeking to have the Department's own work product made public – not information from the operators.<sup>5</sup>

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<sup>2</sup> SOA's Motion for Reconsideration at 3.

<sup>3</sup> Munis' Motion for Reconsideration at 3.

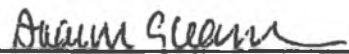
<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 5.

Based upon this Court's review of the parties' submissions, and applying the same legal analysis that was set forth by this Court in the Order re Confidentiality of Certain Exhibits dated October 17, 2011,<sup>6</sup> the Municipalities' Motion to Reconsider is GRANTED. SOA7-11 and SOA7-110 shall be public except as to the redactions proposed by the Municipalities in their filing dated October 28, 2011.

This Order shall become effective twenty days from the date of its distribution, unless otherwise ordered by the Court. Upon receipt of this Order, the State shall immediately provide a copy of this Order to all entities that may have provided confidential information to the State that is included within the two exhibits, and shall accord to each such entity the opportunity to review the public and confidential versions of each exhibit.

DATED this 29<sup>th</sup> day of December, 2011.

  
Sharon Gleason  
Judge of the Superior Court

I certify that on 12.30.11  
a copy was mailed to each of the following  
at their address of record:

  
Judicial Assistant / Deputy Clerk

*Scedorf, Palumbo, Mahoney, Garatoni, Gabel  
Diemer, Johnson, Richards, Brem, Long  
& Braker*

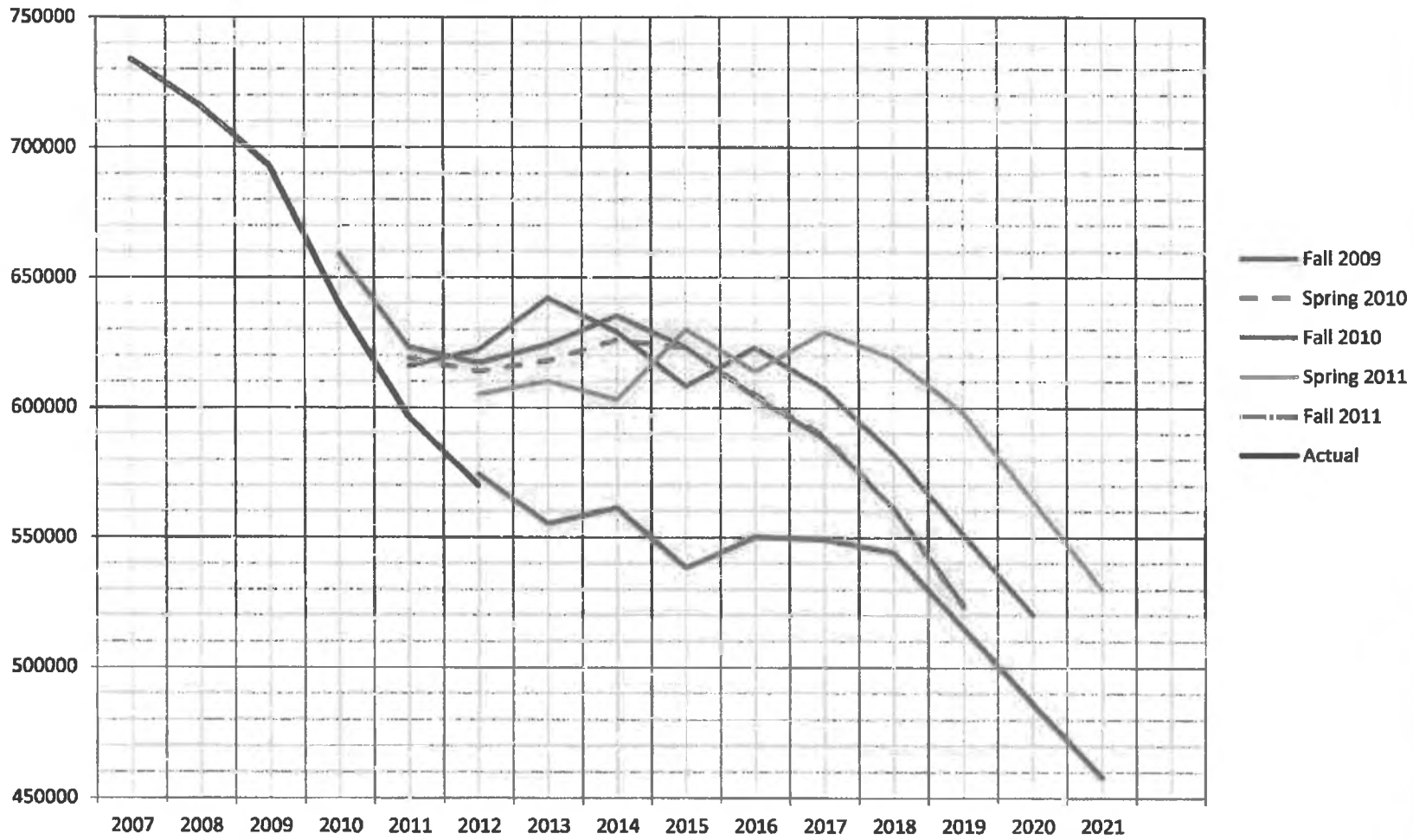
<sup>6</sup> Pages one through five of that Order is incorporated by reference as if fully set forth herein.

| FY   | Actual  | Fall 2009 | Spring 2010 | Fall 2010 | Spring 2011 | Fall 2011 | 2011 Fall v. Spring | Fall 2011 vs. Fall 2009 |
|------|---------|-----------|-------------|-----------|-------------|-----------|---------------------|-------------------------|
| 2010 | 644,000 | 659,000   | 650,000     |           |             |           |                     |                         |
| 2011 | 603,000 | 623,000   | 619,000     | 616,000   | 605,000     |           |                     |                         |
| 2012 |         | 617,000   | 614,000     | 622,000   | 610,000     | 574,000   | (36,000)            | (43,000)                |
| 2013 |         | 624,000   | 618,000     | 642,000   | 603,000     | 555,000   | (48,000)            | (69,000)                |
| 2014 |         | 635,000   | 626,000     | 629,000   | 630,000     | 561,000   | (69,000)            | (74,000)                |
| 2015 |         | 623,000   | 623,000     | 608,000   | 614,000     | 538,000   | (76,000)            | (85,000)                |
| 2016 |         | 604,000   | 605,000     | 623,000   | 629,000     | 550,000   | (79,000)            | (54,000)                |
| 2017 |         | 588,000   | 589,000     | 607,000   | 619,000     | 549,000   | (70,000)            | (39,000)                |
| 2018 |         | 561,000   | 561,000     | 582,000   | 598,000     | 544,000   | (54,000)            | (17,000)                |
| 2019 |         | 524,000   | 523,000     | 551,000   | 564,000     | 515,000   | (49,000)            | (9,000)                 |
| 2020 |         |           |             | 520,000   | 530,000     | 486,000   | (44,000)            |                         |
| 2021 |         |           |             |           |             | 458,000   |                     |                         |

*What dig b/mths*

This table represents DOR forecasts made by the DOR's new production forecaster, Frank Molli. Frank Molli lives in Colorado, and prior to late August of 2011 had never been to the North Slope. In August 2011 Mr. Molli spent 2 days on the North Slope with the State Petroleum property assessor and briefl The DOR estimate for FY 2012 has dropped significantly between the Spring 2011 and Fall 2011 forecasts. ACES had been in effect for two years prior to the Fall 2009 forecast. Due to the aggregating of individual field forecasts into 'groups' (i.e., Prudhoe Bay and Milne Point or Oooguruk It is unclear what judgments regarding the NPRA are being made by DOR (is Umiat in the mix? What assumption

*Why is there such a significant difference btw Spring 11 and Fall 11 forecast?*



Access to Information / Confidentiality  
February 23, 2012

Notes

1. DOR reading of statutes is the broadest possible, even broader than a plain reading would support, in my opinion.
2. Why is any information provided to DOR treated as the business particulars of a taxpayer? For instance why are hypothetical cost studies that contain no business particulars treated as confidential? Why is the data received when doing the production forecast for the revenue sources book confidential - although the companies are taxpayers (as is every entity and person at some level) but they are not providing the information as part of the taxation process? It's just an excuse to do business behind closed doors, it seems to me.
3. Even if DOR interpretation of statutes were reasonable, the process could be opened up via legislation. As a matter of public policy, this seems so obviously in the best interests of the public and in preventing corruption. Would they support that?
4. It's suggested DOR has good information provided by industry via subpoenas and cooperation. Gleason reviewed what DOR had and was unimpressed by what was voluntarily provided (that was in her latest decision).
5. I doubt DOR uses subpoenas with any regularity or with vigor in the context of production taxes because info they do have tends to show up in the property tax context and production forecasting ( although I am not familiar with DORs use of subpoenas in this area).

## Question re: Forecast Information

The Revenue Sources Book only publishes production forecasts for the next 10 years. How do we (and the public) know the forecast beyond that?

Could you please provide the Committee with that information on a pool basis (Orion, West Sak is a pool, etc.)?



*Presentation to the  
Senate Resources Committee  
February 23, 2012  
Alaska Department of Revenue*



# Access to Information



- Assessment Process
- Relevant Confidentiality Statutes
- Legislators' Concerns Regarding Confidentiality
- DOR Information Gathering Procedures
- State Assessment Review Board (SARB) Proceedings
- Subpoena Power
- Joint Administrative Agreements
- Municipal Codes
- Benefits of Confidentiality



# Assessment Process



- Preliminary Assessment by State Assessor
- Appeal to Department & Informal Conference Decision
- Appeal to SARB & SARB Determination
- Certified Assessment
- Appeal to Superior Court & Superior Court Decision
- Appeal to State Supreme Court & Supreme Court Decision



# Relevant Statutes

- AS 43.05.230 states in part
  - "It is unlawful for a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars set out or disclosed in a **report or return** made under this title . . ."
- AS 40.25.100(a) which also applies to DOR states in part
  - "Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of **a taxpayer or other person** is not a matter of public record . . ." It further states that this information will be "kept confidential".
- The statutes referenced above are very broad and apply to all information that discloses the business affairs of all persons, not just taxpayers
- AS 43.05.230(f) provides that for each violation of confidentiality there is a penalty of up to \$5,000 or prison sentence of up to 2 years or both



# Legislators' Concerns Regarding Confidentiality



- During special legislative session (ACES) in 2007, the topic of confidentiality came up on several occasions
- Industry concerned with DOR's ability to maintain taxpayer confidentiality
- Legislators voiced those same concerns
- Legislators discussed increasing penalties for breaches of confidentiality
- As a result DOR adopted a "Confidentiality Policy" and requires annual confidentiality training of all DOR employees, contractors and others that have legal access to taxpayer information



# DOR Information Gathering Procedures



- DOR compels taxpayers to provide information in a variety of ways
- Tax returns and property tax statements must be signed by the taxpayer as truthful renditions under penalties of perjury
- DOR and DNR receive confidential producer data related to reserves, such as confidential plans of development (for which there are also public versions available) and proprietary production forecasts internal to producer companies
- TAPS assessments by DOR (not SARB) were \$4.5 billion in 2007, \$7.2 billion in 2008 and \$7.7 billion in 2009.
- Using information under the de novo provisions at trial in 2011 that was not actually in existence in 2007, the Superior Court ruled TAPS value at \$8.9 billion in 2007, \$9.6 billion in 2008, and \$9.2 billion in 2009. The Municipalities in contrast argued TAPS value is at least \$13 billion, while the TAPS Owners argued TAPS value is around \$1 billion.
- Based upon the information in existence at the time the Department conducted its property tax assessments for the 2007-2009 tax years, the Department's valuations were reasonable.



## SARB Proceedings



- 1983 AG Opinion
  - Determinations of the SARB are public
    - “There is nothing in AS 09.25.100 [renumbered to the current AS 40.25.100] nor AS 43.05.230 that implies that the legislature intended these assessment procedures and records to be confidential. Both of these statutes are aimed a preventing disclosure of information on the amount of income of a taxpayer or the particulars of a business of a taxpayer. These restrictions are not violated by assessing property of the taxpayer and making the valuation of that property open to the public.”
  - Information on the amount of income or the particulars of a business of a taxpayer should be held confidential
    - “15 AAC 56.005(b) makes the property statement filed by a person owning property taxable under AS 43.56 a ‘report or return for purposes of AS 43.05 and 15 AAC 05.’ To the extent that the statement reveals information on the amount of income or the particulars of a business of a taxpayer, the statement should be held confidential in accordance with the dictates of AS 09.25.100 and AS 43.05.230.”



## SARB Proceedings (cont.)



- In compliance with the 1983 AG opinion, SARB conducts public hearings
- SARB does not, however, hold taxpayer information confidential as required under the statutes and as advised by the AG opinion
- All information would be available to SARB and the municipalities during SARB proceedings if taxpayer information was treated as confidential in accordance with applicable statutes and the AG opinion



# Subpoena Power

- AS 43.05.040(a) grants subpoena power to DOR
- Subpoenas are expensive and time consuming
- Subpoenas can be appealed, or DOR may seek a court order to compel a taxpayer to comply with a subpoena
- As such, subpoenas are litigated and can be litigated all the way to the Alaska Supreme Court
- Subpoenas have been utilized by DOR but only when deemed necessary
- Subpoenas have not been used on property tax issues due to statutory deadlines and the reality that any confidential information received under a subpoena would not be reviewed by SARB upon appeal of the Department's assessments



# Joint Administrative Agreements



- AS 43.56.060(g) allows the Department to “enter into agreements with a municipality for the cooperative or joint administration of the assessing authority . . .”
- DOR had an agreement for several years with North Slope Borough (NSB)
- DOR ended the agreement with the NSB when NSB’s only two employees working under the agreement retired and the NSB did not hire new employees to continue the cooperative joint administration of the property tax function
- DOR previously engaged in discussions with other municipalities up through 2007 for Memorandums of Understanding (“MOUs”), but agreement on MOU terms could not be reached primarily due to the requirement that the municipalities must provide resources to assist in the assessment function. Since that time, Municipalities have not requested MOUs.

*Who said  
- is this  
blatantly  
false?*

NOTE:

*“blatantly false” → ask for more information.  
When possible*





# Benefits of Confidentiality



- Leads to cooperation between DOR and its taxpayers
- Fosters trust in us by our taxpayers
- Lends credibility to the Division
- Aids us in obtaining information without costly litigation



# Summary of Confidentiality



- Confidentiality statutes are very broad; all information regarding business affairs of any person is confidential
- SARB does not put measures in place, such as issuing protective orders, to protect taxpayer confidential information in administering its AS 43.56 property assessment appeal hearings
- Municipalities have access to all taxpayer information at Superior Court under protective order. In addition, some municipalities have ordinances which allow them to conduct their own investigations regarding property taxes.
- DOR is willing to enter into agreements with municipalities under 43.56.060(g), but in so doing municipalities must assist cooperatively in the assessment process
- The intent of AS 43.56.060(g) is not, nor are MOU agreements executed, to simply to give municipalities information.



# Questions?

# Access to Information

- Relevant Statutes
- Department Will Not Use Subpoena Power
- The Department Overuses Taxpayer Confidential Designations
- Department Will Not Agree to a Joint Administrative Agreement

# The Life of TAPS

## Source Materials

- Platt Report (MUN7-0024)
- Platt Rebuttal Report (MUN7-0026)
- Hite Report (MUN7-0014)
- Van Dyke Report (MUN7-0017)
- Van Dyke Report Supplement (MUN7-0018)
- Unpredictable Wells Data
- BP Royalty Trust (MUN7-4072)
- JTG Report (MUN7-3000)
- Carpenter Study (MUN7-3020)
- Larkspur Study (MUN7-3044)
- Haines Testimony
- Modisette Report (MUN7-0028)
- Hisey Report (MUN7-0034)
- Hisey PowerPoint

# Access to Information

491. SARB observed the following in its Certificate of Determination for the 2007 assessment year:

The Board also found that the Owners failed to take advantage of the opportunity to provide the Division with persuasive data to challenge the reserves estimates or throughput projections used by the Division if the Owners have such data. The Board found that the Owners chose not to the [sic] share information that the Owners and their parent companies possess regarding throughput and proven reserves with the Division or the Board and instead chose to present evidence and testimony from outside experts who did not have access to the information the Owners possess that was not already in the public record, and who lacked adequate direct experience with, or expertise about, the TAPS or the Alaska North Slope reserves.

Gleason Decision ¶ 491

# Access to Information

5. AS 43.56.080 grants the Division certain investigative powers when assessing AS 43.56 properties, including the power to “enter any premise necessary for the investigation during reasonable hours,” to “examine property and appropriate records,” and to compel owner representatives “to appear for examination under oath by the department.” There was no persuasive evidence presented at the trial de novo that the Division has ever exercised these powers with respect to the valuation of TAPS.

Gleason Decision ¶ 5

# Access to Information

6. The Division broadly interprets what it considers “taxpayer confidential” information under applicable statutes and will not disclose such information to the Municipalities specifically or to the public generally. The Division considers all information that it receives from a taxpayer as “taxpayer confidential,” even if it does not contain the particularities of a taxpayer’s business affairs and is obtainable from the public domain. As a result, the Division did not provide the Owners’ new replacement cost study by Stantec Consulting, Inc. (“Stantec”) to the Municipalities.

Gleason Decision ¶ 6

# Access to Information

7. AS 43.56.060(g) provides that “[t]he department may enter into agreements with a municipality for the cooperative or joint administration of the assessing authority conferred on the department by this section.” The North Slope Borough previously had such an agreement with the Department. The City of Valdez and Fairbanks North Star Borough have never been parties to joint assessment agreements with the Department.

Gleason Decision ¶ 7

# Access to Information

8. In its 2010 decision, SARB expressed its concerns regarding the Division's assessment practices:

The Board believes that it is time for the Division to address the problems created by the way it handles taxpayer confidential information in the assessment process. The Division's failure to provide interested parties with the information on which the assessment was made in time to allow those parties meaningful input in the determination of the property's assessed value, before that determination is subject to limited review of an appeal before the Board, has the potential to throw the fundamental fairness of the AS 43.56 assessment process into question. The Board believes that, due to the Division's current practices with regard to the use of taxpayer confidential information in its AS 43.56 assessments, that process is close to broken and is headed in the wrong direction.

This Court concurs with the Board's observations in this regard.

Gleason Decision ¶ 8

# **Access to Information**

## **Information at DOR Level**

- History of TAPS Valuation
- DOR Process
- Access to Taxpayer Information
- Treatment of Taxpayer Information
- Consequence of Lack of Access to Information

# Access to Information

## History of TAPS Valuation

- DOR relying on TSM based rates lead the assessments falling from over \$8 billion in the mid-1980s to \$2.75 billion in 2001 [Gleason Decision ¶ 30]
- For decades the valuation of TAPS was a negotiated process that largely excluded the Municipalities
- The Municipalities fully engaged the process for the 2005 assessment

# Access to Information

## Observation About DOR's Process

- Key DOR staff are fair, dedicated, and highly competent
- The SARB has also been balanced and diligent
- However the DOR process—as related to information relied on in the taxation process—is close to broken. [Gleason Decision ¶ 8]

# Access to Information

## Access to Confidential Information

- Taxing authorities typically compel information
  - DOR can subpoena information, depose taxpayer representatives, and investigate property and records [AS 43.56.080; AS 29.45.130; AS 43.55.040(a)]
- DOR policy is to work cooperatively with industry, so it does not exercise these powers [Gleason Decision ¶ 8]
- Thus, DOR relies on information that a taxpayer volunteers or that is publicly available

# Access to Information

## Taxpayer Information

- The Alaska Public Records Act, AS 40.25.110, requires State documents to be subject to public examination
- Exception exists under AS 40.25.100(a) for tax information “that discloses the particulars of the business or affairs of a taxpayer” in which case the “information shall be kept confidential except when . . . required in an official investigation [or proceeding]”
- AS 43.05.230(a) also makes it unlawful to “divulge the amount of income or the particulars set out or disclosed in a report or return” except in conjunction with “investigations or proceedings”

# Access to Information Taxpayer Information

DOR narrowly reads taxpayer confidentiality statutes, denying public access to:

- All information provided by taxpayers
  - Non-sensitive correspondence, hypothetical studies, publicly available information, etc.
- Information provided for its production forecasting, which is a budgeting function [2007-2009 Trial Tr. 8813-14, Tr. 10874-877]
- The Municipalities
  - AS 43.56.060(g) allows for joint administration of taxes
  - North Slope Borough had such an agreement until recently

# Access to Information

## Consequence of Information Access

- Industry acts to prevent the best information from harming its position on taxes
  - Low flow documents
  - Royalty trust statements removed
  - BP Pipelines no longer participating in reserves function [2007-2009 Trial Tr. 11480]
  - As a matter of policy DOR does not compel the production of useful information
- DOR does not make publicly available taxpayer information in its possession
- Result–DOR and Legislature do not have access to information necessary to be informed about oil and gas tax issues in Alaska

# **Access to Information Source Materials**

- Alaska Statutes

# Conclusion

- Open Access to Facilities
- Reasonable Transportation Rates
- Minimize Barriers to Entry
- Sound Tax Policy
  - Recognizes Market Structure
  - Recognizes Specific Behavior and Participants  
Most Likely to Be Impacted by Tax Incentives
  - Recognizes Stage of Development of Basin

**THANK YOU**