

HB

158

<TARGET><BILL>HB 158</BILL><SUBJECT>HB
158</SUBJECT><COMM>SFIN29</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 4/9/15

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered CS FOR HOUSE BILL NO. 158(FIN)

HB 158-REFINED FUEL SURCHARGE; MOTOR FUEL TAX

"An Act relating to a refined fuel surcharge; relating to the motor fuel tax; relating to a qualified dealer license; and providing for an effective date."

and recommends:

- be replaced with SCS CS HB 158 (FIN) Same Title Technical Title Change
 New Title/SCR No. _____
- adopt previous SCS _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____
- attached amendment(s)
- adopt SCS CS HB 158 (FIN) Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
SFIN/DEC	✓			
REV	✓			

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DEC			✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	NO REC	AMEND
	MICCICHE	✓			
	BISHOP			✓	
	DUALLEY OLSON		✓		
	Hoffman			✓	
CO-CHAIR:					
CO-CHAIR: <u>Anna Mackinnon</u>	Mackinnon			✓	

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version: HB 158
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB 158 SFIN 4-15-2015
Title: REFINED FUEL SURCHARGE; MOTOR FUEL TAX
Sponsor: MUNOZ
Requester: Senate Finance

Department: Fund Transfers
Appropriation: OpSys DGF Transfers (non-add)
Allocation: Oil and Hazardous Substance Release Prevention Account
OMB Component Number: 2499

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates				
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous	7,450.0		7,600.0	7,750.0	7,900.0	8,050.0	8,200.0
Total Operating	7,450.0	0.0	7,600.0	7,750.0	7,900.0	8,050.0	8,200.0

Fund Source (Operating Only)

1004 Gen Fund	7,450.0		7,600.0	7,750.0	7,900.0	8,050.0	8,200.0
Total	7,450.0	0.0	7,600.0	7,750.0	7,900.0	8,050.0	8,200.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues	7,450.0		7,600.0	7,750.0	7,900.0	8,050.0	8,200.0
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Estimated SUPPLEMENTAL (FY2015) cost: 800.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? N
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Updated to reflect changes in the C.S. which modify the FY15 supplemental amount to \$800.0 and current and future deposits to correspond with revenue projections provided by the Department of Revenue.

Prepared By: Senator Kelly
Senate Finance Committee
Senator MacKinnon
Senate Finance Committee

Phone: (907)465-3709
Date: 04/14/2015

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2015 LEGISLATIVE SESSION**

BILL NO. HB 158 _____

Analysis

This bill addresses a recognized funding shortfall in the Spill Prevention and Response (SPAR) division of the Department of Environmental Conservation. SPAR is funded through the Prevention Account of the Oil and Hazardous Substance Release Prevention and Response Fund (O&H fund). The amount deposited in the prevention account depends on the amount of oil produced--there is a 4 cent per barrel tax on oil produced in Alaska. As oil production has declined, SPAR expenditures have exceeded revenue and reduced the balance of the fund. This long process has depleted the balance of the prevention account.

This bill implements a surcharge on sales of refined fuel and identifies the resultant UGF revenue as available for appropriation to the O&H Fund.

Annual appropriations will be required to deposit UGF into the O&H Fund.

The table below shows projected cash flows and fund balances under the assumption that \$800.0 and \$7.45 million is deposited in the O&H Fund in FY15 and FY16, respectively. As noted above, the timing and amount of the deposits are somewhat arbitrary--they could be reversed or reduced if desired.

Beginning Balance	\$6,913.20	\$2.40	\$564.20	\$6,130.00	\$7,005.80
Crude Oil Revenue plus Cost Recovery	\$7,949.90	\$8,526.00	\$8,380.00	\$8,540.00	\$8,060.00
Aniak Settlement	\$0.00	\$0.00	\$5,000.00	\$0.00	\$0.00
Deposit from Refined Product Tax	\$800.00	\$7,450.00	\$7,600.00	\$7,750.00	\$7,900.00
Total Annual Expenses	\$15,660.70	\$15,414.20	\$15,414.20	\$15,414.20	\$15,414.20
Ending Balance	\$2.40	\$564.20	\$6,130.00	\$7,005.80	\$7,551.60

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version: HB 158
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB158-DOR-TAX-04-14-15
Title: REFINED FUEL SURCHARGE; MOTOR FUEL TAX
Sponsor: MUNOZ
Requester: Senate Finance Committee

Department: Department of Revenue
Appropriation: Taxation and Treasury
Allocation: Tax Division
OMB Component Number: 2476

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates					
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues	7,450.0	7,600.0	7,750.0	7,900.0	8,050.0	8,200.0
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Estimated SUPPLEMENTAL (FY2015) cost: 50.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/15

Why this fiscal note differs from previous version:

This is the fifth version, to include changes made in the Senate Finance G committee substitute. The surcharge rate was reduced to 95/100 of a cent per gallon.

Prepared By:	Ken Alper, Director	Phone:	(907)465-8221
Division:	Tax	Date:	04/14/2015 02:00 PM
Approved By:	Jerry Burnett, Deputy Commissioner	Date:	04/14/2015
Agency:	Department of Revenue		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

BILL NO. SCS HB 158(FIN)

Analysis

Bill Analysis

The legislation creates a new surcharge of 0.95 cent per gallon on certain refined fuels sold in Alaska. The funds are intended, subject to appropriation, to provide an additional source of revenue for the Oil and Hazardous Substance Release Prevention Account. This account, which has historically been funded by the Oil and Gas Conservation Surcharge (also known as the "nickel a barrel tax,") funds the operations of the Spill Prevention and Response (SPAR) division at the Department of Environmental Conservation.

The surcharge will be collected from qualified fuel dealers, who are generally importers and wholesalers of fuel as well as some in-state refiners. This is the same group of companies who currently file Alaska's motor fuel excise tax. That tax, which varies from 3.2 to 8 cents per gallon, is only paid on certain types of fuel with a broad list of exemptions defined in statute. The intent of this bill is to apply the surcharge to a wider range of refined fuel, including some products exempted from the motor fuel tax.

Revenue Impact

In Fiscal Years 2012 through 2014, the motor fuel tax was paid on an average of 620 million gallons of various fuels. In those years, the taxpayers reported total fuel sales of nearly 1,600 million gallons, with the difference being either tax-off sales or tax-on sales later refunded because the fuel was used for an exempt purpose.

Due largely to constitutional concerns (e.g. commerce clause) as well as concern over federal grant restrictions, several categories of fuel sales are also exempt from the new surcharge in this legislation. These include sales to the federal and state government, fuel exported out of the country, fuel used in aviation, and transfers among qualified dealers. With these adjustments, it is estimated that the surcharge will apply to approximately 785 million gallons of refined fuel in the first year. At 0.95 cent per gallon, this represents annual revenue of approximately \$7.45 million in FY16, with an estimated 2% increase per year afterwards.

Implementation Cost

This legislation creates a new fuel type within the motor fuel tax system, which will require the Department of Revenue to update its Tax Revenue Management System and Revenue Online System which allows a taxpayer to file a return online. The update would consist of redesigning, developing, and testing the system to add the new fuel type with its exemptions. We would also need to redesign the current tax return to add the surcharge.

The supplemental fiscal note figure of \$50.0 in FY15 is to cover the costs of updating the systems and form as well as to draft regulations for this new surcharge on a relatively fast track in advance of the sponsor's desired effective date of July 1, 2015. This may require the department to hire temporary or contract staff to assist in drafting regulations and making adjustments to our system and tax forms. We do not anticipate any continuing costs or additional staff needs the tax administration and audit functions will be absorbed within our existing Excise Tax group. Should the number and complexity of tax filings exceed our initial expectations, we may need to revisit this in a future budget year.

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version:	CSHB 158(FIN)
Fiscal Note Number:	1
(H) Publish Date:	4/2/2015

Identifier: HB158-DEC-SPAR-03-20-15
 Title: REFINED FUEL SURCHARGE; MOTOR FUEL TAX
 Sponsor: MUNOZ
 Requester: Finance Committee

Department: Department of Environmental Conservation
 Appropriation: Spill Prevention and Response
 Allocation: Spill Prevention and Response
 OMB Component Number: 3094

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2016 Request	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES	FY 2016	FY 2016					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2015) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable; initial version

Prepared By: Kristin Ryan, Director
 Division: Spill Prevention and Response
 Approved By: Alice Edwards, Deputy Commissioner
 Agency: Department of Environmental Conservation

Phone: (907)269-7604
 Date: 03/20/2015 08:30 AM
 Date: 03/20/2015

REPORTED OUT OF
HFC 04/03/2015
Control Code: Wxsrj

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

Analysis

This bill addresses a recognized funding shortfall in the Prevention Account of the Oil and Hazardous Substance Release Prevention and Response Fund. The Division anticipates that the new revenue generated through this bill, if appropriated, would alleviate a projected revenue shortfall for FY16 operations that is estimated to be around \$7 million.

There will be no fiscal impact to the Division Spill Prevention and Response for implementation of the legislation.

Alaska State Legislature



Official Business

Alaska State Capitol
Juneau, Alaska 99801

Letter of Intent for SCS CSHB 158(FIN)

It is the intent of the Alaska State Legislature that the report required by A.S. 46.08.060 (a) be provided to the Legislature not later than the 10th day following the convening of each regular session and to include a comprehensive summary of department activities concerning the Prevention Account including

- A. Public outreach and education efforts to reduce the risk of spills.
- B. Performance measures relating to spill prevention and response to spills of non-crude products.
- C. Details of spill cleanup efforts including cost and the use of in-house personnel.
- D. Specific information for each spill cleanup on cost recovery efforts and results.
- E. Summary of policy guidelines for determination of appropriate cost recovery decisions.



REPRESENTATIVE CATHY MUÑOZ

SPONSOR STATEMENT HOUSE BILL 158

The Division of Spill Prevention and Response (SPAR), within the Department of Environmental Conservation, works to prevent spills of oil and hazardous substances, and prepares for and responds rapidly to spills. Alaska Statute 46.08.030 states "It is the intent of the Legislature and declared to be the public policy of the State that funds for the abatement of a release of oil or a hazardous substance will always be available."

One of the missions of the SPAR Division is to manage the Oil and Hazardous Substance Release Prevention and Response Fund as a viable, long-term funding source for the state's core spill prevention and response initiatives.

The Prevention and Response Fund is financed with a five cent per-barrel surcharge on oil produced. Decreasing oil production has resulted in a decline of revenue available to pay for spill prevention and cleanup work.

Despite previous efforts by the legislature and the SPAR Division to sustain the fund, there is a \$1.9 million projected shortfall in FY2016. This assumes receipt of a \$5 million federal settlement related to a site in Aniak and budget reductions that included deletion of four positions and consolidated programs. After FY2016, there is a projected \$7 million shortfall.

HB 158 establishes an environmental fee of one cent a gallon on refined fuel sold, transferred, or used in the state. The surcharge on the transfer or consumption of refined fuel does not apply to liquefied petroleum gas. Fuel distributors currently file and pay taxes on motor fuels each month and HB 158 anticipates that the surcharge will be collected from the same distributors. The revenue generated by this surcharge would, subject to legislative appropriation, be placed in the prevention account.

HB 158 creates a viable, long-term funding source for the state's core spill prevention and response initiatives. I urge your support on this piece of legislation to ensure the viability of the oil spill prevention and response.



REPRESENTATIVE CATHY MUÑOZ

EXPLANATION OF CHANGES HOUSE BILL 158

"An Act relating to a refined fuel surcharge; relating to the motor fuel tax; relating to a qualified dealer license; and providing for an effective date."

The CS for HB 158 makes the following changes:

Section 2: Adds exemptions for state agencies and aviation fuel.

Section 3: Technical language clean up suggested by Legislative Legal that removes language regarding gasohol as that program became obsolete as of June 20, 2004.

Section 4: Technical language clean up suggested by Legislative Legal that removes language regarding gasohol as that program became obsolete as of June 20, 2004.

Section 5: Removes "aviation facilities" and replaces it with "capital or operating costs of airports."

Adopted 4/15/15

29-LS0608VF
Nauman
4/14/15

**SENATE CS FOR CS FOR HOUSE BILL NO. 158(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION**

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE MUNOZ

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a refined fuel surcharge; relating to the motor fuel tax; relating to a**
2 **qualified dealer license; and providing for an effective date."**

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

4 *** Section 1.** AS 43.05.230(g) is amended to read:

5 (g) The information contained in a license issued by the commissioner of
6 revenue or the commissioner of commerce, community, and economic development
7 under AS 43.40, AS 43.50, AS 43.60, AS 43.65, AS 43.70, and AS 43.75 is public
8 information.

9 *** Sec. 2.** AS 43.40 is amended by adding new sections to read:

10 **Sec. 43.40.005. Refined fuel surcharge levied.** (a) Every dealer or user of
11 refined fuels shall pay a surcharge of \$.0095 a gallon on refined fuel sold, transferred,
12 or used in the state.

13 (b) The following refined fuels are exempt from the surcharge imposed under
14 this section:

- 1 (1) fuel sold to a federal or state government agency for official use;
- 2 (2) fuel refined and used outside the United States;
- 3 (3) liquefied petroleum gas;
- 4 (4) aviation fuel;
- 5 (5) fuel sold or transferred between qualified dealers.

Sec. 43.40.007. Use of revenue derived from the refined fuel surcharge.

The legislature may appropriate the annual estimated balance of the surcharge levied under AS 43.40.005 to the oil and hazardous substance release prevention account of the oil and hazardous substance release prevention and response fund established in AS 46.08.010. Nothing in this section creates a dedicated fund.

* **Sec. 3.** AS 43.40.010(a) is amended to read:

(a) In addition to the surcharge levied under AS 43.40.005, there [THERE] is levied a tax of eight cents a gallon on all motor fuel sold or otherwise transferred within the state, except that

- (1) the tax on aviation gasoline is four and seven-tenths cents a gallon;
- (2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon;
- (3) the tax on all aviation fuel other than gasoline is three and two-tenths cents a gallon; and
- (4) the tax rate on motor fuel that is blended with alcohol is the same tax rate a gallon as other motor fuel; however,

[(A)] in an area and during the months in which fuel containing alcohol is required to be sold, transferred, or used in an effort to attain air quality standards for carbon monoxide as required by federal or state law or regulation, the tax rate on motor fuel that is blended with alcohol is six cents a gallon less than the tax on other motor fuel not described in (1) - (3) of this subsection [;

(B) NOTWITHSTANDING (A) OF THIS PARAGRAPH, THROUGH JUNE 30, 2004, THE TAX ON MOTOR FUEL SOLD OR OTHERWISE TRANSFERRED WITHIN THE STATE IS EIGHT CENTS A GALLON LESS THAN THE TAX ON OTHER MOTOR FUEL NOT

1 DESCRIBED IN (1) - (3) OF THIS SUBSECTION IF THE MOTOR FUEL

2 (i) IS AT LEAST 10 PERCENT ALCOHOL BY
3 VOLUME, HAS BEEN PRODUCED FROM THE PROCESSING OF
4 LIGNOCELLULOSE DERIVED FROM WOOD, AND WAS
5 PRODUCED IN A FACILITY THAT PROCESSES
6 LIGNOCELLULOSE FROM WOOD, BUT THIS REDUCTION IN
7 THE RATE OF TAX APPLIES TO MOTOR FUEL SOLD OR
8 TRANSFERRED THAT CONTAINS ALCOHOL THAT WAS
9 PRODUCED ONLY DURING THE FIRST FIVE YEARS OF THE
10 FACILITY'S PROCESSING OF LIGNOCELLULOSE FROM
11 WOOD; OR

12 (ii) IS AT LEAST 10 PERCENT ALCOHOL BY
13 VOLUME, HAS BEEN PRODUCED FROM THE PROCESSING OF
14 WASTE SEAFOOD, AND WAS PRODUCED IN A FACILITY
15 THAT PROCESSES ALCOHOL FROM WASTE SEAFOOD, BUT
16 THIS REDUCTION IN THE RATE OF TAX APPLIES TO MOTOR
17 FUEL SOLD OR TRANSFERRED THAT CONTAINS ALCOHOL
18 THAT WAS PRODUCED ONLY DURING THE FIRST FIVE
19 YEARS OF THE FACILITY'S PROCESSING OF ALCOHOL FROM
20 WASTE SEAFOOD].

21 * Sec. 4. AS 43.40.010(b) is amended to read:

22 (b) In addition to the surcharge levied under AS 43.40.005, there
23 [THERE] is levied a tax of eight cents a gallon on all motor fuel consumed by a user,
24 except that

25 (1) the tax on aviation gasoline consumed is four and seven-tenths
26 cents a gallon;

27 (2) the tax on motor fuel used in and on watercraft of all descriptions is
28 five cents a gallon;

29 (3) the tax on all aviation fuel other than gasoline is three and two-
30 tenths cents a gallon; and

31 (4) the tax rate on motor fuel that is blended with alcohol is the same

1 tax rate a gallon as other motor fuel; however,

2 [(A)] in an area and during the months in which fuel containing
3 alcohol is required to be sold, transferred, or used in an effort to attain air
4 quality standards for carbon monoxide as required by federal or state law or
5 regulation, the tax rate on motor fuel that is blended with alcohol is six cents a
6 gallon less than the tax on other motor fuel not described in (1) - (3) of this
7 subsection [;

8 (B) NOTWITHSTANDING (A) OF THIS PARAGRAPH,
9 THROUGH JUNE 30, 2004, THE TAX ON MOTOR FUEL CONSUMED
10 BY A USER WITHIN THE STATE IS EIGHT CENTS A GALLON LESS
11 THAN THE TAX ON OTHER MOTOR FUEL NOT DESCRIBED IN (1) -
12 (3) OF THIS SUBSECTION IF THE MOTOR FUEL

13 (i) IS AT LEAST 10 PERCENT ALCOHOL BY
14 VOLUME, HAS BEEN PRODUCED FROM THE PROCESSING OF
15 LIGNOCELLULOSE DERIVED FROM WOOD, AND WAS
16 PRODUCED IN A FACILITY THAT PROCESSES
17 LIGNOCELLULOSE FROM WOOD, BUT THIS REDUCTION IN
18 THE RATE OF TAX APPLIES TO MOTOR FUEL CONSUMED BY
19 A USER THAT CONTAINS ALCOHOL THAT WAS PRODUCED
20 ONLY DURING THE FIRST FIVE YEARS OF THE FACILITY'S
21 PROCESSING OF LIGNOCELLULOSE FROM WOOD; OR

22 (ii) IS AT LEAST 10 PERCENT ALCOHOL BY
23 VOLUME, HAS BEEN PRODUCED FROM THE PROCESSING OF
24 WASTE SEAFOOD, AND WAS PRODUCED IN A FACILITY
25 THAT PROCESSES ALCOHOL FROM WASTE SEAFOOD, BUT
26 THIS REDUCTION IN THE RATE OF TAX APPLIES TO MOTOR
27 FUEL CONSUMED BY A USER THAT CONTAINS ALCOHOL
28 THAT WAS PRODUCED ONLY DURING THE FIRST FIVE
29 YEARS OF THE FACILITY'S PROCESSING OF ALCOHOL FROM
30 WASTE SEAFOOD].

31 * Sec. 5. AS 43.40.010(e) is amended to read:

1 (e) Sixty percent of the proceeds of the revenue from the motor fuel taxes on
2 aviation fuel, excluding the amount determined to have been spent by the state in its
3 collection, shall be refunded to a municipality owning and operating or leasing and
4 operating an airport in the proportion that the revenue was collected at the municipal
5 airport. All other proceeds of the motor fuel taxes on aviation fuel shall be paid into a
6 special aviation fuel tax account in the state general fund. The legislature may
7 appropriate funds from this account for capital or operating costs of airports
8 [AVIATION FACILITIES].

9 * **Sec. 6.** AS 43.40 is amended by adding a new section to read:

10 **Sec. 43.40.013. Collection of the refined fuel surcharge and the motor fuel**
11 **tax.** Every dealer who sells or otherwise transfers refined or motor fuel in the state
12 shall collect the surcharge and tax required in this chapter at the time of sale, and remit
13 the total surcharge and tax collected during each calendar month of each year to the
14 department by the last day of each succeeding month. Every user shall likewise remit
15 the surcharge and tax required in this chapter and accrued on fuel actually used by the
16 user during each month. If the monthly return is timely filed, one percent of the total
17 monthly surcharge and tax due, limited to a maximum of \$100, may be deducted and
18 retained to cover the expense of accounting and filing the monthly return. At the time
19 the remittance is made, each dealer or user shall submit a statement to the department
20 showing all fuel that the dealer or user has distributed or used during the month.

21 * **Sec. 7.** AS 43.40.015(c) is amended to read:

22 (c) A certificate of use obtained under this section must be renewed annually
23 for exemptions listed under AS 43.40.100(2).

24 * **Sec. 8.** AS 43.40.015(d) is amended to read:

25 (d) A certificate of use is not required under this section
26 (1) for fuel exempted under AS 43.40.100(2)(C) or (J); and
27 (2) for fuel exempted under AS 43.40.100(2)(I) other than fuel sold or
28 transferred under this exemption to a person who is engaged in construction or mining
29 activity.

30 * **Sec. 9.** AS 43.40.030 is amended to read:

31 **Sec. 43.40.030. Refund of the motor fuel tax for nonhighway use.** (a)

1 Except as specified in AS 43.40.010(j), a person who uses motor fuel to operate an
2 internal combustion engine is entitled to a motor fuel tax refund of six cents a gallon
3 if

4 (1) the tax on the motor fuel has been paid;

5 (2) the motor fuel is not aviation fuel, or motor fuel used in or on
6 watercraft; and

7 (3) the internal combustion engine is not used in or in conjunction with
8 a motor vehicle licensed to be operated on public ways.

9 (b) The entire amount of the motor fuel tax levied by this chapter shall be
10 refunded to the purchaser on that part of the motor fuel used in a foreign country on
11 which the tax has been paid when the fuel is sold and delivered in the state for non-
12 highway use in a foreign country.

13 (c) The department shall establish the necessary regulations and prescribe the
14 appropriate forms to prove that, for purposes of the motor fuel tax, the motor fuel is
15 taken to and used in foreign countries.

16 (d) If a person obtains motor fuel on which the motor fuel tax levied by this
17 chapter has been paid and the motor fuel is exempt from the motor fuel tax, the
18 person is entitled to a refund of the motor fuel tax paid.

19 * Sec. 10. AS 43.40.035(a) is amended to read:

20 (a) A person who resells fuel on which a surcharge under AS 43.40.005 or
21 the tax under AS 43.40.010(a) or (b) was previously paid is entitled to a credit or
22 refund of the (1) motor fuel tax if [(1)] the resold fuel is not motor fuel and the
23 requirements of AS 43.40.015 have been fulfilled; or (2) the amount of surcharge or
24 tax previously paid exceeds the surcharge or tax due on the resale. The amount of the
25 credit or refund under this section is equal to the amount of the surcharge or tax
26 previously paid on the resold fuel less the amount of the surcharge or tax prescribed
27 by AS 43.40.005 or 43.40.010(a) or (b), respectively [AS 43.40.010(a) OR (b)].

28 * Sec. 11. AS 43.40.035(c) is amended to read:

29 (c) For motor fuel sold to federal, state, and local government agencies for
30 official use and purchased with a government credit card, the credit card issuer may
31 apply for a refund of any motor fuel tax assessed on the purchase if the tax is not

1 billed by the credit card issuer to the government agency making the purchase. For
2 refined fuel sold to federal agencies for official use and purchased with a
3 government credit card, the credit card issuer may apply for a refund of any
4 refined fuel surcharge assessed on the purchase if the surcharge is not billed by
5 the credit card issuer to the government agency making the purchase.

6 * Sec. 12. AS 43.40.050(b) is amended to read:

7 (b) A claim for refund under AS 43.40.030 or 43.40.035 shall be filed within
8 one year after [FROM] the date of the purchase of the refined or motor fuel as
9 indicated on the invoice, and failure to file within the one-year period is a waiver of
10 the right to the refund. A claim is considered to be filed when the claim is mailed or
11 personally presented to an office of the department.

12 * Sec. 13. AS 43.40.060 is amended to read:

13 **Sec. 43.40.060. Separate invoices.** The department may require the issuance
14 of separate invoices for refined or motor fuel sold, distributed, or transferred when
15 the invoices will be the basis for a refund claim.

16 * Sec. 14. AS 43.40.070 is amended to read:

17 **Sec. 43.40.070. Refund warrants.** Upon approval of a refund claim of the
18 motor fuel tax by the department, a disbursement shall be made from the highway
19 fuel tax account in the general fund in favor of the applicant in the amount of the
20 claim.

21 * Sec. 15. AS 43.40.070 is amended by adding a new subsection to read:

22 (b) Upon approval of a refund claim of the refined fuel surcharge by the
23 department, a disbursement shall be made from the oil and hazardous substance
24 release prevention account of the oil and hazardous substance release prevention and
25 response fund established in AS 46.08.010 in favor of the applicant in the amount of
26 the claim.

27 * Sec. 16. AS 43.40.080(a) is amended to read:

28 (a) To determine the validity of a claim for refund, the department may
29 examine the books and records of the claimant and the books and records of a
30 distributor of the refined or motor fuel. The department may cancel the refund
31 [PERMIT] of a [THE] claimant relying on [UPON] a fraudulent invoice [FOR A

1 PERIOD OF NOT MORE THAN ONE YEAR].

2 * **Sec. 17.** AS 43.40.085 is amended to read:

3 **Sec. 43.40.085. Preservation of books and records.** Dealers and users shall
4 preserve for three years all books and records pertaining to sales, transfers, and uses of
5 refined or motor fuel that are subject to a surcharge or tax [TAXED] under this
6 chapter.

7 * **Sec. 18.** AS 43.40.092(a) is amended to read:

8 (a) The provisions of this section apply to disallow the exemption from the
9 motor fuel tax for motor fuel sold for use by a dealer or used by a user in jet
10 propulsion aircraft operating in flights that continue from foreign countries if, for
11 motor fuel produced by a refiner,

12 (1) the refiner determines, on or after July 1, 1997, that the refiner will
13 expand capacity or expand the refinery to produce more residual fuel oil used in
14 watercraft;

15 (2) on or after the July 1, 1997, the refiner has voluntarily committed
16 by agreement entered into with the commissioner that, if the refiner expands its oil
17 refining capacity in order to produce additional supplies of fuel for use in jet
18 propulsion aircraft that qualify for the tax exemption, when the refiner expands
19 capacity, the refiner will

20 (A) use the refiner's best efforts to advertise for, recruit, and
21 employ in the construction activities associated with expanding refinery
22 capacity resident workers who have experience in the specific fields in which
23 they are hired to work;

24 (B) contract with licensed Alaska firms to prepare materials
25 that are used in construction activities and to provide services in conjunction
26 with activities associated with expanded refinery capacity and, in contracting
27 with those firms, to encourage the refiner's contractors to employ and, when
28 necessary, train state residents; and

29 (C) enter into contracts with Alaska-licensed vendors,
30 contractors, and suppliers for the provision of supplies and services used in
31 conjunction with activities associated with expanding refinery capacity; and

1 (3) the commissioner determines that a dealer or user claiming the
2 exemption for motor fuel acquired from a refiner who has entered into an agreement
3 described in (2) of this subsection acquired the motor fuel for which the exemption is
4 claimed from a refiner who has not complied with the requirements of the agreement
5 in completing expansion of its oil refining capacity under the agreement described in
6 (1) of this subsection.

7 * **Sec. 19.** AS 43.40 is amended by adding a new section to read:

8 **Sec. 43.40.094. Qualified dealer license.** (a) A dealer is eligible for a qualified
9 dealer license if the dealer sells at least 50 percent of fuel acquired to unrelated
10 persons for any combination of the following purposes:

- 11 (1) resale;
- 12 (2) use in heating private or commercial buildings or facilities;
- 13 (3) use in jet propulsion aircraft;
- 14 (4) motor fuel.

15 (b) A person applying for a qualified dealer license must use a form or format
16 prescribed by the department. At the time of application, the applicant must provide an
17 estimate of the average number of gallons of fuel subject to surcharge or tax each
18 month during a calendar year, and state the estimated amount of surcharge and tax on
19 those gallons. A license issued under this section is not transferable.

20 (c) The department may not issue or renew a qualified dealer license if

21 (1) the department finds that the applicant or qualified dealer has
22 withheld information required in the application or that the information submitted in
23 the application is false or misleading;

24 (2) the applicant, or a responsible person of a business organization
25 that is applying for the license, has been convicted within the last 10 years, in this state
26 or in any other taxing jurisdiction, of crimes involving a fuel surcharge or tax;

27 (3) the qualified dealer fails to comply with a requirement of this
28 chapter;

29 (4) the qualified dealer has failed to pay in full the surcharge, taxes,
30 interest, and penalties levied under AS 43.05 or this chapter.

31 (d) The department may

1 (1) issue only one qualified dealer license to each person;

2 (2) put additional limitations on the applicant or holder of a qualified
3 dealer license.

4 (e) A license issued under this section expires on June 30 following the date of
5 issue. Before a license issued under this section expires, the licensee may apply to
6 renew the license, on a form or in a format prescribed by the department, for one year
7 after the expiration date of the license.

8 (f) If the department determines a qualified dealer license may not be issued or
9 renewed under this section, the department shall mail or electronically deliver a notice
10 of license denial or nonrenewal to the person whose license was denied or not
11 renewed. The person may appeal a notice of license denial or nonrenewal not later
12 than 10 days after the date the notice was mailed or electronically delivered.

13 (g) The department may, at the time an applicant applies for a qualified dealer
14 license, require the applicant to file a bond or other security with the department in an
15 amount equal to twice the estimated surcharge and tax due to the department in one
16 month, or \$5,000, whichever is greater.

17 (h) The department may adopt regulations to implement this section, including
18 regulations relating to the revocation of a license.

19 * Sec. 20. AS 43.40.100(1) is amended to read:

20 (1) "dealer" means a person who sells or otherwise transfers in this
21 state refined or motor fuel on [UPON] which the surcharge or tax [TAXES]
22 imposed by this chapter has [HAVE] not been paid;

23 * Sec. 21. AS 43.40.100(3) is amended to read:

24 (3) "qualified dealer" means a person who (A) refines, (B) imports, (C)
25 manufactures, (D) produces, (E) compounds, or (F) wholesales refined or motor fuel
26 [, WHO SATISFIES CRITERIA FOR QUALIFIED DEALERS ESTABLISHED BY
27 THE DEPARTMENT BY REGULATION, AND WHO OBTAINS A QUALIFIED
28 DEALER'S LICENSE FROM THE DEPARTMENT];

29 * Sec. 22. AS 43.40.100(4) is amended to read:

30 (4) "user" means a person consuming or using refined or motor fuel,
31 who

1 (A) purchases the fuel out of the state and ships it into the state
2 for personal use in the state;

3 (B) manufactures the fuel in the state; or

4 (C) purchases or receives fuel in the state that is not subject to
5 the surcharge or tax under this chapter [TAXED] at the time of purchase or
6 receipt or is subject to a surcharge or tax [TAXED AT A RATE] that is less
7 than the rate prescribed by AS 43.40.005 or 43.40.010 [AS 43.40.010].

8 * Sec. 23. AS 43.40.100 is amended by adding a new paragraph to read:

9 (5) "refined fuel" means fuel produced from oil that is used in an
10 engine, machine, or contrivance that creates heat, energy, or power.

11 * Sec. 24. AS 43.40.010(c) is repealed.

12 * Sec. 25. The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 QUALIFIED DEALER LICENSE; REGULATIONS. To the extent current
15 regulations are consistent with this Act, the regulations previously adopted by the Department
16 of Revenue relating to qualified dealers and qualified dealer licenses under AS 43.40.100
17 shall apply to qualified dealers and qualified dealer licenses until the regulations are amended
18 to be consistent with this Act.

19 * Sec. 26. This Act takes effect July 1, 2015.

Adopted 4/14/15

29-LS0608\G
Nauman
4/11/15

SENATE CS FOR HOUSE BILL NO. 158(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MUÑOZ

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to a refined fuel surcharge; relating to the motor fuel tax; relating to a
2 qualified dealer license; and providing for an effective date."

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

4 * Section 1. AS 43.05.230(g) is amended to read:

5 (g) The information contained in a license issued by the commissioner of
6 revenue or the commissioner of commerce, community, and economic development
7 under AS 43.40, AS 43.50, AS 43.60, AS 43.65, AS 43.70, and AS 43.75 is public
8 information.

9 * Sec. 2. AS 43.40 is amended by adding new sections to read:

10 Sec. 43.40.005. Refined fuel surcharge levied. (a) Every dealer or user of
11 refined fuels shall pay a surcharge of \$.0095 a gallon on refined fuel sold, transferred,
12 or used in the state.

13 (b) The following refined fuels are exempt from the surcharge imposed under
14 this section:

- 1 (1) fuel sold to a federal or state government agency for official use;
- 2 (2) fuel refined and used outside the United States;
- 3 (3) liquefied petroleum gas;
- 4 (4) aviation fuel;
- 5 (5) fuel sold or transferred between qualified dealers.

6 **Sec. 43.40.007. Use of revenue derived from the refined fuel surcharge.**

7 The legislature may appropriate the annual estimated balance of the surcharge levied
8 under AS 43.40.005 to the oil and hazardous substance release prevention account of
9 the oil and hazardous substance release prevention and response fund established in
10 AS 46.08.010. Nothing in this section creates a dedicated fund.

11 * **Sec. 3.** AS 43.40.010(a) is amended to read:

12 (a) **In addition to the surcharge levied under AS 43.40.005, there** [THERE]
13 is levied a tax of eight cents a gallon on all motor fuel sold or otherwise transferred
14 within the state, except that

- 15 (1) the tax on aviation gasoline is four and seven-tenths cents a gallon;
- 16 (2) the tax on motor fuel used in and on watercraft of all descriptions is
17 five cents a gallon;
- 18 (3) the tax on all aviation fuel other than gasoline is three and two-
19 tenths cents a gallon; and
- 20 (4) the tax rate on motor fuel that is blended with alcohol is the same
21 tax rate a gallon as other motor fuel; however,

22 [(A)] in an area and during the months in which fuel containing
23 alcohol is required to be sold, transferred, or used in an effort to attain air
24 quality standards for carbon monoxide as required by federal or state law or
25 regulation, the tax rate on motor fuel that is blended with alcohol is six cents a
26 gallon less than the tax on other motor fuel not described in (1) - (3) of this
27 subsection [;

28 (B) NOTWITHSTANDING (A) OF THIS PARAGRAPH,
29 THROUGH JUNE 30, 2004, THE TAX ON MOTOR FUEL SOLD OR
30 OTHERWISE TRANSFERRED WITHIN THE STATE IS EIGHT CENTS A
31 GALLON LESS THAN THE TAX ON OTHER MOTOR FUEL NOT

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DESCRIBED IN (1) - (3) OF THIS SUBSECTION IF THE MOTOR FUEL

(i) IS AT LEAST 10 PERCENT ALCOHOL BY VOLUME, HAS BEEN PRODUCED FROM THE PROCESSING OF LIGNOCELLULOSE DERIVED FROM WOOD, AND WAS PRODUCED IN A FACILITY THAT PROCESSES LIGNOCELLULOSE FROM WOOD, BUT THIS REDUCTION IN THE RATE OF TAX APPLIES TO MOTOR FUEL SOLD OR TRANSFERRED THAT CONTAINS ALCOHOL THAT WAS PRODUCED ONLY DURING THE FIRST FIVE YEARS OF THE FACILITY'S PROCESSING OF LIGNOCELLULOSE FROM WOOD; OR

(ii) IS AT LEAST 10 PERCENT ALCOHOL BY VOLUME, HAS BEEN PRODUCED FROM THE PROCESSING OF WASTE SEAFOOD, AND WAS PRODUCED IN A FACILITY THAT PROCESSES ALCOHOL FROM WASTE SEAFOOD, BUT THIS REDUCTION IN THE RATE OF TAX APPLIES TO MOTOR FUEL SOLD OR TRANSFERRED THAT CONTAINS ALCOHOL THAT WAS PRODUCED ONLY DURING THE FIRST FIVE YEARS OF THE FACILITY'S PROCESSING OF ALCOHOL FROM WASTE SEAFOOD].

* **Sec. 4.** AS 43.40.010(b) is amended to read:

(b) **In addition to the surcharge levied under AS 43.40.005, there** [THERE] is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

(1) the tax on aviation gasoline consumed is four and seven-tenths cents a gallon;

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon;

(3) the tax on all aviation fuel other than gasoline is three and two-tenths cents a gallon; and

(4) the tax rate on motor fuel that is blended with alcohol is the same

1 tax rate a gallon as other motor fuel; however,

2 [(A)] in an area and during the months in which fuel containing
3 alcohol is required to be sold, transferred, or used in an effort to attain air
4 quality standards for carbon monoxide as required by federal or state law or
5 regulation, the tax rate on motor fuel that is blended with alcohol is six cents a
6 gallon less than the tax on other motor fuel not described in (1) - (3) of this
7 subsection [;

8 (B) NOTWITHSTANDING (A) OF THIS PARAGRAPH,
9 THROUGH JUNE 30, 2004, THE TAX ON MOTOR FUEL CONSUMED
10 BY A USER WITHIN THE STATE IS EIGHT CENTS A GALLON LESS
11 THAN THE TAX ON OTHER MOTOR FUEL NOT DESCRIBED IN (1) -
12 (3) OF THIS SUBSECTION IF THE MOTOR FUEL

13 (i) IS AT LEAST 10 PERCENT ALCOHOL BY
14 VOLUME, HAS BEEN PRODUCED FROM THE PROCESSING OF
15 LIGNOCELLULOSE DERIVED FROM WOOD, AND WAS
16 PRODUCED IN A FACILITY THAT PROCESSES
17 LIGNOCELLULOSE FROM WOOD, BUT THIS REDUCTION IN
18 THE RATE OF TAX APPLIES TO MOTOR FUEL CONSUMED BY
19 A USER THAT CONTAINS ALCOHOL THAT WAS PRODUCED
20 ONLY DURING THE FIRST FIVE YEARS OF THE FACILITY'S
21 PROCESSING OF LIGNOCELLULOSE FROM WOOD; OR

22 (ii) IS AT LEAST 10 PERCENT ALCOHOL BY
23 VOLUME, HAS BEEN PRODUCED FROM THE PROCESSING OF
24 WASTE SEAFOOD, AND WAS PRODUCED IN A FACILITY
25 THAT PROCESSES ALCOHOL FROM WASTE SEAFOOD, BUT
26 THIS REDUCTION IN THE RATE OF TAX APPLIES TO MOTOR
27 FUEL CONSUMED BY A USER THAT CONTAINS ALCOHOL
28 THAT WAS PRODUCED ONLY DURING THE FIRST FIVE
29 YEARS OF THE FACILITY'S PROCESSING OF ALCOHOL FROM
30 WASTE SEAFOOD].

31 * **Sec. 5.** AS 43.40.010(e) is amended to read:

1 (e) Sixty percent of the proceeds of the revenue from the motor fuel taxes on
2 aviation fuel, excluding the amount determined to have been spent by the state in its
3 collection, shall be refunded to a municipality owning and operating or leasing and
4 operating an airport in the proportion that the revenue was collected at the municipal
5 airport. All other proceeds of the motor fuel taxes on aviation fuel shall be paid into a
6 special aviation fuel tax account in the state general fund. The legislature may
7 appropriate funds from this account for capital or operating costs of airports
8 [AVIATION FACILITIES].

9 * **Sec. 6.** AS 43.40 is amended by adding a new section to read:

10 **Sec. 43.40.013. Collection of the refined fuel surcharge and the motor fuel**
11 **tax.** Every dealer who sells or otherwise transfers refined or motor fuel in the state
12 shall collect the surcharge and tax required in this chapter at the time of sale, and remit
13 the total surcharge and tax collected during each calendar month of each year to the
14 department by the last day of each succeeding month. Every user shall likewise remit
15 the surcharge and tax required in this chapter and accrued on fuel actually used by the
16 user during each month. If the monthly return is timely filed, one percent of the total
17 monthly surcharge and tax due, limited to a maximum of \$100, may be deducted and
18 retained to cover the expense of accounting and filing the monthly return. At the time
19 the remittance is made, each dealer or user shall submit a statement to the department
20 showing all fuel that the dealer or user has distributed or used during the month.

21 * **Sec. 7.** AS 43.40.015(c) is amended to read:

22 (c) A certificate of use obtained under this section must be renewed annually
23 for exemptions listed under AS 43.40.100(2).

24 * **Sec. 8.** AS 43.40.015(d) is amended to read:

25 (d) A certificate of use is not required under this section
26 (1) for fuel exempted under AS 43.40.100(2)(C) or (J); and
27 (2) for fuel exempted under AS 43.40.100(2)(I) other than fuel sold or
28 transferred under this exemption to a person who is engaged in construction or mining
29 activity.

30 * **Sec. 9.** AS 43.40.030 is amended to read:

31 **Sec. 43.40.030. Refund of the motor fuel tax for nonhighway use.** (a)

1 Except as specified in AS 43.40.010(j), a person who uses motor fuel to operate an
2 internal combustion engine is entitled to a motor fuel tax refund of six cents a gallon
3 if

4 (1) the tax on the motor fuel has been paid;

5 (2) the motor fuel is not aviation fuel, or motor fuel used in or on
6 watercraft; and

7 (3) the internal combustion engine is not used in or in conjunction with
8 a motor vehicle licensed to be operated on public ways.

9 (b) The entire amount of the motor fuel tax levied by this chapter shall be
10 refunded to the purchaser on that part of the motor fuel used in a foreign country on
11 which the tax has been paid when the fuel is sold and delivered in the state for non-
12 highway use in a foreign country.

13 (c) The department shall establish the necessary regulations and prescribe the
14 appropriate forms to prove that, for purposes of the motor fuel tax, the motor fuel is
15 taken to and used in foreign countries.

16 (d) If a person obtains motor fuel on which the motor fuel tax levied by this
17 chapter has been paid and the motor fuel is exempt from the motor fuel tax, the
18 person is entitled to a refund of the motor fuel tax paid.

19 * **Sec. 10.** AS 43.40.035(a) is amended to read:

20 (a) A person who resells fuel on which a surcharge under AS 43.40.005 or
21 the tax under AS 43.40.010(a) or (b) was previously paid is entitled to a credit or
22 refund of the (1) motor fuel tax if [(1)] the resold fuel is not motor fuel and the
23 requirements of AS 43.40.015 have been fulfilled; or (2) the amount of surcharge or
24 tax previously paid exceeds the surcharge or tax due on the resale. The amount of the
25 credit or refund under this section is equal to the amount of the surcharge or tax
26 previously paid on the resold fuel less the amount of the surcharge or tax prescribed
27 by AS 43.40.005 or 43.40.010(a) or (b), respectively [AS 43.40.010(a) OR (b)].

28 * **Sec. 11.** AS 43.40.035(c) is amended to read:

29 (c) For motor fuel sold to federal, state, and local government agencies for
30 official use and purchased with a government credit card, the credit card issuer may
31 apply for a refund of any motor fuel tax assessed on the purchase if the tax is not

1 billed by the credit card issuer to the government agency making the purchase. **For**
2 **refined fuel sold to federal agencies for official use and purchased with a**
3 **government credit card, the credit card issuer may apply for a refund of any**
4 **refined fuel surcharge assessed on the purchase if the surcharge is not billed by**
5 **the credit card issuer to the government agency making the purchase.**

6 * **Sec. 12.** AS 43.40.050(b) is amended to read:

7 (b) A claim for refund under AS 43.40.030 or 43.40.035 shall be filed within
8 one year **after** [FROM] the date of the purchase of the **refined or** motor fuel as
9 indicated on the invoice, and failure to file within the one-year period is a waiver of
10 the right to the refund. A claim is considered to be filed when the claim is mailed or
11 personally presented to an office of the department.

12 * **Sec. 13.** AS 43.40.060 is amended to read:

13 **Sec. 43.40.060. Separate invoices.** The department may require the issuance
14 of separate invoices for **refined or motor** fuel sold, distributed, or transferred when
15 the invoices will be the basis for a refund claim.

16 * **Sec. 14.** AS 43.40.070 is amended to read:

17 **Sec. 43.40.070. Refund warrants.** Upon approval of a refund claim **of the**
18 **motor fuel tax** by the department, a disbursement shall be made from the highway
19 fuel tax account in the general fund in favor of the applicant in the amount of the
20 claim.

21 * **Sec. 15.** AS 43.40.070 is amended by adding a new subsection to read:

22 (b) Upon approval of a refund claim of the refined fuel surcharge by the
23 department, a disbursement shall be made from the oil and hazardous substance
24 release prevention account of the oil and hazardous substance release prevention and
25 response fund established in AS 46.08.010 in favor of the applicant in the amount of
26 the claim.

27 * **Sec. 16.** AS 43.40.080(a) is amended to read:

28 (a) To determine the validity of a claim for refund, the department may
29 examine the books and records of the claimant and the books and records of a
30 distributor of **the refined or** motor fuel. The department may cancel the refund
31 [PERMIT] of **a** [THE] claimant relying **on** [UPON] a fraudulent invoice [FOR A

1 PERIOD OF NOT MORE THAN ONE YEAR].

2 * **Sec. 17.** AS 43.40.085 is amended to read:

3 **Sec. 43.40.085. Preservation of books and records.** Dealers and users shall
4 preserve for three years all books and records pertaining to sales, transfers, and uses of
5 refined or motor fuel that are subject to a surcharge or tax [TAXED] under this
6 chapter.

7 * **Sec. 18.** AS 43.40.092(a) is amended to read:

8 (a) The provisions of this section apply to disallow the exemption from the
9 motor fuel tax for motor fuel sold for use by a dealer or used by a user in jet
10 propulsion aircraft operating in flights that continue from foreign countries if, for
11 motor fuel produced by a refiner,

12 (1) the refiner determines, on or after July 1, 1997, that the refiner will
13 expand capacity or expand the refinery to produce more residual fuel oil used in
14 watercraft;

15 (2) on or after the July 1, 1997, the refiner has voluntarily committed
16 by agreement entered into with the commissioner that, if the refiner expands its oil
17 refining capacity in order to produce additional supplies of fuel for use in jet
18 propulsion aircraft that qualify for the tax exemption, when the refiner expands
19 capacity, the refiner will

20 (A) use the refiner's best efforts to advertise for, recruit, and
21 employ in the construction activities associated with expanding refinery
22 capacity resident workers who have experience in the specific fields in which
23 they are hired to work;

24 (B) contract with licensed Alaska firms to prepare materials
25 that are used in construction activities and to provide services in conjunction
26 with activities associated with expanded refinery capacity and, in contracting
27 with those firms, to encourage the refiner's contractors to employ and, when
28 necessary, train state residents; and

29 (C) enter into contracts with Alaska-licensed vendors,
30 contractors, and suppliers for the provision of supplies and services used in
31 conjunction with activities associated with expanding refinery capacity; and

1 (3) the commissioner determines that a dealer or user claiming the
2 exemption for motor fuel acquired from a refiner who has entered into an agreement
3 described in (2) of this subsection acquired the motor fuel for which the exemption is
4 claimed from a refiner who has not complied with the requirements of the agreement
5 in completing expansion of its oil refining capacity under the agreement described in
6 (1) of this subsection.

7 * **Sec. 19.** AS 43.40 is amended by adding a new section to read:

8 **Sec. 43.40.094. Qualified dealer license.** (a) A dealer is eligible for a qualified
9 dealer license if the dealer sells at least 50 percent of fuel acquired to unrelated
10 persons for any combination of the following purposes:

- 11 (1) resale;
12 (2) use in heating private or commercial buildings or facilities;
13 (3) use in jet propulsion aircraft;
14 (4) motor fuel.

15 (b) A person applying for a qualified dealer license must use a form or format
16 prescribed by the department. At the time of application, the applicant must provide an
17 estimate of the average number of gallons of fuel subject to surcharge or tax each
18 month during a calendar year, and state the estimated amount of surcharge and tax on
19 those gallons. A license issued under this section is not transferable.

20 (c) The department may not issue or renew a qualified dealer license if

21 (1) the department finds that the applicant or qualified dealer has
22 withheld information required in the application or that the information submitted in
23 the application is false or misleading;

24 (2) the applicant, or a responsible person of a business organization
25 that is applying for the license, has been convicted within the last 10 years, in this state
26 or in any other taxing jurisdiction, of crimes involving a fuel surcharge or tax;

27 (3) the qualified dealer fails to comply with a requirement of this
28 chapter;

29 (4) the qualified dealer has failed to pay in full the surcharge, taxes,
30 interest, and penalties levied under AS 43.05 or this chapter.

31 (d) The department may

- 1 (1) issue only one qualified dealer license to each person;
2 (2) put additional limitations on the applicant or holder of a qualified
3 dealer license.

4 (e) A license issued under this section expires on June 30 following the date of
5 issue. Before a license issued under this section expires, the licensee may apply to
6 renew the license, on a form or in a format prescribed by the department, for one year
7 after the expiration date of the license.

8 (f) If the department determines a qualified dealer license may not be issued or
9 renewed under this section, the department shall mail or electronically deliver a notice
10 of license denial or nonrenewal to the person whose license was denied or not
11 renewed. The person may appeal a notice of license denial or nonrenewal not later
12 than 10 days after the date the notice was mailed or electronically delivered.

13 (g) The department may, at the time an applicant applies for a qualified dealer
14 license, require the applicant to file a bond or other security with the department in an
15 amount equal to twice the estimated surcharge and tax due to the department in one
16 month, or \$5,000, whichever is greater.

17 (h) The department may adopt regulations to implement this section, including
18 regulations relating to the revocation of a license.

19 * **Sec. 20.** AS 43.40.100(1) is amended to read:

20 (1) "dealer" means a person who sells or otherwise transfers in this
21 state refined or motor fuel on [UPON] which the surcharge or tax [TAXES]
22 imposed by this chapter has [HAVE] not been paid;

23 * **Sec. 21.** AS 43.40.100(3) is amended to read:

24 (3) "qualified dealer" means a person who (A) refines, (B) imports, (C)
25 manufactures, (D) produces, (E) compounds, or (F) wholesales refined or motor fuel
26 [, WHO SATISFIES CRITERIA FOR QUALIFIED DEALERS ESTABLISHED BY
27 THE DEPARTMENT BY REGULATION, AND WHO OBTAINS A QUALIFIED
28 DEALER'S LICENSE FROM THE DEPARTMENT];

29 * **Sec. 22.** AS 43.40.100(4) is amended to read:

30 (4) "user" means a person consuming or using refined or motor fuel,
31 who

1 (A) purchases the fuel out of the state and ships it into the state
2 for personal use in the state;

3 (B) manufactures the fuel in the state; or

4 (C) purchases or receives fuel in the state that is not subject to
5 the surcharge or tax under this chapter [TAXED] at the time of purchase or
6 receipt or is subject to a surcharge or tax [TAXED AT A RATE] that is less
7 than the rate prescribed by AS 43.40.005 or 43.40.010 [AS 43.40.010].

8 * **Sec. 23.** AS 43.40.100 is amended by adding a new paragraph to read:

9 (5) "refined fuel" means fuel produced from oil that is used in an
10 engine, machine, or contrivance that creates heat, energy, or power.

11 * **Sec. 24.** AS 43.40.010(c) is repealed.

12 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **QUALIFIED DEALER LICENSE; REGULATIONS.** To the extent current
15 regulations are consistent with this Act, the regulations previously adopted by the Department
16 of Revenue relating to qualified dealers and qualified dealer licenses under AS 43.40.100
17 shall apply to qualified dealers and qualified dealer licenses until the regulations are amended
18 to be consistent with this Act.

19 * **Sec. 26.** This Act takes effect July 1, 2015.

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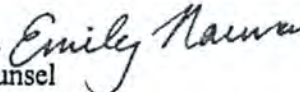
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 7, 2015

SUBJECT: Sectional Summary of CSHB 158(FIN)
(Work Order No. 29-LS0608I)

TO: Representative Cathy Muñoz
Attn: Crystal Koeneman

FROM: Emily Nauman 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 amends AS 43.05.230(g) by adding qualified dealer license information to the list of license information that is public.

Section 2 adds a new surcharge, a refined fuel surcharge, to AS 43.40, lists exemptions to the surcharge, and states that the legislature may appropriate the balance of the surcharge to the oil and hazardous substance release prevention account of the oil and hazardous substance release prevention and response fund.

Section 3 amends AS 43.40.010(a), the motor fuel tax, to conform to the addition of the refined fuel surcharge in sec. 2. Repeals language related to an alternate tax rate that, after 2004, is no longer applicable.

Section 4 amends AS 43.40.010(b), the motor fuel tax, to conform to the addition of the refined fuel surcharge in sec. 2. Repeals language related to an alternate tax rate that, after 2004, is no longer applicable.

Section 5 amends AS 43.40.010(e) to specify that AS 43.40.010(e) applies only to the motor fuel tax and not to the refined fuel surcharge. Amends AS 43.40.010(e) to state that money from the special aviation fuel tax account may be appropriated for "capital and operating expenses of airports," the subsection previously directed those funds to "aviation facilities."

Section 6 replaces repealed AS 43.40.010(c), that applied only to the motor fuel tax, with a new statutory section AS 43.40.013, that sets the schedule for remittance of the refined fuel surcharge and the motor fuel tax, and allows a deduction from the amount owed for the expense of filing a return.

Section 7 amends AS 43.40.015(c) to specify that the certificate of use requirement in 43.40.015 applies only to the motor fuel tax.

Section 8 amends AS 43.40.015(d) to specify that the certificate of use requirement in AS 43.40.015 applies only to the motor fuel tax.

Section 9 amends AS 43.40.030, related to the refund of the motor fuel tax for nonhighway use, to clarify that AS 43.40.030 applies only to the motor fuel tax.

Section 10 amends AS 43.40.035(a), relating to refunds for resales, to include the new refined fuel surcharge in AS 43.40.

Section 11 amends AS 43.40.035(c), relating to federal fuel purchase with a credit card to include the new refined fuel surcharge in AS 43.40.

Section 12 amends AS 43.40.050(b), relating to the timing and waiver of a tax or surcharge refund to include the new refined fuel surcharge in AS 43.40.

Section 13 amends AS 43.40.060, relating to the issuance of separate invoices related to a refund claim, to include the new refined fuel surcharge in AS 43.40.

Section 14 amends AS 43.40.070, related to the refund of the motor fuel tax from the highway fuel tax account, to clarify that AS 43.40.070 only applies to the motor fuel tax.

Section 15 adds a new subsection to AS 43.40.070 requiring that the department refund the refined fuel surcharge from the oil and hazardous substance release prevention account of the oil and hazardous substance release prevention and response fund.

Section 16 amends AS 43.40.080(a), relating to determining the validity of a refund claim to include the new refined fuel surcharge in AS 43.40.

Section 17 amends AS 43.40.085, requiring dealers and users of fuel to maintain records relating to sales of fuel for three years, to include the new refined fuel surcharge in AS 43.40.

Section 18 amends AS 43.40.092(a), relating to a motor fuel exemption for certain jet fuels, to specify that the subsection applies only to the motor fuel tax.

Section 19 adds a new section, AS 43.40.094, creating a qualified dealer license in statute.

Representative Cathy Muñoz
April 7, 2015
Page 3

Section 20 amends the definition of "dealer" AS 43.40.100(1) to include the new refined fuel surcharge in AS 43.40.

Section 21 amends the definition of "qualified dealer" AS 43.40.100(3) to include the new refined fuel surcharge in AS 43.40.

Section 22 amends the definition of "user" AS 43.40.100(4) to include the new refined fuel surcharge in AS 43.40.

Section 23 adds a definition for "refined fuel" to AS 43.40.100.

Section 24 repeals AS 43.40.010(c).

Section 25 provides transition language for regulations related to qualified dealer licenses.

Section 26 provides an effective date of July 1, 2015.

ELN:lnd
15-320.lnd



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Environmental
Conservation

OFFICE OF THE COMMISSIONER

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March 31, 2015

The Honorable Steve Thompson & Mark Neuman
Co-Chairs, House Finance Committee
State Capitol
Juneau, AK 99801

Dear Representatives Thompson & Neuman:

Thank you for hearing House Bill 158 – Refined Fuel Surcharge; Motor Fuel Taxes – on March 25th. During the hearing some questions arose that required additional information. The Department (DEC) has responded to those questions below. If you would like additional information, or have additional questions, we are happy to assist.

Can we see a report on the activities and functions of the Spill Prevention and Response Division over the past few years? (Rep. Thompson)

Please see the enclosed ‘Overview of the Spill Prevention and Response Division.’

Please also see the Biennial Report of the Oil & Hazardous Substance Release Prevention & Response Fund (O&HSRP&RF or Response Fund) available at this link (Please note the report is 574 pages):

<http://dec.alaska.gov/spar/rfa/docs/budget/biennial/Oil%20%20Hazardous%20Substance%20Release%20Prevention%20%20Response%20Fund%20-%20Fiscal%20Years%202013-2014%20Biennial%20Report.pdf>

How much did we spend on the most significant spills? (Rep. Gara)

The top spill sites active in FY2015 by total expenditure are shown in the table below. Please note these are the direct costs only, and do not reflect any of the indirect costs related to the spills.

Sites	Outstanding balance	Total Expenditure	Cost Recovered	Status
Aniak Airport	\$6,801,627.38	\$6,839,720.48	\$38,093.10	Settlement documents drawn to pay the outstanding expenditure.
River Terrace Laundry	\$4,223,172.79	\$6,503,477.78	\$2,280,304.99	Litigation matter. Placed a lien on the property and awaiting sale of the property to recover cost. (State Lead site)

Adak Naval Air Station Base Realignment and Closure	\$3,319,672.98	\$3,339,391.79	\$19,718.81	Currently drafting COBC (Compliance Order by Consent) with RP (Responsible Party) to recover outstanding balance.
Zipmart Store	\$2,504,078.38	\$3,257,701.09	\$753,622.71	We have recorded Lien again the RP. Settled with RP and received payment. Awaiting sale of property.
Flint Hills Refinery	\$2,251,971.99	\$4,438,244.77	\$2,186,272.78	Pending settlement matter, in the process of recovering outstanding balance.

The cost of a spill does not provide the entire picture. Overall, oil spills tend to cost most, but the state gets reimbursed when responding to oil spills. Since the State of Alaska has imposed prevention laws and regulations the frequency of large spills has decreased. Other than large marine vessels in innocent passage, the State of Alaska regulates all oil exploration, production, and transportation. If a company DEC regulates has a release, they are required by law to adequately respond. If the Spill Prevention and Response Division (SPAR) feels their response is inadequate, they have the capacity to take over the response but the responsible party must reimburse DEC for our expenses by law. Therefore, any SPAR expense related to a spill of a regulated company is recovered and the fund is sustained.

On the other hand, SPAR's responses to unregulated entities result in much more difficult cost recovery. These range from home owners to mines, small businesses (dry cleaners are particularly problematic), fishing vessels, and trucking companies. DEC is only able to recover a percentage of our costs for these entities and with complicated contaminated sites it takes many years. In some cases, we are unable to identify a responsible party, the responsible party has passed away, or the responsible party is simply unable to pay. DEC attempts to recover costs from everyone but with limited success. Some of these are very expensive as well, such as dry cleaners, but the majority are small fuel spills. So in terms of the costs that are draining the O&HSRP&RF's Prevention Account, refined fuel spills are more costly, primarily because industries and individuals SPAR does not regulate cause the majority of spills and don't have the resources to reimburse us.

Who is responsible for a spill at an airport? The airline or the airport? (Rep. Neuman)

This is a common scenario during most spills. For example, a truck roll over involves the company hauling the fuel, the company that owns the truck, and the company they are hauling the fuel for. There are similar issues with boats that are usually operated by a company that doesn't own the boat and another company that owns the product being transported. Planes and airports are similar.

By law, they are all considered potentially responsible parties (PRP's). For purposes of liability, Department of Law works with all the companies to determine which entity is responsible for what. This process can take years, which is one reason it is difficult to track cost recovery. If one of the responsible parties doesn't immediately step up to run response operations, SPAR does it

and recovers costs after the fact. Most companies prefer to do it themselves so they can control costs. Our threat of taking a response over is usually an incentive for the PRP's to quickly work together to establish a unified response. For example, one of the recent truck rollovers on the Dalton Highway resulted in the fuel buyer (an oil company) establishing the response command since they were the most experienced in that type of work. Afterward, they worked with the other PRP's to allocate cost responsibility. Most companies know punishment is greater if they wait as is cost to contain and clean up a spill. Prevention is by far cheaper than response but once a response has started, quick recovery is far cheaper than a protracted cleanup.

Would jet fuel used on a domestic flight be taxed despite whether they were a carrier under the Alaska International Airport System? (Rep. Pruitt)

The Department of Revenue will be providing a response to this question.

Why wasn't SPAR money able to be used concerning the Flint Hills contamination?

DEC is using money from the Response Fund to address Flint Hills Refinery contamination. To date, \$4,193,002.75 has come from the Response Account, while \$229,106.94 has come from the Prevention Account.

Why not just increase the per barrel oil surcharge?

This a policy decision. The majority of spills are refined fuel as well as the majority of contaminated sites. The proposed surcharge in HB158 spreads the cost across all spillers since the oil industry is only responsible for a small portion of these spills.

What are the statutes pertaining to the requirements for DEC to respond to a spill? If DEC is called is the department required to respond? If so how does DEC gauge the initial response to a spill or report of a spill? (Rep. Gattis)

AS 46.04.020 (d) states "the department shall provide for the immediate containment or cleanup of an oil discharge of unexplained origin..."

AS 46.08.030 states "It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available."

If there is a responsible party, they are required to respond and report the spill as described below.

All spills, even in de minimus amounts, are reportable to the State under AS 46.03.745. Reporting requirements are set in 18 AAC 75.300. Those requirements are detailed below.

Hazardous Substance Releases (AS 46.03.745)

Any release of a hazardous substance must be reported as soon as the person has knowledge of the discharge.

Oil/Petroleum Releases (AS 46.03.740)

To Water: Any release of oil to water must be reported as soon as the person has knowledge of the discharge.

To Land: Any release of oil in excess of 55 gallons must be reported as soon as the person has knowledge of the discharge. Any release of oil in excess of 10 gallons but less than 55 gallons must be reported within 48 hours after the person has knowledge of the discharge. A person in charge of a facility or operation shall maintain, and provide to the Department on a monthly basis, a written record of any discharge of oil from 1 to 10 gallons.

To impermeable secondary containment areas: Any release of oil in excess of 55 gallons must be reported within 48 hours after the person has knowledge of the discharge.

The vast majority of spills are addressed by the spiller without DEC involvement. It's important that the Department be notified of all spills because multiple small spills from a facility/operation may trigger concerns that should be addressed to avoid a potentially larger spill. Given the number of very small spills that are reported to the State, the Department must manage its limited spill response resources efficiently and strategically based on the potential risk of harm to human health and the environment. This means that the Department does not actively respond to every spill reported. In cases where the Department is notified of a small spill but a response is not feasible or advisable, staff provide the spiller with technical guidance for necessary cleanup.

What state petroleum standards are more stringent than federal standards? (Rep. Wilson)

The EPA has not established cleanup levels for petroleum hydrocarbons because these substances are not regulated under the Comprehensive Environmental Response Compensation and Liability Act. Therefore, the state has established cleanup levels for petroleum ranges that address releases of refined fuels. These cleanup levels are established in regulation at 18 AAC 75.341(d) and 18 AAC 75.345(b)(1). Please see the enclosed 'ADEC Cleanup Levels Established for Petroleum for Soil and Groundwater.'

The Alaska Water Quality Standards contain petroleum criteria for total aromatic hydrocarbons (TAH) and total aqueous hydrocarbons (TAqH); state standards are found in 18 AAC 70.020(b)(5) for fresh water and 18 AAC 70.020(b)(17) for marine water protecting the uses for aquaculture and growth and propagation of fish, shellfish, other aquatic life and wildlife. Alaska's TAH and TAqH numeric criteria were set in 1979 based on toxicity tests of Alaskan aquatic species implemented following federal narrative criteria (1986 Gold Book), which are required for states to adopt under Clean Water Act section 304(a). Alaska's numeric criteria is more stringent than other states numeric criteria for petroleum, but are not directly comparable to any federal numeric water quality criteria under the Clean Water Act.

We hope these responses prove useful to the Committee, please feel free to follow up with us if you require additional information or have additional questions.

Sincerely,



Alice Edwards
Deputy Commissioner

Enclosures: ADEC Cleanup Levels Established For Petroleum for Soil and Groundwater
Overview of the Spill Prevention and Response Division.



THE STATE
of **ALASKA**
 GOVERNOR BILL WALKER

April 1, 2015

The Honorable Steve Thompson
 The Honorable Mark Neuman
 Co-chairs, House Finance Committee
 State Capitol
 Juneau, AK 99801

Delivered Electronically via Email:

Dear Rep Thompson and Rep. Neuman:

I am writing to respond to questions that were raised during the March 25 hearing in your committee on HB 158, "An Act relating to a refined fuel surcharge." The analysis in this letter is based on work draft CS HB 158(FIN)\E.

First Question, from Rep. Neuman:

Explain in detail the various exemptions to the current motor fuel tax and which of these would and would not also be exempt in the proposed Refined Fuel Surcharge.

Answer:

The exemptions in current law are listed within the definition of "motor fuel," in AS 43.40.100(2). In the below table, we list these exemptions, indicate whether they are or are not also exempted in Sec. 2 of CSHB 158(FIN)\E, and indicate the average amount of fuel that was exempted from tax in Fiscal Years 2013-2014.

Category	Reference	Gallons (million)	Exempted in HB 158?
Total Reported Fuel Sales		1,555	n/a
Off-highway use	AS 43.40.030 (note: for this fuel, tax is paid at 8 cents and the refunded at 6 cents)	55	No
Exported	AS 43.40.100(2)(A)	61	Yes
Foreign Flights	AS 43.40.100(2)(B)	481	Yes
Utilities / Power Plants	AS 43.40.100(2)(C),(D),(H),(K)	33	No
Charitable Institutions	AS 43.40.100(2)(E)	1	No
Federal, State, and	AS 43.40.100(2)(G)	103	Yes

Local Government			
Heating Oil	AS 43.40.100(2)(I)	109	No
Other	AS 43.40.100(2)(K)	15	No
Total Taxable (Motor Fuel)		627	
Total Subject to Surcharge (HB 158)		930	

As you can see, the primary fuel types that would be subject to the surcharge while exempted from the motor fuel tax are heating fuel, fuel used in a vehicle for off highway use, and sales to utilities and power plants. In addition, much of the fuel that is initially taxed and on which the tax is later refunded is believed to also consist of heating fuel.

Second Question, from Rep. Pruitt

Would a UPS flight from a foreign country that refueled in Alaska and continued on to Memphis be subject to the Motor Fuel tax?

Answer:


In general, yes. So long as the flight is characterized as "continuing," which primarily means having the same flight number, that fuel would be exempt per AS 43.40.100(2)(B)(ii).

There is interesting legislative back story to this provision. The initial statute language in .100(2)(B) was limited to flights to foreign countries. The most recent major changes to the motor fuel tax statutes were in HB 63 in 1997, by Rep. Therriault of North Pole. In that bill, the "continuing from" language was added, along with the refinery expansion / voluntary Alaska Hire provisions in AS 43.40.092. It is clear from reading the legislative history that the "continuing from" language was added in large part to level the playing field for jet fuel manufactured in Alaska.

Much of the jet fuel imported into Alaska is imported from foreign countries. If used in international flights (including continuing flights), this "bonded" fuel is exempt from local taxation under federal law. Therefore, elimination of the "continuing from" language, although it would potentially add many gallons to the tax base, would only tax fuel from in-state refiners.

I hope you find this information is useful. Please let me know if we can provide any additional information.

Regards



Ken Alper
Director, Tax Division

Cc: Lacy Wilcox, Office of the Governor
Commissioner Larry Hartig, Department of Environmental Conservation
Deputy Commissioner Jerry Burnett, Department of Revenue



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Environmental
Conservation

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April 2, 2015

The Honorable Steve Thompson & Mark Neuman
Co-Chairs, House Finance Committee
State Capitol
Juneau, AK 99801

Dear Representatives Thompson & Neuman:

Thank you for hearing House Bill 158 – Refined Fuel Surcharge; Motor Fuel Taxes – on April 1st. During the hearing some questions arose that required additional information. The Department (DEC) has responded to those questions below. If you would like additional information, or have additional questions, we are happy to assist.

Can we see an audit report of the Spill Prevention and Response (SPAR) Division? (Rep. Wilson)

The last audit of SPAR was in 2008. You can find the report at the following link:
<http://legaudit.akleg.gov/docs/audits/special/dec/30047rpt-2008.pdf>.

Are there limits on the use of the response fund once money is appropriated to it?

AS 46.08.040 describes uses of the fund. Subsection (2) specifically says the prevention account may be used to:

- (A) investigate and evaluate the release or threatened release of oil or a hazardous substance, except for [natural disasters] and contain, clean up, and take other necessary action such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance.
- (B) pay all costs incurred (i) to establish and maintain the oil and hazardous substance response office; (ii) under agreements entered into under 46.04.090 or 46.09.040; (iii) to review Contingency plans; (iv) to conduct training, response exercises, inspections and tests, in order to verify equipment inventories and ability to prevent and respond to spills...(v) to verify or establish proof of financial responsibility.

Wal-Mart inherited contamination at the Muldoon/DeBarr intersection in Anchorage when it bought the property. Who's responsible for paying for that cleanup? (Rep. Pruitt)

In December 2005, prior to the property being sold, Walmart entered into a Prospective Purchaser Agreement (PPA or Agreement) with the state to conduct the environmental cleanup of the property and pay cost recovery totaling \$900,000. We subsequently had a

dispute about some of the money spent under the PPA and settled under an 'Accord and Satisfaction' (Accord) in September 2013 to satisfy the requirements of the PPA.

Cost recovery against the prior owner was not possible as the prior owner corporation was dissolved. Miller, the principal of the company, died and his estate was distributed so there is no recourse for future cost recovery. The existence of prior insurance is not known since the corporation dissolved long ago.

Work required under the Accord included installation and sampling of soil gas probes, soil borings, and monitoring wells on the western portion of the site, including areas next to a church on adjacent property. The Accord had the purpose of prioritizing the remaining environmental work under the former agreement and in so doing, DEC made the decision to suspend cost recovery for time spent by the project manager to ensure that the priority tasks were accomplished. This resulted in approximately \$1,000 not cost recovered.

Following completion of the activities set forth in the Accord, estimated to take place by July 2015, DEC will either issue a Cleanup Complete designation for the Site with or without institutional controls, or if the site is not eligible for either of these designations, will inform Walmart of the additional work required to reach Cleanup Complete, and the PPA will be closed out.

Does the SPAR division get full reasonable attorneys' fees in its cost-recovery actions? (Rep. Gara)

The Department believes we do get full reasonable attorney fees and costs under AS 46.03.822 and under AS 46.03.760(d). We do not have a state court ruling on the issue. AS 46.03.763 allows for full reasonable attorney fees in an action to collect a civil penalty under AS 46.03.758, AS 46.03.759 or AS 46.03.760 for a discharge of oil.

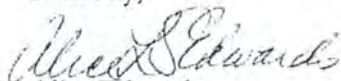
Are regulations sufficient to ensure the State isn't held hostage in fixing cost-recovery problem, or is a change in statute required? (Rep. Pruitt)

The Department does not need better liability authority in statute. AS 46.03.822 goes into great detail about who is liable for a release of hazardous substance. The Department does not believe it could be stricter. As said in testimony, the land owner is responsible even if they didn't cause the contamination. DEC has the authority to pursue other responsible parties if a connection to the release can be clearly made.

AS 46.08.070 already requires DEC to seek reimbursement promptly as does AS 46.04.010. AS 46.08.075 allows the Department of Law to put liens on property to reimburse the Department's expenses.

We hope these responses prove useful to the Committee, please feel free to follow up with us if you require additional information or have additional questions.

Sincerely,


Alice Edwards
Deputy Commissioner

907 586-4004

Law Office of Douglas K. Mertz 1-888-293-2530 [fax]

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mertzlaw@gmail.com

March 24, 2015

Hon. Mark Neuman
Hon. Steve Thompson
Co-chairs, House Finance Committee

Re: HB 158, Position of Prince William Sound Regional Citizens Advisory
Council

Dear Representatives:

Please accept these comments on behalf of my client, the Prince William Sound Citizens Advisory Council, on House Bill 158, which comes before your committee tomorrow.

The RCAC was founded in the wake of the Exxon Valdez spill as a preeminent source of expertise on oil spill prevention and response. The primary lessons learned from that spill are

1) Prevention is the most important single step in avoiding damage and large spill response costs; and 2) if a spill is not contained within 72 hours, very little will be recovered. So we must have a robust prevention program and be prepared to respond to spills immediately and with full vigor.

When the current laws were passed and improved on after the Exxon Valdez, the easiest solution seemed to be to put the burden entirely on the crude oil industry. Almost all of us have come to recognize that it would be fairer to spread the burden among all entities who have a role in created spill expenses, both the crude oil producers and the refined product producers and transporters. It makes sense to spread the burden among all who handle products that may be spilled.

Prevention is cheap insurance. The Exxon Valdez spill cost Exxon over \$2.5 billion, and today many spillers are either not insured, are underinsured, or cannot be found. Having a sound prevention system and a sensible response capacity are protections for the state treasury.

We support this bill, but note the one thing that is lacking. The bill would increase revenue available to the prevention efforts of ADEC, but would do nothing for the response program. The response fund is now capped at \$50 million, i.e., the surcharge no longer is collected after the fund reaches that amount. But \$50 million in 1991 dollars is roughly the equivalent of \$32 million today, due to inflation. So in essence we have fewer real dollars available to respond to spills today than we did twenty-five years ago. We recommend that an inflation adjustment be added to the response account or that the \$50 million cap be expanded to \$75 million to make up for inflation. The funds will be available for the immediate response that is critical to prevent greater damage and higher costs.

With that suggestion, we support HB 158 and urge its passage.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas K. Mertz". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Douglas K Mertz
For the Prince William Sound RCAC

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114
Kara Moriarty, President/CEO

AOGA Testimony on House Bill 158
House Finance Committee
April 1, 2015

Good Afternoon Co-Chairs Thompson & Neuman and members of the Committee. For the record, my name is Kara Moriarty and I am the President/CEO of the Alaska Oil and Gas Association, commonly referred to as "AOGA".

AOGA is a professional trade association whose mission is to foster the long-term viability of the oil and gas industry in Alaska for the benefit of all Alaskans. Thank you for the opportunity to testify today on House Bill 158, an act relating to a refined fuel surcharge; relating to the motor fuel tax; relating to a qualified dealer license; and providing for an effective date.

AOGA represents the majority of oil and gas producers, explorers, refiners, transporters and marketers in Alaska. Our current members include: Alyeska Pipeline Service Company, Apache Corporation, BP, Caelus Energy, Chevron, eni petroleum, ExxonMobil, Hilcorp, PetroStar, Repsol, Shell, Statoil, Tesoro, and XTO Energy. Because this legislation is a tax related matter, this testimony has the unanimous consent from all of these companies; producers and refiners alike.

As a bit of history, Alaska has had some sort of oil spill cleanup fund in place since 1976 when the state created the Coastal Protection Fund during the construction of the Trans-Alaska Pipeline System or TAPS. Over time, the fund morphed into the Oil Spill Mitigation Account, then the Oil Spill Reserve Account, then in 1986, into what it is today, the Oil and Hazardous Substance Prevention & Release Response Fund, or what it is commonly referred to as the "470 Fund", a reference to the bill number that created it. The revenue generated by HB 158 would be deposited into the prevention account of this fund.

In addition to the hundreds of millions of dollars invested each year by the industry in

Alaska to prevent, prepare and respond to the release of hazardous substances, AOGA has long supported fair and equitable efforts to ensure the State of Alaska is also financially prepared.

To date, the state has collected a surcharge only on the oil and gas industry to pay for the "470 fund". If an incident occurs, the oil and gas industry also repays costs associated with the response, as do some other industries. Still, the oil and gas industry is the only industry that has been assessed a specific surcharge/tax to pay for the purposes of this fund, even though the state utilizes the fund for a variety of other industries and individual Alaskans. To date, the oil and gas industry has contributed more than \$350 million through this surcharge for the 470 Fund.

AOGA has been engaged in the policy decisions surrounding the 470 Fund since its inception. In 1994, AOGA supported the legislation that split the initial surcharge into two separate accounts, one for response and one for prevention. AOGA did not oppose the modification to the surcharge in 2006 because the total taxable amount remained at 5 cents per barrel.

Despite the stated purpose of cleaning up and preventing spills, previous Administrations and Legislatures allowed for the fund to be used for non-spill projects such as campgrounds, state airports, tank farm remediation, privately owned greenhouses and new ferries. DEC and the Legislature should be commended because it appears these types of expenditures are no longer being appropriated from the fund, but the corpus of the fund may have been unnecessarily reduced during years when these types of appropriations were authorized.

Although oil and gas production currently accounts for 100 percent of the surcharge for the fund, DEC annual reports show that, from Fiscal Year 2010 – FY 2014, oil production and exploration and natural gas production altogether amount to less than 29% of total spill volume.

It is important to note, as I've mentioned, the oil and gas industry invests hundreds of millions of dollars every year to have a robust response capabilities in the event an industry-related spill occurs. We are required by federal and state regulations to have current contingency plans in place, have spill response equipment available and exercise both plan and equipment regularly. In addition, the companies belong to not-for-profit response

cooperative, such as Cook Inlet Spill Prevention and Response and Alaska Clean Seas.

AOGA endorses the same position as the Oil and Gas Transition Team for the Walker/Mallott administration, which advocated for the State to utilize other revenue sources before increasing the surcharge on the oil and gas industry. House Bill 158 does broaden the contributing efforts of others that use the fund's services.

Additionally, AOGA advocates for DEC to continue to identify efficiencies internally. To that end, AOGA has identified suggestions for DEC's consideration and will work with the State to further identify cost reductions without diminishing the state's strong oversight and regulation of the industry.

We also encourage the State to adopt other policies to assist the state in recovering costs from other users who are not currently reimbursing the State after a response. In FY 14, DEC billed more than \$3 million to various industries and recovered one-third of that amount. To strengthen the State of Alaska's oil spill preparedness and response, there must be an effort to recover more than 30 percent of the state's spending.

In closing, AOGA is not opposed to House Bill 158. It does broaden the contributions of others that use the fund's services without having an overly adverse impact on our member companies.

March 30-April 1, 2015

Dear House and Senate Finance Committees,

Alaska's healthy fisheries depend on a robust oil and hazardous substance spill prevention and response agency. I support the approach proposed in HB 158 and SB 86. A modest per gallon surcharge on refined fuel products will help the Department of Environmental Conservation contain oil spills and clean up hazardous contaminated sites.

As you are aware, this fund is used to assist in large spill response activities, oil spill response training, contaminated soil clean up, containment of spills on land and water, and the administrative functions of the Spill Prevention and Response Division.

Without this important capacity to prevent, respond to, and clean up oil spills both large and small, we run the risk of putting the burden of cleanup on future Alaskans, and impacting the market perception of our world class wild Alaskan fisheries.

Oil and gas development is integral to the Alaska economy. It is fitting that we should have a well-funded agency prepared to quickly assist when an accidental spill occurs. Please consider and pass HB 158 or SB 86 this session so Alaska can maintain its reputation for responsible resource development, which includes accidental spill prevention and cleanup.

I support HB 158 and SB 86 - please fund our Spill Prevention and Response Division

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