

Leg. Finance - House & Senate Finance Comte Files (1973-74)

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1 mail to the taxpayer. At the hearing a person may be required to appear
2 and testify and produce records and other papers as provided in
3 AS 43.05.040.

4 (c) A person aggrieved by an action of the department may apply
5 in writing to the department within 60 days from the date of the notice
6 of the action, giving notice of the grievance and requesting a hearing.

7 (d) If the department determines that a fee in excess of the
8 amount due was paid, he shall allow a refund or permit a credit at the
9 option of the taxpayer. If refund is allowed, it shall be made out of
10 the general fund by a voucher approved by the department.

11 Sec. 43.71.040. APPEALS. If the person is aggrieved by the
12 decision of the department, he may appeal to the superior court in the
13 judicial district where he conducts his business.

14 Sec. 43.71.050. CIVIL PENALTY. (a) If a person fails to file a
15 business license return or pay the fee, as finally determined by the
16 department, unless it is shown that the failure is due to reasonable
17 cause and not to wilful neglect, five per cent is added to the fee for
18 each additional 30 days, or fraction of 30 days, during which the
19 failure continues, but not exceeding 25 per cent in the aggregate. The
20 amount added to the fee shall be collected at the same time and in the
21 same manner as the fee. In case of delinquency interest shall be
22 assessed at the rate of six per cent a year. If payment is made by
23 check, bill of exchange, or note which is later returned by the drawee
24 as uncollectible because of insufficient funds or is dishonored by the
25 drawee for any reason, the dishonor is prima facie evidence of nonpay-
26 ment of the license fee.

27 (b) If a person fails to apply for a license at the required time
28 or makes, wilfully or otherwise, an erroneous or fraudulent return, the
29 department shall assess the fee from any information it can obtain.

1 This assessment is prima facie good and sufficient for all legal purposes
2 under this chapter.

3 Sec. 43.71.060. SECURITY. The amount of the fee, interest
4 charge, and penalty imposed under this chapter constitutes a lien in
5 favor of the state upon all the person's property located in the state.
6 The lien arises upon delinquency and continues until the liability for
7 the amount is satisfied or the property is sold at foreclosure sale.
8 The lien is not valid as against a mortgagee, pledgee, purchaser, or
9 judgment creditor until notice of the lien is filed in the office of the
10 recorder in the manner provided for federal tax liens in AS 43.10.090 -
11 43.10.150. AS 43.10.090 - 43.10.150 apply to the tax liens arising under
12 this chapter.

13 Sec. 43.71.070. DISPOSAL OF MONEY. (a) All money collected under
14 this chapter shall be deposited in the general fund.

15 (b) The legislature is authorized to appropriate each year to the
16 Department of Revenue an amount equal to 80 per cent of the money
17 collected in each organized borough and each organized city. The
18 amount appropriated to the department under this section to be distri-
19 buted to each organized borough and city in proportion to amount of
20 license fees collected in the local government.

21 Sec. 43.71.080. REGULATIONS. The department may adopt regulations
22 necessary to determine and collect the fees imposed and to enforce this
23 chapter.

24 Sec. 43.71.090. PENAL PROVISIONS. (a) It is unlawful for a person
25 to (1) wilfully evade a tax under this chapter; (2) fail to make a
26 return or keep or produce a record required under sec. 20 of this
27 chapter; (3) make a false or fraudulent return or false statement with
28 intent to defraud the state or evade payment of the tax; or (4) aid or
29 abet another in an attempt to evade payment of the tax.

1 (b) It is unlawful for an executive officer or agent of a corpora-
2 tion or agent of a person to make or permit to be made for his principal
3 a false return or false statement in answer to an inquiry from the depart-
4 ment with the intent to evade the payment of the tax under this chapter.

5 (c) A person who violates this section is guilty of a misdemeanor,
6 and upon conviction is punishable by a fine of not more than \$5,000, or
7 by imprisonment for not more than one year, or by both.

8 (d) In a prosecution under this chapter, no person otherwise
9 competent as a witness is privileged from testifying on the ground that
10 his testimony may incriminate him. However, no indictment or prosecu-
11 tion shall afterwards be brought against the witness on account of an
12 offense or transaction concerning which he testifies as a witness.

13 In a prosecution under this chapter, the attorney general may, with the
14 consent of the department, compromise the case by accepting from the
15 defendant a sum not less than the tax, interest on the tax, and all
16 costs and expenses.

17 Sec. 43.71.100. DEFINITIONS. In this chapter, unless the context
18 otherwise requires, the following words have the meanings indicated.

19 (1) "Business" includes all activities or acts, personal,
20 professional, or corporate, engaged in or caused to be engaged in, or
21 following or engaging in a trade, profession, or business, calling or
22 vocation, with the object of financial or pecuniary gain, profit or
23 benefit, either direct or indirect, and not exempting subactivities pro-
24 ducing marketable commodities or services used or consumed in the main
25 business activity, each of which subactivities shall be considered
26 business. The giving or supplying of services as an employee and the
27 furnishing of property, services, substances, or things, by a person who
28 does not hold himself out as regularly engaging in those transactions,
29 does not constitute business under the meaning of this chapter.

1 (2) "Gross receipts" means receipts from sources in the
2 state, whether in the form of money, credits, or other valuable con-
3 sideration received from engaging in or conducting a business without
4 deducting the cost of the property sold, the cost of the materials
5 used, labor or service cost, interest paid, taxes, losses, or any other
6 expense, except that "gross receipts" does not include cash discounts
7 allowed and taken on sales, and sales refunds, either in cash or by
8 credit, uncollectible accounts written off, and payments received in
9 final liquidation of accounts included in the gross receipts of a
10 previous return made by the person. Receipts from sales, wherever made,
11 of goods, wares, and merchandise manufactured or processed or origina-
12 ting in the state are considered a part of gross receipts from sources
13 in the state, and the holder of a state license under this chapter
14 doing bus ss inside and outside the state is liable under this chapter
15 as to that portion of his gross receipts attributable to his Alaska
16 operation. "Gross receipts" also includes all amounts paid or assigned
17 to subcontractors. Individuals representing firms taxed under this
18 chapter on volume of business done, working as agents on commission
19 instead of as employees, may compute their gross receipts as equal to
20 their gross commissions.

21 (3) "Person" includes an individual, firm, partnership, joint
22 adventure, association, corporation, estate trust, business trust,
23 receiver, or any group or combination acting as a unit.

24 Sec. 43.71.110. SHORT TITLE. This chapter may be cited as the
25 Alaska Business and Occupation Tax Act.

26 * Sec. 3. This Act takes effect January 1, 1975.
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Original sponsor: J. Miller, Hartig
and Saylor

Offered: 4/11/74
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 738

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act repealing the Alaska Business License Act and
7 establishing the Alaska Business and Occupation
8 License; and providing for an effective date."

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

10 * Section 1. AS 43.70 is repealed.

11 * Sec. 2. AS 43 is amended by adding a new chapter to read:

12 CHAPTER 71. BUSINESS AND OCCUPATION LICENSE.

13 Sec. 43.71.010. APPLICATION FOR LICENSE. (a) For the privilege
14 of engaging in a business in the state, a person shall first apply, upon
15 forms prescribed by the commissioner, obtain a license and pay the
16 license fee provided for in this chapter. A license issued to a firm
17 for a particular line of business covers all its operations in the state
18 in the line of business regardless of the number of its establishments.
19 Application for a renewal of a license and payment of the initial fee
20 shall be made before February 1 of each year. No license may be issued
21 for a period extending beyond the end of the calendar year for which it
22 is issued.

23 (b) A person engaging in a business subject to licensing provisions
24 of a regulatory nature (for example, the requirement of posting a bond
25 before beginning business as a collection agency) must, in addition to
26 filing the regular application required by this section, comply with
27 those regulatory provisions before being entitled to a license under
28 this chapter.

29 Sec. 43.71.020. LICENSE FEE FOR BUSINESSES. The license fee

1 for each business is \$25 and shall accompany the application. The
2 annual license fee paid by a professional person to his professional
3 board shall be credited against the fee required under this chapter.

4 Sec. 43.71.030. LICENSE FEE FOR BANKS, TRUST COMPANIES AND SAVINGS
5 AND LOAN COMPANIES. (a) The license fee for each national bank and
6 state bank, trust company and savings and loan association is seven
7 per cent of its net income. Net income means the taxable income of
8 each taxpayer before net operating loss deduction and special deductions,
9 computed as required under the Internal Revenue Code of the United
10 States and includes all other income including income from federal,
11 state or municipal obligation. Each of these taxpayers shall submit a
12 copy of the income tax return which it files with the United States
13 Collector of Internal Revenue and shall notify the commissioner of
14 revenue in writing of any alteration or modification of the federal
15 income tax return and of a recomputation of tax or determination of
16 deficiency. This statement shall be in the same form as a federal
17 income tax return and the net income shall be computed as required
18 under the Internal Revenue Code. The statement shall be submitted to
19 the commissioner of revenue before April 16 after the close of the
20 calendar year.

21 (b) An initial fee of \$25 shall accompany the application. The
22 balance payable under this section is due and payable on December 31
23 of each year and shall be paid before April 16 following, except that
24 the department may extend the time until the 30th of the following
25 April upon application showing that the extension is necessary to
26 enable the applicant to ascertain the amount of license money due. To
27 enable accurate determination of the balance of the tax due at the end
28 of each year, each person to whom this section applies shall keep
29 records, give statements under oath, and make returns which the depart-

1 ment requires. Returns are made under penalty of perjury.

2 (c) As soon as practicable after the final payment of the tax
3 under this section, the department shall examine the return and deter-
4 mine the correct amount of the tax and, if an error is found, shall
5 notify the taxpayer of the error and examine the taxpayer's records as
6 authorized in AS 43.05.040, and take other proper steps to determine
7 the amount due. If an agreement cannot be reached with the taxpayer
8 as to the amount of a license tax, the department may set a time and
9 place of hearing on the question, upon at least 60 days notice of the
10 hearing by mail to the taxpayer. At the hearing a person may be
11 required to appear and testify and produce records and other papers as
12 provided in AS 43.05.040.

13 (d) A person aggrieved by an action of the department may apply
14 in writing to the department within 60 days from the date of the
15 notice of the action, giving notice of the grievance and requesting a
16 hearing. If the department determines that a fee in excess of the
17 amount due was paid, he shall allow a refund or permit a credit at the
18 option of the taxpayer. If refund is allowed, it shall be made out of
19 the general fund by a voucher approved by the department.

20 (e) If a person fails to file a business license return or pay
21 the fee under this section, as finally determined by the department,
22 unless it is shown that the failure is due to reasonable cause and not
23 to wilful neglect, five per cent is added to the fee for each addi-
24 tional 30 days, or fraction of 30 days, during which the failure
25 continues, but not exceeding 25 per cent in the aggregate. The amount
26 added to the fee shall be collected at the same time and in the same
27 manner as the fee. In case of delinquency interest shall be assessed
28 at the rate of six per cent a year. If payment is made by check, bill
29 of exchange, or note which is later returned by the drawee as uncol-

1 lectible because of insufficient funds or is dishonored by the drawee
2 for any reason, the dishonor is prima facie evidence of nonpayment of
3 the license fee.

4 (f) If a person fails to apply for a license at the required
5 time or makes, wilfully or otherwise, an erroneous or fraudulent
6 return, the department shall assess the fee from any information it
7 can obtain. This assessment is prima facie good and sufficient for
8 all legal purposes under this chapter.

9 Sec. 43.71.040. APPEALS. If the person is aggrieved by the
10 decision of the department, he may appeal to the superior court in the
11 judicial district where he conducts his business.

12 Sec. 43.71.050. SECURITY. The amount of the fee, interest
13 charge, and penalty imposed under this chapter constitutes a lien in
14 favor of the state upon all the person's property located in the state.
15 The lien arises upon delinquency and continues until the liability for
16 the amount is satisfied or the property is sold at foreclosure sale.
17 The lien is not valid as against a mortgagee, pledgee, purchaser, or
18 judgment creditor until notice of the lien is filed in the office of the
19 recorder in the manner provided for federal tax liens in AS 43.10.090 -
20 43.10.150. AS 43.10.090 - 43.10.150 apply to the tax liens arising under
21 this chapter.

22 Sec. 43.71.060. DISPOSAL OF MONEY. All money collected under
23 this chapter shall be deposited in the general fund.

24 Sec. 43.71.070. REGULATIONS. The department may adopt regulations
25 necessary to determine and collect the fees imposed and to enforce this
26 chapter.

27 Sec. 43.71.080. PENAL PROVISIONS. (a) It is unlawful for a person
28 to (1) wilfully evade a tax under sec. 30 of this chapter; (2) fail
29 to make a return or keep or produce a record required under sec. 30

1 of this chapter; (3) make a false or fraudulent return or false
2 statement with intent to defraud the state or evade payment of the
3 tax; or (4) aid or abet another in an attempt to evade payment of the
4 tax.

5 (b) It is unlawful for an executive officer or agent of a corpora-
6 tion or agent of a person to make or permit to be made for his principal
7 a false return or false statement in answer to an inquiry from the depart-
8 ment with the intent to evade the payment of the tax under sec. 30 of
9 this chapter.

10 (c) A person who violates this section is guilty of a misdemeanor,
11 and upon conviction is punishable by a fine of not more than \$5,000, or
12 by imprisonment for not more than one year, or by both.

13 (d) In a prosecution under this chapter, no person otherwise
14 competent as a witness is privileged from testifying on the ground that
15 his testimony may incriminate him. However, no indictment or prosecu-
16 tion shall afterwards be brought against the witness on account of an
17 offense or transaction concerning which he testifies as a witness.
18 In a prosecution under this chapter, the attorney general may, with the
19 consent of the department, compromise the case by accepting from the
20 defendant a sum not less than the tax, interest on the tax, and all
21 costs and expenses.

22 Sec. 43.71.090. DEFINITIONS. In this chapter, unless the context
23 otherwise requires, "business" includes all activities or acts, per-
24 sonal, professional, or corporate, engaged in or caused to be engaged
25 in, or following or engaging in a trade, profession, or business,
26 calling or vocation, with the object of financial or pecuniary gain,
27 profit or benefit, either direct or indirect, and not exempting
28 subactivities producing marketable commodities or services used or
29 consumed in the main business activity, each of which subactivities

1 shall be considered business. The giving or supplying of services as
2 an employee and the furnishing of property, services, substances, or
3 things, by a person who does not hold himself out as regularly engaging
4 in those transactions, does not constitute business under the meaning
5 of this chapter.

6 Sec. 43.71.110. SHORT TITLE. This chapter may be cited as the
7 Alaska Business and Occupation License Act.

8 * Sec. 3. This Act takes effect January 1, 1979.



RECORDS



CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

4/26/89
Date

"An Act repealing the Alaska Business License Act and establishing the Alaska Business and Occupation Tax; and providing for an effective date."

COMMITTEE REPORT

3/21/74

HOUSE

Mr. Speaker:

Date 4/10/74

The Committee on FINANCE has had HB 738

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH ^{Finance} CS FOR HB 738 AND THAT

^{Finance} CS FOR HB 738 DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____

Members NOT concurring in the Majority report:

<u>[Signature]</u>	recommends: <u>No rec.</u>
_____	recommends:
_____	recommends:
_____	recommends:
_____	recommends:

[Signature] Chairman

Original Sponsor: J. Miller, Hartig
and Saylor

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 736
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act repealing the Alaska Business License Act; and
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STAT. OF ALASKA:

9 * Section 1. AS 43.70 is repealed.

10 * Sec. 2. This Act takes effect January 1, 1979.

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Original sponsor: J. Miller, Hartig
and Saylor

Offered: 3/21/74
Referred: Finance

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 738

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act repealing the Alaska Business License Act and
7 establishing the Alaska Business and Occupation Tax;
8 and providing for an effective date."

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

10 * Section 1. AS 43.70 is repealed.

11 * Sec. 2. AS 43 is amended by adding a new chapter to read:

12 CHAPTER 71. BUSINESS AND OCCUPATION TAX.

13 Sec. 43.71.005. EXEMPTIONS. (a) Net income derived from the
14 following gross receipts are exempt from taxation under this chapter:

15 (1) gross receipts from educational, religious, benevolent,
16 fraternal, or charitable activities, where the entire amount of the
17 receipts is held or expended for these activities, except receipts which
18 are the result of a continuous engaging in a business or occupation
19 otherwise subject to this chapter;

20 (2) gross receipts from the operation of a hospital;

21 (3) gross receipts from a municipally owned and operated
22 utility and from operation of a utility by an incorporated utility dis-
23 trict, nonprofit association, or nonprofit cooperative;

24 (4) gross receipts from home handicrafts up to \$500;

25 (5) gross receipts of a resident wholesale firm registered
26 in the state as a domestic corporation, or otherwise identifiable as a
27 resident wholesaler, from sale of a finished product to dealers for
28 resale to consumers, where the resale is subject to tax under this
29 chapter;

1 (6) gross receipts derived from a sale made to a person in
2 a foreign country for shipment out of the United States, except when
3 the goods or products sold are exported in bond for re-entry into the
4 United States;

5 (7) gross receipts of a manufacturer or processor derived
6 from the sale of his product manufactured or processed in the state,
7 except where the products are sold directly to the consumer;

8 (8) gross receipts subject to the gross production tax im-
9 posed by ch. 55 of this title, except that a person subject to the
10 gross production tax shall obtain a business license and pay the initial
11 \$25 license fee;

12 (9) gross receipts from the taxes imposed by the state upon
13 the sale of motor fuel;

14 (10) gross receipts from a consumers' sales tax collected by
15 a taxpayer for the state or a political subdivision of this state.

16 (b) The word "consumer" as used in this section means the person
17 who, in the ordinary common meaning of the term, ultimately uses goods,
18 and diminishes or destroys their utility.

19 (c) The exemption from taxation of net income derived from certain
20 gross receipts as provided in this chapter does not exempt a person
21 from the \$25 initial license fee.

22 Sec. 43.71.010. APPLICATION FOR LICENSE. (a) For the privilege
23 of engaging in a business in the state, a person shall first apply, upon
24 forms prescribed by the commissioner, obtain a license and pay the
25 license fee provided for in this chapter. A license issued to a firm
26 for a particular line of business covers all its operations in the state
27 in the line of business regardless of the number of its establishments.
28 Application for a renewal of a license and payment of the initial fee
29 shall be made before February 1, of each year. No license may be issued

1 for a period extending beyond the end of the calendar year for which it
2 is issued.

3 (b) A person engaging in a business subject to licensing provisions
4 of a regulatory nature (for example, the requirement of posting a bond
5 before beginning business as a collection agency) must, in addition to
6 filing the regular application required by this section, comply with
7 those regulatory provisions before being entitled to a license under
8 this chapter.

9 Sec. 43.71.020. LEVY AND COMPUTATION OF LICENSE FEE. (a) The
10 license fee for each business is \$25 plus a sum equal to two per cent
11 of the net income from the operation of the business during the year
12 for which the license is issued. Net income in this section means the
13 taxable income from the business or profession computed as required by
14 the Internal Revenue Code of the United States. For a sole proprietor-
15 ship, net income is the net profit shown on Internal Revenue Service
16 Schedule C (form 1040); for a partnership or joint venture, that shown
17 on form 1065; and for a corporation, that shown on form 1120; except
18 that a sole proprietorship or partnership may deduct a reasonable
19 salary paid to the owner. Corporations who have income from in and
20 out of the state shall apportion their income in accordance with the
21 provisions of AS 43.19.010(IV). The annual license fee paid by a
22 professional person to his professional board shall be credited against
23 the initial fee required under this chapter.

24 (b) The license fee for each national bank and state bank, trust
25 company and savings and loan association is seven per cent of its net
26 income. Net income means the taxable income of each taxpayer before
27 net operating loss deduction and special deductions, computed as required
28 under the Internal Revenue Code of the United States and includes all
29 other income including income from federal, state or municipal obligation.

1 Each of these taxpayers shall submit a copy of the income tax return
2 which it files with the United States Collector of Internal Revenue and
3 shall notify the commissioner of revenue in writing of any alteration
4 or modification of the federal income tax return and of a recomputation
5 of tax or determination of deficiency. This statement shall be in the
6 same form as a federal income tax return and the net income shall be
7 computed as required under the Internal Revenue Code. The statement
8 shall be submitted to the commissioner of revenue before April 16 after
9 the close of the calendar year.

10 (c) The initial fee of \$25 applies to all of the provisions of
11 this section, and shall accompany the application. The balance is due
12 and payable on December 31 of each year and shall be paid before
13 April 16 following, except that the department may extend the time
14 until the 30th of the following April upon application showing that
15 the extension is necessary to enable the applicant to ascertain the
16 amount of license money due. To enable accurate determination of the
17 balance of the tax due at the end of each year, each person to whom
18 this chapter applies shall keep records, give statements under oath,
19 and make returns which the department requires. Returns are made
20 under penalty of perjury.

21 Sec. 43.71.030. REVIEW AND DETERMINATION OF LICENSE TAX. (a)
22 As soon as practicable after the final payment of the tax, the department
23 shall examine the return and determine the correct amount of the tax
24 and, if an error is found, shall notify the taxpayer of the error and
25 examine the taxpayer's records as authorized in AS 43.05.040, and take
26 other proper steps to determine the amount due.

27 (b) If an agreement cannot be reached with the taxpayer as to the
28 amount of a license tax, the department may set a time and place of
29 hearing on the question, upon at least 60 days' notice of the hearing by

1 mail to the taxpayer. At the hearing a person may be required to appear
2 and testify and produce records and other papers as provided in
3 AS 43.05.040.

4 (c) A person aggrieved by an action of the department may apply
5 in writing to the department within 60 days from the date of the notice
6 of the action, giving notice of the grievance and requesting a hearing.

7 (d) If the department determines that a fee in excess of the
8 amount due was paid, he shall allow a refund or permit a credit at the
9 option of the taxpayer. If refund is allowed, it shall be made out of
10 the general fund by a voucher approved by the department.

11 Sec. 43.71.040. APPEALS. If the person is aggrieved by the
12 decision of the department, he may appeal to the superior court in the
13 judicial district where he conducts his business.

14 Sec. 43.71.050. CIVIL PENALTY. (a) If a person fails to file a
15 business license return or pay the fee, as finally determined by the
16 department, unless it is shown that the failure is due to reasonable
17 cause and not to wilful neglect, five per cent is added to the fee for
18 each additional 30 days, or fraction of 30 days, during which the
19 failure continues, but not exceeding 25 per cent in the aggregate. The
20 amount added to the fee shall be collected at the same time and in the
21 same manner as the fee. In case of delinquency interest shall be
22 assessed at the rate of six per cent a year. If payment is made by
23 check, bill of exchange, or note which is later returned by the drawee
24 as uncollectible because of insufficient funds or is dishonored by the
25 drawee for any reason, the dishonor is prima facie evidence of nonpay-
26 ment of the license fee.

27 (b) If a person fails to apply for a license at the required time
28 or makes, wilfully or otherwise, an erroneous or fraudulent return, the
29 department shall assess the fee from any information it can obtain.

1 This assessment is prima facie good and sufficient for all legal purposes
2 under this chapter.

3 Sec. 43.71.060. SECURITY. The amount of the fee, interest
4 charge, and penalty imposed under this chapter constitutes a lien in
5 favor of the state upon all the person's property located in the state.
6 The lien arises upon delinquency and continues until the liability for
7 the amount is satisfied or the property is sold at foreclosure sale.
8 The lien is not valid as against a mortgagee, pledgee, purchaser, or
9 judgment creditor until notice of the lien is filed in the office of the
10 recorder in the manner provided for federal tax liens in AS 43.10.090 -
11 43.10.150. AS 43.10.090 - 43.10.150 apply to the tax liens arising under
12 this chapter.

13 Sec. 43.71.070. DISPOSAL OF MONEY. (a) All money collected under
14 this chapter shall be deposited in the general fund.

15 (b) The legislature is authorized to appropriate each year to the
16 Department of Revenue an amount equal to 80 per cent of the money
17 collected in each organized borough and each organized city. The
18 amount appropriated to the department under this section to be distri-
19 buted to each organized borough and city in proportion to amount of
20 license fees collected in the local government.

21 Sec. 43.71.080. REGULATIONS. The department may adopt regulations
22 necessary to determine and collect the fees imposed and to enforce this
23 chapter.

24 Sec. 43.71.090. PENAL PROVISIONS. (a) It is unlawful for a person
25 to (1) wilfully evade a tax under this chapter; (2) fail to make a
26 return or keep or produce a record required under sec. 20 of this
27 chapter; (3) make a false or fraudulent return or false statement with
28 intent to defraud the state or evade payment of the tax; or (4) aid or
29 abet another in an attempt to evade payment of the tax.

1 (b) It is unlawful for an executive officer or agent of a corpora-
2 tion or agent of a person to make or permit to be made for his principal
3 a false return or false statement in answer to an inquiry from the depart-
4 ment with the intent to evade the payment of the tax under this chapter.

5 (c) A person who violates this section is guilty of a misdemeanor,
6 and upon conviction is punishable by a fine of not more than \$5,000, or
7 by imprisonment for not more than one year, or by both.

8 (d) In a prosecution under this chapter, no person otherwise
9 competent as a witness is privileged from testifying on the ground that
10 his testimony may incriminate him. However, no indictment or prosecu-
11 tion shall afterwards be brought against the witness on account of an
12 offense or transaction concerning which he testifies as a witness.

13 In a prosecution under this chapter, the attorney general may, with the
14 consent of the department, compromise the case by accepting from the
15 defendant a sum not less than the tax, interest on the tax, and all
16 costs and expenses.

17 Sec. 43.71.100. DEFINITIONS. In this chapter, unless the context
18 otherwise requires, the following words have the meanings indicated.

19 (1) "Business" includes all activities or acts, personal,
20 professional, or corporate, engaged in or caused to be engaged in, or
21 following or engaging in a trade, profession, or business, calling or
22 vocation, with the object of financial or pecuniary gain, profit or
23 benefit, either direct or indirect, and not exempting subactivities pro-
24 ducing marketable commodities or services used or consumed in the main
25 business activity, each of which subactivities shall be considered
26 business. The giving or supplying of services as an employee and the
27 furnishing of property, services, substances, or things, by a person who
28 does not hold himself out as regularly engaging in those transactions,
29 does not constitute business under the meaning of this chapter.

1 (2) "Gross receipts" means receipts from sources in the
2 state, whether in the form of money, credits, or other valuable con-
3 sideration received from engaging in or conducting a business without
4 deducting the cost of the property sold, the cost of the materials
5 used, labor or service cost, interest paid, taxes, losses, or any other
6 expense, except that "gross receipts" does not include cash discounts
7 allowed and taken on sales, and sales refunds, either in cash or by
8 credit, uncollectible accounts written off, and payments received in
9 final liquidation of accounts included in the gross receipts of a
10 previous return made by the person. Receipts from sales, wherever made,
11 of goods, wares, and merchandise manufactured or processed or origina-
12 ting in the state are considered a part of gross receipts from sources
13 in the state, and the holder of a state license under this chapter
14 doing business inside and outside the state is liable under this chapter
15 as to that portion of his gross receipts attributable to his Alaska
16 operation. "Gross receipts" also includes all amounts paid or assigned
17 to subcontractors. Individuals representing firms taxed under this
18 chapter on volume of business done, working as agents on commission
19 instead of as employees, may compute their gross receipts as equal to
20 their gross commissions.

21 (3) "Person" includes an individual, firm, partnership, joint
22 adventure, association, corporation, estate trust, business trust,
23 receiver, or any group or combination acting as a unit.

24 Sec. 43.71.110. SHORT TITLE. This chapter may be cited as the
25 Alaska Business and Occupation Tax Act.

26 * Sec. 3. This Act takes effect January 1, 1975.
27
28
29

Introduced: 2/25/74
Referred: Commerce and
Finance

1 IN THE HOUSE

BY J.MILLER, HARTIG AND
SAYLORS

2 HOUSE BILL NO. 738
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 EIGHTH LEGISLATURE -- SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act repealing the Alaska Business License Act and
7 establishing the Alaska Business and Occupation Tax;
8 and providing for an effective date."

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

10 * Section 1. AS 43.70 is repealed.

11 * Sec. 2. AS 43 is amended by adding a new chapter to read:

12 CHAPTER 71. BUSINESS AND OCCUPATION TAX.

13 Sec. 43.71.010. APPLICATION FOR LICENSE. (a) For the privilege
14 of engaging in a business in the state, a person shall first apply, upon
15 forms prescribed by the commissioner, obtain a license and pay the
16 license fee provided for in this chapter. A license issued to a firm
17 for a particular line of business covers all its operations in the state
18 in the line of business regardless of the number of its establishments.
19 Application for a renewal of a license and payment of the initial fee
20 shall be made before February 1, of each year. No license may be issued
21 for a period extending beyond the end of the calendar year for which it
22 is issued.

23 (b) A person engaging in a business subject to licensing provisions
24 of a regulatory nature (for example, the requirement of posting a bond
25 before beginning business as a collection agency) must, in addition to
26 filing the regular application required by this section, comply with
27 those regulatory provisions before being entitled to a license under
28 this chapter.

29 Sec. 43.71.020. LEVY AND COMPUTATION OF LICENSE FEE. (a) The

1 license fee for each business is \$25 plus a sum equal to seven per cent
2 of the net income from the operation of the business during the year for
3 which the license is issued. Net income in this section means the taxable
4 income from the business or profession computed as required by the In-
5 ternal Revenue Code of the United States. For a sole proprietorship,
6 net income is the net profit shown on Internal Revenue Service Sched-
7 ule C (form 1040), for a partnership or joint venture, that shown on
8 form 1065, and for a corporation, that shown on form 1120. The annual
9 license fee paid by a professional person to his professional board shall
10 be credited against the initial fee required under this chapter.

11 (b) The license fee for each national bank and state bank, trust
12 company and savings and loan association is seven per cent of its net
13 income. Net income means the taxable income of each taxpayer before
14 net operating loss deduction and special deductions, computed as required
15 under the Internal Revenue Code of the United States and includes all
16 other income including income from federal, state or municipal obligation.
17 Each of these taxpayers shall submit a copy of the income tax return
18 which it files with the United States Collector of Internal Revenue and
19 shall notify the commissioner of revenue in writing of any alteration
20 or modification of the federal income tax return and of a recomputation
21 of tax or determination of deficiency. The taxpayer who files his
22 federal return on a fiscal year basis shall in addition submit a state-
23 ment setting out all information which would be required and reported
24 in a federal income tax return prepared for the calendar year. This
25 statement shall be in the same form as a federal income tax return and
26 the net income shall be computed as required under the Internal Revenue
27 Code. The statement shall be submitted to the commissioner of revenue
28 before the sixteenth day of April after the close of the calendar year.

29 (c) The license for the privilege of taking orders through use of

1 catalogs and by mail order offices in the state is the same as set out
2 in this chapter for business generally and the license fee for those
3 offices shall be based upon the net income attributable to all orders
4 taken at them whether delivery of the merchandise is made through the
5 offices or not.

6 (d) The initial fee of \$25 applies to all of the provisions of this
7 section, and shall accompany the application. The balance is due and
8 payable on December 31 of each year and shall be paid before the first
9 day of March following, except that the department may extend the time
10 until the 30th of the following April upon application showing that the
11 extension is necessary to enable the applicant to ascertain the amount of
12 licens' money due. To enable accurate determination of the balance of
13 the tax due at the end of each year, each person to whom this chapter
14 applies shall keep records, give statements under oath, and make returns
15 which the department requires. Returns are made under penalty of perjury.

16 Sec. 43.71.030. REVIEW AND DETERMINATION OF LICENSE TAX. (a) As
17 soon as practicable after the final payment of the tax, the department
18 shall examine the return and determine the correct amount of the tax and,
19 if an error is found, shall notify the taxpayer of the error and examine
20 the taxpayer's records as authorized in AS 43.05.040, and take other
21 proper steps to determine the amount due.

22 (b) If an agreement cannot be reached with the taxpayer as to the
23 amount of a license tax, the department may set a time and place of
24 hearing on the question, upon at least 60 days' notice of the hearing by
25 mail to the taxpayer. At the hearing a person may be required to appear
26 and testify and produce records and other papers as provided in
27 AS 43.05.040.

28 (c) A person aggrieved by an action of the department may apply
29 in writing to the department within 60 days from the date of the notice

1 of the action, giving notice of the grievance and requesting a hearing.

2 (d) If the department determines that a fee in excess of the
3 amount due was paid, he shall allow a refund or permit a credit at the
4 option of the taxpayer. If refund is allowed, it shall be made out of
5 the general fund by a voucher approved by the department.

6 Sec. 43.71.040. APPEALS. If the person is aggrieved by the
7 decision of the department, he may appeal to the superior court in the
8 judicial district where he conducts his business.

9 Sec. 43.71.050. CIVIL PENALTY. (a) If a person fails to file a
10 business license return or pay the fee, as finally determined by the
11 department, unless it is shown that the failure is due to reasonable
12 cause and not to wilful neglect, five per cent is added to the fee for
13 each additional 30 days, or fraction of 30 days, during which the
14 failure continues, but not exceeding 25 per cent in the aggregate. The
15 amount added to the fee shall be collected at the same time and in the
16 same manner as the fee. In case of delinquency interest shall be
17 assessed at the rate of six per cent a year. If payment is made by
18 check, bill of exchange, or note which is later returned by the drawee
19 as uncollectible because of insufficient funds or is dishonored by the
20 drawee for any reason, the dishonor is prima facie evidence of nonpay-
21 ment of the license fee.

22 (b) If a person fails to apply for a license at the required time
23 or makes, wilfully or otherwise, an erroneous or fraudulent return, the
24 department shall assess the fee from any information it can obtain.
25 This assessment is prima facie good and sufficient for all legal purposes
26 under this chapter.

27 Sec. 43.71.060. SECURITY. (a) The amount of the fee, interest
28 charge, and penalty imposed under this chapter constitutes a lien in
29 favor of the state upon all the person's property located in the state.

1 The lien arises upon delinquency and continues until the liability for
2 the amount is satisfied or the property is sold at foreclosure sale.
3 The lien is not valid as against a mortgagee, pledgee, purchaser, or
4 judgment creditor until notice of the lien is filed in the office of the
5 recorder in the manner provided for federal tax liens in AS 43.10.090 -
6 43.10.150. AS 43.10.090 - 43.10.150 apply to the tax liens arising under
7 this chapter.

8 (b) A nonresident person who starts to perform a construction
9 contract or subcontract or other line of business in the state and is
10 not known by the department to be the holder of adequate property in the
11 state to secure collection of the license money which will probably
12 accrue under this chapter by virtue of the business shall, in or with his
13 application, state under oath the extent of lienable real and personal
14 property which the department prescribes. If the value of the property
15 is not equal to three times the amount of the tax for which the applicant
16 will probably be liable to the state, the department shall not issue
17 the license until the applicant files with him a surety bond approved
18 by the attorney general in a penal sum equal to twice the probable
19 amount of the tax for which the applicant will be liable, conditioned
20 upon payment of the tax in full when due, and with interest if not paid
21 before delinquency. The department may waive the bond requirement if
22 the applicant posts other security in the form of collateral acceptable
23 to the department.

24 Sec. 43.71.070. DISPOSAL OF MONEY. (a) All money collect. under
25 this chapter shall be deposited in the general fund.

26 (b) The legislature is authorized to appropriate each year to the
27 Department of Revenue an amount equal to 80 per cent of the money
28 collected in each organized borough and each organized city. The
29 amount appropriated to the department pursuant to this section to be

1 distributed to each organized borough and city in proportion to amount
2 of license fees collected in the local government.

3 Sec. 43.71.080. REGULATIONS. The department may adopt regulations
4 necessary to determine and collect the fees imposed and to enforce this
5 chapter.

6 Sec. 43.71.090. PENAL PROVISIONS. (a) It is unlawful for a person
7 to (1) wilfully evade a tax under this chapter; (2) fail to make a
8 return or keep or produce a record required under sec. 20 of this
9 chapter; (3) make a false or fraudulent return or false statement with
10 intent to defraud the state or evade payment of the tax; or (4) aid or
11 abet another in an attempt to evade payment of the tax.

12 (b) It is unlawful for an executive officer or agent of a corpora-
13 tion or agent of a person to make or permit to be made for his principal
14 a false return or false statement in answer to an inquiry from the depart-
15 ment with the intent to evade the payment of the tax under this chapter.

16 (c) A person who violates this section is guilty of a misdemeanor,
17 and upon conviction is punishable by a fine of not more than \$1,000, or
18 by imprisonment for not more than one year, or by both.

19 (d) In a prosecution under this chapter, no person otherwise
20 competent as a witness is privileged from testifying on the ground that
21 his testimony may incriminate him. However, no indictment or prosecu-
22 tion shall afterwards be brought against the witness on account of an
23 offense or transaction concerning which he testifies as a witness.
24 In a prosecution under this chapter, the attorney general may, with the
25 consent of the department, compromise the case by accepting from the
26 defendant a sum not less than the tax, interest on the tax, and all
27 costs and expenses.

28 Sec. 43.71.100. DEFINITIONS. In this chapter, unless the context
29 otherwise requires, the following words have the meanings indicated.

1 (1) "Business" includes all activities or acts, personal,
2 professional, or corporate, engaged in or caused to be engaged in, or
3 following or engaging in a trade, profession, or business, calling or
4 vocation, with the object of financial or pecuniary gain, profit or
5 benefit, either direct or indirect, and not exempting subactivities pro-
6 ducing marketable commodities or services used or consumed in the main
7 business activity, each of which subactivities shall be considered
8 business. The giving or supplying of services as an employee and the
9 furnishing of property, services, substances, or things, by a person who
10 does not hold himself out as regularly engaging in those transactions,
11 does not constitute business under the meaning of this chapter.

12 (2) "Income year" means calendar year. If a person carries on
13 business during a part only of the income year, "income year" means the
14 period within the income year during which the person carries on business.

15 (3) "Person" includes an individual, firm, partnership, joint
16 adventure, association, corporation, estate trust, business trust,
17 receiver, or any group or combination acting as a unit.

18 Sec. 43.71.110. SHORT TITLE. This chapter may be cited as the
19 Alaska Business and Occupation Tax Act.

20 * Sec. 3. This Act takes effect January 1, 1975.
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MEMORANDUM

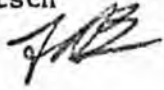
State of Alaska 

TO: Ralph Kimlinger
Deputy Commissioner
Department of Revenue

DATE: March 28, 1974

FILE NO:

TELEPHONE NO:

FROM: Frederick P. Boetsch
Director
Audit Division 

SUBJECT: Committee Substitute for House
Bill 738 - Business and Occupation
Tax

The committee substitute proposes a number of changes from the original bill. Section 2 of the committee substitute includes several exemptions from the tax. It reads that the net income derived from the enumerated gross receipts is exempt from taxation. This provision is probably unnecessary relating, as it does, to gross receipts. The Net Income from activities outlined in paragraphs (1), (3), and (4) are exempt under the Internal Revenue Code (Section 501(c)) and would not be taxed under this bill anyway. Hospitals (paragraph (2)) are also exempt if operated as non-profit institutions.

2 { Since we have shifted the tax base to Net Income rather than Gross Receipts, there is a real question whether we want to continue the exemptions indicated in paragraphs (5), (6), (7), and (8). These would eliminate from taxation the income of wholesalers, manufacturers, oil and gas producers, and all export sales. These categories will soon constitute a majority of the net income derived by persons doing business in this state. The exemption in the current law is designed to prevent duplicate taxation since the Gross Receipts Tax is similar to a sales tax. This is not true with the Net Income base.

Paragraphs (9) and (10) are meaningless in the context of a Net Income base since neither tax generates net income.

It is our recommendation, therefore, that this entire section be deleted from the bill since it is either unnecessary or would severely erode the tax base.

The following changes have been made in Section 43.71.020 which in the committee substitute commences on line 9, page 3. The rate of tax has been changed from 7% of net income to 2% of the net income. I am attaching below a table indicating the projected total revenues under this bill at the 2% rate less the 80% sharing provided later in the bill (Section 43.71.070), the resulting net to the State Treasury under CSHB 738, the net to State Treasury under the current law and the net loss to the State Treasury under this bill. The amount of total sharing would also be less due to the fact that the 2% rate does not raise the same amount of total tax which would be collected under the current law. We previously estimated that the rate on net income necessary to do this would have to be 3.6% (see my memo to you dated March 6). The effects of CSHB 738 are indicated in the table below:

Revenue Projections (\$000 Omitted)

	<u>FY 75</u>	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 79</u>
Tax @ 2%	\$ 4,344.3	\$ 4,996.8	\$ 5,483.4	\$ 5,642.1	\$ 5,614.6
Share @ 80%	<u>3,475.4</u>	<u>3,997.4</u>	<u>4,386.7</u>	<u>4,513.7</u>	<u>4,491.7</u>
Net to State Treas. (CSHB 738)	868.9	999.4	1,096.7	1,128.4	1,122.9
Net to State Treas. (Current Law)	<u>3,114.0</u>	<u>3,581.7</u>	<u>3,930.6</u>	<u>4,044.3</u>	<u>4,042.6</u>
Net Loss to Treas.	<u>\$ 2,245.1</u>	<u>\$ 2,582.3</u>	<u>\$ 2,833.9</u>	<u>\$ 2,915.9</u>	<u>\$ 2,919.7</u>

We also note that additional language has been inserted on lines 17, through 19 of page 3 which allow for a reasonable deduction for salary in the case of a sole proprietorship or partnership. This deduction, of course, would erode the tax base and would decrease the projections indicated above by 2% of the aggregate amount of deductions taken. The bill does not define what a reasonable salary would be. Our experience with such ambiguous statutes in the past has been that they are difficult if not impossible to administer. I recommend that "reasonable salary" be defined in quantitative terms, i.e., 10% of the net income before the salary deduction, X dollars, X dollars plus a percentage of net income before the deduction or some other specific formula tied into the amount of net income earned prior to calculating the salary deduction. Only in this way can we have any hope to administer this provision of the act without litigating almost every case that comes along.

We note that lines 19, through 21 on page 3 have incorporated the language we suggested for apportioning income in the case of corporations doing business within and without the state. We, of course, approve of such language.

The language in 43.71.020(b) covering the bank tax has been altered so that the provision for converting from a fiscal year to a calendar year basis has been deleted. Since the definition of income year has also been deleted from the definitions section we wonder what period is to be covered by the return filed. If the return filed is to be for the same year as filed for Internal Revenue Service purposes then the requirement that the return be filed prior to April 16 after the close of the calendar year may cause some hardship on some institutions whose fiscal year does coincide with the calendar year. If it is the desire of the legislature that the fiscal year be used for reporting purposes rather than the calendar year (which has previously been the case), then I think the requirements should be that the returns must be filed by the fifteenth day of the third month after the close of the fiscal year. This is consistent with the Internal Revenue Code. The same reasoning applies to Section (c), lines 10 through 20 on page 4 of CSHB 738. The extension provisions allowed in line 14 should permit a 60 day extension beyond the normal due date if the language we suggest above is adopted for the due date of returns on a fiscal year basis.

We note that the provision requiring mail-order catalogs and mail-order offices to pay the tax has been stricken in accordance with our recommendations. Such a provision would undoubtedly be in violation of PL 86-272.

Section 43.71.090(c) on lines 5, 6 and 7, page 7 provides for a fine of not more than \$5,000 as suggested in our earlier memorandum. However, the violation is still considered a misdemeanor rather than a felony and the jail term would still be one year. Again we recommend that this be treated as a felony with the prison sentence up to five years in order to be consistent with the criminal provisions in our Income Tax Act.

Section 43.71.100 definitions (2) line one, page 8 defines gross receipts. Since the gross receipts tax is being repealed, and this tax is a tax on business income, I am curious why a lengthy definition of gross receipts is included in the Act. It seems superfluous if not confusing to include this in the definition section. As mentioned previously though, we do need a definition of what constitutes the tax year. I previously indicated that the fiscal year used for filing income tax returns should be considered as the income year for purposes of this tax. This would make administration easier for us and compliance easier for the taxpayer. I do believe that is the intent of CSHB 738 as indicated in the section under the bank tax, but I think that it needs to be spelled out more clearly.

In summary then, the committee substitute has made several changes which create some administrative problems. In addition, the change in the rate has a significant detrimental effect on both the State Treasury and the shares to be received by local governments. A table of the effect on local governments is indicated below.

Share to Local Governments (\$000 Omitted)

	<u>FY 75</u>	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 79</u>
Present Law	\$ 4,671.0	\$ 5,372.6	\$ 5,895.8	\$ 6,066.4	\$ 6,036.8
CSHB 738	<u>3,475.4</u>	<u>3,997.4</u>	<u>4,386.8</u>	<u>4,513.7</u>	<u>4,491.7</u>
Net Loss	<u>\$ 1,195.6</u>	<u>\$ 1,375.2</u>	<u>\$ 1,509.0</u>	<u>\$ 1,552.7</u>	<u>\$ 1,545.1</u>

FPB:jf

March 11, 1974

The Honorable Richard Randolph
Chairman
House Commerce Committee
Alaska State Legislature
Pouch V
Juneau, AK 99801

Dear Representative Randolph:

At the meeting of the House Commerce Committee on March 8 you asked that I provide some additional information in relation to House Bill 738, the bill which seeks to repeal the Gross Receipts Tax and replace it with a Business and Occupation Tax based on net income. You asked three questions in relationship to the tax: (1) What have been the amounts paid by businesses in the Anchorage and Fairbanks areas? (2) What rate under the proposed bill would be necessary to accomplish the same level of sharing and cover the expenses of administration by the State leaving virtually none of the tax for the State Treasury; and (3) What would be the loss to the State Treasury if the rate were set to cover only the sharing and costs of administration.

In answer to the first question, I have indicated in the table below the amounts paid by businesses in the City and Borough of Anchorage and the City of Fairbanks and North Star Borough for the last three years:

Gross Receipts Taxes Paid (\$000 Omitted)

	<u>FY</u> <u>70/71</u>	<u>FY</u> <u>71/72</u>	<u>FY</u> <u>72/73</u>
City of Anchorage	1508.0	1717.4	1951.4
GAAB	842.5	1103.0	1187.3
City of Fairbanks	501.1	498.0	544.8
North Star Borough	174.0	213.0	234.3

I have calculated a rate based on our projections of net income of about 2.3% to equal our revenue sharing projection under the current Gross Receipts Tax and to cover our administrative costs. However, the sharing rate would work out to between 94.3% and 94.8% in order to come out exactly. I think it would be easier for the taxpayer and cleaner to administer if we rounded these percentages. In addition, it would allow for about a 4% to 5% margin of error for our projections. This is a rather tight margin, but on the basis of my calculations I think that it should be sufficient unless there is a drastic

March 11, 1974

change in the projections of business operations during the next five years. I would therefore suggest that a rate of 2.4% and a sharing of 90% would provide for a sharing somewhat greater than the projections under the present tax, would cover administrative costs and would leave a slight buffer in the State Treasury for margin of error.

I would like to raise a question on the desirability of administering a tax program at the state level where the state does not receive any or only negligible benefits to its Treasury. The costs of administering the Gross Receipts Tax program represent about 20% of the Audit Division costs and 10% of the Collection and Administrative Division costs. Since we are in an agency which is revenue intensive, our natural management decision is to put resources in areas where the benefit to cost ratio is the highest. In this program at present, that ratio is about ten to one. In other areas, and as an average for the entire Audit Division, the ratio is almost seventy to one. Under the proposed program, where we are merely covering administrative costs, the ratio would, of course, be zero or negligible.

Your third question related to the net loss to Treasury under this proposal as compared with the current Gross Receipts Tax. Those estimates are as follows (\$000 Omitted):

	<u>FY 75</u>	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 79</u>
Net Loss to Treasury	<u>\$2,592.7</u>	<u>\$2,982.1</u>	<u>\$3,272.6</u>	<u>\$3,367.2</u>	<u>\$3,350.9</u>

On the other hand, if we stay with the 80% sharing provided for in the bill at the 3.6% tax rate (which I mentioned in an earlier memorandum) to bring in the same approximate gross, then the following would be the resultant loss in revenues to the State Treasury (\$000 Omitted):

	<u>FY 75</u>	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 79</u>
Net Loss to Treasury at 3.6% Tax Rate and 80% Sharing	<u>\$1,550.1</u>	<u>\$1,782.9</u>	<u>\$1,956.6</u>	<u>\$2,013.1</u>	<u>\$2,003.4</u>

In order for there to be no loss to the State Treasury, of course, it would be necessary to share at the current 60% rate using the 3.6% tax rate which gives us approximately the same total tax revenues.

If you have any further questions on this bill, I'll be happy to answer them for you.

Best regards,

Frederick P. Roetsch, CPA
Director
Audit Division

FPB:jf

cc: House Commerce Committee members

STATE
of ALASKA

MEMORANDUM

TO: Ralph Kimlinger
Deputy Commissioner
Department of Revenue

DATE : March 7, 1974

FROM: Frederick P. Boetsch
Director
Audit Division

SUBJECT: House Bill 738

I have reviewed House Bill 738 which seeks to repeal the Alaska Business License Act and establish the Alaska Business and Occupation Tax. There are certain administrative problems created by the language of certain parts of the bill. I believe these problems can be eliminated through additional language or changes in language. In addition there are some legal problems connected with the bill which are being researched by John Messenger, our tax counsel with the Attorney General's Office. He is planning to appear before the House Commerce Committee on Friday morning, March 8, at 8 a.m. in order to discuss some of these legal problems with that committee. I will therefore address myself to the administrative problems that we see. I have also made a projection of the revenues which would be derived from this tax both at the 7% rate and at a rate of 3.6% which would equal the present revenues from the gross receipts tax. The table follows (\$000 omitted):

	<u>FY 75</u>	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 79</u>
Tax @ 7%	<u>\$15,205.0</u>	<u>\$17,488.7</u>	<u>\$19,192.0</u>	<u>\$19,747.4</u>	<u>\$19,651.0</u>
Tax @ 3.6%	<u>\$ 7,819.7</u>	<u>\$ 8,994.2</u>	<u>\$ 9,870.2</u>	<u>\$10,155.8</u>	<u>\$10,106.2</u>

The first problem occurs on page 2, lines 5 through 8 which defines the net income as the net profit shown on various Internal Revenue schedules. The language here does not indicate what should be done in case of a fiscal year corporation although the definition of "income year" on page 7 of the bill does seem to indicate that the calendar year should be used. In order to clarify this I suggest that we make that specific change on page 2. In addition the bill does not describe what should be done in the case of multinational corporations doing business in this state where only a portion of their net income that would be shown on form 1120 is actually related to income in the state. In order to cure both of these defects, I propose that the following language be inserted on line 8 right after the sentence ending with "...that shown on form 1120." That language would be; "The taxpayer who files his federal return on a fiscal year basis shall compute his net income on a calendar basis as though he were filing a federal return for the calendar year. Corporations who have income from within and without the state shall apportion their income in accordance with the provisions of AS 43.19.010(IV)."

The next question arises in paragraph (c) which begins on page 2, line 29 and goes to page 3, line 5. There is a question here whether we can exert jurisdiction over companies who merely solicit business in the state through catalog or by mail order offices. Public Law 86-272 which is a federal statute imposing jurisdictional standards on states' ability to tax provides

that mere solicitation would not be sufficient business activity in the state to assert nexus and to allow us to impose a tax. Mr. Messenger will be discussing this point at greater length. In paragraph (d) which begins on page 3, line 6 through line 15, I might suggest that, since we are basing the tax on income, we bring the dates in this section into conformity with the Net Income Tax Act. Accordingly, the date for filing the return and making the tax should be the 15th day of April rather than the first day of March and extensions should be allowed for 180 days rather than until the thirtieth of April.

I note that 43.71.070(b) which begins on page 5, line 26 provides that the sharing provision is 80% of the amount attributable to each organized borough and city; the present gross receipts tax is shared 60% in these areas the net effect being that less of this tax would remain in the state treasury and more would go to the local governments. There may be a problem of attributing net income to local areas. We should provide that net income shall be attributed to local governments on the basis of gross receipts collected in each area by the business entity.

We also have a question on Section 43.71.060(b) which begins on page 5, line 8 and continues to page 5, line 23. This provides for a bond equal to twice the probable amount of tax in the case of non-residents. This provision is already included in AS 43.10.160 for all tax types. It would appear that this is a duplication of that requirement and is probably unnecessary.

On page 6, lines 16 through 19 (which covers paragraph (c) of Section 43.71.090) we would recommend that the penal provision be changed to make violation of the act a felony with a penalty of \$5,000 fine or imprisonment for 5 years or both. This would bring the criminal penal provision in line with the Net Income Tax Act.

The administrative problems connected with this statute other than as mentioned above or discussed by John Messenger as they relate to legal questions, are relatively minor. We would, of course, have to change our gross receipt tax forms to cover the new basis and would be able to do that on the printing next year. Some flats which have already been printed would have to be destroyed but the cost of this would be relatively minor. In addition, we would have to make some changes in the programming of our data processing system for shared revenues. I estimate that the additional programming will probably run about \$10,000. I do not see the need for additional personnel as a result of the change from Gross Receipts to a Business and Occupation Tax.

I might note that the effect of this tax would be to shift the burden from the low profit margin taxpayer to the high profit margin taxpayer. In the case of a net taxable loss, of course, no tax would be due. This is true also of the net income tax. The possibility that this may be considered duplicate taxation and therefore, unconstitutional will be discussed by Mr. Messenger.

FPB:jf

The Legislature of the State of Alaska
 FISCAL NOTE
 Second Session - Eighth Legislature

I. REQUEST

Bill Identification: CSHB 738
 Title: Alaska Business and Occupation Tax
 Requested by: J. Miller, Saylor, Hartig Date: 2-25-74
 Return Date Requested: _____
 Agency: Revenue Program: Individual & Business Taxes

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Individual & Business Taxes

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 74	FY 75	FY 76	FY 77	FY 78	FY 79
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	10.0					
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	10.0	None	None	None	None	None

B. FUNDING: (Thousands of dollars)

GENERAL FUND	10.0	None	None	None	None	None
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	-0- /	-0- /	-0- /	-0- /	-0- /	-0- /
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. ATTACHMENTS

See memorandums from Fred Boetsch, Director of Audit to Ralph Kimlinger, Deputy Commissioner dated March 7 and March 28, 1974 and letter from Fred Boetsch to the Honorable Dick Randolph, State Legislature dated March 11, 1974 (attached).

V. DATE: 3/29/74

PREPARED BY: Ralph Kimlinger

Deputy Commissioner
 Department of Revenue

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)



RECORDS



CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

4/26/89
Date

Original sponsor: J. Miller, Hartig
and Saylor

Offered: 4/17/74
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 738

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Business License Act."

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

8 * Section 1. AS 43.70.030(a) is amended to read:

9 (a) Until December 31, 1978, the [THE] license fee for each
10 business is \$25 plus a sum equal to one-half of one per cent of the
11 gross receipts in excess of \$20,000 from the business during the year
12 for which the license is issued, except that all gross volume in excess
13 of \$100,000 a year is taxed at the rate of one-quarter of one per cent.
14 The annual license fee paid by a professional person to his professional
15 board shall be credited against the initial fee required under this
16 chapter. Beginning January 1, 1979, the license fee for each business
17 is \$25.

18 * Sec. 2. AS 43.70.030(c) is amended to read:

19 (c) The license for the privilege of taking orders through use of
20 catalogs and by mail order offices in the state is the same as set out
21 in this chapter for business generally and until December 31, 1978,
22 gross volume of business of those offices includes all orders taken at
23 them whether delivery of the merchandise is made through the offices or
24 not.

POOR COPY

ALASKA STATE LEGISLATURE
 EIGHTH Legislature SECOND Session

HOUSE BILL NO. 738
 By J. MILLER, HARTIG AND SAYLORS

"An Act repealing the Alaska Business License Act and establishing the Alaska Business and Occupation Tax; and providing for an effective date."

CSHB 738(2d Finance) BYFINANCE
 Offered: 4/17/74
 Referred: Rules =

TITLE: "An Act relating to the Alaska Business License Act."

Alaska Business & Occupational Tax Act
 Introduced in the House 2/25, 1974

HISTORY IN THE HOUSE

19 74	Feb 25	Read first time and referred to Committee on Commerce and Finance
	Mar 21	Reported back with recommendation that <i>Commerce refer w/CS</i>
	Apr 11	<i>Do pass Do Finance</i>
	Apr 15	<i>Do pass Do Rules</i>
	Apr 17	Read second time and <i>Do pass Do Rules</i>
	Apr 18	REND: SECOND TIME CSHB 738 (2d Finance) <i>Adopted</i>
	Apr 19	<i>Again in rd (order) for specific amend. Amend both</i>
	Apr 18	Read third time and
	Apr 19	Reconsideration taken <i>Ref. returned to rd for specific amendment</i>
	Apr 19	Reconsideration
	Apr 18	PASS: Yeas 20, Nays 20, Absent 8, Excused =
	Apr 18	Effective Date
	Apr 18	PASS: Yeas 20, Nays 20, Absent 8, Excused =
	Apr 19	Notice of Reconsideration Reported correctly engrossed
	" 19	Signed by Speaker
	" 19	Sent to Senate

Gene Casper
 CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19 74	Read first time and referred to Committee on Finance
	Reported back with recommendation that
	Read second time and
	Read third time and
	PASS: Yeas, Nays, Absent, Excused
	Effective Date
	PASS: Yeas, Nays, Absent, Excused
	Reported correctly engrossed
	Signed by President
	Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19	Received from Senate
	Reported correctly enrolled
	Sent to Governor
	By Governor
	Filed with Secy. State
	Chapter No.

Original sponsor: J. Miller, Hartig
and Saylor

Offered: 4/17/74
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 738

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Business License Act;
7 and providing for an effective date."

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

9 * Section 1. AS 43.70.010 is repealed.

10 * Sec. 2. AS 43.70.030(a) is amended to read:

11 (a) The license fee for each business is \$25 [PLUS A SUM EQUAL TO
12 ONE-HALF OF ONE PER CENT OF THE GROSS RECEIPTS IN EXCESS OF \$20,000 FROM
13 THE BUSINESS DURING THE YEAR FOR WHICH THE LICENSE IS ISSUED, EXCEPT THAT
14 ALL GROSS VOLUME IN EXCESS OF \$100,000 A YEAR IS TAXED AT THE RATE OF
15 ONE-QUARTER OF ONE PER CENT. THE ANNUAL LICENSE FEE PAID BY A PROFES-
16 SIONAL PERSON TO HIS PROFESSIONAL BOARD SHALL BE CREDITED AGAINST THE
17 INITIAL FEE REQUIRED UNDER THIS CHAPTER].

18 * Sec. 3. AS 43.70.030(c) is amended to read:

19 (c) The license for the privilege of taking orders through use of
20 catalogs and by mail order offices in the state is the same as set out
21 in this chapter for business generally [AND GROSS VOLUME OF BUSINESS OF
22 THOSE OFFICES INCLUDES ALL ORDERS TAKEN AT THEM WHETHER DELIVERY OF THE
23 MERCHANDISE IS MADE THROUGH THE OFFICES OR NOT].

24 * Sec. 4. AS 43.70.040(a) is amended to read:

25 (a) As soon as practicable after the final payment of the tax
26 under sec. 30(b) of this chapter, the department shall examine the
27 return and determine the correct amount of the tax and, if an error is
28 found, shall notify the taxpayer of the error and examine the taxpayer's
29 records as authorized in AS 43.05.040, and take other proper steps to

1 determine the amount due.

2 * Sec. 5. AS 43.70.040(b) is amended to read:

3 (b) If an agreement cannot be reached with the taxpayer as to the
4 amount of a license tax due under sec. 30(b) of this chapter, the
5 department may set a time and place of hearing on the question, upon at
6 least 60 days' notice of the hearing by mail to the taxpayer. At the
7 hearing a person may be required to appear and testify and produce
8 records and other papers as provided in AS 43.05.040.

9 * Sec. 6. AS 43.70.110(2) is repealed.

10 * Sec. 7. This Act takes effect January 1, 1979.

Original sponsor: J. Miller, Hartig
and Saylor

Offered: 3/21/74
Referred: Finance

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 738

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act repealing the Alaska Business License Act and
7 establishing the Alaska Business and Occupation Tax;
8 and providing for an effective date."

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

10 * Section 1. AS 43.70 is repealed.

11 * Sec. 2. AS 43 is amended by adding a new chapter to read:

12 CHAPTER 71. BUSINESS AND OCCUPATION TAX.

13 Sec. 43.71.005. EXEMPTIONS. (a) Net income derived from the
14 following gross receipts are exempt from taxation under this chapter:
15 (1) gross receipts from educational, religious, benevolent,
16 fraternal, or charitable activities, where the entire amount of the
17 receipts is held or expended for these activities, except receipts which
18 are the result of a continuous engaging in a business or occupation
19 otherwise subject to this chapter;
20 (2) gross receipts from the operation of a hospital;
21 (3) gross receipts from a municipally owned and operated
22 utility and from operation of a utility by an incorporated utility dis-
23 trict, nonprofit association, or nonprofit cooperative;
24 (4) gross receipts from home handicrafts up to \$500;
25 (5) gross receipts of a resident wholesale firm registered
26 in the state as a domestic corporation, or otherwise identifiable as a
27 resident wholesaler, from sale of a finished product to dealers for
28 resale to consumers, where the resale is subject to tax under this
29 chapter;

1 (6) gross receipts derived from a sale made to a person in
2 a foreign country for shipment out of the United States, except when
3 the goods or products sold are exported in bond for re-entry into the
4 United States;

5 (7) gross receipts of a manufacturer or processor derived
6 from the sale of his product manufactured or processed in the state,
7 except where the products are sold directly to the consumer;

8 (8) gross receipts subject to the gross production tax im-
9 posed by ch. 55 of this title, except that a person subject to the
10 gross production tax shall obtain a business license and pay the initial
11 \$25 license fee;

12 (9) gross receipts from the taxes imposed by the state upon
13 the sale of motor fuel;

14 (10) gross receipts from a consumers' sales tax collected by
15 a taxpayer for the state or a political subdivision of this state.

16 (b) The word "consumer" as used in this section means the person
17 who, in the ordinary common meaning of the term, ultimately uses goods,
18 and diminishes or destroys their utility.

19 (c) The exemption from taxation of net income derived from certain
20 gross receipts as provided in this chapter does not exempt a person
21 from the \$25 initial license fee.

22 Sec. 43.71.010. APPLICATION FOR LICENSE. (a) For the privilege
23 of engaging in a business in the state, a person shall first apply, upon
24 forms prescribed by the commissioner, obtain a license and pay the
25 license fee provided for in this chapter. A license issued to a firm
26 for a particular line of business covers all its operations in the state
27 in the line of business regardless of the number of its establishments.
28 Application for a renewal of a license and payment of the initial fee
29 shall be made before February 1, of each year. No license may be issued

1 for a period extending beyond the end of the calendar year for which it
2 is issued.

3 (b) A person engaging in a business subject to licensing provisions
4 of a regulatory nature (for example, the requirement of posting a bond
5 before beginning business as a collection agency) must, in addition to
6 filing the regular application required by this section, comply with
7 those regulatory provisions before being entitled to a license under
8 this chapter.

9 Sec. 43.71.020. LEVY AND COMPUTATION OF LICENSE FEE. (a) The
10 license fee for each business is \$25 plus a sum equal to two per cent
11 of the net income from the operation of the business during the year
12 for which the license is issued. Net income in this section means the
13 taxable income from the business or profession computed as required by
14 the Internal Revenue Code of the United States. For a sole proprietor-
15 ship, net income is the net profit shown on Internal Revenue Service
16 Schedule C (form 1040); for a partnership or joint venture, that shown
17 on form 1065; and for a corporation, that shown on form 1120; except
18 that a sole proprietorship or partnership may deduct a reasonable
19 salary paid to the owner. Corporations who have income from in and
20 out of the state shall apportion their income in accordance with the
21 provisions of AS 43.19.010(IV). The annual license fee paid by a
22 professional person to his professional board shall be credited against
23 the initial fee required under this chapter.

24 (b) The license fee for each national bank and state bank, trust
25 company and savings and loan association is seven per cent of its net
26 income. Net income means the taxable income of each taxpayer before
27 net operating loss deduction and special deductions, computed as required
28 under the Internal Revenue Code of the United States and includes all
29 other income including income from federal, state or municipal obligation.

1 Each of these taxpayers shall submit a copy of the income tax return
2 which it files with the United States Collector of Internal Revenue and
3 shall notify the commissioner of revenue in writing of any alteration
4 or modification of the federal income tax return and of a recomputation
5 of tax or determination of deficiency. This statement shall be in the
6 same form as a federal income tax return and the net income shall be
7 computed as required under the Internal Revenue Code. The statement
8 shall be submitted to the commissioner of revenue before April 16 after
9 the close of the calendar year.

10 (c) The initial fee of \$25 applies to all of the provisions of
11 this section, and shall accompany the application. The balance is due
12 and payable on December 31 of each year and shall be paid before
13 April 16 following, except that the department may extend the time
14 until the 30th of the following April upon application showing that
15 the extension is necessary to enable the applicant to ascertain the
16 amount of license money due. To enable accurate determination of the
17 balance of the tax due at the end of each year, each person to whom
18 this chapter applies shall keep records, give statements under oath,
19 and make returns which the department requires. Returns are made
20 under penalty of perjury.

21 Sec. 43.71.030. REVIEW AND DETERMINATION OF LICENSE TAX. (a)
22 As soon as practicable after the final payment of the tax, the department
23 shall examine the return and determine the correct amount of the tax
24 and, if an error is found, shall notify the taxpayer of the error and
25 examine the taxpayer's records as authorized in AS 43.05.040, and take
26 other proper steps to determine the amount due.

27 (b) If an agreement cannot be reached with the taxpayer as to the
28 amount of a license tax, the department may set a time and place of
29 hearing on the question, upon at least 60 days' notice of the hearing by

1 mail to the taxpayer. At the hearing a person may be required to appear
2 and testify and produce records and other papers as provided in
3 AS 43.05.040.

4 (c) A person aggrieved by an action of the department may apply
5 in writing to the department within 60 days from the date of the notice
6 of the action, giving notice of the grievance and requesting a hearing.

7 (d) If the department determines that a fee in excess of the
8 amount due was paid, he shall allow a refund or permit a credit at the
9 option of the taxpayer. If refund is allowed, it shall be made out of
10 the general fund by a voucher approved by the department.

11 Sec. 43.71.040. APPEALS. If the person is aggrieved by the
12 decision of the department, he may appeal to the superior court in the
13 judicial district where he conducts his business.

14 Sec. 43.71.050. CIVIL PENALTY. (a) If a person fails to file a
15 business license return or pay the fee, as finally determined by the
16 department, unless it is shown that the failure is due to reasonable
17 cause and not to wilful neglect, five per cent is added to the fee for
18 each additional 30 days, or fraction of 30 days, during which the
19 failure continues, but not exceeding 25 per cent in the aggregate. The
20 amount added to the fee shall be collected at the same time and in the
21 same manner as the fee. In case of delinquency interest shall be
22 assessed at the rate of six per cent a year. If payment is made by
23 check, bill of exchange, or note which is later returned by the drawee
24 as uncollectible because of insufficient funds or is dishonored by the
25 drawee for any reason, the dishonor is prima facie evidence of nonpay-
26 ment of the license fee.

27 (b) If a person fails to apply for a license at the required time
28 or makes, wilfully or otherwise, an erroneous or fraudulent return, the
29 department shall assess the fee from any information it can obtain.

1 This assessment is prima facie good and sufficient for all legal purposes
2 under this chapter.

3 Sec. 43.71.060. SECURITY. The amount of the fee, interest
4 charge, and penalty imposed under this chapter constitutes a lien in
5 favor of the state upon all the person's property located in the state.
6 The lien arises upon delinquency and continues until the liability for
7 the amount is satisfied or the property is sold at foreclosure sale.
8 The lien is not valid as against a mortgagee, pledgee, purchaser, or
9 judgment creditor until notice of the lien is filed in the office of the
10 recorder in the manner provided for federal tax liens in AS 43.10.090 -
11 43.10.150. AS 43.10.090 - 43.10.150 apply to the tax liens arising under
12 this chapter.

13 Sec. 43.71.070. DISPOSAL OF MONEY. (a) All money collected under
14 this chapter shall be deposited in the general fund.

15 (b) The legislature is authorized to appropriate each year to the
16 Department of Revenue an amount equal to 80 per cent of the money
17 collected in each organized borough and each organized city. The
18 amount appropriated to the department under this section to be distri-
19 buted to each organized borough and city in proportion to amount of
20 license fees collected in the local government.

21 Sec. 43.71.080. REGULATIONS. The department may adopt regulations
22 necessary to determine and collect the fees imposed and to enforce this
23 chapter.

24 Sec. 43.71.090. PENAL PROVISIONS. (a) It is unlawful for a person
25 to (1) wilfully evade a tax under this chapter; (2) fail to make a
26 return or keep or produce a record required under sec. 20 of this
27 chapter; (3) make a false or fraudulent return or false statement with
28 intent to defraud the state or evade payment of the tax; or (4) aid or
29 abet another in an attempt to evade payment of the tax.

1 (b) It is unlawful for an executive officer or agent of a corpora-
2 tion or agent of a person to make or permit to be made for his principal
3 a false return or false statement in answer to an inquiry from the depart-
4 ment with the intent to evade the payment of the tax under this chapter.

5 (c) A person who violates this section is guilty of a misdemeanor,
6 and upon conviction is punishable by a fine of not more than \$5,000, or
7 by imprisonment for not more than one year, or by both.

8 (d) In a prosecution under this chapter, no person otherwise
9 competent as a witness is privileged from testifying on the ground that
10 his testimony may incriminate him. However, no indictment or prosecu-
11 tion shall afterwards be brought against the witness on account of an
12 offense or transaction concerning which he testifies as a witness.
13 In a prosecution under this chapter, the attorney general may, with the
14 consent of the department, compromise the case by accepting from the
15 defendant a sum not less than the tax, interest on the tax, and all
16 costs and expenses.

17 Sec. 43.71.100. DEFINITIONS. In this chapter, unless the context
18 otherwise requires, the following words have the meanings indicated.

19 (1) "Business" includes all activities or acts, personal,
20 professional, or corporate, engaged in or caused to be engaged in, or
21 following or engaging in a trade, profession, or business, calling or
22 vocation, with the object of financial or pecuniary gain, profit or
23 benefit, either direct or indirect, and not exempting subactivities pro-
24 ducing marketable commodities or services used or consumed in the main
25 business activity, each of which subactivities shall be considered
26 business. The giving or supplying of services as an employee and the
27 furnishing of property, services, substances, or things, by a person who
28 does not hold himself out as regularly engaging in those transactions,
29 does not constitute business under the meaning of this chapter.

1 (2) "Gross receipts" means receipts from sources in the
2 state, whether in the form of money, credits, or other valuable con-
3 sideration received from engaging in or conducting a business without
4 deducting the cost of the property sold, the cost of the materials
5 used, labor or service cost, interest paid, taxes, losses, or any other
6 expense, except that "gross receipts" does not include cash discounts
7 allowed and taken on sales, and sales refunds, either in cash or by
8 credit, uncollectible accounts written off, and payments received in
9 final liquidation of accounts included in the gross receipts of a
10 previous return made by the person. Receipts from sales, wherever made,
11 of goods, wares, and merchandise manufactured or processed or origina-
12 ting in the state are considered a part of gross receipts from sources
13 in the state, and the holder of a state license under this chapter
14 doing business inside and outside the state is liable under this chapter
15 as to that portion of his gross receipts attributable to his Alaska
16 operation. "Gross receipts" also includes all amounts paid or assigned
17 to subcontractors. Individuals representing firms taxed under this
18 chapter on volume of business done, working as agents on commission
19 instead of as employees, may compute their gross receipts as equal to
20 their gross commissions.

21 (3) "Person" includes an individual, firm, partnership, joint
22 adventure, association, corporation, estate trust, business trust,
23 receiver, or any group or combination acting as a unit.

24 Sec. 43.71.110. SHORT TITLE. This chapter may be cited as the
25 Alaska Business and Occupation Tax Act.

26 * Sec. 3. This Act takes effect January 1, 1975.
27
28
29

MEMORANDUM

State of Alaska

TO: Ralph Kimlinger
Deputy Commissioner
Department of Revenue

DATE: March 28, 1974

FILE NO:

TELEPHONE NO:

FROM: Frederick P. Boetsch
Director
Audit Division

SUBJECT: Committee Substitute for House
Bill 738 - Business and Occupation
Tax

The committee substitute proposes a number of changes from the original bill. Section 2 of the committee substitute includes several exemptions from the tax. It reads that the net income derived from the enumerated gross receipts is exempt from taxation. This provision is probably unnecessary relating, as it does, to gross receipts. The Net Income from activities outlined in paragraphs (1), (3), and (4) are exempt under the Internal Revenue Code (Section 501(c)) and would not be taxed under this bill anyway. Hospitals (paragraph (2)) are also exempt if operated as non-profit institutions.

2. Since we have shifted the tax base to Net Income rather than Gross Receipts, there is a real question whether we want to continue the exemptions indicated in paragraphs (5), (6), (7), and (8). These would eliminate from taxation the income of wholesalers, manufacturers, oil and gas producers, and all export sales. These categories will soon constitute a majority of the net income derived by persons doing business in this state. The exemption in the current law is designed to prevent duplicate taxation since the Gross Receipts Tax is similar to a sales tax. This is not true with the Net Income base.

Paragraphs (9) and (10) are meaningless in the context of a Net Income base since neither tax generates net income.

It is our recommendation, therefore, that this entire section be deleted from the bill since it is either unnecessary or would severely erode the tax base.

The following changes have been made in Section 43.71.020 which in the committee substitute commences on line 9, page 3. The rate of tax has been changed from 7% of net income to 2% of the net income. I am attaching below a table indicating the projected total revenues under this bill at the 2% rate less the 80% sharing provided later in the bill (Section 43.71.070), the resulting net to the State Treasury under CSHB 738, the net to State Treasury under the current law and the net loss to the State Treasury under this bill. The amount of total sharing would also be less due to the fact that the 2% rate does not raise the same amount of total tax which would be collected under the current law. We previously estimated that the rate on net income necessary to do this would have to be 3.6% (see my memo to you dated March 6). The effects of CSHB 738 are indicated in the table below:

Revenue Projections (\$000 Omitted)

	<u>FY 75</u>	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 79</u>
Tax @ 2%	\$ 4,344.3	\$ 4,996.8	\$ 5,483.4	\$ 5,642.1	\$ 5,614.6
Share @ 80%	<u>3,475.4</u>	<u>3,997.4</u>	<u>4,386.7</u>	<u>4,513.7</u>	<u>4,491.7</u>
Net to State Treas. (CSHB 738)	868.9	999.4	1,096.7	1,128.4	1,122.9
Net to State Treas. (Current Law)	<u>3,114.0</u>	<u>3,581.7</u>	<u>3,930.6</u>	<u>4,044.3</u>	<u>4,042.6</u>
Net Loss to Treas.	<u>\$ 2,245.1</u>	<u>\$ 2,582.3</u>	<u>\$ 2,833.9</u>	<u>\$ 2,915.9</u>	<u>\$ 2,919.7</u>

We also note that additional language has been inserted on lines 17, through 19 of page 3 which allow for a reasonable deduction for salary in the case of a sole proprietorship or partnership. This deduction, of course, would erode the tax base and would decrease the projections indicated above by 2% of the aggregate amount of deductions taken. The bill does not define what a reasonable salary would be. Our experience with such ambiguous statutes in the past has been that they are difficult if not impossible to administer. I recommend that "reasonable salary" be defined in quantitative terms, i.e., 10% of the net income before the salary deduction, X dollars, X dollars plus a percentage of net income before the deduction or some other specific formula tied into the amount of net income earned prior to calculating the salary deduction. Only in this way can we have any hope to administer this provision of the act without litigating almost every case that comes along.

We note that lines 19, through 21 on page 3 have incorporated the language we suggested for apportioning income in the case of corporations doing business within and without the state. We, of course, approve of such language.

The language in 43.71.020(b) covering the bank tax has been altered so that the provision for converting from a fiscal year to a calendar year basis has been deleted. Since the definition of income year has also been deleted from the definitions section we wonder what period is to be covered by the return filed. If the return filed is to be for the same year as filed for Internal Revenue Service purposes then the requirement that the return be filed prior to April 16 after the close of the calendar year may cause some hardship on some institutions whose fiscal year does coincide with the calendar year. If it is the desire of the legislature that the fiscal year be used for reporting purposes rather than the calendar year (which has previously been the case), then I think the requirements should be that the returns must be filed by the fifteenth day of the third month after the close of the fiscal year. This is consistent with the Internal Revenue Code. The same reasoning applies to Section (c), lines 10 through 20 on page 4 of CSHB 738. The extension provisions allowed in line 14 should permit a 60 day extension beyond the normal due date if the language we suggest above is adopted for the due date of returns on a fiscal year basis.

We note that the provision requiring mail-order catalogs and mail-order offices to pay the tax has been stricken in accordance with our recommendations. Such a provision would undoubtedly be in violation of PL 86-272.

Section 43.71.090(c) on lines 5, 6 and 7, page 7 provides for a fine of not more than \$5,000 as suggested in our earlier memorandum. However, the violation is still considered a misdemeanor rather than a felony and the jail term would still be one year. Again we recommend that this be treated as a felony with the prison sentence up to five years in order to be consistent with the criminal provisions in our Income Tax Act.

Section 43.71.100 definitions (2) line one, page 8 defines gross receipts. Since the gross receipts tax is being repealed, and this tax is a tax on business income, I am curious why a lengthy definition of gross receipts is included in the Act. It seems superfluous if not confusing to include this in the definition section. As mentioned previously though, we do need a definition of what constitutes the tax year. I previously indicated that the fiscal year used for filing income tax returns should be considered as the income year for purposes of this tax. This would make administration easier for us and compliance easier for the taxpayer. I do believe that is the intent of CSHB 738 as indicated in the section under the bank tax, but I think that it needs to be spelled out more clearly.

In summary then, the committee substitute has made several changes which create some administrative problems. In addition, the change in the rate has a significant detrimental effect on both the State Treasury and the shares to be received by local governments. A table of the effect on local governments is indicated below.

Share to Local Governments (\$000 Omitted)

	<u>FY 75</u>	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 79</u>
Present Law	\$ 4,671.0	\$ 5,372.6	\$ 5,895.8	\$ 6,066.4	\$ 6,036.8
CSHB 738	<u>3,475.4</u>	<u>3,997.4</u>	<u>4,386.8</u>	<u>4,513.7</u>	<u>4,491.7</u>
Net Loss	<u>\$ 1,195.6</u>	<u>\$ 1,375.2</u>	<u>\$ 1,509.0</u>	<u>\$ 1,552.7</u>	<u>\$ 1,545.1</u>

FPB:jf

The Legislature of the State of Alaska
 FISCAL NOTE
 Second Session - Fifth Legislature

I. REQUEST

Bill Identification: CSHB 738
 Title: Alaska Business and Occupation Tax
 Requested by: J. Miller, Saylor, Martin Date: 2-25-74
 Return Date Requested: _____
 Agency: Revenue Program: Individual & Business Taxes

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Individual & Business Taxes

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 74	FY 75	FY 76	FY 77	FY 78	FY 79
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	10.0					
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	10.0	None	None	None	None	None

B. FUNDING: (Thousands of dollars)

GENERAL FUND	10.0	None	None	None	None	None
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	-0- /	-0- /	-0- /	-0- /	-0- /	-0- /
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. ATTACHMENTS

See memorandums from Fred Boetsch, Director of Audit to Ralph Kimlinger, Deputy Commissioner dated March 7 and March 28, 1974 and letter from Fred Boetsch to the Honorable Dick Randolph, State Legislature dated March 11, 1974 (attached).

V. DATE: 3/29/74 PREPARED BY: Ralph Kimlinger
 Deputy Commissioner
 Department of Revenue

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

COMMITTEE REPORT

4/20/74

SENATE

Mr. President:

Date _____

The Committee on Finance has had CSHB 738 (2d Fin) am
under consideration. ^{Alaska Business License Act} A Majority of the members of the Committee

- () recommends it DO PASS
- () recommends it DO NOT PASS
- () recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- () recommends it BE REPLACED WITH CS FOR _____ AND THAT
CS FOR _____ DO PASS
- () "and" recommends it BE REFERRED TO THE _____
COMMITTEE
- () reports it back WITHOUT RECOMMENDATION
- () "other"

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman



RECORDS



CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

4/26/89
Date

COMMITTEE REPORT

4-10-74

SENATE

Mr. President:

Date 4-10-74

The Committee on Finance has had CS 718 750

under consideration. A Majority of the members of the Committee

- () recommends it DO PASS
- () recommends it DO NOT PASS
- () recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- () recommends it BE REPLACED WITH CS FOR CS 714 A 750 AND THAT

CS FOR CS 718 750 DO PASS

- () "and" recommends it BE REFERRED TO THE _____

COMMITTEE

- () reports it back WITHOUT RECOMMENDATION

- () "other"

Members signing the Majority report:

<u>Clayton Kopp</u>	<u>W. Lee</u>	_____
<u>George Ray</u>	<u>No Rec</u>	_____
<u>W. Lee</u>	<u>W. Lee</u>	_____
<u>Clayton Kopp</u>	<u>No Rec</u>	_____

Members NOT concurring in the Majority report:

Sackett recommends: No Rec

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Clayton Kopp Chairman

Original sponsor: Finance Committee

Offered: 3/28/74
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 750

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal and state property
7 taxing powers; and providing for an effective date."

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

9 * Section 1. AS 29.53.045(b) is amended to read:

10 (b) A municipality may levy and collect a tax on the full and
11 true value of taxable property taxable under AS 43.56 as valued by
12 the Department of Revenue at a rate not to exceed that which produces
13 an amount of tax revenue from all sources [THE TOTAL MUNICIPAL
14 PROPERTY TAX] equivalent to \$1,000 a year for each person residing
15 within its boundaries.

16 * Sec. 2. AS 29.53.055 is amended by adding a new subsection to
17 read:

18 (b) General obligation bonds may not be issued or refunded by
19 a municipality if at the time the bonds are authorized the sum of (1)
20 a maximum annual payment of principal and interest on the proposed
21 issue, (2) maximum annual payments of principal and interest on all
22 its outstanding general obligation bonds for which no repayment of
23 principal was required during the current fiscal year, and (3) the
24 total amount budgeted for all other purposes in the current fiscal
25 year, less revenue from sources other than the ad valorem property
26 tax for that year, exceeds the amount of revenue which may be raised
27 in that year from the ad valorem property tax levied within the
28 municipality under secs. 45 and 50 of this chapter. For the purpose of
29 this subsection, "maximum annual payment of principal and interest" means

1 (1) for outstanding general obligation bond issues, the
2 amount of principal and interest which will be paid annually if the
3 bonds are paid according to their terms; and

4 (2) for proposed general obligation bond issues, the amount
5 of principal and interest which would be paid assuming repayment of
6 principal and interest in equal annual amounts commencing in the next
7 fiscal year and continuing over the life of the issue.

8 * Sec. 3. AS 29.58.180(a) is amended to read:

9 (a) The full faith and credit of a municipality are pledged for
10 the payment of principal and interest on general obligation bonds.
11 Subject to AS 29.53.055, the [THE] municipality may levy ad valorem
12 taxes for payment without limitation of rate or amount.

13 * Sec. 4. AS 43.56.020 is repealed and re-enacted to read:

14 Sec. 43.56.020. EXEMPTIONS. (a) There is exempt from state
15 taxes levied or authorized under sec. 10(a) of this chapter, before the
16 construction commencement date, property which is committed by contract
17 or other agreement for use in this state primarily for the production or
18 pipeline transportation of gas or unrefined oil, or in the operation or
19 maintenance of facilities for the production or pipeline transportation
20 of gas or unrefined oil.

21 (b) The following are exempt from local taxes levied or authorized
22 under sec. 10(b) of this chapter:

23 (1) property rights attached to or inherent in the right to
24 explore for or produce oil or gas;

25 (2) oil or gas leases or properties, whether producing or
26 not;

27 (3) oil or gas in place;

28 (4) oil or gas produced or extracted in the state;

29 (5) an interest in property described in AS 43.55.010(b).

1 (c) In (b)(2) of this section, "properties" means mineral inter-
2 ests in oil and gas and working interests, royalty interests, and over-
3 riding royalty interests in oil and gas leases.

4 * Sec. 5. AS 43.56.210 is amended by adding a new paragraph to read:

5 (8) "municipality" means a general law municipal corporation
6 and political subdivision, which is a first or second class borough or
7 city, or a third class borough, incorporated under the laws of the state,
8 including a home rule first class borough or city, or a unification
9 of these.

10 * Sec. 6. This Act is retroactive to January 1, 1974.

11 * Sec. 7. This Act takes effect on the day after its passage and approval
12 or on the day it becomes law without approval.

Introduced: 2/25/74
Referred: Finance

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 HOUSE BILL NO. 750

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal property taxing powers."

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

8 * Section 1. AS 29.53.055 is amended to read:

9 Sec. 29.53.055. NO LIMITATION ON TAXES TO PAY BONDS. The limita-
10 tions provided for in secs. 45 or 50 of this chapter do not apply to
11 taxes levied or pledged to pay or secure the payment of the principal
12 and interest on bonds. Taxes to pay or secure the payment of principal
13 and interest on bonds may be levied without limitation as to rate or
14 amount. This section applies only in the event of default or pending
15 default on outstanding bonds and may not be used as a basis for issuing
16 bonds repayable only by exceeding the limitations. A taxpayer may
17 bring an action in superior court to enjoin issuance of bonds in viola-
18 tion of this section.

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COMMUNITY AND REGIONAL AFFAIRS COMMITTEE REPORT

ON

CS
SCS House SENATE BILL NO. 750

Finance Committee

The Senate Community and Regional Affairs Committee has had

CS House
~~Senate~~ Bill No. *750* under consideration and recommends that it
be replaced with SCS for CS HB 750
~~de-pass.~~

Section 1 of the bill repeals AS 29.53.050(b) enacted at the 1973 Special Session of the Legislature (sec. 4, ch. 1 FSSLA 1973). This section attempted to prevent the pyramiding of either the \$1,000 per capita property revenue limit or the 225 per cent of average assessed valuation limit imposed by the legislature as limitations on the ability of municipalities to levy and collect taxes under the oil and gas exploration, production and pipeline transportation property tax (AS 43.56). The committee is informed that the section is unworkable. For example, there is nothing in AS 29.53.050(b) that prevents one municipality occupying the same geographical area as another from selecting different limitations (i.e., two cities within a borough or a city and a borough, one selecting the \$1,000 formula, the other choosing the 225 per cent formula). No mechanism was enacted to reconcile these different choices within the same jurisdiction. Moreover, this section attempts to accomplish the mathematically impossible: the adding of tax revenue and assessed valuation, a computation akin to adding apples and oranges. Finally, as a practical matter either of these two formulas imposing the taxation limits (established by AS 29.53.045) are so high as to make AS 29.53.050(b)

superfluous. Inasmuch as no other workable anti-pyramiding formula has been suggested, the committee recommends that the existing formula be repealed to avoid complicating the administration of AS 43.56 insofar as municipal levy and collection of property taxes are concerned.

Section 2 of the bill corrects a potentially serious error in the language of the 1973 Special Session legislation relating to the exemptions from taxation levied under AS 43.56. It was invariably understood during the entire course of the legislative consideration of the oil and gas property tax legislation that state taxation of taxable oil and gas property under AS 43.56 would begin on the construction commencement date as defined in AS 43.56.210(2) and (6), but that municipal taxation would begin on the effective date of the chapter, January 1, 1974. However, because of an inadvertent drafting error that occurred during the final hours of the session, the reverse of the legislature's clearly stated intent was enacted, and the redrafting of AS 43.56-020 as it appears in sec. 2 of this bill merely conforms the language of the section to legislative intent. See paragraph 4, Free Conference Committee Report, Senate Journal, November 11, 1973, p. 125.

Section 3 of the bill corrects an additional flaw in the oil and gas property tax statute (AS 43.56). During the 1973 Special Session the Free Conference Committee concluded that the municipalities alone should be authorized to assess, levy and collect

the property tax, and levy and collect the sales tax, on pipeline construction equipment, or as it was frequently stated during debate on the measure, "to chase the pickup trucks." Accordingly, throughout the bill the phrase "erection, construction," was deleted from the text, except, due to an oversight in drafting, in one subparagraph. The amendment the committee now recommends would conform the statute to the clearly stated legislative intent and is essential to ensure that AS 43.56 will be administered in the manner the legislature desired. See paragraph 10, Free Conference Committee Report, Senate Journal, November 11, 1973, p. 126.

Section 4 of the bill adds a definition of "municipality" to AS 43.56. Some doubt has been expressed that the limitations imposed on municipal property taxing powers with respect to oil and gas properties under AS 43.56, AS 29.53.045 and 29.53.050(b) are applicable to home rule municipalities. Although it is clear from AS 29.33.100(22) that the provisions of the Municipal Code governing city and borough property taxation powers (AS 29.53.010 - 29.53.350, 29.53.400) are applicable to home rule municipalities (thus including AS 29.53.045, a new section, within the ambit of the above-cited inclusive section numbers), the addition of an explicit definition of "municipality" that includes home rule entities should resolve any lingering doubts.

Sections 5 and 6 of the bill cause it to go into immediate effect and make its provisions retroactive to January 1, 1974, which was the effective date of the oil and gas exploration, production and pipeline transportation property tax (sec. 6, ch. 1, FSSLA 1973).



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James O. Smith
Signature of Camera Operator

4/26/89
Date

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal property taxing powers."

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

8 * Section 1. AS 29.53.055 is amended to read:

9 Sec. 29.53.055. NO LIMITATION ON TAXES TO PAY BONDS. The limita-
10 tions provided for in secs. 45 or 50 of this chapter do not apply to
11 taxes levied or pledged to pay or secure the payment of the principal
12 and interest on bonds. Taxes to pay or secure the payment of principal
13 and interest on bonds may be levied without limitation as to rate or
14 amount. This section applies only in the event of default or pending
15 default on outstanding bonds and may not be used as a basis for issuing
16 bonds repayable only by exceeding the limitations. A taxpayer may
17 bring an action in superior court to enjoin issuance of bonds in viola-
18 tion of this section.

19 * Sec. 2. AS 29.58.180(a) is amended to read:

20 (a) The full faith and credit of a municipality are pledged for
21 the payment of principal and interest on general obligation bonds.
22 Subject to AS 29.53.055, the [THE] municipality may levy ad valorem
23 taxes for payment without limitation of rate or amount.
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POOR COPY



COMMITTEE REPORT

HOUSE

Mr. Speaker:

Date 3/28/70

The Committee on Finance has had HOUSE BILL 750

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR SB 750 AND THAT

CS FOR SB 750 DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

<u>M. Jones</u>	recommends: <u>Do not pass</u>
_____	recommends:
_____	recommends:
_____	recommends:
_____	recommends:

_____ Chairman

HOUSE JOURNAL

FINANCE COMMITTEE REPORT

ON

CS FOR HOUSE BILL NO. 750

The House Finance Committee has had HB 750 under consideration and recommends it be replaced with Committee Substitute for House Bill No. 750.

Section 1 of the bill amends AS 29.53.045(b), added to the Municipal Code (AS 29) during the 1973 Special Session (sec. 3, ch. 1, FSSLA 1973) by conforming the language of that subsection to the language of the limitations enacted as AS 29.53.050(b)(sec. 4, ch. 1, FSSLA 1973) thus resolving an apparent conflict between the two. The former bases the \$1,000 per capita limitation on total revenues from municipal property taxes, whereas the latter bases the \$1,000 per capita limitation on all tax revenues from whatever source. The language of the amendment to AS 29.53.045(b) in Section 1 of the bill adopts that of AS 29.53.050(b), thus limiting municipal tax levy and collection under AS 43.56 (Oil and Gas Exploration, Production and Pipeline Transportation Tax) to a rate that produces tax revenues from all sources equal to \$1,000 a year per capita.

Section 2 of the bill clarifies the existing provisions of AS 29.53.055 to ensure that general obligation bonds may not be issued to circumvent the limitations imposed on municipal property taxation powers by AS 29.53.045 (limitations on oil and gas property taxation) and 29.53.050 (30 mill limitation). Concern has been expressed that some municipalities might seek to avoid the limitations on property taxation imposed by these sections by merely issuing substantial amounts of general obligation bonds, then levying property taxes to pay or secure payment of principal and interest. Although the Free Conference Committee on the Oil and Gas Exploration, Production and Pipeline Transportation Tax (FCCS SCS CSHB 1; ch. 1, FSSLA 1973) assured the legislature that the language of AS 29.53.055 could not be so construed and that it only gave local governments the right in case of default or pending default on outstanding bond issues to exceed the tax limits set by AS 29.53.045 and 29.53.050 (House Journal, November 11, 1973, pp. 149-50), the Finance Committee believes it advisable to ensure that there is no misunderstanding on the point by clarifying the language of the several property tax limitations to ensure that they may not be exceeded by the issuance or refunding of general obligation bonds.

Section 3 of the bill clarifies the terms of AS 29.53.180(a) by inserting a cross reference to the limitations on the issuance of bonds that appear in AS 29.53.055.

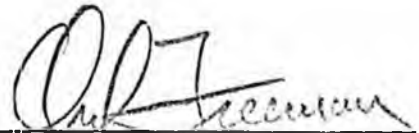
Section 4 of the bill corrects an inadvertent, but potentially serious, error in the language of the Oil and

HOUSE JOURNAL

Gas Exploration, Production and Pipeline Transportation Property Tax legislation relating to the exemptions from that tax levied under AS 43.56 (sec. 1, ch.1, FSSLA 1973). It was invariably understood during the entire course of the legislative consideration of this measure during the 1973 Special Session that state taxation of taxable oil and gas property under AS 43.56 would begin on the construction commencement date as defined in AS 43.56.210(2) and (6), but that municipal taxation would begin on the effective date of the chapter, January 1, 1974. However, because of an inadvertent error in drafting that occurred during the final hours of the session, the reverse of the legislature's clearly stated intent was enacted, and this redrafting of AS 43.56.020 merely conforms the language of the section to legislative intent (Paragraph 4 of Free Conference Committee Report, Senate Journal, November 11, 1973, p. 125).

Section 5 of the bill adds a definition of "municipality" to AS 43.56. Some doubt has been expressed that the limitations imposed on municipal property taxing powers with respect to oil and gas properties under AS 43.56, AS 29.53.045 and 29.53.055(b) are applicable to home rule municipalities. Although it is clear from AS 29.33.100(22) that the provisions of the Municipal Code governing city and borough property taxing powers (AS 29.53.010 - 29.53.350, 29.53.400) are applicable to home rule municipalities (thus including AS 29.53.045, a new section, within its ambit), the addition of an explicit definition of "municipality" that includes home rule entities should resolve any lingering doubts.

Sections 6 and 7 of the bill cause it to go into immediate effect and make its provisions retroactive to January 1, 1974, which was the effective date of the Oil and Gas Exploration, Production and Pipeline Transportation Property Tax (sec. 6, ch.1, FSSLA 1973).



Orsi Freeman, Chairman
HOUSE FINANCE COMMITTEE

Introduced: 2/25/74
Referred: Finance

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

HOUSE BILL NO. 750

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

EIGHTH LEGISLATURE - SECOND SESSION

5

A BILL,

6 For an Act entitled: "An Act relating to municipal property taxing powers."

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

8

* Section 1. AS 29.53.055 is amended to read:

9

Sec. 29.53.055. NO LIMITATION ON TAXES TO PAY BONDS. The limita-
10 tions provided for in secs. 45 or 50 of this chapter do not apply to
11 taxes levied or pledged to pay or secure the payment of the principal
12 and interest on bonds. Taxes to pay or secure the payment of principal
13 and interest on bonds may be levied without limitation as to rate or
14 amount. This section applies only in the event of default or pending
15 default on outstanding bonds and may not be used as a basis for issuing
16 bonds repayable only by exceeding the limitations. A taxpayer may
17 bring an action in superior court to enjoin issuance of bonds in viola-
18 tion of this section.

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Original sponsor: Finance Committee

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 750

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal property taxing powers;
7 and providing for an effective date."

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

9 * Section 1. AS 29.53.055 is amended by adding a new subsection to read:

10 (b) General obligation bonds may not be issued or refunded by a
11 municipality if at the time the bonds are authorized the sum of (1) a
12 maximum annual payment of principal and interest on the proposed issue,
13 (2) maximum annual payments of principal and interest on all its out-
14 standing general obligation bonds for which no repayment of principal
15 was required during the current fiscal year, and (3) the total amount
16 budgeted for all other purposes in the current fiscal year, less revenue
17 from sources other than the ad valorem property tax for that year,
18 exceeds the amount of revenue which may be raised in that year from the
19 ad valorem property tax levied within the municipality under secs. 45
20 and 50 of this chapter. For the purpose of this subsection, "maximum
21 annual payment of principal and interest" means

22 (1) for outstanding general obligation bond issues, the
23 amount of principal and interest which will be paid annually if the
24 bonds are paid according to their terms; and

25 (2) for proposed general obligation bond issues, the amount
26 of principal and interest which would be paid assuming repayment of
27 principal and interest in equal annual amounts commencing in the next
28 fiscal year and continuing over the life of the issue.

29 * Sec. 2. This Act takes effect on the day after its passage and approval

1 or on the day it becomes law without approval.

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NARRATIVE ATTACHMENT

House Bill No. 750 proposes to further define the "No Limit" provision of Section 5 of Chapter 56. Under the existing "No Limit" provision it could be argued that a municipality can sell bonds that would require principle and interest payments that would exceed the limitations provided for in sections 45 or 50 of Chapter 56. If a municipality's administrative budget equals the limitations provided then and principal and interest payments on bonds would exceed these limits.

Sec. 43.56.010 (b) reads in part that a "A tax collected by a municipality as authorized by AS29.53.045 shall be credited against the tax levied under (a) of this section-----". Taxes paid to a municipality in excess of a 20 mill levy then become a credit to the taxpayer against oil and gas property taxes due the State from other areas, or from the undesignated tax base if the municipality elected the 225% formula. This would have a direct effect on the state property tax revenue by the amount of local tax collected in excess of their per capita limitation.

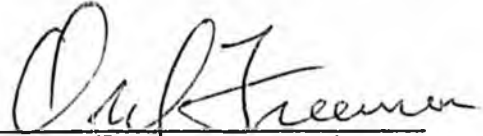
House Bill No. 750 appears to provide the necessary legislation to insure that a municipality comply with the free conference committee's letter of intent relating to "No Limitation" Section. This is a layman's opinion on what may be considered a legal point and should be considered as such.

FINANCE COMMITTEE REPORT

ON

CS FOR HOUSE BILL NO. 750

The House Finance Committee has had HB 750 under consideration and recommends it be replaced with Committee Substitute for House Bill No. 750. The only change in the Committee Substitute from HB 750 as introduced is the addition of Section 2 which makes the same qualification on municipal taxing powers under AS 29.58.180(a), the provision authorizing municipalities to issue general obligation bonds, as Section 1 does under AS. 29.53.055, the provisions for municipal property taxes.



Oral Freeman, Chairman
HOUSE FINANCE COMMITTEE

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal property taxing powers."

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

8 * Section 1. AS 29.53.055 is amended to read:

9 Sec. 29.53.055. NO LIMITATION ON TAXES TO PAY BONDS. The limita-
10 tions provided for in secs. 45 or 50 of this chapter do not apply to
11 taxes levied or pledged to pay or secure the payment of the principal
12 and interest on bonds. Taxes to pay or secure the payment of principal
13 and interest on bonds may be levied without limitation as to rate or
14 amount. This section applies only in the event of default or pending
15 default on outstanding bonds and may not be used as a basis for issuing
16 bonds repayable only by exceeding the limitations. A taxpayer may
17 bring an action in superior court to enjoin issuance of bonds in viola-
18 tion of this section.

19 * Sec. 2. AS 29.58.180(a) is amended to read:

20 (a) The full faith and credit of a municipality are pledged for
21 the payment of principal and interest on general obligation bonds.
22 Subject to AS 29.53.055, the [THE] municipality may levy ad valorem
23 taxes for payment without limitation of rate or amount.
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