

BILLS 1981 - 1982

CSHB 457 - CSHB 460

1981 - 1982

1518

1518

Original Sponsor: Cato

Offered: 4/8/82

Referred: Finance ice

Funding Information

General Fund	\$625,000
Other Funds	-0-
	<u>\$625,000</u>

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 457 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making special appropriations for the reloca-
7 tion of the village of Chenega and the relocation of
8 the village of Mary's Igloo; and providing for an
9 effective date."

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

11 * Section 1. The sum of \$225,000 is appropriated from the general fund
12 to the Department of Community and Regional Affairs for payment as a grant
13 to the Native Village of Chenega for the reestablishment and relocation of
14 the village.

15 * Sec. 2. The sum of \$400,000 is appropriated from the general fund to
16 the Department of Community and Regional Affairs for payment as a grant to
17 Kawerak, Inc. for the Native Village of Mary's Igloo for the reestablishment
18 and relocation of the village.

19 * Sec. 3. The appropriations made by this Act shall be disbursed in
20 accordance with AS 37.05.315.

21 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
22 070(c).

Pegues
12-1359

Original sponsor: Cato

Offered: 5/13/81
Referred: Finance

Funding Information

General Fund	\$225,000
Other Funds	-0-
	<u>\$225,000</u>

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

1 IN THE HOUSE

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3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

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7 village relocation; and providing for an effective
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17 070(c).

28
29
COMMITTEE COPY

-1-

CSHB 457(C&RA) engrossed

ALASKA STATE LEGISLATURE

SECOND
FIRST... Session

TWELFTH. Legislature

HOUSE BILL..... NO. ...457.

By ...CATO.....

"An Act making a special appropriation to the City of Cordova for the Chenega village relocation; and providing for an effective date."

Spec. appro/Chenega village relocation

Introduced in the House ...4/2...., 19...81

HISTORY IN THE HOUSE

19	8	Read first time and referred to Committee on
Apr	2	C &RA and Finance
May	13	Reported back with recommendation that <i>CRA replace w/CS (CRA) 5 degree, 1 no rec. to finance</i>
1982		
Mar	5	Finance replace w/CS (CRA) 6 degree, 1 no rec, 1 do not pass <i>to Rules</i>
Mar	17	Read second time and CS 457 (CRA) adopted <i>today</i>
Mar	17	Read third time and
Mar	18	Reconsideration not taken up
Mar	17	PASS ed Effective Date Yeas 31 Yeas Nays 5 Nays Absent 2 Absent Excused 2 Excused <i>Done</i>
Mar	17	clockwise Reconsideration PASS Effective Date Yeas Yeas Nays Nays Absent Absent Excused Excused
Mar	18	Reported correctly engrossed
	18	Signed by Speaker
	18	Sent to Senate
		<i>Emilee Lloyd</i> CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19	82	Read first time and referred to Committee on
3	19	<i>CRA - Sen</i>
1	8	Reported back with recommendation that <i>CURA replaced w/CS, new title, 1 degree, 1 no rec, to Sen.</i>
		Read second time and
		Read third time and
		PASS Effective Date Yeas Yeas Nays Nays Absent Absent Excused Excused
		Reconsideration PASS Effective Date Yeas Yeas Nays Nays Absent Absent Excused Excused
		Reported correctly engrossed
		Signed by President
		Returned to House
		SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19	Received from Senate
	Concurred in Senate amendment thus adopting: VOTE
	Failed to concur in Senate amendment; asked Senate to recede VOTE
	Senate receded from amendment VOTE
	Senate failed to recede from amendment VOTE
	CC appointed by House
	CC appointed by Senate
	CC adopted by House VOTE
	CC adopted by Senate VOTE
	To enrolling Reported correctly enrolled Sent to Governor by Governor
	Filed with Lt. Governor
	Chapter No.

Alaska State Legislature



House of Representatives

REPRESENTATIVE
BETTE CATO
DISTRICT 5
BOX 775
VALDEZ, ALASKA 99686
907 835-4568
WHILE IN JUNEAU
POUCHV
JUNEAU, ALASKA 99801
907 465-4858

COMMITTEE
CHAIRMAN
HOUSE TRANSPORTATION
MEMBER
HOUSE HEALTH EDUCATION
AND
SOCIAL SERVICES

This appropriation was made last year and the governor vetoed the language and put the appropriation into the Department of Transportation for their operations.

HB 457 appropriation will be used for:

75KW diesel Generator and transportation costs

Bulk Fuel Storage Tanks and transportation costs

Design and Engineering Platting, community plan and administrative costs.

* this is vital for the Local Service Roads and Trails moneys that appropriates \$117,500 in FY 81 and 82 for a total of \$232,000.

* HUD has committed to 23 housing units and this study will plan for plotting and location.

Despite time, problems, Chenega residents still plan return

By BILL BESS
Tundra Times Staff

Almost 18 years after the great earthquake and tidal wave of 1964 destroyed their village and drove them from their homes, the people of Chenega still plan their return. Soon, they say, whether help is forthcoming or not.

"I just think of it as home," says Larry Evanoff, chairman of the Chenega Village Council, and president of the village corporation. "I want to see all the people together again. I remember the village as a fun place, a place where everybody always kind of helped each other out. Nobody kept anything locked. If someone went hunting, they left their house open. Then if someone was in a bad way, they were welcome to come in."

"It gave you a feeling of belonging. It was a far cry different from Anchorage. Evanoff's current home, where everybody is a stranger, where monetary values are put ahead of everything else. Where there is barbed wire. It all gives you a

feeling of being alone." Evanoff was 14 when the disaster struck.

"His wife, Gail, did not grow up in Chenega, but as president of the Village Council, she is a vigorous supporter of the move to build a New Chenega. Her childhood village of Candle was also destroyed by fire, giving her empathy with the people whose interests she represents.

There were about 120 residents of Chenega when the earth shook and then the water swept in and washed everything away, except for the schoolhouse which sat on a hill. Twenty-three of these, including Larry Evanoff's parents, were killed. The survivors found refuge in Tatitlek, but most later moved to Cordova.

Through it all the villagers kept their sense of community. Although no one was living in Chenega when the Alaska Native Claims Settlement Act passed in 1971, the Chenega survivors were able to form a village corporation in the Chugach region under a special "Act of God" clause.

Sixty-nine shareholders are enrolled in the corporation. They also have formed a village council under provisions of the Indian Reorganization Act.

Since that time, the council has been busy planning its community, and seeking help to do so. Three alternate sites covering 69,000 acres were selected. Village members plan to build New Chenega at Crab Bay; 15 boat miles from the old townsite. Crab Bay provides a natural harbor and an area relatively clear of the dense forest which rises from the waters of Prince William Sound. It also should be less susceptible to annihilation in the event of a repeat of 1964, as is evidenced by the still standing remains of an abandoned cannery which survived the tidal wave.

The quest to rebuild has been met with frustrating delays and red tape. Help was sought through the Bureau of Indian Affairs' Emergency Relief program, but the Chenega people learned that aid given

(Continued from Page One)

them in relocating to new areas after the earthquake was all that they qualified for under the program.

In 1981, the BIA provided a \$7,381.50 grant which was used to hold a community meeting in October, and to keep open a council office in Anchorage. The funds have been cut by 45 percent this year.

The state legislature last year approved a \$225,000 grant for planning, engineering, and surveying in the New Chenega townsite, but this was taken out of the budget by Governor Jay Hammond. The community will be lobbying for the funds during the current legislative session, with the services of Community Regional Affairs.

The U.S. Department of Housing and Urban Development originally turned down the villagers' request for housing, but last fall finally approved 23 applications for homes to be built in New Chenega. Funds for their construction have not actually been released, however, and with the budget cutting of the Reagan administration, construction can't be guaranteed until the money is actually received.

Aides to U.S. Senator Ted Stevens and U.S. Rep. Don Young note that the final HUD appropriations for this fiscal year were signed into law just before Christmas. Now the appropriation is in the Office of Management and Budget where it must be assigned to the different area offices by the end of January. Rick Agnew of Young's office notes that the Chenega homes have been a top priority rating in the Anchorage area, and that their outlook is "pretty good." Pam Rubinstein, press secretary to Stevens indicates that funding for the 23 homes is virtually assured.

In addition to the HUD homes, which are priced at \$1.8 million, the council has projected water and sewer construction costs at \$3 million, roads and trails at \$117,000, a school and community center complete with a medical clinic, post office, council and corporation offices, and a community room at \$500,000 to be built with a HUD community development block grant; a dock to berth up to 30 fishing vessels at \$225,000 and an Alaska Native Industries Co-operative Association store, complete with stock, at \$100,000.

The figures have been reached with the help of different governmental agencies, such as the Alaska Department of Transportation, whose help is being sought in obtaining them. Studies are underway to determine the costs and best methods of providing power to New Chenega.

Additionally, community members seek an airstrip, but have been told by state officials that they want to see a community in place before they attempt to justify the cost of construction.

Whatever happens, the Evanoffs say their new community will be founded come June. "We're moving back this summer," Gail Evanoff emphasizes. "If it's going to be in tents, it's going to be in tents! The government agencies want to see our plans before they justify our moving back. We say, let us build our community, then we can see what plans will work out best. But we are going back. My children will go to school next fall in Chenega!"

The Evanoffs express optimism in the potential for economic development for New Chenega. "We know there are several good opportunities for Chenega," Evanoff stresses.

"The sound offers great fishing and tourism potential. We can provide a stopping place for recreationists to refuel, eat and sleep. Most of our people are fishers. There is a potential to build a new cannery."

A Prince William Sound Aquaculture Corporation would like to build a road from New Chenega to their hatchery facilities, and would look for workers among the Chenega population. Most of their help is currently imported from the Lower 48, or urban areas such as Anchorage and Juneau.

The potential for a small sawmill, whose product could be used for building a dock as well as telephone poles and other export needs, also is being explored. Leo Barlow, coordinator of the Alaska Industrial Council, notes that the village has applied for \$13,000 aid for training in sawmill skills at the Alaska Vocational and Technical Center in Seward. "We are supportive of the concept," Barlow says, but stresses that the council has yet to make any decision.

"We have encouraged them to work with their ideas," he notes, adding that there is "tremendous potential for

their approach, and for their concept of starting a sawmill operation."

Ms. Evanoff contends the culture of what is believed to have been the oldest village in Prince William Sound will be lost if New Chenega is not built. There also are a number of important archaeological sites in the area. "A lot has been taken from these sites by people who are interested only in their monetary gain," Ms. Evanoff notes. "We could help preserve these sites. What they want money for, we want respect!"

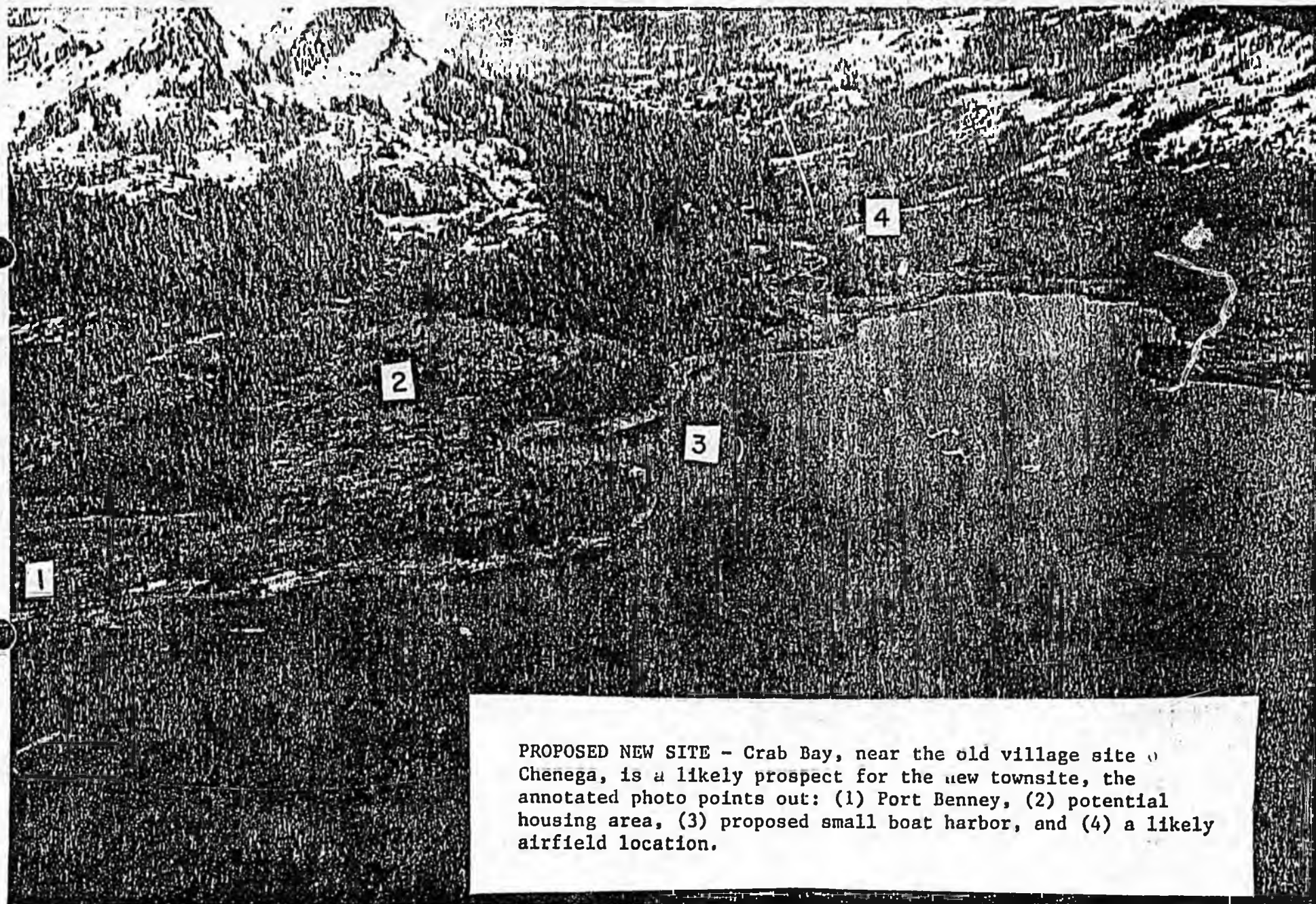
Approximately 70 people would fill the 23 HUD homes. Others among them also emphasize their desire to return. "Oh, we have wanted to go back for so many years," explains John Vlasoff, a Chenega elder. "We have wanted to have our own home there for a long time. I guess since I was a little boy." Vlasoff lives in Cordova.

"I just love village life."

adds Doty Pavak, also of Cordova. "I want to get out of town. It is so expensive here! I have so many bills. Sure, I will have bills in Chenega but it won't be so bad when we can support ourselves. And at least you wouldn't have to contend with the booze, bars, and drugs that you have here!" "You better believe it, I will!" Pavak answers when asked if she would be willing to go back this summer even if it means tent living for a while.

Although Evanoff admits that life in New Chenega would not be exactly like it was in the past, perhaps unattended homes could not be left unlocked for long periods of time; he still believes residents will have a strong sense of community, and will help each other. "I want my children to know village life," he stresses.

"We don't want anyone to feel sorry for us," adds his wife. "We feel we deserve to be able to go back. We're not asking anything for nothing. We're tax payers too, by god! We pay our way!"



PROPOSED NEW SITE - Crab Bay, near the old village site of Chenega, is a likely prospect for the new townsite, the annotated photo points out: (1) Port Benney, (2) potential housing area, (3) proposed small boat harbor, and (4) a likely airfield location.

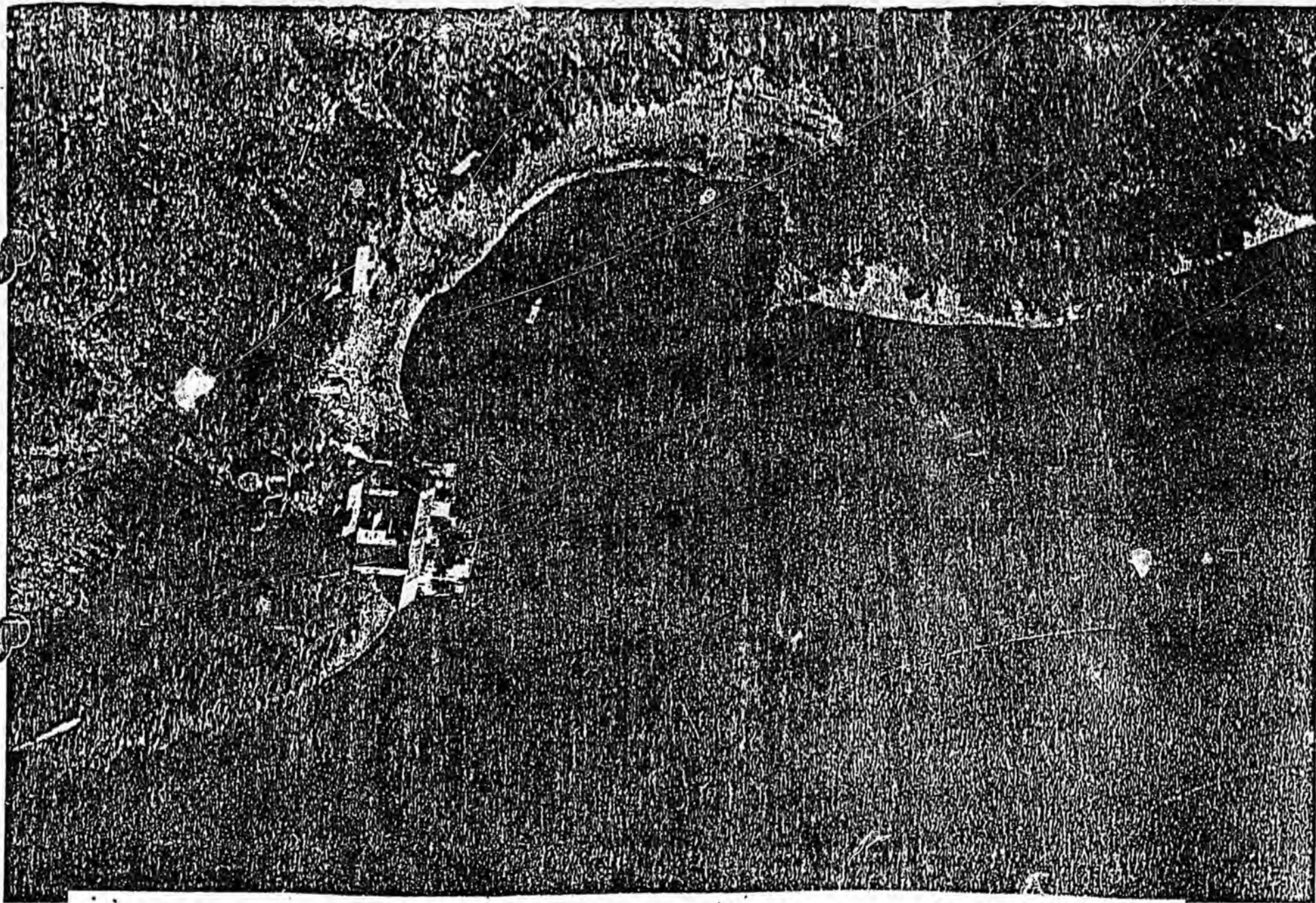


PHOTO #2. Showing one of several potential small boat harbors and abandoned cannery.



PHOTO #3. Cannery damaged during and abandoned after 1964 earthquake (uplift in area 8 to 9 feet).

NEW CHENEGA
DEVELOPMENT PROGRAM

Planning
Work Program
Budget

Prepared by:

CHENEGA VILLAGE COUNCIL
903 W. Northern Lights Blvd., Suite 203
Anchorage, Alaska 99503
Gail Evanoff, President

February 17, 1981

I. INTRODUCTION

This document will explain the overall program for the development of the New Chenega Village. It provides a history of the village's relocation efforts, an explanation of the development plan, and an outline of the overall goals that the Chenega Council and the Chenega Village Corporation hope to attain through this program. Also included is a detailed 1981 work program and budget, plus an overall budget estimate for the development of the new village. Attached are the Chenega Field Trip Reports by Erv Long and Mason Wade of the U.S. Army Corps of Engineers in 1976 (Attachment A), and the New Chenega Preliminary Plan prepared by Hewitt V. Lounsbury and Associates in 1980 (Attachment B).

History of Chenega

Chenega is one of the five villages that constitute the Chugach Native Region. Prior to the Good Friday Earthquake of 1964 it was located on the southern end of Chenega Island in the western Prince William Sound, 41 miles by air from Whittier, 48 from Seward and 84 from Cordova. The tsunami which followed the earthquake destroyed the old village and killed one-third of the residents. The survivors were evacuated to Tatitlek and Cordova, where most of them settled. However, few, if any have ever considered any place other than Chenega home.

Even though Chenega was not noted among the villages receiving benefits of the Alaska Native Claims Settlement Act in 1971, it was certified in 1974 through an "Act of God" provision which recognized certain abandoned villages. This paved the way for the formation of a village corporation to receive the land and monetary benefits owed to the 69 Chenega people who enrolled as village corporation shareholders.

The Chenega Village Council is an IRA Council which is spearheading the development of the New Chenga Village. There are 23 households of Chenega residents who have committed themselves to return to New Chenega.

At first the village considered rebuilding at the village's former location on Chenega Island, and has a plan prepared to guide them on that endeavor. Then, however, the people realized that they would be vulnerable to the same kind of disaster that struck previously. They were also fearful of living at what was now considered a historic place.

Consequently, the Corps of Engineers was asked to assist the village in identifying a suitable site on lands selected by the Village Corporation under the Settlement Act. A Corps of Engineers party, led by Mason Wade and Erv Long visited the area in 1976 and recommended that Crab Bay on Evans Island be considered as the site for the new village. This site is 15 miles south of the former village location. It has a sheltered harbor, a good level area for development, plentiful water supplies and enough protection from all elements to assure that a disaster similar to the one that befell the Chenega people before would never happen again.

In the spring of 1977 the Soil Conservation Service of the U.S. Department of Agriculture visited the site and performed a soils survey. In 1980 the Anchorage firm of Lounsbury and Associates was selected to draft a design plan for the new village. These alternatives were produced under that agreement, and in October of that year the Chenega people assembled in Cordova and chose their preferred alternative.

Based on that decision, the Chenega Village Council has worked with several consultants to prepare this proposal for funding. It entails the collection of sufficient site information for

survey, engineering and design purposes, so that major construction can get underway in late 1981 and 1982.

The Chenega people were uprooted seventeen years ago by an Act of God. Hopefully, the funds granted under this proposal and the construction activities which are soon to follow will finally provide them with a home to return to.

II. DEVELOPMENT PLAN

The Chenega Council proposes to develop New Chenega in a series of phases. Planning for the site has already begun. Significant effort has gone into site selection and preliminary evaluation. A preliminary layout of lots and roads has been done and approved by the stockholders. Initial location studies have been done for a variety of community facilities, including an airport, a school site, a boat harbor, a sewage treatment plant, electrical power generation source and a water source. Consideration has been given to areas for commercial development and future expansion of the residential uses. A preliminary layout of New Chenega is attached (Attachment C). The Chenega Village Corporation owns all of the land involved in the site, thus there should be no title-related problems.

The overall schedule for the development of New Chenega stretches over several years. The short-term schedule anticipates an intensive effort that will result in initial occupancy by late 1982.

In 1981 the Village Council is ready to begin detailed planning, layout and design studies. The feasibility of the utilities should be verified and the village design needs to be adjusted to fit the exact physical conditions of the site. After that the final stages of engineering, surveying and construction can begin.

Chenega's immediate goal is to complete the planning, layout and surveying during this summer. Engineering would be started with completion of construction documents during the winter of 1981-82. It is anticipated that some preliminary construction activity would begin in 1981. However, the major construction effort would occur in 1982. This would include construction of roads, utilities and some houses. An investigation of the

hydroelectric potential identified in the preliminary planning would be conducted to determine the most efficient source of electric power for the village.

Following initial occupancy in late 1982, the Village Council will continue planning for construction of ancillary community facilities, including the small boat harbor, the airport, electrical system improvements and road extensions.

During the winter of 1982-83 design work would continue. The airport would be designed and construction prepared for. The small boat harbor would also be designed and the necessary permits would be obtained prior to construction. Design of the school and community hall would also be completed.

In the summer of 1983 construction of both the road to the airport and the airport would be completed. The school and community hall would be built. Additional housing would be completed and occupied. Improvements to the water storage system could be made, if needed.

Construction of the small boat harbor could begin in 1983 with completion by 1984. By late 1984 the village would be essentially complete.

At the same time that New Chenega is being built, several entities, including the Chugach Region and the Chenega Village Corporation, are searching for and encouraging the development of new economic enterprises in the village. This will provide a stabilizing economic base that will give New Chenega momentum and added ingredients for a stable and permanent community.

Chenega recognizes that this is an ambitious schedule. It is not, however, one that cannot be met. Since the initial planning decisions have already been made, the most critical factor

affecting scheduling of the project will be availability of funding.

The following work program and budget has been prepared for the purpose of requesting financial assistance for this project. This assistance, combined with the financial and human resources of the Chenega people, will allow the plans for replacing the Chenega Village to come to fruition after 17 years of effort.

III. NEW CHENEGA 1981 WORK PLAN

The following is an expression of the tasks that need to be accomplished within the next year in order to maintain the schedule described above.

Task 1: Soils Investigation

Prior to proceeding with final planning and actual layout of the new village on the site and before any engineering activities can begin, it will be necessary to gain definite soils information. This will be a major planning and design determinate. The soils information will be used to help adjust the preliminary site plan to actual conditions on the site, to help develop engineering studies and to develop estimates of construction costs for the village infrastructure and building foundations.

The soils investigation will involve moving a boring rig to the site by barge and taking core samples on a grid pattern. The location of test holes will have to be surveyed. Both onsite and laboratory analysis will be conducted. The final soils report will describe the subsurface conditions in detail and will make engineering and construction recommendations pertaining to the site.

Task 2: Schematic Design and Construction Cost Estimates

This task will utilize the soils information and the preliminary planning that has been done to date to develop a schematic design for utilities and roads. The sewer and water lines will be layed out on a preliminary basis and the treatment facilities will be sited. The roads will also be sited and preliminary design will be done.

This information will then be converted to cost estimates for construction and maintenance of the utilities and roads. After review of these schematic designs and cost estimates by the Village Council and its engineer, any necessary adjustments to the plan and approach to development of the new village will be made. This may involve changes in the site plan and in the method of handling wastewater collection and treatment. After the necessary adjustments and "fine tuning" are complete, the plan can be fitted to the site.

Task 3: Site Validation

This task will involve onsite layout of the village plan to assure that it takes advantage of the soil conditions, topography and other physical features. Changes to accommodate the characteristics of the site will be made and the final layout confirmed. Final location will be determined for the initially required community facilities, including docking facilities, school and town hall, water source and wastewater treatment facilities.

The roads will be staked out and cross-sections will be surveyed in preparation for final engineering. Computations of lot sizes for the final plat will be made so that reconveyance can be planned. This process involves the Village Corporation reconveying all lands necessary for public purposes and community expansion, including residential lots, to the State Municipal Lands Trust Officer, as provided for in Section 14(c)(3) of the Settlement Act, as amended and in Alaska Statute 49.47.150. The trust officer will deed individual lots to the residents as they are ready to move to New Chenega.

Task 4: Final Plat Preparation and Staking

This task will include final subdivision design and computation and staking of each lot. The road system will be surveyed and staked for construction and the above described community facilities will be staked.

The final plat of the village site will be prepared and processed.

Task 5: Engineering Design

This task will begin in the late summer of 1981 and continue into the winter. It will involve final design and preparation of construction documents for the following facilities and utilities:

- Streets and Trails
- Water Source & Storage
- Waterline Extensions
- Sanitary Sewer Laterals
- Sanitary Sewer Treatment Plant
- Initial Dock Facilities
- Hydroelectric Investigation
- Initial Electrical System Design
- Airport Design
- School Design

These designs will be totally complete by the spring of 1982. This will allow the major construction effort to be concentrated in the summer of 1982. Some initial design work will be completed by late summer 1981, which will allow initial construction of the road and trail system to begin in 1981.



PROPOSED HYDRO FACILITY

PROPOSED POWERLINE

PROPOSED ROAD

PROPOSED AIRSTRIP

PROPOSED HARBOR FACILITY

NEW CHENEGA TOWNSITE

PRINCE OF WALES

PASSAGE

Sawmill Bay

LATOUCHE

BIRLINGTON PASSAGE

Brown Buttes

Phoenix

Chicken Island

Hornet Bay

Mine (Alber)

Alber

Lake Hayden

Lake Puffy

Lake Puffy

Original sponsor: Cato

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22 070(c).

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X



August 5, 1980

Mr. Robert M. Johnson, Director
State of Alaska
Department of Revenue
Property Tax Division
201 E. 9th Avenue
Anchorage, Alaska 99501

Dear Mr. Johnson:

Pursuant to A.S. 43.56.110, Alascom, Inc. hereby respectfully appeals those assessments for oil and gas property issued July 17, 1980 by the State of Alaska, Department of Revenue and received by Alascom on July 28, which is shown as a supplemental assessment of Alascom for Alascom owned property described as the Backbone Communications System, the Alternate Route Communications System and the Block Valve Communications System (collectively referred to as "TAPS/12"), for the years 1975 through 1980. Alascom believes the assessment in question to be incorrect for several reasons.

The property in question (with the possible exception of the Block Valve Communications System) is an integrated segment of a worldwide public communications system. Alascom is a telecommunications common carrier regulated pursuant to Certificates of Convenience and Public Necessity held with the Federal Communications Commission and the Alaska Public Utilities Commission. In this capacity, it provides long lines telecommunications services throughout the State of Alaska and between Alaska and other parts of the contiguous 48 states and the world.

The Alascom public telecommunications network is comprised of many integrated segments either constructed by Alascom or acquired through purchase. These segments include the Alaska Communications System and the White Alice Communications System which were acquired from the Air Force, as well as numerous systems designed and constructed by Alascom, such

Mr. Robert M. Johnson
August 5, 1980
Page 2

as the Small Bush Earth Stations, WACS Replacement Earth Stations, and the systems referred to in the Supplemental Assessment Roll as the Backbone Communications System and the Alternate Route Communications System. These segments are integrated to form a statewide telecommunications network and are physically interconnected with the systems of AT&T, CNT, BCT, W.U. and other carriers as part of the worldwide communications network. As such, both message toll as well as private line services transit such systems. Each of the segments has the capability to interface with the other segments in the telecommunications network and, therefore, individual telecommunications may transit one or many of the segments. Thus, it is factually impossible to segregate a portion of the property and attempt to classify that property as being used primarily in the exploration for, production of, or pipeline transportation of gas or unrefined oil.

The Department's Administrative Regulation 15 AAC 05.860 provides as follows:

"Property which is used or committed by agreement for use in the exploration, production, or pipeline transportation of unrefined oil and gas, and also used or committed for other purposes is taxable under A.S.43.56 only if the time the property is used or committed for use in the exploration, production, or pipeline transportation of unrefined oil and gas exceeds 50% of the total time that the property is used or committed for use in a previous calendar year."

However, Alascom's telecommunication network, including the property assessed, which is "used or committed by agreement for use in the exploration, production or pipeline transportation of unrefined oil and gas and also used or committed for other telecommunications purposes" is used less than 1% of the total time by Alyeska for exploration, production or pipeline transportation of unrefined oil and gas. Therefore, none of the property assessed could lawfully be assessed under 15 AAC 05.860.

Although the State's segregation of the Backbone Communications System, Alternate Route Communications System, and Block Valve Communications Systems is clearly improper, and even if this impropriety was not being contested here by Alascom, Alascom would not be liable for the tax pursuant to A.S.

Mr. Robert M. Johnson
August 5, 1980
Page 3

43.56.210(b). Any assessment made by way of segregation would have to be made on the basis that the segments are communications systems utilized in conjunction with the TransAlaska Pipeline System which, in turn, is used primarily in the exploration for, production of, or pipeline transportation of gas or unrefined oil or in the operation or maintenance of facilities used in the exploration for, production of, or pipeline transportation of gas or unrefined oil. Thus, it follows that the communications segments assessed would have to be argued to be part of an oil and gas pipeline system.

A.S. 43.56.210(6) provides, in part, as follows:

"'Taxable property' does not include permanent residences, office buildings requiring substantial local government services, or oil and gas pipeline systems owned and operated by a certificated public utility regulated by the Alaska Public Utilities Commission;..."

Inasmuch as Alascom is, in fact, a certificated public utility by virtue of Docket U-69-24, Order No. 12 before the Alaska Public Utilities Commission, and it is the owner of the above-referenced system, it would definitely be exempt by virtue of the above provision. <

To hold otherwise would not only go beyond the intended scope of the Act, but might also work a great hardship on the ratepayers of the State of Alaska. The only method Alascom has of recuperating taxes assessed is passing the tax along via increased rates to telecommunications services users. We clearly believe it was not the intent of the legislature to assess an oil and gas pipeline tax to a regulated public utility since the utility would have to include any such costs in its rate base, thereby forcing individuals throughout the State of Alaska to pay the tax. It is thus conceivable that residents in small bush villages as well as urban users of telecommunications services in Alaska would be required, in essence, to pay this tax if it were assessed against a regulated utility. The creation of such a great hardship clearly goes beyond the scope of the tax legislation under which the attempted assessment is being made. <

Mr. Robert M. Johnson
August 5, 1980
Page 4

While Alascom, Inc. does not believe the assessment to be valid for the foregoing reasons, it believes that the State's attempted assessment for prior years to be invalid as a matter of law even if the assessment were otherwise valid. There is no statutory authority under which the State can make assessment for prior years. A.S. 43.56.090 and A.S. 43.56.100 provide for an annual assessment. In assessing for the years 1975 through 1979, the State has construed A.S. 43.56.140 with respect to supplementary assessment to allow the reassessment of property omitted in prior years' assessment rolls. However, inasmuch as A.S. 43.56.090 provides only for an annual assessment, it follows that A.S. 43.56.140 would only apply to a supplementary roll for omissions in the same year.

It has been held in various jurisdictions that the statutes dealing with corrections, errors in assessment rolls or tax lists shall apply only to errors for the current or taxable year. In Dyer v. Dalton, 174 P.2d 252, 197 Okl. 601; Bridgeport Brass Co. v. Drew 128 A.413 (1925); Board of County Commissioners v. Lane, 90 P. 1092, 76 Kentucky 12 (1907).

More particularly, the State is attempting to parallel the assessment action taken by the Commissioner of Insurance of the State of Kansas in the case of Equitable Life Insurance Society v. U.S. v. Hobb, 127 P.2d 477, 155 Kansas 534 (1942) wherein an insurance company had filed tax returns for the years 1927 through 1934 but had failed to include certain annuity contracts in those returns. In 1936, the State reassessed the insurance company on the basis that the annuity contracts had been omitted from the years when the tax returns had been filed. In that case, the State specifically contended that it was not estopped by any inaction, procrastination or delay on the part of the Commissioner in asserting liability for the tax and contended that the burden was on the companies to make returns including all property they would have been liable for and pay the tax. There, the Court held at 480, in part:

"There is no provision of statute that permits the Commission to resurvey returns previously made upon which an assessment has been made and paid."

Mr. Robert M. Johnson
August 5, 1980
Page 5

Therefore, the State has no statutory authority for a supplementary assessment pursuant to A.S.43.56.140.

While the foregoing establishes that the assessment is improper, the State would also be precluded from making assessments for the property in question for additional reasons. 15 AAC 05.860, cited supra, requires that the property which is used or committed by agreement for use in the exploration, production or pipeline transportation of unrefined oil and gas can only be taxable if that property was used or committed for use in the exploration, production or pipeline transportation of unrefined oil and gas at least 50% of the total time that the property was used or committed for use in the previous calendar year. In applying this criterion, the assessment would have to be reduced by deleting the Backbone Communications System and the Alternate Route System. Only 52,964 circuit miles of the Backbone Communications System are currently in use by Alyeska. The total circuit capacity of the Backbone Communications System is 247,743 miles. Thus, only 21% of the system is committed for use by Alyeska in the exploration, production or pipeline transportation of unrefined oil and gas. A similar commitment percentage for the Alternate Route Communications System is 1%.

Although Alascom does not know the source of the figures which are included in the assessment, it would appear that the State may have included the equipment used for interim communications in the assessment for the years 1975 and 1976. The amount Alascom believes to have been erroneously included by the State is \$10,479,557 for the years in question. Inasmuch as this system was utilized as a system to provide temporary communications during the construction of the project, Alascom believes that this would not fit within the definition of property uses for the exploration, production or pipeline transportation of unrefined oil and gas and therefore should be eliminated from any assessment.

The State also appears to have included in its assessment capitalization of interest during construction (IDC) in the amounts of \$84,070.00 for 1975, \$1,234,645.00 for 1976, \$4,422,461.00 for 1977, 1978, 1979 and 1980. This portion of the assessment is clearly improper. It has been precluded by A.S.43.56.060 which provides, in part, as follows:

Mr. Robert M. Johnson
August 5, 1980
Page 6

"For purposes of this section, "actual costs" and "replacement costs" do not include Interest before or during the period of construction nor the value of intangible drilling expenses. In the case of taxable property under construction, "actual costs" for purposes of this section means a cost incurred or accrued with respect to the property as of the date of assessment."

Therefore, Alascom believes that, in addition to the reasons previously cited, assessments for the interim communications, Alternate Route Communications System, the Backbone Communications System and the inclusion of IDC should be reduced from any assessment.

The State, in making the assessment retroactively, has also violated the provisions of A.S. 9.10.070(2) and (3). A.S. 9.10.070(2) and (3) provides in part as follows:

...No person may bring an action...(2) upon a statute for forfeiture or penalty to the State or (3) upon the liability created by statute other than a penalty or forfeiture; unless commenced within two years.

While technically the State, in making the assessment, may not have brought an "action" within the two year period, it is clear that any further action taken by the State with respect to collection of taxes would violate the two year statute of limitations. Moreover, the State would be precluded from assessing any penalties or interest on any amounts.

Therefore, for all of the reasons listed above, the assessments are incorrect and invalid and Alascom appeals those assessments under A.S. 43.56.110.

Sincerely,



Edward R. Geiger
Controller

AFFIDAVIT OF SERVICE BY MAIL

Jeannette M. Littlefield, being sworn, states that she is an employee of Alascom, Inc.; that on the 6th day of August, 1980, she mailed a letter to Mr. Robert M. Johnson, Director, State of Alaska, Department of Revenue, Property Tax Division, 201 E. 9th Avenue, Anchorage, Alaska 99501, by placing same in the United States mail with postage prepaid at Anchorage, Alaska.

Jeannette M. Littlefield

SUBSCRIBED AND SWORN to before me this 6th day of August, 1980.

Emma E. Oberg
Notary Public In and For Alaska
My Commission Expires: 8-21-83



HB 460

2098.8

1969.0
Hsp #47

SEN. SUP 62

SB 181

421.5

17. SUP 57

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

AFFIDAVIT OF SERVICE BY MAIL

Jeannette M. Littlefield, being sworn, states that she is an employee of Alascom, Inc.; that on the 6th day of August, 1980, she mailed a letter to Mr. Robert M. Johnson, Director, State of Alaska, Department of Revenue, Property Tax Division, 201 E. 9th Avenue, Anchorage, Alaska 99501, by placing same in the United States mail with postage prepaid at Anchorage, Alaska.

Jeannette M. Littlefield

SUBSCRIBED AND SWORN to before me this 6th day of August, 1980.

Emma E. Obera
Notary Public In and For Alaska
My Commission Expires: 8-21-83



Williams

79 Retro - Stimpson
story -

HB 460

2098.8

1969
Hsp #47
Sen. Sup 62

SB 181

421.5

14. Sup 57

Original sponsor: Resources Committee

Offered: 5/21/81
Referred: Finance

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 460 (Finance) (efd failed)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the fisheries and salmon enhance-
7 ment taxes."

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

9 * Section 1. AS 43.75.015(b) is amended to read:

10 (b) Instead of the taxes levied by (a) of this section, a person
11 who processes [ENGAGED IN A FISHERY BUSINESS WHICH INCLUDES PROCESSING]
12 a developing commercial fish species is liable for and shall pay a tax
13 equal to

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

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

20 * Sec. 2. AS 43.75.015(c) is amended to read:

21 (c) A person engaging or attempting to engage in a fisheries
22 business who first actually and physically processes the fishery re-
23 source, or a person who purchases a fishery resource which is frozen
24 from a person excluded by AS 43.75.017 from liability for the tax, is
25 liable for and shall pay to the department the entire tax imposed by
26 this section. In determining this tax liability, the person may [NOT]
27 deduct from the value of the fishery resources processed the value of
28 fishery resources that are canned or processed for other fisheries busi-
29 nesses. A person taking the deduction authorized by this subsection

1 shall report all information relating to the deduction in accordance
2 with regulations issued by the department [, BUT SHALL INCLUDE THAT
3 VALUE AS PART OF THE VALUE OF THE FISHERY RESOURCES PROCESSED].

4 * Sec. 3. AS 43.75 is amended by adding a new section to read:

5 Sec. 43.75.017. EXCLUSION FROM FISHERIES BUSINESS TAX. A person
6 is not liable for the fisheries business tax under AS 43.75.015 when
7 the fishery resource is frozen aboard a fishing vessel if

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

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

12 (3) the fishery resource which is frozen was caught by the
13 vessel; and

14 (4) the fishery resource is sold by the person who claims an
15 exclusion under this section from a tax levied by AS 43.75.015.

16 * Sec. 4. AS 43.75.130 is amended to read:

17 Sec. 43.75.130. REFUND TO LOCAL GOVERNMENTS. The commissioner of
18 revenue shall pay

19 (1) to each municipality unified under AS 29.68.240 -
20 29.68.440, and to each city located in the unorganized borough, 50 [20]
21 percent of the amount of tax revenue collected in the municipality from
22 taxes levied by AS 43.75;

23 (2) to each city located within a borough, 25 [10] percent
24 of the amount of tax revenue collected in the city from taxes levied by
25 AS 43.75; and

26 (3) to each borough
27 (A) 50 [20] percent of the amount of tax revenue
28 collected in the area of the borough outside cities from taxes
29 levied by AS 43.75; and

1 (B) 25 [10] percent of the amount of tax revenue
2 collected in cities located within the borough from taxes levied
3 by AS 43.75.

4 * Sec. 5. AS 43.75.140(7) is amended to read:

5 (7) "value" means the actual price paid for the fisheries
6 resource by the fisheries business, including indirect consideration
7 such as fuel, supplies, or gear, whether paid at the time of purchase
8 of the fisheries resource or tendered as a deferred or delayed payment,
9 except that "value" means the market value of the fishery resource if
10 the taking of the fishery resource is done [PROCURED] in company-owned
11 or company-subsidized boats operated by employees of the fisheries
12 business or in boats which are operated under lease or other arrange-
13 ment;

14 * Sec. 6. AS 43.75.140 is amended by adding a new paragraph to read:

15 (9) "taking" means pursuing, fishing, capturing, or killing
16 a fisheries resource in any manner.

17 * Sec. 7. AS 43.76.020(a) is amended to read:

18 (a) The salmon enhancement tax levied under AS 43.76.010 or 43.-
19 76.011 may be terminated by the commissioner of revenue upon majority
20 vote at an election held under AS 43.76.015 in the region in which the
21 salmon enhancement tax is levied.

22 * Sec. 8. AS 43.75.136 is repealed.

23 * Sec. 9. TRANSITIONAL REVENUE SHARING. Notwithstanding AS 43.75.130,
24 during the fiscal year ending June 30, 1982, the commissioner of revenue
25 shall pay

26 (1) to each municipality unified under AS 29.68.240 - 29.68.440,
27 and to each city located in the unorganized borough, 30 percent of the
28 amount of tax revenue collected in the municipality from taxes levied by
29 AS 43.75;

1 (2) to each city located within a borough, 15 percent of the
2 amount of tax revenue collected in the city from taxes levied by AS 43.75;
3 and

4 (3) to each borough

5 (A) 30 percent of the amount of tax revenue collected in the
6 area of the borough outside cities from taxes levied by AS 43.75; and

7 (B) 15 percent of the amount of tax revenue collected in
8 cities within the borough from taxes levied by AS 43.75.

9 * Sec. 10. TRANSITION. The taxes paid for the 1980 calendar year under
10 AS 43.75 shall be shared with municipalities in accordance with AS 43.75.130
11 as that section read before its amendment by sec. 4 of this Act. The taxes
12 paid for the 1981 calendar year shall be shared with municipalities in
13 accordance with sec. 9 of this Act. The taxes paid for the 1982 calendar
14 year and for each succeeding calendar year shall be shared with municipali-
15 ties in accordance with AS 43.75.130 as amended by sec. 4 of this Act.

16 * Sec. 11. Sections 2 and 3 of this Act are retroactive to January 1,
17 1981, and apply to tax years beginning after December 31, 1980.

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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

April 14, 1981

The Honorable Fred F. Zharoff
The Honorable Terry Gardiner
Co-Chairmen
House Resources Committee
Room 118 - Capitol
Juneau, AK 99811

HB 460

Re: House Bill No. 460

Dear Mr. Zharoff and Mr. Gardiner:

House Bill No. 460, an Act relating to fisheries and salmon enhancement taxes, was introduced in the House on April 2, 1981, and was referred to the House Resources and Finance Committees.

For the consideration of the House Resources Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Gary L. Jenkins, Director, Audit Division; Mr. Phil Wall, Director, Administrative Services Division and Mr. Robert W. Elliott, Research Section of the Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

Enclosures

cc: The Honorable Samuel R. Cotten
Chairman
House Finance Committee

Phil Wall, Director
Administrative Services Division
Department of Revenue

Joseph K. Donohue
Deputy Commissioner, Taxation
Department of Revenue

Robert W. Elliott
Research Section
Department of Revenue

Gary L. Jenkins, Director
Audit Division
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 460

Title An Act relating to the fisheries and salmon enhancement taxes

Requested by House Resources Committee Date April 13, 1981

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Revenue Collection and Management

BRU, Program, or Subprogram(s) Affected Audit Division

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars) NONE

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						

TOTAL

FUNDING (Thousands of Dollars) NONE

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS NONE

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME						
PART TIME						
TEMPORARY						

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

See attached memo to R.D. Stevenson dated April 13, 1981.

IV. DATE April 13, 1981

PREPARED BY Gary L. Jenkins

AGENCY Audit Division

PHONE 465-2320

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

MEMORANDUM

State of Alaska

TO R. D. Stevenson
Legislative Assistant

DATE April 13, 1981

FILE NO

TELEPHONE NO

FROM Gary L. Jenkins
Director
Audit Division

SUBJECT HB 400

This bill would make some much needed clarifications to the Fisheries Business Tax Act and the Salmon Enhancement Tax Act, along with a change in the revenue sharing provisions of the Fisheries Business Tax.

With regard to the specific provisions of the bill, I would suggest the legislature give consideration to clarifying a few of the proposed provisions. First, Sec. 3 of the bill establishes an exclusion from the Fisheries Business Tax provided certain conditions are met. For purposes of effective administration, I recommend one additional condition be added, which is:

(4) the fishery resource is sold by the person claiming the exclusion from tax to a fisheries business licensed under AS 43.75.

This provision will insure our ability to reasonably enforce the law because the tax will be reportable by taxpayers with whom we are already dealing and we will not be required to go out and try to find other persons who might buy the fishery resource and who would then be required to pay the tax.

When the need for the provisions of this bill were discussed previously with some members of the House Resources Committee, it was suggested that the Salmon Enhancement Tax law be clarified regarding whether the taxable event was the act of catching salmon in one of the established regions or was the act of selling salmon in the region regardless of where caught. It was our original understanding that the taxable event was the act of catching salmon in a region, however, during the course of discussions with various legislators, it has become clear that there is a divergence of opinion as to which event is the taxable event. I would strongly urge the legislature to clarify that point by amending AS 43.75.010 and AS 42.75.011. The issue is further confused by the fact that sections 5, 6 and 10 of the bill include provisions that are predicated on the catching of salmon as being the taxable event. Those provisions refer to the imposition of the tax on the person catching the salmon when the salmon are removed from the state by that person without the tax being paid. These concepts were originally suggested when we were still thinking the legislature meant the taxable event to be the catching of

the salmon. Those provisions should be deleted if the legislature intends to keep the tax on a sales basis only.

With regard to section 14 of the bill, which is the effective date clause for the changes in the revenue sharing section in the fisheries business tax, I would suggest that consideration be given to changing the effective date to either January 1, 1982 or July 1, 1982. Either date would seem to be more consistent with the provisions of section 12 of the bill.

Finally, I would also recommend an additional section be added to the bill for the purpose of defining the term "buyer" as it applies in the proposed revision to the Salmon Enhancement Tax. Please consider the following:

"Buyer" means any person who acquires possession of salmon from the person who caught the salmon regardless of whether there is an actual sale of the salmon but excluding any transfer to a person engaged solely in interstate transportation of goods for hire.

This broad language is being proposed to insure that deliveries of salmon to a cooperative would be included. This would preclude an argument that a delivery to a cooperative was not an actual sale upon which the tax would not apply.

I. REQUEST

Bill/Resolution No. HB 460

Title Relating to the Fisheries and Salmon Enhancement Taxes

Requested by House Resources

Date April 3, 1981

II. FISCAL DETAIL

Agency Affected _____ Revenue _____

Program Category Affected _____ General Government _____

BRU, Program, or Subprogram(s) Affected Administration and Support, Management Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

HB 460 increases the percentage of tax paid. The Bill will also cause a small increase in Returns which report the tax paid on certain frozen fishery resources and upon salmon removed from the State. The Bill will cause a substantial increase in the amount refunded to Local governments. However, it appears that the additional cost can be handled within the present and requested budgets.

IV. DATE April 7, 1981

PREPARED BY _____

Carroll
Philip A. Wall

AGENCY _____

Revenue

Original: Legislative Finance

PHONE _____

465-2313

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 460
 Title Relating to the fisheries and salmon enhancement taxes
 Requested by House Resources Committee Date 4/13/81

II. FISCAL DETAIL

Agency Affected _____
 Program Category Affected _____
 BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						

TOTAL

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No change in revenues.

IV. DATE 4/13/81

PREPARED BY

Robert W. Elliott
 Robert W. Elliott

I. The Department improperly and arbitrarily assessed a tax on one component part of Alascom's telecommunications system so as to circumvent its own regulations. Alascom's property is not taxable property as defined by 15 AAC 05.860;

II. Alascom's property is not within the class intended to be taxed by AS 43.56;

III. The Department may not retroactively assess taxes for the years 1975 to 1980;

A. The assessment is contrary to the common law principle of finality of tax obligations;

B. The legislature has not authorized retroactive assessment of oil and gas property taxes; and

C. The Department is barred and estopped from retroactively assessing taxes.

In addition Alascom submits that the valuations established by the Department for Alascom's property are not only excessive but are not supported by reliable evidence.

Although Alascom discussed the above delineated arguments in its appeal of September 5, 1980, Alascom will reiterate the points covered therein. Some of the text is repetitive in order that the Board might have Alascom's entire case in one document.

I. THE DEPARTMENT OF REVENUE HAS IMPROPERLY AND ARBITRARILY ASSESSED A TAX ON ONE COMPONENT PART OF ALASCOM'S TELECOMMUNICATIONS SYSTEM SO AS TO CIRCUMVENT ITS OWN REGULATIONS. ALASCOM'S PROPERTY IS NOT TAXABLE PROPERTY AS DEFINED BY 15 AAC 05.860.

The Backbone Communications System (BCS), Alternate Route Communications System (ARCS), and Block Valve Communications System (BVCS) are component parts of Alascom's single integrated telecommunications network. Each is an element necessary to the completeness of Alascom's communications network which operates as an integrated circuit providing

long lines communications services. Just as an integrated circuit contains many interconnected amplifying devices and circuit elements necessary to successfully complete its intended functions, Alascom's communications system components interface to enable the completion of their intended functions.

This web of communications facilities also includes the Alaska Communications System, White Alice Communications System, Small Bush Earth Stations and WACS Replacement Earth Stations. The systems comprise a statewide telecommunications network which, in turn, is physically interconnected with the systems of American Telephone & Telegraph, Canadian National Telephone, British Columbia Telephone, Western Union and other carriers as part of the worldwide communications network. Both message toll and private line services transit such systems. Each segment has the capability to interface with the others. Consequently, individual telecommunications may transit one or many of the segments.

The Department's administrative regulation, 15 AAC 05.860, provides for assessment of property "used or committed" for use in the oil production industry. Alascom's telecommunications network, including the property assessed, which is "used or committed by agreement for use in the exploration, production or pipeline transportation of unrefined oil and gas, and also used or committed for other purposes" is used less than one percent (1%) of the total time by Alyeska for exploration, production, or pipeline transportation of unrefined oil and gas. Therefore, none of the property assessed is "taxable" property.

In order to avoid the relevant statutes and regulation, the Department has improperly and arbitrarily assessed a tax on component parts of Alascom's telecommunications

HUGHES THORSNESS
VITZ POWELL & BRUNDIN
ATTORNEYS AT LAW
69 WEST THIRD AVENUE
ANCHORAGE, AK 99501
(907) 274-7522

system. An analogy may assist the Board in understanding Alascom's position. Assume an individual living in Glennallen owns a pickup truck with a power winch on the front, a hand brake and wheel blocks. Assume further that this person uses the truck primarily for hauling in a firewood business, seldom uses the power winch except when hired occasionally to pull oil company vehicles out of snow drifts, and seldom uses the hand brake or wheel blocks except when using the power winch. Based on its approach in the instant case, the Department would focus on each component part of the truck and ignore the fact that it is in fact an integrated piece of machinery. It would thus impose a tax under AS 43.56 on the power winch, the hand brake assembly, and the wheel blocks, contrary to clear intent of 15 AAC 05.860.

15 AAC 05.860 provides:

MULTIPLE USE PROPERTY. Property which is used or committed by agreement for use in the exploration, production, or pipeline transportation of unrefined oil and gas, and also used or committed for other purposes, is taxable under AS 43.56 only if the time the property is used or committed for use in the exploration, production, or pipeline transportation of unrefined oil and gas exceeds 50 percent of the total time that the property was used or committed for use in the previous calendar year.

(Emphasis added). The Department is bound by standards adopted in its regulations. In Jager v. State, 537 P.2d 1100, 1108 (Alaska 1975), the Alaska Supreme Court ruled that "[o]ne indication whether an agency has proceeded in the manner required by law is compliance with its own regulations." Similarly, in United States v. RCA Alaska Communications, Inc., 597 P.2d 489 (Alaska 1979), the Alaska Public Utilities Commission (APUC) adopted a regulation yet believed that applying the regulation as written "would produce an improper allocation" of revenues and that a

different method would result in "an appropriate division." Therefore, the APUC deviated from its regulation. On appeal, the Alaska Supreme Court held that APUC's "interpretation" to be an unreasonable, retroactive modification of the regulation. The Court noted that the agency had not undertaken to amend the regulation. Consequently, the attempted modification was "unreasonable and arbitrary because of the absence of compliance with statutory rule-making procedures." Id. at 499, n. 23. The Department has failed to comply with 15 AAC 05.860.

The analysis of the Department was based at least in part on the excerpt from Alascom's TAPS/12 contract with Alyeska Pipeline Service Company:

RCA Alascom shall at all times during the term of this agreement maintain a separate set of accounts and financial records, segregating all of the revenue, costs and expenses involving provision of the SERVICES to ALYESKA from provision of services over the SYSTEM to any other customer, and further segregating such revenue, costs, and expenses from those of any of RCA ALASCOM'S [sic] other utility services.

Departmental Decision #80-56-1 (Supp) at 4 (emphasis added). The contract clause recognized that the system was designed to provide services other than to Alyeska and was drafted to provide for an accounting procedure. It clearly reflected that there will be system revenue, costs and expenses of "other customers" and "other utility services" as well as those of Alyeska.

Other sections of the TAPS/12 Contract substantiate the intended dual use of the system:

It is understood and agreed that the BACKBONE COMMUNICATIONS SYSTEM shall be used, in addition to providing the SERVICES to ALYESKA as provided in this AGREEMENT, to furnish general communications services to the Alaska public.

Id. at 2.

In no event shall this allocation of investment cost and operating expenses between ALYESKA and other customers using the SYSTEM be changed without the prior written approval of ALYESKA and the approval of the Alaska Public Utilities Commission and any other regulatory body which has jurisdiction through a formal order of such body.

Id. at 34.

The Department also relied on a nonexistent order of the APUC in coming to its erroneous conclusion:

The method used by the Alaska Public Utility Commission in their review of Alascom's tariff revision filing (TA 112-98) is a more applicable method. The APUC's analysis shows total cost for the Backbone System, the major system component, as \$43-44 million dollars, while a system which would serve the public would cost only about \$4,000,000. As such, APUC allocates 10% of the capacity to the public ratepayer and 90% to Alyeska. That same split is an appropriate division here.

Departmental Decision, supra, at 4-5. The APUC has never made any such statement. The only order of the APUC which discusses usage of the BCS is one which the Department ignored. Order No. 3 in Re RCA Alaska Communications, Inc., U-74-25 (Alaska Pub. Util. Comm'n 1974) supports the separation of investment cost and operating expenses contained in the contract:

THE BACKBONE COMMUNICATIONS SYSTEM investment cost and operating expenses shall be allocated seventy-five percent (75%) to ALYESKA, and twenty-five percent (25%) to the public network.

TAPS/12 Contract at 34. As was testified to by Michael E. Holmstrom, Vice President of Finance, Alascom, during the recent rate case hearings, such a separation was premised upon 50% Alyeska/50% public usage. Re: RCA Alaska Communications, Inc., U-78-4 (Alaska Pub. Util. Comm'n 1978), Tr. 300-03.

It would appear that an order from the APUC should be of some relevance to the Board especially since the

Department was content to rely on an adversary document to make its findings.

As a matter of principle, it is completely clear that the reasons behind the doctrine of res judicata as developed in the court system are fully applicable to some administrative proceedings. The reasons against a second litigation between the same parties of the same claims or issues are precisely the same for some administrative determinations as they are for most judicial determinations. The sound view is therefore to use the doctrine of res judicata when the reasons for it are present in full force, to modify it when modification is needed, and to reject it when the reasons against it outweigh those in its favor. The courts generally follow this sound view.

2 Davis, Administrative Law Treatise, 548. Accord, 46 Am. Jur. 2d, Judgments §455:

For the operation of the doctrine of res judicata, there must be a judgment rendered by a body exercising judicial functions....However, despite frequent statements which indicate acceptance of the proposition that the doctrine of res judicata is not applicable where the earlier decision was made, not by a court, but by an administrative agency, or that the doctrine does not ordinarily apply to decisions of administrative tribunals, there is a wealth of reasoned authority for the application of that doctrine, or a similar doctrine, to the determinations of an administrative agency in a proper case, generally where the determinations are made for a purpose similar to those of a court and in proceedings similar to judicial proceedings.

Administrative res judicata has been applied to preclude a redetermination of issues in a subsequent administrative proceeding often. E.g., Matos v. Secretary of H.E.W., 581 F.2d 282 (1st Cir. 1973); Adames v. Califano, 552 F.2d 1 (1st Cir. 1977); Sampson v. Califano, 551 F.2d 881 (1st Cir. 1977); Cooper v. U.S. Nat. Transp. Safety Bd., Washington, 546 F.2d 870 (10th Cir. 1976). See also Ness Investment Corp. v. United States, 595 F.2d 585 (Ct. Cl.

1979) (Board of Forest Appeals determination, that revocation of special use permit was proper, was res judicata, even though determination was never subjected to judicial review).

In Docket U-74-25, supra, Order No. 3 contained the following determinations by the Alaska Public Utilities Commission:

The Commission's approval of the public portion of the TAPS/12 contract that will provide circuitry for public access on the TAPS/12 system is with the understanding that there will be 41 locations within the pipeline corridor where local public service can be connected or tied into the backbone system. It is also the Commission's understanding that the backbone system will be comprised of a 120 circuit voice grade microwave system which can be expanded to 300 circuits and will run the length of the corridor from Prudhoe Bay to Valdez. Furthermore, the approval is based on the representation that 60 of these circuits will be utilized by Alyeska and the remainder will be available to serve the public generally.

It is the Commission's opinion that it is in the public interest to insure that the number of circuits available to the public along the backbone system will not be decreased without this Commission's approval. As indicated above, it appears from the testimony that at least 60 circuits will be available for public use.

Id. at 6-7 (citations omitted).

This exemption [of TAPS/12 contract portions from regulation] does not exempt RCA Alaska Communications, Inc., from any other regulation by the Alaska Public Utilities Commission, specifically including but not limited to, regulation of services provided by RCA Alaska Communications, Inc., to the general public by means of the system provided for in the TAPS/12 contract insofar as that system is used for public service, and the rates and charges therefore [sic].

Id. at 9.

6. RCA Alaska Communications, Inc. shall not decrease the circuits available to the public provided under the TAPS/12 contract below 60 circuits without first obtaining the approval of this Commission.

Id. at 11.

This exemption, however, does not exempt RCA Alascom from the Alaska Public Utilities Commission Act with respect to any part of the system constructed pursuant to the TAPS/12 contract that is available for use by the public.

Id. at 3.

Alascom submits that this Board, while perhaps not bound by the determinations in Docket U-74-25, supra, due to the nature of the proceedings, should at least consider the findings of the APUC to be persuasive evidence that the BCS is dedicated to 50% public use. See Atlantic Richfield Co. v. Fed. Energy Administration, 556 F.2d 542 (T.E.C.A. 1977) (where some requirement is missing, so as to preclude res judicata or collateral estoppel from applying to a case, administrative interpretations and determinations may have persuasive effect which "widely transcends any binding force.") See generally 5 Mezines, Stein & Gruff, Administrative Law Ch. 40 (1980); 2 Cooper, State Administrative Law Ch. XV (1965); 2 Am. Jur. 2d Administrative Law §503, nn. 4, 5 and accompanying text; Annot., 1 A.L.R.2d 338 (1948).

The Department recognized that the TAPS/12 Contract required an accounting for specific utilization of the Alascom system (where a telecommunications appliance or a cable is capable of sending, receiving or carrying messages for Alyeska, "other customers" or "other utility services" there is a need to account for the amount of use by each). Unfortunately, the Department concluded that a "segregation of that portion of the system dedicated to TAPS usage is indeed possible." Departmental Decision, supra, at 4. The Department has confused the 15 AAC 05.860 test of relative time use of an entire system (that is, the system is used "X"% of the time by Alyeska and "Y"% of the time by non-Alyeska customers), with its own new test of dedication of

a portion of the system to particular users (that is, "X" miles of cable and "X" appliances are used solely by Alyeska, and "Y" miles of cable and "Y" appliances are used solely by non-Alyeska customers).

15 AAC 05.860 expressly delineates when multiple use property will be deemed "taxable property" for purposes of AS 43.56, and the test set forth therein requires the Department to make an affirmative finding of taxability based upon relative time use of Alascom's property. The rule of law made clear by the Alaska Supreme Court in United States v. RCA Alaska Communications, Inc., 597 P.2d 489 (Alaska 1979) should be apparent to this Board without further direction from a reviewing court: The Department must adhere to its own regulations as written. An analysis of the controlling regulation, 15 AAC 05.860 is, therefore, essential to a proper determination by this Board.

As shown above, the assessed property is multiple use property. 15 AAC 05.860 dictates that such property "is taxable under AS 43.56 only if the time the property is used or committed for use in the exploration, production, or pipeline transportation of unrefined oil and gas exceeds fifty percent of the total time that the property was used or committed for use in the previous calendar year." (Emphasis added to elements of applicable test). It is significant that the regulation states multiple use property is taxable only if the test is met. This language places the burden upon the Department to make an affirmative finding (on the evidence) that the test is met before assessing the tax. The language does not provide an exemption from the tax. Rather, it limits the scope of the tax, and as such any ambiguity as to its coverage must be construed against the

taxing authority. The finding required by the regulation may be simply stated in algebraic form:

$$X_a > 1/2 Y_{a-1}$$

Where

X = the time property is used or committed for use in the exploration, production, or pipeline transportation of unrefined oil and gas.

Y = the time property is used or committed for use for all purposes.

a = the current tax year.

a-1 = the year previous to the current tax year.

The Department, in Departmental Decision, supra, at 4-5, based its decision upon the APUC's alleged analysis that a public system could have been built for approximately one-tenth of the cost of the actual system (as noted above, the APUC did not make such a finding). The only other basis offered by the Department is that accounting work papers show public ratepayers use a certain number of circuit miles compared to the total number of system circuit miles. (Alascom's records reflect that Alyeska is using 4% of the ARCS based upon Exhibit 19 in APUC Docket U-78-4, supra, and that Alyeska is using 21% of the BCS capacity]. Such data comparisons may satisfy some intrinsic curiosities. They may also be relevant in the context of public utility regulation. However, they simply do not have any relevance under the test prescribed by 15 AAC 05.860, interpreting AS 43.56.

This Board cannot lawfully uphold the Department's decision unless it finds, for each tax year assessed, that the test of 15 AAC 05.860 ($X_a > 1/2 Y_{a-1}$) is satisfied. The burden of offering sufficient evidence to uphold such a finding for each tax year has been placed squarely upon the Department by AS 43.56.210(6), 15 AAC 05.860, and the decisions of the Courts of Alaska and other jurisdictions including the United States Supreme Court. Nevertheless, to

assist the Board's decision, Alascom will now demonstrate that the requirement of AS 43.56.210(6) and 15 AAC 05.860 cannot be met with respect to any of the assessed years.

When the decision was made to build the BCS and the ARCS, it was intended that both would carry messages for Alyeska and non-Alyeska customers. When the BCS and ARCS were built, they were designed to carry messages of Alyeska and non-Alyeska customers as required by demand. The BCS and ARCS in each tax year carried messages for Alyeska and non-Alyeska customers. The property stands ready and available for use by either class of user at all times. For example, the cables and appliances are inactive most of the time, awaiting use by either class of user. The APUC established that the BCS would be available on a fifty percent Alyeska - fifty percent public basis. Docket U-74-25, supra. Whether the Board similarly views the BCS and ARCS as available to Alyeska and the public on a 50-50 basis, or whether it recognizes that the BCS and ARCS are on constant standby for either use, there is only one possible result. The Board cannot, on the facts, make a legally sustainable finding that X_a (the time such property is used or committed for use for exploration, production or pipeline transportation of unrefined oil and gas) EXCEEDS fifty percent of the total time such property was used or committed for use in the previous calendar year. To make such a finding without evidence to support it would result in certain reversal on judicial review. See generally State v. 0.644 Acres, No. 2118 (Alaska, June 27, 1980).

Moreover, as has been intimated earlier, any doubts as to the scope of a tax must be resolved against the taxing authority. While such a rule may occasionally misconstrue the legislature's intent, the rule is applied by

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the courts to avoid the inadvertent imposition of taxes on persons and property not intended by the legislature to be taxed.

II. ALASCOM'S PROPERTY IS NOT WITHIN THE CLASS INTENDED TO BE TAXED BY AS 43.56.

The property assessed by the Division of Petroleum Revenue was not intended to be taxed under AS 43.56. This conclusion is supported by the cardinal and universal rule of tax statute interpretation - tax statutes should be interpreted so that the provisions are not extended by implication beyond the clear import of the language used or enlarged to include matters not specifically pointed out. E.g., Gould v. Gould, 245 U.S. 151 (1917). Just as exemptions are construed narrowly, so is the language defining the scope of a tax. Id. Accord, 1971 Alaska Op. Att'y Gen. No. 1 (January 11, 1974) (concluding oil and gas leases are not taxable property under AS 43.56).

One permissible source for determining legislative intent is the executive messages to the legislature relating to the particular Bill. Homer Electric Assoc. v. City of Kenai, 423 P.2d 285 (Alaska 1967). Governor Egan in his transmittal message (accompanying the introduction of H.B. 1, which became AS 43.56) clearly indicated the legislation was aimed at the oil and gas industry, not public utilities providing telecommunications services:

We expect that the tax paid by the oil and gas industry will....

H.B. 1, Alaska House Journal, 8th Leg., 1st Spec. Sess. (October 17, 1973) at 5. Similarly, the Senate committee which considered the bill reported:

The bill reported by this committee is based on the premise that the Trans-Alaska Pipeline...is a State asset insofar as taxation is concerned....The bill is based on a further premise that taxation of the oil and gas industry....

Senate Comm. on Community & Regional Affairs, Senate CS for House Bill No. 1, Alaska Senate Journal, 8th Leg., 1st Spec. Sess. (November 3, 1973) at 74 (emphasis added).

The intent of the legislature was to levy a tax on the oil and gas industry which would be profiting from the anticipated oil production related to the TransAlaska Pipeline. This understanding is bolstered by the fact that an alternative version of the bill would have simply taxed oil and gas reserves in place. See, E.g., Committee Report, Senate Committee On Community & Regional Affairs, Senate CS for CS for [sic] House Bill No. 1, CSHB 1 am, Alaska Senate Journal, 8th Leg., 1st Spec. Sess. (November 3, 1973) at 84. The legislative intent to tax the oil and gas industry is inconsistent with the levy of a special tax on a certificated telecommunications utility, which must pass along such a special burden to its ratepayers, who do not similarly benefit from the increase in production of oil and gas.

It has been said that our proposals [to modify administrative and house versions] "leave money on the table in favor of the oil industry"....

Because ad valorem taxes imposed on the Interborough Common Carrier Pipeline will be a part of the rate charged by that carrier to producers for the transportation of their oil, the ultimate burden of the tax falls on the oil industry in exact proportion of production....The tax would ultimately be borne by the producers of the oil and gas resource.

Id. at 83.

An honest appraisal and examination of AS 43.56 and its history establishes beyond question that it is a tax on the property of Alaska oil and gas producers. Whether such a tax is, in the view of the State Assessment Review Board, wise or equitable is irrelevant to Alascom's appeal. What is relevant is the recognition that the legislature, by

enacting AS 43.56, did not intend to impose a special tax burden on a utility such as Alascom. This recognition of the true intent of AS 43.56 by the Board is crucial to a correct determination where, as here, a company's property has become entangled in one of the "disputes on the periphery of definitions." See letter from Governor William Egan, H.B.1, Alaska House Journal, 8th Leg., 1st Spec. Sess. (October 17, 1973) at 4. Accord, Senate and House Journal Supp. No. 1, 8th Leg., 1st Spec. Sess. (October 17, 1973) at 1, 3-4 (Remarks by Governor William A. Egan) (emphasis added):

[T]he 1972 Legislature undertook to adopt a comprehensive body of laws relating to taxation and regulation of the oil industry in Alaska...

....

I will comment just briefly on the proposed 20 mill tax on oil and gas properties. These being properties directly utilized in the production and transportation of resources belonging to all the people of Alaska.

....

...The oil industry has acknowledged its responsibilities to the State...to provide a substantial support for the necessary public services.

The language of AS 43.56 clearly does not impose a tax upon Alascom's property. The legislative history suggests, if anything, that the tax was not in fact intended to be imposed on such property. At the very least, it must be found that the applicability of AS 43.56 to Alascom's property is ambiguous. As noted, it is a universal rule that any doubt as to the application of taxing laws must be construed against the government and in favor of the taxpayer. See, e.g., Simplicity Pattern Co. v. State Bd. of Equalization, 161 Cal. Rptr. 558 (Cal. App. 1980); Lee Lumber and

Building Material Corp. v. Dep't of Revenue, 398 N.E.2d 933 (Ill. App. Ct. 1979); Quotron Systems, Inc. v. Irizarry, 399 N.E.2d 948 (N.Y. 1979); Horton v. Gaddy, 594 S.W.2d 848 (Ark. 1980); Cascio v. Beam, 594 S.W.2d 942 (Mo. 1980); Geo Resources, Inc. v. Tax Commissioner, 288 N.W.2d 54 (N.D. 1980); Maggiacomo v. DiVincenzo, 410 A.2d 1332 (R.I. 1980).

As set forth above, the general purpose of the tax was to obtain revenue from the oil and gas industry. In addition, regardless of the general intent of the legislation, analysis of its specific language demonstrates that Alascom's property is not taxable.

The Departmental Decision, supra, stated that the term "communication equipment and facilities" is specifically set out in AS 43.56.210(6) within the examples of real and tangible personal property listed by the legislature. Id. at 3. The Decision quoted an abbreviated version of the statute the last phrase of which is improperly abbreviated to change its clear and unambiguous meaning by deletion of the first three words of the phrase. The last item of paragraph (6) reads "air strips and communication equipment and facilities." This item is the last reference in a series in paragraph (6) where each item is set apart by a comma, and is, as are the rest of the items, separated from its predecessor, "docks and other port facilities," by a comma which clearly indicates the end of the previous item and sets it apart as a separate item. The Department has improperly separated the words "communication equipment and facilities" from the words "air strips and" which constitutes the initial part of the item. The separation clearly changes the meaning of the statute and constitutes an improper interpretation of an unambiguous statement by the legislature.

In Poulin v. Zartman, 542 P.2d 251, 270 (Alaska 1975), the Alaska Supreme Court held "if a statute is unambiguous and clearly expresses the intent of the legislature, it should not be modified or extended by judicial construction." Again in White v. Alaska Ins. Guaranty Ass'n, 592 P.2d 367, 369 (Alaska 1979), the Court stated "where the meaning of a statute is apparent, there is no need to resort to methods of statutory construction." Paragraph (6) pertains to transportation facilities, and the reference to "communication equipment and facilities" is clearly related to the words "air strips."

AS 01.10.040 states that "[w]ords and phrases shall be construed according to the rules of grammar and according to their common and approved usage." See also Lynch v. McCann, 478 P.2d 835 (Alaska 1970). The Department's interpretation of this phrase would require a comma to separate the words "air strips" from the words "and communication equipment and facilities." General rules of statutory construction require that a statute which is clear and grammatical will not be extended or changed in meaning by repunctuation. 82 C.J.S. Statutes §341 at 685. The California court in Treiman v. Kennon, 30 P.2d 636 (Cal. 1934) held that "where the statute as punctuated is neither inconsistent, absurd, nor ambiguous, but has a reasonable meaning apparently in accord with the legislative intent, the punctuation will be followed and the statute construed accordingly." Id. at 637 (footnote omitted).

In summary, the Department's assertion through misinterpretation of the last item in AS 43.56.210(6) that the statute specifically sets out "communication equipment and facilities" as taxable property is improper.

Further, Alascom submits that the wording selected by the legislature in providing examples of taxable property

in AS 43.56.210(6) indicates that telecommunications utility systems were never intended to be taxed under the statute. The legislative purpose in such a listing is to assist the Department of Revenue, and the courts in cases of dispute, by providing guidelines for determining the legislative intent. The legislature chose to set out at considerable length various types of items it considered to be examples of taxable property, and in the recent amendment process even grouped these items into general categories for further clarity. The types of items set out within each of these paragraphs are relatively specific items that are significantly different from a telecommunications common carrier.

The maxim expressio unius est exclusio alterius is a basic rule of statutory construction. It should be applied here to the types of items listed as examples of "taxable property." If the legislature intended to include such a comprehensive system either by implication or by extension of their examples, then it would have set out at least one subparagraph dealing with broad support systems of some nature. The legislature did not do so. It not only did not refer to "communications systems" specifically, it chose not to refer to any type of broad system when setting out an extensive list of examples. The maxim of exclusivity, then, should be applied to result in Alascom's communications systems not being classified as taxable property.

Further, the Departmental Decision, supra, dismissed Alascom's argument, in the alternative, that the BCS is utilized in conjunction with the TransAlaska Pipeline System which is used primarily in the exploration for, production of, or pipeline transportation of gas or unrefined oil or in the operation or maintenance of facilities used in the exploration for, production of, or pipeline transportation of gas or unrefined oil.

Alascom submits that a portion of the BCS and the BVCS are necessary and integral parts of the pipeline. The systems are owned by Alascom, a certificated public utility regulated by the APUC. Therefore, the exemption set forth in AS 43.56.210(6) is applicable:

"taxable property" does not include...
oil and gas pipeline systems owned and
operated by a certificated public utility
regulated by the Alaska Public Utilities
Commission.

Although the Department admitted that "[t]he communications systems are a vital and integral part of TAPS and are utilized for the operation of TAPS" (Departmental Decision, supra, at 3), it failed to recognize the legislative intent not to tax public utilities owning oil and gas pipeline systems or portions thereof. It must be recognized that without communications no system would operate.

III. THE DEPARTMENT MAY NOT RETROACTIVELY ASSESS TAXES FOR THE YEARS 1975 TO 1980.

As set forth infra, Alascom has established that the Department is not authorized to impose an AS 43.56 tax on any of its facilities. Assuming, however, for the purpose of argument, that the Department is authorized to assess such taxes on Alascom's property, the Department's attempt, on July 17, 1980, to impose taxes for the years 1975 to 1980, is invalid as it is (A) contrary to the common law principle of finality of tax obligations; (B) not authorized by the legislation establishing the tax; and (C) barred and estopped by the Department's actions and failures to act.

A. THE ASSESSMENT IS CONTRARY TO THE COMMON LAW PRINCIPLE OF FINALITY OF TAX OBLIGATIONS.

To promote a stable taxation system and to avoid uncertainty as to a taxpayer's financial obligations, the Alaska Supreme Court, in Anchorage Independent School Dist.

v. Stephens, 370 P.2d 531 (Alaska 1962), held that a school district could not, on the basis of its alleged error, increase the assessment on a taxpayer's tax property. Therein the district assessed taxes, which were paid by the property owner. After payment was received, the tax was reassessed, at a level 460% higher than the initial tax, based on a belief that buildings on the property had been erroneously assessed to an adjoining lot. The Court held that because the tax had been assessed and "concurrent in by the taxpayer, a point of finality had been reached." Id. at 533. The Court ruled that the District did not have the "authority to go back and create an additional tax obligation." Id. The Court based its holding on "the necessity of having a stable system of taxation prevail throughout the taxing area, and to avoid uncertainty as to a taxpayer's financial obligations to the District and as to the status of his property with respect to tax liens." Id. (footnote omitted).

In the present case, Alascom, due to the Department's failure to assess taxes, has not paid any taxes. However, this factual distinction does not affect the rule established. To the contrary, Alascom, as a regulated public utility, has as much, if not more, need for finality than the individual taxpayer. To allow Alascom to establish its rates and maintain its contractual relationships, it must have the ability to determine its tax obligations with finality. The principle of finality established in Anchorage, supra, should be applied in this proceeding. Further, as discussed below, the legislature, in adopting the oil and gas property tax, has limited the time during which such tax may be imposed, in compliance with the common law requirement of finality.

B. THE LEGISLATURE HAS NOT AUTHORIZED RETROACTIVE ASSESSMENT OF OIL AND GAS PROPERTY TAXES.

The legislature, in authorizing the Department to impose taxes on oil and gas related property, created a clear, and carefully defined, time schedule within which such taxes may be imposed. The system of assessment, reduced to its essentials, provides for gathering of information (AS 43.56.080), preparation of an original assessment roll (AS 43.56.090), notification to taxpayers (AS 43.56.100), preparation, if necessary, of a supplementary assessment roll to the original assessment roll (AS 43.56.140), preparation and certification of a final assessment roll (AS 43.56.135), and notice to taxpayers of the amount of tax due (AS 43.56.135). Careful examination of the legislation creating the above tax system establishes, beyond question, that the Department may not retroactively assess taxes.

Generally, the legislature has required persons subject to a tax to file a return with the Department. Indeed, the legislature, for most taxes it imposes, requires that taxpayers file a return. Under AS 43.56, however, returns must be filed only if the Department requires them by notice. The Department, based on any returns it requires and on its own investigation, is required to annually prepare an assessment roll. Although the statutes do not state when the assessment roll must be complete, the Department must send, on or before March 1 of each year, a notice of assessment to each owner of taxable property named in the assessment roll. The legislature recognized that the original assessment roll might be incomplete. It therefore authorized the Department to include property omitted from the initial assessment roll on a supplementary roll using the procedures established for the "original roll." The legislature then required that no later than June 1, the Department must

certify the final assessment roll and mail to owners of taxable property a statement of the amount of tax due. The tax is payable on or before June 30.

The legislature clearly established that the assessment must be completed by June 1 by using the terms original roll, supplementary roll, and final roll.

Clearly, the tax roll prepared on or before March 1 is the first, or original, roll. If, however, such roll is incomplete, the legislature authorized the Department to prepare a supplementary roll. The legislature carefully limited the time in which the original roll may be supplemented by requiring certification of a final roll no later than June 1. The supplementary roll may be used to make changes that convert the original roll to a final roll. However, the use of the term "final roll" clearly established the legislature's determination that after June 1 the assessment roll could not be modified. Indeed, any other interpretation of the statutes would render meaningless the concept of a final roll. This statutory construction is supported by Dyer v. Dalton, 174 P.2d 252 (Okla. 1946); Bridgeport Brass Co. v. Drew, 128 A. 413 (Conn. 1925); and Board of County Comm'rs v. Lane, 90 P. 1092 (Kan. 1907) which Kan. held that statutes authorizing corrections of assessments were limited to errors for the current tax year. This position is also supported by Equitable Life Assurance Soc'y of the United States v. Hobbs, 127 P.2d 477 (Kan. 1942), in which the Court held that past returns which omitted certain contracts did not authorize a reassessment. Further, this interpretation is consistent with the judicial requirement that taxpayers receive an assurance that a determination of their tax liability, or lack of liability, is final and may be relied on. As the Department did not

place Alascom's property on the final assessment roll for the years 1975 through 1980, inclusive, its proposed retroactive assessment is not authorized and is void.

Finally, this contention is also supported, if not conclusively demonstrated, by the legislature's failure, in contrast with the actions of other state legislatures, to adopt an omitted property tax statute.

The Alaska Legislature was clearly advised, based on the events in the Anchorage, supra, that a taxing authority might, through negligence or design, fail to include all taxable property on the final tax rolls at its appropriate value. The possibility that property might be omitted from tax rolls has been the subject of legislation in almost every state except Alaska. Indeed, as set forth on attached Exhibit A, almost every state has provided, through omitted property tax statutes, a procedure to allow correction of incomplete assessment rolls. The Alaska Legislature, however, despite Anchorage, supra, and the actions of other state legislatures, has, by failing to enact an omitted tax statute, chosen to provide finality of tax obligations. Therefore, as the Department did not place Alascom on the tax rolls or give it notice of a tax payable by June 1 of the tax years 1975 through 1980, Alascom is not liable for taxes for such tax years.

Alascom believes the evidence will show that even though the Department had full knowledge of the existence and function of Alascom's communications facilities, the Department, through neglect or design, failed to place Alascom's property on the assessment rolls for the years 1975 through 1980, inclusive. The Department, despite its act or failure to act, asserts that it may retroactively assess such taxes, for an unlimited period of time, because

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Alascom did not file a property tax return. The Department's position must be rejected as it was not authorized by the legislature and, indeed, is contrary to the clear intent of the legislature.

Generally, the Alaska Legislature has required taxpayers to file a return with the Department. In fact, as shown on attached Exhibit B, the legislature, for most Alaska taxes, has required that taxpayers file a return. In contrast, however, oil and gas property tax returns must be filed only if the Department requires them by notice. AS 43.56.070. Alascom believes the evidence will show that despite the Department's knowledge of the existence and function of Alascom's communications facilities, the Department did not until late 1979 require Alascom to file a tax return. Further, although Alascom filed a return in response to the Department's request, the Department still did not timely assess taxes in 1980. Thus, the Department's contention that it may retroactively assess taxes based on AS 43.05.260 must be rejected as AS 43.05.260 applies only in instances in which a return is required to be filed. The Department, which had the sole option as to whether Alascom should be required to file a return, should not, by virtue of its decision not to require a return, be allowed to expose Alascom, or any taxpayer, to an infinite number of years of potential retroactive tax liability.

C. THE DEPARTMENT IS BARRED AND ESTOPPED FROM IMPOSING A RETROACTIVE ASSESSMENT ON ALASCOM.

Alascom believes the evidence will establish that, as a regulated public utility of substantial magnitude, its activities in providing communications service, including service provided by the property in question, have been well known throughout Alaska. Further, Alascom believes the

evidence will establish that the Department has been aware that Alascom's rates and charges for service, pursuant to tariff and contract, were and are subject to government review and control. Despite its knowledge of Alascom's activities and of the fact that any taxes imposed by the Department might affect Alascom's rates and charges, the Department, for over five years, deliberately took no action to require a return or to assess taxes on the properties in question.

Alascom, in reasonable reliance on the Department's acts and failures to act, did not require persons or entities receiving service from it to make any payment toward any hypothetical, unassessed, and unknown tax obligations.

It is impossible to know whether Alascom, if required to retroactively pay several years' taxes, will be able to recover such expenditure from telephone ratepayers receiving service. Clearly, however, it is beyond reasonable dispute that it will be substantially more difficult for Alascom to recover such taxes in 1980, 1981, or thereafter, than it would have been if the taxes had been currently and properly assessed between 1975 and 1980. Because Alascom reasonably relied, to its detriment, on the Department's clear and conscious decision not to impose taxes on a timely basis, the Department is barred and estopped from retroactively assessing such taxes.

CONCLUSION

The tax assessments imposed by the Department are invalid because the legislature did not impose any tax on Alascom's properties under AS 43.56. Further, even if Alascom's property is subject to taxation, the purported retroactive assessments, which were not applied in accordance with required statutory procedures, are invalid.

DATED this 27th day of October, 1980.

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN
Attorneys for Alascom, Inc.

By: *Mary K. Hughes*
Mary K. Hughes

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27
day of October, 1980, the attached
documents were mailed to the attorneys of record MKH

HUGHES THORSNESS
& GANTZ POWELL & BRUNDIN
ATTORNEYS AT LAW
509 WEST THIRD AVENUE
ANCHORAGE, AK 99501
(907) 274-7522

EXHIBIT A

STATE OMITTED PROPERTY TAX STATUTES

Alabama	Ala. Code § 40-7-23.
Alaska	None.
Arizona	Ariz. Rev. Stat. Ann. § 42-236(C).
Arkansas	Ark. Stat. Ann. § 84.444.
California	Cal. Rev. & Tax. Code § 531 <u>et seq.</u>
Colorado	Not available.
Connecticut	Conn. Gen. Stat. Ann. §§ 12-53, 12-111, 12-115 (apparently limited to current assessment year).
Delaware	Del. Code Ann. tit. 9, §§ 8301 <u>et seq.</u> (explicit prohibition against retroactive assessment: § 8341).
Florida	Fla. Stat. Ann. § 199-311 (intangible personalty).
Georgia	Ga. Code Ann. § 91A-1440.
Hawaii	Hawaii Rev. Stat. § 246-51.
Idaho	Idaho Code Ann. § 63-718.
Illinois	Ill. Ann. Stat. § 602, 701.
Indiana	Ind. Stat. Ann. § 6.1.1-9 <u>et seq.</u>
Iowa	Iowa Code Ann. Ch. 440.
Kansas	Kan. Stat. Ann. § 79-31186 (intangibles).
Kentucky	Ky. Rev. Stat. § 132.290.
Louisiana	La. Rev. Stat. Ann. § 47:1966.
Maine	Me. Rev. Stat. Ann. tit. 36 § 713.
Maryland	Md. Ann. Code §§ 81-38, 81-39.
Massachusetts	Mass. Ann. Laws § 59-75 (extending assessment period to December).
Michigan	Mich. Comp. Laws § 211.154.
Minnesota	Minn. Stat. Ann. § 274.12.
Mississippi	Miss. Code Ann. §§ 27-35-155, 27-35-325.

EXHIBIT A
State Omitted Property Tax Assessments
Page 2

Missouri	Mo. Ann. Stat. § 137.165.
Montana	Mont. Rev. Codes Ann. § 15-8-601.
Nebraska	Neb. Rev. Stat. §§ 77-1317, 77-1318.
Nevada	Uncertain; see Nev. Rev. Stat. §§ 361.330, 361.770.
New Hampshire	Uncertain; see N.H. Rev. Stat. Ann. § 76:14.
New Jersey	N.J. Stat. Ann. § 54:4-63.12 <u>et seq.</u>
New Mexico	New Mex. Stat. Ann. § 7-38-76 (personalty).
New York	N.Y. Real Prop. Tax Law § 550 <u>et seq.</u> (Consol.)
North Carolina	N.C. Gen. Stat. § 105-312.
North Dakota	N.D. Cent. Code § 57-14-06.
Ohio	Ohio Rev. Code Ann. § 57-14-05 <u>et seq.</u> (realty).
Oklahoma	Okla. Stat. Ann. § 2439.
Oregon	Or. Rev. Stat. § 311.205 <u>et seq.</u>
Pennsylvania	72 Pa. Cons. Stat. Ann. § 5020-406.
Rhode Island	R.I. Gen. Laws §§ 44-5-23, 44-5-24.
South Carolina	S.C. Code § 12-55-10 <u>et seq.</u>
South Dakota	S.D. Comp. Laws Ann. §§ 10-1-24, 10-11-1 through 10-11-8.
Tennessee	Tenn. Code Ann. § 67-1201 <u>et seq.</u>
Texas	Tex. Stat. Ann. §§ 7172 (lien), 7208 (personalty), 7299 (realty).
Utah	Utah Code Ann. § 59-5-17.
Vermont	Unclear; see, Vt. Stat. Ann. §§ 4261, 4262, 4797.
Virginia	Va. Code § 58-1160 <u>et seq.</u>
Washington	Wash. Rev. Code Ann. § 84.40.080.
West Virginia	W. Va. Code §§ 11-3-5 (generally), 11-5-10 (personalty).
Wisconsin	Wis. Stat. Ann. § 70.44.
Wyoming	Wyo. Stat. § 39-2-403(c).

B

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSHB 460 (fin)
 Title relating to the fisheries and salmon enhancement taxes
 Requested by _____ Date May 20, 1981

II. FISCAL DETAIL
 Agency Affected Department of Revenue
 Program Category Affected Shared Taxes
 BRU, Program, or Subprogram(s) Affected Fisheries Tax
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		1969.0	5907.0	5907.0	5907.0	
TOTAL		1969.0	5907.0	5907.0	5907.0	

FUNDING (Thousands of Dollars)

GENERAL FUND		1969.0	5907.0	5907.0	5907.0	
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

IV. DATE May 20, 1981 PREPARED BY Oral Freeman
 AGENCY _____
 PHONE _____
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

*Rec'd 6/22/81
after bill passed
from SFC*

FISCAL NOTE

I. REQUEST

Bill/Resolution No. S CSCSHB 460 (Resources)

Title An Act relating to fisheries and salmon enhancement taxes

Requested by Senate Finance Committee

Date 6/19/81

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Revenue Collection And Management

BRU, Program, or Subprogram(s) Affected Audit Division

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		111.0	62.2	62.2	62.2	62.2
200 TRAVEL		10.0	10.0	10.0	10.0	10.0
300 CONTRACTUAL		4.0	4.0	4.0	4.0	4.0
400 COMMODITIES		1.6	1.6	1.6	1.6	1.6
500 EQUIPMENT		3.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		129.8	77.8	77.8	77.8	77.8

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		129.8	77.8	77.8	77.8	77.8
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME		4	3	3	3	3
PART TIME						
TEMPORARY						

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

The modifications to and new retroactive provisions of the Investment Tax Credit will result in additional increased workload in FY 82 as well as a continuing impact in subsequent fiscal years on our audit program. It is anticipated that we will receive 5,000 to 6,000 claims for refund during FY 82 because of the significant tax benefit which this represents. Also, because of the change whereby the credit will be applicable to property placed in service in Alaska only, our audits of the claims and of returns filed in subsequent years will be made much more difficult because of having to verify the location of the property for all multistate corporations. We now apportion the credit for all multistate corporations, which is very simple. The positions requested are two tax examiners and two revenue auditors. The tax examiners are for

IV. DATE June 22, 1981

PREPARED BY Gary L. Jenkins

AGENCY Audit Division

PHONE 465-2320

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SCS CSHB 460(Res)
 Title Relating to taxes
 Requested by Senate Finance Committee Date 6/19/81

II. FISCAL DETAIL

Agency Affected _____ Revenue _____
 Program Category Affected _____ Community Development _____
 BRU, Program, or Subprogram(s) Affected Shared Taxes - Fisheries Tax
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	(1,969.0)	(5,907.0)			
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

The bill provides for a 150% increase in the sharing of fisheries taxes with 50% of the increase beginning in FY82 and full increase beginning in FY83.

There is no additional administrative cost effect upon the General Government Administration and Support BRU.

IV. DATE June 22, 1981

PREPARED BY Philip A. Wall

AGENCY Revenue

PHONE 465-2313

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SCS CS HB 460 (Fin)
 Title An Act relating to taxes
 Requested by Resources Committee Date June 22, 1981

II. FISCAL DETAIL

Agency Affected Department of Revenue
 Program Category Affected _____
 BRU, Program, or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars) NONE

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND		(15,530.0)	(7,000)	(7,500.0)	(7,930.0)	
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

NONE

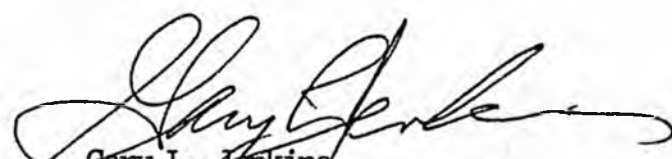
FULL TIME						
PART TIME						
TEMPORARY						

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

This investment credit provisions of this bill will primarily benefit multistate/multinational corporations as well as larger domestic corporations. The estimated loss of revenue for the credit is 5 to 7 million dollars of corporate income tax per year. The effect is so large in FY 82 because of the retroactive provision back to 1/1/79.

The total includes what the state would have obtained if the property exempted under this bill is taxed under AS 43.56. The lost revenue constitutes 2% of assessed value of the property less that amount (about 16%) which is credited for municipal levies. Municipalities could tax the exempted property under local law.

IV. DATE June 22, 1981


 PREPARED BY Gary L. Jenkins
 AGENCY Department of Revenue
 PHONE 465-2320

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

Original sponsor: Resources Committee

Offered: 6/18/81
Referred: Finance

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 460 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to taxes; and providing for an effective date."
7

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

9 * Section 1. AS 43.20.036(b) is amended to read:

10 (b) For purposes of calculating the income tax payable under this
11 chapter, the taxpayer may apply as a credit against his tax liability
12 the [JOB DEVELOPMENT] investment credit allowed as to federal taxes
13 under Internal Revenue Code sec. 38 (26 U.S.C. 38) [50] upon only the
14 first \$20,000,000 [\$500,000] of qualified investment put into use in the
15 state for each taxable year [(26 U.S.C. SEC. 50)]. This limitation does
16 not apply to the amounts invested in equipment which meets the defini-
17 tion of a certified pollution control facility as defined under Internal
18 Revenue Code sec. 169 (26 U.S.C. sec. 169) as in effect on June 19, 1975
19 [THE EFFECTIVE DATE OF THIS ACT] except that the date specified in In-
20 ternal Revenue Code [THAT] section 169(d) as a condition of qualifying a
21 certified pollution control facility for a deduction does not apply.

22 * Sec. 2. AS 43.75.015(b) is amended to read:

23 (b) Instead of the taxes levied by (a) of this section, a person
24 who processes [ENGAGED IN A FISHERY BUSINESS WHICH INCLUDES PROCESSING]
25 a developing commercial fish species is liable for and shall pay a tax
26 equal to

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

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

4 * Sec. 3. AS 43.75.015(c) is amended to read:

5 (c) A person engaging or attempting to engage in a fisheries
6 business who first actually and physically processes the fishery re-
7 source, or a person who purchases a fishery resource that is frozen
8 from a person excluded by AS 43.75.017 from liability for the tax, is
9 liable for and shall pay to the department the entire tax imposed by
10 this section. In determining this tax liability, the person may [NOT]
11 deduct from the value of the fishery resources processed the value of
12 fishery resources that are canned or processed for other fisheries
13 businesses. A person taking the deduction authorized by this subsection
14 shall report all information relating to the deduction in accordance
15 with regulations issued by the department [, BUT SHALL INCLUDE THAT
16 VALUE AS PART OF THE VALUE OF THE FISHERY RESOURCES PROCESSED].

17 * Sec. 4. AS 43.75 is amended by adding a new section to read:

18 Sec. 43.75.017. EXCLUSION FROM FISHERIES BUSINESS TAX. A person
19 is not liable for the fisheries business tax under AS 43.75.015 when
20 the fishery resource is frozen aboard a fishing vessel if

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

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

25 (3) the fishery resource that is frozen was caught by the
26 vessel; and

27 (4) the fishery resource is sold by the person claiming an
28 exclusion from the tax to a fisheries business licensed under AS 43.75.

29 * Sec. 5. AS 43.75.100(a) is amended to read:

1 (a) A person taking, purchasing, or otherwise acquiring a fishery
2 resource covered by this chapter which has not been subject to the tax
3 imposed in AS 43.75.015 is subject to the tax levied in AS 43.75.015 on
4 the value of the fishery resource [SOLD] if the person

5 (1) transports the fishery resource to a point outside the
6 taxing jurisdiction of the state for subsequent processing or sale [TO
7 A FISHERIES BUSINESS] outside the taxing jurisdiction of the state; or

8 (2) sells the fishery resource [TO A FISHERIES BUSINESS]
9 outside the taxing jurisdiction of the state;

10 (3) has the fishery resource processed by a fisheries busi-
11 ness inside the state.

12 * Sec. 6. AS 43.75.100(b) is repealed and reenacted to read:

13 (b) The rate of tax that shall be paid by a person whose liability
14 for the tax is established by this section is the rate of tax that
15 would have been due under AS 43.75.015 if the fisheries business that
16 first actually and physically processed the fish had been liable to pay
17 the tax.

18 * Sec. 7. AS 43.75.130 is amended to read:

19 Sec. 43.75.130. REFUND TO LOCAL GOVERNMENTS. The commissioner of
20 revenue shall pay

21 (1) to each municipality unified under AS 29.68.240 - 29.68.-
22 440, and to each city located in the unorganized borough, 50 [20]
23 percent of the amount of tax revenue collected in the municipality from
24 taxes levied by AS 43.75;

25 (2) to each city located within a borough, 25 [10] percent
26 of the amount of tax revenue collected in the city from taxes levied by
27 AS 43.75; and

28 (3) to each borough

29 (A) 50 [20] percent of the amount of tax revenue

1 collected in the area of the borough outside cities from taxes
2 levied by AS 43.75; and

3 (B) 25 [10] percent of the amount of tax revenue
4 collected in cities located within the borough from taxes levied
5 by AS 43.75.

6 * Sec. 8. AS 43.75.140(7) is amended to read:

7 (7) "value" means the actual price paid for the fisheries
8 resource by the fisheries business, including indirect consideration
9 such as fuel, supplies, or gear, whether paid at the time of purchase
10 of the fisheries resource or tendered as a deferred or delayed payment,
11 except that "value" means the market value of the fishery resource if
12 the taking of the fishery resource is done [PROCURED] in company-owned
13 or company-subsidized boats operated by employees of the fisheries
14 business or in boats which are operated under lease or other arrange-
15 ment;

16 * Sec. 9. AS 43.75.140 is amended by adding a new paragraph to read:

17 (9) "taking" means pursuing, fishing, capturing, or harvest-
18 ing a fisheries resource in any manner.

19 * Sec. 10. AS 43.76.010(a) is amended to read:

20 (a) A person holding a limited entry permit under AS 16.43 shall
21 pay a salmon enhancement tax at the rate of three percent of the value
22 of salmon, as defined in AS 43.75.140(7), that the person removes from
23 the state or transfers to a buyer in the state. The buyer [SELLS TO A
24 PROCESSOR LICENSED UNDER AS 43.75.011. THE PROCESSOR] shall collect
25 the salmon enhancement tax at the time [OF] the salmon is acquired by
26 the buyer [SALE].

27 * Sec. 11. AS 43.76.011(a) is amended to read:

28 (a) A person holding a limited entry permit under AS 16.43 shall
29 pay a salmon enhancement tax at the rate of two percent of the value of

1 salmon, as defined in AS 43.75.140(7), that the person removes from the
2 state or transfers to a buyer in the state. The buyer [SELLS TO A
3 PROCESSOR LICENSED UNDER AS 43.75.011. THE PROCESSOR] shall collect
4 the salmon enhancement tax at the time [OF] the salmon is acquired by
5 the buyer [SALE].

6 * Sec. 12. AS 43.76.020(a) is amended to read:

7 (a) The salmon enhancement tax levied under AS 43.76.010 or 43.-
8 76.011 may be terminated by the commissioner of revenue upon majority
9 vote at an election held under AS 43.76.015 in the region in which the
10 salmon enhancement tax is levied.

11 * Sec. 13. AS 43.76.025(a) is amended to read:

12 (a) A buyer [PROCESSOR] who acquires [BUYS] fisheries resources
13 which are subject to the salmon enhancement tax imposed by AS 43.76.010
14 or 43.76.011 shall collect the salmon enhancement tax at the time of
15 purchase, and shall remit the total salmon enhancement tax collected
16 during each month to the Department of Revenue by the last day of the
17 next month.

18 * Sec. 14. AS 43.76.025(b) is amended to read:

19 (b) A buyer [PROCESSOR] who collects the salmon enhancement tax
20 shall

21 (1) maintain records reflecting the region designated under
22 AS 16.10.375 in which the fishery resource was caught; and

23 (2) report to the Department of Revenue by March 1 of each
24 year the total value, as defined in AS 43.75.140(7), of the salmon
25 caught in each region designated under AS 16.10.375 which the buyer
26 [PROCESSOR] has acquired [PURCHASED] during the preceding year.

27 * Sec. 15. AS 43.76 is amended by adding a new section to read:

28 Sec. 43.76.028. LIABILITY FOR TAX ON SALMON SHIPPED FROM STATE.

29 (a) The owner of salmon removed from the state is liable for payment

1 of the salmon enhancement tax imposed by AS 43.76.010 or 43.76.011 if,
2 at the time the salmon are removed from the state, the tax payable on
3 the salmon has not been collected by a buyer.

4 (b) If the owner of salmon is liable for payment of the salmon
5 enhancement tax under (a) of this section, he shall comply with the
6 requirement of AS 43.76.025(b) to report his liability for payment of
7 the tax.

8 * Sec. 16. AS 43.76 is amended by adding a new section to read:

9 Sec. 43.76.040. DEFINITION. In this chapter, unless the context
10 otherwise requires, "buyer" means a person who acquires possession of
11 salmon from the person who caught the salmon regardless of whether
12 there is an actual sale of the salmon but excluding a transfer to a
13 person engaged solely in interstate transportation of goods for hire.

14 * Sec. 17. AS 43.75.136 is repealed.

15 * Sec. 18. TRANSITIONAL REVENUE SHARING. Notwithstanding AS 43.75.130,
16 during the fiscal year ending June 30, 1982, the commissioner of revenue
17 shall pay

18 (1) to each municipality unified under AS 29.68.240 - 29.68.440,
19 and to each city located in the unorganized borough, 30 percent of the
20 amount of tax revenue collected in the municipality from taxes levied by
21 AS 43.75;

22 (2) to each city located within a borough, 15 percent of the
23 amount of tax revenue collected in the city from taxes levied by AS 43.75;
24 and

25 (3) to each borough

26 (A) 30 percent of the amount of tax revenue collected in the
27 area of the borough outside cities from taxes levied by AS 43.75; and

28 (B) 15 percent of the amount of tax revenue collected in
29 cities inside the borough from taxes levied by AS 43.75.

1 * Sec. 19. TRANSITION. The taxes paid for the 1980 calendar year under
2 AS 43.75 shall be shared with municipalities in accordance with AS 43.75.130
3 as that section read before its amendment by sec. 7 of this Act. The taxes
4 paid for the 1981 calendar year shall be shared with municipalities in
5 accordance with sec. 18 of this Act. The taxes paid for the 1982 calendar
6 year and for each succeeding calendar year shall be shared with municipali-
7 ties in accordance with AS 43.75.130 as amended by sec. 7 of this Act.

8 * Sec. 20. Section 1 of this Act is retroactive to July 1, 1980, and
9 applies to expenditures that qualify for the investment credits that are made
10 on or after that date.

11 * Sec. 21. Sections 3, 4, 8, and 9 of this Act are retroactive to Janu-
12 ary 1, 1981, and apply to tax years beginning after December 31, 1980.

13 * Sec. 22. Section 18 of this Act takes effect July 1, 1981.

14 * Sec. 23. Section 7 of this Act takes effect July 1, 1982.

15 * Sec. 24. Sections 1 - 4, 8, 17, 19, and 21 of this Act take effect
16 immediately in accordance with AS 01.10.070(c).

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STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

*Rec'd 6/22/81
Bill already
passed SFC.*

JAY S. HAMMOND, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

June 22, 1981

JUN 22 1981

The Honorable Don Bennett
The Honorable M. E. Dankworth
Co-Chairmen
Senate Finance Committee
Room 525 - Capitol Building
Juneau, Alaska

Dear Senators Bennett and Dankworth:

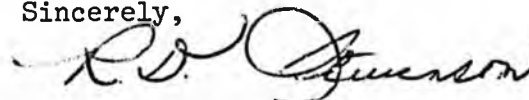
Re: Senate CS for CS for House Bill No. 460 (Resources)

Senate CS for CS for House Bill No. 460 (Resources), an Act relating to taxes, was referred in the Senate on June 18, 1981 by the Senate Resources Committee to the Senate Finance Committee.

For the consideration of the Senate Finance Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Gary L. Jenkins, Director, Audit Division and Mr. Phil Wall, Director, Administrative Services Division of the Department of Revenue concerning the Committee Substitute.

It is the understanding of this office that a further amendment to the Senate Resources Committee Substitute will be added in a Senate Finance Committee Substitute concerning property to be exempt from taxation under AS 43.56. The tax revenue effect is described in one of the two Fiscal Notes prepared by Mr. Gary L. Jenkins.

Sincerely,



R. D. Stevenson
Special Assistant

RDS/rdh

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Gary L. Jenkins, Director
Audit Division
Department of Revenue

Phil Wall, Director
Administrative Services Division
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SCS CS HB 460 (Fin)
 Title An Act relating to taxes
 Requested by Resources Committee Date June 22, 1981

II. FISCAL DETAIL

Agency Affected Department of Revenue
 Program Category Affected _____
 BRU, Program, or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars) NONE

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						

TOTAL

FUNDING (Thousands of Dollars)

GENERAL FUND		(15,530.0)	(7,000)	(7,500.0)	(7,930.0)	
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

NONE

FULL TIME						
PART TIME						
TEMPORARY						

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

This investment credit provisions of this bill will primarily benefit multistate/multinational corporations as well as larger domestic corporations. The estimated loss of revenue for the credit is 5 to 7 million dollars of corporate income tax per year. The effect is so large in FY 82 because of the retroactive provision back to 1/1/79.

The total includes what the state would have obtained if the property exempted under this bill is taxed under AS 43.56. The lost revenue constitutes 2% of assessed value of the property less that amount (about 16%) which is credited for municipal levies. Municipalities could tax the exempted property under local law.

IV. DATE June 22, 1981

PREPARED BY Gary L. Jenkins
 AGENCY Department of Revenue
 PHONE 465-2320

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

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. S CSCSHB 460 (Resources)

Title An Act relating to fisheries and salmon enhancement taxes

Requested by Senate Finance Committee

Date 6/19/81

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Revenue Collection And Management

BRU, Program, or Subprogram(s) Affected Audit Division

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		111.0	62.2	62.2	62.2	62.2
200 TRAVEL		10.0	10.0	10.0	10.0	10.0
300 CONTRACTUAL		4.0	4.0	4.0	4.0	4.0
400 COMMODITIES		1.6	1.6	1.6	1.6	1.6
500 EQUIPMENT		3.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		129.8	77.8	77.8	77.8	77.8

FUNDING (Thousands of Dollars)

GENERAL FUND		129.8	77.8	77.8	77.8	77.8
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		4	3	3	3	3
PART TIME						
TEMPORARY						

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

The modifications to and new retroactive provisions of the Investment Tax Credit will result in additional increased workload in FY 82 as well as a continuing impact in subsequent fiscal years on our audit program. It is anticipated that we will receive 5,000 to 6,000 claims for refund during FY 82 because of the significant tax benefit which this represents. Also, because of the change whereby the credit will be applicable to property placed in service in Alaska only, our audits of the claims and of returns filed in subsequent years will be made much more difficult because of having to verify the location of the property for all multistate corporations. We now apportion the credit for all multistate corporations, which is very simple. The positions requested are two tax examiners and two revenue auditors. The tax examiners are for

IV. DATE FY 82 only; June 22, 1981

PREPARED BY Gary L. Johnson

AGENCY Audit Division

PHONE 465-2320

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SCS CSHB 460(Res)
 Title Relating to taxes
 Requested by Senate Finance Committee Date 6/19/81

II. FISCAL DETAIL

Agency Affected _____ Revenue _____
 Program Category Affected _____ Community Development _____
 BRU, Program, or Subprogram(s) Affected Shared Taxes - Fisheries Tax

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	(1,969.0)	(5,907.0)			
FEDERAL FUNDS						
OTHER (Specify Fund Source)						


POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

The bill provides for a 150% increase in the sharing of fisheries taxes with 50% of the increase beginning in FY82 and full increase beginning in FY83.

There is no additional administrative cost effect upon the General Government Administration and Support BRU.

IV. DATE June 22, 1981 PREPARED BY  Philip A. Wall
 AGENCY Revenue
 PHONE 465-2313
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

Original sponsor: Resources Committee

Offered: 6/18/81
Referred: Finance

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 460 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to taxes; and providing for an effective date."
7

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

9 * Section 1. AS 43.20.036(b) is amended to read:

10 (b) For purposes of calculating the income tax payable under this
11 chapter, the taxpayer may apply as a credit against his tax liability
12 the [JOB DEVELOPMENT] investment credit allowed as to federal taxes
13 under Internal Revenue Code sec. 38 (26 U.S.C. 38) [50] upon only the
14 first \$20,000,000 [\$500,000] of qualified investment put into use in the
15 state for each taxable year [(26 U.S.C. SEC. 50)]. This limitation does
16 not apply to the amounts invested in equipment which meets the defini-
17 tion of a certified pollution control facility as defined under Internal
18 Revenue Code sec. 169 (26 U.S.C. sec. 169) as in effect on June 19, 1975
19 [THE EFFECTIVE DATE OF THIS ACT] except that the date specified in In-
20 ternal Revenue Code [THAT] section 169(d) as a condition of qualifying a
21 certified pollution control facility for a deduction does not apply.

22 * Sec. 2. AS 43.75.015(b) is amended to read:

23 (b) Instead of the taxes levied by (a) of this section, a person
24 who processes [ENGAGED IN A FISHERY BUSINESS WHICH INCLUDES PROCESSING]
25 a developing commercial fish species is liable for and shall pay a tax
26 equal to

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

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

4 * Sec. 3. AS 43.75.015(c) is amended to read:

5 (c) A person engaging or attempting to engage in a fisheries
6 business who first actually and physically processes the fishery re-
7 source, or a person who purchases a fishery resource that is frozen
8 from a person excluded by AS 43.75.017 from liability for the tax, is
9 liable for and shall pay to the department the entire tax imposed by
10 this section. In determining this tax liability, the person may [NOT]
11 deduct from the value of the fishery resources processed the value of
12 fishery resources that are canned or processed for other fisheries
13 businesses. A person taking the deduction authorized by this subsection
14 shall report all information relating to the deduction in accordance
15 with regulations issued by the department [, BUT SHALL INCLUDE THAT
16 VALUE AS PART OF THE VALUE OF THE FISHERY RESOURCES PROCESSED].

17 * Sec. 4. AS 43.75 is amended by adding a new section to read:

18 Sec. 43.75.017. EXCLUSION FROM FISHERIES BUSINESS TAX. A person
19 is not liable for the fisheries business tax under AS 43.75.015 when
20 the fishery resource is frozen aboard a fishing vessel if

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

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

25 (3) the fishery resource that is frozen was caught by the
26 vessel; and

27 (4) the fishery resource is sold by the person claiming an
28 exclusion from the tax to a fisheries business licensed under AS 43.75.

29 * Sec. 5. AS 43.75.100(a) is amended to read: