

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672
2216 SCOMM 87: HOUSE SPECIAL COMMITTEE ON FISHERIES, 1993-94

Carl L. Rosier, Commissioner

Public Communications
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Alaska Department of Fish & Game

NEWS

Testimony on House Bill 264 before the House Special Fisheries Committee

Carl L. Rosier
Commissioner
Alaska Department of Fish and Game
April 5, 1993

I am pleased to see HB 264 introduced. This is an idea whose time has come. With the departure of the foreign fleets from within the 200 mile limit, or Exclusive Economic Zone (EEZ) the offshore factory trawl industry is fully Americanized. A large fleet of approximately 60 plus modern vessels, mostly based in the state of Washington, operates within the EEZ off the coast of Alaska. This fishery has been extremely profitable and rapid capital investment has occurred.

This fleet harvests a bycatch of crab, halibut, herring and salmon while targeting on other species. These species are important to Alaska's resident fishermen and processors, and their coastal communities. The incidental harvest of these species by the factory trawlers has an economic impact on Alaskans by the removal through bycatch of resources that would otherwise be harvested and processed by residents of coastal Alaska.

This fleet avails itself of Alaskan docks and harbors, communications and transportation systems, as well as medical services when needed.

This fleet pays virtually no taxes to the state for either the services it receives or its impact on coastal, Alaskan communities. HB 264 proposes a modest, 3% tax on product landed in Alaska for shipment to market

elsewhere. The revenue from this tax could help pay for the services used by the factory trawlers and mitigate for some of the economic impact they have on Alaska's coastal communities.

It is also no secret that management and enforcement in the offshore fisheries are underfunded. The revenue from this landing tax would provide a necessary addition to the funding of these functions.

However, I am concerned about the budgeting process we are witnessing in the State Senate this year. If the approach to funding natural resource management being proposed in that body prevails, then the benefits offered by the additional revenue from HB 264 will be significantly reduced. If Alaska is to maintain or increase its revenues, jobs, and resident income from fish and wildlife resources, then it has to be willing to put its money into the management of these resources.

I recognize the fiscal situation the state is facing as oil revenue declines. While fish and wildlife resources will never offer the tax revenue that oil does, these resources do offer abundant employment and income producing opportunities for Alaskans. The facts show that the users have been willing to pay a fair share of the cost of managing and protecting these resources. The prudent thing is to build the renewable resource base of the state now, so that when oil revenue declines, these renewable sources of employment and income will be strong. This cannot be done with the cuts to natural resource management being proposed in the Senate.

In closing, I want to thank the House leadership for the approach they have taken on the budget this year. While the department has taken reductions, it has been done in a thoughtful, responsible fashion. I have especially appreciated the dialogue between the House budget writers and the department.

House bill 264 will help provide the management, research, and enforcement that must be done if fisheries resources are to continue their productivity on a sustained yield basis. I want to thank Representative

Moses and the House Rules Committee for the introduction of this bill. I fully support passage of it before the session adjourns.

**AMERICAN FACTORY TRAWLER ASSOCIATION PRESENTATION
TO THE JOINT HOUSE AND SENATE ECONOMIC TASK FORCE
MARCH 13, 1993**

**PRESENTED BY: ED LUTTRELL, PRESIDENT, ARCTIC KING FISHERIES
JOE BLUM, EXECUTIVE DIRECTOR, AMERICAN FACTORY
TRAWLER ASSOCIATION**

**1. IN 1990 THE OFFSHORE SECTOR PROVIDED THE FOLLOWING
CONTRIBUTIONS TO ALASKA:**

- TAXES \$5.4 MILLION (NOT COUNTING CORPORATE, PAYROLL AND CERTAIN LOCAL TAXES)
- PAYROLL \$7.0 MILLION
- ADMINISTRATIVE \$2.3 MILLION
- STORAGE \$8.7 MILLION
- TRANSPORTATION \$7.9 MILLION
- GROCERIES/SUNDRIES \$3.4 MILLION
- MAINTENANCE AND REPAIR \$14.4 MILLION
- FUEL AND LUBRICANTS \$59.7 MILLION
- MISCELLANEOUS \$12.6
- TOTAL/'90 = \$121.4 MILLION

**2. IN 1991, AFTA ESTABLISHED THE BERING SEA COMMERCIAL
FISHERIES DEVELOPMENT FOUNDATION FOR THE PURPOSE OF ASSISTING IN
THE CREATION OF OPPORTUNITIES FOR THE RESIDENTS OF WESTERN ALASKA
TO ENGAGE IN THE COMMERCIAL FISHING INDUSTRY -- IN BOTH THE
HARVESTING AND PROCESSING SECTORS. AFTA MEMBERS SUPPORT THE**

FOUNDATION THROUGH ASSESSMENTS AGAINST EVERY TON OF FISH THEY CATCH IN THE BERING SEA AND GULF OF ALASKA. BY THE END OF 1992, OVER \$680,000 HAD BEEN CONTRIBUTED TO THE FOUNDATION. THE FIRST PROJECT UNDERTAKEN BY THE FOUNDATION WAS AN AGGRESSIVE TRAINING PROGRAM THROUGH WHICH OVER 100 WESTERN ALASKAN RESIDENTS WERE RECRUITED FOR SPECIAL TRAINING PROGRAMS CONDUCTED BY THE ALASKAN VOCATIONAL TRAINING CENTER IN SEWARD. GRADUATES OF THE TRAINING PROGRAM WERE THEN OFFERED EMPLOYMENT ONBOARD AFTA VESSELS. BY THE END OF 1992, OVER 100 WESTERN ALASKANS HAD BEEN RECRUITED, TRAINED AND EMPLOYED BY THE OFFSHORE INDUSTRY. AN ADDITIONAL 300 GRADUATES OF THE PROGRAM ARE ANTICIPATED IN 1993.

3. SIX OFFSHORE COMPANIES, FIVE OF WHICH ARE AFTA MEMBERS, ARE CURRENTLY ENGAGED IN PROJECTS WITH CDQ COMMUNITIES IN WESTERN ALASKA -- FROM ATKA TO NOME AND THE PRIBILOFS. THOSE PROJECTS WILL GENERATE NEARLY \$20 MILLION DOLLARS A YEAR IN INCOME AND OTHER BENEFITS ACCRUING TO WESTERN ALASKAN COMMUNITIES. AS A RESULT, WESTERN ALASKAN RESIDENTS SHOULD HAVE THE SEED MONEY NECESSARY TO DEVELOP THE EXPERTISE AND INFRASTRUCTURE REQUIRED TO ESTABLISH A VIABLE COMMERCIAL FISHING INDUSTRY IN THEIR AREA.

4. IN ALASKA FOR 1990 THE AT-SEA FLEET GENERATED MORE THAN 800 JOBS (USING MULTIPLIER EFFECTS). THE AVERAGE WAGE IN 1990 WAS \$27,000. ENTRY LEVEL WAGES FOR A 60-DAY "TRIP" ARE AS MUCH AS \$10,000.

5. THE AT-SEA FLEET, IN ADDITION TO THE \$7.0 MILLION IN DIRECT WAGES WAS ALSO RESPONSIBLE FOR APPROXIMATELY \$9.0 MILLION IN INDIRECT WAGES. WE DO BUSINESS WITH ALASKA COMPANIES SUCH AS: OFFSHORE SERVICES INCORPORATED, ALASKA AIRLINES, MARK AIR, FACTORY TRAWLER SUPPLY, PENINSULA AIRWAYS, MORRIS AIR, DUTCH HARBOR BUNK HOUSE, SPENARD LUMBER, ALEUTIAN MARINE ELECTRONICS, INDEPENDENT LIFT TRUCKS, DUTCH HARBOR TAXI, HARRIS ELECTRIC, ALASKA SHIP SUPPLY, PACIFIC SHIP SUPPLY, UNISEA INN, WALSHACK SHIPYARD, ALIA WELDING, WATERFRONT WELDING, KODIAK TRANSFER, KODIAK WESTMARK, SHELIKOF INN, PUFFIN INN, ARC N SPARK, SPILL SHIELD, CARLS INC., NORTH STAR TERMINAL, AND NAPA TO NAME A FEW.

6. IN THE LETTERS INVITING US TO PARTICIPATE IN THIS IMPORTANT MINI-SUMMIT YOU ASKED US TO ADDRESS "INCENTIVES TO MAKE ALASKA AN ATTRACTIVE PLACE TO DO BUSINESS." OUR FIRST SUGGESTION WOULD BE THAT YOU DO YOUR OWN ASSESSMENT TO VERIFY THAT THE NUMBERS WE JUST PROVIDED YOU ARE CONSISTENT WITH YOUR RECORDS AND THEN RECOGNIZE THAT THE OFFSHORE PROCESSING SECTOR IS AN IMPORTANT ECONOMIC FACTOR IN ALASKA AND THAT YOU ENCOURAGE OUR CONTINUED PARTICIPATION IN THE FISHERIES OF THE U.S. OFF ALASKA.

UP UNTIL NOW, WE OFTEN FEEL THAT THE INVESTMENTS BY OURSELVES AND FINANCIAL PARTNERS ARE NOT TREATED AS CONTRIBUTING TO ALASKA'S ECONOMIC WELL BEING. WE NEED THE PEOPLE OF ALASKA TO RECOGNIZE OUR CONTRIBUTION AS OUTLINED ABOVE TO ALASKA'S ECONOMIC WELL-BEING AND FACTOR US INTO YOUR FUTURE PLANS.

OF A MORE SPECIFIC NATURE WE HAVE THE FOLLOWING SUGGESTIONS:

- STREAMLINE THE PROCESS FOR BECOMING INVOLVED IN SALMON AND HERRING PROCESSING.
- MODIFY STATE REGULATORY MEASURES THAT ARE DESIGNED FOR ON-SHORE PROCESSORS TO MEET THE CHALLENGES OF OFF-SHORE PROCESSING.

7. IN CONCLUSION, THE AFTA COMPANIES HAVE ENJOYED BUSINESS SUCCESS IN ALASKA. WE HAVE CONTRIBUTED SUBSTANTIALLY TO THE ALASKA ECONOMY AND WE VERY MUCH WANT TO CONTINUE DOING BUSINESS HERE -- A HEALTHY BUSINESS CLIMATE FOR FACTORY TRAWLERS IN ALASKA IS GOOD FOR US, GOOD FOR ALASKA AND GOOD FOR AMERICA'S DOMESTIC CONSUMERS AS WELL AS OUR BALANCE OF PAYMENTS OVERSEAS. LET'S KEEP TALKING POSITIVE!!

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 26, 1993

Hon. Darrel Rexwinkel
Commissioner
Department of Revenue
P.O. Box 110400
Juneau, Alaska 99811-0400

Dear Commissioner Rexwinkel:

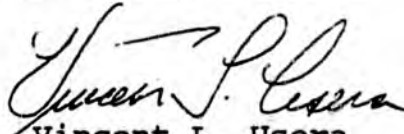
You have asked that we comment on the constitutionality of the proposed legislation which would institute a landing tax on processed fisheries resources taken outside Alaskan waters but subsequently brought into the State. "Landing" would be defined as the act of unloading or transferring a fishery resource inside Alaska waters.

We believe the tax to be constitutionally defensible because the tax would be triggered only by activities within State waters and because there is a sufficient nexus between the availability of State services and resources and a vessel to justify the tax. See, e.g., *Sjong v. State, Dep't of Revenue*, 622 P.2d 967 (Alaska 1981).

This letter will serve to confirm the Department of Law's position that the proposed legislation is constitutionally defensible. We will be available for further analysis should you require.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
Vincent L. Usera
Assistant Attorney General

VLU/ps

cc: K. Lethin, Leg. Liaison
Office of the Governor

D. Behr, AAG

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

☐ 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

☐ KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

☐ P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

RECEIVED
ALASKA DEPARTMENT OF REVENUE

MAR 26 1993

COMMISSIONER'S OFFICE

HB 264

4/12/93 -

Olberg +
Moses
present.

Landing Tax.

5⁰⁸ p.m.

Joe Blum, AFTA - 4039 21st Ave W
Suite 400

98199.

Nichols - at 5⁰⁹

whether tax reflects our burden on
the resource -

whether tax places members at
competitive disadvantage
is not higher for at sea

AFTA will review the bill & accompanying
legal analysis.
no position.

key threshold issue - what is legal basis
for such a tax. If you don't address it.
need Substantive A.G.S. opinion.

Karl Ochs - Br. Sea Fish.
CDQ groups.

suggested amendment: 4/12/93.
tax credit for contributors -

— credit taken against municipality share

similar to Winn Biddle scholarship program.

\$20m - CDQ groups
600.0

50% tax credit - 300.0 -
for western AK.

—
—
Alaska - Mayor Frank Kelly -
City supports it -

cities - significant impacts - on local govts -
econ. rehab. services, recreation, schools,

Fy 92 - city generated 14m in yg -
6m from local fish tax & shared.

3m from local property taxes

7m - 3% taxes -

landfill needs upgrading

port & docks - airport -

research & enforcement.

shore-side donated 1.1m to local clinic
tax credits - ~~but~~ should look at that.

Linda Kozak, Kodiak - Kodiak Longline Vessel
1 catcher / processor frozen / longliner.
support tax.

concerned w/ safety that vessels do
off-loading out of state waters.
should be addressed.

concerned @ def. of "value" -

amend to indicate - instead of lesser -
just have it the statewide average ex-vessel price
fishermen concerned @ state tax.

Brian Bergman, Sitka Harbormaster, City & Port
City v borough support HB 264. closes loophole.
concerns w/ testimony.

Lewey Schwabenberg, Anchorage -
BSPDF per di.

foundation - more than training program.

grassroots level.
funding mechanism to allow foundations like
ours have credits.

our funding matched 2-3 times.

Eura Foundation -

other private sector opportunities,
foundations, trusts, endowments.

Rick Lamber - PSPA - processes 80-95% of AK
fish caught in AK waters & processed in AK.
Hydroil - major taxing entity.

- Mr. Blum asked whether tax would be fair.

I would support this if it was fair.

other 3% -

state floaters pay 5% - + 2% tax to city
of Unalakleet.

Floaters in B Bay 5% + 3% to B Bay Borough.

King Cove 5% + - city + borough

floaters - don't have OSHA, EPA, Clean air & water acts.

* should increase tax.

tax credit - should allow to add to
- should get it - 5% of Tax into Wino
but when you allow factory to build
determine how to spend up to half its
money - big problem.

should require them to go thru legislative scrutiny.

SPDF. way to get support on inshore-offshore.

if we ↑ tax, will they offload at sea. They will do this anyway on the last trip.

in Olympic system - you can't afford the time to off-load at sea.

agree w/

Linda - language on taxability - use

* statewide average -
need definition.

have to have fish weighed - on certified scales.
sounds like based on finished product -

use product recovery rate - estimate of fish originally caught.

w/ weighing fish - at mercy of factory
handlers to tell us their weight.

* Problem w/ using product recovery rates.
need mechanism to weigh fish.

Can require scales.

- tax needs to be fair - 5%

- by weight

→ Mike Symonakis ^{Fishing} ~~Atk~~ Co. ^{of Ak}, Seward.
1984- Seward, rockyish.

3 freezer-longline

7 factory trawlers.

all product caught outside state waters.
much of it forwarded to transp.

question legal basis of taxable event.

no change in product.

question why state wouldn't impose same tax on
Fed. Express.

Legal questions brushed over. ^{no sufficient} Nexus to state
service -

large yits -

many transfers in remote bays.

→ Congress never allowed state to regulate foreign commerce

Commerce clause -

need substantial analysis.

Could not support 2.5-3.5 tax.

can't pass it on.

its supply & demand mkt. - have to take it from
net profits. w/o/catchers processors out there - PSA group
would have exclusive red.

question - weighing scales - cost 40,000 per unit.
we sell our product by the lb. we keep close
track of it. invoices.

use
product recovery rates - very close, if not spot.
sampled by observers.

look at legal questions.

Moss - Garbage

Mike - often garbage will go w/
maintain crews all year round.

Markini + Al Airline fly crew up.

Moss - often undernourished get dumped on beach
w/ no money.

sun or injured - use Coast Guard medicine.
or contracted medicine.

Bob Jettner - Huntsville East Bn. -

150m worth of product landed in one storage.

no benefit to us directly.

offshore processing has impacts on local areas -
public safety, medical services,

supp road maintenance, airport crews.
ASMI promotions.

long-term impacts.

cities get stuck w/ fixed market costs.
resources crash.

motion to adopt CS for decision -
Harley Olberg.

Carl Meyer. - Dept of Revenue.
compare ^{current} mkt value at time of tax to
statewide price.

fish bus tax - unprocessed product

landing tax - product already processed.

attempt to base them on equivalent values.

Mkt value in some instances less than statewide
average -

statewide average - ex-vessel price. - fish ticket

*attn: Nancy***TELECOPY COVER SHEET**
Dillingham Legislative Information Office

Office - (907) 842-5319

Fax - (907) 842-5105

TO: House Special Committee FAX: 465-3445 PHONE: _____FROM: on Fisheries
Robin Samuelson PHONE: _____INSTRUCTIONS: Testimony on HB 264 for TC 30518may Please send us the committee substitute. done

RECEIVED: Date _____ Time _____

SENT: Date 4-13-93 Time 8:35 AM

DISPOSAL OF ORIGINAL: Discard _____ Hold for Pickup _____

NUMBER OF PAGES: - 2 - (Not counting cover sheet)SENT BY: ams

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 26, 1993

SUBJECT: Draft bill establishing fishery resource landing tax (Work Order No. 8-LS0941\A)

TO: Representative Carl Moses
ATTN: Molly McCammon

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum addresses the draft bill, establishing a fishery resource landing tax, that you requested.

The draft bill is largely identical to the proposed bill that was supplied with your drafting request. The significant difference between this draft bill and the material provided involves those provisions of the bill relating to the use of the proceeds of the tax for support of the Alaska Seafood Marketing Institute and for municipal revenue sharing. These provisions have been rewritten to avoid any suggestion of a dedicated fund and to directly incorporate the relevant provisions of AS 43.75.130 and 43.75.137 into the bill.

In addition to being cognizant of the constitutional issues associated with a tax such as that proposed by this bill, the legislature should pay attention to precisely defining the taxable event to which the tax is applied. The bill currently proposes to impose the landing tax on the first act of unloading or transferring a processed finfish or shellfish for which the raw fish tax has not been paid, provided that the first act of unloading or transferring occurs in the state. The legislature should consider whether this provision encompasses the situations where the legislature intends that the tax should apply.

If I may be of further assistance, please advise.

GU:gc
93-279.glc

Enclosure

HOUSE BILL NO. 264
LANDING TAX QUESTIONS AND ANSWERS

Question 1. Who is impacted by this legislation?

Answer Those operators who both catch and process outside Alaska and bring the processed product into the state. The legislation is aimed at catcher/processors in the Exclusive Economic Zone ("EEZ") that currently pay no Fisheries Business Tax.

Question 2. Why are the EEZ catcher/processors not subject to the Fisheries Business Tax?

Answer The Fisheries Business Tax only applies if fishery resources are either caught or processed in Alaska. Since the catcher/processors catch and process in the EEZ exclusively, the Fisheries Business Tax does not apply to them.

Question 3. Why should the state impose the tax if the resources are not caught or processed in Alaska?

Answer Alaska provides significant benefits and services and incurs fishery management costs with respect to the resources to various degrees. Coupled with the impact the operations have on local Alaska communities, the tax is one way to compensate the state for these services.

Question 4. Will the Fisheries Business Tax and the Landing Tax apply to the same resource and result in a double tax burden?

Answer No. The Fisheries Business Tax applies to unprocessed fishery resources while the Landing Tax applies to processed fishery resources. If the Fisheries Business Tax applies, the Landing Tax will never be applicable.

Question 5. Does the Landing Tax apply to fishery resources that are first landed in another state or foreign country and again landed in Alaska?

Answer No. The Landing Tax only applies if the first landing is in this state.

Question 6. Does the Landing Tax apply to fishery resources that are first landed in Alaska and then immediately shipped outside the state?

Answer Yes. The Landing Tax applies to fishery resources that are unloaded or transferred in Alaska without regard to the final destination.

Question 7. Which party is subject to the Landing Tax where a sale occurs upon the first landing in Alaska?

Answer The seller will generally be liable for the tax. The tax is imposed on the owner of the resource at the moment of unloading or transfer.

Question 8. How is taxable value determined?

Answer Value is the lesser of the fair market value of the processed resource at the time and place of the transfer or the statewide average price paid for the unprocessed resource as determined by the Department of Fish and Game. Generally, the statewide average price will be the lower value. The statewide average prices will be determined by Fish and Game and made available to taxpayers for use in filing the tax returns.

Question 9. Is the taxable value zero if there is no statewide average price for a particular year?

Answer No. The Department will adopt regulations to substitute other prices in that event or require the use of fair market value.

Question 10. How does the landing tax rate compare to the rates under the Fisheries Business Tax?

Answer The Landing Tax rate of 3.3% is equivalent to the 3.3% paid by a shore-based fisheries business under the Fisheries Business Tax and Alaska Seafood Marketing Institute ("ASMI") provisions.

Question 11. Is the Landing Tax revenue shared with municipalities?

Answer Yes. The tax collected on .3% of the value is envisioned for ASMI and 50% of the remaining tax is shared in the same manner as under the Fisheries Business Tax provisions as summarized below:

Landings Within Municipalities

--Unified municipalities and cities in unorganized boroughs	50%
--City located within a borough	25%
--Borough where landed within city	25%
--Borough where landed outside a city	50%

except for a city within a borough incorporated after June 16, 1987:

--Year of incorporation	45% to city	5% to borough
--1st year after incorporation	40% to city	10% to borough
--2nd year after incorporation	35% to city	15% to borough
--3rd year after incorporation	30% to city	20% to borough

except a city may adopt an ordinance to transfer some of its revenues to the borough.

Landings Outside Municipalities

--50% of the tax that is otherwise not shared is transmitted to the Department of Community and Regional Affairs for sharing under AS 29.60.450.

HOUSE FISHERIES COMMITTEE
April 12, 1993

Good morning. I'd like to call this meeting of the House Special Committee on Fisheries to order. It's **Monday, April 12**, the time is _____. Would the secretary please take the roll.

Today we will be hearing once again **HB 264**, establishing a Fisheries Resource Landing Tax. We are on the teleconference and will be taking testimony, so be sure to use your teleconference mike at all times.

We will first be hearing from Joe Blum, executive director of the American Factory Trawlers Association. Mr. Blum will be testifying from Seattle. Go ahead, Mr. Blum.

Any questions of Mr. Blum?

Also on the teleconference to testify are:

- Mayor Frank Kelty or City Manager Mark Earnest of Unalaska
- Former state Senator John Binkley of Fairbanks
- Karl Ohls with the Bering Sea Fishermen's Association in Anchorage
- Linda Kozak with the Kodiak Longliners Association
- Former state Senator Mike Szmanski in Juneau
- Bob Juettner with the Aleutians East Borough

Is there anyone else in the audience who would like to testify on HB 264? If not...

You have before you a proposed Fisheries Committee Substitute for HB 264. Could I have a motion to adopt the CS for discussion purposes?

465 -
2020

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 264(FSH)

Page 2, following line 11:

Insert a new section to read:

"Sec. 443.77.035. CREDIT FOR APPROVED CONTRIBUTIONS. (a) A taxpayer who harvests a fishery resource including those under the provisions of a community development quota may claim as a credit against not more than 50 percent of the tax due under this chapter the taxpayer's contributions made during the tax year to a nonprofit corporation incorporated under the laws of the state that are used by the recipient for one or more of the following purposes:

(1) scholarships for study in the disciplines of fisheries management, fisheries business administration, or another related course or discipline;

(2) training for employment in the seafood industry;

(3) making contributions of capital, in the form of loans or grants, to construct or improve

(A) transportation facilities such as airports and docks that are used for the unloading, transferring, or shipment of fisheries products; or

(B) facilities at which fisheries products are canned, frozen, or otherwise processed for inventory, including floating facilities that are documented under the laws of the United States as defined in 46 U.S.C. App. 801;

(4) awarding grants for research projects relating to fisheries.

(b) A taxpayer who makes a contribution that qualifies for the credit authorized by (a) of this section and who claims a credit for th

contribution must apply to obtain the credit. The taxpayer shall apply in the manner provided by the department by regulation, and shall provide to the commissioner all information relating to the contribution that may be required by the department. Upon receipt of a complete application, the department shall approve or disapprove the application for the credit within 60 days.

(c) The department may not approve a tax credit under this section if (1) the department determines that the contribution does not qualify under (a) of this section; or (2) the taxpayer claiming the credit is in arrears in the payment of the tax levied by this chapter. For purposes of this subsection, a taxpayer is not in arrears if the payment is under administrative or judicial appeal.

(d) A contribution allowed as a credit under this section may not be claimed as a credit under another provision of this title."

Page 2, line 12, after "(a)":

Delete "The"

Insert "An amount equal to the"

Page 2, line 13, after "AS 43.77.010":

Insert "calculated without reference to a reduction for the revenue that is not collected due to tax credits approved by the commissioner under AS 43.77.035,"

Page 2, line 18, after "AS 43.77.010":

Insert ", less all tax credits approved by the commissioner under AS 43.77.035,"

Page 4, following line 12:

Insert a new subsection to read:

"(e) In this section, "tax revenue collected" does not include amounts credited against taxes under AS 43.77.035."

Page 4, line 16, after "(1)":

Insert "'community development quota" has the meaning given that term in regulation adopted by the Office of the Governor, under authority granted by art. III, secs. 1 and 24, Constitution of the State of Alaska, to implement a program of the North Pacific Fishery Management Council to set aside fisheries resources for community development purposes in western Alaska;

(2)"

Renumber the following paragraphs accordingly.



April 7, 1993

Ms. Molly McCammon
Office of Representative Carl Moses
Alaska State House of Representatives
Room 204 - State Capitol
Juneau, Alaska 99801-1182

Dear Ms. McCammon:

As a follow-up to our telephone conversation, I am sending you information about the Bering Sea Commercial Fisheries Development Foundation (Foundation). Although we have only been in existence for less than two years, the projects that we have undertaken have provided a tremendous benefit to Western Alaska Coastal Communities. We are trying to expand these opportunities.

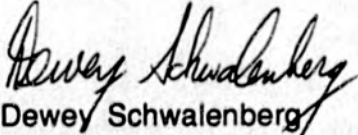
I believe that the Foundation has a real interest in the Fishery Resource Landing Tax Bill (House Bill No. 264) with respect to providing direct social welfare and economic development opportunities to Western Alaska Coastal Fishing Communities. My first impression of the bill is that language is needed to provide a mechanism that would allow the Foundation to receive direct appropriations from these revenues to assist the communities. In addition, an economic incentive to the fishing companies to contribute directly to the Foundation would require a tax credit provision recognizing these business contributions. The details of direct appropriations to the Foundation and a reasonable tax credit for the industry will need to be worked out.

The main objective of the Foundation is to match diverse funding sources to community based projects. Linking state tax revenues with private funds and community resources through the Foundation seems to me to be a way to maximize the financial opportunities that the communities have available to them, while expanding the individual contributions as far as they will go.

I am available to assist you in developing more specific ideas and language as the bill proceeds through the legislature if you feel that such assistance is warranted.

Please feel free to contact me if you should have questions about the enclosed information, our projects, or our interest in House Bill No. 264.

Sincerely,


Dewey Schwalenberg
Executive Director

enc. 1

cc: Mr. John Binkley, President
Mr. Harvey Samuelson, Vice-President

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

ALASKA COMMISSION ON POSTSECONDARY EDUCATION

BOX 110505
JUNEAU, ALASKA 99811-0505
PHONE: (907) 465-2962

MEMORANDUM

TO: Molly McCammon, Legislative Aide
Office of Representative Carl Moses

FROM: Diane Barrans, ^{DB} Programs Coordinator
Alaska Commission on Postsecondary Education

SUBJECT: A.W. "Winn" Brindle Memorial Scholarship Tax Credit

DATE: April 2, 1993

In follow-up to our telephone conversation of earlier today, Commission staff is requesting that the following language be added as an amendment to HB 264 (Providing for a fishery resource landing tax):

AS 43.75.032 be amended to read:

(e) A fisheries business is entitled to a credit of not more than five percent of the business tax liability under AS 43.75.015 for contributions made during the tax year or during the period in which the taxpayer may file the return and pay the tax for the tax year to the A.W. "Winn" Brindle memorial scholarship account (AS 14.43.250). A fisheries business may claim a credit under this subsection for the 1993 (1987) tax year and subsequent tax years. A tax credit under this subsection may not be approved for more than 100 percent of a scholarship contribution.

The purpose of this amendment would be to allow fisheries businesses additional time to calculate their tax liabilities and to allot donations accordingly.

Thank you for your attention to this matter. Please let me know if I can be of further assistance in this process.

963N

FISCAL NOTE

N 2

Bill Version: CSHB 264 (FSH)

(H) Publish Date: 4/13/93

STATE OF ALASKA 1993 LEGISLATIVE SESSION

Revision Date:

Title:

Fishery Resource Landing Tax

Dept. Affected:

Revenue

BRU:

Revenue Operations

Component:

Income and Excise Audit

Sponsor: House Rules

Requestor: House Rules

COMPONENT SERIAL NO. 113

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	58.0	58.0	58.0	58.0	58.0	58.0
TRAVEL	20.0	20.0	20.0	20.0	20.0	20.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	10.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	94.0	84.0	84.0	84.0	84.0	84.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE: General Fund	4,300.0	4,300.0	4,300.0	4,300.0	4,300.0	4,300.0
	860.0	860.0	860.0	860.0	860.0	860.0

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	94.0	84.0	84.0	84.0	84.0	84.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	94.0	84.0	84.0	84.0	84.0	84.0

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary)

Prepared by:

Larry E. Meyers, Director

Phone: 465-2320

Division:

Income and Excise Audit Division

Date: April 1, 1993

Approved by Commissioner:

Darrel J. Rexwinkel

Date: April 1, 1993

Agency:

Department of Revenue

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ORIGINAL

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 264

Revision Date: _____
Title: Fishery Resource Landing Tax
Sponsor: House Rules
Requestor: House Rules

Department Affected: Commerce and Economic Development
BRU: Alaska Seafood Marketing Institute
Component: _____
COMPONENT SERIAL NO. 0393

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	860.0	860.0	860.0	860.0	860.0	860.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	860.0	860.0	860.0	860.0	860.0	860.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE: General Fund	860.0	860.0	860.0	860.0	860.0	860.0
--------------------------------------	-------	-------	-------	-------	-------	-------

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF	860.0	860.0	860.0	860.0	860.0	860.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	860.0	860.0	860.0	860.0	860.0	860.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Fred Fisher, Administrative Officer
Division: Alaska Seafood Marketing Institute

Phone: 465-5571
Date: 4/9/93

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Date: 4-12-93

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Analysis

This bill amends AS Title 43 by adding a chapter to provide for a fishery resource landing tax. The landing tax would be imposed on fisheries resources brought into or landed in the state. The tax would be calculated by multiplying the value of the fishery resource by 3.3%.

Persons subject to the landing tax would be required to file a return with the department on a calendar year basis. The return and tax payment would be due April 1 after the close of the calendar year. Taxes collected on .3% of the value of the fishery resource will be paid into a separate account, the balance of which may be appropriated by the legislature to the Alaska Seafood Marketing Institute (ASMI).

All remaining taxes collected will be paid into a separate account in the general fund. Of that amount, fifty percent will be shared to cities and boroughs in the same manner as fisheries business taxes under AS 75, subject to appropriation by the legislature.

Based on the Department of Revenue's 1991 Fish Tax Study, landing tax revenues are estimated as follows:

	<u>Value</u>	<u>3% Portion</u>	<u>.3% Portion</u>
Landing Tax	\$285,700.0	\$8,600.0	\$860.0
Less Amount Shared (50%)		<u>(4,300.0)</u>	<u>N/A</u>
Net Landing Tax		<u>\$4,300.0</u>	<u>\$860.0</u>

Operating Costs

Personal Services	
Revenue Auditor III - Anchorage (Range 18A)	58.0
Travel	
Compliance and Review	10.0
Audits	10.0
Contractual	5.0
Supplies	1.0
Equipment	
Computer and Modular Furniture (FY 94)	10.0

BSFA**Bering Sea Fishermen's Association**

725 Christensen Drive
Anchorage, Alaska 99501
(800) 770-6519 (Within Alaska)
(907) 279-6519
FAX (907) 258-8888

Serving western Alaska small boat fisheries since 1980

MEMORANDUM - TRANSMITTED BY FACSIMILE MACHINE

TO: Aleutian Pribilof Island Community Development Association
Bristol Bay Economic Development Corporation
Central Bering Sea Fishermen's Association
Coastal Villages Fishing Cooperative
Norton Sound Economic Development Corporation
Yukon Delta Fisheries Development Association

FROM: Karl Ohls *K.O.*

DATE: March 30, 1993

RE: Landing Tax

Rep. Carl Moses of Unalaska today introduced HB 264, which would levy a 3.3 percent landing tax on fisheries resources brought into the jurisdiction of the State of Alaska and first landed here. Landing is defined as "the act of unloading or transferring a fishery resource."

The purpose of the bill is to allow the state to obtain revenue from the fisheries that operate in federal waters. The bill was written by the Department of Revenue.

Because a landing tax would have an impact on the CDQ operations, the CDQ organizations may wish to play an active role in the legislature's consideration of the landing tax, either individually or collectively. I have heard four options suggested as possible responses:

1. Oppose the landing tax.
2. Support the landing tax.
3. Amend the bill to exempt CDQ landings.
4. Support the landing tax with an amendment that would share the tax revenues with the CDQ regions.

Under the current draft, landing tax proceeds would be treated the same as fisheries business tax proceeds in that they would be shared fifty percent with the boroughs and cities in which they were collected.

An alternative suggested by Norman Cohen of CVFC would be to allow seafood processors and harvesters to take a tax credit on the portion of the tax that would be given to municipalities and instead specify that those funds be given to nonprofit fisheries foundations in western Alaska to use for scholarships, training, fisheries infrastructure, or fisheries research projects. In this way, the seafood processing companies that participate in CDQ joint ventures can specify that 50 percent of the revenues collected from their operations be paid to the CDQ regions with which they're involved.

The bill will be considered by the House Finance Committee where Rep. Eileen MacLean of Barrow will have major influence. According to her staff, one of her concerns is how it will affect the CDQ operations.

If you wish to obtain more information about the bill, the staff people who are handling this issue are Molly McCammon in Rep. Moses' office, 465-6848, and Deborah Driver in Rep. MacLean's office, 465-3722.

So far -- as the BSFA staff person assigned to CDQ issues -- I have been working with Norman Cohen on his ideas. If any other CDQ group has thoughts on the bill or suggestions for a response, please call me.

cc: Molly McCammon, Office of Rep. Carl Moses
Deborah Driver, Office of Rep. Eileen MacLean

Molly - "may"
is the operative
word here + there
is no "for other
purposes"
language.

Sec. 16.51.160. Collection of assessments and disposition of proceeds. (a) Processors shall remit to the Department of Revenue by April 1 of each year the total amount of the seafood marketing assessment owed on the value paid for seafood products by the processor in the previous calendar year.

(b) The seafood marketing assessment collected under AS 16.51.010 - 16.51.180 shall be deposited in the general fund. The legislature may make appropriations to the Department of Commerce and Economic Development for the purpose of providing financing to the institute based on collections of the seafood marketing assessment, and may appropriate additional money beyond the seafood marketing assessment as need is demonstrated by the institute. (§ 3 ch 106 SLA 1981)

Revisor's notes. — The words "seafood marketing" were added preceding "assessment" in subsections (a) and (b) and the words "collected under AS 16.51.120" were deleted following "assessment" in subsection (b) by the revisor of statutes pursuant to AS 01.05.031.

Sec. 16.51.170. Enforcement of assessments. The provisions of AS 43.05.010 - 43.05.290 and AS 43.10.010 - 43.10.200 apply for the enforcement and collection of the seafood marketing assessment. (§ 3 ch 106 SLA 1981)

Sec. 16.51.180. Definitions. In AS 16.51.010 - 16.51.180,

(1) "board" means the Board of Directors of the Alaska Seafood Marketing Institute;

(2) "institute" means the Alaska Seafood Marketing Institute;

(3) "processor" means a person who engages in processing seafood for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants;

(4) "promote or make a contract that promotes seafood" means to advertise or publicize, or make a contract for advertising or publicizing, the use, value, attractiveness, or quality of seafood;

(5) "seafood" means finfish, shellfish, and fish by-products, including but not limited to salmon, halibut, herring, flounder, crab, clam, cod, shrimp, and pollock;

(6) "value" means the actual price paid for the seafood, including indirect costs such as fuel, supplies, or gear, whether paid at the time of purchase or tendered as a deferred or delayed payment, except that "value" means the market value of the seafood if the seafood is taken in company-owned or company-subsidized boats or in boats that are operated under lease or other contractual arrangement. (§ 3 ch 106 SLA 1981; am § 41 ch 59 SLA 1982)

DRAFT FISCAL NOTE

STATE OF ALASKA 1993 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: March 23, 1993

Dept. Affected: Revenue

Title: Landing Tax Act

BRU: Revenue Operations

Component: Income and Excise Audit

Sponsor: _____

Requestor: _____

COMPONENT SERIAL NO. 113

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	58.0	58.0	58.0	58.0	58.0	58.0
TRAVEL	20.0	20.0	20.0	20.0	20.0	20.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	10.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	94.0	84.0	84.0	84.0	84.0	84.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE: General Fund	4,300.0	4,300.0	4,300.0	4,300.0	4,300.0	4,300.0
	860.0	860.0	860.0	860.0	860.0	860.0

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	94.0	84.0	84.0	84.0	84.0	84.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	94.0	84.0	84.0	84.0	84.0	84.0

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by:

Larry E. Meyers, Director

Phone: 465-2320

Division:

Income and Excise Audit Division

Date: March 23, 1993

Approved by Commissioner:

Darrel J. Rexwinkel

Date: March 23, 1993

Agency:

Department of Revenue

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Analysis

This bill amends AS Title 43 by adding a chapter to provide for a fisheries landing tax. The landing tax would be imposed on fisheries resources brought into or landed in the state. The tax would be calculated by multiplying the value of the fishery resource by 3.3%.

Persons subject to the landing tax would be required to file a return with the department on a calendar year basis. The return and tax payment would be due April 1 after the close of the calendar year. Taxes collected on .3% of the value of the fishery resource will be paid into an account for use of the Alaska Seafood Marketing Institute (ASMI).

Fifty percent of the total amount of landing taxes collected less the amount earmarked for ASMI would be shared to boroughs and cities in the same manner as fisheries business taxes under AS 75.

Based on the Department of Revenue's 1991 Fish Tax Study, landing tax revenues are estimated as follows:

	<u>Value</u>	<u>3% Portion</u>	<u>.3% Portion</u>
Landing Tax	\$285,700.0	\$8,600.0	\$860.0
Less Amount Shared (50%)		<u>(4,300.0)</u>	<u>N/A</u>
Net Landing Tax		<u>\$4,300.0</u>	<u>\$860.0</u>

Operating Costs

Personal Services	
Revenue Auditor III - Anchorage (Range 18A)	58.0
Travel	
Compliance and Review	10.0
Audits	10.0
Contractual	5.0
Supplies	1.0
Equipment	
Computer and Modular Furniture (FY 94)	10.0



April 7, 1993

Ms. Molly McCammon
Office of Representative Carl Moses
Alaska State House of Representatives
Room 204 - State Capitol
Juneau, Alaska 99801-1182

Dear Ms. McCammon:

As a follow-up to our telephone conversation, I am sending you information about the Bering Sea Commercial Fisheries Development Foundation (Foundation). Although we have only been in existence for less than two years, the projects that we have undertaken have provided a tremendous benefit to Western Alaska Coastal Communities. We are trying to expand these opportunities.

I believe that the Foundation has a real interest in the Fishery Resource Landing Tax Bill (House Bill No. 264) with respect to providing direct social welfare and economic development opportunities to Western Alaska Coastal Fishing Communities. My first impression of the bill is that language is needed to provide a mechanism that would allow the Foundation to receive direct appropriations from these revenues to assist the communities. In addition, an economic incentive to the fishing companies to contribute directly to the Foundation would require a tax credit provision recognizing these business contributions. The details of direct appropriations to the Foundation and a reasonable tax credit for the industry will need to be worked out.

The main objective of the Foundation is to match diverse funding sources to community based projects. Linking state tax revenues with private funds and community resources through the Foundation seems to me to be a way to maximize the financial opportunities that the communities have available to them, while expanding the individual contributions as far as they will go.

1577 C Street, Suite 310 Anchorage, AK 99501-5133 (907) 263-9881 FAX (907) 263-9920

I am available to assist you in developing more specific ideas and language as the bill proceeds through the legislature if you feel that such assistance is warranted.

Please feel free to contact me if you should have questions about the enclosed information, our projects, or our interest in House Bill No. 264.

Sincerely,


Dewey Schwalenberg
Executive Director

enc. 1

cc: Mr. John Binkley, President
Mr. Harvey Samuelson, Vice-President

SCOMM

87:18

15 AAC is amended by adding a new chapter to read:

CHAPTER 77. FISHERY RESOURCE LANDING TAX

15 AAC 77.005. **PURPOSE AND INTENT.** (a) The landing tax is both designed and intended to be a compensatory tax to complement the fisheries business tax under AS 43.75. The landing tax is intended to compensate the state for the burdens that the Exclusive Economic Zone ("EEZ") catcher/processor fleet imposes upon the state and local communities, as well as for the benefits the EEZ catcher/processor fleet receives from the state and local communities.

(b) The state has various research, management and enforcement responsibilities in connection with the offshore fisheries, and the EEZ catcher/processor fleet has a significant presence in the state including transferring the processed product, taking on and disembarking crew, taking on fuel and supplies, obtaining repairs, discharging waste, and seeking sheltered waters. The state and local communities are impacted through the additional burdens placed upon educational systems, road maintenance, public safety, airports, docks, hospitals, and other social programs.

(c) Fisheries businesses in the state pay for these benefits and burdens through the fisheries business tax which applies to fisheries resources harvested or processed in Alaska. The landing tax is a substantially equivalent levy designed to impose a comparable burden on interstate commerce. In a real sense, the EEZ

Register ,

1993

REVENUE

15 AAC 77.010(b)

catcher processors are conducting fisheries businesses in the state to no less a degree than in-state operators. The landing tax is not a fee on the fisheries resources simply moving through the state, it is instead a quid pro quo for the services and benefits conferred upon the processed resources whereby they pay their own way.

The landing tax thus achieves an equality of treatment between local and interstate commerce conducting fisheries businesses in the state. (Eff. / / ,

Register)

Authority: AS 43.77.010

AS 43.77.070

15 AAC 77.010. RETURN, PAYMENT, AND REQUIRED INFORMATION. (a)

A person subject to the fishery resource landing tax shall file one return for all taxable landings of fishery resources in the state. The return shall be filed before April 1 after the close of the calendar tax year, using the forms provided by the department, and shall include all locations at which fishery resources were landed in the state. The tax shall also be paid before April 1 after the close of the calendar tax year.

(b) A person must state the following information in the places prescribed on the form:

(1) name of the person subject to the tax that is filing the return;

(2) the mailing address of the person;

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REVENUE

15 AAC 77.015(a)

(3) the federal employer identification number or social security number of the person;

(4) the calendar year covered by the return;

(5) the precise locations in the state where fishery resources were landed, including a specification by weight and species for each location;

(6) the precise locations in the state where fishery resources harvested under the provisions of a community development quota were landed, including a specification by weight and species for each location;

(7) an Alaska Fisheries Business License number or the Alaska Business License number of the person;

(8) the value of the fishery resources;

(9) the amount of credits claimed for other taxes paid and for approved contributions;

(10) the amount of tax liability and tax payments; and,

(11) other information required on the tax return form. (Eff. / / ,

Register)

Authority: AS 43.77.020

AS 43.77.070

15 AAC 77.015. AUTOMATIC EXTENSION OF TIME TO FILE RETURN AND PAY TAX. (a) A person who has timely filed a request with the department for

information on the value of fisheries resources as provided in 15 AAC 77.040(c) shall automatically be granted an extension of the time in which to file the return and pay the tax required by this chapter if the value of the unprocessed fishery resources is not transmitted at least 30 days before the due date of the return.

(b) An automatic extension under this section is effective until the last day of the month following the month in which the information on value is transmitted.

(c) The tax is not considered delinquent during the period the automatic extension of time to file the return and to pay the tax is in effect and interest and penalties do not accrue during this period. (Eff. / / /, Register)

Authority: AS 43.77.020

AS 43.77.070

15 AAC 77.020. REQUEST FOR EXTENSION OF TIME TO FILE RETURN.(a)

Upon a showing of good cause, the department in its discretion may grant reasonable extensions of time from the due date, or the automatic extension of time to file due date, for the filing of the return. The extensions, excluding automatic extensions, shall not exceed 90 days in the aggregate.

(b) A request for an extension of time to file the return shall be in writing, contain a full statement of the reasons supporting the request, and must be received by the department no earlier than March 1 and no later than 10 calendar days before the date the return is due, including extensions. A facsimile telephone number shall

be provided if the applicant requests a response by facsimile transmission.

(c) If an extension of time for filing the return is granted, the return must be filed before the expiration of the period of the extension. A return filed after the period of the extension voids all extensions under this section.

(d) If an extension of time for filing the return is denied, the return must be filed within 10 calendar days after the date the notice of denial is sent by facsimile transmission or mailed by the department, or by the March 31 due date or automatic extension due date, whichever is later. (Eff. / / , Register)

Authority: AS 43.77.020

AS 43.77.070

15 AAC 77.025. ELECTION TO MAKE ESTIMATED TAX PAYMENTS. (a) In lieu of the bond or security required of nonresident persons in AS 43.10.160, a person may elect to make estimated tax payments of the tax estimated to be due for the year. The estimated tax payments shall be made in equal quarterly installments on or before March 31, June 30, September 30, and December 31 of each calendar year.

(b) A person who makes the election in (a) of this section who fails to make estimated tax payments in equal installments that total at least 90% of the tax liability for the year shall pay an estimated tax penalty computed for each quarter. The estimated tax penalty is determining by applying the interest rate specified in AS 43.05.220 to the underpayment in each quarter.

(c) A person who makes estimated tax payments in equal installments that equal or exceed the liability of the person for tax under AS 43.77 in the previous tax year shall not be subject to the estimated tax penalty.

(d) The election under this section shall be made prior to the landing of fishery resources in the state or June 2 of each year, whichever is earlier, on a form provided by the Department.

(e) The election under this section applies only to the Fisheries Resource Landing Tax and does not relieve a person from complying with the requirements of AS 43.10.160 with respect to other taxes to which the person may be subject. (Eff. / / , Register)

Authority: AS 43.10.160(b)-(c)
AS 43.77.070

15 AAC 77.030. LIABILITY FOR TAX. (a) The person owning the fishery resource at the moment it is first landed in Alaska shall file the return and pay the tax imposed by AS 43.77.010.

(b) The person owning the fishery resource is the person with the legal title and the risk of loss at the moment the act of landing begins in the state. For purposes of this section, and notwithstanding any contract provision to the contrary, a person in possession of the fishery resource who harvested or processed the fishery resource, or a related person or agent in possession of the fishery resource from the person

who harvested or processed the fishery resource, retains legal title and risk of loss until the fishery resource is delivered and actual physical possession is transferred to an unrelated third-party buyer.

(c) The tax imposed under AS 43.77.010 does not apply to a fishery resource that becomes subject to tax under AS 43.75. The provisions of AS 43.75 control and take precedence if a fishery resource, or the value of the fishery resource, may be subject to both AS 43.77 and AS 43.75.

(d) The tax imposed under AS 43.77.010 does not apply to the landing of a secondary product where the secondary product is included in the round weight of the primary product and the primary product is subject to the tax under this chapter.

(e) The tax does not apply if the fishery resource is first landed in the territorial jurisdiction, as recognized by the United States, of another state or foreign country. A first landing outside the jurisdiction of a state or foreign country, such as in United States jurisdictional waters, is not a first landing for purposes of AS 43.77.010 and does not preclude the tax under this chapter.

(f) The tax applies to a fishery resource that is first landed in Alaska without regard to the final destination of the resource.

(Eff. / / /, Register)

Authority: AS 43.77.010
AS 43.77.070

15 AAC 77.035. CREDIT FOR OTHER TAXES PAID. (a) A credit is allowed for taxes paid to another jurisdiction in which the fishery resource was caught, processed, or sold. The credit is only available if the taxes paid to another jurisdiction are equivalent in nature to the taxes imposed by AS 43.75 and AS 43.76. A tax is equivalent in nature to AS 43.75 if it is in the nature of an occupational tax on the conduct of a fisheries business as measured by the value of resources harvested or processed within the jurisdiction, or a tax otherwise imposed on the harvesting or processing of fisheries resources within a jurisdiction. A tax is equivalent in nature to AS 43.76 if it is imposed on the harvesting of salmon within a jurisdiction and the tax is intended to be used to promote or enhance salmon production within that jurisdiction. Sales taxes, import or export fees or taxes, income taxes, and similar taxes and fees are not considered to be equivalent in nature to AS 43.75 and AS 43.76.

(b) For purposes of this section, jurisdiction includes other states, foreign countries, and the United States.

(c) The amount of the credit for taxes paid to another jurisdiction on the fishery resource shall not exceed the liability of the person for the tax on the same resource under AS 43.77.

(d) If taxes paid to another jurisdiction are subsequently refunded or credited to the person, the amount of the credit previously allowed under this chapter shall be

recaptured as additional tax in the year the taxes were refunded or credited.

(e) The credit must be claimed on the return and the person shall attach a statement to the return attesting that the tax has been paid, indicating the date of payment, identifying the jurisdiction to which the payment was made, and describing the nature of the tax and providing citation to the statutory authority in the jurisdiction for imposition of the tax. A copy of the return or report filed in the other jurisdiction shall be submitted with the Alaska return and statement. (Eff. / / /, Register)

Authority: AS 43.77.030

AS 43.77.070

15 AAC 77.040. VALUE AND NOTICE OF VALUE. (a) The value of the fishery resource is the statewide average price paid per pound for unprocessed fishery resources of the same species as reported to the Department of Fish and Game under AS 16.05.690. The department may adjust the statewide average prices paid for fisheries resources to eliminate high and low prices, and to take into account tendering fees, price adjustments, and deferred payments such as bonuses.

(b) In the absence of a Department of Fish and Game statewide average price for a particular species, the department may use information from other governmental agencies, such as the United States National Marine Fisheries Service, or other sources, such as Department of Revenue Fisheries Business Tax Return information, to arrive at a statewide average price for that species. The department statewide

average price must be used to file the return and pay the tax required under this chapter but a person may protest the price determined under this subsection at the time of filing the return and seek a refund. The department statewide average price determination shall only be overcome with clear and convincing proof submitted by the person of the full market value of the unprocessed fisheries resources.

(c) Each person required to file a return and pay the tax under this chapter shall notify the department in writing by January 31 and request notice of the value for each species of fishery resources landed in the state in the previous calendar year. The notification shall be made on a form provided by the department. The department shall transmit the information by United States mail, telephone or facsimile transmission to the person requesting it as soon as practicable after the information becomes available. The information is considered to be transmitted by the department on the date of the facsimile transmission, telephone contact, or on the date on the letter, whichever is earlier. The department is not required to publish the information.

(d) A person that is not required to file a return and pay the tax under this chapter, such as a tax return preparer, may informally request information at any time concerning the values for fishery resources landed in the state. A person subject to (c) of this section may not rely on another person to timely obtain information of the value of each species of fisheries resources landed in the state.

(Eff. / / /, Register)

Register , 1993

REVENUE

15 AAC 77.045(b)

Authority: AS 43.77.010
AS 43.77.070
AS 43.77.200

15 AAC 77.045. WEIGHTS AND RECOVERY RATES. (a) The unprocessed weight of the fishery resource for purposes of the tax under this chapter is determined by actual scale weight, or in the absence of an actual scale weight by volumetric measurement or by a product recovery rate as imposed or required by the United States National Marine Fisheries Service to determine the extent of resources taken by a person in a fishery.

(b) Except as provided in (a) of this section, for purposes of determining the tax on a fishery resource which was processed prior to landing in the state and that is subject to tax under this chapter, the processed weight of the fishery resource at the time it becomes subject to tax must be converted to an unprocessed weight. Secondary products must be included in the conversion to an unprocessed weight. The person's actual recovery rate experience, or the industry average recovery rate if the person's processing activities are consistent with the activities underlying the industry average recovery rate, may be used in making the conversion if the rates are reliable and verifiable. The department may audit and adjust the recovery rate under this subsection.

(c) A person shall disclose with the return, for each species, the nature of the recovery rate used, the percentage of recovery, and shall maintain such records necessary to support the rate utilized. (Eff. / / , Register)

Authority: AS 43.77.010

AS 43.77.070

AS 43.77.200

15 AAC 77.050. CREDIT FOR COMMUNITY DEVELOPMENT QUOTA CONTRIBUTIONS. (a) A person who has made a contribution to a nonprofit corporation incorporated in the state that qualifies for the credit authorized by AS 43.77.040 must apply to the department no later than January 31 of the year following the year of the contribution for authority to take the credit on the tax return. A person that fails to make a timely and complete application as required by this section waives the credit.

(b) The application must be made on the form prescribed by the department and shall contain the following information:

(1) the applicant's name, federal employer identification number or social security number, telephone number and mailing address;

(2) the name of the nonprofit corporation receiving the contribution;

(3) the amount of the contribution, a receipt from the nonprofit corporation for the amount of the contribution, and a statement from the nonprofit

corporation specifying how the contribution will be used and agreeing to allow the department to audit its accounts;

(4) documentation regarding the authority of the person to harvest under a community development quota;

(5) the fishery resources, by weight and species, harvested under the community development quota;

(6) a statement that the contribution to the nonprofit was expressly conditioned upon its use exclusively for one or more purposes authorized by AS 43.77.040; and,

(7) other information required on the application form.

(c) The department shall approve or disapprove an application to take the credit within 30 days of receipt of a timely and complete application. A person may consider the application approved and tentatively take the credit on the tax return if the department does not disapprove the application within the 30 day period and prior to the filing of the tax return.

(d) A contribution that qualifies for the credit is a cash contribution.
Contributions in kind and of services do not qualify for the credit.

(e) A contribution allowed as a credit may not be claimed as a credit or deduction under any other provision of AS 43. (Eff. / / /, Register)

Authority: AS 43.77.040

AS 43.77.070

AS 43.77.200

15 AAC 77.055. REQUIREMENTS FOR NONPROFIT CORPORATIONS. (a)

As a condition to a person obtaining a credit under AS 43.77.040, a nonprofit corporation must separately account for the amount of the contribution and agree to allow the department to audit all accounts.

(b) The nonprofit corporation, in order to separately account for the expenditure of the contribution, must establish the following special accounts as applicable in its accounting system:

- (1) CDQ fisheries scholarships;
- (2) CDQ fisheries industry training;
- (3) CDQ fisheries transportation grants;
- (4) CDQ fisheries transportation loans;
- (5) CDQ fisheries facilities grants;
- (6) CDQ fisheries facilities loans; and,
- (7) CDQ fisheries research grants.

(c) The use of funds in the special accounts shall be determined on a first in first out (FIFO) basis. All contributions, with the exception of those initially placed in loan accounts, must be distributed from the account and used for a qualified purpose by the end of the calendar year following the calendar year of receipt. Contributions

placed in a loan account may be accumulated without the requirement for distribution within any specified time period. A contribution initially accounted for in a loan account that is transferred to another account must be distributed from the account by the end of the calendar year following the calendar year of the transfer. Contributions may not be transferred from a non-loan account to a loan account.

(d) A nonprofit corporation may not make a loan or grant to a person, or to any related party of the person, who has made a contribution to the nonprofit corporation that qualifies for the credit, unless the person first obtains written authorization from the department.

(e) A nonprofit corporation, to accommodate potential contributors, may apply to the department and request a determination that the intended use of contributions for a specifically designated program satisfies one or more of the requirements of AS 43.77.040. (Eff. / / /, Register)

Authority: AS 43.77.040
AS 43.77.070
AS 43.77.200

15 AAC 77.060. CLAIMING CREDITS AND REVOCATION OF CREDITS. (a)

A person that is entitled to claim a credit shall take the credit on the tax return for the year of the contribution. The credit is a direct reduction of the tax liability for the tax year.

(b) The department shall, within the limitations period applicable by statute to the tax year, deny or revoke at any time a tax credit authorized by AS 43.77.040, and recover by assessment a tax credit authorized by AS 43.77.040 that was claimed on a tax return, if it is later determined by the department that:

(1) the contribution does not qualify or there has been a violation of AS 43.77.040; or,

(2) the person claiming the credit is in arrears in the payment of any tax levied in AS 43. For purposes of this subpart, tax includes penalties and interest. A tax is not in arrears if the tax has been timely appealed and is not subject to collection under AS 43.

(c) A tax credit that properly has been denied or revoked under (b) of this section shall not be reinstated.

(Eff. / / , Register)

Authority: AS 43.77.040

AS 43.77.070

AS 43.77.200

15 AAC 77.065. ACCOUNTING FOR REVENUE SHARING. (a) The annual balance in the separate account in the general fund that is available for revenue sharing under AS 43.77 is reduced by all tax credits claimed on returns as a reduction of the tax liability. The effect of this reduction for the tax credits is to reduce dollar for dollar the amount that otherwise would have been paid to municipalities.

(b) The department shall attempt to specifically allocate the reduction in the amount of revenue sharing as a result of the tax credits to those municipalities in which the fishery resources harvested under the provisions of a community development quota were landed. In the event information is not available for that purpose, the department shall apportion the reduction to all areas in the state in which fishery resources were landed. (Eff. / / /, Register)

Authority: AS 43.77.050

AS 43.77.060

AS 43.77.070

15 AAC 77.070. TAXABLE NEXUS. A person, buying a processed fishery resource from an unrelated person in an arms-length transaction, and who obtains a transfer of the legal title, risk of loss, and the physical possession of the resource outside the jurisdiction of the state, who thereafter merely lands the fishery resource in the state for transshipment to another jurisdiction, may apply to the department and shall provide such factual information regarding the person's presence in the state as may be required for a determination of whether the person has a taxable nexus for purposes of AS 43.77. (Eff. / / /, Register)

Authority: AS 43.77.070

15 AAC 77.905. DEFINITIONS. In AS 43.77 and 15 AAC 77.005 - - 15 AAC

77.900,

(1) "average price" is the mean of two or more prices and may be computed in the discretion of the state as a simple average or a weighted average reflecting a volume by price and weight; the average price may also be computed to take into account seasonal differences in prices;

(2) "department" means the Department of Revenue;

(3) "filed" means, unless otherwise indicated, the date of personal delivery or, if mailed, the United States postmark date;

(4) "taxable nexus" means a sufficient connection to the state for tax purposes to satisfy the Due Process and Commerce Clauses of the United States Constitution;

(5) "person" means an individual, a trust, estate, partnership, association, company or corporation;

(6) "related person or party" has the meaning of related person in 26 U.S.C. 267 and 26 U.S.C. 318;

(7) "weight" means the poundage of an unprocessed fishery resource after the application of a recovery rate to a processed fishery resource. (Eff. / / ,

Register)

Authority: AS 43.77.070

15 AAC 116.600 is amended by adding new subsections to read:

(c) A processor is liable for the tax under AS 16.51 on the value of a seafood product processed for a person not licensed under AS 43.75.

(d) A person taking, purchasing, or otherwise acquiring a seafood product that has not been subject to the tax imposed in AS 16.51, who transports the seafood product to a point outside the taxing jurisdiction of the state for sale or processing, is liable for the tax under AS 16.51 on the value of the seafood product.

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PUBLIC HEARING

9

DIVISION OF INCOME & EXCISE AUDIT

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DEPARTMENT OF REVENUE

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October 14, 1993

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Juneau, Alaska

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ORIGINAL

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1 THURSDAY, OCTOBER 14, 1993

2 9:10 A.M.

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4 MR. MEYER: On the record.

5 We're going to go ahead and get
6 started.

7 Today is October the 14th, 1993. It
8 is approximately 9:10 a.m. We are on the 11th floor
9 in the conference room of the commissioner's office in
10 the Department of Revenue.

11 The purpose of this public hearing
12 today is to discuss the Department of Revenue's
13 proposed regulations regarding the landing tax and a
14 couple of amendments that we have proposed to the
15 seafood marketing provisions.

16 My name is Carl Meyer. I'm the Chief
17 of Appeals with the Income and Excise Audit Division.
18 Also here today on my right is Larry Meyers, the
19 Director of the Income and Excise Audit Division.

20 We have an attendance sheet I think
21 everyone has signed or will be signing, and when we
22 get around in a few minutes to asking for testimony,
23 we'll go according to the attendance sheet, here, and
24 I will ask people to come up and provide their
25 testimony.

1 The landing tax was passed by the
2 legislature in May of 1993. The Department of
3 Revenue, thereafter, within a couple of weeks,
4 actually put together the first draft of these
5 regulations.

6 The regulations that you have are
7 probably about the third draft that we did, but
8 they're substantially the same as what we did in the
9 first draft that really was completed prior to the
10 time the governor actually signed this legislation in
11 June of 1993.

12 The provisions under the landing tax
13 are not effective until January of 1994. We will not
14 see tax returns until 1995.

15 The Department of Revenue, in 1991,
16 conducted a study, a fish tax study, and part of that
17 study, the department recommended the imposition of a
18 landing tax.

19 So the landing tax legislation that
20 the legislature passed last year is not really
21 anything new to the department. It's something that
22 we have been involved in from the beginning and were
23 involved in the legislative process, as well, last
24 session.

25 The legislation in the landing tax

1 provision actually had given the department the
2 authority to issue legislative-type regulations. So,
3 therefore, we have taken the position that the
4 authority that the department has to issue these
5 regulations goes beyond the general authority that we
6 have in AS 43.05 to issue procedural regulations, but
7 that the specific grant of legislative -- or specific
8 grant of regulatory authority gives us the power to
9 issue regulations more in the nature of -- with
10 substantive effect.

11 The department is very interested in
12 public comment on these regulations, and we would also
13 be interested in the public identifying any areas that
14 anyone may feel should be addressed in these
15 regulations which have not been addressed, and one of
16 those areas could be whether an estimated tax
17 requirement, for instance, might be more preferable to
18 a bonding requirement or another type of security-type
19 arrangement.

20 At this time, I think I will go ahead
21 and open the hearing to the public testimony.

22 And, Mike, if you want to come up
23 here and state your name and who you represent for the
24 record.

25 MR. SZYMANSKI: Thank you. For the record, my

1 name is Mike Szymanski. I represent The Fishing
2 Company of Alaska.

3 With your indulgence -- I don't have
4 prepared remarks. Unfortunately, I didn't obtain a
5 copy of the regulations until yesterday, and
6 apparently they were sent to our office in Seward, and
7 I didn't get a chance to get a copy of them.

8 Try to bear with me, if you can.
9 I'll just kind of roll through with you the points
10 that I think we need to maybe get clarified or cover
11 with you.

12 Generally speaking, we find the
13 regulations to be pretty straightforward. There are
14 some concerns or questions that we'd like to raise
15 with you.

16 Not going into any in-depth
17 discussion, you've heard our presentation of the past
18 with regard to our comments related to the purpose and
19 intent. I think the purpose and intent as stated in
20 the regulations is certainly -- is one position that
21 the state takes. It is not, from our perspective, and
22 industry perspective, realistic nor real in nature in
23 that the stated intent and purpose behind the
24 regulations is based on the State of Alaska providing
25 research, management and enforcement responsibilities

1 to offshore fisheries which we participate in.

2 To the best of our knowledge, the
3 State of Alaska has no management responsibilities nor
4 enforcement responsibilities with the fisheries with
5 which we participate in. While it may have some in
6 other fisheries which are associated with the State of
7 Alaska and the EEZ, to the best of our knowledge the
8 State of Alaska doesn't provide any of the provisions
9 as stated in the purpose and intent section.

10 So I would rather not let those go
11 uncontested or unobjected. We see no evidence of it,
12 and there hasn't been any evidence shown in the
13 history of the development of the law nor the
14 regulations.

15 We also would take exception to the
16 fact that there is what's stated to be a significant
17 presence in the state, including transfer of products,
18 so forth, stated in the purpose and intent section of
19 the regulations.

20 I would note that even since the
21 passage of this law in May, we have seen a majority,
22 if not vast majority, of at least the longliner fleet
23 that would be affected by this tax which works off of
24 the coast and the EEZ tied up for almost seven months
25 out of the year in Seattle, where less than five

1 months of the year they even come in close proximity
2 to the State of Alaska.

3 So to indicate that they would be
4 affording themselves of educational services, road
5 maintenance, public safety, airport, docks, hospitals
6 and other social service programs is a little
7 ridiculous to me, in light of the fact that they spend
8 seven months of the year outside of the fishing
9 activities of Alaska, and to tax them for a service
10 that they incidentally would receive would probably be
11 stretching the intent.

12 They do, indeed, probably receive
13 some incidental services which they more than
14 adequately pay for as part of their movement in and
15 out of the State of Alaska. And we could certainly
16 provide you vessel names and moorages if you're ever
17 curious as to those vessels that have been tied up and
18 will continue to be tied up outside the State of
19 Alaska which have no impact on the state which really,
20 ultimately, get a tax under it.

21 But not wanting to dwell on that, I
22 thought maybe we'd turn to your 77.010, return,
23 payment, and required information.

24 I have reviewed this. As a company,
25 we think maybe an option may be to allow -- and I say

1 an option, not necessarily the only vehicle -- but an
2 option to allow four quarterly payments similar to
3 your business quarterly payments, advance quarterly
4 payments, should be made available, because I think
5 that depending on the breadth -- or the size of the
6 companies that participate in the fishery, it may be
7 better for some to have that ability, and in other
8 cases the bond provision may be a good provision.

9 So I think it just -- I think the
10 more flexibility that you have, there, the better the
11 industry has an opportunity to deal with that.

12 So I think an expansion of those
13 regulations which incorporate some quarterly payment
14 provisions would probably be received by the industry.

15 Now moving to 77.030, liability of
16 taxes.

17 What concerns us here is an apparent
18 inconsistency in the regulations and inconsistency
19 with the statute, itself, which deals with,
20 specifically, 030(b), and where it states that, "The
21 person owing -- owning the fishery resource is the
22 person with the legal title and risk of loss at the
23 moment the act of landing begins in the State of
24 Alaska."

25 We can concur that that certainly is

1 in line with what the law says, but then the
2 extension -- or the expansion of what the written law
3 is to now include, "For the purposes of this section,
4 and notwithstanding any contract provision to the
5 contrary, a person in possession of the fishery
6 resource who harvested or processed the fishery
7 resource, or a related person or agent in possession
8 of the fishery resource from the person who harvested
9 or processed the fishery resource, retains legal title
10 and risk of loss until the fishery resource is
11 delivered and actual physical possession is
12 transferred to an unrelated third-party" is an
13 extension and certainly goes beyond what the literal
14 reading of the law was when it was written, which was
15 clearly to state, "A person owning a fishery resource
16 that is not subject to AS 43.75, but that is brought
17 into the jurisdiction of and first landed in the
18 state, is liable for and shall pay a landing tax of
19 the value of the fishery resource.

20 It seems to me -- and we are a little
21 at a loss as to why a bill of sale which may be
22 entered into would be null and void by your
23 regulations, which would allow for an individual that
24 commonly buys a resource from a harvester, to have
25 that negated by the regulations, or appears to be

1 negating it, because, as you then look at it, it would
2 appear that you're not going to recognize that the
3 resource of product that can be acquired or purchased
4 through normal trading systems is not -- is not legal
5 for some reason.

6 And I guess I'm looking for some
7 clarification from your side on that as to what --
8 where you were going down that road, because it,
9 again, then becomes a little less clear when you go
10 back into the last section of the regulations,
11 which -- I think it's the last section of the
12 regulations .070, which is a new provision which you
13 cite underneath your authority under AS 77.070, which
14 gives you the -- I guess it's your general provision
15 of this new, broader provision of regulation drafting
16 that allows you to come up with physical possession of
17 the resource outside the jurisdiction of the state.

18 Somehow you've created a person
19 buying a resource -- fishery resources from an
20 unrelated person in an arm's length transaction who
21 obtains a transfer of the legal title, risk of loss,
22 and physical possession of the resource outside the
23 jurisdiction of the state, who therefore merely lands
24 the fishery resource in the State of Alaska,
25 transferring it to another jurisdiction, may apply to

1 the department and shall provide for such may require
2 determination whether the tax imposed under 43.77 is
3 applicable.

4 On one hand, in the front part of the
5 law you appear to say that it is not applicable, and
6 then in the back end of the law, under this section,
7 you're saying it may be applicable.

8 It seems to me it would be -- it
9 would be for the public's best interest to know what
10 your intent is and what you're saying in the law as to
11 whether or not, A, I guess a bill of sale and a legal
12 transaction which normally and customarily occurs
13 would or would not be standing as evidence of a sale,
14 and/or whether or not this 070, determination of
15 applicable tax, screws that and what it really means.

16 It certainly leaves us up in the air
17 as to knowing where or how this law is going to be
18 applied in those instances where an individual buys,
19 purchases and maybe even trades it two or three times
20 before it physically enters the taxing jurisdiction of
21 the state.

22 So I only raise that as a concern or
23 a question that you may want to take a look at and see
24 whether or not you can help us with it.

25 The other question that arises gets

1 down into your (d) section of -- going back, again --
2 I hate to flip back and forth, but I know you guys are
3 very well equipped to do that -- but back on 030(d),
4 it appears what you've drafted, here, in the
5 regulations is to say, "The tax does not apply if the
6 fishery resource is first landed in the territorial
7 jurisdiction, as recognized by the United States, or
8 another state or foreign country."

9 So, in other words, if it's landed in
10 another state, landed in another foreign country and
11 then comes into the State of Alaska, the tax does not
12 apply.

13 But then you go on to indicate
14 that -- somehow you've taken the liberty, and I'm not
15 too sure where you found it, to qualify the EEZ as --
16 which I'd say is three miles out to 200 miles -- as
17 being an area that it would apply in, even though the
18 state taxing jurisdiction doesn't apply.

19 And what you're saying, if I
20 understand the regulations, is that if a transfer
21 occurred outside the three-mile area and then you
22 brought it back into the State of Alaska, it would
23 then be taxable.

24 Well, if I read this literally, the
25 only place that I think you could end up finding a

1 place that becomes no man's zone is the Doughnut Hole,
2 which is no longer within the 200-mile area, but it's
3 not within the state and it's no longer within either
4 a state or federal, regional area.

5 So the Doughnut Hole becomes a point,
6 I guess you could -- that you could make the transfer,
7 but I'm not too sure what your intent is behind it,
8 but I question whether or not the state's jurisdiction
9 to govern the federal jurisdictional area three miles
10 out to 200 miles is allowable, nor was it even cited
11 in the statute that you've got here.

12 MR. MEYER: If I could ask a question at this
13 point, just for clarification. Is what you're saying
14 that if a product is transferred in the EEZ, that that
15 should be considered a first transfer and the Alaska
16 tax should not apply?

17 MR. SZYMANSKI: It would seem to me that that
18 would be logical.

19 MR. MEYER: Would the landing tax ever apply?

20 MR. SZYMANSKI: No.

21 MR. MEYER: It would seem to me --

22 MR. SZYMANSKI: No, under that circumstance --
23 I mean, it would never apply to a first transfer
24 outside the three mile.

25 MR. MEYER: But it seems to us that -- from

1 the testimony we heard during the -- while this was
2 going before the legislature, that the majority of
3 that product is transferred in some kind of way in the
4 EEZ, and it would seem like it would be very difficult
5 for this tax to ever have any application if a
6 transfer in the EEZ was considered an event that would
7 preclude the Alaska tax.

8 MR. SZYMANSKI: Well, there's only -- to the
9 best of my knowledge, there's only one circumstance in
10 which you could actually make a transfer within the
11 EEZ outside of the three-mile area, and that's if
12 you're transferring to an American vessel. Any
13 foreign vessels are required to take transfer within
14 the three-mile area or roadsteads established.

15 So that would be the only ones that I
16 think would be applicable, but I'm not too sure that
17 the regulations -- I think we'll get into an area that
18 was never addressed in statute, nor -- again, you're
19 making law that was not created by the lawmakers.

20 I guess that's pretty broad, but
21 maybe I think you went a little bit too broad, as I
22 think I believe you do with the definition of
23 transactions.

24 But, continuing on into it, the --
25 how am I doing?

1 MS. BURKE: You're doing fine. You convinced
2 me.

3 MR. SZYMANSKI: And I only had last night to
4 read these things.

5 The other thing that kind of popped
6 up to me as further expansion under the rule making
7 versus law making -- and it is kind of a unique
8 opportunity because this is the first time I've ever
9 had an opportunity to comment on rule making, on law
10 making, that I've ever been involved in, which I think
11 was kind of interesting, is that under 77.035, credit
12 for other taxes paid, which is kind of a favorite
13 provision of mine, I see that you have extended this
14 to say that it -- under your interpretation -- and I
15 say "your interpretation," because yet to be
16 determined is what "equivalent in nature to taxes
17 imposed under 43.75 and 43.76" -- and what I'm really
18 referring to is what is the real meaning of
19 "equivalent in nature" to that mean?

20 The "Sales taxes, import or export
21 fees or taxes, income taxes, or similar taxes and fees
22 are not considered to be equivalent in nature to AS
23 43.75, 43.76."

24 By the statement that you've provided
25 in the regulations, it's beyond me how any taxes could

1 conceivably be considered a credit, and if you didn't
2 want to make a credit, I don't think that the law
3 makers would have created the provision, and I think
4 that you've gone beyond the -- by your insertion and
5 interpretation, that all taxes, similar taxes -- I
6 mean, any way, shape or form, taxes that somebody else
7 pays somewhere else, I can't see -- and maybe you can
8 enlighten me -- as to what taxes may be similar in
9 nature that you did not preclude by your statement in
10 the provision.

11 I think you may have gone a little
12 bit too far to exclude, rather than to allow, even
13 beyond what would normally be allowed.

14 Now, we have had discussions, and I
15 understand that the intent behind this would be is if
16 under 75 or 76 a fishery business processing,
17 occupational-type business tax was paid by the
18 taxpayer in this case, then they would get some type
19 of credit, but I'm not too sure I could see how they
20 would be allowed to have that credit under the
21 language you have in your regulations.

22 It looks like it's pretty exclusive.
23 You've excluded everything.

24 MR. MEYER: That's correct. This language
25 that you see, here, is actually the way that the

1 Department of Revenue testified to the legislature,
2 and this issue really very specifically came up during
3 the course of this legislation, and we were
4 specifically asked what taxes would be equivalent in
5 nature, and, in fact, this "equivalent in nature" was
6 a legislative change because the legislature wanted
7 that in there to really make it clear that it had to
8 be a tax what was going to be very similar in
9 operation to the tax under 75 or 76, which is the
10 fisheries business tax, the salmon enhancement tax.

11 Now, the sales taxes, import or
12 export taxes, income taxes, I very specifically
13 remembered when I testified on this legislation before
14 the legislature testifying that those were the type of
15 taxes that Department of Revenue would consider not to
16 be equivalent in nature, and there was no problem with
17 the legislature at that time. That was the language
18 they wanted, and we believe that is exactly what the
19 legislature had in mind, that sales taxes, imported,
20 exported fees, those were not the type of things that
21 the legislature intended to give a credit for, and
22 that's why it's reflected in here in this way.

23 MR. SZYMANSKI: Well, let me say this, that if
24 it had been the legislature's intent, I'm not too sure
25 they wouldn't have adopted the language that you've

1 produced.

2 In other words, they've never been
3 bashful in the past, so if it was your intent and not
4 the legislature's intent, I'm not too sure that they
5 were remiss in it as much as they left it open so
6 there would be some equivalent taxation credits made.

7 I don't see, the way that you've
8 drafted it, that you allow for any equivalent taxes in
9 any way, shape or form, unless somebody has some type
10 of new salmon processing that may occur outside in the
11 EEZ. And I think that -- I'm just saying that you may
12 have, in your desire to clarify what you don't want to
13 be open, closed everything.

14 MR. MEYER: Well, we actually -- when we
15 testified on this, again going back to the testimony
16 before the legislature, that was specifically what we
17 told the legislature, that there would be very few, if
18 any, taxes that would really qualify; that in our
19 view, to be equivalent in nature to a fishery business
20 tax, for instance, it would have to be a tax on
21 processing the fishery business, it would have to be a
22 processing-type tax.

23 And I think when you read what the
24 tax is in 75 and consider what is equivalent to the
25 fishery business tax, that you would be hardpressed to

1 say that an import fee or an export fee or a sales tax
2 by any stretch of the imagination could be equivalent
3 to the fishery business tax.

4 So my question to you, then, might be
5 what would you consider to be a tax that would be
6 equivalent to the Alaska fishery business tax? What
7 type of tax do you think this would entail?

8 MR. SZYMANSKI: Well, let me use a potential
9 example.

10 If another state or even a country
11 created a fishery business processing tax which we
12 would pay as a part of the pipeline that we are
13 entering into in dealing in the commerce of that
14 jurisdiction, whether state or foreign country, we
15 should be given the opportunity to present that
16 similar tax for consideration.

17 You've precluded that in the
18 regulations that you've drafted, because I don't --

19 MR. MEYER: I don't think so, though, Mike.

20 MR. SZYMANSKI: Okay.

21 MR. MEYER: That type of --

22 MR. SZYMANSKI: What's the purpose in similar
23 taxes? Just in case the previous three qualifiers
24 didn't make it, you just said any other similar taxes
25 don't -- it's contradictory to what I thought.

1 MR. MEYER: No. What we've said -- we've
2 identified certain taxes that we do not consider to be
3 equivalent, and that's consistent, like I said, with
4 what we represented to the legislature.

5 We have not tried to identify the
6 taxes that would be equivalent in nature. We don't
7 know of any that are out there at this time.

8 MR. SZYMANSKI: But then what you shouldn't
9 have done is put any of this -- I'm sorry to interrupt
10 you.

11 MR. MEYER: That's okay.

12 MR. SZYMANSKI: You shouldn't have then said,
13 "In any way, shape, or form, taxes, fees, exports,
14 income taxes, similar taxes."

15 I just read that as being the way it
16 is, that it precludes anything. So why even -- it's
17 like there's a law there that says you have the
18 opportunity to present it but then all of a sudden it
19 doesn't give you the opportunity to present it,
20 because your answer is always going to be --

21 MR. MEYER: No, that's not --

22 MR. SZYMANSKI: -- it's precluded.

23 MR. MEYER: That's not the way it is intended
24 to operate. The operative provision is the sentence
25 before that, which says that the credit is available

1 if the tax is paid to another jurisdiction or
2 equivalent in nature.

3 MR. SZYMANSKI: Equivalent in nature.

4 MR. MEYER: That is the key.

5 MR. SZYMANSKI: We certainly would be in a
6 position to try to convince you that we do, if that
7 was found to be the case.

8 Anyway, that was just kind of my
9 comment on that particular section. I didn't have
10 much more on it.

11 Switching down the road as we move
12 down into 77.040, value and notice of value.

13 We have a concern, as I think other
14 industry reps will indicate in some of their
15 correspondence at least I've received copies of, that
16 the value and notice of value -- first of all, going
17 back to the statute itself, which reads, literally,
18 value means the unprocessed value of fishery resources
19 based on state-wide average price paid for the fishery
20 resources as reported by the -- reported during the
21 year to the Department of Fish and Game, is literally
22 real clear.

23 The statute says that if it's
24 reported to the Department of Fish and Game, that
25 average price is the price that you -- is your value

1 price.

2 Do we disagree on that?

3 MR. MEYER: I think we probably do. I mean,
4 if you're saying that the department lacks any
5 authority to adjust that price --

6 MR. SZYMANSKI: No. I think that the average
7 price -- you can go high, you can go low, you can
8 throw out the highs and the lows and you can take the
9 average price, but it's got to be a price or a
10 state-wide average price paid for fishery resource as
11 reported during the year to the Department of Fish and
12 Game, not reported to the Japanese fish market, not
13 reported to Seattle, California, Washington, average
14 United States price, or anything else. It's the
15 average price.

16 Do we agree that it's the average
17 price reported to the Department of Fish and Game?

18 MR. MEYER: We agree that the way that it's
19 written here is that the price is the price as
20 reported to the Department of Fish and Game. I think
21 you can see that in (a).

22 MR. SZYMANSKI: That's what it says in
23 statute.

24 MR. MEYER: Right. The department has the
25 right to eliminate the high and low prices, take into

1 account tendering fees, price adjustments, bonuses.
2 Those are not going to normally be reflected in the
3 initial fish tickets.

4 So I guess we might disagree on your
5 terminology, at least at that point, and --

6 MR. SZYMANSKI: I think we agree on that.

7 MR. MEYER: Okay.

8 MR. SZYMANSKI: I think we agree up to that
9 point.

10 MR. MEYER: Then in the absence of this
11 Department of Fish and Game state-wide average price
12 for a particular species, the department then can use
13 information from another source to arrive at the
14 state-wide average price, but that would be in absence
15 of information from the Department of Fish and Game.

16 MR. SZYMANSKI: How do you get authority to go
17 beyond the state Department of Fish and Game when it
18 says clearly in the statute that you go to the State
19 Department of Fish and Game for the average price?
20 How can you go to other agencies? It didn't say any
21 other agencies in the state.

22 MR. MEYER: Right. But in the event there is
23 no information from the Department of Fish and Game,
24 in essence what you would be arguing is that there
25 would be a zero price for that species, which would

1 not make sense.

2 We testified when this issue came up
3 before the legislature, and we indicated at that time
4 to the legislature that in the absence of that
5 information, it was not going to be a tax break, that
6 we would come up with the state-wide average price
7 from some other -- in some other fashion, and that's
8 what this really is designed to do, here.

9 MR. SZYMANSKI: Well, I know, again, that's
10 what you designed it to do, but I don't read it in the
11 law, so I thought it was kind of creative that you
12 may --

13 MR. MEYER: You think it would be fair and
14 reasonable to -- if the Department of Fish and Game --

15 MR. SZYMANSKI: Maybe there is no price --

16 MR. MEYER: -- if the Department of Fish and
17 Game did not have a specific price for a specific
18 species, that someone should not have to pay the
19 landing tax on that?

20 MR. SZYMANSKI: If there is no price for it,
21 what would there be -- how would you assess a value on
22 something that has no price?

23 MR. MEYER: There might not be a state-wide
24 average price because it's not being reported to the
25 Department of Fish and Game, but I imagine it would

1 certainly have a price to whoever is making the catch
2 and selling it.

3 MR. SZYMANSKI: Let me give an example of one
4 that has probably a negative price that's brought in.
5 Let's use arrow-tooth flounder that's brought into
6 Kodiak. It costs -- they have to pay a guy -- they
7 have to pay -- it's harvested on a tonnage basis, and
8 they have to pay a disposal process to get rid of it.

9 Now, do they get a tax credit for the
10 negative price that they get for it, out of curiosity?

11 MR. MEYER: I don't know of any.

12 MR. SZYMANSKI: I didn't think you'd probably
13 walked that far down that road.

14 MR. MEYER: What is that, arrow-toothed
15 flounder?

16 MR. SZYMANSKI: Yeah. It's a great species.

17 MR. MEYER: Is somebody actually going out on
18 purpose and catching --

19 MR. SZYMANSKI: Oh, yeah, they catch it on
20 purpose. Just ask the State Department of -- right
21 behind me. They catch hundreds of tons of this stuff.
22 It's actually a directed fishery, too.

23 But, in any case, there's a good
24 example of one that -- you've got to think through
25 that one a little bit before you get down the road on

1 it. I don't know how you're going to tax them on it,
2 but I would be curious to see you do it.

3 Anyway, moving down the road --
4 you've had my comments on that.

5 You may want to look at broadening
6 that to allow the industry to present the value in
7 absence of the Department of Fish and Game
8 information. That may be another vehicle from a more
9 practical perspective, because, in realistic terms,
10 there are many products that the State of Alaska never
11 even sees. I mean, they don't know what it is because
12 it never enters the -- it never enters the economic
13 pipeline of the State of Alaska. It never enters the
14 system. I mean, there's a species that are caught,
15 processed, shipped, and it never sees Alaska.

16 I see you've got end-of-product
17 recovery rates. I'll kind of allow that one to go by.

18 My inclination is that your new
19 language that you've developed on recovery rates is
20 based on National Marine Fisheries determination and
21 specifications. It's probably little more specific
22 than what was originally drafted, but, again, let me
23 just introduce for you for your own information that
24 the whole discussion of product recovery rates, at
25 least, is not a precise science by any nature, and, as