1066 SJ SB 310 - SB 332

alaska national
bank
of the north

ALASKA NATIONAL BANK BUILDING FAIRBANKS ALASKA 99701 (907) 456 1891

December 12, 1979

The Honorable Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Ak 99504

Dear Tim:

This will respond to your inquiry to Frank, and his letter of December 3rd relative to legislation proposed for introduction by you into the Eleventh Legislature's second session.

As I read the intent of your bill, it would be to exempt bona fide Alaskan residents, partnerships, and corporations, from payment of state income tax on interest paid to them on savings or time deposits in Alaskan domiciled financial institutions.

Tim, as you are no doubt aware, there is a plethora of banking legislation roaming through various committees in the Congress, ranging from those dealing with the Fed reserve issue (HR7, S85, S85 as amended, and S353) to Regulation Q, NOW accounts, share drafts, automatic transfer services, and remote service units (HR4986).

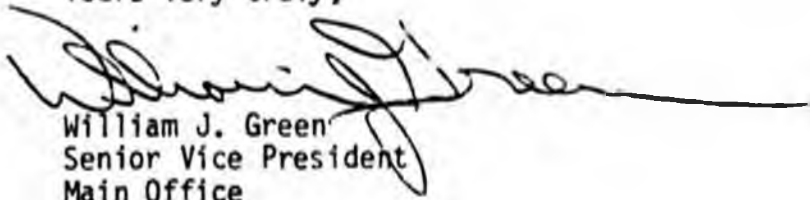
The Ulman legislation (HR3712), did have an amendment proposed to it which would have exempted from Federal taxation the first $100 of interest earned. However, the legislation as originally proposed was defeated in the House Ways and Means Committee and there is no way of telling at this time whether the legislation will ever clear the Congress to become law. To the best of my knowledge, there is no other legislation proposed nationally which deals with exempting from taxation interest earned on savings and time deposits.

The Congress is, however, very conscious of the "plight of the small saver," and quite sensitive to groups such as the Gray Panthers. One of the avenues of relief endorsed by the American Bankers Association is a change in Reg Q to allow a ratcheting upward so that a maximum of 10% interest can be paid on passbook savings, and a reduction in the minimum denominations for money market type CD's (the 182 day rates) from $10,000 to under $1,000.

Assuming that we continue to have a state income tax, as I read your proposal, the interest paid to full-time Alaska residents by Alaskan financial institutions would be exempted from state income tax, whereas interest paid to full-time Alaska residents by financial institutions domiciled outside of Alaska would be subject to state income tax. One of the decisions to be made is whether all interest is to be exempted, or to a maximum dollar amount of interest paid per recipient. Certainly any tax forgiveness allowed on interest earned from deposits made in Alaskan financial institutions as compared with interest earned from deposits made in "outside" institutions will have a beneficial effect on keeping Alaskan money at home. Where there would be some benefit to even the small saver, the great incentive for keeping investable money in Alaska would come from those who have $10,000 or more to invest to enable them to take advantage of the very attractive rates now being quoted. This state tax exemption, if applied to all savings and time interest, would also give Alaskan financial institutions help in the struggle to prevent disintermediation of funds from financial institutions to such areas as the mutual money market funds offered by brokers.

The Alaska Bankers Association should be interested in helping develop this concept, and I suggest you contact Mr. H. A. "Buzz" Hoffman of First National Bank of Anchorage, the Association President. I will also be pleased, as a Board member and individually, to work with you.

Yours very truly,



William J. Green
Senior Vice President
Main Office

WJG:rh

cc: Frank Murkowski

THE FIRST NATIONAL BANK OF ANCHORAGE

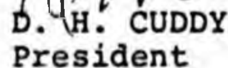
December 4, 1979

Senator Tim Kelly
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly:

I do appreciating being advised of your proposed amendment affecting interest paid on savings accounts, and will follow its progress in the Legislature.

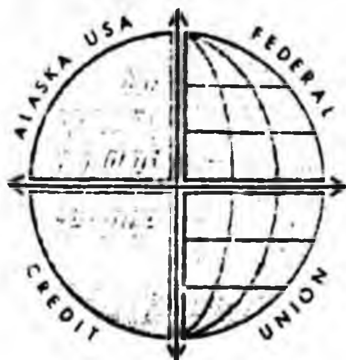
Sincerely,



D. H. CUDDY
President

DHC:mh

The First National Bank of Anchorage • P.O. Box 720 • Anchorage, Alaska 99510



ALASKA USA FEDERAL CREDIT UNION

777 JUNEAU STREET
ANCHORAGE, ALASKA 99501
(907) 276-5100

December 13, 1979

Senator Tim Kelly
P.O. Box 1004
Eagle River, AK 99577

Dear Senator Kelly:

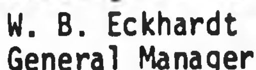
This letter is in reference to your letter of November 23 regarding your consideration of introducing legislation exempting interest earned from Alaska financial institutions from state taxation.

Needless to say, legislation in this regard would be very timely as the current rate of inflation and tax laws regarding personal interest income do not promote individual savings. Individual savings is one of the cornerstones of a stable economy and provides funds for the financing of consumer durables and business investment. Your proposed legislation would be a step in changing individual ideas regarding savings, and would thereby promote thrift and be of value to the State's economy from the consumer's to the large corporation's standpoint.

The one question that I have regarding your proposal is why limit the tax savings to full-year residents? I feel the advantage to the State's economy of attracting additional funds from part-time residents, with the funds then available for making loans by Alaska financial institutions, far outweighs any benefit the State would obtain in collecting taxes on the interest earned.

In any case, we look forward to your proposed legislation's passage and will certainly promote this tax savings advantage to our 75,000 Alaska members. We appreciate your efforts on behalf of the State's economy, and the benefit that our members and the credit union will realize through passage of your bill.

Sincerely,



W. B. Eckhardt
General Manager

WBE:lb

ALASKA RAILROAD
FEDERAL CREDIT UNION
320 West First Avenue Anchorage, Alaska 99501
(907) 276-6543

December 19, 1979

Senator Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

Thank you for your letter regarding your intent to introduce legislation exempting interest earned in Alaska financial institutions from state taxation. I wholeheartedly support such legislation, and am certain that it would increase substantially the capital available within the State.

I do, however, have some observations to make. First, I have no objections to non-residents, or part-time residents investing their funds in Alaska financial institutions to take advantage of the proposed tax exemption. Although the tax benefit might go to a non-resident in a case like this, the benefit of the capital infusion would definitely belong to the State residents.

Next, I would anticipate some opposition to the bill from those who might consider it just a tax loophole for large investors and corporate entities, with no advantage to the lower income sector of the economy. The advantages are, of course, availability of funds for capital investments, with the corresponding multiplier effect, and the creation of resulting jobs.

There is one potentially dangerous flaw in the bill. Most, if not all financial institutions in the State offer substantially reduced interest rates on loans secured by funds on deposit. If the proposed bill passes, it would enable someone to deposit funds, immediately borrow against those funds, thus taking advantage of a tax exemption on the income earned, and a tax deduction on the interest expense. This creates larger deposits and loans for the financial institutions, a definite tax advantage for the borrower/depositer, but zero new capital. This situation is not advantageous to many depositors unless Congress passes similar legislation, which is currently under consideration.

I have no solution as to how to close this potential loophole. Perhaps a limitation on the amount of interest that is exempt, but that would dilute the intended effect of the bill. Also, Congress may not take

similar action, in which case there is no problem.

I hope I have been of some assistance in evaluating the proposed bill. If I ca- be of further help, feel free to call on me.

Sincerely,

Tim Roge-s
Manager

LAR/ds

MAIN OFFICE: POUCH 7012, ANCHORAGE, ALASKA 99510

December 20, 1979

Senator Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Alaska 99504

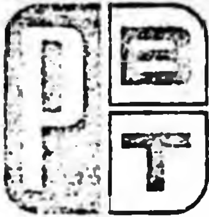
Dear Senator Kelly:

I have reviewed the draft of the legislation you plan to introduce exempting interest earned in Alaska financial institutions from State taxation. I agree with your concept, however, I would suggest that you define financial institutions.

Sincerely yours,

R. W. Miller, Jr.
President

rwc



PEOPLES BANK & TRUST

POUCH 7007 • 8TH AVENUE AND G STREET • ANCHORAGE, ALASKA 99510
TELEPHONE (907) 279-7511

R. A. KENNARD
PRESIDENT

December 14, 1979

Senator Tim Kelly
283 Muldoon Rd.
Station Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

Thank you for your letter of November 21 regarding a bill you were going to introduce which would delete interest on savings accounts for residents of Alaska.

This is of interest and would be helpful to a lot of people, but it could be abused by people. I would suggest that you check with a tax expert, wherein he could show that a person borrowing on a time certificate of deposit would have quite an advantage if there were no tax liability for interest earned on savings in State banking and lending institutions.

Thanks for giving us an opportunity to look at this. I am curious as to what you find out in discussing this with a tax expert.

Very truly yours,

Dick

R.A. Kennard
President

RAK:bwa
2425

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for Senate Bill No. 310
Title An Act exempting interest from certain financial institutions from the
Requested by Judiciary Committee (AK net income tax. Date 2/7/80

II. FISCAL DETAIL
Agency Affected Revenue
Program Category Affected Fiscal Services
BRU, Program, or Subprogram(s) Affected Audit Division
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

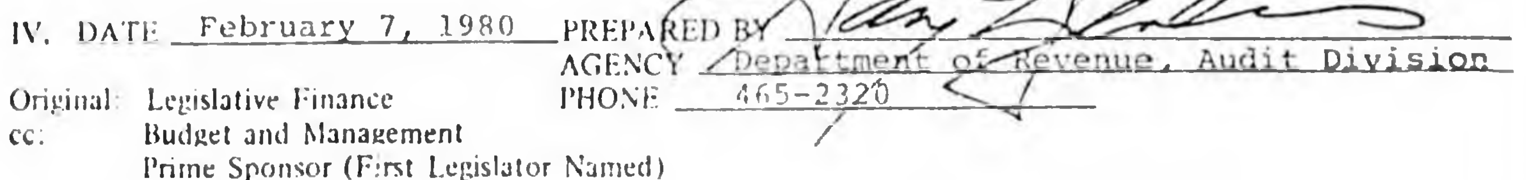
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

See attached memorandum to R. D. Stevenson dated 2/7/80.



IV. DATE February 7, 1980 PREPARED BY
AGENCY Department of Revenue, Audit Division
PHONE 465-2320

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

33-001 (Rev. 12/79)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS For SB 310
Title Act exempting from the net income tax interest earned from Alaska financial/ institutions
Requested by ____ Date ____

II. FISCAL DETAIL
Agency Affected ____
Program Category Affected ____
Budget Request Unit(s) Affected ____

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
GENERAL FUND			Unknown			
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
FULL TIME						
PART TIME						
TEMPORARY						

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

The bill proposes to exempt from income taxation interest earned from a financial institution which is chartered under the laws of the State or has its principal or home office within the State.

Due to lack of data we are unable to determine the exact revenue impact of this proposal. It is likely to reduce general fund revenue by about $5.0 million annually.

IV. DATE 3/7/80 PREPARED BY [illegible]
AGENCY Revenue
PHONE 5-2174

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

33-001 (Rev. 10/78)

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: February 7, 1980

FILE NO.

TELEPHONE NO.

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: CS for Senate Bill No. 310

This bill would exempt any interest paid by a financial institution in the State of Alaska from taxation under the Alaska Income Tax Act. This income would be exempt to individuals trusts, estates, partnerships, and corporations.

It is assumed that the objective behind this bill would be to encourage individuals to place more money in interest-bearing accounts in financial institutions in the State. While this is a very ideal aim, there is serious question about whether a bill such as this would cause the desired result. It is my impression that people place money in savings accounts, depending on the economic climate in the society, rather than because any interest which might be earned is tax free.

The major benefactors of this bill would be the wealthy individuals and large corporations who already have substantial interest-bearing accounts in Alaska banks. If the intent is truly to encourage savings by the average citizen, consideration should be given to providing the tax exempt status to deposits made after the effective date of the bill and on a maximum amount, such as $5,000.

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: February 7, 1980

FILE NO.

TELEPHONE NO.

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Director
Audit Division

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Statement for Record
of Robert R. Richards
President, Alaska Pacific Bank

SENATE BILL 310

THIS BILL ADDRESSES ONE OF THE MOST PERVASIVE PROBLEMS IN ALASKA AND THROUGHOUT THE UNITED STATES; CAPITOL FORMATION. ALASKA HAS CONTINUALLY BEEN A CAPITOL SHORT AREA. ALASKAN FINANCIAL INSTITUTIONS WITH COMPARATIVELY LITTLE CAPITOL HAVE BEEN UNABLE TO FINANCE THE EXPANSION OF ALASKA'S BUSINESS, INDUSTRY OR CONSUMER ACQUISITION OF GOODS.

ONE INSTANT EXAMPLE OF THE CAPITOL SHORTAGE IN ALASKA IS THE INABILITY OF OUR FINANCIAL INSTITUTIONS TO FINANCE THE SINGLE-FAMILY AND MULTI-FAMILY HOUSING MARKET WITHIN OUR STATE.

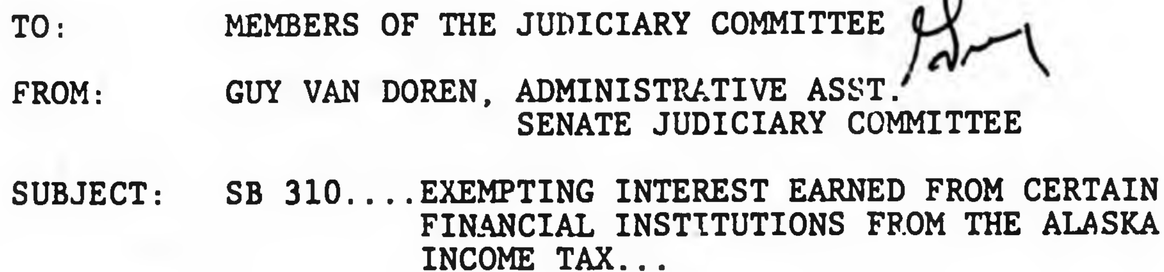
PRESENTLY, OVER 1/2 OF THE MORTAGE MARKET IS BEING FINANCED THROUGH THE USE OF TAX EXEMPT BONDING. NOTING THE POTENTIAL FOR PASSAGE OF THE ULLMAN BILL IN THE U.S. CONGRESS WHICH SEVERLY RESTRICTS THE ABILITY OF ALASKA HOUSING FINANCE CORPORATION TO SERVICE THE MORTAGE MARKET IN NOTING ITS INCUMBENT RESTRICTIONS ON BOTH HOUSING AND THE CONSTRUCTION INDUSTRY, I FEEL IT IS IMPERATIVE FOR THIS BODY TO ACT NOT ONLY WITH THE SHORT-TERM CAPITOL INJECTION WHICH THE ADMINISTRATION HAS SUGGESTED BUT MORE IMPORTANTLY TO FINALLY ADDRESS THE LONG-TERM SOLUTION FOR CAPITOL FORMATION IN ALASKA;UTILIZATION OF THE EFFICENCY OF THE PRIVATE MARKET SYSTEM UNRESTRAINED BY GOVERNMENT.

THE RESULT OF THE PENDING LEGISLATION IS QUITE SIMPLE; INCREASE CAPITOL FOR ALASKANS WHEN ALASKANS ARE NOT TAXED ON INTEREST EARNINGS, AN ADDITIONAL INCENTIVE IS AVAILABLE TO REVERSE THE DECLINING SAVINGS RATE WITHIN OUR STATE. WHEN DOMESTIC PARTNERSHIPS AND CORPORATIONS ARE NOT TAXED ON INTEREST EARRINGS, AN ADDITIONAL INCENTIVE IS AVAILABLE TO MAINTAIN DEPOSITS IN ALASKAN FINANCIAL INSTITUTIONS THEREBY INHANCING THE FUNDS AVAILABLE FOR LENDING.

THE STABILITY OF FUNDS IS THE MOST CRITICAL JUDGEMENTAL FACTOR IN DECIDING WHETHER OR NOT THAT FINANCIAL INSTITUTE CAN LEND THOSE FUNDS. WHEN ALASKA COMES SHORT-TERM DEPOSIT INTO ALASKAN INSTITUTIONS, HOW CAN THE STATE REASONABLY EXPECT THOSE FUNDS TO BE USED TO FUND LONG-TERM LOANS? THERE IS REALLY NOTHING THAT CAN BE DONE WITH SHORT-TERM (UNDER 1 YEAR MATURITY) DEPOSTIS OTHER THAN INVEST THEM IN VERY SHORT-TERM LOANS OR RE-INVEST THEM WITH OTHER INSTITUTIONS OUTSIDE THE STATE. THESE SHORT TERM FUNDS DO LITTLE IF ANYTHING FOR THE ECONOMY AS A WHOLE. THE FORMULA OF LENDING LONG ON SHORT-TERM DEPOSITS HAS ONE SURE EVENTUAL CONSEQUENCE; BANKRUPTCY. THE STABILITY THEREFORE OF PUBLIC FUNDS FOR DEPOSITS IS QUESTIONABLE AT BEST - EVEN WITH THE ASTRONOMICAL PROJECTED SURPLUSES IT IS UNLIKELY THAT THE STATE WILL BE IN A POSITION TO PLACE 10 20 YEAR OR LONGER MATURITY DEPOSITS IN LOCAL FINANCIAL INSTITUTES. THE SOLUTION AGAIN IS TO FREE THE CAPITOL POTENTIAL OF THE PRIVATE MARKET SYSTEM BY EXEMPTING FROM TAXATION THOSE CITIZENS OF OUR STATE BE THEY INDIVIDUALS, PARTNERSHIPS, OR CORPORATIONS TO BUILD

LOCAL CAPITOL. BY DOING SO WE ARE RECOGNIZING THAT ALTHOUGH TODAY OUR GOVERNMENT MIGHT BE ABLE TO PROVIDE A SHORT-TERM SOLUTION THE REAL ANSWER TO CAPITOL FORMATION LIES WHEN THE GOVERNMENT REMOVES THE RESTRICTIONS UPON THE PRIVATE MARKET SYSTEM AND ALLOWS THE FREE ENTERPRISE SYSTEM TO WORK.

I URGE YOUR SERIOUS CONSIDERATION AND ADOPTION OF THIS MEASURE SINCE IT IS IN THE BEST INTEREST OF ALL ALASKANS.



TO: MEMBERS OF THE JUDICIARY COMMITTEE

FROM: GUY VAN DOREN, ADMINISTRATIVE ASST.
SENATE JUDICIARY COMMITTEE

SUBJECT: SB 310....EXEMPTING INTEREST EARNED FROM CERTAIN FINANCIAL INSTITUTIONS FROM THE ALASKA INCOME TAX...

THE BILL WAS INTRODUCED TO ENCOURAGE, BY INTEREST TAX EXEMPTION, PERSONS TO INVEST IN FINANCIAL INSTITUTIONS CHARTERED UNDER AS 06, OR INSTITUTIONS WHICH HAVE THEIR HOME OFFICE OR PRINCIPAL OFFICE IN THE STATE OF ALASKA.

AS. 43.020.031.(b)..PROVIDES FOR ALLOWABLE EXEMPTION IN COMPUTING TAXABLE INCOME. THIS BILL WOULD ADD TO THOSE EXEMPTIONS IN EXISTENCE, " INTEREST EARNED BY A PERSON FROM A FINANCIAL INSTITUTION CHARTERED UNDER AS 06 OR WHICH HAS ITS PRINCIPAL OFFICE OR HOME OFFICE IN THE STATE."

THE BILL ALSO DEFINES "FINANCIAL INSTITUTIONS".

PEOPLES BANK & TRUST
POUCH 7007 • 8TH AVENUE AND G STREET • ANCHORAGE, ALASKA 99510
TELEPHONE (907) 279-7611

R. A. KENNARD
PRESIDENT

December 14, 1979

Senator Tim Kelly
283 Muldoon Rd.
Station Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

Thank you for your letter of November 21 regarding a bill you were going to introduce which would delete interest on savings accounts for residents of Alaska.

This is of interest and would be helpful to a lot of people, but it could be abused by people. I would suggest that you check with a tax expert, wherein he could show that a person borrowing on a time certificate of deposit would have quite an advantage if there were no tax liability for interest earned on savings in State banking and lending institutions.

Thanks for giving us an opportunity to look at this. I am curious as to what you find out in discussing this with a tax expert.

Very truly yours,

R.A. Kennard
President

RAK:bwa
2425

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

ALASKA RAILROAD
FEDERAL CREDIT UNION
320 West First Avenue Anchorage, Alaska 99501
(907) 276-6543

December 19, 1979

Senator Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

Thank you for your letter regarding your intent to introduce legislation exempting interest earned in Alaska financial institutions from state taxation. I wholeheartedly support such legislation, and am certain that it would increase substantially the capital available within the State.

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No longer in the bill

Next, I would anticipate some opposition to the bill from those who might consider it just a tax loophole for large investors and corporate entities, with no advantage to the lower income sector of the economy. The advantages are, of course, availability of funds for capital investments, with the corresponding multiplier effect, and the creation of resulting jobs.

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similar action, in which case there is no problem.

I hope I have been of some assistance in evaluating the proposed bill. If I can be of further help, feel free to call on me.

Sincerely,

Tim Rogers
Manager

LAR/ds

FEDALASKA
FEDERAL
CREDIT
UNION

ANCHORAGE
Pouch 7-505
Anchorage, Alaska 99510
W.E. SAMPLES
General Manager
R.N. RICHARDSON
Manager
MARSHALL ELLISON
Assistant Manager
(907) 276-1011

FAIRBANKS
Box 670
Fairbanks, Alaska 99707
P.J. SCHULER Manager
(907) 456-2562

KODIAK
P.O. Box 109
Kodiak, Alaska 99615
J.T. JOHNSON Manager
(907) 487-5340

JUNEAU
Box 1307
Juneau, Alaska 99802
R.W. COOPER Manager
(907) 789-2128

December 6, 1979

The Honorable Tim Kelly
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly:

Thank you for your correspondence of November 23 with the outline of your proposed legislation exempting interest earned in Alaska financial institutions.

We in FedAlaska would be interested in and give very heavy support of legislation as you have outlined.

Savings in financial institutions is the primary source of capital for mortgage loans and consumer lending and we feel this would be one of the best things that could be done for future development in the State of Alaska.

Sincerely,

W. E. Samples
General Manager

WES/sps

ALASKA USA FEDERAL CREDIT UNION

777 JUNEAU STREET
ANCHORAGE, ALASKA 99501
(907) 276-5100

December 13, 1979

Senator Tim Kelly
P.O. Box 1004
Eagle River, AK 99577

Dear Senator Kelly:

This letter is in reference to your letter of November 23 regarding your consideration of introducing legislation exempting interest earned from Alaska financial institutions from state taxation.

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The one question that I have regarding your proposal is why limit the tax savings to full-year residents? I feel the advantage to the State's economy of attracting additional funds from part-time residents, with the funds then available for making loans by Alaska financial institutions, far outweighs any benefit the State would obtain in collecting taxes on the interest earned.

No longer in the bill

In any case, we look forward to your proposed legislation's passage and will certainly promote this tax savings advantage to our 75,000 Alaska members. We appreciate your efforts on behalf of the State's economy, and the benefit that our members and the credit union will realize through passage of your bill.

Sincerely,

W. B. Eckhardt
General Manager

WBE:lb

THE FIRST NATIONAL BANK OF ANCHORAGE

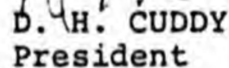
December 4, 1979

Senator Tim Kelly
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly:

I do appreciating being advised of your proposed amendment affecting interest paid on savings accounts, and will follow its progress in the Legislature.

Sincerely,



D. H. CUDDY
President

DHC:mh

alaska national
bank of the north

COLLEGE OFFICE AND ADMINISTRATIVE CENTER P.O. BOX 60730 FAIRBANKS ALASKA 99701 (907) 479-2281

December 3, 1979

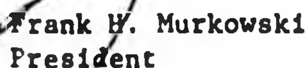
The Honorable Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, AK 99504

Dear Tim:

I read with interest your letter indicating your intention to introduce legislation relieving banks from taxation on interest. I have asked Bill Green, our Sr. Vice President who also serves on the Governing Council of the American Bankers Association, to develop material to submit to you for your perusal.

Heartiest best wishes for a Happy Holiday Season.

Sincerely,



Frank H. Murkowski
President

FHM:js

cc: Bill Green

December 4, 1979

The Honorable Tim Kelly
Alaska State Senate
283 Muldoon Road
Station Box 76
Anchorage, Alaska 99504

Dear Tim:

Your proposed legislation exempting interest earned in Alaska financial institutions from taxation is great!

In addition to encouraging greater savings on the part of Alaskans by generating a higher return for them, this will also have the effect of stemming the outflow of money. Rates on certificates of deposit of over $100,000 are negotiable. Because of the rather unusual money market conditions, Alaska banks have presently been unable to compete with banks in the "lower 48" which are paying extremely high rates. As a result there has been somewhat of an outflow of funds from Alaska. If interest on Alaska CD's were exempt from state taxation, the effective yield on Alaska CD's would be considerably higher and the outward flow of funds would cease.

If there is any way in which I can assist you further on this matter, I would be most pleased to do so.

Cordially,

Robert R. Richards
President

RRR/ph

P. O. Box 420 • Anchorage, Alaska 99510

NORTHERN SCHOOLS FEDERAL CREDIT UNION
Constitution Hall • University of Alaska • Fairbanks, Alaska 99701 • Phone 907/479-4209

TO

Senator Tim Kelly
Pouch V
Juneau, Alaska 99811

DATE November 28, 1979

SUBJECT Exempt Interest

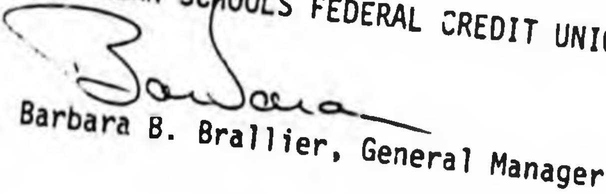
Dear Tim,

Read your letter and the draft of the proposed bill. I heartily agree with the idea. Lets keep Alaska's money in Alaska and with the people. It might also prove an incentive for people to start saving more. A lot of complaints that are heard referes to the fact "why earn interest, the government will just take it away".

Keep up the good work and keep us informed.

Thank you.

NORTHERN SCHOOLS FEDERAL CREDIT UNION



Barbara B. Brallier, General Manager

alaska national
bank
of the north
ALASKA NATIONAL BANK BUILDING FAIRBANKS ALASKA 99701 (907) 456-6691

December 12, 1979

The Honorable Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Ak 99504

Dear Tim:

This will respond to your inquiry to Frank, and his letter of December 3rd relative to legislation proposed for introduction by you into the Eleventh Legislature's second session.

As I read the intent of your bill, it would be to exempt bona fide Alaskan residents, partnerships, and corporations, from payment of state income tax on interest paid to them on savings or time deposits in Alaskan domiciled financial institutions.

Tim, as you are no doubt aware, there is a plethora of banking legislation roaming through various committees in the Congress, ranging from those dealing with the Fed reserve issue (HR7, S85, S85 as amended, and S353) to Regulation Q, NOW accounts, share drafts, automatic transfer services, and remote service units (HR4986).

The Ulman legislation (HR3712), did have an amendment proposed to it which would have exempted from Federal taxation the first $100 of interest earned. However, the legislation as originally proposed was defeated in the House Ways and Means Committee and there is no way of telling at this time whether the legislation will ever clear the Congress to become law. To the best of my knowledge, there is no other legislation proposed nationally which deals with exempting from taxation interest earned on savings and time deposits.

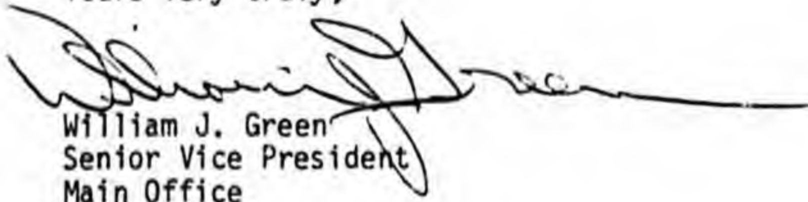
The Congress is, however, very conscious of the "plight of the small saver," and quite sensitive to groups such as the Gray Panthers. One of the avenues of relief endorsed by the American Bankers Association is a change in Reg Q to allow a ratcheting upward so that a maximum of 10% interest can be paid on passbook savings, and a reduction in the minimum denominations for money market type CD's (the 182 day rates) from $10,000 to under $1,000.

The Honorable Tim Kelly
12/12/79
Page Two

Assuming that we continue to have a state income tax, as I read your proposal, the interest paid to full-time Alaska residents by Alaskan financial institutions would be exempted from state income tax, whereas interest paid to full-time Alaska residents by financial institutions domiciled outside of Alaska would be subject to state income tax. One of the decisions to be made is whether all interest is to be exempted, or to a maximum dollar amount of interest paid per recipient. Certainly any tax forgiveness allowed on interest earned from deposits made in Alaskan financial institutions as compared with interest earned from deposits made in "outside" institutions will have a beneficial effect on keeping Alaskan money at home. Where there would be some benefit to even the small saver, the great incentive for keeping investable money in Alaska would come from those who have $10,000 or more to invest to enable them to take advantage of the very attractive rates now being quoted. This state tax exemption, if applied to all savings and time interest, would also give Alaskan financial institutions help in the struggle to prevent disintermediation of funds from financial institutions to such areas as the mutual money market funds offered by brokers.

The Alaska Bankers Association should be interested in helping develop this concept, and I suggest you contact Mr. H. A. "Buzz" Hoffman of First National Bank of Anchorage, the Association President. I will also be pleased, as a Board member and individually, to work with you.

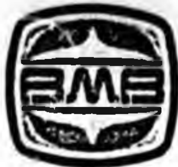
Yours very truly,



William J. Green
Senior Vice President
Main Office

WJG:rh

cc: Frank Murkowski

THE B.M.  BEHRENDS BANK
P. O. BOX 1367 JUNEAU, ALASKA 99802
(907) 586-6800

REMINGTON LOW
PRESIDENT & CHAIRMAN OF THE BOARD

December 6, 1979

Honorable Tim Kelly
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly:

Thank you for your letter of November 21, 1979 regarding income tax exemption for interest earned in Alaska financial institutions.

I personally believe your proposed bill will be beneficial to the people of Alaska as well as to Alaskan financial institutions.

It gives a needed tax break to all investors, but it especially helps small savers who are not able to buy $10,000 money market certificates or $100,000 certificates of deposit. The Congress of the United States has been talking about helping the small savers for a long time, but has never been able to get around to it.

It will also, as you state, encourage capital formation within Alaska which is beneficial to business as well as to the economy of the state in general.

Banks need increased deposits so they will have money to lend to Alaskans. All to often under our presen way of handling state money the state's resources go outside the state to the big banks in the lower fourty-eight who are able to outbid the much smaller Alaskan banks.

Another thing your bill would accomplish is to make Alaskan financial institutions more competitive with the large insurance companies and brokerage firms who are aggressively selling money market funds, which money then immediately leaves the state.

I discussed your letter with the other directors of the Alaskan Bankers Association at a meeting in Anchorage yesterday, and they were heartily in favor of it.

I would suggest you talk your bill over with Wes Coyner whom I am sure you know to see if he can be of any assistance to you. He represents the A. B. A. in the legislature, and is very knowledgeable about banking matters.

If I can be of any assistance please let me know. I would be happy to meet with you at your convenience.

Sincerely,

Remington Low
President & Chairman
of the Board

RL/jr

MAIN OFFICE: POUCH 7012, ANCHORAGE, ALASKA 99510

December 20, 1979

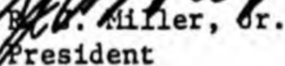
Senator Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

I have reviewed the draft of the legislation you plan to introduce exempting interest earned in Alaska financial institutions from State taxation. I agree with your concept, however, I would suggest that you define financial institutions.

Done!

Sincerely yours,



R. C. Miller, Jr.
President

rwc

Banks Pushing Passage Of Tax Break for Savers

SB 310 1/15/80

By Ward Sinclair
Washington Post Staff Writer

In the name of "the little saver," the country's biggest banking groups are besieging Congress to approve a new tax exemption—this one on interest from savings accounts.

Trade associations for banks and savings and loan institutions have activated their nationwide networks to push for passage.

As a result, before 26 senators and House members sit down this week to confer on an oil-profits tax, they'll find their mailboxes and phone lines jammed with messages from the bankers back home.

The message has nothing to do with oil profits. Rather, it hails a Senate-passed amendment to the oil tax bill that would exclude some savings account interest from federal income taxes.

The source of lenders' enthusiasm, clothed in the apparel of helping folks with small savings, is no secret. They see the tax break as a way of enticing money from other sources into savings. Savers might benefit but so would bankers, with more money to lend and profit on.

Another point is equally clear. As an amendment to an oil-tax measure the president and others dearly want, the proposal's political chances are enhanced.

Savings account interest became an issue for this conference after the Senate last month added language by Sen. Lloyd Bentsen (D-Tex.) to exclude from income tax the first $201 a saver earns in interest.

For banks and savings and loan associations, it's almost a dream come true. For years they have been pushing for the exclusion in hope of attracting more money to savings accounts.

Since the House oil-tax bill has no such provision, the banking groups are aiming their lobbying guns at House conferees who will have to accept or reject the Bentsen proposal.

A pending House bill dealing with mortgage bonds carries an amendment by Rep. W. Henson Moore (R-La.) that would exclude just the first $100 in savings interest from income taxes.

But for now, the big fight will be in the oil tax conference, and Moore said last week that he is campaigning to get fellow House conferees aboard the Bentsen bandwagon.

"The exclusion is very necessary to help reverse the trend of declining amounts of money going into savings accounts and to help stimulate capital formation," Moore said.

"This is a political opportunity to form capital and fight inflation and get people saving more money again . . . The exclusion ought to be higher, but this is a foot in the door. If this passes, we can then work on something more meaningful for the future."

That is precisely what the Carter administration, many House tax-writers and tax-reform groups fear—that once the exclusion is adopted, it will lead to even greater write-offs that would reduce federal tax revenues.

Bentsen's amendment also allows exclusion of $400 of interest when joint tax returns are filed. His exclusion applies to savings interest as well as stock dividends—one, the other or a combination. Current law allows individual exclusion of $100 and joint exclusion of $200 on investment dividends.

Opponents have argued that if savings incentives and capital formation are the issue, as Bentsen and Moore contend, they ought to be dealt with separately and not as appendages to other bills.

Moreover, there is concern about the cost of the Bentsen language. It is estimated that the tax loss to the Treasury would be about $26.9 billion between 1981 and 1990.

"It is true they see this as a foot in the door," said Robert McIntyre of the Tax Reform Research Group. "They'll come back for more next time. We hope the House conferees will stand firm, because this is just a lousy way to legislate."

The banking groups are hoping just as fervently that the House conferees cave in.

And for this fight, they are going all out. The American Bankers Association, in a special alert letter to members, urges aiming a blizzard of mail at the conferees.

"Sen. Bentsen suggests . . . that you consider requesting the employes of your bank on their own letterhead to write their senators and representatives in support of the Bentsen amendment," wrote ABA's Gerald M. Lowrie.

Other lenders have followed suit. The National Savings and Loan League, also quoting Bentsen, called for letters from S&L executives, employes and customers. Similar appeals have gone to members of the Independent Bankers Association of America, the U.S. League of Savings Associations and the National Association of Mutual Savings Banks.

"There is unanimity on this and we have pulled the stops," said the Independent Bankers' Ken Gunther. "We all agree something has to be done to help small savers."

Statement for Record
of Robert R. Richards
President, Alaska Pacific Bank

SENATE BILL 310

THIS BILL ADDRESSES ONE OF THE MOST PERVASIVE PROBLEMS IN ALASKA AND THROUGHOUT THE UNITED STATES; CAPITOL FORMATION. ALASKA HAS CONTINUALLY BEEN A CAPITOL SHORT AREA. ALASKAN FINANCIAL INSTITUTIONS WITH COMPARATIVELY LITTLE CAPITOL HAVE BEEN UNABLE TO FINANCE THE EXPANSION OF ALASKA'S BUSINESS, INDUSTRY OR CONSUMER ACQUISITION OF GOODS.

ONE INSTANT EXAMPLE OF THE CAPITOL SHORTAGE IN ALASKA IS THE INABILITY OF OUR FINANCIAL INSTITUTIONS TO FINANCE THE SINGLE-FAMILY AND MULTI-FAMILY HOUSING MARKET WITHIN OUR STATE.

PRESENTLY, OVER 1/2 OF THE MORTAGE MARKET IS BEING FINANCED THROUGH THE USE OF TAX EXEMPT BONDING. NOTING THE POTENTIAL FOR PASSAGE OF THE [illegible]LMAN BILL IN THE U.S. CONGRESS WHICH SEVERLY RESTRICTS THE ABILITY OF ALASKA HOUSING FINANCE CORPORATION TO SERVICE THE MORTAGE MARKET IN NOTING ITS INCUMBENT RESTRICTIONS ON BOTH HOUSING AND THE CONSTRUCTION INDUSTRY, I FEEL IT IS IMPERATIVE FOR THIS BODY TO ACT NOT ONLY WITH THE SHORT-TERM CAPITOL INJECTION WHICH THE ADMINISTRATION HAS SUGGESTED BUT MORE IMPORTANTLY TO FINALLY ADDRESS THE LONG-TERM SOLUTION FOR CAPITOL FORMATION IN ALASKA;UTILIZATION OF THE EFFICENCY OF THE PRIVATE MARKET SYSTEM UNRESTRAINED BY GOVERNMENT.

THE RESULT OF THE PENDING LEGISLATION IS QUITE SIMPLE; INCREASE CAPITOL FOR ALASKANS WHEN ALASKANS ARE NOT TAXED ON INTEREST EARNINGS, AN ADDITIONAL INCENTIVE IS AVAILABLE TO REVERSE THE DECLINING SAVINGS RATE WITHIN OUR STATE. WHEN DOMESTIC PARTNERSHIPS AND CORPORATIONS ARE NOT TAXED ON INTEREST EARRINGS, AN ADDITIONAL INCENTIVE IS AVAILABLE TO MAINTAIN DEPOSITS IN ALASKAN FINANCIAL INSTITUTIONS THEREBY INHANCING THE FUNDS AVAILABLE FOR LENDING.

THE STABILITY OF FUNDS IS THE MOST CRITICAL JUDGEMENTAL FACTOR IN DECIDING WHETHER OR NOT THAT FINANCIAL INSTITUTE CAN LEND THOSE FUNDS. WHEN ALASKA COMES SHORT-TERM DEPOSIT INTO ALASKAN INSTITUTIONS, HOW CAN THE STATE REASONABLY EXPECT THOSE FUNDS TO BE USED TO FUND LONG-TERM LOANS? THERE IS REALLY NOTHING THAT CAN BE DONE WITH SHORT-TERM (UNDER 1 YEAR MATURITY) DEPOSTIS OTHER THAN INVEST THEM IN VERY SHORT-TERM LOANS OR RE-INVEST THEM WOTH OTHER INSTITUTIONS OUTSIDE THE STATE. THESE SHORT TERM FUNDS DO LITTLE IF ANYTHING FOR THE ECONOMY AS A WHOLE. THE FORMULA OF LENDING LONG ON SHORT-TERM DEPOSITS HAS ONE SURE EVENTUAL CONSEQUENCE; BANKRUPTCY. THE STABILITY THEREFORE OF PUBLIC FUNDS FOR DEPOSITS IS QUESTIONABLE AT BEST - EVEN WITH THE ASTRONOMICAL PROJECTED SURPLUSES IT IS UNLIKELY THAT THE STATE WILL BE IN A POSITION TO PLACE 10 20 YEAR OR LONGER MATURITY DEPOSITS IN LOCAL FINANCIAL INSTITUTES. THE SOLUTION AGAIN IS TO FREE THE CAPITOL POTENTIAL OF THE PRIVATE MARKET SYSTEM BY EXEMPTING FROM TAXATION THOSE CITIZENS OF OUR STATE BE THEY INDIVIDUALS, PARTNERSHIPS, OR CORPORATIONS TO BUILD

LOCAL CAPITOL. BY DOING SO WE ARE RECOGNIZING THAT ALTHOUGH TODAY OUR GOVERNMENT MIGHT BE ABLE TO PROVIDE A SHORT-TERM SOLUTION THE REAL ANSWER TO CAPITOL FORMATION LIES WHEN THE GOVERNMENT REMOVES THE RESTRICTIONS UPON THE PRIVATE MARKET SYSTEM AND ALLOWS THE FREE ENTERPRISE SYSTEM TO WORK.

I URGE YOUR SERIOUS CONSIDERATION AND ADOPTION OF THIS MEASURE SINCE IT IS IN THE BEST INTEREST OF ALL ALASKANS.

.40 The taxpayer could not deduct interest paid on the purchase price of 30-year deferred annuity savings bonds and on borrowings on the bonds, where his annual borrowings kept the cash value of the bonds, on which the annuity or life insurance payments depended, at nominal amount. There was nothing of substance to be realized by the taxpayer beyond a tax deduction. Congress, by disallowing in 1954 Code Sec. 264(a)(2) deductions for interest on single-premium annuity contracts, did not show an intent to allow deduction of interest on pre-1954 transactions without regard to whether the transactions created a true obligation to pay interest. Three dissents.

K. F. Knetsch, (Sup. Ct.) 60-2 USTC ¶ 9785, 364 U. S. 361.

Followed.

T. C. Ballagh, (Ct. Cls.) 64-1 USTC ¶ 9496, 331 F. 2d 874. Cert. den., 379 U. S. 887.

H. C. Minchin, (CA-2) 64-2 USTC ¶ 9649, 335 F. 2d 30.

The legislative history of the statutory prohibition against deduction of interest on loans to purchase multiple premium annuities (Code Sec. 264(a)(3)) did not allow a deduction arising from transactions occurring before the effective date of such legislation where the transaction lacked economic substance.

W. L. McLane, Jr., (CA-9) 67-2 USTC ¶ 9491, 377 F. 2d 557.

A. F. Pierce, 28 TCM 1, Dec. 29,399(M), TC Memo. 1969-1.

The taxpayer was not entitled to deduct some $148,000 in out-of-pocket cost incurred in annuity transactions in which an "interest" deduction was denied. The taxpayer did not in any manner incur expenses for the production of income or for the management, conservation or maintenance of property held for the production of income. He entered into the annuity transactions to obtain a tax advantage. Such expenses were not losses since the transactions were not entered into for profit.

R. S. Gerstell, (CA-3) 63-2 USTC ¶ 9565, 319 F. 2d 131.

K. F. Knetsch, (Ct. Cls.) 65-2 USTC ¶ 9560, 348 F. 2d 932. Cert. denied, 382 U. S. 957.

The court disallowed the claimed deduction where the receipt and prepayment agreement and the loan agreement and assignment had no relationship to the insurance benefits and were merely a means whereby the true cost could be reported as "interest."

J. E. Golsen, (CA-10) 71-2 USTC ¶ 9497, 445 F. 2d 985. Cert. den., 404 U. S. 940.

With respect to certain tax years only, taxpayers could deduct the interest on certain life insurance company loans. They needed the loans in order to pay their premiums, and it did not make any difference that they borrowed against their policies, instead of, for example, from a bank.

M. S. Lee, CtCls, 78-1 USTC ¶ 9252, 571 F2d 1180.

.50 "Lease life insurance."—No portion of the payment by the owner-lessee of a life insurance policy to a leasing company under a "lease life insurance" arrangement is deductible as interest under Code Sec. 163.

Rev. Rul. 66-298, 1966-2 CB 48.

.55 Single payment certificate.—A single payment certificate purchased by a corporation was a face amount certificate. However, it was not an endowment contract.

Rev. Rul. 74-349, 1974-2 CB 91.

.80 Tax-saving plans.—See ¶ 1418.2755.

[¶ 2226] EXPENSES AND INTEREST RELATING TO TAX-EXEMPT INCOME

'54 Code

Sec. 265 [1954 Code]. No deduction shall be allowed for—

(1) EXPENSES.—Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this subtitle, or any amount otherwise allowable under section 212 (relating to expenses for production of income) which is allocable to interest (whether or not any amount of such interest is received or accrued) wholly exempt from the taxes imposed by this subtitle.

(2) INTEREST.—Interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle. In applying the preceding sentence to a financial institution (other than a bank) which is a face-amount certificate company registered under the Investment Company Act of 1940 (15 U. S. C. 80a-1 and following) and which is subject to the banking laws of the State in which such institution is incorporated, interest on face-amount certificates (as defined in section 2(a)(15) of such Act) issued by such institution, and interest on amounts

THIS IS THE LAW

Alaska Statute 43.20.021 Adopts Internal Revenue Code by reference

[¶ 2226]—Continued

received for the purchase of such certificates to be issued by such institution, shall not be considered as interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle, to the extent that the average amount of such obligations held by such institution during the taxable year (as determined under regulations prescribed by the Secretary) does not exceed 15 percent of the average of the total assets held by such institution during the taxable year (as so determined).

(3) CERTAIN REGULATED INVESTMENT COMPANIES.—In the case of a regulated investment company which distributes during the taxable year an exempt-interest dividend (including exempt-interest dividends paid after the close of the taxable year as described in section 855), that portion of any amount otherwise allowable as a deduction which the amount of the income of such company wholly exempt from taxes under this subtitle bears to the total of such exempt income and its gross income (excluding from gross income, for this purpose, capital gain net income, as defined in section 1222(9)).

(4) INTEREST RELATED TO EXEMPT-INTEREST DIVIDENDS.—Interest on indebtedness incurred or continued to purchase or carry shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

'54 Code

Amended by P. L. 94-455 (Deadwood) and P. L. 88-272. For details, see the Code Volume.

.05 Committee Reports on P. L. 88-272 are at 1964-1 CB 729.

.20 Committee Reports on 1954 Code Sec. 265 as originally enacted were reproduced at 582 CCH 2226.10.

• *Regulations*

[¶ 2230] § 1.265-1. Expenses relating to tax-exempt income—(a) *Nondeductibility of expenses allocable to exempt income.* (1) No amount shall be allowed as a deduction under any provision of the Internal Revenue Code of 1954 for any expense or amount which is otherwise allowable as a deduction and which is allocable to a class or classes of exempt income other than a class or classes of exempt interest income.

(2) No amount shall be allowed as a deduction under section 212 (relating to expenses for production of income) for any expense or amount which is otherwise allowable as a deduction and which is allocable to a class or classes of exempt interest income.

(b) *Exempt income and nonexempt income.* (1) As used in this section, the term "class of exempt income" means any class of income (whether or not any amount of income of such class is received or accrued) wholly exempt from the taxes imposed by subtitle A of the Code. For purposes of this section, a class of income which is considered as wholly exempt from the taxes imposed by subtitle A includes any class of income which is—

(i) Wholly excluded from gross income under any provision of subtitle A, or

(ii) Wholly exempt from the taxes imposed by subtitle A under the provisions of any other law.

(2) As used in this section the term "nonexempt income" means any income which is required to be included in gross income.

(c) *Allocation of expenses to a class or classes of exempt income.* Expenses and amounts otherwise allowable which are directly allocable to any class or classes of exempt income shall be allocated thereto; and expenses and amounts

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directly allocable to any class or classes of nonexempt income shall be allocated thereto. If an expense or amount otherwise allowable is indirectly allocable to both a class of nonexempt income and a class of exempt income, a reasonable proportion thereof determined in the light of all the facts and circumstances in each case shall be allocated to each.

(d) *Statement of classes of exempt income; records.* (1) A taxpayer receiving any class of exempt income or ' olding any property or engaging in any activity the income from which is exempt shall submit with his return as a part thereof an itemized statement, in detail, showing (i) the amount of each class of exempt income, and (ii) the amount of expenses and amounts otherwise allowable allocated to each such class (the amount allocated by apportionment being shown separately) as required by paragraph (c) of this section. If an item is apportioned between a class of exempt income and a class of nonexempt income, the statement shall show the basis of the [illegible]onment. Such statement shall also recite that each deduction claimed [illegible] [illegible]rn is not in any way attributable to a class of exempt income.

(2) The taxpayer shall keep such records as will enable him to make the allocations required by this section. See section 6001 and the regulations thereunder. [Reg. § 1.265-1.]

.01 Historical Comment: Proposed 3/19/58. Adopted 9/16/58 by T. D. 6313.

Caution: Reg. § 1.265-2, below, does not reflect the amendment of Code Sec. 265(2) or the addition of Code Sec. 265(3) and (4) by P. L. 94-455. See ¶ 2232.024.

• *Regulations*

[¶ 2231] § 1.265-2. **Interest relating to tax-exempt income.**—(a) *In general.* No amount shall be allowed as a deduction for interest on any indebtedness incurred or continued to purchase or carry obligations, the interest on which is wholly exempt from tax under subtitle A of the Code, such as municipal bonds, Panama Canal loan 3-percent bonds, or obligations of the United States, the interest on which is wholly exempt from tax under subtitle A, and which were issued after September 24, 1917, and not originally subscribed for by the taxpayer. Interest paid or accrued within the taxable year on indebtedness incurred or continued to purchase or carry (1) obligations of the United States issued after September 24, 1917, the interest on which is not wholly exempt from the taxes imposed under subtitle A of the Code, or (2) obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer, the interest on which is wholly exempt from the taxes imposed by subtitle A of the Code, is deductible. For rules as to the inclusion in gross income of interest on certain governmental obligations, see section 103 and the regulations thereunder.

(b) *Special rule for certain financial institutions.* (1) No deduction shall be disallowed, for taxable years ending after February 26, 1964, under section 265(2) for interest paid or accrued by a financial institution which is a face-amount certificate company registered under the Investment Company Act of 1940 (15 U. S. C. 80a-1 and following) and which is subject to the banking laws of the State in which it is incorporated, on face-amount certificates (as defined in section 2(a)(15) of the Investment Company Act of 1940) issued by such institution and on amounts received for the purchase of such certificates to be issued by the institution, if the average amount of obligations, the interest on which is wholly exempt from the taxes imposed by subtitle A of the Code, held by such institution during the taxable year, does not exceed 15 percent of the average amount of the total assets of such institution during

Caution: Reg. § 1.265-2, below, does not reflect the amendment of Code Sec. 265(2) or the addition of Code Sec. 265(3) and (4) by P. L. 94-455. See ¶ 2232.024.

[¶ 2231]—Continued

such year. See subparagraph (3) of this paragraph for treatment of interest paid or accrued on face-amount certificates where the figure is in excess of 15 percent. Interest expense other than that paid or accrued on face-amount certificates or on amounts received for the purchase of such certificates does not come within the rules of this paragraph.

(2) This subparagraph is prescribed under the authority granted the Secretary or his delegate under section 265(2) to prescribe regulations governing the determination of the average amount of tax-exempt obligations and of the total assets held during an institution's taxable year. The average amount of tax-exempt obligations held during an institution's taxable year shall be the average of the amounts of tax-exempt obligations held at the end of each month ending within such taxable year. The average amount of total assets for a taxable year shall be the average of the total assets determined at the beginning and end of the institution's taxable year. If the Commissioner, however, determines that any such amount is not fairly representative of the average amount of tax-exempt obligations or total assets, as the case may be, held by such institution during such taxable year, then the Commissioner shall determine the amount which is fairly representative of the average amount of tax-exempt obligations or total assets, as the case may be. The percentage which the average amount of tax-exempt obligations is of the average amount of total assets is determined by dividing the average amount of tax-exempt obligations by the average amount of total assets, and multiplying by 100. The amount of tax-exempt obligations means that portion of the total assets of the institution which consists of obligations the interest on which is wholly exempt from tax under subtitle A of the Code, and valued at their adjusted basis, appropriately adjusted for amortization of premium or discount. Total assets means the sum of the money, plus the aggregate of the adjusted basis of the property other than money held by the taxpayer in good faith for the purpose of the business. Such adjusted basis for any asset is its adjusted basis for determining gain upon sale or exchange for Federal income tax purposes.

(3) If the percentage computation required by subparagraph (2) of this paragraph results in a figure in excess of 15 percent for the taxable year, there is interest that does not come within the special rule for certain financial institutions contained in section 265(2). The amount of such interest is obtained by multiplying the total interest paid or accrued for the taxable year on face-amount certificates and on amounts received for the purchase of such certificates by the percentage figure equal to the excess of the percentage figure computed under subparagraph (2) of this paragraph over 15 percent. See paragraph (a) for the disallowance of interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from tax under subtitle A of the Code.

(4) Every financial institution claiming the benefits of the special rule for certain financial institutions contained in section 265(2) shall file with its return for the taxable year:

(i) A statement showing that it is a face-amount certificate company registered under the Investment Company Act of 1940 (15 U. S. C. 80a-1 and following) and that it is subject to the banking laws of the State in which it is incorporated.

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Caution: Reg. § 1.265-2, below, does not reflect the amendment of Code Sec. 265(2) or the addition of Code Sec. 265(3) and (4) by P. L. 94-455. See ¶ 2232.024.

(ii) A detailed schedule showing the computation of the average amount of tax-exempt obligations, the average amount of total assets of such institution, and the total amount of interest paid or accrued on face-amount certificates and on amounts received for the purchase of such certificates for the taxable year. [Reg. § 1.265-2.]

.01 **Historical Comment:** Proposed 3/19/58. Adopted 9/16/58 by T. D. 6313. Amended 9/18/67 by T. D. 6927 to reflect P. L. 88-272.

• *Regulations*

[¶ 2231A] § 1.265-3. **Nondeductibility of interest relating to exempt-interest dividends.**—(a) *In general.* No deduction is allowed to a shareholder of a regulated investment company for interest on indebtedness that relates to exempt-interest dividends distributed by the company to the shareholder during the shareholder's taxable year.

(b) *Interest relating to exempt-interest dividends.* (1) All or a portion of the interest on an indebtedness relates to exempt-interest dividends if the indebtedness is either incurred or continued to purchase or carry shares of stock of a regulated investment company that distributes exempt-interest dividends (as defined in section 852(b)(5) of the Code) to the holder of the shares during the shareholder's taxable year.

(2) To determine the amount of interest that relates to the exempt-interest dividends the total amount of interest paid or accrued on the indebtedness is multiplied by a fraction. The numerator of the fraction is the amount of exempt-interest dividends received by the shareholder. The denominator of the fraction is the sum of the exempt-interest dividends and taxable dividends received by the shareholder (excluding capital gain dividends received by the shareholder and capital gains required to be included in the shareholder's computation of long-term capital gains under section 852(b)(3)(D)). [Reg. § 1.265-3.]

.10 **Historical Comment:** Proposed 7/28/78. Adopted 3/15/79 by T. D. 7601. The Preamble to T. D. 7601 is at 79(10) CCH ¶ 6500A.

[¶ 2232] Expenses and Interest Relating to Tax-Exempt Income

• • *CCH Explanation*

.02 Prevention of double deduction.—If all expenses connected with earning exempt income were deductible, there would, in effect, be a double deduction. The exempt income would not be taxable in the first place. The expenses would be deductible in the second, although they would not be attributable to income on which tax is owing.

To prevent this, the expenses of earning income, which by federal income tax standards are wholly exempt from tax, are not deductible.

The courts have found, and the Commissioner has agreed, that there is a valid distinction between "wholly exempt" income and income on which "no gain or loss is recognized" (see .043 and .20, below). These decisions hold that gain realized by a corporation upon a complete plan of liquidation which is not recognized under Code

CCH COMMENTARY

Expenses and Interest Relating to Tax-Exempt Income

[¶ 2232.02]—Continued

• • *CCH Explanation*

Secs. 332 and 337 is not "wholly exempt" income within the meaning of Code Sec. 265 and, therefore, state income tax paid on such gain is a deductible expense.

.021 **Expenses of earning tax-exempt income.**—No deduction is allowed for any expense allocable to the earning of tax-exempt income. However, a *business* expense (excluding interest on indebtedness incurred to carry tax-exempts—see .022 below) attributable to the earning of tax-exempt *interest* may be deducted. Code Sec. 265(1) provides that *nonbusiness* expenses (within the meaning of Code Sec. 212) incurred in earning tax-exempt income are not deductible.

Thus, while an investor may not deduct the expense of earning wholly tax-exempt interest, because the expense is not incurred in a trade or business, a bank may deduct such an expense because it is a business expense. The position of banks and other financial institutions with regard to expenses incurred in earning tax-exempt interest has been clarified at .025 below.

State income taxes paid by an estate or trust which receives taxable income, tax-exempt interest income, and other exempt income may be deducted in part, as explained by the IRS in Rev. Rul. 61-86, at .20, below. The deduction is limited to that portion of the taxes allocable to taxable income and to exempt interest income.

.022 **Interest on indebtedness incurred to carry tax-exempts.**—Code Sec. 265(2) prohibits a deduction for interest on an indebtedness incurred or continued to purchase or carry tax-exempt securities. However, whether the indebtedness is incurred or continued to avoid liquidating tax-exempts is a question which must be decided on the individual circumstances. The courts have generally held that if a satisfactory business purpose can be shown for borrowing the funds, an interest deduction will be allowed even though the borrower continues to hold tax-exempt securities (see .042). Recently, however, in *Illinois Terminal Railroad Co.* (.041), the Court of Claims held that, while a good business purpose existed for continuing an indebtedness, the taxpayer's dominant purpose was to continue to hold tax exempt securities. The Court of Appeals for the 7th Circuit recently denied an interest deduction where it felt that the borrower should have foreseen, at the time it purchased the tax-exempts, that a loan would be required to meet future economic needs. However, the same taxpayer was not required to liquidate municipal bonds in order to finance the construction of a new plant, since this was a major non-recurrent expenditure (*Wisconsin Cheeseman, Inc.* at .041).

.023 **Deductions of certain financial institutions.**—Nonbanking financial institutions which are face-amount certificate companies registered under the Investment Company Act of 1940 and which are subject to state banking laws can deduct the interest on face-amount certificates issued to investors, even though the payments received from these investors are partially reinvested by these financial institu-

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MINUTES
SENATE FINANCE COMMITTEE
February 28, 1980
9:03 a.m.

PRESENT

Chairman Sackett convened the meeting at approximately 9:03 a.m. All committee members were present. Also in attendance were Senators Stimson, Kelly, and Ziegler; Julius J. Brecht, Director, Division of Banking, Securities, and Corporations; Janet Bradley, Assistant Director, Human Rights Commission; Charles Campbell, Director, Division of Corrections; Roger Lange, Administrative Officer, Division of Corrections; Fiscal Analyst Bob Schroeder; and Administrative Assistant to Senate Finance Garrey Peska.

SB 310

Senator Kerttula moved that SB 310 (Act exempting interest earned from certain financial institutions from the Alaska net income tax) be brought up for committee discussion, advising that both Senator Ziegler and the bill's sponsor, Senator Kelly, were present to testify concerning the legislation.

SENATOR KELLY

Senator Kelly advised that the purpose of the bill is to increase capital amounts available within financial institutions in the State of Alaska thereby increasing the amount of money available for loan. A similar idea is currently being looked at very seriously in Congress. Senator Kelly stated again that the legislation would increase capital available for loan within the state and encourage savings.

Mr. Brecht, Director of Banking appeared before committee at this time and distributed to members a copy of an article from the Washington Post outlining the processes involved in effecting this type of savings.

Senator Kelly advised he has not "heard" of any opposition to the bill. Senator Ray stated that while he feels no opposition to the concept, the bill "seems" to discriminate against those who don't have savings accounts--those who have invested their money in other areas. He stated his belief that the bill is too narrow.

Senator Kelly responded that encouraging savings is only the minor thurst of the legislation. The "major idea" is to build up capital savings in Alaska banks.

Chairman Sackett referred to the fiscal note attached to the bill and a memorandum from Gary Jenkins (copies appended to these minutes), advising of the lack of exact data for the bill.

Senator Kelly responded that he had written Mr. Jenkins advising him that he, Jenkins, had missed "the thrust" of the bill which is to increase capital in Alaska financial institutions in order that it can be used to benefit Alaskans.

Senator Kerttula suggested the committee hear from Mr. Brecht concerning Division of Banking's position on the legislation. Mr. Brecht advised that he is in favor of the bill in that it will encourage savers, large and small, to put their money in Alaska financial institutions.

Senator Kerttula asked if the $5 million loss in general fund revenue would be offset by economic activity in the banks. Mr. Brecht replied that a multiplying effect would derive from the bill. By not taxing earned interest, it is available for reinvestment in mortgages which are in turn sold, creating more capital and multiplying the effect many times over. He advised that the effect is difficult to estimate since one would have to know approximately how much capital would be generated and how much economic activity would subsequently follow. Mr. Brecht "guessed" that the capital derived from such non-taxed interest would "at least be increased by a factor of two." It depends upon how quickly an institution can roll its money.

Senator Ray advised of his belief that the legislation represents "a very clever disguise for 'big-brother' action, telling people what to do with their money." Senator Ziegler voiced disagreement with Senator Ray's statement, advising that the bill allows all individuals who save a tax break and would be a "great thing for all savers in the State of Alaska, small and large."

SB 310 HELD IN COMMITTEE

Senator Hohman requested additional time to evaluate the Washington Post article as well as additional backup material relating to the bill and suggested that the bill be returned to committee files at this time. No objection to the Senator's suggestion having been voiced, SB 310 was retained in committee.

SJR 16

Senator Hackney moved that SJR 16 (Relating to an amendment to the Constitution of the United States which would require that total federal appropriations not exceed total estimated federal revenues in a fiscal year in the absence of a national emergency) be brought up for discussion, advising that Senator Ziegler was present to testify.

SENATOR ZIEGLER

Senator Ziegler stated that 30 states have passed resolutions similar to SJR 16. The Resolution represents a philosophical attempt to curb governmental expenditures. In recommending passage, Senator Zielger attested to the need to "slow down federal spending before we go completely bankrupt." Secondly,

considering what the state has been subjected to by the present administration in Washington, the Resolution represents a means of "fighting back," a method of saying "we don't like the way we have been treated on the national level." Senator Ziegler briefly referred to needed minor amendments (Page 2, Line 1, change "five" to "four," and Page 2, Line 6, after "alternatively" insert "this body makes application and requests that") and then requested committee passage of the Resolution.

AMENDMENT
SJR 16

Senator Ray expressed his opinion that passage of the Resolution might be analogous to "sticking your hand in a piranha's mouth, specifically at appropriation time." Senator Ziegler replied that no other states passing similar legislation have been penalized to any extent. The Senator concluded his remarks asking "What more can they do to us?"

MOTION

Senator Sumner moved for passage of SJR 16 as amended with individual recommendations. No objection having been voiced, SJR 16 as amended passed from committee--Senators Sackett, Hohman, Bennett, Hackney, and Sumner signing do pass, Senators Ray and Kerttula signing no recommendation.

SJR 16
(AMENDED)
DO PASS

The Chairman moved to bring SB 382 (Act making a supplemental appropriation to the Department of Health and Social Services, Division of Corrections, for FY 79 bills) and SB 396 (Act making supplemental appropriations to the Department of Health and Social Services, Division of Corrections) up for discussion, advising that the two bills have been combined within Committee Substitute for SB 396.

SB 382

SB 396

CS for SB 396

Mr. Charles Campbell, Director of the Division of Corrections, and Roger Lange, the Division's Finance Officer, appeared before committee to testify on the legislation. Mr. Campbell stated that, essentially, the bill addresses supplemental needs in order to continue operation of the Division of Corrections on a maintenance level. Mr. Campbell attested to the Division's inability to deal with the 6% vacancy factor because of the need for 24 hour guard coverage. In addition, the Division needs major medical funding and funding for out-of-state placement of prisoners.

CAMPBELL
& LANGE

Mr. Lange advised that the Committee Substitute also includes salary costs and $575 thousand for in-state juvenile care in private institutions. The Division has restored the vacancy assessment and the probation officer position. Mr. Lang stated that restriction

of the probation position would be unfair to those about to be released from institutions. Funding is also requested within the legislation to cover the cost of unbudgeted lease costs.

Senator Ray advised that the Committee Substitute also includes $22 thousand for a refrigerator/freezer unit at the Fairbanks Correctional Center, $16 thousand for psychological counseling and a teaching position at Ridgeview Manor, and $400 thousand needed by the Division to pay accumulated unpaid bills. Mr. Lange stated that the unpaid bills consist of charges made by the Federal Bureau of Prisons for out-of-state care, payment for juvenile care in private institutions, and miscellaneous small bills.

Mr. Campbell advised that the number of individuals housed out-of-state has escalated rather dramatically. The Division was previously put on notice to reduce the number of prisoners so housed since the Palmer and Eagle River facilities were not being utilized to full capacity. The division agreed to such a reduction, advising that it is opposed to sending prisoners out-of-state. Seventeen prisoners were brought back to the state and the Division noted increased tension within its facilities as a result of their return. Seventeen represents the greatest number of prisoners the system could bring back. The state continues to "have people out-of-state in excess of what it can pay for."

Responding to a question from Senator Hackney concerning juvenile care, Mr. Campbell advised that McLaughlin had been underfunded by a substantial amount. The Division is in favor of reducing this kind of incarceration for juveniles, but it does not have enough funding to place all juveniles in private care. The Division moved money from private care into foster homes and made an attempt to identify more foster homes. Out-of-state care was reduced by 82% while foster care was increased 52%. Mr. Campbell advised that the department's problem is that it must continue to use McLaughlin until it can implement other programs. To date 28 children have participated in adventure-based programs. The department has also reorganized and set up a specific unit for handling youth, but the Division is "seriously lacking in funding for placing children in private institutions."

Senator Hohman asked how last year's figures for McLaughlin compare with this year's, and Mr. Lange stated he would furnish a comparison

Responding to questions from Senator Hohman concerning adventure-based education, Mr. Campbell advised that the Division has utilized such a program, adding that the programs have been "dramatically successful," although the Division's tracking system has not been the best. The Division strongly supports the adventure-based concept although it has encountered problems developing in-state resources for the programs.

Responding to a question from Chairman Sackett, Mr. Lange advised that the exact amount needed for McLaughlin is $365,000, such funding to be in addition to that already in the budget.

Senator Ray attested to the need for legislative understanding that "it takes 'x' amount of dollars" to operate such a facility as McLaughlin whether it houses 5 or 50 individuals. Such an amount represents "the basic cost of running an institution." Cutting down on the number of people housed therein does not necessarily cut costs proportionately.

Senator Hohman referred to an analysis by Fiscal Analyst Bob Schroeder suggesting that Sec. 10 ($400,000 to division of corrections for outstanding 1979 bills) is inflated by 6%.

Mr. Lange responded that the $400,000 request was prepared last October. At that time the Division had $368,000 in unpaid bills. The Division, in correspondence to Budget & Management, stated that the amount requested could be reduced to the actual dollar amount of its outstanding bills at the time the supplemental was formalized.

Senator Ray moved that the bill be held in committee until the division could provide more information on its unpaid bills. Senator Hohman asked if the $400,000 request was inflated by 6%, and Mr. Lange replied, "yes." Senator Hohman stated his belief that the Division should have advised the committee of this fact on its own.

The Chairman advised the bill would be held in committee.

CS for SB 39[illegible]
HELD IN
COMMITTEE

In his closing remarks Mr. Campbell stated that the Division "couldn't be more pleased at the opportunity to exchange complete information." The Division wants to develop alternative plans for young people, but until such plans are concrete, the Division must continue to use McLaughlin.

Senator Hohman attested to the fact that it is difficult to have confidence in the Division based on its past reputation. He further advised of his belief the Division is guilty of withholding information because of the 6% inflation factor uncovered by Legislative Finance on funds requested under Sec. 10 of the above-discussed legislation.

The meeting adjourned at approximately 10:00 a.m. ADJOURN

02-001B (Rev. 10/76)

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: February 7, 1980

FILE NO:

TELEPHONE NO.

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: CS for Senate Bill No. 310

This bill would exempt any interest paid by a financial institution in the State of Alaska from taxation under the Alaska Income Tax Act. This income would be exempt to individuals trusts, estates, partnerships, and corporations.

It is assumed that the objective behind this bill would be to encourage individuals to place more money in interest-bearing accounts in financial institutions in the State. While this is a very ideal aim, there is serious question about whether a bill such as this would cause the desired result. It is my impression that people place money in savings accounts, depending on the economic climate in the society, rather than because any interest which might be earned is tax free.

The major benefactors of this bill would be the wealthy individuals and large corporations who already have substantial interest-bearing accounts in Alaska banks. If the intent is truly to encourage savings by the average citizen, consideration should be given to providing the tax exempt status to deposits made after the effective date of the bill and on a maximum amount, such as $5,000.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS For SB 310

Title Act exempting from the net income tax interest earned from Alaska financial/ institutions

Requested by ______ Date ______

II. FISCAL DETAIL

Agency Affected ______

Program Category Affected ______

Budget Request Unit(s) Affected ______

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
GENERAL FUND			Unknown			
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
FULL TIME						
PART TIME						
TEMPORARY						

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

The bill proposes to exempt from income taxation interest earned from a financial institution which is chartered under the laws of the State or has its principal or home office within the State.

Due to lack of data we are unable to determine the exact revenue impact of this proposal. It is likely to reduce general fund revenue by about $5.0 million annually.

IV. DATE 2/7/80 PREPARED BY [illegible]

AGENCY Revenue

PHONE 5-2174

Original Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/78)

SB
311

COMMITTEE REPORT

SENATE

1/14/80

FURTHER: NONE

Date: ____________

Mr. President:

The Committee on JUDICIARY has had SB 311 relating to ride sharing

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ____________ [ ] same title [ ] new title

and recommends ____________

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ____________ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:

____
CHAIRMAN

S 60 (Rev. 12/78)

NO YOUTHFUL OPERATOR

Age and Sex		Pleasure Use	Drive to or from Work: Less than 15 Miles	Drive to or from Work: 15 or More Miles	Business Use	Farm Use
Only Operator in Household is a Female Age 30-64	Factor Code	.90 8131— —	1.15 8132— —	1.35 8133— —	1.35 8138— —	.80 8139— —
Principal Operator is Age 65 or Over	Factor Code	.90 8021— —	1.15 8022— —	1.35 8023— —	1.35 8028— —	.80 8029— —
All Other	Factor Code	1.00 8111— —	1.25 8112— —	1.45 8113— —	1.45 8118— —	.90 8119— —

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Having determined that no youthful operator is involved and that the primary factor is to be taken from the table above, the remaining considerations are *age and sex of the principal driver* and *use of the car.* As regards age and sex, most non-youthful drivers fall into the "all other" class, of course. In 1970 a lower factor was introduced for principal operators of age 65 or older. With the introduction of the 161 class plan, the factors for this age group now equal the discount factors for a woman age 30 to 64 who is the only operator in her household.

There are four "use" categories *for the non-youthful driver classes* — but the effect is of five since the "drive to work" category is further subdivided on the basis of mileage. The categories are:

Pleasure Use: The automobile is not used in business *or customarily* driven to or from work — *unless the one way road mileage to the job is under three miles.*

There are, however, two exceptions to this rule, the first relating to an automobile owned by a member of the clergy. It is rated as "pleasure use" — or for "farm use" if that is its place of principal garaging — in spite of the fact that the clergyman may use it in "business" or in driving to or from "work." The other exception is for an insured who has reduced his driving or participates in a *car pool* and drives *less than 15 miles to work.* If the vehicle is not used more than two days a week *or* not more than two weeks in each five week period, the insured is eligible for a "pleasure use" classification.

Drive to Work: The car is not used in business, but it is customarily used to drive to or from work and the one way road mileage is *three miles or more.* If less than three miles, the *pleasure* use category, above, applies. Note that *separate factors* apply to cars driven a one way distance of less than 15 miles and those driven 15 miles or more. Drive to work includes *drive to school* and also driving *part way,* as to a bus depot or train station.

A car pool participant or anyone who drives *15 miles or more to work,* but does not drive more than two days a week *or* not more than two weeks in each five week period, is eligible for classification in the "work less than 15 miles" category.

(Continued on next page.)

public for hire. He limited its use to the transportation of workers who were the clients of his agency. Such limited, special use, therefore, did not make his vehicle a "public or livery conveyance."

In a 1972 case decided by the Virginia supreme court, the insurer involved had denied coverage for liability arising out of the use of an insured's car in carrying car pool members to and from their common place of employment. Each car pool member would pay the insured one dollar a day toward operating expenses. The court ruled that the policy exclusion of any vehicle while used as a public or livery conveyance did not apply to this car pooling arrangement because the car was not held out *indiscriminately to the general public* for the carrying of passengers for hire. This case is *Smith vs. Stonewall Casualty Co., 188 S.E. (2nd.) 82.*

In Personal Auto Policy

The Public or Livery exclusion, as traditionally worded, is not included in the latest private passenger Automobile contract, the Personal Auto policy. Instead of excluding coverage for "any automobile while used as a public or livery conveyance," the Personal Auto policy excludes coverage for claims "arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool."*

This exclusion, presumably, has the same purpose as the Public or Livery exclusion — to eliminate coverage for the public automobile hazard, which is not anticipated in the formulation of private passenger rates. However, the distinction made in the Personal Auto policy hinges only on whether or not "a fee" has been charged. Whether or not the auto has been used as a public or livery conveyance — i.e., held indiscriminately for hire to the general public — is no longer at issue.

In the case of *car pools*, the new exclusion will in most instances have the same effect as the old. *Share-the-expense* car pools are specifically exempted from the exclusion, and by their very nature most car pools fit this description.

In situations not involving car pools, however, the new exclusion may have a more stringent effect than the Public or Livery exclusion. It is possible to imagine, for example, a Bodily Injury Liability claim arising out of an insured's use of his pickup to move an acquaintance's furniture. If the insured charges a fee, the exclusion in his Personal Auto policy states that there is no coverage, despite the fact that the insured has not held the pickup for hire to the general public. This result, though supported by a literal reading of the exclusion, is contrary to the historical intent and legal effect of the traditional Public or Livery exclusion.

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"PUBLIC OR LIVERY CONVEYANCE"

Exclusion in Private Passenger Auto Policies

Rates for private passenger Automobile insurance do not anticipate the hazards inherent in operating an automobile for hire to the general public, such as a taxicab or a van. For this reason, private passenger Automobile policies have customarily excluded coverage for any automobile "while used as a public or livery conveyance." The exclusion, as expressed in its traditional wording, survives in the Family Automobile policy, the Special Package Automobile policy, and many independently filed Automobile policies.

Despite the relatively simple intent of the exclusion, the legal term "public or livery conveyance" has made interpretation difficult for policyholders and insurance people alike. The question often arises as to whether a car pool, especially one in which participants pay the driver a share of expenses, constitutes use of the insured automobile as a public or livery conveyance. The relevant case law on the subject indicates that as long as a driver does not hold an insured auto for hire to the *general public*, the driver may collect a reasonable amount of money from passengers to pay for the expenses of operating the car pool.

A prominent case in this matter is *Allstate Insurance Co. vs. Roberson, 217 Fed. (2nd.) 10 (1954)*. Roberson, the insured, owned a truck which he equipped with extra seats and used for the purpose of regularly transporting about seven of his fellow employes to and from work with him. Although the insured normally collected a small amount of money from each passenger to cover expenses, the Federal court of appeals (8th Circuit, applying Arkansas law) held that because the insured *did not solicit riders and did not hold the truck out to the public for hire*, the truck had not been used as a "public or livery conveyance."

Another case whose outcome depended on the same test of "public or livery conveyance" as employed in the Roberson case is *American Fidelity Insurance Co. vs. Pardo, 299 N.Y.S. (2nd.) 521 (1969)*. Involved here was an insured who owned an employment agency for domestic workers. Each day, he would transport the workers to and from residences where they worked; for this purpose, the insured used a truck which had been altered to carry 12 passengers. The insured charged a fixed rate for all domestics whether or not they used his transportation services.

While the insured was transporting 12 workers to their places of work, he was involved in an accident with another motorist. When the claim was submitted to his insurer, it was denied because of the exclusion in question. The supreme court of New York, in reversing a lower court's decision in favor of the insurer, held that the words "public or livery conveyance" as used in the policy refer to "a vehicle used indiscriminately in conveying the general public, without limitation to certain persons or particular occasions or without being governed by special terms." Here, the insured did not use his vehicle indiscriminately in carrying the general

(Continued on next page)

Alaska State Legislature

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WHILE IN JUNEAU
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SENATOR
GLENN HACKNEY
REPRESENTING
SENATE DISTRICT O
"ALASKA'S GOLDEN HEART"

COMMITTEES:
FINANCE

HEALTH, EDUCATION & SOCIAL SERVICES
CHAIRMAN

State Senate

TO: Senator Robert Ziegler

FROM: Senator Glenn Hackney GH/ss

SUBJECT: SB 311 - Ridesharing

DATE: January 23, 1980

The thrust of the 1979 annual meeting of the Western Conference, Council of State Governments, was energy. One of the facets of that energy package was energy conservation. One of the points in that facet was ridesharing.

It appeared that ridesharing might be feasible in the state of Alaska if it were possible to remove the mickey mouse aspects of indulging in that practice.

With the above in mind, I asked Legislative Affairs to come up with a bill that would render it less likely that people would avoid getting into ridesharing by addressing the points in our own state law that might discourage the practice. Attached to this memo is a copy excerpted from the report of the WCSG Annual Report.

Attachment

"PUBLIC OR LIVERY CONVEYANCE"

Exclusion in Private Passenger Auto Policies

Rates for private passenger Automobile insurance do not anticipate the hazards inherent in operating an automobile for hire to the general public, such as a taxicab or a van. For this reason, priv. passenger Automobile policies have customarily excluded coverage for any automobile "while used as a public or livery conveyance." The exclusion, as expressed in its traditional wording, survives in the Family Automobile policy, the Special Package Automobile policy, and many independently filed Automobile policies.

Despite the relatively simple intent of the exclusion, the legal term "public or livery conveyance" has made interpretation difficult for policyholders and insurance people alike. The question often arises as to whether a car pool, especially one in which participants pay the driver a share of expenses, constitutes use of the insured automobile as a public or livery conveyance. The relevant case law on the subject indicates that as long as a driver does not hold an insured auto for hire to the *general public*, the driver may collect a reasonable amount of money from passengers to pay for the expenses of operating the car pool.

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(Continued on next page.)

public for hire. He limited its use to the transportation of workers who were the clients of his agency. Such limited, special use, therefore, did not make his vehicle a "public or livery conveyance."

In a 1972 case decided by the Virginia supreme court, the insurer involved had denied coverage for liability arising out of the use of an insured's car in carrying car pool members to and from their common place of employment. Each car pool member would pay the insured one dollar a day toward operating expenses. The court ruled that the policy exclusion of any vehicle while used as a public or livery conveyance did not apply to this car pooling arrangement because the car was not held out *indiscriminately to the general public* for the carrying of passengers for hire. This case is *Smith vs. Stonewall Casualty Co., 188 S.E. (2nd.) 82.*

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The Public or Livery exclusion, as traditionally worded, is not included in the latest private passenger Automobile contract, the Personal Auto policy. Instead of excluding coverage for "any automobile while used as a public or livery conveyance," the Personal Auto policy excludes coverage for claims "arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool."*

This exclusion, presumably, has the same purpose as the Public or Livery exclusion — to eliminate coverage for the public automobile hazard, which is not anticipated in the formulation of private passenger rates. However, the distinction made in the Personal Auto policy hinges only on whether or not "a fee" has been charged. Whether or not the auto has been used as a public or livery conveyance — i.e., held indiscriminately for hire to the general public — is no longer at issue.

In the case of *car pools,* the new exclusion will in most instances have the same effect as the old. *Share-the-expense* car pools are specifically exempted from the exclusion, and by their very nature most car pools fit this description.

In situations not involving car pools, however, the new exclusion may have a more stringent effect than the Public or Livery exclusion. It is possible to imagine, for example, a Bodily Injury Liability claim arising out of an insured's use of his pickup to move an acquaintance's furniture. If the insured charges a fee, the exclusion in his Personal Auto policy states that there is no coverage, despite the fact that the insured has not held the pickup for hire to the general public. This result, though supported by a literal reading of the exclusion, is contrary to the historical intent and legal effect of the traditional Public or Livery exclusion.

*Includes copyrighted material of Insurance Services Office, with its permission. Copyright, Insurance Services Office, 1975, 1976, 1978.

To SEN. ZIEGLER WITH MEMO

MODEL STATE LAW TO REMOVE LEGAL IMPEDIMENTS TO RIDESHARING ARRANGEMENTS

INTRODUCTION

Eighty percent of travel to work is by motor vehicle and most drivers commute by themselves. If drivers participated in ridesharing arrangements, it has been estimated that over 10 million gallons of gas would be saved each day and that rush hour traffic could be reduced by 30%. For these and other reasons, people should be encouraged to share rides to work and any law that unnecessarily impedes or discourages such sharing should be changed.

The National Committee on Uniform Traffic Laws and Ordinances is an independent, non-profit, voluntary association, which exists to maintain the Uniform Vehicle Code and Model Traffic Ordinance. The Uniform Vehicle Code is a specimen set of motor vehicle and traffic laws used as a guide by state legislatures, and the Model Traffic Ordinance is a companion document used by local legislative bodies. The National Committee is a carefully selected group of over 140 individuals representing federal, state and local government, private industry, and other groups interested in achieving sound, uniform motor vehicle and traffic laws. Since 1972, the National Committee has drafted texts of model laws in areas of emerging interest that are not covered by the Uniform Vehicle Code. The purpose of this activity is to have the best possible laws to test new ideas or to conduct programs necessary to solve new problems.

Under the title "Model Ridesharing Law" (dated March 26, 1979), the first draft of this document was distributed to more than 1,000 agencies and organizations for their review. Over 65 letters commenting on the first draft were received. These comments were summarized and a second draft dated June 15, 1979 was prepared and distributed to all persons who had commented on the first draft. The second draft, and letters commenting on it, were submitted to a Special Panel, which at a meeting on August 20-21, 1979, decided the contents of this document. The members of the Special Panel were: Senator Nat Washington (Chairman), Jack Derby (California Office of Ridesharing), Ken Dirkzwager (Minnesota Division of Driver and Vehicle Services), Bill Fortune (National Association of Vanpool Operators), Charles Gray (National Association of Regulatory Utility Commissioners), Tim Letzkus (Highway Users Federation for Safety and Mobility), Herb Scheuer (American Public Transit Association), and Mavis Walters (Insurance Services Office).

The preparation of this document was preceded by a review by the NCUTLO Staff of state laws which could impede forming carpools and vanpools. This review will be published under the title "Legal Impediments to Forming Carpools, Vanpools and Other Types of Ridesharing Arrangements." Using that review will enable each state to determine which of sections of this Model Law should be considered for enactment and will facilitate determining how the sections of this Model Law compare with laws in all jurisdictions.

§ 1. DEFINITION OF RIDESHARING

1. Section 1. Ridesharing arrangement defined.
2. Ridesharing arrangement means the transportation
3. of persons in a motor vehicle where such transporta-
4. tion is incidental to another purpose of the driver.
5. The term shall include ridesharing arrangements known
6. as carpools, vanpools and buspools.

§ 2. MOTOR CARRIER LAWS

7. Section 2. Motor carrier laws do not apply to
8. ridesharing.
9. The following laws and regulations of this state
10. shall not apply to any ridesharing arrangement using
11. a motor vehicle with a seating capacity for not more
12. than 15 persons, including the driver:
13. (a) Chapter ..... pertaining to the regulation
14. of motor carriers of any kind or description by the
15. (Public Utilities Commission).
16. (b) Laws and regulations containing insurance
17. requirements that are specifically applicable to
18. motor carriers or commercial vehicles.
19. (c) Laws imposing a greater standard of care
20. on motor carriers or commercial vehicles than that
21. imposed on other drivers or owners of motor vehicles.
22. (d) Laws and regulations with equipment require-
23. ments and special accident reporting requirements
24. that are specifically applicable to motor carriers
25. or commercial vehicles.
26. (e) Laws imposing a tax on fuel purchased in
27. another state by a motor carrier or road user taxes
28. on commercial buses.

§ 3. WORKMEN'S COMPENSATION LAWS

29. Section 3. Workmen's compensation law does not
30. apply to ridesharing.
31. Chapter ..... providing compensation for
32. workers injured during the course of their employ-
33. ment shall not apply to a person injured while
34. participating in a ridesharing arrangement between
35. his or her place of residence and place of employ-
36. ment or termini near such places, provided that if
37. the employer owns, leases or contracts for the motor
38. vehicle used in such arrangement, Chapter .....
39. shall apply.

§ 4. LIABILITY OF EMPLOYER

40. Section 4. Liability of employer.
41. (a) An employer shall not be liable for inju-
42. ries to passengers and other persons resulting from
43. the operation or use of a motor vehicle, not owned,
44. leased or contracted for by the employer, in a ride-
45. sharing arrangement.
46. (b) An employer shall not be liable for inju-
47. ries to passengers and other persons because he
48. provides information, incentives or otherwise en-
49. courages his employees to participate in ridesharing
50. arrangements.

§ 5. INCOME TAXES

51. Section 5. Ridesharing payments are not income.
52. Money and other benefits, other than salary,
53. received by a driver in a ridesharing arrangement
54. using a motor vehicle with a seating capacity for
55. not more than 15 persons, including the driver,
56. shall not constitute income for the purpose of
57. Chapter ..... imposing taxes on income.

Comment: Excepting income received by a driver in smaller ridesharing arrangements from taxes will avoid keeping records. Such a record-keeping requirement is perceived as an impediment to forming carpools and vanpools.

§ 6. MUNICIPAL LICENSES AND TAXES

58. Section 6. Municipal licenses and taxes.
59. No county, city, town or other municipal cor-
60. poration may impose a tax on, or require a license
61. for, a ridesharing arrangement using a motor vehicle
62. with a seating capacity for not more than 15 persons,
63. including the driver.

§ 7. OVERTIME AND MINIMUM WAGE LAWS

64. Section 7. Overtime compensation and minimum wage
65. laws.
66. The mere fact that an employee participates in
67. any kind of ridesharing arrangement shall not result
68. in the application of Chapter ..... (laws requiring
69. payment of a minimum wage, overtime pay or otherwise
70. regulating the hours a person may work).

§ 8. BUSES AND STATE VEHICLE CODES

71. Section 8. Certain ridesharing vehicles are not
72. commercial vehicles or buses.
73. (a) A motor vehicle used in a ridesharing
74. arrangement that has a seating capacity for not
75. more than 15 persons, including the driver, shall
76. not be a "bus" or "commercial vehicle" under the
77. portion of Chapter ..... (state vehicle code) re-
78. lating to equipment requirements or rules of the
79. road.
80. (b) A motor vehicle used in a ridesharing
81. arrangement that has a seating capacity for not
82. more than 15 persons, including the driver, shall
83. not be a "bus" or "commercial vehicle" under the
84. portions of Chapter ..... (state vehicle code)
85. relating to registration.
86. (c) The driver of a passenger car (motor
87. vehicle that has a seating capacity for not more
88. than 10 persons, including the driver) used in a
89. ridesharing arrangement is not a "chauffeur" nor
90. is he transpor[illegible] persons for compensation under
91. the driver lic[illegible]ng portions of Chapter .....
92. (state vehicle code).

Comment: As to "passenger car" in subsection (c), Uniform Vehicle Code § 1-142 defines this term as a motor vehicle designed to carry 10 passengers or less that is used to transport persons.

§ 9. USE OF PUBLIC VEHICLES

93. Section 9. Use of public motor vehicles for
94. ridesharing.
95. Motor vehicles owned or operated by any state
96. or local agency may be used in ridesharing arrange-
97. ments (for public employees). Participants in any
98. such ridesharing arrangement shall pay the actual
99. total costs of using the vehicle in that arrangement.

Comment: States should enact the phrase in parentheses if they decide to allow only public employees to ride to work in vehicles owned or leased by government agencies.

MISCELLANEOUS TOPICS

Incentives

Several people commenting on the "Model Ridesharing Law" recommended the enactment of incentives that would increase sharing rides. While this subject is definitely worthy of consideration, it was deemed beyond the scope of this document.

Cost and availability of insurance

A problem for forming ridesharing arrangements in the past has been the cost and availability of insurance, particularly for van-pools.

Mandating coverage. The Special Panel considered a section which would have prohibited insurers from increasing premiums, cancelling any policy or denying coverage because a motor vehicle is used in a ridesharing arrangement. Members of the Panel unanimously agreed that this approach could be counter-productive and could even result in higher premiums for vehicles used in pooling arrangements. The Panel also thought that enactment of the sections in this document coupled with recent developments in the insurance industry should solve this problem.

No fault benefits. In states where economic losses caused by injuries in crashes are compensated on a no-fault basis, consideration of the source of such compensation in accidents involving ridesharing vehicles should be considered. There may be some reduction in insurance premiums for ridesharing vehicles if the occupants are compensated by their own insurers rather than the insurer of the owner of the vehicle.

d

Deduction of expenses by employer

The Special Panel considered a section which would allow employers to deduct the costs of "promoting, organizing, administering and operating" ridesharing programs as ordinary business expenses. The Panel's view was that providing for such deductions in state income tax laws was unnecessary because employers already could deduct such costs as ordinary business expenses. And inclusion of the cost of operating vanpools might allow employers to write off the cost of acquiring vans on an accelerated basis.

Parking facilities

Several people commenting on the first draft recommended that this Model Law contain sections that would facilitate establishing lots where people could park their cars and continue their journey to work or sporting events in ridesharing arrangements or by using public transit. The Panel did not regard problems in this area to be impediments to most ridesharing arrangements but it did agree that it would be helpful to alert states to possible existence of problems in establishing such lots.

Use of public funds for parking lots located on private property. If the owners of a parking lot in a shopping center agree to allow commuters to park cars in their lot, there probably should be authority to expend public funds to indicate the existence of the facility and to pay the cost of any extra maintenance that may be necessary.

Liability issue. Owners of private property who allow commuters to park probably should be liable for injury or damages to such users only when the owners are grossly negligent. Another approach would be to authorize purchasing insurance to cover any such liability.

Tax-exempt status. If a church allows commuters to park in its lot, it may be necessary to provide that such use of its property does not affect its tax-exempt status.

SB
332

COMMITTEE REPORT

SENATE

1/15/80 FURTHER: None

Date: ____________

Mr. President:

The Committee on JUDICIARY has had SB 332 relating to hunting in the trans-Alaska pipeline corridor

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ____________ [ ] same title [ ] new title

and recommends ____________

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ____________ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

____
CHAIRMAN

S 60 (Rev. 12/78)

SENATE AMENDMENT

BY Senate Judiciary Committee

To: AMEND SENATE BILL No. SB 332

To: HOUSE BILL No.

PAGE: 1 LINE: 11 to 12

line 11 delete [five] insert TWO

line 12 delete [Alignment]

S 70

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

January 23, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 332
Our file J-66-416-80

Dear Senator Ziegler:

Guy VanDoren of your office requested that we review Senate Bill 332. This bill would make it a class-A misdemeanor to hunt "in the area within five miles on either side of the trans-Alaska pipeline alignment." Except as noted below, we do not believe the bill presents any major problems.

One question we have concerns the word "alignment." We assume this refers to the pipeline itself. If that is the case, it would appear that the word "alignment" in the bill is unnecessary. If it means something else, that should be described more explicitly.

A second question is whether the bill (if enacted) would provide the amount of procedural protection afforded by the due process clause of the federal and state constitutions. In Wacek v. State, 530 P.2d 751 (Alaska 1975), a conviction for discharging a firearm in a public park in violation of AS 11.55.050(a) and 11 AAC 12 190 was reversed. The court stated:

> The burden placed upon the defendant in this case to locate the boundaries of a park which has no signs marking its boundaries, which is shown on no published map, and the existence of which is mentioned in no Fish and Game regulation issued to hunters is unreasonable given the relative ease with which some corrective measure might be taken. 2/
>
> 2/ We do not hold, as suggested by the state in its brief, that it will now be necessary "to post signs at every 10 feet along the boundaries

03-C6LH

> of its state parks." We only hold that the application of AS 11.55.050 to appellant, given <u>all</u> the facts stipulated, placed an unreasonable burden upon him to locate the boundaries of the park.

530 P.2d at 753 (emphasis supplied by Alaska Supreme Court; citations omitted). While similar arguments might be made in a case arising under this bill if no additional steps are taken, it would seem that additional steps could be taken (e.g., indicating the area in which hunting is prohibited on published maps, mentioning the prohibition in regulations issued by the Department of Fish & Game to hunters, posting signs at various locations providing access to the area, etc.) and there would be no constitutional defect.

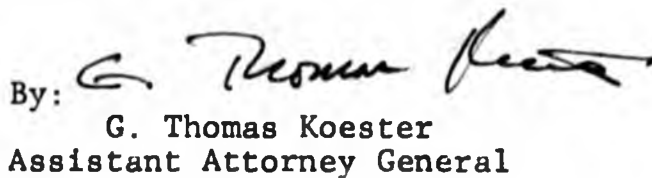
Beyond these two points, we do not believe the bill presents any legal difficulties. Some may question the reasonableness of imposing such a prohibition within five miles on either side of the pipeline. However, this appears to be a policy decision appropriate for the legislature. Since section 2 of the bill states that the purpose of the proposed act "is to prevent damage to the trans-Alaska oil pipeline," it does not seem unreasonable for the legislature to determine that prohibiting hunting within five miles of the pipeline would reduce to a negligible level the possibility of inadvertent damage to the pipeline from such activity.

Under the mens rea provisions of the new Criminal Code, AS 11.81.600 <u>et seq</u>., it would appear that an offense under the bill would have to be committed "recklessly" with respect to the circumstance of being within 5 miles of the pipeline. AS 11.81.610(b)(2). The legislature may wish to consider designating such an offense one of strict liability under AS 11.81.600(b)(1)(B), or (through a letter of intent or committee report) indicating an intent to dispense with the culpable mental state requirement. <u>See</u> AS 11.81.600(b)(2).

We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator John C. Sackett

S.D. 332

of Indian Creek and Falls Creek are closed to the taking of Dall sheep. The department shall retain the authority to set limited seasons, by permit only, and in consultation with the Division of Parks, to adjust severe imbalances in game animal populations;

(14) the Westchester Lagoon waterfowl nesting and observation area: all lands and waters on Chester Creek between Arctic Boulevard and Turnagain Arm are closed to hunting and trapping and to the use of motorized vehicles off designated roadways and travel routes;

(15) Otter Island (one of the Pribilof Islands–Unit 10) administered by the U.S. Department of Commerce National Marine Fisheries Service, is closed to all hunting;

(16) the Moose River closed area (Sterling–Unit 15A): on and within ¼ mile of the Moose River between the Kenai National Moose Range boundary and the Sterling Highway is closed to the taking of waterfowl.

5 AAC 81.260. INTERIOR-ARCTIC ALASKA (UNITS 17-26). The following areas are closed areas:

(1) the Birch Lake closed area (near Fairbanks–Unit 20): on and within ½ mile of Birch Lake (closed to the taking of big game only);

(2) the Harding Lake closed area (near Fairbanks–Unit 20); on and within ½ mile of Harding Lake (closed to the taking of big game only);

(3) the Lost Lake closed area (near Fairbanks–Unit 20); on and within ½ mile of Lost Lake (closed to the taking of big game only);

(4) Repealed.

(5) the Healy-Lignite closed area (near Healy–Unit 20C): beginning at the confluence of Lignite Creek and the Nenana River, thence upstream along Lignite Creek to its confluence with Sanderson Creek, thence in a straight line southerly to the confluence of Healy Creek and Coal Creek, thence in a straight line southerly to Dora Peak (63°49'N and 148°42'W), thence in a straight line westerly to the confluence of Healy Creek and Moody Creek, thence downstream along Healy Creek to the Nenana River, thence downstream along the Nenana River to the point of beginning, is closed to all hunting;

(6) the Prudhoe Bay closed area (near Prudhoe Bay–Unit 26): beginning at a point 70°22'N latitude and 148°00'W longitude, thence south approximately 14 miles to a point at 70°10'N and 148°00'W, thence west approximately 15 miles to a point at 70°10'N and 148°40'W, thence north approximately two miles to a point at 70°12'N and 148°40'W, thence west approximately eight miles to a point at 70°12'N and 148°56'W, thence north approximately two miles to a point at 70°15'N and 148°56'W, thence west approximately 12 miles to a point at 70°15'N and 149°28'W, thence north approximately 12 miles to a point at 70°26'N and 149°28'W, thence east approximately 14 miles to a point at 70°26'N and 148°52'W, thence south for approximately two miles to a point at 70°24'N and 148°52'W, thence east for approximately 16 miles to a point at 70°24'N and 148°11'W, thence south for approximately two miles to a point at 70°22'N and 148°11'W, thence east approximately six miles to the point of beginning at 70°22'N and 148°00'W, is closed to the taking of big game only;

(7) Sledge Island (Unit 22) and the waters within one mile of it are closed to walrus hunting;

(8) the trans-Alaska pipeline corridor closed area (north of the Yukon River-Units 24, 25 and 26): the area within a strip five miles on both sides of the trans-Alaska pipeline alignment from the Yukon River to Prudhoe Bay is closed to the taking of big game only.

Existing Regulation

STATE GAME R

5 AAC 81.270. APPLICATIO
otherwise provided in secs. 280-30
this chapter are continuously close

5 AAC 81 280. SOUTHEA
Forrester Island State Game Re
Forrester Island and adjacent rock
taken for commercial purposes ur
the discretion of the commissioner

(b) The Hazy Island State G
Islands in Southeastern Alaska ar
taken for commercial purposes ur
the discretion of the commissione

(c) The St. Lazaria Islands
Lazaria Islands at the entrance of

(d) The Mendenhall Wetlan
area described as the Mendenhal
closed to trapping and hunting,
during established seasons. The u
other motorized vehicles (excep
Wetlands State Game Refuge is pr

5 AAC 81.290. SOUTHCEN
State Game Refuge (Kodiak Islan
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(b) The Semidi Islands Sta
8): The Semidi Island group is clo

(c) The McNeil River Sta
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from Akjemguiga Cove on the n
head of Kamishak Bay, in lowe
Access to McNeil River is by perm

(d) The Tuxedni Island Sta
Egg and other small islands in Tux

(e) The Aleutian Islands S
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(1) Umnak, Atka, Un
Islands are open to hunting;

(2) Shemya, Attu, an
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(3) Adak Island is ope

(4) all of the Aleutian

(f) The Bogoslof Islands S
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(g) The Kenai State Gan
corresponding to the Kenai Natio
hunting;

(h) The Potter Point Stat
14C): all lands and waters south
which extends from Campbell
hunting and trapping and to th
exceptions:

(1) that portion of th

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

January 23, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 332
Our file J-66-416-80

Dear Senator Ziegler:

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One question we have concerns the word "alignment." We assume this refers to the pipeline itself. If that is the case, it would appear that the word "alignment" in the bill is unnecessary. If it means something else, that should be described more explicitly.

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00-C5LH

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The could be part of letter of intent

530 P.2d at 753 (emphasis supplied by Alaska Supreme Court; citations omitted). While similar arguments might be made in a case arising under this bill if no additional steps are taken, it would seem that additional steps could be taken (e.g., indicating the area in which hunting is prohibited on published maps, mentioning the prohibition in regulations issued by the Department of Fish & Game to hunters, posting signs at various locations providing access to the area, etc.) and there would be no constitutional defect.

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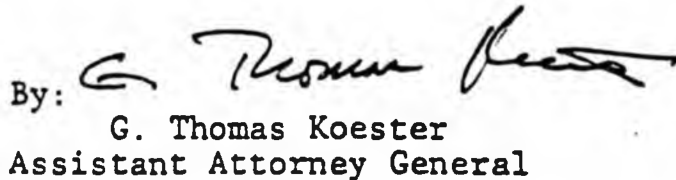
By: 
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator John C. Sackett

BILL ANALYSIS

ASSIGNMENT DATE__________

UNASSIGNED________ ________

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Sackett	SB 332

DEPARTMENT POSITION

Neutral

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Fred Woldstad	1/22/80	William R. Nix	1/22/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)

(2) OTHER AGENCIES AFFECTED BY BILL Dept. of Fish & Game, Board of Game

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unk.	Unk.

(3) PROGRAM EFFECTS OF BILL

No adverse effect on the division's programs.

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

The div .on enforced a similar law during the pipeline construction era and does not foresee any problem with this bill.

S.D.332

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(4) Repealed.

(5) the Healy-Lignite closed area (near Healy–Unit 20C): beginning at the confluence of Lignite Creek and the Nenana River, thence upstream along Lignite Creek to its confluence with Sanderson Creek, thence in a straight line southerly to the confluence of Healy Creek and Coal Creek, thence in a straight line southerly to Dora Peak (63°49'N and 148°42'W), thence in a straight line westerly to the confluence of Healy Creek and Moody Creek, thence downstream along Healy Creek to the Nenana River, thence downstream along the Nenana River to the point of beginning, is closed to all hunting.

(6) the Prudhoe Bay closed area (near Prudhoe Bay–Unit 26): beginning at a point 70°22'N latitude and 148°00'W longitude, thence south approximately 14 miles to a point at 70°10'N and 148°00'W, thence west approximately 15 miles to a point at 70°10'N and 148°40'W, thence north approximately two miles to a point at 70°12'N and 148°40'W, thence west approximately eight miles to a point at 70°12'N and 148°56'W, thence north approximately two miles to a point at 70°15'N and 148°56'W, thence west approximately 12 miles to a point at 70°15'N and 149°28'W, thence north approximately 12 miles to a point at 70°26'N and 149°28'W, thence east approximately 14 miles to a point at 70°26'N and 148°52'W, thence south for approximately two miles to a point at 70°24'N and 148°52'W, thence east for approximately 16 miles to a point at 70°24'N and 148°11'W, thence south for approximately two miles to a point at 70°22'N and 148°11'W, thence east approximately six miles to the point of beginning at 70°22'N and 148°00'W, is closed to the taking of big game only;

(7) Sledge Island (Unit 22) and the waters within one mile of it are closed to walrus hunting;

(8) the trans-Alaska pipeline corridor closed area (north of the Yukon River-Units 24, 25 and 26): the area within a strip five miles on both sides of the trans-Alaska pipeline alignment from the Yukon River to Prudhoe Bay is closed to the taking of big game only.

Existing Regulation

STATE GAME RE

5 AAC 81.270. APPLICATIO
otherwise provided in secs. 280-30
this chapter are continuously close

5 AAC 81.280. SOUTHE
Forrester Island State Game Re
Forrester Island and adjacent rock
taken for commercial purposes un
the discretion of the commissione

(b) The Hazy Island State G
Islands in Southeastern Alaska a
taken for commercial purposes un
the discretion of the commissione

(c) The St. Lazaria Islands
Lazaria Islands at the entrance of S

(d) The Mendenhall Wetlan
area described as the Mendenhal
closed to trapping and hunting,
during established seasons. The u
other motorized vehicles (excep
Wetlands State Game Refuge is pr

5 AAC 81.290. SOUTHCEN
State Game Refuge (Kodiak Islan
ing to the Kodiak National Wildlif

(b) The Semidi Islands Stat
8): The Semidi Island group is clo

(c) The McNeil River Stat
McNeil River, Mikfik Creek and a
from Akjemguiga Cove on the n
head of Kamishak Bay, in lowe
Access to McNeil River is by perm

(d) The Tuxedni Island Sta
Egg and other small islands in Tux

(e) The Aleutian Islands S
Islands are closed to hunting with

(1) Umnak, Atka, Uni
Islands are open to hunting,

(2) Shemya, Attu, an
ptarmigan hunting;

(3) Adak Island is open

(4) all of the Aleutian

(f) The Bogoslof Islands St
10): The Bogoslof Islands are close

(g) The Kenai State Gam
corresponding to the Kenai Natio
hunting;

(h) The Potter Point Stat
14C): all lands and waters south
which extends from Campbell
hunting and trapping and to th
exceptions:

(1) that portion of th

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

January 23, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 332
Our file J-66-416-80

Dear Senator Ziegler:

Guy VanDoren of your office requested that we review Senate Bill 332. This bill would make it a class-A misdemeanor to hunt "in the area within five miles on either side of the trans-Alaska pipeline alignment." Except as noted below, we do not believe the bill presents any major problems.

One question we have concerns the word "alignment." We assume this refers to the pipeline itself. If that is the case, it would appear that the word "alignment" in the bill is unnecessary. If it means something else, that should be described more explicitly.

A second question is whether the bill (if enacted) would provide the amount of procedural protection afforded by the due process clause of the federal and state constitutions. In Wacek v. State, 530 P.2d 751 (Alaska 1975), a conviction for discharging a firearm in a public park in violation of AS 11.55.050(a) and 11 AAC 12.190 was reversed. The court stated:

> The burden placed upon the defendant in this case to locate the boundaries of a park which has no signs marking its boundaries, which is shown on no published map, and the existence of which is mentioned in no Fish and Game regulation issued to hunters is unreasonable given the relative ease with which some corrective measure might be taken. 2/
>
> 2/ We do not hold, as suggested by the state in its brief, that it will now be necessary "to post signs at every 10 feet along the boundaries

The court be part of letter of intent for

> of its state parks." We only hold that the application of AS 11.55.050 to appellant, given all the facts stipulated, placed an unreasonable burden upon him to locate the boundaries of the park.

530 P.2d at 753 (emphasis supplied by Alaska Supreme Court; citations omitted). While similar arguments might be made in a case arising under this bill if no additional steps are taken, it would seem that additional steps could be taken (e.g., indicating the area in which hunting is prohibited on published maps, mentioning the prohibition in regulations issued by the Department of Fish & Game to hunters, posting signs at various locations providing access to the area, etc.) and there would be no constitutional defect.

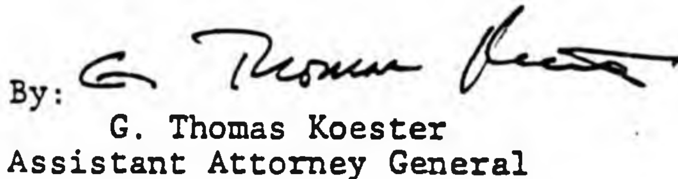
Beyond these two points, we do not believe the bill presents any legal difficulties. Some may question the reasonableness of imposing such a prohibition within five miles on either side of the pipeline. However, this appears to be a policy decision appropriate for the legislature. Since section 2 of the bill states that the purpose of the proposed act "is to prevent damage to the trans-Alaska oil pipeline," it does not seem unreasonable for the legislature to determine that prohibiting hunting within five miles of the pipeline would reduce to a negligible level the possibility of inadvertent damage to the pipeline from such activity.

Under the mens rea provisions of the new Criminal Code, AS 11.81.600 et seq., it would appear that an offense under the bill would have to be committed "recklessly" with respect to the circumstance of being within 5 miles of the pipeline. AS 11.81.610(b)(2). The legislature may wish to consider designating such an offense one of strict liability under AS 11.81.600(b)(1)(B), or (through a letter of intent or committee report) indicating an intent to dispense with the culpable mental state requirement. See AS 11.81.600(b)(2).

We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator John C. Sackett

BILL ANALYSIS

ASSIGNMENT DATE ____________

UNASSIGNED ____________

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Sackett	SB 332

DEPARTMENT POSITION

Neutral

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Fred Woldstad	1/22/80	William R. Nix	1/22/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)

(2) OTHER AGENCIES AFFECTED BY BILL

Dept. of Fish & Game, Board of Game

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unk.	Unk.

(3) PROGRAM EFFECTS OF BILL

No adverse effect on the division's programs.

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

The division enforced a similar law during the pipeline construction era and does not foresee any problem with this bill.

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER ____________

DEPARTMENT ____________________________

ATTENTION ____________________________

- [ ] Approval
- [ ] Signature
- [ ] Comment
- [ ] Contact Me
- [ ] Prepare Reply
- [ ] For Your File
- [ ] Note & Return
- [ ] Initial & Return
- [ ] Return As Requested
- [ ] Return For Approval
- [ ] Necessary Action
- [ ] Your Information

Remarks:

(Jud.) Sen. Ziegler
107 Cap

FROM:
MAIL STATION NUMBER 1200

DEPARTMENT Pub. Safety

BY ____________________ DATE 3-11-80

02-002 (REV.10/73)

BILL ANALYSIS

ASSIGNMENT DATE________

UNASSIGNED________

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Sackett	CSSB 332

DEPARTMENT POSITION

Support

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Fred Woldstad	3/10/80	William R. Nix by [signature]	3/10/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)

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(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

The committee substitute limits the hunting closure to the corridor north of the Yukon River, which is desirable from an enforcement view.

It is recommended that Sec. 16.05.785(b) be amended to remove the hyphenated word "class-A" from the sentence, as there are no class-A misdemeanors in the Fish and Game statutes. Such wording could cause grounds for argument that there is no proper penalty.

Reviewing Title 16, the addition of 785 to Chapter 5 will require an amendment in a penalty section to provide a penalty for violation of 785.