

ALASKA LEGISLATURE COMMITTEE FILES 1965-1966 8072

3759 HSTA SB 387 - SB 421

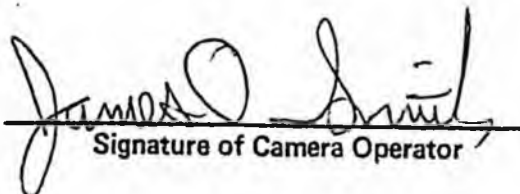
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HOUSE
COMMITTEE REPORT

(7)

TRANSPORTATION

Date referred: 4/14/86

FURTHER REFERRALS: FINANCE

DATE: 5/11/86

The STATE AFFAIRS Committee has considered CSSB 387 (Fin)

"An Act relating to taxation of watercraft motor fuel."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

Roger Jenkins

Betty Cato

Ed A. Bombar

SIGNING OTHER RECOMMENDATIONS:

Katie Hurley Do not Pass

Mike Spwan - no rec.

Mark D. - no rec.

Cinquillo DO NOT PASS

Katie Hurley

Chairman

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

March 20, 1986

BILL SHEFFIELD, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300

The Honorable Jan Faiks
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: SB 387 Position Paper

Dear Senator Faiks:

At the March 4, 1986 Finance Committee meeting you requested this Department to provide the Committee with the Department's position concerning SB 387. As drafted, this legislation will amend AS 43.40 to exempt from tax any motor fuel imported into this state in a fuel storage tank on watercraft when the fuel is to be used by the watercraft.

I. The Department of Revenue recommends the committee reconsider the need for SB 387 in light of the following factors:

- 1) The bill will further erode the state's tax base. We estimate as many as three hundred businesses will be relieved from paying their tax, which is estimated to aggregate \$3 million annually;
- 2) Alaska currently taxes the motor fuel actually consumed while a vessel is in the state's taxing jurisdiction. Although our tax law differs from those imposed by California, Oregon, Washington, and Hawaii, each state uniformly exempts from tax any fuel consumed outside their taxing jurisdiction. There is no need to amend our law to ensure that double taxation is avoided among the states. Further information concerning these state's motor fuel tax laws is included in Addendum "A" to this memorandum;
- 3) Passage of SB 387 would in many instances provide a competitive edge to out-of-state businesses over Alaska based marine transportation companies. For instance, local barge lines providing freight transportation service to Southeastern Alaska communities and purchasing fuel in-state will be required to pay the five-cent Alaska tax, while a barge line providing essentially the same service but with connection to Washington will, under SB 387, be totally exempt from tax on motor fuel purchased in Washington and used in Alaska;

- 4) As drafted, the bill may be construed to allow fishermen, fish processors, drilling rig operators and others to fuel their vessels in Alaska, transport the fuel outside the state while fishing, processing or drilling and then bring the remaining fuel back into the state, thereby creating the exemption contemplated by SB 387;
- 5) Finally, current Alaska tax law appears to be constitutionally sound. States are permitted to tax businesses engaged in interstate commerce provided four tests are met. First, the business must have sufficient contact with the state. Secondly, the tax must be fairly apportioned between the states. Third, the tax cannot discriminate against interstate commerce. Fourth, the tax must be related to services provided by the state. The motor fuel tax law as currently drafted and administered passes these four tests.

II. During the hearing, the Committee requested the Department's interpretation of how the statute and regulations work to permit the taxation of the motor fuel and industries in question.

The Alaska statutes levy a tax on motor fuel sold or transferred within Alaska, or alternatively consumed by a user in the state, at various rates. The tax is collected by a dealer upon sale or transfer and is remitted to the Department, as is the case with the tax upon fuel consumed by a user, by the last day of the succeeding month. A dealer is defined as a person who sells or transfers in Alaska previously untaxed fuel. A user is defined, in part, as a person consuming motor fuel who purchased it outside Alaska and shipped it into the state for personal use. AS 43.40.010; AS 43.40.100.

The definition of "user" includes a person consuming motor fuel in transit to Alaska. Fuel consumed in transit is considered to be shipped into the state for personal use. Distinctions concerning whether the fuel entered Alaska in the cargo hold or in the bunker are not material since the statute is designed to tax personal use in the state. The tax result should be identical in each case since fuel is consumed in the state.

The references to "sale" and "use" indicate that the statute imposes a combination motor fuel sales or use tax. The initial focus is upon sales or transfers of motor fuel within Alaska which give rise to a motor fuel sales tax liability. Alternatively, motor fuel not sold or transferred within Alaska but rather purchased outside the state and then consumed here produces a motor fuel use tax liability.

The Commerce Clause of the United States Constitution imposes the requirement that a state tax applied to interstate and foreign commerce be fairly apportioned and non-discriminatory. Therefore, the Alaska statute envisions an interstate or foreign commerce deduction or refund be allowed for all fuel sold or transferred in Alaska and consumed outside the state. This absence of a sales tax liability results in a use tax liability where the tax is determined by reference to the actual fuel used or consumed within the jurisdiction of the state.

The imposition of the tax on both motor fuel dealers and motor fuel users has been incorporated in the statute since 1946. Although the cruiseship and tankership industries were nonexistent at that time, the primary method of travel and transportation within and between Alaska and the contiguous United States was by water. With that in mind, we believe the drafters of these provisions were aware that the marine transportation industry would be subject to the law and a major payer of the tax, especially given the lack of roads and highways in the state at that time.

The Alaska tax system differs somewhat from that of other states. For instance, the states of Washington, Oregon, California and Hawaii do not apply a motor fuel tax to bunker fuel taken aboard watercraft. Motor fuel tax in these states is imposed only on fuel used in motor vehicles traveling upon state highways. Economic considerations involving direct competition between the ports of the states for increased traffic may have resulted in relief from the motor fuel tax on watercraft as a form of tax incentive. The states are not disadvantaged, however, since the states have comprehensive and well developed highway systems which attract substantial highway fuel tax revenues from the increased port activity in addition to the inherent advantages of having border states and connecting highway systems.

This is in strong contrast to Alaska and the fact that the waterways of this state are the basic means for the movement of commerce to and from the state. In essence, water and air transportation in Alaska substitute for highways. Other states have the ability to forego fuel taxes on watercraft because of the highway revenues. Alaska does not possess that flexibility nor the inclination to discriminate against Alaska residents purchasing and using fuel and who, but for the tax statute, would otherwise be solely responsible for the tax burden.

III. The Committee also requested that we determine if any past legislative intent could be found which might shed light on this area. Thus far we have been unable to locate comments, committee notes, transcripts or tapes of any kind which would reveal a legislative intent to tax fuel imported for use, rather than sale, in the state.

IV. The Committee requested information concerning the Department's activities to date with respect to taxing motor fuel used on watercraft.

Beginning in 1973 the Department of Revenue began development of its field audit staff. It determined its highest priority to be the corporate net income tax and in particular the administration of the multistate corporate income tax, sometimes referred to as the "unitary" tax. Little audit activity was conducted in any other tax type (with the exception of oil and gas related taxes) until 1980. At that time the Department began a systematic review of all its tax types and conducted compliance related projects on all of them.

In 1980 we began comprehensive review of all in-state motor fuel dealers and out-of-state suppliers to determine if effective compliance was being met. Based on the review it became apparent that statutory amendments and regulations were needed to take care of claim for refund problems related to exempt purchases of fuel. This review and the statutory changes made were unrelated to the tax on imported fuel used on watercraft. With the statutes and regulations in place, and based upon extensive audits of the major oil companies selling at the wholesale level in the state, by 1984 we were confident that the in-state motor fuel industry was in compliance with the law.

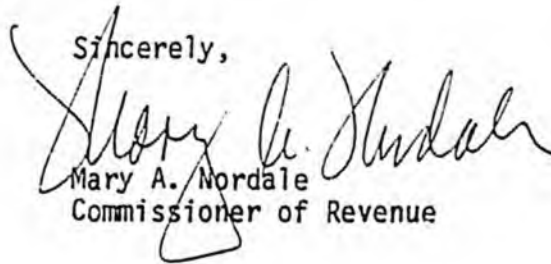
During our review of the major importers of wholesale motor fuel, our audit staff discovered that the interstate water transportation industry was not purchasing its fuel from these wholesale importers. This fact indicated substantial revenues were being lost to the state because of a history of substantial compliance with the motor fuel tax law by the air transportation industry under the same provisions of the law. This discovery led to phase II of our motor fuel compliance project.

This project began in early 1985. We began by obtaining information from various state and federal agencies as well as from the maritime industry itself. On June 3, 1985 we mailed information request letters to all motor fuel users identified by the project. As of today eighty tax returns have been received along with approximately \$800,000 tax. The Department is proceeding with taxpayer appeals through the administrative process to resolve some of the questions raised regarding the interpretation of the statute.

The Honorable Jan Faiks*
March 20, 1986
Page 5

Enclosed for your review is a copy of the letter and attendant enclosures which were originally sent to the marine transportation industry.

Sincerely,



Mary A. Nordale
Commissioner of Revenue

MAN:m11
86-68

Enclosures

cc: Members of the Senate Finance Committee

ADDENDUM A

<u>STATE</u>	<u>DESCRIPTION OF MOTOR FUEL TAX LEVY</u>
Washington	6.5¢/gallon use tax with optional county add on of 1.6¢/gallon for watercraft fuel. Exemption certificates given for fuel to be used outside the state.
California	7.0¢/gallon sales/use tax on <u>gasoline</u> used in watercraft. No diesel tax. Export certificates given for fuel to be used outside the state.
Oregon	No motor fuel taxes applicable to watercraft.
Hawaii	1¢/gallon use tax on diesel used by watercraft.

Prepared by:
Department of Revenue
Division of Audit
March 20, 1986

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 387
 Title : An Act Relating to Taxation
 of Watercraft Motor Fuel
 Sponsor : Sen. Bennett
 Requestor : Senate Finance
 Date of Request : March 1986

FISCAL DETAIL

Agency Affected : Revenue
 BRU : _____
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	(1,000.0)	(3,000.0)	(3,000.0)	(3,000.0)	(3,000.0)	(3,000.0)

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Attached

Prepared by : David Tonkovich CRT Phone : 465-2173
 Division : Revenue/Research Date : March 3, 1986
 Approved by Commissioner : *Walter H. Murdock* Date : 3/5/86
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Analysis:

This note estimates marine fuel tax potentially collectable on fuel purchased out-of-state but used in Alaska waters. These estimates have not been built into official revenue estimates as many returns for this usage are in appeal status.

The estimate contained in this note was prepared by dividing potential collections into two parts:

1. Revenues from users whose tax liability could be estimated from data on the number of trips, average fuel consumption and time in Alaska waters. Also, for several of these users a full year return was available. This part of the estimate covered these major users:

Tankers into and out of Valdez

Cruiseships in Southeast Alaska

Several large common carriers serving Southcentral Alaska

Several carriers distributing petroleum products for local use.

Our estimate for these users is \$2 million annually.

2. Revenues for remaining users. This tax liability is more difficult to estimate because of the diversity of users and the fact that available returns cover only part of the year. This estimate would cover many of the common and contract carriers, freighters hauling raw materials and semi-finished products such as LNG, fish processors and a variety of other users.

Our estimate for these users is \$1 million. Because of the number of users involved this estimate is probably conservative.

Note: The relatively low return in FY 86 reflects the fact that many returns are in appeal and may not be resolved this fiscal year.

CHAPTER 40.
MOTOR FUEL TAX

Article

1. Application of Tax
(15 AAC 40.010-15 AAC 40.070)
2. Tax Refunds and Credits for Fuel Resellers (15 AAC 40.100)
3. Tax Refunds and Credits for Final User
(15 AAC 40.200-15 AAC 40.230)
4. (Reserved)
5. (Reserved)
6. (Reserved)
7. (Reserved)
8. (Reserved)
9. General Provisions (15 AAC 40.900)

ARTICLE 1.
APPLICATION OF TAX

Section

10. Tax return filing requirements
20. Fuel subject to tax and exemptions
30. Certificate requirements for certain sales
40. Qualified dealer license
50. Bonding requirement for qualified dealer license
60. Revocation of qualified dealer license
70. Records

15 AAC 40.010. TAX RETURN FILING REQUIREMENTS. Each dealer and each user must submit monthly to the department a return showing all motor fuel sold or transferred by the dealer or consumed by the user in the state, including all tax-exempt sales, transfers and uses. The return must be signed by the dealer or user under penalty of perjury and must show to whom fuel was sold or transferred and the reasons for any tax exemption. The return, supporting documentation, and the tax collected or accrued must be remitted by the last day of the month following the month the motor fuel was sold, transferred or used. (Eff. 7/19/82, Reg. 83)

Authority: AS 43.05.080
AS 43.40.010

15 AAC 40.020. FUEL SUBJECT TO TAX AND EXEMPTIONS. (a) All motor fuel sold or transferred in the state or consumed by a user in the state is subject to the motor fuel

tax under AS 43.40.010 - 43.40.100, unless exempted under (b) of this section. For purposes of AS 43.40.010 - 43.40.100 and this chapter, "motor fuel" is fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, or in a stationary engine, machine or mechanical contrivance which is run by an internal combustion motor, including bulk or other transfers of fuel between producing, refining, importing or exporting companies and gasoline separated from a mixture of gasoline and alcohol that was not taxed in its combined state. All bulk sales of fuel to a person who uses a common storage tank servicing both taxable and nontaxable uses, except bulk sales of jet fuel to a person who exclusively flies directly from the state to a foreign country, are subject to the motor fuel tax under AS 43.40.010 - 43.40.100, but the portion actually used for nontaxable purposes is eligible for a tax refund upon application to the department.

(b) Fuel meeting the following requirements is exempt from the motor fuel tax under AS 43.40.010 - 43.40.100:

(1) fuel sold to, transferred to, or used by United States, Alaska, or local government agencies for official use, except motor fuel sold to a contractor who purchases motor fuel either for its own account or as the agent of a government agency for use in the performance of a contract with that agency;

(2) fuel sold to, transferred to, or used by auxiliary military units for official use, not including fuel purchased by a volunteer member of an auxiliary unit for use in a private vehicle;

(3) fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;

(4) fuel used exclusively for use in heating private residential buildings;

(5) fuel sold exclusively for use for heating commercial buildings or facilities, not including fuel used in or on watercraft;

(6) fuel used in stationary power plants that generate electrical energy exclusively for private residential consumption;

(7) fuel used by nonprofit power associations or corporations for generating electrical energy for resale;

(8) fuel used by charitable institutions;

(9) refined fuel transported as cargo out of the state on a vessel from a port in this state to a port outside this state, except fuel purchased in the state for use in the exploration for and development of subsoil and seabed resources in and upon the adjacent outer continental shelf of the state;

(10) fuel consigned to foreign countries;

(11) fuel sold to, transferred to, or used on jet propulsion aircraft operating flights from the state to a foreign country, except flights to a foreign country, with intermediate stops within the United States;

(12) fuel which is at least 10 percent alcohol by volume;

(13) fuel sold to or transferred between licensed qualified dealers;

(14) actual losses of volume which occur during handling, transporting or storing motor fuel, including shrinkage and losses from fire and other accidents;

(15) additives that are used for improving existing characteristics of fuel, not including blended fuels; and

(16) fuel used for any other purpose which the department determines is not motor fuel as defined by AS 43.40.100(2) if the purpose is fully disclosed on the monthly motor fuel tax return. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080
AS 43.40.010
AS 43.40.100

15 AAC 40.030. CERTIFICATE REQUIREMENTS FOR CERTAIN SALES. (a) In support of an exemption under 15 AAC 40.020(b)(3), (5), (7), (8), (10), (11), (12), and (16), the dealer or the fuel reseller shall obtain a certificate of use from the buyer or transferee at the time of each sale stating that the fuel that is

purchased or received is not intended for use as motor fuel subject to tax under AS 43.40.010 - 43.40.100.

(b) In support of an exemption under 15 AAC 40.020(b)(1), (2), (4), (6) and (13), the dealer or the fuel reseller shall obtain a certificate of use at the time of the first sale in each calendar year from a person purchasing fuel for one of these exempt uses.

(c) In support of an exemption under 15 AAC 40.020(b)(9) for transportation of refined fuel out of the state, a dealer, fuel reseller or user must submit to the department proof of that use on a form prescribed by the department by the last day of the month following the month the fuel was transported out of the state.

(d) If a purchaser certifies in writing on a certificate of use that the use of the fuel purchased is for an exempt use and the purchaser subsequently uses the fuel for taxable purposes, that purchaser is liable for payment of the motor fuel tax.

(e) A certificate of use under this section must be signed by the purchaser or his or her representative. The certificate remains in effect unless revoked by the department or in writing by the purchaser, dealer or fuel reseller. The dealer, fuel reseller or user must retain a copy of each certificate of use or form required under this section for three years. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080 AS 43.40.050
AS 43.40.010 AS 43.40.085
AS 43.40.035

15 AAC 40.040. QUALIFIED DEALER LICENSE. (a) A person who in the regular course of business sells at least 20 percent of his or her fuel to another party for resale or for residential heating purposes or for a combination of those purposes may apply for and obtain a license from the department.

(b) The department will, in its discretion, refuse to issue a license to a person described in (a) of this section if there is reasonable cause to believe that the applicant has willfully withheld information necessary to determine eligibility for a license or if there is reasonable cause to believe that information submitted in the application is false or misleading.

(c) A license issued under (a) of this section is in addition to any other license required by law. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080
AS 43.40.100

15 AAC 40.050. BONDING REQUIREMENT FOR QUALIFIED DEALER LICENSE. (a) An applicant for a qualified dealer license must file with the department a bond made payable to the department in an amount equal to twice the average monthly motor fuel tax remittance or in the amount of \$5,000, whichever is greater. The department will, in its discretion, accept a cash deposit or a bank letter of credit in the appropriate amount in lieu of a bond.

(b) In lieu of the requirements of (a) of this section, an applicant for a qualified dealer license may file a sworn statement in affidavit form stating that the applicant owns real property in the state equal in value to at least twice the average monthly motor fuel tax remittance, on which the motor fuel tax may become a first lien, and describing the property and the fair market value of the applicant's interest in the property. (Eff. 7/19/82, Reg. 83)

Authority: AS 43.05.080
AS 43.40.100

15 AAC 40.060. REVOCATION OF QUALIFIED DEALER LICENSE. (a) The department will, in its discretion, revoke a license issued under 15 AAC 40.040 if a licensee fails to comply with the requirements of AS 43.40.010 - 43.40.100 or this chapter.

(b) If the department determines a license should be revoked for failure to comply with the requirements of AS 43.40.010 - 43.40.100 or this chapter it will give the licensee 30 days' notice of a proposed revocation. If the basis for revocation still exists on the 30th day, the department will, upon notice of revocation to the licensee, revoke the license, unless an appeal under (d) of this section has been timely filed by the licensee.

(c) When a license is revoked under this section, the licensee may not apply for a new license until 60 days after the date of revocation. The date of revocation is the date on which the notice of revocation is issued.

(d) A person may appeal a notice of proposed revocation to the department. The appeal must be submitted to the department in person or by mail within 10 days of the date of issuance of the notice of proposed revocation. The department will hold a formal hearing on the appeal as prescribed by 15 AAC 05.030. The hearing officer will issue a written decision, and, if appropriate, a notice of revocation will be issued by the department. (Eff. 7/19/82, Reg. 83: am 11/14/82, Reg. 84)

Authority: AS 43.05.080
AS 43.40.100
AS 43.40.240

15 AAC 40.070. RECORDS. (a) Each dealer, fuel reseller and user must keep a complete record by gallons showing

(1) all motor fuel inventories on hand at the first of each month:

(2) all motor fuel refined during each month:

(3) all motor fuel purchased, received or produced during each month, showing the name of the seller and the date of each purchase or receipt;

(4) all motor fuel sold, transferred or used during each month, the date of sale, transfer, or use, and the names of all purchasers and transferees;

(5) all nontaxable fuel sales or transfers made during each month; and

(6) all motor fuel inventories on hand at the end of each month.

(b) Each dealer, fuel reseller and user must keep a complete record showing all amounts received from a supplier or the department for exempt sales or transfers and for credits or refunds for taxes paid.

(c) Each dealer, fuel reseller and user must preserve for three years from the due date, or the date the return was filed, whichever is later, all books and records required under this section. (Eff. 7/19/82, Reg. 83: am 11/14/82, Reg. 84)

Authority: AS 43.05.080 AS 43.40.050
AS 43.40.010 AS 43.40.085
AS 43.40.030 AS 43.40.100

ARTICLE 2.
TAX REFUNDS AND CREDITS
FOR FUEL RESELLERS

Section

- 100. Refunds and credits on certain sales or transfers of motor fuel
- 110. (Repealed)

15 AAC 40.100. REFUNDS AND CREDITS ON CERTAIN SALES OR TRANSFERS OF MOTOR FUEL. (a) If a fuel reseller makes a sale or transfer of motor fuel that is exempt under 15 AAC 40.020(b) and upon which motor fuel tax has been previously paid, the fuel reseller is entitled to a refund equal to the amount of tax previously paid on the resold fuel from the department. To receive a refund the fuel reseller must have on file a certificate of use from the buyer.

(b) If a fuel reseller makes a sale or transfer of motor fuel upon which the motor fuel tax has been previously paid and the tax paid exceeds the tax due on resale, the fuel reseller is entitled to a refund equal to the amount of tax previously paid less the amount of tax prescribed by AS 43.40.010.

(c) In lieu of claiming a refund directly from the department, a fuel reseller who sells or transfers fuel that is exempt or is subject to a lesser tax on resale than that previously paid may elect, with the express written consent of the supplier, to receive the refund or credit directly from the supplier. A claim for refund or credit must be supported by copies of the original invoices issued by the claimant and copies of the certificate of use obtained. When an election is made under this section, the supplier may claim the credit or refund from the department by adjusting the motor fuel tax return accordingly. To be effective, an election under this section must be submitted on a form prescribed by the department and signed in quadruplicate by the fuel reseller and by the supplier. The fuel reseller and the supplier must each file one copy of the election, with original signatures, with the department. The fuel reseller and the supplier must each retain a copy of the election, with original signatures, for audit review by the department. If an election is made under this section, it may not be revoked without the express written consent of the supplier.

(d) A claim for refund or credit under (a), (b) or (c) of this section must be filed within one year from the date of the sale as shown on the invoice issued by the claimant. Failure to file within the one-year period waives the right to a refund or credit. The claim must include the name, address and occupation of the applicant, the nature of the business of the applicant, and a description sufficient to identify the basis for the refund or credit. A claim for refund must be supported by copies of the original invoices issued by the claimant and copies of the certificates of use obtained. (Eff. 4/8/82, Reg. 82; am 8/1/82, Reg. 83; am 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080	AS 43.40.035
AS 43.40.010	AS 43.40.050
AS 43.40.030	AS 43.40.060

15 AAC 40.110.

Repealed 11/14/82.

**ARTICLE 3.
TAX REFUNDS AND CREDITS
FOR FINAL USER**

Section

- 200. Refunds on certain uses of motor fuel
- 210. Requirements for filing claims for refund of motor fuel tax
- 220. Recovery of erroneous refunds
- 230. Records

15 AAC 40.200. REFUNDS ON CERTAIN USES OF MOTOR FUEL. (a) If a person uses motor fuel in an internal combustion engine and the motor fuel tax of eight cents a gallon has been paid but that fuel is not used in, or in conjunction with, a licensed motor vehicle, as aviation fuel, or in or on watercraft, that person is entitled to a refund of six cents a gallon.

(b) If a person purchases fuel upon which the motor fuel tax has been paid and uses the fuel for tax-exempt purposes as described in 15 AAC 40.020(b), that person is entitled to a refund of the full amount of tax paid if that person has not signed a certificate of use stating that the fuel that was purchased was not intended for use as motor fuel.

(c) If a person purchases motor fuel upon which the amount of tax paid exceeds the tax imposed by AS 43.40.010 for the manner in

which the motor fuel is used, that person is entitled to a refund equal to the amount of tax paid, less the amount of tax prescribed by AS 43.40.010.

(d) If a person purchases motor fuel upon which marine fuel tax or aviation fuel tax has been paid and uses the fuel in a land-based internal combustion engine that is not used in or in conjunction with a licensed vehicle, that person is entitled to a refund equal to the amount of tax paid, less the amount of two cents per gallon. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080	AS 43.40.050
AS 43.40.010	AS 43.40.100
AS 43.40.030	

15 AAC 40.210. REQUIREMENTS FOR FILING CLAIMS FOR REFUND OF MOTOR FUEL TAX. (a) A claim for refund of motor fuel tax under 15 AAC 40.200 must include the following information for the period covered by the claim:

(1) a schedule indicating by type of fuel (e.g. gasoline, diesel, etc.), the following:

(A) total gallons of motor fuel purchased during the period;

(B) total gallons of motor fuel used during the period;

(C) total gallons of fuel used for tax-exempt purposes, as described in 15 AAC 40.020(b); and

(D) total gallons of motor fuel used that are eligible for refund, as described in 15 AAC 40.200;

(2) if fuel was used for tax-exempt purposes, a clear, complete explanation of that use, including the category of exempt use under 15 AAC 40.020(b); and

(3) a schedule indicating by type of equipment, the gallons used that are eligible for refund.

(b) The first claim filed during each calendar year must include a list of the person's equipment, including license and serial numbers.

(c) Original invoices must be submitted to substantiate any claim for refund. Corrected invoices will be accepted only if the original incorrect invoice is also submitted. (Eff. 7/19/82, Reg. 83)

Authority: AS 43.05.080 AS 43.40.050
AS 43.40.030 AS 43.40.060

15 AAC 40.220. RECOVERY OF ERRONEOUS REFUNDS. The department will, in its discretion, recover any refund or portion of any refund which is erroneously made and any credit or portion of any credit which is erroneously allowed. (Eff. 7/19/82, Reg. 83)

Authority: AS 43.05.080
AS 43.10.032
AS 43.40.080

15 AAC 40.230. RECORDS. (a) A person filing a claim for a motor fuel tax refund must keep a complete record in gallons showing

(1) all motor fuel inventories on hand at the beginning and closing of the claim period;

(2) all motor fuel purchased or received, showing the name of the seller and the date of each purchase;

(3) all motor fuel transferred into the fuel supply tanks of an internal combustion engine that is used in or in conjunction with a motor vehicle licensed to be operated on public ways;

(4) all motor fuel transferred into the fuel supply tanks of an internal combustion engine that is not used in or in conjunction with a motor vehicle licensed to be operated on public ways, showing the purpose for which it is used; and

(5) all motor fuel used for exempt purposes under 15 AAC 40.020(b) with documentation of the specific purpose for which the fuel is used.

(b) A person claiming a motor fuel tax refund must preserve for three years from the date of filing a claim, books and records pertaining to all acquisitions and uses of motor fuel.

(c) Failure to maintain records required by (a) and (b) of this section for a period necessary to substantiate any claim filed for that period may

be cause for denial of a refund or for recovery of a refund paid on a claim. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 34)

Authority: AS 43.05.080 AS 43.40.080
AS 43.40.050 AS 43.40.085

ARTICLE 4.
(Reserved)

ARTICLE 5.
(Reserved)

ARTICLE 6.
(Reserved)

ARTICLE 7.
(Reserved)

ARTICLE 8.
(Reserved)

ARTICLE 9.
GENERAL PROVISIONS

Section

900. Definitions.

15 AAC 40.900. DEFINITIONS. In this chapter

(1) "charitable institution" means a non-profit association, corporation, society or other entity which is organized or incorporated in the state for the relief of poverty or distress;

(2) "dealer" means a person who sells or otherwise transfers in this state motor fuel upon which the taxes imposed by AS 43.40 have not been paid;

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

(4) "fuel reseller" means a person who sells or otherwise transfers in this state fuel upon which the taxes imposed by AS 43.40 have been paid;

(5) "shrinkage" means loss of volume as a result of temperature changes;

(6) "user" means a person consuming or using motor fuel who purchases the fuel out of state or ships it into the state for personal use in

MEMORANDUM

State of Alaska

TO: James R. Ayres
Director of Legislative Relations
Office of the Governor


DATE: March 17, 1986

FILE NO:

TELEPHONE NO: 465-3500

FROM: Harold M. Brown
Attorney General

SUBJECT: SB 387 (Marine
fuel use tax)


By: Richard D. Monkman
Assistant Attorney General

At your request, we have reviewed AS 43.40.010(b) in the context of SB 387. The statute provides:

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

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

AS 43.40.010 (emphasis supplied).

This tax is a "use" tax, meaning that it is imposed upon the use or consumption of fuel. This is a well-established type of tax, used in many jurisdictions. It is different from a "sales" or "transaction" tax, in that the purchase of the fuel in Alaska does not trigger the tax. */ A barge fueling up in Seattle for a trip to Anchorage, for example, would be liable to pay the tax for fuel used or consumed while in Alaska territorial waters, even though the fuel was bought in Washington state.

As we understand the situation, the Department of Revenue has been systematically reviewing in-state motor fuel dealers and out-of-state fuel suppliers to determine if this tax has been in compliance with the law. As part of their review,

*/ A "sales" tax on motor fuel used by watercraft is provided in AS 43.40.010(a). This tax focuses on sales and transfers of fuel within Alaska. The combination of these two sections provides a comprehensive, coherent taxing system for marine motor fuels. Alaska's statute is similar to use taxes imposed by California, Kansas, New Mexico, Oklahoma, Utah, Washington and Wyoming.

James R. Ayres, Director
Legislative Relations
Office of the Governor
Re: SB 387

March 17, 1986
Page 2

it was discovered that the interstate freight transportation industry (e.g., TOTE) was not paying the tax. Hence, the department has been notifying delinquent taxpayers and assessing the tax.

This is not a change in policy. Instead it is an effective application of the Department of Revenue's long-standing policy of collecting taxes in a full and fair manner. The taxes being assessed against these interstate carriers are squarely within the statute. The taxpayer's main complaint seems to be that they have finally been caught up with, and are now being required to pay the taxes due.

The Department of Revenue estimates that SB 387 will reduce tax receipts by an estimated \$3,000,000. In these times of fiscal crisis, it does not appear to be wise policy to reduce the State of Alaska tax base by such a large amount.

HMB:RDM:cck

cc: The Hon. Mary Nordale
Commissioner
Department of Revenue

TESTIMONY OF

MICHAEL G. RANTA
PACIFIC DIVISION TAX MANAGER
CROWLEY MARITIME CORPORATION

BEFORE
ALASKA HOUSE OF REPRESENTATIVES
STATE AFFAIRS COMMITTEE

ON

SENATE BILL 387

TESTIMONY OF
MICHAEL G. RANTA
IN SUPPORT OF SENATE BILL 387

Madam Chairwoman, Mr. Chairman, Members of The Committee. I am testifying today on behalf of Crowley Maritime Corporation, and other ocean carriers shipping between the States of Alaska and Washington. We wish to express our support for Senate Bill 387 which was introduced to clarify the original intent of the Alaska Motor Fuel Act and to eliminate any ambiguity in that Act in relation to fuel brought into the state in the fuel storage tanks of watercraft.

The Motor Fuel Tax Act was passed as law by the territorial legislature in 1946. We believe that the legislature intended to tax fuel sold in Alaska and bulk fuel shipped as cargo into Alaska for personal use in the state. The legislature intended to prevent the shipping of untaxed bulk fuel into Alaska. The legislature did not intend to tax fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating the watercraft.

Alaska followed this legislative intent for 39 years until June of 1985. No tax was asserted or collected on fuel brought into the state in fuel storage tanks on a watercraft for the purpose of operating that watercraft. In June of 1985, the Department of Revenue arbitrarily determined to redefine the legislative intent and to collect a tax on this bunker fuel. We strongly disagree with this radical new interpretation and believe that, in attempting to reinterpret the law and impose a new tax, the Department violated the intent of the legislature as expressed in both the Motor Fuel Tax Act and the Alaska Administrative Procedure Act.

The Department has asserted this tax as a user tax. The concept of a user tax is to pay for a service. The State of Alaska itself provides virtually no service for our industry. Aids to navigation, dredging, safety at sea, inspections, and vessel safety are covered by the federal government. Carrier's port and dockside facilities are paid for by dockage fees and rental payments to the ports. In addition, Crowley Maritime pays substantial taxes to the State of Alaska, including income, property and payroll taxes, as I am assuming, do other carriers.

A tax on bunker fuel consumed in Alaska waters encourages carriers to avoid travel within the three mile limit. Ports such as Anchorage, which lie farther inland, would be discriminated against as would the carriers serving these ports.

I would also like to point out that administrative and economic burdens placed upon this taxpayer, under the current ruling, are excessive in relationship to the amount of tax collected.

Tracking and calculating time spent and fuel consumed in Alaska waters on a regular scheduled route such as our year-round Alaska Hydro-Train operation which carries freight into Whittier from Seattle once a week is a relative easy task.

However, Crowley Maritime also has freight operations to westward Alaska, which do not have regular routes and/or ports of call. These operation, which are considered moderately hazardous, have voyages in the spring and summer months which have a duration of anywhere from 40 to 90 days, calling on various ports many of which are shallow and cannot facilitate large tugs and barges.

When serving these shallow water ports, freight must be lightered to shore via shallow draft tugs and barges, from the main freight barges anchored or jogging anywhere from 1 to 12 miles offshore, depending on location, tide and weather.

Trying to track each entry and exit from the Alaska 3 mile limit places additional navigation calculations on vessel Captains when their main objective is to safely delivery their cargos and safeguard the vessel and crew.

We also deliver specialized modules, equipment and general cargo to oil companies at Prudhoe Bay, Alaska. This operation is extremely hazardous, due to the ice flows encountered in navigating the waters of the Arctic Ocean. Requiring Captains to calculate whether or not they have entered or exited the 3 mile limit at this critical time of the voyage would not be practical.

Due to the remote locations and length of voyages to western Alaska and Prudhoe Bay, it is very difficult to get tug logs to the Seattle office on a regular basis to permit analysis for filing of timely and accurate motor fuel tax returns.

Motor fuel tax returns are due to the Department of Revenue by the end of the month following consumption. Taxpayers are allowed a \$100 deduction for prompt filing of the returns. However, a penalty of 5% per month and interest of 12% per annum on the unpaid taxes are charged if returns are filed late.

Given these facts, this taxpayer would be forced to file a return with estimated consumption figures. This would put us into a penalty situation of one sort or another and also require us to file amended returns and possible requests for refund, i.e., if the consumption was under estimated we would be required to file an amended return, pay the additional tax plus penalties and interest. On the other hand, if the consumption was over estimated, we would have to file an amended return and also file for a refund, for the amount of the overpayment.

The crux here is that although the state charges penalties and interests on late filings, there is no provision for paying interest to the taxpayer on any overpayments.

To accurately track, calculate and file the returns for this tax would force us to add a person to our staff at an estimated annual cost of approximately \$30,000.

Using as a base the return filed in October 1985 where we paid approximately \$12,900 in taxes, our annual tax liability would be estimated at \$150,000. To force the taxpayer to add an additional cost of \$30,000 for additional staff plus additional return filings, penalty and interest payments and loss of use of funds in the case of overpayments seems to be an extremely harsh burden for the taxpayer to bear.

Any increase in taxes will increase costs to the Alaska consumer. The past two years have been unprofitable for many carriers in our industry, and several operators have been forced from the business as a result. The next two years are also expected to be difficult. Any new taxes would worsen the condition of the industry and this ultimately increases costs to the Alaska consumer.

Our industry has filed appeals with the Department of Revenue contesting this new tax. Our attorneys have filed a legal brief documenting the impropriety of the Department's imposition of a new tax. Although we expect to ultimately prevail in this matter, this arduous and expensive process can be avoided by clarifying the Act through Senate Bill 387.

In Summary, Senate Bill 387 was introduced to clarify the original intent of the legislature for the Alaska Motor Fuel Tax Act, and to eliminate any ambiguity in that act in relation to fuel brought into the state in the fuel storage tanks of watercraft. This bill will relieve the industry and the Department of Revenue from an expensive appeal and litigation process resulting from the Department's radical new interpretation of the Act. Finally, this bill will remove a burden from water carriers and consumers in Alaska.

I wish to thank you for this opportunity to express the views of Crowley Maritime and of our industry. We encourage your support of Senate Bill 387 and will answer any questions you have at this time.

POSITION STATEMENT BY THE UNITED STATES FLAG CARRIERS
AND FOREIGN FLAG CARRIERS

The Department of Revenue of the State of Alaska by letter dated June 10, 1985 has advised numerous foreign and domestic shipping lines engaged in foreign and interstate commerce that they are subject to the Motor Fuel Tax (AS 43.40.010) of five cents per gallon. This would be cover all fuel consumed in propelling the vessels in Alaskan waters. The tax is imposed although the fuel is purchased out-of-state, does not come to rest in Alaska and may have been previously taxed when purchased out of state.

Alaska imposes a tax on transfer of motor fuel and on consumption of motor fuel by statutorily defined "users". "Users" is defined as follows:

AS 43.40010 (1983)

- (4) "user" means a person consuming or using motor fuel, who either
- (A) purchases the fuel out of the state and ships it into the state for personal use in the state
 - (B) manufactures the fuel in the state;
or
 - (C) purchases or receives fuel in the state that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010.

The Department construes the phrase "ships . . . into" the state as equivalent to "carried into" the state. Blacks Law Dictionary definition of the verb "to ship" is:

"to place goods on board a vessel for the purchaser or consignee, to be transported at his risk".

Since the common meaning of the verb "to ship" is to transport cargo, and no contrary definition is provided in the motor fuel tax statute, fuel taxable under AS 43.40.100 (4) (A) must be transported as cargo not as fuel tank fuel for use in propelling a vessel.

Under the Department's interpretation, the tax would apply on its face to fuel tank fuel of trucks and automobiles

entering the state. Enforcement of a tax on fuel tank fuel against marine shipping, but not against motor vehicle users, would be discriminatory. The enforcement problems inherent with the Department's position weighs heavily against its interpretation and is strong evidence of the legislative intent not to impose the tax on fuel tank fuel.

A number of court cases support the position that it is an unconstitutional burden on interstate and foreign commerce for a state to tax the mere consumption of fuel used in providing the motive power of vessels sailing in its waters.

Other states have expressly rejected the Department's position of imposing a tax on fuel purchased out of state by non-residents and consumed in propulsion of vessels, aircraft or motor vehicles, thereby eliminating the possibility of multiple taxation of the same event.

Washington's administrative code specifically excludes taxing any part of consumable goods, including bunker fuel which is used in Washington but was placed aboard outside the state.

California, by regulation, prevents the application of its use tax to fuel purchased for use and used in interstate or foreign commerce prior to its entry into California and thereafter used continuously in such commerce both within and without California and not exclusively in California.

Oregon does not tax bunker fuel purchased out of state and consumed while propelling a vessel in interstate or foreign commerce within the state.

Hawaii by statute prohibits taxing the use of goods imported into the state by the owner of a vessel engaged in interstate or foreign commerce and held for and used only as ships stores for the vessel. Bunker fuel is considered by the Hawaii Department of Taxation to be part of ships stores.

The Alaska Department of Revenue determined that fuel which is consumed in propelling a vessel in interstate or in foreign commerce is considered an import once it reaches Alaskan waters. The United States Supreme Court has clearly rejected such an interpretation in *Swain and Finch Company v. United States*.

The obvious purpose of the statute is to prevent an Alaska resident from purchasing non-taxed fuel outside of the state and then bringing in into Alaska and storing it for future use, thereby avoiding the Alaska Motor Fuel Tax. The purpose is not to tax fuel consumed which provides the motive power of a vehicle, vessel or aircraft which has

taken fuel on outside Alaska and thereafter enter Alaska as part of an interstate or foreign journey.

The tax cannot have been intended to apply to mere consumption of fuel in Alaska waters and must have been intended to apply to fuel both stored and consumed in Alaska.

The motor fuel tax, as interpreted by the Department, poses the enhanced risk of multiple taxation and discriminates against interstate commerce under the Equal Protection and Commerce Clause of the United States Constitution.

The tax would increase the operating costs of cruise ships and tug and barge operators which would be passed on to consumers, resulting in higher costs for everything that Alaskans buy. Many carriers cannot absorb any additional costs and remain viable competitors and would therefore be forced to consider curtailing service or even discontinuing service.

The tax discriminates against the Port of Anchorage as the tax applies to fuel consumed in Alaskan waters. Because the approach to Anchorage through Cook Inlet passes through more Alaskan waters than, for example, the approach to Seward, the tax consequence is greater for a vessel to call at Anchorage than to call at another port.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

ELEVENTH FLOOR
STATE OFFICE BUILDING
POUCH SA
JUNEAU, ALASKA 99811

Date _____

Watercraft Motor Fuel User

Gentlemen:

Based on information available to the Department of Revenue, we believe that you are using motor fuel in and/or on watercraft within Alaskan waters.

However, our records indicate that you have not filed motor fuel tax returns or paid motor fuel tax to the State of Alaska for the gallons consumed by your vessels. The tax on motor fuel used in and on watercraft of all descriptions is five (5) cents per gallon.

All motor fuel sold, transferred in the state or consumed by a user in the State is subject to the motor fuel tax under AS 43.40.010.

Alaska Statute:

AS 43.40.010: Tax on transfers or consumption of motor fuel and expenditure of proceeds.

(a) There is levied a tax of eight cents a gallon on all motor fuel sold or otherwise transferred within the state, except that

- (1) the tax on aviation gasoline is four cents a gallon,
- (2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and
- (3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that.

- (1) the tax on aviation gasoline consumed is four cents a gallon,
- (2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and
- (3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(c) Every dealer who sells or otherwise transfers motor fuel in the state shall collect the tax at the time of sale, and remit the total tax collected during each calendar month of each year to the Department of Revenue by the last day of each succeeding month. Every user shall likewise remit the tax accrued on motor fuel actually used by him during each month. If the monthly return is timely filed, one percent of the total monthly tax due, limited to a maximum of \$100, can be deducted and retained to cover the expense of accounting and filing the monthly tax return. At the time the remittance is made, each dealer or user shall submit a statement to the Department of Revenue showing all fuel which he has distributed or used during the month. (Emphasis added)

This tax is a user tax. The fuel purchased out of state and used or consumed within Alaska waters on watercraft is subject to the Alaska Motor Fuel Tax. Every user is required to remit the tax accrued on motor fuel imported into the State and used during each month. Based on our information, we believe you are required to file a monthly tax return with the Department of Revenue.

I have enclosed Alaska Statutes and regulations governing motor fuel taxes. Also enclosed are motor fuel tax returns (04-541) with instructions on how to prepare these returns. We request that you file these returns for the periods that you have been using motor fuel within Alaska waters. If you need additional returns or information please contact this office.

If you feel that you are not liable for these taxes or have any questions, please contact me within thirty (30) days from the date of this letter. Failure to respond to this request within thirty (30) days from the date of this letter may result in taxes, applicable penalties and interest being assessed accordingly, based on information available.

Direct all correspondence to this office at the above address.

Sincerely,

John Hansen
Revenue Auditor IV
Audit Division
(907) 465-2343

JH:gf

Enclosures

04-544

**Claim for Refund of Motor Fuel Tax
(By a Final User)**

This form is to be completed by a person who consumes fuel upon which the tax has been paid and uses it in a manner other than as motor fuel, or who has paid the tax of eight cents per gallon and consumes the fuel in or on watercraft. This claim can also be filed if a person purchases fuel upon which the tax has been paid and uses it in a land based internal combustion engine that is not used in or in conjunction with a licensed motor vehicle. In that case the person is eligible for a refund equal to the amount of tax paid less the amount of two cents per gallon.

04-545

**Claim for Refund of Motor Fuel Tax
— Invoice Listing Sheet**

This form is to be completed and submitted with the Claim for Refund of Motor Fuel Tax (by a Final User).

04-533

**Affidavit to Certify Copy of
Original Invoice**

Original invoices must be attached to the Claim for Refund of Motor Fuel Tax — Invoice Listing Sheet, form 04-545. The Affidavit is to be completed and notarized when submitting a copy instead of the original invoice.

**Alaska
Motor Fuel
Excise Tax**

FORMS GUIDE



**State of Alaska
Department of Revenue
Pouch SA
Juneau, Alaska 99811**

Need Forms?

All motor fuel excise tax forms listed in this pamphlet are available for pickup at the public service counters in the following Department of Revenue offices:

- Anchorage
201 E. Ninth Avenue
- Fairbanks
675 Seventh Avenue, Section G
- Juneau
1111 W. Eighth Street

If you want forms mailed to you, or need further information about the motor fuel excise tax, please write or call:

Department of Revenue
Audit Division Excise Tax
Pouch SA
Juneau, Alaska 99811
(907) 465-2322

Motor Fuel Tax Forms

Following is a listing of the numbers, titles and descriptions of all motor fuel tax forms to be used by the taxpayer and/or the motor fuel user in compliance with AS 43.40 and 15 AAC 40.010-.230.

04-541

Motor Fuel Tax Return

This form is to be completed by all persons selling fuel upon which the motor fuel tax has not been previously collected. The return is due by the last day of the month following the month in which the motor fuel was sold or transferred.

04-543

Supporting Schedule of Exempt Sales

This form is to be attached to and made a part of the Motor Fuel Tax Return if any non-taxable or use-conversion sales have been made during the reporting month. A supporting schedule is not required for sales of fuel for heating purposes. However, a list of all heating fuel accounts, except residential accounts, must accompany the last Motor Fuel Tax Return for each calendar year.

04-535

Claim for Refund of Motor Fuel Tax by a Reseller

This form is to be filed by any person who paid the tax on fuel they purchased, and then resold the fuel, tax free, to an exempt organization or for a use other than motor fuel. This claim is also to be filed for any use-conversion sales.

04-536

Claim for Refund by a Reseller Supporting Schedule

This form is to be attached to and made a part of the Claim for Refund of Motor Fuel Tax by a Reseller to substantiate the sales of fuel which are eligible for a refund. A supporting schedule is not required for sales of fuel for heating purposes. However, a list of all heating fuel accounts except residential accounts must be submitted with the Claim for Refund of Motor Fuel Tax by a Reseller form 04-535.

04-537

Election to Receive Credit or Refund from the Fuel Supplier

This form is to be completed by any reseller of fuel who wishes to receive the tax refund or credit directly from their fuel supplier for fuel purchases upon

which the reseller has paid the tax prior to selling the fuel, tax free, to an exempt organization or for use other than motor fuel. This also includes use-conversion sales. The election is subject to the fuel supplier's approval.

04-538

Certificate of Use

This certificate is an annual form which must be completed by the purchaser at the time of the first fuel purchase of the calendar year upon which the motor fuel tax is not paid. However, a certificate is not required for sales of fuel to a consumer for heating single or multiple unit private dwellings including mobile homes but not including watercraft, or for sales of fuel which is at least ten percent alcohol by volume. Both purchaser and seller must retain a copy of the Certificate of Use for three years for possible audit by the Alaska Department of Revenue.

04-407

Qualified Motor Fuel Dealer License Application

This form may be completed by a person who refines, imports, manufactures, produces or compounds motor fuel, or a person who in the regular course of business sells at least twenty percent of his or her fuel for resale or for residential heating purposes or for a combination of these purposes. A person who is issued a Qualified Dealer's License can receive all of their fuel tax free from their supplier.

04-408

Affidavit of Motor Fuel Excise Taxes Due

This form must accompany the Qualified Motor Fuel Dealer License Application.

ALASKA DEPARTMENT OF REVENUE

AUDIT DIVISION

ALASKA STATUTES AND REGULATIONS

GOVERNING

MOTOR FUEL TAX



November 1984

(b) Bulk sales of fuel to a person who uses a common storage tank servicing both taxable and nontaxable uses, except bulk sales of jet fuel to a person who flies directly from the state to a foreign country, are subject to the motor fuel tax under AS 43.40.010 - 43.40.100, but the portion actually used for nontaxable purposes is eligible for a tax refund upon application to the department. A dealer who makes bulk sales of motor fuel shall collect and remit the tax in accordance with this chapter, except that if the sales is a sale of jet fuel to a person who flies directly from the state to a foreign country, the tax may not be collected. However, if a portion of that jet fuel is used on a foreign flight which includes a stop or stops in this state or in another state, the user shall file a return as required by 15 AAC 40.010 and remit the amount of tax due for the jet fuel actually consumed over Alaska.

ARTICLE 8.

(Reserved)

ARTICLE 9

GENERAL PROVISIONS

Section

900. Definition

15 AAC 40.900. Definitions. In this chapter

(1) "charitable institution" means an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(2) "dealer" means a person who sells or otherwise transfers in this state motor fuel upon which the taxes imposed by AS 43.40 have not been paid;

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

(4) "fuel reseller" means a person who sells or otherwise transfers in this state fuel upon which the taxes imposed by AS 43.40 have been paid;

(5) "shrinkage" means loss of volume as a result of temperature changes;

(6) "user" means a person consuming or using motor fuel who purchases the fuel out of state or ships it into the state for personal use in the state, who manufactures the fuel in the state, or who purchases or receives in the state fuel that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010;

(7) "timely filed" means received by the department or postmarked on or before the last day of the month following the month motor fuel is sold, transferred, or used;

(8) "watercraft" means a ship, boat, vessel, or other structure that is capable of being moved in or on water either under its own propulsion or propelled by another, craft, including a floating fish-processor, a transportation barge, a drilling ship, and a semi-submersible drilling rig;

(9) "commercial buildings and facilities" means all buildings and facilities other than single and multiple unit private dwellings and mobile homes but does not include watercraft;

(10) "person" means an individual, firm, partnership, joint venture, government or military agency, association, corporation, estate trust, business trust, receiver, or any group or combination acting as a unit. (Eff. 4/8/82, Reg. 82; am 8/1/82, Reg. 83; am 7/19/82, Reg. 83; am 11/14/82, Reg. 84; am 8/12/84, Reg. 91)

AS 43.05.080 AS 43.40.060

AS 43.40.010 AS 43.40.080

AS 43.40.030 AS 43.40.085

AS 43.40.035 AS 43.40.100

AS 43.40.050 AS 43.40.240

Chapter 40. Motor Fuel Tax.

Section

10. Tax on transfers or consumption of motor fuel and expenditure of proceeds
30. Refund for nonhighway use
35. Other refunds and credits
50. Refund claim by affidavit
60. Separate invoices

Section

70. Refund warrants
80. Examination of books and records
85. Preservation of books and records
100. Definitions

Collateral references. — Am. Jur. 2d, State and Local Taxation, §§ 616 — 634; 53 Am. Jur. 2d, Licenses, §§ 30, 46 — 58.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignee's account without previous sale or order for purchase, 4 ALR2d 244.

Loading or unloading interstate freight in performance of obligation resting upon one other than interstate carrier as interstate com-

merce as regards local taxation, 10 ALR2d 651.

State taxation of motor carriers as affected by commerce clause, 17 ALR2d 421.

Power of legislature to remit, release, or compromise tax claim, 28 ALR2d 1425.

Financial hardship or inability to pay taxes as rendering inapplicable statute denying remedy by injunction against assessment or collection of tax, 65, ALR2d 550.

Sec. 43.40.010. Tax on transfers or consumption of motor fuel and expenditure of proceeds. (a) There is levied a tax of eight cents a gallon on all motor fuel sold or otherwise transferred within the state except that

(1) the tax on aviation gasoline is four cents a gallon,

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

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

(1) the tax on aviation gasoline consumed is four cents a gallon,

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

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(c) Every dealer who sells or otherwise transfers motor fuel in the state shall collect the tax at the time of sale, and remit the total tax collected during each calendar month of each year to the department by the last day of each succeeding month. Every user shall likewise remit the tax accrued on motor fuel actually used by the user during each month. If the monthly tax return is timely filed, one percent of the total monthly tax due, limited to a maximum of \$100, may be deducted and retained to cover the expense of accounting and filing the monthly tax return. At the time the remittance is made, each dealer or user shall submit a statement to the department showing all fuel which the dealer or user has distributed or used during the month.

(d) [Repealed, § 3 ch 166 SLA 1976.]

(e) Sixty per cent of the proceeds of the revenue from

the taxes on aviation fuel, excluding the amount determined to have been spent by the state in its collection, shall be refunded to a municipality owning and operating or leasing and operating an airport in the proportion that the revenue was collected at the municipal airport. All other proceeds of the taxes on aviation fuel shall be paid into a special aviation fuel tax account in the state general fund. The legislature may appropriate funds from this account for aviation facilities.

(f) The proceeds from the revenue from the tax on motor fuel used in boats and watercraft of all descriptions shall be deposited in a special watercraft fuel tax account in the general fund. The legislature may appropriate from this account for water and harbor facilities.

(g) The proceeds of the revenue from the tax on all motor fuels, except as provided in (e), (f) and (j) of this section, shall be deposited in a special highway fuel tax account in the state general fund. The legislature may appropriate funds from it for expenditure by the Department of Transportation and Public Facilities directly or as matched with available federal-aid highway money for maintenance of highways, construction of highway projects and ferries included in the program provided for in AS 19.10.150, including approaches, appurtenances and related facilities and acquisition of rights-of-way or easements, and other highway costs including surveys, administration, and related matters. All departments of the state government authorized to spend funds collected from taxes imposed by this chapter shall perform when feasible, all construction or reconstruction projects by contract after the projects have been advertised for competitive bids, except that, when feasible, arrangements shall be made with political subdivisions to carry out the construction or reconstruction projects. If it is not feasible for the work to be performed by state engineering forces, the commissioner of transportation and public facilities may contract on a professional basis with private engineering firms for road design, bridge design, and services in connection with surveys. If more than one private engineering firm is available for the work the contracts shall be entered into on a negotiated basis.

(h) All motor fuel tax receipts shall be paid into the general fund and distributed to the proper accounts in the general fund. Valid motor fuel tax refund claims shall be paid from the highway fuel tax account in the general fund.

(i) Within 30 days after the legislature convenes the Department of Transportation and Public Facilities shall submit an annual budget covering anticipated revenues and their expenditure, for the consideration and approval by the legislature. The budget shall cover all money collected or anticipated to be collected under this chapter for the year following the adjournment of each regular session of the legislature.

(j) The proceeds from the tax on motor fuel used in snow vehicles and, unless a tax refund is applied for under AS 43.40.040, other internal combustion engines not used in or in conjunction with a motor vehicle licensed to

15 AAC 40.220. Recovery of Erroneous Refunds. The department will, in its discretion, recover any refund or portion of any refund which is erroneously made and any credit or portion of any credit which is erroneously allowed. (Eff. 7/19/82, Reg. 83).

Authority: AS 43.05.080
AS 43.10.032
AS 43.40.080

15 AAC 40.230. Records. (a) A person filing a claim for a motor fuel tax refund must keep a complete record in gallons showing

(1) all motor fuel inventories on hand at the beginning and closing of the claim period;

(2) all motor fuel purchased or received, showing the name of the seller and the date of each purchase,

(3) all motor fuel transferred into the fuel supply tanks of an internal combustion engine that is used in or in conjunction with a motor vehicle licensed to be operated on public ways;

(4) all motor fuel transferred into the fuel supply tanks of an internal combustion engine that is not used in or in conjunction with a motor vehicle licensed to be operated on public ways, showing the purpose for which it is used; and

(5) all motor fuel used for exempt purposes under 15 AAC 40.020(b) with documentation of the specific purpose for which the fuel is used.

(b) A person claiming a motor fuel tax refund must preserve for three years from the date of filing a claim, books and records pertaining to all acquisitions and uses of motor fuel.

(c) Failure to maintain records required by (a) and (b) of this section for a period necessary to substantiate any claim filed for that period may be cause for denial of a refund or for recovery of a refund paid on a claim. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080
AS 43.40.050
AS 43.40.080
AS 43.40.085

ARTICLE 4.

(Reserved)

ARTICLE 5.

(Reserved)

ARTICLE 6.

(Reserved)

ARTICLE 7.

(Reserved)

43.40.010 for the manner in which the motor fuel is used, that person is entitled to a refund equal to the amount of tax paid, less the amount of tax prescribed by AS 43.40.010.

(d) If a person purchases motor fuel upon which marine fuel tax or aviation fuel tax has been paid and uses the fuel in a land-based internal combustion engine that is not used in or in conjunction with a licensed vehicle, that person is entitled to a refund equal to the amount of tax paid, less the amount of two cents per gallon. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080 AS 43.40.050
AS 43.40.010 AS 43.40.100
AS 43.40.030

15 AAC 40.210. Requirements for Filing Claims for Refund of Motor Fuel Tax. (a) A claim for refund of motor fuel tax under 15 AAC 40.200 must include the following information for the period covered by the claim:

(1) a schedule indicating by type of fuel (e.g. gasoline, diesel, etc.), the following:

(A) total gallons of motor fuel purchased during the period;

(B) total gallons of motor fuel used during the period;

(C) total gallons of fuel used for tax exempt purposes, as described in 15 AAC 40.020(b); and

(D) total gallons of motor fuel used that are eligible for refund, as described in 15 AAC 40.200;

(2) if fuel was used for tax-exempt purposes, a clear complete explanation of that use, including the category of exempt use under 15 AAC 40.020(b); and

(3) a schedule indicating by type of equipment, the gallons used that are eligible for refund.

(b) The first claim filed during each calendar year must include a list of the final user's equipment, including license and serial numbers.

(c) The original invoices issued to the final user at the time the motor fuel was purchased must be submitted to substantiate any claim for refund. Corrected invoices will be accepted only if the original incorrect invoice is also submitted. The department will, in its discretion, accept copies of original invoices if the refund applicant

(1) explains in writing why original invoices are not being submitted;

(2) obtains a statement from the vendor indicating that the copies are true copies showing invoice numbers, dates and amounts; and

(3) signs an affidavit on a form prescribed by the department certifying that no other refund has or will be claimed on the same motor fuel. (Eff. 7/19/82, Reg. 83; am 8/12/84, Reg. 91)

Authority: AS 43.05.080
AS 43.40.030
AS 43.40.050
As 43.40.060

be operated on public ways shall be deposited in a special nonpublic highway use account in the general fund. The legislature may appropriate from this account to the Department of Transportation and Public Facilities for trail staking and shelter construction and maintenance.

(k) The tax on the transfer or consumption of motor fuel provided for in this section does not apply to liquefied petroleum gas.

(l) If a dealer has a reasonable belief at the time of sale or transfer that fuel that is sold or transferred is not to be used as motor fuel, the dealer need not collect the motor fuel tax. If the tax is not collected, the dealer shall obtain a certificate of use from the buyer or transferee stating that the fuel that has been or will be purchased or received is not intended for use as motor fuel. The department may not collect the motor fuel tax from a dealer for fuel for which a certificate of use has been properly obtained under this subsection. A certificate of use is not required for fuel for any domestic purpose in a single or multiple unit private dwelling, including motor homes, or for fuel which is at least 10 percent alcohol by volume. An annual certificate of use is required for all other exemptions listed under AS 43.40.100(2), except certificate of use needs under AS 43.40.100(2)(K) will be determined by the department. The dealer shall retain a copy of each certificate of use obtained under this subsection for examination or audit on request by the department. The form of a certificate of use may be prescribed by regulation adopted by the department. (§ 48-5-2 ACIA 1949; am § 1 ch 80 SLA 1951; am § 47 SLA 1955; am §§ 1, 2 ch 27 SLA 1957; am § 1 ch 134 SLA 1957; am § 1 art VI title II ch 152 SLA 1957; am § 2 art V title III ch 152 SLA 1957; am § 2 ch 124 SLA 1959; am §§ 1, 2 ch 20 SLA 1960; am § 1 ch 150 SLA 1960; am § 1 ch 110 SLA 1961; am § 1 ch 136 SLA 1961; am §§ 1 — 3 ch 131 SLA 1962; am § 1 ch 130 SLA 1968; am § 10 ch 143 SLA 1968; am §§ 1, 2 ch 216 SLA 1968; am §§ 1 — 3 ch 158 SLA 1970; am § 3 ch 58 SLA 1971; am §§ 1, 2 ch 124 SLA 1971; am §§ 2, 3, ch 125 SLA 1971; am §§ 1 — 3 ch 153 SLA 1972; am § 3 ch 166 SLA 1976; am §§ 1, 2 ch 116 SLA 1977; am § 4 ch 82 SLA 1982; am §§ 1, 2 ch 87 SLA 1983)

Cross references. — For civil penalty imposed for failure to file a return or report, or pay the full amount of a tax, or a portion or a deficiency of the tax, see AS 43.05.220.

Effect of amendments. — The 1982 amendment added subsection (l).

The 1983 amendment, in subsection (c), added the present third sentence and deleted "motor" preceding "fuel" in the last sentence, and in subsection (l), added the present fourth and fifth sentences.

OPINIONS OF ATTORNEY GENERAL

The purpose of the dedication of the taxes on motor fuels contained in subsection (g) of this section is public highways. 1959 Op. Att'y Gen., No. 9.

A proposed alteration going to the geographical area of expenditure rather than to the special purpose of a dedication, does not contravene the constitution. 1959 Op. Att'y Gen., No. 9.

The Civil Air Patrol is exempt from taxation under the Alaska Motor Fuel Oil Tax Act because it is an instrumentality of the federal government, but volunteer members of Civil Air Patrol are not exempt. 1961 Op. Att'y Gen., No. 26.

Sec. 43.40.020. Penalty for violation. *[Repealed, § 46 ch 113 SLA 1980. For criminal penalties, see AS 43.05.290.]*

Sec. 43.40.030. Refund for nonhighway use. (a) Except as specified in AS 43.40.010(j), a person who uses motor fuel to operate an internal combustion engine is entitled to a refund of six cents a gallon if

- (1) the tax on the motor fuel has been paid;
- (2) the motor fuel is not aviation fuel, or motor fuel used in or on watercraft; and
- (3) the internal combustion engine is not used in or in conjunction with a motor vehicle licensed to be operated on public ways.

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

(c) The department shall establish the necessary regulations and prescribe the appropriate forms to prove that the motor fuel is taken to and used in foreign countries.

(d) If a person obtains motor fuel on which the tax levied by this chapter has been paid and the motor fuel is exempt from the tax, the person is entitled to a refund of the tax paid. (§ 2 ch 47 SLA 1955; am § 3 ch 27 SLA 1957; am § 2 ch 136 SLA 1961; am § 4 ch 158 SLA 1970; am § 3 ch 124 SLA 1971; am § 4 ch 125 SLA 1971; am § 4 ch 116 SLA 1977; am §§ 35, 36 ch 113 SLA 1980; am § 5 ch 82 SLA 1982)

Effect of amendments. — The 1980 amendment substituted a reference to this chapter in subsection (b), and added subsection (d).

The 1982 amendment substituted "the tax has been" for "duty is" in subsection (b).

Sec. 43.40.035. Other refunds and credits. (a) A person who resells fuel on which the tax under AS 43.40.010(a) or (b) was previously paid is entitled to a credit or refund of the tax if (1) the resold fuel is not motor fuel and the requirements of AS 43.40.010(l) have been fulfilled; or (2) the amount of tax previously paid exceeds the tax due on the resale. The amount of the credit or refund under this section is equal to the amount of tax previously paid on the resold fuel less the amount of tax prescribed by AS 43.40.010(a) or (b).

(b) A reseller may elect, with the express written consent of the supplier of the reseller, to receive the credit or refund under this section directly from the supplier rather than by filing a claim for the credit or refund with

signed in quadruplicate by the fuel reseller and by the supplier. The fuel reseller and the supplier must each file one copy of the election, with original signatures, with the department. The fuel reseller and the supplier must each retain a copy of the election, with original signatures, for audit review by the department. If an election is made under this section, it may not be revoked without the express written consent of the supplier.

(d) A claim for refund or credit must be filed within one year after the date of the sale as shown on the invoice issued by the claimant. Failure to file within the one-year period waives the right to a refund or credit. The claim must include the name, address, and occupation of the applicant, the nature of the business of the applicant, and a description sufficient to identify the basis for the refund or credit. A claim for refund must be supported by copies of the original invoices issued to the claimant and copies of certificates of use obtained under 15 AAC 40.030. A claimant qualifying as a charitable institution under 15 AAC 40.900(1) must submit with its initial claim for refund a copy of its Internal Revenue Service Determination Letter. A claimant that has had its tax-exempt status denied by the Internal Revenue Service is not eligible for a motor fuel tax refund as a charitable institution. (Eff. 4/8/82, Reg. 82; am 8/1/82, Reg. 83; am 7/19/82, Reg. 83; am 11/14/82, Reg. 84; am 8/12/84, Reg. 91)

AS 43.05.080 AS 43.40.035
AS 43.40.010 AS 43.40.050
AS 43.40.030 AS 43.40.060

15 AAC 40.110. Additional Tax Due for Sales of Diesel Fuel Not Used for Heating Purposes. Repealed 11/14/82.

ARTICLE 3. TAX REFUNDS AND CREDITS FOR FINAL USER

Section	Section
200. Refunds on certain uses of motor fuel	220. Recovery of erroneous refunds
210. Requirements for filing claims for refund of motor fuel tax	230. Records

15 AAC 40.200. Refunds on Certain Uses of Motor Fuel. (a) If a person uses motor fuel in an internal combustion engine and the motor fuel tax of eight cents a gallon has been paid but that fuel is not used in, or in conjunction with, a licensed motor vehicle, as aviation fuel, or in or on watercraft, that person is entitled to a refund of six cents a gallon.

(b) If a person purchases fuel upon which the motor fuel tax has been paid and uses the fuel for tax-exempt purposes as described in 15 AAC 40.020(b), that person is entitled to a refund of the full amount of tax paid if that person has not signed a certificate of use stating that the fuel that was purchased was not intended for use as motor fuel.

(c) If a person purchases motor fuel upon which the amount of tax paid exceeds the tax imposed by AS

(4) all motor fuel sold, transferred or used during each month, the date of sale, transfer, or use, and the names of all purchasers and transferees;

(5) all nontaxable fuel sales or transfers made during each month; and

(6) all motor fuel inventories on hand at the end of each month.

(b) Each dealer, fuel reseller and user must keep a complete record showing all amounts received from a supplier or the department for exempt sales or transfers and for credits or refunds for taxes paid.

(c) Each dealer, fuel reseller and user must preserve for three years from the due date, or the date the return was filed, whichever is later, all books and records required under this section. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080 AS 43.40.050
AS 43.40.010 AS 43.40.085
AS 43.40.030 AS 43.40.100

ARTICLE 2. TAX REFUNDS AND CREDITS FOR FUEL RESELLERS

Section

100. Refunds and credits on certain sales or transfers of motor fuel

110. (Repealed)

15 AAC 40.100. Refunds and Credits on Certain Sales or Transfers of Motor Fuel. (a) If a fuel reseller makes a sale or transfer of motor fuel that is exempt under 15 AAC 40.020(b) and upon which motor fuel tax has been previously paid, the fuel reseller is entitled to a refund equal to the amount of tax previously paid on the resold fuel from the department. To receive a refund the fuel reseller must have on file a certificate of use from the buyer if a certificate of use is required by 15 AAC 40.030.

(b) If a fuel reseller makes a sale or transfer of motor fuel upon which the motor fuel tax has been previously paid and the tax paid exceeds the tax due on resale, the fuel reseller is entitled to a refund equal to the amount of tax previously paid less the amount of tax prescribed by AS 43.40.010.

(c) Instead of claiming a refund directly from the department, a fuel reseller who sells or transfers fuel that is exempt or is subject to a lesser tax on resale than that previously paid may elect with the express written consent of the supplier, to receive the refund or credit directly from the supplier. A claim for refund or credit must be supported by copies of the original invoices issued by the reseller and copies of certificates of use obtained under 15 AAC 40.030. When an election is made under this section, the supplier may claim the credit or refund from the department by adjusting the motor fuel tax return accordingly. To be effective, an election under this section must be submitted on a form prescribed by the department and

the department. When an election is properly made under this subsection, the supplier may claim the credit or refund from the department. To be effective an election under this subsection must be signed in quadruplicate by the reseller and by the supplier. The reseller and the supplier shall each file one copy of the election, with original signatures, with the department. The reseller and supplier shall each retain a copy of the election with original signatures for audit review by the department. If an election is made under this subsection, it may not be revoked without the express written consent of the supplier. (§ 6 ch 82 SLA 1982; am § 3 ch 87 SLA 1983)

Effect of amendments. — The 1983 amendment substituted "the requirements of AS 43.40.010(l) have been fulfilled" for "a certi-

ficate of use is acquired under AS 43.40.010(l)" in the first sentence of subsection (a).

Sec. 43.40.040. Applications and permits for refund. [Repealed, § 45 ch 113 SLA 1980. For current law, see AS 43.40.050(a).]

Sec. 43.40.050. Refund claim by affidavit. (a) A person who claims a refund under AS 43.40.030 shall present the claim for the refund to the commissioner of revenue by affidavit upon a form provided by the commissioner. The claim shall include the name, address and occupation of the applicant, the nature of the business of the applicant, and a description sufficient to identify the machinery or equipment in which the motor fuel for which the refund is claimed was used. The claim shall be accompanied by each invoice issued to the claimant at the time the motor fuel was purchased. The commissioner may require any additional information which the commissioner considers necessary for the administration of this subsection.

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

(c) A reseller who claims a refund or credit under AS 43.40.035 shall present the refund claim to the department or to the supplier of that reseller by affidavit on a form provided by the department. The claim shall include the name, address, and occupation of the applicant, the nature of the business of the applicant, and a description sufficient to identify the reason for the refund or credit. The claim shall be supported by documentation required by the department. (§ 4 ch 47 SLA 1955; am § 1 ch 139 SLA 1960; am § 37 ch 113 SLA 1980; am §§ 7 — 9 ch 82 SLA 1982)

Effect of amendments. — The 1980 amendment in subsection (a), changed a reference to this chapter at the beginning and at the end of the subsection, substituted the pre-

ferred second sentence for the former material, which read: "with the information the commissioner requires", and substituted "was" for "is" preceding "purchase" at the

end of the present third sentence.

The 1982 amendment substituted "under AS 43.40.030" for "as provided in AS 43.40.010 — 43.40.100" and "the claim for the refund" for "his claim" in the first sentence of subsection (a), substituted "the commissioner" for "he"

and "this subsection" for "AS 43.40.010 — 43.40.100" in the last sentence of subsection (a), inserted "under AS 43.40.030 or 43.40.035" in the first sentence of subsection (b), and added subsection (c).

Collateral references. — 53 C.J.S., Licenses, § 62.

Sec. 43.40.060. Separate invoices. The department may require the issuance of separate invoices for fuel sold, distributed, or transferred when the invoices will be the basis for a refund claim. (§ 6 ch 47 SLA 1955)

Sec. 43.40.070. Refund warrants. Upon approval of a refund claim by the department, a warrant shall be drawn on the highway fuel tax account in the general fund in favor of the applicant in the amount of the claim. (§ 7 ch 47 SLA 1955; am § 5 ch 131 SLA 1962)

Sec. 43.40.080. Examination of books and records. (a) To determine the validity of a claim for refund, the department may examine the books and records of the claimant and the books and records of a distributor of motor fuel. The department may cancel the refund permit of the claimant relying upon a fraudulent invoice for a period of not more than one year.

(b) *[Repealed, § 46 ch 113 SLA 1980.]* (§ 5 ch 47 SLA 1955; am § 46 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment repealed subsection (b).

Sec. 43.40.085. Preservation of books and records. Dealers and users shall preserve for three years all books and records pertaining to sales, transfers, and uses of motor fuel which are taxed under this chapter. (§ 5 ch 158 SLA 1970)

Sec. 43.40.090. Criminal violation. *[Repealed, § 46 ch 113 SLA 1980.]*

Sec. 43.40.100. Definitions. In this chapter

(1) "dealer" means a person who sells or otherwise transfers in this state motor fuel upon which the taxes imposed by this chapter have not been paid;

(2) "motor fuel" means fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, or in a stationary engine, machine or mechanical contrivance which is run by an internal combustion motor; "motor fuel" does not include

(A) fuel consigned to foreign countries;

(B) fuel sold for use in jet propulsion aircraft operating in flights to foreign countries;

(C) fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;

(D) fuel used by nonprofit power associations or corporations for generating electric energy for resale;

15 AAC 40.050. Bonding Requirement for Qualified Dealer License. (a) An applicant for a qualified dealer license must file with the department a bond made payable to the department in an amount equal to twice the average monthly motor fuel tax remittance or in the amount of \$5,000, whichever is greater. The department will, in its discretion, accept a cash deposit or a bank letter of credit in the appropriate amount in lieu of a bond.

(b) In lieu of the requirements of (a) of this section, an applicant for a qualified dealer license may file a sworn statement in affidavit form stating that the applicant owns real property in the state equal in value to at least twice the average monthly motor fuel tax remittance, on which the motor fuel tax may become a first lien, and describing the property and the fair market value of the applicant's interest in the property. (Eff. 7/19/82, Reg. 83)

Authority: AS 43.05.080
AS 43.40.100

15 AAC 40.060. Revocation of Qualified Dealer License. (a) The department will, in its discretion, revoke a license issued under 15 AAC 40.040 if a licensee fails to comply with the requirements of AS 43.40.010 — 43.40.100 or this chapter.

(b) If the department determines a license should be revoked for failure to comply with the requirements of AS 43.40.010 — 43.40.100 or this chapter it will give the licensee 30 days' notice of a proposed revocation. If the basis for revocation still exists on the 30th day, the department will, upon notice of revocation to the licensee, revoke the license, unless an appeal under (d) of this section has been timely filed by the licensee.

(c) When a license is revoked under this section, the licensee may not apply for a new license until 60 days after the date of revocation. The date of revocation is the date on which the notice of revocation is issued.

(d) A person may appeal a notice of proposed revocation to the department. The appeal must be submitted to the department in person or by mail within 10 days of the date of issuance of the notice of proposed revocation. The department will hold a formal hearing on the appeal as prescribed by 15 AAC 05.030. The hearing officer will issue a written decision, and, if appropriate, a notice of revocation will be issued by the department. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84)

Authority: AS 43.05.080
AS 43.40.100
AS 43.40.240

15 AAC 40.070. Records. (a) Each dealer, fuel reseller and user must keep a complete record by gallons showing

(1) all motor fuel inventories on hand at the first of each month;

(2) all motor fuel refined during each month;

(3) all motor fuel purchased, received or produced during each month, showing the name of the seller and the date of each purchase or receipt;

15 AAC 40.030. Certificate Requirements for Certain Sales. (a) Except as provided by (b) of this section, a dealer or fuel reseller who sells or transfers fuel that is exempt under 15 AAC 40.020(b) shall obtain an annual certificate of use from the buyer or transferee at the time of the first sale in each calendar year stating that the fuel that is purchased or received is not intended for use as motor fuel subject to tax under AS 43.40.010. A dealer or fuel reseller may use a certificate-of-use form prescribed or approved by the department.

(b) A certificate of use under (a) of this section is not required in support of an exemption under 15 AAC 40.020(b)(4), (6), (13) (15), and (16).

(c) In support of an exemption under 15 AAC 40.020(b)(5), the annual certificate of use must itemize and show the location of each tank or other facility which stores fuel used exclusively for heating commercial buildings and facilities.

(d) If a purchaser certifies in writing on a certificate of use that the use of the fuel purchased is for an exempt use and the purchaser subsequently uses the fuel for taxable purposes, that purchaser is liable for payment of the motor fuel tax.

(e) A certificate of use under this section must be signed by the purchaser or his or her representative. The certificate remains in effect unless revoked by the department or in writing by the purchaser, dealer, or fuel reseller. The dealer, fuel reseller, or user must retain a copy of each certificate of use required under this section for three years. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84; am 8/12/84, Reg. 91)

Authority: AS 43.05.080 AS 43.40.050
AS 43.40.010 AS 43.40.085
AS 43.40.035

15 AAC 40.040. Qualified Dealer License. (a) In order to purchase or sell tax-exempt fuel as a qualified dealer under 15 AAC 40.020(b)(15), a person must apply for and obtain a qualified dealer license from the department.

(b) A person is eligible for a qualified dealer license if that person

(1) refines, imports, manufactures, produces, or blends motor fuel; or

(2) sells fuel at least 20 percent of which is for resale or for residential heating purposes or for a combination of these purposes.

(c) A license issued under (a) of this section is in addition to any other license required by law.

(d) The department will not issue a license to a person described in (a) of this section if there is reasonable cause to believe that the applicant has wilfully withheld information necessary to determine eligibility for a license or if there is reasonable cause to believe that information submitted in the application is false or misleading. (Eff. 7/19/82, Reg. 83; am 11/14/82, Reg. 84; am 8/12/84, Reg. 91)

Authority: AS 43.05.080 AS 43.40.100

(E) fuel used by charitable institutions;
(F) fuel which is at least 10 percent alcohol by volume;
(G) fuel sold or transferred between qualified dealers;
(H) fuel sold to federal, state, and local government agencies for official use;

(I) fuel used in stationary power plants that generate electrical energy for private residential consumption;

(J) fuel used to heat private or commercial buildings or facilities;

(K) fuel used for other nontaxable purposes as prescribed by regulations adopted by the department; or

(L) fuel used in stationary power plants of 100 kw or less that generate electrical power for commercial enterprises not for resale;

(3) "qualified dealer" means a person who (A) refines, (B) imports, (C) manufactures, (D) produces, (E) compounds, or (F) wholesales motor fuel, who satisfies criteria for qualified dealers established by the department by regulation and who obtains a qualified dealer's license from the department;

(4) "user" means a person consuming or using motor fuel, who either

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

(B) manufactures the fuel in the state; or

(C) purchases or receives fuel in the state that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010. (§ 48-5-1 ACLA 1949; am § 1 ch 56 SLA 1949; am § 9 ch 47 SLA 1955; am § 26 ch 70 SLA 1964; am §§ 6, 7 ch 158 SLA 1970; am § 1 ch 74 SLA 1972; am § 5 ch 116 SLA 1977; am § 10 ch 83 SLA 1980; am §§ 10 — 12 ch 82 SLA 1982; am § 4 ch 87 SLA 1983)

Revisor's notes. — Paragraphs (3) and (4) were renumbered in 1983 to achieve alphabetical order.

Effect of amendments. — The 1980 amendment added subparagraph (F) in paragraph (2).

The 1982 amendment, in paragraph (2), added subparagraphs (G)-(K); in paragraph (3) added the subparagraphs (A) and (B) designations, substituted "personal use" for "his own use" and deleted "or" from the end, in subparagraph (A), added "or" to the end of subparagraph (B), and added subparagraph (C); and added paragraph (4).

The 1983 amendment added paragraph (2)(L).

Secs. 43.40.110 — 43.40.120. Additional tax levy on transfers or consumption of motor fuel. [Repealed, § 8 ch 158 SLA 1970.]

Chapter 40. Motor Fuel Tax.

Article

1. Application of Tax

(15 AAC 40.010 — 15 AAC 40.070)

2. Tax Refunds and Credits for Fuel Resellers

(15 AAC 40.100)

3. Tax Refunds and Credits for Final User

(15 AAC 40.200 — 15 AAC 40.230)

4. (Reserved)

5. (Reserved)

- 6. (Reserved)
- 7. (Reserved)
- 8. (Reserved)
- 9. General Provisions (i5 AAC 40.900)

ARTICLE 1. APPLICATION OF TAX

Section	Section
10. Tax return filing requirements	40. Qualified dealer license
20. Fuel subject to tax and exemptions	50. Bonding requirement for qualified dealer license
30. Certificate requirements for certain sales	60. Revocation of qualified dealer license
	70. Records

15 AAC 40.010. Tax Return Filing Requirements. Each dealer and each user must submit monthly to the department a return showing all motor fuel sold or transferred by the dealer or consumed by the user in the state, including all tax-exempt sales, transfers and uses. The return must be signed by the dealer or user under penalty of perjury and must show to whom fuel was sold or transferred and the reasons for any tax exemption. The return, supporting documentation, and the tax collected or accrued must be remitted by the last day of the month following the month the motor fuel was sold, transferred or used. One percent of the total monthly tax due and remitted, up to \$100, may be deducted and retained if the return is timely filed. (Eff. 7/19/82, Reg. 83; am 8/12/84, Reg. 91)

Authority: AS 43.05.080
AS 40.40.010

15 AAC 40.020. Fuel Subject to Tax and Exemptions.

(a) All motor fuel sold or transferred in the state or consumed by a user in the state is subject to the motor fuel tax under AS 43.40.010 — 43.40.100, unless exempted under (b) of this section. For purposes of AS 43.40.010 — 43.40.100 and this chapter, "motor fuel" is fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, or in a stationary engine, machine or mechanical contrivance which is run by an internal combustion motor, including bulk or other transfers of fuel between producing, refining, importing or exporting companies and gasoline separated from a mixture of gasoline and alcohol that was not taxed in its combined state. All bulk sales of fuel to a person who uses a common storage tank servicing both taxable and nontaxable uses, except bulk sales of jet fuel to a person who exclusively flies directly from the state to a foreign country, are subject to the motor fuel tax under AS 43.40.010 — 43.40.100, but the portion actually used for nontaxable purposes is eligible for a tax refund upon application to the department.

B See Book
C

(b) Fuel meeting the following requirements is exempt from the motor fuel tax under AS 43.40.010 — 43.40.100:

(1) fuel sold to, transferred to, or used by United States, Alaska, or local government agencies for official use, except motor fuel sold to a contractor who purchases motor fuel either for its own account or as the agent of a government agency for use in the performance of a contract with that agency;

(2) fuel sold to, transferred to, or used by auxiliary military units for official use, not including fuel purchased by a volunteer member of an auxiliary unit for use in a private vehicle;

(3) fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;

(4) fuel used exclusively for a domestic purpose in single or multiple unit private dwellings including mobile homes, but not including watercraft;

(5) fuel sold exclusively for use for heating commercial buildings or facilities;

(6) fuel used in stationary power plants that generate electrical energy exclusively for private residential consumption;

(7) fuel used in stationary commercial power plants of 100 kw or less;

(8) fuel used by nonprofit power associations or corporations for generating electrical energy for resale;

(9) fuel used by charitable institutions;

(10) refined fuel transported as cargo out of the state into international waters if the fuel is sold or otherwise transferred to watercraft which operate exclusively in international waters and which do not enter state territorial waters, ports, or facilities;

(11) refined fuel transported as cargo out of the state on a vessel from a port in this state to a port outside this state, unless the fuel is purchased for use within state territorial waters;

(12) fuel consigned to foreign countries;

(13) fuel sold to, transferred to, or used on jet propulsion aircraft operating flights from the state to a foreign country, except flights to a foreign country, with intermediate stops within the United States;

(14) fuel which is at least 10 percent alcohol by volume;

(15) fuel sold to or transferred between licensed qualified dealers;

(16) actual losses of volume which occur during handling, transporting or storing motor fuel, including shrinkage and losses from fire and other accidents;

(17) additives that are used for improving existing characteristics of fuel, not including blended fuels; and

(18) fuel used for any other purpose which the department determines is not motor fuel as defined by AS 43.40.100(2) if the purpose is fully disclosed on the monthly motor fuel tax return.

(c) For purposes of (b)(1) and (2) of this section, "official use" does not include sales of fuel. (Eff. 7/19/82, Reg. 83; am 11/14/84, Reg. 84; am 8/12/84, Reg. 91)

Authority: AS 43.05.080
AS 43.40.010
AS 43.40.100

*Alaska Department of
Revenue*



Motor Fuel Tax

*Questions and Answers
May 1985*

STATE OF ALASKA

DEPARTMENT OF REVENUE

BILL SHEFFIELD, GOVERNOR

ELEVENTH FLOOR
STATE OFFICE BUILDING
POUCH SA
JUNEAU, ALASKA 99811

May 1, 1985

Dear Motor Fuel Taxpayer:

Included in this booklet are a composite of questions concerning motor fuel most asked of this Department. We hope the answers will help clarify the motor fuel law and regulations for you.

You may have further questions. If so, or if you have some suggestions for inclusion in subsequent informational booklets, please do not hesitate to contact us.

Excise Tax
Audit Division
Department of Revenue
Pouch SA
Juneau, AK 99811

465-2322
465-4661

Definition of Motor Fuel

Motor Fuel is: 1) fuel used in an engine for the propulsion of a motor vehicle or aircraft, or 2) fuel used in and on watercraft for any purpose, or, 3) fuel used in a stationary engine, machine or mechanical contrivance which is run by an internal combustion engine. 43.40.100(A)-(L)

1. Q. What fuel or uses of fuel are exempt from the Alaska motor fuel tax?

A. The following uses of fuel are exempt from the motor fuel tax:

- a. Fuel sold to, transferred to, or used by the United States, Alaska, or local government agencies for official use. Motor fuel sold to a contractor who purchases motor fuel either for his own account or as the agent of a government agency for use in the performance of a contract with that agency is not exempt;
- b. Fuel sold to, transferred to, or used by auxiliary military units for official use. Fuel purchased by a volunteer member of an auxiliary unit for use in a private vehicle is not exempt;
- c. Fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;
- d. Fuel used exclusively for a domestic purpose in single or multiple unit private dwellings including mobile homes. This does not include fuel used in or on a watercraft for any purpose;
- e. Fuel sold exclusively for use as heating fuel for commercial buildings and facilities;
- f. Fuel used in stationary power plants that generate electrical energy exclusively for private residential consumption;
- g. Fuel used in stationary commercial power plants of 100 kW or less;
- h. Fuel used by non-profit power associations or corporations for generating electrical energy for resale;
- i. Fuel used by charitable institutions. Charitable institution means an organization that is exempt from taxation under Section 501(c) (3) of the Internal Revenue Code;
- j. Refined fuel transported as cargo out of the state into international waters if the fuel is sold or otherwise transferred to watercraft which operate exclusively in international waters and which do not enter state territorial waters, ports or facilities.

- k. Refined fuel transported as cargo out of the state on a vessel from a port in this state to a port outside this state. This does not include fuel purchased in the state for use in the exploration for and development of subsoil and seabed resources in and upon the adjacent outer continental shelf of the state;
- l. Fuel consigned to foreign countries;
- m. Fuel sold to, transferred to, or used on jet propulsion aircraft operating flights from the state to a foreign country. This does not include flights to a foreign country, with intermediate stops within the United States;
- n. Fuel which is at least 10 percent alcohol by volume;
- o. Fuel sold to or transferred between licensed qualified dealers;
- p. Actual losses of volume which occur during handling, transporting or storing motor fuel, including shrinkage and losses from fire and other accidents;
- q. Additives that are used for improving existing characteristics of fuel, not including blended fuel;
- r. Fuel used for any other purpose which the department determines is not motor fuel as defined by AS 43.40.100(2) if the purpose is fully disclosed on the monthly motor fuel tax return.

Qualified Dealer License

2. Q. How do I become a licensed qualified dealer so I can purchase motor fuel tax exempt?

- A. A person is eligible to become a qualified dealer if he:
 - a. Refines, imports, manufactures, produces, or compounds fuel; or
 - b. sells fuel at least 20 percent of which is for resale or residential heating purposes or for a combination of these purposes.

License application form 04-407 must be completed and accompanied by affidavit form 04-408 which requires security for the motor fuel tax. Alternatives for the security are:

- a. A surety bond equal to twice the average monthly tax but not less than \$5,000.
- b. A letter of credit, CD or cash equal to twice the average monthly tax but not less than \$5,000.

A. Dealer-certified copies of original invoices are allowed (with the following attachments):

- 1) The taxpayer must furnish an acceptable explanation why originals are not being submitted.
- 2) The taxpayer must obtain a statement from the vendor that copies submitted are true copies (with invoice numbers, dates and amounts).

42. Q. I am a fuel supplier. In addition to paying tax by filing the monthly return, I also file a claim for refund. May I deduct the refund due from the tax I must pay?

A. Yes. If you file a monthly Motor Fuel Tax return and also have a refundable amount due, that amount can be deducted from the tax due on the return and you pay the net difference. However, the refund claim, and supporting documents, must be attached to the return.

43. Q. I am a retail fuel dealer and pay tax on all fuel when purchased. On occasion, I make exempt sales to government agencies or charitable organizations. May I recover the tax paid as I am not able to pass it along to the customer?

A. Yes. You should file a Claim for Refund of Motor Fuel Tax by a Reseller, form no. 04-535. Your claim must include copies of the original invoices issued to the claimant of each exempt sale, and the certificate of use signed by the customer.

44. Q. Where can I get more information on motor fuel tax if I have additional questions?

A. Alaska Department of Revenue
Excise/Claims Unit
Pouch SA
Juneau, AK 99811
(907) 465-2322

- A. No. The classification of "shore-based" for fisheries business tax purposes has no effect on the motor fuel statute. Your vessel is a "watercraft", subject to a tax of .05 a gallon on all fuel used in and on watercraft.
36. Q. A petroleum production company has platforms and drill rigs working outside Alaska waters. These platforms are serviced by a rig tender which takes on the fuel as cargo in Seward, the tender's usual berth. Is this fuel taxable?
- A. Since the fuel used on the offshore rigs and platform is being used outside the Alaska jurisdiction and was transported there as cargo, the fuel is exempt from the Alaska tax. The fuel consumed by the rig tender is subject to the .05 per gallon fuel tax on marine fuel.
37. Q. The same company as in Q. 36 also operates a production platform that lies inside the 3-mile limit (inside Alaska's jurisdictional waters). The well itself is in international waters. Is fuel used in this case taxable?
- A. In this case, the fuel used is subject to the tax. However, the fuel used would be eligible for a .06 per gallon refund (highway) or .03 per gallon refund (marine).
38. Q. A towing and barge company based in Seattle has portions of Southeast Alaska. Fuel is purchased in Alaska prior to the southbound trip. Is the fuel subject to the Alaska tax on marine fuel?
- A. Yes, however the company may apply for a refund for the portion of fuel used outside Alaskan waters.
39. Q. Should we collect the marine fuel tax of 5¢ per gallon on fuel delivered into the operating fuel tanks of foreign vessels which are in port for infrequent fill-ups and then either fish exclusively outside the three (3) mile limit of Alaska or are bound for foreign ports?
- A. Yes, however a refund may be claimed on that portion of fuel used outside Alaskan waters.
- Refunds
40. Q. For each calendar year, when filing a claim for refund of motor fuel for fuel used in unlicensed equipment, I must submit a list of all my equipment, including all licenses and serial numbers. Does this mean the first claim filed during each calendar year, even though it is on fuel used the previous year?
- A. Yes. File your list of equipment with the first claim filed after the first of the calendar year, regardless of when the fuel was used.
41. Q. Must claims for refund be accompanied by original fuel invoices? Sometimes original invoices are lost or accidentally destroyed. May dealer-certified copies of the original invoices be allowed when originals are not available?
- c. Real property in the applicant's name, or interest therein equal to twice the average monthly tax.
3. Q. As a dealer do I have to obtain a qualified dealer license in order to obtain fuel tax free?
- A. Yes. A dealer must pay the tax at the time of purchase unless he has a qualified dealer license.
4. Q. Is it to my advantage to become a qualified dealer?
- A. If a dealer makes a large number of exempt sales and few taxable sales each month, it may be advantageous to purchase fuel tax free and report monthly to the Department his small proportion of taxable sales. If a dealer makes very few exempt sales to customers, it may be more advantageous to pay all the tax up front and then claim a refund from the supplier or department for all exempt sales made. A dealer would avoid having to file a monthly tax return this way. A heating fuel dealer should find it advantageous to become a qualified dealer. The decision whether or not to become a qualified dealer will depend on each situation.
5. Q. If I do purchase my gasoline, tax paid, and then sell some to an exempt government agency, can I claim credit for this on my monthly motor fuel tax return?
- A. Yes. You must account for the exempt sale by attaching a Claim for Refund by a Reseller to your motor fuel tax return.
6. Q. I own a gas station and purchase all my gasoline and diesel fuel tax paid. I have a separate tank for diesel fuel that I sell to customers to heat residential and commercial buildings. I am not eligible to be a qualified dealer. Do I have to buy this "heating fuel" tax paid even though it is in a separate tank?
- A. If you are not a licensed qualified dealer all fuel must be purchased tax paid.
7. Q. The regulation states that a qualified dealer is not required to sign a certificate of use. Does a dealer have the responsibility to determine if a customer actually is a qualified dealer? Does the responsibility for tax fall on the dealer or the customer if it is found later that the customer was not a qualified dealer?
- A. If dealers are not sure a customer is a qualified dealer, they may ask the customer to sign a certificate of use to protect themselves. In any case, the responsibility for the tax lies with the customer since the law does not require a certificate of use when a qualified dealer sells to another qualified dealer. A list of qualified dealers may be obtained from the Department of Revenue upon request.

8. Q. Over 40% of the fuel we purchase is used in an exempt manner. Does this meet the requirements for obtaining a qualified dealer's license?
- A. No. The qualified dealer license is intended for dealers in motor fuel, not users of fuel. To meet the requirements for a qualified dealer license, your fuel purchases must be for resale as residential heating fuel or for sale to a reseller.

9. Q. How long does my qualified dealer license remain in effect? Does it have to be renewed annually?

A. The qualified dealer license remains in effect indefinitely until:

- 1) The business ceases or,
- 2) The 20% quota of yearly sales made for resale or for residential heating purposes is no longer met or,
- 3) The license is revoked by the Department of Revenue.

The license itself does not have to be renewed annually, but an affidavit of security for motor fuel tax due, form 04-408, must be completed annually on or before September 1 of each year.

Motor Fuel Tax Return & Supporting Schedule

10. Q. Who must file a motor fuel tax return?

A. Every dealer who sells or otherwise transfers motor fuel in the state shall collect the tax at the time of the sale and remit the tax collected to the Department of Revenue. Also, every user of motor fuel who has not paid the tax shall do so.

11. Q. When is the Alaska motor fuel tax return due?

A. The return is due on or before the last day of the month following the month in which the motor fuel was sold, delivered or used.

12. Q. As a qualified dealer, do I have to file a monthly motor fuel tax return with supporting schedules if I have no monthly tax liability, and all my sales are tax exempt heating fuel sales?

A. Yes, the Department of Revenue needs to know the final exempt use of the fuel for the federal government report. The department does not know the nature of your exempt heating fuel sales because your supplier reports the sales of fuel to you as sales to a qualified dealer on our forms. If all your sales are exempt, the monthly reporting is very simple. No supporting schedules are required for sales of fuel for heating purposes. You do not have to prepare schedules of your commercial or residential heating fuel sales each month. However, an annual list of all commercial heating fuel accounts is required.

13. Q. Do I need supporting schedules showing names of customers and fuel gallons sold if all my sales are taxable sales?

30. Q. I operate a portable drilling rig. The actual drilling operation is powered by a take-off from the transport vehicle's engine. Can I claim the .06 per gallon refund for fuel used in the off-highway drilling?

A. The critical issue is whether the transport vehicle is licensed. If it is licensed, the fuel used is not subject to refund, even though used off-highway, because the fuel is being used in conjunction with a licensed vehicle. If it is unlicensed, the fuel is subject to the .06 per gallon refund.

31. Q. How can I determine the amount of shrinkage that I am allowed to deduct as a result of the new regulations?

A. A dealer should keep records, through his inventory reconciliation of fuel temperature shrinkage and expansion, tank filling losses, and loading and unloading losses of fuel; and submit them to the Department.

Marine Fuel

32. Q. Is motor fuel consumed in watercraft while operating in international waters subject to the Alaska motor fuel tax?

A. The motor fuel tax is a use tax and not a sales tax. Qualified dealers must in all cases collect the tax on motor fuel sold for use on watercraft. The motor fuel user may seek a refund for tax on any fuel subsequently used outside Alaska's three mile tax jurisdiction.

33. Q. I operate a crab boiler aboard my processing vessel. Will I be allowed to purchase the fuel tax exempt since it is not consumed in an internal combustion engine?

A. No. The law states all fuel used in or on board watercraft is subject to a tax of .05 per gallon.

34. Q. I am a fuel dealer. A customer wishes to purchase bulk marine fuel. This customer wishes to transport this fuel as cargo out of the state into international waters to bunker a fishing fleet at sea. Will I be allowed to sell this fuel without tax added on?

A. Yes. The fuel may be purchased tax free if it is to be transported as cargo into international waters. A certificate of use, with its export provision, must be properly signed by the customer. If the vessels being fueled in international waters use a portion of that fuel to come into an Alaskan port, the portion consumed in Alaska waters becomes taxable. The user must file a motor fuel tax return and pay the tax to the Department of Revenue.

35. Q. Since my fish processing vessel is classified as a "shore-based" processor, will I be allowed to purchase fuel for crab boilers and retorts tax exempt; and will I be allowed a .03 per gallon refund on other fuel, such as generator fuel?

A. The fuel is subject to tax as you use it. Tax on the fuel actually used during a calendar month should be remitted to the Department by the last day of the month following the month the fuel was used.

24. Q. Is fuel exempt from tax when used in off-highway vehicles and equipment?

A. No. Fuel used in any equipment with an internal combustion engine is motor fuel and is taxed at 8¢ per gallon. However, the law provides a 6¢ per gallon refund when the internal combustion engine is not used in or in conjunction with a motor vehicle licensed to be operated on public ways. No refund is allowed when the fuel is used in or in conjunction with a licensed motor vehicle, including off-highway use.

25. Q. As a placer miner, I do not operate any of my vehicles on the highway system, nor are they licensed. Will I be allowed to purchase fuel exempt from tax?

A. No. Fuel used in mining activities is subject to the 8¢ tax. You must purchase the fuel and pay the .08 per gallon. As you use the fuel, you may file refund claims for .06 a gallon refund.

26. Q. Is agricultural fuel exempt from tax?

A. No. Agricultural fuel is subject to the initial .08 per gallon tax. The farmer may apply for a .06 per gallon refund on the fuel used in unlicensed equipment. Additionally, if a separate tank is maintained, the farmer may purchase fuel used for heating purposes tax exempt by signing a certificate of use.

27. Q. As an operator of an asphalt plant, may I sign a certificate of use and purchase the fuel used to operate the plant tax free?

A. Yes, if the fuel is held in a "dedicated" tank and not stored in common with taxable fuel.

28. Q. The total combined output of our generators is 200 KW. Does this mean we cannot qualify for the exemption regarding generators of 100 KW or less?

A. Not necessarily. If your total output was from a 150KW and a 50KW generator, the fuel consumed by the 50KW generator would be exempt. Or, if the two generators were 100KW each, then all the fuel used by the generators would be exempt, as long as they were stationary.

29. Q. Are contractors performing on federal or state contracts exempt from the motor fuel tax?

A. No. Fuel purchased by a contractor either for his own account or as the agent of a government agency for use in the performance of a contract with that agency is subject to the motor fuel tax.

A. No. Supporting schedules are required for tax exempt fuel only.

14. Q. Can I substitute a computer printout of my sales of fuel in lieu of manually preparing the supporting schedules?

A. Yes, if the same data required on the supporting schedule is shown on the printout.

Certificate of Use

The certificate of use allows a purchaser to buy fuel tax free under one of the motor fuel tax exemptions. If a customer does not sign a certificate of use, he must pay the tax on the fuel purchased. A dealer must pay to the state the tax on fuel sold for which a certificate of use is not received.

15. Q. How does a fuel dealer know when the motor fuel tax is to be collected?

A. Motor fuel tax is collected when a dealer sells or otherwise transfers motor fuel in Alaska unless a dealer has a reasonable belief at the time of sale or transfer that the fuel sold or transferred is not to be used as motor fuel. If the tax is not collected, the dealer shall obtain a certificate of use from the buyer or transferee stating that the fuel that has been or will be purchased or received is not intended for use as motor fuel.

16. Q. Which exempt uses of fuel do not have to be supported by a certificate of use?

A. A certificate of use is not required for the following 5 exemptions:

a. Fuel used exclusively for heating single or multiple unit private dwellings, including mobile homes. This does not include fuel used in or on a watercraft used as a private dwelling.

If heating fuel is not delivered into a heating fuel tank, but is purchased by the can or drum, a dealer may ask his customer to sign a certificate of use to protect himself, in the event it is later found that the fuel was used in a taxable manner;

b. Fuel used in stationary power plants that generate electrical energy exclusively for private residential consumption;

c. Fuel sold to, transferred to, or used on jet propulsion aircraft operating flights from the state to a foreign country, except flights to a foreign country with intermediate stops within the United States;

- d. Fuel sold to or transferred between licensed qualified dealers;
- e. Actual losses of volume which occur during handling, transporting or storing motor fuel, including shrinkage and losses from fire and other accidents.

17. Q. When are annual certificates of use required?

- A. An annual certificate of use is required for the following sales:
 - a. Fuel sold to, transferred to, or used by United States, Alaska, or local government agencies for official use. This does not include fuel sold to contactors who purchase motor fuel either for their own account or as the agent of a government agency for use in the performance of a contract with that agency;
 - b. Fuel sold to, transferred to, or used by auxiliary military units for official use. This does not include fuel purchased by a volunteer member of an auxiliary unit for use in a private vehicle;
 - c. Fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;
 - d. Fuel sold exclusively for use for heating commercial buildings, or facilities, not including fuel used in or on watercraft;
 - e. Fuel used in stationary commercial power plants of 100 kw or less;
 - f. Fuel used by non-profit power associations or corporations for generating electrical energy for resale;
 - g. Fuel used by charitable institutions;
 - h. Refined fuel transported as cargo out of the state into international waters if the fuel is sold or otherwise transferred to watercraft which operate exclusively in international waters and which do not enter state territorial waters, ports or facilities;
 - i. Refined fuel transported as cargo out of the state on a vessel from a port in this state to a port outside this state, except fuel purchased in the state for use in the exploration for and development of subsoil and seabed resources in and upon the adjacent outer continental shelf of the state;
 - j. Fuel consigned to foreign countries;
 - k. Fuel which is at least 10 percent alcohol by volume;
 - l. Additives that are used for improving existing characteristics of fuel, not including blended fuel;

- m. Fuel used for any other purpose which the department determines is not motor fuel as defined by AS 43.40.100(2) if the purpose is fully disclosed on the monthly motor fuel tax return.
- n. Jet fuel sold to commercial air carriers which transport passengers or freight between Alaska and a foreign country.

18. Q. May a dealer or seller use his own form of a certificate of use?

A. Yes, if it has been approved by the department prior to its use.

19. Q. I have several customers possessing large fuel storage tanks on their trucks. Others come in and purchase 4 to 6 drums of diesel. The customers sign certificates of use stating that the fuel is for heating purposes. In some cases I know the customers have diesel powered equipment in their businesses. Am I liable for the tax if I make an exempt sale to these customers?

A. Not if you obtain a signed certificate of use at each sale. The ultimate liability is on the customer if an audit reveals tax due.

20. Q. We are a logging company working at a remote site and our vehicles are not licensed. We store fuel used for the trucks and other heavy equipment, our camp generators and camp heaters, in one main tank. Will I be allowed to purchase the heating fuel tax exempt if I sign a certificate of use?

A. No. To purchase your heating fuel tax exempt you must store the exempt fuel in a separate tank. Exempt fuel cannot be stored in a "common" storage tank with fuel subject to tax.

21. Q. What is the responsibility of a fuel dealer if a "common storage tank" exists? As an example, Dealer A sells fuel to Customer B, a construction company, and B signs a certificate of use stating that the fuel will be used exclusively for heating purposes. Does A have to determine that B does, in fact, maintain separate storage?

A. The responsibility in such a case is upon B, the customer signing the certificate, and the ultimate liability is upon B if an audit should reveal tax due.

General Questions

22. Q. What is the current tax rate on motor fuel?

A. The tax on motor fuel transferred or consumed is 8¢ per gallon except that tax on aviation gasoline is 4¢ per gallon, the tax on motor fuel used in and on watercraft is 5¢ per gallon, and the tax on aviation fuel other than gasoline is 2 1/2¢ per gallon.

23. Q. If I import fuel into Alaska, or I refine fuel in Alaska for my own use, at what point do I become liable for the tax?

Alaska Department of Revenue
 Audit Division
 Pouch SA
 Juneau, Alaska 99811

MOTOR FUEL TAX RETURN

AS 43.40.010

Parts 1 and 2 - To Revenue
 Part 3 - Your Files

This return is due on or before the last day of the month following the month in which the motor fuel was sold or delivered.

COMPANY NAME AND MAILING ADDRESS	FOR THE MONTH OF:	YEAR
	ALASKA BUSINESS LOCATION	
	FEDERAL EMPLOYER IDENTIFICATION NUMBER	

	(a) AVIATION GASOLINE	(b) AVIATION JET FUEL	(c) MARINE GASOLINE	(d) MARINE DIESEL	(e) OTHER GASOLINE	(f) OTHER DIESEL
GROSS DISTRIBUTIONS (Report all fuel in gallons or fractions of gallons)						
1. Total fuel sold within Alaska						
2. Total fuel you used						
3. Other distributions (Attach explanation)						
4. Total gross distributions (Add lines 1-3 in each column)						
EXEMPT DISTRIBUTIONS (Attach schedules 04-543 for all exempt sales except sales for heating use. See instruction "B" on back.)						
5. Qualified dealers						
6. Sold for heating use						
7. Federal government						
8. State/local government						
9. Charitable institution						
10. Pub. util./non-profit power assoc.						
11. Exempt power plant						
12. Jet fuel - foreign flights						
13. Bonded jet fuel						
14. Consigned to foreign countries						
15. Exported as cargo						
16. Gasohol						
17. Losses (Attach explanation)						
18. Other (Attach explanation)						
19. Total exempt distributions (Add lines 5-18 in each column)						
TAXABLE DISTRIBUTIONS (For each column (a) through (f), subtract line 19 from line 4 and enter difference on line 20 below.)						
20. Total taxable distributions						
21. Aviation gasoline tax @ 4¢ per gallon	\$					
22. Aviation jet fuel tax @ 2½¢ per gallon		\$				
23. Marine fuel tax @ 5¢ per gallon			\$	\$		
24. Other fuel tax @ 8¢ per gallon					\$	\$

I declare under penalty of perjury that I have examined this return, and to the best of my knowledge and belief it is a true and correct return of all fuel sold or delivered during the month specified.

SIGNATURE X	DATE
TITLE (Please Print)	

TOTAL TAX (Add amounts from lines 21-24 above)	\$
DEDUCTION FOR TIMELY FILING (Enter lesser of \$100 or 1% of total tax)	\$ < >
PENALTY	\$
INTEREST	\$
TOTAL AMOUNT	\$
CREDIT (See instructions on back)	\$ < >
NET AMOUNT	\$

CLAIM FOR REFUND OF MOTOR FUEL TAX

DUE DATE: All claims must be filed within one year from the date the fuel was purchased. (AS 43.40.050)

Send Refund To: (Name and Address)	Business or Occupation	Fuel on which refund is claimed was purchased: (dates)
	Business Location (City and State)	From: _____ Through: _____

INSTRUCTIONS:

1. Complete Form 04-545 Invoice Listing.
2. Detach and complete Schedule A Statement of Motor Fuel Use Upon Which Refund is Claimed. This Schedule is part 3 of this form.
3. Complete sections I and II below.
4. Sign and date the claim. Please note that a fraudulent claim is a felony punishable by a maximum fine of \$25,000.00 or three years imprisonment, or both.

I. SUMMARY OF GALLONS PURCHASED AND USED	APPLICANT'S USE	REVENUE USE ONLY
a. Total gallons purchased as reported on Form 04-545 Invoice Listing		
b. Total gallons used in or in conjunction with a licensed vehicle, no matter where operated in Alaska, and marine fuel used in or on watercraft		
c. Net gallons used upon which a refund is claimed. (Subtract line (b) from line (a). This figure must equal the total gallonage reported on Schedule A.)		

II. SUMMARY OF AMOUNTS CLAIMED FOR REFUND. Enter the gallons claimed at each refund rate as reported on Form 04-545 Invoice Listing. Check the box to indicate the type of fuel. Multiply the Gallons Claimed by the Refund Rate and enter the result in the Refund Claimed column.

	GALLONS CLAIMED	GASOLINE	DIESEL	REFUND RATE	REFUND CLAIMED	REVENUE USE ONLY
NOTE: The total gallons claimed in (g) below must equal the total gallonage reported on Schedule A.	a.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	¢ \$	\$	\$
	b.			¢ \$	\$	\$
	c.			¢ \$	\$	\$
	d.			¢ \$	\$	\$
	e.			¢ \$	\$	\$
	f.			¢ \$	\$	\$
g. Total Gallons Claimed Add lines a-f		21587891.2 1567891.2				
h. Total Refund Claimed. Add lines a-f					\$	\$
REVENUE USE ONLY						
		Adjustments				
		Net Amount of Refund				
Claim Paid: ____/____/____		Warrant Number: _____		Warrant Amount: \$		

III. SIGNATURE

I declare under penalty of perjury that I have examined this claim, and to the best of my knowledge and belief the fuel was purchased on the dates and in the amounts shown on each invoice, that the fuel was used in the manner set forth and that none of the fuel on which a tax refund is claimed was used for operating an internal combustion engine in, or in conjunction with, a motor vehicle licensed to be operated on public ways and that no part of the tax refund claimed has already been paid.

Signature	Printed Name of Person Who Signed	Title	Date
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Revenue Use Only	Audited By:
	Approved:

REMEMBER TO ATTACH FORM 04-545 INVOICE LISTING, ORIGINAL INVOICES, AND SCHEDULE A.

2103

MOTOR FUEL TAX RETURN

AS 43.40.010

This return is due on or before the last day of the month following the month in which the motor fuel was sold or delivered.

COMPANY NAME AND MAILING ADDRESS Example Marine Motor Fuel User	FOR THE MONTH OF:	January	YEAR	1986
	ALASKA BUSINESS LOCATION			
	FEDERAL EMPLOYER IDENTIFICATION NUMBER			

	(a) AVIATION GASOLINE	(b) AVIATION JET FUEL	(c) MARINE GASOLINE	(d) MARINE DIESEL	(e) OTHER GASOLINE	(f) OTHER DIESEL
GROSS DISTRIBUTIONS (Report all fuel in gallons or fractions of gallons)						
1. Total fuel sold within Alaska						
2. Total fuel you used				1,000,000		
3. Other distributions (Attach explanation)						
4. Total gross distributions (Add lines 1-3 in each column)				1,000,000		
EXEMPT DISTRIBUTIONS (Attach schedules 04-543 for all exempt sales except sales for heating use. See instruction "B" on back.)						
5. Qualified dealers						
6. Sold for heating use						
7. Federal government						
8. State/local government						
9. Charitable institution						
10. Pub. util./non-profit power assoc.						
11. Exempt power plant						
12. Jet fuel - foreign flights						
13. Bonded jet fuel						
14. Consigned to foreign countries						
15. Exported as cargo						
16. Gasohol						
17. Losses (Attach explanation)						
18. Other (Attach explanation)						
19. Total exempt distributions (Add lines 5-18 in each column)						
TAXABLE DISTRIBUTIONS (For each column (a) through (f), subtract line 19 from line 4 and enter difference on line 20 below.)						
20. Total taxable distributions				1,000,000		
21. Aviation gasoline tax @ 4¢ per gallon	\$					
22. Aviation jet fuel tax @ 2½¢ per gallon		\$				
23. Marine fuel tax @ 5¢ per gallon			\$	\$ 50,000		
24. Other fuel tax @ 8¢ per gallon					\$	\$

I declare under penalty of perjury that I have examined this return, and to the best of my knowledge and belief it is a true and correct return of all fuel sold or delivered during the month specified.

SIGNATURE X	DATE
TITLE (Please Print)	

TOTAL TAX (Add amounts from lines 21-24 above)	\$ 50,000
DEDUCTION FOR TIMELY FILING (Enter lesser of \$100 or 1% of total tax)	\$ < 100 >
PENALTY	\$ 0
INTEREST	\$ 0
TOTAL AMOUNT	\$ 49,900
CREDIT (See Instructions on back)	\$ < >
NET AMOUNT	\$

CLAIM FOR REFUND OF MOTOR FUEL TAX

DUE DATE: All claims must be filed within one year from the date the fuel was purchased. (AS 43.40.050)

Send Refund To: (Name and Address) Example Marine Motor Fuel User	Business or Occupation <hr/> Business Location (City and State)	Fuel on which refund is claimed was purchased: (dates) From: <u>3/30/85</u> Through: <u>2/28/86</u>
---	--	---

INSTRUCTIONS:

1. Complete Form 04-545 Invoice Listing.
2. Detach and complete Schedule A Statement of Motor Fuel Use Upon Which Refund is Claimed. This Schedule is part 3 of this form.
3. Complete sections I and II below.
4. Sign and date the claim. Please note that a fraudulent claim is a felony punishable by a maximum fine of \$25,000.00 or three years imprisonment, or both.

I. SUMMARY OF GALLONS PURCHASED AND USED	APPLICANT'S USE	REVENUE USE ONLY
a. Total gallons purchased as reported on Form 04-545 Invoice Listing	50,000	
b. Total gallons used in or in conjunction with a licensed vehicle, no matter where operated in Alaska, and marine fuel used in or on watercraft	7,530	
c. Net gallons used upon which a refund is claimed. (Subtract line (b) from line (a). This figure must equal the total gallonage reported on Schedule A.)	42,470	

II. SUMMARY OF AMOUNTS CLAIMED FOR REFUND. Enter the gallons claimed at each refund rate as reported on Form 04-545 Invoice Listing. Check the box to indicate the type of fuel. Multiply the Gallons Claimed by the Refund Rate and enter the result in the Refund Claimed column.

	GALLONS CLAIMED	GASOLINE	DIESEL	REFUND RATE	REFUND CLAIMED	REVENUE USE ONLY
NOTE: The total gallons claimed in (g) below must equal the total gallonage reported on Schedule A.	a. 42,470	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	5 ¢	\$ 2,123.50	\$
	b.			¢	\$	\$
	c.			¢	\$	\$
	d.			¢	\$	\$
	e.			¢	\$	\$
	f.			¢	\$	\$
g. Total Gallons Claimed Add lines a-f		21,123.50				
h. Total Refund Claimed. Add lines a-f					\$ 2,123.50	\$
REVENUE USE ONLY						
Adjustments						
Net Amount of Refund						
Claim Paid: ____/____/____		Warrant Number: _____			Warrant Amount: \$ _____	

III. SIGNATURE

I declare under penalty of perjury that I have examined this claim, and to the best of my knowledge and belief the fuel was purchased on the dates and in the amounts shown on each invoice, that the fuel was used in the manner set forth and that none of the fuel on which a tax refund is claimed was used for operating an internal combustion engine in, or in conjunction with, a motor vehicle licensed to be operated on public ways and that no part of the tax refund claimed has already been paid.

Signature	Printed Name of Person Who Signed	Title	Date
-----------	-----------------------------------	-------	------

Revenue Use Only	Audited By:
	Approved:

REMEMBER TO ATTACH FORM 04-545 INVOICE LISTING, ORIGINAL INVOICES, AND SCHEDULE A.

EXAMPLE OF FUEL CONSUMPTION INFORMATION IN ALASKAN WATERS FOR
THE CLAIM FOR REFUND OF MOTOR FUEL TAX BY A MARINE USER:

From March 30, 1985 to February 28, 1986 we had five trips in
and out of port and 38 days total tie-up time in port. Each
trip into or out of port is 1.5 hours on the main engine.

Each 398 Cat. main engine uses approximately 53 gallons/hour at
full speed but cruising at 950 r.p.m. running to and from port
the fuel consumption rate is approximately 23 gallons/hour.

The 3304 auxiliary engine consumes between 7 and 8 gallons for
power while in port.

Summary of gallonage used in Alaskan waters (3 mile limit):

Gallonage used running in and out of port:

5 trips x 3 hours x 23 gallons/hour x two engines= 690 gallons.

Auxiliary engine while in port gallonage:

38 days x 24 hours x 7.5 gallons/hour=6840

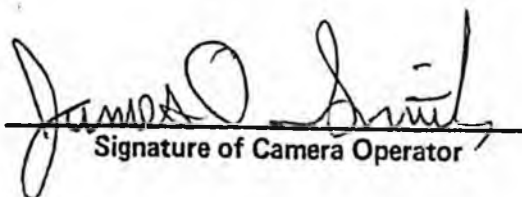
Total fuel use inside the 3 mile limit for this claim period:

690 gallons running + 6840 gallons in port= 7530 gallons



RECORDS CERTIFICATION

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


Signature of Camera Operator


Date

S B

4 1 2

BILL HISTORY

HOUSE CALENDAR: 5-10-86

SB 412

BILL SB0412
 PAGE 01837
 DATE 02/14/86
 CHAMBER SENATE
 TEXT SENATE BILL NO. 412 by Senator Faiks, entitled:
 "An Act relating to claims against the state."
 was read the first time and referred to the State Affairs
 Committee and the Judiciary Committee.

BILL SB0412
 PAGE 01927
 DATE 02/26/86
 CHAMBER SENATE
 TEXT The State Affairs Committee considered SENATE BILL NO. 412
 (claims against the state) and a majority of the committee
 recommended do pass. The report was signed by Senator
 Abood, Chairman and concurred in by Senators DeVries and Vic
 Fischer.
 SENATE BILL NO. 412 was referred to the Judiciary Committee.

BILL SB0412
 PAGE 02125
 DATE 03/21/86
 CHAMBER SENATE
 TEXT The Judiciary Committee considered SENATE BILL NO. 412
 (claims against the state) and a majority of the committee
 recommended do pass. The report was signed by Senator
 Kelly, Vice-Chairman and concurred in by Senators Faiks,
 Ziegler and Halford.
 Fiscal note is zero.
 SENATE BILL NO. 412 was referred to the Rules Committee.

BILL SB0412
 PAGE 02163
 DATE 03/26/86
 CHAMBER SENATE
 TEXT The Rules Committee considered SENATE BILL NO. 412 (claims
 against the state) and a majority of the committee recom-
 mended calendar March 26. The report was signed by Senator
 Kelly, Chairman and concurred in by Senators Coghill, Faiks
 and Bennett.
 SENATE BILL NO. 412 is on the calendar.
 SENATE BILL NO. 412 (claims against the state) was read the
 second time.
 Senator Halford moved and asked unanimous consent that
 SENATE BILL NO. 412 be considered engrossed, advanced to
 third reading and placed on final passage. Without
 objection, it was so ordered.

SENATE BILL NO. 412 was read the third time.
 The question being: "Shall SENATE BILL NO. 412 (claims
 against the state) pass the Senate?" The roll was taken
 with the following result:

SB 412 3RD

Yeas: 19 Abood, Bennett, Coghill, DeVries,
 Eliason, Fahrenkamp, Faiks,
 Ferguson, Fischer Paul,
 Fischer Vic, Halford, Josephson,
 Kelly, Kerttula, Ray, Rodey,
 Sackett, Sturgulewski, Ziegler

Nays: 0

Excused: 1 Zharoff

and so, SENATE BILL NO. 412 passed the Senate and was
 referred to the Secretary for engrossment.

SENATE BILL NO. 412 was engrossed, signed by the President
 and Secretary and transmitted to the House for considera-
 tion.

BILL SB0412
 PAGE 02519
 DATE 04/01/86
 CHAMBER HOUSE

TEXT SENATE BILL NO. 412, by Faiks, entitled:
 "An Act relating to claims against the
 state."

was read the first time and referred to the State Affairs
 and Judiciary Committees.

BILL SB0412
 PAGE 02820
 DATE 04/22/86
 CHAMBER HOUSE

TEXT The State Affairs Committee has considered SENATE BILL
 NO. 412 (relating to claims against the state) and reports
 it back as follows: Hurley (Chairman), Jenkins, Collins,
 Cato and Boucher recommend do pass.
 SB 412 was referred to the Judiciary Committee.

HOUSE
COMMITTEE REPORT

5/7
Reiler

(?)

Date referred: 4/22/86

FURTHER REFERRALS:

DATE: _____

The JUDICIARY Committee has considered SB 412

"An Act relating to claims against the state."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

Claims Against the State
(judicial review) SENATE BILL NO. 412, by Sen. Faiks. If a person bringing a claim against the state does not accept the decision of the Dept. of Administration, the claimant could obtain judicial review by the superior court by filing a notice of appeal as in civil matters. Notice would have to be filed within 30 days after the last day on which reconsideration could be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency.

Procedures for claims against the state do not apply to a department in the executive branch, or to legislative or judicial branches if that department or branch has adopted a mandatory claims and appeal procedure (currently only includes executive branch departments). Does not provide effective date.

Introduced February 14 and referred to State Affairs, Judiciary.

Claims Against the State
(judicial review) SENATE BILL NO. 412, (see page 174). Reported back to the Senate February 26 by State Affairs recommending it do pass. Concurring: Abood (Chair), DeVries and V. Fischer. To Judiciary.

Claims Against the State
(judicial review) SENATE BILL NO. 412, (see pages 174;280). Reported back to the Senate March 21 by Judiciary recommending it do pass. Concurring: Kelly (Vice Chair), Faiks, Ziegler and Halford. To Rules.

Claims Against the State
(judicial review) SENATE BILL NO. 412, (see pages 174;280;357). Passed the senate March 26, 1986, 19-0-1. Excused: Zharoff.

Claims Against the State
(judicial review) SENATE BILL NO. 412, (see pages 174;280;357;387) Reported back to the House April 22, 1986 by State Affairs recommending that it do pass. Concurring were Hurley (chair), Jenkins, Collins, Cato and Boucher. Referred to Judiciary.

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE

907-465-3740



Senate

JAN FAIKS
POUCHA
CAPITOL BUILDING
JUNEAU, ALASKA 99801

February 25, 1986

MEMORANDUM

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Senator Jan Faiks

SUBJECT: Background Information on Senate Bill 412, an Act
relating to claims against the state

Alaska Statutes 44.77.010 - 070 establish procedures for a person who wishes to file a claim for labor, services, materials, or supplies furnished to the State.

The claim must first be submitted to an administrative or executive officer. If the officer denies his claim, then the claimant may obtain review of the denial by the Department of Administration.

Only if both the officer and the Department deny the claim, or the latter takes no action on the request for one year, may the person seek judicial review of the State's decision. In that event, the current law says that a person can file a legal action in Superior Court. There, his claim would be governed by the procedures for introducing evidence and all of the other formalities of a civil lawsuit.

Section 1 and 2 of this bill will change this system by entitling the person to a judicial review according to simpler procedures which are now contained in our Administrative Procedure Act. Rather than beginning anew with the issue, the court would be able to review the evidence already presented on the claim and then judge the State's decisions accordingly.

OUT OF SESSION

1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

These amendments were suggested by the Alaska Supreme Court in order to further judicial economy without significantly impairing the rights of claimants. These persons will still have full court review of their denied claims. However, they will avoid the expense and delay of having to present these claims in the context of a formal, civil lawsuit.

Section 3 deals with the consequences of a November, 1985, court decision. In the case of State v. Dupere, the Supreme Court decided that the claims procedure applied not only to the executive branch, but also to the legislative and judicial branches.

Currently, AS 44.77.070 exempts from this system any department in the executive branch which has adopted its own mandatory claims and appeal procedure.

Section 3 of the bill will extend this exemption to departments of the legislative and judicial branches once they adopt a claims and appeals procedure. By allowing the judicial and legislative branches to adopt their own system and to avoid a review of their matters by a department of the executive branch, the bill will further the principle of separation of powers.

Memorandum

Alaska Court System

TO:

Arthur H. Snowden, II
Administrative Director

DATE : March 5, 1986

FROM:

Karla L. Forsythe
Staff Counsel

SUBJECT: SB 412 - Analysis

You asked me to outline the provisions of SB 412, an act relating to claims against the state, and to compare the proposed changes with existing law.

Under current law, a person who has a claim against the state for reimbursement for money, or for compensation for labor, materials or supplies furnished or services given to or for the state, must first submit the claim to the appropriate administrative officer. If that officer disallows all or part of the claim, the person may seek review through the Department of Administration. If the Department of Administration disallows the claim, the person must file a new action in superior court in order to pursue the claim.

Sections 1 and 2 of SB 412 would change this procedure by eliminating the requirement that a claimant file a completely new lawsuit. Instead, the person would follow the judicial review provisions of the administrative procedure act (AS 44.62.560-.570) by filing a notice of appeal with the superior court. The court would review the hearing record compiled by the Department of Administration, and could overturn the decision if it found that the agency did not have jurisdiction, that the hearing was not fair, or that there was a prejudicial abuse of discretion. Court resources would be used more efficiently by handling these claims as administrative appeals rather than new lawsuits.

Under current law, an executive branch agency can establish a claims procedure which is independent from the Department of Administration. However, under a recent Alaska supreme court decision interpreting AS 44.77.070, claims against the legislative and judicial branches must be submitted through the Department of Administration (State v. Dupere, No. 2995, November 22, 1985). Section 3 of SB 412 would permit the legislative and judicial branches to establish separate claims procedures, giving them the same option available under current law to executive branch agencies.

KF/k1

SB 412 - Analysis

Sections 1 and 2

- Under current law, a person who has a contract claim against the state must file it with the Department of Administration.
- If a person loses after going through the DOA review, the person must file a brand new law suit in court.
- Under this bill, instead of filing a totally new law suit, the person would ask for court review of the DOA decision. The court would not hold a new hearing but would make its decision based on the record compiled by the DOA.
- The court could overturn DOA if its hearing was unfair or DOA abused its discretion.
- Court resources are used more efficiently by handling these cases as administrative appeals rather than new law suits.

Section 3

- Under current law, an executive agency can set up a claim procedure separate from DOA.
- But under a recent supreme court case, claims against the legislative and judicial branches must be submitted through DOA.
- This decision was based on the way the statute is written now.
- Section 3 would change the statute to give the legislative and judicial branches the same power as the executive branch to set up separate claims procedures.

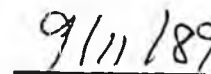


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Signature of Camera Operator


Date

SB

421

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House State Affairs Committee 4/21/1986, 3:00pm.



Official Business

Alaska State Legislature

Senate

SENATOR PAUL FISCHER

Pouch V
State Capitol
Juneau, Alaska 99811

To: House State Affairs Committee Members

From: Senator Paul Fischer *PF*

Date: April 17, 1986

Subject: Backup material for SSSB 421.

Attached is the backup material for SSSB 421. Included for your consideration is the following:

- (1) Summary of the effects of SSSB 421.
- (2) Copy of SSSB 421.
- (3) Zero fiscal note.
- (4) Sectional analysis of SSSB 421.
- (5) Copies of the relevant statutes (AS 43.23.065 and AS 09.38.010)



Alaska State Legislature

Senate

Official Business

SENATOR PAUL FISCHER

Pouch V
State Capitol
Juneau, Alaska 99811

TO: House State Affairs Committee Members

FROM: Senator Paul Fischer

DATE: April 16, 1986

SUBJECT: SSSB 421, permanent fund dividend attachment.

This measure, if enacted, would facilitate the attachment of an individual's permanent fund dividend for payment of child support, court ordered restitution, or debts to the state.

By making SSSB 421 law, we would be streamlining the procedures used to accomplish the purposes of prioritized debts under AS 43.23.065.

SSSB 421 would eliminate some procedural hurdles, established to protect property rights, that should not apply when an individual owes a prioritized debt.

Whether the debt is child support, victim restitution, a criminal court fine, attorney fees for the public defender agency, or other debts to the state, this bill will eliminate the procedural maze which effectively prevents the use of permanent fund dividends for satisfaction of that debt. This legislation accomplishes this while still protecting the rights of the debtor.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SSSB 421
 Title : Act relating to attachment
 and assignment of permanent fund
 dividends
 Sponsor : Senator P. Fischer
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : All
 BRU : _____

 Component(s) : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
----------------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
----------------	---	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : _____
 Division : Senator Jan Faiks, Co-chairman
Senate Finance Committee

Phone : 465-4523
 Date : 3/20/86

Approved by Commissioner : _____
 Agency : _____

Date : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 998
907 466 3800

MEMORANDUM

March 4, 1986

SUBJECT: Sectional Analysis of SSSB 421
TO: Senator Paul Fischer
FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Section 1. The statute dealing with exemption of permanent fund dividends from levy, execution, garnishment, attachment or other remedies for the collection of debt is amended. Under existing law the exemption is not available for dividends taken to satisfy child support obligations, a debt owed to an agency, or a court ordered restitution under certain statutes. Under this bill, for these types of non-exempt situations, AS 09.38 (Alaska Exemptions Act) does not apply. Execution is not accomplished under the general chapter on executions (AS 09.35) but rather, it is accomplished by serving a certified copy of the judgment on the commissioner of revenue. In addition, a voluntary assignment of a dividend to satisfy one of the debts of a type that is not exempt under existing law is to be granted the same priority as would be granted under existing law for an involuntary attachment.

Sec. 2. The Act has an immediate effective date.

TBC:mkr
m3/118

Sec. 43.23.065. Exemption of permanent fund dividends. Fifty percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for permanent fund dividends taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired; or (3) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state or court ordered restitution, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation and court ordered restitution has been taken. (S 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 57 SLA 1985)

Revisor's notes. — Sections 12 and 13, ch. 99, SLA 1985, amend this section and add new (b) and (c). The amendments are effective if § 1, ch. 99, SLA 1985 is repealed by § 25, ch. 99, SLA 1985). If the amendments become law, the section will read: "(a) Fifty percent of a cash permanent fund dividend payment is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash permanent fund dividend payments taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired; or (3) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

"(b) The department shall require an individual to take 100 percent of the permanent fund dividend in cash if the department receives a levy, execution, garnishment, attachment or other legal remedy for the collection of a past due debt described in (a)(1) or (2) of this section.

"(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 — 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash."

Section 22, ch. 99, SLA 1985 provides for an advisory vote to be held at the general election in 1986. For the text of that provision, see § 22, ch. 99, SLA 1985 in the Temporary and Special Acts.

Effect of amendments. — The 1984 amendment added the last sentence and, in the next-to-last sentence, substituted "An exemption is not" for "No exemption is," inserted "(1)," and added the language beginning with "(2) a debt" at the end of the sentence. Section 2, ch. 157, SLA 1984 limits the application of the 1984 amendment to dividends issued for 1984 and subsequent years.

The first 1985 amendment added "or (3) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100" at the end of the next-to-last sentence and in

the last sentence inserted "or court ordered restitution" and "and court ordered restitution."

The second 1985 amendment, effective

Sec. 43.23.075. Eligibility for public assistance.

Revisor's notes. — Section 14, ch. 99, SLA 1985, amends this section. The amendment is effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendment becomes law, the section will read: "(a) In determining the eligibility of an individual under a public assistance program administered by the Department of Health and Social Services in which eligibility for assistance is based on financial need, the Department of Health and Social Services may not consider a permanent fund dividend as income or resources received by the recipient of public assistance or by a member of the recipient's household unless required to do so by federal law or regulation. The Department of Health and Social Services shall notify all recipients of public assistance of the effects of a permanent fund dividend credit or cash payment.

"(b) An individual who is denied medical assistance under 42 U.S.C. 1396 — 1396p (Social Security Act, Title XIX) solely because of the credit or receipt of a permanent fund dividend by the individual or by a member of the individual's household is eligible for state-funded medical assistance under the general relief assistance program (AS 47.25.120 —

Sec. 43.23.095. Definitions.

Revisor's notes. — Section 15, ch. 99, SLA 1985, amends (6) of this section. The amendment is effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendment becomes law, the paragraph will read: "(6) 'permanent fund dividend' means a credit to an annuity account or a cash payment under this chapter;"

In addition, § 16, ch. 99, SLA 1985, also effective upon the repeal of § 1, ch. 99, SLA 1985, enacts AS 43.23.110 — 43.23.130. If § 16, ch. 99, SLA 1985 becomes law, the new sections will read:

"Article 2. Annuity Program.

"Sec. 43.23.110. Annuity investment fund. (a) The annuity investment fund is established as a separate fund in the state

if § 1, ch. 99, SLA 1985 is repealed, rewrote subsection (a) and added subsections (b) and (c).

47.25.300). The individual is entitled to receive, for a period not to exceed four months, the same level of medical assistance as the individual would have received under 42 U.S.C. 1396 — 1396p (Social Security Act, Title XIX) had there been no permanent fund dividend program.

"(c) An individual who is denied assistance solely because permanent fund dividends credited to or received by the individual or by a member of the individual's household are counted as income or resources under federal law or regulation is eligible for cash assistance under the general relief assistance program (AS 47.25.120 — 47.25.300). Notwithstanding the limit in AS 47.25.130, the individual is entitled to receive, for a period not to exceed four months, the same amount as the individual would have received under other public assistance programs had there been no permanent fund dividend program."

Section 22, ch. 99, SLA 1985 provides for an advisory vote to be held at the general election in 1986. For the text of that provision, see § 22, ch. 99, SLA 1985 in the Temporary and Special Acts.

treasury. The annuity investment fund consists of money transferred from the dividend fund and income earned by the annuity investment fund. Notwithstanding AS 37.13.145, an amount equal to the permanent fund dividends taken as annuity credits under this chapter shall be annually transferred from the dividend fund to the annuity investment fund.

"(b) Money in the annuity investment fund shall be invested by the commissioner of revenue in investments authorized under AS 39.35.110. The commissioner of administration shall credit the net income of the annuity investment fund to the individual annuity accounts.

"(c) The legislature may annually appropriate to the Department of Administration an amount sufficient to pay

monthly annu-
quent fiscal ve-
the annuity in-
propriated un-
transferred fr-
fund to the De-
in order to me-
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Chapter

Section
80. Transfer of an-

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Chapter 38. Alaska Exemptions Act.

<p>Section 30. Exemption of earnings and liquid assets</p>	<p>Section 115. Adjustment of dollar amounts</p>
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Sec. 09.38.010. Homestead exemption.

NOTES TO DECISIONS

Avoidance of judicial lien to extent of impairment of homestead exemption. — Section 522(f) of the Bankruptcy Code provides that "... the debtor may avoid the fixing of a (judicial) lien on ... property to the extent that such lien impairs an exemption ...". To determine whether there is such an impairment of a homestead exemption, the following steps are taken by the court: (1) all liens are ranked in order of priority (and equity, if any) to the extent of the value of

the property; (2) the gross amount of the homestead exemption is subtracted from the value of the property; and (3) from the remainder left, each lien is subtracted, one at a time, beginning with the most senior lien, until a judicial lien is reached. Then the judicial lien is subtracted. To the extent that all or any portion of the judicial lien exceeds the remainder derived in (2), above, it is voidable. In re Duncan, 43 Bankr. 833 (Bankr. D. Alaska 1984).

Sec. 09.38.030. Exemption of earnings and liquid assets. (a) Except as provided in (b) and (c) of this section and AS 09.38.050, an individual debtor is entitled to an exemption of the individual debtor's weekly net earnings not to exceed \$175. The weekly net earnings of an individual are determined by subtracting from the weekly gross earnings all sums required by law or court order to be withheld. The weekly net earnings of an individual paid on a monthly basis are determined by subtracting from the monthly gross earnings of the individual all sums required by law or court order to be withheld and dividing the remainder by 4.3. The weekly net earnings of an individual paid on a semi-monthly basis are determined by subtracting from the semi-monthly gross earnings all sums required by law or court order to be withheld and dividing the remainder by 2.17.

(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of \$700, except as provided in AS 09.38.050. The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.

(c) A creditor may levy upon earnings exempt under (a) and (b) of this section if the creditor's claim is

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(1) enforceable against exempt property under AS 09.38.065(a)(1);
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(2) enforceable under an order of a court of bankruptcy under 11 U.S.C. 1301 — 1330 (Bankruptcy Reform Act of 1978).

(d) If the individual debtor is a nonresident, the limitations on garnishment imposed under 15 U.S.C. 1673 apply.

(e) The following property, unless exempt without limitation under AS 09.38.015, upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate maintenance;

(3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent;

(4) proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service. (§ 2 ch 62 SLA 1982; am § 36 ch 6 SLA 1984)

Effect of amendments. — The 1984 reference in paragraph (2) of subsection amendment changed the federal statutory (c).

Sec. 09.38.115. Adjustment of dollar amounts. (a) The dollar amounts in this chapter change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all Urban Consumers for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of the year in which this section becomes effective is the reference base index.

(b) The dollar amounts change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for November of the preceding year and the reference base index, is 10 percent or more, but

(1) the portion of the percentage change in the index in excess of a multiple of 10 percent is disregarded and the dollar amounts change only in multiples of 10 percent of the amounts appearing in this chapter on August 26, 1982; and

(2) the dollar amounts do not change if the amounts required by this section are those currently in effect as a result of earlier application of this section.

This bill is intended to facilitate the attachment of an individual's permanent fund dividend for the payment of child support, court ordered restitution, or debts to the state.

Currently there exists a legal dispute as to whether a permanent fund dividend is subject to the exemption procedures in the Alaska Exemption Act, AS 09.38, when the permanent fund dividend is being sought for a debt prioritized under AS 43.23.065 (1-3). While arguments as to the applicability of AS 09.38 can be made, this legislation directs that when a judgment is rendered by a court for child support, victim restitution or a debt to the state, then the individual cannot claim that the permanent fund dividend is exempt from attachment.

Additionally, the execution procedures existing in AS 09.35 would no longer be applicable to attachment of a dividend for a prioritized debt. This change would not foreclose due process for dividend receipts, rather the legislation directs the Department of Revenue to adopt procedures whereby a recipient receives notice of the attachment and the opportunity to raise a defense to it, e.g., the debt has been paid, or this is the debt of this particular dividend recipient. Of course these debts have already been reduced to judgments in other forums, so that substantive defenses are precluded.

The final provision in this bill would recognize situations where individuals, having incurred a prioritized debt, cooperate and voluntarily assign their dividends to satisfy that debt. Currently, a voluntarily assigned dividend for a prioritized debt, is given no greater priority than any other involuntary attachment for an unprioritized purpose. Rather, it is strictly a matter of which is filed first, thus belying the purposes of priorities set out in AS 43.23.065.

With passage of this legislation, we would be streamlining procedures to accomplish the purposes of prioritized debts under this statute. By dispensing with procedural hurdles established to protect property rights that should not apply when an individual owes a prioritized debt, we facilitate use of permanent fund dividends for a greater purpose. For whether the debt is child support, victim restitution, criminal court fines, attorney fees for the public defender agency, or other debts to the state, we should eliminate procedural mazes which effectively prevent use of a permanent fund dividend for satisfaction. And this legislation does that while still protecting rights of the debtor.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No: SSSB 421
Title: An act relating to attachment and assignment of Permanent Fund Dividends
Sponsor: P. Fischer and DeVries
Requestor: Senate Judiciary
Date of Request: 3/3/86

FISCAL DETAIL

Agency Affected: Revenue
ERU: Permanent Fund Dividend

Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

See attached

Prepared By: Ervin B. Jones
Division: Administrative Services

Phone: 465-2313
Date: 4/17/86

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 4/17/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Department of Revenue
Administrative Services Division
Fiscal Note Analysis
SSSB 421

Assumptions:

1. It is assumed that the substance of AS 09.38, related regulations and the volume of court history, interpreting those laws would not apply to attachments for Child Support Enforcement, debts to state agencies, or court ordered restitution and cannot be relied upon as a basis for such attachments.
2. It is assumed that all attachments which arise from a court judgment will be served as a certified copy of judgment and that attachments arising from administrative decisions (e.g. tax liabilities, child support orders) will continue to be served in the existing way.
3. It is assumed that AS 09.40.010 will apply to all prejudgment attachments.

Program Summary:

AS 43.23.065 was originally enacted to offer protection to 50% of an applicant's dividend from the standard remedies for collection of debts - levy, execution, garnishment, and attachment. These attachments arise from either court orders or from administrative remedies found in federal and state law.

This protection is specifically not offered in three cases:

- 1) child support obligations required by court order or decision of the Child Support Enforcement Division;
- 2) debts owed to a state agency, where appeals have been exhausted; and
- 3) court ordered restitution

In these cases, 100% of the dividend is subject to attachment.

In 1985, the Department of Revenue received and processed 15,008 attachment orders, of which 12,123 were accepted. Of these, the above three categories accounted for the following number of attachments:

- 1) CSED - 1,297
- 2) State debts - 1,286
- 3) Restitution orders - 3

The attachments can be served as writs of Execution, arising from a court judgment or as an Order to Withhold arising from an administrative decision. The attachments are served either on paper or by magnetic tape. The paper attachments are manually entered into the PFD system, identifying the person's record as one to be attached upon payment. The magnetic tape match does basically the same thing. Because of the huge volume of attachments, and because there is only one employee to process them, the Department of Revenue has been encouraging tape matches for those creditors who are large and sophisticated enough to handle it (e.g. Child Support Enforcement, IRS, Department of Labor). Those serving the

Program Summary (con't)

department with attachments may release the attachment up until the time the dividend is paid. This occurs when the debtor has satisfied the debt by other means. Releases are all done manually by entering a status change in the file. The PFD system includes a "garnishment" subsystem which processes payments in priority order once an attached dividend comes up for payment. In cases where a residual amount is due the applicant, the subsystem also produces that warrant.

In each case where an individual's dividend is attached, in whole or in part, the Department of Revenue sends the applicant a notice indicating how much was taken, and by whom. This notice also provides a telephone number at which the process server can be contacted.

The changes proposed would require the Document Processing section of Administrative Services - PFD to do the following:

- 1) modify the voluntary assignment to explain the changes;
- 2) review all voluntary assignments to determine those falling under AS 43.23.065(d) as proposed;
- 3) modify the Attachment sub-system of the PFD system to recognize the new priority of such voluntary assignments.

1. Positions: None

2. Other Expenditures: None

Funding: N/A

Section Cost Analysis: N/A

Computations: N/A

Impact on Local Government: N/A

Attachments: None

Suggested Revisions: None

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 6, 1986

SUBJECT: Permanent Fund Dividends
(SSSB 421)

TO: Representative Katie Hurley, Chair
House State Affairs Committee

FROM: Tamara Brandt Cook
Director
Division of Legal Services

A bill relating to permanent fund dividends has been referred to your committee, SSSB 421. I wish to alert you to the fact that the title to the bill is defective in that it does not adequately reflect the subject of the bill as required under Article II, Section 13 of the state constitution. AS 09.38, dealt with under AS 43.23.065(b) in the bill, is a chapter relating to exemptions for certain property from levy, attachment and execution to satisfy debts. As such, it deals with more than attachment, which is all that is reflected in the title. AS 43.23.065(c) added in Section 1 of the bill deals with execution, which is distinct from attachment.

A better title for SSSB 421 would be "An Act relating to the use of permanent fund dividends to satisfy certain debts; and providing for an effective date." Under Rule 24(c) of the Uniform Rules a committee of the second house is prohibited from amending a bill in a way that will require a title change, except that the committee may make a clerical or technical change to the title. Correcting the title problem contained in SSSB 421 is the type of technical change which can be accomplished by a committee of the second house pursuant to the rule. Therefore, I recommend that the State Affairs Committee consider reporting out a committee substitute for SSSB 421 correcting the title.

If I can be of any assistance to the committee in dealing with this bill, please let me know.

TBC:mkr
m4/090