

ALASKA LEGISLATURE COMMITTEE FILES 1987-88 8672
4482 HCRA HB 452 - HB 475

HB

452

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

May, 1988

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

Mary Van Nimwegen

House C+RA

3-16-88

3:00p.m.

2/10
D

R

F

2/11
P

2/11
N

BILL PREPARATION/ACTION*

Bill # HB 452

Date Referred: 2/10/89

Out:

Title: Approp: Toward Funding for Education

Sponsor: Frank/Miller

Referrals: CRA HES FIN

CONTACTS:*****

Name _____

DCEA Phelan PP FN 2/11;

DOE Steve Nole FN 2/11;

Rev. Royce Willes PP FN 2/11; LCH 3/10/88

Rep Frank. 2/10 notif being in [3/10];

REMARKS:

MEETINGS:*****

Date _____ Action _____

* 3-16-8 1st pub. hearing CS, JDP 3 NR.

*See other side for additional information.

CONTAC.TXT



Official Business

COMMITTEE:

HOUSE COMMUNITY & REGIONAL AFFAIRS

DATE: Wed., March 16, 1988

SIGN-IN

Subject of meeting:

*HB 452 Approp: Forward Funding for Education

*HB 453 ~~Municipal and Education Reserve Accounts~~

and HB 453

NAME (PLS PRINT)	YOUR TITLE & ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Jerald Mikesell	Director EFSS Dept. of Educ	2F65	DOE	will answer questions
BOB GREENG	AASB - 305 316 W 11 TH ST	586-1083	AASB	?
Jim PARSYAN	Dep Dir MEAD	470	DLRA	yes
Rep. Frank				

8 HB 452

5-1791B

Original sponsors: Frank and Miller

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 452 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making special appropriations of windfall receipts to the education reserve account and the municipal assistance reserve account; and providing for an effective date."

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

* Section 1. That portion of the money received by the state on or after the effective date of this section from the settlement or final judicial determination of the Dinkum Sands case (United States v. Alaska) and not deposited into the Alaska permanent fund under AS 37.13.010(a)(1) or (2) or into the public school fund under AS 37.14.110, not to exceed the entitlement created under AS 14.17, the foundation account, and AS 14.11, the debt retirement account, for the year in which the money is received, is appropriated to the education reserve account.

* Sec. 2. The money not included in the estimated receipts set out in the budget for the fiscal year 1989 submitted under AS 37.07.020(a) that is received by the state during the fiscal year ending June 30, 1989, from an agreement under AS 43.05.060 or a final judicial determination against an oil and gas producer or a person engaged in the transportation by pipeline of oil and gas in the state is appropriated to the education reserve account.

* Sec. 3. That portion of the money received by the state on or after the effective date of this section from the settlement or final judicial determination of the North Slope royalty case (State v. Amerada Hess, et al.) and not deposited into the Alaska permanent fund under

Introduced: 2/10/88
Referred: Community & Regional
Affairs, Health, Education &
Social Services and Finance

① HB 453

1 IN THE HOUSE

BY FRANK AND MILLER

2 HOUSE BILL NO. 453

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state funding of public education
7 programs and municipal assistance programs; and
8 providing for an effective date."

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

10 * Section 1. AS 37.05 is amended by adding new sections to read:

11 Sec. 37.05.161. EDUCATION RESERVE ACCOUNT. (a) The education
12 reserve account is established in the general fund for the purpose of
13 ~~NOT TO EXCEED THE~~ receiving funds to be appropriated to the public school foundation
14 program under AS 14.17 and the school construction debt retirement
15 program under AS 14.11.100. The account consists of appropriations to
16 the account.

17 (b) The legislature may replenish the account each year by
18 making appropriations to the account that are sufficient to fund the
19 following year's appropriation for the foundation program and the
20 school construction debt retirement program.

21 Sec. 37.05.162. MUNICIPAL ASSISTANCE RESERVE ACCOUNT. (a) ~~The~~
22 ~~municipal assistance reserve account is established in the general~~
23 ~~fund for the purpose of receiving funds to be appropriated to the~~
24 ~~municipal assistance fund under AS 29.60.350, for the state revenue~~
25 ~~sharing program under AS 29.60.100, and for the senior citizens' and~~
26 ~~disabled veterans' property tax exemption reimbursement program under~~
27 ~~AS 29.45.030. The account consists of appropriations to the account.~~
28

29 ~~(b) The legislature may replenish the account each year by~~
~~making appropriations to the account that are sufficient to fund the~~

CORRECTION

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

8 HB 452

5-1791B

Original sponsors: Frank and Miller

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 452 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making special appropriations of windfall
7 receipts to the education reserve account and the
8 municipal assistance reserve account; and providing
9 for an effective date."

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

11 * Section 1. That portion of the money received by the state on or
12 after the effective date of this section from the settlement or final
13 judicial determination of the Dinkum Sands case (United States v. Alaska)
14 and not deposited into the Alaska permanent fund under AS 37.13.010(a)(1)
15 or (2) or into the public school fund under AS 37.14.110, not to exceed the
16 entitlement created under AS 14.17, the foundation account, and AS 14.11,
17 the debt retirement account, for the year in which the money is received,
18 is appropriated to the education reserve account.

19 * Sec. 2. The money not included in the estimated receipts set out in
20 the budget for the fiscal year 1989 submitted under AS 37.07.020(a) that is
21 received by the state during the fiscal year ending June 30, 1989, from an
22 agreement under AS 43.05.060 or a final judicial determination against an
23 oil and gas producer or a person engaged in the transportation by pipeline
24 of oil and gas in the state is appropriated to the education reserve ac-
25 count.

26 * Sec. 3. That portion of the money received by the state on or after
27 the effective date of this section from the settlement or final judicial
28 determination of the North Slope royalty case (State v. Amerada Hess, et
29 al.) and not deposited into the Alaska permanent fund under

1 AS 37.13.010(a)(1) or (2) or into the public school fund under AS 37.14.-
2 110, not to exceed the amount appropriated in the previous fiscal year to
3 the municipal assistance fund under AS 29.60.350, for the state revenue
4 sharing program under AS 29.60.010 - 29.60.300, and for the senior
5 citizens' and disabled veterans' property tax exemption reimbursement
6 program under AS 29.45.030, is appropriated to the municipal assistance
7 reserve account.

8 * Sec. 4. Sections 1 and 2 of this Act take effect on the effective
9 date of an Act enacted by the Fifteenth Alaska State Legislature establish-
10 ing the education reserve account.

11 * Sec. 5. Section 3 of this Act takes effect on the effective date of
12 an Act enacted by the Fifteenth Alaska State Legislature establishing the
13 municipal assistance reserve account.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Introduced: 2/10/88
Referred: Community & Regional
Affairs, Health, Education &
Social Services and Finance

① HB 453

1 IN THE HOUSE

BY FRANK AND MILLER

2 HOUSE BILL NO. 453

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state funding of public education
7 programs and municipal assistance programs; and
8 providing for an effective date."

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

10 * Section 1. AS 37.05 is amended by adding new sections to read:

11 Sec. 37.05.161. EDUCATION RESERVE ACCOUNT. (a) The education
12 reserve account is established in the general fund for the purpose of
13 ~~NOT TO EXCEED THE~~ receiving funds to be appropriated to the public school foundation
14 program under AS 14.17 and the school construction debt retirement
15 program under AS 14.11.100. The account consists of appropriations to
16 the account.

17 (b) The legislature may replenish the account each year by
18 making appropriations to the account that are sufficient to fund the
19 following year's appropriation for the foundation program and the
20 school construction debt retirement program.

21 Sec. 37.05.162. MUNICIPAL ASSISTANCE RESERVE ACCOUNT. (a) ~~The~~
22 ~~municipal assistance reserve account is established in the general~~
23 ~~fund for the purpose of receiving funds to be appropriated to the~~
24 ~~municipal assistance fund under AS 29.60.350, for the state revenue~~
25 ~~sharing program under AS 29.60.100, and for the senior citizens' and~~
26 ~~disabled veterans' property tax exemption reimbursement program under~~
27 ~~AS 29.45.030. The account consists of appropriations to the account.~~
28

29 ~~(b) The legislature may replenish the account each year by~~
~~making appropriations to the account that are sufficient to fund the~~

Committee decided
advise of DORA by
accepted as such. —————

Alaska State Legislature

STEVE FRANK

DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701



While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

TO: House Community & Regional Affairs Committee

FROM: Rep. Steve Frank

RE: House Bills 452 and 453 - forward funding
municipal pass-through funds

DATE: March 16, 1988

This legislation, if enacted, would create a forward funding mechanism for all municipal pass-through funds.

Basically the bill proposes to set up two accounts; an education reserve account that would fund both the foundation formula and school debt retirement, and a municipal assistance reserve account to fund municipal assistance, revenue sharing and senior citizen/disabled veterans tax exemption.

Further, we would earmark the expected settlements from the Dinkum Sands litigation to finance the school account and the anticipated settlements from the Amerada Hess case to fund the municipal assistance account.

Since this proposal would not require a dedication of funds and doesn't take existing money off the table, its political practicality is increased. It is important to note that the legislature's ultimate power of appropriation would not be diminished since an annual appropriation would be necessary from the reserve accounts to the Departments of Education and Community and Regional Affairs as well as back in to those reserve accounts to replenish them for the next year's school and municipal funding.

The main purpose of the legislation is to allow municipalities and school districts the ability to know, with greater certainty, the level of state funding they have available during their budgeting process. Setting aside money in these reserve accounts is a distinct advantage over merely early funding because, under this proposal, the money actually exists in an account a year in advance, thus increasing the certainty of the appropriations.

Thank you for your consideration.

File Contents

HB 452 - Approp: Forward Funding for Education

<u>No.</u>	<u>Description</u>
1.	Bill - HB 452
1.1	Fiscal Note - Dept. of Educ.
2.	Memo - from Legal Services, 2/12/88
3.	Chart - General Funding Available for Approp.
4.	Dinkum-Sands Oil/Gas Prices
5.	Bill Review - Harrison
6.	Memo from Sponsor, 2/26/88

HOUSE COMMITTEE REPORT

⑦ HB 452

(5)

Date referred: 2/10/88

FURTHER REFERRALS:

HESS
Finance

DATE: MAR 16 1988

The Community and Regional Affairs Committee has considered HB 452

"An Act making special appropriations of windfall receipts to the education reserve account and the municipal assistance reserve account; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 452 (CRA) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Springer Heinrich Springer

SIGNING OTHER RECOMMENDATIONS:

Herrmann Odelya Herrmann - No Rec

Collins [Signature] - No Rec

Cato [Signature] - No Rec

Springer

Heinrich Springer
Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS HB-452
PUBLISH DATE: _____

(7.1) HB 452

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Special appropriation of windfall
receipts to the education reserve account
Sponsor: Frank, Miller
Requestor: House C&RA

Agency Affected: Education
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This appropriation measure has no direct fiscal implications for the Department of Education.

Prepared by: Mary Hakala Phone: 465-2800
Division: Commissioner's Office Date: 2-16-88
Approved by Commissioner: William G. Demmert Date: 2-16-88
Agency: Department of Education

Distribution (by preparer):

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

452

B
NOT TO EXCEED THE ENTITLEMENT CREATED UNDER
14.17, THE FOUNDATION ACCOUNT and 14.11 THE
DEBT RETIREMENT ACCOUNT FOR THE YEAR
IN WHICH THE MONEY IS RECEIVED

Alaska State Legislature

Sp / CRA
DWA ✓
⑥ HB 452

STEVE FRANK

DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701



While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

FEB 29 1988

House of Representatives

TO: Rep. Henry Springer, Chairman
House Community & Regional Affairs Committee

FROM: Rep. Steve Frank

RE: House Bills 452 and 453 - forward funding
municipal pass-through funds

DATE: February 26, 1988

Recently I introduced legislation that, if enacted, would create a forward funding mechanism for all municipal pass-through funds and would like to request a hearing at your earliest convenience.

Basically we propose to set up two accounts; an education reserve account that would fund both the foundation formula and school debt retirement as well as a municipal assistance reserve account to fund municipal assistance, revenue sharing and senior citizen/disabled veterans tax exemption.

Further, we would earmark the expected settlements from the Dinkum Sands litigation to finance the school account and the anticipated settlements from the Amerada Hess case to fund the municipal assistance account.

Since this proposal would not require a dedication of funds and doesn't take existing money off the table, its political practicality is increased. It is important to note that the legislature's ultimate power of appropriation would not be diminished since an annual appropriation would be necessary from the reserve accounts to the Departments of Education and Community and Regional Affairs as well as back in to those reserve accounts to replenish them for the next year's school and municipal funding.

The main purpose of the legislation is to allow municipalities and school districts the ability to know, with greater certainty, the level of state funding they have available during their budgeting process. Setting aside money in these reserve accounts is a distinct advantage over merely early funding because, under this proposal, the money actually exists in an account a year in advance, thus increasing the certainty of the appropriations.

Thank you for your consideration.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB-452
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Special appropriation of windfall receipts to the education reserve account
Sponsor: Frank, Miller
Requestor: House C&RA

Agency Affected: Education
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This appropriation measure has no direct fiscal implications for the Department of Education.

Prepared by: Mary Hakala Phone: 465-2800
Division: Commissioner's Office Date: 2-16-88
Approved by Commissioner: William G. Demmert Date: 2-16-88
Agency: Department of Education

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

② HB 452

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 12, 1988

SUBJECT: Section-by-section Summary of HB 452,
an Act making special appropriations
of windfall receipts to the education
reserve account and the municipal
assistance reserve account.

TO: Representative Steve Frank

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum contains a section-by-section summary of
HB 452 as requested by Rick Solie of your staff.

A section-by-section summary of a bill should not be con-
sidered an authoritative interpretation of the bill. The
bill itself is the best statement of its contents.

SECTION 1 of the bill appropriates a portion of the money
received by the state on or after the effective date of this
section of the bill from the settlement or final judicial
determination of the Dinkum Sands case (United States v.
Alaska) to the education reserve account. The actual amount
of money appropriated into the education reserve account
will be that amount remaining after deposits into the per-
manent fund under AS 37.13.010(a)(1) or (2) and the public
school fund under AS 37.14.110 are made.

SECTION 2 of the bill appropriates any unanticipated wind-
falls received by the state during fiscal year 1989 from
agreements under AS 43.05.060 or final judicial deter-
minations against oil and gas producers or oil and gas
pipeline companies to the education reserve account.

SECTION 3 of the bill appropriates a portion of the money
received by the state after the effective date of this sec-
tion of the bill from the settlement or final judicial
determination of the North Slope royalty case (State v.

Representative Steve Frank
Page 2
February 12, 1988

Amerada Hess et al.) to the municipal assistance reserve account. The actual amount of money appropriated into the municipal assistance reserve account will be that amount remaining after deposits into the permanent fund under AS 37.13.010(a)(1) or (2) and the public school fund under AS 37.14.110 are made.

SECTION 4 of the bill provides that the appropriations made by secs. 1 and 2 of the bill take effect on the effective date of a bill enacted by the Fifteenth Alaska State Legislature that creates the education reserve account. However money is not placed into the education reserve account unless the conditions attached to the appropriations occur, such as settlement or final judicial determination of the Dinkum Sands case or the receipt of certain windfall revenues during fiscal year 1989.

SECTION 5 of the bill provides that the appropriation made by sec. 3 of the bill takes effect on the effective date of a bill enacted by the Fifteenth Alaska State Legislature that creates the municipal assistance reserve account. However, money is not placed into the municipal assistance reserve account unless the conditions attached to the appropriations occur, such as settlement or final judicial determination of the Amerada Hess case.

GU:bb
wkb2/076

GENERAL FUNDS AVAILABLE FOR APPROPRIATION

③ HB 452

	<u>30 % Rev Est</u>	<u>50 % Rev Est</u>
FY 87 CARRY FORWARD	19.7	19.7
FY 88 REVENUES	1,934.0	2,095.0
FY 88 ADJUSTMENTS	147.5	147.5
DINKUM SANDS	<u>159.8</u>	<u>159.8</u>
TOTAL FY 88 AVAILABLE	2,261.0	2,422.0
FY 88 EXPENDITURES:		
OPERATING	1,738.1	1,738.1
SCHOOL DEBT REIMBURSEMENT	109.5	109.5
G.O. DEBT	148.0	148.0
CAPITAL	98.2	98.2
LOANS	22.6	22.6
FY 88 SUPPLEMENTALS	60.2	60.2
JOBS BILL	<u>75.2</u>	<u>75.2</u>
TOTAL FY 88 EXPENDITURES	2,251.8	2,251.8
FY 88 CARRY FORWARD***	9.2	170.2
FY 88 CARRY FORWARD	9.2	170.2
FY 89 REVENUES	1,784.6	1,981.0
FY 89 ADJUSTMENTS	68.2	68.2
Total FY 89 Revenues	1,862.0	2,219.4
PROPOSED FY89 EXPENDITURES:		
OPERATING	1,844.3	1,844.3
SCHOOOL DEBT REIMBURSEMENT	117.7	117.7
G.O. DEBT	135.6	135.6
OTHER DEBT	11.8	11.8
CAPITAL	79.4	79.4
LOANS	30.6	30.6
NEW LEGISLATION	<u>10.0</u>	<u>10.0</u>
TOTAL FY 89 EXPENDITURES	2,229.4	2,229.4
FY 89 CARRY FORWARD	-367.4	-10.0

Notes to this revenue analysis:

Revenue Estimates are base^d on the Feb. 11, 1988 memo from Dept. of Revenue. New forecast is expected around the 25th of March.

FY 88 supplementals include the Governor's latest request, plus the 300.0 for formation of the Aleutians East Borough.

Under proposed FY 89 Expenditures, the operating budget proposal does not include the Governor's additional request of 21.6 million. New legislation estimate of 10.0 million is only an estimate.

WHAT ARE THE OIL AND GAS CASES ABOUT?

I. United States v. Alaska "DINKUM SANDS"

A. Issues involved:

1. The "enclave issues": use of strict application of the method of arcs and circles versus straight baselines

2. Is Dinkum Sands an island?

3. The counterclaim issues:

(a) whether NPRA's submerged lands are Alaska's;

(b) whether Alaska has title to the submerged lands underlying the coastal lagoons between the Canning River and the Canadian border;

(c) whether the 1975 expansion of the ARCO dock is part of the state's coastline; and

(d) whether the southern portion of Harrison Bay is part of the inland waters of Alaska.

B. Amount in litigation

Currently in escrow is approximately \$900 million. That amount is expected to exceed \$1 billion at the time a final decision is rendered.

C. Current status

1. Currently pending before a special master of the United States Supreme Court.

2. After special master's decision, parties may present their respective cases to the United States Supreme Court.

3. Estimated final decision: 1990.

D. Representation

1. Tom Koester, Assistant Attorney General.

2. John Briscoe, partner in the San Francisco law firm of Washburn and Kemp.

II. State v. Amerada Hess, et al.

A. Issues involved:

1. Interpretation of the state's lease form DL-1;

2. Determination of disposition of each barrel of oil produced between 1977 and 1986.

B. Amount in litigation

The defendants have estimated the range as between \$300 million and \$2 billion.

C. Current status

1. The case is expected to go to trial in October 1989. There is a rigorous schedule leading to that trial date

(depositions, witness lists, expert testimony, summary judgment motions, etc.)

2. Trial is expected to last six months.

3. Decision in superior court in Spring 1990, with right of appeal to Alaska Supreme Court. Earliest decision: 1992.

4. Three defendants have filed suit in U.S. District Court claiming that no Alaska court can try the case fairly because if the state succeeds, the permanent fund will be enriched -- accordingly, the permanent fund dividends will be increased. Each qualified juror and judge would therefore benefit from the outcome of the case -- a conflict of interest. The state has moved to dismiss the complaint.

D. Representation

1. Lead counsel is Wilson Condon of Hellen, Partnow & Condon, Anchorage.

2. Morrison and Foerster of San Francisco, Law Offices of Spencer Hosie (San Francisco), and Law Offices of Robert Stoller (Anchorage) support the effort.

III. Pipeline Matters

A. Issues presented

1. TAPS

(a) compliance with the terms of the settlement;
(b) monitoring of Arctic Slope efforts to seek reversal of the settlement in the United States Supreme Court.

2. Pipeline rate cases (Kuparuk, Endicott, and Milne Point) are aimed at determining that the tariffs are just and reasonable.

B. Amounts at stake

1. The TAPS settlement has brought in more than \$1.2 billion through reduced tariffs (thus increasing the wellhead value for purposes of both taxation and royalties).

2. The compliance effort is to determine that the TAPS owners abide by the terms of the settlement. This year, our audit raised major exceptions to the owners' tariff filings, resulting in \$40 million in additional revenues to the state.

3. The Kuparuk, Endicott, and Milne Point pipeline rate cases together raise in excess of \$70 million in potential gains to the state over the life of the respective pipelines.

C. Current status

1. TAPS compliance monitoring is on-going. The TAPS settlement appeal by Arctic Slope Regional Corporation to the United States Supreme Court is expected shortly.

2. The Kuparuk case is currently awaiting decision by an administrative law judge. The Endicott case goes to hearing in late June 1988. Milne Point has not announced resumption of production yet.

D. Representation

1. Lead counsel is Robert Loeffler, partner in Washington, D.C. office of Morrison and Foerster.

2. Edward Twomey, Newman & Holtzinger, Washington, D.C.

IV. The Tax Cases

A. Issues presented

Because of the confidentiality provisions of AS 43.05.230, the department cannot detail the specific issues or taxpayers who have disputed the state's tax assessments. The disputes arise under AS 43.21 (separate accounting income tax) and AS 43.55 (the oil and gas production tax). Parallels may be drawn to the Amerada Hess litigation to the extent that a netback to the point of production for purposes of determining a value is

required. In the income tax cases, various deductions are also at issue.

B. Amounts at stake

Cases funded by the Department of Law account for approximately \$500 million to \$1 billion of the estimated \$2.3 billion in disputed taxes.

C. Current status

One major case is scheduled to go to hearing in June 1988 and conclude in early 1989, to be followed by a second major case in 1989. Smaller cases will be scheduled on an on-going basis.

D. Representation

1. The major tax cases are directed in-house by Assistant Attorney General Barbara Herman.

2. Ms. Herman and her staff are assisted by the law firms of Preston, Thorgrimson (Anchorage) and Morrison and Foerster's Washington, D.C. office.

5 HB 452



Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

March 16, 1988

TO: Rep. Henry Springer, Chairman HCRA

FROM: David C. Harrison, P.A., HCRA *DCH*

HB 452 "An Act making special appropriations of windfall receipts to the education reserve account and the municipal assistance reserve account; and providing for an effective date." Sponsors Frank and Miller

REVIEW of HB 452

Section 1. Under this section an education reserve account is to be set up from that portion of the money received from the Dinkum Sands not deposited to the Alaska permanent fund or into the public education reserve account made available.

AS 37.13.010(a) refers to Article IX § 15 of the Alaska Constitution that established a separate fund the Alaska permanent fund.

AS 37.14.110 refers to Public School Fund that is established as a separate fund in the public school fund. Sums come from the management of state land, amounts paid to the state proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments of bonuses.

Sec. 2, refers to money not included in the estimated receipts based upon the governor's budget for FY 1989. Also money from an agreement(s) under AS 43.05.060 whereby settlements under judicial determination are awarded to the state against certain persons and industries - such money would be appropriated to the education reserve account.

AS 37.07.020(a) refers to the governor's responsibility in preparing and submitting the state budget.

COMMENTS: Copy of General Funds Available for Appropriation provides an insight into revenue estimates based upon Feb. 11, 1988, memo from Dept. of Revenue. It is noted that a part of the Dinkum Sands settlement of \$159.8 million has been made a part of the revenue estimates to the general fund for FY '89. No doubt the permanent fund share has been deposited to the permanent fund.

If HB 452 becomes law, after requirements of the permanent fund are made what is left will be deposited to (1) the education reserve account and to (2) the municipal reserve account for municipal revenue sharing, municipal assistance account and for property tax exemption program.

Sec. 3, refers to money received from Amerada Hess, et al., settlement that would not be placed in the Alaska permanent fund or the public school fund would be appropriated to the municipal reserve account.

COMMENTS: Please see attached "What Are the Oil and Gas Cases About?" Litigation, amounts involved and those involved are listed for your review.

Sec. 4, refers to effective dates establishing the education reserve account, specifically Secs. 1 and 2.

Sec. 5, provides an effective date for Sec. 3 for the municipal reserve account.

H B

453

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

House C+RA

3-16-88

3:00 p.m.

⑧ HB 453



Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

M E M O R A N D U M

To: Rep. Nillo Koponen, Co-Chairman, HESS
Rep. Johnny Ellis, Co-Chairman, HESS

From: Rep. Henry Springer, Chairman HCRA *HSR*

Date: March 16, 1988

Re: HB 453 - Municipal and Education Reserve Accounts

The Community and Regional Affairs (CRA) Committee passed HB 453, "An Act relating to state funding of public education programs and municipal assistance programs; and providing for an effective date." out of Committee today.

During the discussion, the Department of Community and Regional Affairs and sponsor suggested the following change:

HB 453, Page 1, Section 1, Line 25:

Delete "AS 29.60.100" and replace with "AS 29.60.010 - AS 29.60.300".

The CRA Committee adopted this as a technical amendment and did not change it to a CS. Legal Services determined that this was not correct. Therefore, please adopt a CS with this change as your first order of business when you consider the bill.

HOUSE COMMITTEE REPORT 7 HB 453

(5)

Date referred: 2/10/88

FURTHER REFERRALS:

HESS
Finance

DATE: MAR 16 1988

The Community and Regional Affairs Committee has considered HB 453

"An Act relating to state funding of public education programs and municipal assistance programs; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ tech amendment ee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Springer Heinrich Springer

Herrmann Adelheid Herrmann

Heinrich

SIGNING OTHER RECOMMENDATIONS:

Cato Bette Cato - No Rec

Collins Collins "11"

Springer Heinrich Springer
Chairman's signature

File Contents

HB 453 - Municipal & Education Reserve Accounts

<u>No.</u>	<u>Description</u>
1.	Bill - HB 453
1.1	Fiscal Note - Dept. of Educ.
2.	Sectional Analysis, Legal Services
3.	Memo to HCRA from Sponsor
4.	Bill Review - Harrison
5.	Memo to Springer from Sponsor
6	<i>Memo from Legal</i>
7	<i>C. Rpt.</i>
8	<i>Memo to HESS - Amend.</i>

② HB 453

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 11, 1988

SUBJECT: Section-by-section Summary of HB 453, an Act relating state funding of public education programs and municipal assistance programs.

TO: Representative Steve Frank

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum contains a section-by-section summary of HB 453 as requested by Rick Solie of your staff.

A section-by-section summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

SECTION 1 of the bill amends AS 37.05 by adding two new sections.

Sec. 37.05.161 creates the education reserve account in the general fund. The account is a repository for funds available for subsequent appropriation to the public school foundation program (AS 14.17) and the school construction debt retirement program (AS 14.11.100). The account consists of money the legislature appropriates to the account. The legislature may replenish the account each year with sufficient money necessary to fund these programs in subsequent fiscal years.

The creation of the education reserve account permits forward funding of the public school foundation program and the school construction debt retirement program by establishing a place where money can be held until it is appropriated to these programs in subsequent fiscal years. Once the money is placed in the account, the amount available for appropriation to these programs in subsequent fiscal years is known and school districts that rely on these programs will

have a better idea as to what funds will be available in the next fiscal year and can develop their budgets accordingly.

Sec. 37.05.162 creates the municipal assistance reserve account in the general fund. The account is a repository for funds available for subsequent appropriation to the municipal assistance program (AS 29.60.350 - 29.60.375), the state revenue sharing program (AS 29.60.100), and the senior citizens' and disabled veterans' property tax exemption reimbursement program (AS 29.45.030). The account consists of money the legislature appropriates to the account. The legislature may replenish the account each year with sufficient money necessary to fund these programs in subsequent fiscal years.

The creation of the municipal assistance reserve account permits forward funding of the municipal assistance program, the state revenue sharing program, and the senior citizens' and disabled veterans' property tax exemption reimbursement program by establishing a place where money can be held until it is appropriated to these programs in subsequent fiscal years. Once the money is placed in the account, the amount available for appropriation to these programs in subsequent fiscal years is known and municipalities that rely on these programs will have a better idea as to what funds will be available in the next fiscal year and can develop their municipal budgets accordingly.

SECTION 2 of the bill provides that the bill takes effect immediately after becoming law.

GU:gc
WKG1:084

Alaska State Legislature

3 HB 453

STEVE FRANK

DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701



While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

TO: House Community & Regional Affairs Committee

FROM: Rep. Steve Frank *JS*

RE: House Bills 452 and 453 - forward funding
municipal pass-through funds

DATE: March 16, 1988

This legislation that, if enacted, would create a forward funding mechanism for all municipal pass-through funds and would like to request a hearing at your earliest convenience.

Basically we propose to set up two accounts; an education reserve account that would fund both the foundation formula and school debt retirement as well as a municipal assistance reserve account to fund municipal assistance, revenue sharing and senior citizen/disabled veterans tax exemption.

Further, we would earmark the expected settlements from the Dinkum Sands litigation to finance the school account and the anticipated settlements from the Amerada Hess case to fund the municipal assistance account.

Since this proposal would not require a dedication of funds and doesn't take existing money off the table, its political practicality is increased. It is important to note that the legislature's ultimate power of appropriation would not be diminished since an annual appropriation would be necessary from the reserve accounts to the Departments of Education and Community and Regional Affairs as well as back in to those reserve accounts to replenish them for the next year's school and municipal funding.

The main purpose of the legislation is to allow municipalities and school districts the ability to know, with greater certainty, the level of state funding they have available during their budgeting process. Setting aside money in these reserve accounts is a distinct advantage over merely early funding because under this proposal, the money actually exists in an account a year in advance, thus increasing the certainty of the appropriations.

Thank you for your consideration.

(4) HB 453

Alaska State Legislature



House of Representatives

Committee on
Community & Regional Affairs

March 16, 1988

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

MMATHA HB
453
GIVE NUMBERS
ON EACH
I'll write the
rest on it
Please PM

TO: Rep. Henry Springer, Chairman HCRA

FROM: David C. Harrison, P.A., HCRA

HB 453 "An Act relating to state funding of public education programs and municipal assistance programs; and providing for and effective date".
Sponsor: Steve Frank

REVIEW: HB 453

Section 1. AS 37.05 refers to administrative actions required of the department of administration in carrying out fiscal responsibilities in handling fund deposits of the state. This bill amends AS 37.05. by adding two new sections.

Sec. 37.05.161 establishes an education reserve account in the general fund for the purposes of receiving funds appropriated to the public school foundation program per AS 14.17 and AS 14.11.100 school construction debt retirement program. Legislative funding would replenish this account each year sufficient to fund education programs in subsequent fiscal years.

Establishing of an education reserve account allows forward funding of the public education foundation program(s) plus school debt retirement funds to be held until appropriated. Once such funding is placed in education reserve account, the amount for subsequent fiscal year is known. Legislators, school personnel and the public will know what is expected to be funded for school programs and can prepare budgets accordingly.

Sec. 37.05.162 establishes a municipal assistance reserve account which is a respository account for funds for subsequent municipal assistance programs per AS 29.60.350 - 29.60.375. Forward funding is likewise provided for state revenue sharing program (AS 29.60.100) as well as the senior citizens' and disabled veterans property tax exemption reimbursement programs under AS 29.45..030. Under this bill the legislature would be able to appropriate sufficient money to be held in an account for subsequent fiscal years.

Section 2. provides that the bill takes effect immediately after becoming law.

COMMENT: Funding of the education foundation program and related needs are based upon consistency of criteria established by law. The \$60,000 basic unit of instruction allocation, ADM requirements, area differential costs are examples of reliable stable funding for public schools.

Is it possible in a time of budget shortfalls to forward fund the entire education program? It is noted that HCS CS SB 330 (HESS) funding was \$626,572,400 and at the present time awaits the governor's signature. It is also noted that the DCRA FY '89 budget request for municipal assistance, revenue sharing and tax exemption programs are over \$100,000,000.

A copy of HCS CS SB 330 (HESS) is attached for your review.

FISCAL ANALYSIS FOR HCS CS SB 330 (HESS)

COMPONENT	FY 87 ACT	FY 88 AUTH	FY 89 GOV	FY 89 SEN	<i>Passed</i> FY 89 HOUSE	H VS SEN	H VS GOV %	H VS 88 %
GENERAL FUNDS:								
FOUNDATION PROGRAM	380,590.1	407,742.4	411,913.0	417,423.9	417,423.9	0.0%	1.3%	2.4%
TUITION STUDENTS	12,445.8	13,889.0	14,609.0	14,609.0	14,609.0	0.0%	0.0%	5.2%
BOARDING HOME GRANTS	308.1	427.5	450.0	450.0	450.0	0.0%	0.0%	5.3%
YOUTH IN DETENTION	1,192.7	1,192.7	1,307.7	1,307.7	1,307.7	0.0%	0.0%	9.6%
SCHOOLS FOR THE HANDICAPPED	4,045.9	2,582.6	2,772.6	2,772.6	2,772.6	0.0%	0.0%	7.4%
PUPIL TRANSPORTATION	21,441.4	21,268.6	22,697.4	25,121.7	25,121.7	0.0%	10.7%	18.1%
SCHOOL DEBT REIMBURSEMENT	115,845.0	109,472.7	102,368.1	0.0	117,710.0	100.0%	15.0%	7.5%
TOTAL GENERAL FUNDS	535,869.0	556,575.5	556,117.8	461,684.9	579,394.9	25.5%	4.2%	4.1%
TOTAL FUNDS:								
FOUNDATION FUNDING	409,227.2	438,386.5	441,900.0	447,500.9	447,500.9	0.0%	1.3%	2.5%
STUDENT LUNCH PROGRAM	10,897.4	10,877.5	13,500.5	13,500.5	13,500.5	0.0%	0.0%	24.1%
CIGARETTE TAX DISTRIBUTION	3,500.0	3,500.0	3,500.0	3,500.0	3,500.0	0.0%	0.0%	0.0%
TUITION STUDENTS	12,445.8	13,889.0	14,609.0	14,609.0	14,609.0	0.0%	0.0%	5.2%
BOARDING HOME GRANTS	308.1	427.5	450.0	450.0	450.0	0.0%	0.0%	5.3%
YOUTH IN DETENTION	1,192.7	1,192.7	1,307.7	1,307.7	1,307.7	0.0%	0.0%	9.6%
SCHOOLS FOR THE HANDICAPPED	4,045.9	2,682.6	2,872.6	2,872.6	2,872.6	0.0%	0.0%	7.1%
PUPIL TRANSPORTATION	21,441.4	21,268.6	22,697.4	25,121.7	25,121.7	0.0%	10.7%	18.1%
SCHOOL DEBT REIMBURSEMENT	115,845.0	109,472.7	102,368.1	0.0	117,710.0	100.0%	15.0%	7.5%
TOTAL ALL FUNDS	578,903.5	599,697.1	603,205.3	508,862.4	626,572.4	23.1%	3.9%	4.5%
FUNDING SOURCE TOTALS:								
GENERAL FUNDS	535,869.0	556,575.5	556,117.8	461,684.9	579,394.9	25.5%	4.2%	4.1%
P.L./81-874	20,637.1	21,246.1	21,246.1	21,246.1	21,246.1	0.0%	0.0%	0.0%
PUBLIC SCHOOL FUND	8,000.0	7,398.0	8,830.9	8,830.9	8,830.9	0.0%	0.0%	19.4%
SCHOOL FUND	3,500.0	3,500.0	3,500.0	3,500.0	3,500.0	0.0%	0.0%	0.0%
FEDERAL RECEIPTS	10,897.4	10,977.5	13,510.5	13,600.5	13,600.5	0.0%	0.7%	23.9%
TOTAL ALL FUNDS	578,903.5	599,697.1	603,205.3	508,862.4	626,572.4	23.1%	3.9%	4.5%

Alaska State Legislature

diff ✓
fjw / CRA
⑤ HB 453

STEVE FRANK

DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701



While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

FEB 29 1988

House of Representatives

TO: Rep. Henry Springer, Chairman
House Community & Regional Affairs Committee

FROM: Rep. Steve Frank

RE: House Bills 452 and 453 - forward funding
municipal pass-through funds

DATE: February 26, 1988

Recently I introduced legislation that, if enacted, would create a forward funding mechanism for all municipal pass-through funds and would like to request a hearing at your earliest convenience.

Basically we propose to set up two accounts; an education reserve account that would fund both the foundation formula and school debt retirement as well as a municipal assistance reserve account to fund municipal assistance, revenue sharing and senior citizen/disabled veterans tax exemption.

Further, we would earmark the expected settlements from the Dinkum Sands litigation to finance the school account and the anticipated settlements from the Amerada Hess case to fund the municipal assistance account.

Since this proposal would not require a dedication of funds and doesn't take existing money off the table, its political practicality is increased. It is important to note that the legislature's ultimate power of appropriation would not be diminished since an annual appropriation would be necessary from the reserve accounts to the Departments of Education and Community and Regional Affairs as well as back in to those reserve accounts to replenish them for the next year's school and municipal funding.

The main purpose of the legislation is to allow municipalities and school districts the ability to know, with greater certainty, the level of state funding they have available during their budgeting process. Setting aside money in these reserve accounts is a distinct advantage over merely early funding because, under this proposal, the money actually exists in an account a year in advance, thus increasing the certainty of the appropriations.

Thank you for your consideration.

1.1 HB 453

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB-453
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: State funding of public education programs and . . .
Sponsor: Frank, Miller
Requestor: House C&RA

Agency Affected: Education
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by: Mary Hakala
Division: Commissioner's Office
Approved by Commissioner: William G. Demmert
Agency: Department of Education

Phone: 465-2800
Date: 2-16-88
Date: 2-16-88

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

6 HB 453

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 16, 1988

SUBJECT: HB 453, funding of public education programs
and municipal assistance programs

TO: Representative Steve Frank

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum contains draft appropriation language that may be used to implement the process envisioned by HB 453.

HB 453 creates two accounts in the general fund to hold money for later appropriation to the programs supported by the accounts. One account is to be used for funding the public school foundation program and the school construction debt retirement program. The other account is to be used for funding the municipal assistance program, the state revenue sharing program, and the senior citizens' and disabled veterans' property tax exemption reimbursement program.

Appropriation language to implement the purposes of these accounts would be similar to the following:

* Sec. _____. The sum of \$10,000,000 is appropriated from the general fund to the education reserve account (AS 37.05.161) to provide funds for appropriations to the public school foundation program (AS 14.17) and the school construction debt retirement program (AS 14.11.100) for fiscal year 1990.

* Sec. _____. The sum of \$10,000,000 is appropriated from the education reserve account (AS 37.05.161) to the Department of Education for fiscal year 1989 and is allocated in the following amounts for the purposes expressed:

foundation program (AS 14.17)	\$7,500,000
school debt retirement (AS 14.11.100)	\$2,500,000

Representative Steve Frank
Page 2
March 16, 1988

The first section above appropriates money to the education reserve account for subsequent appropriation to the Department of Education in fiscal year 1990. The second section above appropriates money currently in the education reserve account to the Department of Education and allocates the appropriation among the foundation program and the school debt retirement program for expenditure in fiscal year 1989.

Appropriation language to implement the municipal assistance reserve account would be similar to that provided above.

GU:lmb
L6/051

H B

475



P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

HB 475
Interim 88
H. Research Rpt

August 15, 1988

MEMORANDUM

TO: Representative Henry Springer

FROM: Patricia Brawley *pb*
Legislative Analyst

RE: Tax Assessments on Undeveloped Land
Research Request 89.008

You requested information about provisions in other states for property tax relief for owners of undeveloped lands which are adjacent to developed lands. You asked specifically about tax assessments on property near several major western ski resorts.

Property tax laws are generally based on the traditional presumption that the highest and best use of land is that which provides the greatest financial profit. States with natural resources as their primary economic base--such as Vermont, Wyoming, Washington and Oregon--provide tax relief for areas designated as timber and/or agricultural land. Some states--such as Oregon and Washington--also provide tax relief for areas designated as "open spaces." This classification is intended to preserve a variety of natural and/or scenic resources. None of the states surveyed--Colorado, Washington, Oregon, Wyoming and Idaho--provide tax relief to owners of property adjacent to developments, unless such property can be classified as timber, open space, or agricultural land for the economic purposes noted above. Farmland in Alberta receives special tax consideration through a similar provision. In addition, as part of a national park, the town of Banff is leased from the federal government, and property tax relief is provided to residents who depend on access to the resort for their livelihood.

An exception to the traditional notion of highest and best use of land is Oregon's single family residence law which provides that property within a

Representative Springer

August 15, 1988

Page 2

commercial or industrial zone, but used exclusively as a single family residence, shall be assessed on its residential use, without consideration of the commercial or industrial influence. Other exceptions include a tax credit for homestead owners in Wyoming and a property tax exemption for retired persons in Washington who are unable to pay such tax. See attached statutes.

I am enclosing House Research Agency memorandum 88.138 (Conservation Easements), which may be of interest to you.

I hope this information is useful. If you have questions, please call me at this office.

Attachments

308.670

car companies undergoing major work including remodeling, renovation, conversion or repairs shall be exempt from taxation.

(2) For purposes of this section, the term "major work" shall include all remodeling, renovation, conversion, reconversion or repairs to a railroad car in which the total labor expended for such work exceeds 10 work hours.

(3) The exemption described in subsection (1) of this section shall apply for the period of time in which the railroad cars are awaiting or undergoing major work or are awaiting transportation to or from or are being transported to or from a facility performing such major work.

(4) No exemption under subsection (1) of this section shall be allowed unless the department is furnished sufficient documentary information to prove that the claimant is entitled to the exemption. [1973 c.245 §2; 1987 c.158 §48]

Note: 308.665 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 308 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

SINGLE FAMILY RESIDENCE PROPERTY

308.670 Single family residences within commercial or industrial zones assessed at single family residence value. Notwithstanding ORS 308.205 or 308.235, but subject to ORS 308.232:

(1) Any land and improvements which are within a zone allowing industrial or commercial use or more residential density than a single family residence zone established under ORS 215.010 to 215.190 and 215.402 to 215.438 or 227.215 to 227.300, but which are used, and have been used for the preceding five years, exclusively for single family residence as defined in subsection (2) of this section shall, upon compliance with ORS 308.675, be valued at its true cash value for single family residence and not at the true cash value the land and improvements would have if applied to other than single family residence.

(2) As used in ORS 308.670 to 308.685:

(a) "Owner" includes purchaser under recorded instrument of sale.

(b) "Single family residence" means a structure designed as a residence for one family and sharing no common wall or parcel of land with another residence of any type and which is the principal place of abode of the owner.

(3) The special assessment provisions of this section shall be determined as of January 1.

However, if qualified land and improvements become disqualified prior to July 1 of the same year, the land and improvements shall be valued under ORS 308.232 at true cash value as defined by law without regard to this section. [1975 c.655 §1; 1977 c.679 §1; 1981 c.804 §67]

Note: 308.670 to 308.685 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 308 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

308.675 Application for special assessment; form; contents; execution. (1) Any owner of a single family residence entitled to special assessment under ORS 308.670 must, to secure the assessment, make application therefor to the county assessor on or before April 1 of the first year in which the assessment is desired.

(2)(a) The application shall be made upon forms prepared by the Department of Revenue and supplied by the county assessor and shall include information reasonably required to determine whether the special assessment shall be allowed.

(b) The application may be signed by any one of the following:

(A) The owner of the single family residence land and improvements who holds an estate therein in fee simple or for life.

(B) Any one of tenants in common or tenants by the entirety, holding an estate in the single family residence land and improvements in fee simple or for life.

(C) Any person of legal age, duly authorized in writing to sign an application on behalf of any person described in subparagraph (A) or (B) of this paragraph.

(D) The guardian or conservator of an owner.

(E) The purchaser of the fee simple or life estate of an owner under a contract of sale.

(c) The assessor or the deputy of the assessor shall not approve an application signed by a person whose authority to sign is not a matter of public record unless there is filed with the assessor a true copy of the deed, contract of sale, power of attorney or other appropriate instrument evidencing the signer's interest or authority. When filed with the assessor only, the instrument shall not constitute a public record.

(3) There shall be annexed to each application the affidavit or affirmation of the applicant that the statements contained therein are true. [1975 c.655 §2; 1977 c.679 §2]

Note: See note under 308.670.

308.680 Assessment of approved land; notice to assessor of change in land use; election by governing body to disqualify property upon transfer; limitation. (1) Upon approval of an application, the county assessor shall assess land and improvements approved under ORS 308.675 at the special assessment provided in ORS 308.670 and shall also enter on the assessment and the tax roll the notation "potential additional tax liability" until the property becomes disqualified for such assessment by:

(a) Notification in writing by the taxpayer to the assessor to remove such special assessment;

(b) Sale or transfer to an ownership which makes the property exempt from ad valorem taxation;

(c) Removal of the special assessment by the assessor upon the discovery that the property is no longer being used for a single family residence; or

(d) Transfer of ownership of property when such property is subject to an ordinance which makes subsection (2) of this section inapplicable to such property, and the transfer occurs after the effective date of the ordinance.

(2) (a) Except as provided in paragraph (b) of this subsection, the sale or transfer to a new owner or transfer by reason of death of a former owner to a new owner or other transfer shall not operate to disqualify property from the special assessment provisions of ORS 308.670 to 308.685 so long as the property continues to be used exclusively as a single family residence.

(b) This subsection shall not apply to property if the city or county with planning and zoning jurisdiction over such property adopts an ordinance which makes this subsection inapplicable to such property. An ordinance adopted by a city or county under this paragraph shall not apply to an entire class of zoning districts but shall be limited in application to property within a single restricted geographic area within the city or county. The city or county adopting such ordinance shall give individual mailed notice thereof to all owners of property within the area receiving the special assessment within 30 days after the effective date of the ordinance. Such notice shall include a statement explaining the effect of disqualification under the ordinance.

(3) When, for any reason, the property or any portion thereof ceases to be used exclusively for a single family residence as defined in ORS 308.670 (2), the owner at the time of the change in use shall notify the assessor of such change prior to the next January 1 assessment date. [1975 c.555 §3; 1977 c.679 §3]

Note: See note under 308.670.

308.685 Disqualified land; additional tax; notice to owner; cancellation of additional tax upon rezoning. (1)(a) Except as provided in subsection (2) of this section, whenever property which has received special assessment as a single family residence under ORS 308.670 thereafter becomes disqualified for the assessment, the assessor shall notify the owner thereof and there shall be added to the tax extended against the property on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property tax, an additional tax equal to five times (or such lesser number of times, corresponding to the number of successive years prior to the year of disqualification, single family residence assessment was in effect for the property) the total amount by which the taxes that would have been imposed had the property been assessed without regard to ORS 308.670 exceeds the taxes that were imposed under ORS 308.670 for the assessment year for which single family residence assessment was last in effect for the property.

(b) However, if property becomes disqualified under ORS 308.680 (1)(d) and the property first received the special assessment under ORS 308.670 after October 4, 1977, and prior to the effective date of the ordinance, then the provisions of paragraph (a) of this subsection shall not apply.

(2) Whenever property which has received special assessment as a single family residence under ORS 308.670 thereafter becomes disqualified for such assessment, and the notice required by ORS 308.680 (3) is not given, the assessor shall notify the owner thereof and notwithstanding ORS 311.220, there shall be added to the tax extended against the property on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property tax, an additional tax equal to the sum of the following:

(a) An amount equal to five times (or such lesser number of times, corresponding to the number of successive years prior to the assessment year for which the property should have been disqualified for special assessment as single family residence) the total amount by which the taxes that would have been imposed had the property been assessed without regard to ORS 308.670 exceeds the taxes that were imposed pursuant to ORS 308.670 for the assessment year for which single family residence assessment was last properly in effect for the property; and

(b) The total amount by which the taxes that would have been imposed had the property been

assessed without regard to ORS 308.670 exceeds the taxes that were assessed for the assessment year for which the notice should have been given and each assessment year thereafter, together with the interest that would have accrued had the amounts been placed on the tax roll in the applicable years; and

(c) A penalty equal to 20 percent of the amount specified in paragraph (b) of this subsection; however, no penalty shall be imposed on any amount attributable to interest.

(3) In cases where the designation of specially assessed property is removed as a result of sale or transfer to an ownership which makes it exempt from taxation pursuant to ORS 308.680 (1)(b), the lien for such increased taxes and interest shall attach as of the day preceding such sale or transfer.

(4) The amount determined to be due under subsection (1) of this section may be paid to the tax collector prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

(5) Whenever a single family residence zone is established which includes property which is receiving special assessment as a single family residence under ORS 308.670, the county assessor and tax collector shall cancel any potential additional taxes to be collected under this section. [1975 c.655 §4; 1977 c.679 §4; 1979 c.350 §8; 1985 c.524 §2]

Note: See note under 308.670.

SINGLE FAMILY DWELLING DEFERRED MAINTENANCE PROJECTS

308.690 "Deferred maintenance" defined. (1) As used in ORS 308.690 to 308.700, "deferred maintenance" means maintenance, repairs or replacements to an existing dwelling or portion thereof as described in subsection (2) of this section. In no event does it mean the addition of new construction to an existing building which increases the number of square feet of living space.

(2) Deferred maintenance includes maintenance, repairs or replacements of the following:

(a) Broken floor joists, missing sections or collapsed interior floors;

(b) Improperly installed or collapsing partitions, loose or missing plaster;

(c) Broken or missing sash, frames or window panes;

(d) Inadequate light or ventilation;

(e) Missing or defective weather stripping or storm windows;

(f) Missing or broken doors;

(g) Collapsed or broken stairs, stairways or stair railings;

(h) Missing or inoperative sanitary facilities;

(i) Hazardous gas or electric installations;

(j) Leaking sinks or defective drainboards;

(k) Improperly installed, obstructed, broken or leaking piping, drains, vents or traps;

(L) Inoperative or obsolete heating plant;

(m) Electrical insulation missing or damaged, overloaded electrical circuits, improper electrical installations or connections;

(n) Split or buckled basement support beams, open breaks or severe settlement in basement walls;

(o) Inadequate exterior wall and attic insulation;

(p) Open cracks or breaks in exterior building walls;

(q) Holes or cracks through roof, defective roof flashing or skylights;

(r) Collapsing or deteriorating chimneys;

(s) Broken or missing gutters and downspouts;

(t) Rotted fascia boards, eaves, soffits and cornices;

(u) Collapsed or broken porch joists, columns or railings;

(v) Rotted or broken porch flooring;

(w) Missing or broken step treads;

(x) Exterior or interior paint; and

(y) Weatherization materials certified in accordance with ORS 316.088 (3). As used in this paragraph, "weatherization materials" has the meaning given that term by ORS 316.088 (1)(b). [1975 c.355 §2; 1977 c.811 §3; 1979 c.534 §2]

Note: 308.690 to 308.700 were enacted into law by the Legislative Assembly and were added to and made a part of ORS chapter 308 but not added to any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

308.695 Application of ORS 308.690 to 308.700. ORS 308.690 to 308.700 shall apply only to deferred maintenance of owner-occupied, single-family dwellings performed and completed during the period July 1, 1975, to December 31, 1982. [1975 c.355 §3]

Note: See note under 308.690.

308.720 Return showing gross earnings; payment of tax. Every company upon which a tax is imposed under ORS 308.710 (2), on or before February 1 of each year shall make a return to the department. A such form and on such blanks as the department may provide, showing the amount of its gross earnings during the calendar year preceding, the year-end number of subscribers in each rural telephone exchange, the pole line miles of each rural telephone exchange and such other facts and information as the department may require. The company shall compute and forward with the return the tax imposed by ORS 308.710 (2). [1957 c.628 §6]

308.725 Examination of return by department; apportioning tax to counties. (1) The Department of Revenue shall examine and determine the accuracy of the returns forwarded under ORS 308.720. The department shall thereafter apportion the amount of tax so received among the several counties in which the company operates rural telephone exchanges. The part to be apportioned to a county shall bear the same ratio to the total of the tax so received as the number of wire miles of the rural telephone exchanges or parts thereof in the county bears to the total number of wire miles of all rural telephone exchanges or parts thereof operated by the company in this state. The part apportioned to each county shall be remitted to the treasurer of the county and shall be distributed among the code areas of the county on the basis of wire miles in each code area and among the districts in each code area in the proportion that the rate of tax levy in each district as shown by the tax levy filed with the assessor for the year last in process of collection bears to the total tax rate of the levies of all such taxing bodies for such year.

(2) Whenever the department determines that the use of wire miles under subsection (1) of this section does not fairly apportion the tax, it may apportion the tax to the counties in which the property of the rural telephone exchange is situated in such manner as the department deems reasonable and fair. The department shall advise each assessor of the value apportionment of the companies' properties within the county of the assessor for purposes of distribution of taxes to the taxing district in the county. [1957 c.628 §7; 1963 c.238 §2; 1965 c.492 §1; 1967 c.226 §1; 1969 c.595 §12]

308.730 Tax as a lien; delinquency date; action to collect. (1) The tax imposed under ORS 308.710 (2) shall be a debt due and owing from the company and shall be a lien on all the property, real and personal, of the company on and after February 1 of each year. Interest shall be charged and collected on any tax so

imposed and not paid when due at the rate of one percent per month or fraction of a month until paid. The taxes so imposed shall be delinquent if not paid within one year following the due date thereof.

(2) The Department of Revenue shall enforce collection of the tax imposed under ORS 308.710 (2) and immediately after the delinquency date thereof may institute an action for the collection of the taxes, together with interest, costs and other lawful charges thereon. The department shall have the benefit of all laws of this state pertaining to provisional remedies against the properties, either real or personal, of such companies, without the necessity of filing either an affidavit or undertaking, as otherwise provided by law. [1957 c.628 §8; 1981 c.623 §5]

OPEN SPACE LANDS

308.740 Definitions for ORS 308.740 to 308.790. As used in ORS 308.740 to 308.790, unless a different meaning is required by the context:

(1) "Open space land" means:

(a) Any land area so designated by an official comprehensive land use plan adopted by any city or county; or

(b) Any land area, the preservation of which in its present use would:

(A) Conserve and enhance natural or scenic resources;

(B) Protect air or streams or water supply;

(C) Promote conservation of soils, wetlands, beaches or tidal marshes;

(D) Conserve landscaped areas, such as public or private golf courses, which reduce air pollution and enhance the value of abutting or neighboring property;

(E) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space;

(F) Enhance recreation opportunities;

(G) Preserve historic sites;

(H) Promote orderly urban or suburban development; or

(I) Retain in their natural state tracts of land, on such conditions as may be reasonably required by the legislative body granting the open space classification.

(2) "Current" or "currently" means as of next January 1, on which the property is to be listed

and valued by the county assessor under ORS chapter 308.

(3) "Owner" means the party or parties having the fee interest in land, except that where land is subject to a real estate sales contract, "owner" shall mean the contract vendee. [1971 c.493 §2]

308.745 Policy. The legislature hereby declares that it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands and the vegetation thereon to assure continued public health by counteracting pollutants and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The legislature further declares that it is in the public interest to prevent the forced conversion of open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such open space land, and that assessment practices must be so designed as to permit the continued availability of open space lands for these purposes, and it is the intent of ORS 308.740 to 308.790 to so provide. [1971 c.493 §1]

308.750 Application for open space use assessment; contents of application; filing; reapplication. An owner of land desiring current open space use assessment under ORS 308.740 to 308.790 shall make application to the county assessor upon forms prepared by the Department of Revenue and supplied by the county assessor. The owner shall describe the land for which classification is requested, the current open space use or uses of the land, and shall designate the paragraph of ORS 308.740 (1) under which each such use falls. The application shall include such other information as is reasonably necessary to properly classify an area of land under ORS 308.740 to 308.790 with a verification of the truth thereof. Applications shall be made prior to December 31, 1971, for classification for the assessment year commencing January 1, 1972, and thereafter applications to the county assessor shall be made during the calendar year preceding the first assessment year for which such classification is requested. If the ownership of all property included in the application remains unchanged, a new application is not required after the first assessment year for which application was made and approved. [1971 c.493 §3]

308.755 Submission of application for approval of local granting authority; grounds for denial; approval; withdrawal of application. (1) Within 10 days of filing in

the office of the assessor, the assessor shall refer each application for classification to the planning commission, if any, of the governing body and to the granting authority, which shall be the county governing body, if the land is in an unincorporated area, or the city legislative body, if it is in an incorporated area. An application shall be acted upon in a city or county with a comprehensive plan in the same manner in which an amendment to the comprehensive plan is processed by such city or county, and by a city or county without a comprehensive plan after a public hearing and after notice of the hearing shall have been given by three consecutive weekly advertisements in a newspaper of general circulation in the city or county, the third published at least 10 days before the hearing. Each advertisement for one or more hearings shall be no smaller than three column by five inches in size. In determining whether an application made for classification under ORS 308.740 (1)(b) should be approved or disapproved, the granting authority shall weigh the benefits to the general welfare of preserving the current use of the property which is the subject of application against the potential loss in revenue which may result from granting the application.

(2) If the granting authority in so weighing shall determine that preservation of the current use of the land will:

(a) Conserve or enhance natural or scenic resources;

(b) Protect air or streams or water supplies;

(c) Promote conservation of soils, wetlands, beaches or tidal marshes;

(d) Conserve landscaped areas, such as public or private golf courses, which enhance the value of abutting or neighboring property;

(e) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces;

(f) Enhance recreation opportunities;

(g) Preserve historic sites;

(h) Promote orderly urban or suburban development; or

(i) Affect any other factors relevant to the general welfare of preserving the current use of the property;

the granting authority shall not deny the application solely because of the potential loss in revenue which may result from granting the application.

(3) The granting authority may approve the application with respect to only part of the land which is the subject of the application; but if any

part of the application is denied, the applicant may withdraw the entire application. [1971 c.493 §4]

308.760 Notice to assessor of approval or denial; recording approval; assessor to record potential additional taxes on tax roll; appeal from denial. (1) The granting authority shall immediately notify the county assessor and the applicant of its approval or disapproval which shall in no event be later than April 1 of the year following the year of receipt of said application. An application not denied by April 1 shall be deemed approved, and shall be considered to be land which qualifies under ORS 308.740 to 308.790.

(2) When the granting authority determines that land qualifies under ORS 308.740 to 308.790, it shall enter on record its order of approval and file a copy of the order with the county assessor within 10 days. The order shall state the open space use upon which approval was based. The county assessor shall, as to any such land, assess on the basis provided in ORS 308.765, and each year the land is classified shall also enter on the assessment roll, as a notation, the assessed value of such land were it not so classified.

(3) Each year the assessor shall include in the certificate made under ORS 311.105 a notation of the amount of additional taxes which would be due if the land were not so classified.

(4) On approval of an application filed under ORS 308.750, for each year of classification the assessor shall indicate on the tax roll that the property is being specially assessed as open space land and is subject to potential additional taxes as provided by ORS 308.770, by adding the notation "open space land (potential add'l tax)".

(5) Any owner whose application for classification has been denied may appeal to the circuit court in the county where the land is located, or if located in more than one county, in that county in which the major portion is located. [1971 c.493 §5]

308.765 Determination of true cash value of open space lands. In determining the true cash value of open space land which has been classified as such under ORS 308.740 to 308.790, each year the assessor shall, notwithstanding the provisions of ORS 308.205:

(1) Assume the highest and best use of the land to be the current open space use, such as park, sanctuary or golf course, and the assessor shall not consider alternative uses to which the land might be put.

(2) Value the improvements on the land, if any, as required by ORS 308.205. [1971 c.493 §6]

308.770 Change in use of open space land; notice to assessor; withdrawal from classification; collection of additional potential taxes. (1) When land has once been classified under ORS 308.740 to 308.790, it shall remain under such classification and it shall not be applied to any other use than as open space unless withdrawn from classification as provided in subsection (2) of this section, except that if the use as open space land changes from one open space use to another open space use, such as a change from park purposes to golf course land, the owner shall notify the assessor of such change prior to the next January 1 assessment date.

(2) During any year after classification, notice of request for withdrawal may be given by the owner to the county assessor or assessors of the county or counties in which such land is situated. The county assessor or assessors, as the case may be, shall withdraw such land from such classification, and immediately shall give written notice of the withdrawal to the granting authority that classified the land; and additional real property taxes shall be imposed on such land in an amount equal to the total amount of potential additional taxes computed under ORS 308.760

(3) during each year in which the land was classified, together with interest at the rate of two-thirds of one percent a month, or fraction of a month, from the dates on which such additional taxes would have been payable had the land not been so classified, limited to a total amount not in excess of the dollar difference in the value of the land as open space land for the last year of classification and the market value under ORS 308.205 for the year of withdrawal.

(3) If the owner fails to give the notice required under subsection (1) of this section during the period of classification, upon withdrawal under subsection (2) of this section, the assessor shall add to the tax extended against the land previously classified, an amount, if any, equal to the additional taxes that would have been collected had the assessor valued the classified land on the basis of the changed open space use, together with interest at the rate of two-thirds of one percent a month, or fraction of a month, from the dates on which such additional taxes would have been payable. [1971 c.493 §7]

308.775 Withdrawal by assessor when use changed; notice to granting authority; imposition of additional taxes; interest; penalty; exception in case of certain sale of land. (1) When land which has been classified and assessed under ORS 308.740 to 308.790 as open space land is applied to some use other than as open space land, except through compliance

with ORS 308.770 (2), or except as a result of the exercise of the power of eminent domain, the owner shall within 60 days thereof notify the county assessor of such change in use. The assessor or assessors shall withdraw the land from classification and immediately shall give written notice of the withdrawal to the granting authority that classified the land; and additional real property taxes shall be imposed upon such land in an amount equal to the amount that would have been due under ORS 308.770 if notice had been given by the owner as of the date of withdrawal, plus a penalty equal to 20 percent of the amount so determined.

(2) If no notice is given as required by subsection (1) of this section, the assessor, upon discovery of the change in use, shall compute the amount of taxes, penalty and interest described in subsection (1) of this section, as though notice had been given, and shall add thereto an additional penalty equal to 20 percent of the total amount so computed, for failure to give such notice.

(3) The limitation described in ORS 308.770 (2) applies only to the computation of taxes and interest, and not to the penalties described in subsections (1) and (2) of this section.

(4) The provisions of subsections (1) and (2) of this section shall not apply in the event that the change in use results from the sale of a least 50 percent of such land classified under ORS 308.740 to 308.790 within two years after the death of the owner. [1971 c.493 §8]

308.780 Prepayment of additional taxes; extending taxes on tax roll; collection; distribution. (1) The amount determined to be due under ORS 308.770 or 308.775 may be paid to the tax collector prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

(2) The amounts under ORS 308.770 or 308.775 shall be added to the tax extended against the land on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property taxes. [1971 c.493 §9; 1979 c.350 §9]

308.785 Reports from owner to assessor; effect of failure of owner to make report upon request. The assessor shall at all times be authorized to demand and receive reports by registered or certified mail from owners of land classified under ORS 308.740 to 308.790 as to the use of the same. If the owner shall fail, after 90 days' notice in writing by certified mail to comply with such demand, the assessor may immediately withdraw the land

from classification, give written notice to the granting authority of the withdrawal, and apply the penalties provided in ORS 308.770 and 308.775. [1971 c.493 §10]

308.790 Rules and regulations. The Department of Revenue of the State of Oregon shall make such rules and regulations consistent with ORS 308.740 to 308.790 as shall be necessary or desirable to permit its effective administration. [1971 c.493 §11]

GROSS EARNINGS TAX ON MUTUAL OR COOPERATIVE DISTRIBUTION SYSTEMS

308.805 Mutual and cooperative electric distribution systems subject to tax on gross earnings. (1) Every association of persons, wholly mutual or cooperative in character, whether incorporated or unincorporated, the principal business of which is the construction, maintenance and operation of an electric transmission and distribution system for the benefit of the members of such association without intent to produce profit in money and which has no other principal business or purpose shall, in lieu of all other taxes on the transmission and distribution lines, pay a tax on all gross revenue derived from the use or operation of transmission and distribution lines (exclusive of revenues from the leasing of lines to governmental agencies) at the rates prescribed by ORS 308.807. The tax shall not apply to or be in lieu of ad valorem taxation on any property, real or personal, which is not part of the transmission and distribution lines of such association.

(2) The Department of Revenue, pursuant to ORS 308.505 to 308.655, shall assess for ad valorem taxation all the real and personal property of such associations which is not a part of "transmission and distribution lines," as defined in subsection (3) of this section. All other property subject to ad valorem taxation shall be assessed in the manner otherwise provided by law, by the assessor of the county in which such property has a tax situs.

(3) As used in ORS 308.805 to 308.820:

(a) "Transmission and distribution lines" shall include all property that is energized or capable of being energized or intended to be energized, or that supports or is integrated with such property. This includes, but is not limited to, substation equipment, fixtures and framework, poles and the fixtures thereon, conductors, transformers, services, meters, street lighting equipment, easements for rights of way, generating equipment, communication equipment,

§ 39-1-204. Home owner's tax credit.

(a) Subject to subsection (g) of this section, a person who occupies a specified homestead as his home and principal residence is entitled to a property tax credit in the amount provided by subsection (d) or (e) of this section. No more than one (1) home owner's tax credit shall be allowed on the same piece of property during any year.

(b) A person who wishes to claim a home owner's tax credit shall file a claim under penalties of perjury with the county assessor on or before the fourth Monday in May on forms provided by the department of revenue and taxation. The forms may be mailed to property owners and may be published in a newspaper by county assessors and the mailed or published form may be filled out and returned by mail or in person to county assessors. The applicant shall list the property claimed to be subject to the tax credit, state that the property is the principal place of residence of the applicant and state that no other home owner's claims have been or will be submitted by the applicant during the remainder of the calendar year. False claims are punishable as provided by W.S. 6-5-303.

(c) In completing the assessment roll of the county the county assessor shall indicate the assessed value used as a base for computation of the home owner's tax credit and the county treasurer shall collect from the property owner the amount of tax due minus the amount of tax credit allowed. On or before September 1, county assessors shall certify the credits granted pursuant to this section to the state tax commission. On or before October 1 the state treasurer out of funds appropriated for that purpose shall reimburse each county treasurer for the amount of taxes which would have been collected if the property tax credit had not been granted. The county treasurer shall distribute to each governmental entity the actual amount of revenue lost due to the tax credit.

(d) The tax credit under subsection (a) of this section is one thousand four hundred sixty dollars (\$1,460.00) times the mill levy to be applied against the property if the dwelling and land, not to exceed two (2) acres on which the dwelling is located, have a combined assessed value of less than three thousand nine hundred dollars (\$3,900.00), or five hundred ninety dollars (\$590.00) times the mill levy to be applied against the property if the dwelling and land, not to exceed two (2) acres on which the dwelling is located, have a combined assessed value of at least three thousand nine hundred dollars (\$3,900.00) but less than five thousand eight hundred fifty dollars (\$5,850.00) and if:

(i) The dwelling and land on which the dwelling is located are owned by the same person or entity; and

(ii) The dwelling has been occupied in Wyoming since the beginning of the calendar year by the applicant.

(e) The tax credit under subsection (a) of this section is five hundred ninety dollars (\$590.00) times the mill levy to be applied against the property if:

person who occupies a residence is entitled to a section (d) or (e) of this shall be allowed on the

's tax credit shall file a assessor on or before the department of revenue and s and may be published s published form may be assessors. The applicant ix credit, state that the licant and state that no mitted by the applicant aims are punishable as

ity the county assessor mputation of the home llect from the property x credit allowed. On or y the credits granted On or before October 1 purpose shall reimburse ich would have been d. The county treasurer amount of revenue lost

on is one thousand four o be applied against the (2) acres on which the ue of less than three undred ninety dollars property if the dwelling elling is located, have a l nine hundred dollars fifty dollars (\$5,850.00)

ng is located are owned ng since the beginning section is five hundred and against the property

(i) The dwelling has an assessed value of less than five thousand eight hundred fifty dollars (\$5,850.00); and

(ii) The land on which the dwelling is located is not owned by the same person or entity owning the dwelling; and

(iii) The dwelling has been occupied in Wyoming since the beginning of the calendar year by the applicant.

(f) As used in this section:

(i) "Applicant" means:

(A) A person who occupies and owns a homestead either solely or jointly with his spouse;

(B) A person who occupies a homestead as a vendee in possession under a contract of sale;

(C) A person who occupies a homestead owned by a corporation primarily formed for the purpose of farming or ranching if the person is a shareholder or is related to a shareholder of the corporation; or

(D) A person who occupies a homestead owned by a partnership primarily formed for the purpose of farming or ranching if the person is a partner or is related to a partner in the partnership.

(ii) "Dwelling" means a house, trailer house, mobile home, transportable home or other dwelling place.

(g) Every person or entity holding an escrow for the payment of taxes on property owned by another shall notify the owner of the property of the amount of home owner's tax credit allowed to the owner under this section annually on or before October 1.

(h) The home owner's tax credit authorized by this section is allowed during a fiscal year only if the legislature has appropriated monies [that] the state tax commission determines to be necessary to reimburse all local governments for tax losses created by this section during that fiscal year. When it appears to the state treasurer that the monies appropriated are insufficient to reimburse the counties as provided herein, the money available shall be prorated among the counties at an amount less than one hundred percent (100%).

(j) The purpose of this section is to provide general property tax relief for certain persons who own their residences through a system of tax credits and general fund appropriations. The relief provided is to offset in part the general tax burden. Thus, the tax relief provided is determined by reference to property tax assessment and collection mechanisms but is not limited to property tax relief nor formulated upon legislative power to relieve such taxes. It is for the general relief of taxes and grounded upon general legislative power. In adopting this method of reimbursement of property taxes and providing that no local government shall incur any loss of property tax revenue under subsection (h) of this section, any bond issues or other matters relying upon the assessed value of a local government for computation shall be predicated upon the assessed value of the local government before computation of tax credits under this section. (Laws 1979, ch. 163, § 1; 1980, ch. 41, § 1; 1982, ch. 7, § 1; 1983, ch. 148, § 1; 1984, ch. 64, § 200; 1985, ch. 6, § 1.)

Co
comi
reads
comn
be cc
act."
Mi
of "tl
subsi

§ 3

(2
com

Cross references. — As to Wyoming tax commission, see § 39-1-302.

The 1984 amendment, effective July 1, 1984, in subsection (d) substituted "six thousand one hundred sixty dollars (\$6,160.00)" for "eight thousand one hundred sixty dollars (\$8,160.00)" in two places and substituted "eight thousand two hundred dollars (\$8,200.00)" for "ten thousand two hundred dollars (\$10,200.00)".

The 1985 amendment rewrote subsections (d) and (e) to the extent that a detailed comparison would be impracticable.

Laws 1985, ch. 6, § 3, makes the act effective

immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 8, 1985.

Editor's notes. — There is no subsection (i) in this section as it appears in the printed acts.

Appropriations. — Laws 1985, ch. 6, § 2, reads: "There is appropriated to the state treasurer from the general fund the sum of six million dollars (\$6,000,000.00) or as much thereof as may be necessary to reimburse taxing entities for lost revenues as by law provided. The tax credit authorized by this act applies to the 1985 tax year."

ARTICLE 3. STATE ADMINISTRATIVE PROVISIONS

Cross references. — As to county board of equalization, see § 39-2-302. As to state board of equalization, see art. 15, §§ 9, 10, Wyo. Const.

Am. Jur. 2d, ALR and C.J.S. references. — Estoppel of state or local government in tax matters, 21 ALR4th 573.

§ 39-1-301. Department created.

The department of revenue and taxation is created. (Laws 1973, ch. 248, § 1; 1977, ch. 45, § 1.)

Law reviews. — For comment, "Competitive Bidding on Public Works in Wyoming: Determination of Responsibility and Preference," see XI Land & Water L. Rev. 243 (1976).

§ 39-1-302. Appointment of commissioners; appointment of division administrators; additional employees.

(a) The governor shall appoint, with senate confirmation, three (3) tax commissioners who are the department's executive and administrative heads. Not more than two (2) commissioners may be members of the same political party. Each appointment of the tax commissioners shall be for a six (6) year term. The three (3) commissioners shall comprise the Wyoming tax commission as well as the state board of equalization. The commission, with the approval of the governor, may appoint administrators as needed for the divisions of the department. The commission may employ professional, technical and other employees to work in any of the divisions. The commission may formulate the policies and programs to be carried out by the department through its respective divisions and adopt suitable rules and regulations to implement the administration of this act pursuant to the provisions of the Wyoming Administrative Procedure Act [§§ 16-3-101 through 16-3-115].

(b) The commissioners shall elect a chairman and a vice-chairman who shall serve for two (2) years. (Laws 1973, ch. 248, § 1; 1975, ch. 17, § 1; 1977, ch. 45, § 1.)

Library References

Taxation 241(1).
C.J.S. Taxation § 281 et seq.

84.36.370. Repealed by Laws 1974, Ex.Sess., ch. 182, § 6, eff. May 5, 1974

The repealed section, relating to exemptions from percentage of residential property tax for qualified owners, was derived from:

Laws 1971, Ex.Sess., ch. 288, § 4
Laws 1972, Ex.Sess., ch. 126, § 1
Laws 1973, 1st Ex.Sess., ch. 98, § 1.
See, now, §§ 84.36.381 to 84.36.389.

84.36.379. Residences—Property tax exemption—Findings

The legislature finds that the property tax exemption authorized by Article VII, section 10 of the state Constitution should be made available on the basis of a retired person's ability to pay property taxes. The legislature further finds that the best measure of a retired person's ability to pay taxes is that person's disposable income as defined in RCW 84.36.383(6). Enacted by Laws 1980, ch. 185, § 3.

Applicability—Laws 1980, ch. 185: "Except for the amendment to § 84.36.381(2) by this 1980 act, sections 3 through 5 of this 1980 act are effective for property taxes due in 1982 and thereafter." [Laws 1980, ch. 185, § 7.] The reference to "sections 3 through 5 of

this 1980 act" refers to § 84.36.379 and to the 1980 amendments to §§ 84.36.381 and 84.36.383.

Library References

Taxation 219.
C.J.S. Taxation § 240 et seq.

84.36.380. Repealed by Laws 1974, Ex.Sess., ch. 182, § 6

The repealed section, providing definitions, procedures, and penalties applicable to owners claiming residential property tax exemption, was derived from

Laws 1971, Ex.Sess., ch. 288, § 5, as amended by Laws 1972, Ex.Sess., ch. 126, § 3.
See, now, §§ 84.36.381 to 84.36.389.

84.36.381. Residences—Property tax exemptions—Qualifications

A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of January 1st of the year for which the exemption is claimed: *Provided*, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: *Provided further*, That confinement of the person to a hospital or nursing home shall not disqualify the claim of exemption if the residence is temporarily unoccupied or if the residence is occupied by a spouse and/or a person financially dependent on the claimant for support;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by

cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must have been sixty-one years of age or older on January 1st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: *Provided*, That any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve.

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of eighteen thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of fourteen thousand dollars or less but greater than twelve thousand dollars shall be exempt from all regular property taxes on the greater of twenty-four thousand dollars or thirty percent of the valuation of his or her residence, but not to exceed forty thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of twelve thousand dollars or less shall be exempt from all regular property taxes on the greater of twenty-eight thousand dollars or fifty percent of the valuation of his or her residence.

Enacted by Laws 1974, Ex.Sess., ch. 182, § 1, eff. May 5, 1974. Amended by Laws 1975, 1st Ex.Sess., ch. 291, § 14, eff. July 2, 1975; Laws 1977, Ex.Sess., ch. 268, § 1, eff. June 15, 1977; Laws 1979, Ex.Sess., ch. 214, § 1, eff. June 4, 1979; Laws 1980, ch. 185, § 4; Laws 1983, 1st Ex.Sess., ch. 11, § 2, eff. May 11, 1983; Laws 1983, 1st Ex.Sess., ch. 11, § 5, eff. Jan. 1, 1984; Laws 1987, ch. 301, § 1.

Applicability—Laws 1987, ch. 301: "This act shall be effective for taxes levied for collection in 1989 and thereafter." [Laws 1987, ch. 301, § 2.]

Intent—Laws 1983, 1st Ex.Sess., ch. 11: "The legislature finds that inflation has significant detrimental effects on the senior citizen property tax relief program. Inflation increases incomes without increasing real buying power. Inflation also raises the values of homes, and thus the taxes on those homes. This act addresses the problem of inflation in two ways. First, the assessed value exemption is tied to home value so it will increase as values rise. Secondly, though the income of most senior citizens does not keep pace with inflation, it is the legislature's intent that inflationary increases in incomes will not result in program disqualification. Therefore, the income levels are adjusted to reflect the forecasted increase in inflation. The

legislature also recommends that similar adjustment be examined by future legislatures." [Laws 1983, 1st Ex.Sess., ch. 11, § 1.]

Applicability—Laws 1983, 1st Ex. Sess., ch. 11: "This act applies to taxes first due in 1984 and thereafter." [Laws 1983, 1st Ex.Sess., ch. 11, § 7.]

Effective dates—Laws 1983, 1st Ex. Sess., ch. 11: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except sections 5 and 6 of this act shall take effect January 1, 1984." [Laws 1983, 1st Ex.Sess., ch. 11, § 8.] "Sections 5 and 6 of this act" refer to the amendments to §§ 84.36.381 and 84.36.385 by Laws 1983, 1st Ex. Sess., ch. 11, §§ 5 and 6, respectively. Expect for "sections 5 and 6 of this act," the effective date of "this act," Laws

WASHINGTON

CORRECTION

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

Library References

Taxation ¶241(1).

C.J.S. Taxation § 281 et seq.

84.36.370. Repealed by Laws 1974, Ex.Sess., ch. 182, § 6, eff. May 5, 1974

The repealed section, relating to exemptions from percentage of residential property tax for qualified owners, was derived from:

Laws 1971, Ex.Sess., ch. 288, § 4
Laws 1972, Ex.Sess., ch. 126, § 1
Laws 1973, 1st Ex.Sess., ch. 98, § 1.
See, now, §§ 84.36.381 to 84.36.389.

84.36.379. Residences—Property tax exemption—Findings

The legislature finds that the property tax exemption authorized by Article VII, section 10 of the state Constitution should be made available on the basis of a retired person's ability to pay property taxes. The legislature further finds that the best measure of a retired person's ability to pay taxes is that person's disposable income as defined in RCW 84.36.383(6). Enacted by Laws 1980, ch. 185, § 3.

Applicability—Laws 1980, ch. 185: "Except for the amendment to § 84.36.381(2) by this 1980 act, sections 3 through 5 of this 1980 act are effective for property taxes due in 1982 and thereafter." [Laws 1980, ch. 185, § 7.] The reference to "sections 3 through 5 of

this 1980 act" refers to § 84.36.379 and to the 1980 amendments to §§ 84.36.331 and 84.36.383.

Library References

Taxation ¶219.

C.J.S. Taxation § 240 et seq.

84.36.380. Repealed by Laws 1974, Ex.Sess., ch. 182, § 6

The repealed section, providing definitions, procedures, and penalties applicable to owners claiming residential property tax exemption, was derived from

Laws 1971, Ex.Sess., ch. 288, § 5, as amended by Laws 1972, Ex.Sess., ch. 126, § 3.
See, now, §§ 84.36.381 to 84.36.389.

84.36.381. Residences—Property tax exemptions—Qualifications

A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of January 1st of the year for which the exemption is claimed: *Provided*, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: *Provided further*, That confinement of the person to a hospital or nursing home shall not disqualify the claim of exemption if the residence is temporarily unoccupied or if the residence is occupied by a spouse and/or a person financially dependent on the claimant for support;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by

cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must have been sixty-one years of age or older on January 1st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: *Provided*, That any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve.

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of eighteen thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of fourteen thousand dollars or less but greater than twelve thousand dollars shall be exempt from all regular property taxes on the greater of twenty-four thousand dollars or thirty percent of the valuation of his or her residence, but not to exceed forty thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of twelve thousand dollars or less shall be exempt from all regular property taxes on the greater of twenty-eight thousand dollars or fifty percent of the valuation of his or her residence.

Enacted by Laws 1974, Ex.Sess., ch. 182, § 1, eff. May 5, 1974. Amended by Laws 1975, 1st Ex.Sess., ch. 291, § 14, eff. July 2, 1975; Laws 1977, Ex.Sess., ch. 268, § 1, eff. June 15, 1977; Laws 1979, Ex.Sess., ch. 214, § 1, eff. June 4, 1979; Laws 1980, ch. 185, § 4; Laws 1983, 1st Ex.Sess., ch. 11, § 2, eff. May 11, 1983; Laws 1983, 1st Ex.Sess., ch. 11, § 5, eff. Jan. 1, 1984; Laws 1987, ch. 301, § 1.

Applicability—Laws 1987, ch. 301: "This act shall be effective for taxes levied for collection in 1989 and thereafter." [Laws 1987, ch. 301, § 2.]

Intent—Laws 1983, 1st Ex.Sess., ch. 11: "The legislature finds that inflation has significant detrimental effects on the senior citizen property tax relief program. Inflation increases incomes without increasing real buying power. Inflation also raises the values of homes, and thus the taxes on those homes. This act addresses the problem of inflation in two ways. First, the assessed value exemption is tied to home value so it will increase as values rise. Secondly, though the income of most senior citizens does not keep pace with inflation, it is the legislature's intent that inflationary increases in incomes will not result in program disqualification. Therefore, the income levels are adjusted to reflect the forecasted increase in inflation. The

legislature also recommends that similar adjustments be examined by future legislatures." [Laws 1983, 1st Ex.Sess., ch. 11, § 1.]

Applicability—Laws 1983, 1st Ex.Sess., ch. 11: "This act applies to taxes first due in 1984 and thereafter." [Laws 1983, 1st Ex.Sess., ch. 11, § 7.]

Effective dates—Laws 1983, 1st Ex.Sess., ch. 11: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except sections 5 and 6 of this act shall take effect January 1, 1984." [Laws 1983, 1st Ex.Sess., ch. 11, § 8.] "Sections 5 and 6 of this act" refer to the amendments to §§ 84.36.381 and 84.36.385 by Laws 1983, 1st Ex.Sess., ch. 11, §§ 5 and 6, respectively. Expect for "sections 5 and 6 of this act," the effective date of "this act," Laws

1983, 1st Ex.Sess., ch. 11, including the amendments to §§ 84.36.381 and 84.36.385 by Laws 1983, 1st Ex.Sess., ch. 11, § 2 and 3, is May 11, 1983.

Applicability—Laws 1980, ch. 185: See No. following § 84.36.379.

Applicability—Laws 1979, Ex.Sess., ch. 214: "The exemption created by sections 1 through 4 of this act shall be effective starting with property taxes levied in calendar year 1979 for collection in calendar year 1980. The former exemption created by the law amended shall continue to be effective with respect to property taxes levied in calendar year 1978 for collection in calendar year 1979. [Laws 1979, Ex.Sess., ch. 214, § 10.] "[S]ections 1 through 4 of this act" consist of the amendments by Laws 1979 Ex.Sess., ch. 214 to §§ 84.36.381, 84.36.383, 84.36.385, and 84.36.389.

Effective dates—Severability—Laws 1975, 1st Ex.Sess., ch. 291: See Historical Note following § 82.04.050.

Severability—Laws 1974, Ex.Sess., ch. 182: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [Laws 1974, Ex.Sess., ch. 182, § 8.]

Cross References

Parks and recreation commission, authority to grant senior citizen's pass to persons qualifying for property tax exemption under this section, see § 43.51.055.

Senior citizens, reduced utility rates for low income senior citizens, income not to exceed amount specified in provision of this section, see § 74.38.070.

Library References

Taxation — 219.

C.J.S. Taxation § 240 et seq.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

84.36.383. Residences—Definitions

As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

(1) The term "residence" shall mean a single family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre. The term shall also include a share ownership in a cooperative housing association, corporation,

Attorney General's Opinions

Both because of a lack of statutory authority and possible constitutional objections under Washington Constitution, Article VIII, section 7, a county transportation authority may not directly reduce or eliminate fares only for (a) senior citizens, a category being created only on the basis of age, or (b) students attending public schools except (in the latter case) through an interlocal cooperation act agreement with participating school districts; likewise, although such action would not be constitutionally objectionable in the case of low income citizens or the handicapped, a county transportation authority presently lacks the requisite statutory authority to reduce or to entirely eliminate fares for those individuals. Op.Atty.Gen.1980, No. 25.

Neither Const. Art. 7, § 10 nor such implementing legislation as is contained in § 84.36.381 et seq., qualify an individual for a property tax exemption with respect to a "residence occupied by a share owner under a cooperative housing association agreement [which] is not owned by the association, but is leased by the association from a third party pursuant to a long term lease". Op. Atty.Gen.1979, L.O. No. 24.

Obligation of grantees from senior citizens [who timely claim tax exemption and pay "first half" of taxes] to pay one-half of original amount levied. Op. Atty.Gen.1972, No. 23.

Inclusion of all of applicant's income from federal civil service or railroad retirement pension in computing income for purposes of exemption provided by this statute. Op.Atty.Gen.1972, No. 10.

Property taxpayers' disqualification for tax exemption [granted by § 4, Chapter 288, Laws 1971, 1st Ex.Sess.] on receiving income causing reduction of federal social security benefits; effect of amended federal legislation. Op.Atty. Gen.1971, No. 27.

Termination of exemption when person entitled thereto dies or sells property before taxes become payable. Op. Atty.Gen.1971, No. 31.

or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. The term shall also include a single family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of Washington, and notwithstanding the provisions of RCW 84.04.080, 84.04.090 or 84.40.250, such a residence shall be deemed real property.

(2) The term "real property" shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities: *Provided*, That a mobile home located on land leased by the owner of the mobile home shall be subject, for tax billing, payment, and collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) The term "preceding calendar year" shall mean the calendar year preceding the year in which the claim for exemption is to be made.

(4) "Department" shall mean the state department of revenue.

(5) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the residence for the preceding calendar year, less amounts paid by the person claiming the exemption or his or her spouse during the previous year for the treatment or care of either person in a nursing home.

(6) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended¹ prior to January 1, 1980, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(a) Capital gains;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments;

(f) Veterans benefits other than attendant-care and medical-aid payments;

(g) Federal social security act² and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

(7) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence.

Enacted by Laws 1974, Ex.Sess., ch. 182, § 2, eff. May 5, 1974. Amended by Laws 1975, 1st Ex.Sess., ch. 291, § 15, eff. July 2, 1975; Laws 1979, Ex.Sess., ch. 214, § 2, eff. June 4, 1979; Laws 1980, ch. 185, § 5; Laws 1983, 1st Ex.Sess., ch. 11, § 4, eff. May 11, 1983; Laws 1985, ch. 395, § 3; Laws 1987, ch. 155, § 2.

¹ 26 U.S.C.A. § 1 et seq.

² 42 U.S.C.A. § 301 et seq.

Intent — Applicability — Effective dates — Laws 1983, 1st Ex.Sess., ch. 11: See Historical Note following § 84.36.381.

Applicability—Laws 1979, Ex.Sess., ch. 214: See Historical Note following § 84.36.381.

Effective dates—Severability—Laws 1975, 1st Ex.Sess., ch. 291: See Historical Note following § 82.04.050.

Library References

Taxation ¶219.

C.J.S. Taxation § 240 et seq.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Attorney General's Opinions

Where but only where a mobile home is permanently affixed to realty so as to constitute an improvement, and the bona fide purchaser, encumbrancer, or contract buyer has acquired an interest in the real estate upon which it is located prior to the time the mobile home is assessed, the proviso to the second sentence of RCWA 84.40.080 will apply so as to prevent an omitted property assessment. Op.Atty.Gen.1980, No. 4.

residence of such person is under mortgage or purchase contract requiring accumulation of reserves out of which the holder of the mortgage or contract is required to pay real estate taxes, by such holder or by the owner, either before two witnesses or the county assessor or his deputy in the county where the real property is located: *Provided*, That if a claim for exemption is made by a person living in a cooperative housing association, corporation, or partnership, such claim shall be made and signed by the person entitled to the exemption and by the authorized agent of such cooperative.

(2) If the taxpayer is unable to submit his own claim, the claim shall be submitted by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(3) Any person signing a false claim with the intent to defraud or evade the payment of any tax shall be guilty of the offense of perjury.

(4) The tax liability of a cooperative housing association, corporation, or partnership shall be reduced by the amount of tax exemption to which a claimant residing therein is entitled and such cooperative shall reduce any amount owed by the claimant to the cooperative by such exact amount of tax exemption or, if no amount be owed, the cooperative shall make payment to the claimant of such exact amount of exemption.

(5) A remainderman or other person who would have otherwise paid the tax on real property that is the subject of an exemption granted under RCW 84.36.381 for an estate for life shall reduce the amount which would have been payable by the life tenant to the remainderman or other person to the extent of the exemption. If no amount is owed or separately stated as an obligation between these persons, the remainderman or other person shall make payment to the life tenant in the exact amount of the exemption.

Enacted by Laws 1974, Ex.Sess., ch. 182, § 4, eff. May 5, 1974. Amended by Laws 1975, 1st Ex.Sess., ch. 291, § 16, eff. July 2, 1975; Laws 1980, ch. 185, § 6.

Effective dates—Severability—Laws 1975, 1st Ex.Sess., ch. 291: See Historical Note following § 82.04.050.

Library References

Taxation ¶839.

C.J.S. Taxation § 1026.

84.36.389. Residences—Rules and regulations—Audits—Confidentiality—Criminal penalty

(1) The director of the department of revenue shall adopt such rules and regulations and prescribe such forms as may be necessary and appropriate for implementation and administration of this chapter subject to chapter 34.04 RCW, the administrative procedure act.

(2) The department may conduct such audits of the administration of RCW 84.36.381 through 84.36.389 and the claims for exemption filed thereunder as it considers necessary. The powers of the department under chapter 84.08 RCW apply to these audits.

(3) Any information or facts concerning confidential income data obtained by the assessor or the department, or their agents or employees, under subsection (2) of this section shall be used only to administer RCW 84.36.381 through 84.36.389. Notwithstanding any provision of law to the contrary, absent written consent by the person about whom the information or facts have been obtained, the confidential income data shall not be disclosed by the assessor or the assessor's agents or employees to anyone other than the department or the department's agents or employees nor by the department or the department's agents or employees to anyone other than the assessor or the assessor's agents or employees except in a judicial

84.36.385. Residences—Claim for exemption—Forms—Change of status—Publication and notice of qualifications and manner of making claims

A claim for exemption under RCW 84.36.381 as now or hereafter amended, shall be made and filed between January 2 and July 1 for exemption from taxes payable the following year and thereafter and solely upon forms as prescribed and furnished by the department of revenue.

A person granted an exemption under RCW 84.36.381 shall inform the county assessor of any change in status affecting the person's entitlement to the exemption on forms prescribed and furnished by the department of revenue.

If the assessor finds that the applicant does not meet the qualifications as set forth in RCW 84.36.381, as now or hereafter amended, the claim or exemption shall be denied but such denial shall be subject to appeal under the provisions of RCW 84.48.010(5). If the applicant had received exemption in prior years based on erroneous information, the taxes shall be collected subject to penalties as provided in RCW 84.40.130 for a period of not to exceed three years.

The department and each local assessor is hereby directed to publicize the qualifications and manner of making claims under RCW 84.36.381 through 84.36.389, through communications media, including such paid advertisements or notices as it deems appropriate. Notice of the qualifications, method of making applications, the penalties for not reporting a change in status, and availability of further information shall be included on or with property tax statements and revaluation notices for all residential property including mobile homes, except rental properties.

Enacted by Laws 1974, ch. 182, § 3, eff. May 5, 1974. Amended by Laws 1977, Ex.Sess., ch. 268, § 2, eff. June 15, 1977; Laws 1979, Ex.Sess., ch. 214, § 3, eff. June 4, 1979; Laws 1983, 1st Ex.Sess., ch. 11, § 3, eff. May 11, 1983; Laws 1983, 1st Ex.Sess., ch. 11, § 6, eff. Jan. 1, 1984.

Intent — Applicability — Effective dates — Laws 1983, 1st Ex.Sess., ch. 11: See Historical Notes following § 84.36.381.

Applicability—Laws 1979, Ex.Sess., ch. 214: See Historical Note following § 84.36.381.

Library References

Taxation ¶251.

C.J.S. Taxation §§ 304, 305.

84.36.387. Residences—Claimants—Penalty for falsification—Reduction by remainderman

(1) All claims for exemption shall be made and signed by the person entitled to the exemption, by his or her attorney in fact or in the event the

proceeding pertaining to the taxpayer's entitlement to the tax exemption under RCW 84.36.381 through 84.36.389. Any violation of this subsection is a misdemeanor.

Enacted by Laws 1974, Ex.Sess., ch. 182, § 5, eff. May 5, 1974. Amended by Laws 1979, Ex.Sess., ch. 214, § 4, eff. June 4, 1979.

Applicability—Laws 1979, Ex.Sess., ch. 214: See Historical Note following § 84.36.381.

Library References
Taxation Ⓒ219.
C.J.S. Taxation § 240 et seq.

84.36.400. Improvements to single family dwellings

Any physical improvement to single family dwellings upon real property shall be exempt from taxation for the three assessment years subsequent to the completion of the improvement to the extent that the improvement represents thirty percent or less of the value of the original structure. A taxpayer desiring to obtain the exemption granted by this section must file notice of his intention to construct the improvement prior to the improvement being made on forms prescribed by the department of revenue and furnished to the taxpayer by the county assessor: *Provided*, That this exemption cannot be claimed more than once in a five-year period.

The department of revenue shall promulgate such rules and regulations as are necessary and convenient to properly administer the provisions of this section.

Enacted by Laws 1972, Ex.Sess., ch. 125, § 3.

Severability—Laws 1972, Ex.Sess., ch. 125: See Historical Note following § 84.40.045.

Library References
Taxation Ⓒ220.
C.J.S. Taxation § 249.

84.36.410. Repealed by Laws 1980, ch. 155, § 7, eff. April 1, 1980

The repealed section, establishing procedure and rules under which solar energy systems may be exempted from prop-

erty tax, was derived from Laws 1977, Ex.Sess., ch. 384, § 1.

84.36.450. Repealed by Laws 1975-76, 2nd Ex.Sess., ch. 61, § 20, eff. March 1, 1976

The repealed section, exempting leasehold estates from property tax, was derived from Laws 1973, 1st Ex.Sess., ch. 187, § 11.

See, now, § 84.36.451.

84.36.451. Right to occupy or use certain public property (including leasehold interests)

The following property shall be exempt from taxation: Any and all rights to occupy or use any real or personal property owned in fee or held in trust by:

(1) The United States, the state of Washington, or any political subdivision or municipal corporation of the state of Washington; or

(2) A public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites; and

(3) Including any leasehold interest arising from the property identified in subsections (1) and (2) of this section as defined in RCW 82.29A.020:

Provided, That the exemption under this section shall not apply to any such leasehold interests which are a part of operating properties of public utilities subject to assessment under chapter 84.12 RCW nor be construed to modify the provisions of RCW 84.40.230.

Enacted by Laws 1975-76, 2nd Ex.Sess., ch. 61, § 14, eff. March 1, 1976. Amended by Laws 1979, Ex.Sess., ch. 196, § 10, eff. July 1, 1979.

Effective date—Laws 1979, Ex.Sess., ch. 196: See Historical Note following § 82.04.240.

Effective date—Severability—Laws 1975-76, 2nd Ex.Sess., ch. 61: See §§ 82.29A.900, 82.29A.910.

Cross References

Cancellation of taxes levied for collection in 1976, see § 82.29A.150.

Leasehold excise tax, exemptions, see § 82.29A.130.

Taxation of improvements not defined as contract rent, see § 82.29A.160.

Library References

Taxation Ⓒ241.1(3).
C.J.S. Taxation § 282 et seq.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Attorney General's Opinions

Entitlement to leasehold interest tax exemption with respect to time "renegotiated"; requirements for exemption of leasehold interest granted by Indian to

non-Indian, under subd.(8) of this section. Op.Atty.Gen.1974, No. 8.

"Renegotiation," with respect to taxable leasehold interests in property owned by state or its political subdivisions, as not including mutually agreed on changes in the lease during its term that are not part of any extension or renewal. Op.Atty.Gen.1973, No. 17.

Notes of Decisions

For purposes of applying RCW 84.04.080, which defines leaseholds as personalty and also includes as personalty any improvements to realty titled in the name of the United States, non-Indian owned leaseholds on tribal real property and removable improvements installed by the holder of a leasehold interest are personal property and taxable as such Chief Seattle Properties, Inc. v. Kitsap County (1975) 86 Wash.2d 7, 541 P.2d 699.

84.36.455, 84.36.460. Repealed by Laws 1975-76, 2nd Ex.Sess., ch. 61, § 20, eff. March 1, 1976

The repealed sections, relating to leasehold and educational exemptions effectiveness in event leasehold in lieu excise taxes held invalid and tax on im-

provements owned or by acquired by sublessee is taxable to such sublessee, were derived from Laws 1973, 1st Ex.Sess., ch. 187, §§ 14, 15.

84.36.470. Agricultural or horticultural produce or crop—Phase out exemption

Any agricultural or horticultural produce or crop, including any animal, bird, or insect, or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom grown or produced for sale by any person upon his own lands or upon lands in which he has a present right of possession who is exempted from payment of business and occupation tax pursuant to RCW 82.04.330 as now or hereafter amended shall be assessed for the purposes of ad valorem taxes according to the following schedule:

Commencing with assessment as of January 1, 1975, for taxes due in 1976 the assessment level shall be seventy-five percent of true and fair value.

Commencing with assessment as of January 1, 1976, for taxes due in 1977 the assessment level shall be seventy percent of true and fair value.

Commencing with assessment as of January 1, 1977, for taxes due in 1978 the assessment level shall be sixty percent of true and fair value.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

February 19, 1988

MEMORANDUM

TO: Representative Sam Cotten

ATTN: Ned Farquhar

FROM: Karen Oakley *ko*
Legislative Analyst

RE: Conservation Easements
Research Request 88.138

You asked for information on conservation easement statutes in other states. You also asked what federal and local tax benefits a landowner achieves by granting a conservation easement and how conservation easements affect federal and local government revenues.

In this memorandum, we present background information on easements in general and on conservation easements in particular, and discuss the conservation easement statutes of other states; the tax and revenue consequences of conservation easements; and the applicability of conservation easements to the Alaska situation.

The primary source of information presented in this memorandum is Powell on Real Property, Vol. 3, Chapter 34A entitled "Conservation Easements," by William R. Ginsberg, published by Matthew Bender and Co. This article provides a definitive and very readable review of the topic and is attached (Attachment A).

In summary, we found:

- The conservation easement is a well-established legal concept and is widely used throughout the United States as a means to protect scenic or other natural values of private land and to preserve historic structures.
- Because a conservation easement is held by a person, rather than by an adjacent parcel, the easement is considered to be held in gross. Under common law, an easement in gross cannot run with the land. To ensure that a conservation easement is enforceable in perpetuity, this common law deficiency must be corrected by statute.

- Alaska is one of only four states that does not have a conservation easement statute.
- State statutes typically specify: the purposes for which easements may be made; the types of organizations that are eligible to receive an easement; the duration of an easement; and the parties that are empowered to enforce the terms of an easement. In specifying the purposes, holders and enforcers of conservation easements, states vary considerably.
- Landowners that donate a conservation easement to a charitable organization are eligible for a federal income tax deduction. Landowners granting a conservation easement may also pay less local property tax due to decreased value of the parcel.
- Governments are the most common holders of conservation easements, and easements represent a cost-effective way for governments to protect the public value of private land. The revenue foregone by allowing conservation easements is considerably less than the cost of fee simple purchase of land.
- Native corporations are the major private landowners in Alaska. Conservation easements may provide a way to protect portions of these lands from development while still allowing subsistence use.

BACKGROUND

Easements in General

An easement is a legal agreement between a property owner and the holder of the easement that affects the present owner's and all future owners' use of the property. An easement is a limitation on the possessory rights of an owner in the form of an enforceable property right.

Easements may be negative or affirmative. A negative easement restricts the use to which land subject to the easement may be put. An affirmative easement grants the right to perform certain activities on the property, such as the right to cross the land or to erect powerlines.

An easement may also be either "appurtenant" or "in gross." An easement appurtenant is the most familiar form of easement and refers to the situation where two parcels of land, usually adjacent, are held by different owners, and one parcel is benefitted and the other parcel burdened by the grant of certain rights, for example, the right to cross. If the owner of Parcel A grants a right-of-way to the owner of Parcel B, the right of the owner of Parcel B to cross Parcel A becomes one of the property rights that comes with ownership of Parcel B. A right-of-way is an affirmative appurtenant easement that lasts in perpetuity and runs with the land.

In contrast to the easement appurtenant which transfers property rights from one parcel to another, the easement in gross transfers property rights from one parcel to a person, corporate or natural, that owns no land at all. Under common law, the easement in gross is not assignable and cannot run with the land.

The Conservation Easement

The conservation easement is a restriction on the use of real estate. The easement is usually held by a nonprofit or governmental entity and is a negative easement in gross. A conservation easement has specific purposes commonly including the protection of natural, scenic or open space values or preserving the historical or cultural aspects of real property.

Conservation easements were first employed in the late 1880s in Boston to protect parkways. During the 1930s, the U.S. Fish and Wildlife Service began to obtain easements as a means to preserve wetlands for migratory waterfowl. The National Park Service also began the practice of purchasing scenic easements along highways. In the 1960s, many states authorized the acquisition of scenic easements along highways to take advantage of federal funds made available for that purpose by the Federal Highway Beautification Act.

As the use of scenic highway easements developed, the applicability of the easement to other objectives, such as preservation of open space or historic preservation, was urged. Beginning with California in 1959 and New York in 1960, many states passed legislation authorizing government or nonprofit organizations to acquire conservation easements. The laws removed the common law impediment to holding an easement in gross in perpetuity. By 1975, 16 states had conservation easement statutes; by 1984, 44 states had conservation easement statutes (see following section for a discussion of state statutes).

Although the highway beautification act had an important influence on the development of the conservation easement, the 1964 determination by the Internal Revenue Service that the value of a conservation easement donated to a charitable organization was deductible for federal income tax purposes probably had an even greater effect.

In 1985, the Land Trust Exchange, a national association of land trusts, published a study of the use of conservation easements throughout the United States (Attachment B). They found that over 1.7 million acres were protected by conservation easements. Of these easements, 1.2 million acres were held by the federal government, 200,000 by state and local governments and 350,000 acres by nonprofit organizations.

CONSERVATION EASEMENT STATUTES IN OTHER STATES

The primary purpose of a state conservation easement law is to overcome the short term nature of an easement in gross under the common law. Because an easement in gross, under the common law, does not run with the land and therefore does not last in perpetuity, the conservation easement must be created in statute.

Almost all states have adopted some type of conservation easement statute during the past 30 years.¹ In 1981, the National Conference of Commissioners on Uniform State Laws approved a Uniform Conservation Easement Act (Attachment C). Many of the states that adopted a conservation easement statute during the 1980s fashioned their statutes after this uniform act.

In establishing the conservation easement, state statutes typically address four topics:

- 1) Purpose. Some states may allow conservation easements to be used to achieve a broad range of objectives, while other states restrict the use of conservation easements to a few specifically defined purposes.
- 2) Duration. State statutes generally provide that conservation easements shall be in perpetuity or of unlimited duration, unless the parties provide otherwise in the document creating the restrictions. Some states set a minimum term of 10 to 15 years.²

¹The only states that have not adopted a conservation easement statute are Alaska, Hawaii, Kansas and Wyoming.

²Under the IRS code, the tax benefits from donating a conservation easement accrue only if the easement runs in perpetuity.

- (3) **Holders.** State statutes fall into two categories with respect to the parties that are permitted to hold a conservation easement: those which allow only a government agency to receive an easement and those which also allow private nonprofit organizations to receive easements. Within these categories, there are many variations. For example, Mississippi allows only the Mississippi Commission on Wildlife Conservation to hold conservation easements. South Carolina allows a variety of governmental agencies to hold easements, but allows only one nonprofit organization, the Nature Conservancy, to hold conservation easements. In contrast, Utah allows any party entitled to own real property interests to hold a conservation easement.
- (4) **Enforcement.** The success of a conservation easement in achieving its objective depends in part on enforcement of the terms of the agreement, and enforcement depends on having standing (and resources) to sue. Few state statutes clearly specify the categories of persons that have standing to enforce an agreement. The Uniform act recommends that four classes, including third parties, be granted standing.

Copies of conservation easement statutes from Oregon (1983), which is patterned after the uniform act, Washington (1979), Connecticut (1971) and Minnesota (1985) are attached as examples (Attachment D).

TAX AND REVENUE CONSEQUENCES OF CONSERVATION EASEMENTS

For the property owner that grants a conservation easement, both federal income taxes and local property taxes may be reduced. Conservation easements therefore may act to reduce the tax revenues of the federal government and of the local governments in which the conservation easements lie. In this section, the tax consequences (for the individual) and the revenue consequences (for governments) are discussed.

Federal Income Tax Consequences

Under the Internal Revenue Service (IRS) Code, the donation of a conservation easement to a qualified charitable organization qualifies as a tax-deductible charitable contribution. The IRS statute and implementing regulations are attached in Attachment E, and a recent tax journal article on obtaining the deduction for contribution of a conservation easement is attached in Attachment F.

The federal tax law on conservation easements is, as you might expect, complex.³ In brief, to qualify for a charitable donation deduction, a conservation easement must meet three tests: it must consist of a qualified real property interest, be given to a qualified organization and be used, in perpetuity, exclusively for conservation purposes. Qualified organizations must have both a commitment to protect the conservation purposes of the donation and the resources to enforce the restrictions.

Qualified conservation purposes are defined as:

- the preservation of land areas for outdoor recreation by, or the education of, the general public;
- the protection of relatively natural habitat of fish, wildlife or plants or similar ecosystem;
- the preservation of open space (including farmland and forest land) where such preservation is: 1) for the scenic enjoyment of the general public; or 2) pursuant to a clearly defined federal, state or local governmental conservation policy, and will yield a significant public benefit; or
- the preservation of an historically important land area or a certified historic structure.

Real Property Tax Consequences

Because a conservation easement severely limits the uses to which a property may be put, the market value of the property should be reduced. Since real property taxes are based on assessed valuation, conservation easements should reduce property value and, thereby, local tax liability. However, some local governments may fail to recognize a conservation easement as a factor in the assessment of property burdened by a conservation easement. To ensure that the effect of a conservation easement is considered in the determination of assessed value, some state statutes specifically address this topic (see the Oregon statute at 271.785).

³A former IRS attorney, Stephen J. Small, who helped write the current conservation easement regulations, is now in private practice and has recently written a book entitled The Federal Tax Law of Conservation Easements. This book, as well as other memos on conservation easement tax topics, are available from the Land Trust Exchange.

Valuation of Conservation Easements

The primary issue that arises with both the deductibility of a conservation easement donation and local property tax assessment is the valuation of a conservation easement. Under the IRS code and under most local tax assessment codes, the value of an easement is its fair market value. As a practical matter, however, there is no market for conservation easements. They are not ordinarily bought and sold, thus there is no direct method to determine their market value.

The traditional method of valuing a conservation easement is the "before and after" approach where the value of the easement is equal to the difference between the fair market value of the total property before granting of the easement and the fair market value of the property after the easement. Since there have been very few sales of properties encumbered by conservation easements, the "after" valuation is difficult to determine.

Another method of valuing conservation easements for IRS purposes has been used: the comparable sales method. The comparable sales method suffers from the same drawback as the "before and after" method; sales data on which to base an appraisal are sparse.

Issues of conservation easement valuation are discussed in greater detail in Attachment A, pp. 55-63, and in Attachment F.

Effect on Federal and Local Government Revenues

Obviously, conservation easements cause a decrease in federal income tax revenues and in local property tax revenues, but as yet, no one has attempted to quantify these decreases.

The Land Trust Exchange (in their 1985 survey) found that some local governments were opposed to conservation easements because they feared erosion of their tax bases. However, only 21 percent of the respondents to the survey indicated that any of their easements had reduced property taxes. Mr. Ginsberg in (his article at pp. 53 - 54) noted that fears of erosion of the tax base have little basis in fact:

. . . Any meaningful diminution in the tax base as a result of conservation easements is highly unlikely in most jurisdictions where the major portion of assessed value is based on improvements, not land. If a reduction in assessed value occurs as a result of conservation easements, there would be countervailing economic and environmental benefits. These would include a reduction in the demand for (and costs of) public services, and enhanced values of other property in the area.