ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5971 HOUSE RESOURCES

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2.4 Suretyship Premium

This issue arises from footnote 51 (see 2.3 above) of the Williams decision as well as the Williams II treatment of debt financing. In footnote 51 FERC went out of its way to point out the availability of return on guaranteed debt. The suretyship premium allows the company to earn a return on debt guaranteed by the parent company. Table 4 shows the impact of a change from 0 to 2% suretyship premium

Nov. 14

Table 4

0 Suretyship Premium

$ 1985 (000,000)

	GAIN TEN VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	3226	-1272	1954	3993	311	4304
2.0%	209	1136	1345	2509	-675	1834	3476	303	3779
4.0%	209	1046	1255	2452	-610	1842	3034	279	3313
6.0%	209	962	1171	2146	-432	1714	2656	251	2907
8.0%	209	885	1094	1852	-310	1572	2330	221	2551
10.0%	209	815	1024	1636	-225	1431	2049	193	2242
12.0%	209	753	962	1459	-165	1294	1806	167	1973

2% Suretyship Premium

$ 1985 (000,000)

	GAIN TEN VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN DOC VS CURRENT PROJECTION		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	2693	-1313	1580	3993	311	4304
2.0%	209	1136	1345	2519	-707	1812	3476	303	3779
4.0%	209	1046	1255	2199	-636	1563	3034	279	3313
6.0%	209	962	1171	1924	-453	1471	2656	251	2907
8.0%	209	885	1094	1688	-327	1361	2330	221	2551
10.0%	209	815	992	1485	-239	1246	2049	193	2242
12.0%	209	753	962	1309	-176	1133	1806	167	1973

2.6 Depreciation Method

Early in the TAPS litigation the parties agreed, by stipulation, to use of straight line depreciation. However, it may be possible to reopen this issue. Thus the State may determine that some form of accelerated depreciation such as unit of throughput is desirable. The primary problem with using unit of throughput is that some schedule of deemed throughput must be determined and the advantages to the State will depend upon the nature of this schedule. Table 6 shows the impact of a switch from straight line to unit of throughput. The throughput schedule used is a combination of the Department of Revenue and Department of Natural Resources Production estimates as of June 1985.

Nov. 14

Table 6

Straight Line Depreciation

$ 1985 (000,000)

	GAIN TEN VS CURRENT PROJECTION			GAIN MILLIONS VS CURRENT PROJECTION			GAIN COC VS CURRENT PROJECTION		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	3226	-1272	1954	3593	311	4204
2.0%	209	1136	1345	2369	-875	1934	3478	263	3779
4.0%	209	1046	1255	2452	-616	1842	3024	279	3313
6.0%	209	962	1171	2246	-432	1714	2695	251	2907
8.0%	209	885	1094	1682	-310	1372	2350	221	2551
10.0%	209	815	992	1656	-225	1431	2049	193	2242
12.0%	209	753	962	1459	-165	1294	1805	167	1972

Unit of Throughput Depreciation

$ 1985 (000,000)

	GAIN TEN VS CURRENT PROJECTION			GAIN MILLIONS VS CURRENT PROJECTION			GAIN COC VS CURRENT PROJECTION		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	2477	-73	2404	3264	906	4170
2.0%	209	1136	1345	2157	-13	2144	3103	745	3848
4.0%	209	1046	1255	1283	20	1303	2708	613	3321
6.0%	209	962	1171	1647	37	1684	2270	506	2776
8.0%	209	885	1094	1445	44	1489	2080	419	2499
10.0%	209	815	1024	1271	46	1317	1829	349	2178
12.0%	209	753	962	1121	45	1166	1612	291	1903

Nov. 14

Table 5

65% Debt 35% Equity

$ 1985 (000,000)

	GAIN TEM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN BCC VS CURRENT PROJECTIO		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	4146	-620	3526	4698	414	5112
2.0%	209	1136	1345	3609	-386	3223	4090	383	4473
4.0%	209	1046	1255	3150	-239	2911	3570	343	3913
6.0%	209	962	1171	2757	-145	2612	3124	301	3425
8.0%	209	885	1094	2419	-85	2334	2741	262	3003
10.0%	209	815	1024	2127	-47	2080	2411	226	2637
12.0%	209	753	962	1875	-23	1852	2125	194	2319

35% Debt 65% Equity

$ 1985 (000,000)

	GAIN TEM VS CURRENT PROJECTION			GAIN WILLIAMS VS CURRENT PROJECTION			GAIN BCC VS CURRENT PROJECTIO		
	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
DISCOUNT RATE	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL	REFUNDS	CASH FLOW	TOTAL
0.0%	209	1225	1434	2541	-1751	790	3487	238	3725
2.0%	209	1136	1345	2212	-1233	979	3036	245	3281
4.0%	209	1046	1255	1931	-883	1048	2650	234	2884
6.0%	209	962	1171	1690	-642	1048	2319	214	2533
8.0%	209	885	1094	1483	-474	1009	2035	192	2227
10.0%	209	815	992	1304	-355	949	1790	169	1959
12.0%	209	753	962	1147	-269	880	1578	148	1726

Table 5 shows the potential impact of a change from 65/35 debt/equity to 35/65 debt equity with all other variables held constant.

3/ Id. Page 11

Testimony Before the Alaska House of Representatives Resources Committee on HB 519, HB 541, HB 554, HB 572 and HB 573

Richard A. Fineberg
March 21, 1990

Mr. Chairman, my name is Richard Fineberg. The committee has received copies of my report on oil and gas revenue disputes, which was prepared under the direction of Representative Navarre.[1] Thank you for the opportunity to testify on the management of revenue disputes between Alaska and its major oil and gas producers.

At this time, the State believes it is owed in oil and gas revenue disputes a sum equal to more than one-half of the Alaska Permanent Fund. The vast majority of this amount represents the difference between the State and a very small number of major producers in reckoning the division of the profits (economic rent) from the North Slope bonanza, plus interest and penalties.

In contrast to the wide discussion of Permanent Fund policies, however, relatively little public attention has focused on the management of Alaska's continuing revenue collection effort. This Administration has taken some steps to improve case management, and to increase legislative involvement in this important area. However, most of the legislative review this subject has received in the last three years has taken place behind closed doors, in hearings involving a small number of people.

The secrecy that surrounds oil and gas revenue disputes derives in large part from two sources: the confidentiality imposed by the assumed right of the taxpayer to a remarkable degree of privacy, and by the broad application of the assumption that litigating strategy requires information to be very closely held. I believe the cloak of confidentiality over oil and gas matters has a corrosive effect on the quality of information that is available to the public, to the legislators who chart and review policy -- and even to the people charged with responsibility for executing that policy. If you review the settlement of the Trans-Alaska Pipeline System (TAPS) rate case -- one of the three major oil and gas

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[1] My interest in this subject stems from work on State budget, revenue and oil and gas issues for the Governor's Office of Management and Budget from 1983 through October 1989. From late 1986 through October 1989 I spent the much of my time dealing with oil and gas revenue disputes. My report on this subjects contains 22 specific recommendations, ten of which are statutory. Most of the bills before you today reflect recommendations in that report.

settlements since 1985 -- you will find a number of rather astonishing confirmations of this thesis.[2]

Policy in this area is made and executed with such secrecy, Mr. Chairman, that if you were to request the Department of Revenue to tell you about one certain settlement, the Department would have to ask you to invite the settling company to be present.

The Commissioner of Natural Resources has created a special settlement team that is working actively to settle the State's royalty litigation, with a $1.3 billion claim in royalty payments and interest from 1977 through 1986 depending on the outcome. In view of the magnitude of this case, some may find it surprising that there are no procedures in place to insure an independent review of any settlement that might be negotiated.

Nor are any formal review procedures contemplated.

Mr. Chairman, in response to a query from your office, the Commissioner of Natural Resources informed you last week that she has no intention of establishing an independent review procedure for this important case. The Commissioner responded that:

> initial review of settlement offers will be undertaken by the settlement team I have appointed. . . . Any recommendations toward settlement for this group [sic.] will be reviewed by the litigation team and its consultants. . . . That team, which has undertaken the most extensive analysis of and aggressive posture toward royalty obligations . . . would provide the most extensive 'second opinion' on proposed settlements or settlement offers.

In other words, the Commissioner intends to rely first on the settling team to review its own settlement and to rely second on the litigating attorneys to blow the whistle if the litigators don't like the settlement. In my estimation, this plan has two basic problems:

First, settlements tend to develop a momentum of their own, as we have seen in the past. This happens because a settling team is liable to become enamored of its own

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[2] Early in 1985, significant facts were omitted from the major briefing document on the settlement. Later that same year, the Governor's final major TAPS decision was briefed with an erroneous document. Subsequently, a set of numbers in that document was quietly revised and the erroneous document was removed from agency files. The mistakes in the briefing document made the settlement seem significantly better than it actually was, in comparison to continued litigation. The Administration refused to release the original document and contended that it was essentially identical to the public document. These nightmarish, Orwellian information gaffes adversely affeced key Executive decisions, as well as both Executive and Legislative policy review of what the Department of Law called the largest and most complicated rate-making case in the history of the United States.

settlement, and also because a bureaucratic group that works at length on a project naturally wants to complete that project. With hundreds of millions of dollars riding on disputes with individual companies, independent review -- not review by the settling team -- seems like a wise precaution.

What about the so-called "second opinion" by the litigating attorneys? This review will protect the public interest only if the recommendations are heeded. But if the litigating attorneys do not approve the settlement, their wisdom is liable to be dismissed on one of two grounds: "Of course they want to litigate: They're lawyers." Or: "These lawyers just don't want to see their rice bowl broken." The Commissioner's letter to you indicated that the State's litigating attorneys exhibit a most aggressive posture toward royalty obligations.

With regard to the settlement of tax cases, the creation of an independent review procedure was commissioned by the Administration's Oil & Gas Subcabinet in September 1988. When last I checked, in January 1990, after thirteen months draft procedures from the Governor's Office had finally found their way to the Department of Revenue, where they had languished for about three months.

In both the tax and royalty arenas, to protect the public interest in settlements of this magnitude, I believe, stewardship of Alaska's resources demands codified guidelines for a disinterested, independent review of major settlements.

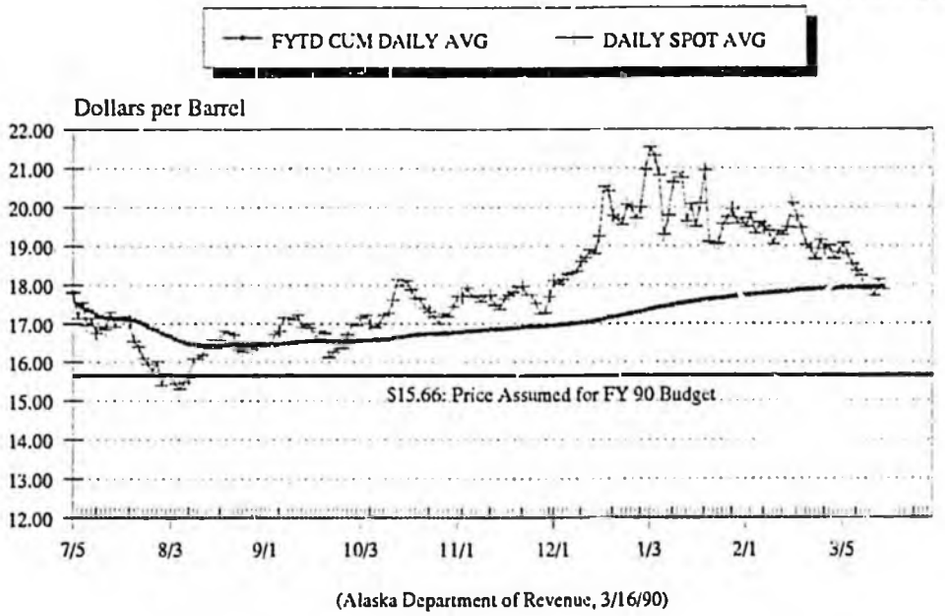
Mr. Chairman, this is a very unusual area of public policy. If you get a traffic ticket, you pay the penalty or go to court. If you receive a traffic ticket when you are drunk, the penalty is also clear. And if you rack up a specific number of infractions, you lose your license to drive. But if you are one of the small number of taxpaying corporations that habitually underpay their taxes by tens of millions of dollars, year after year, and if you then stonewall the tax auditors, the sanctions are not at all clear. The tax collector and the taxpayer typically negotiate a solution. They do so in the absence of clear statutory guidelines, and in secrecy that erodes the checks and balances that normally safeguard the public interest.

It is my hope that in the midst of your busy schedules you will give these measures the attention they deserve. Careful consideration of the proposals before you today can make a significant contribution to improving the manner in which decisions are made in this arena. Few issues are more important to the State's fiscal well-being.

I will be happy to answer questions now, or after the bills before you today are introduced by their sponsors.

FY 90 ANS CRUDE PRICES

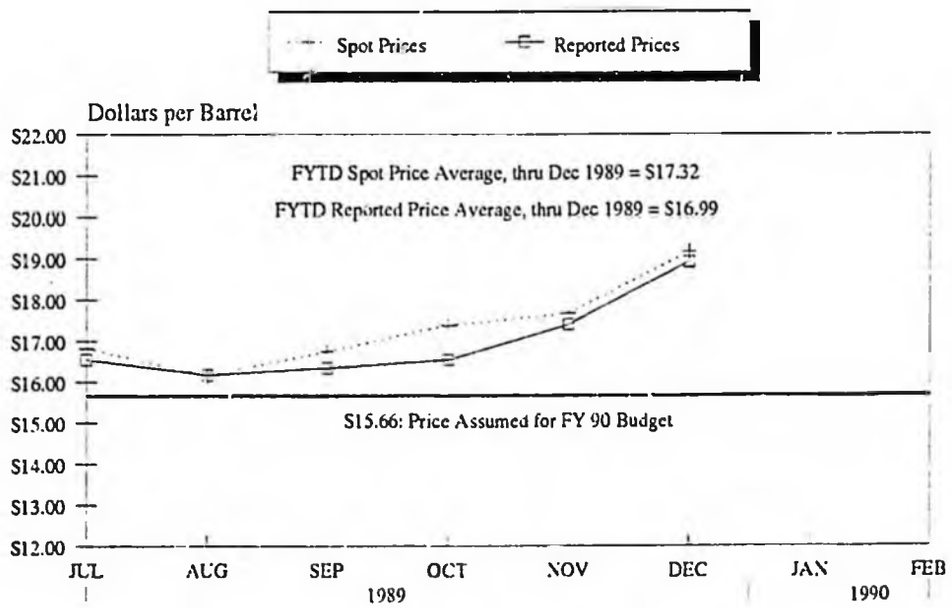
FYTD Cumulative Daily Spot Average
vs. Daily Spot Average



(Alaska Department of Revenue, 3/16/90)

FY 90 ANS CRUDE PRICES

Monthly Weighted Average



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I will be happy to answer questions now, or after the bills before you today are introduced by their sponsors.

What should the State choose for Interest rates on taxes due?

Presently, delinquent taxes pay interest at a fixed rate of 12% simple interest. Generally, this is a great deal less than what a taxpayer would have paid if he borrowed the money at a bank.

I would recommend that the rate on delinquent taxes be tied to the market.

I believe that a floating rate 5% points above the federal reserve rate, as set out in AS 45.45.010(b) would work well for delinquent taxes.

A lower rate, say 3% points above the federal reserve rate, should apply to any refunds. This would give a taxpayer an incentive to get the issue resolved, but would not put the state at risk if a taxpayer overpaid.

A similar differential approach is used by the U.S. Treasury Department.

3/20/90

Hugh Malone
Commissioner
Department of Revenue

Attachment: (1) Compound interest chart
(2) Historic Federal Reserve discount rate

COMPOUND INTEREST - AN INCENTIVE TO PAY

$100,000 + interest from 1/1/80 to 1/1/90.
Showing total amounts which would be due at one, 5, and 10 years.

	1/1/81	1/1/85	1/1/90
12% simple	$112,000	$160,000	$220,000
12% compound	112,000	176,234	310,584
20% simple	120,000	200,000	300,000
20% compound	120,000	248,832	619,174
Floating Rate 5% above Federal Reserve (AS 45.45.010(h) compounded annually */	116,800	207,140	356,980

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*/ These amounts were calculated using the following yearly rates for the f deral reserve rate and adding 5% to each rate to reach the rate call for in AS 45.45.010(b). These rates are for illustration purposes only:

Federal Reserve Rate Average weighted by days for period indicated.	First year @ 11.8 Next 4 years @ 10.4 Last 5 years @ 6.5

See attachment for actual base federal reserve rates during this period.

FEDERAL RESERVE BANK OF SAN FRANCISCO
101 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94105

"DISCOUNT RATE" ON ADVANCES TO MEMBER BANKS UNDER SECTIONS 13 AND 13A OF THE FEDERAL RESERVE ACT IN EFFECT AT THE FEDERAL RESERVE BANK OF SAN FRANCISCO

March 12, 1990

The following is a list of rates of interest on our advances to, and discounts for, member banks and other depository institutions under Sections 13 and 13a of the Federal Reserve Act. Each rate (also referred to as the "discount rate") was in effect until the next date indicated.

Effective Date			Rate (% per annum)	Days
1976	January	19	5-1/2	
	November	22	5-1/4	
1977	September	2	5-3/4	
	October	26	6	
1978	January	13	6-1/2	
	May	11	7	
	July	3	7-1/4	
	August	21	7-3/4	
	September	22	8	
	October	16	8-1/2	
	November	2	9-1/2	
1979	July	20	10	
	August	20	10-1/2	
	September	19	11	
	October	8	12	
1980	February	15	13	46
	May	29	12	103
	June	13	11	15
	July	28	10	45
	September	26	11	60
	November	17	12	52
	December	5	13	18
				26 to 1-1-81

Effective Date			Rate (% per annum)	Days
1981	May	5	14	151
	November	2	13	181
	December	4	12	32
1982	July	20	11-1/2	228
	August	2	11	13
	August	16	10-1/2	14
	August	27	10	11
	October	11	9-1/2	45
	November	22	9	42
	December	14	8-1/2	22
1984	April	13	9	~~28~~ 485
	November	21	8-1/2	222
	December	24	8	33
1985	May	21	7-1/2	148
1986	March	7	7	283
	April	21	6-1/2	45
	July	11	6	81
	August	21	5-1/2	41
1987	September	9	6	384
1988	August	9	6-1/2	334
1989	February	24	7*	199
				310 to 1-1-90

7 to 1-1

From March, 1980 through November, 1981, surcharges were applied at various times on advances to certain depository institutions. The Federal Reserve Bank expresses no opinion on the applicability of the basic discount rate or surcharge to any transaction governed by a Federal or state usury or usury pre-emption statue.

*current rate

Note: Number of days at each rate is handwritten on this chart

Hm

ANATOMY OF A SETTLEMENT

Prepared by Department of Revenue

Oil and Gas Audit Division

March 2, 1990

ANATOMY OF A SETTLEMENT

EXECUTIVE SUMMARY

A. Synopsis

This report:

- Reviews the authority and responsibility of the Department of Revenue
- Briefly describes the ARCO settlement of October 1988
- Describes the process from initial audit through the final settlement
- Lists the participants and their qualifications

B. Summary

The quality of a final settlement of a tax dispute is dependent upon a large number of factors from the initial audit through the appeals process and the final negotiations. The process provided in the statutes and regulations has been developed over a number of years. The staff of the Oil and Gas Audit Division is highly qualified and trained to conduct the complex audits of multi-national corporations and carry out the review and appeals process in the best interest of the State while at the same time protecting the rights of the taxpayers. The Division has also contracted with a world recognized firm in negotiating techniques to train the employees of the Departments of Revenue and Law so they are proficient in negotiating fair settlements.

I. INTRODUCTION

Over the past few years the public and public officials have begun to believe the resolution process for settlement of outstanding tax disputes has broken down causing loss of revenue owed the State of Alaska. They fear that settlements may be based upon political or personal motives.

The Oil and Gas producers in Alaska are very large, multi-national corporations, thus making the audit process very long and complex. The Alaska tax laws are complicated and difficult to administer requiring special training and experience. In addition, the very large assessments cause concern to everyone. The quality of a final settlement agreement is determined by the qualifications of everyone involved and the effort put into the process from the initial audit through the appeals stages and negotiation of the agreement.

Disclosure laws providing confidentiality of taxpayer information adds to the public's concern over settlements. The public and public officials believe they cannot assess the results from the Department of Revenue and Department of Law without access to confidential information.

We believe a clearer understanding of the settlement process and the qualifications of the large number of participants may ease some of the fears expressed above.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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It takes years of experience to develop an understanding of the books and records of a large corporation and the complex tax laws to make an informed judgment . This makes legislative oversight very difficult. However, the Legislature already has a competent staff in Legislative Audit who can review and judge the results of the settlement process. Public accountability can be maintained and enforced in this manner without placing barriers in the process that will further delay settlements.

I. INTRODUCTION

Over the past few years the public and public officials have begun to believe the resolution process for settlement of outstanding tax disputes has broken down causing loss of revenue owed the State of Alaska. They fear that settlements may be based upon political or personal motives.

The Oil and Gas producers in Alaska are very large, multi-national corporations, thus making the audit process very long and complex. The Alaska tax laws are complicated and difficult to administer requiring special training and experience. In addition, the very large assessments cause concern to everyone. The quality of a final settlement agreement is determined by the qualifications of everyone involved and the effort put into the process from the initial audit through the appeals stages and negotiation of the agreement.

Disclosure laws providing confidentiality of taxpayer information adds to the public's concern over settlements. The public and public officials believe they cannot assess the results from the Department of Revenue and Department of Law without access to confidential information.

We believe a clearer understanding of the settlement process and the qualifications of the large number of participants may ease some of the fears expressed above.

II. AUTHORITY, RESPONSIBILITY AND DUTIES OF THE DEPARTMENT OF REVENUE

The Commissioner of Revenue is assigned responsibility for the enforcement and collection of all taxes listed in Alaska Statute Section 43 and the audit of all reports and payments due relating to royalties and net profits under Section 38. A specific list of duties can be found at AS 43.05.010. (see copy - Appendix A (4))

In addition, there are other areas of responsibility which the statute addresses:

- Inspection of records on premises and issuance of summons. AS 43.05.040 (See copy - Appendix A (5))
- Taxpayer remedies. AS 43.05.240 (See copy - Appendix A (9))
- Agreements with department respecting liability. AS 43.05.060 (See copy - Appendix A (6))
- Compromise of tax or penalty. AS 43.05.070 (See copy - Appendix A (7))

A. Audit

The Department of Revenue has authority (AS 43.05.040) to examine all books and records of a taxpayer and if necessary can issue a summons to enforce their requests. At the conclusion of the examination a report will be issued. The report will result in one of three possibilities, either an increase to the tax liability, a decrease to the tax liability or acceptance of the tax liability without change.

B. Appeals

The statute (AS 43.05.240) provides a means of appealing the audit findings. A taxpayer who disagrees with an action of the Department is provided an appeal process which includes first an appeal for an informal conference and second an appeal for a formal hearing. Both the conference officer and hearing officer will hear the arguments and listen to the evidence provided by both the Department and the taxpayer and will issue a written decision. The decision will result in either an increase or decrease to the audit findings or acceptance without change.

C. Agreements

The Statute (AS 43.05.060) authorizes the Department of Revenue to enter into agreements with taxpayers. There are two types of agreements, one entered into by the Department only and the other by both the Department of Revenue and Department of Law. When an agreement is signed by both the Department of Revenue and Department of Law it is "final and conclusive" and may not be reopened as to matters agreed upon (unless there is a showing of fraud, malfeasance, or a misrepresentation of a material fact); however, when only the Department of Revenue signs it is not final and conclusive and may be reopened with a showing of substantial change in the facts.

D. Compromise

AS 43.05.070 gives the Department of Revenue authority to compromise a tax if there is doubt as to the liability or the collectibility of a tax. This authority is shared with the Department of Law and must have the Attorney General's approval.

III. SETTLEMENT

ARCO Alaska, Inc.
Separate Accounting Income Tax
A.S. 43.21
Agreement - October 1988 for Years 1978 Thru 1981

We will analyze this settlement because all of the participants are still involved in the process to settle other cases and have contributed to this report. Following the narrative portion of this report is Appendix B which lists all of the participants and their qualifications. As you read through the report you can refer to the Appendix to give you an understanding as to why these individuals were included in the process.

IV. ARCO AUDIT ASSESSMENTS - INCOME TAX 43.21

A. 1978 Assessment dated August 31, 1981

Arne Bue, Senior Auditor, was assigned the audit of ARCO separate accounting income tax for 1978 in January 1980. As lead auditor he supervised Jeff Johnson, Stacey Scott, Wabe Kissick, Marty Bassett, and Sue Stauffer in conducting the audit. The audit report was completed on August 31, 1981.

B. 1979-1980-1981 Assessment dated Apr l 18, 1986

On August 16, 1985 the Alaska Supreme Court upheld the separate accounting income tax A.S. 43.21. Instructions were given Arne Bue and his team to proceed with issuing the assessment of the years 1979 through 1981. This was completed on April 18, 1986. The law firm of Preston Thorgrimson was contracted to assist in this task. John Messenger, former Deputy Commissioner of Revenue and Joe Donohue, also

a former Deputy Commissioner of Revenue, both attorneys, worked closely with the Department in completing the assessment. Dr. Ernest Nadel, Economist and noted authority in Marine Transportation was also contracted to assist.

C. Briefing on Amerada Hess Litigation

In July of 1987 the new Division of Oil and Gas Audit of the Department of Revenue was formed. William Floerchinger, CPA with 25 years of experience in tax administration with the IRS, was hired as Director of the Division. The Division immediately undertook a complete review of the Oil and Gas issues and Department policies relating to these issues.

The Director and members of the Division attended a week long briefing of the Amerada Hess royalty litigation in late July 1987. The briefing was conducted by the litigation team lead by Wilson Condon, Attorney and former Attorney General.

D. Review of Issues and Policies

In mid-August 1987 the Department held a week long seminar where we discussed the major oil and gas issues. Three economists with world wide experience and current knowledge about the ANS market were contracted to assist in the review.

They were: Dr. John Gault, Geneva, Switzerland; Dr. Arlan Tussing, Seattle, Washington; and Dr. Michael Tonzer of New York, New York. Immediately following this seminar, joint meetings were held between Oil and Gas Audit Division and Attorneys from the Department of Law to review and update the State position on all of the major tax

issues confronting the Department. These meetings continued well into 1988. During this review we continued to consult Dr. Gault, Dr. Nadel, and Dr. Jeff Leitzinger who was on contract with the Amerada Hess royalty litigation. In addition, we began consulting with Dr. Tom Horst from Washington, D.C. on the TAPS debt allocation issue and Spencer Hosie, Attorney from San Francisco on the entitlements issue.

E. Amended Assessment - November 16, 1987

An amended assessment was prepared to incorporate the new information and policy changes developed during the review.

F. Amended Assessment - December 18, 1987

Additional assessments were made to add the entitlements issue to the case. This also was done as a result of our review of the issues in the month's prior to December.

V. PREPARATION FOR FORMAL HEARING

A. Initial Strategy For Formal Hearing

The first pre-hearing conference at the formal hearing level on this case was held in January 1987. This was the largest case that had ever reached the formal hearing process, in amount of taxes in dispute, the number of issues in dispute, and the complexity of the case. This is demonstrated by the fact that when the parties entered into a Scheduling Conference Stipulation and Order in February 198[illegible] a

hearing was scheduled for June 1988 which was anticipated to last four weeks. This was 18 months from the start of the proceedings.

The case was being prepared by the Oil, Gas, and Mining Section of the Department of Law in coordination with the Oil and Gas Audit Division. The Department of Law hired outside counsel and experts to assist them in the preparation of the case. The case was divided into three issue teams: Valuation, Transportation, and Pipeline.

The primary members of each team was as follows:

Valuation	Transportation	Pipeline
Ronald Bitzer	Ronald Bitzer	Ronald Bitzer
Arne Bue	Arne Bue	Maureen O'Brien
Ernie Nadel	Ernie Nadel	Ernie Nadel
Maureen O'Brien	Maureen O'Brien	Michael Hotchkin
Barbara Herman	Robert Loeffler	Robert Loeffler
Shelley Higgins		Tom Horst
Joseph Donohue		
Spencer Hosie		
Jeff Leitzinger		

There were numerous additional attorneys and economists who supported the above people.

As part of the Scheduling Conference Stipulation, the Division was allowed to make an additional assessment correcting and adding additional issues. This project was completed in two parts in November and December 1987.

At the same time a tremendous amount of discovery was being conducted. The requests included production of documents, interrogatories, depositions, witness lists, obtaining experts, and working on pre-filed testimony. During this time period many motions on procedure and motions for partial summary judgment on the issues were filed.

B. Amended Strategy For Resolution of Case

By January 1988 extensive preparation for the upcoming hearing had taken place. Hundreds of thousands of documents had been accumulated, categorized, and summarized. However, it became clear that as a result of the preparation for the case, a single hearing of 4 weeks would not be sufficient. The case was divided, and a second hearing added, which ultimately took place in December 1988. It also became quite clear, that the amount of the preparation had allowed both sides to focus on the individual issues involved and that both sides now had a better understanding of both the strengths and weaknesses of their respective positions. However, the parties had not directly talked about the individual issues with each other.

VI. RESOLUTION TEAM - INFORMAL DISCUSSION

In late January 1988, the Division and the Taxpayer agreed to the ground rules which established what has been known as the Resolution Team. The Resolution Team consisted of Arne Bue, the lead auditor on the case, Bruce Kinney, the Audit Supervisor over the case, Richard Brewer, Assistant to the Director, who represented the Director, and Ronald Bitzer, Senior Appeals Officer, who was in charge of the case. We started discussing the issues one by one. Due to the extensive case preparation that was occurring, the availability of experts, and the willingness of the Taxpayer to provide additional information that was

needed, we were able to resolve various issues. As a result of these agreements, all of the issues that were set for the first hearing scheduled for June 1988 were resolved. These agreements were not only reviewed and approved by the Resolution Team involved, they were approved by the Director of the Oil & Gas Audit Division. They were then reviewed and approved by the Department of Law and outside counsel that had been retained.

VII. SETTLEMENT - OCTOBER 1988

A. Proposal From Taxpayer

The Resolution Team continued to work throughout the summer months reviewing various issues. In August 1988, the Taxpayer made a global offer to the Department of Revenue to resolve the entire case. At that time the Department of Law working with the outside counsel and experts, and the Oil & Gas Audit Division prepared an evaluation of the case, issue by issue. This evaluation incorporated all of the previous agreements that had been reached, and evaluated our position on the remaining issues.

Our evaluation included hazards of litigation, costs of litigation and potential settlement results. We also determined that at least two and possibly three issues would not be on the negotiating table because of the impact upon all the other taxpayer producers in Alaska. A strong need existed for obtaining court precedent in these areas.

In response to the taxpayer's request we set up the following teams for negotiating a potential settlement.

B. Negotiating Team

Bill Floerchinger	Director, Oil & Gas Audit Division
Dick Brewer	Assistant Director, Oil & Gas Audit
Ronald Bitzer	Senior Appeals Officer
Bruce Kinney	Supervisor, Oil & Gas Audit
Arne Bue	Senior Revenue Auditor
Ron Lorenson	Deputy Attorney General

This team sat at the negotiating table and hammered out the provisions of the agreement.

C. Support Team

Barbara Herman	Assistant Attorney General
Craig Tillery	Assistant Attorney General
Mike Hotchkin	Assistant Attorney General
John Messenger	Preston, Thorgrimson
Joe Donohue	Preston, Thorgrimson

This team was available in a room next door and caucused with the negotiating team at each break in the session.

D. Outside Support

Spencer Hosie	Attorney, San Francisco, California
Robert Loeffler	Attorney, Washington, D.C.
Ernie Nadel	Economist, Oakland, California
Jeff Leitzinger	Economist, Los Angeles, California

This team was constantly available to discuss the issues by telephone and recommend conditions for this settlement agreement.

E. Briefings

Throughout the time after the resolution team was established the Commissioner was briefed regularly. During the final days of

negotiating the Commissioner was briefed at least once a day and sometimes more often. Early on, the Governor was made aware of the negotiations and was fully briefed in Anchorage within one week prior to the agreement. Mary Halloran, Director, Division of Policy and Richard Fineberg, Analyst for the Division of Policy were briefed during the last days of the negotiations.

F. Approvals

The final written agreement was approved by the following individuals for the State of Alaska:

Hugh Malone	Commissioner of Revenue
Bill Floerchinger	Director, Oil & Gas Audit Division
Grace Berg Schaible	Attorney General

As a result of the resolution process, a very complicated case was ultimately reduced to two issues that went forward to hearing. Without such a process, a formal hearing would have been a most difficult, costly and time consuming affair.

VIII. CONFIDENTIALITY

A. Responsibility of the Department of Revenue

Tax administration explicitly covers not only return processing and monitoring but also entails audits of the taxpayer's books and records to assure compliance with related statutes and regulations.

The ability of the Department of Revenue to conduct audits of taxpayer and royalty filings is founded in AS 43.05.040 and AS 38.05.180:

> (a) The department may examine the books, papers, records, or memoranda of any person to ascertain the correctness of a return filed or to determine whether a tax or a payment for oil or gas royalty is due. The records and the premises where a business is conducted shall be open at all reasonable times for official inspection, and the department may summon any person to appear and produce books, records, papers, or memoranda bearing upon tax matters or matters relating to oil and gas royalty or net profits . . .

AS 43.05.040 also deals with the summons authority of the Department of Revenue:

> (b) A summons may be served by the commissioner of public safety or peace officer designated by the commissioner or by a person designated by the Department of Revenue. . .

For the audits of royalties and net profit payments, the statutes under AS 38.05.036 enumerate:

> (a) The Department of Revenue shall audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under this chapter.
>
> (b) The Department of Revenue may inspect all reports and other information filed in support of or relating to royalty and net profits payments, whether or not that information is confidential, and shall hold that information confidential to the extent required under oil and gas agreements, contracts, or leases, or by this chapter or AS 43.05.230.

B. Linchpin of Tax Administration

Confidentiality is the linchpin to administration of Alaska's tax and royalty statutes and regulations. AS 09.25.100 states that:

> Information in the possession of the Department of Revenue which discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation or court proceeding.

Further, AS 43.05. 230(a) also provides in pertinent part:

> (a) It is unlawful for a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under AS 43.05.010-43.80.040, except (1) in connection with official investigations or proceedings of the department, whether judicial or administrative, involving taxes due under this title.

The foregoing provisions of Alaska's statutes provide assurance to taxpayers that information pertaining to tax administration will be kept confidential under applicable statutes and regulations. This assurance to taxpayers is also founded in the summons power of the Department. The information subject to a summons request must have relevance to the administration of Alaska's taxing statutes and regulations. Further, the assurance of confidentiality that is afforded the summoned information serves to dispel any defense from the taxpayer about compliance with the summons request.

So why is confidentiality crucial to tax administration? Because absent this assurance, taxpayers will be disinclined to provide information at the Department's request that corroborates information in tax and royalty filings. It is that simple.

Further, Departmental employees are charged with a heavy burden of assuring this confidentiality, the consequences of which are substantial fines and penalties:

> (f) A willful violation of the provisions of this section is punishable by a fine of not more that $5,000, or by imprisonment for not more than two years, or by both. (AS 43.05.230)

C. Nature of the Information Produced During an Audit

Much of the information disclosed to the Department during the course of audits is highly confidential and sensitive. Trade secrets, marketing strategies, and pricing philosophies may be contained in the information requested and disclosed during the course of an audit. Should this information fall into competitor's hands, unfair advantages may result with irreparable harm occurring to the disclosing taxpayer. The confidentiality statutes serve to obviate this concern and place a heavy burden on the Department in maintaining the confidentiality of taxpayer information.

In this regard, during the course of an audit, information gathered from one producer often is used in assessments of other producers. The market for ANS is very focused and sales, exchanges, dispositions, and netback values realized by one producer may form the benchmark for assessments of value against another producer. So that specific information from one taxpayer may be disclosed to another taxpayer, a regulation has been enacted:

> 15 AAC 05.250. USE OF CONFIDENTIAL INFORMATION IN ENFORCEMENT PROCEEDING. (a) Department representatives will, in their discretion disclose confidential information obtained from a taxpayer in an audit or investigation of another taxpayer . . . The information will be disclosed only to parties, counsel, experts, and consultants involved in the proceeding after notification to the taxpayer whose information is to be disclosed. The information will be disclosed only under an administrative protective order and only after the taxpayer whose information is to be disclosed has had an opportunity to appear and present objections to that representative.

Obviously, confidentiality serves to form the underpinnings for the entire audit process.

D. Summary

The confidentiality statutes allow access to complex and sensitive information. Taxpayers are inclined to make available the information requested by auditors through the normal audit process or as a result of the summons power only because of the confidentiality afforded by statute and regulation. The ready submission of confidential records allows the Department to adequately administer the tax statutes. Absent confidentiality, the process will be destroyed and effective administration will become the purview of the judicial system.

Sec. 09.25.090. Objections to tender. The person to whom a tender is made shall at the time specify any objection the person may have to the money, instrument, or property, or the person waives it. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property, the person shall specify the amount, terms, or kind which the person requires, or is precluded from objecting later. This section shall not be construed to modify or change in any manner corresponding provisions of the Uniform Commercial Code (AS 45.01 — 45.09). (§ 3.20 ch 101 SLA 1962)

NOTES TO DECISIONS

It is not necessary to tender cash. Ward v. Miller, 13 Alaska 752 (1952).

And a check, unobjected to, would constitute a proper tender. Ward v. Miller, 13 Alaska 752 (1952).

Sec. 09.25.100. Disposition of tax information. Information in the possession of the Department of Revenue which discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, or prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information which may assist in the collection of delinquent taxes. (§ 3.21 ch 101 SLA 1962)

Collateral references. — Validity, construction, and effect of state laws requiring state officials to protect confidentiality of income tax returns and information, 1 ALR4th 959.

Sec. 09.25.110. Inspection and copies of public records. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record. (§ 3.22 ch 101 SLA 1962)

Cross references. For proof of public records, see Evid. R. 1005; for management and preservation of public records, see AS 40.21.

his claim was defined as a parcel of similar utility to the homestead in 1959, and he was not entitled to land on a value-for-value basis merely because the homestead land was presently worth two or three million dollars. Messerli v. Department of Natural Resources, 768 P.2d 1122 (Alaska 1989).

The leasing of state lands is governed by regulations promulgated by the commissioner of the Department of Natural Resources, pursuant to AS 38.05.020(b)(1), and executed by the Director of the Division of Lands, pursuant to paragraph (a)(3) of this section. Swindel v. Kelly, 499 P.2d 291 (Alaska 1972).

Construction of state lease provision reserving right to grant right-of-way. — Provision in a lease issued by the State of Alaska, Division of Lands, expressly reserving the right to grant an easement or right-of-way across the leased property was construed to include an interagency transfer of a right-of-way to the Department of Transportation and Public Facilities. Wessells v. State, Dep't of Hwys., 562 P.2d 1042 (Alaska 1977).

Contract for sale without commissioner's approval. — The director can only approve and issue a contract for sale without the commissioner's approval if the appraised value of the land is less than $50,000. Messerli v. Department of Natural Resources, 768 P.2d 1122 (Alaska 1989).

Applied in Hammond v. North Slope Borough, 645 P.2d 750 (Alaska 1982); Hoblit v. Commissioner of Natural Resources, 678 P.2d 1337 (Alaska 1984).

Quoted in Alyeska Ski Corp. v. Holdsworth, 426 P.2d 1006 (Alaska 1967); Alaska Survival v. State, Dep't of Natural Resources, 723 P.2d 1281 (Alaska 1986); Aspen Exploration Corp. v. Sheffield, 739 P.2d 150 (Alaska 1987).

Cited in State v. Bering Strait Regional Educ. Attendance Area School Dist., 658 P.2d 784 (Alaska 1983); Chevron U.S.A., Inc. v. LeResche, 663 P.2d 923 (Alaska 1983).

Sec. 38.05.036. Audit of royalty and net profit payments. (a) The Department of Revenue shall audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under this chapter.

(b) The Department of Revenue may inspect all reports and other information filed in support of or relating to royalty and net profits payments, whether or not that information is confidential, and shall hold that information confidential to the extent required under oil and gas agreements, contracts, or leases, or by this chapter or AS 43.05.230.

(c) All information obtained by the Department of Revenue relating to royalty and net profits payments, including information obtained under AS 43, may be made available to the department, in the form of summaries and, when in furtherance of the department's royalty and net profits functions, relevant portions of the audits. Information made available to the department that was obtained under AS 43 is confidential and subject to the provisions of AS 43.05.230.

(d) The Department of Revenue may conduct audits under this section concurrently with audits or investigations under AS 43, and may use information obtained from the department in tax audits, investigations, or proceedings under AS 43.

(e) In this section, "audit" means the process of obtaining sufficient competent evidentiary matter through inspection, observation, inquiry, and confirmation to afford a reasonable basis for ascertaining the compliance by the subject of the audit with the applicable law, regulation, lease, agreement, and contract terms; it does not include

any other actions necessary to administer this chapter pertaining to oil and gas royalty and net profits payments, including daily accounting functions, certification procedures associated with those accounting functions, and enforcement of payments of royalties and net profits. (§ 2 ch 61 SLA 1980)

Sec. 38.05.037. Zoning regulations in the unorganized borough. (a) In areas of the state outside first, second or third class boroughs where there is no municipality with a zoning power, the division of lands shall exercise the zoning power by adopting zoning regulations.

(b) The division of lands may exercise its zoning power

(1) within federal land in the unorganized borough only at the times and in the areas it is requested to do so by the Secretary of the Interior to facilitate sales of federal land within the unorganized borough under P.L. 88-608, 78 Stat. 988;

(2) within any portion of a third class borough covered by the Alaska coastal management program adopted in accordance with the provisions of AS 46.40 if the municipality has not done so.

(c) Any zoning done by the division of lands under (b) of this section is final unless disapproved by concurrent resolution at the next regular session of the legislature. (§ 6 ch 118 SLA 1972; am § 5 ch 93 SLA 1977; am § 14 ch 138 SLA 1977)

Opinions of attorney general. — The zoning power vested in the Department of Natural Resources under this section is broad enough to encompass the creation of historical districts as a control over land use, but the exercise of that authority does not make the property eligible for historic preservation loans under AS 45.98, which is aimed solely at historic districts established by municipalities. January 3, 1980, Op. Att'y Gen.

Sec. 38.05.040. Director shall be bonded. Before performing any duties, the director shall execute a corporate surety bond to the state in the sum of $150,000, conditioned upon the faithful performance of all duties under this chapter and upon the prompt and faithful accounting of all money collected by the director or deputies, assistants, employees or agents of the director. The bond, together with additional conditions or limitations considered necessary, shall be approved by the attorney general and filed in the office of the governor. The premium upon the bond is payable from money appropriated for operation of the division. (§ 6 art II ch 169 SLA 1959)

Sec. 43.05.010. Duties of commissioner of revenue. The commissioner of revenue shall

(1) exercise general supervision and direct the activities of the Department of Revenue;

(2) supervise the fiscal affairs and responsibilities of the department;

(3) prescribe uniform rules for investigations and hearings;

(4) keep a record of all departmental proceedings, record and file all bonds and assume custody of returns, reports, papers and documents of the department;

(5) make recommendations and an annual report to the governor to be transmitted to the legislature concerning the condition, operation and functioning of the department and state laws relating to taxation and tax administration;

(6) adopt a seal and affix it to each order, process, or certificate issued by the commissioner;

(7) keep a record of each order, process, and certificate issued by the commissioner, and keep the record open to public inspection at all reasonable times;

(8) hold hearings and investigations necessary for the administration of state tax and revenue laws;

(9) hear and determine appeals involving income, excise, license, or other taxes levied under state laws and enter orders on the appeals which are final unless reversed or modified by the courts;

(10) require the attendance of witnesses and the production of necessary books, papers, documents, correspondence and other evidence at hearings;

(11) order the taking of depositions before a person competent to administer oaths;

(12) administer oaths and take acknowledgments;

(13) request the attorney general for rulings on the interpretation of the tax and revenue laws administered by the department;

(14) call upon the attorney general to institute actions for recovery of unpaid taxes, fees, excises, additions to tax, penalties and interest;

(15) issue warrants for the collection of unpaid tax penalties and interest and take all steps necessary and proper to enforce full and complete compliance with the tax, license, excise, and other revenue laws of the state;

(16) audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under AS 38.05. (§ 48-2-9 ACLA 1949; § 7-1-8 ACLA 1949; am § 3 ch 61 SLA 1980)

Effect of amendments. — The 1980 amendment added paragraph (16).

NOTES TO DECISIONS

Department of Revenue's failure to affix the seal of the commissioner of revenue to a summons issued under AS 43.05.040 was harmless error. State, Dep't of Revenue v. Oliver, Sup. Ct. Op. No. 2441 (File Nos. 4755, 5049), 636 P.2d 1156 (1981).

Cited in Wien Air Alaska, Inc. v. Department of Revenue, Sup. Ct. Op. No. 2527 (File No. 5594), P.2d (1982).

Sec. 43.05.020. Collection agencies. The commissioner of revenue may employ a collection agency outside the state to assist in the collection of revenue owed to the state. The commissioner may pay for these services by entering into contingent fee agreements the commissioner considers reasonable, or by the payment of amounts out of the proper appropriation for the department the commissioner considers reasonable. (§ 48-2-9(y) 1949; § 1 ch 100 SLA 1960)

Sec. 43.05.025. Audit agents. The commissioner of revenue may employ agents outside the state to assist in the audit of books and records located outside the state. Agents employed under this section are subject to the restrictions of AS 43.05.230. (§ 1 ch 166 SLA 1976)

Sec. 43.05.030. Branch offices. The department may establish branch offices essential for the efficient administration of its duties. (§ 48-2-8 ACLA 1949)

Sec. 43.05.040. Inspection of records or premises and issuance of summons. (a) The department may examine the books, papers, records, or memoranda of any person to ascertain the correctness of a return filed or to determine whether a tax or a payment for oil or gas royalty or net profits shares under a contract, agreement, or lease under AS 38.05 is due, or in an investigation or inspection in connection with tax matters or matters relating to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05. The records and the premises where a business is conducted shall be open at all reasonable times for official inspection, and the department may summon any person to appear and produce books, records, papers, or memoranda bearing upon tax matters or matters relating to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05, and to give testimony or answer interrogatories under oath respecting tax matters or matters related to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05, and the department may administer oaths to persons who are so summoned.

(b) A summons may be served by the commissioner of public safety or a peace officer designated by the commissioner or by a person designated by the Department of Revenue. If a person who is summoned neglects or refuses to obey the summons issued as provided in this section, the department may report the fact to the superior court and the court may compel obedience to the summons to the same extent as witnesses may be compelled to obey the subpoenas of the court. (§ 48-2-12(a) (b) ACLA 1949; am § 4 ch 61 SLA 1980)

Effect of amendments. — The 1980 amendment in subsection (a), inserted "or a payment for oil or gas royalty or net profits shares under a contract, agreement, or lease under AS 38.05" in the first sentence, and inserted "or matters related to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05" in three places in that subsection.

NOTES TO DECISIONS

For a discussion of the proper scope of summons issued by the Department of Revenue under this section, see State, Dep't of Revenue v. Oliver, Sup. Ct. Op. No. 2441 (File Nos. 4755, 5049), 636 P.2d 1156 (1981).

Constitutionality of summons. — Department of Revenue's summons which was reasonably specific, asked only for material relevant to a legitimate tax inquiry, and was enforceable only by court order did not violate taxpayer's right against unreasonable searches and seizures. State, Dep't of Revenue v. Oliver, Sup. Ct. Op. No. 2441 (File Nos. 4755, 5049), 636 P.2d 1156 (1981).

Harmless error. — Department of Revenue's failure to affix the seal of the commissioner of revenue to a summons issued under this section was harmless error. State, Dep't of Revenue v. Oliver, Sup. Ct. Op. No. 2441 (File Nos. 4755, 5049), 636 P.2d 1156 (1981).

Sec. 43.05.050. Return by department upon failure to make return or making false or fraudulent return. If a person fails to file a return at the time prescribed by law or by regulation, or makes, wilfully or otherwise, a false or fraudulent return, the department shall make the return from the information it obtains. A return made by the department is prima facie good and sufficient for all legal purposes. (§ 48-2-13 ACLA 1949)

NOTES TO DECISIONS

Application of privilege against self-incrimination. — The privilege against self-incrimination does not extend to the right to refuse to file a tax return. State, Dep't of Revenue v. Oliver, Sup. Ct. Op. No. 2441 (File Nos. 4755, 5049), 636 P.2d 1156 (1981); Cogan v. State, Dep't of Revenue, Sup. Ct. Op. No. 2597 (File No. 6528), 657 P.2d 396 (1983).

A blanket refusal to disclose any financial information on a tax return based on the privilege against self-incrimination is equivalent to filing no return at all. State, Dep't of Revenue v. Oliver, Sup. Ct. Op. No. 2441 (File Nos. 4755, 5049), 636 P.2d 1156 (1981); Cogan v. State, Dep't of Revenue, Sup. Ct. Op. No. 2597 (File No. 6528), 657 P.2d 396 (1983).

The privilege against self-incrimination may be validly claimed in a prosecution for failure to file to avoid answering particular questions on a tax return if the answers to those questions would tend to incriminate an individual. State, Dep't of Revenue v. Oliver, Sup. Ct. Op. No. 2441 (File Nos. 4755, 5049), 636 P.2d 1156 (1981).

Computation of tax based on W-2 forms. — An individual's privacy rights were not violated by the state's computation of tax liability based on W-2 forms after that person failed to file a tax return because the state did not ask the person anything but rather simply imposed a tax based on available information. Cogan v. State, Dep't of Revenue, Sup. Ct. Op. No. 2597 (File No. 6528), 657 P.2d 396 (1983).

Sec. 43.05.060. Agreements with department respecting liability. The department may enter into an agreement with a person relating to the liability of the person, or of a person or estate the person

represents, for a tax, license fee, or excise tax for a period ending before the date of the agreement. If the agreement is approved by the attorney general, the agreement is final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, the case may not be reopened as to the matters agreed upon or the agreement modified. In a suit or proceeding relating to the tax liability of the taxpayer the agreement may not be annulled, modified, set aside, or disregarded. (§ 48-2-14 ACLA 1949)

NOTES TO DECISIONS

Quoted in Wien Air Alaska, Inc. v. 2527 (File No. 5594), P.2d (1982). Department of Revenue, Sup. Ct. Op. No.

Sec. 43.05.070. Compromise of tax or penalty. (a) If in the opinion of the department there is doubt as to the liability of the taxpayer for or the collectibility of a tax, license fee, or excise tax, the department, with the approval of the attorney general, may compromise the tax.

(b) The department, with the approval of the attorney general, may, for cause shown, compromise a penalty accruing under the state tax, license, or excise tax laws. (§ 48-2-15(a) (c) ACLA 1949)

Sec. 43.05.080. Adoption of regulations. The department shall adopt and publish regulations necessary for the enforcement of the tax, license, or excise tax laws administered by it. The department shall prepare and distribute all forms necessary or useful in the administration of tax, license, and excise tax laws. (§ 48-2-16 ACLA 1949)

NOTES TO DECISIONS

Cited in Wien Air Alaska, Inc. v. 2527 (File No. 5594), P.2d (1982). Department of Revenue, Sup. Ct. Op. No.

Sec. 43.05.085. List of contributors. The commissioner of revenue shall prepare and furnish to the Alaska Election Campaign Commission by July 1 of each year a list of all persons claiming a credit under AS 43.20.010(c), including the dates, if available, and candidates or groups to which the contribution was made. These lists or parts of them shall not be made public except on order of the supreme court of the state. (§ 4 ch 76 SLA 1974)

Editor's notes. — AS 43.20.010(c) was repealed in 1975. The present provisions for tax credits for political contributions are found in AS 43.20.013.

(e) A penalty imposed by this section shall be collected at the same time, in the same manner, and as a part of the original tax. However, if the original tax is paid before neglect or fraud is discovered, the penalty shall be collected in the same manner as the original tax. Interest may not be collected on a penalty imposed by this section. (§ 2 ch 166 SLA 1976; am § 1 ch 113 SLA 1980; am § 1 ch 39 SLA 1982)

Effect of amendments. — The 1980 amendment, in subsection (a), inserted "at the time or times required by law or regulation" in the first sentence and deleted the former third sentence, which read: "The penalty shall be collected at the same time, in the same manner and as a part of the original tax; but if the original tax is paid before the neglect is discovered, the penalty shall be collected in the same manner as the original tax", and added subsections (b)-(e).

The 1982 amendment, added the present third sentence of subsection (a).

Sec. 43.05.225. Interest on taxes. Unless otherwise provided, when a tax levied in this title becomes delinquent it bears interest at the rate of 12 percent a year. (§ 2 ch 166 SLA 1976; am § 2 ch 82 SLA 1982)

Effect of amendments. — The 1982 amendment increased the rate of interest from eight percent to 12 percent.

Sec. 43.05.230. Disclosure of tax returns and reports. (a) It is unlawful for a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under this title, except

(1) in connection with official investigations or proceedings of the department, whether judicial or administrative, involving taxes due under this title;

(2) in connection with official investigations or proceedings of the child support enforcement agency, whether judicial or administrative, involving child support obligations imposed or imposable under AS 25 or AS 47;

(3) as provided in AS 38.05.036 pertaining to audit functions; and

(4) as otherwise provided in this section.

(b) The department, upon written request, shall furnish to the taxpayer a copy of the taxpayer's tax return upon payment of a fee of $1 per page.

(c) The department may permit the proper officer of the United States or of a state, territory or possession of the United States or of the Dominion of Canada or of a province or territory of Canada, or the officer's authorized representative, to inspect tax returns or reports filed with the department, or may furnish to the officer or representative a copy of the tax return, if the other jurisdiction grants substantially similar privileges to the department or its representative or to counsel for the state; and if the department determines that the

other jurisdiction provides adequate safeguards for the confidentiality of the returns and reports, and that the returns and reports will be used for tax purposes only. The department may also permit the employment security division of the Alaska Department of Labor to inspect tax returns or reports filed with the department or may furnish a copy of the tax returns for tax purposes only.

(d) The commissioner of revenue may furnish to the Multistate Tax Commission or other authorized agent information contained in the tax returns, reports, related schedules and documents filed under an audit or investigation of a multistate business made by the department. This information may be furnished for tax purposes only. The Multistate Tax Commission or other authorized agent may make the information available to the tax officials of other states, the District of Columbia, the United States and its territories for tax purposes only.

(e) Nothing in this section prohibits the publication of statistics so classified as to prevent the identification of particular returns or reports or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with other relevant information which in the opinion of the department may assist in the collection of delinquent taxes.

(f) A wilful violation of the provisions of this section is punishable by a fine of not more than $5,000, or by imprisonment for not more than two years, or by both.

(g) The information contained in a license issued by the commissioner of revenue under AS 43.50, 43.60, 43.65, 43.70, and 43.75 is public information. (§ 2 ch 166 SLA 1976; am § 32 ch 126 SLA 1977; am § 5 ch 61 SLA 1980; am §§ 2, 3 ch 113 SLA 1980)

Revisor's notes. — The two 1980 amendments have been reconciled.

Cross references. — For purpose of 1977 amendatory act, see § 1, ch. 126, SLA 1977 in the Temporary and Special Acts.

Effect of amendments. — The first 1980 amendment rewrote subsection (a).

The second 1980 amendment substituted "a current or former" for "an" preceding "officer" near the middle of subsection (a) as it existed prior to the first 1980 amendment and added subsection (g).

Opinions of attorney general. — Division of audit to have access to records of state agencies, whether confidential or not. 1972 Op. Att'y Gen., issued under former AS 43.20.190.

A legislative auditor may not examine confidential records on file for state income tax returns and wage information submitted by employees and employers to the Department of Labor in connection with the administration of the State Employment Security Act to determine if persons receiving assistance from the Department of Health and Social Services under their Adult Public Assistance and Aid to families with dependent children were eligible. Such data is within the ambit of protection intended to be afforded the right of privacy under § 22, art. I, of the Alaska Constitution. 1972 Op. Att'y Gen., issued under former AS 43.20.190.

NOTES TO DECISIONS

Constitutionality. — Given the lack of connection between most information sought on a tax return and a person's more intimate concerns and the confidentiality protections afforded by this section, the state's interest in the implementation of its tax system justifies and outweighs any privacy rights violated by compulsion to fill out tax forms or testify before a revenue agent. State, Dep't of Revenue v. Oliver, Sup. Ct. Op. No. 2441 (File Nos. 4755, 5049), 636 P.2d 1156 (1981).

Subsection (c) provides adequate protection for an invasion of privacy rights that might occur as the result of the implementation of the state tax system. Cogan v. State, Dep't of Revenue, Sup. Ct. Op. No. 2597 (File No. 6528), 657 P.2d 396 (1983).

An individual's privacy rights were not violated by the state's computation of tax liability based on W-2 forms after that person failed to file a tax return because the state did not ask the person anything but rather simply imposed a tax based on available information. Cogan v. State, Dep't of Revenue, Sup. Ct. Op. No. 2597 (File No. 6528), 657 P.2d 396 (1983).

Cited in State, Dep't of Revenue v. Oliver, Sup. Ct. Op. No. 2441 (File Nos. 4755, 5049), 636 P.2d 1156 (1981).

Collateral references. — Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information, 1 ALR4th 959.

Sec. 43.05.240. Taxpayer remedies. (a) A person aggrieved by the action of the department in fixing the amount of a tax or in imposing a penalty may apply to the department within 60 days from the date of mailing the notice required to be given to the person by the department, giving notice of the grievance, and requesting an informal conference. At the conference the person aggrieved may present arguments and evidence relevant to the amount of tax or penalty due the state. If the department determines that a correction is warranted, the department shall make the correction.

(b) A person aggrieved by the action of the department in fixing the amount of a tax or in imposing a penalty may apply to the department and request a formal hearing

(1) in place of the informal conference provided for in (a) of this section, within 60 days from the date of mailing the notice required to be given to the person by the department; or

(2) within 30 days after decision resulting from an informal conference.

(c) At the formal hearing the department may subpoena witnesses and may administer oaths and make inquiries necessary to determine the amount of the tax or penalty due the state. The person aggrieved may present arguments and evidence relevant to the amount of the tax or penalty due the state. If the department determines that a correction is warranted, the department shall make the correction.

(d) Within 30 days after the formal hearing and decision by the department, a person aggrieved by the decision of the department may appeal to the superior court in the judicial district in which the person

resides. The taxpayer shall be given access to the file of the department in the matter for preparation of the appeal. If after the appeal is heard it appears that the tax was correct, the court shall confirm the tax. If incorrect, the court shall determine the amount of the tax and if the person aggrieved is entitled to recover the tax or part of it, the court shall order the repayment and the department shall immediately pay the amount due and attach a certified copy of the judgment to the payment. (§ 2 ch 166 SLA 1976)

NOTES TO DECISIONS

Means of challenging tax assessment. — Under this section and App. R. 601-611, the exclusive means of challenging a tax assessment is by appeal to the superior court. Fedpac Int'l, Inc. v. State, Sup. Ct. Op. No. 2520 (File No. 6034), 646 P.2d 240 (1982).

Collateral estoppel. — If a later proceeding is concerned with a similar or unlike claim relating to a different tax year, a prior judgment acts as a collateral estoppel only as to those matters in the second proceeding which were actually presented and determined in the first suit. State v. Baker, Sup. Ct. Op. No. 227 (File No. 428), 393 P.2d 893 (1964), decided under former AS 43.70.050.

Res judicata. — If a claim of liability or nonliability relating to a particular tax year is litigated, a judgment on the merits is res judicata as to any subsequent proceeding involving the same claim and the same tax year. State v. Baker, Sup. Ct. Op. No. 227 (File No. 428), 393 P.2d 893 (1964), decided under former AS 43.70.050.

Cited in Sjong v. State, Dep't of Revenue, Sup. Ct. Op. No. 2269 (File No. 4255), 622 P.2d 967 (1981); Cogan v. State, Dep't of Revenue, Sup. Ct. Op. No. 2597 (File No. 6528), 657 P.2d 396 (1983).

Sec. 43.05.245. Assessment and collection of tax, penalties and interest. If a taxpayer fails to file a return or report required by this title in the time required by law or regulation, or makes an erroneous or fraudulent return, the department shall proceed to assess the license fees, tax, penalties, or interest and make a return from information which it obtains. A return made and subscribed by the department in accordance with this section is presumed sufficient for all legal purposes. However, nothing prevents a taxpayer from presenting evidence or other information on an appeal under AS 43.05.240 in order to rebut the presumed sufficiency of a return made and subscribed by the department, nor does the presumption of sufficiency alter the parties' respective burdens of proof once the taxpayer has presented evidence or other material information to rebut that presumption. The assessment of license fees, tax, penalties, or interest under this section occurs when the department issues a notice and demand for payment of the license fees, tax, penalties, or interest. The notice and demand for payment is issued when the notice and demand is delivered to the taxpayer in person or placed in the United States mail, addressed to the last known address of the taxpayer. Penalties and interest assessed under this title shall be collected in the same manner as provided in this title for the collection of tax or license fees. (§ 4 ch 113 SLA 1980)

APPENDIX B

Qualifications of Participants

Bassett, Martin - Appeals Officer.
CPA
IRS - 5 1/2 years
Oil and Gas Audit - 6 years
Peat Marwick (CPA's) Auditor

Bitzer, Ronald - Senior Appeals Officer.
Attorney
Controller - 5 years (Corporation in Private Industry)
IRS - 1 year
Department of Revenue - 6 years
Oil and Gas Audit - 5 years

Brewer, Richard - Asst Director, Oil and Gas Audit
CPA
Oil and Gas Audit - 6 years
Department of Revenue - 10 years

Bue, Arne - Senior Revenue Auditor
20 years experience with Department of Revenue
11 years experience in Oil and Gas Audit

Condon, Wilson - Attorney
Hellen, Partnow, and Condon
Former Attorney General for Alaska

Donohue, Joseph - Attorney
Preston, Thorgrimson, Ellis, and Holman
Former Asst Attorney General
Former Deputy Commissioner of Revenue

Fineberg, Richard
Former Analyst - Division of Policy

Floerchinger, William - Director, Oil and Gas Audit
CPA
Auditor - 10 years private industry
25 years - IRS Tax Administrator
2 1/2 years - Oil and Gas Audit

Gault, Dr. John - Economist
Geneva, Switzerland
Emphasis on World Oil Prices

Halloran, Mary - Director, Division of Policy
Governor's Office

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Hellen, Partnow, and Condon
Former Attorney General for Alaska

Donohue, Joseph - Attorney
Preston, Thorgrimson, Ellis, and Holman
Former Asst Attorney General
Former Deputy Commissioner of Revenue

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Gault, Dr. John - Economist
Geneva, Switzerland
Emphasis on World Oil Prices

Halloran, Mary - Director, Division of Policy
Governor's Office

Herman, Barbara - Asst Attorney General
Supervisor, Oil, Gas and Mining Section

Higgins, Shelly - Asst Attorney General
Oil, Gas, and Mining Section

Hotchkin, Michael - Asst Attorney General
Oil, Gas, and Mining Section

Horst, Dr. Thomas - Economist
Horst and Associates
Emphasis on Pipeline Issues and Debit Allocation

Hosie, Spencer - Attorney
San Francisco, California
Emphasis on Petroleum Price Controls and Entitlements

Johnson, Jeff - Senior Revenue Auditor
CPA
10 years - Oil and Gas Audit
2 years - Missouri Department of Revenue

Kinney, Bruce - Supervisor, Oil and Gas Audit
15 years - IRS
7 years - Oil and Gas Audit

Kissick, Wabe - Revenue Auditor
18 years - Department of Revenue
9 years - Oil and Gas Audit

Leitzinger, Dr. Jeff - Economist
Micronomics, Inc.
Los Angeles, California
Emphasis on Value of Crude Oil

Loeffler, Robert - Attorney
Morrison & Forester - Washington, D.C.
Emphasis on Pipeline Issues

Malone, Hugh - Commissioner of Revenue
Former Legislator
Former Speaker of House of Representatives

Messenger, John - Attorney
Preston, Thorgrimson, Ellis, and Holman
Former Revenue Auditor
Former Asst Attorney General
Former Deputy Commissioner of Revenue

Nadel, Dr. Ernest - Economist
Barakat, Howard and Chamberlin - Oakland, California
Emphasis on Marine Transportation

Scott, Stacey - Senior Revenue Auditor
CPA
11 years - Oil and Gas Audit
2 years - Johnson and Morgan (CPA's)

Stauffer, Susan - Revenue Auditor
4 years - IRS
11 years - Oil and Gas Audit

Tillery, Craig - Asst Attorney General
Oil, Gas, and Mining Section

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

March 16, 1990

The Honorable Cliff Davidson
Chair
House Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Davidson:

This letter is in response to your communication of March 9, 1990, concerning legislation relating to oil and gas revenue disputes.

I have included a copy of the February 16, 1988 "Attachment B" and my December 7, 1989 response to Dr. Fineberg's letter. I urge you to contact Dr. Fineberg directly for a copy of his communication to me rather than calling upon the department to edit portions for distribution. Dr. Fineberg is in the Legislature's employ specifically with respect to this matter.

Amerada Hess Working Group meeting dates in chronological order, are as follows: March 10, 1987; April 15, 1987; September 8, 1987; September 14, 1987; October 20, 1987; November 4, 1987; November 20, 1987; November 26, 1987; February 16, 1988; May 3, 1988; August 31, 1988; October 5, 1988; December 5, 1988; February 1, 1989; March 7, 1989; August 23, 1989; October 12, 1989; January 26, 1990. In addition, there have been several Oil and Gas Subcabinet meetings which have pertained in part to Amerada Hess, most recently on February 16, 1990 and February 22, 1990.

I have personally been involved in the development of the Amerada Hess Working Group from its inception. I place great importance on the working group and have not delegated this responsibility to others. I assure you that initial review of settlement offers will be undertaken by the settlement team I have appointed. That team consists of Jim Eason, Director of the Division of Oil and Gas, Bruce Botelho, Assistant Attorney General, and Julian Mason, of Ashburn and Mason, an Anchorage-based law firm. This team is assisted by petroleum engineering and economic consultants. A

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recommendations toward settlement for this group will be reviewed by the litigation team and its consultants, headed by Wilson Condon. That team, which has undertaken the most extensive analysis of and aggressive posture toward royalty obligations, consists not only of attorneys, but of nationally recognized economists. This group would provide the most extensive "second opinion" on proposed settlements or settlement offers. I would also consult with other state officials who have particular expertise concerning the specific settlement as well as with the Governor and his staff.

Should you have additional questions regarding this matter, please let me know.

Sincerely,

Lennie Gorsuch for
Commissioner

Enclosures

STATE OF ALASKA
HOUSE OF REPRESENTATIVES
Box V, Juneau, Alaska 99811
(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON • DISTRICT 27 • Box 746, Kodiak, Alaska 99615 • (907) 486-8250

March 9, 1990

Lennie Gorsuch, Commissioner
Department of Natural Resources
400 Willoughby Ave. (Mail Stop 1000)
Juneau, AK 99801

Dear Commissioner Gorsuch,

As you know, the House Resources Committee is considering legislation relating to oil and gas revenue disputes. To further our understanding of the management of the state's royalty litigation with oil and gas producers, I would appreciate your prompt response to the following questions:

1) The materials you provided Representative Cotten on October 17, 1989 included Attachment B (Settlement Principles of the Amerada Hess Working Group), adopted February 16, 1988 and modified on August 23, 1989. I would like to receive a copy of the February 16, 1988 document.

2) Dr. Richard Fineberg's report to the Legislature on oil and gas revenue disputes refers to a letter you wrote to Dr. Fineberg on December 7, 1989 (pp 37). Please provide a copy of that letter, and a copy of your December 7, 1989 response to Dr. Fineberg. If, in your judgement, portions of either letter should be held confidential, please delete those portions and briefly explain why each portion should remain confidential.

3) Please provide the dates of each meeting of the Royalty Litigation (Amerada Hess) Working Group since its creation in 1987. Please list each meeting date separately.

4) Please describe the review procedures that you would employ to evaluate a settlement with one or more of the defendants in this case. If there are any written procedures, please provide them.

In view of the time constraints we are facing, I would very much appreciate your response to these questions by the close of work on Friday, March 16 or sooner.

Thank you for your assistance. I look forward to discussing these matters with you in the coming weeks. With best regards.

Cordially,

Cliff Davidson

Representative Cliff Davidson

Testimony before House Resources Committee
Kenneth Reither. Exxon Company, U.S.A.
Friday, March 23, 1990

Mr. Chairman, Members of the Committee. My name is Ken Reither. I have been an employee of Exxon Company, U.S.A. for something over 16 years. My primary emphasis during that period has been in the areas of state taxation. My office is in Anchorage. My purpose today is to comment on behalf of Exxon on House Bills 519, 541, 554 and 573 from a tax administration point of view.

First, some general comments. Exxon has for a number of years shared the concerns of the bill sponsors over the growing amounts of taxes in controversy in Alaska, the length of time required to obtain final resolution of these issues, and the structure of the resolution process itself. We believe, however, that the legislative bills being discussed today will not materially assist in solving the problem. We hope that some of the information provided today will help explain why.

Exxon last fall received revised workpapers and tax assessments for oil production taxes for 1979 through 1982 and corporate income taxes for tax years 1979 through 1981. The assessment documents and accompanying workpapers fill three banker's boxes and probably weigh at least 40 pounds. There are more than 25 separate issues identified in these papers, some very large, some small. Some are relatively straightforward, but some are extremely complex. The largest relate to how we determined the value that we reported for the oil produced.

With respect to these tax assessments, the administrative process in Alaska provides for an informal conference within the Oil and Gas Division of the Department of Revenue. If matters cannot be resolved at that level, the next step is a formal hearing conducted by a hearing examiner reporting to the Commissioner. If the taxpayer is not satisfied with the outcome of the formal

hearing, the taxpayer may appeal to the Alaska Superior Court, but in the normal case, the Superior Court is required to decide the appeal based on the record made in the hearing before the Department. The taxpayer is not entitled to a trial.

We are now at the informal conference level with respect to the assessments and workpapers received last fall. Exxon and the Oil and Gas Division of the Department of Revenue have both assigned teams to work on this matter. An assistant Attorney General has been assigned to assist the Oil and Gas Division. The discussions taking place are for the purpose of reaching a common ground as to why Exxon filed its returns the way it did, and why the Department believes we owe additional tax.

Once that common understanding is reached, we hope to go forward to resolve at least some of the issues at that level. Those issues not resolved at that level will then go to formal hearing and on to court if necessary. It is Exxon's hope that these further steps will not be necessary because we believe that further litigation is not in the interest of Exxon or the State. And however frustrating and long these discussions may appear, we are hopeful that these discussions will resolve the issues.

So far I have discussed the status of the revised tax assessments received last fall, which cover income taxes through 1981 and oil production taxes through 1982. As to our tax returns for subsequent periods, the Department's auditors have been visiting Exxon to examine our books and records, the methods we used to determine the oil values we reported, the transportation deductions we took, and the myriad of detail that went into preparation of our returns. It always has been and continues to be Exxon's policy to provide full disclosure and full access of our records to the

Department's auditors. We are not stonewalling and we have full detail available to support the calculations we made in determining the tax that we paid.

As a final general comment, we believe it would be helpful for you to know that Mr. Floerchinger is meeting with the Tax Committee of the Alaska Oil and Gas Association this coming Tuesday, March 27, 1990, for the purpose of explaining to Exxon and the other taxpayers new equipment acquired by the Oil and Gas Division and new procedures for gathering data, all designed for the purpose of streamlining the audit process.

Now I would like to turn to the specific provisions of the bills under discussion. One of the provisions of HB 519 would establish an Administrative Law Judge within the Department of Administration. As we have testified in past years, Exxon believes that changes should be made to the appeal process currently in place in Alaska. We concur in the notion that the Department finally determining the appeal should not be the same Department that came up with the tax assessment in the first place. The better solution is to allow trial in the Superior Court.

HB 519 would also raise interest rates on outstanding oil and gas tax assessments to 20%. We believe such a rate is too high. We believe it is not fair to apply one rate to the petroleum industry and a separate, lower rate to other taxpayers in the state. We also believe that this provision will not assist in resolution of the overall problem.

The other provision of HB 519 would require petroleum taxpayers to prepay disputed tax and royalty assessments in order to bid on oil and gas leases. We believe this provision will add considerations to the bidding process that are unrelated to the oil or gas prospects themselves, and the

result would have unintended and negative side effects for both industry and the State of Alaska. As Ed Phillips testified on March 21, this provision could result in fewer bids and smaller revenues for the State.

It is also important to keep in mind that these are disputed taxes that we are discussing -- that there are genuine differences between Exxon and the Department as to the amount of tax due. Payment of taxes and royalties and the assessment appeal process are totally unrelated to the lease bidding process. This provision smacks of being guilty until proven innocent.

HB 541 would establish a requirement for an independent appraisal of any major tax or royalty settlement before the settlement could go forward. It was suggested in testimony on Wednesday March 21 that a set of findings was envisioned and that it might be appropriate that the findings be made public.

As mentioned before, the assessment documents and workpapers received last fall by Exxon involve at least 25 separate issues, some exceedingly complex, and three banker's boxes of detail. It is going to take many months of discussion before resolution can be reached as to these issues. Requiring a separate independent analysis would only add another layer to an already complex and difficult task and would for all practical purposes bog down the process.

HB 554, including the amendment proposed March 21 by its sponsor, would allow disclosure of summaries of the business income and taxes paid of a taxpayer involved in the petroleum business in Alaska and would extend to all income, production, conservation, and property taxes paid by the petroleum industry in Alaska. First, only oil taxes are singled out for disclosure. Second, we do not see how such disclosure will materially assist in resolution of tax disputes, which is the real problem we understand these bills are

intended to address.

HB 573 provides for release of delinquent tax information in the case of large oil tax assessments relating to early tax years where the assessment has been on the books for more than a year and provides for escrow of half of the amounts assessed in order to apply for formal hearing. Again, Exxon does not believe that either provision will materially assist in the early resolution of tax disputes, but will instead set up artificial and arbitrary deadlines unrelated to the complexity of the tax issues themselves.

Exxon recognizes, however, that the Legislature does have oversight responsibility and we recognize the need for disclosure of information to the Legislature to assist in that responsibility. Exxon two years ago testified that we supported the development of legislation that would allow disclosure to members of the Legislature in an atmosphere where both the Department of Revenue and the taxpayer were present so that neither side was disadvantaged, and where appropriate safeguards were in place to preserve the confidentiality of the data disclosed. We continue to support that effort.

This concluded my comments. Thank you for the opportunity to testify.

TESTIMONY BEFORE HOUSE RESOURCE COMMITTEE

ROBERT W. VAN HOOK, BP EXPLORATION (ALASKA) INC.

FRIDAY, MARCH 23, 1990

FOR THE RECORD, MY NAME IS BOB VAN HOOK. I AM HERE TO TESTIFY FOR BP EXPLORATION (ALASKA) INC.

BP APPRECIATES THIS OPPORTUNITY TO TESTIFY ON H.B.'S 519, 541, 554, AND 573.

WHETHER THESE BILLS HAVE ACTUALLY BEEN PROMPTED BY RICHARD FINEBERG'S RECENT REPORT ON THE SO-CALLED "BACK TAXES" ISSUE OR NOT, THEY ALL SHARE WITH THAT REPORT AN IMPORTANT AND FUNDAMENTAL MISPERCEPTION ABOUT THE OIL INDUSTRY AND ITS ATTITUDES TOWARD THE STATE'S TAX ASSESSMENTS. THAT MISPERCEPTION IS THAT OIL COMPANIES ARE UNWILLING AND UNCOOPERATIVE IN TRYING TO RESOLVE THE TAX ISSUES THAT THE ASSESSMENTS HAVE RAISED. ASIDE FROM THE GENERAL CORPORATE GOALS OF TRYING TO AVOID ILL DEFINED RISKS, THERE IS A VERY STRONG PRACTICAL REASON - UNIQUE TO ALASKA - TO RESOLVE TAX DISPUTES QUICKLY.

UNRESCLVED TAX ASSESSMENTS LEAVE THE ALASKAN TAXPAYER AT RISK FOR EVER-INCREASING TAX ASSESSMENTS UNDER NEW THEORIES WHICH THE STATE DEVISES YEARS AFTER THE ORIGINAL ASSESSMENT. THE ATTORNEY GENERAL HAS ADVISED THAT THE DEPARTMENT OF REVENUE MAY INCREASE THE AMOUNT OF TAX THAT IT CLAIMS IS OWED, EVEN AFTER THE STATUTE OF LIMITATIONS HAS OTHERWISE RUN OUT, SO LONG AS THE ORIGINAL ASSESSMENT IS STILL BEING APPEALED WITHIN THE DEPARTMENT AND HAS NOT GOTTEN TO COURT. WHILE WE DISAGREE STRONGLY WITH THE ATTORNEY GENERAL'S CONCLUSION, THE DEPARTMENT HAS USED THIS TACTIC TO FULL ADVANTAGE IN THE ABSENCE OF ANY COURT RULINGS ON THE SUBJECT.

IN ONE CASE WITH US, THE SECOND ASSESSMENT - WHICH CAME MORE THAN THREE YEARS AFTER THE FIRST ASSESSMENT - WAS FOR MORE THAN THREE TIMES THE AMOUNT OF THE ORIGINAL ASSESSMENT. HAD THE ORIGINAL ASSESSMENT BEEN RESOLVED WITHIN THAT THREE YEAR PERIOD, THE DEPARTMENT WOULD HAVE BEEN BARRED - EVEN UNDER THE ATTORNEY GENERAL'S OPINION - FROM MAKING THE SECOND ASSESSMENT. TO LIMIT THIS EXPOSURE, WE HAVE SERIOUSLY CONSIDERED SKIPPING OUR RIGHT TO INFORMAL CONFERENCE SIMPLY TO DECREASE THE CHANCE FOR NEW THEORIES TO BE DEVELOPED. IN PLAIN FACT THE DEPARTMENT HAS A GREATER INCENTIVE THAN THE TAXPAYER TO EXTEND THE RESOLUTION OF TAX DISPUTES.

THE SLOW PACE OF RESOLVING OUR ALASKAN TAX AND ROYALTY ISSUES IS ATYPICAL FOR BP.

CONSIDER THAT IT WAS NOT UNTIL OCTOBER 1989 THAT BP FIRST SAW THE AMOUNT THAT THE STATE BELIEVES IT IS OWED UNDER THE AMERADA HESS CASE. THIS MEANS THAT IT TOOK THE STATE 12 YEARS TO TELL US HOW MUCH IT BELIEVES ROYALTY OIL WAS WORTH THAT WAS PRODUCED IN 1977. ASK YOURSELVES WHAT PREPAYMENT, PUNITIVE INTEREST RATES, BIDDING RESTRICTIONS OR BIASED PUBLIC DISCLOSURE HAS TO DO WITH A PROCESS THAT CAN JUSTIFY A 12 YEAR PERIOD FOR ASSESSING.

IN 1988, BP TESTIFIED IN FAVOR OF LEGISLATION WHICH BP BELIEVED WOULD PROVIDE FOR A QUICKER AND MORE EVEN HANDED RESOLUTION OF TAX DISPUTES. IN A NUMBER OF AREAS, THERE WAS STRONG DISAGREEMENT BETWEEN THE INDUSTRY AND THE DEPARTMENT OF REVENUE. THE ONE AREA OF AGREEMENT WAS THAT THERE NEEDED TO BE MORE FACE TO FACE CONTACT BETWEEN THE DEPARTMENT AND INDUSTRY.

GREATER CONTACT HAS IN FACT OCCURRED. SOME PROGRESS HAS BEEN MADE IN RESOLVING ISSUES IN ASSESSMENTS, PRIMARILY IN CONFIRMING THAT TRANSPORTATION COSTS REPORTED HAD IN FACT BEEN INCURRED. NEITHER THOSE WE DEAL WITH IN THE DEPARTMENT NOR BP BELIEVES ENOUGH PROGRESS HAS BEEN MADE, HOWEVER. OVER THE

PAST 2 MONTHS, BOTH SIDES HAVE TAKEN A FRESH LOOK AT NEW APPROACHES TO BREAKING THE LOG JAM. BP IS CAUTIOUSLY OPTIMISTIC THAT FURTHER PROGRESS CAN BE MADE. BP HAS ACTED WITH THE UTMOST DILIGENCE AND GOOD FAITH DURING THESE NEGOTIATIONS AS HAS THE DEPARTMENT. I WOULD BE STUNNED IF ANY DEPARTMENT EMPLOYEE WORKING WITH BP OVER THE PAST THREE YEARS WOULD DISAGREE.

THE PUNITIVE MEASURES SUGGESTED IN THIS LEGISLATION AND IN RICHARD FINEBERG'S REPORT AND TESTIMONY ARE A TRULY DISAPPOINTING RESPONSE TO OUR GOOD FAITH EFFORTS. AS FAR AS I KNOW, RICHARD FINEBERG IS NOT IN THE DEPARTMENT OF REVENUE AND HAS NOT BEEN WITHIN 571 MILES OF OUR NEGOTIATIONS. HIS SECOND OR THIRD HAND SOURCES ARE MISINFORMED OR HE HAS MISUNDERSTOOD THE EXPLANATION. WITH RESPECT TO HIS COMMENT ABOUT INDUSTRY HABITUALLY UNDERPAYING TAXES, I WOULD POINT OUT BP'S AVERAGE REPORTED PRICE ON ITS TAX RETURNS EXCEEDED THE AVERAGE OF THE SPOT VALUES WHICH THE COMMISSIONER USED IN HIS GRAPH TO DEMONSTRATE THAT COMPANIES ARE CURRENTLY REPORTING BELOW SPOT VALUES. THE COMMISSIONER'S SCHEDULE COVERED JULY THROUGH DECEMBER OF 1989.

IN H.B.'S 519 AND 573 AND IN THE FINEBERG REPORT, PREPAYMENT PROPOSALS ARE MADE. THE FOUNDATION FOR THESE PROPOSALS IS EXTREMELY SHAKY.

FIRST, THE TAXPAYER IN MANY INSTANCES MAY NOT KNOW WHAT HIS ASSESSMENT SHOULD BE UNDER THE STATE'S CURRENT INTERPRETATION OF THE TAX LAWS. ON A NUMBER OF CRUCIAL ISSUES, THE STATE HAS ALTERED ITS INTERPRETATIONS OF THE LAW AFTER THE ORIGINAL AUDIT WORK HAS BEEN DONE. NEW AUDIT WORK IS THEN REQUIRED TO SQUARE THE ASSESSMENT WITH THE THEORY.

SECOND, BP BELIEVES THAT IT HAS PAID THE PROPER AMOUNT OF TAXES AND ROYALTIES AND DISAGREES WITH THE THEORIES ADVANCED BY THE STATE. YET EVEN IF THE STATE'S THEORIES WERE CORRECT, THE ASSESSMENTS ARE HIGHER THAN CAN BE JUSTIFIED UNDER THOSE THEORIES. EVEN THE FINEBERG REPORT ACKNOWLEDGES THAT THE ASSESSMENTS ARE IN THE NATURE OF A JEOPARDY OR BLUE SKY ASSESSMENT. AN EXAMPLE WOULD BE THE DISALLOWANCE OF AN ENTIRE CATEGORY OF EXPENSE SIMPLY BECAUSE OF DISPUTE ABOUT 5% OF THE TOTAL.

THIRD, FORCING A TAXPAYER TO ESCROW DISPUTED TAXES WITHOUT A HEARING AND WITH FULL KNOWLEDGE THAT THE ASSESSMENT IS TOO HIGH IS A CALLOUS DISREGARD OF THE FUNDAMENTAL RIGHTS TO DUE PROCESS AND TO PETITION GOVERNMENT FOR REDRESS OF GRIEVANCES.

WITH RESPECT TO H.B. 541, BP ENCOURAGES LEGISLATIVE OVERSIGHT OF THE SETTLEMENT PROCESS. E.G. BP WOULD FULLY SUPPORT CONFIDENTIAL BRIEFINGS OF A LEGISLATIVE COMMITTEE WITH OR

WITHOUT THE DEPARTMENT OF REVENUE PRESENT PROVIDED THE PROCESS IS FAIR TO BOTH SIDES AND THERE ARE ADEQUATE SAFEGUARDS TO PROTECT CONFIDENTIALITY. BP STRONGLY OBJECTS TO DEPARTMENT OF REVENUE BRIEFINGS ABOUT BP MATTERS WITHOUT THE THE OPPORTUNITY TO BE PRESENT AND WITHOUT ANY REAL SAFEGUARDS IN PLACE.

WHILE SUPPORTING LEGISLATIVE OVERSIGHT, BP OPPOSES THE REQUIREMENT FOR YET ANOTHER INDEPENDENT APPRAISAL. CURRENTLY BOTH THE DEPARTMENTS OF REVENUE AND LAW AND PERHAPS THE OFFICE OF MANAGEMENT AND BUDGET MUST APPROVE A SETTLEMENT. ADDING A THIRD OR EVEN FOURTH LEVEL OF STATE REVIEW IS UNREALISTIC AND WILL PROBABLY DELAY FINAL RESOLUTION OF "BACK TAXES" EVEN MORE. EACH STATE GROUP WILL HAVE TO JUSTIFY ITS ROLE IN THE PROCESS AND DISPUTES AMONG THE STATE PARTIES MAY BE MORE INTENSE THAN DISPUTES WITH THE TAXPAYER.

A BETTER APPROACH WOULD BE AT THE OUTSET TO PICK A STATE TEAM WHICH YOU TRUST. SPEND YOUR TIME IN OVERSIGHT ACTIVITIES, NOT SECOND GUESSING THE TEAM WITH STILL ANOTHER GROUP. THE FINEBERG REPORT AND TESTIMONY DO NOTHING BUT RIDICULE ANYONE WHO WOULD REACH A SETTLEMENT, BUT THEN BEMOANS THE SLOW PROGRESS. TRY SUPPORTING YOUR TEAMS INSTEAD OF DOUBTING THEM AT EVERY TURN.

WITH RESPECT TO THE OTHER PROVISIONS IN THE BILLS BEFORE YOU SUCH AS NON-MARKET INTEREST RATES, LIMITATIONS ON LEASE BIDDING, BIASED PUBLIC DISCLOSURE, ETC., BP CONSIDERS THESE SIMPLY AS PENALTIES FOR IMAGINED TRANSGRESSIONS OUTLINED IN THE FINEBERG REPORT AND TESTIMONY. BP'S PACE IN ISSUE RESOLUTION IS DICTATED BY THE TIME IT TAKES TO REACH CORRECT SOLUTIONS, INCLUDING THE TIME IT TAKES FOR THE STATE TO DIGEST THE INFORMATION WE PROVIDE THEM.

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY.

EXECUTIVE ORDER 73

HOUSE COMMITTEE REPORT

(9)
Date Referred: January 9, 1989 FURTHER REFERRALS: FINANCE

Date of Committee Action: 1-30-89

The RESOURCES Committee recommends that:

EXECUTIVE ORDER NO. 73
Transferring the function of issuing certain fishing, hunting, and trapping licenses, tags and identification cards from the Department of Revenue to the Department of Fish and Game.

[ ] be replaced with ______________ [ ] the same title [ ] a new title

[ ] have attached amendment(s)

[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the ______________ Committee

ADOPTS: Hs. Res. letter of ~~intent~~ approval

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

APPROVES PREVIOUS:

[ ] fiscal note(s) published: ______________

[X] zero fiscal notes(s) published: 2ea - [illegible] 1-9-89

SIGNING ~~DO PASS:~~ APPROVE:

[signatures]

SIGNING ~~OTHER THAN DO PASS:~~ DISAPPROVE
(Do Not Pass, No Recommendation, Amend)

[signature]
Chairman's Signature

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

January 30, 1989

Dear Mr. Speaker:

The House Resources Committee has reviewed Executive Order 73, transferring the function of issuing certain fishing, hunting and trapping licenses, tags and identification cards from the Department of Revenue to the Department of Fish and Game.

The Committee heard testimony from the Departments of Fish and Game and Revenue and finds Executive Order 73 to be in the state's best interest for the efficient administration of the program.

Best Regards,

Representative George Jacko
Vice-Chair
Resources Committee

No. 1

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 76 & EX ORDER 73
PUBLISH DATE: HOUSE 1/9/89

FISCAL NOTE

REQUEST:

Revision Date:
Title: An act relating to compensation for, penalties against, proceeds...
Sponsor: Rules
Requestor: Steve Cowper

Agency Affected: Fish and Game
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Bill Analysis. Changes in funding due to this transfer are included in the Fish and Game operating budget.

Prepared by: Beverly Reaume — Phone: 465-4120
Division: Administration — Date: 12-16-88

Approved by Commissioner: Don Collinsworth — Date: 12-19-88
Agency: Department of Fish and Game

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 76 & EX ORDER 73
PUBLISH DATE: HOUSE 1/9/89

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act transferring issuance of fishing, hunting, trapping licenses...
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Revenue
BRU: Income and Excise Audit
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: See attached analysis.

Prepared By: Steven E. Kettel
Division: Income and Excise Audit
Phone: (907) 465-2320
Date: December 19, 1988

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue
Date: December 19, 1988

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

Prepared By: Steven E. Kettel
Income and Excise Audit Division
Department of Revenue
December 19, 1988

At the time of drafting this fiscal note an executive order was being drafted for Governor Cowper's signature transferring the Fish and Game Licensing Program from Department of Revenue to Department of Fish and Game. To effect the transfer, legislation amending the statutory responsibility is also necessary.

The Department of Revenue supports this legislation transferring the fish and game licensing program to the Department of Fish and Game.

This program consists of the following features:

1) coordination of statewide sales of fish and game licenses, tags, permits and duck stamps through over 900 private vendors;

2) design and mailout of licenses and forms;

3) data capture of monthly, quarterly, and annual sales reports from the vendors;

4) processing and deposit of cash receipts;

5) reconciliation of vendor reports to cash receipts; and

6) paying additional compensation to vendors based upon the number of licenses sold.

To effect the transfer, the Department of Revenue will give the Department of Fish and Game the resources it has allocated to the program. Funding for the resources is being transferred through the Department's budget as a C-4 Transfer within Adjusted Base. Transferred resources include:

1) Data processing software and documentation including file layouts, flow chart, program listing, data file tapes, etc., assuring that Fish and Game would convert the data from a Wang file structure to an IBM file structure and the Wang COBOL programs to IBM COBOL programs.

2) Transfer of funding will include:

A) Personal Services

The following positions will transfer from the Income and Excise Audit Division with associated funding of $188.1:

Position	Range/Step	FY 89 Budget
Revenue Licensing Supervisor	16K	$54.8
Accounting Supervisor I	14J	$46.7
Clerk Typist II	7B	$26.9
Accounting Clerk II	9D	$31.4
Clerk Typist III	8B	$28.3
		$188.1

The following position will transfer from the Administrative Services Division with associated funding of $38.7:

Position	Range/Step	FY 89 Budget
Data Entry Center Supervisor	14A	$38.7

B) Contractual

The following associated funds will transfer from the Income and Excise Audit Division:

Vendor Compensation:	$356.6
Printing, Postage, Telephone:	$36.8
	$393.4

C) Supplies

The transfer of associated supply funds from the Income and Excise Audit Division Will be $2.5.

The transfer of associated supply funds from the Administrative Services Division will be: $.1

SUMMARY OF TRANSFERS:

Personal Services	$226.8
Contractual	$393.4
Supplies	$2.6
Total Transfer:	$622.8

MEMORANDUM STATE OF ALASKA

TO: Resources Committee
House of Representatives

DATE: January 27, 1989

FILE NO:

TELEPHONE NO: 465-4081

FROM: Commercial Fisheries Entry Commission
Bruce Twomley, Chairman
Rich Listowski, Commissioner
Phil Smith, Commissioner

SUBJECT: House Bill 76

By this Memorandum, we wish to express our support for the bill as submitted by Governor Cowper. The proposed statutory changes (supporting Executive Order 73) are clearly in the public interest. The Commission's direct interest in the bill is prompted by the proposed deletions to authority for the Commissioner of Fish and Game to appoint agents to assist in the completion of annual application and renewal forms for interim-use permits and entry permits issued under AS 16.43. These deletions are found in Sections 3, 4, and 5 of the bill, and we support them.

In 1979, the last time any vendors assisted with permit applications, a number of problems were encountered, as follows:

1. Confusion over the service being provided.

An individual seeking a commercial fishing (crewman) license or a sport hunting or fishing license fills out the application form (a copy of which, when certified by the vendor, constitutes the actual license), pays the appropriate fee, and is then authorized to engage in the licensed activity.

In contrast, an applicant for an interim-use or entry permit can only complete an application for the permit; actual issuance of the permit card must be accomplished by the Commission. For this purpose, there are only three embossing machines in the state (in Juneau and Kodiak, and a portable machine which can be linked to Juneau through on-line computer ports) which work in conjunction with the state main-frame computer. The design of the card itself is unique (for instance, use of a "black light" reveals the signature of the Commission Chairman) to guard against forgery or other fraud. Only after all relevant information is entered and verified will the computerized system allow the card to be issued and delivered to the fisherman (who cannot legally fish unless the card is in his or her possession).

When vendors assisted individuals with applications for their permits, great confusion frequently ensued, with the fishermen frequently under the illusion that they could legally fish with a copy of the application.

2. The commission cannot issue a card until the application is properly completed and the fees have been paid and recorded.

Mistakes in the application (improper fishery code, permit number, etc.) were found to be common. Even more commonplace was the miscalculation of the appropriate fees (depending on the residency and economic status of the permit applicant and the fishery, there are 11 different fee categories, ranging from $15.00 to $750.00). When mistakes were made, it was almost impossible to know whether to contact the vendor or the applicant fisherman. This was especially troubling when the mistake was in fee calculation, since the agent would have already deducted the 15% service charge before sending the money to the Commission. As a result, contrary to the intent, fishermen were frequently disadvantaged by the system and were required to wait much longer before getting their cards and going fishing.

3. Vendor compensation is difficult to compute, because of the absence of a uniform fee structure.

When vendors were authorized to assist in the preparation of applications for permits, a vendor could receive up to $112.50 for assisting a non-resident to complete an application for certain permits, but only $37.50 for assisting a resident to apply for the same class of permit (and only $2.50 for assisting a resident to obtain a permit under the poverty fee provisions). In all cases, the amount of actual work was the same; i.e., insuring that the fishery code(s) were correct, that residency information was properly understood and sworn to, and that correct fees were assessed.

4. The Commission can neither train nor supervise the vendors, but is responsible for their actions.

When the vendor authority was being exercised, a significant problem was that the Commission had no control or authority over the agents and they, in turn, were not required to have any knowledge of the Commission's requirements.

For all of the above reasons, we urge your favorable consideration of HB 76, in particular those portions which would delete the authority of the Commissioner of Fish and Game to appoint agents to assist fishermen to apply for interim-use and entry permits issued by the Commission.

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

January 30, 1989

Dear Mr. Speaker:

The House Resources Committee has reviewed Executive Order 73, transferring the function of issuing certain fishing, hunting and trapping licenses, tags and identification cards from the Department of Revenue to the Department of Fish and Game.

The Committee heard testimony from the Departments of Fish and Game and Revenue and finds Executive Order 73 to be in the state's best interest for the efficient administration of the program.

Best Regards,

Representative George Jacko
Vice-Chair
Resources Committee

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

C.C.
HB 76
+
SB 73

January 9, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting Executive Order No. 73, transferring the functions of issuing fishing, hunting, and trapping licenses, tags, and identification cards from the Department of Revenue to the Department of Fish and Game.

Also, under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a related bill that would make some changes and additions to AS 16.05.390, 16.05.460, and 16.05.470, concerning agents appointed to serve as private license vendors.

The Executive Order will make the operation of state government more efficient because the transfer of the fish and game licensing function places that function in the department that is responsible for the resource management programs that are partially funded by the license revenue. Also, that department, the Department of Fish and Game, can more efficiently gather the most appropriate information during the license issuance process to assist in its management functions. The transfer will reduce the number of departments an individual must contact if the individual intends to take fish or game. At the same time, because the Department of Fish and Game has more field offices than does the Department of Revenue, the transfer will probably make the contact more convenient.

In addition, the transfer will enable the Department of Revenue to focus more of its attention and resources on its primary responsibility -- collecting revenue owed to our state government.

Sections 1 -- 12 of the Executive Order delete references in AS 16.05.335 -- 16.05.826 to the commissioner of revenue and to the Department of Revenue, leaving only references to the "commissioner" and the "department." Those terms are then defined in AS 16.05.940(6) and (7), respectively, as the commissioner of fish and game and the Department of Fish and Game.

Sections 13 and 14, respectively, of the Order delete the power to issue fish and game licenses from the Department of Revenue powers listed in AS 44.25.020 and add it to the Department of Fish and Game powers set out in AS 44.39.020. Section 15 of the Order sets out transition provisions regarding regulations relating to the transferred function.

The only other changes made by the Executive Order are a few housekeeping clarifications in AS 16.05.390 and 16.05.470, and in AS 44.25.020 (secs. 6, 11, and 13 of the Order). No substantive changes, other than the transfer itself, are made by this Order.

Sections 1, 2, and 4 of the related bill amend AS 16.05.390 (concerning vendors of all licenses but commercial fishing licenses) and 16.05.470 (concerning vendors of commercial fishing licenses), to allow penalties to be assessed against license vendors or agents who do not transmit to the Department of Fish and Game, in a timely manner, the license fees that they collect.

Sections 2 and 4 of the related bill also specify that the monthly reports and fee transmittals that are already required from vendors must be made by the last day of the month after fees are collected, unless an alternative schedule is set by contract for vendors covered by AS 16.05.390, or unless an extension is granted for vendors covered by AS 16.05.470.

Finally, secs. 3 and 5 of the related bill delete reference in AS 16.05.460 and 16.05.470 to issuance of interim-use and entry permits by vendors. This deletion merely eliminates possible confusion, and conforms the statute to the reality that private vendors have not issued limited entry permits since 1979.

I urge you to further increase the efficiency gained from the Executive Order by passing the related bill.

Sincerely,

Steve Cowper
Governor

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

January 26, 1989

The Honorable Cliff Davidson, Co-Chair
The Honorable Curt Menard, Co-Chair
House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representatives Davidson and Menard:

House Bill 76 and Executive Order 73 are the two final steps necessary to complete the transfer of the responsibility for hunting and fishing license sales from the Department of Revenue to the Department of Fish and Game. Administrative Order 11 issued in July 1988 began the transfer. At present the Department of Fish and Game is selling and accounting for hunting, fishing, and trapping licenses. The transfer from the Department of Revenue to the Department of Fish and Game included the transfer to the Department of Fish and Game of Revenue's FY 89 budget for this program and the transfer of five positions. Unfortunately, funding for the program as operated by the Department of Revenue was never adequate and that remains the case to the present.

The following paragraphs will discuss both the Executive Order and HB 76. The bill is primarily designed to clarify compensation paid to vendors and to enable the department to effectively collect the amounts due from those selling licenses. There apparently have been cases in the past where license vendors have sold hunting and fishing licenses but have not transmitted in a timely manner--and sometimes not at all--proceeds due the state. The bill clearly sets forth the time frame in which such remittances are due to the state and penalties which the department may exact to ensure compliance.

The Executive Order will make the operation of state government more efficient because the transfer of the fish and game licensing function places the function in the department that is responsible for the resource management programs that are partially funded by the license revenue. Also, that department (the Department of Fish and Game) can more efficiently gather the most appropriate information

during the license issuance process to assist in its management functions. The transfer will reduce the number of departments an individual must contact if the individual intends to take fish or game. At the same time, because the Department of Fish and Game has more field offices than does the Department of Revenue, the transfer will probably make the contact more convenient.

In addition, the transfer will enable the Department of Revenue to focus more of its attention and resources on its primary responsibility--collecting revenue owed to our state government.

Sections 1-12 of the Executive Order delete references in AS 16.05.335-16.05.826 to the Commissioner of Revenue and to the Department of Revenue, leaving only references to the "commissioner" and the "department." Those terms are then defined in AS 16.05.940(6) and (7), respectively, as the Commissioner of Fish and Game and the Department of Fish and Game.

Sections 13 and 14, respectively, of the Order delete the power to issue fish and game licenses from the Department of Revenue powers listed in AS 44.25.020 and add it to the Department of Fish and Game powers set out in AS 44.39.020. Section 15 of the Order sets out transition provisions regarding regulations relating to the transferred function.

The only other changes made by the Executive Order are a few housekeeping clarifications in AS 16.05.390 and 16.05.470, and in AS 44.25.020 (Sections 6, 11, and 13 of the Order). No substantive changes, other than the transfer itself, are made by this Order.

Sections 1, 2, and 4 of the related bill amend AS 16.05.390 (concerning vendors of all licenses but commercial fishing licenses) and 16.05.470 (concerning vendors of commercial fishing licenses), to allow penalties to be assessed against license vendors or agents who do not transmit to the Department of Fish and Game, in a timely manner, the license fees that they collect.

Sections 2 and 4 of the related bill also specify that the monthly reports and fee transmittals that are already required from vendors must be made by the last day of the month after fees are collected, unless an alternative schedule is set by contract for vendors covered by AS 16.05.390, or unless an extension is granted for vendors covered by AS 16.05.470.

Finally, Sections 3 and 5 of the related bill delete reference in AS 16.05.460 and 16.05.470 to issuance of

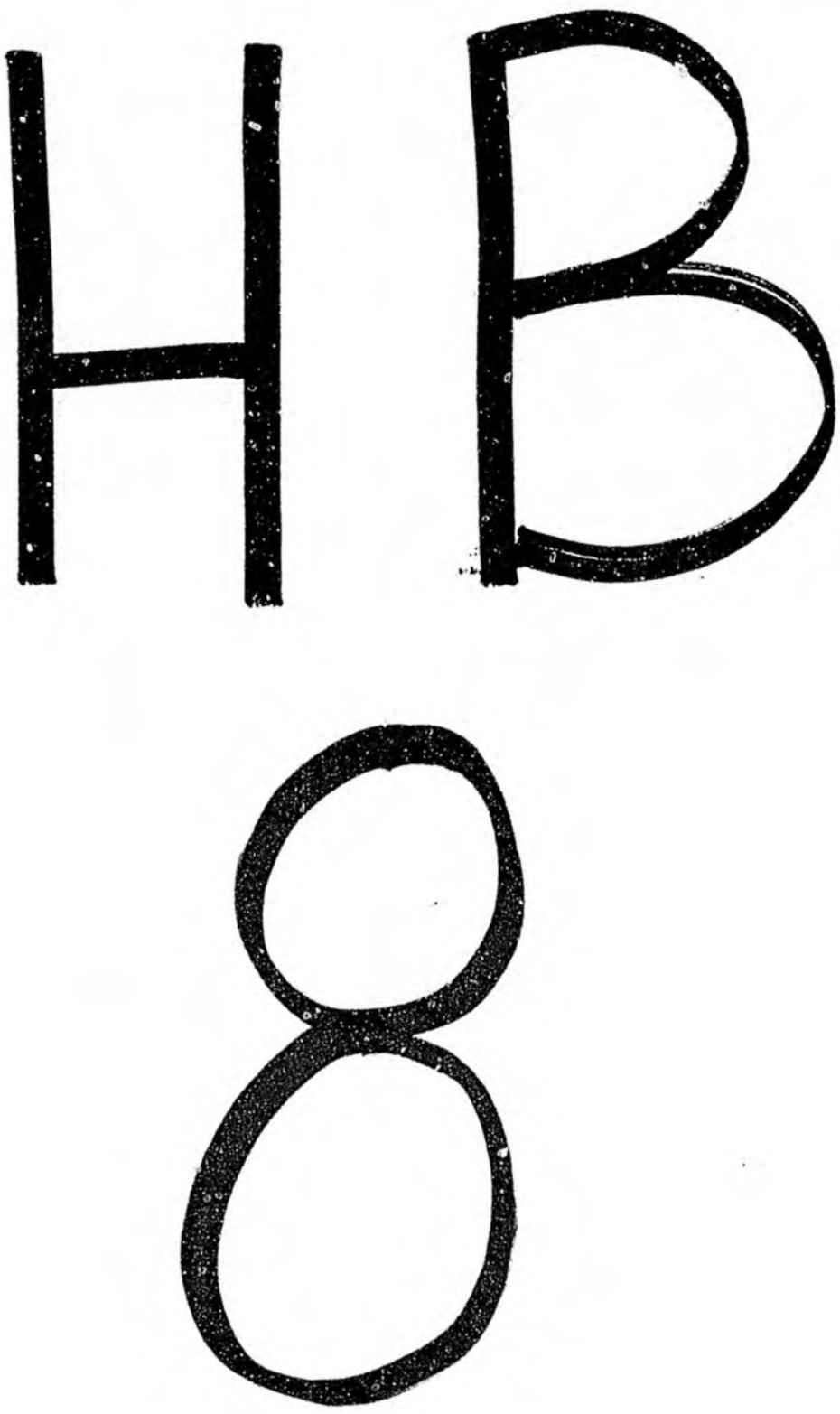
interim-use and entry permits by vendors. This deletion merely eliminates possible confusion and conforms the statute to the reality that private vendors have not issued limited entry permits since 1979.

Representatives from the Department of Fish and Game will be on hand for the Committee's hearing on both the Executive Order and HB 76. We will be prepared to answer any questions at that time. If there is further detailed information the Committee desires before the hearing, I will be happy to provide it.

Sincerely,

Warren W. Wiley
Assistant Commissioner

cc: House Resources Committee Members



CS HB 8 (Finance)
"An Act relating to the addition of land to Kachemak Bay State Park and Kachemak Bay State Wilderness Park."
JUSTIFICATION SUMMARY

House Bill 8 adds three major parcels to Kachemak Bay State Park and Kachemak Bay State Wilderness Park. Those additions are outlined in this summary.

NUKA ISLAND AND NUKA UPLANDS: 42, 092 ACRES +/-

Nuka Island and its adjacent uplands have been identified in the U.S. Congressional Record for inclusion within the boundary of the Kenai Fjords National Park. As state land, it cannot be part of Kenai Fjords, but this is a good illustration of the nationally recognized values of this island area.

(As a matter of interest, the February 1988 edition of Alaska Magazine contains an article on the Kenai Fjords National Park. The article and its accompanying illustrations still describe Nuka Island and Nuka uplands as national park lands.)

Some of the significant values are:

* The area has some of the most varied representation of shore and tidal marine life along the Kenai Fjord area.

* The outstanding scenic beauty complements hiking, fishing, boating and other similar recreational opportunities.

* Management of a commercial lease for facility development on the west side of the island corresponds with the current Nuka Island Management Plan. Development of recreational and tourism use by the Division of Parks and Outdoor Recreation make Nuka Island the logical "jumping off" point for enjoyment of Kachemak Bay State Wilderness Park, Kenai Fjords National Park, and other parts of the island itself.

* It is the only potential development link between Seward and Homer via cruise ship and state ferry system, and the only sheltered development site from Gore Point to Cape Resurrection also safe from earthquake and tsunami waves.

* Nuka Island has been identified by the Kachemak Bay State Park Citizen's Advisory Board for inclusion into the park since 1982. The Nuka Island Management Plan, completed in December of 1986, cites the islands high recreational potential.

NUKA ISLAND (cont'd.)

NOTE: The state has reached a land settlement with the University of Alaska, and certain Nuka Island lands are part of this agreement. The University has made a tentative selection of two 25 acres sites (one at Mike's Bay, and one at Herring Pete's Cove). These sites are available for commercial lodge development under the Nuka Island Management Plan, and are subject to conditions of the plan. House Bill 8 provides for these parcels.

COTTONWOOD CREEK AND EASTLAND CREEK: 2,310 ACRES, +/-

The Cottonwood-Eastland Creek parcels have been under consideration as potential park for over a decade. In 1979, the Division of Parks and Outdoor Recreation identified these parcels as desirable park land, following a recreational development feasibility study.

Located on the northern shore of Kachemak Bay, these lands are not contiguous to the balance of Kachemak Bay State Park. However, they will meet a strong need for road accessible recreational park land near Homer that can be readily developed. The nearest developed state park facility is the Anchor River State Recreational Area (approximately 16 miles north of Homer on the Sterling Highway), which is primarily used for fishing and camping. The Homer Spit is the only other area with public recreational facilities (operated by the City of Homer), and the summer impact to the spit will be relieved somewhat by development of Cottonwood-Eastland.

The 1979 feasibility study noted archaeological sites in the area, and recommended investigation, evaluation, and excavation if necessary, to preserve and protect these sites. Transfer to park status would help assure this.

Other justification for inclusion of Cottonwood-Eastland parcels in this legislation include:

* High scenic and wildlife values

* Developed road to area

* Strong likelihood of year-round public use, when facilities are developed.

AURORA LAGOON: 2, 553 ACRES +/-

This is a logical adjustment to the boundary of the park. In discussions with former legislators, it seems apparent that the omission of Aurora Lagoon from the original Kachemak Bay State Park legislation was an oversight. Currently, the lagoon is heavily used for recreational pursuits.

AURORA LAGOON (cont'd.)

Aurora Lagoon itself offers high scenic and recreational values, and is one of the few locations of safe high tide moorage in this area of Kachemak Bay unaffected by inclement weather. Additionally, there are good beach landing sites for small craft.

Other justifications include:

* Excellent camping and hiking potential.

* Strong potential as a public use cabin site.

* Good recreational fishing in area - salmon, crab, clams.

* The Kachemak Bay State Park Citizen's advisory board has identified Aurora Lagoon for inclusion in the park since 1984.

* Commercial development (a wilderness lodge) is taking place on private lands at nearby Bear Cove. State park status of these Aurora Lagoon lands would enhance and encourage recreation in the entire Aurora Lagoon/Bear Cove area, which has an excellent potential for trail development.

Mike Navarre

Rep. Mike Navarre
prime sponsor, HB8