

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6955 HOUSE JUDICIARY

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. HB 361

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to offenses of sexual BRU: Trial Courts
assault... Components: _____
 Sponsor: B. Davis
 Requestor: Judiciary COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 01/21/92

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 01/21/92
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 361

Revision Date: _____
Title: An Act relating to Offenses of Sexual Assault Committed Against Person Unaware that Sexual Act is Being Committed
Sponsor: Representative Bettie Davis
Requestor: House Judiciary

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)
No impact.

Prepared by: Kevin Brooks, Director *KB*
Division: Administrative Services

Phone: 465-2277
Date: 1/21/92

Approved by Commissioner: Nancy Bear Usera *NBU*
Agency: Administration

Date: 1/21/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Olc., & Impacted Agency(ies).

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 361

Revision Date: _____
Title: An Act relating to the offenses of sexual assault against a person who is unaware that a sexual act is being committed.
Sponsor: Rep. B. Davis
Requestor: House Judiciary

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: John Salemi, Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: January 21, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Administration

Date: 1/21/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

ANALYSIS: (continued)

Title: "An Act relating to the offenses of sexual assault against a person who is unaware that a sexual act is being committed."

HB 361 amends the definition of criminal offenses, Sexual Assault in the Second Degree and Sexual Assault in the Third Degree. This revision of the criminal code ensures that a person can be prosecuted for a sexual act committed against a person/victim who is unaware that the act is being committed. The proposed legislation further distinguishes said criminal sexual acts from those contained in AS 11.41.410 (Sexual Assault in the First Degree). Thus this bill defines certain conduct as criminal and reclassifies (to the extent that the defined conduct was already embraced in current criminal statutes) the crimes in terms of potential sanctions.

It is unlikely that such an amendment would have a significant impact on Public Defender work or caseload numbers. As such, no fiscal impact is anticipated.

SECTIONAL ANALYSIS
SPONSOR SUBSTITUTE FOR HB 361

Section 1: Findings and Purpose

Section 2: The bill section amends the first degree sexual assault statute to make illegal for a health care worker to engage in sexual penetration during the course of professional treatment with a person who the offender knows is unaware that a sexual act is being committed. By specifically including this conduct within the statute, the legislation closes the door on a technical legal defense to a charge of sexual assault in a future case similar to the one involving Dr. Ake. First degree sexual assault is an unclassified felony.

Section 3: The bill section amends the second degree sexual assault statute to make it illegal for a health care worker to engage in sexual contact during the course of professional treatment, and for anyone to engage in sexual penetration, with a person who the offender knows is unaware that a sexual act is being committed. As with bill section 2, the legislation closes the door on a technical legal defense to a charge of sexual assault. Second degree sexual assault is a class B felony.

Section 4: The bill section amends the third degree sexual assault statute to make it illegal for anyone to engage in sexual contact with a person who the offender knows is unaware that a sexual act is being committed. As with bill section 2, the legislation closes the door on a technical legal defense to a charge of sexual assault. Third degree sexual assault is a class C felony.

Section 5: The bill section is amended by adding a new subsection to read: "It is an affirmative defense to a crime charged under AS 11.41.420(a)(3)(C) or 11.41.425(a)(3) that the defendant held a reasonable belief that the victim of the sexual act would not have objected to the act if the victim had been aware of the act."

Section 6: The bill section defines the term "health care worker" as used in bill sections 2 and 3. The definition includes those persons who are employed in a job in which it is possible to engage in sex with a patient without the patient being aware that sex is occurring.

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 361 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES B.DAVIS, Ellis, Barnes, Ulmer, Lincoln, Bruckman, Brown, Boyer, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the offenses of sexual assault committed against a person who is
2 unaware that a sexual act is being committed."

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

4 * Section 1. AS 11.41.410(a) is amended to read:

5 (a) An offender [A PERSON] commits the crime of sexual assault in the first degree if

6 (1) the offender [DEFENDANT] engages in sexual penetration with another
7 person without consent of that person;

8 (2) the offender [DEFENDANT] attempts to engage in sexual penetration with
9 another person without consent of that person and causes serious physical injury to that person;

10 or

11 (3) the offender [DEFENDANT] engages in sexual penetration with another
12 person

13 (A) who the offender [DEFENDANT] knows is mentally incapable; and

14 (B) who is entrusted to the offender's [DEFENDANT'S] care

- 1 (i) by authority of law; or
- 2 (ii) in a facility or program that is required by law to be licensed
- 3 by the Department of Health and Social Services; or
- 4 (4) the offender engages in sexual penetration with a person who the offender
- 5 knows is unaware that a sexual act is being committed and
- 6 (A) the offender is a health care worker; and
- 7 (B) the offense takes place during the course of professional treatment
- 8 of the victim.

9 * Sec. 2. AS 11.41.420(a) is amended to read:

10 (a) An offender commits the crime of sexual assault in the second degree if

11 (1) the offender engages in sexual contact with another person without consent
12 of that person;

13 (2) the offender engages in sexual contact with a person

14 (A) who the offender knows is mentally incapable; and

15 (B) who is entrusted to the offender's care

16 (i) by authority of law; or

17 (ii) in a facility or program that is required by law to be licensed
18 by the Department of Health and Social Services; or

19 (3) the offender engages in sexual penetration with a person who the offender
20 knows is

21 (A) mentally incapable; [OR]

22 (B) incapacitated; or

23 (C) unaware that a sexual act is being committed;

24 (4) the offender engages in sexual contact with a person who the offender
25 knows is unaware that a sexual act is being committed and

26 (A) the offender is a health care worker; and

27 (B) the offense takes place during the course of professional treatment
28 of the victim.

29 * Sec. 3. AS 11.41.425(a) is amended to read:

30 (a) An offender commits the crime of sexual assault in the third degree if the offender
31 engages in sexual contact with a person who the offender knows is

- 1 (1) mentally incapable; [OR]
- 2 (2) incapacitated; or
- 3 (3) unaware that a sexual act is being committed.

4 * Sec. 4. AS 11.41.470 is amended by adding new paragraphs to read:

- 5 (7) "health care worker" means a person who is or who purports to be an
- 6 anesthesiologist, acupuncturist, chiropractor, dentist, health aide, hypnotist, massage therapist,
- 7 mental health counselor, midwife, nurse, nurse practitioner, osteopath, naturopath, physical
- 8 therapist, physical therapy assistant, physician, physician's assistant, psychiatrist, psychologist,
- 9 psychological associate, radiologist, religious healing practitioner, surgeon, x-ray technician, or
- 10 a substantially similar position;
- 11 (8) "sexual act" means sexual penetration or sexual contact.

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

419 6th Street, No. 116 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC); Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWiC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRC);
Mentana Regional Women's Crisis Program; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE);eward Life Action Council (SLAC);
Sitka Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR);
Tongass Community Counseling Center; Tundra Women's Coalition (TWC);
Unalaska Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WCCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

HB 361
SEXUAL ASSAULT BY HEALTH PRACTITIONERS

The Alaska Network on Domestic Violence and Sexual Assault supports HB 361, which provides clarification of the law regarding sexual assault in health care settings. The Network is a non-profit organization with 22 member programs which provides service to victims and their families.

In the past, the legislature has recognized that when professionals in positions of special trust use that trust to sexually assault an especially vulnerable group, those professionals must be held accountable for that violation. Nowhere is this more the case than when health care workers, whose profession is to provide for the physical and mental well-being of society, misuse the trust and vulnerability of their patients in order to rape them. Breach of that trust is irreparable. Following the Ake case, Network programs heard from many women, especially survivors of sexual assault, who felt that they were facing a choice between their primary health care needs and their physical safety.

The Network urges your support for this important legislation.

HB

362

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 362

Revision Date: _____ Department Affected: Department of Law

Title: "An Act establishing a property exemption." BRU: Legal Services
Component: Operations

Sponsor: Representative Hudson

Requestor: House Judiciary Committee COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: January 21, 1992

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: January 21, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 362

This bill amends AS 09.38.015 to provide that the property of an individual is exempt from execution to satisfy a judgment in favor of another state for the individual's failure to pay the other state's income tax on the benefits received by the individual from a pension or other retirement plan. AS 09.38.055 is also amended to provide the exemption from the same tax judgments from bankruptcy proceedings under 11 U.S.C. These are private transactions that do not involve the Department of Law and, consequently, there will not be a fiscal impact for the department.

7-LS1543D
Bannister
4/1/92

CS FOR HOUSE BILL NO. 362 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE HUDSON

A BILL

FOR AN ACT ENTITLED

1 "An Act exempting an individual's property from execution to satisfy a judgment in favor
2 of another state for the individual's failure to pay the other state's income tax on pension
3 or other retirement plan benefits received by the individual."

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

5 * Section 1. AS 09.38.015 is amended by adding a new subsection to read:

6 (e) The property of an individual is exempt from execution to satisfy a judgment in favor
7 of another state for the individual's failure to pay the other state's income tax on the benefits
8 received by the individual from a pension or other retirement plan.

9 * Sec. 2. AS 09.38.055 is amended to read:

10 Sec. 09.38.055. BANKRUPTCY PROCEEDINGS. In a proceeding under 11 U.S.C.
11 (Bankruptcy) only the exemptions under AS 09.38.010, 09.38.015(a), 09.38.015(e), 09.38.017,
12 09.38.020, 09.38.025 and 09.38.030 apply.



Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol
Juneau, Alaska
99801-1182

(907)465-3744 or 4991

March 24, 1992

COMMITTEES

CHAIR
House Special Committee
on Oil & Gas
MEMBER
Resources
Transportation
International Trade & Tourism

FINANCE SUBCOMMITTEE
Department of Transportation
and Public Facilities

Representative Dave Donley,
Chair - House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Dear Dave:

Enclosed is a copy of materials prepared by the American Law Division of the Congressional Research Service, Library of Congress. The subject of the research is the constitutionality of HB 362, relating to the exemption of property from taxation, also referred to as "source tax."

A hearing of HB 362 was requested on February 27. A copy of the letter requesting Judiciary Committee deliberation is also attached.

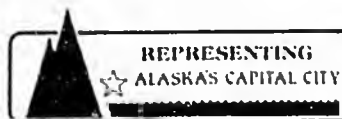
I would be most pleased to speak with you about this subject, and will be very much appreciative of your placing this legislation on the calendar for consideration.

Respectfully,


Bill Hudson

BH:lh

Enclosures





Alaska State Legislature

REPRESENTATIVE BILL HUDSON

February 27, 1992

State Capitol
Juneau, Alaska
99801-1182
(907)465-3744 or 4991

COMMITTEES

CHAIR
House Special Committee
on Oil & Gas
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FINANCE SUBCOMMITTEE:
Department of Transportation
and Public Facilities

Representative Dave Donley,
Chair - House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Dear Representative Donley:

I am enclosing information relating to HB 362, "An Act establishing a property exemption."

This legislation exempts the property of Alaskans from satisfying judgments of another state for the Alaskan's failure to pay the other state's income tax on the pension benefits received by the individual.

In other words, several states have state income taxes and impose a "source tax" on former residents. For example, a person living in Alaska who retired from a job in California is facing the risk of having his or her pension income taxed by the State of California.

At this time, I do not know the number of Alaskans impacted; however, the very idea of retired Alaskans having to pay a state income tax to California or any other state is hardly fair.

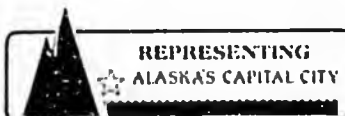
It would be very much appreciated if you would schedule HB 362 for a hearing in the House Judiciary Committee at the earliest possible time.

If you have questions, I would be most pleased to discuss the bill with you.

Respectfully,

Bill Hudson

BH:lh



ROBERT C. BYRD, WEST VIRGINIA, CHAIRMAN

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United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

Bill #
Landa

March 12, 1992

The Honorable Bill Hudson
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Bill:

Enclosed is a copy of a report prepared by the Congressional Research Service on legislation to exempt property from collection of another State's judgment for failure to pay income taxes. I hope that this information is helpful to you -- thanks again for bringing this to my attention.

With best wishes,

Cordially,


TED STEVENS

Enclosure



Congressional Research Service • The Library of Congress • Washington, D.C. 20540

1992 FEB -5 AM 8:22 January 31, 1992

TO : Honorable Ted Stevens

FROM : American Law Division

SUBJECT : Constitutionality of Proposed Alaska Legislation Which
Would Establish an Exemption from Execution on Judgments
for Failure to Pay Another State's Income Tax on Pension or
Retirement Benefits

We have reviewed a bill proposed to be introduced in the legislature of the State of Alaska to protect Alaska residents against other states' taxes on nonresidents' pension income ("source taxes"). The bill would add a new subsection (e) to Alaska Stat. §09.38.015, as follows:

(e) The property of an individual is exempt from execution to satisfy a judgment in favor of another state for the individual's failure to pay the other state's income tax on the benefits received by the individual from a pension or other retirement plan.

Under the bill this exemption would also apply in bankruptcy.

We have been asked whether this bill is constitutional under the full faith and credit provision of the Constitution, Article IV, section 1, which requires full faith and credit to be given in each state to the public acts, records, and judicial proceedings of every other state. Although it is impossible to give a definitive answer because the question has not been judicially reviewed before, we believe that the bill raises questions under the full faith and credit clause of the Constitution.

For purposes of our analysis, it is assumed that any judgment obtained for income taxes owing on a pension earned by a nonresident was validly obtained in the state imposing the tax and that the Alaska bill would bar use of the Alaska courts to collect on the judgment. We concern ourselves only with the issue of Alaska's reluctance to enforce a judgment validly obtained in another state.

Although the full faith and credit clause can encompass many issues, several points have become clear. First, an action to enforce a judgment is different from the action on which the judgment was entered. In an action on the judgment, the validity of the underlying claim is not open for

reexamination. As the Supreme Court stated in *McElmoyle v. Cohen*, 38 U.S. 311, 324 (1839), the full faith and credit clause,

"as it relates to judgments, was intended to provide the means of giving to them the conclusiveness of judgments upon the merits, when it is sought to carry them into judgments by suits in the tribunals of another state."

Second, although the judgment is a record which is not examinable upon the merits, the judgment is not automatically enforceable in the sister state. To have the force of a judgment in the sister state, "it must be made a judgment there; and can only be executed in the latter as its laws may permit." *Id.* This language suggests that if this bill were enacted, it might be permissible for Alaska to recognize the judgment and deny its enforcement.

Third, the forum state is entitled to apply its procedural laws to the enforcement of the foreign judgment. In upholding the application of a shorter statute of limitations to foreign judgments than the local judgments, the Court stated

"there is no direct constitutional inhibition upon the states, nor any clause in the constitution from which it can be even plausibly inferred, that the states may not legislate upon the remedy in suits upon the judgments of other states, exclusive of all interference with their merits." 38 U.S. at 327.

The case upheld the application of a five-year statute of limitations on foreign judgments in Georgia, even though the rules in Georgia for domestic judgments and in South Carolina, where the original judgment was entered, had substantially longer periods of limitations. *McElmoyle* was decided before the equal protection clause was added to the Constitution, but in a similar case decided in 1966, the Supreme Court reached a similar result.

Watkins v. Conway, 385 U.S. 188 (1966), upheld a Georgia statute requiring suits on foreign judgments to be brought within five years of obtaining the judgment. This period was shorter than the rule for domestic judgments and shorter than the limitation period where the original judgment was obtained. The judgment creditor brought suit in Georgia five years and one day after obtaining the Florida judgment. The Georgia court gave summary judgment for the debtor. The judgment creditor challenged the Georgia statute's discrimination based on the full faith and credit clause and the equal protection clause. The Supreme Court ruled that the Georgia statute did not discriminate against this foreign judgment since the judgment creditor could return to Florida, revive his judgment, and then sue on the revived judgment within five years.

This third principle, and the cases associated with it, would suggest that the proposed bill would not present a problem.

Fourth, the forum state cannot use procedural or jurisdictional statutes to escape its obligations under the full faith and credit clause. The Court has prohibited states from denying jurisdiction to courts that would otherwise be competent in order to escape their constitutional obligations under the full faith and credit clause. In *Kenney v. Supreme Lodge*, 252 U.S. 411 (1920), the Court held unconstitutional an Illinois ruling refusing to enforce an Alabama judgment for wrongful death which occurred in Alabama. Because an Illinois statute provided that no action should be brought or prosecuted in Illinois for damages occasioned by death occurring in another state in consequence of wrongful conduct, the Illinois courts refused to enforce the Alabama judgment on the grounds that they could not enforce a judgment if the underlying case could not have been brought in the state. The Supreme Court overruled the Illinois courts, saying that the fact that the original cause of action could not have been maintained in Illinois was not an answer to a suit upon a judgment. A state cannot escape its constitutional obligations by the simple device of denying jurisdiction to courts otherwise competent.

In *Broderick v. Rosner*, 294 U.S. 629 (1935), the Superintendent of Banks in New York State brought an action in New Jersey to enforce unpaid assessments against 557 New Jersey shareholders in a New York bank. New Jersey had a statute which provided that no action could be maintained in its courts to enforce a shareholder's statutory personal liability arising under the laws of another state, unless the suit was brought in equity and all shareholders and all creditors were joined as necessary parties. The bank had more than 20,000 shareholders and more than 400,000 depositors, many of whom did not live in New Jersey. Joining all those parties would cost more than the Superintendent was seeking to collect. New Jersey dismissed the suit for failure to file in equity. The Court ruled that although the assessment was statutory, the full faith and credit clause applied, and that since the New Jersey courts possessed general jurisdiction over the subject matter and the parties, the full faith and credit clause required that the suit be entertained.

In numerous cases this Court has held that credit must be given to the judgment of another state although the forum would not be required to entertain the suit on which the judgment was founded; that considerations of policy of the forum which would defeat a suit upon the original cause of action are not involved in a suit upon the judgment and are insufficient to defeat it. *Milwaukee County v. White Co.*, 296 U.S. 268, 277 (1935).

Milwaukee County v. White Co. holds that a judgment cannot be denied full faith and credit merely because it is for taxes. If a state were to bring a judgment for taxes due on retirement benefits to Alaska, under the full faith and credit clause the Alaska courts would be required to entertain the action on the judgment. However, if the bill were enacted, Alaska law would prohibit enforcement of the judgment. Alaska does not have a state income tax, and apparently it would like to adopt a policy against any state imposing taxes on its citizens' retirement incomes. Is this constitutional under the full faith and credit clause?

The proposed bill purports to list certain property exempt from judicially enforced execution. Although *McElmoyle* and *Bacon v. Howard*, 61 U.S. (20 How.) 22, 25 (1857) contain language which suggests that a judgment can only be enforced as the laws of the state into which the judgment is brought permit, it seems contrary to the spirit of the full faith and credit clause to provide no remedy. This would not be a case where the procedure makes enforcement of the judgment more difficult by shortening the statute of limitations or creating other procedural hurdles; this bill would make a judgment obtained by the taxing state unenforceable in Alaska. Although the bill purports to relate only to the remedy, it would seem to close the courts of the state to the judgment creditor as effectively as if the courts refused to entertain the suit. If one accepts the argument, that one should not be able to do indirectly what one cannot do directly, there may be a constitutional problem with the statute.

Although we have been unable to find authority for the proposition that a sister state must provide some sort of remedy, *Broderick v. Rosner*, *Kenney v. Supreme Lodge*, and *Hughes v. Fetter*, 341 U.S. 609 (1951), may suggest that if a statute such as that proposed were subject to constitutional challenge, there is a possibility that it would be found unconstitutional under the full faith and credit clause. While it is possible that such a statute might not be objectionable on the ground that it would only limit the remedy, the fact that it is aimed only at the enforcement of foreign states' judgments relating to income taxes and the fact that it is not an exemption of the pension income but rather an exemption of all property against a type of judgment make it seem like it is specifically designed not to give full faith and credit to another state's judgments. While the outcome of any challenge is uncertain, the full faith and credit question is certainly presented.

We enclose for your information a virtually identical analysis done in 1991 on similar statutes in Nevada and Florida. You may find interesting the conclusion that because of the collection methods employed by states such as California, statutes such as that proposed by the bill do not seem likely to be challenged in the near future.



Marie B. Morris
Legislative Attorney

CRS Report for Congress

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Constitutionality of State Legislation Exempting Property Within the State From Judgments for Failure to Pay Another State's Income Taxes on Pension or Retirement Benefits

Marie B. Morris
Legislative Attorney
American Law Division

SUMMARY

Nevada and Florida have enacted legislation which exempts from enforcement of judgments all property within the state of a judgment debtor where the judgment is in favor of any state for failure to pay that state's income taxes on retirement benefits. While this type of legislation may raise questions of constitutionality under the full faith and credit clause of the Constitution, at present, states with "source taxes" on retirement income are not necessarily pursuing collections through judgments, which lessens the probability that this type of legislation will be challenged in the near future.

BACKGROUND

A number of states impose income taxes on all income earned in the state. Carried to its logical end, this means a taxpayer owes income taxes on retirement income which was earned in that state even after the retiree has moved to another state.¹ It comes as a shock to retirees who have left the state where they were employed to retire to a state with no income taxes when they receive a notice in the mail that their former state of residence expects them to continue paying income taxes as long as they continue to receive retirement income. The state income tax on nonresidents' pensions has come to be referred to as the "source tax" because the state where the pension was earned, the "source state," imposes the tax on the nonresidents' retirement income.

In response to residents' anger over the perceived tax grab, Nevada and Florida have adopted protective legislation. The Nevada law exempts from execution

¹ For a discussion of those states, see CRS Report for Congress, No. 89-224 A, *State Taxation of Nonresidents' Retirement Income*, by Robert B. Burdette, March 27, 1989.



All property in this state of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan. Nevada Rev. Stat. Ann. §21.090.

The Florida law declares

All property in this state of a judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan is exempt from forced sale under process of any court, and no such judgment or execution based thereon shall be a lien on such property. Florida Stats. Ann. §55.146.

Similar legislation has been introduced in other states as well.

Protective legislation of this type, which essentially closes the courts to collection of source taxes, raises questions under the full faith and credit clause of the Constitution. This report discusses those issues.

ANALYSIS

Article IV, section 1, of the Constitution requires full faith and credit to be given in each state to the public acts, records, and judicial proceedings of every other state. It permits Congress to enact laws prescribing the manner in which such, acts, records, and proceedings shall be proved, and the effect of doing so. The full faith and credit clause is sometimes invoked in choice of law questions and sometimes invoked when a judgment granted in one state is brought to a second state for enforcement. This paper's discussion limits itself to the question of enforcement of judgments obtained in a foreign state and assumes that any judgment obtained for income taxes owing on a pension earned by a nonresident would be validly obtained in the state imposing the tax.

Although the full faith and credit clause can encompass many issues, several points have become clear. First, an action to enforce a judgment is different from the action on which the judgment was entered. In an action on the judgment, the validity of the underlying claim is not open for reexamination. As the Supreme Court stated in *McElmoyle v. Cohen*, 38 U.S. 311, 324 (1839), the full faith and credit clause,

"as it relates to judgments, was intended to provide the means of giving to them the conclusiveness of judgments upon the merits, when it is sought to carry them into judgments by suits in the tribunals of another state."

Second, although the judgment is a record which is not examinable upon the merits, the judgment is not automatically enforceable in the sister state. To have the force of a judgment in the sister state, "it must be made a judgment there; and can only be executed in the latter as its laws may permit." *Id.*

Third, the forum state is entitled to apply its procedural laws to the enforcement of the foreign judgment. In upholding the application of a shorter statute of limitations to foreign judgments than the local judgments, the Court stated

"there is no direct constitutional inhibition upon the states, nor any clause in the constitution from which it can be even plausibly inferred, that the states may not legislate upon the remedy in suits upon the judgments of other states, exclusive of all interference with their merits." 38 U.S. at 327.

The case upheld the application of a five-year statute of limitations on foreign judgments in Georgia, even though the Georgia rule for domestic judgments and South Carolina, where the original judgment was entered, had substantially longer periods of limitations. *McElmoyle* was decided before the equal protection clause was added to the Constitution, but in a similar case decided in 1966, the Supreme Court reached a similar result.

Watkins v. Conway, 385 U.S. 188 (1966), upheld a Georgia statute requiring suits on foreign judgments to be brought within five years of obtaining the judgment. This period was shorter than the rule for domestic judgments and shorter than the limitation period where the original judgment was obtained. The judgment creditor brought suit in Georgia five years and one day after obtaining the Florida judgment. The Georgia court gave summary judgment for the debtor. The judgment creditor challenged the Georgia statute's discrimination based on the full faith and credit clause and the equal protection clause. The Supreme Court ruled that the Georgia statute did not discriminate against this foreign judgment since the judgment creditor could return to Florida, revive his judgment, and then sue on the revived judgment within five years.

Fourth, the forum state cannot use procedural or jurisdictional statutes to escape their obligations under the full faith and credit clause. The Court has prohibited states from denying jurisdiction to courts that would otherwise be competent in order to escape their constitutional obligations under the full faith and credit clause. In *Kenney v. Supreme Lodge*, 252 U.S. 411 (1920), the Court held unconstitutional an Illinois ruling refusing to enforce an Alabama judgment for wrongful death which occurred in Alabama. Because an Illinois statute provided that no action should be brought or prosecuted in Illinois for damages occasioned by death occurring in another state in consequence of wrongful conduct, the Illinois courts refused to enforce the Alabama judgment on the grounds that they could not enforce a judgment if the underlying case could not have been brought in the state. The Supreme Court overruled the Illinois courts, saying that the fact that the original cause of action could not have been maintained in Illinois was not an answer to a suit upon a judgment. A state cannot escape its constitutional obligations by the simple device of denying jurisdiction to courts otherwise competent.

In *Broderick v. Rosner*, 294 U.S. 629 (1935), the Superintendent of Banks in New York State brought an action in New Jersey to enforce unpaid assessments against 557 New Jersey shareholders in a New York bank. New Jersey had a statute which provided that no action could be maintained in its courts to enforce a shareholder's statutory personal liability arising under the laws of another state, unless the suit was brought in equity and all shareholders and all creditors were joined as necessary parties. The bank had more than 20,000 shareholders and more than 400,000 depositors, many of whom did not live in New Jersey. Joining all those parties would cost more than the Superintendent was seeking to collect. New Jersey dismissed the suit for failure to file in equity. The Court ruled that although the assessment was statutory, the full faith and credit clause applied, and that since the New Jersey courts possessed general jurisdiction over the subject matter and the parties, the full faith and credit clause required that the suit be entertained.

There are a few defenses to a suit on a judgment: lack of jurisdiction of the original court rendering the judgment and satisfaction or payment of the judgment. *Milwaukee County v. White Co.*, 296 U.S. 268, 275 (1935).

In numerous cases this Court has held that credit must be given to the judgment of another state although the forum would not be required to entertain the suit on which the judgment was founded; that considerations of policy of the forum which would defeat a suit upon the original cause of action are not involved in a suit upon the judgment and are insufficient to defeat it. *Id.* at 277.

Milwaukee County v. White Co. holds that a judgment cannot be denied full faith and credit merely because it is for taxes. If a state were to bring a judgment for taxes on retirement benefits to Nevada or Florida, under the full faith and credit clause the Nevada and Florida courts would be required to entertain the action on the judgment. However, their laws prohibit enforcement of the judgment. Neither Florida nor Nevada has a state income tax, and apparently both states have a policy against any state imposing taxes on its citizens' retirement incomes. Are these laws constitutional under the full faith and credit clause?

The Nevada and Florida statutes only purport to list certain property exempt from judicially enforced execution. Although *McElmoyle* contains language which suggests that a judgment can only be enforced as the laws of the state into which the judgment is brought permit, it seems contrary to the spirit of the full faith and credit clause to provide no remedy. This would not be a case where the statute of limitations is shortened; nor would it be a case where the taxing state had to go through procedural hurdles; under these statutes the taxing state could not use the power of the sister state's courts to collect against any property of the debtor. Although the statutes purport to relate only to the remedy, these statutes seem to close the courts of the state to the judgment creditor as effectively as if the courts refused to entertain the suit.

Although we have been unable to find authority for the proposition that a sister state must provide some sort of remedy, *Broderick v. Rosner* and *Kenney v. Supreme Lodge* may suggest that if a statute such as those in Nevada and Florida were subject to constitutional challenge, there is a possibility that it would be found unconstitutional under the full faith and credit clause.

It may be unlikely that these statutes would be challenged in the near future. California is one of the states associated with efforts to collect income taxes on nonresidents' pension income earned in California. In telephone conversations with attorneys in the Legal Division of the California Franchise Tax Board, we learned that the California collection efforts work something like this.

California learns of nonresidents who are receiving California-source pensions from reporting that is required of retirement plans. Of course, they have the most information on plans covering retired state employees. Computer checks indicate which retirees have not filed returns. Those people are sent letters informing them of their California tax obligations and requesting them to file a return. If a return is not filed, California makes a determination about the amount owed and assesses that amount against the retiree. Our sources indicated that the assessment often brings a response because California's assessment may be higher than the amount which would ultimately be owed if the person filed a return. (The assessment may not account for marital status or dependents, for example.)

If the assessment is not paid or responded to in some way, California turns the matter over to bill collectors in the state where the retiree resides. They attempt to collect the bill in much the same way that a credit card debt is collected. If the bill is still not paid, the department may notify credit reporting agencies of the outstanding obligation. This may cause taxpayers to settle with California when they desire new extensions of credit. If the nonpayer is a former state employee, the state also has the option of withholding the taxes from the employee's annuity.

Because of the small amounts of tax involved, our sources indicated that it was unlikely that the tax assessment would be reduced to a judgment or pursued in the courts of a neighboring state. Thus, the Nevada and Florida statutes were not seen as a bar to collecting the taxes on nonresidents' retirement incomes. Perhaps only the out-of-state collection agencies would encounter this obstacle.

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

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Congress of the United States
House of Representatives
Washington, D.C. 20515

February 5, 1992

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The Honorable Bill Hudson
P.O. Box V
Juneau, Alaska 99811

Dear Representative Hudson:

This regards the question as to whether the source tax legislation that you are developing is in conflict with the full faith and credit provision of the U.S. Constitution.

As you know, similar "stop-gap" legislation has been enacted in several states, including Nevada, Washington, and Florida. Each state that has passed these measures has gauged the possible conflicts concerning the full faith and credit provision, but each state passed the bill nonetheless. It is important to note that California, the state which is most adversely effected by the legislation, has yet to challenge the constitutionality of the stop-gap measure on the grounds that it violates the full faith and credit provision.

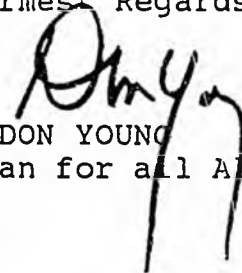
It is my opinion that California and other states that benefit from a source tax do not wish to see a great deal of publicity regarding this issue. These states know that the only way to repeal the tax is to do so at the federal level and adverse publicity will only draw national attention to the unfairness of the tax.

I have discussed the full faith and credit issue with Bill Hoffman, President of RESIST, State Senator Ernie Adler, of Nevada, who introduced the first state legislation, and also U.S. Representative Barbara Vucanovich, who has introduced the federal legislation which would repeal the source tax (or at least make it more equitable). They all agree that the only way to test the full faith and credit provision is to do so in the courts. Either way, Alaska is in a win-win situation.

These are the true experts on the source tax. Their advice to you, as is mine, is to go full speed ahead with your legislation.

I wish you the best of luck during this legislative session. If there is any way I can be of further assistance to you on this or any other issue of concern, please do not hesitate to contact me.

My Warmest Regards,

A handwritten signature in black ink, appearing to read "Don Young", written over the typed name.

DON YOUNG
Congressman for all Alaska

DY/jhr



June 14, 1991
Contact: Steve Hansen (202) 225-5765
Press Secretary

h-1.0. 4/5

Congressman Young Seeks To Protect Alaskans' Pensions From Out-of-State Taxation

Washington, D.C. - In an effort to protect the pension income of Alaskan senior citizens from out-of-state taxation, Alaska Congressman Don Young is co-sponsoring legislation designed to stop the growing practice of "source" income taxes on pension programs.

Young said a number of Lower 48 states that have state income taxes are imposing the so-called "source" state income taxes on former residents who once worked in their states and now collect pension payments from their former employers.

For example, a retired person who now lives in Alaska (which has no state income tax) but who once worked in California (which has a state income tax) is now facing the risk of having their pension income taxed by the State of California.

Young, however, is seeking to stop this practice by supporting H.R. 431, which would put a stop to the "source" income tax on non-resident pension income. Thus, a person who now lives in Alaska and collects a pension from a former employer in California would not be subject to California's "source" income tax.

June.

Wenover

*- Paul Elliot
Wenover*

In addition, Young is also co-sponsoring H.R. 1655 and H.R. 1531 which also address the "source" tax controversy (see page 3).

"It's imperative that we not allow revenue-hungry states to arbitrarily levy income taxes on Alaskan senior citizens," Young said. "Alaska does not have a state income tax so we should not allow states like California, Oregon and Iowa to tax the pension income of our seniors."

(more)

"This legislation is designed to stop this alarming practice and allow our seniors to collect their pensions without the fear of being tracked down by states that have decided to impose the 'source' income tax.

"A number of senior citizens throughout the United States are now discovering that their pensions are being subject to 'source' tax," Young added. "And the problem is getting worse. Numerous other states are seriously considering imposing the 'source' tax as a means to gain additional tax revenues.

"This is wrong and Congress must address the problem so that our senior citizens can go on with their lives without the fear of an Outside state trying to take their pension dollars."

California, Oregon And Iowa Are Main "Source" Taxers

Young said that California, Oregon and Iowa have begun imposing the 'source' tax on former residents and several other states are considering imposing such a tax.

"To make the situation even worse, some states are now assessing the 'source' tax retroactively and charging high penalties on the retroactive tax," Young said. "In cases of non-payment, some states are going after the pensions and assets of their former residents and using collection agencies to pressure retirees into compliance. This is absolutely wrong and has a devastating effect on the income of senior citizens."

Young said that H.R. 431 would be retroactive to December 31, 1987 and protect retirees from paying the "source" tax from that date forward.

"This problem was created in 1986 when Congress revised the U.S. tax codes and empowered states to levy a 'source' tax," Young said. "I opposed the tax revisions in 1986 and I still feel many of the changes are wrong and unfair."

Young said that states which impose the "source" tax argue that some or all of pension benefits earned when the person was a resident of their state is taxable even after the person moves to another state because the person used their state roads, school and police and fire service when they were residents of their state.

(more)

"I disagree with this rationale because these people paid their share of taxes for state services when they were residents of that state," Young said. "Now that these people live in Alaska, they do not owe their former states any more money because they no longer use the services from their former state.

"It's absolutely ludicrous for some states to require that retirees living in Alaska pay taxes to finance the government of another state."

Additional Bills Seek To Resolve "Source" Tax Problem

In addition, Young is co-sponsoring H.R. 1531, which is similar to H.R. 431, except that it is retroactive back to December 31, 1990, and H.R. 1655, which also addresses the "source" tax problem by requiring that any state that imposes a "source" tax must:

- Provide advance notice of the tax;
- ✓ • Provide a taxing formula that does not include income from other states;
- Provide an opportunity for retirees to prepay the tax before they leave the state.

"Of the three bills, I prefer H.R. 431 because it is more fair to our senior citizens and is retroactive back to December 31, 1987," Young said. "I also feel that H.R. 1531 is good alternative because it is similar to H.R. 432 and retroactive to December 31, 1990.

"However, if there is not enough Congressional support for these repeal bills, I will support H.R. 1655 as a first step toward addressing the 'source' tax dilemma."

(Alaska Congressman Don Young is the Ranking Republican on the U.S. House Committee on Interior Affairs and a senior member of the Merchant Marine and Fisheries and Post Office and Civil Service committees. He is now serving his 10th term as Alaska's only member in the U.S. House of Representatives.)

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MEMORANDUM

October 2, 1991

SUBJECT: Exempting property from collection of another state's judgment for failure to pay income taxes (Work Order No. 7-LS1543A)

TO: Representative Bill Hudson
Attn: Landa

FROM: Theresa L. Bannister *TJB*
Legislative Counsel

This memo accompanies the draft of the bill that you requested to exempt the Alaskan property of an individual from satisfying the judgment of another state for the individual's failure to pay the other state's income tax on the pension benefits received by the individual.

You will note that the exemption has been drafted to apply to any individual, not just to residents. However, if you intended to limit the exemption to residents, please contact me so that we can discuss the matter further and draft the bill accordingly. (1)

Please be aware that the exemption may violate the full faith and credit provision of the U.S. Constitution (art. IV, sec. 1). That provision generally requires Alaska to recognize the judgments of another state. Although the exemption created by your bill does not directly address the recognition of judgments in Alaska, the exemption does make certain judgments of another state uncollectible in this state. This result may be viewed as violating the full faith and credit provision. If you need further research done on this issue, please advise. (2)

If I may be of further assistance, please advise.

TLB:lmb
91-262.lmb

Enclosure

STATEMENT BY THE HONORABLE BARBARA F. VUCANOVICH

BEFORE THE SENATE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

JUNE 12, 1991

MR. CHAIRMAN, I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY IN SUPPORT OF S. 267 WHICH WOULD PROHIBIT A STATE FROM IMPOSING AN INCOME TAX ON THE PENSION OR RETIREMENT INCOME OF INDIVIDUALS WHO ARE NOT RESIDENTS OR DOMICILIARIES OF THAT STATE.

ON JANUARY 3, 1991, IN RESPONSE TO A GROWING ANTI-TAX MOVEMENT IN MY STATE OF NEVADA AND IN MANY OTHER STATES, I INTRODUCED H.R. 431 IN THE HOUSE. BOTH S. 267 AND H.R. 431 WOULD PUT AN ABSOLUTE BAN ON THE UNFAIR PRACTICE OF TAXING NON-RESIDENTS' PENSION INCOME.

MANY RETIREES WHO HAVE MOVED TO OTHER STATES SUDDENLY FIND THEIR PENSIONS TAXED BY THE STATE OF THEIR FORMER RESIDENCE. I FEEL THAT IT IS UNFAIR THAT THESE PEOPLE ARE BEING TAXED BY STATES WHERE THEY RECEIVE NO BENEFITS AND CANNOT VOTE. RETIREES WHO HAD THEIR INCOMES TAXED THE FIRST TIME AROUND WHILE EMPLOYED OUGHT NOT BE TAXED A SECOND TIME ON THEIR PENSIONS BY A STATE WHERE THEY NO LONGER LIVE. RETIREES ON FIXED INCOMES SHOULD LIVE COMFORTABLY, WITHOUT WORRIES OF BEING UNFAIRLY TAXED BY OTHER STATES.

AS YOU KNOW, MY STATE OF NEVADA HAS NO INCOME TAX, HOWEVER, THIS ISSUE DOES NOT ONLY CONCERN RETIREES LIVING IN STATES WITH NO INCOME TAXES, IT IS AN ISSUE OF CONCERN TO RETIREES ALL OVER THE COUNTRY. MANY STATES HAVE SOURCE TAX LAWS, ALTHOUGH MANY DON'T GO AFTER THE PENSIONS OF EX-RESIDENTS. WHAT IS OF CONCERN TO MANY FOLKS IS THAT THESE

STATES MAY ACTIVATE THE SOURCE TAX LAWS AT ANY TIME THEY SO DESIRE. JUST ASK RETIREES WHO ARE EX-RESIDENTS OF CALIFORNIA HOW THESE SOURCE TAX LAWS AFFECT THEM. CALIFORNIA IS THE MOST AGGRESSIVE OF THE TAXING STATES. IT HAS HIRED COLLECTION AGENCIES TO COLLECT UNPAID NONRESIDENT TAXES ON PENSIONS. THESE AGENCIES HARASS AND THREATEN SENIOR CITIZENS. CALIFORNIA INCLUDES IN THE TAX ASSESSMENT A 55 PERCENT PENALTY AND DAILY INTEREST. IN MANY OF THESE CASES CALIFORNIA WAS DELINQUENT IN NOTIFYING THE TAXPAYERS OF THE TAX THUS CREATING HUGE INTEREST PENALTIES AND AN OVERWHELMING TAX BURDEN. IN ADDITION, CALIFORNIA AND SOME OF THE OTHER STATES, NOT SATISFIED WITH JUST TAXING THE PENSION, BASE THE TAX RATE ON THE RETIREE'S TOTAL INCOME. BY THIS ACTION, THEY MANAGE TO LEVY A TAX ON THE RETIREE'S OUT-OF-STATE INCOME, TOO, WHETHER FROM INVESTMENTS OR ANOTHER JOB. SIMPLY STATED, THIS IS "TAXATION WITHOUT REPRESENTATION."

MR. CHAIRMAN, THE BOSTON TEA PARTY AND THE REVOLUTION OCCURRED BECAUSE OF UNREASONABLE TAXATION WITHOUT REPRESENTATION. CONGRESS MUST RESOLVE THIS SITUATION AS SOON AS POSSIBLE; OUR SENIORS AND RETIREES DESERVE NO LESS.

IN ADDITION TO H.R. 431, WHICH HAS 115 COSPONSORS, I HAVE INTRODUCED H.R. 1655 WHICH HAS BEEN REFERRED TO THE HOUSE WAYS AND MEANS COMMITTEE. THIS BILL WOULD AMEND THE TAX REFORM ACT OF 1986 TO 1) PROVIDE TAXPAYERS WITH AN ADVANCE NOTICE OF THE TAX, 2) USE A TAXING FORMULA THAT DOES NOT INCLUDE INCOME FROM OTHER STATES, AND 3) PROVIDE TAXPAYERS AN OPPORTUNITY TO PREPAY THE TAX BEFORE THEY ACTUALLY LEAVE THE STATE. H.R. 1655 HAS 33 COSPONSORS.

S. 267, H.R. 431 AND H.R. 1655 DO NOTHING MORE THAN PROVIDE SIMPLE FAIRNESS AND DECENCY TO OUR SENIOR CITIZENS AND TO ALL AMERICAN

TAXPAYERS WHO MAY LIVE IN ONE OR MORE STATES DURING THEIR LIFETIME.

ON THE STATE LEVEL, MY STATE OF NEVADA HAS PASSED LEGISLATION THAT WOULD "EXEMPT PROPERTY IN NEVADA FROM EXECUTION FOR FAILURE TO PAY INCOME TAX TO OTHER STATES ON BENEFITS RECEIVED FROM PENSION OR RETIREMENT FUNDS." THE STATUTE DOES NOT INVALIDATE ANOTHER STATE'S SOURCE TAX; IT MERELY PREVENTS COLLECTION BY PLACING A LIEN ON THE INDIVIDUAL'S PROPERTY LOCATED IN NEVADA. THE STATE OF NEW JERSEY HAS GONE SO FAR AS TO REPEAL ITS TAX ON NONRESIDENTS' RETIREMENT INCOME.

FINALLY, MR CHAIRMAN, I WOULD LIKE TO WELCOME MR. BILL HOFFMAN, A CONSTITUENT OF MINE FROM CARSON CITY, NEVADA. BILL, ALONG WITH HIS WIFE JOANNE, FOUNDED THE "RESIST" ORGANIZATION, RETIREES TO ELIMINATE STATE INCOME SOURCE TAX, AND HAVE WORKED TIRELESSLY FOR THIS JUST CAUSE. BILL WILL BE HAPPY TO ANSWER YOUR SPECIFIC TECHNICAL QUESTIONS. ALONG WITH "RESIST", THE COALITION CONSISTS OF THE AIR FORCE ASSOCIATION AND THIRTY ONE MILITARY ORGANIZATIONS AND THE NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES.

THANK YOU, MR. CHARIMAN.

STATEMENT OF SENATOR HARRY REID

S. 267, SOURCE TAX HEARING

JUNE 12, 1991

I would like to thank the Chairman of the Senate Committee on Finance, Senator Bentsen, and the Chairman of the Subcommittee on Taxation, Senator Boren, for acknowledging the magnitude of the source tax issue, and for permitting Senator Bryan, Bill Hoffman of Retirees to Eliminate State Income Source Tax, the Federation of Tax Administrators, and myself to come before them today to discuss a matter in which all Members of Congress have a stake--a matter in which all Americans have a stake.

A few years ago, I was approached by Nevadan Bill Hoffman, who told me about a problem Nevadans were having. You see, many Americans are retiring to the Silver State, because, among many other reasons, there is no state income tax. Bill informed me, however, that these new Nevadans were being harrassed by their

former states of residence, and were being taxed by them. Now, I've always been a resident of Nevada. I have never had another state levy a tax on my income or assets. But I know many, many people who have moved to Nevada, retirees and otherwise, who certainly never expected to be told they must continue to pay state income taxes to the state where they used to live. To be perfectly honest, I could hardly believe what Bill Hoffman was telling me.

There are Nevadans, and citizens in every state, who are forced to pay taxes to states where they do not reside. These retirees pay taxes on pensions drawn in the states where they spent their working years, despite the fact that they are not present to participate in the programs which their taxes are funding--they do not participate in medical assistance programs, senior centers, public parks, or even get to vote in their former state of residence--yet they still pay taxes to these states.

No one wants to pay a penny more in taxes than he or she has to. But most Americans pay what they owe. They pay because they

know what they are getting in return, and in the United States, you get a lot in return. But you don't get a single benefit from a state in which you do not reside--except in some instances, a tax bill. As you will hear many times today, this is taxation without representation.

This practice is affecting more and more Americans as economic times become tougher, and certain states have become more creative in looking for revenues. That is why Retirees to Eliminate State Income Source Tax (RESIST), founded in July of 1988, has grown beyond the borders of Nevada to include members in every state of the Union. This is a non-profit, grass roots organization in the truest sense of the word--it operates entirely through the work of volunteers--no members are salaried. The credibility of this group has convinced other long-established organizations such as the National Association of Retired Federal Employees to make a commitment to prohibiting taxation of non-resident retirement income. This is a bi-partisan effort, of millions of Americans who cannot live with unfair reductions in the fixed incomes which their retirement provides them.

I know of people who are taxed at a rate which reflects their entire income--not just their income derived from the taxing state. An individual could find him or herself paying a tax on his pension that far exceeds the rate that would have been applicable at the time the pension was earned. He could also find himself paying tax on the same income to more than one state.

Most states offer a tax credit when their residents pay their income taxes to other states. While this allowance is admirable, the state offering the credit is LOSING REVENUES. If I retire from California to Oklahoma, and California decides to levy a tax on my pension, Oklahoma will most likely grant me a credit for the amount I owe California. But Oklahoma will still be the state providing me with medical assistance and other seniors programs, as well as access to its parks--not to mention the right to vote. And Oklahoma will be providing me all this free of charge since California will be receiving my tax dollars!

To prohibit this unethical practice, I have offered legislation

which prohibits states from taxing pensions or retirement income of non-residents. States are crossing state lines, collecting taxes from non-residents, and are retreating, offering nothing in return. State residents who conscientiously pay taxes on their pension have the privilege of voting in that state, and have access to state funded social services, parks, and other amenities. Non-residents just pay.

All too frequently retirees are unaware that they must pay tax to the state from which they draw a monthly pension check. As in Nevada, many people plan retirement in state with low or non-existent income tax and spend or save accordingly. Notifications that back taxes and penalties are owed to a state other than where someone resides is rightfully met with indignation and horror. The indignation rises from the shock of post-revolutionary taxation without representation; the horror rises from the inability to pay an enormous tax debt when one lives on a fixed income.

Once more, I would like to thank the Chairman for the

opportunity to discuss source tax, and I would like to urge his support for prohibiting this unfair practice.



Greater Fairbanks

Chamber

of Commerce

709 Second Avenue

(907) 452-1105

P O Box 74446

Fairbanks, Alaska 99707

RESOLUTION 06-2491

A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF COMMERCE TO PROTECT ALASKAN'S PENSIONS FROM OUT-OF-STATE "SOURCE" TAXATION

WHEREAS, persons living on a fixed income from a pension plan are at the greatest financial risk due to the rapid fluctuation of our economy; and

WHEREAS, the Constitution guarantees the right to travel and to reside anywhere in the United States without any restrictions; and

WHEREAS, that segment of society that is being threatened by "source" taxation have already paid for the services they enjoyed while residents of the "source" state through the existing tax structure of that state; and

WHEREAS, Alaska does not have a personal income tax on any of its residents;

NOW, THEREFORE, BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce encourages the passage of HR431, HR1655 and HR1531; all of which address this unfair and predatory tax practice that is being promulgated against one of society's most fragile groups, senior citizens; and

BE IT FURTHER RESOLVED that the Greater Fairbanks Chamber of Commerce views the practice of "source" taxation to be a blatant violation of the basic constitutional rights to reside in any state by the restriction that this taxation places on our fixed income, and that this legislation receive immediate attention by our Congress.

Dated this 24th day of June, 1991.

Larry Kelly
President

A.L. Buki Wright
Chairman of the Board

RESIST OF AMERICA

Retirees to Eliminate State Income Source Tax

PRESENTATION TO CONGRESS FOR S.267

ATTACHMENT A:

The following is a partial list of organizations that have joined RESIST of America in a coalition. The goal of the coalition is to end the taxation of nonresident pensions by the states. These organizations represent millions of people.

William (Bill) C. Hoffman
President, RESIST of America
2440 Ash Canyon Rd.
Carson City, NV 89703
(702) 883-8620

Air Force Association	NARFE
Air Force Sergeants Association	National Assn. of Retired Federal
Airline Pilots Assn.	National Assn. For Uniformed Services
American Assn. of Foreign Service Women	National Assn. of Postal Supervisors
AMVETS	National Guard Assn. of the US
Assn. of Military Surgeons of the US	National Military Family Assn.
Association of the US Army	National Taxpayers Union
Commissioned Officers Assn. of the US Health Service, Inc.	Naval Reserve Association
Common Cause	Navy League of the US
COSSO	Nevada Taxpayers Union
Council of Sacramento Senior Organizations	Non-Commissioned Officers Assn.
CWO & WA Assn., US Coast Guard	Reserve Officers Association
FAIR (Represents 34 Organizations)	SCAN
Fund for Assuring an Independent Retirement	Senior Co-operative Alert Network
Federal Managers Assn.	Society of Medical Consultants
Fleet Reserve Association	The Retired Enlisted Association
Marine Corps League	The Retired Officers Association
Marine Corps Reserve	US Army Warrant Officers Association
McDonald County Unit of the Retired Teachers Assn. - MO	US CG & Chief Petty Officers Assn.

RESIST OF AMERICA

Retirees to Eliminate State Income Source Tax

SUMMARY OF PRESENTATION TO CONGRESS FOR S.267

THE BEST KEPT SECRET IN AMERICA

The taxation of nonresident pensions by the states is a prime example of "TAXATION WITHOUT REPRESENTATION." No one was told about this unfair tax. This tax interferes with our right to travel across the United States of America and live where we choose, without a financial penalty. How can a nation that was formed over the issue of "TAXATION WITHOUT REPRESENTATION" allow this to happen? **BECAUSE IT IS THE BEST KEPT SECRET IN AMERICA!**

Several states now tax nonresident pensions. There are about 40 states with source tax laws and each of them could implement this tax on nonresident pensions. Nonresident taxation of pensions is different from other forms of nonresident taxation. Unlike a business, job, or investment, the pension tax debt cannot be removed from the state. The retiree is trapped for the rest of their lives by the state in "Financial Slavery."

Some states correctly assume pensions are intangibles, similar to savings accounts. Others claim pensions are deferred income. Defining pensions as "deferred income" is an incorrect position, because pension income is not paid after the death of the retiree. These latter states claim that benefits were received when the retirees were earning the pension. They don't deserve more benefits. Yet a retiree that remains in the state also received benefits while earning the pension. This retiree continues to receive benefits. This is unfair and unequal.

Most retirees paid taxes on contributions to their pension plans. Why weren't we informed about this unfair tax that would lead to "Taxation Without Representation" in the future? Why weren't options offered to the employees, such as 401K Averaging Plans? It was this unfair tax that prompted me to form RESIST of America in July of 1988. The only goal of RESIST of America is to end the tax on nonresident pensions by the states. Our organization is not, however, against fair taxation with representation.

California is the most aggressive state that taxes nonresident pensions. They have it both ways. As a spokesperson for the California Franchise Tax Board (FTB) cheerfully acknowledges, residents can be taxed on all income, regardless of its source; nonresidents are taxed on the source regardless of residence, including military pensions, and perhaps Social Security.

There is another point that has aggravated Seniors Citizens. Several States (particularly California) use total income earned (including income earned in other States) to establish the highest rate for taxing pensions.

The U. S. Supreme Court affirmed the constitutionality of taxes on nonresident source income, 70 years ago; even though pensions were not common then. We have tried to get individual states to repeal their tax on nonresident pensions without much success. New Jersey is the only state to repeal their nonresident tax on pensions. **THE CONGRESS OF THE UNITED STATES IS OUR LAST HOPE! WE NEED FEDERAL LEGISLATION!**

The members of RESIST and The Coalition urge you to pass S.267 and end the tyranny of "TAXATION WITHOUT REPRESENTATION." There is no financial loss to the Federal Government, and we believe, to the states. Stop this terrible injustice to our Senior Citizens and to all Americans. This tax affects every American young and old.



William (Bill) C. Hoffman
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Carson City, NV 89703
(702) 883-8620



T H E M I L I T A R Y C O A L I T I O N

201 North Washington Street
Alexandria, Virginia 22314

STATEMENT OF
THE MILITARY COALITION
before the
Subcommittee on Taxation
of the
SENATE FINANCE COMMITTEE
JUNE 12, 1991

Dear Mr. Chairman:

The Military Coalition (see attached list), representing over three and one-half million active duty, retired, Guard and Reserve members of the seven uniformed services and their widows and dependents, wishes to express its appreciation for the opportunity to present this statement for the record in support of S. 267, a bill to prohibit a State from imposing an income tax on the pension or retirement income of individuals who are not residents or domiciliaries of that State.

Mr. Chairman, the Military Coalition as well as other concerned organizations have been working diligently for the past several years to remedy what we collectively consider to be a grave injustice. This injustice allows a state to continue to tax the pension or retirement incomes of former residents once they leave that state to go to another jurisdiction.

It is no secret that the ranks of retired people in the United States are growing. With improvements in health care and treatment, retirees are living longer, more active lives. They move more readily from one locale to another, bringing with them very little except their retirement incomes. Often this pension or retirement check, earned over many years of hard work, is all they have to live on. Yet, Mr. Chairman, we have states today, who reach out and grab a portion of that retirement, regardless of whether they have a fiscal need to provide for these citizens or not.

The vehicle or method States use for this "grab" has come to be known as a source tax. Simply put, a source tax is an income tax levied on the total income earned by a former state resident, regardless of what or where the source of that income may be - either from sources within or without the taxing jurisdiction!

Mr. Chairman, we strongly urge the Committee's favorable consideration of S. 267 which seeks to abolish this tax for the following reasons:

- o It would abolish a blatant form of "taxation without representation". Since the affected retirees no longer live in the state, derive no benefit from the state and can no longer vote in that state, they should not be taxed by that state;

o In many cases, the monies put into a retirement fund are taxed by the state at the outset. To allow the same state to tax it again is a form of double taxation;

o With regard to military personnel and some federal retirees, oftentimes the only reason they were ever in the taxing state was as a result of their federal employment. Additionally, these people are subjected to multiple moves during the course of their careers, often living and working in several different states. Under the source taxing authority presently extant in these states, it is entirely possible that, at the end of their careers, these people could have source taxes applied on their retired incomes by each of these states - simultaneously - and yet not reside in any of them;

o A tax of this nature has a totally chilling affect on the freedom of movement and freedom of choice enjoyed by all Americans. It makes former residents of source tax states virtual prisoners of those states by imposing a continuing liability on their pensions - no matter where they go.

Mr. Chairman, we would like to close with just one of the many stories we've received on this subject. An individual has worked hard all of his life, paid taxes to his respective state of residence, saved whatever was left and invested in a modest retirement plan. Now the day comes to retire and realize a life's dream. The individual moves to a state with no income taxes and lives there for several years. Then one day, upon opening the mail, he finds a letter from his former state announcing that several thousand dollars in back taxes are owed, demanding immediate payment and threatening the loss of home and property if payment is not received. Furthermore, he is informed that taxes will be owed on retirement income for the rest of his life, because part or all of it was earned while working in the former state. The individual then asks himself why; why does he owe taxes to a state in which he hasn't lived for several years? Didn't he pay enough taxes while he lived and worked there? What is the former state doing for him? Is he going to have to live out his days constantly facing this tax burden? How is he going to live on the small pension he has earned if he has to pay these taxes every year?

Mr. Chairman, we in the Military Coalition strongly believe that the only way to remedy this depressing and frustrating dilemma facing many senior retired Americans is to afford them the protection they have earned and deserve. And that way, Mr. Chairman, is to favorably report out of Committee Senator Reid's bill, S. 267.

Respectfully Submitted,

The Military Coalition
(Signatures Attached)



RESIST

RETIREES TO ELIMINATE STATE INCOME SOURCE TAX

NATIONAL HEADQUARTERS

Do we still have "TAXATION WITHOUT REPRESENTATION" in The United States of America? YES, WE DO! A number of states' tax Nonresidents on what they call SOURCE income. This tax becomes intolerable when it is applied to pensions, because the retiree is trapped forever in financial slavery. The retiree can not vote, petition, receive benefits or enjoy governmental protection from the taxing state.

One of our former presidents called "TAXATION WITHOUT REPRESENTATION" TYRANNY. Presidents often take liberty with their words, but the first definition for tyranny in the Random House Unabridged Dictionary is "arbitrary or unrestrained exercise of power; despotic abuse of authority." That president was right. "TAXATION WITHOUT REPRESENTATION" is indeed TYRANNY and it must be stopped!

NOW IS THE TIME FOR EVERY AMERICAN TO STAND UP AND BE COUNTED!!!!

Join RESIST and help us pass Federal Legislation to stop the taxation of non-resident pensions.

H.R.431 - Introduced by Representative Barbara Vucanovich into
The House Judiciary Committee

S.267 - Introduced by Senators Harry Reid and Richard Bryan into
The Senate Finance Committee

H.R.1531- Introduced by Representative Jolene Unsoeld into
The House Judiciary Committee

H.R.1655- Introduced by Representative Barbara Vucanovich into
The House Ways and Means Committee

These bills prohibit a State from imposing an income tax on the pension or retirement income of Nonresidents or domiciliaries. H.R.1655 permits the states to offer settlement options if a retiree leaves their state, provided that the state has informed them of this tax obligation. This bill also has a grandfather clause that prevents states from hitting Seniors that have been retired many years with an unexpected and enormous tax bill.

Bill Hoffman is the founder and President of RESIST, which was organized to stop the unfair practice of taxing non-resident pensions. RESIST is not against fair taxation with representation.

Not one member of RESIST was informed of this unfair tax, by either their State or employer, why? Why weren't options offered to the employees, such as 401K Averaging Plans? Taxes are deferred by intelligent people so that they pay fewer taxes later not more! Non-resident retirees might pay significantly more taxes. It is frightening to speculate on how high non-resident taxes could become in the future. State needs more income = raise non-resident taxes! They can't stop us! How can a nation that was formed over "TAXATION WITHOUT REPRESENTATION" allow this to happen? BECAUSE IT IS THE BEST KEPT SECRET IN AMERICA! We must begin a RESIST "American Tea Party" that dwarfs the original version!

Some states have even hired collection agencies to harass and threaten Senior Citizens for the collection of unpaid non-resident taxes on pensions. California for 7 or 6 Years, sent letters to retirees stating that non-resident taxes were not due on pensions. Then they have the nerve to subsequently say the tax is owed with a 55 percent penalty and interest added to the tax. They also offer rewards for information on delinquent taxpayers. These actions can only be described as "Gestapo Tactics."

A number of states, unsatisfied with just taxing the pension, base the tax rate on the retirees total income. By this action they manage to levy a tax on the retirees out of state income, whether from investments or another job.

California has obtained delightfully contradictory court rulings. There is the Borchers case involving a man who retired from the state of Illinois and moved to California. Borchers claimed that he didn't owe California taxes on his pension because the SOURCE of the pension was Illinois. California disagreed and after a 10 year battle in a Los Angeles court, they won. The decision claimed that distributions such as pensions could not be taxed until the amount became fixed and known. A pension, paid for life, first became fixed and known when the payment was received each month and was taxable in the state of residence when received.

They rarely mention this case. Instead, they often refer to the Baustian case which was tried in the California State Board of Equalization. This case is the opposite of Borchers, involving a pension earned in California and received in another state. They claim that the SOURCE of the pension was California and it doesn't matter where the pension is received (Note the contradiction).

As a spokesman for the California Franchise Tax Board cheerfully acknowledges, residents can be taxed on all income, regardless of its source; Nonresidents are taxed on the source regardless of residence. California is an equal opportunity taxing state. They tax everything fair, unfair, just, unjust and yet they had alternatives. They could have avoided "TAXATION WITHOUT REPRESENTATION" by offering options such as ten years averaging.

What are the consequences or danger of this unfair tax? Since the retiree has no control over the tax and it provides free income for the state, the cancer will spread! Federal Employees who typically work in more than one state will probably pay taxes to multiple states. Some states permit apportionment of the tax, depending on the percentage of time worked in that state, and some states give compensation. These items are not always allowed, so don't depend on it.

Don't expect to get any benefits for taxes paid to another state. You won't even be able to use schools or buy a fishing license at resident rates. Of course, they will sell you a fishing license and let you use their schools at NON-RESIDENT RATES, which is much higher. They can take delight in sticking it to you again.

Some states' claim pensions are deferred income and benefits were received while the retirees were residents and therefore they still owe taxes, but deserve no more benefits.

This is a fallacious argument. Consider a person who earns a pension in one of these states and retires in that state. This person pays taxes, but continues to receive benefits from the state, and can vote, petition and otherwise be represented by the government of that state. The person who leaves their state after retirement, pays taxes, but receives nothing. Didn't the retiree who remained in the state also get benefits while they were earning their pension? Don't they get additional benefits after retirement that the non-resident doesn't get? ISN'T THIS DISCRIMINATION? HOW CAN THIS BE EQUAL TREATMENT?

Some states, bless them, take a different position. They consider pension's intangibles and don't tax them.

**** HELP US STOP THESE OUTRAGEOUS, UNFAIR TAXES. ****

Membership fees, gifts or any other donations to RESIST are not tax deductible.

For more information, please contact: William (Bill) C. Hoffman, President
RESIST - National Headquarters
2440 Ash Canyon Rd.
Carson City, NV 89703
(702) 883-8620
(702) 887-1296 - Office

What services do we get as nonresident taxpayers? NONE!

We can't use schools, or even buy a fishing license at resident rates.

What do we get from the government of the taxing state? NOTHING!

This tax hits Retirees hard!

Imagine:

An elderly lady in Nevada that makes between \$12000 and \$13000 a year. She isn't rich, but she is surviving. Then the mailcarrier delivers a notice from California that says she owes taxes on her pension, plus penalty and interest. She can't believe it; and being honest, she tells California that she has never paid. The result was they calculated her tax debt from 1978 till the present. She now owes about \$6000.

Imagine:

A retired man from California, whose wife died, meets a lady, marries her and moves to New York because she is still working there. He discovers that he not only must pay California taxes on his pension for the rest of his life, but must include his out of California income and his new wife's income. He pays New York much less because they give a large exemption for resident pensions.

Imagine:

A lady in Texas who just received a bill from CA for more than \$24000.

Unfortunately, these are not imaginary cases. They are just a few real cases out of thousands in our files.

States Position

Some states correctly assume pensions are intangibles, similar to savings accounts. Others claim pensions are deferred income.

Defining pensions as "deferred income" is an indiscriminate use of the English language and law. Income that is deferred should be paid unconditionally, either to the retiree or to their heirs. Pensions clearly do not meet the requirements of deferred income. If you are unfortunate and die one day before you retire, you or your heirs receive only your own contributions plus a small amount of interest. You receive none of the so called "deferred income."

These states claim that benefits were received when the retirees were earning the pension. Therefore they owe taxes for the rest of their lives, and do not deserve any additional benefits.

There is a fallacy to this argument. Consider two similar retirees. One decides to remain in the state where the pension was earned and the other moves to another state. The resident pays taxes, but continues to receive benefits from the state, and can vote, petition and otherwise be represented by the government of that state. The nonresident pays taxes, but receives nothing. Didn't the retiree who remained in the state also get benefits while they were earning their pension? **ISN'T THIS DISCRIMINATION? HOW CAN THIS BE EQUAL TREATMENT?**

Most retirees paid taxes on contributions to their pension plans. Apparently, Companies, Federal, and State agencies did not pay taxes on their contributions to pension plans or accrued interest. Before the publicity that RESIST of America initiated, no one was informed, by either their State or employer, about nonresident taxation of retirement income. Why weren't we informed about this unfair tax that would lead to "Taxation Without Representation" in the future? Why weren't options offered to the employees, such as 401K Averaging Plans? The only reason for deferring taxable income is to pay fewer taxes on the income later. Nonresident retirees might pay significantly more taxes instead of less. It is particularly frightening to speculate on how high nonresident taxes could become in the future. When a State needs more income, they can raise these taxes at their discretion and a nonresident can do nothing about it. The retiree cannot vote, petition, receive benefits or enjoy governmental protection from the taxing State. This situation is intolerable.

It was this unfair tax that prompted me to form RESIST of America in July of 1988. RESIST of America is a nonprofit organization that was incorporated July 28, 1988. The only goal of RESIST of America is to end the tax on nonresident pensions by the states. RESIST of America is a "grass roots" organization that operates entirely through volunteers. No one in our organization gets a salary. Our organization is not, however, against fair taxation with representation.

California has it both ways

California has obtained (from their point of view) delightfully contradictory court rulings.

Borchers - Baustian

The Borscher case was tried in the district court 2 of Los Angeles, CA. It involved a man who earned his pension in Illinois and moved to California to retire. Borscher claimed that he didn't owe California taxes on his pension income because the SOURCE of his pension was Illinois. California disagreed. Borscher lost after a ten year court battle.

The Baustian case involved a man who earned his pension in California and retired to another State. California claimed that he owed nonresident taxes on his pension because the SOURCE of his pension was California. This decision was made by The State Board of Equalization. The cases occurred about the same period.

As a spokesperson for the California FTB cheerfully acknowledges, residents can be taxed on all income, regardless of its source; nonresidents are taxed on the source regardless of residence.

To make matters worse, California hired collection agencies that use "Gestapo Tactics" to harass and threaten Senior Citizens for the collection of these unfair taxes. They also offer rewards for information on delinquent taxpayers. Other states will probably follow California's lead.

Income earned in other States also taxed

There is another point that has aggravated Seniors Citizens. Several States (particularly California) use total income earned (including income earned in other States) to establish the highest rate for taxing pensions. Even so, they claim they do not tax out of State income. However, any increase in taxes as a result of including non-California income is clearly a tax against that income.

This procedure, causes additional inequality between retirees. A retiree that supplements their income through investments, can decrease their tax liability by investing in items (Federal Securities) that states cannot tax. Those retirees that must work to supplement their income have no options and must include this income. As a result, the retiree that works pay more taxes than the retiree that invests, even if their total income is the same.

California, perhaps other states, tax nonresident, military pensions

Some believe that California does not tax the nonresident pensions of military personnel. Don't you believe it. Check California tax forms 1031 and 1032. California gives an exemption for military personnel, but the maximum exemption is a generous \$40.00 per year. Other states have not answered the question of whether or not they tax military pensions. We suspect they do.

Constitutionality of nonresident taxes

One of the first officials contacted by our organization about this issue was The Attorney General of Nevada. It was our hope that he would challenge the constitutionality of the nonresident tax on pensions by the states. We knew that it was unconstitutional for a citizen to sue a state in a Federal court. Unfortunately, Brian McKay, who was Nevada's Attorney General then, told us that the U. S. Supreme court had upheld the nonresident taxes about 70 years ago. He sent us the Michigan State Law review, which discussed many cases covering this general issue. He recommended that we try to get Federal Legislation passed. Research into other court cases and investigation of The California State Law Review confirmed his position.

Can we solve this problem at the State level?

There are some Senators that believe that we should work though the states and organizations like The Multi-State Tax Commission to end this tax on nonresident pensions. We have tried. It is impossible to sway State Legislators when you are not represented. New Jersey is the only state that was convinced to stop taxing

non resident pensions. This success occurred due to the efforts of The National Association of Retired Federal Employees (NARFE) and due to a study by New Jersey that the collection of these taxes was not economical.

Our efforts with California have been futile to say the least. Last year, The California Legislature introduced two bills to prevent or limit the taxation of nonresident pensions. AB-3976, which would completely end this unfair tax and AB-3963, which would give a \$20,000 credit to nonresidents, but income earned in other States must still be used to determine the tax rate. AB-3963 also contained a "sunset clause" which would automatically repeal the law 6 years after enactment.

Trice Harvey, an Assemblyman from Bakersfield, invited me, Pierce Powers (National Association of Retired Federal Employees -NARFE), Elton Hipport also from NARFE, and Douglas Baldwin, representing The Air Force Association to testify before the Revenue and Taxation Committee for AB-3976.

Johan Klehs, Chairman of this committee (District San Leandro) refused to let us testify, claiming there was not enough time and that we were "out of order." The testimony for and against the previous issue, to grant tax exempt status for businesses that grow ostriches for food involved less than a dozen people, and took more than two hours (not counting two hours for the ostrich barbecue).

Our issue involves millions of Senior Citizens as well as the young people in the State. Clearly, we were faced with a "stacked deck." The committee has every right to oppose our position; however, there is never a reason to be rude and inconsiderate to anyone. Johan Klehs treated us like people without representation.

This year AB 1513, SB 427, and AJR 25 were introduced. The two bills would repeal the tax on nonresident pensions, and the joint resolution urges The United States Congress to pass the bills that prohibit this tax. This year it was Dick Millington (Regional Vice President - NARFE) who received the rude treatment.

I have subsequently written a letter to The Speaker of The California Assembly, Willie Brown, and suggested a plan that would end "TAXATION WITHOUT REPRESENTATION" and yield California more income.

WE NEED FEDERAL LEGISLATION!
THE CONGRESS OF THE UNITED STATES IS OUR LAST HOPE!

We are asking you, The Congress to help us end this terrible injustice to our Seniors and our Future Seniors. The issue of taxation of nonresident pensions by the states affects every American. Even if a citizen does not have a pension or if they never leave the state where the pension is earned, they are affected.

Many states give credits or rebates to retirees that pay taxes to another state. If a state does, then the taxpayers of that state are paying for the benefits, services, and government for these retirees. The taxes paid by the retirees, that should help defray the cost of their benefits, services, and government, are instead paid to their former state. That state doesn't give anything to the retirees or the resident state's economy. Even if the resident state does not give credits or rebates for taxes paid to another state, their citizens still lose. The money paid to another state by the retirees is not available for expenditure in your state.

There is a better way. Taxpayers should pay taxes only to their state of residence, where they receive benefits, services and government, where they have the right to vote, petition, and otherwise influence their representatives.

Three bills have been introduced into The House of Representatives to stop states from taxing nonresident pensions, (H.R.431, H.R.1531, and H.R.1655).

H.R. 431 and H.R. 1531 are similar to The Senate Bill S.267. The main difference is that S. 267 includes pensions and other Retirement income instead of just pensions. The difference is important. California has recently introduced legislation to tax Social Security. Some other States have already done this. Without the clause, "other Retirement Income," we could be back where we started even if The House Bills passed. House bill H.R. 1655 is more complex, but does have some favorable attributes:

1. States must inform employees each year about his or her nonresident tax policies.
2. States must offer a lump sum settlement if the conditions of 1. are met and the retiree leaves the state.
3. Income earned in other states cannot be taxed.

Does S.267 cost the Federal Government?

The Federal Government should realize a slight increase in tax revenue if S. 267 passes, because those retirees that still itemize on their Federal taxes would have fewer deductions.

States would probably not lose income either. If we do not pass S. 267, it is ironic that the most aggressive state, California would lose. California is still the second largest retirement state behind Florida. When the other Source tax States, realize that California is stealing money from their economy, you can bet they will retaliate and impose taxes on their retirees that move to California. It is difficult to predict which state would lose the most, but one situation is easy to predict. If taxes are paid to the State of Residence, where the Retiree can vote, petition, receive services and benefits, everyone gains, including the states.

We urge you to pass S.267 and end the tyranny of "TAXATION WITHOUT REPRESENTATION," without a financial loss to the Federal Government and, we believe, without a loss to the states.

Stop this terrible injustice to our Senior Citizens and to all Americans.

Thank you,

Bill

William (Bill) C. Hoffman
President, RESIST of America
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Carson City, NV 89703

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Personal Finance

California surprise awaits pensioners who leave

By Deborah A. Mawhar
Reno Area Editor

Planning on spending your retirement years in a state — like Nevada — that doesn't tax personal income? Plan carefully, because you may be facing hefty taxes anyway, depending on your pension's source state.

California and more than 40 other states want a piece of your income pie, no matter which state you retire to.

And the slice is bigger than your pension. Since a law change in 1982, California bases its share of non-resident taxes on your total income, not just the income from a California-based pension.

"I just completed a rough estimate of my 1988 California taxes due," a Nevada resident wrote to RESIST of Nevada, a grass-roots tax resistance group. "If taxes were figured only on sources within California, I would owe \$1,500. But because California figures a percentage of total in-

come they now collect \$2,300. How can they ... use my total income to confiscate another \$800 from me? We must get this tax on pensions eliminated now!"

Retirees living in Nevada who are unfortunate enough to have a California-based pension have been caught between a fixed income and the California Franchise Tax Board. Bill Hoffman of Carson City, who has a California pension, decided to act.

"I discovered (this California tax law) and got angry. I think what really made me angry is when they looked at all my income" to establish a tax rate.

And so he founded the non-profit group RESIST — Retirees to Eliminate State Income Source Tax — of Nevada. Since February 1988, RESIST has been disseminating information in an effort to encourage legislation to change the situation.

Nevada Assemblyman Ernie Adler introduced Assembly Bill 154 in direct response to RESIST's efforts. Hearings on the

legislation were crowded with RESIST members testifying about their own taxation woes.

"California wasn't garnishing pensions," said Hoffman. "They were sending collection agencies into other states to seize property."

AB 154 prevents that. The bill was presented to Gov. Bob Miller in mid-April for his signature. He held a signing ceremony with RESIST members and Adler.

"I think, for certain seniors, (this legislation) does give them protection from California against debt collection," said Adler. "Although I'm not urging anyone not to pay their taxes, this bill will give some protection to those who've already chosen to not pay California taxes."

For a copy of AB 154, call the Legislative Hotline: (702) 885-5545 or (800) 992-0973, ext. 5545.

But RESIST leader Hoffman said there is more to be done. While Nevada's legislation takes

some immediate heat off affected retirees by preventing other states from seizing Nevada property in collecting for this type of tax, the real problem is that its legal for states to tax pension income in this way.

"It's unfair for anyone to suffer 'taxation without representation,' but that's exactly what happens when retirees pay income tax on pensions in a state where they no longer reside," said U.S. Sen. Richard Bryan of Nevada.

Rep. Barbara Vucanovich, R-District 2, has reintroduced legislation, HR 1227, which would prohibit such taxation. Rep. James Bilbray, D-District 1, is cosponsoring the bill.

It states: "No state may impose an income tax (as defined in section 110(c)) on the pension income of any individual who is not a resident or domiciliary of such state."

Bryan and Sen. Harry Reid introduced companion legislation in the Senate, S. 434.

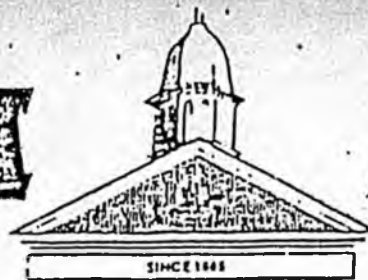
Hearings on the House and Senate measures have not yet been scheduled.

"We're hoping to get the word out across the country to get support," said Hoffman of RESIST. "We've got to bring what my wife calls 'the best kept secret in America' out in the open so people know what's going on."

Fiscally, this federal legislation could put a big hole in some big states' income tax pockets — states, like California, that have large congressional delegations, and lots of votes. Yet two of HR 1227's cosponsors are from Southern California, Reps. Robert K. Dornan (R-Garden Grove) and Jerry Lewis (R-Redlands).

"This bill affects retirees living in many places," said Vucanovich. "I am depending upon grass roots support from retirees across the country, caught in this unfair situation, to persuade their senators and congressmen to support my bill."

NEVADA



APPEAL

Carson City, Nevada, March 7, 1989

It's time to RESIST

By WILLIAM C. HOFFMAN

Legislation designed to end unfair taxation of pensions by California and other states, HR1227, has been reintroduced into the House Judiciary Committee by Rep. Barbara Vucanovich, and into the U.S. Senate Finance Committee, S434, by Sen. Harry Reid.

These two bills replaced last year's bills, HR5276 and S2820, respectively.

There are 40 states with non-resident income tax laws. Twelve of these states now tax non-resident pensions.

When RESIST of Nevada was incorporated July 1988, just five states were taxing non-resident pensions.

If this increase continues, all 40 states with non-resident tax laws will join the bandwagon and get their greedy hands on this free income, which is derived at the expense of retired senior citizens.

Not one member of RESIST was informed of this impending tax on retirement income by either their company or state.

Instead, many members were shocked by a tax bill from the state of California which usually includes 55 percent in penalties along with 8 percent to 13 percent interest.

The states and companies were aware of these laws which were declared constitutional as long ago as 1919.

Nevertheless, senior citizens, many who retired in the early '60s, never knew of these taxes until they received notices from the taxing state.

Employees of companies in Nevada,

whose parent company or pension plan is in California or another state — BEWARE — you can expect to be taxed by California or the other state when you retire.

California has hired collection agencies that use "Gestapo tactics" to harass and threaten senior citizens for the collection of these unfair taxes.

To stop this, Assemblyman Ernie Adler (D-Carson City) introduced AB154 into the state Assembly.

This bill, when enacted into law, would exempt property in Nevada from execution, for failure to pay income tax to other states on benefits received from pension or retirement funds.

The passage of AB154 would throw an important roadblock into California's plans.

Many senior citizens braved -20 degree F. weather to attend a hearing of this bill before the Assembly Judiciary Committee.

The committee room was overflowing with RESIST members.

The committee appeared sympathetic toward the bill. Some members wanted to strengthen it.

For those who think this law would treat California unfairly or upset relationships, remember that California does not honor Nevada gambling debts and that none of the Nevada citizens affected by these unfair taxes have any rights in California.

Adler, our exemplary public servant, has helped us from the beginning. He supports our cause, has attended every meeting of RESIST in Carson City, and along with Gov. Bob Miller and Nick Colona (a professional lobbyist), will be a guest speaker at

At the Capital

our meeting at the Carson Nugget Wednesday at 7 p.m.

The enactment into law of both the proposed federal legislation (HR1227 and S131) and the proposed Nevada legislation (AB154) would force states to stop practicing taxation without representation, an issue which this country was formed to stop and which former President Reagan called tyranny.

We urge every Nevadan to write their congressional representatives and Nevada legislators to pass both the federal and Nevada legislation to stop California and other states from this tyrannical taxation, help our senior citizens, and keep between \$200 million and \$2 billion in the Nevada economy.

William (Bill) C. Hoffman, a Carson City resident is president of RESIST (Retirees to Eliminate State Income Source Tax). This is one in a series of At the Capital guest columns written by state lawmakers and those involved in the Legislature and Nevada issues.

We encourage LETTERS TO THE EDITOR. Those for publication must bear the writer's signature, printed name, address and phone number. The phone number and address are confidential and are only needed to verify the source of a letter.

Peninsula Daily News

Serving Clallam and Jefferson counties — the North Olympic Peninsula

Monday

April 29, 1991

Sequim man wins pension-tax battle

By TODD COHEN
Peninsula Daily News

SEQUIM — A bill to bar other states from collecting income taxes on retirees' pensions in Washington is waiting for Gov. Booth Gardner's signature.

The governor has indicated his support and is expected to sign the bill, said the bill's author, state Rep. Evan Jones, D-Sequim. The governor has until May 15 to act.

The bill was championed by the 500-member RESIST of Washington (or Retirees to Eliminate State Income Source Tax) group led by Jim Dawes of Sequim.

The bill, (S)HB1105, would prevent another state from seizing property or accounts to satisfy a source income tax debt owed by former residents who now live in Washington. California and 11 other states tax pensions that stem from work done in their states.

Dawes, who lived in California before moving to Sequim in 1987, said he was "tremendously happy" the Legislature passed the bill, saying it would help protect residents who cannot afford to pay the tax.

"They can still harrass and send notices to intimidate to collect the bill."

—Jim Dawes
RESIST leader

However, Dawes said federal legislation is need to outlaw the source tax entirely. Only Congress can ban the source tax.

"(Other states) won't get the cooperation of (Washington) to collect. But they can still harrass and send notices to intimidate to collect the bill," Dawes said, adding that the taxes can still be deducted from pension checks that originate in those states.

Third District Rep. Jolene Unsoeld, D-Wash., has introduced a bill, HR15351, in Congress to ban the tax and hopes to have a hearing sometime this year. Second District Rep. Al Swift, who represents the Peninsula, and other members of the Washington delegation are co-sponsors. Other bills also have been introduced by Nevada's delegation.

Peninsula Daily News

627

Serving Clallam and Jefferson counties — the North Olympic Peninsula

Sunday

January 27, 1991

Bite on retirees is taxing

By TODD COHEN

Peninsula Daily News

SEQUIM — The California tax man finally tracked down Ray Simpson last month.

Thirteen years after Simpson retired from the Golden State to his new home in Sequim, Simpson opened his mailbox and found a notice that said he owed California income taxes on his teaching pension.

It's called "source income tax" and California is one of 11 states that claim a share of the pensions former residents receive — no matter where they now live.

The state asserts that retirees owe taxes on the portion of their retirement income that stems from work done in that state. The California tax for a typical Washington retiree with a \$20,000 annual income is \$140, a state Department of Revenue report said. In addition, the state uses a retiree's total income to place the retiree in a higher tax bracket, the report said.

"I can't go to California and vote. I can't go to California and get a resident fishing license. I am a foreigner for all sense and purposes except for paying taxes," said Simpson, a 70-year-old retired teacher.

The tax notice "felt like a good kick in the gut," he said.

Simpson isn't alone. Marian Matsunaga, a retired California office administrator, has been paying the source tax ever since retiring to Sequim in 1987.

"It's a burden to me. I don't get anything from there anymore," she said. "I would rather support Washington."

Another couple doesn't earn enough to pay taxes, but still must file forms with the state. One California retiree living in Sequim didn't want his name used for fear it would help California track him down and tax his military pension.

Using a computer network, California is regarded as the most aggressive of the states in locating retirees and using collection agencies and court liens to collect. It has even obtained court orders forcing the tax be deducted from military pension checks.

"I pay taxes in Washington," the Sequim man said. "I'm not trying to

avoid paying taxes. I'm trying to avoid being done in."

Such fears of an extra tax burden and anger over what many regard as "taxation without representation" has spurred many retirees across the nation to band together and fight. A 45-state strong national organization called RESIST, or Retirees to Eliminate State Income Source Tax, is leading the charge.

In Washington, the top general is a 76-year-old Sequim retiree named Jim Dawes. He formed the state chapter two years ago after hearing about the tax and has built a 500-member organization, managed mostly out of a room in his Sequim house. The tax man has yet to find him, but Dawes expects he will and he isn't waiting.

Dawes goes to battle at 1:30 p.m. tomorrow when a State Senate Governmental Operations committee holds a hearing in Olympia on three bills aimed at blocking source income tax collection in Washington. State Sen. Paul Conner, D-Sequim, is a sponsor of one bill.

A House bill authored by State Rep. Evan Jones, D-Sequim, will be the subject of a later hearing in the House Revenue committee. The bill died in another committee last session.

But Dawes, a postal carrier in California who moved to Sequim in 1987, is hopeful the Legislature will act this year. And he's better

organized, with volunteers busy writing letters to key legislators.

States cannot bar other states from collecting source income taxes. Only Congress has that power and so far no action has been considered, although 78 congressmen have expressed support, including the Peninsula's Rep. Al Swift, D-Bellingham.

However, states can pass laws barring other states from seizing resident's private property, like cars and houses, to satisfy the tax debt. The four bills in the Washington Legislature would do that, and are based on similar laws passed in 1989 and 1990 in Nevada and Florida.

The only other barrier is a state income tax, which allow residents to credit out-of-state taxes. Washington has no income tax and none is proposed.

Jones said several concerns helped kill his bill last year. One committee chairman was concerned about backlash in California, which helps Washington collect business and occupation taxes from California companies that do business in Washington. Other legislators felt it was a federal issue that Congress should solve, he said.

But with four bills now aimed at the problem, Jones said he was encouraged that the Legislature will act. Gov. Booth Gardner also has been quoted as supporting such a bill.

Fighting off tax collector

Bill provides relief for state retirees

By Adele Ferguson
Sun Staff

OLYMPIA — Retirees being pursued by income tax collectors from other states are girding up for battle again to escape "source taxation."

Jim Dawes of Sequim is their general and he has House and Senate bills in his arsenal.

However, legislators are gently suggesting Washington state is the wrong battleground.

Congress is the place to go, said House Judiciary Chairman Marlin Appelwick, D-Seattle, who has the House bill in his committee.

Source taxation is a device employed by a dozen states, through which they collect taxes on the income of people who once worked within their environs. The taxes are collected even after those people have retired and moved away.

And those states tax all the income of the household, including that earned after the ex-resident crossed state lines. If a dun doesn't produce payment, the state or a collector agency goes after the non-payer's assets, including homes, cars, boats, bank accounts, etc.

The twin bills promoted by Dawes would exempt targeted Washington pensioners from such seizure.

The Senate bill, sponsored by Al Bauer, D-Vancouver, has a good chance of passage there. But it takes both houses, and a similar bill died in Appelwick's committee last year.

With California the most aggressive pursuer of departed pensioners, "the

risk is that we invite a retaliatory war," said Appelwick.

"In essence, this bill says you can't use our courtrooms to enforce California tax laws. We spend a lot of money for tax auditors, a good number of whom are auditing California corporations to collect our business and occupation taxes," he said.

Various states have invested a lot of energy and money putting together reciprocity agreements, Appelwick said. "And I would hate to see us jeopardize that by something hasty."

He's listened to some of the stories from pensioners who have been billed for thousands of dollars in back taxes, he said, "and I think we have every reason to be sympathetic. There is something wrong. But this isn't the proper way to deal with the problem. Maybe we ought to work with our congressional delegation on it."

A similar law has been successfully approved and defended in one state for 18 months — Nevada.

Rep. Evan Jones, D-Sequim, sponsor of the House bill this year and last, said he was aware that "Congress is the only surefire fix. But we need to do what we can as soon as we can. With computerization, these other states are going after more and more pensioners."

The state Department of Revenue has taken no stand on the issue, Jones said, with the notion that it has no effect on state revenues.

When he first began his quest for relief in 1989, Dawes said, he learned that 20 people within six miles of his home were paying \$22,030 a year.

"Multiply that by the thousands of retirees here, and there must be millions of dollars involved," he said:

Hearing on Pension Tax

By Mike Causey
Washington Post Staff Writer

A Senate hearing is scheduled next week on a bill to bar a state from taxing the pension benefits of people who move to another state that doesn't have an income tax.

California is currently taxing or trying to collect taxes from former residents (many of them federal retirees) who retired to states without income taxes. They are Alaska, Connecticut, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington and Wyoming, and have 417,000 federal retirees. Many of them are unhappy with the so-called source tax.

The theory of the source tax is that some or all of the pension benefit earned when a person was a resident of the state is taxable when the retiree moves away. Opponents say they paid their share of taxes for state services while they were residents. They object to paying taxes to a state they no longer live in.

About 40 states have source tax laws, said William Hoffman, president of Retirees to Eliminate State Income Source Tax. But he said most don't go after the pensions of ex-residents. The Washington-based National Association of Retired Federal Employees has been fighting the source tax in a dozen state legislatures.

The Senate Finance Committee's taxation subcommittee plans a hearing Wednesday on several bills. One, introduced by Sen. Harry Reid (D-Nev.), would outlaw the source tax. Many Californians retire to Nevada, which has no income tax.

Maryland, Virginia and the District don't use the source tax. But some folks worry that

the source tax might be activated down the road by revenue-hungry jurisdictions. From a political standpoint, the source tax has a certain charm, because it hits people who no longer live—or vote—in the state taking the tax bite.

The Finance Committee says anyone may submit a statement for the record by June 26. It must be typed and of no more than five pages. Five copies should be mailed to Wayne Hosier and Ed Mihalski, c/o U.S. Senate Finance Committee, Washington, D.C. 20510.

Job Mart

The Marine Corps at Quantico is looking for a Grade 13 environmental engineer and a GM (merit pay) 13 supervisory environmental engineer. Call 703-640-2048.

The Bureau of Alcohol, Tobacco and Firearms needs a GS 13 position classification specialist and an employee relations specialist. Call 202-566-7311.

People

The local chapter of the American Society for Public Administration has given distinguished public service awards to Robert L. Bombaugh, of the Justice Department; Sara Lyon, Housing and Urban Development; Linda Gibbs, Customs Service; Grace Flores Hughes, Community Relations Service; and Warren Master, General Services Administration.

Mediation First

The Department of Health and Human Services and the National Treasury Employees Union will use the Federal Mediation and Conciliation Service to help solve workplace disputes. The service says this is the first time an agency and union have agreed to use the grievance mediation procedure, which is designed to produce quicker settlements.

Some lower 48 states want to tax pensions

by Rep. Don Young

As if economic conditions weren't difficult enough for many senior citizens, a new problem has emerged that threatens to cut into their hard-earned pensions - the so-called "source" income tax.

In an attempt to increase state revenues, a growing number of lower 48 states that have state income taxes are imposing the "source" income taxes on former residents who once worked in their states and now collect pension payments from former employers - especially federal retirees.

For example, a retired person who now lives in Alaska (which has no state income tax) but who once worked in California (which has a state income tax) is now facing the risk of having their pension income taxed by the state of California.

I strongly feel this is wrong and I am co-sponsoring three bills in Congress which would address this unfair taxation problem.

One of these bills, H.R. 431, would put an immediate stop to the "source" income tax on nonresident pension income. Thus a person who now lives in Alaska and collects a pension from a former employer in California (or any other state) would not be subject to California's "source" tax.

It's simply unreasonable to expect Alaskan senior citizens to pay for the government operations and services of another state. It's imperative that we not allow revenue-hungry states to arbitrarily levy income taxes on Alaskan residents.

H.R. 431 is designed to stop this alarming practice and allow our seniors to collect their pensions without the fear of being tracked down by states that have decided to impose the tax.

The states of California, Oregon and Iowa have already begun imposing the "source" tax on former residents and several other states are seriously considering following suit. Forty states have laws that enable them to impose "source"

In cases of nonpayment, some states are going after the pensions and assets of their former residents and using collection agencies to pressure retirees into compliance. This is absolutely wrong.

taxes on former residents.

These states argue that some or all of pension benefits earned when the person was a resident of their state is taxable even after the person moves to another state because the person used their state roads, schools, police and fire service when they were residents of their state.

However, many of my colleagues and I disagree with this rationale because these people paid their fair share of taxes for state services when they were residents of that state.

Now that these people live in Alaska, they do not owe their former states any more money because they no longer use the services of their former state.

I think it's absolutely ludicrous for some states to require that retirees living in Alaska pay taxes to finance the government operations of another state.

To make the situation even worse, some states are now assessing the "source" tax retroactively and charging high penalties on the retroactive tax.

In cases of nonpayment, some states are going after the pensions and assets of their former residents and using collection agencies to pressure retirees into compliance. This is absolutely wrong.

In order to protect our seniors from this harassment and financial burden, H.R. 431 would be retroactive to December 31, 1987, and protect retirees from paying the "source" tax from that date forward.

I am also co-sponsoring H.R. 1531, which is similar to H.R. 431 except that it is retroactive to December 31, 1990. Congressional analysts indicate H.R. 1531 has a better chance of passage

due to its less stringent retroactivity.

In addition, I am a co-sponsor of H.R. 1655, which also addresses the "source" tax problem by requiring that any state that imposes a "source" tax must:

- provide advance notice of the tax;
- provide a taxing formula that does not include income from other states; and
- provide an opportunity for retirees to pre-pay the tax before they leave the state.

Of these three bills, I prefer H.R. 431 because it is more fair to our senior citizens and is retroactive to December 31, 1987. I feel that H.R. 1531 is a feasible alternative because it is similar in intent to H.R. 431 and retroactive to December 31, 1990.

However, if there is not enough Congressional support for these repeal bills, I will support H.R. 1655 as a first step toward addressing the "source" tax dilemma.

It's important that I point out that this is going to be an extremely difficult battle to win.

These states are short of cash and looking for every possible source of revenue. Their Congressional representatives will not support a repeal of the "source" tax because it lessens the tax burden on their current residents - and the reality that the people who are hit by the tax no longer vote in their Congressional districts.

However, this is a fight many Congressmen, including myself, are willing to fight on behalf of our senior citizens. I'll keep you posted on future developments with our repeal legislation.

Rep. Don Young represents Alaska in the U.S. House of Representatives.

Stalked by the Source Tax

By Mike Causey

Washington Post Staff Writer

The dream: After a long, hard career, you retire to sunny Florida, Texas or Nevada, where the living is easier and there is no state income tax to cut into your reduced income.

The nightmare: Your home state tracks you down and says you owe it taxes on your pension—for the rest of your life—because you qualified for the pension while working in that state.

Revenue-hungry states (which is more and more of them) are hoping Congress will kill bills that would bar states from chasing the pensions of former residents who have moved to states that don't have a state income tax.

Oregon, Iowa and California use the so-called source tax now. Most of California's efforts are directed at former residents who moved across the line to Nevada, which has no state income tax.

The long-armed revenue producer is called the source tax because states that use it consider themselves the source of the pension benefits ex-residents receive elsewhere. Source-tax states say that is appropriate because those individuals used state roads, schools, police and fire services when they were residents. But retirees who have moved contend they did their share by paying state taxes while they were using the services.

Maryland, Virginia and the District do not use the source tax. But many people who have moved, or plan to retire to a state with no state income tax, worry that the source tax may someday follow them.

So far the source-tax issue is mostly a fight between California and Nevada. Nevada

and Florida have passed laws forbidding other states to seize the property of their residents. Texas is considering a similar law. In the meantime, groups representing retirees are watching to make sure the source tax isn't adopted by more states.

Rep. Barbara F. Vucanovich (R-Nev.) and Sen. Harry Reid (D-Nev.) have reintroduced their bill, which would outlaw the source tax. Sixty-seven of 435 House members are cosponsors. About a dozen of the 100 senators have signed on to Reid's bill. But both plans died in the House Judiciary and Senate Finance committees last year. States considering the source-tax option hope the bills will die in committee again.

Vucanovich will try another route this year. Last Friday, she introduced a bill that would protect current retirees (but not people retiring in the future) from the pension source tax. She is sending it through the House Ways and Means Committee rather than the Judiciary Committee.

The Washington Post

March 27, 1991

SENATE JOINT RESOLUTION NO. 15—SENATORS JOERG, O'CONNELL, BEYER, COFFIN, GETTO, HICKEY, HORN, JACOBSEN, MALONE, MELLO, NEAL, O'DONNELL, RAGGIO, RAWSON, RHOADS, SHAFFER, SMITH, TITUS, TOWNSEND, VERGIELS AND WAGNER

MARCH 30, 1989

Referred to Committee on Taxation

SUMMARY—Urges Congress to pass legislation prohibiting states from imposing income tax on pension income of nonresidents. (BDR R-1338)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [] is material to be omitted.

SENATE JOINT RESOLUTION—Urging Congress to pass legislation prohibiting each state from imposing an income tax on the pension income of any person who is not a resident of that state.

1 WHEREAS, Nevada is one the fastest growing states in the union; and
2 WHEREAS, The continuous influx of people into this state promotes a grow-
3 ing, healthy and diversified economy; and
4 WHEREAS, Many of the people who migrate to this state are retired and live
5 on limited and fixed incomes; and
6 WHEREAS, Many of these people retire to Nevada with the expectation of
7 being exempt from any state income tax and have planned their finances
8 accordingly; and
9 WHEREAS, For many of these people their pension income and the income
10 earned from savings and other investments are barely enough to pay their
11 expenses and offset inflation; and
12 WHEREAS, Other states have enacted legislation that authorizes the imposi-
13 tion of an income tax on pension income that originates in those states, even if
14 the person who earns the income resides in another state; and
15 WHEREAS, As a result, many of the people who have retired to Nevada are
16 required to pay income tax on their pension income; and
17 WHEREAS, These laws have placed an unexpected and oftentimes insur-
18 mountable financial burden on many of these people; and
19 WHEREAS, S. 434 and H.R. 1227 of the 101st Congress, 1st Session
20 (1989), would prohibit each state from imposing an income tax on the pen-
21 sion income of any person who is not a resident of that state; now, therefore,
22 be it

1 RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA,
2 JOINTLY, That the Nevada Legislature urges the Congress of the United States
3 to pass S. 434 and H.R. 1227 of the 101st Congress, 1st Session (1989); and
4 be it further
5 RESOLVED, That copies of this resolution be prepared and transmitted by
6 the Secretary of the Senate to the Vice President of the United States as
7 presiding officer of the Senate, the Speaker of the House of Representatives
8 and to each member of the Nevada Congressional Delegation; and be it
9 further
10 RESOLVED, That this resolution becomes effective upon passage and
11 approval.

(EXEMPTIONS FROM EXECUTION - RETIREMENT INCOME TAX)

1991

GENERAL SESSION

S. B. No. 33

By Dixie L. Leavitt

LYLE W. HILLYARD

AN ACT RELATING TO EXEMPTIONS FROM EXECUTION; EXEMPTING FROM EXECUTION ANY PROPERTY ON WHICH THERE IS A JUDGMENT FOR FAILURE TO PAY ANOTHER STATE'S INCOME TAX ON RETIREMENT BENEFITS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

78-23-5, AS LAST AMENDED BY CHAPTER 19, LAWS OF UTAH 1989

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 78-23-5, Utah Code Annotated 1953, as last amended by Chapter 19, Laws of Utah 1989, is amended to read:

78-23-5. Property exempt from execution.

(1) An individual is entitled to exemption of the following property:

(a) a burial plot for the individual and his family;

(b) health aids reasonably necessary to enable the individual or a dependent to work or sustain health;

(c) benefits the individual or his dependent have received or are entitled to receive by reason of disability, illness, or unemployment from any source;

1 (i) to an alternate payee under a qualified domestic relations
2 order, as those terms are defined in Section 414(p) of the [United
3 States] Internal Revenue Code of 1986, as amended; [or]

4 (ii) to amounts contributed or benefits accrued by or on behalf of a
5 debtor within 180 days before the debtor files for bankruptcy; or

6 (iii) to the assets of bankruptcy proceedings filed before January
7 1, 1989;

8 (k) the interest of or any money or other assets payable to an
9 alternate payee under a qualified domestic relations order as those terms
10 are defined in Section 414(p) of the [United-States] Internal Revenue Code
11 of 1986, as amended[~~r~~]; and

12 (1) property in Utah of a Utah resident on which there is a judgment
13 in favor of another state for failure to pay that state's income tax on
14 benefits received from a pension or other retirement plan.

15 (2) Exemptions under this section do not limit items which may be
16 claimed as exempt under Section 78-23-8.

17 Section 2. Effective Date.

18 If approved by two-thirds of all the members elected to each house,
19 this act takes effect upon approval by the governor, or the day following
20 the constitutional time limit of Article VII, Sec. 8 without the
21 governor's signature, or in the case of a veto, the date of veto
22 override.

January 16, 1991

MANAGEMENT AND FISCAL ANALYSIS

S. B. 33

This bill will have no fiscal impact on the State.

OFFICE OF THE LEGISLATIVE FISCAL ANALYST

TESTIMONY

(For SB-5000, SB-5001 and SB-5024)

Presented to the Governmental Operations Committee—Jan. 28, 1991

Honorable Chairman and Members of the Governmental Operations Committee:

My name is Jim Dawes, I live at 118 Palo Verde Loop, Sequim, Washington, and I offer this testimony on behalf of "RESIST of AMERICA". You have all been made aware of our problem, and know, who and what, a retired senior is; And that a number of them desperately need the protection given by SB-5000, SB-5001 or SB-5024, ^{THAT} you are about to decide, having or not having, made law.

California has taken the lead in being aggressive and unjust in the pursuit of income tax payments from former residents of their State. Their claim justifying this practice is, that your employer's contribution to your pension, was never taxed. Fair enough! Let's pay off the tax on the employer's contribution. No way, unless you withdraw the pension in a 'lump' sum. I paid income tax on my entire pension, as a resident of California, for 17 years; Yet I am expected to go on paying this tax for the rest of my life, and my wife will have to pay the rest of her life, on a reduced survivors annuity.

There are retirees residing in Washington since 1975, still paying income tax to California. One of these retirees wants to send his grand-daughter to a California College; guess what tuition she must pay, not the same as her fellow student, who is a resident of California.

Then the retirees who have lived here for years, without income enough to warrant the payment of taxes, yet they must continue to file the California tax forms each year. They must go through the expense of filing these forms. For What!??

There are two other category of retiree, that desperately need the protection the passage of these bills would bring. The retiree who has lived here for many years, never having been notified of this taxing practice, unexpectedly he is notified he is to pay a \$16000. tax liability on a \$27,000. annual income. Then the retiree, who has lived here since the middle '70s, has just found out she was supposed to have been paying income taxes to California, on her meager \$5000. pension. She is afraid California will bill her for all those years, and seize her life savings in a local bank, to satisfy the claim. She does not sleep to well and is reluctant to make the daily visit to the mail box. This added mental stress to older people is un-warranted. There are other examples, ~~so many~~ to many to mention here, of California's unfair actions in implementing their income taxing program. Suffice to say it is "TAXATION WITHOUT REPRESENTATION"!

In closing, this problem is in it's 'infancy' and Federal action is needed to correct it. We would like to have Washington back the words of their last year's Senate Joint Memorial with action. The message to the U.S. Congress, provided by making one of these bills into law, will be a step in that direction.

The U.S. Constitutionality of such Law has been determined with the passage of similar law in Nevada and Florida.

Let 'justice' and 'right' be your guide in determining the outcome of these bills. Let someone else challenge the 'legality'; but, certainly not Washington State.

Thank You,

James W. "Jim" Dawes

HOUSE CONCURRENT RESOLUTION

REQUESTING THE HAWAII CONGRESSIONAL DELEGATION TO SUPPORT
LEGISLATION PROHIBITING STATES FROM IMPOSING INCOME TAX ON
PENSION INCOME OF NONRESIDENTS.

WHEREAS, Hawaii continues to have one of the highest costs
of living in the United States; and

WHEREAS, recent statistics show that it now costs 28.7 per
cent more for the typical urban family to live in Hawaii than on
the Mainland; and

WHEREAS, housing prices in Honolulu are the highest in the
country and Hawaii's expensive housing market continues to
deprive hundreds if not thousands of middle-class people of their
piece of the American dream; and

WHEREAS, many of the people who migrate to this State are
retired and live on limited and fixed incomes; and

WHEREAS, for many of these retirees, their pension income
and the income earned from savings and other investments are
barely enough to cover their expenses and offset inflation; and

WHEREAS, Hawaii law eases the tax burden on retirees by
exempting from state income taxation all pension income; and

WHEREAS, many people retire to Hawaii with the expectation
of being exempt from any state income tax on pension income and
have planned their finances accordingly; and

WHEREAS, California and fifteen other states have laws which
impose an income tax on pension income originating in those
states, even if the person who earns the income resides in
another state; and

WHEREAS, many people moving to Hawaii from the Mainland are
forced to pay nonresident income tax to the states they moved
from even though they no longer reside in or enjoy the benefits
and amenities of those states; and

WHEREAS, the laws of these states have placed an unexpected
and oftentimes insurmountable financial burden on many of our
senior citizens who are living on fixed incomes; and

WHEREAS, these laws create an unfair and inequitable tax
burden on many retirees residing in Hawaii and in other states;
and

WHEREAS, S. 434 and H.R. 1227 of the 101st Congress, 1st
Session, would prohibit each state from imposing an income tax on
the pension income of any person who is not a resident of that
state; now, therefore,

BE IT RESOLVED by the House of Representatives of the
Fifteenth Legislature of the State of Hawaii, Regular Session of
1990, the Senate concurring, that the Legislature urges the
Hawaii congressional delegation to support S. 434 and H.R. 1227
to prohibit states from imposing an income tax on the pension
income of nonresidents; and

BE IT FURTHER RESOLVED that certified copies of this
Concurrent Resolution be transmitted to each member of the Hawaii
congressional delegation.

OFFERED BY: 

HOUSE RESOLUTION

REQUESTING THE HAWAII CONGRESSIONAL DELEGATION TO SUPPORT
LEGISLATION PROHIBITING STATES FROM IMPOSING INCOME TAX ON
PENSION INCOME OF NONRESIDENTS.

WHEREAS, Hawaii continues to have one of the highest costs
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WHEREAS, the laws of these states have placed an unexpected
and oftentimes insurmountable financial burden on many of our
senior citizens who are living on fixed incomes; and

WHEREAS, these laws create an unfair and inequitable tax
burden on many retirees residing in Hawaii and in other states;
and

WHEREAS, S. 434 and H.R. 1227 of the 101st Congress, 1st
Session, would prohibit each state from imposing an income tax on
the pension income of any person who is not a resident of that
state; now, therefore,

BE IT RESOLVED by the House of Representatives of the
Fifteenth Legislature of the State of Hawaii, Regular Session of
1990, that this body urges the Hawaii congressional delegation to
support S. 434 and H.R. 1227 to prohibit states from imposing an
income tax on the pension income of nonresidents; and

BE IT FURTHER RESOLVED that certified copies of this
Resolution be transmitted to each member of the Hawaii
congressional delegation.

OFFERED BY: 

Peninsula Daily News

627

Serving Clallam and Jefferson counties — the North Olympic Peninsula

Sunday

January 27, 1991

Bite on retirees is taxing

By TODD COHEN

Peninsula Daily News

SEQUIM — The California tax man finally tracked down Ray Simpson last month.

Thirteen years after Simpson retired from the Golden State to his new home in Sequim, Simpson opened his mailbox and found a notice that said he owed California income taxes on his teaching pension.

It's called "source income tax" and California is one of 11 states that claim a share of the pensions former residents receive — no matter where they now live.

The state asserts that retirees owe taxes on the portion of their retirement income that stems from work done in that state. The California tax for a typical Washington retiree with a \$20,000 annual income is \$140, a state Department of Revenue report said. In addition, the state uses a retiree's total income to place the retiree in a higher tax bracket, the report said.

"I can't go to California and vote. I can't go to California and get a resident fishing license. I am a foreigner for all sense and purposes except for paying taxes," said Simpson, a 70-year-old retired teacher.

The tax notice "felt like a good kick in the gut," he said.

Simpson isn't alone. Marian Matsunaga, a retired California office administrator, has been paying the source tax ever since retiring to Sequim in 1987.

"It's a burden to me. I don't get anything from there anymore," she said. "I would rather support Washington."

Another couple doesn't earn enough to pay taxes, but still must file forms with the state. One California retiree living in Sequim didn't want his name used for fear it would help California track him down and tax his military pension.

Using a computer network, California is regarded as the most aggressive of the states in locating retirees and using collection agencies and court liens to collect. It has even obtained court orders forcing the tax be deducted from military pension checks.

"I pay taxes in Washington," the Sequim man said. "I'm not trying to

avoid paying taxes. I'm trying to avoid being done in."

Such fears of an extra tax burden and anger over what many regard as "taxation without representation" has spurred many retirees across the nation to band together and fight. A 45-state strong national organization called RESIST, or Retirees to Eliminate State Income Source Tax, is leading the charge.

In Washington, the top general is a 76-year-old Sequim retiree named Jim Dawes. He formed the state chapter two years ago after hearing about the tax and has built a 500-member organization, managed mostly out of a room in his Sequim house. The tax man has yet to find him, but Dawes expects he will and he isn't waiting.

Dawes goes to battle at 1:30 p.m. tomorrow when a State Senate Governmental Operations committee holds a hearing in Olympia on three bills aimed at blocking source income tax collection in Washington. State Sen. Paul Conner, D-Sequim, is a sponsor of one bill.

A House bill authored by State Rep. Evan Jones, D-Sequim, will be the subject of a later hearing in the House Revenue committee. The bill died in another committee last session.

But Dawes, a postal carrier in California who moved to Sequim in 1987, is hopeful the Legislature will act this year. And he's better

organized, with volunteers busy writing letters to key legislators.

States cannot bar other states from collecting source income taxes. Only Congress has that power and so far no action has been considered, although 78 congressmen have expressed support, including the Peninsula's Rep. Al Swift, D-Bellingham.

However, states can pass laws barring other states from seizing resident's private property, like cars and houses, to satisfy the tax debt. The four bills in the Washington Legislature would do that, and are based on similar laws passed in 1989 and 1990 in Nevada and Florida.

The only other barrier is a state income tax, which allow residents to credit out-of-state taxes. Washington has no income tax and none is proposed.

Jones said several concerns helped kill his bill last year. One committee chairman was concerned about backlash in California, which helps Washington collect business and occupation taxes from California companies that do business in Washington. Other legislators felt it was a federal issue that Congress should solve, he said.

But with four bills now aimed at the problem, Jones said he was encouraged that the Legislature will act. Gov. Booth Gardner also has been quoted as supporting such a bill.

HB

367

HOUSE COMMITTEE REPORT

5-5-92
Judiciary
Finance

(7)
 Date Referred: 1/13/92

FURTHER REFERRALS:

Date of Committee Action: 5/5/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 367

HOUSE BILL NO. 367

USE OR INGESTION OF CONTROLLED SUBST.

"An Act relating to the use or ingestion of controlled substances."

RECOMMENDATIONS:

be replaced with C.S. HB 367 (HES) the same title

have attached amendments(s) a new title

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

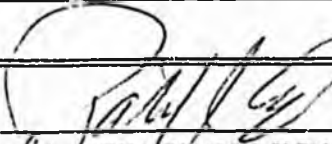
fiscal impact _____

fiscal note(s) _____

zero fiscal note corrected

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Cheri Davis</i>	✓	<i>Betty Davis</i>		X	
<i>J. C. Souyals</i>	✓				
<i>Mary Miller</i>	✓	<i>Ruth [unclear] CARNEY</i> <i>Lincoln</i>		✓	
				✓	



 CHAIRMAN'S SIGNATURE CARNEY

XU

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. H.B. 367

Revision Date: 02/21/92 Department Affected: Corrections
 Title: "An Act relating to the use or ingestion of controlled substances." BRU: Statewide Operations
 Component: Various
 Sponsor: Rep. Zawacki
 Requestor: House HESS COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	262.8	262.8	262.8	262.8	262.8	262.8
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	262.8	262.8	262.8	262.8	262.8	262.8

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE						
FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	262.8	262.8	262.8	262.8	262.8	262.8
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	262.8	262.8	262.8	262.8	262.8	262.8

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

This revised fiscal analysis corrects an erroneous assumption made in the fiscal note dated 2/5/92, that the bill would restore past practice.

Prepared By: Diane Schenker, Legislative Liaison Phone: 465-3376
 Division: Commissioner's Office Date: 02/20/92
 Approved by Commissioner: Lloyd James, Commissioner
 Agency: Department of Corrections Date: 02/20/92

CONTINUATION OF FISCAL ANALYSIS (REVISED 2/21/92)

This bill would reverse the recent Thronsen decision which held that a person cannot be prosecuted for "possession by consumption." In Thronsen, the police had a search warrant for a house which authorized them to look for drugs/paraphernalia. The defendant was present and appeared to have ingested drugs, so his blood and urine were tested and confirmed the presence of cocaine. He was charged with possession of paraphernalia as well as possession of cocaine in his blood system. The jury found him not guilty on the syringe charge and the possession by consumption charge was overturned by the courts. The circumstances of this case suggest that charges of "possession by consumption" will strengthen the State's ability to win convictions in drug cases. If this increases the number of felony drug offenders by ten percent, approximately 16 offenders per year will be incarcerated for an average of 12 additional months. If the Department contracted for additional community residential center beds to accomodate this increase, the cost would be 16 offenders X 365 days X \$45.00 = \$262,800.00.

This estimate is based on costs for contract community beds since it cannot be accurately predicted when the increases in incarceration days will actually result in adding new prison beds to the current correctional system, based on this bill alone. Therefor, using the daily cost of a prison bed for each additional bed-day would not accurately reflect budget increases, since the cost of each existing bed is already reflected in the Department's budget. However, any increase in the number or lengths of prison or probation sentences will accelerate the need for additional prison construction, additional correctional staff and additional probation officers. The probation population is currently growing at a rate of about 4% per year. The prison population is currently remaining fairly stable.

7-LS1617-D
Chenoweth
5/1/92

CS FOR HOUSE BILL NO. 367 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ZAWACKI, Taylor, Leman, Baker, Sharp, G.Phillips, C.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the possession of controlled substances."

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

3 * Section 1. PURPOSE. In its recent decision in State v. Thronsen, 809 P.2d 941, the Alaska Court
4 of Appeals ruled that a defendant could not be convicted of misconduct involving a controlled substance
5 in the fourth degree based on the presence in the defendant's blood of quantities of cocaine that the
6 defendant had ingested. The appellate court affirmed the trial court's dismissal of the indictment
7 alleging that the defendant had possessed cocaine in the defendant's body. The purpose of this Act is
8 to set aside the ruling of that decision and its effect so that a person may be convicted on the basis of
9 use or ingestion of a controlled substance on the same basis as the person's possession of the substance.

10 * Sec. 2. AS 11.71.900 is amended by adding a new paragraph to read:

11 (30) "possess" means exercising dominion or control over or having physical
12 possession of a controlled substance, and includes injecting, inhaling, swallowing, or otherwise
13 introducing the substance into the person's body or bloodstream.

Alaska State Legislature

3111 "C" STREET, SUITE 425
ANCHORAGE, ALASKA 99503
(907) 561-2037

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-2719/2693



MEMBER
RESOURCES COMMITTEE
LABOR AND COMMERCE
COMMITTEE
OIL AND GAS COMMITTEE
FINANCE SUB COMMITTEE
NATURAL RESOURCES

Representative Jim Zawacki

M E M O R A N D U M

TO: ALL LEGISLATORS
FROM: Representative Jim Zawacki
DATE: January 27, 1992
RE: HB367

Attached is a copy of HB367 for your consideration and review. I introduced this legislation to eliminate a loophole that currently exists in AS 11.71.040 (a)(3)(A).

Under current law, a person who has recently or immediately ingested a controlled substance cannot be charged with possession of a controlled substance.

Also attached is page 17 of the Legislative Affairs Agency's report to the Legislature "Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes."

The report recommends "legislative review" and describes the current statute as "illogical."

I firmly believe that this loophole should be corrected in order to aid our law enforcement agencies and personnel and to correct an unfortunate error contained in AS 11.71.040.

Please contact Portia in my office (2724) if you would like to Co-Sponsor HB367 or if you have any questions or would like additional information.

Thank you very much and I look forward to hearing from you.

Sponsor Statement

BILL NO: HB 367

DATE: February 3, 1992

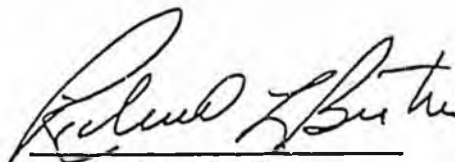
TITLE: An Act relating to the
use or ingestion of
controlled substances.

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

POSITION PAPER - Department of Public Safety

HB 367 would amend the existing controlled substance laws to make it clear that a person who has ingested a controlled substance is guilty of misconduct involving a controlled substance. This would have the effect of setting aside the Alaska Court of Appeals decision in State v. Thronsen, 809 p. 2d 941 (Ak. App. 1991). In that case the court ruled that a person who injected cocaine into himself at a "crack house" in Fairbanks could not be found guilty of "possession" of that cocaine.

The Legislative Affairs Agency, after reviewing the Thronsen case, recommended that the Legislature consider addressing this anomaly. At page 17 of its report the agency states: "It seems illogical to punish a person possessing a drug for personal use before it is used, but not to punish that person when he or she has just used it." The Department of Public Safety agrees with that statement, and supports HB 367.



Richard L. Burton
Commissioner

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

WALTER J. HICKEL, GOVERNOR

REPLY TO:

P.O. BOX T
JUNEAU, ALASKA 99811-2000
PHONE (907) 465-3376

February 4, 1992

The Honorable Jim Zawacki
Alaska State House of Representatives
P.O. Box V
Juneau, Alaska 99811

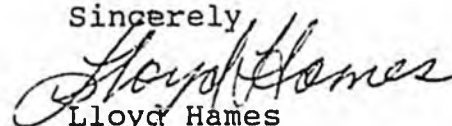
Dear Representative Zawacki,

I have reviewed House Bill 367, which you introduced to eliminate a loophole in our statutes dealing with possession of controlled substances. I am responding to your letter dated January 24, 1992 requesting the Department's position on this bill.

The Department of Corrections fully supports this proposed legislation. The availability of urinalysis and other chemical testing to detect illegal drug use has been of immeasurable help to our Department in our efforts to detect and curtail drug use in institutions, as well as by probationers/parolees. It seems unreasonable to prevent law enforcement agencies from using such technology to detect illegal drug use. I concur that recent use or ingestion of a controlled substance should be treated the same as possession without intent to deliver.

Thank you for the opportunity to express the Department's position in support of your bill.

Sincerely,



Lloyd Hames
Commissioner

STATE OF ALASKA
DEPARTMENT OF LAW

MEMORANDUM

TO: Charlie Cole
Attorney General

DATE: February 24, 1992

THRU:

PHONE: 452-1565

FROM: Harry L. Davis
District Attorney
Fairbanks DAO

RE: House Bill #67

House Bill 367 misses the mark in correcting the Thronsen decision. Under present law it is unlawful to knowingly use or ingest a controlled substance since one must possess it in order to use or ingest it. The problem with Thronsen is that it legalizes the possession of controlled substances in one's body. The practical problem of this is that we cannot prove when and where a person knowingly ingested the controlled substance. An example of this would be where a defendant ingests PCP in Seattle, gets on a plane and is arrested in Anchorage a few hours later. Even though the defendant would still have the controlled substance in his body and still be under its influence there would be no crime in Alaska since the ingestion and use occurred outside the jurisdiction of Alaska.

The way to correct this loophole is to amend A.S. 11.71.900 by adding a definition of possess to read as follows:

"possess means having physical possession or the exercise of dominion or control over a drug or having a drug in one's body, urine or blood."

The Supreme Court might declare the statute unconstitutional under Ravin but that is a risk we run every time we pass drug legislation.

HLD/rlr

XU

ANCHORAGE DISTRICT ATTORNEY'S OFFICE
Alaska Department of Law/Criminal Division

Memorandum

TO: The Hon. Charles E. Cole
Attorney General

FROM: Edward E. McNally
Anchorage District Attorney *EM*

DATE: February 28, 1992

RE: Comments for Representative Zawacki on House Bill No. 367

You have asked that the Anchorage District Attorney's Office provide comments concerning House Bill No. 367, a commendable piece of legislation recently submitted by Representative Zawacki.

As is stated on the face of the Bill, the proposals in HB 367 are based on a very sound premise: the need to close a loophole in Alaska's drug possession laws that has resulted from the Alaska Court of Appeals decision in State v. Thronsen, 809 P.2d 941 (Alaska App. 1991). Representative Zawacki is entirely correct that this is a matter that needs to be addressed during this legislative session.

However, as you will recall, when you assembled a team of the State's leading prosecutors last fall in order to prepare the Governor's Crime Bill, you asked that the Department of Law draft language to address this very same loophole. As with HB 367, Section 6 of the Governor's Crime Bill (HB 554) would also have the effect of reversing the Thronsen decision, which held, in essence, that a person cannot be prosecuted for "possession by consumption." As the Legislative Affairs Committee noted in its recent report to the Legislature in Juneau, "It seems illogical to punish a person possessing a drug for personal use before it is used, but not to punish that person when he or she has just used it." Legislative Affairs Agency Report to the 17th State Legislature (October 1991) at p. 17.

In essence, then, Section 6 of the Governor's Crime Bill defines "possession" for drug offenses so that persons who have ingested drugs are subject to prosecution to the same extent as those who are found with drugs in the pockets of their clothing or at their house.

D.O.L. Correspondence

The Hon. Charles E. Cole
Attorney General
February 28, 1992
Page 2

I have reviewed the language in Representative Zawacki's proposed change, and discussed this question with Dean Guaneli. We share the view that as a practical matter, the language drafted at your direction for the Governor's Crime Bill would be somewhat more effective and useful to Alaska's prosecutors in closing the loophole created by the Thronsen decision.

ACTION: It would be our recommendation that you authorize Assistant Attorney General Margo Knuth of the Criminal Division Central Office to work in cooperation with Representative Zawacki's staff in an effort to reach a mutually supported position. Although it is our view that the language in HB 554 would be more effective than that in HB 367, it is clear that we are trying to achieve the same objective.

Thank you for this opportunity to comment, and for your continuing support for improved legislation to fight crime.

cc: Harry Davis
Fairbanks District Attorney

Dean Guaneli
Assistant Attorney General

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX XC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

March 9, 1992

Rep. Jim Zawacki
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 367

Dear Representative Zawacki:

This letter is to confirm the Department of Law's support for HB 367, "An Act relating to the use or ingestion of controlled substances." We are pleased with the concept of this legislation, which will have the effect of overruling the recent court of appeals opinion in State v. Thornsen, 809 P.2d 941 (Alaska App. 1991) (holding that a defendant who has ingested cocaine is not "in possession of" the drug under current law).


As we have noted in conversation with your staff, the same issue is addressed in one of the provisions of the Governor's crime bill, but in a much more direct, and in our opinion effective, manner. HB 367 amends three of the state's drug crimes to add "using or ingesting" any amount of a particular drug as one of the ways that the offense can be committed. The Governor's bill, HB 554/SB 444, instead simply amends the definition of "possession" for purposes of the drug laws to include "injecting, inhaling, swallowing, or otherwise introducing the substance into the person's body or bloodstream."

We prefer the language used in the Governor's bill and would be happy to assist your office in preparing a committee substitute for HB 367, using this language.

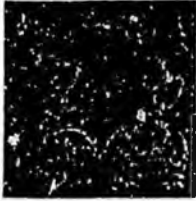
Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:


Dean J. Guaneli
Assistant Attorney General

DJG:jf
cc: Lori Nottingham
Office of the Governor



U

ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

February 6, 1992

Representative Jim Zawacki
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99835

Dear Representative Zawacki:

At a recent meeting of the Alaska State Medical Association Legislative Affairs Committee, we reviewed your House Bill 367, an act relating to use of controlled substances. After review of the bill, we have given it our strong endorsement. This bill will close a rather large loophole in the present law and should make prosecution of drug abuse easier.

If I can be of any assistance to you in passing this bill, do not hesitate to call me.

Sincerely yours,

Donald R. Lehmann, M.D., A.B.F.P.
Chairman, Legislative Affairs Committee

DRL:bj

cc: Rick Urion

Misc. Support



Municipality of Anchorage

Tom Fink, Mayor



Girdwood Board of Supervisors

P.O. Box 345 • Girdwood, Alaska 99587

February 11, 1992

Representative Jim Zawacki
P.O. Box V
Juneau, AK 99811

Dear Representative Zawacki:

The Girdwood Board of Supervisors unanimously supports the passage of HB 367, an act relating to the use or ingestion of controlled substances. We join you in expressing a desire to see this legislation passed in the coming season.

Sincerely,

Mike Grandinetti
Chairman
Girdwood Board of Supervisors

MG/blp