ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7074 HOUSE LABOR & COMMERCE

CORRECTION

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02-576(2/77)

SUBJECT LINE TO READ: T/C NO.;F/L NO. OR TS;SHORT SUBJECT;DATE

JNU MOD: LIOCJAM

T/C NO: 92-04-007
DATE: APRIL 7, 1992
SPONSOR: HOUSE LABOR AND COMMERCE COMMITTEE
SUBJECT: HB 568, HB 538, HB 457, HB 317, HB 294
MODERATOR: MELBA
SITE: FAIRBANKS

PARTICIPANT LIST

****

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. CHUCK GRAY			HB 317
2. BUD HELMERICKS			HB 317
3. DAVE MORRIS			HB 317
4. BOB ELLIOTT			HB 317
5.			

CHARLES GRAY
111 Slater Street
FAIRBANKS, ALASKA 99701

January 13, 1992

The Honorable David Finkelstein
Chairman, Labor and Commerce Committee
Capitol Building
Juneau, AK 99801-1182

Dear Mr. Finkelstein:

This letter is to ask you to give serious consideration to scheduling an early public hearing on HB-317, a Bill to delete the requirement for liability insurance for registered guides doing their own flying.

This requirement is extremely onerous for those of us who only conduct one or two high-quality guided hunts each fall. The cost, about $2500, which mostly goes to London, makes it unprofitable for low-volume guides to operate.

If given the opportunity to testify at a teleconference, several of us can give your committee more reasons the requirement should be dropped.

Sincerely,

Charles Gray

CG:cga

June 10, 1991

Rep. Bert Sharp
119 N. Cushman
Fairbanks, ak. 99701

BOX 81572, 99706

Dear mr. Sharp,

I'm writing to thank you for your introduction of HB 317, hopefully relieving the guiding profession of the mandatory aircraft insurance being forced upon us.

I'm a young registered guide attempting to break into the industry and this has proven to be a tremendous financial burden.

While the larger guiding operations may be able to absorb this punishment over the course of several months of high volume hunting, for the individual conducting a few high quali 1 on 1 type hunts it represents a substantia portion of potential income.

Instead of these funds being syphoned off by insurance companies, they could be applied to maintaining aircraft and upgrading the many essentials that go into a successful guided hunt.

Respectfully, David E. Morin

THE HELMERICKS
Walker Lake - Colville Village
Via 930-9th Avenue
Fairbanks, Alaska 99701-9998
(907) 452-5417

June 7, 1991

Rep. Bert Sharp
119 North Cushman
Fairbanks, Alaska 99701

Dear Bert,

Martha and I have been up at our Arctic Coast home and we are back in Fairbanks for a few days to do up business, have our float airplane annualed and enjoy the days.

It is real good news to see that you have introduced H.B-317 to repeal the mandatory aircraft insurance on the small aircraft owner who also immediately use our airplanes in guiding. It is most unfair especially to the rural, who have no way to travel except with our aircraft.

They simply get carried away in Juneau with the big operators lobbying, other pressure-interests. And they forget they are dealing with people. Some of us small people far away from the political action, in reality invest by taxation.

In our case we may only use our family airplane in guiding perhaps 10 hours a year so far and yet we are expected to carry the same insurance as an Air Taxi operator. Then no one want to write insurance for use for our rural people.

If anyone thinks this insurance is a safety measure it isn't — it is far safer to put the money into aircraft maintenance than into insurance. And you can spend it both ways.

You may fly in the furtherance of any mission without special insurance such as a minister, lawyer, doctor, dentist, carpenter, surveyor etc. so why single out the small guide for special insurance?

I have been a guide and pilot flown for over 45 years, and it has been real hard to at times make ends meet. This added burden of insurance on our family airplane is way out of line with reality. If the State came up with an insurance program for everyone who flies like it has for autos drivers and insurance companies who will write the insurance as they do for autos then I will be happy to go along. As things are now they are unrealistic, unfair and discriminatory.

I will help in anyway I can to help repeal this unjust legislation. Thanks for your concern. We send you our best wishes and kindest regards.

Sincerely yours,
Bud & Martha

HB
329

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 329

Revision Date: April 3, 1992
Title: Net Income of Foreign Corporations

Sponsor: Rules by request of the Governor
Requestor:

Department Affected: Department of Revenue
BRU: Revenue Operations
Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	131.4	131.4	131.4	131.4	65.7	65.7
TRAVEL	40.0	40.0	40.0	40.0	20.0	20.0
CONTRACTUAL	10.0	10.0	10.0	10.0	6.5	6.5
SUPPLIES	2.0	2.0	2.0	2.0	1.0	1.0
EQUIPMENT	11.0	0.0	0.0	0.0	0.0	0.0
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	194.4	194.4	194.4	194.4	93.2	93.2
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE	2.0M	2.0M	2.0M	2.0M	2.0M	2.0M

FUNDING: (Thousands of Dollars)

GENERAL FUND	194.4	194.4	194.4	194.4	93.2	93.2
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	194.4	194.4	194.4	194.4	93.2	93.2

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: $0.0

ANALYSIS:

SEE ATTACHED

Prepared By: Carl Meyer
Division: Income and Excise Audit
Phone: (907) 465-2320
Date: April 3, 1992

Approved by Commissioner: Darrel J. Rexwinkel
Agency: Department of Revenue
Date: 4/6/92

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

rev 10/91

Personal Services		$131.4
Revenue Auditor IV Anchorage, Range 20A FY93 - FY96 only	$65.7	
Revenue Auditor IV Anchorage, Range 20A	$65.7	
Travel		40.0
Contractual		10.0
Supplies		2.0
Equipment		11.0
Total Request		$194.4

Provides travel funding of $20.0 per auditor each year. In FY97 travel funding will reduce to $20.0 annually.

Provides funding for professional services, printing, communications, advertising, and a data base report.

Provides funding for office and data processing supplies.

Provides first year funding for printers, computers, and modular office.

Alaska law generally provides for the incorporation of certain provisions of the Internal Revenue Code ("IRC") into the Alaska Net Income Tax Act. IRC Secs. 883 and 894 (26 U.S.C.) are included within those general sections incorporated into Alaska law. This bill would affirmatively modify Alaska law to remove any doubt concerning their incorporation and would expressly remove these provisions from incorporation into the Alaska Net Income Tax Act.

Sec. 883 generally provides an exclusion from gross income attributed to certain ships and aircraft operated by foreign corporations. Sec. 894 correspondingly exempts income covered by United States treaties. These federal provisions generally reflect United States tax policies that do not necessarily reflect the policies of the various states. The bill makes it clear that the special federal tax breaks are not necessary and do not reflect Alaska state tax policy. The impact of the legislation will be to treat foreign corporations consistent with the treatment of domestic corporations.

Unlike other items that are shown as subtractions from income, the income in question is not reported as income on either the United States or Alaska income tax returns. Some financial information may be available with the federal return if the foreign corporation has a domestic parent. Therefore, an estimate of the revenue impact is at best difficult to impossible. Nevertheless, based on 30 to 40 potential taxpayers being affected and an average additional tax of $50,000 per taxpayer we estimate the revenue impact at approximately $2,000,000.

This fiscal note reflects the requirement for two auditor positions. The Department intends to immediately enforce compliance should the legislation become law. This will require field audit action that is not feasible with current resources. While the department believes this legislation is merely a clarification to existing law, the focus of the bill has not been a priority and audit resources have been more efficiently and effectively utilized in other areas.

One of the requested auditor positions will terminate in four years. This reflects the fact that we anticipate a higher level of compliance after a period of about four years of audit activity. We would anticipate that a foreign taxpayer that maintains its books and records outside the United States will resist and challenge the authority of the state to summons those records.

In conjunction with this legislation, AS 43.20.030 should be amended to require tax returns from foreign corporations that are not required to file federal income tax returns.

FISCAL NOTE No. 1
Bill Version: HB 329
(H) Publish Date: 5/14/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date:
Title: Determination of Net Income Subject to State Income Tax for a Foreign Corp.
Sponsor:
Requestor:

Department Affected: Department of Revenue
BRU: Revenue Operations
Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0
FEDERAL FUNDS						
OTHER						
TOTAL	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: Attach a separate page for analysis.

SEE ATTACHED

Prepared By: Larry E. Meyers
Division: Income and Excise Audit Division
Phone: (907) 465-2320
Date: May 13, 1991

Approved by Commissioner: Lee E. Fisher
Agency: Department of Revenue
Date: May 13, 1991

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

Rev 10/90

COMMITTEE COPY

May 13, 1991

HB __ AN ACT RELATING TO THE DETERMINATION OF NET INCOME
SUBJECT TO STATE INCOME TAX FOR A FOREIGN CORPORATION
AND PROVIDING FOR AN EFFECTIVE DATE
FISCAL NOTE ANALYSIS
DEPARTMENT OF REVENUE

Alaska law generally provides for the incorporation of certain provisions of the Internal Revenue Code ("IRC") into the Alaska Net Income Tax Act. IRC Secs. 883 and 894 (26 U.S.C.) are included within those general sections incorporated into Alaska law. This bill would affirmatively modify Alaska law to remove any doubt concerning their incorporation and would expressly remove these provisions from incorporation into the Alaska Net Income Tax Act.

Sec. 883 generally provides an exclusion from gross income attributed to certain ships and aircraft operated by foreign corporations. Sec. 894 correspondingly exempts income covered by United States treaties. These federal provisions generally reflect United States tax policies that do not necessarily reflect the policies of the various states. The bill makes it clear that the special federal tax breaks are not necessary and do not reflect Alaska state tax policy. The impact of the legislation will be to treat foreign corporations consistent with the treatment of domestic corporations.

Unlike other items that are shown as subtractions from income, the income in question is not reported as income on either the United States or Alaska income tax returns. Therefore, an estimate of the revenue impact is difficult. Nevertheless, we estimate the revenue impact at $2,000,000. We envision the impact will fall upon the foreign shipping corporations. The revenue impact upon aircraft operated by foreign corporations is estimated to be insignificant and is therefore not included in the estimate.

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 329

Revision Date: _____

Department Affected: Commerce & Econ. Dev.

Title: Net Income of Foreign Corporations

BRU: Banking, Securities & Corporations

Component: _____

Sponsor: House Rules Committee

Requestor: House Labor & Commerce

COMPONENT SERIAL NO. 1 2 3 3

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
REVENUE FUND RESOURCE:	0	0	0	0	0	0

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: 0

ANALYSIS (Attach a separate page if necessary.)

Our division does not collect corporate income tax.

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521

Division: Banking, Securities & Corporations Date: 3/27/92

Approved by Commissioner: Glenn A. Olds

Agency: Department of Commerce & Economic Development Date: 3.27.92

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

KP/dg11763D-1/032792a

(Rev. 12/91)

HB 329

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 14, 1991

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

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the application of Alaska's net income tax laws to foreign corporations. AS 43.20.021(a) provides for the incorporation into Alaska law of sections 26 U.S.C. 1-1399 of the Internal Revenue Code (IRC) as amended. These provisions when incorporated have full force and effect unless excepted to or modified by other provisions. IRC Sections 883 and 894 (26 U.S.C. 883 and 894) exclude or exempt from taxation the income of certain foreign corporations conducting shipping and airline operations.

The Department of Revenue takes the position that these two provisions are part of the federal "sourcing" rules and, as such, are not incorporated into Alaska law. Alaska's approach to the determination of taxable income is, by statute, completely different from the federal approach. As a result, sourcing rules, including the two provisions, arguably have been "excepted to" and are not a part of Alaska law. The position of the Department of Revenue has been challenged and the eventual result is far from certain. This legislation would provide that certainty.

Pursuant to federal tax law, a United States corporation is taxed on all of its income, wherever earned. A foreign tax credit is available against the U.S. tax for the taxes paid foreign countries on the income earned in the foreign countries. Similarly, a foreign corporation is taxed on income earned, or "sourced," in the U.S.

IRC Sec. 883 provides an exclusion from gross income, and an exemption from tax, for gross income derived by a foreign corporation from the operation of ships or aircraft in the United

States, if the foreign country grants an equivalent exemption to corporations organized in the United States. IRC Sec 894 provides an exclusion from gross income, and an exemption from tax, for income of any kind to the extent required by any treaty obligation of the United States. IRC Sec. 883 and 894 are thus sourcing provisions for federal tax purposes. Within that context, the provisions provide an exclusion from gross income for certain types of income that otherwise would be "sourced" to the United States under the code.

The focus at the state level is different than that at the federal level. A state can only tax based on activities within its jurisdiction; it cannot tax a multistate or multinational corporation on 100% of its income, and then give credits for taxes paid outside the jurisdiction. Correspondingly, the foreign sourcing provisions are not relevant, since a state cannot tax income earned outside the state.

Alaska looks to the total income of a unitary business and for non-oil and gas corporations applies the standard three factor formula to that income. The unitary business includes domestic and foreign corporations. Under CSHB 12, if that bill passes, the unitary business would be extended only to the water's edge.

The Internal Revenue Code provisions further federal policies, not necessarily state policies. Identical treatment of foreign income at the federal and state levels is not mandated. Mobil Oil Corporation v. Commissioner of Taxes of Vt., 445 U.S. 425 (1980). Therefore, absent some compelling state policy that would be fostered by such an exemption, there is no reason to exempt income simply because it is derived by a foreign corporation conducting business in the state. This legislation will make it clear that cruise ships and airlines, both domestic and foreign, must pay a fair and equal share of state taxes. I urge your support of this legislation.

Sincerely,

Walter J. Hickel
Governor

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
REVENUE	Income & Excise Audit	HB 329	Rules

SHORT TITLE OF BILL
Net Income of Foreign Corporations

DEPARTMENT POSITION
Support

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Carl Meyer	4/3/92		4/6/92

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
Department of Commerce	Certain Foreign Corporations
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
None	Various Shipping and Airline Companies

FISCAL IMPACT: / / NONE /X/ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This legislation was originally attached to HB12 (Water's Edge Legislation) in committee. The Administration agreed to introduce separate legislation on the issue in order to move HB12 and remove opposition. HB329 was thereafter introduced. The intent of this legislation is to tax cruise ship income and other shipping and airline income that is excluded from federal income.

ANALYSIS OF BILL/PROGRAM EFFECTS

SEE ATTACHED

AMENDMENTS PROPOSED

A corresponding amendment to AS 43.20.030 is necessary to require the filing of Alaska tax returns from corporations that are not required to file federal tax returns.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

Alaska law provides in AS 43.20.021(a) for the incorporation of sections 1-1399 of the Internal Revenue Code as amended. These provisions have full force and effect unless "excepted to or modified" by other provisions of Alaska law. The federal provisions must be applied at the state level unless "the Alaska statutes, taken in context, would preclude application of certain provisions of the Internal Revenue Code". Order Denying Reconsideration of Revenue Hearing Decision 91-002.

HB 329 provides that the provisions of the Internal Revenue Code at Sections 883 and 894 do not apply for state purposes. Those provisions provide:

> Sec. 883. Exclusions From Gross Income. (a) Income Of Foreign Corporations From Ships And Aircraft. The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:
> (1) Ships Operated By Certain Foreign Corporations. Gross income derived by a corporation organized in a foreign country from the operation of a ship or ships if such foreign country grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.
>
> (2) Aircraft Operated By Certain Foreign Corporations. Gross income derived by a corporation organized in a foreign country from the operation of aircraft if such foreign country grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.
> * * *
>
> Sec. 894. Income Affected By Treaty. (a) Income Exempt Under Treaty. Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.
> * * *

Both Sec. 883 and 894 fall within the incorporation provision. The question then becomes whether, absent HB 329, the Alaska statutes preclude their application. The Division contends these provisions are not incorporated into Alaska law because they are federal sourcing rules for determining federal taxable income and Alaska has its own specific statutory sourcing rules for determining Alaska taxable income. The Department has not ruled on that issue but the question is pending a decision from a formal hearing conducted in January.

Secs. 883 and 894 are within the federal subchapter of the Internal Revenue Code that deals with tax based on income from sources within or without the United States. These sourcing provisions are necessary under federal law since foreign corporations are not otherwise subject to United States tax. Unlike domestic corporations that are subject to tax on all of its income a foreign corporation is taxed on income earned or geographically sourced within the United States.

The focus at the state level is different. The federal sourcing rules are not relevant. A state can only tax based on activities within its jurisdiction and cannot tax income earned outside the state. AS 43.20.065 sets forth the state sourcing rules that provide for an allocation and apportionment of income. Rather than geographically sourcing income as is done at the federal level, Alaska sources income based on the extent of activities within the state. The difference between the federal sourcing rules and the state sourcing rules is the difference between night and day.

Further, with respect to the treaty provision, United States treaties do not apply to the states unless the treaty specifically so provides. A state is bound by any treaty that specifically provides for application at the state level. Current treaties have no specific application to the states. Therefore, a state is free to apply its tax without regard to the treaty.

If the federal provisions did apply to Alaska, the result would be tax avoidance. That is because while the income would be excluded, the apportionment factors would not be excluded. The federal provisions do not address that situation because apportionment is not used at the federal level. This illustrates the need for a consistent and commonsense result in applying the federal provisions into Alaska law.

The Internal Revenue Code provisions further federal policies and not necessarily state policies. Identical treatment of foreign income at the federal and state levels is not mandated. Mobil Oil Corporation v. Commissioner of Taxes of Vermont, 445 U.S. 425 (1980). The question is whether state policy is furthered. The Alaska Supreme Court in Gulf Oil Corporation v. State, Department of Revenue, 752 P.2d 983 (Alaska 1988) recognized the validity of looking to state policy implications in determining whether the legislature intended to incorporate federal law. It is clear from a state policy standpoint that IRC Secs. 883 and 894 do not further sound state policies.

For these reasons, the Division has taken the position that these provisions are not incorporated into Alaska law. The legislation would make that position clear. The legislation does have significant opposition.

STATE OF ALASKA
DEPARTMENT OF REVENUE
INCOME AND EXCISE AUDIT DIVISION

WALTER J. HICKEL, GOVERNOR

550 WEST 7TH AVENUE
ANCHORAGE, ALASKA 99501

January 28, 1992

The Honorable Tom H. Moyer
Alaska House of Representatives
Chairman, International Trade
and Tourism Committee
Room 13, Capitol
P. O. Box V
Juneau, AK 99811

Attention: Alexis Miller
Legislative Aide

Dear Representative Moyer:

In response to your request for information regarding tax revenues generated by the cruise ship industry operating in the State of Alaska, I can provide you with the following background.

There is currently before the Legislature House Bill No. 329 relating to the determination of net income subject to state income tax for a foreign corporation. The Income and Excise Audit Division prepared a fiscal note, a copy of which is attached. Currently those cruise ships registered in a foreign country and visiting Alaska are not paying any Federal or Alaska corporate income tax.

You have asked the question as to the amount of corporate income tax paid by those corporations which although headquartered outside of Alaska operate in-state subsidiaries. Your letter specifically refers to one corporation as an example. We are precluded by statute from releasing confidential taxpayer information. Additionally, we have not in the past identified the information you are requesting, and if it was available, it would more than likely involve considerable effort to search our files to gather the data. The information you are requesting may encompass a small number of taxpayers and would be tantamount to identifying particular taxpayers, and therefore would be viewed as confidential.

If our Division can be of any further help please contact us.

Very truly yours,

Larry E. Meyers
Director

Attachment

92-023

Draft

November 21, 1991

Mr. Larry Meyers
Director
Income and Excise Audit Division
Alaska Department of Revenue
550 W. 7th, Suite 320-A
Anchorage, AK 99501

Dear Mr. Meyers:

With cooperation from the administration, this Committee has been studying options for raising additional revenues to support the state's tourism promotion effort. During a hearing last week, the Committee decided to seek additional information about tax revenues generated by the cruiseship industry operating in Alaska.

With this letter, I would like to request the following information at your earliest convenience:

* W[redacted] income tax, if any, paid by cruiseship comp[redacted] The companies that come immediately to mind include Princess, Holland America Westours, Cunard Line, Royal Caribbean, Royal Viking and World Explorer Cruises, but please do not limit the inquiry to only those if you know of others.

* Many of those companies, although headquartered outside Alaska, operate in-state subsidiaries, such as Westmark Hotels, which has hotels, gift shops and restaurants in Alaska. [redacted] of corporate income [redacted]?

Please direct this information to Committee Aide David Ramseur in Anchorage at 3111 C St., #525, Anchorage 99503, phone 562-5716. For additional information, feel free to contact either him, or me at my Fairbanks office at 456-8161. Thanks in advance for your assistance.

Sincerely,

Representative Tom Moyer
Chairman

MEMORANDUM

State of Alaska

DEPARTMENT OF REVENUE

TO: D. Max Hodel
Chief of Staff
Office of the Governor

DATE: May 15, 1991

WPPCOMM - 3530

TELEPHONE NO: 465-2300

THRU:

SUBJECT: HB 329 - TAXATION OF FOREIGN CARRIERS MARINE AND AIRCRAFT

FROM: Lee E. Fisher
Commissioner

I have reviewed the allegations that HB 329 would harm export of Alaskan resources. The concerns appear to be without merit, in fact are perhaps smoke and mirrors on behalf of the cruise ship industry.

Repeal of the application of IRC Sec. 883 and Sec. 894 would cause revenue from marine and air carriers to be taxed in Alaska. The issues involving Usibelli Coal, Red Dog and LNG (Phillips-Marathon) relate to costs of transportation presently being deducted from income by foreign carriers. This legislation has no relevance to costs -- only to revenue.

I have discussed my conclusions with CPA/attorney senior staff in our Income & Excise Audit Division of DOR and with the CFO of Usibelli Coal. I have a call in to the senior tax counsel of Phillips Petroleum. If their response is any different I will notify you immediately.

HB 329 should proceed with our full support. HB 12 passed the House last night, 34 to 5. It is being calendared in the Senate.

LEF:mll

cc: Bruce Kendall
Mitch Abood
Lori Nottingham
Malcolm Roberts
Representative Robin Taylor
Representative Ramona Barnes
Representative Kay Brown
Representative Tom Moyer

Statement of Mary A. Nordale
Robertson, Monagle & Eastaugh
240 Main Street, Suite 800
Juneau, Alaska

My name is Mary A. Nordale. I appear today to testify in behalf of Holland America Line-Westours, Inc., in opposition to House Bill 329.

HB 329 would authorize the inclusion of income earned by instrumentalities of foreign commerce--vessels, aircraft and railroads--in the computation of taxable income to which Alaska's corporate income tax would be applied. The bill would authorize the Department of Revenue to collect income taxes from the owners of all vessels and aircraft involved in the passenger and cargo trade with Alaska.

Federal law expressly exempts from taxation the income HB 329 seeks to include. 26 U.S.C. 883 provides that gross income derived by a corporation organized in a foreign country from the operation of ships, aircraft or railroads shall be excluded from the calculation of gross income and shall be exempt from taxation if the foreign country grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.

26 U.S.C. 894 provides that "[i]ncome of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this title."

Prior to enactment of Section 883 in 1954, the United States routinely entered into tax treaties to deal with the exemption of income earned by foreign vessels, aircraft and railroads. Passage of Section 883 relieved the State Department of the burden of treaty negotiation and allows the United States to review the laws of other countries to determine whether or not they contain reciprocal provisions.

The exact meaning of Section 883 has been tested in several cases, the most recent precedent being Japan Line, Ltd. v. County of Los Angeles, 441 U.S. 434, 60 L. Ed. 2d 336, 99 S. Ct. 1813 (1979). In that case the U. S. Supreme Court determined that application by the County of an ad valorum tax to containers owned and used exclusively by Japan Line would be unconstitutional. The Court held there that whether the exemption was claimed under the provisions of a treaty or under the provisions of Section 883, the United States, through the Commerce Clause, had exempted the "instrumentalities" of foreign commerce from taxation. The Court held that the containers were integral to the operation of the vessels and, therefore, could not be considered separately, even though they were capable of being off loaded from the vessels.

In Container Corporation of America v. Franchise Tax Board, 463 U.S. 159, 77 L.Ed 2d 545, 103 S. Ct. 2933 (1983), the U. S. Supreme Court upheld application of California's unitary tax using worldwide combined reporting, but this case must be distinguished from Japan Line because it did not involved income exempted from taxation by Section 883.

Alaska is heavily dependent upon trade carried on vessels registered in foreign countries. Tourism, fish, timber and pulp, coal and other mining come immediately to mind as the industries in Alaska most dependent on foreign vessels. We know what can happen when foreign air carriers discontinue use of the Anchorage and Fairbanks International Airports. Both the Anchorage and Fairbanks International Airports have been striving to replace the passenger air fleet with cargo fleets in order to sustain the level of traffic for which they were built. The economic viability of those airports was brought into serious question when foreign air carriers determined that they no longer needed to stop at Anchorage or Fairbanks to refuel.

We do not have comparable experience with the maritime trade and we urge this committee and the entire legislature to consider seriously the possibility that if foreign vessel owners determine that they would rather switch than fight, Alaska may find itself without adequate marine transport to carry its fish, timber and pulp, coal and ore to market. For some industries, the only market is Asia and without transportation, those markets will be lost. Once lost to Alaska's competition, the likelihood of winning them back is slim, at best.

Tourism may also suffer. The cruise lines, as an industry, as well as individually, have invested millions of dollars in the promotion of Alaska tours. The results are evident from the growth we have seen. Many people are under the mistaken impression that the cruise industry has no long-term positive economic benefit for Alaska. In order to dispel that impression, I am furnishing with this statement estimates made by Holland America Line-Westours for the year 1990 to illustrate the scope of the economic benefit tourism from cruise lines has brought to Alaska.

Holland America Line-Westours has shore-based investments as well as its cruise vessels. The company employed 2,343 people in Alaska in 1990. All of the permanent employees are Alaska residents and 89 percent of the part-time employees are Alaska residents.

The cruise lines, as an industry, pay approximately 85 percent of the private sector contribution to the state's cooperative marketing program. They pay a major portion of the port and dockage fees charged by the various communities they visit. Their passengers make a substantial contribution to the

communities through the payment of sales taxes on their purchases. Many communities impose bed taxes and those are paid largely by tourists.

Much of Alaska's economy is based on the movement of passengers and cargo on foreign vessels. Future development is contingent on the availability of vessels and aircraft. The decline in revenues from the oil industry only emphasizes the point that Alaska must continue to encourage and promote its foreign trade, not diminish it through the adoption of tax measures that are unconstitutional and that will discourage foreign vessels and aircraft from participation in Alaska's future.

We urge the committee to request a fiscal note from the Department of Law. The issue is of such importance that the constitutionality of the bill must be tested in the courts. The Department of Law should have funds with which to participate in the action.

Holland America Line
Westours Inc.

1990 ALASKA ECONOMIC IMPACT BY HOLLAND AMERICA WESTOURS AND ITS PASSENGERS

Alaska is the third most popular cruise destination after the Caribbean and the Mediterranean. The Alaska market is currently estimated to represent 7 percent of the entire North American cruise industry. Over the next decade, the Alaska cruise market is forecast to grow at 6 to 8 percent annually.

The number of cruise passengers carried to Alaska by Holland America Line, one of the largest operators in the Alaska market, has grown from 16,000 in 1983 to 101,000 for 1990, including Alaska cruise passengers and Alaska and Canadian Rookies cruisetour passengers.

Holland America Westours and its subsidiaries, Gray Line of Alaska and Westmark Hotels and Inns, employed a total of 2,343 people in 1990. All of the year-round employees are Alaska residents, as are 89 percent of the seasonal workers. The company also does business with 1,050 vendors around the state. In addition, Holland America Westours spends nearly $14 million annually in advertising to promote Alaska tourism and distributes nearly 2.5 million Alaska brochures to consumers and travel agencies across the United States and Canada.

Cruise- and cruisetour-related contributions to the Alaska economy by Holland America Line and Windstar Sail Cruises directly and their passengers indirectly in 1990 amounts to an estimated $89,453,514 statewide. The breakdown follows:

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$35,978,727
HAL-W direct spending (Includes taxes, rent, fuel, food/ beverage, utilities, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	37,363,459
Estimated crew spending	1,416,000
HAL-W statewide payroll	14,695,328
Total direct and indirect impact	$89,453,514
Total estimated statewide economic impact (using commonly accepted economic multipliers)	$242,275,476

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Holland America Line
Westours Inc.

1990 ANCHORAGE ECONOMIC IMPACT BY HOLLAND AMERICA WESTOURS AND ITS PASSENGERS

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$6,801,305
HAL-W direct spending -- 473 area vendors (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	17,066,573
HAL-W Anchorage payroll	4,632,183
Total direct and indirect impact	$28,500,061
Total estimated Anchorage economic impact (using commonly accepted economic multipliers)	$78,068,011

STATEWIDE ECONOMIC IMPACT

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$35,978,727
HAL-W direct spending (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	37,363,459
Estimated crew spending	1,416,000
HAL-W statewide payroll	14,695,328
Total direct and indirect impact	$89,453,514
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Holland America Line
Westours Inc.

1990 FAIRBANKS ECONOMIC IMPACT BY HOLLAND AMERICA WESTOURS AND ITS PASSENGERS

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$5,037,271
HAL-W direct spending -- 165 local vendors (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	4,245,106
HAL-W Fairbanks payroll	3,205,686
Total direct and indirect impact	$12,488,063
Total estimated Fairbanks economic impact (using commonly accepted economic multipliers)	$31,627,243

STATEWIDE ECONOMIC IMPACT

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$35,978,727
HAL-W direct spending (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	37,363,459
Estimated crew spending	1,416,000
HAL-W statewide payroll	14,695,328
Total direct and indirect impact	$89,453,514
Total estimated statewide economic impact (using commonly accepted economic multipliers)	$242,275,476

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Holland America Line
Westours Inc.

1990 JUNEAU ECONOMIC IMPACT BY HOLLAND AMERICA WESTOURS AND ITS PASSENGERS

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$6,409,783
HAL-W direct spending -- 127 local vendors (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	5,088,827
Estimated crew spending	377,600
HAL-W Juneau payroll	2,392,023
Total direct and indirect impact	$14,268,233
Total estimated Juneau economic impact (using commonly accepted economic multipliers)	$36,499,557

STATEWIDE ECONOMIC IMPACT

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$35,978,727
Estimated crew spending	1,416,000
HAL-W direct spending (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	37,363,459
HAL-W statewide payroll	14,695,328
Total direct and indirect impact	$89,453,514
Total estimated statewide economic impact (using commonly accepted economic multipliers)	$242,275,476

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Holland America Line
Westours Inc.

1990 KODIAK ECONOMIC IMPACT BY HOLLAND AMERICA WESTOURS AND ITS PASSENGERS

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$766,779
HAL-W direct spending -- 41 local vendors (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	492,282
HAL-W Kodiak payroll	739,798
Total direct and indirect impact	$1,998,859
Total estimated Kodiak economic impact (using commonly accepted economic multipliers)	$4,900,171

STATEWIDE ECONOMIC IMPACT

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$35,978,727
HAL-W direct spending (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	37,363,459
Estimated crew spending	1,416,000
HAL-W statewide payroll	14,695,328
Total direct and indirect impact	$89,453,514
Total estimated statewide economic impact (using commonly accepted economic multipliers)	$242,275,476

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Holland America Line
Westours Inc.

1990 KETCHIKAN ECONOMIC IMPACT BY HOLLAND AMERICA WESTOURS AND ITS PASSENGERS

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$3,587,039
HAL-W direct spending -- 76 area vendors (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	3,526,799
Estimated crew spending	377,600
HAL-W Ketchikan payroll	656,202
Total direct and indirect impact	$8,147,640
Total estimated Ketchikan economic impact (using commonly accepted economic multipliers)	$21,789,411

STATEWIDE ECONOMIC IMPACT

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$35,978,727
HAL-W direct spending (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	37,363,459
Estimated crew spending	1,416,000
HAL-W statewide payroll	14,695,328
Total direct and indirect impact	$89,453,514
Total estimated statewide economic impact (using commonly accepted economic multipliers)	$242,275,476

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Holland America Line
Westours Inc.

1990 SKAGWAY ECONOMIC IMPACT BY HOLLAND AMERICA WESTOURS AND ITS PASSENGERS

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$2,628,883
HAL-W direct spending -- 21 local vendors (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	1,761,694
Estimated crew spending	141,600
HAL-W Skagway payroll	1,003,156
Total direct and indirect impact	$5,535,333
Total estimated Skagway economic impact (using commonly accepted economic multipliers)	$14,376,092

STATEWIDE ECONOMIC IMPACT

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$35,978,727
HAL-W direct spending (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	37,363,459
Estimated crew spending	1,416,000
HAL-W statewide payroll	14,695,328
Total direct and indirect impact	$89,453,514
Total estimated statewide economic impact (using commonly accepted economic multipliers)	$242,275,476

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Holland America Line
Westours Inc.

1990 SITKA ECONOMIC IMPACT BY HOLLAND AMERICA WESTOURS AND ITS PASSENGERS

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$4,292,039
HAL-W direct spending -- 33 local vendors (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	2,711,053
Estimated crew spending	377,600
HAL-W Sitka payroll	846,201
Total direct and indirect impact	$8,226,893
Total estimated Sitka economic impact (using commonly accepted economic multipliers)	$21,579,640

STATEWIDE ECONOMIC IMPACT

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$35,978,727
HAL-W direct spending (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	37,363,459
Estimated crew spending	1,416,000
HAL-W statewide payroll	14,695,328
Total direct and indirect impact	$89,453,514
Total estimated statewide economic impact (using commonly accepted economic multipliers)	$242,275,476

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Holland America Line
Westours Inc.

1990 VALDEZ ECONOMIC IMPACT BY HOLLAND AMERICA WESTOURS AND ITS PASSENGERS

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$2,499,429
HAL-W direct spending -- 29 local vendors (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	1,611,208
Estimated crew spending	141,600
HAL-W Valdez payroll	923,421
Total direct and indirect impact	$5,175,658
Total estimated Valdez economic impact (using commonly accepted economic multipliers)	$13,401,632

STATEWIDE ECONOMIC IMPACT

Estimated passenger spending (Includes cruisetour, Gray Line of Alaska and Westmark Hotels)	$35,978,727
HAL-W direct spending (Includes taxes, rent, fuel, utilities, food/beverage, equipment, local advertising, contributions, capital projects/ maintenance, other tour operators, air transportation)	37,363,459
Estimated crew spending	1,416,000
HAL-W statewide payroll	14,695,328
Total direct and indirect impact	$89,453,514
Total estimated statewide economic impact (using commonly accepted economic multipliers)	$242,275,476

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Testimony of Kent Dawson on behalf of
Princess Tours, Inc.
before the
House Labor and Commerce Committee

April 9, 1992

Mr. Chairman and Members of the Committee:

My name is Kent Dawson. I am here today on behalf of Princess Tours, Inc., who wishes to comment on HB 329.

We would first like to note that HB 329 is a rather broad piece of taxation legislation.

How the bill would impact "foreign" corporations is not totally clear, but it would seem that all manner of Alaska export would be affected. This would include timber, minerals, the fisheries, and, in fact, anywhere in Alaska where foreign hulls are used to export Alaska products. There are likely numerous other applications of the tax as well.

It is our understanding, that should Alaska pass such legislation, we would be unique among the states in having such a taxation system in place.

In terms of the cruise industry, it should be noted that the Canadian Federal Government in Ottawa, had, for a time, considered similar legislation, but after careful review has opted not to proceed. An examination of that Canadian effort might be in order, prior to the State of Alaska enacting HB 329.

The question of taxation of the tourism industry, has been a topic of discussion now for some time.

Princess Tours wholeheartedly supports the efforts of the Alaska Visitors Association with their industry funded Destination Alaska program. It is the purpose and intention of Destination Alaska to provide to the Alaska Legislature next session a comprehensive report on Alaska tourism and what means of taxation might be most equitable.

The study had originally been designed as an eighteen month effort, but has now been shortened to one year to be complete prior to the 1993 legislative session.

If it is desirable to encourage additional tourism growth, we support first of all a thorough effort to determine whether tourism already provides the revenue to fund additional state tourism expenditures, and secondly, assurance that revenues from special

taxes on the visitor industry in turn be applied to the enhancement of the industry.

In 1990 the visitor industry serving both residents and non-residents, paid about $44 million in taxes and fees, including property taxes, airport fees, port fees, bed taxes, sales taxes, inventory taxes, and others. Over 2/3 or $30 million can be attributed to non-residents.

The Tax Committee of Destination Alaska has been addressing this issue in some detail. The committee's work will be presented to the steering committee of the Destination Alaska project and ultimately to the AVA board of directors.

We believe that any tax proposal must meet the test of reasonableness on several criteria, including: economic efficiency, equity, elasticity, administrative efficiency, political feasibility, interstate capture, intergovernmental effects and inflation effects. All proposals should be evaluated against these criteria.

We acknowledge that Alaska's revenue sources are quite different from the other 49 states and that the potential for additional tax revenue sources are limited. Alaskans rank 50th in terms of per capita state and local taxes paid, yet Alaska spends over four times the average of the 50 states, on public services and entitlement. Alaska collects over two and one-half times the national average in severance taxes and about the national average in selected sales taxes, license taxes, corporate income taxes and property taxes.

The Alaska taxing mechanisms which remain unused or considerably below national norms include general sales taxes, individual income taxes and estate and gift taxes. Clearly, these are the areas to look for new taxes.

The nature of visitor expenditures lends itself most efficiently toward a sales tax approach augmented by special fees. Personal income and estate taxes would only indirectly tax visitors.

In addition, the interstate aspect of non-resident travel brings into play Federal regulations. Specifically, head taxes and discriminatory taxes on interstate airlines and air transport are prohibited by Federal law.

Visitors enter Alaska via a variety of transportation modes and stay in a variety of accommodations, including campgrounds, cruise ships and hotels and lodges. We consider it essential that taxing mechanisms directed toward the visitor industry distribute the tax burden equitably among all types of visitors.

We are aware that the State's need for new revenue sources is growing as a result of declining oil-generated revenues. This will inevitably require general tax increases, probably income or sales taxes. We prefer for reasons of efficiency and equity that visitors and the visitor industry be taxed in the context of a general tax plan that addresses the State's entire need for additional revenues over the long term.

Mr. Chairman and members of the Committee, Princess Tours will continue to work with the Legislature and the Administration in the development of new tourism revenues.

Thank you.

[441 US 434]

JAPAN LINE, LTD., et al., Appellants,

v

COUNTY OF LOS ANGELES, et al.

441 US 434, 60 L Ed 2d 336, 99 S Ct 1813

[17–1878]

Argued January 8, 1979. Decided April 30, 1979.

Decision: Application of California ad valorem property tax to foreign-owned cargo shipping containers used exclusively in foreign commerce, held violative of commerce clause.

SUMMARY

Pursuant to California's ad valorem property tax, several counties and cities levied property taxes on large cargo shipping containers that were temporarily within the state. The containers were owned by six Japanese shipping companies on whose vessels the containers were carried, both the vessels and containers having their home ports in Japan where they were subject to property tax, and both the vessels and containers being used exclusively for hire in the transportation of cargo in foreign commerce. The shipping companies paid the property taxes under protest and sued for their refund in the Superior Court for the County of Los Angeles. The Superior Court held that application of the property tax in derogation of the "home port" doctrine" subjected international commerce to multiple taxation and thus was unconstitutional under the commerce clause of the Federal Constitution (Art I, § 8, cl 3). The California Court of Appeal reversed (61 Cal App 3d 562, 132 Cal Rptr 531). Subsequently, the Supreme Court of California granted a hearing of the case and also reversed the judgment of the Superior Court, adopting the opinion of the Court of Appeal (20 Cal 3d 180, 141 Cal Rptr 905, 571 P2d 254).

On appeal, the United States Supreme Court reversed. In an opinion by BLACKMUN, J., joined by BURGER, Ch., J., and BRENNAN, STEWART, WHITE, MARSHALL, POWELL, and STEVENS, JJ., it was held that California's imposition of its nondiscriminatory tax on the shipping containers violated the commerce clause, since the tax resulted in the multiple taxation of instru-

Briefs of Counsel, p 1099, infra.

mentalities of international commerce and prevented the United States from "speaking with one voice" in regulating foreign trade.

REHNQUIST, J., dissented for substantially the reasons set forth in the opinion of the Supreme Court of California and would have affirmed that court's judgment.

HEADNOTES

Classified to U. S. Supreme Court Digest, Lawyers' Edition

Commerce § 325 — state property tax — foreign-owned cargo shipping containers — constitutionality

1a, 1b. A state's imposition of a nondiscriminatory ad valorem property tax on foreign-owned cargo shipping containers temporarily located in the state—which containers are used exclusively in foreign commerce and are subject to property tax in the foreign country where they are based and registered—violates the commerce clause of the Federal Constitution (Art I, § 8, cl 3), since the tax results in the multiple taxation of instrumentalities of international commerce and prevents the United States from "speaking with one voice" in regulating foreign trade. (Rehnquist, J., dissented from this holding.)

Treaties § 9 — conflict with state tax law

2a, 2b. A state ad valorem property tax, as applied to Japanese-owned cargo shipping containers used in international commerce that are temporarily located in the state, is not prohibited by Article XI, §§ 1 and 4, and by Article XXII, § 2, of the April 2, 1953 Treaty of Friendship, Commerce and Navigation Between the United States and Japan (4 UST 2063, TIAS No. 2863), where the state does not treat the Japanese containers differently from domestic containers for purposes of applying its property tax.

Treaties § 9 — conflict with state tax law

3a, 3b. A state ad valorem property tax, as applied to foreign-owned cargo shipping containers used in international commerce that are temporarily located in the state, does not contravene Article III, §§ 1 and 2, of the General Agreement on Tariffs and Trade (61 Stat A3), even if the containers, as instrumentalities of commerce entering the United States subject to re-exportation, could be labeled "imported products" within the meaning of the Agreement,

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15A Am Jur 2d, Commerce § 24; 71 Am Jur 2d, State and Local Taxation §§ 244, 248
USCS, Constitution, Article I, Section 8, Clause 3
US L Ed Digest, Commerce § 325
L Ed Index to Annos, Commerce
ALR Quick Index, Taxes
Federal Quick Index, Commerce

ANNOTATION REFERENCE

Situs of vessels as affecting validity of state property tax thereon, 96 L Ed 433.

where the state does not treat the foreign containers differently from domestic containers for purposes of applying its property tax.

Appeal and Error § 475 — Supreme Court jurisdiction — state court decision — constitutionality of statute as applied

4. The United States Supreme Court has appellate jurisdiction under 28 USCS § 1257(2) to review the decision of a state's highest court presenting the question whether a state, consistent with the Federal Constitution's commerce clause (Art I, § 8, cl 3), may impose a nondiscriminatory ad valorem property tax on foreign-owned instrumentalities of international commerce, where the state's highest court has sustained, against challenges grounded upon the Constitution and various treaties, the validity of such a tax as applied to foreign-owned shipping containers used exclusively in foreign commerce; a state statute is sustained within the meaning of § 1257(2) when a state court holds it applicable to a particular set of facts against the contention that such application is invalid on federal grounds.

Commerce § 237 — validity of state taxation — instrumentalities of interstate commerce

5. Instrumentalities of interstate commerce are not an exception to the rule that the commerce clause of the Federal Constitution (Art I, § 8, cl 3) confers no immunity from state taxation and that interstate commerce must bear its fair share of the state tax burden.

Commerce § 238 — validity of state taxation — test — instrumentalities of foreign commerce

6a, 6b. If a state tax is applied to an activity with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the state, no impermissible burden on interstate commerce will be found; however, a more elaborate inquiry is necessary when a state seeks to tax the instrumentalities of foreign, rather than interstate, commerce: in addition to answering the nexus, apportionment, and nondiscrimination questions, a court must also inquire, first, whether the tax, notwithstanding apportionment, creates a substantial risk of international multiple taxation, and, second, whether the tax prevents the Federal Government from "speaking with one voice" when regulating commercial relations with foreign governments, a state tax being unconstitutional under the commerce clause of the Federal Constitution (Art I, § 8 cl 3) if it contravenes either of the two precepts.

Commerce § 245 — validity of state tax — avoiding multiple taxation

7. The rule which permits taxation of instrumentalities of interstate commerce by two or more states on an apportionment basis precludes taxation of all of the property by the state of the domicile, for otherwise there would be multiple taxation of interstate operations.

Courts § 116 — Supreme Court — relation to state legislatures — interstate commerce

8. Under the commerce clause of the Federal Constitution (Art I, § 8, cl 3), the United States Supreme Court, and not the state legislatures, is the final arbiter of the competing demands of state and national interests in an area where Congress has not acted.

Commerce § 245 — validity of state tax — multiple taxation — foreign commerce

9. With respect to the requirement under the commerce clause of the Federal Constitution (Art I, § 8, cl 3) that state taxes be apportioned to avoid multiple taxation, a slight overlapping of tax —which might be deemed de minimis in a domestic context—assumes importance when sensitive matters of foreign relations and national sovereignty are concerned.

JAPAN LINE, LTD. v COUNTY OF LOS ANGELES

441 US 434, 60 L Ed 2d 336, 99 S Ct 1813

SYLLABUS BY REPORTER OF DECISIONS

Appellant Japanese shipping companies' vessels carry cargo containers which, like the ships, are owned by appellants, are based, registered, and subjected to property tax in Japan, and are used exclusively in foreign commerce. A number of appellants' containers were temporarily present in appellee county and cities in California, and appellees levied property taxes on the containers. The California Supreme Court upheld the tax as applied.

Held:

1. This Court has appellate jurisdiction under 28 USC § 1257(2) [28 USCS § 1257(2)], since the California Supreme Court sustained the tax, as applied, as against the contention that such application would violate the Commerce Clause and various treaties.

2. It is unnecessary to decide the broad proposition whether mere use of international routes is enough, under the "home port doctrine," to render an instrumentality immune from tax in a nondomiciliary State. The question here is a more narrow one, namely, whether instrumentalities of commerce that are owned, based, and registered abroad, and that are used exclusively in international commerce, may be subjected to apportioned ad valorem property taxation by a State.

3. While under Complete Auto Transit, Inc. v Brady, 430 US 274, 51 L Ed 2d 326, 97 S Ct 1076, no impermissible burden on interstate commerce will be found if a state tax "is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State," id., at 279, 51 L Ed 2d 326, 97 S Ct 1076, a more elaborate inquiry is necessary when a State seeks to tax the instrumentalities of foreign, rather than of interstate, commerce. In addition to answering the nexus, apportionment, and nondiscrimination questions posed in Complete Auto, a court must also inquire, first, whether the tax, notwithstanding apportionment, creates a substantial risk of international multiple taxation, and, second, whether the tax prevents the Federal Government from "speak[ing] with one voice when regulating commercial relations with foreign governments." Michelin Tire Corp. v Wages, 423 US 276, 285, 46 L Ed 2d 495, 96 S Ct 535. If a state tax contravenes either of these precepts, it is unconstitutional under the Commerce Clause.

4. The California ad valorem property tax, as applied to appellants' shipping containers, is unconstitutional under the Commerce Clause, since it results in multiple taxation of the instrumentalities of foreign commerce. Moorman Mfg. Co. v Bair, 437 US 267, 57 L Ed 2d 197, 98 S Ct 2340, distinguished, and prevents this Nation from "speaking with one voice" in regulating foreign trade and thus is inconsistent with Congress' power to "regulate Commerce with foreign Nations."

20 Cal 3d 180, 571 P2d 254, reversed.

Blackmun, J., delivered the opinion of the Court, in which Burger, C. J., and Brennan, Stewart, White, Marshall, Powell, and Stevens, JJ., joined. Rehnquist, J., filed a dissenting statement.

APPEARANCES OF COUNSEL

Peter L. Briger argued the cause for appellants.

Kent L. Jones, pro hac vice, argued the cause for the United States, as amicus curiae, by special leave of court.

James Dexter Clark argued the cause for appellees.

Briefs of Counsel, p 1099, infra.

Mr. Justice Blackmun delivered the opinion of the Court.

[1a] This case presents the question whether a State, consistently with the Commerce Clause of the Constitution, may

[441 US 436]

impose a nondiscriminatory ad valorem property tax on foreign-owned instrumentalities (cargo containers) of international commerce.

I

The facts were "stipulated on appeal," App 29, and were found by the trial court, id., at 33–36, as follows:

Appellants are six Japanese shipping companies; they are incorporated under the laws of Japan, and they have their principal places of business and commercial domiciles in that country. Id., at 34. Appellants operate vessels used exclusively in foreign commerce; these vessels are registered in Japan and have their home ports there. Ibid. The vessels are specifically designed and constructed to accommodate large cargo shipping containers.[1] The containers, like the ships, are owned by appellants, have their home ports in Japan, and are used exclusively for hire in the transportation of cargo in foreign commerce. Id., at 35. Each container is in constant transit save for time spent undergoing repair or awaiting loading and unloading of cargo. All appellants' containers are subject to property tax in Japan and, in fact, are taxed there.

Appellees are political subdivisions of the State of California. Appellants' containers, in the course of their international

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journeys, pass through appellees' jurisdictions intermittently. Although none of appellants' containers stays permanently in California, some are there at any given time; a container's average stay in the State is less than three weeks. Ibid. The containers engage in no intrastate or interstate transportation of cargo except as continuations of international voyages. Id., at 30. Any movements or periods of nonmovement of containers in appellees' jurisdictions are essential to, and inseparable from, the containers' efficient use as instrumentalities of foreign commerce. Id., at 35–36.

Property present in California on March 1 (the "lien date" under California law) of any year is subject to ad valorem property tax. Cal. Rev. & Tax. Code Ann. §§ 117, 405, 2192 (West 1970 and Supp 1979). A number of appellants' containers were physically present in appellees' jurisdictions on the lien dates in 1970,

1. "A container is a permanent reusable article of transport equipment . . . durably made of metal, and equipped with doors for easy access to the goods and for repeated use. It is designed to facilitate the handling, loading, stowage aboard ship, carriage, discharge from ship, movement, and transfer of large numbers of packages simultaneously by mechanical means to minimize the cost and risks of manually processing each package." Simon, The Law of Shipping Containers, 5 J Mar L & Com 507, 513 (1974).

See Customs Convention on Containers, Art 1(b), May 18, 1956, [1969] 20 UST 301, 304, TIAS No. 6634. Although containers may be as small as 1 cubic meter (35.3 cubic feet), 49 CFR § 420.3(c)(5) (1977), they are typically 8 feet high, 8 feet wide, and between 8 and 40 feet long. Simon, 5 J Mar L & Com, at 510.

1971, and 1972; this number was fairly representative of the containers' "average presence" during each year. App 35. Appellees levied property taxes in excess of $550,000 on the assessed value of the containers present on March 1 of the three years in question. Id., at 36. During the same period, similar containers owned or controlled by steamship companies domiciled in the United States, that appeared from time to time in Japan during the course of international commerce, were not subject to property taxation in Japan, and therefore were not, in fact, taxed in that country. Id., at 35.

Appellants paid the taxes, so levied, under protest and sued for their refund in the Superior Court for the County of Los Angeles. That court awarded judgment in appellants' favor.[2] Id., at 39–40. The court found that appellants' containers were instrumentalities of foreign commerce that had their home ports in Japan where they were taxed. The federal courts, however, in the trial court's view, had "consistently held that vessels which are instrumentalities of foreign commerce

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and engaged in foreign commerce can be taxed in their home port only." Id., at 24. This rule, said the court, was necessary to avoid multiple taxation, id., at 23; whereas apportionment of taxes can be used to prevent duplicative taxation in interstate commerce, apportionment is "not practical" when one of the taxing entities is a foreign sovereign. In such cases, "[t]here is no tribunal that can adjudicate [competing] rights unless it be the International Court and to invoke its services jurisdiction must be consented to by all parties." Id., at 24. The application of appellees' taxes in derogation of the "home port doctrine," the court concluded, subjected international commerce to multiple taxation and thus was unconstitutional under the Commerce Clause. In so holding, the court followed Scandinavian Airlines System, Inc. v County of Los Angeles, 56 Cal 2d 11, 363 P2d 25, cert denied, 368 US 899, 7 L Ed 2d 94, 82 S Ct 175 (1961) (hereinafter SAS) (ruling that ad valorem property tax levied by California upon aircraft owned, based, and registered abroad and used exclusively in international commerce, was unconstitutional under the Commerce Clause).

[2a] The Court of Appeal reversed. 132 Cal Rptr 531 (1976). The court appeared to conclude that SAS had been effectively overruled by Sea-Land Service, Inc. v County of Alameda, 12 Cal 3d 772, 528 P2d 56 (1974). In Sea-Land, the Supreme Court of California had criticized the home port doctrine and labeled it "anachronistic," and had upheld apportioned property taxation of containers owned by a domestic corporation and used in both intercoastal and foreign commerce. Id., at 787, 528 P2d, at 66. The Court of Appeal rejected appellants' arguments that a different result was required here in view of their containers' foreign ownership and exclusively international use. The court likewise dismissed any argument as to multiple taxation. "[T]he possibility of international double taxation of instrumentalities of foreign commerce," it concluded, is "no reason to limit the local power to

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tax them upon a non-

2. The opinion of the Superior Court is not officially reported.

discriminatory apportioned basis." 132 Cal Rptr, at 533.[3]

[3a] The California Supreme Court granted a hearing of the case and it, too, reversed the judgment of the Superior Court, essentially adopting the opinion of the Court of Appeal. 20 Cal 3d 180, 571 P2d 254 (1977). It concluded that "the threat of double taxation from foreign taxing authorities has no role in commerce clause considerations of multiple burdens, since burdens in international commerce are not attributable to discrimination by the taxing state and are matters for international agreement." Id., at 185, 571 P2d, at 257. Deeming the containers' foreign ownership and use irrelevant for purposes of constitutional analysis, id., at 186, 571 P2d, at 257–258, the court rejected appellants' Commerce Clause challenge and sustained the validity of the tax as applied.[4]

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Appellants appealed. We postponed consideration of our jurisdiction to the hearing on the merits. 436 US 955, 57 L Ed 2d 1120, 98 S Ct 3067 (1978).

II

[4] This Court has appellate jurisdiction to review a final judgment rendered by the highest court of a State in which a decision could be had "where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity." 28 USC § 1257(2) [28 USCS § 1257(2)]. In this case, appellants drew in question the validity of California's ad valorem

3. [2b] The Court of Appeal also rejected, 132 Cal Rptr, at 534, appellants' argument that California's tax was prohibited by Art XI, §§ 1 and 4, and by Art XXII, § 2, of the Treaty of Friendship, Commerce and Navigation. Between the United States of America and Japan, Apr. 2, 1953, [1953] 4 UST 2063, TIAS No. 2863 (providing that Japanese nationals residing in the United States may not be subjected to payment of taxes "more burdensome than those borne by" United States nationals, and according Japan "most favored nation" status). Appellants repeat this argument here, and we reject it. The provisions appellants cite interdict *discrimination* against Japanese nationals; there is no evidence that California has treated Japanese containers differently from domestic containers for purposes of applying its property tax.

The Court of Appeal likewise rejected, 132 Cal Rptr, at 533, appellants' argument that California's tax constituted an indirect "Duty of Tonnage" proscribed by U. S. Const, Art I, § 10, cl 3. Appellants repeat this argument here; in view of our disposition, we do not reach it. The Court of Appeal noted that appellants did not challenge California's tax on due process grounds. See 132 Cal Rptr, at 532 n 2. Although appellants proffer a due process challenge here, we need not reach it either.

4. [3b] The California Supreme Court also rejected appellants' argument that California's tax constituted "Imposts or Duties" proscribed by U. S. Const, Art I, § 10, cl 2. 20 Cal 3d, at 186–188, 571 P2d, at 258–259. Appellants reiterate this argument here; in view of our disposition, we do not consider it. In their petition for rehearing, appellants argued that the tax contravened Art III, §§ 1 and 2 of the General Agreement on Tariffs and Trade (GATT), 61 Stat A18 (providing that "imported products" may not be subjected to heavier taxes, or to less favorable treatment, than like products of domestic origin). Pet for Rehearing 35–40. The court rejected this latter argument sub silentio. 20 Cal 3d, at 190. Appellants repeat this argument here, and we deem it frivolous. Assuming, arguendo, that appellants' containers, as instrumentalities of commerce entering this country subject to reexportation, could be labeled "imported products" within the meaning of GATT, the provisions on which appellants rely prohibit only *discriminatory* treatment. As noted above, n 3, supra, there is no evidence that California has treated Japanese containers differently from domestic containers for purposes of applying its property tax.

property tax, contending that the tax, as applied to their containers, was repugnant to the Commerce Clause and various treaties, and the California Supreme Court sustained the validity of the tax. Under these circumstances, this Court's appellate jurisdiction would seem manifest.

Appellees suggest that the California courts did not in reality uphold the tax statute against constitutional attack, but simply refused to extend to appellants a constitutional immunity from taxation. Motion to Dismiss or Affirm 2. Appellees' suggested recharacterization is unpersuasive. Appellants squarely challenged the constitutionality of the tax

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statute, as applied, and the California Supreme Court just as squarely sustained its validity, as applied. We have held consistently that a state statute is sustained within the meaning of § 1257(2) when a state court holds it applicable to a particular set of facts as against the contention that such application is invalid on federal grounds. E.g., Cohen v California, 403 US 15, 17-18, 29 L Ed 2d 284, 91 S Ct 1780 (1971); Warren Trading Post v Arizona Tax Comm'n, 380 US 685, 686, and n 1, 14 L Ed 2d 165, 85 S Ct 1242 (1965); Bantam Books, Inc. v Sullivan, 372 US 58, 61 n 3, 9 L Ed 2d 584, 83 S Ct 631 (1963); Dahnke-Walker Milling Co. v Bondurant, 257 US 282, 288–290, 66 L Ed 239, 42 S Ct 106 (1921). We conclude that we have appellate jurisdiction of this case.

III

A

The "home port doctrine" was first alluded to in Hays v Pacific Mail S. S. Co. 17 How 596, 15 L Ed 254 (1855). In Hays, California sought to impose property taxes on oceangoing vessels intermittently touching its ports. The vessels' home port was New York City, where they were owned, registered, and based; they engaged in intercoastal commerce by way of the Isthmus of Panama, and remained in California briefly to unload cargo and undergo repairs. This Court held that the ships had established no tax situs in California:

> "We are satisfied that the State of California had no jurisdiction over these vessels for the purpose of taxation; they were not, properly, abiding within its limits, so as to become incorporated with the other personal property of the State; they were there but temporarily, engaged in lawful trade and commerce, with their situs at the home port, where the vessels belonged, and where the owners were liable to be taxed for the capital invested, and where the taxes had been paid." Id., at 599–600, 15 L Ed 254.

Because the vessels were properly taxable in their home port,

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this Court concluded, they could not be taxed in California at all.[5]

The "home port doctrine" enunciated in Hays was a corollary of the medieval maxim mobilia sequuntur personam ("movables follow the person," see Black's Law Dictionary

5. The "home port doctrine" was reaffirmed, as to oceangoing vessels, in Morgan v Parham, 16 Wall 471, 476–477, 21 L Ed 303 (1873), and in Southern Pacific Co. v Kentucky, 222 US 63, 69, 56 L Ed 96, 30 S Ct 13 (1911). It was applied to vessels moving in inland waters in St. Louis v Ferry Co. 11 Wall 423, 20 L Ed 192 (1871), and in Ayer & Lord Tie Co. v Kentucky, 202 US 409, 421–423, 50 L Ed 1082, 26 S Ct 679 (1906).

1154 (rev 4th ed 1968)) and resulted in personal property being taxable in full at the domicile of the owner. This theory of taxation, of course, has fallen into desuetude, and the "home port doctrine," as a rule for taxation of moving equipment, has yielded to a rule of fair apportionment among the States. This Court, accordingly, has held that various instrumentalities of commerce may be taxed, on a properly apportioned basis, by the nondomiciliary States through which they travel. E.g., Pullman's Palace Car Co. v Pennsylvania, 141 US 18, 35 L Ed 613, 11 S Ct 876 (1891); Ott v Mississippi Valley Barge Line Co. 336 US 169, 93 L Ed 585, 69 S Ct 432 (1949); Braniff Airways, Inc. v Nebraska State Bd. of Equalization, 347 US 590, 98 L Ed 967, 74 S Ct 757 (1954). In discarding the "home port" theory for the theory of apportionment, however, the Court consistently has distinguished the case of oceangoing vessels. E.g., Pullman's Palace, 141 US, at 23–24, 35 L Ed 613, 11 S Ct 876 (approving apportioned tax on railroad rolling stock, but distinguishing vessels "engaged in interstate or foreign commerce upon the high seas"); Ott, 336 US, at 173–174, 93 L Ed 585, 69 S Ct 432 (approving apportioned tax on barges navigating inland waterways, but "not reach[ing] the question of taxability of ocean carriage"); Braniff, 347 US, at 600, 98 L Ed 967, 74 S Ct 757 (approving apportioned tax on domestic aircraft, but distinguishing vessels "used to plow the open seas"). Relying on these cases, appellants argue that the "home port doctrine," yet vital, continues to prescribe the proper rule for state taxation of oceangoing ships. Since

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containers are "functionally a part of the ship," Leather's Best, Inc. v S. S. Mormaclynx, 451 F2d 800, 815 (CA2 1971), appellants conclude, the containers, like the ships, may be taxed only at their home ports in Japan, and thus are immune from tax in California.

Although appellants' argument, as will be seen below, has an inner logic, we decline to cast our analysis of the present case in this mold. The "home port doctrine" can claim no unequivocal constitutional source; in assessing the legitimacy of California's tax, the Hays Court did not rely on the Commerce Clause, nor could it, in 1854, have relied on the Due Process Clause of the Fourteenth Amendment. The basis of the "home port doctrine," rather, was common-law jurisdiction to tax.[6] Given its origins, the doctrine could be said to be "anachronistic"; given its underpinnings, it may indeed be said to have been "abandoned." Northwest Airlines, Inc. v Minnesota, 322 US 292, 320, 88 L Ed 1283, 64 S Ct 950, 153 ALR 245 (1944) (Stone, C. J., dissenting). As a theoretical matter, then, to rehabilitate the "home port doctrine" as a tool of Commerce Clause analysis would be somewhat odd. More importantly, to hold in this case that the "home port doctrine" survives would be to prove too much. If an oceangoing vessel could indeed be taxed only at its home port, taxation by a nondomiciliary State logically would be barred, regardless of whether the vessel were domestically or foreign owned, and regardless of whether it were

6. See, e.g., Note, 49 Calif L Rev 968, 970–971 (1961); Note, State Taxation of International Air Transportation, 11 Stan L Rev 518, 522, and n 19 (1959); Page, Jurisdiction to Tax Tangible Movables, 1945 Wis L Rev 125, 143–144.

engaged in domestic or foreign commerce. In Hays itself, the vessel was owned in New York and was engaged in interstate commerce through international waters. There is no need in this case to decide currently the broad proposition whether mere use of international routes is enough, under the "home port doctrine," to render an instrumentality immune

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from tax in a nondomiciliary State. The question here is a much more narrow one, that is, whether instrumentalities of commerce that are owned, based, and registered abroad and that are used exclusively in international commerce, may be subjected to apportioned ad valorem property taxation by a State.[7]

B

[5, 6a] The Constitution provides that "Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art I, § 8, cl 3. In construing Congress' power to "regulate Commerce . . . among the several States," the Court recently has affirmed that the Constitution confers no immunity from state taxation, and that "interstate commerce must bear its fair share of the state tax burden." Washington Revenue Dept. v Association of Wash. Stevedoring Cos., 435 US 734, 750, 55 L Ed 2d 682, 98 S Ct 1388 (1978). Instrumentalities of interstate commerce are no exception to this rule, and the Court regularly has sustained property taxes as applied to various forms of transportation equipment. See Pullman's Palace, supra (railroad rolling stock); Ott, supra (barges on inland waterways); Braniff, supra (domestic aircraft). Cf. Central Greyhound Lines v Mealey, 334 US 653, 663, 92 L Ed 1633, 68 S Ct 1260 (1948) (motor vehicles). If the state tax "is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the

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services provided by the State," no impermissible burden on interstate commerce will be found. Complete Auto Transit, Inc. v Brady, 430 US 274, 279, 51 L Ed 2d 326, 97 S Ct 1076 (1977); Washington Revenue Dept., 435 US, at 750, 55 L Ed 2d 682, 98 S Ct 1388.

Appellees contend that cargo shipping containers, like other vehicles of commercial transport, are subject to property taxation, and that the taxes imposed here meet Complete Auto's fourfold requirements. The containers, they argue, have a "substantial nexus" with California because some of them are present in that State at all times; jurisdiction to tax is based on "the habitual employment of the property within the State," Braniff, 347 US, at 601, 98 L Ed 967, 74 S Ct 757, and appellants' containers habitually are so employed. The tax, moreover, is "fairly apportioned," since it is levied only on the containers' "average

7. Accordingly, we do not reach questions as to the taxability of foreign-owned instrumentalities engaged in interstate commerce, or of domestically owned instrumentalities engaged in foreign commerce. Cf. Sea-Land Service, Inc. v County of Alameda, 12 Cal 3d 772, 528 P2d 56 (1974) (domestically owned containers used in intercoastal and foreign commerce held subject to apportioned property tax); Flying Tiger Line, Inc. v County of Los Angeles, 51 Cal 2d 314, 333 P2d 323 (1958) (domestically owned aircraft used in foreign commerce held subject to apportioned property tax).

presence" in California.[8] The tax "does not discriminate," thirdly, since it falls evenhandedly on all personal property in the State; indeed, as an ad valorem tax of general application, it is of necessity nondiscriminatory. The tax, finally, is "fairly related to the services provided by" California, services that include not only police and fire protection, but the benefits of a trained work force and the advantages of a civilized society.

These observations are not without force. We may assume that, if the containers at issue here were instrumentalities of purely interstate commerce, Complete Auto would apply and be satisfied, and our Commerce Clause inquiry would be at an end. Appellants' containers, however, are instrumentalities of

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foreign commerce, both as a matter of fact[9] and as a matter of law.[10] The premise of appellees' argument is that the Commerce Clause analysis is identical, regardless of whether interstate or foreign commerce is involved. This premise, we have concluded, must be rejected. When construing Congress' power to "regulate Commerce with foreign Nations," a more extensive constitutional inquiry is required.

[7] When a State seeks to tax the instrumentalities of foreign commerce, two additional considerations, beyond those articulated in Complete Auto, come into play. The first is the enhanced risk of multiple taxation. It is a commonplace of constitutional jurisprudence that multiple taxation may well be offensive to the Commerce Clause. E.g., Evco v Jones, 409 US 91, 94, 34 L Ed 2d 325, 93 S Ct 349 (1972); Central R. Co. v Pennsylvania, 370 US 607, 612, 8 L Ed 2d 720, 82 S Ct 1297 (1962); Standard Oil Co. v Peck, 342 US 382, 384–385, 96 L Ed 427, 72 S Ct 309, 47 Ohio Ops 81, 63 Ohio L Abs 559, 26 ALR2d 1371 (1952); Ott, 336 US, at 174, 93 L Ed 585, 69 S Ct 432; J. D. Adams Mfg. Co. v Storen, 304

8. By taxing property present on the "lien date," California roughly apportions its property tax for mobile goods like containers. For example, if each of appellants' containers is in California for three weeks a year, the number present on any arbitrarily selected date would be roughly 3/52 of the total entering the State that year. Taxing 3/52 of the containers at full value, however, is the same as taxing all the containers at 3/52 value. Thus, California effectively apportions its tax to reflect the containers' "average presence," i.e., the time each container spends in the State per year.

9. As noted above, the trial court found that appellants' containers are "instrumentalities of foreign commerce" that are "used constantly and exclusively for the transportation of cargo for hire in foreign commerce." App 35, 36.

10. Appellants' containers entered the United States pursuant to the Customs Convention on Containers, see n 1, supra, which grants containers "temporary admission free of import duties and import taxes and free of import prohibitions and restrictions," provided they are used solely in foreign commerce and are subject to re-exportation. 20 UST, at 304. Similarly, 19 CFR § 10.41a(a)(3) (1978) designates containers "instruments of international traffic," with the result that they "may be released without entry or the payment of duty" under 19 USC § 1322(a) [19 USCS § 1322(a)]. See 19 CFR § 10.41a(a)(1) (1978). A bilateral tax Convention between Japan and the United States associates containers with the vehicles that carry them, and provides that income "derived by a resident of a Contracting State . . . from the use, maintenance, and lease of containers and related equipment . . . in connection with the operation in international traffic of ships or aircraft . . . is exempt from tax in the other Contracting State." Convention Between the United States of America and Japan for the Avoidance of Double Taxation, Mar. 8, 1971, [1972] 23 UST 967, 1084–1085, TIAS No. 7365.

US 307, 311, 82 L Ed 1365, 58 S Ct 913, 117 ALR 429 (1938). In order to prevent

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multiple taxation of interstate commerce, this Court has required that taxes be apportioned among taxing jurisdictions, so that no instrumentality of commerce is subjected to more than one tax on its full value. The corollary of the apportionment principle, of course, is that no jurisdiction may tax the instrumentality in full. "The rule which permits taxation by two or more states on an apportionment basis precludes taxation of all of the property by the state of the domicile. . . . Otherwise there would be multiple taxation of interstate operations." Standard Oil Co. v Peck, 342 US, at 384–385, 96 L Ed 427, 72 S Ct 309, 47 Ohio Ops 81, 63 Ohio L Abs 559, 26 ALR2d 1371; Braniff, 347 US, at 601, 98 L Ed 967, 74 S Ct 757. The basis for this Court's approval of apportioned property taxation, in other words, has been its ability to enforce full apportionment by all potential taxing bodies.

Yet neither this Court nor this Nation can ensure full apportionment when one of the taxing entities is a foreign sovereign. If an instrumentality of commerce is domiciled abroad, the country of domicile may have the right, consistently with the custom of nations, to impose a tax on its full value.[11] If a State should seek to tax the same instrumentality on an apportioned basis, multiple taxation inevitably results. Hence, whereas the fact of apportionment in interstate commerce means that "multiple burdens logically cannot occur," Washington Revenue Dept., 435 US, at 746–747, 55 L Ed 2d 682, 98 S Ct 1388, the same conclusion, as to foreign commerce, logically cannot be drawn. Due to the absence of an authoritative tribunal capable of ensuring that the aggregation of taxes is computed

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on no more than one full value, a state tax, even though "fairly apportioned" to reflect an instrumentality's presence within the State, may subject foreign commerce "' to the risk of a double tax burden to which [domestic] commerce is not exposed, and which the commerce clause forbids.'" Evco v Jones, 409 US, at 94, 34 L Ed 2d 325, 93 S Ct 349, quoting J. D. Adams Mfg. Co. 304 US, at 311, 82 L Ed 1365, 58 S Ct 913, 117 ALR 429.

Second, a state tax on the instrumentalities of foreign commerce may impair federal uniformity in an area where federal uniformity is essential. Foreign commerce is preeminently a matter of national concern. "In international relations and with respect to foreign intercourse and trade the people of the United States act through a single government with unified and adequate national power." Board of Trustees v United States, 289 US 48, 59, 77 L Ed 1025, 53 S Ct 509 (1933). Although the Constitution, Art I, § 8, cl 3, grants Congress power to regulate com-

11. Oceangoing vessels, for example, are generally taxed only in their nation of registry; this fact in part explains the phenomenon of "flags of convenience" (a term deemed derogatory in some quarters), whereby vessels are registered under the flags of countries that permit the operation of ships "at a nominal level of taxation." See B. Boczek, Flags of Convenience 5, 56–57 (1962). Aircraft engaged in international traffic, apparently, are likewise "subject to taxation on an unapportioned basis by their country of origin." Note, 11 Stan L Rev, supra n 6, at 519, and n 11. See, e.g., SAS, 56 Cal 3d, at 17, and n 3, 363 P2d, at 28, and n 3.

merce "with foreign Nations" and "among the several States" in parallel phrases, there is evidence that the Founders intended the scope of the foreign commerce power to be the greater.[12] Cases of this Court, stressing the need for uniformity in treating with other nations, echo this distinction.[13] In approving state taxes on the instrumentalities

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of interstate commerce, the Court consistently has distinguished oceangoing traffic, supra, at 442, 60 L Ed 2d 344; these cases reflect an awareness that the taxation of foreign commerce may necessitate a uniform national rule. Indeed, in Pullman's Palace, the Court wrote that the "'vehicles of commerce by water being instruments of intercommunication with other nations, the regulation of them is assumed by the national legislature.'" 141 US, at 24, 35 L Ed 613, 11 S Ct 876, quoting Railroad Co. v Maryland, 21 Wall 456, 470, 22 L Ed 678 (1875). Finally, in discussing the Import-Export Clause, this Court, in Michelin Tire Corp. v Wages, 423 US 276, 285, 46 L Ed 2d 495, 96 S Ct 535 (1976), spoke of the Framers' overriding concern that "the Federal Government must speak with one voice when regulating commercial relations with foreign governments." The need for federal uniformity is no less paramount in ascertaining the negative implications of Congress' power to "regulate Commerce with foreign Nations" under the Commerce Clause.[14]

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12. E.g., The Federalist No. 42, pp 279-283 (J. Cooke ed 1961) (Madison); 3 M. Farrand, The Records of the Federal Convention of 1787, p 478 (1911) (Madison). See Note, State Taxation of International Air Carriers, 57 Nw UL Rev 92, 101, and n 42 (1962); Note, 11 Stan L Rev, supra n 6, at 525–526, and n 29; Abel, The Commerce Clause in the Constitutional Convention and in Contemporary Comment, 25 Minn L Rev 432, 465–475 (1941) (concluding, after an exhaustive survey of contemporary materials: "Despite the formal parallelism of the grants, there is no tenable reason for believing that anywhere nearly so large a range of action was given over commerce 'among the several states' as over that 'with foreign nations.'" Id., at 475).

13. E.g., Buttfield v Stranahan, 192 US 470, 492–493, 48 L Ed 525, 24 S Ct 349 (1904) ("exclusive and absolute" power of Congress over foreign commerce); Bowman v Chicago & N. R. Co. 125 US 465, 482, 31 L Ed 700, 8 S Ct 689 (1888) ("It may be argued [that] the inference to be drawn from the absence of legislation by Congress on the subject excludes state legislation affecting commerce with foreign nations more strongly than that affecting commerce among the States. Laws which concern the exterior relations of the United States with other nations and governments are general in their nature, and should proceed exclusively from the legislative authority of the nation"); Henderson v Mayor of New York, 92 US 259, 273, 23 L Ed 543 (1876) (regulation "must of necessity be national in its character" when it affects "a subject which concerns our international relations, in regard to which foreign nations ought to be considered and their rights respected"); Gibbons v Ogden, 9 Wheat 1, 228–229, 6 L Ed 23 (1824) (Johnson, J., concurring). See also Atlantic Cleaners & Dyers, Inc. v United States, 286 US 427, 434, 76 L Ed 1204, 52 S Ct 607 (1932). In National League of Cities v Usery, 426 US 833, 49 L Ed 2d 245, 96 S Ct 2465 (1976), the Court noted that Congress' power to regulate interstate commerce may be restricted by considerations of federalism and state sovereignty. It has never been suggested that Congress' power to regulate foreign commerce could be so limited.

14. The policies animating the Import-Export Clause and the Commerce Clause are much the same. In Michelin, the Court noted that the Import-Export Clause met three main concerns: "[T]he Federal Government must speak with one voice when regulating commercial relations with foreign governments . . .; import revenues were to be the major source of revenue of the Federal Government and should not be diverted to the States; and harmony among the States might be disturbed unless seaboard States . . . were prohibited from levying taxes on [goods in transit]." 423 US, at 285–286, 46 L Ed 2d 495, 96 S Ct 535 (footnotes omitted). Abel, see n 12, supra, observed that the Commerce Clause was directed to similar concerns. See 25 Minn

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A state tax on instrumentalities of foreign commerce may frustrate the achievement of federal uniformity in several ways. If the State imposes an apportioned tax, international disputes over reconciling apportionment formulae may arise.[15] If a novel state tax creates an asymmetry in the international tax structure, foreign nations disadvantaged by the levy may retaliate against American-owned instrumentalities present in their jurisdictions. Such retaliation of necessity would be directed at American transportation equipment in general, not just that of the taxing State, so that the Nation as a whole would suffer.[16] If other States followed the taxing State's

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example, various instrumentalities of commerce could be subjected to varying degrees of multiple taxation, a result that would plainly prevent this Nation from "speaking with one voice" in regulating foreign commerce.

[6b] For these reasons, we believe that an inquiry more elaborate than that mandated by Complete Auto is necessary when a State seeks to tax the instrumentalities of foreign, rather than of interstate, commerce. In addition to answering the nexus, apportionment, and nondiscrimination questions posed in Complete Auto, a court must also inquire, first, whether the tax, notwithstanding apportionment, creates a substantial risk of international multiple taxation, and, second, whether the tax prevents the Federal Government from "speaking with one voice when regulating commercial relations with foreign governments." If a state tax contravenes either of these precepts, it is unconstitutional under the Commerce Clause.

L Rev, at 448, and n 67, 452, and n 81, 456–457, and n 110 (need to deal in unified manner with foreign nations); id., at 446–451 (need to preserve federal revenue); id., at 448–449, and nn 69–70, 470–471, 472–473 (need to prevent disharmony among States on account of import duties). In Washington Revenue Dept., v Association of Wash. Stevedoring Cos. 435 US 734, 55 L Ed 2d 682, 99 S Ct 1388 (1978), we noted that the third Michelin factor—preserving harmony among the States—mandated the same inquiry as to the effect of a state tax as the Interstate Commerce Clause. See id., at 754–755, 55 L Ed 2d 682, 98 S Ct 1388. In this case, similarly, the first Michelin factor—the need to speak with one voice when regulating commercial relations with Foreign governments—mandates the same inquiry as to the effect of a state tax as the foreign Commerce Clause. In Washington Revenue Dept., the Court, holding that the state tax at issue did not prevent "speaking with one voice," noted: "No foreign business or vessel is taxed." 435 US, at 754, 55 L Ed 2d 682, 98 S Ct 1388.

15. See Note, Developments in the Law—Federal Limitations on State Taxation of Interstate Business, 75 Harv L Rev 953, 986 (1962) (noting the difficulty of allocating "international bridge time" for aircraft engaged in international commerce, with consequent risk of multiple taxation from overlapping apportionment formulae, and concluding that apportioned state taxation of foreign-owned aircraft should be forbidden).

16. Cf. Chy Lung v Freeman, 92 US 275, 279, 23 L Ed 550 (1876) (invalidating California's bond requirement for Chinese immigrants):

"[I]f this plaintiff and her twenty companions had been subjects of the Queen of Great Britain, can any one doubt that this matter would have been the subject of international inquiry, if not of a direct claim for redress? Upon whom would such a claim be made? Not upon the State of California; for, by our Constitution, she can hold no exterior relations with other nations. It would be made upon the government of the United States. If that government should get into a difficulty which would lead to war, or to suspension of intercourse, would California alone suffer, or all the Union?"

C

[1b] Analysis of California's tax under these principles dictates that the tax, as applied to appellants' containers, is impermissible. Assuming, arguendo, that the tax passes muster under Complete Auto, it cannot withstand scrutiny under either of the additional tests that a tax on foreign commerce must satisfy.

First, California's tax results in multiple taxation of the instrumentalities of foreign commerce. By stipulation, appellants' containers are owned, based, and registered in Japan; they are used exclusively in international commerce; and they
[441 US 452]
remain outside Japan only so long as needed to complete their international missions. Under these circumstances, Japan has the right and the power to tax the containers in full. California's tax, however, creates more than the *risk* of multiple taxation; it produces multiple taxation in fact. Appellants' containers not only "are subject to property tax . . . in Japan," App 32, but, as the trial court found, "are, in fact, taxed in Japan." Id., at 35. Thus, if appellees' levies were sustained, appellants "would be paying a double tax." Id., at 23.[17]

Second, California's tax prevents this Nation from "speaking with one voice" in regulating foreign trade. The desirability of uniform treatment of containers used exclusively in foreign commerce is evidenced by the Customs Convention on Containers, which the United States and Japan have signed. See
[441 US 453]
n 10, supra. Under this Convention, containers temporarily imported are admitted free of "all duties and taxes whatsoever chargeable by reason of importation." 20 UST, at 304. The Convention reflects a national policy to remove impediments to the use of containers as "instruments of international traffic." 19 USC § 1322(a) [19 USCS § 1322(a)]. California's tax, however, will frustrate attainment of federal uniformity. It is stipulated that American-owned containers are not taxed in Japan. App 35. California's tax thus creates an asymmetry in international maritime taxation operating to Japan's disadvantage. The risk of retaliation by Japan, under these circumstances, is acute.

17. The stipulation of facts, App 32, like the trial court's finding, id., at 35, states that "[a]ll containers of [appellants] are subject to property tax and are, in fact, taxed in Japan." The record does not further elaborate on the nature of Japan's property tax. Appellants have uniformly insisted, Brief 9; Tr of Oral Arg 3, that Japan's property tax is unapportioned, i.e., that it is imposed on the containers' full value, and we so understand the trial court's finding. Although appellees do not seriously challenge this understanding, Brief 10–11, and n 2, amicus curiae Multistate Tax Commission suggests that the record is inadequate to establish double taxation in fact: Japan, amicus says, may offer "credits . . . for taxes paid elsewhere." Brief 8. Amicus provides no evidence to support this theory. Both the Solicitor General, Brief for United States as Amicus Curiae 19 n 9, and the Department of State, id., at 17a, assure us that Japan taxes appellants' containers at their "full value," and we accept this interpretation of the trial court's factual finding.

Because California's tax in this case creates multiple taxation in fact, we have no occasion here to decide under what circumstances the mere *risk* of multiple taxation would invalidate a state tax, or whether this risk would be evaluated differently in foreign, as opposed to interstate, commerce. Compare Moorman Mfg. Co. v Bair, 437 US 267, 276–277, 57 L Ed 2d 197, 98 S Ct 2340 (1978), and Washington Revenue Dept. 435 US, at 746, 55 L Ed 2d 682, 98 S Ct 1388, with, e.g., Central R. Co. v Pennsylvania, 370 US 607, 615, 8 L Ed 2d 720, 82 S Ct 1297 (1962); Ott v Mississippi Barge Line Co. 336 US 169, 175, 93 L Ed 585, 69 S Ct 432 (1949); and Northwest Airlines, 322 US, at 326, 88 L Ed 1283, 64 S Ct 950, 153 ALR 245 (Stone, C. J., dissenting).

and such retaliation of necessity would be felt by the Nation as a whole.[18] If other States follow California's example (Oregon already has done so),[19] foreign-owned containers will be subjected to various degrees of multiple taxation, depending on which American ports they enter. This result, obviously, would make "speaking with one voice" impossible. California, by its unilateral act, cannot be permitted to place these impediments before this Nation's conduct of its foreign relations and its foreign trade.

Because California's ad valorem tax, as applied to appellants' containers, results in multiple taxation of the instrumentalities of foreign commerce, and because it prevents the Federal Government from "speaking with one voice" in international trade, the tax is inconsistent with Congress' power to "regulate

[441 US 454]

Commerce with foreign Nations." We hold the tax, as applied, unconstitutional under the Commerce Clause.

D

Appellees proffer several objections to this holding. They contend, first, that any multiple taxation in this case is attributable, not to California, but to Japan. California, they say, is just trying to take its share; it should not be foreclosed by Japan's election to tax the containers in full. California's tax, however, must be evaluated in the realistic framework of the custom of nations. Japan has the right and the power to tax appellants' containers at their full value; nothing could prevent it from doing so. Appellees' argument may have force in the interstate commerce context. Cf. Moorman Mfg. Co. v Bair, 437 US 267, 277, and n 12, 57 L Ed 2d 197, 98 S Ct 2340 (1978). In interstate commerce, if the domiciliary State is "to blame" for exacting an excessive tax, this Court is able to insist upon rationalization of the apportionment. As noted above, however, this Court is powerless to correct malapportionment of taxes imposed from abroad in foreign commerce.

[8] Appellees contend, secondly, that any multiple taxation created by California's tax can be cured by congressional action or by international agreement. We find no merit in this contention. The premise of appellees' argument is that a State is free to impose demonstrable burdens on commerce, so long as Congress has not pre-empted the field by affirmative regulation. But it long has been "accepted constitutional doctrine that the commerce clause, without the aid of Congressional legislation . . . affords some protection from state legislation inimical to the national commerce, and that in such cases, where Congress has not acted, this Court, and not the state legislature, is under the commerce clause

18. Retaliation by some nations could be automatic. West Germany's wealth tax statute, for example, provides an exemption for foreign-owned instrumentalities of commerce, but only if the owner's country grants a reciprocal exemption for German-owned instrumentalities. Vermogensteuergesetz (VStG), Art 1, § 2(3), reprinted in I Bundesgesetzblatt (BGBl) 950 (Apr. 23, 1974). The European Economic Community (EEC), when apprised of California's tax on foreign-owned containers, apparently determined to consider "suitable counter-measures." Press Release, Council of the European Communities, 521st Council Meeting—Transport (Luxembourg, June 12, 1978), p 21.

19. Ore Op Atty Gen No. 7709 (Jan. 31, 1979) (citing decision below).

the final arbiter of the competing demands of state and national interests." Southern Pacific Co. v Arizona ex rel. Sullivan, 325 US 761, 769, 89 L Ed 1915, 65 S Ct 1515 (1945). Accord, Hughes v Oklahoma, ante, at

[441 US 455]

326, and n 2, 60 L Ed 2d 250, 99 S Ct 1727 (1979); Boston Stock Exchange v State Tax Comm'n, 429 US 318, 328, 50 L Ed 2d 514, 97 S Ct 599 (1977). Appellees' argument, moreover, defeats, rather than supports, the cause it aims to promote. For to say that California has created a problem susceptible only of congressional—indeed, only of international—solution is to concede that the taxation of foreign-owned containers is an area where a uniform federal rule is essential. California may not tell this Nation or Japan how to run their foreign policies.

[9] Third, appellees argue that, even if California's tax results in multiple taxation, that fact, after Moorman, is insufficient to condemn a state tax under the Commerce Clause. In Moorman, the Court refused to invalidate Iowa's single-factor income tax apportionment formula, even though it posed a credible threat of overlapping taxation because of the use of three-factor formulae by other States. See also the several opinions in Morrman in dissent. 437 US, at 281, 282, and 283, 57 L Ed 2d 197, 98 S Ct 2340. That case, however, is quite different from this one. In Moorman, the existence of multiple taxation, on the record then before the Court, was "speculative," id., at 276, 57 L Ed 2d 197, 98 S Ct 2340; on the record of the present case, multiple taxation is a fact. In Moorman, the problem arose, not from lack of apportionment, but from mathematical imprecision in apportionment formulae. Yet, this Court consistently had held that the Commerce Clause "does not call for mathematical exactness nor for the rigid application of a particular formula; only if the resulting valuation is palpably excessive will it be set aside." Northwest Airlines, Inc. v Minnesota, 322 US, at 325, 88 L Ed 1283, 64 S Ct 950, 153 ALR 245 (Stone, C. J., dissenting). Accord, Moorman, 437 US, at 274, 57 L Ed 2d 197, 98 S Ct 2340 (citing cases). See Hellerstein, State Taxation Under the Commerce Clause: An Historical Perspective, 29 Vand L Rev 335, 347 (1976). This case, by contrast, involves no mere mathematical imprecision in apportionment; it involves a situation where true apportionment does not exist and cannot be policed by this Court at all. Moorman, finally, concerned

[441 US 456]

interstate commerce. This case concerns foreign commerce. Even a slight overlapping of tax—a problem that might be deemed de minimis in a domestic context—assumes importance when sensitive matters of foreign relations and national sovereignty are concerned.[20]

20. Appellees' reliance on Bob-Lo Excursion Co. v Michigan, 333 US 28, 92 L Ed 455, 68 S Ct 358 (1948), is also misplaced. In that case, the appellant, a Michigan corporation, transported passengers from Detroit to an amusement park on an island in the Province of Ontario; the appellant refused to accept Negro passengers and was prosecuted under a Michigan civil rights statute. In sustaining the statute's application against Commerce Clause attack, the Court emphasized that the appellant conducted "foreign commerce" in name only. The sole business on the island was the amusement park, and it catered solely to American patrons. There were "no established means of access from the Canadian shore to the island," id., at 36, 92 L Ed 455, 68 S Ct 358, and the island was "economically and socially . . . an amusement adjunct of the city of Detroit." Id., at 35, 92 L Ed 455, 68 S Ct 358. The "highly closed and localized

Finally, appellees present policy arguments. If California cannot tax appellants' containers, they complain, the State will lose revenue, even though the containers plainly have a nexus with California; the State will go uncompensated for the services it undeniably renders the containers; and, by

[441 US 457]

exempting appellants' containers from tax, the State in effect will be forced to discriminate against domestic, in favor of foreign, commerce. These arguments are not without weight, and, to the extent appellees cannot recoup the value of their services through user fees, they may indeed be disadvantaged by our decision today. These arguments, however, are directed to the wrong forum. "Whatever subjects of this [the commercial] power are in their nature national, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress." Cooley v Board of Wardens, 12 How 299, 319, 13 L Ed 996 (1852). The problems to which appellees refer are problems that admit only of a federal remedy. They do not admit of a unilateral solution by a State.

The judgment of the Supreme Court of California is reversed.

It is so ordered.

Substantially for the reasons set forth by Justice Manuel in his opinion for the unanimous Supreme Court of California, Mr. Justice **Rehnquist** is of the opinion that the judgment of that court should be affirmed.

---

manner" in which the business was run insulated it "from all commercial or social intercourse and traffic with the people of another country usually characteristic of foreign commerce." Id., at 36, 92 L Ed 455, 68 S Ct 358. The Court noted that the possibility of conflicting Canadian regulation was "so remote that it [was] hardly more than conceivable," id., at 37, 92 L Ed 455, 68 S Ct 358, and concluded that, on the facts of the case, it was "difficult to imagine what national interest or policy, whether of securing uniformity in regulating commerce affecting relations with foreign nations or otherwise, could reasonably be found to be adversely affected by applying Michigan's statute to these facts or to outweigh her interest in doing so." Id., at 40, 92 L Ed 455, 68 S Ct 358.

Bob-Lo is consistent with both the analysis and the result in the present case. Whereas in Bob-Lo the risk that foreign commerce would be burdened by inconsistent international regulation was "remote," the risk that foreign commerce will be burdened by international multiple taxation here has been realized in fact. And whereas the Michigan statute posed no threat at all to the Federal Government's ability to "speak with one voice" in regulating foreign trade, the impairment of federal uniformity worked by California's statute is substantial.

HB
336

(7) [redacted]USE COMMITTEE REPOR[redacted]

Date Referred: February 21, 1992 FURTHER REFERRALS:

Date of Committee Action: 3-17-92

The LABOR AND COMMERCE Committee considered: HB 336

HOUSE BILL NO. 336 OPTOMETRISTS: AUTHORIZED PRACTICES

"An Act relating to optometrists."

RECOMMENDATIONS: CS HB 336 (L+C) [X] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[X] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: House Labor + Commerce letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [X] zero fiscal note(s) Commerce

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
				✓	
				X	
[redacted]	X			X	
				X	
	✓			✓	

CHAIRMAN'S SIGNATURE

STATE OF ALASKA FISCAL NOTE BILL NO. HB 336

1992 LEGISLATIVE SESSION

Revision Date. _____ Department Affected: Commerce & Economic Development

Title: An Act relating to optometrists. BRU: Occupational Licensing

Component: Administration

Sponsor: House HESS

Requestor: House HESS COMPONENT SERIAL NO. 0 3 5 6

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	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

The bill amends the optometry statutes to authorize the use of pharmaceutical agents in the practice of optometry. New funds are not required to implement this bill.

Prepared By: Jennifer Stricklan Phone: 465-2144

Division: Occupational Licensing Date: 02/19/92

Approved by Commissioner: Glenn A. Olds

Agency: Commerce & Economic Development Date: 2-19-92

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

Rev 10/90

HB 336
Letter of Intent

It is the intent of the legislature that optometrists currently holding license endorsements do not have the new authorities granted by this legislation until they are relicensed under new regulations adopted pursuant to this law.

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN
HOUSE FINANCE COMMITTEE

FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
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JUNEAU

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House of Representatives

MEMORANDUM

TO: Rep. David Finkelstein, Chair
Labor and Commerce Committee

FROM: Rep. Mark Boyer MB

DATE: February 24, 1992

RE: HB 336, relating to optometrists

I would like to request that HB 336 be scheduled for a hearing in the Labor and Commerce Committee. This bill passed out of the Health, Education and Social Services Committee last week.

Currently, optometrists can diagnose conditions that require prescription drugs for treatments but they are unable to prescribe the treatment. Thirty states now allow optometrists to write prescriptions. In Alaska the issue becomes more critical for our rural residents in terms of access to basic health care. HB 336 would allow optometrists to prescribe certain drugs to treat eye conditions thereby providing a less costly and more available health care option to Alaskans.

Thank you.

Luckhaupt
3/13/92

CS FOR HOUSE BILL NO. 336 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE HEALTH, EDUCATION & SOCIAL SERVICES COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to optometrists."

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

* Section 1. AS 08.72.175(a) is amended to read:

(a) The board may issue a license endorsement authorizing a licensee to <u>prescrit</u> <u>or</u> use the pharmaceutical agen described in AS 08.72.272, if the licensee or applicant for a license passes the written and practical portions of examination on ocular pharmacology, approved by the board, that tests the licensee's or t applicant's knowledge of the characteristics, pharmacological effects, indicatio contraindications, and emergency care associated with the <u>prescription or</u> use of pharmaceuti agents. The endorsement expires at the same time as the license to which it attaches. endorsement may be renewed upon satisfactory completion of continuing education requirem established by the board by regulation.

* Sec. 2. AS 08.72.272 is repealed and reenacted to read:

Sec. 08.72.272. USE OF PHARMACEUTICAL AGENTS. (a) A licensee may prescribe or use a pharmaceutical agent in the practice of optometry if

(1) the pharmaceutical agent is a drug topically applied to the human eye and its appendages; and

(2) the person holds a license endorsement issued by the board authorizing the prescription or use.

(b) A licensee may not purchase, possess, use, or prescribe a pharmaceutical agent unless the licensee has obtained a license endorsement under AS 08.72.175.

* Sec. 3. AS 08.72 is amended by adding a new section to read:

Sec. 08.72.273. REMOVAL OF FOREIGN BODIES. A licensee may remove superficial foreign bodies from the eye and its appendages. This section is not intended to permit a licensee to perform invasive surgery.

2-21-92

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 16, 1991 FURTHER REFERRALS: Labor & Commerce

Date of Committee Action: 2/21/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 336

HOUSE BILL NO. 336 OPTOMETRISTS: AUTHORIZED PRACTICES

"An Act relating to optometrists."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title
[ ] have attached amendments(s)
[ ] 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 Commerce & Ec Dev. [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
[signature]	✓	Betty J. Davis		✓	
[signature]	✓	J. E. Gonzales		✓	
Mary Miller	✓	Mark Stanley		X	
		—			

[signature]
CO-CHAIRMAN'S SIGNATURE

HB336

ALASKA STATE MEDICAL ASSOCIATION

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

Senator Al Adams
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99811

Dear Senator Adams:

The Alaska State Medical Association Legislative Affairs Committee has over the last several weeks been reviewing your SB 157 relating to expanding the boundaries of optometry. The debate has been lively and heated. We have, additionally, contacted physicians not on the committee who have written letters sympathetic to the bill in an effort to achieve some sort of consensus from the medical community.

In general, we believe that the vast majority of physicians cannot accept the bill in its current form. The bill, while not significantly improving access to eye care, does have the potential for harm allowing optometrists to care for serious diseases beyond the expertise and training of the vast majority of optometrists.

Should the legislature wish to pass a bill on this topic, we respectfully submit the following suggestions:

1. Pharmaceutical agents should be limited to topical antibiotics, anesthetics, cycloplegics, and mydriatics.

2. Glaucoma may be treated on an emergent basis with referral to an ophthalmologist or on a chronic basis on referral from an ophthalmologist.

3. The license endorsement authorizing optometrists to use pharmaceutical agents must be issued on the basis of an exam and not grandfather in all licensed optometrists.

4. The license endorsement exam should be drawn up by the State Optometric Board and approved by the State Medical Board.

We feel that the above changes would be in the best interest of health care for all Alaskans.

If I can be of further assistance regarding this legislation, do not hesitate to call me.

Sincerely yours,

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

DRL:bj

JEFFREY A. GONNASON, O.D.
Doctor of Optometry
Medical Park Eye Care
2211 E. Northern Lights - Suite 202
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Telephone: (907) 276-2080

My name is Jeffrey A. Gonnason, O.D., a doctor of optometry. I am a life-long Alaskan, president of the Alaska Optometric Association, and past president of the Alaska State Board of Examiners in Optometry. I have been in private practice in Alaska for over 15 years. On behalf of the Alaska Optometric Association representing over 60 of Alaska's Doctors of Optometry, I wish to thank the committee for hearing this issue in the public interest. Documents of support are available from Alaska and across the nation relating the 16 years of experience by other states that allow optometrists the use of therapeutic medications.

The purpose of this legislation is to update the Alaska optometry statutes with regard to the use of pharmaceutical agents. Currently, only diagnostic drugs are used for examining the eye. Passage of this legislation would allow qualified Alaska optometrists to treat the conditions they currently diagnose in a manner consistent with their education and training. Alaska statutes currently require optometrists to "keep informed of and use current professional theories and practices" (AS 08.72.240). In the 30 states where optometrists routinely use drugs to treat eye disease, problems have virtually been non-existent over a 16 year track record. Alaska's O.D.'s do not have this earned and justified privilege.

Optometry as a profession has grown progressively more sophisticated and capable. Most doctors of optometry complete 8 to 9 years of college: 4 years undergraduate and 4 years of graduate training in optometry school, as well as a residency program. Admission requirements and tests are similar to those for medical and dental schools. The biomedical sciences presented in other health professional programs are taught in optometry school with the same quality of instruction. Course work in diagnosis and treatment of eye disease and ocular pharmacology is much more extensive than that presented in medical school. Clinical training occurs in various clinics, HMO's, Public Health, Indian Health, and VA Hospitals. Optometry schools are accredited by the same national agencies that accredit medical schools.

Alaska state education funds would be better spent if these doctors could practice their healing arts in their own native state. It is difficult to get new graduates to come to Alaska because they cannot currently utilize the full extent of their training.

JEFFREY A. GONNASON, O.D.
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Optometrists possess an education similar to dentists, podiatrists, and medical doctors. None of these other practitioners, including general medicine, have the extensive training and education specific to eye disease and ocular pharmacology. Yet of these practitioners, only optometry is limited in its use of pharmaceutical agents. We have far more extensive education, as well as training in the use of highly specialized eye instrumentation, than the general medical doctors, nurses, and health aides that are currently allowed to treat eye disease in Alaska.

Last year the American Public Health Association, which represents over 52,000 health professionals, passed a resolution entitled "Access to Treatment for Eye Care". This resolution recommends that legislators update their state optometry practice acts to allow optometrists to use therapeutic pharmaceuticals.

This bill will not allow "grandfathering" of present practitioners. Current statutes already require each Alaska optometrist to pass additional examinations determined by the State Board to receive a license endorsement for pharmaceutical agents. Current regulations for a license already require passing "TREATMENT AND MANAGEMENT OF OCULAR DISEASE", a nationally recognized and standardized examination offered by the International Association of Boards of Examiners in Optometry (IAB), of which Alaska is a member. I can assure you that the Board would exercise the utmost caution in stringent requirements for pharmaceutical endorsement.

The malpractice insurance rate paid by optometrists are the same in states that do allow as those that do not yet allow treatment of eye disease. This is an unbiased reflection of quality, cost-effective care. Malpractice rates have actually been reduced recently. My rate went from $356 last year down to $250 this year. This is positive proof of the public safety of optometry, with 16 years of therapeutic experience and one of the lowest litigation rates of the health professions. The courts hold optometrists to the same standards of care applicable to medical doctors and dentists.

Optometrists are classified as physicians under federal Medicare Law, with respect to all services authorized by state law. Medicare patients are denied access to therapeutic eye care from optometrists in Alaska. U.S. Public Health, Indian Health, and military optometrists in Alaska have used medications for many years. If they enter private practice as many have done, they are then restricted by outdated Alaska statutes.

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— — —
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The only reason for this legislation is to provide much better access to quality, affordable, and cost-effective eye care for Alaskans. This is especially true in our smaller towns and villages. In Alaska, optometrists outnumber ophthalmologists 3 to 1 and are widely distributed throughout the state, while the ophthalmologists are only in the Juneau, Fairbanks, and Anchorage areas (including Soldotna). Time and expense would be saved by the public and the state health payers by reducing unnecessary travel, lost work time, not having to pay more than one doctor, or not having to pay the higher fees of a surgical eye specialist for a common primary care condition. According to the Journal of the American Medical Association, April 1985, "The cost of primary care increases when it is provided by specialists, without necessarily improving its quality...". These cost savings have been well documented. Increased competition and freedom of choice among providers is a cost containment reality.

The optometrist is often the first contact for a patient suffering from an eye disorder. In most cases, needed treatment can begin immediately, an important aspect in the treatment of many eye diseases. Early diagnosis and treatment allows the optometrist to eliminate patient suffering, and can prevent serious complications.

Optometrists are reasonable, educated, caring professionals with a clean track record nationally. We are state licensed with strict standards. We are regulated by the State Board, by legal liability concerns, by community opinion, and by medicine and the legislature looking carefully over our shoulders. Unlike our other medical and non-medical colleagues with unrestricted license for new educational developments, we practice under a limited license and must return to the legislature for statute changes as optometric education and eye care technology advances. The State Board of Optometry should be allowed to determine the scope of practice by regulation, as is done by other health professions in Alaska to keep current with health care advances.

We are fortunate to have a legislature that will respond to the health care needs of all Alaskans. By lending your approval to expansion of primary eye care services by optometrists, you will be supporting the basic goal of improved quality of life for all Alaskans. Our support is from a broad base: State health administrators, educators, Native organizations, community and regional health groups, insurance providers, medical doctors, dentists, nurses, pharmacists, and mostly by our patients all over the state who choose to trust us with their eye care.

Member
American Optometric Association

ALASKA'S DOCTORS OF OPTOMETRY

Fact sheet for SB 157

HB 336

A: Access:

Alaskans in communities like Sitka, Kodiak, Homer, Ketchikan and others do not have access to eye care. Most Alaskan communities have no medical specialists, and the local optometrist is the most highly trained, specialized, and instrument-equipped professional in town, with over 60 of us scattered throughout the state.

B: Better Care:

The optometrist is often the first contact for a patient suffering from an eye disorder. Needed treatment can be started immediately, which is an important aspect in treating many eye diseases.

C: Cost Containment:

Optometrists' fees are generally lower than those of medical specialists and hospitals; the cost of a 2nd visit to another doctor or clinic would be eliminated; travel time and expense would be eliminated as well as extra time away from work. These are documented cost savings from other states. Increased competition with freedom of choice among health providers also holds down costs.

D: Doctors of Optometry:

Optometrists have been prescribing drugs for their patients across the nation for the past 16 years, with 30 states currently allowing therapeutic drug treatment of eye diseases. No laws have been repealed, and 13 more states have bills pending. There have been no problems nationally, and the malpractice insurance premiums for optometry are the same in states with and without therapeutic drug laws.

E: Education:

Optometry training is on a par with medicine, dentistry and podiatry. An undergraduate college degree plus a 4 year doctorate program and often a residency in a hospital-based setting. The letter from Dr. Les Walls, a medical school professor and now an optometry school dean, best explains our education. Older optometrists who did not originally receive advanced therapeutic training would not be grandfathered. They would be required to return to school for additional training and pass rigid State Board standards and exams to be endorsed to use therapeutics.

F: Fairness:

Under the current state law, the optometrists in most communities must refer their patients needing eye medication to a nurse practitioner, health aide, or general medical doctor with far less training than optometrists have.

G: Government:

Approximately 5 agencies of the Federal Government have studied optometry and found us competent in therapeutic treatment and surgical co-management. Military and Indian Health optometrists have used therapeutic drugs for many years. Optometrists are considered "physicians" under federal Medicare law, being allowed to provide any services the state law allows. The national American Public Health Association recently passed a resolution supporting optometry therapeutics in all states.

This legislation is in the best interest of the public health.

APHA
American Public Health Association

1015 Fifteenth Street, NW
Washington, DC 20005
202/789-5600

March 10, 1992

Dear Alaska Legislator:

At its 118th Annual Meeting, the American Public Health Association (APHA), which represents a combined national affiliate membership of over 52,000 public health professionals and community health leaders, adopted a resolution entitled "Access to Treatment for Eye Care by Optometrists". A copy is enclosed for you information.

This resolution acknowledges that the expansion of clinical privileges of optometrists has increased the availability, accessibility, and cost effectiveness of eye care to the American public. The resolution recommends that States update their optometric practice acts to allow for optometric use of those diagnostic and therapeutic pharmaceuticals which have been determined by the State Board of Examiners in Optometry as being within the scope of competency of pharmaceutically certified optometrists. We further recommend that dispensing of such pharmaceuticals be regulated by state pharmacy laws.

Currently, 30 states allow optometrists to use therapeutic drugs for the benefit of their patients. APHA urges your support for legislation which encompasses the principles endorsed in the APHA resolution, and would result in better access to comprehensive eye care of the American citizens.

Thank you for considering the American Public Health Association's view.

Very truly yours,

William H. McBeath, M.D., M.P.H.
Executive Director

Enclosure

HOMER MEDICAL CLINIC
A PROFESSIONAL CORPORATION
4136 BARTLETT STREET
HOMER, ALASKA 99603

TELEPHONE (907) 235-8586

PAUL L. ENEBOE, M.D., A.B.F.P.
WILLIAM H. BELL, M.D., A.B.F.P.

MARY LOU KELSEY, C.N.M.
STEPHANIE STAUBER, C.N.M., F.N.P.
BETTY ENEBOE, R.N., M.P.H.

May 3, 1991

RE: Senate Bill 157: An Act Relating to Optometrists

TO WHOM IT MAY CONCERN:

I support the licensing of optometrists in the state of Alaska to use topcially applied agents for the treatment of diseases of the human eye and its appendages.

I have had a long association with optometrists that initially began from a point of skepticism and has now evolved to a point of respect. I was raised with a father who was a fairly diligent ophthalmologist and over the years became impressed with optometrists' skills, and began to rely on them more and more as partners in the care of human eye disease. It became apparent to him that the optometrists of the current era are a new breed who are well trained and exposed to the judicious treatment and diagnosis of human eye conditions.

Since I have opened my own practice, it has become apparent to me that many optometrists have skills, knowledge and appreciation for eye disease that transcends my own, and I have come to rely on the optometrists present in Homer as valuable colleagues in patient care. Currently, I will often call in a prescription for them without ever seeing the patient, and I think you should see that as a measure of my trust in their judgment. I would also be very relieved not to have to do that any more, so that the liability would slip from my shoulders to their shoulders, where it rightly belongs.

I remain more uncomfortable with the concept of giving them broad powers for the oral administration of anti-affectives, analgesics, decongestants, and antiglaucoma medications, as that now gets into the systemic affective drugs that have wide and varying ramifications based on a patient's current intake of prescriptions, current diagnosed medical diseases, and current undiagnosed medical diseases. It is my belief that, at this stage, those optometrists with an endorsement of their licenses from the state of Alaska should probably not be prescribing oral medications for such a broad category of disease states. I do, however, feel that they should have full capabilities for the use of topical agents.

If I can be of further assistance to you, please don't hesitate to contact me.

Sincerely yours,

William H. Bell, M.D.

WHB:pm

Tanana Valley Clinic

Family Medical Care

Since 1959

April 18, 1991

OBSTETRICS & GYNECOLOGY
Richard S. Anderson, M.D.
Donald R. Hoffman, M.D.
Richard C. Hoss, M.D.
Roger A. Wells, M.D.
Nigel G. Woodcock, M.D.
Phyllis L. Banks, P.A.C.
Jon Swanson, C.N.P.

SURGERY
Arlene G. Kirchner, M.D.

INTERNAL MEDICINE
Michael J. Hanna, M.D.
Jonathan R. Starr, M.D.

PEDIATRICS
Marvin E. Bergeson, M.D.
J. Timothy Foote, M.D.
Richard C. Reem, M.D.
Nancy J. Schultz, M.D.
Mark H. Stoutler, M.D.

FAMILY PRACTICE
Hunter Judkins, M.D.
Donald E. Thurman, M.D.
Joan M. W. Togans, M.D.
Charles Stamer, M.D.
Corrine Lockhart, M.D.
David Isbell, P.A.C.
Donna Rogers, P.A.C.

PHYSICAL THERAPIST
Cole Carson, L.P.T.
Beverly Conover, L.P.T.

PATIENT EDUCATION
Virginia Stephenson, R.N.

ADMINISTRATION
Ron Davis, Administrator
Sandra J. Farmer, Controller/Asst. Admin.

Alaska State Legislature
Juneau
Alaska 99811

To the Legislators:

I am writing to you requesting support for the proposed Senate Bill 157 allowing optometrists in the State of Alaska to practice at a level consistent with their training which would include limited use of therapeutic drugs, i.e. anti-infectives and anti-inflammatory drugs. I worked for many years in the military which utilized optometrists and allowed them to use the drugs as both diagnostic and therapeutic agents. I found that the optometrists I worked with were very confident and judicious in the use of these therapeutic agents.

There are only four ophthalmologists in Fairbanks and none in the remainder of the Interior; however, there are many optometrists. Allowing optometrists to treat diseases of the eye within their spectrum of expertise would allow many more Alaskans to be adequately taken care of. Optometrists are trained for four years after completing a Bachelor of Arts degree, and in most cases this training includes 150 hours of Pharmacology. Currently all fifty states allow optometrists to use drugs in a diagnostic area, and 25 of the states also allow them to use drugs therapeutically.

Alaska, with its vast land area and remoteness of villages and cities, would certainly benefit by allowing optometrists to use their clinical expertise with the use of diagnostic and therapeutic drugs.

Sincerely,

Marvin E. Bergeson, M.D.
Pediatrics

MEB:sr

1001 Noble Street • Fairbanks, Alaska 99701
(907) 452-1611 • FAX (907) 456-8770

DAVID R. BURRUS, M.D.
Ann F. Dorwart, C., F.N.P.
Obstetrics & Gynecology
3340 Providence Drive, Suite 457
Anchorage, Alaska 99508

March 10, 1992

Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Legislator:

As an obstetrician/gynecologist, I am writing in reference to Senate Bill 157, optometry scope of practice.

I support the updating of the Alaska optometry law to allow qualified optometrists to use therapeutic pharmaceutical agents limited to eye treatment. The expansion of clinical privileges of optometrists has been shown to increase the availability, accessibility, and cost effectiveness of eye care to the public.

In 1990 the American Public Health Association passed a resolution supporting this legislation, and 30 states currently allow optometrists to use therapeutic drugs for the benefit of their patients.

I am requesting that the Alaska State Medical Association Legislative Committee support this legislation, and ask that the State Legislature pass this bill into law.

Sincerely,

David R. Burrus, M.D.

CALLISTO
MEDICAL CLINIC
"Numquam occidens stella"

Thomas L. Conley M.D., FAAP
Physician Services

Peggy Midgett Jones
Patient Coordinator

Jean Kemmerer
Office Manager

Susan Walsh R.N.
Nursing Services

February 18, 1992

RECEIVED
2-24-92

Representative Cheri Davis
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Cheri:

I am writing in general support of SB157 which would permit appropriately trained optometrists to use and prescribe ophthalmologic medications. I do think it needs some reworking in a number of areas.

As a member and for five years chairman of the Alaska State Medical Licensing Board I was involved in hammering out the compromise between optometrists and ophthalmologists that permitted use of certain topical agents under the provisions of AS 08.72.175 and AS 08.72.272. It was obvious at the time that eventually optometrists would be back asking for expansion of this authority to use all topical medications and authority to remove foreign bodies from the eye for indeed their training qualifies them to make these judgments and to perform these tasks.

Opposition from ophthalmology in 1988 to Sections 175 and 272 was spirited and can be expected to be spirited in regard to the request for the expansion of authority proposed in SB 157. It was couched in terms of protection of the public health and such surely will be the countering argument in 1992. However such arguments are clearly a smoke screen, optometrists are indeed adequately trained in these areas and the battle is rather one over turf and resultant compensation. In such a contest the state should stand neutral - as long as in this case both groups are trained adequately in the area - and let the market decide the outcome.

I would recommend however some reworking of the bill. It would seem appropriate to delete reference to oral medications for such moves outside the competence of optometry with the exception that oral anti-glaucoma medications might be administered with telephonic consultation and quickly referral. As to topical medications the authority should extend to prescription in addition to administration. This might require some changes in the pharmacy and medicine sections of Chapter 08, a task which legislative research should be able to handle.

Finally, believing as I do that licensing boards should pay their own way, I would tack a $50.00 endorsement fee onto the licensing fee of any optometrist who seeks this authority to help defray the administrative and testing costs of the endorsement.

To put the whole thing in prospective it should be pointed out that physicians assistants, who have much less formal training than optometrists, are routinely prescribing much more potent and dangerous drugs (including topical ophthalmologic drugs) than are proposed here. Medicine accepts their practice. It is therefore logically inconsistent for it to oppose the use of topical medications and the removal of ocular foreign bodies by optometrists. It will be argued that physician assistants are under supervision and so they are in theory. However the required once a quarter in-person supervision hardly makes for close scrutiny. I am not by any means attacking the physician assistant system, which I support, and which has extended medical care to many Alaskans who would otherwise lack it. It has indeed worked fairly well. In similar manner it can be expected that well trained optometrists will, granted the authority asked here, extend competent eye care to many Alaskans who would otherwise not receive such.

Sincerely,

Thomas L. Conley, M.D.

TLC:ts

CALLISTO
MEDICAL CLINIC
"Numquam occidens stella"

Thomas L. Conley M.D., FAAP
Physician Services

Peggy Midgett Jones
Patient Coordinator

Jean Kemmerer
Office Manager

Susan Welsh R.N.
Nursing Services

February 18, 1992

Senator Curt Menard
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Curt:

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Sincerely,

Tom

Thomas L. Conley, M.D.

TLC:ts

NORTH PACIFIC MEDICAL CENTER
104 CENTER AVE., SUITE 100
KODIAK, AK 99615
TELEPHONE (907) 486-4183

KEVIN CREELMAN, M.D.
GENERAL PRACTICE

LOREN HALTER, D. O. (D.A.B.F.P.)
RICHARD HOLYOKE, PA-C

March 6, 1992

TO: Members of the Alaska Legislature

FROM: Kevin Creelman, M.D.

RE: Senate Bill 157 "An Act Relating to Optometrists"

Dear Sirs:

I am writing to express my support for the above bill which would allow qualified optometrists to prescribe topical medicines for conditions affecting the eye.

Over the past 17 years practicing in Alaska, most of which has been in rural areas without immediate ophthalmologist referral, I have relied upon a good relationship with an optometrist to assist in diagnosing and treating conditions of the eye. Especially in Kodiak this has been extremely helpful. Because of the excellent optical equipment at the optometrist's office, measurements can be made which are extremely accurate regarding the condition of the affected eye. Such equipment is as rarely available in the medical physician's clinic. Over the past 10 years here in Kodiak I have developed an appreciation for the ability of this optometrist and would fully support his having the privilege of prescribing topical medications as would be provided in the above bill.

I feel that the appropriate overseeing board should be able to supervise who should get this privilege once the bill is passed since I have known optometrists who do not meet this high standard of quality.

The major point here is patient care. Very frequently conditions of the eye need immediate attention and very close follow-up. In rural areas without the presence of an ophthalmologist, the optometrist commonly provides an extremely valuable additional expertise in this critical area. I feel that their ability to treat with topical medications with the oversight and review of a board of peers would be an advance in the excellence of medical care in the state, especially in rural areas.

Sincerely,

Kevin Creelman, M.D.
KC:re

April 4, 1991

To the Legislature.

This is a letter of support for the bill in Legislation which will permit Optometrist; to prescribe and dispense medication.

The clinic where I work is located in Metlakatla and the nearest Ophthalmologist is in Juneau. Patients that have an acute eye problem and need to be evaluated by an "eye specialist" are referred to the Optometrist. Dr. E. Christiansen, in Ketchikan for evaluation and a treatment plan. After Dr. Christiansen evaluates the patient, he calls the referring physician to tell them his findings and recommendations. On occasion, Dr. Christiansen has recommended that the patient be seen by an Ophthalmologist for care we send the patient to Juneau. But, not all patients have needed to be referred to the Ophthalmologist. It has saved the clinic unnecessary travel expenses for those patients Dr. Christiansen can treat.

For the above reasons, I support the bill which will permit the Optometrist to prescribe and dispense medications.

Thank you.

Barbara Fine

Barbara Fine, RN
P. O. Box 652
Metlakatla, Alaska 99926