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THAT IS NOT HAPPENING UNDER THE CURRENT LAW. BUT THIS GRIDLOCK IS NOT CAUSED BY THE CURRENT LAW; IT IS CAUSED BY THE OIL AND GAS AUDIT DIVISION IN THE DEPARTMENT OF REVENUE ISSUING ASSESSMENTS THAT ARE TOTALLY INCONSISTENT WITH THE PLAIN MEANING OF THE TAX LAW. DON'T CHANGE THE LAW, CHANGE THE PRACTICE. AS THE HEARING EXAMINER SAID IN HIS OPINION ON OUR 1978 INCOME TAX FORMAL CONFERENCE DECISION, WHICH WAS ADOPTED BY THE COMMISSIONER OF REVENUE ON APRIL 9 OF LAST YEAR AND I QUOTE: "THE DIVISION'S POSITION OF NOT USING AVAILABLE MARKET DATA, WHETHER FOR ANS OR OTHER TRANSACTIONS WHICH ARE EVIDENCE OF THE VALUE OF ANS IN THE MARKET, IS DISCONCERTING", END QUOTE.

IF THIS BILL BECOMES LAW, WE WILL HAVE MORE ISSUES LIKE THIS, NOT FEWER. WE WILL HAVE LONGER PERIODS BEFORE RESOLUTION, NOT SHORTER. WE WILL BOTH HAVE TO UTILIZE MORE OF OUR MANPOWER AND FINANCIAL RESOURCES RESOLVING THESE ASSESSMENTS, NOT LESS. AS I HAVE SAID BEFORE AND I WILL SAY IT AGAIN . . . . THAT IS NOT RIGHT . . . . DON'T PROMOTE TAX GRIDLOCK. TAKE A STEP TO END IT. REJECT SB 377.

THANK YOU FOR ALLOWING ME THIS OPPORTUNITY TO EXPRESS EXXON'S VIEWS ON THIS BILL. I WOULD BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

TESTIMONY OF
THE ALASKA OIL AND GAS ASSOCIATION
ON SENATE BILL NO. 185

APRIL 7, 1994

Good afternoon. Mr. Chairman and members of the committee. My name is Paul Wessels. I am the Director of Tax for BP Exploration (Alaska), Inc. and I am here today representing the Alaska Oil and Gas Association (AOGA) to offer some brief comments on the testimony offered by former Attorney General Charlie Cole and Department of Revenue Commissioner Darrel Rexwinkel at the March 22, 1994 hearing on Senate Bill 185. Thank you for giving AOGA the opportunity to testify before you today.

AOGA, as you may know, is a trade association whose eighteen member companies account for the majority of the oil and gas exploration, production, transportation and marketing activities in Alaska. Let me say for the record again, that AOGA strongly opposes Senate Bill 185. Senate Bill 185 would represent bad tax policy for the state of Alaska. It would set terrible precedent, while provoking more litigation than it would resolve. It not only singles out the oil and gas industry, it sends a very hostile message about Alaska, not only to the managements of the companies who are already here, but also to those who might be thinking about investing in Alaska.

Mr. Cole has stated repeatedly that what is being proposed before you in Senate Bill 185 is not unlike the statute of limitations provisions found in many of the Lower 48 states and in particular Texas. That is simply not true.

According to our research, we have not found a single state with specific language that parallels that of Senate Bill 185. The Texas statutes provide in section 111.207(b) that when a taxpayer files a protest against an assessment, the statute of limitations is tolled only for the amount of taxes in issue. The Texas statutes do not have specific language addressing the increase of assessments during the taxpayer's protest of assessments. Moreover, it has been our members' experience in the Lower 48 that once a state has made a

determination of a taxpayer's tax liability, generally there is no increase in the assessment: it is either sustained or amended in favor of the taxpayer.

And not one of those states has ever retroactively amended their statute of limitations provisions. Those states realize, as we and others have tried to explain to you, that such a retroactive amendment would likely be unconstitutional. Those states recognize the need for a tax assessment and collection period to end, to allow taxpayers and the state to move on from one tax year to another. To in effect show certainty with their taxing system. To show tax stability.

Mr. Cole also testified before this committee that the only reason oil and gas taxpayers would oppose Senate Bill 185 is because it affects their bottom lines. That is simply not true. Senate Bill 185 represents bad tax policy which would not only create a very unstable and unfair tax regime in Alaska but would also destroy Alaska's attractiveness for future investments. Investors will be unwilling to spend their scarce investment dollars in Alaska when the tax rules applicable at the time of the investment could be retroactively changed many years in the future. Let me give you a hypothetical example of a typical oil and gas audit experience.

A taxpayer files its tax return on June 15, 1981. On June 10, 1984, the Department of Revenue requests the taxpayer to extend the soon to expire three-year statute of limitations to June 15, 1986. The taxpayer agrees to extend the statute. On June 13, 1986, the Department of Revenue issues a notice of assessment for $4 million. The taxpayer files an appeal to the assessment and requests an informal hearing.

Prior to that hearing, the Department of Revenue, in October of 1987, issues yet another assessment - on a brand new issue. The taxpayer files an appeal and requests a hearing on that issue. The Department of Revenue holds an informal conference and affirms the assessments. The taxpayer then requests a formal hearing.

In December of 1988, the Department decides it is still not through inventing new theories for the past, issues yet another assessment of $3 million on two brand

new claims. The taxpayer objects to the new claims and files yet another appeal. In 1990, the Department of Revenue retaliates by increasing its earlier assessments on a new previously undisclosed theory. The taxpayer objects. In December of that year, the Department of Revenue issues yet another assessment - increasing the earlier claims under yet another new theory. The taxpayer objects and is forced to file another request for a hearing. Thus, the taxpayer, in 1991, is being forced to defend against five separate tax assessments raised by the Department of Revenue for the taxpayer's single 1980 tax return as much as ten years after the original return was filed.

The hypothetical I have just painted for you may sound a little exaggerated. But we have checked with our member companies and have been informed that more than one of them have actual audit situations whose facts are essentially equal to or worse than the hypothetical I have just discussed. The taxpayers are forced to expend substantial resources challenging the Department's higher assessments based on misguided theories dreamed up by the Department many, many years after the tax return is filed. This type of never-ending auditing is what the Department of Revenue hopes Senate Bill 185 will allow them to do. Is this the type of tax stability and fairness that Alaska wants to promote to encourage new investments - both from the oil and gas companies here in the state and from other potential investors thinking about investing in Alaska for the first time?

Testimony has also been presented before this committee that Senate Bill 185 is needed in order to accelerate the audit process and prevent the lengthy, protracted litigation over oil and gas tax assessments. That Senate Bill 185 would provide more incentive for the settlement of current oil and tax disputes. That also is simply not true. Since the very beginning of oil and gas production in Alaska, it has been the general practice of the oil and gas taxpayers to agree to extend the three year statute of limitation under which the Department of Revenue can issue tax assessments whenever the Department of Revenue would ask for them.

With respect to the collection of any taxes owing, the Department of Revenue controls the pace of the tax appeals process within its Department. Under the Department's own regulations, 15 AAC 05.030 (e) to (g), the administrative

hearing officer sets the schedule. If a taxpayer tried to drag the hearing on unduly, the hearing officer has the authority to cut off irrelevant and unduly repetitious evidence. 15 AAC 05.030(h). So, if the Department, not the taxpayer, controls the schedule and the pace of the tax appeal, why can't the Department make sure it gets the hearing done within six years? Why does it need Senate Bill 185 to keep the clock from starting for the six-year period until the hearing is over and the Department issues its formal hearing decision?

Our goal has always been not to delay the tax audit process, but to get it done timely and fairly. Senate Bill 185, therefore, would not be needed if only this goal was also the goal of the Department of Revenue. A quick look at the Mr. Cole's audit experience of BP's 1978, 1979 tax years clearly shows how the Department of Revenue has allowed tax audits to drag on unnecessarily. In his testimony before the Legislative Budget and Audit Committee this past January, Mr. Cole stated that when he asked an assistant attorney general why the audit would not be completed until August of 1993, he stated, and I quote:

> "[Y]ou're talking about an audit in August in 1993 for I don't know, 1978, 1979 tax years. 'Ya.' Well, why hasn't it been done? 'Well, it's sort of laying around over in Revenue for the last six years, and you know, nobody's done much about it.'"

If the Department of Revenue had no real incentive to move quickly on audits in the past, Senate Bill 185 will only make matters worse. Senate Bill 185 would allow the Department of Revenue to go back whenever it wants to whatever year it chooses and issue higher tax assessments regardless of the underlying law that the taxpayer relied on when it filed its tax return. Under such a system, there would be no incentive whatsoever for the Department of Revenue to ever want to settle a tax year. The Department would simply issue outrageously high assessments knowing full well the taxpayer would have to protest them thereby allowing the Department to keep the audit period open indefinitely. Various Alaska government officials have already indicated that currently outstanding assessments are already overstated. If you don't believe me, just listen to what Mr. Cole told the Legislative Budget and Audit Committee this past January concerning how the Department of Revenue's auditors typically write their assessments, and I quote:

> "Suppose an auditor sees a particular tax issue which he or she, as the case may be, believes it should be noted. . . Lets suppose also that the auditor says, well this is a little bit thin, you know, it's not a slam dunk. . . Well how does the auditor write it up? If he thinks, or she thinks that there's a 20% chance, or if you will a 50% chance of recovering on this issue. . . of course it's written up for the full amount."

Under Senate Bill 185, even if an auditor believes the chance of an assessment being upheld is minimal, the auditor will have more incentive to issue the assessment for an excessive amount. When the taxpayer receives such an assessment, he will have no choice but to protest it and the never-ending audit cycle will begin. Senate Bill 185 will therefore provide no incentive toward resolution of audit issues.

No matter what the administration may try to make you believe - the truth of the matter is this. If Senate Bill 185 passes, there will be no tax certainty. There will be no tax stability. And there would be no tax fairness. And there will be never-ending tax administrative and judicial proceedings without resolution. On behalf of AOGA, I urge you to keep Alaska competitive with the rest of the world for investment dollars, reject Senate Bill 185.

Thank you.

AS 43.__ - Oil & Gas Corporate Income Tax
AS 43.55 - Oil & Gas Production Taxes and Oil & Gas Surcharge

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Chenoweth
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HOUSE CS FOR CS FOR SENATE BILL NO. 377( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to state agency fiscal procedures, including procedures related to the assessment and collection of certain taxes; and providing for an effective date."

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

* Section 1. AS 43.05.260(a) is amended to read:

(a) Except as provided in (c) of this section and AS 43.20.200(b), the amount of a tax imposed by this title must be assessed

(1) for tax periods ending before January 1, 1994, within three years after the return was filed, whether or not a return was filed on or after the date prescribed by law; however, at any time during the administrative consideration of a taxpayer grievance or of a claim for credit or refund, based upon a tax imposed by former AS 43.21 or by AS 43.55, the department may increase or decrease the amount of tax due by issuing or amending an assessment;

(2) for tax periods beginning after December 31, 1993, within five

years after the return was filed, whether or not a return was filed on or after the date prescribed by law; the department may increase or decrease the amount of tax due by issuing or amending an assessment within the five-year period; after that five-year period, the department may not increase an assessment under this subsection. [IF THE TAX IS NOT ASSESSED BEFORE THE EXPIRATION OF THE THREE-YEAR PERIOD, PROCEEDINGS MAY NOT BE INSTITUTED IN COURT FOR THE COLLECTION OF THE TAX.]

* Sec. 2. AS 43.05.270(a) is amended to read:

(a) When the assessment of a tax imposed by this title has been made within the period of limitation under AS 43.05.260, the tax may be collected by levy or by a proceeding in court [, BUT ONLY] if the levy is made or the proceeding is begun:

(1) within six years after the latest of any of the following:

(A) the assessment of the tax;

(B) the final administrative determination of the grievance, if the taxpayer files a grievance from an assessment; or

(C) the final judicial resolution of an appeal, if the taxpayer appeals from a final adjudicative determination of a grievance; or

(2) before the expiration of a period for collection agreed upon in writing by the department and the taxpayer before the expiration of the six-year period; a period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon [; THE PERIOD PROVIDED BY THIS PARAGRAPH DURING WHICH A TAX MAY BE COLLECTED BY LEVY MAY NOT BE EXTENDED OR CURTAILED BECAUSE OF A JUDGMENT AGAINST THE TAXPAYER].

* Sec. 3. AS 43.55 is amended by adding a new section to read:

Sec. 43.55.145. PREVAILING VALUE FOR OIL. (a) The department shall adopt regulations to determine a methodology for calculating the prevailing value of oil produced in each field or area of the state for each destination area to which the oil is delivered. Before each October 30, the department shall annually review and determine if any adjustments are necessary to the methodology established by regulation under this section.

(b) The regulations adopted by the department under (a) of this section shall determine the prevailing value of oil using the

(1) current value or average of current values for oil of like kind, character, and quality produced from each field or area in the state;

(2) current values or average of current values for two or more types of domestic or foreign oil selected by the department that are not produced in the state; or

(3) any combination of the methods set out in this subsection.

(c) The department may average or assign different weights to the oils selected under (b) of this section. The department may adjust the amounts calculated under (b) of this section to account for differences in oil types and destination areas.

(d) For purposes of this section, "current value" includes spot or other current prices or assessments publicly reported.

* Sec. 4. AS 43.55.900(7) is amended to read:

(7) "gross value at the point of production" means

(A) for oil, the value of the oil at the point where it is metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) in a condition of pipeline quality on the premises of the lease or property from which it is recovered; however, if the oil is not of pipeline quality when it is removed from the premises of the lease or property from which it is recovered, or if the oil recovered from a lease or property is not metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) on the premises of the lease or property from which it is recovered, then the gross value at the point of production is the value of that oil at the off-premises location where the oil is first metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) in a condition of pipeline quality;

(B) for gas recovered from or in association with oil, the value of the gas at the point where it is accurately metered or measured after separation from the oil; for gas run through a gas processing plant, the gross

value at the point of production is the full consideration received by the producer for the gas if sold in an arm's length transaction or, in the absence of an arm's length transaction, is the sum of the value of the liquids extracted from the gas at the plant and sold and the value of the residue gas sold, less a reasonable allowance, which may not exceed $1 per barrel of plant liquid sold, for processing the gas at the plant and for transporting the gas to the plant from the premises upon which the oil production operation is conducted; and

(C) for gas not recovered from or in association with oil, the value of the gas at the point where it is accurately metered or measured or the value of the gas at the point of sale, if any, on the premises of the lease or property from which the gas is recovered, whichever is the higher value; for gas run through a gas processing plant, the gross value at the point of production is the full consideration received by the producer for the gas if sold in an arm's length transaction or, in the absence of an arm's length transaction, is the sum of the value of the liquids extracted from the gas at the plant and sold and the value of the residue gas sold, less a reasonable allowance, which may not exceed $1 per barrel of plant liquid sold, for processing the gas at the plant and for transporting the gas to the plant from the point where it was accurately metered or measured;

* Sec. 5. AS 43.55.900(7), as amended by sec. 4 of this Act, is amended to read:

(7) "gross value at the point of production" means

(A) for oil, the value of the oil at the point where it is metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) in a condition of pipeline quality on the premises of the lease or property from which it is recovered; however, if the oil is not of pipeline quality when it is removed from the premises of the lease or property from which it is recovered, or if the oil recovered from a lease or property is not metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) on the premises of the lease or property from which it is recovered, then the gross value at the point of production is the value of that oil at the off-premises location where the oil

is first metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) in a condition of pipeline quality;

(B) for gas recovered from or in association with oil, the value of the gas at the point where it is accurately metered or measured after separation from the oil; for gas run through a gas processing plant, the gross value at the point of production is the full consideration received by the producer for the gas if sold in an arm's length transaction or, in the absence of an arm's length transaction, is the sum of the value of the liquids extracted from the gas at the plant and sold and the value of the residue gas sold, less a reasonable allowance, which may not exceed $1 per barrel of plant liquid sold, for processing the gas at the plant and for transporting the gas to the plant from the premises upon which the oil production operation is conducted; [AND]

(C) for gas not recovered from or in association with oil, the value of the gas at the point where it is accurately metered or measured or the value of the gas at the point of sale, if any, on the premises of the lease or property from which the gas is recovered, whichever is the higher value; for gas run through a gas processing plant, the gross value at the point of production is the full consideration received by the producer for the gas if sold in an arm's length transaction or, in the absence of an arm's length transaction, is the sum of the value of the liquids extracted from the gas at the plant and sold and the value of the residue gas sold, less a reasonable allowance, which may not exceed $1 per barrel of plant liquid sold, for processing the gas at the plant and for transporting the gas to the plant from the point where it was accurately metered or measured; and

(D) for taxable gas produced and used as a fuel or feedstock in the production of urea or ammonia, notwithstanding (B) and (C) of this paragraph and AS 43.55.020(f), the gross value at the point of production for each lease or property is the amount per Mcf under a royalty settlement agreement to which the state is a party and that was in effect

on January 1, 1994, for royalty gas from that lease or property; if taxable gas is produced and exchanged for other gas on a volumetric basis, and the gas received in that exchange transaction is used as a fuel or feedstock in the production of urea or ammonia, the gross value at the point of production for each lease or property is the amount per Mcf under a royalty settlement agreement to which the state is a party and which was in effect on January 1, 1994, for royalty gas from the lease or property from which the producer's taxable gas was produced;

* Sec. 6. AS 43.55.900 is amended by adding new paragraphs to read:

(17) "condensate" means all hydrocarbons, including scrubber liquids, recovered in liquid form from a gaseous stream by mechanical separation without resort to extraneous refrigeration, adiabatic expansion through a Joule-Thompson valve following artificial compression, turbo-expansion, aerial cooling below the temperature at which hydrates or ice would form in the gas stream, osmosis, adsorption, or absorption; if a gas stream moves to a gas processing plant without having passed through a prudently operated mechanical separation unit, that portion of the liquid hydrocarbons extracted at the gas plant that could have been extracted through a mechanical separation unit by a prudent operator will be treated as condensate;

(18) "distillate" has the meaning given the term "condensate" in this section;

(19) "gas processing plant" means a facility, other than a liquified natural gas plant, in which liquid hydrocarbons are extracted and separated from a stream of gas by one or more of the following means: refrigeration, adiabatic expansion through a Joule-Thompson valve following artificial compression, turbo-expansion, osmosis, adsorption, or absorption.

* Sec. 7. AS 37.05.180 is amended to read:

Sec. 37.05.180. TIME [TWO-YEAR] LIMITATION ON PAYMENT OF WARRANTS. A warrant upon the state treasury may not be paid unless presented at the office of the commissioner of revenue within one-year [TWO YEARS] of the date of its issuance. A warrant not presented within that time is considered paid and money held at the expiration of that time in a special fund or account for the payment of the

warrant shall be transferred to the general fund, except where the warrant is for the payment of a permanent fund dividend or where transfer is prohibited by the federal government for state participation in a federal program.

* Sec. 8. AS 37.05.510(b) is amended to read:

(b) The Department of Administration shall allocate to the working reserve account amounts appropriated to all state agencies for the benefits set out in (a) of this section after the appropriation Act implementing the state operating budget is enacted. The department shall charge the reserve account with all payments for the benefits set out in (a) of this section. [IF PAYMENTS FOR A FISCAL YEAR EXCEED THE UNEXPENDED BALANCE OF APPROPRIATIONS ALLOCATED TO THE ACCOUNT, THE DEPARTMENT MAY, EXCEPT FOR PAYMENTS UNDER (a)(4) OF THIS SECTION, PAY THOSE BENEFITS BY CHARGING THE UNENCUMBERED BALANCE OF ANY APPROPRIATION ENACTED TO FINANCE THE PAYMENT OF EMPLOYEE SALARIES AND BENEFITS THAT IS DETERMINED TO BE AVAILABLE FOR LAPSE AT THE END OF THE FISCAL YEAR.]

* Sec. 9. AS 37.07.060(b)(2) is amended to read:

(2) the governor's operating program and budget recommendations for the succeeding fiscal year organized by agency as required by AS 37.07.020(a); **if an appropriation has been made from the constitutional budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska), and until the amount appropriated is repaid, the governor shall propose the amount of money in the general fund available for appropriation at the end of the preceding fiscal year that shall be appropriated to the constitutional budget reserve fund;**

* Sec. 10. AS 37.07 is amended by adding a new section to read:

Sec. 37.07.085. PRORATION OF PAYMENTS. (a) At the beginning of each fiscal year, an agency that administers grants, reimbursement, revenue sharing, public assistance, or other programs to distribute state money under a statute shall determine whether appropriations for the fiscal year are sufficient to pay all anticipated claims and entitlements under the statute. Except as provided in (d) of this section or as otherwise provided by law prescribing agency action in response to insufficient

appropriations, if appropriations are not sufficient, the agency shall reduce the amount to be paid to eligible recipients by prorating the shortfall among the eligible recipients.

(b) An agency that is paying reduced payments under (a) of this section shall determine, on December 30 of the fiscal year, whether money available is sufficient to fund the reduced payment level for the remainder of the fiscal year.

(c) An agency that has determined that appropriations are insufficient under (a) or (b) of this section shall report to the governor, and the governor shall report to the legislature by the 10th day of the next regular legislative session, the amount of additional money needed for the remainder of that fiscal year to fund payments at the reduced level and the amount of additional money needed to make full payments to eligible recipients.

(d) An agency that has determined that appropriations are insufficient under (a) of this section may not reduce payments if the reduction would violate the terms of an agreement between the state and the federal government or would violate a requirement for participation in a federal program in which the state is participating. As required by (c) of this section, the agency and the governor shall report regarding the amount of money needed to make full payments to eligible recipients.

(e) The commissioner of administration may adopt regulations necessary to implement this section.

* Sec. 11. AS 37.25.010(b) is amended to read:

(b) An indebtedness arising from a prior year for which the appropriation has lapsed shall be paid from the current year's appropriations, if

(1) this expenditure does not exceed the balance lapsed; and

(2) the original obligation date is not more than **four** [TWO] years from the requested date of disbursement.

* Sec. 12. AS 39.20.250(a) is amended to read:

(a) Terminal leave for unused personal leave shall be allowed upon separation from service. The payment equals the **personal leave balance at the date of separation multiplied by the officer's or employee's rate of pay at the date of separation expressed on an hourly basis** [COMPENSATION THAT THE OFFICER OR EMPLOYEE WOULD HAVE RECEIVED IF THE OFFICER OR EMPLOYEE

HAD REMAINED IN THE SERVICE UNTIL THE EXPIRATION OF THE PERIOD OF UNUSED PERSONAL LEAVE]. A payment of terminal leave to an employee shall be made as a lump sum payment [OR IN INSTALLMENTS OVER A PERIOD OF TIME, AS THE EMPLOYEE ELECTS].

* Sec. 13. AS 43.23.055 is amended to read:

Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

(1) annually pay permanent fund dividends from the dividend fund;

(2) subject to AS 43.23.011 and [PARAGRAPH] (8) of this section, adopt regulations under AS 44.62 (Administrative Procedure Act) that establish procedures and time limits for claiming a permanent fund dividend; the department shall determine the number of eligible applicants by October 1 of the year for which the dividend is declared and pay the dividends by December 31 of that year;

(3) adopt regulations under AS 44.62 (Administrative Procedure Act) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual;

(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends;

(5) annually determine, in cooperation with the Department of Corrections, the number and identity of individuals ineligible for a permanent fund dividend under AS 43.23.005(d);

(6) adopt regulations that are necessary to implement AS 43.23.005(d);

(7) adopt regulations that establish procedures for the parent, guardian, or other authorized representative of a disabled individual to apply for prior year permanent fund dividends not received by the disabled individual because no application was submitted on behalf of the individual;

(8) adopt regulations that establish procedures for an individual to apply to have a dividend warrant reissued if it is returned to the department as undeliverable or it is not paid within <u>one year</u> [TWO YEARS] of the date of its issuance; however,

the department may not establish a time limit within which an application to have a warrant reissued must be filed;

(9) adopt regulations establishing an optional longevity bonus program to provide for the direct payment by the department of an individual's permanent fund dividend to an annuity program selected by the individual.

* Sec. 14. AS 47.20.070 is amended by adding a new subsection to read:

(d) The department may award grants necessary to the performance of its duties under this chapter. If the department determines that it is appropriate to further program objectives, the department may award grants for a period of two years, subject to legislative appropriation.

* Sec. 15. AS 39.20.250(b) is repealed.

* Sec. 16. The provisions of AS 43.05.260(a)(1), as amended by sec. 1 of this Act, and of AS 43.05.270(a), as amended by sec. 2 of this Act, are declaratory of existing law as originally enacted in AS 43.05.260 and 43.05.270 by sec. 1, ch. 94, SLA 1976.

* Sec. 17. Notwithstanding the provisions of AS 01.10.100(a), the provisions of AS 43.05.260(a)(1), as amended by sec. 1 of this Act, and AS 43.05.270(a), as amended by sec. 2 of this Act, apply to a grievance pending under AS 43.05.240 and to an action or appeal pending before a court on the effective date of secs. 1 and 2 of this Act.

* Sec. 18. Section 4 of this Act is retroactive to January 1, 1985.

* Sec. 19. Sections 1 - 6 and 16 - 18 of this Act take effect immediately under AS 01.10.070(c).

* Sec. 20. Except as provided in sec. 19 of this Act, this Act takes effect July 1, 1994.

TESTIMONY OF
BP EXPLORATION (ALASKA) INC.
TO THE HOUSE STATE AFFAIRS COMMITTEE
REGARDING
CSSB 377(FIN) am
and the Administration's
May 7th Proposed HCS CSSB 337(STA)

May 8, 1994

Good afternoon, Mr. Chairman and members of the Committee. My name is Tom Williams and I am Alaska Tax Counsel for BP Exploration (Alaska) Inc. I was Commissioner of Revenue for Alaska from 1979 to 1982. In my work for the State, I was the actual draftsman of almost all of the tax regulations that underlie the outstanding disputes over past taxes. I joined BP in 1987 — five years after leaving government service. During those five years I worked as an attorney in private practice on real estate and banking matters, and as general counsel for an Alaska Native corporation.

I am here to testify on behalf of BP against the proposed retroactive changes to the statute of limitations that appear as sections 1, 8, 9 and 14 of the Senate's version of SB 377, and as sections 1, 2, 3 and 7 of the Administration's proposed House CS for SB 377 that Attorney General Botelho gave the Committee yesterday afternoon. These retroactive changes are substantially the same in both versions.

Because oil and gas taxes are not very familiar to those who don't specialize in them, let me take just a few moments to review how the process currently works. Today the North Slope should produce about 1.6 million barrels of oil. Almost half of that oil is BP's. By the end of next month, we will have to pay production tax on our oil. When we do, we will also file tax returns explaining how we calculated the amount of our tax.

Then the ball is in the State's court. The Department of Revenue has the right to audit our tax returns. And they do. If the auditors believe BP should have paid more tax than we actually did, they give us a bill for the extra tax, plus interest. This bill for additional tax is called an assessment. That's all an assessment is — a bill for additional tax.

When a taxpayer gets this tax bill or assessment, he has several choices. He can pay the whole bill. He can dispute the whole assessment by filing an appeal. Or he can pay some of the assessment and dispute the rest. Alaska's tax laws and regulations require taxpayers to pay any portion of the tax bill that they do not contest.

Now getting an assessment or tax bill does not necessarily mean you actually owe the additional money. Auditors being human, they can make mistakes just like anyone else. And BP has received assessments in the past

where there were arithmetic errors — in one case the total amount of the assessment was $2 million more than the sum of the individual claims made in that assessment. Other times the auditors may have misread the tax laws and regulations and made a claim that is incorrect or not allowed.

Whatever the nature of a mistake in an assessment, a taxpayer has the right to ask the State to correct the error. The way a taxpayer asks for the correction is to file an appeal. If the mistake is a simple one — say the auditor added two plus two and wrote down five instead of four — the taxpayer should ask for an informal conference because it shouldn't take much to show the mistake to the Department and get it corrected. In fact, BP has usually requested informal conferences when we appeal in order to try to iron out the computational errors, the $2 million mistake I mentioned a moment ago.

It has probably been suggested to at least some of you by the Administration that BP asked for these informal conferences in order to drag out the appeal and postpone the time we have to pay up. Let me state clearly for the record that BP asked for informal conferences, often with encouragement from the Department itself, in order to first work out these computational items and other simple matters, so that any more difficult underlying issues can then be presented and dealt with on their own, without distractions from these side issues.

After the simple matters are addressed in the informal conference, the taxpayer can ask for a formal hearing on the more difficult questions, such as whether the auditors misread the tax statutes and regulations. If the assessment was clean in terms of math errors and the like, the taxpayer can bypass the informal conference and go directly to formal conference to address questions of legal interpretation and sound tax policy.

After the formal hearing, the Department's hearing officer ...ites a decision. The Commissioner of Revenue then reviews that decision. If the Commissioner approves the decision, it is formally issued and becomes the official position of the Department on the matter. At that stage the taxpayer has 30 days to appeal that decision to court.

So that, in outline, is how this tax appeals process works. Now how does the statute of limitations fit into this scheme?

While the statute of limitations may seem complicated, it really isn't if you remember just two simple rules — three years to audit, six years to collect. The Department has three years from the filing of a tax return in which to audit it and send the taxpayer the bill for any additional tax that the auditors think should have been paid. Then it has six years from the time it sends that bill, in which to go to court if necessary to collect it. The six year statute is satisfied if, within the six years, the Department considers and decides a tax appeal and the appeal gets into court. In other words, when the appeal gets to court, it becomes a "judicial proceeding" of the type that the six-year statute talks about. So let me restate the two simple rules about the statute of limitations — three years to audit, six years for the Department to hear and decide the appeal.

Now I would like talk about what the SB 377 and the Administration are proposing with respect to the statute of limitations. One is to change the three-year audit statute so that, even after the three years are up, the auditors can raise new and unrelated issues and increase their claims without limit for more tax at any time so long as the Department has not finished its consideration of the appeal and issued its formal hearing decision. The second is to change the six-year statute so that the clock for the six years isn't running while the tax assessment is being appealed within the Department of Revenue or in court.

Think about what this means. The six-year statute currently sets a time limit on how slowly the Department can consider and decide a tax appeal. It has to get its work done on the appeal in six years. But under SB 377 and the Administration's proposed House CS, the six-year clock won't be running while the Department considers the appeal. So the Department will, under this legislation, be free to take 10 years, 15, 20, maybe even half a century, to make a final decision. And, under the change proposed to the three-year statute, at any point during all that time while the Department has the appeal, it can change its mind about what the tax laws meant years earlier when the taxpayer originally filed its return.

This changing of the Department's mind during the course of an extended tax appeal is one of the most pernicious problems Alaska has with its present tax system, and because of tax confidentiality it is one of the most difficult to explain to the public with real-life examples. In effect, this revisionism in tax policy makes it impossible for a taxpayer to know what the correct amount of tax is when he has to file a tax return and pay that tax. Absolutely impossible.

Really? you ask. Suppose I go to Commissioner Rexwinkel and say, here's what's happening with my oil, what I'm selling it for, what I'm trading it for, what others are selling their oil for. And I ask him, how do I compute my tax liability? How much do I owe? And suppose he gives me an answer. Is that the correct and final answer? No, it's not — at least not in BP's experience.

There are a number of issues where taxpayers, including BP's predecessor Sohio, came to the Department while I was Commissioner, and they were told how to deal with that issue. They were given answers, by me, by others in policy-making positions in the Department. And they basically followed the answers they were given. Although the auditors admit that what taxpayers were told was the Department's policy back during the 1980s, they claim that they are not bound by prior policy, that it was a mistake, and they can impose their new and very different policy back through time to the periods when the Department's policy was different.

Let me give you just one real-life example. It's from last year's ARCO decision by the Alaska Supreme Court. Under the separate-accounting tax statute, taxpayers were specifically allowed a tax deduction for interest on money they borrowed to build the Trans Alaska Pipeline System. The regulations specifically allowed it, too. But the auditors claimed that the interest was deductible only if the pipeline company itself had actually borrowed the money. If the parent company borrowed the money and then gave it to the

pipeline subsidiary, they claimed the interest wasn't deductible. Nothing in the regulation required this strained reading, where the mere form of a deal dictated the tax substance. So in 1985 Commissioner Mary Nordale, with Bruce Botelho as her Deputy Commissioner, amended the regulation to make it absolutely clear that the interest was deductible regardless of whether it was the parent company, the pipeline subsidiary or some other affiliated company that first borrowed the money to build the pipeline. But that still wasn't the end of it. In 1986 or '87 the auditors began claiming that only part of the interest was deductible, even though they admitted that all of it was paid on money borrowed to build the pipeline. They argued that a ratio should be applied to the interest, based on ARCO's share of cost of the pipeline versus ARCO's total assets. Such a ratio was used to limit the deductible interest on any money ARCO borrowed to develop Prudhoe Bay — it was prescribed in the statute, in the regulations, and on the tax form. But there was nothing like that ratio anywhere in the statute, regulations or tax form with respect to pipeline interest. The auditors simply made it up. And ARCO had to appeal this all the way to the Alaska Supreme Court before this was finally overturned.

The ARCO case is published in the Pacific Reporter, and you can find it, if you're interested, in the Dimond Courthouse across the street. The full record in that case is open to the public, and you can probably still go to the courts and look through the files for yourselves. I invite you, the press, anyone to go examine that case to see if I'm telling the truth. I am not making this up.

And have the auditors finally stopped on the pipeline-interest issue? No. I can't go into details, but since the ARCO case they have begun raising a new theory to limit BP's deductible pipeline interest to something less than what we actually paid.

This illustrates a subtle change over the last 10 to 15 years in the State's objective in auditing tax returns. Instead of trying to audit and determine the correct amount of tax, the objective has become one of trying to find the largest possible amount of tax that can be claimed, regardless whether it has any relation to the right amount of tax or not. All that matters is that there is at least some slim reed of rationalization to support the claim. That way, if a company settles its tax disputes with the State, it will have to pay something — maybe only five cents on the dollar — to settle that claim. Even at a nickel on the dollar, those are nickels that wouldn't be collected if the claim hadn't been made.

The State itself has admitted that this change has been happening. A few years back, Bruce Botelho as Deputy Attorney General told a Senate committee that some of the claims for past taxes were long shots in terms of winning, but the dollars involved were so large the State couldn't just back off and abandon them. And Bill Floerchinger, who was Director of oil tax audits and then Assistant Revenue Commissioner for the Cowper Administration, testified to the legislature that the assessments had "a lot of water" in them — a gripping metaphor for something big with little substance to it.

The proposed changes to the statutes of limitations would ratify this process and enshrine in statute the authority to continue it for all tax periods

before this year. Even if this is legal — and we contend it isn't — is this fair and wise tax policy? I don't think so. Neither does the Administration, because they want to cut it off for taxes beginning this year. They recognize the need for certainty about the tax rules if oil companies and others are going to make investments here in the future. That's why their proposal for the future is a rule that gives the Department five years to audit and make its claim for more tax, and after that the tax claim cannot be increased.

But I ask you this, if their proposal for the past is such poor policy that even they don't want it for the future, why should it even be allowed for any tax period, past or future? I don't think it should. Enacting it just for the past does not mean Alaska escapes from effects on the future. Enacting the retroactive changes sends this message to all investors — if the State wants your money badly enough, it will do anything, even change its laws retroactively, in order to get it. That's pretty ominous for anyone thinking about putting real money here. It scares them. It scares us.

Now what about the Administration's claim that this retroactive legislation is necessary to keep nearly $3 billion in tax claims from falling off the table? Are the oil companies walking away from all responsibility for that money because of a "technicality"?

To answer that, let me point out that for some taxpayer, including BP, the three-year periods and the six-year periods have already run out. It's not that they are about to run out. They already have. Those events have happened, and there is no way to legislate them away, any more than you could legislate that the earth is flat.

So things have happened that have legal consequences and effects. Exactly what those consequences and effects are, is a matter in dispute. We say the three-year statute prevents the State from raising new claims after that time. The auditors raised them anyway. Whether those claims can legally be raised is a question that is now before the Alaska Supreme Court in the Exxon case.

Similarly, for some of the assessments against BP and others, more than six years have run since those assessments were issued. We say the statute means what it says, and it's too late for the State to collect the money it billed in those assessments. The State says the clock under the present law should be stopped during the time our appeal is going on. Courts in other states have read similar limitations on collection as having an implied "time out" provision as the State contends. Again, this is a matter that the Alaska courts have not decided but will presumably be asked to decide in the future.

Now just because our legal position is that the late claims could not be made and the oldest assessments cannot be collected, that does not mean we think we should pay nothing on those claims at all. There is a material litigation risk that our legal positions will be rejected by the courts, and the State's position upheld. If that happens, we will have to pay and the statutes of

limitation won't prevent the State from getting all the money it's entitled to. On the other hand, if we win, then some of the State's claims will be lost.

That may sound like a harsh result, but it's no different from the case where someone gets hit by a car and files suit for damages the day after the statute of limitations runs out for filing such lawsuits. It's too bad, but the plaintiff can't sue. That's what the statute of limitations does.

Passing this retroactive legislation doesn't mean the statute-of-limitations issue will be resolved. Far from it. Over 18 years of retroactivity is a long time to be reaching back and changing things. It is likely there will be litigation over that. And if there is, there will once again be litigation risk for each side that the other side will win. The cases on retroactivity suggest that the State should win on retroactivity if the retroactive change cures some technical flaw in the current statute, as opposed to materially changing the substance of the current statute. If it is not a curative change, the retroactivity should be unconstitutional.

Much of the question of whether SB 377's retroactivity is curative or not, will depend on what the present laws mean. If they mean what the State, in court, is arguing they mean, then SB 377 is probably curative and the retroactivity will be okay. Of course, if the courts rule in the State's favor on the meaning of the present laws, then there will be no need for SB 377's retroactive changes. And on the other hand, if the courts rule that the present laws don't mean what the State is arguing for, the SB 377 is probably not curative and its retroactivity will be unconstitutional.

Representative Ulmer was very interested at yesterday's hearing about whether the proposed retroactive changes in this legislation are really nothing more than affirmations of the Department of Revenue's longstanding practice and position, or whether they are material departures from prior practice. As a former Commissioner of Revenue, I have some qualification to answer her question.

The three-year statute of limitations was enacted in 1976. The Department of Revenue's very first regulation about that statute after its enactment was a regulation adopted under the separate-accounting tax, former AS 43.21. It was section 700(e) of chapter 12 of the Department's regulations, adopted early in 1979. Around 1981 the chapter number was changed to 21 instead of 12, but the regulation itself was left unchanged. I wrote that regulation. John Messenger, the Deputy Revenue Commissioner at that time, was my boss and he worked closely with me in reviewing my drafts of the separate-accounting regulations. He is now one of the State's outside counsel in these tax cases, and he was here for the negotiations over this legislation during the past few days. If he is still here, you could ask him to confirm what I tell you about the separate-accounting regulations.

At any rate, section 700(e) says, and I quote: "Returns and assessments under this section are subject to amendment for three years from the date of the original notice of assessment." Let me repeat the key part of that regulation: "... assessments ... are subject to amendment for three years from the date of

the original notice of assessment." That doesn't sound to me like a statement that new amendments can be made after the three years up. Does it to you?

In point of fact, it was intended to mean — and as its draftsman, I ought to know what it's supposed to mean — just what it says. Three years to audit and issue the final tax bill. No further amendments after that time is up, unless the three years were extended by mutual agreement with the taxpayer.

Actually, and enough time has passed that I can admit it now, section 700(e) was really kind of stretching the three-year statute already. The statute runs from the date the taxpayer files its return. Under separate accounting, that was no later than April 15th. But section 700(e) says the three years run from the date of the original notice of assessment, which was issued on August 15th. But there were aspects of the separate-accounting statutes that made it more like an ad valorem property tax, in which the tax obligation is fixed when the tax assessor sends you the tax bill. With separate-accounting, the obligation to pay up was fixed, subject to audit, by the issuance of the tax bill, or assessment, in August, not by the return filed in April. And so Mr. Messenger and I both felt this bit of a stretch was justifiable, given the particular nature of separate-accounting tax. But the point is, the Department's policy and practice, as reflected in this 1979 regulation and recodified in 1981, did not contemplate issuing amended assessments after the three-year period, plus extensions, was up.

In February 1984 state auditors issued BP's predecessor, Sohio, an assessment for 1978 separate-accounting taxes, purporting to amend an earlier assessment that had been issued in 1981 and which Sohio had appealed. The three years under section 700(e) of the regulations had expired August 15, 1982. The 1981 assessment was within the three years, the 1984 was late. Sohio protested that the new assessment, arguing that it was barred by the three-year statute. On October 16, 1984 the Attorney General's Office issued a formal opinion, asserting that amendments to a timely assessment could be made, even after the three years were up, so long as the appeal over the on-time assessment was still pending within the Department and had not made it into court.

To my knowledge as a former Commissioner, this 1984 Attorney General's Opinion was the first public assertion, by any agency of the State of Alaska, of the proposition that the three-year statute does not prevent the Department from issuing new claims after the three years are up, so long as the appeal over the original assessment is not yet in court. I can say categorically that this was <u>not</u> the Department's position or policy from April 16, 1979 to December 6, 1982, when I was Commissioner of Revenue.

Sometime in late 1984 or 1985 Sohio wrote to Commissioner Mary Nordale, asking her whether the 1984 AG's Opinion reflected the position of the Department. She replied to the effect that, while it was highly persuasive because the Attorney General is legal counsel for the State, it would not be addressed as a matter of formal departmental policy until the issue had been presented in due course through a formal hearing or a tax appeal, at which

time she or her successor would decide whether, as a matter of policy, to seek to go as far as the AG's Opinion said the Department could.

In March 1987 Sohio sued the State, seeking declaratory judgment that the 1984 AG's Opinion was wrong. The Attorney General, representing the Department of Revenue, argued that the courts should not decide this issue until the Department of Revenue had the chance to take a position on it. In making this argument, the Attorney General pointed to Commissioner Nordale's 1985 letter saying the question would be formally decided by the Department in due course through a formal hearing. These arguments were vigorously made throughout the course of Sohio's lawsuit from 1987 to early 1989. The Alaska Supreme Court decided the case April 21, 1989. While noting that Commissioner Nordale's letter made it appear very likely that the Department would end up following the AG's Opinion, agreed with the Attorney General that the Department had not formally taken this position. And so the Court ordered Sohio to go back to its tax appeal in the Department to find out the Department's official position.

What all this means is this. Up until April 21, 1989, when it Alaska Supreme Court issued its decision in Sohio's lawsuit, the Department of Revenue was earnestly and strenuously arguing to the courts that it had not taken a position on the three-year statute of limitations. The Department can't have it both ways — either it didn't have a position on the three-year statute just as it told the courts, which conflicts with what the Administration is telling you now. Or you are being told the truth now and it did have a position then, and the Department simply lied about it to the Alaska Supreme Court.

Now I don't actually believe that anyone has been deliberately lying to anyone about this issue. And I don't have to decide whether people were forgetful about things back in 1989 or whether they are forgetful now. The fact is, the Alaska Supreme Court ruled in 1989 that the Department did not then have a position on the three-year statute. So that question has been considered and adjudged. The Department has a position it has formally held for less than five years and is asking you to use that as justification for rewriting the law retroactively by more than 18 years.

In conclusion, BP opposes the retroactive changes to the statute of limitations for the following reasons. First, it won't move the tax disputes any closer to a resolution. It only makes a procedural change to allow both sides' litigation teams to duke things out. Second, it won't save the alleged $3 billion from falling off the table. Either it has already fallen, or the present laws have already kept it from falling. SB 377 won't change this. Third, it usurps the authority of the Judicial Branch by attempting to dictate the outcome of litigation pending before the courts. We are willing to have the courts decide, despite the State's "home court" advantage. Why isn't the State? Fourth, changing the rules retroactively by more than 18 sets a dreadful precedent. If the State does this and gets away with it, what will keep it from similarly desperate retroactive measures in the future as it struggles with its looming budget crunch? Fifth, it singles out one industry — oil— for unfair and unequal treatment. Sixth, it

sends a message to us and to all others who might invest here that the usual stability one expects in the United States is not the case in Alaska.

Thank you for this opportunity to testify.

PETROLEUM REVENUE/OIL & GAS AUDIT

APPROPRIATION HISTORY

FY85-FY95

COMPARING GOVERNOR'S REQUEST AND AUTHORIZED

	FY85 REQUEST	FY85 AUTH.	FY86 REQUEST	FY86 AUTH.	FY87 REQUEST	FY87 AUTH.	FY88 REQUEST	FY88 AUTH.
TOTAL	1941.1	1891.4	2216.3	2075.7	4351.1	4273.9	2453.7	2431.4
GF	1941.1	1891.4	2216.3	2075.7	4351.1	4173.7	2453.7	2431.4
GF-PROG RCPTS						100.2		
POSITIONS								
PFT	28.0	28.0	29.0	29.0	77.0	76.0	40.0	40.0
PPT					2	2	1	1

	FY89 REQUEST	FY89 AUTH.	FY90 REQUEST	FY90 AUTH.	FY91 REQUEST	FY91 AUTH.	FY92 REQUEST	FY92 AUTH.
TOTAL	3229.2	3031.7	3271.4	3096.7	3365.9	3430.2	3489.3	3769.4
GF	3229.2	3031.7	3271.4	3096.7	3365.9	3430.2	3489.3	3769.4
GF-PROG RCPTS								
POSITIONS								
PFT	44.0	44.0	44.0	44.0	47.0	47.0	46.0	46.0
PPT	1	1	1	1				

	FY93 REQUEST	FY93 AUTH.	FY94 REQUEST	FY94 AUTH.	FY95 REQUEST
TOTAL	3665.2	3423.6	3380.3	3378.3	3394.9
GF	3665.2	3423.6	3380.3	3378.3	3394.9
GF-PROG RCPTS					
POSITIONS					
PFT	45.0	41.0	40.0	40.0	40.0
PPT					

budgeted in FY85-86 as Petroleum Revenue

merged with Audit in FY87

split in FY88 to Audit - Excise Tax and Audit - Oil and Gas

renamed Audit - Oil and Gas to Audit - Petroleum Tax in FY89

renamed in FY90 to Oil & Gas Audit

FY92: COLA and full funding of authorized positions

FY93: reduced COLA, cut 4 positions, increased contractual for property tax assessment

CHILD SUPPORT ENFORCEMENT DIVISION

FY90-FY95

COMPARING GOVERNOR'S REQUEST AND AUTHORIZED

	FY90 REQUEST	FY90 AUTH.	FY91 REQUEST	FY91 AUTH.	FY92 REQUEST	FY92 AUTH.
TOTAL	5657.0	5657.0	6790.4	6790.4	7248.9	7248.9
FEDERAL	3733.6	3733.6	4481.6	4481.6	4784.3	4784.3
GFM	1104.0	1104.0	1488.8	1488.8	1482.7	1482.7
FED INCENTIVES	819.4	819.4	820.0	820.0	981.9	981.9
POSITIONS						
PFT	109.0	109.0	115.0	115.0	115.0	126.0
TEMP						

	FY93 REQUEST	FY93 AUTH.	FY94 REQUEST	FY94 AUTH.	FY95 REQUEST
TOTAL	8343.5	8284.9	8281.9	8281.9	10561.5
FEDERAL	5594.0	5576.4	5591.9	5591.9	7018.1
GFM	1767.6	1726.6	1708.1	1708.1	1725.9
FED INCENTIVES	981.9	981.9	981.9	981.9	1817.5
POSITIONS					
PFT	127.0	128.0	128.0	128.0	154.0
TEMP					16.0

INCOME & EXCISE AUDIT

APPROPRIATION HISTORY

FY85-FY95

COMPARING GOVERNOR'S REQUEST AND AUTHORIZED

	FY85 REQUEST	FY85 AUTH.	FY86 REQUEST	FY86 AUTH.	FY87 REQUEST	FY87 AUTH.	FY88 REQUEST	FY88 AUTH.
TOTAL	2884.1	2864.0	2854.8	2600.7	4351.1	4273.9	1828.3	1828.3
GF	2884.1	2864.0	2854.8	2600.7	4351.1	4173.7	1672.9	1672.9
GF-PROG RCPTS						100.2	155.4	155.4
POSITIONS								
PFT	65.0	65.0	57.0	55.0	77.0	76.0	39.0	39.0
PPT	1	1	2	2	2	2	1	1

	FY89 REQUEST	FY89 AUTH.	FY90 REQUEST	FY90 AUTH.	FY91 REQUEST	FY91 AUTH.	FY92 REQUEST	FY92 AUTH.
TOTAL	3754.3	3682.9	3251.7	3166.1	3112.2	3337.3	3203.4	3526.5
GF	3501.1	3429.7	2995.6	2910.0	2956.1	3181.2	3047.6	3370.7
GF-PROG RCPTS	253.2	253.2	256.1	256.1	156.1	156.1	155.8	155.8
POSITIONS								
PFT	64.0	64.0	59.0	57.0	59.0	59.0	55.0	55.0
PPT	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0

	FY93 REQUEST	FY93 AUTH.	FY94 REQUEST	FY94 AUTH.	FY95 REQUEST
TOTAL	3565.1	3388.0	3411.5	3395.3	3603.3
GF	3373.8	3335.7	3255.7	3239.5	3446.7
GF-PROG RCPTS	191.3	52.3	155.8	155.8	156.6
POSITIONS					
PFT	54.0	51.0	54.0	54.0	57.0
PPT	1	1			

budgeted in FY85-86 as Audit

merged with Petroleum Revenue in FY87

split in FY88 to Audit - Excise Tax and Audit - Oil and Gas

renamed in FY89 to Audit - Income & Excise Tax

renamed in FY90 to Income & Excise Audit

FY91 request vs authorized change due to full funding of personal services and Kodiak compliance officer

FY92 restored COLA of 195.7 and reduced vacancy 127.4

FY94 total authorized is 3599.0 including salmon marketing (HB 275) and landing tax (HB 268)

TESTIMONY OF
THE ALASKA OIL AND GAS ASSOCIATION
TO THE HOUSE STATE AFFAIRS COMMITTEE
REGARDING CSSB 377(FIN) am

MAY 14, 1994

Good afternoon, Mr. Chairman and members of the committee. My name is Jim Palmer. I work for BP Exploration and I am here today representing the Alaska Oil & Gas Association (AOGA). Thank you for giving AOGA the opportunity to testify before you today. AOGA has testified in the past opposing Senate Bill 185 which is essentially contained in Senate Bill 377 now before you.

AOGA, as you may know, is a trade association whose eighteen member companies account for the majority of the oil and gas exploration, production, transportation and marketing activities in Alaska. AOGA strongly opposes the retroactive provisions that are contained in Senate Bill 377. Sections 1 and 2 of Senate Bill 377 would represent bad tax policy for the State of Alaska. It would set terrible precedent, while provoking more litigation than it would resolve. It sends a very hostile message about Alaska, not only to the managements of the companies who are already here, but also to those who might be thinking about investing in Alaska.

Former Attorney General Mr. Cole has stated in previous hearings on this measure that what is being proposed before you in this legislation is not unlike the statute of limitations provisions found in many of the Lower 48 states and in particular Texas. That is not true.

According to AOGA's research, we have not found a single state with specific language that parallels that of sections 1 and 2 of Senate Bill 377. The Texas statutes provide in section 111.207(b) that when a taxpayer files a protest against an assessment, the statute of limitations is tolled only for the amount of taxes in issue. The Texas statutes do not have specific language addressing the increase of assessments during the taxpayer's protest of assessments. Moreover it has been our members' experience in the Lower 48 that once a state has made a determination of a taxpayer's tax liability,

generally there is no increase in the assessment; It is either sustained or amended in favor of the taxpayer.

And not one of those states has ever retroactively amended their statute of limitations provisions. Those states realize that such a retroactive amendment would likely be unconstitutional. Those states recognize the need for a tax assessment and collection period to end, to allow taxpayers and the state to move on from one tax year to another. To, in effect, show certainty with their taxing system.

It has been stated that the only reason oil and gas taxpayers would oppose Senate Bill 377's retroactive provisions is because it affects their bottom lines. That is simply not true. This legislation represents bad tax policy which would not only create a very unstable and unfair tax regime in Alaska but could also destroy Alaska's attractiveness for future investments. Investors will be unwilling to spend their scarce investment dollars in Alaska when the tax rules applicable at the time of the investment could be retroactively changed many years in the future. Let me give you a hypothetical example of a typical oil and gas audit experience.

A taxpayer files its tax return on June 15, 1981. On June 10, 1984, the Department of Revenue request the taxpayer to extend the soon to expire three-year statute of limitation to June 15, 1986. The taxpayer agrees to extend the statute. On June 13, 1986, the Department of Revenue issues a notice of assessment for $4 million. The taxpayer files an appeal to the assessment and requests an informal hearing.

Prior to that hearing, the Department of Revenue, in October of 1987, issues yet another assessment - on a brand new issue. The taxpayer files an appeal and requests a hearing on that issue. The Department of Revenue holds an informal conference and affirms the assessments. The taxpayer than requests a formal hearing.

In December of 1988, the Department decides it is still not through inventing new theories for the past, an issues yet another assessment of $3 million on two brand new claims. The taxpayer objects to the new claims and files yet another appeal. In 1990, the Department of Revenue retaliates by increasing its earlier assessments on a new previously undisclosed theory. The taxpayer objects. In December of that year, the Department of Revenue issues yet another assessment - increasing the earlier claims under yet another new theory. The taxpayer objects and is forced to file another request

for a hearing. Thus, the taxpayer, in 1991, is being forced to defend against five separate tax assessments raised by the Department of Revenue for the taxpayer's single 1980 tax return as much as ten years after the original return was filed.

The hypothetical I have just painted for you may sound a little exaggerated. But we have checked with our member companies and have been informed that more than one of them have actual audit situations whose facts are essentially equal to, or worse than, the hypothetical I have just discussed. The taxpayers are forced to expend substantial resources challenging the Department's high assessments based on misguided theories dreamed up by the Department many, many years after the tax return is filed. Is this the type of tax stability and fairness that Alaska wants to promote to encourage new investments - both from the oil and gas companies here in the state and from other potential investors thinking about investing in Alaska for the first time?

Our goal has always been not to delay the tax audit process, but to get it done timely and fairly. Senate Bill 377' retroactive provisions therefore, would not be needed if only this goal was also the goal of the Department of Revenue. A quick look at Mr. Cole's audit experience of BP's 1978, 1979 tax years clearly shows how the Department of Revenue has allowed tax audits to drag on unnecessarily. In his testimony before the Legislative Budget and Audit Committee this past January. Mr. Cole stated that when he asked an assistant attorney general why the audit would not be completed until August of 1983, he stated, and I quote:

> "You're talking about an audit in August in 1993 for I don't know, 1978, 1979 tax years. "Ya" Well, why hasn't it been done? "Well, it's sort of laying around over in Revenue for the last six years, and you know, nobody's done much about it."

If the Department of Revenue had no real incentive to move quickly on audits in the past, this legislation will only make matters worse. Sections 1 and 2 of Senate Bill 185 would allow the Department of Revenue to go back whenever it wants to whatever year it chooses and issue higher tax assessments regardless of the underlying law that the taxpayer relied on when it filed its tax return. Under such a system, there would be no incentive whatsoever for the Department of Revenue to ever want to settle a tax year. The Department would simply issue outrageously high assessments knowing full well the taxpayer would have to protest them thereby allowing the Department to keep the audit

period open indefinitely. Various Alaska government officials have already indicated that currently outstanding assessments are already overstated. Mr. Cole told the Legislative Budget and Audit Committee this past January told how the Department of Revenue's auditors typically write their assessments, and I quote:

> "Suppose an auditor sees a particular tax issue which he or she, as the case may be, believes it should be noted . . . Lets suppose also that the auditor says, well this is a little bit thin, you know, it's not a slam dunk . . . Well how does the auditor write it up? If he thinks, or she thinks, that there's a 20% chance, or if you will, a 50% chance of recovering on this issue . . . of course it's written up for the full amount."

Under this legislation, even if an auditor believes the chance of an assessments being upheld is minimal, the auditor will have more incentive to issue the assessment for an excessive amount. When the taxpayer receives such an assessment, he will have not choice but to protest it and the never-ending audit cycle will begin.

On behalf of AOGA, I urge you to keep Alaska competitive with the rest of the world for investment dollars, reject Sections 1 and 2 of Senate Bill 377.

Thank you.

Good morning, Mr. Chairman and members of the Committee. My name is Paul Wessells and I am Director of Tax for BP Exploration (Alaska) Inc. I am here to testify on behalf of BP against the proposed retroactive changes to the statutes of limitation on assessment and collection of the Oil and Gas Production Tax and the former Oil and Gas Income Tax, as set forth in Sections 1 and 2 of Senate Bill 377.

Although oil and gas taxes may seem like an obscure subject to most people, the tax administration system in Alaska is not a great deal different from others, including the federal income tax system. When its time to do your taxes you read the instruction booklet (that is, the statutes and regulations), you fill out a return, calculate the tax you owe, and then write a check. As I am sure some of you are painfully aware from personal experience with the IRS, filing your return is not always the end of the matter. It's no different for oil and gas producers in Alaska. The auditors in the Department of Revenue examine the returns we file, ask for explanations of items in these returns, and then decide whether the correct amount of tax has been paid. If the auditors believe we should have paid more, they give us a bill for the extra tax, and some sort of explanation of how they calculated the bill. This bill for additional tax is called an assessment and demand for payment. The IRS uses a different name for the bill they give you when they finish

an audit, but the process leading up to that bill is essentially the same.

Now just because you get this bill from the IRS or the Department of Revenue doesn't mean you owe it. The auditor might have made a mistake, either in calculating the bill or in interpreting the rules contained in the tax statutes and regulations. Whatever the nature of the mistake in an assessment, taxpayers have the right to ask the State (and the IRS) to correct the error. The way a taxpayer asks for a correction is by filing an appeal. In Alaska, taxpayers usually start the error correction process by asking for an informal conference with a Department of Revenue employee. If all of the errors are not corrected; the taxpayer can request a formal hearing presided over by a hearing officer, who is also a Department of Revenue employee. After the formal hearing, the Department's hearing officer writes a decision. The Commissioner of Revenue then reviews that decision. If the Commissioner approves the decision, it is formally issued and becomes the official position of the Department on the matter. At that stage the taxpayer has 30 days to appeal that decision to court. In a nutshell, that's how the tax audit and appeal process within the Department of Revenue works here in Alaska.

So how do the statutes of limitation fit into all of this? Well, they are rules that are there to regulate the audit and appeal process. Simply put, they give the Department three years from the filing of a tax return to audit it and send the taxpayer the bill for additional tax that the auditors think should have been paid and then an additional six years to get the claim into court for collection. If the Department doesn't send the bill within the three year period, it can never claim and collect any additional tax from the taxpayer. The same rule applies to your federal taxes - if you haven't heard from the IRS within the three years after April 15, you can throw your records away- you won't be needing them, because they won't ever be able to send you a bill for extra tax for that year.

Here in Alaska the six year statute is satisfied if, within the six years, the Department considers and decides a tax appeal and the appeal gets into court. In other words, when the appeal gets to court, it becomes a "judicial proceeding" of the type that the six-year statute talks about. What this means is that if the Commissioner of Revenue does not make a final administrative determination of a taxpayer's appeal before the six year period runs out, the State can't collect the bill. So it's three years to audit and six years to collect - nine years altogether.

Now I would like to talk about how SB 377 would change these rules. The amendment contained in Section 1 would change the three-year audit statute so that, even after the three years are up, the auditors can raise new and unrelated issues and increase their claims without limit for more tax at any time so long as the Department has not finished its consideration of the appeal and issued its formal hearing decision. [Exxon example] Section 2 of SB 377 would change the six-year statute so that the clock for the six years isn't running while the tax assessment is being appealed within the Department of Revenue or in court.

This doesn't sound like a big deal until you stop and think what it really means. The six-year statute currently sets a time limit on how slowly the Department can consider and decide a tax appeal. It has to get its work done on the appeal in six years. But under the Administration's proposal, the six-year clock won't be running while the Department considers the appeal. So the Department will, under this legislation, be free to take as many years as it wants to make a final decision. And, under the change proposed to the three-year statute, at any point during all that time while the Department has the appeal, it can change its mind about what the tax laws meant years earlier when the taxpayer originally filed its return.

Can you imagine what you would think if after an IRS audit you got a bill for an additional $1,000. You filed an

appeal explaining why you didn't think you owed it - and then heard nothing from the IRS about the disposition of your appeal until nine years later - at which time you get a bill for an additional $2,000 with an explanation that the IRS has come up with a new interpretation of the same rules. And, of course, the $3,000 has twelve years of interest added to it. Well, after you managed to calm down, if that were possible, you would probably think that something was terribly wrong with the US tax system.

You probably think I have a pretty vivid imagination to come up with a story like that. Let me assure you that except for the amount of tax this story is true and it happened to BP right here in Alaska. This changing of the Department's mind during the course of an extended tax appeal is one of the most troubling problems Alaska has with its present tax system, and because of tax confidentiality it is one of the most difficult to explain to the public with real-life examples. In effect, this institutionalized revisionism makes it impossible for a taxpayer to know what the correct amount of tax is when it has to file a tax return and pay that tax. Absolutely impossible.

The proposed amendments to the statutes of limitation that you are being asked to enact in this special session would ratify this course of conduct. Even if this is legal - and we don't think it is - is it a sensible tax policy? Apparently,

the Administration does not think so. That's why their proposal for the future is a rule that gives the Department five years to audit and make its claim for more tax, and after that the tax claim cannot be increased. Well then I must ask you, if the amendment to the three year statute that is being proposed to deal with tax years before 1994 is not good policy for the future, then why is it fit for the past?

I would like to say a few words about our efforts in recent weeks to find a compromise on this legislation. We have had a number of discussions with the Attorney General in an effort to find a middle ground. As you know from the letter you received from our President, John Morgan, we offered not to claim the six year collection statute as a defense in consideration for the Administration dropping its insistence on retroactivity. We also supported legislation that would adopt royalty settlement values as a basis for tax valuation. The Administration rejected these overtures. During our several discussions with them it has become very clear to us that withdrawing support of retroactivity, especially with regard to the three year limit on assessments, is an idea they will not accept. As you all know from Mr. Sullivan's testimony yesterday, the Supreme Court is scheduled to hear a case next week that will determine the proper interpretation of the three year limit on assessments. We had hoped that the Administration

would conclude that our offer not to claim the six year statute would avoid the prospect of amounts being "taken off the table" in negotiations and that a proper judicial determination of the meaning of the three year statute would be satisfactory. BP is prepared to live by whatever the court decides, why isn't the Administration? Is it concerned that the State might not prevail? If that is the problem, the message for business in Alaska is pretty ominous - if the State wants your money bad enough, it will do anything, even change its laws retroactively, in order to get it.

In addition to being bad policy for the state by sending a very clear "stay away" message to investors, SB 377 won't even deliver as advertised - that is as a catalyst to settlement of these old tax claims. It only adds another procedural twist that both sides' litigation teams will spar over. And it won't save the alleged $3 billion of back taxes from falling off the table. Either it has already fallen, or the present laws keep it from falling off.

Thank you for the opportunity to testify.

DIVISION OF LEGAL SERVICES

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MEMORANDUM May 10, 1994

SUBJECT: Draft HCS CSSB 377 ( ) "X" version (Work Order No. 8-LS1888\X)

TO: Representative Ramona Barnes,
Speaker of the House
ATTN: Doug Wooliver

FROM: Jack Chenoweth
Legislative Counsel

Per request, this is a sectional analysis of HCS CSSB 377( ), a bill draft requested and returned to your office this afternoon.

The draft includes all the tax-assessment and tax-related changes at the front of the bill, as bill sections 1 - 6.

Bill section 1 makes substantive changes in the procedures surrounding the assessment of the oil and gas properties production tax and the former oil and gas income tax applying the "separate accounting" method. Paragraph (1) affects the taxes due for tax periods ending before January 1, 1994 and would allow the department to adjust assessments at any time the matter remained unresolved, notwithstanding the general three-year limitation period applicable to tax assessments. Paragraph (2) affects the taxes due for tax periods beginning after December 31, 1993, and caps the ability of the state to issue or amend tax assessments for taxes to five years.

Bill section 2 amends provisions relating to tax collection to clarify when the six-year period for collection commences.

Bill section 3 sets out a mechanism by which to ascertain the prevailing value of oil under the state's oil and gas properties production tax, authorizing the Department of Revenue to adopt regulations to determine the "prevailing value of oil" based upon a combination of stated methods and reflecting different types of oil and different production fields.

Bill section 4 amends the definition, for purposes of the state's oil and gas properties production tax, of "gross value at the point of production" as applicable to the valuation of gas taken as a byproduct from the production of oil.

Bill section 5 expands the definition, for purposes of the state's oil and gas properties production tax, of "gross value at the point of production" as applicable to the valuation of gas produced as fuel or stock in the production of urea or ammonia, tying that value to a royalty settlement agreement when there is an agreement.

Bill section 6 supplies definitions for terms used in AS 43.55.

*

Bill sections 7 - 15 retain the material initially offered by the administration that relate to state agency fiscal procedures.

Bill section 7, amending AS 37.05.180, changes, from two to one two year, the time within which state warrants must be presented for payment.

Bill section 8, amending AS 37.05.510(b), changes the manner in which charges may be made against the working reserve account.

Bill section 9, amending AS 37.07.060(b)(2), would require the governor to include certain information related to the constitutional budget reserve fund in the required financial report to the legislature.

Bill section 10, adding a new section AS 37.07.085, authorizes a state agency to prorate certain payments under certain conditions.

Bill section 11, amending AS 37.25.010(b), revises a provision relating to payment of certain prior year obligations.

Bill section 12, amending AS 39.20.250(a), eliminates the provision of current law authorizing the payment of terminal leave in installments.

Bill section 13, amending AS 44.23.055(8), would reduce from two years to one year the time within which a person must apply for reissue of a permanent fund dividend that was returned as undeliverable.

Bill section 14, amending AS 47.20.070, is applicable to the state's grant program for exceptional children operated by the Department of Health & Social Services, and would reauthorize the payment of certain grants that were made in past years but for which the authority to pay was inadvertently deleted in conforming related laws to changes in federal laws. I understand that detailed information about this provision

is available from the Department of Health & Social Services in a memorandum from Special Assistant Elmer Lindstrom memo to the Senate Finance Committee.

Bill section 15 repeals AS 39.20.250(b), a law related to payment of terminal leave and should be read in connection with bill section 12.

*

Bill section 16, commenting as to the nature of the amendments made to AS 43.05.-260(a)(1) and AS 43.05.270(a) by bill sections 1 and 2, asserts that these provisions restate the law as it was enacted by sec. 1, ch. 94, SLA 1976.

Bill section 17, in the nature of an applicability provision, directs that the changes made by the amendments made to AS 43.05.260(a)(1) and AS 43.05.270(a) by bill sections 1 and 2 apply to grievances, actions, and appeals pending on the effective date of those sections.

Bill section 18 makes the initial amendment of the definition of "gross value at the point of production" retroactive to January 1, 1985.

Bill sections 19 and 20 are the measure's effective date provisions. Generally,

-- the changes in law affecting oil and gas matters that are made by the provisions enumerated in bill section 19 take effect immediately; and

-- under bill section 20, the changes proposed in the provisions not related to oil and gas matters would take effect with the start of the next fiscal year (July 1, 1994).

JBC:mi
94-107.mai

8-LS1888\X
Chenoweth
5/10/94

HOUSE CS FOR CS FOR SENATE BILL NO. 377( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to state agency fiscal procedures, including procedures related to the assessment and collection of certain taxes; and providing for an effective date."

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

* Section 1. AS 43.05.260(a) is amended to read:

(a) Except as provided in (c) of this section and AS 43.20.200(b), the amount of a tax imposed by this title must be assessed

(1) for tax periods ending before January 1, 1994, within three years after the return was filed, whether or not a return was filed on or after the date prescribed by law; however, at any time during the administrative consideration of a taxpayer grievance or of a claim for credit or refund, based upon a tax imposed by former AS 43.21 or by AS 43.55, the department may increase or decrease the amount of tax due by issuing or amending an assessment;

(2) for tax periods beginning after December 31, 1993, within five

years after the return was filed, whether or not a return was filed on or after the date prescribed by law; the department may increase or decrease the amount of tax due by issuing or amending an assessment within the five-year period; after that five-year period, the department may not increase an assessment under this subsection. [IF THE TAX IS NOT ASSESSED BEFORE THE EXPIRATION OF THE THREE-YEAR PERIOD, PROCEEDINGS MAY NOT BE INSTITUTED IN COURT FOR THE COLLECTION OF THE TAX.]

* Sec. 2. AS 43.05.270(a) is amended to read:

(a) When the assessment of a tax imposed by this title has been made within the period of limitation under AS 43.05.260, the tax may be collected by levy or by a proceeding in court [, BUT ONLY] if the levy is made or the proceeding is begun:

(1) within six years after the latest of any of the following:

(A) the assessment of the tax;

(B) the final administrative determination of the grievance, if the taxpayer files a grievance from an assessment; or

(C) the final judicial resolution of an appeal, if the taxpayer appeals from a final adjudicative determination of a grievance; or

(2) before the expiration of a period for collection agreed upon in writing by the department and the taxpayer before the expiration of the six-year period; a period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon [; THE PERIOD PROVIDED BY THIS PARAGRAPH DURING WHICH A TAX MAY BE COLLECTED BY LEVY MAY NOT BE EXTENDED OR CURTAILED BECAUSE OF A JUDGMENT AGAINST THE TAXPAYER].

* Sec. 3. AS 43.55 is amended by adding a new section to read:

Sec. 43.55.145. PREVAILING VALUE FOR OIL. (a) The department shall adopt regulations to determine a methodology for calculating the prevailing value of oil produced in each field or area of the state for each destination area to which the oil is delivered. Before each October 30, the department shall annually review and determine if any adjustments are necessary to the methodology established by regulation under this section.

(b) The regulations adopted by the department under (a) of this section shall determine the prevailing value of oil using the

(1) current value or average of current values for oil of like kind, character, and quality produced from each field or area in the state;

(2) current values or average of current values for two or more types of domestic or foreign oil selected by the department that are not produced in the state; or

(3) any combination of the methods set out in this subsection.

(c) The department may average or assign different weights to the oils selected under (b) of this section. The department may adjust the amounts calculated under (b) of this section to account for differences in oil types and destination areas.

(d) For purposes of this section, "current value" includes spot or other current prices or assessments publicly reported.

* Sec. 4. AS 43.55.900(7) is amended to read:

(7) "gross value at the point of production" means

(A) for oil, the value of the oil at the point where it is metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) in a condition of pipeline quality on the premises of the lease or property from which it is recovered; however, if the oil is not of pipeline quality when it is removed from the premises of the lease or property from which it is recovered, or if the oil recovered from a lease or property is not metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) on the premises of the lease or property from which it is recovered, then the gross value at the point of production is the value of that oil at the off-premises location where the oil is first metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) in a condition of pipeline quality;

(B) for gas recovered from or in association with oil, the value of the gas at the point where it is accurately metered or measured after separation from the oil; for gas run through a gas processing plant, the gross

value at the point of production is the full consideration received by the producer for the gas if sold in an arm's length transaction or, in the absence of an arm's length transaction, is the sum of the value of the liquids extracted from the gas at the plant <u>and sold</u> and the value of the residue gas <u>sold</u>, less a reasonable allowance<u>, which may not exceed $1 per barrel of plant liquid sold,</u> for processing the gas at the plant and for transporting the gas to the plant from the premises upon which the oil production operation is conducted; and

(C) for gas not recovered from or in association with oil, the value of the gas at the point where it is accurately metered or measured or the value of the gas at the point of sale, if any, on the premises of the lease or property from which the gas is recovered, whichever is the higher value; for gas run through a gas processing plant, the gross value at the point of production is the full consideration received by the producer for the gas if sold in an arm's length transaction or, in the absence of an arm's length transaction, is the sum of the value of the liquids extracted from the gas at the plant <u>and sold</u> and the value of the residue gas <u>sold</u>, less a reasonable allowance<u>, which may not exceed $1 per barrel of plant liquid sold,</u> for processing the gas at the plant and for transporting the gas to the plant from the point where it was accurately metered or measured;

* Sec. 5. AS 43.55.900(7), as amended by sec. 4 of this Act, is amended to read:

(7) "gross value at the point of production" means

(A) for oil, the value of the oil at the point where it is metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) in a condition of pipeline quality on the premises of the lease or property from which it is recovered; however, if the oil is not of pipeline quality when it is removed from the premises of the lease or property from which it is recovered, or if the oil recovered from a lease or property is not metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) on the premises of the lease or property from which it is recovered, then the gross value at the point of production is the value of that oil at the off-premises location where the oil

is first metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) in a condition of pipeline quality;

(B) for gas recovered from or in association with oil, the value of the gas at the point where it is accurately metered or measured after separation from the oil; for gas run through a gas processing plant, the gross value at the point of production is the full consideration received by the producer for the gas if sold in an arm's length transaction or, in the absence of an arm's length transaction, is the sum of the value of the liquids extracted from the gas at the plant and sold and the value of the residue gas sold, less a reasonable allowance, which may not exceed $1 per barrel of plant liquid sold, for processing the gas at the plant and for transporting the gas to the plant from the premises upon which the oil production operation is conducted; [AND]

(C) for gas not recovered from or in association with oil, the value of the gas at the point where it is accurately metered or measured or the value of the gas at the point of sale, if any, on the premises of the lease or property from which the gas is recovered, whichever is the higher value; for gas run through a gas processing plant, the gross value at the point of production is the full consideration received by the producer for the gas if sold in an arm's length transaction or, in the absence of an arm's length transaction, is the sum of the value of the liquids extracted from the gas at the plant and sold and the value of the residue gas sold, less a reasonable allowance, which may not exceed $1 per barrel of plant liquid sold, for processing the gas at the plant and for transporting the gas to the plant from the point where it was accurately metered or measured; **and**

(D) for taxable gas produced and used as a fuel or feedstock in the production of urea or ammonia, notwithstanding (B) and (C) of this paragraph and AS 43.55.020(f), the gross value at the point of production for each lease or property is the amount per Mcf under a royalty settlement agreement to which the state is a party and that was in effect

on January 1, 1994, for royalty gas from that lease or property; if taxable gas is produced and exchanged for other gas on a volumetric basis, and the gas received in that exchange transaction is used as a fuel or feedstock in the production of urea or ammonia, the gross value at the point of production for each lease or property is the amount per Mcf under a royalty settlement agreement to which the state is a party and which was in effect on January 1, 1994, for royalty gas from the lease or property from which the producer's taxable gas was produced;

* Sec. 6. AS 43.55.900 is amended by adding new paragraphs to read:

(17) "condensate" means all hydrocarbons, including scrubber liquids, recovered in liquid form from a gaseous stream by mechanical separation without resort to extraneous refrigeration, adiabatic expansion through a Joule-Thompson valve following artificial compression, turbo-expansion, aerial cooling below the temperature at which hydrates or ice would form in the gas stream, osmosis, adsorption, or absorption; if a gas stream moves to a gas processing plant without having passed through a prudently operated mechanical separation unit, that portion of the liquid hydrocarbons extracted at the gas plant that could have been extracted through a mechanical separation unit by a prudent operator will be treated as condensate;

(18) "distillate" has the meaning given the term "condensate" in this section;

(19) "gas processing plant" means a facility, other than a liquified natural gas plant, in which liquid hydrocarbons are extracted and separated from a stream of gas by one or more of the following means: refrigeration, adiabatic expansion through a Joule-Thompson valve following artificial compression, turbo-expansion, osmosis, adsorption, or absorption.

* Sec. 7. AS 37.05.180 is amended to read:

Sec. 37.05.180. TIME [TWO-YEAR] LIMITATION ON PAYMENT OF WARRANTS. A warrant upon the state treasury may not be paid unless presented at the office of the commissioner of revenue within one-year [TWO YEARS] of the date of its issuance. A warrant not presented within that time is considered paid and money held at the expiration of that time in a special fund or account for the payment of the

warrant shall be transferred to the general fund, except where the warrant is for the payment of a permanent fund dividend or where transfer is prohibited by the federal government for state participation in a federal program.

* Sec. 8. AS 37.05.510(b) is amended to read:

(b) The Department of Administration shall allocate to the working reserve account amounts appropriated to all state agencies for the benefits set out in (a) of this section after the appropriation Act implementing the state operating budget is enacted. The department shall charge the reserve account with all payments for the benefits set out in (a) of this section. [IF PAYMENTS FOR A FISCAL YEAR EXCEED THE UNEXPENDED BALANCE OF APPROPRIATIONS ALLOCATED TO THE ACCOUNT, THE DEPARTMENT MAY, EXCEPT FOR PAYMENTS UNDER (a)(4) OF THIS SECTION, PAY THOSE BENEFITS BY CHARGING THE UNENCUMBERED BALANCE OF ANY APPROPRIATION ENACTED TO FINANCE THE PAYMENT OF EMPLOYEE SALARIES AND BENEFITS THAT IS DETERMINED TO BE AVAILABLE FOR LAPSE AT THE END OF THE FISCAL YEAR.]

* Sec. 9. AS 37.07.060(b)(2) is amended to read:

(2) the governor's operating program and budget recommendations for the succeeding fiscal year organized by agency as required by AS 37.07.020(a); **if an appropriation has been made from the constitutional budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska), and until the amount appropriated is repaid, the governor shall propose the amount of money in the general fund available for appropriation at the end of the preceding fiscal year that shall be appropriated to the constitutional budget reserve fund;**

* Sec. 10. AS 37.07 is amended by adding a new section to read:

Sec. 37.07.085. PRORATION OF PAYMENTS. (a) At the beginning of each fiscal year, an agency that administers grants, reimbursement, revenue sharing, public assistance, or other programs to distribute state money under a statute shall determine whether appropriations for the fiscal year are sufficient to pay all anticipated claims and entitlements under the statute. Except as provided in (d) of this section or as otherwise provided by law prescribing agency action in response to insufficient

appropriations, if appropriations are not sufficient, the agency shall reduce the amount to be paid to eligible recipients by prorating the shortfall among the eligible recipients.

(b) An agency that is paying reduced payments under (a) of this section shall determine, on December 30 of the fiscal year, whether money available is sufficient to fund the reduced payment level for the remainder of the fiscal year.

(c) An agency that has determined that appropriations are insufficient under (a) or (b) of this section shall report to the governor, and the governor shall report to the legislature by the 10th day of the next regular legislative session, the amount of additional money needed for the remainder of that fiscal year to fund payments at the reduced level and the amount of additional money needed to make full payments to eligible recipients.

(d) An agency that has determined that appropriations are insufficient under (a) of this section may not reduce payments if the reduction would violate the terms of an agreement between the state and the federal government or would violate a requirement for participation in a federal program in which the state is participating. As required by (c) of this section, the agency and the governor shall report regarding the amount of money needed to make full payments to eligible recipients.

(e) The commissioner of administration may adopt regulations necessary to implement this section.

* **Sec. 11.** AS 37.25.010(b) is amended to read:

(b) An indebtedness arising from a prior year for which the appropriation has lapsed shall be paid from the current year's appropriations, if

(1) this expenditure does not exceed the balance lapsed; and

(2) the original obligation date is not more than **four** [TWO] years from the requested date of disbursement.

* **Sec. 12.** AS 39.20.250(a) is amended to read:

(a) Terminal leave for unused personal leave shall be allowed upon separation from service. The payment equals the **personal leave balance at the date of separation multiplied by the officer's or employee's rate of pay at the date of separation expressed on an hourly basis** [COMPENSATION THAT THE OFFICER OR EMPLOYEE WOULD HAVE RECEIVED IF THE OFFICER OR EMPLOYEE

HAD REMAINED IN THE SERVICE UNTIL THE EXPIRATION OF THE PERIOD OF UNUSED PERSONAL LEAVE]. A payment of terminal leave to an employee shall be made as a lump sum payment [OR IN INSTALLMENTS OVER A PERIOD OF TIME, AS THE EMPLOYEE ELECTS].

* Sec. 13. AS 43.23.055 is amended to read:

Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

(1) annually pay permanent fund dividends from the dividend fund;

(2) subject to AS 43.23.011 and [PARAGRAPH] (8) of this section, adopt regulations under AS 44.62 (Administrative Procedure Act) that establish procedures and time limits for claiming a permanent fund dividend; the department shall determine the number of eligible applicants by October 1 of the year for which the dividend is declared and pay the dividends by December 31 of that year;

(3) adopt regulations under AS 44.62 (Administrative Procedure Act) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual;

(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends;

(5) annually determine, in cooperation with the Department of Corrections, the number and identity of individuals ineligible for a permanent fund dividend under AS 43.23.005(d);

(6) adopt regulations that are necessary to implement AS 43.23.005(d);

(7) adopt regulations that establish procedures for the parent, guardian, or other authorized representative of a disabled individual to apply for prior year permanent fund dividends not received by the disabled individual because no application was submitted on behalf of the individual;

(8) adopt regulations that establish procedures for an individual to apply to have a dividend warrant reissued if it is returned to the department as undeliverable or it is not paid within <u>one year</u> [TWO YEARS] of the date of its issuance; however,

the department may not establish a time limit within which an application to have a warrant reissued must be filed;

(9) adopt regulations establishing an optional longevity bonus program to provide for the direct payment by the department of an individual's permanent fund dividend to an annuity program selected by the individual.

* **Sec. 14.** AS 47.20.070 is amended by adding a new subsection to read:

(d) The department may award grants necessary to the performance of its duties under this chapter. If the department determines that it is appropriate to further program objectives, the department may award grants for a period of two years, subject to legislative appropriation.

* **Sec. 15.** AS 39.20.250(b) is repealed.

* **Sec. 16.** The provisions of AS 43.05.260(a)(1), as amended by sec. 1 of this Act, and of AS 43.05.270(a), as amended by sec. 2 of this Act, are declaratory of existing law as originally enacted in AS 43.05.260 and 43.05.270 by sec. 1, ch. 94, SLA 1976.

* **Sec. 17.** Notwithstanding the provisions of AS 01.10.100(a), the provisions of AS 43.05.260(a)(1), as amended by sec. 1 of this Act, and AS 43.05.270(a), as amended by sec. 2 of this Act, apply to a grievance pending under AS 43.05.240 and to an action or appeal pending before a court on the effective date of secs. 1 and 2 of this Act.

* **Sec. 18.** Section 4 of this Act is retroactive to January 1, 1985.

* **Sec. 19.** Sections 1 - 6 and 16 - 18 of this Act take effect immediately under AS 01.10.070(c).

* **Sec. 20.** Except as provided in sec. 19 of this Act, this Act takes effect July 1, 1994.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

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

March 25, 1988

Dear :

This letter is to invite your participation in briefing an issue currently pending before the commissioner of revenue in a confidential taxpayer proceeding.

The questions to be addressed may be stated as follows:

1. Under which of the following circumstances, if any, does the statute of limitations bar the department from amending a timely filed assessment.

(a) the amount originally assessed is either increased or decreased in the amended assessment and more than three years have elapsed since the filing of the return;

(b) the amount originally assessed is not changed but the reasons in support have changed and more than three years have elapsed since the filing of the return; and

(c) both the amount originally assessed and the underlying grounds for the original assessment have been changed and more than three years have elapsed since the filing of the return?

2. If the department has authority to amend an assessment under any of the circumstances above, is the department required to first show good cause and, if so, what does "good cause" mean?

3. Does an appeal by a taxpayer of a Notice of Assessment constitute a waiver of the statute of limitations or toll the running of the limitation period during the pendency of the appeal?

Your participation is invited in order to assist the commissioner in focusing on the broader implications of various possible rulings on the statute of limitations. Your participation in this matter does not foreclose or affect your ability to later argue this issue in a subsequent case in which you have a direct interest.

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If you choose to file an amicus brief on the above question, please submit the brief, along with two copies, by April 25, 1988. This office will serve copies of the amicus briefs on the parties to the proceeding. The briefs of the parties will not be circulated to the non-party taxpayers. No reply brief of an amicus will be permitted.

Please note that amicus briefs are probably not protected by AS 43.05.230 and may be subject to public disclosure. This notice is being sent to all AS 43.21 and AS 43.55 taxpayers. You may wish to join with one or more taxpayer in submitting a brief. Thank you for your consideration of this matter.

Sincerely,

Deborah Vogt
Senior Revenue Hearing Examiner

cc: Commissioner Hugh Malone
Attorney General Grace Berg-Schaible
Donald Bullock, Hearing Officer
Myron Klein, Hearing Officer
Tina Koybayashi, Hearing Officer
Diane Colvin, Hearing Officer

Current

sales in the same market for each month as reported by the taxpayers on their production tax returns. The volume-weighted average reported sales price is an arithmetic calculation based on returns as filed and is not a determination of the prevailing value of the oil.

(b) A taxpayer will recalculate its aggregate tax liability based on the interim sales price under (a) of this section and it shall pay the difference between the reported tax liability and the recalculated tax liability for the six-month period. If the amount of taxes paid by a taxpayer exceeds the recalculated tax liability for the six-month period, then the taxpayer may treat the excess as a credit against future estimated payments. Notwithstanding 15 AAC 05.050, the department will defer action on a claim for refund of the recalculated tax until the department has made a final determination of taxes due under 15 AAC 55.

(c) A taxpayer shall file a report on a form prescribed by the department and shall, as appropriate, either pay with money or by applying a credit accrued under (b) of this section, or claim a credit for, the difference between the recalculated tax liability under this section and the reported tax liability. The report and the payment of claim of credit for the first six months of the calendar year must be filed no later than October 31 of that year, and the report and the payment or claim of credit for the second six months of the calendar year must be filed no later than April 30 of the following year. (Eff. 9/1/84, Register 91)

Authority: AS 43.05.080 AS 43.55.040
AS 43.55.020 AS 43.55.110
AS 43.55.030

15 AAC 55.170. PREVAILING VALUE FOR OIL. (a) For a producer's oil, the prevailing value for purposes of this chapter is the arithmetic average acquisition cost C.I.F. (at the refinery inlet in the same market in which the producer's Alaskan oil is refined) based on the sales price of like oil sold in up to three third-party, arm's-length transactions selected by the department. In this subsection, "like oil" means an oil of substantially similar quality produced in the same general area of the state and subject to the same federal price controls, if any, as the oil for which the prevailing value is to be determined.

(b) If the information under (a) of this section is not available, then the prevailing value for purposes of this chapter equals the arithmetic average acquisition cost C.I.F. (at the refinery inlet in the same market in which the producer's Alaskan oil is refined) of up to six oils selected by the department including

(1) up to three domestic oils of substantially similar quality which are sold in significant quantities in the same market or near the same market; and

(2) up to three imported oils of substantially similar quality which are sold in significant quantities in the same market or near the same market.

(c) The respective acquisition cost C.I.F. at the refinery inlet in a market for each of the oils used in this section equals the sum of

(1) the respective official government sales price or posted price of the oil (with adjustments for differentials and surcharges) appearing in the latest Platt's Oilgram Price Report published on or before the last day of a month; plus

(2) the respective tanker transportation cost of the oil from its port of origin to ship's rail in the same market as that in which the producer's Alaskan oil is refined, to be calculated

(A) by multiplying the London Tanker Broker's average freight rate assessment ("AFRA") applicable to that voyage during that month for AFRA LR2 (Long Range 2) oil tankers, by the most recently published Worldscale rate for that voyage; or

(B) by applying another applicable freight rate if foreign flag vessels are prohibited from transporting that oil; plus

(3) any canal tolls and expenses not included in the applicable freight rate for that voyage; plus

(4) pipeline or other carrying charges.

(Eff. 1/6/80, Register 73; am 5/21/81, Register 78; am 9/1/84, Register 91)

Authority: AS 43.05.080
AS 43.55.020(f)
AS 43.55.110

15 AAC 55.172. PREVAILING VALUE FOR GAS. For a producer's gas, the prevailing value for purposes of this chapter is

(1) the volume-weighted average of the prices received under the terms of sales contracts for significant quantities which have been entered into or the pricing provisions of which have been amended during the tax year or the two preceding years at the sales delivery points within the same market for that production by the producer in arm's-length sales transactions for like kind, character, and quality Alaskan gas produced during the month; or

(2) if the producer makes no arm's-length sales of significant quantities at the sales delivery points within the same market for like kind, character, and quality Alaskan gas produced during the month, the volume-weighted average of the prices under the terms of arm's-length sales contracts for significant quantities of gas (whether between third parties or not) which were entered into or the pricing provisions of which were amended during the tax year or the two preceding years from the same field as the producer's gas (or if there are no contracts which comply with this paragraph for that

with generally accepted accounting principles, consistently applied.

(d) If a producer exchanges oil or gas with a third party, the sales price of that oil or gas for purposes of 15 AAC 55.010 — 15 AAC 55.210 is

(1) the price prescribed in the exchange agreement for the producer's oil or gas for purposes of settling accounts and cashing out any net exchange balances in the producer's favor (to illustrate what is meant by a net exchange balance in the producer's favor, suppose the exchange is for oil on a barrel-for-barrel basis and the producer's volume to the third party exceeds the volume received from the third party: the amount of that excess would be the net exchange balance in the producer's favor); or

(2) if there is no such price prescribed in the exchange agreement, the price attributable to the oil or gas received by the producer which is entered on the producer's books in accordance with generally accepted accounting principles, consistently applied. (Eff. 1/6/80, Reg. 73)

Authority: AS 43.05.080
AS 43.55.020(f)
AS 43.55.110

15 AAC 55.165. ESTIMATED PAYMENT OF TAXES. (a) Beginning with the six-month period of July through December 1984, and for each succeeding six-month period after that, the department will compute and publish an interim sales price for oil from each oil producing field or area in Alaska for each month of that six-month period. The department will publish interim sales prices for the first six months of a calendar year before August 31 of that year and will publish interim sales prices for the second six months of the calendar year before March 1 of the following year. The interim sales price will be based on the volume-weighted average sales price of all taxpayers' sales in the same market for each month as reported by the taxpayers on their production tax returns. The volume-weighted average reported sales price is an arithmetic calculation based on returns as filed and is not a determination of the prevailing value of the oil.

(b) A taxpayer will recalculate its aggregate tax liability based on the interim sales price under (a) of this section and it shall pay the difference between the reported tax liability and the recalculated tax liability for the six-month period. If the amount of taxes paid by a taxpayer exceeds the recalculated tax liability for the six-month period, then the taxpayer may treat the excess as a credit against future estimated payments. Notwithstanding 15 AAC 05.050, the department will defer action on a claim for refund of the recalculated tax until the department has made a final determination of taxes due under 15 AAC 55.

(c) A taxpayer shall file a report on a form prescribed by the department and shall, as appropriate, either pay with money or by applying a credit accrued under (b) of this section, or claim a credit for, the difference between the recalculated tax liability under this section and the reported tax liability. The report and the payment of claim of credit for the first six months of the calendar year must be filed no later than October 31 of that year, and the report and the payment or claim of credit for the second six months of the calendar year must be filed no later than April 30 of the following year. (Eff. 9/1/84, Reg. 91)

Authority: AS 43.05.080 AS 43.55.040
AS 43.55.020 AS 43.55.110
AS 43.55.030

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(b) If the information under (a) of this section is not available, then the prevailing value for purposes of this chapter equals the arithmetic average acquisition cost C.I.F. (at the refinery inlet in the same market in which the producer's Alaskan oil is refined) of up to six oils selected by the department including

(1) up to three domestic oils of substantially similar quality which are sold in significant

quantities in the same market or near the same market; and

(2) up to three imported oils of substantially similar quality which are sold in significant quantities in the same market or near the same market.

(c) The respective acquisition cost C.I.F. at the refinery inlet in a market for each of the oils used in this section equals the sum of

(1) the respective official government sales price or posted price of the oil (with adjustments for differentials and surcharges) appearing in the latest Platt's Oilgram Price Report published on or before the last day of a month; plus

(2) the respective tanker transportation cost of the oil from its port of origin to ship's rail in the same market as that in which the producer's Alaskan oil is refined, to be calculated

(A) by multiplying the London Tanker Broker's average freight rate assessment ("AFRA") applicable to that voyage during that month for AFRA LR 2 (Long Range 2) oil tankers, by the most recently published Worldscale rate for that voyage; or

(B) by applying another applicable freight rate if foreign flag vessels are prohibited from transporting that oil; plus

(3) any canal tolls and expenses not included in the applicable freight rate for that voyage; plus

(4) pipeline or other carrying charges. (Eff. 1/6/80, Reg. 73; am 5/21/81, Reg. 78; am 9/1/84, Reg. 91)

Authority: AS 43.05.080
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AS 43.55.110

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(1) the volume-weighted average of the prices received under the terms of sales contracts for significant quantities which have been entered into or the pricing provisions of which have been amended during the tax year or the two preceding years at the sales delivery points within the same market for that production by the producer in arm's-length sales transactions for like kind, character, and quality Alaskan gas produced during the month; or

(2) if the producer makes no arm's-length sales of significant quantities at the sales delivery points within the same market for like kind, character, and quality Alaskan gas produced during the month, the volume-weighted average of the prices under the terms of arm's-length sales contracts for significant quantities of gas (whether between third parties or not) which were entered into or the pricing provisions of which were amended during the tax year or the two preceding years from the same field as the producer's gas (or if there are no contracts which comply with this paragraph for that field, contracts which comply with this paragraph in the nearest field to that field), with appropriate adjustments for differences, if any, in kind, character, and quality between gas sold under the reference sales contracts and the producer's gas. (Eff. 5/21/81, Reg. 78)

Authority: AS 43.05.080
AS 43.55.020(f)
AS 43.55.110

15 AAC 55.180. CHOICE OF METHODS FOR DETERMINING REASONABLE COST OF TRANSPORTATION. (a) Except as provided in (b) of this section, the reasonable cost of transportation is the actual cost of transportation as determined in 15 AAC 55.190(a) and (b).

(b) The reasonable cost of transportation is the fair market value as defined in 15 AAC 55.190(c) when all of the following conditions exist:

(1) the parties to the transportation of oil or gas are affiliated;

(2) the contract for the transportation of oil or gas is not an arm's-length transaction or is not representative of the market value of the transportation; and

(3) the method of transportation of oil or gas is not reasonable in view of existing alternative methods of transportation. (Eff. 1/6/80, Reg. 73)

Authority: AS 43.05.080 AS 43.55.110
AS 43.55.020(f) AS 43.55.150

APR 4 1994

Ans'd.....

November 1, 1993

Honorable Rick Halford, President, Alaska State Senate
and
Honorable Ramona Barnes, Speaker, Alaska House of Representatives
State of Alaska
Juneau, Alaska

Dear Mr. President and ~~Madam Speaker~~ Ramona:

Recent publicity involving settlement of oil and gas income and severance tax litigation and the related question of use of these funds prompts me to break my two year silence.

I, like many informed Alaskans, was aware that for the last decade the major oil companies were exercising their rights as taxpayers and resisting many of the assessments levied by the Department of Revenue. As a professional in the tax/accounting field, I knew the numbers were large and the issues complex. However, it was only after becoming Commissioner in December 1990 that I gained awareness of the internal problems associated with the collection efforts of the state.

Early in my term I received many hours of indoctrination by Revenue's Oil & Gas audit staff. Gov. Hickel's charge to me was "clean up this mess and collect the monies due the state". I also read thousands of pages of documents, but found it ironic that far too many of these pieces of paper were exchanges (often bitter) between personnel in Revenue and Law (AG's office). Their basic problem was the issue of "control" over the collection process. The tax issues were seldom debated. The fact that the process suffered while they bickered seemed to be lost in the shuffle of paperwork, while egos were bruised and costs skyrocketed.

I was also immediately troubled by the deep and expensive involvement of outside legal counsel, controlled in the early years by Revenue and then gradually taken over by Law.

I became convinced, and remain so today, that the parties representing the state were (and are) more interested in perpetuating this litigation than accomplishing settlement (collection). By the magnitude of its dollars and the virgin issues involved, this litigation represents potential lifetime employment, career enhancement and retirement benefits to state employees and their cozy friends in

outside law firms. It is a bureaucrat's dream.

The major oil companies were financially capable of doing battle for as long as it served their purpose and whether consciously or unwittingly, they played directly into the hands of the state's employees and outside contractors. The combination of these factors has bode poorly for our citizens and the Legislature.

Perhaps of equal importance, until William Floerchinger, CPA, was appointed Director of Oil & Gas audit by Commissioner Malone, the state had never been led and represented by an experienced tax professional. The expertise of the oil companies was overwhelming by comparison. Bill brought credentials to the table which resulted in the ARCO settlement and laid out a long-term plan for the department.

Regretfully, most of this gain was destroyed by the October/November 1991 take over of the Department of Revenue by Attorney General Charlie Cole. Floerchinger's termination was purely and simply retribution for the part he had played in the previously described problems between the two agencies. The agreement signed in early 1992 between Acting Commissioner Rexwinkel and Cole is, in my opinion and the opinion of many senior staff in Revenue, in violation of Statutes and Regulations. The present day leadership of Oil & Gas audit is without appropriate tax background and operates for the sake of appearance...totally dominated by the AG's office.

All decisions regarding audits and collection efforts since early 1992 have been made solely by Cole or his designee (until January 5, 1994). Needless to say, the moral of Revenue's staff is low and audit productivity is poor. They sense that the professionalism of Floerchinger's leadership has been replaced by the administration's (Cole's) "cash today and to hell with the tax issues" policy. Don't think for an instance this has been overlooked by the taxpayers.

Some unreported history from my short tenure in office should help you understand the severity of this problem.

In early May 1991, I was furnished a copy (about 3/4" thick) of the January 1991 billing from the state's primary outside law firm. I was appalled at the individual attorney's hours reflected in this billing for the thirty one days of January. They ranged from 250 hours for some staff to as much as 290 hours for others. As a professional person, I knew these charges represented either (1) padded hours (see enclosed articles), or (2) inefficient workmanship. In either case, we the State were stupid to pay such charges.

I physically presented this bill to Gov. Hickel in his Anchorage office along with my verbal analysis. He evidenced an immediate understanding and decreed that "we should meet in Juneau with Charlie and bring this unacceptable billing to his attention".

During this Anchorage meeting the Governor shared with me the counsel he had received from both of his immediate predecessors (Sheffield and Cowper) that "his greatest problem as Governor would be reducing the power structure and personnel/budget build-up in the AG's office which occurred during their terms." Wally appeared genuinely concerned with Bill's and Steve's comments and appeared to relate their words to the billing I had just reviewed with him and the overall failure of the State to close out these old tax cases...1977 to 1982.

Two weeks later I was summoned to the governor's office for a meeting with Cole. In hindsight, I'm now sure the result had been predetermined prior to my arrival. The governor asked me to present the issue/problem. I did so. Charlie made a cursory examination of the page summarizing the hours billed and stated in his best court room manner --"Governor, these are good hours, normal for attorneys preparing a case for trial. Accountants just don't understand working such long hours".

I was out in five minutes and was now an identified enemy of the AG and his staff.

In July 1991, at the insistence of Revenue, a high level meeting with Law was held in the NBA's main conference room in Anchorage. This neutral site was necessary because of the egos of the parties.

Bob Doss, Director of Oil & Gas Audit, co-chaired the meeting with an Assistant AG. An agenda had been prepared and included opportunities for both groups to make presentations. I don't remember why Revenue presented first, but we did. A senior auditor made a presentation describing a chart developed from analysis of the Statutes and Regulations showing the involvement and responsibilities of each department from the start of an audit through final collection, including litigation (court) if necessary.

The meeting quickly degenerated into child-like bickering, led by three very vocal Assistant AG's. Again, the entire emphasis was on the question of control of the audits and the collection/litigation process. Law wanted to be involved from the start of planning and field work. Revenue felt that such early involvement of attorneys would hinder the audit process and was in violation of Regulations. Taxpayer cooperation during an audit would be almost non-existent if they faced attorneys from the very outset. Historically I know of no such involvment of attorneys in routine tax audits. It is only when fraud and/or criminal charges are at issue that attorneys are initially involved.

I entered this meeting with hope for cooperation between the two state agencies. I left with a feeling of despair and frustration.

After several days of soul searching and counsel with Chief of Staff Max Hodel, I wrote a lengthy memo to Floerchinger and Doss, with instructions to convey my message to their personnel. In simple terms, my memo instructed Revenue personnel to cease any further rancorous encounters (verbal or written) with members of the AG's staff. They were instructed to conduct themselves as professionals and to perform their duties in accordance with the Regulations/Statutes. If, for any reason, they were unable to comply, I was to be notified and would

resolve the issue with Charlie, Max or the governor, if necessary.

This was not the first time a Commissioner of Revenue sought to resolve the conflicts with the AG's office by involving the governor. Malone, Cowper and his AG were scheduled to meet in Fairbanks in March 1989 for final agreement on a document outlining the agreed responsibilities of both departments. Malone had forced this meeting and Revenue was destined to prevail on most issues. Malone was close to Cowper and I am advised that Cowper was fed up with the divisive antics of the AG's office and staff. (Remember his comments to Hickel).

The Fairbanks meeting never occurred. The Exxon Valdez spill did and all of Cowper's and Law's efforts for the balance of 1989-90 went into Prince William Sound issues. Thus, when the Hickel administration took office in December 1990, the conflict between Revenue and Law was still unresolved.

During the period of the late 1980's through 1991 the news media became aware of this conflict. Since it was my goal to work with AG Cole and his staff, I felt it appropriate to respond to their queries in a positive manner and not fan the flames arising from prior administrations. I should have realized the media's obsession with controversy and conflict, overshadows reporting the truth. Such was the situation when the ill-fated Coopers & Lybrand consulting contract was so maliciously misreported. Without dwelling unduly on this contract and the Daily News' charges of conflict of interest, be assured my demise was at Cole's insistence; not because of the C&L contract.

In December 1990, prior to accepting appointment as Commissioner of Revenue, I requested that the AG examine my retired status as a C&L partner to assure the governor that my duties would not be impaired by involvement with my former firm or its clients who did business with the State or owed taxes to the State. Cole's opinion was clean and simple. I had been retired two years and three months as of December 1990. The state's usual conflict of interest period is one year. I was, and remain, on a fixed, actuarially computed retirement

plan exactly like several hundred other retired partners and over which none of us have any power to alter, enhance or change our benefits. I had no conflict, ruled Cole in December 1990. Compare this to his advice to the Governor in October 1991 and his comments to the press following my resignation.

As laypersons you cannot be expected to understand the technical tax issues involving Alaska vs. Oil Company X. They are complex and in some instances have no precedent in other jurisdictions. It is precisely for this reason that we (Revenue) sought outside, independent analysis of the tax issues in various stages of litigation.

The anticipated benefits of C&L's expert counsel were swept away by Cole's action against Floerchinger and me and his take-over of Revenue. Be assured, the State is strong in many of their audit assessments, but typical of such matters, particularly given the novelty of some particularly "Alaskan" issues, we could be weak in other assessments.

Given the contentious environment between Revenue and Law; staff's desire to stretch out cases; and the fierce resistence offered by the oil companies, I still believe the independent analysis was (and is) necessary. We need to "know when to hold 'em and know when to fold 'em."

It is my understanding and belief that the settlements Cole has proudly announced during the past two years do not resolve tax issues. These same disputed audit issues will be back to haunt us in the future. Perhaps that's the underlying motive of the AG, since more attorneys will be employed, retirement benefits will be enhanced and the Legislature will continue to be faced with shrinking budgets for all departments except Law.

In summary, the issues involved in all of the preceding rhetoric are:

1) we are not settling the oil company tax cases in a professional manner. The tax issues remain for future hordes of attorneys to litigate.
2) The Department of Law is an out-of-control entity with power that seems to exceed the Legislature and to dominate the Governor's office.

3) the working agreement contract between Revenue (Rexwinkel) and Law (Cole) in early 1992 has effectively destroyed the functions the two departments are designed to perform -- by Statute and Regulation.

I urge you to carefully examine the growth and funding of the AG's office over the past ten to twelve years. I believe you will find it exceeds any department in our state's government. Be sure to include in your computations the outside funding received by Law from their "legal services" provided on a fee basis to such entities as the Permanent Fund, AIDEA and AHFC.

As you have probably noted, the date on this letter is November 1, 1993. It is being completed in late March 1994, after much anguish and soul searching. This is not something I have enjoyed writing, but in the final analysis, something I have concluded needed to be written.

Respectfully submitted,

Lee E. Fisher,
Commissioner of Revenue (1990-91)

lef/jj
encl.

(b) If a producer's oil or gas is sold to an affiliate of that producer (as opposed to being transferred from one division to another within the same corporate person), the sales price of that oil or gas for purposes of 15 AAC 55.010 — 15 AAC 55.210 is the greater of

(1) the cash value of the full consideration given in receipt for the oil or gas so sold; and

(2) the price attributable to that sale which is entered on the producer's books in accordance with generally accepted accounting principles, consistently applied.

(c) If a producer's oil or gas is retained by the producer or is transferred from the production division to another division within the same corporate person, the sales price of that oil or gas for purposes of 15 AAC 55.010 — 15 AAC 55.210 is the price attributable to that oil or gas which is entered on the producer's books in accordance with generally accepted accounting principles, consistently applied

(d) If a producer exchanges oil or gas with a third party, the sales price of that oil or gas for purposes of 15 AAC 55.010 — 15 AAC 55.210 is

(1) the price prescribed in the exchange agreement for the producer's oil or gas for purposes of settling accounts and cashing out any net exchange balances in the producer's favor (to illustrate what is meant by a net exchange balance in the producer's favor, suppose the exchange is for oil on a barrel-for-barrel basis and the producer's volume to the third party exceeds the volume received from the third party; the amount of that excess would be the net exchange balance in the produc

(2) if there is no such price pres ent, the price attributable to the oil cer which is entered on the producer ter- ally accepted accounting prine Eff. 1/6/80, Register 73)

original version

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Authority: AS 43.05.080
AS 43.56.020(0)
AS 43.55.110

15 AAC 55.165. ESTIMATED PAYMENT OF TAXES. (a) Beginning with the six-month period of July through December 1984, and for each succeeding six-month period after that, the department will compute and publish an interim sales price for oil from each oil producing field or area in Alaska for each month of that six-month period. The department will publish interim sales prices for the first six months of a calendar year before August 31 of that year and will publish interim sales prices for the second six months of the calendar year before March 1 of the following year. The interim sales price will be based on the volume-weighted average sales price of all taxpayers'

sales in the same market for each month as reported by the taxpayers on their production tax returns. The volume-weighted average reported sales price is an arithmetic calculation based on returns as filed and is not a determination of the prevailing value of the oil.

(b) A taxpayer will recalculate its aggregate tax liability based on the interim sales price under (a) of this section and it shall pay the difference between the reported tax liability and the recalculated tax liability for the six-month period. If the amount of taxes paid by a taxpayer exceeds the recalculated tax liability for the six-month period, then the taxpayer may treat the excess as a credit against future estimated payments. Notwithstanding 15 AAC 05.050, the department will defer action on a claim for refund of the recalculated tax until the department has made a final determination of taxes due under 15 AAC 55.

(c) A taxpayer shall file a report on a form prescribed by the department and shall, as appropriate, either pay with money or by applying a credit accrued under (b) of this section, or claim a credit for, the difference between the recalculated tax liability under this section and the reported tax liability. The report and the payment of claim of credit for the first six months of the calendar year must be filed no later than October 31 of that year, and the report and the payment or claim of credit for the second six months of the calendar year must be filed no later than April 30 of the following year. (Eff. 9/1/84, Register 91)

Authority: AS 43.05.080
AS 43.55.020
AS 43.55.030
AS 43.65.040
AS 43.65.110

15 AAC 55.170. PREVAILING VALUE FOR OIL. (a) For a producer's oil, the prevailing value for purposes of this chapter is the arithmetic average acquisition cost C.I.F. (at the refinery inlet in the same market in which the producer's Alaskan oil is refined) based on the sales price of like oil sold in up to three third-party, arm's-length transactions selected by the department. In this subsection, "like oil" means an oil of substantially similar quality produced in the same general area of the state and subject to the same federal price controls, if any, as the oil for which the prevailing value is to be determined.

(b) If the information under (a) of this section is not available, then the prevailing value for purposes of this chapter equals the arithmetic average acquisition cost C.I.F. (at the refinery inlet in the same market in which the producer's Alaskan oil is refined) of up to six oils selected by the department including

(1) up to three domestic oils of substantially similar quality which are sold in significant quantities in the same market or near the same market; and

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(d) An absence for any purpose other than one stated in (c) of this section will, in the department's discretion, be allowed by the department if the nature and duration of the absence are temporary and are consistent with an intent to return to Alaska and remain permanently in the state. Effective for the 1991 dividend year and subsequent years, an absence allowed under this subsection for a dividend year may not exceed a total of 120 days cumulative during the 12-month period that immediately precedes April 1 of the dividend year. An individual who is out of the state on an absence that is not allowed must return at least 12 months before April 1 of the dividend year in order to be eligible for that year's dividend.

(e) In the department's discretion, an absence under (c)(3), (4), (5), (6), or (14) of this section may be disallowed, depending on the length of the absence, frequency and duration of that absence, and other factors relevant to the length and purpose of the absence in question.

(f) An absence under (c)(1), (2), (3), (7), (8), (9), (10), (11), (12), or (13) of this section totaling more than five years is presumed not to be allowable. In such a case, the individual is not eligible for a dividend payment unless the individual provides, with his or her application, documentation that demonstrates to the department's satisfaction an intent at all times during the absence or absences to return to the state and remain permanently in the state.

(g) An absence from the state or a cumulative absence from the state of 30 days or less is not considered an absence for the purpose of any eligibility period in this chapter. However, if the cumulative absences exceed 30 days, then all of the time outside the state will be counted. (Expires January 15, 1991, unless made "permanent" by the adopting agency.) (Eff. 3/31/90, Register 113; am 9/18/90, Register 116)

Authority: AS 43.23.015
AS 43.23.055
AS 43.23.095

1990 amended

CHAPTER 55. OIL AND GAS PROPERTIES PRODUCTION TAX

15 AAC 55.165. ESTIMATED PAYMENT OF TAXES BASED ON MARKET VALUE. (a) Beginning with the three-month period of July through September 1990, and for each succeeding three-month period after that, the department will compute and publish an interim sales price based on market value for oil from each oil producing field or area in Alaska for each month of that three-month period. The department will publish interim sales prices based on market value for January through March of a year by April 30 of that year; for April through June of a year by July 31 of that year; for July through

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September of a year by October 31 of that year; and for October through December of a year by January 31 of the following year. The interim sales price based on market value will be based on current market information available to the department that may include published spot prices for oil from the producing field; a market basket of foreign crude oils or domestic crude oils or both; a formula including a beginning value for the oil adjusted over time by certain indicators; sales prices as reported by taxpayers; or any other information that the department deems relevant. The interim sales price based on market value is not a final determination of value for a taxpayer under AS 43.55 and 15 AAC 55. Together with the interim sales prices based on market value, the department will publish an explanation of the basis for each price.

(b) A taxpayer will recalculate its aggregate tax liability based on the interim sales price based on market value under (a) of this section and it shall pay the difference between the reported tax liability and the recalculated tax liability for the three-month period. If the amount of taxes paid by a taxpayer exceeds the recalculated tax liability for the three-month period, then the taxpayer may treat the excess as a credit against future estimated payments. Notwithstanding 15 AAC 55.050, the department will defer action on a claim for refund of the recalculated tax until the department has made a final determination of taxes due under 15 AAC 55.

(c) A taxpayer shall file a report on a form prescribed by the department and shall, as appropriate, either pay with money or by applying a credit accrued under (b) of this section, or claim a credit for, the difference between the recalculated tax liability under this section and the reported tax liability. The report and the payment or claim of credit for January through March of a year must be filed no later than May 31 of that year; for April through June of a year it must be filed no later than August 31 of that year; for July through September of a year, it must be filed no later than November 30 of that year; for October through December, it must be filed no later than March 1 of the following year. **(Expires February 6, 1991, unless made "permanent" by the adopting agency.)** (Eff. 9/1/84, Register 91; am 10/10/90, Register 116)

Authority: AS 43.05.080 AS 43.55.030
AS 43.55.011 AS 43.55.040
AS 43.55.020 AS 43.55.110

ALASKA ATTORNEY GENERAL FAX NO. 9074656735 10-18-13

No. 2

Bill Version: SB 377

(S) Publish Date: 4-21-94

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

Revision Date:
Title: "An Act relating to state agency fiscal procedures . . . ."
Sponsor: Senate Finance
Requestor: Senate Finance

Dept. Affected: Statewide
BRU: Statewide
Component: Statewide

COMPONENT SERIAL NO.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	(147.7)	(147.7)	(147.7)	(147.7)	(147.7)	(147.7)
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	(147.7)	(147.7)	(147.7)	(147.7)	(147.7)	(147.7)
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	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

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See attached.

Changes in CSSB 377 (FIN) reflect NO FISCAL CHANGE from the onginal fiscal note. This fiscal note is appropnate.

4-21-94 _____
date Comte Aide (initial)

Prepared by: Don Wanie, Director
Division: Finance
Phone: 465-2240
Date:

Approved by Commissioner: Nancy Bear Usera NBU
Agency: Administration
Date: 4/13/94

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(Rev: 10/93) ni 4/13/94

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 377

ANALYSIS:

Sections 1 and 2 of this bill have no fiscal impact on the Division of Finance.

Section 3: Under the current statute (AS 39.20.250), terminating employees receive pay for their accumulated leave as though they had remained in pay status until the leave is exhausted. This means holidays that occur in the payoff period become state paid holidays.

With the proposed change, terminating employees will be paid only for the hours of annual/personal leave on the books at the time of termination. No state paid holidays would be included.

Approximately 20 percent of state employees are affected by the proposed change. They represent approximately 600 terminations per year with an average leave payoff of six weeks pay. An average leave payoff would include 1.5 state paid holidays per person. This translates to 900 state paid holidays for this group annually. The statewide value of these holidays for this group of employees is $147.7 annually.

No. 1

FISCAL NOTE

Bill Version: SB 377

(S) Publish Date: 4-21-94

STATE OF ALASKA

1994 LEGISLATIVE SESSION

BILL

Revision Date:

Dept. Affected: Revenue

Title: State Agency Fiscal Procedures

BRU: Permanent Fund Dividend

Component: Permanent Fund Dividend

Sponsor: SENATE FINANCE COMMITTEE

Requestor: Senate Finance Committee

COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $ -0-

ANALYSIS:

The amendment in section 4 of this legislation will have no effect on the operations of the Permanent Fund Dividend division or Permanent Fund Dividend applicants.

Changes in CSSB 377 (FIN) have no fiscal impact. This fiscal note is appropriate.

4-21-94
date

Comte Aide(initial)

Prepared by: Thomas C. Williams

Phone: 465-2323

Division: Permanent Fund Dividend

Date: 04-15-94

Approved by Commissioner:

Date: 4/15/94

Agency: Department of Revenue

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Discussion Draft submitted by the Administration with sections unrelated to Oil and Gas issues temporarily deleted

May 9, 1994 (L)

PROPOSED

HOUSE CS FOR SENATE BILL NO. 377(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to state agency fiscal procedures, including procedures related to the assessment and collection of certain taxes; and providing for an effective date."

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

*** Section 1.** AS 43.05.260(a) is amended to read:

(a) Except as provided in (c) of this section and AS 43.20.200(b), the amount of a tax imposed by this title must be assessed

(1) for tax periods ending before January 1, 1994, within three years after the return was filed, whether or not a return was filed on or after the date prescribed by law**; however, at any time during the administrative consideration of a taxpayer grievance or of a claim for credit or refund, based upon a tax imposed by former AS 43.21 or by AS 43.55, the department may increase or decrease the amount of tax due by issuing or amending an assessment;**

(2) for tax periods beginning after December 31, 1993, within five

New Text Underlined [DELETED TEXT BRACKETED]

years after the return was filed, whether or not a return was filed on or after the date prescribed by law; the department may increase or decrease the amount of tax due by issuing or amending an assessment within the five-year period; after that five-year period, the department may not increase an assessment under this subsection. [IF THE TAX IS NOT ASSESSED BEFORE THE EXPIRATION OF THE THREE-YEAR PERIOD, PROCEEDINGS MAY NOT BE INSTITUTED IN COURT FOR THE COLLECTION OF THE TAX.]

* **Sec. 2.** AS 43.05.270(a) is amended to read:

(a) When the assessment of a tax imposed by this title has been made within the period of limitation under AS 43.05.260, the tax may be collected by levy or by a proceeding in court [, BUT ONLY] if the levy is made or the proceeding is begun:

(1) within six years after **the latest of any of the following:**

(A) the assessment of the tax;

(B) the final administrative determination of the grievance, if the taxpayer files a grievance from an assessment; or

(C) the final judicial resolution of an appeal, if the taxpayer appeals from a final adjudicative determination of a grievance; or

(2) before the expiration of a period for collection agreed upon in writing by the department and the taxpayer before the expiration of the six-year period; a period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon [; THE PERIOD PROVIDED BY THIS PARAGRAPH DURING WHICH A TAX MAY BE COLLECTED BY LEVY MAY NOT BE EXTENDED OR CURTAILED BECAUSE OF A JUDGMENT AGAINST THE TAXPAYER].

* **Sec. 3.** AS 43.55 is amended by adding a new section to read:

Sec. 43.55.145. PREVAILING VALUE FOR OIL. (a) The department shall adopt regulations to determine a methodology for calculating the prevailing value of oil produced in each field or area of the state for each destination area to which the oil is delivered. Before each October 30, the department shall annually review and determine if any adjustments are necessary to the methodology established by

regulation under this section.

(b) The regulations adopted by the department under (a) of this section shall determine the prevailing value of oil using the

(1) current value or average of current values for oil of like kind, character, and quality produced from each field or area in the state;

(2) current values or average of current values for two or more types of domestic or foreign oil selected by the department which are not produced in the state; or

(3) any combination of the methods set out in this subsection.

(c) The department may average or assign different weights to the oils selected under (b) of this section. The department may adjust the amounts calculated under (b) of this section to account for differences in oil types and destination areas

(d) For purposes of this section, "current value" includes spot or other current prices or assessments publicly reported.

* **Sec. 4.** AS 43.55.900(7) is amended to read:

(7) "gross value at the point of production" means

(A) for oil, the value of the oil at the point where it is metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) in a condition of pipeline quality on the premises of the lease or property from which it is recovered; however, if the oil is not of pipeline quality when it is removed from the premises of the lease or property from which it is recovered, or if the oil recovered from a lease or property is not metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) on the premises of the lease or property from which it is recovered, then the gross value at the point of production is the value of that oil at the off-premises location where the oil is first metered or measured (by automatic custody transfer meter, tank gauge, or other method approved by the commissioner) in a condition of pipeline quality;

(B) for gas recovered from or in association with oil, the value

of the gas at the point where it is accurately metered or measured after separation from the oil; for gas run through a gas processing plant, the gross value at the point of production is the full consideration received by the producer for the gas if sold in an arm's length transaction or, in the absence of an arm's length transaction, is the sum of the value of the liquids extracted from the gas at the plant **and sold** and the value of the residue gas **sold**, less a reasonable allowance**, which may not exceed $1 per barrel of plant liquid sold,** for processing the gas at the plant and for transporting the gas to the plant from the premises upon which the oil production operation is conducted; [AND]

(C) for gas not recovered from or in association with oil, the value of the gas at the point where it is accurately metered or measured or the value of the gas at the point of sale, if any, on the premises of the lease or property from which the gas is recovered, whichever is the higher value; for gas run through a gas processing plant, the gross value at the point of production is the full consideration received by the producer for the gas if sold in an arm's length transaction or, in the absence of an arm's length transaction, is the sum of the value of the liquids extracted from the gas at the plant **and sold** and the value of the residue gas **sold**, less a reasonable allowance**, which may not exceed $1 per barrel of plant liquid sold,** for processing the gas at the plant and for transporting the gas to the plant from the point where it was accurately metered or measured; **and**

(D) notwithstanding (B) and (C) of this paragraph and AS 43.55.020(f), for taxable gas produced and used as a fuel or feedstock in the production of urea or ammonia, the gross value at the point of production for each lease or property is the amount per Mcf under a royalty settlement agreement to which the state is a party and which was in effect on January 1, 1994, for royalty gas from that lease or property; if taxable gas is produced and exchanged for other gas on a volumetric basis, and the gas received in that transaction is used as a fuel or feedstock in the production of urea or ammonia,

the gross value at the point of production for each lease or property is the amount per Mcf under a royalty settlement agreement to which the state is a party and which was in effect on January 1, 1994, for royalty gas from the lease or property from which the producer's taxable gas was produced;

*** Sec. 5.** AS 43.55.900 is amended by adding new paragraphs to read:

(17) "condensate" means all hydrocarbons, including scrubber liquids, recovered in liquid form from a gaseous stream by mechanical separation without resort to extraneous refrigeration, adiabatic expansion through a Joule-Thompson valve following artificial compression, turbo-expansion, aerial cooling below the temperature at which hydrates or ice would form in the gas stream, osmosis, adsorption, or absorption; if a gas stream moves to a gas processing plant without having passed through a prudently operated mechanical separation unit, that portion of the liquid hydrocarbons extracted at the gas plant that could have been extracted through a mechanical separation unit by a prudent operator will be treated as condensate;

(18) "distillate" has the meaning given the term "condensate" in this section;

(19) "gas processing plant" means a facility, other than a liquified natural gas plant, in which liquid hydrocarbons are extracted and separated from a stream of gas by one or more of the following means: refrigeration, adiabatic expansion through a Joule-Thompson valve following artificial compression, turbo-expansion, osmosis, adsorption, or absorption.

[Secs. 6-14 and 21 temporarily omitted because they do not address oil & gas issues]

*** Sec. 15.** The provisions of AS 43.05.260(a)(1), enacted by sec. 1 of this Act, and sec. 2 of this Act, are declaratory of existing law as originally enacted in AS 43.05.260 and 43.05.270 (sec. 1, ch. 94, SLA 1976).

*** Sec. 16.** Notwithstanding the provisions of AS 01.10.100(a), the provisions of AS 43.05.260(a)(1), enacted by sec. 1 of this Act, and sec. 2 of this Act, apply to a grievance pending under AS 43.05.240 and to an action or appeal pending before a court on the effective date of secs. 1 and 2 of this Act.

*** Sec. 17.** AS 43.55.900(7)(B) and (C), enacted by sec. 4 of this Act, are retroactive to

January 1, 1985.

* **Sec. 18.** Section 3 of this Act takes effect if the commissioner of revenue certifies to the lieutenant governor and the revisor of statutes that all assessments of taxes, including interest, levied under former AS 43.21 that are outstanding on the effective date of this section are completely resolved by final payment, compromise, or final judgment by a court of competent jurisdiction.

* **Sec. 19.** If sec. 3 of this Act takes effect, it takes effect 30 days after the date that the commissioner of revenue certifies to the lieutenant governor and the revisor of statutes that all outstanding assessments of taxes, including interest, levied under former AS 43.21 that are outstanding on the effective date of sec. 18 of this Act are completely resolved by final payment, compromise, or final judgment by a court of competent jurisdiction.

* **Sec. 20.** Sections 1, 2, 4, 5, and 15 - 19 take effect immediately under AS 01.10.070(c).

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM April 25, 1994

SUBJECT: Sectional Analysis of CSSB 377(FIN) am (Work Order No. 8-LS1888\E)

TO: Representative Ramona Barnes
Speaker of the House of Representatives
Attn: Melva Krogseng

FROM: David R. Dierdorff
Revisor of Statutes

You have asked for a brief sectional analysis of CSSB 377(FIN) am, the second of the bills that began as part of SB 365. This bill deals with the subject of state agency fiscal procedures. Although it is likely that those affected by the material added by Senate floor amendment will challenge the bill on single subject grounds, an argument can be made that the changes in tax assessment procedures are within the stated subject.

Sections 1, 8, and 9 contain the material originally found in SB 185, modified by the Department of Law and subsequently proposed as a draft CS to Senate Labor and Commerce. Section 1 contains legislative findings and a statement of purpose. Sections 8 and 9 make substantive changes in the procedures surrounding the assessment and collection of certain oil-related taxes. A further description should come from either the Department of Revenue or the Department of Law.

Section 2 amends the time within which state warrants must be presented for payment.

Section 3 changes the manner in which charges may be made against the working reserve account.

Section 4 requires the governor to include certain information related to the constitutional budget reserve fund in the required financial report to the legislature.

SECTIONAL ANALYSIS

Section 5 authorizes an agency to prorate certain payments under certain conditions. Further information on this provision needs to come from OMB or the legislative finance division.

Section 6 revises a provision relating to payment of certain prior year obligations.

Section 7 eliminates the payment of terminal leave in installments.

Section 10 reduces to one year the time within which a person must apply for reissue of a permanent fund dividend that was returned as undeliverable.

Section 11 reauthorizes the payment of certain grants that have been made in past years, but for which the authority to pay was inadvertently deleted in conforming related laws to changes in federal laws. Further information is available from the Department of Health and Social Services (see Lindstrom memo to Senate Finance).

Section 12 repeals a law related to payment of terminal leave and should be read in connection with sec. 7 of the bill.

Section 13 is a severability clause that restates AS 01.10.030. It is my understanding that this was added because of concerns regarding the constitutionality of the proration provisions added in sec. 5. (The severability clause is of no help in saving a bill from a single subject challenge.)

Section 14 makes the changes to tax procedures retroactive.

Sections 15 and 16 are the effective date provisions.

If I may be of further assistance, please advise.

DRD:gc:pl
94-288.glc

May 2, 1994

SECTIONAL ANALYSIS

FOR PROPOSED CSHB 547(FIN)

(Draft Offered by the Administration)

Section 1. This section contains proposed legislative findings setting forth the Department of Revenue's interpretation of AS 43.05.260 and of AS 43.05.270. The proposed legislative findings conclude that the department's interpretation is correct and that it is in the public interest that AS 43.05.260 and AS 43.05.270 be clarified to reflect the department's interpretation. This section also sets forth the purpose of sections 2 and 3 of this bill, which is to validate and affirm the department's longstanding administrative interpretation and to clarify existing law that resulted in the inconsistent decisions in the state Superior court. This section also explains the purpose of the addition of a definition of "gas processing plant."

Section 2. This section adds language to AS 43.05.260(a) to clarify that for tax periods ending before January 1, 1993, the Department of Revenue may increase or decrease the amount of a tax due by issuing or amending an assessment under former AS 43.21 or AS 43.55 at any time during the administrative consideration of a taxpayer grievance on an assessment or a claim for credit or refund of a tax. This section also adds AS 43.05.260(a)(2) which provides that for tax periods beginning after December 31, 1993, the Department of Revenue may increase or decrease the amount of a tax due by issuing or amending an assessment within five years after a return is filed. After expiration of the five-year period, the department may not increase an assessment.

Section 3. This section adds language to AS 43.05.270(a) to clarify the six-year limitation on collection of taxes after assessment. Under this section, the limitation period does not begin to run until the final administrative determination of a grievance if the taxpayer files a grievance from an assessment or the final judicial resolution of an appeal if the taxpayer appeals from a final adjudicative determination of a grievance.

Section 4. This section adds language to establish a statutory methodology for establishing prevailing value for oil production tax purposes. This section will provide a means by which a taxpayer will be able to determine a sales price for purposes of determining its tax liability under AS 43.55.

Section 5. This section amends the definition of "gross value at the point of production." The amendment places a

SECT. ANALYSIS for Admin. Draft of CSHB 547(FIN)

limitation on a reasonable processing allowance not to exceed $1 per barrel of plant liquid sold.

Section 6. This section adds definitions for "condensate," "distillate," and "gas processing plant." The addition of the definitions are intended to reduce litigation over these issues.

Section 7. This section makes AS 43.05.260(a)(1), enacted by sec. 2, and sec. 3, retroactive to January 1, 1976.

Section 8. This section makes definition sections at secs. 5 and 6 of the bill retroactive to January 1, 1985.

Section 9. This section makes new AS 43.55.145, prevailing value for oil, applicable to oil produced in the state after December 31, 1994.

Section 10. This section provides that provisions of the bill are not severable.

Section 11. This section provides that all provisions of the bill take effect immediately under AS 01.10.070(c).

File SB-377

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300 - DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

May 2, 1994

MAY 3 1994

Re: Statute of limitations

Dear Legislator:

During the last several days many of you have approached me to learn of the current status of efforts to resolve differences between the state and industry on the statute of limitations legislation, SB 377. That legislation included an amendment earlier recommended by the Administration to alter the statute of limitations on assessments prospectively by extending it from three to five years but making the five-year period an absolute bar.

We offered a further compromise that involved resolution of another controversy important to industry, a definition for gas processing plants. While ARCO embraced the compromise, BP and Exxon rejected it.

On April 25, John Morgan, President of BP Exploration Alaska, Inc., presented a proposal on behalf of both BP and Exxon that required the state to abandon retroactivity on both the three-year statute of limitations on assessments and the six-year statute of limitations on collections. I rejected that proposed compromise. My reasons for that action are set forth in my letter of April 25, 1994 to Mr. Morgan.

On Thursday, April 28, I proposed an alternate resolution, consisting of three elements:

(1) retention of SB 377's retroactive provisions regarding the three-year statutes of limitations on assessments;

(2) deletion of SB 377's retroactive provisions regarding the six-year statute of limitations on collections; and

(3) retention of SB 377's provision to extend prospectively the assessment statute of limitations to five years, but prohibit amended assessments after the five-year period.

DEPT. OF LAW LTR.

I have yet to receive any formal response to this offer. I will keep you posted of any further developments.

Finally, I enclose further information about the proposed statute of limitations legislation in question-and-answer format. Please do not hesitate to contact me should you have further questions regarding this matter.

Very truly yours,

Bruce M. Botelho
Attorney General

BMB:pml

att.

94052

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300 - DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

April 25, 1994

Mr. John C. Morgan, President
BP Exploration Alaska
P.O. Box 196612
Anchorage, AK 99519-6612

Dear John:

Thank you for taking the time earlier today to speak with me about possible resolution of the statute of limitations controversy.

Your proposal consisted of the following elements: (1) abandonment by the administration of all retroactive provisions of SB 377; (2) retention of the five-year prospective bar on assessments in SB 377; and (3) agreement by BP and Exxon not to raise the statute of limitations on collections as a defense for past taxes.

I told you that this proposal was one that we could not accept. When Governor Hickel sought introduction of SB 185 last year, he intended to seek legislative affirmation of the state's long-standing interpretation of two statutes of limitation, one dealing with the assessment period, the second with the collections period. The rationale was--and remains--straightforward: to bolster the state's case pending before the Alaska Supreme Court and to facilitate negotiation with certain taxpayers, based upon the underlying tax structure and without discounting to zero claims that raise statute of limitations issues (estimated by the Department of Revenue at approximately $3 billion).

Based upon testimony presented by BP and others, the governor substantially altered his initial position when he proposed that the state's interpretation on assessments be limited to past years and that future assessments be barred if not issued within five years of the tax period.

You now ask him to forego his objectives in exchange for your agreement not to raise the collections statute of limitations as a bar in pending litigation. The proposal is hardly a fair