

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8390 SENATE LABOR & COMMERCE

(12) prepare market research and product development plans for the promotion of any species of seafood and their by-products that may be harvested in the state and processed for sale;

(13) establish an executive board to assist the board in efficiently exercising the board's powers and duties under this chapter; the executive board shall consist of seven members selected from and by the board and shall include at least three members who are engaged in commercial fishing;

(14) establish committees related to the marketing of salmon and salmon products; the board shall, to the extent practicable, appoint equal numbers of seafood processors and persons engaged in commercial fishing to the committees.

* Sec. 5. AS 16.51.100 is amended to read:

Sec. 16.51.100. DUTIES OF BOARD. The board shall

(1) conduct programs of education, research, advertising, or sales promotion designed to accomplish the purposes of this chapter;

(2) promote all species of seafood and their by-products that are harvested in the state and processed for sale;

(3) develop market-oriented quality specifications for Alaska seafoods to be used in developing a high quality image for Alaska seafood in domestic and world markets, and adopt and distribute recommendations regarding the handling of seafood from the moment of capture to final distribution;

(4) prepare market research and product development plans for the promotion of all species of seafood and their by-products that are harvested in the state and processed for sale;

(5) submit an annual report to the governor and the legislature describing the activities of the institute; [AND]

(6) develop marketing programs based on the "inspection" and "premium quality" seals designed under AS 03.05.026 [,] and use the seals in advertising and promotion efforts of the institute;

(7) collect, organize, and distribute information on prices paid and market conditions for raw salmon and salmon products and provide this

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1 information on a regular and timely basis to all salmon fishermen who hold
2 permits under AS 16.43 and to all nonprofit salmon enhancement organizations,
3 that hold a permit under AS 16.10.400:

and shall be made available to the public / put in the public record

4 (8) cooperate with commercial salmon fishermen, fishermen's
5 organizations, seafood processors, the Alaska Fisheries Development Foundation,
6 the Fisheries Industrial Technology Center, state and federal agencies, and other
7 relevant persons and entities to investigate market reception to new salmon
8 product forms and ~~develop commodity standards~~ and future markets for salmon
9 products: and

10 (9) establish a salmon marketing advisor / committee to assist and
11 advise the board in fulfilling its responsibilities under (7) and (8) of this section:
12 notwithstanding AS 16.51.090(14), the committee shall consist of one commercial
13 salmon fisherman appointed by the commissioner from each salmon
14 administrative area established by the Alaska Commercial Fisheries Entry
15 Commission: the board shall adopt regulations that are necessary to implement
16 this paragraph.

17 * Sec. 6. AS 43.76 is amended by adding new sections to read:

18 ARTICLE 2. SALMON MARKETING TAX.

19 Sec. 43.76.110. SALMON MARKETING TAX. A person holding a limited
20 entry permit or interim-use permit under AS 16.43 shall pay a salmon marketing tax
21 at the rate of one percent of the value, as defined in AS 43.75.290, of salmon that the
22 person removes from the state or transfers to a buyer in the state. The buyer shall
23 collect the salmon marketing tax at the time the salmon is acquired by the buyer.

24 Sec. 43.76.120. COLLECTION OF TAX. (a) A buyer who acquires salmon
25 that is subject to a salmon marketing tax imposed by AS 43.76.110 shall collect the
26 salmon marketing tax at the time of purchase and shall remit the total salmon
27 marketing tax collected during each month to the Department of Revenue by the last
28 day of the next month.

29 (b) A buyer who collects the salmon marketing tax shall

30 (1) maintain records of the value of salmon purchased in the state;

31 (2) report to the Department of Revenue by March 1 of each year the

1 total value, as defined in AS 43.75.290, of the salmon that the buyer has acquired
2 during the preceding year.

3 (c) The owner of salmon removed from the state is liable for payment of
4 a salmon marketing tax imposed by AS 43.76.110 if, at the time the salmon is
5 removed from the state, the tax payable on the salmon has not been collected by a
6 buyer. If the owner of the salmon is liable for payment of the salmon marketing tax
7 under this subsection, the owner shall comply with the requirements under (a) and (b)
8 of this section to remit the tax to the Department of Revenue, to maintain records, and
9 to report to the Department of Revenue.

10 (d) The salmon marketing tax collected under this section shall be deposited
11 in the general fund. The legislature may appropriate revenue generated by the salmon
12 marketing tax to the Alaska Seafood Marketing Institute for the purpose of supporting
13 the institute's salmon marketing program under AS 16.51.100(7) - (9) and the
14 institute's domestic salmon marketing program. Except as otherwise provided in an
15 appropriation by the legislature, the amount of the allocation made to the institute's
16 salmon marketing program under AS 16.51.100(7) - (9) should not exceed 10 percent
17 of the total amount of salmon marketing tax revenue appropriated for the institute.

18 Sec. 43.76.130. DEFINITION. In AS 43.76.110 - 43.76.130, "buyer" means
19 a person who acquires possession of salmon from the person who caught the salmon
20 regardless of whether there is an actual sale of the salmon, but does not include a
21 person engaged solely in interstate transportation of goods for hire.

22 * Sec. 7. TRANSITION FOR MEMBERS OF THE BOARD OF DIRECTORS OF THE
23 ALASKA SEAFOOD MARKETING INSTITUTE. (a) Notwithstanding AS 16.51.020(b),
24 as amended by sec. 2 of this Act, and (c) of this section, a person who is serving as a member
25 of the board of directors of the Alaska Seafood Marketing Institute on the day before the
26 effective date of sec. 2 of this Act may continue to serve as a member of the board for the
27 remainder of the term to which the person was appointed.

28 (b) As soon as practicable after the effective date of sec. 1 of this Act, the governor
29 shall appoint six persons engaged in commercial fishing to the new memberships created on
30 the board of directors of the Alaska Seafood Marketing Institute by secs. 1 and 2 of this Act.
31 Notwithstanding AS 16.51.030, the governor shall appoint two persons appointed under this

1 Notwithstanding AS 16.51.030, the governor shall appoint: two persons appointed under this
2 subsection to one-year terms, two persons appointed under this subsection to two-year terms,
3 and two persons appointed under this subsection to three-year terms.

4 (c) Notwithstanding AS 16.51.020(b), as amended by sec. 2 of this Act, the governor
5 shall appoint a person engaged in commercial fishing to the membership on the board of
6 directors of the Alaska Seafood Marketing Institute that is vacated by the lay person member.
7 If a person is appointed under this subsection to fill a vacancy arising other than by the
8 expiration of a term of office, the person shall be appointed to complete the remainder of the
9 unexpired term.

10 * Sec. 8. AS 43.76.110, 43.76.120, and 43.76.130 are repealed June 30, 1999.

11 * Sec. 9 AS 16.51.100(7), 16.51.100(8), and 16.51.100(9) are repealed June 30, 2000.

12 * Sec. 10. Section 6 of this Act takes effect July 1, 1993.

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8-LS0946K
Utermohle
4/7/93

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CS FOR SENATE BILL NO. 177()

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Seafood Marketing Institute and a salmon
2 marketing tax; and providing for an effective date."

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

4 * Section 1. AS 16.51.020(a) is amended to read:

5 (a) The governing body of the institute is a board of directors. The board
6 consists of 24 [18] voting members appointed by the governor. [In making
7 appointments to the board, the governor shall consider, but need not appoint, nominees
8 presented by persons engaged in fish processing, the financing of fish processing, or
9 commercial fishing.]

*Amend:
too much
discretion
to the Gov.*

10 * Sec. 2. AS 16.51.020(b) is amended to read:

11 (b) Twelve members of the board shall be seafood processors: eight of the
12 seafood processors must have an annual payroll in the state of more than \$2,500,000
13 [\$1,000,000 OR MORE]; four of the seafood processors must have an annual payroll
14 in the state of \$50,000 - \$2,500,000. Twelve [\$1,000,000. FIVE] members of the

1 board must be engaged in commercial fishing. [ONE MEMBER OF THE BOARD
2 SHALL BE A LAY PERSON SELECTED BY THE GOVERNOR.]

3 * Sec. 3. AS 16.51.050 is amended to read:

4 Sec. 16.51.050. QUORUM. Fourteen [TEN] members of the board appointed
5 under AS 16.51.020 constitute a quorum for the transaction of business and the
6 exercise of the powers and duties of the board.

7 * Sec. 4. AS 16.51.090 is amended to read:

8 Sec. 16.51.090. POWERS OF BOARD. In carrying out the powers of the
9 institute, the board may

- 10 (1) adopt, alter, and use a corporate seal;
- 11 (2) prescribe, adopt, amend, and repeal bylaws;
- 12 (3) sue and be sued in the name of the institute;
- 13 (4) enter into any agreements necessary to the exercise of its powers
14 and functions;

15 (5) cooperate with a public or private board, organization, or agency
16 engaged in work or activities similar to the work or activities of the institute, including
17 entering into contracts for joint programs of consumer education, sales promotion,
18 quality control, advertising, and research in the production, processing, or distribution
19 of seafood;

20 (6) conduct, or contract for, scientific research to develop and discover
21 health, dietetic, or other uses of seafood harvested and processed in the state;

22 (7) receive contributions of money from persons;

23 (8) establish offices in the state and otherwise incur expenses incidental
24 to the performance of its duties;

25 (9) appear on behalf of the institute before boards, commissions,
26 departments, or other agencies of municipal, state, or federal government;

27 (10) acquire, hold, lease, sell, or otherwise dispose of property, but such
28 property is limited to that which is necessary to the administrative functioning of the
29 office of the institute;

30 (11) establish and maintain one or more bank accounts for the
31 transaction of the institute's business;

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(12) prepare market research and product development plans for the promotion of any species of seafood and their by-products that may be harvested in the state and processed for sale;

(13) establish an executive board to assist the board in efficiently exercising the board's powers and duties under this chapter: the executive board shall consist of seven members selected from and by the board and shall include at least three members who are engaged in commercial fishing:

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3 processors & 2 the public members

(14) establish committees related to the marketing of salmon and salmon products: the board shall, to the extent practicable, appoint equal numbers of seafood processors and persons engaged in commercial fishing to the committees.

* Sec. 5. AS 16.51.100 is amended to read:

Sec. 16.51.100. DUTIES OF BOARD. The board shall

(1) conduct programs of education, research, advertising, or sales promotion designed to accomplish the purposes of this chapter;

(2) promote all species of seafood and their by-products that are harvested in the state and processed for sale;

(3) develop market-oriented quality specifications for Alaska seafoods to be used in developing a high quality image for Alaska seafood in domestic and world markets, and adopt and distribute recommendations regarding the handling of seafood from the moment of capture to final distribution;

(4) prepare market research and product development plans for the promotion of all species of seafood and their by-products that are harvested in the state and processed for sale;

(5) submit an annual report to the governor and the legislature describing the activities of the institute; [AND]

(6) develop marketing programs based on the "inspection" and "premium quality" seals designed under AS 03.05.026 [,] and use the seals in advertising and promotion efforts of the institute;

(7) collect, organize, and distribute information on prices paid and market conditions for raw salmon and salmon products and provide this

*Kari Elton:
data should be available to the public*

1 information on a regular and timely basis to all salmon fishermen who hold
 2 permits under AS 16.43 and to all nonprofit salmon enhancement organizations
 3 that hold a permit under AS 16.10.400: *and ~~it~~ available to all members of*
 4 *the public*

5 (8) cooperate with commercial salmon fishermen, fishermen's
 6 organizations, seafood processors, the Alaska Fisheries Development Foundation,
 7 the Fisheries Industrial Technology Center, state and federal agencies, and other
 8 relevant persons and entities to investigate market reception to new salmon
 9 product forms and develop commodity standards and future markets for salmon
products: and

10 (7) establish a salmon marketing advisory committee to assist and
 11 advise the board in fulfilling its responsibilities under (7) and (8) of this section:
 12 notwithstanding AS 16.51.090(14), the committee shall consist of one commercial
 13 salmon fisherman appointed by the commissioner from each salmon
 14 administrative area established by the Alaska Commercial Fisheries Entry
 15 Commission: the board shall adopt regulations that are necessary to implement
 16 this paragraph.

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17 * Sec. 6. AS 43.76 is amended by adding new sections to read:

18 ARTICLE 2. SALMON MARKETING TAX.

19 Sec. 43.76.110. SALMON MARKETING TAX. A person holding a limited
 20 entry permit or interim-use permit under AS 16.43 shall pay a salmon marketing tax
 21 at the rate of one percent of the value, as defined in AS 43.75.290, of salmon that the
 22 person removes from the state or transfers to a buyer in the state. The buyer shall
 23 collect the salmon marketing tax at the time the salmon is acquired by the buyer.

24 Sec. 43.76.120. COLLECTION OF TAX. (a) A buyer who acquires salmon
 25 that is subject to a salmon marketing tax imposed by AS 43.76.110 shall collect the
 26 salmon marketing tax at the time of purchase and shall remit the total salmon
 27 marketing tax collected during each month to the Department of Revenue by the last
 28 day of the next month.

29 (b) A buyer who collects the salmon marketing tax shall

- 30 (1) maintain records of the value of salmon purchased in the state;
 31 (2) report to the Department of Revenue by March 1 of each year the

1 total value, as defined in AS 43.75.290, of the salmon that the buyer has acquired
2 during the preceding year.

3 (c) The owner of salmon removed from the state is liable for payment of
4 a salmon marketing tax imposed by AS 43.76.110 if, at the time the salmon is
5 removed from the state, the tax payable on the salmon has not been collected by a
6 buyer. If the owner of the salmon is liable for payment of the salmon marketing tax
7 under this subsection, the owner shall comply with the requirements under (a) and (b)
8 of this section to remit the tax to the Department of Revenue, to maintain records, and
9 to report to the Department of Revenue.

10 (d) The salmon marketing tax collected under this section shall be deposited
11 in the general fund. The legislature may appropriate revenue generated by the salmon
12 marketing tax to the Alaska Seafood Marketing Institute for the purpose of supporting
13 the institute's salmon marketing program under AS 16.51.100(7) - (9) and the
14 institute's domestic salmon marketing program. Except as otherwise provided in an
15 appropriation by the legislature, the amount of the allocation made to the institute's
16 salmon marketing program under AS 16.51.100(7) - (9) should not exceed 10 percent
17 of the total amount of salmon marketing tax revenue appropriated for the institute.

18 Sec. 43.76.130. DEFINITION. In AS 43.76.110 - 43.76.130, "buyer" means
19 a person who acquires possession of salmon from the person who caught the salmon
20 regardless of whether there is an actual sale of the salmon, but does not include a
21 person engaged solely in interstate transportation of goods for hire.

22 * Sec. 7. TRANSITION FOR MEMBERS OF THE BOARD OF DIRECTORS OF THE
23 ALASKA SEAFOOD MARKETING INSTITUTE. (a) Notwithstanding AS 16.51.020(b),
24 as amended by sec. 2 of this Act, and (c) of this section, a person who is serving as a member
25 of the board of directors of the Alaska Seafood Marketing Institute on the day before the
26 effective date of sec. 2 of this Act may continue to serve as a member of the board for the
27 remainder of the term to which the person was appointed.

28 (b) As soon as practicable after the effective date of sec. 1 of this Act, the governor
29 shall appoint six persons engaged in commercial fishing to the new memberships created on
30 the board of directors of the Alaska Seafood Marketing Institute by secs. 1 and 2 of this Act.
31 Notwithstanding AS 16.51.030, the governor shall appoint two persons appointed under this

1 Notwithstanding AS 16.51.030, the governor shall appoint two persons appointed under this
2 subsection to one-year terms, two persons appointed under this subsection to two-year terms,
3 and two persons appointed under this subsection to three-year terms.

4 (c) Notwithstanding AS 16.51.020(b), as amended by sec. 2 of this Act, the governor
5 shall appoint a person engaged in commercial fishing to the membership on the board of
6 directors of the Alaska Seafood Marketing Institute that is vacated by the lay person member.
7 If a person is appointed under this subsection to fill a vacancy arising other than by the
8 expiration of a term of office, the person shall be appointed to complete the remainder of the
9 unexpired term.

10 * Sec. 8. AS 43.76.110, 43.76.120, and 43.76.130 are repealed June 30, 1999.

11 * Sec. 9. AS 16.51.100(7), 16.51.100(8), and 16.51.100(9) are repealed June 30, 2000.

12 * Sec. 10. Section 6 of this Act takes effect July 1, 1993.

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Utermohle
4/5/93

CS FOR SENATE BILL NO. 177()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to salmon marketing, a salmon marketing tax, and the Alaska
2 Seafood Marketing Institute; and providing for an effective date."

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

4 * Section 1. AS 16.10 is amended by adding new sections to read:

5 ARTICLE 10A. SALMON MARKETING.

6 Sec. 16.10.570. SALMON MARKET INFORMATION. The Department of
7 Commerce and Economic Development shall collect, organize, and distribute
8 information on prices paid and market conditions for raw salmon and salmon products.
9 The department shall provide this information on a regular and timely basis to all
10 salmon fishermen who hold permits under AS 16.43 and to all nonprofit salmon
11 enhancement organizations that hold a permit under AS 16.10.400.

12 Sec. 16.10.580. SALMON MARKETING SERVICES. The department shall
13 cooperate with commercial salmon fishermen, fishermen's organizations, seafood
14 processors, the Alaska Seafood Marketing Institute, the Alaska Fisheries Development

1 Foundation, the Fisheries Industrial Technology Center, state and federal agencies, and
2 other relevant persons and entities to investigate market reception to new salmon
3 product forms and develop commodity standards and future markets for salmon
4 products.

5 Sec. 16.10.590. SALMON ADVISORY COMMITTEE. The commissioner
6 shall establish a salmon marketing advisory committee to assist and advise the
7 department in fulfilling the department's responsibilities under AS 16.10.570 -
8 16.10.599. The committee shall consist of one commercial salmon fisherman
9 appointed by the commissioner from each salmon administrative area established by
10 the Alaska Commercial Fisheries Entry Commission. The commissioner shall adopt
11 regulations that are necessary to implement this section.

12 Sec. 16.10.599. DEFINITIONS. In AS 16.10.570 - 16.10.599,

13 (1) "commissioner" means the commissioner of commerce and
14 economic development;

15 (2) "department" means the Department of Commerce and Economic
16 Development.

17 * Sec. 2. AS 16.51.020(a) is amended to read:

18 (a) The governing body of the institute is a board of directors. The board
19 consists of 24 [18] voting members appointed by the governor. In making
20 appointments to the board, the governor shall consider, but need not appoint, nominees
21 presented by persons engaged in fish processing, the financing of fish processing, or
22 commercial fishing.

23 * Sec. 3. AS 16.51.020(b) is amended to read:

24 (b) Twelve members of the board shall be seafood processors: eight of the
25 seafood processors must have an annual payroll in the state of more than \$2,500,000
26 [\$1,000,000 OR MORE]; four of the seafood processors must have an annual payroll
27 in the state of \$50,000 - \$2,500,000. Twelve [\$1,000,000. FIVE] members of the
28 board must be engaged in commercial fishing. [ONE MEMBER OF THE BOARD
29 SHALL BE A LAY PERSON SELECTED BY THE GOVERNOR.]

30 * Sec. 4. AS 16.51.050 is amended to read:

31 Sec. 16.51.050. QUORUM. Fourteen [TEN] members of the board appointed

1 under AS 16.51.020 constitute a quorum for the transaction of business and the
2 exercise of the powers and duties of the board.

3 * Sec. 5. AS 16.51.090 is amended to read:

4 Sec. 16.51.090. POWERS OF BOARD. In carrying out the powers of the
5 institute, the board may

6 (1) adopt, alter, and use a corporate seal;

7 (2) prescribe, adopt, amend, and repeal bylaws;

8 (3) sue and be sued in the name of the institute;

9 (4) enter into any agreements necessary to the exercise of its powers
10 and functions;

11 (5) cooperate with a public or private board, organization, or agency
12 engaged in work or activities similar to the work or activities of the institute, including
13 entering into contracts for joint programs of consumer education, sales promotion,
14 quality control, advertising, and research in the production, processing, or distribution
15 of seafood;

16 (6) conduct, or contract for, scientific research to develop and discover
17 health, dietic, or other uses of seafood harvested and processed in the state;

18 (7) receive contributions of money from persons;

19 (8) establish offices in the state and otherwise incur expenses incidental
20 to the performance of its duties;

21 (9) appear on behalf of the institute before boards, commissions,
22 departments, or other agencies of municipal, state, or federal government;

23 (10) acquire, hold, lease, sell, or otherwise dispose of property, but such
24 property is limited to that which is necessary to the administrative functioning of the
25 office of the institute;

26 (11) establish and maintain one or more bank accounts for the
27 transaction of the institute's business;

28 (12) prepare market research and product development plans for the
29 promotion of any species of seafood and their by-products that may be harvested in
30 the state and processed for sale;

31 (13) establish an executive board to assist the board in efficiently

1 exercising the board's powers and duties under this chapter: the executive board
2 shall consist of seven members selected from and by the board and shall include
3 at least three members who are engaged in commercial fishing:

4 (14) establish committees related to the marketing of salmon and
5 salmon products: the board shall, to the extent practicable, appoint equal
6 numbers of seafood processors and persons engaged in commercial fishing to the
7 committee.

8 * Sec. 6. AS 16.51.100 is amended to read:

9 Sec. 16.51.100. DUTIES OF BOARD. The board shall

10 (1) conduct programs of education, research, advertising, or sales
11 promotion designed to accomplish the purposes of this chapter;

12 (2) promote all species of seafood and their by-products that are
13 harvested in the state and processed for sale;

14 (3) develop market-oriented quality specifications for Alaska seafoods
15 to be used in developing a high quality image for Alaska seafood in domestic and
16 world markets, and adopt and distribute recommendations regarding the handling of
17 seafood from the moment of capture to final distribution;

18 (4) prepare market research and product development plans for the
19 promotion of all species of seafood and their by-products that are harvested in the state
20 and processed for sale;

21 (5) submit an annual report to the governor and the legislature
22 describing the activities of the institute; and

23 (6) develop marketing programs based on the "inspection" and
24 "premium quality" seals designed under AS 03.05.026 [,] and use the seals in
25 advertising and promotion efforts of the institute.

26 * Sec. 7. AS 43.76 is amended by adding new sections to read:

27 ARTICLE 2. SALMON MARKETING TAX.

28 Sec. 43.76.110. SALMON MARKETING TAX. A person holding a limited
29 entry permit or interim-use permit under AS 16.43 shall pay a salmon marketing tax
30 at the rate of one percent of the value, as defined in AS 43.75.290, of salmon that the
31 person removes from the state or transfers to a buyer in the state. The buyer shall

1 collect the salmon marketing tax at the time the salmon is acquired by the buyer.

2 Sec. 43.76.120. COLLECTION OF TAX. (a) A buyer who acquires salmon
3 that is subject to a salmon marketing tax imposed by AS 43.76.110 shall collect the
4 salmon marketing tax at the time of purchase and shall remit the total salmon
5 marketing tax collected during each month to the Department of Revenue by the last
6 day of the next month.

7 (b) A buyer who collects the salmon marketing tax shall

8 (1) maintain records of the value of salmon purchased in the state;

9 (2) report to the Department of Revenue by March 1 of each year the
10 total value, as defined in AS 43.75.290, of the salmon that the buyer has acquired
11 during the preceding year.

12 (c) The owner of salmon removed from the state is liable for payment of
13 a salmon marketing tax imposed by AS 43.76.110 if, at the time the salmon is
14 removed from the state, the tax payable on the salmon has not been collected by a
15 buyer. If the owner of the salmon is liable for payment of the salmon marketing tax
16 under this subsection, the owner shall comply with the requirements under (a) and (b)
17 of this section to remit the tax to the Department of Revenue, to maintain records, and
18 to report to the Department of Revenue.

19 (d) The salmon marketing tax collected under this section shall be deposited
20 in the general fund. The legislature may make appropriations allocating this revenue
21 between the Department of Commerce and Economic Development for the purpose of
22 supporting the salmon marketing program of the department under AS 16.10.570 -
23 16.10.590 and the domestic salmon marketing program of the Alaska Seafood
24 Marketing Institute. Except as otherwise provided in an appropriation by the
25 legislature, the amount of the allocation made to the salmon marketing program of the
26 department under AS 16.10.570 - 16.10.590 should not exceed 10 percent of the total
27 amount appropriated for the department and the institute.

28 Sec. 43.76.130. DEFINITION. In AS 43.76.110 - 43.76.130, "buyer" means
29 a person who acquires possession of salmon from the person who caught the salmon
30 regardless of whether there is an actual sale of the salmon, but does not include a
31 person engaged solely in interstate transportation of goods for hire.

1 * Sec. 8. TRANSITION FOR MEMBERS OF THE BOARD OF DIRECTORS OF THE
2 ALASKA SEAFOOD MARKETING INSTITUTE. (a) Notwithstanding AS 16.51.020(b),
3 as amended by sec. 3 of this Act, and (c) of this section, a person who is serving as a member
4 of the board of directors of the Alaska Seafood Marketing Institute on the day before the
5 effective date of sec. 3 of this Act may continue to serve as a member of the board for the
6 remainder of the term to which the person was appointed.

7 (b) As soon as practicable after the effective date of sec. 2 of this Act, the governor
8 shall appoint six persons engaged in commercial fishing to the new memberships created on
9 the board of directors of the Alaska Seafood Marketing Institute by secs. 2 and 3 of this Act.
10 Notwithstanding AS 16.51.030, the governor shall appoint two persons appointed under this
11 subsection to one-year terms, two persons appointed under this subsection to two-year terms,
12 and two persons appointed under this subsection to three-year terms.

13 (c) Notwithstanding AS 16.51.020(b), as amended by sec. 3 of this Act, the governor
14 shall appoint a person engaged in commercial fishing to the membership on the board of
15 directors of the Alaska Seafood Marketing Institute that is vacated by the lay person member.
16 If a person is appointed under this subsection to fill a vacancy arising other than by the
17 expiration of a term of office, the person shall be appointed to complete the remainder of the
18 unexpired term.

19 * Sec. 9. AS 43.76.110, 43.76.120, and 43.76.130 are repealed June 30, 1999.

20 * Sec. 10. AS 16.10.570, 16.10.580, 16.10.590, and 16.10.599 are repealed June 30, 2000.

21 * Sec. 11. Section 7 of this Act takes effect July 1, 1993.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSSB 177

8-LS0946\E

Revision Date:

Dept. Affected:

Revenue

Title: Salmon Marketing and Enhancement Taxes

BRU:

Revenue Operations

Component:

Income and Excise Audit

Sponsor: Senate Finance

Requestor: Senate Finance

COMPONENT SERIAL NO. 113

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	76.7	76.7	76.7	76.7	76.7	76.7
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	6.0	6.0	6.0	6.0	6.0	6.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	10.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	109.7	99.7	99.7	99.7	99.7	99.7

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE: General Fund	5,750.0	5,750.0	5,750.0	5,750.0	5,750.0	5,750.0
-----------------------------------	---------	---------	---------	---------	---------	---------

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	109.7	99.7	99.7	99.7	99.7	99.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	109.7	99.7	99.7	99.7	99.7	99.7

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by:

Larry E. Meyers, Director

Phone: 465-2320

Division:

Income and Excise Audit Division

Date: April 5, 1993

Approved by Commissioner:

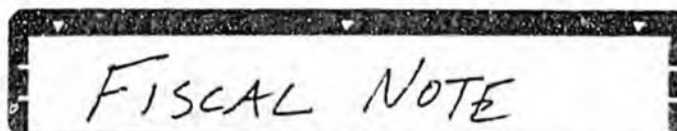
Darrel J. Rexwinkel

Date: April 5, 1993

Agency:

Commissioner

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Analysis

This bill affects the Department of Revenue by adding a new chapter to AS 43.76 which provides for a salmon marketing tax. The salmon marketing tax would be imposed on limited entry or interim-use holders at a rate of 1% of the value of the salmon and would be collected by buyers in the state. The buyers would remit the taxes to the Department on a monthly basis. This tax would take effect July 1, 1993 and be automatically repealed after 6 years under section 9 of the bill.

According to the Department of Fish and Game, the total estimated value of salmon harvested in 1992 was \$575 million. Applying the salmon marketing tax to this value, the Department would expect to receive \$5.75 million (\$575 million times 1%).

Operating Costs

The Department expects to receive an average of 6 returns to be filed from 500 buyers (based on the number of licensed fisheries business processors in 1992). As a result, the salmon marketing tax program will generate approximately 3000 additional returns for the Department to data capture and process. Additionally, the Department will conduct audits of buyers' records to insure compliance.

		<u>FY 94*</u>	<u>FY 95-99</u>
Personal Services			
Tax Examiner - Juneau (Range 12A)	\$40.7		
Accounting Clerk II - Juneau (Range 9A)	<u>36.0</u>		
Total Personal Services		\$76.7	76.7
Travel			
10 Audit Trips	10.0		
5 Compliance Trips	<u>5.0</u>		
Total Travel		15.0	15.0
Contractual			
Phone/Utilities	3.0		
Printing	2.0		
Mailing	<u>1.0</u>		
Total Contractual		6.0	6.0
Supplies		2.0	2.0
Equipment (FY 94 Only)			
Computer and Modular Furniture		<u>10.0</u>	<u>0.0</u>
Total Operating Costs		<u>\$109.7</u>	<u>\$99.7</u>

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 177

Revision Date:	Dept. Affected: Revenue
Title: <u>Salmon Marketing and Enhancement Taxes</u>	BRU: <u>Revenue Operations</u>
Sponsor: <u>Senate Finance</u>	Component: <u>Income and Excise Audit</u>
Requestor: <u>Senate Finance</u>	COMPONENT SERIAL NO. <u>113</u>

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	38.4	76.7	76.7	76.7	76.7	76.7
TRAVEL	0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	3.0	6.0	6.0	6.0	6.0	6.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	10.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	53.4	99.7	99.7	99.7	99.7	99.7

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE: General Fund	100.0	5,750.0	5,750.0	5,750.0	5,750.0	5,750.0
-----------------------------------	-------	---------	---------	---------	---------	---------

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	53.4	99.7	99.7	99.7	99.7	99.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	53.4	99.7	99.7	99.7	99.7	99.7

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by:	Larry E. Meyers, Director <i>Larry E. Meyers</i>	Phone: 465-2320
Division:	Income and Excise Audit Division	Date: April 2, 1993
Approved by Commissioner:	Darrel J. Rexwinkel <i>Darrel J. Rexwinkel</i>	Date: April 2, 1993
Agency:	Commissioner	

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FISCAL NOTE

Fiscal Note Analysis

SB 177

April 2, 1993

Page 2 of 2

Analysis

This bill affects the Department of Revenue by adding a new chapter to AS 43.76 which provides for a salmon marketing tax. The salmon marketing tax would be imposed on limited entry or interim-use holders at a rate of 1% of the value of the salmon and would be collected by buyers in the state. The buyers would remit the taxes to the Department on a monthly basis. This tax would be automatically repealed after 5 years under section 9 of the bill.

According to the Department of Fish and Game, the total estimated value of salmon harvested in 1992 was \$575 million. Applying the salmon marketing tax to this value, the Department would expect to receive \$5.75 million (\$575 million times 1%).

Operating Costs

The Department expects to receive an average of 6 returns to be filed from 500 buyers (based on the number of licensed fisheries business processors in 1992). As a result, the salmon marketing tax program will generate approximately 3000 additional returns for the Department to data capture and process. Additionally, the Department will conduct audits of buyers' records to insure compliance.

		<u>FY 94*</u>	<u>FY 95-99</u>
Personal Services			
Tax Examiner - Juneau (Range 12A)	\$40.7		
Accounting Clerk II - Juneau (Range 9A)	<u>36.0</u>		
Total Personal Services		\$38.4	76.7
Travel			
10 Audit Trips	10.0		
5 Compliance Trips	<u>5.0</u>		
Total Travel		0	15.0
Contractual			
Phone/Utilities	3.0		
Printing	2.0		
Mailing	<u>1.0</u>		
Total Contractual		3.0	6.0
Supplies		2.0	2.0
Equipment (FY 94 Only)			
Computer and Modular Furniture		<u>10.0</u>	<u>0.0</u>
Total Operating Costs		<u>\$53.4</u>	<u>\$99.7</u>

* Since the salmon marketing tax program does not become effective until January 1, 1994, personal services and contractual costs are reflected for half of FY 94.

SB

184

Alaska State Legislature


STEVE FRANK

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701
(907) 452-3421



Senate

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 417

TO: Senator Kelly; Chairman, Senate Labor and Commerce
FROM:  Senator Frank; Co-Chair, Senate Finance
RE: SB 184: Civil Liability of Volunteers
DATE: 12 April, 1993

Senate Bill 184 proposes to make volunteers and employees of non-profit corporations in Alaska immune to civil liability for damages incurred while on the job. Immunity will only be granted for civil damages incurred while the volunteer is performing his/her duties in good faith without being reckless or grossly negligent.

This immunity will only apply to volunteers of non-profit corporations which have a liability insurance policy of at least \$200,000 per individual claim, and \$500,000 for all claims arising from the same occurrence.

Certain kinds of volunteers are already protected against civil liability in Alaska law; EMTs, volunteer aircraft safety inspectors, doctors and other medical professionals delivering "good Samaritan" services, emergency veterinary care, and a general limit to liability for officers and directors of non-profit corporations.

But for the most part, individual volunteers in Alaska have no statutory protection from liability. This bill is necessary to allow volunteers and employees of non-profit corporations to give their services freely without the threat of a lawsuit and personal ruin. Volunteers are an important, powerful resource in our state and they deserve protection from liability.

Thank you for hearing this bill.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

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

MEMORANDUM

April 13, 1993

SUBJECT: Sectional Summary of SB 184

TO: Senator Steve Frank

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Provides that a person who is employed by or who volunteers for a nonprofit corporation is not liable for civil damages that result from an act or omission of that person, if the nonprofit corporation is insured or is exempt from applicable insurance requirements. Limits the immunity to acts or omissions that are not intentional, reckless, or grossly negligent. Establishes liability insurance requirements that must be met in order to create immunity for employees or volunteers.

Section 2. Applicability section.

Section 3. Effective date.

MFF:gc
93-332.glc

A M E N D M E N T

OFFERED IN THE SENATE
TO: SB 184

BY SENATOR FRANK

Page 1, line 1, after "liability":

Insert "of certain nonprofit corporations and"

Page 2, after line 4:

Insert a new subsection to read:

"(c) In an action against a nonprofit corporation to recover damages resulting from an act or omission of an employee or volunteer of the nonprofit corporation, if the nonprofit corporation is insured as described under (b) of this section, the court or jury may not award damages in an amount that exceeds the limit of coverage under the nonprofit corporation's policy of liability insurance. This subsection does not apply to a nonprofit corporation that is not insured as described under (b) of this section."

Reletter the following subsections accordingly.

Page 2, line 7:

Delete "This"

Insert "Except as provided under (c) of this section, this"

SENATE LABOR & COMMERCE COMMITTEE - JAN. 25, 1994

**ADDITIONAL PACKET INFORMATION FOR SB 184:
LIABILITY OF EMPLOYEES & VOLUNTEERS OF NONPROFIT CORPS.**

Proposed CS from the Sponsor

Fiscal Note for the Proposed CS

Letter on original version of the bill from the Dept. of Law

Letters of Support:

Fairbanks Community Food Bank Service

Fairbanks Region Older American Volunteer Programs

United Way of Anchorage

United Way of Mat-Su

Palmer Senior Citizens' Center, Inc.

Wasilla Area Seniors, Inc.

Feg Rogers, Director: Kids Are People Too

Glenn Hackney, Non-Profit Volunteer

James D. Dewitt

8-LS0954J ✓

Ford

1/25/94

CS FOR SENATE BILL NO. 184()
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATOR FRANK

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability of certain nonprofit corporations and of
 2 volunteers of certain nonprofit corporations; and providing for an effective date."

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

4 * Section 1. AS 09.65 is amended by adding a new section to read:

5 Sec. 09.65.098. CIVIL LIABILITY OF CERTAIN VOLUNTEERS AND
 6 CORPORATIONS. (a) A person working as a volunteer for a nonprofit corporation
 7 is not liable for civil damages resulting from an act or omission that occurs while the
 8 person is acting in good faith and within the scope of the person's functions and duties
 9 as a volunteer for the nonprofit corporation if the nonprofit corporation is insured as
 10 required under (b) of this section or is exempt from the insurance requirement under
 11 (b) of this section.

12 (b) Immunity provided under (a) of this section does not apply unless the
 13 nonprofit corporation purchases and maintains a policy of liability insurance with a
 14 limit of coverage of at least \$200,000 per individual claim and \$500,000 for all claims

1 arising from the same occurrence. This subsection does not apply to a nonprofit
2 corporation that had administrative operating costs of less than \$100,000 in the
3 previous calendar year and that is exempt from taxation under 26 U.S.C. 501(c)(3)
4 (Internal Revenue Code of 1954).

5 (c) In an action against a nonprofit corporation to recover damages resulting
6 from an act or omission of a volunteer of the nonprofit corporation, if the nonprofit
7 corporation is insured as described under (b) of this section, the court or jury may not
8 award damages in an amount that exceeds the limit of coverage under the nonprofit
9 corporation's policy of liability insurance. This subsection does not apply to a
10 nonprofit corporation that is not insured as described under (b) of this section.

11 (d) This section does not preclude liability for civil damages as a result of
12 gross negligence, recklessness, or intentional misconduct.

13 (e) Except as provided under (c) of this section, this section does not affect the
14 liability of a nonprofit corporation.

15 (f) In this section,

16 (1) "administrative operating costs" do not include money awarded as
17 a grant;

18 (2) "nonprofit corporation" means a corporation

19 (A) incorporated under AS 10.20; or

20 (B) exempt from taxation under 26 U.S.C. 501(c)(3) (Internal
21 Revenue Code of 1954);

22 (3) "volunteer" means a person who does not receive financial
23 consideration, except for reimbursement for expenses actually incurred, for services
24 performed for a nonprofit corporation.

25 * Sec. 2. This Act applies to civil actions that accrue on or after the effective date of this
26 Act.

27 * Sec. 3. This Act takes effect July 1, 1994.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS SB 184

Revision Date: 1/24/94
 Title: Volunteers and Employees of Nonprofits
 Sponsor: Senator Frank
 Requestor: _____

Department Affected: Commerce and Economic Development
 BRU: Insurance
 Component: Operations
 COMPONENT SERIAL NO. 354

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
-----------------------------	----------	----------	----------	----------	----------	----------

CHANGE IN REVENUES ()	0	0	0	0	0	0
-------------------------------	----------	----------	----------	----------	----------	----------

FUND SOURCE

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

Estimate of current year (FY 94) cost: \$ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared by: Joan Brown, Administrative Officer
 Division: Insurance

Phone: 465-2597
 Date: 1/24/94

Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Date: 1-24-94

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WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 300
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295
(907) 465-3603
(FAX) 465-2539

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 28, 1993

RECEIVED APR 29 1993

Honorable Steve Frank
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: SB 184

Dear Senator Frank:

At the request of the Governor's legislative office, we have reviewed SB 184. The bill would create a new statute, AS 09.65.098, which would immunize ~~employees~~ and volunteers of certain non-profit corporations from civil liability under certain conditions. If applicable, the bill provides immunity to individual ~~employees~~ and volunteers but does not affect the liability of the non-profit corporations for whom those individuals work or provide their services. Proposed AS 09.65.098(a) and (d).

The liability is predicated on one of two things: The non-profit corporation must either (1) maintain a minimum level of liability insurance or (2) have administrative operating costs under \$100,000 and be tax-exempt. Proposed AS 09.65.098(b).¹ The bill does not preclude liability for gross negligence, recklessness, or intentional misconduct. Proposed AS 09.65.098(c). If enacted, the bill would apply only to actions that accrue on or after its effective date. Sec. 2.

As noted, the bill would eliminate the personal liability of volunteers and ~~employees~~ of certain non-profit corporations for simple negligence, but would not affect the liability of the non-profits themselves. It should be understood that, because of this immunity, there would be no possibility of third party recovery from a non-profit corporation or an insurer for ~~an employee's or~~

¹ We express no opinion on the insurance levels used in the bill, but do suggest that an insurance specialist verify that standard forms of coverage are available at the levels identified. The Division of Risk Management in the Department of Administration, or the Division of Insurance in the Department of Commerce and Economic Development, may be able to provide assistance in this area.

Honorable Steve Frank
Alaska State Legislature
Re: SB 184

April 28, 1993
Page 2

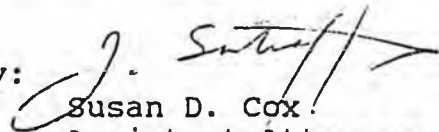
volunteer's personal liability. Even though the non-profit may have the liability insurance specified in the bill, such insurance would not provide coverage for acts or omissions that are statutorily immunized from liability. Therefore, recovery from the non-profit or its insurer would be incumbent on proving direct negligence by the non-profit itself, or by establishing that the non-profit is vicariously liable for the acts or omissions of the employee or volunteer.²

We have no comments on legal aspects of the bill other than the observations above. Please feel free to contact us if you have further questions.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:

 For:
Susan D. Cox
Assistant Attorney General

SDC:bap

cc: Deborah E. Behr
Log # 93-004

² It is conceivable that there might be circumstances in which a volunteer could perform a service for a non-profit corporation and be immune under AS 09.65.098(a), yet the non-profit would not necessarily have direct or vicarious liability. In such circumstances, there might not be a source of recovery for injured third parties, notwithstanding the fact that the non-profit may have liability insurance. Conversely, there could be situations where an employee or volunteer is immune and the non-profit corporation definitely has liability, but there is no liability insurance coverage. See proposed AS 09.65.098(b).



Fairbanks Community Food Bank Service

517 Gaffney Road
Fairbanks, Alaska 99701-9990
(907) 452-7761 FAX 456-2377

April 13, 1993

Senator Frank, Co-Chair
Senate Finance Committee
FAX 465-4714

Dear Senator Frank,

Thank you for your follow-through on SB184 and for the prompt hearing and proposed amendment.

The clarifying language of this bill will make all non-profits breathe easier.

The Fairbanks Community Food Bank operates almost entirely by volunteer help. In 1992, that amounted to 10,000 volunteer hours and the work accomplished was amazing. It is right to give these generous people the protection and encouragement they need to continue to perform such important work for the community.

Sincerely,


Samantha Castle-Kirstein
Executive Director



A United Way Agency

FAIRBANKS REGION
 OLDER AMERICAN VOLUNTEER PROGRAMS
 FOSTER GRANDPARENT, SENIOR COMPANION,
 RETIRED SENIOR VOLUNTEER

c/o Senior Center • 1424 Moore Street • Fairbanks, AK 99701 • (907) 452-6417



FAIRBANKS REGION
 OLDER AMERICAN VOLUNTEER PROGRAMS

M E M O R A N D U M

Anchorage
 Fairbanks
 Hoonah
 Juneau
 Palmer
 Tanacross
 Wasilla
 North Pole
 Mintos
 Tanana
 Nulato

TO: Senator Frank; Co-Chair Senate Finance
 FROM: Jeanne Thomas *Jeanne Thomas*
 SUBJECT: SB 184: Civil Liability of Volunteers
 DATE: April 13, 1993



Anchorage
 Fairbanks
 Hoonah
 Juneau
 Palmer
 Wasilla
 Kenai
 North Pole

On behalf of the Fairbanks Region OAVP I would like to express our support for SB 184, which proposes to make volunteers and employees of non-profit corporations in Alaska immune to civil liability for damages incurred while on the job. We also support the proposed amendment that states that corporations may only be held liable up to the limit of their insurance coverage.

In the Fairbanks region we have over 100 senior volunteers serving in dozens of agencies in a wide variety of community service volunteer positions. We also have numerous community volunteers that give freely of their time to our programs on a regular basis.

Our programs exist to provide seniors the opportunity to serve their community as volunteers. They impact thousands of people's lives and gave over 38,000 hours of community service last year. We feel it is imperative that these volunteers do not have to serve their communities under the threat of personal ruin or lawsuit.

We feel the passage of this bill is imperative not only to our volunteers but all volunteers serving with non-profits.



Fairbanks
 Juneau
 North Pole



A UNITED WAY AGENCY SPONSORED BY ALASKA COMMUNITY SERVICES, INC.



United Way
of Anchorage

Post Office Box 102052
Anchorage, Alaska 99510-2052
Phone (907) 562-4483
Fax (907) 563-0020

April 13, 1993

The Honorable Senator Frank
The Senate of Alaska
State Capitol Building, Room 518
Juneau, Alaska 99801

Dear Honorable Frank:

As Executive Director of the United of Anchorage, I would like to offer my support for Senate Bill 184.

The United Way of Anchorage works for the largest volunteer network in Alaska. We help fund 39 health and human service organizations in southcentral Alaska. This Bill would enhance these organizations' ability to recruit volunteers and ensure their altruistic efforts are protected by law.

Please do all possible to have Senate Bill 184 passed.

Sincerely,

A handwritten signature in cursive script that reads "Dennis G. McMillian".

Dennis G. McMillian
Executive Director

DGM:ah



United Way
of
Mat-Su Borough

April 13, 1993

Senator Steve Frank
Senate Finance Committee

Subject: HB 184

Dear Senator:

United Way of Mat-Su would like to express its support of HB 184. Without such legislation the business of helping friends, neighbors, and relatives would be very difficult.

Through your energy and foresight we can continue doing what is necessary to enrich the lives of many.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kris Becker".

Kris Becker
Executive Director

Palmer Senior Citizens' Center, Inc.


"Seniors helping Seniors"

Senator Steve Front, Co-Chair
Senate Finance Committee

Dear Senator Front,

Palmer Senior Center sincerely supports SB184 that would limit civil liability for non-profit volunteers and staff. Please consider PSCC a supporter of this bill.

Sincerely,


Richard Tubbs
Executive Director



United Way

831 S. Chugach St. • Palmer, Alaska 99646 • (907) 745-6464

WASILLA
AREA
SENIORS
INC.



Senator Frank,

Just a quick note to voice our
support for SB 184. Your efforts in
addressing this matter are to be applauded
and you have our sincere thanks!

[Signature]
Executive Director

APR 13 '93 11:56 LEG. AFFAIRS - WASILLA

Call us at 376-3704 165 E. Parks Highway Suite 106

Public Opinion Message

Only those single messages delivered by the signing individual to the Legislative Information Office by phone or fax, hand-delivered or written at the Legislative Information Office will be accepted for transmission via electronic mail as a Public Opinion Message. We require the following information to be held confidential: (1) name address and phone number of sender, (2) who the POM should be addressed to, (3) the text of the POM (50 words or less), and (3) when possible, the bill number referenced in the POM. Your message may be directed to any individual or combination of the following members of the Legislature.

Delegations	
<input type="checkbox"/>	Anchorage Delegation (*)
<input type="checkbox"/>	Fairbanks Delegation (+)
<input checked="" type="checkbox"/>	Mat-Su Delegation (*)
<input type="checkbox"/>	Bush Caucus (#)

Senators			
<input type="checkbox"/>	Adams#	<input type="checkbox"/>	Lincoln#
<input type="checkbox"/>	Donley*	<input type="checkbox"/>	Little
<input type="checkbox"/>	Duncan#	<input type="checkbox"/>	Miller+
<input type="checkbox"/>	Ellis*	<input type="checkbox"/>	Pearce*
<input checked="" type="checkbox"/>	Frank+	<input type="checkbox"/>	Phillips*
<input type="checkbox"/>	Hallford**	<input type="checkbox"/>	Rieger*
<input type="checkbox"/>	Jackos#	<input type="checkbox"/>	Salo*
<input type="checkbox"/>	Kelly*	<input type="checkbox"/>	Sharp+
<input type="checkbox"/>	Kemula**	<input type="checkbox"/>	Taylor
<input type="checkbox"/>	Leman*	<input type="checkbox"/>	Zharov#

<input type="checkbox"/>	Barnes*	<input type="checkbox"/>	Hoffman#	<input type="checkbox"/>	Ciberg#
<input type="checkbox"/>	Brice+	<input type="checkbox"/>	Hudson	<input type="checkbox"/>	Parnell*
<input type="checkbox"/>	Brown*	<input type="checkbox"/>	James+	<input type="checkbox"/>	Phillips
<input type="checkbox"/>	Bunde*	<input type="checkbox"/>	Kot*	<input type="checkbox"/>	Porter*
<input type="checkbox"/>	Carney*	<input type="checkbox"/>	Larson*	<input type="checkbox"/>	Sanders*
<input type="checkbox"/>	Davidson#	<input type="checkbox"/>	Mackin#	<input type="checkbox"/>	Siron+
<input type="checkbox"/>	Davies+	<input type="checkbox"/>	MacLean#	<input type="checkbox"/>	Theriault+
<input type="checkbox"/>	Davis, B.*	<input type="checkbox"/>	Martin*	<input type="checkbox"/>	Toohy*
<input type="checkbox"/>	Davis, G.	<input type="checkbox"/>	Menard*	<input type="checkbox"/>	Ulmar
<input type="checkbox"/>	Finkelstein*	<input type="checkbox"/>	Moses#	<input type="checkbox"/>	Vezey+
<input type="checkbox"/>	Foster#	<input type="checkbox"/>	Mulder*	<input type="checkbox"/>	Williams
<input type="checkbox"/>	Green*	<input type="checkbox"/>	Navarre	<input type="checkbox"/>	Wills*
<input type="checkbox"/>	Grussendorf#	<input type="checkbox"/>	Nicholas#	<input type="checkbox"/>	
<input type="checkbox"/>	Harley*	<input type="checkbox"/>	Nordlund*	<input type="checkbox"/>	

Committees	
Indicate H for House or S for Senate.	
<input type="checkbox"/>	Community & Regional Affairs
<input type="checkbox"/>	Finance
<input type="checkbox"/>	Health, Education & Social
<input type="checkbox"/>	Judiciary
<input type="checkbox"/>	Labor & Commerce
<input type="checkbox"/>	Resources
<input type="checkbox"/>	Rules
<input type="checkbox"/>	State Affairs
<input type="checkbox"/>	Transportation

Mr., Mrs., Ms., Dr., etc.

Name	PEG ROGERS, DIRECTOR / KIDS ARE PEOPLE, INC.	Phone	376-6016
Address	701 E. PARKS #206B	City	WASILLA AK 98
City	WASILLA AK 98	ZIP	99654

Subject: SB 184			
I	2	3	4
	SUPPORT	SB 184	
3	5	7	8
9	10	11	12
13	14	15	16
17	18	19	20
21	22	23	24
25	26	27	28
29	30	31	32
33	34	35	36
37	38	39	40
41	42	43	44
45	46	47	48
49	50		

Amend
 None

April 13, 1993

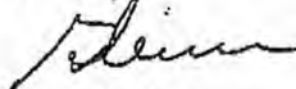
Senator Kelly, Co-Chair
Senate Labor and Commerce Committee
FAX 465-4714

Dear Tim,

Thanks for the prompt hearing of SB184.

The clarifying language of this bill will make all non-profits breathe easier. Hope it can be passed out of committee with a unanimous "Do-Pass."

Sincerely,



Glenn Hackney
Non-profit volunteer

313 Lancaster Drive
Fairbanks, Alaska 99712
March 16, 1993

Senator Steve Frank
Alaska State Senate
Room 518
State Capitol
Juneau, Alaska 99801-1182

Re: Limitation of Liability of Volunteers
Proposed New Statute

Dear Steve:

As I mentioned in our telephone conversation of Thursday, March 11, 1993, the Washington, D.C. Council (the equivalent of its city council) recently adopted D.C. Act 9-353, for the stated purpose of amending the District of Columbia Nonprofit Corporation Act "to provide immunity from civil liability for volunteers and employees of non-profit corporations." The statute strikes a careful balance among the competing concerns in this area. I have drafted a modified version of the statute, attempting to apply those concepts to Alaska law.

In this letter I will try to make the case for adoption of this or a similar statute. I emphasize that while I have had a great deal of experience with non-profit corporations, as a director, officer and attorney, I am writing as a private citizen and not on behalf of any group or non-profit corporation.

Present Alaska law provides for a few limited kinds of protection for volunteers. There are special statutes protecting emergency medical technicians (AS 09.65.090(b)), volunteer aircraft safety inspections (AS 09.65.092), physicians and other medical professionals delivering "good Samaritan" services (AS 09.65.090(a)), emergency veterinary care (AS 09.65.097), and a general limitation on the liability of officers and directors of non-profit corporations (AS 10.20.151(d)). The standards and rules of liability for each of these exceptions is slightly different, resulting in confusing and sometimes contradictory guidelines that depend upon the character of the services delivered by the volunteer. By far the greatest number of volunteers have no protection at all. And the organizations for which they work have no protection at all from the negligence of the volunteers.

To the extent that the average volunteer thinks about the risk of personal liability at all, they assume they have some statutory protection from liability or that if they don't their homeowner's or automobile insurance will protect them. Most of the time all of those assumptions are false.

There is a second aspect to volunteer liability: the rule of law called "respondeat superior" - the rule that the master will respond, meaning the "employer" is liable for the torts of the "employee" - applies to volunteers in most instances as well. Thus, a non-profit corporation may be liable for the negligence of its volunteers.

These risks are presently managed partially, if at all. In the best case, non-profit monies are spent on insurance premiums for liability policies that might be more effectively spent on delivery of the services. And areas containing high risk are simply not serviced at all.

The proposed statute attempts to balance various competing interests:

(1) the need to encourage volunteers to donate their services without risk of personal ruin in the event they are negligent;

(2) the need to keep and retain employees at non-profit corporations, often at substantially lower wages than equivalent positions in the private sector;

(3) the need to assure non-profit corporations that they can deliver services without facing financial ruin in the event of employee or volunteer negligence; and

(4) assurance that volunteers, employees of non-profit corporations and the non-profit corporations will have sufficient economic stake in risk management that they do not become careless in the delivery of their services.

The general scheme of the proposed statute is to relieve volunteers from their negligence if minimum levels of insurance are in place at the non-profit corporation. Levels of misconduct more serious than negligence or gross negligence are no excuse. A volunteer could then serve without risk of personal financial liability for their negligence. The non-profit corporation can maintain reasonable levels of insurance and be assured it has adequate protection. And the levels of insurance are high enough to assure that the non-profit corporations will still act with a sufficient level of care to protect the general public.

Senator Steve Frank
March 16, 1993
Page 3

The insurance levels required to trigger protection for volunteers could be extended to employees as well. The amounts of insurance required could be adjusted to different levels, say to the levels required for auto insurance. The kinds of insurance required could be changed to clarify the type of coverages required. But all of those changes are mere glosses on the structure. The important issue is to get a form of general volunteer protection in place.

If there is anything I can do to assist in the adoption of this proposal, please do not hesitate to contact me.

Sincerely yours.



James D. DeWitt

Enclosure

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/5/93

FURTHER: JUDICIARY

Date of 5-Day Notice: 4/8/93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4/25/94

L&C Committee considered SB 184

"An Act relating to civil liability of employees and volunteers of certain nonprofit corporations; and providing for an effective date."

and recommends:

replace with _____ CS SB 184 (L&C)

- same title
- new title
- technical title change (HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

Individual recommendations

FISCAL NOTE INFORMATION

SB&CS

Department	Date	Zero	Fiscal
DCED	4/12	✓	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Tom Kelly
Bob Williams

OTHER RECOMMENDATIONS:

Steve Rieg
Judith S. Sato No Rec
Heather NE

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 184

Revision Date: _____

Department Affected: Commerce and Economic Development

Title: Volunteers and Employees of Nonprofits

BRU: Insurance

Component: Operations

Sponsor: Senator Frank

Requestor: _____

COMPONENT SERIAL NO. 354

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE						
FUND SOURCE:	0	0	0	0	0	0

FUNDING:

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

POSITIONS:

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

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared by: Joan Brown, Administrative Officer

Phone: 465-2597

Division: Insurance

Date: April 12, 1993

Approved by Commissioner: Paul Fuhs

Agency: Commerce and Economic Development

Date: 4-12-93

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill No. SB 184

Revision Date: _____ Department Affected: Alaska Court System
 Title: Volunteers and employees of nonprofits BRU: Trial Courts
 Sponsor: Senator Frank Components: _____
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: None

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

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Division: Alaska Court System Date: 04/14/93

Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 04/14/93
 Agency: Alaska Court System

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

SB

185

(File 1)

Limitations

period - TAX

Assessments

From the desk of **Richard A. Fineberg**
Ester, Alaska 99725

P.O. Box 416
Phone / Fax (907) 479-7778

(Via Fax)

March 20, 1994

Sen. Tim Kelly, Chair
Senate Labor & Commerce Committee
Alaska State Legislature
Juneau, Alaska 99801-1182

Re: SB 185 (Statute of Limitations for Oil & Gas Tax Assessments)

Dear Sen. Kelly:

Based on my experience working for the previous administration and reporting to the Legislature on oil and gas revenue disputes. I would like to testify in favor of SB 185. In this issue, you are presented with two conflicting world views: On one side, the Department of Law argued last year that the taxpayers want the right to reduce their taxes unilaterally at any time during the appeals process while denying the state the ability to increase its tax assessment on the basis of information uncovered during the same process. On the other side, Exxon presented the picture of a the poor taxpayer on whom the government constantly changes the rules. For two sessions, the Department of Law has told you it needs this bill. If you fail to pass it, you side with Exxon.

Analyses of last year's Senate Judiciary Committee hearing record on SB 185 and review of Supreme Court briefs do not provide an unambiguous picture of what is going on, or what is at stake in precedent. Oil and gas valuation and its governing laws are enormously complicated. Moreover, in my estimation, both policy making and oversight in this uncharted and complicated area are seriously hampered by the strictures of confidentiality. Nevertheless, I support this bill. Here's why:

First, Exxon has taken several positions that self-evidently fly in the face of the facts. Exxon U.S.A. General Tax Counsel Paul Sullivan flew up from Texas last April 21 to testify before the Judiciary Committee that the Department of Law was, in effect, lying. He claimed he was "going to give you some concrete information about the 'legislative findings' [in the administration's bill] so that you can . . . decide whether these so-called 'findings' are true." (Sullivan underlined the word "true" in his written testimony.) Among other things, he asserted that the following propositions are facts:

- (1) "The department's ability to audit tax returns is not constrained by its audit resources."
- (2) "Taxpayers did not contribute to any delay. . . Exxon has always granted division requests for extensions."
- (3) The auditors frequently file "blue-sky" or unsubstantiated "high-ball" assessments.

Since Mr. Sullivan took it upon himself to tell you that the Department of Law was in effect lying to you; let's see how his own words stack up.

Regarding Mr. Sullivan's first "fact:" As an Alaskan who has watched oil and gas tax administration fairly closely for a decade, including an extended period in state service working on these issues, I can recall periods when resources were abysmally insufficient for the task. When Exxon's top tax attorney thinks he can fly in and tell you otherwise, he must take you for fools.

END

— LETTER OF SUPPORT —

Fineberg / Sen. Tim Kelly
3/20/94 (Page 2)

As for Mr. Sullivan's second point: I find it difficult to believe that industry tax attorneys, whose job is to maximize income for the corporation's shareholders, bend over backwards to allow state assessors whatever time they need to do their job. In the cases I with which I am familiar, this most certainly has not been the case. I think Mr. Sullivan's "fact" is demonstrably false; at best, it's a debatable assertion.

Turning to Mr. Sullivan's third proposition: As I understand the process, the auditors sometimes file high-balls to keep the issue alive when the company stonewalls them and they run out of time. I believe that if the auditors had time and resources to do their job properly, "high-ball" assessments would not be necessary.

We would still have disputes; the auditors sometimes take aggressive positions, based on the facts available to them, as do the tax filers on the other side. That's one reason a tax resolution process is necessary. In my estimation, Mr. Sullivan conveniently confounded blue-sky audits with normal differences regarding application of tax law, seriously weakening his argument. Exxon's tax counsel purported to present facts; instead, he gave you assertions capable of very different interpretations.

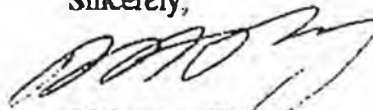
It is almost laughable that Mr. Sullivan began with the worn-out parallel between Exxon and an individual taxpayer dealing with a retroactive change in home mortgage rules. This analogy is at once seductive and blatantly silly. According to company reports, Exxon's after-tax profits last year were \$5.3 billion. That's better than \$14 million a day, or \$10,000.00 per minute. Exxon maintains a stable of high-priced attorneys like Mr. Sullivan to minimize its taxes in each jurisdiction in which it operates. This is a very different situation from you or myself dealing with home mortgage tax law. The only meaningful parallel in Mr. Sullivan's analogy is that tax laws require us to give the tax records of Mr. Sullivan's corporation the same shelter from public inspection that you and I rightly expect as individuals. This facet of law gives Mr. Sullivan room to fly up here and submit his arguably distorted views as fact.

Is the change in law arbitrary, as Exxon contends, or reasonable? Both the particulars and the precedents are shrouded in confidentiality and controversy. Both sides appear to be taking some liberties with a complicated history. Nevertheless, the department has two important things going for its position. First, the department has been part of a state settlement collections process that has brought in more than \$2 billion in the last decade, much of that in recent years. That means the industry apparently thought the courts would ultimately require it to pay more than \$2 billion the industry originally underpaid. Second, for those issues that the industry did take to court, the Department of Law has a truly impressive victory margin. It is hard to reconcile these facts with the notion implicit in Mr. Sullivan's testimony that the industry is a beleaguered Boy Scout.

The record would lead me to support the Dept. of Law on SB 185 even if the testimony of the gentleman from Exxon were not demonstrably full of holes. But Mr. Sullivan has created a situation in which you must decide whether one party or the other is lying to you. If you fail to act on this bill, you are buying Exxon's tattered brief.

Because I will be travelling Tuesday and therefore will not be able to testify, may I ask you to put this letter in committee packets? Thank you.

Sincerely,



Richard A. Fineberg

END

ELLEN TOLL

MEMORANDUM

State of Alaska
Department of Law

TO: Charles E. Cole
Attorney General

DATE: March 25, 1993

FILE NO.:

TEL. NO.: 269-5287

SUBJECT: Retroactive Repeal
of Tax Limitations

FROM: Jenifer Kohout
Assistant Attorney General

CONFIDENTIAL--
ATTORNEY WORK PRODUCT

ISSUES

May the State immediately repeal or amend time limitations in its tax code in order to eliminate existing time bars on the assessment or collection of production taxes?

CONCLUSION

It appears that the State legislature may retroactively repeal or amend statutes of limitation in the State tax code. If the legislature directs, the changes would apply to existing tax obligations barred from assessment or collection by the current limitations. To be effective immediately, the State Constitution requires approval by a two-thirds majority of each house.

The State can eliminate the time bar on production taxes by repeal or amendment. Assuming that the existence of some sort of time limitation is a desirable means of eliminating stale claims, an amendment which lengthens the time period for production taxes is recommended.

DISCUSSION

1. Can the State Retroactively Repeal or Amend Time Limitations in the State Tax Code?

A. State Law Restrictions

General Provisions in the Alaska Statutes direct that the "repeal or amendment of a law does not release or extinguish any . . . liability incurred or right accruing or accrued under the law, unless the repealing or amending act so provides expressly." AS 01.10.100(a). The provision is consistent with constitutional

MEMO FROM ASST. AG KOHOUT
TO AG COLE RE: REPEAL OF TAX LIMITATIONS

prohibitions on state interference with "vested rights." See Bidwell v. Scheele, 355 P.2d 584, 586 (Alaska 1960). State law also directs that "no statute is retrospective unless expressly declared therein." AS 01.10.090.

B. Constitutional Constraints

Legislation with retroactive effect triggers due process concerns.¹ Both the Federal and the State Constitutions provide that "[n]o person shall be deprived of life, liberty, or property, without due process of law." Bidwell, 355 P.2d at 586 (discussing the Fourteenth Amendment of the U.S. Constitution and Article I, Sec. 7 of the Alaska Constitution). In Alaska, "accrued" or "vested" rights warrant constitutional protection. Id. Thus, state legislation is unconstitutional when it interferes with a vested property right. See Chase Securities Corp. v. Donaldson, 325 U.S. 304, 65 S.Ct. 1137, 89 L.Ed. 1628, reh' r denied, 325 U.S. 896 (1945).

The retrospective effect of legislation may violate the due process clause of the Constitution if "special hardships" or "oppressive effects" result. Id., 65 S.Ct. at 1143. One such oppressive effect exists when "appellant's conduct would have been different if the present rule had been known and the change foreseen." Id. In a Ninth Circuit case involving an extension of a statute of limitations, the court looked for evidence that "the limitations provision tended to induce reliance of a kind that would make its retroactive extension so oppressive as to violate due process." Davis v. Valley Distributing Co., 522 F.2d 827, 830 n. 7 (9th Cir. 1975), cert. denied, 429 U.S. 1090 (1977).

¹ The Alaska Supreme Court defined "retroactive" in ARCO Alaska, Inc. v. State, 824 P.2d 708, 711 (Alaska 1992).

'A retroactive [retrospective] law is one which gives to pre-enactment conduct a different legal effect from that which it would have had without passage of the statute.' Thus the retroactive date of the law serves to identify that conduct to which the law will apply.

Id. (citations omitted).

C. Analysis

Extension of the time limitations in the State tax code would not violate the due process clause. First, a time bar is not a property right. See Cambell v. Holt, 115 U.S. 620, 6 S.Ct. 209, 29 L.Ed. 483 (1885).

We are unable to see how a man can be said to have property in the bar of the statute as a defense to his promise to pay.

Id., 6 S.Ct. at 214. Subsequent courts have agreed. See Chase Securities, 65 S.Ct. at 1142; International Union of Elec., Radio & Mach. Workers, AFL-CIO, Local 790 v. Mvers, Inc., 429 U.S. 229, 97 S.Ct. 441, 50 L.Ed.2d 427 (1976); Bidwell, 355 P.2d at 587; Starks v. S.E. Rykoff & co., 673 F.2d 1106 (9th Cir. 1982). According to the Supreme Court in Chase Securities,

[statutes of limitations] represent a public policy about the privilege to litigate. Their snelter has never been regarded as what now is called a 'fundamental' right or what used to be called a 'natural' right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control.

Id. The Court went on to recognize the hypothesis set out in Cambell, "that statutes of limitation go to matters of remedy, not to destruction of fundamental rights." Id.

In Electrical Workers, the Supreme Court held that an Act, which expanded the limitations period for filing a wrongful discharge complaint, applied to a claim that had been time barred by the previous act. The court conceded that statutes of limitation "could be so manipulated that their retroactive effects would offend the Constitution." Id., 429 U.S. at 243. However, "lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time" was not a per se offense against the Fourteenth Amendment. Id. at 243-44.

Relying on Supreme Court cases such as Cambell v. Holt, the Alaska Supreme Court has recognized that a time bar is not a constitutionally protected property right. Bidwell, 355 P.2d at 587.

It is our opinion that the legislature-given defense of failure on the part of the plaintiff to tender and pay taxes into court did not constitute such a "right", vested right", or "property" in the defendant as could not be taken away by the legislature.

Id.

With regard to tax obligations, the Alaska Supreme Court has held that "[t]he taxpayer's obligation to pay taxes accrues in the year the income is received." State, Dept. of Revenue v. Alaska Pulp America, Inc., 674 P.2d 268, 272 (Alaska 1983) (rejecting the argument that the tax obligation does not arise until the tax is assessed.) Id. Thus, the Court concluded that "a period of limitations provided by a later tax act cannot release a taxpayer from that liability." Id.

A time bar on the assessment or collection of a tax obligation is not a property right; thus, extinguishing that bar via the extension of a statute of limitations does not deprive a person of "life, liberty, or property, without due process of law." See Bidwell at 586.

A legislative act may violate the Constitution if it is particularly oppressive. Given the nature of time limitation statutes², it is unlikely that an act which extended a limitation period would be oppressive. To prove "special hardship" or "oppressive effect", taxpayers in this case would have to show that their "conduct would have been different if the present rule had been known and the change foreseen." Chase Securities, 65 S.Ct. at 1142. The disappointment of legitimate hopes in a particular defense does not necessarily "give [a party] a constitutional right

² According to the Supreme Court,

[s]tatutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devised to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost.

against change of policy before final adjudication." Id., 65 S.Ct. at 1143. Since oil producers would anticipate paying production taxes under the tax code, it is unlikely they would have behaved differently knowing the State would repeal or amend existing time limitations.

It appears that the State is free to repeal or amend statutes of limitations in the tax code. Repealing the statutory time limitations altogether would eliminate desirable aspects of those restrictions as well. However, a check on unwarranted delay by State agencies remains. A party aggrieved by inexcusable delay may "raise the equitable defense of laches to bar the claim." G.D. Searle & Co. v. Cohn, 455 U.S. 404, 411, 102 S.Ct. 113, 71 L.Ed.2d 250 (1982). Rather than completely eliminate time constraints on the State's tax collection efforts, the legislature might simply extend the limitation period.

To the extent the changes are specific to production taxes, oil producers might attempt to establish a violation of the equal protection clause. It is unlikely that this argument would succeed. Since a time bar is not a fundamental right, the State would have to establish only that the change is rationally related to a legitimate state objective. Id. at 408. Particular difficulties in the assessment and collection of production taxes and their importance for the State economy would probably provide a legitimate state objective; extension or elimination of the time limitation would be rationally related to that end.

2. Can the State Take Immediate Action?

The legal effect of any change to the tax code occurs "only after the law's effective date."³ ARCO Alaska, 824 P.2d at 711. According to Article II, Section 18 of the State Constitution, "[l]aws passed by the legislature become effective ninety days after enactment." The only exception to this rule occurs when the legislature provides for a different date with the "concurrence of two-thirds of the membership of each house." Alaska Const. art. II, § 18.

³ In ARCO Alaska, the Alaska Supreme Court explained that "[a] law's retroactive date and its effective date are distinctly different concepts." ARCO Alaska, 824 P.2d at 711. The former indicates the extent of pre-enactment conduct covered; while the later signals when the law will have legal effect. Id.

Charles E. Cole

March 25, 1993

Page 6

CONFIDENTIAL--ATTORNEY WORK PRODUCT

3. Conclusion

If it does so explicitly, the State may extend or eliminate time limitations in the tax code so that it may reach tax obligations previously barred from assessment or collection. Such retroactive legislation does not appear to violate the due process clause of either the State or the Federal Constitutions. To make the change effective immediately, both houses of the State legislature would have to approve by a two-thirds majority.

As for the form of the change, the State is probably free to eliminate the time limitations altogether. However, to preserve the desirable effects of statutory time limitations, the State might simply extend the time periods for the assessment and collection of production taxes.

MEMORANDUM

To: Honorable Walter J. Hickel
Governor

From: Charles E. Cole
Attorney General

Date: March 30, 1993

Re: Attached draft bill relating to the limitations period for assessments and collection after assessment of taxes due under AS 43 and providing for an effective date.

Attached is a bill relating to the limitations period for taxes due under AS 43.

This bill clarifies what some perceive as an ambiguity regarding the statute of limitations on both assessments and collections of tax. The state's position has been that until there has been a final determination of tax liability, the state retains the right to amend the assessment. Similarly, it has been the state's position that during the time the assessment is being contested, the collection limitations period is tolled. In short, the statute of limitations does not prohibit the Department of Revenue from amending an assessment while a taxpayer is in the process of challenging the validity of a tax assessment, nor from collecting the tax once the challenge is resolved.

— MEMO FROM FORMER
AG MR. COLE —

March 30, 1993

Page 2

The perceived ambiguity in the statute has spawned litigation over the scope of the limitations period and thus has become an impediment to effective tax administration. Two such cases are currently pending before the Alaska Supreme Court. The purpose of the amendment to AS 43.05.260 and 43.05.270 is to validate and affirm the longstanding practices of the state in assessing and collecting taxes and, in doing so, resolve inconsistent decisions of the superior court in Tesoro Petroleum Corporation, et al. v. State of Alaska, Department of Revenue, Superior Court No. 3AN-89-7130, and State of Alaska, Department of Revenue v. Exxon Corporation et al., Superior Court No. 3AN-89-5215 CIV.

The Department of Revenue currently estimates that there are millions of dollars in assessments that would be subject to an adverse ruling in the Exxon case. Similarly, the Department estimates that substantially more revenues would be exposed to an unfavorable result in the Tesoro case. Although the state is confident of its legal arguments before the court, the fiscal impact of a loss in either case is so significant that a legislative backstop is prudent under the circumstances.

In our view, the bill will validate and affirm the longstanding practice of the Department of Revenue with regard to the procedure used in assessing and collecting taxes. To reaffirm past practice, the bill should be explicitly made retroactive to the effective date of the present statute.

MEMORANDUM

To: Honorable Walter J. Hickel
Governor

From: Charles E. Cole
Attorney General

Date: March 30, 1993

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— MEMO FROM FORMER
AG MR. COLE —

March 30, 1993

Page 2

The perceived ambiguity in the statute has spawned litigation over the scope of the limitations period and thus has become an impediment to effective tax administration. Two such cases are currently pending before the Alaska Supreme Court. The purpose of the amendment to AS 43.05.260 and 43.05.270 is to validate and affirm the longstanding practices of the state in assessing and collecting taxes and, in doing so, resolve inconsistent decisions of the superior court in Tesoro Petroleum Corporation, et al. v. State of Alaska, Department of Revenue, Superior Court No. 3AN-89-7130, and State of Alaska, Department of Revenue v. Exxon Corporation et al., Superior Court No. 3AN-89-5215 CIV.

The Department of Revenue currently estimates that there are millions of dollars in assessments that would be subject to an adverse ruling in the Exxon case. Similarly, the Department estimates that substantially more revenues would be exposed to an unfavorable result in the Tesoro case. Although the state is confident of its legal arguments before the court, the fiscal impact of a loss in either case is so significant that a legislative backstop is prudent under the circumstances.

In our view, the bill will validate and affirm the longstanding practice of the Department of Revenue with regard to the procedure used in assessing and collecting taxes. To reaffirm past practice, the bill should be explicitly made retroactive to the effective date of the present statute.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

PO. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 9, 1993

Honorable Steve Frank
Co-Chair
Senate Finance Committee
Alaska Senator
Room 518
State Capitol
Juneau, AK 99801-1182

Honorable Drue Pearce
Co-Chair
Senate Finance Committee
Alaska Senator
Room 508
State Capitol
Juneau, AK 99801-1182

Re: SB 185(FIN)

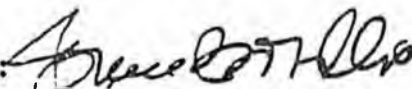
Dear Senators Frank and Pearce:

Attached is a sectional analysis of SB 185(FIN). I hope that this will help explain the content and purpose of the bill. We hope that this bill will have a speedy passage through your committee.

If you have any questions, please do not hesitate to contact me.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
Bruce M. Botelho
Deputy Attorney General

BMB:tg

Attachment

— SECTIONAL ANALYSIS —

SECTIONAL ANALYSIS

Section 1. This section contains proposed legislative findings which set 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 SB 185, which is to validate and affirm the department's longstanding administrative interpretation and to resolve inconsistent decisions in the state Superior court.

Section 2. This section adds language to AS 43.05.260(a) to clarify that the Department of Revenue may increase or decrease the amount of a tax by issuing or amending an assessment under 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.

Section 3. This section adds language to AS 43.05.270(a) to clarify that the six-year limitation on collection of taxes after assessment 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.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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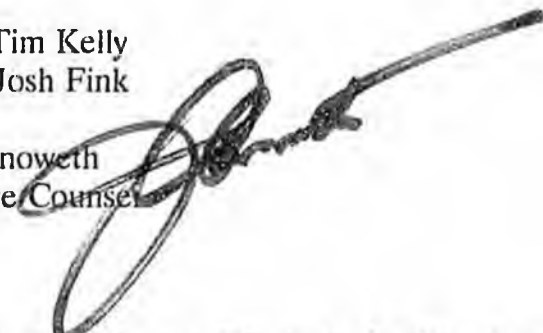
MEMORANDUM

April 13, 1994

SUBJECT: Senate Bill 185: Retroactive application of the proposed amendments to limitations periods for assessments and collections of certain taxes due the state (Work Order No. 8-LS-0971\J)

TO: Senator Tim Kelly
ATTN: Josh Fink

FROM: Jack Chenoweth
Legislative Counsel



Your inquiry concerns section 4 of Senate Bill 185. Section 4 explicitly makes retroactive to January 1, 1976, the operative changes proposed in section 2 and, by cross-reference, in section 3 of the bill. ^{1/}

You have asked whether, in amending statutes setting out limitation periods for assessments and collections of certain taxes due the state, the state will encounter any legal problems by making the proposed changes retroactive.

Short answer: A state may retroactively amend or repeal time limitations that are set out in its tax codes. While I cannot be certain of it, there is, in my judgment, a high likelihood that the courts would not find retroactive application of the proposed modifications of the limitations statutes, as proposed by sec. 4 of Senate Bill 185, to be unconstitutional.

^{1/} The bill's section 2 proposes to amend AS 43.05.260(a). Its section 3 proposes an amendment to AS 43.05.270(a) in which there is incorporated a cross-reference back to AS 43.05.260(a). AS 43.05.260 and 43.05.270 were enacted May 27, 1976, but made retroactive to January 1, 1976. See sec. 5, ch. 94, SLA 1976. Thus, section 4's retrospective application of the changes to AS 43.05.260(a) and 43.05.270(a) are intended to have the effect of changing the language of the provisions of those sections back to the date of the initial enactment of those two permanent law provisions.

Discussion

Retroactive or retrospective law is

' . . . one which gives to pre-enactment conduct a different legal effect from which it would have had without passage of the statute.' . . .

Thus the retroactive date of the law serves to identify that conduct to which the law will apply. . . .

ARCO Alaska, Inc. v. State, 824 P.2d 708, at 711 (Alaska 1992), citing Norton v. Alcoholic Beverage Control Board, 695 P.2d 1090, 1093 (Alaska 1985) (citations omitted).

A state may amend or repeal its state tax codes and may give those changes retrospective effect. Atlantic Richfield Co. v. State, 705 P.2d 418 (Alaska 1985) at 438.

I

Speaking generally, as a matter of constitutional law, retroactive legislation raises due process concerns. ^{2/} See 2 Sutherland, Statutory Construction, § 41.06, at 381 - 382.

A.

A state's enactment of legislation having retrospective effect may be found to violate constitutional guarantees to due process if the statute's retrospective application affects a party's "vested" or "accrued" right. Bidwell v. Scheele, 355 P.2d 584, 586 (Alaska 1960).

^{2/} Under the Fifth Amendment to the United States Constitution, the federal government is prohibited from

. . . depriv[ing a person] of life, liberty, or property, without due process of law.

Similarly, the last sentence of section 1 of the Fourteenth Amendment, applicable as against a state, directs that

. . . [n]o person shall be deprived of life, liberty, or property without due process of law.

The parallel provision of the Alaska Constitution, article I, section 7, so also provides.

An early decision involving application of the Fourteenth Amendment holds that a state's repeal of a statute of limitations that had barred the recovery of debts (the elimination of the statute permitted recovery of the debts collection of which had previously been prohibited) did not interfere with a vested right and therefore did not amount to a violation of the due process clause. Campbell v. Hoit, 115 U.S. 620, 628 - 629, 29 L.Ed. 483, 486 - 487, 6 S.Ct. 209, 213 (1885). The Campbell Court reasoned that the statute of limitation only barred the remedy or right of action but not the cause of action. Later, in Chase Securities Corporation v. Donaldson, 325 U.S. 304, 89 L.Ed. 1628, 65 S.Ct. 1137, reh. den. 325 U.S. 896 (1945), the United States Supreme Court determined that, except as to actions affecting title to property, a state legislature may extend a lapsed statute of limitations without violating the Fourteenth Amendment:

Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost. . . . They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and the unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about a privilege to litigate. Their shelter has never been regarded as what now is called a "fundamental" right or what used to be called a "natural" right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control.

325 U.S. at 314, 89 L.Ed. at 1635 - 1636. Thus, under the Chase decision, it is clear that, except as to actions involving title to property, where the statute provides a party with a defense, the party gaining protection by the statute of limitations does not obtain a vested property right. The legislature may, thereafter, by modification or repeal of the statute, extend or revive the action without violating the party's due process protections.

The reasoning of the Chase decision was subsequently extended in International Union of Electrical, Radio, and Machine Workers, AFL-CIO, Local 790 v. Robbins & Myers, Inc., 429 U.S. 229, 50 L.Ed.2d 427, 97 S.Ct. 441 (1976), wherein the Court upheld a statute expanding a statutory limitation period permitting the filing of a wrongful discharge complaint that had previously been barred. See also Starks v. S.E. Rykoff & Co., 673 F.2d 1106 (9th Cir. 1982).

B.

A state's enactment of legislation having retrospective effect may also be found to violate constitutional guarantees to due process if the statute's retrospective application imposes a hardship or "oppressive effect."^{3/}

C.

States, of course, have their own constitutional limitations. In jurisdictions in which state constitutional provisions explicitly prohibit legislative passage of retrospective laws, some courts have determined that legislative revival of time-barred rights of action are unconstitutional as violations of those specific prohibitions. Among the remainder, the decisions are divided. A fair number permit legislative extensions or revivals of time-barred rights of action without finding a violation of state due process protections. In a few others, legislative revival has been found not to be a per se due process violation, but may be unconstitutional depending upon the effects of the legislative action on the respective parties--a variant of the notion of "special hardship" or "oppressiveness" alluded to in the Chase decision. In contrast, a significant number of jurisdictions have determined that expiration of a statutory

^{3/} The "special hardship" test derives from the Chase opinion cited earlier:

The essential holding in Campbell v. Holt, so far as it applies to this case is sound and should not be overruled. The Fourteenth Amendment does not make an act of state legislation void merely because it has some retrospective operation. What it does forbid is taking of life, liberty, or property without due process of law. Some rules of law probably could not be changed retroactively **without hardship and oppression**, and this whether wise or unwise in their origin. Assuming that statutes of limitation, like other types of legislation, could be so manipulated that their retroactive effects would offend the Constitution, certainly it cannot be said that lifting the bar of a statute of limitations so as to restore a remedy lost through mere lapse of time is per se an offense against the Fourteenth Amendment. Nor has the appellant pointed out **special hardships or oppressive effects** which result from lifting the bar in this class of cases with retrospective force. It does not say, and could hardly say, that it [acted] depending on a statute of limitation for shelter from liability. . . . When the action was commenced, it no doubt expected to be able to defend by invoking Minnesota public policy that lapse of time had closed the courts to the case, and its legitimate hopes have been disappointed. But the existence of the policy at the time the action was commenced did not, under the circumstances, give the appellant a constitutional right against a change of policy before final adjudication. Whatever grievance appellant may have at the change of policy to its disadvantage, it had acquired no immunity from this suit that has become a Federal constitutional right. . . .

limitation period vests a party with a right that is entitled to that state's due process protection.

Alaska fits none of these categories. However, the weight of the case decisions in this area should lead the Alaska Court to allow legislative extensions or revivals of certain time-barred rights of action without finding a violation of state due process protections.

First, the court has held that "[a] statute . . . imposing a condition precedent to the maintenance of an action or proceeding affected the remedy only and did not create any vested right." Bidwell v. Scheele, 355 P.2d 584, 587 (Alaska 1960).^{4/} Thus, a statute imposing a condition precedent in the nature of a bar or defense to maintenance of an action does not provide a property interest to one who may cite or rely on the condition precedent as a defense and, hence, does not interpose a constitutionally protected property right.

Second, rejecting a contention that the obligation to pay a tax does not arise until the tax assessment has been completed, the court has determined that "[a] taxpayer's obligation to pay taxes accrues in the year the income is received." State Department of Revenue v. Alaska Pulp America, Inc., 674 P.2d 268, 272 (Alaska 1983).

^{4/} Bidwell v. Scheele involved an action commenced by the alleged owner and possessor of real property to remove a cloud on the title to the property caused by an invalid certificate of tax sale or invalid tax deed awarded to the defendant. Under what the parties believed was the law at the time, the plaintiff neglected to pay into the court an amount for which the lands was sold and the taxes paid by the by the holder of the tax title. The defendant secured judgment from the trial court on the plaintiff's failure to make these deposits. Belatedly, the court found that the Act imposing the payment requirements had been repealed in the period between the award of the tax deed and the commencement of the action. Defendant asserted that repeal of the Act adversely affected a property right that had been vested. Rejecting that contention, the court noted that

The repealing statute does nothing to impair the defendant's substantive right to appear and defend . . . title. It does nothing more than permit the plaintiff to proceed to litigate the title to the property in controversy without first fulfilling the condition precedent of tendering into court certain taxes that the defendant might have paid on the property.

It concluded that "[a] statute . . . imposing a condition precedent to the maintenance of an action or proceeding affected the remedy only and did not create any vested right in the defendant." Bidwell, 355 P.2d at 587.

From that determination, citing the state's general saving statute, AS 01.10.100(a) ^{5/}, the court has reasoned that

. . . a period of limitations provided by a later tax act cannot release a taxpayer from that liability.

Id.

Consequently, it appears that neither condition identified by the decisions of the United States Supreme Court would give rise to a due process violation. The holding in Bidwell affirms that the state is free to amend conditions precedent in its statutes of limitation without interference with a vested property right. Under Chase, the court would be prepared to find a violation of the constitutional guarantee to due process if the statute's retrospective application could be shown to impose a hardship or "oppressive effect." Since, under Alaska Pulp America, a taxpayer's tax liability is fixed in the year the taxpayer received the income that is subject to tax and since the taxpayer may not avoid liability for that tax payment obligation if a limitation period is imposed by a legislative Act, it is doubtful that taxpayers would be able to demonstrate that the belated effort to amend the law to adjust the limitation on collections in recognition of extended administrative proceedings and judicial consideration constitutes a particular hardship.

Finally, even if either of the above were close questions, Alaska's courts are on record as favoring the proposed action:

. . . First, statutes of limitation barring the assessment and collection of taxes are strictly construed in favor of the government. Second, although the applicability of AS 43.05.160(a) turns on statutory interpretation [permitting the court to consider the statute without considering the department's interpretation of it,] the Department [of Revenue's] interpretation is entitled to some weight.

State, Department of Revenue v. Alaska Pulp America, 674 P.2d 268, at 274. Senate Bill 185 is offered in part to conform the actual statute law to the department's long-

^{5/} Under the general saving statute,

(a) The repeal or amendment of a law does not release or extinguish any penalty, forfeiture, or liability incurred or right accruing or accrued under that law, unless the repealing or amending act so provides expressly. The law shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture, or liability.

standing interpretation and practice. In a close decision, these additional factors add weight in favor of the conclusion that the changes proposed by bill sections 2 and 3 of Senate Bill 185, applied retroactively by the bill's section 4, do not raise a due process-based constitutional claim.

II

Depending on the context in which enacted, retroactive legislation may also implicate constitutional equal protection guarantees.^{6/} The question arises with respect to Senate Bill 185 insofar as the substantive changes made by the bill's section 2 are applicable only as to former AS 43.21 (former special oil and gas corporate income tax, enacted by ch. 110, SLA 1978, and repealed by ch. 119, SLA 1981) and current AS 43.55 (oil and gas properties production, or severance, tax). Bill section 3 incorporates the changes by its cross-reference of "the period of limitation under AS 43.05.260." As the bill is drafted, the state's other levies are not affected.

Should those liable for payment of these taxes contend that singling out these two tax levies for different treatment amounts to a violation of equal protection guarantees, I foresee little likelihood of a successful equal protection-based challenge. Generally, judicial review of equal protection-based challenges to state revenue-raising laws have rejected use of a compelling state interest test. Instead, what is required is a showing of a rational relationship between the means used--the enactment--and the ends or objectives of the measure--the notion that any distinctions or classifications rest upon a difference or differences that have a reasonable relationship to the subject of the particular legislation.^{7/} In tax matters, the court has indicated that the inquiry to

^{6/} The guarantee of equal protection arises out of the Fifth Amendment and, as it is applicable to the states, out of section 1 of the Fourteenth Amendment to the United States Constitution. The related Alaska Constitutional provision is to be found in the second clause of article I, section 1.

^{7/} There are two principal state cases examining equal protection considerations in the context of taxation or economic regulation.

The first is State v. Reefer King Co., Inc., 559 P.2d 56 (Alaska 1976), a challenge to the raw fish tax, AS 43.75. On the parties' equal protection-based claim, the court said:

[T]he processors claim that the statute creates an illegal classification since they, as "floating" processors, are taxed more heavily than similarly situated "shore-based" processors. In the past, classifications created by state statutes regulating economic affairs, and in particular those concerning taxation, have received the least judicial scrutiny when challenged on equal protection grounds. The United States Supreme Court has been tolerant in this regard:

be made is

... whether there has been 'a deliberate and intentional plan to discriminate' based on some unjustifiable or arbitrary classification.

North Slope Borough v. Puget Sound Tug and Barge, 598 P.2d 924, at 930 (Alaska 1979), quoting State v. Reefer King Co., 559 P.2d 56, 65 (Alaska 1976). Absent a finding of arbitrary action, the tax distinctions should be upheld.

2/ (...continued)

Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.

(citing Lehnhausen v. Lake Shore Auto Parts, 410 U.S. 356, 359, 93 S.Ct. 1001, 1003, 35 L.Ed.2d 351, 354-355 (1973).)

In our recent decision in Isakson v. Rickey, 550 P.2d 359 (Alaska 1976), we adopted a new standard of equal protection analysis, for use where the compelling state interest test, requiring strict judicial scrutiny, is inappropriate. This new test requires that the classification in question

... be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relationship to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Since this appeal involves neither a fundamental right nor a suspect classification, and thus does not qualify for strict scrutiny, the classification which differentiates "shore-based" from "floating" processors for the purposes of taxation must meet the test set out above.

559 P.2d 56, at 65 (footnotes and citations omitted).

The second decision is Atlantic Richfield Co. v. State, 705 P.2d 418 (Alaska 1985), a challenge to the former Oil and Gas Corporate Income Tax, AS 43.21, the so-called "separate accounting" tax (repealed, effective January 1, 1982). Applying what had become, by that time, a three-part test of state equal protection analysis, the court determined that the tax "did not affect any fundamental interest, nor did it contain a suspect classification." 705 P.2d at 437. It observed that "[t]he rational basis standard is particularly easy to meet in the area of taxation," recognizing that the United States Supreme Court had stated that "[l]egislatures have especially broad latitude in creating classifications and distinctions in tax statutes." Regan v. Taxation with Representation of Washington, 461 U.S. 540, 547, 103 S.Ct. 1997, 2002, 76 L.Ed.2d 129, 138 (1983)." Id.

Senator Tim Kelly

April 13, 1994

Page 9

Section 1 of the bill enumerates factors or differences that the administration believes are sufficient to demonstrate the rational relationship between the measure and the objectives sought. Assuming the representations made in it are accurate, the provision should materially assist the state to defend the operative provisions against an equal protection-based claim brought under either the federal or state constitutional provisions.

TBC:pl

94-308.plm

Legislative Research Agency

Alaska State Legislature




130 Seward Street, Suite 218
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Phone: (907) 465-3991
Fax: (907) 463-3351

April 15, 1994

MEMORANDUM

TO: Senator Tim Kelly

FROM: Gordon S. Harrison, Director 

RE: Resolution of Oil Taxation Disputes in Other States
Research Request 94.198

Senate Bill 185 seeks to clarify certain sections of the tax code so they explicitly comport with the interpretation given to these sections by the Alaska Department of Revenue over the years in its various disputes with oil companies over back taxes. You asked us to query a sample of other oil producing states on questions raised by SB 185, specifically: (1) What statutes of limitation apply to actions by the state to recover back taxes? (2) May the state increase its assessment of the amount due from the taxpayer after an administrative proceedings is underway? and (3) How long does it take to resolve disputes?

We spoke to revenue officials in North Dakota, Wyoming, and Texas who were directly involved in auditing oil industry tax returns.¹ These three states and Alaska use essentially the same process to resolve disputes: there is an initial, informal effort on the part of the department and the taxpayer to settle the matter; if informal conferences fail to reach agreement, the taxpayer may go to a formal administrative hearing; failing that, the taxpayer may turn to the court system. The states differ only on the details of these processes, especially the formal administrative hearing: in Wyoming the case goes to the state board of equalization; elsewhere it goes to an independent administrative hearing officer.

Likewise, the three states showed little variation on the matters of statute of limitations, revision of assessments, and length of the appeals process. Each of these are discussed below.

¹In North Dakota we spoke to Harold Aldinger (corporate income tax) and Carol Murschel (oil gas production tax) of the Audit Division, Tax Department (Bismarck) (701) 224-2770; in Wyoming we spoke to Rich Marble, Director of Mineral Taxation, Department of Revenue (Cheyenne) (307) 777-5237; and in Texas we spoke to Mary Hawkins, Audit Division, Department of Public Accounts (Austin) (512) 463-3928.

Statute of Limitations

If state tax officials in North Dakota, Wyoming or Texas are going to file an assessment for back taxes, they must do so within a limited time after the due date of the tax (or after it is filed, whichever is later). In North Dakota this statute of limitation has been 6 years, but it will soon go to 3 years as the result of a "taxpayers bill of rights" recently adopted. In Wyoming it is 5 years. In Texas it is 4 years. The Texas official with whom we spoke pointed out that there are four exceptions to this limitation. It does not apply if the taxpayer never filed a return; if the amount reported was understated by as much as 25 percent; if fraud was involved; if the taxpayer agrees to waive the limitation. Presumably the other states have similar exceptions.

None of the states operate under any other limitation, such as a maximum limitation on the time the state has to collect an assessment from the date it was originally filed. Officials in the three states said they had no control over the appeal process once it started, particularly if it reached the courts, and they questioned how such an overall statute of limitation could work.

Increasing an Assessment During an Appeal

None of the tax departments in the three states are prohibited from increasing an assessment against a taxpayer while an appeal process was underway. In Texas it is the department's policy not to increase an assessment if the information on which the new assessment is based had been available to department auditors at the outset. If, however, the department obtains information from the taxpayer during the appeal process that it should have had during the initial audit, it may issue a higher assessment.

Length of Time to Resolve Disputes

The length of time it takes to resolve disputes over back taxes varies enormously with the complexity of the issues involved and the amounts of money at stake. Simple disputes involving small sums may be resolved in 6 to 9 months; others may drag on for years. In July, 1993 a corporate income tax case was settled in North Dakota that began in 1980 (13 years). There are income tax cases currently open in North Dakota that are 5 and 6 years old. The oldest severance tax case open there now is 10 years old.

We were told that in Texas it is not unusual for tax cases that go to court to take 10 years to be settled. The appeal process within the department can last in some cases 5 to 6 years.

Senator Kelly
April 15, 1994
Page 3

although the average is 2 to 3 years. The person with whom we spoke in Texas said that there was a severance tax case still alive that was alive when she went to work for the department 19 years ago. Wyoming, on the other hand, reported shorter times for disputes to be settled. There, the longest lasting disputes reported to us were about 4 years.

I hope this information is helpful. If you have any questions, or if you would like us to contact additional states, please call.

March 30, 1993

Transmittal letter to the Legislature

Re: "An Act Relating to the Limitations Period For
Assessment and Collection After Assessment of
Taxes Due Under AS 43; and Providing for an
Effective Date"

[salutation]:

Under the authority of Art. III, Sec. 18 of the Alaska Constitution, I am transmitting a bill relating to the limitation period for assessment and collection after assessment of taxes under AS 43 and providing for an effective date.

As a general matter, AS 43.05.260 requires that a tax be assessed within three years of the filing of a return and AS 43.05.270 requires that a collection action be filed within six years of the assessment. Since virtually every significant assessment of tax under AS 43 is protested by the taxpayer and subject to a lengthy and time consuming administrative process and, eventually, judicial review, the Department of Revenue is rarely able to file a collection action within six years of the date of the original assessment. Due to the complexity of the factual and legal issues arising under certain of the major tax types administered by the Department, primarily oil and gas production taxes (AS 43.55) and the

— TRANSMITTAL LETTER —
FROM THE GOVERNOR

separate accounting income tax (AS 43.21), the Department has also found it necessary to amend an original assessment as new problems are identified or as the taxpayer makes new information available.

The purpose of the amendments to AS 43.05.260 and 43.05.270 is to validate and affirm the practice of the state for assessing and collecting taxes. The bill clarifies a perceived ambiguity in the application of these statutes that has resulted in litigation. Two cases are currently pending before the Alaska Supreme Court. The purpose of the amendment to AS 43.05.260 and 43.05.270 is to validate and affirm the longstanding practices of the state in assessing and collecting taxes and, in doing so, resolve inconsistent decisions of the superior court in Tesoro Petroleum Corporation, et al. v. State of Alaska, Department of Revenue, Superior Court No. 3AN-89-7130, and State of Alaska, Department of Revenue v. Exxon Corporation et al., Superior Court No. 3AN-89-5215 CIV.

The Department of Revenue currently estimates that there are several million dollars in assessments that are at risk in the Exxon case. Similarly, the Department estimates that substantially more revenues would be exposed to an unfavorable result in the Tesoro case. Although the state is confident of its legal arguments before the court, the fiscal impact of a loss in either case is so significant that a legislative backstop is prudent under the circumstances.

Since the purpose of the bill is to validate and affirm the longstanding practice of the state with regard to the procedures employed in assessing and collecting taxes, it should be

made retroactive.

I urge you to pass this bill this session.

Sincerely,

Walter J. Hickel

legisl.LTR

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

EXXON CORPORATION AND)
CERTAIN AFFILIATED COMPANIES,)
)
Appellants,)
)
v.)
)
STATE OF ALASKA,)
DEPARTMENT OF REVENUE,)
)
Appellee.)

FILED IN THE TRIAL COURT
STATE OF ALASKA, THIRD DISTRICT
APPEALS DIVISION

APR 03 1992

Clerk of the Trial Courts
By Deputy

Case No. 3AN-89-5215

Decision on Appeal

Background

This is an appeal from an Alaska Department of Revenue decision, adopted on May 26, 1989, which found that the three year statute of limitations provision of AS 43.05.260 did not bar the 1983, 1986, and 1988 tax assessments on Exxon's 1978 production and pipeline transportation income.

This Court has jurisdiction pursuant to AS 22.10.020(d), AS 43.05.240, and Appellate Rule 602(a) (2).

Statutory Background

The Alaska Oil and Gas Corporate Income Tax Act, also known as the "separate accounting" income tax statute, was in effect from 1978 through 1981.¹ Although several oil companies challenged the

¹ The statute was repealed by Chapter 116 SLA 1981.

constitutionality of "separate accounting," the scheme was upheld by the Courts. Atlantic Richfield Co. v. State, 705 P.2d 418 (Alaska 1985), app. dism., 474 U.S. 1043, reh. denied, 475 U.S. 1062 (1986) (hereinafter Atlantic Richfield).

Under the separate accounting statute, an oil company taxpayer was required to submit its return for the previous year by April 15. The Alaska Department of Revenue (DOR) was then required to send the taxpayer a "notice of assessment" by the following August 15.

This "desk assessment" of the amount of the taxpayer's taxable income, and the amount of tax payable, was based on the face of the taxpayer's return. After sending out the assessment, the DOR could audit the taxpayer's records and issue amended assessments. A taxpayer could appeal the assessment at either an informal conference or a formal hearing, and the DOR was permitted to correct the assessments at either level of appeal.

At the informal conference, the taxpayer was permitted to review and discuss the department's file on the taxpayer, to present additional evidence, and could also be required to submit additional information.

The informal conference could be followed by a more extensive formal hearing:

A formal hearing may encompass all issues pertaining to the protest, even if an issue is not presented by the taxpayer, and may result in a decision which affirms, rejects, or modifies any informal conference decision or departmental action. The decision will provide any appropriate relief, including but not limited to, the remand of issues to the appropriate division of the department for further audit or investigation. If the

department determines that the result of the division's decision is correct, the decision may be upheld on grounds other than those given by the division.

15 AAC 05.030.

Prior to 1976, the six year statute of limitations set forth in AS 09.10.120 applied to most tax collection actions. In 1976, Governor Jay Hammond introduced a bill, with the following transmittal letter:

The bill sets forth a uniform limitation period for assessment and collection of tax. The bill provides generally that in the absence of fraud the State would have to make an assessment or the action would be barred. With the exception of the income tax, estate tax, and motor fuel tax statutes, there are presently no limitation periods on assessment or collection of taxes. This change in the statutes would help to achieve uniform tax administration and assure timely assessment and collection of taxes.

1976 Senate Journal 45 (Jan. 16, 1976).

The bill was enacted without amendment, and was codified as AS 43.05.260:

Limitation on assessment. (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 within three years after the return was filed, whether or not a return was filed on or after the date prescribed by law. 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.

...
(c) The following exceptions apply to the limitation period of (a) of this section:

(1) in the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of the tax may be begun without assessment, at any time;

(2) in the case of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without assessment, at any time;

(3) if, before the expiration of the time prescribed in this section for the assessment of a tax imposed by

this title, both the department and the taxpayer have consented in writing to the assessment after the expiration of the time, the tax may be assessed at any time before the expiration of the period agreed upon; however, the period agreed upon may be extended by a subsequent agreement in writing made before the expiration of the period previously agreed upon. (§ 1 ch 94 SLA 1976; am § 113 ch 6 SLA 1984)

Under the authority conferred by AS 43.21.090, the DOR subsequently promulgated 15 AAC 21.810:

Statute of limitations. . . . [T]he department will, in its discretion

(1) amend an assessment under this chapter no later than three years from the date a return is due or filed under this chapter, whichever is later; . . . (Eff. 2/22/79, Register 69; am 3/26/82, Register 81)

The three year limitation period for amended assessments is repeated in 15 AAC 21.700:

Returns and assessments. . . . (e) . . . Returns and assessments under this section are subject to amendment for three years from the date of the original notice of assessment. (Eff. 2/22/79, Register 69; am 5/21/81, Register 78)

Procedural Background

This case has a drawn out procedural background marked by numerous appeals accompanied by deferred consideration requests, and continuances.

Exxon filed its 1978 income tax return on June 15, 1979. On August 15, 1979, the DOR issued a Notice of Assessment, which Exxon appealed on October 12, 1979.

In this first appeal, Exxon requested a refund of over \$41 million, asserting that the separate accounting statute was unconstitutional, a claim then being litigated in Atlantic

Richfield, supra. Because of the ongoing litigation, Exxon suggested "that all consideration of the Department of Revenue[,] the enclosed protest, notice of grievance and claim for refund, including any administrative conferences or hearings, be deferred until after the Arco litigation is resolved." R. 2.

The DOR issued three amended notices of assessment on September 11, 1979 and on July 31, 1980. Exxon does not dispute the timeliness of these assessments.

On September 29, 1980, Exxon requested another appeal to supersede the one filed on October 12, 1979, and Exxon again asked for a stay of formal proceedings "including any administrative conferences or hearings" until after the resolution of State v. Exxon Corp., Case No. 3AN-80-1542. R. 3.

On April 10, 1981, the DOR issued an Informal Conference Decision on Exxon's initial grievance. Exxon appealed the decision and requested a formal hearing, on May 9, 1981.

On October 21, 1983, the DOR issued a "Notice of Amended Assessment and Notice of Demand for Payment." On December 20, 1983, Exxon appealed the Notice, stating that "all further administrative action was being held in abeyance" pending resolution of the Atlantic Richfield and State v. Exxon cases, and suggesting that all administrative conferences be deferred. Exxon also objected that the statute of limitations had run.

The DOR later determined that the underlying reasons for the Notice of Amended Assessment were erroneous, and withdrew the contention. However, the DOR reserved the option to support the

assessment amount on some other basis.

An Informal Conference Decision issued on July 10, 1984 concluded that the statute of limitations did not bar the October, 1983 assessment. On August 9, 1984, Exxon requested a formal hearing on this decision.

On October 2, 1986, a pre-hearing conference order was issued, setting out three issues to be addressed at the hearing, including the following: was the department barred by the applicable three-year statute of limitations from making an additional assessment for the year 1978.

Two additional issues were added to the hearing agenda, on December 1, 1986, and Exxon appealed the added issues on January 30, 1987.

On January 8, 1987, a formal hearing was ordered scheduled for late July or early August, 1987, and the issues were bifurcated in order to first consider the statute of limitations issue. On May 11, 1987, Exxon filed its opening brief. Then, on May 15, 1987, the Hearing Examiner suspended formal hearings until "at least" September, 1987.

On February 29, 1988, the Hearing Examiner directed the DOR to respond to Exxon's opening brief by May 1, 1988. This date was modified to May 9, 1988, in order to permit amicus briefs.

The hearing began on June 15, 1988 and was continued to October 20, 1988. On June 14, 1988, the DOR informed Exxon that Exxon's tax deficiency had been recalculated, and that the DOR would present new legal and factual arguments at the hearing in

support of the recalculation. Exxon objected that this new position violated the Hearing Examiner's order of October 2, 1986, as well as the statute of limitations.

On December 16, 1988, after the formal hearing, the DOR changed its position as to the recalculation. Exxon's motion to strike was denied. In December, 1988, a revised "Final DOR Position" was issued as to the taxable value of Exxon's 1978 crude oil.

On May 25, 1989, the Hearing Examiner issued his decision on the June 15 and October 20, 1988 hearings:

1. The statute of limitations is to be construed strictly in the favor of the State.

2. The Department made a timely assessment against the Taxpayer within three years following the date of filing a return for 1978 Oil and Gas Corporate Income Tax.

3. Where the Department has made an assessment and a taxpayer appeals, the assessment may be amended by the Department during the consideration of the Taxpayer's protest; the amendments relate back to the original assessment.

4. The appeal of an assessment by a Taxpayer suspends the statute of limitations for making assessments.

5. The Taxpayers claim for refund put the entire tax liability for 1978 into dispute.

6. The possibility of assessments being corrected during the course of a Taxpayer's appeal does not violate the Taxpayer's rights to Due Process and Equal Protection.

R. 23. Exxon's timely appeal was filed on June 19, 1989.

Standard of Review

This appeal presents no questions of fact. The questions of law involve analysis and interpretation of statutes and regulations, for which the Department of Revenue has no unique expertise, but for which the "courts are particularly well-suited." Union Oil Co. of California v. State of Alaska, 804 P.2d 62, 64 (Alaska 1990). Accordingly, the Court shall exercise the independent judgment standard of review.

Discussion

Exxon argues that the assessments of October 21, 1983, December 1, 1986, June 14, 1988, and December 16, 1988² were time-barred by the statute of limitations, AS 43.05.260(a).³ The statute requires that "the amount of a tax imposed by this title must be assessed within three years after the return was filed."

The Court finds that the initial Notice of Assessment was timely issued by the DOR on August 15, 1979, and that the subsequent notices of assessment were amendments of the initial assessment. The limitations period for amended assessments, found

² The Court notes that the four disputed assessments against Exxon total \$2,767,600. The Court also notes that this decision shall resolve similar disputes between the State Department of Revenue and several other oil companies which also received amended 1978 tax assessments more than three years after filing their 1978 tax returns.

³ Alternatively, Exxon argues that the DOR's interpretation of the statute of limitations violates the federal and state constitutional protections of equal protection, due process, and the right to petition for redress. The Court finds no merit in these constitutional arguments.

in 15 AAC 21.810, does not differ from that of the statute; in AS 43.05.260, amended assessments are not distinguished from initial assessments. Whether the assessments at issue are classified as additional assessments or amended assessments, the statute of limitations period is three years.

The Court also finds that, in the absence of an exception, the plain and unambiguous language of both the statute and the regulation clearly limits the DOR from issuing initial or amended tax assessments later than three years after the return has been filed by the taxpayer.

The statutory exceptions are clearly enumerated in AS 43.05.260(c): instances of taxpayer fraud, the taxpayer's failure to file a return, or where both the taxpayer and the DOR have signed a written waiver of the limitations period. None of these exceptions exist in the facts of this case.

Under the doctrine of expressio unius est exclusio alterius, no additional exceptions to a statute may be implied or inferred where specific exceptions are addressed by the statute. State Department of Revenue v. Alaska Pulp America, Inc., 674 P.2d 268, 275 (Alaska 1983).

The DOR asserts that the statute of limitations does not apply in this case, for several possible reasons.⁴ The Court does not

⁴ The DOR argues that
1) amended assessments relate back to the date of the original, timely assessment;
2) the statute of limitations is tolled by the taxpayer's administrative appeal;
3) AS 43.05.240 (taxpayer's remedies) authorized the DOR to make a subsequent correction, if it determined that a correction