

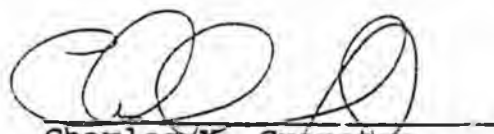
ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8391 SENATE LABOR & COMMERCE

find merit in any of these arguments. Although statutes of limitation are to be strictly construed in favor of the government, id. at 274, the plain meaning of the statute indicates that no additional, implied exceptions to the statute of limitations exist.

Accordingly, the Court finds that the four tax assessments issued in 1983, 1986, and 1988 were not exceptions to the statute of limitations, and were therefore untimely. The decision below is REVERSED and REMANDED for further proceedings consistent with this opinion.

Dated this 7 day of April, 1992 at Kenai, Alaska.


Charles K. Cranston
Superior Court Judge

CERTIFICATION OF DISTRIBUTION
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4/14/92

- was warranted, at either the informal conference or at the formal hearing requested by the taxpayer;
- 4) the taxpayer's claim for refund placed its entire tax liability in dispute;
 - 5) neither AS 43.05.260 nor 15 AAC 21.8110 apply to amended assessments; and
 - 6) statutes of limitations are strictly construed in favor of the government.



Alaska State Legislature
LEGISLATIVE RESEARCH AGENCY
130 Seward Street, Suite 218, Juneau, Alaska 99801-2196
907-465-3991 Fax: 907-463-3351

TO: *Josh Fink*

DATE:

4/15

FROM:

Gordon Harrison

my telephone note

1-3/94
North Dakota

Carol Murschel, Audit Division, oil and gas taxes, Harold Aldinger, Audit Division, corporate income tax
Tax Department, Bismark 701 224-2770

Until recently the state had 6 years to conduct an audit and file an assessment with the taxpayer; changes under a "taxpayers bill of rights" law is shortening that time, and it will soon be 3 years. There are no other statutes of limitation.

Disputes are handled with informal administrative proceedings; then they go to formal hearing with an independent hearing officer; from there to court system.

The state can revise its assessment up or down during its informal hearing process

The length of time for settlement: most cases are routine and non controversial, and are settled in 6 or 9 months from the time the state files its assessment; however, an income tax case was recently settled (July of 93) that went back to 1930 (13 years). There are currently open income tax cases that are 5 and 6 years old; the oldest severance tax case currently open dates from 1984 (ten years old). According to Mr. Aldinger, the oil and tax audit division did not really "get going" until the early 1980s.

4/13
Wyoming

Rich Marble, Director of Mineral Taxation
Department of Revenue, Cheyenne
307-777-5237

The appeal process: informal process in which dept tries to reach agreement; then to State Board of Equalization, then to district court and state supreme court.

-Wyoming does not have a corporate income tax: rather, it levies a production (severance tax), and so do the counties. The counties collect the tax, but the state certifies the values.

-disputes with taxpayers are over such things as excessive deductions, unreported or under-reported production.

The department operates under a recently adopted statute of limitation that gives them five years to audit a filing and bring an assessment against the taxpayer. The time begins from the time the tax return is filed, or when it is due, whichever is later. There is no statute of limitation after the assessment is filed. Mr. Marble said "it makes no sense" to

limit the case after the assessment is filed, because they lose control of the processes. The state can't tell the state court system to hurry up.

The longest disputes that Mr. Marble knows about have lasted about four years. If a complicated case goes to the Board of Equalization, it might take 15 to 18 months to get a hearing; after that it may be 1 year in the district court and 1 year in the supreme court.

(Forgot to ask about adjustment upward of assessment during appeal process)

11/12/

Texas

Mary Hawkins, Audit Division, Department of Public Accounts, Austin
(512) 463-3928

Statute of Limitation: state has four years to make an audit and issue an assessment, with four exceptions: a) if the taxpayer never filed a return b) if the amount reported was understated by as much as 2 percent, c) fraud was involved, d) if the taxpayer will sign an extension (this also qualifies taxpayer for possible refund). There are no other statutes of limitation.

Procedures: the department tries to settle the matter informally. The dept may issue two types of determinations: a deficiency determination, in which the taxpayer has 40 days to respond in writing; or a jeopardy determination, when the dept fears the taxpayer will flee the state, in which the taxpayer has only 30 days to respond in writing.

If negotiations between departmental auditor and taxpayer do not settle the matter, the next step is to call a dispute resolution conference, in which an employee of the department who works in another city and who was not involved in the audit sits as a dispute resolution officer.

If resolution is not reached, the matter is sent to department's legal services division. There the department's lawyers review the case and attempt to reach agreement with the taxpayer (or his attorneys).

If resolution is not achieved, the matter goes to an administrative law judge. These are formal, court-like hearings. The judge issues a written decision. The judge is an employee of the department, but is highly independent.

If the taxpayer is not satisfied with the decision of the administrative law judge, the matter may be appealed to the court system.

Length of time for appeals:

If a case reaches the court system, 10 years is not unusual. The appeal process within the department may take 5 to 6 years. Small claims involving small companies are usually

settled within 2 or 3 years. Ms.Hawkins said that there is one dispute that has been around for as long as she has been with the department, which is 19 years.

Amendment of assessment upward during settlement process:

Ms. Hawkins said that it is the policy of the department not to revise an assessment upward during the proceeding if it involves something that the auditor failed to pick up. That is, if the department's auditor made the mistake, the department will not increase the assessment. However, if the department discovers documents that should have been filed, or if the taxpayer failed to reveal the information and should have, the department will amend an assessment upward. Nothing in statute prohibits the department from doing so.

SUMMARY OF PROPOSED CSSB 185

"An Act relating to the limitations period for assessments for certain state taxes, and for collection, after assessment, of taxes due the state; and providing for an effective date."

What the proposed Committee Substitute for SB 185 Does

- * SB 185 clarifies existing law so that the three-year and six-year limitations on assessment and collection of oil and gas taxes are suspended while tax appeals are ongoing. The bill confirms the Department of Revenue's longstanding interpretation of the statutes of limitations in this regard.
- * The proposed amendment to the bill makes a prospective change in the statute of limitations on assessments. For tax periods beginning January 1, 1994, the proposed CS would change the three year statute of limitations on assessments to a five year period, and would also make clear that assessments cannot be increased after that time (absent taxpayer consent, fraud or failure to file--which are exceptions under current law) even when a taxpayer appeal takes longer than five years to conclude. The purpose of the amendment is to provide the Department with adequate time to complete its audits in future tax years, but also to provide taxpayers with certainty regarding their prospective tax liability.
- * The proposed amendment does not change the Department's interpretation of the six year statute of limitations on collections. Whenever a taxpayer appeals its tax bill, SB 185 makes clear that the limitations period for tax collection is suspended until the administrative and judicial processes are complete.
- * The bill with its proposed amendments does not increase oil and gas taxes or change the underlying rules of liability. The proposed CS for SB 185 simply ensures the oil and gas industry will not be able to avoid payment of taxes which are due and owing the state by delaying payment through filing appeals and then raising the technical defense of statute of limitations.
- * Passage of the proposed CS for SB 185 will help ensure the state is able to collect potentially \$ 3 billion in taxes, interest, and penalties in contested tax cases which are still open under appeal. It will not retroactively reopen any closed or settled tax cases.
- * The bill will strengthen the state's position in court challenges brought by certain oil producers by providing clarification of legislative intent.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 185

Revision Date:	Dept. Affected: Revenue
Title: An Act clarifying limitation period for assessments and collection of certain taxes	BRU: Revenue Operations
Sponsor: Senator Taylor by request	Component: Oil & Gas Audit
Requestor: Senate Labor & Commerce Committee	COMPONENT SERIAL NO. 115

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL						
REVENUE FUND SOURCE:	**	**	**	**	**	**

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ xx

ANALYSIS: (Attach a separate page if necessary.)

** SB 185 relates to tax litigation and ongoing tax audit cases. While it is not possible to predict the outcome of these cases, the State believes that its claim will ultimately prevail. However, the courts have decided both ways on such cases and substantial state revenues are involved. Therefore, approval of this legislation will help protect the State's position in these cases and would reduce the risk of a loss of tax revenues.

Prepared by:	John Pilkinton <i>[Signature]</i>	Phone: 276-1363 ext. 225
Division:	Oil & Gas Audit Division	Date: 3/21/94
Approved by Commissioner:	Darrel J. Rexwinkel <i>[Signature]</i>	Date: 3/21/94
Agency:	Revenue	

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- FISCAL NOTE -

SECTIONAL ANALYSIS

Section 1. This section contains proposed legislative findings setting forth the Department of Revenue's interpretation of AS 43.05.260 and of AS 43.05.270. The proposed legislative findings conclude that the department's interpretation is correct and that it is in the public interest that AS 43.05.260 and AS 43.05.270 be clarified to reflect the department's interpretation. This section also sets forth the purpose of 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 for tax periods ending before January 1, 1994, the Department of Revenue may increase or decrease the amount of a tax due 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. This section also adds AS 43.05.260(a) that provides that for tax periods beginning after December 31, 1993, the Department of Revenue may increase or decrease the amount of a tax due by issuing or amending an assessment within five years after a return is filed. After expiration of the five-year period, an assessment may not be amended by the department.

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

Section 4. This section makes AS 43.05.260(a)(1), enacted by sec. 2 and sec. 3, retroactive to January 1, 1976.

Section 5. This section makes AS 43.05.260 take effect immediately under AS 01.10.070(c).

CS FOR SENATE BILL NO. 185(L&C)**IN THE LEGISLATURE OF THE STATE OF ALASKA****EIGHTEENTH LEGISLATURE - SECOND SESSION****BY THE SENATE LABOR AND COMMERCE COMMITTEE****Offered:****Referred:****Sponsor(s): SENATORS TAYLOR BY REQUEST, Kerttula****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to the limitations period for assessments for certain state
2 taxes, and for collection, after assessment, of taxes due the state; and providing
3 for an effective date."

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

5 * **Section 1. LEGISLATIVE FINDINGS AND PURPOSE.** (a) The legislature finds
6 that

7 (1) with respect to income taxes imposed under former AS 43.21 and oil
8 and gas production taxes imposed by AS 43.55,

9 (A) the Department of Revenue has interpreted AS 43.05.260 to
10 permit it to issue an amended assessment at any time during the administrative
11 consideration of an appeal or of a claim for credit or refund;

12 (B) the department's interpretations of AS 43.05.260 and 43.05.270
13 are correct; and

14 (C) it is in the public interest that AS 43.05.260 and 43.05.270 be

1 classified by amendment, effective from the date of enactment of those sections,
2 to reflect these longstanding administrative interpretations;

3 (2) the legal and factual issues arising out of the separate accounting
4 methods used in the levy and collection of income taxes imposed under former AS 43.21
5 and oil and gas production taxes imposed by AS 43.55 are complex and require lengthy
6 audits by the Department of Revenue to accurately determine the amount of the taxes
7 that are due the state from the respective levies;

8 (3) two other factors have contributed to the lengthy period required to
9 issue accurate tax assessments for the taxes imposed by former AS 43.21 and AS 43.55:

10 (A) throughout the 1970's and the 1980's, the Department of
11 Revenue's ability to audit these tax returns effectively was constrained by its audit
12 resources; and

13 (B) subsequent to the enactment of former AS 43.21 in 1978,
14 taxpayers requested suspension of action on assessments pending the outcome of
15 a challenge to the constitutionality of the separate accounting method as applied
16 to the levy and collection of the income tax; litigation arising out of this challenge
17 was filed in 1979 and concluded in 1986;

18 (4) the six-year limitation on the collection of taxes, as applicable to
19 income taxes imposed by former AS 43.21 and production taxes imposed by AS 43.55,
20 should be amended retroactively to clarify that the limitation on collections is tolled
21 during any administrative or judicial consideration of an assessment; the adoption of the
22 amendment embodies the interpretation by and practice of the Department of Revenue
23 since the enactment of AS 43.05.270 by sec. 1, ch. 94, SLA 1976;

24 (5) often a tax levy cannot be made or a proceeding in court cannot be
25 initiated for the collection of unpaid taxes within six years after the assessment of that
26 tax because

27 (A) the protest of an assessment begins a process that often takes
28 several years to complete;

29 (B) after a final administrative decision on a protest has issued,
30 judicial resolution of the protest often lasts several more years; and

31 (C) commencement of a separate collection action while an

1 administrative or judicial appeal of a taxpayer's protest of an assessment is
2 pending is impractical and an inefficient use of the resources of the executive and
3 judicial branches of the state government;

4 (6) substantial taxes assessed under former AS 43.21 and under AS 43.55
5 remain uncollected;

6 (7) these uncollected taxes are in large part the result of disputes over
7 value at the point of production for oil and gas produced in the state;

8 (8) substantial public revenue is at risk in the litigation to which reference
9 is made in (b)(2) of this section, and it is contrary to the public interest to allow these
10 revenues to go uncollected;

11 (9) because the department has had difficulties in obtaining information
12 and completing audits within the three-year period set out in AS 43.05.260(a) and has had
13 to amend assessments based on information developed during taxpayer appeals to reflect
14 the correct amount of tax due, a longer statutory period for assessments should be
15 provided for tax periods beginning after December 31, 1993;

16 (10) taxpayers also have an interest in finality and certainty with respect
17 to the amount of taxes due the state, and that interest will be promoted by having a five-
18 year statute of limitations on assessments, except as otherwise authorized by
19 AS 43.05.260(c), after which time no increases in the amount due the state will be
20 allowed; and

21 (11) it is in the public interest to amend AS 43.05.260(a) prospectively to
22 provide for the issuance and amendment of assessments within five years from the date
23 the taxpayer's return is filed, except as provided in AS 43.05.260(c).

24 (b) The purposes of the amendment of AS 43.05.260(a), made by sec. 2 of this
25 Act, and of AS 43.05.270(a), made by sec. 3 of this Act, are

26 (1) to validate and affirm the longstanding administrative interpretation
27 and practices of the Department of Revenue in assessing and collecting taxes; and

28 (2) to make clear specific existing law which resulted in the inconsistent
29 decisions the state Superior Court reached in *Tesoro Petroleum Corporation, et al., v.*
30 *State of Alaska, Department of Revenue, Superior Court No. 3AN-89-7130 Civ.*, and
31 *State of Alaska, Department of Revenue v. Exxon Corporation, et al., Superior Court No.*

1 3AN-89-5215 Civ.; and

2 (3) to make prospective changes to the statute of limitations for
3 assessments in AS 43.05.260 to allow the Department of Revenue five years from the
4 date the taxpayer's return is filed to complete its audit and issue or amend an assessment,
5 for tax periods beginning after December 31, 1993.

6 * Sec. 2. AS 43.05.260(a) is amended to read:

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

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

16 (2) for tax periods beginning after December 31, 1993, within five
17 years after the return was filed, whether or not a return was filed on or after the
18 date prescribed by law; the department may increase or decrease the amount of
19 tax due by issuing or amending an assessment within that five-year period; after
20 that five-year period, the department may not increase an assessment under this
21 subsection. [IF THE TAX IS NOT ASSESSED BEFORE THE EXPIRATION
22 OF THE THREE-YEAR PERIOD, PROCEEDINGS MAY NOT BE
23 INSTITUTED IN COURT FOR THE COLLECTION OF THE TAX].

24 * Sec. 3. AS 43.05.270(a) is amended to read:

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

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

30 (A) the assessment of the tax;

31 (B) the final administrative determination of the grievance.

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

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

11 * Sec. 4. AS 43.05.260(a)(1), enacted by sec. 2 of this Act, and sec. 3 of this Act are
12 retroactive to January 1, 1976.

13 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 377(FIN)

Page 1, line 1, after "procedures":

Insert ", including procedures related to the assessment and collection of certain taxes"

Page 1, after line 3:

Insert a new bill section to read:

"* Section 1. LEGISLATIVE FINDINGS AND PURPOSE RELATED TO SECTIONS 8 AND 9. (a) The legislature finds that

(1) with respect to income taxes imposed under former AS 43.21 and oil and gas production taxes imposed by AS 43.55,

(A) the Department of Revenue has interpreted AS 43.05.260 to permit it to issue an amended assessment at any time during the administrative consideration of an appeal or of a claim for credit or refund;

(B) the department's interpretation of AS 43.05.260 and 43.05.270 are correct; and

(C) it is in the public interest that AS 43.05.260 and 43.05.270 be clarified by amendment, effective from the date of enactment of those sections, to reflect these longstanding administrative interpretations;

(2) the legal and factual issues arising out of the separate accounting methods used in the levy and collection of income taxes imposed under former AS 43.21 and oil and gas production taxes imposed by AS 43.55 are complex and require lengthy audits by the Department of Revenue to accurately determine the amount of the taxes that are due the state from the respective levies;

(3) two other factors have contributed to the lengthy period required to issue accurate tax assessments for the taxes imposed by former AS 43.21 and AS 43.55:

(A) throughout the 1970's and the 1980's, the Department of Revenue's ability to audit these tax returns effectively was constrained by its audit resources; and

(B) subsequent to the enactment of former AS 43.21 in 1978, taxpayers requested suspension of action on assessments pending the outcome of a challenge to the constitutionality of the separate accounting method as applied to the levy and collection of the income tax; litigation arising out of this challenge was filed in 1979 and concluded in 1986;

(4) the six-year limitation on the collection of taxes, as applicable to income taxes imposed by former AS 43.21 and production taxes imposed by AS 43.55, should be amended retroactively to clarify that the limitation on collections is tolled during any administrative or judicial consideration of an assessment; the adoption of the amendment embodies the interpretation by and practice of the Department of Revenue since the enactment of AS 43.05.270 by sec. 1, ch. 94, SLA 1976;

(5) often a tax levy cannot be made or a proceeding in court cannot be initiated for the collection of unpaid taxes within six years after the assessment of that tax because

(A) the protest of an assessment begins a process that often takes several years to complete;

(B) after a final administrative decision on a protest has issued, judicial resolution of the protest often lasts several more years; and

(C) commencement of a separate collection action while an administrative or judicial appeal of a taxpayer's protest of an assessment is pending is impractical and an inefficient use of the resources of the executive and judicial branches of the state government;

(6) substantial taxes assessed under former AS 43.21 and under AS 43.55 remain uncollected;

(7) these uncollected taxes are in large part the result of disputes over value at the point of production for oil and gas produced in the state;

(8) substantial public revenue is at risk in the litigation to which reference is made in (b)(2) of this section, and it is contrary to the public interest to allow these revenues to go uncollected;

(9) because the department has had difficulties in obtaining information and completing audits within the three-year period set out in AS 43.05.260(a) and has had to amend assessments based on information developed during taxpayer appeals to reflect the correct amount of tax due, a longer statutory period for assessments should be provided for tax periods beginning after December 31, 1993;

(10) taxpayers also have an interest in finality and certainty with respect to the amount of taxes due the state, and that interest will be promoted by having a five-year statute of limitations on assessments, except as otherwise authorized by AS 43.05.260(c), after which time no increases in the amount due the state will be allowed; and

(11) it is in the public interest to amend AS 43.05.260(a) prospectively to provide for the issuance and amendment of assessments within five years from the date the taxpayer's return is filed, except as provided in AS 43.05.260(c).

(b) The purposes of the amendment of AS 43.05.260(a), made by sec. 8 of this Act, and of AS 43.05.270(a), made by sec. 9 of this Act, are

(1) to validate and affirm the longstanding administrative interpretation and practices of the Department of Revenue in assessing and collecting taxes;

(2) to make clear specific existing law that resulted in the inconsistent decisions of the state Superior Court reached in *Tesoro Petroleum Corporation, et al., v. State of Alaska, Department of Revenue*, Superior Court No. 3AN-89-7130 Civ., and *State of Alaska, Department of Revenue v. Exxon Corporation, et al.*, Superior Court No. 3AN-89-5215 Civ.

(3) to make prospective changes to the statute of limitations for assessments in AS 43.05.260 to allow the Department of Revenue five years from the date the taxpayer's return is filed to complete its audit and issue or amend an assessment, for tax periods beginning after December 31, 1993."

Page 1, line 4:

Delete "* Section 1."

Insert "* Sec. 2."

Renumber the following bill sections accordingly.

Page 3, after line 30:

Insert new bill sections to read:

** Sec. 8. AS 43.05.260(a) is amended to read:

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

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

(2) for tax periods beginning after December 31, 1993, within five years after the return was filed, whether or not a return was filed on or after the date prescribed by law; the department may increase or decrease the amount of tax due by issuing or amending an assessment within the five-year period; after that five-year period, the department may not increase an assessment under this subsection. [IF THE TAX IS NOT ASSESSED BEFORE THE EXPIRATION OF THE THREE-YEAR PERIOD, PROCEEDINGS MAY NOT BE INSTITUTED IN COURT FOR THE COLLECTION OF THE TAX.]

* Sec. 9. AS 43.05.270(a) is amended to read:

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

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

(A) the assessment of the tax;

(B) the final administrative determination of the grievance.

if the taxpayer files a grievance from an assessment; or

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

(2) before the expiration of a period for collection agreed upon in writing by the department and the taxpayer before the expiration of the six-year period; a period agreed upon may be extended by subsequent agreements in writing

made before the expiration of the period previously agreed upon [; THE PERIOD PROVIDED BY THIS PARAGRAPH DURING WHICH A TAX MAY BE COLLECTED BY LEVY MAY NOT BE EXTENDED OR CURTAILED BECAUSE OF A JUDGMENT AGAINST THE TAXPAYER]."

Renumber the following bill sections accordingly.

Page 5, after line 6:

Insert new bill sections to read:

" * Sec. 13. Under the provisions of AS 01.10.030, if any provisions of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby.

* Sec. 14. Sections 8 and 9 of this Act are retroactive to January 1, 1976.

* Sec. 15. Sections 8, 9, 13, and 14 of this Act take effect immediately under AS 01.10.070(c)."

Renumber the following bill section accordingly.

Page 5, line 7:

Delete "This"

Insert "Except as provided in sec. 15 of this Act, this"

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Bert Sharp
Senator Judy Salo
Senator Georgianna Lincoln



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ANCHORAGE AK 99501-2133
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MEMORANDUM

TO: Senator Kelly, Chair

FROM: Josh Fink, Administrative Aide

DATE: April 13, 1994

RE: Meeting with Assistant Attorney General Jim Baldwin on
SB 185, Limitations Period for Tax Assessments & Collection

At 9:00 a.m. April 13, I met with Jim Baldwin regarding an amendment the Attorney General would like to offer to SB 185 in an effort to reach a compromise acceptable to the Senate Labor & Commerce Committee. (See attached amendment)

Basically, this amendment would allow the State to modify tax assessments, up or down, for assessments initially made within the three year statute of limitations prior to December 31st, 1994. After this date, the statute of limitations for tax assessments would be extended from three to five years, and modifications resulting in an increased assessment after the initial assessment would be prohibited after five years, even if the assessment is still being contested beyond five years from the initial assessment. The State would still be allowed to reduce an assessment after the five year period.

As to the methodology utilized in determining the value of oil, value for royalty purposes is set out in oil and gas leases, while value for tax purposes is set out in statute and regulation. Value, according to Mr. Baldwin, is nebulous. For example, the value in the early years (1978-1980) was capped by agreement between the State and producers at the federal price ceilings for royalty purposes. However, State statute mandated the value for production tax purposes be based on actual value, even if it exceeded the artificial federal price ceilings.

If detailed information on determining value is needed, the AG's office can provide that. If actual figures are desired, they could only be conveyed in an executive session.

AMENDMENT

OFFERED IN THE SENATE

TO: SB 185

Page 1, line 11:

Following "department's":

Delete "interpretation"

Insert "interpretations"

Following "AS 43.05.250":

Delete "is"

Insert "and AS 43.05.270 are"

Page 1, line 12:

Following "that":

Delete "AS 43.05.260"

Insert "AS 43.05.260(a) and 43.05.270(a)"

Page 1, line 13:

Following "enactment of":

Delete "that section"

Insert "those sections"

Following "reflect":

Delete "this"

Insert "these"

Page 1, line 14:

Following "administrative":

Delete "interpretation"

Insert "interpretations"

Page 3, line 2:

Following "state;":

Delete "and"

Page 3, line 4:

Following "uncollected":

Delete "."

Insert ";

Page 3, following line 8:

Insert new paragraphs to read:

"(9) because the department has had difficulties in obtaining information and completing audits within the three-year period set out in AS 43.05.260(a) and has had to amend assessments based on information developed during taxpayer appeals to reflect the correct amount of tax due, a longer statutory period for assessments should be provided for tax periods beginning after December 31, 1994;

(10) taxpayers also have an interest in finality and certainty with respect to the amount of taxes due the state, and that interest will be promoted by having a five-year statute of limitations on assessments, except as

otherwise authorized by AS 43.05.260(c), after which time no increases in the amount due the state will be allowed; and

(iii) it is in the public interest to amend AS 43.05.260(a) prospectively to provide for the issuance and amendment of assessments within five years from the date the taxpayer's return is filed, except as provided in AS 43.05.260(c)."

Page 3, line 7:

Following "The":

Delete "purpose"

Insert "purposes"

Page 3, line 8:

Following "Act,":

Delete "is"

Insert "are"

Page 3, line 10:

Following "taxes;":

Delete "and"

Page 3, line 14:

Following "Civ.":

Insert "; and"

Page 3, following line 14:

Insert a new paragraph to read:

"(3) to make prospective changes to the statute of limitations for assessments in AS 43.09.260 to allow the Department of Revenue five years from the date the taxpayer's return is filed to complete its audit and issue or amend an assessment, for tax periods beginning after December 31, 1994."

Page 3, line 17:

Following "assessments":

Delete all material.

Page 3, following line 17:

Insert:

"(1) for tax periods ending before January 1, 1995,
within three years after the return was"

Page 3, line 18:

Following "law":

Delete "."

Insert ";"

Page 3, line 19:

Delete all material.

Insert "however, at any time during the administrative

consideration of a taxpayer grievance or of a claim for credit or refund, based upon a tax imposed under"

Page 3, line 21:

Following "amending":

Insert "an assessment:"

Page 3, lines 22 - 23:

Delete all material.

Page 3, following line 23:

Insert new material to read:

"(2) for tax periods beginning after December 31, 1994, within five years after the return was filed, whether or not a return was filed on or after the date prescribed by law; the department may increase or decrease the amount of tax due by issuing or amending an assessment within that five-year period; after that five-year period, the department may not increase an assessment under this subsection."

Page 3, line 26:

Delete "taxpayer under AS 43.20.275"

Page 4, line 15:

Following "* Sec. 4.":

Delete "Sections 2 and"

Insert "30 40.13.260(a) (1), enacted by sec. 2 of this
Act, and sec. "

SECTIONAL ANALYSIS

Section 1. This section contains proposed legislative findings setting forth the Department of Revenue's interpretation of AS 43.05.260 and of AS 43.05.270. The proposed legislative findings conclude that the department's interpretation is correct and that it is in the public interest that AS 43.05.260 and AS 43.05.270 be clarified to reflect the department's interpretation. This section also sets forth the purpose of sections 8 and 9 of CS SB 377, which is to validate and affirm the department's longstanding administrative interpretation and to resolve inconsistent decisions in the state Superior court.

Section 8. This section adds language to AS 43.05.260(a) to clarify that for tax periods ending before January 1, 1994, the Department of Revenue may increase or decrease the amount of a tax due 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. This section also adds AS 43.05.260(a) that provides that for tax periods beginning after December 31, 1993, the Department of Revenue may increase or decrease the amount of a tax due by issuing or amending an assessment within five years after a return is filed. After expiration of the five-year period, an assessment may not be amended by the department.

Section 9. This section adds language to AS 43.05.270(a) to clarify the six-year limitation on collection of taxes after assessment. Under this section, the limitation period does not begin to run until the final administrative determination of a grievance if the taxpayer files a grievance from an assessment or the final judicial resolution of an appeal if the taxpayer appeals from a final adjudicative determination of a grievance.

Section 13. This section acknowledges the severability clause of AS 01.10.030.

Section 14. This section makes AS 43.05.260(a)(1), enacted by sec. 8 and sec. 9, retroactive to January 1, 1976.

Section 15. This section makes AS 43.05.260 take effect immediately under AS 01.10.070(c).

SENATE BILL NO. 185

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS TAYLOR BY REQUEST, Kerttula

Introduced: 4/7/93
 Referred: FINANCE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the limitations period for assessments for certain state taxes,
 2 and for collection, after assessment, of taxes due the state; and providing for an
 3 effective date."

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

5 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that

6 (1) with respect to income taxes imposed under former AS 43.21 and oil and
 7 gas production, or severance, taxes imposed by AS 43.55,

8 (A) the Department of Revenue has interpreted AS 43.05.260 to permit
 9 it to issue an amended assessment at any time during the administrative consideration
 10 of an appeal or of a claim for credit or refund;

11 (B) the department's interpretation of AS 43.05.260 is correct; and

12 (C) it is in the public interest that AS 43.05.260 be clarified by
 13 amendment, effective from the date of enactment of that section, to reflect this
 14 longstanding administrative interpretation;

1 (2) the legal and factual issues arising out of the separate accounting methods
2 used in the levy and collection of income taxes imposed under former AS 43.21 and oil and
3 gas production, ~~or severance~~ taxes imposed by AS 43.55 are complex and require lengthy
4 audits by the Department of Revenue to accurately determine the amount of the taxes that are
5 due the state from the respective levies;

6 (3) two other factors have contributed to the lengthy period required to issue
7 accurate tax assessments for the taxes imposed by former AS 43.21 and AS 43.55:

8 (A) throughout the 1970's and the 1980's, the Department of Revenue's
9 ability to audit these tax returns effectively was constrained by its audit resources; and

10 (B) subsequent to the enactment of former AS 43.21 in 1978, taxpayers
11 requested suspension of action on assessments pending the outcome of a challenge to
12 the constitutionality of the separate accounting method as applied to the levy and
13 collection of the income tax; litigation arising out of this challenge was filed in 1979
14 and concluded in 1986;

15 (4) the six-year limitation on the collection of taxes, as applicable to income
16 taxes imposed by former AS 43.21 and ~~property~~ production taxes imposed by AS 43.55,
17 should be amended retroactively to clarify that the limitation on collections is tolled during
18 any administrative or judicial consideration of an assessment; the adoption of the amendment
19 embodies the interpretation by and practice of the Department of Revenue since the enactment
20 of AS 43.05.270 by sec. 1, ch. 94, SLA 1976;

21 (5) often a tax levy cannot be made or a proceeding in court cannot be initiated
22 for the collection of unpaid taxes within six years after the assessment of that tax because

23 (A) the protest of an assessment begins a process that often takes
24 several years to complete;

25 (B) after a final administrative decision on a protest has issued, judicial
26 resolution of the protest often lasts several more years; and

27 (C) commencement of a separate collection action while an
28 administrative or judicial appeal of a taxpayer's protest of an assessment is pending
29 is impractical and an inefficient use of the resources of the executive and judicial
30 branches of the state government;

31 (6) substantial taxes assessed under former AS 43.21 and under AS 43.55

1 remain uncollected;

2 (7) these uncollected taxes are in large part the result of disputes over value
3 at the point of production for oil and gas produced in the state; and

4 (8) substantial public revenue is at risk in the litigation to which reference is
5 made in (b)(2) of this section, and it is contrary to the public interest to allow these revenues
6 to go uncollected.

7 (b) The purpose of the amendment of AS 43.05.260(a), made by sec. 2 of this Act,
8 and of AS 43.05.270(a), made by sec. 3 of this Act, is

9 (1) to validate and affirm the longstanding administrative interpretation and
10 practices of the Department of Revenue in assessing and collecting taxes; and

11 (2) to resolve the inconsistent decisions of the state Superior Court reached in
12 Tesoro Petroleum Corporation, et al., v. State of Alaska, Department of Revenue, Superior
13 Court No. 3AN-89-7130 Civ., and State of Alaska, Department of Revenue v. Exxon
14 Corporation, et al., Superior Court No. 3AN-89-5215 Civ.

15 * Sec. 2. AS 43.05.260(a) is amended to read:

16 (a) Except as provided in (c) of this section and AS 43.20.200(b), the amount
17 of a tax imposed by this title must be assessed within three years after the return was
18 filed, whether or not a return was filed on or after the date prescribed by law.
19 However, notwithstanding the limitation on assessments for a tax imposed by
20 former AS 43.21 or by AS 43.55, the department may increase or decrease the
21 amount of tax due by issuing or amending

22 (A) an assessment at any time during the administrative
23 consideration of a taxpayer grievance on an assessment filed by the
24 taxpayer under AS ⁰⁵43.20.240; or

25 (B) a claim for credit or refund of a tax filed by the
26 taxpayer under AS ⁰⁵43.20.275 [IF THE TAX IS NOT ASSESSED BEFORE
27 THE EXPIRATION OF THE THREE-YEAR PERIOD, PROCEEDINGS MAY
28 NOT BE INSTITUTED IN COURT FOR THE COLLECTION OF THE TAX].

29 * Sec. 3. AS 43.05.270(a) is amended to read:

30 (a) When the assessment of a tax imposed by this title has been made within
31 the period of limitation under AS 43.05.260, the tax may be collected by levy or by

1 a proceeding in court [, BUT ONLY] if the levy is made or the proceeding is begun:

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

3 (A) the assessment of the tax;

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

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

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

15 * Sec. 4. Sections 2 and 3 of this Act are retroactive to January 1, 1976.

16 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Hickel to push tax law

Bill aims at collecting claims on oil industry

By RALPH THOMAS
Daily News reporter

JUNEAU — The Hickel administration has decided to make a big push for legislation that would make it easier to collect more than \$1 billion in oil tax claims.

The measure, which faces strong industry opposition, sat dormant for nearly a year, but is scheduled for a hearing today in the Senate Labor and Commerce Committee.

At issue are the statutes of limitation that dictate how long the state has to file tax claims and collect back taxes.

State tax claims against oil companies total more than \$5.5 billion. But, with many claims dating back more than a decade, oil-company lawyers have begun using the statutes of limitation to keep the state from collecting the old tax debts.

One such case, against Exxon Corp., is slated to go before the Alaska Supreme Court in May. More than \$1 billion worth of oil tax claims against Exxon and other

Please see Back Page, TAXES

TAXES: Hickel to push bill

Continued from Page A-1

companies could evaporate if the state loses, according to some legislators.

"This is my No. 1 legislative priority," Attorney General Bruce Botelho said. "The statute of limitation should not be a technical bar to prevent the state to get what is owed."

The statutes of limitation were adopted in the mid-1970s. Under them, once a company files a tax return, the state has three years to audit the return and issue an assessment saying how much additional tax, if any, is owed. Once an assessment is issued, the state has six years to start action to collect the tax.

Senate Bill 185 would change that. It would allow the state to amend claims and collect taxes beyond the time limits.

The administration-sponsored measure has gotten little attention from lawmakers and not much of a push from Gov. Wally Hickel. But Botelho, who took over as the state's chief attorney in January, said last week he has the governor's blessing to lobby hard for the bill.

Ardie Gray, spokeswoman for the Alaska Oil and Gas Association, said the group would make a strong statement against the bill today. But she said late Monday she could not release details from the statement because it was still being prepared.

Today's hearing will be conducted by Sen. Tim Kelly, chairman of the Labor and Commerce Commit-

tee. Last year, Kelly, an Anchorage Republican, was the bill's most outspoken opponent in the Senate. This year, the bill was stalled until he got it assigned to his committee for a hearing. Now, he says, he doesn't know enough about it to decide if it's a good idea. Oil companies and the state have been squabbling over the time limits for several years.

In a lawsuit filed by Tesoro Alaska Petroleum Co., a Superior Court judge in 1991 agreed with the state's argument that the clock on the six-year collection time-limit does not run while a company is appealing a tax claim. Tesoro appealed to the state Supreme Court, but the issue was never resolved because the case was settled out of court.

In the case scheduled for trial in May, a Superior Court judge in 1992 ruled the state could not amend assessments against Exxon after the three-year time limit. The dispute reached the state Supreme Court last year, but was put on hold so the Hickel administration and Exxon could try to work out a settlement. No deal was reached, however, and earlier this year the two sides asked the high court to schedule a trial.

Because of the confidentiality laws that surround the state's back-tax disputes with the oil industry, it's difficult to pin down what's at stake in the Exxon case. But lawmakers have said they've been told at least \$1 billion and perhaps as

much as \$2 billion — is at stake.

Botelho said the state's current budget crisis, which includes more than \$1.5 billion in projected deficits over two years, should give lawmakers an added incentive to pass Senate Bill 185.

But industry opposition will make the bill a tough sell. In fact, he said, it could spark a legislative battle similar to the one over the so-called economic limit factor, an oil-production tax break that was curtailed in 1989.

When the bill was introduced late last spring, Exxon sent its chief tax lawyer to Juneau to deliver a 22-page opposition statement.

Though Botelho will be out of town for today's Labor and Commerce Committee hearing, some other big guns from both sides are expected to show up.

The administration is bringing back former Attorney General Charlie Cole, to testify. Cole, who steered the state's oil-tax cases for three years before resigning in January, angered industry officials when he got Senate Bill 185 rolling last spring.

The Alaska Oil and Gas Association is sending Joe Householder, Union Oil Co.'s tax lawyer, to today's hearing. Several other companies and industry groups — including BP Exploration (Alaska) and Arco Alaska Inc. — also notified the Senate panel that they were sending people to testify.

State must protect its resources and collect taxes owed

By GOV. WALTER J. HICKEL

JUNEAU — The editorial writers at the Voice of the Times departed from their normal, reasoned approach to public policy debates on April 6 and 7 when they implied the Hickel administration wants to raise taxes on the oil industry.

To suggest this administration wants to enact new taxes or even raise existing taxes on the oil industry is not true.

My administration is pushing for legislation to make sure the oil companies pay the taxes they already owe and have owed for years. The Voice of the Times editorials label this a "suicidal tax policy" that would subject the oil company taxpayers to "open-ended retroactive tax liabilities."

Nothing could be further from the truth. The oil companies were liable for the taxes that were on the books at the time they took our oil.

Let me be clear: We appreciate the partnership this state has had with the oil industry over the years. There is no doubt it has been beneficial to Alaskans. However, we have honored our part of the bargain, and we expect the oil companies to honor their part.

We are not seeking this clarification of the law



because we need more money, but rather because these billions of dollars are owed to Alaska.

One editorial writer correctly states that the defining issue of the 1994 gubernatorial campaign will likely be the ability of the state to responsibly manage its resources.

This has been the defining issue of my entire political life. Alaska is an owner state and has to responsibly manage those resources. It is precisely because previous administrations, through a lack of understanding, neglected to follow through on their owner state obligations that we now find ourselves in this debate.

The dispute is not whether the money is owed by the oil companies. We know it is. The issue is about whether the money is going to be collected by the state.

At issue with SB 185 is whether the oil companies should be allowed to manipulate a

At issue with SB 185 is whether the oil companies should be allowed to manipulate a technicality in the law to avoid paying the taxes they already owe.

technicality in the law to avoid paying the taxes they already owe. The oil companies believe they can drag out negotiations over disputed tax assessments past the statute of limitations. The companies say that if the state hasn't collected in the required time, they shouldn't have to pay.

Around April 15 every year, each of us can probably understand a taxpayer's desire to reduce his tax obligation.

But, we are not the taxpayers here. We — you and I and all Alaska citizens — are the tax collectors.

As the owners of the resources of this state, it is our duty to make sure that when our resources are developed, we are paid a fair price for them. We would surely be irresponsible to Alaskans, and especially to future generations, if we simply gave the resources away.

Yet that's precisely what the opponents of SB

185 want us to do.

At the base of this whole problem is simply that we have not been acting enough like the owner of the resource. If Prudhoe Bay were privately held, how long do you think it would take the owners' lawyers and auditors to audit and collect what's owed?

Yet, through years of neglect, it has taken literally years for this state to audit and assess underpaid taxes. This is unacceptable. And it is also unacceptable to allow the oil companies to take advantage of the situation and blow off billions of dollars in back taxes.

This administration has aggressively pursued these back taxes. In the past three years, we have collected more than \$1.7 billion. And we intend to stay at it.

A suicidal tax policy? No way. SB185 would be better described as life support.

ANCHORAGE DAILY NEWS
TUESDAY, APRIL 12, 1994
PAGE B-7
CC: JMB

SB

185

(Filed)

Testimony
Opposed

Subject: SB 185: Texas Statute of Limitations

Attached is a brief corky-dot outline describing the general provisions of the franchise and production tax assessment and collection limitation period applicable in Texas (Attachment 1) together with copies of the relevant statutory provisions. (Attachment 2) Comparing the Texas statutes to the changes that would be made by Alaska Senate Bill 185, it is readily apparent the statute of limitations provisions are dissimilar.

The most apparent distinction is in Texas Tax Code § 111.207, which provides that although the basic limitations periods for assessment or collection of taxes is extended during periods under which taxes are paid under protest or judicial proceedings for tax determinations are ongoing and during which tax administrative proceedings are pending, this extension applies only with respect to the amount of taxes at issue in those proceedings.

And Texas, like every other state, has never retroactively amended its statute of limitations provisions.

TEXAS TAX STATUTE OF LIMITATIONS

Assessment and Refund Limitation (Tex. Tax Ann. Code § 111.201 (West 1994))

- No tax may be assessed after four years from the date the tax becomes due and payable.
- No refund of any tax may be made by the Comptroller after four years after the date that the tax was paid, except on tolling of the statute of limitations for refunds under Tex. Tax Code Ann. § 111.2051.

Agreements to Extend Periods of Limitation (Tex. Tax Code Ann. § 111.203 (West 1992))

- Before expiration of period prescribed in Section 111.201 for refund claims or assessment or collection of any tax, a written agreement can be entered into extending that period.

Exception to Assessment Limitation (Tex. Tax Code Ann. § 111.205 (West 1994))

- The limitation period provided by Section 111.201 does not apply and the Comptroller may assess a tax imposed at any time if:

- (1) with intent to evade the tax, the taxpayer files a false or fraudulent report;
- (2) no report for the tax has been filed; or
- (3) information contained in the report of the tax contains a gross error.

- Gross error means that after correction of the error, the amount of tax due and payable exceeds the amount initially reported by at least 25 percent.

Tolling of Limitation Period (Tex. Tax Code Ann. § 111.207 (West 1994))

- In determining the end of the tax assessment or collection limitations period, the following periods are not considered:

- (1) The period following the date a tax payment is made under protest;
- (2) The period during which a judicial proceeding is pending to determine the amount of tax due; and
- (3) The period during which an administrative proceeding is pending for a redetermination of the tax liability. Tex. Tax Code Ann. § 111.207(a).

The suspension of the period of limitations under Section 111.207(a) applies only to the amount of taxes in issue under Subdivision (1), (2) and (3) of that subsection. Tex. Tax Code Ann. § 111.207(b) (West 1994).

Vernon's
TEXAS CODES
ANNOTATED



TAX CODE
Sections 101.001 to 170.

WEST PUBLISHING CO.
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§ 111.201. Assessment Limitation

No tax imposed by this title may be assessed after four years from the date that the tax becomes due and payable.

Acts 1981, 67th Leg., p. 1508, ch. 389, § 1, eff. Jan. 1, 1982.

Historical and Statutory Notes

Section 10 of Acts 1981, 67th Leg., p. 243, ch. 102, eff. Aug. 31, 1981, provides:

"The amendment by this Act in narrowing the period of limitations for collection of tax does not apply to the estates of persons who died prior to the effective date of this Act."

Section 39(1) of Acts 1981, 67th Leg., p. 1787, ch. 389, provides:

"Sections 1 through 8 of S.B. No. 371, Acts of the 67th Legislature, Regular Session, 1981 [Chapter 102], are repealed. Section 10 of S.B. No. 371, Acts of the 67th Legislature, Regular Session, 1981, applies to the provisions of Title

2, Tax Code, that incorporate the amendments contained in S.B. No. 371 in the same manner that Section 10 of S.B. No. 371 applies to the provisions of S.B. No. 371."

Prior Laws:

Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, art. 1.045.

Acts 1967, 60th Leg., p. 1019, ch. 448, § 1.

Acts 1981, 67th Leg., p. 241, ch. 102, § 6.

Acts 1981, 67th Leg., p. 1787, ch. 389, § 39(1).

V.A.T.S. Tax.-Gen. art. 1.045, § (A).

Cross References

Exception to this section, see § 111.205.

Library References

Taxation ¶318.
WESTLAW Topic No. 371.
C.J.S. Taxation §§ 382, 394.

Notes of Decisions

Exceptions 1

1. Exceptions

For purposes of statute, V.T.C.A., Tax Code § 151.507(c), providing that limitations period for assessment of sales tax does not apply to determination for collection if deficiency notice has been given for collection of use tax "on

the same taxable item," sales tax assessment which Comptroller of Public Accounts sought to levy on advertising revenues of publishing company were not "on the same taxable item" as use tax assessment levied on printing and other goods and services that went into physical production of publications. *Bullock v. Cordovan Corp.* (App. 3 Dist. 1985) 697 S.W.2d 432, ref. n.r.c.

§ 111.202. Suit Limitation

At any time within three years after a deficiency or jeopardy determination has become due and payable or within three years after the last recording of a lien, the comptroller may bring an action in the courts of this state, or any other state, or of the United States in the name of the people of the State of Texas to collect the amount delinquent together with penalties and interest.

Acts 1981, 67th Leg., p. 1508, ch. 389, § 1, eff. Jan. 1, 1982.

Historical and Statutory Notes

For provisions relating to application of the section was derived, see Historical and Statutory Notes following § 111.201.

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V.A.T.S. TAXATION
Title 2

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COLLECTION PROCEDURES
Ch. 111

§ 111.203

Prior Laws:

Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1,
art. 1.045.
Acts 1967, 60th Leg., p. 1019, ch. 448, § 1.

Acts 1981, 67th Leg., p. 241, ch. 102, § 6.
Acts 1981, 67th Leg., p. 1787, ch. 389,
§ 39(I).
V.A.T.S. Tax-Gen. art. 1.045, § (B).

Cross References

Delinquent tax collection, applicability of this section, see § 151.607.

Library References

Taxation ¶589.
WESTLAW Topic No. 371.
C.J.S. Taxation § 707.

§ 111.203. Agreements to Extend Period of Limitation

(a) Before the expiration of the periods prescribed in Sections 111.104, 111.201, and 111.202 of this code for the filing of a refund claim or for the assessment and collection of any tax imposed by this title, the comptroller and a taxpayer may agree in writing to the filing of a refund claim or to an assessment and collection after that time. The agreement must contain the reasons the comptroller and the taxpayer wish to extend the period. At any time before the expiration of the period agreed on, the refund may be made, the tax may be assessed and collected, or an action may be commenced in any court to collect the amount delinquent.

(b) The extended period agreed on under Subsection (a) of this section may be extended by subsequent agreements made before the expiration of the extended period. All subsequent agreements must set forth the reasons for extending the period.

(c) No single extension agreement may be for a period of more than 24 months from the expiration date of the period being extended.

(d) The period for filing a refund claim or for assessment and collection of a tax may be extended if:

(1) without an extension, there might occur a revenue loss to the state;

(2) either the taxpayer or the comptroller, despite good faith efforts, requires more time to prepare for or complete the audit;

(3) without an extension, circumstances beyond the control of either the comptroller or the taxpayer would make an audit by the comptroller impractical or burdensome for either party; or

(4) an issue of law involved in the audit is awaiting determination in either litigation or an administrative proceeding.

(e) If, during an extended period agreed on under Subsection (a) of this section, the comptroller finds that an amount of tax, penalty, or interest has been unlawfully or erroneously collected, the comptroller shall credit the amount against any other amount then due and payable by the taxpayer from

whom the amount was collected. The remainder of the amount if any may be refunded to the taxpayer.

Acts 1981, 67th Leg., p. 1508, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 458, ch. 94, §§ 1, 2, eff. May 10, 1983.

Historical and Statutory Notes

For provisions relating to application of the 1983 amendment of the article from which this section was derived, see Historical and Statutory Notes following § 111.201.

The 1983 amendment, in subsec. (a), in the first sentence, inserted "111.104", "filing of a refund claim or for the" inserted a comma preceding "and 111.202 of", and inserted "the filing of a refund claim or to", and in the third sentence inserted "the refund may be made" and inserted a comma preceding "or an action"; in subsec. (d), in the introductory lan-

guage, inserted "for filing a refund claim or"; and added subsec. (e).

Prior Laws:

- Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, art. 1.045.
- Acts 1967, 60th Leg., p. 1019, ch. 448, § 1.
- Acts 1981, 67th Leg., p. 241, ch. 102, § 6.
- Acts 1981, 67th Leg., p. 1787, ch. 389, § 39(1).
- V.A.T.S. Tax-Gen. art. 1.045, § (C).

Administrative Code References

Comptroller of Public Accounts, state sales and use tax, statute of limitations, sec 34 TAC § 3.339.

Library References

- Taxation ¶569.
- WESTLAW Topic No. 371.
- C.J.S. Taxation § 707.

Notes of Decisions

Validity of prior law 1

1. Validity of prior law

The legislature could not constitutionally delegate its power to the comptroller without any

accompanying standards or guidelines; § (C) of V.A.T.S. Tax-Gen. art. 1.045 (repealed; now, this section), therefore, was an invalid delegation of power, and said provision could be invalid as a delegation of power to suspend the law under Const. Art. 1, § 28. Op. Atty. Gen. 1972, No. M-1190.

§ 111.204. Beginning of Period of Limitation

In determining the beginning date for a period of limitation provided in this title, the date that a tax is due and payable is the day after the last day on which a payment is required by the chapter of this title imposing the tax.

Acts 1981, 67th Leg., p. 1309, ch. 389, § 1, eff. Jan. 1, 1982.

Historical and Statutory Notes

Prior Laws

Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, art. 1.045.

Acts 1967, 60th Leg., p. 1019, ch. 448, § 1. V.A.T.S. Tax-Gen. art. 1.045, § (D).

§ 111.205. Exception to Assessment Limitation

The limitation provided by Section 111.201 of this code does not apply and the comptroller may assess a tax imposed by this title at any time if:

- (1) wa report;
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Prior Laws: Acts 1959, art. 1.045.

Comptroller o TAC § 3

§ 111.206

- (a) This (1) an agency; c (2) a ju local, stat
- (b) A fin imposed by of 60 days report must tax liability
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COLLECTION PROCEDURES
Ch. 111

§ 111.206

(1) with intent to evade the tax, the taxpayer files a false or fraudulent report;

(2) no report for the tax has been filed;

(3) information contained in the report of the tax contains a gross error and the amount of tax due and payable after correction of the error is 25 percent or more greater than the amount initially reported; or

(4) a taxpayer has filed a timely claim for refund with the comptroller; however, the assessment is limited to the period and type of tax for which the refund is sought.

Acts 1981, 67th Leg., p. 1509, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 459, ch. 94, § 4, eff. May 10, 1983.

Revisor's Note

The exception in Subsection (3) of Sec. (A) of Art. 1.045 literally says the opposite of that which is intended. The revised law chooses a meaning that retains the 25 percent margin of error in relation to the amount reported.

Historical and Statutory Notes

The 1983 amendment, in subd. (2), deleted "or"; in subd. (3) substituted "; or" for a period; added subd. (4).

Prior Laws:

Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, art. 1.045.

Acts 1967, 60th Leg., p. 1019, ch. 448, § 1.

Acts 1981, 67th Leg., p. 241, ch. 102, § 6.

Acts 1981, 67th Leg., p. 1757, ch. 389, § 39(1).

V.A.T.S. Tax.-Gen. art. 1.045, § (A).

Administrative Code References

Comptroller of Public Accounts, tax administration, inheritance tax, closing documents, sec 34 TAC § 3.230.

§ 111.206. Exception to Limitation: Determination Resulting From Administrative Proceeding

(a) This section applies only to a final determination resulting from:

(1) an administrative proceeding of a local, state, or federal regulatory agency; or

(2) a judicial proceeding arising from an administrative proceeding of a local, state, or federal regulatory agency.

(b) A final determination that affects the amount of liability of a tax imposed by this title shall be reported to the comptroller before the expiration of 60 days after the day on which the determination becomes final. The report must include a detailed statement of the reasons for the difference in tax liability as required by the comptroller.

(c) Notwithstanding the expiration of a period of limitation provided in this title, the comptroller may assess and collect or bring suit for the collection of any tax deficiency, including penalties and interest, resulting from a final determination or from investigation at any time before the expiration of one year after:

(1) the day the report required by Subsection (b) of this section is received, if the report is filed within the 60-day period; or

(2) if the report is not made or is made after the 60-day period, the day the report is received or the day the final determination is discovered, whichever period is the shorter.

(d) If a final determination or investigation results in the taxpayer having overpaid the amount of tax due the state, the comptroller shall refund or issue a credit for the amount of the overpayment at any time during the one-year period during which assessments may be made under Subsection (c) of this section.

(e) This section does not shorten any period of limitation elsewhere provided in this title.

Acts 1981, 67th Leg., p. 1509, ch. 389, § 1, eff. Jan. 1, 1982.

Historical and Statutory Notes

Prior Laws: Acts 1967, 60th Leg., p. 1019, ch. 448, § 1. V.A.T.S. Tax. Gen. art. 1.045, § (F).
Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, art. 1.045, . . .

Administrative Code References

Comptroller of Public Accounts, tax administration, inheritance tax, closing documents, see 34 TAC § 3.230.

Library References

Taxation ¶589.
WESTLAW Topic No. 371.
C.J.S. Taxation § 707.

§ 111.207. Tolling of Limitation Period

(a) In determining the expiration date for a period when a tax imposed by this title may be assessed or collected, the following periods are not considered:

- (1) the period following the date of a tax payment made under protest;
- (2) the period during which a judicial proceeding is pending in a court of competent jurisdiction to determine the amount of the tax due; and
- (3) the period during which an administrative proceeding is pending before the comptroller for a redetermination of the tax liability.

(b) The suspension of a period of limitation under Subsection (a) of this section applies only to the amount of taxes in issue under Subdivision (1), (2), or (3) of that subsection.

(c) A bankruptcy case commenced under Title 11 of the United States Code suspends the running of the period prescribed by any section of this title for the assessment or collection of any tax imposed by this title until the bankruptcy case is dismissed or closed. After the case is dismissed or closed, the running of the period resumes until finally expired.

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Ch. 11

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§ 111.20

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Title 2

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COLLECTION PROCEDURES
Ch. 111

§ 111.251

(d) In determining the expiration date for filing a refund claim for a tax imposed by this title, the period during which an administrative proceeding is pending before the comptroller for the same period and type of tax is not considered; however, this provision does not authorize the filing of a refund claim for the same transaction or item, for the same type of tax, and for the same time period as a refund claim previously filed and granted or denied in whole or in part by the comptroller.

Acts 1981, 67th Leg., p. 1510, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 459, ch. 94; § 3, eff. May 10, 1983.

Historical and Statutory Notes

The 1983 amendment added subsec. (d).
Acts 1967, 60th Leg., p. 1019, ch. 448, § 1.
Acts 1981, 67th Leg., p. 241, ch. 102, § 6.
Acts 1981, 67th Leg., p. 1787, ch. 399,
§ 39(I).
V.A.T.S. Tax-Gen. art. 1.045, § (E).

Prior Laws:

Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1,
art. 1.045.

Library References

Taxation ¶589.
WESTLAW Topic No. 371.
C.J.S. Taxation § 707.

Notes of Decisions

Construction and application 1

1. Construction and application

Under V.A.T.S. Tax-Gen. art. 20.01(T)(2) (repealed; see, now, § 151.056), in a "cost-plus" contract for the improvement of realty, a separately stated charge calculated as a percentage of the cost of the material is considered part of the "agreed price" of the materials and is therefore subject to the sales tax. Additionally, an increase in a deficiency determination, occurring after the deficiency determination had been placed in redetermination status pursuant to V.A.T.S. Tax-Gen. art. 1.032(C) (repealed;

see, now, § 111.009) but beyond four (4) years from the date tax on the transaction was due, is not barred by the four-year statute of limitations contained in V.A.T.S. Tax-Gen. art. 20.06(D)(1) (repealed; see, now, § 151.507). Because V.A.T.S. Tax-Gen. art. 20.08(C) (repealed; see, now, § 151.511) allows the Comptroller to increase the deficiency "at or before" the hearing, V.A.T.S. Tax-Gen. art. 1.045(E) (repealed; now, this section) must be read to toll the statute of limitations for all transactions in the audit period, not just those specific transactions upon which sales or use tax was assessed in the original deficiency determination. Comptroller's Decision No. 10.915 (1980).

[Sections 111.208 to 111.250 reserved for expansion]

SUBCHAPTER E. ASSIGNMENT OF TAX CLAIMS

§ 111.251. Assignment on Payment by Third Person

(a) A person may voluntarily pay to the comptroller the tax, fine, penalty, and interest due for a period of time under this title by another person after the tax becomes due or may pay a judgment for those taxes, and when the tax or judgment is paid, the comptroller may assign all rights, liens, judgments, and remedies of the state to secure and enforce tax payments to the person paying the tax or the judgment.

Vernon's
TEXAS CODES
ANNOTATED

Volume 2.

TAX CODE

Sections 101.001 to 170

1994

Cumulative Annual Pocket Part

Insert this 1994 Pocket Part in back of volume

For Use In 1993-1994

Includes
Laws through the 1993 Regular Session
of the 73rd Legislature
Court Constructions through 850 S.W.2d 815

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WEST PUBLISHING CO.
ST. PAUL, MINN.

STATE TAXATION
Title 2

STATE TAXATION
Title 2

§ 111.201

- (1) under Subchapter B of Chapter 112¹ and the refund is made or the credit is issued under a court order;
- (2) under the provision of Section 111.104(c)(3) applicable to a refund claim filed after a jeopardy or deficiency determination becomes final;
- (3) under Chapter 153; or
- (4) under Section 151.318(g) or (n).

Amended by Acts 1993, 73rd Leg., ch. 687, § 8, eff. Sept. 1, 1993.
1 § 112.051 et seq.

Historical and Statutory Notes

1993 Legislation (3), deleted "of this code" following "Chapter 153";
The 1993 amendment added the exception at the beginning of the introductory language; in subd. and inserted subd. (4).

§ 111.108. Recovery of Refund or Credit

(a) Within four years after the date that a refund is erroneously paid or an amount of credit is erroneously allowed, the comptroller may recover the refund or credit in a jeopardy or deficiency determination.

(b) This section does not extend or toll a period of limitation under this title for filing a timely claim for a refund.

Amended by Acts 1993, 73rd Leg., ch. 537, § 9, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation
The 1993 amendment rewrote the section.

§ 111.109. Tax Refund for Wages Paid to Employee Receiving Aid to Families With Dependent Children

The comptroller shall issue a refund for a tax paid by a person to this state in the amount of a tax refund voucher issued by the Texas Department of Human Services under Subchapter D,¹ Chapter 31, Human Resources Code, subject to the provisions of that subchapter.

Added by Acts 1993, 73rd Leg., ch. 486, § 4.02, eff. Jan. 1, 1994.
¹V.T.C.A., Human Resources Code § 31.071 et seq.

SUBCHAPTER D. LIMITATIONS

§ 111.201. Assessment and Refund Limitation

(a) No tax imposed by this title may be assessed after four years from the date that the tax becomes due and payable.

(b) No refund of any tax imposed by this title may be made by the comptroller after four years after the date that the tax was paid, except on tolling of the statute of limitations for refunds as provided in this title.

Amended by Acts 1993, 73rd Leg., ch. 486, § 1.05, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation For application provision of the 1993 Act, see
The 1993 amendment inserted "and refund" in Historical and Statutory Notes following § 101.-
the section heading, designated subsec. (a), and 003.
added subsec. (b).

§ 111.201

STATE TAXATION
Title 2

Notes of Decisions

Sureties 2

U.S. Fire Ins. Co. v. State (App. 3 Dist.1992) 849 S.W.2d 283, error denied, rehearing of writ of error overruled.

2. Sureties

Statutes of limitation for assessment and collection of delinquent taxes apply to taxpayer's surety.

§ 111.202. Suit Limitation

Notes of Decisions

Construction and application 1
Sureties 2

bond. Lawyers Sur. Corp. v. State (App. 3 Dist. 1992) 625 S.W.2d 802.

2. Sureties

Statutes of limitation for assessment and collection of delinquent taxes apply to taxpayer's surety. U.S. Fire Ins. Co. v. State (App. 3 Dist.1992) 848 S.W.2d 283, error denied, rehearing of writ of error overruled.

1. Construction and application

Three-year statute of limitations for initiation of suit for unpaid gas and diesel fuel taxes applied to collection action by state against surety on tax

§ 111.205. Exception to Assessment Limitation

(a) The limitation provided by Section 111.201 of this code does not apply and the comptroller may assess a tax imposed by this title at any time if:

- (1) with intent to evade the tax, the taxpayer files a false or fraudulent report;
- (2) no report for the tax has been filed; or
- (3) information contained in the report of the tax contains a gross error.

(b) In this section, "gross" error means that, after correction of the error, the amount of tax due and payable exceeds the amount initially reported by at least 25 percent.

Amended by Acts 1993, 78rd Leg., ch. 587, § 10, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment designated subsec. (a), and therein deleted "and the amount of tax due and payable after correction of the error is 25 percent

or more greater than the amount initially reported" following "error" in subd. (3), and deleted subd. (4); and added subsec. (b) defining "gross error".

§ 111.2051. Assessment When Refund Claimed

(a) Notwithstanding the expiration of any period of limitation provided under this title, the comptroller may assess a tax imposed by this title if a taxpayer files a timely claim for refund with the comptroller.

(b) An assessment authorized by this section is limited to the tax payment period and type of tax for which the refund is sought and must be made before the later of:

- (1) four years after the date the refund claim is filed with the comptroller; or
- (2) the expiration of the applicable limitation period for making assessments as otherwise provided by this title.

(c) This section extends only the time in which the comptroller may assess the tax and does not extend or toll a period of limitation under this title for filing a timely claim for refund.

Added by Act 1993, 78rd Leg., ch. 587, § 11, eff. Sept. 1, 1993.

STATE TAXATION
Title 2

§ 111.207. Tolling of Limit

Sureties 2

2. Sureties

Taxpayer's bankruptcy did not toll the limitations as applied to tax

CHAPTER

SUBCHAPTER

§ 112.051. Protest Payment

Validity *

2. Validity

Taxpayer's constitutional due were not infringed by statutory require pay deficiency assessment before recover sales tax deficiency assessment. Inc. v. Sharp (App. 3 S.W.2d 947, application for writ

Requirement that taxpayer pay assessment as prerequisite to judicial violate State Constitution's operation since at common law there was

§ 112.052. Taxpayer Suit

(a) A person may bring suit receipts, franchise, license, or person has first paid the tax

Amended by Acts 1998, 78rd Leg.

1993 Legislation
The 1993 amendment inserted sec. (a).

§ 112.053. Submission of

(a) Except as provided in § protest are to be handled as if

- (1) An officer who receive of this code shall each day of payments, and a writ
- (2) The treasurer shall, in which the tax or fee paid in
- (3) The treasurer shall
- (4) A payment under pro amount of interest that would of the treasurer.

STATE TAXATION
Title 2

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STATE TAXATION
Title 2

§ 111.207. Tolling of Limitation Period

Notes of Decisions

Sureties 2

2. Sureties

Taxpayer's bankruptcy did not tax code stat-
ute of limitations as applied to taxpayer's surety;

State was not required to exhaust remedies
against taxpayer before pursuing surety, and thus
was not precluded by taxpayer's bankruptcy from
recovering against surety. U.S. Fire Ins. Co. v.
State (App. 3 Dist.1992) 843 S.W.2d 283, error
denied, rehearing of writ of error overruled.

CHAPTER 112. TAXPAYERS' SUITS

SUBCHAPTER B. SUIT AFTER PROTEST PAYMENT

§ 112.051. Protest Payment Required

Notes of Decisions

Validity 4

4. Validity

Taxpayer's constitutional due process rights
were not infringed by statutory requirement that it
pay deficiency assessment before filing suit to
recover sales tax deficiency assessment. R Com-
munications, Inc. v. Sharp (App. 3 Dist.1992) 839
S.W.2d 947, application for writ of error filed.

Requirement that taxpayer pay deficiency as-
sessment as prerequisite to judicial review did not
violate State Constitution's open courts guaranty;
since at common law there was no right to sue

sovereign to protest revenue laws, taxpayer failed
to demonstrate that common-law cause of action
was being restricted. R Communications, Inc. v.
Sharp (App. 3 Dist.1992) 839 S.W.2d 947, applica-
tion for writ of error filed.

8. Jurisdiction and venue

Administrative Procedure and Terms Register
Act (APTRA) did not repeal jurisdictional require-
ments of Tax Code, and thus taxpayer that did not
pay tax deficiency could not proceed with petition
for judicial review under APTRA. R Communica-
tions, Inc. v. Sharp (App. 3 Dist.1992) 839 S.W.2d
947, application for writ of error filed.

§ 112.052. Taxpayer Suit After Payment Under Protest

(a) A person may bring suit against the state to recover an occupation, excise, gross
receipts, franchise, license, or privilege tax or fee required to be paid to the state if the
person has first paid the tax under protest as required by Section 112.051 of this code.

[See main volume for (b) and (c)]

Amended by Acts 1993, 73rd Leg., ch. 488, § 7.01, eff. Sept. 1, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment inserted "excise" in sub-
sec. (a).

§ 112.058. Submission of Protest Payments to Treasurer

(a) Except as provided in Subsections (b) and (c) of this section, payments made under
protest are to be handled as follows:

(1) An officer who receives payments made under protest as required by Section 112.051
of this code shall each day send to the treasurer the payments, a list of the persons making
the payments, and a written statement that the payments were made under protest.

(2) The treasurer shall, immediately on receipt, credit the payments to each fund to
which the tax or fee paid under protest is allocated by law.

(3) The treasurer shall maintain detailed records of payments made under protest.

(4) A payment under protest bears pro rata interest. The pro rata interest is the
amount of interest that would be due if the amount had been placed in the suspense account
of the treasurer.

[See main volume for (b) to (d)]

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TESTIMONY OF
THE ALASKA STATE CHAMBER OF COMMERCE
ON SENATE BILL NO. 185

April 7, 1994

Good afternoon, Mr. Chairman and members of the committee. On behalf of the Alaska State Chamber of Commerce, we wish to go on record against passage of Senate Bill 185.

The Alaska State Chamber of Commerce represents small and large businesses throughout the state of Alaska and the Northwest. Our message is very clear, is this the type of message we would like to send to investors and potential investors throughout the state, and the United States? This particular piece of legislation, if passed, is sending a clear message of Alaska as an unstable tax environment at a time in our history that we as business people want to promote investment in our state. If such a piece of legislation passes we are creating quite the opposite type of environment. The Alaska State Chamber of Commerce supports previous testimony from other business organizations that states simply, is this the stability that invites people to invest in Alaska, and let me quote from a previous gentleman's testimony, "For if the state can do it to the oil companies, nothing will keep it from being able to do it legally to miners, fisherman, timber interest, or the general public at large." Let the courts decide back tax issues.

On behalf of the Alaska State Chamber of Commerce and it's 850 members, I urge you strongly to reject Senate Bill 185. Thank you.

TESTIMONY OF MARATHON OIL COMPANY

4/7/94

Limitations Period For Tax Assessments

SB 185

My name is Norma Calvert and I am here today representing Marathon Oil Company. We appreciate the opportunity to comment on Senate Bill 185. Marathon is opposed to S.B. 185 because we feel it is bad legislation, both for the State of Alaska and for the taxpayer.

The U.S. Supreme Court has said that a statute of limitations is an almost indispensable element of fairness as well as of practical administration of income tax policy. It is designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. It is ill-advised to have an income tax system under which there would never come a day of final settlement and which require both a taxpayer and the Government to stand ready forever and a day to produce vouchers, prove events, and recall details of all that goes into an income tax contest. Rothensies v. Electric Storage Battery Co., Volume 329, U.S. 296, 1946.

Section 2 of Senate Bill 185 has the potential to require the taxpayer to "stand ready forever and a day." It permits the Department of Revenue to increase or decrease the amount of tax due by amending an assessment at any time during the administrative consideration of the taxpayer's grievance on an assessment or a claim for credit or refund of a tax. This rule, if adopted, would differ from the rules of most other states' tax administration.

This amendment would render meaningless the well established three-year assessment period provided for in AS 43.05.260(a). If the Department believes that a three year period of time is too limited to complete its assessments, it can always seek an extension from the taxpayer.

If this amendment is enacted into law, the Department would have an indefinite amount of time to complete its assessment. It would be free to delay administrative proceedings in order to amend an assessment as often as it pleases. If, for example, it were expecting a favorable judicial decision on a particular issue and could change an assessment at will, there would be powerful motivation to extend the administrative process. The lack of finality to an assessment is unfair and seriously hinders the taxpayer's ability to defend against it. In fact, under the proposed statute, the Department could amend an assessment just as a formal hearing was about to end,

forcing the taxpayer to start its defense all over.

The purpose behind a statute of limitations is to introduce a measure of finality into the assessment process. The production tax process starts with payment of taxes by industry on a monthly basis. Thereafter, the Department of Revenue reviews these payments and may issue an assessment for additional taxes they believe are due. An assessment is a serious matter -- it is the formal recording of a taxpayer's additional liability. Assessments of a tax have fundamental significance in the Alaskan tax system in two ways. First, an assessment establishes a taxpayer's liability for the amount of any additional tax due and, therefore, the Department's entitlement to collect and retain an amount as a tax. Until an assessment is made, the Department cannot collect a tax administratively because the collection provisions of section 43.05.270 depend on the making of a demand for payment, which in turn assumes the making of an assessment. Even after collection, the Department cannot retain an amount as a tax unless an assessment is made timely. Any tax paid and collected after an untimely assessment is refundable.

Second, and perhaps more importantly, the assessment of tax is an administrative act that divides the examination and administrative settlement procedures from collection procedures and, ultimately, the judicial review of the administrative process. In summary, significant rights and obligations arise from an assessment. The Department, in exercising its right to make an assessment, should be confident enough to then stand by it. An assessment when made should be final thus permitting the taxpayer to pay or challenge it with some degree of confidence that the rules will not be changed in midstream.

As for section 3 of the act, which extends the period of limitations during which the tax may be collected by levy or by proceedings in court to six years after a final administrative or judicial resolution, Marathon believes it is unreasonable considering that the states and Federal government suspend the statute in similar situations. For example, in Texas, which former Attorney General Cole has, in the past, described as the "leading oil producing state in the Union" (remarks to Senate Judiciary 4/22/93), the statute of limitations on levy is suspended where the assessment is challenged in court (Section 111.207 of the Texas Tax Code). The Federal system is similar. The running of the statute for collection by levy is suspended until 60 days after the decision of the Tax Court becomes final

(Section 6503(a)(1) of the Internal Revenue Code). The Commissioner then is entitled to use the 60-day period together with any unexpired portion of the statute of limitations remaining at the time it became suspended (Aura Grimes Bales v. Commissioner, 22 T.C. 355, 1954). Alaska, in extending the period for 6 years after the final administrative or judicial proceeding is going beyond what is considered reasonable in other jurisdictions.

Marathon Oil respectfully requests that the Senate Labor and Commerce Committee reject Senate Bill 185.

Thank you.

TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE
ON SB 185, APRIL 21, 1993
PAUL E. SULLIVAN, GENERAL TAX COUNSEL
EXXON COMPANY, USA.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE,
MY NAME IS PAUL E. SULLIVAN. I AM GENERAL
TAX COUNSEL FOR EXXON COMPANY, U.S.A. I
WANT TO THANK THE COMMITTEE FOR
ALLOWING THIS TIME TO HEAR COMMENTS.

I AM HERE TODAY TO PRESENT THE REASONS
WHY EXXON STRONGLY OPPOSES SB 185, A BILL
WHICH RETROACTIVE TO 1976, AMENDS THE
TIME LIMITATIONS ON TAX ASSESSMENTS TO
ALLOW NEW OR REVISED ASSESSMENTS AT ANY
TIME WHILE AN ADMINISTRATIVE APPEAL OR
REFUND CLAIM IS PENDING.

THERE ARE THREE THINGS I WANT TO
ACCOMPLISH IN MY STATEMENT TODAY: FIRST, I
AM GOING TO GIVE YOU SOME CONCRETE
INFORMATION ABOUT THE "LEGISLATIVE
FINDINGS" SO THAT YOU CAN APPLY YOUR OWN
JUDGMENT AND COMMON SENSE TO DECIDE
WHETHER THESE SO-CALLED "FINDINGS" ARE
TRUE. NEXT, I WILL TELL YOU WHAT HAS

TESTIMONY IN SEN. JUD. COMM.
FROM PAUL SULLIVAN, EXXON COUNSEL

ACTUALLY HAPPENED, IN REAL CASES. FINALLY, I WILL TELL YOU ABOUT THE NEGATIVE EFFECTS THAT THIS PIECE OF LEGISLATION COULD HAVE UPON THE STATE AND ITS TAXPAYERS.

I'D LIKE TO TAKE A FEW MINUTES TO SET THE SCENE. SUPPOSE THAT YOU FILED YOUR 1992 FEDERAL INDIVIDUAL INCOME TAX RETURN LAST WEEK. NOW LETS TURN THE CLOCK AHEAD. SUPPOSE THAT YOU WERE AUDITED AND THE AUDITORS DISALLOWED YOUR DEDUCTION FOR HOME MORTGAGE INTEREST. AND OVER THE NEXT SEVERAL YEARS YOU FOLLOWED ALL THE REQUIRED STEPS FOR ADMINISTRATIVE REVIEW WITHIN THE IRS TO NO AVAIL AND, SO YOU WENT TO COURT. SEVERAL YEARS LATER, THE COURT AGREED WITH YOU. WELL, AT THAT POINT YOU'D BE PRETTY HAPPY. BUT THEN YOU FIND OUT THAT THE GOVERNMENT HAS APPEALED THE DECISION. YOU MIGHT NOT BE HAPPY ABOUT THAT BUT AT LEAST YOU'D ADMIT THAT THE GOVERNMENT WAS WITHIN ITS RIGHTS IN APPEALING, THAT'S OUR SYSTEM. BUT, WHILE YOUR SUCCESSFUL LOWER COURT DECISION IS ON APPEAL, YOU LEARN THAT A BILL HAS BEEN INTRODUCED IN THE U.S. CONGRESS, RETROACTIVE TO 1992, WHICH AT THAT POINT

MIGHT BE 5, 10, 15 OR MAYBE EVEN 17 YEARS AGO, THAT 'CLARIFIES' THE IRS POSITION THAT THERE IS NO DEDUCTION OF HOME MORTGAGE INTEREST FOR PERSONS WHO WERE MEMBERS OF THE ALASKA SENATE JUDICIARY COMMITTEE ON APRIL 21, 1993. LET ME SUBMIT TO YOU THAT YOU MIGHT BE JUST A LITTLE BIT UPSET.

LEGISLATIVE BILLS WITH RETROACTIVE APPLICATION AFFECTING TAX LIABILITIES ARE RARE. THEY SHOULDN'T BE ADOPTED UNLESS THERE ARE COMPELLING REASONS. WE DON'T HAVE THOSE REASONS HERE.

YOU ARE BEING ASKED TO CONSIDER A BILL CONTAINING STATEMENTS OF "LEGISLATIVE FINDINGS AND PURPOSE" THAT ARE CLEARLY INCORRECT AND NOT FACTUALLY SUPPORTED. THE FACTS ARE:

1. THIS BILL IS MERELY AN AFTER THE FACT ADMINISTRATIVE INTERPRETATION OF THE CURRENT ASSESSMENT DEADLINE STATUTE. THE INTERPRETATION IS AN ISSUE THE DEPARTMENT HAS FLIP-FLOPPED ON SINCE 1978.

2. THE DEPARTMENT'S PRIOR INTERPRETATION OF THE ASSESSMENT DEADLINE STATUTE IS NOT CORRECT AND THE ALASKA COURT HAS TOLD THE DEPARTMENT SO.
3. THE DEPARTMENT'S ABILITY TO AUDIT TAX RETURNS IS NOT CONSTRAINED BY ITS AUDIT RESOURCES.
4. TAXPAYERS DID NOT CONTRIBUTE TO ANY DELAY IN THE PERIOD REQUIRED TO ISSUE TAX ASSESSMENTS.
5. ARGUMENTS THAT SUBSTANTIAL PUBLIC REVENUES ARE AT RISK IN PENDING LITIGATION CANNOT BE SUBSTANTIATED.
6. THE STATEMENT THAT THE DECISIONS REACHED BY THE SUPERIOR COURT IN THE EXXON AND TESORO PETROLEUM CORPORATION CASES ARE INCONSISTENT IS NOT SUPPORTABLE; IN FACT THEY'RE NOT EVEN RELATED.
7. THREE YEARS IS ENOUGH TIME TO ANALYZE A TAXPAYER'S RETURN AND DETERMINE THE TAXES DUE THE STATE. IN ADDITION, THE

STATUTE ALLOWS FOR FURTHER WRITTEN EXTENSIONS IF NECESSARY. EXXON HAS ALWAYS GRANTED DIVISION REQUESTS FOR EXTENSIONS.

LET ME DOCUMENT THESE POINTS:

FIRST, YOU ARE BEING ASKED TO FIND THAT THIS BILL IS MERELY A CLARIFICATION OF A LONG-STANDING ADMINISTRATIVE INTERPRETATION THAT UNDER THE STATUTE FOR YEARS BACK TO 1976 THE OIL AND GAS DIVISION OF THE DEPARTMENT OF REVENUE CAN ISSUE NEW ASSESSMENTS OR INCREASE EXISTING ASSESSMENTS AT ANY TIME WHILE AN ADMINISTRATIVE APPEAL IS UNDERWAY. WE BELIEVE THE DIVISION CANNOT DO THAT UNDER THE EXISTING STATUTE. WE ARE NOT ALONE IN OUR BELIEF. THE ALASKA SUPERIOR COURT ALSO DECIDED THAT THE DIVISION CANNOT DO THAT.

IT IS NOT A CLARIFICATION OF THE LAW FOR YOU TO AFFIRM AN ADMINISTRATIVE INTERPRETATION THAT AN ALASKA COURT HAS ALREADY FOUND TO BE INCONSISTENT WITH THE EXISTING STATUTE. THE COURT HAS

FOUND THAT THE STATUTE IS CLEAR ON ITS
FACE AND DOES NOT REQUIRE CLARIFICATION.

FURTHERMORE, I SUBMIT THAT NO SUCH
LONG-STANDING INTERPRETATION AND
PRACTICE EVER EXISTED.

LETS LOOK FOR A MINUTE AT THE HISTORY
SURROUNDING THE DEPARTMENT OF REVENUE'S
STATEMENTS ON THIS STATUTE. IN THE
DIVISION'S ORIGINAL 1978 ASSESSMENTS
AGAINST BOTH STANDARD OIL AND EXXON BOTH
DATED AUGUST 15, 1979, THE DIVISION STATED
THAT THE ASSESSMENTS, QUOTE: "MAY CHANGE
AS THE RESULT OF ANY AUDIT FINDINGS WITHIN
THREE YEARS OF THE DATE OF THIS NOTICE OF
ASSESSMENT." UNQUOTE. WHILE WE AND THE
ALASKA SUPERIOR COURT DISAGREE WITH EVEN
THAT STATEMENT...THAT THE 3 YEARS STARTS
FROM THE ASSESSMENT DATE...YOU SHOULD
NOTE THAT THOSE NOTICES DID NOT SAY THAT
THE ASSESSMENT MAY CHANGE AS THE RESULT
OF ANY AUDIT FINDINGS "AT ANY TIME DURING
THE ADMINISTRATIVE CONSIDERATION OF A
TAXPAYER GRIEVANCE". YET THATS WHAT'S
PROPOSED FOR IN SB 185. THIS IS A

FUNDAMENTAL ABROGATION OF DUE PROCESS AND IS NOT IN THE STATE'S BEST INTEREST.

THE NEXT STATEMENT I'M AWARE OF WAS MADE ON OCTOBER 16, 1984, WHEN ATTORNEY GENERAL GORSUCH ISSUED A FORMAL OPINION ADDRESSING THE INTERPRETATION OF THE ASSESSMENT DEADLINE STATUTE. THE A.G. ADVISED THAT ONCE THE THREE YEAR ASSESSMENT DEADLINE HAS EXPIRED, AN ASSESSMENT SHOULD NOT BE AMENDED UNLESS "THE AUDIT STAFF CAN SHOW GOOD CAUSE", INCLUDING AN EXPLANATION OF WHY THE ISSUE WAS NOT ADDRESSED BY THE AUDIT STAFF ON THE ORIGINAL ASSESSMENT. THE DEPARTMENT OF REVENUE NEVER ACCEPTED THIS OPINION AS THE DEFINITIVE AND BINDING STATEMENT OF THE LAW; AND IT SAID AS MUCH IN ALMOST THOSE VERY WORDS TO THE ALASKA SUPREME COURT IN A 1989 CASE. THE DEPARTMENT'S REFUSAL TO ACCEPT THE INTERPRETATION IN THIS A.G. OPINION IS ALSO SHOWN BY THE FACT THAT THE INTERPRETATION THAT THE DEPARTMENT NOW ADVOCATES IS AT VARIANCE WITH THE 1984 A.G. OPINION.

IN THE ALASKA SUPREME COURT CASE I JUST REFERRED TO, STANDARD ALASKA PRODUCTION COMPANY SUED THE DEPARTMENT OF REVENUE CHALLENGING THE DEPARTMENT'S ATTEMPT TO ASSESS ADDITIONAL TAXES AFTER THE THREE-YEAR PERIOD HAD EXPIRED. IT ASKED THE COURT TO DECLARE THAT THE DEPARTMENT'S INTERPRETATION OF THE LAW WAS ILLEGAL. THE DEPARTMENT TOLD THE COURT, AND HERE I QUOTE FROM THE OPINION, "NO OFFICIAL DEPARTMENT VIEW AS TO STANDARD'S LIMITATIONS CLAIMS HAD YET BEEN FORMULATED." DESPITE THE FACT THAT AN ATTORNEY GENERAL'S OPINION HAD BEEN RENDERED ON THE MATTER IN 1984, THE DEPARTMENT EMPHATICALLY ARGUED TO THE SUPREME COURT IN THIS 1989 CASE THAT IT HAD NOT YET MADE UP ITS MIND ABOUT THE CORRECT INTERPRETATION OF THE STATUTE. THE COURT RELIED ON THE DEPARTMENT'S EXPRESS DISCLAIMER OF ANY "LONG-STANDING INTERPRETATION" OF THE STATUTE AND SENT THE QUESTION BACK TO THE DEPARTMENT FOR ADMINISTRATIVE REVIEW.

NOW, LET'S LOOK AT WHAT HAPPENED IN EXXON'S 1978 INCOME TAX CASE. THE

DEPARTMENT OF REVENUE WENT TO THE UNUSUAL EFFORT OF INVITING OTHER TAXPAYERS TO SUBMIT "FRIEND OF THE COURT" BRIEFS ON THE ASSESSMENT DEADLINE QUESTION, TO HELP THE DEPARTMENT FORMULATE ITS POSITION AS TO THE PROPER INTERPRETATION OF THE STATUTE. THAT REQUEST IS CONTAINED IN A LETTER SENT TO TAXPAYERS ON MARCH 25, '988. THE LETTER STATES - AND I QUOTE - "YOUR PARTICIPATION IS INVITED IN ORDER TO ASSIST THE COMMISSIONER IN FOCUSING ON THE BROADER IMPLICATIONS OF VARIOUS POSSIBLE RULINGS ON THE STATUTE OF LIMITATIONS" UNQUOTE.

FINALLY, ON MAY 26, 1989, THE DEPARTMENT ISSUED ITS FORMAL HEARING DECISION IN EXXON'S 1978 CASE ADDRESSING THE ASSESSMENT DEADLINE QUESTION. THIS DECISION IN MAY OF 1989 IS THE DEPARTMENT'S FIRST SOLID EXPRESSION OF ITS CURRENT INTERPRETATION OF THE LAW, BRINGING TO A CLOSE THE UNCERTAINTY THAT IT HAD ITSELF MAINTAINED IN THE STANDARD OIL DECLARATORY JUDGMENT ACTION. IN SUMMARY, THE DEPARTMENT DID NOT ARRIVE AT ITS "LONG-STANDING INTERPRETATION" OF

THE LAW UNTIL MAY 26, 1989. ANY SUGGESTION THAT THE DEPARTMENT HAD SOME EARLIER LONG-STANDING INTERPRETATION SIMPLY CANNOT BE RECONCILED WITH THESE FACTS, AND THESE FACTS ARE INDISPUTABLE.

THERE SHOULD BE NO DOUBT THAT THIS LEGISLATIVE PROPOSAL ATTEMPTS TO COMPLETELY CHANGE THE STATUTE UNDER WHICH TAXPAYERS HAVE CONDUCTED THEIR BUSINESS FOR THE LAST 17 YEARS! WE HAVE HAD A LONG-STANDING INTERPRETATION AND PRACTICE WITH RESPECT TO THE EXISTING STATUTE. THE DIFFERENCE BETWEEN OUR INTERPRETATION AND THE STATE'S IS THAT OURS HAS BEEN REVIEWED BY THE ALASKA COURT AND ACCEPTED, WHILE THE STATE'S INTERPRETATION FIRST REVEALED IN MAY OF 1989 WAS REVIEWED AND HAS BEEN REJECTED. JUDGE CRANSTON STATED (AND I QUOTE HERE) 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 DIVISION FROM ISSUING INITIAL OR AMENDED TAX ASSESSMENTS LATER THAN

THREE YEARS AFTER THE RETURN HAS BEEN
FILED BY THE TAXPAYER. UNQUOTE

THE STATUTORY EXCEPTIONS ARE CLEARLY
ENUMERATED: THEY ARE:

1. TAXPAYER FRAUD.
2. TAXPAYER'S FAILURE TO FILE A RETURN, OR
3. WHERE BOTH THE TAXPAYER AND THE
DEPARTMENT HAVE SIGNED A WRITTEN
AGREEMENT EXTENDING THE TIME PERIOD
TO ISSUE AN ASSESSMENT.

AS JUDGE CRANSTON WENT ON TO STATE IN HIS
OPINION (QUOTE) "NONE OF THESE EXCEPTIONS
EXIST IN THE FACTS OF THIS CASE." (END
QUOTE) THAT'S A FACT.

NEXT, IN THE FINDINGS, YOU ARE BEING ASKED
TO FIND THAT THE DIVISION'S ABILITY TO AUDIT
RETURNS WAS CONSTRAINED BY AUDIT
RESOURCES THROUGHOUT THE 1970'S AND
1980'S. THERE IS JUST NO EVIDENCE THAT THIS
IS TRUE. IN FACT THE PUBLIC RECORD SHOWS
THAT IN EVERY SESSION OF THE LEGISLATURE

SINCE NORTH SLOPE PRODUCTION BEGAN THE OIL AND GAS AUDIT DIVISION (FORMERLY THE DIVISION OF PETROLEUM REVENUE) HAS RECEIVED VIRTUALLY EVERY DOLLAR REQUESTED IN THE GOVERNOR'S BUDGET REQUEST.

ADEQUACY OF STAFFING HAS NEVER BEEN AN ISSUE. WHAT ACCOUNTS FOR THE DIVISION'S UNTIMELY TAX ASSESSMENTS IS THE ZEAL OF ITS AUDIT STAFF TO "UP THE ANTE" ON TAXPAYERS WHO EXERCISE THEIR RIGHT TO APPEAL ASSESSMENTS. FORMER DIVISION DIRECTOR WILLIAM FLOERCHINGER ADMITTED IN A PUBLISHED INTERVIEW TWO YEARS AGO THAT THE AUDIT DIVISION HAS MADE IT A PRACTICE TO ISSUE "HIGHBALL ASSESSMENTS". ALSO, ONE OF THE DEPARTMENT'S OWN HEARING OFFICERS TOLD THE LEGISLATURE IN 1986 THAT THE COMMON PRACTICE OF THE AUDITORS IS TO MAKE ASSESSMENTS THAT ARE VERY HIGH AS COMPARED TO THE AMOUNTS ON WHICH THE DEPARTMENT LATER SETTLES WITH THE TAXPAYERS.

LET'S FACE IT: THE DIVISION'S STANDARD OPERATING PROCEDURE IS TO ISSUE "AMENDED

ASSESSMENTS" BASED ON NEW AND ULTIMATELY DISCREDITED LEGAL THEORIES TO GAIN LEVERAGE FOR NEGOTIATION. THE "INADEQUATE STAFFING LEVELS" ARGUMENT IS NOT VALID. THAT'S A FACT.

YOU ARE BEING ASKED TO FIND THAT TAXPAYERS CONTRIBUTED TO THE DELAYS IN ISSUING TAX ASSESSMENTS BECAUSE THEY "REQUESTED SUSPENSION OF ACTION ON ASSESSMENTS" DURING THE LITIGATION CHALLENGING THE SEPARATE ACCOUNTING INCOME TAX. THIS DID NOT IMPACT THE DIVISION'S ABILITY TO CONDUCT AUDITS AND TO MAKE ASSESSMENTS IN OUR CASE. PRIOR TO THE TIME THAT THE CONSTITUTIONALITY OF THE SEPARATE ACCOUNTING INCOME TAX STATUTE WAS CONTESTED, THE DIVISION HAD ALREADY CONDUCTED AN EXTENSIVE AUDIT OF EXXON'S 1978 RECORDS. FOR THE 1979 - 81 SEPARATE ACCOUNTING INCOME TAX YEARS, THE DIVISION ALSO REQUESTED AND EXXON PROVIDED WRITTEN WAIVERS EXTENDING THE ASSESSMENT DEADLINE. ADDITIONALLY, DURING THE PENDENCY OF THAT LAWSUIT ABOUT THE CONSTITUTIONALITY OF THE SEPARATE ACCOUNTING METHOD, THE DIVISION

ISSUED SEVERAL AMENDED ASSESSMENTS,
CONDUCTED THE INFORMAL CONFERENCE WITH
EXXON UNDER ITS APPEAL REGULATIONS AND
ISSUED ITS INFORMAL CONFERENCE DECISION.
IN SHORT, THE CASE WAS VERY ACTIVE WHILE
THE CONSTITUTIONAL LITIGATION WAS PENDING.

YOU ARE BEING ASKED TO FIND THAT THERE IS
SUBSTANTIAL PUBLIC REVENUE AT RISK IN
PENDING LITIGATION WHICH, IF THE STATE
LOSES ITS APPEAL IN THE EXXON CASE, WOULD
BE CONTRARY TO THE PUBLIC INTEREST SINCE
SUCH REVENUES WOULD BE UNCOLLECTIBLE.

ANY ESTIMATES OF DIRE CONSEQUENCES TO
THE ALASKA TREASURY IF YOU VOTE DOWN THIS
BILL (AS I HOPE YOU WILL) ARE PURE
SPECULATION.

FIRST OF ALL, BECAUSE OF THE CONFIDENTIAL
NATURE OF THE INTERACTIONS WITH THE
DEPARTMENT, I CANNOT SPEAK TO OTHER
TAXPAYER ASSESSMENTS THAT MIGHT BE
IMPACTED BY THIS BILL. IN FACT, THE DIVISION
MIGHT TRY TO ISSUE ANOTHER ASSESSMENT TO
EXXON OR SOME OTHER TAXPAYER TODAY AND
THEN TELL YOU TOMORROW THERE'S EVEN

MORE MONEY AT STAKE. BUT NEITHER YOU NOR I CAN TELL IF THAT ASSESSMENT WOULD BE SUSTAINED ON THE MERITS. WITHOUT KNOWING THE MERITS OF THE STATE'S LATE ASSESSMENTS. NO ONE CAN KNOW OR EVEN ESTIMATE WHAT REVENUE, IF ANY, MIGHT BE LOST IF THE CURRENT LIMITATIONS STATUTE REMAINS UNCHANGED. ANY ESTIMATES ARE RANK SPECULATION. THAT'S A FACT.

NEXT, YOU ARE BEING ASKED TO PASS SB 185 TO RESOLVE THE ALLEGED INCONSISTENCY BETWEEN DECISIONS REACHED BY THE SUPERIOR COURTS IN THE EXXON AND TESORO PETROLEUM CORPORATION CASES. TO SUGGEST THAT LEGISLATION IS NEEDED TO RESOLVE THE DECISIONS IN THESE TWO CASES IS CLEARLY WRONG AND VERY MISLEADING. THE TWO CASES INVOLVED TWO ENTIRELY DIFFERENT QUESTIONS UNDER TWO DIFFERENT STATUTES ADDRESSING TWO DIFFERENT SUBJECTS. NEITHER THE ATTORNEY GENERAL NOR THE DEPARTMENT VIEW THE QUESTIONS ADDRESSED IN THESE TWO CASES AS RELATED, MUCH LESS IDENTICAL. THE BEST EVIDENCE OF THIS IS THAT ALTHOUGH THE STATE WON THE TESORO CASE IN THE SUPERIOR COURT, THEY

DID NOT EVEN CITE IT IN THEIR BRIEFING OF THE EXXON CASE. THAT'S A FACT.

FINALLY, YOU ARE BEING ASKED TO FIND THAT THREE YEARS IS NOT ENOUGH TIME TO ANALYZE A TAXPAYER'S RETURN AND DETERMINE THE TAXES DUE THE STATE.

THE PROPONENTS OF AMENDING THE ASSESSMENT DEADLINE STATUTE CLAIM THAT THREE YEARS IS NOT ENOUGH TIME GIVEN THE ALLEGEDLY OBSCURE AND COMPLEX ISSUES INVOLVED IN DETERMINING THE TRUE VALUE OF A TAXPAYER'S OIL. THAT ASSUMPTION IS NOT SUBSTANTIATED. IN FACT, IT IS CONTRADICTED BY THE DEPARTMENT'S EXPERIENCE IN EXXON'S 1978 INCOME TAX CASE - WHICH IS, TO OUR KNOWLEDGE, ONE OF ONLY TWO CASES THAT THE DEPARTMENT HAS ACTUALLY ADJUDICATED TO A FINAL CONCLUSION ON THE ISSUE OF CRUDE VALUE. LET'S TALK A LITTLE ABOUT THAT CASE.

EXXON'S 1978 CASE HAS BEEN THE SUBJECT OF TWO FORMAL CONFERENCE DECISIONS ADDRESSING THE VALUE OF NORTH SLOPE OIL TRANSFERRED TO ITS REFINERIES. THE

SECOND ONE, ISSUED JUST A FEW DAYS AGO (APRIL 9, 1993), ESTABLISHES THAT IF THE AUDIT DIVISION COMPLIES WITH THE LAW IN DOING ITS JOB, THE DETERMINATION OF VALUE IS NOT THAT DIFFICULT. THE REASON THAT IT HAS TAKEN NEARLY FIFTEEN YEARS TO GET TO THE BOTTOM OF THIS IN EXXON'S 1978 CASE IS, QUITE SIMPLE. THE DIVISION TRIED TO IGNORE THE LAW AND EXXON PROPERLY (AND SUCCESSFULLY) OBJECTED. LET ME EXPLAIN:

FROM THE BEGINNING, EXXON HAS CONSISTENTLY TAKEN THE POSITION THAT THE BEST WAY TO VALUE THE OIL IT KEPT FOR ITS OWN REFINERIES WAS TO USE THE VALUES THAT WERE USED WHEN PRODUCERS SOLD OIL TO THIRD PARTIES. THE DIVISION REFUSED TO ACCEPT THIS APPROACH AND INSISTED UPON SUBSTITUTING HYPOTHETICAL VALUES FOR THE OIL BASED UPON ITS SO-CALLED "MARKET BASKET" OF IMPORTED OILS. MOST OF THE TIME-CONSUMING LEGAL SKIRMISHING IN EXXON'S 1978 INCOME TAX CASE INVOLVED THE COMPLICATED PROBLEMS ENCOUNTERED IN USING THAT APPROACH. NOW, AFTER ALL IS SAID AND DONE, COMMISSIONER REXWINKEL HAS DECIDED THAT THE VALUES THAT EXXON

USED WERE IN FACT A PROPER BASIS FOR VALUING THE OIL THAT EXXON KEPT FOR ITS REFINERIES.

WHAT IS MORE - AND THIS IS THE SUPREME IRONY OF THE FOURTEEN-YEAR LEGAL STRUGGLE IS THAT WHEN THE DEPARTMENT'S METHODOLOGY IS PROPERLY APPLIED AS THE COMMISSIONER RULED, EXXON ACTUALLY OVERVALUED ITS OIL. THAT'S RIGHT. WE PAID MORE TAXES ON THE CRUDE VALUE ISSUE WITH OUR RETURN AS ORIGINALLY FILED THAN THE COMMISSIONER SAID WE SHOULD HAVE PAID.

COMMISSIONER REXWINKEL'S APRIL 9 DECISION IN EXXON'S TAX CASE FURTHER CONFIRMED THAT EXXON HAD A RIGHT TO RELY UPON THE DEPARTMENT'S PUBLISHED FORMAL HEARING DECISION IN THE 1983... THAT'S RIGHT, 1983 -- AMERADA HESS CASE REGARDING THE USE OF NORTH SLOPE SALES DATA IN DETERMINING THE IMPUTED VALUE OF THE OIL THAT EXXON KEPT FOR ITS OWN REFINERIES. IN THE OPINION, THE COMMISSIONER CRITICIZED THE OIL AND GAS AUDIT DIVISION FOR REFUSING TO COMPLY WITH THAT DECISION. HE SAID THAT HE FOUND IT "DISCONCERTING" THAT THE DIVISION WOULD

ATTEMPT TO IGNORE THE AMERADA HESS METHODOLOGY, WHICH EXXON DUTIFULLY USED. HE ALSO CRITICIZED THE DIVISION'S EXPERT WITNESS FOR REFUSING TO FOLLOW THE ANALYSIS OF THE ALASKA SUPREME COURT BY REPUDIATING THE MARKET VALUE CONCEPT THAT IS THE CORE PRINCIPLE OF THE TAX LAW.

IN SHORT, THERE IS ONE SIMPLE EXPLANATION FOR WHY THIS 1978 TAX CASE HAS TAKEN SC LONG TO RESOLVE: THE OIL AND GAS AUDIT DIVISION SIMPLY IGNORED THE LAW IN THE AMERADA HESS CASE. IF IT HAD DONE WHAT COMMISSIONER REXWINKEL SAYS IT SHOULD HAVE DONE - FOLLOW ITS OWN REGULATION AS IT WAS INTERPRETED IN THE 1983 AMERADA HESS CASE - THIS FOURTEEN YEAR LEGAL BATTLE WOULD NEVER HAVE OCCURRED. TAXPAYERS SHOULD NOT BE PUNISHED FOR THE DIVISION'S HAVING IGNORED THE RULINGS AND REGULATIONS OF ITS OWN COMMISSIONERS.

IN CLOSING LET ME SPEND A FEW MINUTES TALKING ABOUT SOME OF THE EFFECTS OF THIS BILL ON THE STATE AND IT TAXPAYERS.

IF THIS LEGISLATION HAD PROSPECTIVE APPLICATION ONLY. I'D STILL BE SITTING HERE TO TELL YOU IT WOULD BE A BAD LAW FOR THE ADMINISTRATION OF THE TAX LAWS OF THE STATE OF ALASKA. IT WOULD BE BAD BECAUSE:

- (1) IT REMOVES ANY INCENTIVE FOR THE DIVISION TO BRING CASES TO FINAL RESOLUTION WHILE THEY TRY TO CREATE NEW WAYS TO EXTRACT MORE MONEY FROM THE TAXPAYERS THAT WILL ULTIMATELY NOT BE SUPPORTABLE. IN FACT, IT ADDS A FURTHER DISINCENTIVE, SINCE A FINAL RESOLUTION WOULD CLOSE THE DOOR ON ISSUING AN ASSESSMENT TWENTY YEARS FROM NOW ON SOME ISSUE NEITHER THE DIVISION NOR THE TAXPAYER COULD EVEN DREAM OF TODAY.
- (2) IT LEAVES TAXPAYERS AT THE WHIM OF THE DIVISION AND NEVER ABLE TO FINALLY RESOLVE THEIR TAX YEARS HERE IN ALASKA. TAXPAYERS HAVE AN INTEREST IN BEING PROTECTED FROM STALE CLAIMS. THEY ALSO HAVE AN

INTEREST IN THE UNIFORM
ADMINISTRATION OF THE TAX LAWS
AND TIMELY ASSESSMENT AND
COLLECTION PRACTICES, AND IN
PROCEDURAL FAIRNESS.

- (3) IT WILL INCREASE AN ALREADY OVER
BURDENSOME LITIGATION SITUATION
ON TAX ISSUES HERE IN ALASKA SINCE
TAXPAYERS WILL BE REQUIRED TO
DEFEND AGAINST SOME ENTIRELY NEW
AND PERHAPS MISDIRECTED
INTERPRETATION EMBODIED IN AN
ASSESSMENT THAT COULD BE ISSUED
15, 20 OR MORE YEARS AFTER THE
FACT. THAT'S WRONG. WE URGE YOU
TO PASS LAWS THAT WILL SEEK TO
RESOLVE TAX CONFLICTS FOR BOTH
ALASKA AND TAXPAYERS.

THIS BILL IS FAR WORSE THAN MERE
PROSPECTIVE APPLICATION. IT ALSO CALLS FOR
RETROACTIVE APPLICATION TO 1976. THAT'S
WRONG, THAT'S OFFENSIVE AND THAT'S
INTERFERING WITH A DECISION OF AN ALASKAN
COURT. THAT COURT SAID WHAT THE PLAIN
LEGAL MEANING OF THE CURRENT LEGISLATIVE

LANGUAGE IS. THAT DECISION DOES NOT SQUARE WITH WHAT THE DIVISION WOULD LIKE; SO NOW YOU'VE GOT THIS BILL TO UNDERMINE THAT DECISION. THAT'S WRONG, THAT'S INTERFERENCE WITH A VALID COURT DECISION APPLYING THE LAW AS ADOPTED BY THIS LEGISLATURE AND SIGNED BY THE GOVERNOR.

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

EVIDENCE OF THE VALUE OF ANS IN THE MARKET. IS DISCONCERTING."

IF THIS BILL BECOMES THE LAW, WE'LL HAVE MORE ISSUES LIKE THIS, NOT FEWER. WE'LL HAVE LONGER PERIODS BEFORE RESOLUTION, NOT SHORTER. WE'LL BOTH HAVE TO UTILIZE MORE OF OUR MANPOWER AND FINANCIAL RESOURCES RESOLVING THESE ASSESSMENTS, NOT LESS. AS I'VE SAID BEFORE AND I'LL SAY IT AGAIN.... THAT'S NOT RIGHT...DON'T PROMOTE TAX GRIDLOCK. TAKE A STEP TO END IT. REJECT SB 185.

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

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

March 22, 1994

Good afternoon, Mr. Chairman and Members of the Committee. My name is Joe Householder. I am General Tax Counsel for Unocal Corporation, and I am here today to testify on behalf of the Alaska Oil and Gas Association ("AOGA") as chairman of the AOGA Tax Committee. Thank you for this opportunity to testify on Senate Bill 185.

AOGA is a trade association whose 18 member companies account for the majority of oil and gas exploration, production, transportation and marketing activities in Alaska. AOGA absolutely opposes SB 185. This bill represents unwise and unfair tax policy. It would set terrible precedent. It will provoke more litigation than it would resolve. Even the findings it purports to make as justification for what it does are incomplete, misleading or simply untrue. Let me examine what SB 185 would do, in order to explain our reasons for such strong opposition.

SB 185 proposes to amend the statutes of limitations for taxes. There are two of these statutes. One gives the Department of Revenue three years from the time a tax return is filed, in which to audit the return and issue an assessment for additional tax. The other gives the Department six years from the time it

issues a tax assessment, in which to go start legal proceedings to collect the tax claimed in the assessment. There is no need for this legislation. Under current law each of these statutes provides that the time period may be extended by mutual agreement between the Department and the taxpayer, and there is no limit to the number of times an extension may be further extended by mutual agreement. Since the very beginning of oil & gas production in Alaska, it has been the general practice of oil and gas taxpayers to agree to extensions whenever the Department asked for them. This is common practice both within and outside Alaska. It is also fairly well settled law, at least in the U.S., that once a statute of limitations period has expired, it cannot be resurrected, despite the willingness of the parties. That brings me to an interesting point with respect to the subject matter here. While I am not personally knowledgeable about the tax affairs of other AOGA members, I am familiar with those of Unocal. Unocal has typically received its assessments on, or after, the very last day of the extended limitations period - which, by the way, may have been 10 years after the taxable period. How then, could our appeal of the assessment be found to extend the limitations period which has already expired by the time we file the appeal? I'll tell you - the fact is that the Department is asking you to enact legislation which will likely be unsuccessful in the Courts. It is only the retroactivity they can be interested in because they have not asserted a problem with receiving waivers under current law.

Speaking of the courts, let me tell you what they say:

"[T]he purpose of statutes of limitations is to encourage promptness in the prosecution of actions and thus avoid the injustice which may result from the prosecution of stale claims. Statutes of limitations attempt to protect against the difficulties caused by lost evidence, faded memories and disappearing

witnesses." These aren't my words, nor the words of anyone else with AOGA. They are the words of the Alaska Supreme Court in *Byrne v. Ogle*, reported at page 718 in Volume 488 of the Second Series of the Pacific Reporter.

Think about that for a minute. The purpose is "to encourage promptness ... and thus avoid the injustice which may result from the prosecution of stale claims." How might this "injustice" occur? Because of "the difficulties caused by lost evidence, faded memories and disappearing witnesses." In other words, as time passes it gets harder and harder to prove what exactly you did and why you did it. Statutes of limitations are supposed to let you defend yourself while you still have the evidence available to do it. AOGA members are facing tax claims based on events 15 years and more in the past. Not only do memories fade and witnesses disappear during such a long time, but people may die and documents may be lost or difficult to locate. Even corporate taxpayers may merge and disappear altogether during such a long time.

Now, what does SB 185 propose to do? Well, section 2 would amend the three-year statute of limitations to allow the Department of Revenue to "increase or decrease the amount of tax due by issuing or amending an assessment at any time during the administrative consideration of a taxpayer grievance on an assessment[.]" In other words, instead of requiring the Department to do its audits and make its claims while the evidence is still fresh, it will allow the tax audits to drag on while the Department and its outside consultants try to invent new ways of viewing the past. All it will need to do is issue an assessment for substantial sums that is full of mistakes or questionable claims, and that will force the taxpayer to appeal. Under the proposed changes, there is no restraint on how long the appeal process can go on and the Department could make

assessments indefinitely so long as it held the appeal within the Department's procedures.

But SB 185 goes beyond being an open invitation for the Department of Revenue to ignore the quest for prompt and reasonable audits. So far only a handful of tax appeals have made it into court and become public. But it is clear from those that have become public, that the Department at various times in the past has told taxpayers what the tax rules mean and how they should comply with the law. Sometimes this advice came from the Department's auditors during an audit of the taxpayer. Sometimes it came from the Commissioner of Revenue. Sometimes it came in the form of instructions on the tax return forms. One would expect taxpayers to follow such advice when it is given. Indeed, if they don't follow it and don't have a reasonable cause for not following it, they can be subject under AS 43.05.220 to negligence and failure-to-pay penalties of up to 30% of the amount of their underpayment.

But as the years passed and the tax appeals dragged on and on, something bad started to happen. The Department began getting new advice from outside consultants and lawyers about how much more taxes could have been due if the Department hadn't given its original advice. Some of its own auditors also found ways to claim additional taxes if only the Department hadn't given that inconsistent earlier advice. And so the Department began issuing new assessments which repudiated its earlier positions and its advice that taxpayers had relied on. Instead, the new assessments asserted different positions under strained and unexpected re-interpretations of the tax statutes and regulations.

SB 185 would ratify this process of retroactive revisionism. As long as the Department still has a taxpayer's appeal pending before it, its audit and litigation

teams would be free to develop radical new theories for yet more taxes and, under SB 185, they could amend the assessment to incorporate those new positions.

How does this square with the idea of "avoid[ing] injustice" due to "difficulties caused by lost evidence, faded memories and disappearing witnesses" which the Alaska Supreme Court said was the purpose of a statute of limitations? Well, of course, that's a rhetorical question because it's obvious SB 185 doesn't square with that idea at all. Until a tax appeal finally makes it out of the Department and into court — which could be 10, 15 or perhaps even 20 years or more after the fact — there would effectively be no three-year statute of limitations at all under section 2 of SB 185 and no limit on the exposure that a taxpayer may face simply for having appealed an assessment containing mistakes.

Section 3 of SB 185 effectively removes the six-year statute of limitations as well while a tax appeal is pending before the Department. That section proposes to amend the six-year statute so that the six years don't begin to run until "the final administrative determination of the grievance[.]" In other words, the six years don't start until the Department finally issues its final decision in the tax appeal and the matter moves on to court.

So, between sections 2 and 3 of the bill, there would effectively be no statute of limitations at all until the Department has finished its consideration of the tax appeal.

We in AOGA do not believe this is sound policy for Alaska. It's not fair because a taxpayer who gets an assessment with mistakes in it, whether major or minor, and appeals to have them corrected, should not be exposed to

unlimited liability for an open-ended period of time simply for making that appeal. Taxpayers should not be penalized for exercising their right to appeal.

It's also not a wise policy for Alaska. This is not an easy time for the Alaskan oil industry. Prudhoe Bay production has been in decline for five years and is down by 25% despite billions of dollars of continued capital investment during that same period. This year and in the coming years other fields on the North Slope will begin their own production declines. Cook Inlet oil production has been in decline for over 20 years. On top of this, we have been hit by low oil prices, which makes it that much tougher to continue the investments that need to be made to slow down the rate of decline.

Each company up here is competing for money against other parts of the same company. None of us can afford to make all the good investments that we have opportunities for. So we only choose the best investments. Not just the best economically — often the opportunities elsewhere are economically comparable to the ones here. In such cases, if we are to make the Alaskan investment instead of the other one, there has to be something else that gives Alaska a competitive edge. SB 185 would take away some of Alaska's current edge in these decisions because it would increase the uncertainty about what our tax obligations are. We can pay today exactly what the Department of Revenue tells us to pay, but we would have no assurance that the Department will not change its position in the future and try to apply the new position retroactively back to today through the audit and appeals process.

Both ARCO and BP have said that half the North Slope production they expect to see in the year 2000 — just six years from now — could come from investments that have not yet been made. I submit that if Alaska destabilizes its

tax system and scares off those investments, the cost to the State in terms of lost taxes and royalties from that production will exceed any extra taxes that Alaska might gain by adopting SB 185 and trying to administer its taxes by hindsight.

So far I've been talking about the problems with sections 2 and 3 of SB 185. Before I move on to other parts of the bill, let me make two final points. One, why is section 3 necessary? The Department of Revenue controls the pace of the tax appeals process within the Department. Under the Department's own regulations, 15 AAC 05.030(e) - (g), the administrative hearing officer sets the schedule. If a taxpayer tried to drag the hearing out unduly, the hearing officer has the authority to cut off "[i]rrelevant and unduly repetitious evidence[.]" 15 AAC 05.030(h). So if the Department, not the taxpayer, controls the schedule and pace of the tax appeal, why can't the Department make sure it gets the hearing done within six years? Why does it need SB 185 to keep the clock from starting for the six years until the hearing is over and the Department issues its formal decision? And if the Department does somehow find it needs more than six years to get done with a tax appeal, why doesn't it just ask taxpayers for an extension of the six-year period?

The second point I'd like to make about sections 2 and 3 is that they are limited only to certain oil and gas taxes — namely, the separate-accounting income tax that was repealed in 1981, and the production tax. It's not a very friendly message that the State is sending to the petroleum industry if it changes the rules of the game just for us and no one else. In fact, it's one more bit of Alaska's competitive edge that would be thrown away. Why do this and invite at the same time litigation over whether it's constitutional to discriminate this way against one group of taxpayers?

Now I would like to discuss the retroactivity of SB 185, which is in section 4 of the bill. Not only are the proposed changes to the statutes of limitation bad policy on a prospective basis, but section 4 would make them retroactive by more than 18 years to the beginning of 1976.

There are three fundamental problems with this retroactivity. One, there is already litigation pending over the three-year statute of limitations. In fact, the Alaska Supreme Court is due to hear the case on the three-year statute in May. Adopting SB 185 retroactively would interfere in the orderly judicial resolution of that litigation. The courts are, under our constitutional system of government, the arbiter of what the statutes mean. We don't think it is appropriate to change the language of a statute retroactively and certainly not before the courts have had the chance to rule on what it means.

The second fundamental problem is that such extreme retroactivity simply goes too far. For some taxpayers, one or both of the statutes of limitations has expired, and they now have certain rights that have vested as a result. To take away those rights retroactively and without compensation as SB 185 would do is, we believe, unconstitutional.

The third fundamental problem with retroactivity relates to wise tax policy. Suppose the courts ultimately decide it is within Alaska's constitutional powers to reach back more than 18 years and change the rules of the game. Is this the stability that invites people to invest in Alaska? No, it isn't. For if the State can do it to oil companies, nothing will keep it from being able to do it legally to miners, fishermen, timber interest, investors in a Gas Pipeline, or the general public at large. Not only will SB 185 cast a pall over the oil industry here, but

over all private sectors of the state economy. Don't cripple Alaska's future through a misguided attempt to change the past.

Before I close, I need to correct the record on a number of statements in the findings and purposes of section 1 that are inaccurate, incomplete or simply untrue.

First, on lines 6 and 7 of page 1, the finding asserts that the Department has taken a certain position, described in the next three lines, in the context of the separate-accounting income tax under former AS 43.21 and the production tax under AS 43.55. This is incomplete. We believe the Department also takes this position on the income tax under AS 43.20, and may also take it for other taxes that we are unfamiliar with. We fail to see why the findings on this point, if true, should be limited to just the two oil and gas taxes.

Second, on line 11 of page 1, the finding asserts that the Department's interpretation of AS 43.05.260 is correct. This is either false or misleading. The Superior Court has ruled that the Department's interpretation of AS 43.05.260 is incorrect. While the Department's appeal of that decision to the Alaska Supreme Court is still pending, the current law of the case is that the Department is wrong.

Third, on lines 12-14 of page 1, the finding asserts that this is a clarification. In last year's hearings, Attorney General Cole testified that while working on tax claims and assessments, he found "corrections" that needed to be made to the procedural tax statutes, procedures and regulations to "balance the scales" as he put it. Corrections are not clarifications. The finding also asserts that the Department's position is a "long-standing administrative interpretation" justifying the retroactivity of SB 185 to the date of enactment of AS 43.05.260, the three-year statute of limitations. It is simply not true that the Department's