

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8393 SENATE LABOR & COMMERCE

OIL & GAS CONTRACT SUMMARY

July 1, 1990 - February 15, 1994

Contractor	Contract No.	Case	TOTAL EXPENDITURES	ROYALTY PORTION	% OF TOTAL	TAX/OTHER PORTION	% OF TOTAL
ASHBURN & MASON	No. 93-938-594	Tax	\$0	\$0	0.00%	\$0	100.00%
BARAKAT & CHAMBERLIN	No. 90-990-470	Royalty Gas	\$9,249	\$9,249	100.00%	\$0	0.00%
BIRCH, HORTON, ET AL.	No. 92-920-572	Export Ban	\$9,486	\$3,672	38.71%	\$5,814	61.29%
BIRCH, HORTON, ET AL.	No. 93-938-581	Export Ban	\$533,092	\$206,360	38.71%	\$326,732	61.29%
CONDON PARTNOW & SHARROCK	No. 83-816-068	Am Hess	\$44,256,105	\$44,256,105	100.00%	\$0	0.00%
		Phillips	\$0	\$0	100.00%	\$0	0.00%

			\$44,256,105				
CONDON PARTNOW & SHARROCK	No. 92-928-587	Tax	\$4,154,968	\$0	0.00%	\$4,154,968	100.00%
COULTER KING O'NEILL	No. 91-910-483	Contract Mgmt.	\$25,498	\$9,870	38.71%	\$15,627	61.29%
HERZFELD & RUBIN	No. 92-928-557	Tax	\$141,341	\$0	0.00%	\$141,341	100.00%
KOESTER, G. THOMAS	No. 92-924-542	Beaufort Sea	\$95,000	\$36,775	38.71%	\$58,226	61.29%
MIRROR SYSTEMS	No. 94-946-659	Lit. Support	\$315,950	\$122,304	38.71%	\$193,646	61.29%
MORRISON & FOERSTER	No. 81-783-017	TAPS	\$5,703,298	\$2,207,747	38.71%	\$3,495,551	61.29%
MORRISON & FOERSTER	No. 87-678-317	Tax	\$189,484	\$0	0.00%	\$189,484	100.00%
NEWMAN & HOLTZINGER	No. 87-961-298	TAPS	\$245,715	\$95,116	38.71%	\$150,599	61.29%
PRESTON, ET AL.	No. 84-932-096	Tax	\$9,195,362	\$0	0.00%	\$9,195,362	100.00%
QUORUM LIT.SERVICES	No. LSS018	BASIS Softwar	\$47,692	\$18,461	38.71%	\$29,230	61.29%
QUORUM LIT.SERVICES	No. 89-986-411	Lit. Support	\$299,037	\$116,106	38.71%	\$183,831	61.29%
QUORUM LIT.SERVICES	No. 93-936-634	Lit. Support	\$454,597	\$175,974	38.71%	\$278,622	61.29%
ROGOVIN, ET AL.	No. 81-783-023	TAPS	\$23,037	\$8,918	38.71%	\$14,120	61.29%
STOLLER, ROBERT	No. 90-813-476	Tesoro v. St	\$12,285	\$12,285	100.00%	\$0	0.00%
VINSON & ELKINS	No. 90-990-461	St v. ASRC	\$59,534	\$59,534	100.00%	\$0	0.00%
WASHBURN, ET AL.	No. 82-501-028	Beaufort Sea	\$24,717	\$93,495	38.71%	\$148,032	61.29%
WASHBURN, ET AL.	No. 91-912-493	Am Hess	\$39,863	\$39,863	100.00%	\$0	0.00%
WASHBURN, ET AL.	No. 93-938-588	Tax	\$5,139,425	\$0	0.00%	\$5,139,425	100.00%
WILLIAMS, STEPHAN H.	No. 92-920-551	Lease Disputes	\$3,554	\$3,554	100.00%	\$0	0.00%
TOTALS:			\$71,195,998	\$47,475,388	66.68%	\$23,720,610	33.32%

DEPARTMENT OF LAW - OIL & GAS IN-HOUSE RSA SUMMARY
July 1, 1990 - February 15, 1994

Fiscal Year	Coll. Code	Title/Case	TOTAL EXPENDITURES	ROYALTY PORTION	% OF TOTAL	TAX/OTHER PORTION	% OF TOTAL
FY91	740	O&G Operations	\$2,277,670	\$881,686	38.71%	\$1,395,984	61.29%
	741	O&G DP	\$239,630	\$92,761	38.71%	\$146,869	61.29%
			\$2,517,300				
FY92	740	O&G Operations	\$2,716,700	\$1,051,635	38.71%	\$1,665,065	61.29%
	741	O&G DP	\$206,700	\$80,014	38.71%	\$126,686	61.29%
			\$2,923,400				
FY93	740	O&G Operations	\$2,853,990	\$1,104,780	38.71%	\$1,749,210	61.29%
	741	O&G DP	\$229,717	\$88,923	38.71%	\$140,794	61.29%
			\$3,083,707				
FY94	740	O&G Operations	\$1,801,007	\$697,170	38.71%	\$1,103,837	61.29%
	741	O&G DP	\$94,810	\$36,701	38.71%	\$58,109	61.29%
			\$1,895,817				
TOTALS:			\$10,420,224	\$4,033,669	38.71%	\$6,386,555	61.29%

TOT. OIL & GAS LITIGATION EXPENDITURES
July 1, 1990 - February 15, 1994

	TOTAL EXPENDITURES	ROYALTY PORTION	% OF TOTAL	TAX/OTHER PORTION	% OF TOTAL
O&G CONTRACTS	\$71,195,998	\$47,475,388	66.68%	\$23,720,610	33.32%
IN-HOUSE RSA'S	\$10,420,224	\$4,033,669	38.71%	\$6,386,555	61.29%
TOTALS	\$81,616,222	\$51,509,056	63.11%	\$30,107,165	36.89%

TOTAL O&G ROYALTY EXPENDITURES:	\$51,509,056
	x 25%
25% PERMANENT FUND OBLIGATION:	\$12,877,264
TOTAL O&G EXPENDITURES:	\$81,616,222
LESS PERMANENT FUND OBLIGATION:	(\$12,877,264)
CBRF OBLIGATION	\$68,738,958

ESTIMATED TOTAL OIL & GAS LITIGATION
Expenditures and Obligations: July 1, 1990 through end of FY94

Category	TOTAL EXPENDITURES	TOTAL OBLIGATIONS	ROYALTY PORTION	% OF TOTAL	TAX/OTHER PORTION	% OF TOTAL
O&G CONTRACT EXP.	\$71,195,998	\$0	\$47,475,388	66.68%	\$23,720,610	33.32%
O&G CONTRACT BAL's						
Oil Export/Misc.	\$0	\$1,908	\$739	38.71%	\$1,169	61.29%
FERC/TAPS Issues	\$0	\$94,736	\$36,672	38.71%	\$58,063	61.29%
Royalty O&G	\$0	\$255,733	\$255,733	100.00%	\$0	0.00%
Beaufort Sea	\$0	\$25,130	\$9,728	38.71%	\$15,402	61.29%
O&G Lit. Support	\$0	\$379,454	\$146,887	38.71%	\$232,567	61.29%
O&G Tax Litigation	\$0	\$974,705	\$0	0.00%	\$974,705	100.00%
PY/IN-HOUSE RSA'S	\$8,524,407	\$0	\$3,299,798	38.71%	\$5,224,609	61.29%
FY94/IN-HOUSE RSA	\$1,895,817	\$1,220,483	\$1,206,320	38.71%	\$1,909,980	61.29%
FY94/SUPPLEMENTAL	\$0	\$18,450,000	\$9,556,568	51.80%	\$8,893,432	48.20%
	\$81,616,222	\$21,402,149	\$61,987,832	60.17%	\$41,030,539	39.83%
TOTAL O&G APPROPRIATION:	\$103,018,371					
ESTIMATED TOTAL O&G ROYALTY EXPENDITURES THROUGH 6/30/94:		\$61,987,832				
		x 25%				
25% PERMANENT FUND OBLIGATION:		\$15,496,958				
TOTAL O&G APPROPRIATION:	\$103,018,371					
LESS PERMANENT FUND OBLIGATION:	(\$15,496,958)					
CBRF OBLIGATION:	\$87,521,413					

FY95 OIL & GAS APPROPRIATION REQUEST
PROJECTED EXPENDITURES

Coll Code	Title/Case	PROJECTED EXPENDITURES	ROYALTY PORTION	% OF TOTAL	TAX/OTHER PORTION	% OF TOTAL
	FY95 Appropriation Request	\$36,012,000	\$13,821,703	38.38%	\$22,190,297	61.62%
	TOTAL O&G REQUEST:	\$36,012,000				
	ESTIMATED TOTAL O&G ROYALTY EXPENDITURES THROUGH 6/30/95:	\$13,821,703				
		<u> </u>	x 25%			
	25% APFC OBLIGATION:	\$3,455,426				
	TOTAL O&G FY91-FY94	\$103,018,371				
	TOTAL O&G FY95 PROJECTED	<u>\$36,012,000</u>				
	TOTAL O&G FY91-FY95	\$139,030,371				
	LESS FY91-FY94 APFC OBLIGATION	(\$15,496,958)				
	LESS FY95 APFC OBLIGATION	<u>(\$3,455,426)</u>				
	FY91-FY95 CBRF OBLIGATION	\$120,077,987				

STATE OF ALASKA

DEPARTMENT OF REVENUE

OIL AND GAS AUDIT DIVISION

WALTER J. HICKEL, GOVERNOR

550 WEST 7TH AVENUE, SUITE 570
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-1383
(907) 277-5827

April 19, 1994

The Honorable Tim Kelly
The State Senate
P.O. Box 210001
Anchorage, AK 99521

Re: SB 185, Relating to Statutes of Limitation on Oil and Gas Taxes

Dear Senator Kelly:

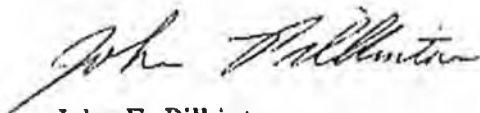
I understand that you inquired about the effect of Section 2 of SB 185 on taxpayers in the state. Section 2 clarifies that during administrative consideration of a taxpayer's appeal of an assessment, the Department of Revenue may amend that assessment. The original assessment must be issued within the three-year limitation period unless extended by the taxpayer. There has been discussion of further amending this Section to provide for a prospective five-year limitation period for assessments, and not permitting the Department to amend the assessment after that five-year period, even if the administration process continues past the five-year period. This means that, as to past years, if the taxpayer appeals the assessment, the Department may amend that assessment during the administrative process. However, as to future years, the Department may not amend an assessment once the five years have passed.

The clarification of the three-year assessment period will affect all oil and gas taxpayers with open audits and assessments for tax years through 1993. The effect of this amendment on taxpayers will vary depending on the number of tax years still in dispute, but all oil and gas producer/taxpayers will be affected by this legislation.

The prospective five-year statute of limitations provides a deadline for amendments regardless of the administrative process. Although at first glance, the five-year period may appear to be more generous than the three-year period, but because it is an absolute bar, it is not. In large tax disputes, it has been the Department's experience that it takes significantly longer than five years to process a case from assessment through informal conference and through formal hearing.

I hope this answers your question. If you have other concerns or questions, please call me.

Very truly,



John E. Pilkinton
Director

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 19, 1994

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907)451-2311
FAX: (907)451-2846
- P.O. BOX 110300-DIMOND COURT HC
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

The Honorable Tim Kelly
Chair, Senate Labor & Commerce
Room 101
State Capitol
Juneau, AK 99801-1182

Re: Committee Substitute for
SB 185 - statutes of
limitation

Dear Senator Kelly:

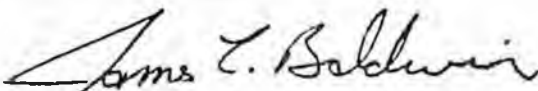
Attached is a summary of the Committee Substitute that the Department of Law intends to propose for consideration by your committee for SB 185. The summary also explains the effects of this amendment. Also attached is a letter from John Pilkinton, Director of the Oil & Gas Audit Division, Department of Revenue explaining the effect of a five-year statute of limitation on producer taxpayers.

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

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



James L. Baldwin
Assistant Attorney General

JLB:tg

Attachments

STATE OF ALASKA

DEPARTMENT OF REVENUE

OIL AND GAS AUDIT DIVISION

WALTER J. HICKEL, GOVERNOR

550 WEST 7TH AVENUE, SUITE 570
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-1303
(907) 277-5927

April 19, 1994

The Honorable Tim Kelly
The State Senate
P.O. Box 210001
Anchorage, AK 99521

Re: SB 185, Relating to Statutes of Limitation on Oil and Gas Taxes

Dear Senator Kelly:

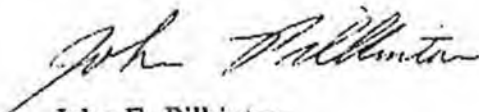
I understand that you inquired about the effect of Section 2 of SB 185 on taxpayers in the state. Section 2 clarifies that during administrative consideration of a taxpayer's appeal of an assessment, the Department of Revenue may amend that assessment. The original assessment must be issued within the three-year limitation period unless extended by the taxpayer. There has been discussion of further amending this Section to provide for a prospective five-year limitation period for assessments, and not permitting the Department to amend the assessment after that five-year period, even if the administration process continues past the five-year period. This means that, as to past years, if the taxpayer appeals the assessment, the Department may amend that assessment during the administrative process. However, as to future years, the Department may not amend an assessment once the five years have passed.

The clarification of the three-year assessment period will affect all oil and gas taxpayers with open audits and assessments for tax years through 1993. The effect of this amendment on taxpayers will vary depending on the number of tax years still in dispute, but all oil and gas producer/taxpayers will be affected by this legislation.

The prospective five-year statute of limitations provides a deadline for amendments regardless of the administrative process. Although at first glance, the five-year period may appear to be more generous than the three-year period, but because it is an absolute bar, it is not. In large tax disputes, it has been the Department's experience that it takes significantly longer than five years to process a case from assessment through informal conference and through formal hearing.

I hope this answers your question. If you have other concerns or questions, please call me.

Very truly,



John E. Pilkinton
Director

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.

Following "administrative":

Delete "interpretation"

Insert "interpretations"

Page 2, line 3:

Following "state:"

Delete "and"

Page 3, line 4:

Following "incorporated":

Delete ","

Insert ";

Page 3, following line 6:

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 43.05.160(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, 199~~7~~³;

(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

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ARE
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Insert "and"

Following "and":

Page 2, line 14:

Delete "and"

Following "taxes":

Page 2, line 14:

Insert "and"

Delete "and"

Following "and":

Page 2, line 14:

Insert "and"

Delete "and"

Following "and":

Page 2, line 14:

AS AMENDED BY

taxpayer's return to which, except as provided in
amendment of regulations which have been from the date the
as amended by the Secretary to provide for the issuance and
and to the public interest to amend
provision in the statute and the state will be allowed; and
otherwise a provision of the statute, other than time to

Page 3, following line 17:

Insert a new paragraph to read:

"(2) To make retrospective changes to the statute of limitations for assessments in AS 43.05.140 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, 199~~7~~³."

Page 3, line 17:

Following "assessed":

Delete all material.

Page 3, following line 17:

Insert:

"(1) for tax periods ending before January 1, 199~~8~~⁴,
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 1, line 11:

Following "amending":

Insert "an assessment:"

Page 3, lines 10 - 18:

Delete "AS 43.20.275."

Page 3, following line 18:

Insert new material to read:

(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 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 "As amended by sec. 2 of this Act, and sec. "

STATE OF ALASKA

DEPARTMENT OF REVENUE

OIL AND GAS AUDIT DIVISION

WALTER J. HICKEL, GOVERNOR

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PHONE: (907) 278-1383
(907) 277-5627

April 22, 1994

The Honorable Tim Kelly, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
Room 101
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Kelly:

I have amended the table of historical information that was a handout during my testimony at the hearing last Thursday, to add the line for settled cases as you requested. I offer a couple of brief explanatory notes to make the table more useful.

First, the table was constructed on a calendar year rather than fiscal year basis merely because the information was more readily available in that format. Line One (the "Number of Taxpayers") reflects the end-of-year number of taxpayers for AS 43.55 and former AS 43.21. Consequently, the number of taxpayers is twice as high for the separate accounting income tax years: 1978 through 1981. This number might be slightly different for any particular month of the tax year as interests changed hands or new fields with new producers began reporting.

Line Two represents total dollars collected in that calendar year. The bulk of this amount would have been received with the tax returns, but some increment will be the result of settlements.

Line Three is the number of original audits issued for that calendar year whenever issued. This number will vary from the number of taxpayers for several reasons. During any tax period, there have always been some taxpayers who were not audited because they either had no tax liability (e.g., negative elf) or because their interest was so small that a cursory examination failed to disclose the possibility of generating any additional tax owed. Additionally, some small producers would have had all their interests examined in one audit, while larger producers would have received separate audit examinations for gas and oil, and in some cases for Cook Inlet interests separately from the North Slope interests.

The Honorable Tim Kelly
April 22., 1994
page 2

Line Four represents the number of amendments to the audits reflected in line three, whenever made. Thus, if a 1978 case was amended in 1985, that would be reflected in the 1978 amended case column rather than in 1985. The purpose here is to give a clearer picture of how many of the older cases have actually been amended, and to show the decline in amendment numbers as time has progressed. As mentioned in testimony, the early years represented a period of learning for both the auditors and industry during a time of turmoil in oil prices and federal regulation. In recent years, cases have often been corrected and resolved in the informal conference process without the need for formal amended assessments.

The entry on new Line Seven (Closed Cases) represents settled audits.

Finally, it should be pointed out that a number of audits are currently in progress for tax years 1987 through 1990 and are due to be issued within the next few months. Also, we are actively pursuing reasonable settlements of the open, issued audits.

I hope this information is of assistance. I would be more than happy to respond to any questions you or members of your committee may have.

Sincerely,



John E. Pilkinton, Director
Oil and Gas Audit Division

Enclosures

Oil and Gas Division Historical Information

(Calendar Year Basis)

	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994 ^(e)
1 Number of Taxpayers (a)	41	41	43	47	19	19	20	20	18	16	17	18	18	18	19	19	18
2 Tax Dollars Collected (b)	\$263	\$669	\$1359	\$2110	\$2404	\$1223	\$1379	\$1328	\$901	\$998	\$1050	\$996	\$1374	\$1067	\$1163	\$1057	\$239
3 Number of Audits Issued (c)	35	47	40	46	25	22	20	24	20	12	9	10	6	5	1	0	0
4 Number of Amended Assessments	19	22	17	12	6	2	2	1	0	0	0	0	0	0	0	0	0
5 Number of Taxpayers with Cases in Court (d)	1	1	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6 Number of Taxpayers with Open Cases	2	3	4	5	5	5	5	8	9	6	6	6	6	5	1	0	0
7 Closed Audits	32	43	33	41	20	17	15	16	11	5	3	4	0	0	0	0	0
8 Auditors/ Appeals Staff	0	5	5	6	8	10	10	10	10	14	18	23	24	22	21	21	21

(a) Includes both AS 43.55 and AS 43.21, 1973-1981

(b) Includes payments and settlements for this calendar year - Millions of Dollars

(c) May include separate Oil and Gas Assessments for the same taxpayer in some years

(d) Either in court or issues reserved pending court decision

(e) Reflects information available through 4/20/94

WALTER J. HICKEL, GOVERNOR

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FAIRBANKS, ALASKA 99701-4679
PHONE (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465 7735

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 22, 1994

Honorable Tim Kelly
Chair
Senate Labor and Commerce Committee
ATT: Josh Fink
Room 101, State Capitol
Juneau, Alaska 99801-1182

Re: Department of Laws' Proposed
Amendment to SB 185 (Statute
of Limitations)

Dear Senator Kelly:

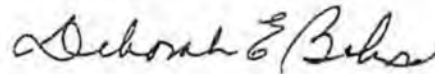
As requested by your staff, enclosed are the Department
of Law's requested amendments to SB 185 in amendment form.

If you have questions, please contact me.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Deborah E. Behr
Assistant Attorney General

BMB:DEB:ci

cc: Richard Eliason
Legislative Liaison
Office of the Governor

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 interpretations 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)(2) which provides that for tax periods beginning after December 31, 1993, the Department of Revenue may increase or decrease the amount of a tax due by issuing or amending an assessment within five years after a return is filed. After expiration of the five-year period, the department may not increase an assessment.

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

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

Section 5. This section provides that all provisions of the bill take effect immediately under AS 01.10.070(c).

AMENDMENT

OFFERED IN THE SENATE LABOR AND COMMERCE COMMITTEE

TO: SB 185

Page 1, line 7:

Following "production":

Delete ", or severance,"

Page 1, line 11:

Following "department's":

Delete "interpretation"

Insert "interpretations"

Following "AS 43.05.260":

Delete "is"

Insert "and 43.05.270 are"

Page 1, line 12:

Following "AS 43.05.260":

Insert "and 43.05.270"

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 2, line 3:

Following "production":

Delete ", or severance,"

Page 3, line 3:

Following "state;":

Delete "and"

Page 3, line 6:

Following "uncollected":

Delete "."

Insert ";

Page 3, following line 6:

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, 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), regarding tax periods beginning after December 31, 1993, 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 11:

Following "(2) to":

Delete "resolve"

Insert "clarify existing law that resulted in"

Page 3, line 11:

Following "inconsistent decisions":

Delete "of"

Page 3, line 14:

Following "Civ.":

Insert "; and"

Page 3, following line 14:

Insert a new paragraph to read:

"(3) to make 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 3, line 17:

Following "assessed":

Delete all material.

Page 3, following line 17:

Insert:

"(1) for tax periods ending before January 1, 1994,
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 - 25:

Delete all material.

Page 3, following line 25:

Insert new material to read:

"(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 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 "AS 43.05.260(a)(1), enacted by sec. 2 of this Act, and sec. "

bcc: James Baldwin
Sen Tan
Tina Kobayashi
Deborah Behr

04/28/93 09:52

312 463 4617

COMP LEGAL SERV

002



John Sharp
Comptroller

COMPTROLLER OF PUBLIC ACCOUNTS**STATE OF TEXAS**

111 West 6th Street
P. O. Box 13528
Austin, Texas 78711-3528

Toll Free 1(800)531-5441
Fax (512)474-1643

April 27, 1993

Honorable Charles E. Cole
Attorney General
State of Alaska
P. O. Box K - State Capitol
Juneau, Alaska 99811-0300

Dear General Cole:

Ms. Tina Kobayashi of your office has made additional inquiry concerning our administrative process and that I address her concerns in a letter to you.

To start, most of our cases in the hearings process are audit appeals. Following the completion of an audit, the taxpayer is mailed a copy of the audit results and a Texas Notice of Tax Due. The taxpayer has 30 days to request a hearing or the liability becomes final and subject to collection action. To request a hearing, the taxpayer must file a statement of grounds that sets forth in detail the issues that will be contested in the hearing. The statute of limitations is tolled upon our receipt of the request for hearing and statement of grounds. The statute remains tolled during the pendency of the case until a final decision is issued. It then begins to run again.

While it would be the rare situation, it is my belief that an assessment can be increased during the hearings process as long as the statute of limitations has not run. I find support for this belief is Sec. 111.001 of the Tax Code and Texas Constitution Article 3 Sec. 55 and Article 8 Sec. 10. The Constitutional provisions prohibit forgiveness of tax indebtedness and the statute places the duty upon this office to collect taxes. I think it makes little difference legally whether an audit is in the hearings process. Policy considerations could of course dictate a different result.

04/28/93 09:53

512 483 4617


COMP LEGAL SERV

003

Honorable Charles E. Cole
Page 2

If you have any additional questions concerning our procedures, please call me at
1-800-531-5441, extension 5-0528 or at 512/475-0528.

Sincerely,



Michael J. Borkland
Chief Hearings Attorney
Legal Services Division

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

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

April 23, 1993

Michael Borkland
Chief Hearings Attorney
Legal Services
P. O. Box 13528
Austin, TX 78711

Dear Mr. Borkland:

The State of Alaska is involved in a controversy concerning the interpretation of our statute of limitation on oil and gas tax assessments. In our discussions with legislators and other interested parties, we have used Texas (a major oil and gas producing state) as an example of how other states handle limitations on assessment.

As I read Texas statutes § 111.201 and § 111.205 - 207, Texas suspends its four-year statute of limitations during administrative appeals of tax assessments. In other words, if information discovered during the administrative process shows that a taxpayer owes more than originally assessed, Texas' Tax Division may increase its original assessment to reflect the additional amount owed even though the four-year assessment period has expired. Assistant Attorney General Tina Kobayashi informs me that you confirmed that that statutory interpretation was correct in a telephone call yesterday. You also stated that the taxing authority has a duty to the public to increase the assessment when evidence shows that more tax is owed by the taxpayer. In addition, you stated that you were not aware of any challenge by any taxpayer of the Tax Division's interpretation.

Some people claim our reading of the Texas statutes is incorrect, therefore, I would appreciate verification from your office that our interpretation is correct. Our fax machine number is (907)465-6735 or (907)465-2075. Thank you very much for your time and assistance.

Very truly yours,


Charles E. Cole
Attorney General

CEC:tg

7-430

§ 111.201

STATE TAXATION
Title 2

→ § 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 3 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 ☞ 313.

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.e.

§ 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.

COLLECTION PROCEDURES
Ch. 111

§ 111.203

Prior Laws:

Acts 1959, 56th Leg., 3rd C.S., p. 197, ch. 1,
art. 1.045.

Acts 1967, 58th 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, § (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

§ 111.203

STATE TAXATION Title 2

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 1981 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, see 34 TAC § 3.339.

Library References

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

Note 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. 1509, 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:

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.

§ 448, § 1.
§ 102, § 2.
ch. 389,
A).

Texes

Administrative

Comptroller of Public Accounts, tax administrator:
TAC § 3.230.

ents. see 34

§ 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:

§ 111.206

STATE TAXATION Title 2

(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.
Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, art. 1.045, § (F).
V.A.T.S. Tax.-Gen. art. 1.045, § (F).

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.

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).

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(f).
V.A.T.S. Tax.-Gen. art. 1.045, § (E).

Library References

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

Notes of Decisions

Construction and application

I. 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.

Alabama

Alabama Repealed

CTIONS

§ 40-

§ 40-1-34

requisite court
otherwise conf
v. Alabama, 74

§ 40-1-34. 1

made directly to department
1992, No. 92-186, § 80, effe

October 1, 1992.

§ 40-1-36. Limitation of actions on collection of certain taxes. Repealed
by Acts 1992, No. 92-186, § 80, effective October 1, 1992.

Cross references. — As to additional clarifi-
cation of limitation periods, see §§ 40-29-50
through 40-29-52.

§ 40-1-44. Interest on delinquent taxes and overpayments.

(a) Interest shall be added as provided herein to any tax or other amount
due the department which is not paid by the due date. Interest on any
delinquency shall be charged from the due date of the tax, except (1) interest
on delinquent license taxes levied under Chapter 12 of this Title 40 shall be
charged from the delinquent date provided in subsection (e) of Section
40-12-10; and (2) interest on delinquent license tax and registration fees
levied on motor vehicles shall be charged beginning after the period allowed
for registration or renewal; and (3) interest on the freight lines and equipment
companies tax levied in Section 40-21-52 shall be charged from the delinquent
date thereof. Such interest shall be computed based on the underpayment rate
established by the Secretary of the Treasury under the authority of 26 USC
6621.

(b)(1) Except as provided in subdivision (2) of this subsection (b), interest
shall be paid by the department on any refund of tax erroneously paid
directly to the department. Interest shall be computed on any overpayment
from the date of overpayment to the department; except, a. interest on any
refund resulting from a net operating loss carryover or carryback shall be
computed from the date the claim giving rise to the refund is filed, b.
interest on any overpayment of tax withheld and paid over to the state
pursuant to Article 2 of Chapter 18 of this Title 40 and estimated tax paid
pursuant to Section 40-18-83, shall be paid beginning 90 days after the due
date of the return required by Section 40-18-27 for individuals, and Section
40-18-39 for corporations, or the date such return is filed, whichever is later.
Interest as required above shall be computed at the same rate as provided
herein for interest on underpayments.

(2) No interest shall be paid on any overpayment of the following taxes:
a. Taxes paid by entities for which a refund is allowed by Sections
40-9-12 and 40-9-13;
b. License taxes which are refunded pursuant to Sections 40-12-23 and
40-12-24;

of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate applicable to liabilities due the Department of Revenue from the date of the sale; or, in the discretion of the commissioner or his delegate, the sale may be declared to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in subsections (b) and (c) of this section. In the event of such readvertisement and sale any new purchaser shall receive such property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited. (Acts 1983, 4th Ex. Sess., No. 83-891, p. 128, § 9; Acts 1992, No. 92-186, § 76.)

The 1992 amendment, effective October 1, 1992, deleted the former last sentence of subsection (b) which read: "Whenever levy is made without regard to the thirty-day notice period, public notice of sale of the property seized shall be made within such thirty-day period unless section 40-29-27 (relating to sale of perishable

goods) is applicable"; substituted "in which the taxpayer has at least 50 percent interest" for "in which the taxpayer has controlling interest and may not include property wherein the taxpayer may share in ownership with other persons" in the second sentence of subsection (c); and rewrote subsection (d).

ARTICLE 3.

LIMITATIONS ON ASSESSMENT AND COLLECTION.

§ 40-29-50. **Limitations on assessment; income tax.** Repealed by Acts 1992, No. 92-186, § 80, effective October 1, 1992.

§ 40-29-52. **Suspension of running of period of limitation.**

(a) *General rule.* — The running of the period of limitations provided in this Title 40 for collecting any tax shall be suspended for the period during which the commissioner is prohibited from collecting by levy or a proceeding in court and for 60 days thereafter.

(b) *Assets of taxpayer in control or custody of court.* — The period of limitations on collection prescribed in this title shall be suspended for the period the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the State of Alabama, and for six months thereafter.

(c) *Taxpayer outside State of Alabama.* — The running of the period of limitations on collection prescribed in this Title 40 shall be suspended for the period during which the taxpayer is outside the State of Alabama if such period or absence is for a continuous period of at least six months. If the preceding sentence applies and at the time of the taxpayer's return to the State of Alabama the period of limitations on collection after assessment prescribed in Section 40-29-51 would expire before the expiration of six months from the date of his return, such period shall not expire before the expiration of such six months.

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 and void for failure to make
 the property may again be
 s (b) and (c) of this section. In
 y new purchaser shall receive
 ar of any claim or right of the
 whatsoever, and the amount
 chaser shall be forfeited. (Acts
 Acts 1992, No. 92-186, § 76.)

pplicable"; substituted "in which the
 as at least 50 percent interest" for
 the taxpayer has controlling interest
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 a the second sentence of subsection
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COLLECTION.

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(d) *Case under Title 11 of the United States Code (Bankruptcy).* — The
 running of the period of limitations provided in Section 40-29-51 for collection
 shall, in a case under Title 11 of the United States Code (Bankruptcy), be
 suspended for the period during which the commissioner is prohibited by
 reason of such case from collecting said tax and for six months thereafter.
 (Acts 1983, 4th Ex. Sess., No. 83-891, p. 128, § 20; Acts 1992, No. 92-186,
 § 77.)

The 1992 amendment, effective October 1,
 1992, rewrote this section.

ARTICLE 4.

ADDITIONS TO TAX AND PENALTIES.

§ 40-29-72. Rules for application of assessable penalties; "person"
 defined.

Cross references. — As to so-called "100%
 penalty" provisions for trust fund taxes, see, in
 conjunction with this section, § 40-29-73.

§ 40-29-73. Failure to collect and pay over tax, or attempt to evade or
 defeat tax.

Cross references. — As to so-called "100%
 penalty" provisions for trust fund taxes, see, in
 conjunction with this section, § 40-29-72.

ARTICLE 5.

JEOPARDY.

§ 40-29-90. Jeopardy assessment — For income tax.

(a) *Termination of taxable period.* — If the commissioner or his delegate
 finds that a taxpayer designs quickly to depart from the State of Alabama or
 to remove his property therein, or to do any other act tending to prejudice or to
 render wholly or partly ineffectual proceedings to collect the income tax for
 the current or the preceding taxable year unless such proceedings be brought
 without delay, the commissioner or his delegate shall declare the taxable
 period for such taxpayer immediately terminated, and shall cause notice of
 such finding and declaration to be given the taxpayer, together with a demand
 for immediate payment of the tax for the taxable period so declared
 terminated and of the tax for the preceding taxable year or so much of such
 tax as is unpaid, whether or not the time otherwise allowed by law for filing
 return and paying the tax has expired; and such taxes shall thereupon become
 immediately due and payable. In any proceeding in court brought to enforce
 payment of taxes made due and payable by virtue of the provisions of this

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Period of 5 years for
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95.091 Limitation on actions to collect taxes.—

(1)(a) Except in the case of taxes for which certificates have been sold or of taxes enumerated in s. 72.011, any tax lien granted by law to the state or any of its political subdivisions, any municipality, any public corporation or body politic, or any other entity having authority to levy and collect taxes shall expire 5 years after the date the tax is assessed or becomes delinquent, whichever is later. No action may be begun to collect any tax after the expiration of the lien securing the payment of the tax.

(b) Any tax lien granted by law to the state or any of its political subdivisions for any tax enumerated in s. 72.011 shall expire 20 years after the last date the tax may be assessed, after the tax becomes delinquent, or after the filing of a tax warrant, whichever is later. An action to collect any tax enumerated in s. 72.011 may not be commenced after the expiration of the lien securing the payment of the tax.

(2) If no lien to secure the payment of a tax is provided by law, no action may be begun to collect the tax after 5 years from the date the tax is assessed or becomes delinquent, whichever is later.

(3)(a)1 With the exception of taxes levied under chapter 198 and tax adjustments made pursuant to s. 220.23, the Department of Revenue may determine and assess the amount of any tax, penalty, or interest due under any tax enumerated in s. 72.011:

a. Within 5 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later;

b. Within 6 years after the date the taxpayer either makes a substantial underpayment of tax, or files a substantially incorrect return;

c. At any time while the right to a refund or credit of the tax is available to the taxpayer;

d. At any time after the taxpayer has failed to make any required payment of the tax, has failed to file a required return, or has filed a grossly false or fraudulent return; or

e. In any case in which there has been a refund of tax erroneously made for any reason, within 5 years after making such refund, or at any time after making such refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

2. For the purpose of this paragraph, a tax return filed before the last day prescribed by law, including any extension thereof, shall be deemed to have been filed on such last day, and payments made prior to the last day prescribed by law shall be deemed to have been paid on such last day.

(b) The limitations in this subsection shall be tolled for a period of 2 years if the Department of Revenue has issued a notice of intent to conduct an audit or investigation of the taxpayer's account within the applicable period of time as specified in this subsection. The department shall commence an audit within 120 days after it issues a notice of intent to conduct an audit unless the taxpayer requests a delay. If the taxpayer does not request a delay and the department does not begin the audit within 120 days after issuing the notice, the tolling period shall terminate.

(4) If administrative or judicial proceedings for review of the tax assessment or collection are begun within a period of limitation prescribed in this section, the running of the period shall be tolled during the pendency of the proceeding. Administrative proceedings shall include taxpayer protest proceedings initiated under s. 213.21 and department rules.

History.—s. 20, ch. 74-382; s. 37, ch. 85-342; s. 49, ch. 97-8, ss. 29, 66, ch. 97-101, s. 4, ch. 98-119; s. 19, ch. 92-315.

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(1) WITHIN TWENTY YEARS.—An action on a judgment or decree of a court of record in this state.

(2) WITHIN FIVE YEARS.—

(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument.

(c) An action to foreclose a mortgage.

(3) WITHIN FOUR YEARS.—

(a) An action founded on negligence.

(b) An action relating to the determination of paternity, with the time running from the date the child reaches the age of majority.

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 15 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his employer, whichever date is latest.

(d) An action to recover public money or property held by a public officer or employee, or former public officer or employee, and obtained during, or as a result of, his public office or employment.

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SEVERANCE TAX

205.306

and complete record of all such oil produced in this state during the time so engaged in its production, and said record shall be open at all times to the inspection of the Michigan tax commission. Any corporation, association or person failing to comply with this requirement shall be subject to a penalty of not less than 500 and not more than 1,500 dollars payable to the state of Michigan, and such penalty shall accrue for each 20 days of failure to comply with this section with reference to each separate oil or gas well.

¹ Sections 205.301 and 205.302.

Historical Note

Source:	C.L.1948, § 205.304.
P.A.1929, No. 48, § 4, Eff. Aug. 28.	C.L.1970, § 205.304.
C.L.1929, § 3607.	

Library References

Licenses ⇨25, 41.
C.J.S. Licenses §§ 35, 55, 62 to 65.

205.305. Report, contents

Sec. 5. In each report required to be made by this act, such corporation, association or person making the same shall show in detail the disposition made of any such oil or gas. Said report shall show to whom any such oil or gas was sold or delivered to each, and shall show the name and location of the person, refinery, pipe line establishment, plant, factory, railroad, institution or place to which or to whom delivery was made.

Historical Note

Source:	C.L.1948, § 205.305.
P.A.1929, No. 48, § 5, Eff. Aug. 28.	C.L.1970, § 205.305.
C.L.1929, § 3608.	

Library References

Licenses ⇨25.
C.J.S. Licenses § 35.

205.306. Administration; rules; deficiency, interest, or penalty; limitations

Sec. 6. (1) The tax imposed by this act shall be administered by the revenue commissioner of the department of treasury, under Act No. 122 of the Public Acts of 1941, as amended, being sections 205.1 to 205.19 of the Michigan Compiled Laws, and this act. In case of conflict between Act No. 122 of the Public Acts of 1941, as amended, and this act, the provisions of this act shall prevail.

Michigan

205.306

TAXATION

(2) Rules shall be promulga
of the Public Acts of 1969, as
the Michigan Compiled Laws.

Act No. 306
to 24.315 of

(3) A deficiency, interest, or penalty shall not be assessed after the expiration of 4 years after the date set for the filing of the required return or the date the return was filed, whichever is later. The taxpayer shall not claim refund of any amount paid to the department after the expiration of 4 years after the date of the payment. A taxpayer shall not assign a claim against the state to any other person. If a person subject to tax under this act fraudulently conceals any liability for the tax or a part of the tax, the commissioner, upon discovery of the fraud and within 2 years thereafter, shall proceed to assess the tax with penalties and interest as provided, computed from the date on which the tax liability originally accrued and the tax, penalties, and interest shall become due and payable after notice and hearing as provided.

(4) The running of the statute of limitations shall be suspended for:

(a) The period pending a final determination of tax after issuance of a notice of intent.

(b) A period which the taxpayer and the commissioner consent to in writing.

Amended by P.A.1980, No. 166, § 1, Eff. Sept. 17.

Historical Note

Source:

- P.A.1929, No. 48, § 6, Eff. Aug. 28.
- C.L.1929, § 3609.
- C.L.1948, § 205.306.
- C.L.1970, § 205.306.
- P.A.1975, No. 5, § 1, Imd. Eff. March 25.

The 1975 amendment substituted "department" for "commission" throughout the section; inserted "examine the books, records, and files of a person required to make a report" in the first sentence; and deleted "and shall certify the same to the state treasurer for collection" following "penalties and costs" in the last sentence.

The 1980 amendment rewrote this section, which formerly read:

"The department shall have the power to examine the books, records, and files of a person required to make a report, require a producer or other person, corporation, or association required to make a report to furnish additional information as may be deemed necessary for the fair determination of the amount of severance tax, and

shall have the power to issue subpoenas and examine witnesses. Whenever it shall appear to the department that a producer or other person required to make a report has unlawfully made an untrue or incorrect report, the department shall correct the report and shall assess the severance tax thereon, together with all penalties and costs."

P.A.1980, No. 166, § 3, provided:

"This amendatory act shall not take effect unless House Bill No. 4718 (request no. 79 of the 1979 regular session of the legislature is enacted into law. This act shall take effect on the effective date of House Bill No. 4718 of the 1980 regular session of the legislature."

House Bill No. 4718 was enacted as P.A. 1980, No. 162. It became effective September 17, 1980.

P.A.1980, No. 166 was ordered to take immediate effect and was approved June 18, 1980.

MISSISSIPPI

years: a record of all oil purchased, received, procured, manufactured, refined, compounded; used, sold, stored; or delivered within this state by such distributor, together with invoices, bills of lading, and other pertinent records and papers as may be reasonably required by the commission.

It shall be the duty of every person purchasing oil from a distributor of oil or other person for the purpose of sale or distribution to maintain and keep for a period of three (3) years a record of all oil received, together with delivery tickets, invoices, bills of lading, and such other records as the commission may require.

All sales made by a distributor of oil, other than retail sales from a service station, shall be evidenced in writing; signed by the seller or his agent, shall bear the date of purchase, name and address of the purchaser and the seller, and shall show the kind and quantity of the product purchased. Sales tickets and invoices made to cash shall not be considered as complying with the terms of this article.

A dual user shall maintain records from which an accurate determination of the quantities of diesel fuel or kerosene used for highway and nonhighway purposes can be made.

If, in the normal conduct of business of a distributor of oil or dual user, the records of such distributor or dual user are maintained and kept at an office outside this state, it shall be a sufficient compliance with this section if the records shall be made available for audit and examination by the commission at such office located outside Mississippi. If a distributor or dual user fails or refuses to permit the check and audit its records during t employees to day, the commission shall have authority to have them brought to the office of the commis ave them after the subpoena is served on the distributor.

If a distributor of oil or dual user ords, or if an audit of the records of said distri rt filed by him or any other information discl paid, the commission shall make assessments from any information available, which shall be prima facie correct.

All actions by this state for the recovery of additional amounts claimed as tax due under this article must be commenced within a period of three (3) years from the date of the filing of the required report with the commission, provided that in the case of a fraudulent or false report with intent to evade tax or of a failure to file a report, action may be commenced at any time. However, when an examination of a taxpayer's records to verify returns made under this chapter has been initiated and the taxpayer notified thereof by certified mail, within the thirty-six-month examination period provided herein, the determination of the correct tax liability may be made by the commission after the expiration of said thirty-six-month examination period, provided that said determination shall be made with reasonable promptness and diligence.

SOURCES: Laws, 1981, ch. 408, § 48; 1982, ch. 438, § 12, eff from and after July 1, 1982.

Editor's Note—

Section 23 of ch. 438, Laws, 1982, effective from and after July 1, 1982, provides as follows: "SECTION 23. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57, 61 and 63, Mississippi Code of 1972, prior to July 1, 1982, whether such assessments, appeals, suits, claims

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The 1991 amendment, effective April 1, 1991, in the second sentence, substituted "department" for "board" and deleted "department" following "taxpayer."

Conflicting legislation. — Laws 1991, ch. 174, § 4, provides: "Any other act adopted by

the Wyoming legislature during the same session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

§ 39-2-214. Valuation amendments and limitation period.

(a) Effective until March 1, 1994, the department is authorized to rely on final audit findings under W.S. 9-2-2003, taxpayer amended returns or department review, and to certify mine product valuation amendments for production in calendar year 1985 and thereafter, to the county assessor of the county in which the property is located, to be entered upon the assessment rolls of the county and taxes or subject to appeal under subsection (g) of this :

(b) Commencing March 1, final audit findings, taxpayer certify mine product valuation county in which the property rolls of the county and taxes or under subsection (g) of this

commences or return is filed w should have been or was reported pursuant to W.S. 39-2-201(b)(i), whichever is later.

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authorized to rely on t review, and to assessor of the the assessment subject to appeal audit (or review) e the production

(c) The department is authorized to rely on final audit findings, taxpayer amended returns or department review, and to assess deficient severance tax payments, interest and penalty, if any, for the same periods governing mine product valuation amendments pursuant to subsections (a) and (b) of this section.

(d) All audits or department reviews, as applicable, pursuant to subsections (a), (b) and (c) of this section are subject to the following conditions:

(i) Audits are commenced when the taxpayer receives written notice of the intended action;

(ii) Prior to entering the premises of a taxpayer or third party, the taxpayer or third party shall be provided at least fourteen (14) days written notice;

(iii) Audits are completed when the final findings are issued to the taxpayer by the department of audit;

(iv) Unless otherwise agreed to in writing, audits shall be completed and the final audit findings issued to the taxpayer not later than the end of the month two (2) years after the audit is commenced;

(v) Any assessment or levy, including the assessment of a penalty and interest, if any, resulting from final audit findings or department review shall be issued within one (1) year following the completion of the audit or review;

(vi) Upon receipt of department review findings, the taxpayer shall have sixty (60) days in which to submit a response.

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Good afternoon Mr. Chairman and Committee Members

My name is John Pilkinton. I am Director of Oil & Gas Audit.
With me today is Ron Bitzer, chief of my Appeals Section.

We want to leave you with three messages-

1. SB185 and or its substitutes should be passed out of this committee with an overwhelming endorsement and passed by the Senate and House this session. There are substantial dollars at risk.

2. The personnel of Division of Oil & Gas Audit has done an outstanding job for the citizens of Alaska and instead of the castigation by industry and the media they should be applauded. The audits of Oil and Gas tax and royalties of the state are complex, gargantuan tasks done with some of the largest corporation in the world.

3. The clarification proposed in SB185 are reasonable, equitable to the companies and to Alaska's citizens.

First let me me summarize the two portions of the bill as originally submitted and the suggested substitution:

The 6 year collection statute is the least talked about portion of the bill, the simplest to understand yet with the largest exposure to the state. The existing law says 6 years from date of assessment the tax may be collected by levy or by a proceeding in court. The proposed clarification in wording provides for the later of 6 years after assessment or 6 years after final administrative or judicial appeal. Only one taxpayer has thus far raised this as a defense but in addition to assessments already past the six years, there will be several assessments made in the late 80's that could be jeopardized in the next few years if the law is not changed. We believe the taxpayers are entitled to exercise their full rights to all levels of protest without premature levy's and collection actions and urge you to give the taxpayers that protection.

The proposed 3 year clarification allows the division to increase or decrease an unpaid assessment that was previously issued within the three year statute. The concept is that the taxpayer has been put on notice with an assessment that their tax liability is in dispute and that the Division wants to collect the correct amount of tax, be it higher or lower. So the Division needs to be able to adjust its original assessment for new information. {The alternate language in the substitute bill would still provide the retroactive feature but would put a cap on the future of five years to make any assessment-- a short period when you often are not allowed to start auditing the taxpayer with the barest of information for eighteen months to two years.} Let us walk thru a quick summary of the process of audit assessment and appeal.

(CHART) of process

The amending of an assessment comes about normally in two ways. One as the taxpayer exercises its appeal rights the case is assigned to an appeals officer who looks at the audit and determines whether the audit was done in accord with Division and Department policy, is accurately done and that the facts are supported. In an informal hearing the hearing officer also may help to negotiate a compromise with the taxpayer. In a formal hearing the officer will render a judgment on the facts. The taxpayer has filed their appeal and told the Division what they believe. All of this becomes the basis of what goes to court, starting in Superior Court, if agreement is not reached.

The second, more extreme case comes about when a taxpayer plays hardball, will not provide information, will not waive the statute of limitations and the Division has to issue an assessment based on estimates- a jeopardy or bluesky assessment. This is rare for a company to do but it has happened even during my short tenure. But the more likely situation is where on a particular issue within a larger audit, the taxpayer is slow to provide information on a particular issue and force the auditor to be very very precise in asking for particular information or documents. A taxpayer in May 1986 explained to an audit team the concept of "peeling the onion". That is making the auditor work their way thru the layers of information, always asking the right questions to get to the next

layer. In this situation change is inevitable as information comes to light going through an appeal process.

Either way the assessment will be adjusted based on the facts provided and assuming no settlement will be the case that is tried.

Now permit me to give you an overview of what we are dealing with.

For 1990 to 1992 there were **11257** filings for 18 or 19 producers for as many as 28 fields for as many as 36 production months. (18144 maximum) with every producer not having an interest in every field and returns being filed for both oil and gas. Then the producers filed **3709 amended filings** for the same period (33%), (and they complain about the Division filing amended assessments.)

For 1993, the numbers are :

3993 severance tax filings

2737 amended filings by taxpayers (69%)

Each of these filings and amended filings by taxpayers has to be dealt with as one large mechanical aspect of the audit. In fact taxpayers are often trying to make amendments while we are trying to audit a return.

Now I would like to show you where we have been with this spread sheet summary. (passout copies)

Walk thru the lines

Context of the world and industry and how it has changed, things going on in 79 80--gasoline lines, price controls, windfall profits tax, no settlements of royalty or tax, emerging markets for oil.

As you see we have resolved most cases and for the earliest years there are only a couple taxpayers left and those are not there for lack of effort. There have been numerous meetings to negotiate equitable settlements to no avail. We have not convinced the taxpayers, nor have they convinced us so we move forward toward resolution in a formal hearing and if necessary to a judicial solution. We would hate to have our goodwill in trying to work out informal solution to be held against us with a judicial decree that prevents us from collecting what is due the citizens of Alaska.

TESTIMONY BY ATTORNEY GENERAL BRUCE M. BOTELHO REGARDING
SB 185 - STATUTE OF LIMITATIONS
April 7, 1994

Let me begin by reiterating that what is at stake here is not a dispute about how much tax an oil company should pay. It is not a dispute about whether the department of revenue's assessments reflect a correct or incorrect application of the production tax or the income tax laws. What is at stake is whether there can even be a determination of who is right and who is wrong and of how much is actually owed under the state's revenue laws.

What does SB 185 do?

SB 185 confirms the state's interpretation of two statutes of limitation.

With respect to AS 43.05.260, that interpretation is that so long as the department of revenue has issued an assessment on a tax year within the three year period, it may later amend that assessment to reflect new evidence that has come to light during discovery.

The second statute, AS 43.05.270, on its face declares that the department of revenue must initiate a collection action within six years of the assessment. Once again, the state's interpretation is that the period does not run while the taxpayer continues to dispute the amount that is actually due.

Why do we believe this is the right interpretation?

Let me focus on the assessment statute of limitations.

As Charlie Cole made clear in his testimony, the purpose of the statute of limitations is to require that a taxpayer be put on notice that a tax type and tax year have been challenged in a timely enough fashion that the taxpayer knows to keep records on hand.

Charlie compared the assessment to the complaint in a civil suit--a comparison that the supreme court this week also made in the Hickel v. Halford lawsuit. Charlie noted that civil statutes of limitation make no mention of relation-back and tolling, but they are well-accepted doctrines that should be applied in this context as well.

That is to say, that in a garden variety civil suit in Alaska, the plaintiff has the benefit of both these doctrines: relation-back and equitable tolling. These rights are not statutory, but arise under the common law. The industry now argues that the state should be denied these same benefits. And, in opposing SB 185, the industry argues that the legislature, in enacting AS 43.05.260,

decided to deny the state rights that are traditionally and uniformly available to other Alaska plaintiffs. This bill says they're wrong.

Well, if you're so sure of your position, why not let the Alaska Supreme Court simply decide this case. Why involve us in this controversy?

As you may know, there had been a stay in effect in the Alaska Supreme Court between May 1993 and January of this year. The State and Exxon had agreed to the stay in order to allow for continuing negotiations to see whether we could resolve our outstanding differences.

When I became attorney general, I lifted the stay and asked the Supreme Court to schedule oral argument--now set for May 18th.

So why are you involved with SB 185? There are two reasons. One is obvious. How ever strong we believe our position to be, there is the possibility we might lose.

The second reason relates to my decision to lift the stay. The state and oil companies cannot settle their differences so long as the companies assess their risk on disputed taxes that are affected by the statute of limitations at zero.

Meaningful negotiations cannot be concluded until there is a fundamental rethinking of that view. And while the Alaska Supreme Court may hear oral argument in May, I do not believe it likely that the court would issue its decision for at least several months, perhaps more than a year afterward.

The six year statute of limitations had been argued in the supreme court and had been awaiting decision for more than 13 months when we first notified the court that we were engaging in settlement discussions with Tesoro. We ultimately settled with Tesoro several months later, resulting in dismissal of the case.

In short, passage of SB 185 will put us back on track toward early, meaningful resolution of outstanding tax disputes.

Let me respond briefly to other concerns that I've heard expressed about this bill.

This bill is changing the rules in the middle of the game.

As I stated at the outset, this bill does not change any tax rule. It does confirm the longstanding position of the state--explicitly and publicly set forth in a formal opinion of the department of law 10 years ago.

I must admit that I was troubled by this argument raised by Mr. Householder on behalf of the Alaska Oil and Gas Association. When oil began flowing from Prudhoe Bay in September 1977, the rule of the game was "separate accounting". That didn't stop the industry from trying to change the rule.

In 1979 the industry filed suit to have it declared unconstitutional and to seek refunds for all monies the state would receive under the tax. And, although the tax was upheld at every stage--through the Alaska Supreme Court in 1985, with cert. denied in 1986 by the US Supreme Court--the industry was successful in getting the separate accounting act repealed in 1982.

The department of revenue is responsible for the years long delays in completing the tax cases

There is no doubt that the period of time to solve some of the oldest cases is extraordinary. There is blame to go around. There should also be recognition that the amounts at stake are some of the largest pieces of litigation in the United States; the issues are complex. They take time.

To the extent that you wish to get to the bottom of this issue, I urge you to do three things:

a. contact other oil producing states to find out whether they have cases that are as long standing as ours--I believe that you will find them.

b. schedule a separate hearing so that the department of revenue can provide you with a detailed anatomy on pending cases. Ask them to account to you for the delay.

c. And each time a representative of the industry comes forward to argue that the department has delayed resolution of their tax matter, ask him or her whether he or she is prepared to waive the confidentiality statute so that the public may make a determination about whether the department of revenue has been dilatory.

Efforts to collect these disputed taxes will seriously impair the financial viability of the companies

There is no doubt that the amounts of disputed taxes is great. But there are three points to be made:

a. They are disputed obligations that have accrued in the past;

b. The taxpayers have the ability and the right to an impartial administrative trial and full appellate review to make sure that the only taxes they pay are the "correct" taxes.

c. Virtually every taxpayer has reported in its SEC filings that it has sufficient reserves to cover its Alaska contingent tax liabilities.

Thank you for the opportunity to address you on this important matter. I urge your speedy enactment of SB 185.

March 22, 1994

TESTIMONY ON SB 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

Darrel J. Rexwinkel, Commissioner
DEPARTMENT OF REVENUE, STATE OF ALASKA

I. INTRODUCTION

My name is Darrel J. Rexwinkel, I am the Commissioner of the Department of Revenue for the State of Alaska. I am here to urge passage of SB 185 and to provide background information that will show passage of SB 185 is in the best interests of the people of the State of Alaska.

II. RECOMMENDATION

AS 43.05.260 (a) provides, ". . . the amount of a tax imposed by Title 43 must be assessed within three years after the return was filed. . . . 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," with the limited exceptions of failure to file a return or the filing of a false or fraudulent return with the intent to evade tax.

AS 43.05.270 (a) provides, "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 assessment of the tax;"

The Oil & Gas Audit Division's position is based upon the Attorney General's Opinion of October 16, 1984. This opinion provided that the statute of limitations does not bar amendments of assessments during the administrative appeals proceedings of oil and gas tax cases because its operation is suspended during those proceedings. This is proper to protect the public interest due to the extremely large amounts of tax revenues at risk.

Presently, we have assessments outstanding of \$983 million in taxes plus penalties and interest of \$2 billion for a total of \$2.983 billion subject to taxpayer claims of statute of limitations defense arguments. Certain producers have challenged the Department's interpretation in their various appeals and are asserting that assessment and collections statutes of limitations cut off the state's ability to collect taxes due and owing the state if the dispute is over 3 years old.

It is strongly urged that SB 185 be passed in order to clarify the legislature's position and affirm the Department's long standing interpretation of AS 43.05.260 and 270

III. HISTORY

The charge to the Department of Revenue is set out in AS 43.05.010. The Commissioner of Revenue must administer the tax laws of the State of Alaska including the inspection of tax returns, inspection of books and records, and the holding of conferences and hearings to determine the correct amounts of tax due and to resolve disputes. The Attorney General and the Department of Law are significantly involved in these processes.

The Petroleum Revenue Division was created in 1975, prior to TAPS coming on line in June of 1976.

In 1976 the oil and gas "separate accounting income tax" was passed by the legislature. The Department of Revenue adopted regulations to implement this act in February 1979.

The separate accounting income tax was subsequently challenged as unconstitutional by the producing companies, but the state was ultimately upheld in the United States Supreme Court, even though the state had by then repealed the law.

The Division has attempted to issue the audits as quickly as possible. The result is a backlog of cases which had been assessed and appealed to the informal or formal conference level by taxpayers.

Through December 1977, the Petroleum Revenue Division had only one Revenue Field Auditor. Tax Returns were filed with the Department of Natural Resources. In the fall of 1978, the Division began processing tax returns filed under the new separate accounting tax statute. In the Spring of 1979, the first audit was started. By September 1979, the first audit was completed.

By December 1979 the staff was increased to: a Chief of Audit Services, five revenue field auditors and one tax examiner. Between 1983 and 1985 the staff grew to eight field auditors. In July of 1985 the Petroleum Revenue Division was combined with the Audit Division. Prudhoe Bay Oil producers had seen nine years worth of production flow down TAPS and filed in excess of 200 monthly production tax returns each year (12 months x 18 producers). For some years the number of returns is double or triple that because of the filing of one or more amended returns for a month or group of months.

In December 1986, the Oil & Gas Audit Division was formed and the staff was increased to fifteen revenue auditors, two audit supervisors, two tax examiners and three appeals officers.

IV. CURRENT OPERATIONS

Currently we have sixteen revenue auditors, one audit supervisor, four appeals officers, one appeals supervisor, six members of the economic research staff, and two in the property tax section, one assistant to the director and four support and return processing positions.

The procedures prescribed for tax dispute resolution are set out in the Alaska Statutes and the Alaska Administrative Code (the Regulations). The "normal" procedure consists of an audit of a taxpayer's returns performed by the Department of Revenue, the issuance of an assessment of tax due with a notice of deficiency. The assessment is issued within the 3-year statute of limitations (or the agreed-upon extension period). The problem occurs when the department sees a need to make changes as the result of information developed during an administrative appeal. If a taxpayer disagrees with the assessment a Request for Appeal must be filed by the taxpayer within 60 days of receipt of the notice of assessment. The taxpayer may request an appeal to the informal conference level to provide additional facts, documents or relevant information. Or, the taxpayer may request a formal hearing, conducted in a more formal legal setting, with the ground work being laid for subsequent litigation if the case remains unresolved or if further appealed to the Alaska Superior Court or Alaska Supreme Court.

The assessments dealing with both production tax and separate accounting income tax are highly complicated and deal with highly confidential areas of valuation of the oil and the cost of transporting the oil since Alaska's taxes are based on the value, net of transportation costs. Any impact upon these two factors means millions of dollars in tax.

To determine the value of oil for tax purposes, essentially every barrel is traced during audit to the sales delivery point, normally the west or gulf coasts of the United States. Every barrel is also traced to a sales contract, which is examined to determine the actual consideration received by the taxpayer and then that is compared to what was reported on the tax returns and to the Department's own determination of the prevailing value of the oil in the market where sold.

This process requires voluminous data be obtained from the producing companies and careful evaluation of that data to determine the consideration received by the producer, since much of the oil is traded in-kind or refined by the producer, and not sold outright for cash. It takes professional judgment along with sophisticated factual data analysis to determine the value of the oil for tax purposes.

Alaska's oil and gas does not get to market until weeks after it is produced. The production, transportation and marketing activity encompasses many diverse and often geographically distant affiliates of large integrated oil companies. The compilation of information for just filing the tax returns involves many individuals and volumes of information. Amended returns are often filed many months and sometimes years after the original return is filed is the rule.

Any resistance or hesitation by the taxpayer companies to provide this data slows the audit process to the extent to where an auditor frequently must request a written consent of the taxpayer to extend the period for audit under the three-year statute of limitations. Taxpayers seem to be increasingly hesitant to grant such waivers.

The auditor may be forced to issue an assessment based on insufficient information, if factual data is not forthcoming during audit field work. The taxpayers then try to settle during the administrative appeals process on some other basis, in hopes of avoiding the production of invoices, contracts and records concerning the real consideration received for their oil.

One begins to grasp an understanding of the tremendous workload in terms of work-hours, document production and computer data processing required. We are dealing with some of the largest and most sophisticated corporations in the world. A dispute over taxes quickly evolves into a major legal contest of skilled attorneys and credentialed expert witnesses pitted against the State. In a recent formal hearing completed by the Department, a single taxpayer produced over 120 boxes of documents. The administrative hearing record consisted of about 40,000 pages.

Given the large volumes of oil, the large numbers of contracts and the relatively few auditors, it is a high-stakes game the taxpayers play well and to their advantage. Taxpayers attempted to use the three-year audit limitation and a six-year collection limitation period to prevent the Department from determining or collecting the "correct" tax due based on factual information discovered years after the fact.

Even the unitization of the North Slope Oil Field and the multiple-ownership of TAPS have, despite their efficiencies, created disputes among and between the producers themselves that have taken many years to resolve.

Section 2 of proposed SB 185 ensures that the Department may utilize information discovered during the course of an appeal in determining the correct amount of tax due. This is only common sense.

At the present time, the Division's normal audit practice is to audit three or four years of monthly oil & gas production tax returns in a single audit program. We are presently auditing the 1987 - 91 period of the major producers.

While some taxpayers may try to provide us information to complete the audit assessments, we frequently find that the information is incomplete and additional information is necessary to accurately analyze and develop audit issues. If the deadline expires prior to receipt of the necessary data, assessment is based on incomplete information.

If SB 185 is not passed - audits may not be completed and disputes from assessments will occur, resulting in re-auditing during the administrative appeals process. Too much tax revenue is at risk to allow oil and gas producers to go un-audited because of unrealistic statute of limitations restrictions.

In the face of reduced oil prices on the world market and the inevitable decline in North Slope oil production, every dollar of tax assessed in our audits, and ultimately collected under Alaska's tax laws, becomes more important to the State Treasury.

It is not uncommon to receive comments about how old some of the oil and gas tax cases are. Let me point out that the recent Aramco case decided by the U.S. Tax Court last December involved complex issues similar to those arising under Alaska's production tax and dealt with the 1979 - 82 tax years. That case, and the Amerada Hess Royalty litigation, both illustrate the amount of time and work involved in resolving these complex matters. These cases should dispel any thought that these lingering disputes are due to lack of activity on the part of the State of Alaska, which has been diligent in pursuing resolution of these matters.

The division presently has five assessments of AS 43.55 oil and gas production tax against three producers whose assessments were corrected based on information disclosed during the informal conference or formal hearing stages.

V. AMERADA HESS ROYALTY CASE

The taxpayers potentially have much to gain by defeating SB 185. Much of the Department's ability to issue these assessments has arisen directly from data obtained through litigation against the taxpayers in the Amerada Hess Royalty Case. One producer even developed a method of concealing the actual disposition of barrels of ANS exchanged from the consideration received, thereby burying the audit trail.

It has only been through legal discovery in the Amerada Hess Royalty case and the great volume of documents produced to the State's attorneys, that auditors were finally able to obtain much-needed factual information concerning the early sales and disposition of ANS crude. That case took almost 10 years to prepare and many tens of millions of dollars in legal and consulting fees!

Without the data obtained in the Royalty litigation, much of the information used by our auditors would still be unavailable through the "peeling of the onion" approach that producer company tax personnel put in front of State of Alaska auditors.

If the State was unable to toll the three-year and the six-year statute of limitations during the administrative appeals process, the State would be barred from determining the correct tax due under Alaska law. It is that amount to which the State is legally entitled to, and only that amount, that the Department of Revenue is trying to assess and collect.

One need only to look at the recent history of settlement revenues received to grasp the magnitude of impact upon the State Treasury these cases have.

VI. CONCLUSION

In summary, because of the large amounts of public revenues at risk and the Division's long-standing position and desire to assess and collect the correct amounts of oil and gas production and "separate accounting" taxes due the State of Alaska, I again, urge you to pass Senate Bill 185 which confirms that the six-year collection statute of limitations is tolled and allows for the issuance of amended assessments during the administrative appeals process.

QUESTIONS AND ANSWERS
Statute of Limitations Oil and Gas Taxation
CSSB 377 (former SB 185)

1. What is a statute of limitations?

A statute of limitations is a legislatively-created bar to the prosecution of a claim in a judicial or quasi-judicial proceeding based upon a specific lapse of time since the claim arose.

2. What are the current statutes of limitations involved in oil and gas taxation?

There are two. The first is a three year statute on assessments. That means that the department of revenue must issue an assessment within three years of the filing of a return by a taxpayer. The second statute requires the state to collect the tax within six years of the assessment.

3. Why is there a need for legislation about the statute of limitations?

Two separate lawsuits were filed by oil companies to challenge the department of revenue's application of these statutes. The first, filed by Exxon, and pending before the Alaska Supreme Court, challenged the department's use of amended assessments. While the department has always issued amendments within the three year period (or obtained waivers of the statute from the taxpayers), it has frequently issued amended assessments after the three year period has run. Exxon claims the state may not do this. Tesoro separately challenged the six year statute of limitations on collections, claiming that if the state has not completed the hearing process and collected the taxes within the six year period, the taxpayer is no longer obligated to pay. The purpose of the legislation is to confirm the statute's historic interpretation and application of these statutes.

4. If the matter is in the courts, why should the legislature deal with it?

There are three reasons. First, the Tesoro lawsuit involving the six year statute on collections was settled before the Alaska Supreme Court could reach a decision (the state had won in the Superior Court). Thus, there is no precedent that is binding and taxpayers remain free to litigate that issue. Second, the amounts at issue in the Exxon case before the Alaska Supreme Court make it extremely desirable to have an insurance policy. Finally, we anticipate many months to elapse between oral

argument and a decision (more than 13 months had gone by between oral argument in the Supreme Court and the parties' decision to settle in the Tesoro case without decision). That delay will adversely affect the ability of the state and individual companies to negotiate fair settlements.

5. What does the administration's proposal on the statute of limitations contained in CSBB 377 do?

The bill clarifies existing statutes of limitations. It makes clear that the time limitations on assessment and collection of oil and gas taxes are suspended for as long as a tax appeal is open. The bill also makes a prospective change to the statute of limitations on assessments, so that assessments may not be increased after five years, even if a tax appeal takes longer than that to resolve.

6. How does the proposal affect the three-year statute of limitations on assessments?

The bill ensures that for all currently pending oil company tax appeals, the department can amend its original assessments upwards or downwards. This means that, if information comes to the attention of the department of revenue during an appeal which requires an adjustment, the department can determine the correct tax amount. The bill merely confirms the department's longstanding interpretation of the statute of limitations in this regard.

7. What does the proposal do to the six-year statute of limitations on collections?

The bill confirms the department's interpretation of existing law on the six-year statute of limitations that the limitations period for tax collection is suspended until administrative and judicial appeals by the taxpayer have been completed, and the tax amount owing has been finally determined.

8. Does the proposal retroactively change the tax laws?

The basic tax laws remain the same. The proposed legislation merely improves the likelihood that the state will ultimately collect what is found to be owing under the existing tax statutes.

9. Does the proposal increase oil taxes?

No. It only affects the statute of limitations, not the tax rates or substantive rules of tax liability.

10. Is the proposed legislation fair to the oil companies?

Yes, it is. The bill ensures that the companies cannot avoid paying the correct tax after the department has all relevant information. The bill also ensures that the companies cannot delay payment of taxes by appealing the department's assessments, and then avoid payment altogether on the technical ground that the statute of limitations bars collection after the appeal is over. In fact, to not pass the legislation would be unfair to those companies who have settled the early years.

11. Does the proposed legislation affect all the oil companies equally?

The bill will affect all oil and gas taxpayers with open audits and assessments for tax years through 1993. The precise financial effect on individual companies will vary depending upon the number of tax years still in dispute, but all oil and gas producers will be affected by this proposed legislation.

12. How much money is really at stake?

Including interest and penalties, nearly three billion dollars in back tax assessments (claims) are at risk from the oil companies' statutes of limitations arguments. Final tax amounts owing the state have not been determined in all these cases, however.

13. Does the proposal allow any closed or settled cases to be reopened?

No. It affects only cases which are still open under an appeal brought by the taxpayer.

14. What do other states and the federal government do?

The federal statute specifically provides that the statutes of limitations are suspended when a taxpayer appeals an assessment. Other states have similar provisions, suspending the statute, as well. In addition, Alaska's other statutes of limitations have been interpreted consistent with the department of revenue's

position. See e.g. Civil Rule 15(c), Alaska Rules of Civil Procedure.

15. Why wasn't three years enough for the Department to complete the assessment in the past?

There are good historical, practical, and legal reasons that the process has taken so long. In brief, the tax owed depends on the "value" of the crude oil. Value was difficult to determine early on because the oil either was traded in distant markets or internally processed (so there was no arms-length transaction). In addition, the oil market was in a state of flux. The Department was not at first prepared for the size of the problem --over 5 billion barrels of oil had to be traced to final markets. And, the companies controlled the information.

16. The companies have asserted that the Department has always had plenty of resources to deal with the problems presented by these taxes. Is that true?

In 1977, the Department had one auditor; in 1979, three more were hired, but none had any special oil & gas experience. The number of auditors increased to ten by 1983. At that time, there were 19 taxpayers filing both monthly (production tax) and yearly (separate income tax) returns. Unfortunately, the state--having been unprepared at the beginning--spent the next decade playing catch-up.

17. The companies have complained about the delays in the process. Is there anything to these complaints?

The process has taken a lot of time. However, if any taxpayer thought the delays it was experiencing were unreasonable, it could have requested that appeal be taken to formal conference immediately. They have almost uniformly chosen NOT to do this. In fact, until 1990, when the interest rates increased, the taxpayers had no incentive to move the cases along because they don't have to pay until the appeals process is completed.

18. Are oil company taxpayers at the mercy of the department of revenue which can issue amended assessments ad infinitum?

No. In addition to requesting an accelerated process, each taxpayer has the right to pay the disputed amount and file a claim for refund, thus barring any additional assessments.

19. The companies have argued that this proposal enacted into law will further delay settlement of major tax litigation. Is that true?

No. The bill removes incentive to delay by making it clear that the statutes of limitations are suspended during the appeal process. This means that the taxpayers can no longer argue that they do not have to pay any tax if the process takes more than six years. This can only encourage settlement of these tax cases.

20. Many in the industry claim that the bill is unfair because it "changes the rules in the middle of the game." Is this true?

No. The underlying tax structure is not changed one iota. It is ironic, however, to hear this argument from industry. Its sense of fairness did not impede the industry's willingness to challenge Alaska's oil tax structure and demand refunds from the courts beginning in 1979. Though they lost at every stage of litigation (through the United States Supreme Court in 1986), they won the battle in 1981 by convincing the legislature that too much was at risk for it not to abandon the separate accounting income tax.

21. Does the statute of limitations bill affect any non-oil and gas taxpayer?

No. The bill is limited to taxpayers that were subject to the state's oil and gas separate accounting statute in effect between 1979 and 1981 and to the state's oil and gas production tax, AS 43.55.

22. Is the audit process really that complicated?

Yes, it is. Alaska's production and separate accounting taxes are based on the gross value of the oil at the point of production on the North Slope, thousands of miles away from the markets where the oil was used or disposed of. Verifying the value reported by a producer requires tracing each month's barrels of production to their ultimate market, valuing the oil in that market, and checking the transportation costs that are deducted to arrive at a point-of-production value.

Between 1977 and 1986 alone, the department of revenue was required to monitor

• over 5 billion barrels of oil produced on the North Slope;

- some 15,000 tanker voyages and over 26,000 pipeline tariff transactions to transport this oil;
- over 16,000 separate deliveries;
- delivery to third parties under more than 4,800 different contracts;
- ANS crude oil exchanges for 105 other crude oils.

23. Wasn't this information available because of the state's litigation with the oil producers over royalty obligations?

The state did collect this information in the litigation with the producers over royalty obligations. However, the royalty data base was not completed until 1989. The Department is now making extensive use of that data base.

24. Are ANCSA corporations affected by this legislation in any way?

No. No ANCSA corporation has an outstanding assessment pending before the department of revenue issued outside the three year statute of limitation on assessments.

25. Will collection of the disputed back taxes financially cripple any oil and gas taxpayer?

Generally speaking, the taxpayers have advised their shareholders that they have reserves specifically set aside for various tax claims, including Alaska's. Typically some variant of the following language is employed:

Settlement of the open tax matters is not expected to have a material effect on the consolidated financial position of the company and, in the opinion of management, adequate provision has been made for income and franchise taxes either under examination or subject to future examination.

S B

185

(File 4)

Letters

04/18/94
08:31:00

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCLLF

From: Mr. Thomas
3821 James Dr

Burgin

Anchorage

AK 99504

Tel: 248-3511

CONSTITUENT

Registered Voter Y

Bill# SB 185 Title: LIMITATIONS PERIOD FOR TAX ASSESSMENTS
Subject

OPPOSES THIS LEGISLATION

Message: AND HB 511: I URGE YOU TO OPPOSE THESE BILLS BECAUSE I FEEL THEY
WILL NEGATIVELY IMPACT THE AMOUNT OF INVESTMENT DOLLARS SPENT BY THE OIL
COMPANIES IN ALASKA. (LIMITATIONS PERIOD FOR TAX ASSESSMENTS)

Entered By: LIOCBBN on 4/15/94

PomID 15428

Distribution 2

MSG:

Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

04/13/94
09:47:43

PUBLIC OPINION MESSAGE SYSTEM
MEMBER OFFICE KEL Kelly

POMS100
LSNCLLF

From: Mr. Timothy K. Irvin
3605 Arctic Blvd #2915

Anchorage

AK 99503

Tel: 338-6510

CONSTITUENT

Registered Voter

Bill#

Title:

Subject OIL & GAS

NOT RELATED TO SPECIFIC LEGISLATION

Message: I AM AGAINST GOING BACK AND CHARGING TAX ON THE OIL COMPANIES THAT
HAVE ALREADY BEEN TAXED. THE STATE NEEDS TO WORK WITH THE OIL COMPANIES TO
INSURE THEY WILL STAY IN THIS STATE.

Entered By: LIOCCRI on 4/13/94

PomID 14820

Distribution 60

MSG:

Enter Next Message PF4 Menu PF6 WasteBasket PF7 Previous POM PF10 BigWaste

We the following oppose Senate Bill 185 and the House Companion Bill 511.

Our jobs here in Alaska evolve around the oilfield industry, both in exploration and production. Passage of any further taxation or retroactive taxation by our state legislators does nothing but jeopardize our job security.

The state of Alaska is way overdue towards offering incentives that will enhance these oil field companies to search for new productive fields.

Let us join together towards rebuilding that industry that once made this great state of Alaska "TICK".

Sincerely,

Mike McBinnis

Donald W. Wende

Mark R. Risher

M. J. Janning

William J. Wesson

Bob Bork

G. J. Bell

James H. Smith

Brian C. Kuntzman

John R. Walsh

Tommy M. Jensen

David Wallis

Debbie Robertson

Daroy Demers
James O. Bunker

Mark Sauve
5929 Camden Circle
Anchorage AK, 99504

The Honorable Senator Tim Kelly
Room 101
State Capitol
Juneau, Alaska 99801-1182


Dear Sir,

I am writing to you as a constituent of Senate district R in regards to Senate Bill 511 concerning the statute of limitations for oil company taxpayers. I am particularly troubled about the possibility of its passage and the ensuing devastating impact it will unquestionably have on the economy of Alaska.

It is inconceivable that a reasonable legislative body would impose such restrictions as SB 511 would make to the appeal process for the oil industry, singling out that industry for special discriminatory latent taxation. When the State was wallowing in petrodollars there was no complaint in the amount of taxes being promptly paid by the oil companies, but when the reality of fiscal responsibility finally began to set in retroactive (and in my opinion unethical) taxation became the word of the day. For the legislature to add to this legacy of shame with SB 511 is in my opinion underhanded and downright stupid in light of today's oil prices.

How can we expect modern corporations (petroleum related and otherwise) to seriously consider investment in Alaska if we send a signal to the world that they can expect a shifting taxation regime, dependent upon the whims of a mercurial legislature? The attraction of capital is now played out on a global theater and Alaska will further lose its reputation for an area with acceptable risk if SB 511 is passed. Corporations will be forced to invest their money elsewhere and Alaska will take a big step down the road to economic catastrophe. As a lifelong Alaskan I urge you sir, with all my heart, to actively oppose SB 511, a bill that can only help to bring ruin to this great state.

Sincerely,



Mark Sauve


Beth Fox
7410 Foxridge Way #H
Anchorage, AK 99518

To Senator Drue Pearce,

I am writing in reference to Senate Bill 185 to encourage your opposition to this measure. The oil industry is the most vital player in our state's economy. By passing legislation that de stabilized our state's tax policy will only lead to less industry investment and consequently less state revenue and jobs.

Having just moved up here, and adopting this state as my home, I'm a little concerned with Alaska's way of thinking. Back in Minnesota, we call em' like we see em'! And this to me looks like the biggest scam since Tea Pot Dome!!!!

Beth Fox

A handwritten signature in cursive script that reads "Beth A. Fox". The signature is written in dark ink and is positioned above the typed name and distribution list.

cc: Tim Kelly, Senate Labor and Commerce
Senator Loren Leman

To Senator Tim Kelly

From Julio Rivera
11903 Copper Mountain
Eagle River, AK 99577

What's going on here!!! Senate Bill 185 sends a clear message to the business commur. --DON'T DO BUSINESS IN ALASKA!!!!

I urge you to kill this legislation. The People have spoken, please listen....

Julio Rivera

A handwritten signature in black ink, appearing to read "Julio Rivera", written in a cursive style.

cc: Loren Leman, Senator

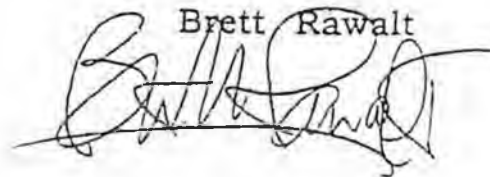
Brett Rawalt
1600 Juneau Dr. #1
Anchorage, AK
99501

For Senator Johnny Ellis

Alaska has the highest oil exploration and field development costs in the world, and the additional impact of low oil prices has already reduced investment in the search for more oil here. Let's not aggravate the problem further by passing Senate Bill 185.

The oil industry pays its fair share - Let's be fair back. I encourage your opposition to this needless legislation.

And by the way, I just became a father. When my daughter grows up, what am I going to tell her if she starts to question the way things are run in the world? We teach our children to be fair, and play by the rules. The oil industry pays more than their fair share, but rules to the game are changing. Do I tell Hosanna that life isn't fair? Government is complicated enough without having to explain to your child that it can do whatever it wants to whoever they want, regardless of what is right!!

Brett Rawalt


cc: Senator Tim Kelly

Molly Griese
P.O Box 200126
Anchorage, AK 99520

Dear Senator Kelly,

I heard about the possibility of Senate Bill 185 passing, and frankly, I'm very concerned. Haven't the oil companies contributed enough to the State's spending budget? 85% to me sounds like a heck of a lot! Not to mention all the money spent as sponsors to different events that go on around Alaska, like the Health Fair, Special Olympics, Alaska Science and Engineering Fair. The oil companies don't have to be "nice guy's". But they try to give back to Alaska a little of what was taken in the form of much needed sponsorships. So let's be fair, or otherwise, the oil companies are going to start "giving as good as they get". In other words, nothing!!!

-Molly Griese
A Concerned Citizen

A handwritten signature in cursive script that reads "Molly Griese".

cc: Loren Leman, Senator

KONIAG, INC.

(907) 561-2668 • FAX (907) 562-5258 •

• 4300 B Street, Suite 407, Anchorage, AK 99503

Members
Alaska State Legislature
Juneau, Alaska

March 29, 1994

Dear Senator/Representative,

We would like to take this opportunity to convey to all members of the State Legislature Koniag's strong opposition to S.B.185.


This legislation is clearly not in the best interest of the State of Alaska in that it will send the message that Alaska is not a good place to invest capital or conduct business. It conveys the fact that Alaska, in its zeal to extract even more revenue from the oil producers, is willing to constantly tinker with the state's tax code to achieve that objective.

We believe that the retroactive provision of S.B.185 is most likely unconstitutional and that it is clearly unfair and "anti-business".

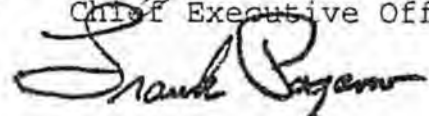
There is no doubt in our minds that this legislation, if successful, will have an adverse effect on the economy of the state. This concern was also clearly voiced by CIRI in its testimony before the Senate Labor and Commerce Committee on March 22, 1994. Additionally, this legislation would certainly cause the oil industry to re-think its investment strategies in Alaska and it will discourage other resource based companies from coming here.

We would hope that the legislature will soundly reject S.B.185 for the bad legislation it is!

Sincerely,
KONIAG CORPORATION



Uwe L. Gross
Chief Executive Officer



Frank Pagano
President

cc: Governor Walter Hickel

March 30, 1994

Sen. Tim Kelly, Chair
Senate Labor and Commerce Committee
Alaska State Legislature
State Capitol (MS3100)
Juneau, Alaska 99801-1182

Dear Sen. Kelly:

I cannot believe that any rational person would seriously consider Senate Bill 185 which would give the state carte blanche to harass the oil industry out of existence.

This bill is nothing but a ruse to cover your refusal to take responsibility for the fiscal mess we face. Instead of making some hard decisions about the future of this state, you want to take the easy way out. You want to unleash your tax dogs, hoping to harangue a few more dollars out of an industry that already pays more tax than any other that does business in Alaska?

This approach is short-sighted and extremely dangerous, not to mention unfair and probably illegal. Who would want to do business in a state where the ground rules change retroactively and the statute of limitation never expires?

I encourage you to put a stop to this insanity now, and to share my comments with the rest of your committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lana Johnson".

Lana Johnson
3440 Korovin Bay Circle
Anchorage, AK 99515
349-5419

March 30, 1994

Sen. Tim Kelly, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
State Capitol (MS3100)
Juneau, Alaska 99801-1182

Dear Senator ^{Tim} Kelly:

I am writing in opposition to SB185. This bill is ill-timed, ill-considered, and just plain unfair.

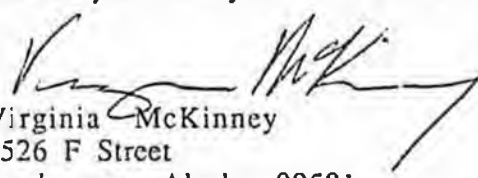
With the oil industry already packing up and leaving Alaska as oil reserves dwindle, now is not the time to impose a new industry tax of any kind. Instead, the state should be trying to figure out what it can do to entice the industry to stay longer and explore more.

The stubbornly low price of oil is another reason not to fiddle with the tax structure. The industry in our high-priced state is already reeling from these bargain basement prices. I'm afraid that a new tax will just increase exploration and development in bargain basement countries--not in Alaska.

As for the tax itself, it's sneaky and unfair. And what a perfect bullying tool it would be for these bureaucrats if they could raise a company's assessments during the middle of an appeal! There's a measure of desperation in this attempt to go back almost 20 years to try and collect more taxes off an industry that pays 85% of our bills already.

Please, vote no on SB 185.

Thank you for your consideration.


Virginia McKinney
1526 F Street
Anchorage, Alaska 99501

March 31, 1994

Tim Kelly, Senate Labor and Commerce
Room 101
State Capitol
Juneau, AK 99801-1182

Dear Senator Kelly,

I know it's not popular to quote Bill Clinton right now, especially in Alaska, but I ask you to urge your colleagues to recall his unofficial campaign slogan as the Senate considers SB 185: "It's the ECONOMY, Stupid!"

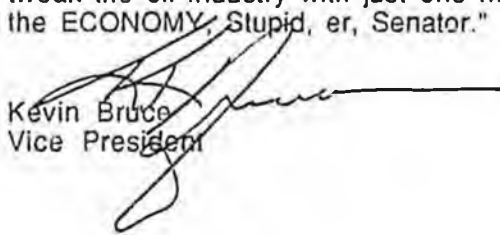
Alaska's economy is hanging by some pretty fragile threads right now. Fish prices are terrible (and stocks, too, in some areas) and showing no signs of recovery; military cutbacks are inevitable; hundreds of jobs in the non-military federal bureaucracy are going to disappear; state employment is poised to follow the Prudhoe Bay curve downward; the oil industry seems to be stable after making serious cutbacks, but is a shadow of its former self.

That leaves tourism as just about the only growth industry we have left, and most of the jobs it offers are low-paying, seasonal employment. Not exactly the kind of work a family can send the kids to college on.

Now SB 185 has the potential to play its own negative role in this scary situation, because it will represent yet another financial drain on an industry that is already on the brink of retreat from Alaska.

The bill simply gives the state too much room to abuse its already potent powers to impose and collect taxes from the oil companies. In the long run, this bill could well cause many of the companies to decide Alaska is just not worth the trouble any longer, and you know what that would mean to what's left of our weakened economy.

I urge you to oppose this bill, and if another Senator asks you why you don't want to tweak the oil industry with just one more tax bill, just give him or her this answer: "It's the ECONOMY, Stupid, er, Senator."


Kevin Bruce
Vice President

cc: Steve Rieger, Senator
Bert Sharp, Senator
Georgianna Lincoln, Senator
Judy Salo, Senator

March 30, 1994

Sen. Tim Kelly, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
State Capitol (MS3100)
Juneau, Alaska 99801-1182

Dear Senator Kelly:

I am writing to express my concern about Senate Bill 105, which apparently would allow our state bureaucrats to rewrite the tax law for the oil industry at will. This would set a dangerous precedent and must be stopped at all costs.

I don't work for an oil company, so my own just isn't (immediately) at stake. But I do know how dependent our whole state is on the oil industry. And I also know what's right. It's not right that anonymous employees of the government in Juneau can change tax policies without any public process. Where is the fairness in that? If we want to increase somebody's taxes, let's be open and above-board about it--not sneak around and try to do it on the sly.

Please vote against Senate Bill 105.

Sincerely,



Clint Shreeley
7765 Port Orford
Anchorage, AK 99516

Maarch 31, 1994

Christopher Ransom
426 G Street #1
Anchorage, AK 99501

Dear Senator Ellis,

It has just come to my attention that the legislation might try to change the tax assessment procedures as they apply to the oil companies. I'm hoping in writing this letter, as I was taught growing up, that my voice counts, and I say VOTE NO on SB 185.

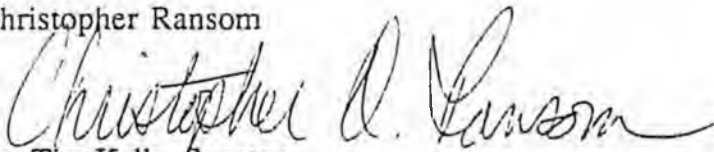
I see no justification for giving the revenue service even MORE time than it already has to collect taxes and levy more. The thought of taxing anyone for something which has already transpired (as far as 1976) is outrageous! What's next?

The average consumer probably does not realize the amount of money oil companies already pay, but I believe if they knew, they would stand up and fight for equal rights. Should I let them know? Or can we nip this in the bud?

Would it not be more prudent to suck in our fiscal stomachs' and tighten our budget belts' instead of looking to the people who put us on the map financially?

Signed,

Christopher Ransom

A handwritten signature in cursive script that reads "Christopher Ransom". The signature is written in dark ink and is positioned below the typed name.

cc: Tim Kelly, Senator
Judy Salo, Senator

April 1, 1994

Dear Senator Kelly;

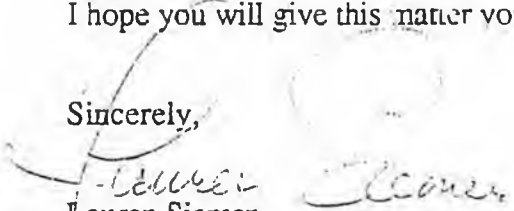
I am writing to tell you that I am deeply concerned about Senate Bill 185, which is currently pending in your Labor and Commerce Committee.

I am sure you'll hear a lot about this issue, since it has a tremendous effect on all Alaskans. We all know how important the oil industry is in our state. I am sure that everyone who lives and works in Alaska knows that their lifestyle would be very different if the oil industry were not successful here. Of course we need to diversify our economy, but that won't work if we don't have a strong base to build on.

That is why I am so concerned about SB 185. Passing legislation that allows such blatantly unfair treatment of the oil industry harms us all. If this bill were aimed at private citizens, we would vote to recall the entire legislation in a heartbeat. I realize that it gets harder every year to find the money that we need to operate the state government, but pillaging the oil companies is a dead end. If we take away their future here, we destroy our future, too. SB 185 could signal the end of Alaska's healthy economy.

I hope you will give this matter your most careful attention.

Sincerely,


Lauren Siemer
636 W. 20th Ave.
Anchorage, AK 99503

cc: Senator Reiger
Senator Sharp
Senator Halford
Senator Ellis
Senator Pearce



April 6, 1994

Senator Tim Kelly
Room 101
State Capitol
Juneau, AK 99801-1182

SUBJECT: Senate Bill #185

Dear Senator Kelly:

I wish to express my concern about Senate Bill #185 which would retro-tax the oil industry in Alaska. I seriously question the ethics of a taxing government body looking more than three years into the past to assess taxes. Every business in this State will re-examine their purpose and benefits of doing business in Alaska.

Further, the bill increases pressure on our leading industry and provider in Alaska's economy whose production is now declining. I question the long-term wisdom of additional tax pressure on an industry nearly all of us have benefited from for some time for a one-year State budget "fix."

Based on these reasons I respectfully ask you to use your power to stop this bill from passing.

Sincerely,

WESTMARK HOTELS, INC.

A handwritten signature in cursive script that reads "Herbert 'Safety Hub' Everett".

Herbert E. Everett
Director of Safety and
Workers' Compensation

tkw