

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8615 HOUSE JUDICIARY

HB

341

Amendment No. : (deleting provisions relating to the Board of Tax Appeals, and providing for appointment by the Governor upon recommendation of the Judicial Council)

•In the title, page 1, lines 3-4, delete the phrase "as a quasi-judicial agency".

•In Section 1, page 2, lines 4 - 9, delete the text and substitute the following text:

Sec. 43.05.400. OFFICE OF TAX APPEALS ESTABLISHED. (a) The office of tax appeals is established within the department.

•In Section 1, page 2, delete lines 21 - 29, and substitute the following text:

Sec. 43.05.410. APPOINTMENT; TERM; REAPPOINTMENT. (a) The governor shall appoint a chief administrative law judge of the office of tax appeals from among two or more persons nominated for that position by the judicial council. The governor may appoint additional administrative law judges from among two or more persons nominated for each position by the judicial council. Nominations by the council under this section shall be made after the judicial council has

(1) published an announcement of the governor's notice of a vacancy or impending vacancy of a position under this section that invites application for the position;

(2) published a list of those persons who have applied for the position, and invited written comments on the applicants from the public to the judicial council during a specified comment period of 30 days. Comments may be submitted anonymously, and shall be kept confidential, but the judicial council shall give the governor and each applicant a summary of the public comment; and

(3) interviewed each of the applicants for the position.

(b) The initial term for an administrative law judge, including the chief administrative law judge, is two years. The governor may decline to reappoint an administrative law judge, including the chief administrative law judge, without cause. A person appointed to serve as an administrative law judge, including the chief administrative law judge, may be appointed to subsequent terms of four years each after

(1) the governor has given the judicial council notice of intent to reappoint the administrative law judge;

(2) the judicial council has published an announcement of the governor's intent to reappoint, and invited written comments from the public to the

judicial council on the reappointment during a specified comment period of 30 days. Comments may be submitted anonymously, and shall be kept confidential, but the judicial council shall give the governor and the administrative law judge a summary of the public comment; and

(3) submitted a recommendation to the governor on reappointment.

•In Section 1, page 3, line 21, delete the word "board" and replace with the phrase "the chief administrative law judge."

•In Section 1, page 7, line 17, delete the phrase "by the full board".

•In Section 1, page 7, line 30, replace the word "board" with the phrase "administrative law judge."

•In Section 1, page 8, at lines 1, 6, 8, 9, and 16, replace the word "board" in each line with the phrase "administrative law judge".

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

3.11.98

To: Karen @ CAA legal

From: Tom Meyer x4990

for CSMB 341 (JUD)

2029

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Amendment to v. R. of CS HB 349

p. 17, line 30, delete "at"

p. 17, line 31, delete entire line

p. 17, line 32, delete "UNDER AS 43.05.240]"

p. 18, line 1, delete "meeting"

p. 18, line 2, restore [hearing]

NEW AMENDMENT #1

In the House Judiciary Committee
By Representative Green

March 11, 1996

TO: CSHB341
Version "R"

Page 2. Line 31 before "...removed from..." INSERT "...disciplined or..."

ad apted

AMENDMENT #2

In the House Judiciary Committee
By Representative Green

March 11, 1996

TO: CSHB341
Version "R"

Page 4, Line 15 - After "...of proof;" DELETE "the findings of fact of the informal conference decision are presumed correct unless the taxpayer rebuts the findings;"

OK

AMENDMENT #3

In the House Judiciary Committee
By Representative Green

March 11, 1996

TO: CSHB341
Version "R"

Page 15, Line 26 - after "...and prescribed." INSERT "The schedule may be subsequently modified by consent of the parties."

OK

AMENDMENT #4

In the House Judiciary Committee
By Representative Green

March 11, 1996

TO: CSHB341
Version "R"

Page 10, Line 18 AFTER "...of Revenue..." DELETE "...and..." and INSERT ..."or..."

OK

new #7

* Amend Section 11, page 16, proposed AS 43.05.242,
Delete lines 5 - 8.

Insert:

"Sec. 43.05.242. JUDICIAL APPEAL. (a) Within 60 days after decision resulting from the informal conference, a person aggrieved by the action of the department under AS 43.05.240 in fixing the amount of a tax or in imposing a penalty may appeal to the superior court.

(b) The superior court, sitting without a jury, shall hear all questions de novo. As used in this section, "de novo" has the same meaning as in AS 43.05.400 - AS 43.05.499. The court shall

(1) resolve a question of fact by a preponderance of the evidence or, if a different standard of proof has been set by law for a particular question, by that standard of proof;

(2) resolve a question of law in the exercise of the independent judgment of the superior court judge;

(3) defer to the Department of Revenue as to a matter for which discretion is legally vested in the Department of Revenue, unless not supported by a reasonable basis.

(c) When an appeal is taken under this section,"

[remainder of text as it appears on page 16, lines 9 - 18]

OK

9-LS1129R
Chenoweth
3/7/96

CS FOR HOUSE BILL NO. 341()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative adjudication and judicial appeals and to the
2 informal resolution of certain factual disputes between taxpayers and the
3 Department of Revenue; establishing the office of tax appeals as a quasi-judicial
4 agency in the Department of Administration; revising the procedures for hearing
5 certain tax appeals, including appeals regarding seafood marketing assessments;
6 relating to consideration and determination by the superior court of disputes
7 involving certain taxes and penalties due, and amending provisions relating to the
8 assessment, levy, and collection of taxes and penalties by the state and to the tax
9 liability of taxpayers; providing for the release of agency records relating to
10 formal administrative tax appeals; relating to litigation disclosure of public records;
11 clarifying administrative subpoena power in certain tax matters; and providing for
12 an effective date."

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

2 * Section 1. AS 43.05 is amended by adding new sections to read:

3 ARTICLE 4. OFFICE OF TAX APPEALS.

4 Sec. 43.05.400. OFFICE OF TAX APPEALS ESTABLISHED. (a) The office
5 of tax appeals is established within the department. The office of tax appeals is a
6 quasi-judicial agency, headed by a Board of Tax Appeals.

7 (b) The Board of Tax Appeals consists of the chief administrative law judge,
8 who is the chair of the board, and additional administrative law judges as may be
9 appointed; however, the Board of Tax Appeals shall have at least two members.

10 Sec. 43.05.405. JURISDICTION. The office of tax appeals has original
11 jurisdiction to hear formal appeals from informal conference decisions of the
12 Department of Revenue under AS 43.05.240. Appeal to the office may be taken only
13 from an informal conference decision under AS 43.05.240. Jurisdiction of the office
14 is limited to, and AS 43.05.400 - 43.05.499 applies to and governs, an administrative
15 appeal regarding

16 (1) electric and telephone cooperative taxes under AS 10.25;

17 (2) a seafood marketing assessment under AS 16.51;

18 (3) all taxes levied under AS 43, except the property tax assessed under
19 AS 43.56; and

20 (4) any other taxes administered by the Department of Revenue.

21 Sec. 43.05.410. APPOINTMENT. (a) The governor shall appoint a chief
22 administrative law judge of the office of tax appeals, and may appoint additional
23 administrative law judges in the office of tax appeals.

24 (b) The initial term for an administrative law judge is two years. A person
25 appointed to serve as an administrative law judge, including chief administrative law
26 judge, may be appointed to subsequent terms of four years each.

27 (c) The initial appointment and any reappointment of an administrative law
28 judge, including the chief administrative law judge, is subject to confirmation by the
29 legislature in joint session.

30 Sec. 43.05.415. REMOVAL. (a) The chief administrative law judge may be
31 removed from office by the commissioner only for good cause.

1 (b) An administrative law judge other than the chief administrative law judge
2 may be disciplined or removed from office by the chief administrative law judge only
3 for good cause.

4 (c) In this section, "good cause" includes

5 (1) violation of the Alaska code of judicial conduct adopted by the
6 Alaska Supreme Court;

7 (2) conviction of a crime of moral turpitude;

8 (3) unjustified failure to handle the caseload assigned or similar
9 nonfeasance of office;

10 (4) failure to meet the requirements of AS 43.05.425 relating to
11 qualification for office; and

12 (5) unreasonable failure to comply with the statutes or regulations
13 regarding the confidentiality of taxpayer information.

14 Sec. 43.05.420. ADMINISTRATION. (a) The chief administrative law judge

15 (1) shall exercise general supervision of the office; and

16 (2) may select and hire staff for the office.

17 (b) An administrative law judge, including the chief administrative law judge,
18 may preside over a proceeding and carry out any procedures authorized under
19 AS 43.05.400 - 43.05.499.

20 (c) The board may adopt regulations implementing or interpreting
21 AS 43.05.400 - 43.05.499, including rules of procedure and evidence for proceedings
22 before the office.

23 Sec. 43.05.425. QUALIFICATIONS; CODE OF CONDUCT. (a) An
24 administrative law judge, including the chief administrative law judge, at the time of
25 appointment, must

26 (1) be licensed to practice law in this state or another state; and

27 (2) have experience in the field of tax law or tax administration.

28 (b) A person appointed as an administrative law judge under AS 43.05.410
29 who is not licensed to practice law in this state at the time of appointment must
30 become licensed to practice law in this state within 12 months after appointment or
31 shall cease to hold office.

1 (c) An administrative law judge, including the chief administrative law judge,
2 shall comply with the Alaska code of judicial conduct and, except as provided in (b)
3 of this section, shall be and remain licensed to practice law in this state.

4 Sec. 43.05.430. NOTICE OF APPEAL FROM INFORMAL CONFERENCE
5 DECISION. An appeal under the jurisdiction of the office is initiated by filing with
6 the office, and serving upon the commissioner of revenue, a notice of appeal from an
7 informal conference decision of the Department of Revenue under AS 43.05.240. A
8 notice of appeal from the informal conference decision may be filed or amended after
9 the time for filing has expired only if good cause is shown.

10 Sec. 43.05.435. SCOPE AND STANDARDS FOR DECISION. The
11 administrative law judge shall hear all questions de novo under AS 43.05.400 -
12 43.05.499. The administrative law judge shall

13 (1) resolve a question of fact by a preponderance of the evidence or,
14 if a different standard of proof has been set by law for a particular question, by that
15 standard of proof; the findings of fact of the informal conference decision are
16 presumed correct unless the taxpayer rebuts the findings;

17 (2) resolve a question of law in the exercise of the independent
18 judgment of the administrative law judge;

19 (3) defer to the Department of Revenue as to a matter for which
20 discretion is legally vested in the Department of Revenue, unless not supported by a
21 reasonable basis.

22 Sec. 43.05.440. SERVICE OF DOCUMENTS. Service of documents required
23 under AS 43.05.400 - 43.05.499 may be accomplished in any manner authorized under
24 the Alaska Rules of Civil Procedure. If service is done only by mail, the date of
25 service is determined by the date of mailing. If service is done by both mail and hand
26 delivery, the date of service is determined by the earlier of the date of mailing or
27 actual receipt of the documents.

28 Sec. 43.05.445. DISCOVERY. (a) In an appeal under AS 43.05.405,
29 discovery may take place only under a plan for discovery approved by the
30 administrative law judge. The administrative law judge shall approve a plan for
31 discovery to the extent consistent with the efficient, just, and speedy conduct of the

1 appeal. The plan may limit or set conditions on discovery and must include provisions
2 for stipulations of fact by the Department of Revenue and the taxpayer. Discovery
3 shall be limited to information that is relevant to the determination of the correct tax
4 or penalty, unless the Department of Revenue or the taxpayer makes a showing that
5 the discovery is reasonably calculated to lead to admissible information.

6 (b) Requests by the taxpayer for disclosure of public records relating to the
7 appeal are governed by, and the records are disclosed only in accordance with, the plan
8 approved under this section.

9 (c) Legislative history, reported court decisions, statutes, regulations, or similar
10 documents available for public inspection at a library or the office of the lieutenant
11 governor or through a publicly accessible database must be obtained through those
12 means and may not be sought through discovery.

13 Sec. 43.05.450. SUBPOENAS. An administrative law judge may issue a
14 subpoena to compel attendance of a witness or the production of a document or thing.
15 A subpoena may compel attendance of a witness or production of a document or thing,
16 located either inside or outside the state, to the maximum extent permitted by law. A
17 subpoena may be used for the purpose of discovery or for the purpose of presenting
18 evidence at a formal hearing. A subpoena shall issue upon request of a party, subject
19 to reasonable limitation or conditions set in the subpoena. A subpoena may be
20 enforced by petition to or other appropriate legal proceeding brought in a court of this
21 state or another jurisdiction.

22 Sec. 43.05.455. FORMAL HEARING. (a) At or before the formal hearing,
23 a party may present argument and evidence relevant to the amount of the tax or
24 penalty. The administrative law judge shall administer oaths and permit inquiry
25 necessary to determine the proper amount of the tax or penalty.

26 (b) Each party and witness shall be present during the formal hearing, except
27 that

28 (1) with the consent of the taxpayer, the administrative law judge may
29 conduct all or part of the hearing by telephone, audio or video teleconference, or other
30 electronic medium; and

31 (2) with the consent of the parties and the administrative law judge, all

1 or part of the hearing may be conducted through correspondence.

2 (c) The taxpayer bears the burden of proof on questions of fact by a
3 preponderance of the evidence unless a different standard of proof has been set by law
4 for a particular question.

5 (d) The formal hearing before the administrative law judge is not required to
6 be conducted with strict adherence to the Alaska Rules of Evidence. Relevant
7 evidence must be admitted if it is probative of a material fact in controversy.
8 Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence is
9 admissible if it is the kind of evidence on which responsible persons are accustomed
10 to rely in the conduct of serious affairs, regardless of the existence of a common law
11 or statutory rule that makes improper the admission of the evidence over objection in
12 a civil action. Oral evidence may be taken only on oath or affirmation. The rules of
13 privilege are effective to the same extent that they are recognized in a civil action in
14 the courts of this state, except that relevant documents and other material items that
15 are public records under AS 09.25.100 - 09.25.220 shall be admissible.

16 (e) The administrative law judge shall make a record of the proceedings of the
17 appeal, including recordation of the proceedings of a formal hearing by electronic or
18 stenographic means.

19 (f) The administrative law judge may grant exceptions to the requirements of
20 this section in the interest of justice.

21 Sec. 43.05.460. ENFORCEMENT. (a) The administrative law judge and each
22 party is responsible for the efficient, just, and speedy conduct of the formal hearing.
23 The administrative law judge may impose sanctions on the parties for failure to comply
24 with a subpoena, an order respecting discovery, and any other matter regarding conduct
25 of the appeal. In imposing sanctions, the administrative law judge shall be guided by
26 the practices of the courts of this state in imposing sanctions for similar offenses in
27 civil proceedings.

28 (b) The administrative law judge may

29 (1) remand the matter for consideration of material new information or
30 material information withheld by a party;

31 (2) prohibit a party from introducing information previously withheld

1 without good cause, and any other evidence dependent upon the information;

2 (3) enter an order, upon a showing of good cause,

3 (A) barring a designated claim or defense;

4 (B) striking part or all of a pleading of a party; or

5 (C) dismissing part or all of the appeal; or

6 (4) grant any other relief that the administrative law judge considers
7 appropriate.

8 (c) In addition to the remedies of (a) and (b) of this section, a party may seek
9 enforcement of a subpoena or other order of an administrative law judge by the
10 superior court under AS 44.62.590.

11 Sec. 43.05.465. DECISION; RECONSIDERATION; FINALITY. (a) Within
12 180 days after the record on the appeal is closed, the administrative law judge shall
13 issue a decision in writing. The decision must contain a concise statement of reasons
14 for the decision, including findings of fact and conclusions of law. In the decision, the
15 administrative law judge may grant relief, provide remedies, and issue any order that
16 is appropriate. The administrative law judge shall serve each party in the case with
17 a copy of the decision. Unless reconsideration by the full board is ordered under (c)
18 of this section, the decision under this subsection is the final administrative decision.

19 (b) A party may request reconsideration of a decision issued under (a) of this
20 section within 30 days after the date of service shown in the certificate of service of
21 the decision. The request must state specific grounds for reconsideration.
22 Reconsideration may be granted if, in reaching the decision, the administrative law
23 judge has

24 (1) overlooked, misapplied, or failed to consider a statute, regulation,
25 court or administrative decision, or legal principle directly controlling;

26 (2) overlooked or misconceived some material fact or proposition of
27 law;

28 (3) misconceived a material question in the case; or

29 (4) applied law in the ruling that has subsequently changed.

30 (c) The board may issue an order for reconsideration of all or part of the
31 decision upon request of a party. Reconsideration is based on the record, unless the

1 board allows additional evidence and argument. A hearing on reconsideration at which
2 additional evidence or argument is offered or received is subject to the procedures
3 applicable to a hearing under AS 43.05.455.

4 (d) The power to order reconsideration expires 60 days after the date of
5 service, as shown on the certificate of service, of a decision issued under (a) of this
6 section. If the board does not issue an order for reconsideration within the time
7 allowed for ordering reconsideration, a motion for reconsideration is considered denied.

8 (e) Within 60 days after the close of the record on reconsideration, the board
9 shall issue a written decision upon reconsideration. The board shall serve each party
10 in the case with a copy of the decision upon reconsideration. The decision upon
11 reconsideration is the final administrative decision.

12 (f) A final administrative decision becomes final either on the date

13 (1) 60 days after the date of service of a decision issued under (a) of
14 this section if an order for reconsideration is not issued; or

15 (2) the decision upon reconsideration is served, as shown by the
16 certificate of service executed by the board under (e) of this section.

17 Sec. 43.05.470. PUBLIC PROCEEDINGS AND RECORDS. (a) Records,
18 proceedings, and decisions under AS 43.05.400 - 43.05.499 are confidential, except
19 that the records, proceedings, and decisions become public records and open to the
20 public when the final administrative decision is issued and becomes final.

21 (b) Upon a showing of good cause, an administrative law judge shall issue a
22 protective order requiring that specified parts of the records, proceeding, or decision
23 shall be kept confidential in a particular appeal. If a protective order is issued, the
24 final administrative decision shall be made public after redacting by deletion or
25 substitution of information as required by the protective order.

26 (c) The department, in consultation with the chief administrative law judge,
27 shall maintain, index, and make available for public inspection the final administrative
28 decisions, proceedings, and records of the office made public under this section.

29 Sec. 43.05.475. CONSISTENCY OF DECISIONS. (a) As to questions of
30 law, a final administrative decision issued under AS 43.05.400 - 43.05.499, unless
31 reversed or overruled, has the force of legal precedent.

1 (b) To promote consistency among legal determinations issued under
2 AS 43.05.400 - 43.05.499, the chief administrative law judge may review and circulate
3 among the other administrative law judges the drafts of formal decisions, decisions
4 upon reconsideration, and other legal opinions of the other administrative law judges
5 in the office. The drafts are confidential documents and are not subject to disclosure
6 under AS 09.25.100 - 09.25.220 or this chapter.

7 Sec. 43.05.480. JUDICIAL REVIEW. (a) Judicial review by the superior
8 court of a final administrative decision may be had by a party to the appeal under this
9 chapter by filing a notice of appeal in accordance with the applicable rules of court
10 governing appeals to that court in civil matters. The notice of appeal shall be filed
11 within 30 days after an administrative decision becomes final under AS 43.05.465.
12 The right to judicial review under this subsection is not affected by the failure to seek
13 reconsideration before the administrative law judge.

14 (b) The amount due must be paid or refunded within 30 days after the date
15 that the final administrative decision becomes final under AS 43.05.465. In place of
16 payment of the amount due, a taxpayer who has appealed a final administrative
17 decision may file a bond with the court or otherwise obtain relief from payment in
18 accordance with the Alaska Rules of Appellate Procedure.

19 (c) Appeals under this section are reviewed under AS 44.62.560 and 44.62.570.

20 (d) If, after the appeal is heard, it appears that the final administrative decision
21 was correct, the court shall affirm the decision. If the final administrative decision is
22 incorrect, the court shall determine the amount due. If the taxpayer is entitled to a
23 refund, the court shall order the repayment and the Department of Revenue shall pay
24 the amount due and attach a certified copy of the judgment to the payment. If the
25 court determines that the taxpayer owes an additional amount, the court shall order the
26 payment and the taxpayer shall pay the amount due and attach a certified copy of the
27 judgment to the payment. Any payment required under this subsection shall be paid
28 by the 30th day following the expiration of the time within which an appeal from the
29 superior court decision may be filed, unless the party appealing files a bond or
30 otherwise obtains relief from payment in accordance with the Alaska Rules of
31 Appellate Procedure.

1 Sec. 43.05.499. DEFINITIONS. In AS 43.05.400 - 43.05.499, unless the
2 context otherwise requires,

3 (1) "administrative law judge" means an administrative law judge
4 appointed under AS 43.05.410;

5 (2) "board" means the Board of Tax Appeals established under
6 AS 43.05.410;

7 (3) "commissioner" means the commissioner of administration;

8 (4) "department" means the Department of Administration;

9 (5) "discovery" means the use of subpoenas, subpoenas duces tecum,
10 interrogatories, requests for production, requests for admission, depositions, and other
11 methods of civil procedure by which one party to an action may discover information
12 within the knowledge and control of another person;

13 (6) "legislative history" means the documents of the legislature
14 recording the background and events, including draft bills, correspondence and
15 memoranda, committee reports, tapes and transcripts of hearings, and tapes and
16 transcripts of floor debate concerning consideration of a bill;

17 (7) "office" means office of tax appeals in the department;

18 (8) "party" means the Department of Revenue and the taxpayer;

19 (9) "proceeding" means only a proceeding under the jurisdiction of the
20 office;

21 (10) "subpoena" means a command to appear at a certain time and
22 place to testify, or to appear at a certain time and place to produce books, papers, and
23 other things, and testify;

24 (11) "tax" means a tax described in AS 43.05.405, including a seafood
25 marketing assessment under AS 16.51;

26 (12) "taxpayer" means a person required to pay a tax, including a
27 person required to pay a seafood marketing assessment under AS 16.51.

28 * Sec. 2. AS 09.25.100 is amended to read:

29 Sec. 09.25.100. DISPOSITION OF TAX INFORMATION. Information in the
30 possession of the Department of Revenue that discloses the particulars of the business
31 or affairs of a taxpayer or other person is not a matter of public record, except for

1 purposes of investigation and law enforcement. The information shall be kept
2 confidential except when its production is required in an official investigation,
3 administrative adjudication under AS 43.05.400 - 43.05.499, or court proceeding.

4 These restrictions do not prohibit the publication of statistics presented in a manner
5 that prevents the identification of particular reports and items, [OR] prohibit the
6 publication of tax lists showing the names of taxpayers who are delinquent and
7 relevant information that may assist in the collection of delinquent taxes, or prohibit
8 the publication of records, proceedings, and decisions under AS 43.05.400 -
9 43.05.499.

10 * Sec. 3. AS 09.25.122 is amended to read:

11 Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is subject
12 to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record
13 subject to disclosure and copying even if the record is used for, included in, or relevant
14 to litigation, including law enforcement proceedings, involving a public agency, except
15 that with respect to a person involved in litigation, the records sought shall be
16 disclosed in accordance with the rules of procedure applicable in a court or an
17 administrative adjudication [RULES]. In this section, "involved in litigation" means
18 a party to litigation or representing a party to litigation, including obtaining public
19 records for the party.

20 * Sec. 4. AS 22.10.020(c) is amended to read:

21 (d) The superior court has jurisdiction in all matters appealed to it from a
22 subordinate court, or administrative agency when appeal is provided by law. The
23 hearings on appeal from a final order or judgment

24 (1) of a subordinate court [OR ADMINISTRATIVE AGENCY] shall
25 be on the record unless the superior court, in its discretion, grants a trial de novo, in
26 whole or in part;

27 (2) of the Department of Revenue in matters relating to fixing the
28 amount of, or imposing a penalty on, a tax levied and collected by the state when
29 appeal is taken under AS 43.05.242 shall be heard as a trial de novo as a matter
30 of right;

31 (3, of an administrative agency, except for a matter described in

1 (2) of this subsection, shall be on the record unless the superior court, in its
2 discretion, grants a trial de novo, in whole or in part.

3 * Sec. 5. AS 37.10.410 is amended to read:

4 Sec. 37.10.410. "ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES"
5 DEFINED. (a) The following money received by the state is considered to be
6 received as a result of the termination of an administrative proceeding for purposes of
7 applying art. IX, sec. 17(a), Constitution of the State of Alaska:

8 (1) past due taxes that are received by the state for each tax year for
9 which a request for an informal conference under AS 43.05.240 [AS 43.05.240(a)] is
10 made to the Department of Revenue, together with penalties and interest on the taxes;

11 (2) past due taxes that are received by the state after a request for a
12 formal hearing under AS 43.05.241 [AS 43.05.240(b)(1)] is made to the Department
13 of Revenue, together with penalties and interest on the taxes.

14 (b) Money received by the state under the following conditions is not
15 considered to be received as the result of the termination of an administrative
16 proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of
17 Alaska:

18 (1) taxes that are not due at the time the request for the proceeding was
19 made under AS 43.05.240, 43.05.241, or 43.05.242 [AS 43.05.240(a) or (b)(1)];

20 (2) taxes set out in a return not audited by the Department of Revenue
21 at the date of collection; or

22 (3) taxes collected for a tax year for which the taxpayer did not give
23 notice of appeal of an assessment made by the Department of Revenue.

24 * Sec. 6. AS 39.25.110 is amended by adding a new paragraph to read:

25 (31) the chief administrative law judge and any other administrative law
26 judges appointed to the office of tax appeals of the Department of Administration under
27 AS 43.05.400 - 43.05.499.

28 * Sec. 7. AS 43.05.010 is amended to read:

29 Sec. 43.05.010. DUTIES OF COMMISSIONER. The commissioner of revenue
30 shall

31 (1) exercise general supervision and direct the activities of the
32 Department of Revenue;

- 1 (2) supervise the fiscal affairs and responsibilities of the department;
- 2 (3) prescribe uniform rules for investigations and hearings;
- 3 (4) keep a record of all departmental proceedings, record and file all
- 4 bonds, and assume custody of returns, reports, papers, and documents of the department;
- 5 (5) [REPEALED]
- 6 (6) adopt a seal and affix it to each order, process, or certificate issued
- 7 by the commissioner;
- 8 (6) [(7)] keep a record of each order, process, and certificate issued by
- 9 the commissioner, and keep the record open to public inspection at all reasonable times;
- 10 (7) [(8)] hold hearings and investigations necessary for the administration
- 11 of state tax and revenue laws;
- 12 (8) except as provided in AS 43.05.400 - 43.05.499, [(9)] hear and
- 13 determine appeals of a matter within the jurisdiction of the Department of Revenue
- 14 [INVOLVING INCOME, EXCISE, LICENSE, OR OTHER TAXES LEVIED UNDER
- 15 STATE LAWS] and enter orders on the appeals that are final unless reversed or
- 16 modified by the courts;
- 17 (9) issue subpoenas to [(10)] require the attendance of witnesses and the
- 18 production of necessary books, papers, documents, correspondence, and other things
- 19 [EVIDENCE AT HEARINGS];
- 20 (10) [(11)] order the taking of depositions before a person competent to
- 21 administer oaths;
- 22 (11) [(12)] administer oaths and take acknowledgments;
- 23 (12) [(13)] request the attorney general for rulings on the interpretation
- 24 of the tax and revenue laws administered by the department;
- 25 (13) [(14)] call upon the attorney general to institute actions for recovery
- 26 of unpaid taxes, fees, excises, additions to tax, penalties, and interest;
- 27 (14) [(15)] issue warrants for the collection of unpaid tax penalties and
- 28 interest and take all steps necessary and proper to enforce full and complete compliance
- 29 with the tax, license, excise, and other revenue laws of the state;
- 30 (15) [(16)] audit reports, payments, and payments due relating to royalty
- 31 and net profits under oil and gas contracts, agreements, or leases under AS 38.05 [;
- 32 (17) REPEALED].

1 * Sec. 8. AS 43.05.040 is amended to read:

2 Sec. 43.05.040. INSPECTION OF RECORDS OR PREMISES AND
3 ISSUANCE OF SUBPOENAS. (a) The department may examine the books, papers,
4 records, or memoranda of any person to ascertain the correctness of a return filed or to
5 determine whether a tax or a payment for oil or gas royalty or net profits shares under
6 a contract, agreement, or lease under AS 38.05 is due, or in an investigation or
7 inspection in connection with tax matters or matters relating to oil and gas royalty or net
8 profits under contracts, agreements, or leases under AS 38.05. The records and the
9 premises where a business is conducted shall be open at all reasonable times for official
10 inspection, and the department may subpoena any person to appear and produce books
11 records, papers, or memoranda bearing upon tax matters or matters relating to oil and gas
12 royalty or net profits under contracts, agreements, or leases under AS 38.05, and to give
13 testimony or answer interrogatories under oath respecting tax matters or matters related
14 to oil and gas royalty or net profits under contracts, agreements, or leases under
15 AS 38.05, and the department may administer oaths to persons who are so subpoenaed.
16 A subpoena issued under this section may compel attendance of a witness or
17 production of a document or thing, located either inside or outside the state, to the
18 maximum extent permitted by law.

19 (b) A subpoena may be served by the commissioner of public safety or a peace
20 officer designated by the commissioner of public safety, [OR] by a person designated by
21 the Department of Revenue, or as otherwise provided by law. A subpoena may also
22 be served by registered or certified mail for delivery restricted only to the person
23 subpoenaed. The return delivery receipt must be addressed so that the receipt is
24 returned to the department.

25 (c) If a person who is subpoenaed neglects or refuses to obey the subpoena
26 issued as provided in this section, the department may report the fact to the superior
27 court or the appropriate court of another jurisdiction, and may seek an order from
28 the court compelling obedience to the subpoena. The [AND THE] court, to the
29 maximum extent permitted by law, may compel obedience to the subpoena to the same
30 extent as witnesses may be compelled to obey the subpoenas of the court.

31 * Sec. 9. AS 43.05.230(a) is amended to read:

32 (a) It is unlawful for a current or former officer, employee, or agent of the state

1 to divulge the amount of income or the particulars set out or disclosed in a report or
2 return made under this title, except

3 (1) in connection with official investigations or proceedings of the
4 department, whether judicial or administrative, involving taxes due under this title;

5 (2) in connection with official investigations or proceedings of the child
6 support enforcement agency, whether judicial or administrative, involving child support
7 obligations imposed or imposable under AS 25 or AS 47;

8 (3) as provided in AS 38.05.036 pertaining to audit functions; [AND]

9 (4) as provided in AS 43.05.400 - 43.05.499; and

10 (5) as otherwise provided in this section.

11 * Sec. 10. AS 43.05.240 is repealed and reenacted to read:

12 Sec. 43.05.240. TAXPAYER REMEDIES. (a) A taxpayer aggrieved by the
13 action of the department in fixing the amount of a tax or penalty may apply to the
14 department within 60 days after the date of mailing of the notice required to be given
15 to the taxpayer by the department, giving notice of the grievance, and requesting an
16 informal conference to be scheduled with an appeals officer. The taxpayer shall be given
17 access to the taxpayer's file in the department in the matter for preparation for the
18 informal conference. At the informal conference, the taxpayer may present to the
19 appeals officer arguments and evidence relevant to the amount of tax or penalty due the
20 state. If the department determines that a correction is warranted, the department shall
21 make the correction.

22 (b) A party who believes that the appeals officer is unduly delaying a hearing
23 process may notify the commissioner in writing. Within 30 days after being notified by
24 a party, the commissioner may issue an order prescribing a schedule for the appeals
25 officer to complete the informal conference or setting a meeting at which that schedule
26 will be discussed and prescribed. If the commissioner fails to issue an order within 30
27 days after receiving notice of a party's belief of undue delay, the department's action in
28 fixing the amount of tax or penalty shall be considered to have been summarily affirmed
29 by the appeals officer the same as if an informal conference decision to that effect were
30 issued on the last day of that 30-day period.

31 * Sec. 11. AS 43.05 is amended by adding new sections to read:

32 Sec. 43.05.241. FORMAL APPEAL. For a matter within the jurisdiction of the

1 office of tax appeals under AS 43.05.405, the taxpayer aggrieved by an informal
2 conference decision entered under AS 43.05.240 may file with the office of tax appeals
3 a notice of appeal for formal hearing, as provided in AS 43.05.430, no later than 60 days
4 after service of the decision resulting from an informal conference.

5 Sec. 43.05.242. JUDICIAL APPEAL. A person aggrieved by the action of the
6 department under AS 43.05.240 in fixing the amount of a tax or in imposing a penalty
7 may within 60 days after decision resulting from the informal conference appeal to the
8 superior court. When an appeal is taken under this section,

9 (1) the taxpayer shall be given access to the file of the department in the
10 matter for preparation of the appeal;

11 (2) if, after the appeal is heard,

12 (A) it appears that the tax was correct, the court shall confirm the
13 tax;

14 (B) it appears that the tax was incorrect, the court shall determine
15 the amount of the tax; if the person aggrieved is entitled to recover the tax or
16 part of it, the court shall order the repayment, and the department shall
17 immediately pay the amount due and attach a certified copy of the judgment to
18 the payment.

19 Sec. 43.05.244. TAX, PENALTY, AND INTEREST PAYABLE BEFORE
20 APPEAL. (a) In an appeal from a decision of the department involving a deficiency of
21 taxes levied and collected by the state, whether in a formal hearing under AS 43.05.241
22 and 43.05.400 - 43.05.499 or under a judicial appeal authorized by AS 43.05.242, the
23 taxpayer shall pay to the state the full amount of the tax, penalty, and interest in respect
24 of the amount of tax assessed that is not in dispute. The taxpayer shall post a bond,
25 obtain a letter of credit, or provide other evidence satisfactory to the department that it
26 is able to pay the amount of tax, penalty, and interest in respect of the amount of tax
27 assessed that is in dispute and that is the basis of the taxpayer's appeal.

28 (b) The tax and interest due under this section are the amounts stated in the final
29 order of the department from which the appeal is taken, or if the final order appealed
30 from is a summary judgment or partial summary judgment, the amount shall be as
31 originally assessed on the issue or issues disposed of.

32 * Sec. 12. AS 43.05.245 is amended to read:

1 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES,
 2 AND INTEREST. If a taxpayer fails to file a return or report required by this title in
 3 the time required by law or regulation, or makes an erroneous or fraudulent return, the
 4 department shall proceed to assess the license fees, tax, penalties, or interest and make
 5 a return from information that [WHICH] it obtains. A return made and subscribed by
 6 the department in accordance with this section is presumed sufficient for all legal
 7 purposes. However, nothing prevents a taxpayer from presenting evidence or other
 8 information on an informal conference [APPEAL] under AS 43.05.240 or in an appeal
 9 under AS 43.05.241 or 43.05.242 in order to rebut the presumed sufficiency of a return
 10 made and subscribed by the department, nor does the presumption of sufficiency alter
 11 the parties' respective burdens of proof once the taxpayer has presented evidence or other
 12 material information to rebut that presumption. The assessment of license fees, tax,
 13 penalties, or interest under this section occurs when the department issues a notice and
 14 demand for payment of the license fees, tax, penalties, or interest. The notice and
 15 demand for payment is issued when the notice and demand is delivered to the taxpayer
 16 in person or placed in the United States mail, addressed to the last known address of the
 17 taxpayer. Penalties and interest assessed under this title shall be collected in the same
 18 manner as provided in this title for the collection of tax or license fees.

19 * Sec. 13. AS 43.20.270(a) is amended to read:

20 (a) The department may collect taxes, with interest, penalties, and other
 21 additional amounts permitted by law, by distraint and sale, in the manner provided in this
 22 section, of the property of a person liable to pay the taxes, interest, penalties, or other
 23 additional amounts, who neglects or refuses to pay them within 10 days from the mailing
 24 of notice and demand for payment of them, and who has not appealed from the
 25 assessment of the taxes, interest, penalties, and other additional amounts determined
 26 under AS 43.05.240 or following appeal taken under AS 43.05.241 or 43.05.242.

27 * Sec. 14. AS 43.55.013(g) is amended to read:

28 (g) The monthly production at the economic limit for a lease or property is
 29 presumed to be 3,000 Mcf times the number of well days for the lease or property during
 30 that month for which the tax is to be paid. The taxpayer may rebut this presumption ~~at~~
 31 ~~a meeting with representatives of the Department of Revenue [FORMAL HEARING~~
 32 ~~UNDER AS 43.05.240]~~ by providing clear and convincing evidence of a different

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monthly production rate at the economic limit for the lease or property. The ~~meeting~~ ^{restored} [HEARING] shall be held before February 15 of the year or within six months after commencement of gas production for a lease or property. The monthly production rate at the economic limit for the lease or property based upon the clear and convincing evidence of the taxpayer shall be calculated by dividing the value determined under (i) of this section into the average monthly direct operating cost determined under (h) of this section.

* Sec. 15. AS 43.55.040 is amended to read:

Sec. 43.55.040. POWERS OF DEPARTMENT OF REVENUE. Except as provided in AS 43.05.400 - 43.05.499, the [THE] department may

(1) require a person engaged in production and the agent or employee of the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil or gas to furnish additional information that is considered by the department as necessary to compute the amount of the tax;

(2) examine the books, records, and files of such a person;

(3) conduct hearings and compel the attendance of witnesses and the production of books, records, and papers of any person; and

(4) make an investigation or hold an inquiry that is considered necessary to a disclosure of the facts as to

(A) the amount of production from any oil or gas location, or of a company or other producer of oil or gas; [,] and

(B) the rendition of the oil and gas for taxing purposes.

* Sec. 16. EFFECT ON EXISTING REMEDIES AND PROCEDURES. This Act does not affect the remedies and procedures

(1) specified in AS 04.11, including AS 04.11.560; AS 05.15, including AS 05.15.610; AS 42.05, including AS 42.05.551; or AS 43.56, including AS 43.56.120 and 43.56.130; or

(2) adopted by regulation by the Department of Revenue governing appeal of a decision of the Department of Revenue regarding

(A) a game of chance or skill made under AS 05.15;

(B) a permanent fund dividend under AS 43.23;

(C) a coin-operated device or punchboard under AS 43.35; or

1 (D) a child support obligation under AS 25.27.

2 * Sec. 17. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided by
3 this Act apply to all revenue tax appeals in which a request for formal hearing is filed with the
4 Department of Revenue on or after the effective date of this Act. The remedies and procedures
5 existing before the effective date of this Act apply to all revenue tax appeals in which a request
6 for formal hearing was filed with the Department of Revenue before the effective date of this
7 Act, unless, on the effective date of this Act,

8 (1) there has been an informal conference, but there has not been material
9 discovery by either party and substantive motions have not been filed;

10 (2) there has not been an informal conference, nor has there been material
11 discovery by either party and substantive motions have not been filed, but the taxpayer stipulates
12 to proceed to an informal conference under the remedies and procedures established by
13 AS 43.05.240, as amended by sec. 10 of this Act; or

14 (3) the parties stipulate to use the remedies and procedures established by this
15 Act; consent to that stipulation may not be unreasonably withheld by either party.

16 (b) Until regulations authorized under this Act take effect, 15 AAC 05.001 -
17 15 AAC 05.320 govern appeals within the jurisdiction of the office of tax appeals filed after the
18 effective date of this Act, except to the extent the regulations are inconsistent with this Act.

19 (c) Notwithstanding AS 43.05.405, enacted by sec. 1 of this Act, until the office of tax
20 appeals has a full caseload, and with the approval of the chief administrative law judge, the chief
21 administrative law judge or any other administrative law judge of the office of tax appeals may
22 be appointed by the governor, by the commissioner of administration, or by the commissioner
23 of another department to serve as a special hearing officer or special administrative law judge
24 on another matter outside the scope of this Act and arising from another department of the
25 executive branch. Appointment under this subsection may not interfere with the primary mission
26 of the office of tax appeals under this Act of the expeditious resolution of administrative tax
27 appeals under its jurisdiction.

28 (d) Until 15 AAC 05.001 - 15 AAC 05.320 and other Department of Revenue
29 regulations in effect on the effective date of this Act are revised as necessary, those regulations
30 continue to govern an administrative appeal of a Department of Revenue decision not within the
31 jurisdiction of the office of tax appeals, including a decision regarding a

32 (1) game of chance or skill under AS 05.15;

- 1 (2) permanent fund dividend under AS 43.23; and
2 (3) coin-operated device or punchboard under AS 43.35.
3 (e) In this section,
4 (1) "chief administrative law judge" means the chief administrative law judge
5 of the office of tax appeals appointed under AS 43.05.410, enacted by sec. 1 of this Act;
6 (2) "office of tax appeals" means the office established in AS 43.05.400, enacted
7 by sec. 1 of this Act.
8 * Sec. 18. This Act takes effect July 1, 1996.

**DEPARTMENT OF REVENUE
PROPOSED MODIFICATIONS TO CSHB 341 (Work Draft R)
(March 8, 1996)**

The following amendments are offered to CSHB 341, work draft no. 9-LS1129\R
(Mar. 7, 1996)(hereinafter, "Work Draft R").

Amendment No. 1: (deleting provisions relating to the Board of Tax Appeals)

•In Section 1, page 2, lines 5 -9, delete text beginning with the phrase "The office of tax appeals is a quasi-judicial agency . . ." and ending with the phrase ". . . shall have at least two members."

•In Section 1, page 2, delete lines 27-29 (proposed AS 43.05.410(c)).

•In Section 1, page 7, line 17, delete the phrase "by the full board".

•In Section 1, page 7, line 30, replace the word "board" with the phrase "administrative law judge."

•In Section 1, page 8, at lines 1, 6, 8, 9, and 16, replace the word "board" in each line with the phrase "administrative law judge".

Rationale: Creation of a "Board of Tax Appeals" would be unwieldy and unnecessary to the fair hearing of tax appeals.

Amendment No. 2: (deleting provisions relating to direct appeal to superior court)

- Delete Section 4, at pages 11-12, lines 20-2.
- Amend Section 5, page 12, line 19, by replacing the phrase "AS 43.05.240, 43.05.241. or 43.05.242" with the phrase "AS 43.05.240 or AS 43.05.241".
- In Section 11, page 16, delete text beginning on line 5 and ending on line 18 (proposed AS 43.05.242).
- In Section 11, page 16, line 21, delete the phrase ", whether".
- In Section 11, page 16, line 22, delete the phrase "or under a judicial appeal authorized by AS 43.05.042".
- In Section 12, page 17, line 9, delete the phrase "or 43.05.242".

Rationale: Direct review by the superior court has several disadvantages, including: 1) loss of the benefit of the tax expertise of the office of tax appeals; 2) potentially inconsistent legal opinions of uncertain status which may conflict with the opinions issued by the ALJs as precedent under proposed AS 43.05.475(a); 3) burdening the superior court judiciary with tax trials which are frequently document-intensive and complex, without the benefit of the narrowing and clarification of issues resulting from administrative review; 4) placing the trial-level resolution of tax disputes behind the superior court's criminal calendar, which must take precedence over civil disputes. See also the Department of Law comments on Proposed Committee Substitute for CSHB 341 (Resources), dated Mar. 8, 1996.

Amendment No. 3: (providing a statement of Findings and Purposes):

•At page 2, line 1, insert a new Section 1, as follows, and re-number all remaining sections accordingly:

*** Section 1. FINDINGS AND PURPOSES.** (a) The legislature finds with respect to appeals of taxes assigned to the Department of Revenue that

(1) while courts have traditionally upheld the power of administrative agencies to perform the combined functions of tax audit and adjudication of tax appeals, certain taxpayers have perceived the combination of these functions within the Department of Revenue as unfair;

(2) the commissioner of revenue is frequently faced with the question of withdrawal from the management of or participation in a tax matter in order to maintain quasi-judicial independence when the matter is appealed to the commissioner; and

(3) these tax appeal proceedings should be made public in order to promote open government and because the public has an interest in the proceedings.

(b) The purposes of this Act are to

(1) provide a forum not subject to the supervision of the commissioner of revenue in which tax matters may be heard de novo in a formal recorded proceeding;

(2) help ensure that adjudicative decisions on formal administrative appeals of tax matters assigned to the Department of Revenue will be free from political influence and based upon the facts and the law;

(3) preserve for the commissioner of revenue the traditional role of policy formulation for revenue tax matters;

(4) not interfere with the proper exercise of the discretion of the commissioner of revenue in revenue tax matters;

(5) encourage taxpayers to provide all information pertinent to their taxes to the Department of Revenue, so that its auditors and other staff may properly determine the correct tax before the matter is appealed; and

(6) streamline tax appeal procedures and resolve disputes more efficiently by encouraging earlier exchange of information between the taxpayer and the Department of Revenue.

Rationale: a statement of findings and purposes clearly stating the Legislature's intent in adopting the Act will help prevent litigation. The proposed Findings and Purposes are from HB 427. Alternatively, a draft letter of intent is attached.

Amendment No. 4: (restricting certain discovery)

•In Section 1, page 6, delete text on lines 19-20 (proposed AS 43.05.455(f)).

•In Section 1, page 6, line 11, insert a new subsection (e) to read as follows, and re-number remaining subsections accordingly:

(e) Evidence on the following subjects is irrelevant and may not be admitted, unless the administrative law judge grants an exception in the interest of justice:

(1) history of legislative provisions that have not been enacted;

(2) history of a draft regulation that has not been adopted;

(3) confidential information under AS 43 of a taxpayer other than the taxpayer whose tax is the subject of the appeal may unless the confidentiality has been waived by that other taxpayer.

Rationale: The language proposed regarding unenacted law and unadopted regulations is offered from HB 427 to remedy past discovery abuses in which information: completely irrelevant to a particular appeal was sought under the guise of discovery. To allay taxpayer concerns, a prefatory clause permits an ALJ in a particular case to grant exceptions. The third subsection regarding confidential taxpayer information was proposed as Modification No. 8 by the AOGA Tax Committee in "HB 341: The AOGA Tax Committee's Comments about Tax Appeal Reform using Administrative Law Judges within the Executive Branch" (undated), at page 5.

The language of proposed AS 43.05.455(f) in work draft R is superfluous with the change as proposed, and we suggest deletion.

Amendment No. 5: (creating a presumption that tax appeal proceedings are public)

- Amend Section 1, page 8, lines 17-20, proposed AS 43.05.470(a), as follows:

Sec. 43.05.470. PUBLIC PROCEEDINGS AND RECORDS. (a) Records, proceedings, and decisions under AS 43.05.400 - 43.05.499 are public records and open to the public except as provided in this section.

Rationale: this amendment would create a presumption of public access to tax appeal records, proceedings, and decisions. Making these records public will encourage accountability and public confidence in tax appeals, which are frequently of significant public interest. The remainder of the language in proposed AS 43.05.470(b) would permit the ALJ in a particular case to protect proprietary information, or information which otherwise should be kept confidential.

W/ draw

Amendment No. 6: (preserving current standard for review of discretionary decisions of Department of Revenue)

•Amend Section 1, page 10, line 3, by inserting the following additional subsection to proposed AS 43.05.499, and renumbering the remaining subsections accordingly:

(3) "de novo" means a new trial of record before an administrative law judge with opportunity for each party to present evidence and argument under AS 43.05.400 - 43.05.499.

•Amend Section 11, page 15, lines 5-18 (proposed AS 43.05.242) as follows:

Sec. 43.05.242. JUDICIAL APPEAL. (a) Within 60 days after decision resulting from the informal conference, a person aggrieved by the action of the department under AS 43.05.240 in fixing the amount of a tax or in imposing a penalty may appeal to the superior court.

(b) The superior court, sitting without a jury, shall hear all questions de novo. As used in this subsection, "de novo" has the same meaning as defined in AS 43.05.499. The court shall

(1) resolve a question of fact by a preponderance of the evidence, or by a different standard of proof that has been set by law for a particular question. The findings of fact of the informal conference decision are presumed correct unless the taxpayer rebuts the findings;

(2) resolve a question of law in the exercise of the judge's independent judgment;

(3) defer to the Department of Revenue on a question as to a matter committed to the discretion of that department, unless not supported by a reasonable basis.

(c) When an appeal is taken under this section,

(1) the taxpayer shall be given access to the file of the department in the matter for preparation of the appeal;

(2) if, after the appeal is heard,

(A) it appears that the tax was correct, the court shall confirm the tax;

(B) it appears that the tax was incorrect, the court shall determine the amount of the tax. If the person aggrieved is entitled to recover the tax or part of it, the court shall order the repayment, and the department shall immediately pay the amount due and attach a certified copy of the judgment to the payment.

Rationale: "De novo" is not defined in Work Draft R. We believe the term should be defined to prevent future disputes about the effect of the bill. "De novo" has been interpreted to have different meanings in different contexts. For example, one Alaska court has quoted with approval a Washington case which held that "de novo trial"

" ' require[s] no less than a determination by the trial court which was 'independent of any conclusion of the school board, and . . . based solely upon the evidence and testimony which the trial court receives.' "

Asevedo v. Anchorage School Dist., 843 P.2d 1209, 1209 (Alaska 1992), quoting Matanuska-Susitna Borough v. Lum, 538 P.2d 994, 1001 (Alaska 1975), quoting Hattrick v. North Kitsap School Dist., 81 Wash.2d 668, 504 P.2d 302, 303 (1972).

Work Draft R, as currently drafted, does not contemplate review of tax decisions completely "independent of any conclusion" of the Department of Revenue because proposed AS 43.05.435(3) requires deference certain Department of Revenue decisions. This subsection, originally proposed in HB 427, Sec. 2 (proposed AS 44.21.625), maintains the current discretion the Department of Revenue and its commissioner have to implement tax policy. That discretion has been noted in many Alaska cases, including State, Dept. of Revenue v. Parsons Corp., 843 P.2d at 1241; Handley v. State, Dept. of Revenue, 838 P.2d 1231, 1233 (Alaska 1992); Gulf Oil Corp. v. State, Dept. of Revenue, 755 P.2d 372, 378 n. 19 (Alaska 1988); Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896 (Alaska 1987); Earth Resources Co. v. State, Dept. of Revenue, 665 P.2d 960, 964 (Alaska 1983); Nat. Bank of Alaska v. State, Dept. of Revenue, 642 P.2d at 815.

The discretionary decisions of most if not all other Alaska agencies are given deferential review. E.g. AS 44.62.570(e) (requiring deference to agency's discretionary decisions).

By adopting the section from HB 427 regarding Scope and Standards for Decision, we interpret that Work Draft R is intended to preserve this deferential review of matters committed to the discretion of the Department of Revenue. If that is true, this intent will be made express by adopting the definition of "de novo" which is proposed, to make it clear that "de novo" under this bill does not mean something defined by some other statute or case (such as the Hattrick case quoted above), and that the bill does not eradicate the traditional deferential review of discretionary decisions of the Department of Revenue.

We suggest additions to proposed AS 43.05.242 that clarify that appeals to superior court will occur under the same standard of review as appeals to the Office of Tax Appeals.

Proposed Section 43.05.242 in Work Draft R is also ambiguous as to whether the appeal to superior court will be tried to a judge, or to a jury. The proposed language expressly states that the trial de novo shall be to the court, sitting without a jury.

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Amendment No.7: (placing ALJs in the partially exempt service)

• Amend Section 6, page 12, lines 24-27, to read as follows:

* Sec. 6. AS 39.25.120(c) is amended by adding a paragraph to read:

(25) the chief administrative law judge and any other administrative law judges appointed to the office of tax appeals of the Department of Administration under AS 43.05.410.

Rationale: Work Draft R places the Chief ALJ and other ALJs in the exempt service. We believe that positions of this nature are more properly placed in the partially exempt service, especially in light of the provisions which would protect these personnel from adverse disciplinary action or removal other than "for cause."

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Amendment No. 8: (preserving the oil and gas production tax presumption of "monthly production rate at the economic limit")

• Amend Section 14, at page 17, lines 31-32, by deleting the phrase "meeting with representatives of the Department of Revenue [FORMAL HEARING UNDER AS 43.05.240]" and replacing with the phrase "a formal hearing under AS 43.05.241 or a judicial appeal under AS 43.05.242 [AS 43.05.240]".

to delete " at line 31 entire

line 32, under AS 43.05.241

p. 18, line 2, delete "meeting"

• Amend Section 14, at page 18, lines 1-2, by deleting the phrase "meeting [HEARING]" and replacing with the phrase "hearing".

insert hearing p 18, line 2

Rationale: If proposed AS 43.05.242 is deleted, as suggested above, this section will be unnecessary and should be deleted in its entirety. However, if proposed AS 43.05.242 is retained, this amendment will preserve the current statutory presumption in AS 43.55.013(g) for the "monthly production rate at the economic limit;" the amendment specifies that the presumption may be overcome only if the taxpayer makes a showing by clear and convincing evidence at the hearing. The language contained in Work Draft R, Section 14, suggests that a taxpayer must make a clear and convincing showing to the department of revenue at a "meeting." It is inappropriate to require this kind of showing at an informal conference, which is not a formal, recorded proceeding. The amendment proposed in Work Draft R, Section 14, will make it ambiguous as to what the standard will be for a taxpayer to overcome the statutory presumption of AS 43.55.013(g) at a formal hearing or other de novo proceeding on appeal from a department of revenue decision.

If the intent of the change proposed in Work Draft R is to modify the burden of proof required to overcome the presumption of AS 43.55.013(g), then we also suggest that the title to the bill be modified to reflect this substantive change in the oil and gas production tax.

Letter of Intent
for
Finance Committee Substitute for House Bill 341

It is the intent of the Legislature to provide a forum not subject to the supervision of the commissioner of revenue in which revenue tax matters may be heard de novo in a formal recorded proceeding; to help ensure that adjudicative decisions on formal administrative appeals of tax matters assigned to the Department of Revenue will be free from political influence and based upon the facts and the law; to preserve for the commissioner of revenue the traditional role of policy formulation for revenue tax matters; to not interfere with the proper exercise of the discretion of the commissioner of revenue in revenue tax matters; to encourage taxpayers to provide all information pertinent to their taxes to the Department of Revenue, so that its auditors and other staff may properly determine the correct tax before the matter is appealed; and to streamline tax appeal procedures and resolve disputes more efficiently by encouraging earlier exchange of information between the taxpayer and the Department of Revenue.

There is a perception by certain taxpayers that the combination of the functions of tax audit and adjudication of tax appeals within the Department of Revenue is unfair. Although courts have traditionally upheld the power of administrative agencies to combine these functions, CSHB 341 addresses this concern.

Presently, the commissioner is frequently faced with the question of withdrawal from the management or participation in a tax matter in order to maintain quasi-judicial independence when the matter is appealed to the commissioner. Under CSHB 341, the commissioner of

TESTIMONY OF THE
ALASKA OIL AND GAS ASSOCIATION
TO THE HOUSE JUDICIARY COMMITTEE
REGARDING HOUSE BILL NO. 341

March 8, 1996

Good afternoon, Mr. Chairman and Members of the Judiciary Committee. My name is Dan Seckers, and I am the chairman of the Tax Committee of the Alaska Oil and Gas Association ("AOGA"). AOGA is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska. We are grateful for this opportunity to offer our comments, which reflect the unanimous consensus of the Tax Committee.

The present tax appeals process is, we believe, seriously flawed in practice and denies taxpayers the opportunity to have their tax appeals heard and decided by a truly independent and impartial tribunal. The draft Judiciary CS for HB 341 would significantly reform this process. There are nine areas in particular which we would like to address. In some areas we have reached agreement with the Administration, and in others we have not.

1. Legislative confirmation. Unlike the Department of Revenue, AOGA believes it is sound public policy for the Legislature to confirm appointments to the administrative law judge positions. These people may decide cases involving tens or even hundreds of millions of dollars in tax claims. Surely the Legislature has a proper interest in ensuring that these people are qualified, capable and fair.

AOGA also supports confirmation because it provides taxpayers with an opportunity to comment on a candidate before the decision to appoint him or her becomes final. This ensures that, in the event someone is named who has demonstrated bias or similar improper conduct in the past, there will be an opportunity to make people aware of those facts before the appointment becomes final.

Finally, AOGA supports confirmation because it prevents an improper influence that the Executive Branch might otherwise have over an administrative law judge if it could hold out the lure of appointment or reappointment to that person. We are not saying that this has ever happened, nor that we believe it is likely to happen. But the point is, it could happen. By having an independent body like the Legislature involved, even the possibility of this happening is removed, since the Executive Branch would no longer be able to "deliver" on such a deal on its own.

Under *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976), legislative confirmation is allowed under the "separation of powers" doctrine only to the extent it is specifically authorized under the Alaska Constitution. AOGA is pleased to see that "9-LS1129\R" dated 3/7/96 (which I will refer to as "Work Draft R" in the rest of my testimony) includes provisions to ensure that the new administrative law judges will fall within the scope of allowable legislative confirmation under section 26, Article III of the Alaska Constitution.

2. Standards of review. It is important here to emphasize at the outset that AOGA and the Department of Revenue are in fundamental agreement about the standards by which the tax claims made by the Department are to be reviewed. On questions of fact, both sides agree that disputes about what actually happened should be heard and decided as if there were a clean slate. This is the heart of what the attorneys call "trial *de novo*." On questions of law, which most often relate to what a particular statute or regulation means, the administrative law judges will not be bound by the legal positions taken by the Department of Revenue, but will be free to decide for themselves which position or interpretation is best. On questions where the Department has been legally vested with discretion, its exercise of that discretion is to be upheld so long as it has a reasonable basis.

While both sides endorse these standards of review, it is probably also true that both have concerns about how last two will work in practice. Given the broad statutory mandates of the Department to administer, collect and enforce the state's tax laws, taxpayers are concerned that almost any legal question could potentially be characterized as one involving the Department's discretion. In practice, this would make a dead letter of the "substitution of judgment" standard for ordinary legal issues, which is something we, as taxpayers, do not believe is appropriate or intended. Conversely, an unduly narrow reading of when the Department is legally vested with discretion could end up impairing the Department's proper exercise of the discretion that the Legislature intended it to have, which is something we doubt is either supported by the Department or intended by your Committee.

Because the decision about which rule applies is so dependent on the particular circumstances of each individual case, we do not see a way to legislate so as to ensure that the administrative law judges will make the right call in choosing which rule to apply. Instead, we will have to trust the administrative law judges to call balls as balls and strikes as strikes in this area. However, because the question of which rule is applicable is itself a legal question, the administrative law judges will decide this question for themselves on a case-by-case basis without being bound by the Department's characterization of it. This gives them the authority to decide independently, which is as far as one can go with legislation. Whether they actually exercise that authority in practice will be up to the individuals who are named as the administrative law judges.

There is one change that AOGA urges the Committee to make to Work Draft R. In lines 15-16 on page 4, you should delete the words "the findings of fact of the informal conference decision are presumed correct unless the taxpayer rebuts the findings" and also delete the semicolon at the end of line 16. This language is both inappropriate and unnecessary, and the Department of Revenue did not object to deleting this language during the subcommittee's work sessions.

3. Discovery. AOGA is in partial agreement with the Department of Revenue about the subject of discovery. The Administration's bill (HB 427) would generally limit discovery to only that information which would actually be admissible in the formal hearing. AOGA pointed out that there are some types of discovery in which it is impossible to know in advance whether it will yield admissible evidence or not. For example, a taxpayer should be able to find out whether the State has been taking a consistent position with other taxpayers on an issue or not. If it has been consistent, then there is no issue, and the answer to the question is irrelevant and inadmissible. But if the State has been inconsistent, then it becomes highly relevant to the question of discrimination against particular taxpayers, or whether the Department has actually adopted a position on the issue. There was no disagreement over AOGA's point, nor did AOGA disagree with the Department's concern that open-ended "fishing expeditions" should be prevented. As a result of discussions with the Department of Revenue, compromise language was developed on this matter which is satis-

factory to both sides. AOGA is pleased to see that compromise language appears in Work Draft R, beginning with line 28 on page 4 and continuing through line 5 on page 5.

However, the other area regarding discovery is one where AOGA and the Department of Revenue do not agree. The Department wants to declare inadmissible, as a matter of law, evidence about the legislative history of bills that didn't pass, about regulations that weren't adopted, and about other taxpayers. AOGA acknowledges that in many cases these types of information may be irrelevant. But there have been real cases in the past where these types of evidence were in fact highly relevant to issues in the appeal. It is therefore important not to prevent this information from being discovered and admitted as evidence when it is relevant.

The latest language offered by the Department to AOGA still declares these types of evidence to be irrelevant as a matter of law, even though it then proceeds to authorize the administrative law judges to make exceptions and admit the evidence anyway. We believe it is completely inappropriate to declare an entire category of evidence to be irrelevant when in fact everyone knows that sometimes the evidence can in fact be relevant. Therefore, AOGA cannot endorse the Department's most recent proposal.

We believe the language already in Work Draft R sufficiently authorizes the administrative law judges to prevent discovery from becoming abusive in tax appeals and thereby lead to greater efficiency. Ultimately, one reaches a point in legislation where one has fully enabled people to do the right thing, and thereafter one must trust that those people will actually exercise their authority and do it. We believe this is where we are with respect to this area in the subject of discovery.

4. Option to go directly to court. The option of proceeding directly to Superior Court instead of to the new administrative law judges was not something that AOGA proposed. However, we find merit in this proposal and accordingly endorse it.

Although we agree with the Administration that most taxpayers will prefer the tax expertise and procedural rules of the new system of administrative law judges, there may be times when it would be more efficient and expedient to proceed directly to court. For example, when it is clear that a particular issue will likely be appealed to the Superior Court and beyond, the taxpayer may prefer to proceed directly to court to avoid the time and expense of going first to an administrative law judge and then to court.

Or, if a dispute involves issues that an administrative law judge cannot rule on, such as constitutional issues, it would make much more sense to allow a direct appeal to the forum where those issues can be dealt with. Otherwise, they could well end up having to be litigated twice — once before the administrative law judge anyway, in order to preserve the right to argue those issues later in the appeal, and again in court.

As Mr. Paul Frankel mentioned in his testimony before the joint hearing of the House Judiciary and Finance Committees on February 29th, the federal tax system offers taxpayers a choice of forums. Certain states likewise provide an option (e.g., New Hampshire, Florida, Georgia and Alabama). By making the option available in Alaska, the State is saying to taxpayers that it is committed to ensuring that the tax appeals process is fair. If any taxpayer has a residual concern about the independence of the administrative law judges, the taxpayer has the other option. But I would repeat that we expect the option of going directly to court to be one that is used only on an exceptional basis.

Having a choice to go either to an administrative law judge or to court will provide a balance between the two forums and will aid each other in arriving at fair, impartial decisions: one with technical expertise and the other with judicial wisdom.

5. Court Rule change. In an earlier work draft of the Judiciary CS, there was a Bill Section stating that the creation of a right to trial *de novo* when a taxpayer elects to appeal directly to Superior Court is a change in Rule 609(b) of the Alaska Rules of Appellate Procedure. AOGA agrees with the legal conclusion, reflected in Work Draft R, that the creation of such a right is a change of substantive tax law and policy, and therefore does not require a two-thirds vote of each legislative body as would be required for a change in the Court Rules. In *Matanuska-Susitna Borough v. Lum*, 538 P.2d 994 (Alaska 1975), and *Winegardner v. Greater Anchorage Area Borough*, 534 P.2d 541 (Alaska 1975), the Alaska Supreme Court ruled that the creation of a right to *de novo* consideration in court is a matter of substantive tax policy, not one of court procedure. In both cases the Court upheld a statutory right to *de novo* consideration in an administrative appeal despite former Appellate Rule 45, which said that court review in administrative appeals would be based on the record below.

Appellate Rule 609(b) reflects the general statutory rule under the Administrative Procedure Act. AS 44.62.570, which sets the scope of judicial review for all administrative appeals to which the Administrative Procedure Act applies, does not create a right to *de novo* consideration in court. Rather, it says the court "may" grant trial *de novo* in whole or in part, which means *de novo* consideration is discretionary with the judge.

However, tax appeals currently are not subject to the Administrative Procedure Act, nor would they be under Work Draft O. And, as *Winegardner* and *Lum* make clear, the Legislature can, by statute, create a substantive right to *de novo* consideration in certain kinds of administrative appeals, and that right will be upheld even though it may be inconsistent with the Court Rules. Since it is a substantive right that would be created under Work Draft O, not a change in the courts' internal procedure, a two-thirds vote is not needed and Bill Section 19 should be deleted. Indeed, Rule 609(b) will still apply with perfect force to those administrative appeals that are subject to the Administrative Procedure Act since, in those, there still will won't be a statutory right under the Administrative Procedure Act to *de novo* consideration in court.

6. Public proceedings. AOGA endorses the provisions in Work Draft R to keep confidential the record, proceedings and decision in a tax appeal in front of an administrative law judge until the appeal gets into Superior Court. This reflects the rule under the existing law. The Department of Revenue has proposed that the proceedings be opened at the beginning of the formal hearing process before an administrative law judge, instead of at the end of that process.

AOGA sees no reason why, in moving the formal hearing to an administrative law judge outside of Revenue, there should be any change to the present rule. When a case moves to court, the full record bearing on the argument and adjudication of the issues in the case does become public. In other words, the public cannot watch a tax appeal live and in person as they watched the O. J. Simpson trial on TV. They have to wait to find out what happened. But they are not cut off from that information; eventually they do have access. Meanwhile, the existing protection of confidentiality as the proceedings unfold allows the participants to focus on the matters at hand, instead of grandstanding to a public audience.

It has been suggested that the public feels uneasy about the negotiation of large tax settlements in private in the past, and that this public concern justifies opening the tax-appeal process to the public at an earlier stage than current law provides. However, settlement

discussions would still be private and confidential even if the formal hearing were opened to the public. Even the particular terms of any settlement could still be kept confidential. In other words, opening the hearings up to the public isn't a cure to the alleged problem about negotiating settlements in private. Nor is there a cure to this particular problem — if the State wishes to preserve the possibility of having tax settlements in the future, there will have to be a way for them to be negotiated privately and off the record. Otherwise there simply will not be any settlements.

7. Definition of "de novo". AOGA and the Department of Revenue have reached an agreement on the issue of whether a definition of "de novo" should be included in the Bill or not. Both sides agree that, in the context of this particular legislation, "de novo" means the standards and procedures for tax appeals that will be heard before administrative law judges under the Bill. Since there is only one place where that term is used in the context of administrative law judges, inserting language there to make this clarification will eliminate the need for a definition. AOGA is pleased to see that such a clarification has been made in lines 11-12 on p. 4 of Work Draft R.

8. Procedure to rebut the presumed production rate at the economic limit for ELF purposes under the production tax. Bill Section 15, beginning with line 27 on p. 17 of Work Draft R and running through line 7 on p. 18, makes certain amendments to AS 43.55.013(g). Section 013(g) provides for the rebuttal of a presumption about the rate of gas production at the economic limit for a lease or property.

AOGA and the Department of Revenue agree that the second sentence in AS 43.55.013(g) should be changed to read as follows: "The taxpayer may rebut this presumption by providing clear and convincing evidence of a different monthly production rate at the economic limit for the lease or property." This change will ensure that the "clear and convincing evidence" standard for rebutting this ELF presumption under the present law will continue to apply under the new procedures, both in making the initial showing to the Department of Revenue and in any subsequent appeal from the Department's decision based on that showing, regardless whether that appeal goes to an administrative law judge or directly to Superior Court.

It is unclear at this time whether any further changes to AS 43.55.013(g) should be made in light of the procedural changes made elsewhere in the Bill, and AOGA and the Department of Revenue have agreed to study this question further.

9. Transition rule. AOGA is in basic agreement with the Department of Revenue that taxpayers who are far advanced in their formal hearings when the Bill becomes law should not be allowed to switch over to the new procedures and start over. Conversely, they agree with us that taxpayers who are still at a very early stage in their formal hearing proceedings should be allowed to use the new procedures.

We have been unable to reach agreement with the Department on the precise wording of such a transition rule, and so we offer our own proposal for the Committee's consideration. AOGA recommends striking in its entirety Bill Section 17(a), which appears in lines 2-15 on p. 19 of Work Draft R, and replace it with a new Bill Section 17(a) that would read as follows:

"Sec. 17. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided by this Act apply to all revenue tax appeals in which a request for a formal hearing is filed with the Department of Revenue on or after the effective date of this Act. The remedies and procedures existing before the effective date of this Act apply to all revenue tax appeals in which a request for

formal hearing was filed with the Department of Revenue before the effective date of this Act, unless

“(1) an informal conference is still in progress as of the effective date of this Act, and the taxpayer withdraws the pending request for a formal hearing under the remedies and procedures existing before the effective date of this Act;

“(2) there has been an informal conference under the remedies and procedures existing before the effective date of this Act; and as of March 1, 1996, with respect to the subsequent formal hearing under those remedies and procedures, there has been no material discovery by either party and no motions have been filed for summary adjudication on legal issues relating to the amount of tax or penalty;

“(3) informal conference was waived in favor of proceeding directly to formal hearing under the remedies and procedures existing before the effective date of this Act; and

“(A) as of March 1, 1996, there has been no material discovery by either party and no motions have been filed for summary adjudication on legal issues relating to the amount of tax or penalty; and

“(B) the taxpayer stipulates to go to informal conference under the remedies and procedures established by this Act; or

“(4) the parties stipulate to follow the remedies and procedures established by this Act; however, consent to such a stipulation may not be unreasonably withheld.”

There is also a technical change to Work Draft R that AOGA would ask the Committee to make. At the beginning of line 31 on p. 2, insert the words "disciplined or" in front of "removed". This will treat the chief administrative law judge the same way the other administrative law judges are treated in lines 1-3 on p. 3.

In conclusion, Mr. Chairman, we in AOGA applaud you and your Committee for your diligence and hard work in developing the Committee's CS for HB 341. We particularly applaud the subcommittee and their efforts. We also acknowledge and appreciate the willingness of the Department of Revenue and the Attorney General's Office to meet with us and sincerely try to resolve or at least narrow the areas of disagreement.

As it has been for a number of years, the reform of Alaska's present tax-appeals system remains a priority of AOGA and its members. We believe that, with the changes outlined earlier, you will have a sound, fair and workable bill that will provide real reform to tax appeals. I can pledge to you that we in AOGA are committed to working with this Legislature and the Administration to ensure that these reforms are enacted.

Thank you again for this opportunity to testify.

Revision Date: _____ Dept. Affected: Revenue
 Title: Tax Appeals/Assessment/Levy/Collection BRU: Administration and Support
 Component: Commissioner's Office
 Sponsor: Representative Green
 Requestor: _____ COMPONENT SERIAL NO. 123

DRAFT

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	225.6	225.6	225.6	225.6	225.6	225.6
TRAVEL	5.3	5.3	5.3	5.3	5.3	5.3
CONTRACTUAL	43.0	43.0	43.0	43.0	43.0	43.0
SUPPLIES	4.5	4.5	4.5	4.5	4.5	4.5
EQUIPMENT	55.5	2.5	2.5	2.5	35.0	2.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	333.9	280.9	280.9	280.9	313.4	280.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	333.9	280.9	280.9	280.9	313.4	280.9

Estimate of any current year (FY96) cost _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Deborah Vogt, Deputy Commissioner
 Division: Commissioner's Office
 Approved by Commissioner: Wilson L. Condon
 Agency: Department of Revenue

Phone: (907) 465-2302
 Date: March 8, 1996
 Date: March 8, 1996

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***** D R A F T *****

Operating Budget

This bill creates an Office of Tax Appeals as a quasi-judicial board, attached for administrative purposes to the Department of Administration.

Operating Costs

Personal Services - The Office of Tax Appeals will include two Administrative Law Judges (equivalent to a Limited Entry Commissioner, range 26, annual cost \$96.4) who will hear all appeals involving tax matters from the Department of Revenue, including severance tax, corporate income tax, and all fisheries taxes. The ALJs will require the support of a full-time clerk, Administrative Clerk II range 8, annual cost \$32.8, for a total cost of \$225.6. Because the workload in the PFD and CSED areas has grown so tremendously in recent years, DOR will not be able to reduce its current staff of three hearing officers.

Travel - Cost based on an estimated seven trips (airfare \$400) with 3 days (\$120 per day) of per diem each trip. Total cost \$5,320. The funding for major hearings (lasting in excess of 3 to 5 days) is not included in the fiscal note as the costs will be charged to the parties involved in the appeal.

Contractual - Additional funding is needed to provide office space, communications (telephone/computer), legal support, other professional services, subscriptions, courier service and printing that will result from creating a new office, and devoting it entirely to tax appeals. The recurring incremental costs for these items is \$43,000.00

Supplies - \$4,500 is needed for general office supplies and data processing supplies.

Equipment - In setting up the new office, equipment needs include three computers, printer, copier, fax and office furniture. Estimated start-up costs are \$55,500. Recurring funding \$2,500 is needed for maintenance or replacement parts. Also we have estimated \$35,000 in year 2001 for equipment replacement or upgrade.

Funding Note

The personal services costs are shown at \$ from general funds and \$ allocated equally to PFD funds CSED federal receipts. This results from the reallocation of funding sources for the hearing section personnel who will remain at DOR, whose function becomes limited to those two divisions. It is therefore appropriate to fund them almost entirely from the divisions that create the workload. The reallocation frees up general funds.

PAUL H. FRANKEL is a partner in **Morrison & Foerster's** New York City law office. He is a graduate of Dartmouth College, University of Virginia Law School and N.Y.U. Graduate School of Law. He has represented taxpayers in major tax controversies in nearly all of the fifty states. Prior to joining the firm he was Senior Tax Counsel, W.R. Grace & Co. Before joining W.R. Grace & Co. he was a Senior Trial Attorney for the IRS Regional Counsel's Office. He is a member of the ABA, NYSBA, NJBA, Va. State Bar and the Monmouth County (NJ) Bar Association. He has served as National Chairman of TEI's State and Local Steering Committee, Chairman of the COST Lawyer's Coordinating Subcommittee and Chairman of the National Foreign Trade Council's Worldwide Unitary Task Force. He is currently Chairman of the Monmouth Bar Association's Tax Committee; a member of the New York City Tax Appeals Tribunal Advisory Committee, the CCH State Tax Advisory Board, Tax Management Inc.'s State Tax Advisory Board, the faculty of TEI's S&L Tax School and the NYU Institute's S&L Advisory Board; Co-Chairman of the NYU State Tax Forum; and an editorial board member of the Multistate Tax Analyst and the Interstate Tax Report. He has written many pamphlets and articles, including BNA Portfolios 152 and 153 (U.S. Tax Court Procedures) and 193 (Tax Crimes) and "Basic Principles and Significant Issues in State Taxation of "Unitary" Corporate Income", The Tax Executive.

**DEPARTMENT OF REVENUE
PROPOSED MODIFICATIONS TO CS HB 341 (Work Draft R)
(March 8, 1996)**

The following amendments are offered to CSHB 341, work draft no. 9-LS1129\R
(Mar. 7, 1996)(hereinafter, "Work Draft R").

Amendment No. 1: ^{#5} (deleting provisions relating to the Board of Tax Appeals)

•In Section 1, page 2, lines 5 -9, delete text beginning with the phrase "The office of tax appeals is a quasi-judicial agency . . ." and ending with the phrase ". . . shall have at least two members."

•In Section 1, page 2, delete lines 27-29 (proposed AS 43.05.410(c)).

•In Section 1, page 7, line 17, delete the phrase "by the full board".

•In Section 1, page 7, line 30, replace the word "board" with the phrase "administrative law judge."

•In Section 1, page 8, at lines 1, 6, 8, 9, and 16, replace the word "board" in each line with the phrase "administrative law judge".

Rationale: Creation of a "Board of Tax Appeals" would be unwieldy and unnecessary to the fair hearing of tax appeals.

Final

#6
Amendment No. 2: (deleting provisions relating to direct appeal to superior court)

- Delete Section 4, at pages 11-12, lines 20-2.
- Amend Section 5, page 12, line 19, by replacing the phrase "AS 43.05.240, 43.05.241, or 43.05.242" with the phrase "AS 43.05.240 or AS 43.05.241".
- In Section 11, page 16, delete text beginning on line 5 and ending on line 18 (proposed AS 43.05.242).
- In Section 11, page 16, line 21, delete the phrase ", whether".
- In Section 11, page 16, line 22, delete the phrase "or under a judicial appeal authorized by AS 43.05.042".
- In Section 12, page 17, line 9, delete the phrase "or 43.05.242".

Rationale: Direct review by the superior court has several disadvantages, including: 1) loss of the benefit of the tax expertise of the office of tax appeals; 2) potentially inconsistent legal opinions of uncertain status which may conflict with the opinions issued by the ALJs as precedent under proposed AS 43.05.475(a); 3) burdening the superior court judiciary with tax trials which are frequently document-intensive and complex, without the benefit of the narrowing and clarification of issues resulting from administrative review; 4) placing the trial-level resolution of tax disputes behind the superior court's criminal calendar, which must take precedence over civil disputes. See also the Department of Law comments on Proposed Committee Substitute for CSHB 341 (Resources), dated Mar. 8, 1996.

filed

Amendment No. 3: (providing a statement of Findings and Purposes):

•At page 2, line 1, insert a new Section 1, as follows, and re-number all remaining sections accordingly:

* Section 1. FINDINGS AND PURPOSES. (a) The legislature finds with respect to appeals of taxes assigned to the Department of Revenue that

(1) while courts have traditionally upheld the power of administrative agencies to perform the combined functions of tax audit and adjudication of tax appeals, certain taxpayers have perceived the combination of these functions within the Department of Revenue as unfair;

(2) the commissioner of revenue is frequently faced with the question of withdrawal from the management of or participation in a tax matter in order to maintain quasi-judicial independence when the matter is appealed to the commissioner; and

(3) these tax appeal proceedings should be made public in order to promote open government and because the public has an interest in the proceedings.

(b) The purposes of this Act are to

(1) provide a forum not subject to the supervision of the commissioner of revenue in which tax matters may be heard de novo in a formal recorded proceeding;

(2) help ensure that adjudicative decisions on formal administrative appeals of tax matters assigned to the Department of Revenue will be free from political influence and based upon the facts and the law;

(3) preserve for the commissioner of revenue the traditional role of policy formulation for revenue tax matters;

(4) not interfere with the proper exercise of the discretion of the commissioner of revenue in revenue tax matters;

(5) encourage taxpayers to provide all information pertinent to their taxes to the Department of Revenue, so that its auditors and other staff may properly determine the correct tax before the matter is appealed; and

(6) streamline tax appeal procedures and resolve disputes more efficiently by encouraging earlier exchange of information between the taxpayer and the Department of Revenue.

Rationale: a statement of findings and purposes clearly stating the Legislature's intent in adopting the Act will help prevent litigation. The proposed Findings and Purposes are from HB 427. Alternatively, a draft letter of intent is attached.

#8

Amendment No. 4: (restricting certain discovery)

- In Section 1, page 6, delete text on lines 19-20 (proposed AS 43.05.455(f)).
- In Section 1, page 6, line 11, insert a new subsection (e) to read as follows, and re-

number remaining subsections accordingly:

(e) Evidence on the following subjects is irrelevant and may not be admitted, unless the administrative law judge grants an exception in the interest of justice:

(1) history of legislative provisions that have not been enacted;

(2) history of a draft regulation that has not been adopted;

(3) confidential information under AS 43 of a taxpayer other than the taxpayer whose tax is the subject of the appeal may unless the confidentiality has been waived by that other taxpayer.

Rationale: The language proposed regarding unenacted law and unadopted regulations is offered from HB 427 to remedy past discovery abuses in which information completely irrelevant to a particular appeal was sought under the guise of discovery. To allay taxpayer concerns, a prefatory clause permits an ALJ in a particular case to grant exceptions. The third subsection regarding confidential taxpayer information was proposed as Modification No. 8 by the AOGA Tax Committee in "HB 341: The AOGA Tax Committee's Comments about Tax Appeal Reform using Administrative Law Judges within the Executive Branch" (undated), at page 5.

The language of proposed AS 43.05.455(f) in work draft R is superfluous with the change as proposed, and so we suggest deletion.

F

Amendment No. 5: (creating a presumption that tax appeal proceedings are public)

- Amend Section 1, page 8, lines 17-20, proposed AS 43.05.470(a), as follows:

Sec. 43.05.470. PUBLIC PROCEEDINGS AND RECORDS. (a) Records, proceedings, and decisions under AS 43.05.400 - 43.05.499 are public records and open to the public except as provided in this section.

Rationale: this amendment would create a presumption of public access to tax appeal records, proceedings, and decisions. Making these records public will encourage accountability and public confidence in tax appeals, which are frequently of significant public interest. The remainder of the language in proposed AS 43.05.470(b) would permit the ALJ in a particular case to protect proprietary information, or information which otherwise should be kept confidential.

Amendment No. 6: (preserving current standard for review of discretionary decisions of Department of Revenue)

•Amend Section 1, page 10, line 3, by inserting the following additional subsection to proposed AS 43.05.499, and renumbering the remaining subsections accordingly:

(3) "de novo" means a new trial of record before an administrative law judge with opportunity for each party to present evidence and argument under AS 43.05.400 - 43.05.499.

•Amend Section 11, page 15, lines 5-18 (proposed AS 43.05.242) as follows:

Sec. 43.05.242. JUDICIAL APPEAL. (a) Within 60 days after decision resulting from the informal conference, a person aggrieved by the action of the department under AS 43.05.240 in fixing the amount of a tax or in imposing a penalty may appeal to the superior court.

(b) The superior court, sitting without a jury, shall hear all questions de novo. As used in this subsection, "de novo" has the same meaning as defined in AS 43.05.499. The court shall

(1) resolve a question of fact by a preponderance of the evidence, or by a different standard of proof that has been set by law for a particular question. The findings of fact of the informal conference decision are presumed correct unless the taxpayer rebuts the findings;

(2) resolve a question of law in the exercise of the judge's independent judgment;

(3) defer to the Department of Revenue on a question as to a matter committed to the discretion of that department, unless not supported by a reasonable basis.

(c) When an appeal is taken under this section,

(1) the taxpayer shall be given access to the file of the department in the matter for preparation of the appeal;

(2) if, after the appeal is heard,

(A) it appears that the tax was correct, the court shall confirm the tax;

(B) it appears that the tax was incorrect, the court shall determine the amount of the tax. If the person aggrieved is entitled to recover the tax or part of it, the court shall order the repayment, and the department shall immediately pay the amount due and attach a certified copy of the judgment to the payment.

Rationale: "De novo" is not defined in Work Draft R. We believe the term should be defined to prevent future disputes about the effect of the bill. "De novo" has been interpreted to have different meanings in different contexts. For example, one Alaska court has quoted with approval a Washington case which held that "de novo trial"

" ' require[s] no less than a determination by the trial court which was 'independent of any conclusion of the school board, and . . . based solely upon the evidence and testimony which the trial court receives.' "

Asevedo v. Anchorage School Dist., 843 P.2d 1209, 1209 (Alaska 1992), quoting Matanuska-Susitna Borough v. Lum, 538 P.2d 994, 1001 (Alaska 1975), quoting Hatrick v. North Kitsap School Dist., 81 Wash.2d 668, 504 P.2d 302, 303 (1972).

Work Draft R, as currently drafted, does not contemplate review of tax decisions completely "independent of any conclusion" of the Department of Revenue because proposed AS 43.05.435(3) requires deference certain Department of Revenue decisions. This subsection, originally proposed in HB 427, Sec. 2 (proposed AS 44.21.625), maintains the current discretion the Department of Revenue and its commissioner have to implement tax policy. That discretion has been noted in many Alaska cases, including State, Dept. of Revenue v. Parsons Corp., 843 P.2d at 1241; Handley v. State, Dept. of Revenue, 838 P.2d 1231, 1233 (Alaska 1992); Gulf Oil Corp. v. State, Dept. of Revenue, 755 P.2d 372, 378 n. 19 (Alaska 1988); Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896 (Alaska 1987); Earth Resources Co. v. State, Dept. of Revenue, 665 P.2d 960, 964 (Alaska 1983); Nat. Bank of Alaska v. State, Dept. of Revenue, 642 P.2d at 815.

The discretionary decisions of most if not all other Alaska agencies are given deferential review. E.g. AS 44.62.570(e) (requiring deference to agency's discretionary decisions).

By adopting the section from HB 427 regarding Scope and Standards for Decision, we interpret that Work Draft R is intended to preserve this deferential review of matters committed to the discretion of the Department of Revenue. If that is true, this intent will be made express by adopting the definition of "de novo" which is proposed, to make it clear that "de novo" under this bill does not mean something defined by some other statute or case (such as the Hatrick case quoted above), and that the bill does not eradicate the traditional deferential review of discretionary decisions of the Department of Revenue.

We suggest additions to proposed AS 43.05.242 that clarify that appeals to superior court will occur under the same standard of review as appeals to the Office of Tax Appeals.

Proposed Section 43.05.242 in Work Draft R is also ambiguous as to whether the appeal to superior court will be tried to a judge, or to a jury. The proposed language expressly states that the trial de novo shall be to the court, sitting without a jury.

#9

Amendment No.7: (placing ALJs in the partially exempt service)

•Amend Section 6, page 12, lines 24-27, to read as follows:

* Sec. 6. AS 39.25.120(c) is amended by adding a paragraph to read:

(25) the chief administrative law judge and any other administrative law judges appointed to the office of tax appeals of the Department of Administration under AS 43.05.410.

Rationale: Work Draft R places the Chief ALJ and other ALJs in the exempt service. We believe that positions of this nature are more properly placed in the partially exempt service, especially in light of the provisions which would protect these personnel from adverse disciplinary action or removal other than "for cause."

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#10

Amendment No. 8: (preserving the oil and gas production tax presumption of “monthly production rate at the economic limit”)

•Amend Section 14, at page 17, lines 31-32, by deleting the phrase “meeting with representatives of the Department of Revenue [FORMAL HEARING UNDER AS 43.05.240]” and replacing with the phrase “a formal hearing under AS 43.05.241 or a judicial appeal under AS 43.05.242 [AS 43.05.240]”.

•Amend Section 14, at page 18, lines 1-2, by deleting the phrase “meeting [HEARING]” and replacing with the phrase “hearing”.

Rationale: If proposed AS 43.05.242 is deleted, as suggested above, this section will be unnecessary and should be deleted in its entirety. However, if proposed AS 43.05.242 is retained, this amendment will preserve the current statutory presumption in AS 43.55.013(g) for the “monthly production rate at the economic limit;” the amendment specifies that the presumption may be overcome only if the taxpayer makes a showing by clear and convincing evidence at the hearing. The language contained in Work Draft R, Section 14, suggests that a taxpayer must make a clear and convincing showing to the department of revenue at a “meeting.” It is inappropriate to require this kind of showing at an informal conference, which is not a formal, recorded proceeding. The amendment proposed in Work Draft R, Section 14, will make it ambiguous as to what the standard will be for a taxpayer to overcome the statutory presumption of AS 43.55.013(g) at a formal hearing or other de novo proceeding on appeal from a department of revenue decision.

If the intent of the change proposed in Work Draft R is to modify the burden of proof required to overcome the presumption of AS 43.55.013(g), then we also suggest that the title to the bill be modified to reflect this substantive change in the oil and gas production tax.

Letter of Intent
for
Finance Committee Substitute for House Bill 341

It is the intent of the Legislature to provide a forum not subject to the supervision of the commissioner of revenue in which revenue tax matters may be heard de novo in a formal recorded proceeding; to help ensure that adjudicative decisions on formal administrative appeals of tax matters assigned to the Department of Revenue will be free from political influence and based upon the facts and the law; to preserve for the commissioner of revenue the traditional role of policy formulation for revenue tax matters; to not interfere with the proper exercise of the discretion of the commissioner of revenue in revenue tax matters; to encourage taxpayers to provide all information pertinent to their taxes to the Department of Revenue, so that its auditors and other staff may properly determine the correct tax before the matter is appealed; and to streamline tax appeal procedures and resolve disputes more efficiently by encouraging earlier exchange of information between the taxpayer and the Department of Revenue.

There is a perception by certain taxpayers that the combination of the functions of tax audit and adjudication of tax appeals within the Department of Revenue is unfair. Although courts have traditionally upheld the power of administrative agencies to combine these functions, CSHB 341 addresses this concern.

Presently, the commissioner is frequently faced with the question of withdrawal from the management or participation in a tax matter in order to maintain quasi-judicial independence when the matter is appealed to the commissioner. Under CSHB 341, the commissioner of

revenue will now be able to be involved in tax matters from beginning to end.

Tax appeal matters are frequently of great public interest. In order to promote open government and public confidence, the proceedings, records and decisions in revenue tax appeals are made public under CSHB 341.

1. purpose §
2. lines 10-11 of 2

9-LS11290
Chenoweth
2/26/96

CS FOR HOUSE BILL NO. 341()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative adjudication and judicial appeals; establishing
2 the office of tax appeals in the Department of Administration; revising the
3 procedures for hearing certain tax appeals, including appeals regarding seafood
4 marketing assessments; relating to consideration and determination by the superior
5 court of disputes involving certain taxes and penalties due, and amending
6 provisions relating to the assessment, levy, and collection of taxes and penalties
7 by the state and to the tax liability of taxpayers; providing for the release of
8 agency records relating to formal administrative tax appeals; relating to litigation
9 disclosure of public records; clarifying administrative subpoena power in certain
10 ~~tax matters, and amending Rule 609(b), Alaska Rules of Appellate Procedure; and~~
11 ~~providing for an effective date."~~ ?

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

1 * Section 1. AS 43.05 is amended by adding new sections to read:

2 ARTICLE 4. OFFICE OF TAX APPEALS.

3 Sec. 43.05.400. OFFICE OF TAX APPEALS ESTABLISHED. The office of
4 tax appeals is established within the department.

5 Sec. 43.05.405. JURISDICTION. The office of tax appeals has original and
6 exclusive jurisdiction to hear formal appeals from informal conference decisions of the
7 Department of Revenue under AS 43.05.240. Appeal to the office may be taken only
8 from an informal conference decision under AS 43.05.240. Jurisdiction of the office
9 is limited to, and AS 43.05.400 - 43.05.499 applies to and governs, an administrative
10 appeal regarding

11 (1) electric and telephone cooperative taxes under AS 10.25;

12 (2) a seafood marketing assessment under AS 16.51;

13 (3) all taxes levied under AS 43, except the property tax assessed under
14 AS 43.56; and

15 (4) any other taxes administered by the Department of Revenue.

16 Sec. 43.05.410. APPOINTMENT. (a) The governor shall appoint a chief
17 administrative law judge of the office of tax appeals, and may appoint additional
18 administrative law judges in the office of tax appeals.

19 (b) The initial term for an administrative law judge is two years. A person
20 appointed to serve as an administrative law judge, including chief administrative law
21 judge, may be appointed to subsequent terms of four years each.

22 (c) The initial appointment and any reappointment of an administrative law
23 judge, including the chief administrative law judge, is subject to confirmation by the
24 legislature in joint session.

25 Sec. 43.05.415. REMOVAL. (a) The chief administrative law judge may be
26 removed from office by the commissioner only for good cause.

27 (b) An administrative law judge other than the chief administrative law judge
28 may be removed from office by the chief administrative law judge only for good
29 cause.

30 (c) In this section, "good cause" includes

31 (1) violation of the Alaska code of judicial conduct adopted by the

1 Alaska Supreme Court;

2 (2) conviction of a crime of moral turpitude;

3 (3) unjustified failure to handle the caseload assigned or similar
4 nonfeasance of office;

5 (4) failure to meet the requirements of AS 43.05.425 relating to
6 qualification for office; and

7 (5) violation of the statutes or regulations regarding the confidentiality
8 of taxpayer information.

9 Sec. 43.05.420. ADMINISTRATION. (a) The chief administrative law judge

10 (1) shall exercise general supervision of the office; and

11 (2) may select and hire staff for the office.

12 (b) An administrative law judge, including the chief administrative law judge,
13 may preside over a proceeding and carry out any procedures authorized under
14 AS 43.05.400 - 43.05.499.

15 (c) The chief administrative law judge may adopt regulations implementing or
16 interpreting AS 43.05.400 - 43.05.499, including rules of procedure and evidence for
17 proceedings before the office.

18 Sec. 43.05.425. QUALIFICATIONS; CODE OF CONDUCT. (a) An
19 administrative law judge, including the chief administrative law judge, at the time of
20 appointment, must

21 (1) be licensed to practice law in this state or another state; and

22 (2) have experience in the field of tax law or tax administration.

23 (b) A person appointed as an administrative law judge under AS 43.05.410
24 who is not licensed to practice law in this state at the time of appointment must
25 become licensed to practice law in this state within 12 months after appointment or
26 shall cease to hold office.

27 (c) An administrative law judge, including the chief administrative law judge,
28 shall comply with the Alaska code of judicial conduct and, except as provided in (b)
29 of this section, shall be and remain licensed to practice law in this state.

30 Sec. 43.05.430. NOTICE OF APPEAL FROM INFORMAL CONFERENCE
31 DECISION. An appeal under the jurisdiction of the office is initiated by filing with

1 the office, and serving upon the commissioner of revenue, a notice of appeal from an
2 informal conference decision of the Department of Revenue under AS 43.05.240. A
3 notice of appeal from the informal conference decision may be filed or amended after
4 the time for filing has expired only if good cause is shown.

5 Sec. 43.05.435. SCOPE AND STANDARDS FOR DECISION. The
6 administrative law judge shall hear all questions de novo. The administrative law
7 judge shall

8 (1) resolve a question of fact by a preponderance of the evidence or,
9 if a different standard of proof has been set by law for a particular question, by that
10 standard of proof; the findings of fact of the informal conference decision are
11 presumed correct unless the taxpayer rebuts the findings;

12 (2) resolve a question of law in the exercise of the independent
13 judgment of the administrative law judge;

14 (3) defer to the Department of Revenue as to a matter for which
15 discretion is legally vested in the Department of Revenue, unless not supported by a
16 reasonable basis.

17 Sec. 43.05.440. SERVICE OF DOCUMENTS. Service of documents required
18 under AS 43.05.400 - 43.05.499 may be accomplished in any manner authorized under
19 the Alaska Rules of Civil Procedure. If service is done only by mail, the date of
20 service is determined by the date of mailing. If service is done by both mail and hand
21 delivery, the date of service is determined by the earlier of the date of mailing or
22 actual receipt of the documents.

23 Sec. 43.05.445. DISCOVERY. (a) In an appeal under AS 43.05.405,
24 discovery may take place only under a plan for discovery approved by the
25 administrative law judge. The administrative law judge shall approve a plan for
26 discovery to the extent consistent with the efficient, just, and speedy conduct of the
27 appeal. The plan may limit or set conditions on discovery. Discovery shall be limited
28 to information that is relevant to the determination of the correct tax or penalty, or that
29 is reasonably calculated to lead to admissible information. The administrative law
30 judge may grant exceptions to the requirements of this subsection in the interest of
31 justice.

1 (b) Requests by the taxpayer for disclosure of public records relating to the
 2 appeal are governed by, and the records are disclosed only in accordance with, the plan
 3 approved under this section.

4 (c) Legislative history, reported court decisions, statutes, regulations, or similar
 5 documents available for public inspection at a library or the Office of the Lieutenant
 6 Governor or through a publicly accessible database must be obtained through those
 7 means and may not be sought through discovery.

8 Sec. 43.05.450. SUBPOENAS. An administrative law judge may issue a
 9 subpoena to compel attendance of a witness or the production of a document or thing.
 10 A subpoena may compel attendance of a witness or production of a document or thing,
 11 located either inside or outside the state, to the maximum extent permitted by law. A
 12 subpoena may be used for the purpose of discovery or for the purpose of presenting
 13 evidence at a formal hearing. A subpoena shall issue upon request of a party, subject
 14 to reasonable limitation or conditions set in the subpoena. A subpoena may be
 15 enforced by petition to or other appropriate legal proceeding brought in a court of this
 16 state or another jurisdiction.

17 Sec. 43.05.455. FORMAL HEARING. (a) At or before the formal hearing,
 18 a party may present argument and evidence relevant to the amount of the tax or
 19 penalty claimed to be due to the state as determined by the Department of Revenue.
 20 The administrative law judge may administer oaths and permit inquiry necessary to
 21 determine the proper amount of the tax or penalty.

22 (b) Each party and witness shall be present during the formal hearing, except
 23 that

24 *with consent of T*
 (1) the administrative law judge may conduct all or part of the hearing
 25 by telephone, audio or video teleconference, or other electronic medium; and

26 (2) with the consent of the parties and the administrative law judge, all
 27 or part of the hearing may be conducted through correspondence.

28 (c) The taxpayer bears the burden of proof on questions of fact by a
 29 preponderance of the evidence unless a different standard of proof has been set by law
 30 for a particular question.

31 (d) The formal hearing before the administrative law judge is not required to

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1 be conducted with strict adherence to the Alaska Rules of Evidence. Relevant
 2 evidence must be admitted if it is probative of a material fact in controversy.
 3 Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence is
 4 admissible if it is the kind of evidence on which responsible persons are accustomed
 5 to rely in the conduct of serious affairs, regardless of the existence of a common law
 6 or statutory rule that makes improper the admission of the evidence over objection in
 7 a civil action. Oral evidence may be taken only on oath or affirmation. The rules of
 8 privilege are effective to the same extent that they are recognized in a civil action in
 9 the courts of this state, except that ~~documents~~ ^{relevant} and other material items that are public
 10 records under AS 09.25.100 - 09.25.220 shall be admissible.

11 (e) The administrative law judge shall make a record of the proceedings of the
 12 appeal, including recordation of the proceedings of a formal hearing by electronic or
 13 stenographic means.

14 (f) The administrative law judge may grant exceptions to the requirements of
 15 this section in the interest of justice.

16 Sec. 43.05.460. ENFORCEMENT. (a) The administrative law judge and each
 17 party is responsible for the efficient, just, and speedy conduct of the formal hearing.
 18 The administrative law judge may impose sanctions on the parties for failure to comply
 19 with a subpoena, an order respecting discovery, and any other matter regarding conduct
 20 of the appeal. In imposing sanctions, the administrative law judge shall ~~follow~~ ^{be guided by} the
 21 practices of the courts of this state in imposing sanctions for similar offenses in civil
 22 proceedings.

23 (b) The administrative law judge may

24 (1) remand the matter for consideration of material new information or
 25 material information withheld by a party;

26 (2) prohibit a party from introducing information previously and
 27 intentionally withheld, ^{without good cause} and any other evidence dependent upon the information;

28 (3) enter an order ^{upon a showing of good cause}

29 (A) barring a designated claim or defense;

30 (B) striking part or all of a pleading of a party; or

31 (C) dismissing part or all of the appeal; or

1 (4) grant any other relief that the administrative law judge considers
2 appropriate.

3 (c) In addition to the remedies of (a) and (b) of this section, a party may seek
4 enforcement of a subpoena or other order of an administrative law judge by the
5 superior court under AS 44.62.590.

6 Sec. 43.05.465. DECISION; RECONSIDERATION; FINALITY. (a) Within
7 180 days after the record on the appeal is closed, the administrative law judge shall
8 issue a decision in writing. The decision must contain a concise statement of reasons
9 for the decision, including findings of fact and conclusions of law. In the decision, the
10 administrative law judge may grant relief, provide remedies, and issue any order that
11 is appropriate. The administrative law judge shall serve each party in the case with
12 a copy of the decision. Unless reconsideration is ordered under (c) of this section, the
13 decision under this subsection is the final administrative decision.

14 (b) A party may request reconsideration of a decision issued under (a) of this
15 section within ~~10~~ ³⁰ days after the date of service shown in the certificate of service of
16 the decision. The request must state specific grounds for reconsideration.
17 Reconsideration may be granted if, in reaching the decision, the administrative law
18 judge has

19 (1) overlooked, misapplied, or failed to consider a statute, regulation,
20 court or administrative decision, or legal principle directly controlling;

21 (2) overlooked or misconceived some material fact or proposition of
22 law;

23 (3) misconceived a material question in the case; or

24 (4) applied law in the ruling that has subsequently changed.

25 (c) The administrative law judge may issue an order for reconsideration of all
26 or part of the decision upon request of a party. Reconsideration is based on the record,
27 unless the administrative law judge allows additional evidence and argument. A
28 hearing on reconsideration at which additional evidence or argument is offered or
29 received is subject to the procedures applicable to a hearing under AS 43.05.455.

30 (d) The power to order reconsideration expires ~~30~~ ⁶⁰ days after the date of
31 service, as shown on the certificate of service, of a decision issued under (a) of this

1 section. If the administrative law judge does not issue an order for reconsideration
2 within the time allowed for ordering reconsideration, a motion for reconsideration is
3 considered denied.

4 (e) Within 60 days after the close of the record on reconsideration, the
5 administrative law judge shall issue a written decision upon reconsideration. The
6 administrative law judge shall serve each party in the case with a copy of the decision
7 upon reconsideration. The decision upon reconsideration is the final administrative
8 decision.

9 (f) An administrative decision becomes final either on the date

10 (1) 30 days after the date of service of a decision issued under (a) of
11 this section if an order for reconsideration is not issued; or

12 (2) the decision upon reconsideration is served, as shown by the
13 certificate of service executed by the administrative law judge under (e) of this section.

14 Sec. 43.05.470. PUBLIC PROCEEDINGS AND RECORDS. (a) Records,
15 proceedings, and decisions under AS 43.05.400 - 43.05.499 are confidential, except
16 that the records, proceedings, and decisions become public records and open to the
17 public when the final administrative decision is issued and becomes final.

18 (b) Upon a showing of good cause, an administrative law judge shall issue a
19 protective order requiring that specified parts of the records, proceeding, or decision
20 shall be kept confidential in a particular appeal. If a protective order is issued, the
21 final administrative decision shall be made public after redacting by deletion or
22 substitution of information as required by the protective order.

23 (c) The department, in consultation with the chief administrative law judge,
24 shall maintain, index, and make available for public inspection the final administrative
25 decisions, proceedings, and records of the office made public under this section.

26 Sec. 43.05.475. CONSISTENCY OF DECISIONS. (a) As to questions of
27 law, a final administrative decision issued under AS 43.05.400 - 43.05.499, unless
28 reversed or overruled, has the force of legal precedent.

29 (b) To promote consistency among legal determinations issued under
30 AS 43.05.400 - 43.05.499, the chief administrative law judge may review and circulate
31 among the other administrative law judges the drafts of formal decisions, decisions

1 upon reconsideration, and other legal opinions of the other administrative law judges
2 in the office. The drafts are confidential documents and are not subject to disclosure
3 under AS 09.25.100 - 09.25.220 or this chapter.

4 Sec. 43.05.480. JUDICIAL REVIEW. (a) Judicial review by the superior
5 court of a final administrative decision may be had by a party to the appeal under this
6 chapter by filing a notice of appeal in accordance with the applicable rules of court
7 governing appeals to that court in civil matters. The notice of appeal shall be filed
8 within 30 days after an administrative decision becomes final under AS 43.05.465.
9 The right to judicial review under this subsection is not affected by the failure to seek
10 reconsideration before the administrative law judge.

11 (b) The amount due must be paid or refunded within 30 days after the date
12 that the final administrative decision becomes final under AS 43.05.465. In place of
13 payment of the amount due, a taxpayer who has appealed a final administrative
14 decision may file a bond with the court or otherwise obtain relief from payment in
15 accordance with the Alaska Rules of Appellate Procedure.

16 (c) Appeals under this section are reviewed under AS 44.62.560 and 44.62.570.

17 (d) If, after the appeal is heard, it appears that the final administrative decision
18 was correct, the court shall affirm the decision. If the final administrative decision is
19 incorrect, the court shall determine the amount due. If the taxpayer is entitled to a
20 refund, the court shall order the repayment and the Department of Revenue shall pay
21 the amount due and attach a certified copy of the judgment to the payment. If the
22 court determines that the taxpayer owes an additional amount, the court shall order the
23 payment and the taxpayer shall pay the amount due and attach a certified copy of the
24 judgment to the payment. Any payment required under this subsection shall be paid
25 by the 30th day following the expiration of the time within which an appeal from the
26 superior court decision may be filed, unless the party appealing files a bond or
27 otherwise obtains relief from payment in accordance with the Alaska Rules of
28 Appellate Procedure.

29 Sec. 43.05.499. DEFINITIONS. In AS 43.05.400 - 43.05.499, unless the
30 context otherwise requires,

31 (1) "administrative law judge" means an administrative law judge

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appointed under AS 43.05.410;

"de novo" >

(2) "commissioner" means the commissioner of administration;

(3) "department" means the Department of Administration;

(4) "discovery" means the use of subpoenas, subpoenas duces tecum, interrogatories, requests for production, requests for admission, depositions, and other methods of civil procedure by which one party to an action may discover information within the knowledge and control of another person;

(5) "legislative history" means the documents of the legislature recording the background and events, including draft bills, correspondence and memoranda, committee reports, tapes and transcripts of hearings, and tapes and transcripts of floor debate concerning consideration of a bill;

(6) "office" means office of tax appeals in the department;

(7) "party" means the Department of Revenue and the taxpayer;

(8) "proceeding" means only a proceeding under the jurisdiction of the office;

(9) "subpoena" means a command to appear at a certain time and place to testify, or to appear at a certain time and place to produce books, papers, and other things, and testify;

(10) "tax" means a tax described in AS 43.05.405, including a seafood marketing assessment under AS 16.51;

(11) "taxpayer" means a person required to pay a tax, including a person required to pay a seafood marketing assessment under AS 16.51.

* Sec. 2. AS 09.25.100 is amended to read:

Sec. 09.25.100. DISPOSITION OF TAX INFORMATION. Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation, administrative adjudication under AS 43.05.400 - 43.05.499, or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, [OR] prohibit the

1 publication of tax lists showing the names of taxpayers who are delinquent and
 2 relevant information that may assist in the collection of delinquent taxes, or prohibit
 3 the publication of records, proceedings, and decisions under AS 43.05.400 -
 4 43.05.499.

5 * Sec. 3. AS 09.25.122 is amended to read:

6 Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is subject
 7 to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record
 8 subject to disclosure and copying even if the record is used for, included in, or relevant
 9 to litigation, including law enforcement proceedings, involving a public agency, except
 10 that with respect to a person involved in litigation, the records sought shall be
 11 disclosed in accordance with the rules of procedure applicable in a court or an
 12 administrative adjudication [RULES]. In this section, "involved in litigation" means
 13 a party to litigation or representing a party to litigation, including obtaining public
 14 records for the party.

15 * Sec. 4. AS 22.10.020(d) is amended to read:

16 (d) The superior court has jurisdiction in all matters appealed to it from a
 17 subordinate court, or administrative agency when appeal is provided by law. The
 18 hearings on appeal from a final order or judgment

19 (1) of a subordinate court [OR ADMINISTRATIVE AGENCY] shall
 20 be on the record unless the superior court, in its discretion, grants a trial de novo, in
 21 whole or in part;

22 (2) of the Department of Revenue in matters relating to fixing the
 23 amount of, or imposing a penalty on, a tax levied and collected by the state when
 24 appeal is taken under AS 43.05.242 shall be heard as a trial de novo as a matter
 25 of right;

26 (3) of the Department of Administration in matters relating to
 27 fixing the amount of, or imposing a penalty on, a tax levied and collected by the
 28 state when appeal is taken under AS 43.05.400 - 43.05.499 shall be on the record
 29 unless the superior court, in its discretion, grants a trial de novo, in whole or in
 30 part;

31 (4) of an administrative agency, except for a matter described in

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1 (2) or (3) of this subsection, shall be on the record unless the superior court, in
2 its discretion, grants a trial de novo, in whole or in part.

3 * Sec. 5. AS 37.10.410 is amended to read:

4 Sec. 37.10.410. "ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES"
5 DEFINED. (a) The following money received by the state is considered to be
6 received as a result of the termination of an administrative proceeding for purposes of
7 applying art. IX, sec. 17(a), Constitution of the State of Alaska:

8 (1) past due taxes that are received by the state for each tax year for
9 which a request for an informal conference under AS 43.05.240 [AS 43.05.240(a)] is
10 made to the Department of Revenue, together with penalties and interest on the taxes;

11 (2) past due taxes that are received by the state after a request for a
12 formal hearing under AS 43.05.241 [AS 43.05.240(b)(1)] is made to the Department
13 of Revenue, together with penalties and interest on the taxes.

14 (b) Money received by the state under the following conditions is not
15 considered to be received as the result of the termination of an administrative
16 proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of
17 Alaska:

18 (1) taxes that are not due at the time the request for the proceeding was
19 made under AS 43.05.240, 43.05.241, or 43.05.242 [AS 43.05.240(a) or (b)(1)];

20 (2) taxes set out in a return not audited by the Department of Revenue
21 at the date of collection; or

22 (3) taxes collected for a tax year for which the taxpayer did not give
23 notice of appeal of an assessment made by the Department of Revenue.

24 * Sec. 6. AS 39.25.110 is amended by adding a new paragraph to read:

25 (31) the chief administrative law judge and any other administrative law
26 judges appointed to the office of tax appeals of the Department of Administration under
27 AS 43.05.400 - 43.05.499.

28 * Sec. 7. AS 43.05.010 is amended to read:

29 Sec. 43.05.010. DUTIES OF COMMISSIONER. The commissioner of revenue
30 shall

31 (1) exercise general supervision and direct the activities of the
32 Department of Revenue;

- 1 (2) supervise the fiscal affairs and responsibilities of the department;
- 2 (3) prescribe uniform rules for investigations and hearings;
- 3 (4) keep a record of all departmental proceedings, record and file all
- 4 bonds, and assume custody of returns, reports, papers, and documents of the department;
- 5 (5) [REPEALED]
- 6 (6) adopt a seal and affix it to each order, process, or certificate issued
- 7 by the commissioner;
- 8 (6) [(7)] keep a record of each order, process, and certificate issued by
- 9 the commissioner, and keep the record open to public inspection at all reasonable times;
- 10 (7) [(8)] hold hearings and investigations necessary for the administration
- 11 of state tax and revenue laws;
- 12 (8) except as provided in AS 43.05.400 - 43.05.499, [(9)] hear and
- 13 determine appeals of a matter within the jurisdiction of the Department of Revenue
- 14 [INVOLVING INCOME, EXCISE, LICENSE, OR OTHER TAXES LEVIED UNDER
- 15 STATE LAWS] and enter orders on the appeals that are final unless reversed or
- 16 modified by the courts;
- 17 (9) issue subpoenas to [(10)] require the attendance of witnesses and the
- 18 production of necessary books, papers, documents, correspondence, and other things
- 19 [EVIDENCE AT HEARINGS];
- 20 (10) [(11)] order the taking of depositions before a person competent to
- 21 administer oaths;
- 22 (11) [(12)] administer oaths and take acknowledgments;
- 23 (12) [(13)] request the attorney general for rulings on the interpretation
- 24 of the tax and revenue laws administered by the department;
- 25 (13) [(14)] call upon the attorney general to institute actions for recovery
- 26 of unpaid taxes, fees, excises, additions to tax, penalties, and interest;
- 27 (14) [(15)] issue warrants for the collection of unpaid tax penalties and
- 28 interest and take all steps necessary and proper to enforce full and complete compliance
- 29 with the tax, license, excise, and other revenue laws of the state;
- 30 (15) [(16)] audit reports, payments, and payments due relating to royalty
- 31 and net profits under oil and gas contracts, agreements, or leases under AS 38.05 [;
- 32 (17) REPEALED].

1 * Sec. 8. AS 43.05.040 is amended to read:

2 Sec. 43.05.040. INSPECTION OF RECORDS OR PREMISES AND
3 ISSUANCE OF SUBPOENAS. (a) The department may examine the books, papers,
4 records, or memoranda of any person to ascertain the correctness of a return filed or to
5 determine whether a tax or a payment for oil or gas royalty or net profits shares under
6 a contract, agreement, or lease under AS 38.05 is due, or in an investigation or
7 inspection in connection with tax matters or matters relating to oil and gas royalty or net
8 profits under contracts, agreements, or leases under AS 38.05. The records and the
9 premises where a business is conducted shall be open at all reasonable times for official
10 inspection, and the department may subpoena any person to appear and produce books,
11 records, papers, or memoranda bearing upon tax matters or matters relating to oil and gas
12 royalty or net profits under contracts, agreements, or leases under AS 38.05, and to give
13 testimony or answer interrogatories under oath respecting tax matters or matters related
14 to oil and gas royalty or net profits under contracts, agreements, or leases under
15 AS 38.05, and the department may administer oaths to persons who are so subpoenaed.
16 A subpoena issued under this section may compel attendance of a witness or
17 production of a document or thing, located either inside or outside the state, to the
18 maximum extent permitted by law.

19 (b) A subpoena may be served by the commissioner of public safety or a peace
20 officer designated by the commissioner of public safety, [OR] by a person designated by
21 the Department of Revenue, or as otherwise provided by law. A subpoena may also
22 be served by registered or certified mail for delivery restricted only to the person
23 subpoenaed. The return delivery receipt must be addressed so that the receipt is
24 returned to the department.

25 (c) If a person who is subpoenaed neglects or refuses to obey the subpoena
26 issued as provided in this section, the department may report the fact to the superior
27 court or the appropriate court of another jurisdiction, and may seek an order from
28 the court compelling obedience to the subpoena. The [AND THE] court, to the
29 maximum extent permitted by law, may compel obedience to the subpoena to the same
30 extent as witnesses may be compelled to obey the subpoenas of the court.

31 * Sec. 9. AS 43.05.230(a) is amended to read:

32 (a) It is unlawful for a current or former officer, employee, or agent of the state

1 to divulge the amount of income or the particulars set out or disclosed in a report or
2 return made under this title, except ,

3 (1) in connection with official investigations or proceedings of the
4 department, whether judicial or administrative, involving taxes due under this title;

5 (2) in connection with official investigations or proceedings of the child
6 support enforcement agency, whether judicial or administrative, involving child support
7 obligations imposed or imposable under AS 25 or AS 47;

8 (3) as provided in AS 38.05.036 pertaining to audit functions; [AND]

9 (4) as provided in AS 43.05.400 - 43.05.499; and

10 (5) as otherwise provided in this section.

11 * Sec. 10. AS 43.05.240 is repealed and reenacted to read:

TAXPAYER REMEDIES

12 Sec. 43.05.240. ~~INFORMAL CONFERENCE.~~ (a) A taxpayer aggrieved by the
13 action of the department in fixing the amount of a tax or penalty may apply to the
14 department within 60 days after the date of mailing of the notice required to be given
15 to the taxpayer by the department, giving notice of the grievance, and requesting an
16 informal conference to be scheduled with an appeals officer. The taxpayer shall be given
17 access to the taxpayer's file in the department in the matter for preparation for the
18 informal conference. At the informal conference, the taxpayer may present to the
19 appeals officer arguments and evidence relevant to the amount of tax or penalty due the
20 state. If the department determines that a correction is warranted, the department shall
21 make the correction.

22 (b) ~~A taxpayer~~ ^{party} who believes that the appeals officer is unduly delaying a hearing
23 process may notify the commissioner. Within 30 days after being notified by a ~~taxpayer~~ ^{party},
24 the commissioner may issue an order prescribing a schedule for the appeals officer to
25 complete the informal conference or setting a meeting at which that schedule will be
26 discussed and prescribed. ^{The schedule may be voluntarily waived -} If the commissioner fails to issue an order within 30 days after
^{with the consent of the parties, procedure may be} receiving notice of a taxpayer's belief of undue delay, the department's action in fixing
27 the amount of tax or penalty shall be considered to have been summarily affirmed by the
28 appeals officer the same as if an informal conference decision to that effect were issued
29 on the last day of that 30-day period. ^{making.}

31 * Sec. 11. AS 43.05 is amended by adding new sections to read:

32 Sec. 43.05.241. FORMAL APPEAL. For a matter within the jurisdiction of the

1 office of tax appeals under AS 43.05.405, the taxpayer aggrieved by an informal
2 conference decision entered under AS 43.05.240 may file with the office of tax appeals
3 a notice of appeal for formal hearing, as provided in AS 43.05.430, no later than 30 days
4 after service of the decision resulting from an informal conference.

5 Sec. 43.05.242. JUDICIAL APPEAL. A person aggrieved by the action of the
6 department under AS 43.05.240 in fixing the amount of a tax or in imposing a penalty
7 may within 30 days after decision resulting from the informal conference appeal to the
8 superior court. When an appeal is taken under this section,

9 (1) the taxpayer shall be given access to the file of the department in the
10 matter for preparation of the appeal;

11 (2) if, after the appeal is heard,

12 (A) it appears that the tax was correct, the court shall confirm the
13 tax;

14 (B) it appears that the tax was incorrect, the court shall determine
15 the amount of the tax; if the person aggrieved is entitled to recover the tax or
16 part of it, the court shall order the repayment, and the department shall
17 immediately pay the amount due and attach a certified copy of the judgment to
18 the payment.

19 Sec. 43.05.244. TAX, PENALTY, AND INTEREST PAYABLE BEFORE
20 APPEAL. (a) In an appeal from a decision of the department involving a deficiency of
21 taxes levied and collected by the state, whether in a formal hearing under AS 43.05.241
22 and 43.05.400 - 43.05.499 or under a judicial appeal authorized by AS 43.05.242, the
23 taxpayer shall pay to the state the full amount of the tax, penalty, and interest in respect
24 of the amount of tax assessed that is not in dispute. The taxpayer shall post a bond,
25 obtain a letter of credit, or provide other evidence satisfactory to the tax court that it is
26 able to pay the amount of tax, penalty, and interest in respect of the amount of tax
27 assessed that is in dispute and that is the basis of the taxpayer's appeal.

28 (b) The tax and interest due under this section are the amounts stated in the final
29 order of the department from which the appeal is taken, or if the final order appealed
30 from is a summary judgment or partial summary judgment, the amount shall be as
31 originally assessed on the issue or issues disposed of.

32 * Sec. 12. AS 43.05.245 is amended to read:

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Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES, AND INTEREST. If a taxpayer fails to file a return or report required by this title in the time required by law or regulation, or makes an erroneous or fraudulent return, the department shall proceed to assess the license fees, tax, penalties, or interest and make a return from information that [WHICH] it obtains. A return made and subscribed by the department in accordance with this section is presumed sufficient for all legal purposes. However, nothing prevents a taxpayer from presenting evidence or other information on an informal conference [APPEAL] under AS 43.05.240 or in an appeal under AS 43.05.241 or 43.05.242 in order to rebut the presumed sufficiency of a return made and subscribed by the department, nor does the presumption of sufficiency alter the parties' respective burdens of proof once the taxpayer has presented evidence or other material information to rebut that presumption. The assessment of license fees, tax, penalties, or interest under this section occurs when the department issues a notice and demand for payment of the license fees, tax, penalties, or interest. The notice and demand for payment is issued when the notice and demand is delivered to the taxpayer in person or placed in the United States mail, addressed to the last known address of the taxpayer. Penalties and interest assessed under this title shall be collected in the same manner as provided in this title for the collection of tax or license fees.

* Sec. 13. AS 43.05 is amended by adding a new section to read:

Sec. 43.05.254. OVERPAYMENT. If it has been finally determined that an overpayment exists, either the taxpayer or the commissioner may elect within 60 days to credit the overpayment, including any interest accruing on the overpayment, against the tax liability of the taxpayer for the current tax year and subsequent tax years. The amount of the refund not credited within three years of the date of the election shall be paid to the taxpayer, with interest accrued at the rate established in AS 43.05.280.

* Sec. 14. AS 43.20.270(a) is amended to read:

(a) The department may collect taxes, with interest, penalties, and other additional amounts permitted by by distraint and sale, in the manner provided in this section, of the property of a person liable to pay the taxes, interest, penalties, or other additional amounts, who neglects or refuses to pay them within 10 days from the mailing of notice and demand for payment of them, and who has not appealed from the assessment of the taxes, interest, penalties, and other additional amounts determined

delete

1 under AS 43.05.240 or following appeal taken under AS 43.05.241 or 43.05.242.

2 * Sec. 15. AS 43.55.013(g) is amended to read:

3 (g) The monthly production at the economic limit for a lease or property is
4 presumed to be 3,000 Mcf times the number of well days for the lease or property during
5 that month for which the tax is to be paid. The taxpayer may rebut this presumption at
6 an informal conference [A FORMAL HEARING] under AS 43.05.240 by providing
7 clear and convincing evidence of a different monthly production rate at the economic
8 limit for the lease or property. The hearing shall be held before February 15 of the year
9 or within six months after commencement of gas production for a lease or property. The
10 monthly production rate at the economic limit for the lease or property based upon the
11 clear and convincing evidence of the taxpayer shall be calculated by dividing the value
12 determined under (i) of this section into the average monthly direct operating cost
13 determined under (h) of this section.

14 * Sec. 16. AS 43.55.040 is amended to read:

15 Sec. 43.55.040. POWERS OF DEPARTMENT OF REVENUE. Except as
16 provided in AS 43.05.400 - 43.05.499, the [THE] department may

17 (1) require a person engaged in production and the agent or employee of
18 the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil or
19 gas to furnish additional information that is considered by the department as necessary
20 to compute the amount of the tax;

21 (2) examine the books, records, and files of such a person;

22 (3) conduct hearings and compel the attendance of witnesses and the
23 production of books, records, and papers of any person; and

24 (4) make an investigation or hold an inquiry that is considered necessary
25 to a disclosure of the facts as to

26 (A) the amount of production from any oil or gas location, or of
27 a company or other producer of oil or gas; [,] and

28 (B) the rendition of the oil and gas for taxing purposes.

29 * Sec. 17. EFFECT ON EXISTING REMEDIES AND PROCEDURES. This Act does not
30 affect the remedies and procedures

31 (1) specified in AS 04.11, including AS 04.11.560; AS 05.15, including
32 AS 05.15.610; AS 42.05, including AS 42.05.551; or AS 43.56, including AS 43.56.120 and

1 43.56.130; or

2 (2) adopted by regulation by the Department of Revenue governing appeal of a
3 decision of the Department of Revenue regarding

4 (A) a game of chance or skill made under AS 05.15;

5 (B) a permanent fund dividend under AS 43.23;

6 (C) a coin-operated device or punchboard under AS 43.35; or

7 (D) a child support obligation under AS 7.

8 * Sec. 18. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided by
9 this Act apply to all revenue tax appeals in which a request for formal hearing is filed with the
10 Department of Revenue on or after the effective date of this Act. The remedies and procedures
11 existing before the effective date of this Act apply to all revenue tax appeals in which a request
12 for formal hearing was filed with the Department of Revenue before the effective date of this
13 Act, unless all of the parties to an appeal, by written stipulation approved by the chief
14 administrative law judge, agree to the remedies and procedures established by this Act.

15 (b) Until regulations authorized under this Act take effect, 15 AAC 05.001 -
16 15 AAC 05.320 govern appeals within the jurisdiction of the office of tax appeals filed after the
17 effective date of this Act, except to the extent the regulations are inconsistent with this Act.

18 (c) Notwithstanding AS 43.05.405, enacted by sec. 1 of this Act, until the office of tax
19 appeals has a full caseload, and with the approval of the chief administrative law judge, the chief
20 administrative law judge or any other administrative law judge of the office of tax appeals may
21 be appointed by the governor, by the commissioner of administration, or by the commissioner
22 of another department to serve as a special hearing officer or special administrative law judge
23 on another matter outside the scope of this Act and arising from another department of the
24 executive branch. Appointment under this subsection may not interfere with the primary mission
25 of the office of tax appeals under this Act of the expeditious resolution of administrative tax
26 appeals under its jurisdiction.

27 (d) Until 15 AAC 05.001 - 15 AAC 05.320 and other Department of Revenue
28 regulations in effect on the effective date of this Act are revised as necessary, those regulations
29 continue to govern an administrative appeal of a Department of Revenue decision not within the
30 jurisdiction of the office of tax appeals, including a decision regarding a

31 (1) game of chance or skill under AS 05.15;

32 (2) permanent fund dividend under AS 43.23;

- 1 (3) coin-operated device or punchboard under AS 43.35; and
- 2 (4) child support obligation under AS 25.27.

3 (e) In this section,

4 (1) "chief administrative law judge" means the chief administrative law judge
 5 of the office of tax appeals appointed under AS 43.05.410, enacted by sec. 1 of this Act;

6 (2) "office of tax appeals" means the office established in AS 43.05.400, enacted
 7 by sec. 1 of this Act.

8 * Sec. 19. COURT RULE CHANGE; RULES OF APPELLATE PROCEDURE. The
 9 provisions of AS 22.10.020(d)(2), added by sec. 4 of this Act, have the effect of changing
 10 Rule 609(b) of the Alaska Rules of Appellate Procedure relating to the superior court's
 11 exercise of its discretion to grant a de novo review of certain appeals of decisions of the
 12 Department of Revenue involving taxes and related penalties.

13 * Sec. 20. This Act takes effect July 1, 1996.

*Can
 Winegrove
 ?*

STATE TAX APPEAL FORUMS
AS OF AUGUST, 1994¹

- I. The following states have either a separately created court within the judicial branch to hear only state tax cases or have a separate division within their court system that hears state tax cases:

Arizona	New Jersey
Hawaii	Oregon
Indiana	Connecticut

- II. The following states have either tax courts or tax tribunals (independent state agencies) within the executive branch which are designed to hear state tax cases:

Maryland	Michigan
Minnesota	New York

- III. The following states have independent review boards to which tax cases may be appealed. These Boards operate independently from the influence of the Commissioners of Revenue, or those agencies charged with assessing and collecting taxes.

California (Income and Franchise Taxes only)
Delaware
Iowa
Kansas
Kentucky
Louisiana
Massachusetts
Missouri
Montana
New Hampshire
North Carolina
Ohio
Pennsylvania
Washington
Wisconsin
Wyoming

- IV. The following states have appeal boards within a commission or agency that is charged not only with hearing tax appeals, but also with administering the collection of taxes. The important point is that the board members are generally appointed by the governor for limited terms and are approved or reviewed by the state legislature.

¹ From State Tax Appeals Systems published by Federation of Tax Administrators.

California (Sales and Use Taxes only)
Mississippi
Nevada
Oklahoma
South Carolina
Utah

- V. The following states have an appeals system administered and under the direction of the state's department of revenue or equivalent type agency. What is significant in these states is that the hearing officer is either appointed by the chief of the department of revenue and/or the hearing officer's decision is subject to the approval of the chief of the department of revenue.

Alabama
Alaska
Arkansas
Colorado
Florida
Illinois
Maine
Nebraska
New Mexico
North Dakota
Rhode Island
South Dakota
Tennessee
Texas
Vermont
Virginia
West Virginia

Of those states listed above, the following allow state court de novo hearings at some phase in appealing an administrative tax decision. This procedure adds some degree of due process to ensure the taxpayer does not suffer from any potential institutional biasedness at the administrative level hearing.

Alabama	Circuit Court
Arkansas	Chancery Court
Colorado	District Court
Florida	Circuit Court
Georgia	Superior Court
Illinois	Circuit Court
Maine	Superior Court
Nebraska	Lancaster County District Court (de novo review based on prior evidentiary record)
Rhode Island	District Court
Tennessee	Chancery Court
Texas	District Court
Virginia	Circuit Court

Alaska State Legislature



Representative Joe Green

District 13

Sponsor Statement

CSHB 341 - Tax Court

CSHB 341 proposes to establish a new tax appeals process within the Department of Revenue.

PROBLEM: The Commissioner of Revenue assumes several roles in his/her relationships with taxpayers. The commissioner interprets state tax law in *writing the regulations* by which taxpayers must abide. The commissioner also *enforces* state tax laws and regulations through the audit process, *issues assessments*, and if the assessment is appealed, *selects the hearing officer and/or sits in judgment* during the appeal process.

When the taxpayer requests a formal hearing the commissioner selects a departmental employee to act as a hearing officer. If the hearing officer's ruling is unsatisfactory the taxpayer may file a motion for reconsideration with the commissioner. If the commissioner denies reconsideration, or if the commissioner grants reconsideration and rules against the taxpayer, the taxpayer can appeal to Superior Court. The Superior Court, however, will only conduct an "on the record" review of the commissioner's final decision, meaning no new evidence can be introduced. Essentially, the court considers a brief, compiled by the department.

SOLUTION: HB 341 allows a taxpayer to present a complete set of facts to the Superior Court, in a *de novo* (new) proceeding. A Superior Court hearing will allow taxpayers to stand before another tribunal if they fear the commissioner's decision is biased as a result of he/she acting as the enforcer (auditor), prosecutor (assessor), and judge (hearing officer).

Revision Date: January 17, 1996 Dept. Affected: Revenue
 Title: Alaska Tax Court BRU: Revenue Operations
 Component: Oil and Gas Audit
 Sponsor: Representative Green
 Requestor: _____ COMPONENT SERIAL NO. 115

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: John E. Pilkington, Director
 Division: Oil and Gas Audit
 Approved by Commissioner: _____
 Agency: Department of Revenue

Phone: (907) 276-1363 Ext. 225
 Date: January 23, 1996
 Date: January 23, 1996

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As drafted, CSHB 341 will at a minimum add to our audit workload and delay current audits by reforming the "informal" proceedings within the department. It is also possible that it could eventually add an additional layer to the appeals process by altering the likelihood of trial de novo in an appeal from formal hearing, thereby increasing future costs of case resolution. The reason for both results is that CSHB 341 changes the primary purpose of the reviewing court from an appellate function to a trial function.

The change in the Court's fundamental purpose, and the fact that under AS 43.05.242(b) informal hearings now become automatic in all cases, will change the nature of the informal proceeding. Today, informal proceedings serve as a second review of the audit results and provide an informal process within which the taxpayer can attempt to resolve the matter. Although taxpayers can now bypass informal conference and go directly to formal hearing, most of the Division's past cases have been resolved at the informal level. Under existing law, an informal conference is followed by a formal administrative proceeding where the bulk of the department's work in putting our official litigation position together now takes place. Under CSHB 341, uncertainty regarding whether the taxpayer will go to formal hearing or to a civil trial de novo, will require much more "formal" and detailed preparation at the informal level. This will involve considerable time and effort from the audit and appeals staff that would normally be spent on current audits and informal resolution. Additionally, the current informal/formal procedure allows the department the opportunity to develop issues and determine which should be resolved and which litigated. Automatic appeal to civil court will allow taxpayer decisions to drive the department's litigation costs.

The change in the reviewing court's primary function could also alter the likelihood of trial de novo being granted on appeal from any cases which do go to formal hearing. Under CSHB 341, the Superior Court's review will no longer be primarily an "appellate review". Instead, the Court's primary function in these cases will be to sit as a specialized trial court for tax matters. Different rules of procedure and evidence will apply in a tax civil trials and sophisticated oil and gas taxpayers will likely have little trouble presenting "new" issues and "new" evidentiary questions to encourage the Court to exercise its independent judgment rather than defer to a Department hearing officer's decision which is portrayed as biased. Over time, the court will develop specialized tax expertise. Since these large, complex cases are almost unanimously appealed, a Judge is likely to prefer that the case go up on a record which he/she had some control in creating. Formal hearings might easily become little more than discovery and negotiation tools, with an almost automatic right to trial de novo.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 341

Revision Date: _____
Title: An Act establishing a tax court...

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____

Sponsor: Rep. Green
Requestor: House Resources

COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	267.0	267.0	267.0	267.0	267.0	267.0
TRAVEL						
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	4.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT	17.8					
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	293.8	276.0	276.0	276.0	276.0	276.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	293.8	276.0	276.0	276.0	276.0	276.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	293.8	276.0	276.0	276.0	276.0	276.0


Estimate of any current year (FY 96) cost: \$ None

POSITIONS

FULL-TIME	4.0	4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel 
Agency: Alaska Court System

Phone: 264-8228
Date: 01/17/96

Approved by: Arthur H. Snowden, II, Administrative Director 
Agency: Alaska Court System

Date: 01/17/96

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Alaska Court System

Fiscal Analysis

HB 341

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Superior Court Judge, Anchorage, PFT, 12 months	\$96,600	\$52,365	\$148,965
Secretary, 12A, Anchorage, PFT, 12 months	27,108	10,363	37,471
In Court Clerk, 12A, Anchorage, PFT, 12 months	27,108	10,363	37,471
Law Clerk, 13D, Anchorage, PFT, 12 months	31,824	11,278	<u>43,102</u>
	Total Personal Services		<u>267,009</u>

Contractual

Postage, telephone, annual updates to legal reference materials, copier rental, etc. 5,000

This fiscal note assumes that the cost of the 3-master panels will be assessed to the parties.

Supplies

Office, courtroom and computer supplies. 4,000

Equipment (one time item)

Office furniture, computer or data terminal, software, dictation equipment, statutes, rules of court, facsimile machine, etc 17,800

Total Estimated Cost \$293,809

Revision Date: _____ Dept. Affected: Revenue
 Title: Alaska Tax Court BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Representative Green
 Requestor: (H) Resources COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL	25.0	25.0	25.0	25.0	25.0	25.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.0	25.0	25.0	25.0	25.0	25.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Larry Meyers, Director
 Division: Income and Excise Audit
 Approved by Commissioner: [Signature]
 Agency: Department of Revenue

Phone: (907) 269-6620
 Date: January 23, 1996
 Date: January 23, 1996

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The HB 341 changes the present method in which a tax assessment is appealed. Under the existing law the taxpayer has the option of having its case heard initially at the informal level or appealing directly for a formal hearing. The formal record on the case is prepared at the formal hearing. Appeal to superior court is available to the taxpayer. Under the proposed bill the taxpayer now has the ability to appeal the decision from the informal appeal directly to the superior court and receive a trial de novo.

The bill impacts virtually all the Income and Excise Division's tax types. It is projected that an average of 200 appeals a year will be received of which approximately 12 will relate to oil and gas and other large multi state corporations. These major cases require approximately 1500 hours of auditor time to complete. If these cases are appealed from the informal hearing to the superior court, the related de novo hearing is anticipated to increase the audit support time up to an additional 25%. This is time that would normally have been spent on new audits. The impact is at a minimum a deferral of revenue offset in part by the accruing of interest leading to a reduction in the total number of audits being completed. With no increase of audit positions the number of cases closures would decrease and future revenues would be protected only upon the receiving of statute of limitation waivers or issuance of jeopardy assessments.

The appeals staff would see an even greater impact on their ability to move cases through the system in a timely fashion. They would be required to prepare as if every informal hearing would be appealed to superior court and granted a trial de novo. Currently an informal hearing is used to substantiate dollar amounts and gather new taxpayer information. No formal rules of evidence are followed which would now change under this bill. The superior court option is available to any applicable tax that is assessed regardless of the dollar size. The additional time spent at the informal appeal level on preparing these cases allows the backlog of cases to grow and all taxpayers will see a delay in the length of time it takes for a decision to be reached.

The Division anticipates that it will incur travel costs either on behalf of its auditors and its appeals staff as a result of the informal hearing being appealed to the superior court in the judicial district in which the person resides. Presently informal appeals and formal hearings are available at the taxpayer's option through telephonic means or physically at three hearing sites. Under the proposed bill the Division will incur travel costs to more cities and the length of time will increase due to the trial de novo before a superior court. The average daily per diem is projected to be \$150 with airfare of \$400. Travel costs could reach \$25,000 given the number of cases the Division handles.

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Representative Joe Green

District 12

Sponsor Statement

CSHB 341 - Tax Court

CSHB 341 proposes to establish a new tax appeals process within the Department of Revenue.

PROBLEM: The Commissioner of Revenue assumes several roles in his/her relationships with taxpayers. The commissioner interprets state tax law in *writing the regulations* by which taxpayers must abide. The commissioner also *enforces* state tax laws and regulations through the audit process, *issues assessments*, and if the assessment is appealed, *selects the hearing officer and/or sits in judgment* during the appeal process.

When the taxpayer requests a formal hearing the commissioner selects a departmental employee to act as a hearing officer. If the hearing officer's ruling is unsatisfactory the taxpayer may file a motion for reconsideration with the commissioner. If the commissioner denies reconsideration, or if the commissioner grants reconsideration and rules against the taxpayer, the taxpayer can appeal to Superior Court. The Superior Court, however, will only conduct an "on the record" review of the commissioner's final decision, meaning no new evidence can be introduced. Essentially, the court considers a brief, compiled by the department.

SOLUTION: HB 341 allows a taxpayer to present a complete set of facts to the Superior Court, in a *de novo* (new) proceeding. A Superior Court hearing will allow taxpayers to stand before another tribunal if they fear the commissioner's decision is biased as a result of he/she acting as the enforcer (auditor), prosecutor (assessor), and judge (hearing officer).