

12173

HOUSE

JUDICIARY

judicial determination of guilt in the criminal proceeding brought against appellant. It is argued, in effect, that appellant had its day in court when it pleaded guilty to the offense. Thus, no further adjudicative determination is necessary. This argument overlooks, however, the different character of the criminal proceeding and the administrative proceeding.

The penalty imposed by the Board is not automatic. The use of the word 'may' rather than the directive 'shall' in AS 04.15.100(b), indicates a discretionary power, *Alaska Alcoholic Beverage Control Board v. Malcolm, Inc.*, 391 P.2d 441 (Alaska 1964). In addition, the reference to 'upon the direction of the majority of its members' clearly contemplates a vote, which would be a hollow gesture if the suspension authority were not discretionary. The choice of the duration of the penalty by the Board creates a further area of discretion.²⁴

Thus the Supreme Court agreed that the corporation had suffered a violation of its state and federal due process rights.²⁵

In order to satisfy due process requirements, the litigant must be given more than just a hearing. That hearing must be "meaningful."²⁶ In determining "whether a hearing is a meaningful one, [the court is] guided by

²⁴ *Id.*, 524 P.2d at 660. The Supreme Court noted that the fact that the Board had discretion to impose a range of penalties was not determinative. 524 P.2d at 661 n. 5. It observed that other courts had "found that even when suspension is statutorily mandated a right to notice and hearing still obtains." *Id.* The Supreme Court expressly chose not to address the process due if the suspension was mandatory. *Id.*

²⁵ *Id.*, 524 P.2d at 661.

²⁶ *Javed v. Dep't of Public Safety*, 921 P.2d 620, 622 (Alaska 1996) (quoting *Graham v. State*, 633 P.2d 211, 216 (Alaska 1981)).

'considerations of fundamental fairness.'"²⁷ Thus at an administrative hearing concerning the suspension of a driver's license "the accused must be granted the opportunity to *fully contest issues of 'central importance'* to the revocation decision."²⁸

Where there are allegations that a driver drove with an excessive amount of alcohol in his system a meaningful hearing "would require the presence of the arresting officer, the production of the report of the arresting officer and any tape recordings, videotapes, or transcripts concerning events surrounding the arrest, and the presence of witnesses having evidence to offer on contested points."²⁹ The alleged driver must be afforded an opportunity to challenge the reliability of the breath test³⁰ and the state must preserve the breath sample or give the driver an opportunity to obtain an independent test.³¹

In the hearing at which Holiday was facing the suspension of the tobacco endorsement, the central issue was whether its agents or employees had

²⁷ *Javed*, 921 P.2d at 622 (quoting *Thorne v. State, Dep't of Public Safety*, 774 P.2d 1326, 1329 (Alaska 1989) quoting *Whisenhut v. State, Dep't of Public Safety*, 746 P.2d 1298, 1300 (Alaska 1987)).

²⁸ *Thorne*, 774 P.2d at 1331 (quoting *Champion v. State, Dep't of Public Safety*, 721 P.2d 131, 133 (Alaska 1986)) (italics supplied).

²⁹ *Graham*, 633 P.2d at 216 n. 12.

³⁰ *Champion*, 721 P.2d at 133.

³¹ *Id.* and *Briggs v. State, Dep't of Public Safety*, 732 P.2d 1078, 1080 (Alaska 1987).

sold tobacco products to underage customers. The restriction of the hearing to the issue of the scope of the agent or employee's authority avoids the typical central issue entirely.³²

The holding in *Javed* is again compelling. Alaska Statute 28.15.165 required the suspension of a driver's license if a driver failed or refused to take a breath test.³³ The accused was allowed an administrative hearing but the issues at the hearing were limited.³⁴ The accused could only argue that the arresting officer did not have reasonable grounds to believe that the accused was driving or that other specified circumstances existed.³⁵ But the accused could not demonstrate that he was not driving. The Supreme Court concluded, "a hearing which is statutorily limited to the reasonableness of the arresting officer's beliefs at the time of arrest is not necessarily meaningful or fundamentally fair. Revocation is not fair if the accused can demonstrate that he was not driving, regardless of the reasonable beliefs of the arresting officer."³⁶ This analysis applies to the restriction

³² The only time the scope of authority might be of any practical relevance would be in the rare occasion when the holder of the endorsement could defend on the grounds that the agent or employee had taken tobacco products off premises and sold them to customers, say from the back of the employee's car or from the agent's home.

³³ 921 P.2d at 623.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

of the issues at the tobacco endorsement suspension hearing to preclude Holiday from arguing that its agent or employee did not sell tobacco products at all, or did not sell to an underage patron, or did not unreasonably sell tobacco products.

Holiday has not been afforded a meaningful administrative hearing when the State is permitted to utilize the judgment of conviction of another person (even if that person was an agent or employee of Holiday) as proof of what Holiday did. In *Scott v. Robertson*³⁷ the Alaska Supreme Court addressed the circumstances when a criminal conviction of a party can be used against the same party in a subsequent civil trial. It reviewed the traditional restrictions against the use of the conviction and concluded to abandon some of the restrictions in favor of a more tolerant rule. It described the more liberal rule it was adopting as follows:

The trend in recent years, however, has been to admit criminal convictions as evidence in subsequent civil trials where: (1) the prior conviction is for a serious criminal offense; (2) the defendant in fact had a full and fair hearing; and (3) it is shown that the issue on which the judgment is offered was necessarily decided in the previous trial. We adopt this position for use in Alaska.

The three conditions which we have set forth as prerequisites to the use of a criminal conviction in a subsequent civil case arising from the same set of facts are designed to protect the defendant against the introduction of unduly prejudicial criminal convictions. We first require that the prior conviction be for a serious offense in order that the accused have the motivation to defend himself fully. A driver who pleads guilty to a minor traffic violation may have decided merely that the costs of defending outweigh the burden of having such a conviction on his record. Such a conviction is not credible evidence of guilty conduct. Generally, any offense

³⁷ 583 P.2d 188 (Alaska 1978).

punishable by imprisonment should be considered to be a serious offense.

The requirement of a full and fair hearing is designed to prevent the introduction of the prior conviction where there is substantial question as to its validity. Normally, a criminal conviction, incorporating the high burden of proof on the state and the stringent safeguards against violations of due process, should be admissible absent strong showing of irregularity. Generally, no conviction entered without representation of counsel ought to be considered as evidence in a subsequent trial.

The third prerequisite would preclude the use of a conviction where the fact sought to be introduced had not necessarily been determined at the prior trial.³⁸

Consider a scenario that is more favorable to the State than the present situation. If the State had prosecuted Holiday for the alleged violations of AS 11.76.100 (a)(1), rather than three of its employees, and then offered those judgments of conviction in the administrative hearing concerning the suspension of the tobacco endorsements, the proposed use of the convictions would not have met the requirements of *Scott*. The first *Scott* prong requires that the prior conviction be for a serious criminal offense, defined as one for which incarceration is possible. The sale of tobacco products to an underage consumer is defined as a violation, a category of offense that is less serious than a misdemeanor and for which there is no possibility of incarceration. A conviction for a violation is not a conviction for a serious criminal offense. In fact a violation

³⁸ *Id.*, 583 P.2d at 191-92 (footnotes omitted).

is defined to be not a criminal offense.³⁹ Because the consequences of a conviction for a violation are so minor, a person accused of that conduct does not have sufficient incentive to fight the charges so as to permit the use of the conviction in a subsequent civil proceeding.

The proceedings in the district court provided even less incentive to the accused to fight the charges. None of the three individuals was exposed to the collateral potential of having the tobacco endorsement suspended in a later administrative proceeding. From Holiday's perspective the use of the convictions of other defendants at the administrative hearing was even more perverse. It had a greater incentive, because of the potential suspensions of the tobacco endorsements, to challenge the accusations of underage sales, but had no ability to exert that challenge. It could not participate in the district court proceedings and was not allowed to raise defenses (except a hopelessly insignificant one) in the administrative hearing.

The use of the conviction for a violation does not meet *Scott's* second prong. The safeguards that are normally found in a criminal proceeding are usually deemed adequate to ensure that there will not be substantial questions about the validity of the conviction sought to be used in the civil proceeding. One of the protections in the criminal proceeding is the availability of counsel to all accused persons. But a person accused of a violation is not entitled to public

³⁹ AS 11.76.100(f). A violation is a noncriminal offense that carries no possibility of a jail term. AS 11.81.900(62).

representation. The three individuals who were convicted of the violation had no right to a public defender or a trial by jury.⁴⁰ Nor is it likely that any of the three accused individuals would incur the expense of private counsel even if he or she could afford it because there was so little at stake. The definition of a violation states that "conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime."⁴¹ Because Holiday had no notice of the hearings at which the three individuals entered pleas, it had no ability to provide counsel for those persons in an effort, by defending the individuals directly, to defend itself indirectly from the consequences of their convictions if used against Holiday in a subsequent administrative hearing.

Finally, it is doubtful that the third *Scott* prong would be satisfied. That test does not permit the prior conviction to be used in the subsequent hearing unless the fact relevant to the second proceeding had necessarily been proven in the first trial. In order for a specific tobacco endorsement to be suspended the State must link the underage sale with the location applicable to the endorsement. The elements of the noncriminal offense of underage sale do not include, and thus do not necessitate, the proof of the location of the sale with such specificity. While it is true that the conviction may cover some elements relevant to the administrative

⁴⁰ AS 11.81.900(b)(62) ("a person charged with a violation is not entitled (A) to a trial by jury; or (B) to have a public defender or other counsel appointed at public expense to represent the person").

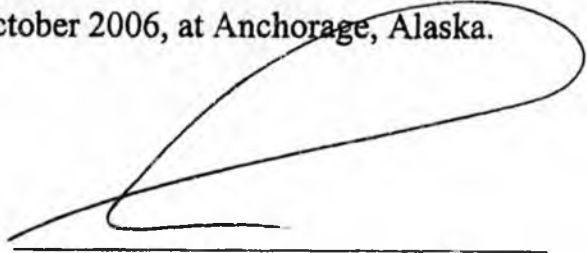
⁴¹ AS 11.81.900(b)(62).

hearing, it does not cover all of them. The prior conviction might meet the third prong and thus be admissible, but it alone would not suffice for the suspension of the endorsement as it might be silent as to the location of the sale or identification of the specific endorsement to be suspended.

But the most significant problem with the use of the convictions of the three individuals as conclusive proof of elements of the case for the suspension of the tobacco endorsements against Holiday is the basic fact that Holiday had no opportunity to be heard concerning the questions surrounding the alleged conduct of its agents or employees. The conduct of the three individuals constitute the issues of central importance in the case against Holiday but, by the use of the convictions for the violations of the three individuals, Holiday is deprived of any meaningful opportunity to be heard on those central issues. Having been deprived of that opportunity by the restriction of the issues that could be raised at the administrative hearing, Holiday was deprived of due process just as was the driver in *Javed* who could only challenge the reasonableness of the arresting officer's belief and not present evidence that he was not the driver.

Holiday was not afforded due process of law in violation of its state and federal constitutional rights. *The decisions of the Administrative Law Judge and commissioner are REVERSED.*

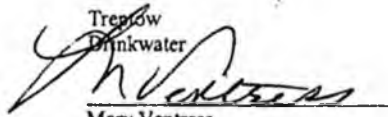
DONE this 27th day of October 2006, at Anchorage, Alaska.



William F. Morse
Superior Court Judge

I certify that on 27 October 2006
a copy of the above was mailed to
each of the following at their
addresses of record:

Trenlow
Drinkwater



Mary Ventress
Judicial Assistant

3AN-05-14036 CI
HOLIDAY V SOA
ORDER

HB

194

ALASKA STATE LEGISLATURE
House Resources Committee

Carl Gatto, Co-Chair

State Capitol Building, Room 108

Juneau, AK 99801-1182

(907) 465-3743

FAX (907) 465-2381

Rep_Carl_Gatto@legis.state.ak.us



Craig Johnson, Co-Chair

State Capitol Building, Room 126

Juneau, AK 99801-1182

(907) 465-4993

FAX (907) 465-3872

Rep_Craig_Johnson@legis.state.ak.us

Sponsor Statement
HB 194

"An Act relating to fines for certain offenses involving aeronautics, alcoholic beverages, boats, fish and game, health care records and public health, medical review organizations, public restroom facilities, smoking, shelter cabins, refrigerators and similar equipment, radiation sources, high voltage lines, child labor, employment in underground mines, marriage licenses, motor vehicles and driver's licenses, ignition interlock devices, pipelines, use of the state seal, and emissions requirements; relating to the maximum fine provided for violations and infractions and to the definition of 'minor offenses'; redesignating certain fish and game misdemeanor offenses as class A misdemeanors; relating to violations and offenses that are committed on state land, water, and land and water or that are related to water management or dam and reservoir safety; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date."

HB 194 proposes to raise the maximum amount a person may be fined to \$750 when found guilty of an infraction or violation as currently provided for in statute. The exception to this is found in *Sec. 2* of this bill that sets \$750 as the minimum fine, with the amount of \$1,000 established as the cap for this type of offense.

In addition, this bill brings fish and game penalty language in Title 16 into alignment with the current statutory definition for a Class A Misdemeanor. In 2002, the Alaska Legislature doubled the fines for Class A misdemeanors from \$5,000 to \$10,000. However, several important Title 16 penalties listed a maximum fine of \$5,000 and thus remained locked at that level. Since some of these penalties went into effect around statehood, it is appropriate to update the maximum fines.

Violations or infractions are both minor offenses and are often confused with one another. Violations are about the same as traffic infractions, except that violations are not traffic offenses. Violations were created as a new class of offense in 1978 when the criminal code was completely revised. Both violations and infractions are non-criminal offenses for which no jail time can be imposed. In 1978, the maximum fine set for infractions was \$300, although some violations impose a \$500 minimum fine. This dollar amount has not changed in almost 30 years.

This increase in the dollar amount is consistent with today's values and begins to allow for inflation since 1978. The increase in the maximum monetary penalty will serve as a further deterrence to those not only found guilty, but for those contemplating any action that might lead to such an act leading to an infraction or violation under law.

In today's society, the most serious infractions and violations are the types of offenses that the public observes daily. The public expects that enforcement action will be taken to insure our collective safety. By increasing the fines levied against those that are found guilty, we act to serve the better good.

In addition, HB 194 proposes a substantive change in the enforcement authority for the Department of Natural Resources for all lands managed by them. When the 24th Alaska State Legislature created the Knik River Public Use Area, it granted the department penalty and enforcement authority over those lands. Section 37 of the bill grants to the department penalty and enforcement authority over all lands managed by the division of mining, land, and water.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Jerry Luckhaupt

Fax #: 2029

Number of pages including cover: 1

From: Jane Pierson

Date: May 1, 2007

Re: HB194(RES) 25-LS0398\M

Jerry,

Please go final on a HJUD CS for the above-referenced bill to include the following conceptual amendment:

Delete Sections 37 & 43.

Thank you.

ALASKA STATE LEGISLATURE
House Resources Committee

Carl Gatto, Co-Chair

State Capitol Building, Room 108
Juneau, AK 99801-1182
(907) 465-3743
FAX (907) 465-2381
Rep_Carl_Gatto@legis.state.ak.us



Craig Johnson, Co-Chair

State Capitol Building, Room 126
Juneau, AK 99801-1182
(907) 465-4993
FAX (907) 465-3872
Rep_Craig_Johnson@legis.state.ak.us

HB 194
Sectional Statute Index

Section 1 – AS 02.35 relates licensing and permitting for aircraft and airmen.

Section 2 – AS 02.40 relates to the requirements for air carriers.

Section 3 – AS 04.21.065 relates to the posting of warning signs by liquor license owners.

Section 4 – AS 05.25 relates to the licensing, use, and operation of personal watercraft.

Section 5 – AS 12.55 relates to fines associated with sentencing procedures for criminal violations.

Section 6 – AS 16.05.407 relates to non-resident hunters being accompanied by a guide or resident relative.

Section 7 – AS 16.05.420 relates to license, tag, permit, or registration violations pertaining to hunting.

Section 8 – AS 16.05.783 relates to same day airborne hunting.

Section 9 – AS 16.05.831 relates to wasting of salmon.

Section 10 – AS 16.05.905 relates to the prohibition for illegal aliens to engage in commercial fishing and other activities within territorial waters.

Section 11 – AS 16.10.010 – 050 relate to license requirements necessary for the interference of salmon spawning streams.

Section 12 – AS 16.10.55 relates to the interference with commercial fishing gear.

Section 13 – AS 16.10.090 relates to penalties associated with the operation of fish traps found under AS 16.10.070.

Section 14 – AS 16.10.110 relates to the penalty associated with the erection of fish traps on water or land owned by the state found under AS 16.10.100.

Section 15 – AS 16.10.130 relates to the penalties associated with the use of drum or reel in the operation of a purse seine and a termination device for shellfish and bottom fish pots found under AS 16.10.120 – 125 respectively.

Section 16 – AS 16.10.220 relates to the penalties associated with the unlawful taking or sale of migratory fish or shellfish on the high seas found under AS 16.10.200 – 210 respectively.

Section 17 – AS 16.10.250 relates to the penalty for violating the statutory requirements for the transportation of live crab outside of the state found under AS 16.10.240.

Section 18 – AS 16.10.270 relates to the penalty for violating the statutory requirements for a fish processor or primary fish buyer purchasing fish by the pound.

Section 19 – AS 18.05.061 relates to the penalty for violating regulations of the Department of Health and Social Services pertaining public health found under AS 18.05.040.

Section 20 – AS 18.23.040 relates to the penalty for violating the provisions for the confidentiality of records of a hospital/medical review organization found under AS 18.23.030.

Section 21 – AS 18.35.110 relates to the requirement for a restaurant or tavern owner to provide for sanitary toilet accommodations for public use found under AS 18.35.100.

Section 22 – AS 18.35.210 relates to the requirement for free toilet accommodations for public facilities and special events found under AS 18.35.200.

Section 23 – AS 18.35.341 relates to the limitations, prohibitions, and signage requirements pertaining to smoking in public, the designation of smoking areas, no smoking signs, and civil complaints found under AS 18.35.300-330 respectively.

Section 24 – AS 18.40.050 establishes the penalty associated with defacing a shelter cabin or comfort station, constructed and maintained by DOT/PF on airports, roads, or trails or defacing or removing furnishings of those cabins found under AS 18.40.10 & AS 18.40.020.

Section 25 – AS 18.60.450 provides the penalties associated with violations of refrigerator safety requirements found under AS 18.60.400-460.

Section 26 – AS 18.60.535 provides the penalty associated with violations of regulations, standards or order of the Department of Health and Social Services found under AS 18.60.475-545.

Section 27 – AS 18.60.685 provides the penalty associated with the prohibition of placing equipment near power lines, and the requirement to post warning signs prior to beginning work and establishing barriers for temporary work near power lines as found under AS 18.60.670 – AS 18.60.695.

Section 28 – AS 22.15.120 relates to the limitation of cases that may be heard or tried by a magistrate.

Section 29 – AS 23.10.370 provides the penalties for violation of child/minor employment provisions found under AS 23.10.325-365.

Section 30 – AS 23.10.415 provides the penalty for violating the limitation of work hours in an underground mine found under AS 23.10.405 & 410.

Section 31 – AS 25.05.331 establishes the penalty for issuing an unlawful marriage license or refusing to issue a lawful marriage license.

Section 32 – AS 25.05.341 establishes the penalty for misrepresenting a fact required for a marriage license application.

Section 33 – AS 28.39.010 relates to the requirement for snowmobile registration.

Section 34 & 35 – AS 28.90.010 relates to the penalties for the violations of law, regulations, and municipal ordinance as they relate to motor vehicles.

Section 36 – AS 33.05.020 relates to the duties of the commissioner of Corrections by regulation to stipulate that an interlock device must include a warning label that anyone who circumvents or tampers with the device is in violation of AS 11.76.140.

Section 37 – AS 38.05 Pertains to penalties and enforcement authority of the Department of Natural Resources over lands managed by the department. This section is a substantive increase in the department's enforcement authority and is modeled on the enforcement granted to them for previously authorized public use areas established by the legislature.

Section 38 – AS 42.06.540 establishes civil penalties associated with violations of the Pipeline Act.

Section 39 – AS 44.09.015 establishes the penalty for unauthorized use of the state seal.

Section 40 – AS 46.14.400 establishes a penalty for non-compliance with a local air-quality control program.

Section 41 – AS 46.14.510 establishes a penalty for failure to display an emissions inspection decal under the provisions for motor vehicle pollution.

Section 42 – This section amends the uncodified laws of Alaska to make court rule changes pertaining to the definition of minor offenses.

Section 43 – This section repeals the enforcement authority and penalties granted to the Department of Natural Resources for the Knik River Public Use Area. This is a conforming amendment that takes into account the broader enforcement authority provided to the department under Section 37 of the bill.

Section 44 – Establishes the effective date of the act as July 1, 2007.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 9
 Bill Version: CSHB 194(RES)
 (H) Publish Date: 4/10/07

Revision Date/Time :
 Title "An Act relating to fines for certain offenses ..."

Dept. Affected: Public Safety
 RDU Alaska State Troopers
 Component Alaska Wildlife Troopers

Sponsor House Resources
 Requester House Resources

Component No. 2746

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (1004)	****	****	****	****	****	****
------------------------------------	------	------	------	------	------	------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

"An Act relating to fines for certain offenses including . . . fish and game, . . . relating to the maximum fine provided for violations and infractions and to the definition of 'minor offenses'; redesigning certain fish and game misdemeanor offenses as class A misdemeanors; relating to violations and offenses that are committed on state land, water, and land and water or that are related to water management or dam and reservoir safety; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date".

Passage of this legislation will have no fiscal impact on the Department of Public Safety. Any change in the amount of revenue that might result is too speculative to estimate and is shown as indeterminate.

Prepared by: Lt. Rodney Dial
 Division Division of Alaska State Troopers
 Approved by: Commissioner Walt Monegan
 Agency Department of Public Safety

Phone 907-247-4480
 Date/Time 4/3/07 1030
 Date 4/3/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note: 8
 Bill Version: CSHB 194(RES)
 (H) Publish Date: 4/10/07

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Fines and Offenses RDU: Labor Standards and Safety
 Component: Wage and Hour
 Sponsor: House Resources
 Requester: House Resources Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

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 (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2007) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

*The financial impact is indeterminate (expected to be very minimal). Criminal penalties are uncommon under AS 23.10.370(a) and AS 23.10.415(a).

Prepared by: Grey Mitchell, Director Phone: (907) 465-4855
 Division: Labor Standards and Safety Date/Time: 3/23/07 2:24 PM
 Approved by: Click Bishop, Commissioner Date: 3/23/2007
 Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 7
Bill Version: CSHB 194(RES)
(H) Publish Date: 4/10/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Dept of Environmental Conservation
Title: Fines & Offenses RDU: Environmental Health
Component: Food Safety and Sanitation
Sponsor: House Resources
Requester: House Resources Component No. 243

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	***	***	***	***	***	***
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This legislation will have no expenditure impact and an indeterminate impact on revenue that might be generated due to changes in fine amounts found at Sec 21-23 of the bill.

Prepared by: Kristin Ryan, Director Phone 907-269-7644
Division: Environmental Health Date/Time 3/27/07 3:11 PM
Approved by: Larry Hartig, Commissioner Date 3/27/2007
Agency: Department of Environmental Conservation

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSHB 194(RES)
 (H) Publish Date: 4/10/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Dept of Environmental Conservation
 Title: Fines and Offenses RDU: Air Quality
 Component: Air Quality
 Sponsor: House Resources
 Requester: House Resources Component No. 2061

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (*)	***	***	***	***	***	***
---------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 *This bill will have a positive impact on revenues but it is not possible to reasonably project the magnitude because the number of court convictions vary year to year and are usually few in number.

Prepared by: Tom Chapple, Director Phone 269-7686
 Division: Air Quality Date/Time 3/27/07 1:50 p.m.
 Approved by: Larry Hartig, Commissioner Date 3/27/2007
 Agency: Department of Environmental Conservation

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSHB 194(RES)
 (H) Publish Date: 4/10/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title "An Act relating to fines for certain offenses..." RDU Statewide Support
 Component Alaska Records & Identification
 Sponsor Representative Carl Gatto
 Requester House Resources Committee Component No. 1190

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
-----------------------------	--	--	--	--	--	--

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 (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The changes in this bill will require the Department of Public Safety to update the Uniform Offense Citation Table, which is used by numerous state agencies and departments to ensure consistent reporting of charges and convictions. This is routine work, however, and the department does not expect this bill to have a fiscal impact.

Prepared by: David Schade Phone 269-0202
 Division: Statewide Services Date/Time 3/28/07 1:27 PM
 Approved by: Commissioner Walt Monegan Date 3/28/2007
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSHB 194(RES)
(H) Publish Date: 4/10/07

Revision Date/Time (Note if correction): 04/02/07; 2:20pm Dept. Affected: Natural Resources
Title: Fines and Offenses RDU: Resource Development
Sponsor: House Resources Component: Claims, Permits and Leases
Requester: House Resources Component No.: 2460

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
-----------------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 37 of the bill provides statutory authority for the Division of Mining, Land and Water (DMLW) to more effectively enforce provisions of state law and the Alaska Administrative Code regarding management of state land, and provides citation authority, including the legal framework for the Alaska State Troopers, other designated peace officers, or designated DNR employees to issue a criminal citation for certain offenses on general state land. This will allow DMLW to create fines for various offenses, with the fine amount commensurate with the severity of the offense. The ability to create and enforce these fines, with the backing of a misdemeanor charge, creates a much needed deterrent for unlawful activities on state land. It provides a much more effective tool than the existing civil prosecution alternative. This is critically needed to respond to the growing pressures from unlawful use of state lands.
(continued)

Prepared by: Dick Mylius, Director Phone 269-8600
Division: Mining, Land & Water Date/Time 4/2/2007
Approved by: Tom Irwin, Commissioner Date 4/2/2007
Agency: Natural Resources

FISCAL NOTE #4

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. CSHB 194(RES)

ANALYSIS CONTINUATION

This fiscal note does not address the cost of application of enforcement authority. The division will have to promulgate regulations; create a bail forfeiture schedule, internal policy, and training to allow DMLW staff to issue citations. Alaska State Troopers would be able to use the misdemeanor authority for certain unlawful acts, but DNR would still need regulations and a bail forfeiture schedule to issue citations curable by payment of fines.

To implement this authority DMLW will need to pursue increased field presence of staff that can address unlawful activities. The need for this increased field presence exists regardless of this legislation, hence DMLW concludes that the bill does not in and of itself result in the need for additional staff or funding. Therefore DNR has not included this cost in this fiscal note.

For DMLW to fulfill its land and resource stewardship responsibilities, Section 37 of the bill is a critical component of a successful management strategy to provide appropriate stewardship that will keep land and resources available for lawful use and development for all Alaskans.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 194(RES)
 (H) Publish Date: 4/10/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating to fines and offenses RDU Criminal
 Component Criminal Justice Litigation
 Sponsor RESOURCES
 Requester HOUSE RESOURCES Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
-----------------------------	--	--	--	--	--	--

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 (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See page 2.

Prepared by: Robert Meiners, Admin. Services Manager Phone 465-5427
 Division Administrative Services Division Date/Time 3/30/07 1:42 PM
 Approved by: Robert Meiners for Talis Colberg, Attorney General Date 3/30/2007
 Agency Department of Law

FISCAL NOTE #3

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. CSHB 194(RES)

ANALYSIS CONTINUATION

HB 194 would amend fines imposed for misdemeanors, violations, and infractions in various parts of Alaska law so that they are more consistent with the more general fines for criminal acts and violations in Title 12. It would raise the maximum fine in Title 12 for commission of a violation or infraction from \$500 to \$750. And it would raise the maximum fine from \$500 to \$750 under Alaska District Court Rule 8(b) that may be imposed for an offense that is considered to be a minor offense.

Section 37 of the bill would amend AS 38.05 to create penalties and give citation authority to the Department of Natural Resources for offenses on general state land managed by DNR under Title 38. The overall scheme is modeled on AS 41.21.950 - 360, under which DNR has enforcement authority on state park lands managed under Title 41. Under proposed AS 38.05.750 - 760, a bail forfeiture schedule would be established under which persons cited by DNR would have the option of paying the fine amount - thereby forfeiting the bail - in lieu of a court appearance (similar to the process for speeding tickets).

The only likely fiscal impact to Law would appear to be from those cases where persons cited (1) elect to appear to contest the citation; or (2) fail to appear or pay the bail amount, in which case the citation is treated as a summons for a misdemeanor charge and "the offender shall be proceeded against in the manner prescribed by law." In such cases, there would be a need for attorney time, likely from the Criminal Division, to handle the misdemeanor prosecution; however, we do not anticipate the need for any additional attorney positions due to prosecutions under this statute.

Passage of this legislation would not have a significant fiscal impact upon the Department of Law.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 194(RES)
 (H) Publish Date: 4/10/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to fines for certain offenses involving RDU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor House Resources
 Requester House Resources Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The act alters the fines and defines penalties for conduct related to aeronautics, alcoholic beverages, boats, fish and game, health care records and public health, medical review organizations, public restroom facilities, smoking, shelter cabins, refrigerators and similar equipment, radiation sources, high voltage lines, child labor, employment in underground mines, marriage licenses, motor vehicles and driver's licenses, ignition interlock devices, pipelines, use of the state seal, and emissions requirements; relating to the maximum fine provided for violations and infractions and to the definition of 'minor offenses'.

This bill is not expected to have a fiscal impact on the Agency.

Prepared by: Quinlan Steiner, Director Phone (907) 334-4414
 Division: Public Defender Agency Date/Time 3/27/07 12:15 p.m.
 Approved by: Rachael Petro, Deputy Commissioner Date 3/27/07 1:30pm
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 194(RES)
 (H) Publish Date: 4/10/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to fines for certain offenses involving RDU Legal and Advocacy Services
 Component: Office of Public Advocacy
 Sponsor House Resources
 Requester House Resources Component No. 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The act modifies the fines and defines penalties for conduct in relation to aeronautics, alcoholic beverages, boats, fish and game, health care records and public health, medical review organizations, public restroom facilities, smoking, shelter cabins, refrigerators and similar equipment, radiation sources, high voltage lines, child labor, employment in underground mines, marriage licenses, motor vehicles and driver's licenses, ignition interlock devices, pipelines, use of the state seal, emissions requirements, and certain "minor offense."

This bill is not expected to have any fiscal impact on the Agency.

Prepared by: Joshua Fink, Director
 Division: Office of Public Advocacy
 Approved by: Rachael Petro, Deputy Commissioner
 Agency: Administration

Phone (907) 269-3501
 Date/Time 3/27/07, 12:50 p.m.
 Date 3/27/07, 1:30pm

Historian I, Archaeologist I, Environmental Specialist I, or Biologist I with the State of Alaska or the equivalent with another employer.

OR:

Four years of journey level technical experience in natural resource management. The required experience includes work such as a Natural Resource Technician II, Forest Technician III, or Fish & Wildlife Technician III with the State of Alaska or the equivalent with another employer.

Required Job Qualifications:

(The special note is to be used to explain any additional information an applicant might need in order to understand or answer questions about the minimum qualifications.)

Special Note:

This job class requires the use or possession of a firearm or ammunition. In accordance with the federal Omnibus Consolidated Appropriations Act of 1997 (PL 104-208), if you have been convicted of a misdemeanor crime of domestic violence, you may not hold a position in this class. Prior to appointment successful candidates for Park Ranger positions are subject to a criminal records check.

A "misdemeanor crime of domestic violence" is an offense that is (1) a misdemeanor under federal or state law; and (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

Upon appointment employees are subject to fingerprinting. Park Rangers are required to acquire and maintain a Department of Natural Resources Peace Officer Commission, an Alaska Fish and Game Peace Officer Commission and carry a firearm. Employees must satisfactorily complete law enforcement or public safety academy training as specified by the Department of Public Safety and the Department of Natural Resources. Admission to the academy will require passing a physical and/or medical examination to determine that the essential duties of the position can be safely performed. A background investigation is also required.

Park Rangers can be recalled to work in case of an emergency. Some positions may be seasonal, require evening and/or weekend work, extended periods of on call or standby work. Travel to remote locations may be required.

Minimum Qualification Questions:

Do you have a bachelor's degree from an accredited college?

AND

Do you have, or are you eligible to obtain, a valid Alaska driver's license?

Or Substitution:

Do you have two years of entry level professional experience in natural resource management? The required experience includes work such as a Park Specialist, Natural Resource Specialist I, Forester I, Geologist I, Hydrologist I, Agronomist I, Historian I, Archaeologist I, Environmental Specialist I, or Biologist I with the State of Alaska or the equivalent with another employer.

AND

Do you have, or are you eligible to obtain, a valid Alaska driver's license?

Or Substitution:

Do you have four years of journey level technical experience in natural resource management? The required experience includes work such as a Natural Resource Technician II, Forest Technician III, or Fish & Wildlife Technician III with the State of Alaska or the equivalent with another employer.

AND

Do you have, or are you eligible to obtain, a valid Alaska driver's license?

AS 01.10.060. Definitions.

(7) "peace officer" means

- (A) an officer of the state troopers;
- (B) a member of the police force of a municipality;
- (C) a village public safety officer;
- (D) a regional public safety officer;
- (E) a United States marshal or deputy marshal; and
- (F) an officer whose duty it is to enforce and preserve the public peace;

AS 18.65.290(7) "police officer" means

(A) a full-time employee of the state or a municipal police department with the authority to arrest and issue citations; detain a person taken into custody until that person can be arraigned before a judge or magistrate; conduct investigations of violations of and enforce criminal laws, regulations, and traffic laws; search with or without a warrant persons, dwellings, and other forms of property for evidence of a crime; and take other action consistent with exercise of these enumerated powers when necessary to maintain the public peace;

(B) an officer or employee of the Department of Transportation and Public Facilities who is stationed at an international airport and has been designated to have the general police powers authorized under AS 02.15.230(a);

(C) a University of Alaska public safety officer with general police powers authorized under AS 14.40.043 ;

There were no other changes to the bill in House Community and Regional Affairs Committee.

NOT
OFF

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GATTO

TO: HB 194(RES)

1 Page 9, lines 25 - 26:

2 Delete all material.

3

4 Reletter the following subparagraphs accordingly.

5

6 Page 10, lines 3 - 4:

7 Delete "arrest a person who violates a provision of this chapter or a regulation adopted
8 under this chapter"

9 Insert

10 "(A) execute a warrant or other process issued by an officer or
11 court of competent jurisdiction;

12 (B) arrest a person who violates a provision of this chapter or a
13 regulation adopted under this chapter"

Amendment # 1 Delete Sec. 37 & Sec. 43

CONCEPTUAL AMENDMENT

IN THE HOUSE

CSHB 194 Version "M"

Page 9, lines 25-26

Delete

Page 10, line 3

Insert after "AS 46.17,"

and execute a warrant or other process issued by an officer or court of competent jurisdiction and

NOT
OFF

BY Gruenberg.

NOT
OFF

25-LS0398\M.1
Luckhaupt
4/24/07

AMENDMENT

Ramras

OFFERED IN THE HOUSE
TO: CSHB 194(RES)

BY REPRESENTATIVE ~~OSWALD~~

- 1 Page 9, line 10:
- 2 Delete ", AS 41.23, AS 46.15, or AS 46.17,"
- 3 Insert "or AS 41.23"

AMENDMENT

NOT
OFF

25-LS0398\M

OFFERED IN THE HOUSE
TO: CSHB 194(RES)

BY REP. RAMRAS

AS 38.05.755 (a)(2)

- 1 Page 9, line 19, following "state;":
- 2 Insert "or a commissioned employee of the department ^{who} ~~that~~ has equivalent law
- 3 enforcement training and certification as a Park Ranger;"

CONCEPTUAL AMENDMENT

IN THE HOUSE

CSHB 194 Version "M"

Page 9, lines 25-26

Delete

Page 10, line 3

Insert after "AS 46.17,"

and execute a warrant or other process issued by an officer or court of competent jurisdiction and

NOT
OFF.

BY Gruenberg

HB

1966



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Ralph Samuels
Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 11, 2007

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: HB196

Please consider this memo as a request for HB196 to be heard on tl. House Floor. Attached to this memo are the following documents:

- Sponsor Statement
- CSHB196(JUD) 25-LS0447E
- Legal memo re: amendment
- Sectional
- Fiscal notes
 - CRT - 0
 - LAW - 0
- HB196 25-LS0447C
- House JUD report
- Behr letter of 4/10/07 re: amendment
- Applicable statutes

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Sponsor Statement **HB 196**

“An Act relating to the handling of matters after a person’s death.”

Existing Alaska law provides that a provision may be placed in a trust penalizing a person for contesting the trust even if probable cause exists for instituting proceedings. This bill provides for the same kind of provision in a will.

In addition, this bill provides that life insurance or retirement benefits payable at death are not subject to the claims of the creditors of the individual who is insured under the life insurance contract or who was a participant in the retirement plan.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Leg. Legal

Fax #: 2029

Number of pages including cover: 2

From: Jane Pierson

Cc:

Date: April 10, 2007

Re: CSHB196(JUD)

Would you please go final on a CS for HB196(JUD) to reflect the following amendment.

Thank you!

AMENDMENT

OFFERED IN THE HOUSE JUDICIARY
COMMITTEE
TO: HB 196

BY Greenberg

1 Page 3, line 5, following "estate":

2 Insert ", except that if the decedent owes money for child support arrearages, for spousal
3 support arrearages, or under AS 47.07.055, the provisions of (d) of this section do not apply"

4

5 Page 3, line 7, following "will":

6 Insert ", except that if the decedent owes money for child support arrearages, for spousal
7 support arrearages, or under AS 47.07.055, the provisions of (d) of this section do not apply"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 5, 2007

SUBJECT: Sectional summary of bill relating to the handling of matters after a person's death (Work Order No. 25-LS0447\C)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Peterson

FROM:  Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Amends AS 13.12.517 to provide that a penalty clause for contesting a will or instituting other proceedings apply even if probably cause exists for instituting the proceedings.

Section 2. Amends AS 13.16.680(a) to change one of the statements that must be contained in an affidavit to be used by a decedent's successor to collect personal property of the decedent from another person. The statement indicates that the value of the entire estate does not consist of more than certain specified amounts.

Section 3. Amends AS 13.16.700 to conform this section to the change made by this bill to AS 13.16.680(a).

Section 4. Adds new subsections to AS 13.33.101 (nonprobate transfers on death).

Proposed AS 13.33.101(d) states that the benefits paid under a nonprobate transfer provision are not subject to certain described debts and creditor claims.

Proposed AS 13.33.101(e) describes certain situations in which proposed AS 13.33.101(d) applies.

Proposed AS 13.33.101(f) establishes that proposed AS 13.33.101(d) does not limit the rights of the owner of a life insurance contract to pledge or assign the benefits as collateral for the owner's debts.

Proposed AS 13.33.101(g) defines "life insurance contract" and "retirement plan" for (d) of the section.

Representative Jay Ramras

March 5, 2007

Page 2

Section 5. Provides a transition section to indicate to which decedents and nonprobate transfer provisions certain provisions of the bill apply.

If I may be of further assistance, please advise.

TLB:med

07-147.med

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB196-Courts-4-3-07
 Bill Version: HB196
 () Publish Date: _____

Revision Date/Time (Note if correction):
 Title Handling Matters After a Person's Death
 Sponsor House Judiciary Committee
 Requester _____

Dept. Affected:
 RDU Alaska Court System
 Component Trial Courts
 Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
-----------------------------	--	--	--	--	--	--

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 (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 196.

Prepared by: Doug Wooliver, Administrative Attorney
 Division: Alaska Court System
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director
 Agency: Alaska Court System

Phone 463-4750
 Date/Time 4-3-07 @ 1:00 pm
 Date 4/3/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB198-LAW-CFB-3-31-0
 Bill Version: HB 198
 () Publish Date: _____

Revision Date/Time (Note if correction):
 Title An Act relating to handling matters after a
persons death
 Sponsor JUDICIARY
 Requester SENATE JUDICIARY

Dept. Affected: Law
 RDU Civil
 Component Commercial & Fair Business
 Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
-----------------------------	--	--	--	--	--	--

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 (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill proposes amendments to Title 13 of the Alaska Statutes relating to matters following a person's death including changes to allow enforceability of a penalty clause for a will contest, raising the amount of personal property that may be collected by affidavit in the administration of small estates, and to ensure that non-probate transfers of life insurance or retirement plan benefits are not subject to the debts of the individual who was the insured or who was the plan participant or to claims of that individual's creditors. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Robert Meiners, Admin. Services Manager
 Division: Administrative Services Division
 Approved by: Robert Meiners for Tallis Colberg, Attorney General
 Agency: Department of Law

Phone 485-5427
 Date/Time 3/31/07 11:52 AM
 Date 3/31/2007

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

SARAH PALIN, GOVERNOR

LEGISLATION & REGULATIONS SECTION
P.O. BOX 110300
DIMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2520

April 10, 2007

The Honorable Max Gruenberg
House Special Committee on Ways and Means
State Capitol, Room 110
Juneau, AK 99801-1182

Re: HB 196 - Matters After a Person's Death (Revised Draft Amendment)

Dear Representative Gruenberg:

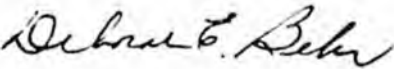
At a recent House Judiciary Committee meeting, a question was raised about access to the money or other benefits to pay for child support or spousal support obligations. We agree that a change is needed to allow access for these support obligations. Additionally, the Medicaid program has alerted us of a similar issue to repay obligations owed by the estate for Medicaid payments paid on behalf of the decedent.

The attached amendment makes these necessary changes. It has been revised to reflect comments of private trust and estate attorneys.

If you need additional information, please let me know.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: 
Deborah E. Behr
Chief Assistant Attorney General

DEB:pvp

cc: The Hon. Jay Ramras, Chair, House Judiciary Committee

HB

197

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Sponsor Statement HB 197

“An Act relating to trusts, to the issuance of shares of professional corporations to a trustee, to a trustee’s power to appoint property to another trust, to a trustee’s selection of the percentage of trust property to be considered principal, to the determination of the value of a trust, and to a settlor’s intent when transferring property in trust.”

It is important that Alaska’s trust statutes be updated so that Alaska’s investment laws stay competitive with other states. This bill proposes amendments to statutes relating to trusts registered in the state and governing the actions of trustees and co-trustees, which will accomplish this end.

HB197 bill provides for the following:

1. That shares in a professional corporation may be held by the trustees of the professional’s revocable trust.
2. Expands the coverage of AS 13.36.157, which allows the trustee of a trust to transfer trust assets to a similar trust. This expansion will only occur if the trust has an Alaskan trustee and the trust has its primary administration in Alaska.
3. Allows the Alaska trustee of a charitable trust to change the percentage of the value of the trust that will be considered income whenever the trustee determines that the new percentage is necessary and prudent.

4. Clarifies that a settlor's express intention to protect trust assets from beneficiary's potential future creditors is not evidence of an intent to defraud.

5. States needed provisions relating to trustees: compensation, accepting or declining trusteeship, co-trustees, vacancy, resignation, removal, delivery of property by former trustee, reimbursement of expenses, and certification of trust.

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

(907) 465-3004

Fax: (907) 465-2070

Representative_Jay_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:

Representative Nancy Dahlstrom,
Vice-Chairman

Representative John Coghill

Representative Bob Lynn

Representative Ralph Samuels

Representative Max Gruenberg

Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Sectional HB197

Section 1. Amends AS 10.45.050 to expand who can be issued shares of capital stock in a professional corporation.

Section 2. Amends AS 13.36.020 - **Effects of failure to register** to include removal of the trustee under new section AS 13.36.076

Section 3. Amends AS 13.36.035(a) regarding exclusive jurisdiction of the court to include trusts where the trustee has been appointed or removed under new section AS 13.36.076.

Section 4. Amends AS 13.36.035(d) to include appointment and removal of a trustee under new section AS 13.36.076 under laws of the state

Section 5. Adds a new subsection (b) to AS 13.36.055 to deal with compensation of the trustee or his agent and the burden of proof being on the person who seeks review of that compensation, if the compensation is made within the terms of the trust or is reasonable.

Section 6. AS 13.36 is amended by adding new sections

Sec. 13.36.071. Accepting or rejecting trusteeship. Determines when a person designated as a trustee may accept or reject the position and the actions they may take prior to accepting or rejecting the trusteeship.

Sec. 13.36.072 Co-trustees. Defines co-trustees, their roles, and how their duties should be carried out.

Sec. 13.36.073 Vacancy in trusteeship; appointment of successor. Defines a vacancy in a trusteeship and how a successor to a vacancy shall be appointed.

Sec. 13.36.074. Resignation of trustee. Defines how a trustee may resign.

Section 7. AS 13.36 is amended by adding new sections

Sec. 13.36.076. Removal of trustee. States under what conditions a trustee may be removed from office and how a successor trustee shall be appointed.

Sec. 13.36.077. Delivery of property by former trustee. Defines how trust property shall be protected and provides for expeditious delivery of trust property by a trustee who has resigned or removed.

Sec. 13.36.078. Reimbursement of expenses. Defines how a trustee is to be reimbursed for incurred or advanced expenses paid for the benefit of the trust.

Sec. 13.36.079. Certification of trust; penalty Creates a "certification of trust" document, sets forth what must be included in the document, for what purposes it may be used, and the civil penalties that may be imposed for demanding the entire trust instrument in addition to certification of trust.

Section 8. AS 13.36.090 is amended to include a removal of a trustee under new section AS 13.36.076. Also removes language that gives weight to adult beneficiaries determining suitability of the trustee and place of administration.

Section 9. AS 13.36.157(b) is amended to further define a trustee's power to appoint to another trust under the laws of the State of Alaska.

Section 10. AS 13.36.198. Liability for violations is amended to include new section AS 13.36.076 - Removal of a trustee.

Section 11. AS 13.36.390 is amended by adding a definition for "qualified beneficiary"

Section 12. AS 13.38.460(a) amends the selection of percentage after charitable trust election so that the trustee may elect to change the percentage whenever the trustee determines that the new percentage is necessary and prudent.

Section 13. AS 13.38.480 - Value determination. This will amend this section to clarify how the average value of a trust will be determined if the trust has been in existence for less than three years.

Section 14. AS 34.40.110 Restricting transfers of trust interests. Sub-section (b) is amended to include that a settlor's expressed intention to protect trust assets from a beneficiary's potential future creditors is not evidence of an intent to defraud.

Section 15. Repeals 13.36.360(d) that defines "qualified beneficiary", which is now defined under AS 13.36.390.

Section 16. Deals with indirect court rule changes to Alaska Rules of Civil Procedures 54 (Costs) and 82 (Attorney's fees).

Section 17. Applicability section.

Section 18. Conditional Effect. AS 13.36.079(i), enacted by sec.7 of this Act, takes effect only if sec. 16 of this Act receives a two-thirds majority vote by each house.

Section 19. Immediate effective date under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB197-LAW-CFB-3-31-0
 Bill Version: HB 197
 () Publish Date: _____

Revision Date/Time (Note if correction): _____
 Title An Act relating to trusts

Dept. Affected: Law
 RDU Civil
 Component Commercial & Fair Business

Sponsor JUDICIARY
 Requester SENATE JUDICIARY

Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
-----------------------------	--	--	--	--	--	--

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 (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill proposes amendments to statutes relating to trusts registered in this state and governing the actions of trustees and co-trustees including provisions that will allow a professional corporation to issue stock to a trust, that establish certain requirements for accepting or rejecting a trusteeship, acting as co-trustees, establishing and fill vacancies in trusteeships, removing or resigning as a trustee, and that provide requirements for certification of trusts to persons other than the trust beneficiaries. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Robert Meiners, Admin. Services Manager
 Division Administrative Services Division
 Approved by: Robert Meiners for Talis Colberg, Attorney General
 Agency Department of Law

Phone 465-5427
 Date/Time 3/31/07 11:52 AM
 Date 3/31/2007



Past & Future Of

Alaska Trust

Legislation

Presented By:



ALASKA TRUST COMPANY

Wealth Management Specialists



Legislation Passed Into Law 1997

HB 101 – Effective April 2, 1997

- Perpetual Trusts
- Self-Settled Spendthrift Trusts

HB 266 – Effective July 1, 1997

- Limited Partnership & LLC Improvements
Statute



Legislation 1998

SB 354 – Effective April 12, 1998

- General Modernization of Trust and Estate Laws

HB 199 – Effective May 23, 1998

- Alaska Community Property Trust

HB 321 – Effective May 23, 1998

- Alaska Uniform Prudent Investor Act

HB 490 – Effective June 26, 1998

- Life Insurance Premium Tax



LEGISLATION 2000

HB 222 – Effective March 8, 2000

- Improvements & Technical Changes to Limited Partnerships LLC statute

SB 166 – Effective March 8, 2000

- Technical Changes to Alaska Community Property Trust

SB 162 – Effective April 22, 2000

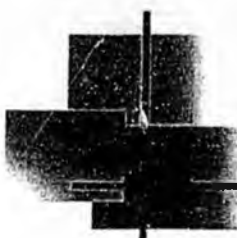
- Modification to Perpetual Trust Statute

HB 275 – Effective August 9, 2000

- “Safety Net” Estate Planning Legislation

SB 163 – Effective August 30, 2000

- Modification and Improvement to General Trust Statutes



Legislation 2003 - 2006

SB 87 – Effective September 1, 2003

- Version of Uniform Principal & Income Act

HB 212 – Effective October 8, 2003

- 2003 Alaska Trust Act

SB 344 – Effective June 24, 2004

- Trust / Estate / Property Transfers

SB 298 – Effective September 15, 2006

- Amendments to Trust and Estates Statutes



Why Alaska

- Personal
- Familiar with Alaska Statutes and Estate Planning Professionals
- Estate Planning Professionals Wanted Institutions That Would Specialize In Trust and Investment Management Services
- No State Income Tax On Trusts & Estates

Has It Been
Successful?



Yes

Yes

Yes



Positive Developments

Alaska Has Become Known Throughout the Country for Being Creative and Innovative Regarding its Trust Laws. Alaska is Considered the Leading Jurisdiction for Trust Administration.




Alaska's 1st Independent Trust Company

- Has 9 full time employees; 4 are born & raised Alaskans
- Pays State Corporate Income Tax
- Annually puts hundreds of thousands of dollars into the Alaska Economy
- Have on deposit with local banks (Northrim & Alaska First) tens of millions of dollars
- Over 1,000 clients have come to Alaska from other states



Professionals in Alaska Have Benefited

- Attorneys have increased business both from outside clients and Alaska clients
- CPAs have increased business
- Insurance agents
- Stock brokers
- Others



Alaskans have benefited directly
from the legislation

Many Alaskans are taking
advantage of the unique Trust &
Estate Legislation



State Of Alaska

The state of Alaska has received over \$2 million in direct revenue


- Increase in Life Insurance Premium Taxes
- Increase Corporate Income Tax
- Increase revenue from LLC & LP filings



All This Has Happened With
No Financial Outlay From
the State

Why the Need to Have Additional Legislation

- Since 1997, the Alaska State Legislature has consistently worked to update and improve laws regarding the use and administration of trusts. As a result, Alaska is considered one of the premier trust jurisdictions in the country.
- But, it is a very competitive environment. In fact, at least seven other states – Delaware, Missouri, Nevada, Oklahoma, Rhode Island, South Dakota and Utah – have enacted legislation similar to our own.
- Much of this Legislation is structured to meet IRS rules & guidelines. When IRS makes a change, it may require a change in Alaska Statute to stay effective.
- Other states are trying to improve their Trust Laws. If they come up with a better approach, we need to adjust in Alaska to stay effective.
- Fine-tune legislation to make sure it is the best.



The Future Looks Very Bright for Alaska to Continue to Attract Business to the State. The Only Potential Problem Would Be the Implementation of an Income Tax on Trusts and Estates Set Up by Non-Residents. The Implementation of Such a Tax Would Cause Alaska to Lose 99% of the Business It Has Attracted Within one Year. The Business Would Go to a State That Does Not Tax Non-Resident Trusts.



Thank You...

for your prior involvement and
hope for your continued support

A New Direction In Estate Planning: North To Alaska

Two goals that often are sought to be achieved in estate planning are estate tax reduction and protection of assets from claims of creditors. Reducing taxes significantly may be a "sum zero" game if the assets are attached by creditors. Similarly, protecting assets from creditors' claims may not accomplish all goals sought unless taxes also are reduced. Fortunately, these two goals are not only compatible, they usually are complementary. That is, the steps to protect assets from claims of creditors may allow tax reduction to occur, as well. On the other hand, a transfer that fails to protect property from claims of the transferor's creditors is likely to fail to reduce taxes because, almost always, if a creditor of the transferor can attach the asset the transfer is regarded as incomplete for gift and estate tax purposes. The Alaska Trust Act (Chapter No. 6, SLA 1997, effective April 2, 1997) offers a new tool in the United States to accomplish the dual goals of asset protection and tax reduction. The Act also effectively repeals the rule against perpetuities for a trust created under Alaska law. This article discusses the dual goals of asset protection and estate tax reduction and how the Alaska Trust Act can be used in the context of estate planning. It also compares some aspects of Alaska trusts with certain offshore trusts.

Alaska recently has enacted legislation similar to laws in certain foreign asset protection jurisdictions. As a consequence, an American in any state can create a trust for his or her own benefit which is protected from creditors provided, among other things, it is not a transfer intended to defraud known creditors. Perhaps of greater importance, Alaska trusts open a new dimension in estate planning. One of this article's co-authors, Jonathan Blattmachr, was the principle draftsman of this new Alaska legislation.

Steps To Reduce Estate Taxation

It seems well accepted that an effective, if not the most effective, estate tax reduction planning step is to make lifetime transfers. Lifetime transfers can avoid gift tax (and, by removing an asset from an estate, can avoid estate tax, as well) in ways that cannot be used at death to avoid estate taxation. However, lifetime transfers are effective for these purposes only if they are "complete" under the federal estate and gift tax rules. The law appears well established that a transfer is complete for such tax purposes only if it is not (or when it no longer is) subject to the claims of the transferor's creditors.

Fraudulent Transfers, Etc.

IN GENERAL, "fraudulent conveyances" with respect to creditors whose claims arise either before or after the transfer are transfers (a)

By Douglas J. Blattmachr
Alaska Trust Company
Anchorage, Alaska
and Jonathan G. Blattmachr
Milbank, Tweed, Hadley & McCloy
New York, NY

that the debtor made with actual intent to hinder, delay or defraud his or her creditors or (b) (i) for which the debtor received less than "a reasonably equivalent value" and (ii) after which the debtor

had insufficient assets to meet future business needs or to pay debts. A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer if the debtor made the transfer without receiving "reasonably equivalent value" and the debtor was insolvent at the time of or as a result of the transfer. Proof of actual intent to defraud is not required. Most states have adopted these rules in the form of the Uniform Fraudulent Transfer Act. However, some states (including New York) still have in effect the Uniform Fraudulent Conveyance Act. (See N.Y. Debtor and Creditor Law Secs. 273-281.) Alaska has adopted neither the Uniform Fraudulent Transfers Act nor the Uniform Fraudulent Conveyance Act. [See *Summers v. Hasen*, 852 P.2d 1165, 1169 n.5 (Alaska 1993).] Its fraudulent transfer rules are contained in Alaska Statutes (AS) 34.40.010 et seq.

Similar rules are contained under the Bankruptcy Code, and in the case of bankruptcy, fraudulent conveyances may be defined with reference to the Bankruptcy Code or under applicable state law. The Bankruptcy Code permits such transfers to be set aside

only if made within one year before filing of the petition, but many states permit reference to a much longer period, especially, in the case of transfers to family members. [See, e.g., *FDIC v. Pappadio*, 606 F. Supp. 631, 632 (S.D.N.Y. 1985) (under New York law a claim to set aside a fraudulent conveyance is governed by a six year statute of limitations).] Avoided fraudulent conveyances are "brought back" into the debtor's estate, usually for distribution to the debtor's creditors. In addition, some fraudulent conveyances may deprive a debtor of (1) homestead or other property exemptions⁵ and (2) a bankruptcy discharge.

As a general rule, a transfer is found to have been made with an actual intent to hinder, delay or defraud creditors only if it was intended to remove assets from claims of specifically known or anticipated creditors. "If the debtor has particular creditors in mind and is trying to remove his assets from their reach, this would be grounds to deny the [bankruptcy] discharge [on the ground of a fraudulent conveyance]. If the debtor is merely looking to his future well-being, [the conveyance would not be fraudulent and as such] the discharge will be granted."⁷

An example will help illustrate this principle. A property owner makes a gift to a family member (whether outright or in trust) which does not result in the property owner being insolvent or unable to pay her debts as they mature. She has no known or specifically identifiable creditors. Nonetheless, she realizes that a claim against her could arise on account of unforeseen circumstances, such as being involved in a car accident, occurring in the future. This gift should not be regarded as a fraudulent conveyance, despite the fact that she is making it with the general intention to protect the property from claims that could arise against her in the future.

Although the fraudulent conveyance rules apply to creditors in bankruptcy, obviously they also have a broader application. For example, in a number of states a tort claimant is permitted to attack as

fraudulent a transfer made after the time of the tort but prior to any judgment.⁸

Interests in Trusts

TWO SETS OF CONTRASTING rules must be considered to determine whether interests in trusts are subject to claims of creditors. First, as a general rule, a beneficial interest in trust that is subject to a restriction on transfer (called a "spendthrift provision") is not subject to the claims of a beneficiary's creditors.⁹ Thus, if the debtor is a beneficiary of a trust established for his or her benefit by another person (such as by a parent) which interest by its terms and/or applicable state law is not assignable, the trust assets should be protected.¹⁰ However, property transferred in trust for the beneficiary may be attached by the creditors of the grantor if the transfer to the trust was a fraudulent conveyance.¹¹

In virtually all states, property may be placed in trust for another and thereby be protected from the claims of most creditors of the beneficiaries (and of the grantor). The degree of "creditor proofing" usually varies depending on whether the trust gives the beneficiary the right to receive all of the income, is for the "support" of the beneficiary and/or restricts alienation of the beneficiary's interests.¹² It appears the maximum protection of trust property from the claims of the beneficiary's creditors may be achieved by placing property in a trust that gives the trustee complete discretion as to whether and when to distribute income and/or principal to the beneficiary or beneficiaries of the trust, and which also imposes spendthrift restrictions. The trustee, having control over distributions, probably should not be one of the beneficiaries, both to secure the creditor protection and to avoid inclusion of the property in the estate of a beneficiary for tax purposes (which may be viewed as an additional form of credit protection). The beneficiary, however, may participate as a trustee in investment decisions and may have a non-general power of appointment over all or part of the trust corpus.¹³

Such a trust offers major advan-

tages to the beneficiaries. First, the trust assets should be entirely protected from the claims of most creditors of the beneficiaries, including creditors in bankruptcy and spousal property, and in some cases, even support claims, in the event of divorce or upon death of the beneficiary.¹⁴ In order to maximize the creditor protection, the trustee may be given broad authority not only to distribute or accumulate income and principal, but also to purchase assets for the use of trust beneficiaries. For example, the trustee may be authorized to purchase a home for the use of the beneficiary, thereby preserving that asset in the trust protected from the claims of the beneficiary's creditors. (It seems that this use by a beneficiary should not cause any income to be imputed to the beneficiary.) The purchase of assets "inside" the trust as opposed to distributions also preserves the wealth transfer tax savings that may be achieved through the use of such a trust. Thus, the property owner can confer a substantial benefit on the chosen objects of his or her bounty by transferring during lifetime or bequeathing at death assets to such a "discretionary" trust.¹⁵

As noted above, however, a transfer for less than fair value¹⁶, including a gratuitous transfer in trust for the benefit of another, may be set aside if it constitutes a fraudulent conveyance. For example, a person could not defeat an outstanding liability by transferring while insolvent all of his or her assets into a trust for the benefit of his or her spouse. Thus, in the case of lifetime planning, it is best to have created trusts and make the transfers in advance of any financial difficulties in order to successfully avoid the challenge that such transfers were fraudulent conveyances.¹⁷

The second general rule relates to whether and to the extent of which the grantor of the trust has a beneficial interest in it. As to a trust created for one's own benefit, the "black letter" law is that a transfer in trust for the benefit of the transferor is void as against his or her creditors, whether their claims arise before or after the transfer.¹⁸ In other words, the general rule that has

prevailed throughout the United States, at least until the enactment of the Alaska Trust Act¹⁹, has been that the assets in the trust may be claimed by the creditors of the grantor to the extent the grantor is entitled or eligible to receive assets from the trust, even if the transfer to it was not in default of creditors and even though the statute of limitations for a person to make a claim that the transfer to the trust was fraudulent has expired.²⁰ For example, an individual creates a trust in 1970 from which the individual is eligible, but not entitled, in the exercise of discretion of a third party as trustee, to receive distributions. A judgment is rendered against the grantor in 1997 on account of a car accident that occurred in 1996. To the extent the trustee has the capacity to make distributions of trust property to the grantor, the judgment against the grantor could be enforced according to the Restatement (2d) Trusts against the trust assets even though the grantor had no intention of defrauding that creditor, or any other creditor, when the trust was created in 1970. On the other hand, a judgment creditor of the grantor generally may not attach the assets in a trust of which the grantor is neither eligible nor entitled to receive distributions unless the transfer was in default of creditors.

The Tax Rule

THE TREATMENT OF self-settled domestic trusts has been explored in a series of federal tax cases that follow from the creditors' rights analysis. Specifically, if the grantor's creditors can reach the entire corpus of such a trust, the transfer to the trust is regarded as wholly incomplete and no gift tax is due upon creation of the trust. As a corollary, however, the entire trust is included in the creator's estate under Code Sec. 2036(a)(1).

Thus, in *Paolozzi v. Commissioner*²¹, the settlor transferred property to a trust under which the trustees had discretion to pay over the income to her during her lifetime. The Tax Court determined that under Massachusetts law, the settlor's creditors could reach the maximum amount that, under the trust terms,

could be paid to the settlor — that is, the entire income interest. Accordingly, the gift was incomplete to the extent of that interest. In *Outwin v. Commissioner*²², also considering Massachusetts law, the Tax Court reached the same result where the trustee could distribute income and principal to the settlor in the trustee's discretion but only with the consent of the settlor's spouse. The spouse had an income interest following the settlor's death, could receive principal in the discretion of the trustee at that time, and had a limited testamentary power of appointment. However, the Tax Court concluded that the spouse's veto power was not sufficient to distinguish the situation from *Paolozzi*, regardless of the fact that the spouse might be an adverse party for gift-tax purposes.²³

More recently, in *Paxton v. Commissioner*²⁴, the Tax Court held that a trust was included in the settlor's estate where the trustee had discretion to apply income and principal among a class of persons including the settlor; the trustee was the settlor's son, who also had a beneficial interest in the trust. The Tax Court looked to Washington state law, but relied primarily on the Restatement rule, discussed earlier, to support its holding.²⁵

Offshore Trusts

IN THE PAST FEW YEARS, there has been considerable use of trusts created in those foreign jurisdictions that provide greater protection against claims of creditors than is available under American law. A so-called "asset protection trust" allows a grantor to protect assets from his or her creditors without requiring the settlor to relinquish all interest in the assets in the trust. In general, asset protection trusts are trusts established in foreign jurisdictions that have limited the recourse of creditors to trust assets.

The selection of the foreign jurisdiction in which the asset protection trust will be established requires great care because of the existence of the English "Statute of Elizabeth" (precursor to U.S. fraudulent conveyance law, discussed above), which makes it possible to set aside a transfer that is intended

to defeat future, but currently unknown, creditors. Some offshore sites have enacted "Statute of Elizabeth override" statutes to circumvent any questions concerning the applicability of the Statute of Elizabeth. Some of the offshore sites that have passed such legislation are the Bahamas, Bermuda, the Cayman Islands, the Cook Islands (which appears to offer particularly strong protection against creditors) and Gibraltar.²⁶ Other concerns are political stability and the availability of adequate banking and other financial services in the chosen jurisdiction.

Asset protection trusts usually are designed so that the settlor, upon creation of the trust, will experience no tax consequences. In almost all cases, an asset protection trust will be a so-called "grantor trust" for federal income tax purposes, with the result that the creator will continue to be taxed on all the trust income in the same manner as if he or she continued to own the trust property outright.²⁷ In addition, the settlor typically retains certain powers or interests sufficient to render the transfer to the trust an incomplete gift, thereby avoiding gift tax and keeping the trust property within the settlor's gross estate for estate tax purposes. For example, in Private Letter Ruling 9536002 (May 12, 1995) (not precedent), the IRS ruled that a transfer to an offshore trust was incomplete because the grantors retained a limited power of appointment over the trust property.

The New Alaska Trust Law

Elimination of the Rule Against Perpetuities. Under the Alaska Trust Law, an interest in a trust will not fail to be valid because it is non-vested if all or part of the income or principal of the trust may be distributed, in the discretion of the trustee, to a person who is living when a trust is created.²⁸ As a practical matter, this means a trust can be of perpetual duration provided the Trustee has discretion to distribute trust income and principal to the beneficiaries, at least one of whom is living when the trust is created. (This might be contrasted with South Dakota law, which provides that a trust may be perpetual if the trustee is authorized

to sell the trust assets and with Delaware law which has abolished the rule against perpetuities in its entirety, except with respect to real estate.) Thus, a perpetual trust now can be created under the law of Alaska which imposes no income tax. And if the trust is not a grantor trust (causing the income to be attributed directly to the grantor), state (and local) income tax can be avoided to the extent trust income is not currently distributed to beneficiaries who are tax residents of states (or localities) that impose income tax.

Spendthrift Provisions. Alaska law also was amended expressly to provide that a person who transfers property in trust may direct that the interest of a beneficiary of the trust may not be either voluntarily or involuntarily transferred before payment or delivery of the property to the beneficiary by the trustee. It further provides that if the trust contains such a transfer restriction, the restriction prevents a creditor existing when the trust is created, a subsequent creditor or any other person from seeking to satisfy a claim out of the beneficiary's interest in the trust, subject to four exceptions.

First, if the settlor retains the power to revoke or terminate the trust, his or her creditors may attach the trust property to the extent of the power of revocation or termination. However, a power to revoke or terminate does not include a power to veto distributions from the trust to another beneficiary, the retention of a special testamentary power of appointment, or the right to receive a distribution of income, corpus or both in the discretion of another person, including a trustee, other than the settlor of the trust. The veto power and power of appointment may be retained by the grantor to prevent the transfer to the trust from being complete for federal gift-tax purposes.³² By the same token, retention of such powers will cause the assets to be includable in the gross estate of the grantor at death.

Second, creditors of the settlor may also attach property in the trust to the extent that the trust income and principal must be distributed to the grantor.

Third, the transfer is void with respect to creditors if at the time of the transfer to the trust the settlor was in default by 30 or more days in making a payment due under a child support judgment or order.³³

Fourth, the transfer is subject to attachment by the settlor's creditors if the transfer was intended, in whole or in part, to hinder, delay or defraud creditors under the Alaska fraudulent transfer law. (AS 34.40.010.) However, an action to claim the transfer was fraudulent may not be commenced unless (1) if the claimant was a creditor when the trust was created, the action is brought within the later of four years after the transfer to the trust was made or one year after the trust is or could have been reasonably discovered, or (2) if the claimant becomes a creditor after the transfer, the action is commenced within four years after the transfer to the trust.³⁴

The foregoing means that if the settlor is not in default by 30 or more days of making a child support payment, the transfer was not intended to defraud creditors and the grantor retains no power to revoke or terminate the trust or the mandatory right to receive income or principal but only retains the right to receive a distribution in the discretion of a trustee, creditors of the grantor cannot reach the assets contained in the Alaska trust. If the grantor retains the power to veto a distribution to other beneficiaries and a special testamentary power of appointment or similar right, the transfer to the trust will not be complete for gift and estate tax purposes even though it is not subject to the claims of the grantor's creditors. On the other hand, if the grantor retains no such power to veto or power of appointment or similar right, the transfer to the trust will be complete for estate and gift tax purposes. Thus, the Act offers flexibility to integrate creditor protection with the grantor's tax and other estate planning objectives.

The Rule for Making the Trust Alaskan

ALTHOUGH FOUR OTHER jurisdictions (Delaware, South Dakota, Idaho and Wisconsin) allow trusts to

last perpetually in their jurisdictions, no statutory guidance is provided by their laws as to what connection or nexus is sufficient to cause their state's law to apply to the trust. The Alaska statute, however, provides an explicit rule as to what makes a trust an Alaskan trust for both the purpose of avoiding the rule against perpetuities and the purpose of creating a trust that will not be subject to claims of the settlor's creditors. First, some of the trust assets must be deposited in the state and be administered by a "qualified person." Deposited in Alaska means held in a checking account, time deposit, certificate of deposit, brokerage account, trust company fiduciary account or other similar account located in Alaska. A "qualified person" is an Alaskan domiciliary or an Alaskan trust company or bank. Second, the Alaskan trustee's duties must at least include an obligation to maintain records for the trust (on an exclusive or nonexclusive basis with other trustees) and the obligation to prepare or arrange for the preparation of income tax returns that must be filed by the trust (again on an exclusive basis or on a nonexclusive basis with other trustees). Third, part of the administration must occur in the state.

Some Contrasts to Foreign Asset Protection Trusts

ALTHOUGH AN AMERICAN now is able to create an Alaskan trust of which he or she is a discretionary beneficiary which will be protected from the claims of his or her creditors, an Alaska trust will not provide the same level of practical protection from claims of creditors which may be afforded to a trust created in one of the offshore jurisdictions, such as the Cook Islands or the Bahamas. The laws of such offshore jurisdictions typically have extremely short statutes of limitations before the period to commence an action claiming the transfer to the trust was fraudulent runs which, as a practical matter, cannot be met by a creditor especially if the trust is created and funded sufficiently in advance of the entry of a final judgment against the debtor in an American court.³⁵ Second, the

jurisdiction may prohibit the enforcement of American judgments. That means the action must be retried in the offshore jurisdiction. As a practical matter, that may well be impossible. Because Alaska is one of the American states, its courts will be required to give full faith and credit to any judgment of a sister state although, as indicated, a judgment against the debtor will not be enforceable against the Alaska trust unless there is a finding that the transfer to the trust was a fraudulent transfer or some other reason for voiding the trust, such as the grantor having been in default by 30 or more days in child support payments at the time the trust was created. Third, at least some of these offshore jurisdictions explicitly exclude some claimants from contending a transfer was fraudulent. For instance, in some cases, a claim founded on a domestic right (such as an equitable distribution claim to property in the event of a divorce) cannot be brought against a trust situated in that jurisdiction.

In some ways, however, a foreign asset protection trust may be less desirable than an Alaska trust. Obviously, there is greater political risk in these offshore jurisdictions than there is in the United States. In addition, new "anti-foreign trust" provisions added to the Internal Revenue Code (see, e.g., Code Sec. 6048) will not apply to an Alaska trust. Also, it may be that a court would be more prone to view the creation of a foreign asset protection trust as an attempt to remove or secrete assets than it would the creation of an Alaska trust. In a recent bankruptcy court case, the court expressed considerable hostility to the creation of an offshore trust and ultimately applied New York law to determine whether the debtor had retained a property interest in the trust (which was established under Jersey law) for purposes of determining whether he should be denied a discharge in bankruptcy.⁴⁴ It appears, however, that this case may have turned on the rather extraordinary facts, which the court apparently perceived as involving a course of deception and concealment of assets by the debtor.

Options Under the Alaska Trust Act

A SIGNIFICANT OBSTACLE to the making of lifetime transfers is that the property owner is then cut off from the property. For example, some persons are willing to make a gift, and anticipate that they will be comfortable without the gifted asset and/or the income therefrom under the most likely scenarios, but are concerned about a "disaster" situation in which they might need access to the funds. They may not be at all concerned about protecting assets from creditors. In such a case, an offshore trust may be appropriate to consider. Precisely because the normal U.S. rule permitting creditors to reach the trust does not apply, the fact that the grantor is a permissible beneficiary of trust income and/or principal in the discretion of an independent trustee should not render the gift incomplete and includable in the estate under Code Sec. 2036 or 2038. Thus, the trust can be structured so that the transfer is a completed gift upon creation.⁴⁵ Gift tax would be paid (or unified credit applied). In that way, the "normal" estate planning benefits of removing gifted assets and the appreciation thereon from the estate are achieved. However, the Trustee can give the settlor access to the trust assets.

These same opportunities are now available to Americans using Alaska trusts. For example, an individual could create a so-called "Crummey trust"⁴⁶ in Alaska for the benefit of himself or herself as well as members of his or her family and protect transfers to the trust from gift tax using annual exclusions with respect to the other family members. For instance, a woman who is married and has two children could transfer up to \$50,000 under the protection of the annual exclusion under Code Sec. 2503(c) granting her husband and each child the right, respectively, to withdraw \$10,000 and \$20,000 from the trust. The transfers to such a trust created under Alaska law would be complete and should be excludable from the grantor's estate at death even though the grantor is eligible, although not entitled, to receive

distributions from the trust in the discretion of a trustee other than himself or herself. Of course, the beneficiaries may exercise the powers of withdrawal so that there is no property left in the trust from which the grantor could benefit. In addition, to the extent that the powers of withdrawal have not lapsed tax-free pursuant to Code Sec. 2514(e) and 2041(b)(2), the property subject to the powers of withdrawal will be includable under Code Sec. 2041(a) in the gross estates of the powerholders.

An individual also could create an Alaska trust and transfer the amount of his or her remaining gift tax exemption equivalent (which can be as great as \$600,000) and remain a beneficiary eligible to receive distributions in the discretion of a trustee other than himself or herself and avoid having the property includable in his or her estate. This provides an opportunity to remove the income and appreciation earned on the property during the balance of his or her lifetime from his or her gross estate even though the grantor has retained the possibility of receiving assets back in the discretion of the trustee if appropriate circumstances arise. Similarly, an individual could make a transfer, which is complete for estate and gift tax purposes, to an Alaska trust, of which he or she is eligible to receive distributions, equal to his or her remaining GST exemption under Code Sec. 2631(a) which can be as great \$1 million. This would allow the amount protected from generation-skipping transfer tax to increase by post-transfer income and appreciation during the balance of the transferor's lifetime even though the grantor is an eligible beneficiary of the trust.

The entitlement to payments from a grantor retained annuity trust (GRAT) described in Code Sec. 2702(b)(1) or grantor retained unitrust (GRUT) described in Code Sec. 2702(b)(2) must terminate prior to the death of the grantor or the trust assets will be includable, in whole or in part, in the grantor's estate.⁴⁷ However, if the GRAT or GRUT is created under Alaska law, the property may continue in trust after the grantor's annuity or uni-

trust term ends, and the grantor thereafter could be eligible to receive distributions from the trust without causing the trust to be includable in his or her estate, provided the grantor survives the annuity or unitrust term.

Conclusions

THE DUAL GOALS OF asset protection and reduction in taxation are often compatible and complementary. The new Alaska Trust Act provides an opportunity for Americans in all states to create trusts in Alaska which may help achieve both goals. Although not providing all of the practical protection that may be available through similar trusts created in offshore jurisdictions, many Americans will prefer for their assets to remain in the United States. For them, Alaska trusts may be considered. Although not discussed in detail in this article, making the trust perpetual may offer additional financial, tax and estate planning benefits. ♦

End Notes

1. See, e.g., *Polozzt v. Commissioner*, 22 T.C. 182 (1954).
2. Compare Reg. Sec. 25.2511-2(c) with Code Sec. 2038(a).
3. "If and when the grantor's dominion and control of the trust assets ceases, such as by the trustee's decision to move the situs of the trust to a state where the grantor's creditors cannot reach the trust assets, then the gift is complete for Federal gift tax purposes..." Rev. Rul. 76-103, 1976-1 CB 293. See generally, Kartiganer, Rollins & Piontznica, "Completed Gifts to Offshore Trusts and the Three-Year Rule," *Journal of Asset Protection* (March/April 1996).
4. See generally, P. Alces, *The Law of Fraudulent Conveyance*, Sec. 504 (1989) (1991 Cum. Supp. No. 2).
5. See, e.g., Tex. Prop. Code Sec. 42.004(a); (under Texas law, a debtor who acquires otherwise exempt personal property with intent to hinder, delay or defraud creditors loses the personal property exemption—however, that is not the case with the Texas homestead exemption, although a bankruptcy discharge may be denied); *Anderson Mill & Lumber Co. v. Clements*, 134 So. 588, 592 (Fla. 1931); (under Florida law, debtor who acquires otherwise exempt homestead property with intent to hinder, delay or defraud creditors loses homestead exemption).
6. See, e.g., Bankruptcy Code Sec. 727(a)(2); *In re Reed*, 700 F.2d 986, 988 (5th Cir. 1983) ("a debtor who converts nonexempt assets to an exempt homestead immediately before bankruptcy, with intent to defraud his creditors, must be denied a discharge in bankruptcy because of the provisions of Section 727 of the Bankruptcy Code"); *In re Myerson & Kubn*, 121 B.R. 145, 158-159 & n.15 (Bkrcty. S.D.N.Y. 1990).
7. *Oberst v. Oberst*, 91 B.R. 97, 101 (Bkrcty. C.D. California 1988). See, also, *Klein v. Klein et al.*, 122 NYS 2d 546 (1952) (similar).
8. See *Myers v. Redmill*, 266 Ala. 270, 96 So. 2d 450 (1957) (conveyance to wife two days after automobile accident), and cases cited in annot., 73 A.L.R.2d 749. See, also, annot., 38 A.L.R.3d 597.
9. Such an interest would normally be excluded from a beneficiary's bankruptcy estate as well. See Bankruptcy Code Sec. 541(c)(1) and (2). *In re Remington*, 14 BR 496 (Bankr. DNJ 1981) (in bankruptcy proceeding of New Jersey resident, both income and principal of trust created for his benefit by relative who resided in Pennsylvania protected under Bankruptcy Code because under Pennsylvania law spendthrift provision was effective to provide that protection).
10. In some states, trusts are "spendthrift" only to the extent so provided in the governing instrument. In other states, they are "automatically" spendthrift unless the governing instrument provides otherwise. In still others, they may not be "spendthrift" at all (i.e. they are subject to creditor claims regardless of spendthrift provisions in the instruments). See, e.g., *Industrial Nat'l Bank v. Budlong*, 106 RI 780, 264 A2d 18 (1970).
11. See e.g., N.Y. Debtor and Creditor Law, Secs. 278 and 279.
12. See, e.g., Scott, 11A *The Law of Trusts*, Secs. 152, 155-157.1 (4th ed. 1987); *Restatement (2d) Trusts*, Secs. 155 and 157; Cal. Prob. Code Ann. Secs. 15400-15307.
13. See Code Sec. 2041.
14. See *Converstan v. Kellogg*, 136 Mich. App. 504, 357 N.W. 2d 705 (Mich. App. 1984); Scott, *supra*, Sec. 157.1.
15. See Oshlins & Blattmachr, "The Megatrust: An Ideal Family Wealth Preservation Tool", *Trusts & Estates* 20 (November 1991).
16. It is not always clear whether a transfer is for fair value for this purpose. The analysis will depend on applicable law and the facts of the case.
17. See *Oberst v. Oberst*, 91 B.R. 97 (Bkrcty. C.D. Cal. 1988).
18. See, e.g., *Restatement (2d) Trusts*, Sec. 156.2.
19. Although apparently not widely known, a rule somewhat similar to that in Alaska is contained in Missouri Revised Statute Sec. 456.080.
20. However, it seems that not every retained interest will trigger the application of this rule. For example, a power to direct investments probably is not attachable by the grantor's creditors. A related issue is whether creditors can reach the assets of a trust over which the settlor retained a power of revocation (or a general power of appointment), and whether creditors can reach the assets of such a trust to satisfy the debts of the settlor/decedent. It appears that the trend is to allow assets in such a trust to be used to satisfy the debts of the settlor/decedent and toward extending the recourse of creditors (including creditors of a decedent) against such trusts, in some cases by statute. See, e.g., Cal. Prob. Code Ann. Secs. 18200 and 18201; *State Street Bank & Trust Co. v. Relsler*, 389 N.E.2d 768 (Mass. App. 1979).
21. 22 T.C. 182 (1954). See, also, Rev. Rul. 77-378, 1972-2 CB 347; Rev. Rul. 76-103, 1976-1 CB 394.
22. 76 T.C. 153 (1981), acq. 1981-2 C.B. 1.
23. See *Comm'r v. Vander Wheele*, 254 F2d 895 (6th Cir. 1958), acq. 1962-1 CB 5 (same result under Michigan law); PLR 8350004 (same result under California law). Neither a private letter ruling (PLR) nor a national office technical advice memorandum may be cited or used as precedent. Code Sec. 6110(j).
24. 86 T.C. 785 (1986).
25. See, however, *Estate of German v. United States*, 85-1 TC ¶ 13,610 (Ct. Cl. 1985) and *Herzog v. Comm'r*, 116 F.2d 591 (2d Cir. 1941), finding that creditors could not reach assets of a trust of which the settlor was one of several discretionary beneficiaries (or found that the Internal Revenue Service had failed to meet its burden to show that settlor's creditors could reach the asset held in the trust). However, the conclusion reached by the Federal courts in these cases may not be the same as those reached by state courts. Compare *Vanderbilt Credit Corp. v. Chase Manhattan Bank, N.A.*, 100 AD2d 544, 473 NYS 2d 242 (2d Dep't 1984) with *Herzog v. Comm'r*, *supra*.
26. In general, it appears that asset protection trusts will be effective only against future, but currently unknown, creditors. The settlor, generally, cannot be insolvent at the time the trust is created or become insolvent as a result of the creation of the trust.
27. See Code Sec. 677(a) (a trust is a grantor trust if, among other situations, the trustee, without the consent of an "adverse party", can distribute the trust assets to the grantor.) There will be no Code Sec. 1491 excise tax consequences since no tax will apply to the transfer of appreciated assets to a foreign trust so long as that trust is a "grantor trust" and the settlor is a U.S. person. Rev. Rul. 87-61, 1987-1 CB 219.
28. AS 34.27.050(a)
29. Reg. Sec. 25.2511-1(c).
30. Code Sec. 2036(a)(2), 2038(a).
31. An Alaska trust could not be used to avoid child support or alimony payments because neither a judgment for child support nor one for alimony is dischargeable in bankruptcy. Bankruptcy Code Sec. 523(a)(5).
32. It is possible that a court would determine that the statute of limitations of the grantor's domicile state (or another state) should be applied rather than the one provided under the new Alaska law. This could mean a shorter, longer or "different" statute of limitations. However, the determination that the trust is "spendthrift" under Alaska law should apply even if the grantor is domiciled elsewhere. See 4 *Collier on Bankruptcy*, 544.02 at 544-13 to 544-14 and fn. 17 (15th ed. 1989) ("The

tendency of the courts is to treat the law of the site of property at the commencement of the case as governing to the extent that Sec. 544(a) refers to non-bankruptcy law"); 4A *Collier on Bankruptcy*, ¶ 70.26 at 364-365 (14th ed.) ("Whether the bankrupt's interest as a *cestui que trust* was, at the time of bankruptcy, assignable or transferable, or subject to attachment, seizure or judicial sale, is a matter generally to be determined by the law of the state where the trust has its situs" [footnote omitted]); *Ferrari v. Barclays Business Credit, Inc.*, 108 B.R. 384, 387 (D. Mass. 1989) ("The authorities ... have shown a preference for applying the law of the site of the conveyed property"); *In re Remington, supra* (applying Pennsylvania law to determine interest of New Jersey debtor in trust established under Pennsylvania law). But cf. *In re Portnoy, infra* (alleged concealment of assets of offshore trust as grounds for denial of discharge in bankruptcy).

33. But, see 515 S. *Orange Grove Owners Ass'n v. Orange Grove Partners*, Plaintiff No. 208/94 (High Ct. Rarotonga, Civil Div., Nov. 6, 1995)

34. *In re Larry Portnoy*, 201 B.R. 685, 695 (S.D.N.Y. 1996).

35. See, e.g., PLR 9332006 (not precedent) (transfer to offshore trust of which grantor

and members of grantor's family are eligible beneficiaries a completed gift and will not be in grantor's estate because under the law governing the trust creditors of the grantor cannot attach the trust assets).

36. See, generally, Blattmachr & Slade, "Building an Effective Life Insurance Trust"

continued on page 94

Trusts & Estates 29 (May 1990) explaining how to structure such a trust to hold insurance policies on the grantor's life. Crummey trusts can hold other assets as well. It seems that the life insurance proceeds should not be includable in the grantor's estate under Code Sec. 2042 if the grantor is merely an eligible beneficiary of the trust which is not subject to the claims of his or her creditors, because the incidents of ownership (which is the "touchstone" for application of Code Sec. 2042) held by a trust are not automatically attributed to the beneficiary whose life is insured. See, e.g., PLR 9434028 (not precedent).

37. The Internal Revenue Service has contended that a GRAT is includable in its entirety under Code Sec. 2039(a) if the grantor dies during the term for which he or she is entitled to annuity payments. See PLR 9345035 (not precedent).

Self-Settled Estate Planning Trusts

The Alaska Act opens a new dimension in estate planning for Americans. They can now make lifetime transfers, which are complete for federal gift and estate tax purposes, to an Alaska trust of which the grantor is eligible, but not entitled, to receive distributions in the discretion of a trustee (other than himself or herself).¹ Such self-settled Alaska trusts could be used for virtually all lifetime estate planning transfers.

For instance, an individual may make transfers under the protection of the Internal Revenue Code §2503(b) gift tax annual exclusion by transferring property to an annual exclusion or so-called "Crummey" trust, which provides that certain individuals (such as a transferor's spouse, descendants, and perhaps others, but not the grantor) can withdraw property transferred to the trust up to the amount of annual exclusions not used elsewhere. With an Alaska trust, the grantor may remain eligible to receive distributions of trust property in the discretion of a trustee other than the grantor without causing the trust assets to be includable in his or her estate. From an estate planning perspective, the grantor will want distributions to him or her to be minimized, because such distributions diminish the estate tax planning benefits of having made completed transfers to the trust that otherwise would be excludable from his or her estate.

If an agreement that the grantor would receive the income from or the use of the assets held by the trust may be inferred from the circumstances, the assets almost certainly will be includable in the grantor's estate, under Code §2036(a)(1), even when coupled with the finding that the grantor had no legal entitlement to such income or use. See, e.g., *Estate of Skinner v. U.S.*, 197 F. Supp. 726 (E.D. Pa. 1961), *aff'd*, 316 F.2d 517 (3rd Cir. 1963). On the other hand, only occasional use of trust assets or occasional receipt of trust income should avoid any such inference. See, e.g., *Estate of Wells v. Commissioner*, *supra*. Actual retention of the property or the income (that is, the failure actually to transfer the property or the income to another) may also result in estate tax inclusion. See, e.g., *Lee v. United States*, 86-1 U.S.T.C. ¶ 13,649 (CCH)(W.D. Ky. 1986).

Annual Exclusion Trusts

Not infrequently, a Crummey trust will acquire one or more life insurance contracts on the life of the grantor or on the lives of the grantor and the grantor's spouse. Ownership of the policies by the trust is an attempt to keep the proceeds paid at death from inclusion in the estate(s) of the insured(s). If the insured holds no "incident of ownership" in the policy at or within three years of death, and if the proceeds are not paid to the estate of the insured, the proceeds should

not be included in the insured's gross estate. Code §2035, 2042.

If the terms of an annual exclusion (or another type) Alaska trust that acquires a cash value life insurance contract provide merely that the trustee may, in the exercise of its discretion, distribute trust assets to the grantor, the incidents of ownership in the contract should not be attributed to the insured grantor so as to cause the proceeds to be includable in his or her estate. See, e.g., PLR 9434028 (incidents of ownership held by a trust are not automatically attributed to the beneficiary whose life is insured if the beneficiary is not a trustee).

This provides an opportunity for the grantor, through the exercise of discretion of a trustee other than himself or herself, to be eligible to receive cash value in the policy without causing the proceeds paid at death to be includable in his or her estate.

Unified Credit, GST Exemption, and Other Trusts

One of the most effective lifetime planning techniques is to transfer as early as possible in life the amount protected from gift tax by reason of the unified credit allowable under Code Sec. 2010 or by reason of the amount of GST exemption under Code Sec. 2631. Use of the unified credit (which under the Taxpayer Relief Act of 1997 will increase commencing in 1998 and continuing through 2006) early in life can result in a very large amount being excludable from the transferor's estate. The early use of the \$1 million GST exemption (which under the Taxpayer Relief Act of 1997 is indexed for inflation) can be even more effective from an estate planning perspective. In the long run, because the GST exemption can be used to avoid wealth transfer tax on property as it passes from one generation to the next without limit, the use of the GST exemption to avoid tax may be even more important than use of the unified credit. (As noted earlier, an Alaska trust can be structured so it can last perpetually. Also, Alaska has no income tax.)

The remainder following the grantor's retained interest term in a grantor retained annuity trust (GRAT), grantor retained unitrust (GRUT), or grantor retained income trust (GRIT), including a qualified personal residence trust, can pass outright to others or remain in trust. In most jurisdictions in the United States, the property will continue to be includable in the grantor's estate if the grantor is eligible to receive continuing distributions in the discretion of a trustee after the grantor's entitlement to payments ceases, because the grantor's creditors will be able to attach the trust assets. See Rev. Rul. 77-378, *supra*. However, if the GRAT, GRUT, or GRIT is an Alaska trust, the property should not be includable in the grantor's estate after the annuity, unitrust, income, or use term

IRC § 754. Moreover, entities treated as partnerships for income tax purposes can be much more flexible in formation, operation and ownership than so-called S corporations. Subject to certain exceptions (such as for domestic (U.S.) corporations), an entity may elect on its first tax return filed after 1997 to be treated as a partnership (or, alternatively, as a corporation) for federal income tax purposes.

Entities treated as partnerships, in certain circumstances, can be used to enhance the protection of assets from claims of creditors. First, "buy-out" provisions contained in a partnership agreement (or other document) sometimes provide other owners or the entity itself the right to buy partnership interests (or comparable interests in a LLC) from a partner who becomes bankrupt. Although these "triggered by bankruptcy" provisions sometimes are not enforceable, they may be enforceable in certain other cases. In any event, their mere existence may chill a creditor from attempting to attach a partnership interest. Second, as a general matter, any creditor who does succeed to the economic interest of the bankrupt partner but does not become a partner (because, for example, state law or the partnership agreement so provides) nonetheless may be taxed apparently on a pro rata portion of the income, even if no distributions are made. See Rev. Rul. 77-137, 1977-1 C.B. 178. This may make the attached interest in the partnership a liability in the hands of the creditor (because it may generate an income tax liability without a concomitant distribution of cash or other assets,) which may cause the creditor to agree to disgorge the asset at a lower price or possibly to abandon it. Under the law of virtually all jurisdictions, however, a court having jurisdiction over the partnership may order its liquidation for any "equitable" reason. See, e.g., 8A N.Y. Cons. Law §121-802. In addition, under those state laws that otherwise permit a partner to demand to be bought out upon six month's notice (which is the default rule contained in the Revised Uniform Limited Partnership Act), a creditor might convince a court that a creditor should be able to exercise that power to be liquidated out.

Under the new Alaska law, a court will be able to order the dissolution of a partnership or limited liability company only if it determines that it is impossible for the enterprise to continue to operate. Therefore, the court will be unable to order a liquidation merely for an "equitable" reason. In addition, unlike the default rules under most state laws, an Alaska limited partnership or limited liability company does not go out of existence upon the death of a general partner of a limited partnership or of a member of an LLC.

Limited partnerships and LLCs are widely used for estate planning. They can accomplish many goals, including providing a family unit with an opportunity

to shift income more efficiently, share in lower brokerage and investment advisory fees, and centralize and harmonize the management of assets and investment decisions. Use of these entities changes the nature of what is owned. In other words, family members no longer own an interest in the assets owned by the partnership or LLC, but rather own interests in the partnership or LLC. Because the nature of the family's interest changes, so does its value. Often, the value is reduced. Lower value may mean lower gift, estate, or generation-skipping transfer tax when an interest is transferred. It can also mean a smaller "step-up" in income tax basis at death. See IRC §1014.

The Internal Revenue Service has shown a strong and growing inclination to disregard the existence of the partnership (or LLC) when disregarding its existence would result in a larger value for estate, gift, or generation-skipping transfer tax purposes, and thus, higher taxes. The Service's attack, to date, has revolved around four primary arguments. See, generally, Aucutt, "More on Deathbed FLPs," 9 *Probate Practice Report* 1 (August 1997), for a discussion of some of these arguments.

First, the IRS has contended that the taxpayer may be making a gift upon formation of the entity to other equity owners (e.g., partners) if the taxpayer receives back an interest worth less than what he or she contributed. The argument may not be sound. For example, upon termination any such "gift" to the other partners may be offset by a "gift" back from the others. If so, any transfer upon formation must be for full consideration and cannot be a gift. At least in some cases, the courts have not completely dismissed the argument that a gift can be made upon formation, thus this argument should not be disregarded in forming a limited partnership or LLC. Cf. *Estate of Trenchard v. Commissioner*, T.C. Memo 1995-232. See, also, Horn, "Limited Partnerships: Some Thoughts and Theories about Key Issues," 23 *ACTEC Notes* 37 (Summer 1997).

Second, the IRS has contended that the existence of the partnership should not be respected in those cases where the partnership was formed only for tax reduction reasons, at least if its existence has no other substantial economic impact. It appears more likely that there will have been a smaller non-tax impact if a transfer of partnership units occurs immediately after the formation of the entity. See, e.g., National Office Technical Advice Memorandum (NOTAM) 9719006 (formation of partnership by individual who was terminally ill and died two days after partnership was formed). See, also, NOTAM 9723009 (formation 54 days before death), and NOTAM 9725002 (formation two months before death).

Third, the Internal Revenue Service also has recently contended that the existence of the partner-

limited liability companies last indefinitely (just as corporations do). In addition, as a matter of default Alaska law, the terms of a partnership agreement (or governing documents of a limited liability company) can only be changed with the unanimous of all partners (or members of an LLC). Hence, if there is any partner who is not a family member (such as a niece or nephew), the family will not be able to remove the restriction and, accordingly, it should not constitute an applicable restriction the existence of which may be disregarded under IRC §2704(b).

Alaska has also eliminated any right of a limited partner or LLC member to demand to be bought out on six months' notice. In fact, under default state law, a partner or member is entitled to distributions only as provided in the governing documents. Moreover, unlike the default rules under the law of virtually all the other states, neither a limited partnership nor a limited liability company is dissolved under Alaska law upon the death of any general partner or member. Rather, a limited liability company continues for as long as there is one member. A limited partnership continues in existence as long as there is another general partner, or if there is none, it dissolves only if a majority-in-interest of the remaining partners fail to elect a new general partner within 90 days.

New Delaware Asset Protection Trust Legislation

Effective July 1, 1997, Delaware enacted a new law similar to and intended to produce the same estate planning and asset protection benefits that the Alaska Trust Act provides. The official synopsis of the new Delaware law states that the purpose of the Act is to facilitate the establishment of trusts in Delaware and is intended to be like the Alaska Trust Act. In fact, much of the language in the Delaware law is identical to the Alaska law.⁶

Unfortunately, it appears that the Delaware law will provide less asset protection than the Alaska law will. Perhaps of much greater significance, it may not be possible for a gift to a self-settled trust formed under Delaware law, as enacted, to be complete for

federal tax purposes. See Dela. Stat. Ann. §3573. Subsection §3573(a) appears to provide that the trust is permanently available to discharge the grantor's obligation to pay alimony, child support, and property settlement awards even if the obligation arises after the transfer to the trust occurs. As indicated above, a transfer is incomplete for Federal estate and gift tax purposes to the extent the grantor can relegate the grantor's creditors to the trust. Here, because the potential use of trust assets is limited and probably ascertainable, it seems the transfer might be only partly incomplete (i.e., to the extent potential use of trust assets for child support, etc. is ascertainable). See Treas. Reg. §20.2036-1(a)(ii).

Probably most troublesome is §3573(b), under which the grantor can certify in writing to any creditor (including apparently someone who becomes a creditor after the trust has been created) that the trust assets are available to satisfy the creditor's claim. That certification seems to make the trust assets available to that creditor. This virtually assures that the gift to the trust is incomplete, because the grantor can relegate his or her future creditors to the trust assets. This power of relegation is sufficient to render the gift incomplete. Rev. Rul. 77-378, *supra*.

Third, under §3573(c) the trust assets are permanently available to claimants who have suffered personal injury, death, or property damage that occurs prior to the transfer to the trust. It appears quite certain that these claimants continue for all time to have access to the property in the Delaware trust to satisfy their claims, even if the transfer to the trust was not a fraudulent conveyance. It seems that transfers to the Delaware trust are incomplete to the extent of any such pre-transfer claims, under Dela. Stat. Ann. §3573(c).

Nonetheless, supporters of the new Delaware trust act are likely to seek to have these potential problems with the legislation cured early in that state's 1998 legislative session. With certain changes, Delaware law will provide the same estate planning benefits currently available under Alaska law.

Notes

¹ The extent of asset protection is discussed in more detail in Hompesch, Rothschild and Blattmachr. "Does the New Alaska Trusts Act Provide an Alternative to the Foreign Trust?" *The Journal of Asset Protection*, 9 (July-August, 1997).

² For example, Rev. Rul. 77-378 states, in part:

There would be no doubt of his nonliability for gift tax upon the value of the income if he had reserved to himself the absolute right to the income for his life. But he made no such reservation. He transferred the entire property. Whether he would enjoy any of its income depended entirely on the trustee, who, in his uncontrolled discretion, could deprive him of it completely. It

was only by virtue of the trustee's direction, which on this record must be regarded as entirely voluntary, that the donor received any of the income; and this direction might be terminated whenever the trustee deemed it proper that the wife should receive the income. Such a hope of passive expectancy is not a right. It is not enough to lessen the value of the property transferred.... 'Whether the grantor enjoy any of the trust's assets is dependent entirely on the uncontrolled discretion of the trustee. Such a hope or passive expectancy does not lessen the value of the property transferred....' Rev. Rul. 62-13 is hereby clarified to remove any implication

ACTEC NOTES

THE AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL

3415 S. Sepulveda Boulevard, Suite 330 • Los Angeles, California 90034 • (310) 398-1888 • FAX: (310) 572-7280

Lynn Wintriss, Editor / W. Bjarne Johnson, Assistant Editor / © The American College of Trust and Estate Counsel 1997



Jerold I.
Horn

President's Message

My first President's Message, appearing in the Summer, 1997, issue of *ACTEC Notes*, signalled my long-held belief that the most important issue that confronts trusts and estates lawyers, and the most significant issue that I can address and can induce the College to address, is an economic and professional malaise that befalls the legal specialty in which we practice. I devote this President's Message to revisiting the theme.

As I view the essentials and state them directly, the issue is nothing less than whether our work is sufficiently valuable to generate the fees that will enable us to continue to perform our work in the manner in which we are prepared and inclined and in which our professional standards require. The economic and professional standards that I see at the margins of the market are not cause for encouragement.

The recent and vast increase in the number of lawyers arguably is having the greatest impact upon those types of
(continued on page 183)

Volume 23, No. 3, Winter 1997

Table of Contents

President's Message	177
Calendar of Events	178
In Memoriam	181
Fellows in the News	185
Editor's Page	186
Washington Report	187
<i>John M. Bixler and Ronald D. Aucutt</i>	
Foundation News	189
<i>Thomas P. Sweeney</i>	
Committee Corner	191
<i>W. Bjarne Johnson</i>	
ACTech Talk: Push Technology	193
<i>Roger L. Shumaker</i>	
Spotlight on Attorneys' Fees	195
<i>Martin A. Heckscher</i>	
New Developments in Construction and Instruction Case Law	198
<i>Arlene Harris</i>	
The Taxpayer Relief Act of 1997 ("TAPRA"): A First Look, but Not the Last Word	201
<i>George L. Cushing, John H. Clymer and Natalie B. Choate</i>	
The Family-Owned Business Exclusion	214
<i>Donald H. Kelley</i>	
The New Charitable Remainder Trust Rules: Show Me the Charitable Gift	234
<i>Conrad Teltell</i>	
Estate Planning on America's Last Frontier: Alaska Trusts, Limited Partnerships, and LLCs	240
<i>Jonathan G. Blattmachr, George E. Goerig, Jr. and Richard S. Thwaites, Jr.</i>	
Written Communication with Clients: Observations on the Survey	247
<i>Stephen E. Martin</i>	
Contest Planning for the Client with Marginal Capacity	251
<i>Wills and Trusts Subcommittee of the Fiduciary Litigation Committee</i>	

PLEASE NOTE

1998 Summer Meeting, Portland, Oregon, July 9-12

Enclosed with this issue are a letter from E. James Garble, a hotel brochure and reservation form, and a return postcard for a free Northwest Oregon travel guide.