

In the Matter Of:
WORKSHOP RE 15 AAC 56

HEARING
August 12, 2016

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BEFORE THE DEPARTMENT OF REVENUE

STATE OF ALASKA

In re:

Notice of Public Scoping and
Workshop for Possible Updates
and Revisions to DOR Regulations
15 AAC 56: Oil and Gas Exploration,
Production and Pipeline
Transportation Property Tax.



TRANSCRIPT OF PROCEEDINGS

Pages 1 - 35, inclusive

Friday, August 12, 2016
1:30 P.M.

Taken at
550 West 7th Avenue, Suite 104
Anchorage, Alaska

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A-P-P-E-A-R-A-N-C-E-S

For State of Alaska, Department of Revenue:

**John Larsen, Audit Master
Lennie Dees, Audit Master
550 West 7th Avenue, Suite 500
Anchorage, Alaska 99501
907/269-8436**

Also Present:

**Ken Alper, Department of Revenue
John Bitney, public
Robin Brena, Brena, Bell & Clarkson
Molly Brown, Dillon & Findley
Peter Caltagirone, Department of Law
Kathleen Dalton, Department of Revenue
Dan Dickinson, BDO
Felipe Farley, North Slope Borough
Michael Hurley, ConocoPhillips
Tim Jones, Glacier Oil & Gas
Joyce Lofgren, Department of Revenue
Steve Mahoney, Manley & Brautigam
Marty McGee, State Assessor
Melody Nardin, Brena, Bell & Clarkson
Martin Schultz, Department of Law
Andrew Stemp, North Slope Borough
Gretchen Stoddard, public
Jack Wakeland, Brena, Bell & Clarkson
Tom Williams, BP**

Present via Teleconference:

**Jill Dolan, Fairbanks North Star Borough
Carl Giesler, Glacier Oil
Mary Gramling, Department of Law
Wayne Kelley, RSK
Brenda Maxwell, ASRC
Forrest Olemaun, North Slope Borough**

Court Reporter:

**Gary Brooking, Registered Professional Reporter
PACIFIC RIM REPORTING
711 M Street, Suite 4
Anchorage, Alaska 99501**

1 ANCHORAGE, ALASKA; FRIDAY, AUGUST 12, 2016

2 1:36 P.M.

3 -o0o-

4 MR. LARSEN: Well, good afternoon. Looks
5 like we have a full house here, so we'll go ahead and
6 get started.

7 My name is John Larsen. I'm an Audit Master
8 with the Department of Revenue in the Oil and Gas Tax
9 Division. And welcome to today's workshop on oil and
10 gas exploration, production and pipeline
11 transportation property tax under Title 15, Chapter 56
12 of the Alaska Administrative Code.

13 The purpose of the meeting here today is to
14 receive public comment from interested parties
15 regarding possible changes to existing regulations
16 prior to drafting any regulations to be proposed.

17 I want to stress this is not a public
18 hearing, and that there will be a chance for
19 additional comment once any regulations to be proposed
20 have been drafted and publicly noticed.

21 But anyway, prior to starting the procedures
22 here today, just some administrative things to take
23 care of. In the event of a fire, out the door,
24 outside. They would like us to gather in the parking
25 lot over by 9th and D, kind of by the tennis courts

1 there, so that we can account for everybody and make
2 sure that you're out of the building. We have a
3 sign-in list. Hopefully everybody signed in on their
4 way in. And if you see me on the way over there, I
5 can tick you off so you don't have to walk all the way
6 over to the parking lots.

7 The restrooms, if you need to use those, are
8 right out the door past the guard desk to your right
9 and all the way to the end of the hall.

10 If you have any electronic devices here,
11 please turn them off.

12 If you're on the phone, and especially if
13 you're using your cell phone, put that on mute. And
14 if you're using your desk phone and you go away,
15 please don't put us on hold and then leave. If you
16 have to leave, turn your phone off and then come back
17 later. We had an incident in our first session this
18 morning where I think somebody went on hold and we had
19 hold music playing to us as we were trying to get
20 testimony. So once again, you if do have to leave,
21 please hang up and come back again.

22 On the sign-in sheet, I asked if there was
23 anybody that wanted to be added to the mailing list.
24 So if you did say yes to that, please make sure that
25 you wrote legibly so that I will get the correct

1 address.

2 Also note that when we sign you in for that,
3 you will get a confirmation, and you have to respond
4 to that confirmation in order to get activated on the
5 mailing list. There's also a link on our website that
6 you can go to and take care of that yourself.

7 So prior to us starting the testimony, let's
8 go ahead and go around the room and we'll introduce
9 everybody here in the room first, and then we'll go to
10 the phone lines.

11 My name is John Larsen. I'm an Audit Master
12 with the Department of Revenue.

13 MR. DEES: My name is Lennie Dees. I'm an
14 Audit Master with the Department of Revenue.

15 MR. SCHULTZ: My name is Martin Schultz. I'm
16 an Assistant Attorney General with the State of
17 Alaska.

18 MR. CALTAGIRONE: Peter Caltagirone,
19 Assistant Attorney General, State of Alaska.

20 MR. BRENA: Robin Brena, here on behalf of
21 Valdez and Fairbanks.

22 MR. WAKELAND: Jack Wakeland on behalf of
23 Valdez and Fairbanks.

24 MS. LOFGREN: Joyce Lofgren, Department of
25 Revenue.

1 MR. JONES: Tim Jones, Glacier Oil & Gas.

2 MR. DICKINSON: Dan Dickinson, BDO, LLP, SA.

3 MR. HURLEY: Michael Hurley with

4 ConocoPhillips.

5 MS. STODDARD: Gretchen Stoddard, public.

6 MR. MCGEE: Marty McGee, State assessor. The

7 other State assessor.

8 MR. WILLIAMS: Tom Williams with BP.

9 MR. MAHONEY: Steve Mahoney, Manley &

10 Brautigam.

11 MR. FARLEY: Felipe Farley, Borough attorney,

12 North Slope Borough.

13 MR. STEMP: Andrew Stemp, the North Slope

14 Borough.

15 MS. BROWN: Molly Brown from Dillon &

16 Findley.

17 MS. NARDIN: Melody Nardin.

18 MR. LARSEN: Pardon me. I couldn't --

19 MS. NARDIN: Melody Nardin, Brena, Bell &

20 Clarkson.

21 MR. LARSEN: Okay. Thanks, Melody.

22 MR. ALPER: Ken Alper --

23 MR. BITNEY: John -- John Bitney.

24 MR. ALPER: Oh, sorry.

25 MR. BITNEY: Here for myself.

1 MS. DALTON: Kathleen Dalton, DOR.

2 MR. LARSEN: And on the phone, please.

3 MR. GIESLER: Carl --

4 MS. MAXWELL: Brenda Maxwell, ASRC

5 Exploration.

6 MR. GIESLER: Carl Giesler, with Glacier Oil.

7 MS. DOLAN: Jill Dolan, Fairbanks North Star

8 Borough.

9 MR. KELLEY: Wayne Kelley, with RSK.

10 MR. OLEMAUN: Forrest Olemaun, chief

11 administrative officer for the North Slope Borough.

12 MS. GRAMLING: Mary Gramling, Department of

13 Law.

14 MR. LARSEN: And anyone else on the phone

15 lines? Okay. Thanks.

16 As previously stated, the Department is
17 holding this workshop to get input and suggestions on
18 regulations that may need to be amended, implemented
19 or repealed.

20 While the workshop announcement identified
21 certain regulations, such as those related to the
22 municipal tax cap replacement cost and intangible
23 drilling expense, the Department is also accepting
24 comment on other areas that may need to be addressed
25 to clarify, conform to existing statutes.

1 Just to give everybody here an idea of the
2 timeline, our goal is, to the extent possible, to have
3 any regulations that come out of this process in
4 effect on January 1st, 2017. And so as the workshop
5 notice indicated, we would like to have any written
6 comments received by the close of business on Tuesday,
7 October 16th, 2016. Following that, we'll --

8 MR. DEES: August.

9 MR. LARSEN: Excuse me. August?

10 MR. DEES: Yes.

11 MR. LARSEN: Sorry. Thank you. August 16th.
12 Thank you.

13 Following that, we'll begin the regulations
14 drafting process, and our goal is to have any
15 regulations that we intend to propose publicly noticed
16 by mid-September, probably trying to target the
17 September 15th -- September 19th date.

18 And once the regulations have been publicly
19 noticed, then there will be further opportunity for
20 public comment at that time.

21 And so as you know, we -- or as stated,
22 there's no regulations that have been drafted at this
23 point in time for you to comment on. It's kind of an
24 open forum for the public to provide comment on
25 regulations related to property tax that the public or

1 interested parties feel need to be implemented or
2 amended at this time.

3 So having said that, is there anyone that
4 would like -- and I'm sorry. One more thing. When
5 you do speak, we would like you to use the microphone
6 here so that we can get a transcription of the
7 proceedings. And that will be made available on our
8 website as well.

9 So when you come up, please identify your
10 name and your affiliation. And if there's anybody
11 that would like to volunteer to go first, we're taking
12 volunteers. Thanks.

13 I know we have some representatives here from
14 all parties. So if there's any comment that people
15 would like to make, we'd certainly like to get those
16 on the record at this point in time.

17 I'll be here till 2:30 regardless --
18 (laughter) -- of whether people have anything to say
19 or not, as indicated in the scoping notice. In case
20 someone comes late, there will be opportunity for them
21 or anyone else to speak later.

22 But nobody has anything that they want to add
23 or suggest for the proceedings? I hate --

24 MR. ALPER: This is a bigger crowd than the
25 morning crowd that turned out for the oil and gas

1 taxpayer bill, but it's a quieter crowd.

2 MR. LARSEN: I hate to waste all this
3 valuable time we have sitting here in the forum.

4 MR. BRENA: I have a couple things to offer,
5 but I wasn't in a big hurry to be first.

6 MR. LARSEN: Okay. Would you mind coming up
7 and using the microphone?

8 MR. BRENA: I'm happy to.

9 MR. LARSEN: Thank you, Mr. Brena. And I
10 wish I had an award for going first, but --

11 MR. BRENA: Yeah.

12 MR. LARSEN: -- you know, with the State
13 budget right now, things are fairly tight.

14 MR. BRENA: My name is Robin Brena, and I'm
15 here -- I'm an attorney with Brena, Bell & Clarkson,
16 and I'm here today on behalf of Valdez and Fairbanks
17 North Star Borough.

18 I guess there are a couple reg changes that I
19 think that you have to make. There has been a Supreme
20 Court decision with regard to the scope of SARB's
21 jurisdiction, and 15 AAC 56.015 has an alternative
22 appeal path for taxability issues, which the Alaska
23 Supreme Court has held to be inconsistent with the
24 underlying statute, and I believe needs to be repealed
25 or changed.

1 Also, I would just note that, to some degree,
2 15 AAC 56.070, which concerns the tax cap of the
3 Municipality, the underlying statute has changed since
4 the regulation was adopted to adopt tiers, depending
5 on -- in the calculation of the tax cap, depending on
6 the mill rate with -- used to be 225. And that's what
7 the current regulation provides. And the statute now
8 provides for three tiers, 225, 300 and 375, depending
9 on the underlying mill rate. So I think you need to
10 harmonize 15 AAC 56.070. I think you need to
11 harmonize it with the existing statutory change.
12 Those are changes that I think that you -- that you
13 have to make.

14 I noticed in your -- and then just a few
15 brief comments. I noticed a relatively tight
16 timeframe, and there's lots of potential issues that
17 have been litigated for a decade now that could come
18 up in these conversations.

19 I would encourage you to approach this
20 narrowly, rather than broadly. I think, you know, at
21 least from my point of view, you have a settlement in
22 place. And if all the parties who went through a
23 tremendous effort to reach a settlement with regard to
24 some of these underlying issues, if, in effect, this
25 reg process is an opportunity for any party or the

1 State to just advance litigation positions that have
2 just been settled, then I don't think that's a very
3 helpful exercise, and I think that it undermines the
4 integrity of the settlement that the State just
5 entered into.

6 So I would say please don't use this
7 regulation process as an opportunity to, through
8 regulations, try to finish the -- sort of finish the
9 litigation based on where it stood. Just allow it --
10 I mean, I don't think that that would be -- I don't
11 think that would be in good faith on anybody's part to
12 agree to settle and have a standstill for five years
13 just to have -- be sitting here effectively
14 relitigating the same issues through a regulatory
15 process. That would certainly affect my client's
16 assessment of whether it made sense to settle with the
17 parties in the future if that's what this is to turn
18 into.

19 I think that's a particular risk with regard
20 to proven reserves. The State has advanced a proven
21 reserves position 17 or 18 times, and it has never
22 been successful. The Supreme Court has ruled twice on
23 it. And so please don't use the regulatory process,
24 after we settle, as an opportunity to reopen the
25 State's failed litigation positions with regard to

1 proven reserves. I don't think that would be helpful,
2 and I don't think that would be in good faith.

3 With regard to the duration of replacement
4 cost, I'd say similar comments on that. It's not
5 clear what you mean by "replacement cost." If what
6 you -- because you use replacement cost in one place
7 in your notice and replacement value in another place
8 in your notice, so it's not clear whether you mean
9 RCN, replacement cost new, or you mean RCNLD,
10 replacement cost new less depreciation, or the total
11 assessment.

12 If what you mean is RCNLD, the total
13 assessment, I would point out that the statutory
14 scheme is an annual one, and so the durability -- I
15 don't think you should suggest a duration different
16 than your statutory scheme implements.

17 If you mean replacement cost studies,
18 because, frankly, all the parties are trying to figure
19 out how to disagree in a less litigation-intensive
20 fashion than we have in the past, if you mean -- if
21 you mean RCNs, we have a cost study, so what do you do
22 with that cost study?

23 The State has advanced the position in the
24 past that why don't we just index a cost study once
25 it's signed off on, and we'll just index it for a

1 number of years, that kind of approach. Then there
2 are independent -- you're reopening a litigation issue
3 that we just settled, and I would hope that you
4 wouldn't do that.

5 With regard to that particular concept, the
6 courts have held that they should consider -- people
7 should consider the best evidence available as to
8 value, and I would counsel against suggesting any
9 regulation that suggests anything less -- anything
10 other than the best evidence.

11 The Court has also rejected indexing cost
12 studies, and relevant treatises provide that you do
13 not index an estimate. You index an original cost.
14 So the State's litigation position, if that's what's
15 intended to be scoped here, is inconsistent with the
16 holdings of the courts, it's inconsistent with the
17 treatises, and it would, I think, not be very good
18 faith to reopen a litigation position after settling.

19 So those are -- with regard to the -- so
20 those are two examples. So I would -- in summary, I
21 would counsel you there's certain things you have to
22 do. Please bear in mind that we're all at a
23 standstill, and let's not have this be an opportunity
24 to reopen the standstill afterwards, or this isn't
25 going to work out well for anybody.

1 And with regard to those particular issues,
2 please don't allow it to become a process so the State
3 can continue to advance failed litigation positions
4 through a reg process right after they settle a case.

5 Do you have any questions you would like to
6 ask me? Otherwise, I will go over there and sit down
7 and shut up.

8 MR. LARSEN: No, I don't have any questions
9 at this time, and I appreciate your comments. Thanks.

10 MR. BRENA: Okay.

11 MR. LARSEN: And you don't have to shut up.
12 You're welcome to pipe back in later on if you want
13 to.

14 Is there anyone else? Thank you.

15 MS. BROWN: Good afternoon. My name is Molly
16 Brown, and I am an attorney from Dillon & Findley, and
17 I represent the North Slope Borough. And the North
18 Slope Borough representatives, some of which are on
19 the phone, and some -- and two of whom are here with
20 me today might have some further comments.

21 I just wanted to support Mr. Brena's comment
22 regarding changes to 15 AAC 56.015 as it relates to
23 taxability appeals. The Alaska Supreme Court resolved
24 that issue in February, with a formal decision, I
25 think, in May. And I think all that needs to be

1 changed, and we will propose these regulatory changes
2 in writing, is to delete Sections (b), (c), (d) of
3 that regulation. That would eliminate the procedure
4 that would take a taxability appeal through the Office
5 of Administrative Hearings.

6 The Borough is also very interested in any
7 changes to 15 AAC 56.120, which is the regulation
8 related to intangible drilling expenses. As the
9 Department of Revenue knows, and as those sitting in
10 this room know, that the intangible drilling expense
11 issue has been litigated twice, once before the Office
12 of Administrative Hearings and once before the State
13 Assessment Review Board this May, and is now pending
14 before the Alaska Superior Court [as spoken] on
15 appeal. So we will be submitting our comments in
16 writing on Tuesday.

17 Besides that, I don't have any additional
18 comments and -- except to say that on behalf of the
19 Borough, we fully support the Department of Revenue
20 making changes to regulations to conform to the Alaska
21 Supreme Court decisions that have been issued as a
22 result of the TAPS litigation and as a result of the
23 jurisdiction litigation in 15 AAC 56.015, which I just
24 discussed.

25 We join in the comments made by Mr. Brena

1 regarding some of the issues that are contained in the
2 official notice for today's workshop, the issues that
3 have been resolved in litigation and that, you know,
4 were resolved as they related to the settlement
5 agreement, not be disturbed at this point through the
6 regulatory process.

7 The Borough derives almost all of its
8 operating revenue from oil and gas property tax and is
9 interested in a system that is fair and is equal, and
10 will join in any changes that advance that. But to
11 change the issues that have been litigated and
12 resolved in the past through the regulatory process is
13 something that is of great concern to the Borough.

14 MR. LARSEN: Thank you, Ms. Brown.

15 And there's someone on the phone line that
16 has their phone on, and we can hear you typing in the
17 background noise. If you can go on mute, we would
18 appreciate that. Thank you.

19 Would anyone else like to speak next?

20 MR. MAHONEY: My name is Steve Mahoney. I'm
21 with Manley Brautigam. We're not representing any
22 specific client at this point. I'm speaking as having
23 been a member of extended litigation with regard to
24 property tax and a property tax filer since about 1979
25 in the state of Alaska.

1 I would recommend to the Department that they
2 do take a considered and strong look at providing
3 guidance with regard to certain issues that remain
4 open. I hate to consider that a settlement agreement
5 on one piece or one asset, taxable asset, would drive
6 the lack of activity or positioning of the Department
7 with regard to its interpretations of the statutes.

8 There are many, many, many assets all over
9 the state which would be impacted by changes to the
10 terms that have been defined in the notice, and it
11 behooves the Department to provide clarity, in
12 essence, to reduce the amount of litigation that's
13 happened over the past decade with regard to proven
14 reserves, having some standard to calculate and
15 understand, as a taxpayer, what proven reserves are so
16 that a legitimate, reasonable and rational forwarding
17 of a value can be applied with a calculation that
18 makes sense when you're looking at the life of an
19 asset.

20 With regard to production assets and
21 transportation assets, proven reserves is a necessary
22 and important part of the calculation of its value.

23 Right now the only definition of "proven
24 reserves" -- and it's not actually a definition of
25 "proven reserves," but how to calculate the proven

1 reserves is found in the regulation with regard to
2 production equipment. And that essentially just says
3 look to engineering standards, calculated using
4 engineering standards.

5 A more definitive definition of "proven
6 reserves" would be more fair to all parties. It would
7 be more reasonable, less apt to be in controversy; and
8 providing as clear and clean a definition as possible
9 would behoove all parties.

10 With regard to IDC, intangible drilling
11 expenses, the definition in the regulation is
12 different than the definition in the statute. What
13 that definition is, what it means is currently the
14 subject of litigation.

15 Three cases currently outstanding in Superior
16 Court are being consolidated at least into two, maybe
17 one case. Summary judgment motions with regard to
18 that definition have been filed. I think it might be
19 premature, and it might be problematic as well in
20 litigation positioning, both for federal and state
21 purposes, if the Department were to amend or adjust
22 the current regulations. Whether or not various
23 taxpayers believe those regulations don't properly
24 define IDC, or intangible drilling expenses, as
25 those -- that word is used or term is defined.

1 To change the regulation again would only be
2 problematic, in terms of valuations, in at least 2017,
3 likely 2018. This issue will be resolved by the
4 Supreme Court one way or the other. It might take two
5 years plus to do that, given our current timeframes,
6 but at the same time it is being litigated; it will be
7 resolved in terms of the statutory definition. And I
8 think at this point it would be premature and
9 problematic to try to define that currently.

10 With regard to the calculation of the
11 definition of the duration of replacement costs,
12 whether you consider it replacement cost new,
13 replacement cost new less depreciation or your
14 definition, again a standard calculation with some
15 form of calculable objective standard for that
16 valuation over a period of time behooves the process
17 of properly rendering values and having the assessor
18 apply those values for full and true value.

19 So I would state that any effort, in terms of
20 getting those definitions more objectively defined,
21 would forward the process of getting these assessments
22 properly put together for full and true value and then
23 less litigation and less controversy forward.

24 Thank you.

25 MR. LARSEN: Thank you, Mr. Mahoney.

1 Anyone else here in the audience that would
2 like to provide comment here today?

3 Okay. How about on the phone lines? Is
4 there anybody that would like to enter anything into
5 the record here for us today?

6 MS. GRAMLING: John, this is Mary Gramling
7 with the Department of Law.

8 MR. LARSEN: Yes, Mary.

9 MS. GRAMLING: I just wanted to put out
10 there, in case you didn't mention it at the start,
11 that "any written comments received will be public"
12 does not include the information that might be
13 taxpayer confidential or proprietary in any way.

14 MR. LARSEN: Thank you, Mary, for that
15 reminder.

16 And for anybody that wasn't able to hear that
17 clearly, is that when you submit your written
18 comments, that they are public comments, so be sure to
19 not include any confidential or proprietary
20 information in anything that you submit to the
21 Department here. It will be made public.

22 Yes, sir.

23 MR. WILLIAMS: May I --

24 MR. LARSEN: Yes, sir, please.

25 MR. WILLIAMS: For the record, my name is Tom

1 Williams. I work for BP as a tax attorney. I do not
2 have any responsibilities with respect to ad valorem
3 tax for BP.

4 I'm chairman of the tax committee of the
5 Alaska Oil and Gas Association, but because there's no
6 proposal here, the Alaska Oil and Gas Association has
7 no specific proposal or comments to make.

8 I decided initially not to speak, but I am
9 going to speak just to provide some historical
10 context, because sometimes there are good ideas that
11 get forgotten.

12 I came to the state in August of 1973, just
13 before the 1973 special session, where this tax was
14 enacted. And my area of involvement was royalties
15 from the Cook Inlet and production taxes from the Cook
16 Inlet. But in the course of going through the State's
17 records about its royalty administration and its tax
18 administration with respect to the Cook Inlet, we --
19 Wilson Condon and I compiled a lot of information
20 about what people had thought and what they did and
21 that sort of stuff.

22 Governor Egan, in 1972, got concerned because
23 the cost of the oil pipeline, which was originally
24 estimated to be \$900 million, was approaching
25 3 billion, and during the course of that year the

1 estimate, I believe, crossed \$3 billion. Obviously
2 that wasn't close to the final number.

3 But he was concerned in a world of
4 three-dollar oil, and the posted price for oil in
5 Swanson River, which was the only production Alaska
6 had, was \$3.04. And -- or maybe it was a nickel. But
7 it was just over three dollars. And he was afraid
8 that the Pipeline costing that much, there would be no
9 wellhead value left, that the tariff would eat that
10 all up.

11 One of the things he wanted to do was have a
12 tax on the Pipeline so that if it was eating up all
13 the wellhead value through the tariffs that would be
14 charged, the State would still have something to show
15 for it, a nonrenewable resource that was going to be
16 coming out of its land and going down the Pipeline and
17 gone forever.

18 So he introduced, in 1972, House Bill 806.
19 It was a tax on the Pipeline and on field equipment,
20 but primarily the Pipeline. And it didn't pass. It
21 didn't -- it was one of a few times Governor Egan
22 actually introduced a bill that he didn't get, because
23 ordinarily when he spoke to the legislature and said
24 jump, they didn't say why. They said how high.

25 And he wanted the tax, and he didn't get it.

1 And it was because the Municipality said this is our
2 tax, and you can't take this away from us. We
3 administer property taxes.

4 So the State instead passed a scheme of
5 pipeline regulation about the tariffs, where, as a
6 condition of the right-of-way lease across State lands
7 for the Pipeline, the owners of the Pipeline would
8 covenant and agree to be regulated for their tariffs
9 by the State.

10 And there was also legislation passed that
11 said we're going to have a high cents-per-barrel
12 production tax with a credit against it for the oil
13 royalties that you pay to the State. The effect of
14 the royalty credit was to set a floor on the combined
15 royalty and production tax revenues of about \$1.51,
16 half of the prevailing price but a lot better than
17 zero, which is what the Governor was thinking of.

18 That passed in 1972 and became the subject of
19 litigation. Both of those did. The contractual
20 regulation of the Pipeline and the cents-per-barrel
21 royalty credit tax. And it became embroiled in
22 litigation.

23 And it might still be in litigation today,
24 except for the fact that on July 6 or 9 -- I can't
25 remember which way it is -- Senator Henry Jackson said

1 that we're getting ready to vote on the federal
2 pipeline right-of-way, and if Alaska doesn't have its
3 act together -- you know, this land is only T8 --
4 we'll take it back. We'll take this to federal court,
5 and the State won't have anything for it, and we'll
6 get this thing built.

7 And Governor Egan took that threat seriously
8 and called a special session. And one of the things
9 that happened before the special session was there was
10 an agreement to resolve the litigation. If the
11 cents-per-barrel tax or the royalty credit were
12 repealed and replaced with something else, and if
13 there were a tax on the Pipeline that the Governor
14 wanted that's shared with Municipalities, the
15 revenues, all that was sort of agreed between and
16 among the plaintiffs in that litigation, which were
17 the North Slope royalty -- or lessees -- they didn't
18 have royalties yet that they were going to pay; we
19 just had the leases -- and the State of Alaska.

20 And the Municipalities, because they had had
21 the votes before to block legislation, wanted to keep
22 that there. So they wanted to keep themselves, that
23 is to say, as players in this.

24 So you ended up with a grand settlement, and
25 this legislation is one of the bills that came out of

1 the special session. That, in effect, is a
2 settlement.

3 Now, that doesn't mean that it's -- the
4 constitution provides specific ways to contract and
5 limit its taxing power, and a settlement probably is
6 not one of them. But there is a settlement -- there
7 was a settlement there that was created.

8 And one of the problems that you have with a
9 tax on a pipeline or on oilfield equipment that makes
10 it different from a tax here in the city of Anchorage
11 is, in my neighborhood, there are houses for sale
12 every year. The assessor gets the data from those
13 sales. He knows whether they're the same square
14 footage as mine. He knows whether they're built at
15 the same time. He's got lots of empirical data that
16 he can use to benchmark my house against and come up
17 with an assessed value.

18 So the tax works well because there's a lot
19 of objective data about the value that a willing buyer
20 and a willing seller, in fact, are agreeing and paying
21 to one another, or accepting payment thereof.

22 And we don't have those, and so this tax has
23 always been fraught with a question of how are we
24 going to deal with this?

25 Now, I'm not here to offer or to take a

1 position about how that should be done. There are
2 lots of people in this room who know far more about
3 the ins and outs of that issue than I could ever want
4 to try to learn in the remaining time I have left.

5 But the point so much isn't about how it
6 should be done, but I agree that there are a couple
7 things that you do want to be sensitive to. One is
8 where you have an adjudication. Then you have to --
9 if that's -- if your regulations are inconsistent with
10 an adjudicated decision by -- especially by the Alaska
11 Supreme Court, where it's final and no longer subject
12 to appeal, then that's the law. And your job is to
13 have regulations that do not become inconsistent with
14 what the law is.

15 Where you have a settlement, I think that
16 what you want to do is refrain from adopting
17 regulations that will upset that settlement, and the
18 only exception is if you've got some compelling strong
19 reason to do so, for whatever -- whatever that is.

20 Now this tax has evolved a great deal, this
21 particular property tax, from when it was first
22 passed. When I got to administer it when I left the
23 AG's office, I -- trying -- was then called the pat
24 rev division, and I supervised the first assessment of
25 TAPS when it came onstream.

1 And I supervised the reserves tax when we
2 valued reserves on the basis of their economic value,
3 not on how many MCFs were down in the ground. And,
4 you know, you can make those things work.

5 But, again, the point is you have to have
6 people who can try to understand from both sides of
7 the table, because each side has a different
8 perspective. And where they have reached agreement,
9 they should be reluctant to overturn it, as I say,
10 without a good reason.

11 So I don't -- don't have anything to say,
12 other than -- about how this tax should work, other
13 than, you know, you should not interfere with ongoing
14 litigation. The Courts will decide that in due
15 course. I think it's inappropriate use of the
16 sovereign taxation power to try to force a resolution
17 of a dispute through retroactive action by regulation
18 and leave the settlements alone.

19 Initially 80 percent of this tax went to the
20 State and about 20 was being collected by the
21 Municipalities. And we have seen over time that the
22 condition has changed, and this is now reversed.

23 I'm not saying, again, that's a good thing or
24 a bad thing. It is what happened, and the law has
25 allowed it. It's not for us, in this proceeding, to

1 try to alter that outcome.

2 I think what you need to do is -- sometimes
3 "he who governs least governs best." And in this
4 case, where you have things that do need to be
5 changed, you should, but I think, especially with
6 respect to settlements or trying to determine outcomes
7 of litigation, both of those are bad businesses to try
8 and get into.

9 There's a lot of history here. It's not
10 always relevant, but it is important to the
11 institutions to -- that are at these tables, because
12 the North Slope Borough was there from the beginning
13 of its creation, and the Kenai Peninsula Borough was
14 there, and BP, through its alter ego, Sohio, was
15 there, and now is also there -- is there directly, and
16 all the other companies that own parts of TAPS, or
17 formerly owned parts of TAPS, or the fields, have all
18 come through this together.

19 And, you know, it's -- it would be nice if
20 there weren't any disputes, but I suppose that's a
21 naive hope, because the dollars are too much.

22 But, again, I think just be cautious, is all
23 I can say. Recommend the -- or recognize the context
24 in which this tax originated and its success in
25 functioning for the great majority of the time it's

1 been in place, not that it's been dispute-free, but it
2 has been successful.

3 And I think people are still collecting the
4 money, and people are still able to reach agreements
5 about what they owe and what their obligations will
6 be. And so it's not a failure, and don't give up on
7 that.

8 MR. LARSEN: Thanks, Tom. Appreciate your
9 perspective there.

10 Well, we certainly gained some momentum once
11 we had our initial volunteer, and for that I
12 appreciate everybody's comments.

13 I don't know if people want to take a few
14 moments and reflect and see if there's any additional
15 comment that they would like to add. We can certainly
16 take a break if people want to have a sidebar and
17 communicate with some of their counsel and co-workers,
18 but if this is -- if people have made all the
19 statements that they believe are pertinent and need to
20 be made, then, as I stated earlier, I don't want to
21 waste anybody's valuable time here just sitting around
22 waiting.

23 But I think we have had some excellent
24 comments here today, and so I wouldn't want to cut
25 them short if there are things that people would like

1 to add to the record here.

2 Marty.

3 MR. MCGEE: I originally had not intended to
4 speak at this meeting. My name is Marty McGee, and
5 I'm currently the state assessor in the Department of
6 Commerce, so I don't have any particular comment in
7 terms of that role.

8 But historically I've played a role in a lot
9 of different aspects of the administration of this tax
10 and the use of these regulations. And Tom's comments
11 kind of provoked me to make a comment.

12 One of the things that's of great interest to
13 me is the administrative process and having systems,
14 tax systems that can be administrated which minimize
15 conflict and produce a mechanism for the resolution of
16 conflict.

17 So my roles have been multiple. I've been a
18 local Municipal assessor for quite some time in
19 Anchorage. I've played a role as the member of the
20 panel on SARB, and was the chairman of SARB for
21 several years. And now I'm looking at the world from
22 the perspective of State government and the
23 administration of State government, and I likely will
24 play a role in several different aspects of these
25 regulations.

1 So I really appreciated Tom's comments and
2 the history of what we have got. And I think that
3 ought to be the focus of the regulatory change, is
4 trying to build a system that is administratable, that
5 minimizes conflicts so that -- and provides a
6 mechanism for the resolution of conflicts, where those
7 occur.

8 And I think there is room for improvement in
9 the regulations that we have in place now. And of
10 course the first emphasis ought to be bringing the
11 current regulations into conformity with the statutes
12 as they exist now and with the most recent Supreme
13 Court decisions, especially the Supreme Court
14 decisions, so that they're not inconsistent and
15 logically follow the path.

16 That was the extent of my comment.

17 MR. LARSEN: Thank you, Mr. McGee.

18 Any further follow-up here in the room?

19 On the phone lines, is there anybody that
20 would like to add additional comment?

21 Okay. Hearing none, as I stated earlier, and
22 in the workshop notice, I'm obligated to be here until
23 2:30, in case anybody would like to show up and
24 provide additional testimony. But for now I'm going
25 to go off the record unless somebody comes back into

1 the room or on the phone lines, and we'll come back on
2 at 2:30 and then close the proceeding if nobody has
3 come forth at that time. Thanks.

4 I'm going to go ahead and put the phone lines
5 on mute for now, and I will come back on at 2:30.
6 Thanks.

7 (Off record.)

8 MR. LARSEN: This is John Larsen. We are
9 back on the record here. The time is 2:34.

10 I want to thank everyone once again for your
11 participation today, and the comments that I hope to
12 receive. Just as a reminder, if you want to submit
13 comments, you can send them to me at my e-mail, which
14 is John.Larsen -- L-a-r-s-e-n -- @Alaska.gov. You can
15 also send them to me by regular mail at 550 West
16 Seventh Avenue, Suite 500, Anchorage, Alaska 99501, or
17 fax to 269-6644.

18 All comments submitted will be considered in
19 any regulation to be proposed, and as we stated
20 previously, that any comments submitted are considered
21 public, so please do not submit any confidential or
22 proprietary information.

23 Once draft regulations have been proposed, a
24 further opportunity will be provided once the
25 regulations have been publicly noticed.

1 Thank you again for your participation, and I
2 look forward to seeing your comments. With that, the
3 proceeding is closed. Thanks and good day.

4 (Proceedings concluded at 2:36 p.m.)

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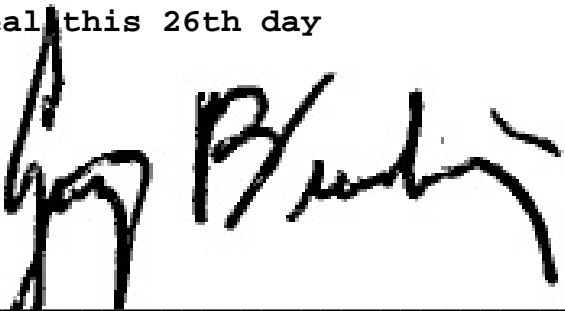
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CERTIFICATE

I, GARY BROOKING, Registered Professional Reporter and Notary Public in and for the State of Alaska, do hereby certify that the foregoing proceedings were taken before me at the time and place herein set forth; that the proceedings were reported stenographically by me and later transcribed by computer transcription; that the foregoing is a true record of the proceedings taken at that time; and that I am not a party to nor have I any interest in the outcome of the action herein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 26th day of August, 2016.



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