

Honorable Paul Fuhs
Commissioner
Alaska Dep't of Commerce
and Economic Development

April 29, 1993

663-93-0251

465-3600

Changing salmon
enhancement tax

Stephen M. White
Assistant Attorney General
Natural Resources Section - Juneau

You have asked how a qualified regional aquaculture association ("RAA") may legally change its salmon enhancement tax from three percent to two percent.

According to your staff, an RAA has a three-percent tax that generates revenue for paying back a state loan issued by your department. The RAA wishes to convert to a two-percent tax. Your department ("DCED"), however, is concerned that if the election to reduce the enhancement tax is accomplished in two steps--a repeal and an approval--it is possible that voters will repeal the three percent tax but not approve the two-percent tax.

AS 43.76.015 deals with elections to approve or terminate a salmon enhancement tax. Several subsections of this statute set out procedures for approving a one-percent, a two-percent, or a three-percent tax. AS 43.76.015(a)-(d). One subsection sets out procedures for terminating a tax, and a separate statute sets out conditions for a termination election. AS 43.76.015(e); AS 43.76.020(b).

The above statutes do not provide for a one-step process to revert from a higher to a lower tax or vice versa. This, and the fact that the statutes distinguish between the two types of elections,¹ leads us to believe that the procedure should follow two distinct steps--a termination of the higher tax followed by an approval of the lower tax.

¹ For example, AS 43.76.015(c)(3) and AS 43.76.020(b)(3) set out different requirements for the ballots in each type of election.

DCED does have protection in a two-step process. A salmon enhancement tax cannot be terminated by the commissioner of revenue unless you, the commissioner of commerce and economic development, determine that there are no outstanding loans that are secured by the tax. AS 43.76.020(b)(2).

We understand that either a three-percent or a two-percent salmon enhancement tax can secure the RAA's loan obligation to the state, but that a termination of all enhancement taxes would leave the state unsecured. Therefore, we believe that DCED may issue a conditional statement to deal with this situation. The statement would say that the outstanding loans to the RAA would be secured only if a two-percent tax is approved in place of the three-percent tax. If the two-percent tax is not approved, the condition under AS 43.76.020(b)(2) has not be satisfied, and accordingly, the three-percent tax could not legally be terminated.

The elections to terminate a higher tax and approve a lower tax follow the same process. AS 43.76.020(e). To avoid delay and unnecessary paperwork, we believe the termination and approval elections can be accomplished in a single operation:

1. First, DCED must receive a petition that requests the termination of the three-percent salmon enhancement tax. The petition must be signed by at least 25 percent of the number of persons who voted in the election to approve the three-percent tax. AS 43.76.020(b)(1).

2. DCED would approve the RAA's notice, ballots, and registration/voting procedures for termination of the three-percent tax and approval of a two-percent tax. AS 43.76.015(a).

3. The RAA would hold a public meeting at least thirty days before the postmark date for returning ballots in order to explain reasons for the elections and to explain election procedures. The RAA would give notice of the meeting to permit holders by direct mail, by posting notice in at least three places, and by publishing notice in newspapers in accordance with AS 43.76.015(c)(1)(C). All notices should state that DCED's "no outstanding loans" statement under AS 43.76.020(b)(2) is conditioned on approval of the two-percent tax. The RAA must give the notice within two months of being notified by DCED that a valid termination petition has been received. AS 43.76.020(b)(5).

4. The RAA would mail out two sets of ballots, one not more than forty-five days before the election postmark date and one not less than fifteen days before the postmark date. AS 43.76.015(c)(2). Each set must contain two separate ballots.

Honorable Paul Fuhs, Commissioner
Alaska Dep't of Commerce and
Economic Development
AG File No.: 663-93-0251

August 3, 2000
Page 3

One ballot would deal with the termination question and the other would deal with the approval question. The termination ballot must be worded so that "yes" will continue the three-percent tax and "no" will terminate it. The approval ballot (1) must state that the election is for a two-percent salmon enhancement tax under AS 43.76.011, (2) must ask whether the tax is approved, and (3) must state the boundaries of the region, the effective date of the tax, and the return postmark date for the ballot. AS 43.76.015(c)(3). Each ballot set should contain a written DCED caution that your "no outstanding loans" statement is conditioned on approval of the two-percent tax. Finally, the RAA must adopt procedures to ensure that only one termination ballot and one approval ballot is counted for each voter. AS 43.76.015(c)(2).

5. DCED would count ballots and certify the results of each election. AS 43.76.015(c)(4), (d). Each question, i.e., the termination of the three-percent tax and approval of the two-percent tax, must be approved separately by a majority vote of eligible permit holders voting in that election. AS 43.76.015(b)(1); AS 43.76.020(b)(4).

Please contact us if we can be of further assistance.

SMW:lae