

Office of Chief Counsel  
Internal Revenue Service  
**Memorandum**

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to: Deborah Diamond,  
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subject: Alaska Stranded Gas Development Contracts

This Chief Counsel Advice responds to your e-mail request dated December 19, 2005. In accordance with I.R.C. § 6110(k)(3), Chief Counsel Advice may not be used or cited as precedent.

ISSUE

Whether the State of Alaska is entitled to the disclosure of taxpayer information pursuant to I.R.C. § 6103(d) to administer State contracts for payments made to the Department of Revenue in lieu of corporate net income tax as authorized under the Alaska Stranded Gas Development Act of the Alaska revenue laws?

CONCLUSION

The Service can disclose taxpayer information to the State of Alaska under I.R.C. § 6103(d) to assist the State in the administration of its corporate tax laws, specifically the administration of contracts authorized under the Alaska Stranded Gas Development Act.

## FACTS

The Alaska Stranded Gas Development Act (the "Act") was added to Alaska's revenue laws in 1998 and amended in 2003. See AS § 43.20.010 *et. seq.* To encourage new investment to develop stranded gas resources in the State, the Act offers the State the ability to negotiate an alternative taxing structure tailored to the economic conditions of the project. AS § 43.82.010(1)-(2). The State of Alaska recognized there were natural gas supplies in the State that were going undeveloped due to the high costs of bringing the gas to market despite the high demand for natural gas. See AS § 43.82.900 (definition of "stranded gas"). The natural gas, a by-product of the extraction of oil, is extracted with the oil and is put back into the ground. To encourage firms to undertake the high construction costs associated with building pipelines or distribution facilities to bring the natural gas to market, the State passed the Act as a means to lower the financial risks of participating firms. Participation in the program is by application; applications were due by March 31, 2005. To qualify, firms must demonstrate to the Alaska Commissioner of Revenue and the Alaska Commissioner of Natural Resources the proposed project meets the requirements set forth in the Act. AS § 43.82.140. Once approved, the details of the contract are negotiated with the State.

The Act vests the Alaska Commissioner of Revenue with the authority to negotiate a contract on behalf of the State that provides for

periodic payments in lieu of one or more taxes that otherwise would be imposed by the State or a municipality...as a consequence of ...participation in an approved qualified project....

AS § 43.82.020. One such tax is the State corporate income tax. AS § 43.82.210. To date, the State has not finalized a contract and remains in negotiations with applicants. According to a representative of the State, the Department of Revenue anticipates the final contract will contain an annual payment in lieu of corporate income tax; however, the annual payment will be calculated by reference to the present Alaska corporate income tax provisions. In essence, the contract is freezing the State's corporate tax calculation and rates as they exist today.

While the Commissioner has also been given the authority to adopt procedures for collecting amounts due under the contract, including interest and penalties, the State has decided to adopt by reference applicable statutes and regulations, once again making today's collection procedures the rule for the term of the contract.

AS § 43.82.620. To ensure compliance with the terms of the contract, the Commissioner has the authority to audit and inspect the books of the taxpayer. AS § 43.82.630.

All contracts negotiated by the Commissioner under the Act must be approved by the State legislature and are not binding or enforceable against the State until the legislature has authorized the governor to execute the contract. AS § 43.82.435.

### ANALYSIS

Federal returns and return information are confidential and shall not be disclosed except as provided for in I.R.C. § 6103 or another section of the Internal Revenue Code (the "Code"). I.R.C. § 6103(a). Return is defined broadly to mean

any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

I.R.C. § 6103(b)(1). Likewise, return information encompasses a wide array of data pertaining to a taxpayer including, but not limited to, the following:

the taxpayer's identity, the nature, source, or amount of his income, payments receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies.

I.R.C. § 6103(b)(2).

Pursuant to I.R.C. § 6103(d)(1), the Service may disclose tax information to State agencies charged under the laws of the State with responsibility for administration of State tax laws. The tax information disclosed, however, must relate one or more of the enumerated chapters (e.g. chapter I – Normal Taxes and Surcharges, or chapter 6 – Consolidated Returns) and can only be disclosed to the extent the information is necessary for State tax administration. I.R.C. § 6103(d).

As a precondition to disclosure, State officials must make a written request specifying the information requested and to whom it is to be disclosed. I.R.C. § 6103(d)(1). To simplify the process and allow for continuing disclosures to States, the IRS Commissioner has authorized the use of agreements to facilitate the provision of information.<sup>1</sup> I.R.S. Deleg. Order 11-2.

States choosing to enter into a disclosure agreement with the IRS in fact enter into two agreements. The first agreement, called the Basic Agreement, is an agreement between the IRS and the State agency charged with administering the State revenue laws setting forth the required procedures and safeguards. IRM 11.3.32.5 (6/17/2005).

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<sup>1</sup> States that choose not to enter into an agreement with the IRS. for the sharing of information under I.R.C. § 6103(d) may still obtain returns and return information, as long as they submit a written request for each disclosure as required under I.R.C. § 6103(d)(1).

The second agreement, the Implementing Agreement, is designed to supplement the Basic Agreement by detailing the working relationship between the IRS and the State, the items to be exchanged, and how the exchange process operates. IRM 11.3.32.6 (6/17/2005). Alaska's Department of Revenue has signed Basic and Implementing Agreements with the IRS.

The Alaska Basic Agreement (the "Basic Agreement") provides that the agreement is to serve as the basis for coordination of Federal and State tax administration, and the development of techniques and modes of exchange most beneficial to improved tax administration. Alaska Basic Agreement ¶ 1.1. Adopting the definition of tax administration found in IRC § 6103(b)(4), the Basic Agreement provides that tax administration is

(a) ... (i) the administration, management, conduct, direction, and supervision of the *execution and application of the revenue laws*, or related statutes of the State, and (ii) the development and formulation of State tax policy relating to existing or proposed revenue laws, or related statutes, of the State, and

(b) includes assessment, collection, enforcement, litigation, and statistical gathering functions under such laws and statutes.

Alaska Basic Agreement ¶ 2.13. (emphasis added). The Alaska Department of Revenue is identified in paragraph 3.1 of the Basic Agreement as the agency charged with the responsibility for State tax administration.

Tax administration under I.R.C. § 6103 has a broad scope and encompasses more than assessing and collecting taxes. Tax administration has been interpreted to allow for the use of information obtained pursuant to I.R.C. § 6103(d) for oversight by a State of its revenue personnel to protect the integrity of the tax system. *Rueckert v. IRS*, 775 F.2d 208, 212 (7th Cir. 1985); see also, *Davidson v. Brady*, 559 F.Supp. 459 (W.D. Mich. 1983)(disclosure of tax returns was proper in a criminal case where attempting to interfere with the administration of IRS tax laws was found to pertain to tax administration); *Sanders v. State*, 57 Md. App. 156, 173 (Md. Ct. Spec. App. 1984)(the prosecution of a defendant for planning to murder an IRS agent to end the agents' audit was tax administration because defendant was attempting to obstruct the lawful conduct of an IRS agent).

Under the facts as presented by Alaska, the structure and operation of the planned contract program pursuant to the Alaska Act strongly militates in favor of its inclusion as tax administration under IRC § 6103(d). The payment in lieu of program was designed, not to eliminate the State's income tax for participants, but to provide them with an alternative taxing structure. By adding the Act to the State revenue laws, the State has chosen to give participants an incentive to develop natural resources by freezing the State income tax laws for the duration of the contract. In so doing, the State has offered

participants fiscal certainty as to their State tax obligations given that participating firms face potentially unforeseen and high construction costs.

Further, the payments under the contract are functionally equivalent to the taxes currently paid by participants under Alaska's net income tax provisions AS § 43.20. The contract will incorporate by reference Alaska's present corporate income tax provisions as the means for calculating the payment due. Payments will continue to be remitted like all other tax payments presently paid by participants and on the same forms currently used to report income. Likewise, current regulations and procedural rules regarding collections and audits for tax returns will also apply to payments under the contracts. To ensure receipt of accurate payment, Alaska would have the IRS disclose participants' returns and return information, information collected pursuant to the chapters listed in I.R.C. § 6103(d); the same information the State currently receives to assist it in auditing participants' State tax returns. The fact that the contract freezes the applicable statutory provisions, used to calculate, collect, and audit a participant, does not take the contract outside of the Department of Revenue's tax administration duties.

Whether the payment to the State is made pursuant to a revenue statute or under a contract authorized by a revenue statute, in both instances, the Department of Revenue is administering the "execution and application of revenue laws." What constitutes tax administration has been interpreted broadly and, therefore, based on the facts provided, Alaska's administration of contracts under the Act is tax administration and information can be disclosed by the IRS to the State under I.R.C. § 6103(d).

The State would remain subject to the disclosure rules, particularly those related to the use and sharing of the information received with other State agencies.

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