

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF)	
)	
THE CITY OF VALDEZ)	
NOTICE OF ESCAPED PROPERTY)	
)	
OIL & GAS PROPERTY TAX AS 43.56)	
1974-2002 TAX YEARS)	OAH Nos. 04-0322-TAX
<hr style="width:50%; margin-left:0;"/>		

ORDER ON PENDING DISPOSITIVE MOTIONS

I. Introduction

This is an oil and gas production property tax assessment dispute which dates to 2000, when the City of Valdez filed an action in superior court, seeking to compel the Department of Revenue, Taxation Division, to reopen assessments going back to 1974. Though the decision could have broader implications than the effect on a single taxpayer, Crowley Marine Services, Inc. (Taxpayer), is the taxpayer whose assessments were targeted in the litigation. The superior court dismissed Valdez's action, without prejudice, for failure to exhaust administrative remedies.

Valdez filed administrative appeals which eventually encompassed tax years 1974-2002. The appeals were consolidated into this single matter. The parties engaged in vigorous motion practice and discovery disputes. Among the motions filed were three dispositive motions: two by the Division, seeking partial summary adjudication as to assessments for 1974-1997, and the other by the Taxpayer, asking that the Division's informal conference decisions inclusive through tax year 2002 be upheld. Valdez opposed the motions. This decision addresses only those three dispositive motions.¹

¹ Upon petition to the superior court, the parties obtained an order directing that the pending dispositive motions be decided within 90 days. Order Re: Exhaustion of Administrative Remedies, dated August 18, 2007. Because the parties had filed many motions during the pendency of this contentious administrative appeal, they were permitted to submit supplemental briefing and present oral argument after the court's order. Prior to the October 10, 2007 oral argument on the motions, the parties agreed that three motions, (1. The Division's February 18, 2003, Motion to Dismiss Claims Barred by Statutory Limits; 2. The Division's September 04, 2003, Motion To Dismiss Time-Barred Claims on Summary Judgment and; and 3. The Taxpayer's February 21, 2003, Motion To Confirm Informal Conference Decision) are the only pending dispositive motions, though many procedural motions (most concerning discovery) remain to be decided.

The Division's dispositive motions should be granted, disposing of the appeal as to tax years 1974-1997, but the Taxpayer's motion should not insofar as it encompasses tax year 1997 and subsequent years. Valdez cannot compel the Division to reopen assessments for tax years in which Valdez itself would be statutorily time barred from levying a property tax against the Taxpayer's property. This supports dismissal of the appeal as to 1974-1994. The Division's decision not to make a 1997 change in its interpretation of "taxable property" retrospective was reasonable. This supports dismissal of the appeal as to 1995-1996. As to 1997 and beyond, however, the briefing and argument of the parties suggests that genuine issues of disputed fact material to assessments or supplemental assessments may exist. Accordingly, without further briefing, and possibly an evidentiary proceeding, it would be premature to dismiss Valdez's appeals as to those years. Whether some or all of the assessment issues for tax years 1997-2002 can be resolved as a matter of law, or will require findings of fact preliminary to applying the law on "taxable property," remains to be determined through additional proceedings, in accordance with the order encompassed in Part IV below.

II. Facts

Prior to 1997 the Division interpreted "taxable oil and gas production property" as allowing it to assess oil and gas-related property used at the Valdez Marine Terminal but not spill response vessels and equipment. The property at issue in this appeal was not included in the annual assessment rolls prior to 1997. In a 1997 response to an inquiry by Valdez, the Division changed its interpretation of what constitutes "taxable property" under AS 43.56.

The Division determined that beginning with the 1997 assessment, "taxable property" included the spill response vessels primarily committed to, or used for, terminal operations. The effect of this new interpretation of "taxable property" subjected spill response vessels in Valdez to taxation.²

Valdez seeks to compel the Division to tax spill response vessels that escaped taxation in the 1974 through 1996 assessments. Valdez first filed the disputed escaped property claims for the 1974 to 1996 assessments in 2000, in an original action in superior court. On August 28,

² The property that became taxable under the new interpretation includes oil spill prevention vessels used in marine waters, such as marine vessels that escort oil tankers engaged in the marine transportation of oil, as well as oil spill response property, such as barges that store spill response equipment, skimmer vessels that are deployed throughout Prince William Sound, landing craft and mini-barges.

2000, superior court dismissed Valdez's action for failure to exhaust administrative remedies.³

The order required Valdez to submit its claims for escaped property to the Department of Revenue. The following issues were to be addressed on remand:

1. Valdez must submit its formal request for the Department to take certain action relating to Valdez's escaped property claims.
2. The Department must advise Valdez whether or not it took action relating to the escaped property claims.
3. If the Department has not taken action on Valdez's escaped property claims, it must decide whether to take action (i.e., through issuance of a supplemental assessment).⁴

After the dismissal order was issued, Valdez filed its escaped property claims with the Division. In August 2002, the Division issued informal conference decision which denied, in part, Valdez's pre-1997 escaped property claims. In the informal conference decision, the Division determined that Valdez could not require the Division to reopen the pre-1997 assessments because the Division was not required to implement its new interpretative policy retrospectively and because Valdez's claims were subject to the six-year statute of limitation on actions brought in the name of a political subdivision. This appeal followed.

Valdez argues that the Division should have applied its new interpretation of AS 43.56 retroactively. Valdez argues that the property that would have been taxable under the interpretative policy change should now be taxed. Valdez maintains that the 1997 interpretation of taxable property applies to the previously non-taxed spill response vessels that would have been covered by the Division's new interpretation, and this property should be taxed under escaped property assessments.⁵ The Division argues that "escaped property" became taxable only when the Division altered its interpretation of AS 43.56, because prior to that change, the property was not subject to taxation because the Division never considered spill response vessels part of the Valdez terminal.

³ Order Granting Motion to Dismiss, dated August 28, 2000, in Case No. 3VA-0022CI.

⁴ Order Granting Motion to Dismiss, dated August 28, 2000, in Case No. 3VA-0022CI, at page 7.

⁵ AS 43.56.140.

III. Discussion

In administrative adjudications, the right to a hearing does not require development of facts through an evidentiary hearing when no factual dispute exists.⁶ Summary adjudication of an administrative appeal uses the same standard as summary judgment in court: if the material facts are undisputed, they are applied to the relevant law and the resulting legal conclusions determine the outcome. Only if the parties genuinely dispute a material fact (not legal conclusion) is it necessary to hold an evidentiary hearing.⁷

An evidentiary hearing is not necessary to dispose of Valdez's appeal as to the pre-1997 assessments because the Division's decision to apply a six-year limitation on reopening assessments was consistent with supreme court precedent on municipal taxation and its was not an abuse of discretion for the Division to decide not to retroactively apply a new interpretation of "taxable property." These conclusions will be more fully explained below, in context with discussion of the parties' main arguments.

A. The six-year limitation on reopening past assessment.

The Division's informal conference decision concluded that Valdez is, in effect, time barred under the six-year statute of limitations in AS 09.10.120(a) from compelling the Division to reopen past assessments noticed more than six years before Valdez filed suit.⁸ AS 09.10.120(a) provides as follows:

An action brought in the name of or for the benefit of the state, any political subdivision, or public corporation may be commenced only within six years of the date of accrual of the cause of action. However, if the action is for relief on the ground of fraud, the limitation commences from the time of discovery by the aggrieved party of the facts constituting the fraud.

Though AS 09.10.120(a) does not purport to impose limitations on administrative actions, a statutory limitation on civil actions involving the state or a political subdivision should be taken into consideration by an executive branch decisionmaker when asked to reopen long-closed administrative matters.

⁶ See *Smith v. Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990).

⁷ A fact is not "material" unless it would make a difference to the outcome. *Whaley v. State*, 438 P.2d 718, 720 (Alaska 1968).

⁸ AS 09.10.120(a).

The parties' legal dispute on applicability of AS 09.10.120(a)'s six-year limitation period, therefore, really raises the question: should the Commissioner, in his discretion, endorse the Division's decision to extend the civil action time bar to the administrative adjudication of Valdez's appeal seeking to reopen old assessments the Division made for the benefit of Valdez. To answer that question, it is necessary to understand the respective roles of Valdez, the Division and the Commissioner in oil and gas production property taxation.

1. Oil and Gas Production Property Taxation

The Department of Revenue is charged with the administration and enforcement of the Alaska Oil and Gas Exploration, Production and Pipeline Transportation Property Tax (oil and gas production property tax) under AS 43.56, the tax under which the disputed assessments were made.⁹ The Commissioner exercises general supervision over and directs the activities of the Department, and "hold[s] hearings and investigations necessary for the administration of state tax and revenue laws."¹⁰ Subject to the Commissioner's supervision, direction and adjudicatory or investigatory oversight, therefore, the Division enforces the state's tax laws, including the oil and gas production property assessment and collection laws.¹¹

As a municipality with taxing authority under Alaska Statutes title 29, Valdez benefits from the oil and gas production property tax laws enforced by the Department because it receives tax payments in the amount Valdez itself levies from a taxpayer for the property.¹² Valdez has the authority to levy a property tax on all real and personal property within the city.¹³ Under AS 43.56.060, the Division assesses the oil and gas production property tax. A municipality may also levy a tax on property that is taxable oil and gas production property under AS 29.45.080, but the assessment for such a tax is also prepared by the Division. The taxpayer who pays a municipal property tax under AS 29.45.080 receives a credit against its AS 43.56 tax liability under AS 43.56.010(d).¹⁴

⁹ AS 43.56.060.

¹⁰ AS 43.05.010(1) & (7).

¹¹ *See generally* 15 AAC 56; *also* 15 AAC 56.005 & 15 AAC 56.900(3) (prescribing regulations for oil and gas production property taxation and demonstrating, for instance, by requiring taxpayers to file statements with "the director," allowing "the director" to grant extensions, and defining "director" to mean "the direct of the tax division of the department ..." that the Commissioner acts through the Division with respect to many tax enforcement functions).

¹² AS 29.45.080; AS 43.56.010; AS 43.56.030.

¹³ *See* AS 29.45.010; AS 29.45.550.

¹⁴ *City of Valdez v. State, Dept. of Community & Regional Affairs*, 793 P.2d 532, 533 (Alaska 1990).

With regard to the tax assessments at issue here, the superior court ordered Valdez to exhaust its administrative remedies before pursuing an action in court.¹⁵ The superior court did not dictate how the Department must decide the issue of whether some tax years are too remote for Valdez to compel the Division to reopen those years' assessments.¹⁶ Rather, the effect of the court ordered dismissal of Valdez's claims for failure to exhaust administrative remedies was to require Valdez to first see if the Department would decide, as a result of an administrative appeal, that the assessments for those years should be revisited.

The regulations governing administrative appeals of assessments under AS 43.56, which are found at 15 AAC 56.005 – 15 AAC 56.900, divide jurisdiction over appeals between those raising valuation issues and those raising taxability issues.¹⁷ In the first instance, an appeal of either type of issue is filed with the Department and goes through an informal appeal process.¹⁸ The resulting informal conference decision can be appealed as well: valuation issues are decided by the State Assessment Review Board; taxability issues are decided by the Department.¹⁹ Valdez's appeal asserting that property has escaped taxation is a taxability appeal to be decided by the Department, not the board. Taxability appeals are conducted under the procedures set out in 15 AAC 05.001 – 15 AAC 05.050.²⁰

Under those procedures, the informal conference is conducted by an appeals officer.²¹ For tax cases, an employee of the Division serves as the appeals officer and issues the informal conference decision. That decision can be appeal to a "formal hearing under 15 AAC 05.030 but is not a final administrative determination for purposes of appeal to the superior court."²² In

¹⁵ Order Granting Motion to Dismiss, dated August 28, 2000, in Case No. 3VA-0022CI.

¹⁶ Contrary to Valdez's assertion, the superior court did not rule that Valdez's claims are not time barred. The order simply concluded that supplementary assessments are distinct from the initial assessment objection and appeal procedure. The court concluded that Valdez has no time limit for informing the Division of potentially taxable property. Order Granting Motion to Dismiss, dated August 28, 2000, in Case No. 3VA-0022CI, at page 5. It does not follow that the Division is required to take the action that Valdez wants in response to this notification.

¹⁷ 15 AAC 56.020 (describing department's jurisdiction over taxability issues); 15 AAC 56.030 (describing board's jurisdiction over valuation issues).

¹⁸ 15 AAC 56.015.

¹⁹ 15 AAC 56.020; 15 AAC 56.030.

²⁰ 15 AAC 56.015(c).

²¹ 15 AAC 05.020

²² 15 AAC 05.020(c).

cases that predate July 1, 2005, the formal hearing is governed by the procedures set out in 15 AAC 05.030.²³ Following closure of the record in the appeal and issuance of a written decision by the person who heard the appeal on his behalf, the Commissioner may adopted or reject the proposed decision and the parties may request reconsideration from the Commissioner under 15 AAC 05.035.²⁴ The Commissioner’s final decision can then be appealed to superior court.²⁵

In sum, the Commissioner (not the Division) is the final executive branch decisionmaker on an oil and gas production property taxability appeal, and Valdez has the right to bring such an appeal but not to dictate how the Commissioner exercises adjudicatory oversight concerning the Division’s policy determinations announced through informal conference decisions. Prior to judicial review of Valdez’s appeal, therefore, the Commissioner must issue a final decision on whether Valdez’s escaped property-based appeal should be time barred as to the years for which the Division decided not to reopen the assessments.

2. Compelling Recapture of Escaped Property

As to the pre-1995 assessments which Valdez asserts allowed taxable property to escape taxation, the Division’s decision not to reopen the assessments is consistent with supreme court precedent. The supreme court has held that the six-year statute of limitations set forth in AS 09.10.120(a) bars a municipality from levying taxes on property that had escaped assessment and taxation after the six year period has run.²⁶ Valdez is, in effect, seeking enforcement of its own municipal tax, levied in accordance with its local property tax authority under AS 29.45. The fact that the Division (rather than Valdez) would have been responsible for the assessment of this property if it had been found to be taxable under AS 43.56 for years prior to 1995, does not make the six-year limitation period inapplicable. If the six-year limitation were applied to Valdez’s tax

²³ These appeals were not placed under the original jurisdiction of the former Office of Tax Appeals for which AS 43.05.405 *et seq.* prescribed hearing procedures. As such, they are not within the original jurisdiction of the successor agency, the Office of Administrative Hearings (OAH). Instead, OAH’s administrative law judges serve as “hearing officers” for the Commissioner when oil and gas production property taxability cases are voluntarily referred to OAH. For voluntary referral cases arising after July 1, 2005, the procedures in AS 44.64.060 and OAH’s implementing regulations apply and are reconciled with the 15 AAC 05.030 procedures. In either event, absent a delegation of final decisionmaking authority, the OAH administrative law judge or other hearing officer is not the final decision maker but rather issues a written decision for final action by the Commissioner or his delegee. *See* 15 AAC 05.030(i).

²⁴ Because this appeal predates both the July 1, 2005 effective date of AS 44.64.030 – AS 44.64.200 and the July 2, 2006 effective date of OAH’s implementing procedural regulations, the right to request reconsideration under 15 AAC 05.035 applies in this appeal.

²⁵ 15 AAC 05.040; Alaska R. App. P. 602.

²⁶ *Alascom, Inc. v. North Slope Borough*, 659 P.2d 1175, 1179 (Alaska 1983).

claims against all of the property that Valdez taxes except oil and gas production property it would undermine the one of purposes of the AS 43.56 by providing differential local property tax treatment of oil and gas production property.²⁷ The six-year limitation period should apply to Valdez for all of the property subject to its levy under AS 29.45, including property that is taxable under AS 43.56. Valdez's pre-1995 escaped property claims, therefore, should be time-barred under AS 09.10.120(a) and the Division's decision giving effect to that time bar at the administrative appeal level was a reasonable exercise of discretion on behalf of the Department.²⁸

Whether the Department, acting through the Division, might under some circumstances be justified in reopening assessments that are more than six years old is not before the Commissioner in this appeal. Valdez cannot compel the Division to reopen assessments, or to issue supplemental assessment, more than six years after the notice of assessment was issued for the simple reason that it could not itself directly levy a property tax against a taxpayer more than six years after assessment.

Valdez argues that if the six-year limitation on claims can be applied to its appeal, the "discovery rule" tolls the running of the limitation period. The purpose of the assessment notice is to alert taxpayers and municipalities of their legal rights. AS 43.56.090(1) requires Division to identify only the property that it considers taxable. Valdez was required to identify missed property by timely filing a written objection with the department after receiving the assessment roll under AS 43.56.110(a) and its own ordinance.²⁹ The statute of limitations period, therefore, begins to run on date of the notice of the assessment.

Because Valdez received the annual assessment rolls during this period, Valdez's claims for missed property accrued on the date that it received the annual assessment rolls. The annual assessment notice provided Valdez with notice it needed to take action if it wished to pursue claims for tax on any missed property. Thus, because Valdez filed the escaped property claims in 2000, claims for the years prior to 1995 would be time barred under AS 09.10.120 and the

²⁷ One of the purposes of AS 43.56 is to prevent differential local property tax treatment of oil and gas production property. *See City of Valdez v. State, Dept. of Community & Regional Affairs*, 793 P.2d 532, 534 (Alaska 1990).

²⁸ An executive branch agency adjudicating issues regarding which the civil statutes of limitations would apply if the issues were litigated in a civil action may have the discretion to waive an arguable time bar, be it statutory, regulatory or equitable (e.g., laches). Whether the decisionmaker has such discretion may vary from subject matter to subject matter, depending on statutory and regulatory dictates, and prior decisions. Just because the decisionmaker may have such discretion does not require that it exercise the discretion.

²⁹ VMC § 3.28.020

Division's decision to treat Valdez's appeal as to those assessment years as time barred was a reasonable exercise of discretion on behalf of the Department.

The time bar rationale for upholding the Division's informal conference decision, however, does not extend to assessments for tax years 1995 and after. The Division argued that Valdez's claims from 1974 through 1997 are also time barred by AS 43.56.110. This statute requires that municipalities provide the Division with a written objection to an assessment notice within 20 days of the effective date of the notice.³⁰ Valdez did not provide the Department with a written objection for each of the years 1974 through 1997 within 20 days after the effective dates of the notices of assessment. The superior court concluded that this 20-day filing requirement did not bar Valdez from informing the Division of potential escaped property. This does not mean that Valdez can compel the Division to assess property by providing the information after this deadline has past. Instead, the Division can take such information into account when determining whether to reopen past assessments in the exercise of its enforcement discretion, if it has the discretion to reopen, or when setting policy on the retrospective effect of a new interpretation of tax law.

B. The prospective effect of a new interpretation of "taxable property."

The Division's decision not to attempt to give retrospective effect to its new interpretation that spill response vessels are taxable was an exercise of agency discretion. The supreme court has held that the Department has the inherent discretion to determine whether to apply a new interpretation of a tax statute retroactively.³¹ Under AS 43.56 and supreme court precedent, therefore, the Division had broad discretion to determine what property is subject to taxation and whether to apply a new interpretative policy retroactively.³² The Division declined to apply its new interpretation of AS 43.56 to the pre-1997 escaped property. The Division's decision should be upheld if it was reasonable.³³

When agencies make discretionary decisions not requiring formal procedures, the review of those decisions *by a court* through the administrative appeal process is under a deferential standard.³⁴ For instance, if the Department's final decisions were before the superior court *on*

³⁰ AS 43.56.110(a).

³¹ *Wien Air Alaska, Inc. v. Dept of Revenue, State of Alaska*, 647 P.2d 1087, 1095 (Alaska 1982).

³² *Cool Homes, Inc. v. Fairbanks North Star Borough Bd. Of Equalization*, 860 P.2d 1248, 1262 (Alaska 1993)

³³ *Unocal v. State*, 804 P.2d 62, 64 (Alaska 1990).

³⁴ *See Kelly v. Zamarello*, 486 P.2d 906, 916 (Alaska 1971) (explaining the different standards of review to apply to agency actions that are legislative, judicial or executive in nature).

appeal (not as an original action) the reasonable basis test would apply because the agency decision-making process is an executive rather than a legislative or judicial activity.³⁵ To the extent that the decision-making process requires application of law to facts, an executive discretionary decision might be said to resemble judicial activity, but the similarity ends where the focus of decision rests in the exercise of the agency’s duty to weigh the complex and sometimes competing policy directives inherent in the statutes that bear on the decision. The reasonable basis test is used as the standard of review in an administrative appeal of these executive discretionary decisions.³⁶ This standard of review is proper in administrative appeals of discretionary acts not requiring formal procedures because it allows agencies the latitude they need to act in a manner commensurate with their discretion.³⁷ The Division’s decision not to apply its new interpretation retroactively is just such an executive discretionary decision.³⁸

Here, however, Valdez has not appealed a final executive branch decision to the superior court. Instead, Valdez’s appeal challenges the Division’s decision in an appeal to the Commissioner—the agency head with supervisory and adjudicatory oversight authority over the Division. The Commissioner can, but is not required to, defer to the discretionary decision of a subordinate. The Commissioner, therefore, justifiably could choose not to substitute his judgment for that of a subordinate or predecessor (just as a court would defer to the Department and not substitute its judgment³⁹), unless the Division’s prior decision is unreasonable.

The Division’s decision not to apply its new interpretation of “taxable property” retroactively was reasonable. The statutes and regulations giving the Department (and hence the Division acting for it) authority to implement and enforce the oil and gas production property tax do not limit or set standards for determining whether a new interpretation should be given retrospective effect.⁴⁰ In its informal conference decision, the Division determined it should not give its new interpretation retroactive application because doing so would impose an unfair

³⁵ *Kelly*, 486 P.2d at 917.

³⁶ *Kelly*, 486 P.2d at 917.

³⁷ *Olson v. State, Dept. of Natural Resources*, 799 P.2d 289, 293 (Alaska, 1990).

³⁸ *Bering Straights Coastal Management v. Noah*, 952 P.2d 737 (Alaska 1998).

³⁹ The rational (or reasonable) basis standard of review applied by courts is a counterpoint to the substitution of judgment standard they apply when reviewing agency decisions that do not implicate the agency’s expertise. If a court would be required under the standards of review to forebear from substituting its judgment about tax policy and enforcement matters for that of the Department, the Commissioner quite reasonably could decide to forebear from substituting his judgment for that of the Division, or of a predecessor policymaker, though he is not bound to do so.

⁴⁰ *See generally* AS 43.45; 15 AAC 56.

penalty on taxpayers, would be inconsistent with the general property tax policy which favors the finality of tax assessments, and would result in significant hardship on the Division.

Although the Division could have attempted to apply its new policy retroactively, as both the Division and the Taxpayer point out, attempting retroactive application of this new policy likely would result in legal challenges such as due process and statute of limitations challenges from the taxpayers, and enforcement problems because not all of the taxpayers and property that could be taxed under a retroactive application of the new policy are known to the Division.⁴¹ Property owners who relied on this earlier policy would be subjected to liability for twenty-three years of back taxes on property that the Division had deemed non-taxable under AS 43.56. These property owners had a reasonable expectation of finality regarding their liability for tax in prior years' property tax assessments.⁴² The Division's basing its decision on these considerations was reasonable, even if all of these concerns would not apply to all of the disputed property. The Division's decision to decline to retroactively enforce its new policy was reasonable.

C. Summary adjudication is appropriate for pre-1997 assessments only.

Under some circumstances, the reasonableness of an agency decision might require a fact-intensive inquiry, making it impossible to decide the matter through summary adjudication. Here, however, the reasonableness of the Division's decisions to extend the six-year time bar to escaped property claims and not to apply its new interpretation of "taxable property" retroactively rest on law and policy, not on disputed material facts.

No issues of disputed fact need to be decided in order to dispose of Valdez's pre-1997 claims. Valdez argues that the Division has raised several issues of material facts that need to be resolved prior to the disposition of these claims. These issues include:

1. Did the Department know about the oil spill response vessels?
2. Was it possible for Valdez to discover that property had not been taxed?
3. Are oil spill response vessels moored near the Valdez Boat Harbor?
4. Are vessels moored or near the Valdez Marine Terminal visible to the naked eye?

⁴¹ In its supplemental brief, the Division notes that Valdez's Notices of Escaped Property identify twenty-nine different owners of numerous vessels and other equipment over a twenty-eight year period, and that some of the owners of property that would be covered under a retroactive application of the new policy are businesses that have gone bankrupt, changed names, were sold or merged, and that the properties have been moved, sold, rebuilt, and destroyed.

⁴² See *City of Yakutat v. Ryman*, 654 P.2d 785, 790 (Alaska 1982).

5. How far is it between the Valdez Boat Harbor and the VMT loading docks?
6. What weather conditions impact visibility of vessels at the VMT from the City, if there is any visibility at all.
7. Did the Department properly comply with its duty to provide notice to Valdez of property it was taxing?
8. Who are the property owners/taxpayers?
9. Would the Department have divulged to Valdez the identity of taxpayers that had filed returns?

None of these issues is material to whether the Division had the authority to extend the six-year time bar to a municipality's escaped property claims and to decline to apply its new interpretation of "taxable property" retroactively. These issues would be material if the Division's decisions were based on fact rather than policy and discretion, or perhaps they were predicated on an administrative laches time bar theory. The informal conference decision relied on the statutory time bar for claims raised more than six years after they accrue, and on the decision not to apply the new interpretation retroactively. It embodied policy-based decisions to the effect that predictability and certainty for taxpayers in the form of finality as to past assessments, and avoidance of collateral risk to the state from complex litigation in which the Division might be forced to take positions that could hamper future enforcement efforts and require the Division to reallocate its limited resources to the fights Valdez chooses. To create uniformity in taxation of oil and gas production property, the legislature gave the Department authority to make the policy decision necessary to the enforcement of this tax.⁴³ In setting this policy on behalf of the Department, the Division made a reasonable decision. Valdez is not entitled to step into the Division's role and, in effect, reopen the reporting requirements for these closed assessments through the adjudicatory hearing process.

In short, the Division's decisions to extend the six-year time bar to escaped property claims and not to apply its new interpretation retroactively dispose of Valdez's claims arising from pre-1997 assessments. The same cannot be said for claims arising from assessments for and after 1997.

The Taxpayer's motion asking that the Division's informal conference decision be upheld as a matter of law must be denied at this point in the appeal. The Taxpayer argued that

⁴³ *City of Valdez v. State, Dept. of Community & Regional Affairs*, 793 P.2d 532, 535 (Alaska, 1990).

Division's legal determinations are reasonable and fully supported by the informal conference record and the applicable statutes.⁴⁴ The policy decisions on the six-year time bar and non-retroactivity of the new interpretation, however, do not reach claims based on assessments for 1997 and after. Outstanding issues relating to the 1997-2002 tax years remain that have not been fully briefed and may raise issues of material fact that the parties disputed by the parties. Accordingly, summary adjudication is not appropriate for those years.

IV. Conclusion

Valdez seeks to overturn the Division's informal conference decision and compel the Division to reopen assessments and apply its 1997 policy change retroactively to assess spill response vessels, and impose tax against the vessels' owners for prior years, going back to 1977. The Division's decision to extend the six-year time bar to Valdez's claims for pre-1995 tax years is reasonable. Likewise, the Division's decision not to apply its new interpretation of "taxable property" retroactively was reasonable. That decision precludes Valdez from challenging assessments for 1995 and 1996. Partial summary adjudication should be entered in favor of the Division as to 1974 through 1996, leaving the 1997-2002 assessments remaining to be addressed.

Summary adjudication will be entered as to the claims based on the pre-1997 assessments if the Commissioner of Revenue adopts this order, which will be transmitted to the Commissioner for final action under 15 AAC 05.030(i). The parties will have an opportunity to request reconsideration under 15 AAC 05.035(a) of the Commissioner's final decision, as well as the right to file an appeal to the superior court.

DATED this 3rd day of December 2007.

By: Signed _____
Mark T. Handley
Administrative Law Judge

⁴⁴ Supplemental Brief: Taxpayers at pages 3-5.

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Marcia R. Davis, on behalf of the Commissioner of Revenue, order that this Order on Pending Dispositive Motions concerning Valdez's appeal of the portion of the Division's informal conference decision denying Valdez request to reopen assessments for 1974 through 1996 is adopted as of this date and entered as the final administrative determination in that part of Valdez's appeal.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of the written decision of the Administrative Law Judge, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and be filed with the Office of Administrative Hearings. If mailed, it should be addressed to

P.O. Box 110231
Juneau, Alaska 99811

If by hand delivery to

450 Whittier Street, Suite 210
Juneau, Alaska 99801.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 19th day of December, 2007.

By: Signed
Signature
Marcia R. Davis
Name
Deputy Commissioner
Title

[This document has been modified to conform to technical standards for publication.]