MEMORANDUM

State of Alaska
Department of Law

To: Scott Nordstrand
Deputy Attorney General

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File No:

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Subject: Interpretation of AS 14.17.510(c)

I. Introduction and Short Answers

You have requested that we answer two questions concerning AS 14.17.510(c), which limits to 50 percent the amount of an annual increase in the assessed value of the property in a city or borough school district that may be used to determine the amount of local contribution the district is required to make to obtain state funds for education.

The first question is whether the 50 percent discount allowed in AS 14.17.510(c) applies to an increase in a district's assessment on account of the annexation of additional territory. The short answer is yes.

The second question is how to apply the 50 percent discount when a district is formed after 1999, the base year from which increases covered by AS 14.17.510(c) are calculated. We believe that the legislature or the Department of Education and Early Development will have to determine through statute or regulation an appropriate base year for a newly formed district.

II. Discussion

A. AS 14.17.510(c) and Annexation

AS 14.17.510(c) provides:

> (c) Notwithstanding AS 14.17.410(b)(2) and the other provisions of this section, if the assessed value in a city or borough school district determined under (a) of this section increases from the base year, only 50 percent of the annual increase in assessed value may be

> included in determining the assessed value in a city or borough school district under (a) of this section. The limitation on the increase in assessed value in this subsection applies only to a determination of assessed value for purposes of calculating the required contribution of a city or borough school district under AS 14.17.410(b)(2) and 14.17.490(b). In this subsection, the base year is 1999.[1]

The effect of this subsection is to reduce the required local effort toward education and to increase the state aid for education in organized communities in which the assessed value of property is increasing. An annexation increases the assessed value of property in an organized community. Therefore, if we were to follow the plain language of the statute, it would appear that only fifty percent of the increase of assessed value over the base year valuation caused by an annexation would be included in the calculation of local effort.

In Alaska, however, we cannot assume that this plain language interpretation will control. "The objective of statutory construction is to give effect to the intent of the legislature, with due regard for the meaning that the statutory language conveys to others." *City of Dillingham v. CH2M Hill Northwest, Inc.*, 873 P.2d 1271, 1277 (Alaska 1994). Thus, "[s]tatutory construction begins with an analysis of the language of the statute construed in light of its purpose." *Borg-Warner Corp. v. AVCO Corp.*, 850 P.2d 628, 633 n.12 (Alaska 1993). The Alaska Supreme Court has established a continuum, under which "the plainer the language of a statute, the more convincing contrary legislative history must be to interpret a statute in a contrary manner." *Dillingham*, 873 P.2d at 1276.

Here, the legislative history does not provide a clear directive to overcome the plain meaning of the statute. This subsection was adopted in 2001. Ch. 95 §2, SLA 2001. In testimony before the Senate Finance Committee, the subsection was described

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[1] AS 14.17.410(b)(2) requires a city or borough school district to contribute the equivalent of a four mill tax levy of the full and true value of taxable property as determined by the Department of Commerce and Economic Development (DCED), not to exceed 45 percent of a district's basic need. AS 14.17.490(b) prohibits a district from receiving the difference between its funding under AS 14.17.410 in 1999 and subsequent fiscal years if the district does not make the four mill contribution. AS 14.17.510(a) requires DCED to assess the full and true value of taxable property in the city or borough in consultation with the city or borough's assessor.

as an effort to provide tax relief for "all of organized Alaska" by splitting the cost of increases in assessed value with local taxpayers. Sen. Finance Committee, Hearing on SB 174, *remarks of Sen. Wilken* (April 20, 2001). It was anticipated that additional general fund contributions would be required to make up the discount. Sen. Finance Committee, Hearing on SB 174, *remarks of Sens. Hoffman, Leman, and Wilken* (April 20, 2001).[2] The House Finance Committee discussed the effect of the 50 percent discount on education funding, but apparently the intent of subsection was not clear to its members. House Finance Committee on CSSB 174, *remarks of Rep. Davies* (May 6, 2001.)

On this history, it seems that in adopting subsection 510(c), the Senate Finance Committee intended to benefit property taxpayers in existing organized communities that had an increase in assessed value over the base year.[3] The focus appears to be on providing taxpayer relief from the increase in taxation caused by property appreciation. We find no evidence that the drafters ever addressed the question of appreciation of the municipal tax base through annexation. Yet, an increase in the required local effort would affect all municipal taxpayers, regardless of whether that increase was caused by annexation or appreciation. Furthermore, if annexed property were fully included in the calculation of local effort, it could create a disincentive to annexation—a result that would appear to be the opposite of legislative intent, which favored having a tax base and local effort. In sum, given the legislative intent to provide protection for municipal taxpayers from increases in the municipal tax base, we cannot say on this record that the legislature did not intend for the plain meaning of the statute to control.

Similarly, the canons of statutory construction for tax statutes do not fit well with this statute. Under well-settled law, exemptions to taxes are construed narrowly in favor of the government. *State, Dep't of Revenue v. Alaska Pulp America, Inc.,* 674 P.2d 268, 276 (Alaska 1983) ("tax exemptions are construed narrowly against the taxpayer"); *City of Nome v. Catholic Bishop of Northern Alaska,* 707 P.2d 870, 879 (Alaska 1985)

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[2] The subsection was briefly addressed at an April 24, 2001, Senate Finance Committee hearing, when the word "annual" was added to the subsection, but little was added to the discussion of April 20.

[3] In his presentation to the Senate Finance Committee, Sen. Wilken presented a chart showing assessment changes in several municipalities, though it is not clear from the testimony whether the changes were increase or decreases. In the fiscal note accompanying the bill, 19 school districts showed increased state aid as a result of this section.

("[s]tatutes granting tax exemptions are narrowly construed."); *Union Oil Co. of California v. State, Dep't of Rev.*, 677 P.2d 1256, 1260 (Alaska 1984) (the principle that tax exemption laws are strictly construed against the exemption extends to exemptions by contracts). If this statute were a tax exemption, arguably we should construe it to favor full inclusion of annexed property. Yet, here, this statute is not a tax exemption. This statute is a determination of the tax base for local effort for education. The municipality may still tax all annexed property at the same rate that it taxes other property. We cannot conclude that this rule of construction overcomes the plain language of the statute that governs all increases in value since 1999, without regard to whether the increases were due to annexation or appreciation. Therefore, the Department of Community and Economic Development should treat increases in the municipal tax base caused by annexation the same as it treats increases caused by appreciation.

B. The Base Year for Newly Organized Municipal Districts

To address this second question, we first examined other sections of AS 14.17 to determine if the legislature had provided guidance on new municipal districts that might assist us in determining how AS 14.17.510(c) would apply to a newly formed municipal school district. *Cf. Bullock v. State, DC&RA*, 19 P.3d 1209, 1214-15 (Alaska 2001) (court will generally construe statutes *in pari materia* where two statutes deal with the same subject matter; principle of statutory construction that all sections of an act are to be construed together so that all have meaning and no section conflicts with another). Alaska Statute 14.17.410(e) addresses new municipal districts, and AS 14.17.490 uses fiscal year 1999 as a base year, but neither provides assistance in answering our question.

Unlike AS 14.17.410(e), AS 14.17.510(c) does not make any provision for newly organized city or borough school districts. Section 410(e) sets out alternate formulas for the calculation of the required local effort in the first three fiscal years the district operates schools after July 1, 1998. Section 510(c) assumes a 1999 base year for the purpose of calculating the 50 percent discount of full and true value, and makes no reference to section 410(e). The purpose of 410(e) is to ease the transition of a new district as it assumes its local obligation responsibilities. This is different from the purpose of 510(c), which is to provide property tax relief for districts with appreciating tax bases, although both could be seen as tax-relief measures.

AS 14.17.490 also adopts 1999 as a base year, but its purpose is to provide a mechanism to determine what additional state aid can be paid to those districts that might otherwise lose aid as a result of 1998 legislative changes in the school funding formula, and under what circumstances that aid will be reduced. It lacks any direct reference to new school districts, and would not apply to a district not in existence in 1998. Thus,

other statutes are of no assistance in trying to apply 510(c) to a new municipal school district.

If a new district does not have a 1999 DCED assessment, 1999 cannot be used as a base year for the purpose of determining eligibility for the 50 percent discount. Without further legislative guidance, we see two possible alternatives here. First, we could assume that since AS 14.17.410(e) was adopted in the same act as AS 14.17.510(c), section 410(e) is the exclusive tax relief for new districts, and 510(c) does not apply. This interpretation seems peculiarly harsh and inapt, given the legislative intent to encourage formation of municipal school districts. Alternatively, we could assume that the entire value of the municipality represents an increase from 1999. This result, too, would not be satisfactory. It would give the new municipality too large an exemption from the local effort requirement.

In order for the statutory scheme to work properly, a base year must be specified. We do not believe, however, that this office can find an implied-in-law base year that the assessor could use for a new municipality that did not have assessed property in 1999. Under well-settled law, we are very reluctant to "add missing terms or hypothesize differently worded provisions in order to reach a particular result." *Hickel v. Cowper,* 874 P.2d 922, 927-28 (Alaska 1994); *see also Hootch v. State-Operated School Systems,* 536 P.2d 793, 804 (Alaska 1975) (rejecting request "to insert into the constitution a concept not present in the original document"); *Municipality of Anchorage v. Suzuki,* 41 P.3d 147, 150-51 (Alaska 2002) ("In ascertaining the plain meaning of a statute, we refrain from adding terms.").

In our view, resolution of this issue will require a policy-making body—either the legislature or the state board—to designate a base year. The legislature has some time in which to take action. When a new municipality is formed, it likely will not assume school duties for two years. AS 29.05.140. Following that time, there is a three-year transition tax-ramp-up period allowed for under AS 14.17.410(e). Thus, the legislature will have five years to address this issue. If the legislature has not acted within that time to specify how to apply AS 14.17.510(c) to new municipal districts, the Department of Education and Early Development should adopt regulations to provide for the selection of a base year.[4] If no policy-making body has addressed this issue, we will have to revisit the matter. At this time, we do not see a logical way to apply 510(c) to a new municipal school district without some authority to designate a base year.

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[4] The department has specific authority to adopt regulations necessary to implement chapter 17 of title 14. AS 14.17.920. Here, if the legislature fails to act, a regulation determining the base year would be necessary and consistent with legislative intent.

III. Conclusion

We conclude that AS 14.17.510(c) applies to all increases in value for an existing municipality. For new districts, the legislature or the department should specify a base year. If a base year is not specified by the legislature or the department, we conclude that the assessor would have no authority to imply a base year for application of AS 14.17.510(c) to a new municipal school district.

SCS/nfp