

# ANCSA: Congress gives, IRS takes away

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WASHINGTON—Six years after Congress passed the Alaska Native Claims Settlement Act of 1972, providing the Natives with 44 million acres of land, the Native regional corporations find themselves in yet another legal battle that threatens to drain millions of dollars from their government resources over the years.

Although Congress also included \$950 million in tax-free funds to help the Eskimos, Indians and Aleuts with development, little did the Natives realize at that time that millions of dollars would slip through their hands for legal fees, land tracing and management, investment consultants and the mammoth costs of forming themselves into 13 regional corporations—a strict prerequisite to receiving the money and the land.

Now, the Internal Revenue Service has ordered the regional corporations to pay taxes on dollars that various resource industries are spending to develop Native lands. The IRS claims that since the Natives will benefit from any industry development, what the industry spends must be taxed as income to the Natives.

In addition, the regional corporations are being prohibited from deducting expenses incurred when the Natives were selecting their 44 million acres and when they were incorporating.

"The IRS is trying to take away with one hand what Congress gave with the other," said an attorney representing the NANA corporation. "It's just not fair."

As a result of this latest Native battle, most of the 13 re-

gional corporations have retained prestigious Washington law firms to fight their case against the IRS. Most are hoping for a special IRS exemption that would soften the sudden tax demands.

The exact amount of money at stake in the battle with the IRS is not known but sources estimate that it runs into the tens of millions of dollars.

The matter came to a head last year, when for the first time the Alaska office of the IRS began auditing the corporations' books. Since that time, many of the Native groups have been ordered to hand over millions of dollars in taxes from partnerships they formed with major oil companies.

Although some of the Natives have not been hit as hard as others, all will indirectly be affected by the outcome of the IRS dispute. Under the Native Claims Act, a certain percentage of resource development profits go to the particular corporation involved with the development, and the rest is shared with all 13 regional groups.

According to attorneys for the various corporations, there are three crucial issues at stake:

—When corporations first received their money and their land, many entered into partnerships with oil and mineral companies. Although the regional corporations are not laying out any capital, IRS is saying that they must pay taxes on dollars the oil and mineral company spends on development.

Bristol Bay Corp. is one of those feeling the immediate burden of this ruling. Several years ago, this regional corporation contracted with Phillips Oil Co. In return for a lease on the corporation's land, Phillips agreed to spend \$15 million on re-

search, ecological surveys and exploratory drilling. Under the terms of the agreement, Phillips and Bristol Bay would split whatever came out of the ground.

About a year and a half ago the Alaska IRS office ruled that Bristol Bay must pay corporate taxes on the \$15 million as income since it will ultimately benefit from Phillips' investment. At the corporate rate of 48 percent, Bristol Bay regional corporation would owe the IRS \$7 million.

The NANA and Arctic Slope regional corporations are also being hit hard as a result of this ruling. IRS is seeking about \$2 million from NANA in taxes from a deal it made with Standard Oil Co. of California. Although lawyers for the Arctic Slope refused to discuss the case, IRS is believed to have taxed the Arctic Slope Regional Corp. millions of dollars for partnerships it formed with at least four oil companies.

—The IRS has disallowed deductions which the regional corporations are seeking for costs incurred when they were incorporating. This would include legal fees, professional consulting fees and the costs of organizing. According to the IRS, since the corporations were not in business at that time, they can't deduct these as business-related expenses.

—Corporations spent millions of dollars to study the land before they made their selections. The money again, went toward legal and consulting costs, in addition to geological surveys, land management, salaries for regional corporation presidents and directors. These expenditures are not deductible, according to the IRS.

"It's outrageous, that's what it is," said Richard Bannon, attorney representing the NANA Corp. "They're being required to pay taxes on money they have never seen. It's an extremely heavy drain on their resources."

Since the \$950 million Congress allocated to the Natives is being spread out over an 11-year period, the regional corporations

do not have the capital on hand to pay the IRS.

According to Bannon, NANA has contested the IRS through the U.S. Tax Court because it cannot afford to pay \$2.7 million which the government says accrued from its deal with Standard Oil of California. So far, NANA is the only regional group which has tried to bring the matter to a head.

One attorney, asking not to be identified, said his firm was requesting a special ruling from the Treasury Department to exempt the corporations.

Sen. Mike Gravel, D-Alaska, recently met with Treasury Secretary Michael Blumenthal in an attempt to work out the problem on an administrative level. Although it is unclear what

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happened at that meeting, Treasury is expected to solve one of the problems in the near future.

According to a Treasury source, a recommendation has been made to tax only those resources which actually come out of the ground. This means that regional corporations such as Bristol Bay and Arctic Slope would only be taxed if oil or gas is discovered, and not for the exploratory costs

"We contend it's wrong," said Richard Allan, counsel for the Southeast Alaska Corp. "The IRS has disallowed land selections, as a legitimate expense for a business. It's not right."

According to Allan, Southeast Alaska has not been allowed to deduct money paid to techni-

cal advisors, and costs of incorporation and organization. "It's irrelevant what the dollar figures are now," said Allan. "The point is that it will cost millions over the long run. If (the IRS) theory were to prevail, it would pose an incredible drain on all the corporations.

Essentially, the 13 corporations have several options: paying the taxes; appealing to Treasury for a special ruling; or requesting a hearing at the U.S. Tax Court.

So far, none has paid the tax, only one has appealed to the tax court and most are hoping the Department of the Treasury pulls through with a special tax break.

However, if Treasury grants a special exemption to the Native regional corporations, it could be confronted with requests from thousands of corporations, large and small, throughout the country for tax exemptions.

A spokesman for IRS would not respond, except to say, "by law we are not allowed to divulge any information in a pending case."