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2 economic incentive” to exist.¹² Here, the borough has been the driving force behind the
3 lawsuit and the financial backer of the lawsuit, thus there is sufficient economic interest
4 to motivate the lawsuit.

5 Moreover, the burden to prove lack of “sufficient economic incentive”, under
6 AS 09.60.010(c)(2), falls on the party alleging that they lack that incentive.¹³ Prior
7 decisions of this court indicate that the party seeking public interest status must present
8 “substantial evidence” in support of its position.¹⁴ The Alaska Supreme Court has also
9 held that it is appropriate for a party to explain why it will not gain a direct or indirect
10 profit from the litigation to explain its lack of economic incentive.¹⁵ Here, plaintiffs
11 have not met their burden of establishing a lack of economic incentive.
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13 **III. Any Rule 82 fees should be reduced to reflect that hours spent relitigating**
14 **the refund issue were not “necessarily incurred.”**

15 Rule 82(b)(2) provides that a prevailing party in a case without a money
16 judgment resolved without trial is twenty percent of its actual attorney’s fees “which
17 were necessarily incurred.” The borough received the only relief it was awarded in this
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19 ¹² See *Kachemak Bay Watch, Inc.*, 935 P.2d at 828 (organization did not qualify as
20 a public interest litigant where it failed to refute that three of its board members had a
21 sufficient economic incentive).

22 ¹³ See *Fairbanks North Star Borough v. Interior Cabaret, Hotel, Restaurant &*
Retailers Ass’n, 137 P.3d 289, 293 (Alaska 2006); *Cabana v. Kenai Peninsula Borough*,
23 21 P.3d 833, 837 (Alaska 2001).

24 ¹⁴ See *Matanuska Electric*, 36 P.3d at 698 (“substantial evidence supported
25 rejection of contention that association was motivated by economic goals of its
26 members.”); *Cabana*, 21 P.3d at 837.

¹⁵ *Citizen’s Coalition for Tort Reform*, 810 P.2d at 171.

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2 Court's initial November 2014 Order. Although the borough subsequently filed a
3 motion for reconsideration on the refund issue, it did not achieve any additional relief,
4 and its hours expended on that motion were not "necessarily incurred" in the litigation.
5 The State objects to paying fees on the borough's motion for reconsideration.

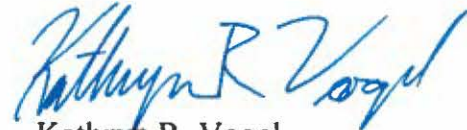
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7 **CONCLUSION**

8 For the reasons stated above, the Court should order each side to bear its own
9 costs and fees. In the alternative, in recognition of the financial interest motivating the
10 lawsuit the Court should award plaintiffs only partial fees for the work necessarily
11 incurred in this litigation.

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