LAWS OF ALASKA

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Source
SCS CSHB 90(FIN)

Chapter No.
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AN ACT

Relating to a salmon product development tax credit and a salmon utilization tax credit under the Alaska fisheries business tax; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

AN ACT

Relating to a salmon product development tax credit and a salmon utilization tax credit under the Alaska fisheries business tax; and providing for an effective date.

*** Section 1.** AS 43.75 is amended by adding new sections to read:

Sec. 43.75.035. Salmon product development tax credit. (a) A taxpayer that is a fisheries business may claim a salmon product development tax credit of 50 percent of qualified investment in new property first placed into service in a shore-based plant or on a vessel in the state in the tax year.

(b) The amount of the tax credit applied against taxes under this section may not

(1) exceed 50 percent of the taxpayer's tax liability incurred under this chapter for processing of salmon during the tax year; or

(2) be claimed for property first placed into service after December 31, 2005.

(c) If the property for which a tax credit is claimed is installed on a vessel, the amount of qualified investment under (a) of this section is determined by multiplying the investment cost of the qualified investment property by a fraction, the numerator of which is the weight of raw salmon processed on the vessel by the taxpayer in the state in the tax year in which the property is first placed into service, and the denominator of which is the weight of raw salmon processed on the vessel by the taxpayer in and outside of the state in the tax year in which the property is first placed into service.

(d) An unused credit under this section may be carried forward and applied against the tax liability incurred on salmon in the following three tax years.

(e) Qualified investment costs upon which a tax credit is claimed under this section may not be considered for another tax credit in this title. A tax credit applied under this section together with a tax credit applied under AS 43.75.036 may not exceed 50 percent of the taxpayer's tax liability incurred for the processing of salmon during the tax year.

(f) A taxpayer may not claim the tax credit allowed under this section if the taxpayer is in arrears in the payment of assessments under AS 16.51.120, contributions under AS 23.20, or taxes or assessments collected or owed under this title. For purposes of this subsection, a taxpayer is not in arrears if the liability for the assessment, contribution, or tax is under administrative or judicial appeal.

(g) If, during a tax year, property for which a credit was claimed under this section is disposed of by the taxpayer, ceases to be qualified investment property, or is removed from service in the state, the tax due under this chapter is increased by the recapture percentage of the aggregate decrease in the credit allowed under this section for all prior tax years that would have resulted solely from reducing to zero the credit allowed for the qualified investment property under this section. The amount of tax credit attributable to the qualified investment that is carried forward from prior tax years is terminated as of the first day of the tax year in which the qualified investment property is disposed of by the taxpayer, ceases to be qualified investment property, or is removed from service in the state. For purposes of this subsection,

(1) the recapture percentage during the year in which the property is

first placed into service or during the first year following the year in which the property is first placed into service is 100 percent;

(2) the recapture percentage during the second year following the year in which the property is first placed into service is 75 percent;

(3) the recapture percentage during the third year following the year in which the property is first placed into service is 50 percent;

(4) the recapture percentage during the fourth or subsequent year following the year in which the property is first placed into service is zero percent;

(5) qualified investment property used on a vessel is considered to have been removed from the state on the first day of a tax year in which the proportion of raw salmon processed in the state on the vessel is less than 50 percent of total weight of raw salmon processed on the vessel in and outside of the state.

(h) The amount of a tax credit recaptured under (g)(1) - (3) of this section may not be included in the determination of the amount of that tax credit that is allowable under this section or AS 43.75.036.

(i) In this section,

(1) "first placed into service" means the moment when property is first used for its intended purpose;

(2) "new property" means property whose original use commences with the taxpayer and does not include property first used by another person;

(3) "qualified investment" means the investment cost in depreciable tangible personal property with a useful life of three years or more to be used predominantly to produce value-added salmon products beyond gutting of the salmon; in this paragraph, "property" includes filleting, skinning, portioning, mincing, forming, extruding, stuffing, injecting, mixing, marinating, preserving, drying, smoking, brining, packaging, blast freezing, or pin bone removal equipment;

(4) "tax liability" means the liability for all taxes under this chapter before all credits allowed by this chapter;

(5) "useful life" means the useful life of the property that is or would be applicable for purposes of depreciation.

Sec. 43.75.036. Salmon utilization tax credit. (a) A taxpayer that is a fisheries business may claim a salmon utilization tax credit of 50 percent of the amount of the qualified expenditure in the state in the tax year for full utilization of salmon.

(b) The amount of the tax credit applied against taxes under this section may not

(1) exceed 50 percent of the taxpayer's tax liability incurred under this chapter for salmon during the tax year; or

(2) be claimed for property first placed into service, or for expenditures incurred, after December 31, 2005.

(c) If the tax credit is claimed for installation or operation of new equipment on a vessel, the amount of the qualified expenditure under (a) of this section is determined by multiplying the cost of the installation or operation of the equipment by a fraction, the numerator of which is the weight of raw salmon processed on the vessel by the taxpayer in the state in the tax year in which the equipment is first placed into service, and the denominator of which is the weight of raw salmon processed on the vessel by the taxpayer in and outside of the state in the tax year in which the equipment is first placed into service.

(d) An unused credit under this section may be carried forward and applied against the tax liability incurred on salmon in the following three tax years.

(e) Qualified expenditures for which a tax credit is claimed under this section may not be considered for another tax credit in this title. A tax credit applied under this section together with a tax credit applied under AS 43.75.035 may not exceed 50 percent of the taxpayer's tax liability incurred for the processing of salmon during the tax year.

(f) A taxpayer may not claim the tax credit allowed under this section if the taxpayer is in arrears in the payment of assessments under AS 16.51.120, contributions under AS 23.20, or taxes or assessments collected or owed under this title. For purposes of this subsection, a taxpayer is not in arrears if the liability for the assessment, contribution, or tax is under administrative or judicial appeal.

(g) If, during a tax year, equipment for which a credit was claimed under this section is disposed of by the taxpayer, ceases to be a qualified expenditure, or is removed from service in the state, the tax due under this chapter is increased by the recapture percentage of the aggregate decrease in the credit allowed under this section for all prior tax years that would have resulted solely from reducing to zero the credit allowed for the qualified expenditure under this section. The amount of tax credit attributable to the qualified expenditure that is carried forward from prior tax years is terminated as of the first day of the tax year in which the equipment is disposed of by the taxpayer, ceases to be a qualified expenditure, or is removed from service in the state. For purposes of this subsection,

(1) the recapture percentage during the year in which the equipment is first placed into service or during the first year following the year in which the equipment is first placed into service is 100 percent;

(2) the recapture percentage during the second year following the year in which the equipment is first placed into service is 75 percent;

(3) the recapture percentage during the third year following the year in which the equipment is first placed into service is 50 percent;

(4) the recapture percentage during the fourth or subsequent year following the year in which the equipment is first placed into service is zero percent;

(5) equipment used on a vessel is considered to have been removed from the state on the first day of a tax year in which the proportion of raw salmon processed in the state on the vessel is less than 50 percent of total weight of raw salmon processed on the vessel in and outside of the state.

(h) The amount of a tax credit recaptured under (g)(1) - (3) of this section may not be included in the determination of the amount of that tax credit that is allowable under this section or AS 43.75.035.

(i) In this section,

(1) "first placed into service" means the moment when equipment is first used for its intended purpose;

(2) "new equipment" means tangible, depreciable personal property with a useful life of three years or more whose original use commences with the taxpayer and does not include property first used by another person;

(3) "qualified expenditure" means

(A) the direct and incremental cost of the development, manufacture, or purchase of new equipment by a taxpayer to produce marketable products in the state using salmon waste;

(B) reasonable custom processing or disposal fees paid to another fisheries business in the state that does not claim a credit under this section or AS 43.75.035 and that produces marketable products from salmon waste, less the market value of the products produced for the taxpayer; or

(C) the direct and incremental cost of transporting salmon waste to a facility in the state that produces a marketable product from salmon waste;

(4) "tax liability" means the liability for all taxes under this chapter before all credits allowed by this chapter;

(5) "useful life" means the useful life of equipment that is or would be applicable for purposes of depreciation.

*** Sec. 2.** AS 43.75.130 is amended by adding a new subsection to read:

(g) For purposes of this section, tax revenue collected under AS 43.75.015 from a person entitled to a credit under AS 43.75.035 or 43.75.036 shall be calculated as if the person's tax were collected without applying the credit; tax revenue collected does not include the amount of a tax credit recaptured under AS 43.75.035(g) or 43.75.036(g).

*** Sec. 3.** AS 43.75.035, 43.75.036, and 43.75.130(g) are repealed.

*** Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. Sections 1 and 2 of this Act are retroactive to January 1, 2003.

*** Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. If the attorney general provides notification under sec. 7(2) of this Act, sec. 3 of this Act is retroactive to January 1, 2003.

*** Sec. 6.** Sections 1, 2, and 4 of this Act take effect immediately under AS 01.10.070(c).

*** Sec. 7.** Section 3 of this Act takes effect on the earlier of the following:

(1) January 1, 2009; or

(2) the date of the attorney general's notification to the lieutenant governor and to the revisor of statutes that

(A) a court has entered final judgment that AS 43.75.035 or 43.75.036, added by sec. 1 of this Act, violates the commerce clause contained in art. I, sec. 8, United States Constitution; and

(B) the time for an appeal of that judgment has expired, or, if an appeal was taken, a final order on the appeal has been entered that AS 43.75.035 or 43.75.036, added by sec. 1 of this Act, violates the commerce clause contained in the United States Constitution.

* **Sec. 8.** Section 5 of this Act takes effect on the date of the attorney general's notification under sec. 7(2) of this Act.