



LAWS OF ALASKA

1968

Source

Chapter No.

HCSSB 409 am (FCC)

222

AN ACT

Relating to state and local industrial incentive tax credits; and providing for an effective date.

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

* Section 1. AS 43 is amended by adding a new chapter to read:

CHAPTER 26. INDUSTRIAL INCENTIVE TAX CREDITS.

Sec. 43.26.010. TAX CREDITS AUTHORIZED. (a) A person who has established and owns or proposes to establish and own an eligible business is entitled to a tax credit not to exceed 75 per cent of the value of the investment made in the business as of the date it commenced operation. The grant of tax credit shall be effective for a period, established by the commissioner of economic development, not to exceed 10 years from the date of grant and shall be applied against the amount of certain taxes, as determined by the department, due the state during that period as a result of the development, organization, construction, establishment and operation of the specific business for which the credit is granted. The unused portion of a tax credit authorized under this chapter shall be forfeited at the expiration of the period of credit for which the grant was made. Only one grant of tax credit shall be made an eligible business, irrespective of transfer of the business or other circumstances. In the event a tax for which credit is given under this chapter produces revenue shared with local political subdivisions, the state shall pay to any affected subdivision the amount of revenue it would receive had the tax credit not been given.

(b) The commissioner of economic development may by regulation classify and exclude from investments qualifying for tax credit under this chapter investments in an eligible business which are not of substantial benefit to the state

in furthering the purposes of industrial development. Adoption, amendment or modification of regulations under this subsection is not subject to the procedural requirements of AS 44.62.180 - 44.62.290.

Sec. 43.26.020. APPLICATION FOR CREDIT. Application for a grant of tax credit shall be made in a manner and upon forms prescribed by the department. A grant of tax credit under this chapter shall be considered a contract between the grantee and the state. The department may determine the amount of the tax credit and the period for which the credit applies. Then the department may attach such terms and conditions to the credit as in its judgment will further the purposes of industrial development.

Sec. 43.26.030. USE OF COMMON FACILITIES. (a) The department may grant authorization for a plant, factory, machine or machine ensemble to use major industrial facilities in common with other industrial units if the department determines that the common use is necessary or convenient for the development of the economy and welfare of the state because it will

(1) provide increased opportunities for work in either or both industrial units;

(2) add substantially to the net income of the state; and

(3) result in a substantial investment in equipment, machinery and supplies, comparable to the investment in the original unit, less the value of the facilities to be used in common.

(b) If the industrial unit providing major or minor industrial facilities to be used in common by other industrial units does not have a tax credit, but a tax credit is obtained by the unit using the facilities, the department may grant a tax credit with regard to the facilities, except that the tax credit is limited to a part of the value of the facilities and a part of the compensation received for the use of the facilities, in proportion to the use made of the facilities by the industrial unit which has a tax credit. The determinant factors of the use include space occupied, time and nature of use, and the importance the use bears on the industrial unit or units making use of the facilities.

Sec. 43.26.040. ADMINISTRATION. (a) The commissioner of economic development shall appoint the personnel necessary to carry out this chapter. The commissioner shall make arrangements for such public hearings as he considers necessary and shall require an applicant for a tax credit to present evidence that will justify the credit.

(b) The commissioner or another person whom the commissioner designates shall hear the evidence presented in relation to an application for tax credit; he may summon witnesses and take their testimony as to facts related to the tax credit applied for, and administer an oath to the person testifying before him; he shall make a

report to the department on the evidence, together with his recommendations.

(c) The department shall adopt regulations it considers necessary to carry out the purposes of this chapter. The regulations shall be published in newspapers necessary to guarantee general circulation in the state.

(d) To enforce compliance with this chapter, the department may require periodic reports from the grantee of a tax credit and may at reasonable intervals inspect the books of the eligible business for which the credit has been granted.

(e) All decisions and findings of the department under this chapter are final and no judicial or administrative appeal or other proceeding lies against them unless otherwise specifically provided in this chapter or by regulation.

Sec. 43.26.050. REVOCATION OF TAX CREDIT. (a) After furnishing notice and opportunity to be heard to the grantee of a tax credit under this chapter, the department may revoke the grant if

(1) the business for which the tax credit is granted ceases to be an eligible business;

(2) the department determines that the grantee of a tax credit has falsely or fraudulently represented facts or circumstances upon which grant of the credit was predicated in whole or in part, or the department determines that the grantee has used the tax credit for taxes upon a business not included in the application upon which the credit was granted;

(3) the grantee of a tax credit fails to comply with a condition or term of the grant or a provision of this chapter or a regulation adopted under it; or

(4) a transfer of shares of stock or partnership participation in an eligible business is made which represents a change of control in the business, except

(A) a transfer by will or by operation of the laws of inheritance,

(B) a transfer made solely to create security for bona fide indebtedness, or

(C) a transfer by operation of law or court order to a trustee in bankruptcy or receiver.

(b) Upon revocation of a grant of tax credit, all taxes which, except for the tax credit, would have been due the state subsequent to revocation shall be assessed and collected and paid in accordance with the provisions of the tax laws.

(c) A person aggrieved by department action revoking a grant of tax credit may seek judicial review of the action by filing an appeal with the superior court within

30 days after final determination by the department. Pending judicial review, the department may postpone the effective date of the action taken by it upon such conditions as may be required and to the extent necessary to prevent irreparable injury. If a postponement is applied for and denied, the court may issue appropriate process to postpone the effective date of the action taken by the department or to preserve the status or rights of the parties pending conclusion of the review proceedings. Postponement by the court shall be conditioned upon the giving of acceptable bond to the department in an amount equal at least to the amount of taxes credited before revocation plus interest and penalties as provided by the tax laws.

Sec. 43.26.060. PENALTY. A person who fraudulently represents facts or circumstances upon which a grant of tax credit is predicated in whole or in part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both.

Sec. 43.26.070. TERMINATION DATE FOR APPLICATIONS. An application for a grant of tax credit under this chapter shall be received by the department until midnight of June 30, 1973, but not after that date.

Sec. 43.26.080. GRANT OF TAX CREDIT BY POLITICAL SUBDIVISION. With respect to taxes levied by it, a political subdivision of the state may award grants of tax credit in the same manner and subject to the same restrictions as provided for the department under this chapter, except that the amount of tax credit granted may not exceed 25 per cent of the value of the investment made in the business as of the date it commences operation, and a political subdivision shall levy and collect at least a real and personal property tax millage on the assessed valuation of the property which is equal to at least twice the millage required for the local tax effort under the Public School Foundation Program (AS 14.17).

Sec. 43.26.090. EFFECT ON INDUSTRIAL TAX EXEMPTIONS. Exemptions granted in whole or in part under sec. 6, ch. 10, SLA 1949; ch. 33, SLA 1953 and ch. 129, SLA 1957 (the Alaska Industrial Incentive Act) shall remain in full force and effect upon the terms and for the periods granted. No industrial unit granted a tax exemption under any of those laws may qualify for a grant of tax credit under this chapter, provided additional industrial units, which use facilities in common with an industrial unit or units previously granted a tax exemption under those laws or a tax credit under this chapter, may be granted a tax credit if the industrial unit qualifies as an eligible business as defined in this chapter.

Sec. 43.26.100. DEFINITIONS. In this chapter

- (1) "department" means the Department of Economic Development;
- (2) "eligible business" means
 - (A) an industrial unit having as its object

the production on a commercial scale in the state of a manufactured product which was not produced on a commercial scale before July 1, 1968, and for which there were on that date in the same competitive area in the state as defined by the commissioner of economic development, no production facilities capable of the production of that manufactured product on a commercial scale;

(B) an industrial unit established after July 1, 1968, and having as its objective the production on a commercial scale in the state of a designated article, and which, in the judgment of the department

(i) is established in good faith and with a permanent character, and

(ii) produces, or will produce, on a sustained basis, within a reasonable time, a substantial amount of a designated article additional to the amount of the same articles being produced by other industrial units in operation in the state; in determining the amount of the production in the state of these articles, the department shall use the average production in the state of these articles, for the three calendar years immediately preceding July 1, 1968; or

(C) an industrial unit established before July 1, 1968, engaged in the production of a designated article in the state on a commercial scale if

(i) tax credit has been granted to a new industrial unit under the terms of this chapter to produce the same designated article, and

(ii) the new industrial unit has begun production on a commercial scale;

(3) "industrial unit" means a plant, factory, machine, or machine ensemble which has a capacity to perform the major functions involved in the production of a manufactured product on a commercial scale and land which is necessary to perform these functions; an industrial unit may not include business inventories, company stores or company housing, or land devoted to company stores or company housing; a plant, factor, machine or machine ensemble may be considered a separate industrial unit even though it uses, in common with other industrial units,

(A) minor facilities such as sections of buildings, power plants, warehouses, material conveyors, or other minor production facilities, or

(B) major facilities, if the department authorizes the common use of the facilities, as provided in sec. 30 of this chapter;

(4) "production on a commercial scale" means

production for sale in the market in the normal course of business in quantities and at prices which justify the operation of an industrial unit as a going business;

(5) "designated articles" includes but is not limited to the following articles or businesses:

- (A) lumber,
- (B) plywood,
- (C) chemical grade pulp,
- (D) newsprint,
- (E) ores which have been processed or refined,
- (F) petroleum products,
- (G) handicrafts,
- (H) agricultural products,
- (I) manufactured articles from fur or native skins,
- (J) fish products,
- (K) furniture, but not the mere assembly of it,
- (L) products of slaughtering operations, including the products of packing houses that use the products of slaughtering operations as raw material,
- (M) livestock raising,
- (N) other related articles including industrial power development;

(6) "manufactured product" means

(A) a product transformed from raw material into an article of commerce finished by hand or machinery;

(B) a product with respect to which substantial industrial operations are undertaken in the state if

(i) in the judgment of the department the product merits treatment as a manufactured product within the scope of this chapter because of the nature and extent of the operations, the technology involved, the employment provided, or other contribution made or to be made by the operation to the welfare of the state, and

(ii) the operations are carried out substantially as originally represented by the tax credit petitioner, except as the tax credit

grant is modified by the department in its discretion upon appropriate petition of the grantee; or

(C) the production obtained from a mining operation if it is benefited or substantially processed in the state directly by the producer or by an independent enterprise.

(7) "political subdivision" means a home rule or general law organized borough or city;

(8) "value" means value as determined by the department.

Sec. 43.26.110. SHORT TITLE. This chapter may be cited as the Alaska Industrial Tax Credit Act.

* Sec. 2. This Act takes effect July 1, 1968.