

CS FOR HOUSE BILL NO. 341(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 1/26/96

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to consideration and determination by the superior court of
2 disputes involving certain taxes and penalties due, and amending provisions relating
3 to the assessment, levy, and collection of taxes and penalties by the state and to
4 the tax liability of taxpayers; and amending Rule 609(b) of the Alaska Rules of
5 Appellate Procedure; and providing for an effective date."

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

7 * **Section 1.** AS 22.10.020(d) is amended to read:

8 (d) The superior court has jurisdiction in all matters appealed to it from a
9 subordinate court, or administrative agency when appeal is provided by law. The
10 hearings on appeal from a final order or judgment

11 (1) of a subordinate court [OR ADMINISTRATIVE AGENCY] shall
12 be on the record unless the superior court, in its discretion, grants a trial de novo, in
13 whole or in part;

1 (2) of the Department of Revenue in matters relating to fixing the
2 amount of, or imposing a penalty on, a tax levied and collected by the state when
3 appeal is taken under AS 43.05.242(c)(1) shall be heard as a trial de novo as a
4 matter of right;

5 (3) of the Department of Revenue in matters relating to fixing the
6 amount of, or imposing a penalty on, a tax levied and collected by the state when
7 appeal is taken under AS 43.05.242(c)(2) shall be on the record unless the
8 superior court, in its discretion, grants a trial de novo, in whole or in part;

9 (4) of an administrative agency, except for a matter described in
10 (2) or (3) of this subsection, shall be on the record unless the superior court, in
11 its discretion, grants a trial de novo, in whole or in part.

12 * **Sec. 2.** AS 37.10.410 is amended to read:

13 Sec. 37.10.410. "ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES"
14 DEFINED. (a) The following money received by the state is considered to be
15 received as a result of the termination of an administrative proceeding for purposes of
16 applying art. IX, sec. 17(a), Constitution of the State of Alaska:

17 (1) past due taxes that are received by the state for each tax year for
18 which a request for an informal conference under AS 43.05.240(a) is made to the
19 Department of Revenue, together with penalties and interest on the taxes;

20 (2) past due taxes that are received by the state after a request for a
21 formal hearing under AS 43.05.240(b)(1) is made to the Department of Revenue,
22 together with penalties and interest on the taxes.

23 (b) Money received by the state under the following conditions is not
24 considered to be received as the result of the termination of an administrative
25 proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of
26 Alaska:

27 (1) taxes that are not due at the time the request for the proceeding was
28 made under AS 43.05.240(a) or (b)(1) **or 43.05.242(b)**;

29 (2) taxes set out in a return not audited by the Department of Revenue
30 at the date of collection; or

31 (3) taxes collected for a tax year for which the taxpayer did not give

1 notice of appeal of an assessment made by the Department of Revenue.

2 * **Sec. 3.** AS 43.05.240 is amended by adding a new subsection to read:

3 (e) The provisions of this section do not apply to the action of the department
4 in fixing the amount of a tax or in imposing a penalty related to a tax described in
5 AS 43.05.242(a).

6 * **Sec. 4.** AS 43.05 is amended by adding new sections to read:

7 Sec. 43.05.242. APPEAL OF CERTAIN TAXES AND RELATED
8 PENALTIES. (a) The provisions of this section apply to a matter relating to fixing
9 the amount of, or imposing a penalty on, a tax levied and collected by the state under

- 10 (1) AS 43.19 and AS 43.20;
11 (2) former AS 43.21;
12 (3) AS 43.55;
13 (4) AS 43.65;
14 (5) AS 43.75.

15 (b) A person aggrieved by the action of the department in fixing the amount
16 of a tax or in imposing a penalty may apply to the department within 60 days from the
17 date of mailing the notice required to be given to the person by the department, giving
18 notice of the grievance, and requesting an informal hearing. At the informal hearing,
19 the person aggrieved may present arguments and evidence relevant to the amount of
20 tax or penalty due the state. If the department determines that a correction is
21 warranted, the department shall make the correction.

22 (c) A person aggrieved by the action of the department under (b) of this
23 section in fixing the amount of a tax or in imposing a penalty may

24 (1) within 30 days after decision resulting from the informal hearing,
25 appeal to the superior court in the judicial district in which the person resides; when
26 an appeal is taken under this paragraph,

27 (A) the taxpayer shall be given access to the file of the
28 department in the matter for preparation of the appeal;

29 (B) if, after the appeal is heard,

30 (i) it appears that the tax was correct, the court shall
31 confirm the tax;

1 (ii) it appears that the tax was incorrect, the court shall
2 determine the amount of the tax; if the person aggrieved is entitled to
3 recover the tax or part of it, the court shall order the repayment, and the
4 department shall immediately pay the amount due and attach a certified
5 copy of the judgment to the payment; or

6 (2) within 30 days after decision resulting from an informal hearing,
7 apply to the department and request a formal hearing; when a formal hearing is
8 requested under this paragraph,

9 (A) the department may subpoena witnesses, administer oaths,
10 and make inquiries necessary to determine the amount of the tax or penalty due
11 the state;

12 (B) the person aggrieved may present arguments and evidence
13 relevant to the amount of the tax or penalty due the state; and

14 (C) if the department determines that a correction is warranted,
15 the department shall make the correction.

16 Sec. 43.05.244. TAX, PENALTY, AND INTEREST PAYABLE BEFORE
17 APPEAL. (a) In an appeal from a decision of the department involving a deficiency
18 of taxes levied and collected by the state under a tax described in AS 43.05.242(a), the
19 taxpayer shall pay to the state the full amount of the tax, penalty, and interest in
20 respect of the amount of tax assessed that is not in dispute. The taxpayer shall post
21 a bond, obtain a letter of credit, or provide other evidence satisfactory to the tax court
22 that it is able to pay the amount of tax, penalty, and interest in respect of the amount
23 of tax assessed that is in dispute and that is the basis of the taxpayer's appeal.

24 (b) The tax and interest due under this section are the amounts stated in the
25 final order of the department from which the appeal is taken, or if the final order
26 appealed from is a summary judgment or partial summary judgment, the amount shall
27 be as originally assessed on the issue or issues disposed of.

28 * Sec. 5. AS 43.05.245 is amended to read:

29 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES,
30 AND INTEREST. If a taxpayer fails to file a return or report required by this title in
31 the time required by law or regulation, or makes an erroneous or fraudulent return, the

1 department shall proceed to assess the license fees, tax, penalties, or interest and make
2 a return from information **that** [WHICH] it obtains. A return made and subscribed by
3 the department in accordance with this section is presumed sufficient for all legal
4 purposes. However, nothing prevents a taxpayer from presenting evidence or other
5 information on an appeal under AS 43.05.240 or 43.05.242 in order to rebut the
6 presumed sufficiency of a return made and subscribed by the department, nor does the
7 presumption of sufficiency alter the parties' respective burdens of proof once the
8 taxpayer has presented evidence or other material information to rebut that
9 presumption. The assessment of license fees, tax, penalties, or interest under this
10 section occurs when the department issues a notice and demand for payment of the
11 license fees, tax, penalties, or interest. The notice and demand for payment is issued
12 when the notice and demand is delivered to the taxpayer in person or placed in the
13 United States mail, addressed to the last known address of the taxpayer. Penalties and
14 interest assessed under this title shall be collected in the same manner as provided in
15 this title for the collection of tax or license fees.

16 * **Sec. 6.** AS 43.05 is amended by adding a new section to read:

17 Sec. 43.05.254. OVERPAYMENT. If it has been finally determined that an
18 overpayment exists, either the taxpayer or the commissioner may elect within 60 days
19 to credit the overpayment, including any interest accruing on the overpayment, against
20 the tax liability of the taxpayer for the current tax year and subsequent tax years. The
21 amount of the refund not credited within three years of the date of the election shall
22 be paid to the taxpayer, with interest accrued at the rate established in AS 43.05.280.

23 * **Sec. 7.** AS 43.20.200(a) is amended to read:

24 (a) As soon as practicable after a return is filed, the department may examine
25 it and determine the correct amount of the tax. If an error is disclosed by the
26 examination, the department shall so notify the taxpayer by first-class mail. The
27 taxpayer may petition for redetermination of deficiency as provided in AS 43.05.240
28 or 43.05.242.

29 * **Sec. 8.** AS 43.20.270(a) is amended to read:

30 (a) The department may collect taxes, with interest, penalties, and other
31 additional amounts permitted by law, by distraint and sale, in the manner provided in

1 this section, of the property of a person liable to pay the taxes, interest, penalties, or
2 other additional amounts, who neglects or refuses to pay them within 10 days from the
3 mailing of notice and demand for payment of them, and who has not appealed from
4 the assessment of the taxes, interest, penalties, and other additional amounts under
5 AS 43.05.240 or 43.05.242.

6 * **Sec. 9.** AS 43.55.013(g) is amended to read:

7 (g) The monthly production at the economic limit for a lease or property is
8 presumed to be 3,000 Mcf times the number of well days for the lease or property
9 during that month for which the tax is to be paid. The taxpayer may rebut this
10 presumption at a formal hearing under AS 43.05.242(c)(2) [AS 43.05.240] by
11 providing clear and convincing evidence of a different monthly production rate at the
12 economic limit for the lease or property. The hearing shall be held before February 15
13 of the year or within six months after commencement of gas production for a lease or
14 property. The monthly production rate at the economic limit for the lease or property
15 based upon the clear and convincing evidence of the taxpayer shall be calculated by
16 dividing the value determined under (i) of this section into the average monthly direct
17 operating cost determined under (h) of this section.

18 * **Sec. 10.** COURT RULE CHANGE; RULES OF APPELLATE PROCEDURE. The
19 provisions of AS 22.10.020(d)(2), added by sec. 1 of this Act, have the effect of changing
20 Rule 609(b) of the Alaska Rules of Appellate Procedure relating to the superior court's
21 exercise of its discretion to grant a de novo review of certain appeals of decisions of the
22 Department of Revenue involving taxes and related penalties.

23 * **Sec. 11.** This Act takes effect July 1, 1996.