

HOUSE BILL NO. 239

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE DAVIS

Introduced: 4/8/97

Referred: Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the liability of motor fuel dealers for payment of tax
2 imposed on certain credit transactions involving motor fuel sales or transfers that
3 become worthless debts or on sales or transfers to persons who declare
4 bankruptcy; and providing for an effective date."

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

6 * **Section 1.** LEGISLATIVE FINDINGS. The legislature finds that

7 (1) the motor fuel tax is an excise tax designed ultimately to be payable by the
8 user of the fuel; for administrative and other reasons, the tax is required to be collected by the
9 motor fuel dealer from the person consuming or using the motor fuel, that is, from the user;

10 (2) in commercial transactions, it is customary to extend reasonable credit
11 terms; this business practice may result in a deferral or delay in the collection of both the debt
12 and the motor fuel tax by the dealer; after the extension of credit to the person to whom the
13 motor fuel is sold or transferred and before full payment by that person, the debt may become
14 wholly or partially worthless;

1 (3) when, during the period between the extension of credit and full payment,
 2 the person to whom the motor fuel is sold or transferred becomes a debtor under the federal
 3 bankruptcy laws, the automatic stay provisions of federal bankruptcy law preclude the dealer
 4 from taking action to collect either the debt or the tax on the unpaid account; the federal
 5 bankruptcy laws also determine the portion, if any, of the amount of the debt and tax to be
 6 paid to creditors;

7 (4) a motor fuel dealer should not be burdened with the tax remittance
 8 obligation if the tax liability on the transaction is significant and the underlying debt becomes
 9 worthless or the person to whom the motor fuel has been sold or transferred becomes a debtor
 10 under the federal bankruptcy laws; the tax liability and payment responsibility in these
 11 situations should remain with the person.

12 * **Sec. 2.** AS 43.40 is amended by adding a new section to read:

13 **Sec. 43.40.025. Handling of tax in a sale or transfer of motor fuel in**
 14 **certain credit transactions.** (a) This section applies when a dealer who sells or
 15 otherwise transfers motor fuel in a credit transaction in the state subsequently
 16 determines that the person to whom the motor fuel was sold or transferred in the credit
 17 transaction

18 (1) has become a debtor under 11 U.S.C. (Federal Bankruptcy Act); or

19 (2) has ceased to pay the person's debts in the ordinary course of
 20 business or cannot pay the person's debts as they become due, and the dealer treats the
 21 person's debt as a worthless debt or partially worthless debt under 26 U.S.C. 166.

22 (b) A dealer is entitled to a credit in an amount equal to the tax remitted to
 23 the department for the tax due on the sale or transfer of motor fuel in circumstances
 24 described in (a) of this section if

25 (1) under this chapter, the sale or transfer results in a tax liability on
 26 the transaction of \$500 or more; and

27 (2) the dealer has submitted a statement and remitted the tax due on the
 28 transaction under AS 43.40.010(c).

29 (c) The dealer may not claim or obtain a refund of the amount of a credit to
 30 which the dealer is entitled under (b) of this section. The dealer may apply the credit
 31 authorized by (b) of this section against the motor fuel tax payable under this chapter

1 by the dealer to the state

2 (1) during the month in which the dealer provides written notification
3 to the department of the claim of the credit accompanied by a copy of the bankruptcy
4 petition filed by the person to whom the motor fuel was sold or transferred; or

5 (2) in the first month after the dealer reports to the Internal Revenue
6 Service that the debt of the person to whom the motor fuel was sold or transferred is
7 a worthless debt or partially worthless debt by claiming the debt as a deduction under
8 26 U.S.C. 166.

9 (d) If, as to a credit transaction described in (a) of this section for which a
10 credit was claimed and allowed under (b) and (c) of this section, the person to whom
11 the motor fuel was sold or transferred later makes payment to the dealer of

12 (1) all of the debt due on the transaction, the dealer shall remit payment
13 to the department of the tax as required by AS 43.40.010;

14 (2) a portion of the debt due on the transaction, the dealer shall remit
15 payment to the department of a proportional part of the tax as required by
16 AS 43.40.010.

17 (e) The commissioner may not allow a dealer a credit under this section for
18 the credit transaction debt of a person if the dealer claiming the credit has, within the
19 three-year period immediately before making the claim of the credit, previously
20 submitted a statement under (c)(2) of this section that a credit transaction debt of that
21 person is a worthless debt or partially worthless debt under (c)(2) of this section.

22 (f) This section does not apply to a dealer who sells or otherwise transfers
23 motor fuel in a credit transaction after the dealer knows that the person to whom the
24 motor fuel was sold in the credit transaction has

25 (1) become a debtor under 11 U.S.C. (Federal Bankruptcy Act); or

26 (2) ceased to pay the person's debts in the ordinary course of business
27 or cannot pay the person's debts as they become due and the dealer treats the previous
28 credit transaction debt to the dealer as a worthless debt or partially worthless debt
29 under 26 U.S.C. 166.

30 (g) In this section, "credit transaction" means a transaction by which the
31 payment for motor fuel subject to the tax levied under this chapter is to be made at a

1 future date.

2 * **Sec. 3.** APPLICABILITY. (a) This Act applies to sales or transfers of motor fuel
3 subject to tax under AS 43.40.010 - 43.40.100 that are made on or after the effective date of
4 this Act.

5 (b) In AS 43.40.025(e), added by sec. 2 of this Act, reference to a previously
6 submitted credit transaction debt means a credit transaction debt that was reported to the
7 Internal Revenue Service as a deduction against income under 26 U.S.C. 166 on or after the
8 effective date of this Act because the credit transaction debt became worthless or partially
9 worthless.

10 * **Sec. 4.** This Act takes effect July 1, 1997.