

HOUSE BILL NO. 307

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES CROFT, Austerman

Introduced: 1/21/00

Referred: House Special Committee on Oil and Gas, Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing an oil and gas corporate income tax and making conforming
2 amendments; and amending the tax on corporations levied under the Alaska Net
3 Income Tax Act to eliminate the state corporate income tax on taxable income
4 of less than \$10,000; and providing for an effective date."

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
7 section to read:

8 SHORT TITLE. This Act may be known as the "Corporate Income Tax Reform Act
9 of 2000."

10 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section
11 to read:

12 **LEGISLATIVE FINDINGS AND INTENT.** (a) The legislature finds and declares that

13 (1) the method of apportioning income for tax purposes under AS 43.19
14 ("Uniform Division of Income for Tax Purposes" formula embodied in the Multistate Tax

1 Compact), AS 43.20.065, and 43.20.072, repealed by sec. 13 of this Act, do not fairly
 2 represent the extent of the business activities in this state of multistate corporations engaged
 3 in the production and pipeline transportation of crude oil and natural gas in the state;

4 (2) the separate accounting method of apportioning income more accurately
 5 and fairly represents the extent of business activities in this state of multistate corporations
 6 engaged in the production and pipeline transportation of crude oil and natural gas in the state;
 7 and

8 (3) the repeal of former AS 43.21.010 - 43.21.120 by ch. 116, SLA 1981, was
 9 made only because of the uncertainties presented by a then-pending court challenge that have
 10 since been resolved.

11 (b) The legislature, therefore, intends that

12 (1) in accordance with the provisions of art. IV, sec. 18, AS 43.19, the income
 13 tax of all corporations engaged in the production or pipeline transportation of oil or natural
 14 gas in or directly associated with this state shall be assessed by the tax administrator under
 15 this Act;

16 (2) the assessment of income tax against a multistate corporation engaged in
 17 the production or pipeline transportation of oil or natural gas shall be commensurate with the
 18 tax that would be assessed against a corporation owning and operating only those assets of the
 19 multistate corporation that are in or directly associated with this state.

20 * **Sec. 3.** AS 29.60.599(1) is amended to read:

21 (1) "barrel" when used with reference to oil **means the quantity of oil**
 22 **contained in 42 United States gallons of 231 cubic inches each, measured at a**
 23 **temperature of 60 degrees Fahrenheit, and an absolute pressure of 14.65 pounds**
 24 **per square inch** [HAS THE MEANING GIVEN IN AS 43.20.072];

25 * **Sec. 4.** AS 41.09.010(b) is amended to read:

26 (b) An exploration incentive credit extended under (a) of this section may be
 27 applied against

28 (1) a payment or obligation against which a credit authorized by
 29 AS 38.05.180(i) may be claimed;

30 (2) taxes payable under AS 43.20 **or AS 43.21, as appropriate**; and

31 (3) oil and gas bonus payments due the state under AS 38.05.180(f).

1 * **Sec. 5.** AS 43.20.011(e) is amended to read:

2 (e) There is imposed for each taxable year upon the entire taxable income of
3 every corporation derived from sources within the state a tax computed as follows:

4 If the taxable income is:	Then the tax is:
5 [LESS THAN \$10,000	1 PERCENT OF THE TAXABLE
6	INCOME]
7 \$10,000 but less than \$20,000	\$100 plus 2 percent of the taxable
8	income over \$10,000
9 \$20,000 but less than \$30,000	\$300 plus 3 percent of the taxable
10	income over \$20,000
11 \$30,000 but less than \$40,000	\$600 plus 4 percent of the taxable
12	income over \$30,000
13 \$40,000 but less than \$50,000	\$1,000 plus 5 percent of the taxable
14	income over \$40,000
15 \$50,000 but less than \$60,000	\$1,500 plus 6 percent of the taxable
16	income over \$50,000
17 \$60,000 but less than \$70,000	\$2,100 plus 7 percent of the taxable
18	income over \$60,000
19 \$70,000 but less than \$80,000	\$2,800 plus 8 percent of the taxable
20	income over \$70,000
21 \$80,000 but less than \$90,000	\$3,600 plus 9 percent of the taxable
22	income over \$80,000
23 \$90,000 or more	\$4,500 plus 9.4 percent of the
24	taxable income over \$90,000.

25 * **Sec. 6.** AS 43.20.011 is amended by adding a new subsection to read:

26 (g) The tax of a corporation engaged in the production or transportation of
27 crude oil or natural gas shall be determined and paid in accordance with AS 43.21.

28 * **Sec. 7.** AS 43.20.014(d) is amended to read:

29 (d) A contribution claimed as a credit under this section may not

30 (1) be claimed as a credit under another provision of this title;

31 (2) also be allowed as a deduction under 26 U.S.C. 170 against the tax

1 imposed by this chapter; and

2 (3) when combined with credits taken during the taxpayer's tax year
3 under AS 21.89.070, AS 43.21.310, AS 43.55.019, AS 43.56.018, AS 43.65.018,
4 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

5 * **Sec. 8.** AS 43.20.073(f) is amended to read:

6 (f) This section does not apply to taxpayers subject to AS 43.21.200 -
7 43.21.499 [AS 43.20.072 ENGAGED IN

8 (1) THE PRODUCTION OF OIL OR GAS FROM A LEASE OR
9 PROPERTY IN THE STATE; OR

10 (2) THE TRANSPORTATION OF OIL OR GAS BY REGULATED
11 PIPELINE IN THE STATE].

12 * **Sec. 9.** AS 43.21 is amended by adding new sections to read:

13 **Article 1. Determination of Taxable Income.**

14 **Sec. 43.21.200. Application.** This chapter applies to every corporation doing
15 business in the state that derives income from the production of oil or gas from a lease
16 or property in the state or from the pipeline transportation of oil or gas in the state.
17 The tax calculated under this chapter is measured by the total taxable income of the
18 corporation during the tax period as defined by AS 43.21.210 - 43.21.240 and is
19 calculated at the rates established under AS 43.20.011(e).

20 **Sec. 43.21.210. Determination of taxable income from oil and gas**
21 **production.** (a) The taxable income of a corporation from the production of oil and
22 gas from a lease or property in the state shall be the corporation's net income as
23 calculated by the department in accordance with this section.

24 (b) Gross income of a corporation from oil and gas production shall be the
25 gross value at the point of production of oil or gas produced from a lease or property
26 in the state. The department shall by regulation determine a uniform method of
27 establishing the gross value at the point of production. In making its determination,
28 the department may use the actual prices or values received for the oil or gas, the
29 posted prices for the oil or gas in the same field, or the prevailing prices or values of
30 oil or gas in the same field. In addition, in its determination of gross value at the
31 point of production of oil or gas produced from a lease or property, the department

1 shall determine the reasonable costs of transportation from the point of sale to the
2 point of production of the oil or gas. Transportation costs set by a tariff properly on
3 file with the Regulatory Commission of Alaska or other regulatory agency shall be
4 considered prima facie reasonable, but, if a tariff properly on file with a regulatory
5 agency is subsequently amended, changed, or overturned retroactively, the reasonable
6 costs of transportation shall be recomputed for that period using the newly determined
7 tariff.

8 (c) Net income from oil and gas production shall be determined by the
9 department by deducting from gross income the following:

10 (1) royalties paid in kind or in value;

11 (2) taxes imposed under AS 43.55 that are actually paid or incurred by
12 the corporation on the production from a lease or property in the state;

13 (3) taxes imposed under AS 29.45.080 - 29.45.090 and AS 43.56 that
14 are actually paid or incurred by the corporation on property used directly in the
15 production of oil or gas from a lease or property in the state, including property used
16 in production, gathering, treatment, or preparation of the oil or gas for pipeline
17 transportation, but only if those property tax payments were due and payable only after
18 the date of commercial production from the lease or property with which the property
19 was associated;

20 (4) the direct costs incurred by or for the corporation in operating the
21 lease or property, including the direct costs of producing, gathering, treating, or
22 preparing the oil or gas for pipeline transportation, but net of any payments received
23 for those activities and not including any indirect cost or overhead expense;

24 (5) depreciation, using the unit of production method or another
25 reasonable method as the department may by regulation establish, on property used
26 directly in the production, gathering, treatment, or preparation of the oil or gas for
27 pipeline transportation, including amortization of capitalized interest for investments
28 in this property at a rate not to exceed the average cost of borrowed capital to the
29 taxpayer during the year in which it is capitalized;

30 (6) the amortization of lease acquisition payments and taxes paid or
31 incurred under AS 29.45.080 - 29.45.090 or AS 43.56, including capitalized interest,

1 for or on producing properties before the commencement of commercial production
2 from the lease or property for which the property is being used;

3 (7) interest expense of the corporation, not capitalized during
4 construction, that was paid or incurred in connection with property in Alaska; however,
5 unless (f) of this section applies, the interest expense may not exceed that portion of
6 the total interest paid by the consolidated business of which the corporation is a part,
7 determined by multiplying the total interest, by a fraction, the numerator of which is
8 the value of the corporation's real and tangible personal property used directly in the
9 production of oil or gas from a lease or property in the state and the denominator of
10 which is the value of all real and tangible personal property of the consolidated
11 business; in this paragraph, "total interest paid by the consolidated business" does not
12 include interest expense arising from intercompany obligations within the consolidated
13 business except to the extent that the interest expense reflects a pass-through of interest
14 on a third-party borrowing by the parent or other member of the consolidated business
15 with the purpose, expressed at the time of the third-party borrowing, of financing
16 Alaska business activity of the taxpayer corporation;

17 (8) expenses incurred by the corporation after December 31, 2000, of
18 unsuccessful exploration of oil or gas in the state, including the acquisition costs of
19 abandoned properties, dry hole costs, and the costs of geologic and geophysical
20 exploration related to those abandoned properties;

21 (9) general overhead or administrative expense incurred by the
22 corporation attributable to deriving income from the production of oil or gas from a
23 lease or property in the state to the extent, except as provided in (f) of this section, that
24 it does not exceed that portion of the total general overhead or administrative expense
25 incurred by the consolidated business of which the corporation is a part, determined
26 by multiplying the total general overhead or administrative expense by a fraction, the
27 numerator of which is the value of the corporation's real and tangible personal property
28 used directly in the production of oil or gas from a lease or property in the state and
29 the denominator of which is the value of all real and tangible personal property of the
30 consolidated business;

31 (10) the amount of income from the production of oil and gas from a

1 lease or property that is divided among the regional Native corporations under 43
2 U.S.C. 1606(i) (sec. 7(i), Alaska Native Claims Settlement Act (P.L. 92-203)).

3 (d) Deductions from gross income under this section may not include expenses
4 previously deducted on a return filed under AS 43.20.

5 (e) Where a corporation subject to this chapter shares the production or
6 proceeds of the production from a lease or property through a working interest, royalty
7 interest, overriding royalty interest, production payment, net profit interest, joint
8 venture, or other agreement, the department shall allocate the deductions from gross
9 income between the corporation and the persons with whom it has such an agreement
10 in accordance with the terms of the agreement.

11 (f) If a corporation demonstrates to the satisfaction of the department that it
12 paid or incurred actual expenses for interest or for general overhead or administration
13 attributable to deriving income from the production of oil or gas from a lease or
14 property in the state in an amount greater than the amount determined under (c)(7) or
15 (9) of this section, the department may allow the corporation to deduct the greater
16 amount.

17 **Sec. 43.21.220. Determination of income from oil and gas pipeline**
18 **transportation.** (a) Except as provided in (c) of this section, taxable income
19 attributable to the transportation of oil in a pipeline engaged in interstate commerce
20 in this state shall be determined by the department and shall be the amount reported
21 or that would be required to be reported to the Federal Energy Regulatory Commission
22 or its successors as net operating income, less those portions of interest and general
23 administrative expense attributable to the pipeline transportation of oil in the state,
24 except that taxable income shall also include taxes on or measured by income. The
25 department shall establish regulations governing the determination of interest and
26 general administrative expense attributable to pipeline transportation of oil in the state.

27 (b) Except as provided in (c) of this section, taxable income attributable to the
28 transportation of natural gas in a pipeline engaged in interstate commerce in this state
29 shall be determined by the department and shall be the amount reported or that would
30 be required to be reported to the Federal Energy Regulatory Commission as net
31 operating income, less that portion of interest and general administrative expense

1 attributable to pipeline transportation in the state, except that the taxable income shall
 2 also include taxes on or measured by income. The department shall establish
 3 regulations governing the determination of interest and general administrative expense
 4 attributable to pipeline transportation of natural gas in the state.

5 (c) Taxable income attributable to the transportation of oil or natural gas in
 6 this state of a corporation not under the Federal Energy Regulatory Commission
 7 jurisdiction, or of a corporation under the jurisdiction of the Federal Energy Regulatory
 8 Commission but not reporting the operation of pipelines in the state separately from
 9 the operation of pipelines elsewhere, shall be determined by the department and shall
 10 be based on an amount equal to that which would have been reported to the Federal
 11 Energy Regulatory Commission under (a) of this section in the case of oil pipelines,
 12 or (b) of this section in the case of natural gas pipelines, had the corporation been, in
 13 fact, under Federal Energy Regulatory Commission jurisdiction for the taxable year
 14 and required to report on the operation of pipelines in the state separately from the
 15 operation of pipelines elsewhere.

16 **Sec. 43.21.230. Determination of income from activities other than oil and**
 17 **gas production or pipeline transportation.** (a) Taxable income of a corporation
 18 subject to this chapter from activities in this state other than the production of oil or
 19 gas from a lease or property in the state or the pipeline transportation of oil or gas in
 20 the state shall be determined in accordance with the method established in art. IV of
 21 AS 43.19.010 and in AS 43.20.071, as modified by (b) - (d) of this section.

22 (b) The total taxable income of the consolidated business is its entire income
 23 less the portion of that entire income attributable to worldwide production and pipeline
 24 transportation of oil and gas. In this subsection, for a member of a consolidated
 25 business who is

26 (1) required to file under the Internal Revenue Code, "entire income"
 27 means the taxpayer's federal taxable income as the term is used in AS 43.20.011 -
 28 43.20.065, except that those provisions adopted after December 31, 2000, that change
 29 or modify exemptions from tax under 26 U.S.C. (Internal Revenue Code) are not
 30 adopted by reference as a part of this section until the second January 1 following the
 31 effective date of the federal law;

1 (2) not required to file under the Internal Revenue Code, "entire
2 income" means book income, except that a taxpayer may elect to report his income as
3 the income would be determined under (1) of this subsection.

4 (c) The numerator and denominator of the property factor, of the payroll
5 factor, and of the sales factor shall be calculated without reference to that portion of
6 property, payroll, or sales directly related to the production of oil or gas from a lease
7 of property in the state or the pipeline transportation of oil or gas in the state.

8 (d) The value attributed to vessels transporting Alaska oil or gas of the
9 consolidated business that are not owned or effectively owned by the consolidated
10 business shall be excluded from the property factor.

11 **Sec. 43.21.240. Applicability of tax to a consolidated business.** The
12 provisions of this chapter apply to a consolidated business whether or not the taxpayer
13 is the parent or controlling corporation.

14 **Article 2. Calculation of Tax; Returns.**

15 **Sec. 43.21.300. Assessment of income and tax.** (a) The department shall
16 assess taxable income and the amount of tax payable on that taxable income.

17 (b) On or before August 15 of each year, the department shall send to every
18 corporation taxable under this chapter a notice of assessment showing the amount of
19 income taxable under this chapter for the previous year and the amount of tax payable
20 on that taxable income.

21 (c) For purposes of this chapter, the department may combine taxable income
22 of corporations subject to tax under this chapter who are part of the same consolidated
23 business.

24 (d) If the methods of allocation and apportionment provided in this chapter do
25 not fairly represent the extent of a corporation's business activity in the state, the
26 corporation may petition for or the department may require, in respect to all or any
27 part of the corporation's business activity, if reasonable, the employment of any method
28 authorized under art. IV, sec. 18, AS 43.19.010 (Multistate Tax Compact), to carry out
29 an equitable allocation and apportionment of the corporation's income. The
30 commissioner shall include in the annual report required in AS 43.21.420 a report on
31 all relief granted under this subsection, including for each case a statement of the

1 changes in tax liability resulting from the granting of relief, the tax years involved, and
 2 a description of the method of determining taxable income that was substituted for
 3 those provided in this chapter.

4 **Sec. 43.21.310. Income tax education credit.** (a) For cash contributions
 5 accepted for direct instruction, research, and educational support purposes, including
 6 library and museum acquisitions, and contributions to endowment, by an Alaska
 7 university foundation or by a nonprofit, public or private, Alaska two-year or four-year
 8 college accredited by a regional accreditation association, a taxpayer is allowed as a
 9 credit against the tax due under this chapter

10 (1) 50 percent of contributions of not more than \$100,000; and

11 (2) 100 percent of the next \$100,000 of contributions.

12 (b) Each public college and university shall include in its annual operating
 13 budget request contributions received and how the contributions were used.

14 (c) A contribution claimed as a credit under this section may not

15 (1) be claimed as a credit under another provision of this title;

16 (2) also be allowed as a deduction under 26 U.S.C. 170 against the tax
 17 imposed by this chapter; and

18 (3) when combined with credits taken during the taxpayer's tax year
 19 under AS 21.89.070, AS 43.20.014, AS 43.55.019, AS 43.56.018, AS 43.65.018,
 20 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

21 **Sec. 43.21.320. Returns.** On or before April 15 of each year, a corporation
 22 subject to tax under this chapter shall submit a return in a form prescribed by the
 23 department setting out information required by the department to determine taxable
 24 income. For purposes of this chapter, the department may require a corporation
 25 subject to tax under this chapter who is part of the same consolidated business to file
 26 a single return.

27 **Sec. 43.21.330. Payment of tax.** The tax levied under this chapter is payable
 28 to the department on or before September 30 of each year or in installments, including
 29 prepayments of estimated tax, at the times and under the conditions the department
 30 may by regulation require. This tax is payable on the due date set out in this section
 31 even though the assessment is under appeal or the validity, enforceability, or

1 application of this chapter or any provision of this chapter is challenged before the
2 department or in the courts.

3 **Article 3. Administrative Matters.**

4 **Sec. 43.21.400. Regulations.** The department may adopt regulations in
5 accordance with AS 44.62 (Administrative Procedure Act) as appropriate to administer
6 and enforce this chapter.

7 **Sec. 43.21.410. Penalties.** The penalties established in AS 43.20 apply to this
8 chapter.

9 **Sec. 43.21.420. Public reporting.** (a) The commissioner shall compile and
10 transmit to the legislature an annual consolidated report of state revenues and taxation
11 policies under this chapter. This report must include total aggregate income tax paid
12 by corporations covered under this chapter and aggregate income and deductions by
13 category, so classified as to prevent the identification of particular returns or reports.

14 (b) The legislative auditor shall transmit to the legislature an annual report
15 reviewing the actions of the department in administering this chapter.

16 **Sec. 43.21.499. Definitions.** Unless the context requires otherwise, the
17 definitions contained in AS 43.55.900 are applicable to this chapter. In addition, in
18 this chapter,

19 (1) "base of operations" means the closest point on land to the offshore
20 oil or gas production operations from which goods, services, and supplies flow to those
21 offshore oil or gas production operations;

22 (2) "consolidated business" means a corporation or group of
23 corporations having more than 50 percent common ownership, direct or indirect, or a
24 group of corporations in which there is common control, either direct or indirect, as
25 evidenced by an arrangement, contract, or agreement.

26 * **Sec. 10.** AS 43.55.019(d) is amended to read:

27 (d) A contribution claimed as a credit under this section may not

28 (1) be claimed as a credit under another provision of this title; and

29 (2) when combined with credits taken during the taxpayer's tax year
30 under AS 21.89.070, AS 43.20.014, AS 43.21.310, AS 43.56.018, AS 43.65.018,
31 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

1 * **Sec. 11.** AS 43.56.018(d) is amended to read:

2 (d) A contribution claimed as a credit under this section may not
 3 (1) be claimed as a credit under another provision of this title; and
 4 (2) when combined with credits taken during the taxpayer's tax year
 5 under AS 21.89.070, AS 43.20.014, **AS 43.21.310**, AS 43.55.019, AS 43.65.018,
 6 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

7 * **Sec. 12.** AS 43.82.210(a) is amended to read:

8 (a) If the commissioner approves an application and proposed project plan
 9 under AS 43.82.140, the commissioner may develop proposed terms for inclusion in
 10 a contract under AS 43.82.020 for periodic payment in lieu of one or more of the
 11 following taxes that otherwise would be imposed by the state or a municipality on the
 12 qualified sponsor or member of a qualified sponsor group as a consequence of
 13 participating in an approved qualified project:

14 (1) oil and gas production taxes and oil surcharges under AS 43.55;

15 (2) oil and gas exploration, production, and pipeline transportation
 16 property taxes under AS 43.56;

17 (3) [REPEALED.

18 (4)] Alaska net income tax under AS 43.20 **or corporate income tax**
 19 **under AS 43.21**;

20 **(4)** [(5)] municipal sales and use tax under AS 29.45.650 - 29.45.710;

21 **(5)** [(6)] municipal property tax under AS 29.45.010 - 29.45.250 or
 22 29.45.550 - 29.45.600;

23 **(6)** [(7)] municipal special assessments under AS 29.46;

24 **(7)** [(8)] a comparable tax or levy imposed by the state or a
 25 municipality after June 18, 1998;

26 **(8)** [(9)] other state or municipal taxes or categories of taxes identified
 27 by the commissioner.

28 * **Sec. 13.** AS 43.20.072 is repealed.

29 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section
 30 to read:

31 **APPLICABILITY.** The amendment to AS 43.20.011(e) made by sec. 5 of this Act and

1 AS 43.21.200 - 43.21.499, added by sec. 7 of this Act, apply to taxable income earned or
2 received after December 31, 2000.

3 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 TRANSITIONAL RULES. The Department of Revenue shall provide by regulation
6 transition for corporations subject to tax under AS 43.20 before December 31, 2000, to avoid
7 double taxation of the same income or double deduction of the same expense of those
8 corporations as a result of becoming subject to tax under AS 43.21.200 - 43.21.499.

9 * **Sec. 16.** This Act takes effect January 1, 2001.