

CS FOR HOUSE BILL NO. 236(W&M)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

Offered: 3/18/04

Referred: Finance

Sponsor(s): REPRESENTATIVE WILSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act imposing a limited tax on wages and on net earnings from self-employment;**
2 **relating to the administration and enforcement of that tax; and providing for an**
3 **effective date."**

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

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

7 SHORT TITLE. This Act may be known as the Alaska Education Tax Act.

8 * **Sec. 2.** AS 43.10.042(a) is amended to read:

9 (a) A lien imposed under AS 43.10.010 - 43.10.060 is not valid as against a
10 mortgagee or other lien holder, pledgee, purchaser, or judgment creditor until notice of
11 it is recorded in the records of the recording district where the property subject to the
12 lien is situated. However, regardless of the date the liens are recorded, a lien arising
13 out of a tax due under AS 43.45, AS 43.56, and AS 43.75 [AS 43.56 AND 43.75],
14 including the penalties and interest on the tax, is a lien prior, paramount, and superior

1 to all other liens, mortgages, hypothecations, conveyances, and assignments, upon all
 2 the real and personal property of the person liable for the tax, and upon all the real and
 3 personal property used with the permission of the owner to carry on the business that
 4 is subject to the tax.

5 * **Sec. 3.** AS 43 is amended by adding a new chapter to read:

6 **Chapter 45. Education Tax.**

7 **Sec. 43.45.011. Tax imposed.** (a) There is imposed a tax, not to exceed a
 8 combined total of \$100 a calendar year, on wages and net earnings from self-
 9 employment in excess of \$600.

10 (b) The rate of the tax is 10 percent.

11 (c) The tax imposed under this section does not apply to wages and net
 12 earnings exempt from the tax under federal law.

13 (d) The tax is imposed in a calendar year following a fiscal year during which
 14 the balance on June 30 of assets of the budget reserve fund established in art. IX, sec.
 15 17, Constitution of the State of Alaska, that were invested in the constitutional budget
 16 reserve fund accounts at the state's custodial bank, at current market value, as reported
 17 to the department, was less than \$1,000,000,000. Once imposed, the tax remains in
 18 effect until suspended under (e) of this section.

19 (e) The tax is suspended in a calendar year following a fiscal year during
 20 which the balance on June 30 of assets of the budget reserve fund established in art.
 21 IX, sec. 17, Constitution of the State of Alaska, that were invested in the constitutional
 22 budget reserve fund accounts at the state's custodial bank, at current market value, as
 23 reported to the department, was equal to or greater than \$2,500,000,000 and is not
 24 reimposed until the condition in (d) of this section is met.

25 (f) The commissioner shall certify the balance of assets invested in the
 26 constitutional budget reserve fund accounts at the state's custodial bank, at current
 27 market value, as reported to the department of the budget reserve fund on June 30
 28 within one calendar month following the end of each fiscal year.

29 **Sec. 43.45.021. Collection of tax by employer.** (a) An employer shall
 30 deduct and withhold 10 percent of an employee's wages subject to withholding under
 31 26 U.S.C. 3401 - 3406 on the first regular payroll of the calendar year and from

1 subsequent payrolls until the tax due under this chapter is fully withheld.

2 (b) An employer is liable for the tax required to be withheld from an employee
 3 unless the employer can demonstrate that the employer relied on proof provided by the
 4 employee that the total tax for the calendar year imposed under AS 43.45.011 had
 5 already been withheld under this section or paid under AS 43.45.031. A deduction of
 6 the tax may not be made from the wages of an individual who provides proof to the
 7 employer that the entire tax imposed under AS 43.45.011 on that individual for the
 8 calendar year has already been withheld or paid under AS 43.45.031.

9 (c) Tax withheld by an employer becomes due and shall be paid by an
 10 employer to the department in accordance with regulations adopted by the department.

11 (d) An employer shall maintain a record of the amount deducted from the
 12 wages of each employee and shall furnish an annual statement of the deductions to
 13 each employee and to the department in accordance with regulations adopted by the
 14 department.

15 (e) The Department of Revenue may, to the extent practicable, coordinate
 16 collection and reporting of the tax imposed in this chapter with the collection and
 17 reporting of employment security contributions by the Department of Labor and
 18 Workforce Development, including permitting the Department of Labor and
 19 Workforce Development to collect the tax payments and remit them to the Department
 20 of Revenue.

21 (f) The department may by regulation provide for an incentive to an employer
 22 or a self-employed individual for electronically filing returns and making payments or
 23 for other use of technology or filing methodologies to improve the efficiency of tax
 24 administration. Regulations adopted under this subsection must

25 (1) establish the duration, level, nature, and value of the incentive; the
 26 value of an incentive established under this subsection may not exceed \$300 for each
 27 return, application, filing, or payment; and

28 (2) require that the incentive be available only if the return,
 29 application, filing, or payment is filed timely with the department under this chapter.

30 **Sec. 43.45.026. Employer security.** (a) If the department determines that an
 31 employer has been delinquent in remitting the tax imposed under AS 43.45.011 in

1 accordance with regulations adopted by the department, the department may require
2 the employer to deposit and keep on deposit with the department a sum equal to the
3 tax required to be withheld by the employer during the 12 months immediately
4 preceding the determination of delinquency under this subsection by the department.
5 If the employer was not required to withhold tax during the full 12 months
6 immediately preceding the determination of delinquency, the department may require
7 a deposit equal to the employer's estimated liability for a 12-month period based on
8 the actual liability for the period during which the employer was required to withhold
9 tax.

10 (b) The department may accept a bond or other security equal in value to the
11 deposit required under (a) of this section in lieu of the deposit required under (a) of
12 this section.

13 (c) The provision of a deposit, bond, or other security under this section does
14 not relieve the employer from any other obligation under this title.

15 (d) The department may apply all or part of the deposit, bond, or other security
16 to payment of the tax imposed under AS 43.45.011, and to any interest and penalties
17 imposed under AS 43.45.021.

18 (e) The deposit, bond, or other security provided under this section is exempt
19 from process, attachment, garnishment, or execution unless otherwise provided by
20 law.

21 (f) The department shall return the deposit, bond, or other security to the
22 employer if the employer is timely in filing and remitting the tax under AS 43.45.021
23 for a period of 24 consecutive months.

24 (g) If an employer ceases to be subject to AS 43.45.021, the department shall,
25 after 12 months have elapsed and all liabilities of the employer to the department
26 under this chapter have been satisfied, refund to the employer any remaining deposit,
27 and cancel any bond or other security accepted by the department under this section.

28 **Sec. 43.45.031. Payment of tax by self-employed individual.** A self-
29 employed individual shall remit to the department 10 percent of the individual's net
30 earnings from self-employment in accordance with regulations adopted by the
31 department until the entire tax has been paid.

1 **Sec. 43.45.041. Refund of overpayments.** (a) If an individual pays to the
2 department, directly or through withholding, an amount exceeding the total tax
3 imposed under this chapter during a calendar year and the individual applies for a
4 refund in accordance with regulations adopted by the department, the department shall
5 refund the overpayment to the individual.

6 (b) Interest on an overpayment may not be allowed under AS 43.05.280 if the
7 department refunds the overpayment within 90 days after the date the individual
8 correctly files the refund claim.

9 (c) The Department of Revenue may adopt regulations to coordinate refunds
10 of overpayments under this section with refunds of employment security contributions
11 under AS 23.20.165.

12 (d) An individual may apply for a refund under this section only during the
13 calendar year immediately following the calendar year in which the excess was paid.

14 **Sec. 43.45.051. Report of payments to self-employed individuals.** A person
15 required to report a payment to a self-employed individual to the federal government
16 under 26 U.S.C. shall also report that payment to the department in accordance with
17 regulations adopted by the department.

18 **Sec. 43.45.061. Disposition of tax proceeds.** (a) The tax collected by the
19 department under AS 43.45.021 shall be deposited into the general fund and accounted
20 for separately.

21 (b) The legislature may appropriate the estimated amounts to be collected and
22 separately accounted for under (a) of this section for education.

23 (c) The deposit required and appropriation authorized by this section are not
24 intended to create a dedication in violation of art. IX, sec. 7, Constitution of the State
25 of Alaska.

26 **Sec. 43.45.099. Definitions.** In this chapter,

- 27 (1) "employee" has the meaning given in 26 U.S.C. 3401;
28 (2) "employer" has the meaning given in 26 U.S.C. 3401;
29 (3) "net earnings from self-employment" has the meaning given in 26
30 U.S.C. 1402;
31 (4) "wages" has the meaning given in 26 U.S.C. 3401.

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

3 REGULATIONS. Notwithstanding sec. 6 of this Act, the Department of Revenue
4 may proceed to adopt regulations to implement sec. 3 of this Act. The regulations take effect
5 under AS 44.62 (Administrative Procedure Act), but not before the effective date of sec. 2 of
6 this Act.

7 * **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

8 * **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect January 1, 2005.