

CS FOR HOUSE BILL NO. 236(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/29/04

Referred: Rules

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 **Sec. 43.45.021. Collection of tax by employer.** (a) An employer shall
 14 deduct and withhold 10 percent of an employee's wages subject to withholding under
 15 26 U.S.C. 3401 - 3406 on the first regular payroll of the calendar year and from
 16 subsequent payrolls until the tax due under this chapter is fully withheld.

17 (b) An employer is liable for the tax required to be withheld from an employee
 18 unless the employer can demonstrate that the employer relied on proof provided by the
 19 employee that the total tax for the calendar year imposed under AS 43.45.011 had
 20 already been withheld under this section or paid under AS 43.45.031. A deduction of
 21 the tax may not be made from the wages of an individual who provides proof to the
 22 employer that the entire tax imposed under AS 43.45.011 on that individual for the
 23 calendar year has already been withheld or paid under AS 43.45.031.

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

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

30 (e) The Department of Revenue may, if it will result in cost savings for the
 31 state in the administration of the tax, for employers in the administration of the tax, or

1 for both, to the extent practicable, coordinate collection and reporting of the tax
 2 imposed in this chapter with the collection and reporting of employment security
 3 contributions by the Department of Labor and Workforce Development, including
 4 permitting the Department of Labor and Workforce Development to collect the tax
 5 payments and remit them to the Department of Revenue.

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

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

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

15 **Sec. 43.45.026. Employer security.** (a) If the department determines that an
 16 employer has been delinquent in remitting the tax imposed under AS 43.45.011 in
 17 accordance with regulations adopted by the department, the department may require
 18 the employer to deposit and keep on deposit with the department a sum equal to the
 19 tax required to be withheld by the employer during the 12 months immediately
 20 preceding the determination of delinquency under this subsection by the department.
 21 If the employer was not required to withhold tax during the full 12 months
 22 immediately preceding the determination of delinquency, the department may require
 23 a deposit equal to the employer's estimated liability for a 12-month period based on
 24 the actual liability for the period during which the employer was required to withhold
 25 tax.

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

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

31 (d) The department may apply all or part of the deposit, bond, or other security

1 to payment of the tax imposed under AS 43.45.011, and to any interest and penalties
2 imposed under AS 43.45.021.

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

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

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

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

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

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

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

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

30 **Sec. 43.45.051. Report of payments to self-employed individuals.** A person
31 required to report a payment to a self-employed individual to the federal government

1 under 26 U.S.C. shall also report that payment to the department in accordance with
2 regulations adopted by the department.

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

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

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

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

12 (1) "employee" has the meaning given in 26 U.S.C. 3401;

13 (2) "employer" has the meaning given in 26 U.S.C. 3401;

14 (3) "net earnings from self-employment" has the meaning given in 26
15 U.S.C. 1402;

16 (4) "wages" has the meaning given in 26 U.S.C. 3401.

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

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

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

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