

HOUSE BILL NO. 444

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE WILSON

Introduced: 2/9/04

Referred: House Special Committee on Fisheries, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to direct marketing fisheries businesses, to the fisheries business tax,
2 and to liability for payment of taxes and assessments on the sale or transfer of fishery
3 resources; and providing for an effective date."

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

5 * **Section 1.** AS 43.75.015(c) is amended to read:

6 (c) A person engaging or attempting to engage in a fisheries business who first
7 actually and physically processes the fishery resource, or a person who purchases a
8 fishery resource that is **processed** [FROZEN] from a person excluded by
9 AS 43.75.017 from liability for the tax, is liable for and shall pay to the department the
10 entire tax imposed by this section. In determining this tax liability, the person may
11 deduct from the value of the fishery resources processed the value of fishery resources
12 that are canned or processed for other fisheries businesses. A person taking the
13 deduction authorized by this subsection shall report all information relating to the
14 deduction in accordance with regulations adopted by the department.

1 * **Sec. 2.** AS 43.75.015 is amended by adding new subsections to read:

2 (d) Instead of the taxes levied under (a) or (b) of this section, a person who
3 processes a fishery resource under a direct marketing fisheries business license is
4 liable for and shall pay a tax equal to

5 (1) one percent of the value of the developing commercial fish species
6 processed during the year; and

7 (2) three percent of the value of a commercial fish species not subject
8 to (1) of this subsection.

9 (e) For purposes of determining the value of a fishery resource on which a tax
10 is levied under this section, the department may establish a presumption of market
11 value for a fishery resource in a region or market area based on a volume weighted
12 average of market values for the fishery resource reported on returns filed under this
13 chapter by fisheries businesses operating in the region or market area. A taxpayer who
14 appeals an assessment of taxes based on a presumption of market value determined by
15 the department under this subsection may rebut the presumption with substantial
16 evidence of

17 (1) the prevailing price paid to fishermen for the fishery resource of the
18 same kind and quality by fisheries businesses in the same region or market area where
19 the fishery resource was taken, if the taxpayer holds a direct marketing fisheries
20 business license under AS 43.75.020(c) and the fishery resource on which the tax is
21 levied is processed under that license; or

22 (2) the true market value of the fishery resources if the taking of the
23 fishery resource is done in a company-owned or company subsidized boat operated by
24 employees of a fisheries business, a subsidiary of the fisheries business, or a parent
25 company of the fisheries business.

26 * **Sec. 3.** AS 43.75.017 is amended to read:

27 **Sec. 43.75.017. Exclusion from fisheries business tax.** A person is not liable
28 for the fisheries business tax under AS 43.75.015 when the fishery resource is
29 processed [FROZEN] aboard a fishing vessel if

30 (1) the vessel is operated as a commercial fishing vessel under a valid
31 commercial fishing license;

1 (2) the fishery resource is not processed beyond heading, gutting or
2 cleaning, freezing, and glazing;

3 (3) the fishery resource was caught by the vessel; and

4 (4) the fishery resource is sold [BY THE PERSON CLAIMING AN
5 EXCLUSION FROM THE TAX] to a fisheries business licensed under this chapter.

6 * **Sec. 4.** AS 43.75.020 is amended by adding a new subsection to read:

7 (c) Instead of a license issued under (a) of this section, the department may
8 issue a direct marketing fisheries business license to a licensed commercial fisherman
9 who processes fishery resources caught using a vessel that does not exceed 65 feet in
10 overall length and is owned or leased by the commercial fisherman. The licensee may
11 place into commerce in the state and outside of the state processed or unprocessed
12 fishery resources caught using the vessel described in the license. Fishery resources
13 that are caught using the vessel and owned by the licensee from the time of harvest
14 through sale, as defined by the department by regulation, may be processed by the
15 licensee on the vessel, at a shore-based facility, or by means of custom processing
16 services obtained by the licensee. An application for a direct marketing fisheries
17 business license shall be filed with the department and accompanied by an annual fee
18 of \$25. A separate direct marketing fisheries business license and annual license fee
19 are required for each vessel on which processing is performed. The application must
20 state the name and address of the applicant, the fishery resources for which the
21 applicant holds a commercial fishing entry permit or interim-use permit or quota
22 share, a description of the vessel and each shore-based facility where the applicant will
23 process fishery resources, and other information that the department prescribes by
24 regulation. The application must state that the applicant agrees to pay the tax imposed
25 by AS 43.75.015(d) or 43.75.100, and that the applicant will make a return and pay the
26 tax at the time provided by law. A person who holds a direct marketing fisheries
27 business license may not under that license (1) purchase fishery resources for resale or
28 processing for sale; or (2) process fishery resources for another licensed commercial
29 fisherman or for a fisheries business licensed under this chapter. In this subsection,
30 "licensed commercial fisherman" means a natural person who holds a commercial
31 fishing entry permit or interim-use permit issued under AS 16.43 or a quota share

1 issued under federal law.

2 * **Sec. 5.** AS 43.75.290(7) is amended to read:

3 (7) "value" means

4 (A) **the market value of the fishery resource as determined**
 5 **by the prevailing price paid to fishermen for the fishery resource of the**
 6 **same kind and quality by fisheries businesses in the same region or**
 7 **market area where the fishery resource was taken if**

8 **(i) the taking of the fishery resource is done in a boat**
 9 **owned or leased by a person who holds a direct marketing fisheries**
 10 **business license under AS 43.75.020(c); and**

11 **(ii) the fishery resource was sold to a buyer other**
 12 **than a fishery business licensed under AS 43.75.020(a);**

13 **(B) for fisheries resources other than those described in (A)**
 14 **of this paragraph,** the market value of the **fishery** [FISHERIES] resource if
 15 the taking of the **fishery** [FISHERIES] resource is done in company-owned or
 16 company-subsidized boats operated by employees of the company or in boats
 17 that are operated under lease to or from the company or other arrangement with
 18 the company and if the **fishery** [FISHERIES] resource is delivered to the
 19 company; in this subparagraph, "company" means a fisheries business, a
 20 subsidiary of a fisheries business, or a subsidiary of a parent company of a
 21 fisheries business; **"company" does not include a direct marketing fisheries**
 22 **business licensed under AS 43.75.020(c);** or

23 **(C)** [(B)] for **fishery** [FISHERIES] resources other than those
 24 described in (A) **or (B)** of this paragraph, the actual price paid for the **fishery**
 25 [FISHERIES] resource by the fisheries business to the fisherman, including
 26 indirect consideration and bonus amounts paid for fuel, supplies, gear, ice,
 27 handling, tender fees, or delivery, whether paid at the time of purchase of the
 28 **fishery** [FISHERIES] resource or tendered as a deferred or delayed payment;
 29 in this subparagraph, "delivery" means

30 (i) transportation of the **fishery** [FISHERIES] resource
 31 from the boat or vessel on which the product was taken to a tender; or

1 (ii) if delivery was not to a tender, transportation of the
 2 **fishery** [FISHERIES] resource from the boat or vessel on which the
 3 product was taken to a shore-based facility in which delivery of the
 4 **fishery** [FISHERIES] resource is normally accepted.

5 * **Sec. 6.** AS 43.76.025(a) is amended to read:

6 (a) **Except as otherwise provided under (d) of this section, a** [A] buyer who
 7 acquires **fishery** [FISHERIES] resources that are subject to a salmon enhancement tax
 8 imposed by AS 43.76.010, 43.76.011, or 43.76.012 shall collect the salmon
 9 enhancement tax at the time of purchase, and shall remit the total salmon enhancement
 10 tax collected during each month to the **Department of Revenue** [DEPARTMENT] by
 11 the last day of the next month.

12 * **Sec. 7.** AS 43.76.025 is amended by adding a new subsection to read:

13 (d) A direct marketing fisheries business licensed under AS 43.75.020(c) or a
 14 commercial fisherman who transfers possession of salmon to a buyer who is not a
 15 fisheries business licensed under AS 43.75 is liable for the payment of a salmon
 16 enhancement tax imposed by AS 43.76.010, 43.76.011, or 43.76.012 if, at the time
 17 possession of the salmon is transferred to a buyer, the salmon enhancement tax
 18 payable on the salmon has not been collected. If a direct marketing fisheries business
 19 or commercial fisherman is liable for payment of the salmon enhancement tax under
 20 this subsection, the direct marketing fisheries business or commercial fisherman shall
 21 comply with the requirements of (b) of this section to maintain records and to report
 22 the liability for payment of the tax. Notwithstanding (a) of this section, a person
 23 subject to this subsection shall remit the total salmon enhancement tax payable during
 24 the calendar year to the Department of Revenue before April 1 after close of the
 25 calendar year.

26 * **Sec. 8.** AS 43.76.120(a) is amended to read:

27 (a) **Except as otherwise provided under (e) of this section, a** [A] buyer who
 28 acquires salmon that is subject to a salmon marketing tax imposed by AS 43.76.110
 29 shall collect the salmon marketing tax at the time of purchase and shall remit the total
 30 salmon marketing tax collected during each month to the Department of Revenue by
 31 the last day of the next month.

1 * **Sec. 9.** AS 43.76.120 is amended by adding a new subsection to read:

2 (e) A direct marketing fisheries business licensed under AS 43.75.020(c) or a
3 commercial fisherman who transfers possession of salmon to a buyer who is not a
4 fisheries business licensed under AS 43.75 is liable for the payment of a salmon
5 marketing tax imposed by AS 43.76.110 if, at the time possession of the salmon is
6 transferred to a buyer, the salmon marketing tax payable on the salmon has not been
7 collected. If a direct marketing fisheries business or commercial fisherman is liable
8 for payment of the salmon marketing tax under this subsection, the direct marketing
9 fisheries business or commercial fisherman shall comply with the requirements under
10 (b) of this section to maintain records and to make reports to the Department of
11 Revenue. Notwithstanding (a) of this section, a person subject to this subsection shall
12 remit the total salmon marketing tax payable during the calendar year to the
13 Department of Revenue before April 1 after close of the calendar year.

14 * **Sec. 10.** AS 43.76.190(a) is amended to read:

15 (a) **Except as otherwise provided under (e) of this section, a** [A] buyer who
16 acquires a fishery resource that is subject to a dive fishery management assessment
17 levied under AS 43.76.150(b), (c), (d), or (e) shall collect the dive fishery management
18 assessment at the time of purchase and shall remit the total dive fishery management
19 assessment collected during each calendar quarter to the Department of Revenue by
20 the last day of the month following the end of the calendar quarter. In this subsection,
21 "calendar quarter" means each of the three-month periods ending March 31, June 30,
22 September 30, and December 31.

23 * **Sec. 11.** AS 43.76.190 is amended by adding a new subsection to read:

24 (e) A direct marketing fisheries business licensed under AS 43.75.020(c) or a
25 commercial fisherman who transfers possession of a fishery resource to a buyer who is
26 not a fisheries business licensed under AS 43.75 is liable for payment of a dive fishery
27 management assessment levied under AS 43.76.150(b), (c), (d), or (e) if, at the time
28 possession of the fishery resource is transferred to a buyer, the dive fishery
29 management assessment payable on the fishery resource has not been collected. If a
30 direct marketing fisheries business or commercial fisherman is liable for payment of a
31 dive fishery management assessment under this subsection, the direct marketing

1 fisheries business or commercial fisherman shall comply with the requirement to
 2 maintain records under (b) of this section. Notwithstanding (a) of this section, a
 3 person subject to this subsection shall remit the total dive fishery management
 4 assessment payable during the calendar year to the Department of Revenue before
 5 April 1 after close of the calendar year.

6 * **Sec. 12.** AS 43.76.260(a) is amended to read:

7 (a) **Except as otherwise provided under (f) of this section, a** [A] buyer who
 8 acquires salmon that is subject to a salmon fishery assessment levied under
 9 AS 43.76.220 shall collect the salmon fishery assessment at the time of purchase and
 10 shall remit the total salmon fishery assessment collected during each month to the
 11 **Department of Revenue** [DEPARTMENT] by the last day of the next month.

12 * **Sec. 13.** AS 43.76.260 is amended by adding a new subsection to read:

13 (f) A direct marketing fisheries business licensed under AS 43.75.020(c) or a
 14 commercial fisherman who transfers possession of salmon to a buyer who is not a
 15 fisheries business licensed under AS 43.75 is liable for the payment of a salmon
 16 fishery assessment levied under AS 43.76.220 if, at the time possession of the fishery
 17 resource is transferred to a buyer, the salmon fishery assessment payable on the
 18 salmon has not been collected. If a direct marketing fisheries business or commercial
 19 fisherman is liable for payment of the salmon fishery assessment under this
 20 subsection, the direct marketing fisheries business or commercial fisherman shall
 21 comply with the requirement under (b) of this section to maintain records.
 22 Notwithstanding (a) of this section, a person subject to this subsection shall remit the
 23 total salmon fishery assessment payable during the calendar year to the Department of
 24 Revenue before April 1 after close of the calendar year.

25 * **Sec. 14.** AS 43.76.310(a) is amended to read:

26 (a) **Except as otherwise provided under (f) of this section, a** [A] buyer who
 27 acquires fish that are subject to a permit buy-back assessment imposed by
 28 AS 43.76.300 shall collect the permit buy-back assessment at the time of purchase and
 29 shall remit the total permit buy-back assessment collected during each month to the
 30 **Department of Revenue** [DEPARTMENT] by the last day of the next month.

31 * **Sec. 15.** AS 43.76.310 is amended by adding a new subsection to read:

1 (f) A direct marketing fisheries business licensed under AS 43.75.020(c) or a
2 commercial fisherman who transfers possession of fish to a buyer who is not a
3 fisheries business licensed under AS 43.75 is liable for the payment of a permit buy-
4 back assessment imposed by AS 43.76.300 if, at the time possession of the fish is
5 transferred to a buyer, the permit buy-back assessment payable on the fish has not
6 been collected. If a direct marketing fisheries business or commercial fisherman is
7 liable for payment of a permit buy-back assessment under this subsection, the direct
8 marketing fisheries business or commercial fisherman shall comply with the
9 requirements under (b) of this section to maintain records and report the value of fish
10 acquired during the preceding year. Notwithstanding (a) of this section, a person
11 subject to this subsection shall remit the total permit buy-back assessment payable
12 during the calendar year to the Department of Revenue before April 1 after close of
13 the calendar year.

14 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 **ADOPTION OF REGULATIONS.** The Department of Revenue shall adopt
17 regulations it considers necessary for the administration of this Act, but the regulations may
18 not take effect until January 1, 2005.

19 * **Sec. 17.** Section 16 of this Act takes effect immediately under AS 01.10.070(c).

20 * **Sec. 18.** Except as provided under sec. 17 of this Act, this Act takes effect January 1,
21 2005.