

HOUSE BILL NO. 280

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Introduced: 4/19/05

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the taxation of mining property; relating to contracts approved by**
2 **municipalities for payments in lieu of taxes; and providing for an effective date."**

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

4 * **Section 1.** AS 43.05.405, as amended by sec. 66, ch. 163, SLA 2004, is amended to read:

5 **Sec. 43.05.405. Jurisdiction.** The office has original jurisdiction to hear
6 formal appeals from informal conference decisions of the Department of Revenue
7 under AS 43.05.240. Appeal to the office may be taken only from an informal
8 conference decision under AS 43.05.240. AS 44.64.060 does not apply to an
9 administrative hearing under the jurisdiction of the office under this section.
10 Jurisdiction of the office under this section is limited to, and AS 43.05.405 - 43.05.499
11 and AS 44.64.070 apply to and govern, an administrative appeal regarding

- 12 (1) electric and telephone cooperative taxes under AS 10.25;
13 (2) a seafood marketing assessment under AS 16.51;
14 (3) all taxes levied under AS 43, except the property **taxes** [TAX]

1 assessed under AS 43.56 and AS 43.67; and

2 (4) any other taxes administered by the Department of Revenue.

3 * **Sec. 2.** AS 43.10.042 is amended to read:

4 (a) A lien imposed under AS 43.10.010 - 43.10.060 is not valid as against a
5 mortgagee or other lien holder, pledgee, purchaser, or judgment creditor until notice of
6 it is recorded in the records of the recording district where the property subject to the
7 lien is situated. However, regardless of the date the liens are recorded, a lien arising
8 out of a tax due under AS 43.56, AS 43.67, and AS 43.75 [43.75], including the
9 penalties and interest on the tax, is a lien prior, paramount, and superior to all other
10 liens, mortgages, hypothecations, conveyances, and assignments, upon all the real and
11 personal property of the person liable for the tax, and upon all the real and personal
12 property used with the permission of the owner to carry on the business that is subject
13 to the tax.

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

15 **Chapter 67. Mining Property Tax.**

16 **Sec. 43.67.010. Levy of tax.** An annual tax is levied each tax year beginning
17 January 1, 2006, on the full and true value of real and tangible personal property used
18 or committed by contract or other agreement for use within this state primarily in the
19 production or transportation of minerals, or in the operation or maintenance of
20 facilities used in the production or transportation of minerals, located on land in the
21 unorganized borough as of January 1, 2005. The tax rate is the mill rate specified in
22 AS 14.17.410(b)(2), except the tax rate in a municipality incorporated after January 1,
23 2005, is the mill rate required to meet the local contribution required of that
24 municipality under AS 14.17.410(b)(2) plus two mills.

25 **Sec. 43.67.020. In place of municipal taxes.** (a) Except as provided in (b) of
26 this section, the taxes levied or authorized under AS 43.67.010 are in place of all other
27 taxes that would otherwise be imposed by a municipality on the property for a period
28 of 15 years after the production commencement date, including

29 (1) taxes on the retail sale or use of the taxable property;

30 (2) taxes on the sale or use of minerals;

31 (3) taxes on the sale or use of services used in or associated with the

1 taxable property or in its maintenance or operation;

2 (4) taxes on or measured by gross or net income from the taxable
3 property, including income from the exploration for, production of, or transportation
4 of minerals or taxable property; and

5 (5) any license, excise, fee, charge, severance, throughput, or other tax
6 on or pertaining to the taxable property or services used in or associated with the
7 taxable property or in its maintenance or operation.

8 (b) A municipality may levy a tax on the first \$1,000 of the retail sale or use of
9 the taxable property and the first \$1,000 of the sale or use of services used in or
10 associated with the taxable property or in its maintenance or operation.

11 **Sec. 43.67.030. Assessment.** (a) The department shall assess property for the
12 tax levied under AS 43.67.010 at its full and true value as of January 1 of the
13 assessment year except that the first assessment date shall be the production
14 commencement date. If the production commencement date is used as the assessment
15 date, the tax payable shall be prorated on the basis of the assessment year remaining.

16 (b) The full and true value of taxable property is

17 (1) on the production commencement date, the actual capital cost
18 incurred or accrued with respect to the property as of the date of assessment;

19 (2) determined on each January 1 after the commencement date on the
20 basis of replacement cost less depreciation; "depreciation," for purposes of this
21 paragraph, shall be based on the economic life of proven reserves with due
22 consideration given to the elapsed life of the facilities.

23 (c) The department may enter into agreements with a municipality for the
24 cooperative or joint administration of the assessing authority.

25 (d) For purposes of this section, "actual capital cost" and "replacement cost"
26 do not include interest capitalized before or during the period of construction or the
27 value of intangible expenses.

28 **Sec. 43.67.040. Returns.** (a) The department by notice may require every
29 person having ownership or control of an interest in taxable property to submit a
30 return within 30 days after the production commencement date and by January 31 of
31 each year following the production commencement date in the form prescribed by the

1 department, based on property values existing on January 1 of each year, except as
2 otherwise provided in this chapter.

3 (b) The department by written notice may require a person to provide
4 additional information within 30 days after the notice.

5 **Sec. 43.67.050. Investigation.** (a) The department may make an
6 investigation of property on which a return has been filed or of taxable property upon
7 which no return has been filed. In either case, the department may make its own
8 valuation of the taxable property, which is prima facie evidence of full and true value.

9 (b) An employee or agent of the department may enter premises necessary for
10 the investigation during reasonable hours and may, subject to reasonable safety
11 regulations generally imposed, examine property and appropriate records. The owner
12 of the taxable property shall, upon request, furnish to the employee or agent of the
13 department reasonable assistance required for the investigation. If the department is
14 refused entry, the department may seek a court order to compel entry.

15 (c) For the purpose of the investigation, the owner of the taxable property or a
16 representative of the owner may be required to appear for examination under oath by
17 the department.

18 **Sec. 43.67.060. Assessment roll.** The department shall prepare annually the
19 assessment roll for taxation under this chapter. The roll must contain

20 (1) a description of all taxable property;

21 (2) the assessed value of all taxable property;

22 (3) the names and addresses of persons owning property subject to
23 assessment and taxation.

24 **Sec. 43.67.070. Assessment notice.** (a) On or before March 1 of each year,
25 the department shall send to every owner of taxable property named in the assessment
26 roll a notice of assessment, showing the assessed value of the property. Notice of
27 assessment is effective on the date of mailing.

28 (b) The department shall send to a municipality a copy of the notice of
29 assessment on taxable property that is assessed under the provisions of this chapter
30 and that is located in the municipality.

31 **Sec. 43.67.080. Objection to the department.** (a) An owner of taxable

1 property or a municipality receiving an assessment notice may object to the
 2 assessment by advising the department in writing of the objection to the assessment
 3 within 20 days after the effective date of the notice.

4 (b) The department shall provide by regulation for notices of objections to the
 5 owners of taxable property and municipalities.

6 (c) Following an objection, the department may adjust the assessment and the
 7 assessment roll. An adjustment based on an objection from an owner of taxable
 8 property or a municipality shall be made within 30 days after the effective date of the
 9 notice of assessment.

10 **Sec. 43.67.090. Appeal to the State Assessment Review Board.** The owner
 11 of taxable property or a municipality may appeal an assessment to the State
 12 Assessment Review Board established under AS 43.56.040. The appeal must be filed
 13 in writing within 30 days after an assessment or the adjustment, if any, made under
 14 AS 43.67.080.

15 **Sec. 43.67.100. Certification.** Not later than June 1 of each year, the
 16 department shall certify the final assessment roll and mail to the owner of the taxable
 17 property or an authorized agent a statement of the amount of tax due.

18 **Sec. 43.67.110. Supplementary assessment rolls.** The department shall
 19 include taxable property omitted from the assessment roll on a supplementary roll
 20 using the procedures set out in this chapter for the original roll.

21 **Sec. 43.67.120. Collection and deposit.** (a) The tax levied by AS 43.67.010
 22 is payable to the department on or before June 30 of the taxable year.

23 (b) The department shall provide for voluntary prepayment and for payment
 24 by installments.

25 (c) The tax levied under AS 43.67.010 and interest and penalties collected
 26 with respect to this levy shall be deposited in a special mining tax property tax account
 27 in the general fund. The legislature may appropriate the balance of the account into
 28 the public education fund (AS 14.17.300).

29 (d) If jurisdiction over the taxable property is obtained by a newly
 30 incorporated municipality, the tax is payable to the municipality.

31 **Sec. 43.67.130. Penalty for delinquent taxes.** When the tax levied by

1 AS 43.67.010 becomes delinquent, a penalty of 10 percent shall be added.

2 **Sec. 43.67.140. Remedy.** The remedy of distraint of property set out in
3 AS 43.20.270 applies to the tax levied by AS 43.67.010. However, only property
4 subject to the tax may be distrained.

5 **Sec. 43.67.150. Regulations.** The board and the department may adopt
6 regulations under AS 44.62 (Administrative Procedure Act) as appropriate to carry out
7 their respective duties under this chapter.

8 **Sec. 43.67.160. Exemptions from municipal tax and mining property tax.**

9 (a) The following are exempt from taxation by municipalities incorporated on or after
10 January 1, 2005:

11 (1) property rights attached to or inherent in the right to explore for or
12 produce minerals;

13 (2) mineral leases or properties, whether producing or not;

14 (3) minerals in place;

15 (4) minerals produced or extracted in the state;

16 (5) the value of intangible exploration expenses;

17 (6) tangible property used for the exploration and development of
18 minerals;

19 (7) roads, storage facilities, terminals, docks and other port facilities,
20 and airstrips, publicly owned or privately owned and open to public use.

21 (b) The following are exempt from the tax levied in AS 43.67.010:

22 (1) roads, storage facilities, terminals, docks and other port facilities,
23 and air strips, publicly owned or privately owned and open to public use;

24 (2) property that is used in production or transportation of minerals and
25 that is located in a municipality 15 or more years after the production commencement
26 date.

27 (c) Property used in the production or transportation of minerals where the
28 actual capital cost incurred or accrued with respect to the mine and related facilities is
29 less than \$10,000,000 is exempt from taxation under AS 43.67.010. However, a
30 person having ownership or control of an interest in property that would be taxable
31 under AS 43.67.010 except for this subsection may elect to have the property treated

1 as taxable property by filing an election on a form determined by the department. An
 2 election under this subsection must be filed on or before the production
 3 commencement date if the production commencement date is after January 1, 2006, or
 4 with the first tax return on or before July 1, 2006, for property producing minerals on
 5 or before January 1, 2006.

6 **Sec. 43.67.170. Definitions.** In this chapter,

7 (1) "board" means the State Assessment Review Board under
 8 AS 43.56.040;

9 (2) "minerals" means valuable metals, ores, and coal;

10 (3) "production commencement date" means the date on which the
 11 initial shipment of products from mining operations is made;

12 (4) "real and tangible personal property" and "property" include

13 (A) buildings, machinery, appliances, supplies, equipment,
 14 transmission lines, power plants, and pipelines; and

15 (B) roads, storage facilities, terminals, docks and other port
 16 facilities, and air strips;

17 (5) "taxable property" means property taxable under AS 43.67.010,
 18 including property that is taxable because of an election under AS 43.67.160(c).

19 * **Sec. 4.** AS 29.45.810 is amended by adding a new subsection to read:

20 (c) A party to a contract for payments in lieu of taxes with a municipality, and
 21 the property, products, and activities associated with the project that are subject to the
 22 contract, are exempt, as specified in the contract, from all taxes identified in the
 23 contract that would be levied and collected by a municipality under state law as a
 24 consequence of the participation by the party in the project.

25 * **Sec. 5.** AS 29.46.010 is amended by adding a new subsection to read:

26 (c) Notwithstanding (a) of this section, a party to a contract for payments in
 27 lieu of taxes with a municipality is exempt as specified in the contract from
 28 assessment under this chapter against real property associated with the approved
 29 qualified project that is subject to the contract.

30 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

1 TRANSITION: REGULATIONS. The Department of Revenue may proceed to adopt
2 regulations to implement AS 43.67.010 - 43.67.170, added by sec. 3 of this Act. The
3 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
4 effective date of sec. 3 of this Act.

5 * **Sec. 7.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).

6 * **Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect January 1, 2006.