

HOUSE BILL NO. 418

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

BY REPRESENTATIVE SEATON

Introduced: 2/1/06

Referred: House Special Committee on Ways and Means, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a mining production tax; relating to the mining license tax; relating**
2 **to production royalties on minerals; relating to exploration incentive credits; and**
3 **providing for an 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 LEGISLATIVE INTENT. It is the intent of the legislature to recapture a portion of the
8 wealth lost to the state when nonrenewable resources are removed by imposing a production
9 tax on mineral extraction.

10 * **Sec. 2.** AS 21.89.070(c) is amended to read:

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

12 (1) be claimed as a credit under more than one provision of this title;

13 and

14 (2) when combined with credits taken during the taxpayer's tax year

1 under AS 21.89.075, AS 43.20.014, AS 43.55.019, AS 43.56.018, [AS 43.65.018,]
 2 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

3 * **Sec. 3.** AS 21.89.075(c) is amended to read:

4 (c) A contribution claimed by a taxpayer as a credit under this section may not

5 (1) be claimed as a credit under more than one provision of this title;

6 (2) when combined with credits taken during the taxpayer's tax year
 7 under AS 21.89.070, AS 43.20.014, AS 43.55.019, AS 43.56.018, [AS 43.65.018,]
 8 AS 43.75.018, or AS 43.77.045, exceed \$150,000; or

9 (3) be claimed as a credit unless the contribution qualifies for the credit
 10 under (d) of this section.

11 * **Sec. 4.** AS 27.30.030(a) is amended to read:

12 (a) In a tax year or royalty payment period, subject to (c) of this section and
 13 the respective limitations of this subsection, the person may apply the credit, the
 14 taking of which was approved under AS 27.30.020(2), against

15 (1) [TAXES PAYABLE BY THE PERSON

16 (A) UNDER AS 43.65; APPLICATION OF THE CREDIT
 17 UNDER THIS SUBPARAGRAPH MAY NOT EXCEED THE LESSER OF

18 (i) 50 PERCENT OF THE PERSON'S TAX
 19 LIABILITY UNDER AS 43.65 FOR THE TAX YEAR THAT IS
 20 RELATED TO PRODUCTION FROM THE MINING OPERATION
 21 AT WHICH THE EXPLORATION ACTIVITIES OCCURRED, AS
 22 SHOWN UNDER (b) OF THIS SECTION; OR

23 (ii) 50 PERCENT OF THE PERSON'S TOTAL TAX
 24 LIABILITY UNDER AS 43.65 FOR THE TAX YEAR;

25 (B) UNDER AS 43.20; APPLICATION OF THE CREDIT
 26 UNDER THIS SUBPARAGRAPH MAY NOT EXCEED THE LESSER OF

27 (i) AN AMOUNT EQUAL TO THE AMOUNT
 28 DETERMINED UNDER (A)(i) OF THIS PARAGRAPH; OR

29 (ii) 50 percent of the person's total tax liability under
 30 AS 43.20 for the tax year; and

31 (2) mineral production royalty payments payable by the person under

1 AS 38.05.135 - 38.05.175 and 38.05.212 for production from the mining operation at
 2 which the exploration activities occurred; application of the credit under this
 3 paragraph may not exceed 50 percent of the person's mineral production royalty
 4 payment liability from the mining operation at which the exploration activities
 5 occurred.

6 * **Sec. 5.** AS 38.05.212(b) is amended to read:

7 (b) The production royalty

8 (1) is three percent of **gross value at the point of production** [NET
 9 INCOME] as determined under **AS 43.66.030** [AS 43.65]; and

10 (2) is subject to the exploration incentive credit authorized by
 11 AS 27.30.

12 * **Sec. 6.** AS 43.05.230(g) is amended to read:

13 (g) The information contained in a license issued by the commissioner of
 14 revenue or the commissioner of commerce, community, and economic development
 15 under AS 43.50, AS 43.60, **former** AS 43.65, AS 43.70, and AS 43.75 is public
 16 information.

17 * **Sec. 7.** AS 43.05.230(h) is amended to read:

18 (h) The commissioner shall, upon request, furnish to the Department of
 19 Natural Resources copies of tax returns, reports, documents filed under **former**
 20 AS 43.65 **and AS 43.66**, and the Department of Revenue's determinations and
 21 workpapers. The Department of Natural Resources shall maintain the confidentiality
 22 that the Department of Revenue is required to extend to the returns, reports,
 23 documents, determinations, and workpapers furnished to the Department of Natural
 24 Resources under this subsection.

25 * **Sec. 8.** AS 43.20.014(d) is amended to read:

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

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

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

30 (3) when combined with credits taken during the taxpayer's tax year
 31 under AS 21.89.070, 21.89.075, AS 43.55.019, AS 43.56.018, [AS 43.65.018,]

1 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

2 * **Sec. 9.** AS 43.20.042(h) is amended to read:

3 (h) In this section, "eligible taxes" means the total tax liability of a taxpayer
4 for the annual taxes due under the provisions of this chapter [AND AS 43.65].

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

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

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

8 (2) when combined with credits taken during the taxpayer's tax year
9 under AS 21.89.070, 21.89.075, AS 43.20.014, AS 43.56.018, [AS 43.65.018,]
10 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

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

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

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

14 (2) when combined with credits taken during the taxpayer's tax year
15 under AS 21.89.070, 21.89.075, AS 43.20.014, AS 43.55.019, [AS 43.65.018,]
16 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

17 * **Sec. 12.** AS 43 is amended by adding a new chapter to read:

18 **Chapter 43.66. Mining Production Tax.**

19 **Sec. 43.66.010. Mining production tax.** (a) Except as provided in (d) of this
20 section, there is levied on a person engaged in mining after December 31, 2006, a tax
21 equal to a percentage of the gross value at the point of production of resources
22 determined under (b) of this section.

23 (b) The percentage of the gross value at the point of production of resources
24 produced by mining during the following periods is as follows:

25 (1) after December 31, 2006, but before January 1, 2008, 0.6 percent;

26 (2) after December 31, 2007, but before January 1, 2009, 1.2 percent;

27 (3) after December 31, 2008, but before January 1, 2010, 1.8 percent;

28 (4) after December 31, 2009, but before January 1, 2011, 2.4 percent;

29 (5) after December 31, 2010, three percent.

30 (c) The tax imposed under this section is applicable to the total taxable
31 resources produced by mining by a person engaged in mining in the state during the

1 period for which the tax is imposed.

2 (d) The tax under (a) of this section does not apply to

3 (1) resources the ownership or right to which is exempt from taxation;
4 and

5 (2) the first \$50,000 of the gross value at the point of production of
6 resources produced by a person not part of an affiliated group or by an affiliated group
7 filing a combined statement under AS 43.66.070 in each calendar year.

8 **Sec. 43.66.020. Deferment for new mining production.** (a) The tax on
9 production from a lease or property from which a resource has not been previously
10 produced is deferred for the first three years following the date production begins. The
11 deferment under this subsection does not apply to the production of sand and gravel,
12 coal, or rock.

13 (b) The commissioner of natural resources shall

14 (1) adopt regulations defining the date production begins for the
15 purposes of this section; and

16 (2) report to the commissioner of revenue the date production began
17 for each lease or property to which this section applies.

18 (c) The tax deferred under (a) of this section shall be paid in equal annual
19 payments during the 10-year period following the end of the three-year deferment
20 period, without interest.

21 **Sec. 43.66.030. Gross value at the point of production.** (a) The gross value
22 at the point of production

23 (1) is the value of a resource immediately after its removal from the
24 mine;

25 (2) does not include

26 (A) value added subsequent to mining by treatment processes,
27 such as crushing, grinding, or concentration, by transportation from the mine,
28 or by marketing of the resource or products derived from the resource;

29 (B) income from the extraction or processing of resources from
30 mine waste or residue of previously processed resources previously subject to
31 tax under this chapter or former AS 43.65.

1 (b) Except as provided in (c) of this section, the value of a resource
2 immediately after its removal from the mine is the price received by the person
3 engaged in the mining of the resource adjusted for value added after the resource was
4 produced.

5 (c) The price received by the person engaged in the mining of the resource
6 may be rejected by the department as the gross value at the point of production when

7 (1) the price received is less than the fair market value;

8 (2) the price received does not reflect the total value received by the
9 seller in the transaction;

10 (3) the parties to the transaction are affiliated; or

11 (4) the price received was not negotiated in an arm's length transaction
12 between the buyer and seller.

13 (d) If the department rejects the price reported by the person engaged in the
14 mining of the resource, the department shall substitute the fair market value of the
15 resource on the date and at the place of production for purposes of determining the tax
16 liability under this chapter.

17 **Sec. 43.66.040. Transportation costs.** (a) The gross value at the point of
18 production shall be calculated using the reasonable costs of transportation if the
19 destination value is used to determine the value at the point of production. The
20 reasonable costs of transportation shall be the actual costs, except when

21 (1) the parties to the transportation are affiliated;

22 (2) the contract for the transportation is not an arm's length transaction
23 or is not representative of the market value of that transportation;

24 (3) the method of transportation is not reasonable in view of existing
25 alternative methods of transportation.

26 (b) If the department finds that the conditions in (a)(1), (2), or (3) of this
27 section are present, the department shall determine the reasonable costs of
28 transportation, using the fair market value of like transportation, the fair market value
29 of equally efficient and available alternative modes of transportation, or another
30 reasonable method. Transportation costs fixed by tariff rates properly on file with the
31 Regulatory Commission of Alaska or another regulatory agency shall be considered

1 prima facie reasonable.

2 (c) In this section, "destination value" means the value of the resource at the
3 destination where production from the mine is delivered for treatment or processing.

4 **Sec. 43.66.050. Payment of tax.** (a) The mining production tax shall be paid to
5 the department before April 1 of the year following the calendar year of production.

6 (b) The tax shall be paid by or on behalf of the person engaged in mining.

7 **Sec. 43.66.060. Filing of statements.** (a) Except as provided in (c) of this
8 section, a person engaged in mining in the state shall file with the department a
9 statement, under oath on a form prescribed by the department, before April 1 of the
10 year following the calendar year of production.

11 (b) The department shall adopt regulations that prescribe the information to be
12 submitted on a form to the department. The information must include the following:

13 (1) a description of each mining lease or property from which the
14 resources were produced, by name, legal description, lease number, or accounting
15 code number assigned by the department;

16 (2) the names of the person engaged in mining and the person paying
17 the tax;

18 (3) a description of each type of resource produced and an estimate of
19 the quantity produced;

20 (4) the gross value at the point of production of the resources produced
21 from each lease or property and the total for all leases and property in the state;

22 (5) the name of the first purchaser and the price received for resources
23 produced during the calendar year;

24 (6) the fair market value at the point of production of the resources
25 produced from each lease or property in the state and the total for all leases and
26 properties in the state; and

27 (7) for a sale not occurring at the point of production, costs incurred by
28 the person liable for the tax after the resource is removed from the mine.

29 (c) An individual who is not required to file a single combined statement
30 under AS 43.66.070 and produces resources with a total gross value at the point of
31 production of less than \$10,000 from all leases and properties in the state during a

1 calendar year is not required to file a statement under (a) of this section.

2 **Sec. 43.66.070. Affiliated taxpayers.** Two or more persons subject to the tax
3 under this chapter that are affiliated shall file a single combined statement under
4 AS 43.66.060.

5 **Sec. 43.66.900. Definitions.** In this chapter,

6 (1) "affiliated" means a person who directly, or indirectly through one
7 or more intermediaries, controls, is controlled by, or is under common control with the
8 persons specified;

9 (2) "mining" means an operation by which valuable metals, ores,
10 minerals, asbestos, gypsum, coal, marketable earth, or stone, or any of them are
11 extracted, mined, or taken from the earth;

12 (3) "resource" means the valuable metals, ores, minerals, asbestos,
13 gypsum, coal, marketable earth, or stone that are extracted, mined, or taken from the
14 earth by a person engaged in mining.

15 * **Sec. 13.** AS 43.75.018(d) is amended to read:

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

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

18 (2) when combined with credits taken during the taxpayer's tax year
19 under AS 21.89.070, 21.89.075, AS 43.20.014, AS 43.55.019, AS 43.56.018,
20 [AS 43.65.018,] or AS 43.77.045, exceed \$150,000.

21 * **Sec. 14.** AS 43.77.045(c) is amended to read:

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

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

24 (2) when combined with credits taken during the taxpayer's tax year
25 under AS 21.89.070, 21.89.075, AS 43.20.014, AS 43.55.019, AS 43.56.018,
26 [AS 43.65.018,] or AS 43.75.018, exceed \$150,000.

27 * **Sec. 15.** AS 27.30.030(b); AS 43.20.044(b); AS 43.65.010, 43.65.018, 43.65.020,
28 43.65.030, and 43.65.060 are repealed.

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

31 **TRANSITION.** (a) A person subject to the mining license tax under AS 43.65 shall

1 file a return and pay the tax under that chapter for the period ending on December 31, 2006.

2 (b) The Department of Revenue shall adopt regulations for the filing of returns and
3 the payment of tax under AS 43.65 by taxpayers filing a return on a basis other than a
4 calendar year.

5 * **Sec. 17.** Sections 2 - 11 and 13 - 15 of this Act take effect January 1, 2007.

6 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect immediately under
7 AS 01.10.070(c).