

**SENATE BILL NO. 179**

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

**BY SENATOR THERRIAULT**

**Introduced: 4/18/05**

**Referred: Community and Regional Affairs, 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 specified in AS 14.17.410(b)(2) plus two mills.

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

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

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

30 (3) taxes on the sale or use of services used in or associated with the  
31 taxable property or in its maintenance or operation;

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

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

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

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

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

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

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

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

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

27 **Sec. 43.67.040. Returns.** (a) The department by notice may require every  
 28 person having ownership or control of an interest in taxable property to submit a  
 29 return within 30 days after the production commencement date and by January 31 of  
 30 each year following the production commencement date in the form prescribed by the  
 31 department, based on property values existing on January 1 of each year, except as

1 otherwise provided in this chapter.

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

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

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

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

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

- 19 (1) a description of all taxable property;  
20 (2) the assessed value of all taxable property;  
21 (3) the names and addresses of persons owning property subject to  
22 assessment and taxation.

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

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

30 **Sec. 43.67.080. Objection to the department.** (a) An owner of taxable  
31 property or a municipality receiving an assessment notice may object to the

1 assessment by advising the department in writing of the objection to the assessment  
2 within 20 days after the effective date of the notice.

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

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

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

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

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

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

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

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

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

30 **Sec. 43.67.130. Penalty for delinquent taxes.** When the tax levied by  
31 AS 43.67.010 becomes delinquent, a penalty of 10 percent shall be added.

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

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

7           **Sec. 43.67.160. Exemptions from municipal tax and mining property tax.**  
 8 (a) The following are exempt from taxation by municipalities incorporated on or after  
 9 January 1, 2005:

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

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

13                   (3) minerals in place;

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

15                   (5) the value of intangible exploration expenses;

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

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

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

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

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

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

1 election under this subsection must be filed on or before the production  
 2 commencement date if the production commencement date is after January 1, 2006, or  
 3 with the first tax return on or before July 1, 2006, for property producing minerals on  
 4 or before January 1, 2006.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **TRANSITION: REGULATIONS.** The Department of Revenue may proceed to adopt

1 regulations to implement AS 43.67.010 - 43.67.170, added by sec. 3 of this Act. The  
2 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
3 effective date of sec. 3 of this Act.

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

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