

HOUSE BILL NO. 191

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES SEATON, Kito

Introduced: 4/11/15

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the oil and gas corporate income tax; and providing for an effective
2 date."

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

4 * **Section 1.** AS 29.60.599(1) is amended to read:

5 (1) "barrel," when used with reference to oil, means the quantity of
6 oil contained in 42 United States gallons of 231 cubic inches each, measured at a
7 temperature of 60 degrees Fahrenheit and an absolute pressure of 14.65 pounds a
8 square inch [HAS THE MEANING GIVEN IN AS 43.20.144];

9 * **Sec. 2.** AS 41.09.010(b) is amended to read:

10 (b) An exploration incentive credit extended under (a) of this section may be
11 applied against

12 (1) a payment or obligation against which a credit authorized by
13 AS 38.05.180(i) may be claimed;

14 (2) taxes payable under AS 43.20 or AS 43.21, as applicable; and

(3) oil and gas bonus payments due the state under AS 38.05.180(f).

* **Sec. 3.** AS 43.20.011 is amended by adding a new subsection to read:

(g) For purposes of calculating the tax under (e) of this section, the taxable income of a corporation engaged in the production or transportation of crude oil or natural gas shall be determined in accordance with AS 43.21.

* **Sec. 4.** AS 43.20.145(f) is amended to read:

(f) This section does not apply to taxpayers subject to **AS 43.21**
[AS 43.20.144 ENGAGED IN

(1) THE PRODUCTION OF OIL OR GAS FROM A LEASE OR
PROPERTY IN THE STATE; OR

(2) THE TRANSPORTATION OF OIL OR GAS BY REGULATED
PIPELINE IN THE STATE].

* **Sec. 5.** AS 43.21 is amended by adding new sections to read:

Article 1. Determination of Taxable Income.

Sec. 43.21.200. Application. This chapter applies to every corporation doing business in the state that derives income from the production of oil or gas from a lease or property in the state or from the pipeline transportation of oil or gas in the state. The tax calculated under this chapter is measured by the total taxable income of the corporation during the tax period as defined by AS 43.21.210 - 43.21.250 and is calculated at the rates established under AS 43.20.011(e).

Sec. 43.21.210. Internal Revenue Code adopted by reference. (a) 26 U.S.C. 1 - 1399 and 6001 - 7872 (Internal Revenue Code), as amended, are adopted by reference as a part of this chapter. These portions of the Internal Revenue Code have full force and effect under this chapter unless excepted to or modified by other provisions of this chapter.

(b) When portions of the Internal Revenue Code incorporated by reference as provided in (a) of this section refer to rules and regulations adopted by the United States Commissioner of Internal Revenue, or hereafter adopted, those portions shall be regarded as regulations adopted by the department under and in accord with the provisions of this chapter, unless and until the department adopts specific regulations in place of those portions conformable with this chapter.

1 **Sec. 43.21.220. Determination of taxable income from oil and gas**
 2 **production.** (a) The taxable income of a corporation from the production of oil and
 3 gas from a lease or property in the state is the corporation's net income as calculated in
 4 accordance with this section.

5 (b) Gross income of a corporation from oil and gas production is the sum of
 6 the gross value at the point of production of oil or gas produced from a lease or
 7 property in the state, any gain or loss resulting from the sale of a lease, and any gain or
 8 loss resulting from the sale of property used in the production of oil and gas in the
 9 state. The department shall by regulation determine a uniform method of establishing
 10 the gross value at the point of production. For the purpose of determining the gross
 11 value at the point of production under this subsection, the department shall use
 12 AS 43.55.150 for the determination of transportation costs.

13 (c) Net income from oil and gas production shall be determined by deducting
 14 from gross income the following:

- 15 (1) royalties paid in kind or in value;
- 16 (2) taxes imposed under AS 43.55 that are actually paid or incurred by
 17 the corporation on the production from a lease or property in the state;
- 18 (3) taxes imposed under AS 29.45.080 - 29.45.090 and AS 43.56 that
 19 are actually paid or incurred by the corporation on property used directly in the
 20 production of oil or gas from a lease or property in the state, including property used
 21 in production, gathering, treatment, or preparation of the oil or gas for pipeline
 22 transportation, but only if those property tax payments were due and payable only
 23 after the date of commercial production from the lease or property with which the
 24 property was associated;
- 25 (4) the direct costs incurred by or for the corporation in operating the
 26 lease or property, including the direct costs of producing, gathering, treating, or
 27 preparing the oil or gas for pipeline transportation, but net of any payments received
 28 for those activities and not including any indirect cost or overhead expense;
- 29 (5) depreciation, under 26 U.S.C. 167 (Internal Revenue Code) or
 30 another reasonable method as the department may by regulation establish, on property
 31 used directly in the production, gathering, treatment, or preparation of the oil or gas

1 for pipeline transportation, including amortization of capitalized interest for
 2 investments in that property at a rate not to exceed the average cost to the taxpayer of
 3 borrowed capital during the year in which the interest is capitalized; for purposes of
 4 this paragraph, property capitalized under AS 43.20 shall maintain its adjusted basis,
 5 less any depreciation taken under AS 43.20 and any amount attributable to that
 6 property received as a credit under this title;

7 (6) the amortization of lease acquisition payments and taxes paid or
 8 incurred under AS 29.45.080, 29.45.090, or AS 43.56, including capitalized interest,
 9 for or on producing properties before the commencement of commercial production
 10 from the lease or property for which the property is being used;

11 (7) interest expense of the corporation, not capitalized during
 12 construction, that was paid or incurred in connection with property in the state;
 13 however, the interest expense may not exceed that portion of the total interest paid by
 14 the consolidated business of which the corporation is a part, determined by
 15 multiplying the total interest by a fraction, the numerator of which is the value of the
 16 corporation's real and tangible personal property used directly in the production of oil
 17 or gas from a lease or property in the state and the denominator of which is the value
 18 of all real and tangible personal property of the consolidated business; in this
 19 paragraph, "total interest paid by the consolidated business" does not include interest
 20 expense arising from intercompany obligations within the consolidated business
 21 except to the extent that the interest expense reflects a pass-through of interest on a
 22 third-party borrowing by the parent or other member of the consolidated business with
 23 the purpose, expressed at the time of the third-party borrowing, of financing Alaska
 24 business activity of the taxpayer corporation;

25 (8) expenses incurred by the corporation after December 31, 2015, of
 26 unsuccessful exploration of oil or gas in the state, including the acquisition costs of
 27 abandoned properties, dry hole costs, and the costs of geologic and geophysical
 28 exploration related to those abandoned properties;

29 (9) general overhead or administrative expense incurred by the
 30 corporation attributable to deriving income from the production of oil or gas from a
 31 lease or property in the state to the extent that the general overhead or administrative

1 expense does not exceed that portion of the total general overhead or administrative
 2 expense incurred by the consolidated business of which the corporation is a part,
 3 determined by multiplying the total general overhead or administrative expense by a
 4 fraction, the numerator of which is the value of the corporation's real and tangible
 5 personal property used directly in the production of oil or gas from a lease or property
 6 in the state and the denominator of which is the value of all real and tangible personal
 7 property of the consolidated business;

8 (10) the amount of income from the production of oil and gas from a
 9 lease or property that is divided among the regional Native corporations under 43
 10 U.S.C. 1606(i) (sec. 7(i), Alaska Native Claims Settlement Act, P.L. 92-203);

11 (11) net operating loss carry forward amounts accrued from taxes paid
 12 under AS 43.20 or AS 43.21 for expenditures related to the production of oil or gas
 13 from a lease or property in the state or from pipeline transportation of oil or gas in the
 14 state, except that a net operating loss amount that resulted from an expenditure that
 15 was also the basis of a credit under this title may not be deducted under this paragraph.

16 (d) Deductions from gross income under this section may not include
 17 expenses previously deducted on a return filed under AS 43.20.

18 (e) If a corporation subject to this chapter shares the production or proceeds of
 19 the production from a lease or property through a working interest, royalty interest,
 20 overriding royalty interest, production payment, net profit interest, joint venture, or
 21 other agreement, the taxpayer shall allocate the deductions from gross income between
 22 the corporation and the persons with whom the corporation has the agreement in
 23 accordance with the terms of the agreement.

24 **Sec. 43.21.230. Determination of taxable income from oil and gas pipeline**
 25 **transportation.** (a) Except as provided in (c) of this section, taxable income
 26 attributable to the transportation of oil in a pipeline engaged in interstate commerce in
 27 this state is the amount reported or that would be required to be reported to the Federal
 28 Energy Regulatory Commission or its successors as net operating income, less those
 29 portions of interest and general overhead or administrative expense attributable to the
 30 pipeline transportation of oil in the state, except that taxable income shall also include
 31 taxes on or measured by income. The department shall establish regulations governing

1 the determination of interest and general overhead or administrative expense
2 attributable to pipeline transportation of oil in the state.

3 (b) Except as provided in (c) of this section, taxable income attributable to the
4 transportation of natural gas in a pipeline engaged in interstate commerce in this state
5 is the amount reported or that would be required to be reported to the Federal Energy
6 Regulatory Commission as net operating income, less that portion of interest and
7 general overhead or administrative expense attributable to pipeline transportation in
8 the state, except that the taxable income shall also include taxes on or measured by
9 income. The department shall establish regulations governing the determination of
10 interest and general overhead or administrative expense attributable to pipeline
11 transportation of natural gas in the state.

12 (c) Taxable income attributable to the transportation of oil or natural gas in
13 this state of a corporation not under the jurisdiction of the Federal Energy Regulatory
14 Commission, or of a corporation under the jurisdiction of the Federal Energy
15 Regulatory Commission but not reporting the operation of pipelines in the state
16 separately from the operation of pipelines elsewhere, shall be based on an amount
17 equal to the amount that would have been reported to the Federal Energy Regulatory
18 Commission under (a) of this section in the case of oil pipelines, or under (b) of this
19 section, in the case of natural gas pipelines, had the corporation been, in fact, under the
20 jurisdiction of the Federal Energy Regulatory Commission for the taxable year and
21 required to report on the operation of pipelines in the state separately from the
22 operation of pipelines elsewhere.

23 **Sec. 43.21.240. Determination of taxable income from activities other than**
24 **oil and gas production or pipeline transportation.** (a) Taxable income of a
25 corporation subject to this chapter from activities in this state other than the production
26 of oil or gas from a lease or property in the state or the pipeline transportation of oil or
27 gas in the state shall be determined in accordance with the method established in art.
28 IV of AS 43.19.010 and in AS 43.20.143, as modified by (b) - (d) of this section.

29 (b) The total taxable income of a consolidated business is its entire income
30 less the portion of that entire income attributable to worldwide production and pipeline
31 transportation of oil and gas. In this subsection, for a member of a consolidated

business who is

(1) required to file under the Internal Revenue Code, "entire income" means the taxpayer's taxable income as the term is used in AS 43.20.011 - 43.20.142;

(2) not required to file under the Internal Revenue Code, "entire income" means an income determination prepared in accordance with generally accepted accounting principles, except that a taxpayer may elect to report income as the income would be determined under (1) of this subsection.

(c) The numerator and denominator of the property factor, of the payroll factor, and of the sales factor shall be calculated without reference to that portion of property, payroll, or sales directly related to the production of oil or gas from a lease of property in the state or the pipeline transportation of oil or gas in the state.

(d) The value attributed to vessels transporting Alaska oil or gas of a consolidated business that are not owned or effectively owned by the consolidated business shall be excluded from the property factor.

Sec. 43.21.250. Applicability of tax to a consolidated business. The provisions of this chapter apply to a consolidated business whether or not the taxpayer is the parent or controlling corporation.

Article 2. Calculation of Tax; Returns.

Sec. 43.21.300. Calculation of tax. (a) The amount of the tax payable on the taxable income of a corporation subject to tax under this chapter shall be determined using the tax rates in AS 43.20.011(e).

(b) For purposes of this chapter, the department may combine taxable income of corporations subject to tax under this chapter who are part of the same consolidated business.

(c) If the methods of allocation and apportionment provided in this chapter do not fairly represent the extent of a corporation's business activity in the state, the corporation may petition for or the department may require, in respect to all or any part of the corporation's business activity, if reasonable, the employment of any method authorized under art. IV, sec. 18, AS 43.19.010 (Multistate Tax Compact), to carry out an equitable allocation and apportionment of the corporation's income. The commissioner shall include in the annual report required in AS 43.21.410 a report on

1 all relief granted under this subsection, including, for each case, a statement of the
 2 changes in tax liability resulting from the granting of relief, the tax years involved, and
 3 a description of the method of determining taxable income that was substituted for the
 4 methods provided in this chapter.

5 **Sec. 43.21.320. Credits.** Subject to the limitations imposed on the credits in
 6 AS 43.20, a credit under AS 43.20.014, 43.20.043, 43.20.044, 43.20.046, 43.20.047,
 7 43.20.048, 43.20.049, or 43.20.053 may be applied against the tax levied under this
 8 chapter, unless a credit for the same expenditure has been taken against a tax levied
 9 under AS 43.20 or AS 43.55. Any refund of a credit under this section is limited to the
 10 portion of the tax credit unused under this title.

11 **Sec. 43.21.330. Returns and payment of taxes.** (a) A corporation subject to
 12 tax under this chapter and required to make a return under the Internal Revenue Code
 13 shall, within 30 days after the federal return is required to be filed, submit a return
 14 setting out

15 (1) the amount of tax due under this chapter, less credits claimed
 16 against the tax; and

17 (2) other information the department may require to carry out the
 18 purposes of this chapter.

19 (b) The return shall be made under oath or shall contain a written declaration
 20 that it is made under penalty of perjury and shall be made on a form prescribed by the
 21 department.

22 (c) On request by the department, a taxpayer shall furnish to the department a
 23 true and correct copy of each annual tax return the taxpayer has filed with the United
 24 States Internal Revenue Service. Every taxpayer shall notify the department in writing
 25 of any modification of the taxpayer's federal income tax return and of a recomputation
 26 of tax or determination of deficiency. A full statement of the facts must accompany
 27 this notice. The notice shall be filed within 60 days after the final determination of the
 28 modification, recomputation, or deficiency, and the taxpayer shall pay the additional
 29 tax or penalty under this chapter. For purposes of this section, a determination shall be
 30 considered to be final at the time an amended federal return is filed or a notice of
 31 deficiency or an assessment is mailed to the taxpayer by the Internal Revenue Service,

except that in no event shall a determination be considered final for purposes of this section until the taxpayer has exhausted the taxpayer's rights of appeal under federal law.

(d) The total amount of tax imposed by this chapter is due and payable to the department at the same time and in the same manner as the tax payable to the United States Internal Revenue Service, including quarterly estimated tax prepayments, except that a taxpayer with an estimated tax liability of less than \$1,000,000 for the year is not required to make quarterly prepayments of the estimated tax.

(e) A tax due under this section is payable even if the assessment is under appeal or the validity, enforceability, or application of this chapter or any provision of this chapter is challenged before the department or in the courts.

(f) An unpaid amount of an installment payment required under (d) of this section that is not paid when due shall be treated as an underpayment under 26 U.S.C. 6655 (Internal Revenue Code) and shall accrue interest at a rate appropriate for the state prescribed in regulation.

Article 3. Administrative Matters.

Sec. 43.21.400. Regulations. The department shall adopt regulations in accordance with AS 44.62 (Administrative Procedure Act) to implement this chapter. In the adoption of regulations under this section, the department shall use the 1981 regulations adopted under former provisions of this chapter as guidance. Regulations adopted under this section must include methods for accounting for

(1) intercompany transactions in a fair and equitable manner and to prevent purposeful tax evasion or manipulation of income or deductions, including transactions for costs incurred by a party outside of the state that are related to oil or gas production from a lease or property in the state or to pipeline transportation of oil or gas in the state; and

(2) transactions between parent and subsidiary companies.

Sec. 43.21.410. Public reporting. (a) The commissioner shall compile and transmit to the legislature an annual report of state revenue and the implementation of taxation policies under this chapter. The report must include total aggregate income tax paid by corporations subject to this chapter and aggregate income and deductions

1 by category, classified so as to prevent the identification of particular returns or
2 reports.

3 (b) The legislative auditor shall notify the legislature on or before the first day
4 of each regular session that the annual report reviewing the actions of the department
5 in administering this chapter is available.

6 **Sec. 43.21.420. Information disclosure.** Notwithstanding another provision of
7 law, the department shall disclose to a legislator, on request, information collected
8 from a taxpayer to the extent that

9 (1) the taxpayer is a publicly traded company;

10 (2) the information has been filed in a quarterly, annual, or other
11 periodic report to the United States Securities Exchange Commission; and

12 (3) the information has been made public by the United States
13 Securities Exchange Commission.

14 **Sec. 43.21.499. Definitions.** Unless the context requires otherwise, the
15 definitions contained in AS 43.55.900 are applicable to this chapter. In addition, in this
16 chapter,

17 (1) "consolidated business" means a corporation or group of
18 corporations having more than 50 percent common ownership, direct or indirect, or a
19 group of corporations in which there is common control, either direct or indirect, as
20 evidenced by an arrangement, contract, or agreement;

21 (2) "Internal Revenue Code" has the meaning given in AS 43.20.340.

22 * **Sec. 6.** AS 43.82.210(a) is amended to read:

23 (a) If the commissioner approves an application and proposed project plan
24 under AS 43.82.140, the commissioner may develop proposed terms for inclusion in a
25 contract under AS 43.82.020 for periodic payment in lieu of one or more of the
26 following taxes that otherwise would be imposed by the state or a municipality on the
27 qualified sponsor or member of a qualified sponsor group as a consequence of
28 participating in an approved qualified project:

29 (1) oil and gas production taxes and oil surcharges under AS 43.55;

30 (2) oil and gas exploration, production, and pipeline transportation
31 property taxes under AS 43.56;

- 1 (3) **oil and gas corporate income tax under AS 43.21;** [REPEALED]
 2 (4) Alaska net income tax under AS 43.20;
 3 (5) municipal sales and use tax under AS 29.45.650 - 29.45.710;
 4 (6) municipal property tax under AS 29.45.010 - 29.45.250 or
 5 29.45.550 - 29.45.600;
 6 (7) municipal special assessments under AS 29.46;
 7 (8) a comparable tax or levy imposed by the state or a municipality
 8 after June 18, 1998;
 9 (9) other state or municipal taxes or categories of taxes identified by
 10 the commissioner.

11 * **Sec. 7.** AS 43.20.144 is repealed.

12 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
 13 read:

14 APPLICABILITY. AS 43.21, added by sec. 5 of this Act, applies to taxable income
 15 earned or received after December 31, 2015.

16 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 REGULATIONS. (a) The Department of Revenue may adopt regulations necessary to
 19 implement AS 43.21, added by sec. 5 of this Act. The regulations take effect under AS 44.62
 20 (Administrative Procedure Act), but not before the effective date of the law implemented by
 21 regulation.

22 (b) The Department of Revenue shall provide by regulation for a transition for a
 23 corporation subject to tax under AS 43.20 before December 31, 2015, to avoid double
 24 taxation of the same income or double deduction of the same expense of the corporation as a
 25 result of becoming subject to tax under AS 43.21, added by sec. 5 of this Act.

26 (c) The Department of Revenue may adopt regulations necessary to provide a five-
 27 year transition period for the adoption of applicable depreciation schedules.

28 * **Sec. 10.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).

29 * **Sec. 11.** Except as provided in sec. 10 of this Act, this Act takes effect January 1, 2016.