

1 IN THE HOUSE

BY MESSRS. MCNABB AND GREUEL

2 HOUSE BILL NO. 186

3 IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4 TWENTY-THIRD SESSION

5 A BILL

6 For an Act entitled: "An Act to declare the policy of the Terri-
7 tory of Alaska in connection with temporary
8 industrial tax incentives; to determine
9 which operations shall be eligible to the
10 benefits of this Act; to define the nature,
11 extent and scope of the temporary tax
12 incentives provided for hereunder; to
13 authorize the Board of Administration to
14 grant such temporary tax incentives, to
15 revoke grants in certain cases and to make
16 such rules and regulations as may be neces-
17 sary for such purposes; and to forbid cer-
18 tain activities and to punish the perfor-
19 mance thereof by fine or imprisonment or
20 both and by retroactive revocation of the
21 tax incentive benefits obtained under this
22 Act; repealing Chapter 33, SLA 1953."

23 BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

24 Section 1. EXEMPTIONS.

25 (a) Exempted business is exempt from income tax upon
26 its industrial development income derived during the ten years
27 following the date of the commencement of its operations as
28 determined by the Board of Administration or its designee, here-
29 inafter referred to as the Board, .

1 (b) The property of exempted business used in the
2 development, organization, construction, establishment or opera-
3 tion of the activity which gives rise to the exemption as well
4 and personal property devoted to industrial development, shall not
5 be subject to Territorial or municipal taxes on real and personal
6 property for the periods set forth below and which shall be
7 counted from the first of January of the year in which the
8 exempted business commences its operations whenever said business
9 owns as of that date such property or utilizes property devoted
10 to industrial development, or in cases to the contrary, such
11 periods shall be counted from the first of January of the year
12 following the year in which the exempted business commences the
13 activities that give rise to its exemption.

14 (1) When the investment in real or personal pro-
15 perty is not greater than \$1,000,000 - 5 years.

16 (2) When such investment exceeds \$1,000,000 but
17 not \$3,000,000 - 6 years for the whole investment.

18 (3) When such investment exceeds \$3,000,000 but
19 not \$5,000,000 - 7 years for the whole investment.

20 (4) When such investment exceeds \$5,000,000 but
21 not \$7,000,000 - 8 years for the whole investment.

22 (5) When such investment exceeds \$7,000,000 but
23 not \$10,000,000 - 9 years for the whole investment.

24 (6) When such investment exceeds \$10,000,000 -
25 10 years for the whole investment.

26 When an exempt business utilizes real or personal pro-
27 perty owned by it as well as property devoted to industrial
28 development income, the preceding schedule shall apply on the
29 investment made on its own property and separately and independ-

1. dently upon the investment made on property devoted to industrial
2. development.

3. The preceding schedule shall apply first to the original
4. investment. Within 30 days following the end of the fifth year
5. of the exemption, the exempted business shall submit to the Board
6. a sworn statement of the investment made up to that date in real
7. and personal property owned by it. A similar statement shall be
8. prepared and submitted by the owner of property devoted to indus-
9. trial development. The Board shall verify the correctness of
10. such statement within 60 days following the filing thereof. Once
11. the amounts of such investments have been verified in this manner,
12. the Board shall determine and shall advise the corresponding
13. beneficiary of the period of exemption readjusted which results
14. from the total investment in each of such two classes of property
15. at the end of said period of five years. This procedure of the
16. readjustment shall be repeated, if found necessary, at the end
17. of the seventh year and at the end of the tenth year of the
18. possible duration of the exemption.

19. (c) Exempted business shall not be subject to license
20. fees, excises or other taxes levied by the Territory or any poli-
21. tical subdivision thereof, for a period of ten years from the
22. date when the business begins its operations as certified to by
23. the Board,

24. (d) In the case of an exempt business which is a com-
25. mercial hotel, the exemptions granted under this section shall be
26. limited to 50 percent of the taxes referred to.

27. (e) In case the exempt business had commenced its
28. operations on or before the filing of the corresponding applica-
29. tion for tax exemption, the periods of exemption to which reference

1 is made in paragraphs (a) and (c) hereof shall be counted from
2 the date when the application for tax exemption was filed.

3 Sec. 2: DEFINITIONS. For the purposes of this Act words
4 and phrases shall have the following meanings, unless other
5 meanings are apparent from the context:

6 (c) "Industrial development income" shall be:

7 (1) The net income derived from the production of
8 a manufactured product that gives rise to the exemption of
9 an exempted business under paragraphs 1, 2 and 3 of Section
10 2(d).

11 (2) The net income derived under paragraph 4 of
12 Section 2(d).

13 (3) The net income derived from the operation of
14 hotels under paragraphs 5 and 6 of Section 2(d).

15 (b) The term "property devoted to industrial develop-
16 ment" means:

17 (1) Real property, including land and improvements,
18 or any portion thereof which has been constructed or installed
19 on or after the effective date of this Act, either by private
20 persons or any government department, political subdivision,
21 agency or instrumentality, to be leased or otherwise placed
22 at the disposal of an exempted business provided and so long
23 as it is used for the development, organization, construction,
24 establishment or operation of an exempted business; provided,
25 that, whenever land is owned by a person other than the per-
26 son who owns, constructs or installs the improvements thereon,
27 both such land and improvements shall be property devoted to
28 industrial development when leased or otherwise made available
29 to an exempted business for the purposes above indicated.

1 (2) All equipment or machinery belonging to
2 private persons or a government department, political sub-
3 division, agency or instrumentality, necessary or convenient
4 to and installed or otherwise used under a contract of lease,
5 use, usufruct or any other kind of contract, by an exempted
6 business; provided whenever the supplier is a private person,
7 such equipment or machinery is made available by a supplier
8 normally engaged in making such machinery and equipment
9 available under terms other than by sale.

10 (a) "Exempted business" means a business established
11 or proposed to be established in Alaska by a natural or artificial
12 person and which is an eligible business and has been declared
13 exempt by the Board.

14 The Board may in any case refuse any application, not-
15 withstanding the eligibility of the product or property under any
16 of the preceding provisions, if it shall find, in the light of the
17 facts submitted for consideration in the proceedings provided by
18 this Act, and after the applicant has had the opportunity to make
19 a full presentment with respect to the questions in dispute, that
20 the application is in conflict with the public interest of the
21 Territory of Alaska on the ground that the applicant has not been
22 organized in good faith in view of the type and the reputation
23 of the persons constituting same, the plans and methods for
24 raising funds, the plans and methods of distribution and sale of
25 the product or products to be manufactured, the nature and
26 intended use of such product or products, and any other factors
27 which reasonably indicate a likelihood that the grant of the
28 exemption would be misused to the prejudice of the interest of the
29 people of the Territory of Alaska, and that, consequently, the

1 public interest of the Territory of Alaska would be adversely
2 affected by such grant.

3 (d) The term "eligible business" shall mean:

4 (1) Any industrial unit having as its object the
5 production on a commercial scale in Alaska of any manufac-
6 tured product which was not produced on a commercial scale
7 prior to the effective date of this Act, and for which there
8 were on that date in Alaska no production facilities
9 capable of the production of that manufactured product on a
10 commercial scale.

11 (2) Any industrial unit established after the
12 effectiveness of this Act, having as its objective the
13 production on a commercial scale in Alaska of any designated
14 article, and which, in the judgment of the Board:

15 (i) is established in good faith and with a
16 permanent character; and

17 (ii) produces, or will produce, on a sustained
18 basis, within a reasonable period of time, a substan-
19 tial amount of one or more designated articles addi-
20 tional to the amount of the same articles theretofore
21 being produced by other industrial units in operation
22 in Alaska; provided, that in determining the amount
23 of the production in Alaska of such articles, the
24 Board shall use the average production in Alaska of
25 such articles for the three calendar years immediately
26 preceding the effective date of this Act.

27 (3) Any industrial unit established prior to the
28 enactment of this Act, engaged in the production of a desig-
29 nated article in Alaska on a commercial scale.

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(1) tax exemption has been granted to a
new industrial unit under the terms of this Act, to
produce the same designated article, and
(11) the new industrial unit has begun pro-
duction on a commercial scale.
(4) Any property devoted to industrial develop-
ment.

1 (5) Any tourist hotel operated in Alaska under
2 conditions of sanitation and efficiency acceptable to the
3 Alaska Department of Health.

4 (6) Any commercial hotel operated in Alaska under
5 conditions of sanitation and efficiency acceptable to the
6 Alaska Department of Health.

7 (7) The Board may, in the exercise of sound dis-
8 cretion, refuse the tax exemption in any of the cases
9 enumerated in paragraphs (1), (2) and (3) of this subsection
10 (d), if, in its judgment, the commodity produced or to be
11 produced by the applicant will, because of its use or other
12 factors, displace, or, with a substantial advantage by rea-
13 son of the tax exemption, compete with, commodities produced
14 by industries established in Alaska, or that the exemptions
15 will jeopardize the financial condition of any political
16 subdivision; provided, however, that notwithstanding the
17 foregoing, the Board may grant the tax exemption when,
18 in its judgment, the eligible petitioning industry is of
19 a substantial benefit to the general economy of Alaska on
20 the score of anticipated substantial increases in produc-
21 tion to supply markets outside Alaska; or to supply an
22 existing demand in Alaska which has not been previously
23 supplied in substantial quantities, and in view of the
24 investment, technology and new jobs involved. In granting
25 tax exemption to any industry under such circumstances, the
26 Board may, on petition of an interested party filed prior
27 to the final finding herein provided, grant said exemption
28 to those other existing industries which manufacture such
29 similar commodities which, in its judgment, will stand

1 substantially affected by the substitution or competition
2 to which this paragraph refers.

3 (B) In the case of an application filed under
4 Section 3(d)(1) of this Act, if the Board determines that a
5 former exemption for the same product, granted under Section
6 3(d)(1) of this Act, was granted under circumstances likely
7 to give rise later to a substantial question as to whether
8 or not the product should have been considered as a new
9 product within the provisions of said section in view of a
10 further consideration of all available data with respect
11 to production and production facilities and the nature of
12 the differences on which the former exemption was granted,
13 any grant of exemption on such a petition shall be effective
14 for a term which shall expire not later than the latest
15 termination date of any exemption in force with respect to
16 the same product, and shall include the same tax exemption
17 privileges as are provided in such grant in force; provided,
18 however, that nothing herein provided shall prevent the
19 Board from finding that the application is eligible on other
20 grounds.

21 (c) The term "designated articles" includes any or
22 the following articles or businesses:

- 23 (1) Lumber
- 24 (2) Plywood
- 25 (3) Chemical grade pulp
- 26 (4) Newsprint
- 27 (5) Ores which have been processed or refined
- 28 (6) Petroleum products
- 29 (7) Handicrafts

- 1 (8) Agricultural products.
- 2 (9) Manufactured articles from fur or native
- 3 skins
- 4 (10) Special fish products such as crab, shrimp,
- 5 and clams
- 6 (11) Furniture, but not the mere assembly
- 7 thereof
- 8 (12) Products of slaughtering operations,
- 9 including the products of packing houses that use the pro-
- 10 ducts of slaughtering operation as raw material
- 11 (13) Other related articles and businesses.

12 (f) The term "hotel" means any building or group of

13 buildings properly and bona-fide devoted to the furnishings of

14 accommodation of pay, primarily to transient guests, in which no

15 less than fifteen rooms are furnished for accommodation of such

16 guests, and having one or more dining rooms where meals are

17 served to the general public; provided such facilities are

18 operated in Alaska under conditions and standards of sanitation

19 and efficiency acceptable to the Alaska Department of Health.

20 Hotels are divided as follows:

21 (1) Tourist Hotels. The term "tourist hotel"

22 means a hotel operated primarily in the interest of the

23 tourist trade and which shall have as an integral part

24 thereof, within the limits of the hotel site, and in pro-

25 portion to its maximum accommodation facilities, one or

26 more of the following typical tourist attractions: Hiking,

27 game courts, or other outdoor sports, provided the hotel

28 operation is devoted efficiently to serving its guests with

29 such facilities.

1 (2) Commercial Hotel. The term "commercial
2 hotel" means any hotel as herein defined which is not a
3 tourist hotel,

4 (g) The term "manufactured product" means not only
5 all products transformed from raw materials into articles of
6 commerce finished by hand or machinery, but any product with
7 respect to which substantial industrial operations are undertaken
8 in Alaska which, in the judgment of the Board, merits treatment
9 as a manufactured product within the scope of this law because
10 of the nature and extent of such operations, or the technology
11 involved, the employment provided, other contribution made or
12 to be made by the operation to the welfare of the Territory of
13 Alaska, or any one or more of such factors; provided, however,
14 that the operation shall be carried out substantially as originally
15 represented by the tax exemption petitioner, except as the
16 tax exemption grant may be otherwise modified by the Board in
17 its discretion upon appropriate petition of the grantee. The
18 Board shall have authority to draft regulations governing the
19 application of the foregoing definition, and such regulations
20 shall have the force of law, and shall be published in one or
21 more newspapers of general circulation in Alaska. The production
22 obtained from mining operations shall not be considered a manu-
23 factured product unless beneficiated or otherwise substantially
24 processed in Alaska directly by the producer or by an independent
25 enterprise.

26 (h) The term "industrial unit" means any plant, fac-
27 tory, machine or machine ensemble having a capacity of performing
28 the major functions involved in the production of a manufactured
29 product on a commercial scale.

1 (1). A plant, factory, machine or machine ensemble
2 may be considered as a separate industrial unit within the
3 meaning of this Act, even though it may use, in common with
4 other industrial units, certain minor facilities such as,
5 but without limitation, sections of buildings, power plants,
6 warehouses, material conveyors or other minor production
7 facilities.

8 (2) A plant, factory, machine or machine ensemble
9 may be considered as a separate industrial unit within the
10 scope of this Act, even though it may use, in common with
11 other industrial units, certain major facilities, provided
12 the Board authorizes the use of such facilities in common.
13 The Board may grant such authorization whenever it deter-
14 mines, after consulting with the Commissioner of Mines and
15 the Alaska Resource Development Board, that such use in
16 common is necessary or convenient for the development of
17 the economy and welfare of the Territory of Alaska because:

18 (i) it will provide in either or both indus-
19 trial units increased opportunities for work, and

20 (ii) it will add substantially to the Terri-
21 tory's net income, and

22 (iii) it will redound in a substantial
23 investment in equipment, machinery and supplies, com-
24 parable to the investment in the original unit, less
25 the value of the facilities to be used in common.

26 (3) In the cases referred to in paragraphs (1)
27 and (2) of this subdivision, the tax exemption enjoyed by
28 the industrial unit which provides facilities to be used in
29 common by other industrial units, shall not extend over.

1 longer periods than those prescribed in Section 1 of this
2 Act with respect to the facilities so being used in common.
3 Where the industrial unit providing facilities to be
4 used in common by other industrial units pursuant to paragraphs
5 (1) and (2) of this subdivision does not enjoy tax exemption, but
6 such exemption has been obtained by the unit or units using such
7 facilities, the Board may grant tax exemption with regard to
8 such facilities pursuant to the provisions of this Act; provided,
9 however, that the tax exemption in this case shall be limited to
10 a part of the value of such facilities and of the compensation
11 received for their use, in proportion to the use made of such
12 facilities by the industrial unit or units enjoying tax exemption,
13 the determinant factors of such use being, among others, space
14 occupied, time and nature of use, and importance it bears on the
15 industrial unit or units using such facilities.

16 (1) The term "production on a commercial scale" means
17 production for sale in the market in the normal course of busi-
18 ness in quantities and at prices which justify the operation of
19 an industrial unit as a going business.

20 (j) The other terms employed herein, unless otherwise
21 specifically provided, shall have the same meaning as in a similar
22 context in the tax laws in force in Alaska and the regulations
23 issued thereunder.

24 Sec. 3. DISTRIBUTION.

25 (a) The distributions of dividends and profits by a
26 corporation or partnership that is an exempted business, if made
27 within 15 years of the commencement of operations of such exempted
28 business, and if made from industrial development income derived
29 during the first seven years of its operations covered by the

1 exemption, shall be exempt from income tax in the same proportion
2 in which such industrial development income is exempt from taxes
3 in favor of the exempted business in accordance with the provi-
4 sions of Section 1 of this Act.

5 (b) Any distribution of dividends made by a corpora-
6 tion exempted hereunder from payment of taxes shall be considered
7 as made from gains or profits exempted from taxes under this Act,
8 provided on the date of distribution the latter does not exceed
9 the undistributed balance of such gains or profits.

10 In the cases of corporations which, on the effective
11 date of their tax exemption hereunder, have accumulated a surplus,
12 dividend distributions made on and after said date shall be con-
13 sidered as made from the undistributed balance of said surplus,
14 but after the latter is exhausted by virtue of such distributions
15 the provisions of the preceding paragraph shall be applicable.

16 (c) No profit or loss shall be recognized if the shares
17 of a tax-exempt corporation, which have been acquired through
18 purchase or otherwise, are sold or exchanged on or before the
19 termination date of the tax exemption granted to the corporation.

20 Profit or loss shall be recognized if the shares of a
21 tax-exempt corporation which have been acquired by purchase or
22 otherwise, are sold or exchanged after the corporation's exemp-
23 tion termination date. The profit derived from the sale or other
24 disposition of such shares shall be the surplus of the amount
25 received in such sale or disposition over the base established
26 by subdivision (d) of this section, and the loss shall be the
27 excess of said base over the amount received, but shall be recog-
28 nized up to the limit provided by the Territorial Income Tax Act
29 in force on the date when the transaction takes place.

1 (d) To determine the profit or loss derived from the
2 sale or other disposition, made after the exemption termination
3 date, of shares of a tax-exempt corporation, which shares have
4 been acquired through purchase or otherwise before the corpora-
5 tion's exemption termination date, the larger of the following
6 bases shall be used:

7 (1) The value of such share on the exemption
8 termination date according to the books of the corporation
9 less the amount of any tax-exempt distributions received on
10 said shares after said date, or

11 (2) the cost of said shares, less the amount of
12 any tax-exempt distributions received on same before and
13 after the exemption termination date.

14 Sec. 4. LIQUIDATION OF EXEMPTED BUSINESSES. If on or
15 before the expiration of tax exemption of any exempted business
16 any property, including money, is received by a domestic or
17 foreign corporation (herein called the transferee) on complete
18 liquidation of such exempted business (herein called the trans-
19 feror) no income tax shall be assessed on or be paid by the
20 transferor or the transferee with respect to such liquidations,
21 only if—

22 (a) The transferee was on the date of adoption of the
23 liquidation plan, and has continued to be at all times, until
24 the receipt of the property pursuant to said plan, the owner of
25 at least 80 percent of the total combined voting power of all
26 classes of voting stock, and the owner of at least 80 percent of
27 all other classes of stock (except non-voting stock which is
28 limited and preferred as to dividends); and

29 (b) All the said property was received by the trans-

1 force pursuant to the said liquidation plan, on or prior to the
2 exemption termination date; and

3 (c) The distribution in liquidation by the transferor,
4 whether at one time or from time to time, was made by the trans-
5 feror in complete cancellation or redemption of all of its
6 capital stock.

7 No income tax shall be assessed on or be paid by the
8 transferor, whether or not the transferee assumes any liabilities
9 or obligations of the transferor or receives such property sub-
10 ject to any liability or obligation of the transferor.

11 If the exemption of a transferor corporation hereunder
12 shall be terminated prior to the exemption termination date, a
13 sum equal to the earned surplus of the transferor corporation as
14 of the end of the fiscal year of the corporation in which the
15 termination becomes effective, may be transferred by the trans-
16 feror to the transferee under the circumstances described herein-
17 before under (a) and (c), at any time thereafter without assess-
18 ment of income tax on the transferor or on the transferee,
19 except in the cases of mandatory revocation under Sections 5(b)
20 and 8 of this Act when no tax-free liquidation shall be allowed
21 in accordance with the provisions of this Section 4.

22 After the expiration of the exemption of the transferor,
23 a sum equal to the capital and the earned surplus of the trans-
24 feror as of said date, may be transferred by the transferor to
25 the transferee under the circumstances described under the fore-
26 going (a) and (c), at any time thereafter, without assessment of
27 income tax therefor on the transferor or the transferee.

28 By "earned surplus" of the transferor shall be under-
29 stood the earned surplus according to the books of the transferor,

1 determined in accordance with generally-accepted accounting
2 principles, but the amount thereof shall not be larger, save by
3 the amount of the income tax exemption and all other tax exemp-
4 tions granted hereunder to the transferor, than the amount in
5 case the transferor had in fact, been subject to tax under the
6 income tax provisions and all other tax laws in force during the
7 exemption period.

8 In the event of a liquidation under the circumstances
9 described in this Section, the base of the property to the trans-
10 feror on subsequent disposition by the transferee and the base
11 for allowance for depreciation or depletion, shall be the adjusted
12 base of the property, pursuant to the provisions of the Income
13 Tax Law in force, plus an amount equal to the earned surplus of
14 the transferor at the beginning of the liquidation. Such surplus
15 shall be allocated to the several properties subject to deprecia-
16 tion or depletion transferred in accordance with their respective
17 adjusted bases at the beginning of the liquidation.

18 Sec. 5. ADMINISTRATION.

19 (a) Applications. Any natural or artificial person
20 who has established or proposes to establish in Alaska an eligible
21 business, may apply to the Board for the benefits of this Act.
22 The grants of tax exemption under this Act shall be considered
23 in the nature of a contract between the grantee and the Territory
24 of Alaska. The Board may include in grants of tax exemption
25 hereunder such terms and conditions as in its judgment will fur-
26 ther the purpose of industrial development of this Act.

27 (b) Authority of Board to appoint Director.

28 (1) The Board is hereby granted authority to
29 appoint a Director of Industrial Tax Exemptions.

1 (2) The Director shall appoint the personnel
2 necessary to carry out the provisions of this Act. The
3 Director shall make arrangements for such public hearings
4 as he may deem necessary and shall require of all applicants
5 for tax exemption the presentation of such evidence as will
6 justify the exemption applied for. The Director or any
7 other person whom the Board may designate shall hear the
8 evidence presented in relation to any application for tax
9 exemption; shall have power (A) to summon witnesses and take
10 their testimony as to the facts alleged or in any way
11 related to the tax exemption applied for, and (B) to admini-
12 ster an oath to any person or persons testifying before him;
13 and shall make a report to the Board on the evidence adduced,
14 together with his recommendations in the matter.

15 (3) The Board shall draft such rules and regula-
16 tions as it may deem necessary to carry out the purposes of
17 this Act, which rules and regulations shall, upon their
18 promulgation, have the force of law, and shall be published
19 in one or more newspapers of general circulation in Alaska.

20 (c) Administrative finality. All decisions and
21 findings of the Board under this Act shall be final and no judi-
22 cial or administrative appeal or other proceeding shall lie
23 against the same unless otherwise specifically provided,

24 (d) Revocation of tax exemption. The Board, after
25 permitting the person to whom the exemption has been granted to
26 appear and be heard before it or before any person appointed for
27 such purpose, who shall report his conclusions and recommendations
28 to the Board, and upon the recommendations of the Director, may
29 or shall revoke any tax exemption granted hereunder, as herein-

1 after provided:

2 (1) Permissive revocation. The Board may decree
3 such revocation in the following cases:

4 (A) When the person to whom the exemption
5 has been granted fails to comply with any of the obli-
6 gations imposed on him by this Act, by the regulations
7 promulgated hereunder, or by the terms of the declara-
8 tion of exemption;

9 (B) When the person to whom the exemption
10 has been granted either does not commence or fails to
11 complete the construction of the installations necessary
12 for the production of the manufactured products which
13 he proposes to produce or fails to commence such pro-
14 duction, within the periods fixed for such purposes
15 in the grant of exemption, which periods may be ex-
16 tended by the Board whenever, in its judgment, just
17 cause exists therefor, provided that no period shall
18 be originally fixed in excess of 3 years from the date
19 of exemption grant for the commencement of opera-
20 tions; and

21 (C) When the person to whom the exemption
22 has been granted discontinues production on a commer-
23 cial scale or operations in any business eligible under
24 paragraphs (1), (2), (3), (5) or (6) of Section 2(a)
25 for more than thirty (30) days without the authoriza-
26 tion of the Board. The Board shall authorize such
27 discontinuances for periods of more than thirty (30)
28 days when they are the result of causes beyond the
29 control of such person.

1 The permissive revocation shall be effective from
2 the date when the grantee of the tax exemption incurred in
3 the fault on which the order of revocation is predicated.

4 (2) Mandatory revocation. A tax exemption
5 granted hereunder shall be revoked by the Board if it was
6 obtained by falsely or fraudulently representing the nature
7 of the product or products manufactured or cultivated or to
8 be manufactured or cultivated or the nature and extent of
9 the manufacturing or production processes performed or to
10 be performed in Alaska or by falsely or fraudulently repre-
11 senting that property is or was to be devoted to industrial
12 development or by falsely or fraudulently representing any
13 other facts or circumstances upon which the exemption grant
14 was predicated in whole or in part. In the event of such
15 revocation, all net income previously reported as industrial
16 development income as well as all distribution therefrom
17 shall be subject to normal tax and surtax and the taxpayer
18 shall be deemed to have filed a false or fraudulent return
19 with intent to evade tax, and, therefore, subject to the
20 penal provisions of the income tax laws in force in Alaska.
21 The tax due in such case as well as any other taxes thereto-
22 fore exempted and unpaid shall become due and shall be
23 assessed and collected in accordance with the provisions
24 of the tax laws in force.

25 Nothing herein previously provided shall affect
26 the tax exemptions granted with respect to property devoted
27 to industrial development which has been leased or in any
28 other manner used by a business whose exemption has been
29 cancelled mandatorily, either under the preceding provisions

1 or under the provisions of Section 7 hereof, unless it is
2 shown that the lease of utilization was not undertaken in
3 good faith, that is, that at the time when such property
4 was leased or otherwise made available to the exempted
5 business, the owner or owners thereof had knowledge of the
6 facts that subsequently caused the mandatory cancellation.

7 (c) Reports.

8 (1) Exemption application reports. Before
9 deciding on any application for exemption, the Board shall
10 first consider the reports on each application which shall
11 be submitted to it by the Director of the Alaska Resource
12 Development Board, the Commissioner of Mines, the Commis-
13 sioner of Agriculture, and such other executive heads of
14 the Territorial Government as the Board may deem proper.
15 Such reports shall be made by the said government executives
16 within the term the Board may, in its discretion, fix for
17 the filing of such reports. In the event that any report
18 is not submitted by any of said government executives
19 within the time so fixed by the Board, the Board may dis-
20 pense with the report of such executive and act upon the
21 application for exemption.

22 (2) Other reports. Any natural or artificial
23 person covered by the benefits of this Act shall be under
24 obligation to present to the Board, within 75 days after the
25 close of the grantee's fiscal year, a complete list and a
26 correct valuation of all real and personal property declared
27 tax-exempt under the provisions hereof, and which said per-
28 son possesses in his own right or has in his possession on
29 January 1st of each year; to file annually with the Tax

1 Commissioner, pursuant to the Income Tax Law in force, but
2 independently of the amount of his gross or net income, a
3 separate income tax return in accordance with the provisions of
4 otherwise is under obligation to file in relation to the
5 operations of the industry the object of the exemption; to
6 keep, separately, the accounting records relative to the
7 exempted business; to keep such records, make such sworn
8 statements, present such declarations, and comply with such
9 rules and regulations as the Board may prescribe for the
10 enforcement or other fulfillment of the purposes hereof and
11 as the Tax Commissioner may prescribe in connection with
12 the levy and collection of all kinds of taxes.

13 Sec. 6. TRANSFER OF AN EXEMPTED BUSINESS.

14 (a) General rule. If a tax exemption grant or shares
15 of stock or any partnership participation in an exempted business
16 are transferred without the prior written approval of the Board,
17 the exemption shall be forfeited, except in the cases specified
18 in subsection (b).

19 (b) Exemptions. The following transfers shall be per-
20 mitted:

21 (1) A transfer of the assets of a decedent to
22 his estate or a transfer by bequest or inheritance;

23 (2) an exchange within the provisions of Section 4
24 hereof;

25 (3) a transfer of share of stock or any partner-
26 ship participation when such transfer does not directly or
27 indirectly result in a change in control of the exempted
28 business, applying the rules of stock ownership provided by
29 the income tax laws then in force;

1 (4) a transfer of shares of stock of a corpora-
2 tion owning or conducting an exempted business which occurs
3 after the Board has determined that any and all transfers
4 of shares of stock of such corporation shall be permitted
5 without the prior written approval of the Board, which
6 determination the Board may make after considering the
7 extent to which availability of investment capital may
8 depend on the existence of securities which are freely
9 transferable, the nature of the exempted business and its
10 importance to the industrial development of Alaska, the
11 integrity and financial standing of the stockholders, and
12 the paid-in capitalization and number of stockholders that
13 the corporation expects to have at the time of the commence-
14 ment of operations of the exempted business; provided, that,
15 before making a determination of this nature the Board
16 shall consider the reports on each such case which shall be
17 submitted to it by the Alaska Resource Development Board,
18 the Commissioner of Mines, the Commissioner of Agriculture,
19 and such other executive heads of the Territorial Government
20 as the Board may deem proper;

21 (5) a pledge or hypothecation entered into in
22 the normal course of business, solely for the purpose of
23 creating security for bona-fide indebtedness;

24 (6) a transfer by operation of law or court
25 order to a trustee in bankruptcy or a receiver.

26 (c) Notice. Every corporation owning or conducting
27 an exempted business shall give written notice to the Board of
28 each transfer of record of shares of stock of such corporation
29 not later than 30 days after such transfer. Written notice shall

1 be given to the Board by any interested party of each transfer
2 of any partnership participation exempted business, not later
3 than 30 days after such transfer.

4 Sec. 7. DENIAL OF TAX EXEMPTION TO SUCCESSORS OF PREDECESSOR
5 EXEMPTED BUSINESSES.

6 (a) Denial or forfeiture of exemption in certain cases.

7 No person shall be entitled to any tax exemption under this Act
8 if:

9 (1) A predecessor exempted business, as defined
10 in paragraph (b) of this section, is dissolved, liquidated,
11 or otherwise ceases to operate prior to the filing by such
12 person of an application for tax exemption, or shall, at
13 any time after the filing of such application but prior to
14 the close of the tax exemption period otherwise applicable
15 to such person, be dissolved, liquidated, or otherwise
16 ceases to operate for more than six (6) consecutive months
17 for any cause except strikes, war, action of a government
18 or the elements, or other cause beyond the control of such
19 predecessor exempted business; or if

20 (2) at any time after the filing of such applica-
21 tion but prior to the close of the tax exemption period
22 otherwise applicable to such person, the annual production,
23 output, or the operations of a predecessor exempted business
24 shall be diminished for any cause except strikes, war, action
25 of a government or the elements, or other cause beyond the
26 control of such predecessor exempted business, by 25 per-
27 cent or more as compared with its average annual production,
28 output, or operations during the three-year period ending
29 with the close of the taxable year of such predecessor

1 exempted business preceding the filing of such application
2 for tax exemption, or for such part of such period as may
3 be applicable; or if

4 (3) such person, through the industrial unit or
5 hotel established or to be established, utilizes or shall
6 utilize physical facilities including, but without limita-
7 tion, land, buildings, machinery, equipment, inventory or
8 supplies having a value of \$5,000 or more previously utilized
9 by a predecessor exempted business; provided, however, that
10 this subsection shall not apply in cases where the Board
11 determines that the use of the physical facilities pre-
12 viously utilized by a predecessor exempted business will be
13 in the best interest of the Territory of Alaska in view of
14 the nature of the facilities, the investment, the number of
15 workers and employees involved, and the amount of the pay-
16 roll.

17 (b) Definition. For the purpose of this section, a
18 predecessor exempted business shall mean any business which:

19 (1) Is enjoying or has enjoyed tax exemption; and

20 (2) Which, as the source of its industrial
21 development income, produced a manufactured product or con-
22 ducted hotel operations substantially similar to the manu-
23 factured product or hotel operations to be produced or con-
24 ducted by the person filing the subsequent application for
25 tax exemption; and

26 (3) Which, for the purpose of applying subsection
27 (a)(1) and (a)(2) but not subsection (a)(3) above, is or
28 was owned to the extent of 10% or more of its outstanding
29 stock or any other proprietary interest by such person filing

1 the subsequent application for tax exemption or by any of
2 its stockholders or proprietors owning stock or other pro-
3 prietary interest to the extent of 10% or more. For the
4 purposes of this subsection, the ownership of stock or any
5 other proprietary interest shall be determined in the manner
6 provided by the rules concerning the ownership of stock of
7 corporations or of participation in partnerships under the
8 income tax laws in force in Alaska.

9 (c) Disclosure of facts. The Board shall require
10 every applicant for tax exemption to make full disclosure, under
11 oath, of facts required or appropriate to determine whether or
12 not the applicant's operations or proposed operations shall be
13 in violation of the preceding provisions of this section; further-
14 more, every grant of tax exemption under this Act shall require
15 that at no time during the life of the grant shall the grantee
16 violate such preceding provisions.

17 (d) Penalties. Any person or persons who shall
18 intentionally commit or attempt to commit, on their own behalf or
19 on behalf of any other person or persons, a breach of the pro-
20 visions of this section, shall be guilty of a felony, and, upon
21 conviction shall be subject to a fine of not more than \$1,000.00,
22 or imprisonment for not more than five (5) years, or both, toge-
23 ther with the costs of prosecution; furthermore, any tax exemption
24 previously granted to any one or more of such persons shall be
25 subject to mandatory revocation by the Board, following for such
26 purposes the procedure established by Section 5(d)(2) of this Act;
27 all net income theretofore reported or earned as industrial
28 development income by such person or persons whether or not
29 distributed and the distributions therefrom shall be subject to

1 normal tax and surtax as of the date or dates when such taxes
2 were otherwise due and payable; similarly, all other taxes
3 exempted pursuant to Section 1 hereof shall become due and pay-
4 able as of the date or dates when, but for such tax exemption,
5 they would have become due and payable; all such taxes shall be
6 assessed and collected in accordance with the provisions of the
7 tax laws in force.

8 (e) Cases of facilities used in common. The provisions
9 of subdivision (a) (3) of this section shall not apply to cases
10 where facilities are used in common by two or more industrial
11 units pursuant to the provisions of subdivision (h) (3) of Sec-
12 tion 2 of this Act.

13 Sec. 8. APPEALS. Any grantee adversely affected or
14 aggrieved by any action taken by the Board revoking and/or can-
15 celling a tax exemption grant under the foregoing Sections 5(d) (2)
16 and 7, shall be entitled to judicial review thereof by filing an
17 appeal with the District Court within 30 days after final deci-
18 sion or adjudication by the Board.

19 Pending judicial review the Board is authorized,
20 where it finds that justice so requires, to postpone the effec-
21 tive date of any action taken by it upon such conditions as may
22 be required and to the extent necessary to prevent irreparable
23 injury. Where such postponement is applied for and denied, the
24 reviewing court may issue all necessary and appropriate process
25 to postpone the effective date of any action taken by the Board
26 or to preserve the status or rights of the parties pending con-
27 clusion of the review proceedings, after bond is given in favor
28 of and acceptable to the Tax Commissioner and before him, in the
29 amount of the taxes theretofore exempted and unpaid plus interest

1 and penalties, and interest computed for a period of one year at
2 the rate of 6 percent per annum.

3 Sec. 9. SHORT TITLE. The short title of this Act shall
4 be "The Alaska Industrial Incentive Act of 1957."

5 Sec. 10. REPEALER. Chapter 33, SLA 1953, is hereby
6 repealed, but all tax incentive agreements entered into under
7 said Act shall not be affected hereby.

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