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1 IN THE SENATE

BY THE FINANCE COMMITTEE

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HOUSE CS FOR SENATE BILL NO. 409

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FIFTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to state and local industrial incen-

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tive tax credits; and providing for an effective date."

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

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* Section 1. AS 43 is amended by adding a new chapter to read:

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CHAPTER 26. INDUSTRIAL INCENTIVE TAX CREDITS.

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Sec. 43.26.010. TAX CREDITS AUTHORIZED. (a) A person who has

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established and owns or proposes to establish and own an eligible busi-

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ness is entitled to a tax credit not to exceed 75 per cent of the value

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of the investment made in the business as of the date it commenced

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operation. The grant of tax credit shall be effective for a period,

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established by the commissioner of economic development, not to exceed

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10 years from the date of grant and shall be applied against the amount

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of certain taxes, as determined by the department, due the state during

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that period as a result of the development, organization, construction,

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establishment and operation of the specific business for which the

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credit is granted. The unused portion of a tax credit authorized

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under this chapter shall be forfeited at the expiration of the period

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of credit for which the grant was made. Only one grant of tax credit

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shall be made an eligible business, irrespective of transfer of the

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business or other circumstances. In the event any tax for which credit

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is given under this chapter produces revenue shared with local political

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subdivisions, the state shall pay to any affected subdivision the amount

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of revenue it would receive had the tax credit not been given.

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(b) The commissioner of economic development may by regulation

1 classify and exclude from investments qualifying for tax credit under
2 this chapter investments in an eligible business which are not of
3 substantial benefit to the state in furthering the purposes of industrial
4 development. Adoption, amendment or modification of regulations under
5 this subsection shall not be subject to the procedural requirements of
6 AS 44.62.180 - 44.62.290.

7 Sec. 43.26.020. APPLICATION FOR CREDIT. Application for a grant
8 of tax credit shall be made in a manner and upon forms prescribed by
9 the department. A grant of tax credit under this chapter shall be
10 considered a contract between the grantee and the state. The department
11 may determine the amount of the tax credit and the period for which
12 the credit applies. Then the department may attach such terms and
13 conditions to the credit as in its judgment will further the purposes
14 of industrial development.

15 Sec. 43.26.030. USE OF COMMON FACILITIES. (a) The department
16 may grant authorization for a plant, factory, machine or machine ensemble
17 to use major industrial facilities in common with other industrial units
18 if the department determines that the common use is necessary or conveni-
19 ent for the development of the economy and welfare of the state because
20 it will

21 (1) provide increased opportunities for work in either or
22 both industrial units;

23 (2) add substantially to the net income of the state; and

24 (3) result in a substantial investment in equipment, machin-
25 ery and supplies, comparable to the investment in the original unit,
26 less the value of the facilities to be used in common.

27 (b) If the industrial unit providing major or minor industrial
28 facilities to be used in common by other industrial units does not
29 have a tax credit, but a tax credit is obtained by the unit using such

1 facilities, the department may grant a tax credit with regard to such
2 facilities, except that the tax credit is limited to a part of the
3 value of such facilities and a part of the compensation received for
4 the use of the facilities, in proportion to the use made of the
5 facilities by the industrial unit which has a tax credit. The determin-
6 ant factors of the use include space occupied, time and nature of use,
7 and the importance the use bears on the industrial unit or units making
8 use of the facilities.

9 Sec. 43.26.040. ADMINISTRATION. (a) The commissioner of eco-
10 nomic development shall appoint the personnel necessary to carry out
11 this chapter. The commissioner shall make arrangements for such
12 public hearings as he considers necessary and shall require an appli-
13 cant for a tax credit to present evidence that will justify the credit.

14 (b) The commissioner or another person whom the commissioner
15 designates shall hear the evidence presented in relation to an appli-
16 cation for tax credit; he may summon witnesses and take their testimony
17 as to facts related to the tax credit applied for, and administer an
18 oath to the person testifying before him; he shall make a report to
19 the department on the evidence, together with his recommendations.

20 (c) The department shall adopt regulations it considers necessary
21 to carry out the purposes of this chapter. The regulations shall be
22 published in newspapers necessary to guarantee general circulation in
23 the state.

24 (d) To enforce compliance with this chapter, the department may
25 require periodic reports from the grantee of a tax credit and may at
26 reasonable intervals inspect the books of the eligible business for
27 which the credit has been granted.

28 (e) All decisions and findings of the department under this chap-
29 ter are final and no judicial or administrative appeal or other

1 proceeding lies against them unless otherwise specifically provided in
2 this chapter or by regulation.

3 Sec. 43.26.050. REVOCATION OF TAX CREDIT. (a) After furnishing
4 notice and opportunity to be heard to the grantee of a tax credit
5 under this chapter, the department may revoke the grant if

6 (1) the business for which the tax credit is granted ceases
7 to be an eligible business; or

8 (2) the department determines that the grantee of a tax
9 credit has falsely or fraudulently represented facts or circumstances
10 upon which grant of the credit was predicated in whole or in part, or
11 the department determines that the grantee has used the tax credit
12 for taxes upon a business not included in the application upon which
13 the credit was granted; or

14 (3) the grantee of a tax credit fails to comply with any
15 conditions or terms of the grant or any provisions of this chapter
16 or regulations adopted under it; or

17 (4) a transfer of shares of stock or partnership participa-
18 tion in an eligible business is made which represents a change of
19 control in the business, except

20 (A) a transfer by will or by operation of the laws of
21 inheritance, or

22 (B) a transfer made solely to create security for bona
23 fide indebtedness, or

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

26 (b) Upon revocation of a grant of tax credit, all taxes which,
27 except for the tax credit, would have been due the state subsequent to
28 revocation shall be assessed and collected and paid in accordance with
29 the provisions of the tax laws.

1 (c) A person aggrieved by department action revoking a grant of
2 tax credit may seek judicial review of the action by filing an appeal
3 with the superior court within 30 days after final determination by the
4 department. Pending judicial review, the department may postpone the
5 effective date of the action taken by it upon such conditions as may
6 be required and to the extent necessary to prevent irreparable injury.
7 If a postponement is applied for and denied, the court may issue
8 appropriate process to postpone the effective date of the action taken
9 by the department or to preserve the status or rights of the parties
10 pending conclusion of the review proceedings. Postponement by the
11 court shall be conditioned upon the giving of acceptable bond to the de-
12 partment in an amount equal at least to the amount of taxes credited
13 prior to revocation plus interest and penalties as provided by the tax
14 laws.

15 Sec. 43.26.060. PENALTY. A person who fraudulently represents
16 facts or circumstances upon which a grant of tax credit is predicated
17 in whole or in part is guilty of a misdemeanor and upon conviction
18 shall be punished by a fine of not more than \$1,000 or by imprisonment
19 for not more than one year, or by both.

20 Sec. 43.26.070. TERMINATION DATE FOR APPLICATIONS. An applica-
21 tion for a grant of tax credit under this chapter shall be received by
22 the department until midnight of June 30, 1973, but not after that date.

23 Sec. 43.26.080. GRANT OF TAX CREDIT BY POLITICAL SUBDIVISION.
24 With respect to taxes levied by it, a political subdivision of the
25 state may award grants of tax credit in the same manner and subject
26 to the same restrictions as provided for the department under this
27 chapter, except that the amount of tax credit granted may not exceed
28 25 per cent of the value of the investment made in the business as of
29 the date it commences operation, and a political subdivision shall levy

1 at least a real and personal property tax millage on the assessed valu-
2 ation of the property which is equal to the millage required for the
3 local tax effort under the Public School Foundation Program (AS 14.17).

4 Sec. 43.26.090. EFFECT ON INDUSTRIAL TAX EXEMPTIONS. Exemptions
5 granted in whole or in part under sec. 6, ch. 10, SLA 1949; ch. 33,
6 SLA 1953 and ch. 129, SLA 1957 (the Alaska Industrial Incentive Act)
7 shall remain in full force and effect upon the terms and for the
8 periods granted. No industrial unit granted a tax exemption under any
9 of those laws may qualify for a grant of tax credit under this chapter,
10 provided additional industrial units, which use facilities in common
11 with an industrial unit or units previously granted a tax exemption
12 under those laws or a tax credit under this chapter, may be granted a
13 tax credit if such industrial unit qualifies as an eligible business
14 as defined herein.

15 Sec. 43.26.100. DEFINITIONS. In this chapter

16 (1) "department" means the Department of Economic Develop-
17 ment;

18 (2) "eligible business" means

19 (A) an industrial unit having as its object the produc-
20 tion on a commercial scale in the state of a manufactured product
21 which was not produced on a commercial scale before July 1, 1968,
22 and for which there were on that date in the same competitive
23 area within the state as defined by the commissioner of economic
24 development, no production facilities capable of the production
25 of that manufactured product on a commercial scale; or

26 (B) an industrial unit established after July 1, 1968,
27 and having as its objective the production on a commercial scale
28 in the state of a designated article, and which, in the judgment
29 of the department

1 (i) is established in good faith and with a
2 permanent character, and

3 (ii) produces, or will produce, on a sustained
4 basis, within a reasonable time, a substantial amount of
5 a designated article additional to the amount of the same
6 articles being produced by other industrial units in opera-
7 tion in the state; in determining the amount of the produc-
8 tion in the state of these articles, the department shall
9 use the average production in the state of these articles,
10 for the three calendar years immediately preceding July 1,
11 1968; or

12 (C) an industrial unit established before July 1, 1968,
13 engaged in the production of a designated article in the state on
14 a commercial scale if

15 (i) tax credit has been granted to a new indus-
16 trial unit under the terms of this chapter to produce the
17 same designated article, and

18 (ii) the new industrial unit has begun production
19 on a commercial scale.

20 (3) "industrial unit" means a plant, factory, machine, or
21 machine ensemble which has a capacity to perform the major functions
22 involved in the production of a manufactured product on a commercial
23 scale and land which is necessary to perform these functions; an
24 industrial unit may not include business inventories, company stores
25 or company housing, or land devoted to company stores or company
26 housing; a plant, factory, machine or machine ensemble may be consid-
27 ered a separate industrial unit even though it uses, in common with
28 other industrial units,

29 (A) minor facilities such as sections of buildings,

1 power plants, warehouses, material conveyors, or other minor
2 production facilities, or

3 (B) major facilities, if the department authorizes
4 the common use of the facilities, as provided in sec. 30 of this
5 chapter;

6 (4) "production on a commercial scale" means production for
7 sale in the market in the normal course of business in quantities and
8 at prices which justify the operation of an industrial unit as a going
9 business;

10 (5) "designated articles" includes but is not limited to
11 the following articles or businesses:

12 (A) lumber,

13 (B) plywood,

14 (C) chemical grade pulp,

15 (D) newsprint,

16 (E) ores which have been processed or refined,

17 (F) petroleum products,

18 (G) handicrafts,

19 (H) agricultural products,

20 (I) manufactured articles from fur or native skins,

21 (J) fish products,

22 (K) furniture, but not the mere assembly of it,

23 (L) products of slaughtering operations, including the
24 products of packing houses that use the products of slaughtering
25 operations as raw material,

26 (M) livestock raising,

27 (N) other related articles including industrial power
28 development;

29 (6) "manufactured product" means

1 (A) a product transformed from raw material into an
2 article of commerce finished by hand or machinery; or

3 (B) a product with respect to which substantial indus-
4 trial operations are undertaken in the state if

5 (i) in the judgment of the department the product
6 merits treatment as a manufactured product within the scope
7 of this chapter because of the nature and extent of the
8 operations, the technology involved, the employment provided
9 or other contribution made or to be made by the operation to
10 the welfare of the state, and

11 (ii) the operations are carried out substantially
12 as originally represented by the tax credit petitioner,
13 except as the tax credit grant is modified by the department
14 in its discretion upon appropriate petition of the grantee;
15 or

16 (C) the production obtained from a mining operation if
17 it is beneficiated or substantially processed in the state
18 directly by the producer or by an independent enterprise.

19 (7) "political subdivision" means a home rule or general
20 law organized borough or city;

21 (8) "value" means value as determined by the department.

22 Sec. 43.26.110. SHORT TITLE. This chapter may be cited as the
23 Alaska Industrial Tax Credit Act.

24 * Sec. 2. This Act takes effect July 1, 1968.
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