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Referred: Commerce and
Finance

1 IN THE HOUSE

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SAYLORS

2 *CS* HOUSE BILL NO. 738

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3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act repealing the Alaska Business License Act and
7 establishing the Alaska Business and Occupation Tax;
8 and providing for an effective date."

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

10 * Section 1. AS 43.70 is repealed.

11 * Sec. 2. AS 43 is amended by adding a new chapter to read:

12 CHAPTER 71. BUSINESS AND OCCUPATION TAX.

13 Sec. 43.71.010. APPLICATION FOR LICENSE. (a) For the privilege
14 of engaging in a business in the state, a person shall first apply, upon
15 forms prescribed by the commissioner, obtain a license and pay the
16 license fee provided for in this chapter. A license issued to a firm
17 for a particular line of business covers all its operations in the state
18 in the line of business regardless of the number of its establishments.
19 Application for a renewal of a license and payment of the initial fee
20 shall be made before February 1, of each year. No license may be issued
21 for a period extending beyond the end of the calendar year for which it
22 is issued.

23 (b) A person engaging in a business subject to licensing provisions
24 of a regulatory nature (for example, the requirement of posting a bond
25 before beginning business as a collection agency) must, in addition to
26 filing the regular application required by this section, comply with
27 those regulatory provisions before being entitled to a license under
28 this chapter.

29 Sec. 43.71.020. LEVY AND COMPUTATION OF LICENSE FEE. (a) The

1 license fee for each business is \$25 plus a sum equal to seven per cent
2 of the net income from the operation of the business during the year for
3 which the license is issued. Net income in this section means the taxable
4 income from the business or profession computed as required by the In-
5 ternal Revenue Code of the United States. For a sole proprietorship,
6 net income is the net profit shown on Internal Revenue Service Sched-
7 ule C (form 1040), for a partnership of joint venture, that shown on
8 form 1065, and for a corporation, that shown on form 1120. The annual
9 license fee paid by a professional person to his professional board shall
10 be credited against the initial fee required under this chapter.

11 (b) The license fee for each national bank and state bank, trust
12 company and savings and loan association is seven per cent of its net
13 income. Net income means the taxable income of each taxpayer before
14 net operating loss deduction and special deductions, computed as required
15 under the Internal Revenue Code of the United States and includes all
16 other income including income from federal, state or municipal obligation.
17 Each of these taxpayers shall submit a copy of the income tax return
18 which it files with the United States Collector of Internal Revenue and
19 shall notify the commissioner of revenue in writing of any alteration
20 or modification of the federal income tax return and of a recomputation
21 of tax or determination of deficiency. The taxpayer who files his
22 federal return on a fiscal year basis shall in addition submit a state-
23 ment setting out all information which would be required and reported
24 in a federal income tax return prepared for the calendar year. This
25 statement shall be in the same form as a federal income tax return and
26 the net income shall be computed as required under the Internal Revenue
27 Code. The statement shall be submitted to the commissioner of revenue
28 before the sixteenth day of April after the close of the calendar year.

29 (c) The license for the privilege of taking orders through use of

1 catalogs and by mail order offices in the state is the same as set out
2 in this chapter for business generally and the license fee for those
3 offices shall be based upon the net income attributable to all orders
4 taken at them whether delivery of the merchandise is made through the
5 offices or not.

6 (d) The initial fee of \$25 applies to all of the provisions of this
7 section, and shall accompany the application. The balance is due and
8 payable on December 31 of each year and shall be paid before the first
9 day of March following, except that the department may extend the time
10 until the 30th of the following April upon application showing that the
11 extension is necessary to enable the applicant to ascertain the amount of
12 license money due. To enable accurate determination of the balance of
13 the tax due at the end of each year, each person to whom this chapter
14 applies shall keep records, give statements under oath, and make returns
15 which the department requires. Returns are made under penalty of perjury.

16 Sec. 43.71.030. REVIEW AND DETERMINATION OF LICENSE TAX. (a) As
17 soon as practicable after the final payment of the tax, the department
18 shall examine the return and determine the correct amount of the tax and,
19 if an error is found, shall notify the taxpayer of the error and examine
20 the taxpayer's records as authorized in AS 43.05.040, and take other
21 proper steps to determine the amount due.

22 (b) If an agreement cannot be reached with the taxpayer as to the
23 amount of a license tax, the department may set a time and place of
24 hearing on the question, upon at least 60 days' notice of the hearing by
25 mail to the taxpayer. At the hearing a person may be required to appear
26 and testify and produce records and other papers as provided in
27 AS 43.05.040.

28 (c) A person aggrieved by an action of the department may apply
29 in writing to the department within 60 days from the date of the notice

1 of the action, giving notice of the grievance and requesting a hearing.

2 (d) If the department determines that a fee in excess of the
3 amount due was paid, he shall allow a refund or permit a credit at the
4 option of the taxpayer. If refund is allowed, it shall be made out of
5 the general fund by a voucher approved by the department.

6 Sec. 43.71.040. APPEALS. If the person is aggrieved by the
7 decision of the department, he may appeal to the superior court in the
8 judicial district where he conducts his business.

9 Sec. 43.71.050. CIVIL PENALTY. (a) If a person fails to file a
10 business license return or pay the fee, as finally determined by the
11 department, unless it is shown that the failure is due to reasonable
12 cause and not to wilful neglect, five per cent is added to the fee for
13 each additional 30 days, or fraction of 30 days, during which the
14 failure continues, but not exceeding 25 per cent in the aggregate. The
15 amount added to the fee shall be collected at the same time and in the
16 same manner as the fee. In case of delinquency interest shall be
17 assessed at the rate of six per cent a year. If payment is made by
18 check, bill of exchange, or note which is later returned by the drawee
19 as uncollectible because of insufficient funds or is dishonored by the
20 drawee for any reason, the dishonor is prima facie evidence of nonpay-
21 ment of the license fee.

22 (b) If a person fails to apply for a license at the required time
23 or makes, wilfully or otherwise, an erroneous or fraudulent return, the
24 department shall assess the fee from any information it can obtain.
25 This assessment is prima facie good and sufficient for all legal purposes
26 under this chapter.

27 Sec. 43.71.060. SECURITY. (a) The amount of the fee, interest
28 charge, and penalty imposed under this chapter constitutes a lien in
29 favor of the state upon all the person's property located in the state.

1 The lien arises upon delinquency and continues until the liability for
2 the amount is satisfied or the property is sold at foreclosure sale.
3 The lien is not valid as against a mortgagee, pledgee, purchaser, or
4 judgment creditor until notice of the lien is filed in the office of the
5 recorder in the manner provided for federal tax liens in AS 43.10.090 -
6 43.10.150. AS 43.10.090 - 43.10.150 apply to the tax liens arising under
7 this chapter.

8 (b) A nonresident person who starts to perform a construction
9 contract or subcontract or other line of business in the state and is
10 not known by the department to be the holder of adequate property in the
11 state to secure collection of the license money which will probably
12 accrue under this chapter by virtue of the business shall, in or with his
13 application, state under oath the extent of lienable real and personal
14 property which the department prescribes. If the value of the property
15 is not equal to three times the amount of the tax for which the applicant
16 will probably be liable to the state, the department shall not issue
17 the license until the applicant files with him a surety bond approved
18 by the attorney general in a penal sum equal to twice the probable
19 amount of the tax for which the applicant will be liable, conditioned
20 upon payment of the tax in full when due, and with interest if not paid
21 before delinquency. The department may waive the bond requirement if
22 the applicant posts other security in the form of collateral acceptable
23 to the department.

24 Sec. 43.71.070. DISPOSAL OF MONEY. (a) All money collected under
25 this chapter shall be deposited in the general fund.

26 (b) The legislature is authorized to appropriate each year to the
27 Department of Revenue an amount equal to 80 per cent of the money
28 collected in each organized borough and each organized city. The
29 amount appropriated to the department pursuant to this section to be

1 distributed to each organized borough and city in proportion to amount
2 of license fees collected in the local government.

3 Sec. 43.71.080. REGULATIONS. The department may adopt regulations
4 necessary to determine and collect the fees imposed and to enforce this
5 chapter.

6 Sec. 43.71.090. PENAL PROVISIONS. (a) It is unlawful for a person
7 to (1) wilfully evade a tax under this chapter; (2) fail to make a
8 return or keep or produce a record required under sec. 20 of this
9 chapter; (3) make a false or fraudulent return or false statement with
10 intent to defraud the state or evade payment of the tax; or (4) aid or
11 abet another in an attempt to evade payment of the tax.

12 (b) It is unlawful for an executive officer or agent of a corpora-
13 tion or agent of a person to make or permit to be made for his principal
14 a false return or false statement in answer to an inquiry from the depart-
15 ment with the intent to evade the payment of the tax under this chapter.

16 (c) A person who violates this section is guilty of a misdemeanor,
17 and upon conviction is punishable by a fine of not more than \$1,000, or
18 by imprisonment for not more than one year, or by both.

19 (d) In a prosecution under this chapter, no person otherwise
20 competent as a witness is privileged from testifying on the ground that
21 his testimony may incriminate him. However, no indictment or prosecu-
22 tion shall afterwards be brought against the witness on account of an
23 offense or transaction concerning which he testifies as a witness.
24 In a prosecution under this chapter, the attorney general may, with the
25 consent of the department, compromise the case by accepting from the
26 defendant a sum not less than the tax, interest on the tax, and all
27 costs and expenses.

28 Sec. 43.71.100. DEFINITIONS. In this chapter, unless the context
29 otherwise requires, the following words have the meanings indicated.

1 (1) "Business" includes all activities or acts, personal,
2 professional, or corporate, engaged in or caused to be engaged in, or
3 following or engaging in a trade, profession, or business, calling or
4 vocation, with the object of financial or pecuniary gain, profit or
5 benefit, either direct or indirect, and not exempting subactivities pro-
6 ducing marketable commodities or services used or consumed in the main
7 business activity, each of which subactivities shall be considered
8 business. The giving or supplying of services as an employee and the
9 furnishing of property, services, substances, or things, by a person who
10 does not hold himself out as regularly engaging in those transactions,
11 does not constitute business under the meaning of this chapter.

12 (2) "Income year" means calendar year. If a person carries on
13 business during a part only of the income year, "income year" means the
14 period within the income year during which the person carries on business.

15 (3) "Person" includes an individual, firm, partnership, joint
16 adventure, association, corporation, estate trust, business trust,
17 receiver, or any group or combination acting as a unit.

18 Sec. 43.71.110. SHORT TITLE. This chapter may be cited as the
19 Alaska Business and Occupation Tax Act.

20 * Sec. 3. This Act takes effect January 1, 1975.
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