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Referred: Finance

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 738

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 AS 43.70 is repealed.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. 43.71.005. EXEMPTIONS. (a) Net income derived from the  
14 following gross receipts are exempt from taxation under this chapter:  
15 (1) gross receipts from educational, religious, benevolent,  
16 fraternal, or charitable activities, where the entire amount of the  
17 receipts is held or expended for these activities, except receipts which  
18 are the result of a continuous engaging in a business or occupation  
19 otherwise subject to this chapter;

20 (2) gross receipts from the operation of a hospital;

21 (3) gross receipts from a municipally owned and operated  
22 utility and from operation of a utility by an incorporated utility dis-  
23 trict, nonprofit association, or nonprofit cooperative;

24 (4) gross receipts from home handicrafts up to \$500;

25 (5) gross receipts of a resident wholesale firm registered  
26 in the state as a domestic corporation, or otherwise identifiable as a  
27 resident wholesaler, from sale of a finished product to dealers for  
28 resale to consumers, where the resale is subject to tax under this  
29 chapter;

1 (6) gross receipts derived from a sale made to a person in  
2 a foreign country for shipment out of the United States, except when  
3 the goods or products sold are exported in bond for re-entry into the  
4 United States;

5 (7) gross receipts of a manufacturer or processor derived  
6 from the sale of his product manufactured or processed in the state,  
7 except where the products are sold directly to the consumer;

8 (8) gross receipts subject to the gross production tax im-  
9 posed by ch. 55 of this title, except that a person subject to the  
10 gross production tax shall obtain a business license and pay the initial  
11 \$25 license fee;

12 (9) gross receipts from the taxes imposed by the state upon  
13 the sale of motor fuel;

14 (10) gross receipts from a consumers' sales tax collected by  
15 a taxpayer for the state or a political subdivision of this state.

16 (b) The word "consumer" as used in this section means the person  
17 who, in the ordinary common meaning of the term, ultimately uses goods,  
18 and diminishes or destroys their utility.

19 (c) The exemption from taxation of net income derived from certain  
20 gross receipts as provided in this chapter does not exempt a person  
21 from the \$25 initial license fee.

22 Sec. 43.71.010. APPLICATION FOR LICENSE. (a) For the privilege  
23 of engaging in a business in the state, a person shall first apply, upon  
24 forms prescribed by the commissioner, obtain a license and pay the  
25 license fee provided for in this chapter. A license issued to a firm  
26 for a particular line of business covers all its operations in the state  
27 in the line of business regardless of the number of its establishments.  
28 Application for a renewal of a license and payment of the initial fee  
29 shall be made before February 1, of each year. No license may be issued

1 for a period extending beyond the end of the calendar year for which it  
2 is issued.

3 (b) A person engaging in a business subject to licensing provisions  
4 of a regulatory nature (for example, the requirement of posting a bond  
5 before beginning business as a collection agency) must, in addition to  
6 filing the regular application required by this section, comply with  
7 those regulatory provisions before being entitled to a license under  
8 this chapter.

9 Sec. 43.71.020. LEVY AND COMPUTATION OF LICENSE FEE. (a) The  
10 license fee for each business is \$25 plus a sum equal to two per cent  
11 of the net income from the operation of the business during the year  
12 for which the license is issued. Net income in this section means the  
13 taxable income from the business or profession computed as required by  
14 the Internal Revenue Code of the United States. For a sole proprietor-  
15 ship, net income is the net profit shown on Internal Revenue Service  
16 Schedule C (form 1040); for a partnership or joint venture, that shown  
17 on form 1065; and for a corporation, that shown on form 1120; except  
18 that a sole proprietorship or partnership may deduct a reasonable  
19 salary paid to the owner. Corporations who have income from in and  
20 out of the state shall apportion their income in accordance with the  
21 provisions of AS 43.19.010(IV). The annual license fee paid by a  
22 professional person to his professional board shall be credited against  
23 the initial fee required under this chapter.

24 (b) The license fee for each national bank and state bank, trust  
25 company and savings and loan association is seven per cent of its net  
26 income. Net income means the taxable income of each taxpayer before  
27 net operating loss deduction and special deductions, computed as required  
28 under the Internal Revenue Code of the United States and includes all  
29 other income including income from federal, state or municipal obligation.

1 Each of these taxpayers shall submit a copy of the income tax return  
2 which it files with the United States Collector of Internal Revenue and  
3 shall notify the commissioner of revenue in writing of any alteration  
4 or modification of the federal income tax return and of a recomputation  
5 of tax or determination of deficiency. This statement shall be in the  
6 same form as a federal income tax return and the net income shall be  
7 computed as required under the Internal Revenue Code. The statement  
8 shall be submitted to the commissioner of revenue before April 16 after  
9 the close of the calendar year.

10 (c) The initial fee of \$25 applies to all of the provisions of  
11 this section, and shall accompany the application. The balance is due  
12 and payable on December 31 of each year and shall be paid before  
13 April 16 following, except that the department may extend the time  
14 until the 30th of the following April upon application showing that  
15 the extension is necessary to enable the applicant to ascertain the  
16 amount of license money due. To enable accurate determination of the  
17 balance of the tax due at the end of each year, each person to whom  
18 this chapter applies shall keep records, give statements under oath,  
19 and make returns which the department requires. Returns are made  
20 under penalty of perjury.

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

27 (b) If an agreement cannot be reached with the taxpayer as to the  
28 amount of a license tax, the department may set a time and place of  
29 hearing on the question, upon at least 60 days' notice of the hearing by

1 mail to the taxpayer. At the hearing a person may be required to appear  
2 and testify and produce records and other papers as provided in  
3 AS 43.05.040.

4 (c) A person aggrieved by an action of the department may apply  
5 in writing to the department within 60 days from the date of the notice  
6 of the action, giving notice of the grievance and requesting a hearing.

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

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

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

27 (b) If a person fails to apply for a license at the required time  
28 or makes, wilfully or otherwise, an erroneous or fraudulent return, the  
29 department shall assess the fee from any information it can obtain.

1 This assessment is prima facie good and sufficient for all legal purposes  
2 under this chapter.

3 Sec. 43.71.060. SECURITY. The amount of the fee, interest  
4 charge, and penalty imposed under this chapter constitutes a lien in  
5 favor of the state upon all the person's property located in the state.  
6 The lien arises upon delinquency and continues until the liability for  
7 the amount is satisfied or the property is sold at foreclosure sale.  
8 The lien is not valid as against a mortgagee, pledgee, purchaser, or  
9 judgment creditor until notice of the lien is filed in the office of the  
10 recorder in the manner provided for federal tax liens in AS 43.10.090 -  
11 43.10.150. AS 43.10.090 - 43.10.150 apply to the tax liens arising under  
12 this chapter.

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

15 (b) The legislature is authorized to appropriate each year to the  
16 Department of Revenue an amount equal to 80 per cent of the money  
17 collected in each organized borough and each organized city. The  
18 amount appropriated to the department under this section to be distri-  
19 buted to each organized borough and city in proportion to amount of  
20 license fees collected in the local government.

21 Sec. 43.71.080. REGULATIONS. The department may adopt regulations  
22 necessary to determine and collect the fees imposed and to enforce this  
23 chapter.

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

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

5 (c) A person who violates this section is guilty of a misdemeanor,  
6 and upon conviction is punishable by a fine of not more than \$5,000, or  
7 by imprisonment for not more than one year, or by both.

8 (d) In a prosecution under this chapter, no person otherwise  
9 competent as a witness is privileged from testifying on the ground that  
10 his testimony may incriminate him. However, no indictment or prosecu-  
11 tion shall afterwards be brought against the witness on account of an  
12 offense or transaction concerning which he testifies as a witness.  
13 In a prosecution under this chapter, the attorney general may, with the  
14 consent of the department, compromise the case by accepting from the  
15 defendant a sum not less than the tax, interest on the tax, and all  
16 costs and expenses.

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

19 (1) "Business" includes all activities or acts, personal,  
20 professional, or corporate, engaged in or caused to be engaged in, or  
21 following or engaging in a trade, profession, or business, calling or  
22 vocation, with the object of financial or pecuniary gain, profit or  
23 benefit, either direct or indirect, and not exempting subactivities pro-  
24 ducing marketable commodities or services used or consumed in the main  
25 business activity, each of which subactivities shall be considered  
26 business. The giving or supplying of services as an employee and the  
27 furnishing of property, services, substances, or things, by a person who  
28 does not hold himself out as regularly engaging in those transactions,  
29 does not constitute business under the meaning of this chapter.

1 (2) "Gross receipts" means receipts from sources in the  
2 state, whether in the form of money, credits, or other valuable con-  
3 sideration received from engaging in or conducting a business without  
4 deducting the cost of the property sold, the cost of the materials  
5 used, labor or service cost, interest paid, taxes, losses, or any other  
6 expense, except that "gross receipts" does not include cash discounts  
7 allowed and taken on sales, and sales refunds, either in cash or by  
8 credit, uncollectible accounts written off, and payments received in  
9 final liquidation of accounts included in the gross receipts of a  
10 previous return made by the person. Receipts from sales, wherever made,  
11 of goods, wares, and merchandise manufactured or processed or origina-  
12 ting in the state are considered a part of gross receipts from sources  
13 in the state, and the holder of a state license under this chapter  
14 doing business inside and outside the state is liable under this chapter  
15 as to that portion of his gross receipts attributable to his Alaska  
16 operation. "Gross receipts" also includes all amounts paid or assigned  
17 to subcontractors. Individuals representing firms taxed under this  
18 chapter on volume of business done, working as agents on commission  
19 instead of as employees, may compute their gross receipts as equal to  
20 their gross commissions.

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

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

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