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1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 297

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the oil and gas reserves ad valorem
7 tax and its relationship to other oil and gas taxation;
8 and providing for an effective date."

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

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

11 CHAPTER 58. OIL AND GAS RESERVES AD VALOREM TAX.

12 Sec. 43.58.010. AD VALOREM TAX. (a) An annual tax is levied each
13 tax year beginning January 1, 1976, on the full and true value of
14 taxable property under this chapter.

15 (b) The legislature shall annually determine by law the rate of
16 the levy before April 1.

17 (c) If on April 1 the legislature has not determined the rate of
18 levy, the rate of levy shall be zero for that year. The rate of levy
19 may not exceed 20 mills.

20 Sec. 43.58.020. EXEMPTIONS. (a) The following interests in the
21 proven reserves of a lease or property shall be exempt from taxation
22 under this chapter:

23 (1) any interest of the United States or the state;

24 (2) any interest exempted from taxation by sec. 21 of the
25 Alaska Native Claims Settlement Act (P.L. 92-203; 43 U.S.C. sec. 1620);

26 (3) all other interests in the proven reserves of a lease or
27 property during the five year period beginning with the earlier of:

28 (A) the date of the original lease, concession, contract
29 or any other agreement that is made for the oil and gas development

1 of a part or all of the land subject to that lease or property, or

2 (B) the date of the first completion, suspension, or
3 abandonment of a discovery well in a field or pool which in whole
4 or in part underlies or comprises the lease or ownership interest;

5 (4) taxable property under ch. 56 of this title;

6 (5) any and all interests acquired by an Alaska Native
7 regional corporation under the Alaska Native Claims Settlement Act
8 (P.L. 92-203; 43 U.S.C. 1620).

9 (b) If any provision of this section or the application of any
10 provision of this section or circumstance is held invalid, the remainder
11 of this Act is void.

12 Sec. 43.58.030. CREDIT AGAINST TAX. There shall be allowed, as a
13 credit against the tax levied under this chapter for a lease or property
14 the amount of oil and gas properties production taxes paid under ch. 55
15 of this title for that lease or property for the 12 months before the
16 tax payment date under this chapter. The credit may not exceed the
17 amount of tax due under this chapter. For purposes of this section, the
18 credit shall be calculated without regard to the allowance of any credit
19 under AS 43.55.018 against the taxes levied by ch. 55 of this title.

20 Sec. 43.58.040. ASSESSMENT. (a) The department shall assess
21 taxable property under this chapter at its full and true value as of
22 January 1 of each year.

23 (b) The full and true value of taxable property under this chapter
24 is the estimated price which the property would bring in an open market
25 and under the then prevailing market conditions in a sale between a
26 willing seller and a willing buyer both conversant with the property and
27 with prevailing values. In determining this value, the department shall
28 consider all factors which may be known by the department to affect the
29 value of the proven reserves of the lease or property, including but not

1 limited to the present value of the expected discounted future net
2 income from the lease or property.

3 Sec. 43.58.050. ASSESSMENT ROLL. The department shall prepare
4 annually the assessment roll for taxation under this chapter. The roll
5 shall contain:

- 6 (1) a description of all taxable property;
7 (2) the assessed value of all taxable property; and
8 (3) the names and addresses of persons owning or otherwise
9 holding an interest in taxable property.

10 Sec. 43.58.060. ASSESSMENT NOTICE. On or before April 15 of each
11 year, the department shall send to every owner of taxable property named
12 in the assessment roll a notice of assessment showing the assessed value
13 of the property. The notice of assessment is effective on the date of
14 its mailing.

15 Sec. 43.58.070. APPEAL. (a) A person aggrieved by the action of
16 the department in making an assessment may request a hearing not later
17 than 20 days after the effective date of the assessment notice.

18 (b) At the hearing the department may subpoena witnesses and may
19 administer oaths and make inquiries necessary to determine the correct-
20 ness of the assessment. At the hearing the appellant bears the burden
21 of proof, and in the absence of this proof the assessment will be
22 upheld. If the department determines that a correction is warranted,
23 the department shall correct the assessment and the assessment roll.

24 (c) Within 30 days after the decision by the department after a
25 hearing, either the department or a person aggrieved by the decision may
26 appeal to the superior court for a trial de novo. The superior court
27 shall grant priority on its dockets for the appeals over all civil cases
28 then pending.

29 Sec. 43.58.080. CERTIFICATION. On or before June 15 of each year,

1 the department shall certify the final assessment roll and mail to the
2 operator or other person filing a return and paying tax on the taxable
3 property a statement of the amount of tax due.

4 Sec. 43.58.090. SUPPLEMENTAL ASSESSMENT ROLLS. The department
5 shall include property omitted from the assessment roll on a supple-
6 mental roll, using the procedures set out in this chapter for the
7 original roll.

8 Sec. 43.58.100. INVESTIGATION. (a) The department may make an
9 investigation of property on which a return has been filed or on pro-
10 perty for which no return has been filed. In either case, the depart-
11 ment may make its own valuation of the taxable property, which is prima
12 facie evidence of full and true value.

13 (b) An employee or agent of the department may enter any premise
14 necessary for the investigation during reasonable hours and may examine
15 property and appropriate records. The owner of taxable property upon
16 request shall furnish to the employee or agent of the department reason-
17 able assistance required for the investigation. If refused entry or
18 assistance the superior court may, after reasonable notice to the owner,
19 order the owner to allow the entry or to furnish the assistance.

20 (c) For the purpose of the investigation, the operator or other
21 person filing a return and paying the tax on the taxable property or his
22 representative may be required to present himself for examination under
23 oath by the department.

24 Sec. 43.58.110. RETURNS AND PAYMENT OF TAX. (a) The operator of
25 a lease or property is primarily liable for payment of the tax levied by
26 this chapter. All other persons owning or otherwise holding an interest
27 or right in that lease or property are secondarily liable for payment of
28 the tax levied by this chapter.

29 (b) The operator of a lease or property shall submit returns on

1 the form prescribed by the department and shall make payment of the tax
2 levied under this chapter, on behalf of itself and all other persons
3 holding an interest or right in that lease or property. With the written
4 approval of the department, a non-operator of the lease or property may
5 submit returns or make payment of the tax levied under this chapter, on
6 behalf of himself and such other persons as the department may approve.
7 All returns shall be filed on or before February 1 of each year.

8 (c) The tax levied under this chapter is payable to the department
9 on or before June 30 of each year or in installments at the times and
10 under the conditions the department may by regulation require. This
11 provision applies even though the assessment is under appeal.

12 (d) With the prior written approval of the department, a person
13 submitting returns or making payments as required under this chapter for
14 more than one lease or property may regard those leases or properties as
15 a single lease or property for purposes of submitting those reports or
16 making those payments.

17 (e) An operator or other person making payment of the tax levied
18 under this chapter on behalf of one or more other persons owning or
19 otherwise holding an interest in a lease or property may withhold a
20 proportionate share of the payment from any proceeds or other benefits
21 from the lease or property owed to any person on whose behalf the pay-
22 ment is made. Unless otherwise specifically provided by written contract
23 or agreement, the person so withholding a proportionate share of the tax
24 levied under this chapter incurs no liability to those from whom it is
25 withheld by virtue of having made the withholding.

26 (f) By written notice the department may require a person filing
27 a return to submit additional information to the department no later
28 than 30 days after the notice.

29 Sec. 43.58.120. CIVIL PENALTY. Five per cent shall be added to

1 the tax for each 30-day period or fraction of that period during which
2 the taxpayer fails to file a return or pay the full amount of the tax,
3 or a portion or a deficiency of the tax due and payable as finally
4 determined by the department and required by this chapter, unless it is
5 shown that the failure is due to a reasonable cause and not to wilful
6 neglect. The penalty may not exceed 25 per cent in the aggregate. The
7 penalty shall be collected at the same time, in the same manner and as a
8 part of the original tax, but if the original tax is paid before the
9 neglect is discovered the penalty shall be collected in the same manner
10 as the original tax. The department shall describe by regulation circum-
11 stances which constitute reasonable cause for purposes of this section.

12 Sec. 43.58.130. INTEREST. When the tax levied in this chapter
13 becomes delinquent it bears interest at the rate of eight per cent a
14 year.

15 Sec. 43.58.140. LIEN. The tax, penalty and interest payable under
16 this chapter are first and paramount liens on the property subject to
17 tax under this chapter.

18 Sec. 43.58.150. REMEDY. The remedy of distraint of property set
19 out in AS 43.20.270 applies to the tax levied by this chapter.

20 Sec. 43.58.160. REGULATIONS. The department may adopt regulations
21 in accordance with the Administrative Procedure Act (AS 44.62) as
22 appropriate to administer and enforce this chapter.

23 Sec. 43.58.170. TERMINATION OF TAX. The tax imposed by this
24 chapter shall terminate on December 31, 1977.

25 Sec. 43.58.180. ACCRUAL OF EARLY DEVELOPMENT INCENTIVE CREDIT.
26 (a) An early development incentive credit, calculated in accordance
27 with this section, shall be applied to the tax payable under ch. 55 of
28 this title as provided in AS 43.55.018. The early development incentive
29 credit for a lease or property is zero until changed as provided in this

1 section.

2 (b) The early development incentive credit for a lease or property
3 shall be increased each calendar year by the amount of net tax paid
4 under this chapter.

5 (c) The early development incentive credit for a lease or property
6 shall be reduced each month by the amount of tax credit allowed in that
7 month under AS 43.55.018 for that lease or property.

8 Sec. 43,58,190. DEFINITIONS. In this chapter:

9 (1) "department" means the Department of Revenue;

10 (2) "gas" means all hydrocarbon substances not defined as oil
11 in this chapter;

12 (3) "lease or property" means

13 (A) a lease or other property that includes mineral
14 rights in oil and gas,

15 (B) a leasehold interest in oil and gas,

16 (C) a working interest, royalty interest, overriding
17 royalty interest, production payments, net profit interest or any
18 other interest in a lease, concession, joint venture or other
19 agreement for oil and gas exploration, development or production,

20 (D) a working interest, royalty interest, overriding
21 royalty interest, production payment, net profit interest or any
22 other interest in an agreement for unitization or pooling under the
23 provisions of sec. 614(b)(3) of the Internal Revenue Code of 1954
24 as defined on the effective date of this paragraph;

25 (4) "net tax paid under this chapter" means the amount of tax
26 payable under sec. 10 of this chapter, less the credit allowed under
27 sec. 30 of this chapter without regard to interest or penalty;

28 (5) "oil" means crude petroleum oil and other hydrocarbons
29 regardless of gravity which, when recovered, are recovered at the well-

1 head in liquid form, and the liquid hydrocarbons known as distillate or
2 condensate that are recovered by separation from gas other than at a gas
3 processing plant;

4 (6) "operator" means the person conducting the exploration,
5 development or production operation for a lease or property;

6 (7) "proven reserves" means the volumes of oil and gas in a
7 known deposit which geological and engineering information indicate to
8 be recoverable if it is economically feasible to market it in the future;
9 "proven reserves" does not include oil and gas which is not economically
10 feasible to market in the future under reasonably foreseeable conditions;

11 (8) "taxable property" means any interest in the proven
12 reserves of a lease or property.

13 Sec. 43.58.200. PAYMENT TO ALASKA NATIVE FUND. When the tax levied
14 under this chapter is payable an amount not less than two per cent of
15 the tax shall be paid by the state from oil and gas royalty payments
16 into the Alaska Native Fund established by sec. 6 of the Alaska Native
17 Claims Settlement Act (P.L. 92-203, 85 Stat. 688, 43 USC 1601 et seq.)
18 until all payments paid into the fund equals \$500,000,000.

19 * Sec. 2. AS 43.55.010(b) is amended to read:

20 (b) Except as provided in ch. 58 of this title, the [THE] tax
21 imposed by this chapter is in place of all taxes now imposed by the
22 state or any of its municipalities, and neither the state nor a munici-
23 pality may impose a tax upon

24 (1) [deleted]

25 (2) producing oil or gas leases;

26 (3) oil or gas produced or extracted in the state;

27 (4) [deleted]

28 (5) the value of intangible drilling and exploration expenses

29 * Sec. 3. AS 43.55 is amended by adding a new section to read:

1 Sec. 43.55.018. CREDIT AGAINST TAX. (a) There shall be allowed
2 as a credit against the taxes levied under this chapter for a lease or
3 property the early development incentive credit accrued for that lease
4 or property under AS 43.58.180. In no event may the credit allowed for
5 a lease or property exceed 50 per cent of the taxes levied under this
6 chapter for that lease or property.

7 (b) The credit shall be allowed on a monthly basis.

8 * Sec. 4. AS 43.55.140(8) is repealed and re-enacted to read:

9 (8) "lease or property" means

10 (A) a lease or other property that includes mineral
11 rights in oil and gas,

12 (B) a leasehold interest in oil and gas,

13 (C) a working interest, royalty interest, overriding
14 royalty interest, net profit interest or any other interest in a
15 lease, concession, joint venture or other agreement for oil and gas
16 exploration, development or production,

17 (D) a working interest, royalty interest, overriding
18 royalty interest, net profit interest or any other interest in an
19 agreement for unitization or pooling under the provisions of sec.
20 614(b)(3) of the Internal Revenue Code of 1954 as defined on the
21 effective date of this paragraph;

22 * Sec. 5. Sec. 29.53.050(b) is amended to read:

23 (b) No municipality, or combination of municipalities occupying
24 the same geographical area, in whole or in part, may levy taxes which
25 result in tax revenues from all sources exceeding either (1) \$1,000 a
26 year for each person residing within their boundaries or (2) when com-
27 bined with the value of property otherwise taxable by the municipality,
28 the product of 225 per cent of the average per capita assessed full and
29 true value in the state multiplied by the number of residents of the

1 taxing municipality. If two or more municipalities occupying the same
2 geographical area, in whole or in part, attempt to levy a tax the
3 combined levy of which would result in tax revenues from all sources
4 exceeding either (1) \$1,000 a year for each person residing within their
5 boundaries or (2) when combined with the value of property otherwise
6 taxable by the municipality, the product of 225 per cent of the average
7 per capita assessed full and true value of property in the state multi-
8 plied by the number of residents of the taxing municipality, the commis-
9 sioner of community and regional affairs shall apportion the lawful levy
10 and equitably divide these revenues on the basis of need, services
11 performed and other considerations in the public interest. For the
12 purpose of this subsection population shall be determined by the commis-
13 sioner of community and regional affairs based on the latest statistics
14 of the United States Bureau of the Census or on other reliable population
15 data. For purposes of this subsection the average per capita assessed
16 full and true value of property in the state shall be calculated without
17 regard to the assessed value of taxable property under AS 43.58.

18 * Sec. 6. Sec. 43.56.010(c) is amended to read:

19 (c) If the total value of assessed property of a municipality
20 taxing under AS 29.53.045(c) exceeds the product of 225 per cent of the
21 average per capita assessed full and true value of property in the state
22 (to be determined by the department and reported to each municipality by
23 January 15 of each year) multiplied by the number of residents of the
24 taxing municipality, the department shall designate the portion of the
25 tax base against which the local tax may be applied. For purposes of
26 this subsection the average per capita assessed full and true value of
27 property in the state shall be calculated without regard to the assessed
28 value of taxable property under ch. 58 of this title.

29 * Sec. 7. This Act takes effect on April 30, 1975.