

Original sponsor: Cowper, Bowman,  
Bradley, et al

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Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR 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 June 1.

17 (c) The rate of levy may not exceed 20 mills.

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

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

22 (2) any interest in proven reserves during the five-year  
23 period beginning with the date of the first completion, suspension, or  
24 abandonment, whichever occurs first, of a discovery well in an oil or  
25 gas field or pool which in whole or in part underlies or comprises the  
26 lease or property;

27 (3) any interest in proven reserves until the earlier of  
28 either of the following occurs:

29 (A) the issuance, upon application, of a permit for

1 construction of a facility to transport oil or gas from any well or  
2 wells in an oil or gas field or pool which in whole or in part  
3 underlies or comprises the lease or property to market; or

4 (B) the commencement of construction of a facility to  
5 transport oil or gas from any well or wells in an oil or gas field  
6 or pool which in whole or in part underlies or comprises the lease  
7 or property to market;

8 (4) any interest in proven reserves as to which the issuance  
9 of a permit for, or the commencement of construction of a facility to  
10 transport oil or gas from any well or wells in an oil or gas field or  
11 pool which in whole or in part underlies or comprises the lease or  
12 property, or the use of those facilities, is enjoined, either temporar-  
13 ily or permanently, by an order, judgment, decree, determination or  
14 award of a federal, state or local court or administrative or regulatory  
15 agency.

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

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

27 (b) The full and true value of taxable property under this chapter  
28 is the estimated price which the property would bring in an open market  
29 and under the then prevailing market conditions in a sale between a

1 willing seller and a willing buyer both conversant with the property and  
2 with prevailing values. In determining this value, the department shall  
3 consider all factors which may be known by the department to affect the  
4 value of the proven reserves of the lease or property, including but not  
5 limited to the present value of the expected discounted future net  
6 income from the lease or property.

7 Sec. 43.58.050. ASSESSMENT ROLL. The department shall prepare  
8 annually the assessment roll for taxation under this chapter. The roll  
9 shall contain:

- 10 (1) a description of all taxable property;  
11 (2) the assessed value of all taxable property; and  
12 (3) the names and addresses of persons owning or otherwise  
13 holding an interest in taxable property.

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

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

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

28 (c) Within 30 days after the decision by the department after a  
29 hearing, either the department or a person aggrieved by the decision may

1 appeal to the superior court. The superior court shall grant priority  
2 on its dockets for the appeals over all civil cases then pending.

3 Sec. 43.58.080. CERTIFICATION. On or before June 15 of each year,  
4 the department shall certify the final assessment roll and mail to the  
5 operator or other person filing a return and paying tax on the taxable  
6 property a statement of the amount of tax due.

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

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

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

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

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

1 or right in that lease or property are secondarily liable for payment of  
2 the tax levied by this chapter.

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

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

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

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

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

4 Sec. 43.58.120. CIVIL PENALTY. Five per cent shall be added to  
5 the tax for each 30-day period or fraction of that period during which  
6 the taxpayer fails to file a return or pay the full amount of the tax,  
7 or a portion or a deficiency of the tax due and payable as finally  
8 determined by the department and required by this chapter, unless it is  
9 shown that the failure is due to a reasonable cause and not to wilful  
10 neglect. The penalty may not exceed 25 per cent in the aggregate. The  
11 penalty shall be collected at the same time, in the same manner and as a  
12 part of the original tax, but if the original tax is paid before the  
13 neglect is discovered the penalty shall be collected in the same manner  
14 as the original tax. The department shall describe by regulation  
15 circumstances which constitute reasonable cause for purposes of this  
16 section.

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

20 Sec. 43.58.140. LIEN. The tax, penalty and interest payable under  
21 this chapter are first and paramount liens on the property subject to  
22 tax under this chapter.

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

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

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

1           Sec. 43.58.180. ACCRUAL OF EARLY DEVELOPMENT INCENTIVE CREDIT.

2           (a) An early development incentive credit, calculated in accordance  
3 with this section, shall be applied to the tax payable under ch. 55 of  
4 this title as provided in AS 43.55.018. The early development incentive  
5 credit for a lease or property is zero until changed as provided in this  
6 section.

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

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

13           Sec. 43.58.190. DEFINITIONS. In this chapter:

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

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

17           (3) "lease or property" means

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

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

21                   (C) a working interest, royalty interest, overriding  
22 royalty interest, production payments, net profit interest or any  
23 other interest in a lease, concession, joint venture or other  
24 agreement for oil and gas exploration, development or production,

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

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

4 (5) "oil" means crude petroleum and other hydrocarbons  
5 regardless of gravity which, when recovered, are recovered at the well-  
6 head in liquid form, and the liquid hydrocarbons known as distillate or  
7 condensate that are recovered by separation from gas other than at a gas  
8 processing plant;

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

11 (7) "proven reserves" means the volumes of oil and gas in a  
12 known deposit which geological and engineering information indicate to  
13 be recoverable if it is economically feasible to market it in the future  
14 under reasonably foreseeable conditions;

15 (8) "taxable property" means any interest in or the right to  
16 produce or recover the proven reserves of a lease or property.

17 Sec. 43.58.200. PAYMENT TO ALASKA NATIVE FUND. When the tax levied  
18 under this chapter is payable an amount equivalent to not less than two  
19 per cent of the tax shall be paid by the state from oil and gas royalti-  
20 ties, bonuses and rentals into the Alaska Native Fund established by  
21 sec. 6 of the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat.  
22 688, 43 U.S.C. 1601 et seq.) until all payments paid into the fund equal  
23 \$500,000,000.

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

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

29 (1) [deleted]

- 1 (2) producing oil or gas leases;
- 2 (3) oil or gas produced or extracted in the state;
- 3 (4) [deleted]
- 4 (5) the value of intangible drilling and exploration expenses.

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

6 Sec. 43.55.018. CREDIT AGAINST TAX. There shall be allowed as a  
7 credit against the taxes levied under this chapter for a lease or  
8 property the early development incentive credit accrued for that lease  
9 or property under AS 43.58.180. The credit shall be allowed on a monthly  
10 basis but in no event may the credit exceed 50 per cent of the taxes  
11 levied each month under this chapter for that lease or property. The  
12 credit shall be allowed until the entire early development incentive  
13 credit for the lease or property has been exhausted.

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

15 (8) "lease or property" means

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

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

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

23 (D) a working interest, royalty interest, overriding  
24 royalty interest, net profit interest or any other interest in an  
25 agreement for unitization or pooling under the provisions of sec.  
26 614(b)(3) of the Internal Revenue Code of 1954 as defined on the  
27 effective date of this paragraph;

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

29 (b) No municipality, or combination of municipalities occupying

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

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

25 (c) If the total value of assessed property of a municipality  
26 taxing under AS 29.53.045(c) exceeds the product of 225 per cent of the  
27 average per capita assessed full and true value of property in the state  
28 (to be determined by the department and reported to each municipality by  
29 January 15 of each year) multiplied by the number of residents of the

1 taxing municipality, the department shall designate the portion of the  
2 tax base against which the local tax may be applied. For purposes of  
3 this subsection the average per capita assessed full and true value of  
4 property in the state shall be calculated without regard to the assessed  
5 value of taxable property under ch. 58 of this title.

6 \* Sec. 7. Except as provided in this section, if a provision of this Act  
7 for any reason is invalid or unenforceable, the invalidity or unenforce-  
8 ability of that provision shall not affect the remainder of this Act or any  
9 of the other provisions of this Act. However, if AS 43.58.020(2), (3) or  
10 (4), or any of those paragraphs, should be for any reason held invalid or  
11 unenforceable, this Act shall be void in its entirety and of no effect  
12 whatsoever.

13 \* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.-  
14 070(c).