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Referred: Resources and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL SUB-
COMMITTEE ON TAXATION AND REVENUE

2 HOUSE BILL NO. 703

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to assessment and taxation of oil and
7 gas properties excess value surtax; and providing for
8 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 23. OIL AND GAS PROPERTIES EXCESS VALUE SURTAX.

12 Sec. 43.23.010. PURPOSE. The purpose of the excess value surtax
13 is to tax the excess value not needed to implement long-term exploration
14 and development and to provide an alternative to promote short-term
15 investments in the oil and gas industry.

16 Sec. 43.23.020. STATEMENT OF YIELD. (a) Every person engaged in
17 producing oil and gas shall file annually by February 1 of each year,
18 with the department a statement showing the gross value and claimed net
19 proceeds from each well or field owned, worked or operated by that
20 person during the previous year.

21 (b) The statement shall be on forms prescribed by or acceptable to
22 the department, under oath, and shall include, in addition to other
23 information required

24 (1) the name and address of the operator of the well or
25 field, together with a list in duplicate of the names and addresses of
26 any persons owning or claiming a royalty interest in the production of
27 the well or field or the proceeds from the sale of it, and the amount
28 paid or delivered in kind as royalty to each of these persons during the
29 period covered by the statement;

- 1 (2) the description and location of the well or field;
2 (3) the number of cubic feet of natural gas, barrels of
3 petroleum, or other crude or mineral oil extracted or produced from the
4 well or field during the period covered by the statement;
5 (4) the gross value in dollars of production; and
6 (5) the claimed deductions from the gross value in the detail
7 set out in sec. 30 of this chapter.

8 Sec. 43.23.030. COMPUTATION OF NET PROCEEDS. (a) The department
9 shall, from the statement and from all obtainable data, evidence and
10 reports, compute the gross value of production and net proceeds.

11 (b) The net proceeds shall be ascertained and determined by sub-
12 tracting from the gross value the following deductions for cost incurred
13 during the year, and none other:

- 14 (1) royalties paid or due the United States or the state;
15 (2) royalties paid or due, other than to the United States or
16 the state, by a lessee or sublessee of a well, or by both, shall con-
17 stitute a deductible item; but the royalties so deducted by the lessee
18 or sublessee constitutes part of the gross yield of the well for the
19 purpose of determining the net proceeds upon which a tax shall be levied
20 against the person to which the royalty has been paid;
21 (3) the actual costs of transporting the product of the well
22 to the FOB point;
23 (4) the actual cost of maintenance and repairs of
24 (A) well machinery, equipment, apparatus and facilities;
25 (B) transportation facilities and equipment;
26 (5) depreciation of the original capitalized cost of the
27 machinery, equipment, apparatus and facilities;
28 (6) all taxes paid or due to the state under chs. 55, 56, and
29 57 of this title;

1 (7) money expended for necessary labor and supplies needed
2 and used in the well operations and developments;

3 (8) money expended for fire insurance and workmen's compen-
4 sation insurance, and for payments by operators to welfare and retire-
5 ment funds when provided for in wage contracts between operators and
6 employees.

7 (c) The deductions mentioned in (b) of this section shall not
8 include any expenditures for the salary of a person not actually engaged
9 in

10 (1) the operation of a well or of transportation facilities
11 or equipment or superintending the management of them; or

12 (2) office clerical or engineering work in the state neces-
13 sary or proper in connection with these operations.

14 Sec. 43.23.040. DEDUCTION OF DRILLING COSTS AND CAPITAL EXPENDI-
15 TURES. (a) The department, in computing the deductions allowable for
16 the costs of drilling wells completed during the period and for other
17 capital expenditures, shall allow 10 per cent of the cost each year for
18 a period of 10 years; in the event of abandonment before the cost is
19 recovered, any remaining depreciation may be written off in the year of
20 abandonment.

21 (b) Exploration costs, including exploratory drilling costs incur-
22 red in the state, shall be capitalized. The department, in computing
23 the allowable amortization of the exploration costs, shall allow up to
24 seven per cent of the exploration costs per year. The department shall
25 issue regulations appropriate to implement and administer this section.

26 Sec. 43.23.050. EXCESS VALUE SURTAX. There is levied upon the
27 producer of oil and gas or any royalty interest not exempt from taxation,
28 a surtax at the rate of 41 per cent upon the excess value of the pro-
29 duction as determined under sec. 60 of this chapter.

1 Sec. 43.23.060. COMPUTATION OF EXCESS VALUE. (a) For each year
2 the department shall, from the statement and from all obtainable data,
3 evidence and reports, compute the excess value by well or field, accord-
4 ing to either (b) or (c) of this section. A well or field not subject
5 to the excess value tax may not be aggregated with a well or field
6 subject to the tax.

7 (b) Excess value is determined by subtracting the long-term net
8 value from the net proceeds of the well or field as computed under sec.
9 30 of this chapter. Long-term net value is determined by subtracting
10 the per barrel costs of the well or field from the long-term index
11 price; however, severance taxes and royalties are deductible costs only
12 in the amount that would have been due on the long-term index price.
13 The long-term index price is the price for a barrel of oil or its energy
14 equivalent of \$7 per barrel FOB in the west coast markets or the amount
15 determined by the department, taking into consideration the prevailing
16 transport charges from the FOB point, chosen by the department, to the
17 west coast markets; however, in no event may the amount determined by
18 the department exceed the equivalent of \$7 per barrel FOB in the west
19 coast markets plus the increase in the national wholesale price index
20 since the tax went into effect.

21 (c) If the long-term net value as calculated for a specific well or
22 field is less than \$1 per barrel of oil or of gas equivalent, the long-
23 term net value will be considered to be \$1 times the number of barrels
24 of oil or of gas equivalent produced from the well or field during the
25 tax reporting period.

26 (d) The producer shall also pay the surtax on the excess of
27 royalties actually paid over royalties which would be paid based on the
28 long-term index price. In making settlement with the royalty owner the
29 producer may deduct the amount of surtax paid on royalty oil or deduct

1 royalty oil equivalent in value (at the time the surtax becomes due) to
2 the amount of the surtax paid.

3 Sec. 43.23.070. CREDIT AGAINST INCOME TAX. The tax paid under
4 this chapter by a producer on his own behalf shall be in lieu of the tax
5 imposed under ch. 20 of this title. The tax paid by a producer on behalf
6 of a royalty owner shall be allowed as a credit by the royalty owner
7 against the tax imposed under ch. 20 of this title on income attributable
8 to that royalty interest. The credit may not exceed the amount of tax
9 imposed under ch. 20 of this title attributable to that income, and may
10 not be carried over.

11 Sec. 43.23.080. CERTIFICATES OF AMOUNT OF EXCESS VALUE. (a) When
12 the department determines the excess value of production from a well or
13 field, the department shall prepare its certificate of the excess value
14 in duplicate and shall file one copy of it with the department and send
15 the second copy by certified mail to:

16 (1) a person who is the owner of the property, or who con-
17 trols that property as agent, or on account of any other person;

18 (2) a guardian or other person who has charge of taxable
19 property belonging to a minor or other person;

20 (3) the trustee of a trust estate holding taxable property in
21 trust for the benefit of another person;

22 (4) the executor or administrator of a deceased person's
23 estate which includes taxable property;

24 (5) the receiver of a corporation who has its assets in his
25 hands.

26 (b) Upon the filing of the copy of the certificate with the depart-
27 ment, the assessment shall be considered to be made in the amount fixed
28 by the certificate and taxes on that amount at the rate established in
29 sec. 50 of this chapter shall be immediately due and payable.

1 (c) The department shall determine annually the long-term index
2 price.

3 Sec. 43.22.090. APPEALS. (a) A person aggrieved by the action of
4 the department in making an assessment may appeal that action and obtain
5 a hearing upon its validity before the department by filing written ob-
6 jections to the assessment not later than 20 days after the effective
7 date of the assessment notice.

8 (b) The procedures for conduct of the hearing and preliminary ac-
9 tivities to it shall be in accordance with AS 44.62.350, 44.62.430,
10 44.62.450 - 44.62.640, 44.62.480, 44.62.500 - 44.62.550, 44.62.590, and
11 44.62.610 - 44.62.640. The term "respondent" used in those sections of
12 AS 44.62 (Administrative Procedure Act) shall be considered, for the
13 purposes of this section, to include the person aggrieved by action of
14 the department. The department shall provide by regulation for notices
15 of hearing under this section to interested persons. At the hearing the
16 appellant bears the burden of proof. In the absence of this proof the
17 assessment is to be upheld by the department. If the department, after
18 hearing, determines that a correction of the assessment is warranted,
19 the department shall correct the assessment.

20 (c) Within 30 days after the decision by the department following
21 the hearing, a person aggrieved by that decision may appeal to the
22 superior court. The superior court shall grant priority on its dockets
23 for the appeals over all civil cases then pending.

24 Sec. 43.22.100. RETURNS AND PAYMENT OF TAX. (a) A return of the
25 taxes due and payable, fixed by the certificate of the net proceeds
26 shall be submitted on or before the 60th day after the filing of the
27 certificate on the form prescribed by the department. The return shall
28 be submitted by those persons listed in sec. 80 of this chapter.

29 (b) The person required to submit the return specified under (a)

1 of this section is primarily liable for payment of the tax levied by
2 this chapter. The persons or estates specified in sec. 80(a)(2) - (5)
3 of this chapter in whose behalf the tax levied by this chapter is to be
4 paid are secondarily liable for payment of the tax. With the written
5 approval of the department, an operator or nonoperator of the lease or
6 property may submit returns or make payment of the tax levied under this
7 chapter on behalf of himself and other persons the department may ap-
8 prove.

9 (c) The tax levied under this chapter is payable to the department
10 on or before the 60th day after the filing of the certificate or in
11 estimated installments at the times and under the conditions the depart-
12 ment may by regulation require. This tax is payable on the due date set
13 out in this subsection even though the assessment is under appeal or the
14 validity, enforceability or application of this chapter or provision of
15 this chapter is challenged before the department or in the courts.

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

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

28 Sec. 43.23.110. CIVIL PENALTY. Five per cent shall be added to
29 the tax for each 30-day period or fraction of that period during which

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

12 Sec. 43.23.120. 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. 43.23.130. 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. 43.23.140. REMEDY. The remedy of distraint of property set
19 out in AS 43.20.270 applies to the tax, penalty and interest levied by
20 this chapter.

21 Sec. 43.23.150. BURDEN OF PROOF. In a suit arising that concerns
22 the assessment and taxation of the proceeds of a well or field, the
23 burden of proof shall be upon the person owning or operating the well
24 or field and every recipient of royalty payments in connection with that
25 well or field.

26 Sec. 43.23.160. REGULATIONS. The department may adopt regulations
27 in accordance with the Administrative Procedure Act (AS 44.62) as appro-
28 priate to administer and enforce this chapter.

29 Sec. 43.23.170. DEFINITIONS. In this chapter

- 1 (1) "department" means the Department of Revenue;
- 2 (2) "energy equivalent" means the quantity of gas or other
3 energy source needed to produce the same BTU (British Thermal Unit)
4 level as a barrel of oil;
- 5 (3) "gas" means all hydrocarbon substances not defined as oil
6 in this chapter;
- 7 (4) "gross value" means FOB price at Alaska border or other
8 convenient point or as determined by the department;
- 9 (5) "oil" means crude petroleum and other hydrocarbons regard-
10 less of gravity which, when recovered, are recovered at the well-head in
11 liquid form, and the liquid hydrocarbons known as distillate or conden-
12 sate that are recovered by separation from gas other than at a proces-
13 sing plant;
- 14 (6) "assessed value" means the value against which tax rates
15 are applied;
- 16 (7) "producer" means any person removing or selling oil or
17 gas from a lease or property in the state.

18 Sec. 43.23.180. PAYMENT TO ALASKA NATIVE FUND. When the tax
19 levied under this chapter is payable, an amount equivalent to not less
20 than two per cent of the tax shall be paid by the state from oil and gas
21 royalties, bonuses, and rentals into the Alaska Native fund established
22 by sec. 6 of the Alaska Native Claims Settlement Act (P.L. 92-203, 85
23 Stat. 688, 43, U.S.C. 1601, et. seq.) until all payments paid into the
24 fund equal \$500,000,000.

25 * Sec. 2. This Act takes effect on January 1, 1977.
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