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Referred: Resources and
Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 CS HOUSE BILL NO. 878

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 the Alaska Mining License Tax;
7 and providing for an effective date."

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

9 * Section 1. AS 43.65.010 is repealed and re-enacted to read:

10 Sec. 43.65.010 MINING LICENSE AND TAX. (a) For the privilege
11 of engaging in the business of mining in the state, a person shall
12 first apply and obtain a license from the department. The license fee
13 is \$25.00, which must accompany the application for a license.

14 (b) There is also levied an annual license tax on each person
15 engaging in the business of mining in the state computed on the net
16 proceeds of the taxpayer from the mining business. The license tax
17 shall be computed according to the following table:

18 If the net proceeds are:	Then the tax is:
19 Over \$40,000 but not over	3 per cent of the excess over
20 \$50,000	\$40,000
21 Over \$50,000 but not over	\$300 plus 5 per cent of the
22 \$100,000	excess over \$50,000
23 Over \$100,000	\$2,800 plus 7 per cent of the
24	excess over \$100,000

25 (c) Upon application and receipt of an exemption certificate, a
26 new mining business operation is exempt from the license tax levied by
27 this chapter for three and one-half years after production from the
28 mining business operation begins. The tax exemption granted to new
29 mining business operations does not apply to the business of mining

1 sand and gravel. The Department of Natural Resources shall certify to
2 the department the date upon which production began from the mining
3 business operation, and the department shall issue a certificate of
4 exemption to the applicant after this certification. A person must
5 apply for an exemption certificate in the first year of production
6 from the mining business operation in order to qualify for the exemption
7 under this section.

8 (d) If mining business operations are conducted in two or more
9 places within the state by one person, those operations are considered
10 as one mining business, and the tax shall be computed upon the net
11 proceeds of all those mining business operations.

12 * Sec. 2. AS 43.65 is amended by adding new sections to read:

13 Sec. 43.65.015. NET PROCEEDS. (a) In this chapter, "net proceeds"
14 means the total gross receipts from the mining business less the
15 following deductions incurred during the taxable year:

16 (1) all expenses incurred directly in the extraction of
17 minerals in the state;

18 (2) all expenses incurred in transporting the minerals from
19 the point of extraction to any further processing plant where only
20 necessary treatment processes are applied to obtain a commercially
21 marketable product;

22 (3) all expenses directly related to the production, re-
23 fining, crushing, screening or other necessary process incurred to
24 make a commercially marketable product;

25 (4) the actual selling expenses incurred in marketing the
26 product;

27 (5) all expenses incurred in transporting the marketable
28 product to a buyer;

29 (6) depreciation of the mining business equipment, works,

1 plant and facilities used directly in the extraction, transportation
2 and processing phases of the mining business, in accordance with sec.
3 167 of the Internal Revenue Code (26 U.S.C. sec. 167);

4 (7) amortization of mining development costs not included
5 in (6) of this subsection;

6 (8) an allowance for depletion on a cost or percentage
7 basis at the rates set out in secs. 611--614 of the Internal Revenue
8 Code as amended (26 U.S.C. secs. 611--614) except that the allowance
9 for depletion may not exceed 50 per cent of the taxpayer's net proceeds
10 calculated before the allowance for depletion.

11 (b) If the taxpayer has expenses within the state other than
12 those specified in (a) of this section, such as general overhead
13 expenses, relating to the business of mining or to the business of
14 mining and other business activities, the deductions shall be appor-
15 tioned in the ratio which the direct expenses of the mining business
16 within the state under (a) of this section bear to the total direct
17 expenses of all business activities of that taxpayer in the state.

18 (c) Except for wages paid during temporary travel out of the
19 state by an employee who is domiciled in the state, the deductions
20 allowed in (a) and (b) of this section do not include wages or other
21 payments for services not performed in the state.

22 (d) If a person is engaged in the business of mining and the
23 only receipts from the business are royalties, the net proceeds of the
24 mining business are the royalties received less the depletion allowance
25 under sec. 15(a)(8) of this chapter.

26 Sec. 43.65.017. GROSS RECEIPTS. (a) In this chapter, "gross
27 receipts" means all revenue received, including royalties, rental pay-
28 ments, and all other compensation from the business of mining. Gross
29 receipts include the actual amount received during the year for the

1 sale of minerals whether or not the minerals were actually extracted
2 during that year.

3 (b) If minerals are sold or transferred at a price other than
4 the true market price, such as when a wholly owned subsidiary transfers
5 or sells the mineral to its parent at a price less than market value,
6 gross receipts are the true market price or average market price per
7 ton or other measurable unit of the mineral multiplied by the total
8 units of the mineral sold or transferred during the year.

9 (c) Gross receipts from the business of mining sand and gravel
10 include:

11 (1) receipts from the sale to customers directly from the
12 pit or mine;

13 (2) receipts from the sale to customers at their place of
14 business or their business site, including receipts relating to the
15 delivery of the sand and gravel; and

16 (3) the average market value of sand and gravel from inter-
17 company transfers of the minerals calculated immediately before the
18 transfer, including intercompany transfers of sand and gravel to a
19 ready-mix or concrete plant.

20 * Sec. 3. AS 43.65.020 is amended to read:

21 Sec. 43.65.020. TAXPAYER'S DUTIES. (a) A person subject to tax
22 under this chapter shall make a return stating specifically the items
23 of gross receipts [INCOME] from the business [PROPERTY], including
24 royalty received and the deductions [AND CREDITS] allowed by this
25 chapter, and other information for carrying out this chapter which the
26 department [DEPARTMENT OF REVENUE] prescribes. The return shall show
27 the mining license number and shall be signed by the taxpayer or his
28 authorized agent, under penalty of perjury. If receivers, trustees,
29 or assigns are operating the mining [PROPERTY OR] business, they shall

1 make returns for the person engaged in the mining business [, OR THE
2 RECIPIENT OF ROYALTY IN CONNECTION WITH MINING PROPERTY]. The tax due
3 on the basis of the returns shall be collected in the same manner as
4 if collected from the person of whose business they have custody and
5 control.

6 (b) A return made on the basis of the calender year shall be
7 filed [MADE] before March 15 [MAY 1] of the next year. A return made
8 on the basis of a fiscal year shall be filed [MADE] before the fifteenth
9 [FIRST] day of the third [FIFTH] month of the next fiscal year.

10 (c) The department [DEPARTMENT OF REVENUE] may grant a reasonable
11 extension of time for filing returns, under regulations adopted
12 [PRESCRIBED] by it. Except in the case of a taxpayer going abroad, no
13 extension may be granted [MADE] for more than six months.

14 (d) A [TAXPAYER'S] return shall be filed with [MADE TO] the
15 department [DEPARTMENT OF REVENUE AT JUNEAU] using the same tax year
16 as the person uses in filing his federal income tax return. [A TAX-
17 PAYER SHALL MAKE HIS RETURN EITHER ON A CALENDER YEAR OR FISCAL YEAR
18 BASIS, IN CONFORMANCE WITH THE BASIS USED IN MAKING HIS RETURN FOR
19 FEDERAL INCOME TAX PURPOSES.]

20 (e) The total amount of tax imposed by this chapter shall be
21 paid on or before the due date of the tax return required under this
22 section [THE 30TH DAY OF APRIL OF THE NEXT CALENDER YEAR, OR IF THE
23 RETURN IS MADE ON THE BASIS OF THE FISCAL YEAR, THEN ON THE LAST DAY
24 OF THE FOURTH MONTH OF THE NEXT FISCAL YEAR].

25 (f) [EVERY PERSON PROSECUTING OR ATTEMPTING TO PROSECUTE OR
26 ENGAGING IN THE BUSINESS OF MINING IN THE STATE SHALL COMPLY WITH THE
27 DEPARTMENT'S REGULATIONS AND SHALL KEEP SUCH RECORDS, GIVE SUCH STATE-
28 MENTS UNDER OATH, AND MAKE SUCH RETURNS AS THE DEPARTMENT OF REVENUE
29 PRESCRIBES.]

1 (g) When the department considers it necessary, it may require a
2 person, by notice served upon him, to make a return, give statements
3 under oath, or keep records as it considers sufficient to show whether
4 or not the person is liable for the [TO] tax under this chapter. If a
5 person fails to file a return at the time prescribed by law or regula-
6 tion, or makes, wilfully or otherwise, a false or fraudulent return,
7 the department shall make the return from its own knowledge and from
8 such information as it can obtain [THROUGH TESTIMONY OR OTHERWISE]. A
9 return so made and subscribed by the department is prima facie good
10 and sufficient for all legal purposes.

11 * Sec. 4. AS 43.65.030 is amended to read:

12 Sec. 43.65.030. APPLICATION FOR RENEWALS. A person engaged in
13 the business of mining shall apply [APPLICATION] for a renewal of a
14 mining license each year [SHALL BE MADE] before the 30th day of the
15 first month of the person's tax year [MAY 1 OF EACH YEAR].

16 * Sec. 5. AS 43.65.040 is repealed and re-enacted to read:

17 Sec. 43.65.040. LIMITATION. The department shall review returns
18 and assess any additional tax due under this chapter within three
19 years of the due date of the return or the date that the return was
20 filed, whichever is later. If a return has not been filed the tax may
21 be assessed at any time.

22 * Sec. 6. AS 43.65.050 is amended to read:

23 Sec. 43.65.050. [VIOLATIONS AND] PENALTIES AND INTEREST. (a)
24 In case of failure to obtain a license or file a return [REQUIRED BY
25 THIS CHAPTER] within the time prescribed by this chapter [LAW OR
26 PRESCRIBED BY THE DEPARTMENT ACCORDING TO LAW], or to pay the full
27 amount of the tax due on the return or a deficiency of the tax as
28 determined by the department, unless it is shown that the failure is
29 due to reasonable cause and not due to wilful neglect, five per cent

1 is added for each 30 days or fraction of 30 days during which the
2 failure continues, but not exceeding 25 per cent in the aggregate.
3 The amount [SO] added to the tax shall be collected at the same time,
4 in the same manner, and as a part of the tax. If the tax is paid
5 before discovery of the neglect, the amount added shall be collected
6 in the same manner as the tax.

7 (b) [IF PART OF A DEFICIENCY IN THE TAX IS DUE TO NEGLIGENCE OR
8 INTENTIONAL DISREGARD OF REGULATIONS, BUT WITHOUT INTENT TO DEFRAUD,
9 FIVE PER CENT OF THE TOTAL AMOUNT OF THE DEFICIENCY, IN ADDITION TO
10 THE DEFICIENCY, SHALL BE ASSESSED, COLLECTED, AND PAID IN THE SAME
11 MANNER AS IF IT WERE A DEFICIENCY, EXCEPT THAT (d) OF THIS SECTION IS
12 NOT APPLICABLE.]

13 (c) If part of a deficiency in the tax is due to fraud with
14 intent to evade the tax, then 50 per cent of the total amount of the
15 deficiency, in addition to the deficiency, shall be assessed and
16 collected. If this penalty is assessed, then the penalty in (a) of
17 this section does not apply.

18 (d) When the tax levied by this chapter becomes delinquent, it
19 bears interest at the rate of eight per cent a year. The tax is
20 delinquent if it is not paid on its due date. [INTEREST UPON THE
21 AMOUNT DETERMINED AS A DEFICIENCY IN THE TAX SHALL BE ASSESSED AT THE
22 SAME TIME AS THE DEFICIENCY, AND PAID UPON NOTICE AND DEMAND BY THE
23 DEPARTMENT. THE INTEREST SHALL BE COLLECTED AS A PART OF THE TAX, AT
24 THE RATE OF SIX PER CENT A YEAR FROM THE TIME PRESCRIBED FOR PAYMENT
25 OF THE TAX TO THE DATE THE DEFICIENCY IS PAID.]

26 (e) The tax levied or accruing under this chapter and the
27 penalties and interest on the tax are a lien prior, paramount, and
28 superior to all other liens, mortgages, hypothecations, conveyances,
29 and assignments, upon all the real and personal property of the person

1 liable for them, and upon all the real and personal property used with
2 the permission of the owner in carrying on the business of mining.
3 This lien is [SHALL] not [BE CONSIDERED] exclusive of other civil or
4 criminal remedies provided by law for the recovery of license taxes.

5 (f) A person who is required under this chapter to pay the [A]
6 tax, make a return, keep records, or supply information [FOR THE COM-
7 PUTATION, ASSESSMENT, OR COLLECTION OF THE TAX IMPOSED BY THIS CHAPTER],
8 who wilfully fails to pay the tax, make the return, keep the records,
9 or supply the information, at the time required by law or regulations,
10 is, in addition to other penalties provided by this chapter [LAW],
11 guilty of a misdemeanor, and upon conviction is punishable by a fine
12 of not more than \$1,000, or by imprisonment for not more than one
13 year, or by both [, TOGETHER WITH THE COST OF PROSECUTION].

14 (g) [A PERSON WHO WILFULLY MAKES AND SIGNS A RETURN WHICH HE DOES
15 NOT BELIEVE TO BE TRUE AND CORRECT AS TO EVERY MATERIAL MATTER IS
16 GUILTY OF A FELONY, AND UPON CONVICTION IS SUBJECT TO THE PENALTIES
17 PRESCRIBED FOR PERJURY UNDER THE LAWS OF THE STATE.]

18 (h) In this section "person" includes an officer or employee
19 of a corporation or a member or employee of a partnership who is under
20 duty to perform the act in respect to which the violation occurs.

21 (i) A person who wilfully attempts to evade the tax imposed by
22 this chapter is, in addition to other penalties provided by this
23 chapter, guilty of a felony and, upon conviction, shall be fined not
24 more than \$5,000, or imprisoned for not more than five years, or both.

25 (j) A person who wilfully makes and subscribes a return, statement,
26 or other document required under this chapter which contains or is
27 verified by a written declaration that it is made under the penalties
28 of perjury which he does not believe to be true and correct as to
29 every material matter is, in addition to other penalties provided by

1 this chapter, guilty of a felony and, upon conviction, shall be fined
2 not more than \$5,000, or imprisoned for not more than three years, or
3 both.

4 (k) A person who wilfully or knowingly aids, procures, or
5 counsels the preparation or presentation in connection with any matter
6 arising under this chapter of a return, affidavit, claim, or other
7 document, which is fraudulent or is false as to any material matter is
8 guilty of a felony whether or not the falsity or fraud is with the
9 knowledge or consent of the person required to present the return,
10 affidavit, claim, or document, and, upon conviction, shall be fined
11 not more than \$5,000, or imprisoned for not more than three years, or
12 both.

13 (l) A person who wilfully delivers or discloses to the department
14 under this chapter any list, return, account, statement, or other
15 document, known by him to be fraudulent or to be false as to any
16 material matter shall be fined not more than \$1,000, or imprisoned for
17 not more than one year, or both.

18 * Sec. 7. AS 43.65.060(4) is amended to read:

19 (4) "new mining business operation [OPERATIONS]" means a
20 mining operation [OPERATIONS] which began production after January 1,
21 1953, and which has not acquired the ownership or property of another
22 mining business which has previously received an exemption certificate
23 under sec. 10 of this chapter [OR WHICH HAVE NOT BEEN LIABLE TO PAY A
24 MINING LICENSE TAX UNDER THIS CHAPTER ON NET INCOME SINCE JANUARY 1,
25 1948];

26 * Sec. 8. AS 43.65.060 is amended by adding new paragraphs to read:

27 (7) "minerals" means asbestos, coal, sulphur, iron ore,
28 lead, zinc, mercury, tin, chromite, bauxite, copper, gold, silver,
29 platinum, potash, clay, stone, sand, gravel, and other valuable metals,

1 ores and marketable earth or stone but not including oil and gas;

2 (8) "business of mining" means a business operation for the
3 extraction of minerals from the earth or water of the state, operated
4 by a person

5 (A) who (i) owns and operates, (ii) works, or (iii)
6 develops a mineral property, whether or not that property is
7 currently producing a marketable product;

8 (B) who leases a mineral property and operates the
9 mineral property, whether or not the mineral property is producing
10 a marketable product;

11 (C) who leases a mineral property and pays royalties,
12 rents or other payments to the owner of the property;

13 (D) who has an interest in a lease, concession, joint
14 venture, or other agreement for the exploration or development,
15 or extraction of a mineral property if royalties, rents, or other
16 payments are to be paid for that interest;

17 (9) "department" means the Department of Revenue.

18 * Sec. 9. AS 43.65.060(1)--(3) are repealed.

19 * Sec. 10. This Act is retroactive to January 1, 1976.

20 * Sec. 11. This Act takes effect immediately in accordance with AS
21 01.10.070(c).