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Referred: Resources and Finance

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

1 IN THE SENATE

2 SENATE BILL NO. 620

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 net proceeds tax; and providing for an
8 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 22. OIL AND GAS PROPERTIES NET PROCEEDS TAX.

12 Sec. 43.22.010. PURPOSE. The purposes of the oil and gas proper-
13 ties net proceeds tax are to provide efficient administration and
14 collection of an ad valorem tax based on the income to the property of
15 oil and gas, and to provide a rate of taxation on the income to the
16 property of oil and gas equal to the corporate state income tax rates
17 provided in AS 43.20.011.

18 Sec. 43.22.020. STATEMENT OF YIELD. (a) Every person engaged in
19 producing oil and gas and every recipient of royalty payments in con-
20 nection with oil and gas production shall file annually, on or before
21 February 1, with the department a statement showing the gross value of
22 production and claimed net proceeds from each well or field owned or op-
23 erated by the person during the previous calendar year.

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

27 (1) the name and address of the operator of the well or field,
28 together with a list in duplicate of the names and addresses of any
29 persons owning or claiming a royalty interest in the production of the

1 well or the proceeds derived from the sale of it, and the amount paid or
2 delivered in kind as royalty to each of these persons during the period
3 covered by the statement;

4 (2) the description and location of the well or field;

5 (3) the number of cubic feet of natural gas, barrels of
6 petroleum, or other crude or mineral oil extracted or produced from the
7 well during the period covered by the statement;

8 (4) the gross value in dollars of the production; and

9 (5) the claimed deductions from the gross value in the detail
10 set out in sec. 30 of this chapter.

11 (c) Each recipient of royalty payments as described in (b)(1) of
12 this section shall annually file with the department a list showing each
13 of the lessees responsible for taxes due in connection with the wells or
14 fields included in the statement filed under (a) and (b) of this section.

15 Sec. 43.22.030. NET PROCEEDS: HOW COMPUTED. (a) The department
16 shall, from the statement and from all obtainable data, evidence and
17 reports, compute the gross value of production and net proceeds.

18 (b) The net proceeds shall be ascertained and determined by sub-
19 tracting from the gross value the following deductions for costs in-
20 curred during the year, and none other:

21 (1) royalties paid or due the United States or the state;

22 (2) royalties paid or due, other than to the United States or
23 the state, by a lessee or sublessee of a well, or by both, shall con-
24 stitute a deductible item; but the royalties so deducted by the lessee
25 or sublessee constitutes part of the gross yield of the well for the
26 purpose of determining the net proceeds upon which a tax shall be levied
27 against the person to which the royalty has been paid;

28 (3) the actual costs of transporting the product of the
29 well to the FOB point;

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(4) the actual cost of maintenance and repairs of
(A) well machinery, equipment, apparatus and facilities;
ties;

(B) transportation facilities and equipment;

(5) depreciation of the original capitalized cost of the machinery, equipment, apparatus and facilities;

(6) all taxes paid or due to the state under chs. 55, 56, and 57 of this title;

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

(8) money expended for fire insurance and workmen's compensation insurance, and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees.

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

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

(2) office clerical or engineering work in the state necessary or proper in connection with these operations.

Sec. 43.22.040. DEDUCTION OF DRILLING COSTS AND CAPITAL EXPENDITURES. (a) The department, in computing the deductions allowable for the costs of drilling wells completed during the period and for other capital expenditures, shall allow 10 per cent of the cost each year for a period of 10 years; in the event of abandonment before the cost is recovered, any remaining depreciation may be written off in the year of abandonment.

(b) Exploration costs, including exploratory drilling costs incur-

1 red in the state, shall be capitalized. The department, in computing
2 the allowable amortization of the exploration costs, shall allow up to
3 seven per cent of the exploration costs per year. The department shall
4 issue regulations appropriate to implement and administer this section.

5 Sec. 43.22.050. AD VALOREM TAX LEVIED. (a) There is levied and
6 shall be collected by the department an ad valorem tax based on the
7 assessed value of production which is severed and sold from each well or
8 field. The tax is levied at the rate provided in AS 43.20.011(e) on the
9 net proceeds from the production which is severed and sold from each
10 well or field.

11 (b) The tax imposed under this chapter is in lieu of the tax
12 imposed under ch. 20 of this title on the income from oil production
13 taxed under this chapter.

14 Sec. 43.22.060. VALUE MAY BE DETERMINED BY DEPARTMENT. The de-
15 partment may determine the value of production severed from a well when
16 (1) the operator and purchaser are affiliated persons; (2) the sale
17 and purchase of the production is not an arm's length transaction; or
18 (3) the production is severed and removed from a production unit, and a
19 value as defined in this chapter is not established for this production.
20 The value determined by the department shall be commensurate with the
21 actual price received for production of like quality, character, and use
22 which is severed in the same field or area and shall not be computed at
23 a lesser amount than the actual value received for the state's royalty
24 oil or gas received for production of like quality, character and use
25 which are severed in the same field or area.

26 Sec. 43.22.070. CERTIFICATES OF AMOUNT OF NET PROCEEDS. (a) When
27 the department determines the net proceeds of a well or field, it shall
28 prepare its certificate of the net proceeds and taxes due on them in
29 duplicate and shall file one copy in the department and send the second

1 copy by certified mail to

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

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

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

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

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

12 (b) Upon the filing of the copy of the certificate and mailing of
13 the second copy, the assessment shall be considered to be made in the
14 amount fixed by the certificate and taxes on that amount shall be im-
15 mediately due and payable.

16 Sec. 43.22.080. APPEALS. (a) A person aggrieved by the action of
17 the department in making an assessment may appeal that action and obtain
18 a hearing upon its validity before the department by filing written ob-
19 jections to the assessment not later than 20 days after the effective
20 date of the assessment notice.

21 (b) The procedures for conduct of the hearing and preliminary ac-
22 tivities to it shall be in accordance with AS 44.62.350, 44.62.430,
23 44.62.450 - 640, 44.62.480, 44.62.500 - 550, 44.62.590, and 44.62.610 -
24 640. The term "respondent" used in those sections of AS 44.62 (Adminis-
25 trative Procedure Act) shall be considered, for the purposes of this
26 section, to include the person aggrieved by action of the department.
27 The department shall provide by regulation for notices of hearing under
28 this section to interested persons. At the hearing the appellant bears
29 the burden of proof. In the absence of this proof the assessment is to

1 be upheld by the department. If the department, after hearing, deter-
2 mines that a correction of the assessment is warranted, the department
3 shall correct the assessment.

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

8 Sec. 43.22.090. RETURNS AND PAYMENT OF TAX. (a) A return of the
9 taxes due and payable, fixed by the certificate of the net proceeds shall
10 be submitted on or before the 60th day after the filing of the certifi-
11 cate on the form prescribed by the department. The return shall be sub-
12 mitted by those persons listed in sec. 70 of this chapter.

13 (b) The person required to submit the return specified under (a)
14 of this section is primarily liable for payment of the tax levied by
15 this chapter. The persons or estates specified in sec. 70(a)(2) - (5) of
16 this chapter in whose behalf the tax levied by this chapter is to be
17 paid are secondarily liable for payment of the tax. With the written
18 approval of the department, an operator or nonoperator of the lease or
19 property may submit returns or make payment of the tax levied under this
20 chapter on behalf of himself and other persons the department may ap-
21 prove.

22 (c) The tax levied under this chapter is payable to the department
23 on or before the 60th day after the filing of the certificate or in esti-
24 mated installments at the times and under the conditions the department
25 may by regulation require. This tax is payable on the due date set out
26 in this subsection even though the assessment is under appeal or the
27 validity, enforceability or application of this chapter or provision of
28 this chapter is challenged before the department or in the courts.

29 (d) A person making payment of the tax levied under this chapter

1 on behalf of one or more other persons owning or otherwise holding an
2 interest in a taxable property may withhold a proportionate share of the
3 payment from the proceeds or other benefits from the taxable property
4 owed to any person on whose behalf the payment is made. Unless otherwise
5 specifically provided by written contract or agreement, the person so
6 withholding a proportionate share of the tax levied under this chapter
7 incurs no liability to those from whom it is withheld by virtue of hav-
8 ing made the withholding.

9 (e) By written notice the department may require a person filing a
10 return to submit additional information to the department no later than
11 30 days after the notice.

12 Sec. 43.22.100. CIVIL PENALTY. Five per cent shall be added to
13 the tax for each 30-day period or fraction of that period during which
14 the taxpayer fails to file a return or pay the full amount of the tax,
15 or a portion or a deficiency of the tax due and payable as finally
16 determined by the department and required by this chapter, unless it is
17 shown that the failure is due to reasonable cause and not to wilful
18 neglect. The penalty may not exceed 25 per cent in the aggregate. The
19 penalty shall be collected at the same time, in the same manner and as a
20 part of the original tax, but if the original tax is paid before the
21 neglect is discovered, the penalty shall be collected in the same
22 manner as the original tax. The department shall describe by regula-
23 tions circumstances which constitute reasonable cause for purposes of
24 this section.

25 Sec. 43.22.110. INTEREST. When the tax levied in this chapter
26 becomes delinquent, it bears interest at the rate of eight per cent a
27 year.

28 Sec. 43.22.120. LIEN. The tax, penalty and interest payable under
29 this chapter are first and paramount liens on the property subject to

1 tax under this chapter.

2 Sec. 43.22.130. REMEDY. The remedy of distraint of property set
3 out in AS 43.20.270 applies to the tax, penalty and interest levied by
4 this chapter.

5 Sec. 43.22.140. BURDEN OF PROOF. In a suit arising concerning the
6 assessment and taxation of the proceeds of wells or fields, the burden
7 of proof shall be upon the person owning or operating the well or field
8 and every recipient of royalty payments in connection with them.

9 Sec. 43.22.150. REGULATIONS. The department may adopt regulations
10 in accordance with the Administrative Procedure Act (AS 44.62) as
11 appropriate to administer and enforce this chapter.

12 Sec. 43.22.160. PAYMENT TO ALASKA NATIVE FUND. When the tax
13 levied under this chapter is payable, an amount equivalent to not less
14 than two per cent of the tax shall be paid by the state from oil and gas
15 royalties, bonuses, and rentals into the Alaska Native Fund established
16 by sec. 6 of the Alaska Native Claims Settlement Act (P.L. 92203, 85
17 Stat. 688, 43, U.S.C. 1601, et. seq.) until all payments paid into the
18 fund equal \$500,000,000.

19 Sec. 43.22.170. DEFINITIONS. In this chapter

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

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

23 (3) "gross value" means FOB price at Alaska border or other
24 convenient point or as determined by the department;

25 (4) "oil" means crude petroleum and other hydrocarbons re-
26 gardless of gravity which, when recovered, are recovered at the well-
27 head in liquid form, and the liquid hydrocarbons known as distillate
28 or condensate that are recovered by separation from gas other than at
29 a processing plant.

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