

Introduced: 3/16/76  
Referred: Commerce and  
Finance

BY THE RULES COMMITTEE BY RE-  
QUEST OF THE SPECIAL COMMITTEE  
ON REVENUE AND TAXATION

1 IN THE SENATE

2 SENATE BILL NO. 702

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing for state taxes and revenues; and  
7 providing for an effective date."

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

9 \* Section 1. AS 34 is amended by adding a new chapter to read:

10 CHAPTER 12. LAND GAINS TAX.

11 Sec. 34.12.010. TAX ON GAIN FROM SALE OR EXCHANGE OF LAND. A tax  
12 is levied on gain from the sale or exchange of land in the state. The  
13 seller or other transferor is liable for the tax, except as provided in  
14 sec. 30(b) of this chapter. The tax is levied according to the follow-  
15 ing schedule:

Holding period of transferor	Gain from sale or exchange, as a percentage of basis (tax cost) (rounded to the next highest whole percentage)		
	0 - 99%	100 - 199%	200% and more
less than 1 year	30%	45%	60%
1 year, but less than 2	25%	37.5%	50%
2 years, but less than 3	20%	30%	40%
3 years, but less than 4	15%	22.5%	30%
4 years, but less than 5	10%	15%	20%
5 years, but less than 6	5%	7.5%	10%

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28 Sec. 34.12.020. COMPUTATION OF GAIN SUBJECT TO TAX. (a) The  
29 gain from the sale or exchange of land which is subject to tax under  
this chapter is the amount realized minus the basis (tax cost) of the

1 land. The amount realized is the full actual consideration paid or to  
2 be paid under the sale or exchange, including the amount of any liens or  
3 encumbrances on the land existing before the sale or exchange and not  
4 removed by it, and is the gross amount realized minus any expenses of  
5 sale and commissions.

6 (b) The basis (tax cost) of the land sold or exchanged shall be  
7 determined according to the provisions of the federal Internal Revenue  
8 Code of 1954, as amended, Title 26, Chapter 1, Subchapters O and P. If  
9 land is sold or exchanged together with buildings, structures, or other  
10 physical improvements, or together with land included in exemptions  
11 accorded under sec. 30 of this chapter, the basis (tax cost) shall be  
12 allocated among the land and the improvements or exempted land on a fair  
13 market basis, in accordance with regulations prescribed by the depart-  
14 ment.

15 (c) The land sold or exchanged shall be considered to have been  
16 held as determined under the federal Internal Revenue Code. However, as  
17 to a person whose holding period is claimed by the seller or transferor,  
18 the holding period may not exceed the time for which the person has had  
19 actual and recorded title in his own name to the land sold or exchanged,  
20 and shall include the time the land was so held before the effective  
21 date of this chapter. If a husband and wife are tenants by the entirety  
22 there may be added to the holding period the amount of time the land was  
23 held by one spouse alone before that spouse created the tenancy by the  
24 entirety. Notwithstanding a provision to the contrary under the federal  
25 Internal Revenue Code, if a tenancy by the entirety is dissolved by  
26 reason of death, the holding period during the tenancy by the entirety  
27 will be added to the holding period of the surviving spouse owning the  
28 property in his or her own name.

29 (d) In the case of a gift, the holding period of the donee shall

1 include the time that actual and recorded title was held by the donor.

2 (e) In the case of a lease-purchase agreement under which any part  
3 of the rental payments constitute a portion of the purchase price of the  
4 land, the end of the holding period with respect to the sale or exchange  
5 shall be determined as of the date of the agreement.

6 (f) No gain may be recognized under this chapter where gain is not  
7 recognized under the federal Internal Revenue Code in relation to the  
8 sale or exchange of capital assets.

9 (g) The taxable gain under this chapter shall not be reduced by  
10 any losses incurred in other transactions.

11 Sec. 34.12.030. EXEMPTIONS. (a) A sale or exchange of the  
12 following land is exempt from the tax levied under this chapter:

13 (1) land sold or exchanged before the effective date of this  
14 chapter;

15 (2) land exempt to the seller or transferor from all state or  
16 local taxation under other provisions of law;

17 (3) land in a contiguous ownership of 20 or more acres  
18 devoted primarily to the production of livestock or agricultural com-  
19 modities for commercial purposes by the seller or transferor for at  
20 least three years in the aggregate before the sale or exchange while in  
21 the ownership of the seller or transferor;

22 (4) a parcel of land five acres or more but less than 20  
23 acres devoted primarily to agricultural uses, which has produced a gross  
24 income to the seller or transferor from agricultural uses of \$50 or more  
25 per acre per year for at least three years in the aggregate before the  
26 sale or exchange while in the ownership of the seller or transferor;

27 (5) a parcel of land less than five acres devoted primarily  
28 to agricultural uses which has produced a gross income to the seller of  
29 \$500 or more per year for at least three years in the aggregate before

1 the sale or exchange while in the ownership of the seller or transferor;

2 (6) land, not exceeding five acres, necessary for a dwelling  
3 to be used as the principal dwelling of the person acquiring the land by  
4 the sale or exchange and whose domicile is or will be established in the  
5 state, subject to (b) of this section.

6 (b) If, under (a)(6) of this section, there is not on the land a  
7 dwelling completed or fit for occupancy as the principal residence of  
8 the person acquiring the land at the time of transfer of title to the  
9 land, the person acquiring the land shall certify that construction of  
10 the dwelling shall commence within three years of the date of transfer  
11 of title to the land, and that it will be completed and occupied within  
12 five years of the date of transfer. The deed or other transfer instru-  
13 ment shall state that the amount of tax which would otherwise have been  
14 due from the transferor is a lien running with the land in favor of the  
15 state until either (1) the person acquiring the land has filed with the  
16 commissioner a statement under penalties of perjury that the dwelling  
17 was constructed and occupied within the terms and conditions previously  
18 certified, or (2) the amount of tax has been paid by the person acquir-  
19 ing the land. If the commissioner determines that certifications under  
20 this section were untrue, he shall collect from the person acquiring the  
21 land the tax upon the gain attributable to the sale or exchange of the  
22 land.

23 Sec. 34.12.040. PAYMENT OF TAX AND WITHHOLDING OF CONSIDERATION TO  
24 PAY TAX. (a) The tax levied under this chapter is payable to the  
25 department on a return and in a manner prescribed by the department,  
26 consistent with the provisions of (b) - (i) of this section.

27 (b) Except as provided in (e) - (f) of this section with respect  
28 to sale or exchange of land held by the seller or transferor for less  
29 than six years, if the sale or exchange of land giving rise to the tax

1 is financed by a mortgage, deed of trust, or other financing arrangement  
2 in which the seller or other transferor is paid in full on the date of  
3 the sale or exchange, the tax is payable in full by the seller or  
4 transferor within 30 days of the date of the sale or exchange or in  
5 installments at the times and under conditions the department may by  
6 regulation require.

7 (c) Except as provided in (e) - (f) of this section with respect  
8 to sale or exchange of land held by the seller or transferor for less  
9 than six years, the tax on an installment sale (as defined in sec.  
10 110(3) of this chapter) shall be due from the seller or transferor  
11 within 30 days of the date of payment of each installment paid to the  
12 seller or transferor.

13 (d) In an installment sale the total amount of taxes due under this  
14 chapter shall be the amount that would have been due had the total pur-  
15 chase price been paid on the date the sale or exchange took place. The  
16 amount of taxes due on each separate installment, including the first  
17 installment, shall bear the same proportion to the total amount of taxes  
18 due as the amount of that installment bears to the total consideration.

19 (e) The buyer or transferee of land held by the seller or trans-  
20 feror for less than six years shall withhold 10 per cent of all con-  
21 sideration paid to the seller or transferor for the land, including 10  
22 per cent of all partial payments made under installment sales. At the  
23 time a payment is made to the seller or transferor, the amounts withheld  
24 shall be remitted by the buyer or transferee to the commissioner.

25 (f) Within 30 days of the sale or exchange of land for which  
26 withholding is required under this section, the seller or transferor  
27 shall file a return with the commissioner setting out the amount of the  
28 tax due and the amount withheld by the buyer or transferee under (e) of  
29 this section. The seller shall either remit with the return the balance

1 of the tax due or make claim for a refund. A refund not made by the  
2 commissioner within 15 days of receipt by him of a valid claim shall  
3 accrue interest at the rate of one-half of one per cent per month.

4 (g) The provisions of (e) or (f) of this section notwithstanding,  
5 the seller or transferor may, in advance of the sale or exchange, pay  
6 the tax levied in this chapter or obtain a written ruling from the  
7 commissioner that no tax is due under this chapter. In either case the  
8 commissioner shall certify to the seller or transferor that the payment  
9 has been made or that no tax is due. Upon receipt by the buyer or  
10 transferee of such certification from the seller or transferor, the  
11 buyer or transferee shall not be required to withhold under (e) of this  
12 section.

13 (h) For good cause shown and upon conditions set by him, the  
14 commissioner may extend the time for filing the return and paying the  
15 tax as required in this section.

16 (i) Nothing in this section prevents the department from providing  
17 by regulation for the voluntary prepayment of taxes other than as pro-  
18 vided in (g) of this section.

19 Sec. 34.12.050. PENALTY. Five per cent shall be added to the tax  
20 to be paid or withheld under this chapter for each 30-day period or  
21 fraction of that period during which a return or payment required under  
22 this chapter is not filed or a portion or a deficiency of a payment due  
23 as finally determined by the department and required by this chapter is  
24 not made or paid, unless it is shown that the failure is due to a  
25 reasonable cause and not to wilful neglect. The penalty may not exceed  
26 25 per cent in the aggregate. The penalty shall be collected at the  
27 same time, in the same manner and as a part of the original tax to be  
28 paid or withheld, but if the original tax is paid, or tax withheld is  
29 remitted, before the neglect is discovered, the penalty shall be col-

1 lected in the same manner as the original tax to be paid or withheld.  
2 The department shall prescribe by regulation circumstances which consti-  
3 tute reasonable cause for purposes of this section.

4 Sec. 34.12.060. INTEREST. When the tax to be paid or withheld  
5 under this chapter becomes delinquent, it bears interest at the rate of  
6 eight per cent a year.

7 Sec. 34.12.070. ENFORCEMENT OF TAX. (a) The tax required to be  
8 paid or withheld under this chapter, together with penalty and interest,  
9 constitutes a personal debt of the person liable to pay or withhold the  
10 tax. The amount of the tax, with penalty and interest, may be collected  
11 in a personal action brought by the state.

12 (b) The tax required to be paid or withheld under this chapter,  
13 together with penalty and interest, is a lien in favor of the state upon  
14 property and interests in property, whether real or personal, belonging  
15 to the person liable to pay or withhold the tax. The lien is prior and  
16 paramount to all other liens and encumbrances against the property  
17 except liens for other taxes. Enforcement of the lien shall be carried  
18 out in the same manner and with the same effect as provided for enforce-  
19 ment of property tax liens under AS 34.10.070 - 34.10.220.

20 (c) The remedy of distraint of property set out in AS 43.20.270  
21 applies to the tax, with penalty and interest, required to be paid or  
22 withheld under this chapter.

23 Sec. 34.12.080. PROCEEDS OF TAX. The department shall deposit  
24 money collected by it under this chapter in a special land gains tax  
25 account in the general fund. There is authorized to be appropriated  
26 each fiscal year for allocation to municipalities having power to levy  
27 real property taxes an amount equal to 75 per cent of the amount of  
28 money in the account. A sum appropriated shall be allocated to a  
29 municipality according to the ratio which the tax, penalty and interest

1 collected under this chapter in the prior fiscal year from gains on land  
2 located in the municipality bears to the total amount of money collected  
3 under this chapter in that year.

4 Sec. 34.12.090. REGULATIONS. The department may adopt regulations  
5 it considers necessary and appropriate to administer and enforce this  
6 chapter.

7 Sec. 34.12.100. VIOLATIONS AND PENALTIES. (a) A person who  
8 wilfully defeats or evades, or attempts to defeat or evade, the tax  
9 levied in this chapter is guilty of a misdemeanor and upon conviction is  
10 punishable by a fine of not more than \$10,000 or five times the amount  
11 of the tax defeated or evaded or attempted to be defeated or evaded,  
12 whichever is larger, or by imprisonment for not more than one year, or  
13 by both. A corporation or other taxable entity which is not a natural  
14 person is subject to the fine provided by this section.

15 (b) An officer, employee, director, trustee or other responsible  
16 person of a corporation or other taxable entity, and any other person  
17 who counsels, aids, abets, participates in, or conceals the defeat or  
18 evasion of the tax, or the attempted defeat or evasion of the tax, is  
19 subject to the penalties of (a) of this section.

20 (c) Returns and other forms for payment of the tax under this  
21 chapter shall set out in large type the penalties provided by this  
22 section.

23 Sec. 34.12.110. DEFINITIONS. In this chapter

24 (1) "commissioner" means the commissioner of revenue;

25 (2) "department" means the Department of Revenue;

26 (3) "installment sale" means a sale or exchange of land for  
27 which the total tax due under this chapter is greater than \$2,000 and in  
28 which the parties agree in advance that payments shall be received by  
29 the seller or transferor in more than one installment on a date other

1 than the date of closing; the term excludes a sale financed by a mort-  
2 gage, deed of trust, or other financing arrangement in which the seller  
3 or transferor is paid in full on the date of the sale or exchange; the  
4 term includes but is not limited to a lease-purchase agreement under  
5 which any part of the rental payments constitute a portion of the  
6 purchase price of the land;

7 (4) "land" includes improved and unimproved land, but does  
8 not include buildings, structures or other physical improvements;

9 (5) "sale or exchange" means, for a consideration, any  
10 transfer of title conveying a fee estate or fractional interest in real  
11 estate other than solely to provide or release security for a debt or  
12 obligation; the term includes but is not limited to

13 (A) transfer of an option for sale or exchange of land;

14 (B) sale or exchange of shares in a corporation or other  
15 entity, or of comparable rights or property interests in another  
16 form of organization or legal entity, which effectively entitles  
17 the purchaser or transferee to the use or occupancy of land;

18 (C) contracts for the sale or exchange of land, but only  
19 at such time as some consideration has passed under the contract to  
20 or for the benefit of the seller or transferor; the sale or ex-  
21 change is considered to take place at the time any consideration  
22 whatsoever, of whatever nature, first passes under the contract,  
23 but a mere promise to purchase, and amounts paid as earnest money,  
24 or amounts paid in deposit or amounts paid in escrow to which the  
25 seller or transferor has no immediate right, do not constitute the  
26 passing of consideration which results in a sale or exchange under  
27 this paragraph.

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