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Referred: Resources and  
Finance

1 IN THE SENATE

BY THE SPECIAL COMMITTEE  
ON TAXATION AND REVENUE

2 SENATE BILL NO. 747

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 is  
13 to tax, after the multiple recovery of investment, the excess value not  
14 needed to implement long-term exploration and development and to provide an  
15 alternative to promote short-term 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 at the wellhead  
6 or other point chosen by the department; and  
7 (5) the claimed deductions from the gross value in the detail  
8 set out in sec. 30 of this chapter.

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

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

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

1 and used in the well operations and developments;

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

6 (8) indirect expense allowance equal to five per cent of ex-  
7 pense reported under (4), (6) and (7) of this subsection and AS 43.22.-  
8 030(5).

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

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

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

16 Sec. 43.23.040. DEDUCTION OF DRILLING COSTS AND CALCULATION OF  
17 CAPITAL EXPENDITURES. (a) Exploration costs, including exploratory  
18 drilling costs, incurred in the state, may be charged at the election of  
19 the exploring interest

20 (1) as an operating expense over a five-year period against  
21 net proceeds or royalties of currently operating fields in which the  
22 explorer has an interest, or

23 (2) as a capital expense to be used in the capital base for  
24 the calculation of excess value of production from a well or field  
25 developed as a direct result of the exploration.

26 (b) the cumulative capital investment for purposes of this chapter  
27 shall include exploration costs under option (a)(2) of this section,  
28 capitalized expenditures before the beginning of commercial production  
29 as determined by the department, and any additional capital investments

1 made during the life of the well or field.

2 Sec. 43.23.050. EXCESS VALUE SURTAX. (a) There is levied upon  
3 the producer of oil and gas or royalty interest not exempt from taxation  
4 a surtax at the rate of 33 1/3 per cent upon the excess value of the  
5 production as determined under sec. 60 of this chapter.

6 (b) In no event may the annual excess value surtax exceed 80 per  
7 cent of the difference between the annual net proceeds as calculated  
8 under sec. 30 of this chapter minus 25 per cent of the cumulative capi-  
9 tal investment calculated under sec. 40 of this chapter. Should 25 per  
10 cent of the cumulative capital investment calculated under sec. 40 of  
11 this chapter equal or exceed the net proceeds as calculated under sec.  
12 30 of this chapter, there is no excess value surtax liability.

13 Sec. 43.23.060. COMPUTATION OF EXCESS VALUE. (a) For each year  
14 the department shall, from the statement and from all obtainable data,  
15 evidence and reports, compute the excess value by well or field, accord-  
16 ing to provisions under (b) and (c) of this section.

17 (b) Excess value equals the amount by which the cumulative net  
18 proceeds as reported under sec. 30 of this chapter exceed 2.5 times the  
19 cumulative capital investment calculated under sec. 40 of this chapter.  
20 The annual excess value equals the annual addition to the amount by which  
21 the cumulative net proceeds under sec. 30 of this chapter exceed 2.5  
22 times the cumulative capital investment under sec. 40 of this chapter.

23 (c) Over the life of a field, the producer may subtract the net  
24 proceeds from up to 70 million barrels of oil or gas energy equivalent  
25 from the excess value. In no year may the producer exempt the net  
26 proceeds of more than 7 million barrels of oil. The net proceeds of the  
27 exempted oil or gas shall equal the fraction whose numerator is the  
28 total number of barrels of oil or gas equivalent exempted for the year  
29 and denominator is the total number of barrels of oil or gas equivalent

1 produced from the field during the year times the annual net proceeds  
2 for the well or field as determined under sec. 30 of this chapter. The  
3 department shall adopt regulations for the allocation of this exemption  
4 among subdivisions of a field such as well, lease, pool or property.

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

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

- 19 (1) a person who is the owner of the property, or who con-  
20 trols that property as agent, or on account of any other person;  
21 (2) a guardian or other person who has charge of taxable  
22 property belonging to a minor or other person;  
23 (3) the trustee of a trust estate holding taxable property in  
24 trust for the benefit of another person;  
25 (4) the executor or administrator of a deceased person's  
26 estate which includes taxable property;  
27 (5) the receiver of a corporation who has its assets in his  
28 hands.

29 (b) Upon the filing of the copy of the certificate with the

1 department, the assessment shall be considered to be made in the amount  
2 fixed by the certificate and taxes on that amount at the rate estab-  
3 lished in sec. 50 of this chapter shall be immediately due and payable.

4 (c) The department shall determine annually the long-term index  
5 price.

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

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

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

27 Sec. 43.22.100. RETURNS AND PAYMENT OF TAX. (a) A return of the  
28 taxes due and payable, fixed by the certificate of the net proceeds  
29 shall be submitted on or before the 60th day after the filing of the

1 certificate on the form prescribed by the department. The return shall  
2 be submitted by those persons listed in sec. 80 of this chapter.

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

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

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

28 (e) By written notice the department may require a person filing a  
29 return to submit additional information to the department no later than

1 30 days after the notice.

2 Sec. 43.23.110. CIVIL PENALTY. Five per cent shall be added to  
3 the tax for each 30-day period or fraction of that period during which  
4 the taxpayer fails to file a return or pay the full amount of the tax,  
5 or a portion or a deficiency of the tax due and payable as finally  
6 determined by the department and required by this chapter, unless it is  
7 shown that the failure is due to reasonable cause and not to wilful  
8 neglect. The penalty may not exceed 25 per cent in the aggregate. The  
9 penalty shall be collected at the same time, in the same manner and as a  
10 part of the original tax, but if the original tax is paid before the  
11 neglect is discovered, the penalty shall be collected in the same manner  
12 as the original tax. The department shall describe by regulations  
13 circumstances which constitute reasonable cause for purposes of this  
14 section.

15 Sec. 43.23.120. INTEREST. When the tax levied in this chapter  
16 becomes delinquent, it bears interest at the rate of eight per cent a  
17 year.

18 Sec. 43.23.130. LIEN. The tax, penalty and interest payable under  
19 this chapter are first and paramount liens on the property subject to  
20 tax under this chapter.

21 Sec. 43.23.140. REMEDY. The remedy of distraint of property set  
22 out in AS 43.20.270 applies to the tax, penalty and interest levied by  
23 this chapter.

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

29 Sec. 43.23.160. REGULATIONS. The department may adopt regulations

1 in accordance with the Administrative Procedure Act (AS 44.62) as appro-  
2 priate to administer and enforce this chapter.

3 Sec. 43.23.170. DEFINITIONS. In this chapter

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

5 (2) "energy equivalent" means the quantity of gas or other  
6 energy source needed to produce the same BTU (British Thermal Unit)  
7 level as a barrel of oil;

8 (3) "gas" means all hydrocarbon substances not defined as oil  
9 in this chapter;

10 (4) "gross value" means FOB price at Alaska border or other  
11 convenient point or as determined by the department;

12 (5) "oil" means crude petroleum and other hydrocarbons re-  
13 gardless of gravity which, when recovered, are recovered at the wellhead  
14 in liquid form, and the liquid hydrocarbons known as distillate or  
15 condensate that are recovered by separation from gas other than at a  
16 processing plant;

17 (6) "assessed value" means the value against which tax rates  
18 are applied;

19 (7) "producer" means any person removing or selling oil or  
20 gas from a lease or property in the state;

21 (8) "cumulative capital investment" does not include short-  
22 term capital investments such as vehicles or replacement parts; the  
23 depreciation or expensing of them shall be considered part of the oper-  
24 ating and maintenance expenses of the well or field;

25 (9) "well" or "field" means any well, field, lease, pool, or  
26 property.

27 Sec. 43.23.180. PAYMENT TO ALASKA NATIVE FUND. When the tax  
28 levied under this chapter is payable, an amount equivalent to not less  
29 than two per cent of the tax shall be paid by the state from oil and gas

1 royalties, bonuses, and rentals into the Alaska Native fund established  
2 by sec. 6 of the Alaska Native Claims Settlement Act (P.L. 92-203, 85  
3 Stat. 688, 43, U.S.C. 1601, et. seq.) until all payments paid into the  
4 fund equal \$500,000,000.

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