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by request of the Governor

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1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 322

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing an oil and gas corporate franchise  
7 tax; and providing for an effective date."

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

9 \*Section 1. AS 43 is amended by adding a new chapter to read:

10 CHAPTER 21. OIL AND GAS CORPORATE

11 FRANCHISE TAX.

12 Sec. 43.21.010. LEGISLATIVE FINDINGS AND PURPOSE. (a) The  
13 legislature finds that Alaska has large deposits of nonrenewable re-  
14 sources of oil and gas which belong to the citizens of the state.  
15 Therefore, it is incumbent upon the state to provide an equitable  
16 taxing system to be applied to corporations engaged in the extraction,  
17 transportation, and refining of this wealth from the state. In addi-  
18 tion, it is important that the tax system be designed to return to the  
19 state tax revenues measured by the income generated by these resources  
20 and activities. Accordingly, the taxing formula must fairly reflect the  
21 business activities in the state by those corporations extracting,  
22 transporting, and refining these nonrenewable resources.

23 (b) The legislature finds that, as a general rule, the three-  
24 factor formula set out in AS 43.19.010, Article IV, fairly measures the  
25 income-producing activity of corporations doing business both in and  
26 outside the state. With regard, however, to the extraction, transporta-  
27 tion, and refining of oil and gas, the legislature finds that the uni-  
28 form formula does not fully reflect corporate income-producing activity  
29 in the state. The legislature finds that the income from the extrac-

1 tion, transportation, and refining of oil and gas should be allocated  
2 and apportioned by a separate state formula just as financial insti-  
3 tutions and public utilities are under the provisions of AS 43.19.010,  
4 Article IV.

5 (c) Although the legislature is mindful of the importance and  
6 the advantages of uniformity which the formula in AS 43.19.010,  
7 Article IV, represents, the legislature also recognizes its responsi-  
8 bility to provide an apportionment formula which fairly represents a  
9 taxpayer's business activity in the state. Accordingly, the legislature  
10 has struck a balance between the uniform formula in AS 43.19.010,  
11 Article IV, and a direct measure of oil and gas extracted in the  
12 state by the substitution of a factor based upon units of extraction,  
13 which will more fairly indicate the taxpayer's income attributable to  
14 its business activity in the state.

15 (d) The legislature is concerned about the possibility of a  
16 corporation's income not being attributable to any specific state, as  
17 when property, payroll, and extraction are present in a location where  
18 the corporation is not subject to state taxation. In such cases, some  
19 portion of the income of the corporation would escape taxation by all  
20 states even though a state may have been impacted by that corporation's  
21 business activity and has given services and protection for which it  
22 is entitled to ask for compensation. The legislature finds that the  
23 apportionment formula in AS 43.19.010, Article IV, is deficient in  
24 this respect for corporations engaged in the extraction, transportation,  
25 and refining of oil and gas. Specifically, the legislature finds that  
26 income generated from activities taking place on the outer continental  
27 shelf should not escape state taxation entirely but should be taxed by  
28 the state which has made contributions of services and protection to  
29 those corporations as a result of those activities taking place off

1 its shores. The legislature finds that the state is currently adversely  
2 impacted by activities occurring on the outer continental shelf off  
3 the state's shores. The state has given and will continue to give  
4 those corporations engaged in those activities hospital services,  
5 educational services, police protection, regulatory protection, and  
6 access to its courts, as well as many other services and protections.  
7 Accordingly, the legislature finds that it is entitled to ask for  
8 compensation for these services and protections. The return which the  
9 state asks is the inclusion of property, payroll, and extraction units  
10 not occurring in any state but which are directly serviced from a  
11 base of operations in the state.

12 Sec. 43.21.020. PRIVILEGE TAX IMPOSED. A tax is hereby imposed  
13 for each tax year on the privilege of engaging in business, exercising  
14 a corporate franchise, doing business in corporate form, employing  
15 capital, labor, or property, or maintaining an office, place of business,  
16 or base of operations in Alaska of every corporation which has ordinary  
17 gross receipts during the tax year in excess of \$250,000,000 (or which  
18 is a member of a unitary business with combined ordinary gross receipts  
19 in excess of \$250,000,000), more than 50 per cent of which is derived  
20 from production, transportation, refining, manufacturing, processing,  
21 distribution, or retail sale of oil or gas or products derived from  
22 oil or gas. The tax imposed by this chapter is measured by the net  
23 income of the corporation and is determined at the rate imposed under  
24 AS 43.20.011(e). The tax imposed under this chapter is in place of  
25 the tax imposed under AS 43.20.

26 Sec. 43.21.030. "NET INCOME" DEFINED. (a) Net income for the  
27 purposes of this chapter is the higher of taxable income (as the term  
28 is used in AS 43.20.011(e)) or the net income determined and certified  
29 by an independent certified public accountant for the purposes of a

1 report to shareholders covering its earnings and profits for the taxable  
2 year calculated using historical cost accounting without regard to any  
3 taxes on, or measured by, net income.

4 (b) The department shall provide by regulation for the determina-  
5 tion of net income in circumstances where the income statement deter-  
6 mined and certified to shareholders does not truly reflect the corpora-  
7 tion's net income. Those circumstances include but are not limited to  
8 situations in which a qualified or disclaimed opinion is given by an  
9 independent accountant on the corporation's net income, the net income  
10 report does not meet standards promulgated by the Securities and  
11 Exchange Commission, a change in accounting method, or the income  
12 statement is not prepared in accordance with generally accepted account-  
13 ing principles.

14 Sec. 43.21.040. "ORDINARY GROSS RECEIPTS" DEFINED. The term  
15 "ordinary gross receipts" means total gross receipts, except that  
16 there shall be excluded:

17 (1) all gains and losses from the sale or other disposition  
18 of capital assets, and

19 (2) all gains and losses from the sale or other disposition  
20 of property of a character described in sec. 1231(b) of the Internal  
21 Revenue Code (determined without regard to holding period).

22 Sec. 43.21.050. APPORTIONMENT OF NET INCOME. (a) A corporation  
23 subject to this tax which is taxable both in and outside the state  
24 shall apportion its entire unitary business net income to Alaska by a  
25 fraction the numerator of which is the property factor plus the payroll  
26 factor plus the extraction factor and the denominator of which is  
27 three. Under regulations adopted by the department, the property  
28 factor and the payroll factor shall be determined in accordance with  
29 Article IV of AS 43.19.010 and with AS 43.20.071, except as otherwise

1 provided in this section.

2 (b) Compensation earned by employees who are not employed in any  
3 state in which the corporation is taxable shall be included in the  
4 numerator of the payroll factor if the employees are directly supplied  
5 from a base of operations maintained in the state.

6 (c) The value of oil or gas production facilities or other  
7 properties which are not located in any state in which the corporation  
8 is taxable shall be included in the numerator of the property factor  
9 if the property is serviced or supplied from a base of operations  
10 maintained in the state or if that property relies on onshore facilities  
11 for storage of the oil and gas produced.

12 (d) The extraction factor is a fraction the numerator of which  
13 is the net amount of oil and gas energy units produced in Alaska  
14 expressed in terms of their equivalents in British Thermal Units and  
15 the denominator of which is the total net amount of oil and gas energy  
16 units produced everywhere. Oil and gas energy units which are not  
17 extracted in a state in which the corporation is taxable shall be  
18 included in the numerator of the extraction factor if the extraction  
19 is performed by facilities which are serviced or supplied from a base  
20 of operations in the state or if those facilities rely on onshore  
21 facilities for storage of the oil and gas produced.

22 (e) If the denominator of any factor of the apportionment formula  
23 set out in this section is zero or is so insignificant that its inclu-  
24 sion will result in a distortion of income, the department may exclude  
25 that factor or include one or more additional factors which will  
26 fairly represent the taxpayer's business activity in the state.

27 Sec. 43.21.060. RETURNS AND PAYMENT OF TAXES. (a) A corporation  
28 subject to tax under this chapter shall make and file a return with  
29 the department at the same time as it files a return under the provisions

1 of the Internal Revenue Code. The return must set out

2 (1) the amount of tax due under this chapter, and

3 (2) other information which the department requires for the  
4 purpose of carrying out the provisions of this chapter.

5 (b) The return must either be on oath or contain a written  
6 declaration that it is made under penalty of perjury, and the department  
7 shall prescribe forms accordingly.

8 (c) The total amount of tax imposed by this chapter is due and  
9 payable to the department at the same time and in the same manner as  
10 the tax payable to the United States Internal Revenue Service.

11 (d) A taxpayer shall furnish to the department a true and correct  
12 copy of the tax return which he has filed with the United States  
13 Internal Revenue Service.

14 (e) The department may credit or refund overpayments of taxes,  
15 taxes erroneously or illegally assessed or collected, penalties col-  
16 lected without authority, and taxes that are found unjustly assessed  
17 or excessive in amount, or otherwise wrongfully collected. The depart-  
18 ment shall set limitations, specify the manner in which claims or  
19 credits or refunds are made and give notice of allowance or disallow-  
20 ance. When a refund is allowed to a taxpayer, it shall be paid out of  
21 the general fund on a warrant issued under a voucher approved by the  
22 department.

23 (f) Every taxpayer shall notify the department in writing of any  
24 alteration in, or modification of, his federal income tax return and  
25 of a recomputation of tax or determination of deficiency (whether with  
26 or without assessment). A full statement of the facts must accompany  
27 this notice. The notice must be filed within 60 days after the final  
28 determination of the modification, recomputation, or deficiency, and  
29 the taxpayer shall pay the additional tax or penalty under this chapter.

1 For purposes of this section, a determination is final at the time  
2 that an amended return is filed or a notice of deficiency or an assess-  
3 ment is mailed to the taxpayer by the Internal Revenue Service, except  
4 that in no event is there a final determination for purposes of this  
5 section until the taxpayer has exhausted his rights of appeal under  
6 federal law.

7 (g) Every taxpayer shall notify the department in writing of any  
8 recomputation or restatement of a prior year's net income. A full  
9 statement of the facts must accompany this notice. The notice must be  
10 filed within 60 days after the recomputation or restatement of a prior  
11 year's net income.

12 (h) In the case of additional tax due by reason of a modification,  
13 recomputation, or determination of deficiency in a taxpayer's federal  
14 income tax return, or by reason of a recomputation or restatement of a  
15 prior year's net income, the period of limitation on assessment  
16 commences from the date that the notice required in (f) or (g) of this  
17 section is filed, and, if no notice is filed, the tax may be assessed  
18 at any time.

19 (i) The tax imposed by this chapter is payable on the due date set  
20 out in this section even though the assessment is under appeal or the  
21 validity, enforceability or application of this chapter or any provi-  
22 sion of this chapter is challenged before the department or in the  
23 courts.

24 Sec. 43.21.065. PETITIONS FOR RELIEF. (a) If a corporation  
25 taxable under this chapter can establish that it is actually being  
26 taxed on more than 100 per cent of its net income by the states in  
27 which it does business, it may petition the department for relief. To  
28 establish that it is being taxed on more than 100 per cent of its net  
29 income the corporation shall provide the department with copies of the

1 tax returns and supporting documents filed in the other states in which  
2 it does business.

3 (b) Upon a showing under this section by a corporation, the com-  
4 missioner shall negotiate with the tax administrators in the other  
5 states in which the corporation does business to arbitrate the total  
6 tax liability of the corporation. The efforts shall include the use  
7 of the arbitration procedures set out in AS 43.19.010, Article IX.

8 (c) If the efforts of arbitration set out in (b) of this section  
9 are not successful in providing tax relief to the taxpayer, the depart-  
10 ment may then modify the apportionment formula by excluding one or more  
11 apportionment factors or including one or more additional factors which  
12 will provide tax relief to the taxpayer and still accurately represent  
13 the taxpayer's business activity in the state.

14 (d) The department shall provide an annual report to the legisla-  
15 ture of the total tax relief given under this section.

16 Sec. 43.21.070. REVIEW AND ASSESSMENT. (a) As soon as practic-  
17 able after a return is filed, the department shall examine it and  
18 determine the correct amount of the tax. If an error is disclosed by  
19 the examination, the department shall notify the taxpayer of the  
20 deficiency.

21 (b) If a taxpayer fails to file a return in the time required by  
22 law, or makes an erroneous or fraudulent return, the department shall  
23 proceed to assess the tax and make a return from information which it  
24 obtains. A return made and subscribed by the department is prima  
25 facie sufficient for all legal purposes.

26 Sec. 43.21.080. REGULATIONS. The department may adopt regulations  
27 in accordance with the Administrative Procedure Act (AS 44.62) as  
28 appropriate to administer and enforce this chapter.

29 Sec. 43.21.090. PENALTIES. (a) A person who wilfully attempts

1 to evade the tax imposed by this title is, in addition to other penal-  
2 ties provided by this title, guilty of a felony and, upon conviction, is  
3 punishable by a fine of not more than \$5,000, or by imprisonment for  
4 not more than five years, or by both.

5 (b) A person required under this title to collect, account for,  
6 and pay over the tax imposed by this title who wilfully fails to collect  
7 or truthfully account for and pay over the tax is, in addition to other  
8 penalties provided by this title, guilty of a felony and, upon convic-  
9 tion, is punishable by a fine of not more than \$5,000, or by imprison-  
10 ment for not more than five years, or by both.

11 (c) A person required under this title to pay a tax, make a  
12 return, keep records, or supply information, who wilfully fails to pay  
13 the tax or estimated tax, make the return, keep the records, or supply  
14 the information, is, in addition to other penalties provided by this  
15 title, guilty of a misdemeanor and, upon conviction, is punishable by a  
16 fine of not more than \$5,000, or by imprisonment for not more than one  
17 year, or by both.

18 (d) A person who wilfully makes and subscribes a return, state-  
19 ment, or other document required under this title which contains or is  
20 verified by a written declaration that it is made under the penalties of  
21 perjury which he does not believe to be true and correct as to every  
22 material matter is, in addition to other penalties provided by this  
23 title, guilty of a felony and, upon conviction, is punishable by a fine  
24 of not more than \$5,000, or by imprisonment for not more than three  
25 years, or by both.

26 (e) A person who wilfully and knowingly aids or assists in, or  
27 procures, or counsels the preparation or presentation in connection with  
28 any matter arising under this title of a return, affidavit, claim, or  
29 other document, which is fraudulent or is false as to any material

1 matter is guilty of a felony whether or not the falsity or fraud is with  
2 the knowledge or consent of the person required to present the return,  
3 affidavit, claim, or document, and, upon conviction, is punishable by a  
4 fine of not more than \$5,000, or by imprisonment for not more than three  
5 years, or by both.

6 (f) A person who wilfully delivers or discloses to the commis-  
7 sioner or the department under this chapter any list, return, account,  
8 statement, or other document, known by him to be fraudulent or to be  
9 false as to any material matter, upon conviction, is punishable by a  
10 fine of not more than \$1,000, or by imprisonment for not more than one  
11 year, or by both.

12 (g) In this section, "person" includes, but is not limited to, an  
13 officer or employee of a corporation who as officer or employee is under  
14 a duty to perform the act in respect to which the violation occurs.

15 Sec. 43.21.900. DEFINITIONS. In this chapter, unless the context  
16 requires otherwise,

17 (1) "base of operations" means the closest point on land to  
18 the offshore oil and gas production operations from which goods, ser-  
19 vices, and supplies flow to those offshore oil and gas production  
20 operations;

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

22 (3) "net amount of oil and gas energy units produced" means  
23 gross production less any portion of the production which represents a  
24 royalty interest, overriding royalty interest, production payment, or  
25 any other interest in a lease concession, joint venture, or other  
26 agreement for oil or gas production belonging to a third party;

27 (4) "unitary business" means a corporation or group of cor-  
28 porations having at least 50 per cent common ownership, direct or  
29 indirect, or a group of corporations in which there is common control

1 either direct or indirect as evidenced by any arrangement, contract, or  
2 agreement.

3 \* Sec. 2. AS 43.55.010(d) is amended to read:

4 (d) The tax imposed by this chapter is not in place of the tax  
5 imposed by ch. 57 or ch. 21 of this title or income taxes or taxes upon  
6 the retail sale of oil or gas products.

7 \* Sec. 3. If any of the provisions of this Act relating to the incor-  
8 poration into the apportionment formula of payroll, property, or extraction  
9 arising out of activities conducted on the outer continental shelf, or if any  
10 other provisions of this Act are held to be invalid or unenforceable, it is  
11 the intent of the legislature that the invalidity or unenforceability does  
12 not affect the remainder of this Act.

13 \* Sec. 4. This Act takes effect January 1, 1978.  
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