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1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 322 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

9 * Section 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds and
10 declares that the method of apportioning income for tax purposes under the
11 "Uniform Division of Income for Tax Purposes" formula embodied in the Multi-
12 state Tax Compact (AS 43.19) and AS 43.20.065 does not fairly represent the
13 extent of the business activities in this state of multistate corporations
14 engaged in the production and pipeline transportation of crude oil and
15 natural gas in Alaska. The legislature therefore intends that, in accordance
16 with the provisions of art. 18 of the Multistate Tax Compact (AS 43.19), the
17 income tax of all corporations engaged in the production or pipeline trans-
18 portation of oil or natural gas in or directly associated with this state
19 shall be assessed by the tax administrator under this Act. The legislature
20 further intends that the assessment of income tax against a multistate cor-
21 poration engaged in the production or pipeline transportation of oil or
22 natural gas shall be commensurate with the tax that would be assessed against
23 a corporation owning and operating only those assets of the multistate cor-
24 poration which are in or directly associated with this state.

25 * Sec. 2. AS 43.20.011(e) is amended to read:

26 (e) There is imposed for each taxable year upon the entire taxable
27 income of every corporation derived from sources within the state a tax
28 consisting of a normal tax equal to 5.4 per cent of taxable income, and
29 a surtax which is equal to 4.0 per cent of taxable income. For purposes

1 of this chapter the surtax exemption for a taxable year follows secs.
2 1561 and 1563 of the Internal Revenue Code. The tax of a corporation
3 engaged in the production or transportation of crude oil or natural gas
4 shall be determined and paid in accordance with ch. 21 of this title.

5 * Sec. 3. AS 43 is amended by adding a new chapter to read:

6 CHAPTER 21. OIL AND GAS CORPORATE
7 INCOME TAX.

8 Sec. 43.21.010. APPLICATION. This chapter applies to every cor-
9 poration doing business in the state which derives income from the
10 production of oil or gas from a lease or property in or directly asso-
11 ciated with the state, or from the pipeline transportation of oil or gas
12 in the state. The tax calculated under this chapter is measured by the
13 total taxable income of the corporation as defined in secs. 20 - 40 of
14 this chapter and is determined at the rates established under AS 43.20.-
15 011(e).

16 Sec. 43.21.020. DETERMINATION OF TAXABLE INCOME FROM OIL AND GAS
17 PRODUCTION. (a) The taxable income of a corporation from the produc-
18 tion of oil and gas from a lease or property in the state shall be the
19 corporation's net income as calculated by the department in accordance
20 with this section.

21 (b) Gross income of a corporation from oil and gas production
22 shall be the gross value at the point of production of oil or gas pro-
23 duced from a lease or property in the state. The department shall by
24 regulation determine a uniform method of establishing the gross value at
25 the point of production. In making its determination the department may
26 use the actual prices or values received for the oil or gas, the posted
27 prices for the oil or gas in the same field, or the prevailing prices or
28 values of oil or gas in the same field. In addition, in its determina-
29 tion of gross value at the point of production of oil or gas produced

1 from a lease or property, the department shall determine the reasonable
2 costs of transportation from the point of sale to the point of produc-
3 tion of the oil or gas. Transportation costs set by a tariff properly
4 on file with the Alaska Pipeline Commission or other regulatory agency
5 shall be considered prima facie reasonable, but if a tariff properly on
6 file with a regulatory agency is subsequently amended, changed, or
7 overturned retroactively, the reasonable costs of transportation shall
8 be recomputed for that period using the newly determined tariff.

9 (c) Net income from oil and gas production shall be determined by
10 the department by deducting from gross income the following:

11 (1) royalties paid in kind or in value;

12 (2) taxes imposed under AS 43.55 and AS 43.57 which are
13 actually paid by the corporation on the production from a lease or
14 property in the state;

15 (3) taxes imposed under AS 43.56 and AS 29.53 which are
16 actually paid by the corporation on property used directly in the pro-
17 duction of oil or gas from a lease or property in the state, including
18 property used in production, gathering, treatment or preparation of the
19 oil or gas for pipeline transportation, but only if those property tax
20 payments were due and payable only after the date of commercial produc-
21 tion from the lease or property with which the property was associated;

22 (4) the direct costs incurred by or for the corporation in
23 operating the lease or property, including the direct costs of pro-
24 ducing, gathering, treating or preparing the oil or gas for pipeline
25 transportation, but net of any payments received for those activities
26 and not including any indirect cost or overhead expense;

27 (5) depreciation (using the unit of production method or such
28 other reasonable methods as the department may by regulation establish)
29 on property used directly in the production, gathering, treatment or

1 preparation of the oil or gas for pipeline transportation including
2 amortization of capitalized interest for investments in this property at
3 a rate not to exceed the average cost of borrowed capital to the tax-
4 payer during the year in which it is capitalized;

5 (6) the amortization of lease acquisition payments and taxes
6 paid under AS 43.56 and AS 29.53 (including capitalized interest on
7 both) for or on producing properties before the commencement of com-
8 mercial production from the lease or property for which the property is
9 being used;

10 (7) interest expense not capitalized of the corporation, to
11 the extent that it does not exceed that portion of the total interest
12 paid by the consolidated business of which the corporation is a part,
13 determined by multiplying the total interest (reduced by intercompany
14 transactions within the consolidated business) by a fraction, the numer-
15 ator of which is the value of the corporation's real and tangible per-
16 sonal property used directly in the production of oil or gas from a
17 lease or property in the state and the denominator of which is the value
18 of all real and tangible personal property of the consolidated business;

19 (8) expenses incurred by the corporation after December 31,
20 1977 of unsuccessful exploration of oil or gas in the state including
21 the acquisition costs of abandoned properties, dry hole costs and the
22 costs of geologic and geophysical exploration related to those abandoned
23 properties;

24 (9) general overhead or administrative expense incurred by
25 the corporation attributable to the production of oil or gas from a
26 lease or property in the state to the extent that it does not exceed the
27 lesser of:

28 (A) that portion of the total general overhead or admin-
29 istrative expense incurred by the consolidated business of which

1 the corporation is a part, determined by multiplying the total
2 general overhead or administrative expense by a fraction, the
3 numerator of which is the value of the corporation's real and
4 tangible personal property used directly in the production of oil
5 or gas from a lease or property in the state and the denominator of
6 which is the value of all real and tangible personal property of
7 the consolidated business, or

8 (B) the sum of \$0.12 for each barrel of oil and \$0.02
9 for each thousand cubic feet of gas produced from a lease or pro-
10 perty in the state.

11 (d) Deductions from gross income under this section shall not
12 include expenses previously deducted on a return filed under AS 43.20.

13 (e) Where a corporation subject to this chapter shares the pro-
14 duction or proceeds of the production from a lease or property through a
15 working interest, royalty interest, overriding royalty interest, pro-
16 duction payment, net profit interest, joint venture or other agreement,
17 the department shall allocate the deductions from gross income between
18 the corporation and the persons with whom it has such an agreement in
19 accordance with the terms of the agreement.

20 Sec. 43.21.030. DETERMINATION OF INCOME FROM OIL AND GAS PIPELINE
21 TRANSPORTATION. (a) Except as provided in (c) of this section, taxable
22 income attributable to the transportation of oil in a pipeline engaged
23 in interstate commerce in Alaska shall be determined by the department
24 and shall be the amount reported or that would be required to be re-
25 ported to the Federal Energy Regulatory Commission or its successors as
26 net operating income, less those portions of interest and general admin-
27 istrative expense attributable to the pipeline transportation of oil in
28 the state, except that taxable income shall also include taxes on or
29 measured by income. The department shall establish regulations govern-

1 ing the determination of interest and general administrative expense
2 attributable to pipeline transportation of oil in the state.

3 (b) Except as provided in (c) of this section, taxable income
4 attributable to the transportation of natural gas in a pipeline engaged
5 in interstate commerce in Alaska shall be determined by the department
6 and shall be the amount reported or that would be required to be re-
7 ported to the Federal Energy Regulatory Administration as net operating
8 income less that portion of interest and general administrative expense
9 attributable to pipeline transportation in the state, except that the
10 taxable income shall also include taxes on or measured by income. The
11 department shall establish regulations governing the determination of
12 interest and general administrative expense attributable to pipeline
13 transportation of natural gas in the state.

14 (c) Taxable income attributable to the transportation of oil or
15 natural gas in Alaska of any corporation not under the Federal Energy
16 Regulatory Commission jurisdiction, or of a corporation under the juris-
17 diction of the Federal Energy Regulatory Commission but not reporting
18 the operation of pipelines in Alaska separately from the operation of
19 pipelines elsewhere, shall be determined by the department and shall be
20 based upon an amount equal to that which would have been reported to the
21 Federal Energy Regulatory Commission under (a) of this section in the
22 case of oil pipelines, or (b) of this section in the case of natural gas
23 pipelines, had the corporation been, in fact, under Federal Energy
24 Regulatory Commission jurisdiction for the taxable year and required to
25 report on the operation of Alaska pipelines separately from the opera-
26 tion of pipelines elsewhere.

27 Sec. 43.21.040. DETERMINATION OF INCOME FROM ACTIVITIES OTHER THAN
28 OIL AND GAS PRODUCTION OR PIPELINE TRANSPORTATION. (a) Taxable income
29 of a corporation subject to this chapter from activities in this state

1 other than the production of oil or gas from a lease or property in the
2 state or the pipeline transportation of oil or gas in the state shall be
3 determined in accordance with the method established in art. IV of AS
4 43.19.010 and in AS 43.20.071, as modified by (b) - (e) of this section.

5 (b) The total taxable income of the consolidated business shall be
6 the net income determined and certified by an independent certified
7 public accountant for the purposes of a report to shareholders covering
8 its earnings and profits for the taxable year (calculated without regard
9 to any taxes on or measured by net income), less the taxable income of
10 the corporation as determined under secs. 20 and 30 of this chapter.

11 (c) The numerator and denominator of the property factor, of the
12 payroll factor and of the sales factor shall be calculated without
13 reference to that portion of property, payroll or sales directly related
14 to the production of oil or gas from a lease of property in the state or
15 the pipeline transportation of oil or gas in the state.

16 (d) Compensation earned by employees of the consolidated business
17 who are employed in the United States but not in any state shall be
18 included in the numerator of the payroll factor if the employees are
19 directly supplied from a base of operations maintained in this state.

20 (e) The value of oil or gas production facilities or other pro-
21 perties of the consolidated business which are located in the United
22 States but not in any state shall be included in the numerator of the
23 property factor if the property is serviced or supplied from a base of
24 operations maintained in the state or if that property relies on onshore
25 facilities in this state for storage of the oil or gas produced.

26 Sec. 43.21.050. ASSESSMENT OF INCOME AND TAX. (a) The department
27 shall assess taxable income and the amount of tax payable on that tax-
28 able income.

29 (b) On or before August 15 of each year the department shall send

1 to every corporation taxable under this chapter a notice of assessment
2 showing the amount of income taxable under this chapter for the previous
3 year and the amount of tax payable on that taxable income.

4 (c) For purposes of this chapter the department may combine tax-
5 able incomes of corporations subject to tax under this chapter who are
6 part of the same consolidated business.

7 Sec. 43.21.060. RETURNS. On or before April 15 of each year, a
8 corporation subject to tax under this chapter shall submit a return in a
9 form prescribed by the department setting out information required by
10 the department to determine taxable income. For purposes of this chap-
11 ter, the department may require corporations subject to tax under this
12 chapter who are part of the same consolidated business to file a single
13 return.

14 Sec. 43.21.070. PAYMENT OF TAX. The tax levied under this chapter
15 is payable to the department on or before September 30 of each year or
16 in installments at the times and under the conditions the department may
17 by regulation require. This tax is payable on the due date set out in
18 this section even though the assessment is under appeal or the validity,
19 enforceability or application of this chapter or any provision of this
20 chapter is challenged before the department or in the courts.

21 Sec. 43.21.080. TRANSITIONAL RULES. The department shall provide
22 by regulation transition rules for corporations subject to tax under AS
23 43.20 before the effective date of this Act to avoid double taxation of
24 the same income or double deduction of the same expense of those cor-
25 porations as a result of becoming subject to tax under this chapter.

26 Sec. 43.21.090. REGULATIONS. The department may adopt regulations
27 in accordance with the Administrative Procedure Act (AS 44.69) as appro-
28 priate to administer and enforce this chapter.

29 Sec. 43.21.100. PENALTIES. The penalties established in ch. 20 of

1 this title apply to this chapter.

2 Sec. 43.21.110. PUBLIC REPORTING. (a) The commissioner of reve-
3 nue shall compile and transmit to the legislature an annual consolidated
4 report of state revenues and taxation policies under this chapter. This
5 report shall include total aggregate income tax paid by corporations
6 covered under this chapter and aggregate income and deductions by cate-
7 gory, so classified as to prevent the identification of particular
8 returns or reports.

9 (b) The legislative auditor shall transmit to the legislature an
10 annual report reviewing the actions of the department in administering
11 this chapter.

12 Sec. 43.21.120. DEFINITIONS. Unless the context requires other-
13 wise the definitions contained in AS 43.55.140 are applicable to this
14 chapter. In addition, in this chapter

15 (1) "base of operations" means the closest point on land to
16 the offshore oil or gas production operations from which goods, services
17 and supplies flow to those offshore oil or gas production operations;

18 (2) "consolidated business" means a corporation or group of
19 corporations having at least 50 per cent common ownership, direct or
20 indirect, or a group of corporations in which there is common control
21 either direct or indirect as evidenced by any arrangement, contract or
22 agreement.

23 * Sec. 4. This Act applies to taxable income earned or received after
24 December 31, 1977.

25 * Sec. 5. The Act takes effect immediately in accordance with AS 01.10.-
26 070(c).