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1 IN THE SENATE

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2 SENATE BILL NO. 202

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST 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
28 field, together with a list in duplicate of the names and addresses of
29 any persons owning or claiming a royalty interest in the production of

1 the well or the proceeds derived from the sale of it, and the amount
2 paid or delivered in kind as royalty to each of these persons during the
3 period 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 at the
9 wellhead or other point chosen by the department; and

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

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

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

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

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

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

29 (3) the costs of transporting the product beyond the area of

1 the well or field to the point of gross valuation, if the gross valua-
2 tion point chosen by the department is beyond the area of the well or
3 field;

4 (4) operating costs incurred in the state as determined under
5 regulations of the department; operating costs shall include

6 (A) well machinery, equipment, apparatus and facilities;

7 (B) transportation facilities and equipment;

8 (C) money expended for necessary labor and supplies
9 needed and used in the well or field operations and developments;

10 (D) money expended for fire insurance and workmen's
11 compensation insurance, and for payments by operators to welfare
12 and retirement funds when provided for in wage contracts between
13 operators and employees;

14 (E) office clerical or engineering work in the state
15 necessary or proper in connection with these operations;

16 (5) the deductions mentioned in this subsection shall not
17 include the salary of a person not subject to the withholding of state
18 income tax under AS 43.20.170 or not actually engaged in

19 (A) the operation of a well or field or of transporta-
20 tion facilities or equipment or superintending the management of
21 them; or

22 (B) office clerical or engineering work in the state
23 necessary or proper in connection with these operations;

24 (6) in lieu of the deduction of expenses incurred outside the
25 state, an indirect expense allowance equal to five per cent of expenses
26 reported under sec. 30(4) of this chapter shall be allowed;

27 (7) all taxes paid or due to the state under chs. 55, 56, and
28 57 of this title;

29 (8) recovery of capital and exploration investments.

1 Sec. 43.22.040. RECOVERY OF CAPITAL AND EXPLORATION EXPENSES. (a)

2 The department shall issue regulations required to determine deductions
3 for the depreciation and recovery of investments related to an operating
4 well or field.

5 (b) Geological and geophysical costs, bonus payments, dry hole
6 costs, and unrecovered costs after lease abandonments which are incurred
7 in areas of the state in which the producer does not hold a currently
8 valid lease, contractual agreement, or other economic interest may be
9 charged against the net proceeds of currently operating wells or fields
10 in which the taxpayer has an interest. However,

11 (1) costs under this subsection may be carried forward for no
12 more than 10 years from the year in which the cost is declared;

13 (2) a cost reported under this subsection may not be charged
14 at a rate of more than 20 per cent of the cost in any one year; and

15 (3) costs may not be reported as expenses under this section
16 if they have previously been charged against state income taxes either
17 directly as reported to the department or indirectly through an appor-
18 tionment formula.

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

25 (b) A taxpayer liable to taxation under this chapter is exempt
26 from further taxation under ch. 20 of this title only to the extent of
27 income earned from the production of oil in the state.

28 Sec. 43.22.060. VALUE MAY BE DETERMINED BY DEPARTMENT. The de-
29 partment may determine the value of production severed from a well or

1 field when (1) the operator and purchaser are affiliated persons; (2)
2 the sale and purchase of the production is not an arm's length trans-
3 action; or (3) the production is severed and removed from a production
4 unit, and a value as defined in this chapter is not established for this
5 production. The value determined by the department shall be commen-
6 surate with the actual price received for production of like quality,
7 character, and use which is severed in the same well or field or area
8 and shall not be computed at a lesser amount than the actual value
9 received for the state's royalty oil or gas received for production of
10 like quality, character and use which are severed in the same well or
11 field or area.

12 Sec. 43.22.070. CERTIFICATES OF AMOUNT OF NET PROCEEDS. (a) When
13 the department determines the net proceeds of a well or field, it shall
14 prepare its certificate of the net proceeds and taxes due on them in
15 duplicate and shall file one copy in the department and send the second
16 copy by certified mail to

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

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

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

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

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

27 (b) Upon the filing of the copy of the certificate and mailing of
28 the second copy, the assessment shall be considered to be made in the
29 amount fixed by the certificate and taxes on that amount shall be im-

1 mediatly due and payable.

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

7 (b) The procedures for conduct of the hearing and preliminary ac-
8 tivities to it shall be in accordance with AS 44.62.350, 44.62.430,
9 44.62.450 - 640, 44.62.480, 44.62.500 - 550, 44.62.590, and 44.62.610 -
10 640. The term "respondent" used in those sections of AS 44.62 (Adminis-
11 trative Procedure Act) shall be considered, for the purposes of this
12 section, to include the person aggrieved by action of the department.
13 The department shall provide by regulation for notices of hearing under
14 this section to interested persons. At the hearing the appellant bears
15 the burden of proof. In the absence of this proof the assessment is to
16 be upheld by the department. If the department, after hearing, deter-
17 mines that a correction of the assessment is warranted, the department
18 shall correct the assessment.

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

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

28 (b) The person required to submit the return specified under (a)
29 of this section is primarily liable for payment of the tax levied by

1 this chapter. The persons or estates specified in sec. 70(a)(2) - (5)
2 of this chapter in whose behalf the tax levied by this chapter is to be
3 paid are secondarily liable for payment of the tax. With the written
4 approval of the department, an operator or nonoperator of the lease or
5 property may submit returns or make payment of the tax levied under this
6 chapter on behalf of himself and other persons the department may ap-
7 prove.

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

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

24 (e) By written notice the department may require a person filing a
25 return to submit additional information to the department no later than
26 30 days after the notice.

27 Sec. 43.22.100. CIVIL PENALTY. Five per cent shall be added to
28 the tax for each 30-day period or fraction of that period during which
29 the taxpayer fails to file a return or pay the full amount of the tax,

1 or a portion or a deficiency of the tax due and payable as finally
2 determined by the department and required by this chapter, unless it is
3 shown that the failure is due to reasonable cause and not to wilful
4 neglect. The penalty may not exceed 25 per cent in the aggregate. The
5 penalty shall be collected at the same time, in the same manner and as a
6 part of the original tax, but if the original tax is paid before the
7 neglect is discovered, the penalty shall be collected in the same manner
8 as the original tax. The department shall describe by regulations
9 circumstances which constitute reasonable cause for purposes of this
10 section.

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

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

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

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

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

27 Sec. 43.22.160. 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. 43.22.170. DEFINITIONS. In this chapter

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

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

9 (3) "gross value" means the price as determined by the depart-
10 ment at the wellhead or other point chosen by the department;

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

16 (5) "well or field" means any well, field, lease, pool, or
17 property.

18 * Sec. 2. This Act takes effect January 1, 1978.