Introduced: 2/18/80
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IN THE SENATE

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SENATE BILL NO. 474

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act Repealing Chapter 20 and amending Chapter 21 of Title 43, Alaska Statutes; and providing for an effective date."

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

* Section 1. LEGISLATIVE FINDINGS AND INTENT. The Legislature finds and declares that the imposition of taxes based on income under Chapters 20 and 21, Title 43 of the Alaska Statutes as currently enacted has the effect of discouraging investment in the state at a time when a sound and dependable tax policy is needed to provide a strong stimulus to business fixed investment, real economic growth, productivity and employment. The legislature finds that repeal of the Net Income Tax Act under Chapter 20 and admendment of the Oil and Gas Corporate Income Tax Act under Chapter 21 would provide incentives for capital formation and long range real economic growth consistent with the state's best interest and, at the same time, would provide relief to individual taxpayers from the effects of inflation and the high costs of living in the state. Furthermore, such changes would reduce the state's increasingly heavy reliance on oil and gas revenues while maintaining sufficient state revenues from other tax sources. Consequently, the legislature intends that Chapter 20 be repealed and Chapter 21 be amended as herein provided.

*** Section 2. Alaska Statutes, Title 43, is amended by removing Chapter 20.**

*** Section 3. AS 43.21.010 is amended to read:**

Sec. 43.21.010. APPLICATION. This chapter applies to every cor-

poration doing business in the state which derives income from the production of oil or gas from a lease or property in [or directly associated with] the state, or from the pipeline transportation of oil or gas in the state. The tax calculated under this chapter is measured by the total taxable income of the corporation as defined in secs. 20 - 40 of this chapter. [and is determined at the rates established under AS 43.20.011(e).

* Section 4. AS 43.21.011 is added as follows:

AS 43.21.011. TAX RATE. There is imposed for each taxable year upon the taxable income under this chapter of every corporation derived from sources within the state a tax consisting of a normal tax equal to 4.4 per cent of taxable income, and a surtax which is equal to 3.0 per cent of taxable income. For purposes of this chapter the surtax exemption for a taxable year follows secs. 1561 and 1563 of the Internal Revenue Code of 1954, as amended.

* Section 5. AS 43.21.016 is added as follows:

AS 43.21.016. SHARING OF CORPORATE INCOME TAX REVENUE WITH MUNICIPALITIES. (a) There is established within the Department of Revenue the municipal assistance fund. The legislature may appropriate to the fund during each fiscal year an amount equal to or greater than 10 per cent of the income tax revenue received by the state under this chapter for the previous fiscal year. The Department of Revenue shall distribute money from the fund to each organized borough and each city of any class on an annual basis as provided in (b) and (c) of this section.

(b) The base amount to be distributed from the fund to each borough and city for the fiscal year shall be the amount received by the borough or city during fiscal year 1978 under AS 43.70.080; however, if the amount appropriated to the fund by the legislature under (a) of this section is insufficient for distribution of the full base amount, the

Department of Revenue shall prorate the amount available for distribution on the basis of amounts received during fiscal year 1978 under AS 43.70.080. A city incorporated within an organized borough after June 30, 1977 shall receive as a base amount a share of the amount distributed to the borough in which it is located based on the ratio of population in the city to the total population in the borough. A city incorporated outside an organized borough after June 30, 1977 shall receive as a base amount the amount received by the city in the state most closely approximating it in population at the time of its incorporation. A borough incorporated after June 30, 1977 shall receive as a base amount the amount received by the borough in the state most closely approximating it in population at the time of its incorporation.

(c) If the amount in the fund at the time of distribution exceeds the base amount to be distributed under (b) of this section, the excess amount shall be distributed to each borough and city on the basis of population. For the purpose of this subsection, the population of a city within an organized borough shall be deducted from the population of the borough. Population, for the purpose of this section, shall be as certified by the commissioner of community and regional affairs.

(d) The intent of (c) of this section is that local governments which levy property taxes reduce those levies in reasonable proportion to the amount of increased state aid received by a local government. The governing body of each local government shall furnish a notice with the tax statement describing its use of this increased state aid.

* Section 6. AS 43.21.020(b) is amended as follows:

(b) Gross income of a corporation from oil and gas production shall be the gross value at the point of production of oil or gas produced from a lease or property in the state. The department shall by regulation determine a uniform method of establishing the gross value at the point of production. In making its determination the department shall use the prices or values recorded on the taxpayer's books and records consistent with generally accepted accounting principles consistently applied except that in cases of fraud or intent to evade taxes the department may use the actual prices or values received for [the] oil or gas in the same field, the posted prices for oil or gas in the same field, or the prevailing prices or values of oil or gas in the same field. In addition, it its determination of gross value at the point of production of oil or gas produced from a lease or property, the department shall determine the reasonable costs of transportation from the point of sale or use to the point of production of the oil or gas. Transportation costs set by a tariff properly on file with the Alaska Pipeline Commission or other regulatory agency shall be considered prima facie reasonable, but if a tariff properly on file with a regulatory agency is subsequently amended, changed, or overturned retroactively, the reasonable costs of transportation shall be recomputed for that period using the newly determined tariff. The department shall permit the taxpayer to use the fair market value of like transportation as the reasonable costs of transportation if the transportation of oil or gas is not by a regulated carrier.

* Section 7. AS 43.21.020(c) is amended as follows:

* * *

(2) taxes imposed under AS 43.55 [and], AS 43.57 and chapter 45 of subtitle D or the Internal Revenue Code of 1954, as amended, which are actually paid or incurred by the corporation on the production from a lease or property in the state;

(3) taxes imposed under AS 43.56 and AS 29.53 which are actually paid or incurred by the corporation on property used directly in the production of oil or gas from a lease or property in the state,

including property used in production, gathering, treatment or preparation of the oil or gas for pipeline transportation, but only if those property tax payments were due and payable only after the date of commercial production from the lease or property with which the property was associated;

(4) the direct costs incurred by or for the corporation <u>incident to and necessary for the drilling of wells bottomed on the lease or property and</u> in operating the lease or property, including the direct costs of producing, gathering, treating or preparing the oil or gas for pipeline transportation, but net of any payments received for those activities and not including any indirect costs or overhead expense;

(5) depreciation (using <u>any method or depreciation and any depreciable useful life or capital recovery period permitted by the rules referred to under Chapter 1 of Subtitle A of the Internal Revenue Code of 1954, as amended</u> [the unit of production method or such other reasonable methods as the department may by regulation establish]) on property used directly in the production, gathering, treatment or preparation of the oil or gas for pipeline transportation including amortization of capitalized interest for investments in this property at a rate not to exceed the average cost of borrowed capital to the taxpayer during the year in which it is capitalized;

(6) the amortization of lease acquisition payments and taxes paid <u>or incurred</u> under AS 43.56 and AS 29.53 (including capitalized interest on both) for or on producing properties before the commencement of commercial production from the lease or property for which the property is being used;

(7) interest expense [not capitalized] of the corporation, the the extent that it does not exceed that portion of the total interest

paid by the consolidated business of which the corporation is a part, determined by multiplying the total interest [reduced by intercompany transactions within the consolidated business] by a fraction, the numerator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the demoninator of which is the value of all real and tangible personal property of the consolidated business. In the case of interest expense arising from intercompany transactions within the consolidated business, the department may adjust the amount of interest expense claimed as a deduction if such adjustment is necessary to prevent evasion of taxes or clearly to reflect the income of any such taxpayers;

* * *

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

[A] that portion of the total general overhead or administrative expense incurred by the consolidated business of which the corporation is a part, determined by multiplying the total general overhead or administrative expense by a fraction, the numerator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the denominator of which is the value of all real and tangible personal property of the consolidated business; [or

(B) the sum of $0.12 for each barrel of oil and $0.02 for each thousand cubic feet of gas produced from a lease or property in the state.]

(10) the costs of permanently terminating operations or removing part or all of the wells, facilities and equipment relating to exploration or production activities, in an amount which equals

(A) a portion of the estimated termination or removal costs in a year prior to actual termination or removal according to any reasonable method as the department shall by regulation establish; or

(B) the termination or removal costs that are actually incurred that year, offset by the salvage value (if any) of the removed wells, facilities and equipment and further offset to the extent of any amounts allowed to be taken prior to actual termination or removal under this paragraph and so taken by the taxpayer.

* Section 8. AS 43.21.030 is amended to read:

Sec. 43.21.030. DETERMINATION OF INCOME FROM OIL AND GAS PIPELINE TRANSPORTATION. (a) Except as provided in (c) and (d) of this section, taxable income attributable to the transportation of oil in a pipeline engaged [to] in interstate commerce in Alaska shall be determined by the department and shall be the amount reported or that would be required to be reported to the Federal Energy Regulatory Commission or its successors as net operating income, less those portions of interest and general administrative expense attributable to the pipeline transportation of oil in the state, except that taxable income shall also include taxes on or measured by income. The department shall establish regulations governing the determination of interest and general administrative expense attributable to pipeline transportation of oil in the state.

(b) Except as provided in (c) and (d) of this section, taxable income attributable to the transportation of natural gas in a pipeline engaged in interstate commerce in Alaska shall be determined by the department and shall be the amount reported or that would be required to be reported to the Federal Energy Regulatory Commission as net operating income less that portion of interest and general administrative expense attributable to pipeline transportation in the state, except that [the] taxable income shall also include taxes on or measured by income. The department shall establish regulations governing the determination of interest and general administrative expense attributable to pipeline transportation of natural gas in the state.

* * *

(d) The taxpayer shall calculate depreciation using any method of depreciation and any depreciable useful life or capital recovery period permitted under Chapter 1 of Subtitle A of the Internal Revenue Code of 1954, as amended, in lieu of the amount reported to the Federal Energy Regulatory Commission.

* Section 9. AS 43.21.040 is amended to read:

Sec. 43.21.040. DETERMINATION OF INCOME FROM ACTIVITIES OTHER THAN OIL AND GAS PRODUCTION OR PIPELINE TRANSPORTATION. (a) Taxable income of a corporation subject to this chapter from activities in this state other than the production of oil or gas from a lease or property in the state or the pipeline transportation of oil or gas in the state shall be determined in accordance with the method established in art. IV of AS 43.19.010 [and in AS 43.20.071,] as modified by (b) - (d) [e] of this section.

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

the net income of the consolidated business derived from oil and gas production and pipeline transportation.

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

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

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

(d) The numerator and denominator of the property factor, of the payroll factor and of the sales factor shall be calculated without reference to property, payroll or sales directly related to marine transportation in the state for the purpose of transporting oil or gas produced from a lease or property in the state unless the taxpayer elects to use the fair market value of like transportation as the reasonable costs of transportation under sec. 20 of this chapter.

* Section 10. Sec. 43.21.120. DEFINITIONS. Unless the context requires otherwise, the definitions contained in AS 43.55.140 are applicable to this chapter. In addition, in this chapter

* * *

(2) "consolidated business" means a corporation or group of

corporations having [at least] more than 50 per cent common ownership, direct or indirect, or a group of corporations in which there is common control either direct or indirect as evidenced by any arrangement, contract or agreement.

* Section 11. This Act becomes effective as to taxable income earned or received and deductions paid or incurred after December 31, 1979.

* Section 12. This Act takes effect July 1, 1980.