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and Bettisworth

Offered: 4/29/82
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 101 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state taxation; and providing for
7 an effective date."

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

9 * Section 1. AS 16.05.050(12) is amended to read:

10 (12) not later than January [MARCH] 31 of each year, provide
11 to the commissioner of revenue the names of those fish and shellfish
12 species which the commissioner of fish and game [HE] designates as
13 developing commercial fish species* for that calendar year [THE FOLLOWING
14 FISCAL YEAR OF THE STATE]; a fish or shellfish species is a developing
15 commercial fish species if, within a specified geographical region,

16 (A) the optimum yield from the harvest of the species
17 has not been reached;

18 (B) a substantial portion of the allowable harvest of
19 the species has been allocated to fishing vessels of a foreign
20 nation; or

21 (C) a commercial harvest of the fish species has
22 recently developed.

23 * Sec. 2. AS 43.05.225 is amended to read:

24 Sec. 43.05.225. INTEREST ON TAXES. Unless otherwise provided,
25 when a tax levied in this title becomes delinquent it bears interest at
26 the rate of 12 [EIGHT] percent a year.

27 * Sec. 3. AS 43.05.280(a) is amended to read:

28 (a) Interest shall be allowed and paid on any overpayment of a tax
29 under this title at the rate prescribed in AS 43.05.225 [OF EIGHT PER-

CENT A YEAR].

* Sec. 4. AS 43.40.010 is amended by adding a new subsection to read:

(1) If a dealer has a reasonable belief at the time of sale or transfer that fuel that is sold or transferred is not to be used as motor fuel, the dealer need not collect the motor fuel tax. If the tax is not collected, the dealer shall obtain a certificate of use from the buyer or transferee stating that the fuel that has been or will be purchased or received is not intended for use as motor fuel. The Department of Revenue may not collect the motor fuel tax from a dealer for fuel for which a certificate of use has been properly obtained under this subsection. The dealer shall retain a copy of each certificate of use obtained under this subsection for examination or audit on request by the Department of Revenue. The form of a certificate of use may be prescribed by regulation adopted by the Department of Revenue.

* Sec. 5. AS 43.40.030(b) is amended to read:

(b) The entire tax levied by this chapter shall be refunded to the purchaser on that part of the motor fuel used in a foreign country on which the tax has been [DUTY IS] paid when the fuel is sold and delivered in the state for non-highway use in a foreign country.

* Sec. 6. AS 43.40 is amended by adding a new section to read:

Sec. 43.40.035. REFUNDS AND CREDITS FOR OTHER USES OF MOTOR FUEL.

(a) A person who resells fuel on which the tax under AS 43.40.010(a) or (b) has previously been paid is entitled to a full or partial credit or refund of the tax paid if the fuel that is resold is not motor fuel and if a certificate is acquired under AS 43.40.010(1). The amount of the credit or refund is equal to the amount of tax prescribed by AS 43.40.-010(a) or (b) subtracted from the amount of tax previously paid on the fuel that is resold.

(b) A reseller may elect, with the express written consent of the

1 supplier of the reseller, to receive the credit or refund under this
2 section directly from the supplier rather than by filing a claim for the
3 credit or refund with the Department of Revenue. When an election is
4 properly made under this subsection, the supplier may claim the credit
5 or refund from the Department of Revenue. To be effective an election
6 under this subsection must be signed in quadruplicate by the reseller
7 and by the supplier. The reseller and the supplier shall each file one
8 copy of the election, with original signatures, with the Department of
9 Revenue. The reseller and supplier shall each retain a copy of the
10 election with original signatures for audit review by the Department of
11 Revenue. If an election is made under this subsection, it may not be
12 revoked without the express written consent of the supplier.

13 * Sec. 7. AS 43.40.050(a) is amended to read:

14 (a) A person who claims a refund under AS 43.40.030 [AS PROVIDED
15 IN AS 43.40.010 - 43.40.100] shall present the [HIS] claim for the refund
16 to the commissioner of revenue by affidavit upon a form provided by the
17 commissioner. The claim shall include the name, address and occupation
18 of the applicant, the nature of the business of the applicant, and a
19 description sufficient to identify the machinery or equipment in which
20 the motor fuel for which the refund is claimed was used. The claim
21 shall be accompanied by each invoice issued to the claimant at the time
22 the motor fuel was purchased. The commissioner may require any addi-
23 tional information which the commissioner [HE] considers necessary for
24 the administration of this subsection [AS 43.40.010 - 43.40.100].

25 * Sec. 8. AS 43.40.050(b) is amended to read:

26 (b) A claim for refund under AS 43.40.030 or 43.40.035 shall be
27 filed within one year from the date of the purchase of the motor fuel as
28 indicated on the invoice, and failure to file within the one year period
29 is a waiver of the right to the refund. A claim is considered to be

1 filed when the claim is mailed or personally presented to an office of
2 the Department of Revenue.

3 * Sec. 9. AS 43.40.050 is amended by adding a new subsection to read:

4 (c) A reseller who claims a refund or credit under AS 43.40.035
5 shall present the refund claim to the Department of Revenue or to the
6 supplier of that reseller by affidavit on a form provided by the Depart-
7 ment of Revenue. The claim shall include the name, address, and occupa-
8 tion of the applicant, the nature of the business of the applicant, and
9 a description sufficient to identify the reason for the refund or credit.
10 The claim shall be supported by documentation required by the Department
11 of Revenue.

12 * Sec. 10. AS 43.40.100(2) is amended by adding new subparagraphs to
13 read:

14 (G) fuel sold or transferred between qualified dealers;

15 (H) fuel sold to federal, state, and local government
16 agencies for official use;

17 (I) fuel used in stationary power plants that generate
18 electrical energy for private residential consumption;

19 (J) fuel used to heat private or commercial buildings or
20 facilities;

21 (K) fuel used for other nontaxable purposes as prescribed
22 by regulations adopted by the Department of Revenue;

23 * Sec. 11. AS 43.40.100(3) is amended to read:

24 (3) "user" means a person consuming or using motor fuel, who
25 either

26 (A) purchases the fuel out of the state and ships it
27 into the state for personal [HIS OWN] use within the state;

28 (B) [OR] manufactures the fuel in the state; or

29 (C) purchases or receives fuel in the state that is not

1 taxed at the time of purchase or receipt.

2 * Sec. 12. AS 43.40.100 is amended by adding a new paragraph to read:

3 (4) "qualified dealer" means a person who (A) refines, (B)
4 imports, (C) manufactures, (D) produces, (E) compounds, or (F) whole-
5 sales motor fuel, who satisfies criteria for qualified dealers estab-
6 lished by the Department of Revenue by regulation and who obtains a
7 qualified dealer's license from the Department of Revenue.

8 * Sec. 13. AS 43.55.060 is amended to read:

9 Sec. 43.55.060. DELINQUENCY. When the tax provided for in this
10 chapter becomes delinquent, it bears interest at the rate prescribed in
11 AS 43.05.225 [OF SIX PERCENT A YEAR]. If any person fails to make a
12 report required by this chapter, within the time prescribed by law for
13 the report, the department shall examine the books, records and files of
14 the person to determine the amount and value of the production to compute
15 the tax, and the department shall add to the tax the cost of the examina-
16 tion, together with any penalties accrued.

17 * Sec. 14. The designation of developing commercial fish species required
18 to be made not later than January 31, 1983, under AS 16.05.050(12), as amended
19 in sec. 1 of this Act, supersedes the designation of developing commercial
20 fish species for the fiscal year ending June 30, 1983.

21 * Sec. 15. Those changes to the investment tax credit provisions of
22 sec. 38 of the Internal Revenue Code (26 U.S.C. sec. 38) enacted by the
23 Economic Recovery Tax Act of 1981 (P.L. 93-34) are effective at the time
24 prescribed by federal law, notwithstanding the fact that the provisions will
25 be made retroactive to the effective dates in the federal law and notwith-
26 standing the delayed incorporation provisions of AS 43.20.021(a). Nothing in
27 this section modifies the limitations and conditions on the Alaska investment
28 tax credit set out in AS 43.20.036(b).

29 * Sec. 16. The Department of Revenue may not collect the motor fuel tax

1 from a dealer, as defined in AS 43.40.100(1), on a sale or transfer of motor
2 fuel that occurs before the effective date of this Act if the dealer did not
3 collect the tax from a purchaser or transferee because of a reasonable belief
4 that the fuel was not to be used as motor fuel, as that term is defined in
5 AS 43.40.100(2), or if the dealer relied upon the purchaser's representation
6 that the fuel would not be used as motor fuel. This section is intended to
7 clarify ambiguities in the existing language of AS 43.40 concerning the party
8 responsible for collecting the tax and to resolve an administrative dispute
9 between certain fuel dealers and the Department of Revenue. For this reason,
10 this section serves the general public interest in the fair and equitable
11 administration of AS 43.40.

12 * Sec. 17. AS 43.20.172 and AS 44.62.330(a)(20) are repealed.

13 * Sec. 18. Sections 2, 3, and 13 of this Act take effect July 1, 1982.

14 * Sec. 19. Sections 1 and 14 of this Act take effect January 1, 1983.

15 * Sec. 20. Sections 4 - 12 and 15 - 17 of this Act take effect immediately
16 in accordance with AS 01.10.070(c).

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