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1 IN THE HOUSE

BY THE CONFERENCE COMMITTEE

2 CONFERENCE CS FOR HOUSE BILL NO. 101

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-

1 CENT A YEAR].

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

3 (1) If a dealer has a reasonable belief at the time of sale or  
4 transfer that fuel that is sold or transferred is not to be used as  
5 motor fuel, the dealer need not collect the motor fuel tax. If the tax  
6 is not collected, the dealer shall obtain a certificate of use from the  
7 buyer or transferee stating that the fuel that has been or will be pur-  
8 chased or received is not intended for use as motor fuel. The Depart-  
9 ment of Revenue may not collect the motor fuel tax from a dealer for  
10 fuel for which a certificate of use has been properly obtained under  
11 this subsection. The dealer shall retain a copy of each certificate of  
12 use obtained under this subsection for examination or audit on request  
13 by the Department of Revenue. The form of a certificate of use may be  
14 prescribed by regulation adopted by the Department of Revenue.

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

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

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

21 Sec. 43.40.035. OTHER REFUNDS AND CREDITS. (a) A person who  
22 resells fuel on which the tax under AS 43.40.010(a) or (b) was previously  
23 paid is entitled to a credit or refund of the tax if (1) the resold fuel  
24 is not motor fuel and a certificate is acquired under AS 43.40.010(1);  
25 or (2) the amount of tax previously paid exceeds the tax due on the  
26 resale. The amount of the credit or refund under this section is equal  
27 to the amount of tax previously paid on the resold fuel less the amount  
28 of tax prescribed by AS 43.40.010(a) or (b).

29 (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 read:

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

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

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

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

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

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

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

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

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

28 (C) purchases or receives fuel in the state that is not  
29 taxed at the time of purchase or receipt or is taxed at a rate that

1           is less than the rate prescribed by AS 43.40.010.

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. The Department of Revenue may not collect the motor fuel tax  
22       from a dealer, as defined in AS 43.40.100(1), on a sale or transfer of motor  
23       fuel that occurs before the effective date of this Act if the dealer did not  
24       collect the tax from a purchaser or transferee because of a reasonable belief  
25       that the fuel was not to be used as motor fuel, as that term is defined in  
26       AS 43.40.100(2), or if the dealer relied upon the purchaser's representation  
27       that the fuel would not be used as motor fuel. This section is intended to  
28       clarify ambiguities in the existing language of AS 43.40 concerning the party  
29       responsible for collecting the tax and to resolve an administrative dispute

1 between certain fuel dealers and the Department of Revenue. For this reason,  
2 this section serves the general public interest in the fair and equitable  
3 administration of AS 43.40.

4 \* Sec. 16. AS 43.20.172 and AS 44.62.330(a)(20) are repealed.

5 \* Sec. 17. Sections 2, 3, and 13 of this Act take effect July 1, 1982.

6 \* Sec. 18. Sections 1 and 14 of this Act take effect January 1, 1983.

7 \* Sec. 19. Sections 4 - 12, 15, and 16 of this Act take effect immedi-  
8 ately in accordance with AS 01.10.070(c).

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