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1 IN THE HOUSE

2

HOUSE BILL NO. 519

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to collection and payment of certain
7 state taxes and royalties from state resources."

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

9 * Section 1. AS 44.21 is amended by adding new sections to read:

10 ARTICLE 8. OFFICE OF ADMINISTRATIVE ADJUDICATION.

11 Sec. 44.21.480. OFFICE OF ADMINISTRATIVE ADJUDICATION. (a)

12 There is established in the Department of Administration an office of
13 administrative adjudication. The office consists of one administra-
14 tive law judge, together with assistants and clerical personnel neces-
15 sary to carry out the provisions of AS 44.21.480 - 44.21.498.

16 (b) The administrative law judge and employees of the office of
17 administrative adjudication are in the exempt service under AS 39.25.-
18 110.

19 Sec. 44.21.483. QUALIFICATIONS OF ADMINISTRATIVE LAW JUDGE. The
20 administrative law judge

21 (1) shall have the qualifications of a judge of the superi-
22 or court under AS 22.10.090; and

23 (2) at the time of appointment shall have demonstrated
24 expertise in oil and gas law and in law applicable to royalties.

25 Sec. 44.21.486. APPOINTMENT OF ADMINISTRATIVE LAW JUDGE; TERM OF
26 OFFICE; REMOVAL. (a) The governor shall appoint the administrative
27 law judge from among two or more candidates nominated for the position
28 by the judicial council. A person appointed as an administrative law
29 judge is subject to AS 39.50 governing conflicts of interest.

1 (b) In the event of a vacancy in the office of administrative
2 law judge, the vacancy shall be filled in the same manner as an origi-
3 nal appointment. A member selected to fill a vacancy shall hold
4 office for a full term.

5 (c) An administrative law judge

6 (1) serves a term of eight years;

7 (2) may be reappointed by the governor.

8 (d) The governor may remove an administrative law judge from
9 office for cause. For purposes of this subsection, "cause" means
10 incompetence, neglect of duty, or misconduct in office. If the gover-
11 nor proposes to remove an administrative law judge from office, the
12 governor shall give the administrative law judge a copy of the charges
13 and afford the administrative law judge the opportunity to present a
14 defense, personally or by counsel, upon not less than 10 days' notice.
15 If an administrative law judge is removed for cause, the governor
16 shall file with the lieutenant governor a complete statement of the
17 charges made against the administrative law judge and the governor's
18 findings based on the charges, together with a complete record of the
19 proceedings.

20 Sec. 44.21.489. COMPENSATION OF ADMINISTRATIVE LAW JUDGE. An
21 administrative law judge is entitled to receive a monthly salary equal
22 to that of a superior court judge for Juneau.

23 Sec. 44.21.492. EMPLOYMENT OF PERSONNEL. (a) The office of
24 administrative adjudication may employ persons necessary to carry out
25 the purposes of AS 44.21.480 - 44.21.498.

26 (b) In addition to its staff of regular employees, the office of
27 administrative adjudication may contract for and engage the services
28 of essential personnel.

29 (c) Except as otherwise provided by law, the administrative law

1 judge and employees of the office of administrative adjudication are
2 subject to the general state laws governing leave, retirement, bene-
3 fits, and travel.

4 Sec. 44.21.495. DUTIES. The office of administrative adjudica-
5 tion shall

6 (1) adopt regulations, consistent with due process of law,
7 to govern practice and procedure and the conduct of all proceedings
8 before the office;

9 (2) hear and determine proceedings

10 (A) involving the levy and collection of taxes as
11 authorized by AS 43.05.285; and

12 (B) involving the payment to the state of oil and gas
13 royalty payments as authorized by AS 38.05.880.

14 Sec. 44.21.498. POWERS. The administrative law judge may

15 (1) administer oaths, certify to official acts, and issue
16 subpoenas and other process to compel the attendance of witnesses and
17 the production of testimony, records, papers, accounts, and documents
18 in an appeal;

19 (2) enforce process by contempt;

20 (3) petition the superior court to enforce the powers
21 granted in this section;

22 (4) appoint, by order, a master to report to the adminis-
23 trative law judge on particular issues, to perform particular acts, or
24 to examine, receive, and report evidence; a master appointed under
25 this paragraph has the powers of a master appointed by a judge of the
26 superior court under applicable rules of the Alaska Rules of Civil
27 Procedure.

28 * Sec. 2. AS 22.05.010(c) is repealed and reenacted to read:

29 (c) Each of the following may be appealed to the supreme court

1 as a matter of right:

2 (1) a decision of the superior court on an appeal from the
3 decision of an administrative agency;

4 (2) a final decision of an administrative law judge of the
5 office of administrative adjudication in the Department of Administra-
6 tion under AS 44.21.480 - 44.21.498; the standard applicable to an
7 appeal of a final decision to the supreme court under this paragraph
8 is the standard applicable for review of tax appeals under AS 43.05.-
9 240(d) for appeals from decisions of the Department of Revenue to the
10 superior court.

11 * Sec. 3. AS 38.05.065(g) is amended to read:

12 (g) Except as provided in AS 38.05.880, the [THE] purchaser may
13 appeal the director's decision to the commissioner within 30 days.
14 The final decision by the department is reviewable under AS 44.62.560.

15 * Sec. 4. AS 38.05.145 is amended by adding new subsections to read:

16 (c) Payment of the royalty to the state under the provisions of
17 AS 38.05.145 - 38.05.181 becomes due on the date and in the manner
18 specified in the lease or in a regulation adopted by the commissioner.

19 (d) The rate of interest on a royalty to which the state is
20 entitled under AS 38.05.180 is 20 percent a year after the royalty
21 becomes due under (c) of this section.

22 (e) Interest shall be allowed and paid on an overpayment of a
23 royalty payment made under AS 38.05.180 at the rate prescribed in (d)
24 of this section.

25 * Sec. 5. AS 38.05.180(f) is amended to read:

26 (f) The commissioner may issue oil and gas leases on state land
27 to the highest responsible qualified bidder determined by competitive
28 bidding under regulations adopted by the commissioner. For purposes
29 of this subsection, a person is not a qualified bidder unless the

1 person has paid to the state all taxes assessed under AS 43.20,
2 AS 43.55, AS 43.56, AS 43.57, and former AS 43.21 and all royalties
3 due under this section, whether or not the person disputes the tax
4 assessment or determination of the amount of royalty due. Bidding may
5 be by sealed bid or according to any other bidding procedure the
6 commissioner determines is in the best interests of the state. When-
7 ever, under any of the leasing methods listed in this subsection, a
8 royalty share is reserved to the state, it shall be delivered in
9 pipeline quality and free of all lease or unit expenses, including but
10 not limited to separation, cleaning, dehydration, gathering, salt
11 water disposal, and preparation for transportation off the lease or
12 unit area. Following a pre-sale analysis, the commissioner may choose
13 at least one of the following leasing methods:

14 (1) a cash bonus bid with a fixed royalty share reserved to
15 the state of not less than 12 1/2 percent in amount or value of the
16 production removed or sold from the lease;

17 (2) a cash bonus bid with a fixed royalty share reserved to
18 the state of not less than 12 1/2 percent in amount or value of the
19 production removed or sold from the lease and a fixed share of the net
20 profit derived from the lease of not less than 30 percent reserved to
21 the state;

22 (3) a fixed cash bonus with a royalty share reserved to the
23 state as the bid variable but no less than 12 1/2 percent in amount or
24 value of the production removed or sold from the lease;

25 (4) a fixed cash bonus with the share of the net profit
26 derived from the lease reserved to the state as the bid variable;

27 (5) a fixed cash bonus with a fixed royalty share reserved
28 to the state of not less than 12 1/2 percent in amount or value of the
29 production removed or sold from the lease with the share of the net

1 profit derived from the lease reserved to the state as the bid vari-
2 able;

3 (6) a cash bonus bid with a fixed royalty share reserved to
4 the state based on a sliding scale according to the volume of produc-
5 tion or other factor but in no event less than 12 1/2 percent in
6 amount or value of the production removed or sold from the lease;

7 (7) a fixed cash bonus with a royalty share reserved to the
8 state based on a sliding scale according to the volume of production
9 or other factor as the bid variable but not less than 12 1/2 percent
10 in amount or value of the production removed or sold from the lease.

11 * Sec. 6. AS 38.05 is amended by adding a new section to read:

12 Sec. 38.05.880. ACTION BY PERSON OWING ROYALTY PAYMENT. A
13 person aggrieved by the action of the department in fixing the amount
14 of a royalty payment due on a state resource under AS 38.05.180 or in
15 imposing a penalty or interest on a royalty payment due under AS 38.-
16 05.145 or 38.05.180 may commence a proceeding in the office of admin-
17 istrative adjudication under AS 44.21.480 - 44.21.498 challenging the
18 amount of the royalty payment, penalty, or interest. The proceeding
19 must be in the nature of an action to modify or set aside the deter-
20 mination of the royalty payment, penalty, or interest, or any portion
21 of them, and shall be tried de novo under the rules of practice and
22 procedure adopted by the office of administrative adjudication.

23 * Sec. 7. AS 39.25.110 is amended by adding a new paragraph to read:

24 (30) the administrative law judge and employees of the
25 office of administrative adjudication established under AS 44.21.480 -
26 44.21.498.

27 * Sec. 8. AS 39.50.200(a)(8) is amended to read:

28 (8) "public official" means a judicial officer, a member of
29 the legislature, the fiscal analyst of the legislative finance

1 division, the legislative auditor of the legislative audit division,
2 the executive director of the Legislative Affairs Agency and the
3 directors of the divisions within the Legislative Affairs Agency, the
4 governor, the lieutenant governor, a person hired or appointed as the
5 head or deputy head of, or director of a division within, a department
6 in the executive branch, an assistant to the governor, the chair
7 [CHAIRMAN] or a member of a state commission or board, an administra-
8 tive law judge appointed under AS 44.21.480 - 44.21.498, the executive
9 director of the Alaska Tourism Marketing Council, and each appointed
10 or elected municipal officer;

11 * Sec. 9. AS 43.05.225 is amended to read:

12 Sec. 43.05.225. INTEREST ON TAXES. Unless otherwise provided,
13 (1) a tax levied under AS 43.55, AS 43.56, or AS 43.57, or
14 a tax levied under AS 43.20 or former AS 43.21 that exceeds \$100,000,
15 that becomes delinquent bears interest at the rate of 20 percent a
16 year;

17 (2) [WHEN] a tax levied in this title other than a tax
18 identified in (1) of this section that becomes delinquent [IT] bears
19 interest at the rate of 12 percent a year.

20 * Sec. 10. AS 43.05.240(a) is amended to read:

21 (a) Except as to a matter for which procedures are provided in
22 AS 43.05.285, a [A] person aggrieved by the action of the department
23 in fixing the amount of a tax, [OR] in imposing a penalty, or in
24 denying a request for refund of tax may apply to the department within
25 60 days from the date of mailing the notice required to be given to
26 the person by the department, giving notice of the grievance [,] and
27 requesting an informal conference. At the conference the person
28 aggrieved may present arguments and evidence relevant to the grievance
29 [AMOUNT OF TAX OR PENALTY DUE THE STATE]. If the department

1 determines that a correction is warranted, the department shall make
2 the correction.

3 * Sec. 11. AS 43.05.240(b) is amended to read:

4 (b) Except as to a matter for which procedures are provided in
5 AS 43.05.285, a [A] person aggrieved by the action of the department
6 in fixing the amount of a tax, [OR] in imposing a penalty, or in
7 denying a request for refund of tax may apply to the department and
8 request a formal hearing

9 (1) in place of the informal conference provided for in (a)
10 of this section, within 60 days from the date of mailing the notice
11 required to be given to the person by the department; or

12 (2) within 30 days after decision resulting from an in-
13 formal conference.

14 * Sec. 12. AS 43.05.245 is amended to read:

15 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES, AND
16 INTEREST. If a taxpayer fails to file a return or report required by
17 this title in the time required by law or regulation, or makes an
18 erroneous or fraudulent return, the department shall proceed to assess
19 the license fees, tax, penalties, or interest and make a return from
20 information which it obtains. A return made and subscribed by the
21 department in accordance with this section is presumed sufficient for
22 all legal purposes. However, nothing prevents a taxpayer from pre-
23 senting evidence or other information on an appeal under AS 43.05.240
24 or under procedures provided by AS 43.05.285 in order to rebut the
25 presumed sufficiency of a return made and subscribed by the depart-
26 ment, nor does the presumption of sufficiency alter the parties'
27 respective burdens of proof once the taxpayer has presented evidence
28 or other material information to rebut that presumption. The assess-
29 ment of license fees, tax, penalties, or interest under this section

1 occurs when the department issues a notice and demand for payment of
2 the license fees, tax, penalties, or interest. The notice and demand
3 for payment is issued when the notice and demand is delivered to the
4 taxpayer in person or placed in the United States mail, postage-paid
5 and addressed to the last known address of the taxpayer. Penalties
6 and interest assessed under this title shall be collected in the same
7 manner as provided in this title for the collection of tax or license
8 fees.

9 * Sec. 13. AS 43.05 is amended by adding a new section to read:

10 Sec. 43.05.285. TAXPAYER'S ACTION. (a) The provisions of this
11 section apply to taxes, penalties, and interest payable under AS 43.-
12 20, AS 43.55, AS 43.56, AS 43.57, and former AS 43.21.

13 (b) A taxpayer aggrieved by the action of the department in
14 fixing the amount of a tax, in imposing a penalty or interest under
15 this chapter, or in refusing to make a tax refund may commence a
16 proceeding in the office of administrative adjudication under AS 44.-
17 21.480 - 44.21.498 challenging the amount of the tax, penalty, or
18 interest. The proceeding must be in the nature of an action to modify
19 or set aside the determination of the tax, penalty, or interest, or
20 any portion of them, or to secure the requested refund, and shall be
21 tried de novo under the rules of practice and procedure adopted by the
22 administrative appeal office.

23 * Sec. 14. TRANSITIONAL PROVISIONS. (a) The provisions of AS 38.05.-
24 880, added by sec. 6 of this Act, apply to a grievance with respect to a
25 royalty payable under AS 38.05.145 or 38.05.180 that, on the effective date
26 of this Act, has not been appealed to the superior court.

27 (b) The provisions of AS 43.05.285, added by sec. 13 of this Act,
28 apply to a grievance with respect to a tax under AS 43.20, AS 43.55,
29 AS 43.56, AS 43.57, or former AS 43.21 that, on the effective date of this

1 Act, has not been appealed to the superior court under AS 43.05.240(d).