

HOUSE BILL NO. 511**IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION****BY THE HOUSE FINANCE COMMITTEE**

Introduced: 2/28/94

Referred: House Special Committee on Oil and Gas, State Affairs, Judiciary

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to the limitations period for assessments for certain state taxes,
2 and for collection, after assessment, of taxes due the state; and providing for an
3 effective date."

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

5 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that
6 (1) with respect to income taxes imposed under former AS 43.21 and oil and
7 gas production, or severance, taxes imposed by AS 43.55,

8 (A) the Department of Revenue has interpreted AS 43.05.260 to permit
9 it to issue an amended assessment at any time during the administrative consideration
10 of an appeal or of a claim for credit or refund;

11 (B) the department's interpretation of AS 43.05.260 is correct; and

12 (C) it is in the public interest that AS 43.05.260 be clarified by
13 amendment, effective from the date of enactment of that section, to reflect this
14 longstanding administrative interpretation;

1 (2) the legal and factual issues arising out of the separate accounting methods
2 used in the levy and collection of income taxes imposed under former AS 43.21 and oil and
3 gas production, or severance, taxes imposed by AS 43.55 are complex and require lengthy
4 audits by the Department of Revenue to accurately determine the amount of the taxes that are
5 due the state from the respective levies;

6 (3) two other factors have contributed to the lengthy period required to issue
7 accurate tax assessments for the taxes imposed by former AS 43.21 and AS 43.55:

8 (A) throughout the 1970's and the 1980's, the Department of Revenue's
9 ability to audit these tax returns effectively was constrained by its audit resources; and

10 (B) subsequent to the enactment of former AS 43.21 in 1978, taxpayers
11 requested suspension of action on assessments pending the outcome of a challenge to
12 the constitutionality of the separate accounting method as applied to the levy and
13 collection of the income tax; litigation arising out of this challenge was filed in 1979
14 and concluded in 1986;

15 (4) the six-year limitation on the collection of taxes, as applicable to income
16 taxes imposed by former AS 43.21 and property production taxes imposed by AS 43.55,
17 should be amended retroactively to clarify that the limitation on collections is tolled during
18 any administrative or judicial consideration of an assessment; the adoption of the amendment
19 embodies the interpretation by and practice of the Department of Revenue since the enactment
20 of AS 43.05.270 by sec. 1, ch. 94, SLA 1976;

21 (5) often a tax levy cannot be made or a proceeding in court cannot be initiated
22 for the collection of unpaid taxes within six years after the assessment of that tax because

23 (A) the protest of an assessment begins a process that often takes
24 several years to complete;

25 (B) after a final administrative decision on a protest has issued, judicial
26 resolution of the protest often lasts several more years; and

27 (C) commencement of a separate collection action while an
28 administrative or judicial appeal of a taxpayer's protest of an assessment is pending
29 is impractical and an inefficient use of the resources of the executive and judicial
30 branches of the state government;

31 (6) substantial taxes assessed under former AS 43.21 and under AS 43.55

1 remain uncollected;

2 (7) these uncollected taxes are in large part the result of disputes over value
3 at the point of production for oil and gas produced in the state; and

4 (8) substantial public revenue is at risk in the litigation to which reference is
5 made in (b)(2) of this section, and it is contrary to the public interest to allow these revenues
6 to go uncollected.

7 (b) The purpose of the amendment of AS 43.05.260(a), made by sec. 2 of this Act,
8 and of AS 43.05.270(a), made by sec. 3 of this Act, is

9 (1) to validate and affirm the longstanding administrative interpretation and
10 practices of the Department of Revenue in assessing and collecting taxes; and

11 (2) to resolve the inconsistent decisions of the state Superior Court reached in
12 Tesoro Petroleum Corporation, et al., v. State of Alaska, Department of Revenue, Superior
13 Court No. 3AN-89-7130 Civ., and State of Alaska, Department of Revenue v. Exxon
14 Corporation, et al., Superior Court No. 3AN-89-5215 Civ.

15 * Sec. 2. AS 43.05.260(a) is amended to read:

16 (a) Except as provided in (c) of this section and AS 43.20.200(b), the amount
17 of a tax imposed by this title must be assessed within three years after the return was
18 filed, whether or not a return was filed on or after the date prescribed by law.
19 However, notwithstanding the limitation on assessments for a tax imposed by
20 former AS 43.21 or by AS 43.55, the department may increase or decrease the
21 amount of tax due by issuing or amending

22 (1) an assessment at any time during the administrative
23 consideration of a taxpayer grievance on an assessment filed by the taxpayer
24 under AS 43.05.240; or

25 (2) a claim for credit or refund of a tax filed by the taxpayer under
26 AS 43.05.275 [IF THE TAX IS NOT ASSESSED BEFORE THE EXPIRATION OF
27 THE THREE-YEAR PERIOD, PROCEEDINGS MAY NOT BE INSTITUTED IN
28 COURT FOR THE COLLECTION OF THE TAX].

29 * Sec. 3. AS 43.05.270(a) is amended to read:

30 (a) When the assessment of a tax imposed by this title has been made within
31 the period of limitation under AS 43.05.260, the tax may be collected by levy or by

1 a proceeding in court [, BUT ONLY] if the levy is made or the proceeding is begun:

2 (1) within six years after the latest of any of the following:

3 (A) the assessment of the tax;

4 (B) the final administrative determination of the grievance,

5 if the taxpayer files a grievance from an assessment; or

6 (C) the final judicial resolution of an appeal, if the taxpayer

7 appeals from a final adjudicative determination of a grievance; or

8 (2) before the expiration of a period for collection agreed upon in

9 writing by the department and the taxpayer before the expiration of the six-year period;

10 a period agreed upon may be extended by subsequent agreements in writing made

11 before the expiration of the period previously agreed upon [; THE PERIOD

12 PROVIDED BY THIS PARAGRAPH DURING WHICH A TAX MAY BE

13 COLLECTED BY LEVY MAY NOT BE EXTENDED OR CURTAILED BECAUSE

14 OF A JUDGMENT AGAINST THE TAXPAYER].

15 * Sec. 4. Sections 2 and 3 of this Act are retroactive to January 1, 1976.

16 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).