

SENATE BILL NO. 344
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION
BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/9/94
Referred: L&C, JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the establishment, collection, and enforcement of an
2 employment tax; and providing for an effective date."

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

4 * Section 1. AS 43 is amended by adding a new chapter to read:

5 CHAPTER 42. EMPLOYMENT TAX.

6 Sec. 43.42.010. TAX IMPOSED. (a) In each calendar year there is levied an
7 employment tax upon each individual who receives compensation for services
8 performed in this state as an employee, or receives self-employment earnings from
9 business activities conducted in this state. The tax on an individual is 10 percent of
10 the first \$1,000

11 (1) of compensation paid to that individual by an employer who has a
12 business situs in this state, for services performed in this state in the calendar year as
13 an employee of that employer;

14 (2) of that individual's self-employment earnings from business

1 activities conducted in this state in the calendar year.

2 (b) Under this chapter, the aggregate tax liability of an individual does not
3 exceed \$100 in a calendar year even if the individual receives both compensation for
4 services performed as an employee and self-employment earnings in that year.

5 Sec. 43.42.020. DETERMINATION OF BUSINESS SITUS. For purposes of
6 AS 43.42.010, an employer has a business situs in this state if at any time in the
7 calendar year an individual performs services in this state as an employee of that
8 employer.

9 Sec. 43.42.030. COLLECTION, REPORTING, AND REMITTANCE OF TAX
10 ON EMPLOYEE COMPENSATION. (a) An employer making payment of
11 compensation for services performed in this state shall withhold from the payment the
12 tax levied by this chapter. The employer shall withhold 10 percent of each such
13 payment until the full amount of the tax is collected, except that the last amount
14 withheld may be less than 10 percent if the lower amount will result in collection of
15 the full amount of the tax. The employer shall file a return and remit the taxes as
16 required by (b) or (c) of this section.

17 (b) Except as provided in (c) of this section, the return required by this section
18 must be filed, and the withheld taxes remitted, by the date the employer's regular
19 quarterly report of employment security contributions under AS 23.20 is required to
20 be filed. The employer shall file a return by reporting amounts withheld under this
21 section during the preceding calendar quarter, and any additional information required
22 by regulation adopted under AS 43.42.040(a), to the Department of Labor, on forms
23 provided by that department, together with the employer's regular quarterly report of
24 employment security contributions under AS 23.20. With each return filed under this
25 subsection, the employer shall remit the taxes required to be withheld under this
26 section during the preceding calendar quarter.

27 (c) An employer who is required to withhold and remit taxes under this section
28 but who is not subject to the reporting requirements of AS 23.20 shall file a return and
29 remit the taxes as required by this subsection. On or before the last day of the month
30 following each calendar quarter in which taxes were withheld under this section, the
31 employer shall file with the department a return, on forms provided by the department,

1 and shall remit the taxes required to be withheld during the preceding calendar quarter.
2 In the return, the employer shall report amounts withheld under this section during the
3 preceding calendar quarter and any additional information required by regulation
4 adopted under AS 43.42.040(a).

5 Sec. 43.42.040. ADMINISTRATION OF TAX ON EMPLOYEE
6 COMPENSATION. (a) After consultation with the Department of Labor, the
7 Department of Revenue shall prescribe, by regulation, any additional information that
8 must be included in a return filed under AS 43.42.030 in order for the Department of
9 Revenue to calculate, determine, collect, or enforce the tax levied by this chapter. The
10 Department of Labor shall include, on forms for reporting under AS 23.20, space
11 designated for reporting amounts withheld under AS 43.42.030 and for providing any
12 additional information required by Department of Revenue regulations. The
13 department shall coordinate with the Department of Labor to maximize the use of
14 existing reports to the department and to the Department of Labor.

15 (b) The Department of Labor shall provide to the Department of Revenue the
16 information collected under AS 43.42.030 that relates to the tax levied by this chapter.

17 (c) The department, by regulation, may establish procedures to authorize an
18 employer to not withhold from payment to an employee the tax levied by this chapter
19 if the employee provides to the employer, and the employer files with the department,
20 proof that the tax already has been withheld by an employer under AS 43.42.030 or
21 paid to the department under AS 43.42.050.

22 (d) The Department of Labor shall report to the Department of Revenue any
23 failure of an employer to timely report or remit the tax levied by this chapter. The
24 Department of Labor may not use the provisions of AS 23.20 to enforce the collection
25 or remittance of the tax levied by this chapter. Reporting forms and other records
26 relating to the tax levied by this chapter that are maintained by the Department of
27 Labor are prima facie evidence of timely reporting and remittance, or failure to timely
28 report or remit, under AS 43.42.030.

29 Sec. 43.42.050. REPORTING AND PAYMENT OF TAX ON SELF-
30 EMPLOYMENT EARNINGS. (a) An individual who is subject to the tax on self-
31 employment earnings levied by this chapter shall file a return with the department, and

1 with the return shall pay the tax, in the manner required by this section. The return
2 must be filed on a form provided by the department.

3 (b) Until the full amount of the tax levied by AS 43.42.010 has been paid, the
4 individual shall file a return for each calendar quarter in which the individual had self-
5 employment earnings, and make a payment of 10 percent of the individual's self-
6 employment earnings in that quarter.

7 (c) Returns must be filed and payments made, as required by (b) of this
8 section, on or before the following dates:

- 9 (1) April 15, regarding the first calendar quarter of a year;
10 (2) July 15, regarding the second calendar quarter of a year;
11 (3) October 15, regarding the third calendar quarter of a year;
12 (4) January 15 of the following year, regarding the fourth calendar
13 quarter of a year.

14 (d) The department may, by regulation, establish procedures under which an
15 individual who is subject to payment of tax under this section may provide to the
16 department proof that the tax levied by this chapter already has been withheld by an
17 employer under AS 43.42.030.

18 Sec. 43.42.060. PENALTIES AND INTEREST. In addition to other
19 applicable provisions of AS 43.05, provisions regarding civil penalties in
20 AS 43.05.220, interest in AS 43.05.225, and criminal penalties in AS 43.05.290 apply
21 to the failure to timely file a required return or report or to pay or remit taxes due
22 under this chapter.

23 Sec. 43.42.070. ENFORCEMENT OF THE TAX BY STATE AGENCIES.

24 (a) A person may not be issued an initial registration, license, or permit described in
25 (b) of this section, or a renewal of a registration, license, or permit described in (b) of
26 this section if that person has failed to file a return or pay or remit the tax due under
27 this chapter. If that person has filed an administrative or a judicial appeal regarding
28 the tax levied by this chapter, the registration, license, or permit may be issued or
29 renewed during the pendency of the appeal.

30 (b) The registrations, licenses, and permits that may not be issued or renewed
31 under (a) of this section are

- 1 (1) liquor licenses issued under AS 04;
2 (2) permits and licenses under AS 05;
3 (3) all registrations, licenses, and permits issued under AS 08;
4 (4) all commercial fishing licenses, including limited entry permits and
5 interim-use permits, required under AS 16.05.480;
6 (5) all business licenses issued under AS 43.70 or AS 43.75.

7 (c) Notwithstanding any provision of AS 04, AS 08, AS 16.05, AS 43.70, or
8 AS 43.75 to the contrary, a department, board, commission, or other state agency
9 issuing or renewing a registration, license, or permit described in (b) of this section to
10 a person shall require that the person submit proof of payment or remittance of the tax
11 levied by this chapter, or proof that an administrative or judicial appeal is pending,
12 before issuing or renewing that registration, license, or permit. However, if the person
13 submits a sworn affidavit, under penalty of perjury, that the person, at the time of
14 application for the registration, license, or permit, does not have an obligation to have
15 paid or remitted the tax levied by this chapter and is not in arrears in the payment or
16 remittance of the tax, the state agency may issue or renew the registration, license, or
17 permit without proof of payment or remittance.

18 (d) A department, board, commission, or other state agency described in (c)
19 of this section

20 (1) may adopt regulations to interpret or implement its duties under this
21 section;

22 (2) shall provide to the Department of Revenue information the
23 Department of Revenue requests to facilitate that department's determination,
24 collection, and enforcement of the tax levied by this chapter, unless the disclosure
25 would jeopardize the receipt of federal money.

26 Sec. 43.42.080. RECORD OF TAX WITHHELD FROM EMPLOYEES;
27 REFUNDS. (a) An employer who withholds tax under AS 43.42.030 shall furnish to
28 the employee before February 1 of each calendar year a record of the amount of tax
29 withheld from that employee's compensation in the preceding calendar year. The
30 employer shall pay to the department a penalty of \$10 for each failure to provide the
31 record required by this subsection.

1 (b) On or before April 15 of a calendar year, an individual may file with the
2 department, on forms provided by the department, a claim for the refund of any excess
3 tax withheld or paid for the preceding calendar year. The individual shall attach the
4 records provided by employers or other proof of payment acceptable to the department
5 to support the refund claim.

6 Sec. 43.42.090. REPORTING OF CERTAIN CONTRACTS; NOTICE TO
7 CONTRACTORS AND INDIVIDUALS. (a) Except as provided in (e) of this section,
8 if a service-recipient in this state contracted with a person who does not hold a
9 registration, license, or permit described in AS 43.42.070(b) for services to be
10 performed in this state, and made payment under the contract in a calendar year, the
11 service-recipient shall file a report on forms provided by the department and shall
12 provide the following information:

13 (1) the aggregate amount of payments made to the contractor during
14 the calendar year;

15 (2) the name and address of the contractor; and

16 (3) if the contractor is not an individual, the names and addresses of
17 all individuals receiving payment under the contract for services performed in this
18 state.

19 (b) The report required by (a) of this section must be filed with the department
20 before February 1 of the year following the year in which payment was made under
21 the contract for services performed in this state.

22 (c) Notwithstanding (a) of this section, a service-recipient is not required to
23 file a report under this section if the aggregate of payments made to the contractor for
24 services performed in the calendar year in this state total less than \$100.

25 (d) At or before the time payment is first made under the contract for services
26 performed in this state, a service-recipient shall furnish to the contractor and, if the
27 contractor is not an individual, to each individual who is to receive payment under the
28 contract for services performed in this state, a written notice of

29 (1) the obligation to pay the tax levied by this chapter;

30 (2) the name and address of the service-recipient; and

31 (3) the address of the department, for obtaining forms and information

1 regarding the tax levied by this chapter.

2 (e) The requirements of this section do not apply to a contract of \$25,000 or
3 less.

4 (f) For the purposes of this section, a "service-recipient" is the person who
5 contracted for services performed in this state, and includes state and municipal
6 agencies.

7 Sec. 43.42.800. REGULATIONS. The department may adopt regulations to
8 interpret and implement this chapter.

9 Sec. 43.42.900. DEFINITIONS. In this chapter

10 (1) "business activities" means activities or acts of a commercial,
11 occupational, professional, or like nature, that are engaged in or caused to be engaged
12 in with the object of financial or pecuniary gain, profit, or benefit; "business activities"
13 does not include

14 (A) providing services as an employee;

15 (B) furnishing or selling of property, services, substances, or
16 things by a person who does not represent to be regularly engaging in those
17 transactions;

18 (C) an individual's investment or banking activities relating to
19 that individual's personal property;

20 (2) "calendar quarter" means each of the three-month periods ending
21 March 31, June 30, September 30, and December 31;

22 (3) "compensation for services" means gross wages, salaries, tips, and
23 other remuneration paid to an employee by an employer; "compensation for services"
24 does not include

25 (A) remuneration for attendance at events such as tradeshow, or
26 conventions, or educational or scientific workshops or seminars; or

27 (B) compensation earned by a prisoner under AS 33 at a rate
28 less than the minimum wage established under AS 23.10;

29 (4) "department" means the Department of Revenue;

30 (5) "employer" means a person making payment of compensation for
31 services who is required to deduct and withhold income taxes under provisions of

1 26 U.S.C. (Internal Revenue Code);
2 (6) "individual" means a natural person who was 19 years of age or
3 older on January 1 of a calendar year;
4 (7) "tax" means the employment tax levied by this chapter;
5 (8) "self-employment earnings" means gross receipts from a business
6 activity that are not paid by an employer.
7 * **Sec. 2. REGULATIONS.** Notwithstanding sec. 4 of this Act, the Department of Revenue
8 may proceed to adopt regulations to implement or interpret the provisions enacted by this Act.
9 Notwithstanding sec. 4 of this Act, a department, board, commission, or other state agency
10 affected by AS 43.42.070, enacted by sec. 1 of this Act, may proceed to adopt regulations to
11 implement or interpret its duties under that statute. Regulations adopted under this section
12 take effect under AS 44.62 (Administrative Procedure Act), but not before January 1, 1995.
13 * **Sec. 3.** Section 2 of this Act takes effect immediately under AS 01.10.070(c).
14 * **Sec. 4.** Section 1 of this Act takes effect January 1, 1995.