

COMMITTEE REPORT

3/4/75

SENATE

Mr. President:

Date _____

The Committee on FINANCE has had SB 173
Alaska industrial incentive taxes and tax credits
under consideration. A Majority of the members of the Committee

- () recommends it DO PASS
- () recommends it DO NOT PASS
- () recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- () recommends it BE REPLACED WITH CS FOR _____ AND THAT
CS FOR _____ DO PASS
- () "and" recommends it BE REFERRED TO THE _____
COMMITTEE
- () reports it back WITHOUT RECOMMENDATION
- () "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:
 _____ recommends:
 _____ recommends:
 _____ recommends:
 _____ recommends:

_____ Chairman

COMMITTEE REPORT

****Finance****

2/14/75

SENATE

Mr. President:

Date March 3, 1975

The Committee on STATE AFFAIRS has had SB 173
Alaska industrial incentive taxes and tax credits
under consideration. A Majority of the members of the Committee

- recommends it DO PASS
- recommends it DO NOT PASS
- recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- recommends it BE REPLACED WITH CS FOR _____ AND THAT
CS FOR _____ DO PASS
- "and" recommends it BE REFERRED TO THE _____
COMMITTEE
- reports it back WITHOUT RECOMMENDATION
- "other"

Members signing the Majority report:

<u>Frank Ferguson</u>	<u>Tim Galletta</u>	_____
<u>John H. Murray</u>	_____	_____
<u>Bill</u>	_____	_____
<u>WELAND</u>	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:
 _____ recommends:
 _____ recommends:
 _____ recommends:
 _____ recommends:

Frank Ferguson Chairman

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, Governor

POUCH S—JUNEAU 99801


February 13, 1975

The Honorable John Huber
Chairman
Special Committee on Revenue and
Taxation
Alaska State Capitol
Juneau, Alaska 99801

Dear Senator Huber:

I have discussed the current status of exemptions and credits with Cameron Edmundson, Commissioner of Economic Development. Apparently no certificates were issued under AS 43.25. At this present time, about five certificates are in effect under AS 43.26. Four of these provide property tax exemptions and the fifth one an excise tax exemption.

Best regards,


Frederick P. Boetsch, C.P.A.
Deputy Commissioner, Taxation

FPB:eh

Introduced: 2/14/75
Referred: State Affairs and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE SPECIAL COMMITTEE
ON TAXATION AND REVENUE

1 IN THE SENATE

2 SENATE BILL NO. 173

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska industrial incentive
7 taxes and tax credits; and providing for an effective
8 date."

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

10 * Section 1. AS 43.25 and AS 43.26 are repealed.

11 * Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-
12 070(c).

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ALASKA STATE LEGISLATURE

NINTH Legislature FIRST Session

SENATE BILL NO. 173

By THE RULES COMMITTEE BY REQUEST OF THE SPECIAL COMMITTEE ON TAXATION AND REVENUE

"An Act relating to the Alaska industrial incentive taxes and tax credits; and providing for an effective date."

Ak. industrial incentive taxes

Introduced in the Senate ..2/14... 19..75

HISTORY IN THE SENATE

19 75

2

Read first time and referred to Committee on

State Affairs and Finance

3

Reported back with *State Affairs* recommendation that *do pass*
to Finance

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reported correctly engrossed
Signed by President
Sent to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reported correctly engrossed
Signed by Speaker
Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Received from House

Reported correctly enrolled

Sent to Governor

..... By Governor

Filed with Lt. Governor

Chapter No.

The Legislature of the State of Alaska
 FISCAL NOTE
 Second Session - Ninth Legislature

I. REQUEST

Bill Identification: SB 173
 Title: Re Ak. Industrial Incentive Taxes and Tax Credits; and providing for eff. date
 Requested by: James Fennel Date: _____
 Return Date Requested: March 12, 1975
 Agency: Legislative Finance Program: _____

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Not-Applicable None

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. ATTACHMENTS

V. DATE: 12/23/75 PREPARED BY: Melvin Germain
 REVIEWED BY: John J. Cook

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

The Legislature of the State of Alaska
FISCAL NOTE

First Session - Ninth Legislature

I. REQUEST

Bill No. SB 173

Title: Re Ak. Industrial Incentive Taxes and Tax Credits; and providing for eff. date

Requested by: James Fennel Date: _____

Return Date Requested: March 12, 1975

Agency: Legislative Finance Program: _____

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Not Applicable

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. ATTACHMENTS

OVER

V. DATE: 3/11/75

PREPARED BY: Carmen Christensen

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Fiscal Note on SB 173

The bill repeals A.S. 43.25 and A.S. 43.26 authorizing industrial tax credits as developmental incentives. The latter amends the former by reducing maximum tax credits from 75 to 50 percent.

Operatively, the tax credit laws were permitted by the Legislature to expire as of June 30, 1971. At a hearing prior to the deadline, four companies won approval for tax exemptions which were never certificated or, if certified, were not exercised, according to Department of Economic Development's records.

Three operations are currently enjoying tax benefits under A.S. 43.26. They are the Collier Carbon & Chemical Co. nitrogen plant (expires 1979), the Phillips Petroleum Co.-Marathon Oil Co. Kenai ING plant (expires 1977), and the Tesoro Alaskan Petroleum Corp. refinery (expires 1979). Oetker Brewery, which has only an excise tax exemption, has expressed intention to exercise its certificate following completion of the brewery in approximately one year.

Costs of administering the residual activity under the laws are absorbed in the Department's normal administration budget. Assuming close-out functions would amount to little more than notification of the certificate holders, boxing of records and sending them to archives, the savings of custodial costs over the remaining four years of the program should be on an order of magnitude of several hundred dollars.

If, as appears the case, the intent is to eliminate the remaining tax exemption of the three companies (and the potential exemption of Oetker) and the State should be successful in any resulting litigation which may ensue, the increased revenue to the State through tax collections would be substantial. The actual amount would depend, of course, on tax rates and corporate profits.



Cameron Edmondson
Commissioner
Department of Economic Development
(March 11, 1975)

Introduced: 2/14/75
Referred: State Affairs and
Finance

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REQUEST OF THE SPECIAL COMMITTEE
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of not more than \$1,000, or by imprisonment for not more than one year, or by both, together with the costs of prosecution.

(c) An individual who wilfully makes and subscribes a return which he does not believe to be true and correct as to every material matter is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both.

(d) A person required to collect, truthfully account for, and pay over a tax imposed by this chapter who wilfully fails to collect the tax or to truthfully account for and pay over the tax, or wilfully attempts in any manner to evade or defeat the tax or the payment of it is, in addition to other penalties provided by law, liable to a civil penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. This penalty is in lieu of the tax not otherwise paid to the state.

(e) In this section "person" includes, but is not limited to, an officer or employee of a corporation or a member or employee of a partnership, who as officer, employee, or member is under a duty to perform the act in respect to which the violation occurs. (§ 18 ch 115 SLA 1949; added by § 1 ch 110 SLA 1955; am § 1 ch 139 SLA 1962)

Am. Jur. reference.—27 Am. Jur.,
Income Taxes, §§ 98, 110, 112, 250.

Sec. 43.20.340. Definitions. In this chapter

(1) "bank" means a financial institution including a national banking association;

(2) "corporation" includes an association, joint-stock company, and an insurance company;

(3) "department" means the Department of Revenue;

(4) "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or a person acting in a fiduciary capacity for another or the estate of a deceased person;

(5) "fiscal year" means an accounting period of 12 months ending on the last day of a month other than December;

(6) "includes" and "including" when used in a definition do not exclude other things otherwise within the meaning of the word defined;

(7) "individual" means a natural person, married or unmarried, adult or minor, subject to payment of an income tax under the Internal Revenue Code;

(8) "Internal Revenue Code" means the Internal Revenue Code of the United States (53 Stat. 1) as amended or as hereafter amended, including all amendments after March 29, 1949, as the code and amendments apply to the normal taxes and surtax on net incomes, but not including excess profits taxes, which amendments

are operative for the purposes of this chapter as of the time they became operative or will become operative under federal law;

(9) "person" means an individual, a trust or estate, a partnership, or a corporation;

(10) "taxable year" means the calendar year or the fiscal year ending during the calendar year upon the basis of which the net income is computed under this chapter; "taxable year" includes, in the case of a return made for a fractional part of a year under this chapter, the period for which the return is made;

(11) "taxpayer" means a person subject to a tax imposed by this chapter;

(12) "trade or business" includes the engaging in or carrying on of a trade, business, profession, vocation, employment, and rendition of services or commercial activity and includes the performance of the functions of a public office. (§ 3 A ch 115 SLA 1949; am § 1 ch 128 SLA 1951; am § 1 ch 5 SLA 1953)

Sec. 43.20.350. Short title. This chapter may be cited as the Alaska Net Income Tax Act. (§ 1 ch 115 SLA 1949)

Chapter 25. Alaska Industrial Incentive Act.

Section	Section
10. Exemptions	90. Denial of tax exemption to successors of predecessor exempted businesses
20. Distributions	100. Appeals
30. Liquidation of exempted businesses	110. Termination date for applications for exemption
40. Application for exemptions	120. Discretion of department to grant or refuse tax exemptions
50. Hearing on application	130. Use of common facilities
53. Coordination with political subdivision	140. Exemptions under earlier laws
56. Option of political subdivision to require limited tax contribution	150. Definitions
60. Revocation of tax exemption	160. Manufactured products
70. Reports	170. Short title
80. Transfer of an exempted business	

Sec. 43.25.010. Exemptions. (a) An exempted business is exempt from income tax upon its industrial development income derived during the 10 years following the date of beginning its operations as determined by the department.

(b) The property of an exempted business used in the development, organization, construction, establishment, or operation of the activity which gives rise to the exemption and personal property devoted to industrial development are not subject to taxes of the state or a political subdivision of the state on real and personal property for the following periods beginning on the first of January of the year in which the exempted business starts operations if the business owns as of that date the property or uses property devoted to industrial development; otherwise the periods begin on

the first of January of the year following the year in which the exempted business starts the activities that give rise to its exemption:

(1) when the investment in real or personal property is not greater than \$1,000,000—five years;

(2) when the investment exceeds \$1,000,000 but not \$3,000,000—six years for the whole investment;

(3) when the investment exceeds \$3,000,000 but not \$5,000,000—seven years for the whole investment;

(4) when the investment exceeds \$5,000,000 but not \$7,000,000—eight years for the whole investment;

(5) when the investment exceeds \$7,000,000 but not \$10,000,000—nine years for the whole investment;

(6) when the investment exceeds \$10,000,000—10 years for the whole investment.

(c) If an exempt business uses real or personal property owned by it and property devoted to industrial development income, the schedule set out in (b) of this section applies on the investment made on its own property and separately and independently upon the investment made on property devoted to industrial development.

(d) The schedule set out in (b) of this section applies first to the original investment. Within 30 days after the end of the fifth year of the exemption, the exempted business shall submit to the department a sworn statement of the investment made up to that date in real and personal property owned by it. A similar statement shall be prepared and submitted by the owner of property devoted to industrial development. The department shall verify the correctness of the statement within 60 days after it is filed. When the amounts of the investments are verified, the department shall determine and shall advise the corresponding beneficiary of the period of exemption readjusted which results from the total investment in each of the two classes of property at the end of the period of five years. This procedure of the readjustment shall be repeated, if necessary, at the end of the seventh year and at the end of the tenth year of the possible duration of the exemption.

(e) An exempted business is not subject to license fees, excises, or other taxes levied by the state or a political subdivision of the state for 10 years from the date when the business begins its operations as certified to by the department. This exemption does not apply to contributions to the Alaska Unemployment Compensation Fund.

(f) If an exempt business is a commercial hotel, the exemption is limited to 50 per cent of the taxes referred to.

(g) If the exempt business began its operations on or before the filing of the application for tax exemption, the periods of ex-

emption referred to in (a) and (e) of this section are counted from the date when the application for tax exemption was filed.

(h) The department may grant a partial exemption from the taxes referred to in this section when the interest of the state or a political subdivision appears to be best served by a partial exemption. (§ 1 ch 129 SLA 1957)

Am. Jur. reference.—27 Am. Jur.,
Income Taxes, § 93 et seq.

Sec. 43.25.020. Distributions. (a) The distribution of dividends and profits by a corporation or partnership that is an exempted business, if made within 15 years after it starts operations as an exempted business, and if made from industrial development income derived during the first seven years of its operations covered by the exemption, is exempt from income tax in the same proportion in which the industrial development income is exempt from taxes in favor of the exempted business in accordance with § 10 of this chapter.

(b) A distribution of dividends by a corporation exempt under this chapter from payment of taxes is considered to be made from gains or profits exempted from taxes under this chapter, if on the date of distribution the latter does not exceed the undistributed balance of the gains or profits.

(c) If a corporation, on the effective date of its tax exemption, has accumulated a surplus, dividend distributions made on and after that date are considered to be made from the undistributed balance of the surplus, but after the surplus is exhausted by the distributions, (a) of this chapter applies.

(d) No profit or loss may be recognized if the shares acquired by purchase or otherwise of a tax-exempt corporation are sold or exchanged on or before the termination date of the tax exemption.

(e) Profit or loss shall be recognized if the shares acquired by purchase or otherwise of a tax-exempt corporation are sold or exchanged after the corporation's exemption termination date. The profit derived from the sale or other disposition of the shares is the surplus of the amount received in the sale or disposition over the base established by (f) of this section, and the loss is the excess of that base over the amount received, but shall be recognized up to the limit provided by the state income tax in force when the transaction takes place.

(f) If shares of a tax-exempt corporation have been acquired by purchase or otherwise before the corporation's exemption termination date, the larger of the following bases shall be used to determine the profit or loss made after the exemption termination date from the sale or other disposition of the shares:

(1) the value of the share on the exemption termination date

according to the books of the corporation less the amount of tax-exempt distributions received on the shares after that date; or

(2) the cost of the shares, less the amount of tax-exempt distributions received on the shares before and after the exemption termination date. (§ 3 ch 129 SLA 1957)

Sec. 43.25.030. Liquidation of exempted businesses. (a) If on or before the expiration of tax exemption of an exempted business, property, including money, is received by a domestic or foreign corporation (the transferee) on complete liquidation of the exempted business (the transferor), no income tax may be assessed on or be paid by the transferor or the transferee with respect to the liquidation, only if

(1) the transferee was, on the date of adoption of the liquidation plan, and has continued to be at all times, until the receipt of the property under the plan, the owner of at least 80 per cent of the total combined voting power of all classes of voting stock, and the owner of at least 80 per cent of all other classes of stock, except nonvoting stock limited and preferred as to dividends;

(2) all the property was received by the transferee under the liquidation plan, on or before the exemption termination date; and

(3) the distribution in liquidation by the transferor, whether at one time or from time to time, was made by the transferor in complete cancellation or redemption of all of its capital stock.

(b) No income tax may be assessed on or be paid by the transferor, whether or not the transferee assumes liabilities or obligations of the transferor or receives the property subject to a liability or obligation of the transferor.

(c) If the exemption of a transferor is terminated before the exemption termination date, a sum equal to the earned surplus of the transferor corporation as of the end of the fiscal year of the corporation in which the termination becomes effective may be transferred by the transferor to the transferee under the circumstances described under (a) (1) and (3) of this section at any time thereafter without assessment of income tax on the transferor or on the transferee, except in the cases of mandatory revocation under §§ 60 and 90 of this chapter when no tax-free liquidation shall be allowed in accordance with this section.

(d) After the exemption of the transferor expires, a sum equal to the capital and the earned surplus of the transferor as of that date may be transferred by the transferor to the transferee under the circumstances described in (a) (1) and (3) of this chapter at any time thereafter without assessment of income tax on the transferor or the transferee.

(e) "Earned surplus" of the transferor is the earned surplus according to the books of the transferor, determined in accordance

with generally accepted accounting principles, but the amount may not be larger, except by the amount of the income tax exemption and all other tax exemptions granted under this chapter to the transferor, than the amount in case the transferor was subject to tax during the exemption period.

(f) In a liquidation under the circumstances described in this section, the base of the property to the transferee on subsequent disposition by the transferee and the base for allowance for depreciation or depletion is the adjusted base of the property, under the income tax law in force, plus an amount equal to the earned surplus of the transferor at the beginning of the liquidation. The earned surplus shall be allocated to the several properties subject to depreciation or depletion transferred in accordance with their respective adjusted bases at the beginning of the liquidation. (§ 4 ch 129 SLA 1957)

Sec. 43.25.040. Application for exemptions. A person who has established or proposes to establish an eligible business in the state may apply to the department for tax exemption under this chapter. A grant of tax exemption under this chapter is considered a contract between the grantee and the state. The department may include in a grant of tax exemption such terms and conditions as in its judgment will further the purposes of industrial development. (§ 5(a) ch 129 SLA 1957)

Sec. 43.25.050. Hearing on application. (a) The commissioner of economic development and planning shall appoint the personnel necessary to carry out this chapter. The commissioner shall make arrangements for such public hearings as he considers necessary and shall require an applicant for tax exemption to present evidence that will justify the exemption.

(b) The commissioner or another person whom the commissioner designates shall hear the evidence presented in relation to an application for tax exemption; he may summon witnesses and take their testimony as to facts related to the tax exemption applied for, and administer an oath to the person testifying before him; and shall make a report to the department on the evidence, together with his recommendations.

(c) The department shall adopt regulations it considers necessary to carry out the purposes of this chapter. The regulations shall be published in a newspaper of general circulation in the state.

(d) All decisions and findings of the department under this chapter are final and no judicial or administrative appeal or other proceeding lies against them unless otherwise specifically provided. (§ 5(b) (c) ch 129 SLA 1957)

Sec. 43.25.053. Coordination with political subdivision. During the period in which the department holds hearings on an application, the department shall advise the political subdivision affected by the application of the dates and locations of the hearings to be held on the application. (§ 1 ch 99 SLA 1967)

Legislative committee report.—For report on ch. 99, SLA 1967 (HB 46), see 1967 House Journal, pp. 780-781.

Sec. 43.25.056. Option of political subdivision to require limited tax contribution. In granting an exemption under this chapter, the department, upon the request by resolution of the governing body of a political subdivision which maintains a school system and in which the property of the business to be exempted is located, shall require that the applicant pay to the political subdivision an annual real property tax on the property which is the subject of the application in an amount not to exceed the amount which would be raised from a levy on the property for purposes of meeting the required local tax effort required under the Public School Foundation Program (AS 14.17). (§ 1 ch 99 SLA 1967)

Legislative committee report.—For report on ch. 99, SLA 1967 (HB 46), see 1967 House Journal, pp. 780-781.

Sec. 43.25.060. Revocation of tax exemption. (a) The department, after permitting the person granted an exemption to appear and be heard, may or shall revoke the tax exemption granted as provided in this section.

(b) The department may revoke the tax exemption if the person

(1) fails to comply with any obligation imposed on him by this chapter or by the regulations adopted under it, or by the terms of the declaration of exemption;

(2) does not begin or fails to complete the construction of the installations necessary for the production of the manufactured products which he proposes to produce, or fails to begin production, within the periods fixed for those purposes in the grant of exemption; however, periods may be extended by the department when, in its judgment, just cause for extension exists, except that no period may be originally fixed in excess of three years from the date of the exemption grant for the commencement of operations; or

(3) discontinues production on a commercial scale or operations in a business eligible under §§ 150(a) (4) (A)—(C), (E), or (F) of this chapter for more than 30 days without the authorization of the department; the department shall authorize discontinuances for more than 30 days when they are the result of causes beyond the control of the person.

(c) The permissive revocation is effective from the date when the grantee of the tax exemption incurred in the fault on which the order of revocation is predicated.

(d) The department shall revoke a tax exemption if it is obtained by falsely or fraudulently representing (1) the nature of the product manufactured or cultivated or to be manufactured or cultivated or the nature and extent of the manufacturing or production processes performed or to be performed in the state; (2) that property is or was to be devoted to industrial development; or (3) other facts or circumstances upon which the exemption grant was predicated in whole or in part.

(e) In a mandatory revocation, (1) all net income previously reported as industrial development income and all distribution from it are subject to normal tax and surtax; (2) the taxpayer is considered to have filed a false or fraudulent return with intent to evade tax, and is subject to the penal provisions of the state income tax laws; and (3) the tax due and all other taxes which are exempted and unpaid become due and shall be assessed and collected in accordance with the provisions of the tax laws.

(f) Nothing in this section affects the tax exemptions granted with respect to property devoted to industrial development which is leased or used by a business whose exemption has been cancelled mandatorily, under this section or § 90 of this chapter, unless it is shown that the lease of utilization was not undertaken in good faith because when the property was leased or made available to the exempted business, the owner of it had knowledge of the facts that subsequently caused the mandatory cancellation. (§ 5(d) ch. 129 SLA 1957)

Sec. 43.25.070. Reports. (a) Before approving or disapproving an application for exemption, the department shall consider the reports on each application which are submitted to it by the Department of Natural Resources and other executive offices of the state government which the department considers proper. The reports shall be made by the state offices within the time the department fixes. If a report is not submitted by a state office within the time fixed, the department may dispense with the report and act upon the application for exemption.

(b) A person covered by the benefits of this chapter shall (1) present to the department, within 75 days after the close of the grantee's fiscal year, a complete list and a correct valuation of all real and personal property declared tax exempt under this chapter which the person possesses in his own right or has in his possession on January 1st of each year; (2) file annually with the Department of Revenue, under the income tax law in force, but independently of the amount of his gross or net income, a separate income tax return, in addition to that which he is obligated to file

in relation to the operations of the exempted industry; and (3) keep separately the accounting records relative to the exempted business, and keep the records, make the sworn statements, present the declarations, and comply with the regulations which the department prescribes for the administration of this chapter and which the Department of Revenue prescribes in connection with the levy and collection of all taxes. (§ 5(e) ch. 129 SLA 1957)

Sec. 43.25.080. Transfer of an exempted business. (a) If a tax-exemption grant, shares of stock, or a partnership participation in an exempted business is transferred without the earlier written approval of the department, the exemption is forfeited, except as set out in (b) of this section.

(b). The following transfers are permitted:

(1) a transfer of the assets of a decedent to his estate or a transfer by bequest or inheritance;

(2) an exchange within the provisions of § 30 of this chapter;

(3) a transfer of share of stock or a partnership participation when the transfer does not result in a change in control of the exempted business, applying the rules of stock ownership provided by the income tax laws then in force;

(4) a transfer of shares of stock of a corporation owning or conducting an exempted business which occurs after the department determines that a transfer of shares of stock of the corporation is permitted without the earlier written approval of the department; the department may make this determination after considering the extent to which availability of investment capital depends on the existence of securities which are freely transferable, the nature of the exempted business and its importance to the industrial development of the state, the integrity and financial standing of the stockholders, and the paid-in capitalization and number of stockholders that the corporation expects to have at the time of the commencement of operations of the exempted business; before making the determination the department shall consider the reports on each case submitted to it by the Department of Natural Resources and the other executive offices of the state government which the department considers proper;

(5) a pledge of hypothecation entered into in the normal course of business, solely to create security for bona fide indebtedness;

(6) a transfer by operation of law or court order to a trustee in bankruptcy or a receiver.

(c) A corporation owning or conducting an exempted business shall give written notice to the department of each transfer of record of shares of stock of the corporation not later than 30 days after the transfer. Written notice shall be given to the department by an interested party of each transfer of a partnership participa-

tion exempted business not later than 30 days after the transfer. (§ 6 ch 129 SLA 1957)

Sec. 43.25.090. Denial of tax exemption to successors of predecessor exempted businesses. (a) No person is entitled to a tax exemption under this chapter if

(1) a predecessor exempted business, as defined in (e) of this section, is dissolved, liquidated, or ceases to operate before the filing by the person of an application for tax exemption, or shall, after the filing of the application but before the close of the tax exemption period otherwise applicable to the person, be dissolved, liquidated, or ceases to operate for more than six consecutive months for a cause except strikes, war, action of a government or the elements, or other cause beyond the control of the predecessor exempted business;

(2) after the filing of the application but before the close of the tax-exemption period otherwise applicable to the person, the annual production, output, or the operation of a predecessor exempted business is diminished for any cause except strike, war, action of a government or the elements, or other cause beyond the control of the predecessor exempted business by 25 per cent or more as compared with its average annual production, output, or operation during the three-year period ending with the close of the taxable year of the predecessor exempted business preceding the filing of the application for tax exemption, or for the part of the period that is applicable; or

(3) the person, through the industrial unit or hotel established or to be established, utilizes physical facilities including land, buildings, machinery, equipment, inventory or supplies of a value of \$5,000 or more previously used by a predecessor exempted business, except that this subsection does not apply if the department determines that the use of the physical facilities previously used by a predecessor exempted business will be in the best interest of the state in view of the nature of the facilities, the investment, the number of workers and employees involved, and the amount of the payroll.

(b) The department shall require every applicant for tax exemption to make full disclosure, under oath, of facts required or appropriate to determine whether or not the applicant's operations or proposed operations will violate this section. Every grant of tax exemption under this chapter shall require that at no time during the life of the grant shall the grantee violate this section.

(c) The provisions of (a) (b) of this section do not apply if facilities are used in common by two or more industrial units under § 130 of this chapter.

(d) A person who intentionally commits or attempts to commit,

on his own behalf or on behalf of another person, a breach of the provisions of this section is guilty of a felony, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than five years, or by both, together with the costs of prosecution. A tax exemption previously granted to such a person is subject to mandatory revocation by the department, following the procedure established by § 60(d)—(f) of this chapter. All net income theretofore reported or earned as industrial development income by the person whether or not distributed and distributions from it are subject to normal tax and surtax as of the date when the taxes were otherwise due and payable. All other taxes exempted under § 10 of this chapter become due and payable as of the date when, but for the tax exemption, they would have become due and payable. The taxes shall be assessed and collected in accordance with the provisions of the tax laws in force.

(e) In this section, a predecessor exempted business means a business which

(1) is enjoying or has enjoyed tax exemption;

(2) as the source of its industrial development income, produced a manufactured product or conducted hotel operations substantially similar to the manufactured product or hotel operations to be produced or conducted by the person filing the subsequent application for tax exemption; and

(3) for the purpose of applying (a) (1) and (2) of this section is or was owned to the extent of 10 per cent or more of its outstanding stock or other proprietary interest by the person filing the subsequent application for tax exemption or by one or more of its stockholders or proprietors owning stock or other proprietary interest to the extent of 10 per cent or more. For the purposes of this subsection, the ownership of stock or other proprietary interest shall be determined in the manner provided by the rules concerning the ownership of stock or corporations or of participation in partnerships under the income tax laws in force in the state. (§ 7 ch 129 SLA 1957)

Sec. 43.25.100. Appeals. (a) A grantee adversely affected or aggrieved by the action taken by the department revoking or cancelling a tax exemption granted under §§ 60(d)—(f) and 90 of this chapter is entitled to judicial review of the action by filing an appeal with the superior court within 30 days after the final decision or adjudication by the department.

(b) Pending judicial review, the department may, if it finds that justice requires, postpone the effective date of the action taken by it upon such conditions as may be required and to the extent necessary to prevent irreparable injury. If a postponement is applied for and denied, the court may issue all necessary and appropriate process to postpone the effective date of the action

taken by the department or to preserve the status or rights of the parties pending conclusion of the review proceedings, after bond is given in favor of and acceptable to the Department of Revenue, in the amount of the taxes exempted and unpaid plus interest and penalties, and interest computed for a period of one year at the rate of six per cent a year. (§ 8 ch 129 SLA 1957)

Am. Jur. reference.—51 Am. Jur.,
Tax Payers' Actions, § 1 et seq.

Sec. 43.25.110. Termination date for applications for exemption. Applications for tax exemptions under this chapter shall be received by the department until midnight of June 30, 1968, but not after that date. (§ 9 ch 129 SLA 1957; am § 2 ch 99 SLA 1967)

Effect of amendment. — The 1967 Legislative committee report.—For amendment substituted "1968" for report on ch. 99, SLA 1967 (HB 46), "1967." see 1967 House Journal, pp. 780-781.

Sec. 43.25.120. Discretion of department to grant or refuse tax exemptions. (a) The department may refuse the tax exemption in any of the cases listed in § 150(a) (4) (A)—(C) of this chapter if, in its judgment, the commodity produced or to be produced by the applicant will, because of its use or other factors, displace, or, with a substantial advantage by reason of the tax exemption, complete with commodities produced by industries established in the state, or the exemptions will jeopardize the financial condition of a political subdivision.

(b) Notwithstanding (a) of this section, the department may grant the tax exemption if, in its judgment, the eligible petitioning industry substantially benefits the general economy of the state on the basis of anticipated substantial increases in production to (1) supply markets outside the state; or (2) supply an existing demand in the state which has not been previously supplied in substantial quantities, and in view of the investment, technology and new jobs involved.

(c) In granting tax exemption to an industry under these circumstances, the department may, on petition of an interested party filed before the final finding, grant the exemption to other existing industries which manufacture similar commodities and, in its judgment, will be substantially affected by the substitution or competition.

(d) In the case of an application filed under § 150(a) (4) (A) of this chapter, if the department determines that a former exemption for the same product granted under § 150(a) (4) (A) of this chapter was granted under circumstances likely to give rise later to a substantial question as to whether or not the product should have been considered as a new product within the provisions of that section in view of a further consideration of all available data with respect to production and production facilities

and the nature of the differences on which the former exemption was granted, a grant of exemption on the petition is effective for a term which expires not later than the latest termination date of an exemption in force with respect to the same product, and includes the same tax exemption privileges as are provided in the grant in force. Nothing in this provision prevents the department from finding that the application is eligible on other grounds.

(e) The department may, in any case, refuse an application, notwithstanding the eligibility of the product or property under this chapter, if it finds, in the light of the facts submitted for consideration in the proceedings provided by this chapter, and after the applicant has had the opportunity to make a full presentation with respect to the questions in dispute, that the application conflicts with the public interest of the state on the ground that the applicant is not organized in good faith in view of the type and the reputation of the persons constituting the applicant, the plans and methods for raising funds, the plans and methods of distribution and sale of the product to be manufactured, the nature and intended use of the product, and other factors which reasonably indicate a likelihood that the grant of the exemption would be misused to the prejudice of the interest of the people of the state, and that, consequently, the public interest of the state would be adversely affected by the grant. (§ 2(c) (d) (7) (8) ch 129 SLA 1957)

Sec. 43.25.130. Use of common facilities. (a) The department may grant authorization for a plant, factory, machine or machine ensemble to use major facilities in common with other industrial units if the department determines, after consulting with the Department of Natural Resources, that the common use is necessary or convenient for the development of the economy and welfare of the state because it will

(1) provide increased opportunities for work in either or both industrial units;

(2) add substantially to the state's net income, and

(3) result in a substantial investment in equipment, machinery and supplies, comparable to the investment in the original unit, less the value of the facilities to be used in common.

(b) The tax exemption of an industrial unit which provides major or minor facilities to be used in common by other industrial units shall not extend over longer periods than those prescribed in § 10 of this chapter with respect to the facilities being used in common.

(c) If the industrial unit providing major or minor facilities to be used in common by other industrial units does not have a tax exemption, but an exemption is obtained by the unit using the

facilities, the department may grant tax exemption with regard to the facilities, except that the tax exemption is limited to a part of the value of the facilities and a part of the compensation received for the use of the facilities, in proportion to the use made of the facilities by the industrial unit which has a tax exemption. The determinant factors of the use include space occupied, time and nature of use, and the importance it bears on the industrial unit or units using the facilities. (§ 2(h) (2) (3) ch 129 SLA 1957)

Sec. 43.25.140. Exemptions under earlier laws. The exemptions granted, in whole or in part, and all classifications made under § 6, ch. 10, SLA 1949, and ch. 33, SLA 1953, shall remain in full force and effect upon the terms and for the periods granted, and shall be binding upon the state, and all cities, municipalities, school districts, public utility districts, and other taxing units in which the property which is the subject of classification or exemption is located. The exemptions so granted or classifications so made shall apply to all taxes levied and assessed by the city, municipality, school district, public utility district, state, or other taxing units where the property is located, as fully as though they had been granted or made under the provisions of this chapter. (§ 11 ch 129 SLA 1957)

Sec. 43.25.150. Definitions. (a) In this chapter, unless the context otherwise requires,

(1) "commercial hotel" means a hotel which is not a tourist hotel;

(2) "department" means Department of Economic Development and Planning;

(3) "designated articles" includes the following articles or businesses:

(A) lumber,

(B) plywood,

(C) chemical grade pulp,

(D) newsprint,

(E) ores which have been processed or refined,

(F) petroleum products,

(G) handicrafts,

(H) agricultural products,

(I) manufactured articles from fur or native skins,

(J) special fish products such as crab, shrimp, and clams,

(K) furniture, but not the mere assembly of it,

(L) products of slaughtering operations, including the products of packing houses that use the products of slaughtering operations as raw material,

(M) livestock raising,

(N) other related articles including industrial power development;

(4) "eligible business" means

(A) an industrial unit having as its object the production on a commercial scale in the state of a manufactured product which was not produced on a commercial scale before March 29, 1957, and for which there were on that date in the state no production facilities capable of the production of that manufactured product on a commercial scale;

(B) an industrial unit established after March 29, 1957, having as its objective the production on a commercial scale in the state of a designated article, and which, in the judgment of the department

(i) is established in good faith and with a permanent character, and

(ii) produces, or will produce, on a sustained basis, within a reasonable time, a substantial amount of a designated article additional to the amount of the same articles being produced by other industrial units in operation in the state; in determining the amount of the production in the state of these articles, the department shall use the average production in the state of these articles for the three calendar years immediately preceding March 29, 1957;

(C) an industrial unit established before March 29, 1957, engaged in the production of a designated article in the state on a commercial scale if

(i) tax exemption has been granted to a new industrial unit under the terms of this chapter to produce the same designated article, and

(ii) the new industrial unit has begun production on a commercial scale;

(D) property devoted to industrial development;

(E) a tourist hotel operated in the state under conditions of sanitation and efficiency acceptable to the Department of Health and Social Services;

(F) a commercial hotel operated in the state under conditions of sanitation and efficiency acceptable to the Department of Health and Social Services;

(5) "exempted business" means a business established or proposed to be established in the state by a person and which is an eligible business and has been declared exempt by the department;

(6) "hotel" means a building or group of buildings devoted in good faith to the furnishing of accommodations for pay, primarily to transient guests, in which at least 15 rooms are furnished for accommodation of transient guests, and which has one or more

dining rooms where meals are served to the general public if the facilities are operated under conditions and standards of sanitation and efficiency acceptable to the Department of Health and Social Services; a hotel is either a "commercial hotel" or a "tourist hotel";

(7) "industrial development income" means the net income derived

(A) from the production of a manufactured product that gives rise to the exemption of an exempted business under (a) (4) (A)—(C) of this section,

(B) under (a) (4) (D) of this section,

(C) from the operation of hotels under (a) (4) (E) of this section;

(8) "industrial unit" means a plant, factory, machine, or machine ensemble which has a capacity to perform the major functions involved in the production of a manufactured product on a commercial scale; a plant, factory, machine or machine ensemble may be considered a separate industrial unit even though it uses, in common with other industrial units,

(A) minor facilities such as sections of buildings, power plants, warehouses, material conveyors, or other minor production facilities, or

(B) major facilities, if the department authorizes the common use of the facilities, as provided in § 130 of this chapter;

(9) "manufactured product" is defined in § 160 of this chapter;

(10) "production on a commercial scale" means production for sale in the market in the normal course of business in quantities and at prices which justify the operation of an industrial unit as a going business;

(11) "property devoted to industrial development" means

(A) real property, including land and improvements, or a portion of it constructed or installed after March 29, 1957, either by a private person or a government department, political subdivision, agency, or instrumentality, to be leased or placed at the disposal of an exempted business so long as it is used for the development, organization, construction, establishment, or operation of an exempted business and if land is owned by a person other than the person who owns, constructs, or installs the improvements on it, both the land and improvements are "devoted to industrial development" when leased or made available to an exempted business for the development, organization, construction, establishment, or operation of the exempted business;

(B) all equipment or machinery belonging to a private person or a government department, political subdivision, agency or instrumentality, necessary or convenient to and installed or used

under a contract or lease, use, usufruct or other contract, by an exempted business if, when the supplier is a private person, the equipment or machinery is made available by a supplier normally engaged in making the machinery and equipment available under terms other than by sale.

(12) "tourist hotel" means a hotel operated primarily in the interest of the tourist trade and which has as an integral part of it, within the limits of the hotel site, and in proportion to its maximum accommodation facilities, one or more of the following typical tourist attractions: hiking, game courts, or other outdoor sports, if the hotel operation is devoted efficiently to serving its guests with these facilities.

(b) The other terms used in this chapter, unless otherwise specifically provided, have the same meaning as used in a similar context in the tax laws of the state and the regulations issued under the tax laws. (§ 2(a)—(c) (d) (1)—(6) (e) (f) (h)—(j) ch 129 SLA 1957; am § 6 ch 164 SLA 1971)

Revisor's note (1971).—The name of the Department of Economic Development and Planning, mentioned in (a)(2) of this section, was changed to "Department of Economic Development" by ch. 103, SLA 1966.

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in subsections (a)(4)(E), (a)(4)(F), and (a)(6).

Qualification of company is ques-

Sec. 43.25.160. **Manufactured products.** (a) In this chapter, unless the context otherwise requires, "manufactured product" means

(1) a product transformed from raw material into an article of commerce finished by hand or machinery, or

(2) a product with respect to which substantial industrial operations are undertaken in the state if

(A) in the judgment of the department it merits treatment as a manufactured product within the scope of this chapter because of the nature and extent of the operations; the technology involved; the employment provided; or other contribution made or to be made by the operation to the welfare of the state; and

(B) the operations are carried out substantially as originally represented by the tax exemption petitioner, except as the tax exemption grant is modified by the department in its discretion upon appropriate petition of the grantee.

(b) The department may draft regulations governing the application of this definition.

(c) The production obtained from mining operation is not considered a manufactured product unless it is beneficiated or substantially processed in the state directly by the producer or by an independent enterprise. (§ 2(g) ch 129 SLA 1957)

Sec. 43.25.170. **Short title.** This chapter may be cited as the Alaska Industrial Incentive Act. (§ 10 ch 129 SLA 1957)

Constitutionality of prior law.—
See Hess v. Mullaney, 12 Alaska 696,
91 F. Supp. 139 (D. Alas. 1950).

Chapter 26. Industrial Incentive Tax Credits.

Section	Section
10. Tax credits authorized	80. Grant of tax credit by political subdivision
20. Application for credit	82. Public school support
30. Use of common facilities	90. Effect on industrial tax exemptions
40. Administration	95. Extracting industries
50. Revocation of tax credit	100. Definitions
60. Penalty	110. Short title
70. Termination date for applications	

Sec. 43.26.010. **Tax credits authorized.** (a) A person who has established and owns or proposes to establish and own an eligible business is entitled to a tax credit not to exceed 50 per cent of the value of the investment made in the business as of the date it commenced operation. The grant of tax credit shall be effective for a period, established by the commissioner of economic development, not to exceed 10 years from the date of grant and shall be applied against the amount of certain taxes, as determined by the department, due the state during that period as a result of the development, organization, construction, establishment and operation of the specific business for which the credit is granted. The unused portion of a tax credit authorized under this chapter shall be forfeited at the expiration of the period of credit for which the grant was made. Only one grant of tax credit shall be made for an eligible business, irrespective of transfer of the business or other circumstances. If a tax for which credit is given under this chapter produces revenue shared with local political subdivisions, the state shall pay to any affected subdivision the amount of revenue it would receive had the tax credit not been given.

(b) The commissioner of economic development may by regulation classify and exclude from investments qualifying for tax credit under this chapter investments in an eligible business which are not of substantial benefit to the state in furthering the purposes of industrial development. Adoption, amendment or modification of regulations under this subsection is not subject to the

procedural requirements of AS 41.62.180—44.62.290. (§ 1 ch 222 SLA 1968; am § 1 ch 102 SLA 1970)

Effect of amendment. — The 1970 amendment substituted "50 per cent" for "75 per cent" in the first sentence of subsection (a).

Sec. 43.26.020. Application for credit. Application for a grant of tax credit shall be made in a manner and upon forms prescribed by the department. A grant of tax credit under this chapter shall be considered a contract between the grantee and the state. The department may determine the amount of the tax credit and the period for which the credit applies. Then the department may attach such terms and conditions to the credit as in its judgment will further the purposes of industrial development. (§ 1 ch 222 SLA 1968)

Sec. 43.26.030. Use of common facilities. (a) The department may grant authorization for a plant, factory, machine or machine ensemble to use major industrial facilities in common with other industrial units if the department determines that the common use is necessary or convenient for the development of the economy and welfare of the state because it will

(1) provide increased opportunities for work in either or both industrial units;

(2) add substantially to the net income of the state; and

(3) result in a substantial investment in equipment, machinery and supplies, comparable to the investment in the original unit, less the value of the facilities to be used in common.

(b) If the industrial unit providing major or minor industrial facilities to be used in common by other industrial units does not have a tax credit, but a tax credit is obtained by the unit using the facilities, the department may grant a tax credit with regard to the facilities, except that the tax credit is limited to a part of the value of the facilities and a part of the compensation received for the use of the facilities, in proportion to the use made of the facilities by the industrial unit which has a tax credit. The determinant factors of the use include space occupied, time and nature of use, and the importance the use bears on the industrial unit or units making use of the facilities. (§ 1 ch 222 SLA 1968)

Sec. 43.26.040. Administration. (a) The commissioner of economic development shall appoint the personnel necessary to carry out this chapter. The commissioner shall make arrangements for such public hearings as he considers necessary and shall require an applicant for a tax credit to present evidence that will justify the credit.

(b) The commissioner or another person whom the commissioner designates shall hear the evidence presented in relation to an application for tax credit; he may summon witnesses and take

their testimony as to facts related to the tax credit applied for, and administer an oath to the person testifying before him; he shall make a report to the department on the evidence, together with his recommendations.

(c) The department shall adopt regulations it considers necessary to carry out the purposes of this chapter. The regulations shall be published in newspapers necessary to guarantee general circulation in the state.

(d) To enforce compliance with this chapter, the department may require periodic reports from the grantee of a tax credit and may at reasonable intervals inspect the books of the eligible business for which the credit has been granted.

(e) All decisions and findings of the department under this chapter are final and no judicial or administrative appeal or other proceeding lies against them unless otherwise specifically provided in this chapter or by regulation. (§ 1 ch 222 SLA 1968)

Sec. 43.26.050. Revocation of tax credit. (a) After furnishing notice and opportunity to be heard to the grantee of a tax credit under this chapter, the department may revoke the grant if

(1) the business for which the tax credit is granted ceases to be an eligible business;

(2) the department determines that the grantee of a tax credit has falsely or fraudulently represented facts or circumstances upon which grant of the credit was predicated in whole or in part, or the department determines that the grantee has used the tax credit for taxes upon a business not included in the application upon which the credit was granted;

(3) the grantee of a tax credit fails to comply with a condition or term of the grant or a provision of this chapter or a regulation adopted under it; or

(4) a transfer of shares of stock or partnership participation in an eligible business is made which represents a change of control in the business, except

(A) a transfer by will or by operation of the laws of inheritance,

(B) a transfer made solely to create security for bona fide indebtedness, or

(C) a transfer by operation of law or court order to a trustee in bankruptcy or receiver.

(b) Upon revocation of a grant of tax credit, all taxes which, except for the tax credit, would have been due the state subsequent to revocation shall be assessed and collected and paid in accordance with the provisions of the tax laws.

(c) A person aggrieved by department action revoking a grant of tax credit may seek judicial review of the action by filing an

appeal with the superior court within 30 days after final determination by the department. Pending judicial review, the department may postpone the effective date of the action taken by it upon such conditions as may be required and to the extent necessary to prevent irreparable injury. If a postponement is applied for and denied, the court may issue appropriate process to postpone the effective date of the action taken by the department or to preserve the status or rights of the parties pending conclusion of the review proceedings. Postponement by the court shall be conditioned upon the giving of acceptable bond to the department in an amount equal at least to the amount of taxes credited before revocation plus interest and penalties as provided by the tax laws. (§ 1 ch 222 SLA 1968)

Sec. 43.26.060. Penalty. A person who fraudulently represents facts or circumstances upon which a grant of tax credit is predicated in whole or in part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. (§ 1 ch 222 SLA 1968)

Sec. 43.26.070. Termination date for applications. An application for a grant of tax credit under this chapter shall be received by the department until midnight of June 30, 1971, but not after that date. (§ 1 ch 222 SLA 1968; am § 2 ch 102 SLA 1970)

Effect of amendment. — The 1970 amendment substituted "1971" for "1973."

Sec. 43.26.080. Grant of tax credit by political subdivision. With respect to taxes levied by it, a political subdivision of the state may award grants of tax credit in the same manner and subject to the same restrictions as provided for the department under this chapter, except that the amount of tax credit granted may not exceed 25 per cent of the value of the investment made in the business as of the date it commences operation, and a political subdivision shall levy and collect at least a real and personal property tax millage on the assessed valuation of the property which is equal to at least seven mills. This section applies only to businesses receiving grants authorized on applications for grants of tax credit made before February 2, 1970. Applications made before February 2, 1970 may not be transferred from one person to another. (§ 1 ch 222 SLA 1968; am § 9 ch 95 SLA 1969; am § 3 ch 102 SLA 1970)

Revisor's note (1969). — For a memorandum regarding floor action on SCSCSIB 350 (a later version of which became ch 95 SLA 1969), see 1969 Senate Journal, Supplement No. 14 (April 19, 1969).
Effect of amendments. — The 1969 amendment, effective July 1, 1969,

substituted "seven mills" for "twice the millage required for the local tax effort under the Public School Foundation Program (AS 14.17)." The 1970 amendment added the second and third sentences.

Sec. 43.26.082. Public school support. (a) A business receiving a tax credit under this chapter located within a political subdivision that levies and collects a real and personal property tax millage on the assessed valuation of property for the support of public schools which is less than 10 mills shall pay to the state Department of Revenue the difference between the millage rate levied and collected by the political subdivision and 10 mills.

(b) The taxes levied by this section shall be effective for the life of the grant of tax credit. This section applies only to businesses receiving grants authorized on applications for grants of tax credit made after February 1, 1970. (§ 4 ch 102 SLA 1970)

Sec. 43.26.090. Effect on industrial tax exemptions. Exemptions granted in whole or in part under § 6, ch. 10, SLA 1949; ch. 33, SLA 1953 and ch. 129, SLA 1957 (the Alaska Industrial Incentive Act (AS 43.25)) shall remain in full force and effect upon the terms and for the periods granted. No industrial unit granted a tax exemption under any of those laws may qualify for a grant of tax credit under this chapter, provided additional industrial units, which use facilities in common with an industrial unit or units previously granted a tax exemption under those laws or a tax credit under this chapter, may be granted a tax credit if the industrial unit qualifies as an eligible business as defined in this chapter. (§ 1 ch 222 SLA 1968)

Sec. 43.26.095. Extracting industries. (a) Notwithstanding any other provisions in this chapter, extracting industries shall meet the following provisions of this section as a condition of qualifying for a tax credit set out in this chapter.

(1) A person seeking tax credit status under this chapter shall set up and maintain an on-the-job training program approved by the Department of Labor aimed at qualifying Alaska residents presently lacking in the requisite technical skills of the activity carried on. This training program shall be geared so that Alaska residents comprise 50 per cent of the employees at the end of the first year of tax credit. Alaska residents shall comprise 60 per cent of the employees at the end of the second year of tax credit and 70 per cent at the end of the third year of tax credit.

(2) The department shall set up procedures to be followed by the person seeking tax credit status under this section and shall certify to the Department of Economic Development those persons qualifying for this status. In no case may the Department of Economic Development grant tax credit status to a person coming

under the provisions of this section without first receiving certification from the department nor continue this status after revocation of certification by the department.

(3) The department shall hold formal hearings for those persons to whom it denies certification. The purpose of these hearings is to hear evidence on the reasons for a person failing to qualify under this section. In order to obtain a reversal of the denial, the person denied certification must show by convincing evidence that he is unable to comply with this section because

(A) the specific activity engaged in requires a greater percentage of trained personnel than the guidelines for resident hiring permits and these trained personnel are not available within the state in great enough number to make out-of-state recruiting unnecessary; or

(B) even though the person applying for tax credit status has set up an on-the-job training program approved by the department, he has been unable to meet the resident guideline requirements due to the inability of the local labor market to supply enough trainable personnel.

(4) A person certified for tax credit status who subsequently fails to comply with the training and hiring practices set out in this section, upon a finding by the department of this failure, forfeits this status. However, if the person seeking tax credit status, within a reasonable time during the first year of exemption, has made application to the department for a hearing to show cause why he will be unable to comply with the training and hiring provisions of this section and the department determines that the failure is excusable under this section the department shall permit a maximum of six months to comply with the training and hiring practices before withdrawing certification and causing the credit to lapse. Extensions of time for compliance shall be added on to the overall time requirements in the second and third years so that a person need not comply with the higher percentages until the expiration of his extension plus the year allowed in this section.

(5) A person having certification revoked under (4) of this section may apply to the department for a hearing to show cause for recertification within six months of the revocation.

(b) In this section

(1) "department" means the Department of Labor;

(2) "extracting industry" means an industry which processes, severs, harvests or extracts a natural resource of the state as a primary activity of the industry;

(3) "resident," at the end of the first year of tax credit, means a person who has been domiciled in Alaska for at least one year

immediately before the granting of the tax credit to the business; "resident," at the end of the second and third year of tax credit, means a person who has been domiciled in Alaska for at least one year either immediately before the granting of the tax credit to the business or after the granting of the tax credit to the business.

(c) A person holding a tax credit granted before the effective date of this section is not subject to the provisions of this section. (§ 1 ch 221 SLA 1968; am § 73 ch 69 SLA 1970; am § 5 ch 102 SLA 1970)

Effect of amendments. — The first 1970 amendment added "In order to obtain a reversal of the denial" at the beginning of the third sentence in subsection (a)(3), and in subsection (a)(3)(A) substituted "make" for "preclude" and inserted "unnecessary."

The second 1970 amendment rewrote subsection (b)(3).
Legislative committee report.—For report on ch. 69, SLA 1970 (RIS 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 43.26.100. Definitions. In this chapter

(1) "department" means the Department of Economic Development, except as provided in § 95 of this chapter;

(2) "eligible business" means

(A) an industrial unit having as its object the production on a commercial scale in the state of a manufactured product which was not produced on a commercial scale before July 1, 1968, and for which there were on that date in the same competitive area in the state as defined by the commissioner of economic development, no production facilities capable of the production of that manufactured product on a commercial scale;

(B) an industrial unit established after July 1, 1968, and having as its objective the production on a commercial scale in the state of a designated article, and which, in the judgment of the department

(i) is established in good faith and with a permanent character, and

(ii) produces, or will produce, on a sustained basis, within a reasonable time, a substantial amount of a designated article additional to the amount of the same articles being produced by other industrial units in operation in the state; in determining the amount of the production in the state of these articles, the department shall use the average production in the state of these articles, for the three calendar years immediately preceding July 1, 1968; or

(C) an industrial unit established before July 1, 1968, engaged in the production of a designated article in the state, on a commercial scale if

(i) tax credit has been granted to a new industrial unit under

the terms of this chapter to produce the same designated article, and

(ii) the new industrial unit has begun production on a commercial scale;

(3) "industrial unit" means a plant, factory, machine, or machine ensemble which has a capacity to perform the major functions involved in the production of a manufactured product on a commercial scale and land which is necessary to perform these functions; an industrial unit may not include business inventories, company stores or company housing, or land devoted to company stores or company housing; a plant, factory, machine or machine ensemble may be considered a separate industrial unit even though it uses, in common with other industrial units,

(A) minor facilities such as sections of buildings, power plants, warehouses, material conveyors, or other minor production facilities, or

(B) major facilities, if the department authorizes the common use of the facilities, as provided in § 30 of this chapter;

(4) "production on a commercial scale" means production for sale in the market in the normal course of business in quantities and at prices which justify the operation of an industrial unit as a going business;

(5) "designated articles" includes but is not limited to the following articles or businesses:

(A) lumber,

(B) plywood,

(C) chemical grade pulp,

(D) newsprint,

(E) ores which have been processed or refined,

(F) petroleum products,

(G) handicrafts,

(H) agricultural products,

(I) manufactured articles from fur or native skins,

(J) fish products,

(K) furniture, but not the mere assembly of it,

(L) products of slaughtering operations, including the products of packing houses that use the products of slaughtering operations as raw material,

(M) livestock raising,

(N) other related articles including industrial power development;

(6) "manufactured product" means

(A) a product transformed from raw material into an article of commerce finished by hand or machinery;

(B) a product with respect to which substantial industrial operations are undertaken in the state if

(i) in the judgment of the department the product merits treatment as a manufactured product within the scope of this chapter because of the nature and extent of the operations, the technology involved, the employment provided, or other contribution made or to be made by the operation to the welfare of the state, and

(ii) the operations are carried out substantially as originally represented by the tax credit petitioner, except as the tax credit grant is modified by the department in its discretion upon appropriate petition of the grantee; or

(C) the production obtained from a mining operation if it is beneficiated or substantially processed in the state directly by the producer or by an independent enterprise;

(7) "political subdivision" means a home rule or general law organized borough or city;

(8) "value" means value as determined by the department. (§ 1 ch 222 SLA 1968)

Sec. 43.26.110. Short title. This chapter may be cited as the Alaska Industrial Tax Credit Act. (§ 1 ch 222 SLA 1968)

Chapter 30. Inheritance and Transfer Taxes.

Section
10—210. [Repealed]

Secs. 43.30.010—43.30.210.

Repealed by § 1 ch 24 SLA 1970.

Editor's note.—The repealed chapter derived from §§ 48-4-1, ACLA 1949, to 48-4-19, ACLA 1949; ch. 119, SLA 1953; chs. 28, 30, SLA 1957; ch. 42, SLA 1959; ch. 111, SLA 1960; ch. 36, SLA 1963.

Although AS 43.30 was repealed by § 1, ch. 24, SLA 1970, until conclusion of necessary probate proceedings it will continue to have some applicability under § 3, ch. 24, SLA 1970,

which provides: "The provisions of AS 43.31 apply to estates of decedents dying after 12:01 a.m., Pacific Standard time on March 21, 1970; and estates of decedents dying before 12:01 a.m., Pacific Standard time on March 21, 1970, shall be taxed in accordance with the laws of this state in force before that date, which laws shall remain in force after March 20, 1970, for this purpose."