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April 7, 1975

The Honorable John Huber
Senator and Chairman,
Special Committee on Taxation and Revenue
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

In re: Analysis of proposed bills to
impose an ad valorem tax on oil
and gas in place, with attention
to present statutes

Dear Senator Huber:

INTRODUCTORY

You asked that Joseph P. Witherspoon and I make a study of the above matters. Basically, he is studying constitutional aspects, and the advantages and disadvantages (and rebuttals thereto) of the ad valorem tax as a revenue producing device. My study is directed to an analysis of the present taxing provisions that would be affected, and to the four bills presently under consideration.

Three chapters of the present statutes that would be amended by one or more of the proposed bills are set out, in whole or in part, in Appendices A, B and C hereto, as photocopied from the Alaska Statutes Supplement. The four bills under consideration, presented in the order in which you forwarded them to us, are set out in Appendices D, E, F and G hereto, as photocopied from the copies which you furnished. The various Appendices are as follows:

Present statutes:

- A. AS Ch. 29.53, Secs. 29.53.045 et seq. Tax on oil and gas production and pipeline property by municipalities;

B. AS Ch. 43.55. Oil and Gas Properties Production Tax;

C. AS Ch. 43.56. Oil and Gas Exploration, Production and Pipeline Transportation Taxes;

Proposed Bills:

D. SB 103, Introduced 1/29/75, by Huber and Hohman,
Referred to Resources and Finance;

E. HB 102, Introduced 1/29/75, by Brown, Bowman, Bradner, Cotten,
Gardiner, McKinnon, Miller, Naughton and Parker;
Referred to Resources and Finance;

F. HB _____, Introduced by Cowper (Cowper's bill);

G. SB 276, Introduced 3/14/75, by the Rules Committee by Request
of the Governor, Referred to Resources and Finance.

The first three bills would amend AS 43.56. The fourth bill would add a new Chapter AS 43.58, Oil and Gas Reserves Ad Valorem tax, and would amend Chapters AS 29.53, 43.55 and 43.56. Because of the interrelationships between those chapters and their possible effect under the proposed bills, I begin by considering the present statutes.

I. THE PRESENT STATUTES

A. Ad Valorem Taxes Imposed by The State and Municipalities on Certain Property Used in Production, etc., of Oil and Gas (AS Chapters 29.53, 43.56)

1. AS Chapter 43.56, Appendix C.

AS 43.56.010(a) levies an annual (state) tax of 20 mills on certain real and tangible personal property used or committed for use for production or pipeline transportation of gas or unrefined oil, or in the operation or maintenance of facilities used in the exploration for, production of, or pipeline transportation of gas or unrefined oil. AS 43.56.010(b) authorizes an ad valorem tax on such properties by municipalities under certain provisions of AS 29.53, and provides for credit of the municipal tax against the state tax. Property subjected to these taxes is specified at AS 43.56.210(6).

The municipal taxes authorized are subject to certain other provisions of AS 43.56, as follows. Certain property is exempt from the municipal tax, including property rights attached to or inherent in the right to explore for or produce oil or gas; oil or gas leases or properties, whether producing or not; oil or gas in place; oil or gas produced or extracted in the state; the value of intangible drilling expenses and exploration expenses; and an interest in property described in AS 43.55.010(b) (pertaining to the gross production tax of Chapter 43.55). AS 43.56.020. The municipal tax is in place of certain other municipal taxes. AS 43.56.030. No municipality may exempt from taxation the property authorized to be taxed under these provisions; exemptions are limited to those in AS 29.53.020, 29.53.025, and 43.56.020. AS 43.56.010(b).

Provision is made for assessment of property by the Department of Revenue for purposes of the municipal tax. AS 43.56.060(a), 210(3). If the total value of assessed property of a municipality taxing under AS 29.53.045(c) exceeds the 225 per cent limitation provided, the Department of Revenue shall designate the portion of the tax base against which the local tax may be applied. AS 43.56.010(c). The Department of Revenue may enter into agreements with a municipality for the cooperative or joint administration of the assessing authority conferred on the Department. AS 43.56.060(g). The Department of Revenue is required to send to a municipality a copy of the notice of assessment on any taxable property which is assessed under the provisions of AS Ch. 43.56, and which is located in the municipality and on which a tax is authorized under AS 43.56.10(b). AS 43.56.100(b). Methods of valuation to be used for assessment for municipal tax purposes are provided. AS 43.56.060(b) - (f).

Other provisions of AS 43.56 appear to be applicable solely to the state tax, or to both the state and the municipal tax. AS 43.56.040, .050, and .070 - .210. These pertain to returns, assessment rolls and notices, appeals, interest and penalty, lien for tax, remedy of distraint, penalties, regulations and definitions.

2. AS Chapter 29.53, Appendix A.

Operative provisions for the municipal tax are at AS 29.53.045 et seq. AS 29.53.045 provides in part as follows:

AS Sec. 29.53.045. Tax on oil and gas production and pipeline property.

(a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount of revenue from the total municipal property tax equivalent to \$1,000 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property under AS 43.56 as assessed by the Department of Revenue which, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, [hereinafter referred to as the 225 per cent limitation.]

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use. . . .

The choice of the \$1,000 per capita limitation or the 225 per cent limitation seems to be at the option of the municipality. AS 29.53.045(d), supra.

The per capita limitation of \$1,000 a year for each person residing within the boundaries of the municipality seems clear. AS Sec. 29.53.045(b), supra.

I am not clear, however, as to the precise meaning of the 225 per cent limitation of AS 29.53.045(b). Does it apply to (a) the "tax on the . . . property taxable under AS 43.56 . . . combined with the value of property otherwise taxable by the municipality. . . ." or (b) to "the full and true value of the portion of the taxable property taxable under AS 43.56. . . combined with the value of property otherwise taxable by the municipality. . . ."? (Emphasis added.) The latter interpretation seems more likely to be intended, as it applies the 225 per cent limitation to combined values, whereas the former applies the 225 per cent limitation to the tax on the taxable properties under consideration combined with the values of other properties taxable by the municipality. AS 29.53.050(b), Appendix C, applies a similar limitation to a municipality or combination of municipalities occupying the same geographical area, in whole or in part; it combines tax with values and thus apparently supports the former interpretation. On the other hand, the administrative provisions of AS 43.56.010(c), Appendix C, look solely to values, and thus seems to support the latter interpretation. This matter is important, not only in the interests of clarification of the present statutes, but also because of the proposed addition of oil and gas minerals in place to taxable property for state tax purposes, and the possible effect of that addition on the 225 per cent limitation on the municipal taxing authority. Further amendment may be necessary in connection with the

proposed ad valorem tax on oil and gas in place, as discussed below.

In addition to the aforementioned \$1,000 per capita and 225 per cent limitations it is provided that no municipality may levy and tax for any purpose in excess of three per cent of the assessed valuation of property within the municipality in any one year. AS 29.53.050(a).

These limitations do not apply, however, to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds, which may be levied without limitation as to rate or amount. AS 29.53.055.

Provision is made for assessment at full and true value of the property subject to the tax as of January 1 of the assessment year, with certain exceptions. AS 29.53.060.

Conclusions. The meaning of the above described 225 per cent limitation should be clarified as discussed above.

The municipal ad valorem property tax discussed, notwithstanding the specified limitations, apparently may equal or exceed the state tax on the same property, and thus by credit extinguish the state tax on that property. To the extent that the municipal tax exceeds the state tax, statewide equality of taxation does not exist. Nevertheless, any excess of the municipal tax over the state ad valorem tax which causes inequality of taxation may pose a constitutional question. Moreover, it appears that the credit against the state tax for the amount of municipal taxes imposed at varying rates under the various limitations may introduce inequality of taxation (as reduced by the varying credits) at the state level. This too may pose a constitutional question.

The provisions pertaining to the 225 per cent limitation may require further amendment in light of the proposed ad valorem state tax on oil and gas in place, as discussed below.

B. Oil and Gas Properties Production Tax.

1. AS Chapter 43.55, Appendix B.

AS Secs. 43.55.010 et seq levy a gross production tax on oil or gas removed or sold from each lease or property in the state less any part of the ownership or right to which is exempt from taxation.

On gas, the tax is four per cent of the gross value of the gas and liquid products produced each month. AS 43.55.010(a)(2).

On oil, there is levied upon the producer a tax based upon a per cent of the gross value at the well of all oil or gas removed or sold from each such lease or property in the state, based upon the percentages specified in AS 43.55.010(a)(1), or in specified amounts per barrel as provided in AS 43.55.015(a), (b), whichever is greater. AS 43.55.010(e); 43.55.015(d). The specified amounts per barrel are subject to revision based upon changes in the Wholesale Price Index for crude petroleum. AS 43.55.015(c).

The gross production tax is in place of all taxes now imposed by the state or any of its municipalities and neither the state nor a municipality may impose a tax upon producing oil or gas leases; oil or gas produced or extracted in the state; nor the value of intangible drilling and exploration expenses. AS 43.55.010(b).

The gross production tax is not in place of certain other taxes as specified in AS 43.55.010(d).

The "ownership or right to which is exempt from taxation" under the gross production tax is any ownership interest of the federal government or the state. AS 43.55.140(9).

For the purpose of the gross production tax "produced" means the removal or sale of oil or gas from a lease or property in the state. AS 43.55.140(10).

Other provisions deal with payment of the tax, 43.55.020; filing of statements 43.55.030; liens, 43.55.070; collection and deposit of revenue, 43.55.080; measurement of oil and gas, 43.55.135; and definitions, 43.55.140.

Conclusions. AS 43.55.010(b) may require a clarifying amendment. It provides that the production tax of AS 43.55 "is in place of all taxes now imposed by the state or any of its municipalities, and neither the state nor a municipality may impose a tax upon . . . (3) oil or gas produced or extracted in the state;" (Emphasis added.) AS 43.55.140(1) defines "produced" to mean "the removal or sale of oil or gas from a lease or property in the state;" AS §§ 43.55.010(a), 43.55.015(a) provide for a tax at the state level on oil or gas "removed or sold from each lease or property in the state. . . ." Thus AS 43.55 on its face appears to prohibit the state tax that it purports to impose. This anomaly seems to require a clarifying amendment.

AS Ch. 43.55 may require further amendment in the light of various exemptions and/or credit provisions of the proposed bills as discussed below.

II. THE PROPOSED BILLS

A. Introductory

Each of the proposed bills would impose an ad valorem property tax on oil and gas in place at the state level, but not at the municipal level. It should be noted that SB 103 and HB 102 contain identical provisions, except that SB 103, Sec. 2, would add a new section, AS 43.56.015(b), to provide a five year moratorium, which is not included in HB 102. Thus the analysis of SB 103 below applies equally to HB 102, with the exception of that moratorium provision. Those bills, and HB ____ (Cowper's Bill),

all provide for the new tax by amending AS 43.56 by adding a new Sec. 43.56.015, with conforming amendments to AS 43.56, but with no amendment to AS 43.53.045 et seq (pertaining to the municipal tax discussed above), nor to AS 43.55, (pertaining to the production tax discussed above). SB 276 (the Governor's bill) provides for the new tax by amending AS 43 by adding a new Chapter 58, to impose the new tax, with correlative amendments to AS 43.55, AS 29.53.050(b) and AS 43.56.010(c).

It should perhaps be pointed out that in the chronology in which these bills were submitted to us, and apparently in conception, it is apparent that each succeeding bill shows the influence of the earlier bills. SB 103, HB 102, HB ____ (Cowper's Bill), and SB 276 (the Governor's bill).

B. The Four Bills Compared

1. The Tax Rate and Effective Date.

Each of the first three bills provides an annual tax.

SB 103, §2, provides an annual tax of 20 mills, effective "each year beginning January 1, 1974," Is this intended? Compare SB 103, §12, which provides that the bill take effect January 1, 1976.

HB ____ (Cowper's bill), §2. This bill provides an annual tax of 20 mills "automatically at such time as the state's general fund cash balance reaches \$200,000,000," Is this on the upswing of the cash balance, or on the downswing? The bill does not state. The bill further provides: "The tax due for the calendar year of the original levy is the full amount which is due for the year reduced pro rata by the number of days from January 1 to the date of the original levy. In years subsequent to the original levy the tax is levied each year beginning January 1." This leaves open the question of when, relative to the date the cash balance attains

the specified amount, the levy is to be made.

SB 276, §1 (the Governor's bill), provides a new section as follows:

"Sec. 43.58.010 (b) The legislature shall annually determine by law the rate of the levy before April 1.

"(c) If on April 1 the legislature has not determined the rate of levy, the rate of levy shall be zero for that year. The rate of levy may not exceed 20 mills."

This provision seems to have the makings of an annual battle, with the danger that the deadline will pass without legislative determination of a rate. It seems desirable to establish a definite effective date and rate of tax.

2. The Subject Matter of the Tax.

The first three bills impose the tax on the full and true value of:

"(1) oil and gas leases within the state under which there are proven reserves; and

"(2) ownership interests in proven oil and gas reserves in place within the state."

SB 103, §2; HB ____ (Cowper's bill), §2.

SB 102 does not define what is meant by "proven reserves," the subject of the proposed tax. HB ____ (Cowper's bill), §11, and SB 276 (the Governor's bill), §1, adding 43.58.190(7) present definitions of the term.

SB 276 (the Governor's bill) imposes the tax on the full and true value "of taxable property under this chapter," which is defined as "any interest in the proven reserves of a lease or property." SB 276, §1, adding AS 43.58.010(a), and AS 43.58.190(8). The term "lease or property" is defined at SB 276, §1, adding AS 43.58.190(3).

SB 276 seems clearest on this point.

3. Exemptions.

SB 276 (the Governor's bill), §1, adds a new provision, AS 43.58.020 as follows:

"Sec. 43.58.020. EXEMPTIONS. The following interests in the proven reserves of a lease or property shall be exempt from taxation under this chapter:

"(1) any interest of the United States or the state;

"(2) any interest exempted from taxation by sec. 21 of the Alaska Native Claims Settlement Act (P. L. 92-203 43 U.S.C. sec. 1620); . . .

"(4) taxable property under ch. 56 of this title."

The exemption of "any interest of the United States or the state" corresponds to the present provisions of AS 43.55.140(9), 43.55.010(a) and 43.55.015(a), exempting those interests from the production tax of AS 43.55.

Should the exemptions described in (2) in the above quotation be added to the exemptions of present AS 43.55.140(9)? None of the proposed bills does so.

Should the exemptions provided in (1) and (2) as quoted above be added to the provisions of SB 103, or of HB ____ (Cowper's bill)?

Clause (4), quoted above, exempts oil and gas in place subjected to the new tax from taxation under AS 43.56, the Oil and Gas Exploration, Production and Pipeline Transportation Property Taxes. There is no corresponding provision in SB 103, or HB ____ (Cowper's bill). This provision may be desirable from the standpoint of clarity. It does not seem necessary, however, as there appears to be a clear distinction between the property taxable under these bills and that taxable under AS 43.56. Compare SB 276, §1, adding Sec. 43.58.190(3), (7) and (8), with present AS 43.56.210(6).

See also proposals for a moratorium on the new tax, and incentive credits and exemptions discussed below.

4. Moratorium.

SB 103 and HB ____ (Cowper's bill) both provide a five year moratorium, but in different terms. The language of each follows, the bracketed language being in SB 103 but not in Cowper's bill, and the underscored language being added in Cowper's bill:

"Sec. 2. AS 43.56 is amended by adding a new section to read:

"Sec. 43.56.015. . . . (b) Oil and gas leases and ownership interests in proven oil [and] or gas reserves are exempt from taxation under (a) of this section for a period of five years from (1) the date of the original lease of all or part of the property described in the lease or ownership interest being taxed, or (2) the date [the existence of oil reserves under the land covered by the lease or interest is established to a reasonable certainty,] of the first completion, suspension, or abandonment of a discovery well in a field or pool which in whole or in part underlies or comprises the lease or ownership interest, whichever occurs [earlier] first."

HB 102 contains no corresponding provision.

Comment. The addition of interests in gas to the moratorium clause by HB ____ (Cowper's bill) is necessary. On the other hand, the use of the "suspension" or "abandonment" of wells as a reference point for the commencement of a five year moratorium period seems inappropriate. Those factors tend to indicate want of value for tax purposes, rather than value.

SB 276 (the Governor's bill) provides for exemption from the proposed tax, in addition to those interests described under "Exemptions,"

above, of the following:

"(3) all other interests in the proven reserves of a lease or property during a five-year period commencing with the date of the first lease, concession, joint venture, contract or any other agreement that is made for the oil and gas development of a part or all of the land subject to that lease or property;"

SB 276 §1, adding Sec. 43.58.020(3).

Comment. It seems to me that the moratorium clause of SB 276 (the Governor's bill) may be the most desirable of the three, measuring the five-year period from the earliest to occur of the specified events, which are much more comprehensive than those in the other two proposals. Moreover, that bill omits the reference points of "suspension" or "abandonment" of HB ____ (Cowper's bill).

5. Incentive Credits and Exemptions.

Each of the four bills provides a combination of credits and/or exemptions. As SB 103, HB 102, and HB ____ (Cowper's bill) are similar in some respects, I shall consider those first, then SB 276 (the Governor's bill).

a. SB 103; HB 102; and HB ____ (Cowper's bill).

(1) Exemption from the proposed ad valorem tax. Provision is made that producing interests which are paying gross production tax during the assessment year which exceeds [equals or exceeds in HB ____ (Cowper's bill)] the proposed ad valorem tax that would otherwise be due for that year are exempt from the ad valorem tax. SB 103, §3; HB 102, §3; HB ____ (Cowper's bill), §2, adding AS 43.56.015(c). Each of these provisions would be difficult to administer, as the proposed ad valorem tax to be levied by amendment to AS Ch. 43.56 would be subject to assessment on or before March 1, and payment is due on or before Sept. 1. AS 43.56.100, .150. Thus assessment and payment would apparently be required before the question of exemption can be determined for the year.

(2) Credit against the proposed ad valorem tax for gross production taxes. SB 103 and HB 102 provide that the production tax paid during the assessment year may be taken as a credit against the ad valorem tax. SB 103, §7; HB 102, §7. HB ____ (Cowper's bill) allows a similar credit, but only if the production tax is less than the proposed ad valorem tax. HB ____ (Cowper's bill), §2, adding AS 43.56.015(d).

(3) Credit carryover for proposed ad valorem tax paid. SB 103 and HB 102 contain no credit carryover provision. HB ____ (Cowper's bill), §2, provides that the ad valorem tax paid "may be used as a credit against gross production tax . . . In subsequent years; however, the credit used in any one tax year may not exceed 50 percent of the gross production tax due." There is no provision for reducing the credit carryover as it is applied to the gross production tax of subsequent years, hence it is arguable that under the provision an ad valorem tax paid may be taken repetitively against production taxes for two or more subsequent years. This point should be clarified; it seems to be covered in SB 276 (the Governor's bill), discussed below, which see for suggested limitations on carryover. See also discussion under b (2) below which applies equally to HB ____ (Cowper's bill).

b. SB 276 (the Governor's bill).

This bill provides similar credits, and for carryover of any excess credit for the proposed ad valorem tax against the production tax, in such manner as to avoid some of the problems posed above. SB 276, §1, adding AS 43.58.030, .180, .190; §3, adding AS 43.55.018. The provisions operate as below.

(1) The credit against the proposed ad valorem tax. SB 276 provides for a credit against the proposed ad valorem tax of the production taxes paid for the 12 months before the ad valorem tax payment date. The

credit is limited to the amount of ad valorem tax due. For this purpose the credit is to be calculated without regard to the development incentive credit against the production tax, described below. SB 276 (the Governor's bill), §1, adding AS 43.58.030. Comment: This provision avoids the problem posed under the exemption proposed under the other three bills, mentioned under a (1), above.

(2) Early development incentive credit. The provisions for this credit provide for the carryover of net payment of the proposed ad valorem tax (as reduced by the credit for production taxes described above), to subsequent periods to be allowed as a credit against production tax otherwise due for those subsequent periods but limited to 50 per cent of the production tax against which the credit is applied. The mechanics of the credit are as follows.

First, "net tax paid under this chapter" means the amount of the proposed ad valorem tax paid, less the credit for production tax. SB 276, §1, adding AS 43.58.190(4).

Second, the early development incentive credit accrued (i.e., accumulated) for a lease or property, initially a zero amount, is increased each calendar year by the amount of "net tax paid under this chapter," and is reduced each month by the amount of the credit allowed against the production tax for that month. SB 276, §1, adding AS 43.58.180.

Third, there is allowed as a credit against the gross production tax for a lease or property the early development incentive credit accrued (i.e., accumulated) for that lease or property, but limited to 50 per cent of the production tax. This credit is allowed on a monthly basis. SB 276,

§3, adding AS 43.55.018.

(3) Effect of credits under SB 276 (the Governor's bill). A

careful study of the above reveals the following possible results:

- (a) The proposed ad valorem property tax for any given year may be extinguished by the credit for the production tax paid during the preceding 12 months;
- (b) The foregoing is true even though the production tax "paid" during the preceding 12 months may have been reduced by as much as 50 per cent by the early development investment credit which arose out of payment of the proposed ad valorem tax for earlier years;
- (c) (b), above, is anomalous, in that previous years' ad valorem taxes may be applied as a credit against the production tax of the preceding 12 months to a maximum of 50 per cent thereof, nevertheless the full amount of the production tax of the preceding 12 months (unreduced by the credit) may be taken as a credit against the ad valorem tax in (a);
- (d) Nevertheless, any production tax arising for the given year specified in (a) must be paid at least to the extent of 50 per cent, because the early development investment credit is limited to 50 per cent;
- (e) (1) Thus, for any given year the proposed ad valorem tax may be extinguished by credit for the previous 12 months' production tax "paid," even though those "payments" may have been only 50 per cent paid in fact; and
(2) If a production tax becomes payable, at least 50 per cent of that must be paid; accordingly,
(3) Years may arise when no more is payable than 50 per cent of the production tax, and if none, then neither tax would be payable.

(4) Comments. The considerations under (3), above, may make

the notion of an early development incentive credit less attractive. I

wonder, in any case, just how much effect such an incentive will have.

What it amounts to is for the state to say to the owner, in effect, "if

you drill and strike oil, we will allow you to recoup the ad valorem property

taxes that you previously paid by a credit of up to 50 per cent against your production tax." At the present price of oil of some \$10.00 or more per barrel, the production tax imposed by AS 43.55.010 which ranges up to eight per cent would exceed the minimum provided by AS 43.55.015 which ranges up to \$.2700 per barrel under the present provision. Accordingly the production tax would range upward to eight per cent, so that the development incentive credit would amount to a maximum of four per cent. Even this benefit is reduced by the impact of income taxes. In view of the high prices of oil today, is it realistic to think that the credit will have a significant effect on efforts to bring a field into production? I am doubtful that it will.

I call your attention to the fact that there is no limit to the number of years that the early development incentive credit may be carried forward. Thus when a lease or property comes into production an early development incentive credit may be carried over that would eliminate 50 per cent of the production tax for many years to come. At the same time the production tax, unreduced by the credit, may be taken as a credit against the new ad valorem tax and thus may eliminate that tax altogether. It seems that this feature may so burden the future to meet present needs that the state would be faced with the prospect of no future ad valorem tax in many cases, while collecting only 50 per cent of the production tax as presently provided by AS 43.55.

I also call your attention to the fact that SB 276 would not become effective until January 1, 1976, and would terminate December 31, 1977, thus imposing but two years' ad valorem property taxes. SB 276, §1,

adding AS 43.58.010, .170. Note, then, that presently producing leases or properties which presumably are most able to bear the ad valorem tax would have an immediate credit against ad valorem taxes for those years based on production taxes previously "paid," even though to some extent not in fact paid because of the credit for the ad valorem tax. I would limit the credit for production taxes against the ad valorem tax to production taxes actually paid after the effective date of the proposed new law.

Further, as SB 276 would not become effective until January 1, 1976, and would terminate December 31, 1977, the pressing need for immediate revenue would not be met for 1975, and whatever revenue is derived in 1976 and 1977 would be subject to loss by credit against production tax on subsequent production. Moreover, extension of SB 276 beyond 1977 would exacerbate the problem because the production tax, unreduced by the early development incentive credit, would be subject to loss by credit against subsequent ad valorem taxes on oil and gas in place.

In light of the above it seems desirable to modify the carryover provisions to limit the carryover of any given year's ad valorem tax to five years (or sixty months, for the monthly tax under AS 43.55), and to provide that the carryover be reduced from month to month by the amount of the gross production tax, not merely by the fifty per cent provided in SB 276. I have in mind provisions patterned upon the long-term capital loss carryover provisions and the net operating loss carryover provisions of the United States Internal Revenue Code of 1954.

The following modifications are suggested. First, that Sec. 43.58.030, as proposed by SB 276, §1, be modified by providing a credit against the ad valorem tax of fifty per cent of the production tax actually paid for months after the effective date of the new law, but limited to fifty per cent of the ad valorem tax against which the credit is taken.

Second, to clarify the additions and subtractions to be made in the computation of the early development incentive credit, the following addition to AS 43.58.180 as proposed by SB 276 (the Governor's bill) seems appropriate: "(d) In calculating the early development investment credit for any month under AS 43.55.018, additions under (a) shall include payments through that month, and reductions under (c) shall include those through the preceding month." This applies only if the early development incentive credit is enacted in substantially the form proposed in SB 276.

Third, that the early development incentive credit carryover be limited to five years.

Fourth, that the early development incentive credit carryover be reduced from month to month by the amount of the production tax, rather than by fifty per cent thereof.

The limitation of the early development incentive credit carryover to five years would emphasize the incentive for early development. Provision for reduction from month to month by the amount of the production tax would permit the use of each dollar of ad valorem tax paid to produce a fifty cent credit against the production tax, limited to fifty per cent of the production tax, but each dollar of the ad valorem tax used to produce a fifty cent credit would be eliminated from the carryover to subsequent years. Thus only fifty cents of any dollar of ad valorem tax could be applied against the production tax, and that only against fifty per cent of the production tax. The carryover of any ad valorem tax would be limited to five years, emphasizing the incentive to obtain early production. Thus the integrity of the credit would be preserved, and the revenue of the state would be protected.

These suggestions would initially impose total taxes equal to the greater tax plus one-half of the smaller tax, the remaining half of the smaller being credited against the larger. To illustrate, suppose the taxes for a lease on property for two succeeding years are: First, as in column (a), and second, as in column (b), below.

	(a)	(b)
First year	100,000	150,000
Second year	150,000	100,000
Total (before credit)	250,000	250,000

Then the credit against the second year tax would be fifty per cent of the first year tax, limited to fifty

per cent of second year tax, or	50,000	50,000
Net tax collected	200,000	200,000

C. Miscellaneous

Regardless of whether the proposed tax is levied by adding a new provision to the present AS Ch. 43.56 as in SB 103, HB 102, and HB _____ (Cowper's bill), or by addition of a new Chapter to title 43 as in SB 276 (the Governor's bill), it is clear that, in addition to the above, conforming amendments to certain other provisions of AS Chapters 29.53, 43.55, and 43.56, supra, are needed.

Municipalities are precluded from taxing oil and gas in place, as noted above. AS 43.55.010(c), 43.56.020(a). AS §§29.53.045 et seq. (Appendix A) provide for taxation of certain other properties by municipalities. Accordingly it appears that, with one exception, AS §§29.53.045 et seq. do not require conforming amendment. The exception is the 225 per cent limitation discussed above, provided in AS 29.53.045(c), .050(b), and 43.56.010(c). In addition to the clarifying amendment suggested above, it appears that

further amendment may be necessary in view of the proposed tax on oil and gas in place at the state level. The reason is that the addition of the value of oil and gas in place to the taxable values at the state level will apparently increase the quantum of the 225 per cent limitation on taxation of other property by each municipality, and thus indirectly increase the amount of tax permitted to be imposed by municipalities. Unless that result is intended amendment appears to be necessary to AS 29.53.045(c), .050(b), and 43.56.010(c). SB 276 (the Governor's bill) recognizes this problem by proposing amendment to AS 29.53.050(b) and to AS 43.56.010(c) by addition of the following qualifying clause to each:

"For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58."

SB 276, §§5, 6 (Appendix G). That bill offers no amendment to AS 29.53.045(c). Moreover, SB 103, HB 102, and HB ____ (Cowper's bill) (Appendices D, E, and F) offer no amendment in this regard.

D. Miscellaneous amendments.

For convenience, Exhibit A, herewith, presents a tabulation of certain provisions of the Alaska Statutes which would be amended by the proposed bills, and certain others where amendment may be desirable or necessary. In parallel columns references are made to the numbers of the section of the various bills that would modify the present provisions. Note that under SB 276 (the Governor's bill) §1 a new chapter, AS 43.58 is added, the section numbers of which are set out. The following symbols are used to indicate the nature of the amendment, or absence of amendment. The symbols used are explained at the end of Exhibit A.

The tabulation at Exhibit A covers many, though not necessarily all, of the provisions discussed herein. The main reason for including Exhibit A is to call to your attention various conforming and technical amendments not otherwise mentioned herein.

Exhibit A

Present Stats.	Description	SB 103; HB 102	HB (Cowper's bill)	SB 276 (the Governor's bill)
<u>43.56.-</u>				Sec.1 adds <u>43.58-</u>
.010(a)	Excepts new tax from present provision 1 CA		1 CA	NR
---	New ad valorem tax provided	2 adds 43.- 56.015	2 adds 43.- 56.015	.010 - .190
---	Moratorium on the new tax (*Note: Not included in HB 102).	2 adds 43.- 56.015(b)*	2 adds 43.- 56.015(b)	.020(3)
.020	Exemptions	NR	NR	.020
.030	Present tax is in place of certain other taxes	?	?	?
.040	State Assessment Review Board	NC	NC	NA
.060(a)	Assessment	4 CA	3 adds (h)	.040(a)
(b)	Valuation (*Should be lettered (h).)	5 adds (g)*	3 adds (i)	.040(b)
.070	Returns	NC	NC	.110(b)
.080	Investigation	NC	NC	.100
.090	Assessment roll	NC	NC	.050
.100	Assessment notice	NC	4 adds (c)	.060
---	Certification of final assessment	---	---	.080
.110	Appeal to the department	NC	NC	.070
	Appeal to the court	---	---	.070
.120	Appeal to State Assessment Review Board	NC	5 adds (c)	NA
.130	Hearings of State Assessment Review Board	NC	NC	NA
.140	Supplementary Assessment Rolls	NC	NC	.090
.150(c)	Collection and deposit	6 CA	6 CA	.110(a)
---	Deposit to Alaska Native Claims Settlement Fund	---	6 adds	

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Exhibit A

Present Stats.	Description	SB 103; HB 102	HB (Cowper's bill)	SB 276 (the Governor's bill)
.160	Interest, etc., late payment	8 CA	7CA	.130, .120
.190	Penalty - False or late return	8 CA	7 CA	.120
.170	Lien for tax	9 CA	8 CA	.140
.180	Remedy of distraint	10 CA	9 CA	.150
.190	Penalties	NC	NC	.120
.200	Regulations	NC	NC	.160
.210	Definitions	11 Am	10 Am	.190(1) - (8)
.210(6)	Definitions - Taxable property	11	10	.190(8)
.210(i)	Definitions - proven reserves	?	11 adds (i)	.190(7)
---	"Lease" or "property" defined for new tax	?	?	.190(3)(A)
---	Effective date provision	Sec. 12	Sec. 13	.010
	Termination date provision	---	13	.170
	Providing:			
	Effective date	1-1-76	Immediately	1-1-76
	Termination date	---	1-1-82	12-31-77
---	Exemption from new tax on account of production tax	3 adds 43.- 020(c)	2 adds 43.- 56.015(c)	NR, see .030
---	Credit against new tax for production tax	7 adds 43.- 56.150(d)	2 adds 43.- 56.015(d)	
---	Credit against production tax for new tax (Early development incentive credits)	---	2 adds 43.- 56.015(e)	.180, .190(4) 3 adds 43.- 55.018
43.55.010(b)	Present production tax is in place of certain other taxes	?	?	2 amends
43.55.140(8)	"lease" or "property" defined under production tax provisions	?	?	4 repeals & reenacts
29.53.045(c)	225 per cent choice in municipal taxation	?	?	?

Exhibit A

Present Stats.	Description	SB 103; HB 102	HB _____ (Cowper's bill)	SB 276 (the Governor's bill)
29.53.050(b)	225 per cent limitation on municipal taxation	?	?	5 amends
43.56.010(c)	225 per cent limitation, administration	?	?	6 amends

<u>Symbol</u>	<u>Meaning</u>
adds	adds new provision as indicated
Am	Amendment
CA	Conforming or technical amendment
NR	Not required under the particular bill
NC	No change
NA	Not available under the particular bill
?	No amendment proposed under the particular bill, but may be desirable.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section. (§ 2 ch 118 SLA 1972; am § 1 ch 90 SLA 1974)

Effect of amendment. — The 1974 amendment made such changes in cable and added subsections (d) and subsections (a), (b), and (c) as to (e).

Sec. 29.53.045. Tax on oil and gas production and pipeline property. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount of revenue from the total municipal property tax equivalent to \$1,000 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year. (§ 3 ch 1 FSSLA 1973)

Effective date. — Section 6, ch. 1, FSSLA 1973, provides: "This Act takes effect on January 1, 1974."

Sec. 29.53.050. Tax limitation. (a) No municipality may levy and tax for any purpose in excess of three per cent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes which will result in tax revenues from all sources exceeding either (1) \$1,000 a year for each person residing within their boundaries or (2) when combined with the value of property otherwise taxable by the municipality, the product of 225 per cent of the average per capita assessed full and true value of property in the state multi-

plied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax the combined levy of which would result in tax revenues from all sources exceeding either (1) \$1,000 a year for each person residing within their boundaries or (2) when combined with the value of property otherwise taxable by the municipality, the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. (§ 2 ch 118 SLA 1972; am § 4 ch 1 FSSLA 1973)

Effect of amendment. — The 1973 amendment, effective January 1, 1974, added subsection (b).

Sec. 29.53.055. No limitation on taxes to pay bonds. The limitations provided for in §§ 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount. (§ 2 ch 118 SLA 1972; am § 5 ch 1 FSSLA 1973)

Effect of amendment. — The 1973 amendment, effective January 1, 1974, substituted "limitations provided for in §§ 45 or 50 of this chapter do" for "limitation provided for in § 50 of this chapter does" in the first sentence.

Sec. 29.53.060. Full and true value. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and §§ 30, 35 and 160 of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, re-

strictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

(am § 45 ch 53 SLA 1973; am § 1 ch 46 SLA 1974)

Effect of amendments. — The 1973 amendment deleted "of a municipality" following "assessor" in the first sentence of subsection (a).

The 1974 amendment added subsection (c).

As the rest of the section was not affected by the amendments, it is not set out.

Editor's note.—The annotation in

the main pamphlet, reading "This section applies only to the tax year during which a disaster takes place," was incorrectly located under this section. It applies to AS 29.53.160.

Legislative committee report.—For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

Sec. 29.53.100. Assessment roll.

Mandatory provisions of section not complied with.—Mandatory provisions of this section and AS 29.53.110 relating to assessment procedures were not complied with by the North Slope Borough. Such non-compliance is in

violation of the rights of plaintiffs to due process in the levy of tax against them. *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973). *

Sec. 29.53.110. Assessment notice.

Mandatory provisions of section not complied with.—Mandatory provisions of AS 29.53.100 and this section relating to assessment procedures were not complied with by the North Slope Borough. Such non-compliance is in violation of the rights of

plaintiffs to due process in the levy of tax against them. *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Sec. 29.53.130. Appeal.

Applied in *Arco Pipe Line Co. v. North Slope Borough*, Superior Court,

4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Sec. 29.53.140. Hearing.

Cited in *Arco Pipe Line Co. v. North Slope Borough*, Superior Court,

4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Sec. 29.53.160. Tax adjustments on property affected by a natural disaster.

Editor's note. — This section is based on former AS 29.10.397.

This section applies only to the tax year during which a disaster takes

place. *Hoblitt v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2 630 (1970).

Article 2. Enforcement of Tax Liens.

Sec. 29.53.200. Validity.

The validity of assessment rolls established by this section is a rebuttable presumption of validity. *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

The acts of assessing officers are

presumed to be valid, and, unless the contrary appears, the presumption is that an assessment is regular, valid and correct. *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Validity not affected by nonsub-

Sec. 43.40.100. Definitions. In §§ 10—100 of this chapter

(2) "motor fuel" means fuel used in an engine for the propulsion of a motor vehicle, aircraft, boat or watercraft, or in a stationary engine, machine or mechanical contrivance which is propelled by an internal combustion motor; except on consignments of motor fuel oil to foreign countries, except motor fuel oil sold for use in jet propulsion aircraft operating in flights to foreign countries and except fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public or by nonprofit power associations or corporations for generating electric energy for resale or by charitable institutions;

(am § 1 ch 74 SLA 1972)

Effect of amendments.

The 1972 amendment inserted "except motor fuel oil sold for use in jet propulsion aircraft operating in flights to foreign countries" in paragraph (2).

As the rest of the section was not affected by the amendment, it is not set out.

Chapter 43. School Tax.

Section

10. Tax imposed

Sec. 43.45.010. Tax imposed. (a) There is imposed a school tax of \$10 a year upon each person 19 years of age or older gainfully employed in the state or on the waters of the state, except (1) a married person who is unemployed and entirely dependent upon the income of the spouse and whose spouse has paid a school tax, and (2) a person exempt under § 20 of this chapter.

(am § 111 ch 127 SLA 1974)

Effect of amendment. — The 1974 amendment, in item (1) of subsection (a), substituted "person" for "woman," "the spouse" for "her husband," and "whose spouse" for "whose husband."

As the rest of the section was not affected by the amendment, it is not set out.

Chapter 55. Oil and Gas Properties Production Tax.

Section

- 10. Gross production tax
- 15. Tax per barrel of oil
- 20. Payment of tax
- 30. Filing of statements
- 70. Lien for tax

Section

- 80. Collection and deposit of revenue
- 100. [Repealed]
- 135. Measurement
- 140. Definitions

Sec. 43.55.010. Gross production tax. (a) There is levied upon the producer of oil or gas a tax based upon a per cent of the gross value at the well of all oil or gas removed or sold from each

lease or property in the state, less the value of any part the ownership or right to which is exempt from taxation. The tax is determined according to the following schedules, and any part which is exempt from taxation is deducted from the tax levied on a pro rata basis as to each production level tax bracket:

(1) oil: based upon the average daily production for each well for the calendar month in barrels, the tax is

- (A) five per cent on the first 300 barrels;
- (B) six per cent on the next 700 barrels;
- (C) eight per cent on all production in excess of 1,000 barrels;

(2) gas: the tax is four per cent of the gross value of the gas and liquid products produced each month.

(b) The tax imposed by this chapter is in place of all taxes now imposed by the state or any of its municipalities, and neither the state nor a municipality may impose a tax upon

- (1) [deleted]
- (2) producing oil or gas leases;
- (3) oil or gas produced or extracted in the state;
- (4) [deleted]
- (5) the value of intangible drilling and exploration expenses.

(c) The tax imposed by this chapter is in place of all taxes imposed by a municipality upon oil or gas in place or nonproducing oil or gas leases or properties.

(d) The tax imposed by this chapter is not in place of the tax imposed by ch. 57 of this title or income taxes or taxes upon the retail sale of oil or gas products.

(e) If on a tax payment date the amount of tax due under (a) (1) of this section is less than the tax due under § 15 of this chapter, the tax levied in § 15 of this chapter is payable in place of the tax levied in this section. (§ 2 ch 7 ESLA 1955; am § 1 ch 110 SLA 1968; am § 1 ch 247 SLA 1970; am §§ 1—3 ch 101 SLA 1972; am § 49 ch 53 SLA 1973; am § 1 ch 4 FSSLA 1973)

Effect of amendments.

The 1972 amendment, effective July 1, 1972, in subsection (a), substituted "the producer of" for "every person producing" in the first sentence, substituted "removed or sold from each lease or property" for "produced" in that sentence, rewrote the second sentence, deleted "per-well" preceding "production" in the introductory language of paragraph (1), and inserted "for each well" therein. The amendment also deleted item (3) in subsection (b) and added subsection (e).

The first 1973 amendment substituted "or any of its political subdivisions" for "cities, towns, school dis-

tricts, and other local government units" in the introductory language in subsection (b), and substituted "produce" for "producing" in paragraph (1) of that subsection.

The second 1973 amendment, effective January 1, 1974, in subsection (a), substituted "oil or gas" for "oil and gas" twice in the first sentence of the introductory language, substituted "five" for "three" in paragraph (1)(A) and "six" for "five" in paragraph (1)(B), rewrote paragraph (1)(C), deleted paragraph (1)(D), substituted "tax" for "rate" in paragraph (2), and inserted "each month" in that paragraph. The amendment

also rewrote subsections (b), (c), and (d) and substituted "in place of the tax levied in this section" for "and the tax levied in this section need not be paid" in subsection (e).

Legislative committee reports.

For report on ch. 101, SLA 1972 (FCCS HCSSB 168), see 1972 House Journal, p. 963. For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

This section is constitutional. *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

The legislature has acted by subsection (b) to preempt the area of taxation. *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Nowhere in the state constitution is there provision that the state may not stake out an area of tax base as its exclusive province, forbidding the taxation thereof by local governmental units. *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

While Alaska Const., art. IX, § 5, does state that private leaseholds, contracts or interests in land or property owned by any one of the various levels of government shall be taxable to the extent of the private interest therein, there is no constitutional direction as to who may or may not impose the tax on that interest. *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Enumerated interests not subject to local ad valorem taxes.—The former language of subsection (b), "Payment of the tax is in lieu of all ad

valorem taxes now or hereafter imposed by the state, cities, towns, school districts, and other local government units. . . ." combined in reading with the former language of subsection (c), "An interest in the land not described in this section shall be assessed and taxed as other property within the taxing district in which the property is located," gives clear and unambiguous expression of the legislative intent that these enumerated interests are not to be subject to ad valorem taxes by any local government unit, including a borough. *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973), decided prior to 1973 amendment of this section.

The former language of subsection (b) expressly exempted oil and gas leases from borough ad valorem taxes. *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973), decided prior to 1973 amendment of this section.

The borough is a "local government unit" within the meaning of the former language of subsection (b). *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973), decided prior to 1973 amendment of this section.

Oil companies held not subject to ad valorem taxes by the North Slope Borough, under subsections (a) and (b). *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973), decided prior to 1973 amendment of this section.

Sec. 43.55.015. Tax per barrel of oil. (a) There is levied upon the producer of oil a tax on each barrel of oil removed or sold from each lease or property in the state less any part the ownership or right to which is exempt from taxation. The tax is based upon the average daily production for each well for the calendar month in barrels determined according to the following schedule and any part which is exempt from taxation is deducted from the tax levied on a pro rata basis as to each production level bracket:

- (1) \$.16875 on each of the first 300 barrels;

(2) \$.2025 on each of the next 700 barrels;

(3) \$.2700 on each barrel of production in excess of 1,000 barrels.

(b) The cents per barrel tax schedule set out in this section applies to oil of 27 degrees API gravity. For each degree of API gravity less than 27 degrees the cents per barrel tax in each production level bracket shall be reduced by two per cent of the base rate for 27 degree oil and for each degree of API gravity greater than 27 degrees the cents per barrel tax for each production level bracket shall be increased by two per cent of the base rate for 27 degree oil; except that oil above 40 degrees API gravity shall be taxed as 40 degree oil. In applying the gravity adjustment under this subsection, fractional degrees of API gravity shall be disregarded.

(c) The tax rates set out in this section will be increased or decreased by a percentage equal to the percentage of change in the Wholesale Price Index for crude petroleum published by the Bureau of Labor Statistics, of the United States Department of Labor. The year 1967 is the base year of 100 for computing the tax rates. Changes in tax rates will be computed based on changes in the Wholesale Price Index occurring after January 1, 1974 and will not include changes in the Wholesale Price Index prior to January 1, 1974. The department shall post the changes in the tax rates at least semi-annually and shall notify every person producing oil within the state of the changes.

(d) If on a tax payment date the amount of tax due under this section is equal to or less than the tax due under § 10(a)(1) of this chapter, the tax levied in § 10(a)(1) of this chapter is payable in place of the tax levied in this section.

(e) When the tax levied under this section is payable, an amount not less than \$.05 for each barrel of oil produced shall be paid by the state out of its royalties from the oil, whenever payment by the state is required under the revenue-sharing provisions of sec. 9 of the Alaska Native Claims Settlement Act (PL 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.), into the Alaska Native Fund until all amounts paid in the fund equal \$500,000,000. (§ 4 ch 101 SLA 1972; am § 2 ch 4 FSSLA 1973)

Effect of amendment. — The 1973 amendment, effective January 1, 1974, rewrote this section.

Effective date.—Section 18, ch. 101, SLA 1972, provides: "This Act takes effect July 1, 1972."

Legislative committee report.—For report on ch. 101, SLA 1972 (FCCS HCSSB 168), see 1972 House Journal, p. 963.

Sec. 43.55.020. Payment of tax. (a) The gross production tax on oil or gas shall be paid monthly. The tax is due on the last day of each calendar month on oil or gas removed or sold from each

lease or property during the preceding month. If the tax is not paid before the end of the month in which it becomes due, the tax becomes delinquent.

(b) The gross production tax on oil or gas shall be paid by or on behalf of the producer.

(c) Repealed by § 7 ch 101 SLA 1972, effective July 1, 1972.

(d) In making settlement with the royalty owner the producer may deduct the amount of the tax paid on royalty oil or gas, or may deduct royalty oil or gas equivalent in value at the time the tax becomes due to the amount of the tax paid.

(e) Gas produced and used, except gas used in the operation of a lease or property in drilling for or producing oil or gas, or for repressuring, is considered, for the purpose of this chapter and in the amount used, as gas removed or sold from a lease or property.

(f) If oil or gas is sold under circumstances where the sale price does not represent the cash price prevailing for oil or gas of like kind, character or quality in the field from which the product is produced, the department may require the tax to be paid upon the basis of the prevailing price then being paid at the time of production of the oil or gas in the field for oil or gas of the same kind, quality and character. (§ 3 ch 7 ESLA 1955; am §§ 5—9 ch 101 SLA 1972)

Effect of amendment. — The 1972 amendment, effective July 1, 1972, substituted "monthly" for "quarterly" in the first sentence of subsection (a), rewrote the second sentence in that subsection, rewrote subsection (b), repealed subsection (c), inserted "or gas" in two places in subsection (d), inserted "may" preceding "deduct royalty" in that subsection, sub-

stituted "property" for "premises" in subsection (e), and substituted "removed or sold from a lease or property" for "actually produced and saved" therein.

Legislative committee report.—For report on ch. 101, SLA 1972 (FCCS HCSSB 168), see 1972 House Journal, p. 963.

Sec. 43.55.030. Filing of statements. (a) The tax shall be paid to the department and the person paying the tax shall file with the department at the time the tax is required to be paid a statement, under oath, on forms prescribed by or acceptable to the department, giving with other information required, the following:

(1) a description of the lease or property from which the oil or gas was removed or sold, by name, legal description, lease number or by accounting code numbers assigned by the department;

(2) the names of the producer and the person paying the tax;

(3) the gross amount of oil or gas removed or sold from the lease or property, and the percentage of the gross amount owned by each producer for whom the tax is paid;

(4) the total value of the oil or gas removed or sold from the lease or property owned by each producer for whom the tax is paid; and

(5) [deleted]

(6) the name of the first purchaser and the price received for the oil or gas if sold in the state.

(b) Repealed by § 11 ch 101 SLA 1972, effective July 1, 1972.

(c) Repealed by § 11 ch 101 SLA 1972, effective July 1, 1972.

(d) Reports by or on behalf of the producer are delinquent the first day following the day the tax is due. Each producer is subject to a penalty of \$25 a day for each lease or property upon which the report is not filed. The penalty for failure to file a report is in addition to the penalty for delinquent taxes, and is a lien against the assets of the producer. (§ 4 ch 7 ESLA 1955; am §§ 10—12 ch 101 SLA 1972)

Effect of amendment. — The 1972 amendment, effective July 1, 1972, rewrote subsection (a), repealed subsections (b) and (c), and rewrote subsection (d).

Legislative committee report.—For report on ch. 101, SLA 1972 (FCCS HCSSB 168), see 1972 House Journal, p. 963.

Sec. 43.55.070. Lien for tax. The tax is a first and paramount lien against the producer's real and personal property. The tax may be recovered at the suit of the state upon relation to the department. (§ 8 ch 7 ESLA 1955; am § 13 ch 101 SLA 1972)

Effect of amendment. — The 1972 amendment, effective July 1, 1972, deleted "purchaser's or" preceding "producer's" in the first sentence, and deleted a former second sentence.

Legislative committee report.—For report on ch. 101, SLA 1972 (FCCS HCSSB 168), see 1972 House Journal, p. 963.

Sec. 43.55.080. Collection and deposit of revenue. The department shall deposit in the general fund the money collected by it under this chapter. (§ 10 ch 7 ESLA 1955; am § 14 ch 101 SLA 1972)

Effect of amendment. — The 1972 amendment, effective July 1, 1972, deleted "quarterly" following "deposit." Legislative committee report.—For

report on ch. 101, SLA 1972 (FCCS HCSSB 168), see 1972 House Journal, p. 963.

Sec. 43.55.100. Acceptance of deductions.

Repealed by § 15 ch 101 SLA 1972, effective July 1, 1972.

Editor's note.—The repealed section derived from § 12, ch. 7, ESLA 1955.

report on ch. 101, SLA 1972 (FCCS HCSSB 168), see 1972 House Journal, p. 963.

Legislative committee report.—For

Sec. 43.55.135. Measurement. For the purposes of this chapter, oil shall be measured in terms of a "barrel of oil" and gas shall be measured in terms of a "cubic foot of gas." (§ 16 ch 101 SLA 1972)

Effective date.—Section 18, ch. 101, SLA 1972, provides: "This Act takes effect July 1, 1972."

report on ch. 101, SLA 1972 (FCCS HCSSB 168), see 1972 House Journal, p. 963.

Legislative committee report.—For

Sec. 43.55.140. Definitions. In this chapter

(1) "barrel of oil" means 42 United States gallons of oil of 231 cubic inches a gallon computed at a temperature of 60 degrees Fahrenheit;

(2) "cubic foot of gas" means the volume of gas contained in one cubic foot of space measured at a pressure base of 14.65 pounds per square inch absolute and a temperature base of 60 degrees Fahrenheit;

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

(4) "gas" means all natural, associated or casinghead gas, all hydrocarbons produced at the wellhead not defined as oil, and all liquid hydrocarbons extracted at a gas processing plant;

(5) "oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered by separation from gas other than at a gas processing plant.

(6) "API gravity" means the specific gravity of oil measured in degrees on the American Petroleum Institute scale;

(7) "intangible drilling expenses" as defined in sec. 263(c) of the United States Internal Revenue Code as defined on the effective date of this paragraph;

(8) "lease or property" means a lease or property including mineral interests in oil and gas and working interests, royalty interests and overriding royalty interests in oil and gas leases and unitization or pooling agreements under the provisions of sec. 614(b) (3) of the Internal Revenue Code of 1954 as defined on the effective date of this paragraph;

(9) "ownership or right to which is exempt from taxation" means any ownership interest of the federal government or the state;

(10) "produced" means the removal or sale of oil or gas from a lease or property in the state;

(11) "production" means the volume or quantity of oil or gas removed or sold from a lease or property in the state. (§ 1 ch 7 ESLA 1955; am § 17 ch 101 SLA 1972; am § 3 ch 4 FSSLA 1973)

Effect of amendments. — The 1972 amendment, effective July 1, 1972, rewrote this section.

The 1973 amendment, effective January 1, 1974, added paragraphs (6)—(11).

Legislative committee report.—For report on ch. 101, SLA 1972 (FCCS HCSSB 168), see 1972 House Journal, p. 963.

Chapter 56. Oil and Gas Exploration, Production and Pipeline Transportation Property Taxes.

Section	Section
10. Levy of tax	130. Hearings of State Assessment Review Board
20. Exemptions	140. Supplementary assessment rolls
30. In place of other taxes	150. Collection and deposit
40. State Assessment Review Board	160. Interest and penalty
50. Per diem and expenses	170. Lien for tax
60. Assessment	180. Remedy
70. Returns	190. Penalties
80. Investigation	200. Regulations
90. Assessment roll	210. Definitions
100. Assessment notice	
110. Appeal to the department	
120. Appeal to the State Assessment Review Board	

Effective date. — Section 6, ch. 1, FSSLA 1973, provides: "This Act takes effect on January 1, 1974."

Sec. 43.56.010. Levy of tax. (a) An annual tax of 20 mills is levied each tax year beginning January 1, 1974, on the full and true value of taxable property taxable under this chapter.

(b) A municipality may levy and collect a tax under AS 29.53.045 at the rate of taxation that applies to other property taxed by the municipality. A tax collected by a municipality as authorized by AS 29.53.045 shall be credited against the tax levied under (a) of this section and shall be levied at a rate no higher than the rate applicable to other property taxable by the municipality. No municipality may exempt from taxation property authorized to be taxed under this chapter. Exemptions shall be limited to those in AS 29.53.020 and 29.53.025 and § 20 of this chapter.

(c) If the total value of assessed property of a municipality taxing under AS 29.53.045(c) exceeds the product of 225 per cent of the average per capita assessed full and true value of property in the state (to be determined by the department and reported to each municipality by January 15 of each year) multiplied by the number of residents of the taxing municipality, the department shall designate the portion of the tax base against which the local tax may be applied. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.020. Exemptions. (a) The following are exempt from local taxes levied or authorized under § 10(b) of this chapter:

(1) property rights attached to or inherent in the right to explore for or produce oil or gas;

(2) oil or gas leases or properties, whether producing or not;
(3) oil or gas in place;
(4) oil or gas produced or extracted in the state;
(5) the value of intangible drilling expenses and exploration expenses;

(6) an interest in property described in AS 43.55.010(b);

(7) before the construction commencement date, property taxed under § 1(a) of this chapter which is committed by contract or other agreement for use in this state primarily for pipeline transportation of gas or unrefined oil or for the production of gas or unrefined oil to be transported by that pipeline;

(8) before the construction commencement date, property taxed under § 10(a) of this chapter which is committed by contract or other agreement for use in this state primarily in the operation or maintenance of facilities for pipeline transportation of gas or unrefined oil, or facilities for production of gas or unrefined oil to be transported by that pipeline.

(b) In (a)(2) of this section, "properties" means mineral interests in oil and gas and working interests, royalty interests, and overriding royalty interests in oil and gas leases. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.030. In place of other taxes. Except for those taxes imposed under ch. 55 and ch. 57 of this title, the taxes levied or authorized under § 10(b) of this chapter are in place of

(1) all other ad valorem taxes or other taxes imposed by a municipality on property subject to tax under this chapter or exempted from taxation by § 20 of this chapter, and

(2) all other taxes imposed by a municipality on or with respect to the property subject to tax under this chapter or exempted from taxation by § 20 of this chapter, including, but not limited to,

(A) taxes on the retail sale or use of the property except for the retail sales tax on the first \$1,000 of each sale;

(B) taxes on the sale or use of gas or unrefined oil;

(C) taxes on the sale or use of services used in or associated with the property or in its maintenance or operation except for the sales tax on the first \$1,000 of each sale;

(D) taxes on or measured by gross or net income from the property, including income from the exploration for, production of, or pipeline transportation of gas or unrefined oil or property; and

(E) any license, excise, fee, charge or other tax on or pertain-

ing to the property or services. (§ 1 ch 1 FSSLA 1973; am § 55 ch 127 SLA 1974)

Effect of amendment. — The 1974 amendment deleted "erection, construction" preceding "maintenance" in paragraph (2)(C).

Legislative committee report.—For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 43.56.040. State Assessment Review Board. The State Assessment Review Board is created within the Department of Revenue. The board consists of five persons appointed by the governor to serve at his pleasure, each of whom must be knowledgeable of assessment procedures. Each board member is subject to confirmation by a majority of the members of the legislature in joint session. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.050. Per diem and expenses. Members of the board shall receive per diem and expenses authorized by law for boards and commissions. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.060. Assessment. (a) The department shall assess property for the tax levied under § 10(b) of this chapter and AS 29.53.045 on property used or committed by contract or other agreement for use for the pipeline transportation of gas or unrefined oil or for the production of gas or unrefined oil at its full and true value as of January 1 of the assessment year.

(b) The department shall assess property for the taxes levied under § 10(a) of this chapter at its full and true value as of January 1 of the assessment year except that in the case of taxable property used or committed by contract or other agreement for the pipeline transportation of gas or unrefined oil or for the production of gas or unrefined oil to be transported by that pipeline, the first assessment date shall be the construction commencement date. If the construction commencement date is used as the assessment date, the tax payable shall be prorated on the basis of the assessment year remaining.

(c) The full and true value of taxable property used or committed by contract or other agreement for use in the exploration for gas or unrefined oil, or in the operation or maintenance of facilities for the exploration for gas or unrefined oil, is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(d) The full and true value of taxable property used or committed by contract or other agreement for the production of gas or unrefined oil or in the operation or maintenance of facilities for the production of gas or unrefined oil is:

(1) on the construction commencement date the actual cost in-

curred or accrued with respect to the property as of the date of assessment;

(2) determined on each January 1 thereafter on the basis of replacement cost less depreciation based on the economic life of proven reserves.

(e) The full and true value of taxable property used or committed by contract or other agreement for pipeline transportation of gas or unrefined oil or in the operation or maintenance of facilities for the pipeline transportation of gas or unrefined oil is:

(1) on the construction commencement date and until January 1 following the date the pipeline begins to transport gas or unrefined oil, the actual cost incurred or accrued with respect to the property as of the date of assessment;

(2) determined on each January 1 thereafter with due regard to the economic value of the property based on the estimated life of the proven reserves of gas or unrefined oil then technically, economically and legally deliverable into the transportation facility; however, if the proven reserves of gas or unrefined oil then technically, economically and legally deliverable indicate an economic life materially shorter than the estimated physical life of the transportation facility, the full and true value is the actual cost reduced by an annual allowance for depreciation on a straight line basis over an economic life based on the actual elapsed life from the commencement of full operation to the date of assessment plus the estimated remaining life of the proven reserves of gas and unrefined oil then technically, economically and legally deliverable into the transportation facility as of the date of the assessment;

(3) on the assessment date next following inability to use or construct all or a substantial part of the facility for a period of 90 or more consecutive days because of natural disaster or legal prohibition, or other events beyond the control of a person having ownership or control of the property, adjusted to take into account any diminution in value.

(f) For purposes of this section, "actual cost" and "replacement cost" do not include interest capitalized before or during the period of construction nor the value of intangible drilling expenses. In the case of taxable property under construction, "actual cost" for purposes of this section means the costs incurred or accrued with respect to the property as of the date of assessment.

(g) The department may enter into agreements with a municipality for the cooperative or joint administration of the assessing authority conferred on the department by this section. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.070. Returns. (a) The department may require by notice every person having ownership or control of an interest in property taxable under this chapter to submit a return in the form prescribed by the department, based on property values existing on January 1 of each year, except as otherwise provided in this chapter.

(b) The department by written notice may require a person to provide additional information within 30 days of the notice. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.080. Investigation. (a) The department may make an investigation of property on which a return has been filed or of taxable property upon which no return has been filed. In either case, the department may make its own valuation of the taxable property, which is prima facie evidence of full and true value.

(b) An employee or agent of the department may enter any premise necessary for the investigation during reasonable hours and may examine property and appropriate records. The owner of the taxable property upon request shall furnish to the employee or agent of the department reasonable assistance required for the investigation. If refused entry, the department may seek a court order to compel entry.

(c) For the purpose of the investigation the owner of the taxable property or his representative may be required to present himself for examination under oath by the department. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.090. Assessment roll. The department shall prepare annually the assessment roll for taxation under this chapter. The roll shall contain:

- (1) a description of all taxable property;
- (2) the assessed value of all taxable property;
- (3) the names and addresses of persons owning property subject to assessment and taxation. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.100. Assessment notice. (a) On or before March 1 of each year, the department shall send to every owner of taxable property named in the assessment roll a notice of assessment, showing the assessed value of the property. Notice of assessment is effective on the date of mailing.

(b) The department shall send to a municipality a copy of the notice of assessment on any taxable property which is assessed under the provisions of this chapter and which is located in the municipality and on which a tax is authorized under § 10(b) of this chapter. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.110. Appeal to the department. (a) An owner of taxable property or a municipality receiving an assessment notice may object to the assessment by advising the department in writing of the objections to the assessment within 20 days of the effective date of the notice.

(b) The department shall provide by regulation for notices of appeals to interested persons and municipalities.

(c) Following an objection the department may adjust the assessment and the assessment roll. An adjustment based on an objection from an owner of taxable property or a municipality shall be made within 30 days of the effective date of the notice of assessment. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.120. Appeal to the State Assessment Review Board.

(a) After a ruling by the department on an appeal made under § 110 of this chapter, the owner or a municipality may further appeal to the board. The appeal must be filed in writing within 50 days of the effective date of the notice of assessment.

(b) The board shall provide by regulation for notices of appeals to interested persons and municipalities. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.130. Hearings of State Assessment Review Board.

(a) The board shall hear appeals filed under § 120(a) of this chapter.

(b) A majority of the board constitutes a quorum required to transact business.

(c) The board shall provide by regulation for notices of hearings to interested persons and municipalities.

(d) If an appellant fails to appear at the hearing, the board may proceed with the hearing in his absence.

(e) The appellant bears the burden of proof at the hearing.

(f) The only grounds for adjustment of assessed value is proof of unequal, excessive or improper valuation or valuation not determined in accordance with the standards set out in this chapter, based on facts stated in a written appeal timely filed or proved at the hearing.

(g) The board shall certify its determinations to the department within seven days of the hearing.

(h) The department shall enter the changes and certify the final assessment roll on or before June 1 of each year and by July 1 shall mail to the owner of taxable property or his authorized agent a statement of the amount of tax due.

(i) An owner or municipality may appeal to the superior court for, and is entitled to, trial de novo of the board's action. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.140. Supplementary assessment rolls. The department shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.150. Collection and deposit. (a) The tax levied by § 10(a) of this chapter is payable to the department on or before September 30 of the taxable year.

(b) The department may provide for voluntary prepayment and for payment by installments.

(c) The tax levied under § 10(a) of this chapter, interest and penalties collected with respect to this levy shall be deposited in the general fund. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.160. Interest and penalty. When the tax levied by § 10(a) of this chapter becomes delinquent, a penalty of 10 per cent shall be added. Interest on the delinquent taxes, exclusive of penalty, shall be assessed at a rate of eight per cent a year. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.170. Lien for tax. The tax levied under § 10(a) of this chapter and the interest and penalty provided in § 160 of this chapter are first and paramount liens on the property subject to tax under this chapter. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.180. Remedy. The remedy of distraint of property set out in AS 43.20.270 applies to the tax levied by § 10(a) of this chapter. However, only property subject to the tax may be distrained. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.190. Penalties. A person who knowingly fails to file a return when due or who makes a false statement in a return required under this chapter with intent to evade taxation 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 six months, or by both, together with the costs of prosecution, notwithstanding the provisions of AS 12.80.030. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.200. Regulations. The board and the department may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) as appropriate to carry out their respective duties under this chapter. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.210. Definitions. In this chapter

(1) "board" means State Assessment Review Board;

(2) "construction commencement date" means the earlier of April 1, 1974 or the date the following occur:

(A) there has been issued to the owner or his agent right-of-

way permits, leases, and title and other rights in lands, and other approvals, permits, licenses and certificates, by federal, state and local agencies that a reasonable and prudent person would consider adequate to commence construction of the facilities in the expectation that all other approvals, permits, licenses and certificates necessary for the completion of facilities will be obtained;

(B) all approvals, permits, licenses and certificates are in full force and effect, unrevoked and without any modification, which might jeopardize the completion or continued construction of the facilities; and

(C) no order, judgment, decree, determination or award of a federal, state or local court or administrative or regulatory agency enjoining, either temporarily or permanently, the construction or the continuation of construction of the facilities is in effect;

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

(4) "gas" includes all natural gas and all hydrocarbons produced at the wellhead not defined as oil;

(5) "intangible drilling expenses" means those expenses defined in sec. 263(c) of the United States Internal Revenue Code as defined on the effective date of this paragraph;

(6) "taxable property" means real and tangible personal property used or committed by contract or other agreement for use within this state primarily in the exploration for, production of, or pipeline transportation of gas or unrefined oil (except for property used solely for the retail distribution or liquefaction of natural gas), or in the operation or maintenance of facilities used in the exploration for, production of, or pipeline transportation of gas or unrefined oil, including machinery, appliances, supplies, equipment, drilling rigs, wells (whether producing or not), gathering lines and transmission lines, pumping stations, compressor stations, power plants, topping plants, processing units, roads, tank farms, tanker terminals, docks and other port facilities, air strips and communication equipment and facilities, maintenance equipment and facilities, and maintenance camps and other related facilities; "taxable property" does not include permanent residences, office buildings requiring substantial local government services, or gas pipeline systems operated as utilities and regulated by the Alaska Public Utilities Commission;

(7) "unrefined oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas. (§ 1 ch 1 FSSLA 1973)

Chapter 57. Oil and Gas Regulation and Conservation Tax.

Section

10. Oil and gas regulation and conservation tax

Sec. 43.57.010. Oil and gas regulation and conservation tax. (a) There is levied upon the producer of oil a tax of one-eighth of one cent on each barrel of oil removed or sold from each lease or property in the state, less any part the ownership or right to which is exempt from taxation.

(b) The tax is in addition to and shall be administered and paid in the same manner as the taxes imposed by ch. 55 of this title. Producers of oil are required to make reports of production in the same manner and under the same penalties as required by ch. 55 of this title.

(c) Proceeds from the tax shall be paid into the general fund. (§ 1 ch 5 FSSLA 1973)

Effective date. — Section 2, ch. 5, FSSLA 1973, provides: "This Act takes effect January 1, 1974."

Chapter 60. Excise Tax on Intoxicating Liquors.

Sec. 43.60.010. Liquor tax.

AS 43.26.010(a) covers the malt liquor excise tax.—The commissioner of economic development was justified in determining that AS 43.26.010(a) covered the malt liquor excise tax. *K & I Distrib., Inc. v. Murkowski*, Sup. Ct. Op. No. 694 (File No. 1322), 486 P.2d 351 (1971).

The application of an industrial

credit to the malt liquor excise tax is not unconstitutional as being in violation of both the commerce clause of the United States Constitution and the equal protection clause of the 14th amendment of the United States Constitution. *K & I Distrib., Inc. v. Murkowski*, Sup. Ct. Op. No. 694 (File No. 1322), 486 P.2d 351 (1971).

Chapter 70. Alaska Business License Act.

Section

30. Levy and computation of license fee

Sec. 43.70.030. Levy and computation of license fee.

(b) The license fee for each national bank and state bank, trust company and savings and loan association is seven per cent of its net income. Net income means the taxable income of each such taxpayer before net operating loss deduction and special deductions, computed as required under the Internal Revenue Code of the United States and includes all other income including income from federal, state or municipal obligation. Each of these taxpayers shall submit a copy of the income tax return which it files with the

Chapter 57. Oil and Gas Regulation and Conservation Tax.

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(b) The tax is in addition to and shall be administered and paid in the same manner as the taxes imposed by ch. 55 of this title. Producers of oil are required to make reports of production in the same manner and under the same penalties as required by ch. 55 of this title.

(c) Proceeds from the tax shall be paid into the general fund. (§ 1 ch 5 FSSLA 1973)

Effective date. — Section 2, ch. 5, FSSLA 1973, provides: "This Act takes effect January 1, 1974."

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1 IN THE SENATE

BY HUBER AND HOHMAN

2 SENATE BILL NO. 103

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 oil and gas exploration,
7 production and pipeline transportation property tax;
8 and providing for an effective date."

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

10 * Section 1. AS 43.56.010(a) is amended to read:

11 (a) An annual tax of 20 mills is levied each tax year beginning
12 January 1, 1974, on the full and true value of taxable property taxable
13 under this chapter, except as provided in sec. 15 of this chapter.

14 * Sec. 2. AS 43.56 is amended by adding a new section to read:

15 Sec. 43.56.015. OIL AND GAS IN PLACE. (a) An annual tax of 20
16 mills is levied each year beginning January 1, 1974, on the full and
17 true value of

18 (1) oil and gas leases within the state under which there
19 are proven reserves; and

20 (2) ownership interests in proven oil and gas reserves in
21 place within the state.

22 (b) Oil leases and ownership interests in proven oil reserves
23 are exempt from taxation under (a) of this section for a period of
24 five years from (1) the date of the original lease, or (2) the date
25 the existence of oil reserves under the land covered by the lease
26 or interest is established to a reasonable certainty, whichever occurs
27 earlier.

28 * Sec. 3. AS 43.56.020 is amended by adding a new subsection to read:

29 (c) Producing oil leases or properties which are paying gross

1 production tax under ch. 55 of this title during the assessment year
2 in an amount which exceeds the amount of tax that would otherwise be
3 due under sec. 15 of this chapter for that year are exempt from the
4 taxes levied or authorized under this chapter for that year.

5 * Sec. 4. AS 43.56.060(a) is amended to read:

6 (a) The department shall assess property for the tax levied
7 under sec. 10(b) of this chapter and AS 29.53.045 on property used or
8 committed by contract or other agreement for use for the pipeline
9 transportation of gas or unrefined oil or for the production of gas
10 or unrefined oil, and under sec. 15 of this chapter, at its full and
11 true value as of January 1 of the assessment year.

12 * Sec. 5. AS 43.56.060 is amended by adding a new subsection to read:

13 (g) The full and true value of property taxable under sec. 15
14 of this chapter is the estimated price which the property would bring
15 in an open market and under the then prevailing market conditions in
16 a sale between a willing seller and a willing buyer both conversant
17 with the property and with prevailing general price levels. In deter-
18 mining this value the assessor shall take into account the discounted
19 value of the expected future net income from the production of proven
20 reserves under the property.

21 * Sec. 6. AS 43.56.150(c) is amended to read:

22 (c) The taxes [TAX] levied under secs. [SEC.] 10(a) and 15 of
23 this chapter, interest and penalties collected with respect to these
24 levies [THIS LEVY] shall be deposited in the general fund.

25 * Sec. 7. AS 43.56.150 is amended by adding a new subsection to read:

26 (d) The amount of oil properties production tax paid under ch. 55
27 of this title on a particular lease or interest during the assessment
28 year may be taken as a credit against the tax due under sec. 15 of
29 this chapter on that lease or interest.

1 * Sec. 8. AS 43.56.160 is amended to read:

2 Sec. 43.56.160. INTEREST AND PENALTY. When the tax levied by
3 sec. 10(a) or sec. 15 of this chapter becomes delinquent, a penalty of
4 10 per cent shall be added. Interest on the delinquent taxes, exclusive
5 of penalty, shall be assessed at a rate of eight per cent a year.

6 * Sec. 9. AS 43.56.170 is amended to read:

7 Sec. 43.56.170. LIEN FOR TAX. The taxes [TAX] levied under
8 secs. [SEC.] 10(a) and 15 of this chapter and the interest and penalty
9 provided in sec. 160 of this chapter are first and paramount liens on
10 the property subject to tax under this chapter.

11 * Sec. 10. AS 43.56.180 is amended to read:

12 Sec. 43.56.180. REMEDY. The remedy of distraint of property set
13 out in AS 43.20.270 applies to the taxes [TAX] levied by secs. [SEC.]
14 10(a) and 15 of this chapter. However, only property subject to [THE]
15 tax may be distrained.

16 * Sec. 11. AS 43.56.210(6) is amended to read:

17 (6) "taxable property" means property described in sec. 15
18 of this chapter or real and tangible personal property used or committed
19 by contract or other agreement for use within this state primarily in
20 the exploration for, production of, or pipeline transportation of gas
21 or unrefined oil (except for property used solely for the retail distri-
22 bution or liquefaction of natural gas), or in the operation or mainte-
23 nance of facilities used in the exploration for, production of, or
24 pipeline transportation of gas or unrefined oil, including machinery,
25 appliances, supplies, equipment, drilling rigs, wells (whether pro-
26 ducing or not), gathering lines and transmission lines, pumping
27 stations, compressor stations, power plants, topping plants, processing
28 units, roads, tank farms, tanker terminals, docks and other port
29 facilities, air strips and communication equipment and facilities,

1 maintenance equipment and facilities, and maintenance camps and other
2 related facilities; "taxable property" does not include permanent
3 residences, office buildings requiring substantial local government
4 services, or gas pipeline systems operated as utilities and regulated
5 by the Alaska Public Utilities Commission;

6 * Sec. 12. This Act takes effect January 1, 1976.
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Introduced: 1/29/75
Referred: Resources and
Finance

BY BROWN, BOWMAN, BRADNER,
COTTEN, GARDINER, MCKINNON,
MILLER, NAUGHTON AND PARKER

IN THE HOUSE

HOUSE BILL NO. 102

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the oil and gas exploration,
production and pipeline transportation property tax;
and providing for an effective date."

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

* Section 1. AS 43.56.010(a) is amended to read:

(a) An annual tax of 20 mills is levied each tax year beginning
January 1, 1974, on the full and true value of taxable property taxable
under this chapter, except as provided in sec. 15 of this chapter.

* Sec. 2. AS 43.56 is amended by adding a new section to read:

Sec. 43.56.015. OIL AND GAS IN PLACE. An annual tax of 20 mills
is levied each year beginning January 1, 1974, on the full and true
value of

(1) oil and gas leases within the state under which there
are proven reserves; and

(2) ownership interests in proven oil and gas reserves in
place within the state,

* Sec. 3. AS 43.56.020 is amended by adding a new subsection to read:

(c) Producing oil leases or properties which are paying gross
production tax under ch. 55 of this title during the assessment year
in an amount which exceeds the amount of tax that would otherwise be
due under sec. 15 of this chapter for that year are exempt from the
taxes levied or authorized under this chapter for that year.

* Sec. 4. AS 43.56.060(a) is amended to read:

(a) The department shall assess property for the tax levied

under sec. 10(b) of this chapter and AS 29.53.045 on property used or committed by contract or other agreement for use for the pipeline transportation of gas or unrefined oil or for the production of gas or unrefined oil, and under sec. 15 of this chapter, at its full and true value as of January 1 of the assessment year.

* Sec. 5. AS 43.56.060 is amended by adding a new subsection to read:

(g) The full and true value of property taxable under sec. 15 of this chapter is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels. In determining this value the assessor shall take into account the discounted value of the expected future net income from the production of proven reserves under the property.

* Sec. 6. AS 43.56.150(c) is amended to read:

(c) The taxes [TAX] levied under secs. [SEC.] 10(a) and 15 of this chapter, interest and penalties collected with respect to these levies [THIS LEVY] shall be deposited in the general fund.

* Sec. 7. AS 43.56.150 is amended by adding a new subsection to read:

(d) The amount of oil properties production tax paid under ch. 55 of this title on a particular lease or interest during the assessment year may be taken as a credit against the tax due under sec. 15 of this chapter on that lease or interest.

* Sec. 8. AS 43.56.160 is amended to read:

Sec. 43.56.160. INTEREST AND PENALTY. When the tax levied by sec. 10(a) or sec. 15 of this chapter becomes delinquent, a penalty of 10 per cent shall be added. Interest on the delinquent taxes, exclusive of penalty, shall be assessed at a rate of eight per cent a year.

* Sec. 9. AS 43.56.170 is amended to read:

1 Sec. 43.56.170. LIEN FOR TAX. The taxes [TAX] levied under
2 secs. [SEC.] 10(a) and 15 of this chapter and the interest and penalty
3 provided in sec. 160 of this chapter are first and paramount liens on
4 the property subject to tax under this chapter.

5 * Sec. 10. AS 43.56.180 is amended to read:

6 Sec. 43.56.180. REMEDY. The remedy of distraint of property set
7 out in AS 43.20.270 applies to the taxes [TAX] levied by secs. [SEC.,]
8 10(a) and 15 of this chapter. However, only property subject to [THE]
9 tax may be distrained.

10 * Sec. 11. AS 43.56.210(6) is amended to read:

11 (6) "taxable property" means property described in sec. 15
12 of this chapter or real and tangible personal property used or com-
13 mitted by contract or other agreement for use within this state
14 primarily in the exploration for, production of, or pipeline transpor-
15 tation of gas or unrefined oil (except for property used solely for
16 the retail distribution or liquefaction of natural gas), or in the
17 operation or maintenance of facilities used in the exploration for,
18 production of, or pipeline transportation of gas or unrefined oil,
19 including machinery, appliances, supplies, equipment, drilling rigs,
20 wells (whether producing or not), gathering lines and transmission
21 lines, pumping stations, compressor stations, power plants, topping
22 plants, processing units, roads, tank farms, tanker terminals, docks
23 and other port facilities, air strips and communication equipment and
24 facilities, maintenance equipment and facilities, and maintenance
25 camps and other related facilities; "taxable property" does not include
26 permanent residences, office buildings requiring substantial local
27 government services, or gas pipeline systems operated as utilities and
28 regulated by the Alaska Public Utilities Commission;

29 * Sec. 12. This Act takes effect January 1, 1976.

1 IN THE HOUSE

BY COWPER

2 HOUSE BILL NO.

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 oil and gas exploration,
7 production and pipeline transportation property tax;
8 and providing for an effective date."

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

10 * Section 1. AS 43.56.010(a) is amended to read:

11 (a) An annual tax of 20 mills is levied each tax year beginning
12 January 1, 1974, on the full and true value of taxable property taxable
13 under this chapter, except as provided in sec. 15 of this chapter.

14 * Sec. 2. AS 43.56 is amended by adding a new section to read:

15 Sec. 43.56.015. OIL AND GAS IN PLACE. (a) An annual tax of 20
16 mills is levied automatically at such time as the state's general fund
17 cash balance reaches \$200,000,000 on the full and true value of (1) oil
18 and gas leases within the state under which there are proven reserves;
19 and (2) ownership interests in proven oil and gas reserves in place
20 within the state. The tax due for the calendar year of the original
21 levy is the full amount which is due for the year reduced pro rata by
22 the number of days from January 1 to the date of the original levy. In
23 years subsequent to the original levy the tax is levied each year be-
24 ginning January 1.

25 (b) Oil and gas leases and ownership interests in proven oil or
26 gas reserves are exempt from taxation under (a) of this section for a
27 period of five years from (1) the date of the original lease of all or
28 part of the property described in the lease or ownership interest being
29 taxed, or (2) the date of the first completion, suspension, or abandon-

1 ment of a discovery well in a field or pool which in whole or in part.
2 underlies or comprises the lease or ownership interest, whichever occurs
3 first.

4 (c) Producing oil or gas leases or ownership interests in proven
5 oil or gas reserves which are paying gross production tax under ch. 55
6 of this title during an assessment year in an amount which is equal to
7 or exceeds the tax due under (a) of this section for that year are
8 exempt from taxes under (a) of this section for that year.

9 (d) Producing oil or gas leases or properties which are paying
10 gross production tax under ch. 55 of this title during an assessment
11 year in an amount which is less than the amount due under (a) of this
12 section shall reduce the tax due under (a) of this section by the gross
13 production tax actually paid in the assessment year after the subtract
14 of the credit allowable under (c) of this section.

15 (e) Tax paid under (a) of this section may be used as a credit
16 against gross production tax due under ch. 55 of this title in subse-
17 quent years; however, the credit used in any one tax year may not exceed
18 50 per cent of the gross production tax due.

19 " Sec. 3. AS 43.55.060 is amended by adding new subsections to read:

20 (b) The department shall assess property for the tax levied under
21 sec. 15 of this chapter within 60 days of the effective date of this Act
22 on the basis of information presently available to the department.

23 (1) The full and true value of property taxable under sec. 15 of
24 this chapter is the estimated price which the property would bring in an
25 open market and under the prevailing market conditions in a sale between
26 a willing buyer and a willing seller both conversant with the property
27 and with prevailing general price levels. In determining this value the
28 assessor shall take into account the discounted value of the expected
29 future net income from the production of proven reserves under the

1 property.

2 ■ Sec. 4. AS 43.56.100 is amended by adding a new subsection to read:

3 (c) The department shall send to every owner of taxable property
4 named in the assessment roll a notice of the assessment made under sec.
5 60(h) of this chapter within 75 days of the effective date of this Act.

6 ■ Sec. 5. AS 43.56.120 is amended by adding a new subsection to read:

7 (c) If an owner appeals a ruling of the department made under an
8 appeal of an assessment of property made for purposes of the tax levied
9 under sec. 15 of this chapter, the owner, by filing a notice of appeal
10 to the board, agrees to furnish the state with all its records and
11 research information relating to the property which is the subject of
12 the appeal, including but not limited to (1) well logs; (2) records of
13 well testing and completion; and (3) geological and geophysical infor-
14 mation including seismic data. The information contained in the records
15 and research information shall be kept confidential by the board unless
16 litigation is instituted after a decision by the board.

17 ■ Sec. 6. AS 43.56.150(c) is amended to read:

18 (c) The taxes [TAX] levied under secs. [SEC.] 10(a) and 15 of
19 this chapter, interest and penalties collected with respect to these
20 levies [THIS LEVY] shall be deposited in the general fund, except that
21 two per cent of the taxes collected under sec. 15 of this chapter shall
22 be deposited into the Alaska Native claims settlement fund.

23 ■ Sec. 7. AS 43.56.160 is amended to read:

24 Sec. 43.56.160. INTEREST AND PENALTY. When the tax levied by sec.
25 10(a) or sec. 15 of this chapter becomes delinquent, a penalty of 10 per
26 cent shall be added. Interest on the delinquent taxes, exclusive of
27 penalty, shall be assessed at a rate of eight per cent a year.

28 ■ Sec. 8. AS 43.56.170 is amended to read:

29 Sec. 43.56.170. LIEN FOR TAX. The taxes [TAX] levied under secs.

1 [SEC.] 10(a) and 15 of this chapter and the interest and penalty provided
2 in sec. 160 of this chapter are first and paramount liens on the property
3 subject to tax under this chapter.

4 * Sec. 9. AS 43.56.180 is amended to read:

5 Sec. 43.56.180. REMEDY. The remedy of distraint of property set
6 out in AS 43.20.270 applies to the taxes [TAX] levied by secs. [SEC.]
7 10(a) and 15 of this chapter. However, only property subject to [THE]
8 tax may be distrained.

9 * Sec. 10. AS 43.56.210(6) is amended to read:

10 (6) "taxable property" means property described in sec. 15 of
11 this chapter or real and tangible personal property used or committed by
12 contract or other agreement for use within this state primarily in the
13 exploration for, production of, or pipeline transportation of gas or
14 unrefined oil (except for property used solely for the retail distri-
15 bution or liquefaction of natural gas), or in the operation or mainte-
16 nance of facilities used in the exploration for, production of, or
17 pipeline transportation of gas or unrefined oil, including machinery,
18 appliances, supplies, equipment, drilling rigs, wells (whether producing
19 or not), gathering lines and transmission lines, pumping stations,
20 compressor stations, power plants, topping plants, processing units,
21 roads, tank farms, tanker terminals, docks and other port facilities,
22 air strips and communication equipment and facilities, maintenance
23 equipment and facilities, and maintenance camps and other related facil-
24 ities; "taxable property" does not include permanent residences, office
25 buildings requiring substantial local government services, or gas pipe-
26 line systems operated as utilities and regulated by the Alaska Public
27 Utilities Commission;

28 * Sec. 11. AS 43.56.210 is amended by adding a new paragraph to read:

29 (8) "proven reserves" means the volume of oil or gas in a

1 known deposit which geological and engineering information indicate to
2 be reasonably expected to be produced under current economic and techno-
3 logical knowledge.

4 * Sec. 12. This Act takes effect immediately in accordance with AS 01.10.-
5 070(c).

6 * Sec. 13. This Act terminates January 1, 1982.
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IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

SENATE BILL NO. 276

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the oil and gas reserves ad valorem tax and its relationship to other oil and gas taxation; and providing for an effective date."

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

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

CHAPTER 58. OIL AND GAS RESERVES AD VALOREM TAX.

Sec. 43.58.010. AD VALOREM TAX. (a) An annual tax is levied each tax year beginning January 1, 1976, on the full and true value of taxable property under this chapter.

(b) The legislature shall annually determine by law the rate of the levy before April 1.

(c) If on April 1 the legislature has not determined the rate of levy, the rate of levy shall be zero for that year. The rate of levy may not exceed 20 mills.

Sec. 43.58.020. EXEMPTIONS. The following interests in the proven reserves of a lease or property shall be exempt from taxation under this chapter:

(1) any interest of the United States or the state;

(2) any interest exempted from taxation by sec. 21 of the Alaska Native Claims Settlement Act (P.L. 92-203; 43 U.S.C. sec. 1620);

(3) all other interests in the proven reserves of a lease or property during a five-year period commencing with the date of the first lease, concession, joint venture, contract or any other agreement

1 that is made for the oil and gas development of a part or all of the
2 land subject to that lease or property;

3 (4) taxable property under ch. 56 of this title.

4 Sec. 43.58.030. CREDIT AGAINST TAX. There shall be allowed, as
5 a credit against the tax levied under this chapter for a lease or
6 property, the amount of oil and gas properties production taxes paid
7 under ch. 55 of this title for that lease or property for the
8 12 months before the tax payment date under this chapter. The credit
9 may not exceed the amount of tax due under this chapter. For purposes
10 of this section, the credit shall be calculated without regard to the
11 allowance of any credit under AS 43.55.018 against the taxes levied by
12 ch. 55 of this title.

13 Sec. 43.58.040. ASSESSMENT. (a) The department shall assess
14 taxable property under this chapter at its full and true value as of
15 January 1 of each year.

16 (b) The full and true value of taxable property under this
17 chapter is the estimated price which the property would bring in an
18 open market and under the then prevailing market conditions in a sale
19 between a willing seller and a willing buyer both conversant with the
20 property and with general price levels. In determining this value,
21 the department shall consider all factors which may be known by the
22 department to affect the value of the proven reserves of the lease or
23 property, including but not limited to the discounted present value of
24 the expected future net income from the lease or property.

25 Sec. 43.58.050. ASSESSMENT ROLL. The department shall prepare
26 annually the assessment roll for taxation under this chapter. The
27 roll shall contain:

- 28 (1) a description of all taxable property;
29 (2) the assessed value of all taxable property; and

1 (3) the names and addresses of persons owning or otherwise
2 holding an interest in taxable property.

3 Sec. 43.58.060. ASSESSMENT NOTICE. On or before April 15 of
4 each year, the department shall send to every owner of taxable property
5 named in the assessment roll a notice of assessment showing the assessed
6 value of the property. The notice of assessment is effective on the
7 date of its mailing.

8 Sec. 43.58.070. APPEAL. (a) A person aggrieved by the action
9 of the department in making an assessment may request a hearing not
10 later than 20 days after the effective date of the assessment notice.

11 (b) At the hearing the department may subpoena witnesses and may
12 administer oaths and make inquiries necessary to determine the correct-
13 ness of the assessment. At the hearing the appellant bears the burden
14 of proof, and in the absence of this proof the assessment will be
15 upheld. If the department determines that a correction is warranted,
16 the department shall correct the assessment and the assessment roll.

17 (c) Within 30 days after the decision by the department after a
18 hearing, a person aggrieved by the decision may appeal to the superior
19 court. If, after the appeal is heard, it appears that the assessment
20 was correct, the court shall confirm the tax. If incorrect, the court
21 shall determine the amount of tax and, if the person aggrieved is
22 entitled to recover the tax or part of it, the court shall order the
23 repayment.

24 Sec. 43.58.080. CERTIFICATION. On or before June 15 of each
25 year, the department shall certify the final assessment roll and mail
26 to the operator or other person filing a return and paying tax on the
27 taxable property a statement of the amount of tax due.

28 Sec. 43.58.090. SUPPLEMENTAL ASSESSMENT ROLLS. The department
29 shall include property omitted from the assessment roll on a supple-

1 mental roll, using the procedures set out in this chapter for the
2 original roll.

3 Sec. 43.58.100. INVESTIGATION. (a) The department may make an
4 investigation of property on which a return has been filed or on
5 property for which no return has been filed. In either case, the
6 department may make its own valuation of the taxable property, which
7 is prima facie evidence of full and true value.

8 (b) An employee or agent of the department may enter any premise
9 necessary for the investigation during reasonable hours and may
10 examine property and appropriate records. The owner of taxable property
11 upon request shall furnish to the employee or agent of the department
12 reasonable assistance required for the investigation. If refused
13 entry, the department may seek a court order to compel entry.

14 (c) For the purpose of the investigation, the operator or other
15 person filing a return and paying the tax on the taxable property or
16 his representative may be required to present himself for examination
17 under oath by the department.

18 Sec. 43.58.110. RETURNS AND PAYMENT OF TAX. (a) The operator
19 of a lease or property is primarily liable for payment of the tax
20 levied by this chapter. All other persons owning or otherwise holding
21 an interest or right in that lease or property are secondarily liable
22 for payment of the tax levied by this chapter.

23 (b) The operator of a lease or property shall submit returns on
24 the form prescribed by the department and shall make payment of the
25 tax levied under this chapter, on behalf of itself and all other
26 persons holding an interest or right in that lease or property. With
27 the written approval of the department, a non-operator of the lease or
28 property may submit returns or make payment of the tax levied under
29 this chapter, on behalf of himself and such other persons as the

department may approve. All returns shall be filed on or before February 1 of each year.

(c) The tax levied under this chapter is payable to the department on or before June 30 of each year or in installments at the times and under the conditions the department may by regulation require.

(d) With the prior written approval of the department, a person submitting returns or making payments as required under this chapter for more than one lease or property may regard those leases or properties as a single lease or property for purposes of submitting those reports or making those payments.

(e) An operator or other person making payment of the tax levied under this chapter on behalf of one or more other persons owning or otherwise holding an interest in a lease or property may withhold a proportionate share of the payment from any proceeds or other benefits from the lease or property owed to any person on whose behalf the payment is made. Unless otherwise specifically provided by written contract or agreement, the person so withholding a proportionate share of the tax levied under this chapter incurs no liability to those from whom it is withheld by virtue of having made the withholding.

(f) By written notice the department may require a person filing a return to submit additional information to the department no later than 30 days after the notice.

Sec. 43.58.120. CIVIL PENALTY. Five per cent shall be added to the tax for each 30-day period or fraction of that period during which the taxpayer fails to file a return or pay the full amount of the tax, or a portion or a deficiency of the tax due and payable as finally determined by the department and required by this chapter, unless it is shown that the failure is due to a reasonable cause and not to willful neglect. The penalty may not exceed 25 per cent in the aggregate.

gate. The penalty shall be collected at the same time, in the same manner and as a part of the original tax, but if the original tax is paid before the neglect is discovered the penalty shall be collected in the same manner as the original tax. The department shall describe by regulation circumstances which constitute reasonable cause for purposes of this section.

Sec. 43.58.130. INTEREST. When the tax levied in this chapter becomes delinquent it bears interest at the rate of eight per cent a year.

Sec. 43.58.140. LIEN. The tax, penalty and interest payable under this chapter are first and paramount liens on the property subject to tax under this chapter.

Sec. 43.58.150. REMEDY. The remedy of distraint of property set out in AS 43.20.270 applies to the tax levied by this chapter.

Sec. 43.58.160. REGULATIONS. The department may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) as appropriate to administer and enforce this chapter.

Sec. 43.58.170. TERMINATION OF TAX. The tax imposed by this chapter shall terminate on December 31, 1977.

Sec. 43.58.180. ACCRUAL OF EARLY DEVELOPMENT INCENTIVE CREDIT.

(a) An early development incentive credit, calculated in accordance with this section, shall be applied to the tax payable under AS 43.55 as provided in AS 43.55.018. The early development incentive credit for a lease or property is zero until changed as provided in this section.

(b) The early development incentive credit for a lease or property shall be increased each calendar year by the amount of net tax paid under this chapter.

(c) The early development incentive credit for a lease or property

(7) "proven reserves" means the volumes of oil and gas in a known deposit which geological and engineering information indicate to be recoverable in the future under prevailing economic conditions and technology;

(8) "taxable property" means any interest in the proven reserves of a lease or property.

" Sec. 2. AS 43.55.010(b) is amended to read:

(b) Except as provided in AS 43.58, the [THE] tax imposed by this chapter is in place of all taxes now imposed by the state or any of its municipalities, and neither the state nor a municipality may impose a tax upon

(1) [deleted]

(2) producing oil or gas leases;

(3) oil or gas produced or extracted in the state;

(4) [deleted]

(5) the value of intangible drilling and exploration expenses.

" Sec. 3. AS 43.55 is amended by adding a new section to read:

Sec. 43.55.018. CREDIT AGAINST TAX. (a) There shall be allowed as a credit against the taxes levied under this chapter for a lease or property the early development incentive credit accrued for that lease or property under AS 43.58.180. In no event may the credit allowed for a lease or property exceed 50 per cent of the taxes levied under this chapter for that lease or property.

(b) The credit shall be allowed on a monthly basis.

" Sec. 4. AS 43.55.140(8) is repealed and re-enacted to read:

(8) "lease or property" means

(A) a lease or other property that includes mineral rights in oil and gas,

(B) a leasehold interest in oil and gas,

1 shall be reduced each month by the amount of tax credit allowed in
2 that month under AS 43.55.018 for that lease or property.

3 Sec. 43.58.190. DEFINITIONS. In this chapter:

4 (1) "department" means the department of revenue;

5 (2) "gas" means all hydrocarbon substances not defined as
6 oil in this chapter;

7 (3) "lease or property" means

8 (A) a lease or other property that includes mineral
9 rights in oil and gas,

10 (B) a leasehold interest in oil and gas,

11 (C) a working interest, royalty interest, overriding
12 royalty interest, net profit interest or any other interest in a
13 lease, concession, joint venture or other agreement for oil and
14 gas exploration, development or production,

15 (D) a working interest, royalty interest, overriding
16 royalty interest, net profit interest or any other interest in an
17 agreement for unitization or pooling under the provisions of sec.
18 611(b)(3) of the Internal Revenue Code of 1954 as defined on the
19 effective date of this paragraph;

20 (4) "net tax paid under this chapter" means the amount of
21 tax payable under sec. 10 of this chapter, less the credit allowed
22 under sec. 30 of this chapter;

23 (5) "oil" means crude petroleum oil and other hydrocarbons,
24 regardless of gravity which, when recovered, are recovered at the
25 wellhead in liquid form, and the liquid hydrocarbons known as distil-
26 late or condensate that are recovered by separation from gas other
27 than at a gas processing plant;

28 (6) "operator" means the person conducting the exploration,
29 development or production operation for a lease or property;

(C) a working interest, royalty interest, overriding royalty interest, net profit interest or any other interest in a lease, concession, joint venture or other agreement for oil and gas exploration, development or production,

(D) a working interest, royalty interest, overriding royalty interest, net profit interest or any other interest in an agreement for unitization or pooling under the provisions of sec. 614(b)(3) of the Internal Revenue Code of 1954 as defined on the effective date of this paragraph;

* Sec. 5. Sec. 29.53.050(b) is amended to read:

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes which result in tax revenues from all sources exceeding either (1) \$1,000 a year for each person residing within their boundaries or (2) when combined with the value of property otherwise taxable by the municipality, the product of 225 per cent of the average per capita assessed full and true value in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax the combined levy of which would result in tax revenues from all sources exceeding either (1) \$1,000 a year for each person residing within their boundaries or (2) when combined with the value of property otherwise taxable by the municipality, the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection population shall be determined by

1 the commissioner of community and regional affairs based on the latest
2 statistics of the United States Bureau of the Census or on other
3 reliable population data. For purposes of this subsection the average
4 per capita assessed full and true value of property in the state shall
5 be calculated without regard to the assessed value of taxable property
6 under AS 43.58.

7 * Sec. 6. Sec. 43.56.010(c) is amended to read:

8 (c) If the total value of assessed property of a municipality
9 taxing under AS 29.53.045(c) exceeds the product of 225 per cent of
10 the average per capita assessed full and true value of property in the
11 state (to be determined by the department and reported to each munici-
12 pality by January 15 of each year) multiplied by the number of residents
13 of the taxing municipality, the department shall designate the portion
14 of the tax base against which the local tax may be applied. For pur-
15 poses of this subsection the average per capita assessed full and true
16 value of property in the state shall be calculated without regard to
17 the assessed value of taxable property under AS 43.58.

18 * Sec. 7.. This Act takes effect on April 30, 1975.
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Notes to Appendices One, Two, Three and Four

1. Quantities produced and production costs based on H. J. Gruy and Associates model used for the Aerospace Corporation "Alaska Natural Gas Transportation Systems: report to the Department of Interior; specifically run 44102, tables 3.066B and 4.04B.
2. Capital costs are based on H. J. Gruy and Associates model as are quantities produced and production costs. Capital costs are varied between Appendix one and two to determine sensitivity of costs and tax revenues to greater depreciation costs.
3. Transportation costs are based on preliminary "Pipeline Tariff Summary," Oct. 13, 1975, by Division of Oil and Gas, Department of Revenue.
4. All values are in 1975 dollars except for transportation which allows for a three percent per year increase in operating expenses which slightly over states transportation expenses in the later years of operations.
5. PRICE - Appendix one and Appendix two: Price set at \$7.00 per barrel to determine if this price and the proposed tax approach would yield returns to capital high enough to clearly make further development at this "long term price" competitive in the capital markets. NOTE: Under Appendix two, even if original capital costs are increased by 500 million to 3.2 million, the present discounted rate of return would still be 41 percent.
6. PRICE - Appendix three: This is based on total decontrol of Prudhoe Bay oil. It assumes it will have the same price as OPEC oil and that over time both will be forced down to the long term price. NOTE: Both may appear to have rising prices but when inflation is considered, the price will be falling in real purchasing power terms. This has actually happened to OPEC prices in the past year.
7. * PRICE - Appendix three: This is based on the recently passed and signed "Energy Policy and Conservation Act." It is assumed that:
1) Prudhoe Bay oil will be treated like other oil and will generally sell for the "average weighted price" of \$7.66 plus the three percent incentive factor allowed; 2) OPEC prices start at \$14.00 in 1975 and in real purchasing power terms (constant dollars) fall three percent a year; and 3) in the eleventh year of production OPEC and the Prudhoe Bay price are equal and both begin to fall at three percent per year to the long term price of \$7.00 per barrel.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

J. HENRY WILKINSON, JR.

Attorney at Law

5505 CAPRICE DRIVE

AUSTIN, TEXAS 78731

April 12, 1975

The Honorable John Huber
Senator and Chairman
Special Committee on Taxation & Revenue
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: SB ____ to provide for ad valorem taxes on oil and gas in place
and for certain amendments to the present Alaska tax statutes.

Dear John:

You asked that I draft a bill for the above purpose based on the study which I furnished you on April 7, 1975, which reflected the work of Joseph P. Witherspoon and myself, and on the conclusions reached in consultation with you, based on various conferences and the testimony that we have heard this week.

I enclose the requested bill, SB _____. In Appendix "A" to this letter I have set out the corresponding provisions of SB 276 (the Governor's bill) and the sources of the provisions of SB 276 in the last two columns of Exhibit "A", indicating the section of SB 276 in the penultimate column and other sources in the last column, all by section number.

The principle changes from SB 276 to SB _____ herewith are the following:

1. SB _____ broadens the exemptions accorded to native interests;
2. The early production incentive credit provided by SB 276 is eliminated;

3. The termination date provided by SB 276 is eliminated so as to make the new bill a permanent provision of the Alaska statutes.
4. SB ____ provides for review by the State Assessment Review Board, and reconstitutes the membership of that Board.
5. SB ____ provides for returns by each owner and for taxation of his interest, not for returns and payments by the operator as in SB 276.

Section 1 of SB ____ adds a new chapter, AS 58, as does SB 276. I shall now review briefly the changes that are made in SB ____ compared to SB 276. This review may be facilitated by reference to the cross-reference table provided in Appendix "A". I shall take up the section numbers of AS 43.58 proposed to be added by SB ____.

Section .010 AD VALOREM TAX. This provision is the same as that in SB 276, and provides for an annual rate to be fixed by the Legislature.

Section .020 EXEMPTIONS. The exemptions correspond to those set out in SB 276, except that Section .020 (2), providing for exemption of native interests, has been broadened to read as provided in SB ____.

Section .030 CREDIT AGAINST TAX. This provision for a credit against the new ad valorem tax for the amount of production taxes paid under AS 43.55 has been modified to provide that such credit shall be based upon the production taxes paid for the twelve months of the preceding calendar year as determined without reference to interest or penalty. Further modification limits the credit to the amount of the new ad valorem tax as determined without reference to interest or penalties and without regard to any credit.

Section .040 ASSESSMENT. This provision is based upon that in SB 276.

Section .050 ASSESSMENT ROLL, Section .060 RETURNS, and .070 INVESTIGATIONS. As a result of the provision for review by the State Assessment Review Board, these sections have been changed to meet that requirement and are based upon the present provisions of AS 43.56 as indicated.

Section .080 ASSESSMENT NOTICE. This provision is taken from SB 276, but the date of sending the notice is advanced from April 15 to March 15 because of the adoption of a State Assessment Review Board appellate procedure.

Section .090 APPEAL TO THE DEPARTMENT. To conform to the addition of the provision for appeal to the State Assessment Review Board, the provision for appeal to the Department has been modified to conform thereto, and is based upon AS 43.56.110 as indicated.

Section .100 APPEAL TO THE STATE ASSESSMENT REVIEW BOARD and Section .110 HEARINGS OF STATE ASSESSMENT REVIEW BOARD. These provisions are for the review by the State Assessment Review Board and are based upon the present provisions of AS 43.56 as indicated. It should be noted that, at one time, consideration was given to including a subsection 43.58.100 (c) based upon HB 297, Section 5 (Cowper's bill), providing that by filing of a notice of appeal the appellant agrees to furnish the State with certain records. John Messenger has advised that the State has access to such records under existing law and that the provision is unnecessary. Consequently, it has not been included in the draft bill, SB ____.

It should also be noted that the date provided in Section .110 (h) for certification and notice of tax due has been changed from June 1 to June 15 to conform to the time requirements imposed by the provisions for review by the State Assessment Review Board. Your attention is also directed to the fact that Section .110 (i) provides that the appeal from the Board's action to the Superior Court is to be in accordance with and

subject to the provisions of AS 43.56.130 (i). (Provision is made in Section 9 of SB ___, below, concerning appeal to the court.)

Section .120 SUPPLEMENTARY ASSESSMENT ROLLS and Section .130 COLLECTION AND DEPOSIT are based upon the provisions of AS 43.56 as indicated.

Section .140 CIVIL PENALTY, Section .150 INTEREST, and Section .160 LIEN were taken from SB 276 as indicated.

Section .170 REMEDY. The provision for remedy for distraint was taken from AS 43.56 as indicated, but has been modified to extend to the penalty and interest on the ad valorem tax.

Section .180 REGULATIONS. This provision was taken from AS 43.56 as indicated in order to provide for the State Assessment Review Board procedure.

Section .190 DEFINITIONS. The definitions were taken from SB 276 but were renumbered. Section .190 (1) is added to define the "Board" to conform to the addition of procedures before the State Assessment Review Board. Section .190 (4) and (5) were modified to add "production payment" to the definition of a "lease or property."

The above completes the description of the new chapter AS 43.58 to be added by Section 1 of SB ___. The remaining sections of SB ___, numbers 2 and following, provide for amendment of present statutes and for an effective date. These will now be considered.

Section 2. This provision is taken from SB 276 and modifies AS 43.55.010 (b) to except the ad valorem tax to be imposed under AS 43.58 from the exemption provided.

Section 3. This provision repeals and reenacts AS 43.55.140 (8) and is taken from SB 276. Its purpose is to redefine the term "lease or property" in AS 43.55 to correspond with the definition in AS 43.58.190 as provided in SB ____.

Section 4, Section 6 and Section 7. In my study of present law, as covered in my letter to you of April 7, 1975, on pages 5 and 6, a question was raised as to the meaning of the 225% limitation imposed on assessment of tax by municipalities under AS 29.53.045, as set out in 29.53.045 (c), 29.53.050 (b) and in 43.56.010 (c) of the present statutes. Sections 4, 6 and 7 of SB ____ provide for clarification of that ambiguity and apply the limitation of 225% to the values of property taxed by the municipality under AS 29.53 and values otherwise taxed by the municipality, not to the tax under AS 29.53 plus values of other properties taxed by the municipality. In addition, the three sections mentioned are amended by addition of a clause at the end of each which precludes the inclusion of values of oil and gas reserves in place to be taxed under new AS 43.58 in the calculations of the 225% limitation on the municipal tax.

Section 5. This provision reconstitutes the State Assessment Review Board membership to include the commissioners of natural resources, commerce and revenue, with the provision that each commissioner may designate his deputy commissioner to act in his stead, in lieu of the present membership under AS 43.55.040.

Section 8. This section amends AS 43.56.030 to provide for exclusion of the new ad valorem tax under Chapter 58 from the exemptions there provided.

Section 9. This section modifies the provisions of AS 43.56.120 (i) to eliminate the provision for trial de novo and to substitute an appeal on the record of the Board's action, and limits the inquiry

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on that appeal. The purpose is to facilitate proceedings in the Superior Court, to expedite the proceedings and to avoid duplication of effort and costs at the Superior Court level upon appeal from the Board's action. This provision is referred to in SB ___, Section 43.58.110 (i), referred to above.

Section 10. This section provides that the act shall take effect immediately.

It is understood that the draft of SB ___ will be put in suitable form by your legislative draftsman for introduction.

Very truly yours,

J. Henry Wilkinson, Jr.

JHW:kb

Enclosure

cc: Joseph P. Witherspoon

AGO 530553

Cross References from SB 276 to SB _____
and Sources of Draft Bill Provisions

SB 276 S. 1 adds 43.58-	Description	SB S. 1 adds 43.58-	Source	
			SB 276 S. 1 adds 43.58-	Present Statute 43.56-
.010	Ad valorem Tax	.010	.010	
.020	Exemptions	.020	.020	
.030	Credit against tax	.030	.030	
.040	Assessment	.040	.040	
.050	Assessment roll	.050		.090
.110 (b)	Returns	.060		.070
.100	Investigation	.070		.080
.060	Assessment Notice	.080	.060	
.070	Appeal (to department)	.090		.110
.080	Certification: Notice of Tax due (See Secs. .080 and .110 (h) of SB _____).			
---	State Assessment Review Board	.100		.100
---	Hearings of State Assessment Review Board	.110		.130
.090	Supplemental Assessment Rolls	.120		.140
.110 (a)	Payment	.130		.150
.120	Civil Penalty	.140	.140	
.130	Interest	.150	.130	
.140	Lien	.160	.160	
.150	Remedy - Distraint	.170		.170
.160	Regulations	.180		.200
.170	Termination of Tax	---	---	---
.180	Accrual of early development incentive credit	---	---	---

		Source	
<u>SB 276</u>		<u>SB 276</u>	<u>Present</u>
<u>S. 1 adds</u>		<u>S. 1 adds</u>	<u>Statute</u>
43.58-	Description	43.58-	43.56-
.190	Definitions	.190	.190
Sec. 2	Amends AS 43.55.010 (b)	Sec. 2	Sec. 2
Sec. 3	Amends AS 43.55.018 Credit against production tax	---	
Sec. 4	AS 43.55.140 (8) repealed and reenacted	Sec. 3	Sec. 4
Sec. 5	Amends AS 29.53.050 (b) and to remove ambiguity	Sec. 4	Sec. 5
---	Amends AS 43.56.040	Sec. 5	
Sec. 6	Amends AS 43.56.010 (c)	Sec. 6	Sec. 6
---	Amends AS 29.53.045 (c)	Sec. 7	
---	Amends AS 43.56.030	Sec. 8	
---	Amends AS 43.56.120 (i)	Sec. 9	
Sec. 7	Effective Date	Sec. 10	