Leg. Finance

1484

> tion or fraudulent purpose to overvalue the property and so to set at naught fundamental principles that safeguard the taxpayer's rights and property. Rowley v. Chicago & N.W. Ry., 293 U.S. 102, 109-111. The assessment is presumed to have been rightly made on the basis of actual value. Its validity must be tested upon consideration of the facts established by the evidence and of those of which judicial notice may be taken.

Id., 297 U.S. at 139. Because the assessors admittedly intended to overvalue the property, the Court found the evaluation was "grossly excessive" and in violation of the due process clause of the Fourteenth Amendment. Id., 297 U.S. at 152.

Great Northern Ry. Co. apparently is one of a very few cases in which the Supreme Court invoked "substantive due process" under the Fourteenth Amendment. See Southland Mall Inc. v. Garner, 455 F.2d 887, 890 n. 3 (6th Cir. 1972). Subsequent cases testing the constitutionality of assessment procedures rely on the equal protection test of Cumberland Coal Co., continuing to require the taxpayer to show intentional undervaluation of some but not all the taxed property in a single class. See Charleston Federal Savings & Loan Association v. Alderson, 324 U.S. 182 (1945); Southland Mall, Inc. v. Garner, 455 F.2d 887 (6th Cir. 1972) (both citing and applying the equal protection standard of Cumberland Coal Co.).

In summary, the Supreme Court tests the constitutionality of property assessments according to the following formula:

1. The Court will presume that the assessment has been correctly made on the basis of actual value (_Great Northern Ry. Co._).

2. The aggrieved taxpayer bears the burden of proving either:

(a) that there has been a systematic undervaluation of other properties in the same class (equal protection problem of _Cumberland Coal Co._); or

(b) that his property has been assessed at a value grossly in excess of its actual value (due process problem of _Great Northern Ry. Co._), and

3. The taxpayer must prove that the problem in (2)(a) or (2)(b) above is not a mere overvaluation or error in judgment, caused by the choice of one assessment method over another, but rather was the result of intentional or fraudulent undervaluation or overvaluation or the clear adoption of a fundamentally wrong principle. (_Chicago, B&Q Ry. Co._, _Cumberland Coal Co._, _Great Northern Ry. Co._, _Charleston A'ssn._, _Southland Mall, Inc._, _supra_ and cases cited therein).

Adopting this constitutional standard, Alaska's reserves property tax contains a presumption that the statutory discount rate is appropriate. 43.58.051(d). The taxpayers may upset this presumption by proving, through "clear and convincing evidence that the use of the statutory discount rate would result in constructive fraud." _Id._

b. State court review of assessments in other states

At least three states have applied the U.S. Supreme Court's test or a very similar test in cases challenging the assessments of oil properties. In People v. Coen, 112 N.E.2d 119 (Ill. 1953), a landowner with a one-eighth royalty interest in the underlying oil reserves protested the assessed valuation of that interest. The assessor considered present production, the nature of the oil-bearing formation, and the life expectancy of the field. He did not actually visit the property in question. The Illinois Supreme Court upheld the assessment saying,

> The law presumes that in fixing the value of property the taxing authorities have properly discharged their duties and that the tax is just. One objecting to the valuation has the burden of proving, by clear and convincing evidence, that an excessive valuation was made as the result of some improper, corrupt or illegal motive on the part of the assessing authorities, or that the valuation is so grossly excessive as to create a constructive fraud.

Id., 112 N.E. 2d at 121-22.

In Red Bluff Developers v. County of Tehama, 66 Cal. Rptr. 229 (Ct. App. 1968) plaintiff protested the county's valuation of his reserved rights to oil and gas beneath a residential subdivision, claiming that they had no known market value. It appeared that the county assessor had set a tax which represented his cost of paperwork; making the assessment that there was no known market value for the mineral estate. The Court of Appeals upheld the assessor, quoting the test set out by the Supreme Court of California:

> It is the rule applicable to assessors and to boards having assessing powers that it is presumed that the assessing officers have properly performed the duties entrusted to them and, consequently, that the assessments are both regularly and correctly made. (Utah Construction Co. v. Richardson, supra, 187 Cal. at p.654.)
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> . . .
>
> Thus, before taxes can be set aside where they are claimed to be excessive, there must be evidence to show that the assessments were fraudulently or mistakenly made, or that an improper method of valuation was pursued. (Utah Construction Co. v. Richardson, supra, 187 Cal. at p.655; Miller & Lux v. Richardson, 182 Cal. 115, 123.)

Id., 66 Cal. Rptr. at 233.

Finally, in Mobil Pipeline v. Rohmiller, 522 P.2d 923 (Kan. 1974), plaintiff protested the assessed value of his oil pipeline, arguing that the assessor neglected to make certain deductions before capitalizing the operating income of the pipeline. The Court upheld the assessor's finding saying that it would not interfere with the assessor's ruling unless it were shown that the assessor had neglected the instructions of the legislature as to assessment methods or had been arbitrary and capricious, amounting to constructive fraud.

To avoid confusion with regard to the judicial standard of review to be applied, it may help to contrast the problems of a legislative classification which intentionally taxes certain properties at different rates, with intentionally unequal assessment practices. The former is constitutional, the latter is not. As explained elsewhere in this report, a state legislature may classify taxpayers according to any system which has "a reasonable relation to some permitted end of governmental action. . . ." Heisler v. Thomas Colliery Co., 260 U.S. 245, 255 (1922). The Supreme Court has upheld classifications distinguishing between producers of anthracite coal and bituminous coal, between personal property owned by corporations and individuals, and between mining property and quarries, forests, and other properties (see section on Equal Protection for citations). There is no doubt that Alaska may constitutionally choose to impose a property tax on oil reserves and not on other properties. However, once the subject class is defined by legislation, the state assessors may not intentionally or fraudulently assess some members of the class at a higher percentage of true value than others. This is the teaching of Cumberland Coal Co. and the other cases cited in this section.

Thus, for example, the Pennsylvania legislature could have classified coal reserves adjacent to a river for higher taxation than coal some miles away, for the purpose of encouraging the development of the less accessible coal, or to prevent the water pollution problems caused by coal mining next to rivers. However, so long as the two coal deposits are categorized in the same class, the tax assessors may not intentionally or fraudulently assess some properties at 100% of true value while assessing others at only 25% of true value.

c. Review of assessments in Alaska

Article IX, § 3 of the Alaska Constitution states:

> Standards for appraisal of all property assessed by the State or its political subdivisions shall be prescribed by law.

Pursuant to this requirement, SSHB 200 prescribes that the subject property shall be assessed at its "full and true value" and lists certain factors to be included and others to be excluded by the assessor in estimating the true value.

As discussed in the Equal Protection section of this report, Alaska's Constitution, unlike certain other states, does not require that all property be taxed at the same rate. Alaska's choice of property tax and assessment methods is constrained only by the Fourteenth Amendment of the U.S. Constitution and the equal protection clause of Article I, § 1 of the Alaska Constitution.

In Twentieth Century Investment Co. v. City of Juneau, 359 P.2d 783 (Alaska 1961), the Supreme Court of Alaska interpreted the Fourteenth Amendment as it applies to tax laws and assessment procedures in Alaska. The Court adopted the language of the U.S. Supreme Court discussed earlier in this section. In response to the taxpayer's claim that his theater building was assessed by a different method than a similar theater nearby, the Court said:

> The equal protection clause [of the Fourteenth Amendment] does not prohibit inequality in taxation which is not shown to be the result of an intentional or systematic undervaluation of some but not all of the taxed property in a single class.

Id. 359 P.2d at 785. The Court held that the theater owner had failed to show that the assessor adopted a different method of assessment with the purpose of either overvaluing plaintiff's theater or undervaluing his competitor's theater. The bare fact that the assessor used different reconstruction cost rates for the two theaters was not proof of intentional discrimination, because plaintiff failed to prove that there was no "conceivable basis that would sustain the different valuations of the two buildings." Id., 359 P.2d at 786.

The plaintiff also alleged that the assessed value of a certain portion of his theater so greatly exceeded the full and true value of that portion as to amount to a confiscation of his property, violating the due process clause of the Fourteenth Amendment. To this contention the Court replied:

> The valuation and assessment of property for taxes does not contravene the due process clause of the Fourteenth Amendment unless it is plainly demonstrated that there is involved, not the exercise of the taxing power, but the exertion of a different and forbidden power, such as the confiscation of property. Such a demonstration is not made simply by showing overvaluation; there must be something which, in legal effect, is equivalent to an intention or fraudulent purpose to place an excessive valuation on property, and thus violate fundamental principles that safeguard the taxpayer's property rights.

Id., 359 P.2d at 787 (citing Great Northern Ry. Co. v. Weeks, supra). The Court held that the assessor was justified in not considering the functional obsolescence or the capitalized income of the theater because these procedures would have been burdensome and expensive, and that this was not arbitrary or fraudulent treatment of the taxpayer. Id., 359 P.2d at 788.

Finally as to the assessor's choice of an assessment method, the Court said,

> The City was not bound by any particular formula, rule or method, either by statute or otherwise. Its choice of one recognized method of valuation over another was simply the exercise of a discretion committed to it by law. Whether or not it exercised a wise judgment is not our concern. This court has nothing to do with complaints of that nature. It will not substitute its judgment for the judgment of those upon whom the law confers the authority and duty to assess and levy taxes. This court is concerned with nothing less than fraud or the clear adoption of a fundamentally wrong principle of valuation. Neither has been shown here.

Id., 359 P.2d 788 (citing Great Northern Ry. Co. and Chicago, B&Q Ry. Co., supra).

In summary, the Alaska Supreme Court has followed the U.S. Supreme Court closely in testing the constitutionality of property tax assessments. Consistent with the Alaska Court's decision in Twentieth Century Investment Co. (repeated and applied in Hoblit v. Greater Anchorage Area Borough, 473 P.2d. 630 (Alaska 1970)), the State may adopt any method of property valuation it chooses, so long as there is no fraud or clear adoption of a fundamentally wrong principle of valuation.

The reserves property tax specifies a procedure for estimating the full and true value of oil reserves in the State of Alaska. The assessor is to consider several factors, including future net income discounted at a rate of ten percentage points above the inflation rate. In accordance with the Alaska Supreme Court's decisions in Twentieth Century Investment Co. and Hoblit, any taxpayer seeking to overturn the assessor's findings will bear the burden of proving intentional or fraudulent discrimination on the part of the assessor in either overvaluing the taxpayer's property of systematically undervaluing the property of others.

V. CONCLUSION

As a result of our analysis and the work of others, we have concluded that the backstop legislation, as embodied in SSHB 200, is a sound strategy and best available option for protecting Alaska's oil and gas revenues.

COMMITTEE REPORT

HOUSE

6/3/81 FURTHER:

(11)

Date: ____________________

Mr. Speaker:

The Committee on FINANCE has had SSHB 200

"An Act relating to oil and gas taxes; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ______________ [ ] same title [ ] new title

and recommends ______________

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ______________ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
______________	______________
______________	______________
______________	______________
______________	______________
______________	______________
______________	______________
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______________	
______________	

____
CHAIRMAN

H 60 (Rev. 3/81)

COMMITTEE REPORT

HOUSE

6/3

5/19/81

(7)

FURTHER: FINANCE

Date: 6/2/81

Mr. Speaker:

The Committee on SPECIAL GAS PIPELINE has had SSHB 200

"An Act relating to oil and gas taxes; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SSHB 200 (GP) [X] same title [ ] new title

and recommends Do Pass

[X] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

Terry Gardiner

[illegible] Malone

[illegible] Vaska

[illegible] Rogers

MEMBERS HAVING OTHER RECOMMENDATIONS:

Rick Halford - NO REC

[illegible] - DO NOT PASS

[illegible] - Do Not Pass.

Terry Gardiner

CHAIRMAN

H 60 (Rev. 3/81)

Chenoweth

Original sponsor: Rules/Governor

Offered: 6/3/81
Referred: Finance

IN THE HOUSE

BY THE SPECIAL GAS PIPELINE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 200 (Gas Pipeline)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to oil and gas taxes; and providing for an effective date."

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

* Section 1. AS 43.20.011(e) is amended to read:

(e) There is imposed for each taxable year upon the entire taxable income of every corporation derived from sources within the state a tax consisting of a normal tax equal to 5.4 percent of taxable income, and a surtax which is equal to 4.0 percent of taxable income, except that the tax on a corporation doing business in the state which derives income from [ENGAGED IN] the production or pipeline transportation of crude oil or natural gas in the state shall be determined and paid in accordance with AS 43.21. Income from sharing in a regional Native corporation's revenue that is required to be divided under sec. 7(i) and sec. 7(j) of the Alaska Native Claims Settlement Act (P.L. 92-203) is taxable income of the recipient under this chapter, except that a recipient who is subject to AS 43.21 shall treat the income as taxable under AS 43.21.040. For tax years beginning after December 31, 1979, the surtax exemption is $50,000. For controlled corporations described in secs. 1561 - 1563 of the Internal Revenue Code only one surtax exemption may be allowed for the controlled group.

* Sec. 2. AS 43.21.010 is amended to read:

Sec. 43.21.010. APPLICATION. This chapter applies to every corporation doing business in the state which derives income from the production of oil or gas from a lease or property in the state [,] or from

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Letter 6/3

the pipeline transportation of oil or gas in the state. The tax calculated under this chapter is measured by the total taxable income of the corporation during the tax period as determined under [DEFINED IN] AS 43.21.020 - 43.21.040 and is calculated [DETERMINED] at the rates established under AS 43.20.011(e).

* Sec. 2. AS 43.21.020(c) is amended to read:

(c) Net income from oil and gas production shall be determined by the department by deducting from gross income the following:

(1) royalties paid in kind or in value;

(2) taxes imposed under AS 43.55 and AS 43.57 which are actually paid or incurred by the corporation on the production from a lease or property in the state;

(3) taxes imposed under AS 43.56 and AS 29.53 which are actually paid or incurred by the corporation on property used directly in the production of oil or gas from a lease or property in the state, including property used in production, gathering, treatment, or preparation of the oil or gas for pipeline transportation, but only if those property tax payments were due and payable only after the date of commercial production from the lease or property with which the property was associated;

(4) the direct costs incurred by or for the corporation in operating the lease or property, including the direct costs of producing, gathering, treating, or preparing the oil or gas for pipeline transportation, but not of any payments received for those activities and not including any indirect cost or overhead expense;

(5) depreciation (using the unit of production method or such other reasonable methods as the department may by regulation establish) on property used directly in the production, gathering, treatment, or preparation of the oil or gas for pipeline transportation in-

cluding amortization of capitalized interest for investments in this property at a rate not to exceed the average cost of borrowed capital to the taxpayer during the year in which it is capitalized;

(6) the amortization of lease acquisition payments and taxes paid or incurred under AS 43.56 and AS 29.53 (including capitalized interest on both) for or on producing properties before the commencement of commercial production from the lease or property for which the property is being used;

(7) interest expense of the corporation, not capitalized during construction, that was paid or incurred in connection with property in Alaska; however, unless (f) of this section applies, the interest expense may [TO THE EXTENT THAT IT DOES] not exceed that portion of the total interest paid by the consolidated business of which the corporation is a part, determined by multiplying the total interest [(REDUCED BY INTERCOMPANY TRANSACTIONS WITHIN THE CONSOLIDATED BUSINESS)] by a fraction, the numerator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the denominator of which is the value of all real and tangible personal property of the consolidated business; in this subsection, "total interest paid by the consolidated business" does not include interest expense arising from intercompany obligations within the consolidated business except to the extent that the interest expense reflects a pass-through of interest on a third-party borrowing by the parent or other member of the consolidated business with the purpose, expressed at the time of the third-party borrowing, of financing Alaska business activity of the taxpayer corporation;

(8) expenses incurred by the corporation after December 31, 1977, of unsuccessful exploration of oil or gas in the state including

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the acquisition costs of abandoned properties, dry hole costs, and the costs of geologic and geophysical exploration related to those abandoned properties;

(9) general overhead or administrative expense incurred by the corporation attributable to deriving income from the production of oil or gas from a lease or property in the state to the extent, except as provided in (f) of this section, that it does not exceed [THE LESSER OF:

(A)] that portion of the total general overhead or administrative expense incurred by the consolidated business of which the corporation is a part, determined by multiplying the total general overhead or administrative expense by a fraction, the numerator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the denominator of which is the value of all real and tangible personal property of the consolidated business;

(10) the amount of income from the production of oil and gas from a lease or property that is divided among the regional Native corporations under sec. 7(i) of the Alaska Native Claims Settlement Act (P.L. 92-203);

(11) the amount by which the total tax paid or incurred by the taxpayer under AS 43.58 for leases or properties in the state exceeds the amount of credit allowed to the taxpayer under AS 43.58.041;

(12) the tax imposed by sec. 4986 of the Internal Revenue Code that is paid or incurred by the taxpayer for oil production from leases or properties in the state [, OR

(B) THE SUM OF $0.12 FOR EACH BARREL OF OIL AND $0.02 FOR EACH THOUSAND CUBIC FEET OF GAS PRODUCED FROM A LEASE OR PROP-

ERTY IN THE STATE].

* Sec. 4. AS 43.21.020 is amended by adding a new subsection to read:

(f) If a corporation demonstrates to the satisfaction of the department that it paid or incurred actual expenses for interest or for general overhead or administration attributable to deriving income from the production of oil or gas from a lease or property in the state in an amount greater than the amount determined under (c)(7) or (c)(9) of this section, the department may allow the corporation to deduct the greater amount.

* Sec. 5. AS 43.21.040(b) is repealed and reenacted to read:

(b) The total taxable income of the consolidated business is its entire income less the portion of that entire income attributable to worldwide production and pipeline transportation of oil and gas. In this section,

(1) for a member of a consolidated business who is required to file under the Internal Revenue Code, "entire income" means taxable income under Subtitle F and chapter 1 of Subtitle A of the Internal Revenue Code of 1954, as amended, except that those provisions adopted after December 31, 1975, which change or modify exemptions from tax are not adopted by reference as a part of this section until the second January 1 following the effective date of the federal law;

(2) for a member of a consolidated business who is not required to file under the Internal Revenue Code, "entire income" means book income, except that a taxpayer may elect to report his income as the income would be determined under (1) of this subsection.

* Sec. 6. AS 43.21.050 is amended by adding a new subsection to read:

(d) If the methods of allocation and apportionment provided in this chapter do not fairly represent the extent of a corporation's business activity in the state, the corporation may petition for or the department may require, in respect to all or any part of the corporation's business activity, if reasonable, the employment of any method authorized under art. IV, sec. 18, of the multistate tax compact (AS 43.19.010) to effectuate an equitable allocation and apportionment of the corporation's income. The commissioner shall include in his annual report required in AS 43.21.110 a report on all relief granted under this subsection, including for each case a statement of the changes in tax liability resulting from the granting of relief, the tax years involved, and a description of the method of determining taxable income that was substituted for those provided in this chapter.

* Sec. 7. AS 43.21.070 is amended to read:

Sec. 43.21.070. PAYMENT OF TAX. The tax levied under this chapter is payable to the department on or before September 30 of each year or in installments, including prepayments of estimated tax, at the times and under the conditions the department may by regulation require. This tax is payable on the due date set out in this section even though the assessment is under appeal or the validity, enforceability or application of this chapter or any provision of this chapter is challenged before the department or in the courts.

* Sec. 8. AS 43.58 is amended by adding new sections to read:

Sec. 43.58.011. FINDINGS AND PURPOSES. (a) The legislature finds that

(1) since Statehood the level of public services and public facilities provided by the state government to its citizens has been much below the level provided by other states to their citizens, and this inadequacy has been the result of insufficient state revenues;

(2) there exists in Alaska today a level of public services and public facilities far below that which Alaskans are reasonably entitled to expect, and these unmet needs include inadequate public

transportation facilities, inadequate public health care facilities and programs, inadequate communications facilities, inadequate public education facilities, inadequate levels of police protection, overburdened justice facilities, and inadequate energy facilities, and an economy overly dependent on nonrenewable resource development;

(3) with the increased revenues that have resulted from increased development of oil resources in Alaska, this legislature, acting on behalf of all the people of Alaska, has embarked upon a legislative program intended to begin fulfilling some of the unmet public needs described in (2) of this subsection, and it will take many years of expenditures at current or increased levels to meet these needs;

(4) a part of this program includes preparing for the time when the revenues derived from Alaska's nonrenewable resources begin to decline and this preparation includes funding of the Alaska permanent fund, encouraging development of renewable resources, and encouraging economic diversification efforts;

(5) there is presently pending in the courts litigation brought by certain taxpayers challenging the constitutionality of the Oil and Gas Corporate Income Tax (AS 43.21), and if the taxpayers in that litigation are successful, the future revenues available to meet the important public needs described in (2) of this subsection will be significantly diminished;

(6) it is in the public interest to provide an alternative means of generating revenues sufficient to meet the state's present and future needs if the constitutional challenge to AS 43.21 is successful;

(7) imposing additional or alternative state taxes upon small businesses and newly developing industries in Alaska would have a significantly adverse impact upon those businesses and would be counterproductive to efforts to encourage economic diversification;

(8) the level of taxation currently imposed by the state on the oil industry does not impose an undue burden on that industry and has not discouraged exploration and development of oil resources in Alaska;

(9) development of natural gas resources in Alaska has lagged behind oil development in the state and additional or alternative taxes on the natural gas industry may discourage future natural gas development;

(10) the imposition of a property tax on oil reserves with a credit for income taxes paid will best provide sufficient alternative revenues without discouraging economic diversification and without discouraging present or future exploration and development of oil resources;

(11) it appears that the Congress of the United States has affirmatively granted the authority to tax developed and leased property received under the Alaska Native Claims Settlement Act only to local governments, for a 20-year period, and that a state tax on developed or leased property received under the Alaska Native Claims Settlement Act would be in conflict with the intent and purpose of that Act.

(b) The purposes of this Act are to

(1) enact a tax which will generate sufficient revenues to

(A) meet any judgment that might be rendered against the state in the litigation concerning the Oil and Gas Corporate Income Tax; and

(B) provide revenue comparable to the present and projected future revenues derived from AS 43.21 if the Oil and Gas Corporate Income Tax is found to be unconstitutional;

(2) avoid imposing cumulative tax liability on taxpayers subject to the Oil and Gas Corporate Income Tax (AS 43.21) by granting

a credit of taxes paid under AS 43.21 for those persons subject to the oil reserves property tax;

(3) avoid discouraging future exploration and development of oil resources by imposing the tax only on property having commercial production;

(4) avoid discouraging the development of economic diversification and the development of natural gas production in the state;

(5) avoid creating a conflict with federal law by exempting from this tax property received under the Alaska Native Claims Settlement Act.

Sec. 43.58.021. AD VALOREM TAX. (a) Beginning July 1, 1981, an annual tax is levied each tax year on the full and true value of taxable property under this chapter.

(b) The rate of levy is 25 mills, unless a different rate is enacted for a tax year no later than the last day of February in that tax year.

Sec. 43.58.031. EXEMPTIONS. (a) The following property that would otherwise be taxable property is exempt from taxation under this chapter:

(1) property of the United States or the state;

(2) property exempt from state taxation under the laws of the United States including the exemption of property, whether or not developed or leased to third-parties, under sec. 21(d) of the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat. 688, 43 U.S.C. 1601, et. seq.);

(3) that portion of the full and true value of taxable property attributable to gas reserves.

(b) Notwithstanding the exemptions from taxation authorized by (a) of this section, a leasehold or similar interest held by a third party in property described in (a)(1) or (a)(2) of this section is taxable under this chapter to the extent of the interest.

Sec. 43.58.041. CREDITS. (a) The amount of tax under AS 43.21 paid during a tax year under this chapter by a taxpayer or the taxpayer's consolidated business for tax periods under AS 43.21 beginning after December 31, 1980, is allowed as a credit against the tax levied under this chapter in the tax year for the taxpayer's taxable property. The credit may not exceed the total amount of tax due for the tax year under this chapter for all of the taxpayer's taxable properties.

(b) In addition to the credit allowed under (a) of this section, the amount of tax paid under AS 43.21 by a taxpayer or the taxpayer's consolidated business before July 1, 1981, is allowed as a credit against the tax levied under this chapter for the taxpayer's taxable properties.

(c) In applying the credits under (a) and (b) of this section, the credit allowed under (a) of this section shall be applied before applying any credit under (b) of this section. Credit under (b) of this section shall be applied only to the extent that the combined amount of applied credit under (a) and (b) of this section does not exceed three-quarters of the total amount of tax levied under this chapter for all of the taxpayer's taxable properties. If the amount of the credit under (b) of this section exceeds the amount that may be applied for a tax year against the tax levied under this chapter, the excess credit under (b) of this section may be carried forward and applied in subsequent tax years until it has been exhausted.

(d) For purposes of determining and applying credits under this section, tax paid by a taxpayer under AS 43.20 shall be treated the same as if it had been paid under AS 43.21, but only if the taxpayer would have been subject to AS 43.21 had the taxpayer been a corporation.

Sec. 43.58.051. REDETERMINATION OF LIABILITY. If the income tax liability of a taxpayer or the taxpayer's consolidated business under AS 43.20 or AS 43.21 for a tax period is redetermined and adjusted after the credit for that tax period has been applied under AS 43.58.-041, or if the income tax liability of the taxpayer or the taxpayer's consolidated business is redetermined under AS 43.20 and adjusted after the credit for that tax period has been applied under AS 43.58.041, then the taxpayer's tax liability under this chapter for the tax year in which the credit was applied shall be redetermined, taking into account the adjustment to the taxpayer's income tax liability.

Sec. 43.58.061. ASSESSMENT. (a) The department shall assess taxable property under this chapter to the owner of it at its full and true value as of July 1 of each tax year.

(b) The full and true value of taxable property under this chapter is the estimated price which the property would bring for its proven reserves 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 values. In determining this value, the department shall consider all factors which may be known by the department to affect the value of taxable property, including but not limited to the discounted present value of the expected future net income from the proven reserves of the taxable property.

(c) In assessing taxable property under this chapter, the department may not include the assessed value of property subject to tax under AS 43.56.

(d) In discounting the expected future net income from the taxable property to its present value under (b) of this section, the department shall presume that the appropriate discount rate is 11.6 percentage points above the rate of inflation implicit in the GNP deflator over the five calendar years immediately preceding the assessment date. A taxpayer may rebut this presumption only by proving to the department by clear and convincing evidence that the use of the presumed discount rate in the valuation of the property would result in constructive fraud. In this subsection, "GNP deflator" means the deflator for the gross national product published by the United States Department of Commerce.

Sec. 43.58.071. 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; and

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

Sec. 43.58.081. ASSESSMENT NOTICE. On or before October 15 of each tax 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. The notice of assessment is effective on the date of its mailing.

Sec. 43.58.091. APPEAL. (a) A person aggrieved by the action of the department in making an assessment may appeal that action and obtain a formal hearing upon its validity before the department by filing written objections to the assessment not later than 20 days after the effective date of the assessment notice.

(b) The procedures for conduct of the formal hearing shall be in accordance with AS 43.05.240. At the hearing the appellant bears the burden of proof. In the absence of this proof the assessment is to be upheld by the department. If the department, after hearing, determines that a correction of the assessment is warranted, the department shall correct the assessment and the assessment roll.

(c) Within 30 days after the decision by the department following the hearing, a person aggrieved by that decision may appeal to the superior court.

Sec. 43.58.101. CERTIFICATION. On or before February 1 of the tax year, the department shall certify the final assessment roll. The department shall mail to the owner, operator, or other person filing a return and paying tax on the taxable property a statement of the amount of tax due no later than March 15 of the tax year.

Sec. 43.58.111. SUPPLEMENTAL ASSESSMENT ROLLS. The department shall, using the procedures set out in this chapter for the original roll, prepare a supplemental assessment roll to include property omitted from the original roll and property from which commercial production commences after the beginning of the tax year. If property is included on the supplemental assessment roll because commercial production from it commences after the beginning of the tax year, the assessed value of the property shall be reduced pro rata in proportion to the portion of the tax year preceding the commencement of commercial production from the property.

Sec. 43.58.121. INVESTIGATION. (a) The department may make an investigation of property on which a return has been filed or on property for which no return has been filed. In either case, the department shall 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 premises necessary for the investigation during reasonable hours and may examine property and other appropriate records. The owner of taxable property, upon request, shall furnish to the employee or agent of the department reasonable assistance required for the investigation. If an employee or agent of the department seeking to enter any premises necessary for an investigation under this section or to obtain reasonable assistance required for an investigation under this section is refused entry or assistance, the superior court may, after reasonable notice to and hearing of the owner, order the owner to allow the entry or to furnish the assistance.

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

Sec. 43.58.131. LIMITATIONS ON ASSESSMENT, COLLECTION, AND REFUND OF TAXES. The limitations on assessment, collection, and refund of taxes under AS 43.05.260, 43.05.270, and 43.05.275 apply to the tax levied under this chapter except that a redetermination of tax under AS 43.58.041(d) is not subject to these limitations.

Sec. 43.58.141. RETURNS AND PAYMENT OF TAX. (a) A return of taxable property shall be submitted no later than August 1 on the form prescribed by the department based on property values existing on July 1 of each tax year

(1) by a person who is the owner of the property, or who controls that property as agent, or on account of any other person;

(2) by a guardian or other person who has charge of taxable property belonging to a minor or other person;

(3) by the trustee of a trust estate holding taxable property in trust for the benefit of another person;

(4) by the executor or administrator of a deceased person's estate which includes taxable property;

(5) by the receiver of a corporation having taxable property.

(b) The person required to submit the return specified under (a) of this section is primarily liable for payment of the tax levied by this chapter. The persons or estates specified in (a)(2) - (5) of this section in whose behalf the tax levied by this chapter is to be paid are secondarily liable for payment of the tax. With the written approval of the department, an operator or nonoperator of the lease or property may submit returns or make payment of the tax levied under this chapter on behalf of himself and such other persons as the department may approve.

(c) The tax levied under this chapter is payable to the department on or before June 30 of each tax year or in installments, including prepayments, at the times and under the conditions the department may by regulation require. This tax is payable on the due date set out in this subsection or at the times required by the department under its regulations even though the assessment is under appeal or the validity, enforceability, or application of this chapter or any provision of this chapter is challenged before the department or in the courts.

(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 taxable property may regard these properties as a single taxable property for purposes of submitting those reports or making those payments.

(e) A 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 taxable property may withhold a proportionate share of the payment from any proceeds or other benefits from the taxable property owed to a 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 witholding.

(f) By written notice the department may require a person filing a return to submit additional information to the department within 30 days.

Sec. 43.58.151. 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. 43.58.161. DEFINITIONS. In this chapter

(1) "commercial production" means the production of oil or gas for purposes of sale or other beneficial use, except when the sale or beneficial use is incidental to the testing of an unproven well or unproved completion interval;

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

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

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

(5) "operator" means the person conducting the exploration, development, or production operation for a property;

(6) "property" means any right, title, or interest in or the right to produce or recover oil or gas including:

(A) a mineral interest;

(B) a leasehold interest;

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

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

(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) "tax year" means a calendar period beginning on July 1 of one calendar year and ending on June 30 of the following calendar year;

(9) "taxable property" means a property having commercial production.

* Sec. 9. AS 43.58.041 has been included in sec. 8 of this Act so that persons subject to the tax under AS 43.21 will not bear the cumulative burden of both the tax under AS 43.21 and AS 43.58. It is the intent of the legislature that the inclusion of this section granting tax credits does not in any manner change the intent, validity, or enforceability of the basic ad valorem tax imposed by this Act. If the inclusion of AS 43.58.041, or any portion of it, results in a judicial decision that the ad valorem tax imposed by this Act is invalid, then AS 43.58.041, or that portion of it that causes the invalidity, is void and of no effect, and AS 43.58, enacted in sec. 8 of this Act, shall be read as if that section or that portion of it had never been included.

* Sec. 10. If an exemption under AS 43.58.031(1), (2), or (3) is held invalid by a final judgment of a court from which an appeal is not taken, then that exemption is void, and AS 43.58, enacted in sec. 8 of this Act,

shall be read as if that exemption had never been included.

* Sec. 11. If the method of determining taxable income under either AS 43.21.020 or 43.21.030 is held invalid by a final judgement of a court from which an appeal is not taken, and if as a result of that judgment a corporation, whether or not a party named in that judgment, receives a refund of taxes or estimated taxes paid under AS 43.21, then the provisions of AS 43.20 apply to that corporation for the entire period for which it receives the refund.

* Sec. 12. (a) Notwithstanding the provisions of AS 43.58.021(b), enacted in sec. 8 of this Act, the rate of levy under AS 43.58 for the tax year beginning July 1, 1981, is 30 mills.

(b) Notwithstanding the provisions of AS 43.58.041(c), enacted in sec. 8 of this Act, for the tax year beginning July 1, 1981, credit under AS 43.58.041(b) shall be applied only to the extent that the combined amount of applied credit under AS 43.58.041(a) and (b) does not exceed two-thirds of the total amount of tax levied under AS 43.58 for all of the taxpayer's taxable properties.

* Sec. 13. AS 43.21.040(d) and (e) are repealed.

* Sec. 14. AS 43.55.011(d), 43.55.012(a), 43.55.018; AS 43.58.010, 43.58.020, 43.58.030, 43.58.040, 43.58.050, 43.58.060, 43.58.070, 43.58.080, 43.58.090, 43.58.100, 43.58.110, 43.58.150, 43.58.160, 43.58.170, 43.58.180, 43.58.190, and 43.58.200 are repealed.

* Sec. 15. Sections 1 - 7, 11, and 13 of this Act are retroactive to January 1, 1978, and apply to tax years beginning after December 31, 1977.

* Sec. 16. Sections 8, 12, and 14 of this Act take effect July 1, 1981.

* Sec. 17. Sections 9, 10, and 15 of this Act take effect immediately in accordance with AS 01.10.070(c).

Gov

Introduced: 5/19/81
Referred: Special Gas Pipeline Committee and Finance

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 200

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to oil and gas taxes; and providing for an effective date."

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

* Section 1. AS 43.20.011(e) is amended to read:

(e) There is imposed for each taxable year upon the entire taxable income of every corporation derived from sources within the state a tax consisting of a normal tax equal to 5.4 percent of taxable income, and a surtax which is equal to 4.0 percent of taxable income, except that the tax on a corporation doing business in the state which derives income from [ENGAGED IN] the production or pipeline transportation of crude oil or natural gas in the state shall be determined and paid in accordance with AS 43.21. Income from sharing in the 70 percent of a regional Native corporation's revenue that is required to be divided under sec. 7(i) of the Alaska Native Claims Settlement Act (P.L. 92-203) is taxable income of the recipient under this chapter. For tax years beginning after December 31, 1979, the surtax exemption is $50,000. For controlled corporations described in secs. 1561 - 1563 of the Internal Revenue Code only one surtax exemption may be allowed for the controlled group.

* Sec. 2. AS 43.21.010 is amended to read:

Sec. 43.21.010. APPLICATION. This chapter applies to every corporation doing business in the state which derives income from the production of oil or gas from a lease or property in the state [,] or from the pipeline transportation of oil or gas in the state. The tax calcu-

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Letter - [illegible] 5/19

lated under this chapter is measured by the total taxable income of the corporation <u>during the tax period</u> as <u>determined under</u> [DEFINED IN] AS 43.21.020 - 43.21.040 and is <u>calculated</u> [DETERMINED] at the rates established under AS 43.20.011(e).

* Sec. 3. AS 43.21.020(c) is amended to read:

(c) Net income from oil and gas production shall be determined by the department by deducting from gross income the following:

(1) royalties paid in kind or in value;

(2) taxes imposed under AS 43.55 and AS 43.57 which are actually paid <u>or incurred</u> by the corporation on the production from a lease or property in the state;

(3) taxes imposed under AS 43.56 and AS 29.53 which are actually paid <u>or incurred</u> by the corporation on property used directly in the production of oil or gas from a lease or property in the state, including property used in production, gathering, treatment, or preparation of the oil or gas for pipeline transportation, but only if those property tax payments were due and payable only after the date of commercial production from the lease or property with which the property was associated;

(4) the direct costs incurred by or for the corporation in operating the lease or property, including the direct costs of producing, gathering, treating, or preparing the oil or gas for pipeline transportation, but not of any payments received for those activities and not including any indirect costs or overhead expense;

(5) depreciation (using the unit of production method or such other reasonable methods as the department may by regulation establish) on property used directly in the production, gathering, treatment, or preparation of the oil or gas for pipeline transportation including amortization of capitalized interest for investments in this

property at a rate not to exceed the average cost of borrowed capital to the taxpayer during the year in which it is capitalized;

(6) the amortization of lease acquisition payments and taxes paid or incurred under AS 43.56 and AS 29.53 (including capitalized interest on both) for or on producing properties before the commencement of commercial production from the lease or property for which the property is being used;

(7) interest expense of the corporation, not capitalized during construction, that was paid or incurred in connection with property in Alaska; however, unless (f) of this section applies, the interest expense may [TO THE EXTENT THAT IT DOES] not exceed that portion of the total interest paid by the consolidated business of which the corporation is a part, determined by multiplying the total interest [(REDUCED BY INTERCOMPANY TRANSACTIONS WITHIN THE CONSOLIDATED BUSINESS)] by a fraction, the numberator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the denominator of which is the value of all real and tangible personal property of the consolidated business; in this subsection, "total interest paid by the consolidated business" does not include interest expense arising from intercompany obligations within the consolidated business except to the extent that the interest expense reflects a pass-through of interest on a third-party borrowing by the parent or other member of the consolidated business with the purpose, expressed at the time of the third-party borrowing, of financing Alaska business activity of the taxpayer corporation;

(8) expenses incurred by the corporation after December 31, 1977 of unsuccessful exploration of oil or gas in the state including the acquisition costs of abandoned properties, dry hole costs, and the

costs of geologic and geophysical exploration related to those abandoned properties;

(9) general overhead or administrative expense incurred by the corporation attributable to the production of oil or gas from a lease or property in the state to the extent, except as provided in (f) of this section, that it does not exceed [THE LESSER OF:

(A)] that portion of the total general overhead or administrative expense incurred by the consolidated business of which the corporation is a part, determined by multiplying the total general overhead or administrative expense by a fraction, the numerator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the denominator of which is the value of all real and tangible personal property of the consolidated business;

(10) the amount of income from the production of oil and gas from a lease or property that is divided among the 12 regional corporations under sec. 7(i) of the Alaska Native Claims Settlement Act (P.L. 92-203);

(11) the amount by which the total tax paid or incurred by the taxpayer under AS 43.58 for leases or properties in the state exceeds the amount of credit allowed to the taxpayer under AS 43.58.041;

(12) the tax imposed by sec. 4986 of the Internal Revenue Code that is paid or incurred by the taxpayer for oil production from leases or properties in the state [, OR

(B) THE SUM OF $0.12 FOR EACH BARREL OF OIL AND $0.02 FOR EACH THOUSAND CUBIC FEET OF GAS PRODUCED FROM A LEASE OR PROPERTY IN THE STATE].

* Sec. 4. AS 43.21.020 is amended by adding a new subsection to read:

(f) If a corporation demonstrates to the satisfaction of the department that it paid or incurred actual expenses for interest or for general overhead or administration attributable to the production of oil or gas from a lease or property in the state in an amount greater than the amount determined under (c)(7) or (c)(9) of this section, the department may allow the corporation to deduct the greater amount.

* Sec. 5. AS 43.21.040(b) is repealed and reenacted to read:

(b) The total taxable income of the consolidated business is its entire income less the portion of that entire income attributable to worldwide production and pipeline transportation of oil and gas. In this section, "entire income" is taxable income under Subtitle F and chapter 1 of Subtitle A of the Internal Revenue Code of 1954, as amended, except that those provisions adopted after December 31, 1975 which change or modify exemptions from tax are not adopted by reference as a part of this section until the second January 1 following the effective date of the federal law. In computing taxable income under this section, the taxpayer is not entitled to deduct any taxes based on or measured by net income.

* Sec. 6. AS 43.21.050 is amended by adding a new subsection to read:

(d) If the methods of allocation and apportionment provided in this chapter do not fairly represent the extent of a corporation's business activity in the state, the corporation may petition for or the department may require, in respect to all or any part of the corporation's business activity, if reasonable, the employment of any method authorized under art. IV, sec. 18, of the multistate tax compact (AS 43.19.010) to effectuate an equitable allocation and apportionment of the corporation's income. The commissioner shall include in his annual report required in AS 43.21.110 a report on all relief granted under this subsection, including for each case a statement of the changes in tax liability resulting from the granting of relief, the tax years involved and a description of the method of determining taxable income that was substituted for those provided in this chapter.

* Sec. 7. AS 43.21.070 is amended to read:

Sec. 43.21.070. PAYMENT OF TAX. The tax levied under this chapter is payable to the department on or before September 30 of each year or in installments<u>, including prepayments of estimated tax</u>, at the times and under the conditions the department may by regulation require. This tax is payable on the due date set out in this section even though the assessment is under appeal or the validity, enforceability or application of this chapter or any provision of this chapter is challenged before the department or in the courts.

* Sec. 8. AS 43.58 is amended by adding new sections to read:

Sec. 43.58.011. FINDINGS AND PURPOSES. (a) The legislature finds:

(1) that since Statehood, the level of public services and public facilities provided by the state government to its citizens has been much below the level provided by other states to their citizens, and that this inadequacy has been the result of insufficient state revenues;

(2) that there exists in Alaska today a level of public services and public facilities far below that which Alaskans are reasonably entitled to expect, and that these unmet needs include inadequate public transportation facilities, inadequate public health care facilities and programs, inadequate communications facilities, inadequate public education facilities, inadequate levels of police protection, overburdened justice facilities, and inadequate energy facilities, and an economy overly dependent on nonrenewable resource development;

(3) that with the increased revenues that have resulted from

increased development of oil resources in Alaska, this legislature, acting on behalf of all the people of Alaska, has embarked upon a legislative program intended to begin fulfilling some of the unmet public needs described in (2) of this subsection, and that it will take many years of expenditures at current or increased levels to meet these needs;

(4) that a part of this program includes preparing for the time when the revenues derived from Alaska's nonrenewable resources begin to decline and that such preparation includes funding of the Permanent Fund, encouraging development of renewable resources and encouraging economic diversification efforts;

(5) that there is presently pending in the courts litigation brought by certain taxpayers challenging the constitutionality of the Oil and Gas Corporate Income Tax (AS 43.21), and that if the taxpayers in that litigation are successful, the future revenues available to meet the important public needs described in (2) of this subsection will be significantly diminished;

(6) that it is in the public interest to provide an alternative means of generating revenues sufficient to meet the state's present and future needs in the event that the constitutional challenge to AS 43.21 is successful;

(7) that imposing additional or alternative state taxes upon small businesses and newly-developing industries in Alaska would have a significantly adverse impact upon those businesses and would be counterproductive to efforts to encourage economic diversification;

(8) that the level of taxation currently imposed by the state on the oil industry does not impose an undue burden on that industry and has not discouraged exploration and development of oil resources in Alaska;

(9) that development of natural gas resources in Alaska has lagged behind oil development in the state and that additional or alternative taxes on the natural gas industry may discourage future natural gas development;

(10) that the imposition of a property tax on oil reserves with a credit for income taxes paid will best provide sufficient alternative revenues without discouraging economic diversification and without discouraging present or future exploration and development of oil resources;

(11) that it appears that the Congress of the United States has affirmatively granted the authority to tax developed and leased property received under the Alaska Native Claims Settlement Act only to local governments, for a 20-year period, and that a state tax on developed or leased property received under the Alaska Native Claims Settlement Act would be in conflict with the intent and purpose of that Act.

(b) The purposes of this Act are

(1) to enact a tax which will generate sufficient revenues (A) to meet any judgment that might be rendered against the state in the litigation concerning the Oil and Gas Corporate Income Tax and (B) to provide revenue comparable to the present and projected future revenues derived from AS 43.21 in the event that tax is found to be unconstitutional;

(2) to avoid imposing cumulative tax liability on taxpayers subject to the Oil and Gas Corporate Income Tax (AS 43.21), by granting a credit of taxes paid under AS 43.21 for those persons subject to the oil reserves property tax;

(3) to avoid discouraging future exploration and development of oil resources by imposing the tax only on property having commercial production;

(4) to avoid discouraging the development of economic diversification and the development of natural gas production in the state;

(5) to avoid creating a conflict with federal law by exempting from this tax property received under the Alaska Native Claims Settlement Act.

Sec. 43.58.021. AD VALOREM TAX. (a) Beginning July 1, 1981, an annual tax is levied each tax year on the full and true value of taxable property under this chapter.

(b) The rate of levy is 25 mills, unless a different rate is enacted for a tax year no later than the last day of February in that tax year.

Sec. 43.58.031. EXEMPTIONS. The following property that would otherwise be taxable property is exempt from taxation under this chapter:

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

(2) property exempt from state taxation under the laws of the United States including the exemption of property, whether developed or leased to third-parties, under sec. 21(d) of the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat. 688, 43 USC 1601, et. seq.), except that leaseholds and similar interests held in the exempt property by third-parties shall be taxable to the extent of those interests;

(3) that portion of the full and true value of taxable property attributable to gas reserves.

Sec. 43.58.041. CREDITS. (a) The amount of tax under AS 43.21 paid during a tax year (as defined in AS 43.58.151(9)) by a taxpayer or the taxpayer's consolidated business for tax periods under AS 43.21 beginning after December 31, 1980, is allowed as a credit against the tax levied under this chapter in the tax year for the taxpayer's taxable property. The credit may not exceed the total amount of tax due for the tax year under this chapter for all of the taxpayer's taxable properties.

(b) In addition to the credit allowed under (a) of this section, the amount of tax paid under AS 43.21 by a taxpayer or the taxpayer's consolidated business before July 1, 1981, is allowed as a credit against the tax levied under this chapter for the taxpayer's taxable properties.

(c) In applying the credits under (a) and (b) of this section, the credit allowed under (a) of this section shall be applied before applying any credit under (b) of this section. Credit under (b) of this section shall be applied only to the extent that the combined amount of applied credit under (a) and (b) of this section does not exceed three-quarters of the total amount of tax levied under this chapter for all of the taxpayer's taxable properties. If the amount of the credit under (b) of this section exceeds the amount that may be applied for a tax year against the tax levied under this chapter, then the excess credit under (b) of this section may be carried forward and applied in subsequent tax years until it has been exhausted.

(d) For purposes of determining and applying credits under this section, tax paid by a taxpayer under AS 43.20 shall be treated the same as if it had been paid under AS 43.21, but only if the taxpayer would have been subject to AS 43.21 had the taxpayer been a corporation.

(e) If the income tax liability of a taxpayer or the taxpayer's consolidated business under AS 43.20 or AS 43.21 for a tax period is redetermined and adjusted after the credit for that tax period has been applied under this section, or if the income tax liability of the taxpayer or the taxpayer's consolidated business is redetermined under AS 43.20 and adjusted after the credit for that tax period has been applied under this section, then the taxpayer's tax liability under this chapter for the tax year in which the credit was applied shall be redetermined, taking into account the adjustment to the taxpayer's income tax liability.

Sec. 43.58.051. ASSESSMENT. (a) The department shall assess taxable property under this chapter to the owner of it at its full and true value as of July 1 of each tax year.

(b) The full and true value of taxable property under this chapter is the estimated price which the property would bring for its proven reserves 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 values. In determining this value, the department shall consider all factors which may be known by the department to affect the value of taxable property, including but not limited to the discounted present value of the expected future net income from the proven reserves of the taxable property.

(c) In assessing taxable property under this chapter, the department may not include the assessed value of property subject to tax under AS 43.56.

(d) In discounting the expected future net income from the taxable property to its present value under (b) of this section, the department shall presume that the appropriate discount rate is 10 percentage points above the rate of inflation in the implicit GNP deflator over the five calendar years immediately preceding the assessment date. A taxpayer may rebut this presumption only by proving to the department by clear and convincing evidence that the use of the presumed discount rate in the valuation of the property would result in constructive fraud. In this subsection, "implicit GNP deflator" means the deflator for the gross national product published by the United States Department of Commerce.

Sec. 43.58.061. 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; and

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

Sec. 43.58.071. ASSESSMENT NOTICE. On or before October 15 of each tax 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. The notice of assessment is effective on the date of its mailing.

Sec. 43.58.081. APPEAL. (a) A person aggrieved by the action of the department in making an assessment may appeal that action and obtain a formal hearing upon its validity before the department by filing written objections to the assessment not later than 20 days after the effective date of the assessment notice.

(b) The procedures for conduct of the formal hearing shall be in accordance with AS 43.05.240. At the hearing the appellant bears the burden of proof. In the absence of this proof the assessment is to be upheld by the department. If the department, after hearing, determines that a correction of the assessment is warranted, the department shall correct the assessment and the assessment roll.

(c) Within 30 days after the decision by the department following the hearing, a person aggrieved by that decision may appeal to the superior court.

Sec. 43.58.091. CERTIFICATION. On or before February 1 of the tax year, the department shall certify the final assessment roll. The department shall mail to the owner, operator, or other person filing a return and paying tax on the taxable property a statement of the amount of tax due no later than March 15 of the tax year.

Sec. 43.58.101. SUPPLEMENTAL ASSESSMENT ROLLS. The department shall include property omitted from the assessment roll on a supplemental roll, using the procedures set out in this chapter for the original roll.

Sec. 43.58.111. INVESTIGATION. (a) The department may make an investigation of property on which a return has been filed or on property for which no return has been filed. In either case, the department shall 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 premises necessary for the investigation during reasonable hours and may examine property and other appropriate records. The owner of taxable property, upon request, shall furnish to the employee or agent of the department reasonable assistance required for the investigation. If an employee or agent of the department seeking to enter any premises necessary for an investigation under this section or to obtain reasonable assistance required for an investigation under this section is refused such entry or assistance, the superior court may, after reasonable notice to and hearing of the owner, order the owner to allow the entry or to furnish the assistance.

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

Sec. 43.58.121. LIMITATIONS ON ASSESSMENT, COLLECTION, AND REFUND OF TAXES. The limitations on assessment, collection, and refund of taxes under AS 43.05.260, 43.05.270, and 43.05.275 apply to the tax levied under this chapter except that a redetermination of tax under AS 43.58.041(d) is not subject to these limitations.

Sec. 43.58.131. RETURNS AND PAYMENT OF TAX. (a) A return of taxable property shall be submitted no later than August 1 on the form prescribed by the department based on property values existing on July 1 of each tax year

(1) by a person who is the owner of the property, or who controls that property as agent, or on account of any other person;

(2) by a guardian or other person who has charge of taxable property belonging to a minor or other person;

(3) by the trustee of a trust estate holding taxable property in trust for the benefit of another person;

(4) by the executor or administrator of a deceased person's estate which includes taxable property;

(5) by the receiver of a corporation having taxable property.

(b) The person required to submit the return specified under (a) of this section is primarily liable for payment of the tax levied by this chapter. The persons or estates specified in (a)(2) - (5) of this section in whose behalf the tax levied by this chapter is to be paid are secondarily liable for payment of the tax. With the written approval of the department, an operator or nonoperator of the lease or property may submit returns or make payment of the tax levied under this chapter on behalf of himself and such other persons as the department may approve.

(c) The tax levied under this chapter is payable to the department on or before June 30 of each tax year or in installments, including prepayments, at the times and under the conditions the department may by regulation require. This tax is payable on the due date set out in this subsection or at the times required by the department under its regulations even though the assessment is under appeal or the validity, enforceability, or application of this chapter or any provision of this chapter is challenged before the department or in the courts.

(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 taxable property may regard those properties as a single taxable property for purposes of submitting those reports or making those payments.

(e) Any 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 taxable property may withhold a proportionate share of the payment from any proceeds or other benefits from the taxable 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 witholding.

(f) By written notice the department may require a person filing a return to submit additional information to the department within 30 days.

Sec. 43.58.141. 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. 43.58.151. DEFINITIONS. In this chapter:

(1) "commercial production" means the production of oil or gas for purposes of sale or other beneficial use, except when the sale or beneficial use is incidental to the testing of an unproven well or unproved completion interval;

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

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

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

(5) "operator" means the person conducting the exploration, development, or production operation for a property;

(6) "property" means any right, title, or interest in or the right to produce or recover oil or gas including:

(A) a mineral interest;

(B) a leasehold interest;

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

(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) "tax year" means a calendar period beginning on July 1 of one calendar year and ending on June 30 of the following calendar

year;

(9) "taxable property" means a property having commercial production.

* Sec. 9. AS 43.58.041 has been included in sec. 8 of this Act so that persons subject to the tax under AS 43.21 will not bear the cumulative burden of both the tax under AS 43.21 and AS 43.58. It is the intent of the legislature that the inclusion of this section granting tax credits does not in any manner change the intent, validity, or enforceability of the basic ad valorem tax imposed by this Act. If the inclusion of AS 43.58.041, or any portion of it, results in a judicial decision that the ad valorem tax imposed by this Act is invalid, then AS 43.58.041, or that portion of it that causes the invalidity, is void and of no effect, and AS 43.58, enacted in sec. 8 of this Act, shall be read as if that section or that portion of it had never been included.

* Sec. 10. If an exemption under AS 43.58.031(1), (2), or (3) is held invalid by a final judgment of a court from which an appeal is not taken, then that exemption is void, and AS 43.58, enacted in sec. 8 of this Act, shall be read as if that exemption had never been included.

* Sec. 11. If the method of determining taxable income under either AS 43.21.020 or 43.21.030 is held invalid by a final judgment of a court from which an appeal is not taken, and if as a result of that judgment a corporation, whether or not a party named in that judgment, receives a refund of taxes or estimated taxes paid under AS 43.21, then the provisions of AS 43.20 apply to that corporation for the entire period for which it receives the refund.

* Sec. 12. (a) Notwithstanding the provisions of AS 43.58.021(b), enacted in sec. 8 of this Act, the rate of levy under AS 43.58 for the tax year beginning July 1, 1981, is 30 mills.

(b) Notwithstanding the provisions of AS 43.58.041(c), enacted in sec.

8 of this Act, for the tax year beginning July 1, 1981, credit under AS 43.-58.041(b) shall be applied only to the extent that the combined amount of applied credit under AS 43.58.041(a) and (b) does not exceed two-thirds of the total amount of tax levied under AS 43.58 for all of the taxpayer's taxable properties.

* Sec. 13. AS 43.21.040(d) and (e) are repealed.

* Sec. 14. AS 43.55.011(d), 43.55.012(a), 43.55.018, 43.58.010, 43.58.-020, 43.58.030, 43.58.040, 43.58.050, 43.58.060, 43.58.070, 43.58.080, 43.-58.090, 43.58.100, 43.58.110, 43.58.150, 43.58.160, 43.58.170, 43.58.180, 43.58.190, and 43.58.200 are repealed.

* Sec. 15. Sections 1 - 7, 11, and 13 of this Act are retroactive to January 1, 1978, and apply to tax years beginning after December 31, 1977.

* Sec. 16. Sections 8, 12, and 14 of this Act take effect July 1, 1981.

* Sec. 17. Sections 9, 10, and 15 of this Act take effect immediately in accordance with AS 01.10.070(c).

JAY S. HAMMOND
GOVERNOR

SS HB 200

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

SS HB 200

May 19, 1981

The Honorable Jim Duncan
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am submitting a sponsor substitute for House Bill 200, originally introduced at my request on February 19, 1981. The original bill proposed amendments only to the Oil and Gas Corporate Income Tax, AS 43.21. This sponsor substitute contains all of the provisions of the original bill, but includes in addition new provisions for an ad valorem property tax on oil reserves, with credits allowed against this tax for oil and gas corporate income taxes paid under AS 43.21.

On March 18, 1981, the legislative leadership and I jointly issued a statement concerning pending oil and gas tax issues. That statement contained a pledge that my administration and the legislative leadership would undertake a mutual effort to arrive at an equitable and responsible plan to protect the sorely needed state revenues that have been placed at risk as a result of the pending constitutional challenge to the Oil and Gas Corporate Income Tax (AS 43.21). The new provisions in this sponsor substitute providing for a property tax on oil reserves represent the fruits of those mutual efforts.

Sections 3 through 7 and sections 11 and 13 of SSHB 200 are, with some additional changes, the same as the original provisions of House Bill 200. The major additions to the original bill are found in section 1 and in section 3 of the bill. Section 1 would amend AS 43.20.011(e) to provide that income from sharing in the 70 percent of a regional corporation's income from oil or gas production that must be divided among the other regional corporations under sec. 7(i) of the Alaska Native Claims Settlement Act would be taxed under AS 43.20 rather than AS 43.21. The primary reason for this provision is that while the 30 percent of oil or gas production income that is retained by a corporation results from direct activity by that corporation, the share of 70 percent that is received by the other corporations is, by contrast, sufficiently removed from oil and gas production. Therefore, the 70 percent share is more appropriately taxed under AS 43.20.

The original version of House Bill 200 contained several proposed amendments to AS 43.21.020(c), relating to deductions from gross income for interest expenses and for administrative and overhead expenses. This bill now includes three additional deductions. First, in proposed AS 43.21.020(c)(10), a deduction would be allowed to a regional Native corporation for the 70 percent of production income that must be shared under ANCSA with the other regional corporations. Second, a deduction is allowed against gross production income for any taxes actually paid under the oil reserves property tax provisions in sec. 8 of this bill. Finally, a deduction would be allowed to taxpayers for taxes imposed under the federal Windfall Profit Tax. These kinds of taxes are often allowed by states as deductions from gross income under state income taxes, and allowing them to be deducted under the Oil and Gas Corporate Income Tax puts to rest any claim by the taxpayers that the failure to allow these deductions results in discriminatory treatment.

Section 8 of this bill would provide for an ad valorem property tax on oil reserves. After reviewing the available options, I am convinced that this is the best method of addressing the state's need to protect the revenues that have been placed at risk as a result of the legal challenge to the Oil and Gas Corporate Income Tax. Clearly it would be totally irresponsible to do nothing to protect these revenues that are so critical to the state. While there may be other ways to raise sufficient revenues to meet any judgment that might be rendered against the state in the event the oil companies' legal challenge is successful, these other ways would severely undercut efforts to encourage economic diversification and to reduce our severe economic dependence on nonrenewable resource development. At the same time, by allowing a credit against the oil reserves tax for income taxes paid under AS 43.21, the overall tax burden on the oil industry remains substantially unchanged, and thus present and future oil exploration and development activities will not be adversely affected.

Proposed AS 43.58.031 would allow certain exemptions from the property tax. Interests in taxable property held by the state or by the United States would not be subject to the tax. Of course, a leasehold or other interest in state or federal lands held by a third party would be taxable. Similarly, I have been advised that there is substantial reason to believe that under sec. 21(d) of ANCSA, Congress has prohibited the state from imposing a property tax on developed or leased lands received under the Act for a twenty-year period (until after December 1991). Although some arguments to the contrary could be raised by the state, I believe that the better course of action is to avoid a legal battle over this question -- particularly one in which we would not be likely to prevail. Thus, the bill would exempt that property only to the extent required by ANCSA. Leaseholds and similar interests held by third parties in this property would not be exempt from the property tax. Additionally, the bill would exempt gas reserves from the property tax. Because of the somewhat precarious economic situation with respect to natural gas production and transportation, evidenced in part by the difficulties that have attended efforts to obtain financing for a natural gas pipeline from the Prudhoe Bay fields, I am reluctant to impose any possible additional tax burdens on natural gas at this time. The exemption provision is structured in such a way that if circumstances change in future years, the legislature can remove this exemption without having to perform major surgery on the reserves tax.

I recognize that this bill is coming to the legislature relatively late in the session. However, the concepts embodied in the bill have been under discussion and close review by the legislative leadership for many months, and the provisions in the bill should come as no surprise. Therefore, I can in good conscience express to you my sense of urgency in obtaining action on this bill this session. The issues have been before you for some time now, and the state's problems will only be exacerbated by delay.

Sincerely,

Jay S. Hammond
Governor

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

SS HB 200

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Sponsor Substitute for HB 200 (Page 1 of 3)
Title Act relating to oil and gas taxes; effective date
Requested by Date May 18, 1981

II. FISCAL DETAIL

Agency Affected Revenue
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Petroleum Revenue Division
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars) See ANALYSIS below

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME						
PART TIME						
TEMPORARY						

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

Figures in $millions

	FY 82	FY 83	FY 84	FY 85	Total
Present AS 43.21	1142 to 1177	1356 to 1491	1474 to 1751	1585 to 2042	5557 to 6461
New AS 43.21	787 to 794	860 to 891	951 to 1018	1008 to 1107	3606 to 3810
New AS 43.58	601 to 722	429 to 590	474 to 1244	522 to 817	2026 to 3373
Retro. "Warts"	-83	0	0	0	-83
Retro. WPT	-156	0	0	0	-156
New Cash Flow	1149 to 1277	1289 to 1481	1425 to 2262	1530 to 1924	5393 to 6944
FISCAL IMPACT	7 to 100	-67 to -10	-49 to 511	-55 to -118	-164 to 483

(see also attached tables)

IV. DATE May 18, 1981

PREPARED BY Thomas K. Williams
AGENCY Revenue
PHONE 465-2300

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

33-001 (Rev. 12/79)

FISCAL IMPACT OF SSHB 200
("High-Price" Case)

	FY 82	FY 83	FY 84	FY 85
Present AS 43.21	1177	1491	1751	2042
"Warts" Deduction	33	37	40	44
Windfall Profit Tax	333	498	622	784
AS 43.58 Deduction 1/	17	65	71	107
	383	600	733	935
New AS 43.21	794	891	1018	1107
Gross AS 43.58 2/	2166	2075	2262	1924
"Sec. 41(a) Credit" 3/	794	891	1018	1107
"Sec. 41(b) Credit" 3/	650	594	0	0
Net AS 43.58	722	590	1244	817

1/ Equals 1/4 of current year's net AS 43.58 plus 3/4 of previous year's net AS 43.58, times 9.4 percent.

2/ Computed using a 19% discount rate, 30 mills in first year, 25 mills in next two years, and 20 mills thereafter.

3/ FY 82 credits together equal 2/3 of gross AS 43.58; FY 83 "Sec. 41(b) credit" equals remaining credit from an original amount of 1244.

FISCAL IMPACT OF SSHB 200
("Low-Price" Case)

	FY 82	FY 83	FY 84	FY 85
Present AS 43.21	1142	1356	1474	1585
"Warts" Deduction	33	37	40	44
Windfall Profit Tax	308	407	442	487
AS 43.58 Deduction 1/	14	52	41	46
	355	492	523	575
New AS 43.21	787	860	951	1008
Gross AS 43.58 2/	1803	1715	1828	1530
"Sec. 41(a) Credit" 3/	787	860	951	1008
"Sec. 41(b) Credit" 3/	415	426	403	0
Net AS 43.58	601	429	474	522

1/ Equals 1/4 of current year's net AS 43.58 plus 3/4 of previous year's net AS 43.58, times 9.4 percent.

2/ Computed using a 19% discount rate, 30 mills in first year, 25 mills in next two years, and 20 mills thereafter.

3/ FY 82 credits together equal 2/3 of gross AS 43.58; FY 83 credits together equal 3/4 of gross AS 43.58; FY 84 "Sec. 41(b) credit" equals remaining credit from an original amount of 1244.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 200
Title Act Relating to Oil Taxes
Requested by Special Gas Pipeline Committee Date

II. FISCAL DETAIL
Agency Affected Revenue
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Petroleum Revenue
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		-0-				
200 TRAVEL		7.1	4.3	5.1	6.1	7.4
300 CONTRACTUAL		66.8	37.8	45.4	54.5	65.3
400 COMMODITIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS, ETC.		-0-				
TOTAL		73.9	42.1	50.5	60.6	72.7

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		73.9	42.1	50.5	60.6	72.7
FEDERAL FUNDS		-0-				
OTHER (Specify Fund Source)		-0-				

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME		-0-				
PART TIME		-0-				
TEMPORARY		-0-				

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

For the first year, costs for consultants will be higher than in the future. We estimate 123 days of consultant time at $450/day plus travel outside and to Alaska. An additional 20 days of time preparing for appeals is anticipated. Total consultant costs would therefore be $66,750 for the first year. Travel by Division staff would add another $7,080 in the first year. For later years, we assume contract time and travel will drop to about $42,040 in FY 83. After that, we have added a 20% per year inflation (tickets, fees, and per diem). No new positions are needed, although some reshuffling of responsibilities may occur.

IV. DATE 5/18/81 PREPARED BY [signature]
AGENCY Pet Rev
PHONE 276-1363

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

33-001 (Rev. 12/79)

CS SS HB 200 (GP)

HOUSE SPECIAL GAS PIPELINE COMMITTEE

Letter of Intent
CS SSHB 200(GP)

As stated in the legislation, the purpose of the Committee Substitute for SSHB 200 is to protect and stabilize Alaska's oil revenues. Both the technical amendments to the oil & gas corporate income tax (AS 43.21) and the proposed tax on reserves contained in SSHB 200 accomplish this purpose. An ad valorem tax on producing oil reserves is an especially appropriate backstop for AS 43.21 because of its basis in the net present value of a field, paralleling the stream of income from that field.

The Committee has received extensive legal and fiscal analyses of the proposed legislation. The legal analysis was prepared for the Committee by Preston, Thorgrimson, Ellis & Holman and is entitled A Sound Strategy for Protecting Alaska's Oil & Gas Revenues: An Analysis of the Proposed Backstop Legislation. The Department of Revenue has submitted a report to the Committee entitled Fiscal Analysis of the Proposed Backstop Legislation. Both reports are hereby formally submitted as part of this Committee report on CS SSHB 200.

Alaska's tax burden on oil & gas is progressive and equitable. The States's major taxes on oil & gas - the production tax (AS 43.55), the oil & gas corporate income tax (AS 43.21), and the proposed ad valorem tax on producing reserves - are all designed to tax only profitable production income and not marginal properties. In recognition of this emphasis, CS SSHB 200 grants an exemption for natural gas from the proposed ad valorem tax. The tenuous nature of two major natural gas projects of national importance based on Alaskan gas reserves - the Pacific LNG project in Cook Inlet and the Alaska Natural Gas Transportation System - were of special concern to the Committee, and the exemption was supported in the testimony taken by the Committee.

CS SSHB 200 will provide legal and fiscal stability for the State's petroleum tax policy, a policy that places Alaska in a very attractive position for oil and gas development. In a memorandum to the legislature, dated May 1981, an international petroleum economist summarized the comparative nature of Alaska's tax climate by stating, "In comparing the profitability of Alaskan oil with that elsewhere in the world, it is quite clear that it is probably the most profitable investment area in the world."

Terry Gardiner
Rep. Terry Gardiner, Chairman

Brian Rogers
Rep. Brian Rogers

Rep. Richard Halford

Joe L Hayes - Do Not Pass
Rep. Joe Hayes

R Randolph - Do Not Pass
Rep. Richard Randolph

H Malone
Rep. Hugh Malone

Tony Vaska
Rep. Tony Vaska

House Special Gas Pipeline Committee

ALASKA STATE LEGISLATURE

TWELFTH . Legislature FIRST... Session

SPONSOR SUBSTITUTE FOR
HOUSE ..BILL......... NO. 200

By ..THE.RULES..COMMITTEE.......
BY REQUEST OF THE GOVERNOR

"An Act relating to oil and gas taxes; and providing for an effective date."

Oil and gas taxes

Introduced in the House ...5/19..., 19....81

HISTORY IN THE HOUSE

1981

May 19 Read first time and referred to Committee on
Special Gas Pipeline and Finance

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by Speaker
Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by President
Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Received from Senate

Concurred in Senate amendment thus adopting:
VOTE

Failed to concur in Senate amendment; asked Senate to recede
VOTE

Senate receded from amendment
VOTE

Senate failed to recede from amendment
VOTE

CC appointed by House

CC appointed by Senate

CC adopted by House
VOTE

CC adopted by Senate
VOTE

To enrolling
Reported correctly enrolled
Sent to Governor

.... by Governor

Filed with Lt. Governor

Chapter No. ....

Original sponsor: Rules/Governor

Offered: 6/3/81
Referred: Finance

IN THE HOUSE

BY THE SPECIAL GAS PIPELINE COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 200 (Gas Pipeline)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to oil and gas taxes; and providing for an effective date."

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

* Section 1. AS 43.20.011(e) is amended to read:

(e) There is imposed for each taxable year upon the entire taxable income of every corporation derived from sources within the state a tax consisting of a normal tax equal to 5.4 percent of taxable income, and a surtax which is equal to 4.0 percent of taxable income, except that the tax on a corporation <u>doing business in the state which derives income from</u> [ENGAGED IN] the production or <u>pipeline</u> transportation of crude oil or natural gas <u>in the state</u> shall be determined and paid in accordance with AS 43.21. <u>Income from sharing in a regional Native corporation's revenue that is required to be divided under sec. 7(i) and sec. 7(j) of the Alaska Native Claims Settlement Act (P.L. 92-203) is taxable income of the recipient under this chapter, except that a recipient who is subject to AS 43.21 shall treat the income as taxable under AS 43.21.040.</u> For tax years beginning after December 31, 1979, the surtax exemption is $50,000. For controlled corporations described in secs. 1561 - 1563 of the Internal Revenue Code only one surtax exemption may be allowed for the controlled group.

* Sec. 2. AS 43.21.010 is amended to read:

Sec. 43.21.010. APPLICATION. This chapter applies to every corporation doing business in the state which derives income from the production of oil or gas from a lease or property in the state [,] or from the pipeline transportation of oil or gas in the state. The tax calculated under this chapter is measured by the total taxable income of the corporation during the tax period as determined under [DEFINED IN] AS 43.21.020 - 43.21.040 and is calculated [DETERMINED] at the rates established under AS 43.20.011(e).

* Sec. 3. AS 43.21.020(c) is amended to read:

(c) Net income from oil and gas production shall be determined by the department by deducting from gross income the following:

(1) royalties paid in kind or in value;

(2) taxes imposed under AS 43.55 and AS 43.57 which are actually paid or incurred by the corporation on the production from a lease or property in the state;

(3) taxes imposed under AS 43.56 and AS 29.53 which are actually paid or incurred by the corporation on property used directly in the production of oil or gas from a lease or property in the state, including property used in production, gathering, treatment, or preparation of the oil or gas for pipeline transportation, but only if those property tax payments were due and payable only after the date of commercial production from the lease or property with which the property was associated;

(4) the direct costs incurred by or for the corporation in operating the lease or property, including the direct costs of producing, gathering, treating, or preparing the oil or gas for pipeline transportation, but not of any payments received for those activities and not including any indirect cost or overhead expense;

(5) depreciation (using the unit of production method or such other reasonable methods as the department may by regulation establish) on property used directly in the production, gathering, treatment, or preparation of the oil or gas for pipeline transportation in-

cluding amortization of capitalized interest for investments in this property at a rate not to exceed the average cost of borrowed capital to the taxpayer during the year in which it is capitalized;

(6) the amortization of lease acquisition payments and taxes paid or incurred under AS 43.56 and AS 29.53 (including capitalized interest on both) for or on producing properties before the commencement of commercial production from the lease or property for which the property is being used;

(7) interest expense of the corporation, not capitalized during construction, that was paid or incurred in connection with property in Alaska; however, unless (f) of this section applies, the interest expense may [TO THE EXTENT THAT IT DOES] not exceed that portion of the total interest paid by the consolidated business of which the corporation is a part, determined by multiplying the total interest [(REDUCED BY INTERCOMPANY TRANSACTIONS WITHIN THE CONSOLIDATED BUSINESS)] by a fraction, the numerator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the denominator of which is the value of all real and tangible personal property of the consolidated business; in this subsection, "total interest paid by the consolidated business" does not include interest expense arising from intercompany obligations within the consolidated business except to the extent that the interest expense reflects a pass-through of interest on a third-party borrowing by the parent or other member of the consolidated business with the purpose, expressed at the time of the third-party borrowing, of financing Alaska business activity of the taxpayer corporation;

(8) expenses incurred by the corporation after December 31, 1977, of unsuccessful exploration of oil or gas in the state including

the acquisition costs of abandoned properties, dry hole costs, and the costs of geologic and geophysical exploration related to those abandoned properties;

(9) general overhead or administrative expense incurred by the corporation attributable to deriving income from the production of oil or gas from a lease or property in the state to the extent, except as provided in (f) of this section, that it does not exceed [THE LESSER OF:

(A)] that portion of the total general overhead or administrative expense incurred by the consolidated business of which the corporation is a part, determined by multiplying the total general overhead or administrative expense by a fraction, the numerator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the denominator of which is the value of all real and tangible personal property of the consolidated business;

(10) the amount of income from the production of oil and gas from a lease or property that is divided among the regional Native corporations under sec. 7(i) of the Alaska Native Claims Settlement Act (P.L. 92-203);

(11) the amount by which the total tax paid or incurred by the taxpayer under AS 43.58 for leases or properties in the state exceeds the amount of credit allowed to the taxpayer under AS 43.58.041;

(12) the tax imposed by sec. 4986 of the Internal Revenue Code that is paid or incurred by the taxpayer for oil production from leases or properties in the state [, OR

(B) THE SUM OF $0.12 FOR EACH BARREL OF OIL AND $0.02 FOR EACH THOUSAND CUBIC FEET OF GAS PRODUCED FROM A LEASE OR PROP-

ERTY IN THE STATE].

* Sec. 4. AS 43.21.020 is amended by adding a new subsection to read:

(f) If a corporation demonstrates to the satisfaction of the department that it paid or incurred actual expenses for interest or for general overhead or administration attributable to deriving income from the production of oil or gas from a lease or property in the state in an amount greater than the amount determined under (c)(7) or (c)(9) of this section, the department may allow the corporation to deduct the greater amount.

* Sec. 5. AS 43.21.040(b) is repealed and reenacted to read:

(b) The total taxable income of the consolidated business is its entire income less the portion of that entire income attributable to worldwide production and pipeline transportation of oil and gas. In this section,

(1) for a member of a consolidated business who is required to file under the Internal Revenue Code, "entire income" means taxable income under Subtitle F and chapter 1 of Subtitle A of the Internal Revenue Code of 1954, as amended, except that those provisions adopted after December 31, 1975, which change or modify exemptions from tax are not adopted by reference as a part of this section until the second January 1 following the effective date of the federal law;

(2) for a member of a consolidated business who is not required to file under the Internal Revenue Code, "entire income" means book income, except that a taxpayer may elect to report his income as the income would be determined under (1) of this subsection.

* Sec. 6. AS 43.21.050 is amended by adding a new subsection to read:

(d) If the methods of allocation and apportionment provided in this chapter do not fairly represent the extent of a corporation's business activity in the state, the corporation may petition for or the department may require, in respect to all or any part of the corporation's business activity, if reasonable, the employment of any method authorized under art. IV, sec. 18, of the multistate tax compact (AS 43.19.010) to effectuate an equitable allocation and apportionment of the corporation's income. The commissioner shall include in his annual report required in AS 43.21.110 a report on all relief granted under this subsection, including for each case a statement of the changes in tax liability resulting from the granting of relief, the tax years involved, and a description of the method of determining taxable income that was substituted for those provided in this chapter.

* Sec. 7. AS 43.21.070 is amended to read:

Sec. 43.21.070. PAYMENT OF TAX. The tax levied under this chapter is payable to the department on or before September 30 of each year or in installments , including prepayments of estimated tax, at the times and under the conditions the department may by regulation require. This tax is payable on the due date set out in this section even though the assessment is under appeal or the validity, enforceability or application of this chapter or any provision of this chapter is challenged before the department or in the courts.

* Sec. 8. AS 43.58 is amended by adding new sections to read:

Sec. 43.58.011. FINDINGS AND PURPOSES. (a) The legislature finds that

(1) since Statehood the level of public services and public facilities provided by the state government to its citizens has been much below the level provided by other states to their citizens, and this inadequacy has been the result of insufficient state revenues;

(2) there exists in Alaska today a level of public services and public facilities far below that which Alaskans are reasonably entitled to expect, and these unmet needs include inadequate public

transportation facilities, inadequate public health care facilities and programs, inadequate communications facilities, inadequate public education facilities, inadequate levels of police protection, overburdened justice facilities, and inadequate energy facilities, and an economy overly dependent on nonrenewable resource development;

(3) with the increased revenues that have resulted from increased development of oil resources in Alaska, this legislature, acting on behalf of all the people of Alaska, has embarked upon a legislative program intended to begin fulfilling some of the unmet public needs described in (2) of this subsection, and it will take many years of expenditures at current or increased levels to meet these needs;

(4) a part of this program includes preparing for the time when the revenues derived from Alaska's nonrenewable resources begin to decline and this preparation includes funding of the Alaska permanent fund, encouraging development of renewable resources, and encouraging economic diversification efforts;

(5) there is presently pending in the courts litigation brought by certain taxpayers challenging the constitutionality of the Oil and Gas Corporate Income Tax (AS 43.21), and if the taxpayers in that litigation are successful, the future revenues available to meet the important public needs described in (2) of this subsection will be significantly diminished;

(6) it is in the public interest to provide an alternative means of generating revenues sufficient to meet the state's present and future needs if the constitutional challenge to AS 43.21 is successful;

(7) imposing additional or alternative state taxes upon small businesses and newly developing industries in Alaska would have a significantly adverse impact upon those businesses and would be counterproductive to efforts to encourage economic diversification;

(8) the level of taxation currently imposed by the state on the oil industry does not impose an undue burden on that industry and has not discouraged exploration and development of oil resources in Alaska;

(9) development of natural gas resources in Alaska has lagged behind oil development in the state and additional or alternative taxes on the natural gas industry may discourage future natural gas development;

(10) the imposition of a property tax on oil reserves with a credit for income taxes paid will best provide sufficient alternative revenues without discouraging economic diversification and without discouraging present or future exploration and development of oil resources;

(11) it appears that the Congress of the United States has affirmatively granted the authority to tax developed and leased property received under the Alaska Native Claims Settlement Act only to local governments, for a 20-year period, and that a state tax on developed or leased property received under the Alaska Native Claims Settlement Act would be in conflict with the intent and purpose of that Act.

(b) The purposes of this Act are to

(1) enact a tax which will generate sufficient revenues to

(A) meet any judgment that might be rendered against the state in the litigation concerning the Oil and Gas Corporate Income Tax; and

(B) provide revenue comparable to the present and projected future revenues derived from AS 43.21 if the Oil and Gas Corporate Income Tax is found to be unconstitutional;

(2) avoid imposing cumulative tax liability on taxpayers subject to the Oil and Gas Corporate Income Tax (AS 43.21) by granting

a credit of taxes paid under AS 43.21 for those persons subject to the oil reserves property tax;

(3) avoid discouraging future exploration and development of oil resources by imposing the tax only on property having commercial production;

(4) avoid discouraging the development of economic diversification and the development of natural gas production in the state;

(5) avoid creating a conflict with federal law by exempting from this tax property received under the Alaska Native Claims Settlement Act.

Sec. 43.58.021. AD VALOREM TAX. (a) Beginning July 1, 1981, an annual tax is levied each tax year on the full and true value of taxable property under this chapter.

(b) The rate of levy is 25 mills, unless a different rate is enacted for a tax year no later than the last day of February in that tax year.

Sec. 43.58.031. EXEMPTIONS. (a) The following property that would otherwise be taxable property is exempt from taxation under this chapter:

(1) property of the United States or the state;

(2) property exempt from state taxation under the laws of the United States including the exemption of property, whether or not developed or leased to third-parties, under sec. 21(d) of the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat. 688, 43 U.S.C. 1601, et. seq.);

(3) that portion of the full and true value of taxable property attributable to gas reserves.

(b) Notwithstanding the exemptions from taxation authorized by (a) of this section, a leasehold or similar interest held by a third party in property described in (a)(1) or (a)(2) of this section is taxable under this chapter to the extent of the interest.

Sec. 43.58.041. CREDITS. (a) The amount of tax under AS 43.21 paid during a tax year under this chapter by a taxpayer or the taxpayer's consolidated business for tax periods under AS 43.21 beginning after December 31, 1980, is allowed as a credit against the tax levied under this chapter in the tax year for the taxpayer's taxable property. The credit may not exceed the total amount of tax due for the tax year under this chapter for all of the taxpayer's taxable properties.

(b) In addition to the credit allowed under (a) of this section, the amount of tax paid under AS 43.21 by a taxpayer or the taxpayer's consolidated business before July 1, 1981, is allowed as a credit against the tax levied under this chapter for the taxpayer's taxable properties.

(c) In applying the credits under (a) and (b) of this section, the credit allowed under (a) of this section shall be applied before applying any credit under (b) of this section. Credit under (b) of this section shall be applied only to the extent that the combined amount of applied credit under (a) and (b) of this section does not exceed three-quarters of the total amount of tax levied under this chapter for all of the taxpayer's taxable properties. If the amount of the credit under (b) of this section exceeds the amount that may be applied for a tax year against the tax levied under this chapter, the excess credit under (b) of this section may be carried forward and applied in subsequent tax years until it has been exhausted.

(d) For purposes of determining and applying credits under this section, tax paid by a taxpayer under AS 43.20 shall be treated the same as if it had been paid under AS 43.21, but only if the taxpayer would have been subject to AS 43.21 had the taxpayer been a corporation.

Sec. 43.58.051. REDETERMINATION OF LIABILITY. If the income tax liability of a taxpayer or the taxpayer's consolidated business under AS 43.20 or AS 43.21 for a tax period is redetermined and adjusted after the credit for that tax period has been applied under AS 43.58.-041, or if the income tax liability of the taxpayer or the taxpayer's consolidated business is redetermined under AS 43.20 and adjusted after the credit for that tax period has been applied under AS 43.58.041, then the taxpayer's tax liability under this chapter for the tax year in which the credit was applied shall be redetermined, taking into account the adjustment to the taxpayer's income tax liability.

Sec. 43.58.061. ASSESSMENT. (a) The department shall assess taxable property under this chapter to the owner of it at its full and true value as of July 1 of each tax year.

(b) The full and true value of taxable property under this chapter is the estimated price which the property would bring for its proven reserves 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 values. In determining this value, the department shall consider all factors which may be known by the department to affect the value of taxable property, including but not limited to the discounted present value of the expected future net income from the proven reserves of the taxable property.

(c) In assessing taxable property under this chapter, the department may not include the assessed value of property subject to tax under AS 43.56.

(d) In discounting the expected future net income from the taxable property to its present value under (b) of this section, the department shall presume that the appropriate discount rate is 11.6 percentage points above the rate of inflation implicit in the GNP deflator over the five calendar years immediately preceding the assessment date. A taxpayer may rebut this presumption only by proving to the department by clear and convincing evidence that the use of the presumed discount rate in the valuation of the property would result in constructive fraud. In this subsection, "GNP deflator" means the deflator for the gross national product published by the United States Department of Commerce.

Sec. 43.58.071. 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; and

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

Sec. 43.58.081. ASSESSMENT NOTICE. On or before October 15 of each tax 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. The notice of assessment is effective on the date of its mailing.

Sec. 43.58.091. APPEAL. (a) A person aggrieved by the action of the department in making an assessment may appeal that action and obtain a formal hearing upon its validity before the department by filing written objections to the assessment not later than 20 days after the effective date of the assessment notice.

(b) The procedures for conduct of the formal hearing shall be in accordance with AS 43.05.240. At the hearing the appellant bears the burden of proof. In the absence of this proof the assessment is to be upheld by the department. If the department, after hearing, determines that a correction of the assessment is warranted, the department shall correct the assessment and the assessment roll.

(c) Within 30 days after the decision by the department following the hearing, a person aggrieved by that decision may appeal to the superior court.

Sec. 43.58.101. CERTIFICATION. On or before February 1 of the tax year, the department shall certify the final assessment roll. The department shall mail to the owner, operator, or other person filing a return and paying tax on the taxable property a statement of the amount of tax due no later than March 15 of the tax year.

Sec. 43.58.111. SUPPLEMENTAL ASSESSMENT ROLLS. The department shall, using the procedures set out in this chapter for the original roll, prepare a supplemental assessment roll to include property omitted from the original roll and property from which commercial production commences after the beginning of the tax year. If property is included on the supplemental assessment roll because commercial production from it commences after the beginning of the tax year, the assessed value of the property shall be reduced pro rata in proportion to the portion of the tax year preceding the commencement of commercial production from the property.

Sec. 43.58.121. INVESTIGATION. (a) The department may make an investigation of property on which a return has been filed or on property for which no return has been filed. In either case, the department shall 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 premises necessary for the investigation during reasonable hours and may examine property and other appropriate records. The owner of taxable property, upon request, shall furnish to the employee or agent of the department reasonable assistance required for the investigation. If an employee or agent of the department seeking to enter any premises necessary for an investigation under this section or to obtain reasonable assistance required for an investigation under this section is refused entry or assistance, the superior court may, after reasonable notice to and hearing of the owner, order the owner to allow the entry or to furnish the assistance.

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

Sec. 43.58.131. LIMITATIONS ON ASSESSMENT, COLLECTION, AND REFUND OF TAXES. The limitations on assessment, collection, and refund of taxes under AS 43.05.260, 43.05.270, and 43.05.275 apply to the tax levied under this chapter except that a redetermination of tax under AS 43.58.041(d) is not subject to these limitations.

Sec. 43.58.141. RETURNS AND PAYMENT OF TAX. (a) A return of taxable property shall be submitted no later than August 1 on the form prescribed by the department based on property values existing on July 1 of each tax year

(1) by a person who is the owner of the property, or who controls that property as agent, or on account of any other person;

(2) by a guardian or other person who has charge of taxable property belonging to a minor or other person;

(3) by the trustee of a trust estate holding taxable property in trust for the benefit of another person;

(4) by the executor or administrator of a deceased person's estate which includes taxable property;

(5) by the receiver of a corporation having taxable property.

(b) The person required to submit the return specified under (a) of this section is primarily liable for payment of the tax levied by this chapter. The persons or estates specified in (a)(2) - (5) of this section in whose behalf the tax levied by this chapter is to be paid are secondarily liable for payment of the tax. With the written approval of the department, an operator or nonoperator of the lease or property may submit returns or make payment of the tax levied under this chapter on behalf of himself and such other persons as the department may approve.

(c) The tax levied under this chapter is payable to the department on or before June 30 of each tax year or in installments, including prepayments, at the times and under the conditions the department may by regulation require. This tax is payable on the due date set out in this subsection or at the times required by the department under its regulations even though the assessment is under appeal or the validity, enforceability, or application of this chapter or any provision of this chapter is challenged before the department or in the courts.

(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 taxable property may regard those properties as a single taxable property for purposes of submitting those reports or making those payments.

(e) A 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 taxable property may withhold a proportionate share of the payment from any proceeds or other benefits from the taxable property owed to a 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 witholding.

(f) By written notice the department may require a person filing a return to submit additional information to the department within 30 days.

Sec. 43.58.151. 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. 43.58.161. DEFINITIONS. In this chapter

(1) "commercial production" means the production of oil or gas for purposes of sale or other beneficial use, except when the sale or beneficial use is incidental to the testing of an unproven well or unproved completion interval;

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

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

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

(5) "operator" means the person conducting the exploration, development, or production operation for a property;

(6) "property" means any right, title, or interest in or the right to produce or recover oil or gas including:

(A) a mineral interest;

(B) a leasehold interest;

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

(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) "tax year" means a calendar period beginning on July 1 of one calendar year and ending on June 30 of the following calendar year;

(9) "taxable property" means a property having commercial production.

* Sec. 9. AS 43.58.041 has been included in sec. 8 of this Act so that persons subject to the tax under AS 43.21 will not bear the cumulative burden of both the tax under AS 43.21 and AS 43.58. It is the intent of the legislature that the inclusion of this section granting tax credits does not in any manner change the intent, validity, or enforceability of the basic ad valorem tax imposed by this Act. If the inclusion of AS 43.58.041, or any portion of it, results in a judicial decision that the ad valorem tax imposed by this Act is invalid, then AS 43.58.041, or that portion of it that causes the invalidity, is void and of no effect, and AS 43.58, enacted in sec. 8 of this Act, shall be read as if that section or that portion of it had never been included.

* Sec. 10. If an exemption under AS 43.58.031(1), (2), or (3) is held invalid by a final judgment of a court from which an appeal is not taken, then that exemption is void, and AS 43.58, enacted in sec. 8 of this Act,

shall be read as if that exemption had never been included.

* Sec. 11. If the method of determining taxable income under either AS 43.21.020 or 43.21.030 is held invalid by a final judgment of a court from which an appeal is not taken, and if as a result of that judgment a corporation, whether or not a party named in that judgment, receives a refund of taxes or estimated taxes paid under AS 43.21, then the provisions of AS 43.20 apply to that corporation for the entire period for which it receives the refund.

* Sec. 12. (a) Notwithstanding the provisions of AS 43.58.021(b), enacted in sec. 8 of this Act, the rate of levy under AS 43.58 for the tax year beginning July 1, 1981, is 30 mills.

(b) Notwithstanding the provisions of AS 43.58.041(c), enacted in sec. 8 of this Act, for the tax year beginning July 1, 1981, credit under AS 43.58.041(b) shall be applied only to the extent that the combined amount of applied credit under AS 43.58.041(a) and (b) does not exceed two-thirds of the total amount of tax levied under AS 43.58 for all of the taxpayer's taxable properties.

* Sec. 13. AS 43.21.040(d) and (e) are repealed.

* Sec. 14. AS 43.55.011(d), 43.55.012(a), 43.55.018; AS 43.58.010, 43.58.020, 43.58.030, 43.58.040, 43.58.050, 43.58.060, 43.58.070, 43.58.080, 43.58.090, 43.58.100, 43.58.110, 43.58.150, 43.58.160, 43.58.170, 43.58.180, 43.58.190, and 43.58.200 are repealed.

* Sec. 15. Sections 1 - 7, 11, and 13 of this Act are retroactive to January 1, 1978, and apply to tax years beginning after December 31, 1977.

* Sec. 16. Sections 8, 12, and 14 of this Act take effect July 1, 1981.

* Sec. 17. Sections 9, 10, and 15 of this Act take effect immediately in accordance with AS 01.10.070(c).

ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Sponsor Substitute for HB 200 (Page 1 of 3)

Title Act relating to oil and gas taxes; effective date

Requested by Date May 18, 1981

II. FISCAL DETAIL

Agency Affected Revenue

Program Category Affected General Government

BRU, Program, or Subprogram(s) Affected Petroleum Revenue Division

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars) See ANALYSIS below

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III) Figures in $millions

	FY 82	FY 83	FY 84	FY 85	Total
Present AS 43.21	1142 to 1177	1356 to 1491	1474 to 1751	1585 to 2042	5557 to 6461
New AS 43.21	787 to 794	860 to 891	951 to 1018	1008 to 1107	3606 to 3810
New AS 43.58	601 to 722	429 to 590	474 to 1244	522 to 817	2026 to 3373
Retro. "Warts"	-83	0	0	0	-83
Retro. WPT	-156	0	0	0	-156
New Cash Flow	1149 to 1277	1289 to 1481	1425 to 2262	1530 to 1924	5393 to 6944
FISCAL IMPACT	7 to 100	-67 to -10	-49 to 511	-55 to -118	-164 to 483

(see also attached tables)

IV. DATE May 18, 1981 PREPARED BY Thomas K. Williams

AGENCY Revenue

PHONE 465-2300

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

FISCAL IMPACT OF SSHB 200
("High-Price" Case)

	FY 82	FY 83	FY 84	FY 85
Present AS 43.21	1177	1491	1751	2042
"Warts" Deduction	33	37	40	44
Windfall Profit Tax	333	498	622	784
AS 43.58 Deduction 1/	17	65	71	107
	383	600	733	935
New AS 43.21	794	891	1018	1107
Gross AS 43.58 2/	2166	2075	2262	1924
"Sec. 41(a) Credit" 3/	794	891	1018	1107
"Sec. 41(b) Credit" 3/	650	594	0	0
Net AS 43.58	722	590	1244	817

1/ Equals 1/4 of current year's net AS 43.58 plus 3/4 of previous year's net AS 43.58, times 9.4 percent.

2/ Computed using a 19% discount rate, 30 mills in first year, 25 mills in next two years, and 20 mills thereafter.

3/ FY 82 credits together equal 2/3 of gross AS 43.58; FY 83 "Sec. 41(b) credit" equals remaining credit from an original amount of 1244.

FISCAL IMPACT OF SSHB 200
("Low-Price" Case)

	FY 82	FY 83	FY 84	FY 85
Present AS 43.21	1142	1356	1474	1585
"Warts" Deduction	33	37	40	44
Windfall Profit Tax	308	407	442	487
AS 43.58 Deduction 1/	14	52	41	46
	355	492	523	575
New AS 43.21	787	860	951	1008
Gross AS 43.58 2/	1803	1715	1828	1530
"Sec. 41(a) Credit" 3/	787	860	951	1008
"Sec. 41(b) Credit" 3/	415	426	403	0
Net AS 43.58	601	429	474	522

1/ Equals 1/4 of current year's net AS 43.58 plus 3/4 of previous year's net AS 43.58, times 9.4 percent.

2/ Computed using a 19% discount rate, 30 mills in first year, 25 mills in next two years, and 20 mills thereafter.

3/ FY 82 credits together equal 2/3 of gross AS 43.58; FY 83 credits together equal 3/4 of gross AS 43.58; FY 84 "Sec. 41(b) credit" equals remaining credit from an original amount of 1244.

ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 200
Title Act Relating to Oil Taxes
Requested by Special Gas Pipeline Committee Date

II. FISCAL DETAIL
Agency Affected Revenue
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Petroleum Revenue
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		-0-				
200 TRAVEL		7.1	4.3	5.1	6.1	7.4
300 CONTRACTUAL		66.8	37.8	45.4	54.5	65.3
400 COMMODITIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS, ETC.		-0-				
TOTAL		73.9	42.1	50.5	60.6	72.7

FUNDING (Thousands of Dollars)

GENERAL FUND		73.9	42.1	50.5	60.6	72.7
FEDERAL FUNDS		-0-				
OTHER (Specify Fund Source)		-0-				

POSITIONS

FULL TIME		-0-				
PART TIME		-0-				
TEMPORARY		-0-				

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

For the first year, costs for consultants will be higher than in the future. We estimate 123 days of consultant time at $450/day plus travel outside and to Alaska. An additional 20 days of time preparing for appeals is anticipated. Total consultant costs would therefore be $66,750 for the first year. Travel by Division staff would add another $7,080 in the first year. For later years, we assume contract time and travel will drop to about $42,040 in FY 83. After that, we have added a 20% per year inflation (tickets, fees, and per diem). No new positions are needed, although some reshuffling of responsibilities may occur.

IV. DATE 5/18/81 PREPARED BY [signature]
AGENCY Pet Rev
PHONE 276-1363

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

33-001 (Rev. 12/79)

Introduced: 5/19/81
Referred: Special Gas Pipeline Committee and Finance

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 200

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to oil and gas taxes; and providing for an effective date."

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

* Section 1. AS 43.20.011(e) is amended to read:

(e) There is imposed for each taxable year upon the entire taxable income of every corporation derived from sources within the state a tax consisting of a normal tax equal to 5.4 percent of taxable income, and a surtax which is equal to 4.0 percent of taxable income, except that the tax on a corporation doing business in the state which derives income from [ENGAGED IN] the production or pipeline transportation of crude oil or natural gas in the state shall be determined and paid in accordance with AS 43.21. Income from sharing in the [illegible] percent of a regional Native corporation's revenue that is required to be divided under sec. 7(i) of the Alaska Native Claims Settlement Act (P.L. 92-203) is taxable income of the recipient under this chapter. For tax years beginning after December 31, 1979, the surtax exemption is $50,000. For controlled corporations described in secs. 1561 - 1563 of the Internal Revenue Code only one surtax exemption may be allowed for the controlled group.

* Sec. 2. AS 43.21.010 is amended to read:

Sec. 43.21.010. APPLICATION. This chapter applies to every corporation doing business in the state which derives income from the production of oil or gas from a lease or property in the state [,] or from the pipeline transportation of oil or gas in the state. The tax calculated under this chapter is measured by the total taxable income of the corporation during the tax period as determined under [DEFINED IN] AS 43.21.020 - 43.21.040 and is calculated [DETERMINED] at the rates established under AS 43.20.011(e).

* Sec. 3. AS 43.21.020(c) is amended to read:

(c) Net income from oil and gas production shall be determined by the department by deducting from gross income the following:

(1) royalties paid in kind or in value;

(2) taxes imposed under AS 43.55 and AS 43.57 which are actually paid or incurred by the corporation on the production from a lease or property in the state;

(3) taxes imposed under AS 43.56 and AS 29.53 which are actually paid or incurred by the corporation on property used directly in the production of oil or gas from a lease or property in the state, including property used in production, gathering, treatment, or preparation of the oil or gas for pipeline transportation, but only if those property tax payments were due and payable only after the date of commercial production from the lease or property with which the property was associated;

(4) the direct costs incurred by or for the corporation in operating the lease or property, including the direct costs of producing, gathering, treating, or preparing the oil or gas for pipeline transportation, but not of any payments received for those activities and not including any indirect costs or overhead expense;

(5) depreciation (using the unit of production method or such other reasonable methods as the department may by regulation establish) on property used directly in the production, gathering, treatment, or preparation of the oil or gas for pipeline transportation including amortization of capitalized interest for investments in this

property at a rate not to exceed the average cost of borrowed capital to the taxpayer during the year in which it is capitalized;

(6) the amortization of lease acquisition payments and taxes paid _or incurred_ under AS 43.56 and AS 29.53 (including capitalized interest on both) for or on producing properties before the commencement of commercial production from the lease or property for which the property is being used;

(7) interest expense of the corporation, not capitalized during construction, _that was paid or incurred in connection with property in Alaska; however, unless (f) of this section applies, the interest expense may_ [TO THE EXTENT THAT IT DOES] not exceed that portion of the total interest paid by the consolidated business of which the corporation is a part, determined by multiplying the total interest [(REDUCED BY INTERCOMPANY TRANSACTIONS WITHIN THE CONSOLIDATED BUSINESS)] by a fraction, the numerator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the denominator of which is the value of all real and tangible personal property of the consolidated business; _in this subsection, "total interest paid by the consolidated business" does not include interest expense arising from intercompany obligations within the consolidated business except to the extent that the interest expense reflects a pass-through of interest on a third-party borrowing by the parent or other member of the consolidated business with the purpose, expressed at the time of the third-party borrowing, of financing Alaska business activity of the taxpayer corporation;_

(8) expenses incurred by the corporation after December 31, 1977 of unsuccessful exploration of oil or gas in the state including the acquisition costs of abandoned properties, dry hole costs, and the

costs of geologic and geophysical exploration related to those abandoned properties;

(9) general overhead or administrative expense incurred by the corporation attributable to the production of oil or gas from a lease or property in the state to the extent, except as provided in (f) of this section, that it does not exceed [THE LESSER OF:

(A)] that portion of the total general overhead or administrative expense incurred by the consolidated business of which the corporation is a part, determined by multiplying the total general overhead or administrative expense by a fraction, the numerator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the denominator of which is the value of all real and tangible personal property of the consolidated business;

(10) the amount of income from the production of oil and gas from a lease or property that is divided among the 12 regional corporations under sec. 7(i) of the Alaska Native Claims Settlement Act (P.L. 92-203);

(11) the amount by which the total tax paid or incurred by the taxpayer under AS 43.58 for leases or properties in the state exceeds the amount of credit allowed to the taxpayer under AS 43.58.041;

(12) the tax imposed by sec. 4986 of the Internal Revenue Code that is paid or incurred by the taxpayer for oil production from leases or properties in the state [, OR

(B) THE SUM OF $0.12 FOR EACH BARREL OF OIL AND $0.02 FOR EACH THOUSAND CUBIC FEET OF GAS PRODUCED FROM A LEASE OR PROPERTY IN THE STATE].

* Sec. 4. AS 43.21.020 is amended by adding a new subsection to read:

(f) If a corporation demonstrates to the satisfaction of the department that it paid or incurred actual expenses for interest or for general overhead or administration attributable to the production of oil or gas from a lease or property in the state in an amount greater than the amount determined under (c)(7) or (c)(9) of this section, the department may allow the corporation to deduct the greater amount.

* Sec. 5. AS 43.21.040(b) is repealed and reenacted to read:

(b) The total taxable income of the consolidated business is its entire income less the portion of that entire income attributable to worldwide production and pipeline transportation of oil and gas. In this section, "entire income" is taxable income under Subtitle F and chapter 1 of Subtitle A of the Internal Revenue Code of 1954, as amended, except that those provisions adopted after December 31, 1975 which change or modify exemptions from tax are not adopted by reference as a part of this section until the second January 1 following the effective date of the federal law. In computing taxable income under this section, the taxpayer is not entitled to deduct any taxes based on or measured by net income.

* Sec. 6. AS 43.21.050 is amended by adding a new subsection to read:

(d) If the methods of allocation and apportionment provided in this chapter do not fairly represent the extent of a corporation's business activity in the state, the corporation may petition for or the department may require, in respect to all or any part of the corporation's business activity, if reasonable, the employment of any method authorized under art. IV, sec. 18, of the multistate tax compact (AS 43.19.010) to effectuate an equitable allocation and apportionment of the corporation's income. The commissioner shall include in his annual report required in AS 43.21.110 a report on all relief granted under this subsection, including for each case a statement of the changes in tax liability resulting from the granting of relief, the tax years involved and a description of the method of determining taxable income that was substituted for those provided in this chapter.

* Sec. 7. AS 43.21.070 is amended to read:

Sec. 43.21.070. PAYMENT OF TAX. The tax levied under this chapter is payable to the department on or before September 30 of each year or in installments, including prepayments of estimated tax, at the times and under the conditions the department may by regulation require. This tax is payable on the due date set out in this section even though the assessment is under appeal or the validity, enforceability or application of this chapter or any provision of this chapter is challenged before the department or in the courts.

* Sec. 8. AS 43.58 is amended by adding new sections to read:

Sec. 43.58.011. FINDINGS AND PURPOSES. (a) The legislature finds:

(1) that since Statehood, the level of public services and public facilities provided by the state government to its citizens has been much below the level provided by other states to their citizens, and that this inadequacy has been the result of insufficient state revenues;

(2) that there exists in Alaska today a level of public services and public facilities far below that which Alaskans are reasonably entitled to expect, and that these unmet needs include inadequate public transportation facilities, inadequate public health care facilities and programs, inadequate communications facilities, inadequate public education facilities, inadequate levels of police protection, overburdened justice facilities, and inadequate energy facilities, and an economy overly dependent on nonrenewable resource development;

(3) that with the increased revenues that have resulted from

increased development of oil resources in Alaska, this legislature, acting on behalf of all the people of Alaska, has embarked upon a legislative program intended to begin fulfilling some of the unmet public needs described in (2) of this subsection, and that it will take many years of expenditures at current or increased levels to meet these needs;

(4) that a part of this program includes preparing for the time when the revenues derived from Alaska's nonrenewable resources begin to decline and that such preparation includes funding of the Permanent Fund, encouraging development of renewable resources and encouraging economic diversification efforts;

(5) that there is presently pending in the courts litigation brought by certain taxpayers challenging the constitutionality of the Oil and Gas Corporate Income Tax (AS 43.21), and that if the taxpayers in that litigation are successful, the future revenues available to meet the important public needs described in (2) of this subsection will be significantly diminished;

(6) that it is in the public interest to provide an alternative means of generating revenues sufficient to meet the state's present and future needs in the event that the constitutional challenge to AS 43.21 is successful;

(7) that imposing additional or alternative state taxes upon small businesses and newly-developing industries in Alaska would have a significantly adverse impact upon those businesses and would be counterproductive to efforts to encourage economic diversification;

(8) that the level of taxation currently imposed by the state on the oil industry does not impose an undue burden on that industry and has not discouraged exploration and development of oil resources in Alaska;

(9) that development of natural gas resources in Alaska has lagged behind oil development in the state and that additional or alternative taxes on the natural gas industry may discourage future natural gas development;

(10) that the imposition of a property tax on oil reserves with a credit for income taxes paid will best provide sufficient alternative revenues without discouraging economic diversification and without discouraging present or future exploration and development of oil resources;

(11) that it appears that the Congress of the United States has affirmatively granted the authority to tax developed and leased property received under the Alaska Native Claims Settlement Act only to local governments, for a 20-year period, and that a state tax on developed or leased property received under the Alaska Native Claims Settlement Act would be in conflict with the intent and purpose of that Act.

(b) The purposes of this Act are

(1) to enact a tax which will generate sufficient revenues (A) to meet any judgment that might be rendered against the state in the litigation concerning the Oil and Gas Corporate Income Tax and (B) to provide revenue comparable to the present and projected future revenues derived from AS 43.21 in the event that tax is found to be unconstitutional;

(2) to avoid imposing cumulative tax liability on taxpayers subject to the Oil and Gas Corporate Income Tax (AS 43.21), by granting a credit of taxes paid under AS 43.21 for those persons subject to the oil reserves property tax;

(3) to avoid discouraging future exploration and development of oil resources by imposing the tax only on property having commercial production;

(4) to avoid discouraging the development of economic diversification and the development of natural gas production in the state;

(5) to avoid creating a conflict with federal law by exempting from this tax property received under the Alaska Native Claims Settlement Act.

Sec. 43.58.021. AD VALOREM TAX. (a) Beginning July 1, 1981, an annual tax is levied each tax year on the full and true value of taxable property under this chapter.

(b) The rate of levy is 25 mills, unless a different rate is enacted for a tax year no later than the last day of February in that tax year.

Sec. 43.58.031. EXEMPTIONS. The following property that would otherwise be taxable property is exempt from taxation under this chapter:

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

(2) property exempt from state taxation under the laws of the United States including the exemption of property, whether developed or leased to third-parties, under sec. 21(d) of the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat. 688, 43 USC 1601, et. seq.), except that leaseholds and similar interests held in the exempt property by third-parties shall be taxable to the extent of those interests;

(3) that portion of the full and true value of taxable property attributable to gas reserves.

Sec. 43.58.041. CREDITS. (a) The amount of tax under AS 43.21 paid during a tax year (as defined in AS 43.58.151(9)) by a taxpayer or the taxpayer's consolidated business for tax periods under AS 43.21 beginning after December 31, 1980, is allowed as a credit against the tax levied under this chapter in the tax year for the taxpayer's taxable property. The credit may not exceed the total amount of tax due for the tax year under this chapter for all of the taxpayer's taxable properties.

(b) In addition to the credit allowed under (a) of this section, the amount of tax paid under AS 43.21 by a taxpayer or the taxpayer's consolidated business before July 1, 1981, is allowed as a credit against the tax levied under this chapter for the taxpayer's taxable properties.

(c) In applying the credits under (a) and (b) of this section, the credit allowed under (a) of this section shall be applied before applying any credit under (b) of this section. Credit under (b) of this section shall be applied only to the extent that the combined amount of applied credit under (a) and (b) of this section does not exceed three-quarters of the total amount of tax levied under this chapter for all of the taxpayer's taxable properties. If the amount of the credit under (b) of this section exceeds the amount that may be applied for a tax year against the tax levied under this chapter, then the excess credit under (b) of this section may be carried forward and applied in subsequent tax years until it has been exhausted.

(d) For purposes of determining and applying credits under this section, tax paid by a taxpayer under AS 43.20 shall be treated the same as if it had been paid under AS 43.21, but only if the taxpayer would have been subject to AS 43.21 had the taxpayer been a corporation.

(e) If the income tax liability of a taxpayer or the taxpayer's consolidated business under AS 43.20 or AS 43.21 for a tax period is redetermined and adjusted after the credit for that tax period has been applied under this section, or if the income tax liability of the taxpayer or the taxpayer's consolidated business is redetermined under AS 43.20 and adjusted after the credit for that tax period has been applied under this section, then the taxpayer's tax liability under this chapter for the tax year in which the credit was applied shall be redetermined, taking into account the adjustment to the taxpayer's income tax liability.

Sec. 43.58.051. ASSESSMENT. (a) The department shall assess taxable property under this chapter to the owner of it at its full and true value as of July 1 of each tax year.

(b) The full and true value of taxable property under this chapter is the estimated price which the property would bring for its proven reserves 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 values. In determining this value, the department shall consider all factors which may be known by the department to affect the value of taxable property, including but not limited to the discounted present value of the expected future net income from the proven reserves of the taxable property.

(c) In assessing taxable property under this chapter, the department may not include the assessed value of property subject to tax under AS 43.56.

(d) In discounting the expected future net income from the taxable property to its present value under (b) of this section, the department shall presume that the appropriate discount rate is 10 percentage points above the rate of inflation in the implicit GNP deflator over the five calendar years immediately preceding the assessment date. A taxpayer may rebut this presumption only by proving to the department by clear and convincing evidence that the use of the presumed discount rate in the valuation of the property would result in constructive fraud. In this subsection, "implicit GNP deflator" means the deflator for the gross national product published by the United States Depart-