



LAWS OF ALASKA

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Chapter No.

159

AN ACT

Relating to the oil and gas reserves ad valorem tax and its relationship to other oil and gas taxation; and providing for an effective date.

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

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

CHAPTER 58. OIL AND GAS RESERVES AD VALOREM TAX.

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

(b) The rate of levy for the tax year beginning January 1, 1976 is 20 mills.

(c) The legislature shall annually determine by law the rate of the levy for the succeeding year.

(d) The rate of levy may not exceed 20 mills.

Sec. 43.58.020. EXEMPTIONS. The following property that would otherwise be taxable property shall be exempt from taxation under this chapter:

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

(2) any property for the period of five years beginning on the date of the completion, suspension, or abandonment, whichever occurs first, of a discovery well in an oil or gas field or pool which in whole or in part underlies or comprises the lease or property;

(3) any property until any of the following

occurs:

(A) the securing by the owner or operator of or by a person who has purchased or has the right to purchase all or any part of the production from a property, individually or with others, of permits, licenses, certificates or other approvals from federal and state agencies and rights-of-way, easements, leases or other rights in land which in the aggregate are reasonably necessary to commence construction of an initial transmission facility to transport oil or gas that may be produced from that property; or

(B) the commencement by the owner or operator of or by a person who has purchased or has the right to purchase all or any part of the production from a property, individually or with others, of construction of an initial transmission facility to transport oil or gas that may be produced from that property; or

(C) the determination by the department that a transmission facility exists that is capable of transporting oil or gas that may be produced from that property;

(4) any property with respect to which on January 1 the commencement of construction of an initial transmission facility to transport oil or gas that may be produced from that property is enjoined, either temporarily or permanently, by an order, judgment, decree, determination or award of a federal, state or local court or administrative or regulatory agency; however, the exemption stated in this paragraph operates only while the injunction is in effect and becomes inoperative if the department makes the determination stated in (3)(C) of this section.

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

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

(b) The full and true value of taxable property under this chapter is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing 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 taxable property.

Sec. 43.58.050. 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. 43.58.060. ASSESSMENT NOTICE. On or before April 15 of each year, the department shall send to every owner of taxable property named in the assessment roll a notice of assessment showing the assessed value of the property. The notice of assessment is effective on the date of its mailing.

Sec. 43.58.070. APPEAL. (a) A person aggrieved by the action of the department in making an assessment may appeal that action and obtain a 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 hearing and preliminary activities to it shall be in accordance with AS 44.62.350, 44.62.430, 44.62.450 - 44.62.460, 44.62.480, 44.62.500 - 44.62.550, 44.62.590, and 44.62.610 - 44.62.640. The term "respondent" used in those sections of AS 44.62 (Administrative Procedure Act) shall be considered, for the purposes of this section, to include the person aggrieved by action of the department. The department shall provide by regulation for notices of hearing under this section to interested persons. 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. The superior court shall grant priority on its dockets for the appeals over all civil cases then pending.

Sec. 43.58.080. CERTIFICATION. On or before June 15 of each year, the department shall certify the final assessment roll and 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.

Sec. 43.58.090. 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. 43.58.100. 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. 43.58.110. RETURNS AND PAYMENT OF TAX. (a) A return of taxable property shall be submitted on or before February 1 on the form prescribed by the department based on property values existing on January 1 of each year, except as otherwise provided in this chapter,

(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 who has its assets in his hands.

(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 year or in installments 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 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 leases or 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 withholding.

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

Sec. 43.58.120. CIVIL PENALTY. Five per cent shall be added to the tax for each 30-day period or fraction of that period during which the taxpayer fails to file a return or pay the full amount of the tax, or a portion or a deficiency of the tax due and payable as finally determined by the department and required by this chapter, unless it is shown that the failure is due to a reasonable cause and not to wilful neglect. The penalty may not exceed 25 per cent in the aggregate. The penalty shall be collected at the same time, in the same manner and as a part of the original tax, but if the original tax is paid before the neglect is discovered, the penalty shall be collected in the same manner as the original tax. The department shall describe by regulation circumstances which constitute reasonable cause for purposes of this section.

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

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

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

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

Sec. 43.58.170. TERMINATION OF TAX. The tax imposed

by this chapter shall terminate on December 31, 1977.

Sec. 43.58.180. ACCRUAL OF EARLY DEVELOPMENT INCENTIVE CREDIT. (a) An early development incentive credit, calculated in accordance with this section, shall be applied to the tax payable under ch. 55 of this title as provided in AS 43.55.018. The early development incentive credit for a lease or property is zero until changed as provided in this section.

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

(c) The early development incentive credit for a lease or property shall be reduced each month by the amount of tax credit allowed in that month under AS 43.55.018 for that lease or property.

Sec. 43.58.190. DEFINITIONS. In this chapter:

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

(2) "discovery well" means a well the discovery of which is the basis, either of itself or in conjunction with other information, for a determination by the department that a field or pool, as these terms are defined in AS 31.05.170(4) and (9), exists and that at least a portion of it has been defined or determined to be productive of oil or gas in commercial quantities by actual drilling operation. The department, in determining whether a well is a discovery well, shall first consult with the Department of Natural Resources;

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

(4) "initial transmission facility" means the first means or system for transporting oil or gas that may be produced from a lease or property, either by itself or as a part of or in connection with any other means or system for sale or use off the lease or property including, but not limited to, transmission pipelines, common or private carriers, trucks and barges, although not including gathering lines and other personal property and equipment utilized by the owner or operator in developing the lease or property;

(5) "lease or 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 provisions of sec. 614(b)(3) of the Internal Revenue Code of 1954 as defined on the effective date of this paragraph;

(6) "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;

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

(8) "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;

(9) "taxable property" means any lease or property having proven reserves;

(10) "net tax paid under this chapter" means the amount of tax payable under sec. 10 of this chapter, less the credit allowed under sec. 30 of this chapter without regard to interest or penalty.

Sec. 43.58.200. PAYMENT TO ALASKA NATIVE FUND. When the tax levied under this chapter is payable an amount equivalent to not less than two per cent of the tax shall be paid by the state from oil and gas royalties, bonuses and rentals into the Alaska Native Fund established by sec. 6 of the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat. 688, 43 U.S.C. 1601 et seq.) until all payments paid into the fund equal \$500,000,000.

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

(b) Except as provided in this chapter and in ch. 58 of this title, the tax imposed by this chapter is in place of all taxes now imposed by the state or any of its municipalities, and neither the state nor a municipality may impose a tax upon

(1) [deleted]

(2) producing oil or gas leases;

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

(4) [deleted]

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

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

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

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

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

(8) "lease or property" means 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 provisions of sec. 614(b)(3) of the Internal Revenue Code of 1954 as defined on the effective date of this paragraph;

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

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

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

* Sec. 6. AS 29.53.045(c) is amended to read:

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

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

(c) If the total value of assessed property of a municipality taxing under AS 29.53.045(c) exceeds the product of 225 per cent of the average per capita assessed full and true value of property in the state (to be determined by the department and reported to each municipality by January 15 of each year) multiplied by the number of residents of the taxing municipality, the department shall designate the portion of the tax base against which the local tax may be applied. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under ch. 58 of this title.

* Sec. 8. Except as provided in this section, if a provision of this Act for any reason is invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the remainder of this Act or any of the other provisions of this Act. However, if AS 43.58.020(2), (3) or (4), or any of those paragraphs, should be for any reason held invalid or unenforceable, this Act shall be void in its entirety and of no effect whatsoever.

* Sec. 9. AS 43.58.030, 43.58.180, and AS 43.55.018 are included in this Act so as to avoid double taxation of the same interest in oil and gas and as an incentive for the early production of oil and gas discovered in the state. The legislature believes that the inclusion of these sections granting tax credits does not in any manner change the intent, validity or enforceability of the basic ad valorem tax imposed by the Act. If the inclusion of these sections results in a judicial decision that the ad valorem tax imposed by AS 43.58.010 is invalid, these sections shall be void and of no effect whatsoever and the Act shall be read as if these sections had never been included.

* Sec. 10. This Act takes effect immediately in accordance with AS 01.10.070(c).