



LAWS OF ALASKA

1978

Source

Chapter No.

SCS CSHB 322 (Resources)

110

AN ACT

Establishing an oil and gas corporate income tax; and providing for an effective date.

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

* Section 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds and declares that the method of apportioning income for tax purposes under the "Uniform Division of Income for Tax Purposes" formula embodied in the Multistate Tax Compact (AS 43.19) and AS 43.20.065 does not fairly represent the extent of the business activities in this state of multistate corporations engaged in the production and pipeline transportation of crude oil and natural gas in Alaska. The legislature therefore intends that, in accordance with the provisions of art. IV, sec. 18 of the Multistate Tax Compact (AS 43.19), the income tax of all corporations engaged in the production or pipeline transportation of oil or natural gas in or directly associated with this state shall be assessed by the tax administrator under this Act. The legislature further intends that the assessment of income tax against a multistate corporation engaged in the production or pipeline transportation of oil or natural gas shall be commensurate with the tax that would be assessed against a corporation owning and operating only those assets of the multistate corporation which are in or directly associated with this state.

* Sec. 2. 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 per cent of taxable income, and a surtax which is equal to 4.0 per cent of taxable income. For purposes of this chapter the surtax exemption for a taxable year follows secs. 1561 and 1563 of the Internal Revenue Code. The tax of a corporation engaged in the production or transportation of crude oil or natural gas shall be determined and paid in accordance with ch. 21 of this title.

* Sec. 3. AS 43 is amended by adding a new chapter to read:

CHAPTER 21. OIL AND GAS CORPORATE
INCOME TAX.

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 or directly associated with 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 as defined in secs. 20 - 40 of this chapter and is determined at the rates established under AS 43.20.011(e).

Sec. 43.21.020. DETERMINATION OF TAXABLE INCOME FROM OIL AND GAS PRODUCTION. (a) The taxable income of a corporation from the production of oil and gas from a lease or property in the state shall be the corporation's net income as calculated by the department in accordance with this section.

(b) Gross income of a corporation from oil and gas production shall be the gross value at the point of production of oil or gas produced from a lease or property in the state. The department shall by regulation determine a uniform method of establishing the gross value at the point of production. In making its determination the department may use the actual prices or values received for the oil or gas, the posted prices for the oil or gas in the same field, or the prevailing prices or values of oil or gas in the same field. In addition, in its determination of gross value at the point of production of oil or gas produced from a lease or property, the department shall determine the reasonable costs of transportation from the point of sale to the point of production of the oil or gas. Transportation costs set by a tariff properly on file with the Alaska Pipeline Commission or other regulatory agency shall be considered prima facie reasonable, but if a tariff properly on file with a regulatory agency is subsequently amended, changed, or overturned retroactively, the reasonable costs of transportation shall be recomputed for that period using the newly determined tariff.

(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 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 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 net 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 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 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 not capitalized of the corporation, 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;
- (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 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, 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.

(d) Deductions from gross income under this section shall not include expenses previously deducted on a return filed under AS 43.20.

(e) Where a corporation subject to this chapter shares the production or proceeds of the production from a lease or property through a working interest, royalty interest, overriding royalty interest, production payment, net profit interest, joint venture or other agreement, the department shall allocate the deductions from gross income between the corporation and the persons with whom it has such an agreement in accordance with the terms of the agreement.

Sec. 43.21.030. DETERMINATION OF INCOME FROM OIL AND GAS PIPELINE TRANSPORTATION. (a) Except as provided in (c) of this section, taxable income attributable to the transportation of oil in a pipeline engaged in interstate commerce in Alaska shall be determined by the department and shall be the amount reported or that would be required to be reported to the Federal Energy Regulatory Commission or its successors as net operating income, less those portions of interest and general administrative expense attributable to the pipeline transportation of oil in the state, except that taxable income shall also include taxes on or measured by income. The department shall establish regulations governing the determination of interest and general administrative expense attributable to pipeline transportation of oil in the state.

(b) Except as provided in (c) of this section, taxable income attributable to the transportation of natural gas in a pipeline engaged in interstate commerce in Alaska shall be determined by the department and shall be the amount reported or that would be required to be reported to the Federal Energy Regulatory Commission as net operating income less that portion of interest and general administrative expense attributable to pipeline transportation in the state, except that the taxable income shall also include taxes on or measured by income. The department shall establish regulations governing the determination of interest and general administrative expense attributable to pipeline transportation of natural gas in the state.

(c) Taxable income attributable to the transportation of oil or natural gas in Alaska of any corporation not under the Federal Energy Regulatory Commission jurisdiction, or of a corporation under the jurisdiction of the Federal Energy Regulatory Commission but not reporting the operation of pipelines in Alaska separately from the operation of pipelines elsewhere, shall be determined by the department and shall be based upon an amount equal to that which would have been reported to the Federal Energy Regulatory Commission under (a) of this section in the case of oil pipelines, or (b) of this section in the case of natural gas pipelines, had the corporation been, in fact, under Federal Energy Regulatory Commission jurisdiction for the taxable year and required to report on the operation of Alaska pipelines separately from the operation of pipelines elsewhere.

Sec. 43.21.040. DETERMINATION OF INCOME FROM ACTIVITIES OTHER THAN OIL AND GAS PRODUCTION OR PIPELINE TRANS-

PORTATION. (a) Taxable income of a corporation subject to this chapter from activities in this state other than the production of oil or gas from a lease or property in the state or the pipeline transportation of oil or gas in the state shall be determined in accordance with the method established in art. IV of AS 43.19.010 and in AS 43.20.071, as modified by (b) - (e) of this section.

(b) The total taxable income of the consolidated business shall be the net income determined and certified by an independent certified public accountant for the purposes of a report to shareholders covering its earnings and profits for the taxable year (calculated without regard to any taxes on or measured by net income), less the taxable income of the corporation as determined under secs. 20 and 30 of this chapter.

(c) The numerator and denominator of the property factor, of the payroll factor and of the sales factor shall be calculated without reference to that portion of property, payroll or sales directly related to the production of oil or gas from a lease of property in the state or the pipeline transportation of oil or gas in the state.

(d) Compensation earned by employees of the consolidated business who are employed in the United States but not in any state shall be included in the numerator of the payroll factor if the employees are directly supplied from a base of operations maintained in this state.

(e) The value of oil or gas production facilities or other properties of the consolidated business which are located in the United States but not in any state shall be included in the numerator of the property factor if the property is serviced or supplied from a base of operations maintained in the state or if that property relies on onshore facilities in this state for storage of the oil or gas produced.

Sec. 43.21.050. ASSESSMENT OF INCOME AND TAX. (a) The department shall assess taxable income and the amount of tax payable on that taxable income.

(b) On or before August 15 of each year the department shall send to every corporation taxable under this chapter a notice of assessment showing the amount of income taxable under this chapter for the previous year and the amount of tax payable on that taxable income.

(c) For purposes of this chapter the department may combine taxable incomes of corporations subject to tax under this chapter who are part of the same consolidated business.

Sec. 43.21.060. RETURNS. On or before April 15 of each year, a corporation subject to tax under this chapter shall submit a return in a form prescribed by the department setting out information required by the department to determine taxable income. For purposes of this chapter, the department may require corporations subject to tax under this chapter who are part of the same consolidated business to file a single return.

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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 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. 43.21.080. TRANSITIONAL RULES. The department shall provide by regulation transition rules for corporations subject to tax under ch. 20 of this title before the effective date of this Act to avoid double taxation of the same income or double deduction of the same expense of those corporations as a result of becoming subject to tax under this chapter.

Sec. 43.21.090. 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. 43.21.100. PENALTIES. The penalties established in ch. 20 of this title apply to this chapter.

Sec. 43.21.110. PUBLIC REPORTING. (a) The commissioner of revenue shall compile and transmit to the legislature an annual consolidated report of state revenues and taxation policies under this chapter. This report shall include total aggregate income tax paid by corporations covered under this chapter and aggregate income and deductions by category, so classified as to prevent the identification of particular returns or reports.

(b) The legislative auditor shall transmit to the legislature an annual report reviewing the actions of the department in administering this chapter.

Sec. 43.21.120. DEFINITIONS. Unless the context requires otherwise the definitions contained in AS 43.55.-140 are applicable to this chapter. In addition, in this chapter

(1) "base of operations" means the closest point on land to the offshore oil or gas production operations from which goods, services and supplies flow to those offshore oil or gas production operations;

(2) "consolidated business" means a corporation or group of corporations having at least 50 per cent common ownership, direct or indirect, or a group of corporations in which there is common control either direct or indirect as evidenced by any arrangement, contract or agreement.

* Sec. 4. This Act applies to taxable income earned or received after December 31, 1977.

* Sec. 5. The Act takes effect immediately in accordance with AS 01.10.070(c).