

HOUSE BILL NO. 328

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE SEATON

Introduced: 2/17/12

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the oil and gas corporate income tax; relating to the credits against
2 the oil and gas corporate income tax; making conforming amendments; and providing
3 for an effective date."

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

5 * **Section 1.** AS 29.60.599(1) is amended to read:

6 (1) "barrel," when used with reference to oil, means the quantity of
7 oil contained in 42 United States gallons of 231 cubic inches each, measured at a
8 temperature of 60 degrees Fahrenheit and an absolute pressure of 14.65 pounds a
9 square inch [HAS THE MEANING GIVEN IN AS 43.20.072];

10 * **Sec. 2.** AS 41.09.010(b) is amended to read:

11 (b) An exploration incentive credit extended under (a) of this section may be
12 applied against

13 (1) a payment or obligation against which a credit authorized by
14 AS 38.05.180(i) may be claimed;

1 (2) taxes payable under AS 43.20 or AS 43.21, as applicable; and

2 (3) oil and gas bonus payments due the state under AS 38.05.180(f).

3 * **Sec. 3.** AS 43.20.011 is amended by adding a new subsection to read:

4 (g) For purposes of calculating the tax under (e) of this section, the taxable
5 income of a corporation engaged in the production or transportation of crude oil or
6 natural gas shall be determined in accordance with AS 43.21.

7 * **Sec. 4.** AS 43.20.073(f) is amended to read:

8 (f) This section does not apply to taxpayers subject to AS 43.21
9 [AS 43.20.072 ENGAGED IN

10 (1) THE PRODUCTION OF OIL OR GAS FROM A LEASE OR
11 PROPERTY IN THE STATE; OR

12 (2) THE TRANSPORTATION OF OIL OR GAS BY REGULATED
13 PIPELINE IN THE STATE].

14 * **Sec. 5.** AS 43.21 is amended by adding new sections to read:

15 **Article 1. Determination of Taxable Income.**

16 **Sec. 43.21.200. Application.** This chapter applies to every corporation doing
17 business in the state that derives income from the production of oil or gas from a lease
18 or property in the state or from the pipeline transportation of oil or gas in the state. The
19 tax calculated under this chapter is measured by the total taxable income of the
20 corporation during the tax period as defined by AS 43.21.210 - 43.21.240 and is
21 calculated at the rates established under AS 43.20.011(e).

22 **Sec. 43.21.210. Determination of taxable income from oil and gas**
23 **production.** (a) The taxable income of a corporation from the production of oil and
24 gas from a lease or property in the state is the corporation's net income as calculated
25 by the department in accordance with this section.

26 (b) Gross income of a corporation from oil and gas production is the gross
27 value at the point of production of oil or gas produced from a lease or property in the
28 state. The department shall by regulation determine a uniform method of establishing
29 the gross value at the point of production. For the purpose of determining the gross
30 value at the point of production under this subsection, the department shall use
31 AS 43.55.150 for the determination of transportation costs.

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

3 (1) royalties paid in kind or in value;

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

6 (3) taxes imposed under AS 29.45.080 - 29.45.090 and AS 43.56 that
7 are actually paid or incurred by the corporation on property used directly in the
8 production of oil or gas from a lease or property in the state, including property used
9 in production, gathering, treatment, or preparation of the oil or gas for pipeline
10 transportation, but only if those property tax payments were due and payable only
11 after the date of commercial production from the lease or property with which the
12 property was associated;

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

17 (5) depreciation, using the percentage depletion basis under 26 U.S.C.
18 613 (Internal Revenue Code) or another reasonable method as the department may by
19 regulation establish, on property used directly in the production, gathering, treatment,
20 or preparation of the oil or gas for pipeline transportation, including amortization of
21 capitalized interest for investments in that property at a rate not to exceed the average
22 cost to the taxpayer of borrowed capital during the year in which the interest is
23 capitalized;

24 (6) the amortization of lease acquisition payments and taxes paid or
25 incurred under AS 29.45.080, 29.45.090, or AS 43.56, including capitalized interest,
26 for or on producing properties before the commencement of commercial production
27 from the lease or property for which the property is being used;

28 (7) interest expense of the corporation, not capitalized during
29 construction, that was paid or incurred in connection with property in the state;
30 however, unless (f) of this section applies, the interest expense may not exceed that
31 portion of the total interest paid by the consolidated business of which the corporation

1 is a part, determined by multiplying the total interest by a fraction, the numerator of
2 which is the value of the corporation's real and tangible personal property used
3 directly in the production of oil or gas from a lease or property in the state and the
4 denominator of which is the value of all real and tangible personal property of the
5 consolidated business; in this paragraph, "total interest paid by the consolidated
6 business" does not include interest expense arising from intercompany obligations
7 within the consolidated business except to the extent that the interest expense reflects a
8 pass-through of interest on a third-party borrowing by the parent or other member of
9 the consolidated business with the purpose, expressed at the time of the third-party
10 borrowing, of financing Alaska business activity of the taxpayer corporation;

11 (8) expenses incurred by the corporation after December 31, 2012, of
12 unsuccessful exploration of oil or gas in the state, including the acquisition costs of
13 abandoned properties, dry hole costs, and the costs of geologic and geophysical
14 exploration related to those abandoned properties;

15 (9) general overhead or administrative expense incurred by the
16 corporation attributable to deriving income from the production of oil or gas from a
17 lease or property in the state to the extent, except as provided in (f) of this section, that
18 the general overhead or administrative expense does not exceed that portion of the
19 total general overhead or administrative expense incurred by the consolidated business
20 of which the corporation is a part, determined by multiplying the total general
21 overhead or administrative expense by a fraction, the numerator of which is the value
22 of the corporation's real and tangible personal property used directly in the production
23 of oil or gas from a lease or property in the state and the denominator of which is the
24 value of all real and tangible personal property of the consolidated business;

25 (10) the amount of income from the production of oil and gas from a
26 lease or property that is divided among the regional Native corporations under 43
27 U.S.C. 1606(i) (sec. 7(i), Alaska Native Claims Settlement Act, P.L. 92-203).

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

30 (e) If a corporation subject to this chapter shares the production or proceeds of
31 the production from a lease or property through a working interest, royalty interest,

1 overriding royalty interest, production payment, net profit interest, joint venture, or
2 other agreement, the department shall allocate the deductions from gross income
3 between the corporation and the persons with whom the corporation has the agreement
4 in accordance with the terms of the agreement.

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

11 **Sec. 43.21.220. Determination of income from oil and gas pipeline**
12 **transportation.** (a) Except as provided in (c) of this section, taxable income
13 attributable to the transportation of oil in a pipeline engaged in interstate commerce in
14 this state shall be determined by the department and shall be the amount reported or
15 that would be required to be reported to the Federal Energy Regulatory Commission or
16 its successors as net operating income, less those portions of interest and general
17 overhead or administrative expense attributable to the pipeline transportation of oil in
18 the state, except that taxable income shall also include taxes on or measured by
19 income. The department shall establish regulations governing the determination of
20 interest and general overhead or administrative expense attributable to pipeline
21 transportation of oil in the state.

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

1 (c) Taxable income attributable to the transportation of oil or natural gas in
 2 this state of a corporation not under the jurisdiction of the Federal Energy Regulatory
 3 Commission, or of a corporation under the jurisdiction of the Federal Energy
 4 Regulatory Commission but not reporting the operation of pipelines in the state
 5 separately from the operation of pipelines elsewhere, shall be determined by the
 6 department and shall be based on an amount equal to the amount that would have been
 7 reported to the Federal Energy Regulatory Commission under (a) of this section in the
 8 case of oil pipelines, or under (b) of this section, in the case of natural gas pipelines,
 9 had the corporation been, in fact, under the jurisdiction of the Federal Energy
 10 Regulatory Commission for the taxable year and required to report on the operation of
 11 pipelines in the state separately from the operation of pipelines elsewhere.

12 **Sec. 43.21.230. Determination of income from activities other than oil and**
 13 **gas production or pipeline transportation.** (a) Taxable income of a corporation
 14 subject to this chapter from activities in this state other than the production of oil or
 15 gas from a lease or property in the state or the pipeline transportation of oil or gas in
 16 the state shall be determined in accordance with the method established in art. IV of
 17 AS 43.19.010 and in AS 43.20.071, as modified by (b) - (d) of this section.

18 (b) The total taxable income of a consolidated business is its entire income
 19 less the portion of that entire income attributable to worldwide production and pipeline
 20 transportation of oil and gas. In this subsection, for a member of a consolidated
 21 business who is

22 (1) required to file under the Internal Revenue Code, "entire income"
 23 means the taxpayer's taxable income as the term is used in AS 43.20.011 - 43.20.065;

24 (2) not required to file under the Internal Revenue Code, "entire
 25 income" means an income determination prepared in accordance with generally
 26 accepted accounting principles, except that a taxpayer may elect to report income as
 27 the income would be determined under (1) of this subsection.

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

1 (d) The value attributed to vessels transporting Alaska oil or gas of a
2 consolidated business that are not owned or effectively owned by the consolidated
3 business shall be excluded from the property factor.

4 **Sec. 43.21.240. Applicability of tax to a consolidated business.** The
5 provisions of this chapter apply to a consolidated business whether or not the taxpayer
6 is the parent or controlling corporation.

7 **Article 2. Calculation of Tax; Returns.**

8 **Sec. 43.21.300. Assessment of income and tax.** (a) The department shall
9 assess taxable income and the amount of tax payable on that taxable income. The
10 amount of the tax payable shall be determined using the tax rates in AS 43.20.011(e).

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

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

18 (d) If the methods of allocation and apportionment provided in this chapter do
19 not fairly represent the extent of a corporation's business activity in the state, the
20 corporation may petition for or the department may require, in respect to all or any
21 part of the corporation's business activity, if reasonable, the employment of any
22 method authorized under art. IV, sec. 18, AS 43.19.010 (Multistate Tax Compact), to
23 carry out an equitable allocation and apportionment of the corporation's income. The
24 commissioner shall include in the annual report required in AS 43.21.410 a report on
25 all relief granted under this subsection, including, for each case, a statement of the
26 changes in tax liability resulting from the granting of relief, the tax years involved, and
27 a description of the method of determining taxable income that was substituted for the
28 methods provided in this chapter.

29 **Sec. 43.21.320. Credits.** A credit under AS 43.20.043, 43.20.044, or 43.20.046
30 may also be applied against the tax levied under this chapter, unless a credit for the
31 same expenditure has been taken against a tax levied under AS 43.20 or AS 43.55.

1 **Sec. 43.21.330. Returns.** On or before April 15 of each year, a corporation
2 subject to tax under this chapter shall submit a return in a form prescribed by the
3 department setting out information required by the department to determine taxable
4 income. For purposes of this chapter, the department may require corporations subject
5 to tax under this chapter that are part of the same consolidated business to file a single
6 return.

7 **Sec. 43.21.340. Payment of tax.** The tax levied under this chapter is payable
8 to the department on or before September 30 of each year or in installments, including
9 prepayments of estimated tax, at the times and under the conditions the department
10 may by regulation require. The tax is payable on the due date set out in this section
11 even though the assessment is under appeal or the validity, enforceability, or
12 application of this chapter or any provision of this chapter is challenged before the
13 department or in the courts.

14 **Article 3. Administrative Matters.**

15 **Sec. 43.21.400. Regulations.** The department shall adopt regulations in
16 accordance with AS 44.62 (Administrative Procedure Act) as appropriate to
17 administer and enforce this chapter.

18 **Sec. 43.21.410. Public reporting.** (a) The commissioner shall compile and
19 transmit to the legislature an annual report of state revenue and the implementation of
20 taxation policies under this chapter. The report must include total aggregate income
21 tax paid by corporations subject to this chapter and aggregate income and deductions
22 by category, classified so as to prevent the identification of particular returns or
23 reports.

24 (b) The legislative auditor shall notify the legislature on or before the first day
25 of each regular session that the annual report reviewing the actions of the department
26 in administering this chapter is available.

27 **Sec. 43.21.420. Information disclosure.** Notwithstanding AS 43.05.320, the
28 department shall disclose to a legislator, on request, information collected from a
29 taxpayer to the extent that

- 30 (1) the taxpayer is a publicly traded company;
31 (2) the information has been filed in a quarterly, annual, or other

1 periodic report to the United States Securities Exchange Commission; and

2 (3) the information has been made public by the United States
3 Securities Exchange Commission.

4 **Sec. 43.21.499. Definitions.** Unless the context requires otherwise, the
5 definitions contained in AS 43.55.900 are applicable to this chapter. In addition, in this
6 chapter,

7 (1) "consolidated business" means a corporation or group of
8 corporations having more than 50 percent common ownership, direct or indirect, or a
9 group of corporations in which there is common control, either direct or indirect, as
10 evidenced by an arrangement, contract, or agreement;

11 (2) "Internal Revenue Code" has the meaning given in AS 43.20.340.

12 * **Sec. 6.** AS 43.82.210(a) is amended to read:

13 (a) If the commissioner approves an application and proposed project plan
14 under AS 43.82.140, the commissioner may develop proposed terms for inclusion in a
15 contract under AS 43.82.020 for periodic payment in lieu of one or more of the
16 following taxes that otherwise would be imposed by the state or a municipality on the
17 qualified sponsor or member of a qualified sponsor group as a consequence of
18 participating in an approved qualified project:

19 (1) oil and gas production taxes and oil surcharges under AS 43.55;

20 (2) oil and gas exploration, production, and pipeline transportation
21 property taxes under AS 43.56;

22 (3) **oil and gas corporate income tax under AS 43.21;** [REPEALED]

23 (4) Alaska net income tax under AS 43.20;

24 (5) municipal sales and use tax under AS 29.45.650 - 29.45.710;

25 (6) municipal property tax under AS 29.45.010 - 29.45.250 or
26 29.45.550 - 29.45.600;

27 (7) municipal special assessments under AS 29.46;

28 (8) a comparable tax or levy imposed by the state or a municipality
29 after June 18, 1998;

30 (9) other state or municipal taxes or categories of taxes identified by
31 the commissioner.

1 * **Sec. 7.** AS 43.20.072 is repealed.

2 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. AS 43.21, added by sec. 5 of this Act, applies to taxable income
5 earned or received after December 31, 2012.

6 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 REGULATIONS. (a) The Department of Revenue may adopt regulations necessary to
9 implement AS 43.21, added by sec. 5 of this Act. The regulations take effect under AS 44.62
10 (Administrative Procedure Act), but not before the effective date of the law implemented by
11 regulation.

12 (b) The Department of Revenue shall provide by regulation for a transition for a
13 corporation subject to tax under AS 43.20 before December 31, 2012, to avoid double
14 taxation of the same income or double deduction of the same expense of the corporation as a
15 result of becoming subject to tax under AS 43.21, added by sec. 5 of this Act.

16 * **Sec. 10.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).

17 * **Sec. 11.** Except as provided in sec. 10 of this Act, this Act takes effect January 1, 2013.