

**HOUSE CS FOR CS FOR SENATE BILL NO. 71(FIN) am H**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/20/14

Offered: 4/19/14

Sponsor(s): SENATORS MICCICHE, Stevens, McGuire, Giessel, Stedman, Hoffman, Egan, Bishop, Dyson

REPRESENTATIVES Tarr, Gara, Millett

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the fishery resource landing tax and cost recovery fisheries; relating  
2 to a product development tax credit for certain salmon and herring products; providing  
3 for an effective date by amending the effective date of sec. 3, ch. 57, SLA 2003; and  
4 providing for an effective date."

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

6 \* **Section 1.** AS 16.10.455(c) is amended to read:

7 (c) As a condition of participation in a common property salmon fishery in a  
8 terminal harvest area under this section, a fisherman who participates in the fishery is  
9 subject to the payment of the assessment levied under (d) of this section **on the**  
10 **projected value of the salmon or on the pounds of salmon harvested.** The  
11 assessment is levied on the [VALUE OF] salmon that the fisherman takes in the  
12 terminal harvest area and sells to a licensed buyer. The buyer of the salmon must be  
13 licensed under AS 43.75, and the buyer shall collect the assessment on salmon taken  
14 in a terminal harvest area at the time of purchase and remit the assessment to the

1 Department of Revenue in accordance with regulations adopted by the Department of  
2 Revenue.

3 \* **Sec. 2.** AS 16.10.455(d) is amended to read:

4 (d) The Department of Revenue may, by regulation, annually, by March 1 of  
5 each year, set the [RATE OF THE] assessment levied on salmon taken in a terminal  
6 harvest area in consultation with the Department of Commerce, Community, and  
7 Economic Development, the hatchery permit holder, and representatives of affected  
8 commercial fishermen. The [RATE OF THE] assessment shall provide sufficient  
9 revenue to cover debt service to the state, reasonable operating expenses, reasonable  
10 maintenance expenses, and development or maintenance of a reserve fund up to 100  
11 percent of annual operating costs of the hatchery permit holder. In setting the [RATE  
12 OF THE] assessment, the department shall consider the estimated return and harvest  
13 of salmon in the terminal harvest area, the projected price to be paid for salmon in the  
14 region, the amount of the existing reserve held by the hatchery permit holder, and the  
15 amount by which the assessment collected in previous years exceeded or fell short of  
16 the amount anticipated to be collected. The [TOTAL RATE OF THE] assessment may  
17 not exceed 50 percent of the value of the salmon. **The department may levy the**  
18 **assessment as a percentage of the projected value of the salmon returning to the**  
19 **terminal harvest area or as a flat rate on each pound of salmon harvested in the**  
20 **area, to the nearest whole cent.**

21 \* **Sec. 3.** AS 43.75.035(a) is amended to read:

22 (a) A taxpayer that is a fisheries business may claim a [SALMON] product  
23 development tax credit of 50 percent of qualified investment in new property first  
24 placed into service in a shore-based plant or on a vessel in the state in the tax year.

25 \* **Sec. 4.** AS 43.75.035(b) is amended to read:

26 (b) The amount of the tax credit applied against taxes under this section may  
27 not

28 (1) exceed 50 percent of the taxpayer's tax liability incurred under this  
29 chapter for processing of salmon **and herring** during the tax year; or

30 (2) be claimed for property first placed into service after December 31,  
31 **2020** [2015].

1 \* **Sec. 5.** AS 43.75.035(c) is amended to read:

2 (c) If the property for which a tax credit is claimed is installed on a vessel, the  
3 amount of qualified investment under (a) of this section is determined by multiplying  
4 the investment cost of the qualified investment property by a fraction, the numerator  
5 of which is the weight of raw salmon or raw herring processed on the vessel by the  
6 taxpayer in the state in the tax year in which the property is first placed into service,  
7 and the denominator of which is the weight of raw salmon or raw herring processed  
8 on the vessel by the taxpayer in and outside of the state in the tax year in which the  
9 property is first placed into service.

10 \* **Sec. 6.** AS 43.75.035(d) is amended to read:

11 (d) An unused credit under this section may be carried forward and applied  
12 against the tax liability incurred on salmon and herring in the following three tax  
13 years.

14 \* **Sec. 7.** AS 43.75.035(g) is amended to read:

15 (g) If, during a tax year, property for which a credit was claimed under this  
16 section is disposed of by the taxpayer, ceases to be qualified investment property, or is  
17 removed from service in the state, the tax due under this chapter is increased by the  
18 recapture percentage of the aggregate decrease in the credit allowed under this section  
19 for all prior tax years that would have resulted solely from reducing to zero the credit  
20 allowed for the qualified investment property under this section. The amount of tax  
21 credit attributable to the qualified investment that is carried forward from prior tax  
22 years is terminated as of the first day of the tax year in which the qualified investment  
23 property is disposed of by the taxpayer, ceases to be qualified investment property, or  
24 is removed from service in the state. For purposes of this subsection,

25 (1) the recapture percentage during the year in which the property is  
26 first placed into service or during the first year following the year in which the  
27 property is first placed into service is 100 percent;

28 (2) the recapture percentage during the second year following the year  
29 in which the property is first placed into service is 75 percent;

30 (3) the recapture percentage during the third year following the year in  
31 which the property is first placed into service is 50 percent;

1 (4) the recapture percentage during the fourth or subsequent year  
2 following the year in which the property is first placed into service is zero percent;

3 (5) qualified investment property used on a vessel is considered to  
4 have been removed from the state on the first day of a tax year in which the proportion  
5 of raw salmon or raw herring processed in the state on the vessel is less than 50  
6 percent of total weight of raw salmon or raw herring processed on the vessel in and  
7 outside of the state.

8 \* **Sec. 8.** AS 43.75.035(i) is amended to read:

9 (i) The department shall develop and implement procedures by which a  
10 taxpayer that is a fisheries business may submit the taxpayer's proposed investment to  
11 the department and request a preliminary determination of whether the investment  
12 qualifies for the [SALMON] product development tax credit under this section. A  
13 preliminary determination by the department that the taxpayer's submission qualifies  
14 for the credit is binding, unless the department determines that the taxpayer has made  
15 a material misrepresentation in the taxpayer's submission.

16 \* **Sec. 9.** AS 43.75.035(j)(3) is amended to read:

17 (3) "qualified investment" means the investment cost to purchase or  
18 convert [IN] depreciable tangible personal property with a useful life of three years or  
19 more to be used predominantly to perform an ice making, processing, packaging, or  
20 product finishing function that is a significant component in producing value-added  
21 salmon or herring products, including canned salmon products in can sizes other  
22 than 14.75 ounces or 7.5 ounces [BEYOND GUTTING OF THE SALMON]; in this  
23 paragraph, "property"

24 (A) includes

25 (i) equipment used to fillet, skin, portion, mince,  
26 form, extrude, stuff, inject, mix, marinate, preserve, dry, smoke,  
27 brine, package, freeze, scale, grind, separate meat from bone, or  
28 remove pin bones [FILLETING, SKINNING, PORTIONING,  
29 MINCING, FORMING, EXTRUDING, STUFFING, INJECTING,  
30 MIXING, MARINATING, PRESERVING, DRYING, SMOKING,  
31 BRINING, PACKAGING, BLAST FREEZING, OR PIN BONE

1 REMOVAL EQUIPMENT];

2 (ii) new parts necessary for, or costs associated with,  
 3 converting a canned salmon line to produce can sizes other than  
 4 14.75 ounces or 7.5 ounces [TO CONVERT AN EXISTING CAN  
 5 SEAMER TO POP-TOP CAN PRODUCTION];

6 (iii) conveyors used specifically in the act of producing  
 7 a value-added salmon or herring product; [AND]

8 (iv) ice making machines;

9 (v) new canning equipment for herring products;  
 10 and

11 (vi) equipment used to transform salmon or herring  
 12 byproduct that is discarded as waste into saleable product;

13 (B) does not include

14 (i) vehicles, forklifts, conveyors not used specifically in  
 15 the act of producing a value-added salmon or herring product, cranes,  
 16 pumps, or other equipment used to transport salmon or herring, or  
 17 salmon or herring products, knives, gloves, tools, supplies and  
 18 materials, equipment, other than ice making machines, that is not  
 19 processing, packaging, or product finishing equipment, or other  
 20 equipment, the use of which is incidental to the production, packaging,  
 21 or finishing of value-added salmon or herring products; [OR]

22 (ii) the overhaul, retooling, or modification of new or  
 23 existing property, except for new parts necessary for, or costs  
 24 associated with, converting a canned salmon line to produce can  
 25 sizes other than 14.75 ounces or 7.5 ounces; or

26 (iii) property used predominantly to produce a  
 27 salmon or herring product that is not taxed under this chapter [TO  
 28 CONVERT AN EXISTING CAN SEAMER TO POP-TOP CAN  
 29 PRODUCTION];

30 \* **Sec. 10.** AS 43.75.035(j)(6) is amended to read:

31 (6) "value-added salmon or herring product" means the product of a

1 salmon or herring that is processed beyond heading, gutting, or separation in a  
 2 manner that [MATERIALLY] enhances the value or quality of the salmon or herring  
 3 product, such as shelf-stable, retort pouched, smoked, pickled, or filleted salmon,  
 4 ikura, leather, [OR] jerky, or a saleable product made from waste byproduct of  
 5 salmon or herring; "value-added salmon or herring product" does not include a  
 6 salmon or herring or salmon or herring product that

7 (A) has been subjected to only one or more of heading, gutting,  
 8 freezing, or packaging [, QUALITY ASSURANCE PRACTICES, OR  
 9 VALUE RETENTION PRACTICES];

10 (B) is salmon skeins or other unprocessed salmon or  
 11 unprocessed herring products whether fresh or frozen; or

12 (C) [IS CANNED, EXCEPT FOR SALMON PRODUCTS IN  
 13 A POP-TOP CAN; OR

14 (D)] is produced out of the state.

15 \* **Sec. 11.** AS 43.77.020(b) is amended to read:

16 (b) The return shall be made on the basis of the calendar year. The return  
 17 [AND] is due on the last day of the month following the month that the  
 18 department posts the statewide average fish price calculated by the Department  
 19 of Fish and Game for [BEFORE APRIL 1 AFTER THE CLOSE OF] the calendar  
 20 year for which the return is made, and any unpaid tax shall be paid with the return.

21 \* **Sec. 12.** AS 43.77.020(d) is amended to read:

22 (d) A person subject to the tax under this chapter shall make quarterly  
 23 payments of the tax estimated to be due for the year, as required under (e) of this  
 24 section [REGULATIONS ADOPTED BY THE DEPARTMENT]. A taxpayer will be  
 25 subject to an estimated tax penalty, determined by applying the interest rate specified  
 26 in AS 43.05.225 to the underpayment for each quarter, unless the taxpayer makes  
 27 estimated tax payments as required under (e) of this section [IN EQUAL  
 28 INSTALLMENTS THAT TOTAL EITHER

29 (1) AT LEAST 90 PERCENT OF THE TAXPAYER'S TAX  
 30 LIABILITY UNDER THIS CHAPTER FOR THE TAX YEAR; OR

31 (2) AT LEAST 100 PERCENT OF THE TAXPAYER'S TAX

1 LIABILITY UNDER THIS CHAPTER FOR THE PRIOR TAX YEAR].

2 \* **Sec. 13.** AS 43.77.020 is amended by adding new subsections to read:

3 (e) A person subject to tax under this chapter shall make estimated quarterly  
4 tax payments on or before March 31, June 30, September 30, and December 31 of  
5 each year using one of the following methods:

6 (1) four equal installments the sum of which is at least equal to the  
7 taxpayer's tax liability under this chapter for the immediately preceding calendar year;

8 (2) four equal installments the sum of which equals at least 90 percent  
9 of the taxpayer's tax liability under this chapter for the current calendar year; or

10 (3) four installments, calculated in each quarter, equal to 90 percent of  
11 the sum of the number of pounds of unprocessed fish of each species landed in the  
12 state during the quarter that are subject to tax under this chapter, multiplied by the  
13 respective statewide average price for each species posted by the department in the  
14 immediately preceding calendar year, multiplied by the applicable tax rate under this  
15 chapter.

16 (f) By March 31 of each year, a taxpayer electing to use the method under  
17 (e)(3) of this section shall notify the department of the election. Once the election is  
18 made, the taxpayer may not change the estimated payment method until the following  
19 calendar year. If a taxpayer does not notify the department of an election to use the  
20 method under (e)(3) of this section, the department shall calculate the taxpayer's  
21 estimated liability under (e)(1) and (2) of this section, and apply the estimated  
22 payment method that results in the lowest tax liability to determine the taxpayer's  
23 underpayment and estimated tax penalty.

24 \* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to  
25 read:

26 TRANSITION AND IMPLEMENTATION. For the 2014 calendar year, a taxpayer  
27 may make estimated quarterly tax payments under AS 43.77.020, and the regulations adopted  
28 to implement that section, as they read on December 31, 2013, or under AS 43.77.020, as  
29 amended by secs. 11 - 13 of this Act. A taxpayer may not make estimated tax payments for  
30 the 2014 calendar year under AS 43.77.020(e)(3), added by sec. 13 of this Act, unless the  
31 taxpayer notifies the department before January 1, 2015, of the taxpayer's intent to make

1 payments under that paragraph.

2 \* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 **RETROACTIVITY.** Sections 11 - 13 of this Act are retroactive to January 1, 2014.

5 \* **Sec. 16.** Section 7, ch. 57, SLA 2003, as amended by sec. 4, ch. 3, SLA 2006, sec. 4, ch. 8,  
6 SLA 2008, and sec. 3, ch. 102, SLA 2010, is amended to read:

7 Sec. 7. Section 3, ch. 57, SLA 2003, takes effect on the earlier of the  
8 following:

9 (1) January 1, 2021 [2019]; or

10 (2) the date of the attorney general's notification to the lieutenant  
11 governor and to the revisor of statutes that

12 (A) a court has entered final judgment that AS 43.75.035 or  
13 43.75.036, added by sec. 1, ch. 57, SLA 2003, violates the commerce clause  
14 contained in art. I, sec. 8, United States Constitution; and

15 (B) the time for an appeal of that judgment has expired, or, if  
16 an appeal was taken, a final order on the appeal has been entered that AS  
17 43.75.035 or 43.75.036, added by sec. 1, ch. 57, SLA 2003, violates the  
18 commerce clause contained in the United States Constitution.

19 \* **Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).