

## Alaska's Ongoing Tax Debate

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In this installment of *Alaska Tax: The Last Frontier*, Iversen examines the recent Alaska State Legislature session that concluded in May, which included substantial debate about the state budget and, in particular, funding for Alaska's government operations, the permanent fund dividend, energy, and education.

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As of this writing, Alaskans are focused on summer after a winter of very heavy snowfall. The annual influx of tourists is in full swing. And those of us who were focused on the state's legislative session are enjoying a respite from that often frenzied process. The second regular session of the 33rd Alaska State Legislature concluded on May 15, and although there have been a few murmurings about the need for a special session,<sup>1</sup> the prospects of that seem fairly remote. As always, this legislative session included substantial debate about the state budget and, in

particular, funding for Alaska's government operations, the permanent fund dividend, energy, and education.<sup>2</sup> Now that the dust has settled, it is a good time to look back at this latest session and the activity around Alaska taxes.

### Tax Legislation

There were several pieces of legislation that focused on taxes or at least touched on them. All the following passed in the 2024 session.

H.B. 50 was introduced by Gov. Mike Dunleavy (R) early in the 2023 legislative session to establish a carbon capture, utilization, and storage (CCUS) leasing and regulatory program for the state. The bill did not pass during the 2023 legislative session and thus carried over to the 2024 legislative session. It creates a framework for the Department of Natural Resources and the Alaska Oil and Gas Conservation Commission to permit and regulate carbon storage facilities on state lands. The law also allows the Alaska Oil and Gas Conservation Commission to establish criteria to determine the carbon storage capacity of storage reservoirs. These criteria will be used to calculate the amount of stored carbon dioxide, including for carbon credits.

The calculation of the Alaska corporate income tax is based on federal taxable income with Alaska adjustments.<sup>3</sup> For federal taxes, section 45Q allows tax credits for CCUS (45Q tax credits) to be applied against federal tax liability. H.B. 50 precludes taxpayers from applying 45Q tax credits against Alaska corporate income taxes. There was also discussion about using H.B. 50 as a vehicle to create an income tax that would apply to oil and gas production and transportation

<sup>2</sup> See Jacob Dye, "Carpenter Gives Wrap-Up on Session as He Nears End of House Term," *Peninsula Clarion*, May 23, 2024.

<sup>3</sup> See Alaska Department of Revenue — Tax Division, Corporate Income Tax.

<sup>1</sup> See Steve Kirch, "Enstar President Encourages Special Session to Address Natural Gas Shortfall," *Alaska's News Source*, May 23, 2024.

entities not currently subject to federal taxes or Alaska corporate income taxes, such as limited liability companies and S corporations. This additional tax did not pass.

Certain legislators were also concerned about the costs incurred for CCUS being used as lease expenditures in the calculation of Alaska oil and gas production tax. Unlike other states that levy severance taxes on wellhead value (sales price less transportation costs to move the oil and gas from the wellhead to market), Alaska's production tax is levied on net revenues of oil and gas production in the state, such that upstream operating and capital costs — termed "lease expenditures" — are subtracted from wellhead value before the tax rate is applied. There was substantial discussion and debate on this issue during the legislative session, with several attempts to clarify or change the production tax law in this regard. Those changes were ultimately rejected.<sup>4</sup>

S.B. 179 was introduced in January. It will prohibit the state or municipalities (cities and boroughs) from imposing transfer taxes, fees, or other assessments on sales or other transfers of real property. The new law will also add procedural and substantive requirements regarding municipal property taxes, including:

- requiring local assessors to determine full and true value based on standards adopted by the Department of Commerce, Community, and Economic Development that are consistent with standards adopted by the International Association of Assessing Officers, or standards set by ordinance;
- requiring that local assessors have level 3 certification from the Alaska Association of Assessing Officers or are supervised by someone with that certification;
- requiring assessors to meet with property owners about assessment methods if requested;
- prohibiting boards of equalization (which hear appeals from property tax

assessments) from raising assessments unless requested by the appellant;

- requiring the board of equalization to make specific findings in the record to support its decision if it does not find in favor of the appellant (when an appellant provides a long-form fee appraisal);
- requiring the local governing body to appoint the board of equalization and requiring that boards of equalization must have at least three members; and
- providing that the local governing body may appoint itself to sit as the board of equalization if it does so by ordinance.

There have also been changes to the education tax credits that can be applied against several Alaska state taxes, including the corporate income tax, the oil and gas production tax, the mining license tax, fisheries taxes, and the property tax on oil and gas exploration, production, and pipeline transportation properties. S.B. 189 expands the education tax credit to allow credit for expenditures to operate a childcare facility in the state for children of company employees, payments to employees to offset childcare costs incurred in the state, and contributions of cash or equipment to a nonprofit childcare facility in the state attended by children of employees. H.B. 147 expands the education tax credit for costs for operation of a nonprofit educational resource center that supports academic success in grades 9-12 by coordinating curricula and criteria in several academic subjects and providing interview skills and scholarships.

H.B. 307 was introduced in February by Dunleavy to increase competition and reduce the costs of electricity for ratepayers. One of the means of doing so is a provision that exempts electricity generation facilities or electricity storage facilities that are constructed and placed into service on or after July 1, from state and local ad valorem, income, and excise taxes if the electricity generation facility is: (1) operated by a public utility or joint action agency (two or more public utilities formed for construction and

<sup>4</sup> It is worth noting that the costs for enhanced oil recovery are expressly allowed as lease expenditures under current law. See Alaska Stat. section 43.55.020(e); Alaska Admin. Code tit. 15, section 55.250(b)(9).

operation of a generation or transmission facility to secure financing); or (2) operated by an entity other than a public utility that provides power only to a public utility.<sup>5</sup>

S.B. 127 establishes a vehicle rental tax of 8 percent on charges for the lease or rental of a passenger vehicle through a vehicle rental platform. It requires companies of vehicle rental platforms to collect and pay the vehicle rental tax and remit it to the Department of Revenue on behalf of the vehicle owners. The bill defines “vehicle rental platform” as “an application, website, offline booking service, or other system, whether online or offline, offered or used by a vehicle rental platform company that enables the prearrangement of motor vehicle rentals with motor vehicle owners that are not related by common ownership or control with the vehicle rental platform.”

There were also a number of tax bills introduced in the previous legislative session that carried over for consideration this legislative session. Although none of these bills passed and thus will not carry over to next year’s session, a summary of them is useful in anticipation of the tax debates that will no doubt resurface in the future. The following summarizes several of these bills:

- S.B. 114 would have made several changes to Alaska’s tax structure. It would have imposed a new income tax on a “qualified entity” of 9.4 percent on “qualified taxable income” over \$4 million per year. The bill defined qualified entity as a partnership, sole proprietorship, or S corporation, and qualified taxable income as income from oil and gas production or transportation in Alaska. S.B. 114 would have also substantially increased Alaska’s oil and gas production tax through reductions in production tax credits. It would have reduced or constrained the use of credits based on North Slope oil production under Alaska Stat. section 43.55.024(i) and Alaska Stat. section 43.55.024(j).
- S.B. 122 would have made several changes to the corporate income tax, including (1)

amending the Multistate Tax Compact to adopt market-based sourcing for calculating the portion of a taxpayer’s sales subject to Alaska’s corporate income tax for purposes of factor apportionment; and (2) apportioning income from highly digitized businesses based on the sales factor alone, rather than using the standard three-factor apportionment. S.B. 122 also included a provision similar to the portion of S.B. 114 that would impose an income tax on an “oil and gas entity” — an entity engaged in oil or gas production or pipeline transportation. This would have taxed partnerships, sole proprietorships, and S corporations.

- H.B. 70 would have added an exemption from general property taxation for certain properties owned or operated by an organization incorporated under Alaska state law that is exempt from taxation under IRC section 501(c), including certain parking lots and stores that have charitable goals.
- H.B. 84/S.B. 77 would have allowed municipalities to fully exempt economic development properties from property taxes. The bill would also have allowed municipalities to levy a tax on “blighted” properties that are heavily deteriorated up to 50 percent of assessed value of these properties.
- Alaska’s corporate income tax has nine tax brackets and a maximum tax rate of 9.4 percent on taxable income over \$222,000.<sup>6</sup> H.B. 109 would have removed eight of the nine tax brackets to leave a single tax rate, such that corporations with taxable income over \$25,000 would be taxed at a flat 2 percent rate.
- Alaska imposes an excise tax of \$50 per ounce on the sale or transfer of marijuana from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility.<sup>7</sup> H.B. 119 would have reduced the current tax levied on the cultivator to \$12.50 per ounce and would have added a 3 percent sales tax on the sale

<sup>5</sup>The tax provision of the new law will be at Alaska Stat. section 43.98.100.

<sup>6</sup>Alaska Stat. section 43.20.011(e).

<sup>7</sup>Alaska Stat. section 43.61.010(a).

- of marijuana and marijuana products from a retail store to a consumer.
- H.B. 142 would have imposed a 2 percent tax on all sales of goods and services purchased in Alaska.
  - H.B. 144 would have repealed the sunset of the education tax credit.
  - H.B. 156 would have imposed an income tax on the income of resident individuals, trusts, estates and income of nonresident individuals, and estates on income derived from or connected with a source in the state. The tax would be 2 percent of an individual's taxable income over \$200,000.
  - H.B. 176/S.B. 89 would have established a sales tax on electronic smoking products of 25 percent of the retail sales price.
  - H.B. 185 would have levied an income tax on individuals in the amount of their annual permanent fund dividend.
  - S.B. 50 would have changed the state property tax on oil and gas exploration, production, and pipeline transportation properties. Currently, production properties are valued at replacement cost new less depreciation based on the economic life of proven oil and gas reserves. The bill would have limited this value to a market value, willing buyer/willing seller standard and, for Cook Inlet properties that change ownership, would cap the value of property to the purchase price for the first year of assessment after the change in ownership.
  - S.B. 120 would have expanded the education credits that are available for use against a variety of Alaska state taxes. This bill would have revised the credit amounts to (1) 50 percent of contributions of not more than \$100,000; (2) 100 percent of the next \$200,000 of contributions; and (3) 50 percent of the amount of contributions that exceed \$300,000. The maximum amount of credits would be increased from \$1 million per tax year to \$5 million.

- S.B. 132 would have imposed an annual employment head tax of \$30 on residents, nonresidents, and part-year residents with income from sources in Alaska to provide additional funds for maintenance and construction of educational facilities.

### On the Horizon

It's good to have a breather from the tax and budget debates that characterize the Alaska legislative session. That said, we all can anticipate that this respite will speed by with the passage of summer, and the Ferris wheel will begin spinning again next January. ■