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In this installment of *Alaska Tax: The Last Frontier*, Iversen reviews Alaska lawmakers' actions on taxes in the 2022 legislative session, including approval of a seafood product development tax credit and municipal tax exemptions and deferrals.

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The 32nd Alaska State Legislature adjourned on May 18, and Gov. Mike Dunleavy (R) has been evaluating legislation it approved. Here is what transpired and what may be coming.

Wrapping Up 2022 Legislation

As usual, taxes were prominent this session, and while the governor did not introduce legislation to increase taxes, several lawmakers did, including bills to:

- increase the oil and gas exploration, production, and pipeline transportation property tax from 20 mills to 30 mills;¹

¹S.B. 13.

- increase the minimum oil and gas production tax for North Slope oil from a maximum of 4 percent to 6 percent of the gross value at the point of production for 2023 and 2024;²
- impose a 2 percent statewide sales and use tax;³ and
- impose an income tax on individuals, partners in partnerships, shareholders in S corporations, trusts, and estates.⁴

None of these bills passed, meaning that they are dead because this was the 32nd Legislature's second session, and no bills carry over to a future session. But while none of these four measures got much traction, several others did.

H.B. 104: Motor Fuel Tax

Introduced on March 4, 2021, H.B. 104 would have increased state motor fuel tax rates, which had not been updated in 52 years.⁵ At 9 cents per gallon, Alaska's motor fuel taxes are the lowest in the country.⁶ The second-lowest state motor fuel tax rate is in Hawaii, which is at 16 cents per gallon — nearly double Alaska's rate. H.B. 104 would have increased the highway and marine motor fuels taxes to 16 cents and 10 cents per gallon, respectively.⁷ The bipartisan bill aimed to

²H.B. 369.

³H.B. 373. Alaska has no state sales and use tax, although several municipalities impose sales taxes.

⁴S.B. 154.

⁵See Alaska Stat. section 43.40.010; see also Alaska Department of Revenue, Tax Division, "Annual Report," at 42 (2021) ("Alaska levies a motor fuel tax and surcharge on motor fuel sold, transferred, or used within Alaska.").

⁶Urban-Brookings Tax Policy Center, "State Motor Fuels Tax Rates" (Jan. 27, 2022) (inclusive of the 9 cent rate is a 0.95 cent surcharge on refined fuels).

⁷Rep. Andy Josephson (D), sponsor statement, H.B. 104, 32nd Leg. (Alaska Mar. 4, 2021). Josephson further wrote, "With this increase, Alaska would continue to have the lowest marine fuel tax in the nation, while our ranking for highway fuel tax would move from last to 43rd." *Id.*

raise approximately \$30 million per year through the tax increases.⁸

On March 11, in response to rising oil prices and inflation facing Alaskans, Dunleavy urged the House to amend the bill to suspend collecting tax on motor and marine fuels, aviation gas, and aviation jet fuel until June 30, 2023.⁹

Though some may have been concerned about the federal highway funding impacts of suspending the motor fuel tax, the suspension would not have affected that federal funding. Alaska does not have a dedicated fund for highways; rather, all motor fuel tax is allocated to the general fund, from which the funds can be spent on any capital project.¹⁰

After the House Transportation Committee amended the bill to suspend motor fuel taxes as the governor requested, the House approved H.B. 104 on May 4 and sent it to the Senate. After passing the Senate Transportation Committee on May 16, H.B. 104 was referred to the Senate Finance Committee, where it remained untouched until adjournment. Thus, the motor fuel tax rate remains unchanged — neither suspended nor increased.

S.B. 33: Seafood Product Development Tax Credit

S.B. 33, an expansion of the seafood product development tax credit,¹¹ cleared both the House and Senate and was signed into law by the governor on July 8. Sen. Gary Stevens (R) sponsored the legislation.

With tremendous support from industry groups,¹² S.B. 33 encourages innovation in the seafood processing sector, reduces waste, and incentivizes investment in the industry.¹³

The bill creates a new statute: Alaska Stat. section 43.75.037, which accomplishes three main objectives. First, the law extends the sunset date

for the seafood product development tax credit through 2026. Alaska used to have the salmon and herring product development tax credit, which was repealed in 2014 (effective January 1, 2021).¹⁴ That law gave companies a credit against the fisheries business tax for investments in property or equipment to create value added salmon and herring products.¹⁵

Second, though S.B. 33 is modeled after its predecessor in providing relief from the fisheries business tax for qualified investments, it expands the credit beyond just salmon and herring to pollock, Pacific cod, and sablefish.

Finally, it encourages long-term investment and innovation by providing incentives for equipment upgrades that help processors get more value out of each fish to reduce waste. For example, processors can invest in processing equipment that creates marketable products using different parts of fish, like bones and skin.¹⁶ The estimated annual cost of running the tax credit program is between \$3 million and \$3.6 million.¹⁷ However, the bill benefits not only the Alaska seafood industry, but also the state and localities — which receive revenues from the raw fish landing tax.¹⁸

H.B. 411: Municipal Tax Exemptions and Deferrals

H.B. 411 was introduced April 4 to address the lack of statutory authority for municipalities to tax exemptions or deferrals, or economic incentives inside a service area.¹⁹ Service areas are portions of a municipality that provide a service and may charge a tax only on property within that service area to fund the service. The bill amends current law to allow municipalities to use economic incentives through passage of an ordinance with the goal of stimulating growth

¹⁴ Alaska Stat. section 43.75.035 (repealed 2014).

¹⁵ *Id.*

¹⁶ See Elizabeth Earl, “Alaska Senate Picks Bill to Grow Seafood Tax Credits, Infrastructure Back Up,” *Alaska Journal of Commerce*, Jan. 26, 2022.

¹⁷ Fiscal Note No. 2, S.B. 33, 32nd Leg. (Alaska Feb. 9, 2022).

¹⁸ See Alaska DOR, Tax Division, “Spring 2022 Revenue Forecast,” at 9 (Mar. 15, 2022) (projecting fisheries tax revenue to grow from \$20.9 million in fiscal 2021 to \$26.9 million in fiscal 2022 and \$27.8 million in fiscal 2023); Earl, *supra* note 16.

¹⁹ House Community and Regional Affairs Committee, sponsor statement, H.B. 411, 32nd Leg. (Alaska Apr. 20, 2022).

⁸ See Elwood Brehmer, “Bipartisan Fuel Tax Bill Turned on Its Head,” *Alaska Journal of Commerce*, Mar. 16, 2022.

⁹ Letter from Dunleavy to Alaska House of Representatives (Mar. 11, 2022).

¹⁰ Fact Sheet, H.B. 102, 27th Leg. (Alaska 2011).

¹¹ Sen. Gary Stevens (R), sponsor statement, S.B. 33, 32nd Leg. (Alaska Feb. 22, 2021).

¹² The Senate Resources Committee received many letters in support from seafood processing companies and multiple trade associations.

¹³ See Stevens, *supra* note 11.

within service areas, unless the elected service area board objects to the exemption or deferral by resolution within 60 days after the ordinance's effective date.²⁰ Also, the legislation was intended to resolve ambiguity as to whether boroughs could use federal funds for economic development in partnership with cities within the boundaries of the borough.²¹

During the last week of the legislative session, an amendment to H.B. 411 was introduced to import S.B. 172 into H.B. 411 to allow municipalities to increase the residential property tax exemption from \$50,000 to \$75,000.²² The stated objective was to address significant increases in residential property appraisals.²³ The amendment passed, as did H.B. 411. The measure will become effective without the governor's signature on October 9.²⁴

Payments for Tax Credits

At long last, companies that earned rebatable Alaska Stat. section 43.55 production tax credits and Alaska Stat. section 43.20 corporate income tax credits are seeing meaningful payment for them. Although companies can no longer earn rebatable tax credits, based on the Alaska Department of Revenue's spring 2022 revenue forecast, released March 15, \$532 million in tax credits awaited purchase.²⁵ This figure accounted for \$54 million in rebatable tax credits purchased by the state in 2021.

Although the previous \$54 million payment was helpful, it did not meet the \$114 million that would have been appropriated had the Legislature followed a statutory formula and DOR's spring 2021 forecast last session.²⁶ The formula is based on production tax revenue and oil prices forecast for the fiscal year when the appropriation is made: When oil prices are \$60

per barrel or higher, the percentage of production tax revenues is 10 percent, whereas it is 15 percent of production tax revenue when oil prices are forecast to be less than \$60 per barrel.²⁷ Of the \$114 million that the House approved last session, \$60 million was to be funded through the Constitutional Budget Reserve, and that portion required a three-fourths supermajority vote — which failed. The Senate passed the bill without amendment, hence \$54 million was approved for the fiscal 2022 budget in the third special session of 2021.

H.B. 281 was the budget bill that Dunleavy introduced in the House on January 18. As it made its way through the Legislature, the appropriations for payment for tax credits were amended several times, taking into account DOR's forecasts and the \$60 million shortfall discussed earlier. Lawmakers approved the bill with a \$60 million supplemental appropriation for fiscal 2022 and, for fiscal 2023, an appropriation of 10 percent of revenue from production taxes levied by Alaska Stat. section 43.55.011, up to \$349 million.

The governor left the \$60 million fiscal 2022 supplemental appropriation intact, but reduced through partial veto the maximum appropriation amount for fiscal 2023 to \$330 million, which when combined with the \$60 million appropriation would be adequate to pay for the remaining outstanding credits. (The outstanding queue had decreased largely because of sales of tax credits to taxpayers.)

To its credit — and much to the relief of companies that have been holding outstanding rebatable credits for years — DOR moved expeditiously after H.B. 281 was approved to commence making payments for the outstanding tax credits. Because payment for the credits is prioritized in the first instance by the year when the purchase application was made, the remaining queue of 2016 certificates will be paid before applications made in later years.²⁸ As of the end of July, the department was working to pay for all the outstanding 2016 credits,

²⁰ *Id.*

²¹ *Id.*

²² Sen. Bill Wielechowski (D), sponsor statement, S.B. 172, 32nd Leg. (Alaska Feb. 17, 2022).

²³ *Id.*

²⁴ See Anthony Moore, "Legislation to Increase Property Tax Relief Becomes Law Without Governor Signature," KSRM Radio Group, July 25, 2022.

²⁵ Alaska DOR, Tax Division, *supra* note 18, at 12.

²⁶ Alaska DOR, Tax Division, "Spring 2021 Revenue Forecast," at 17 (Mar. 15, 2021).

²⁷ Alaska Stat. section 43.55.028(c).

²⁸ See Alaska Admin. Code tit. 15, section 55.525.

approximately \$196 million, and many companies had been paid.

Because the fiscal 2023 appropriation is tied to production taxes (and thus oil prices), it may decrease if Alaska North Slope oil prices drop significantly. Accordingly, DOR has chosen to evaluate paying out the remainder of the fiscal 2023 appropriation later this year based on oil prices and production tax revenues. Thus, there is still some uncertainty for holders of the outstanding 2017-2021 credits.

On the Horizon

Although payment for the remaining rebatable tax credits is not set in stone, companies holding the credits are hopeful that the outstanding credits will be paid in their entirety by the end of this fiscal year.

This is also an election year in Alaska, and there is going to be a contentious gubernatorial race and substantial turnover in the Legislature. Based on the June general election filing deadline, there will be some change to roughly one-third of the Legislature — with 10 lawmakers announcing that they do not intend to run for reelection, eight running for different positions, and two incumbents losing their seats because of redistricting.²⁹ Dunleavy is running for reelection against several candidates, including former Gov. Bill Walker, former state Rep. Les Gara, and state Rep. Christopher Kurka (R). The elections and 2023 legislative session are bound to be interesting. ■

²⁹ Sean Maguire, "Alaska General Election Filing Deadline Passes With 10 Incumbents Not Seeking Reelection," KTUU, June 1, 2022.

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