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In this installment of Alaska Tax: The Last Frontier, Iversen explains this year's proposed and established changes to Alaska tax legislation, including bills that will be carried over into future sessions.

As of this writing, those that were immersed in the sometimes frenzied and often frenetic activity that surrounds the Alaska legislature session are enjoying something of a reprieve, or at least a brief exhale. The summer season has arrived — such as it is, given that this year seems to be particularly cloudy and wetter than in recent years. And although we are looking forward to the possibility of warmer weather and some time outdoors, time will slip by, fall will arrive, and discussions about Alaska's fiscal structure and taxes will likely start in earnest again.

Multiple Tax Bills

Although the legislature seems to continuously debate the state's fiscal regime, after the Alaska Department of Revenue released its Spring 2023 Revenue Forecast in March, the level of activity around tax legislation seemed to accelerate dramatically, albeit in various and often countervailing directions.[1] Lawmakers introduced several tax bills during the most recent regular legislative session, which ended on May 17. This session was the first regular session of the 33rd Alaska State Legislature, so although none of the tax bills passed — and many did not leave their committees of referral — those that were not withdrawn will carry over for consideration in the second regular session of this legislature.

Several bills saw significant discussion, including S.B. 114 and S.B. 122. S.B. 114 would impose a new income tax on a qualified entity of 9.4 percent on qualified taxable income over $4 million per year. The bill defines "qualified entity" as a partnership, sole proprietorship, or S corporation. Qualified taxable income is defined as income from oil and gas production or transportation in Alaska.

The bill would also substantially increase Alaska's oil and gas production tax through reductions in production tax credits. Alaska Stat. section 43.55.024(i) provides a credit of $5 per taxable barrel for some taxable North Slope oil produced from comparatively newer fields. North Slope oil production that does not meet the $5 per barrel credit criteria qualifies for a production tax credit under section 43.55.024(j), often referred to as the sliding scale credit or per barrel credit. The amount of sliding scale credit decreases as oil prices rise, resulting in higher effective tax rates at higher oil prices. The maximum credit is $8 per barrel of taxable oil if the average gross value at the point of

[1] Alaska Department of Revenue, "Spring 2023 Revenue Forecast" (Mar. 20, 2023).

production (basically sales price or prevailing market value less transportation costs to move the oil or gas from the point of production to market), often referred to as wellhead value, for the month is less than $80 per barrel. If the average wellhead value for the month is greater than $80 per barrel but less than $90 per barrel, the credit is $7 per barrel. The amount of credit per barrel continues to drop by $1 for each $10 incremental increase in wellhead value and is zero if the average wellhead value for the month is $150 per barrel or higher.

S.B. 114 would reduce the sliding scale credit by $3 per barrel at each increment and would limit the use of the $5 per barrel credit and sliding scale credits for the calendar year to the amount of the producer's capital expenditures for the lease, property, or unit from which the oil or gas was produced that was the basis for the credit.

S.B. 122 would have made several changes to the corporate income tax, including (i) adopting market-based sourcing for calculating the portion of a taxpayer's sales that are subject to Alaska's corporate income tax for purposes of factor apportionment and (ii) adopting a single sales factor for calculating the taxable income of highly digitized businesses. For the first primary change, S.B. 122 would amend the Multistate Tax Compact to clarify that sales of goods and services in Alaska or delivered to Alaskan customers are Alaskan sales. Under this market-based sourcing, sales would be apportioned to Alaska if the market was in Alaska. The second primary change concerns "highly digitized businesses" — corporations that make at least 50 percent of their Alaska sales through electronic means or sales of services for computer or internet technologies. For highly digitized businesses, S.B. 122 would apportion income from highly digitized businesses based on the sales factor alone rather than using the standard three-factor apportionment.

The original version of S.B. 122 was amended to include a provision like 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 — at a rate of 9.4 percent on taxable income derived from sources in the state over $4 million per year. This would tax partnerships, sole proprietorships, and S corporations. The bill provides that the tax would not apply to corporations paying the Alaska corporate income tax. S.B. 122 saw a lot of activity in the Senate Finance Committee toward the end of the legislative session.

As discussed below, legislators introduced several other tax bills, and it is likely that some of them will be discussed in the next regular session.

H.B. 70 would add a general property tax exemption for some properties owned or operated by an organization incorporated under Alaska state law that is exempt from taxation under IRC section 501(c). This includes parking lots used for parking or another use if permitted without charge and real and personal property of a store that (i) deals exclusively in donated inventory that is distributed without cost as part of a program to provide needy persons with food, shelter, clothing, or healthcare without charge; or (ii) sells merchandise below market value to support a literacy program or a program to provide needy persons with food, shelter, clothing, or healthcare without charge. The bill was referred to the Community and Regional Affairs Committee and was later withdrawn by the sponsor.

H.B. 84 and S.B. 77 would allow municipalities to fully exempt economic development properties from property taxes. The bill would allow municipalities to levy a tax on blighted properties that are heavily deteriorated of up to 50 percent of the property's assessed value, which would later be reduced when the property is remediated such that it is no longer considered blighted. The bill leaves it to local governments to define blighted and what is considered remediated, and to establish the tax rate, but each municipality that chooses to use this tax must adopt local ordinances to impose it. The Senate version of this bill passed the Senate but not the House of Representatives.

Alaska has a corporate income tax with nine tax brackets and a maximum tax rate of 9.4 percent on taxable income over $222,000.[2] H.B. 109 would remove eight of the nine tax brackets

[2] Alaska Stat. section 43.20.011(e).

and leave a single tax rate so 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 cultivation facility to a retail marijuana store or product manufacturing facility.[3] H.B. 119 would reduce the tax levied on the cultivator to $12.50 per ounce. The bill would also add a 3 percent sales tax on the sale of marijuana and marijuana products from a retail marijuana store to a consumer.

H.B. 134 would prohibit a borough, a city, or the state from levying a transfer tax on the transfer of real property.

H.B. 142 would impose a 2 percent tax on all sales of goods and services purchased in Alaska. It would allow the legislature to share half of the tax revenue with municipalities that meet certain criteria, including not having property taxes over 10 mills.

H.B. 144 would repeal the sunset of the education tax credit.

H.B. 156 would impose a tax on the income of resident individuals, trusts, and estates and income of nonresident individuals, trusts, 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. There would also be a tax of $20 per year on an individual who has wages, net earnings from self-employment, or combined wages and net earnings from self-employment in the state. The tax on trusts and estates would be $20 plus 2 percent of taxable income over $200,000.

H.B. 176 and S.B. 89 would raise the minimum age to buy, sell, or possess tobacco and electronic smoking products (ESPs) from 19 to 21 and would have established a sales tax on ESPs of 25 percent of the retail sales price. S.B. 89 was passed by the Senate the day before the legislative session ended and sent to the House.

H.B. 185 would levy an income tax on individuals in the amount of their annual permanent fund dividend. The bill would exempt individuals with federal adjusted gross income of less than $75,000, couples filing jointly with aggregate federal AGI of less than $150,000, and individuals who file a federal tax return as a dependent.

S.B. 50 would have changed the state property tax on oil and gas exploration, production, and pipeline transportation properties. 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. The bill was withdrawn by the sponsor shortly after its introduction.

S.B. 120 would expand the education credits that are available for use against a variety of Alaska state taxes. The credit is currently 50 percent of contributions. This bill would revise the credit amounts to (i) 50 percent of contributions of not more than $100,000; (ii) 100 percent of the next $200,000 of contributions; and (iii) 50 percent of the amount of contributions that exceed $300,000. The maximum amount of credits per taxpayer would be increased from $1 million per tax year to $5 million.

S.B. 127 would require vehicle rental platform companies to collect the existing state vehicle rental tax and remit it to DOR for the vehicle owners. The bill would define 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."

S.B. 132 would impose an annual employment head tax of $30 on residents, nonresidents, and part-year residents with income from sources in Alaska. The intent of the bill is to provide additional funds for educational facilities' maintenance and construction.

[3] Alaska Stat. section 43.61.010(a).

Funds to Purchase Tax Credits

As of DOR's spring revenue forecast, $368 million of rebatable tax credits were still awaiting appropriations of funds for purchase by the state.[4] At the time, DOR was planning on fiscal 2023 purchases based on $252 million appropriated in fiscal 2023 plus a $60 million supplemental appropriation from fiscal 2022. Of this, DOR had already paid $196 million, which paid off the 2016 tranche of credits, but was waiting to make any additional payments depending on oil and gas production tax revenues for the year.

The Senate passed the operating budget on the last day of the regular session. The legislature went into special session for one day, and the House passed the same budget bill without any changes, with an appropriation for fiscal 2024 for payment for the tax credits of $28,350,000. Tax credit holders are hopeful that the fiscal 2023 and fiscal 2024 appropriations will be adequate to pay off the entire 2017 tranche of credits, leaving tranches for later years for future payments.

On the Horizon

As discussed, several of the tax bills introduced by the legislature will be carried over for discussion in the second regular session. Also, toward the end of the regular session, Gov. Mike Dunleavy (R) announced that his administration could introduce sales tax legislation. Although it was never introduced, the specter has been raised of a special session sometime this fall. Stay tuned. ■

[4] Alaska Department of Revenue, *supra* note 1, at 12.