

Production Tax Credits



Total Production Tax Credit Impact through FY 2012 (\$M)

	<u>Pre- 2008</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011*</u>	<u>2012*</u>	<u>Total</u>
Tax Credit Certificates	116	131	308	361	458	133	1,507
Credits Applied Against Production Tax Liability	557	378	333	412	405	400	2,485
Total by Year	<u>673</u>	<u>509</u>	<u>641</u>	<u>773</u>	<u>863</u>	<u>533</u>	<u>3,992</u>

*Estimated pending final true-ups

Data Transparency

- **Relative to other regimes Alaska is handicapped in its decision making by the small amount of either confidential or reliable public data on energy operations**
- **Consequently, the producers are the only ones that can provide the legislators with the true picture**
 - Where is the money being spent?
 - What is the upside potential?
 - Why isn't more investment occurring?
 - With HB 110, will they now be investing for the upside ?

Access to Information

- Relevant Statutes
- Department Will Not Use Subpoena Power
- The Department Overuses Taxpayer Confidential Designations
- Department Will Not Agree to a Joint Administrative Agreement

Access to Information

491. SARB observed the following in its Certificate of Determination for the 2007 assessment year:

The Board also found that the Owners failed to take advantage of the opportunity to provide the Division with persuasive data to challenge the reserves estimates or throughput projections used by the Division if the Owners have such data. The Board found that the Owners chose not to share information that the Owners and their parent companies possess regarding throughput and proven reserves with the Division or the Board and instead chose to present evidence and testimony from outside experts who did not have access to the information the Owners possess that was not already in the public record, and who lacked adequate direct experience with, or expertise about, the TAPS or the Alaska North Slope reserves.

Gleason Decision ¶ 491

Access to Information

5. AS 43.56.080 grants the Division certain investigative powers when assessing AS 43.56 properties, including the power to “enter any premise necessary for the investigation during reasonable hours,” to “examine property and appropriate records,” and to compel owner representatives “to appear for examination under oath by the department.” There was no persuasive evidence presented at the trial de novo that the Division has ever exercised these powers with respect to the valuation of TAPS.

Gleason Decision ¶ 5

Access to Information

6. The Division broadly interprets what it considers “taxpayer confidential” information under applicable statutes and will not disclose such information to the Municipalities specifically or to the public generally. The Division considers all information that it receives from a taxpayer as “taxpayer confidential,” even if it does not contain the particularities of a taxpayer’s business affairs and is obtainable from the public domain. As a result, the Division did not provide the Owners’ new replacement cost study by Stantec Consulting, Inc. (“Stantec”) to the Municipalities.

Gleason Decision ¶ 6

Access to Information

7. AS 43.56.060(g) provides that “[t]he department may enter into agreements with a municipality for the cooperative or joint administration of the assessing authority conferred on the department by this section.” The North Slope Borough previously had such an agreement with the Department. The City of Valdez and Fairbanks North Star Borough have never been parties to joint assessment agreements with the Department.

Gleason Decision ¶ 7

Access to Information

8. In its 2010 decision, SARB expressed its concerns regarding the Division's assessment practices:

The Board believes that it is time for the Division to address the problems created by the way it handles taxpayer confidential information in the assessment process. The Division's failure to provide interested parties with the information on which the assessment was made in time to allow those parties meaningful input in the determination of the property's assessed value, before that determination is subject to limited review of an appeal before the Board, has the potential to throw the fundamental fairness of the AS 43.56 assessment process into question. The Board believes that, due to the Division's current practices with regard to the use of taxpayer confidential information in its AS 43.56 assessments, that process is close to broken and is headed in the wrong direction.

This Court concurs with the Board's observations in this regard.

Gleason Decision ¶ 8

Access to Information

Information at DOR Level

- History of TAPS Valuation
- DOR Process
- Access to Taxpayer Information
- Treatment of Taxpayer Information
- Consequence of Lack of Access to Information

Access to Information

History of TAPS Valuation

- DOR relying on TSM based rates lead the assessments falling from over \$8 billion in the mid-1980s to \$2.75 billion in 2001 [Gleason Decision ¶ 30]
- For decades the valuation of TAPS was a negotiated process that largely excluded the Municipalities
- The Municipalities fully engaged the process for the 2005 assessment

Access to Information

Observation About DOR's Process

- Key DOR staff are fair, dedicated, and highly competent
- The SARB has also been balanced and diligent
- However the DOR process—as related to information relied on in the taxation process—is close to broken. [Gleason Decision ¶ 8]

Access to Information

Access to Confidential Information

- Taxing authorities typically compel information
 - DOR can subpoena information, depose taxpayer representatives, and investigate property and records [AS 43.56.080; AS 29.45.130; AS 43.55.040(a)]
- DOR policy is to work cooperatively with industry, so it does not exercise these powers [Gleason Decision ¶ 8]
- Thus, DOR relies on information that a taxpayer volunteers or that is publicly available

Access to Information

Taxpayer Information

- The Alaska Public Records Act, AS 40.25.110, requires State documents to be subject to public examination
- Exception exists under AS 40.25.100(a) for tax information “that discloses the particulars of the business or affairs of a taxpayer” in which case the “information shall be kept confidential except when . . . required in an official investigation [or proceeding]”
- AS 43.05.230(a) also makes it unlawful to “divulge the amount of income or the particulars set out or disclosed in a report or return” except in conjunction with “investigations or proceedings”

Access to Information

Taxpayer Information

DOA narrowly reads taxpayer confidentiality statutes, denying public access to:

- All information provided by taxpayers
 - Non-sensitive correspondence, hypothetical studies, publicly available information, etc.
- Information provided for its production forecasting, which is a budgeting function [2007-2009 Trial Tr. 8813-14, Tr. 10874-877]
- The Municipalities
 - AS 43.56.060(g) allows for joint administration of taxes
 - North Slope Borough had such an agreement until recently

Access to Information

Consequence of Information Access

- Industry acts to prevent the best information from harming its position on taxes
 - Low flow documents
 - Royalty trust statements removed
 - BP Pipelines no longer participating in reserves function [2007-2009 Trial Tr. 11480]
 - As a matter of policy DOR does not compel the production of useful information
- DOR does not make publicly available taxpayer information in its possession
- Result—DOR and Legislature do not have access to information necessary to be informed about oil and gas tax issues in Alaska