

Title 43. Revenue and Taxation

Chapter 55. Oil and Gas Production Tax and Oil Surcharge (Refs & Annos)

Article 1. Oil and Gas Production Tax



KeyCite Yellow Flag - Negative Treatment

1. **Proposed Legislation**

AS § 43.55.025

§ 43.55.025. Alternative tax credit for oil and gas exploration

Currentness

(a) Subject to the terms and conditions of this section, a credit against the production tax levied by [AS 43.55.011\(e\)](#) is allowed for exploration expenditures that qualify under (b) of this section in an amount equal to one of the following:

(1) 30 percent of the total exploration expenditures that qualify only under (b) and (c) of this section;

(2) 30 percent of the total exploration expenditures that qualify only under (b) and (d) of this section;

(3) 40 percent of the total exploration expenditures that qualify under (b), (c), and (d) of this section;

(4) 40 percent of the total exploration expenditures that qualify only under (b) and (e) of this section; or

(5) 80, 90, or 100 percent, or a lesser amount described in (f) of this section, of the total exploration expenditures described in (b)(1) and (2) of this section and not excluded by (b)(3) and (4) of this section that qualify only under (f) of this section.

(b) To qualify for the production tax credit under (a) of this section, an exploration expenditure must be incurred for work performed after June 30, 2008, and before July 1, 2016, and

(1) may be for seismic or other geophysical exploration costs not connected with a specific well;

(2) if for an exploration well,

(A) must be incurred by an explorer that holds an interest in the exploration well for which the production tax credit is claimed;

(B) may be for either a well that encounters an oil or gas deposit or a dry hole;

(C) must be for a well that has been completed, suspended, or abandoned at the time the explorer claims the tax credit under (f) of this section; and

(D) must be for goods, services, or rentals of personal property reasonably required for the surface preparation, drilling, casing, cementing, and logging of an exploration well, and, in the case of a dry hole, for the expenses required for abandonment if the well is abandoned within 18 months after the date the well was spudded;

(3) may not be for administration, supervision, engineering, or lease operating costs; geological or management costs; community relations or environmental costs; bonuses, taxes, or other payments to governments related to the well; costs, including repairs and replacements, arising from or associated with fraud, wilful misconduct, gross negligence, criminal negligence, or violation of law, including a violation of [33 U.S.C. 1319\(c\)\(1\)](#) or [1321\(b\)\(3\)](#) (Clean Water Act); or other costs that are generally recognized as indirect costs or financing costs; and

(4) may not be incurred for an exploration well or seismic exploration that is included in a plan of exploration or a plan of development for any unit before May 14, 2003.

(c) To be eligible for the 30 percent production tax credit authorized by (a)(1) of this section or the 40 percent production tax credit authorized by (a)(3) of this section, exploration expenditures must

(1) qualify under (b) of this section; and

(2) be for an exploration well, subject to the following:

(A) before the well is spudded,

(i) the explorer shall submit to the commissioner of natural resources the information necessary to determine whether the geological objective of the well is a potential oil or gas trap that is distinctly separate from any trap that has been tested by a preexisting well;

(ii) at the time of the submittal of information under (i) of this subparagraph, the commissioner of natural resources may request from the explorer that specific data sets, ancillary data, and reports including all results, and copies of well data collected and data analyses for the well be provided to the Department of Natural Resources upon completion of the drilling; in this sub-subparagraph, well data include all analyses conducted on physical material, and well

logs collected from the well and sample analyses; testing geophysical and velocity data including vertical seismic profiles and check shot surveys; testing data and analyses; age data; geochemical analyses; and access to tangible material; and

(iii) the commissioner of natural resources must make an affirmative determination as to whether the geological objective of the well is a potential oil or gas trap that is distinctly separate from any trap that has been tested by a preexisting well and what information under (ii) of this subparagraph must be submitted by the explorer after completion, abandonment, or suspension under [AS 31.05.030](#); the commissioner of natural resources shall make that determination within 60 days after receiving all the necessary information from the explorer based on the information received and on other information the commissioner of natural resources considers relevant;

(B) for an exploration well other than a well to explore a Cook Inlet prospect, the well must be located and drilled in such a manner that the bottom hole is located not less than three miles away from the bottom hole of a preexisting well drilled for oil or gas, irrespective of whether the preexisting well has been completed, suspended, or abandoned;

(C) after completion, suspension, or abandonment under [AS 31.05.030](#) of the exploration well, the commissioner of natural resources must determine that the well was consistent with achieving the explorer's stated geological objective.

(d) To be eligible for the 30 percent production tax credit authorized by (a)(2) of this section or the 40 percent production tax credit authorized by (a)(3) of this section, an exploration expenditure must

(1) qualify under (b) of this section; and

(2) be for an exploration well that is located not less than 25 miles outside of the outer boundary, as delineated on July 1, 2003, of any unit that is under a plan of development, except that for an exploration well for a Cook Inlet prospect to qualify under this paragraph, the exploration well must be located not less than 10 miles outside the outer boundary, as delineated on July 1, 2003, of any unit that is under a plan of development.

(e) To be eligible for the 40 percent production tax credit authorized by (a)(4) of this section, the exploration expenditure must

- (1) qualify under (b) of this section;
- (2) be for seismic exploration; and
- (3) have been conducted outside the boundaries of a production unit or an exploration unit; however, the amount of the expenditure that is otherwise eligible under this subsection is reduced proportionately by the portion of the seismic exploration activity that crossed into a production unit or an exploration unit.

(f) For a production tax credit under this section,

(1) an explorer shall, in a form prescribed by the department and, except for a credit under (k) of this section, within six months of the completion of the exploration activity, claim the credit and submit information sufficient to demonstrate to the department's satisfaction that the claimed exploration expenditures qualify under this section; in addition, the explorer shall submit information necessary for the commissioner of natural resources to evaluate the validity of the explorer's compliance with the requirements of this section;

(2) an explorer shall agree, in writing,

(A) to notify the Department of Natural Resources, within 30 days after completion of seismic or geophysical data processing, completion of well drilling, or filing of a claim for credit, whichever is the latest, for which exploration costs are claimed, of the date of completion and submit a report to that department describing the processing sequence and providing a list of data sets available;

(B) to provide to the Department of Natural Resources, within 30 days after the date of a request, unless a longer period is provided by the Department of Natural Resources, specific data sets, ancillary data, and reports identified in (A) of this paragraph; in this subparagraph,

(i) a seismic or geophysical data set includes the data for an entire seismic survey, irrespective of whether the survey area covers nonstate land in addition to state land or land in a unit in addition to land outside a unit;

(ii) well data include all analyses conducted on physical material, and well logs collected from the well, results, and copies of data collected and data analyses for the well, including well logs; sample analyses;

testing geophysical and velocity data including seismic profiles and check shot surveys; testing data and analyses; age data; geochemical analyses; and tangible material;

(C) that, notwithstanding any provision of AS 38, information provided under this paragraph will be held confidential by the Department of Natural Resources,

(i) in the case of well data, until the expiration of the 24-month period of confidentiality described in [AS 31.05.035\(c\)](#), at which time the Department of Natural Resources will release the information after 30 days' public notice unless, in the discretion of the commissioner of natural resources, it is necessary to protect information relating to the valuation of unleased acreage in the same vicinity, or unless the well is on private land and the owner, including the lessor but not the lessee, of the oil and gas resources has not given permission to release the well data;

(ii) in the case of seismic or other geophysical data, other than seismic data acquired by seismic exploration subject to (k) of this section, for 10 years following the completion date, at which time the Department of Natural Resources will release the information after 30 days' public notice, except as to seismic or other geophysical data acquired from private land, unless the owner, including a lessor but not a lessee, of the oil and gas resources in the private land gives permission to release the seismic or other geophysical data associated with the private land;

(iii) in the case of seismic data obtained by seismic exploration subject to (k) of this section, only until the expiration of 30 days' public notice issued on or after the date the production tax credit certificate is issued under (5) of this subsection;

(3) if more than one explorer holds an interest in a well or seismic exploration, each explorer may claim an amount of credit that is proportional to the explorer's cost incurred;

(4) the department may exercise the full extent of its powers as though the explorer were a taxpayer under this title, in order to verify that the claimed expenditures are qualified exploration expenditures under this section; and

(5) if the department is satisfied that the explorer's claimed expenditures are qualified under this section and that all data required to be submitted under this section have been submitted, the department shall issue to the explorer a production tax credit certificate for the amount of credit to be allowed against production taxes

levied by [AS 43.55.011\(e\)](#); notwithstanding any contrary provision of AS 38, [AS 40.25.100](#), or [AS 43.05.230](#), the following information is not confidential:

- (A) the explorer's name;
- (B) the date of the application;
- (C) the location of the well or seismic exploration;
- (D) the date of the department's issuance of the certificate; and
- (E) the date on which the information required to be submitted under this section will be released.

(g) An explorer, other than an entity that is exempt from taxation under this chapter, may transfer, convey, or sell its production tax credit certificate to any person, and any person who receives a production tax credit certificate may also transfer, convey, or sell the certificate.

(h) A producer that purchases a production tax credit certificate may apply the credits against its production tax levied by [AS 43.55.011\(e\)](#). Regardless of the price the producer paid for the certificate, the producer may receive a credit against its production tax liability for the full amount of the credit, but for not more than the amount for which the certificate is issued. A production tax credit allowed under this section may not be applied more than once.

(i) For a production tax credit under this section,

- (1) a credit may not be applied to reduce a taxpayer's tax liability under [AS 43.55.011\(e\)](#) below zero for a calendar year; and
- (2) an amount of the production tax credit in excess of the amount that may be applied for a calendar year under this subsection may be carried forward and applied against the taxpayer's tax liability under [AS 43.55.011\(e\)](#) in one or more later calendar years.

(j) Notwithstanding any other provision of this title, of AS 31.05, or of [AS 40.25.100](#), the department shall provide to the Department of Natural Resources information submitted with a claim under this section to support the eligibility of an exploration expenditure, including seismic exploration data and well data, and any information described in (f)(2) of this section received by the department.

(k) Subject to the terms and conditions of this section, if a claim is filed under (f)(1) of this section before January 1, 2016, a credit against the production tax levied by [AS 43.55.011\(e\)](#) is allowed in an amount equal to five percent of an eligible expenditure under this subsection incurred for seismic exploration performed before July 1, 2003. To be eligible under this subsection, an expenditure must

(1) have been for seismic exploration that

(A) obtained data that the commissioner of natural resources considers to be in the best interest of the state to acquire for public distribution; and

(B) was conducted outside the boundaries of a production unit; however, the amount of the expenditure that is otherwise eligible under this section is reduced proportionately by the portion of the seismic exploration activity that crossed into a production unit; and

(2) qualify under (b)(3) of this section.

(l) The first three unaffiliated persons that drill an offshore exploration well for the purpose of discovering oil or gas in Cook Inlet that penetrates and evaluates a prospect in the pre-Tertiary zone using a jack-up rig are eligible for the credit under this subsection. The person that drills the first exploration well is entitled to a credit in the amount of 100 percent of its exploration expenditures or \$25,000,000, whichever is less; the person that drills the second exploration well using the same jack-up rig is entitled to a credit in the amount of 90 percent of its exploration expenditures or \$22,500,000, whichever is less; and the person that drills the third exploration well using the same jack-up rig is entitled to a credit in the amount of 80 percent of its exploration expenditures or \$20,000,000, whichever is less. A person or an affiliate of a person drilling an exploration well is not entitled to a credit for more than one exploration well under this subsection. The department shall make a determination of the order in which the wells are drilled based on the date and time that the drill bit first turns to the right against the seafloor for the purpose of drilling the well. Exploration expenditures eligible for the credit in this subsection may include the necessary and reasonable costs to modify an existing jack-up rig for use in Cook Inlet, may not include the cost to construct or manufacture a jack-up rig, and, notwithstanding (b) of this section, must be incurred for work performed after March 31, 2010. If the exploration well for which a credit is received under this subsection results in sustained production of oil or gas from a reservoir discovered by the exploration well, and notwithstanding that the credit may have been transferred under (g) of this section, 50 percent of the amount of the credit received shall be repaid to the department by the person that received the credit in equal monthly installments over a 10-year period commencing 60 days after the start of sustained

production of oil or gas. Whether the exploration well for which a credit is requested under this subsection penetrated and evaluated a prospect in the pre-Tertiary zone and the exploration well resulted in sustained production of oil or gas from a reservoir discovered by the exploration well shall be determined by the commissioner of natural resources and reported to the commissioner. A taxpayer that obtains a credit under this subsection may not claim a tax credit under [AS 43.55.023](#) or another provision in this section for the same exploration expenditure. In this subsection,

- (1) “jack-up rig” means a mobile drilling platform with extendible legs for support on the ocean floor;
- (2) “reservoir” means an oil and gas accumulation, discovered and evaluated by testing, that is separate from any other accumulation of oil and gas;
- (3) “sustained production” means production of oil or gas from a reservoir into a pipeline or other means of transportation to market, but does not include testing, evaluation, or pilot production.

(m) In this section,

- (1) Repealed by [3rd Sp. Sess. 2006, ch. 2, § 34](#), eff. August 20, 2006.
- (2) “Cook Inlet prospect” means a location within the Cook Inlet sedimentary basin, as that term is defined by regulation adopted to implement [AS 38.05.180\(f\)\(4\)](#);
- (3) Repealed by [3rd Sp. Sess. 2006, ch. 2, § 34](#), eff. August 20, 2006.
- (4) “preexisting well” means a well that was spudded more than 540 days but less than 35 years before the date on which the exploration well to which it is compared is spudded.

Credits

[SLA 2003, ch. 59, § 3](#); [SLA 2004, ch. 49, § 49](#); [SLA 2005, ch. 81, §§ 2--8](#); [3rd Sp. Sess. 2006, ch. 2, §§ 14 to 18, 34](#), eff. Aug. 20, 2006. Amended by [2nd Sp. Sess. 2007, ch. 1, §§ 36 to 40, 42 to 45](#), eff. July 1, 2008; [2nd Sp. Sess. 2007, ch. 1, § 41](#), eff. Dec. 20, 2007; [SLA 2010, ch. 15, §§ 9, 10](#), eff. May 11, 2010.

Editors' Notes

RETROACTIVITY

<Subsection (g), as amended by 2nd Sp. Sess. 2007, Ch. 1, is retroactive to July 1, 2003.>

Current through the 2011 of the First Regular Session and First Special Session of the 27th
Legislature

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