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Nauman  
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**CS FOR HOUSE BILL NO. 328(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES SEATON, Gardner

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the oil and gas corporate income tax; relating to the credits against  
2 the oil and gas corporate income tax; making conforming amendments; and providing  
3 for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* **Section 1.** AS 29.60.599(1) is amended to read:

6 (1) "barrel," when used with reference to oil, means the quantity of  
7 oil contained in 42 United States gallons of 231 cubic inches each, measured at a  
8 temperature of 60 degrees Fahrenheit and an absolute pressure of 14.65 pounds a  
9 square inch [HAS THE MEANING GIVEN IN AS 43.20.072];

10 \* **Sec. 2.** AS 41.09.010(b) is amended to read:

11 (b) An exploration incentive credit extended under (a) of this section may be  
12 applied against

13 (1) a payment or obligation against which a credit authorized by  
14 AS 38.05.180(i) may be claimed;

- 1 (2) taxes payable under AS 43.20 or AS 43.21, as applicable; and
- 2 (3) oil and gas bonus payments due the state under AS 38.05.180(f).

3 \* **Sec. 3.** AS 43.20.011 is amended by adding a new subsection to read:

4 (g) For purposes of calculating the tax under (e) of this section, the taxable  
 5 income of a corporation engaged in the production or transportation of crude oil or  
 6 natural gas shall be determined in accordance with AS 43.21.

7 \* **Sec. 4.** AS 43.20.073(f) is amended to read:

8 (f) This section does not apply to taxpayers subject to AS 43.21  
 9 [AS 43.20.072 ENGAGED IN

10 (1) THE PRODUCTION OF OIL OR GAS FROM A LEASE OR  
 11 PROPERTY IN THE STATE; OR

12 (2) THE TRANSPORTATION OF OIL OR GAS BY REGULATED  
 13 PIPELINE IN THE STATE].

14 \* **Sec. 5.** AS 43.21 is amended by adding new sections to read:

15 **Article 1. Determination of Taxable Income.**

16 **Sec. 43.21.200. Application.** This chapter applies to every corporation doing  
 17 business in the state that derives income from the production of oil or gas from a lease  
 18 or property in the state or from the pipeline transportation of oil or gas in the state. The  
 19 tax calculated under this chapter is measured by the total taxable income of the  
 20 corporation during the tax period as defined by AS 43.21.210 - 43.21.240 and is  
 21 calculated at the rates established under AS 43.20.011(e).

22 **Sec. 43.21.210. Determination of taxable income from oil and gas**  
 23 **production.** (a) The taxable income of a corporation from the production of oil and  
 24 gas from a lease or property in the state is the corporation's net income as calculated in  
 25 accordance with this section.

26 (b) Gross income of a corporation from oil and gas production is the sum of  
 27 the gross value at the point of production of oil or gas produced from a lease or  
 28 property in the state, any gain or loss resulting from the sale of a lease, and any gain or  
 29 loss resulting from the sale of property used in the production of oil and gas in the  
 30 state. The department shall by regulation determine a uniform method of establishing  
 31 the gross value at the point of production. For the purpose of determining the gross

1 value at the point of production under this subsection, the department shall use  
2 AS 43.55.150 for the determination of transportation costs.

3 (c) Net income from oil and gas production shall be determined by deducting  
4 from gross income the following:

5 (1) royalties paid in kind or in value;

6 (2) taxes imposed under AS 43.55 that are actually paid or incurred by  
7 the corporation on the production from a lease or property in the state;

8 (3) taxes imposed under AS 29.45.080 - 29.45.090 and AS 43.56 that  
9 are actually paid or incurred by the corporation on property used directly in the  
10 production of oil or gas from a lease or property in the state, including property used  
11 in production, gathering, treatment, or preparation of the oil or gas for pipeline  
12 transportation, but only if those property tax payments were due and payable only  
13 after the date of commercial production from the lease or property with which the  
14 property was associated;

15 (4) the direct costs incurred by or for the corporation in operating the  
16 lease or property, including the direct costs of producing, gathering, treating, or  
17 preparing the oil or gas for pipeline transportation, but net of any payments received  
18 for those activities and not including any indirect cost or overhead expense;

19 (5) depreciation, under 26 U.S.C. 167 (Internal Revenue Code) or  
20 another reasonable method as the department may by regulation establish, on property  
21 required to be capitalized under 26 U.S.C. (Internal Revenue Code) and used directly  
22 in the production, gathering, treatment, or preparation of the oil or gas for pipeline  
23 transportation, including amortization of capitalized interest for investments in that  
24 property at a rate not to exceed the average cost to the taxpayer of borrowed capital  
25 during the year in which the interest is capitalized;

26 (6) the amortization of lease acquisition payments and taxes paid or  
27 incurred under AS 29.45.080, 29.45.090, or AS 43.56, including capitalized interest,  
28 for or on producing properties before the commencement of commercial production  
29 from the lease or property for which the property is being used;

30 (7) interest expense of the corporation, not capitalized during  
31 construction, that was paid or incurred in connection with property in the state;

1 however, the interest expense may not exceed that portion of the total interest paid by  
2 the consolidated business of which the corporation is a part, determined by  
3 multiplying the total interest by a fraction, the numerator of which is the value of the  
4 corporation's real and tangible personal property used directly in the production of oil  
5 or gas from a lease or property in the state and the denominator of which is the value  
6 of all real and tangible personal property of the consolidated business; in this  
7 paragraph, "total interest paid by the consolidated business" does not include interest  
8 expense arising from intercompany obligations within the consolidated business  
9 except to the extent that the interest expense reflects a pass-through of interest on a  
10 third-party borrowing by the parent or other member of the consolidated business with  
11 the purpose, expressed at the time of the third-party borrowing, of financing Alaska  
12 business activity of the taxpayer corporation;

13 (8) expenses incurred by the corporation after December 31, 2012, of  
14 unsuccessful exploration of oil or gas in the state, including the acquisition costs of  
15 abandoned properties, dry hole costs, and the costs of geologic and geophysical  
16 exploration related to those abandoned properties;

17 (9) general overhead or administrative expense incurred by the  
18 corporation attributable to deriving income from the production of oil or gas from a  
19 lease or property in the state to the extent that the general overhead or administrative  
20 expense does not exceed that portion of the total general overhead or administrative  
21 expense incurred by the consolidated business of which the corporation is a part,  
22 determined by multiplying the total general overhead or administrative expense by a  
23 fraction, the numerator of which is the value of the corporation's real and tangible  
24 personal property used directly in the production of oil or gas from a lease or property  
25 in the state and the denominator of which is the value of all real and tangible personal  
26 property of the consolidated business;

27 (10) the amount of income from the production of oil and gas from a  
28 lease or property that is divided among the regional Native corporations under 43  
29 U.S.C. 1606(i) (sec. 7(i), Alaska Native Claims Settlement Act, P.L. 92-203).

30 (d) Deductions from gross income under this section may not include  
31 expenses previously deducted on a return filed under AS 43.20.

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(e) If a corporation subject to this chapter shares the production or proceeds of the production from a lease or property through a working interest, royalty interest, overriding royalty interest, production payment, net profit interest, joint venture, or other agreement, the taxpayer shall allocate the deductions from gross income between the corporation and the persons with whom the corporation has the agreement in accordance with the terms of the agreement.

**Sec. 43.21.220. Determination of income from oil and gas pipeline transportation.** (a) Except as provided in (c) of this section, taxable income attributable to the transportation of oil in a pipeline engaged in interstate commerce in this state is the amount reported or that would be required to be reported to the Federal Energy Regulatory Commission or its successors as net operating income, less those portions of interest and general overhead or administrative expense attributable to the pipeline transportation of oil in the state, except that taxable income shall also include taxes on or measured by income. The department shall establish regulations governing the determination of interest and general overhead or administrative expense attributable to pipeline transportation of oil in the state.

(b) Except as provided in (c) of this section, taxable income attributable to the transportation of natural gas in a pipeline engaged in interstate commerce in this state is the amount reported or that would be required to be reported to the Federal Energy Regulatory Commission as net operating income, less that portion of interest and general overhead or administrative expense attributable to pipeline transportation in the state, except that the taxable income shall also include taxes on or measured by income. The department shall establish regulations governing the determination of interest and general overhead or administrative expense attributable to pipeline transportation of natural gas in the state.

(c) Taxable income attributable to the transportation of oil or natural gas in this state of a corporation not under the jurisdiction of the Federal Energy Regulatory Commission, or of a corporation under the jurisdiction of the Federal Energy Regulatory Commission but not reporting the operation of pipelines in the state separately from the operation of pipelines elsewhere, shall be based on an amount equal to the amount that would have been reported to the Federal Energy Regulatory

1 Commission under (a) of this section in the case of oil pipelines, or under (b) of this  
2 section, in the case of natural gas pipelines, had the corporation been, in fact, under the  
3 jurisdiction of the Federal Energy Regulatory Commission for the taxable year and  
4 required to report on the operation of pipelines in the state separately from the  
5 operation of pipelines elsewhere.

6 **Sec. 43.21.230. Determination of income from activities other than oil and**  
7 **gas production or pipeline transportation.** (a) Taxable income of a corporation  
8 subject to this chapter from activities in this state other than the production of oil or  
9 gas from a lease or property in the state or the pipeline transportation of oil or gas in  
10 the state shall be determined in accordance with the method established in art. IV of  
11 AS 43.19.010 and in AS 43.20.071, as modified by (b) - (d) of this section.

12 (b) The total taxable income of a consolidated business is its entire income  
13 less the portion of that entire income attributable to worldwide production and pipeline  
14 transportation of oil and gas. In this subsection, for a member of a consolidated  
15 business who is

16 (1) required to file under the Internal Revenue Code, "entire income"  
17 means the taxpayer's taxable income as the term is used in AS 43.20.011 - 43.20.065;

18 (2) not required to file under the Internal Revenue Code, "entire  
19 income" means an income determination prepared in accordance with generally  
20 accepted accounting principles, except that a taxpayer may elect to report income as  
21 the income would be determined under (1) of this subsection.

22 (c) The numerator and denominator of the property factor, of the payroll  
23 factor, and of the sales factor shall be calculated without reference to that portion of  
24 property, payroll, or sales directly related to the production of oil or gas from a lease  
25 of property in the state or the pipeline transportation of oil or gas in the state.

26 (d) The value attributed to vessels transporting Alaska oil or gas of a  
27 consolidated business that are not owned or effectively owned by the consolidated  
28 business shall be excluded from the property factor.

29 **Sec. 43.21.240. Applicability of tax to a consolidated business.** The  
30 provisions of this chapter apply to a consolidated business whether or not the taxpayer  
31 is the parent or controlling corporation.

**Article 2. Calculation of Tax; Returns.**

**Sec. 43.21.300. Calculation of tax.** (a) The amount of the tax payable on the taxable income of a corporation subject to tax under this chapter shall be determined using the tax rates in AS 43.20.011(e).

(b) For purposes of this chapter, the department may combine taxable income of corporations subject to tax under this chapter who are part of the same consolidated business.

(c) If the methods of allocation and apportionment provided in this chapter do not fairly represent the extent of a corporation's business activity in the state, the corporation may petition for or the department may require, in respect to all or any part of the corporation's business activity, if reasonable, the employment of any method authorized under art. IV, sec. 18, AS 43.19.010 (Multistate Tax Compact), to carry out an equitable allocation and apportionment of the corporation's income. The commissioner shall include in the annual report required in AS 43.21.410 a report on all relief granted under this subsection, including, for each case, a statement of the changes in tax liability resulting from the granting of relief, the tax years involved, and a description of the method of determining taxable income that was substituted for the methods provided in this chapter.

**Sec. 43.21.320. Credits.** A credit under AS 43.20.043, 43.20.044, or 43.20.046 may also be applied against the tax levied under this chapter, unless a credit for the same expenditure has been taken against a tax levied under AS 43.20 or AS 43.55.

**Sec. 43.21.330. Returns and payment of taxes.** (a) A corporation subject to tax under this chapter and required to make a return under the Internal Revenue Code shall, within 30 days after the federal return is required to be filed, submit a return setting out

(1) the amount of tax due under this chapter, less credits claimed against the tax; and

(2) other information the department may require to carry out the purposes of this chapter.

(b) The return shall be made under oath or shall contain a written declaration that it is made under penalty of perjury and shall be made on a form prescribed by the

1 department.

2 (c) The total amount of tax imposed by this chapter is due and payable to the  
3 department at the same time and in the same manner as the tax payable to the United  
4 States Internal Revenue Service, including quarterly estimated tax prepayments,  
5 except that a taxpayer with an estimated tax liability of less than \$1,000,000 for the  
6 year is not required to make quarterly prepayments of the estimated tax.

7 (d) A tax due under this section is payable even if the assessment is under  
8 appeal or the validity, enforceability, or application of this chapter or any provision of  
9 this chapter is challenged before the department or in the courts.

10 (e) An unpaid amount of an installment payment required under (c) of this  
11 section that is not paid when due bears interest (1) at the rate provided for an  
12 underpayment under 26 U.S.C. 6621 (Internal Revenue Code), as amended,  
13 compounded daily, from the date the installment payment is due until March 31  
14 following the calendar year of production; and (2) as provided for a delinquent tax  
15 under AS 43.05.225 after that March 31. Interest accrued under (1) of this subsection  
16 that remains unpaid after that March 31 is treated as an addition to tax that bears  
17 interest under (2) of this subsection.

18 (f) Notwithstanding any contrary provision of AS 43.05.280,

19 (1) an overpayment of an installment payment required under (c) of  
20 this section bears interest at the rate provided for an overpayment under 26 U.S.C.  
21 6621 (Internal Revenue Code), as amended, compounded daily, from the later of the  
22 date the installment payment is due or the date the overpayment is made, until the  
23 earlier of

24 (A) the date the overpayment is refunded or applied to an  
25 underpayment; or

26 (B) March 31 following the calendar year of production;

27 (2) except as provided under (1) of this subsection, interest with  
28 respect to an overpayment is allowed only on any net overpayment of the payments  
29 required under (c) of this section that remains after the later of March 31 following the  
30 calendar year of production or the date that the statement required is filed;

31 (3) interest is allowed under (2) of this subsection only from a date that



1 is 90 days after the later of March 31 following the calendar year of production or the  
2 date that the statement required is filed; interest is not allowed if the overpayment was  
3 refunded within the 90-day period;

4 (4) interest under (2) and (3) of this section is paid at the rate and in the  
5 manner provided in AS 43.05.225(1).

6 (g) Notwithstanding any contrary provision of AS 43.05.225 or (e) or (f) of  
7 this section, if the amount of a tax payment, including an installment payment, due  
8 under (c) of this section is affected by the retroactive application of a regulation  
9 adopted under this chapter, the department shall determine whether the retroactive  
10 application of the regulation caused an underpayment or an overpayment of the  
11 amount due and adjust the interest due on the affected payment as follows:

12 (1) if an underpayment of the amount due occurred, the department  
13 shall waive interest that would otherwise accrue for the underpayment before the first  
14 day of the second month following the month in which the regulation became  
15 effective, if

16 (A) the department determines that the producer's  
17 underpayment resulted because the regulation was not in effect when the  
18 payment was due; and

19 (B) the producer demonstrates that it made a good faith  
20 estimate of its tax obligation in light of the regulations then in effect when the  
21 payment was due and paid the estimated tax;

22 (2) if an overpayment of the amount due occurred and the department  
23 determines that the producer's overpayment resulted because the regulation was not in  
24 effect when the payment was due, the obligation for a refund for the overpayment does  
25 not begin to accrue interest earlier than the following, as applicable:

26 (A) except as otherwise provided under (B) of this paragraph,  
27 the first day of the second month following the month in which the regulation  
28 became effective;

29 (B) 90 days after an amended statement and an application to  
30 request a refund of production tax paid is filed, if the overpayment was for a  
31 period for which an amended statement was required to be filed before the

1 regulation became effective.

2 **Article 3. Administrative Matters.**

3 **Sec. 43.21.400. Regulations.** The department shall adopt regulations in  
4 accordance with AS 44.62 (Administrative Procedure Act) as appropriate to  
5 administer and enforce this chapter.

6 **Sec. 43.21.410. Public reporting.** (a) The commissioner shall compile and  
7 transmit to the legislature an annual report of state revenue and the implementation of  
8 taxation policies under this chapter. The report must include total aggregate income  
9 tax paid by corporations subject to this chapter and aggregate income and deductions  
10 by category, classified so as to prevent the identification of particular returns or  
11 reports.

12 (b) The legislative auditor shall notify the legislature on or before the first day  
13 of each regular session that the annual report reviewing the actions of the department  
14 in administering this chapter is available.

15 **Sec. 43.21.420. Information disclosure.** Notwithstanding AS 43.05.320, the  
16 department shall disclose to a legislator, on request, information collected from a  
17 taxpayer to the extent that

18 (1) the taxpayer is a publicly traded company;

19 (2) the information has been filed in a quarterly, annual, or other  
20 periodic report to the United States Securities Exchange Commission; and

21 (3) the information has been made public by the United States  
22 Securities Exchange Commission.

23 **Sec. 43.21.499. Definitions.** Unless the context requires otherwise, the  
24 definitions contained in AS 43.55.900 are applicable to this chapter. In addition, in this  
25 chapter,

26 (1) "consolidated business" means a corporation or group of  
27 corporations having more than 50 percent common ownership, direct or indirect, or a  
28 group of corporations in which there is common control, either direct or indirect, as  
29 evidenced by an arrangement, contract, or agreement;

30 (2) "Internal Revenue Code" has the meaning given in AS 43.20.340.

31 \* **Sec. 6.** AS 43.82.210(a) is amended to read:

1 (a) If the commissioner approves an application and proposed project plan  
2 under AS 43.82.140, the commissioner may develop proposed terms for inclusion in a  
3 contract under AS 43.82.020 for periodic payment in lieu of one or more of the  
4 following taxes that otherwise would be imposed by the state or a municipality on the  
5 qualified sponsor or member of a qualified sponsor group as a consequence of  
6 participating in an approved qualified project:

7 (1) oil and gas production taxes and oil surcharges under AS 43.55;

8 (2) oil and gas exploration, production, and pipeline transportation  
9 property taxes under AS 43.56;

10 (3) oil and gas corporate income tax under AS 43.21; [REPEALED]

11 (4) Alaska net income tax under AS 43.20;

12 (5) municipal sales and use tax under AS 29.45.650 - 29.45.710;

13 (6) municipal property tax under AS 29.45.010 - 29.45.250 or  
14 29.45.550 - 29.45.600;

15 (7) municipal special assessments under AS 29.46;

16 (8) a comparable tax or levy imposed by the state or a municipality  
17 after June 18, 1998;

18 (9) other state or municipal taxes or categories of taxes identified by  
19 the commissioner.

20 \* **Sec. 7.** AS 43.20.072 is repealed.

21 \* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to  
22 read:

23 APPLICABILITY. AS 43.21, added by sec. 5 of this Act, applies to taxable income  
24 earned or received after December 31, 2012.

25 \* **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to  
26 read:

27 REGULATIONS. (a) The Department of Revenue may adopt regulations necessary to  
28 implement AS 43.21, added by sec. 5 of this Act. The regulations take effect under AS 44.62  
29 (Administrative Procedure Act), but not before the effective date of the law implemented by  
30 regulation.

31 (b) The Department of Revenue shall provide by regulation for a transition for a

1 corporation subject to tax under AS 43.20 before December 31, 2012, to avoid double  
2 taxation of the same income or double deduction of the same expense of the corporation as a  
3 result of becoming subject to tax under AS 43.21, added by sec. 5 of this Act.

4 (c) The Department of Revenue may adopt regulations necessary to provide a five-  
5 year transition period for the adoption of applicable depreciation schedules.

6 \* **Sec. 10.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).

7 \* **Sec. 11.** Except as provided in sec. 10 of this Act, this Act takes effect January 1, 2013.