SENATE BILL NO. 3001

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - THIRD SPECIAL SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/18/12
Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to adjustments to oil and gas production tax values based on a percentage of gross value at the point of production for oil and gas produced from leases or properties north of 68 degrees North latitude; relating to monthly installment payments of the oil and gas production tax; relating to the determinations of oil and gas production tax values; relating to oil and gas production tax credits including qualified capital credits for exploration, development, or production; making conforming amendments; and providing for an effective date."

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

*** Section 1.** AS 43.55.011(e) is amended to read:

(e) There is levied on the producer of oil or gas a tax for all oil and gas produced each calendar year from each lease or property in the state, less any oil and gas the ownership or right to which is exempt from taxation or constitutes a landowner's royalty interest. Except as otherwise provided under (f), (j), (k), and (o) of this section, the tax is equal to the sum of

(1) the annual production tax value of the taxable oil and gas as calculated under AS 43.55.160(a)(1)**, as adjusted by AS 43.55.162 if applicable,** multiplied by 25 percent; and

(2) the sum, over all months of the calendar year, of the tax amounts determined under (g) of this section.

*** Sec. 2.** AS 43.55.011(g) is amended to read:

(g) For each month of the calendar year for which the producer's average monthly production tax value under AS 43.55.160(a)(2) per BTU equivalent barrel of the taxable oil and gas is more than $30, the amount of tax for purposes of (e)(2) of this section is determined by multiplying the monthly production tax value**, as adjusted by AS 43.55.162 if applicable,** of the taxable oil and gas produced during the month by the tax rate calculated as follows:

(1) if the producer's average monthly production tax value per BTU equivalent barrel of the taxable oil and gas for the month is not more than $92.50, the tax rate is 0.4 percent multiplied by the number that represents the difference between that average monthly production tax value per BTU equivalent barrel and $30; or

(2) if the producer's average monthly production tax value per BTU equivalent barrel of the taxable oil and gas for the month is more than $92.50, the tax rate is the sum of 25 percent and the product of 0.1 percent multiplied by the number that represents the difference between the average monthly production tax value per BTU equivalent barrel and $92.50, except that the sum determined under this paragraph may not exceed **35** [50] percent.

*** Sec. 3.** AS 43.55.020(a) is amended to read:

(a) For a calendar year, a producer subject to tax under **AS 43.55.011** [AS 43.55.011(e) - (i)] shall pay the tax as follows:

(1) an installment payment of the estimated tax levied by AS 43.55.011(e), net of any tax credits applied as allowed by law, is due for each month of the calendar year on the last day of the following month; except as otherwise provided under (2) of this subsection, the amount of the installment payment is the sum of the following amounts, less 1/12 of the tax credits that are allowed by law to be

applied against the tax levied by AS 43.55.011(e) for the calendar year, but the amount of the installment payment may not be less than zero:

(A) for oil and gas **not subject to AS 43.55.011(o)** produced from leases or properties in the state outside the Cook Inlet sedimentary basin [BUT NOT SUBJECT TO AS 43.55.011(o)], other than leases or properties subject to AS 43.55.011(f), the greater of

(i) zero; or

(ii) the sum of 25 percent and the tax rate calculated for the month under AS 43.55.011(g) multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for the leases or properties under AS 43.55.160 from the gross value at the point of production of the oil and gas produced from the leases or properties during the month for which the installment payment is calculated;

(B) for oil and gas produced from leases or properties subject to AS 43.55.011(f), the greatest of

(i) zero;

(ii) zero percent, one percent, two percent, three percent, or four percent, as applicable, of the gross value at the point of production of the oil and gas produced from all leases or properties during the month for which the installment payment is calculated; or

(iii) the sum of 25 percent and the tax rate calculated for the month under AS 43.55.011(g) multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for those leases or properties under AS 43.55.160 from the gross value at the point of production of the oil and gas produced from those leases or properties during the month for which the installment payment is calculated; **for oil and gas for which an adjustment to the monthly production tax value is made by AS 43.55.162(a) or (b),**

the same adjustment is made to the remainder under this sub-subparagraph;

(C) for oil and gas **subject to AS 43.55.011(j), (k), or (o)** produced from each lease or property [SUBJECT TO AS 43.55.011(j), (k), OR (o)], the greater of

(i) zero; or

(ii) the sum of 25 percent and the tax rate calculated for the month under AS 43.55.011(g) multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible under AS 43.55.160 for oil or gas, respectively, produced from the lease or property from the gross value at the point of production of the oil or gas, respectively, produced from the lease or property during the month for which the installment payment is calculated;

(2) an amount calculated under (1)(C) of this subsection for oil or gas produced from a lease or property subject to AS 43.55.011(j), (k), or (o) may not exceed the product obtained by carrying out the calculation set out in AS 43.55.011(j)(1) or (2) or 43.55.011(o), as applicable, for gas or set out in AS 43.55.011(k)(1) or (2), as applicable, for oil, but substituting in AS 43.55.011(j)(1)(A) or (2)(A) or 43.55.011(o), as applicable, the amount of taxable gas produced during the month for the amount of taxable gas produced during the calendar year and substituting in AS 43.55.011(k)(1)(A) or (2)(A), as applicable, the amount of taxable oil produced during the month for the amount of taxable oil produced during the calendar year;

(3) an installment payment of the estimated tax levied by AS 43.55.011(i) for each lease or property is due for each month of the calendar year on the last day of the following month; the amount of the installment payment is the sum of

(A) the applicable tax rate for oil provided under AS 43.55.011(i), multiplied by the gross value at the point of production of the oil taxable under AS 43.55.011(i) and produced from the lease or property during the month; and

(B) the applicable tax rate for gas provided under AS 43.55.011(i), multiplied by the gross value at the point of production of the gas taxable under AS 43.55.011(i) and produced from the lease or property during the month;

(4) any amount of tax levied by AS 43.55.011(e) or (i), net of any credits applied as allowed by law, that exceeds the total of the amounts due as installment payments of estimated tax is due on March 31 of the year following the calendar year of production.

*** Sec. 4.** AS 43.55.023(a) is amended to read:

(a) A producer or explorer may take a tax credit for a qualified capital expenditure as follows:

(1) notwithstanding that a qualified capital expenditure may be a deductible lease expenditure for purposes of calculating the production tax value of oil and gas under AS 43.55.160(a), unless a credit for that expenditure is taken under AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025, a producer or explorer that incurs a qualified capital expenditure may also elect to apply a tax credit against a tax levied by AS 43.55.011(e) in the amount of 20 percent of that expenditure; [HOWEVER, NOT MORE THAN HALF OF THE TAX CREDIT MAY BE APPLIED FOR A SINGLE CALENDAR YEAR;]

(2) a producer or explorer may take a credit for a qualified capital expenditure incurred in connection with geological or geophysical exploration or in connection with an exploration well only if the producer or explorer

(A) agrees, in writing, to the applicable provisions of AS 43.55.025(f)(2); and

(B) submits to the Department of Natural Resources all data that would be required to be submitted under AS 43.55.025(f)(2).

*** Sec. 5.** AS 43.55.023(d) is amended to read:

(d) Except as limited by (i) of this section, a person that is entitled to take a tax credit under this section that wishes to transfer the unused credit to another person or obtain a cash payment under AS 43.55.028 may apply to the department for **a** transferable tax credit **certificate** [CERTIFICATES]. An application under this subsection must be in a form prescribed by the department and must include supporting information and documentation that the department reasonably requires. The department shall grant or deny an application, or grant an application as to a lesser amount than that claimed and deny it as to the excess, not later than 120 days after the latest of (1) March 31 of the year following the calendar year in which the qualified capital expenditure**, well lease expenditure,** or carried-forward annual loss for which the credit is claimed was incurred; (2) the date the statement required under AS 43.55.030(a) or (e) was filed for the calendar year in which the qualified capital expenditure**, well lease expenditure,** or carried-forward annual loss for which the credit is claimed was incurred; or (3) the date the application was received by the department. If, based on the information then available to it, the department is reasonably satisfied that the applicant is entitled to a credit, the department shall issue the applicant **a** [TWO] transferable tax credit **certificate for** [CERTIFICATES, EACH FOR HALF OF] the amount of the credit. [THE CREDIT SHOWN ON ONE OF THE TWO CERTIFICATES IS AVAILABLE FOR IMMEDIATE USE. THE CREDIT SHOWN ON THE SECOND OF THE TWO CERTIFICATES MAY NOT BE APPLIED AGAINST A TAX FOR A CALENDAR YEAR EARLIER THAN THE CALENDAR YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE CERTIFICATE IS ISSUED, AND THE CERTIFICATE MUST CONTAIN A CONSPICUOUS STATEMENT TO THAT EFFECT.] A certificate issued under this subsection does not expire.

*** Sec. 6.** AS 43.55.023(g) is amended to read:

(g) The issuance of a transferable tax credit certificate under (d) **of this section** or **former** (m) of this section or the purchase of a certificate under AS 43.55.028 does not limit the department's ability to later audit a tax credit claim to which the certificate relates or to adjust the claim if the department determines, as a result of the audit, that the applicant was not entitled to the amount of the credit for which the certificate was issued. The tax liability of the applicant under AS 43.55.011(e) and 43.55.017 - 43.55.180 is increased by the amount of the credit that exceeds that to which the applicant was entitled, or the applicant's available valid outstanding credits applicable against the tax levied by AS 43.55.011(e) are reduced by that amount. If the applicant's tax liability is increased under this subsection, the increase bears interest under AS 43.05.225 from the date the transferable tax credit certificate was issued. For purposes of this subsection, an applicant that is an explorer is considered a producer subject to the tax levied by AS 43.55.011(e).

*** Sec. 7.** AS 43.55.023(*l*) is amended to read:

(*l*) A producer or explorer may apply for a tax credit for a well lease expenditure incurred in the state [SOUTH OF 68 DEGREES NORTH LATITUDE] after <u>**December 31, 2012**</u> [JUNE 30, 2010], as follows:

(1) notwithstanding that a well lease expenditure incurred in the state [SOUTH OF 68 DEGREES NORTH LATITUDE] may be a deductible lease expenditure for purposes of calculating the production tax value of oil and gas under AS 43.55.160(a), unless a credit for that expenditure is taken under (a) of this section, AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025, a producer or explorer that incurs a well lease expenditure in the state [SOUTH OF 68 DEGREES NORTH LATITUDE] may elect to apply a tax credit against a tax levied by AS 43.55.011(e) in the amount of 40 percent of that expenditure; [A TAX CREDIT UNDER THIS PARAGRAPH MAY BE APPLIED FOR A SINGLE CALENDAR YEAR;]

(2) a producer or explorer may take a credit for a well lease expenditure incurred in the state [SOUTH OF 68 DEGREES NORTH LATITUDE] in connection with geological or geophysical exploration or in connection with an exploration well only if the producer or explorer

(A) agrees, in writing, to the applicable provisions of AS 43.55.025(f)(2); and

(B) submits to the Department of Natural Resources all data that would be required to be submitted under AS 43.55.025(f)(2).

*** Sec. 8.** AS 43.55.023(n) is amended to read:

(n) For the purposes of (*l*) [AND (m)] of this section, a well lease expenditure incurred in the state [SOUTH OF 68 DEGREES NORTH LATITUDE] is a lease expenditure that is

(1) directly related to an exploration well, a stratigraphic test well, a producing well, or an injection well other than a disposal well, located in the state [SOUTH OF 68 DEGREES NORTH LATITUDE], if the expenditure is a qualified capital expenditure and an intangible drilling and development cost authorized under 26 U.S.C. (Internal Revenue Code), as amended, and 26 C.F.R. 1.612-4, regardless of the elections made under 26 U.S.C. 263(c); in this paragraph, an expenditure directly related to a well includes an expenditure for well sidetracking, well deepening, well completion or recompletion, or well workover, regardless of whether the well is or has been a producing well; or

(2) an expense for seismic work conducted within the boundaries of a production or exploration unit.

*** Sec. 9.** AS 43.55.028(e) is amended to read:

(e) The department, on the written application of a person to whom a transferable tax credit certificate has been issued under AS 43.55.023(d) or **<u>former AS 43.55.023(m)</u>** [(m)] or to whom a production tax credit certificate has been issued under AS 43.55.025(f), may use available money in the oil and gas tax credit fund to purchase, in whole or in part, the certificate if the department finds that

(1) the calendar year of the purchase is not earlier than the first calendar year for which the credit shown on the certificate would otherwise be allowed to be applied against a tax;

(2) [REPEALED

(3) REPEALED

(4)] the applicant does not have an outstanding liability to the state for unpaid delinquent taxes under this title;

<u>(3)</u> [(5)] the applicant's total tax liability under AS 43.55.011(e), after application of all available tax credits, for the calendar year in which the application is made is zero;

<u>(4)</u> [(6)] the applicant's average daily production of oil and gas taxable under AS 43.55.011(e) during the calendar year preceding the calendar year in which the application is made was not more than 50,000 BTU equivalent barrels; and

(5) [(7)] the purchase is consistent with this section and regulations adopted under this section.

*** Sec. 10.** AS 43.55.028(g) is amended to read:

(g) The department may adopt regulations to carry out the purposes of this section, including standards and procedures to allocate available money among applications for purchases under this chapter and claims for refunds under AS 43.20.046 when the total amount of the applications for purchase and claims for refund exceed the amount of available money in the fund. The regulations adopted by the department may not, when allocating available money in the fund under this section, distinguish an application for the purchase of a credit certificate issued under **former** AS 43.55.023(m) or a claim for refund under AS 43.20.046.

*** Sec. 11.** AS 43.55.160(a) is repealed and reenacted to read:

(a) Except as provided in (b) of this section and AS 43.55.162, for the purposes of

(1) AS 43.55.011(e), the annual production tax value of taxable oil, gas, or oil and gas subject to this paragraph produced by a producer during a calendar year is equal to the gross value at the point of production of that oil, gas, or oil and gas, respectively, taxable under AS 43.55.011(e), less the producer's lease expenditures under AS 43.55.165 for the calendar year that are applicable to the oil, gas, or oil and gas, as applicable, in that category produced by the producer, as adjusted under AS 43.55.170; this paragraph applies to

(A) oil and gas produced during the first 10 consecutive years after the start of sustained production or during the first 10 consecutive years of sustained production after the effective date of this section, whichever is later, from leases or properties north of 68 degrees North latitude that were not, as of January 1, 2008, either within a unit or in commercial production, other than gas produced before 2022 and used in the state;

(B) oil and gas not subject to (A) of this paragraph produced from leases or properties north of 68 degrees North latitude other than gas produced before 2022 and used in the state;

(C) oil and gas produced from leases or properties in the state outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude; this subparagraph does not apply to gas produced before 2022 and used in the state;

(D) oil produced before 2022 from a lease or property in the Cook Inlet sedimentary basin;

(E) gas produced before 2022 from a lease or property in the Cook Inlet sedimentary basin;

(F) gas produced before 2022 from a lease or property in the state outside the Cook Inlet sedimentary basin and used in the state;

(G) oil and gas produced from a lease or property, no part of which is north of 68 degrees North latitude, other than oil or gas described in (C), (D), (E), or (F) of this paragraph;

(2) AS 43.55.011(g), the monthly production tax value of taxable oil, gas, or oil and gas produced by a producer during a calendar month, for which a separate production tax value is required to be calculated under this paragraph, is equal to the gross value at the point of production of that oil, gas, or oil and gas, respectively, taxable under AS 43.55.011(e), less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year that are applicable to the oil, gas, or oil and gas, respectively, in that category produced by the producer during the calendar month, as adjusted under AS 43.55.170; a separate monthly production tax value must be calculated for each category of oil, gas, or oil and gas for which a separate annual production tax value is required to be calculated under (1) of this subsection.

*** Sec. 12.** AS 43.55.160(e) is amended to read:

(e) Any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that would otherwise be deductible by a producer in a calendar year but whose deduction would cause an annual production tax value calculated under (a)(1) of this section of taxable oil or gas produced during the calendar year to be less than zero may be used to establish a carried-forward annual loss under AS 43.55.023(b). However, the department shall provide by regulation a method to ensure that, for a period for which a producer's tax liability is limited by AS 43.55.011(j), (k), or (o), any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that would otherwise be deductible by a producer for that period but whose deduction would cause a production tax value calculated under **<u>(a)(1)(D), (E), or (F)</u>** [(a)(1)(C), (D), OR (E)] of this section to be less than zero are accounted for as though the adjusted lease expenditures had first been used as deductions in calculating the production tax values of oil or gas subject to any of the limitations under AS 43.55.011(j), (k), or (o) that have positive production tax values so as to reduce the tax liability calculated without regard to the limitation to the maximum amount provided for under the applicable provision of AS 43.55.011(j), (k), or (o). Only the amount of those adjusted lease expenditures remaining after the accounting provided for under this subsection may be used to establish a carried-forward annual loss under AS 43.55.023(b). In this subsection, "producer" includes "explorer."

*** Sec. 13.** AS 43.55 is amended by adding a new section to read:

Sec. 43.55.162. Reduction of production tax value for certain oil and gas. (a) For purposes of AS 43.55.011(e)(1) and (2), the annual production tax value for a calendar year under AS 43.55.160(a)(1) and the monthly production tax value for a month under AS 43.55.160(a)(2) of oil and gas produced during the first 10 consecutive years after the start of sustained production or during the first 10 consecutive years after the effective date of this section, whichever is later, from leases or properties north of 68 degrees North latitude that were not, as of January 1, 2008, either within a unit or in commercial production, are reduced by 30 percent of the gross value at the point of production of that oil and gas produced from those leases or properties during the calendar year or during the month respectively.

(b) For purposes of AS 43.55.011(e)(2), the monthly production tax value for a month of oil and gas produced from leases or properties north of 68 degrees North latitude, other than oil and gas subject to (a) of this section, is reduced by 40 percent of the gross value at the point of production of that oil and gas produced during the month from those leases or properties.

(c) The annual and monthly production tax value may not be reduced under this section below zero.

(d) The tax rate under AS 43.55.011(g) shall be determined before the application of the reduction provided by this section.

(e) This section does not apply to gas produced before 2022 and used in the state.

(f) If the annual or monthly gross value at the point of production is zero or below, an adjustment is not made under this section.

*** Sec. 14.** AS 43.55.023(m) is repealed.

*** Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 7 and 8 of this Act apply to expenditures incurred after December 31, 2012.

(b) Sections 1 - 3 and 11 - 13 of this Act apply to oil, gas, or oil and gas produced after December 31, 2012.

(c) Sections 4 - 6 of this Act apply to expenditures incurred after December 31, 2011.

*** Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. Sections 4 - 6, 9, 10, and 14 of this Act are retroactive to January 1, 2012.

*** Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Revenue may adopt regulations to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the provision of this Act implemented by the regulations.

* **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. If HCS CSSB 23(RLS) am H passed by the Twenty-Seventh Alaska State Legislature becomes law, the revisor of statutes shall give preference to this Act if a conflict arises among provisions when consolidating these Acts into the Alaska Statutes.

*** Sec. 19.** Sections 1 - 3, 7, 8, and 11 - 13 of this Act take effect January 1, 2013.

*** Sec. 20.** Except as provided in sec. 19 of this Act, this Act takes effect immediately under

AS 01.10.070(c).