



Sectional Analysis, HB 247
Governor's Oil and Gas Tax Credit Reform Bill
January 22, 2016

- Sec. 1-5.** Conforming language related to the repeal of AS 41.09 in Sec. 40 of the bill. The repeal is a currently unused exploration incentive credit program.
- Sec. 6.** Conforming language related to changes to reporting requirements and confidentiality rules in Sec. 8 of the bill.
- Sec. 7.** Changes the interest rate for delinquent taxes from 3 percent above the Federal Reserve Discount Rate to 7 percent above. This would currently result in an interest rate of about 8%; about halfway between the current 4% and the 11% that was in place before the passage of SB21 in 2013.
- If the state were to begin using earnings from our major savings account, the Permanent Fund, to fund government operations, there would be an "opportunity cost" that comes from unpaid taxes. Our interest rate on these unpaid taxes should reflect the expected rate of earnings on our savings.
- Sec. 8.** Provides an exception to the general taxpayer confidentiality statutes, so that the name of each company claiming credits, the amount they claim, and a general description of their activities can be made public.
- Sec. 9-11.** Amends the Gas Storage Facility, LNG Facility, and In-State Refinery Tax Credits so that these cannot be paid if the taxpayer has any outstanding liability to the state. Currently this is restricted to only a tax liability.
- Sec. 12.** Increases the minimum tax rate in AS 43.55.011(f) to 5% at all oil prices. Currently it is 4% at any oil price above \$25 per barrel, stepping down at lower prices. The minimum tax applies only to production from the North Slope.
- Sec. 13.** Changes the description of monthly installment payments in AS 43.55.020(a), to conform with the higher minimum tax rate in Sec. 12. (*long technical section*)
- Sec. 14-16.** Conforming language related to the repeal of AS 43.55.020(a)(1) and (2) in Sec. 40 of the bill. The repeal is obsolete installment payment language related to production prior to 2014.
- Sec. 17.** Strengthens the minimum tax in two distinct ways:

(b) Prevents several credits that currently can be used to reduce payments below the 4% level from being used for this purpose. Those credits would be carried-forward until the taxpayer had sufficient tax liability against which to use them.

(c) Prevents the circumstance in which per-taxable-barrel credits that could not be used in the month in which they were earned, because of the limitations of the minimum tax, could be claimed at annual tax true-up. This effectively turns the per-taxable-barrel credit into a monthly rather than an annual calculation. Currently if there is substantial price volatility within a year it could result in large tax refunds.

Sec. 18. Modifies the carried-forward annual loss credit in AS 43.55.023(b) so that, for “new” oil production eligible to receive the Gross Value Reduction (GVR), the GVR cannot be used to increase the size of an annual loss. Thus, if a company has oil production but is operating at a loss, their loss credit is limited to the actual size of the loss. Currently there are circumstances in which a company could receive credit refunds for amounts in excess of 100% of their loss.

Sec. 19. Amends AS 43.55.023 so that credits in that section cannot reduce tax liability below the minimum tax, rather than zero as in current statute. Also establishes a sunset when certain credits must be carried forward instead of being cashed out; in these circumstances the credits can only be carried forward for 10 years.

Sec. 20. Establishes a sunset in which credit certificates can only be held for 10 years before they expire.

Sec. 21. Conforming language related to the repeal of AS 43.55.023(a) in Sec. 40 of the bill. The repeal is the “qualified capital expenditure” credit outside of the North Slope.

Sec. 22. New language adding the notice and data sharing requirements that are currently part of the alternative credit for exploration, and applying them to other credits. This will enable DNR to continue to receive seismic and downhole information after the sunset of the exploration credits.

Sec. 23. Amends AS 43.55.024 so that the small producer credit cannot be used to reduce tax liability below the minimum tax. Although this credit will be closed to new recipients in May of 2016, some companies will continue to receive this benefit until approximately 2024.

Sec. 24. Amends AS 43.55.024 so that the \$5 per-taxable-barrel credit received by GVR-eligible North Slope oil production cannot reduce tax liability below the minimum tax. Currently this can be reduced to zero; only the sliding-scale credit for non-GVR oil is limited by the minimum tax.

Sec. 25. Amends AS 43.55.025 so that exploration credits cannot reduce tax liability below the minimum tax.

- Sec. 26.** Amends AS 43.55.028(e) to add limitations on which companies can receive refunded tax credits versus which must hold their certificates and use them against tax liability:
- (2) Companies with any liability to the state are ineligible to receive payment for their tax credit certificates. Currently this is restricted to only a tax liability.
 - (5) Limits cash repurchase to only companies whose gross revenues in the previous year were less than \$10 billion.
 - (6) Limits annual per-company repurchase to \$25 million.
- Sec. 27.** Adds a new limitation to a company's ability to receive a cash repurchase of their tax credits. The state can only repurchase that percentage of a certificate that equals that company's percentage of Alaska resident hire in the previous calendar year.
- Sec. 28-30.** Conforming language related to the repeal of AS 43.55.023(a) and / or (l) in Sec. 40 of the bill. The repeal is the "qualified capital expenditure" and "well lease expenditure" credits outside of the North Slope.
- Sec. 31.** New section specifying that the Gross Value at the Point of Production, defined as sales price less eligible transportation costs, may not be less than zero
- Sec. 32.** Conforming language related to the repeal of AS 43.55.165(j) and (k) in Sec. 40 of the bill. The repeal is the "standard deduction" limitation on lease expenditure inflation that expired in 2010.
- Sec. 33-36.** Conforming language related to the repeal of AS 43.55.023(a) in Sec. 40 of the bill. The repeal is the "qualified capital expenditure" credit outside of the North Slope.
- Sec. 37.** In the case where a municipal entity has an interest in oil and gas production, and sells only a portion of that production to an outside party, their ability to deduct lease expenditures and claim credits is limited in proportion to their taxable production.
- Sec. 38.** Adds a definition for "qualified capital expenditure" to the general definitions section of AS 43.55. This replicates the definition that was in AS 43.55.023 which is repealed because the .023 "qualified capital expenditure" credit is also being repealed in Sec. 40. Most of the conforming sections that currently reference AS 43.55.023(a) use this definition.
- Sec. 39.** Adds a definition for "outstanding liability to the state." This conforms with the changes made in Sections 9, 10, 11, and part (2) of 26.
- Sec. 40.** Repeals multiple sections. All of these have been specifically referenced elsewhere in this analysis or are technical repeals that conform with other repealed statutes.

Sec. 41. Applicability section with multiple sub-parts. In general, ensures that the changes only apply to production after the effective date. Also provides that applications that come in later for credits related to expenditures before the effective date are protected under the former program. Clarifies the timing related to the new 10-year sunset for carried-forward annual loss credits.

Sec. 42-43. Transition language enabling DOR and DNR to draft regulations to implement the changes in this Act, and establishing that regulations may be retroactive to the effective date if they are finalized after the effective date.

Sec. 44. Section 17 is retroactive to January 1, 2016. This is the key floor-hardening provision preventing certain credits from being used against the minimum tax, and is related to the specific concern that one or more major producers could have an operating loss in 2015 and use the carried-forward credit to reduce 2016 tax payments below the minimum tax to zero.

This is the only provision of the bill for which we are seeking this retroactivity.

Sec. 45. Immediate effective date for the transition and regulatory language.

Sec. 46. Effective date of July 1, 2016 for the rest of the Act.