

TAX PAYMENT PENALTIES

Senate Finance Committee

February 19, 2010

Alaska State Department of Revenue

Presentation Overview

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- Tax penalty provisions with general application
- Compromise and settlement
- Provisions that apply to production tax

Overview-Tax Penalties and Interest

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Alaska Statutes 43.05

- General application to Title 43 except as provided in specific tax chapters
- Covers returns, agreements on liability, compromise of tax or penalty, assessment, interest on underpayments and refunds
- Production tax has some specific provisions on interest and penalties, discussed below
- Disputes over tax assessments, including penalties, are first heard through informal conference at DOR
- Appeal is to Office of Administrative Hearings – confidential until final administrative decision AS 43.05.470 (may be subject to protective order)

Penalties

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AS 43.05.220: civil penalties

- Failure to file or pay: 5% for each 30 days up to 25%
 - Penalties won't be imposed if taxpayer shows that failure to file or pay is due to reasonable cause and not wilful neglect.
 - Regulations apply administrative and judicial interpretations of IRC 6651 15 AAC 05.200 (reasonable cause for delay)
- Negligence or intentional disregard: 5% of deficiency
 - Includes substantial deviation from statutes in reporting income or claiming deductions, exaggerated deductions, failure to keep adequate records, or failure to justify understatement of income. 15 AAC 05.220
- Fraud: greater of 50% of deficiency or \$500
 - Requires clear and convincing evidence that tax liability was understated as attempt to evade tax. 15 AAC 05.230
- Penalties are cumulative

Penalties - Criminal

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- ❑ AS 43.05.290: criminal penalties
- ❑ Wilful attempted tax evasion, failure to collect, or truthfully account for and pay tax: class C felony
- ❑ Wilful failure to pay, make return, keep records: class A misdemeanor
- ❑ Wilfully making and subscribing, or assisting in making, a false return (perjury): felonies, up to \$25k and 3 years imprisonment
- ❑ Wilfully delivery or disclosure of a false return: class A misdemeanor
- ❑ Wilful failure to obtain a required license: misdemeanor, up to \$2000 fine, 6 months imprisonment

Compromise and Settlement

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- AS 43.05.070 – If in opinion of DOR there is doubt over liability or collectibility of tax or penalty, DOR, with approval of Attorney General, may compromise tax or penalty
- Agreements are final absent fraud, malfeasance or misrepresentation of material fact
- Confidential under AS 43.05.230

Production tax penalties: failure to provide information

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□ AS 43.55.030-Filing of statements

- Annual report due March 31 whether or not tax payment due
- Statement: description of lease or property, producer name, gross amount of oil or gas production, gross value at point of production, purchaser and price information, qualified capital expenditures, lease expenditures and payments or credits from facility sharing
- Department adopted standards in regulation for delinquent reports
- Penalty maximum \$1,000 a day
- Regulation 15 AAC 55.840 covers notice and penalty amount
- In addition to other penalties

15 AAC 55.840 (b)-Penalties

AS 43.55.030

- (b) If, 30 days after a report required to be filed under AS 43.55.030 is due, the department has not notified the person required to file the report ... the department will not assess ... a penalty that begins earlier than a date specified in a written notice to the person, except in case of the person's fraud or willful concealment. ...[T]he department will specify a date that is at least 10 days after the date of the department's delivery of the notice Nothing in this subsection affects the person's obligation to file a complete and accurate report.

Production tax penalties: failure to provide information

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AS 43.55.040:

- DOR may require person engaged in production, purchaser or royalty owner to provide information necessary to compute the tax
- If person fails to provide information, DOR may assess a penalty, under standards determined by DOR of not more than \$1,000 a day for each day the person fails to file *after notice by the department*. 15 AAC 55.840
- In addition to any penalties under AS 43.05.220 or 43.05.290

15 AAC 55.840(c) –Penalties 43.55.040

- (c) If a person fails to file a report, statement, or other document required to be filed under AS 43.55.040, the department will provide written notice of the failure to the person and will specify in the notice a date beginning on which the person will be liable for a penalty under AS 43.55.040(7) if the person does not remedy the failure before that date.... If, 30 days after the date specified, the department has not assessed a penalty or otherwise notified the person in writing that the person has failed to remedy the failure before the date specified, the department will not assess a penalty under AS 43.55.040 (7) for the failure, except in case of the person's fraud or willful concealment.
- Nothing in this subsection limits the department's right to require the additional or more complete and accurate filing of a report, statement, or other document.

Penalties 43.55.030 and .040



To determine amount of penalty, DOR will consider:

- Willful or knowing nature of act or omission
- Importance of required information and effect on ability of DOR to proceed in absence of information
- Benefits to person in failure to file
- History of noncompliance by person
- Need to deter future noncompliance by that person and others
- Effort made by person to correct noncompliance
- 15 AAC 55.840(d)

Summary



- ❑ Penalties are imposed for failure to comply with reporting provisions of production tax
- ❑ In addition to penalties under 43.05.220 and .290
- ❑ DOR has implemented clear and balanced regulations for taxpayers