

HOUSE BILL NO. 337

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/10/10

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to interest on certain underpayments or overpayments for the oil and
2 gas production tax, to certificates for certain oil and gas production tax credits for
3 qualified capital expenditures, and to alternative tax credits for expenditures for certain
4 oil and gas development and exploration activities for the oil and gas production tax;
5 relating to the use of the oil and gas tax credit fund to purchase certain tax credit
6 certificates; and providing for an effective date."

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

8 * **Section 1.** AS 43.55.020 is amended by adding a new subsection to read:

9 (i) Notwithstanding any contrary provision of AS 43.05.225 or (g) or (h) of
10 this section, if the amount of a tax payment, including an installment payment, due
11 under (a)(1) - (4) of this section is affected by the retroactive application of a
12 regulation adopted under this chapter, the department shall determine whether the
13 retroactive application of the regulation caused an underpayment or an overpayment of

1 the amount due and adjust the interest due on the affected payment as follows:

2 (1) if an underpayment of the amount due occurred, the department
3 shall waive interest that would otherwise accrue for the underpayment before the first
4 day of the second month following the month in which the regulation became
5 effective, if the department determines that

6 (A) the producer's underpayment resulted because the
7 regulation was not in effect when the payment was due; and

8 (B) the producer made a good faith estimate of its tax
9 obligation in light of the regulations then in effect when the payment was due,
10 and paid the estimated tax;

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

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

18 (B) 90 days after an amended statement under AS 43.55.030(a)
19 and an application to request a refund of production tax paid is filed, if the
20 overpayment was for a period for which an amended statement under
21 AS 43.55.030(a) was required to be filed before the regulation became
22 effective.

23 * **Sec. 2.** AS 43.55.023(a) is amended to read:

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

26 (1) notwithstanding that a qualified capital expenditure may be a
27 deductible lease expenditure for purposes of calculating the production tax value of oil
28 and gas under AS 43.55.160(a), unless a credit for that expenditure is taken under
29 AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025, a producer or
30 explorer that incurs a qualified capital expenditure may also elect to apply a tax credit
31 against a tax levied by AS 43.55.011(e) in the amount of 20 percent of that

1 expenditure; [HOWEVER, NOT MORE THAN HALF OF THE TAX CREDIT MAY
2 BE APPLIED FOR A SINGLE CALENDAR YEAR;]

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

6 (A) agrees, in writing, to the applicable provisions of
7 AS 43.55.025(f) [AS 43.55.025(f)(2)];

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

11 * **Sec. 3.** AS 43.55.023(d) is amended to read:

12 (d) Except as limited by (i) of this section, a person that is entitled to take a tax
13 credit under this section that wishes to transfer the unused credit to another person or
14 obtain a cash payment under AS 43.55.028 may apply to the department for a
15 transferable tax credit certificate [CERTIFICATES]. An application under this
16 subsection must be in a form prescribed by the department and must include
17 supporting information and documentation that the department reasonably requires.
18 The department shall grant or deny an application, or grant an application as to a lesser
19 amount than that claimed and deny it as to the excess, not later than 120 days after the
20 latest of (1) March 31 of the year following the calendar year in which the qualified
21 capital expenditure or carried-forward annual loss for which the credit is claimed was
22 incurred; (2) the date the statement required under AS 43.55.030(a) or (e) was filed for
23 the calendar year in which the qualified capital expenditure or carried-forward annual
24 loss for which the credit is claimed was incurred; or (3) the date the application was
25 received by the department. If, based on the information then available to it, the
26 department is reasonably satisfied that the applicant is entitled to a credit, the
27 department shall issue the applicant a [TWO TRANSFERABLE] tax credit certificate
28 [CERTIFICATES, EACH FOR HALF OF THE AMOUNT OF THE CREDIT]. The
29 credit shown on [ONE OF] the certificate [TWO CERTIFICATES] is available for
30 immediate use. [THE CREDIT SHOWN ON THE SECOND OF THE TWO
31 CERTIFICATES MAY NOT BE APPLIED AGAINST A TAX FOR A CALENDAR

1 YEAR EARLIER THAN THE CALENDAR YEAR FOLLOWING THE
 2 CALENDAR YEAR IN WHICH THE CERTIFICATE IS ISSUED, AND THE
 3 CERTIFICATE MUST CONTAIN A CONSPICUOUS STATEMENT TO THAT
 4 EFFECT.] A certificate issued under this subsection does not expire.

5 * **Sec. 4.** AS 43.55.025(a) is repealed and reenacted to read:

6 (a) Subject to the terms and conditions of this section, a 30 percent credit
 7 against the production tax levied by AS 43.55.011(e) is allowed for exploratory well
 8 expenditures if

9 (1) the exploration expenditures are incurred and paid by an explorer
 10 that holds an interest in the exploratory well for which the production tax credit is
 11 claimed;

12 (2) the exploratory well encounters an oil or gas deposit or a dry hole;

13 (3) the exploratory well has been completed, suspended, or abandoned
 14 at the time the explorer claims the tax credit under (f) of this section;

15 (4) the exploratory well expenditures are for goods, services, or rentals
 16 of personal property reasonably required for the surface preparation, drilling, casing,
 17 cementing, and logging of the well, and, in the case of a dry hole, for the expenses
 18 required for abandonment if the well is abandoned no later than 18 months after the
 19 date the well was spudded;

20 (5) a predrilling conference was held with the Department of Natural
 21 Resources to discuss the drilling program and the data acquisition scope and strategy;
 22 and

23 (6) the well is not a service well, a stratigraphic test well, or a
 24 development well.

25 * **Sec. 5.** AS 43.55.025(b) is repealed and reenacted to read:

26 (b) Subject to the terms and conditions of this section, a 30 percent credit
 27 against the production tax levied by AS 43.55.011(e) is allowed for development well
 28 expenditures if

29 (1) the development well expenditures are incurred and paid by a
 30 producer that holds an interest in the development well for which the production tax
 31 credit is claimed;

1 (2) the development well is drilled to a known productive pool and
 2 intended to be a producing well at the time the producer claims the tax credit under (f)
 3 of this section;

4 (3) the development well expenditures are for goods, services, or
 5 rentals of personal property reasonably required for redrilling, casing, cementing,
 6 logging, completing, workover operations, or other operations intended by the
 7 producer to increase or enhance well production from the known productive pool; and

8 (4) the well is not a service well, a stratigraphic test well, or an
 9 exploratory well.

10 * **Sec. 6.** AS 43.55.025(c) is repealed and reenacted to read:

11 (c) Subject to the terms and conditions of this section, a 40 percent credit
 12 against the production tax levied by AS 43.55.011(e) is allowed for exploratory well
 13 expenditures if

14 (1) the exploration expenditures qualify for a credit under (a) of this
 15 section; and

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

21 * **Sec. 7.** AS 43.55.025(d) is repealed and reenacted to read:

22 (d) Subject to the terms and conditions of this section, a 40 percent credit
 23 against the production tax levied by AS 43.55.011(e) is allowed for seismic
 24 exploration expenditures if the seismic exploration was conducted outside the
 25 boundaries of a production unit or an exploration unit. However, the amount of the
 26 expenditure that is otherwise eligible under this subsection is reduced proportionately
 27 by the portion of the seismic exploration activity that crossed into a production unit or
 28 an exploration unit.

29 * **Sec. 8.** AS 43.55.025(e) is repealed and reenacted to read:

30 (e) Notwithstanding (a), (b), (c), or (d) of this section,

31 (1) an exploration or development well credit against the production

1 tax levied by AS 43.55.011(e)

2 (A) must be for exploration or for development well
3 expenditures incurred for work performed after June 30, 2010, and before
4 July 1, 2016;

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

13 (C) may not be incurred for an exploration well or seismic
14 exploration that is included in a plan of exploration or a plan of development
15 for any unit before May 14, 2003; and

16 (2) a certain exploration or development well expenditure may be
17 claimed only once under this section.

18 * **Sec. 9.** AS 43.55.025(f) is amended to read:

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

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

28 (2) an explorer **claiming a credit under (a), (c), or (d) of this section**
29 shall agree, in writing,

30 (A) to notify the Department of Natural Resources, within 30
31 days after completion of seismic or geophysical data processing, completion of

1 well drilling, or filing of a claim for credit, whichever is the latest, for which
2 exploration costs are claimed, of the date of completion and submit a report to
3 that department describing the processing sequence and providing a list of all
4 data sets [AVAILABLE];

5 (B) to provide to the Department of Natural Resources, within
6 30 days after the date of a request, unless a longer period is provided by the
7 Department of Natural Resources, specific data sets, ancillary data, and reports
8 identified in (A) of this paragraph; in this subparagraph,

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

13 (ii) well data include all analyses conducted on physical
14 material, and well logs collected from the well, results, and copies of
15 data collected and data analyses for the well, including well logs;
16 sample analyses; testing geophysical and velocity data including
17 seismic profiles and check shot surveys; testing data and analyses; age
18 data; geochemical analyses; and tangible material;

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

22 (i) in the case of well data, until the expiration of the
23 24-month period of confidentiality described in AS 31.05.035(c), at
24 which time the Department of Natural Resources will release the
25 information after 30 days' public notice unless, in the discretion of the
26 commissioner of natural resources, it is necessary to protect
27 information relating to the valuation of unleased acreage in the same
28 vicinity, or unless the well is on private land and the owner, including
29 the lessor but not the lessee, of the oil and gas resources has not given
30 permission to release the well data;

31 (ii) in the case of seismic or other geophysical data,

1 other than seismic data acquired by seismic exploration subject to (k) of
 2 this section, for 10 years following the completion date, at which time
 3 the Department of Natural Resources will release the information after
 4 30 days' public notice, except as to seismic or other geophysical data
 5 acquired from private land, unless the owner, including a lessor but not
 6 a lessee, of the oil and gas resources in the private land gives
 7 permission to release the seismic or other geophysical data associated
 8 with the private land;

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

13 (3) if more than one explorer **or producer** holds an interest in **an**
 14 **exploration** [A] well, **development well**, or seismic exploration, each explorer **or**
 15 **producer** may claim an amount of credit that is proportional to the explorer's **or**
 16 **producer's** cost incurred **and paid**;

17 (4) **if an explorer is not also a producer subject to the production**
 18 **tax under this chapter**, the department may **nonetheless** exercise the full extent of its
 19 powers as though the explorer were a taxpayer under this title, in order to verify that
 20 the claimed expenditures are qualified exploration expenditures under this section; and

21 (5) if the department is satisfied that the explorer's **or producer's**
 22 claimed expenditures are qualified under this section and that all data required to be
 23 submitted under this section have been submitted, the department shall issue to the
 24 explorer **or producer** a production tax credit certificate for the amount of credit to be
 25 allowed against production taxes levied by AS 43.55.011(e); notwithstanding any
 26 contrary provision of AS 38, AS 40.25.100, or AS 43.05.230, the following
 27 information is not confidential **and may be published**:

28 (A) the explorer's **or producer's** name;

29 (B) the date of the **credit** application;

30 (C) the location of the well or seismic exploration;

31 (D) the date of the department's issuance of the certificate;

1 [AND]

2 (E) the date on which the information required to be submitted
3 under this section will be released; and

4 (F) the type of seismic or geophysical data or well data that
5 will be released.

6 * **Sec. 10.** AS 43.55.025(g) is amended to read:

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

11 * **Sec. 11.** AS 43.55.025(k) is amended to read:

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

17 (1) have been for seismic exploration that

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

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

25 (2) qualify under (e)(2) [(b)(3)] of this section.

26 * **Sec. 12.** AS 43.55.028(e)(2) and 43.55.028(e)(3) are repealed.

27 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 TRANSITION: APPLICABILITY OF SEC. 1 OF THIS ACT. Section 1 of this Act
30 applies to taxes, including installment payments of estimated tax, due on or after February 27,
31 2007.

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2 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the
5 section heading of AS 43.55.025 from "Alternative tax credit for oil and gas exploration" to
6 "Alternative tax credit for exploration and development well expenses".

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

9 RETROACTIVITY OF SECS. 1 - 3 OF THIS ACT. (a) Section 1 of this Act is
10 retroactive to February 28, 2007.

11 (b) Sections 2 and 3 of this Act are retroactive to January 1, 2010.

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

14 RETROACTIVITY OF REGULATIONS. Notwithstanding any contrary provision of
15 AS 44.62.240, if the Department of Revenue expressly designates in the regulation that the
16 regulation applies retroactively to a specific date, the regulation adopted by the Department of
17 Revenue to implement, interpret, make specific or otherwise carry out secs. 1, 2, or 3 of this
18 Act applies retroactively to that date.

19 * **Sec. 17.** Sections 4 - 12 of this Act take effect July 1, 2010.

20 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect immediately under
21 AS 01.10.070(c).