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Bullock
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CS FOR HOUSE BILL NO. 308()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JOHNSON, Neuman, Ramras, Millett, Johansen, Hawker

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the tax rate applicable to the production of oil and gas; relating to**
2 **credits against the oil and gas production tax; relating to the period in which oil and gas**
3 **production taxes may be assessed; relating to the interest rates applicable on certain**
4 **amounts due related to various taxes, penalties, payments, and the Alaska Gasline**
5 **Inducement Act; and providing for an effective date."**

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

7 *** Section 1.** AS 05.15.095(c) is amended to read:

8 (c) A delinquent fee bears interest at the rate set by AS 43.05.225(2)
9 [AS 43.05.225].

10 *** Sec. 2.** AS 34.45.470(a) is amended to read:

11 (a) A person who fails to pay or deliver property within the time prescribed by
12 this chapter may be required to pay to the department interest at the annual rate
13 calculated under AS 43.05.225(2) [AS 43.05.225] on the property or the value of it

1 from the date the property should have been paid or delivered.

2 * **Sec. 3.** AS 43.05.225 is amended to read:

3 **Sec. 43.05.225. Interest.** Unless otherwise provided,

4 (1) when a tax levied in this title becomes delinquent, it bears interest
5 in a calendar quarter at the rate of three [FIVE] percentage points above the annual
6 rate charged member banks for advances by the 12th Federal Reserve District as of the
7 first day of that calendar quarter, [OR AT THE ANNUAL RATE OF 11 PERCENT,
8 WHICHEVER IS GREATER,] compounded quarterly as of the last day of that
9 quarter;

10 (2) the interest rate is 12 percent a year for

11 (A) delinquent fees payable under AS 05.15.095(c); and

12 (B) [REPEALED

13 (C)] unclaimed property that is not timely paid or delivered, as
14 allowed by AS 34.45.470(a).

15 * **Sec. 4.** AS 43.50.570 is amended to read:

16 **Sec. 43.50.570. Interest.** A licensee who fails to pay an amount due for the
17 purchase of stamps within the time required

18 (1) is considered to have failed to pay the cigarette taxes due under this
19 chapter; and

20 (2) shall pay interest at the rate established under AS 43.05.225(1)
21 [AS 43.05.225] from the date on which the amount became due until the date of
22 payment.

23 * **Sec. 5.** AS 43.55.011(g) is amended to read:

24 (g) For each month of the calendar year for which the producer's average
25 monthly production tax value under AS 43.55.160(a)(2) per BTU equivalent barrel of
26 the taxable oil and gas is more than \$30, the amount of tax for purposes of (e)(2) of
27 this section is determined by subtracting the product of \$30 multiplied by the
28 number of BTU equivalent barrels of taxable oil and gas produced during the
29 month from [MULTIPLYING] the monthly production tax value of the taxable oil
30 and gas produced during the month, and multiplying that result by the tax rate
31 calculated as follows:

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

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

11 * **Sec. 6.** AS 43.55.020(a) is amended to read:

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

14 (1) an installment payment of the estimated tax levied by
15 AS 43.55.011(e), net of any tax credits applied as allowed by law, is due for each
16 month of the calendar year on the last day of the following month; except as otherwise
17 provided under (2) of this subsection, the amount of the installment payment is the
18 sum of the following amounts, less 1/12 of the tax credits that are allowed by law to be
19 applied against the tax levied by AS 43.55.011(e) for the calendar year, but the amount
20 of the installment payment may not be less than zero:

21 (A) for oil and gas produced from leases or properties in the
22 state outside the Cook Inlet sedimentary basin but not subject to
23 AS 43.55.011(o), other than leases or properties subject to AS 43.55.011(f), the
24 greater of

25 (i) zero; or

26 (ii) **the result obtained by taking** [THE SUM OF] 25
27 percent [AND THE TAX RATE CALCULATED FOR THE MONTH
28 UNDER AS 43.55.011(g)] multiplied by the remainder obtained by
29 subtracting 1/12 of the producer's adjusted lease expenditures for the
30 calendar year of production under AS 43.55.165 and 43.55.170 that are
31 deductible for the leases or properties under AS 43.55.160 from the

1 gross value at the point of production of the oil and gas produced from
2 the leases or properties during the month for which the installment
3 payment is calculated, and adding that amount to the tax amount
4 determined for the month under AS 43.55.011(g) for the leases or
5 properties;

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

8 (i) zero;

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

13 (iii) the result obtained by taking [THE SUM OF] 25
14 percent [AND THE TAX RATE CALCULATED FOR THE MONTH
15 UNDER AS 43.55.011(g)] multiplied by the remainder obtained by
16 subtracting 1/12 of the producer's adjusted lease expenditures for the
17 calendar year of production under AS 43.55.165 and 43.55.170 that are
18 deductible for those leases or properties under AS 43.55.160 from the
19 gross value at the point of production of the oil and gas produced from
20 those leases or properties during the month for which the installment
21 payment is calculated, and adding that amount to the tax amount
22 determined for the month under AS 43.55.011(g) for the leases or
23 properties;

24 (C) for oil and gas produced from each lease or property
25 subject to AS 43.55.011(j), (k), or (o), the greater of

26 (i) zero; or

27 (ii) the result obtained by taking [THE SUM OF] 25
28 percent [AND THE TAX RATE CALCULATED FOR THE MONTH
29 UNDER AS 43.55.011(g)] multiplied by the remainder obtained by
30 subtracting 1/12 of the producer's adjusted lease expenditures for the
31 calendar year of production under AS 43.55.165 and 43.55.170 that are

1 deductible under AS 43.55.160 for oil or gas, respectively, produced
2 from the lease or property from the gross value at the point of
3 production of the oil or gas, respectively, produced from the lease or
4 property during the month for which the installment payment is
5 calculated, and adding that amount to the tax amount determined
6 for the month under AS 43.55.011(g) for the lease or property;

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

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

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

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

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

1 calendar year of production.

2 * **Sec. 7.** AS 43.55.020(g) is amended to read:

3 (g) Notwithstanding any contrary provision of AS 43.05.225, an unpaid
4 amount of an installment payment required under (a)(1) - (3) of this section that is not
5 paid when due bears interest (1) at the rate provided for an underpayment under 26
6 U.S.C. 6621 (Internal Revenue Code), as amended, compounded daily, from the date
7 the installment payment is due until March 31 following the calendar year of
8 production, and (2) as provided for a delinquent tax under AS 43.05.225(1)
9 [AS 43.05.225] after that March 31. Interest accrued under (1) of this subsection that
10 remains unpaid after that March 31 is treated as an addition to tax that bears interest
11 under (2) of this subsection. An unpaid amount of tax due under (a)(4) of this section
12 that is not paid when due bears interest as provided for a delinquent tax under
13 AS 43.05.225(1) [AS 43.05.225].

14 * **Sec. 8.** AS 43.55.020 is amended by adding a new subsection to read:

15 (i) Notwithstanding any contrary provision of AS 43.05.225 or (g) or (h) of
16 this section, if the amount of a tax payment, including an installment payment, due
17 under (a)(1) - (4) of this section is affected by the retroactive application of a
18 regulation adopted under this chapter, the department shall determine whether the
19 retroactive application of the regulation caused an underpayment or an overpayment of
20 the amount due and adjust the interest due on the affected payment as follows:

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

25 (A) determines that the producer's underpayment resulted
26 because the regulation was not in effect when the payment was due; and

27 (B) does not find that the producer failed to make a good faith
28 estimate of its tax obligation in light of the regulations then in effect when the
29 payment was due and paid the estimated tax;

30 (2) if an overpayment of the amount due occurred and the department
31 determines that the producer's overpayment resulted because the regulation was not in

1 effect when the payment was due, the obligation for a refund for the overpayment does
2 not begin to accrue interest earlier than the following, as applicable:

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

6 (B) 90 days after an amended statement under AS 43.55.030(a)
7 and an application to request a refund of production tax paid is filed, if the
8 overpayment was for a period for which an amended statement under
9 AS 43.55.030(a) was required to be filed before the regulation became
10 effective.

11 * **Sec. 9.** AS 43.55.023(a) is amended to read:

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

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

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

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

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

29 * **Sec. 10.** AS 43.55.023(d) is amended to read:

30 (d) Except as limited by (i) of this section, a person that is entitled to take a tax
31 credit under this section that wishes to transfer the unused credit to another person or

1 obtain a cash payment under AS 43.55.028 may apply to the department for a
 2 transferable tax credit certificate [CERTIFICATES]. An application under this
 3 subsection must be in a form prescribed by the department and must include
 4 supporting information and documentation that the department reasonably requires.
 5 The department shall grant or deny an application, or grant an application as to a lesser
 6 amount than that claimed and deny it as to the excess, not later than 120 days after the
 7 latest of (1) March 31 of the year following the calendar year in which the qualified
 8 capital expenditure or carried-forward annual loss for which the credit is claimed was
 9 incurred; (2) the date the statement required under AS 43.55.030(a) or (e) was filed for
 10 the calendar year in which the qualified capital expenditure or carried-forward annual
 11 loss for which the credit is claimed was incurred; or (3) the date the application was
 12 received by the department. If, based on the information then available to it, the
 13 department is reasonably satisfied that the applicant is entitled to a credit, the
 14 department shall issue the applicant a [TWO TRANSFERABLE] tax credit certificate
 15 [CERTIFICATES, EACH FOR HALF OF THE AMOUNT OF THE CREDIT]. The
 16 credit shown on [ONE OF] the certificate [TWO CERTIFICATES] is available for
 17 immediate use. [THE CREDIT SHOWN ON THE SECOND OF THE TWO
 18 CERTIFICATES MAY NOT BE APPLIED AGAINST A TAX FOR A CALENDAR
 19 YEAR EARLIER THAN THE CALENDAR YEAR FOLLOWING THE
 20 CALENDAR YEAR IN WHICH THE CERTIFICATE IS ISSUED, AND THE
 21 CERTIFICATE MUST CONTAIN A CONSPICUOUS STATEMENT TO THAT
 22 EFFECT.] A certificate issued under this subsection does not expire.

23 * **Sec. 11.** AS 43.55.023(g) is amended to read:

24 (g) The issuance of a transferable tax credit certificate under (d) of this section
 25 or the purchase of a certificate under AS 43.55.028 does not limit the department's
 26 ability to later audit a tax credit claim to which the certificate relates or to adjust the
 27 claim if the department determines, as a result of the audit, that the applicant was not
 28 entitled to the amount of the credit for which the certificate was issued. The tax
 29 liability of the applicant under AS 43.55.011(e) and 43.55.017 - 43.55.180 is increased
 30 by the amount of the credit that exceeds that to which the applicant was entitled, or the
 31 applicant's available valid outstanding credits applicable against the tax levied by

1 AS 43.55.011(e) are reduced by that amount. If the applicant's tax liability is increased
2 under this subsection, the increase bears interest under AS 43.05.225(1)
3 [AS 43.05.225] from the date the transferable tax credit certificate was issued. For
4 purposes of this subsection, an applicant that is an explorer is considered a producer
5 subject to the tax levied by AS 43.55.011(e).

6 * **Sec. 12.** AS 43.55.023 is amended by adding a new subsection to read:

7 (m) A producer or explorer may take a tax credit for a well-related
8 expenditure, as follows:

9 (1) notwithstanding that a well-related expenditure may be a
10 deductible lease expenditure under AS 43.55.165 for purposes of calculating the
11 production tax value of oil and gas under AS 43.55.160(a), unless a credit for that
12 expenditure is taken under (a) of this section, AS 38.05.180(i), AS 41.09.010,
13 AS 43.20.043, or AS 43.55.025, a producer or explorer that incurs a well-related
14 expenditure may also elect to apply a credit against a tax levied by AS 43.55.011(e) in
15 the amount of 30 percent of that expenditure;

16 (2) a producer or explorer may take a credit for a well-related
17 expenditure incurred in connection with geological or geophysical exploration or in
18 connection with an exploration well only if the producer or explorer

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

21 (B) submits to the Department of Natural Resources all data
22 that would be required to be submitted under AS 43.55.025(f)(2) for a credit
23 under AS 43.55.025;

24 (3) In this section, "well-related expenditure" means a lease
25 expenditure related to a well and includes a lease expenditure for the purposes of well
26 sidetracking, well deepening, well recompletion, well workover, an injection well, and
27 well-related seismic work, and an intangible drilling and development cost authorized
28 under 26 U.S.C. (Internal Revenue Code), as amended, and 26 C.F.R. 1.612-4,
29 regardless of the elections made under 26 U.S.C. 263(c); during production, "well-
30 related expenditure" includes the costs of operating a well and moving well fluids up
31 to the wellhead.

1 * **Sec. 13.** AS 43.55.075(a) is amended to read:

2 (a) Except as provided in AS 43.05.260(c), for a tax period ending before
3 January 1, 2010, the amount of a tax imposed by this chapter must be assessed within
4 six years after the return was filed.

5 * **Sec. 14.** AS 43.77.020(d) is amended to read:

6 (d) A person subject to the tax under this chapter shall make quarterly
7 payments of the tax estimated to be due for the year, as required under regulations
8 adopted by the department. A taxpayer will be subject to an estimated tax penalty,
9 determined by applying the interest rate specified in AS 43.05.225(1) [AS 43.05.225]
10 to the underpayment for each quarter, unless the taxpayer makes estimated tax
11 payments in equal installments that total either

12 (1) at least 90 percent of the taxpayer's tax liability under this chapter
13 for the tax year; or

14 (2) at least 100 percent of the taxpayer's tax liability under this chapter
15 for the prior tax year.

16 * **Sec. 15.** AS 43.90.430 is amended to read:

17 **Sec. 43.90.430. Interest.** When a payment due to the state under this chapter
18 becomes delinquent, the payment bears interest at the rate applicable to a delinquent
19 tax under AS 43.05.225(1) [AS 43.05.225].

20 * **Sec. 16.** AS 43.55.028(e)(2) and 43.55.028(e)(3) are repealed.

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

23 **APPLICABILITY.** AS 43.55.020(i), added by sec. 8 of this Act, applies to taxes and
24 installment payments of estimated tax due after February 27, 2007.

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

27 **TRANSITION; RETROACTIVITY OF REGULATIONS.** Notwithstanding any
28 contrary provision of AS 44.62.240, if the Department of Revenue expressly designates in the
29 regulation that the regulation applies retroactively to a specific date, a regulation adopted by
30 the Department of Revenue to implement, interpret, make specific, or otherwise carry out
31 AS 43.55.020(i), as added by sec. 8 of this Act, AS 43.55.023(a), as amended by sec. 9 of this

1 Act, or AS 43.55.023(d), as amended by sec. 10 of this Act, is retroactive to the effective date
2 of those provisions.

3 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 RETROACTIVITY. (a) AS 43.55.020(i), added by sec. 8 of this Act, is retroactive to
6 February 28, 2007.

7 (b) AS 43.55.023(a), as amended by sec. 9 of this Act, AS 43.55.023(d), as amended
8 by sec. 10 of this Act, and AS 43.55.075(a), as amended by sec. 13 of this Act, are retroactive
9 to January 1, 2010.

10 * **Sec. 20.** AS 43.05.225, as amended by sec. 3 of this Act, takes effect on the first day of
11 the calendar quarter immediately following the effective date of secs. 1, 2, 4, and 6 - 19 of this
12 Act.

13 * **Sec. 21.** AS 43.55.011(g), as amended by sec. 5 of this Act, takes effect on the first day of
14 the month immediately following the effective date of secs. 1, 2, 4, and 6 - 19 of this Act.

15 * **Sec. 22.** Except as provided in secs. 20 and 21 of this Act, this Act takes effect
16 immediately under AS 01.10.070(c).