

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 28, 2010

SUBJECT: Single subject issue (CSHB 337());
Work Order No. 26-GH2057\R)

TO: Representative Craig Johnson
Attn: Debra Higgins

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed is a draft version of CSHB 337(). Please read this draft carefully to ensure that it is consistent with your intent. Also, please verify the effective date sections, secs. 19 and 20, with the Department of Revenue to ensure that they are consistent with their advice to you.

Included in this draft are provisions that relate to the purchase of tax credit certificates by the Alaska Retirement Management Board (ARMB). These provisions are in sec. 3, 10, and 12 of the draft. Although the ARMB provisions relate to the purchase of tax credits authorized under the oil and gas production tax, the provisions relate to the powers of the board. Inclusion of these provisions may expose the enactment of the bill to a challenge under art. II, sec. 13, Constitution of the State of Alaska, which requires that bills be confined to one subject.

DMB:lmb
10-013.lmb

Enclosure

26-GH2057\R
Bullock
3/29/10

CS FOR HOUSE BILL NO. 337()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to credits against the oil and gas production tax; relating to the interest**
2 **rates applicable on certain amounts due related to various taxes, penalties, payments,**
3 **and the Alaska Gasline Inducement Act; relating to the use of the oil and gas tax credit**
4 **fund to purchase certain tax credit certificates; authorizing the board of trustees of the**
5 **Alaska Retirement Management Board to purchase and sell transferable tax credit**
6 **certificates issued in conjunction with the production tax on oil and gas; and providing**
7 **for an effective date."**

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

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

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

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

13 (a) A person who fails to pay or deliver property within the time prescribed by

1 this chapter may be required to pay to the department interest at the annual rate
2 calculated under AS 43.05.225(2) [AS 43.05.225] on the property or the value of it
3 from the date the property should have been paid or delivered.

4 * **Sec. 3.** AS 37.10.220(b) is amended to read:

5 (b) The board may

6 (1) employ outside investment advisors to review investment policies;

7 (2) enter into an agreement with the fiduciary of another state fund in
8 order to assume the management and investment of those assets;

9 (3) contract for other services necessary to execute the board's powers
10 and duties;

11 (4) enter into confidentiality agreements that would exempt records
12 from AS 40.25.110 and 40.25.120 if the records contain information that could affect
13 the value of investment by the board or that could impair the ability of the board to
14 acquire, maintain, or dispose of investments;

15 (5) purchase transferable tax credit certificates issued under
16 AS 43.55.023 and 43.55.025 for 92 percent of the face value of a certificate, and
17 sell transferable tax credit certificates to the Department of Revenue under
18 AS 43.55.023(n) and 43.55.025(m) for a cash refund of the full face value of the
19 certificate; under this paragraph, the board

20 (A) may

21 (i) engage in the purchase and sale of transferable
22 tax credits; and

23 (ii) sell a transferable tax credit certificate only if the
24 commissioner of revenue determines that economic conditions are
25 acceptable for the state to purchase and pay for the credit; and

26 (B) shall apply the proceeds from a sale made under this
27 paragraph to defray the unfunded pension liabilities of the systems for
28 which the board has responsibility.

29 * **Sec. 4.** AS 43.05.225 is amended to read:

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

31 (1) when a tax levied in this title becomes delinquent, it bears interest

1 in a calendar quarter at the rate of three [FIVE] percentage points above the annual
2 rate charged member banks for advances by the 12th Federal Reserve District as of the
3 first day of that calendar quarter, [OR AT THE ANNUAL RATE OF 11 PERCENT,
4 WHICHEVER IS GREATER,] compounded quarterly as of the last day of that
5 quarter;

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

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

8 (B) [REPEALED

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

11 * **Sec. 5.** AS 43.50.570 is amended to read:

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

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

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

19 * **Sec. 6.** AS 43.55.020(g) is amended to read:

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

31 * **Sec. 7.** AS 43.55.020 is amended by adding a new subsection to read:

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

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

11 (A) the department determines that the producer's
12 underpayment resulted because the regulation was not in effect when the
13 payment was due; and

14 (B) the producer demonstrates that it made a good faith
15 estimate of its tax obligation in light of the regulations then in effect when the
16 payment was due and paid the estimated tax;

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

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

24 (B) 90 days after an amended statement under AS 43.55.030(a)
25 and an application to request a refund of production tax paid is filed, if the
26 overpayment was for a period for which an amended statement under
27 AS 43.55.030(a) was required to be filed before the regulation became
28 effective.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(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);

(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. 9.** 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 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 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

1 department shall issue the applicant a [TWO TRANSFERABLE] tax credit certificate
2 [CERTIFICATES, EACH FOR HALF OF THE AMOUNT OF THE CREDIT]. The
3 credit shown on [ONE OF] the certificate [TWO CERTIFICATES] is available for
4 immediate use. [THE CREDIT SHOWN ON THE SECOND OF THE TWO
5 CERTIFICATES MAY NOT BE APPLIED AGAINST A TAX FOR A CALENDAR
6 YEAR EARLIER THAN THE CALENDAR YEAR FOLLOWING THE
7 CALENDAR YEAR IN WHICH THE CERTIFICATE IS ISSUED, AND THE
8 CERTIFICATE MUST CONTAIN A CONSPICUOUS STATEMENT TO THAT
9 EFFECT.] A certificate issued under this subsection does not expire.

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

11 (g) The issuance of a transferable tax credit certificate under (d) of this section
12 or the purchase of a certificate under AS 43.55.028 does not limit the department's
13 ability to later audit a tax credit claim to which the certificate relates or to adjust the
14 claim if the department determines, as a result of the audit, that the applicant was not
15 entitled to the amount of the credit for which the certificate was issued. The tax
16 liability of the applicant under AS 43.55.011(e) and 43.55.017 - 43.55.180 is increased
17 by the amount of the credit that exceeds that to which the applicant was entitled, or the
18 applicant's available valid outstanding credits applicable against the tax levied by
19 AS 43.55.011(e) are reduced by that amount. If the applicant's tax liability is increased
20 under this subsection, the increase bears interest under AS 43.05.225(1)
21 [AS 43.05.225] from the date the transferable tax credit certificate was issued. For
22 purposes of this subsection, an applicant that is an explorer is considered a producer
23 subject to the tax levied by AS 43.55.011(e).

24 * **Sec. 11.** AS 43.55.023 is amended by adding new subsections to read:

25 (m) A producer or explorer may take a tax credit for a well-related
26 expenditure after June 30, 2010, and before July 1, 2016, as follows:

27 (1) notwithstanding that a well-related expenditure may be a
28 deductible lease expenditure under AS 43.55.165 for purposes of calculating the
29 production tax value of oil and gas under AS 43.55.160(a), unless a credit for that
30 expenditure is taken under (a) of this section, AS 38.05.180(i), AS 41.09.010,
31 AS 43.20.043, or AS 43.55.025, a producer or explorer that incurs a well-related

1 expenditure may also elect to apply a credit against a tax levied by AS 43.55.011(e) in
2 the amount of 30 percent of that expenditure;

3 (2) a producer or explorer may take a credit for a well-related
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)(2); and

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)(2) for a credit
10 under AS 43.55.025;

11 (3) in this subsection, "well-related expenditure" means a lease
12 expenditure

13 (A) directly related to an exploration well, a stratigraphic test
14 well, a producing well, or an injection well other than a disposal well, if the
15 expenditure is a qualified capital expenditure and an intangible drilling and
16 development cost under 26 U.S.C. 263(c), as amended, and 26 C.F.R. 1.612-4,
17 regardless of the elections made under 26 U.S.C. 263(c); in this subparagraph,
18 an expenditure directly related to a well includes an expenditure for well
19 drilling, well sidetracking, well deepening, well testing, well stimulation, well
20 completion or recompletion, or well workover, regardless as to whether the
21 well is or has been a producing well; or

22 (B) for seismic work conducted within the boundaries of a
23 production or exploration unit.

24 (n) Notwithstanding the limitation on the use of a transferable tax credit by a
25 transferee in (e) of this section and subject to appropriations made by law, the
26 department shall issue a cash refund to the Alaska Retirement Management Board for
27 a transferable tax credit originally issued to a person under (d) of this section and
28 purchased by the Alaska Retirement Management Board under AS 37.10.220(b).

29 * **Sec. 12.** AS 43.55.025 is amended by adding a new subsection to read:

30 (m) Subject to appropriations made by law, the department shall issue a cash
31 refund to the Alaska Retirement Management Board for a transferable tax credit

1 originally issued to an explorer under (f) of this section and purchased by the Alaska
2 Retirement Management Board under AS 37.10.220(b).

3 * **Sec. 13.** AS 43.77.020(d) is amended to read:

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

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

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

14 * **Sec. 14.** AS 43.90.430 is amended to read:

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

18 * **Sec. 15.** AS 43.55.028(e)(2) and 43.55.028(e)(3) are repealed.

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

21 **TRANSITION: APPLICABILITY OF SEC. 7 OF THIS ACT.** Section 7 of this Act
22 applies to taxes, including installment payments of estimated tax, due on or after February 27,
23 2007.

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

26 **RETROACTIVITY OF REGULATIONS.** Notwithstanding any contrary provision of
27 AS 44.62.240, if the Department of Revenue expressly designates in a regulation to
28 implement, interpret, make specific or otherwise carry out secs. 7, 8, or 9 of this Act, or
29 AS 43.55.023(m) as enacted by sec. 11 of this Act that the regulation applies retroactively to a
30 specific date, the regulation applies retroactively to that date.

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

1 read:

2 RETROACTIVITY OF SECS. 7 - 9 OF THIS ACT. (a) Section 7 of this Act is
3 retroactive to February 28, 2007.

4 (b) Sections 8 and 9 of this Act are retroactive to January 1, 2010.

5 * **Sec. 19.** Sections 1, 2, 4 - 6, 10, and 13 of this Act and AS 43.55.023(m), enacted by sec.
6 11 of this Act take effect July 1, 2010.

7 * **Sec. 20.** Except as provided in sec. 19 of this Act, this Act takes effect immediately under
8 AS 01.10.070(c).