

Replacement

AMENDMENT #1

*By Representatives:
Thompson, T. Wilson*

OFFERED IN THE HOUSE
TO: HB 287

1 Page 1, line 1, following "Act":

2 Insert "relating to the determination of the royalty received by the state on oil
3 production refined or processed in the state; providing tax credits against the corporate
4 income tax for certain in-state refineries and for qualified infrastructure expenditures
5 for in-state refineries;"

6

7 Page 1, following line 4:

8 Insert new bill sections to read:

9 *** Section 1.** AS 38.05.180(cc) is amended to read:

10 (cc) The provisions of (aa), [AND] (ee), and (hh) of this section do not
11 prohibit the commissioner from accepting any payment on a federal lease tendered by
12 the federal agency responsible for determination and transmittal of the payment to the
13 state under 30 U.S.C. 191 or otherwise due the state as the state's royalty share of gas
14 production or the state's royalty share of oil production irrespective of the state's
15 acceptance of an amount that is different than the amount due under the lease for
16 purposes of determining royalty share on oil and gas production under that subsection.

17 *** Sec. 2.** AS 38.05.180 is amended by adding new subsections to read:

18 (hh) Upon written request of a lessee of a lease issued under this section or of
19 a lessee of federal land from which the state is entitled to receive a share of the royalty
20 on oil production, the commissioner may enter into an agreement with the lessee to
21 accept, as a value for the state's royalty share of oil production sold to an in-state
22 refiner, an amount that is not less than the price established in a contract between the
23 lessee and the in-state refiner but not exceeding the amount that would otherwise be

1 due under the lease. This subsection applies to a contract entered into after
2 December 31, 2014. The commissioner shall respond to a request received under this
3 section within 90 days after the receipt of the request by the department. The
4 commissioner may enter into an agreement under this section if

5 (1) the commissioner issues a written finding that

6 (A) the agreement is in the best interest of the state;

7 (B) the parties to the contract between the lessee and the in-
8 state refiner are not affiliated under (2) of this subsection; and

9 (C) based on clear and convincing evidence,

10 (i) the contract price is not unreasonably low; and

11 (ii) the prospective reduction in royalty receipts will be
12 balanced by employment opportunities or other tangible benefits to the
13 state; and

14 (2) the primary function of the in-state refiner's contracting with the
15 lessee is to engage in the manufacture of refined petroleum products in the state, and
16 the in-state refiner is not affiliated with the lessee or with a subsequent purchaser of
17 more than 10 percent of the in-state refiner's product; the parties to a contract or
18 purchase are affiliated if, in the judgment of the commissioner, one of the parties to
19 the contract or purchase exercises substantial influence over the policies and actions of
20 the other as evidenced by a relationship based on common ownership or family
21 interest or by action taken in concert whether or not that influence is based on
22 stockholdings, stockholders, officers, or directors.

23 (ii) In (cc) and (hh) of this section,

24 (1) "in-state refiner" means a person engaged in the manufacture of
25 refined petroleum products in the state;

26 (2) "price established in the contract between the lessee and the in-state
27 refiner" includes tax reimbursement amounts, deliverability and other charges, and
28 other forms of consideration paid by the in-state refiner, as appropriate, under the
29 contract;

30 (3) "state's royalty share of oil production" includes payments on
31 federal leases made to the state under 30 U.S.C. 191.

1 * **Sec. 3.** AS 43.20 is amended by adding new sections to read:

2 **Sec. 43.20.052. In-state refinery tax credit.** (a) A taxpayer that owns an in-
3 state oil refinery whose primary function is the manufacturing and sale of refined
4 petroleum products to third parties in arm's length transactions may apply a credit
5 against a tax liability imposed on the taxpayer under this chapter for a tax year
6 beginning after December 31, 2014, and before January 1, 2020. The total amount of
7 credit a taxpayer may receive under this section in a tax year is \$10,000,000 for each
8 in-state oil refinery owned. To qualify for a credit under this section, an in-state oil
9 refinery must refine a daily average of 17,500 or more barrels of crude oil during the
10 tax year.

11 (b) A taxpayer applying the credit under this section against a liability under
12 this chapter shall claim the credit on the taxpayer's return. A tax credit or portion of a
13 tax credit under this section may not be used to reduce the taxpayer's tax liability
14 under this chapter below zero. Any unused tax credit or portion of a tax credit under
15 this section may be carried forward to the five tax years immediately following the tax
16 year in which the credit was received.

17 (c) The total amount of credits received under this section and AS 43.20.053
18 may not exceed \$20,000,000 for a tax year for each qualifying refinery.

19 (d) A person entitled to a tax credit under this section that is greater than the
20 person's tax liability under this chapter may request a refund or payment in the amount
21 of the unused portion of the tax credit.

22 (e) The department may use money available in the oil and gas tax credit fund
23 established in AS 43.55.028 to make a refund or payment under (d) of this section in
24 whole or in part if the department finds that

25 (1) the claimant does not have an outstanding liability to the state for
26 unpaid delinquent taxes under this title; and

27 (2) after application of all available tax credits, the claimant's total tax
28 liability under this chapter for the calendar year in which the claim is made is zero.

29 (f) A refund under this section does not bear interest.

30 (g) The issuance of a refund under this section does not limit the department's
31 ability to later audit or adjust the claim as provided in AS 43.05 if the department

1 determines that the taxpayer claiming the credit was not entitled to the amount of the
2 credit.

3 (h) In this section,

4 (1) "barrel" has the meaning given in AS 43.20.144(h);

5 (2) "refined petroleum products" means separate marketable elements,
6 compounds, or mixtures of oil in liquid form, including gasoline, diesel, jet fuel, gas
7 oil, heating oil, and kerosene;

8 (3) "unpaid delinquent tax" means an amount of tax for which the
9 department has issued an assessment that has not been paid and, if contested, has not
10 been finally resolved in the taxpayer's favor.

11 **Sec. 43.20.053. Qualified in-state oil refinery infrastructure expenditures**
12 **tax credit.** (a) A taxpayer that owns an in-state oil refinery whose primary function is
13 the manufacturing and sale of refined petroleum products to third parties in arm's
14 length transactions may apply a credit against the tax due under this chapter for a
15 qualified infrastructure expenditure incurred in the state for a tax year beginning after
16 December 31, 2014, and before January 1, 2020. The total amount of credit a taxpayer
17 may receive under this section may not exceed the lesser of 40 percent of qualified
18 infrastructure expenditures incurred in the state during the tax year or \$10,000,000 for
19 each in-state refinery for which qualified expenditures are incurred.

20 (b) A taxpayer applying the credit under this section against a liability under
21 this chapter shall claim the credit on the taxpayer's return. A tax credit or portion of a
22 tax credit under this section may not be used to reduce the taxpayer's tax liability
23 under this chapter below zero. Any unused tax credit or portion of a tax credit under
24 this section may be carried forward to the five tax years immediately following the tax
25 year in which the qualified infrastructure expenditures were incurred.

26 (c) An expenditure that is the basis of the credit under this section may not be
27 the basis for

28 (1) a deduction against the tax levied under this chapter;

29 (2) a credit or deduction under another provision of this title; or

30 (3) any federal credit claimed under this title.

31 (d) The total amount of credits received under this section and AS 43.20.052

1 may not exceed \$20,000,000 for a tax year for each qualifying refinery.

2 (e) A person entitled to a tax credit under this section that is greater than the
3 person's tax liability under this chapter may request a refund or payment in the amount
4 of the unused portion of the tax credit.

5 (f) The department may use money available in the oil and gas tax credit fund
6 established in AS 43.55.028 to make a refund or payment under (e) of this section in
7 whole or in part if the department finds that

8 (1) the claimant does not have an outstanding liability to the state for
9 unpaid delinquent taxes under this title; and

10 (2) after application of all available tax credits, the claimant's total tax
11 liability under this chapter for the calendar year in which the claim is made is zero.

12 (g) A refund under this section does not bear interest.

13 (h) The issuance of a refund under this section does not limit the department's
14 ability to later audit or adjust the claim as provided in AS 43.05 if the department
15 determines that the taxpayer claiming the credit was not entitled to the amount of the
16 credit.

17 (i) In this section,

18 (1) "qualified infrastructure expenditure" means an expenditure
19 directly attributable to the in-state purchase, installation, modification, adjustment, or
20 other alteration of tangible personal property for the manufacture or transport of
21 refined petroleum products or petroleum-based feedstock;

22 (2) "refined petroleum products" has the meaning given in
23 AS 43.20.052(h);

24 (3) "unpaid delinquent tax" has the meaning given in AS 43.20.052(h).

25 * **Sec. 4.** AS 43.55.028(a) is amended to read:

26 (a) The oil and gas tax credit fund is established as a separate fund of the state.

27 The purpose of the fund is to purchase transferable tax credit certificates issued under
28 AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 and to
29 pay refunds and payments claimed under AS 43.20.046, [OR] 43.20.047, 43.20.052,
30 or 43.20.053.

31 * **Sec. 5.** AS 43.55.028(g) is amended to read:

1 (g) The department may adopt regulations to carry out the purposes of this
2 section, including standards and procedures to allocate available money among
3 applications for purchases under this chapter and claims for refunds and payments
4 under AS 43.20.046, [OR] 43.20.047, 43.20.052, or 43.20.053 when the total amount
5 of the applications for purchase and claims for refund exceed the amount of available
6 money in the fund. The regulations adopted by the department may not, when
7 allocating available money in the fund under this section, distinguish an application
8 for the purchase of a credit certificate issued under former AS 43.55.023(m) or a claim
9 for a refund or payment under AS 43.20.046, [OR] 43.20.047, 43.20.052, or
10 43.20.053."
11

12 Page 1, line 5:

13 Delete "**Section 1**"

14 Insert "**Sec. 6**"

15

16 Renumber the following bill sections accordingly.

17

18 Page 2, following line 1:

19 Insert a new bill section to read:

20 "*** Sec. 7.** Sections 1 - 5 of this Act take effect January 1, 2015."

21

22 Renumber the following bill section accordingly.

23

24 Page 2, line 2:

25 Delete "This"

26 Insert "Except as provided in sec. 7 of this Act, this"