

SENATE CS FOR CS FOR HOUSE BILL NO. 287(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the determination of the royalty received by the state on oil**
2 **production refined or processed in the state; providing tax credits for qualified**
3 **infrastructure expenditures for in-state refineries and hydrocarbon processing facilities;**
4 **approving and ratifying the sale of royalty oil by the State of Alaska to Tesoro**
5 **Corporation and Tesoro Refining and Marketing Company LLC; and providing for an**
6 **effective date."**

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

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

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

1 acceptance of an amount that is different than the amount due under the lease for
2 purposes of determining royalty share on oil and gas production under that subsection.

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

4 (hh) Upon written request of a lessee of a lease issued under this section or of
5 a lessee of federal land from which the state is entitled to receive a share of the royalty
6 on oil production, the commissioner may enter into an agreement with the lessee to
7 accept, as a value for the state's royalty share of oil production sold to an in-state
8 refiner, an amount that is not less than the price established in a contract between the
9 lessee and the in-state refiner but not exceeding the amount that would otherwise be
10 due under the lease. This subsection applies to a contract entered into after
11 December 31, 2014. The commissioner shall respond to a request received under this
12 section within 90 days after the receipt of the request by the department. The
13 commissioner may enter into an agreement under this section if

14 (1) the commissioner issues a written finding that

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

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

18 (C) based on clear and convincing evidence,

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

20 (ii) the prospective reduction in royalty receipts will be
21 balanced by employment opportunities or other tangible benefits to the
22 state; and

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

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

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

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

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

10 * **Sec. 3.** AS 43.20 is amended by adding a new section to read:

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

22 (b) The credit under this section may not be applied to an expenditure for the
23 in-state purchase, installation, or modification of tangible personal property primarily
24 used

25 (1) for the in-state manufacture or in-state transport of liquefied natural
26 gas or compressed natural gas; or

27 (2) to convert natural gas to liquids.

28 (c) A taxpayer applying the credit under this section against a liability under
29 this chapter shall claim the credit on the taxpayer's return. A tax credit or portion of a
30 tax credit under this section may not be used to reduce the taxpayer's tax liability
31 under this chapter below zero. Any unused tax credit or portion of a tax credit under

1 this section may be carried forward to the five tax years immediately following the tax
2 year in which the qualified infrastructure expenditures were incurred.

3 (d) An expenditure that is the basis of the credit under this section may not be
4 the basis for

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

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

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

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

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

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

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

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

19 (h) If an oil refinery or hydrocarbon processing facility ceases commercial
20 operation during the nine calendar years immediately following the calendar year in
21 which a credit under this section was received, regardless of whether commercial
22 operation later resumes, the taxpayer's tax liability under this chapter will be
23 increased. The tax liability increase is equal to the total amount of credit taken
24 multiplied by a fraction

25 (1) the numerator of which is the difference between 10 and the
26 number of calendar years for which the oil refinery or hydrocarbon processing facility
27 was eligible for a credit under this section; and

28 (2) the denominator of which is 10.

29 (i) A person claiming a tax credit under this section for an oil refinery or
30 hydrocarbon processing facility that ceases commercial operation during the nine
31 calendar years immediately following the calendar year in which a credit under this

1 section was received shall notify the department in writing of the date the oil refinery
2 or hydrocarbon processing facility ceased commercial operation. The notice must be
3 filed with the return for the tax year in which the oil refinery or hydrocarbon
4 processing facility ceases commercial operation.

5 (j) The issuance of a refund under this section does not limit the department's
6 ability to later audit or adjust the claim as provided in AS 43.05 if the department
7 determines that the taxpayer claiming the credit was not entitled to the amount of the
8 credit.

9 (k) In this section,

10 (1) "modification" means an adjustment or other alteration to existing
11 tangible personal property that has a useful life of three years or more;

12 (2) "processed hydrocarbon products" means separate marketable
13 elements, compounds, or mixtures of oil or natural gas in a liquid or gaseous form,
14 including gasoline, diesel, jet fuel, gas, oil, heating oil, kerosene, ammonia, and urea;

15 (3) "qualified infrastructure expenditure" means an expenditure for the
16 in-state purchase, installation, or modification of tangible personal property for the in-
17 state manufacture or in-state transport of refined petroleum products, petroleum-based
18 feedstock, or processed hydrocarbon products;

19 (4) "refined petroleum products" means separate marketable elements,
20 compounds, or mixtures of oil in liquid form, including gasoline, diesel, jet fuel, gas
21 oil, heating oil, and kerosene;

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

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, or
30 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, or 43.20.053 when the total amount of the
 5 applications for purchase and claims for refund exceed the amount of available money
 6 in the fund. The regulations adopted by the department may not, when allocating
 7 available money in the fund under this section, distinguish an application for the
 8 purchase of a credit certificate issued under former AS 43.55.023(m) or a claim for a
 9 refund or payment under AS 43.20.046, [OR] 43.20.047, or 43.20.053.

10 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
 11 read:

12 ROYALTY OIL SALE CONTRACT WITH TESORO CORPORATION AND
 13 TESORO REFINING AND MARKETING COMPANY LLC APPROVED AND
 14 RATIFIED. In accordance with AS 38.06.055, the legislature approves and ratifies the
 15 proposed Amendment to Agreement for the Sale of Royalty Oil attached as Exhibit 1 to the
 16 final best interest finding and determination executed January 9, 2014, by the Department of
 17 Natural Resources regarding the amendment of the Agreement for the Sale Of Royalty Oil
 18 Between and Among the State of Alaska and Tesoro Corporation, a Delaware Corporation
 19 and Tesoro Refining and Marketing Company LLC, a Delaware Limited Liability Company,
 20 October 25, 2013.

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

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