



# State of Alaska Department of Revenue

## Oil and Gas Tax Credit Reform: Update on HB111 Regulations

Presentation to Joint Senate Resources – Senate Finance Committee  
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## *Statement on Process*

“We have been asked to present on recent regulations from a process standpoint. Importantly, DOR has one set of regulations currently noticed for public comment. This legislative hearing today is not part of the public comment process for the adoption of regulations. The committee members, as well as any member of the public who are listening, who wish to comment on the regulations should comment as provided in the public notice. The notice as well as the full text of the proposed regulations are available on the department’s website. The public comment period closes next Friday, January 26.

For the pending regulations, we cannot discuss how they would be applied. Testimony today should not be construed as any pre-determination of any final regulations. Our presentation today is focused on factual information about the DOR’s recent and ongoing regulations process.”

# *Oil and Gas Tax Credit Reform- Recap*

## **HB 247 Passed June, 2016**

- Phased out Cook Inlet and reduced Middle Earth credits
- Extended Cook Inlet gas tax cap, added \$1 / bbl oil tax cap
- Added sunset / “graduation” provisions to Gross Value Reduction for new oil production
- Annual cap on per-company, per-year cash
- Resident hire priority for cash payments
- Limited transparency with annual report of who receives cash for credits
- Increase interest rate on delinquent production taxes for first three years, then reduced to zero
- Technical cleanup and repeal of obsolete language
- Regulation package proposed and adopted, effective 1/1/17

# *Oil and Gas Tax Credit Reform- Recap*

## **HB 111 Passed July, 2017**

- Most credits no longer eligible for state repurchase after 7/1/17, other than refinery / LNG storage
- NOL credit under former AS 43.55.023(b) repealed 1/1/18
- New system of carried-forward lease expenditures beginning 1/1/18
- Process for how carried-forward expenditures are used in a future year once the producer has taxable value
  - “Ringfence,” preventing use until the property for which losses were incurred commences regular production
  - Taxpayer flexibility on use, limited by minimum tax
  - If unused, lease expenditures begin to lose value after 10 years in most cases

# *Oil and Gas Tax Credit Reform- Recap*

## **HB 111 Passed July, 2017 (continued)**

- Align interest rate changes among all tax types and eliminate three-year interest limitation
- Credits can be carried-back and used against a prior year tax liability including interest and penalties for which an audit assessment has not been issued
- Conditional exploration credits granted at time of application, to ensure place in queue
- Seismic work in Middle East no longer eligible for exploration credits after 2017
- Exploration credits in Middle East can be used to offset the explorer's corporate income tax
- Delayed repeal of tax credit fund after all are purchased
- Established Legislative working group

# *Initial Regulation Process to Implement HB111*

## **HB 111 signed into law by the Governor on 7/28/17**

- Early decision made to divide regulations into two distinct packages
  - #1- Carry-back of credits against a prior year, interest rates, and most changes other than the new carry-forward loss structure. Many required regulations to be in place by January 1, 2018.
  - #2- Carry forward lease expenditures and related issues, which required a bit more work in properly developing the language and wouldn't be needed quite as immediately
- Pre-regulation scoping workshop on 8/22/17. Workshop included 22 attendees in person, plus those on phone lines and department personnel
  - Comments were accepted after the workshop, deadline was extended due to AOGA member companies situated in Houston who were impacted by Hurricane Harvey
  - Received comments from eight different parties, including Senator Giessel and Representative Seaton

# *Initial Regulation Process to Implement HB111*

## **...continued**

- Scoping workshop identified key issues to be addressed in drafting the regulations. Examples include:
  - Defining exploration expenditures that are "reasonably related" to a lease or property
  - Aligning definitions between statutes ("regular production" in HB 111 is from a lease or property, whereas this term is defined by AOGCC as "from a well")
  - Determining and allocating the amount of carried-forward lease expenditures when a producer has both producing and non-producing properties, and/or exploration expenditures
  - Gas used in-state (GUIS) requires a separate production tax value with an allocation of lease expenditures to the GUIS portion
- Authority for retroactive application of regulations is essential to allow a more interactive drafting process, especially with late-year passage of bills with a January 1 effective date. The use of workshops and discussion drafts benefits all parties

# *Necessary Steps in the Regulations Process*

1. Workshops (recommended by AO 266) & Discussion Drafts are not required but helpful for complex processes
2. Publication of draft language, with formal public notice
  - Notice must be published in a newspaper of general circulation, posted on the Alaska Online Public Notice System, furnished to the Department's interested parties list and the Department of Law, furnished electronically to all state legislators and the Legislative Affairs Agency, chairs of the standing committees with jurisdiction over the subject, the Administrative Regulation Review Committee, and Legislative Council
  - There are currently approximately 140 people signed up for the Department of Revenue's "Interested Parties" list



# *Necessary Steps in the Regulations Process*

3. The Administrative Procedures Act, AS 44.62.190, requires a minimum 30 days of public notice before the adoption, amendment, or repeal of a regulation
  - Although not mandatory, the department typically holds a public hearing for regulations on oil and gas production taxes. Typically scheduled 2/3 of the way through the public comment period. This provides an opportunity for interested parties to evaluate and incorporate information from the public hearing into their written comments
  - After the public comment deadline, all comments received are published on the department's website
4. Prior to drafting final regulations, the Administrative Procedures Act requires that the department must consider all public comments received, and to keep a record of its use or rejection of public comments
  - The agency submits an "affidavit of agency record of public comment" along with the final adopted regulations

# *Necessary Steps in the Regulations Process*

6. Draft is revised into final regulation proposal and adopted by the Commissioner
7. Prior to filing adopted regulations must be reviewed and approved by the Department of Law
  - Confirms that the regulations are within the scope of authority conferred upon the department and neither conflict with, nor repeat, any other existing statutes or regulations. Minimum two weeks process
  - Legislature informed of pending regulations and has option to review
  - Typically the Department of Law makes technical revisions to language
8. Final version presented to Lieutenant Governor for signature
  - Regulations are effective 30 days after they have been filed by the Lieutenant Governor, or later if another date is specified

# *Regulations Packet #1*

**These are final and adopted, so we can talk more freely about our thinking on specific provisions**

- Process / Timeline
  - September 27, 2017 – Public notice for "Packet 1" dealing primarily with the carry-back of credits and interest
  - October 17, 2017 – Public Hearing for Packet 1.
  - November 1, 2017 – Close of public comment period
  - Signed by Lt. Gov on November 29, 2017
  - December 6, 2017 – Post-filing notice
- Clear legislative intent was to strengthen the secondary market.
  - Received guidance from AG that additional tax liability due to recent TAPS settlement is not required to go to CBRF, thus could be offset with held or purchased tax credit certificates
  - Some changes were made before regulations- for example we issued conditional exploration certificates in August

## *Regulations Packet #2*

**These are in their public review period until Jan. 26th**

- New structure for “carried forward annual losses”
  - Allocation among properties and segments
  - Application of “ringfence”
  - Taxpayer flexibility on use, limited by minimum tax
  - Value loss or “downlift” if unused
  - Reasonably related exploration expenditures
- Process / Timeline
  - November 18, 2017 – Discussion draft for “Packet 2.” Division staff spoke with AOGA and ConocoPhillips regarding discussion draft during this period (all calls were welcome)
  - December 5, 2017 – Close of public comment period on discussion draft
  - December 21, 2017 – Public Notice of official draft “Packet 2”
  - January 11, 2018 – Public Hearing on “Packet 2”
  - January 26, 2018 – Close of public comment period



# Thank You!

## Contact Information

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