

LEGAL SERVICES

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MEMORANDUM

July 16, 2021

SUBJECT: Oil and Gas Production Tax Suspension; Gross Value Tax Rate
(Work Order No. 32-LS1010\A)

TO: Representative Geran Tarr

FROM: Emily Nauman
Deputy Director 

The above referenced bill is attached. I have the following notes and questions.

Alternative Minimum Tax. The bill uses existing statutory structures to carry out your intent. The bill enacts the six percent gross tax you requested by amending the minimum gross tax rate currently found in AS 43.55.011(f). Simultaneously, the bill suspends the net profits tax under AS 43.55.011(e) for two years. Notably, AS 43.55.011(f) only applies to oil produced on the North Slope. Would you like the six percent gross tax rate to also apply to leases and properties outside of the North Slope?

Under the bill, the alternative minimum tax (AS 43.55.011(f)) rates are returned to the current rates at the time the suspension of the net production tax (AS 43.55.011(e)) ends. Is this consistent with your intent?

Gas. Currently, under AS 43.55.011(e)(3)(B), beginning January 1, 2022, gas will be broken out from the oil taxes and taxed at a rate of 13 percent of the gross value of production. The draft bill does not suspend the shift to the 13 percent tax on gas. In other words, under this draft, the six percent gross tax in AS 43.55.011(f) will not apply to gas produced in the state, including gas produced from the North Slope. Is this consistent with your intent? Relatedly, AS 43.55.014(a) allows a producer to make an election to pay the tax due under AS 43.55.011(e) in gas. The bill preserves a producer's option to pay tax in gas. Is this consistent with your intent?

Necessity of suspension. Please consider whether the suspension of the net production tax (AS 43.55.011(e)) is necessary. It may not be necessary to suspend the tax under AS 43.55.011(e) if you believe the six percent gross tax will always exceed the net tax. As explained above, AS 43.55.011(f), the statute currently setting out the minimum gross tax rate, operates as a floor for the net production tax rate under AS 43.55.011(e). Several statutory changes could be avoided if instead the bill just amended the rate in AS 43.55.011(f) to six percent for the desired two-year period. Our office does not have the information or prediction tools to determine whether oil prices for the projected

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period would result in the same outcome if the gross minimum tax were raised to six percent (and the net production tax under AS 43.55.011(e) were left intact) versus if the net production tax were suspended and replaced with only the gross tax of six percent. The Department of Revenue may be able to provide some insight.

Credits. You did not direct how or whether the various credits in AS 43.55 would apply while the tax under AS 43.55.011(e) is suspended. Specifically, please review the credits in AS 45.55.019, AS 43.55.024(c), AS 43.55.024(i) and (j) (the "per barrel" credits), and the credits in AS 43.55.025. Would you like these credits to apply while the tax is suspended? Currently, the bill directs that credits should be calculated as if the tax under AS 43.55.011(e) were applicable. A producer would then likely apply them against the six percent gross tax. Is that consistent with your intent? Once we know your intent, we could better clarify in the bill how and if credits may be applied.

Department Review. I recommend you have the Department of Revenue review the bill. The department may have insight on what language is necessary to ensure the tax suspension is executed as you intend.

Effective Dates, Time. To facilitate ease of administration, the draft sets a January 1, 2023 effective date for the substantive provisions, and an immediate effective date for the provision allowing the department to adopt implementing regulations. If you would prefer different effective dates, please let me know. On that note, you mentioned in your request you had been advised by this office that the longest a tax suspension would be legally feasible would be two years. Although the duration of a tax suspension affects whether the bill accomplishes that suspension using codified changes or uncoded law, the suspension need not be limited to two years. The bill could suspend the tax for any time period you wish. Due to the duration and nature of the suspension, this bill places the tax suspension in codified law. Do you want to extend the suspension beyond two years?

If I may be of further assistance, please advise.

ELN:mjt
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Attachment