HOUSE BILL NO. 63

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GARA, Kerttula, Croft, Guttenberg

Introduced: 1/12/05
Referred: House Special Committee on Ways and Means, House Special Committee on Oil and Gas, Resources, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to the oil and gas properties production (severance) tax as it applies to oil; establishing a minimum rate of tax for certain fields of five percent; providing for an adjustment to increase the tax collected when oil prices exceed $20 per barrel and to reduce the tax collected when oil prices fall below $16 per barrel; and providing for relief from the tax when the price per barrel is low or when the taxpayer demonstrates that a reduction in the tax is necessary to establish or reestablish production from an oil field or pool that would not otherwise be economically feasible."

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

*** Section 1.** AS 36.30.850(33) is amended to read:

(33) contracts between the Department of Natural Resources **or the Department of Revenue, as appropriate,** and contractors qualified to evaluate hydrocarbon development, production, transportation, and economics, to assist the commissioner of natural resources **or the commissioner of revenue, as appropriate,**

in evaluating applications for

<u>(A)</u> royalty increases or decreases or other royalty adjustments, and evaluating the related financial and technical data, entered into under AS 38.05.180(j); **<u>or</u>**

<u>(B) tax reductions, and evaluating the related financial and technical data, as authorized by AS 43.55.011(i) and (j);</u>

*** Sec. 2.** AS 43.55.011(a) is amended to read:

(a) There is levied upon the producer of oil a tax for all oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation. The tax is equal to**<u>,</u>**

<u>(1) in the case of North Slope oil,</u> either the percentage-of-value amount calculated under **<u>(b)(1)</u>** [(b)] of this section or the cents-per-barrel amount calculated under **<u>(c)(1)</u>** [(c)] of this section, whichever is greater**<u>; if</u>** [, MULTIPLIED BY THE ECONOMIC LIMIT FACTOR DETERMINED FOR THE OIL PRODUCTION OF THE LEASE OR PROPERTY UNDER AS 43.55.013. IF] the amounts calculated under **<u>(b)(1) and (c)(1)</u>** [(b) AND (c)] of this section are equal, the amount calculated under **<u>(b)(1)</u>** [(b)] of this section shall be treated as if it were the greater for purposes of this section**<u>;</u>**

<u>(2) in the case of oil that is not North Slope oil, either the percentage-of-value amount calculated under (b)(2) of this section or the cents-per-barrel amount calculated under (c)(2) of this section, whichever is greater, multiplied by the economic limit factor determined for the oil production of the lease or property under AS 43.55.013; if the amounts calculated under (b)(2) and (c)(2) of this section are equal, the amount calculated under (b)(2) of this section shall be treated as if it were the greater for purposes of this section</u>.

*** Sec. 3.** AS 43.55.011(b) is amended to read:

(b) The percentage-of-value amount equals**<u>,</u>**

<u>(1) in the case of North Slope oil, the tax rate set out in (e) of this section multiplied by the gross value at the point of production of taxable oil produced from the lease or property;</u>

<u>(2) in the case of oil that is not North Slope oil,</u> 12.25 percent of the gross value at the point of production of taxable oil produced on or before June 30, 1981, from the lease or property and 15 percent of the gross value at the point of production of taxable oil produced from the lease or property after June 30, 1981; except that**,** for a lease or property coming into commercial oil production after June 30, 1981, the percentage-of-value amount equals 12.25 percent of the gross value at the point of production of taxable oil produced from the lease or property in the first five years after the start of commercial oil production and equals 15 percent of the gross value at the point of production of taxable oil produced [THEREAFTER] from the lease or property.

*** Sec. 4.** AS 43.55.011(c) is amended to read:

(c) The cents-per-barrel amount equals**,**

(1) in the case of North Slope oil, $0.80 per barrel of taxable crude oil produced from the lease or property, as adjusted by AS 43.55.012, multiplied by the economic limit factor determined for oil production of the lease or property under AS 43.55.013 and by the price adjustment factor set out in (e)(2)(C) of this section;

(2) in the case of oil that is not North Slope oil, $0.60 per barrel of taxable old crude oil produced from the lease or property, and $0.80 per barrel for all other taxable oil produced from the lease or property, both as adjusted by AS 43.55.012.

*** Sec. 5.** AS 43.55.011 is amended by adding new subsections to read:

(e) This subsection and (f) - (k) of this section apply only to North Slope oil. Except as provided in (h) of this section for heavy oil, the tax rate is the lesser of

(1) 25 percent; or

(2) the product of the volume adjusted tax rate multiplied by the price adjustment factor; for purposes of

(A) this paragraph, the volume adjusted tax rate is the greater of

(i) five percent; or

(ii) the economic limit factor determined for the oil production of the lease or property under AS 43.55.013 multiplied by the nominal tax rate;

(B) subparagraph (A) of this paragraph, the nominal tax rate is

(i) 12.25 percent during the first five years from the date that is the start of commercial oil production; and

(ii) 15 percent after the first five years from the date that is the start of commercial oil production; and

(C) this paragraph and for the purpose of determining the cents-per-barrel amount under (c) of this section, the price adjustment factor is one, except that the price adjustment factor is the West Coast prevailing value divided by

(i) 16 during each month in which the West Coast prevailing value for oil under AS 43.55.020(f) averages less than $16 per barrel;

(ii) 20 during each month in which the West Coast prevailing value for oil under AS 43.55.020(f) averages more than $20 per barrel.

(f) During a month in which the West Coast prevailing value for oil determined under AS 43.55.020(f) on which tax is due under this chapter averages less than $10 per barrel, the payment of

(1) one-half of the tax due and payable under this chapter is waived; and

(2) the remaining one-half of the tax due and payable under this chapter is deferred, subject to the following:

(A) the amount of tax payment that is deferred under this paragraph is payable by the taxpayer

(i) during each month in which the West Coast prevailing value for oil on which tax is due under this chapter averages at least $16 per barrel; and

(ii) sequentially on a month-for-month basis in the order in which the tax payment was deferred based on payment of one month's deferred tax during each month that the West Coast prevailing value for oil on which tax is due under this chapter averages at least $16 per barrel; and

(B) amounts due and payable by reason of a payment deferral under this paragraph bear interest at the rate of a 10-year note of the United States treasury at the time of the deferral.

(g) On and after July 1, 2006, the commissioner shall

(1) annually revise the dollar prices described in (e) and (f) of this section and the related denominators setout in (e)(2)(C)(i) and (ii) of this section to reflect inflation as defined by regulation adopted by the department; and

(2) promptly report the application of the revisions to all taxpayers subject to the tax levied and collected under this chapter.

(h) Notwithstanding (e) of this section, the tax rate for heavy oil is the volume adjusted tax rate. The volume adjusted tax rate for heavy oil is determined by multiplying the economic limit factor determined for the oil production of the lease or property under AS 43.55.013 by the nominal tax rate set out in (e)(2)(A)(i) and (ii) of this section. In this subsection, "heavy oil" means oil equal to or less than 20 degrees API gravity.

(i) A producer of oil that is North Slope oil may apply for a reduction of the tax due under (e), (j), and (k) of this section on the production of the oil

(1) if and to the extent that the amount calculated under (A) of this paragraph is greater than the amount calculated under (B) of this paragraph, but a reduction of the tax may not result in collection of tax due under this section that is less than the amount calculated under (B) of this paragraph:

(A) the amount of tax on the production of the oil that results from applying the provisions of (e) of this section;

(B) the amount of tax on the production of the oil that would result from not applying the provisions of (e) of this section; and

(2) if the commissioner determines that the application meets the requirements of AS 38.05.180(j)(1)(A), (j)(1)(B), or (j)(1)(C).

(j) When the commissioner receives an application under (i) of this section, the commissioner

(1) may not approve a tax reduction

(A) unless the applicant makes a clear and convincing showing that the tax reduction meets the requirements of (i) of this section and this subsection and is in the best interests of the state;

(B) that reduces the amount of the tax recovered to less than the amount determined under (i)(1)(B) of this section;

(C) without including an explicit condition that the tax reduction is not assignable without the prior written approval, which may not be unreasonably withheld, by the commissioner; the commissioner shall, in the preliminary and final findings and determinations, set out the conditions under which the tax reduction may be assigned;

(2) shall require the applicant to submit, with the application for the tax reduction, financial and technical data that demonstrate that the requirements of (i) of this section and this subsection are met; the commissioner

(A) may require disclosure of only the financial and technical data related to development, production, and transportation of oil and gas or gas only from the field or pool that are reasonably available to the applicant; and

(B) shall keep the data confidential under AS 38.05.035(a)(9) at the request of the applicant; the confidential data may be disclosed by the commissioner to legislators and to the legislative auditor and as directed by the chair or vice-chair of the Legislative Budget and Audit Committee to the director of the division of legislative finance, the permanent employees of their respective divisions who are responsible for evaluating a tax reduction, and to agents or contractors of the legislative auditor or the legislative finance director who are engaged under contract to evaluate the tax reduction, if they sign an appropriate confidentiality agreement;

(3) may require the applicant for the tax reduction under (i) of this section and this subsection to pay for the services of an independent contractor, selected by the applicant from a list of qualified consultants compiled by the commissioner, to evaluate hydrocarbon development, production, transportation, and

economics and to assist the commissioner in evaluating the application and financial and technical data; if, under this paragraph, the commissioner requires payment for the services of an independent contractor, the total cost of the services to be paid for by the applicant may not exceed $150,000 for each application, and the commissioner shall determine the relevant scope of the work to be performed by the contractor; selection of an independent contractor under this paragraph is not subject to AS 36.30;

(4) shall make and publish a preliminary findings and determination on the tax reduction application, give reasonable public notice of the preliminary findings and determination, and invite public comment on the preliminary findings and determination during a 30-day period for receipt of public comment;

(5) shall offer to appear before the Legislative Budget and Audit Committee, on a day that is not earlier than 10 days and not later than 20 days after giving public notice under (4) of this subsection, to provide the committee a review of the commissioner's preliminary findings and determination on the tax reduction application and administrative process; if the Legislative Budget and Audit Committee accepts the commissioner's offer, the committee shall give notice of the committee's meeting to all members of the legislature;

(6) shall make copies of the preliminary findings and determination available to

(A) the presiding officer of each house of the legislature;

(B) the chairs of the legislature's standing committees on resources; and

(C) the chairs of the legislature's special committees on oil and gas, if any; and

(7) shall, within 30 days after the close of the public comment period under (4) of this subsection,

(A) prepare a summary of the public response to the commissioner's preliminary findings and determination;

(B) make a final findings and determination; the commissioner's final findings and determination prepared under this subparagraph regarding a tax reduction is final and not appealable to the court;

(C) transmit a copy of the final findings and determination to the lessee; and

(D) make copies of the final findings and determination available to each person who submitted comment under (4) of this subsection and who has filed a request for the copies.

(k) In this section, "North Slope oil" means oil produced from a portion of a reservoir located north of 68 degrees North latitude.

*** Sec. 6.** AS 43.55.012(b) is amended to read:

(b) The cents-per-barrel amount set out in **<u>AS 43.55.011(c)(1) and (2)</u>** [AS 43.55.011(c)] applies to oil of 27 degrees API gravity. For each degree of API gravity less than 27 degrees the cents-per-barrel amount shall be reduced by $.005 and for each degree of API gravity greater than 27 degrees the cents-per-barrel amount shall be increased by $.005 except that oil above 40 degrees API gravity shall be taxed as 40 degree oil. In applying the gravity adjustment under this subsection, fractional degrees of API gravity shall be disregarded.