

**HOUSE BILL NO. 223**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES CROFT, Crawford

Introduced: 3/17/05

Referred: House Special Committee on Ways and Means, House Special Committee on Oil and Gas, Resources

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act levying a tax on certain known resources of natural gas, conditionally repealing  
2 the levy of that tax, and authorizing a credit for payments of that tax against amounts  
3 due under the oil and gas properties production (severance) tax if requirements relating  
4 to the sale and delivery of the natural gas are met; and providing for an effective date."

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

6 \* **Section 1.** AS 43.58 is amended by adding new sections to read:

7 **Sec. 43.58.210. Tax on certain known gas resources.** (a) An annual tax is  
8 levied each calendar year on known gas resources subject to tax under this chapter.

9 (b) The annual rate of levy is three cents for each 1,000 cubic feet of taxable  
10 gas.

11 **Sec. 43.58.220. Property subject to tax.** (a) The property subject to tax  
12 under this chapter is taxable gas. Taxable gas is known gas resources in the state,  
13 excepting gas described in (b) and (c) of this section.

14 (b) Gas is not taxable gas under this chapter if it is

- 1 (1) a gas hydrate;
- 2 (2) coal bed methane;
- 3 (3) any other nonconventional gas resource;
- 4 (4) nonhydrocarbon gas;
- 5 (5) an unknown gas resource;
- 6 (6) gas to be consumed as fuel in its state-approved oil and gas unit of
- 7 origin within five years of January 1 of the tax year; or
- 8 (7) natural gas liquids to be blended with oil and transported by oil
- 9 pipeline to market for sale as oil within five years of January 1 of the tax year.

10 (c) Gas is not taxable gas under this chapter if the gas is

- 11 (1) not subject to a state-approved oil and gas unit; or
- 12 (2) subject to a state oil and gas lease, but that lease
  - 13 (A) has not been in existence throughout the 10 years
  - 14 immediately preceding the tax year;
  - 15 (B) was not in a state-approved oil and gas unit as of January 1,
  - 16 2002, and January 1 of the tax year; or
  - 17 (C) is in a state-approved oil and gas unit that has less than
  - 18 1,000,000,000,000 cubic feet of known gas resources.

19 **Sec. 43.58.230. Determination of volume of taxable gas.** (a) The

20 department, after consultation with the Department of Natural Resources and the

21 Alaska Oil and Gas Conservation Commission, shall determine the volume of taxable

22 gas in each state-approved oil and gas unit as of January 1 of each year.

23 (b) For a state-approved oil and gas unit in which all lessees have agreed to a

24 formula or formulas for the allocation of hydrocarbons among lessees, the department

25 shall use that formula or those formulas in allocating taxable gas among the lessees for

26 purposes of assessing and collecting the tax due under this chapter.

27 (c) For a state-approved oil and gas unit in which all lessees have not agreed

28 to a formula for the allocation of hydrocarbons among lessees, the department may

29 allocate taxable gas among the lessees in any manner it considers reasonable,

30 including, without limitation,

- 31 (1) by agreement of the department and all lessees;

- 1 (2) based on original or remaining gas in place;  
 2 (3) based on remaining recoverable gas reserves or resources; or  
 3 (4) based on surface acreage.

4 (d) To facilitate the use of confidential information available to the  
 5 Department of Natural Resources and the Alaska Oil and Gas Conservation  
 6 Commission, the department may delegate the allocation of taxable gas under (c) of  
 7 this section among lessees to the Department of Natural Resources or the Alaska Oil  
 8 and Gas Conservation Commission.

9 **Sec. 43.58.240. Returns and payment of tax.** (a) A lessee having gas  
 10 taxable under this chapter shall submit a return setting out known gas resources  
 11 subject to the tax. The lessee shall submit the return on or before February 1 on the  
 12 form prescribed by the department based on volumes of taxable gas existing on  
 13 January 1 of each calendar year, except as otherwise provided in this chapter.

14 (b) With the written approval of the department, an operator of a lease having  
 15 gas taxable under this chapter may submit returns or make payment of the tax levied  
 16 under this chapter on behalf of the lessee.

17 (c) The tax levied under this chapter is payable to the department on or before  
 18 June 30 of each year or in installments at the times and under the conditions that the  
 19 department may by regulation require.

20 (d) If directed or approved by the department, a person submitting returns  
 21 under this section or making payments as required under this chapter for more than  
 22 one lease may regard taxable gas attributable to leases within a state-approved unit as  
 23 if it were a single lease for purposes of submitting those returns or making those  
 24 payments.

25 (e) The department may, by written notice, require a person filing a return to  
 26 submit additional information to the department not later than 30 days after the notice.

27 **Sec. 43.58.250. Regulations.** The department shall adopt regulations in  
 28 accordance with AS 44.62 (Administrative Procedure Act) as appropriate to  
 29 administer and enforce this chapter. The regulations must include provisions that  
 30 address

- 31 (1) annual preparation of the tax roll of property that includes taxable

1 gas;

2 (2) provision for notice to operators or lessees of leases having gas  
3 subject to tax under this chapter of the volume of taxable gas for each lease or unit;

4 (3) procedures by which a person aggrieved by an action of the  
5 department may appeal that action and obtain a hearing; under the procedures to be  
6 adopted,

7 (A) conduct of the hearing and activities preliminary to it shall  
8 be in accordance with AS 44.62.350, 44.62.430, 44.62.450, 44.62.460,  
9 44.62.480, 44.62.500 - 44.62.550, 44.62.590, and 44.62.610 - 44.62.640; for  
10 the purposes of this subparagraph, the term "respondent" used in those sections  
11 shall be considered to include the person aggrieved by the action of the  
12 department;

13 (B) at the hearing, the appellant bears the burden of proof; and

14 (C) within 30 days after the decision by the department  
15 following the hearing, a person aggrieved by that decision may appeal to the  
16 superior court; and

17 (4) certification of a final taxation roll and the manner of preparation  
18 of a supplemental roll using procedures applicable to the preparation of the original  
19 tax roll.

20 **Sec. 43.58.295. Definitions.** In this chapter,

21 (1) "gas" and "natural gas" have the meanings given to "gas" in  
22 AS 43.55.900;

23 (2) "known gas resources" means the volume of gas that geological  
24 and engineering information indicates is recoverable in the future under existing  
25 technology, without regard to the current lack of a means of its transportation to  
26 markets;

27 (3) "lease" means an oil and gas lease issued by the state;

28 (4) "lessee" means the lessee of record with the state as of January 1 of  
29 the tax year;

30 (5) "operator" means the party approved by the Department of Natural  
31 Resources or Alaska Oil and Gas Conservation Commission as the unit operator for a

1 state-approved unit.

2 \* **Sec. 2.** AS 43.55 is amended by adding a new section to read:

3 **Sec. 43.55.027. Credit against tax as it applies to certain natural gas**  
 4 **production.** (a) In addition to other credits authorized by this chapter, there is  
 5 allowed a credit against the tax due under this chapter for a lessee having gas that was  
 6 subject to the tax imposed under AS 43.58.210 - 43.58.295.

7 (b) A lessee having gas that was subject to the tax imposed under AS 43.58  
 8 may claim and take the credit against tax due under this chapter.

9 (c) On and after the date that natural gas committed by contract for sale and  
 10 delivery as commercially marketable gas is first delivered to tidewater for  
 11 transshipment or to the domestic North American natural gas pipeline system and the  
 12 delivery is by a pipeline or combination of pipelines having a minimum delivery  
 13 capacity of 2,000,000,000 cubic feet of gas per day, a lessee holding an interest in the  
 14 taxable property may apply for and obtain a credit calculated in accordance with this  
 15 section. A credit allowed under this section may not be allowed unless

16 (1) the lessee who holds an interest in the taxable property has entered  
 17 into

18 (A) an irrevocable agreement to sell the lessee's gas taxable  
 19 under AS 43.58.210 - 43.58.295; or

20 (B) a binding transportation agreement to ship the lessee's gas  
 21 taxable under AS 43.58.210 - 43.58.295 that results from an open season; in  
 22 this subparagraph, "open season" means

23 (i) an open season for Alaska natural gas transportation  
 24 projects conducted under 15 U.S.C. 720a(e) and related regulations  
 25 governing the initial capacity of the pipeline transportation project  
 26 described in 15 U.S.C. 717 - 717w; or

27 (ii) an open season with a methodology substantially  
 28 similar to that described in (i) of this paragraph for determining  
 29 capacity on other Alaska natural gas transportation pipeline projects;

30 (2) the natural gas pipeline described in this subsection is in service  
 31 and is transporting the gas that is the subject of an irrevocable agreement of sale under

1 (1)(A) of this subsection or a binding transportation agreement to ship under (1)(B) of  
2 this subsection; and

3 (3) the lessee who holds an interest in the taxable property is actually  
4 engaged in selling the gas under an irrevocable agreement of sale described in (1)(A)  
5 of this subsection or in shipping the gas under a binding transportation agreement  
6 described in (1)(B) of this subsection.

7 (d) A credit may be claimed and allowed under this section

8 (1) only against the tax due during the month under this chapter  
9 calculated on the lessee's production of natural gas that is transported in the pipeline  
10 system that is described in (c) of this section;

11 (2) against not more than 50 percent of the tax described in (1) of this  
12 subsection; and

13 (3) in an amount that does not exceed the unused portion of the credit  
14 based on the taxpayer's total liability for taxes levied and collected under AS 43.58  
15 incurred on and after the date of the taxpayer's execution of the irrevocable agreement  
16 of sale or binding transportation agreement described in (c)(1) of this section and  
17 before the date that natural gas committed by contract for sale and delivery as  
18 commercially marketable gas is first delivered to tidewater for transshipment or to the  
19 domestic North American natural gas pipeline system and the delivery is by a pipeline  
20 or combination of pipelines having a minimum delivery capacity of 2,000,000,000  
21 cubic feet of gas per day.

22 (e) A credit may not be claimed and taken under the authority of this section  
23 after December 31, 2030.

24 (f) In this section, "lessee" means the lessee of record with the state as of  
25 January 1 of the tax year.

26 \* **Sec. 3.** AS 43.58.210, 43.58.220, 43.58.230, 43.58.240, 43.58.250, and 43.58.295 are  
27 repealed on the date that natural gas committed by contract for sale and delivery as  
28 commercially marketable gas is first delivered to tidewater for transshipment or to the  
29 domestic North American natural gas pipeline system and the delivery is by a pipeline or  
30 combination of pipelines having a minimum delivery capacity of 2,000,000,000 cubic feet of  
31 gas per day.

1     \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

3           **LESSEE AUTHORIZED TO SURRENDER LEASE.** To avoid liability under  
4 AS 43.58, added by sec. 1 of this Act, for payment of the tax on leases or properties having  
5 known gas resources, a person subject to AS 43.58 may surrender the person's rights under  
6 the lease to the Department of Natural Resources if the person surrenders the rights not later  
7 than December 31, 2006, and complies with all applicable requirements of

8                   (1) the department's regulations adopted under authority of AS 38.05.020  
9 relating to surrenders of rights in land held under lease; and

10                   (2) the applicable requirements of the lease that relate to surrender of the  
11 person's rights in it.

12     \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
13 read:

14           **SEVERABILITY.** Under AS 01.10.030, if any provision of this Act, or the  
15 application of it to any person or circumstance, is held invalid, the remainder of this Act and  
16 the application to other persons are not affected.

17     \* **Sec. 6.** **EFFECTIVE DATE OF REPEAL AND NOTICE.** Section 3 of this Act takes  
18 effect on the date the contingency described in sec. 3 of this Act occurs. The commissioner of  
19 natural resources shall certify to the commissioner of revenue and to the revisor of statutes  
20 when the contingency described in sec. 3 of this Act has occurred and the date on which that  
21 contingency occurred.

22     \* **Sec. 7.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

23     \* **Sec. 8.** Except as provided in secs. 6 and 7 of this Act, this Act takes effect January 1,  
24 2007.