

HOUSE BILL NO. 498

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Introduced: 4/3/06

Referred: House Special Committee on Oil and Gas, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing tax credits against the production tax on oil and gas for qualified
2 expenditures for challenged or nonconventional oil or gas and for qualified expenditures
3 for nonconventional or renewable energy resources; giving the Act contingent effect;
4 and providing for an effective date."

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

6 * **Section 1.** AS 43.55 is amended by adding new sections to read:

7 **Sec. 43.55.026. Credits for expenditures for challenged or nonconventional**
8 **oil or gas.** (a) Notwithstanding that a qualified expenditure may be a lease expenditure
9 that is deductible for the purpose of calculating the production tax value of oil and gas
10 under AS 43.55.160(a), a producer that incurs a qualified expenditure for challenged
11 or nonconventional oil or gas under this section may also elect to take a tax credit in
12 the amount of 15 percent of that expenditure. A credit under this subsection is in
13 addition to any credit under AS 43.55.024 or 43.55.025 for the same qualified
14 expenditure and may be applied against any and all taxes due under this chapter on the

1 producer's taxable oil and gas production.

2 (b) For a calendar year for which the producer makes an election under
3 AS 43.55.160(f),

4 (1) a producer that incurs a qualified expenditure during that year and
5 that wants to apply a credit based on the annual qualified expenditures against any tax
6 or conservation surcharge due under this chapter, instead of taking a tax credit of 15
7 percent of each separate qualified expenditure for the month when the expenditure is
8 incurred, shall calculate and apply every month an annualized tax credit in an amount
9 equal to one and one-quarter percent of the producer's total qualified expenditures then
10 budgeted to be incurred during that year; and

11 (2) if the total annual amount budgeted by the producer for qualified
12 expenditures changes as the year progresses, then (A) the amount of the total tax under
13 AS 43.55.011 on the producer's taxable oil and gas production that is due each month,
14 and (B) the issue of whether at least 90 percent of the full amount of the tax was paid
15 when due each month must be determined for purposes of AS 43.55.020 based on the
16 amount of the credit under this subsection using the producer's budget for the year's
17 qualified expenditures that was in effect as of the end of the month when the
18 producer's taxable oil or gas was produced; however, nothing in this paragraph
19 changes the requirement that a producer shall report under AS 43.55.030(e) based on
20 the credits under this subsection for its actual qualified expenditures for an entire
21 calendar year and pay any additional tax shown in that annual report.

22 (c) A credit or portion of a credit under this section may not be used to reduce
23 a person's total liability for taxes under this chapter for any month below zero, and any
24 unused credit or portion of a credit not used under this subsection may be applied in a
25 later month.

26 (d) Except as otherwise provided in this subsection, a producer incurring the
27 qualified expenditure giving rise to a credit may not transfer the credit. The producer
28 may transfer the tax credit to an affiliate of the producer that is also a producer subject
29 to this chapter. Both the producer transferring the credit to its producer affiliate and
30 the producer affiliate receiving the credit shall report to the department, on the
31 respective monthly tax statements filed under AS 43.55.030, the tax credit transfer, the

1 amount of the credit transferred, and the month for which the credit arose.

2 (e) A producer may not claim a credit for a qualified expenditure under this
3 section

4 (1) more than once; or

5 (2) for an expenditure made after March 31, 2016.

6 (f) For purposes of this section, an expenditure is a qualified expenditure if it
7 is an ordinary and necessary expenditure incurred for the research, development, or
8 production of challenged or nonconventional oil or gas in this state, or for the
9 research, development, or demonstration of new technology as certified by the
10 department for developing or producing the challenged or nonconventional oil or gas,
11 or a material extension of existing technology as certified by the department.

12 (g) In this section,

13 (1) "challenged oil or gas" means

14 (A) oil that is produced from a reservoir located, in whole or in
15 part, north of 68 degrees, 15 minutes North latitude in this state, without regard
16 to its API gravity or depth, if the oil is produced from

17 (i) the Ugnu Formation or West Sak - Schrader Bluff
18 Formation; or

19 (ii) a formation that is stratigraphically equivalent to a
20 formation described in (i) of this subparagraph;

21 (B) oil that is produced from a reservoir for which, as of
22 January 1, 2006, one of the following participating areas had been formed: the
23 Orion or Polaris participating area in the Prudhoe Bay Unit, the West Sak
24 participating area in the Kuparuk River Unit, or the Schrader Bluff
25 participating area in the Milne Point Unit;

26 (C) oil that has an API gravity of 25 or less produced from a
27 reservoir or field located, in whole or in part, north of 68 degrees, 15 minutes
28 North latitude in this state and at a true vertical depth as measured from sea
29 level of 5,500 feet or less;

30 (D) oil that has an API gravity of 18 or less, regardless of depth
31 or location within this state;

1 (E) oil produced from a reservoir whose reservoir rock is
2 primarily made up of carbonates;

3 (F) oil produced through the application of one or more
4 enhanced oil recovery techniques, including

5 (i) steam injection;

6 (ii) microemulsion flooding;

7 (iii) in situ combustion;

8 (iv) polymer-augmented water-flooding;

9 (v) alkaline or caustic flooding;

10 (vi) immiscible nonhydrocarbon gas displacement;

11 (vii) microbial;

12 (viii) low-salinity water flooding; or

13 (ix) any other method not described in (i) - (viii) of this
14 subparagraph that is certified by the department to be a qualified
15 enhanced oil recovery technique or that is certified by the Alaska Oil
16 and Gas Conservation Commission for purposes of this section;

17 (G) oil requiring ultra-extended reach drilling where the total
18 step-out of the well is greater than 25,000 feet laterally away from the surface
19 hole location;

20 (H) oil production not described in (A) – (F) of this paragraph
21 that is inherently difficult and expensive to produce and is certified by the
22 department to be challenged oil; and

23 (I) gas produced from or in association with oil that is produced
24 as described in (A) - (H) of this paragraph;

25 (2) "nonconventional gas" means

26 (A) gas produced or recovered from or in association with
27 nonconventional oil;

28 (B) gas produced or recovered from or in association with
29 hydrates formed from hydrocarbons, including free gas trapped beneath gas
30 hydrates;

31 (C) gas manufactured from the gasification of coal;

1 (D) tight gas produced from reservoirs with average
2 permeabilities less than 0.1 millidarcies; and

3 (E) gas not described in (A) – (D) of this paragraph that is
4 inherently difficult and expensive to produce and is certified by the department
5 to be nonconventional gas;

6 (3) "nonconventional oil" means:

7 (A) oil produced or recovered from or associated with tar
8 sands;

9 (B) oil produced or recovered from or associated with oil shale;
10 and

11 (C) oil production not described in (A) or (B) of this paragraph
12 that is inherently difficult and expensive to produce and is certified by the
13 department to be nonconventional oil.

14 **Sec. 43.55.028. Credits for expenditures for nonconventional or renewable**
15 **energy sources.** (a) Notwithstanding that a qualified expenditure under this section
16 may be deductible or may give rise to a tax credit under AS 43.20 or under any other
17 tax under this title, a producer that incurs a qualified expenditure for the development
18 or use of a nonconventional or renewable energy source may also elect to take a tax
19 credit in the amount of 25 percent of that expenditure. A credit under this subsection
20 may be applied against any tax due under this chapter AS 43.55 on the producer's
21 taxable oil and gas production.

22 (b) For a calendar year for which the producer makes an election under
23 AS 43.55.160(f),

24 (1) a producer that incurs a qualified expenditure during that year and
25 that wants to apply a credit based on the annual qualified expenditures against any tax
26 or conservation surcharge due under this chapter, instead of taking a tax credit of 25
27 percent of each separate qualified expenditure for the month when the expenditure is
28 incurred, shall calculate and apply every month an annualized tax credit in an amount
29 equal to two and one-twelfth percent of the producer's total qualified expenditures then
30 budgeted to be incurred during that year; and

31 (2) if the total annual amount budgeted by the producer for qualified

1 expenditures changes as the year progresses, then (A) the amount of the total tax under
2 AS 43.55.011 on the producer's taxable oil and gas production that is due each month,
3 and (B) the issue of whether at least 90 percent of the full amount of the tax was paid
4 when due each month must be determined for purposes of AS 43.55.020 based on the
5 amount of the credit under this subsection using the producer's budget for the year's
6 qualified expenditures that was in effect as of the end of the month when the
7 producer's taxable oil or gas was produced; however, nothing in this paragraph
8 changes the requirement that a producer must report under AS 43.55.030(e) based on
9 the credits under this subsection for its actual qualified expenditures for an entire
10 calendar year and pay any additional tax shown in that annual report.

11 (c) A credit or portion of a credit under this section may not be used to reduce
12 a person's total liability for taxes under this chapter for any month below zero, and any
13 unused credit or portion of a credit not used under this subsection may be applied in a
14 later month.

15 (d) Except as otherwise provided in this subsection, a producer incurring the
16 qualified expenditure giving rise to a credit may not transfer the credit. The producer
17 may transfer the tax credit to an affiliate of the producer that is also a producer subject
18 to this chapter. Both the producer transferring the credit to its producer affiliate and
19 the producer affiliate receiving the credit shall report to the department, on the
20 respective monthly tax statements filed under AS 43.55.030, the tax credit transfer, the
21 amount of the credit transferred, and the month for which the credit arose.

22 (e) An expenditure for an activity is a qualified expenditure for purposes of
23 this section if it is

24 (1) an ordinary and necessary expenditure for the activity, as "ordinary
25 and necessary" is defined for purposes of 26 U.S.C. 162 (Internal Revenue Code); and

26 (2) incurred for the development or use of a nonconventional or
27 renewable energy source.

28 (f) A producer may not claim a credit for a qualified expenditure under this
29 section

30 (1) more than once; or

31 (2) for an expenditure made after March 31, 2016.

1 (g) In this section, "nonconventional or renewable energy sources" includes

2 (1) solar power;

3 (2) geothermal energy;

4 (3) wind power;

5 (4) nonconventional kinetic energy recovery;

6 (5) exploitation of heat, cold, or another form of energy that is
7 generated from an industrial or manufacturing activity and that would otherwise be
8 dissipated into the environment, including electrical cogeneration;

9 (6) energy that does not involve the consumption or combustion of
10 hydrocarbons; and

11 (7) an energy source not described in (1) - (6) of this subsection that is
12 certified by the department to be a nonconventional or renewable source of energy.

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

15 **TRANSITION: REGULATIONS AND RETROACTIVITY OF REGULATIONS.** (a)
16 The Department of Revenue may proceed to adopt regulations to implement this Act. The
17 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
18 effective date of the law implemented by the regulation.

19 (b) Notwithstanding any contrary provision of AS 44.62.240, a regulation adopted by
20 the Department of Revenue to implement, interpret, make specific, or otherwise carry out the
21 provisions of this Act may apply retroactively to the effective date of this Act, if the
22 Department of Revenue expressly designates in the regulation that the regulation applies
23 retroactively to that date.

24 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **CONDITIONAL EFFECT OF ACT.** This Act takes effect only if the Twenty-Fourth
27 Alaska Legislature passes a bill, and that bill becomes law, in which, among other provisions,
28 the oil and gas properties production (severance) tax is repealed and a production tax on oil
29 and gas based on a percentage of its production tax value is enacted.

30 * **Sec. 4.** If, under sec. 3 of this Act, this Act takes effect, it takes effect on the date that is
31 the later of

- 1 (1) the effective date of the Act described in sec. 3 of this Act; or
- 2 (2) July 1, 2006.