

**CS FOR HOUSE BILL NO. 498(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

**BY THE HOUSE RESOURCES COMMITTEE**

**Offered: 4/29/06**

**Referred: Finance**

**Sponsor(s): HOUSE RULES COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act authorizing tax credits against the production tax on oil and gas for qualified**  
2 **development expenditures for challenged oil pools; and providing for an effective date."**

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

4 **\* Section 1.** AS 43.55 is amended by adding a new section to read:

5 **Sec. 43.55.026. Credits for expenditures for development of challenged oil**  
6 **pools.** (a) Notwithstanding that an expenditure that is a qualified development  
7 expenditure may be a lease expenditure that is deductible for the purpose of  
8 calculating the production tax value of oil and gas under AS 43.55.160(a), a producer  
9 that incurs a qualified development expenditure may also elect to take a tax credit in  
10 the amount of 15 percent of that expenditure. A credit under this subsection

11 (1) is in addition to any credit under AS 43.55.024 for the same  
12 expenditure; and

13 (2) may be applied against a tax due under AS 43.55.011(e) on oil  
14 produced on or after April 1, 2006.

1 (b) For a calendar year for which the producer makes an election under  
2 AS 43.55.160(f), instead of taking a tax credit at a rate authorized by (a) of this section  
3 as to each separate qualified development expenditure after it has been incurred, a  
4 producer that incurs a qualified development expenditure during that year and that  
5 wishes to apply a credit based on that expenditure against a tax due under  
6 AS 43.55.011(e) shall calculate and apply every month an annualized tax credit in an  
7 amount equal to one and one-quarter percent of the producer's total qualified  
8 development expenditures incurred during that year and for which the tax credit is  
9 taken for that year.

10 (c) A credit or portion of a credit under this section may not be used to reduce  
11 a person's tax liability under AS 43.55.011(e) for any month below zero, and any  
12 unused credit or portion of a credit not used under this subsection may be applied in a  
13 later month.

14 (d) A credit under this section is not transferable.

15 (e) A producer may not take a credit under this section for an expenditure  
16 incurred

17 (1) after March 31, 2016;

18 (2) for an oil pool determined to be a challenged oil pool under (f) of  
19 this section sooner than 45 days after the Department of Natural Resources provides  
20 notice of the determination to the Legislative Budget and Audit Committee;

21 (3) to acquire an asset (A) the cost of previously acquiring which was a  
22 lease expenditure under AS 43.55.160(c) or would have been a lease expenditure  
23 under AS 43.55.160(c) if it had been incurred on or after April 1, 2006, or (B) that has  
24 previously been placed in service in the state; an expenditure to acquire an asset is not  
25 excluded under this paragraph if not more than an immaterial portion of the asset  
26 meets a description under (A) or (B) of this paragraph; for purposes of this paragraph,  
27 "asset" includes geological, geophysical, and well data and interpretations.

28 (f) A lessee under an oil and gas lease issued under AS 38.05.180 may apply  
29 to the Department of Natural Resources for a determination that an oil pool within the  
30 lessee's lease, other than an oil pool described in (m)(1)(A) - (D) of this section, is a  
31 challenged oil pool under this subsection. The Department of Natural Resources shall

1 prescribe the application form to be used and the information to be provided by an  
2 applicant. After consulting with the Alaska Oil and Gas Conservation Commission,  
3 the Department of Natural Resources shall make a determination within six months  
4 after receiving a complete application and shall provide notice of the determination to  
5 the Department of Revenue and the Legislative Budget and Audit Committee. For  
6 purposes of this subsection, a challenged oil pool is

7 (1) an oil pool

8 (A) no part of which is located at a true vertical depth of  
9 greater than 5,500 feet as measured from sea level; and

10 (B) with oil that has an average API gravity of 25 or less; or

11 (2) an oil pool whose reservoir rock primarily consists of carbonates  
12 and has an average permeability of three millidarcies or less.

13 (g) If the department determines under (i) of this section that the average price  
14 of Alaska North Slope oil on the United States West Coast during the period April 1,  
15 2006, through March 31, 2016, is \$50 a barrel or more, a producer that takes a credit  
16 under this section shall repay to the department, no later than June 30, 2016, the  
17 amount of the credit, with interest at the rate prescribed in this subsection. Interest is at  
18 a rate equal to the rate of return, as determined by the department, that is earned by the  
19 budget reserve fund established under art. IX, sec. 17, Constitution of the State of  
20 Alaska, from the date the credit was applied against the producer's tax liability until  
21 the earlier of June 30, 2016, or the date the payment is made to the department.  
22 Interest on an amount unpaid after June 30, 2016, is at the rate prescribed under  
23 AS 43.05.225(1) from July 1, 2016 until the date the payment is made to the  
24 department.

25 (h) A producer that otherwise is allowed to apply a credit under this section  
26 against a tax due for a month ending before April 1, 2016, may defer using the credit  
27 until after April 30, 2016. If the department determines under (i) of this section that  
28 the average price of Alaska North Slope oil on the United States West Coast during  
29 the period April 1, 2006, through March 31, 2016, is less than \$50 a barrel, the  
30 producer then may apply the credit against a tax due under AS 43.55.011(e) or may  
31 request a refund from the department of the amount of the credit, with interest at the

1 rate prescribed in this subsection. Interest is at a rate equal to the rate of return, as  
2 determined by the department, that is earned by the budget reserve fund established  
3 under art. IX, sec. 17, Constitution of the State of Alaska, from the date the tax under  
4 AS 43.55.011(e) was due against which the amount of a credit could have been  
5 applied against the producer's tax liability in accordance with (c) of this section, until  
6 (1) the date the amount of the credit is actually applied against a tax under this  
7 subsection, if it is applied; or (2) the earlier of 90 days after a refund request for the  
8 amount of the credit is received by the department or the refund is paid, if a refund is  
9 requested. Interest on an amount unpaid 90 days after a refund request is received by  
10 the department is at the rate prescribed under AS 43.05.225(1) from the 91st day after  
11 the refund request is received until the date the refund is paid.

12 (i) The department shall, by regulation, specify the method by which the  
13 average price of Alaska North Slope oil on the United States West Coast shall be  
14 calculated, with reference to one or more published sources of price information. The  
15 department shall make available to the public no later than April 30, 2016, its  
16 determination of the average price of Alaska North Slope oil on the United States  
17 West Coast during the period April 1, 2006, through March 31, 2016.

18 (j) For purposes of the period of limitations provided under AS 43.05.260, an  
19 amount that a producer is obligated to repay to the department under (g) of this section  
20 is considered a tax imposed by this title for which a return is filed on June 30, 2016. A  
21 producer that incurs an expenditure before April 1, 2016, for which a credit is claimed  
22 under this section shall maintain until July 1, 2019, its records sufficient to show  
23 whether the expenditure is a qualified development expenditure and to show the tax  
24 liability against which the credit is or, under (h) of this section, could have been  
25 applied.

26 (k) Except as provided in (l) of this section, the department may adopt  
27 regulations to carry out the purposes of this section, including prescribing reporting,  
28 record keeping, and other procedures and requirements to verify the accuracy of the  
29 credits claims and to ensure that a credit is not used more than once, and otherwise  
30 implementing this section.

31 (l) The Department of Natural Resources shall adopt regulations to implement

1 (f) of this section, including regulations prescribing the method to be used to  
 2 determine the average API gravity of oil contained in an oil pool and the method to be  
 3 used to determine the average permeability of an oil pool's reservoir rock.

4 (m) In this section,

5 (1) "challenged oil pool" means an oil pool

6 (A) in the Ugnu or Schrader Bluff formation within

7 (i) the Prudhoe Bay Unit; or

8 (ii) the Milne Point Unit;

9 (B) in the West Sak or Ugnu formation within the Kuparuk  
 10 River Unit;

11 (C) in the Ugnu, Schrader Bluff, or West Sak formation within  
 12 the

13 (i) Tuvaq Unit;

14 (ii) Nikaitchuk Unit; or

15 (iii) Rockflour Unit;

16 (D) in the Lisburne group within the Lisburne Participating  
 17 Area of the Prudhoe Bay Unit; or

18 (E) that is determined by the Department of Natural Resources  
 19 to be a challenged oil pool under (f) of this section;

20 (2) "develop" does not include the drilling, testing, or evaluation of  
 21 delineation wells;

22 (3) "qualified development expenditure" means, except as otherwise  
 23 provided in (e) of this section, an expenditure

24 (A) that is a lease expenditure under AS 43.55.160;

25 (B) the primary purpose of which is development of a  
 26 challenged oil pool within an oil and gas lease issued under AS 38.05.180; and

27 (C) that is treated as a capitalized expenditure under 26 U.S.C.  
 28 (Internal Revenue Code), as amended, regardless of elections made under 26  
 29 U.S.C. 263(c) (Internal Revenue Code), as amended, and is

30 (i) treated as a capitalized expenditure for federal  
 31 income tax reporting purposes by the person incurring the expenditure;

1 or

2 (ii) eligible to be deducted as an expense under 26  
3 U.S.C. 263(c) (Internal Revenue Code), as amended.

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

6 TRANSITION PROVISION. Notwithstanding any contrary provision of  
7 AS 43.55.026, enacted by sec. 1 of this Act, for oil and gas produced on or after April 1,  
8 2006, and before January 1, 2007, the phrase "every month an annualized credit in an amount  
9 equal to one and one-quarter percent" in AS 43.55.026(b), enacted by sec. 1 of this Act, shall  
10 be replaced by the phrase "every month during the period April 1, 2006, through  
11 December 31, 2006, an annualized tax credit in an amount equal to one and two-thirds  
12 percent."

13 \* **Sec. 3.** 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 and Department of Natural Resources may proceed to adopt  
17 regulations to implement this Act. The regulations take effect under AS 44.62 (Administrative  
18 Procedure Act), but not before the 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 or Department of Natural Resources to implement, interpret,  
21 make specific, or otherwise carry out the provisions of this Act may apply retroactively to  
22 April 1, 2006, if the agency adopting the regulation expressly designates in the regulation that  
23 the regulation applies retroactively to that date.

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

26 RETROACTIVE EFFECT. Sections 1 and 2 of this Act are retroactive to April 1,  
27 2006.

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

30 CONDITIONAL EFFECT OF ACT. This Act takes effect only if the Twenty-Fourth  
31 Alaska Legislature passes a bill, and that bill becomes law, in which the oil production tax

1 and gas production tax in AS 43.55 are repealed and a production tax on oil and gas based on  
2 a percentage of its production tax value is enacted in AS 43.55.

3 \* **Sec. 6.** If, under sec. 5 of this Act, this Act takes effect, it takes effect on the effective date  
4 of the provisions described in sec. 5 of this Act of the bill referred to in sec. 5 of this Act.