

CS FOR HOUSE BILL NO. 229(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/25/10

Referred: Finance

Sponsor(s): REPRESENTATIVES CHENAULT, Olson, Neuman

A BILL

FOR AN ACT ENTITLED

1 "An Act amending and extending the exploration and development incentive tax credit
2 under the Alaska Net Income Tax Act for operators and working interest owners
3 directly engaged in the exploration for and development of gas from a lease or property
4 in the state; providing for an effective date by amending the effective date for sec. 2, ch.
5 61, SLA 2003; and providing for an effective date."

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

7 * **Section 1.** AS 43.20.043(a) is amended to read:

8 (a) Subject to the terms and conditions of this section, and in addition to any
9 other credit authorized to the taxpayer by this chapter, a taxpayer that is an operator or
10 working interest owner directly engaging in the exploration for and development of
11 gas may apply as a credit against the state tax liability that may be imposed on the
12 taxpayer under this chapter,

13 (1) for a tax year beginning after December 31, 2002, and before

January 1, 2010,

(A) [(1)] 10 percent of the taxpayer's qualified capital investment; and

(B) [(2)] 10 percent of the annual cost incurred by the taxpayer for qualified services in the state during each tax year for which a credit is allowable for a qualified capital investment **for any gas reserve of the taxpayer or for each year that qualified costs are incurred for a gas reserve for which the taxpayer previously elected to claim a credit under (A) of this paragraph; and**

(2) for a tax year beginning after December 31, 2009,

(A) 25 percent of the taxpayer's qualified capital investment; and

(B) 25 percent of the annual cost incurred by the taxpayer for qualified services in the state during each tax year for which a credit is allowable for a qualified capital investment for any gas reserve of the taxpayer or for each year that qualified costs are incurred for a gas reserve for which the taxpayer previously elected to claim a credit under (A) of this paragraph [UNDER (1) OF THIS SUBSECTION].

* **Sec. 2.** AS 43.20.043(b) is amended to read:

(b) Expenditures qualifying for the taxpayer's qualified investment credit under **(a)(1)(A) or (a)(2)(A)** [(a)(1)] of this section must be

(1) cash expenditures or binding payment agreements entered into after

(A) June 30, 2003, and before January 1, 2010, if the claim of the credit is made under (a)(1)(A) of this section; or

(B) December 31, 2009, if the claim of the credit is made under (a)(2)(A) of this section; and

(2) made for assets first placed in service in the state in or before the tax year in which the credit is claimed through the date the

(A) wells [RESERVES] produce gas for sale and delivery; for purposes of this **subparagraph** [PARAGRAPH], "placed in service in the state" means that the first use of the qualified investment is in this state; if the

1 property on which the claim of the credit is based has been used elsewhere in
 2 the tax year of acquisition and is brought to this state during that year or a
 3 subsequent year, the property does not qualify for the investment credit; or

4 **(B) a gas well is determined not to be capable of production**
 5 **in commercial quantities.**

6 * **Sec. 3.** AS 43.20.043(c) is amended to read:

7 (c) The credit **each** [PER] tax year allowed by (a) of this section may not
 8 exceed [50 PERCENT OF] the taxpayer's total tax liability under this chapter, but
 9 shall be calculated before the application of any other credits allowed under this
 10 chapter. An unused portion of the credit for the tax year

11 (1) may be carried forward into one or more of the following tax years,
 12 except that the unused credit from one tax year may not be carried forward for more
 13 than five following tax years;

14 (2) shall be applied to the taxpayer's tax liability under this chapter
 15 during the following tax year before allowance of a credit allowed by (a) of this
 16 section for that following tax year.

17 * **Sec. 4.** AS 43.20.043(e) is amended to read:

18 (e) A taxpayer entitled to a credit under this section

19 (1) may not convey, assign, or transfer the credit to another taxpayer or
 20 business entity unless the conveyance, assignment, or transfer of the credit is part of
 21 the conveyance, assignment, or transfer of the taxpayer's business;

22 (2) forfeits the credit to which the taxpayer is entitled during the tax
 23 year and any carryover of it under (c) of this section, but does not forfeit the portion of
 24 the credit that accrued in a previous taxable year that may be carried over under (c) of
 25 this section, if the taxpayer

26 (A) disposes of the qualified capital investment;

27 (B) takes the qualified investment out of service; or

28 (C) transfers the qualified investment out of this state;

29 **(3) may not include in any rate base for a regulated facility**
 30 **submitted to a regulatory agency charged with determining an appropriate tariff**
 31 **the cost of any qualified capital investment or qualified service that has been**

1 **offset by receipt of a credit under this chapter.**

2 * **Sec. 5.** AS 43.20.043(i)(1) is amended to read:

3 (1) "qualified capital investment" means a cash expenditure or binding
4 payment agreement, as described in (b)(1) of this section, for real property or tangible
5 personal property used in this state in the exploration and development of **any** gas
6 **reserve regardless of whether there has been commercial production in the area**
7 **or whether the exploration and development activity results in the production of**
8 **gas or a well not capable of production in commercial quantities** [RESERVES IN
9 A GAS RESERVOIR FOR WHICH THERE HAS NOT BEEN COMMERCIAL
10 PRODUCTION IF THE RESERVES PRODUCE GAS FOR SALE AND
11 DELIVERY]; in this paragraph, "property" includes

12 (A) property used in the operation or maintenance of facilities
13 for exploration or development of gas;

14 (B) property that is placed in use under a capitalized lease or an
15 operating lease; and

16 (C) the following property used for the exploration and
17 development of gas:

18 (i) machinery, appliances, supplies, and equipment;

19 (ii) drilling rigs, wells, gathering lines and transmission
20 lines, pumping stations, compressor stations, power plants **designed**
21 **for field operations, gas processing plants, and gas treatment**
22 **plants, but not including liquefied natural gas or manufacturing**
23 **plants** [, TOPPING PLANTS, AND PROCESSING UNITS];

24 (iii) roads, docks and other port facilities, and helicopter
25 pads;

26 (iv) maintenance equipment and facilities, and
27 maintenance camps and other related facilities; and

28 (v) communications facilities owned by a person whose
29 principal business in the state is the exploration for or development of
30 gas and whose operation of the communications facilities directly
31 relates to the conduct of that business;

1 * **Sec. 6.** AS 43.20.043 is amended by adding a new subsection to read:

2 (j) A taxpayer shall claim the credit authorized in (a) of this section on a
3 timely filed tax return for the year in which the qualified capital investment is made,
4 on a timely filed amended tax return, or on a timely filed tax return for the year
5 immediately following the year in which the qualified capital investment is made. The
6 election to apply the credit authorized in (a) of this section may not be an irrevocable
7 election.

8 * **Sec. 7.** The uncodified law of the State of Alaska enacted by sec. 3, ch. 61, SLA 2003, is
9 amended to read:

10 Sec. 3. CLAIM OF GAS EXPLORATION AND DEVELOPMENT TAX
11 CREDIT CONTINUED. A taxpayer who, on the effective date of repeal of
12 AS 43.20.043 by secs. 2 and 5, ch. 61, SLA 2003, as amended by sec. 8 [SEC. 2] of
13 this 2010 Act, claims the balance of any unused portion of the gas exploration and
14 development tax credit as a carry-forward under AS 43.20.043(c), may,
15 notwithstanding the repeal of that subsection, continue to claim the balance of the
16 credit until the claim of the credit is exhausted or until the tax year ending
17 December 31, 2024 [2017], whichever occurs earlier. The provisions of AS 43.20.043
18 as they read on the day immediately preceding the effective date of the repeal of that
19 section apply to the claim of the credit if carried forward under this section.

20 * **Sec. 8.** Section 5, ch. 61, SLA 2003, is amended to read:

21 Sec. 5. Section 2, ch. 61, SLA 2003, [OF THIS ACT] takes effect January 1,
22 2020 [2013].

23 * **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).