

CS FOR SENATE BILL NO. 309(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/16/10

Referred: Today's Calendar

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST

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; relating to interest on certain underpayments or overpayments of the oil**
5 **and gas production tax; providing a credit against the tax on the production of oil and**
6 **gas for drilling certain exploration wells in the Cook Inlet sedimentary basin; relating to**
7 **the use of the oil and gas tax credit fund to purchase certain tax credit certificates;**
8 **providing for an effective date by amending the effective date for sec. 2, ch. 61, SLA**
9 **2003; and providing for an effective date."**

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

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

12 (a) Subject to the terms and conditions of this section, and in addition to any

1 other credit authorized to the taxpayer by this chapter, a taxpayer that is an operator or
 2 working interest owner directly engaging in the exploration for and development of
 3 gas may apply as a credit against the state tax liability that may be imposed on the
 4 taxpayer under this chapter,

5 **(1)** for a tax year beginning after December 31, 2002, **and before**
 6 **January 1, 2010,**

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

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

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

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

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

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

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

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

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

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

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

3 (A) wells [RESERVES] produce gas for sale and delivery; for
4 purposes of this subparagraph [PARAGRAPH], "placed in service in the
5 state" means that the first use of the qualified investment is in this state; if the
6 property on which the claim of the credit is based has been used elsewhere in
7 the tax year of acquisition and is brought to this state during that year or a
8 subsequent year, the property does not qualify for the investment credit; or

9 (B) a gas well is determined not to be capable of production
10 in commercial quantities.

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

12 (c) The credit each [PER] tax year allowed by (a) of this section may not
13 exceed 75 [50] percent of the taxpayer's total tax liability under this chapter, but shall
14 be calculated before the application of any other credits allowed under this chapter. An
15 unused portion of the credit for the tax year

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

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

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

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

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

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

31 (A) disposes of the qualified capital investment;

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

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

3 **(3) may not include in any rate base for a regulated facility**
 4 **submitted to a regulatory agency charged with determining an appropriate tariff**
 5 **the cost of any qualified capital investment or qualified service that has been**
 6 **offset by receipt of a credit under this chapter.**

7 * **Sec. 5.** AS 43.20.043(g) is amended to read:

8 (g) A taxpayer **that** [WHO] obtains a credit **for a qualified capital**
 9 **investment or cost incurred for qualified services** under this section may not **also**
 10 claim a tax credit or royalty modification **for the same qualified capital investment**
 11 **or cost incurred for qualified services under AS 38.05.180(i), AS 41.09.010,**
 12 **AS 43.55.023, or 43.55.025** [PROVIDED FOR UNDER ANY OTHER TITLE].

13 However, a taxpayer may **elect not to obtain** [, AT THE TAXPAYER'S ELECTION,
 14 FORGO] a credit under this section in order [TO CONTINUE] to qualify for a credit
 15 provided **under AS 38.05.180(i), AS 41.09.010, AS 43.55.023, or 43.55.025** [FOR IN
 16 ANOTHER TITLE].

17 * **Sec. 6.** AS 43.20.043(i)(1) is amended to read:

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

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

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

31 (C) the following property used for the exploration and

1 development of gas:

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

3 (ii) drilling rigs, wells, gathering lines and transmission
4 lines, pumping stations, compressor stations, power plants **designed**
5 **for field operations, gas processing plants, and gas treatment**
6 **plants, but not including liquefied natural gas or manufacturing**
7 **plants** [, TOPPING PLANTS, AND PROCESSING UNITS];

8 (iii) roads, docks and other port facilities, and helicopter
9 pads;

10 (iv) maintenance equipment and facilities, and
11 maintenance camps and other related facilities; and

12 (v) communications facilities owned by a person whose
13 principal business in the state is the exploration for or development of
14 gas and whose operation of the communications facilities directly
15 relates to the conduct of that business;

16 * **Sec. 7.** AS 43.20.043 is amended by adding a new subsection to read:

17 (j) A taxpayer shall claim the credit authorized in (a) of this section on a
18 timely filed tax return for the year in which the qualified capital investment is made,
19 on a timely filed amended tax return, or on a timely filed tax return for the year
20 immediately following the year in which the qualified capital investment is made. The
21 election to apply the credit authorized in (a) of this section may not be an irrevocable
22 election.

23 * **Sec. 8.** AS 43.55.020 is amended by adding a new subsection to read:

24 (i) Notwithstanding any contrary provision of AS 43.05.225 or (g) or (h) of
25 this section, if the amount of a tax payment, including an installment payment, due
26 under (a)(1) - (4) of this section is affected by the retroactive application of a
27 regulation adopted under this chapter, the department shall determine whether the
28 retroactive application of the regulation caused an underpayment or an overpayment of
29 the amount due and adjust the interest due on the affected payment as follows:

30 (1) if an underpayment of the amount due occurred, the department
31 shall waive interest that would otherwise accrue for the underpayment before the first

1 day of the second month following the month in which the regulation became
2 effective, if

3 (A) the department determines that the producer's
4 underpayment resulted because the regulation was not in effect when the
5 payment was due; and

6 (B) the producer demonstrates that it made a good faith
7 estimate of its tax obligation in light of the regulations then in effect when the
8 payment was due and paid the estimated tax;

9 (2) if an overpayment of the amount due occurred and the department
10 determines that the producer's overpayment resulted because the regulation was not in
11 effect when the payment was due, the obligation for a refund for the overpayment does
12 not begin to accrue interest earlier than the following, as applicable:

13 (A) except as otherwise provided under (B) of this paragraph,
14 the first day of the second month following the month in which the regulation
15 became effective;

16 (B) 90 days after an amended statement under AS 43.55.030(a)
17 and an application to request a refund of production tax paid is filed, if the
18 overpayment was for a period for which an amended statement under
19 AS 43.55.030(a) was required to be filed before the regulation became
20 effective.

21 * **Sec. 9.** AS 43.55.025(a) is amended to read:

22 (a) Subject to the terms and conditions of this section, a credit against the
23 production tax levied by AS 43.55.011(e) is allowed for exploration expenditures that
24 qualify under (b) of this section in an amount equal to one of the following:

25 (1) 30 percent of the total exploration expenditures that qualify only
26 under (b) and (c) of this section;

27 (2) 30 percent of the total exploration expenditures that qualify only
28 under (b) and (d) of this section;

29 (3) 40 percent of the total exploration expenditures that qualify under
30 (b), (c), and (d) of this section; [OR]

31 (4) 40 percent of the total exploration expenditures that qualify only

1 under (b) and (e) of this section; or

2 (5) 80, 90, or 100 percent, or a lesser amount described in (m) of
 3 this section, of the total exploration expenditures described in (b)(1) and (2) of
 4 this section and not excluded by (b)(3) and (4) of this section that qualify only
 5 under (m) of this section.

6 * **Sec. 10.** AS 43.55.025 is amended by adding a new subsection to read:

7 (m) The first three unaffiliated persons that drill an offshore exploration well
 8 for the purpose of discovering oil or gas in Cook Inlet that penetrates at least 3,000
 9 feet below the base of the tertiary-aged strata and evaluates a prospect in the pre-
 10 Tertiary zone using a jack-up drill rig are eligible for the credit under this subsection.
 11 The person that drills the first exploration well is entitled to a credit in the amount of
 12 100 percent of its exploration expenditures or \$25,000,000, whichever is less; the
 13 person that drills the second exploration well using the same jack-up drill rig is
 14 entitled to a credit in the amount of 90 percent of its exploration expenditures or
 15 \$22,500,000, whichever is less; and the person that drills the third exploration well
 16 using the same jack-up drill rig is entitled to a credit in the amount of 80 percent of its
 17 exploration expenditures or \$20,000,000, whichever is less. A person or an affiliate of
 18 a person drilling an exploration well is not entitled to a credit for more than one
 19 exploration well under this subsection. The department shall make a determination of
 20 the order in which the wells are drilled based on the date and time that the drill bit first
 21 turns to the right against the seafloor for the purpose of drilling the well. Exploration
 22 expenditures eligible for the credit in this subsection may include the necessary and
 23 reasonable costs to modify an existing jack-up rig for use in Cook Inlet, may not
 24 include the cost to construct or manufacture a jack-up rig, and, notwithstanding (b) of
 25 this section, must be incurred for work performed after March 31, 2010. If the
 26 exploration well for which a credit is received under this subsection results in
 27 sustained production of oil or gas from a reservoir discovered by the exploration well,
 28 and notwithstanding that the credit may have been transferred under (g) of this section,
 29 50 percent of the amount of the credit received shall be repaid to the department by the
 30 person that received the credit in equal monthly installments over a 10-year period
 31 commencing 60 days after the start of sustained production of oil or gas. Whether the

1 exploration well for which a credit is requested under this subsection penetrated and
 2 evaluated a prospect in the pre-Tertiary zone and the exploration well resulted in
 3 sustained production of oil or gas from a reservoir discovered by the exploration well
 4 shall be determined by the commissioner of natural resources and reported to the
 5 commissioner. A taxpayer that obtains a credit under this subsection may not claim a
 6 tax credit under AS 43.55.023 or another provision in this section for the same
 7 exploration expenditure. In this subsection,

8 (1) "jack-up rig" means a mobile drilling platform with extendible legs
 9 for support on the ocean floor;

10 (2) "reservoir" means an oil and gas accumulation, discovered and
 11 evaluated by testing, that is separate from any other accumulation of oil and gas;

12 (3) "sustained production" means production of oil or gas from a
 13 reservoir into a pipeline or other means of transportation to market, but does not
 14 include testing, evaluation, or pilot production.

15 * **Sec. 11.** The uncodified law of the State of Alaska enacted by sec. 3, ch. 61, SLA 2003, is
 16 amended to read:

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

27 * **Sec. 12.** AS 43.55.028(e)(2) and 43.55.028(e)(3) are repealed.

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

30 TRANSITION: APPLICABILITY OF SEC. 8 OF THIS ACT. Section 8 of this Act
 31 applies to taxes, including installment payments of estimated tax, due after December 31,

1 2005.

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

4 RETROACTIVITY OF SEC. 8 OF THIS ACT. Section 8 of this Act is retroactive to
5 January 1, 2006.

6 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 RETROACTIVITY OF REGULATIONS. Notwithstanding any contrary provision of
9 AS 44.62.240, if the Department of Revenue expressly designates in the regulation that the
10 regulation applies retroactively to a specific date, a regulation adopted by the Department of
11 Revenue to implement, interpret, make specific, or otherwise carry out sec. 8 of this Act
12 applies retroactively to that date.

13 * **Sec. 16.** Section 5, ch. 61, SLA 2003, is amended to read:

14 Sec. 5. Section 2, ch. 61, SLA 2003, [OF THIS ACT] takes effect January 1,
15 2016 [2013].

16 * **Sec. 17.** Section 12 of this Act takes effect July 1, 2010.

17 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect immediately under
18 AS 01.10.070(c).