

SENATE CS FOR CS FOR HOUSE BILL NO. 111(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/12/17

Referred: Rules

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to credits against the oil and gas production tax; relating to the**
2 **applicability of certain credits earned under the oil and gas production tax to the tax on**
3 **corporations; relating to tax credit certificates against the oil and gas production tax**
4 **and the issuance and assignment of those certificates; relating to interest applicable to**
5 **delinquent taxes; relating to lease expenditures; relating to the oil and gas tax credit**
6 **fund; and providing for an effective date."**

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

8 *** Section 1.** AS 43.05.225 is amended to read:

9 **Sec. 43.05.225. Interest.** Unless otherwise provided,

10 (1) a delinquent tax **under this title**

11 (A) [UNDER THIS TITLE,] before January 1, 2014, bears
12 interest in each calendar quarter at the rate of five percentage points above the
13 annual rate charged member banks for advances by the 12th Federal Reserve

District as of the first day of that calendar quarter, or at the annual rate of 11 percent, whichever is greater, compounded quarterly as of the last day of that quarter;

(B) [UNDER THIS TITLE,] on and after January 1, 2014, **and before January 1, 2018** [EXCEPT AS PROVIDED IN (C) OF THIS PARAGRAPH], bears interest in each calendar quarter at the rate of three percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District as of the first day of that calendar quarter;

(C) [UNDER AS 43.55,] on and after January 1, **2018** [2017,

(i) FOR THE FIRST THREE YEARS AFTER A TAX BECOMES DELINQUENT], bears interest in each calendar quarter at the rate of **three** [SEVEN] percentage points above the annual rate charged member banks for advances by the 12th federal reserve district as of the first day of that calendar quarter, compounded quarterly as of the last day of that quarter; [AND

(ii) AFTER THE FIRST THREE YEARS AFTER A TAX BECOMES DELINQUENT, DOES NOT BEAR INTEREST;]

(2) the interest rate is 12 percent a year for

(A) delinquent fees payable under AS 05.15.095(c); and

(B) unclaimed property that is not timely paid or delivered, as allowed by AS 34.45.470(a).

* **Sec. 2.** AS 43.20.044(a) is amended to read:

(a) A taxpayer may apply as a credit against the tax levied under this chapter

(1) the exploration incentive credit authorized by AS 27.30;

(2) an alternative tax credit for oil and gas exploration earned by the taxpayer under AS 43.55.025 for exploration expenditures incurred for work performed on or after July 1, 2016.

* **Sec. 3.** AS 43.20.047(h) is amended to read:

(h) If the liquefied natural gas storage facility for which a credit was received under this section ceases commercial operation during the nine calendar years immediately following the calendar year in which the liquefied natural gas storage

1 facility commences commercial operation, the tax liability under this chapter of the
 2 person who claimed the credit shall be increased, and a person not subject to the tax
 3 under this chapter that received a payment under (d) or former [AND] (e) of this
 4 section shall be liable to the state in the amount determined in this subsection. The
 5 amount of the increase in tax liability or liability to the state

6 (1) for a person subject to the tax under this chapter, shall be
 7 determined and assessed for the taxable year in which the liquefied natural gas storage
 8 facility ceases commercial operation, regardless of whether the liquefied natural gas
 9 storage facility subsequently resumes commercial operation;

10 (2) for a person not subject to the tax due under this chapter, shall be
 11 determined and assessed as of December 31 of the calendar year in which the liquefied
 12 natural gas storage facility ceases commercial operation, regardless of whether the
 13 liquefied natural gas storage facility subsequently resumes commercial operation; and

14 (3) is equal to the total amount of the credit taken or received as a
 15 payment under (d) of this section, as applicable, multiplied by a fraction, the
 16 numerator of which is the difference between 10 and the number of calendar years for
 17 which the liquefied natural gas storage facility was eligible for a tax credit under this
 18 section and the denominator of which is 10.

19 * **Sec. 4.** AS 43.55.023(c) is amended to read:

20 (c) A credit or portion of a credit under this section

21 (1) may not be used to reduce a person's tax liability under
 22 AS 43.55.011(e) for any calendar year below zero;

23 (2) may, if [, AND ANY UNUSED CREDIT OR PORTION OF A
 24 CREDIT] not used under this subsection, [MAY] be applied in a later calendar year;

25 (3) may, regardless of when the credit was earned, be used to
 26 satisfy a tax, interest, penalty, fee, or other charge that

27 (A) is related to the tax due under this chapter for a prior
 28 year, except for a surcharge under AS 43.55.201 - 43.55.299 or 43.55.300
 29 or the tax levied by AS 43.55.011(i); and

30 (B) has not, for the purpose of art. IX, sec. 17(a),
 31 Constitution of the State of Alaska, been subject to an administrative

1 **proceeding or litigation.**

2 * **Sec. 5.** AS 43.55.023(d) is amended to read:

3 (d) A person that is entitled to take a tax credit under this section that wishes
 4 to transfer the unused credit to another person or, **for a credit for a lease expenditure**
 5 **incurred before January 1, 2018,** obtain a cash payment under AS 43.55.028 may
 6 apply to the department for a transferable tax credit certificate. An application under
 7 this subsection must be in a form prescribed by the department and must include
 8 supporting information and documentation that the department reasonably requires.
 9 The department shall grant or deny an application, or grant an application as to a lesser
 10 amount than that claimed and deny it as to the excess, not later than 120 days after the
 11 latest of (1) March 31 of the year following the calendar year in which the qualified
 12 capital expenditure or carried-forward annual loss for which the credit is claimed was
 13 incurred; (2) the date the statement required under AS 43.55.030(a) or (e) was filed for
 14 the calendar year in which the qualified capital expenditure or carried-forward annual
 15 loss for which the credit is claimed was incurred; or (3) the date the application was
 16 received by the department. If, based on the information then available to it, the
 17 department is reasonably satisfied that the applicant is entitled to a credit, the
 18 department shall issue the applicant a transferable tax credit certificate for the amount
 19 of the credit. A certificate issued under this subsection does not expire.

20 * **Sec. 6.** AS 43.55.023(d), as amended by sec. 5 of this Act, is amended to read:

21 (d) A person that is entitled to take a tax credit under this section that wishes
 22 to transfer the unused credit to another person [OR, FOR A CREDIT FOR A LEASE
 23 EXPENDITURE INCURRED BEFORE JANUARY 1, 2018, OBTAIN A CASH
 24 PAYMENT UNDER AS 43.55.028] may apply to the department for a transferable
 25 tax credit certificate. An application under this subsection must be in a form
 26 prescribed by the department and must include supporting information and
 27 documentation that the department reasonably requires. The department shall grant or
 28 deny an application, or grant an application as to a lesser amount than that claimed and
 29 deny it as to the excess, not later than 120 days after the latest of (1) March 31 of the
 30 year following the calendar year in which the qualified capital expenditure or carried-
 31 forward annual loss for which the credit is claimed was incurred; (2) the date the

statement required under AS 43.55.030(a) or (e) was filed for the calendar year in which the qualified capital expenditure or carried-forward annual loss for which the credit is claimed was incurred; or (3) the date the application was received by the department. If, based on the information then available to it, the department is reasonably satisfied that the applicant is entitled to a credit, the department shall issue the applicant a transferable tax credit certificate for the amount of the credit. A certificate issued under this subsection does not expire.

* **Sec. 7.** AS 43.55.023(e) is amended to read:

(e) A person to which a transferable tax credit certificate is issued under (d) of this section may transfer the certificate to another person, and a transferee may further transfer the certificate. Subject to the limitations set out in (a) - (d) of this section, and notwithstanding any action the department may take with respect to the applicant under (g) of this section, the owner of a certificate may apply the credit or a portion of the credit shown on the certificate

(1) [ONLY] against a tax levied by AS 43.55.011(e); **however** [HOWEVER], a credit shown on a transferable tax credit certificate may not be applied **under this paragraph** to reduce a transferee's total tax liability under AS 43.55.011(e) for oil and gas produced during a calendar year to less than 80 percent of the tax that would otherwise be due without applying that credit; **any** [ANY] portion of a credit not used under this **paragraph** [SUBSECTION] may be applied in a later period; **or**

(2) **regardless of when the credit was earned, to satisfy a tax, interest, penalty, fee, or other charge that**

(A) **is related to the tax due under this chapter, except for a surcharge under AS 43.55.201 - 43.55.299 or 43.55.300 or the tax levied by AS 43.55.011(i);**

(B) **is for a calendar year before the year in which the certificate is applied; and**

(C) **has not, for the purpose of art. IX, sec. 17(a), Constitution of the State of Alaska, been subject to an administrative proceeding or litigation.**

1 * **Sec. 8.** AS 43.55.023(g) is amended to read:

2 (g) The issuance of a transferable tax credit certificate under (d) of this section
3 or former (m) of this section [OR THE PURCHASE OF A CERTIFICATE UNDER
4 AS 43.55.028] does not limit the department's ability to later audit a tax credit claim to
5 which the certificate relates or to adjust the claim if the department determines, as a
6 result of the audit, that the applicant was not entitled to the amount of the credit for
7 which the certificate was issued. The tax liability of the applicant under
8 AS 43.55.011(e) and 43.55.017 - 43.55.180 is increased by the amount of the credit
9 that exceeds that to which the applicant was entitled, or the applicant's available valid
10 outstanding credits applicable against the tax levied by AS 43.55.011(e) are reduced
11 by that amount. If the applicant's tax liability is increased under this subsection, the
12 increase bears interest under AS 43.05.225 from the date the transferable tax credit
13 certificate was issued. For purposes of this subsection, an applicant that is an explorer
14 is considered a producer subject to the tax levied by AS 43.55.011(e).

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

16 (a) Subject to the terms and conditions of this section, a credit against the
17 [PRODUCTION] tax levied by AS 43.55.011(e) **or, if the credit is for exploration**
18 **expenditures incurred for work performed on or after July 1, 2016, against the**
19 **tax levied by AS 43.20** is allowed for exploration expenditures that qualify under (b)
20 of this section in an amount equal to one of the following:

- 21 (1) 30 percent of the total exploration expenditures that qualify only
22 under (b) and (c) of this section;
- 23 (2) 30 percent of the total exploration expenditures that qualify only
24 under (b) and (d) of this section;
- 25 (3) 40 percent of the total exploration expenditures that qualify under
26 (b), (c), and (d) of this section;
- 27 (4) 40 percent of the total exploration expenditures that qualify only
28 under (b) and (e) of this section;
- 29 (5) 80, 90, or 100 percent, or a lesser amount described in (l) of this
30 section, of the total exploration expenditures described in (b)(1) and (2) of this section
31 and not excluded by (b)(3) and (4) of this section that qualify only under (l) of this

1 section;

2 (6) the lesser of \$25,000,000 or 80 percent of the total exploration
3 drilling expenditures described in (m) of this section and that qualify under (b) and
4 (c)(1), (c)(2)(A), and (c)(2)(C) of this section; or

5 (7) the lesser of \$7,500,000 or 75 percent of the total seismic
6 exploration expenditures described in (n) of this section and that qualify under (b) of
7 this section.

8 * **Sec. 10.** AS 43.55.025(a), as amended by sec. 9 of this Act, is amended to read:

9 (a) Subject to the terms and conditions of this section, a credit against the tax
10 levied by AS 43.55.011(e) or, if the credit is for exploration expenditures incurred for
11 work performed on or after July 1, 2016, against the tax levied by AS 43.20 is allowed
12 for exploration expenditures that qualify under (b) of this section in an amount equal
13 to one of the following:

14 (1) 30 percent of the total exploration expenditures that qualify only
15 under (b) and (c) of this section;

16 (2) 30 percent of the total exploration expenditures that qualify only
17 under (b) and (d) of this section;

18 (3) 40 percent of the total exploration expenditures that qualify under
19 (b), (c), and (d) of this section;

20 (4) 40 percent of the total exploration expenditures that qualify only
21 under (b) and (e) of this section;

22 (5) 80, 90, or 100 percent, or a lesser amount described in (l) of this
23 section, of the total exploration expenditures described in **(b)(2) and (3)** [(b)(1) AND
24 (2)] of this section and not excluded by **(b)(4) and (5)** [(b)(3) AND (4)] of this section
25 that qualify only under (l) of this section;

26 (6) the lesser of \$25,000,000 or 80 percent of the total exploration
27 drilling expenditures described in (m) of this section and that qualify under (b) and
28 (c)(1), (c)(2)(A), and (c)(2)(C) of this section; or

29 (7) the lesser of \$7,500,000 or 75 percent of the total seismic
30 exploration expenditures described in (n) of this section and that qualify under (b) of
31 this section.

1 * **Sec. 11.** AS 43.55.025(b) is amended to read:

2 (b) To qualify for the production tax credit under (a) of this section, an
3 exploration expenditure

4 **(1)** must be incurred for work performed after June 30, 2008, and
5 before July 1, 2016, except that, [TO QUALIFY FOR THE PRODUCTION TAX
6 CREDIT UNDER (a)(1), (2), (3), OR (4) OF THIS SECTION] for exploration
7 conducted outside of the Cook Inlet sedimentary basin and south of 68 degrees North
8 latitude, **to qualify for the production tax credit under**

9 **(A) (a)(1), (2), or (3) of this section,** an exploration
10 expenditure must be incurred for work performed after June 30, 2008, and
11 before January 1, 2022; [,] and

12 **(B) (a)(4) of this section, an exploration expenditure must**
13 **be incurred for work performed after June 30, 2008, and before**
14 **January 1, 2018;**

15 **(2)** [(1)] may be for seismic or other geophysical exploration costs not
16 connected with a specific well;

17 **(3)** [(2)] if for an exploration well,

18 (A) must be incurred by an explorer that holds an interest in the
19 exploration well for which the production tax credit is claimed;

20 (B) may be for either a well that encounters an oil or gas
21 deposit or a dry hole;

22 (C) must be for a well that has been completed, suspended, or
23 abandoned at the time the explorer claims the tax credit under (f) of this
24 section; and

25 (D) must be for goods, services, or rentals of personal property
26 reasonably required for the surface preparation, drilling, casing, cementing,
27 and logging of an exploration well, and, in the case of a dry hole, for the
28 expenses required for abandonment if the well is abandoned within 18 months
29 after the date the well was spudded;

30 **(4)** [(3)] may not be for administration, supervision, engineering, or
31 lease operating costs; geological or management costs; community relations or

environmental costs; bonuses, taxes, or other payments to governments related to the well; costs, including repairs and replacements, arising from or associated with fraud, wilful misconduct, gross negligence, criminal negligence, or violation of law, including a violation of 33 U.S.C. 1319(c)(1) or 1321(b)(3) (Clean Water Act); or other costs that are generally recognized as indirect costs or financing costs; and

(5) [(4)] may not be incurred for an exploration well or seismic exploration that is included in a plan of exploration or a plan of development for any unit before May 14, 2003.

* **Sec. 12.** AS 43.55.025(f) is amended to read:

(f) For a production tax credit under this section,

(1) an explorer shall, in a form prescribed by the department and, except for a credit under (k) of this section, within six months of the completion of the exploration activity, claim the credit and submit information sufficient to demonstrate to the department's satisfaction that the claimed exploration expenditures qualify under this section; in addition, the explorer shall submit information necessary for the commissioner of natural resources to evaluate the validity of the explorer's compliance with the requirements of this section;

(2) an explorer shall agree, in writing,

(A) to notify the Department of Natural Resources, within 30 days after completion of seismic or geophysical data processing, completion of well drilling, or filing of a claim for credit, whichever is the latest, for which exploration costs are claimed, of the date of completion and submit a report to that department describing the processing sequence and providing a list of data sets available;

(B) to provide to the Department of Natural Resources, within 30 days after the date of a request, unless a longer period is provided by the Department of Natural Resources, specific data sets, ancillary data, and reports identified in (A) of this paragraph; in this subparagraph,

(i) a seismic or geophysical data set includes the data for an entire seismic survey, irrespective of whether the survey area covers nonstate land in addition to state land or land in a unit in

1 addition to land outside a unit;

2 (ii) well data include all analyses conducted on physical
3 material, and well logs collected from the well, results, and copies of
4 data collected and data analyses for the well, including well logs;
5 sample analyses; testing geophysical and velocity data including
6 seismic profiles and check shot surveys; testing data and analyses; age
7 data; geochemical analyses; and tangible material;

8 (C) that, notwithstanding any provision of AS 38, information
9 provided under this paragraph will be held confidential by the Department of
10 Natural Resources,

11 (i) in the case of well data, until the expiration of the
12 24-month period of confidentiality described in AS 31.05.035(c), at
13 which time the Department of Natural Resources will release the
14 information after 30 days' public notice unless, in the discretion of the
15 commissioner of natural resources, it is necessary to protect
16 information relating to the valuation of unleased acreage in the same
17 vicinity, or unless the well is on private land and the owner, including
18 the lessor but not the lessee, of the oil and gas resources has not given
19 permission to release the well data;

20 (ii) in the case of seismic or other geophysical data,
21 other than seismic data acquired by seismic exploration subject to (k) of
22 this section, for 10 years following the completion date, at which time
23 the Department of Natural Resources will release the information after
24 30 days' public notice, except as to seismic or other geophysical data
25 acquired from private land, unless the owner, including a lessor but not
26 a lessee, of the oil and gas resources in the private land gives
27 permission to release the seismic or other geophysical data associated
28 with the private land;

29 (iii) in the case of seismic data obtained by seismic
30 exploration subject to (k) of this section, only until the expiration of 30
31 days' public notice issued on or after the date the production tax credit

1 certificate is issued under (5) of this subsection;

2 (3) if more than one explorer holds an interest in a well or seismic
3 exploration, each explorer may claim an amount of credit that is proportional to the
4 explorer's cost incurred;

5 (4) the department may exercise the full extent of its powers as though
6 the explorer were a taxpayer under this title, in order to verify that the claimed
7 expenditures are qualified exploration expenditures under this section; and

8 (5) if the department is satisfied that the explorer's claimed
9 expenditures are qualified under this section and that all data required to be submitted
10 under this section have been submitted, the department shall issue to the explorer a
11 production tax credit certificate for the amount of credit to be allowed against
12 production taxes levied by AS 43.55.011(e) **and, if the credit is for exploration**
13 **expenditures incurred for work performed on or after July 1, 2016, against taxes**
14 **levied by AS 43.20**; notwithstanding any contrary provision of AS 38, AS 40.25.100,
15 or AS 43.05.230, the following information is not confidential:

16 (A) the explorer's name;

17 (B) the date of the application;

18 (C) the location of the well or seismic exploration;

19 (D) the date of the department's issuance of the certificate; and

20 (E) the date on which the information required to be submitted

21 under this section will be released.

22 * **Sec. 13.** AS 43.55.025(g) is amended to read:

23 (g) An explorer, other than an entity that is exempt from taxation under this
24 chapter, may transfer, convey, or sell its production tax credit certificate to any person,
25 and any person who receives a production tax credit certificate may also transfer,
26 convey, or sell the certificate. **A production tax credit certificate that is**
27 **transferred, conveyed, or sold under this section may not be applied against the**
28 **tax levied by AS 43.20.**

29 * **Sec. 14.** AS 43.55.025(h) is amended to read:

30 (h) A producer that purchases a production tax credit certificate may apply the
31 credits against its production tax levied by AS 43.55.011(e). Regardless of the price

the producer paid for the certificate, the producer may receive a credit against its production tax liability for the full amount of the credit, but for not more than the amount for which the certificate is issued. A production tax credit or a portion of a production tax credit or a production tax credit certificate or a portion of a production tax credit certificate allowed under this section

(1) may not be applied more than once;

(2) may be applied in a later calendar year;

(3) may, regardless of when the credit was earned, be used to satisfy a tax, interest, penalty, fee, or other charge that

(A) is related to the tax due under this chapter for a prior year, except for a surcharge under AS 43.55.201 - 43.55.299 or 43.55.300 or the tax levied by AS 43.55.011(i); and

(B) has not, for the purpose of art. IX, sec. 17(a), Constitution of the State of Alaska, been subject to an administrative proceeding or litigation.

* Sec. 15. AS 43.55.025(i) is amended to read:

(i) For a production tax credit under this section,

(1) a credit may not be applied to reduce a taxpayer's tax liability under AS 43.55.011(e) below zero for a calendar year;

(2) if the production tax credit is for exploration expenditures incurred for work performed on or after July 1, 2016, the explorer may apply the credit to reduce the explorer's tax liability under AS 43.20, except that the credit may not be applied to reduce the explorer's tax liability under AS 43.20 below zero for a tax year; and

(3) [(2)] an amount of the production tax credit in excess of the amount that may be applied for a calendar or tax year under this subsection may be carried forward and applied against the taxpayer's tax liability under AS 43.55.011(e) in one or more later calendar years or under AS 43.20 in one or more later tax years.

* Sec. 16. AS 43.55.025(k) is amended to read:

(k) Subject to the terms and conditions of this section, if a claim is filed under (f)(1) of this section before January 1, 2016, a credit against the production tax levied

by AS 43.55.011(e) is allowed in an amount equal to five percent of an eligible expenditure under this subsection incurred for seismic exploration performed before July 1, 2003. To be eligible under this subsection, an expenditure must

(1) have been for seismic exploration that

(A) obtained data that the commissioner of natural resources considers to be in the best interest of the state to acquire for public distribution; and

(B) was conducted outside the boundaries of a production unit; however, the amount of the expenditure that is otherwise eligible under this section is reduced proportionately by the portion of the seismic exploration activity that crossed into a production unit; and

(2) qualify under ~~(b)(4)~~ [(b)(3)] of this section.

* **Sec. 17.** AS 43.55.025 is amended by adding a new subsection to read:

(q) On the day on which an application for a tax credit certificate is submitted under (f) of this section, the department shall issue to the explorer a conditional tax credit certificate. A conditional tax credit certificate under this subsection

(1) may be used to apply for the purchase of a tax credit certificate under AS 43.55.028(e);

(2) may not be sold, transferred, or conveyed;

(3) has no value; and

(4) expires on the day on which the department issues a transferable tax credit certificate under (f) of this section.

* **Sec. 18.** AS 43.55.028(a) is amended to read:

(a) The oil and gas tax credit fund is established as a separate fund of the state. The purpose of the fund is to purchase transferable tax credit certificates issued under AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 and to pay refunds and payments claimed under AS 43.20.046, 43.20.047, or 43.20.053. **The oil and gas tax credit fund established under this subsection may not be used to purchase a tax credit certificate for a credit earned under this chapter for activity occurring on or after January 1, 2018.**

* **Sec. 19.** AS 43.55.028(e) is amended to read:

(e) The department, on the written application of a person to whom a transferable tax credit certificate has been issued under AS 43.55.023(d) or former AS 43.55.023(m) or to whom a production tax credit certificate has been issued under AS 43.55.025(f), may use available money in the oil and gas tax credit fund to purchase, in whole or in part, the certificate. **For purposes of this subsection, the department may, at the time of application, accept from an explorer a conditional tax credit certificate issued under AS 43.55.025(q); however, the department may not purchase a conditional tax credit certificate.** The department may not purchase a total of more than \$70,000,000 in tax credit certificates from a person in a calendar year. Before purchasing a certificate or part of a certificate, the department shall find that

(1) the calendar year of the purchase is not earlier than the first calendar year for which the credit shown on the certificate would otherwise be allowed to be applied against a tax;

(2) the application is not the result of the division of a single entity into multiple entities that would reasonably be expected to apply as a single entity if the \$70,000,000 limitation in this subsection did not exist;

(3) the applicant's total tax liability under AS 43.55.011(e), after application of all available tax credits, for the calendar year in which the application is made is zero;

(4) the applicant's average daily production of oil and gas taxable under AS 43.55.011(e) during the calendar year preceding the calendar year in which the application is made was not more than 50,000 BTU equivalent barrels; and

(5) the purchase is consistent with this section and regulations adopted under this section.

* **Sec. 20.** AS 43.55.028(e), as amended by sec. 19 of this Act, is amended to read:

(e) The department, on the written application of a person to whom a transferable tax credit certificate has been issued under AS 43.55.023(d) or former AS 43.55.023(m) **for an expenditure incurred before January 1, 2018,** or to whom a production tax credit certificate has been issued under AS 43.55.025(f) **for an expenditure incurred before January 1, 2018,** may use available money in the oil

1 and gas tax credit fund to purchase, in whole or in part, the certificate. For purposes of
 2 this subsection, the department may, at the time of application, accept from an
 3 explorer a conditional tax credit certificate issued under AS 43.55.025(q); however,
 4 the department may not purchase a conditional tax credit certificate. The department
 5 may not purchase a total of more than \$70,000,000 in tax credit certificates from a
 6 person in a calendar year. Before purchasing a certificate or part of a certificate, the
 7 department shall find that

8 (1) the calendar year of the purchase is not earlier than the first
 9 calendar year for which the credit shown on the certificate would otherwise be allowed
 10 to be applied against a tax;

11 (2) the application is not the result of the division of a single entity into
 12 multiple entities that would reasonably be expected to apply as a single entity if the
 13 \$70,000,000 limitation in this subsection did not exist;

14 (3) the applicant's total tax liability under AS 43.55.011(e), after
 15 application of all available tax credits, for the calendar year in which the application is
 16 made is zero;

17 (4) the applicant's average daily production of oil and gas taxable
 18 under AS 43.55.011(e) during the calendar year preceding the calendar year in which
 19 the application is made was not more than 50,000 BTU equivalent barrels; and

20 (5) the purchase is consistent with this section and regulations adopted
 21 under this section.

22 * **Sec. 21.** AS 43.55.029(a) is amended to read:

23 (a) An explorer or producer that has applied for a production tax credit under
 24 AS 43.55.023(a) or (l) [AS 43.55.023(a), (b), OR (l)] or 43.55.025(a) may make a
 25 present assignment of the production tax credit certificate expected to be issued by the
 26 department to a third-party assignee. The assignment may be made either at the time
 27 the application is filed with the department or not later than 30 days after the date of
 28 filing with the department. Once a notice of assignment in compliance with this
 29 section is filed with the department, the assignment is irrevocable and cannot be
 30 modified by the explorer or producer without the written consent of the assignee
 31 named in the assignment. If a production tax credit certificate is issued to the explorer

or producer, the notice of assignment remains effective and shall be filed with the department by the explorer or producer together with any application for the department to purchase the certificate under AS 43.55.028(e).

* **Sec. 22.** AS 43.55.160(d) is amended to read:

(d) Irrespective of whether a producer produces taxable oil or gas during a calendar year or month, the producer is considered to have generated a positive production tax value if a calculation described in (a) of this section yields a positive number because the producer's adjusted lease expenditures for a calendar year under AS 43.55.165 and 43.55.170 are less than zero as a result of the producer's receiving a payment or credit under AS 43.55.170. An explorer that has [TAKEN A TAX CREDIT UNDER AS 43.55.023(b) OR THAT HAS] obtained a transferable tax credit certificate under AS 43.55.023(d) for the amount of a tax credit under **former** AS 43.55.023(b) is considered a producer, subject to the tax levied **by** [UNDER] AS 43.55.011(e), to the extent that the explorer generates a positive production tax value as the result of the explorer's receiving a payment or credit under AS 43.55.170.

* **Sec. 23.** AS 43.55.160(e) is amended to read:

(e) Any adjusted lease expenditures under AS 43.55.165 and 43.55.170 **incurred to explore for, develop, or produce oil or gas from a lease or property outside the Cook Inlet sedimentary basin** that would otherwise be deductible by a producer in a calendar year but whose deduction would cause an annual production tax value calculated under (a)(1) or (h) of this section of taxable oil or gas produced during the calendar year to be less than zero may be used to establish a carried-forward annual loss under **AS 43.55.165(a)(3). A reduction under (f) or (g) of this section must be added back to the calculation of production tax values for that calendar year before the determination of a carried-forward annual loss under this subsection** [AS 43.55.023(b)]. However, the department shall provide by regulation a method to ensure that, for a period for which a producer's tax liability is limited by **AS 43.55.011(o) or (p)** [AS 43.55.011(j), (k), (o), OR (p)], any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that would otherwise be deductible by a producer for that period but whose deduction would cause a production tax value calculated under **(a)(1)(E) or (F) or (h)(3)** [(a)(1)(C), (D), (E),

OR (F), OR (h)(3)] of this section to be less than zero are accounted for as though the adjusted lease expenditures had first been used as deductions in calculating the production tax values of oil or gas subject to any of the limitations under AS 43.55.011(o) or (p) [AS 43.55.011(j), (k), (o), OR (p)] that have positive production tax values so as to reduce the tax liability calculated without regard to the limitation to the maximum amount provided for under the applicable provision of AS 43.55.011(o) or (p) [AS 43.55.011(j), (k), (o), OR (p)]. Only the amount of those adjusted lease expenditures remaining after the accounting provided for under this subsection may be used to establish a carried-forward annual loss under AS 43.55.165(a)(3) [AS 43.55.023(b)]. In this subsection, "producer" includes "explorer."

* **Sec. 24.** AS 43.55.165(a), as amended by sec. 29, ch. 4, 4SSLA 2016, is amended to read:

(a) For purposes of this chapter, a producer's lease expenditures for a calendar year are

(1) costs, other than items listed in (e) of this section, that are

(A) incurred by the producer during the calendar year after March 31, 2006, to explore for, develop, or produce oil or gas deposits located within the producer's leases or properties in the state or, in the case of land in which the producer does not own an operating right, operating interest, or working interest, to explore for oil or gas deposits within other land in the state; and

(B) allowed by the department by regulation, based on the department's determination that the costs satisfy the following three requirements:

(i) the costs must be incurred upstream of the point of production of oil and gas;

(ii) the costs must be ordinary and necessary costs of exploring for, developing, or producing, as applicable, oil or gas deposits; and

(iii) the costs must be direct costs of exploring for, developing, or producing, as applicable, oil or gas deposits; [AND]

(2) a reasonable allowance for that calendar year, as determined under regulations adopted by the department, for overhead expenses that are directly related to exploring for, developing, or producing, as applicable, the oil or gas deposits; **and**

(3) lease expenditures incurred in a previous calendar year, subject to (m) and (n) of this section, that

(A) met the requirements of AS 43.55.160(e) in the year in which the lease expenditures were incurred;

(B) have not been deducted in the determination of the production tax value of oil and gas under AS 43.55.160(a) or (h) in a previous calendar year;

(C) were not the basis of a credit under this title; and

(D) were incurred to explore for, develop, or produce an oil or gas deposit located in the state outside the Cook Inlet sedimentary basin.

* **Sec. 25.** AS 43.55.165(f) is amended to read:

(f) For purposes of AS 43.55.023(a) [AND (b)] and only as to expenditures incurred to explore for an oil or gas deposit located within land in which an explorer does not own a working interest, the term "producer" in this section includes "explorer."

* **Sec. 26.** AS 43.55.165(l) is amended by adding a new paragraph to read:

(4) "carried-forward annual loss" means a loss established under (a)(3) of this section.

* **Sec. 27.** AS 43.55.165 is amended by adding new subsections to read:

(m) In a calendar year, after application of a producer's lease expenditures that are incurred in that calendar year, the producer may choose to apply all or a portion of a carried-forward annual loss or carry any unused portion forward. The department may not require a producer to apply all or a portion of a carried-forward annual loss in a calendar year.

(n) During a calendar year in which a taxpayer's liability under AS 43.55.011(e) is determined under AS 43.55.011(f), the maximum amount of carried-forward annual loss that a taxpayer may apply in that year is equal to the

amount, when combined with the lease expenditures of the current year and any credits under this chapter, necessary to reduce the amount calculated under AS 43.55.011(e) to the equivalent amount of tax due under AS 43.55.011(f) before the application of any credits under this chapter. An amount of carried-forward annual loss not applied under this subsection may continue to be carried forward.

* **Sec. 28.** AS 43.55.170(c) is amended to read:

(c) For purposes of AS 43.55.023(a) [AND (b)] and only as to expenditures incurred to explore for an oil or gas deposit located within land in which an explorer does not own a working interest, the term "producer" in this section includes "explorer."

* **Sec. 29.** AS 43.55.023(b) is repealed January 1, 2018.

* **Sec. 30.** AS 43.05.230(l); AS 43.20.046(e), 43.20.047(e), 43.20.053(e); AS 43.55.028, and 43.55.029 are repealed.

* **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY: TAX CREDITS UNDER AS 43.55.025 APPLIED AGAINST TAX DUE UNDER AS 43.20. AS 43.20.044(a), as amended by sec. 2 of this Act, and AS 43.55.025(a), (f), and (i), as amended by secs. 9, 12, and 15 of this Act, apply to a tax credit that has been earned under AS 43.55.025 for work performed on or after July 1, 2016.

* **Sec. 32.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY: TAX CREDIT AND CREDIT CERTIFICATE CARRYBACK. AS 43.55.023(c), as amended by sec. 4 of this Act, AS 43.55.023(e), as amended by sec. 7 of this Act, and AS 43.55.025(h), as amended by sec. 14 of this Act, apply to a tax credit earned or transferable tax credit certificate issued under AS 43.55.023 or a production tax credit certificate issued under AS 43.55.025(f), regardless of when the credit was earned or the certificate was issued.

* **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY: LEASE EXPENDITURES. AS 43.55.165(a)(3) and 43.55.165(m) and (n), added by secs. 24 and 27 of this Act, apply to a lease expenditure incurred on or after

1 the effective date of secs. 24 and 27 of this Act.

2 * **Sec. 34.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 TRANSITION: INTEREST ON DELINQUENT TAXES. Notwithstanding the
5 effective date of sec. 1 of this Act, a delinquent tax under AS 43.55 bears interest in each
6 calendar quarter of 2017 as provided under AS 43.05.225(1) as that paragraph read on the day
7 before the effective date of sec. 1 of this Act.

8 * **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITION: PUBLIC INFORMATION UNDER AS 43.05.230(l).
11 Notwithstanding the repeal of AS 43.05.230(l) by sec. 30 of this Act, on April 30 of the year
12 following the calendar year in which sec. 30 of this Act takes effect, the Department of
13 Revenue shall make public the information required under AS 43.05.230(l), as that section
14 read on the day before the effective date of sec. 30 of this Act.

15 * **Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 TRANSITION: CARRIED-FORWARD ANNUAL LOSSES. (a) Notwithstanding the
18 repeal of AS 43.55.023(b) by sec. 29 of this Act and the amendments to AS 43.55.160(d) and
19 (e), 43.55.165(f), and 43.55.170(c) by secs. 22, 23, 25, and 28 of this Act, a taxpayer who
20 incurs a carried-forward annual loss before the repeal of AS 43.55.023(b) by sec. 29 of this
21 Act that qualifies for a carried-forward annual loss credit under AS 43.55.023(b) may apply
22 for a credit or tax credit certificate under AS 43.55.023(d), subject to the requirements of
23 AS 43.55.160(d) and (e), as those subsections read on the day before the repeal of
24 AS 43.55.023(b) by sec. 29 of this Act.

25 (b) The Department of Revenue may continue to apply and enforce AS 43.55.023(b),
26 as that subsection read on the day before the repeal of AS 43.55.023(b) by sec. 29 of this Act,
27 for a carried-forward annual loss incurred before the repeal of AS 43.55.023(b) by sec. 29 of
28 this Act.

29 * **Sec. 37.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TRANSITION: OIL AND GAS CREDIT FUND. Subject to appropriation, the

1 balance of the oil and gas tax credit fund created under AS 43.55.028(a) and repealed by sec.
2 30 of this Act lapses into the general fund.

3 * **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 TRANSITION: RETROACTIVITY OF REGULATIONS. Notwithstanding any
6 contrary provision of AS 44.62.240, if the Department of Revenue expressly designates in a
7 regulation that the regulation applies retroactively, a regulation adopted by the Department of
8 Revenue to implement, interpret, make specific, or otherwise carry out this Act may apply
9 retroactively to the effective date of the law implemented by the regulation.

10 * **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 CONDITIONAL EFFECT; NOTIFICATION. (a) Sections 3, 6, 8, 30, 35, and 37 of
13 this Act take effect only if the commissioner of revenue notifies the revisor of statutes in
14 writing as required under (b) of this section.

15 (b) The commissioner of revenue shall notify the revisor of statutes in writing when

16 (1) there are no outstanding applications for purchase of tax credit certificates
17 or claims for refunds or payments for which payment has not been made under
18 AS 43.55.028(e); and

19 (2) it has been at least one year since a person has applied for a purchase,
20 payment, or refund under AS 43.55.028.

21 (c) In this section,

22 (1) "claim for refund or payment" means a refund and payment claimed under
23 AS 43.20.046, 43.20.047, or 43.20.053 subject to payment under AS 43.55.028;

24 (2) "tax credit certificate" means a transferable tax credit certificate issued
25 under AS 43.55.023 or a production tax credit certificate issued under AS 43.55.025 subject
26 to purchase under AS 43.55.028.

27 * **Sec. 40.** Sections 2, 4, 7, 9, 12 - 15, 17, 19, 31, 32, 38, and 39 of this Act take effect
28 immediately under AS 01.10.070(c).

29 * **Sec. 41.** Section 24 of this Act takes effect on the effective date of sec. 29, ch. 4, 4SSLA
30 2016.

31 * **Sec. 42.** If, under sec. 39 of this Act, secs. 3, 6, 8, 30, 35, and 37 of this Act take effect,

1 they take effect on the later of
2 (1) January 1, 2022; or
3 (2) January 1 of the calendar year following the year of notice under sec. 39 of
4 this Act.
5 * **Sec. 43.** Except as provided in secs. 40 - 42 of this Act, this Act takes effect January 1,
6 2018.