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of the Governor

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1 IN THE SENATE

BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR HOUSE CS FOR CS FOR SENATE BILL NO. 238

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to oil and gas taxation; and providing
7 for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

10 Sec. 43.55.011. OIL PRODUCTION TAX. (a) There is levied upon the
11 producer of oil a tax for all oil produced from each lease or property
12 in the state, less any oil the ownership or right to which is exempt
13 from taxation. The tax is equal to either the percentage-of-value
14 amount calculated under (b) of this section or the cents-per-barrel
15 amount calculated under (c) of this section, whichever is greater,
16 multiplied by the economic limit factor determined for the oil produc-
17 tion of the lease or property under sec. 13 of this chapter. If the
18 amounts calculated under (b) and (c) of this section are equal, the
19 amount calculated under (b) of this section shall be treated as if it
20 were the greater for purposes of this section.

21 (b) The percentage-of-value amount equals 12.25 per cent of the
22 gross value at the point of production of taxable oil produced from the
23 lease or property.

24 (c) The cents-per-barrel amount equals \$0.60 per barrel of taxable
25 old crude oil produced from the lease or property, and \$0.80 per barrel
26 for all other taxable oil produced from the lease or property, both as
27 adjusted by sec. 12 of this chapter.

28 (d) When the cents-per-barrel amount calculated under (c) of this
29 section is greater than the percentage-of-value amount calculated under

1 (b) of this section, and payment by the state to the Alaska Native fund
2 out of the state's royalties on that oil is required under the revenue
3 sharing provisions of sec. 9 of the Alaska Native Claims Settlement Act
4 (P.L. 92-203, 85 Stat. 688, 43 U.S.C. 1601 et seq.), that payment shall
5 be not less than \$.05 for each taxable barrel of oil produced until all
6 amounts paid in the fund equal \$500,000,000.

7 Sec. 43.55.012. ADJUSTMENT IN TAX RATES. (a) Before January 1 of
8 each year the department shall review the prices received for crude oil
9 or gas produced in Alaska, the value of that oil or gas, and the general
10 level of prices in Alaska and the nation, and submit a written report of
11 this review to the governor with the department's recommendations for
12 changes in the amounts set out in sec. 11(c) and 16(c) of this chapter.
13 The governor shall, within 30 days of receiving the department's report,
14 submit the proposed changes to the amounts in sec. 11(c) and 16(c) of
15 this chapter to the legislature.

16 (b) The cents-per-barrel amount set out in sec. 11(c) of this
17 chapter as adjusted by (a) of this section applies to oil of 27 degrees
18 API gravity. For each degree of API gravity less than 27 degrees the
19 cents-per-barrel amount shall be reduced by \$.005 and for each degree of
20 API gravity greater than 27 degrees the cents-per-barrel amount shall be
21 increased by \$.005 except that oil above 40 degrees API gravity shall be
22 taxed as 40 degree oil. In applying the gravity adjustment under this
23 subsection, fractional degrees of API gravity shall be disregarded.

24 Sec. 43.55.013. ECONOMIC LIMIT FACTOR. (a) The economic limit
25 factor for old crude oil production of a lease or property equals one
26 minus the ratio of the monthly production rate at the economic limit to
27 the production during the month for which the tax is to be paid.

28 (b) The economic limit factor for oil production of a lease or
29 property other than old crude oil equals:

1 maintenance, and wages and benefits of employees working on the produc-
2 tion operations. Additional direct operating costs not listed in this
3 section may be included only after their inclusion in a regulation
4 adopted by the department. The direct operating costs do not include
5 capital expenditures, tangible or intangible drilling expenses, costs of
6 well workovers, costs for replacement or repairs (other than routine
7 maintenance), depreciation or amortization, taxes, insurance, overhead,
8 money paid or set aside (or booked as being paid or set aside) to cover
9 the cost of terminating the oil production operations of the lease or
10 property, or any other cost not directly related to the oil production
11 operations of the lease or property.

12 (f) For the purpose of calculating the economic limit, the value
13 at the point of production of oil produced from the lease or property
14 shall be determined on the basis of the acquisition cost C.I.F. at West
15 Coast refineries for imported oil of like quality, minus the reasonable
16 cost of transportation between the point of production of the oil from
17 the lease or property and those West Coast refineries.

18 (g) Before February 15 of each year or within six months after
19 commencement of production for a lease or property the department shall
20 notify the producer of gas of the monthly production rate at the eco-
21 nomic limit for each lease or property within the state for that year.
22 The monthly production rate at the economic limit for a lease or pro-
23 perty shall be determined at a formal hearing under AS 43.05.240 and
24 must be established by clear and convincing evidence presented by the
25 taxpayer at that hearing. The monthly production rate at the economic
26 limit for the lease or property based upon the clear and convincing
27 evidence of the taxpayer shall be calculated by dividing the value
28 determined under (i) of this section into the average monthly direct
29 operating cost determined under (h) of this section.

1 (h) The average monthly direct operating cost for gas production
2 operations of the lease or property shall be determined based on a
3 period of not less than four consecutive months. The direct operating
4 costs include only royalty, production supplies, purchased fuel, routine
5 maintenance, and wages and benefits of employees working on the
6 production operations. Additional direct operating costs not listed in
7 this section may be included only after their inclusion in a regulation
8 adopted by the department. The direct operating costs do not include
9 capital expenditures, tangible or intangible drilling expenses, costs of
10 well workovers, costs for replacement or repairs (other than routine
11 maintenance), depreciation or amortization, taxes, insurance, overhead,
12 monies paid or set aside (or booked as being paid or set aside) to cover
13 the cost of terminating the gas production operations of the lease or
14 property, or any other cost not directly related to the gas production
15 operations of the lease or property.

16 (i) For the purpose of calculating the economic limit, the value
17 at the point of production of gas produced from the lease or property
18 shall be determined on the basis of the highest price paid for gas of
19 like quality and pressure in the same field.

20 (j) The department may aggregate two or more leases or properties
21 (or portions of them), for purposes of determining economic limit factors
22 under this section and applying them to sec. 11 or sec. 16 of this chap-
23 ter, when economically interdependent oil or gas production operations
24 are not confined to a single lease or property. The department may also
25 segregate a lease or property into two or more parts, for purposes of
26 determining economic limit factors under this section and applying them
27 under sec. 11 or sec. 16 of this chapter, when two or more economically
28 independent oil or gas production operations are being conducted on it,
29 or when old crude oil is produced from the same lease or property as

1 other oil.

2 (k) A determination of the monthly production rate at the economic
3 limit for a lease or property is retroactive to January 1 of the current
4 year. For production of a lease or property commencing after January 1,
5 the determination of the monthly production rate at the economic limit
6 for that lease or property made within six months after the commencement
7 of production is retroactive to the commencement of production.

8 Sec. 43.55.016. GAS PRODUCTION TAX. (a) There is levied upon the
9 producer of gas a tax for all gas produced from each lease or property
10 in the state, less any gas the ownership or right to which is exempt
11 from taxation. The tax is equal to either the percentage-of-value
12 amount calculated under (b) of this section or the cents-per-Mcf amount
13 calculated under (c) of this section, whichever is greater, multiplied
14 by the economic limit factor determined for gas production of the lease
15 or property under sec. 13 of this chapter. If the amounts calculated
16 under (b) and (c) of this section are equal, the amount calculated under
17 (b) of this section shall be treated as if it were the greater for
18 purposes of this section.

19 (b) The percentage-of-value amount equals 10 per cent of the gross
20 value at the point of production of the taxable gas produced from the
21 lease or property.

22 (c) The cents-per-Mcf amount equals \$.064 per thousand cubic feet
23 of taxable gas produced from the lease or property as adjusted by sec.
24 12 of this chapter.

25 Sec. 43.55.017. RELATION TO OTHER TAXES. (a) Except as provided
26 in this chapter and in ch. 58 of this title, the taxes imposed by this
27 chapter are in place of all taxes now imposed by the state or any of its
28 municipalities, and neither the state nor a municipality may impose a
29 tax upon

1 (1) producing oil or gas leases;
2 (2) oil or gas produced or extracted in the state;
3 (3) the value of intangible drilling and exploration expen-
4 ses.

5 (b) The taxes imposed by this chapter are in place of all taxes
6 imposed by a municipality upon oil or gas in place or nonproducing oil
7 or gas leases or properties.

8 (c) The taxes imposed by this chapter are not in place of the tax
9 imposed by ch. 57 of this title or income taxes, franchise taxes or
10 taxes upon the retail sale of oil or gas products.

11 * Sec. 2. AS 43.55.020(a) is amended to read:

12 (a) The gross production tax on oil or gas shall be paid monthly.
13 The tax is due on the 20th [LAST] day of each calendar month on oil or
14 gas produced [REMOVED OR SOLD] from each lease or property during the
15 preceding month. If the tax is not paid before the end of the month in
16 which it becomes due, the tax becomes delinquent.

17 * Sec. 3. AS 43.55.020(e) is amended to read:

18 (e) Gas produced in excess of that needed for safety purposes
19 [AND USED], except gas used in the operation of a lease or property in
20 drilling for or producing oil or gas, or for repressuring, is considered,
21 for the purpose of this chapter and in the amount used, as gas produced
22 [REMOVED OR SOLD] from a lease or property. Gas flared beyond the
23 amount authorized for safety by the Department of Natural Resources
24 under AS 31.05.170(11)(H) is considered as gas produced, except that it
25 is subject to a penalty equal to the tax computed under sec. 16 of this
26 chapter as adjusted by sec. 12 of this chapter per thousand cubic feet
27 of gas for the month in which the gas was flared.

28 * Sec. 4. AS 43.55.030(a)(1) is amended to read:

29 (1) a description of the lease or property from which the oil

1 or gas was produced [REMOVED OR SOLD], by name, legal description, lease
2 number or by accounting code numbers assigned by the department;

3 * Sec. 5. AS 43.55.030(a)(3) is amended to read:

4 (3) the gross amount of oil or gas produced [REMOVED OR SOLD]
5 from the lease or property, and the percentage of the gross amount owned
6 by each producer for whom the tax is paid;

7 * Sec. 6. AS 43.55.030(a)(4) is amended to read:

8 (4) the total value of the oil or gas produced [REMOVED OR
9 SOLD] from the lease or property owned by each producer for whom the tax
10 is paid; and

11 * Sec. 7. AS 43.55.140 is amended by adding new paragraphs to read:

12 (12) "gross value at the point of production" means

13 (A) for oil, the value of the oil at the point where it
14 is metered or measured (by automatic custody transfer meter, tank
15 gauge, or other method approved by the commissioner) in a condition
16 of pipeline quality on the premises of the lease or property from
17 which it is recovered; however, if the oil is not of pipeline
18 quality when it is removed from the premises of the lease or pro-
19 perty from which it is recovered, or if the oil recovered from a
20 lease or property is not metered or measured (by automatic custody
21 transfer meter, tank gauge, or other method approved by the com-
22 missioner) on the premises of the lease or property from which it
23 is recovered, then the gross value at the point of production is
24 the value of that oil at the off-premises location where the oil is
25 first metered or measured (by automatic custody transfer meter,
26 tank gauge, or other method approved by the commissioner) in a
27 condition of pipeline quality;

28 (B) for gas recovered from or in association with oil,
29 the value of the gas at the point where it is accurately metered or

1 measured after separation from the oil; for gas run through a gas
2 processing plant, the gross value at the point of production is the
3 full consideration received by the producer for the gas if sold in
4 an arm's length transaction or, in the absence of an arm's length
5 transaction, is the sum of the value of the liquids extracted from
6 the gas at the plant and the value of the residue gas, less a
7 reasonable allowance for processing the gas at the plant and for
8 transporting the gas to the plant from the premises upon which the
9 oil production operation is conducted; and

10 (C) for gas not recovered from or in association with
11 oil, the value of the gas at the point where it is accurately
12 metered or measured or the value of the gas at the point of sale,
13 if any, on the premises of the lease or property from which the gas
14 is recovered, whichever is the higher value; for gas run through a
15 gas processing plant, the gross value at the point of production is
16 the full consideration received by the producer for the gas if sold
17 in an arm's length transaction or, in the absence of an arm's
18 length transaction, is the sum of the value of the liquids ex-
19 tracted from the gas at the plant and the value of the residue gas,
20 less a reasonable allowance for processing the gas at the plant and
21 for transporting the gas to the plant from the point where it was
22 accurately metered or measured;

23 (13) "oil production operation" means the operation by which
24 oil is recovered from a lease or property and rendered into oil of
25 pipeline quality, and includes any gathering done before the oil is
26 finally rendered into oil of pipeline quality;

27 (14) "pipeline quality" means good and merchantable condi-
28 tion;

29 (15) "well days" means the number of days in which a well is

1 operating during a month;

2 (16) "old crude oil" means crude oil production classified
3 as "old crude oil" in 10 CFR Chapter II Part 212-72 on May 1, 1977, and
4 which is also classified as "old crude oil" on the date of production.

5 * Sec. 8. AS 43.56.210(6) is amended to read:

6 (6) "taxable property" means real and tangible personal
7 property used or committed by contract or other agreement for use within
8 this state primarily in the exploration for, production of, or pipeline
9 transportation of gas or unrefined oil (except for property used solely
10 for the retail distribution or liquefaction of natural gas), or in the
11 operation or maintenance of facilities used in the exploration for,
12 production of, or pipeline transportation of gas or unrefined oil, in-
13 cluding machinery, appliances, supplies, equipment, drilling rigs, wells
14 (whether producing or not), gathering lines and transmission lines,
15 pumping stations, compressor stations, power plants, topping plants,
16 processing units, roads, tank farms, tanker terminals, docks and other
17 port facilities, air strips and communication equipment and facilities,
18 maintenance equipment and facilities, and maintenance camps and other
19 related facilities; "taxable property" does not include permanent
20 residences, office buildings requiring substantial local government
21 services, or oil and gas pipeline systems owned and operated by a certi-
22 ficated public utility [AS UTILITIES AND] regulated by the Alaska Public
23 Utilities Commission;

24 * Sec. 9. AS 43.55.010, 43.55.015 and 43.55.140(10) and (11) are re-
25 pealed.

26 * Sec. 10. (a) If a court of competent jurisdiction invalidates the
27 differential economic limit factor computation under AS 43.55.013(a) and (b),
28 the economic limit factor contained in (b) of that section shall be used for
29 computation of the economic limit for all oil.

1 (b) If a court of competent jurisdiction invalidates the differential
2 cents-per-barrel amounts set out in AS 43.55.011(c), then the cents-per-
3 barrel amount under that section shall be \$0.80 per barrel for all crude oil.

4 * Sec. 11. This Act applies to production during the month of July, 1977
5 and succeeding months.

6 * Sec. 12. This Act takes effect July 1, 1977.
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