

SB

305

(FILE 18)

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March 22, 2006

The Honorable Tom Wagoner
Chair, Senate Resources Committee
State Capitol, Room 427
Juneau, AK 99801

Re: CS for SB 305

Dear Senator Wagoner,

As we discussed last night, one of the amendments currently being considered by the Senate Resources Committee concerns the powers of the state to audit transfer prices. A related part of the amendment seeks to impose a 20% penalty for a taxpayer failing to provide contemporaneous documentation in connection with a transfer-pricing audit.

While we appreciate the committee's concern about mechanisms to deal with this issue, we do not believe that the proposed audit amendments are necessary to the successful administration of the Petroleum Production Tax (PPT). The audit mechanisms in place have proven adequate and successful over the years.

Further, the consideration of this issue appears to be distracting focus from the goal of passing a PPT which is so critical to Alaska's future. We respectfully suggest that these audit amendments be removed from consideration.

Thank you for your consideration and hard work.

Sincerely,

A handwritten signature in cursive script that reads "James F. Clark".

James F. Clark
Chief of Staff

ALASKA STATE LEGISLATURE



Official Business

SENATE RESOURCES COMMITTEE

Senator Tom Wagoner, Chair

State Capitol, Room 427

Juneau, AK 99801-1182

Phone: (907) 465-4907 Fax: (907) 465-4779

Senator Ralph Seekins, Vice-Chair

Senator Ben Stevens

Senator Kim Elton

Senator Fred Dyson

Senator Bert Stedman

Senator Albert Kookesh

DATE: March 22, 2006

TO: Resource Committee Members

FROM: Senator Tom Wagoner, Chair 

RE: Amendments for SB 305 – today

Attached, find the packets for Technical Amendment #1 and #2 and the Administrative Amendment.

You will note that they correspond to the information you received on Monday, where we asked Jack Chenoweth to prepare amendments to the bill.

I would appreciate your reviewing these two amendment packets to determine if we have already taken care of an amendment that you were thinking of offering.

It will cut down on the time required in my office to double check all the amendments and see whether there are duplicates and will also cut down on the committee's time.

If you turn in duplicative amendments, I will have to either rule that they are not in order, or I will ask that you withdraw them.

I would rather have the committee's time spent on the substantive issues.

Thank you for helping out in this process.

SB 305

Technical Amendment # 1

This amendment refers to the following items (cross-reference to 3-20-06 "Y" Version Amendments)

The items are:

4, 6, 7, 9, 10, 13 & 22, 14, 15, 17, 19, 20, 21, 22 & 13

NOTE:

- Page 2, this is to be inserted following the second "is"
- Page 2, line, 13 ... this should read "transferee's"
- Page 3, lines 8-15: Administration is checking on whether they still need this section (item #6)

TECHNICAL #1

24-GS2052Y.34
Chenoweth
3.21/06

AMENDMENT

OFFERED IN THE SENATE - WAGONER
TO: CSSB 305(RES), Draft Version "Y"

- 1 Page 5, line 19, following "owner:":
- 2 Insert "and"
- 3
- 4 Page 5, line 20:
- 5 Delete "except as provided in (4) of this subsection."
- 6
- 7 Page 5, line 26:
- 8 Delete "; and"
- 9 Insert "."
- 10
- 11 Page 5, lines 27 - 29:
- 12 Delete all material.
- 13
- 14 Page 7, lines 16 - 23:
- 15 Delete all material.
- 16 Insert "Notwithstanding any contrary provision of AS 43.05.280, interest on an
- 17 overpayment is allowed only from a date that is 90 days after the last day of the third month
- 18 following the calendar quarter of production, as described in this subsection, and interest is
- 19 not allowed if the overpayment was refunded within the 90-day period. In addition, the
- 20 producer shall comply with the requirements of AS 43.55.030(a) and 43.55.030(e). In this
- 21 subsection, "calendar quarter" means each of the three-month periods ending March 31,
- 22 June 30, September 30, and December 31."
- 23

#4

#6

the second

1 Page 8, line 21, following "is":

2 Insert "produced and"

3

4 Page 11, lines 7 - 23:

5 Delete all material and insert:

6 (e) A person to which a transferable tax credit certificate is issued under (d)
 7 of this section may transfer the certificate to another person, and a transferee may
 8 further transfer the certificate. Subject to the limitations set out in (a) - (c) of this
 9 section, and notwithstanding any action the department may take with respect to the
 10 applicant under (f) of this section, the owner of a certificate may apply the credit or a
 11 portion of the credit shown on the certificate only against a tax due under
 12 AS 43.55.011(e). However, a credit shown on a transferable tax credit certificate may
 13 not be applied to reduce a ~~transferer's~~ ^{TRANSFEEE'S} total tax due under AS 43.55.011(e) on oil and
 14 gas produced during a calendar year to less than 80 percent of the tax that would
 15 otherwise be due without applying that credit. Any portion of a credit not used under
 16 this subsection may be applied in a later period."

17
18 Reletter the following subsections accordingly.

19
20 Page 12, line 21:

21 Delete "(A)"

22
23 Page 12, line 22, following "service":

24 Insert "economically"

25
26 Page 12, line 24:

27 Delete "similar"

28 Insert "any successor"

29 Delete "; or"

30 Insert "."

31

1 Page 12, lines 25 - 29:

2 Delete all material.

3

4 Page 13, line 2:

#4
5 Delete "(i)"

6 Insert "(h)"

7

8 Page 15, lines 4 - 7:

#6
9 Delete all material and insert:

10 (c) In addition to other required information, the producer shall file a
11 statement, on or before the last day of each calendar quarter of a year, showing any
12 adjustments or corrections to the statements that were required under (a) of this section
13 to be filed for the three months of the preceding calendar year during which the oil or
14 gas was produced. In this subsection, "calendar quarter" means each of the three-
15 month periods ending March 31, June 30, September 30, and December 31."

16

#15
17 Page 16, line 26:

18 Delete "or"

19

20 Page 16, line 29:

"D"
21 Delete "a new subsection"

22 Insert "new subsections"

23

#17
24 Page 17, line 19:

25 Delete "(A)"

26

27 Page 17, line 21:

28 Delete ":",

29 Insert ":",

30

31 Page 17, lines 22 - 23:

1 Delete all material and insert:

2 "(e) A formula prescribed by the department under (d) of this section may not
3 incorporate a reference to royalty value, royalty valuation methodology, or royalty
4 settlement agreement."
5

#19 6 Page 19, line 3:

7 Delete "an"
8

9 Page 19, line 17:

#20 10 Delete "the operator or a working interest owner"

11 Insert "a producer that is an operator"
12

#21 13 Page 20, line 6:

14 Delete "of capital assets"
15

#22 16 Page 21, line 3, following "service":

17 Insert "economically"
18

19 Page 21, line 5, following "similar":

20 Insert "regulatory"
21

"D" 22 Page 24, line 4, following "Code).":

23 Insert "as amended."

Senate Resources Committee

March 22, 10076

SB 305

Technical Amendment # 2

This amendment refers to the following items (cross-reference to 3-20-06 "Y" Version Amendments)

The items are:

#6

Item 6

24G-2
3/22/2006
(10:53 A.M.)

AMENDMENT

OFFERED IN THE SENATE RESOURCES
COMMITTEE

BY WAGONER

TO: CSSB 305(RES) (24-GS2052\Y) (3/16/06 Work Draft: Chenoweth)

1 Page 29, following line 28:

2 Insert the following material:

3 "(e) Notwithstanding any contrary provision of AS 43.55.020(a), as repealed and
4 reenacted by sec. 10 of this Act, or of AS 43.55.020(g), enacted by sec. 15 of this Act, for oil and
5 gas produced on or after April 1, 2006, and before the first day of the first month that begins at
6 least 180 days after the effective date of secs. 10 and 15 of this Act,

7 (1) the amount of the taxes that would have been levied upon the producer under
8 AS 43.55, as the provisions of that chapter read on March 31, 2006, is due on the last day of each
9 calendar month on the oil and gas that was produced from each lease or property during the
10 preceding month;

11 (2) the portion, if any, of the taxes levied under AS 43.55.011(a), as amended by
12 sec. 5 of this Act, and under AS 43.55.011(e), (f), and (g), enacted by sec. 7 of this Act, that
13 remains unpaid, net of any credits applied as allowed by law, is due on the last day of the second
14 month that begins at least 180 days after the effective date of secs. 5 and 7 of this Act.

15 (f) Notwithstanding any contrary provision of AS 43.55.030(a), as amended by sec. 18 of
16 this Act, for oil and gas produced on or after April 1, 2006, and before the first day of the first
17 month that begins at least 180 days after the effective date of sec. 18 of this Act, the person
18 paying the tax shall file with the Department of Revenue, at the time an amount of tax is due

19 (1) under (e)(1) of this section, the statement required under former
20 AS 43.55.030(a), as that subsection read on March 31, 2006; and

21 (2) under (e)(2) of this section, the statements required under AS 43.55.030(a), as

1 amended by sec. 18 of this Act.

2 (g) For purposes of taxes to be calculated and due under (e)(1) of this section and
3 statements to be filed under (f)(1) of this section, regulations that were adopted by the
4 Department of Revenue under AS 43.55, as the provisions of that chapter read on March 31,
5 2006, and that were in effect on that date apply to those taxes and statements."

6

7 Page 29, line 31, following "REGULATIONS":

8 Delete "."

9 Insert "AND RETROACTIVITY OF REGULATIONS. (a)"

10

11 Page 30, following line 3:

12 Insert the following material:

13 "(b) Notwithstanding any contrary provision of AS 44.62.240, a regulation adopted by
14 the Department of Revenue to implement, interpret, make specific, or otherwise carry out the
15 provisions of secs. 5 - 8, 10 - 13, 15 - 18, 20, 24 - 35, and 37 of this Act may apply retroactively
16 as of April 1, 2006, if the Department of Revenue expressly designates in the regulation that the
17 regulation applies retroactively to that date."

AMENDMENT

OFFERED IN THE SENATE:

BY SENATOR WAGONER

TO: CSSB 305(RES), draft version 24-GS2052\Y

Page 18, line 4: insert after "than zero"

If a producer does not produce taxable oil or gas during a month, the producer is considered to have generated a positive production tax value if the calculation described in this subsection yields a positive number because the producer's adjusted lease expenditures for a month are less than zero as a result of the producer's receiving a payment or credit under (e) of this section or otherwise.

Page 18, line 23: insert new paragraph (3)

(3) an explorer that has taken a tax credit under AS 43.55.024(b) or that has obtained a transferable tax credit certificate under AS 43.55.024(d) for the amount of a tax credit under AS 43.55.024(b) is considered a producer, subject to the tax levied 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 described in (e) of this section.

SB 305

Administrative Amendment # 1

This amendment refers to the following items (cross-reference to 3-20-06 "Y" Version Amendments)

The items are:

18, 25, 17, 18, 29, 30 and 31

AMENDMENT

OFFERED IN THE SENATE:

BY SENATOR WAGONER

TO: CSSB 305(RES), draft version 24-GS2052\Y

Page 18, line 4: insert after "than zero"

New From ADMIN

If a producer does not produce taxable oil or gas during a month, the producer is considered to have generated a positive production tax value if the calculation described in this subsection yields a positive number because the producer's adjusted lease expenditures for a month are less than zero as a result of the producer's receiving a payment or credit under (e) of this section or otherwise.

Page 18, line 23: insert new paragraph (3)

New From ADMIN

(3) an explorer that has taken a tax credit under AS 43.55.024(b) or that has obtained a transferable tax credit certificate under AS 43.55.024(d) for the amount of a tax credit under AS 43.55.024(b) is considered a producer, subject to the tax levied 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 described in (e) of this section.

#18
ADMIN. DEFINITION
FOR CAP. ASSETS

Page 19, line 29: replace (A) "outlays for capital assets" with

(A) an expenditure, when incurred, to acquire an item if the acquisition cost is otherwise a direct cost, notwithstanding that the expenditure may be required to be capitalized rather than treated as an expense for financial accounting or federal income tax purposes;

Page 21, line 9: replace "amounts that have not been paid" with

amounts incurred

Page 21, lines 14-15: after "business entity" delete all material and insert

, whether or not the transaction is treated as an asset sale for federal income tax purposes.

Page 21, line 16-17: replace "any payment of credit the producer receives for" with

certain payments or credits received by the producer, as provided in this subsection. If one or more payments or credits subject to this subsection are received by a producer during a month or, under (f) of this section, during a calendar year, and if either the total amount of the payments or credits exceeds the amount of the producer's lease expenditures or the producer has no lease expenditures, the producer shall nevertheless subtract those payments or credits from the lease expenditures or from zero, respectively, and the producer's adjusted lease expenditures for that month or calendar year are a negative number and shall be applied to the calculation under (a) of this section as a negative number. The payments or credits that a producer must subtract from the

New From
Admin.

producer's lease expenditures, or from zero, under this subsection are payments or credits received by the producer for

ITEMS # 25
27-31

Page 21, line 18-22: delete all material, insert

(1) the use by another person of a production facility in which the producer has an ownership interest or the management by the producer of a production facility under a management agreement providing for the producer to receive a management fee;

Page 22, line 1: replace (n) with (m) and after "2006;" insert

for purposes of this subsection, if a producer removes from the state, for use outside the state, an asset described in this paragraph, the value of the asset at the time it is removed is considered a payment received by the producer for the transfer of the asset;

Page 23, line 28: insert "(b)." at the beginning of the line

Page 23, lines 29 through 30: replace (d)(2)(L) with (d)(2)(N) and delete "or (d)(2)(M)"

Page 23, line 31: delete "(d)(2)(L) or (d)(2)(M)" and insert (c)(3)(A)

Page 24, line 10: delete "(d)(2)(L)" and replace with (d)(2)(N)

Page 24, line 4: insert after "Revenue Code),"

as amended,

Page 24, lines 12-13: after due: delete all material and insert

if a producer fails to comply with a request under this paragraph, there shall be added to any underpayment determined by the department under this section a penalty in the amount of 20 percent of the underpayment.

Page 24, lines 14-27: delete all material and reorder

Page 24, lines 28-30: delete all material and insert

(n) For purposes of determining the amount of the adjustment by subtraction that must be made to a producer's lease expenditures as a result of the producer's receiving a payment or credit under (e)(3)(A) of this section,

Page 25, lines 7-11: delete all material and reorder

ITEMS # 25 AND 27-31

t

SB 305

Substantive Amendment #2

This amendment refers to the following items (cross-reference to 3-20-06 "Y" Version Amendments)

The item is #26

NOTE: This is the new "claw-back" or 2 for 1 provision.

AMENDMENT

OFFERED IN THE SENATE RESOURCES

BY _____

COMMITTEE

TO: CSSB 305(RES) (24-GS2052\Y) (3/16/06 Work Draft: Chenoweth)

1 Page 17, line 31, following "(2)", through Page 18, line 2:

2 Delete all material and insert "for a month that ends before April 1, 2013, and to the
3 extent allowed under (g) of this section, less an amount of the producer's transitional investment
4 expenditures that has not previously been deducted under this subsection."
5

6 Page 18, line 20:

7 Delete "(g)"

8 Insert "(g)(3)"
9

10 Delete ", but not more than 1/48 of a producer's transitional investment expenditures may
11 be deducted in any month"
12

13 Page 22, line 13:

14 Delete "January 1, 2003"

15 Insert "April 1, 2001"
16

17 Page 22, lines 18 - 19:

18 Delete "on or after January 1, 2003, and"
19

20 Page 22, line 20:

21 Delete ", multiplied by"

1 Insert ";

2

3 Page 22, lines 21 - 26:

4 Delete all material and insert the following:

5 "(2) an amount of a producer's transitional investment expenditures may
6 be deducted under (a) of this section only to the extent that the amount does not exceed

7 (A) one-half of the producer's qualified capital expenditures, as
8 defined in AS 43.55.024, that are incurred during the month, if the producer does
9 not make an election under (f) of this section;

10 (B) 1/24 of the producer's qualified capital expenditures, as
11 defined in AS 43.55.024, that are incurred during the calendar year, if the
12 producer makes an election under (f) of this section;"

13

14 Page 22, line 27:

15 Delete "(2) notwithstanding (1)"

16 Insert "(3) notwithstanding (2)"

17

18 Page 29, following line 25:

19 Insert the following material:

20 "(d) Notwithstanding any contrary provision of AS 43.55.160(g)(2), enacted by sec. 26
21 of this Act, for oil and gas produced on or after April 1, 2006, and before January 1, 2007,

22 (1) the number "1/24" in AS 43.55.160(g)(2)(B), enacted by sec. 26 of this Act,
23 shall be replaced by the number "1/18";

24 (2) the phrase "calendar year" in AS 43.55.160(g)(2)(B), enacted by sec. 26 of
25 this Act, shall be replaced by the phrase "last nine months of the calendar year"."

26

27 Page 29, line 26:

28 Delete "(d)"

29 Insert "(e)"