

SB

305

(FILE 22)

Further comments on PPT features
March 27, 2006
Pedro van Meurs

Following are some further explanations in response to questions from the Senate Resources Committee.

Tax free allowance

The tax free allowance has as its objective to support small companies. In order to ensure that the allowance would only apply to small companies a sliding scale was suggested for a level of tax free production as follows:

$$\text{Tax Free Production} = 5000 - (\text{Total Production} - 5000) \times 10\%$$

The production would be measured in barrels equivalent per day, with gas converted to oil on a 6 to 1 basis.

In order to determine the share of the net revenues that would be tax free one would take the ratio between the Tax Free Production and the Total Production as follows:

$$\text{Percent Allowance} = (\text{Tax Free Production} / \text{Total Production}) \times 100\%$$

The relations between the Tax Free Production and the Percent Allowance are illustrated in the following table.

TAX FREE ALLOWANCE BASED ON 10%

Daily Production	PPT tax free production	Percentage of net income tax free
5000	5000	100%
6000	4900	82%
7000	4800	69%
8000	4700	59%
9000	4600	51%
10000	4500	45%
15000	4000	27%
20000	3500	18%
25000	3000	12%
30000	2500	8%
35000	2000	6%
40000	1500	4%
45000	1000	2%
50000	500	1%
55000	0	0%

In understand that the Senate Committee is considering to change the 10% to 20%. This would result in the following:

TAX FREE ALLOWANCE BASED ON 20%

Daily Production	PPT tax free production	Percentage of net income tax free
5000	5000	100%
6000	4800	80%
7000	4600	66%
8000	4400	55%
9000	4200	47%
10000	4000	40%
15000	3000	20%
20000	2000	10%
25000	1000	4%
30000	0	0%
35000	0	0%
40000	0	0%
45000	0	0%
50000	0	0%
55000	0	0%

As can be seen the Percent Tax Free Allowance would not be very different between these two concepts. Companies such as Chevron or Anadarko would be slightly negatively affected by this change. However, it would not affect the really small companies (under 5000 barrel equivalent per day) nor the really large companies.

It seems to me that the 20% concept is therefore OK.

It should be noted that companies such as Anadarko and Chevron would also benefit for the 2-for-1 concept.

PPT surtax

Questions were raised why it is necessary to have a separate PPT surtax and why simply the PPT tax rate cannot be adjusted with price.

The reason for the separate PPT surtax is that a changing tax rate would be difficult to administer.

The bill as presented by the Governor sought to minimize administrative complexity by requiring the PPT to be paid monthly but permitting a yearly calculation and administration. This would permit tax payers to allocate capital and operating costs over the year based on the systems proposed in the bill, rather than having to determine these costs actually on a monthly basis. This greatly simplifies administration since it is not necessary to audit whether the month to month allocations of capital and operating costs are correct.

Therefore the PPT surtax was defined as a monthly payment on gross, separate from the basic PPT tax on net revenues. The surtax would then be deductible for net revenue determination.

A PPT surtax on gross is easy to determine. The royalties need to be determined anyway. Therefore this is a small additional step.

A PPT tax rate that changes with price would be difficult to administer. Now there is no other option: the PPT needs to be paid, calculated and administered on a monthly basis. This greatly adds to the complexity. One month the PPT rate may be high and another one it may be low. As a consequence it now becomes very important how much net revenues are being allocated to each month. Audits now need to deal with whether capital and operating costs are properly allocated to each month. Otherwise companies may take high deductions in months of high prices and no deductions during months that the minimum PPT rate applies. This is a very complex administration.

The complexity would be increased by the fact that in addition deductions for the 2-for-1 system and the small company tax free allowance would apply. It would be difficult to administer all of this on a monthly basis with a variable PPT rate.

For all these reasons it can be strongly recommended to stick with the concept of a PPT surtax on gross. This was the recommendation made by EconOne, Daniel Johnston and me in response to questions from the Legislature.

AMENDMENT

OFFERED IN THE SENATE

BY SENATORS STEDMAN AND

TO: CSSB 305(RES), Draft Version "Y"

BEN STEVENS

- 1 Page 12, line 20
- 2 Delete ";"
- 3 Insert ""
- 4
- 5 Page 12, lines 21 - 29
- 6 Delete all material.

AMENDMENT

OFFERED IN THE SENATE

BY SENATORS STEDMAN AND

TO: CSSB 305(RES), Draft Version "Y" BEN STEVENS

1 Page 20, line 24:

2 Delete ";

3 Insert ".

4

5 Page 20, line 25, through page 21, line 15:

6 Delete all material.

7

8 Page 22, lines 1 - 2:

9 Delete "the provisions of (l) and (n) of this section apply to an asset that is subject to
10 this subparagraph;"

11

12 Page 23, line 29, through page 24, line 13:

13 Delete all material.

14

15 Reletter the following subsections accordingly.

16

17 Page 24, line 19:

18 Delete "(1)"

19

20 Page 24, lines 21 - 23.

21 Delete

22 "(A) direct cost under (d)(2)(M) of this section, as a purchase
23 of assets by the producer; and

1 (B)"

2

3 Page 24, line 24.

4 Delete ";"

5 Insert " "

6

7 Page 24, lines 25 - 27:

8 Delete all material.

9

10 Page 25, lines 2 - 5:

11 Delete

12 (A) the principle set out in (l) of this section, as interpreted
13 and implemented by the regulations of the department authorized by (l)(1) of
14 this section, applies; and

15 (B)"

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR STEDMAN

TO: CSSB 305(RES), Draft Version "I"

1 Page 4, lines 15 - 23:

2 Delete all material and insert:

3 "(g) In addition to the taxes levied under (e) and (f) of this section, if the
4 average ANS West Coast price per barrel of oil during a month exceeds \$40, there is
5 levied on the producer of oil a tax for oil produced during that month from each lease
6 or property in the state, less any oil the ownership or right to which is exempt from
7 taxation. The tax levied under this subsection is equal to

8
$$(((\text{ANS West Coast price} - \$40) \times .002) \times [\text{ANS wellhead price} \times (1 - \text{PPT rate})])$$

9
$$\times (\text{total taxable barrels of oil at the point of production})$$

10 where

11 (1) "ANS wellhead price" means the prevailing value for oil produced
12 in the Alaska North Slope area; and

13 (2) the PPT, or production property tax, rate is 25 percent."

NOTE: This replaces Admin. Amend. #1 – now includes line numbers, notes sections previously approved; and identifies pages and lines for the new “I” CS; otherwise, it is identical. //mj 3-26-06

AMENDMENT

OFFERED IN THE SENATE:

BY SENATOR WAGONER

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

1 Page 18, line 4: insert after “than zero”

Approved

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

7
8 Page 18, line 23: insert new paragraph (3)

Approved

9 “(3) an explorer that has taken a tax credit under AS 43.55.024(b) or that has obtained a
10 transferable tax credit certificate under AS 43.55.024(d) for the amount of a tax credit under AS
11 43.55.024(b) is considered a producer, subject to the tax levied under AS 43.55.011(e), to the
12 extent that the explorer generates a positive production tax value as the result of the explorer’s
13 receiving a payment or credit described in (e) of this section.”

14
15 Page 19, line 29: replace (A) “outlays for capital assets” with

Approved

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

19
20 Page 21, line 9: replace “amounts that have not been paid” with

Approved

21 “amounts incurred”
22

NOTE: This replaces Admin. Amend. #1 – now includes line numbers, notes sections previously approved; and identifies pages and lines for the new “I” CS; otherwise, it is identical. //mj 3-26-06

Approved

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

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

4
5 Page 21, line 16-17: replace “any payment of credit the producer receives for” with

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

16
17 Page 21, line 18-22: Page 19, lines 19-23: delete all material, insert:

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

21
22 Page 22, line 1: Page 20, line 2: replace (m) (o) with (m) (n) and after “2006;” insert

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

26
27 Page 23, line 28: Page 22, line 13: insert “(b).” at the beginning of the line

28
29 Page 23, lines 29 through 30: replace (d)(2)(L) with (d)(2)(N) and delete “or (d)(2)(M)”

30 Page 22, Line 14: delete “or (d)(2)(O)”

NOTE: This replaces Admin. Amend. #1 – now includes line numbers, notes sections previously approved; and identifies pages and lines for the new "I" CS; otherwise, it is identical. //mj 3-26-06

1 Page 23, line 31: Page 22, line 16: delete "(d)(2)(L) or (d)(2)(M)" and insert "(e)(3)(A)"

2
3 Page 24, line 10: delete "(d)(2)(L)" and replace with (d)(2)(N): See page 22, line 26: this is
4 now in "I" version, was picked up as a drafting correction

5 ±
6 Page 24, line 4: insert after "Revenue Code),"

7 "as amended," See page 22, line 20: this is now in "I" version, was picked up as a
8 drafting correction

9
10 Page 24, lines 12-13: Page 22, Lines 27-28: after "due;" delete all material and insert

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

14
15 Page 24, lines 14-27: Page 22, Line 29 through Page 23, Line 11: delete all material and
16 reorder

17
18 Page 24, lines 28-30: Page 23, Line 12 through 14: delete all material and insert

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

22
23 Page 25, lines 7-11: Page 23, Lines 22-26: delete all material and reorder

NOTE: "I" version deleted the definition of "ordinary and necessary" which was previously approved by the Committee.

MEMORANDUM

To: Sen. Tom Wagoner, Chair
Senate Resources Committee

From: Joe Balash, Professional Legislative Assistant
Legislative Budget and Audit Committee

Date: March 27, 2006

RE: Section 22 of Draft (RES) CS for SB 305

You have asked for a summary of the changes to proposed AS 43.55.160 contained in the draft committee substitute labeled 24-GS2052\I. All of these changes appear in section 22 of that draft.

Under the proposed legislation, section 160 establishes the tax base against which the tax rate will be applied. It identifies the gross value of the oil and gas at the point of production and then allows a series of costs (or lease expenditures) to be deducted. In this case, we are talking about money flowing out of the taxpayer's wallet. The section relies on a standard of "direct, ordinary, and necessary." Taxpayers are required to make adjustments to those costs in those instances where revenue is flowing back into the wallet of a taxpayer—if they sell an asset or receive facilities access payments.

After introduction of the governor's original legislation, Marvin Kirsner, tax counsel at the firm of Greenberg Traurig, authored a memorandum dated February 27, 2006 that was delivered electronically to every member of the Legislature. He also appeared before the Resources Committee telephonically on March 23. His memorandum delved into those areas in which the state could be exposed to deductions and cost recovery mechanisms that the Legislature might find unacceptable. He offered a series of recommendations to address those concerns.

First, he recommended the provision embodied in subsection (o) [appearing at p. 23, line 12 through p. 24, line 1 of the revised draft CS] that would prevent a taxpayer from churning assets or engaging in what are referred to as "wash sales." You might recall that the Governor's original legislation (and your draft CS) contains an anti-churning provision in the tax credit section of the bill [appearing at p. 10, lines 13-19 of the revised draft CS]. In that case, the administration sought to prevent a taxpayer from buying and selling assets for the sole purpose of accruing multiple tax credits. The same principle applies here—only this section deals with deductions. Keep in mind that a credit is worth 20% of the value of an asset but a deduction is worth 25% of the value due to the tax rate established in the CS.

Second, he recommended that the purchase of a business entity not be allowed as a deduction. For example, when Chevron purchased Unocal last year, you would want to prevent Chevron from deducting 25% of the value of Unocal's Alaska assets against their tax liability on North Slope production. This was embodied in subsection (n) [appearing at p. 22, line 29 through p. 23, line 11 of the revised draft CS]. It was also included in the list of excluded costs as (d)(2)(O) [appearing at p. 19, lines 3-6 of the revised draft CS].

Third, he recommended that the adjustment required under subsection (e)(1) be broadened. The original legislation contains a mechanism to capture revenue received by a producer for providing access to their production facilities. However, that language speaks only to facilities in which the producer has an ownership interest. A producer could sell or otherwise transfer its assets to a non-producer and then provide management services at the facility for a fee. In that event, it was recommended that such revenues be accounted for in the production tax. This was embodied in (e)(3)(B) [appearing at p. 19, lines 21-23 of the revised draft CS].

Finally, he recommended that the State protect itself against inflated pricing in transactions that occur between affiliated parties OR third parties. He recommends two things to accomplish this.

First, exclude as a direct cost that amount which was inflated. This exclusion appears as (d)(2)(N) [appearing at p. 18, line 30 through p. 19, line 2 of the revised draft CS]. An example would be 'Taxpayer A' purchases 50 drill bits at \$100,000 apiece for a total of \$5,000,000 for use at properties in Louisiana and Alaska. Since Louisiana's production tax system does not consider upstream costs, 'Taxpayer A' requests that the 25 drill bits headed for Alaska be priced at \$150,000 and the 25 drill bits headed for Louisiana be priced at \$50,000. The provisions of (d)(2)(N) would allow the department to exclude the inflated \$50,000 per drill bit—a total of \$1,250,000 that would have cost the state \$312,500 if it were deducted.

Second, give the department the tools necessary to conduct the types of audits that the IRS uses to uncover these sorts of inflated transactions. These powers are granted in subsection (m) [appearing at p. 22, lines 14-28 of the revised draft CS].

There were numerous references throughout the section of the draft CS that were incorrect and led to confusion amongst the administration as well as committee members and staff. The portion of Administrative Amendment #1 that was not taken up by the committee contained the necessary corrections. Additionally, that amendment contained changes that would make the language more efficient and reduce some redundancies—changes that personnel from the Departments of Law, Revenue and the Office of the Governor agreed were technically correct.

However, the department—as well as the Governor's Chief of Staff—has made clear that it does not feel the additional audit powers granted in subsection (l) are necessary to achieve the goal of protecting the state against inflated price transactions. If the Committee agrees, removing those audit powers is a straight-forward process, mechanically speaking.

Nevertheless, I would like to bring to your attention that the department believes its current regulations protecting the state on transportation charges will accomplish the same goal on upstream charges. However, the department derives its authority on transportation charges from language in AS 43.55.150(a). That language says that the reasonable costs of transportation shall be the 'actual costs' of transportation. The department relies on the 'actual costs' standard to bore down into the transactions between affiliated companies and prevent the state from absorbing more than actual cost to provide transportation. The proposed section we are dealing with for PPT relies on a different standard—costs that are "direct, ordinary, and necessary."

A final note: the revised draft CS no longer contains a definition that may have been removed in error. 'Ordinary and necessary' was defined in the final subsection, (o) [appearing at p. 25, lines 21 through 23 of the "Y" draft CS], as the meaning found in 26 U.S.C. 162 (Internal Revenue Code). If that language is to go back in, 2 of the 3 words in the standard for the department to rely on in allowing costs for deduction purposes will be defined. That will leave the word 'direct.' So, the question the department will have to answer in the future is whether or not the Legislature intended 'direct' costs to mean 'actual' costs. If it is not clear, the department may be faced with challenges to the regulations they intend to adopt.

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

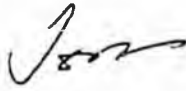
Senator Ben Stevens

Senator Kim Elton

Senator Fred Dyson

Senator Bert Stedman

Senator Albert Kookesh

DATE: March 27, 2006
TO: Senate Resources Committee
FROM: Senator Tom Wagoner, Chair 
RE: SB 305 – Oil and Gas Production Tax

Transmitted with this memo is a copy of the final CS – "I" version, dated 3-27-06. We have just received it and are immediately providing it to each of you, even though we have not reviewed it ourselves. Also attached is a 7-page memorandum from Jack Chenoweth regarding the amendments incorporated in that new CS.

There may, or may not, be issues that need corrections at this afternoon's meeting as a result of this final CS.

Issues remaining for today's committee meeting, to take up from the new CS, are:

- **Administrative #1** – balance of the amendment not previously adopted. We are going to provide a new amendment that shows what has been previously adopted and what remains, and will also include new page and line numbers based on the "I" version. This will be distributed at a later point today.
- **(New) Subs. Amendment #5** – pullout from Technical #1 – deals with valuation/RSA's. We need to check the new amendment against the "I" version to make sure of the page and line numbers and will distribute it later today.
- **Amend. Y.18** Sen. Ben Stevens asked to present this again on Monday.
- **Amend. Y.24** Sen. Ben Stevens asked to present this again on Monday.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

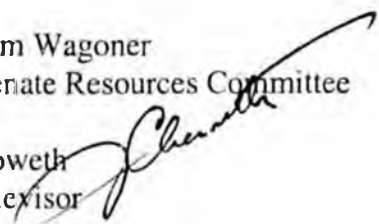
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 27, 2006

SUBJECT: CSSB 305(RES), draft version "I": notes, comments, and questions to accompany the bill draft (Work Order No. 24-GS2052\I)

TO: Senator Tom Wagoner
Chair of Senate Resources Committee

FROM: Jack Chenoweth
Assistant Revisor 

I want, first, to set out for your attention and the committee's consideration additional corrections and conforming changes not reflected in specific instructions from your office:

In an administration-authored amendment identified as "24G-2, 3/22/06, 11:27 a.m.," direction is given to repeal material relating to continuing the existing severance tax on Cook Inlet oil production (draft version "Y", bill sections 5 and 6). Because, elsewhere in the bill (AS 43.55.011(f), added as part of bill section 5), a separate lessor royalty interest levy is specified for Cook Inlet production, I have carried over language from the repealed material and added as a new definition (proposed AS 43.55.900(17), enacted in bill section 29), the definition for "Cook Inlet basin" that repeats the language of the current regulatory definition, 11 AAC 83.1049(2).

I found nothing in the material provided by way of committee-adopted amendments to spell out the due date for payment of the amounts raised by the separate royalty interest levy, added in this draft as AS 43.55.011(f), so I amended the language of AS 43.55.020(g), added as part of bill section 12, to address that omission. Please review that bill section. *If another manner of handling this is warranted, please advise.*

In material set out as part of AS 43.55.160(m) and (n), I removed references to "direct cost" because, on review, I didn't find that the term was used in (d)(2)(N) and (O), the applicable antecedent references.

In the definition subsection for AS 43.55.160, subsection (p) in this draft, because the text has been extensively revised and no longer uses the term "ordinary and necessary [expenses]", I removed the definition of that term -- it had appeared in the previous "Y" version as paragraph (2).

Apart from necessary conforming changes, in general terms, what follows are the amendments or changes incorporated to the "Y" draft:

FORMER BILL SECTIONS DELETED IN THEIR ENTIRETY --

Provisions retaining the current severance tax levy to Cook Inlet production and dependent materials have been dropped. These were bill sections 5, 6, and 8 of the draft "Y" version. Direction to do so appears in as the first two entries to an administration-authored amendment identified as "24G-2, 3/22/06, 11:27 a.m." that I was, I think, referred to as "Substantive Amendment 1" in material provided.

An amendment to AS 43.55.025(b) to modify the costs allowable to support an existing exploration credit has been dropped. This appeared in bill section 17 of the draft "Y" version. Direction to make this change also appears in the first two entries to an administration-authored amendment identified as "24G-2, 3/22/06, 11:27 a.m.," also part of what I think was material identified as "Substantive Amendment 1."

SOURCES AND DIRECTION APPLICABLE TO OTHER AMENDMENTS --

Proposed AS 43.55.011(f), the lessor royalty interest tax provision, starts with this office's amendment Y.40. Direction to adopt the amendment appears in Mary's March 25 memo as entry 1, noted as a "replacement to Y.5"). To the language of (f)(1) of the amendment, I inserted reference to "sedimentary" to conform to the text of the statute that supports the term's definition, AS 38.05.180(f)(4). Paragraph (f)(2) adopts the language of the balance of material set out in Mary Jackson's comprehensive memo as item 3. Paragraph (f)(3) is substantively unchanged and paragraph (f)(4) makes the substitution set out in Y.40 with my addition of the phrase "notwithstanding (1) of this subsection".

Proposed AS 43.55.011(g) and conforming language in AS 43.55.011(h) is taken from Senator Stedman's amendment identified as Y.42. Direction to include it appears as item 6 in Mary's March 25 memo.

Changes from the "Y" draft are made to AS 43.55.020(a) by bill section 7. The changes follow from material in amendment Y.34. Direction to incorporate the amendment is set out in Mary's March 23 memo.

A change to the "Y" draft appears in AS 43.55.020(f), amended by bill section 11. This change also follow from material in amendment Y.34. Direction to incorporate the amendment is set out in Mary's March 23 memo.

AS 43.55.024(b), proposed as part of bill section 13, reflects substitution of this office's amendment Y.12, as directed in item 2 of Mary's March 25 memo.

A change to the "Y" draft appears at the end of AS 43.55.024(g), enacted as part of bill section 13. This change also follows from material in amendment Y.34. Direction to

Senator Tom Wagoner
March 27, 2006
Page 3

incorporate the amendment, with an additional change, is set out in Mary's March 23 memo.

Proposed AS 43.55.024(f) *of the previous "Y" version* is deleted from this draft and the following subsections within proposed AS 43.55.024 (and in the bill's temporary law provisions) are relettered and internal references necessarily conformed. See amendment Y.34. Again, a direction to make the deletion is set out in Mary's March 23 memo.

The language of AS 43.55.024(h)(3) is conformed to text set out in amendment Y.34. Direction to incorporate the amendment is set out in Mary's March 23 memo.

In AS 43.55.030(a)(5), the phrase "unless relieved from this requirement in whole or in part by the department" has been added. The insertion is this office's amendment Y.20, and direction to include it is set out as item 3 in Mary's March 25 memo.

AS 43.55.030, added by bill section 16, derives from page 3 of amendment Y.34; direction to include this amendment was given in Mary's March 23 memo.

This draft contains a modification of AS 43.55.040(1)(B)(ii) based on this office's amendment Y.21. Mary's March 25 memo directs inclusion of the material in this amendment.

This draft deletes "or", as added between paragraphs (2) and (3) of AS 43.55.150(a), amended by bill section 20. See page 3, amendment Y.34, with direction to incorporate the amendment given in Mary's March 23 memo.

AS 43.55.160, proposed to be added by bill section 22:

In the first sentence of subsection (a), direction is given to add "and (i)". The source of the amendment is an administration-authored amendment identified as "24G-2, 3/22/06, 11:27 a.m.," and I believe the direction to incorporate this material appears as "Substantive Amendment 1" in material transmitted by your office.

Paragraph (a)(2) reflects substitution of the content of an administration-authored amendment identified as "24G-2, 3/22/06, 12:54 p.m.," and I believe the direction to incorporate this material also derives from "Substantive Amendment 1" in material transmitted by your office.

Material added at the end of subsection (a) beginning "If a producer . . ." reflects the addition of part of the content of Administrative Amendment #1 submitted for insertion on March 25.

Changes to AS 43.55.160(b)(2)(A) derive from direction given in an administration-authored amendment identified as "24G-2, 3/22/06, 12:54 p.m."; I believe the direction to incorporate this material also derives from "Substantive Amendment 1" in material transmitted by your office.

The addition of paragraph (3) to AS 43.55.160(b) reflects the addition of part of the content of Administrative Amendment #1 submitted for insertion on March 25.

The change in the text of the "including ..." clause in paragraph (2) of AS 43.55.160(c) derives from our amendment identified as Y.34 and is made per direction given in Mary's March 23 memo.

Substitution of new text in paragraph (d)(1)(A) draws on the language of Administrative Amendment 1, as directed by Mary's March 25 memo.

Deletion of a reference to "capital assets" following "amortization" in (d)(2)(A) also derives from our amendment identified as Y.34 and is made per direction given in Mary's March 23 memo.

In (d)(2)(M)(i), replacement language is inserted; the language substituted appears as Item 24 in material set out in Mary Jackson's memo, supplemented by an oral direction to include the entire sheet. *Because of some later confusion about what should or should not be altered, please take the time to verify that the committee agreed to this change!*

In (d)(2)(M)(ii), the edits reflect a verbal instruction to conform the changes to similar amendments made in amendment Y.34. Again, because this was altered based on Mary's instruction that was different than the content of the amendment, *please take the time to verify that the committee agreed to this change.*

Reference to "incurred" is substituted in (d)(2)(N) per direction in Administrative Amendment 1 and Mary's March 25 memo.

The substitution of language in (d)(2)(O) also derives from direction in Administrative Amendment 1 and Mary's March 25 memo.

The lead in language of subsection (e) incorporates new language set out also in Administrative Amendment 1 and Mary's March 25 memo.

Reference date changes and deletions in (g)(1) and substitution of all new matter as a new paragraph, (g)(2), are taken from an administration amendment identified as "24G-2, 3/22/06, 12:54 p.m.", part of Substantive Amendment 2. See Mary's March 22/23 memos submitting this as Substantive Amendment 2 ("new claw-back") and March 25 ("no changes to previous submittal").

What had been subsection (h) is deleted, based on the content of this office's amendment identified as Y.26 and item number 5 in Mary's March 25 memo. New subsections (h) and (i) reflect material in an administration amendment identified as "24G-2, 3/22/06, 11:27 a.m.", part of material that I believe Mary had identified as Substantive Amendment 1. The material is relettered to fit into section order; subsection

(h) is partially reordered; edits to both subsections are made per direction given, first, in Mary's March 23 and March 25 (first entry) memos. Because of the deletion of the content of the previous (h) and the substitution of different material, on my own initiative I have deleted, near the end of (g)(3), the two references to "under (h) of this section."; *if this deletion is incorrect, please advise.*

In addition, there was, in Mary's March 23 memo, direction given reflecting a "conceptual amendment to add a sunset provision to this -- so that it is repealed 7 years from the enactment or effective date of the bill." It's not clear what "this" and "it" refer to. I took them to refer to just the material offered in the amendment (not the entirety of AS 43.55.160) which appears, in the bill, as material in subsections (h) and (i). So, please note that, rather than "sunset" -- put a special effective date for repeal of -- proposed subsection (i), to conform to direction that the production tax value adjustment under (h) and (i) end at the end of a seven year run, I added a last sentence to (i) that precludes the department from taking action to qualify producers under those two subsections after the end of 2013. Since the text of the two subsections speaks to a producer that "qualifies . . . for a calendar year," I set the cutoff date to December 31, 2013, the end of the calendar year, rather than a mid-2013 date. *Please review my handling of this to see if conforms to committee intent. If you want to see something different, please advise.*

Finally -- I have made the necessary insertions of additional material to the uncodified law transitional provisions section, set out in this draft as bill section 33. New in this draft are subsections (d) and (f) - (h).

*

In addition to the preceding, I've made conforming changes throughout the draft, both as to internal references and bill section numbering and effective dates.

*

The committee would be well advised to consider dividing and distributing the content of AS 43.55.160, the "determination of production tax value" provision added as bill section 22, into several codified sections with appropriate cross-references among them. Experience suggests that a codified section that, when offered, already contains sixteen subsections is a codified section that may be unwieldy, and prove more difficult to comprehend and to amend in the future.

*

I have these two questions:

In AS 43.55.011(f), the "default" provision of (f)(2) sets the tax rate at 20 percent, while the general production tax rate provision, AS 43.55.011(e), imposes a tax at a rate of 25 percent. *Should the "default" rate for lessor royalty interest taxes under (f)(2) [20*

percent] be increased to match the standard or general [25 percent] production tax rate? (The committee may have already decided to do so, but I don't find that instruction, hence my question.)

In proposed AS 43.55.011(h), *is it still relevant to address the authority of the department to calculate an "average price"* when, in the immediately preceding subsection, subsection (g), the calculation of the levy under the formula is determined by reference to a "prevailing value for oil"?

*

There are three cross-references to "AS 43.55" in various chapters that were not recommended for amendment in the administration's bill. The administration may have considered each of them and determined that amendment of any of them was not necessary or warranted. However, in the event the administration did not consider them, I want to alert the committee to them for whatever further action the committee may want to take. The provisions are:

-- AS 38.05.180(i), an exploration incentive credit system within the Alaska Land Act (AS 38.05): The subsection provides:

(i) The commissioner may provide for the establishment of an exploration incentive credit system under which a lessee of state land drilling an exploratory well on that land may earn credits based upon the footage drilled and the region in which the well is situated. The commissioner may also provide for credits to be earned by persons performing geophysical work on state land, if that work is performed during the two seasons immediately preceding an announced lease sale and on land included within the sale area and the geophysical information is made public following the sale. Credits may not exceed 50 percent of the cost of the drilling or geophysical work. Credits may be used during a limited period established by the commissioner and may be assigned during that period. *Credits may be applied against* (1) royalty and rental payments for oil and gas or for gas only payable to the state or (2) *taxes payable under AS 43.55*. A credit may not exceed 50 percent of the payment toward which it is being applied. Amounts due the Alaska permanent fund (AS 37.13.010) shall be calculated before the application of credits under this subsection.

-- AS 43.56.030, part of the state's 20-mill property tax levied against exploration, production, and pipeline property transportation facilities. The reference to AS 43.55 appears as part of an exception:

In place of other taxes. Except for those taxes imposed under AS 43.55, the taxes levied or authorized under AS 43.56.010(b) are in place of

(1) all other ad valorem taxes or other taxes imposed by a municipality on property subject to tax under this chapter or exempted from taxation by AS 43.56.020; and

(2) all other taxes imposed by a municipality on or with respect to the property subject to tax under this chapter or exempted from taxation by AS 43.56.020, including, but not limited to,

(A) taxes on the retail sale or use of the property except for the retail sales tax on the first \$1,000 of each sale;

(B) taxes on the sale or use of gas or unrefined oil;

(C) taxes on the sale or use of services used in or associated with the property or in its maintenance or operation except for the sales tax on the first \$1,000 of each sale;

(D) taxes on or measured by gross or net income from the property, including income from the exploration for, production of, or pipeline transportation of gas or unrefined oil or property; and

(E) any license, excise, fee, charge or other tax on or pertaining to the property or services.

and

-- AS 43.82.210, a section within the Alaska Stranded Gas Development Act, where the chapter cross-reference appears within the list of taxes that may be covered by provisions of a contract calling for periodic payments in lieu of taxes for an approved qualifying gasline project:

(a) If the commissioner approves an application and proposed project plan under AS 43.82.140, the commissioner may develop proposed terms for inclusion in a contract under AS 43.82.020 for periodic payment in lieu of one or more of the following taxes that otherwise would be imposed by the state or a municipality on the qualified sponsor or member of a qualified sponsor group as a consequence of participating in an approved qualified project:

(1) oil and gas production taxes and oil surcharges under AS 43.55;

Again, I see no particular need for amendments to any of these provisions, but did want to alert the committee so that it could also consider the question.

JBC:lmb
06-121.lmb

Enclosure

24-GS2052V
Chenoweth
3/27/06

CS FOR SENATE BILL NO. 305(RES)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

BY THE SENATE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for a production tax on oil and gas; repealing the oil and gas
2 production (severance) tax; relating to the calculation of the gross value at the point of
3 production of oil or gas and to the determination of the value of oil and gas for purposes
4 of the production tax on oil and gas; providing for tax credits against the tax for certain
5 expenditures and losses; relating to the relationship of the production tax on oil and gas
6 to other taxes, to the dates those tax payments and surcharges are due, to interest on
7 overpayments of the tax, and to the treatment of the tax in a producer's settlement with
8 the royalty owners; relating to flared gas, and to oil and gas used in the operation of a
9 lease or property under the production tax; relating to the prevailing value of oil or gas
10 under the production tax; relating to surcharges on oil; relating to statements or other
11 information required to be filed with or furnished to the Department of Revenue, to the
12 penalty for failure to file certain reports for the tax, to the powers of the Department of

1 Revenue, and to the disclosure of certain information required to be furnished to the
2 Department of Revenue as applicable to the administration of the tax; relating to
3 criminal penalties for violating conditions governing access to and use of confidential
4 information relating to the tax, and to the deposit of tax money collected by the
5 Department of Revenue; amending the definitions of 'gas,' 'oil,' and certain other terms
6 for purposes of the production tax, and as the definition of the term 'gas' applies in the
7 Alaska Stranded Gas Development Act, and adding further definitions; making
8 conforming amendments; and providing for an effective date."

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

10 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
11 to read:

12 INTENT OF SEC. 11 OF THIS ACT. It is the intent of the legislature through sec. 11
13 of this Act to confirm by clarification the long-standing interpretation of AS 43.55.020(f) by
14 the Department of Revenue.

15 * **Sec. 2.** AS 43.05.230(f) is amended to read:

16 (f) A wilful violation of the provisions of this section or of a condition
17 imposed under AS 43.55.040(1)(B) is punishable by a fine of not more than \$5,000,
18 or by imprisonment for not more than two years, or by both.

19 * **Sec. 3.** AS 43.20.031(c) is amended to read:

20 (c) In computing the tax under this chapter, the taxpayer is not entitled to
21 deduct any taxes based on or measured by net income. The taxpayer may deduct the
22 tax levied and paid under AS 43.55.

23 * **Sec. 4.** AS 43.20.072(b) is amended to read:

24 (b) A taxpayer's business income to be apportioned under this section to the
25 state shall be the federal taxable income of the taxpayer's consolidated business for the
26 tax period, except that

27 (1) taxes based on or measured by net income that are deducted in the
28 determination of the federal taxable income shall be added back; the tax levied and

1 **paid under AS 43.55 may not be added back:**

2 (2) intangible drilling and development costs that are deducted as
3 expenses under 26 U.S.C. 263(c) (Internal Revenue Code) in the determination of the
4 federal taxable income shall be capitalized and depreciated as if the option to treat
5 them as expenses under 26 U.S.C. 263(c) (Internal Revenue Code) had not been
6 exercised;

7 (3) depletion deducted on the percentage depletion basis under 26
8 U.S.C. 613 (Internal Revenue Code) in the determination of the federal taxable income
9 shall be recomputed and deducted on the cost depletion basis under 26 U.S.C. 612
10 (Internal Revenue Code); and

11 (4) depreciation shall be computed on the basis of 26 U.S.C. 167
12 (Internal Revenue Code) as that section read on June 30, 1981.

13 * **Sec. 5.** AS 43.55.011 is amended by adding new subsections to read:

14 (e) There is levied on the producer of oil or gas a tax for all oil and gas
15 produced each month from each lease or property in the state, less any oil and gas the
16 ownership or right to which is exempt from taxation or constitutes a lessor's royalty
17 interest under an oil and gas lease. The tax is equal to 25 percent of the production tax
18 value of the taxable oil and gas as calculated under AS 43.55.160.

19 (f) Notwithstanding (e) of this section, there is levied on the producer of oil or
20 gas a tax for all oil and gas produced each month from each lease or property in the
21 state the ownership or right to which constitutes a lessor's royalty interest under an oil
22 and gas lease, except for oil and gas the ownership or right to which is exempt from
23 taxation. The provisions of this subsection apply for a lessor's royalty interest under an
24 oil and gas lease as follows:

25 (1) the rate of tax levied on oil and gas produced from a lease that is in
26 effect on the effective date of this subsection

27 (A) in the Cook Inlet basin is equal to 1.5 percent of the gross
28 value at the point of production of the oil and gas;

29 (B) except as described in (A) of this paragraph, is equal to five
30 percent of the gross value at the point of production of the oil and gas;

31 (2) if the department determines that, for purposes of reducing the

1 producer's tax liability under (1) of this subsection, the producer has received or will
2 receive consideration from the lessor offsetting all or a part of the producer's royalty
3 obligation, other than a deduction under AS 43.55.020(d) of the amount of a tax paid,
4 notwithstanding (1) of this subsection, the tax equal to 20 percent of the gross value
5 at the point of production of the oil and gas;

6 (3) unless otherwise expressly agreed between the producer and the
7 royalty owner, in making settlement with the royalty owner with respect to royalty oil
8 or gas taxed under this subsection, the producer may deduct the amount of the tax paid
9 on taxable royalty oil or gas under this subsection, or may deduct taxable royalty oil or
10 gas equivalent in value at the time the tax becomes due, and the provisions of
11 AS 43.55.020(d) are not applicable to that taxable royalty oil or gas; and

12 (4) the commissioner shall recommend to the legislature the rate of tax
13 applicable to the lessor's royalty interest on private lease holdings on leases that are
14 entered into after the effective date of this subsection.

15 (g) In addition to the taxes levied under (e) and (f) of this section, there is
16 levied upon the producer of oil a tax for oil produced during that month from each
17 lease or property in the state, less any oil the ownership or right to which is exempt
18 from taxation. The tax levied under this subsection is equal to

19 $((\text{ANS West Coast price} - \$40) \times .002) \times \text{ANS wellhead price} \times (1 - \text{PPT rate})$
20 where

21 (1) "ANS wellhead price" means the prevailing value for oil produced
22 in the Alaska North Slope area; and

23 (2) the PPT, or production property tax, rate is 25 percent.

24 (h) For purposes of (g) of this section, the department may calculate the
25 average price or may, by regulation, specify the method by which the average price
26 shall be calculated with reference to one or more published sources of price
27 information. If, in the department's judgment, reliable published sources of price
28 information on Alaska North Slope crude oil cease, or appear likely to soon cease, to
29 be available, or if, in the department's judgment, the price of Alaska North Slope crude
30 oil ceases, or appears likely to soon cease, to be a reliable indicator of the general
31 price level of crude oils, the department shall, by regulation, specify a substitute

1 formula for computing the oil price index. The substitute formula specified by the
2 department under this subsection must bear, as nearly as is reasonably possible, the
3 same relationship to the general price level of crude oils as did the price of Alaska
4 North Slope crude oil.

5 * Sec. 6. AS 43.55.017 a) is amended to read:

6 (a) Except as provided in this chapter, the taxes imposed by this chapter are in
7 place of all taxes now imposed by the state or any of its municipalities, and neither the
8 state nor a municipality may impose a tax on [UPON]

9 (1) producing oil or gas leases;

10 (2) oil or gas produced or extracted in the state;

11 (3) the value of intangible drilling and development costs, as
12 described in 26 U.S.C. 263(c) (Internal Revenue Code), as amended through
13 January 1, 1974 [EXPLORATION EXPENSES].

14 * Sec. 7. AS 43.55.020(a) is repealed and reenacted to read:

15 (a) The production tax on oil and gas shall be paid as set out in this subsection.
16 Ninety-five percent of the tax levied under AS 43.55.011(e), net of any credits applied
17 under this chapter, is due on the last day of each calendar month on oil and gas
18 produced from each lease or property during the preceding month. The remaining
19 portion of the tax levied under AS 43.55.011(e), net of any credits applied under this
20 chapter, is due on the last day of the third month following the calendar quarter during
21 which the oil and gas were produced. An unpaid amount of tax that is not paid when
22 due in accordance with this subsection becomes delinquent. An overpayment of tax
23 with respect to a month may be applied against the tax due for any later month.
24 Notwithstanding any contrary provision of AS 43.05.280, interest on an overpayment
25 is allowed only from a date that is 90 days after the last day of the third month
26 following the calendar quarter of production, as described in this subsection, and
27 interest is not allowed if the overpayment was refunded within the 90-day period. In
28 addition, the producer shall comply with the requirements of AS 43.55.030(a) and (e).
29 In this subsection, "calendar quarter" means each of the three-month periods ending
30 March 31, June 30, September 30, and December 31.

31 * Sec. 8. AS 43.55.020(b) is amended to read:

1 (b) The production tax on oil and [OR] gas shall be paid by or on behalf of the
2 producer.

3 * Sec. 9. AS 43.55.020(d) is amended to read:

4 (d) In making settlement with the royalty owner for oil or gas that is taxable
5 under AS 43.55.011(e), the producer may deduct the amount of the tax paid on
6 taxable royalty oil and [OR] gas, or may deduct taxable royalty oil or gas equivalent
7 in value at the time the tax becomes due to the amount of the tax paid. Unless
8 otherwise agreed between the producer and the royalty owner, the amount of the
9 tax paid under AS 43.55.011(e) on taxable royalty oil and gas for a month other
10 than oil or gas the ownership or right to which constitutes a lessor's royalty
11 interest under an oil or gas lease is considered to be the gross value at the point of
12 production of the taxable royalty oil and gas produced during the month
13 multiplied by a figure that is a quotient, in which

14 (1) the numerator is the producer's total tax liability under
15 AS 43.55.011(e) for the month of production; and

16 (2) the denominator is the total gross value at the point of
17 production of the oil and gas taxable under AS 43.55.011(e) produced by the
18 producer from all leases and properties in the state during the month.

19 * Sec. 10. AS 43.55.020(e) is repealed and reenacted to read:

20 (e) Gas flared, released, or allowed to escape in excess of the amount
21 authorized by the Alaska Oil and Gas Conservation Commission is considered, for the
22 purpose of AS 43.55.011 - 43.55.160, as gas produced from a lease or property. Oil or
23 gas used in the operation of a lease or property in the state in drilling for or producing
24 oil or gas, or for repressuring, except to the extent determined by the Alaska Oil and
25 Gas Conservation Commission to be waste, is not considered, for the purpose of
26 AS 43.55.011 - 43.55.160, as oil or gas produced from a lease or property.

27 * Sec. 11. AS 43.55.020(f) is amended to read:

28 (f) If oil or gas is produced but not sold, or if oil or gas is produced and
29 sold under circumstances where the sale price does not represent the prevailing value
30 for oil or gas of like kind, character, or quality in the field or area from which the
31 product is produced, the department may require the tax to be paid upon the basis of

1 the value of oil or gas of the same kind, quality, and character prevailing during the
2 calendar month of production for that field or area.

3 * **Sec. 12.** AS 43.55.020 is amended by adding a new subsection to read:

4 (g) The tax levied under AS 43.55.011(f) shall be paid monthly and is due on
5 the last day of each calendar month on oil and gas produced from each lease or
6 property during the preceding month, and, if not paid before the end of the month in
7 which it becomes due, the tax becomes delinquent.

8 * **Sec. 13.** AS 43.55 is amended by adding a new section to read:

9 **Sec. 43.55.024. Tax credits for certain losses and expenditures.** (a)

10 Notwithstanding that a qualified capital expenditure may be a deductible lease
11 expenditure for purposes of calculating the production tax value of oil and gas under
12 AS 43.55.160(a), unless a credit for that expenditure is taken under AS 43.55.025,

13 (1) a producer or explorer that incurs a qualified capital expenditure
14 may also elect to take a tax credit in the amount of

15 (A) 20 percent of that expenditure, if that expenditure is for
16 development or production; or

17 (B) 30 percent of the that expenditure, if the expenditure is for
18 exploration; a credit under this subsection may be applied only against a tax
19 due under AS 43.55.011 - 43.55.160;

20 (2) for a calendar year for which the producer makes an election under
21 AS 43.55.160(f), instead of taking a tax credit at a rate authorized by (1) of this
22 subsection as to each separate qualified capital expenditure after it has been incurred, a
23 producer that incurs a qualified capital expenditure during that year and that wishes to
24 apply a credit based on that expenditure against a tax due under AS 43.55.011 -
25 43.55.160 shall calculate and apply

26 (A) every month an annualized tax credit in an amount equal to
27 one and two-thirds percent of the total qualified capital expenditures incurred
28 for expenditures for development or production during that year and for which
29 the tax credit is taken for that year; or

30 (B) every month an annualized tax credit in an amount equal to
31 two and one-half percent of the total qualified capital expenditures incurred for

1 expenditures for exploration during that year and for which the tax credit is
2 taken for that year;

3 (3) for purposes of (1) and (2) of this subsection.

4 (A) a qualified capital expenditure is eligible for treatment as
5 an exploration expenditure under this subsection only if the qualified capital
6 expenditure

7 (i) was incurred on or after the effective date of this
8 section; and

9 (ii) meets the requirements of AS 43.55.025(b)(1) - (4);

10 (B) a capital expenditure does not qualify as an exploration
11 expenditure if the expenditure relates to an oil and gas unit operating under a
12 plan of development, as that term is described in regulations of the Department
13 of Natural Resources to implement AS 38.05.180 and other provisions of
14 AS 38.05 relating to oil and gas; and

15 (C) the department, after consultation with the Department of
16 Natural Resources, may adopt regulations establishing additional standard
17 necessary to distinguish between expenditures for exploration and expenditures
18 for development or production.

19 (b) A producer may elect to take a tax credit in the amount of 25 percent of a
20 carried-forward annual loss. A credit under this subsection may be applied against a
21 tax for which a credit may be elected under (a) of this section and may be applied
22 irrespective of whether the producer also claims a deduction of transitional investment
23 expenditures authorized by AS 43.55.160. For purposes of this subsection, a carried-
24 forward annual loss is the amount of a producer's adjusted lease expenditures under
25 AS 43.55.160 for a previous calendar year that was not deductible in any month under
26 AS 43.55.160(a) and (b).

27 (c) A credit or portion of a credit under this section may not be used to reduce
28 a person's tax liability under AS 43.55.011(e) for any month below zero, and any
29 unused credit or portion of a credit not used under this subsection may be applied in a
30 later month.

31 (d) A person entitled to take a tax credit under this section that wishes to

1 transfer the unused credit to another person may apply to the department for a
2 transferable tax credit certificate. An application under this subsection must be on a
3 form prescribed by the department and must include supporting information and
4 documentation that the department reasonably requires. The department shall grant or
5 deny an application, or grant an application as to a lesser amount than that claimed and
6 deny it as to the excess, not later than 60 days after the latest of (1) March 31 of the
7 year following the calendar year in which the qualified capital expenditure or carried-
8 forward annual loss for which the credit is claimed was incurred; (2) if the applicant is
9 required under AS 43.55.030(e) to file a statement on or before March 31 of the year
10 following the calendar year in which the qualified capital expenditures or carried-
11 forward annual loss for which the credit was incurred, the date the statement was filed;
12 or (3) the date the application was received by the department. If, based on the
13 information then available to it, the department is reasonably satisfied that the
14 applicant is entitled to a credit, the department shall issue the applicant a transferable
15 tax credit certificate for the amount of the credit. A certificate issued under this
16 subsection does not expire.

17 (e) A person to which a transferable tax credit certificate is issued under (d) of
18 this section may transfer the certificate to another person, and a transferee may further
19 transfer the certificate. Subject to the limitations set out in (a) - (c) of this section, and
20 notwithstanding any action the department may take with respect to the applicant
21 under (f) of this section, the owner of a certificate may apply the credit or a portion of
22 the credit shown on the certificate only against a tax due under AS 43.55.011(e).
23 However, a credit shown on a transferable tax credit certificate may not be applied to
24 reduce a transferee's total tax due under AS 43.55.011(e) on oil and gas produced
25 during a calendar year to less than 80 percent of the tax that would otherwise be due
26 without applying that credit. Any portion of a credit not used under this subsection
27 may be applied in a later period.

28 (f) The issuance of a transferable tax credit certificate under (d) of this section
29 does not limit the department's ability to later investigate or audit a tax credit claim to
30 which the certificate relates or to adjust or deny the claim if the department determines
31 that the applicant was not entitled to the amount of the credit for which the certificate

1 was issued. The tax liability of the applicant under AS 43.55.011(e) and 43.55.017 -
2 43.55.160 is increased by the amount of the credit that exceeds that to which the
3 applicant was entitled. That amount bears interest under AS 43.05.225 from the date
4 the transferable tax credit certificate was issued. For purposes of this subsection, an
5 applicant that is an explorer is considered a producer subject to the tax levied under
6 AS 43.55.011(e).

7 (g) The department may adopt regulations to carry out the purposes of this
8 section, including prescribing reporting, record keeping, and certification procedures
9 and requirements to verify the accuracy of credits claimed and to ensure that a credit is
10 not used more than once, and otherwise implementing this section.

11 (h) A producer or explorer may not elect to take a tax credit under this section
12 for a lease expenditure under AS 43.55.160 that is an expenditure incurred

13 (1) to acquire an asset (A) the cost of previously acquiring which was a
14 lease expenditure under AS 43.55.160(c) or would have been a lease expenditure
15 under AS 43.55.160(c) if it had been incurred on or after April 1, 2006; or (B) that has
16 previously been placed in service in the state; an expenditure to acquire an asset is not
17 excluded under this paragraph if not more than an immaterial portion of the asset
18 meets a description under (A) or (B) of this paragraph; for purposes of this paragraph,
19 "asset" includes geological, geophysical, and well data and interpretations;

20 (2) for an extended period of disuse, dismantlement, removal,
21 surrender, or abandonment of a well, facility, pipeline, platform, or other structure, or
22 for the restoration of a lease, field, unit, area, or body of water in conjunction with an
23 extended period of disuse, dismantlement, removal, surrender, or abandonment of a
24 facility described in this paragraph;

25 (3) for or directly related to a pipeline, facility, other asset, or service
26 economically regulated as to tariffs, fees, or charges by the Federal Energy Regulatory
27 Commission, Regulatory Commission of Alaska, or any successor regulatory body.

28 (i) In this section,

29 (1) "explorer" has the meaning given in AS 43.55.025;

30 (2) "qualified capital expenditure" means, except as otherwise
31 provided in (h) of this section, an expenditure that is a lease expenditure under

1 AS 43.55.160 and is

2 (A) incurred for geological or geophysical exploration; or

3 (B) treated as a capitalized expenditure under 26 U.S.C.
4 (Internal Revenue Code), as amended, regardless of elections made under 26
5 U.S.C. 263(c) (Internal Revenue Code), as amended, and either is treated as a
6 capitalized expenditure by the person incurring the expenditure or is eligible to
7 be deducted as an expense under 26 U.S.C. 263(c) (Internal Revenue Code), as
8 amended.

9 * Sec. 14. AS 43.55.030(a) is amended to read:

10 (a) The tax shall be paid to the department, and the person paying the tax shall
11 file with the department at the time the tax or a portion of the tax is required to be
12 paid a statement, under oath, on forms prescribed by or acceptable to the department,
13 giving, with other information required, the following:

14 (1) a description of each [THE] lease or property from which the oil
15 and [OR] gas were [WAS] produced, by name, legal description, lease number, or
16 [BY] accounting codes [CODE NUMBERS] assigned by the department;

17 (2) the names of the producer and the person paying the tax;

18 (3) the gross amount of oil and the gross amount of [OR] gas
19 produced from each [THE] lease or property, and the percentage of the gross amount
20 of oil and gas owned by each producer for whom the tax is paid;

21 (4) the gross [TOTAL] value at the point of production of the oil
22 and of the [OR] gas produced from each [THE] lease or property owned by each
23 producer for whom the tax is paid; [AND]

24 (5) the name of the first purchaser and the price received for the oil
25 and for the [OR] gas, unless relieved from this requirement in whole or in part by
26 the department; and

27 (6) the producer's lease expenditures and adjustments as
28 calculated under AS 43.55.160 [IF SOLD IN THE STATE]

29 * Sec. 15. AS 43.55.030(d) is amended to read:

30 (d) Reports by or on behalf of the producer are delinquent the first day
31 following the day the tax is due. [EACH PRODUCER IS SUBJECT TO A PENALTY

1 OF \$25 A DAY FOR EACH LEASE OR PROPERTY UPON WHICH THE
2 REPORT IS NOT FILED. THE PENALTY FOR FAILURE TO FILE A REPORT IS
3 IN ADDITION TO THE PENALTY FOR DELINQUENT TAXES, AND IS A LIEN
4 AGAINST THE ASSETS OF THE PRODUCER.]

5 * Sec. 16. AS 43.55.030 is amended by adding a new subsection to read:

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

12 * Sec. 17. AS 43.55.040 is amended to read:

13 **Sec. 43.55.040. Powers of Department of Revenue.** Except as provided in
14 AS 43.05.405 - 43.05.499, the department may

15 (1) require a person engaged in production and the agent or employee
16 of the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil
17 or gas to furnish, whether by the filing of regular statements or reports or
18 otherwise, additional information that is considered by the department as necessary to
19 compute the amount of the tax; notwithstanding any contrary provision of law, the
20 disclosure of additional information under this paragraph to the producer
21 obligated to pay the tax does not violate AS 40.25.100(a) or AS 43.05.230(a);
22 before disclosing information under this paragraph that is otherwise required to
23 be held confidential under AS 40.25.100(a) or AS 43.05.230(a), the department
24 shall

25 (A) provide the person that furnished the information a
26 reasonable opportunity to be heard regarding the proposed disclosure and
27 the conditions to be imposed under (B) of this paragraph; and

28 (B) impose appropriate conditions limiting

29 (i) access to the information to those legal counsel,
30 consultants, employees, officers, and agents of the producer who
31 have a need to know that information for the purpose of

1 determining or contesting the producer's tax obligation; and

2 (ii) the use of the information to use for that

3 purpose;

4 (2) examine the books, records, and files of such a person;

5 (3) conduct hearings and compel the attendance of witnesses and the
6 production of books, records, and papers of any person; and

7 (4) make an investigation or hold an inquiry that is considered
8 necessary to a disclosure of the facts as to

9 (A) the amount of production from any oil or gas location, or of
10 a company or other producer of oil or gas; and

11 (B) the rendition of the oil and gas for taxing purposes.

12 * Sec. 18. AS 43.55.080 is amended to read:

13 **Sec. 43.55.080. Collection and deposit of revenue.** Except as otherwise
14 provided under art. IX, sec. 17, Constitution of the State of Alaska, the [THE]
15 department shall deposit in the general fund the money collected by it under
16 AS 43.55.011 - 43.55.160 [AS 43.55.011 - 43.55.150].

17 * Sec. 19. AS 43.55.135 is amended to read:

18 **Sec. 43.55.135. Measurement.** For the purposes of AS 43.55.011 - 43.55.160
19 [AS 43.55.011 - 43.55.150], oil is [SHALL BE] measured in terms of a "barrel of oil"
20 and gas is [SHALL BE] measured in terms of a "cubic foot of gas."

21 * Sec. 20. AS 43.55.150(a) is amended to read:

22 (a) For the purposes of AS 43.55.011 - 43.55.160 [AS 43.55.011 - 43.55.150],
23 the gross value at the point of production is [SHALL BE] calculated using the
24 reasonable costs of transportation of the oil or gas. The reasonable costs of
25 transportation are [SHALL BE] the actual costs, except when the

26 (1) [WHEN THE] parties to the transportation of oil or gas are
27 affiliated;

28 (2) [WHEN THE] contract for the transportation of oil or gas is not an
29 arm's length transaction or is not representative of the market value of that
30 transportation;

31 (3) [WHEN THE] method of transportation of oil or gas is not

1 reasonable in view of existing alternative methods of transportation.

2 * Sec. 21. AS 43.55.150 is amended by adding a new subsection to read:

3 (d) Under regulations adopted by the department, the department may
4 prospectively require or allow a producer, subject to limitations prescribed by the
5 department, to calculate the gross value at the point of production of oil or gas based
6 in whole or part on

7 (1) a formula prescribed by the department that uses, with adjustments
8 if appropriate, a royalty value or valuation methodology accepted by the

9 (A) Department of Natural Resources under AS 38.05, in the
10 case of oil and gas produced from a lease issued by the Department of Natural
11 Resources or produced from a lease or property that is part of a unit approved
12 by the Department of Natural Resources; or

13 (B) United States Department of the Interior under applicable
14 federal oil and gas leasing statutes, in the case of oil and gas produced from a
15 lease issued by the United States Department of the Interior that is not part of a
16 unit approved by the Department of Natural Resources, or produced from a
17 lease or property that is part of a unit approved by the United States
18 Department of the Interior but not approved by the Department of Natural
19 Resources; or

20 (2) another formula prescribed by the Department of Revenue that
21 reasonably estimates a value for the oil or gas at a specific geographical location, such
22 as the point of tender or delivery into a common carrier pipeline; the formula

23 (A) may use factors such as published price indices for oil or
24 gas in or outside the state, quality differentials for oil or gas, transportation
25 costs between markets, and inflation adjustments;

26 (B) may not incorporate by reference a royalty value, royalty
27 valuation methodology, or royalty settlement agreement.

28 * Sec. 22. AS 43.55 is amended by adding a new section to article 1 to read:

29 **Sec. 43.55.160. Determination of production tax value of oil and gas.** (a)

30 Except as provided in (f) and (i) of this section, for purposes of AS 43.55.011(e), the
31 production tax value of the taxable oil and gas produced during a month is the total of

1 the gross value at the point of production of the oil and gas taxable under
2 AS 43.55.011(e) and produced by the producer from all leases or properties in the
3 state, (1) less the producer's lease expenditures for the month as adjusted under (e) of
4 this section, and (2) for a month that ends before April 1, 2013 and to the extent
5 allowed under (g) of this section, less an amount of the producer's transitional
6 investment expenditures that has not previously been deducted under this subsection.
7 However, the production tax value calculated under this subsection may not be less
8 than zero. If a producer does not produce taxable oil or gas during a month, the
9 producer is considered to have generated a positive production tax value if the
10 calculation described in this subsection yields a positive number because the
11 producer's adjusted lease expenditures for a month are less than zero as a result of the
12 producer's receiving a payment or credit under (e) of this section or otherwise.

13 (b) For purposes of administration of (a) of this section,

14 (1) any adjusted lease expenditures that would otherwise be deductible
15 in a month but whose deduction would cause the production tax value calculated under
16 (a) of this section of the taxable oil and gas produced during the month to be less than
17 zero may be added to the producer's adjusted lease expenditures for one or more other
18 months in the same calendar year; the total of any adjusted lease expenditures that are
19 not deductible in any month during a calendar year because their deduction would
20 cause the production tax value calculated under (a) of this section of the taxable oil
21 and gas produced during one or more months to be less than zero may be used to
22 establish a carried-forward annual loss under AS 43.55.024(b);

23 (2) an amount of transitional investment expenditures that would
24 otherwise be deductible in a month but whose deduction would cause the production
25 tax value calculated under (a) of this section of the taxable oil and gas produced during
26 the month to be less than zero

27 (A) may be deducted in a later month during any calendar year
28 to the extent allowed under (g)(3) of this section;

29 (B) may not be used to establish a carried-forward annual loss
30 under AS 43.55.024(b);

31 (3) an explorer that has taken a tax credit under AS 43.55.024(b) or

1 that has obtained a transferable tax credit certificate under AS 43.55.024(d) fo. the
2 amount of a tax credit under AS 43.55.024(b) is considered a producer, subject to the
3 tax levied under AS 43.55.011(e), to the extent that the explorer generates a positive
4 production tax value as the result of the explorer's receiving a payment or credit
5 described in (e) of this section.

6 (c) For purposes of this section,

7 (1) a producer's lease expenditures for a period are the total costs
8 upstream of the point of production of oil and gas that are incurred on or after April 1,
9 2006, by the producer during the period and that are direct, ordinary, and necessary
10 costs of exploring for, developing, or producing oil or gas from deposits located within
11 the producer's leases or properties in the state or, in the case of land in which the
12 producer does not own a working interest, direct, ordinary, and necessary costs of
13 exploring for oil or gas deposits located within other land in the state; however, lease
14 expenditures do not include the costs incurred to satisfy a work commitment under an
15 exploration license under AS 38.05.132; in determining whether costs are direct,
16 ordinary, and necessary costs of exploring for, developing, or producing oil or gas
17 from a deposit of oil or gas located within a lease or property or other land in the state,
18 the department shall give substantial weight to

19 (A) the typical industry practices and standards in the state and
20 in the United States as to costs that an operator is allowed to bill a working
21 interest owner that is not the operator, under unit operating agreements or
22 similar operating agreements that were in effect on or before December 1,
23 2005, and were subject to negotiation with working interest owners, not the
24 operator, with substantial bargaining power; and

25 (B) the standards adopted by the Department of Natural
26 Resources as to the costs, other than interest, that a lessee is allowed to deduct
27 from revenue in calculating net profits under a lease issued under
28 AS 38.05.180(f)(3)(B), (D), or (E);

29 (2) the Department of Revenue may authorize a producer, including a
30 producer that is an operator, to treat as its lease expenditures under this section the
31 costs paid by the producer that are billed to the producer by an operator in accordance

1 with the terms of a unit operating agreement or similar operating agreement if the
2 Department of Revenue finds that

3 (A) the pertinent provisions of the operating agreement are
4 substantially consistent with the Department of Revenue's determinations and
5 standards otherwise applicable under this subsection; and

6 (B) at least one working interest owner party to the agreement,
7 other than the operator, has substantial incentive and ability to effectively audit
8 billings under the agreement.

9 (d) For purposes of (c) of this section, "direct costs"

10 (1) includes

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

15 (B) payments of property taxes, sales and use taxes, motor fuel
16 taxes, and excise taxes;

17 (C) a reasonable allowance, as determined under regulations
18 adopted by the department, for overhead expenses directly related to exploring
19 for, developing, and producing oil or gas deposits located within leases or
20 properties or other land in the state;

21 (2) does not include

22 (A) depreciation or amortization;

23 (B) royalty payments for oil and gas;

24 (C) taxes based on or measured by net income;

25 (D) interest or other financing charges or costs of raising equity
26 or debt capital;

27 (E) acquisition costs for a lease or property or exploration
28 license;

29 (F) costs arising from fraud, wilful misconduct, or negligence;

30 (G) fines or penalties imposed by law.

31 (H) costs of arbitration, litigation, or other dispute resolution

1 activities that involve the state or concern the rights or obligations among
2 owners of interests in, or rights to production from, one or more leases or
3 properties or a unit;

4 (I) donations;

5 (J) costs incurred in organizing a partnership, joint venture, or
6 other business entity or arrangement;

7 (K) amounts paid to indemnify the state; the exclusion
8 provided by this paragraph does not apply to the costs of obtaining insurance
9 or a surety bond from a third-party insurer or surety;

10 (L) surcharges levied under AS 43.55.201 or 43.55.300;

11 (M) the portion of costs incurred for any extended period of
12 disuse, dismantlement, removal, surrender, or abandonment of a well, facility,
13 pipeline, platform, or other structure, or for the restoration of a lease, field,
14 unit, area, body of water, or right-of-way in conjunction with an extended
15 period of disuse, dismantlement, removal, surrender, or abandonment, that is
16 attributable to

17 (i) production of oil or gas occurring before the
18 effective date of this section, calculated as a ratio of production of oil
19 or gas associated with the well, facility, pipeline platform or other
20 structure, lease, field, unit, area, body of water, or right-of-way
21 occurring before the effective date of this section divided by all
22 production of oil or gas associated with that facility through the end of
23 the calendar month before commencement of the extended period of
24 disuse, dismantlement, removal, surrender, or abandonment; or

25 (ii) a pipeline, facility, or service economically
26 regulated as to tariffs, fees, or charges by the Federal Energy
27 Regulatory Commission, the Regulatory Commission of Alaska, or any
28 successor body if the tariff, fee, or charge takes into account
29 dismantlement, removal, abandonment, or restoration obligations;

30 (N) in a transaction that is not an arm's length transaction,
31 amounts incurred, to the extent that those amounts exceed fair market value;

1 the provisions of (m) of this section apply to a determination under this
2 subparagraph:

3 (O) an amount expended to purchase an interest in any
4 corporation, partnership, limited liability company, business trust, or any other
5 business entity, whether or not the transaction is treated as an asset sale for
6 federal income tax purposes.

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

19 (1) the use by another person of a production facility

20 (A) in which the producer has an ownership interest; or

21 (B) that is subject to a management agreement that provides for
22 the producer to receive a management fee determined in whole or in part on
23 the income or gross revenue earned by the production facility;

24 (2) a reimbursement or similar payment that offsets the producer's
25 lease expenditures, including a payment from the state or federal government for
26 reimbursement of the producer's upstream costs, including costs for gathering,
27 separating, cleaning, dehydration, compressing, or other field handling associated with
28 the production of oil or gas upstream of the point of production;

29 (3) the sale or other transfer of

30 (A) an asset, including geological, geophysical, or well data or
31 interpretations, acquired by the producer as a result of a lease expenditure or an

1 expenditure that would be a lease expenditure if it were incurred on or after
2 April 1, 2006; the provisions of (m) and (o) of this section apply to an asset
3 that is subject to this subparagraph; and

4 (B) oil or gas

5 (i) that is not considered produced from a lease or
6 property under AS 43.55.020(e); and

7 (ii) the cost of acquiring which is a lease expenditure
8 incurred by the person that acquires the oil or gas.

9 (f) In place of the adjusted lease expenditures for a month under (a) of this
10 section, a producer may, at any time, elect to substitute, for every month of a calendar
11 year, one-twelfth of the producer's adjusted lease expenditures for the calendar year.

12 (g) For the purposes of this section,

13 (1) a producer's transitional investment expenditures are the sum of the
14 expenditures the producer incurred on or after April 1, 2001, and before April 1, 2006,
15 that would be qualified capital expenditures, as defined in AS 43.55.024, if they were
16 incurred on or after April 1, 2006 less the sum of the payments or credits the producer
17 received before April 1, 2006, for the sale or other transfer of assets, including
18 geological, geophysical, or well data or interpretations, acquired by the producer as a
19 result of expenditures the producer incurred before April 1, 2006, that would be
20 qualified capital expenditures, as defined in AS 43.55.024, if they were incurred on or
21 after April 1, 2006;

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

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

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

31 (3) notwithstanding (2) of this subsection, an amount of transitional

1 investment expenditures may not be deducted under (a) of this section for a month for
2 which the average price of Alaska North Slope oil delivered on the United States West
3 Coast is equal to or less than \$40 a barrel.

4 (h) For a month for which (1) the production tax value of the taxable oil and
5 gas produced during the month calculated under (a) of this section exceeds zero, and
6 (2) the total amount of oil and gas, including oil and gas the ownership or right to
7 which is exempt from taxation, produced a day by the producer from all leases or
8 properties in the state averages less than 55,000 barrels of oil equivalent, a producer
9 that is qualified under (i) of this section may reduce the production tax value by
10 deducting an allowance in an amount calculated under this subsection. The allowance
11 is equal to the production tax value calculated under (a) of this section multiplied by
12 the fraction that is yielded by the following formula, except that the value of the
13 fraction may not be greater than one:

$$14 \quad (5,000 - 0.2 \times [ADP - 5,000]) / ADP$$

15 where "ADP" is the average for the month of the number of barrels of oil equivalent of
16 the total amount of oil and gas, including oil and gas the ownership or right to which is
17 exempt from taxation, produced a day by the producer from all leases or properties in
18 the state. For purposes of the subsection, a barrel of oil equivalent is a barrel of oil, in
19 the case of oil, or 6,000 cubic feet of gas in the case of gas.

20 (i) On written application by a producer, including any information the
21 department may require, the department shall determine whether the producer
22 qualifies under this subsection for a calendar year. To qualify under this subsection, a
23 producer must demonstrate that its operation in the state or its ownership of an interest
24 in a lease or property in the state as a distinct producer entity would not result in the
25 division among multiple producer entities of any amount of oil or gas production or
26 any production tax value of taxable oil and gas, as defined under (a) of this section,
27 that would be reasonably expected to be attributed to a single producer entity if the
28 allowance provision of (h) of this section did not exist. The department may not make
29 a determination that a producer is qualified under (h) of this section and this
30 subsection after December 31, 2013.

31 (j) The department shall specify or approve a reasonable allocation method for

1 determining the portion of a cost that is appropriately treated as a lease expenditure
2 under (c) of this section if a cost that would otherwise constitute a lease expenditure
3 under (c) of this section is incurred to explore for, develop, or produce

4 (1) both an oil or gas deposit located within land outside the state and
5 an oil or gas deposit located within a lease or property, or other land, in the state; or

6 (2) an oil or gas deposit located partly within land outside the state and
7 partly within a lease or property, or other land, in the state.

8 (k) The department may adopt regulations that establish additional standards
9 necessary to carrying out the purposes of this section.

10 (l) For purposes of AS 43.55.024(a) and (b) and only as to expenditures
11 incurred to explore for an oil or gas deposit located within land in which an explorer,
12 as defined in AS 43.55.025, does not own a working interest, the term "producer" in
13 (c) and (e) of this section includes "explorer."

14 (m) For purposes of making a determination under (d)(2)(N) or (d)(2)(O) of
15 this section, and for purposes of making a subtraction that may be required under
16 (d)(2)(N) or (d)(2)(O) of this section, the standard to be applied is that of a producer
17 dealing at arm's length with an uncontrolled entity. To that end,

18 (1) the department may adopt regulations incorporating the concepts of
19 26 U.S.C. 482 (Internal Revenue Code), as amended, and 26 U.S.C. 6662(e) (Internal
20 Revenue Code), as amended, the related or accompanying regulations of each of those
21 sections, and any ruling or guidance issued by the Internal Revenue Service that
22 relates to each of those sections;

23 (2) on request of the department, a producer shall provide
24 documentation supporting the arm's length nature of the transactions resulting in a cost
25 to the producer; the department may base its consideration and determination under
26 (d)(2)(N) of this section and this subsection only on documentation that was in
27 existence at the time the tax return for the taxable period in question is due; a producer
28 that fails to comply with a request under this paragraph is liable for a penalty;

29 (n) The provisions of this subsection apply to the purchase or acquisition of a
30 business entity that is considered to be a taxable purchase of assets for purposes of the
31 Internal Revenue Code, including, by way of example and not of limitation, the

1 purchase of an entity that is disregarded for federal income tax purposes, or an election
2 that is made under 26 U.S.C. 338 (Internal Revenue Code). Under this subsection,

3 (1) the purchase or allocation shall be treated, for purposes of making a
4 determination of

5 (A) under (d)(2)(O) of this section, as a purchase of assets by
6 the producer; and

7 (B) an adjustment by subtraction under (e) of this section, as a
8 sale or transfer of assets by the entity that is purchased or acquired;

9 (2) if an allocation of assets is required, the principle set out in (m) of
10 this section, as interpreted and implemented by the regulations of the department
11 authorized by (m)(1) of this section, applies to the making of that allocation.

12 (o) For purposes of determining whether an adjustment by subtraction shall be
13 made to a payment or credit that a producer has received under (e)(3)(A) of this
14 section,

15 (1) if the sale or transfer of the asset is made for less than the amount
16 that would have been received in an arm's length transaction,

17 (A) the principle set out in (m) of this section, as interpreted
18 and implemented by the regulations of the department authorized by (m)(1) of
19 this section, applies; and

20 (B) the amount of the adjustment by subtraction shall be
21 calculated using the fair market value of the asset;

22 (2) if the sale or transfer is of an asset that was previously included as
23 a direct cost in the calculation of a qualified lease expenditure under this section
24 during a prior period and the asset is subsequently removed from the state for use
25 outside the state, the commissioner shall require the producer to adjust by subtraction
26 the value of the asset from the producer's direct cost; and

27 (3) the producer shall adjust by subtraction from the producer's direct
28 costs the sale of a relinquished asset; the department may adopt regulations to
29 implement this paragraph; for purposes of this paragraph, a "relinquished asset" is an
30 asset that was first acquired by the producer before the effective date of this section
31 and that has been replaced by the producer's later purchase of an asset that serves a

1 substantially similar function as the asset that was relinquished.

2 (p) For purposes of this section,

3 (1) "explore" includes conducting geological or geophysical
4 exploration, including drilling a stratigraphic test well;

5 (2) "stratigraphic test well" means a well drilled for the sole purpose of
6 obtaining geological information to aid in exploring for an oil or gas deposit and the
7 target zones of which are located in the state.

8 * Sec. 23. AS 43.55.201 is amended to read:

9 **Sec. 43.55.201. Surcharge levied.** (a) Every producer of oil shall pay a
10 surcharge of \$.01 [\$.02] per barrel of oil produced from each lease or property in the
11 state, less any oil the ownership or right to which is exempt from taxation.

12 (b) The surcharge imposed by (a) of this section is in addition to the tax
13 imposed by AS 43.55.011 and shall be paid in the [SAME] manner described in
14 AS 43.55.020. The surcharge [AS THE TAX IMPOSED BY AS 43.55.011 -
15 43.55.150; AND] is in addition to the surcharge imposed by AS 43.55.300 -
16 43.55.310.

17 (c) A producer of oil shall make reports of production in the same manner and
18 under the same penalties as required under AS 43.55.011 - 43.55.160 [AS 43.55.011 -
19 43.55.150].

20 * Sec. 24. AS 43.55.201 is amended by adding a new subsection to read:

21 (d) Oil not considered under AS 43.55.020(e) to be produced from a lease or
22 property is not considered to be produced from a lease or property for purposes of this
23 section.

24 * Sec. 25. AS 43.55.300 is amended to read:

25 **Sec. 43.55.300. Surcharge levied.** (a) Every producer of oil shall pay a
26 surcharge of \$.05 [\$.03] per barrel of oil produced from each lease or property in the
27 state, less any oil the ownership or right to which is exempt from taxation.

28 (b) The surcharge imposed by (a) of this section is in addition to the tax
29 imposed by AS 43.55.011 and shall be paid in the [SAME] manner described in
30 AS 43.55.020. The surcharge [AS THE TAX IMPOSED BY AS 43.55.011 -
31 43.55.150; AND] is in addition to the surcharge imposed by AS 43.55.201 -

1 43.55.231.

2 (c) A producer of oil shall make reports of production in the same manner and
3 under the same penalties as required under AS 43.55.011 - 43.55.160 [AS 43.55.011 -
4 43.55.150].

5 * **Sec. 26.** AS 43.55.300 is amended by adding a new subsection to read:

6 (d) Oil not considered under AS 43.55.020(e) to be produced from a lease or
7 property is not considered to be produced from a lease or property for purposes of this
8 section.

9 * **Sec. 27.** AS 43.55.900(6) is repealed and reenacted to read:

10 (6) "gas" means

11 (A) all natural, associated, or casinghead gas;

12 (B) all hydrocarbons that

13 (i) are recovered by mechanical separation of well
14 fluids or by gas processing; and

15 (ii) exist in a gaseous phase at the completion of
16 mechanical separation and any gas processing; and

17 (C) all other hydrocarbons produced from a well not defined as
18 oil;

19 * **Sec. 28.** AS 43.55.900(7) is repealed and reenacted to read:

20 (7) "gross value at the point of production" means

21 (A) for oil, the value of the oil at the automatic custody transfer
22 meter or device through which the oil enters into the facilities of a carrier
23 pipeline or other transportation carrier in a condition of pipeline quality; in the
24 absence of an automatic custody transfer meter or device, "gross value at the
25 point of production" means the value of the oil at the mechanism or device to
26 measure the quantity of oil that has been approved by the department for that
27 purpose, through which the oil is tendered and accepted in a condition of
28 pipeline quality into the facilities of a carrier pipeline or other transportation
29 carrier or into a field topping plant;

30 (B) for gas, other than gas described in (C) of this paragraph,
31 that is

1 (i) not subjected to or recovered by mechanical
2 separation or gas processing, the value of the gas at the first point
3 where the gas is accurately metered;

4 (ii) subjected to or recovered by mechanical separation
5 but not gas processing, the value of the gas at the first point where the
6 gas is accurately metered after completion of mechanical separation;

7 (iii) subjected to or recovered by gas processing, the
8 value of the gas at the first point where the gas is accurately metered
9 after completion of gas processing;

10 (C) for gas run through an integrated gas processing and gas
11 treatment facility that does not accurately meter the gas after the gas
12 processing and before the gas treatment, the value of the gas at the first point
13 where gas processing is completed or where gas treatment begins, whichever is
14 further upstream;

15 * Sec. 29. AS 43.55.900(10) is repealed and reenacted to read:

16 (10) "oil" means

17 (A) crude petroleum oil; and

18 (B) all liquid hydrocarbons that are recovered by mechanical
19 separation of well fluids or by gas processing;

20 * Sec. 30. AS 43.55.900 is amended by adding new paragraphs to read:

21 (17) "Cook Inlet basin" means the area bounded by

22 (A) the north boundary of Township 18 North, Seward
23 Meridian;

24 (B) the Seward Meridian;

25 (C) the south boundary of Township 7 South, Seward
26 Meridian; and

27 (D) the west boundary of Range 19 West, Seward Meridian;

28 (18) "gas processing"

29 (A) means processing a gaseous mixture of hydrocarbons

30 (i) by means of absorption, adsorption, externally
31 applied refrigeration, artificial compression followed by adiabatic

1 expansion using the Joule-Thomson effect, or another physical process
2 that is not mechanical separation;

3 (ii) for the purpose of extracting and recovering liquid
4 hydrocarbons; and

5 (iii) upstream of any gas treatment and upstream of the
6 inlet of any gas pipeline system transporting gas to a market;

7 (B) does not include gas treatment;

8 (19) "gas treatment"

9 (A) means conditioning gas and removing from gas
10 nonhydrocarbon substances for the purpose of rendering the gas acceptable for
11 tender and acceptance into a gas pipeline system; and

12 (B) includes incidentally removing liquid hydrocarbons from
13 the gas.

14 * **Sec. 31.** AS 43.55.011(a), 43.55.011(b), 43.55.011(c), 43.55.012, 43.55.013, 43.55.016,
15 43.55.900(1), 43.55.900(8), 43.55.900(11), 43.55.900(12), and 43.55.900(16) are repealed.

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

18 **APPLICABILITY.** (a) Sections 5, 7 - 10, 12 - 14, 16, and 20 - 31 of this Act apply to
19 oil and gas produced on or after April 1, 2006.

20 (b) Section 11 of this Act applies to oil and gas produced before, on, or after the
21 effective date of sec. 11 of this Act.

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

24 **TRANSITIONAL PROVISIONS.** (a) Notwithstanding any contrary provision of
25 AS 43.55.024(a), enacted by sec. 13 of this Act, for oil and gas produced on or after April 1,
26 2006, and before January 1, 2007,

27 (1) the phrase "every month an annualized tax credit in an amount equal to
28 one and two-thirds percent" in AS 43.55.024 a)(2)(A), enacted by sec. 13 of this Act, shall be
29 replaced by the phrase "every month during the period April 1, 2006, through December 31,
30 2006, an annualized tax credit in an amount equal to 2 222 percent"; and

31 (2) the phrase "every month an annualized tax credit in an amount equal to

1 two and one-half percent" in AS 43.55.024(a)(2)(B), enacted by sec. 13 of this Act, shall be
2 replaced by the phrase "every month during the period April 1, 2006, through December 31,
3 2006, an annualized tax credit in an amount equal to three and one-third percent."

4 (b) Notwithstanding any contrary provision of AS 43.55.024(e), enacted by sec. 13 of
5 this Act, for oil and gas produced on or after April, 2006, and before January 1, 2007, the
6 phrase "a calendar year" in AS 43.55.024(e), enacted by sec. 13 of this Act, shall be replaced
7 by the phrase "the last nine months of the calendar year."

8 (c) Notwithstanding any contrary provision of AS 43.55.160(f), enacted by sec. 22 of
9 this Act, for oil and gas produced on or after April 1, 2006, and before January 1, 2007, the
10 phrase "for every month of a calendar year, one-twelfth of the producer's adjusted lease
11 expenditures for the calendar year" in AS 43.55.160(f), enacted by sec. 22 of this Act, shall be
12 replaced by the phrase "for each of the last nine months of 2006, one-ninth of the producer's
13 adjusted lease expenditures for that nine-month period."

14 (d) Notwithstanding any contrary provision of AS 43.55.160(g)(2), enacted by sec. 22
15 of this Act, for oil and gas produced on or after April 1, 2006, and before January 1, 2007,

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

18 (2) the phrase "calendar year" in AS 43.55.160(g)(2)(B), enacted by sec. 22 of
19 this Act, shall be replaced by the phrase "last nine months of the calendar year."

20 (e) For oil and gas produced before April 1, 2006, the provisions of AS 43.55, and
21 regulations adopted under AS 43.55, that were in effect before April 1, 2006, and that were
22 applicable to the oil and gas continue to apply to that oil and gas.

23 (f) Notwithstanding any contrary provision of AS 43.55.020(a), as repealed and
24 reenacted by sec. 7 of this Act, or of AS 43.55.020(g), enacted by sec. 12 of this Act, for oil
25 and gas produced on or after April 1, 2006, and before the first day of the first month that
26 begins at least 180 days after the effective date of secs. 7 and 12 of this Act,

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

31 (2) the portion, if any, of the taxes levied under AS 43.55.011(e) - (g), enacted

1 by sec. 5 of this Act, that remains unpaid, net of any credits applied as allowed by law, is due
2 on the last day of the second month that begins at least 180 days after the effective date of sec.
3 5 of this Act.

4 (g) Notwithstanding any contrary provision of AS 43.55.030(a), as amended by sec.
5 14 of this Act, for oil and gas produced on or after April 1, 2006, and before the first day of
6 the first month that begins at least 180 days after the effective date of sec. 14 of this Act, the
7 person paying the tax shall file with the Department of Revenue, at the time an amount of tax
8 is due

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

11 (2) under (f)(2) of this section, the statements required under AS 43.55.030(a),
12 as amended by sec. 14 of this Act.

13 (h) For purposes of taxes to be calculated and due under (f)(1) of this section and
14 statements to be filed under (g)(1) of this section, regulations that were adopted by the
15 Department of Revenue under AS 43.55, as the provisions of that chapter read on March 31,
16 2006, and that were in effect on that date apply to those taxes and statements.

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

19 **TRANSITION; REGULATIONS AND RETROACTIVITY OF REGULATIONS.** (a)
20 The Department of Revenue may proceed to adopt regulations to implement the changes
21 made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act),
22 but not before the effective date of the law implemented by the regulation.

23 (b) Notwithstanding any contrary provision of AS 44.62.240, a regulation adopted by
24 the Department of Revenue to implement, interpret make specific, or otherwise carry out the
25 provisions of secs. 5, 7 - 10, 12 - 14, 16, 20 - 31, and 33 of this Act may apply retroactively as
26 of April 1, 2006, if the Department of Revenue expressly designates in the regulation that the
27 regulation applies retroactively to that date.

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

30 **REVISOR'S INSTRUCTION.** The revisor of statutes is instructed to change the
31 heading of

1 (1) AS 43.55 from "Oil and Gas Production Taxes and Oil Surcharge" to "Oil
2 and Gas Production Tax and Oil Surcharge";

3 (2) article 1 of AS 43.55 from "Oil and Gas Properties Production Taxes" to
4 "Oil and Gas Production Tax";

5 (3) AS 43.55.011 from "Oil production tax" to "Oil and gas production tax";

6 (4) AS 43.55.025 from "Tax credit for oil and gas exploration or gas only
7 exploration" to "Alternative tax credit for oil and gas exploration or gas only exploration";

8 (5) AS 43.55.150 from "Determination of gross value" to "Determination of
9 gross value at the point of production."

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

12 **CONDITIONAL RETROACTIVITY.** If the sections of this Act that, under sec. 38 of
13 this Act, are scheduled to take effect April 1, 2006, take effect on or after April 1, 2006, those
14 sections of this Act are retroactive to April 1, 2006.

15 * **Sec. 37.** Sections 1 - 4, 6, 11, 15, 17 - 19, and 32 - 36 of this Act take effect immediately
16 under AS 01.10.070(c).

17 * **Sec. 38.** Except as provided in sec. 37 of this Act, this Act takes effect April 1, 2006.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 23, 2006

SUBJECT: Penalty provision proposed to apply for non-transmittal of information or evidence supporting arms-length transactions, offered for inclusion in CSSB 305(RES) (Work Order No. 24-GS2052\Y)

TO: Senator Tom Wagoner, Chair
Senate Resources Committee

FROM: Jack Chenoweth
Assistant Revisor

In the middle of the last of the four pages of material you provided, there is language proposing that

. . . if a producer fails to comply with a request under this paragraph [proposed AS 43.55.160(1)(2), relating to failure of compliance with the provision directing submission of supporting documentation to assess arm's length nature of direct cost transactions], there shall be added to any [tax] underpayment determined by the department under this section a penalty in the amount of 20 percent of the underpayment.

There are penalties in the state tax laws for various actions or inactions, including failure to make full tax payment¹ and wilful tax evasion,² but, except for a criminal provision,³

¹ So, for example, see AS 43.05.220(a):

(a) Five percent shall be added to a tax for each 30-day period or fraction of the period during which the taxpayer fails to file at the time or times required by law or regulation a return or report, or pay the full amount of the tax, or a portion or a deficiency of the tax, as finally determined by the department and required by this title, unless it is shown that the failure is due to a reasonable cause and not to wilful neglect. The penalty may not exceed 25 percent in the aggregate. The penalty is computed only on the unpaid balance of the tax liability as determined by the department. The department shall prescribe by regulation circumstances which constitute reasonable cause for purposes of this section.

there is currently no financial penalty set out for a taxpayer's failure to respond to requests for documentation. What I understand happens, civilly, is that, if information is insufficient to verify a tax determination, the department may proceed under AS 43.05.245:

If a taxpayer fails to file a return or report required by this title in the time required by law or regulation, or makes an erroneous or fraudulent return, the department shall proceed to assess the license fees, tax, penalties, or interest and make a return from information that it obtains. An assessment or a return subscribed by the department in accordance with this section is presumed sufficient for all legal purposes. . . . The assessment of license

AS 43.05.220(b):

(b) If a tax deficiency or part of a tax deficiency is due to negligence or intentional disregard of law or regulation without intent to defraud, five percent of the total amount of the tax deficiency shall be assessed, collected, and paid in the same manner as a tax deficiency.

and AS 43.05.220(c):

(c) If a tax deficiency or part of a tax deficiency is due to fraud, a civil fraud penalty equal to 50 percent of the tax due or \$500, whichever is greater, shall be added to the tax. This penalty is in addition to penalties determined under (a) or (b) of this section.

² Apart from subsections (a) - (c), AS 43.05.220(d) also sets out a civil penalty for wilful tax evasion:

(d) A person required to collect or account for a tax imposed by this title who willfully fails to collect the tax or to truthfully account for and pay over the tax, or willfully attempts to evade payment of the tax is, in addition to other penalties provided by law, liable for a civil penalty equal to the total amount of the tax not collected, not accounted for, not paid over, or evaded. The penalty imposed by this subsection is in place of the tax not paid to the state. This penalty shall be paid upon demand by the commissioner or a designee of the commissioner, and shall be assessed and collected in the same manner as taxes are assessed and collected under this title.

³ The provision is to be found in AS 43.05.290(c):

(c) A person required under this title to pay a tax, make a return, keep records, *or supply information*, who willfully fails to pay the tax or estimated tax, make the return, keep the records, or supply the information at the time or times required by law or regulation is, in addition to other penalties provided by this title, guilty of a class A misdemeanor.

Senator Tom Wagoner

March 23, 2006

Page 3

fees, tax, penalties, or interest under this section occurs when the department issues a notice and demand for payment of the license fees, tax, penalties, or interest. The notice and demand for payment is issued when the notice and demand is delivered to the taxpayer in person or placed in the United States mail, addressed to the last known address of the taxpayer. . . .

The department also may compel production of relevant information by subpoena, AS 43.05.040:

(a) The department may examine the books, papers, records, or memoranda of any person to ascertain the correctness of a return filed or to determine whether a tax is due, or in an investigation or inspection in connection with tax matters. . . . [T]he department may subpoena any person to appear and produce books, records, papers, or memoranda bearing upon tax matters and to give testimony or answer interrogatories under oath respecting tax matters. The department may administer oaths to persons who are so subpoenaed. A subpoena issued under this section may compel attendance of a witness or production of a document or thing, located either inside or outside the state, to the maximum extent permitted by law.

(c) If a person who is subpoenaed neglects or refuses to obey the subpoena issued as provided in this section, the department may report the fact to the superior court or the appropriate court of another jurisdiction, and may seek an order from the court compelling obedience to the subpoena. The court, to the maximum extent permitted by law, may compel obedience to the subpoena to the same extent as witnesses may be compelled to obey the subpoenas of the court.

All this is by way of a preface to my assertion that the language proposed that is the subject of this memo is in the nature of a "new" penalty and not necessarily a further penalty based on a taxpayer's nonpayment of taxes. In other words, while the measure of the proposed penalty is a percentage of underpaid taxes, in point of fact the penalty appears to be the first financial civil penalty that would attach for failure to provide or deliver information from which the department may ascertain the correctness of a return filed or to determine whether a tax is due as part of an investigation or inspection in connection with one element of petroleum production tax matters.

*

Whether the further penalty proposed to be applicable for a taxpayer's failure to provide information required under AS 43.55.160(l)(2) would be regarded as unnecessarily harsh is a policy judgment that I can't make.

Penalties to be imposed under revenue laws are designed to attach to a taxpayer's conduct, especially insofar as it is intentional or wilful rather than accidental. The federal

Internal Revenue Code contains numerous penalty provisions, of varying financial severity, depending upon the nature of taxpayer conduct, and the state statutes addressing administration of the tax laws contain materials that, while not nearly as complex, reflect the same enforcement philosophy.

The United States Supreme Court has endorsed the position, at least with respect to the federal internal revenue laws, that tax penalty statutes should be strictly construed:

We are here concerned with a taxing Act which imposes a penalty. The law is settled that "penal statutes are to be construed strictly[.]"
[citing] *Federal Communications Commission v. American Broadcasting Co.*, 347 U.S. 284, 286 [1954].

Commissioner of Internal Revenue v. Acker, 361 U.S. 87, 91 (1959) (note omitted). Despite a very few examples where courts have been sensitive to and generally labored to avoid applications that result in imposition of double penalties on taxpayers,⁴ there is little to indicate to me that, except in unusual circumstances, legislative imposition of a series of civil penalties reflecting egregious taxpayer conduct would not be upheld against a challenge. And, although in the criminal law, there are precedents by which separate criminal statutes punishing the same identical acts differently, one as a misdemeanor under one statute and as a felony under the other, may present a legitimate equal protection question, bear in mind that the tax penalty statutes are civil in nature -- imposition of the penalty does not require evidence of a prior criminal conviction -- so the court should be expected to be more differential of the legislature's judgment as to the circumstances in which failure to produce information warrants a financial penalty.

JBC:med
06-238.med

⁴ For example, *In re Tax Refund Litigation*, 766 F. Supp. 1248 (E.D.N.Y. 1991) (court found that, implicit in the federal tax code is the understanding that any one entity may constitute no more than one "person" for purposes of authorized penalties, that reduction of penalty was warranted where IRS imposed a double penalty by assessing penalties against individuals and their partnership where the partnership is not a legal entity separate from its partners under New York law or under the Internal Revenue Code, but reduction of penalty was not warranted when the penalties were assessed against both individuals and a subchapter S corporation, on a finding that a subchapter S corporation is still legally an entity separate from its shareholders), *aff'd in part and rev'd in part on other grounds sub nom. In re MDL-731 Tax Refund Litigation*, 989 F.2d 1290 (2d Cir. 1993), *cert. den. sub nom. Madison Library, Inc. v. United States*, 510 U.S. 964 (1993).

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Overview - Response Fund Balance Projections

3/25/2006

#1 - Senator Stevens' Amended Surcharge Proposal - Change to 2¢/4¢

- ▶ Changes the Response Account/Prevention Account split to 2¢/4¢;
- ▶ Utilizes 1.8 million of CPV Funds;
- ▶ Allows for increased Operating Costs and minimal CIP for Contaminated Sites Cleanup;
- ▶ **DOT and DMVA (LEPCs) continue to have direct operating appropriations** from the Response Fund.

Impacts:

- a. Fund is not able to support core spill prevention and response programs;
- b. Expenditures exceed Revenues in all years;
- c. Response Fund Balance is depleted by FY2009.

#2 - Change Nickel Split from 2¢/3¢ to 1¢/5¢

- ▶ Changes the Response Account/Prevention Account split from 2¢/3¢ to 1¢/5¢;
- ▶ Utilizes 1.8 million of CPV Funds;
- ▶ Allows for increased Operating Costs and minimal CIP for Contaminated Sites Cleanup;
- ▶ **DOT and DMVA (LEPCs) continue to have direct appropriations** from the Response Fund.

Impacts:

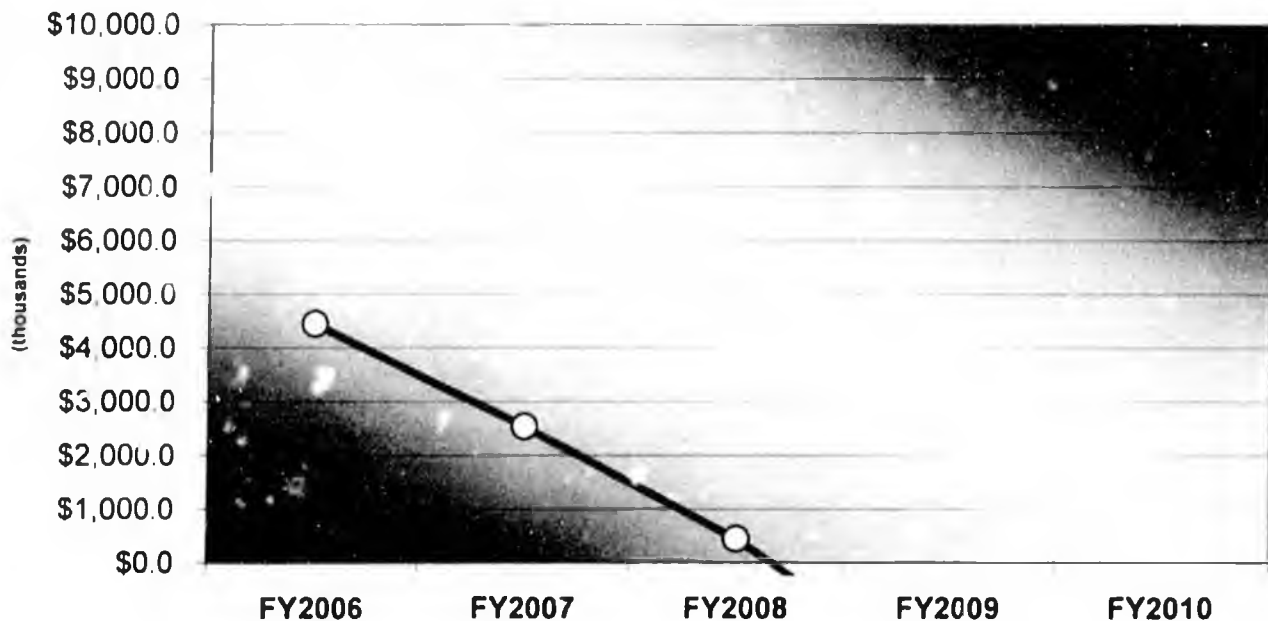
- a. Fund is able to support core spill prevention and response programs;
- b. Revenues exceed expenditures in FY2008 & FY2009;
- c. Expenditures exceed revenues again in FY2010 with minimal draw down on fund.

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
RESPONSE FUND - BALANCE PROJECTION**

**Senator Stevens' Amended Surcharge Proposal - Change to 2¢/4¢
Minimum Capital Cleanup, Known PS Cost Increases and 1.8 mil Transfer from CPVF**

	FY2005 FUND BALANCE	7,782.7				
	FY2006	FY2007	FY2008	FY2009	FY2010	
REVENUE to PREVENTION ACCOUNT	11,431.4	13,000.0	14,400.0	14,400.0	14,400.0	
Current 3 Cent Surcharge	8,396.2	8,500.0	8,600.0	8,600.0	8,600.0	
Cost Recovery/Fines/Penalties	1,225.8	1,500.0	1,500.0	1,500.0	1,500.0	
Interest	1,200.0	1,200.0	1,200.0	1,200.0	1,200.0	
FY2007 Transfer 1.8 million from CPVF to RF (Language)	609.4	1,800.0				
Additional Revenue from Senator Stevens' Amendment to 2¢/4¢			3,100.0	3,100.0	3,100.0	
<i>Note: Revenue from change effective 7/1/2005 will be available for use until FY2008 Budgets</i>						
TOTAL EXPENDITURES	14,767.9	14,909.9	16,491.8	17,073.7	17,655.6	
OPERATING EXPENDITURES	14,767.9	14,909.9	15,491.8	16,073.7	16,655.6	
DEC + Annual Salary Increases - FY2008 and Out Yrs	13,610.4	13,752.4	14,334.3	14,916.2	15,498.1	
DMVA - Continue Annual Approp from RF	332.5	332.5	332.5	332.5	332.5	
DOT - Continue Annual Approp from RF	825.0	825.0	825.0	825.0	825.0	
Proposed Changes	0.0	0.0	0.0	0.0	0.0	
DEC OPERATING						
DOT OPERATING						
DMVA OPERATING						
CAPITAL EXPENDITURES	0.0	0.0	1,000.0	1,000.0	1,000.0	
ESTIMATED FUND BALANCE	4,446.2	2,536.3	444.5	(2,229.2)	(5,484.8)	
EXPENDITURES IN EXCESS OF REVENUE	(3,336.5)	(1,909.9)	(2,091.8)	(2,673.7)	(3,255.6)	

RESPONSE FUND BALANCE



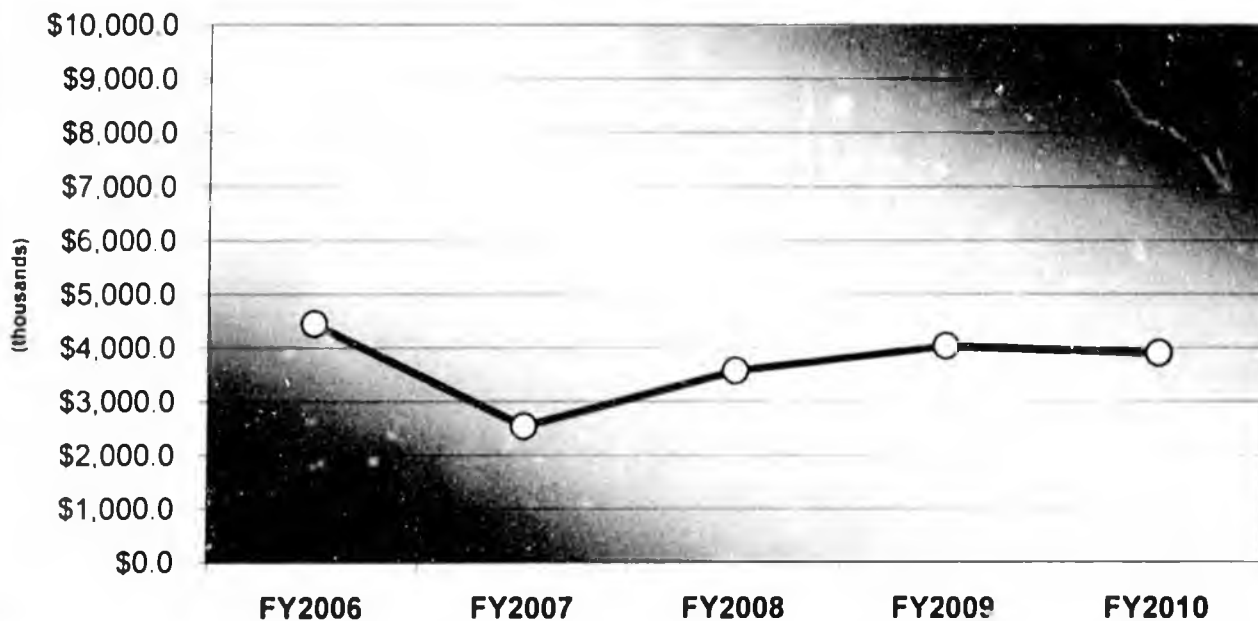
**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
RESPONSE FUND - BALANCE PROJECTION**

Change Nickel Split from 2¢/3¢ to 1¢/5¢

Minimum Capital Cleanup, Known PS Cost Increases and 1.8 mil Transfer from CPVF

	FY2005 FUND BALANCE	7,782.7				
	FY2006	FY2007	FY2008	FY2009	FY2010	
REVENUE to PREVENTION ACCOUNT	11,431.4	13,000.0	17,527.0	17,527.0	17,527.0	
Current 3 Cent Surcharge	8,396.2	8,500.0	8,600.0	8,600.0	8,600.0	
Cost Recovery/Fines/Penalties	1,225.8	1,500.0	1,500.0	1,500.0	1,500.0	
Interest	1,200.0	1,200.0	1,200.0	1,200.0	1,200.0	
FY2007 Transfer 1.8 million from CPVF to RF (Language)	609.4	1,800.0				
Additional Revenue from Change of Nickel Split to 1¢/5¢			6,227.0	6,227.0	6,227.0	
<i>Note: Revenue from change effective 7/1/2006 will be available for use until FY2008 Budgets</i>						
TOTAL EXPENDITURES	14,767.9	14,909.9	16,491.8	17,073.7	17,655.6	
OPERATING EXPENDITURES	14,767.9	14,909.9	15,491.8	16,073.7	16,655.6	
DEC + Annual Salary Increases - FY2008 and Out Yrs	13,610.4	13,752.4	14,334.3	14,916.2	15,498.1	
DMVA - Continue Annual Approp from RF	332.5	332.5	332.5	332.5	332.5	
DOT - Continue Annual Approp from RF	825.0	825.0	825.0	825.0	825.0	
Proposed Changes	0.0	0.0	0.0	0.0	0.0	
DEC OPERATING						
DOT OPERATING						
DMVA OPERATING						
CAPITAL EXPENDITURES	0.0	0.0	1,000.0	1,000.0	1,000.0	
ESTIMATED FUND BALANCE	4,446.2	2,536.3	3,571.5	4,024.8	3,896.2	
EXPENDITURES IN EXCESS OF REVENUE	(3,336.5)	(1,909.9)	1,035.2	453.3	(128.6)	

RESPONSE FUND BALANCE



AMENDMENT

OFFERED IN THE SENATE: BY SENATOR WAGONER
TO: CSSB 305(RES), draft version 24-GS2052N (dated 3-27-06)

- 1 Page 7, line 14, after "amount of" insert:
2 "20 percent of that expenditure."
3
- 4 Page 7, lines 15 through 19, delete all material.
5
- 6 Page 7, line 30, through page 8, line 18, delete all material.
7
- 8 Page 10, line 26-27, following "Federal Energy Regulatory Commission," insert:
9 "the"
10
- 11 page 18, line 25, following "a pipeline, facility" insert:
12 "other asset"
13
- 14 Page 18, line 28, following "successor" insert:
15 "regulatory"
16
- 17 Page 20, lines 12 through page 21 line 3, delete all material and insert deleted materials
18 into Sec. 13, on page 10, line 28 as new subsection (i)
19
- 20 Page 10, line 28, renumber accordingly.
21
22
- 23 Page 20, line 31 through page 21, line 3: delete all material.
24

1 Page 24, line 5: Insert new (2):

2 “(2) “ordinary and necessary” has the meaning given “ordinary and necessary”
3 in 26 U.S.C. 162 (Internal Revenue Code) and regulations adopted under that section;

4 Page 24, line 5, renumber accordingly.

5

6 Page 27, lines 31-32, and Page 28, lines 1-3, delete all material.

7

8

9