

**SB 2001**

**(FILE 1)**

**BILL**

**MATERIALS**

# Alaska State Legislature

**Senator Hollis French, Chair**  
State Capitol, Room 417  
Juneau, Alaska 99801  
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**Committee Members:**  
Senator Charlie Huggins  
Senator Bill Wielechowski  
Senator Lesil McGuire  
Senator Gene Therriault

## Senate Judiciary Committee

### MEMORANDUM

Date: October 24, 2007

To: Senate Secretary's Office

From: Senator Hollis French

Re: Meetings Scheduled: October 29, 30, 31<sup>st</sup> (amended schedule)

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**+Monday, October 29 9:00 a.m. Butrovich Room #205**

SB2001 Oil and Gas Tax Amendments (pending referral)

Bill Overview

Penalties / Qui Tam

Personnel issues: auditors

Itemization of returns

--Testimony Invitation Only

**+Tuesday, October 30 9:00 a.m. Butrovich Room #205**

SB2001 Oil and Gas Tax Amendments (pending referral)

Actual versus reasonable costs

Credit Buy-back fund and appropriation authority

Corrosion

--Testimony Invitation Only

**+Wednesday, October 31 9:00 a.m. Butrovich Room #205**

SB2001 Oil and Gas Tax Amendments (pending referral)

Gross versus Net

Progressivity

Floor

--Testimony Invitation Only

**+Thursday, November 1 9:00 a.m. Butrovich Room #205**

SB2001 Oil and Gas Tax Amendments (pending referral)

--Public Testimony 6:00 p.m. to 8:30 p.m.

**+Friday, November 2 9:00 a.m. Butrovich Room #205**

SB2001 Oil and Gas Tax Amendments (pending referral)

--Testimony Invitation Only

**+Saturday, November 3 9:00 a.m. Butrovich Room #205**

SB2001 Oil and Gas Tax Amendments (pending referral)

--Testimony Invitation Only

## LEGAL SERVICES

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### MEMORANDUM

October 18, 2007

**SUBJECT:** Sectional summary of the governor's production tax bill based on the version received October 17, 2007  
(Work Order No. 25-GH0014\A and 25-GS0014\A)

**TO:** File

**FROM:** Donald M. Bullock Jr.  
Legislative Counsel

The following is a sectional analysis of the draft of the governor's bill amending AS 43.55 and making additional changes related to the administration of the oil and gas production tax and surcharges.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** States that the enactment of AS 43.55.075(b) in sec. 50 of the bill is to "confirm by clarification the long-standing interpretation of AS 43.05.260 by the [department]." (AS 43.05.260 relates to the limitation on assessment for taxes imposed by AS 43.)

**Section 2.** Amends AS 38.05.035(a) by adding a new paragraph that requires the director of the division of lands to furnish records, files, and other information related to the administration of AS 38.05.180 (oil and gas and gas only leasing) to the Department of Revenue for use in forecasting state revenue and the administration of AS 43.55 (oil and gas production tax and surcharges). In the case of information required to be held confidential under AS 38.05.035(a)(8), the Department of Revenue is to maintain the same level of confidentiality of the information as is required of the director of the division of lands.

**Section 3.** Amends AS 38.05.036(b) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 4.** Amends AS 38.05.036(f) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 5.** Amends AS 38.05.036(g) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 6.** Amends AS 38.05.123(f) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 7.** Amends AS 38.05.135(e) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 8.** Amends AS 38.05.180(j) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 9.** Amends AS 38.05.275(c) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 10.** Adds a new paragraph to AS 39.25.110 that makes oil and gas production tax auditors and their immediate supervisors in the Department of Revenue, and oil and gas royalty auditors and their immediate supervisors in the Department of Natural Resources exempt employees.

**Section 11.** Amends AS 41.09.010(d) by changing a cross-reference to a paragraph in AS 38.05.035(a); the change is required because the amendment of AS 38.05.035(a) in sec. 2 renumbered some paragraphs in the subsection and added a new paragraph.

**Section 12.** Amends AS 43.05.230(a) to include AS 43.55.890 (added by sec. 61 of the bill) as authority for divulging the amount of income or the particulars set out or disclosed in a report or return made under AS 43, notwithstanding the general prohibition in AS 43.05.230.

**Section 13.** Amends AS 43.05.230(h) by adding tax returns, reports, and documents filed under AS 43.55 and the Department of Revenue's determinations and workpapers under AS 43.55 and AS 43.65 to the information that the Department of Revenue is required to furnish to the Department of Natural Resources.

**Section 14.** Amends AS 43.05.260(a) to include AS 43.55.075 (added by sec. 50 of the bill) as an exception to the general three-year statute of limitation on assessment.

**Section 15.** Repeals and reenacts AS 43.55.011(e); the reenactment changes levy from a monthly to a calendar year basis; with certain exceptions, provides that the tax is equal to the production tax value of the taxable oil and gas multiplied by the percentage determined under AS 43.55.011(g) (subsection (g) is repealed and reenacted by sec. 17 of the bill). Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 16.** Repeals and reenacts AS 43.55.011(f); the repeal and reenactment creates a new floor for the tax imposed on production from a unit or non-unitized reservoir from which 1,000,000,000 BTU equivalent barrels of oil or gas have been cumulatively produced before the start of the tax year and from which the average daily oil and gas production during the most recent calendar year exceeded 100,000 BTU equivalent barrels a day (so-called "legacy fields"); provides that tax credits may not be used to reduce the tax liability for these leases or properties below 10 percent of the total gross value at the point of production; provides that the effective tax rate under AS 43.55.011(e) may not be less than 10 percent of the total gross value at the point of production. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 17.** Repeals and reenacts AS 43.55.011(g); provides that the tax rate applicable to the tax value of oil and gas production is the sum of 25 percent plus the product of 0.20 percent (.002) times the price index determined under AS 43.55.011(h) (subsection (h) is amended in sec. 18 of the bill); limits the tax to a maximum rate of 50 percent. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 18.** Amends AS 43.55.011(h) to make the price index determined on a calendar year rather than a monthly basis, and to increase the nominal 25 percent tax when the average production tax value for all leases or properties in the state for the calendar year exceeds \$30. Provides that the price index may not be less than zero.<sup>1</sup> Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 19.** Amends AS 43.55.011(j) (relating to Cook Inlet gas) to eliminate a reference to AS 43.55.011(g); the reference to AS 43.55.011(g) is no longer applicable with the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill and the repeal and reenactment of AS 43.55.011(g) in sec. 17 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

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<sup>1</sup> For example, if the average production tax value is \$35 a BTU equivalent barrel, the tax rate is 26%. This is determined by starting with the 25% base rate in AS 43.55.011(g) and adding the product of 0.2% multiplied by 5, with "5" representing the difference between 30 and the average production tax value a BTU equivalent barrel.

**Section 20.** Amends AS 43.55.011(k) (relating to Cook Inlet oil) to eliminate a reference to AS 43.55.011(g); the reference to AS 43.55.011(g) is no longer applicable with the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill and the repeal and reenactment of AS 43.55.011(g) in sec. 17 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 21.** Amends AS 43.55.011(m) by adding new limitations for excess tax credits associated with Cook Inlet gas production based on new subsections added to AS 43.55.160 by sec. 55 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 22.** Repeals and reenacts AS 43.55.020(a); provides the methods for determining the amount of monthly installment payments for the tax imposed on leases or properties outside of Cook Inlet excluding fields subject to tax under AS 43.55.011(f) (legacy fields), on leases or properties subject to AS 43.55.011(f), and on leases or properties in Cook Inlet; provides a limit on the amount of the installment payment for oil and gas produced in Cook Inlet; provides the method for determining the amount of the installment payment for the tax imposed on the production of taxable royalty oil and gas; and provides that any tax remaining due after the payment of the installment payments is due on March 31 of the year following the calendar year of production. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 23.** Amends AS 43.55.020(d) by changing a reference to the statute under which the tax is levied to conform with the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 24.** Amends AS 43.55.020(g) by changing references to paragraphs in AS 43.55.020(a) to conform to the repeal and reenactment of AS 43.55.020(a) in sec. 22 of the bill; clarifies the period during which interest accrues under 26 U.S.C. 6621 on the underpayment of an installment. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 25.** Amends AS 43.55.020(h) by changing references to paragraphs in AS 43.55.020(a) to conform to the repeal and reenactment of AS 43.55.020(a) in sec. 22 of the bill; clarifies the period during which interest accrues under 26 U.S.C. 6621 on the overpayment of an installment. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 26.** Amends AS 43.55.023(a) to require that no more than one-half of a credit for a qualified capital expenditure be applied in a single calendar year; amends the requirements for

submitting information to the Department of Natural Resources as a condition of taking the credit by referencing AS 43.55.025(f)(2) (AS 43.55.025(f)(2) is amended in sec. 39 of the bill); prohibits a credit for a qualified capital expenditure for exploration, development, or production on a lease or property subject to tax under AS 43.55.011(f) (legacy fields) from being applied against a tax for oil and gas production outside of those leases or properties. (The specific reporting requirements in the existing subsection are incorporated into the amended AS 43.55.025(f) in sec. 39 of the bill.) Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 27.** AS 43.55.023(b) is amended to increase the percentage of a carried-forward annual loss that may be taken as a tax credit from 20 to 25 percent; incorporates a limitation on a carried-forward annual loss under AS 43.55.160(h) (AS 43.55.160(h) is added in sec. 55 and is applicable to Cook Inlet); prohibits the carry-forward of adjusted lease expenditures to explore, develop, or produce oil or gas deposits within a unit or non-unitized reservoir subject to AS 43.55.011(f) (legacy fields). Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 28.** Amends AS 43.55.023(d) to limit the application of the subsection by making an exception for tax credits based on certain expenditures in legacy fields (AS 43.55.023(a)(3) in sec. 26 of the bill); references the ability to obtain a cash payment for tax credits under AS 43.55.028 (AS 43.55.028 is added in sec. 45 of the bill); doubles the period for the department to grant, deny, or grant a limited credit by changing the period for acting from 60 to 120 days; amends one of the three alternative starting points (the latest is used) to start the period for departmental action on the date a statement under AS 43.55.030(a) or (e) is filed (AS 43.55.030(a) is amended in sec. 46 of the bill and AS 43.55.030(e) is added in sec. 48 of the bill); requires the department to issue two credit certificates for the credits claimed with each certificate applicable to one-half of the credit amount; provides that the tax credit shown on one of the two credit certificates may be used immediately and prohibits the application of the tax credit on the other certificate before the calendar year following the calendar year in which the certificate is issued. Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 29.** Amends AS 43.55.023(e) to conform with the addition of new limitations on tax credits in AS 43.55.023(d) as amended in sec. 28 of the bill; makes a technical correction to recognize that the tax is "levied by" AS 43.55.011(e), as opposed to "due under" that subsection. Under sec. 66 of the bill this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 30.** Amends AS 43.55.023(g) by adding language to reflect the authority granted in AS 43.55.028 (AS 43.55.028 is added in sec. 45 of the bill) for the department to purchase tax credits authorized under AS 43.55.023. Under sec. 66 of the bill, this section applies to (1) transferable tax credit certificates under AS 43.55.023(d), and (2) transferable tax credit certificates under AS 43.55.023(d) in effect before January 1, 2008 for which a cash refund has not been issued under AS 43.25.023(f) before January 1, 2008. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 31.** Amends AS 43.55.023 by adding a new subsection that states that an entity that is exempt from tax under AS 43.55 may not apply for a transferable tax credit certificate. Under sec. 71 of the bill, this section is retroactive to April 1, 2006.

**Section 32.** Amends AS 43.55.024(a) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 33.** Amends AS 43.55.024(c) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 34.** Amends AS 43.55.024(e) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 35.** Amends AS 43.55.024(g) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 36.** Amends AS 43.55.025(a) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill; makes a technical correction to recognize that the tax is "levied by" AS 43.55.011(e), as opposed to "due under" that subsection; removes the requirement in AS 43.55.020(a)(2) that expenditures must be for work performed before July 1, 2007. Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 37.** Amends AS 43.55.025(b) by changing the start date of the period in which exploration expenditures may qualify for the tax credit under AS 43.55.025(a) from July 1, 2003 to January 1, 2008; requires that the exploration well be completed or abandoned at the time the credit is claimed by an explorer under AS 43.55.05(f) (AS 43.55.025(f) is amended in sec. 39 of the bill); excludes costs from gross negligence or violation of health, safety, or environmental statutes or regulations from eligibility for the tax credit. Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 38.** Repeals and reenacts AS 43.55.025(c); requires an explorer to submit information to the commissioner of natural resources whether the geological objective of the well is a potential oil or gas trap; requires the commissioner to make the determination within a 60-day time period; requires qualifying exploration wells drilled outside of Cook Inlet to have a bottom hole not less than three miles away from the bottom hole of a preexisting oil or gas well; and requires the commissioner of natural resources to determine that the well adequately achieved the explorer's stated geological objective. The "definition of preexisting well" in current law is moved to sec. 43 of the bill where AS 43.55.025(k) is amended by adding the definition in a new paragraph. Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 39.** Amends AS 43.55.025(f) by adding an exception for a credit under AS 43.55.025(l) (AS 43.55.025(l) is a new subsection added by sec. 44 of the bill) and expanding the description of information required to be furnished to the Department of Natural Resources; describes the periods during which information submitted under this subsection to the Department of Natural Resources will be held confidential; requires the Department of Revenue to issue two production tax credit certificates, each for one-half of the amount of the credit allowed against production taxes; provides that the credit associated with one certificate may be used immediately and prohibits the application of the credit associated with the second of the two certificates before the calendar year following the year in which the certificate is issued; states that some information related to the production credit is not confidential. Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 40.** Amends AS 43.55.025(g) to prohibit an explorer that is exempt from the production tax from transferring, conveying, or selling a production tax credit certificate. Under sec. 71 of the bill, this section is retroactive to July 1, 2003.

**Section 41.** Amends AS 43.55.025(h) to refer only to AS 43.55.011(e), the subsection under which the tax is levied following the repeal and reenactment of AS 43.55.011(e) in sec. 15 of the bill, and the repeal and reenactment of AS 43.55.011(f) in sec. 16 of the bill. Under sec.

66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 42.** Repeals and reenacts AS 43.55.025(i). The reenacted provision prohibits applying a tax credit to reduce a taxpayers tax liability below zero and allows tax credits that may not be applied for a calendar year to be carried forward to later calendar years. The reenacted provision is substantively similar to existing law. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 43.** Amends AS 43.55.025(k) by adding a new paragraph that defines "preexisting well." Under sec. 66 of the bill, this section applies to expenditures incurred after December 31, 2007, that are the basis for tax credits with respect to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 44.** Amends AS 43.55.025 by adding a new subsection -- AS 43.55.025(l) -- that relates to a claim for a production tax credit under AS 43.55.025 that is filed before January 1, 2016. Provides for a production tax credit equal to five percent of an eligible expenditure for seismic exploration performed before July 1, 2003; states the terms an expenditure must satisfy to qualify for the credit. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 45.** Adds a new section to AS 43.55 -- AS 43.55.028 -- that establishes the oil and gas tax credit fund and provides for the purchase by the department of certain transferable tax credit certificates issued under AS 43.55.023 and certain production tax certificates issued under AS 43.55.025. Money in the fund consists of earnings on the fund and appropriations to the fund out of production taxes levied under AS 43.55.011. Requires the Department of Revenue to manage the fund and to use money in the fund to purchase tax credit certificates that satisfy certain conditions. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 46.** Amends AS 43.55.030(a) to make the statement filing requirement apply to all producers rather than only those producers with a tax liability. Adds additional information requirements to those in current law. Under sec. 66 of the bill, this section applies to statements and reports required to be filed after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 47.** Amends AS 43.55.030(d) by making a person required to file a report under the section liable for a penalty of \$1,000 for each day the person fails to file the report; provides that the penalty is in addition to existing penalties in AS 43.05.220 and 43.05.290; includes a statement within the meaning of "report" in the subsection.

**Section 48.** Adds subsections (e) and (f) to AS 43.55.030. AS 43.55.030(e) requires an explorer or a producer that does not produce oil or gas during the calendar year to report the

producer's qualified capital expenditures and other lease expenditures; also requires a producer or explorer receiving a payment or credit under AS 43.55.170 to show whether a tax is due based on AS 43.55.160(d) or 43.55.170(b) and, if so, the amount of the tax. AS 43.55.030(f) authorizes the Department of Revenue to require monthly reports of information related to the determination of the amount of tax due under the chapter. Under sec. 66 of the bill, this section applies to statements and reports required to be filed after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 49.** Amends AS 43.55.040 by adding additional paragraphs that authorize the Department of Revenue to require a producer, explorer, or operator to file reports and records that the department considers necessary to forecast state revenue under AS 43.55, and authorizes a \$1,000 a day penalty against a person who fails to file a report, statement, or other document required under that section.

**Section 50.** Adds a new section -- AS 43.55.075 -- to AS 43.55. AS 43.55.075 expands the limitation period for making an assessment of tax imposed by AS 43.55 from three years to six years after the latest return was filed. Requires a producer to report retroactive changes that affect an element used in determining the tax under AS 43.55 and to file amended returns for the periods affected by the change. Under sec. 66 of the bill, AS 43.55.075(a) applies to any tax liability for which the period of limitation had not expired as of the effective date of secs. 14 and 50 of the bill.

**Section 51.** Adds subsections (e), (f), and (g) to AS 43.55.110. AS 43.55.110(e) and (f) authorize the Department of Revenue to require filing and payment by electronic means; AS 43.55.110(g) authorizes the Department of Revenue to issue non-binding advisory bulletins stating the department's interpretation of AS 43.55 and regulations adopted under the chapter.

**Section 52.** Repeals and reenacts AS 43.55.160(a). Provides for the determination of the production tax value of oil and gas produced outside of Cook Inlet, oil produced in Cook Inlet, and gas produced in Cook Inlet. For oil and gas produced outside of Cook Inlet, the production tax value is the gross value at the point of production for that oil or gas, reduced by the lease expenditures and adjustments that are the costs of exploring for, developing, or producing oil located within the leases or properties, and, if the first reduction results in a positive number, lease expenditures and adjustments that are allocated to those leases or properties under AS 43.55.160(e) - (g). (AS 43.55.160(e) is repealed and reenacted in sec. 54 of the bill; AS 43.55.160(f) and (g) are added by sec. 55 of the bill.) For oil and gas produced in Cook Inlet, the production tax value is the gross value at the point of production for that oil or gas, reduced by the lease expenditures and adjustments that are the costs of exploring for, developing, or producing oil located within the leases or properties. (The reenacted subsection removes the distinction between oil and gas produced north of 68 degrees North latitude and other oil and gas produced outside of Cook Inlet; however, the distinction between areas in the state continues in AS 43.55.160(f) and (g).) Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 53.** Amends AS 43.55.160(b) to refer to the tax value calculated under the section, rather than under only (a) of the section. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 54.** Repeals and reenacts AS 43.55.160(e). The reenacted provision addresses three situations in which a producer or explorer may have lease expenditure adjustments, part or all of which could be carried forward rather than being used during the current tax year: 1) the adjustments, if taken as a deduction would reduce the taxable value of oil and gas produced from a lease or property below zero; 2) the costs were incurred on leases or properties outside of Cook Inlet that did not produce oil or gas during the calendar year; 3) the costs are the producer's costs for the exploration for oil or gas located on land outside of Cook Inlet and in which the producer or explorer does not have an operating right, operating interest, or working interest. Before any such expenditures may be carried forward, the adjustments must first be allocated to those leases or properties under new subsections AS 43.55.160(f) and (g) (AS 43.55.160(f) and (g) are added in sec. 55 of the bill.) The current provision provides for a carry forward of adjusted lease expenditures if the adjustments would reduce the taxable value of oil or gas produced during the calendar year below zero. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 55.** Amends AS 43.55.160 by adding four new subsections -- AS 43.55.160(f), (g), (l.), and (i). AS 43.55.160(f) provides for the allocation of adjusted lease expenditures that are the costs of exploring for, developing, or producing deposits within leases or properties that include land north of 68 degrees North latitude, and AS 43.55.160(g) provides for the allocation of adjusted lease expenditures that are the costs of exploring for, developing, or producing deposits within leases or properties outside of Cook Inlet and no part of which is north of 68 degrees North latitude. AS 43.55.160(h) describes "Cook Inlet excess adjusted lease expenditures" and provides the means by which excess adjusted lease expenditures attributable to Cook Inlet may be used to establish a carried-forward annual loss under AS 43.55.023(b) (AS 43.55.023(b) is amended in sec. 27 of the bill). AS 43.55.160(i) describes the calculations a producer subject to AS 43.55.160(h) is required to perform for determining the only amount of excess adjusted lease expenditures that may be carried forward under AS 43.55.160(h). Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 56.** Repeals and reenacts AS 43.55.165(a), which describes a producer's lease expenditures. The reenacted subsection describes the types of costs that qualify and provides standards for the department to determine which costs may be allowed. The reasonable allowance for overhead expenses is moved into this subsection from the current AS 43.55.165(b). The reenacted AS 43.55.165(a) did not include from the existing provision references to typical industry standards in the state, costs an operator is allowed to bill to another working interest owner, and the standards used by the Department of Natural Resources when determining net profits for certain leases, as standards for determining lease

expenditures. (The deleted reference standards are moved to AS 43.55.165(b) in sec. 57 of the bill.) Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 57.** Amends AS 43.55.165(b) by deleting the provision for the allowance of reasonable overhead expenses (which was moved to AS 43.55.165(a) in sec. 56 of the bill) and incorporating factors that appear in the current AS 43.55.165(a) for determining what costs are lease expenditures. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 58.** Amends AS 43.55.165(e) (relating to excluded lease expenditures) by deleting language in AS 43.55.165(e)(15) that relates to dismantlement, removal, surrender, or abandonment costs attributable to production before April 1, 2006, and adding additional categories of excluded costs. AS 43.55.165(e)(6) is amended to exclude costs that arise from a violation of law or the failure to comply with an obligation under a lease, permit, or license issued by the state or federal government. AS 43.55.165(e)(19) is added to exclude costs for repair, replacement, or deferred maintenance undertaken in response to an unscheduled interruption or reduction in the rate of production or undertaken in response to an unpermitted release of gas or other hazardous substances. (AS 43.55.165(e)(19) appears to address concerns similar to those addressed in HB 128 and SB 80, but uses different criteria than those in the existing legislation for determining excluded costs.) AS 43.55.165(e)(20) is added to exclude costs related to a refinery or crude oil topping plant, but allows the value of certain products produced from such a facility to be lease expenditures. Under sec. 66 of the bill, this section applies to oil and gas produced after March 31, 2006. Under sec. 71 of the bill, this section is retroactive to April 1, 2006.

**Section 59.** Amends AS 43.55.165(h) by specifying that the lease expenditures that are allocated are the costs of exploring for, developing, or producing oil or gas deposits. Under sec. 66 of the bill, this section applies to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, this section takes effect January 1, 2008.

**Section 60.** Amends AS 43.55.170(a) by deleting an exception relating to the subtraction of a payment or credit in calculating billable or billed costs. Under sec. 66 of the bill, this section applies to oil and gas produced after March 31, 2006. Under sec. 71 of the bill, this section is retroactive to April 1, 2006.

**Section 61.** Adds a new section to AS 43.55 -- AS 43.55.890. The new section provides for the publication of information, if aggregated among three or more producers or explorers, that includes the amount of oil or gas production, the amount of taxes levied and paid under AS 43.55, and other information related to credits, expenditures, and the value of oil and gas produced.

**Section 62.** Amends AS 43.55.900 by adding definitions for "non-unitized reservoir," "pool," "producer," and "unit."

**Section 63.** Repeals AS 43.55.023(f) (relating to refundable credits).

**Section 64.** Repeals AS 43.55.165(c) and (d) (relating to the determination of lease expenditures using operating agreements). Under sec. 66 of the bill, these repeals apply to oil and gas produced after March 31, 2006. Under sec. 71 of the bill, these repeals are retroactive to April 1, 2006.

**Section 65.** Repeals AS 43.55.011(l) (relating to the taking of a tax reduction for Cook Inlet production), 43.55.023(i) (relating to transitional investment expenditures occurring after March 31, 2001, and before April 1, 2006), 43.55.160(c) (relating to the determination of the production tax value of oil and gas taxable under AS 43.55.011(g)). Under sec. 66 of the bill, these repeals apply to oil and gas produced after December 31, 2007. Under sec. 72 of the bill, these repeals are effective January 1, 2008.

**Section 66.** Makes identified bill sections applicable to oil and gas produced after March 31, 2006 and after December 31, 2007, to expenditures incurred after December 31, 2007, to tax credit certificates that have not been refunded, and statements and reports required to be filed after December 31, 2007.

**Section 67.** Provides for the assignment of current oil and gas auditors in the Department of Revenue and the Department of Natural Resources and their immediate supervisors to the exempt service, but allows those individuals hired before the effective date of sec. 10 of the bill (adding these position classifications to the exempt service) to choose to continue in the classified service.

**Section 68.** Allows regulations adopted by the Department of Revenue and the Department of Natural Resources to be retroactively applied. Under sec. 71 of the bill, this section is retroactive to April 1, 2006.

**Section 69.** Provides for the treatment of pending applications for transferable credits and for the refund of credits under AS 43.55.023.

**Section 70.** Authorizes the Department of Natural Resources and the Department of Revenue to proceed with the adoption of regulations necessary to implement the Act but provides that an adopted regulation may not take effect before the effective date of the law being implemented.

**Section 71.** Provides for the retroactivity of certain provisions of the Act. The retroactivity is noted in the analysis of the bill sections above.

**Section 72.** Makes certain provisions of the Act effective January 1, 2008. The sections effective on this date are noted in the analysis of the bill sections above.

**Section 73.** Except as provided in sec. 72, makes the Act take effect immediately.

**DMB:med**  
**07-367.med**

# State of Alaska

Department of Revenue  
Commissioner's Office



SARAH PALIN, GOVERNOR

333 Willoughby Avenue, 11<sup>th</sup> Floor

P.O. Box 110400

Juneau, Alaska 99811-0405

Phone: (907) 465-2300

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## Sectional Analysis ACES

- Section 1:** Expresses legislative intent regarding application of the statute of limitations.
- Section 2:** Provides for the Department of Natural Resources to share with the Department of Revenue confidential information for use in administering the production tax or forecasting tax revenue, and maintains confidentiality.
- Sections 3-9:** No substantive change. Amends references to altered statutes.
- Section 10:** Provides for an exempt class of oil and gas auditors and supervisors.
- Section 11:** See sections 3-9.
- Section 12:** Makes conforming amendment regarding disclosure of certain taxpayer information.  
[See Sec. 61]
- Section 13:** Provides for the Department of Revenue to share production tax information with the Department of Natural Resources, and maintains taxpayer confidentiality.
- Section 14:** Makes conforming amendments regarding statute of limitations for production tax.  
[See Sec. 50]
- Section 15:** Repeals tax levy under PPT and establishes new oil and gas tax as calculated in following sections.
- Section 16:** Replaces current North Slope tax floor with new 10% gross tax floor on certain very large fields.
- Section 17:** Establishes net tax rate of 25% plus a progressivity factor of 0.2%.
- Section 18:** Lowers progressivity trigger from \$40 per barrel to \$30 per barrel (net) and provides for annual calculation instead of monthly.
- Sections 19-20:** Conforming amendments.
- Section 21:** Makes conforming change consistent with section 55, to the existing provision preventing Cook Inlet producers from utilizing Cook Inlet tax ceiling to export tax credits to other areas of the state.
- Section 22:** Changes the monthly installment tax calculations to conform to changes made by sections 15-18 and to take account of the existing Cook Inlet tax ceilings.
- Sections 23-25:** Conforming amendments.
- Section 26:** Limits to 50% the amount of a capital credit that may be claimed for a single calendar year; conforms data submission requirements for exploration capital credits to the data submission requirements for AS 43.55.025 exploration credits

[See Sec. 39]; Limits use of capital credits generated in fields subject to the 10% gross tax floor to taxes on oil and gas from those fields.

**Section 27:** Conforms the tax credit rate for carried-forward annual loss to the new basic net tax rate enacted by section 17, and provides that fields subject to the 10% gross tax floor may not carry forward losses.

**Section 28:** Conforming amendments for transferable tax credit certificates, increases from 60 to 120 days a time limit for Department of Revenue approval of certificates, and applies the 50% annual limitation in section 26 to certificates.

**Sections 29-30:** Conforming amendments..

**Section 31:** Clarifies that tax-exempt entities may not apply for transferable credit certificates.

**Sections 32-36:** Conforming amendments.

**Section 37:** Updates provisions for exploration credits, provides that a suspended well does not qualify for credits until completed or abandoned, and excludes costs arising from gross negligence or environmental or health and safety violations.

**Section 38:** Modifies eligibility provisions for exploration wells credits to better define and enforce the requirement to test a previously unexplored prospect while allowing for several exploration wells within a limited period of time.

**Section 39:** Clarifies the data submission requirements for exploration credits, reduces the confidentiality period for certain data, applies the 50 percent annual limitation in section 26 to exploration credits, and provides for public disclosure of basic information relating to credits.

**Section 40:** Clarifies that tax-exempt entities may not transfer exploration tax credits.

**Sections 41-42:** Conforming and clarifying amendments.

**Section 43:** Changes the definition of "preexisting well" for purposes of exploration credits to exclude wells drilled within 540 days rather than 150 days.

**Section 44:** Establishes 5% credit which may be claimed against seismic exploration expenses incurred before July 1, 2003, in exchange for seismic data, the acquisition of which is determined by the Commissioner of DNR to be in the best interest of the state.

**Section 45:** Creates Oil and Gas Tax Credit Fund for the purposes of purchasing certain tax credits from explorers and producers; Establishes procedure and standards for appropriation into and management of fund. (Replaces existing credit buy-back provisions [See Sec. 63])

**Section 46:** Requires producers to file annual report with the Department of Revenue annually, even if no tax is due that year, and expands examples of required information.

**Section 47:** Assesses penalty for late filing of reports required under sections 46 and 48.

**Section 48:** Requires producers and explorers to report certain expenditures and adjustments annually to the Department of Revenue and allows the Department of Revenue to require monthly reporting of information considered necessary for administering of taxes.

**Section 49:** Authorizes the Department of Revenue to require reporting of information needed for revenue forecasting purposes and to assess penalties for failure to timely file reports.

- Section 50:** Extends statute of limitations for production tax to six years, subject to extension due to changes in federal income tax, and provides for tax effects of retroactive changes in items that affect a producer's tax.
- Section 51:** Allows the Department of Revenue to establish and require electronic filing and payment.
- Section 52:** Clarifies how production tax values (i.e., taxable values) of oil and gas are calculated, consistent with changes enacted by sections 15-18.
- Section 53:** Makes conforming amendments required under section 52.
- Sections 54-55:** Further implements the changes enacted by section 52, providing for allocation of lease expenditures among leases or properties, and specifies an "anti double-dipping" provision with respect to Cook Inlet tax ceilings.
- Section 56:** Amends the description of deductible lease expenditures, provides that only expenditures allowed by regulation may be deducted, and makes terminology for overhead expenses consistent with ordinary usage.
- Section 57:** Conforms with section 56; existing language is moved to a different subsection.
- Section 58:** Makes non-deductible all expenditures for dismantlement, removal, or restoration; for repair, replacement, or repair associated with interruption of or reduction in oil or gas production or releases of oil, gas, or other substances; and for refineries or topping plants; allows for deduction of added value of refinery or topping plant products used in lease operations.
- Section 59:** Clarifies language of existing provision on cost allocation.
- Section 60:** Conforming change regarding repeal of certain provisions (see section 63).
- Section 61:** Authorizes Department of Revenue to publish production tax information if aggregated among at least three producers or explorers.
- Section 62:** Adds definitions needed for other provisions of Act.
- Section 63:** Repeals transitional investment expenditure (TIE) tax credit; repeals provisions for using unit operating agreements to determine deductible lease expenditures; Repeals existing provisions for state refund of certain tax credit certificates and makes conforming repeals.
- Section 64:** Applicability provisions: most substantive tax changes apply starting January 1, 2008; several apply back to April 1, 2006.
- Sections 65-68:** Transition provisions.
- Section 69:** Makes certain provisions of the act retroactive consistent with section 64; Makes section 40 retroactive to beginning of exploration tax credit program (July 1, 2003).
- Section 70:** Provides for January 1, 2008, effective date for most substantive changes to production tax.
- Section 71:** Establishes immediate effective date for Act other than as provided by section 70.

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
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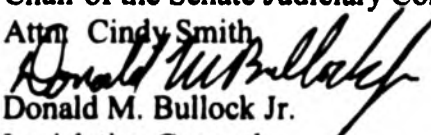
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

November 2, 2007

**SUBJECT:** CSSB 2001(JUD), Draft Version "K"  
(Work Order No. 25-GS0014K)

**TO:** Senator Hollis French  
Chair of the Senate Judiciary Committee  
Attn: Cindy Smith

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

Enclosed is a draft of CSSB 2001(JUD). Please review this draft thoroughly to ensure that it is consistent with the committee's intent.

This is a very complex revision that combines elements of both SB 2001 and CSSB 2001(RES). Added back into this version are the governor's nominal tax rate of 25% and a progressive tax that increases the rate from 0.2 percent to 0.4 percent. The governor's proposed tax on the gross value at the point of production for the so-called legacy fields, those that have had significant historical production and a high level of ongoing production, is not in this version.

The credit provisions currently in AS 43.55, except for AS 43.55.023(i) (sec. 25 of the bill), are not modified in this version except to the extent that references to the taxing provisions in AS 43.55.011 were changed to conform to the bill. The draft does include the governor's proposed oil and gas tax credit fund in sec. 31, but the provision has been modified to delete references to particular saleable credits that are not in this draft.

Adding in what is two out of three elements of the governor's tax proposal -- the nominal tax rate and a modified progressive tax, but not the legacy field tax -- causes ripple effects in the tax credit provisions and the requirements for making installment payments during the tax year. Please review the changes in the credit provisions and installment payment provisions with the Department of Revenue to make sure they think the provisions will work. One particular change to note in the installment payment section (AS 43.55.020(a)) is that the governor's proposal did not require a payment toward the progressive part of the tax until the true-up on the following March 31. This draft changes the progressive calculation from the calendar year period in the governor's bill to a monthly determination as is currently required in AS 43.55. Section 16 also limits the maximum tax rate to 50 percent.

**Senator Hollis French**

**November 2, 2007**

**Page 2**

**Other changes in this draft compared to CSSB 2001(RES) include the additions or modifications of provisions relating to:**

- **The inclusion of a class of disallowed expenditures relating to poorly maintained equipment from SB 80.**
- **The expansion of the statute of limitations to six years, as put forth in SB 2001.**
- **Creation of a limited number of exempt oil and gas audit managers.**
- **A change in the trigger for replacing actual costs with reasonable costs of transportation when determining gross value at the point of production.**
- **A requirement that lease expenditures be incurred in the state.**
- **The authority for the Department of Revenue to require reporting and to publish the gross value at the point for production for a producer for a calendar year and the corresponding lease expenditures.**
- **The requirement that an adjustment to the tax by the Department of Revenue is presumed to be correct and the taxpayer has the burden of disproving the department's assessment and proving the correct amount of tax.**
- **A new penalty for particular understatements of tax that must be shown on a return.**
- **Authority for the Department of Revenue to reward a person who provides information to the department about noncompliance with the requirements of AS 43.55 that leads to the collection of an increase in the tax, penalty, or interest.**

**Again, I urge your committee to review each provision in this draft carefully along with those that may administer the tax in the Department of Revenue.**

**DMB:ljw  
07-394.ljw**

**Enclosure**

# LEGAL SERVICES

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

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Mail Stop 3101

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

## MEMORANDUM

November 1, 2007

**SUBJECT:** Request for CSSB 2001(JUD) (Work Order No. 25-GS0014\K)

**TO:** Senator Hollis French  
Chair of the Senate Judiciary Committee

**FROM:** *Donald M. Bullock*  
Donald M. Bullock  
Legislative Counsel

*to: Don  
from: Lewis*

Based on my meeting with this morning, it is my understanding that the changes outlined below are requested to be made to CSSB 2001(RES) for the drafting of CSSB 2001(JUD). Note that some issues are not yet fully resolved.

### SB 80 Issue

*OK ✓*  
Add the following concept from CSSB 80(FIN), page 3, lines 25 - 26 to AS 43.55.165(e)(19) in CSSB 2001(RES) at page 19, line 15 through page 20, line 10.

### Statute of Limitations

*OK ✓*  
From SB 2001, add secs. 14 and 50 to extend the statute of limitations for assessment to six years.

*also add section 1 of original bill back in — intent language*

### Gross value at the point of production, reasonable and actual costs

Amend AS 43.55.150 as necessary to return to the alternative bases for using reasonable costs:

*OK ✓*  
**Sec. 43.55.150. Determination of gross value at the point of production.** (a) For the purposes of AS 43.55.011 - 43.55.180, the gross value at the point of production is calculated using the reasonable costs of transportation of the oil or gas. The reasonable costs of transportation are the actual costs, except when the

(1) parties to the transportation of oil or gas are affiliated;

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

(3) method of transportation of oil or gas is not reasonable in view of existing alternative methods of transportation.

(b) If the department finds that the conditions in (a)(1), (2), or [AND] (3) of this section are present, the department shall determine the reasonable costs of transportation, using the fair market value of like transportation, the fair market value of equally efficient and available alternative modes of transportation, or

Insert "may include"

**Qui tam**

Insert Senator Wielechowski's qui tam provision in sec. 18, regarding the administration of AS 43.55.

*OK - I called them!*

**Reports of gross value at the point of production and lease expenditures**

In sec. 17, AS 43.55.040 regarding powers of the Department of Revenue, require a producer that has a total production in the state of more than 100,000 barrels a day to report the gross value of the oil and gas produced in the state for a calendar year and the total lease expenditures in the state for that calendar year. Provide that the commissioner may publish that information.

*OK*

**Point of production**

Include language to be provided that defines the point of production for determining gross value at the point of production.

*no drop*

**Retroactivity**

Make provisions in the bill, that would otherwise be effective January 1, 2008 and applicable to oil and gas produced after December 31, 2007, retroactive to January 1, 2007 and applicable to oil and gas produced after December 31, 2006.

*no drop*

**Presumptions and burden of proof**

If these are included in the CS, provide language identifying when the burden of proof falls on the taxpayer and with regard to what issues.

Please provide me with additional guidance as noted above, and correct any misstated part or your request.

*OK*

DMB:med  
07-392.med

other reasonable methods. Transportation costs fixed by tariff rates properly on file with the Regulatory Commission of Alaska or other regulatory agency shall be considered prima facie reasonable.

**Tax rate and progressivity**

Use the 25 percent tax rate from sec. 17 of the governor's bill, but use a rate of 0.4 percent for the progressive rate; use the governor's \$30 trigger.

*OK ✓*

Have the progressivity tax calculated each month, and reflect the monthly calculation in the installment payment provisions (see sec. 18 of CSHB 2001(O&G)).

**Tax credits that may be purchased by the state**

Note that unless secs. 28 (amending AS 43.55.023(d)), 30 (amending AS 43.55.023(g)), and 69 (providing for transition with regard to applications) from SB 2001 are included in CSSB 2001(JUD), sec. 28 has no reference in law.

If AS 43.55.028 in sec. 45 of SB 2001 is inserted into the bill, change AS 43.55.028(b) to refer to the earnings of the fund. The amended AS 43.55.028(b) should look something like this, except that the bracketed language would not appear in the bill and the material that is underlined and bold would be in plain text:

*keep fund eliminate ACES references (leaves PPI credit)*

(b) The oil and gas tax credit fund consists of  
[(1)] money appropriated to the fund, including any appropriation of the percentage provided under (c) of this section of all revenue from taxes levied by AS 43.55.011 that is not required to be deposited in the constitutional budget reserve fund established in art. IX, sec. 17(a), Constitution of the State of Alaska; and **any appropriation from the earnings of the fund**

[(2) EARNINGS ON THE FUND].

**Partially-exempt auditors**

Waiting for more information.

*I spoke w/ Alan Wayne on this*

Provide for PX oil and gas auditors that are distinguished from other oil and gas auditors; policy-makers; intent section to state no more than four positions; describe pay limitations.

**Lease expenditures**

*- pre-audit*

Limit lease expenditures to those incurred in the state.

*none*

Other limits on lease expenditures as recommended by Representative Gara and Senator Guess.

**Information required by the Department of Revenue**

On page 14, line 29 of CSSB 2001:

Delete "**are limited to**"

*Q in tax*

# LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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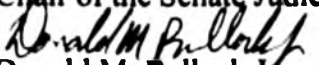
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

November 1, 2007

**SUBJECT:** Request for CSSB 2001(JUD) (Work Order No. 25-GS0014\K)

**TO:** Senator Hollis French  
Chair of the Senate Judiciary Committee

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

Based on my meeting with this morning, it is my understanding that the changes outlined below are requested to be made to CSSB 2001(RES) for the drafting of CSSB 2001(JUD). Note that some issues are not yet fully resolved.

### SB 80 Issue

Add the following concept from CSSB 80(FIN), page 3, lines 25 - 26 to AS 43.55.165(e)(19) in CSSB 2001(RES) at page 19, line 15 through page 20, line 10.

### Statute of Limitations

From SB 2001, add secs. 14 and 50 to extend the statute of limitations for assessment to six years.

### Gross value at the point of production, reasonable and actual costs

Amend AS 43.55.150 as necessary to return to the alternative bases for using reasonable costs:

**Sec. 43.55.150. Determination of gross value at the point of production.** (a) For the purposes of AS 43.55.011 - 43.55.180, the gross value at the point of production is calculated using the reasonable costs of transportation of the oil or gas. The reasonable costs of transportation are the actual costs, except when the

- (1) parties to the transportation of oil or gas are affiliated;
- (2) contract for the transportation of oil or gas is not an arm's length transaction or is not representative of the market value of that transportation; or [AND]
- (3) method of transportation of oil or gas is not reasonable in view of existing alternative methods of transportation.

(b) If the department finds that the conditions in (a)(1), (2), or [AND] (3) of this section are present, the department shall determine the reasonable costs of transportation, using the fair market value of like transportation, the fair market value of equally efficient and available alternative modes of transportation, or

other reasonable methods. Transportation costs fixed by tariff rates properly on file with the Regulatory Commission of Alaska or other regulatory agency shall be considered prima facie reasonable.

**Tax rate and progressivity**

Use the 25 percent tax rate from sec. 17 of the governor's bill, but use a rate of 0.4 percent for the progressive rate; use the governor's \$30 trigger.

Have the progressivity tax calculated each month, and reflect the monthly calculation in the installment payment provisions (see sec. 18 of CSHB 2001(O&G)).

**Tax credits that may be purchased by the state**

Note that unless secs. 28 (amending AS 43.55.023(d)), 30 (amending AS 43.55.023(g)), and 69 (providing for transition with regard to applications) from SB 2001 are included in CSSB 2001(JUD), sec. 28 has no reference in law.

If AS 43.55.028 in sec. 45 of SB 2001 is inserted into the bill, change AS 43.55.028(b) to refer to the earnings of the fund. The amended AS 43.55.028(b) should look something like this, except that the bracketed language would not appear in the bill and the material that is underlined and bold would be in plain text:

- (b) The oil and gas tax credit fund consists of
- [(1)] money appropriated to the fund, including any appropriation of the percentage provided under (c) of this section of all revenue from taxes levied by AS 43.55.011 that is not required to be deposited in the constitutional budget reserve fund established in art. IX, sec. 17(a), Constitution of the State of Alaska; and **any appropriation from the earnings of the fund**
  - [(2) EARNINGS ON THE FUND].

**Partially-exempt auditors**

Waiting for more information.

Provide for PX oil and gas auditors that are distinguished from other oil and gas auditors; policy-makers; intent section to state no more than four positions; describe pay limitations.

**Lease expenditures**

Limit lease expenditures to those incurred in the state.

Other limits on lease expenditures as recommended by Representative Gara and Senator Guess.

**Information required by the Department of Revenue**

On page 14, line 29 of CSSB 2001:

Delete "**are limited to**"

Senator Hollis French

November 1, 2007

Page 3

Insert "may include"

**Oui tam**

Insert Senator Wielechowski's qui tam provision in sec. 18, regarding the administration of AS 43.55.

**Reports of gross value at the point of production and lease expenditures**

In sec. 17, AS 43.55.040 regarding powers of the Department of Revenue, require a producer that has a total production in the state of more than 100,000 barrels a day to report the gross value of the oil and gas produced in the state for a calendar year and the total lease expenditures in the state for that calendar year. Provide that the commissioner may publish that information.

**Point of production**

Include language to be provided that defines the point of production for determining gross value at the point of production.

**Retroactivity**

Make provisions in the bill, that would otherwise be effective January 1, 2008 and applicable to oil and gas produced after December 31, 2007, retroactive to January 1, 2007 and applicable to oil and gas produced after December 31, 2006.

**Presumptions and burden of proof**

If these are included in the CS, provide language identifying when the burden of proof falls on the taxpayer and with regard to what issues.

Please provide me with additional guidance as noted above, and correct any misstated part or your request.

DMB:med

07-392.med

# Alaska State Legislature

**Senator Hollis French, Chair**  
State Capitol, Room 417  
Juneau, Alaska 99801  
Phone: (907) 465-3892  
Fax: (907) 465-6595



**Committee Members:**  
Senator Charlie Huggins  
Senator Bill Wielechowski  
Senator Lesil McGuire  
Senator Gene Therriault

## Senate Judiciary Committee

### MEMORANDUM

Date: November 3, 2007

TO: Don Bullock, Leg. Legal

FROM: Cindy Smith, Senator French

RE: Committee final CS for SB2001

Please prepare a final (S) JUD CS for SB2001, with the following amendments to 25-GS0014K:

Amendment #1: Language from 25-GS0014K.8 (attached) *OK*

Amendment #2: On Page 25, add "In addition to other penalties prescribed by law," immediately following (a) on line 10, and immediately following (b) on Line 14. *OK*

Amendment #3: On page 27, lines 11-12, delete language "for the purpose from penalties collected by the department under this chapter" *OK - but perhaps delete lines 11 & 12*

Amendment #4: See attached amendment #4. *OK*

(note amendment number 5 was withdrawn) *—*

Amendment #6: Language from 25-GS0014K.2 (attached) *OK*

Amendment #7: Language from 25-GS0014K.9 (attached). *OK*

Amendment #8: See amendment #8, attached. *OK*

**Amendment #9:** Language from 25-GS0014\K.1 with appropriate conforming amendments date sections dealing with various tax provisions *JA*

**Amendment #10:** Language from GS0014\M.2 as amended per attached copy. *OLC*

**Amendment #11:** Language from 25-GS0014\K.13, as amended per attached copy *OLC*

**(amendment #12 was withdrawn)**

**Amendment #13:** On Page 27, at line 18, after the word "employee" insert "or an agent of the state". *ALC*

**Amendment #14:** Language from 25-GS0014\K.12 as amended on attached copy.

**Amendment #15:** Language attached.

**Amendment #16:** Language from 25-GS0014\K.15, attached.

AMENDMENT

# 1

OFFERED IN THE SENATE

TO: CSSB 2001(JUD), Draft Version "K"

- 1 Page 25, line 22:
- 2 Delete "10"
- 3 Insert "20"

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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## MEMORANDUM

November 2, 2007

**SUBJECT:** Drafting error in CSSB 2001(JUD)  
(Work Order No. 25-GS0014\K.8)

**TO:** Senator Hollis French

**FROM:** Alpheus Bullard *RAB*  
Legislative Counsel

CSSB 2001(JUD) (25-GS0014\K) contained a drafting error at page 25, line 22. The draft read:

"(2) a gross understatement of tax for any taxable year exists if the amount of the understatement for the taxable year exceeds the lesser of 10 percent of the tax required to be shown on the return for the taxable year or \$20,000,000;" (emphasis added).

The amendment corrects the draft to read:

"(2) a gross understatement of tax for any taxable year exists if the amount of the understatement for the taxable year exceeds the lesser of 20 percent of the tax required to be shown on the return for the taxable year or \$20,000,000;" (emphasis added).

If you have any questions, please do not hesitate to contact our office.

TLAD:med  
07-398.med

Enclosure

Amendment #4

Conceptual Amendment to CSSB 2001(JUD) version K

Repeal and reenact AS 43.55.011(e) to read:

(e) There is levied on the producer of oil or gas a tax for all oil and gas produced each calendar year from each lease or property in the state, less any oil and gas the ownership or right to which is exempt from taxation or constitutes a landowner's royalty interest. Except as otherwise provided under (f), (j), and (k) of this section, the tax is equal to the sum, over all months in the calendar year, of each month's production tax value of the taxable oil and gas as calculated under AS 43.55.160 multiplied by the tax rate for the month determined under (g) of this section. ole

Repeal and reenact AS 43.55.011(g) to read:

(g) The tax rate applied to the production tax value of oil and gas under (e) of this section is 25 percent plus, for a month for which the price index determined under (h) of this section is greater than zero, 0.40 multiplied by the price index determined under (h) of this section. However, a tax rate calculated under this subsection may not be more than 50 percent. ole

Amend AS 43.55.011(h) to read:

(h) For purposes of (g) of this section, the price index for a month is calculated by subtracting 30 [40] from the number that is equal to the quotient of the total of the [MONTHLY] production tax values [VALUE] of the taxable oil and gas produced by the producer from all leases or properties in the state during that month, as calculated ole

under AS 43.55.160, divided by the total amount of that [THE TAXABLE] oil and gas produced by the producer during that month, in BTU equivalent barrels. However, a price index calculated under this subsection may not be less than zero.

Page 14, line 13 of the CS: delete "AS 43.55.160(a)(2)" and insert "AS 43.55.160" t.k. 7

Page 28, line 8, through page 29, line 5: delete all material and insert "AS 43.55.011(e) and 43.55.020(a)(2) [AS 43.55.011(g)], the [MONTHLY] production tax"

Page 29, lines 7, 14, 22, and 29: replace "(A)", "(B)", "(C)", and "(D)" with "(1)", "(2)", "(3)", and "(4)", respectively b/c

Amend AS 43.55.160(c) to read:

(c) Notwithstanding any contrary provision of AS 43.55.150, for purposes of calculating a [MONTHLY] production tax value under (a) [(a)(2)] of this section, the gross value at the point of production of the oil and gas taxable under AS 43.55.011(e) [AS 43.55.011(g)] is calculated under regulations adopted by the department that provide for using an appropriate monthly share of the producer's costs of transportation for the calendar year. o.k.

Amend AS 43.55.160(e) to read:

(e) Any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that would otherwise be deductible by a producer in a calendar year but whose deduction would cause a [AN ANNUAL] production tax value calculated under (a) [(a)(1)] of this o.k.

section of taxable oil or gas produced during the calendar year to be less than zero may be used to establish a carried-forward annual loss under AS 43.55.023(b). In this subsection, "producer" includes "explorer."

Amend AS 43.55.170(b) to read:

(b) Except as otherwise provided under this subsection, if one or more payments or credits subject to this section are received by a producer or by an operator acting for the producer during a calendar year and if either the total amount of the payments or credits exceeds the amount of the producer's applicable lease expenditures for that calendar year or the producer has no lease expenditures for that calendar year, the producer shall nevertheless subtract those payments or credits from the lease expenditures or from zero, respectively, and the producer's applicable adjusted lease expenditures for that calendar year are a negative number and shall be applied to the pertinent calculations [CALCULATION] under AS 43.55.160 [AS 43.55.160(a)] as a negative number.

ok

Delete 43.55.160(c) from the repeal in Sec. 49 of the bill.

AMENDMENT # 6

OFFERED IN THE SENATE

BY SENATOR THERRIAULT

TO: CSSB 2001(JUD), Draft Version "K"

1 Page 2, line 3:

2 Delete "sec. 37"

3 Insert "sec. 46"

4

5 Page 19, following line 7:

6 Insert new bill sections to read:

7 **\*\* Sec. 29.** AS 43.55.025(a) is amended to read:

8 (a) Subject to the terms and conditions of this section, a credit against the  
9 production tax levied by [DUE UNDER] AS 43.55.011(e) [OR (f)] is allowed for  
10 exploration expenditures that qualify under (b) of this section in an amount equal to  
11 one of the following:

12 (1) 20 percent of the total exploration expenditures that qualify only  
13 under (b) and (c) of this section;

14 (2) 20 percent of the total exploration expenditures [FOR WORK  
15 PERFORMED BEFORE JULY 1, 2007, AND] that qualify only under (b) and (d) of  
16 this section:

17 (3) 40 percent of the total exploration expenditures that qualify under  
18 (b), (c), and (d) of this section; or

19 (4) 40 percent of the total exploration expenditures that qualify only  
20 under (b) and (e) of this section.

21 **\* Sec. 30.** AS 43.55.025(b) is amended to read:

22 (b) To qualify for the production tax credit under (a) of this section, an  
23 exploration expenditure must be incurred for work performed [ON OR] after  
24 December 31, 2007 [JULY 1, 2003], and before July 1, 2016, [EXCEPT THAT AN

1 EXPLORATION EXPENDITURE FOR A COOK INLET PROSPECT MUST BE  
2 INCURRED FOR WORK PERFORMED ON OR AFTER JULY 1, 2005.] and

3 (1) may be for seismic or other geophysical exploration costs not  
4 connected with a specific well;

5 (2) if for an exploration well,

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

8 (B) may be for either a [AN OIL OR GAS DISCOVERY] well  
9 that encounters an oil or gas deposit or a dry hole; [AND]

10 (C) must be for a well that has been completed or  
11 abandoned at the time the explorer claims the tax credit under (f) of this  
12 section; and

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

18 (3) may not be for testing, stimulation, or completion costs;  
19 administration, supervision, engineering, or lease operating costs; geological or  
20 management costs; community relations or environmental costs; bonuses, taxes, or  
21 other payments to governments related to the well; costs arising from gross  
22 negligence or violation of health, safety, or environmental statutes or regulations;  
23 or other costs that are generally recognized as indirect costs or financing costs; and

24 (4) may not be incurred for an exploration well or seismic exploration  
25 that is included in a plan of exploration or a plan of development for any unit on  
26 May 13, 2003.

27 \* **Sec. 31.** AS 43.55.025(c) is repealed and reenacted to read:

28 (c) To be eligible for the 20 percent production tax credit authorized by (a)(1)  
29 of this section or the 40 percent production tax credit authorized by (a)(3) of this  
30 section, exploration expenditures must

31 (1) qualify under (b) of this section; and

1 (2) be for an exploration well, subject to the following:

2 (A) before spudding the well, (i) the explorer shall submit to  
3 the commissioner of natural resources the information necessary to determine  
4 whether the geological objective of the well is a potential oil or gas trap that is  
5 distinctly separate from any trap that has been tested by a preexisting well; and  
6 (ii) the commissioner of natural resources must make an affirmative  
7 determination on that question; the commissioner of natural resources shall  
8 decide whether to make that determination within 60 days after receiving all  
9 the necessary information from the explorer and based on the information  
10 received and on other information the commissioner of natural resources may  
11 consider relevant;

12 (B) for an exploration well other than a well to explore a Cook  
13 Inlet prospect, the well must be located and drilled in such a manner that the  
14 bottom hole is located not less than three miles away from the bottom hole of a  
15 preexisting well drilled for oil or gas, irrespective of whether the preexisting  
16 well has been completed, suspended, or abandoned;

17 (C) after completion or abandonment of the exploration well,  
18 the commissioner of natural resources must determine that the well adequately  
19 achieved the explorer's stated geological objective.

20 \* Sec. 32. AS 43.55.025(f) is amended to read:

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

22 (1) an explorer shall, in a form prescribed by the department and,  
23 **except for a credit under (f) of this section,** within six months of the completion of  
24 the exploration activity, claim the credit and submit information sufficient to  
25 demonstrate to the department's satisfaction that the claimed exploration expenditures  
26 qualify under this section;

27 (2) an explorer shall agree, in writing,

28 (A) to notify the Department of Natural Resources, within 30  
29 days after completion of seismic or geophysical data processing, completion of  
30 [A] well **drilling**, or filing of a claim for credit, whichever is the latest, for  
31 which exploration costs are claimed, of the date of completion and submit a

1 report to that department describing the processing sequence and providing a  
2 list of data sets available; [IF, UNDER (c)(2)(B) OF THIS SECTION, AN  
3 EXPLORER SUBMITS A CLAIM FOR A CREDIT FOR EXPENDITURES  
4 FOR AN EXPLORATION WELL THAT IS LOCATED WITHIN THREE  
5 MILES OF A WELL ALREADY DRILLED FOR OIL AND GAS, IN  
6 ADDITION TO THE SUBMISSIONS REQUIRED UNDER (1) OF THIS  
7 SUBSECTION, THE EXPLORER SHALL SUBMIT THE INFORMATION  
8 NECESSARY FOR THE COMMISSIONER OF NATURAL RESOURCES  
9 TO EVALUATE THE VALIDITY OF THE EXPLORER'S CLAIM THAT  
10 THE WELL IS DIRECTED AT A DISTINCTLY SEPARATE  
11 EXPLORATION TARGET. AND THE COMMISSIONER OF NATURAL  
12 RESOURCES SHALL, UPON RECEIPT OF ALL EVIDENCE SUFFICIENT  
13 FOR THE COMMISSIONER TO EVALUATE THE EXPLORER'S CLAIM,  
14 MAKE THAT DETERMINATION WITHIN 60 DAYS;]

15 (B) to provide to the Department of Natural Resources, within  
16 30 days after the date of a request. unless a longer period is provided by the  
17 Department of Natural Resources, specific data sets, ancillary data, and  
18 reports identified in (A) of this paragraph; in this subparagraph,

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

23 (ii) well data include all derivative products, results,  
24 and copies of data collected and data analyses for the well; well  
25 logs; sample analyses; geophysical and velocity data including  
26 vertical seismic profiles and check shot surveys; and tangible  
27 material including, for each whole core collected, a lengthwise cut  
28 slab that is at least 1/3 of the whole core volume, and representative  
29 samples, as specified by the Department of Natural Resources, of  
30 other gaseous, liquid, or solid material collected from drilling or  
31 testing the well;

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

4 (i) in the case of well data, until the expiration of the  
 5 24-month period of confidentiality described in AS 31.05.035(c),  
 6 without extension, after which the Department of Natural  
 7 Resources [FOR 10 YEARS FOLLOWING THE COMPLETION  
 8 DATE, AT WHICH TIME THAT DEPARTMENT] will release the  
 9 information after 30 days' public notice;

10 (ii) in the case of seismic or other geophysical data,  
 11 other than seismic data acquired by seismic exploration subject to  
 12 (I) of this section, for 10 years following the completion date, at  
 13 which time the Department of Natural Resources will release the  
 14 information after 30 days' public notice;

15 (iii) in the case of seismic data obtained by seismic  
 16 exploration subject to (I) of this section, only until the expiration of  
 17 30 days' public notice issued on or after the date the production tax  
 18 credit certificates are issued under (5) of this subsection; and

19 (D) that, in the case of well data, the explorer will not make  
 20 a request under AS 31.05.035(c) that the commissioner of natural  
 21 resources keep the data confidential for longer than the 24-month period  
 22 of confidentiality described in AS 31.05.035(c);

23 (3) if more than one explorer holds an interest in a well or seismic  
 24 exploration.

25 (A) each explorer may claim an amount of credit that is  
 26 proportional to the explorer's cost incurred;

27 (B) in the case of a well, each explorer holding an interest in  
 28 the well shall agree, in writing, that the explorer will not make the request  
 29 described in (2)(D) of this subsection;

30 (4) the department may exercise the full extent of its powers as though  
 31 the explorer were a taxpayer under this title, in order to verify that the claimed

1 expenditures are qualified exploration expenditures under this section; and

2 (5) if the department is satisfied that the explorer's claimed  
 3 expenditures are qualified under this section **and that all data required to be**  
 4 **submitted under this section have been submitted**, the department shall issue to the  
 5 explorer **two** [A] production tax credit **certificates, each** [CERTIFICATE] for **half of**  
 6 the amount of **the** credit to be allowed against production taxes **levied by**  
 7 **AS 43.55.011(e); the credit shown on one of the two certificates is available for**  
 8 **immediate use; the credit shown on the second of the two certificates may not be**  
 9 **applied against a tax for a calendar year earlier than the calendar year following**  
 10 **the calendar year in which the certificate is issued, and the certificate must**  
 11 **contain a conspicuous statement to that effect; notwithstanding any contrary**  
 12 **provision of AS 38, AS 40.25.100, or AS 43.05.230, the following information is**  
 13 **not confidential:**

14 **(A) the explorer's name;**

15 **(B) the date of the application;**

16 **(C) the location of the well or seismic exploration;**

17 **(D) the date of the department's issuance of the certificate;**

18 **and**

19 **(E) the date on which the information required to be**  
 20 **submitted under this section will be released** [DUE UNDER  
 21 AS 43.55.011(e) OR (f)].

22 \* Sec. 33. AS 43.55.025(g) is amended to read:

23 (g) An explorer, **other than an entity that is exempt from taxation under**  
 24 **this chapter**, may transfer, convey, or sell its production tax credit certificate to any  
 25 person and any person who receives a production tax credit certificate may also  
 26 transfer, convey, or sell the certificate.

27 \* Sec. 34. AS 43.55.025(h) is amended to read:

28 (h) A producer that purchases a production tax credit certificate may apply the  
 29 credits against its production tax liability under AS 43.55.011(e) [OR (f)]. Regardless  
 30 of the price the producer paid for the certificate, the producer may receive a credit  
 31 against its production tax liability for the full amount of the credit, but for not more

1 than the amount for which the certificate is issued. A production tax credit allowed  
2 under this section may not be applied more than once.

3 \* Sec. 35. AS 43.55.025(i) is repealed and reenacted to read:

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

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

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

11 \* Sec. 36. AS 43.55.025(k) is amended by adding a new paragraph to read:

12 (4) "preexisting well" means a well that was spudded more than 540  
13 days but less than 35 years before the date on which the exploration well to which it is  
14 compared is spudded.

15 \* Sec. 37. AS 43.55.025 is amended by adding a new subsection to read:

16 (l) Subject to the terms and conditions of this section, if a claim is filed under  
17 (f)(1) of this section before January 1, 2016, a credit against the production tax levied  
18 by AS 43.55.011(e) is allowed in an amount equal to five percent of an eligible  
19 expenditure under this subsection incurred for seismic exploration performed before  
20 July 1, 2003. To be eligible under this subsection, an expenditure must

21 (1) have been for seismic exploration that

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

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

29 (2) qualify under (b)(3) of this section."  
30

31 Renumber the following bill sections accordingly.

1

2 Page 37, line 28:

3 Delete "Sections 42 - 45 and 48"

4 Insert "Sections 51 - 54 and 57"

5

6 Page 37, line 30:

7 Delete "and 41"

8 Insert "34, 35, 37, and 50"

9

10 Page 38, line 1:

11 Delete "Sections 30 - 32"

12 Insert "Sections 39 - 41"

13

14 Page 38, line 2:

15 Delete "sec. 30"

16 Insert "sec. 39"

17

18 Page 38, line 3:

19 Delete "sec. 32"

20 Insert "sec. 41"

21

22 Page 38, line 4:

23 Delete "Section 36"

24 Insert "Section 45"

25

26 Page 38, line 5:

27 Delete "sec. 36"

28 Insert "sec. 45"

29

30 Page 38, line 6:

31 Delete "sec. 37"

1           Insert "sec. 46"

2

3   Page 38, line 8:

4           Delete "37"

5           Insert "46"

6

7   Page 38, following line 8:

8           Insert a new subsection to read:

9           "(f) Sections 29 - 32 and 36 of this Act apply to exploration expenditures incurred for  
10 work performed after December 31, 2007, that are the bases of tax credits that may be  
11 claimed against taxes levied for oil and gas produced after December 31, 2007."

12

13   Page 38, line 25:

14           Delete "Sections 42 - 45 and 48"

15           Insert "Sections 51 - 54 and 57"

16

17   Page 38, line 27:

18           Delete "and 30"

19           Insert ", 29 - 32, 34 - 37, and 39"

20

21   Page 39, lines 13 - 14:

22           Delete "Sections 42 - 45 and 48"

23           Insert "Sections 51 - 54 and 57"

24

25   Page 39, line 15:

26           Delete "Sections 15 - 28, 30 - 32, and 49"

27           Insert "Sections 15 - 32, 34 - 37, 39 - 41, and 58"

28

29   Page 39, line 16:

30           Delete "sec. 55"

31           Insert "sec. 64"

AMENDMENT

#7

OFFERED IN THE SENATE

BY SENATOR THERRIAULT

TO: CSSB 2001(JUD), Draft Version "K"

- 1 Page 27, line 16, following "exceed":
- 2       Insert "the lesser of \$1,000,000 or"

AMENDMENT TO CSSB 2001(JUD)

#9

McGuire

Page 2, line 2 following "LEGISLATIVE INTENT." through line 5:

Delete all material

Insert:

"It is the intent of the legislature that provisions of this Act will ensure a fair and equitable means of assessing and taxing Alaska's oil and gas resources; encourage the availability to Alaska's citizens of affordable gas produced, transported, and consumed within Alaska; and confirm by clarification the long-standing interpretation of AS 43.05.260 by the Department of Revenue by enactment of AS 43.55.075(b), enacted by sec. 37 of this Act, relating to limitation of assessments for the production tax on oil and gas and conservation surcharges on oil."

Page 11, line 3:

Following "(j),":

Delete "and"

Following "(k)":

Insert "and (o)"

Page 11, following line 6:

Insert a new bill section to read:

**\*\* Sec. 16. AS 43.55.011(f) is amended to read:**

(f) The levy of tax under this section on a producer of oil and gas produced north of 68 degrees North latitude, other than gas subject to (o) of this section, may not be less than

(1) four percent of the gross value at the point of production when the average price per barrel for Alaska North Slope crude oil for sale on the United States West Coast during the calendar year for which the tax is due is more than \$25;

(2) three percent of the gross value at the point of production when the average price per barrel for Alaska North Slope crude oil for sale on the United States West Coast during the calendar year for which the tax is due is over \$20 but not over \$25;

(3) two percent of the gross value at the point of production when the average price per barrel for Alaska North Slope crude oil for sale on the United States West Coast during the calendar year for which the tax is due is over \$17.50 but not over \$20;

(4) one percent of the gross value at the point of production when the average price per barrel for Alaska North Slope crude oil for sale on the United States West Coast during the calendar year for which the tax is due is over \$15 but not over \$17.50; or

(5) zero percent of the gross value at the point of production when the average price per barrel for Alaska North Slope crude oil for sale on the

United States West Coast during the calendar year for which the tax is due is \$15 or less.”

Renumber the following bill sections accordingly.

Page 13, line 7:

Following "against":

Delete "the"

Insert "that [THE]"

Following "tax":

Delete "levied by (e) of this section"

Insert "[LEVIED BY (e) OF THIS SECTION]"

Page 13, line 8:

Delete "for [ON] that gas"

Insert "[ON THAT GAS]"

Insert "and tax credits under AS 38.05.180(i), AS 41.09.010, AS 43.20.043,

AS 43.55.024, and AS 43.55.025 that are allocated to gas subject to (o) of this section

and that are available to be applied against a tax levied by (e) of this section for that

gas during a calendar year may be applied only against that tax"

Page 13, line 9:

Following "basin":

Insert "or to gas subject to (o) of this section, respectively,"

Page 13, line 12:

Following "that":

Insert "respective"

Page 13, line 13:

Following "following":

Insert ", applied separately for the Cook Inlet sedimentary basin and for gas subject to (o) of this section, respectively:"

Page 13, line 15:

Following "section" as first appearing:

Insert "or under (o) of this section"

Page 13, following line 26:

Insert a new bill section to read:

"\*Sec. 21. AS 43.55.011(n) is amended to read:

(n) Allocation of credits under (m) of this section shall be made under regulations adopted by the department that provide for reasonable methods of allocating tax credits to gas produced from leases or properties in the Cook Inlet sedimentary basin and to gas subject to (o) of this section. The method of allocating tax credits available under

AS 43.55.024 shall be based in the number of BTU equivalent barrels produced from a lease or property ”

Page 13, line 27:

Insert a new bill section to read:

“\*Sec. 22. AS 43.55.011 is amended by adding a new subsection to read:

(o) For a calendar year before 2022, the tax levied by (e) of this section per 1,000 cubic feet of gas for gas produced from a lease or property outside the Cook Inlet sedimentary basin and used in the state may not exceed the amount of tax per 1,000 cubic feet of gas that as determined under section (j)(2) of this section.”

Renumber the following bill sections accordingly.

Page 28, line 10:

Following "latitude":

Insert "other than gas subject to AS 43.55.011(o)."

Page 28, line 18:

Following "latitude,":

Insert "other than gas subject to AS 43.55.011(o)."

Page 29, line 8:

Following "latitude":

Insert "other than gas subject to AS 43.55.011(o)."

Page 29, line 16:

Following "latitude,":

Insert "other than gas subject to AS 43.55.011(o)."

Page 29, line 5:

Insert:

“(E) gas produced during a calendar year from a lease or property outside the Cook Inlet sedimentary basin and used in the state is the gross value at the point of production of that gas taxable under AS 43.55.011(e) and produced by the producer from that lease or property, less the producer’s lease expenditures under AS 43.55.165 for the calendar year applicable to that gas produced by the producer from that lease or property, as adjusted under AS 43.55.170;”

Page 30, line 4, following “AS 43.55.170”

Insert “;

“(E) gas produced during a month from a lease or property outside the Cook Inlet sedimentary basin and used in the state is the gross value at the point of production of that gas taxable under AS 43.55.011(e) and produced by the producer from that lease or property, less 1/12 of the producer’s lease expenditures under AS 43.55.165 for the calendar year

**applicable to that gas produced by the producer from that lease or property,  
as adjusted under AS 43.55.170"**

Page 35, following line 12:

Insert a new bill section to read:

"\*Sec. 45. AS 43.55.165(h) is amended to read.

(h) The department shall adopt regulations that provide for reasonable methods of allocating costs between oil and gas, **between gas subject to AS 43.55.011(o) and other gas,** and between leases or properties in those circumstances where the determination of the lease expenditures that are applicable to oil or to gas, **that are applicable to gas subject to AS 43.55.011(o) or to other gas,** or that are applicable to oil and gas produced from different leases or properties, requires an allocation of costs."

Renumber the following bill sections accordingly.

AMENDMENT #9

OFFERED IN THE SENATE

BY SENATOR WIELECHOWSKI

TO: CSSB 2001(JUD), Draft Version "K"

1.2 billion

1 Page 2, line 2, following "INTENT":

2 Insert "(a)"

3

4 Page 2, following line 5:

5 Insert a new subsection to read:

6 "(b) It is the intent of the legislature that the amount of money received by the state as  
7 a result of the retroactivity of certain provisions under sec. 54 of this Act that exceeds the  
8 amount the state would have received if those provisions had not been made retroactive will  
9 be appropriated to the budget reserve fund (art. IX, sec. 17. Constitution of the State of  
10 Alaska)."

11

12 Page 37, line 29:

13 Delete "March 31, 2006"

14 Insert "December 31, 2006"

15

16 Page 38, lines 25 - 26:

17 Delete "April 1, 2006"

18 Insert "January 1, 2007"

19

20 Page 39, line 2:

21 Delete "April 1, 2006"

22 Insert "January 1, 2007"

23

24 Page 39, line 14:

Corrosion

- 1 Delete "April 1, 2006"
- 2 Insert "January 1, 2007"

#10

AMENDMENT

French  
L. 2. 1. 1.

OFFERED IN THE SENATE  
TO: CSSB 2001(RES)

1 Page 1, following line 8:

2 Insert a new bill section to read:

3 **\*\* Section 1.** AS 37.10 is amended by adding a new section to read:

4 **Sec. 37.10.440. Appropriations to the budget reserve fund of production**  
5 **tax revenue.** (a) By February 1 of each year, the Department of Revenue shall  
6 determine the amount of money received by the state for the general fund during the  
7 immediately preceding calendar year from the tax levied under AS 43.55.011, as well  
8 as the amount the state would have received that year from the tax levied under  
9 <sup>(e) & (g)</sup> AS 43.55.011 under the law in effect immediately before January 1, 2008. If the  
10 amount received is greater than the amount that would have been received under  
11 ~~AS 43.55.011~~ under the law in effect immediately before January 1, 2008, the  
12 department shall report the difference between the two amounts to the legislature.

13 (b) The legislature may appropriate 50 percent of the amount identified by the  
14 Department of Revenue under (a) of this section to the budget reserve fund (art. IX,  
15 sec. 17, Constitution of the State of Alaska).

16 (c) Nothing in this section requires that money be appropriated or creates a  
17 dedicated fund."  
18

19 Renumber the following bill sections accordingly.  
20

21 Page 23, line 3:

22 Delete "Sections 21, 22, and 25"

23 Insert "Sections 22, 23, and 26"

1

2 Page 23, line 5:

3 Delete "Sections 19, 20, and 26"

4 Insert "Sections 20, 21, and 27"

5

6 Page 23, line 7:

7 Delete "Sections 14 and 16"

8 Insert "Sections 15 and 17"

9

10 Page 23, line 8:

11 Delete "sec. 14"

12 Insert "sec. 15"

13

14 Page 23, line 9:

15 Delete "sec. 16"

16 Insert "sec. 17"

17

18 Page 23, line 19:

19 Delete "sec. 9"

20 Insert "sec. 10"

21

22 Page 23, line 22:

23 Delete "sec. 9"

24 Insert "sec. 10"

25

26 Page 23, line 25:

27 Delete "sec. 9"

28 Insert "sec. 10"

29

30 Page 24, line 6:

31 Delete "secs. 21, 22, and 25"

- 1           Insert "secs. 22, 23, and 26"
- 2
- 3   Page 24, line 8:
- 4           Delete "secs. 13, 14, 16, 19, 20, and 26"
- 5           Insert "secs. 14, 15, 17, 20, 21, and 27"
- 6
- 7   Page 24, lines 25 - 26:
- 8           Delete "Sections 21, 22, 25, and 29"
- 9           Insert "Sections 22, 23, 26, and 30"
- 10
- 11   Page 24, line 27:
- 12           Delete "Sections 13, 14, 16, 19, 20, and 26"
- 13           Insert "Sections 14, 15, 17, 20, 21, and 27"
- 14
- 15   Page 24, line 28:
- 16           Delete "sec. 32"
- 17           Insert "sec. 33"

AMENDMENT #11

OFFERED IN THE SENATE

BY SENATOR THERRIAULT

TO: CSSB 2001(JUD), Draft Version "K"

1 Page 27, line 25:

2 Delete "or is not representative"

3 Insert "requiring payment [OR IS NOT REPRESENTATIVE]"

*delete this change*

*substitute*

4  
5 Page 27, line 30:

6 Delete "the conditions"

*change*

7 Insert "a condition [THE CONDITIONS]"

*below*

9 Page 27, line 31:

10 Delete "are"

11 Insert "is [ARE]"

13 Page 28, lines 3 - 4:

14 Delete "properly on file with"

15 Insert "that have been adjudicated just and reasonable by [PROPERLY ON FILE

16 WITH]"

*insert on lines  
25-26*

*(a) not arms length  
(b) not representative of...  
amending*

*as per Bullock*

*[Handwritten signatures and initials in a box, including "BWP", "CAN", "HPY"]*

# 14  
AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WIELECHOWSKI

TO: CSSB 2001(JUD), Draft Version "K"

1 Page 25, following line 16:

2 Insert a new subsection to read:

3 "(c) In addition to the penalties imposed under (a) or (b) of this section, a  
4 person who has made a substantial or gross underpayment of tax is liable to the state  
5 for the reasonable costs of the state's enforcement action, including auditing costs,  
6 ~~under this section.~~"

7

8 Reletter the following subsection accordingly.



AMENDMENT

# 15

Wolchanski

OFFERED IN THE SENATE

TO: CSSB 2001(JUD) Draft Version "K"

Section 10

Page 9, line 17

Following "Revenue," insert "**and the Department of Natural Resources**"

Section 51

Page 38, line 14:

Following "Revenue," insert "**and no more than two oil and gas revenue audit manager positions to be created in the Department of Natural Resources.**"

AMENDMENT

#16

OFFERED IN THE SENATE

BY SENATOR WIELECHOWSKI

TO: CSSB 2001(JUD), Draft Version "K"

1 Page 30, line 28, through page 31, line 30:

2 Delete all material and insert:

3 **"\* Sec. 43. AS 43.55.165(b) is amended to read:**

4 (b) For purposes of (a) of this section.

5 (1) direct costs include

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

10 (B) payments of or in lieu of

11 (i) property taxes for properties on which oil and gas  
12 exploration, development, or production is taking place; and

13 (ii) [,] sales and use taxes, motor fuel taxes, and excise  
14 taxes related to transactions or activities involving oil or gas  
15 exploration, development, or production;

16 (C) supplies to be used for oil or gas exploration,  
17 development, or production [A REASONABLE ALLOWANCE, AS  
18 DETERMINED UNDER REGULATIONS ADOPTED BY THE  
19 DEPARTMENT, FOR OVERHEAD EXPENSES DIRECTLY RELATED TO  
20 EXPLORING FOR, DEVELOPING, AND PRODUCING OIL OR GAS  
21 DEPOSITS LOCATED WITHIN LEASES OR PROPERTIES OR OTHER  
22 LAND IN THE STATE];

23 (D) purchased fuel;

1                   **(E) routine maintenance;**  
 2                   **(F) the wages and benefits of employees who are directly**  
 3                   **participating in exploration, development, or production operations; and**  
 4                   **(G) other direct costs as may be established in regulations**  
 5                   **adopted by the department;**

6                   **(2) in determining whether costs are lease expenditures, the**  
 7                   **department may consider, among other factors, the**

8                   **(A) typical industry practices and standards in the state**  
 9                   **that determine the costs, other than items listed in (e) of this section, that**  
 10                   **an operator is allowed to bill a producer that is not the operator, under**  
 11                   **unit operating agreements or similar operating agreements that were in**  
 12                   **effect before December 2, 2005, and were subject to negotiation with at**  
 13                   **least one producer with substantial bargaining power, other than the**  
 14                   **operator; and**

15                   **(B) standards adopted by the Department of Natural**  
 16                   **Resources that determine the costs, other than items listed in (e) of this**  
 17                   **section, that a lessee is allowed to deduct from revenue in calculating net**  
 18                   **profits under a lease issued under AS 38.05.180(f)(3)(B), (D), or (E) [AN**  
 19                   ACTIVITY DOES NOT NEED TO BE PHYSICALLY LOCATED ON,  
 20                   NEAR, OR WITHIN THE PREMISES OF THE LEASE OR PROPERTY  
 21                   WITHIN WHICH AN OIL OR GAS DEPOSIT BEING EXPLORED FOR,  
 22                   DEVELOPED, OR PRODUCED IS LOCATED IN ORDER FOR THE COST  
 23                   OF THE ACTIVITY TO BE A COST UPSTREAM OF THE POINT OF  
 24                   PRODUCTION OF THE OIL OR GAS]."

25

26 Page 32, lines 14 - 16:

27 Delete

28                   "(8) costs of arbitration, litigation, or other dispute resolution activities  
 29                   that involve the state or concern the rights or obligations among owners of interests in,  
 30                   or rights to production from, one or more leases or properties or a unit;"

31

1           Insert

2                               "(8) costs of arbitration, litigation, [OR OTHER] dispute resolution  
3 activities, lobbying, public relations, advertising, or policy advocacy [THAT  
4 INVOLVE THE STATE OR CONCERN THE RIGHTS OR OBLIGATIONS  
5 AMONG OWNERS OF INTERESTS IN, OR RIGHTS TO PRODUCTION FROM,  
6 ONE OR MORE LEASES OR PROPERTIES OR A UNIT];"

7

8   Page 32, lines 23 - 24:

9           Delete

10                               "(12) for a transaction that is an internal transfer or is otherwise not an  
11 arm's length transaction, expenditures incurred that are in excess of fair market value;"

12

13           Insert

14                               "(12) an expenditure otherwise deductible under (b) of this section  
15 that is a result of [FOR A TRANSACTION THAT IS] an internal transfer, a  
16 transaction with an affiliate, or a transaction between related parties, or is  
17 otherwise not an arm's length transaction, unless the producer establishes to the  
18 satisfaction of the department that the amount of the expenditure does not exceed  
19 the [EXPENDITURES INCURRED THAT ARE IN EXCESS OF] fair market value  
20 of the expenditure;"

21

22   Page 35, line 12, following "processed":

23           Insert ";

24                               (21) costs relating to office buildings, fixtures and equipment, and  
25 real property that are not located in the state;

26                               (22) overhead, office, or administrative expenses, and all other  
27 indirect costs of oil or gas exploration, development, or production"

25-GS0014K  
Bullock  
11/2/07

**CS FOR SENATE BILL NO. 2001(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIFTH LEGISLATURE - SECOND SPECIAL SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the production tax on oil and gas and to conservation surcharges on**  
2 **oil; relating to the issuance of advisory bulletins and the disclosure of certain**  
3 **information relating to the production tax and the sharing between agencies of certain**  
4 **information relating to the production tax and to oil and gas or gas only leases;**  
5 **amending the State Personnel Act to place in the exempt service certain state oil and**  
6 **gas audit managers; providing for civil penalties relating to oil and gas production tax**  
7 **payments; establishing an oil and gas tax credit fund and authorizing payment from**  
8 **that fund; providing for retroactive application of certain statutory and regulatory**  
9 **provisions relating to the production tax on oil and gas and conservation surcharges on**  
10 **oil; making conforming amendments; and providing for an effective date."**

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

12 **\* Section 1.** The uncodified law of the State of Alaska is amended by adding a new section

1 to read:

2 LEGISLATIVE INTENT. It is the intent of the legislature that AS 43.55.075(b),  
3 enacted by sec. 37 of this Act, confirm by clarification the long-standing interpretation of  
4 AS 43.05.260 by the Department of Revenue relating to limitation of assessments for the  
5 production tax on oil and gas and conservation surcharges on oil.

6 \* Sec. 2. AS 38.05.035(a) is amended to read:

7 (a) The director shall

8 (1) have general charge and supervision of the division and may  
9 exercise the powers specifically delegated to the director; the director may employ  
10 and fix the compensation of assistants and employees necessary for the operations of  
11 the division; the director [AND] is the certifying officer of the division, with the  
12 consent of the commissioner, and may approve vouchers for disbursements of money  
13 appropriated to the division;

14 (2) manage, inspect, and control state land and improvements on it  
15 belonging to the state and under the jurisdiction of the division;

16 (3) execute laws, rules, regulations, and orders adopted by the  
17 commissioner;

18 (4) prescribe application procedures and practices for the sale, lease,  
19 or other disposition of available land, resources, property, or interest in them;

20 (5) prescribe fees or service charges, with the consent of the  
21 commissioner, for any public service rendered;

22 (6) under the conditions and limitations imposed by law and the  
23 commissioner, issue deeds, leases, or other conveyances disposing of available land,  
24 resources, property, or any interests in them;

25 (7) have jurisdiction over state land, except that land acquired by the  
26 Alaska World War II Veterans Board and the Agricultural Loan Board or the  
27 departments or agencies succeeding to their respective functions through foreclosure  
28 or default; to this end, the director possesses the powers and, with the approval of the  
29 commissioner, shall perform the duties necessary to protect the state's rights and  
30 interest in state land, including the taking of all necessary action to protect and  
31 enforce the state's contractual or other property rights;

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(8) [REPEALED

(9) maintain the [SUCH] records [AS] the commissioner considers necessary, administer oaths, and do all things incidental to the authority imposed; the following records and files shall be kept confidential upon request of the person supplying the information:

(A) the name of the person nominating or applying for the sale, lease, or other disposal of land by competitive bidding;

(B) before the announced time of opening, the names of the bidders and the amounts of the bids;

(C) all geological, geophysical, and engineering data supplied, whether or not concerned with the extraction or development of natural resources;

(D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases, and similar items;

(E) applications for rights-of-way or easements;

(F) requests for information or applications by public agencies for land that [WHICH] is being considered for use for a public purpose;

(9) [(10)] account for the fees, licenses, taxes, or other money received in the administration of this chapter including the sale or leasing of land, identify their source, and promptly transmit them to the proper fiscal department after crediting them to the proper fund; receipts from land application filing fees and charges for copies of maps and records shall be deposited immediately in the general fund of the state by the director;

(10) [(11)] select and employ or obtain at reasonable compensation cadastral, appraisal, or other professional personnel the director considers necessary for the proper operation of the division;

(11) [(12)] be the certifying agent of the state to select, accept, and secure by whatever action is necessary in the name of the state, by deed, sale, gift, devise, judgment, operation of law, or other means any land, of whatever nature or interest, available to the state; and be the certifying agent of the state, to select,

1 accept, or secure by whatever action is necessary in the name of the state any land, or  
2 title or interest to land available, granted, or subject to being transferred to the state  
3 for any purpose;

4 (12) on request, furnish records, files, and other information  
5 related to the administration of AS 38.05.180 to the Department of Revenue for  
6 use in forecasting state revenue under or administering AS 43.55, whether or not  
7 those records, files, and other information are required to be kept confidential  
8 under (8) of this subsection: in the case of records, files, or other information  
9 required to be kept confidential under (8) of this subsection, the Department of  
10 Revenue shall maintain the confidentiality that the Department of Natural  
11 Resources is required to extend to records, files, and other information under (8)  
12 of this subsection

13 [(13) REPEALED

14 (14) REPEALED].

15 \* Sec. 3. AS 38.05.036(b) is amended to read:

16 (b) The Department of Revenue may obtain from the department information  
17 relating to royalty and net profits payments and to exploration incentive credits under  
18 this chapter or under AS 41.09, whether or not that information is confidential. The  
19 Department of Revenue may use the information in carrying out its functions and  
20 responsibilities under AS 43, and shall hold that information confidential to the extent  
21 required by an agreement with the department or by AS 38.05.035(a)(8)  
22 [AS 38.05.035(a)(9)], AS 41.09.010(d), or AS 43.05.230.

23 \* Sec. 4. AS 38.05.036(f) is amended to read:

24 (f) Except as otherwise provided in this section or in connection with official  
25 investigations or proceedings of the department, it is unlawful for a current or former  
26 officer, employee, or agent of the state to divulge information obtained by the  
27 department as a result of an audit under this section that is required by an agreement  
28 with the department or by AS 38.05.035(a)(8) [AS 38.05.035(a)(9)] or  
29 AS 41.09.010(d) to be kept confidential.

30 \* Sec. 5. AS 38.05.036(g) is amended to read:

31 (g) Nothing in this section prohibits the publication of statistics in a manner

1 that maintains the confidentiality of information to the extent required by an  
2 agreement with the department or by AS 38.05.035(a)(8) [AS 38.05.035(a)(9)] or  
3 AS 41.09.010(d).

4 \* Sec. 6. AS 38.05.123(f) is amended to read:

5 (f) As part of the timber sale negotiations authorized by this section, the  
6 commissioner may require a prospective purchaser negotiating a timber sale contract  
7 to submit financial and technical data that demonstrates that the requirements of this  
8 section have been or will be met. Upon the prospective purchaser's request, the  
9 commissioner shall keep data provided by the purchaser confidential in accordance  
10 with the requirements of AS 38.05.035(a)(8) [AS 38.05.035(a)(9)].

11 \* Sec. 7. AS 38.05.133(e) is amended to read:

12 (e) The commissioner may make a written request to a prospective licensee  
13 for additional information on the prospective licensee's proposal. The commissioner  
14 shall keep confidential information described in AS 38.05.035(a)(8)  
15 [AS 38.05.035(a)(9)] that is voluntarily provided if the prospective licensee has made  
16 a written request that the information remain confidential.

17 \* Sec. 8. AS 38.05.180(j) is amended to read:

18 (j) The commissioner

19 (1) may provide for modification of royalty on individual leases,  
20 leases unitized as described in (p) of this section, leases subject to an agreement  
21 described in (s) or (t) of this section, or interests unitized under AS 31.05

22 (A) to allow for production from an oil or gas field or pool if

23 (i) the oil or gas field or pool has been sufficiently  
24 delineated to the satisfaction of the commissioner;

25 (ii) the field or pool has not previously produced oil or  
26 gas for sale; and

27 (iii) oil or gas production from the field or pool would  
28 not otherwise be economically feasible;

29 (B) to prolong the economic life of an oil or gas field or pool  
30 as per barrel or barrel equivalent costs increase or as the price of oil or gas  
31 decreases, and the increase or decrease is sufficient to make future production

1 no longer economically feasible; or

2 (C) to reestablish production of shut-in oil or gas that would  
3 not otherwise be economically feasible;

4 (2) may not grant a royalty modification unless the lessee or lessees  
5 requesting the change make a clear and convincing showing that a modification of  
6 royalty meets the requirements of this subsection and is in the best interests of the  
7 state;

8 (3) shall provide for an increase or decrease or other modification of  
9 the state's royalty share by a sliding scale royalty or other mechanism that shall be  
10 based on a change in the price of oil or gas and may also be based on other relevant  
11 factors such as a change in production rate, projected ultimate recovery, development  
12 costs, and operating costs;

13 (4) may not grant a royalty reduction for a field or pool

14 (A) under (1)(A) of this subsection if the royalty modification  
15 for the field or pool would establish a royalty rate of less than five percent in  
16 amount or value of the production removed or sold from a lease or leases  
17 covering the field or pool;

18 (B) under (1)(B) or (1)(C) of this subsection if the royalty  
19 modification for the field or pool would establish a royalty rate of less than  
20 three percent in amount or value of the production removed or sold from a  
21 lease or leases covering the field or pool;

22 (5) may not grant a royalty reduction under this subsection without  
23 including an explicit condition that the royalty reduction is not assignable without the  
24 prior written approval, which may not be unreasonably withheld, by the  
25 commissioner; the commissioner shall, in the preliminary and final findings and  
26 determinations, set out the conditions under which the royalty reduction may be  
27 assigned;

28 (6) shall require the lessee or lessees to submit, with the application  
29 for the royalty reduction, financial and technical data that demonstrate that the  
30 requirements of this subsection are met; the commissioner

31 (A) may require disclosure of only the financial and technical

1 data related to development, production, and transportation of oil and gas or  
2 gas only from the field or pool that are reasonably available to the applicant;  
3 and

4 (B) shall keep the data confidential under AS 38.05.035(a)(8)  
5 [AS 38.05.035(a)(9)] at the request of the lessee or lessees making application  
6 for the royalty reduction; the confidential data may be disclosed by the  
7 commissioner to legislators and to the legislative auditor and as directed by  
8 the chair or vice-chair of the Legislative Budget and Audit Committee to the  
9 director of the division of legislative finance, the permanent employees of  
10 their respective divisions who are responsible for evaluating a royalty  
11 reduction, and to agents or contractors of the legislative auditor or the  
12 legislative finance director who are engaged under contract to evaluate the  
13 royalty reduction, if they sign an appropriate confidentiality agreement;

14 (7) may

15 (A) require the lessee or lessees making application for the  
16 royalty reduction under (1)(A) of this subsection to pay for the services of an  
17 independent contractor, selected by the lessee or lessees from a list of  
18 qualified consultants compiled by the commissioner, to evaluate hydrocarbon  
19 development, production, transportation, and economics and to assist the  
20 commissioner in evaluating the application and financial and technical data;  
21 if, under this subparagraph, the commissioner requires payment for the  
22 services of an independent contractor, the total cost of the services to be paid  
23 for by the lessee or lessees may not exceed \$150,000 for each application, and  
24 the commissioner shall determine the relevant scope of the work to be  
25 performed by the contractor; selection of an independent contractor under this  
26 subparagraph is not subject to AS 36.30;

27 (B) with the mutual consent of the lessee or lessees making  
28 application for the royalty reduction under (1)(B) or (1)(C) of this subsection,  
29 request payment for the services of an independent contractor, selected from a  
30 list of qualified consultants to evaluate hydrocarbon development, production,  
31 transportation, and economics by the commissioner to assist the commissioner

1 in evaluating the application and financial and technical data; if, under this  
2 subparagraph, the commissioner requires payment for the services of an  
3 independent contractor, the total cost of the services that may be paid for by  
4 the lessee or lessees may not exceed \$150,000 for each application, and the  
5 commissioner shall determine the relevant scope of the work to be performed  
6 by the contractor; selection of an independent contractor under this  
7 subparagraph is not subject to AS 36.30;

8 (8) shall make and publish a preliminary findings and determination  
9 on the royalty reduction application, give reasonable public notice of the preliminary  
10 findings and determination, and invite public comment on the preliminary findings  
11 and determination during a 30-day period for receipt of public comment;

12 (9) shall offer to appear before the Legislative Budget and Audit  
13 Committee, on a day that is not earlier than 10 days and not later than 20 days after  
14 giving public notice under (8) of this subsection, to provide the committee a review of  
15 the commissioner's preliminary findings and determination on the royalty reduction  
16 application and administrative process; if the Legislative Budget and Audit  
17 Committee accepts the commissioner's offer, the committee shall give notice of the  
18 committee's meeting to all members of the legislature;

19 (10) shall make copies of the preliminary findings and determination  
20 available to

21 (A) the presiding officer of each house of the legislature;

22 (B) the chairs of the legislature's standing committees on  
23 resources; and

24 (C) the chairs of the legislature's special committees on oil and  
25 gas, if any;

26 (11) shall, within 30 days after the close of the public comment period  
27 under (8) of this subsection,

28 (A) prepare a summary of the public response to the  
29 commissioner's preliminary findings and determination;

30 (B) make a final findings and determination; the  
31 commissioner's final findings and determination prepared under this

1 subparagraph regarding a royalty reduction is final and not appealable to the  
2 court;

3 (C) transmit a copy of the final findings and determination to  
4 the lessee;

5 (D) with the applicant's consent, amend the applicant's lease or  
6 unitization agreement consistent with the commissioner's final decision; and

7 (E) make copies of the final findings and determination  
8 available to each person who submitted comment under (8) of this subsection  
9 and who has filed a request for the copies;

10 (12) is not limited by the provisions of AS 38.05.134(3) or (f) of this  
11 section in the commissioner's determination under this subsection.

12 \* Sec. 9. AS 38.05.275(c) is amended to read:

13 (c) Subsection (b) of this section may not be construed to limit the director in  
14 the exercise of authority granted by AS 38.05.035(a)(11) [AS 38.05.035(a)(12)].

15 \* Sec. 10. AS 39.25.110 is amended by adding a new paragraph to read:

16 (42) oil and gas audit managers employed in a professional capacity  
17 by the Department of Revenue to collect oil and gas revenue by developing policy,  
18 conducting studies, drafting proposed regulations, enforcing regulations, and  
19 supervising audits by oil and gas revenue auditors.

20 \* Sec. 11. AS 41.09.010(d) is amended to read:

21 (d) Data derived from drilling a stratigraphic test well or exploratory well that  
22 is provided to the commissioner under (c)(3) of this section shall be kept confidential  
23 for 24 months after receipt by the commissioner unless the owner of the well gives  
24 written permission to the state to release the well data at an earlier date, and,  
25 notwithstanding AS 31.05.035(c), confidentiality may not be extended beyond 24  
26 months. The provisions of AS 38.05.035(a)(8)(C) [AS 38.05.035(a)(9)(C)] apply to  
27 other data provided to the commissioner under (c)(3) of this section, except that the  
28 commissioner, under appropriate confidentiality provisions and without preference or  
29 discrimination, may display to all interested third parties, but may not distribute or  
30 transfer in hard copy or electronic form, those data with respect to all land if the  
31 commissioner determines that the limited disclosure is necessary to further the

1 interest of the state in evaluating or developing its land.

2 \* **Sec. 12.** AS 43.05.230(a) is amended to read:

3 (a) It is unlawful for a current or former officer, employee, or agent of the  
4 state to divulge the amount of income or the particulars set out or disclosed in a report  
5 or return made under this title, except

6 (1) in connection with official investigations or proceedings of the  
7 department, whether judicial or administrative, involving taxes due under this title;

8 (2) in connection with official investigations or proceedings of the  
9 child support enforcement agency, whether judicial or administrative, involving child  
10 support obligations imposed or imposable under AS 25 or AS 47;

11 (3) as provided in AS 38.05.036 pertaining to audit functions of the  
12 Department of Natural Resources;

13 (4) as provided in AS 43.05.405 - 43.05.499; and

14 (5) as otherwise provided in this section or AS 43.55.890.

15 \* **Sec. 13.** AS 43.05.230(h) is amended to read:

16 (h) The commissioner shall, upon request, furnish to the Department of  
17 Natural Resources copies of tax returns, reports, and other documents filed under  
18 AS 43.55 or AS 43.65, and the Department of Revenue's determinations and  
19 workpapers under those chapters. The Department of Natural Resources shall  
20 maintain the confidentiality that the Department of Revenue is required to extend to  
21 the returns, reports, documents, determinations, and workpapers furnished to the  
22 Department of Natural Resources under this subsection.

23 \* **Sec. 14.** AS 43.05.260(a) is amended to read:

24 (a) Except as provided in (c) of this section, [AND] AS 43.20.200(b), and  
25 AS 43.55.075, the amount of a tax imposed by this title must be assessed within three  
26 years after the return was filed, whether or not a return was filed on or after the date  
27 prescribed by law. If the tax is not assessed before the expiration of the applicable  
28 [THREE-YEAR] period, proceedings may not be instituted in court for the collection  
29 of the tax.

30 \* **Sec. 15.** AS 43.55.011(e) is repealed and reenacted to read:

31 (e) There is levied on the producer of oil or gas a tax for all oil and gas

1 produced each calendar year from each lease or property in the state, less any oil and  
2 gas the ownership or right to which is exempt from taxation or constitutes a  
3 landowner's royalty interest. Except as otherwise provided under (f), (j), and (k) of  
4 this section, the tax is equal to the production tax value of the taxable oil and gas as  
5 calculated under AS 43.55.160 multiplied by the tax rate determined under (g) of this  
6 section.

7 \* Sec. 16. AS 43.55.011(g) is repealed and reenacted to read:

8 (g) The tax rate applied to the production tax value of oil and gas under (e) of  
9 this section is 25 percent plus, for each month in which the price index determined  
10 under (h) of this section is greater than zero, 0.40 multiplied by the price index  
11 determined under (h) of this section. However, the amount calculated under this  
12 subsection for any month may not exceed 50 percent of the monthly production tax  
13 value of the taxable oil and gas as calculated under AS 43.55.160.

14 \* Sec. 17. AS 43.55.011(h) is amended to read:

15 (h) For purposes of (g) of this section, the price index for a month is  
16 calculated by subtracting 30 [40] from the number that is equal to the quotient of the  
17 total monthly production tax value of the taxable oil and gas produced by the  
18 producer from all leases or properties in the state during that month, as calculated  
19 under AS 43.55.160, divided by the total amount of that [THE TAXABLE] oil and  
20 gas produced by the producer during that month, in BTU equivalent barrels.  
21 However, a price index calculated under this subsection may not be less than zero.

22 \* Sec. 18. AS 43.55.011(j) is amended to read:

23 (j) For a calendar year before 2022, the [TOTAL] tax levied by (e) [AND (g)]  
24 of this section for [ON] gas produced from a lease or property in the Cook Inlet  
25 sedimentary basin may not exceed

26 (1) for a lease or property that first commenced commercial  
27 production of gas before April 1, 2006, the product obtained by multiplying (A) the  
28 amount of taxable gas produced during the calendar year from the lease or property,  
29 times (B) the average rate of tax that was imposed under this chapter for [ON]  
30 taxable gas produced from the lease or property for the 12-month period ending on  
31 March 31, 2006, times (C) the quotient obtained by dividing the total gross value at

1 the point of production of the taxable gas produced from the lease or property during  
2 the 12-month period ending on March 31, 2006, by the total amount of that gas;

3 (2) for a lease or property that first commences commercial  
4 production of gas after March 31, 2006, the product obtained by multiplying (A) the  
5 amount of taxable gas produced during the calendar year from the lease or property,  
6 times (B) the average rate of tax that was imposed under this chapter for [ON]  
7 taxable gas produced from all leases or properties in the Cook Inlet sedimentary basin  
8 for the 12-month period ending on March 31, 2006, times (C) the average prevailing  
9 value for gas delivered in the Cook Inlet area for the 12-month period ending  
10 March 31, 2006, as determined by the department under AS 43.55.020(f).

11 \* Sec. 19. AS 43.55.011(k) is amended to read:

12 (k) For a calendar year before 2022, the [TOTAL] tax levied by (e) [AND  
13 (g)] of this section for [ON] oil produced from a lease or property in the Cook Inlet  
14 sedimentary basin may not exceed

15 (1) for a lease or property that first commenced commercial  
16 production of oil before April 1, 2006, the product obtained by multiplying (A) the  
17 amount of taxable oil produced during the calendar year from the lease or property,  
18 times (B) the average rate of tax that was imposed under this chapter for [ON]  
19 taxable oil produced from the lease or property for the 12-month period ending on  
20 March 31, 2006, times (C) the quotient obtained by dividing the total gross value at  
21 the point of production of the taxable oil produced from the lease or property during  
22 the 12-month period ending on March 31, 2006, by the total amount of that oil;

23 (2) for a lease or property that first commences commercial  
24 production of oil after March 31, 2006, the product obtained by multiplying (A) the  
25 amount of taxable oil produced during the calendar year from the lease or property,  
26 times (B) the average rate of tax that was imposed under this chapter for [ON]  
27 taxable oil produced from all leases or properties in the Cook Inlet sedimentary basin  
28 for the 12-month period ending on March 31, 2006, times (C) the average prevailing  
29 value for oil produced and delivered in the Cook Inlet area for the 12-month period  
30 ending on March 31, 2006, as determined by the department under AS 43.55.020(f).

31 \* Sec. 20. AS 43.55.011(m) is amended to read:

1 (m) Notwithstanding any contrary provision of AS 38.05.180(i),  
2 AS 41.09.010, AS 43.20.043, AS 43.55.024, or 43.55.025, tax credits under  
3 AS 38.05.180(i), AS 41.09.010, AS 43.20.043, AS 43.55.024, and 43.55.025 that are  
4 allocated to gas produced from leases or properties in the Cook Inlet sedimentary  
5 basin and that are available to be applied against a tax levied by (e) of this section for  
6 [ON] gas produced from leases or properties in the Cook Inlet sedimentary basin  
7 during a calendar year may be applied only against the tax levied by (e) of this section  
8 for [ON] that gas. The amount by which the amount of tax credits that are allocated  
9 to gas produced from leases or properties in the Cook Inlet sedimentary basin and that  
10 the producer would otherwise be allowed to use for a later calendar year or transfer to  
11 another person exceeds the amount of tax credits whose application would reduce the  
12 tax levied by (e) of this section for [ON] that gas to zero, if any, is considered the  
13 amount of excess tax credits, and the excess tax credits are subject to the following:

14 (1) for each lease or property for which a limitation under (j) or (k) of  
15 this section on the tax levied by (e) [AND (g)] of this section has the effect of  
16 reducing the producer's tax below the amount of tax that would be levied in the  
17 absence of that limitation, the producer shall calculate the amount of that reduction;

18 (2) the producer shall calculate the total of the reductions calculated  
19 under (1) of this subsection for all affected leases or properties;

20 (3) the producer shall reduce the amount of excess tax credits by the  
21 total calculated under (2) of this subsection, but not to less than zero;

22 (4) any amount of excess tax credits remaining after reduction under  
23 (3) of this subsection may be used for a later calendar year, transferred to another  
24 person, or applied against a tax levied for [ON] oil or gas produced from a lease or  
25 property located anywhere in the state to the extent otherwise allowed under  
26 applicable law governing the tax credits.

27 \* Sec. 21. AS 43.55.020(a) is amended to read:

28 (a) For a calendar year, a producer subject to tax under AS 43.55.011(e), (f),  
29 [(g),] or (i), and notwithstanding that a producer may be liable for the tax under  
30 AS 43.55.011(f) rather than the tax under AS 43.55.011(e), shall pay the tax as  
31 follows:

1 (1) an installment payment of the estimated tax levied by  
2 AS 43.55.011(e) or (f), net of any tax credits applied as allowed by law, is due for  
3 each month of the calendar year on the last day of the following month; the amount of  
4 the installment payment is [THE SUM OF THE AMOUNTS CALCULATED  
5 UNDER (2) AND (3) OF THIS SUBSECTION, BUT NOT LESS THAN ZERO;

6 (2) THE FIRST OF THE TWO AMOUNTS USED TO  
7 CALCULATE THE INSTALLMENT PAYMENT FOR A MONTH UNDER (1) OF  
8 THIS SUBSECTION IS] equal to the remainder obtained by subtracting

9 [(A)] 1/12 of the tax credits that are allowed by law to be  
10 applied against the tax levied by AS 43.55.011(e) for the calendar year [;]  
11 from

12 [(B)] the total of the monthly production values calculated  
13 under [IN THE MANNER PROVIDED IN] AS 43.55.160(a)(2) of all oil and  
14 gas taxable under AS 43.55.011(e) and produced by the producer from leases  
15 or properties in the state during the month, multiplied by the total tax rate  
16 for the month determined [22.5 PERCENT;

17 [(3) THE SECOND OF THE TWO AMOUNTS USED TO  
18 CALCULATE THE INSTALLMENT PAYMENT FOR A MONTH UNDER (1) OF  
19 THIS SUBSECTION IS THE AMOUNT CALCULATED FOR THE MONTH]  
20 under AS 43.55.011(g);

21 ~~(2)~~ [(4)] an installment payment of the estimated tax levied by  
22 AS 43.55.011(i) for each lease or property is due for each month of the calendar year  
23 on the last day of the following month; the amount of the installment payment is the  
24 sum of

25 (A) the applicable percentage rate for oil provided under  
26 AS 43.55.011(i), multiplied by the gross value at the point of production of  
27 the oil taxable under AS 43.55.011(i) and produced from the lease or property  
28 during the month; plus

29 (B) the applicable percentage rate for gas provided under  
30 AS 43.55.011(i), multiplied times the gross value at the point of production of  
31 the gas taxable under AS 43.55.011(i) and produced from the lease or property

1 during the month;

2 (3) [(5)] any amount of tax levied by AS 43.55.011(e), (f), and (i)  
3 [AS 43.55.011(e) - (g) AND (i)], net of any credits applied as allowed by law, that  
4 exceeds the total of the amounts due as installment payments of estimated tax is due  
5 on March 31 of the year following the calendar year of production.

6 \* **Sec. 22.** AS 43.55.020(d) is amended to read:

7 (d) In making settlement with the royalty owner for oil and gas that is taxable  
8 under AS 43.55.011, the producer may deduct the amount of the tax paid on taxable  
9 royalty oil and gas, or may deduct taxable royalty oil or gas equivalent in value at the  
10 time the tax becomes due to the amount of the tax paid. If the total deductions of  
11 installment payments of estimated tax for a calendar year exceed the actual tax for  
12 that calendar year, the producer shall, before April 1 of the following year, refund the  
13 excess to the royalty owner. Unless otherwise agreed between the producer and the  
14 royalty owner, the amount of the tax paid under AS 43.55.011(e) and (f)  
15 [AS 43.55.011(e) - (g)] on taxable royalty oil and gas for a calendar year, other than  
16 oil and gas the ownership or right to which constitutes a landowner's royalty interest,  
17 is considered to be the gross value at the point of production of the taxable royalty oil  
18 and gas produced during the calendar year multiplied by a figure that is a quotient, in  
19 which

20 (1) the numerator is the producer's total tax liability under  
21 AS 43.55.011(e) and (f) [AS 43.55.011(e) - (g)] for the calendar year of production;  
22 and

23 (2) the denominator is the total gross value at the point of production  
24 of the oil and gas taxable under AS 43.55.011(e) and (f) [AS 43.55.011(e) - (g)]  
25 produced by the producer from all leases and properties in the state during the  
26 calendar year.

27 \* **Sec. 23.** AS 43.55.020(g) is amended to read:

28 (g) Notwithstanding any contrary provision of AS 43.05.225, an unpaid  
29 amount of an installment payment required under (a)(1) and (2) [(a)(1) - (4)] of this  
30 section that is not paid when due bears interest (1) at the rate provided for an  
31 underpayment under 26 U.S.C. 6621 (Internal Revenue Code), as amended,

1           compounded daily, from the date the installment payment is due until [THE]  
 2           March 31 of the year following the calendar year of production [DESCRIBED IN  
 3           AS 43.55.030(a)], and (2) as provided for a delinquent tax under AS 43.05.225 after  
 4           that March 31. Interest accrued under (1) of this subsection that remains unpaid after  
 5           that March 31 is treated as an addition to tax that bears interest under (2) of this  
 6           subsection. An unpaid amount of tax due under ~~(a)(3)~~ [(a)(5)] of this section that is  
 7           not paid when due bears interest as provided for a delinquent tax under AS 43.05.225.

8           \* Sec. 24. AS 43.55.020(h) is amended to read:

9                     (h) Notwithstanding any contrary provision of AS 43.05.280,

10                    (1) an overpayment of an installment payment required under ~~(a)(1)~~  
 11                    and (2) [(a)(1) - (4)] of this section bears interest at the rate provided for an  
 12                    overpayment under 26 U.S.C. 6621 (Internal Revenue Code), as amended,  
 13                    compounded daily, from the later of the date the installment payment is due or the  
 14                    date the overpayment is made, until the earlier of

15                                   (A) the date it is refunded or is applied to an underpayment; [,]

16                                   or

17                                   (B) [THE] March 31 of the year following the calendar year  
 18                    of production [DESCRIBED IN AS 43.55.030(a)];

19                    (2) except as provided under (1) of this subsection, interest with  
 20                    respect to an overpayment is allowed only on any net overpayment of the payments  
 21                    required under (a) of this section that remains after the later of [THE] March 31 of  
 22                    the year following the calendar year of production [DESCRIBED IN  
 23                    AS 43.55.030(a)] or the date that the statement required under AS 43.55.030(a) is  
 24                    filed;

25                    (3) interest is allowed under (2) of this subsection only from a date  
 26                    that is 90 days after the later of [THE] March 31 of the year following the calendar  
 27                    year of production [DESCRIBED IN AS 43.55.030(a)] or the date that the statement  
 28                    required under AS 43.55.030(a) is filed; interest is not allowed if the overpayment  
 29                    was refunded within the 90-day period;

30                    (4) interest under (2) and (3) of this subsection is paid at the rate and  
 31                    in the manner provided in AS 43.05.225(1).

1 \* Sec. 25. AS 43.55.023(i) is amended to read:

2 (i) For the purposes of this section,

3 (1) a producer's or explorer's transitional investment expenditures are  
4 the sum of the expenditures the producer or explorer incurred after March 31, 2001,  
5 and before April 1, 2006, that would be qualified capital expenditures if they were  
6 incurred after March 31, 2006, less the sum of the payments or credits the producer or  
7 explorer received before April 1, 2006, for the sale or other transfer of assets,  
8 including geological, geophysical, or well data or interpretations, acquired by the  
9 producer or explorer as a result of expenditures the producer or explorer incurred  
10 before April 1, 2006, that would be qualified capital expenditures, if they were  
11 incurred after March 31, 2006;

12 (2) a producer or explorer that did not have commercial production  
13 of oil or gas from a lease or property in the state before January 1, 2008. may  
14 elect to take a tax credit against a tax levied by [DUE UNDER] AS 43.55.011(e) in  
15 the amount of 20 percent of the producer's or explorer's transitional investment  
16 expenditures, but only to the extent that the amount does not exceed 1/10 of the  
17 producer's or explorer's qualified capital expenditures that were incurred after  
18 March 31, 2006, and before January 1, 2008 [ARE INCURRED DURING THE  
19 CALENDAR YEAR FOR WHICH THE CREDIT IS TAKEN];

20 (3) a producer or explorer may not take a tax credit for a transitional  
21 investment expenditure

22 (A) for any calendar year after [THE LATER OF

23 (i)] 2013; [OR

24 (ii) THE SIXTH CALENDAR YEAR AFTER THE  
25 CALENDAR YEAR FOR WHICH THE PRODUCER FIRST  
26 APPLIES A CREDIT UNDER THIS SUBSECTION AGAINST A  
27 TAX DUE UNDER AS 43.55.011(e), IF THE PRODUCER DID NOT  
28 HAVE COMMERCIAL PRODUCTION OF OIL OR GAS FROM A  
29 LEASE OR PROPERTY IN THE STATE BEFORE APRIL 1, 2006;]

30 (B) more than once; or

31 (C) if a credit for that expenditure was taken under

AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025;

(4) notwithstanding (d), (e), and (g) of this section, a producer or explorer may not transfer a tax credit or obtain a transferable tax credit certificate for a transitional investment expenditure.

\* Sec. 26. AS 43.55.024(a) is amended to read:

(a) For a calendar year for which a producer's tax liability under AS 43.55.011(e) [OR (f)] on oil and gas produced from leases or properties outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, exceeds zero before application of any credits under this chapter, a producer that is qualified under (e) of this section may apply a tax credit against that liability of not more than \$6,000,000.

\* Sec. 27. AS 43.55.024(c) is amended to read:

(c) For a calendar year for which a producer's tax liability under AS 43.55.011(e) [OR (f)] exceeds zero before application of any credits under this chapter, other than a credit under (a) of this section but after application of any credit under (a) of this section, a producer that is qualified under (e) of this section and whose average amount of oil and gas produced a day and taxable under AS 43.55.011(e) [OR (f)] is less than 100,000 BTU equivalent barrels a day may apply a tax credit under this subsection against that liability. A producer whose average amount of oil and gas produced a day and taxable under AS 43.55.011(e) [OR (f)] is

(1) not more than 50,000 BTU equivalent barrels may apply a tax credit of not more than \$12,000,000 for the calendar year;

(2) more than 50,000 and less than 100,000 BTU equivalent barrels may apply a tax credit of not more than \$12,000,000 multiplied by the following fraction for the calendar year:

$$1 - [2 \times (AP - 50,000)] \div 100,000$$

where AP = the average amount of oil and gas taxable under AS 43.55.011(e) [OR (f)], produced a day during the calendar year in BTU equivalent barrels.

\* Sec. 28. AS 43.55.024(e) is amended to read:

(e) On written application by a producer that includes any information the

1 department may require, the department shall determine whether the producer  
2 qualifies for a calendar year under this section. To qualify under this section, a  
3 producer must demonstrate that its operation in the state or its ownership of an  
4 interest in a lease or property in the state as a distinct producer would not result in the  
5 division among multiple producer entities of any production tax liability under  
6 AS 43.55.011(e) [OR (f)] that reasonably would be expected to be attributed to a  
7 single producer if the tax credit provisions of (a) or (c) of this section did not exist.

8 \* **Sec. 29.** AS 43.55 is amended by adding a new section to read:

9 **Sec. 43.55.028. Oil and gas tax credit fund established; cash purchases of**  
10 **tax credit certificates.** (a) The oil and gas tax credit fund is established as a separate  
11 fund of the state. The purpose of the fund is for the purchase of transferable tax credit  
12 certificates issued under this chapter that are subject to purchase by the department.

13 (b) The oil and gas tax credit fund consists of money appropriated to the fund,  
14 including any appropriation of the percentage provided under (c) of this section of all  
15 revenue from taxes levied by AS 43.55.011 that is not required to be deposited in the  
16 constitutional budget reserve fund established in art. IX, sec. 17(a), Constitution of  
17 the State of Alaska, and any appropriation from the earnings of the fund.

18 (c) The applicable percentage for a fiscal year under (b) of this section is  
19 determined with reference to the average price or value forecast by the department for  
20 Alaska North Slope oil sold or otherwise disposed of on the United States West Coast  
21 during the fiscal year for which the appropriation of revenue from taxes levied by  
22 AS 43.55.011 is made. If that forecast is

23 (1) \$60 a barrel or higher, the applicable percentage is 10 percent;

24 (2) less than \$60 a barrel, the applicable percentage is 15 percent.

25 (d) The department shall manage the fund.

26 (e) The department may, on the written application of the person to whom a  
27 production tax credit certificate has been issued under AS 43.55.025(f), use available  
28 money in the oil and gas tax credit fund to purchase, in whole or in part, the  
29 certificate if the department finds that

30 (1) the calendar year of the purchase is not earlier than the first  
31 calendar year for which the credit shown on the certificate would otherwise be

1 allowed to be applied against a tax;

2 (2) within 24 months after applying for the transferable tax credit  
3 certificate or filing a claim for the production tax credit certificate, the applicant  
4 incurred a qualified capital expenditure or was the successful bidder on a bid  
5 submitted for a lease on state land under AS 38.05.180(f);

6 (3) the amount expended for the purchase would not exceed the total  
7 of qualified capital expenditures and successful bids described in (2) of this  
8 subsection that have not been the subject of a finding made under this paragraph for  
9 purposes of a previous purchase of a certificate;

10 (4) the applicant does not have an outstanding liability to the state for  
11 unpaid delinquent taxes under this title;

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

15 (6) the applicant's average amount of oil and gas taxable under  
16 AS 43.55.011(e) and produced each day during the calendar year preceding the  
17 calendar year in which the application is made was not more than 50,000 ETU  
18 equivalent barrels; and

19 (7) the purchase is consistent with this section and regulations adopted  
20 under this section.

21 (f) Money in the fund remaining at the end of a fiscal year does not lapse and  
22 remains available for expenditure in successive fiscal years.

23 (g) The department may adopt regulations to carry out the purposes of this  
24 section, including standards and procedures to allocate available money among  
25 applications for purchases the total amount of which exceeds the amount of available  
26 money in the fund.

27 (h) Nothing in this section creates a dedicated fund.

28 (i) In this section, "qualified capital expenditure" has the meaning given in  
29 AS 43.55.023.

30 \* Sec. 30. AS 43.55.030(a) is amended to read:

31 (a) A producer that produces oil or gas from a lease or property in the

1 state during a calendar year, whether or not any tax payment is due under  
2 AS 43.55.020(a) for that oil or gas. [THE PERSON PAYING THE TAX] shall file  
3 with the department on March 31 of the following year [FOLLOWING THE  
4 CALENDAR YEAR FOR WHICH THE TAX WAS LEVIED] a statement, under  
5 oath, in a form prescribed by the department, giving, with other information required,  
6 the following:

7 (1) a description of each lease or property from which [THE] oil or  
8 [AND] gas was [WERE] produced, by name, legal description, lease number, or  
9 accounting codes assigned by the department;

10 (2) the names of the producer and, if different, the person paying the  
11 tax, if any;

12 (3) the gross amount of oil and the gross amount of gas produced from  
13 each lease or property, and the percentage of the gross amount of oil and gas owned  
14 by the [EACH] producer [FOR WHOM THE TAX IS PAID];

15 (4) the gross value at the point of production of the oil and of the gas  
16 produced from each lease or property owned by the [EACH] producer and the costs  
17 of transportation of the oil and gas [FOR WHOM THE TAX IS PAID];

18 (5) the name of the first purchaser and the price received for the oil  
19 and for the gas, unless relieved from this requirement in whole or in part by the  
20 department; [AND]

21 (6) the producer's qualified capital expenditures, as defined in  
22 AS 43.55.023, other lease expenditures [AND ADJUSTMENTS AS  
23 CALCULATED] under AS 43.55.165, and adjustments or other payments or  
24 credits under AS 43.55.170;

25 (7) the production tax values of the oil and gas under  
26 AS 43.55.160;

27 (8) any claims for tax credits to be applied; and

28 (9) calculations showing the amounts, if any, that were or are due  
29 under AS 43.55.020(a) and interest on any underpayment or overpayment  
30 [AS 43.55.160 - 43.55.170].

31 \* Sec. 31. AS 43.55.030(d) is amended to read:

1 (d) Reports required under this section [BY OR ON BEHALF OF THE  
2 PRODUCER] are delinquent the first day following the day the report is due. The  
3 person required to file the report is liable for a penalty, as determined by the  
4 department under standards adopted in regulation by the department, of not  
5 more than \$1,000 for each day the person fails to file the report at the time  
6 required. The penalty is in addition to the penalties in AS 43.05.220 and  
7 43.05.290 and is assessed, collected, and paid in the same manner as a tax  
8 deficiency under this title. In this subsection, "report" includes a statement.

9 \* Sec. 32. AS 43.55.030 is amended by adding new subsections to read:

10 (c) An explorer or producer that incurs a lease expenditure under  
11 AS 43.55.165 or receives a payment or credit under AS 43.55.170 during a calendar  
12 year but does not produce oil or gas from a lease or property in the state during the  
13 calendar year shall file with the department on March 31 of the following year a  
14 statement, under oath, in a form prescribed by the department, giving, with other  
15 information required, the following:

16 (1) the producer's qualified capital expenditures, as defined in  
17 AS 43.55.023, other lease expenditures under AS 43.55.165, and adjustments or other  
18 payments or credits under AS 43.55.170; and

19 (2) if the explorer or producer receives a payment or credit under  
20 AS 43.55.170, calculations showing whether the explorer or producer is liable for a  
21 tax under AS 43.55.160(d) or 43.55.170(b) and, if so, the amount.

22 (f) The department may require a producer, an explorer, or an operator of a  
23 lease or property to file monthly reports, as applicable, of

24 (1) the amounts and gross value at the point of production of oil and  
25 gas produced;

26 (2) transportation costs of the oil and gas;

27 (3) any unscheduled interruption of, or reduction in the rate of, oil or  
28 gas production;

29 (4) lease expenditures and adjustments under AS 43.55.165 and  
30 43.55.170;

31 (5) joint interest billings;

- 1 (6) contracts for the sale or transportation of oil or gas;  
2 (7) information and calculations used in determining monthly  
3 installment payments of estimated tax under AS 43.55.020(a); and  
4 (8) other records and information the department considers necessary  
5 for the administration of this chapter.

6 \* Sec. 33. AS 43.55.040 is amended to read:

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

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

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

21 (B) impose appropriate conditions limiting

22 (i) access to the information to those legal counsel,  
23 consultants, employees, officers, and agents of the producer who have  
24 a need to know that information for the purpose of determining or  
25 contesting the producer's tax obligation; and

26 (ii) the use of the information to use for that purpose;

27 (2) examine the books, records, and files of the [SUCH A] person;

28 (3) conduct hearings and compel the attendance of witnesses and the  
29 production of books, records, and papers of any person; [AND]

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

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

3 (B) the rendition of the oil and gas for taxing purposes;

4 (5) require a producer, an explorer, or an operator of a lease or  
5 property to file reports and copies of records that the department considers  
6 necessary to forecast state revenue under this chapter; in the case of reports and  
7 copies of records relating to proposed, expected, or approved unit expenditures  
8 for a unit for which one or more working interest owners other than the  
9 operator have authority to approve unit expenditures, the required reports and  
10 copies of records may include those reports or copies of records that constitute  
11 or disclose communications between the operator and the working interest  
12 owners relating to unit budget matters;

13 (6) require a producer that has an average total production in the  
14 state of more than 100,000 barrels a day for a calendar year to report the gross  
15 value at the point of production of the producer's taxable oil and gas in the state  
16 for a calendar year and the total amount of lease expenditures in the state for  
17 that calendar year; and

18 (7) assess against a person required under this section to file a  
19 report, statement, or other document a penalty, as determined by the  
20 department under standards adopted in regulation by the department, of not  
21 more than \$1,000 for each day the person fails to file the report, statement, or  
22 other document at the time required; the penalty is in addition to the penalties in  
23 AS 43.05.220 and 43.05.290 and is assessed, collected, and paid in the same  
24 manner as a tax deficiency under this title.

25 \* Sec. 34. AS 43.55.050 is amended to read:

26 **Sec. 43.55.050. Incorrect returns.** The department may determine whether or  
27 not a return required by this chapter to be filed with it is correct. If a person makes an  
28 untrue or incorrect return of the gross amount of production, the gross value at the  
29 point of production, the amount of lease expenditures, the amount of credits, or  
30 other information that affects the amount of tax due under this chapter, [OR  
31 THE VALUE OF IT,] or fails or refuses to make a return, the department shall, under

1 regulations adopted by it, determine the correct amount of tax due under this  
2 chapter [GROSS PRODUCTION OR THE VALUE OF IT, AND COMPUTE THE  
3 TAX].

4 \* **Sec. 35.** AS 43.55.050 is amended by adding a new subsection to read:

5 (b) The determination of the correct amount of tax due under this chapter by  
6 the department is presumed to be correct, and the taxpayer bears the burden of proof  
7 to prove that the determination by the department is incorrect and to prove the correct  
8 amount of tax due under this chapter.

9 \* **Sec. 36.** AS 43.55 is amended by adding a new section to read:

10 **Sec. 43.55.055. Penalty for understatement of tax.** (a) If there is a  
11 substantial understatement of tax required to be shown on a return under this chapter,  
12 there shall be added to the tax an amount equal to 20 percent of the substantial  
13 understatement of tax.

14 (b) If there is a gross understatement of tax required to be shown on a return  
15 under this chapter, there shall be added to the tax an amount equal to 40 percent of the  
16 gross understatement of tax.

17 (c) For purposes of this section,

18 (1) a substantial understatement of tax for any taxable year exists if  
19 the amount of the understatement for the taxable year exceeds the lesser of 10 percent  
20 of the tax required to be shown on the return for the taxable year or \$10,000,000;

21 (2) a gross understatement of tax for any taxable year exists if the  
22 amount of the understatement for the taxable year exceeds the lesser of 10 percent of  
23 the tax required to be shown on the return for the taxable year or \$20,000,000;

24 (3) "understatement" means the amount by which the tax required to  
25 be shown on the return for the taxable year exceeds the amount of the tax reported as  
26 due by the taxpayer as shown on the return.

27 \* **Sec. 37.** AS 43.55 is amended by adding a new section to read:

28 **Sec. 43.55.075. Limitation on assessment and amended returns.** (a) Except  
29 as provided in AS 43.05.260(c), the amount of a tax imposed by this chapter must be  
30 assessed within six years after the latest return was filed.

31 (b) A decision of a regulatory agency, court, or other body with authority to

1 resolve disputes that results in a retroactive change to a lease expenditure, to an  
2 adjustment to a lease expenditure, to costs of transportation, to sale price, to  
3 prevailing value, or to consideration of quality differentials relating to the  
4 commingling of oils has a corresponding effect, either an increase or decrease, as  
5 applicable, on the production tax value of oil or gas or the amount or availability of a  
6 tax credit as determined under this chapter. For purposes of this section, a change to a  
7 lease expenditure includes a change in the categorization of a lease expenditure as a  
8 qualified capital expenditure or as not a qualified capital expenditure. The producer  
9 shall

10 (1) within 60 days after the change, notify the department in writing;

11 and

12 (2) within 120 days after the change, file amended returns covering all  
13 periods affected by the change, unless the department agrees otherwise or a stay is in  
14 place that affects the filing or payment, regardless of the pendency of appeals of the  
15 decision.

16 (c) If an alteration in or modification of a producer's federal income tax return  
17 or a recomputation of the producer's federal income tax or determination of  
18 deficiency occurs that affects the amount of a tax imposed on the producer under this  
19 chapter, the producer shall

20 (1) within 60 days after the final determination of the alteration,  
21 modification, recomputation, or deficiency, notify the department in writing; and

22 (2) within 120 days after the final determination of the alteration,  
23 modification, recomputation, or deficiency, file amended returns covering all affected  
24 periods.

25 (d) In this section,

26 (1) "qualified capital expenditure" has the meaning given in  
27 AS 43.55.023;

28 (2) "return" includes a report, a statement, and an amended return,  
29 report, or statement.

30 \* **Sec. 38.** AS 43.55.110 is amended by adding new subsections to read:

31 (e) The department may require that returns, statements, reports, notifications,

1 and applications filed under this chapter be filed electronically in a form and manner  
2 approved or prescribed by the department.

3 (f) The department may require that payments required under this chapter be  
4 made electronically in a form and manner approved or prescribed by the department.

5 (g) Notwithstanding AS 44.62, the department may issue, for the information  
6 and guidance of producers, explorers, and other interested persons, advisory bulletins  
7 stating the department's interpretation of provisions of this chapter and of regulations  
8 adopted under this chapter. Unless otherwise provided by the department by  
9 regulation, interpretations stated in the advisory bulletins are not binding on the  
10 department or others.

11 (h) Subject to legislative appropriation for the purpose from penalties  
12 collected by the department under this chapter, the department may compensate a  
13 person who provides information to the department about noncompliance with the  
14 provisions of this chapter by an explorer or a producer of oil or gas if that information  
15 leads to the collection of additional taxes, penalties, or interest from the producer. The  
16 amount of compensation under this subsection may not exceed 10 percent of the  
17 additional tax, penalty, or interest collected as a result of the information. A state  
18 employee is not eligible for compensation under this subsection.

19 \* Sec. 39. AS 43.55.150(a) is amended to read:

20 (a) For the purposes of AS 43.55.011 - 43.55.180, the gross value at the point  
21 of production is calculated using the reasonable costs of transportation of the oil or  
22 gas. The reasonable costs of transportation are the actual costs, except when the

23 (1) parties to the transportation of oil or gas are affiliated;

24 (2) contract for the transportation of oil or gas is not an arm's length  
25 transaction or is not representative of the market value of that transportation; or  
26 [AND]

27 (3) method of transportation of oil or gas is not reasonable in view of  
28 existing alternative methods of transportation.

29 \* Sec. 40. AS 43.55.150(b) is amended to read:

30 (b) If the department finds that the conditions in (a)(1), (2), or [AND] (3) of  
31 this section are present, the department shall determine the reasonable costs of

1 transportation, using the fair market value of like transportation, the fair market value  
2 of equally efficient and available alternative modes of transportation, or other  
3 reasonable methods. Transportation costs fixed by tariff rates properly on file with the  
4 Regulatory Commission of Alaska or other regulatory agency shall be considered  
5 prima facie reasonable.

6 \* Sec. 41. AS 43.55.160(a) is amended to read:

7 (a) Except as provided in (b) of this section, for the purposes of

8 (1) AS 43.55.011(e), the annual production tax value of the taxable

9 (A) oil and gas produced during a calendar year from leases or  
10 properties in the state that include land north of 68 degrees North latitude is  
11 the gross value at the point of production of the oil and gas taxable under  
12 AS 43.55.011(e) and produced by the producer from those leases or  
13 properties, less the producer's lease expenditures under AS 43.55.165 for the  
14 calendar year applicable to the oil and gas produced by the producer from  
15 those leases or properties, as adjusted under AS 43.55.170;

16 (B) oil and gas produced during a calendar year from leases or  
17 properties in the state outside the Cook Inlet sedimentary basin, no part of  
18 which is north of 68 degrees North latitude, is the gross value at the point of  
19 production of the oil and gas taxable under AS 43.55.011(e) and produced by  
20 the producer from those leases or properties, less the producer's lease  
21 expenditures under AS 43.55.165 for the calendar year applicable to the oil  
22 and gas produced by the producer from those leases or properties, as adjusted  
23 under AS 43.55.170;

24 (C) oil produced during a calendar year from a lease or  
25 property in the Cook Inlet sedimentary basin is the gross value at the point of  
26 production of the oil taxable under AS 43.55.011(e) and produced by the  
27 producer from that lease or property, less the producer's lease expenditures  
28 under AS 43.55.165 for the calendar year applicable to the oil produced by the  
29 producer from that lease or property, as adjusted under AS 43.55.170;

30 (D) gas produced during a calendar year from a lease or  
31 property in the Cook Inlet sedimentary basin is the gross value at the point of

1 production of the gas taxable under AS 43.55.011(e) and produced by the  
2 producer from that lease or property, less the producer's lease expenditures  
3 under AS 43.55.165 for the calendar year applicable to the gas produced by  
4 the producer from that lease or property, as adjusted under AS 43.55.170;

5 (2) AS 43.55.020(a)(2) [AS 43.55.011(g)], the monthly production tax  
6 value of the taxable

7 (A) oil and gas produced during a month from leases or  
8 properties in the state that include land north of 68 degrees North latitude is  
9 the gross value at the point of production of the oil and gas taxable under  
10 AS 43.55.011(e) [AS 43.55.011(g)] and produced by the producer from those  
11 leases or properties, less 1/12 of the producer's lease expenditures under  
12 AS 43.55.165 for the calendar year applicable to the oil and gas produced by  
13 the producer from those leases or properties, as adjusted under AS 43.55.170;

14 (B) oil and gas produced during a month from leases or  
15 properties in the state outside the Cook Inlet sedimentary basin, no part of  
16 which is north of 68 degrees North latitude, is the gross value at the point of  
17 production of the oil and gas taxable under AS 43.55.011(e)  
18 [AS 43.55.011(g)] and produced by the producer from those leases or  
19 properties, less 1/12 of the producer's lease expenditures under AS 43.55.165  
20 for the calendar year applicable to the oil and gas produced by the producer  
21 from those leases or properties, as adjusted under AS 43.55.170;

22 (C) oil produced during a month from a lease or property in  
23 the Cook Inlet sedimentary basin is the gross value at the point of production  
24 of the oil taxable under AS 43.55.011(e) [AS 43.55.011(g)] and produced by  
25 the producer from that lease or property, less 1/12 of the producer's lease  
26 expenditures under AS 43.55.165 for the calendar year applicable to the oil  
27 produced by the producer from that lease or property, as adjusted under  
28 AS 43.55.170;

29 (D) gas produced during a month from a lease or property in  
30 the Cook Inlet sedimentary basin is the gross value at the point of production  
31 of the gas taxable under AS 43.55.011(e) [AS 43.55.011(g)] and produced by

1 the producer from that lease or property, less 1/12 of the producer's lease  
2 expenditures under AS 43.55.165 for the calendar year applicable to the gas  
3 produced by the producer from that lease or property, as adjusted under  
4 AS 43.55.170.

5 \* Sec. 42. AS 43.55.165(a) is repealed and reenacted to read:

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

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

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

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

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

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

23 (iii) the costs must be direct costs of exploring for,  
24 developing, or producing, as applicable, oil or gas deposits; and

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

28 \* Sec. 43. AS 43.55.165(b) is amended to read:

29 (b) For purposes of (a) of this section,

30 (1) direct costs include

31 (A) an expenditure, when incurred, that is incurred in the

1 state to acquire an item if the acquisition cost is otherwise a direct cost,  
2 notwithstanding that the expenditure may be required to be capitalized rather  
3 than treated as an expense for financial accounting or federal income tax  
4 purposes;

5 (B) payments of or in lieu of property taxes to the state or to  
6 a political subdivision of the state, sales and use taxes, motor fuel taxes, and  
7 excise taxes;

8 [(C) A REASONABLE ALLOWANCE, AS DETERMINED  
9 UNDER REGULATIONS ADOPTED BY THE DEPARTMENT, FOR  
10 OVERHEAD EXPENSES DIRECTLY RELATED TO EXPLORING FOR,  
11 DEVELOPING, AND PRODUCING OIL OR GAS DEPOSITS LOCATED  
12 WITHIN LEASES OR PROPERTIES OR OTHER LAND IN THE STATE;]

13 (2) an activity does not need to be physically located on, near, or  
14 within the premises of the lease or property within which an oil or gas deposit being  
15 explored for, developed, or produced is located in order for the cost of the activity to  
16 be a cost upstream of the point of production of the oil or gas, but the activity must  
17 occur in the state;

18 (3) in determining whether costs are lease expenditures, the  
19 department shall consider, among other factors, the

20 (A) typical industry practices and standards in the state  
21 that determine the costs, other than items listed in (e) of this section, that  
22 an operator is allowed to bill a producer that is not the operator, under  
23 unit operating agreements or similar operating agreements that were in  
24 effect before December 2, 2005, and were subject to negotiation with at  
25 least one producer with substantial bargaining power, other than the  
26 operator; and

27 (B) standards adopted by the Department of Natural  
28 Resources that determine the costs, other than items listed in (e) of this  
29 section, that a lessee is allowed to deduct from revenue in calculating net  
30 profits under a lease issued under AS 38.05.180(f)(3)(B), (D), or (E).

31 \* Sec. 44. AS 43.55.165(e) is amended to read:

1 (e) For purposes of this section, lease expenditures do not include

2 (1) depreciation, depletion, or amortization;

3 (2) oil or gas royalty payments, production payments, lease profit  
4 shares, or other payments or distributions of a share of oil or gas production, profit, or  
5 revenue;

6 (3) taxes based on or measured by net income;

7 (4) interest or other financing charges or costs of raising equity or  
8 debt capital;

9 (5) acquisition costs for a lease or property or exploration license;

10 (6) costs arising from fraud, wilful misconduct, [OR] gross  
11 negligence, violation of law, or failure to comply with an obligation under a lease,  
12 permit, or license issued by the state or federal government;

13 (7) fines or penalties imposed by law;

14 (8) costs of arbitration, litigation, or other dispute resolution activities  
15 that involve the state or concern the rights or obligations among owners of interests  
16 in, or rights to production from, one or more leases or properties or a unit;

17 (9) costs incurred in organizing a partnership, joint venture, or other  
18 business entity or arrangement;

19 (10) amounts paid to indemnify the state; the exclusion provided by  
20 this paragraph does not apply to the costs of obtaining insurance or a surety bond  
21 from a third-party insurer or surety;

22 (11) surcharges levied under AS 43.55.201 or 43.55.300;

23 (12) for a transaction that is an internal transfer or is otherwise not an  
24 arm's length transaction, expenditures incurred that are in excess of fair market value;

25 (13) an expenditure incurred to purchase an interest in any  
26 corporation, partnership, limited liability company, business trust, or any other  
27 business entity, whether or not the transaction is treated as an asset sale for federal  
28 income tax purposes;

29 (14) a tax levied under AS 43.55.011;

30 (15) [THE PORTION OF] costs incurred for dismantlement, removal,  
31 surrender, or abandonment of a facility, pipeline, well pad, platform, or other

1 structure, or for the restoration of a lease, field, unit, area, tract of land, body of  
2 water, or right-of-way in conjunction with dismantlement, removal, surrender, or  
3 abandonment [, THAT IS ATTRIBUTABLE TO PRODUCTION OF OIL OR GAS  
4 OCCURRING BEFORE APRIL 1, 2006; THE PORTION IS CALCULATED AS A  
5 RATIO OF THE AMOUNT OF OIL AND GAS PRODUCTION, IN BARRELS OF  
6 OIL EQUIVALENT, ASSOCIATED WITH THE FACILITY, PIPELINE, WELL  
7 PAD, PLATFORM, OTHER STRUCTURE, LEASE, FIELD, UNIT, AREA, BODY  
8 OF WATER, OR RIGHT-OF-WAY OCCURRING BEFORE APRIL 1, 2006, TO  
9 THE TOTAL AMOUNT OF OIL AND GAS PRODUCTION, IN BARRELS OF  
10 OIL EQUIVALENT, ASSOCIATED WITH THAT FACILITY, PIPELINE, WELL  
11 PAD, PLATFORM, OTHER STRUCTURE, LEASE, FIELD, UNIT, AREA, BODY  
12 OF WATER, OR RIGHT-OF-WAY THROUGH THE END OF THE CALENDAR  
13 MONTH BEFORE COMMENCEMENT OF THE DISMANTLEMENT,  
14 REMOVAL, SURRENDER, OR ABANDONMENT]; a cost is not excluded under  
15 this paragraph if the dismantlement, removal, surrender, or abandonment for which  
16 the cost is incurred is undertaken for the purpose of replacing, renovating, or  
17 improving the facility, pipeline, well pad, platform, or other structure; [FOR THE  
18 PURPOSES OF THIS PARAGRAPH, "BARREL OF OIL EQUIVALENT" MEANS

19 (A) IN THE CASE OF OIL, ONE BARREL;

20 (B) IN THE CASE OF GAS, 6,000 CUBIC FEET;]

21 (16) costs incurred for containment, control, cleanup, or removal in  
22 connection with any unpermitted release of oil or a hazardous substance and any  
23 liability for damages imposed on the producer or explorer for that unpermitted  
24 release; this paragraph does not apply to the cost of developing and maintaining an oil  
25 discharge prevention and contingency plan under AS 46.04.030;

26 (17) costs incurred to satisfy a work commitment under an exploration  
27 license under AS 38.05.132;

28 (18) that portion of expenditures, that would otherwise be qualified  
29 capital expenditures, as defined in AS 43.55.023 [AS 43.55.023(k)], incurred during a  
30 calendar year that are less than the product of \$0.30 multiplied by the total taxable  
31 production from each lease or property, in BTU equivalent barrels, during that

1 calendar year, except that, when a portion of a calendar year is subject to this  
2 provision, the expenditures and volumes shall be prorated within that calendar year;

3 (19) costs incurred for repair, replacement, or deferred  
4 maintenance of a facility, a pipeline, a structure, or equipment, other than a well,  
5 that results in or is undertaken in response to a failure, problem, or event that  
6 results in an unscheduled interruption of, or reduction in the rate of, oil or gas  
7 production; costs incurred for repair, replacement, or deferred maintenance of a  
8 facility, a pipeline, a structure, or equipment, other than a well, that is  
9 undertaken in response to, or is otherwise associated with, an unpermitted  
10 release of a hazardous substance or of gas; or costs incurred for repair,  
11 replacement, or deferred maintenance of a facility, a pipeline, a structure or  
12 equipment other than a well that was not maintained or was improperly  
13 maintained; however, costs under this paragraph that would otherwise  
14 constitute lease expenditures under (a) of this section may be treated as lease  
15 expenditures if the department determines that the repair or replacement is  
16 solely necessitated by an act of war, by an unanticipated grave natural disaster  
17 or other natural phenomenon of an exceptional, inevitable, and irresistible  
18 character, the effects of which could not have been prevented or avoided by the  
19 exercise of due care or foresight, or by an intentional or negligent act or  
20 omission of a third party, other than a party or its agents in privity of contract  
21 with, or employed by, the producer or an operator acting for the producer, but  
22 only if the producer or operator, as applicable, exercised due care in operating  
23 and maintaining the facility, pipeline, structure, or equipment, and took  
24 reasonable precautions against the act or omission of the third party and against  
25 the consequences of the act or omission; in this paragraph,

26 (A) "costs incurred for repair, replacement, or deferred  
27 maintenance of a facility, a pipeline, a structure, or equipment" includes  
28 costs to dismantle and remove the facility, pipeline, structure, or  
29 equipment that is being replaced;

30 (B) "hazardous substance" has the meaning given in  
31 AS 46.03.826;

1 (C) "replacement" includes renovation or improvement:

2 (20) costs incurred to construct, acquire, or operate a refinery or  
3 crude oil topping plant, regardless of whether the products of the refinery or  
4 topping plant are used in oil or gas exploration, development, or production  
5 operations; however, if a producer owns a refinery or crude oil topping plant  
6 that is located on or near the premises of the producer's lease or property in the  
7 state and that processes the producer's oil produced from that lease or property  
8 into a product that the producer uses in the operation of the lease or property in  
9 drilling for or producing oil or gas, the producer's lease expenditures include the  
10 amount calculated by subtracting from the fair market value of the product used  
11 the prevailing value, as determined under AS 43.55.020(f), of the oil that is  
12 processed.

13 \* Sec. 45. AS 43.55.170(a) is amended to read:

14 (a) A [UNLESS THE PAYMENT OR CREDIT HAS ALREADY BEEN  
15 SUBTRACTED IN CALCULATING BILLABLE OR BILLED COSTS UNDER  
16 AS 43.55.165(c) OR (d), A] producer's lease expenditures under AS 43.55.165 must  
17 be adjusted by subtracting payments or credits, other than tax credits, received by the  
18 producer or by an operator acting for the producer for

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

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

1 an expenditure that would be a lease expenditure if it were incurred after  
2 March 31, 2006; for purposes of this subparagraph,

3 (i) if a producer removes from the state, for use outside  
4 the state, an asset described in this subparagraph, the value of the asset  
5 at the time it is removed is considered a payment received by the  
6 producer for sale or transfer of the asset;

7 (ii) for a transaction that is an internal transfer or is  
8 otherwise not an arm's length transaction, if the sale or transfer of the  
9 asset is made for less than fair market value, the amount subtracted  
10 must be the fair market value; and

11 (B) oil or gas

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

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

16 \* **Sec. 46.** AS 43.55 is amended by adding a new section to article 4 to read:

17 **Sec. 43.55.890. Disclosure of tax information.** Notwithstanding any contrary  
18 provision of AS 40.25.100, and regardless of whether the information is considered  
19 under AS 43.05.230(e) to constitute statistics classified to prevent the identification of  
20 particular returns or reports, the department may publish

21 (1) the following information under this chapter, if aggregated among  
22 three or more producers or explorers, showing by month or calendar year and by lease  
23 or property, unit, or area of the state:

24 (A) the amount of oil or gas production;

25 (B) the amount of taxes levied under this chapter or paid under  
26 this chapter;

27 (C) the effective tax rates under this chapter;

28 (D) the gross value of oil or gas at the point of production;

29 (E) the transportation costs for oil or gas;

30 (F) qualified capital expenditures under AS 43.55.023(k);

31 (G) exploration expenditures under AS 43.55.025;

- 1 (H) production tax values of oil or gas under AS 43.55.160;  
2 (I) lease expenditures under AS 43.55.165;  
3 (J) adjustments to lease expenditures under AS 43.55.170;  
4 (K) tax credits applicable or potentially applicable against  
5 taxes levied by this chapter; and

- 6 (2) the gross value at the point of production and the total amount of  
7 the lease expenditures for each producer required to report under AS 43.55.040(5).

8 \* **Sec. 47.** AS 43.55.900 is amended by adding new paragraphs to read:

9 (22) "producer" means an owner of an operating right, operating  
10 interest, or working interest in a mineral interest in oil or gas;

11 (23) "unit" means a group of tracts of land that is

12 (A) subject to a cooperative or a unit plan of development or  
13 operation that has been certified by the commissioner of natural resources  
14 under AS 38.05.180(p);

15 (B) subject to a cooperative or a unit plan of development or  
16 operation that has been certified by the United States Secretary of the Interior  
17 under 30 U.S.C. 226(m);

18 (C) subject to an agreement of the owners of interests in the  
19 tracts of land to validly integrate their interests to provide for the unitized  
20 management, development, and operation of the tracts of land as a unit, within  
21 the meaning of AS 31.05.110(a); or

22 (D) within the unit area of a unit created by order of the  
23 Alaska Oil and Gas Conservation Commission under AS 31.05.110(b).

24 \* **Sec. 48.** AS 43.55.165(c) and 43.55.165(d) are repealed.

25 \* **Sec. 49.** AS 43.55.011(l) and 43.55.160(c) are repealed.

26 \* **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to  
27 read:

28 **APPLICABILITY.** (a) Sections 42 - 45 and 48 of this Act apply to oil and gas  
29 produced after March 31, 2006.

30 (b) Sections 15 - 24, 26 - 28, and 41 of this Act apply to oil and gas produced after  
31 December 31, 2007.

1 (c) Sections 30 - 32 of this Act apply to statements and reports under  
2 AS 43.55.030(a), as amended by sec. 30 of this Act, and AS 43.55.030(e) and (f), as added  
3 by sec. 32 of this Act, required to be filed after December 31, 2007.

4 (d) Section 36 of this Act applies to understatements made after the effective date of  
5 sec. 36 of this Act.

6 (e) AS 43.05.075, added by sec. 37 of this Act, applies to any tax liability under  
7 AS 43.55 with respect to which the period of limitation on assessment under AS 43.05.260  
8 had not expired before the effective date of secs. 14 and 37 of this Act.

9 \* Sec. 51. The uncodified law of the State of Alaska is amended by adding a new section to  
10 read:

11 OIL AND GAS REVENUE AUDIT MANAGER POSITIONS; LEGISLATIVE  
12 INTENT. It is the intent of the legislature that the commissioner of administration shall cause  
13 not more than four oil and gas revenue audit manager positions to be created in the  
14 Department of Revenue. Oil and gas revenue audit managers shall be employed in a  
15 professional capacity to collect oil and gas revenue by developing policy, conducting studies,  
16 drafting proposed regulations, enforcing regulations, and supervising audits by oil and gas  
17 revenue auditors.

18 \* Sec. 52. The uncodified law of the State of Alaska is amended by adding a new section to  
19 read:

20 TRANSITION: RETROACTIVITY OF REGULATIONS. Notwithstanding any  
21 contrary provision of AS 44.62.240,

22 (1) if the Department of Revenue expressly designates in the regulation that  
23 the regulation applies retroactively to that date, a regulation adopted by the Department of  
24 Revenue to implement, interpret, make specific, or otherwise carry out

25 (A) secs. 42 - 45 and 48 of this Act may apply retroactively to April 1,  
26 2006;

27 (B) secs. 15 - 28 and 30 of this Act may apply retroactively to  
28 January 1, 2008;

29 (2) a regulation adopted by the Department of Natural Resources to  
30 implement, interpret, make specific, or otherwise carry out statutory provisions for the  
31 administration of oil and gas leases issued under AS 38.05.180(f)(3)(B), (D), or (E), to the

1 extent the regulation deals with the treatment of oil and gas production taxes in determining  
2 net profits under those leases, may apply retroactively to April 1, 2006, if the Department of  
3 Natural Resources expressly designates in the regulation that the regulation applies  
4 retroactively to that date.

5 \* **Sec. 53.** The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

7       **TRANSITION: REGULATIONS.** The Department of Natural Resources and the  
8 Department of Revenue may proceed to adopt regulations to implement this Act. The  
9 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
10 effective date of the law implemented by the regulation.

11 \* **Sec. 54.** The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13       **RETROACTIVITY OF CERTAIN PROVISIONS OF THIS ACT.** Sections 42 - 45  
14 and 48 of this Act are retroactive to April 1, 2006.

15 \* **Sec. 55.** Sections 15 - 28, 30 - 32, and 49 of this Act take effect January 1, 2008.

16 \* **Sec. 56.** Except as provided in sec. 55 of this Act, this Act takes effect immediately under  
17 AS 01.10.070(c).

# LEGAL SERVICES

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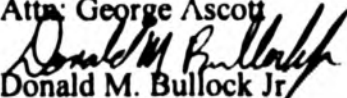
State Capitol  
Juneau, Alaska 99801-1182  
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## MEMORANDUM

October 31, 2007

**SUBJECT:** Qui Tam amendment (SB 2001; Work Order 25-GS0014\A.7)

**TO:** Senator Bill Wielechowski  
Attn: George Ascott

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

Enclosed is an amendment that adds a qui tam provision to an oil and gas production tax bill. Please review this amendment carefully to ensure that it is consistent with your intent.

Note that this amendment would be inserted in SB 2001 at page 37, following line 9, and in CSSB 2001(RES) at page 15, following line 19. This amendment may be applicable in a future version of the bill that includes an amendment that adds additional subsections to AS 43.55.110. When customizing the amendment to a bill, note the page and line number for the bill you are amending as well as the existing subsection letters, and add the appropriate references to the amendment. If you are amending a bill that does not already include an amendment that adds subsections to AS 43.55.110, your amendment would be added in a new bill section, with appropriate renumbering of section references at the end of the bill.

If I may be of further assistance, please advise.

DMB:lmb  
07-141.lmb

Enclosure

# Qui tam

From Wikipedia, the free encyclopedia

*Qui tam* is a legal provision in the United States under the False Claims Act, 31 U.S.C. § 3729 et seq.), which allows for a private individual, or whistleblower with knowledge of past or present fraud committed against the U.S. federal government to bring suit on its behalf. Its name is an abbreviation of the Latin phrase "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*", meaning "he who sues for the king as well as for himself." This provision allows a private person, known as a "relator," to bring a lawsuit on behalf of the United States, where the private person has information that the named defendant has knowingly submitted or caused the submission of false or fraudulent claims to the United States. The relator need not have been personally harmed by the defendant's conduct.

The False Claims Act provides incentive to relators by granting them between 15% and 30% of any award or settlement amount. In addition, the statute provides an award of the relator's attorney's fees, making *qui tam* actions a popular topic for the plaintiff's bar. A private [natural] person is able to commence a *qui tam* action "pro se" -- that is, without representation by a lawyer -- as demonstrated by the case *Roco v. Commissioner*, in which an accountant for NYU brought a qui tam suit claiming that NYU had submitted false information in order to get an overpayment of federal funds.

Once a relator brings suit on behalf of the government, a U.S. Attorney for the district in which the suit was filed has the option to take over the case. If he or she does so, the government will usually notify the company or person being sued that a claim has been filed. *Qui tam* actions are filed under seal, which has to be partially lifted by the court to allow this type of disclosure. The seal prohibits the defendant from disclosing even the mere existence of the case to anyone, including its shareholders (a fact which may cause conflicts with the defendant's obligation under Securities & Exchange Commission or stock exchange regulations that require it to disclose lawsuits that could materially affect stock prices). The government may then, without disclosing the identity of the plaintiff or any of the facts, begin taking discovery from the defendant.

If the government does not decide to participate in a *qui tam* action, the relator may proceed on his or her own, though such cases classically have a much lower success rate. Conventional wisdom states that this is due in part to the fact that the government will get involved in what it believes are winning cases, but will avoid losing cases.

## Contents

- 1 History
- 2 Sources
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## History

Qui tam actions were first used in 13th Century England as a way to enforce the King's laws. They existed in the United States in colonial times, and were embraced by the first U.S. Congress as a way to enforce the laws when the new federal government had virtually no law enforcement officers.[1] The

False Claims Act was passed in 1863 during the US Civil War, but was substantially weakened in 1943 during World War 2 while the government rushed to sign massive military procurement contracts. It was strengthened again in 1986 after a period of military expansion at a time when there were many stories of defense contractor price-gouging.[2]

There are proposals to introduce this legal provision back to the United Kingdom.[3]

## Sources

- A history of qui tam actions was provided in *Vermont Agency of Natural Resources v. United States ex. rel. Stevens*, 529 U.S. 765 (2000). See fn. 1.

## See also

- False Claims Act

## External links

- procedural description and time-line of qui tam

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Categories: [United States law](#) | [Latin legal phrases](#)

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## MEMORANDUM

October 22, 2007

**SUBJECT:** Magnitude of civil penalties for failing to produce information and documents relating to the imposition of a tax  
(Work Order No. 25-LS1161)

**TO:** Senator Hollis French  
Chair of the Senate Judiciary Committee

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

You told me that you were interested in exploring the use of penalties to encourage the production of information required under AS 43.55. You asked for examples of penalties imposed in similar situations and about limitations applicable to civil penalties in general.

Unfortunately, I am unable to advise you concerning the maximum civil penalty a court would accept. However, I offer the following regarding factors to be considered when deciding what action or inaction should be penalized and the amount of the penalty.

There are penalties in current law applicable to the late filing of a return or report, or late payment of a tax under AS 43. AS 43.05.220(a) provides:

(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.

The amount of the penalty in AS 43.05.220(a) above is a percentage of the tax or a portion or deficiency of the tax; if there is no tax there is no penalty. Thus, the penalty is inapplicable to a requirement that a taxpayer submit information that is not part of a tax-related return or report.

SB 2001 proposes a penalty for failing to file a report under AS 43.55 and the proposed penalty is unrelated to the amount of tax. If enacted, AS 43.55.030(d), as amended in sec. 47 of the bill, provides authority for a penalty in the amount of \$1,000 a day for each day a person fails to file a report after the time the report is due.<sup>1</sup> This penalty is in addition to other applicable penalties and is not related to the amount of tax due. This flat-rate penalty is the type you may want to consider to encourage the timely provision of information under AS 43.55. Other flat-rate penalties in Alaska law that relate to filing an information statement or report include: AS 06.01.035(h) (\$100 a day), AS 15.13.390(a) (\$50 and \$500 a day), AS 24.45.141 (\$10 a day), AS 24.60.240 (\$10 a day), and AS 39.50.135 (\$10 a day).

The Internal Revenue Code provides for the assessment of penalties against a person who fails to file information returns as required under the code. Information returns include form 1099 that is furnished to a taxpayer receiving interest or other payment, such as the Permanent Fund Dividend. Under 26 U.S.C. 6721, a person that files an information return late is subject to a penalty of up to \$50 a return and a total penalty for a calendar year of up to \$250,000, with higher penalties if the failure to file was through the intentional disregard of the filing requirement. Similar penalties are imposed under 26 U.S.C. 6722 if a person fails to provide a payee with a statement, and under 26 U.S.C. 6723 for failing to comply with other specified reporting requirements.

Challenges to penalties as being excessive are brought under the eighth and fourteenth amendments of the United States Constitution. Under the eighth amendment, the challenge is that the penalty violates the excessive fines clause. However, unless the fine is considered a punishment, the fine is not subject to review under that amendment. In the case of tax penalties, federal courts have concluded that the impositions are not considered "punishment" and are therefore not subject to the limitation in the amendment.<sup>2</sup> Unsuccessful challenges were waged under the eighth amendment against penalties imposed for underpayment, negligence, and fraud, as well as the 10 percent tax imposed on certain withdrawals from an individual retirement account.

Under the fourteenth amendment, alleged excessive penalties are challenged as being invalid under the due process clause. For a civil penalty to run afoul of the due process clause, the penalty must be grossly excessive. In *Long v. Board of Governors of the Fed. Reserve System*, the 10th Circuit Court of appeals upheld a penalty of \$717,941 against a person who "knowingly and intentionally entered into an unlawful transaction . . . [and] deliberately concealed this transaction and refused to reverse it for almost five years."<sup>3</sup> In

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<sup>1</sup> Before amendment to this subsection in 2006, AS 43.05.030(d) provided for a penalty of \$25 a day for each lease or property upon which the report is not filed. The \$25 a day penalty was deleted by sec. 20, ch. 2, TSSLA 2006.

<sup>2</sup> E.g. *United States v. Alt*, 83 F.3d 779, 784 (6th Cir. 1996).

<sup>3</sup> 117 F.3d 1145, 1156 (10th Cir. 1997).

the case of the penalty in *Long*, part of the basis for the court's approval of the imposition was the intentional and deliberate conduct by Long.

Cases in which the level of punitive damages were challenged are helpful for determining the type and amount of civil penalties that may be imposed. Both punitive damages and civil penalties are not generally characterized as compensation, but serve the purpose of deterrence and retribution. In *State Farm Mut. Auto. Ins. Co. v. Campbell*, the United States Supreme Court instructed courts that review punitive damages to consider civil penalties as one guidepost. The court wrote:<sup>4</sup>

In light of these concerns, in *Gore supra*.<sup>[5]</sup> we instructed courts reviewing punitive damages to consider three guideposts: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. We reiterated the importance of these three guideposts in *Cooper Industries*<sup>[6]</sup> and mandated appellate courts to conduct de novo review of a trial court's application of them to the jury's award.

When considering the enactment of a penalty, the third of the three guideposts from *State Farm* probably would be of little help. However, the legislative record accompanying the enactment of a penalty for failing to provide information relevant to the state's interest in levying and collecting taxes on the oil and gas industry should include a discussion of the importance of the information sought, the damage to the state if the information is not provided, and the reprehensibility of a taxpayer or other person holding information that opts not to provide it to the state.

In my opinion, a significant penalty for the failure to provide timely information, required by statute, would survive a challenge under either the eighth or fourteenth amendment if the amount of the penalty is reasonable in light of the importance of the information to the state in administering the tax. Since the state's dependence on revenue from the oil and gas industry is significant, a significant penalty would be justifiable. The \$1,000 a day penalty proposed in sec. 47 of SB 2001 would most likely survive a due process challenge, based on the importance of the information to the accurate determination of the tax liability and the loss to the state when the proper determination of the tax is delayed.

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<sup>4</sup> 538 U.S. 408, 418 (U.S. 2003) (citations omitted).

<sup>5</sup> *BMW of America v. Gore*, 517 U.S. 559; 116 S. Ct. 1589; 134 L. Ed. 2d 809 (1996).

<sup>6</sup> *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 149 L. Ed. 2d 674, 121 S. Ct. 1678 (2001).

**Senator Hollis French**

**October 22, 2007**

**Page 4**

In closing, and with regard to your determination of the appropriate penalty amount, consider the following quote from *State Farm*: "In sum, courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered."<sup>7</sup> In the tax context, the cost to the state of either not receiving necessary information or not receiving the information timely could be used as a basis for determining the appropriate penalty.

If I may be of further assistance, please advise.

DMB:med

07-372.med

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<sup>7</sup> 538 U.S. at 426.

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## MEMORANDUM

February 26, 2007

**SUBJECT:** Ex post facto (SB 80; Work Order No. 25-LS0425)

**TO:** Senator Thomas Wagoner  
Attn: Mary Jackson

**FROM:** Donald M. Bullock Jr.  
Legislative Counsel

*This Memo is in the  
public domain as it was made  
public in a committee hearing.  
D.M.B.*

You asked whether enactment of SB 80 would violate the prohibition against ex post facto laws in the United States and Alaska Constitutions<sup>1</sup> because the disallowance of certain deductions applies retrospectively to April 1, 2006, the effective date of the PPT.

The answer is no.

During the meetings of the Senate Resources Committee on SB 80 and the House Special Committee on Oil and Gas on HB 128, a person appearing before the committees stated that the retrospective effect of the bills is prohibited under the ex post facto clauses. I have been unable to find any authority for this statement regarding the change in tax law offered in these bills.

To the contrary, both the United States Supreme Court and our own Supreme Court have upheld retrospective tax legislation.

In 1912, the United State Supreme Court noted that, "It is however, settled that [the ex post facto prohibition of Art. I, § 9 of the Constitution] is confined to laws respecting criminal punishments, and has no relation to retrospective legislation of any other description."<sup>2</sup> The proposed disallowance of expenses resulting from the lack of maintenance or improper maintenance are not criminal punishment provisions and only

<sup>1</sup> Art. I, sec. 9, Constitution of the United States; art. I, sec. 15, Constitution of the State of Alaska.

<sup>2</sup> *Johannessen v. United States*, 225 U.S. 227, 242; 32 S. Ct. 613, 617; 56 L. Ed. 1066, 1072 (1912). The *Johannessen* case involved an immigration issue, but the principle that the application of the ex post facto clause is limited to laws regarding criminal punishment is cited as authority for denying an ex post facto challenge in cases reviewing tax laws with retrospective effect. See, e.g. *Mathes v. Commissioner of Internal Revenue*, 63 T.C. 642, 644 (1975).

affect the amount of tax for which a producer is liable. Though any taxpayer may consider a greater amount of tax as "punishment," the bill you are sponsoring does not involve the type of criminal punishment addressed by the ex post facto clause.

The United States Supreme Court has also upheld retrospective tax legislation against a due process challenge. In *United States v. Carlton*,<sup>3</sup> the court upheld the retroactive application of a curative measure in 1987 to a provision enacted the prior year; the actual retroactive effect of the 1987 amendment extended for a period only slightly greater than one year. In *Carlton*, the court noted that "Congress acted promptly and established only a modest period of retroactivity," and "Congress 'almost without exception' has given general revenue statutes effective dates prior to the dates of actual enactment." The Court noted a 1938 decision upheld a Wisconsin income tax enacted in 1935 that imposed a tax on dividends in 1933 for the proposition that, "the 'recent transactions' to which a tax law may be retroactively applied 'must be taken to include the receipt of income during the year of the legislative session preceding that of its enactment.'"<sup>4</sup> SB 80 proposes to amend tax legislation that was became effective August 20, 2006, just over 6 months ago.

Note that retrospective application of changes in tax laws on the oil industry have been upheld by the Alaska Supreme Court. In 1985, the Alaska Supreme Court upheld the retrospective effect of oil and gas income tax legislation that was signed into law in July 1978 and was retroactive to January 1, 1978.<sup>5</sup> Seven years later, the same court upheld the retrospective effect of a change in the economic limit formula applicable to the production tax on oil and gas; in that case, the Act was effective August 6, 1989, and was retroactive to January 1, 1989.<sup>6</sup> In neither case did the taxpayers assert the ex post facto prohibition as authority for challenging the retrospective application of the tax, but unsuccessfully argued that the retrospective application was effectively an "effective date" that required a two-thirds majority vote under art. II, sec. 18 of the state constitution.

In my opinion, the retrospective application of SB 80 or HB 128 would survive a challenge under the ex post facto clauses of the United States and Alaska constitutions.

If I may be of further assistance, please advise.

DMB:ljw  
09-100.ljw

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<sup>3</sup> *United States v. Carlton*, 512 U.S. 26; 114 S. Ct. 2018; 129 L. Ed. 2d 22 (1994).

<sup>4</sup> *Carlton*, 512 U.S. at 33, 114 S. Ct. at 2023, 129 L. Ed. 2d at 30, citing, *Welch v. Henry*, 305 U.S. 134, 83 L. Ed. 87, 59 S. Ct. 121 (1938).

<sup>5</sup> *Atlantic Richfield Company v. State, Dep't of Revenue*, 705 P.2d 418 (Alaska 1985), appeal dismissed, 474 U.S. 1043, 106 S. Ct. 774, 88 L. Ed. 2d 754 (1986).

<sup>6</sup> *ARCO Alaska, Inc. v. State, Commissioner of Revenue*, 824 P.2d 708 (Alaska 1992).