

HB

191

<TARGET><BILL>HB 191</BILL><SUBJECT>HB
191</SUBJECT><COMM>HRES29</COMM></TARGET>

HOUSE BILL NO. 191

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE SEATON

Introduced: 4/11/15

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the oil and gas corporate income tax; and providing for an effective
2 date."

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

4 * **Section 1.** AS 29.60.599(1) is amended to read:

5 (1) "barrel," when used with reference to oil, means the quantity of
6 oil contained in 42 United States gallons of 231 cubic inches each, measured at a
7 temperature of 60 degrees Fahrenheit and an absolute pressure of 14.65 pounds a
8 square inch [HAS THE MEANING GIVEN IN AS 43.20.144];

9 * **Sec. 2.** AS 41.09.010(b) is amended to read:

10 (b) An exploration incentive credit extended under (a) of this section may be
11 applied against

12 (1) a payment or obligation against which a credit authorized by
13 AS 38.05.180(i) may be claimed;

14 (2) taxes payable under AS 43.20 or AS 43.21, as applicable; and

1 (3) oil and gas bonus payments due the state under AS 38.05.180(f).

2 * **Sec. 3.** AS 43.20.011 is amended by adding a new subsection to read:

3 (g) For purposes of calculating the tax under (e) of this section, the taxable
4 income of a corporation engaged in the production or transportation of crude oil or
5 natural gas shall be determined in accordance with AS 43.21.

6 * **Sec. 4.** AS 43.20.145(f) is amended to read:

7 (f) This section does not apply to taxpayers subject to AS 43.21
8 [AS 43.20.144 ENGAGED IN

9 (1) THE PRODUCTION OF OIL OR GAS FROM A LEASE OR
10 PROPERTY IN THE STATE; OR

11 (2) THE TRANSPORTATION OF OIL OR GAS BY REGULATED
12 PIPELINE IN THE STATE].

13 * **Sec. 5.** AS 43.21 is amended by adding new sections to read:

14 **Article 1. Determination of Taxable Income.**

15 **Sec. 43.21.200. Application.** This chapter applies to every corporation doing
16 business in the state that derives income from the production of oil or gas from a lease
17 or property in the state or from the pipeline transportation of oil or gas in the state. The
18 tax calculated under this chapter is measured by the total taxable income of the
19 corporation during the tax period as defined by AS 43.21.210 - 43.21.250 and is
20 calculated at the rates established under AS 43.20.011(e).

21 **Sec. 43.21.210. Internal Revenue Code adopted by reference.** (a) 26 U.S.C.
22 1 - 1399 and 6001 - 7872 (Internal Revenue Code), as amended, are adopted by
23 reference as a part of this chapter. These portions of the Internal Revenue Code have
24 full force and effect under this chapter unless excepted to or modified by other
25 provisions of this chapter.

26 (b) When portions of the Internal Revenue Code incorporated by reference as
27 provided in (a) of this section refer to rules and regulations adopted by the United
28 States Commissioner of Internal Revenue, or hereafter adopted, those portions shall be
29 regarded as regulations adopted by the department under and in accord with the
30 provisions of this chapter, unless and until the department adopts specific regulations
31 in place of those portions conformable with this chapter.

1 **Sec. 43.21.220. Determination of taxable income from oil and gas**
2 **production.** (a) The taxable income of a corporation from the production of oil and
3 gas from a lease or property in the state is the corporation's net income as calculated in
4 accordance with this section.

5 (b) Gross income of a corporation from oil and gas production is the sum of
6 the gross value at the point of production of oil or gas produced from a lease or
7 property in the state, any gain or loss resulting from the sale of a lease, and any gain or
8 loss resulting from the sale of property used in the production of oil and gas in the
9 state. The department shall by regulation determine a uniform method of establishing
10 the gross value at the point of production. For the purpose of determining the gross
11 value at the point of production under this subsection, the department shall use
12 AS 43.55.150 for the determination of transportation costs.

13 (c) Net income from oil and gas production shall be determined by deducting
14 from gross income the following:

15 (1) royalties paid in kind or in value;

16 (2) taxes imposed under AS 43.55 that are actually paid or incurred by
17 the corporation on the production from a lease or property in the state;

18 (3) taxes imposed under AS 29.45.080 - 29.45.090 and AS 43.56 that
19 are actually paid or incurred by the corporation on property used directly in the
20 production of oil or gas from a lease or property in the state, including property used
21 in production, gathering, treatment, or preparation of the oil or gas for pipeline
22 transportation, but only if those property tax payments were due and payable only
23 after the date of commercial production from the lease or property with which the
24 property was associated;

25 (4) the direct costs incurred by or for the corporation in operating the
26 lease or property, including the direct costs of producing, gathering, treating, or
27 preparing the oil or gas for pipeline transportation, but net of any payments received
28 for those activities and not including any indirect cost or overhead expense;

29 (5) depreciation, under 26 U.S.C. 167 (Internal Revenue Code) or
30 another reasonable method as the department may by regulation establish, on property
31 used directly in the production, gathering, treatment, or preparation of the oil or gas

1 for pipeline transportation, including amortization of capitalized interest for
2 investments in that property at a rate not to exceed the average cost to the taxpayer of
3 borrowed capital during the year in which the interest is capitalized; for purposes of
4 this paragraph, property capitalized under AS 43.20 shall maintain its adjusted basis,
5 less any depreciation taken under AS 43.20 and any amount attributable to that
6 property received as a credit under this title;

7 (6) the amortization of lease acquisition payments and taxes paid or
8 incurred under AS 29.45.080, 29.45.090, or AS 43.56, including capitalized interest,
9 for or on producing properties before the commencement of commercial production
10 from the lease or property for which the property is being used;

11 (7) interest expense of the corporation, not capitalized during
12 construction, that was paid or incurred in connection with property in the state;
13 however, the interest expense may not exceed that portion of the total interest paid by
14 the consolidated business of which the corporation is a part, determined by
15 multiplying the total interest by a fraction, the numerator of which is the value of the
16 corporation's real and tangible personal property used directly in the production of oil
17 or gas from a lease or property in the state and the denominator of which is the value
18 of all real and tangible personal property of the consolidated business; in this
19 paragraph, "total interest paid by the consolidated business" does not include interest
20 expense arising from intercompany obligations within the consolidated business
21 except to the extent that the interest expense reflects a pass-through of interest on a
22 third-party borrowing by the parent or other member of the consolidated business with
23 the purpose, expressed at the time of the third-party borrowing, of financing Alaska
24 business activity of the taxpayer corporation;

25 (8) expenses incurred by the corporation after December 31, 2015, of
26 unsuccessful exploration of oil or gas in the state, including the acquisition costs of
27 abandoned properties, dry hole costs, and the costs of geologic and geophysical
28 exploration related to those abandoned properties;

29 (9) general overhead or administrative expense incurred by the
30 corporation attributable to deriving income from the production of oil or gas from a
31 lease or property in the state to the extent that the general overhead or administrative

1 expense does not exceed that portion of the total general overhead or administrative
 2 expense incurred by the consolidated business of which the corporation is a part,
 3 determined by multiplying the total general overhead or administrative expense by a
 4 fraction, the numerator of which is the value of the corporation's real and tangible
 5 personal property used directly in the production of oil or gas from a lease or property
 6 in the state and the denominator of which is the value of all real and tangible personal
 7 property of the consolidated business;

8 (10) the amount of income from the production of oil and gas from a
 9 lease or property that is divided among the regional Native corporations under 43
 10 U.S.C. 1606(i) (sec. 7(i), Alaska Native Claims Settlement Act, P.L. 92-203);

11 (11) net operating loss carry forward amounts accrued from taxes paid
 12 under AS 43.20 or AS 43.21 for expenditures related to the production of oil or gas
 13 from a lease or property in the state or from pipeline transportation of oil or gas in the
 14 state, except that a net operating loss amount that resulted from an expenditure that
 15 was also the basis of a credit under this title may not be deducted under this paragraph.

16 (d) Deductions from gross income under this section may not include
 17 expenses previously deducted on a return filed under AS 43.20.

18 (e) If a corporation subject to this chapter shares the production or proceeds of
 19 the production from a lease or property through a working interest, royalty interest,
 20 overriding royalty interest, production payment, net profit interest, joint venture, or
 21 other agreement, the taxpayer shall allocate the deductions from gross income between
 22 the corporation and the persons with whom the corporation has the agreement in
 23 accordance with the terms of the agreement.

24 **Sec. 43.21.230. Determination of taxable income from oil and gas pipeline**
 25 **transportation.** (a) Except as provided in (c) of this section, taxable income
 26 attributable to the transportation of oil in a pipeline engaged in interstate commerce in
 27 this state is the amount reported or that would be required to be reported to the Federal
 28 Energy Regulatory Commission or its successors as net operating income, less those
 29 portions of interest and general overhead or administrative expense attributable to the
 30 pipeline transportation of oil in the state, except that taxable income shall also include
 31 taxes on or measured by income. The department shall establish regulations governing

1 the determination of interest and general overhead or administrative expense
2 attributable to pipeline transportation of oil in the state.

3 (b) Except as provided in (c) of this section, taxable income attributable to the
4 transportation of natural gas in a pipeline engaged in interstate commerce in this state
5 is the amount reported or that would be required to be reported to the Federal Energy
6 Regulatory Commission as net operating income, less that portion of interest and
7 general overhead or administrative expense attributable to pipeline transportation in
8 the state, except that the taxable income shall also include taxes on or measured by
9 income. The department shall establish regulations governing the determination of
10 interest and general overhead or administrative expense attributable to pipeline
11 transportation of natural gas in the state.

12 (c) Taxable income attributable to the transportation of oil or natural gas in
13 this state of a corporation not under the jurisdiction of the Federal Energy Regulatory
14 Commission, or of a corporation under the jurisdiction of the Federal Energy
15 Regulatory Commission but not reporting the operation of pipelines in the state
16 separately from the operation of pipelines elsewhere, shall be based on an amount
17 equal to the amount that would have been reported to the Federal Energy Regulatory
18 Commission under (a) of this section in the case of oil pipelines, or under (b) of this
19 section, in the case of natural gas pipelines, had the corporation been, in fact, under the
20 jurisdiction of the Federal Energy Regulatory Commission for the taxable year and
21 required to report on the operation of pipelines in the state separately from the
22 operation of pipelines elsewhere.

23 **Sec. 43.21.240. Determination of taxable income from activities other than**
24 **oil and gas production or pipeline transportation.** (a) Taxable income of a
25 corporation subject to this chapter from activities in this state other than the production
26 of oil or gas from a lease or property in the state or the pipeline transportation of oil or
27 gas in the state shall be determined in accordance with the method established in art.
28 IV of AS 43.19.010 and in AS 43.20.143, as modified by (b) - (d) of this section.

29 (b) The total taxable income of a consolidated business is its entire income
30 less the portion of that entire income attributable to worldwide production and pipeline
31 transportation of oil and gas. In this subsection, for a member of a consolidated

1 business who is

2 (1) required to file under the Internal Revenue Code, "entire income"
3 means the taxpayer's taxable income as the term is used in AS 43.20.011 - 43.20.142;

4 (2) not required to file under the Internal Revenue Code, "entire
5 income" means an income determination prepared in accordance with generally
6 accepted accounting principles, except that a taxpayer may elect to report income as
7 the income would be determined under (1) of this subsection.

8 (c) The numerator and denominator of the property factor, of the payroll
9 factor, and of the sales factor shall be calculated without reference to that portion of
10 property, payroll, or sales directly related to the production of oil or gas from a lease
11 of property in the state or the pipeline transportation of oil or gas in the state.

12 (d) The value attributed to vessels transporting Alaska oil or gas of a
13 consolidated business that are not owned or effectively owned by the consolidated
14 business shall be excluded from the property factor.

15 **Sec. 43.21.250. Applicability of tax to a consolidated business.** The
16 provisions of this chapter apply to a consolidated business whether or not the taxpayer
17 is the parent or controlling corporation.

18 **Article 2. Calculation of Tax; Returns.**

19 **Sec. 43.21.300. Calculation of tax.** (a) The amount of the tax payable on the
20 taxable income of a corporation subject to tax under this chapter shall be determined
21 using the tax rates in AS 43.20.011(e).

22 (b) For purposes of this chapter, the department may combine taxable income
23 of corporations subject to tax under this chapter who are part of the same consolidated
24 business.

25 (c) If the methods of allocation and apportionment provided in this chapter do
26 not fairly represent the extent of a corporation's business activity in the state, the
27 corporation may petition for or the department may require, in respect to all or any
28 part of the corporation's business activity, if reasonable, the employment of any
29 method authorized under art. IV, sec. 18, AS 43.19.010 (Multistate Tax Compact), to
30 carry out an equitable allocation and apportionment of the corporation's income. The
31 commissioner shall include in the annual report required in AS 43.21.410 a report on

1 all relief granted under this subsection, including, for each case, a statement of the
2 changes in tax liability resulting from the granting of relief, the tax years involved, and
3 a description of the method of determining taxable income that was substituted for the
4 methods provided in this chapter.

5 **Sec. 43.21.320. Credits.** Subject to the limitations imposed on the credits in
6 AS 43.20, a credit under AS 43.20.014, 43.20.043, 43.20.044, 43.20.046, 43.20.047,
7 43.20.048, 43.20.049, or 43.20.053 may be applied against the tax levied under this
8 chapter, unless a credit for the same expenditure has been taken against a tax levied
9 under AS 43.20 or AS 43.55. Any refund of a credit under this section is limited to the
10 portion of the tax credit unused under this title.

11 **Sec. 43.21.330. Returns and payment of taxes.** (a) A corporation subject to
12 tax under this chapter and required to make a return under the Internal Revenue Code
13 shall, within 30 days after the federal return is required to be filed, submit a return
14 setting out

15 (1) the amount of tax due under this chapter, less credits claimed
16 against the tax; and

17 (2) other information the department may require to carry out the
18 purposes of this chapter.

19 (b) The return shall be made under oath or shall contain a written declaration
20 that it is made under penalty of perjury and shall be made on a form prescribed by the
21 department.

22 (c) On request by the department, a taxpayer shall furnish to the department a
23 true and correct copy of each annual tax return the taxpayer has filed with the United
24 States Internal Revenue Service. Every taxpayer shall notify the department in writing
25 of any modification of the taxpayer's federal income tax return and of a recomputation
26 of tax or determination of deficiency. A full statement of the facts must accompany
27 this notice. The notice shall be filed within 60 days after the final determination of the
28 modification, recomputation, or deficiency, and the taxpayer shall pay the additional
29 tax or penalty under this chapter. For purposes of this section, a determination shall be
30 considered to be final at the time an amended federal return is filed or a notice of
31 deficiency or an assessment is mailed to the taxpayer by the Internal Revenue Service,

1 by category, classified so as to prevent the identification of particular returns or
2 reports.

3 (b) The legislative auditor shall notify the legislature on or before the first day
4 of each regular session that the annual report reviewing the actions of the department
5 in administering this chapter is available.

6 **Sec. 43.21.420. Information disclosure.** Notwithstanding another provision of
7 law, the department shall disclose to a legislator, on request, information collected
8 from a taxpayer to the extent that

9 (1) the taxpayer is a publicly traded company;

10 (2) the information has been filed in a quarterly, annual, or other
11 periodic report to the United States Securities Exchange Commission; and

12 (3) the information has been made public by the United States
13 Securities Exchange Commission.

14 **Sec. 43.21.499. Definitions.** Unless the context requires otherwise, the
15 definitions contained in AS 43.55.900 are applicable to this chapter. In addition, in this
16 chapter,

17 (1) "consolidated business" means a corporation or group of
18 corporations having more than 50 percent common ownership, direct or indirect, or a
19 group of corporations in which there is common control, either direct or indirect, as
20 evidenced by an arrangement, contract, or agreement;

21 (2) "Internal Revenue Code" has the meaning given in AS 43.20.340.

22 * **Sec. 6.** AS 43.82.210(a) is amended to read:

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

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

30 (2) oil and gas exploration, production, and pipeline transportation
31 property taxes under AS 43.56;

- 1 (3) **oil and gas corporate income tax under AS 43.21;** [REPEALED]
 2 (4) Alaska net income tax under AS 43.20;
 3 (5) municipal sales and use tax under AS 29.45.650 - 29.45.710;
 4 (6) municipal property tax under AS 29.45.010 - 29.45.250 or
 5 29.45.550 - 29.45.600;
 6 (7) municipal special assessments under AS 29.46;
 7 (8) a comparable tax or levy imposed by the state or a municipality
 8 after June 18, 1998;
 9 (9) other state or municipal taxes or categories of taxes identified by
 10 the commissioner.

11 * **Sec. 7.** AS 43.20.144 is repealed.

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

14 APPLICABILITY. AS 43.21, added by sec. 5 of this Act, applies to taxable income
 15 earned or received after December 31, 2015.

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

18 REGULATIONS. (a) The Department of Revenue may adopt regulations necessary to
 19 implement AS 43.21, added by sec. 5 of this Act. The regulations take effect under AS 44.62
 20 (Administrative Procedure Act), but not before the effective date of the law implemented by
 21 regulation.

22 (b) The Department of Revenue shall provide by regulation for a transition for a
 23 corporation subject to tax under AS 43.20 before December 31, 2015, to avoid double
 24 taxation of the same income or double deduction of the same expense of the corporation as a
 25 result of becoming subject to tax under AS 43.21, added by sec. 5 of this Act.

26 (c) The Department of Revenue may adopt regulations necessary to provide a five-
 27 year transition period for the adoption of applicable depreciation schedules.

28 * **Sec. 10.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).

29 * **Sec. 11.** Except as provided in sec. 10 of this Act, this Act takes effect January 1, 2016.

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Sponsor Statement

HB 191

*"An Act relating to the oil and gas corporate income tax;
and providing for an effective date."*

HB 191 requires international or Lower 48 domestic oil producers to pay their 9.4% Alaska Corporate Income Tax on profits made in and expenses related to Alaska, just like companies operating only in Alaska. HB 191 replaces the current tax method under which oil companies pay a proportion of their worldwide profits calculated for their production from Alaska operations. This current worldwide apportionment of corporate income tax allows oil companies to write off less profitable international or Lower 48 domestic production against their highly profitable Alaska production.

HB 191 reinstates Separate Accounting which simply means that the companies pay on profits made in Alaska instead of writing off losses incurred outside of the state. Alaska instituted Separate Accounting from 1978 through 1981 because the state was subsidizing overseas investments by oil companies under the worldwide apportionment method of calculating income taxes. During these four years, an additional \$1.4 billion dollars (without including interest) was collected under the separate accounting method than would have been collected under the worldwide apportionment method. The oil companies sued on numerous grounds and lost on all points at trial. The case was appealed to the Alaska Supreme Court.

There was concern in 1981 over an increasing liability for repayment of this additional \$1.4 billion if the separate accounting method was overturned by the Supreme Court, so the state returned to the worldwide apportionment method awaiting case resolution. The Alaska Supreme Court upheld the state's right to collect Corporate Income Tax via Separate Accounting in 1985. Oil companies

then appealed to the U.S. Supreme Court which dismissed the appeal because Alaska's Separate Accounting law did not raise any federal constitutional or statutory question. Since that time, Alaska has not availed itself of its right to reinstate the separate accounting method and calculate oil company corporate income tax based on profits made in and expenses related to Alaska.

According to a 2000 testimony by Dan Dickenson with the Department of Revenue, Alaska lost \$4.6 Billion from 1982 – 1997 by not utilizing Separate Accounting. During the four years in which the state required Separate Accounting, the state received an additional \$1.4 billion or \$350 million per year, not including interest. If we multiply \$350 million by the 32 years that we have not collected Corporate Income Tax through Separate Accounting, this equals approximately \$11.2 billion in lost revenue to the state.

International energy consultant Pedro Van Meurs, who has advised Alaska and numerous jurisdictions on modifications to their petroleum tax regimes, is a strong supporter of calculating state corporate tax based on costs and revenues attributed to oil production in Alaska. Most nations such as Norway utilize separate accounting. All of the major producers operating in Alaska have been complying with the separate accounting terms in those jurisdictions. Two other states, Mississippi and Oklahoma, use separate accounting even though they have neighbors who do not.

Government Take is used for comparative attractiveness of investment in different jurisdictions. Alaska's rate of 9.4% is used for Corporate Income Tax in these comparisons. Since 9.4% is used for these comparisons, the state of Alaska should truly be collecting the 9.4% tax on the profits international oil companies make in Alaska. Converting the method of computing Corporate Income Tax for oil and gas corporations will not change the corporate tax rate or change any tax credits but will help the state collect on the full tax rate.

HB 191 creates fairness between the tax rate paid by oil and gas corporations operating exclusively in Alaska and the tax rate paid by multinational oil and gas corporations.

Alaska State Legislature

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SECTIONAL ANALYSIS

House Bill 191
Version H

HB 191 Sectional Analysis
Version: 29-LS0849\H

An Act relating to the oil and gas corporate income tax; and providing for an effective date.

Please note that a sectional analysis of a bill or resolution should not be considered an authoritative interpretation of the measure itself. The legislation is the best statement of its contents.

NOTE: Oil & Gas Corporate Income Tax, also known as Separate Accounting, will be a new section added to statute: AS 43.21. This is noted in Section 5 of this sectional analysis. Oil and Gas Producers and Pipelines, also known as Worldwide Apportionment, is repealed in Section 7.

Section 1: *Page 1: Lines 4-8*

Amends language in AS 29.60.599(1), *Definitions*, by directly defining the meaning of barrel when used with reference to oil. It removes the reference to the same definition that is listed in AS 43.20.144, a statute which is being repealed in Section 7 of this bill.

Section 2: *Pages 1, Line 9 – page 2, Line 1*

Amends language in AS 41.09.010(b), *Exploration Incentive Credit*, by allowing for the credit to be used against AS 43.21, *Oil and Gas Corporate Income Tax*.

Section 3: *Page 2: Lines 2-5*

Adds a new subsection under AS 43.20.011, *Tax on Corporations*, stating that corporations engaged in the production or transportation of crude oil or natural gas shall be taxed under AS 43.21, *Oil and Gas Corporate Income Tax* (separate accounting).

Section 4: *Page 2: Lines 6-12*

Amends language in AS 43.20.145(f), *Affiliated Groups*, to replace AS 43.20.144 (worldwide apportionment) with AS 43.21 (separate accounting). Because AS 43.20.144 dealt with more than just oil and gas companies, clarifying language was included in (f). Since AS 43.21 only deals with oil and gas production and transportation companies, the clarifying language was not necessary and therefore deleted.

Section 5: *Page 2, Line 13 – Page 10, Line 21*

Adds new sections to AS 43.21, *Oil and Gas Corporate Income Tax*; includes addition of Articles 1, 2, and 3. This reinstates the Oil and Gas Corporate Income Tax (separate accounting) which was repealed in 1982.

Article 1: Determination of Taxable Income

Section 43.21.200 *Page 2, Line 15-20:* Clarifies that this tax applies to every corporation with business in the state that has income from production and/or transportation of oil or gas in the state.

Section 43.21.210 *Page 2, Line 21-31:* Adopts 26 U.S.C. 1-1399, *Normal Taxes and Surtaxes*, and 6001-7872, *Internal Revenue Code*, by reference, which thereby incorporates these codes as regulations adopted by the department.

Section 43.21.220 *Page 3, Line 1 – Page 5, Line 23:* Describes how the taxable income from oil and gas production is calculated.

Section 43.21.230 *Page 5, Line 24 – Page 6, Line 22:* Describes how the taxable income from oil and gas pipeline transportation is calculated.

Section 43.21.240 *Page 6, Line 23 – Page 7, Line 14:* Clarifies how taxable income is determined from activities other than oil and gas production or pipeline transportation as established through AS 43.19.010, *Multistate Tax Compact*, and AS 43.20.143, *Transportation Carriers*.

Section 43.21.250 *Page 7, Line 15-17:* Clarifies that AS 43.21, *Oil and Gas Corporate Income Tax*, applies to a consolidated business whether or not the taxpayer is the parent or controlling corporation.

Article 2: Calculation of Tax; Returns

Section 43.21.300 *Page 7, Line 19 – Page 8, Line 4:* Part (a) clarifies that the amount of tax payable is determined using the tax rates in AS 43.20.011(e), *Tax on Corporations*. (For most companies the tax rate is 9.4%.) Part (b) provides the department the ability to combine taxable income of corporations who are part of the same consolidated business. Part (c) states that if methods of allocation and apportionment which are provided in the chapter are not

fairly representative of the corporation's business activity in the state, the corporation is able to petition the department under certain requirements noted in this section.

Section 43.21.320 *Page 8, Line 5-10*: References tax credits that may be applied against AS 43.21, *Oil and Gas Corporate Income Tax*, which include: Income Tax Education Credit (AS 43.20.014), Gas Exploration and Development Credit (AS 43.20.043), Exploration Incentive Credit (AS 43.20.044), Gas Storage Facility Credit (AS 43.20.046), Liquefied Natural Gas Storage Facility Credit (AS 43.20.047), Veteran Employment Credit (AS 43.20.048), Qualified Oil and Gas Service Industry Expenditure Credit (AS 43.20.049), and Qualified In-State Oil Refinery Infrastructure Expenditures Credit (AS 43.20.053). Credits may only be applied if they were not already taken as a credit under AS 43.20 or AS 43.55. Refunds of credits will be limited to the portion of the tax credit that is unused under this title.

Section 43.21.330 *Pages 8, Line 11 – Page 9, Line 15*: Returns and payment of taxes. Part (a): 30 days after a corporation files their return under the Internal Revenue Code, the corporation must submit their state return. Part (b) states that the state return shall be made under oath to be true or contain a written declaration to be true. Part (c) states that taxpayers shall supply the department with a copy of each annual tax return that is filed with the IRS. Taxpayers shall provide in writing any change in their federal income return; any change must be reported within 60 days. Part (d): the state tax is due at the same time and in the same manner as the United States Internal Revenue Service federal tax due; this includes quarterly tax prepayments. Part (e) states that the tax is due even if the assessment is under appeal or challenge. Part (f) states that any unpaid amount of an installment payment will be treated as an underpayment and shall accrue interest.

Article 3: Administrative Matters

Section 43.21.400 *Page 9, Lines 17-27*: Relates to Regulations. The Department shall adopt regulations under Administrative Procedures Act (AS 44.62). The Department shall use the regulations that had been adopted in 1981 as guidance. Regulations to be adopted must include methods for accounting for: 1) intercompany transactions in a fair and equitable manner to prevent purposeful tax evasion or manipulation of income or deduction; and 2) transactions between parent and subsidiary companies.

Section 43.21.410 *Page 9, Line 28 – Page 10, Line 5*: Relates to Public Reporting. Part (a) states that an annual report of state revenue along with the implementation of taxation policies under the chapter must be provided to the legislature. Part (b) states that a legislative auditor shall notify the legislature on or before the first day of each regular session when the report is available.

Section 43.21.420 *Page 10, Lines 6-13*: Information Disclosure. The Department shall disclose to any legislator that requests information collected from a taxpayer if: 1) the taxpayer is a publicly traded company; 2) information has been filed in report to the United States Securities Exchange Commission; and 3) the information has been made public by the United States Securities Exchange Commission.

Section 43.21.499 Page 10, Lines 14-21: The section adds in the definitions for consolidated business and Internal Revenue Code in relationship to the chapter.

Section 6: Pages 10, Line 22 – Page 11, Line 10
Amends Section 43.82.210(a), *Contract terms relating to payment in lieu of one or more taxes*, to include AS 43.21, *Oil and Gas Corporate Income Tax*.

Section 7: Page 11, Line 11
AS 43.20.144, *Oil and Gas Producers and Pipelines*, is repealed. (This is the worldwide apportionment method.)

Section 8: Page 11: Lines 12-15
Amends the Uncodified Law of the State of Alaska by adding a new section clarifying that AS 43.21, *Oil and Gas Corporate Income Tax*, applies to taxable income earned or received after December 31, 2015.

Section 9: Page 11: Lines 16-27
Amends the Uncodified Law of the State of Alaska by adding a new section on Regulations. Part (a): Department of Revenue may adopt the regulations necessary to implement AS 43.21, *Oil and Gas Corporate Income Tax*, which would take effect under Administrative Procedure Act (AS 44.62) after the effective date of law which is implemented by regulations. Part (b): Department of Revenue shall provide by regulations a transition period for the corporations that fall under AS 43.20 before the date of December 31, 2015. This is in order to prevent double taxation with the implementation of AS 43.21, *Oil and Gas Corporate Income Tax*. Part (c): Department of Revenue may adopt regulations in order to provide a 5-year transition period for depreciation.

Section 10: Page 11: Line 28
States that Section 9 will take effect immediately.

Section 11: Page 11: Line 29
States that Sections 1-8 will take effect January 1, 2016.

Alaska State Legislature

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REPRESENTATIVE PAUL SEATON Rep.Paul.Seaton@akleg.gov SECTIONAL ANALYSIS

House Bill 191 Version H

HB 191 Short Version Sectional Analysis Version: 29-LS0849H

An Act relating to the oil and gas corporate income tax; and providing for an effective date.

*Please note that a sectional analysis of a bill or resolution should not be considered an authoritative interpretation of the measure itself.
The legislation is the best statement of its contents.*

NOTE: Oil & Gas Corporate Income Tax, also known as Separate Accounting, will be a new section added to statute: AS 43.21. This is noted in Section 5 of this sectional analysis. AS 43.20 *Oil and Gas Producers and Pipelines*, also known as Worldwide Apportionment, is repealed in Section 7.

Section 1: *Page 1: Lines 4-8*

Amends language by removing reference to AS 43.20.144, which is repealed in Section 7 of this bill, and inserts the same definition of barrel in reference to oil.

Section 2: *Pages 1-2: Lines 9-1*

Amends language in AS 41.09.010(b), *Exploration Incentive Credit*, by allowing for the credit to be used against AS 43.21, *Oil and Gas Corporate Income Tax* (separate accounting).

Section 3: *Page 2: Lines 2-5*

Adds new subsection under AS 43.20.011, *Tax on Corporations*, stating that any corporation engaged in the production or transportation of crude oil or natural gas shall be taxed under AS 43.21, *Oil and Gas Corporate Income Tax* (separate accounting).

Section 4: *Page 2: Lines 6-12*

Amends language in AS 43.20.145(f), *Affiliated Groups*, to replace AS 43.20.144 (worldwide apportionment) with AS 43.21 (separate accounting). AS 43.20.144 dealt with more than oil and gas companies, clarifying language was included in (f). AS 43.21 is only for oil and gas production and transportation companies, the clarifying language is unnecessary and was deleted.

Section 5: *Pages 2-10: Lines 13-18*

Re-incorporates former Separate Accounting methodology that was approved by the Supreme Court in the 1982 with the addition of Articles 1, 2, and 3 to AS 43.21, *Oil and Gas Corporate Income Tax*.

Section 6: *Page 10-11: Lines 22-11*

Amends section 43.82.210(a), *Contract terms relating to payment in lieu of one or more taxes*, by updating periodic payments made on tax and to include reference to AS 43.21, *Oil and Gas Corporate Income Tax*, in the statute.

Section 7: *Page 11: Line 11*

The worldwide apportionment method, AS 43.20.144, is repealed.

Section 8: *Page 11: Lines 12-15*

Adds new section to the uncodified law of the State of Alaska for Applicability by adding an effective date of January 1, 2016.

Section 9: *Page 11: Lines 16-27*

Adds new section to the uncodified law of the State of Alaska on Regulations allowing Department of Revenue to adopt regulations necessary to implement the separate accounting method (Oil and Gas Corporate Income Tax). This includes a transition period in order to avoid double taxation, along with the ability to adopt regulations to provide a five-year transition period for depreciation.

Section 10: *Page 11: Line 28*

States that Section 9 will take place immediately.

Section 11: *Page 11: Line 29*

States that Sections 1-8 will take effect January 1, 2016.

For more detailed information go to:

<http://www.akleg.gov/basis/Bill/Detail/29?Root=HB%20191>

29th Legislature
HB 191

Oil and Gas Corporate Income Tax
“Separate Accounting”

Power Point presentation created by the office of Rep. Paul Seaton.

Worldwide Apportionment: attributes a percentage of a corporation's total worldwide expenses to each jurisdiction and requires combined reporting of the group's profit or loss. The parent, multinational corporation and all of its subsidiaries are viewed as though they are a single entity for tax purposes.

- **Problem:** When a corporation's subsidiaries are less profitable outside of Alaska as compared to their subsidiaries within Alaska, the less profitable subsidiaries reduce the overall profit of the parent company, which reduces the amount of corporate tax they pay to Alaska (well below Alaska's 9.4% tax rate.)

Separate Accounting: Multinational corporations must determine their profits separately in each tax jurisdiction in which they operate. A branch or subsidiary within a multinational corporation is accounted for as a separate entity for tax purposes.

- **Solution:** This method does not allow a corporation to include their lower profit from areas outside of Alaska. The company is taxed only on their profit from Alaska operations.

HB 191 does not change Alaska's 9.4% corporate income tax rate or tax credits. It helps the state more fully and equitably collect on the tax due.

History of Separate Accounting

The next 5 slides show:

- Supreme Court Case 1985
- Estimated Interest & Liability for Separate Accounting Revenue collected between 1978-1981
- 1982-1997 comparison between Worldwide Apportionment & Separate Accounting
- 1982-1997 graph of comparison
- Separate Accounting in other States & Countries

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ATLANTIC RICHFIELD COMPANY; ARCO)
PIPE LINE COMPANY; BP ALASKA,)
INC.; EXXON CORPORATION; EXXON)
PIPELINE COMPANY; SOHIO ALASKA)
PETROLEUM COMPANY; and SOHIO)
PIPE LINE COMPANY,)

Appellants,)

vs.)

STATE OF ALASKA; ALASKA DEPART-)
MENT OF REVENUE; ALASKA DEPART-)
MENT OF ADMINISTRATION;)
COMMISSIONER OF REVENUE ROBERT)
D. HEATH, and COMMISSIONER OF)
ADMINISTRATION LISA RUDD,)

Appellees.)

Supreme Court
No. S-52

Superior Court Nos.
3AN-79-1903 Civil
3AN-80-1542 Civil

APPENDIX A OF BRIEF OF APPELLEES

1 of 1 DOCUMENT

Atlantic Richfield Co. v. State

File No. S-52; No. 2965

11. The estimated interest that would be payable on a refund of the difference between AS 43.21 and AS 43.20 tax liabilities:


<u>YEAR</u>	<u>INTEREST ON ESTIMATED REFUND*</u>
1978	\$ 40,000,000
1979	89,000,000
1980	138,000,000
1981	<u>159,000,000</u>
TOTAL	\$426,000,000

*Interest through 4/27/84


12. The estimated total refund liability of the State is:

<u>YEAR</u>	<u>ESTIMATED TOTAL REFUND LIABILITY</u>
1978	\$ 122,000,000
1979	311,000,000
1980	570,000,000
1981	<u>821,000,000</u>
TOTAL	\$1,824,000,000

Further your affiant saith naught.


Robert D. Heath, Commissioner
Department of Revenue

SUBSCRIBED AND SWORN TO before me this 27th day of April, 1984.


Notary Public, State of Alaska
My commission expires: 12/9/84

**Comparison of Actual Oil and Gas Corporate Income Tax
Collected with Estimated Revenues using a Separate Accounting
Income Tax Approach
(In Millions)**

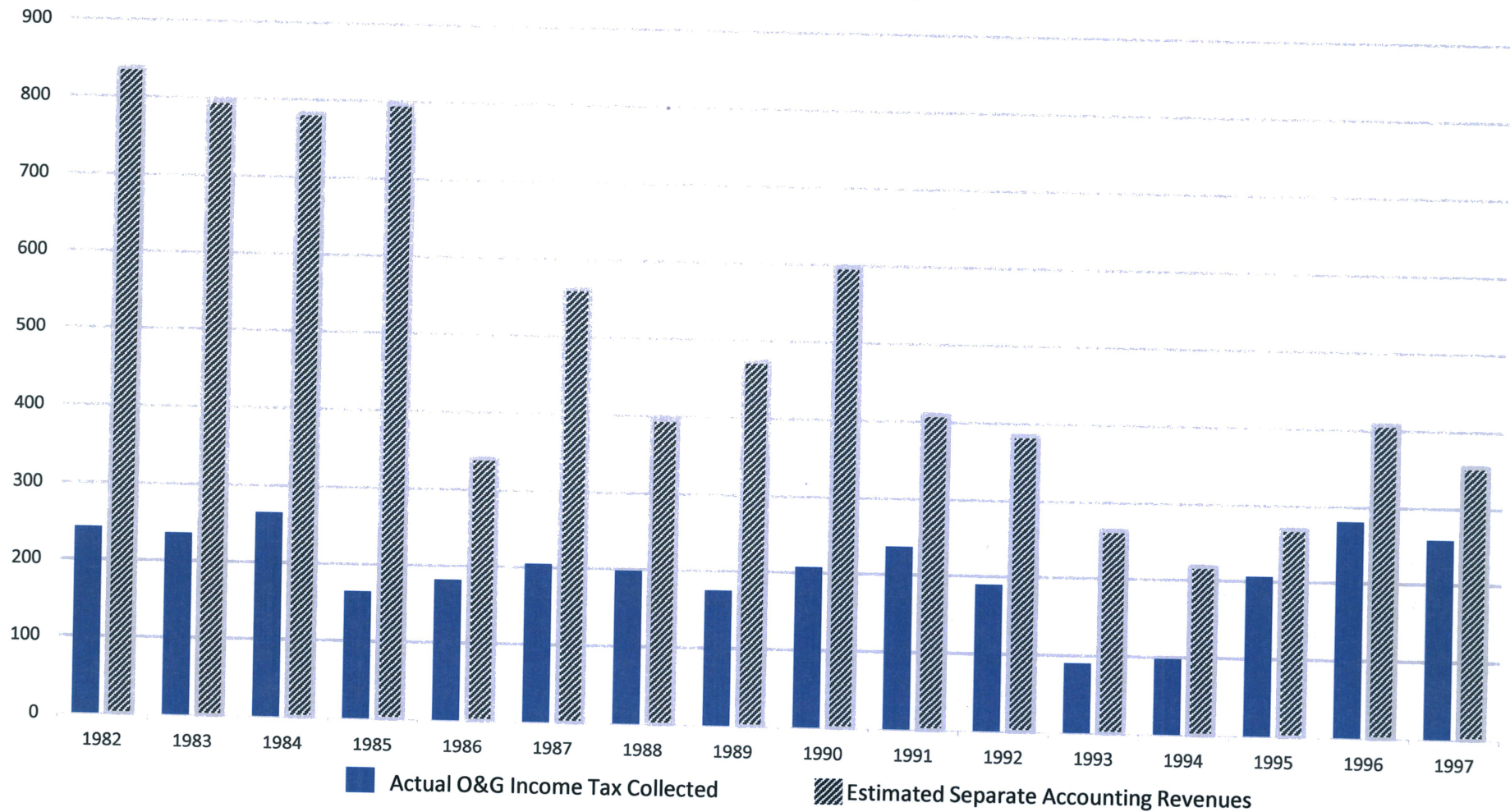
	(Worldwide Apportionment)	Estimated Separate	
	Actual O&G Income Tax Collected	Accounting Revenues	Difference
1982	242.50	837.62	595.12
1983	236.00	796.15	560.15
1984	265.10	782.86	517.76
1985	163.60	797.00	628.40
1986	181.00	341.00	160.00
1987	205.00	562.00	357.00
1988	198.00	396.00	198.00
1989	174.00	473.00	299.00
1990	208.00	598.00	390.00
1991	237.00	410.00	173.00
1992	189.00	385.00	196.00
1993	90.00	264.00	174.00
1994	98.00	219.00	121.00
1995	206.00	270.00	64.00
1996	281.00	408.00	127.00
1997	259.00	355.00	96.00

TOTALS \$3,238.20 \$7,894.63 \$4,656.43



Source: 1986-97 calendar year data from DOR letter D. Dickinson to J. Donohue Sept. 23, 1999; 1982-85 fiscal data is from DOR report dated Oct. 31, 1985, Wright to Nordale, in re HB353; data for second half of 1985 not available at this time.

Comparison of Actual Oil and Gas Corporate Income Tax Collected with Estimated Revenues using a Separate Accounting Income Tax Approach Assuming Existing AS 43.20 Rate



Source: 1986-1997 calendar year data from DOR letter, D. Dickinson to J. Donohue, 9/23/99; 1982-85 fiscal data is from DOR report dated 10/31/85, Wright to Nordale, in re HB353. Data for second half of 1985 not available at this time. Since the actual income tax collections for FY82 (the phase out year) included revenue from both separate accounting and modified apportionment, the actual income tax collections for FY82 depicted on the chart includes an estimate of revenue from modified apportionment as if it had been in effect for the entire fiscal year.

**States using
Separate Accounting:
Mississippi and Oklahoma**

Companies in both Alaska & Mississippi:

- Anadarko Petroleum
- Apache Corporation
- Aurora Exploration
- Chevron USA
- ExxonMobil
- Hilcorp Energy Co.
- Shell Oil
- Tesoro
- Ultra Oil & Gas

Companies in both Alaska & Oklahoma:

- Anadarko Petroleum
- Apache Corporation
- BP Exploration & Production
- Chevron USA
- ConocoPhillips
- ExxonMobil Corp
- XTO Energy

80 oil-producing countries:

For Nonresident corporations in these countries, the vast majority determine taxable income using a separate accounting system or a variation of separate accounting.

Companies in both Alaska & other Countries:

- Anadarko Petroleum
- Apache Corporation
- BP Exploration & Production
- Chevron USA
- ConocoPhillips
- Eni Petroleum
- ExxonMobil Corp.
- Repsol
- Shell Oil Co. (Royal Dutch Shell)
- Statoil

Tax Rates & Net Income

The next 3 slides show:

- Top 5 Oil Companies 2006-2013 Tax Rate Paid to Alaska
- ConocoPhillips Net Income per BOE 2000-2014
- ConocoPhillips Graph Net Income per BOE for only Alaska, Lower 48, and U.S. Total

Top Five Oil Companies – Corporate Income Tax Comparison

	2006	2007	2008	2009	2010	2011	2012	2013
Production Tax Value (PTV)	8,269,253,754	12,373,309,410	16,639,085,462	8,123,576,735	10,267,505,397	14,471,372,140	12,875,430,660	10,511,652,318
Production Tax net of Credits	1,648,686,505	3,486,434,327	7,121,145,726	2,033,891,379	3,023,427,665	6,018,617,015	5,201,264,064	3,345,624,109
PTV net of Production Tax / Subtotal								
Production Income	6,620,567,249	8,886,875,083	9,517,939,736	6,089,685,356	7,244,077,732	8,452,755,125	7,674,166,596	7,166,028,209
Transportation Income (E)	(90,244,995)	110,116,400	(753,871,782)	(455,178,918)	(467,334,308)	(347,095,698)	(78,316,445)	8,709,283
Separate Accounting Taxable Income (A)	6,530,322,254	8,996,991,483	8,764,067,954	5,634,506,438	6,776,743,424	8,105,659,427	7,595,850,151	7,174,737,492
Separate Accounting Tax @ 9.4% (B)	613,850,292	845,717,199	823,822,388	529,643,605	637,013,882	761,931,986	714,009,914	674,425,324
Actual Corporate Income Tax Paid (C.) (Worldwide Apportionment)	657,429,974	600,302,648	668,232,719	309,232,497	405,148,405	474,009,740	393,108,892	319,247,744
Difference (B-C)	(43,579,682)	245,414,551	155,589,669	220,411,108	231,865,477	287,922,246	320,901,022	355,177,580
Effective Tax Rate Paid to Alaska (C/A)	10.1%	6.7%	7.6%	5.5%	6.0%	5.8%	5.2%	4.4%

(Note: Alaska Corporate Income Tax Rate is 9.4% for corporations with taxable income \$222,000 or more.)

Average Difference per year: \$221,712,746

Slide: 10

Chart provided by the Dept. of Revenue Tax Division 4/10/2015.

Table 2: ConocoPhillips Exploration and Production Net Income per Barrel of Oil Equivalent by Selected Jurisdictions

(Nominal Dollars)

Net Income

Jurisdiction	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Average
Alaska	\$8.97	\$6.01	\$6.19	\$10.43	\$14.36	\$20.38	\$21.08	\$20.66	\$22.84	\$15.73	\$19.47	\$24.10	\$29.21	\$31.09	\$30.48	\$18.73
Lower 48	\$9.13	\$8.02	\$3.77	\$8.42	\$10.56	\$15.96	\$10.63	\$9.80	\$14.39	(\$0.20)	\$6.26	\$8.09	\$6.06	\$4.13	(\$0.11)	\$7.66
U.S. Total	\$9.03	\$6.60	\$5.34	\$9.54	\$12.65	\$18.32	\$14.52	\$13.71	\$17.38	\$5.37	\$10.89	\$13.55	\$13.34	\$11.85	\$7.62	\$11.31
International	\$5.35	\$3.60	\$2.74	\$5.57	\$7.64	\$11.55	\$12.70	\$11.43	\$18.68	\$5.30	\$18.67	\$13.60	\$17.06	\$25.46	\$20.76	\$12.01
Equity Affiliates	\$0.00	\$4.11	\$10.82	\$6.66	\$10.31	\$11.07	\$11.41	(\$9.20)	(\$27.54)	\$6.09	\$12.46	\$23.12	\$26.10	\$29.67	\$29.99	\$9.67
Global Total	\$7.54	\$5.62	\$4.43	\$7.32	\$9.88	\$13.85	\$13.05	\$7.58	\$7.65	\$5.52	\$14.73	\$14.70	\$16.60	\$19.78	\$16.02	\$10.95

Source: April 2015 Legislative Research calculations based on annual filing of form 10-K with U.S. Securities and Exchange Commission posted on EDGAR online database. <http://www.sec.gov/edgar/searchedgar/webusers.htm>.

Definitions:

BOE: Barrel of Oil Equivalent is the amount of a given fuel required to equal the amount of energy contained in one standard U.S. barrel of crude oil (42 gallons). Example: BOE for natural gas is 5,800 cubic feet (5.8Mcf). BOE's should be viewed as estimates; amount of energy can vary by grade of oil produced.

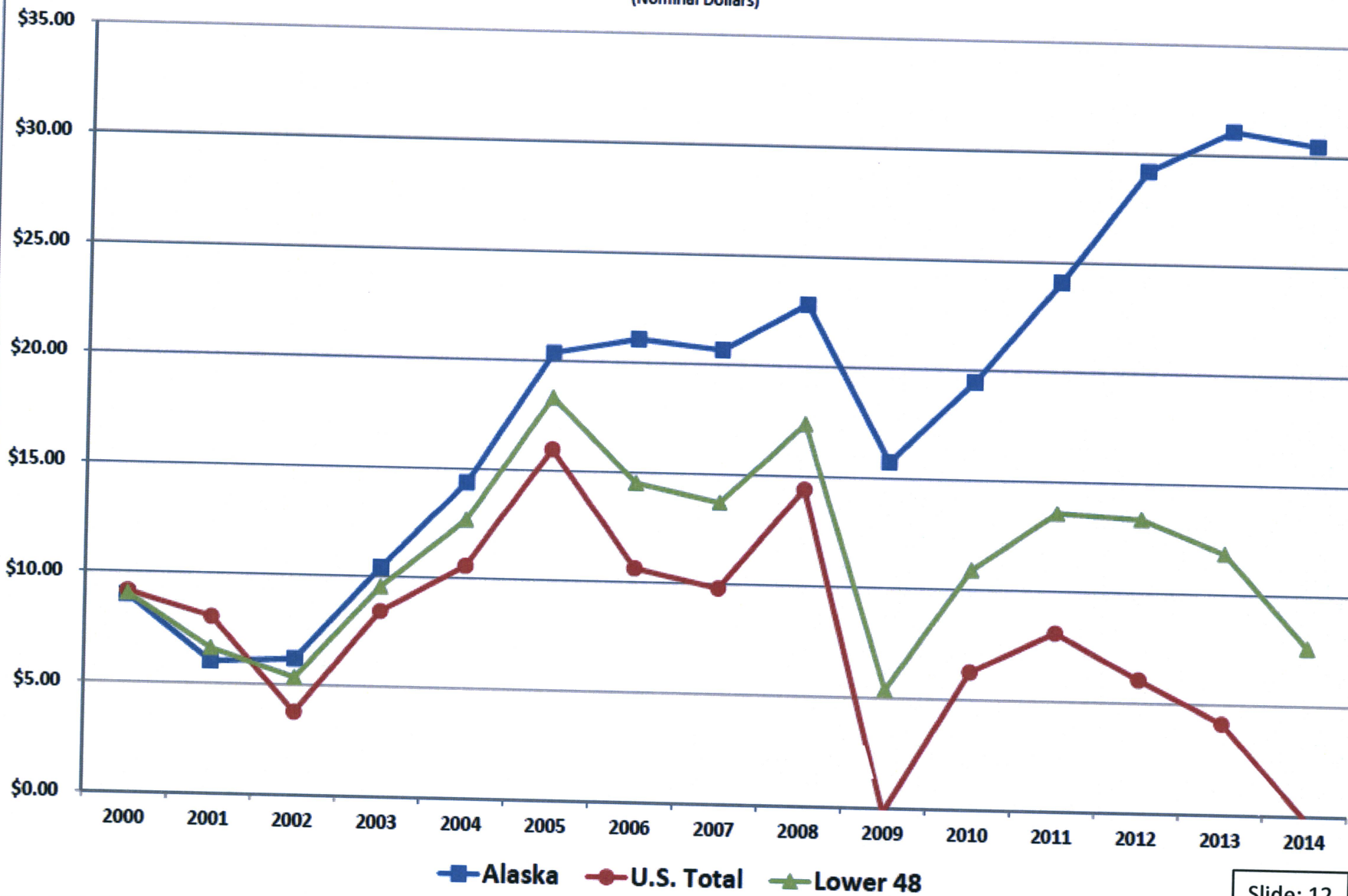
Equity Affiliates: companies that ConocoPhillips owns or in which it holds an equity interest. These exist across a number of geographic jurisdictions and vary in location from year to year.

Jurisdictional Totals: divide net income for the given geographical area by the total BOE (Barrel of oil equivalent) production in that area.

U.S. Total: sum of all net income in U.S. divided by the company's total BOE production in U.S. Note: the total is NOT just the average of Alaska and the Lower 48 noted in the graph.

Global Total: sum of all net income divided by the company's total BOE production. Note: the total is NOT just the average of the separate jurisdictions noted in the graph.

Figure 3: ConocoPhillips: Net Exploration and Production Income per Barrel of Oil Equivalent in the U.S., 2000-2014
(Nominal Dollars)



ConocoPhillips & Alaska

The next 5 slides show:

- ConocoPhillips Texas vs. Global Portfolio 2011
- Alaska Economics 2011
- ConocoPhillips 2015 Increasing Investments in Alaska
- ConocoPhillips 2015 Reducing Investments in the Lower 48
- Average Oil Industry Alaska Margin for FY16

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Providing coverage of Alaska and northern Canada's oil and gas industry
May 2011

Vol. 16, No. 19 Week of May 08, 2011

ConocoPhillips' global portfolio approximately \$23 per barrel based on 2011 article.

Eagle Ford could nudge Alaska for COP

ConocoPhillips' plans to invest \$2 billion this year on liquids-rich shale plays could mean the Lower 48 edges out Alaska oil

Eric Lidji



Greg Garland, senior vice president for



exploration and production in the Americas

ConocoPhillips likes the Eagle Ford because of economics.

Garland said the play offered \$45 per barrel margins last year, twice the average of ConocoPhillips' global portfolio. Since January 2010, well costs have fallen 40 percent.

Alaska Oil Economics 2011

- Spring 2011 approximate price of oil: \$118/bl
- Transportation \$6
- Royalty = \$112 x 12.5% = \$14
- Upstream Costs: \$20/bl
- Production Tax Value: \$78/bl

Note: Production tax rate is base 25% +.4% / \$ progressivity = 44.2
44.2% x \$78 = prod tax of \$34.5/bl ACES Tax Regime

Typical
Company



Alaska Margin: \$43.50/bl

- At \$110/bl, margin would be \$41.60
- At \$100/bl, margin would be \$38.66

**Alaska margins are nearly double ConocoPhillips
\$23/bl worldwide average margin in 2011.**

ConocoPhillips Oil Economics 2015

ConocoPhillips increasing investment in Alaska due to higher profitability:

- Expand Drill Site 1H at the Kuparuk River Unit
- Sanctioned construction of Kuparuk River unit Drill Site 2S
- Commissioned 2 rigs
- Brought Nabors 9ES and Nabors 7ES to the Kuparuk River unit for infield drilling

Alaska vs Other 2015 Oil Economics

Reduced investment in the Lower 48 and Canada

Increased investment in Alaska

Month/Year of Report	Alaska Total Active Rig Count (From All Company's)	ConocoPhillips Rig Count in AK
Feb. 2015	48	6
Feb. 2014	49	7
Feb. 2013	48	4
Feb. 2012	47	4
Feb. 2011	44	5
Feb. 2010	43	5
Feb. 2009	41	5
Feb. 2008	46	4

**Info from Petroleum News Archives Alaska - Mackenzie Rig Report*

FEBRUARY AVERAGE RIG COUNTS			
YEAR	NORTH DAKOTA	OKLAHOMA	MISSISSIPPI
2015	121	162	8
2014	168	182	10
2013	177	193	12
2012	185	205	10

**All info from Baker Hughes (see link below)*

	US Avg Rig Count	Canadian Avg Rig Count
March 2015	1,110	196
March 2014	1,803	449
	30% Less Rigs	50% Less Rigs

**Info from Baker Hughes March 2015 Report*

Result:

Using the worldwide apportionment method, higher expenses in the Lower 48 create lower profit in these jurisdictions which are written off against Alaska's corporate income tax.

Estimated average oil Industry “margin” per taxable barrel in Alaska for FY16
Current production tax method.

Alaska North Slope (ANS) Oil Price FY16	\$66.03	(A)
Transportation Costs	\$ 9.17	(B)
ANS Average Wellhead	<u>\$56.86</u>	(C = A-B)
Royalty	\$ 7.11	
Deductible lease expenditures	\$43.55	(D)
Production tax value	\$13.31	(E = C-D)
35% production tax	\$ 4.66	(F = E x 35%)
4% gross minimum tax	\$ 2.27	(G)
Per-taxable barrel credit earned	\$ 8.00	
Per-taxable barrel credit allowed	\$ 2.38	
Alaska Production tax after credits	<u>\$ 2.27</u>	(G)
Company margin before state and federal income tax	<u>\$11.04</u>	(H = E-G)

Slide: 18

For purposes of this calculation, “margin” is defined as cash flow per taxable barrel after production tax but before state and federal corporate income tax. Source: Fall 2014 revenue forecast assumptions for FY2016. Information provided by Dept. of Revenue Tax Division 4/9/15.

During the last tax year 2013

Top five oil companies paid: 4.4% \$319,247,744

Under Separate Accounting
they would have paid: 9.4% \$674,425,324

Alaska's 2013 Loss: \$355,177,580