

**01/19/2018
Overview:
Regulations
for HB 111
(ch. 3 SSLA
2017)**

<TARGET><BILL>HB 111</BILL><SUBJECT>01-19-2018 Overview
Regulations for HB 111 (ch. 3 SSLA
2017)</SUBJECT><COMM>SRES30</COMM></TARGET>



State of Alaska Department of Revenue

Oil and Gas Tax Credit Reform: Update on HB111 Regulations

Presentation to Joint Senate Resources – Senate Finance Committee
January 19, 2018

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Statement on Process

“We have been asked to present on recent regulations from a process standpoint. Importantly, DOR has one set of regulations currently noticed for public comment. This legislative hearing today is not part of the public comment process for the adoption of regulations. The committee members, as well as any member of the public who are listening, who wish to comment on the regulations should comment as provided in the public notice. The notice as well as the full text of the proposed regulations are available on the department’s website. The public comment period closes next Friday, January 26.

For the pending regulations, we cannot discuss how they would be applied. Testimony today should not to be construed as any pre-determination of any final regulations. Our presentation today is focused on factual information about the DOR’s recent and ongoing regulations process.”

Oil and Gas Tax Credit Reform- Recap

HB 247 Passed June, 2016

- Phased out Cook Inlet and reduced Middle Earth credits
- Extended Cook Inlet gas tax cap, added \$1 / bbl oil tax cap
- Added sunset / “graduation” provisions to Gross Value Reduction for new oil production
- Annual cap on per-company, per-year cash
- Resident hire priority for cash payments
- Limited transparency with annual report of who receives cash for credits
- Increase interest rate on delinquent production taxes for first three years, then reduced to zero
- Technical cleanup and repeal of obsolete language
- Regulation package proposed and adopted, effective 1/1/17

Oil and Gas Tax Credit Reform- Recap

HB 111 Passed July, 2017

- Most credits no longer eligible for state repurchase after 7/1/17, other than refinery / LNG storage
- NOL credit under former AS 43.55.023(b) repealed 1/1/18
- New system of carried-forward lease expenditures beginning 1/1/18
- Process for how carried-forward expenditures are used in a future year once the producer has taxable value
 - “Ringfence,” preventing use until the property for which losses were incurred commences regular production
 - Taxpayer flexibility on use, limited by minimum tax
 - If unused, lease expenditures begin to lose value after 10 years in most cases

Oil and Gas Tax Credit Reform- Recap

HB 111 Passed July, 2017 (continued)

- Align interest rate changes among all tax types and eliminate three-year interest limitation
- Credits can be carried-back and used against a prior year tax liability including interest and penalties for which an audit assessment has not been issued
- Conditional exploration credits granted at time of application, to ensure place in queue
- Seismic work in Middle Earth no longer eligible for exploration credits after 2017
- Exploration credits in Middle Earth can be used to offset the explorer's corporate income tax
- Delayed repeal of tax credit fund after all are purchased
- Established Legislative working group

Initial Regulation Process to Implement HB111

HB 111 signed into law by the Governor on 7/28/17

- Early decision made to divide regulations into two distinct packages
 - #1- Carry-back of credits against a prior year, interest rates, and most changes other than the new carry-forward loss structure. Many required regulations to be in place by January 1, 2018.
 - #2- Carry forward lease expenditures and related issues, which required a bit more work in properly developing the language and wouldn't be needed quite as immediately
- Pre-regulation scoping workshop on 8/22/17. Workshop included 22 attendees in person, plus those on phone lines and department personnel
 - Comments were accepted after the workshop, deadline was extended due to AOGA member companies situated in Houston who were impacted by Hurricane Harvey
 - Received comments from eight different parties, including Senator Giessel and Representative Seaton

Initial Regulation Process to Implement HB111

...continued

- Scoping workshop identified key issues to be addressed in drafting the regulations. Examples include:
 - Defining exploration expenditures that are "reasonably related" to a lease or property
 - Aligning definitions between statutes ("regular production" in HB 111 is from a lease or property, whereas this term is defined by AOGCC as "from a well")
 - Determining and allocating the amount of carried-forward lease expenditures when a producer has both producing and non-producing properties, and/or exploration expenditures
 - Gas used in-state (GUIS) requires a separate production tax value with an allocation of lease expenditures to the GUIS portion
- Authority for retroactive application of regulations is essential to allow a more interactive drafting process, especially with late-year passage of bills with a January 1 effective date. The use of workshops and discussion drafts benefits all parties

Necessary Steps in the Regulations Process

1. Workshops (recommended by AO 266) & Discussion Drafts are not required but helpful for complex processes
2. Publication of draft language, with formal public notice
 - Notice must be published in a newspaper of general circulation, posted on the Alaska Online Public Notice System, furnished to the Department's interested parties list and the Department of Law, furnished electronically to all state legislators and the Legislative Affairs Agency, chairs of the standing committees with jurisdiction over the subject, the Administrative Regulation Review Committee, and Legislative Council
 - There are currently approximately 140 people signed up for the Department of Revenue's "Interested Parties" list

Necessary Steps in the Regulations Process

3. The Administrative Procedures Act, AS 44.62.190, requires a minimum 30 days of public notice before the adoption, amendment, or repeal of a regulation
 - Although not mandatory, the department typically holds a public hearing for regulations on oil and gas production taxes. Typically scheduled 2/3 of the way through the public comment period. This provides an opportunity for interested parties to evaluate and incorporate information from the public hearing into their written comments
 - After the public comment deadline, all comments received are published on the department's website
4. Prior to drafting final regulations, the Administrative Procedures Act requires that the department must consider all public comments received, and to keep a record of its use or rejection of public comments
 - The agency submits an "affidavit of agency record of public comment" along with the final adopted regulations

Necessary Steps in the Regulations Process

6. Draft is revised into final regulation proposal and adopted by the Commissioner
7. Prior to filing adopted regulations must be reviewed and approved by the Department of Law
 - Confirms that the regulations are within the scope of authority conferred upon the department and neither conflict with, nor repeat, any other existing statutes or regulations. Minimum two weeks process
 - Legislature informed of pending regulations and has option to review
 - Typically the Department of Law makes technical revisions to language
8. Final version presented to Lieutenant Governor for signature
 - Regulations are effective 30 days after they have been filed by the Lieutenant Governor, or later if another date is specified

Regulations Packet #1

These are final and adopted, so we can talk more freely about our thinking on specific provisions

- Process / Timeline
 - September 27, 2017 – Public notice for "Packet 1" dealing primarily with the carry-back of credits and interest
 - October 17, 2017 – Public Hearing for Packet 1.
 - November 1, 2017 – Close of public comment period
 - Signed by Lt. Gov on November 29, 2017
 - December 6, 2017 – Post-filing notice
- Clear legislative intent was to strengthen the secondary market.
 - Received guidance from AG that additional tax liability due to recent TAPS settlement is not required to go to CBRF, thus could be offset with held or purchased tax credit certificates
 - Some changes were made before regulations- for example we issued conditional exploration certificates in August

Regulations Packet #2

These are in their public review period until Jan. 26th

- New structure for “carried forward annual losses”
 - Allocation among properties and segments
 - Application of “ringfence”
 - Taxpayer flexibility on use, limited by minimum tax
 - Value loss or “downlift” if unused
 - Reasonably related exploration expenditures
- Process / Timeline
 - November 18, 2017 – Discussion draft for “Packet 2.” Division staff spoke with AOGA and ConocoPhillips regarding discussion draft during this period (all calls were welcome)
 - December 5, 2017 – Close of public comment period on discussion draft
 - December 21, 2017 – Public Notice of official draft “Packet 2”
 - January 11, 2018 – Public Hearing on “Packet 2”
 - January 26, 2018 – Close of public comment period

NEW SUSTAINABLE

ALASKA

PLAN



Pulling Together to Build Our Future

Thank You!

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15 AAC 05.330(a) is amended to read:

(a) Except as otherwise provided in (e) of this section, AS 43.55.020(g) and (h) and 15 AAC 55.830, the quarterly interest rate applicable to a delinquent tax or overpayment of a tax under AS 43 on or after January 1, 2014, **and before January 1, 2018**, is the interest rate under AS 43.05.225(1)(B) as of the first day of each calendar quarter in a calendar year calculated on an annualized basis by

(1) adding three percentage points to the annual rate charged member banks for advances by the 12th Federal Reserve District as of the first day of each calendar quarter;

(2) dividing the sum determined under (1) of this subsection by the total number of days in the calendar year; and

(3) multiplying the quotient determined under (2) of this subsection by the total number of days in the quarter in which there is a delinquent tax or overpayment of tax.

15 AAC 05.330(b) is amended to read:

(b) Except as otherwise provided in (e) **and (f)** of this section, delinquent tax consists only of the balance of unpaid tax on or after December 31, 2013 and does not include any accrued and unpaid interest the taxpayer owes on that date.

15 AAC 05.330(c) is amended to read:

(c) **Except as otherwise provided in (e) and (f) of this section** [FOR PURPOSES OF THIS SECTION], overpayment of a tax consists only of the balance of tax overpaid on or after December 31, 2013 and does not include any accrued interest owed to the taxpayer on that date.

15 AAC 05.330(d) is amended to read:

(d) Except as otherwise provided in (e) of this section, on or after January 1, 2014 **and before January 1, 2018**, any accrued and unpaid interest owed by or to a taxpayer as of December 31, 2013 does not accrue further interest.

^
15 AAC 05.330(e) is repealed and readopted to read:

(e) For the purposes of this subsection a delinquent tax under AS 43.55 consists of the balance of unpaid tax on January 1, 2017, including any accrued and unpaid interest the taxpayer owes on that date. An overpayment of tax under AS 43.55 consists of the balance of the tax overpaid on January 1, 2017, including any accrued interest owed to the taxpayer on that date. The interest on a delinquent tax under AS 43.55 or an overpayment of tax under AS 43.55, on or after January 1, 2017 and before January 1, 2018, shall compound quarterly as of the last day of the quarter. The interest rate for the applicable period shall be

- (1) eight and one-quarter percent for January 1, 2017 through March 31, 2017;
- (2) eight and one-half percent for April 1, 2017 through June 30, 2017;
- (3) eight and three-quarters percent for July 1, 2017 through September 30, 2017;

and

- (4) eight and three-quarters percent for October 1, 2017 through December 31, 2017.

15 AAC 05.330 is amended by adding a new subsection to read:

(f) For the purposes of this subsection a delinquent tax consists of the balance of unpaid tax on January 1, 2018, including any accrued and unpaid interest the taxpayer owes on that date.

An overpayment of tax consists of the balance of the tax overpaid on January 1, 2018, including any accrued interest owed to the taxpayer on that date. Except as otherwise provided in AS 43.55.020(g) and (h), and 15 AAC 55.830, the interest rate applicable to a delinquent tax or overpayment of a tax under this title, on or after January 1, 2018 is the interest rate under AS 43.05.225(1)(C) as of the first day of each calendar quarter in a calendar year calculated on an annualized basis by

(1) adding five and one-quarter percentage points to the annual rate charged by members banks for advances by the 12th Federal Reserve District as of the first day of each calendar quarter, compounded quarterly as of the last day of that quarter;

(2) dividing the sum determined under (1) of this subsection by the total number of days in the calendar year; and

(3) multiplying the quotient determined under (2) of this subsection by the total number of days in the quarter in which there is a delinquent tax or overpayment of tax. (Eff. 2/21/2014, Register 209; am 3/1/2017, Register 221; am 1/1/2018, Register 224)

Authority: AS 43.05.080 AS 43.05.280 Sec. 36, ch. 3 SSSLA 2017
AS 43.05.225

15 AAC 05.340(2) is amended to read:

(2) 15 AAC 05.330(e), as the provisions of that subsection read on December 31, 2017. (Eff. 3/1/2017, Register 221; am 1/1/2018, Register 224)

Authority: AS 43.05.080 Sec. 38, ch. 4 4SSLA 2016 Sec. 36, ch. 3 SSSLA 2017

15 AAC 55.305(a) is amended to read:

(a) A producer may apply a tax credit as allowed by law only against the specified type of tax liability. A producer may not apply a tax credit against a penalty or interest, except for as provided in (c) of this subsection for interest associated with an additional amount of tax due when filing an amended return and any self-reported penalty.

15 AAC 55.305 is amended by adding a new subsection to read:

(c) A producer reporting an additional amount of tax due and associated interest from the tax levied by AS 43.55.011(e) for oil or gas produced in a prior year in an amended return filed with the department before the department has issued an assessment for the tax levied by AS 43.55.011(e) for oil or gas produced in that prior year may carryback a tax credit under AS 43.55.023 or 43.55.025 or a tax credit certificate under AS 43.55.023 or 43.55.025 for application against the additional amount of tax and associated interest. A producer reporting a penalty associated with the tax levied by AS 43.55.011(e) before the department has issued an assessment for the penalty may carryback a tax credit under AS 43.55.023 or 43.55.025 or a tax credit certificate under AS 43.55.023 or 43.55.025 for application against the penalty. If a producer uses a tax credit under AS 43.55.023 or AS 43.55.025 or a tax credit certificate under AS 43.55.023 or AS 43.55.025 to satisfy a self-reported penalty, the producer must specify the amount of the credit being applied to the self-reported penalty. The amount of a tax credit under AS 43.55.023 or 43.55.025 or the amount of a tax credit certificate under AS 43.55.023 or 43.55.025 that the producer may carryback for application against the additional amount due for that prior year is limited to the additional amount of tax and associated interest and any self-

reported penalty. The percentage limitation in AS 43.55.023(e) for a tax credit certificate is inapplicable when a producer carries back a tax credit certificate under AS 43.55.023(e) against the additional amount of tax due for a prior year. For a producer that elected to apply the tax credit in AS 43.55.024(j) in the prior year, the amount of a tax credit under AS 43.55.023 or 43.55.025 or the amount of a tax credit certificate under AS 43.55.023 or 43.55.025 that the producer may carryback for application against the additional amount of tax due for that prior year is limited to the amount of the tax credit under AS 43.55.023 or 43.55.025 or tax credit certificate under AS 43.55.023 or 43.55.025 that would reduce the tax liability under AS 43.55.011(e) for that prior year to the amount in AS 43.55.011(f) as provided in 15 AAC 55.335(g). A producer that elected to apply the tax credit in AS 43.55.024(j) in that prior year may, in its amended return reporting the additional amount of tax, withdraw the producer's application of all or a portion of tax credit in AS 43.55.024(j) in order to carryback a tax credit under AS 43.55.023 or 43.55.025 or a tax credit certificate under AS 43.55.023 or 43.55.025 for application against the additional amount of tax provided no claim for refund would result and no assessment has been issued by the department for the prior year and the carryback is consistent with 15 AAC 55.335(g) if only a portion of the tax credit in AS 43.55.024(j) is withdrawn. No claim for refund may be requested by a producer carrying back a tax credit under AS ^{43.}55.023 or 43.55.025 or a tax credit certificate under AS 43.55.023 or 43.55.025 for application against the additional amount of tax, associated interest for that prior year, or a self-reported penalty. The department may issue a notice and demand for payment, including interest, not later than six years after the date the producer files an amended return that carries back a tax credit under AS 43.55.023 or 43.55.025 or a tax credit certificate under AS 43.55.023 or 43.55.025 if the department reduces the amount of the tax credit under

AS 43.55.023 or 43.55.025 or tax credit certificate under AS 43.55.023 or 43.55.025 following an audit of the tax credit claim to which the tax credit or tax credit certificate relates. A producer may carryforward any excess amount of a tax credit or tax credit certificate if the producer overstated the additional amount of a tax, associated interest, or self-reported penalty, due in its amended return that carried back a tax credit under AS 43.55.023 or 43.55.025 or tax credit certificate under AS 43.55.023 or 43.55.025.

(d) The following examples illustrate (c) of this section:

Example 1. Producer A has a tax credit under AS 43.55.023(b) in Year 6 due to an annual loss in Year 5. In Year 7, Producer A is required under AS 43.55.075(b) to file amended returns for Year 2 and Year 3 reporting additional tax and associated interest due to a decision of a regulatory agency that results in a retroactive change to costs of transportation that has a corresponding increase on the production tax value of oil produced in Year 2 and Year 3. The department has not issued a notice ^{of assessment} and demand for payment for oil and gas produced by Producer A in Year 2 and Year 3 when Producer A files the amended return in Year 7. Producer A in its amended return filed in Year 7 for oil and gas produced in Year 2 and Year 3 may carryback the tax credit under AS 43.55.023 from Year 6 against the additional amount of tax and associated interest due in Year 2 and Year 3.

Example 2. The facts are the same as in Example 1 except the department has determined in Year 10 after an audit that the annual loss in Year 5 for Producer A was a lower amount than claimed in Producer's original return for Year 5. The amount of the tax credit under AS 43.55.023(b) in Year 6 is correspondingly reduced. Producer A overstated its tax credit under AS 43.55.023(b) that it carried back in its amended return for Year 2 and Year 3. The department

issues a notice and demand for payment for Year 3 to account for the reduction in the tax credit after the audit in Year 10.

Example 3. The facts are the same as in Example 1 except Producer A in Year 6 purchased a tax credit certificate under AS 43.55.023 from Explorer B. The department has determined in Year 10 after an audit that the annual loss in Year 5 from Explorer B for a tax credit issued as a carried-forward annual loss under AS 43.55.023(b) was a lower amount than claimed in Explorer B's application for the tax credit certificate. The department issues a notice of assessment and demand for payment pursuant to AS 43.55.023(g) to Explorer B. The department does not issue a demand for payment to Producer A despite the reduction in the tax credit certificate.

Example 4. The facts are the same as in Example 1 except Producer A in Year 8 realizes that it overstated the additional tax and associated interest due in its amended return for Year 3 filed in Year 7. Producer A files an amended return for Year 3 to correct its error. Producer A carried back an excess amount of its tax credit under AS 43 55.023(b) in Year 6 against its amended return in Year 7 for Year 3. Producer A may not request a refund of the excess tax credit in its amended return filed in Year 8. The department will adjust the tax credit to reflect the additional amount of tax credit available due to the decrease in tax.

Example 5. The facts are the same as in Example 1 except Producer A filed its original return late for Year 3. Producer A realizes its failure before the department issues a notice of assessment and demand for payment for the failure to file penalty under AS 43.05.220. Producer A in its amended return for Year 7 includes a self-report of the penalty. Producer A may carryback the tax credit under AS 43.55.023 to apply against its self-reported penalty. (Eff. 5/3/2007, Register 182; am 10/21/2009, Register 192; am 1 / 1 / 2018, Register 224)

Register 224, January 2018

REVENUE

| | | | |
|-------------------|--------------|---------------------|---------------------|
| Authority: | AS 43.05.080 | AS 43.55.024 | <u>AS 43.55.075</u> |
| | AS 43.55.011 | AS 43.55.025 | AS 43.55.110 |
| | AS 43.55.023 | <u>AS 43.55.030</u> | |

15 AAC 55.315(a) is amended to read:

(a) Except as provided in 15 AAC 55.305, a [A] carried-forward annual loss tax credit under AS 43.55.023(b), as the provisions of that subsection read before January 1, 2018, may not be applied against a tax liability for the calendar year in which the adjusted lease expenditures on which the credit is based are incurred.

(Eff. 5/3/2007, Register 182; am 3/1/2017, Register 221; am 1/1/2018, Register 224)

| | | | |
|-------------------|--------------|--------------|----------------------------------|
| Authority: | AS 43.05.080 | AS 43.55.110 | <u>Sec. 39, ch. 3 SSSLA 2017</u> |
| | AS 43.05.023 | AS 43.55.160 | |

15 AAC 55.351(d) is amended to read:

(d) This section applies to exploration expenditures for work performed after June 30, 2008 and before July 1, 2016, and to seismic exploration expenditures for work performed before July 1, 2003, except that exploration expenditures for work conducted outside of the Cook Inlet sedimentary basin and south of 68 degrees North latitude must be incurred for work performed

(1) after June 30, 2008 and before January 1, 2022 for a tax credit under AS 43.55.025(a)(1), (2), or (3);

(2) after June 30, 2008 and before January 1, 2018 for a tax credit under AS 43.55.025(a)(4); [,] or

(3) as provided in (e) of this section.

(Eff. 12/25/2009, Register 192; am 3/1/2017, Register 221; am 1/1/2018, Register 224)

Authority: AS 43.05.080 AS 43.55.025 AS 43.55.110

15 AAC 55.356(e) is amended to read:

(e) If the department determines that all data required to be submitted to the Department of Natural Resources under AS 43.55.025 have been submitted, and, except for a credit under AS 43.55.025(k), after the six-month application period in AS 43.55.025(f) has expired, the department will issue one or more production tax credit certificates for the qualified expenditures allowed under AS 43.55.025. **A conditional tax credit certificate issued under AS 43.55.025(q) expires on the date the department denies the application for a production tax credit certificate under AS 43.55.025(f) or the date the department issues the production tax credit certificate under AS 43.55.025(f). The department will issue a conditional tax credit certificate under AS 43.55.025(q) on and after July 1, 2017 for an application for a tax credit certificate under AS 43.55.025(f) for exploration expenditures incurred before July 1, 2017 if**

(1) the application is submitted to the department on or after July 1, 2017;

or

(2) the applicant requests a conditional tax credit certificate for an application submitted before July 1, 2017 and the department has not

(A) denied the application; or

(B) issued a production tax credit certificate under AS 43.55.025(f).

15 AAC 55.356(g) is amended to read:

(g) This section applies to exploration expenditures for work performed after June 30, 2008 and before July 1, 2016, and to seismic exploration expenditures under AS 43.55.025(k) for work performed before July 1, 2003, except that exploration expenditures for work conducted outside of the Cook Inlet sedimentary basin and south of 68 degrees North latitude must be incurred for work performed

(1) after June 30, 2008 and before January 1, 2022 for a tax credit under AS 43.55.025(a)(1), (2), or (3);

(2) after June 30, 2008 and before January 1, 2018 for a tax credit under AS 43.55.025(a)(4); [,] or

(3) as provided in (h) of this section.

(Eff. 12/25/2009, Register 192; am 3/1/2017, Register 221; am 1/1/2018, Register 224)

Authority: AS 43.05.080 AS 43.55.025 AS 43.55.110

15 AAC 55.360(a)(2) is amended to read:

(2) AS 43.55.025(a)(1) - (4), in effect on July 1, 2008, qualified exploration expenditures are the reasonably required direct costs for work performed on a particular exploration well or seismic or other geophysical exploration project after June 30, 2008, and before July 1, 2016, or on a particular seismic exploration project before July 1, 2003, except that exploration expenditures for work conducted outside of the Cook Inlet sedimentary basin and

south of 68 degrees North latitude must be incurred for work performed after June 30, 2008 and before

(A) January 1, 2022 for a tax credit under AS 43.55.025(a)(1), (2), or

(3); or

(B) January 1, 2018 for a tax credit under AS 43.55.025(a)(4);

15 AAC 55.360(f)(2)(B) is amended to read:

(B) do not include expenditures to abandon or suspend a well; this subparagraph does not affect the treatment as qualified exploration expenditures of expenses required for abandonment of a dry hole within 18 months after the date the well was spudded as provided in AS 43.55.025(b)(3)(D) [AS 43.55.025(B)(2)(D)]. (Eff. 5/3/2007, Register 182; am 12/25/2009, Register 192; am 3/1/2017, Register 221; am 1/1/2018, Register 224)

Authority: AS 43.05.080 AS 43.55.025 AS 43.55.110

CCC Publisher: No change to editor's notes for 15 AAC 55.360, 15 AAC 55.365, 15 AAC 55.370 or Editor's note: The subject matter of 15 AAC 55.360 was formerly located at 15 AAC 55.230. (15 AAC 55.525.)

The history note for 15 AAC 55.360 does not reflect the history of the earlier section.

15 AAC 55.365 is amended by adding a new subsection to read:

(e) On or after January 1, 2018, a tax credit certificate for a tax credit under AS 43.55.023(b), as the provisions of that subsection read before January 1, 2018, may be assigned in the same manner as provided under AS 43.55.029 for a tax credit certificate for a tax

credit under AS 43.55.023(a) or (l), or 43.55.025(a). (Eff. 5/3/2007, Register 182; am
1/1/2018, Register 224)

Authority: AS 43.05.080 AS 43.55.025 Sec. 39, ch. 3 SSSLA 2017
AS 43.55.023 AS 43.55.110

Editor's note: The subject matter of 15 AAC 55.365 was formerly located at 15 AAC 55.235.
The history note for 15 AAC 55.365 does not reflect the history of the earlier section.

15 AAC 55.370(c) is amended to read:

(c) Except for a tax credit based on an expenditure for seismic exploration under
AS 43.55.025(k) or except as provided in 15 AAC 55.305,

(1) the earliest calendar year for which a production tax credit under
AS 43.55.025 may be applied against the tax liability of the producer that incurred the
exploration expenditure on which the tax credit is based is the calendar year in which the
exploration expenditure was incurred;

(2) subject to the department's later issuance of a production tax credit certificate
covering the amount of the tax credit, the producer may apply the tax credit before the certificate
is issued.

15 AAC 55.370(d) is amended to read:

(d) Except as provided in 15 AAC 55.305, the [THE] earliest calendar year for which a
production tax credit under AS43.55.025

(1) that is based on an expenditure for seismic exploration under AS 43.55.025(k) may be applied against the tax liability of the producer that incurred the expenditure is the calendar year in which the production tax credit certificate is issued;

(2) may be applied against the tax liability of a transferee of the production tax certificate is the calendar year in which the effective date of the transfer of the certificate occurs.

15 AAC 55.370(e) is amended to read:

(e) A production tax credit certificate does not accrue interest, and except for application against a [PRODUCTION] tax liability as provided in this section or as provided in 15 AAC 55.305 for an additional amount of tax, associated interest, or a self-reported penalty, may not be used in payment of any tax or other amount owed. A production tax credit certificate for exploration expenditures incurred for work performed on or after July 1, 2016 may be applied against the tax levied by AS 43.20.011(e) by the producer or explorer that incurred the expenditures for the production tax credit certificate. (Eff. 5/3/2007, Register 182; am 12/25/2009, Register 192; am 1/1/2018, Register 224)

Authority: AS 43.05.080 AS 43.55.025 AS 43.55.110

AS 43.20.044

Editor's note: The subject matter of 15 AAC 55.370 was formerly located at 15 AAC 55.240.

The history note for 15 AAC 55.370 does not reflect the history of the earlier section.

15 AAC 55.525(h)(2) is amended to read:

(2) for each subsequent calendar year, all applications for purchase received from a prior year will be paid in accordance with the applicable statutes and provisions of this section prior to considering applications in that subsequent calendar year; applications will be prioritized based upon

(A) first, the year in which the application for purchase of the tax credit certificate, the conditional tax credit certificate, or portion of a [THE] certificate was received; and

(B) second, the percentage of resident workers in the applicant's workforce;

15 AAC 55.525(h)(3) is amended to read:

(3) an application must include a certification that the explorer's or producer's operation in the state or its ownership of an interest in a lease or property in the state is not for the purpose of dividing a single entity into multiple explorer or producer entities for the purpose of increasing the amount of tax credits that might be eligible for purchase in any calendar year and that no entity, including affiliates may receive more than \$70 million in cash purchases;

15 AAC 55.525 is amended by adding new subsections to read:

(l) Except as provided in (m) of this section, the department may purchase tax credit certificates issued under AS 43.55.023 or 43.55.025 only if the tax credit underlying the certificate was

(1) earned for activity occurring before July 1, 2017; and

(2) the expenditures for that activity were expenditures incurred before July 1,

2017.

(m) Notwithstanding the provisions of (l) of this section, in addition to the limitations in AS 43.55.028, as the provisions of that section read before July 28, 2017, and the regulations in this chapter implementing that statute, the department may purchase no more than one half of the amount of a tax credit certificate under AS 43.55.023(d) issued for a tax credit under AS 43.55.023(b), as the provisions of that subsection read before January 1, 2018, for lease expenditures incurred in 2017. (Eff. 3/1/2017, Register 221; am 1/1/2018, Register 224)

Authority: AS 43.05.080 AS 43.55.025 AS 43.55.110
AS 43.55.023 AS 43.55.028 Sec. 38, ch 3 SSSLA 2017

Editor's note: The subject matter of 15 AAC 55.525 was formerly located at 15 AAC 55.325. The history note for 15 AAC 55.525 does not reflect the history of the earlier section.

15 AAC 55.800(a)(9) is amended to read:

(9) 15 AAC 55.290 - 15 AAC 55.315(a), except 15 AAC 55.305(a) and (c) and 15 AAC 55.315(a), as amended effective January 1, 2018, which apply retroactively to July 28, 2017;

15 AAC 55.800(a)(11) is amended to read:

(11) 15 AAC 55.345 - 15 AAC 55.355, except 15 AAC 55.351(d) [AND (E),] as amended effective March 1, 2017 and as amended effective January 1, 2018, and 15 AAC 55.351(e) as adopted effective March 1, 2017;

15 AAC 55.800(a)(12) is amended to read:

(12) 15 AAC 55.370 - 15 AAC 55.380, except 15 AAC 55.370(c), (d), and (e) as amended effective January 1, 2018 which apply retroactively to July 28, 2017, and

15 AAC 55.375(a) and (c), as amended effective March 1, 2017;

15 AAC 55.800(m)(11) is amended to read:

(11) 15 AAC 55.525, except 15 AAC 55.525(h)(2), (l), and (m) as amended effective January 1, 2018 which apply retroactively to July 1, 2017;

15 AAC 55.800 is amended by adding new subsection to read:

(o) 15 AAC 55.356(e) as amended effective January 1, 2018 applies retroactively to July 1, 2017; (Eff. 5/3/2007, Register 182; am 10/21/2009, Register 192; am 2/27/2010, Register 193; am 4/30/2010, Register 194; am 12/4/2010, Register 196; am 3/1/2017, Register 221; am 1 / 1 / 2018, Register 224)

Authority: AS 43.05.080 Sec. 72, ch. 1 SSSLA 2007 Sec. 41, ch. 3 SSSLA 2017
AS 43.55.110 Sec. 38, ch. 4 4SSLA 2016 Sec. 42, ch. 3 SSSLA 2017
Sec. 37, ch. 2 TSSLA 2006

15 AAC 55.206(b) is amended to read:

(b) The provision of AS 43.55.160(b) that a production tax value may not be less than zero applies to each production tax value calculated for each segment. Subject to the provisions of AS 43.55.023(b)(2), **as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018, or the provisions of AS 43.55.160(e), for oil and gas produced after December 31, 2017,** adjusted lease expenditures applicable to a segment that exceed the amount of adjusted lease expenditures that may, under AS 43.55.160(b), be deducted in calculating a production tax value for the segment are considered excess adjusted lease expenditures and, except as otherwise provided under 15 AAC 55.224, may not be reallocated to, or deducted in calculating a production tax value for, a different segment. Excess adjusted lease expenditures relating to the calculation of an annual production tax value, but not a monthly production tax value, may be used to establish a carried-forward annual loss to the extent allowed under AS 43.55.023(b), **as the provisions of that subsection read on December 31, 2017, for oil and gas produced before January 1, 2018, or under AS 43.55.165(a)(3), for oil and gas produced after December 31, 2017,** and **AS 43.55.160(e).**

15 AAC 55.206(f) is amended to read:

(f) For purposes of this section, [AND] 15 AAC 55.215, **and 15 AAC 55.217, if** a unit, other than a unit within the Cook Inlet sedimentary basin [BEFORE 2022, MAY BE TREATED AS A SINGLE LEASE OR PROPERTY EVEN IF IT] contains multiple participating areas, **the participating areas together may be treated as a single lease or property,** unless any producer's ownership interests differ by 10 percentage points or more between two or more of the participating areas.

15 AAC 55.206 is amended by adding a new subsection to read:

(h) In the calculation of annual production tax value under AS 43.55.160(a)(1) or (h) for a calendar year, the provisions of AS 43.55.165(o)(2) do not affect the deductibility of adjusted lease expenditures for the calendar year under AS 43.55.165(a) that are described in AS 43.55.165(a)(1) and (2). Eff. 10/21/2009, Register 192; am 12/25/2013, Register 208; am 3/1/2017, Register 221; am ____/____/____, Register _____)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 43.05.080 | AS 43.55.024 | AS 43.55.160 |
| | AS 43.55.011 | AS 43.55.110 | AS 43.55.165 |

15 AAC 55.208(c) is amended to read:

(c) The only adjusted lease expenditures incurred by a municipal entity that may be used to establish a carried-forward annual loss under AS 43.55.023(b)(1), **as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018, or under AS 43.55.165(a)(3), for oil and gas produced after December 31, 2017,** subject to the provisions of AS 43.55.023(b)(2), **as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018, or AS 43.55.165(a)(3), for oil and gas produced after December 31, 2107,** are the portion, if any, of the amount of adjusted lease expenditures calculated under (b) of this section that would otherwise be deductible in calculating an annual production tax value but whose deduction would cause the annual production tax value to be less than zero. (Eff. 3/1/2017, Register 221; am ____/____/____, Register _____)

Register _____, _____, 2018

REVENUE

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|-------------------|--------------|--------------|---------------------|
| Authority: | AS 43.05.080 | AS 43.55.110 | AS 43.55.895 |
| | AS 43.55.023 | AS 43.55.160 | <u>AS 43.55.165</u> |

15 AAC 55.211(h) is amended to read

(h) Except as provided under AS 43.55.160(e) and 15 AAC 55.511(c)(2), the gross value at the point of production of oil or gas is reduced under AS 43.55.160(f) or (g) only for the purpose of calculating an annual production tax value under AS 43.55.160(a)(1)(A) or (h)(1), subject to the provisions of AS 43.55.023(b)(2), **as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018, or under AS 43.55.160(e) for oil and gas produced after December 31, 2017.** The gross value at the point of production of oil is not reduced under AS 43.55.160(f) or (g) for the purpose of calculating an average gross value at the point of production of oil for a month under AS 43.55.024(j), or for the purpose of calculating a gross value at the point of production under AS 43.55.011(f) or AS 43.55.020(a)(1)(B)(ii), (5)(B)(ii), or (7)(A)(ii).

(Eff. 12/25/2013, Register 208; am 3/1/2017, Register 221; am ____/____/____, Register ____)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 43.05.080 | AS 43.55.110 | AS 43.55.160 |
|-------------------|--------------|--------------|--------------|

15 AAC 55.215(d) is amended to read:

(d) A producer's lease expenditure [INCURRED BEFORE 2022] that is a cost of exploring for, developing, or producing oil or gas deposits located within a lease or property, **other than a lease or property subject to AS 43.55.011(p),** outside the Cook Inlet sedimentary basin from which both (1) gas used in the state; and (2) oil or other gas are produced by the

producer during the calendar year after June 30, 2007 in which the lease expenditure is incurred, is allocated between **(1) gas used in the state and (2) oil or other gas** [THE CATEGORIES IN (1) AND (2) OF THIS SUBSECTION] proportionally to the respective amounts of **each** [GAS AND OF OIL OR OTHER GAS IN EACH CATEGORY], in BTU equivalent barrels, produced by the producer from the lease or property during the calendar year and taxable under AS 43.55.011(e).

15 AAC 55.215(e) is amended to read:

(e) A producer's lease expenditure [INCURRED BEFORE 2022] that is a cost of exploring for oil or gas deposits located within land that is not a lease or property and is in an area of the state described in (a)(2)(A)(i) or (ii) of this section is allocated among (1) gas used in the state produced from each lease or property in that area, **other than gas subject to AS 43.55.011(p)**; and (2) oil and other gas produced from leases or properties in that area, proportionally to the respective amounts, if any, of gas used in the state and of oil or other gas, in BTU equivalent barrels, produced by the producer from the leases or properties during the calendar year after June 30, 2007 in which the lease expenditure is incurred and taxable under AS 43.55.011(e).

15 AAC 55.215 is amended by adding a new subsection to read:

(h) Except to the extent provided under 15 AAC 55.217(d), this section does not apply to carried-forward annual losses. (Eff. 5/3/2007, Register 182; am 10/21/2009, Register 192; am 12/25/2013, Register 208; am ____/____/____, Register ____)

Register _____, _____, 2018

REVENUE

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 43.05.080 | AS 43.55.024 | AS 43.55.160 |
| | AS 43.55.011 | AS 43.55.110 | AS 43.55.165 |

Article 2 of 15 AAC 55 is amended by adding a new section to read:

15 AAC 55.217. Carried-forward annual losses after December 31, 2017. (a) This section applies to lease expenditures incurred after December 31, 2017, to explore for, develop, or produce oil or gas deposits located outside the Cook Inlet sedimentary basin.

(b) For carried-forward annual losses for a segment under 15 AAC 55.206(c)(1), the adjusted lease expenditures that establish each carried-forward annual loss are determined using the following procedure, unless no oil or gas is produced during the calendar year from the segment:

(1) for any oil or gas produced during the calendar year for which the gross value at the point of production is reduced under AS 43.55.160(f) or (f) and (g), the reduction is added back to the gross value at the point of production;

(2) the adjusted lease expenditures incurred by the producer during the calendar year that are applicable to the segment under 15 AAC 55.215 are segregated into the following groups:

(A) the adjusted lease expenditures incurred to explore for, develop, or produce oil or gas deposits located within segment leases or properties from which oil or gas is produced during the calendar year, as allocated under 15 AAC 55.215(d) if applicable;

(B) the adjusted lease expenditures incurred to explore for, develop, or produce oil or gas deposits located within segment leases or properties, if any, from which no oil or gas is produced during the calendar year;

(C) the adjusted lease expenditures incurred to explore for oil or gas deposits located within land in the area under 15 AAC 55.215(a)(2) other than the producer's leases or properties, as allocated under 15 AAC 55.215(e) or (g), as applicable;

(3) if the gross value at the point of production of the taxable oil and gas produced by the producer during the calendar year from all leases or properties in the segment is

(A) less than or equal to the total adjusted lease expenditures described in (2)(A) of this subsection, a quotient Q is calculated as $Q = SE \div \sum(PE)$, where SE = the amount by which the total adjusted lease expenditures described in (2)(A) of this subsection exceed the gross value at the point of production of the taxable oil and gas produced by the producer during the calendar year from all leases or properties subject to (2)(A) of this subsection, and PE = the amount, if greater than zero, by which the adjusted lease expenditures incurred by the producer during the calendar year to explore for, develop, or produce oil or gas deposits located within each of those leases or properties, as allocated to the segment under 15 AAC 55.215(d) if applicable, exceeds the gross value at the point of production of taxable oil and gas produced by the producer during the calendar year from the lease or property; for each of those leases or properties for which PE is calculated, PE is multiplied by the quotient Q ; the product of that multiplication is referred to as TE , and for each lease or property for which TE is calculated, a fraction is calculated as $F = TE \div LE$, where LE is the amount of adjusted

lease expenditures incurred by the producer during the calendar year to explore for, develop, or produce oil or gas deposits located within the lease or property, as allocated to the segment under 15 AAC 55.215(d) if applicable; carried-forward annual losses for the segment are, subject to 15 AAC 55.224(f) if applicable, established only by

(i) for each lease or property for which F is calculated, a fraction F of the adjusted lease expenditures incurred by the producer during the calendar year to explore for, develop, or produce oil or gas deposits located within the lease or property, as allocated to the segment under 15 AAC 55.215(d) if applicable; for each lease or property this fraction F is applied uniformly to all of those adjusted lease expenditures; and

(ii) the adjusted lease expenditures, if any, described in (2)(B) and (2)(C) of this subsection;

(B) greater than the adjusted lease expenditures described in (2)(A) of this subsection and less than or equal to the sum of the adjusted lease expenditures described in (2)(A) and (2)(B) of this subsection, a fraction G is calculated as $G = XE \div AE$, where XE = the amount, if any, by which the adjusted lease expenditures described in (2)(B) of this subsection exceed the remainder resulting from subtracting the adjusted lease expenditures described in (2)(A) of this subsection from the gross value at the point of production of the taxable oil and gas produced by the producer during the calendar year from all leases or properties in the segment, and AE = the total adjusted lease expenditures described in (2)(B) of this subsection; carried-forward annual losses for the segment are, subject to 15 AAC 55.224(f) if applicable, established only by

(i) for each lease or property subject to (2)(B) of this subsection, a fraction G of the adjusted lease expenditures incurred by the producer during the calendar year to explore for, develop, or produce oil or gas deposits located within the lease or property; for each lease or property this fraction G is applied uniformly to all of those adjusted lease expenditures; and

(ii) the adjusted lease expenditures, if any, described in (2)(C) of this subsection;

(C) greater than the sum of the adjusted lease expenditures described in (2)(A) of this subsection and (2)(B) of this subsection and less than the sum of the adjusted lease expenditures described in (2)(A), (2)(B), and (2)(C) of this subsection, a fraction H is calculated as $H = YE \div QE$, where YE = the amount, if any, by which the adjusted lease expenditures described in (2)(C) of this subsection exceed the remainder resulting from subtracting the sum of the adjusted lease expenditures described in (2)(A) and (2)(B) of this subsection from the gross value at the point of production of the taxable oil and gas produced by the producer during the calendar year from all leases or properties in the segment, and QE = the total adjusted lease expenditures described in (2)(C) of this subsection; carried-forward annual losses for the segment are, subject to 15 AAC 55.224(f) if applicable, established only by a fraction H of the adjusted lease expenditures described in (2)(C) of this subsection; this fraction H is applied uniformly to all of those lease expenditures;

(D) equal to or greater than the sum of the adjusted lease expenditures described in (2)(A), (2)(B), and (2)(C) of this subsection, no carried-forward annual loss is established for the segment;

(4) in the case of a segment described in 15 AAC 55.206(c)(1)(E) or (F), the amount initially calculated for each carried-forward annual loss under (3) of this subsection is multiplied by the fraction calculated under 15 AAC 55.224(f)(7); only the product of that multiplication, if greater than zero, establishes the carried-forward annual loss.

(c) A producer for which a carried-forward annual loss for a segment under 15 AAC 55.206 is established by adjusted lease expenditures incurred during a calendar year shall file, with or as part of the statement required by AS 43.55.030(a) or (e) for the calendar year, a statement on a form approved or prescribed by the department that contains, for the segment,

(1) the following information:

(A) if applicable, the calculations specified under (b) of this section;

(B) the amount of the carried-forward annual loss, if any, established for each segment lease or property; and

(C) the amount of the carried-forward annual loss, if any, established for exploration described in (b)(2)(C) of this section; or

(2) if the producer wishes to disclaim the right to use in the future any carried-forward annual loss for the segment established for that calendar year, the producer's agreement not to deduct all or any part of any carried-forward annual loss for the segment established for that calendar year in the calculation of an annual production tax value for a future calendar year; that agreement binds any transferee of an interest in a lease or property of the producer and any person that acquires the producer.

(d) This subsection implements AS 43.55.165(o)(1). A carried-forward annual loss established under (b) of this section may be deducted only in calculating an annual production

tax value for the same segment under 15 AAC 55.206(c)(1) for which the carried-forward annual loss was established. A carried-forward annual loss established for a segment described in

(1) 15 AAC 55.206(c)(2)(A) may be deducted only in calculating annual production tax values for the following segments, if the lease expenditures establishing the carried-forward annual loss were incurred to explore for, develop, or produce oil or gas deposits located within a lease or property that includes land north of 68 degrees North latitude, with the carried-forward annual loss allocated between the segments proportionally to the respective amounts of gas used in the state and of oil and other gas produced by the producer from the lease or property during the calendar year regular production of oil or gas commences from the lease or property:

(A) gas used in the state produced by the producer from the lease or property;

(B) oil and other gas produced by the producer from leases or properties that include land north of 68 degrees North latitude;

(2) 15 AAC 55.206(c)(2)(A) may be deducted only in calculating annual production tax values for the following segments, if the lease expenditures establishing the carried-forward annual loss were incurred to explore for oil or gas deposits located within land that is not the producer's lease or property and is located north of 68 degrees North latitude, with the carried-forward annual loss allocated among the segments proportionally to the respective amounts of gas used in the state and of oil and other gas produced by the producer from leases or properties that include land north of 68 degrees North latitude during the first calendar year that regular production of oil or gas commences from any of the leases or properties:

(A) gas used in the state produced by the producer from each lease or property that includes land north of 68 degrees North latitude;

(B) oil and other gas produced by the producer from leases or properties that include land north of 68 degrees North latitude;

(3) 15 AAC 55.206(c)(2)(B) may be deducted only in calculating an annual production tax value for oil and gas produced by the producer from leases or properties outside the Cook Inlet sedimentary basin and no part of which is north of 68 degrees North latitude lease or property.

(e) For purposes of AS 43.55.165(s) and this section,

(1) a lease expenditure incurred by a producer to explore for oil or gas deposits (A) within land that later becomes part or all of a lease or property of the producer, or (B) in the case of geological or geophysical exploration other than a stratigraphic test well, within 25 miles of land that later becomes part or all of a lease or property of the producer, is reasonably related to that lease or property, beginning in the calendar year the land becomes part or all of that lease or property;

(2) a lease expenditure incurred by a producer to explore a specific potential hydrocarbon accumulation, or to explore by delineating a specific reservoir, is reasonably related to a participating area of the producer established for a reservoir that is discovered or delineated, respectively, by the producer's exploration of that potential hydrocarbon accumulation or reservoir; the first calendar year the lease expenditure is reasonably related to the participating area is the calendar year the participating area is established, except for lease expenditures subject to (3) of this subsection;

(3) a lease expenditure incurred by a producer to explore by further delineating a reservoir for which a participating area was previously established is reasonably related to the participating area as of the calendar year during which the lease expenditure is incurred;

(4) unless (2) or (3) of this subsection applies, a lease expenditure incurred by a producer to explore a specific potential hydrocarbon accumulation outside a unit or within a unit described in 15 AAC 55.815(2), or to explore by delineating a specific reservoir outside a unit or within a unit described in 15 AAC 55.815(2), is reasonably related to a lease or property of the producer that contains all or part of a reservoir that is discovered or delineated, respectively, by the producer's exploration of that potential hydrocarbon accumulation or reservoir; the first calendar year the lease expenditure is reasonably related to the lease or property is the later of the calendar year during which (A) the lease expenditure is incurred, or (B) the lease or property is first shown to contain all or part of the reservoir;

(5) a lease expenditure incurred by a producer to explore for oil or gas deposits by means of a stratigraphic test well is reasonably related to a lease or property acquired by the producer, beginning in the calendar year the lease or property is acquired, if the producer relies on information gained from the well in evaluating that lease or property for acquisition.

(f) A carried-forward annual loss established by adjusted lease expenditures that were incurred in a calendar year may not be deducted in calculating an annual production tax value unless all deductible carried-forward annual losses established by adjusted lease expenditures that were incurred in earlier calendar years, other than a carried-forward annual loss whose use has been disclaimed under (c)(2) of this section, are first deducted in calculating that annual production tax value.

(g) This subsection implements AS 43.55.165(n). In the calculation of an annual production tax value for a producer's segment described in 15 AAC 55.206(c)(1)(A), carried-forward annual losses may be deducted only to the extent that 35 percent of the resulting annual production tax value is equal to or greater than the amount calculated for the producer for the calendar year under AS 43.55.011(f).

(h) A producer that acquires an interest in a lease or property may use an unused carried-forward annual loss established by lease expenditures that were previously incurred by the transferor or the transferor's predecessor to the same extent as if the lease expenditures had been incurred by the acquiring producer, if the lease expenditures either were incurred to explore for, develop, or produce oil or gas deposits located within the lease or property or if the lease expenditures are reasonably related to the lease or property, subject to the following limitations:

(1) the transferor of the interest must provide the acquiring producer with a description and documentation of the lease expenditures with sufficient specificity to distinguish them from other lease expenditures incurred by the transferor and to justify on audit the deduction of the carried-forward annual loss;

(2) the transferor of the interest must agree in writing that the lease expenditures will not be used by the transferor and will be available for use only by the acquiring producer;

(3) if the transferor retains an interest in the lease or property, the fraction of the lease expenditures available for use by the acquiring producer may not be greater than the fraction of the transferor's interest transferred to the acquiring producer;

(i) If a producer acquires another producer or explorer, the amount of the acquired entity's previously unused carried-forward annual losses that may be used may not exceed the value of the consideration paid for the acquisition multiplied by 2.86.

(j) The limitation provided under AS 43.55.165(o), that a carried-forward annual loss may only be applied beginning in the calendar year in which regular production of oil or gas from the lease or property where the lease expenditure resulting in the carried-forward annual loss was incurred commences, is satisfied if the first calendar year for which part or all of the carried-forward annual loss is deducted in calculating an annual production tax value is not earlier than the calendar year during which that regular production commences. If the lease expenditure was incurred on more than one lease or property, the calendar year during which regular production of oil or gas commences may be determined with reference to any one of those leases or properties for purposes of this subsection. Upon receiving a written request from a producer, the department will request the Alaska Oil and Gas Conservation Commission to determine whether, and if so when, regular production of oil or gas has commenced from a lease or property.

(k) As used in

(1) AS 43.55.165(l)(4), “loss” means an amount of adjusted lease expenditures described in AS 43.55.165(a)(1) and (2) incurred during a calendar year after 2017 that would otherwise be deductible by the producer in calculating an annual production tax value for that calendar year under AS 43.55.160(a)(1) or (h) but whose deduction would cause the annual production tax value to be less than zero, subject to the requirements in AS 43.55.160(e) to add back a reduction under AS 43.55.160(f) or (g) and to account for the adjusted lease expenditures if the producer’s tax liability is limited by AS 43.55.011(o) or (p);

(2) AS 43.55.165(o)(2), (p), and (s) and this section, the lease or property “on” which a lease expenditure is incurred or “where” a lease expenditure is incurred means

(A) in the case of a lease expenditure incurred to explore for, develop, or produce oil or gas deposits located within a lease or property of the producer, the lease or property within which is located the oil or gas deposits to explore for, develop, or produce which the lease expenditure is incurred;

(B) a lease or property, if any, to which the lease expenditure is determined to be reasonably related under (e)(1) – (5) of this section;

(C) a lease or property that incorporates the lease or property described in (A) or (B) of this paragraph, such as a participating area that when established encompasses an oil and gas lease subject to (A) or (B) of this paragraph and other oil and gas leases; the first calendar year the lease expenditure is considered to be on a lease or property described in this subparagraph is the calendar year during which the lease or property incorporates the lease or property described in (A) or (B) of this paragraph;

(3) this section,

(A) “carried-forward annual loss” has the meaning given in AS 43.55.165(l);

(B) “participating area” means a participating area described in 15 AAC 55.815(1);

(C) “potential hydrocarbon accumulation” has the meaning given in 11 AAC 83.395;

(D) “producer” includes “explorer” with regard to lease expenditures incurred to explore for oil or gas deposits located in land in which the explorer does not own an operating right, operating interest, or working interest in a mineral interest in oil or gas.

(E) "reservoir" has the meaning given in 11 AAC 83.395

(f) The following examples illustrate (b) of this section:

Example 1. In a given calendar year, a producer has three producing leases or properties on the North Slope and no non-producing leases or properties on the North Slope. The producer also conducts seismic exploration on the North Slope in a location remote from and unrelated to any of the leases or properties.

Ten barrels of taxable oil with a gross value at the point of production of \$500, and qualifying for a gross value reduction of 20 percent under AS 43.55.160(f), are produced during the year from Property A. The producer incurs adjusted lease expenditures during the year of \$400 to develop and produce oil from Property A.

Twenty barrels of taxable oil with a gross value at the point of production of \$1,000, not qualifying for a gross value reduction, and 10 BTU equivalent barrels of taxable gas used in the state with a gross value at the point of production of \$610 are produced during the year from Property B. The producer incurs adjusted lease expenditures during the year of \$1,800 to develop and produce oil and gas from Property B.

Thirty barrels of taxable oil with a gross value at the point of production of \$1,500, not qualifying for a gross value reduction, are produced during the year from Property C. The producer incurs adjusted lease expenditures during the year of \$2,000 to develop and produce oil from Property C.

The producer incurs adjusted lease expenditures during the year of \$140 to conduct the off-lease seismic exploration.

An annual production tax value must be calculated for each of two segments in this example: (1) oil and gas, other than gas used in the state, produced from North Slope leases or properties, under 15 AAC 55.206(c)(1)(A); and (2) gas produced from Property B that is used in the state, under 15 AAC 55.206(c)(1)(E).

The gross value at the point of production for the first segment is the sum of \$500, less a 20 percent gross value reduction, or \$400 from Property A, plus \$1,000 from Property B, plus \$1,500 from Property C, for a total of \$2,900. Adjusted lease expenditures applicable to this segment are the sum of \$400 from Property A, plus \$1,200 from Property B (because under 15 AAC 55.215(d), the lease expenditures to develop and produce oil and gas from Property B are allocated between the oil and the gas used in the state proportionally to the respective BTU equivalent barrels produced, of which oil accounts for $20/30 = 2/3$ of the \$1,800 lease expenditures = \$1,200), plus \$2,000 from Property C, plus \$120 from the seismic exploration (because under 15 AAC 55.215(e), those lease expenditures are allocated between the oil produced from both Properties A, B, and C, on one hand, and the gas used in the state produced from Property B, on the other hand, proportionally to the respective BTU equivalent barrels produced, of which oil accounts for $60/70 = 6/7$ of the \$140 lease expenditures = \$120), for a total of \$3,720. Since the lease expenditures exceed the gross value at the point of production, the annual production tax value for the segment is zero. Hence, the producer is required to follow the procedure set out in (b) of this section to determine the producer's carried-forward annual losses, if any, for this segment.

The gross value at the point of production for the second segment is \$610, for gas used in the state produced from Property B. The lease expenditures applicable to this segment are the sum of \$600 from Property B (because under 15 AAC 55.215(d), one-third of the lease

expenditures incurred to develop and produce oil and gas from Property B are allocated to gas used in the state produced from Property B), plus \$20 from the seismic exploration (because under 15 AAC 55.215(e), 1/7 of those lease expenditures are allocated to the gas used in the state produced from Property B), for a total of \$620. Since the lease expenditures exceed the gross value at the point of production, the annual production tax value for the segment is zero. Hence, the producer is required to follow the procedure set out in (b) of this section to determine the producer's carried-forward annual losses, if any, for this segment.

For the first segment:

(1) After adding back the gross value reduction for Property A, the gross value at the point of production for Property A is \$500.

(2) The applicable adjusted lease expenditures are grouped as follows:

(A) \$3,600 incurred to explore for, develop, or produce oil or gas deposits located within the producer's leases or properties from which oil or gas is produced;

(B) zero incurred to explore for, develop, or produce oil or gas deposits located within the producer's leases or properties from which no oil or gas is produced;

(C) \$120 incurred to explore for oil or gas deposits located within North Slope land other than the producer's leases or properties.

(3) The gross value at the point of production of the oil and gas produced from Properties A, B, and C, \$3,000, is less than the \$3,600 in adjusted lease expenditures in group (2)(A), above. Therefore, carried-forward annual losses for the segment are calculated under (3)(A), as follows:

$$SE = \$3,600 - \$3,000 = \$600$$

$$PE \text{ for Property B} = \$200$$

$$\text{PE for Property C} = \$500$$

$$\text{Sum of PEs} = \$700$$

$$Q = \$600 \div \$700 = 6/7$$

$$\text{TE for Property B} = \$200 * 6/7 = \$171.43$$

$$\text{TE for Property C} = \$500 * 6/7 = \$428.57$$

$$F \text{ for Property B} = \$171.43 \div \$1,200 = 14.286\%$$

$$F \text{ for Property C} = \$428.57 \div \$2,000 = 21.428\%$$

Therefore, under (b)(3)(A)(i) of this section, the producer has a carried-forward annual loss for the segment in the amount of \$171.43, established by 14.286 percent of the producer's \$1,200 in adjusted lease expenditures incurred to explore for, develop, or produce oil or gas deposits located within Property B and allocated to oil produced from Property B. (That is to say, 14.3 percent of *each* of those lease expenditures is carried forward, rather than the producer's identifying a subset of lease expenditures with a total dollar amount of \$171.43 to carry forward.) The producer has a second carried-forward annual loss for the segment in the amount of \$428.57, established by 21.428 percent of the producer's \$2,000 in adjusted lease expenditures incurred to explore for, develop, or produce oil or gas deposits located within Property C. In addition, as provided by (b)(3)(A)(ii) of this section, the producer has a third carried forward annual loss for the segment in the amount of \$120, established by the producer's \$120 in adjusted lease expenditures incurred to explore for oil or gas deposits located in North Slope land other than the producer's leases or properties and allocated to oil and gas other than gas used in the state.

For the second segment:

- (1) There is no gross value reduction to add back.

(2) The applicable adjusted lease expenditures are grouped as follows:

(A) \$600 incurred to explore for, develop, or produce oil or gas deposits located within the lease or property from which gas is produced (Property B);

(B) zero incurred to explore for, develop, or produce oil or gas deposits located within the producer's leases or properties from which no oil or gas is produced (this is necessarily true for a segment under 15 AAC 55.206(c)(1)(E), since by definition this kind of segment is gas produced from a single lease or property, and that single lease or property is the subject of the preceding subparagraph (2)(A));

(C) \$20 incurred to explore for oil or gas deposits located within North Slope land other than the producer's leases or properties.

(3) The gross value at the point of production of gas produced from the segment lease or property, \$610, is greater than the sum of the adjusted lease expenditures described in (2)(A) and (2)(B), \$600, but is less than the sum of the adjusted lease expenditures described in (2)(A), (2)(B), and (2)(C), \$620. Therefore, carried-forward annual losses for the segment are calculated under (3)(C), as follows:

$$YE = \$10$$

$$H = \$10 \div \$20 = 50\%$$

Therefore, under (b)(3)(C) of this section, the producer has a carried-forward annual loss for the segment in the amount of \$10, established by 50 percent of the producer's \$20 in adjusted lease expenditures incurred to explore for oil or gas deposits located within North Slope land other than the producer's leases or properties and allocated to gas used in the state. (It is assumed for purposes of (b)(4) of this section that the production does not have a positive annual production

tax value for the segment described in 15 AAC 55.206(c)(1)(F) for the calendar year, so that the fraction calculated under 15 AAC 55.224(f)(7) equals one.)

Example 2. In a given calendar year, a producer has one lease or property on the North Slope, Property D, from which no oil or gas is produced. The producer incurs adjusted lease expenditures of \$1,000 to explore for or develop oil and gas deposits located within the lease or property. The producer also incurs adjusted lease expenditures of \$200 to conduct seismic exploration on the North Slope in a location remote from and unrelated to the lease or property.

Under 15 AAC 55.206(c)(2)(A), the relevant segment is the area of the state north of 68 degrees North latitude. The production tax value for the segment is zero, but since the segment is not a segment under 15 AAC 55.206(c)(1) the producer need not use the procedure set out in (b) of this section to determine carried-forward annual losses for the segment. The producer has a carried-forward annual loss for the segment in the amount of \$1,000, established by the producer's \$1,000 in adjusted lease expenditures incurred to explore for or develop oil or gas deposits located within Property D. The producer also has a carried-forward annual loss for the segment in the amount of \$200, established by the producer's \$200 in adjusted lease expenditures incurred to explore for oil or gas deposits located within North Slope land other than the producer's leases or properties.

(m) The following example illustrates (d) and (k)(2) of this section:

The facts are as described in Example 1 in (l) of this section. The producer wishes to deduct the carried-forward losses to the maximum extent possible in calculating annual production tax values for a later calendar year.

The first segment, for which adjusted lease expenditures established the \$171.43, \$428.57, and \$120 carried-forward annual losses, is oil and gas, other than gas used in the state,

produced from leases or properties that include land north of 68 degrees North latitude, under 15 AAC 55.206(c)(1)(A). Therefore, subject to AS 43.55.165(o)(2) and (p), the carried-forward annual losses established by those lease expenditures may be deducted in calculating the annual production tax value for oil and gas, other than gas used in the state, produced from leases or properties that include land north of 68 degrees North latitude. Under AS 43.55.165(o)(2) and (k)(2) of this section, the \$171.43 carried-forward annual loss established by lease expenditures incurred to explore for, develop, or produce oil or gas deposits located within Property B may be deducted only if regular production of oil or gas has commenced from Property B, and the \$428.57 carried-forward annual loss established by lease expenditures incurred to explore for, develop, or produce oil or gas deposits located within Property C may be deducted only if regular production of oil or gas has commenced from Property C. Since the \$120 carried-forward annual loss was established by the producer's lease expenditures incurred to explore for oil or gas deposits located in North Slope land in a location remote from and unrelated to any of the producer's existing leases or properties, that carried-forward annual loss may not be deducted until and unless the adjusted lease expenditures that established the carried-forward annual loss become reasonably related to a lease or property of the producer from which regular production has commenced. In addition, the amounts of any or all of the carried-forward losses are potentially subject to reduction under AS 43.55.165(p).

The second segment, for which adjusted lease expenditures established the \$10 carried-forward annual loss, is gas produced from Property B that is used in the state, under 15 AAC 55.206(c)(1)(E). Therefore, subject to AS 43.55.165(o)(2) and (p), this carried-forward annual loss may be deducted in calculating the annual production tax value of gas used in the state that is produced from Property B. However, as explained above, the carried-forward annual

loss may not be deducted until and unless the adjusted lease expenditures that established the carried-forward annual loss become reasonably related to a lease or property of the producer from which regular production has commenced.

(n) The following example illustrates (e)(2) of this section:

A unit composed of state oil and gas leases has been formed to encompass a specific potential hydrocarbon accumulation. A producer drills three wells to explore the potential hydrocarbon accumulation. The first well is a dry hole. The second well discovers a reservoir in the potential hydrocarbon accumulation. The third well penetrates the same reservoir. A participating area in which the producer owns an interest is established for the reservoir by the department of natural resources. The lease expenditures incurred to drill all three wells are reasonably related to the participating area, because all the wells were drilled to explore the potential hydrocarbon accumulation in question.

(o) The following example illustrates 15 AAC 55.217(g):

A producer produces oil from North Slope leases or properties for which the amount of tax calculated under AS 43.55.011(e)(2) for the calendar year is \$150 after the deduction of adjusted lease expenditures under AS 43.55.165(a)(1) and (2). The minimum tax for the oil as determined under AS 43.55.011(f) for the calendar year is \$100. Regardless of the amount of carried-forward annual losses under AS 43.55.165(a)(3) that the producer has available, carried-forward annual losses under AS 43.55.165(a)(3) may not be used to reduce the amount of tax calculated under AS 43.55.011(e) to less than \$100. The producer deducts carried-forward annual losses under AS 43.55.165(a)(3) from a prior year to reduce the producer's tax liability to an amount equal to the amount of tax determined under AS 43.55.011(f) [\$100]. The producer has available \$75 of credits earned in the current year under AS 43.55.024(i) and a tax credit

under former AS 43.55.023(b) in the amount of \$50. The entire amount of the tax credit under AS 43.55.024(i) of \$75 may be applied to reduce the producer's tax liability to \$25, and \$25 dollars of the tax credit under former AS 43.55.023(b) may be applied to further reduce the producer's tax liability down to zero. The remaining \$25 of the tax credit under former AS 43.55.023(b) may not be used to apply for a refund, but may be carried-forward to be used in a future period.

(p) The following example illustrates 15 AAC 55.217(b)(3) and 55.224(f)

In a given calendar year, a producer has two producing leases or properties on the North Slope, both of which have commenced regular production (Property A and Property B). The producer also has two non-producing leases or properties on the North Slope, neither of which has commenced regular production (Property C and Property D). Oil and gas other than gas used in the state produced from the four properties make up the first segment of taxable production for the producer. The producer also has taxable production from a second segment on the North Slope for gas used in the state produced from Property A. For purposes of this example it has been assumed that if any of the properties are eligible for a gross value reduction under AS 43.55.160(f) or AS 43.55.160(f) and (g), any gross value reduction has been added back to the gross value at the point of production prior to determining the amount of any carried-forward annual loss under 15 AAC 55.217. Additionally, the producer has no lease expenditures or production outside of the North Slope.

In year 1, the producing leases or properties, Property A and Property B, respectively, produce 30 and 20 barrels of taxable oil with gross values at the point of production of \$1,500 and \$1,000, and adjusted lease expenditures of \$1,800 and \$1,200. Property A also produces six BTU equivalent barrels of taxable gas used in the state with a gross value at the point of

production of \$200. The non-producing properties, Property C and Property D incur adjusted lease expenditures of \$300 and \$500, respectively.

In Year 2, the producing leases or properties, Property A and Property B, respectively, produce 50 and 25 barrels of taxable oil with gross values at the point of production of \$2,750 and \$1,375, and adjusted lease expenditures of \$2,400 and \$1,200. Property A also produces 10 BTU equivalent barrels of taxable gas used in the state with a gross value at the point of production of \$500. The non-producing properties, Property C and Property D incur adjusted lease expenditures of \$400 and \$600, respectively.

In Year 3, the producing leases or properties, Property A and Property B, respectively, produce 50 barrels and 30 barrels of taxable oil with gross values at the point of production of \$3,000 and \$1,800, and adjusted lease expenditures of \$2,400 and \$1,200. Property A also produces 10 BTU equivalent barrels of taxable gas used in the state with a gross value at the point of production of \$500. In addition, during Year 3, Property C commences regular production and for the North Slope oil and gas, other than gas used in the state segment, produces 20 barrels of taxable oil with a gross value at the point of production of \$1,200 and incurs adjusted lease expenditures of \$1,300. In addition, Property C produces six BTU equivalent barrels of gas used in the state, with a gross value at the point of production of \$150. Non-producing Property D incurs adjusted lease expenditures of \$600.

In Year 1 the producer has a loss for the first segment of \$1,000. The \$1,800 in adjusted lease expenditures for Property A are allocated to the first segment, North Slope oil and gas other than gas used in the state, in the amount of \$1,500 [$\$1,800 \times (30 / (30 + 6))$] and \$300 to the second segment, gas used in the state for Property A [$\$1,800 \times (6 / (30 + 6))$]. Part or all of the \$200 carried-forward annual loss established by lease expenditures incurred on Property B may be

deducted in determining the annual production tax value for the first segment in any following year to the extent that the gross value at the point of production for the segment exceeds the adjusted lease expenditures described in AS 43.55.165(a)(1) or (2) for the segment for the calendar year subject to AS 43.55.165(n). The carried-forward annual losses of \$300 established by lease expenditures incurred on Property C, and \$500 established by lease expenditures incurred on Property D, may not be applied in determining the annual production tax value for the segment until the respective Property has commenced regular production. For the gas used in the state segment for Property A, the producer has a carried-forward annual loss of \$100. Since there are no other North Slope properties from which gas used in the state was produced and it was previously stated that the producer does not have any other lease expenditures or production outside of the North Slope that might result in a positive annual production tax value for the segment described in 15 AAC 55.206(c)(1)(F) for the calendar year, the fraction calculated under 15 AAC 55.224(f)(7) equals one.

In Year 2, the producer has a loss for the first segment, in the amount of \$75. The lease expenditures establishing the loss are those incurred on the non-producing properties (Property C and Property D) as provided by 15 AAC 55.217(b)(3)(B). The \$2,400 in adjusted lease expenditures from Property A is allocated to the North Slope oil or gas, other than gas used in the state segment, in the amount of \$2,000 to Property A [$\$2,400 * (50/(50 + 10))$] and \$400 to the gas used in the state segment for Property A [$\$2,400 * (10/(50 + 10))$]. Since the amount of lease expenditures for the calendar year for the segment North Slope oil and gas, other than gas used in the state, required to exceed the gross value at the point of production includes costs from both producing and non-producing properties, the adjusted lease expenditures incurred on the non-producing properties are used to establish any carried-forward annual losses based on the

calculations in 15 AAC 55.217(b)(3)(B), where $XE = \$75$ (amount of the loss for the North Slope oil and gas, other than gas used in the state, segment) and $AE = \$1,000$ (the sum of the adjusted lease expenditures from leases or properties from which no oil or gas is produced), resulting in a fraction G , of .075. Applying the fraction G of .075 to the adjusted lease expenditures of \$400 incurred on Property C and \$600 incurred on Property D results in carried-forward annual losses in the amounts of \$30 established by lease expenditures incurred on Property C and \$45 established by lease expenditures incurred on Property D. Those carried-forward annual losses may not be applied to the segment until the respective property commences regular production. For the gas used in the state segment for Property A, the GVPP of \$500 exceeds the adjusted lease expenditures of \$400, so there is no carried-forward annual loss. Additionally, the \$100 carried-forward annual loss for gas used in the state from Property A from Year 1 may be applied against the \$100 production tax value in Year 2 to reduce production tax value to zero. Since there are no excess lease expenditures for the gas used in the state segment for Property A the calculations under 15 AAC 55.224(f) are not relevant.

In Year 3 the producer has a positive production tax value for the North Slope oil and gas, other than gas used in the state segment, before deducting any available carried-forward annual losses, in the amount of \$1,200. For the North Slope oil and gas, other than gas used in the state segment, there is no carried-forward annual loss created in Year 3. The adjusted lease expenditures from Property A are allocated to the North Slope oil and other gas, other than gas used in the state segment, in the amount of \$2,000 to Property A [$\$2,400 * (50/(50 + 10))$] and \$400 to the gas used in the state segment for Property A [$\$2,400 * (10/(50 + 10))$]. The adjusted lease expenditures for Property C of \$1,300 are allocated to the North Slope oil and other gas, other than gas used in the state segment, in the amount of \$1,000 to Property A [$\$1,300 * (20/20$

+ 6)) and \$300 to the gas used in the state segment for Property C [$\$1,300 * (6/(20 + 6))$]. For the North Slope oil and gas, other than gas used in the state segment, the amount of tax levied by AS 43.55.011(e) is \$420 if no carried-forward annual losses from prior years are deducted [$(\$6,000 \text{ GVPP} - \$4,800 \text{ adjusted lease expenditures}) * 35\%$]]. Since the minimum tax for the North Slope oil and gas, other than gas used in the state segment, as determined under AS 43.55.011(f) is \$240 ($\$6,000 \text{ gross value at the point of production} * 4\%$), the producer may use any available carried forward annual losses from Property B (\$200), plus those from Property C (\$300) from Year 1, plus an additional \$14 from Property C (Year 2) to reduce the producer's production tax liability, before the application of any tax credits, to no less than the \$240 minimum tax determined under AS 43.55.011(f).

For the gas used in the state segment for Property A, the amount of production tax calculated under AS 43.55.011(e)(2) is \$35 [$(\$500 \text{ GVPP} - \$400 \text{ adjusted lease expenditures}) * 35\%$]]. However, this amount is limited under AS 43.55.011(o) to \$10 [$(10 \text{ BTU equivalent barrels} * (6 \text{ MMBTUs/BTU Eq. Bbl./1,037,000 BTUs/Mcf})) = 58 \text{ Mcf. } (58 \text{ Mcf} * \$0.177 = \$10)$]]. For the gas used in the state segment for Property C the producer is determined to have incurred excess lease expenditures under 15 AAC 55.206(b) in the amount of \$150 [$\$150 \text{ GVPP} - \text{adjusted lease expenditures of } \300]. As previously noted, the producer does not have any other lease expenditures or production outside of the North Slope that might result in a positive annual production tax value for the segment described in 15 AAC 55.206(c)(1)(F). Therefore, the amount of the carried-forward annual loss would be determined under 15 AAC 55.224(f) as follows:

- \$150 = 15 AAC 55.224(f)(1) – Total amount of excess lease expenditures gas used in state
- \$ 53 = 15 AAC 55.224(f)(2) – [$(15 \text{ AAC } 55.224(f)(1) * 35\%)$]

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\$ 25 = 15 AAC 55.224(f)(3)&(4) – sum of benefit of limitation under AS 43.55.011(o) & (p)

\$ 28 = 15 AAC 55.224(f)(5) – Difference [(15 AAC 55.224(f)(2) – 15 AAC 55.224(f)(4))]

\$ 79 = 15 AAC 55.224(f)(6) – [(15 AAC 55.224(f)(5)/35%)]

0.53 = 15 AAC 55.224(f)(7) – ratio to be applied to excess lease expenditures in (f)(1) [(15 AAC 55.224(f)(6) / 15 AAC 55.224(f)(1))].

In accordance with 15 AAC 55.217(b)(4) the 53% ratio in 15 AAC 55.224(f)(7) is applied to the \$150 excess less expenditures from gas used in the state Property C resulting in a carried-forward annual loss of \$79 for the segment. (Eff. ___/___/2018, Register _____)

| | | | |
|-------------------|--------------|--------------|---------------------------|
| Authority: | AS 43.05.080 | AS 43.55.110 | AS 43.55.165 |
| | AS 43.55.011 | AS 43.55.160 | Sec. 30, ch. 3 SSSLA 2017 |

15 AAC 55.224(a) is amended to read:

(a) For purposes of the calculations required under **(b), (d), (e), or (f)** [(b) OR (d)] of this section, in calculating an annual production tax value for a segment described in 15 AAC 55.206(c)(1)(C), (D), (E), or (F), a producer shall deduct applicable adjusted lease expenditures for the calendar year to the maximum extent that deductibility is allowed under applicable law, including **(b), (d), (e), or (f)** [(b) OR (d)], as applicable of this section.

15 AAC 55.224(b) is amended to read:

(b) For a calendar year before 2014 for which a limitation under AS 43.55.011(j), (k), (o), or (p) on the tax levied by AS 43.55.011(e) has the effect of reducing the producer's tax on oil or gas produced from one or more leases or properties below the amount of the tax that would

be levied in the absence of that limitation, the producer shall account under this subsection for adjusted lease expenditures that are excess adjusted lease expenditures, if any, under 15 AAC 55.206(b) in the calculation of annual production tax values for segments described in 15 AAC 55.206(c)(1)(C), (D), (E), or (F). Only the amount, if any, of those excess adjusted lease expenditures that is calculated under (6) of this subsection may be used to establish a carried-forward annual loss under AS 43.55.023(b), **as the provisions of that subsection read before January 1, 2018 for oil or gas produced before January 1, 2018.** The calculations to be performed for the accounting under this subsection are as follows:

... (((Publisher: 15 AAC 55.224(b)(1) – (6) are unchanged.)))

15 AAC 55.224(d) is amended to read:

(d) For a calendar year after 2013 **and before 2017** for which a limitation under AS 43.55.011(j), (k), (o), or (p) on the tax levied by AS 43.55.011(e) has the effect of reducing the producer's tax on oil or gas produced from one or more leases or properties below the amount of the tax that would be levied in the absence of that limitation, the producer shall account under this subsection for adjusted lease expenditures that are excess adjusted lease expenditures, if any, under 15 AAC 55.206(b) in the calculation of annual production tax values for segments described in 15 AAC 55.206(c)(1)(C), (D), (E), or (F). Only the amount, if any, of those excess adjusted lease expenditures that is calculated under (7) of this subsection may be used to establish a carried-forward annual loss under AS 43.55.023(b), **as the provisions of that subsection read before January 1, 2018 for oil or gas produced before January 1, 2018.** The fraction of the amount calculated under (7) of this subsection that is subject to a 25 percent tax credit under AS 43.55.023(b), **as the provisions of that subsection read before January 1,**

2018 for oil or gas produced before January 1, 2018, is equal to the amount calculated under (1) of this subsection divided by the sum of the amounts calculated under (1) and (2) of this subsection. The fraction of the amount calculated under (7) of this subsection that is subject to a 45 percent tax credit under AS 43.55.023(b), **as the provisions of that subsection read before January 1, 2018 for oil or gas produced before January 1, 2018**, in the case of lease expenditures incurred after December 31, 2013, and before January 1, 2016, or a 35 percent tax credit under AS 43.55.023(b), **as the provisions of that subsection read before January 1, 2018 for oil or gas produced before January 1, 2018**, in the case of lease expenditures incurred after December 31, 2015 and before January 1, 2017, is equal to the amount calculated under (2) of this subsection divided by the sum of the amounts calculated under (1) and (2) of this subsection. The calculations to be performed for the accounting under this subsection are as follows:

.... (((Publisher: 15 AAC 55.224(d)(1) – (7) are unchanged.)))

15 AAC 55.224(e) is amended to read:

(e) For calendar year 2017 for which a limitation under AS 43.55.011(j), (k), (o), or (p) on the tax levied by AS 43.55.011(e) has the effect of reducing the producer's tax on oil or gas produced from one or more leases or properties below the amount of the tax that would be levied in the absence of that limitation, the producer shall account under this subsection for adjusted lease expenditures that are excess adjusted lease expenditures, if any, under 15 AAC 55.206(b) in the calculation of annual production tax values for segments described in 15 AAC 55.206(c)(1)(C), (D), (E), or (F). Only the amount, if any, of those excess adjusted lease expenditures that is calculated under (7) of this subsection may be used to establish a carried-

forward annual loss under AS 43.55.023(b), as the provisions of that subsection read before January 1, 2018 for oil or gas produced before January 1, 2018. The fraction of the amount calculated under (7) of this subsection that is subject to a 15 percent tax credit under AS 43.55.023(b), as the provisions of that subsection read before January 1, 2018 for oil or gas produced before January 1, 2018, is equal to the amount calculated under (1) of this subsection divided by the sum of the amounts calculated under (1) and (2) of this subsection. The fraction of the amount calculated under (7) of this subsection that is subject to a 35 percent tax credit under AS 43.55.023(b), as the provisions of that subsection read before January 1, 2018 for oil or gas produced before January 1, 2018, is equal to the amount calculated under (2) of this subsection divided by the sum of the amounts calculated under (1) and (2) of this subsection. The calculations to be performed for the accounting under this subsection are as follows:

..., (((Publisher: 15 AAC 55.224(e)(1) – (7) are unchanged.)))

15 AAC 55.224(f) is amended to read:

(f) For a calendar year after 2017 for which a limitation under AS 43.55.011(o) or [AND] (p) on the tax levied by AS 43.55.011(e) has the effect of reducing the producer's tax on oil or gas produced from one or more leases or properties below the amount of the tax that would be levied in the absence of that limitation, the producer shall account under this subsection for adjusted lease expenditures that are excess adjusted lease expenditures, if any, under 15 AAC 55.206(b) in the calculation of annual production tax values for segments described in 15 AAC 55.206(c)(1)(E)[,] or (F). Only the fraction calculated under (7) of this subsection [AMOUNT, IF ANY,] of those excess adjusted lease expenditures, if greater than zero, [THAT IS

CALCULATED UNDER (7) OF THIS SUBSECTION] may be used to establish [A] carried-forward annual losses [LOSS] under AS 43.55.160(e) and 43.55.165(a)(3) and (m) – (s). [AS 43.55.023(b). THE FRACTION OF THE AMOUNT CALCULATED UNDER (7) OF THIS SUBSECTION THAT IS SUBJECT TO A 15 PERCENT TAX CREDIT UNDER AS 43.55.023(b) IS EQUAL TO THE AMOUNT CALCULATED UNDER (1) OF THIS SUBSECTION DIVIDED BY THE SUM OF THE AMOUNTS CALCULATED UNDER (1) AND (2) OF THIS SUBSECTION. THE FRACTION OF THE AMOUNT CALCULATED UNDER (7) OF THIS SUBSECTION THAT IS SUBJECT TO A 35 PERCENT TAX CREDIT UNDER AS 43.55.023(b) IS EQUAL TO THE AMOUNT CALCULATED UNDER (2) OF THIS SUBSECTION DIVIDED BY THE SUM OF THE AMOUNTS CALCULATED UNDER (1) AND (2) OF THIS SUBSECTION.] The calculations to be performed for the accounting under this subsection are as follows:

(1) calculate the total amount of excess adjusted lease expenditures subject to this subsection [FOR SEGMENTS DESCRIBED IN 15 AAC 55.206(c)(1)(F) FOR GAS PRODUCED FROM LEASES OR PROPERTIES NO PART OF WHICH IS NORTH OF 68 DEGREES NORTH LATITUDE];

(2) [CALCULATE THE TOTAL AMOUNT OF EXCESS ADJUSTED LEASE EXPENDITURES SUBJECT TO THIS SUBSECTION FOR SEGMENTS DESCRIBED IN 15 AAC 55.206(c)(1)(E) FOR GAS PRODUCED FROM LEASES OR PROPERTIES THAT INCLUDE LAND NORTH OF 68 DEGREES NORTH LATITUDE];

(3) SUM THE AMOUNTS CALCULATED UNDER (1) AND (2) OF THIS SUBSECTION AND] multiply that total amount [SUM] by 35 percent;

(3) [(4)] calculate for each segment the amount by which a limitation under **AS 43.55.011(o) or (p)** [AS 43.55.011(j), (k), (o), OR (p)] reduces the amount of the producer's tax otherwise levied by AS 43.55.011(e);

(4) [(5)] sum the total of the reductions calculated under **(3)** [(4)] of this subsection for all affected segments;

(5) [(6)] if the amount calculated under **(2)** [(3)] of this subsection is

(A) greater than the amount calculated under **(4)** [(5)] of this subsection, subtract the amount calculated under **(4)** [(5)] of this subsection from the amount calculated under **(2)** [(3)] of this subsection;

(B) equal to or less than the amount calculated under **(4)** [(5)] of this subsection, consider the amount calculated under this paragraph to be zero;

(6) [(7)] divide the amount calculated under **(5)** [(6)] of this subsection by 0.35;

(7) divide the amount calculated under (6) of this subsection by the amount calculated under (1) of this subsection. (Eff. 10/21/2009, Register 192; am 12/25/2013, Register 208; am 3/1/2017, Register 221; am ____/____/____, Register _____)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 43.05.080 | AS 43.55.024 | AS 43.55.160 |
| | AS 43.55.011 | AS 43.55.110 | AS 43.55.165 |

15 AAC 55.290(c) is amended to read:

(c) For purposes of AS 43.55.023(i), AS 43.55.165, and this chapter, whether a cost incurred by a producer or explorer was incurred before April 1, 2001, or after March 31, 2001, before April 1, 2006, or after March 31, 2006, and before July 1, 2007, or after June 30, 2007,

before June 29, 2008, or after June 30, 2008, before July 1, 2016, or after June 30, 2016, and before July 1, 2017, or after June 30, 2017 is determined by the month

(1) for which the operator of a lease or property contemporaneously billed the producer for the cost, if

(A) the cost is a cost of exploring for, developing, or producing oil or gas deposits located within the lease or property;

(B) the operator operated the lease or property on behalf of the producer;

and

(C) at least one producer, other than the operator, on behalf of which the operator operated the lease or property had a material interest in the lease or property;

(2) in which the cost was contemporaneously recorded on the producer's or explorer's financial accounting books as incurred or, in the case of a cost that is treated as a capitalized expenditure under 26 U.S.C. (Internal Revenue Code), as amended, regardless of elections made under 26 U.S.C. 263(c) (Internal Revenue Code), as amended, as placed in the producer's or explorer's work-in-process, construction-in-process, or similar account, if the circumstances were other than those described in (1) of this subsection. (Eff. 5/3/2007, Register 182; am 10/21/2009, Register 192; am ___/___/___, Register _____)

| | | | |
|-------------------|--------------|---------------------|-------------------------------|
| Authority: | AS 43.05.080 | <u>AS 43.55.028</u> | AS 43.55.165 |
| | AS 43.55.023 | AS 43.55.110 | Sec. 72, ch. 1, SSSLA 2007 |

15 AAC 55.315(b) is amended to read:

(b) A determination of a carried-forward annual loss subject to AS 43.55.023(b)(2), as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018, may be performed by subtracting the reduction under AS 43.55.160(f) or (g) from the amount of excess adjusted lease expenditures otherwise calculated under 15 AAC 55.206(b) for the segment described in 15 AAC 55.206(c)(1)(A). Only the remainder, if positive, constitutes excess adjusted lease expenditures that may establish a carried-forward annual loss under AS 43.55.023(b), as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018. If the remainder is zero or less, there is no carried-forward annual loss.

15 AAC 55.315(c) is amended to read:

(c) The following examples illustrate (b) of this section:

Example 1. Producer A produces only oil in a calendar year after 2016 that qualifies for a 20 percent reduction in the gross value at the point of production under AS 43.55.160(f) but not a reduction under AS 43.55.160(g). The gross value at the point of production, before reduction, is \$10 million. After reduction under AS 43.55.160(f), the gross value at the point of production is \$8 million. The producer's adjusted lease expenditures for the calendar year applicable to the oil are \$9 million. The annual production tax value of the oil would be calculated by deducting \$9 million from \$8 million, except that an annual production tax value may not be less than zero. Therefore, the annual production tax value of the oil is zero, and the \$1 million in adjusted lease expenditures that are not deductible are considered excess adjusted lease expenditures. However, for the purpose of determining a carried-forward annual loss and a potential tax credit under AS 43.55.023(b)(2), as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018, the \$2 million reduction in the

gross value at the point of production is subtracted from that \$1 million in excess adjusted lease expenditures. This results in a negative value. Therefore, there is no carried-forward annual loss under AS 43.55.023(b)(2), **as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018,** and no tax credit.

Example 2. The facts are the same as in Example 1 except that the producer's adjusted lease expenditures for the calendar year applicable to the oil are \$11 million instead of \$9 million. In this situation, the annual production tax value of the oil again is zero, but the amount of excess adjusted lease expenditures is \$3 million. After the \$2 million reduction in the gross value at the point of production is subtracted from the \$3 million figure, the resulting excess adjusted lease expenditures are \$1 million. Therefore, there is a \$1 million carried-forward annual loss under AS 43.55.023(b)(2), **as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018.** (Eff. 5/3/2007, Register 182; am 3/1/2017, Register 221; am _____/_____/_____, Register _____)

Authority: AS 43.05.080 AS 43.55.110 AS 43.55.160
AS 43.55.023

15 AAC 55.320(a) is amended to read:

- (a) A producer or explorer may apply for a transferable tax credit certificate for
 - (1) a qualified capital expenditure credit under AS 43.55.023(a) or a well lease expenditure credit under AS 43.55.023(l) at any time after the expenditure in question is incurred but no more frequently than once a calendar quarter;

(2) a carried-forward annual loss credit under AS 43.55.023(b), as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018, no earlier than January 1 of the calendar year following the calendar year in which the carried-forward annual loss in question is incurred.

(Eff. 5/3/2007, Register 182; am 10/21/2009, Register 192; am 9/14/2012, Register 203; am 3/1/2017, Register 221; am ____/____/2018, Register _____)

Authority: AS 43.05.080 AS 43.55.023 AS 43.55.110

15 AAC 55.337(a) is amended to read:

(a) For a tax credit based on expenditures incurred during a calendar year, other than a tax credit under AS 43.55.023(b), as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018, the amount of the municipal entity's tax credit may not exceed the amount of the tax credit otherwise allowed under this chapter, multiplied by the fraction calculated under (d) of this section for that calendar year.

(Eff. 3/1/2017, Register 221; am ____/____/____, Register _____)

Authority: AS 43.05.080 AS 43.55.024 AS 43.55.110
AS 43.55.019 AS 43.55.025 AS 43.55.895
AS 43.55.023

15 AAC 55.345(a) is amended to read:

(a) To apply a tax credit allowed under AS 43.55.023, as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018, or AS 43.55.024 against a tax liability under AS 43.55.011, a producer must file, no later than March 31 of the year following the calendar year for which the tax was levied, a claim for the tax credit in the statement described in AS 43.55.030(a), setting out the information required by the department on a form prescribed by the department as part of that statement.

15 AAC 55.345(b) is amended to read:

(b) In addition to other information required by the department, a claim under this section for a tax credit for a qualified capital expenditure under AS 43.55.023(a), carried-forward annual loss under AS 43.55.023(b), as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018, or well lease expenditure under AS 43.55.023(l) must include

... (((Publisher: 15 AAC 55.345(b)(1) – (6) are unchanged.)))

(Eff. 5/3/2007, Register 182; am 10/21/2009, Register 192; am 9/14/2012, Register 203; am 3/1/2017, Register 221; am _____ / _____ / _____, Register _____)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 43.05.080 | AS 43.55.025 | AS 43.55.040 |
| | AS 43.55.023 | AS 43.55.030 | AS 43.55.110 |
| | AS 43.55.024 | | |

15 AAC 55.375(c)(10) is amended to read:

(10) ninth, any credit under AS 43.55.023(b), **as those provisions read on December 31, 2017, for oil and gas produced before January 1, 2018;**

(Eff. 5/3/2007, Register 182; am 10/21/2009, Register 192; am 9/14/2012, Register 203; am 12/25/2013, Register 208; am 3/1/2017, Register 221; am ____/____/2018, Register _____)

Authority: AS 43.05.080 AS 43.55.024 AS 43.55.110
AS 43.55.023 AS 43.55.025

15 AAC 55.511 is amended by adding a new section to read:

(i) Where the calculation of an installment payment of estimated tax under AS 43.55.020(a) calls for subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for specified oil, gas, or oil and gas, those lease expenditures include lease expenditures that are described in AS 43.55.165(a)(3), but only the following portion of the lease expenditures described in AS 43.55.165(a)(3) is subtracted: 1/12 of the adjusted lease expenditures described in AS 43.55.165(a)(3) that are actually deducted in calculating the annual production tax value for the calendar year for the oil, gas, or oil and gas under AS 43.55.160(a)(1) or AS 43.55.160(h), as applicable. (Eff. 10/21/2009, Register 192; am 4/30/2010, Register 194; am 12/25/2013, Register 208; am 3/1/2017, Register 221; am ____/____/____, Register _____)

Authority: AS 43.05.080 AS 43.55.020 AS 43.55.160
AS 43.55.011 AS 43.55.110 AS 43.55.895

Register _____, _____, 2018 REVENUE

15 AAC 55.520(f)(9) is amended to read:

(9) tax payments, including conservation surcharges under AS 43.55.201 or 43.55.300, due for the month; [AND]

15 AAC 55.520(f)(10) is amended to read:

(10) the volumes of oil and gas that the producer has determined qualify for a reduction in gross value at the point of production under AS 43.55.160(f), or under AS 43.55.160(f)(1) and (g), and the amounts of the reductions the producer has calculated under 15 AAC 55.211(g); **and** [.]

15 AAC 55.520(f) is amended by adding a new paragraph to read:

(11) the amount of carried-forward annual losses under AS 43.55.160(e) and 43.55.165(a)(3) and (m) – (s) that is included in the amount of lease expenditures subtracted in calculating the monthly installment payment of estimated tax. (Eff. 5/3/2007, Register 182; am 5/17/2008, Register 186; am 12/25/2013, Register 208; am ____/____/____, Register _____)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 43.05.080 | AS 43.55.040 | AS 43.55.165 |
| | AS 43.55.020 | AS 43.55.110 | AS 43.55.180 |
| | AS 43.55.030 | | |

15 AAC 55.800(a)(3) is amended to read:

(3) 15 AAC 55.215, **except 15 AAC 55.215(d), (e), and (h) as amended and adopted effective _____, 2018 apply retroactively to January 1, 2018;**

15 AAC 55.800(a)(9) is amended to read:

(9) 15 AAC 55.290 - 15 AAC 55.315(a), except 15 AAC 55.290(c) as amended effective _____, 2018, applies retroactively to January 1, 2018, and 15 AAC 55.305(a) and (c) and 15 AAC 55.315(a), as amended effective January 1, 2018, apply retroactively to July 28, 2017;

15 AAC 55.800(f)(4) is amended to read:

(4) 15 AAC 55.206, except 15 AAC 55.206(b) as amended effective March 1, 2017, apply retroactively to January 1, 2017 and 15 AAC 55.206(b), (f), and (h) as amended and adopted effective _____, 2018 apply retroactively to January 1, 2018;

15 AAC 55.800(f)(5) is amended to read:

(5) 15 AAC 55.224, except 15 AAC 55.224(d) as amended effective March 1, 2017, apply retroactively to January 1, 2017 and 15 AAC 55.224(a), (b), (e), and (f) as amended effective _____, 2018 apply retroactively to January 1, 2018;

15 AAC 55.800(k) is repealed:

(k) Repealed / / _____ [THE PROVISIONS OF 15 AAC 55.206(b) AND 15 AAC 55.224(d) AS AMENDED EFFECTIVE MARCH 1, 2017, APPLY RETROACTIVELY TO JANUARY 1, 2017, AND OTHERWISE APPLY RETROACTIVELY TO JULY 1, 2007].

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15 AAC 55.800(m)(1) is amended to read:

(1) 15 AAC 55.208, except 15 AAC 55.208(c) as amended effective _____,

2018 applies retroactively to January 1, 2018;

15 AAC 55.800(m)(2) is amended to read:

(2) 15 AAC 55.211[l](h), as amended effective March 1, 2017, except as amended effective _____, 2018 applies retroactively to January 1, 2018;

15 AAC 55.800(m)(6) is amended to read:

(6) 15 AAC 55.224(e) - (f), except as amended effective _____, 2018 apply retroactively to January 1, 2018;

15 AAC 55.800 is amended by adding a new subsection to read:

(p) The following provisions apply retroactively to January 1, 2018:

(1) 15 AAC 55.217;

(2) 15 AAC 55.511(i);

(3) 15 AAC 55.520(f)(9) and (10), as amended effective _____, 2018, and

15 AAC 55.520(f)(11) as adopted effective _____, 2018;

(4) 15 AAC 55.900(b)(29). (Eff. 5/3/2007, Register 182; am 10/21/2009, Register 192; am 2/27/2010, Register 193; am 4/30/2010, Register 194; am 12/4/2010, Register 196; am 3/1/2017, Register 221; am 1/1/2018, Register 224; am ____/____/____, Register _____)

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Authority: AS 43.05.080 Sec. 72, ch. 1 SSSLA 2007 Sec. 41, ch. 3 SSSLA 2017
AS 43.55.110 Sec. 38, ch. 4 4SSLA 2016 Sec. 42, ch. 3 SSSLA 2017
Sec. 37, ch. 2 TSSLA 2006

15 AAC 55.900(b) is amended by adding a new paragraph to read:

(29) except in AS 43.55.160(a) and (h) subject to AS 43.55.165(m), "lease expenditure" does not include a carried-forward annual loss as defined in AS 43.55.165(l). (Eff. 1/1/95, Register 132; am 1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2003, Register 164; am 1/1/2004, Register 168; am 5/3/2007, Register 182; am 10/21/2009, Register 192; am 2/27/2010, Register 193; am 4/30/2010, Register 194; am 12/4/2010, Register 196; am 9/14/2012, Register 203; am 12/25/2013, Register 208; am 3/1/2017, Register 221; am ____/____/____, Register _____)

Authority: AS 43.05.080 AS 43.55.025 AS 43.55.165
AS 43.55.011 AS 43.55.028 AS 43.55.170
AS 43.55.020 AS 43.55.110 AS 43.55.895
AS 43.55.023 AS 43.55.150 AS 43.55.900
AS 43.55.024 AS 43.55.160