

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SJUD 12567

1 during the month;

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

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

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

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

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

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

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

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

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

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

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

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

16 or

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

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

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

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

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

2 (i) For the purposes of this section,

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

12 (2) a producer or explorer that did not have commercial production
13 of oil or gas from a lease or property in the state before January 1, 2008. may
14 elect to take a tax credit against a tax levied by [DUE UNDER] AS 43.55.01!(e) in
15 the amount of 20 percent of the producer's or explorer's transitional investment
16 expenditures, but only to the extent that the amount does not exceed 1/10 of the
17 producer's or explorer's qualified capital expenditures that were incurred after
18 March 31, 2006, and before January 1, 2008 [ARE INCURRED DURING THE
19 CALENDAR YEAR FOR WHICH THE CREDIT IS TAKEN];

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

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

23 (i)] 2013; [OR

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

30 (B) more than once; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (d) The department shall manage the fund.

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

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

1 allowed to be applied against a tax;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (5) joint interest billings;

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

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

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

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

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

21 (B) impose appropriate conditions limiting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (c) For purposes of this section,

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

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

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

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

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

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

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

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

11 and

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

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

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

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

25 (d) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (1) direct costs include

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

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

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

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

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

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

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

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

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

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

2 (1) depreciation, depletion, or amortization;

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

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

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

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

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

13 (7) fines or penalties imposed by law;

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

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

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

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

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

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

29 (14) a tax levied under AS 43.55.011;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (3) the sale or other transfer of

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

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

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

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

11 (B) oil or gas

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

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

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

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

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

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

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

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

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

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

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

31 (G) exploration expenditures under AS 43.55.025;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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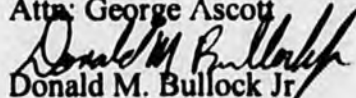
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MEMORANDUM

October 31, 2007

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

TO: Senator Bill Wielechowski
Attn: George Ascott

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

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

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

If I may be of further assistance, please advise.

DMB:lmb
07-141.lmb

Enclosure

Qui tam

From Wikipedia, the free encyclopedia

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

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

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

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

Contents

- 1 History
- 2 Sources
- 3 See also
- 4 External links

History

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

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

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

Sources

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

See also

- False Claims Act

External links

- procedural description and time-line of qui tam

Retrieved from "http://en.wikipedia.org/wiki/Qui_tam"

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

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MEMORANDUM

October 22, 2007

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

TO: Senator Hollis French
Chair of the Senate Judiciary Committee

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

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

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

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

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

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

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

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

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

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

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

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

³ 117 F.3d 1145, 1156 (10th Cir. 1997).

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

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

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

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

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

⁴ 538 U.S. 408, 418 (U.S. 2003) (citations omitted).

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

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

Senator Hollis French

October 22, 2007

Page 4

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

If I may be of further assistance, please advise.

DMB:med

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⁷ 538 U.S. at 426.

LEGAL SERVICES

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MEMORANDUM

February 26, 2007

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

TO: Senator Thomas Wagoner
Attn: Mary Jackson

FROM: Donald M. Bullock Jr.
Legislative Counsel

*This Memo is in the
Public domain as it was made
public in a committee hearing.
DMS*

You asked whether enactment of SB 80 would violate the prohibition against ex post facto laws in the United States and Alaska Constitutions¹ because the disallowance of certain deductions applies retrospectively to April 1, 2006, the effective date of the PPT.

The answer is no.

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

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

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

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

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

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

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

Note that retrospective application of changes in tax laws on the oil industry have been upheld by the Alaska Supreme Court. In 1985, the Alaska Supreme Court upheld the retrospective effect of oil and gas income tax legislation that was signed into law in July 1978 and was retroactive to January 1, 1978.⁵ Seven years later, the same court upheld the retrospective effect of a change in the economic limit formula applicable to the production tax on oil and gas; in that case, the Act was effective August 6, 1989, and was retroactive to January 1, 1989.⁶ In neither case did the taxpayers assert the ex post facto prohibition as authority for challenging the retrospective application of the tax, but unsuccessfully argued that the retrospective application was effectively an "effective date" that required a two-thirds majority vote under art. II, sec. 18 of the state constitution.

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

If I may be of further assistance, please advise.

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09-100.ljw

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

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

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

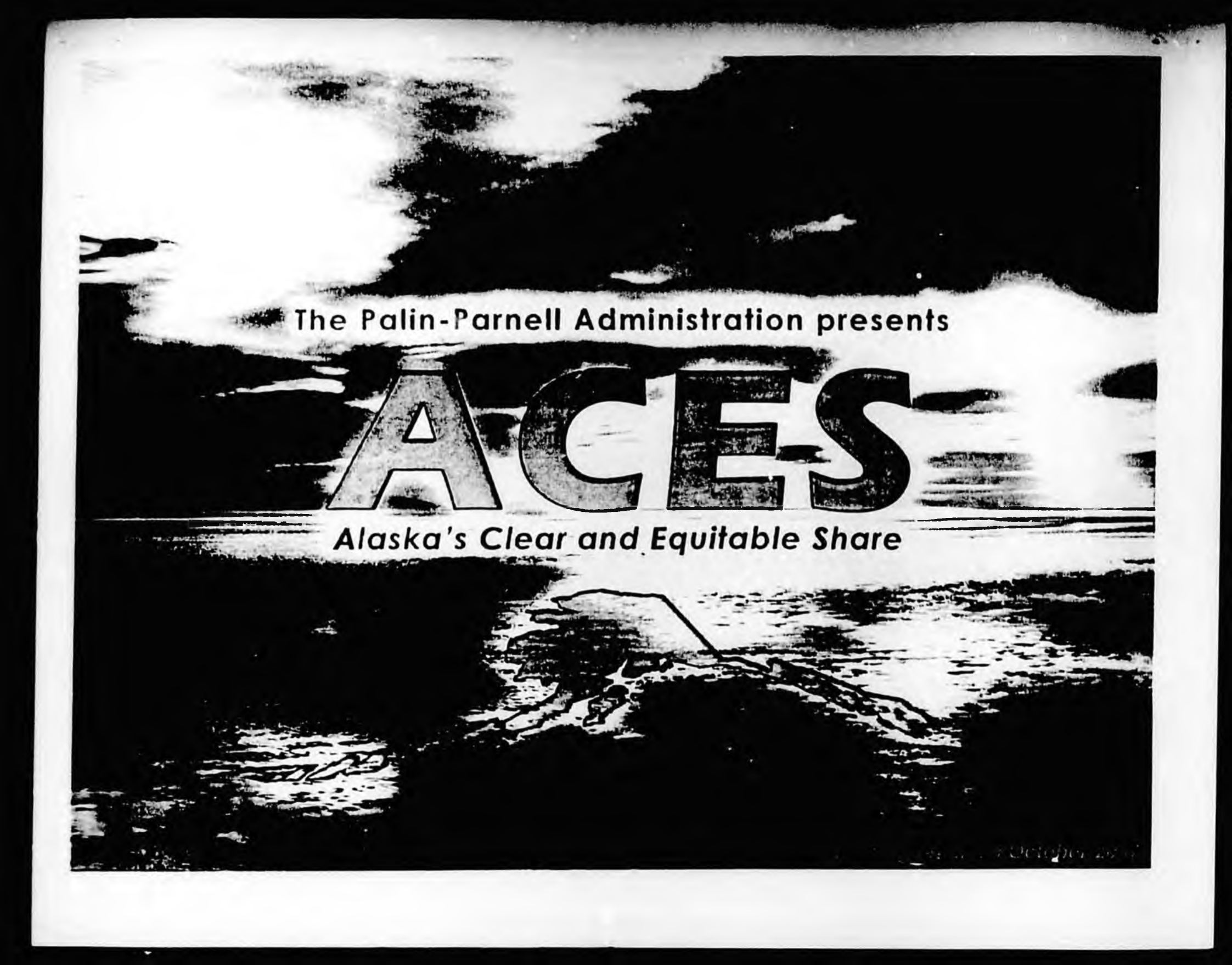
⁶ *ARCO Alaska, Inc. v. State, Commissioner of Revenue*, 824 P.2d 708 (Alaska 1992).

SB 2001

(FILE 2)

ADMIN.

**PRESENT'N
& MATER'LS**



The Palin-Parnell Administration presents

ACES

Alaska's Clear and Equitable Share

October 2009

Transportation Deductions

Antony Scott
Commercial Analyst, DNR
October 30, 2007

Overview



- Current law
- The commercial reality
- Some problems
- Potential remedies

- Gross value at point of production determined by subtracting “reasonable costs of transportation” from market prices
- “Reasonable costs” = “actual costs”
- “Actual costs” have historically been understood as FERC/RCA tariffs
- Exception for affiliate transactions, but only if “there are other reasonable modes of transportation” → exception is never met!

Transportation Deductions (Oil Pipelines)



- Deductions have historically relied on rates sanctioned by regulatory bodies
- Typically, this “sanction” does not reflect a regulatory determination
- Rather, the regulatory bodies have “blessed” settlement agreements between the state and the pipeline owner

Why does state base its tax policy for pipeline transportation deductions on pipeline rate litigation?

- MMS doesn't when pipeline is owned by producing affiliates.
 - They adopt a method promulgated through regulation

Pipeline Transportation Deductions



- Key reasons for state to avoid relying on regulatory process in setting tax value
 - Creates uncertainty: While litigation drags on tax value not fully known
 - Inefficient: Regulatory process unlikely to work well absent arms-length commercially sophisticated parties

TAPS Tariffs Example



Background:

- TAPS rates are currently ~\$5/bbl, set under a 1985-era settlement agreement between the State and the TAPS owners
 - Rates don't appear to reflect "actual costs"
 - RCA determined that actual costs ~\$2/bbl
 - FERC Administrative Law Judge determined that actual costs ~\$2/bbl
 - While litigation continues, State continues to allow a ~\$5/bbl transportation deduction
-

TAPS Tariffs Example



Indicative Value of “Tariffs by DOR”

- Assume:
 - TAPS tariffs are \$3/Bbl too high
 - 760,000 Bbls/day
 - Production tax rate of 22.5%
 - All barrels are shipped on affiliated transportation
 - Then production tax value to state of setting tariffs for affiliate transactions is **~\$160 million/year**
-

Transportation Deductions (Gas Pipelines)

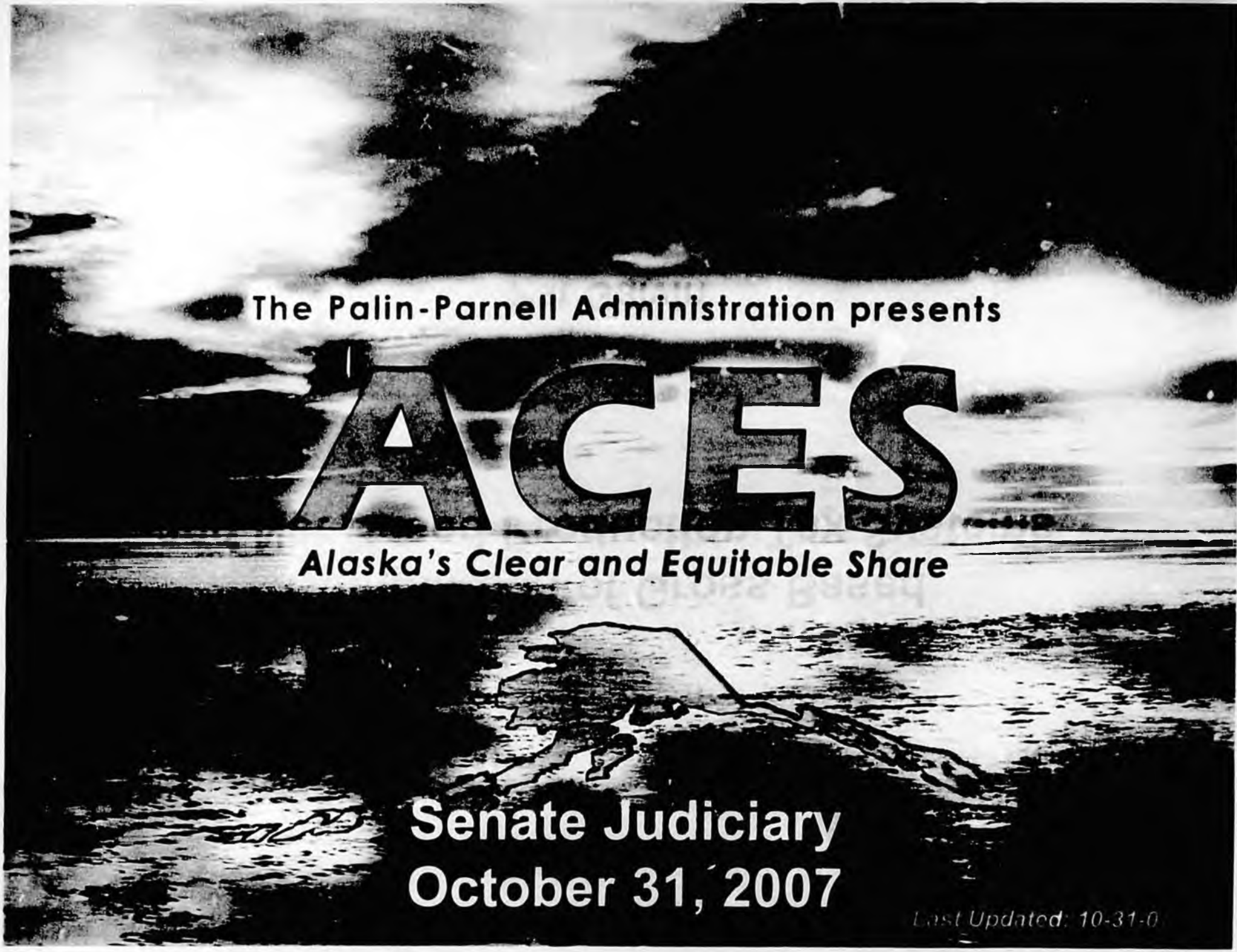


- Gas pipelines typically built on basis of “negotiated rates” between shippers and pipelines
- FERC typically gives no scrutiny as to whether the negotiated rates are a “fair” bargain between shipper and pipeline
- If Producers end up owning the gas pipeline, then they can negotiate rates with themselves

The Key to a Remedy



- At present, state is arguably forced to live with non-arms length transactions because it is never the case that “there are other reasonable modes of transportation”
- DOR could follow MMS’ lead and establish regulations that determine appropriate cost deductions for non arms-length transactions on pipelines
- Cleanup language needed to ensure that the arms-length shippers – who really do have “actual costs” of the posted tariffs – are not forced to use the DOR-established tax deduction



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Alaska's Clear and Equitable Share

**Senate Judiciary
October 31, 2007**

Last Updated: 10-31-07

October 31, 2007

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Alaska's Clear and Equitable Share

Comparison of Gross Based and Net Based Production Tax Systems

Pat Galvin

October 31, 2007

Pro's and Con's of Gross Tax and Net Tax

ACES

Alaska's Clear and Equitable Share

Gross Tax

- Pro's
 - More Transparent
 - Less Audit/Litigation Burden
 - Less risk to revenue projection
- Con's
 - Creates a “one size fits all” problem for varying project economics
 - Errors in assumptions can stifle investment
 - To protect project economics, may have to accept less revenue

Net Tax

- Pro's
 - Investment climate “self corrects” to adjust to changes in costs
 - Provides more attractive investment climate
- Con's
 - Less Transparency
 - Greater Audit/Litigation Burden
 - Errors in assumptions can reduce revenue

Balancing Act

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Alaska's Clear and Equitable Share

Revenue Investment Climate



Transparency Economic Flexibility



Incumbents New Entrants



Revenue from "Legacy" Fields Exploration & New Field Development



Audit Risk Investment Challenge



Factors to Consider

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Alaska's Clear and Equitable Share

- "Audit Risk"
- Revenue to the State
- Investment Climate