



LAWS OF ALASKA

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Chapter No.

86

AN ACT

Providing for exploration incentive credits for activities involving locatable and leasable mineral and coal deposits on certain land in the state; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 20, 1995

Actual Effective Date: June 21, 1995, retroactive to January 1, 1995

AN ACT

1 Providing for exploration incentive credits for activities involving locatable and leasable
2 mineral and coal deposits on certain land in the state; and providing for an effective date.

3

4 * **Section 1.** AS 27 is amended by adding a new chapter to read:

5 CHAPTER 30. EXPLORATION INCENTIVE CREDITS.

6 Sec. 27.30.010. EXPLORATION INCENTIVE CREDITS AUTHORIZED.

7 (a) The commissioner shall grant to a person described in (d) of this section an
8 exploration incentive credit for the eligible costs of each of the following exploration
9 activities that are performed on or for the benefit of land in the state for the purpose
10 of determining the existence, location, extent, or quality of a locatable or leasable
11 mineral or coal deposit, regardless of whether the land is state-owned land:

12 (1) surveying by geophysical or geochemical methods;

13 (2) drilling exploration holes;

14 (3) conducting underground exploration;

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1 (4) surface trenching and bulk sampling; or

2 (5) performing other exploratory work, including aerial photographs,
3 geological and geophysical logging, sample analysis, and metallurgical testing.

4 (b) Except as provided in (c) of this section, an exploration incentive credit
5 may not be granted under (a) of this section for exploration activity described in that
6 subsection that occurs after the mine construction commencement date of a new mine.

7 In this subsection, "mine construction commencement date of a new mine" means the
8 date no later than which all of the following have occurred:

9 (1) there has been issued to the owner or an agent of the owner
10 permits, leases, and title and other rights in land, and other approvals, permits, licenses,
11 and certificates, by federal, state, and local agencies that a reasonable and prudent
12 person would consider adequate to commence construction of a mine in the expectation
13 that all other approvals, permits, licenses, and certificates necessary for the completion
14 of the facilities will be obtained;

15 (2) all approvals, permits, licenses, and certificates are in full force and
16 effect, unrevoked and without any modification that might jeopardize the completion
17 or continued construction of the mine; and

18 (3) an order, judgment, decree, determination, or award of a court or
19 administrative or regulatory agency enjoining, either temporarily or permanently, the
20 construction or the continuation of construction of the mine is not in effect.

21 (c) In addition to the grant of an exploration incentive credit for a new mine
22 under (b) of this section, an exploration incentive credit may be granted under (a) of
23 this section for exploration activity described in that subsection for a mine that had
24 previously operated, has ceased to operate, and for which all previous mining
25 approvals, permits, licenses, and certificates that allowed the previous operation are
26 no longer in effect. However, under this subsection, an exploration incentive credit may
27 not be granted under (a) of this section for exploration activity that occurs after the
28 mine reopening date. In this subsection, "mine reopening date" means the date not
29 later than which all of the following have occurred:

30 (1) there has been issued to the owner or an agent of the owner
31 permits, leases, and title and other rights in land, and other approvals, permits, licenses,

1 and certificates, by federal, state, and local agencies that a reasonable and prudent
2 person would consider adequate to commence operation of the former mine in the
3 expectation that all other approvals, permits, licenses, and certificates necessary for the
4 completion of the facilities will be obtained;

5 (2) all approvals, permits, licenses, and certificates for the reopened
6 mine are in full force and effect, unrevoked, and without any modification that might
7 jeopardize the reopening of the former mine; and

8 (3) an order, judgment, decree, determination, or award of a court or
9 administrative or regulatory agency enjoining, either temporarily or permanently, the
10 reopening of the former mine is not in effect.

11 (d) An exploration incentive credit may be granted under this chapter only to

12 (1) a natural person who is at least 18 years of age;

13 (2) a partnership qualified to do business in the state;

14 (3) a corporation qualified to do business in the state;

15 (4) a limited liability company qualified to do business in the state;

16 (5) a legal guardian or trustee of a qualified natural person described
17 in (1) of this subsection; or

18 (6) any association of persons listed in (1) - (5) of this subsection.

19 Sec. 27.30.020. PROCEDURE FOR REQUESTING AND TAKING THE
20 CREDIT. To obtain the credit authorized by this chapter,

21 (1) a person shall submit a request for the credit as follows:

22 (A) the person shall submit a request and a statement of
23 expenditures for the previous calendar year not later than 60 days after the
24 close of that calendar year;

25 (B) the request must

26 (i) describe the work accomplished during the previous
27 year, the number of employees, and the names and number of
28 consultants; and

29 (ii) provide a detailed list or ledger of expenditures of
30 the accomplishments described in (i) of this subparagraph and a list of
31 exploration activity data that in the future will be made available to the

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1 commissioner under (2)(A) of this section;

2 (C) the person submitting the request is not required to transmit
3 copies of receipts with the request, but the statement of expenditures is subject
4 to audit in the discretion of the commissioner;

5 (D) if the commissioner determines to audit the statement of
6 expenditures, the commissioner may require the person submitting the request
7 to justify claims of expenditures with receipts and other reliable information;

8 (E) the commissioner shall respond to the request by
9 September 30 by certifying or not certifying the person's expenditures; if the
10 commissioner

11 (i) does not certify expenditures, the commissioner shall
12 state the reasons for denial of certification and give the person making
13 the request an opportunity to correct any problems or to provide
14 additional information;

15 (ii) certifies expenditures, the commissioner shall specify
16 the exploration activity data requirements for that year that must be
17 presented to the department at the time of the taking of the credit;

18 (F) if the commissioner neither certifies nor denies certification
19 of expenditures by September 30, the expenditures are certified as submitted;

20 (2) the person whose expenditures have been certified under (1) of this
21 subsection may thereafter request the taking of the credit for the certified expenditures
22 as follows:

23 (A) the person shall deliver to the commissioner the exploration
24 activity data identified by the commissioner under (1)(E)(ii) of this section, and
25 shall request the commissioner's approval of the taking of the credit;

26 (B) the commissioner shall approve or disapprove the taking of
27 the credit within six months after receipt of the request for taking of the credit;
28 if the

29 (i) exploration activity data complies with the
30 requirements identified by the commissioner under (1)(E)(ii) of this
31 section, the commissioner shall approve the taking of the credit;

1 (ii) request is disapproved, the commissioner shall state
2 the reasons for disapproval and offer the person seeking to take the
3 credit an opportunity to correct any problems or to provide additional
4 exploration activity data or other information;

5 (C) if the commissioner neither approves nor disapproves the
6 request to take the credit within six months after submission of the request, the
7 taking of the credit is approved.

8 Sec. 27.30.030. APPLICATION OF THE CREDIT. (a) In a tax year or
9 royalty payment period, subject to (c) of this section and the respective limitations of
10 this subsection, the person may apply the credit, the taking of which was approved
11 under AS 27.30.020(2), against

12 (1) taxes payable by the person

13 (A) under AS 43.65; application of the credit under this
14 subparagraph may not exceed the lesser of

15 (i) 50 percent of the person's tax liability under
16 AS 43.65 for the tax year that is related to production from the mining
17 operation at which the exploration activities occurred, as shown under
18 (b) of this section; or

19 (ii) 50 percent of the person's total tax liability under
20 AS 43.65 for the tax year;

21 (B) under AS 43.20; application of the credit under this
22 subparagraph may not exceed the lesser of

23 (i) an amount equal to the amount determined under
24 (A)(i) of this paragraph; or

25 (ii) 50 percent of the person's total tax liability under
26 AS 43.20 for the tax year; and

27 (2) mineral production royalty payments payable by the person under
28 AS 38.05.135 - 38.05.175 and 38.05.212 for production from the mining operation at
29 which the exploration activities occurred; application of the credit under this paragraph
30 may not exceed 50 percent of the person's mineral production royalty payment liability
31 from the mining operation at which the exploration activities occurred.

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1 (b) If the person applies the credit against the person's tax liability under
2 (a)(1)(A)(i) or (a)(1)(B)(i) of this section, the commissioner of revenue shall disallow
3 application of the credit under that provision unless the person files with the person's
4 tax return an accounting of the person's mining operation activities for each mining
5 operation that is included in the tax return and as to which the credit is being applied.

6 The accounting of mining operation activities required by this subsection shall be made
7 (1) on a form prescribed by the Department of Revenue; on the form,
8 the person shall

9 (A) identify the mining operations for which the credit is
10 claimed; and

11 (B) set out the gross income attributable to the mining
12 operations and other information about the mining operations that the
13 Department of Revenue may require;

14 (2) without regard to an exemption to which the person may be entitled
15 under AS 43.65.010(a).

16 (c) The person may not apply the credit under this section if the application,
17 when added to credits previously applied under this section, would exceed the total
18 amount of the credits approved under AS 27.30.020(2).

19 Sec. 27.30.040. CREDIT MAY BE CARRIED FORWARD. Except as its
20 application is limited by AS 27.30.030 and 27.30.050, a portion of a credit that is not
21 applied under AS 27.30.030 during a tax year or royalty payment period may be
22 carried forward to and applied during a subsequent tax year or royalty payment period.

23 Sec. 27.30.050. LIMIT ON APPLICATION OF CREDIT. An exploration
24 incentive credit for a mining operation may not exceed \$20,000,000 and must be
25 applied within 15 tax years or royalty payment periods after the taking of the credit
26 is approved under AS 27.30.020(2), but the tax years or royalty payment periods in
27 which the credit is applied need not be

28 (1) the tax year or royalty payment period in which the person first
29 incurs liability for payment of tax or royalty based on the person's activity that is the
30 basis of the claim of the exploration incentive credit; or

31 (2) consecutive periods.

1 Sec. 27.30.060. ASSIGNMENT OF CREDIT. A person may assign an
2 exploration incentive credit to the person's successor in interest for the mining
3 operation at which the exploration activities occur, but only if the successor in interest
4 is a person qualified to obtain the credit under AS 27.30.010(d). An exploration
5 incentive credit may not be assigned except as permitted in this section.

6 Sec. 27.30.070. RESPONSIBILITY FOR RECORD OF USE OF CREDIT.
7 For each mining operation, the commissioner may require each person who proposes
8 to take the credit under AS 27.30.020(2) to provide with the request to take the credit
9 a record of

10 (1) the person's past use of credits taken under AS 27.30.020(2) and
11 27.30.030; and

12 (2) other information that the commissioner requires to determine if
13 approval of the taking of the credit by the person would exceed the limits on use of
14 the credit under this chapter.

15 Sec. 27.30.080. RELATIONSHIP TO OTHER FUNDS. Amounts due the
16 permanent fund under AS 37.13.010 shall be calculated before the application of a
17 credit extended under this chapter.

18 Sec. 27.30.090. CONFIDENTIALITY OF DATA. (a) The commissioner shall
19 keep the exploration activity data provided under AS 27.30.020 confidential for 36
20 months after receipt by the department.

21 (b) The department is liable in damages to a person who provided the
22 exploration activity data under AS 27.30.020 if the data is disclosed in violation of (a)
23 of this section.

24 Sec. 27.30.099. DEFINITIONS. In this chapter,

25 (1) "credit" means the exploration incentive credit for activities
26 involving locatable and leasable mineral and coal deposits authorized by this chapter;

27 (2) "eligible costs" mean the costs incurred for activities in direct
28 support of exploration activity conducted at the mining operation of the exploration
29 activity for the purpose of determining the existence, location, extent, or quality of a
30 mineral or coal deposit; the term

31 (A) includes

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- 1 (i) the costs of obtaining the approvals, permits, licenses,
2 and certificates for an exploration activity set out in AS 27.30.010(a)(1)
3 - (5);
- 4 (ii) direct labor costs and the cost of benefits for
5 employees directly associated with work described in
6 AS 27.30.010(a)(1) - (5);
- 7 (iii) the cost of renting or leasing equipment from
8 parties not affiliated with the person requesting and taking the credit;
- 9 (iv) the reasonable costs of owning, maintaining, and
10 operating equipment;
- 11 (v) insurance and bond premiums associated with the
12 activities set out in (i) - (iv) of this subparagraph;
- 13 (vi) payments to consultants and independent
14 contractors; and
- 15 (vii) the general expense of operating the person's
16 business, including the costs of materials and supplies, if those expenses
17 and costs are directly attributable to the work described in
18 AS 27.30.010(a)(1) - (5);
- 19 (B) does not include return on investment, insurance or bond
20 premiums not covered under (A)(v) of this paragraph, or any other expense that
21 the person has not incurred to complete work described in AS 27.30.010(a)(1) -
22 (5);
- 23 (3) "exploration activity data" includes, as applicable,
- 24 (A) a representative skeleton core for each hole cored or a
25 representative set of cuttings for each hole rotary drilled;
- 26 (B) chemical analytical data and noninterpretive geophysical
27 data;
- 28 (C) aerial photographs or a topographic or geologic map
29 showing the location of the drill holes, sample locations, or the other
30 exploration activities undertaken;
- 31 (4) "geochemical methods" means soil, rock, water, air, vegetation, and

1 similar samples collected and their chemical analyses;

2 (5) "geophysical methods" means all geophysical data gathering
3 methods used in mineral or coal exploration, including seismic, gravity, magnetic,
4 radiometric, radar, and electromagnetic and other remote sensing measurements;

5 (6) "mining operation" includes all operating and nonoperating activities
6 related to a mineral deposit interest, and may be comprised of one or more mining
7 properties; in determining whether mining properties are part of the same mining
8 operation, the commissioner may consider whether the operation, in conducting mining
9 activities on several mining properties, uses common personnel, supply, and
10 maintenance facilities, mining-related treatment processes, storage facilities, roads,
11 pipelines and transportation equipment, and mining techniques and technology, and
12 may also consider the extent to which the mineral deposit interest comprises a common
13 mining property;

14 (7) "person" means only those persons listed in AS 27.30.010(d).

15 * Sec. 2. AS 38.05.150(d) is amended to read:

16 (d) For the privilege of mining or extracting the coal in the land covered by
17 the lease, the lessee

18 (1) shall pay to the state the royalties specified in the lease; ~~the~~ [. THE]
19 royalties shall be fixed before offering the lease, and shall be effective for a
20 period of not more than 20 years; ~~the~~ [. THE] royalties shall be not less than five
21 cents a ton of 2,000 pounds; ~~the royalty payment is subject to the exploration~~
22 ~~incentive credit authorized by AS 27.30;~~

23 (2) [. THE LESSEE] shall also pay an annual rental, payable at the
24 date of the lease and annually thereafter, on the land or coal deposits covered by the
25 lease, at a rate fixed by the commissioner before offering the lease; ~~the~~ [. THE]
26 annual rental shall be effective for a period of not more than 20 years; ~~the~~ [. THE]
27 annual rental shall be not less than 25 cents an acre for the first year of the lease, not
28 less than 50 cents an acre for the second year, third year, fourth year and fifth year,
29 and not less than \$1 an acre for each year thereafter during the continuance of the
30 lease; ~~the~~ [. THE] rental for each year shall be credited against the royalties as they
31 accrue for that year; ~~each~~ [. EACH] lease shall provide that the annual rental payment

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1 is subject to adjustment at intervals of no more than 20 years and adjustments shall be
2 based on the current rates for properties similarly situated.

3 * Sec. 3. AS 38.05.212(b) is amended to read:

4 (b) The production royalty

5 (1) is three percent of net income as determined under AS 43.65; and

6 (2) is subject to the exploration incentive credit authorized by

7 AS 27.30.

8 * Sec. 4. AS 43.20 is amended by adding a new section to read:

9 Sec. 43.20.044. EXPLORATION INCENTIVE CREDIT. (a) A taxpayer may
10 apply as a credit against the tax levied under this chapter the exploration incentive
11 credit authorized by AS 27.30.

12 (b) In a tax year in which a taxpayer applies against the tax levied under this
13 chapter the exploration incentive credit authorized by AS 27.30, the commissioner shall
14 require the taxpayer to submit the accounting of mining operation activities form
15 required by AS 27.30.030(b).

16 * Sec. 5. AS 43.65.020(a) is amended to read:

17 (a) A person subject to tax under this chapter shall make a return stating
18 specifically the items of gross income from the property, including royalty received
19 and the deductions and credits allowed by this chapter and the exploration incentive
20 credit authorized by AS 27.30, and other information for carrying out this chapter
21 that the department prescribes. The return must show the mining license number and
22 must be signed by the taxpayer or an authorized agent of the taxpayer, under penalty
23 of unsworn falsification. If receivers, trustees, or assigns are operating the property
24 or business, they shall make returns for the person engaged in mining, or the recipient
25 of royalty in connection with mining property. The tax due on the basis of the returns
26 shall be collected in the same manner as if collected from the person of whose
27 business they have custody and control. In a tax year in which a taxpayer applies
28 against the tax levied under this chapter the exploration incentive credit
29 authorized by AS 27.30, the commissioner shall require the taxpayer to submit the
30 accounting of mining operation activities form required by AS 27.30.030(b).

31 * Sec. 6. This Act is retroactive to January 1, 1995, and applies to activities that qualify

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- 1 for the exploration incentive credit authorized by AS 27.30 that are undertaken after May 15,
- 2 1995.
- 3 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).