LAWS OF ALASKA

2014

Source
SCS CSHB 287(FIN)

Chapter No.
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AN ACT

Relating to the determination of the royalty received by the state on oil production refined or processed in the state; providing tax credits for qualified infrastructure expenditures for in-state refineries; approving and ratifying the sale of royalty oil by the State of Alaska to Tesoro Corporation and Tesoro Refining and Marketing Company LLC; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

Relating to the determination of the royalty received by the state on oil production refined or processed in the state; providing tax credits for qualified infrastructure expenditures for in-state refineries; approving and ratifying the sale of royalty oil by the State of Alaska to Tesoro Corporation and Tesoro Refining and Marketing Company LLC; and providing for an effective date.

*** Section 1.** AS 38.05.180(cc) is amended to read:

(cc) The provisions of (aa)**,** [AND] (ee)**, and (hh)** of this section do not prohibit the commissioner from accepting any payment on a federal lease tendered by the federal agency responsible for determination and transmittal of the payment to the state under 30 U.S.C. 191 or otherwise due the state as the state's royalty share of gas production **or the state's royalty share of oil production** irrespective of the state's acceptance of an amount that is different than the amount due under the lease for purposes of determining royalty share on **oil and** gas production under that subsection.

*** Sec. 2.** AS 38.05.180 is amended by adding new subsections to read:

(hh) Upon written request of a lessee of a lease issued under this section or of a lessee of federal land from which the state is entitled to receive a share of the royalty on oil production, the commissioner may enter into an agreement with the lessee to accept, as a value for the state's royalty share of oil production sold to an in-state refiner, an amount that is not less than the price established in a contract between the lessee and the in-state refiner but not exceeding the amount that would otherwise be due under the lease. This subsection applies to a contract entered into after December 31, 2014. The commissioner shall respond to a request received under this subsection within 90 days after the receipt of the request by the department. The commissioner may enter into an agreement under this subsection if

(1) the commissioner issues a written finding that

(A) the agreement is in the best interest of the state;

(B) the parties to the contract between the lessee and the in-state refiner are not affiliated under (2) of this subsection; and

(C) based on clear and convincing evidence,

(i) the contract price is not unreasonably low; and

(ii) the prospective reduction in royalty receipts will be balanced by employment opportunities or other tangible benefits to the state; and

(2) the primary function of the in-state refiner's contracting with the lessee is to engage in the manufacture of refined petroleum products in the state, and the in-state refiner is not affiliated with the lessee or with a subsequent purchaser of more than 10 percent of the in-state refiner's product; the parties to a contract or purchase are affiliated if, in the judgment of the commissioner, one of the parties to the contract or purchase exercises substantial influence over the policies and actions of the other as evidenced by a relationship based on common ownership or family interest or by action taken in concert whether or not that influence is based on stockholdings, stockholders, officers, or directors.

(ii) In (cc) and (hh) of this section,

(1) "in-state refiner" means a person engaged in the manufacture of refined petroleum products in the state;

(2) "price established in a contract between the lessee and the in-state refiner" includes tax reimbursement amounts, deliverability and other charges, and other forms of consideration paid by the in-state refiner, as appropriate, under the contract;

(3) "state's royalty share of oil production" includes payments on federal leases made to the state under 30 U.S.C. 191.

*** Sec. 3.** AS 43.20 is amended by adding a new section to read:

Sec. 43.20.053. Qualified in-state oil refinery infrastructure expenditures tax credit. (a) A taxpayer that owns an in-state oil refinery whose primary function is the manufacturing and sale of refined petroleum products to third parties in arm's length transactions may apply a credit against the tax due under this chapter for a qualified infrastructure expenditure incurred in the state for a tax year beginning after December 31, 2014, and before January 1, 2020. The total amount of credit a taxpayer may receive under this section may not exceed the lesser of 40 percent of qualified infrastructure expenditures incurred in the state during the tax year or $10,000,000 for each in-state refinery for which qualified expenditures are incurred.

(b) A taxpayer applying the credit under this section against a liability under this chapter shall claim the credit on the taxpayer's return. A tax credit or portion of a tax credit under this section may not be used to reduce the taxpayer's tax liability under this chapter below zero. Any unused tax credit or portion of a tax credit under this section may be carried forward to the five tax years immediately following the tax year in which the qualified infrastructure expenditures were incurred.

(c) An expenditure that is the basis of the credit under this section may not be the basis for

(1) a deduction against the tax levied under this chapter;

(2) a credit or deduction under another provision of this title; or

(3) any federal credit claimed under this title.

(d) A person entitled to a tax credit under this section that is greater than the person's tax liability under this chapter may request a refund or payment in the amount of the unused portion of the tax credit.

(e) The department may use money available in the oil and gas tax credit fund established in AS 43.55.028 to make a refund or payment under (d) of this section in whole or in part if the department finds that

(1) the claimant does not have an outstanding liability to the state for unpaid delinquent taxes under this title; and

(2) after application of all available tax credits, the claimant's total tax liability under this chapter for the calendar year in which the claim is made is zero.

(f) A refund under this section does not bear interest.

(g) If an oil refinery ceases commercial operation during the nine calendar years immediately following the calendar year in which a credit under this section was received, regardless of whether commercial operation later resumes, the taxpayer's tax liability under this chapter will be increased. The tax liability increase is equal to the total amount of credit taken multiplied by a fraction

(1) the numerator of which is the difference between 10 and the number of calendar years for which the oil refinery was eligible for a credit under this section; and

(2) the denominator of which is 10.

(h) A person claiming a tax credit under this section for an oil refinery that ceases commercial operation or is sold during the nine calendar years immediately following the calendar year in which a credit under this section was received shall notify the department in writing of the date the oil refinery ceased commercial operation or was sold. The notice must be filed with the return for the tax year in which the oil refinery ceases commercial operation or was sold.

(i) The issuance of a refund under this section does not limit the department's ability to later audit or adjust the claim as provided in AS 43.05 if the department determines that the taxpayer claiming the credit was not entitled to the amount of the credit.

(j) In this section,

(1) "modification" means an adjustment or other alteration to existing tangible personal property that has a useful life of three years or more;

(2) "qualified infrastructure expenditure" means an expenditure for the in-state purchase, installation, or modification of tangible personal property for the in-state manufacture or in-state transport of refined petroleum products, or petroleum-based feedstock;

(3) "refined petroleum products" means separate marketable elements, compounds, or mixtures of oil in liquid form, including gasoline, diesel, jet fuel, gas oil, heating oil, and kerosene;

(4) "unpaid delinquent tax" means an amount of tax for which the department has issued an assessment that has not been paid and, if contested, has not been finally resolved in the taxpayer's favor.

* **Sec. 4.** AS 43.55.028(a) is amended to read:

(a) The oil and gas tax credit fund is established as a separate fund of the state. The purpose of the fund is to purchase transferable tax credit certificates issued under AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 and to pay refunds and payments claimed under AS 43.20.046**,** [OR] 43.20.047**, or 43.20.053**.

* **Sec. 5.** AS 43.55.028(g) is amended to read:

(g) The department may adopt regulations to carry out the purposes of this section, including standards and procedures to allocate available money among applications for purchases under this chapter and claims for refunds and payments under AS 43.20.046**,** [OR] 43.20.047**, or 43.20.053** when the total amount of the applications for purchase and claims for refund exceed the amount of available money in the fund. The regulations adopted by the department may not, when allocating available money in the fund under this section, distinguish an application for the purchase of a credit certificate issued under former AS 43.55.023(m) or a claim for a refund or payment under AS 43.20.046**,** [OR] 43.20.047**, or 43.20.053**.

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

ROYALTY OIL SALE CONTRACT WITH TESORO CORPORATION AND TESORO REFINING AND MARKETING COMPANY LLC APPROVED AND RATIFIED. In accordance with AS 38.06.055, the legislature approves and ratifies the proposed Amendment to Agreement for the Sale of Royalty Oil attached as Exhibit 1 to the final best interest finding and determination executed January 9, 2014, by the Department of Natural Resources regarding the amendment of the Agreement for the Sale of Royalty Oil between and among the State of Alaska and Tesoro Corporation, a Delaware Corporation, and Tesoro Refining and Marketing Company LLC, a Delaware Limited Liability Company, October 25, 2013.

*** Sec. 7.** Sections 1 - 5 of this Act take effect January 1, 2015.

*** Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect immediately under AS 01.10.070(c).