

CS FOR HOUSE BILL NO. 337(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 4/9/10

Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to credits against the oil and gas production tax; relating to the interest
2 rates applicable on certain amounts due related to various taxes, penalties, payments,
3 and the Alaska Gasline Inducement Act; relating to the use of the oil and gas tax credit
4 fund to purchase certain tax credit certificates; and providing for an effective date."

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

6 * **Section 1.** AS 05.15.095(c) is amended to read:

7 (c) A delinquent fee bears interest at the rate set by AS 43.05.225(2)
8 [AS 43.05.225].

9 * **Sec. 2.** AS 34.45.470(a) is amended to read:

10 (a) A person who fails to pay or deliver property within the time prescribed by
11 this chapter may be required to pay to the department interest at the annual rate
12 calculated under AS 43.05.225(2) [AS 43.05.225] on the property or the value of it
13 from the date the property should have been paid or delivered.

14 * **Sec. 3.** AS 43.05.225 is amended to read:

1 **Sec. 43.05.225. Interest.** Unless otherwise provided,

2 (1) when a tax levied in this title becomes delinquent, it bears interest
3 in a calendar quarter at the rate of five percentage points above the annual rate charged
4 member banks for advances by the 12th Federal Reserve District as of the first day of
5 that calendar quarter, [OR AT THE ANNUAL RATE OF 11 PERCENT,
6 WHICHEVER IS GREATER,] compounded quarterly as of the last day of that
7 quarter;

8 (2) the interest rate is 12 percent a year for

9 (A) delinquent fees payable under AS 05.15.095(c); and

10 (B) [REPEALED

11 (C)] unclaimed property that is not timely paid or delivered, as
12 allowed by AS 34.45.470(a).

13 * **Sec. 4.** AS 43.50.570 is amended to read:

14 **Sec. 43.50.570. Interest.** A licensee who fails to pay an amount due for the
15 purchase of stamps within the time required

16 (1) is considered to have failed to pay the cigarette taxes due under this
17 chapter; and

18 (2) shall pay interest at the rate established under AS 43.05.225(1)
19 [AS 43.05.225] from the date on which the amount became due until the date of
20 payment.

21 * **Sec. 5.** AS 43.55.020(g) is amended to read:

22 (g) Notwithstanding any contrary provision of AS 43.05.225, an unpaid
23 amount of an installment payment required under (a)(1) - (3) of this section that is not
24 paid when due bears interest (1) at the rate provided for an underpayment under 26
25 U.S.C. 6621 (Internal Revenue Code), as amended, compounded daily, from the date
26 the installment payment is due until March 31 following the calendar year of
27 production, and (2) as provided for a delinquent tax under AS 43.05.225(1)
28 [AS 43.05.225] after that March 31. Interest accrued under (1) of this subsection that
29 remains unpaid after that March 31 is treated as an addition to tax that bears interest
30 under (2) of this subsection. An unpaid amount of tax due under (a)(4) of this section
31 that is not paid when due bears interest as provided for a delinquent tax under

1 **AS 43.05.225(1)** [AS 43.05.225].

2 * **Sec. 6.** AS 43.55.020 is amended by adding a new subsection to read:

3 (i) Notwithstanding any contrary provision of AS 43.05.225 or (g) or (h) of
4 this section, if the amount of a tax payment, including an installment payment, due
5 under (a)(1) - (4) of this section is affected by the retroactive application of a
6 regulation adopted under this chapter, the department shall determine whether the
7 retroactive application of the regulation caused an underpayment or an overpayment of
8 the amount due and adjust the interest due on the affected payment as follows:

9 (1) if an underpayment of the amount due occurred, the department
10 shall waive interest that would otherwise accrue for the underpayment before the first
11 day of the second month following the month in which the regulation became
12 effective, if

13 (A) the department determines that the producer's
14 underpayment resulted because the regulation was not in effect when the
15 payment was due; and

16 (B) the producer demonstrates that it made a good faith
17 estimate of its tax obligation in light of the regulations then in effect when the
18 payment was due and paid the estimated tax;

19 (2) if an overpayment of the amount due occurred and the department
20 determines that the producer's overpayment resulted because the regulation was not in
21 effect when the payment was due, the obligation for a refund for the overpayment does
22 not begin to accrue interest earlier than the following, as applicable:

23 (A) except as otherwise provided under (B) of this paragraph,
24 the first day of the second month following the month in which the regulation
25 became effective;

26 (B) 90 days after an amended statement under AS 43.55.030(a)
27 and an application to request a refund of production tax paid is filed, if the
28 overpayment was for a period for which an amended statement under
29 AS 43.55.030(a) was required to be filed before the regulation became
30 effective.

31 * **Sec. 7.** AS 43.55.023(a) is amended to read:

1 (a) A producer or explorer may take a tax credit for a qualified capital
2 expenditure as follows:

3 (1) notwithstanding that a qualified capital expenditure may be a
4 deductible lease expenditure for purposes of calculating the production tax value of oil
5 and gas under AS 43.55.160(a), unless a credit for that expenditure is taken under
6 AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025, a producer or
7 explorer that incurs a qualified capital expenditure may also elect to apply a tax credit
8 against a tax levied by AS 43.55.011(e) in the amount of 20 percent of that
9 expenditure; [HOWEVER, NOT MORE THAN HALF OF THE TAX CREDIT MAY
10 BE APPLIED FOR A SINGLE CALENDAR YEAR;]

11 (2) a producer or explorer may take a credit for a qualified capital
12 expenditure incurred in connection with geological or geophysical exploration or in
13 connection with an exploration well only if the producer or explorer

14 (A) agrees, in writing, to the applicable provisions of
15 AS 43.55.025(f)(2);

16 (B) submits to the Department of Natural Resources all data
17 that would be required to be submitted under AS 43.55.025(f)(2).

18 * **Sec. 8.** AS 43.55.023(d) is amended to read:

19 (d) Except as limited by (i) of this section, a person that is entitled to take a tax
20 credit under this section that wishes to transfer the unused credit to another person or
21 obtain a cash payment under AS 43.55.028 may apply to the department for a
22 transferable tax credit **certificate** [CERTIFICATES]. An application under this
23 subsection must be in a form prescribed by the department and must include
24 supporting information and documentation that the department reasonably requires.
25 The department shall grant or deny an application, or grant an application as to a lesser
26 amount than that claimed and deny it as to the excess, not later than 120 days after the
27 latest of (1) March 31 of the year following the calendar year in which the qualified
28 capital expenditure or carried-forward annual loss for which the credit is claimed was
29 incurred; (2) the date the statement required under AS 43.55.030(a) or (e) was filed for
30 the calendar year in which the qualified capital expenditure or carried-forward annual
31 loss for which the credit is claimed was incurred; or (3) the date the application was

1 received by the department. If, based on the information then available to it, the
 2 department is reasonably satisfied that the applicant is entitled to a credit, the
 3 department shall issue the applicant a [TWO TRANSFERABLE] tax credit certificate
 4 [CERTIFICATES, EACH FOR HALF OF THE AMOUNT OF THE CREDIT]. The
 5 credit shown on [ONE OF] the certificate [TWO CERTIFICATES] is available for
 6 immediate use. [THE CREDIT SHOWN ON THE SECOND OF THE TWO
 7 CERTIFICATES MAY NOT BE APPLIED AGAINST A TAX FOR A CALENDAR
 8 YEAR EARLIER THAN THE CALENDAR YEAR FOLLOWING THE
 9 CALENDAR YEAR IN WHICH THE CERTIFICATE IS ISSUED, AND THE
 10 CERTIFICATE MUST CONTAIN A CONSPICUOUS STATEMENT TO THAT
 11 EFFECT.] A certificate issued under this subsection does not expire.

12 * **Sec. 9.** AS 43.55.023(g) is amended to read:

13 (g) The issuance of a transferable tax credit certificate under (d) of this section
 14 or the purchase of a certificate under AS 43.55.028 does not limit the department's
 15 ability to later audit a tax credit claim to which the certificate relates or to adjust the
 16 claim if the department determines, as a result of the audit, that the applicant was not
 17 entitled to the amount of the credit for which the certificate was issued. The tax
 18 liability of the applicant under AS 43.55.011(e) and 43.55.017 - 43.55.180 is increased
 19 by the amount of the credit that exceeds that to which the applicant was entitled, or the
 20 applicant's available valid outstanding credits applicable against the tax levied by
 21 AS 43.55.011(e) are reduced by that amount. If the applicant's tax liability is increased
 22 under this subsection, the increase bears interest under AS 43.05.225(1)
 23 [AS 43.05.225] from the date the transferable tax credit certificate was issued. For
 24 purposes of this subsection, an applicant that is an explorer is considered a producer
 25 subject to the tax levied by AS 43.55.011(e).

26 * **Sec. 10.** AS 43.55.023 is amended by adding a new subsection to read:

27 (m) A producer or explorer may take a tax credit for a well-related
 28 expenditure incurred after June 30, 2010, and before July 1, 2016, as follows:

29 (1) notwithstanding that a well-related expenditure may be a
 30 deductible lease expenditure under AS 43.55.165 for purposes of calculating the
 31 production tax value of oil and gas under AS 43.55.160(a), unless a credit for that

1 expenditure is taken under (a) of this section, AS 38.05.180(i), AS 41.09.010,
 2 AS 43.20.043, or AS 43.55.025, a producer or explorer that incurs a well-related
 3 expenditure may also elect to apply a credit against a tax levied by AS 43.55.011(e) in
 4 the amount of 30 percent of the expenditures during a calendar year that exceed the
 5 average annual well-related expenditures for the calendar years 2008 and 2009; the
 6 producer or explorer shall submit the amount of well-related expenditures for each of
 7 the years 2008 and 2009, at the time an election is made to apply the credit authorized
 8 by this subsection;

9 (2) a producer or explorer may take a credit for a well-related
 10 expenditure incurred in connection with geological or geophysical exploration or in
 11 connection with an exploration well only if the producer or explorer

12 (A) agrees, in writing, to the applicable provisions of
 13 AS 43.55.025(f)(2); and

14 (B) submits to the Department of Natural Resources all data
 15 that would be required to be submitted under AS 43.55.025(f)(2) for a credit
 16 under AS 43.55.025;

17 (3) in this subsection, "well-related expenditure" means a lease
 18 expenditure

19 (A) directly related to an exploration well, a stratigraphic test
 20 well, a producing well, or an injection well other than a disposal well, if the
 21 expenditure is a qualified capital expenditure and an intangible drilling and
 22 development cost under 26 U.S.C. 263(c), as amended, and 26 C.F.R. 1.612-4,
 23 regardless of the elections made under 26 U.S.C. 263(c); in this subparagraph,
 24 an expenditure directly related to a well includes an expenditure for well
 25 drilling, well sidetracking, well deepening, well testing, well stimulation, well
 26 completion or recompletion, or well workover, regardless as to whether the
 27 well is or has been a producing well; or

28 (B) for seismic work conducted within the boundaries of a
 29 production or exploration unit.

30 * **Sec. 11.** AS 43.77.020(d) is amended to read:

31 (d) A person subject to the tax under this chapter shall make quarterly

1 payments of the tax estimated to be due for the year, as required under regulations
 2 adopted by the department. A taxpayer will be subject to an estimated tax penalty,
 3 determined by applying the interest rate specified in AS 43.05.225(1) [AS 43.05.225]
 4 to the underpayment for each quarter, unless the taxpayer makes estimated tax
 5 payments in equal installments that total either

6 (1) at least 90 percent of the taxpayer's tax liability under this chapter
 7 for the tax year; or

8 (2) at least 100 percent of the taxpayer's tax liability under this chapter
 9 for the prior tax year.

10 * **Sec. 12.** AS 43.90.430 is amended to read:

11 **Sec. 43.90.430. Interest.** When a payment due to the state under this chapter
 12 becomes delinquent, the payment bears interest at the rate applicable to a delinquent
 13 tax under AS 43.05.225(1) [AS 43.05.225].

14 * **Sec. 13.** AS 43.55.028(e)(2) and 43.55.028(e)(3) are repealed.

15 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
 16 read:

17 TRANSITION: APPLICABILITY OF SEC. 6 OF THIS ACT. Section 6 of this Act
 18 applies to taxes, including installment payments of estimated tax, due on or after February 27,
 19 2007.

20 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
 21 read:

22 RETROACTIVITY OF REGULATIONS. Notwithstanding any contrary provision of
 23 AS 44.62.240, if the Department of Revenue expressly designates in a regulation to
 24 implement, interpret, make specific or otherwise carry out secs. 6, 7, or 8 of this Act, or
 25 AS 43.55.023(m), as enacted by sec. 10 of this Act, that the regulation applies retroactively to
 26 a specific date, the regulation applies retroactively to that date.

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

29 RETROACTIVITY OF SECS. 6 - 8 OF THIS ACT. (a) Section 6 of this Act is
 30 retroactive to February 28, 2007.

31 (b) Sections 7 and 8 of this Act are retroactive to January 1, 2010.

1 * **Sec. 17.** Sections 1 - 5, and 9 - 11 of this Act take effect July 1, 2010.

2 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect immediately under

3 AS 01.10.070(c).