

HOUSE BILL NO. 407

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES TUCK, Kawasaki

Introduced: 2/23/10

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing a rebate of the production tax on oil and gas based on the**
2 **employment of resident workers; imposing a penalty under the production tax on oil**
3 **and gas on persons that fail to employ a certain percentage of resident workers; relating**
4 **to the tax rate applicable to oil and gas production; relating to employee records**
5 **required to be kept by an employer that provides labor the cost of which is a lease**
6 **expenditure for purposes of the production tax on oil and gas; and providing for an**
7 **effective date."**

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

9 *** Section 1.** AS 23.05.080 is amended by adding a new subsection to read:

10 (b) In addition to the records that must be kept under (a) of this section, an
11 employer that provides labor, the cost of which is a lease expenditure under
12 AS 43.55.165(a), shall keep the records required under this subsection. For each
13 employee, an employer subject to this subsection shall keep an accurate record of the

1 name, address, and occupation of the person, the daily and weekly hours worked by
 2 the person, and whether the person is a resident worker. The employer shall keep an
 3 accurate record of the total numbers of hours during a calendar year worked by
 4 resident workers, the total number of hours during a calendar year worked by persons
 5 that are not resident workers, and the wages paid each pay period to each person. A
 6 record required under this subsection shall be kept on file for at least three years and
 7 may be provided to the Department of Revenue by request. In this subsection,

8 (1) "hours" means the hours of labor the cost of which is included in an
 9 allowable lease expenditure under AS 43.55.165; and

10 (2) "resident worker" has the meaning given in AS 43.55.900.

11 * **Sec. 2.** AS 23.05.100 is amended to read:

12 **Sec. 23.05.100. Inspections and examination of records.** The department
 13 may

14 (1) enter a place of employment during regular hours of employment
 15 and, in cooperation with the employer, or someone designated by the employer, collect

16 (A) facts and statistics relating to the employment of workers;

17 **and**

18 **(B) information required to be kept under AS 23.05.080(b)**
 19 **for the purpose of verifying whether a person subject to tax under**
 20 **AS 43.55.011(e) is eligible for a rebate under AS 43.55.022 or is subject to**
 21 **the penalty in AS 43.55.026;**

22 (2) make inspections for the proper enforcement of all state labor laws;

23 (3) for the purpose of examination, have access to and copy from any
 24 book, account, record, payroll, paper, or document relating to the employment of
 25 workers.

26 * **Sec. 3.** AS 43.55.011(e) is amended to read:

27 (e) There is levied on the producer of oil or gas a tax for all oil and gas
 28 produced each calendar year from each lease or property in the state, less any oil and
 29 gas the ownership or right to which is exempt from taxation or constitutes a
 30 landowner's royalty interest. Except as otherwise provided under (f), (j), (k), and (o) of
 31 this section, the tax is equal to the sum of

1 (1) the annual production tax value of the taxable oil and gas as
2 calculated under AS 43.55.160(a)(1) multiplied by 27 [25] percent; and

3 (2) the sum, over all months of the calendar year, of the tax amounts
4 determined under (g) of this section.

5 * **Sec. 4.** AS 43.55.011(i) is amended to read:

6 (i) There is levied on the producer of oil or gas a tax for all oil and gas
7 produced each calendar year from each lease or property in the state the ownership or
8 right to which constitutes a landowner's royalty interest, except for oil and gas the
9 ownership or right to which is exempt from taxation. The provisions of this subsection
10 apply to a landowner's royalty interest as follows:

11 (1) the tax levied for oil is equal to five percent of the gross value at
12 the point of production of the oil;

13 (2) the tax levied for gas is equal to 1.667 percent of the gross value at
14 the point of production of the gas;

15 (3) if the department determines that, for purposes of reducing the
16 producer's tax liability under (1) or (2) of this subsection, the producer has received or
17 will receive consideration from the royalty owner offsetting all or a part of the
18 producer's royalty obligation, other than a deduction under AS 43.55.020(d) of the
19 amount of a tax paid, then, notwithstanding (1) and (2) of this subsection, the tax is
20 equal to 27 [25] percent of the gross value at the point of production of the oil and gas.

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

22 (a) For a calendar year, a producer subject to tax under AS 43.55.011(e) - (i)
23 shall pay the tax as follows:

24 (1) an installment payment of the estimated tax levied by
25 AS 43.55.011(e), net of any tax credits applied as allowed by law, is due for each
26 month of the calendar year on the last day of the following month; except as otherwise
27 provided under (2) of this subsection, the amount of the installment payment is the
28 sum of the following amounts, less 1/12 of the tax credits that are allowed by law to be
29 applied against the tax levied by AS 43.55.011(e) for the calendar year, but the amount
30 of the installment payment may not be less than zero:

31 (A) for oil and gas produced from leases or properties in the

1 state outside the Cook Inlet sedimentary basin but not subject to
2 AS 43.55.011(o), other than leases or properties subject to AS 43.55.011(f), the
3 greater of

4 (i) zero; or

5 (ii) the sum of 27 [25] percent and the tax rate
6 calculated for the month under AS 43.55.011(g) multiplied by the
7 remainder obtained by subtracting 1/12 of the producer's adjusted lease
8 expenditures for the calendar year of production under AS 43.55.165
9 and 43.55.170 that are deductible for the leases or properties under
10 AS 43.55.160 from the gross value at the point of production of the oil
11 and gas produced from the leases or properties during the month for
12 which the installment payment is calculated;

13 (B) for oil and gas produced from leases or properties subject
14 to AS 43.55.011(f), the greatest of

15 (i) zero;

16 (ii) zero percent, one percent, two percent, three
17 percent, or four percent, as applicable, of the gross value at the point of
18 production of the oil and gas produced from all leases or properties
19 during the month for which the installment payment is calculated; or

20 (iii) the sum of 27 [25] percent and the tax rate
21 calculated for the month under AS 43.55.011(g) multiplied by the
22 remainder obtained by subtracting 1/12 of the producer's adjusted lease
23 expenditures for the calendar year of production under AS 43.55.165
24 and 43.55.170 that are deductible for those leases or properties under
25 AS 43.55.160 from the gross value at the point of production of the oil
26 and gas produced from those leases or properties during the month for
27 which the installment payment is calculated;

28 (C) for oil and gas produced from each lease or property
29 subject to AS 43.55.011(j), (k), or (o), the greater of

30 (i) zero; or

31 (ii) the sum of 27 [25] percent and the tax rate

1 calculated for the month under AS 43.55.011(g) multiplied by the
2 remainder obtained by subtracting 1/12 of the producer's adjusted lease
3 expenditures for the calendar year of production under AS 43.55.165
4 and 43.55.170 that are deductible under AS 43.55.160 for oil or gas,
5 respectively, produced from the lease or property from the gross value
6 at the point of production of the oil or gas, respectively, produced from
7 the lease or property during the month for which the installment
8 payment is calculated;

9 (2) an amount calculated under (1)(C) of this subsection for oil or gas
10 produced from a lease or property subject to AS 43.55.011(j), (k), or (o) may not
11 exceed the product obtained by carrying out the calculation set out in
12 AS 43.55.011(j)(1) or (2) or 43.55.011(o), as applicable, for gas or set out in
13 AS 43.55.011(k)(1) or (2), as applicable, for oil, but substituting in
14 AS 43.55.011(j)(1)(A) or (2)(A) or 43.55.011(o), as applicable, the amount of taxable
15 gas produced during the month for the amount of taxable gas produced during the
16 calendar year and substituting in AS 43.55.011(k)(1)(A) or (2)(A), as applicable, the
17 amount of taxable oil produced during the month for the amount of taxable oil
18 produced during the calendar year;

19 (3) an installment payment of the estimated tax levied by
20 AS 43.55.011(i) for each lease or property is due for each month of the calendar year
21 on the last day of the following month; the amount of the installment payment is the
22 sum of

23 (A) the applicable tax rate for oil provided under
24 AS 43.55.011(i), multiplied by the gross value at the point of production of the
25 oil taxable under AS 43.55.011(i) and produced from the lease or property
26 during the month; and

27 (B) the applicable tax rate for gas provided under
28 AS 43.55.011(i), multiplied by the gross value at the point of production of the
29 gas taxable under AS 43.55.011(i) and produced from the lease or property
30 during the month;

31 (4) any amount of tax levied by AS 43.55.011(e) or (i), net of any

1 credits applied as allowed by law, that exceeds the total of the amounts due as
2 installment payments of estimated tax is due on March 31 of the year following the
3 calendar year of production.

4 * **Sec. 6.** AS 43.55 is amended by adding a new section to read:

5 **Sec. 43.55.022. Tax rebate for employing resident workers.** (a) Subject to
6 appropriation and the requirements of this section, a taxpayer subject to tax under
7 AS 43.55.011(e)(1) that incurs labor costs that are allowable lease expenditures under
8 AS 43.55.165 is entitled to a rebate if 80 percent or more of the labor is done by
9 resident workers.

10 (b) The amount of the rebate is equal to a percentage of the tax paid under
11 AS 43.55.011(e)(1) based on the percentage of labor done by resident workers the cost
12 of which is included in an allowable lease expenditure under AS 43.55.165. The
13 amount of the rebate is equal to the following percentage of the tax paid under
14 AS 43.55.011(e)(1):

15 (1) two percent if the percentage of labor done by resident workers is
16 80 percent;

17 (2) the difference by which the percentage of labor done by resident
18 workers exceeds 80 percent, except the percentage of the tax paid under
19 AS 43.55.011(e) determined under this paragraph may not be less than two percent.

20 (c) The percentage of labor done by resident workers is

21 (1) determined on a calendar year basis using the number of hours of
22 labor the cost of which is a lease expenditure, and includes all hours of labor,
23 regardless of whether a worker is paid on an hourly or some other basis; and

24 (2) a fraction the numerator of which is the number of hours of labor
25 done by resident workers the cost of which is a lease expenditure, and the denominator
26 of which is the number of hours of labor by all workers the cost of which is a lease
27 expenditure, expressed as a percentage.

28 (d) A person subject to tax under AS 43.55.011(e) shall report employment
29 information at the time a statement must be filed under AS 43.55.030(a) for each
30 calendar year. The report must include the following for the calendar year for which a
31 statement is required under AS 43.55.030(a):

1 (1) the number of hours of labor, the cost of which is a lease
2 expenditure;

3 (2) the number of hours of labor done by resident workers that are
4 included in (1) of this subsection;

5 (3) the total cost of labor that is a lease expenditure;

6 (4) the name of each employee providing labor the cost of which is the
7 basis for a rebate claimed under this section;

8 (5) other information required by the department in a regulation
9 adopted to administer this section, including the names of the resident workers whose
10 hours of labor are included in (1) of this subsection.

11 (e) At the same time the report is filed with the department under (d) of this
12 section, the person shall file a copy of the report with the commissioner of labor and
13 workforce development. The report must include the information in (d)(1), (2), and (4)
14 of this section and other information required by the commissioner of labor and
15 workforce development by regulation. Any amendment to the report in (d) of this
16 section that changes the information in (d)(1) and (2) of this section must also be filed
17 with the commissioner of labor and workforce development. At the request of the
18 commissioner, the Department of Labor and Workforce Development shall audit the
19 information reported in (d)(1), (2), and (4) of this section and notify the commissioner
20 of the results of the audit.

21 (f) A person claiming a rebate under this section has the burden of proving
22 eligibility for the rebate, including a claim that an individual is a resident worker.

23 (g) The department shall report to the legislature the amount of rebates paid
24 under this section and statistical information relating to the percentage of labor done
25 by resident workers based on hours worked.

26 * **Sec. 7.** AS 43.55 is amended by adding a new section to read:

27 **Sec. 43.55.026. Penalty for underemployment of resident workers.** (a) A
28 taxpayer subject to tax under AS 43.55.011(e)(1) that incurs labor costs that are
29 allowable lease expenditures under AS 43.55.165 is subject to the penalty described in
30 this section if less than 80 percent of the labor is done by resident workers.

31 (b) The amount of the penalty is equal to the amount of tax paid under

1 AS 43.55.011(e)(1) multiplied by the percentage determined by subtracting the
 2 percentage of labor done by resident workers, the cost of which is included in an
 3 allowable lease expenditure under AS 43.55.165, from 80 percent.

4 (c) For the purposes of this section, the percentage of labor done by resident
 5 workers is determined under AS 43.55.022(c).

6 * **Sec. 8.** 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, the rebate under AS 43.55.022, or the penalty under
 14 AS 43.55.026; notwithstanding any contrary provision of law, the disclosure of
 15 additional information under this paragraph to the producer obligated to pay the tax
 16 does not violate AS 40.25.100(a) or AS 43.05.230(a); before disclosing information
 17 under this paragraph that is otherwise required to be held confidential under
 18 AS 40.25.100(a) or AS 43.05.230(a), the department shall

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

22 (B) impose appropriate conditions limiting

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

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

28 (2) examine the books, records, and files of the person;

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

31 (4) make an investigation or hold an inquiry that is considered

1 necessary to a disclosure of the facts as to

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

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

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

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

17 (7) assess against a person required under this section to file a report,
18 statement, or other document a penalty, as determined by the department under
19 standards adopted in regulation by the department, of not more than \$1,000 for each
20 day the person fails to file the report, statement, or other document after notice by the
21 department; the penalty is in addition to any penalties under AS 43.05.220 and
22 43.05.290 and is assessed, collected, and paid in the same manner as a tax deficiency
23 under this title; the penalty shall bear interest at the rate specified under
24 AS 43.05.225(1).

25 * **Sec. 9.** AS 43.55.900 is amended by adding new paragraphs to read:

26 (25) "lease expenditure" means an expenditure allowed as a lease
27 expenditure under AS 43.55.165;

28 (26) "resident worker" means an individual who

29 (A) is physically present in the state with the intent to remain in
30 the state indefinitely and has a home in the state;

31 (B) demonstrates that intent by maintaining a residence in the

1 state;

2 (C) possesses a resident fishing, trapping, or hunting license, or
3 receives a permanent fund dividend; and

4 (D) may be required to state under oath that the individual is
5 not claiming residency outside of the state or obtaining benefits under a claim
6 of residency outside of the state.

7 * **Sec. 10.** AS 44.31.020 is amended to read:

8 **Sec. 44.31.020. Duties of department.** The Department of Labor and
9 Workforce Development shall

10 (1) enforce the laws and adopt regulations under them concerning
11 employer-employee relationships, including the safety, hours of work, wages, and
12 conditions of workers, including children;

13 (2) accumulate, analyze, and report labor statistics;

14 (3) operate systems of workers' compensation and unemployment
15 insurance;

16 (4) gather data reflecting the cost of living in the various election
17 districts of the state upon request of the director of personnel under AS 39.27.030; in
18 this paragraph, "election district" has the meaning given in AS 39.27.020(b);

19 (5) operate the federally funded employment and training programs
20 under 29 U.S.C. 2801 - 2945 (Workforce Investment Act of 1998);

21 (6) administer the state's program of adult basic education and adopt
22 regulations to administer the program; [AND]

23 (7) administer the programs of the Alaska Vocational Technical Center
24 and adopt regulations to administer the programs, including regulations that set rates
25 for student tuition and room and board and fees for the programs and services
26 provided by the department regarding the Alaska Vocational Technical Center; **and**

27 **(8) at the request of the commissioner of revenue, audit**
28 **information described in AS 43.55.022(d)(1), (2), and (4) that is submitted to the**
29 **Department of Revenue by a person subject to tax under AS 43.55.011(e).**

30 * **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).