CS FOR SENATE BILL NO. 21(FIN) am(efd fld)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 3/20/13
Offered: 3/18/13

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

A BILL

FOR AN ACT ENTITLED

"An Act relating to the interest rate applicable to certain amounts due for fees, taxes, and payments made and property delivered to the Department of Revenue; providing a tax credit against the corporation income tax for qualified oil and gas service industry expenditures; relating to the oil and gas production tax rate; relating to gas used in the state; relating to monthly installment payments of the oil and gas production tax; relating to oil and gas production tax credits for certain losses and expenditures; relating to oil and gas production tax credit certificates; relating to nontransferable tax credits based on production; relating to the oil and gas tax credit fund; relating to annual statements by producers and explorers; establishing the Oil and Gas Competitiveness Review Board; and making conforming amendments."

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

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

(c) A delinquent fee bears interest at the rate set by **<u>AS 43.05.225(2)</u>** [AS 43.05.225].

*** Sec. 2.** AS 29.60.850(b) is amended to read:

(b) Each fiscal year, the legislature may appropriate **<u>an amount</u>** to the community revenue sharing fund [AN AMOUNT EQUAL TO 20 PERCENT OF THE MONEY RECEIVED BY THE STATE DURING THE PREVIOUS CALENDAR YEAR UNDER AS 43.55.011(g)]. The amount may not exceed

(1) $60,000,000; or

(2) the amount that, when added to the fund balance on June 30 of the previous fiscal year, equals $180,000,000.

*** Sec. 3.** AS 34.45.470(a) is amended to read:

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

*** Sec. 4.** AS 43.05.225 is amended to read:

Sec. 43.05.225. Interest. Unless otherwise provided,

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

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

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

(B) unclaimed property that is not timely paid or delivered, as allowed by AS 34.45.470(a).

*** Sec. 5.** AS 43.20.046(i) is amended to read:

(i) The issuance of a refund under this section does not limit the department's ability to later audit or adjust the claim if the department determines, as a result of the audit, that the person that claimed the credit was not entitled to the amount of the credit. The tax liability of the person receiving the credit under this chapter is increased by the amount of the credit that exceeds that to which the person was entitled. If the tax liability is increased under this subsection, the increase bears interest under **<u>AS 43.05.225(1)</u>** [AS 43.05.225] from the date the refund was issued.

*** Sec. 6.** AS 43.20.047(i) is amended to read:

(i) The issuance of a refund under this section does not limit the department's ability to later audit or adjust the claim if the department determines, as a result of the audit, that the person that claimed the credit was not entitled to the amount of the credit. The tax liability of the person receiving the credit under this section is increased by the amount of the credit that exceeds that to which the person was entitled. If the tax liability is increased under this subsection, the increase bears interest at the rate set by **<u>AS 43.05.225(1)</u>** [AS 43.05.225] from the date the refund was issued.

*** Sec. 7.** AS 43.20 is amended by adding a new section to read:

Sec. 43.20.049. Qualified oil and gas industry service expenditure credit. (a) For a tax year beginning after the effective date of this section, a taxpayer may apply a credit against the tax due under this chapter for a qualified oil and gas service industry expenditure incurred in the state. The total amount of credit a taxpayer may receive in a tax year may not exceed the lesser of 10 percent of qualified oil and gas industry service expenditures incurred in the state during the tax year or $10,000,000.

(b) A taxpayer may not apply more than $10,000,000 in tax credits under this section in a tax year. 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 applied in later tax years, except that any unused tax credit or portion of a tax credit may not be carried forward for more than five tax years immediately following the tax year in which the qualified oil and gas service industry 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) Notwithstanding any contrary provision of AS 40.25.100(a) or AS 43.05.230(e), for a year that three or more taxpayers claim a tax credit under this section, the department may publish the aggregated amount of tax credits claimed under this section and a description of the qualified oil and gas service industry expenditures that were the basis for a tax credit under this section.

(e) In this section,

(1) "manufacture" means to perform substantial industrial operations in the state to transform raw material into tangible personal property with a useful life of three years or more for use in the exploration, development, or production of oil or gas deposits;

(2) "modification" means an adjustment, equipping, or other alteration to existing tangible personal property that has a useful life of three years or more and is for use in the exploration, development, or production of oil or gas deposits; "modification" does not include minor product alterations or inventory activities;

(3) "qualified oil and gas service industry expenditure" means an expenditure directly attributable to an in-state manufacture or in-state modification of tangible personal property used in the exploration, development, or production of oil or gas deposits, but does not include components or equipment used for or in the process of that manufacturing or modification.

*** Sec. 8.** AS 43.50.570 is amended to read:

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

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

(2) shall pay interest at the rate established under **<u>AS 43.05.225(1)</u>** [AS 43.05.225] from the date on which the amount became due until the date of payment.

*** Sec. 9.** AS 43.55.011(e) is amended to read:

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

(1)] the annual production tax value of the taxable oil and gas as calculated under <u>**AS 43.55.160(a)**</u> [AS 43.55.160(a)(1)] multiplied by <u>**35**</u> [25] percent [; AND

(2) THE SUM, OVER ALL MONTHS OF THE CALENDAR YEAR, OF THE TAX AMOUNTS DETERMINED UNDER (g) OF THIS SECTION].

*** Sec. 10.** AS 43.55.011(o) is amended to read:

(o) Notwithstanding other provisions of this section, for a calendar year before 2022, the tax levied under (e) of this section for each 1,000 cubic feet of gas for gas produced from a lease or property outside the Cook Inlet sedimentary basin and used in the state<u>**, other than gas subject to (p) of this section,**</u> may not exceed the amount of tax for each 1,000 cubic feet of gas that is determined under (j)(2) of this section.

*** Sec. 11.** AS 43.55.020(a) is amended to read:

(a) For a calendar year, a producer subject to tax under <u>**AS 43.55.011**</u> [AS 43.55.011(e) - (i) OR (p)] shall pay the tax as follows:

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

(A) for oil and gas <u>**not subject to AS 43.55.011(o) or (p)**</u> produced from leases or properties in the state outside the Cook Inlet sedimentary basin [BUT NOT SUBJECT TO AS 43.55.011(o) OR (p)], other than leases or properties subject to AS 43.55.011(f), the greater of

(i) zero; or

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

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

(i) zero;

(ii) zero percent, one percent, two percent, three percent, or four percent, as applicable, of the gross value at the point of production of the oil and gas produced from **<u>the</u>** [ALL] leases or properties during the month for which the installment payment is calculated; or

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

(C) for oil **<u>or</u>** [AND] gas [PRODUCED FROM EACH LEASE OR PROPERTY] subject to AS 43.55.011(j), (k), **<u>or</u>** (o) [, OR (p)], **<u>for each lease or property,</u>** the greater of

(i) zero; or

(ii) the sum of 25 percent and the tax rate calculated for the month under AS 43.55.011(g) multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible under AS 43.55.160 for **<u>the</u>** oil or gas, respectively, produced from the lease or property from the gross value at the point of production of the oil or gas, respectively, produced from the lease or property during the month for which the installment payment is calculated;

(D) for oil and gas subject to AS 43.55.011(p), the lesser of

(i) the sum of 25 percent and the tax rate calculated for the month under AS 43.55.011(g) multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for the oil and gas under AS 43.55.160 from the gross value at the point of production of the oil and gas produced from the leases or properties during the month for which the installment payment is calculated, but not less than zero; or

(ii) four percent of the gross value at the point of production of the oil and gas produced from the leases or properties during the month, but not less than zero;

(2) an amount calculated under (1)(C) of this subsection for oil or gas [PRODUCED FROM A LEASE OR PROPERTY

(A)] subject to AS 43.55.011(j), (k), or (o) may not exceed the product obtained by carrying out the calculation set out in AS 43.55.011(j)(1) or (2) or 43.55.011(o), as applicable, for gas or set out in AS 43.55.011(k)(1) or (2), as applicable, for oil, but substituting in AS 43.55.011(j)(1)(A) or (2)(A) or 43.55.011(o), as applicable, the amount of taxable gas produced during the month for the amount of taxable gas produced during the calendar year and substituting in AS 43.55.011(k)(1)(A) or (2)(A), as applicable, the amount of taxable oil produced during the month for the amount of taxable oil produced during the calendar year;

[(B) SUBJECT TO AS 43.55.011(p) MAY NOT EXCEED FOUR PERCENT OF THE GROSS VALUE AT THE POINT OF PRODUCTION OF THE OIL OR GAS;]

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

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

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

(4) any amount of tax levied by **<u>AS 43.55.011</u>** [AS 43.55.011(e) OR (i)], net of any credits applied as allowed by law, that exceeds the total of the amounts due as installment payments of estimated tax is due on March 31 of the year following the calendar year of production.

*** Sec. 12.** AS 43.55.020(a), as amended by sec. 11 of this Act, is amended to read**:**

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

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

(A) for oil and gas not subject to AS 43.55.011(o) or (p) produced from leases or properties in the state outside the Cook Inlet sedimentary basin, other than leases or properties subject to AS 43.55.011(f), the greater of

(i) zero; or

(ii) __**35 percent**__ [THE SUM OF 25 PERCENT AND THE TAX RATE CALCULATED FOR THE MONTH UNDER AS 43.55.011(g] multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for the oil and gas under AS 43.55.160 from the gross value at the point of production of the oil and gas produced from the leases or properties during the month for which the installment payment is calculated;

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

(i) zero;

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

(iii) __**35 percent**__ [THE SUM OF 25 PERCENT AND THE TAX RATE CALCULATED FOR THE MONTH UNDER AS 43.55.011(g)] multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for __**the**__ oil and gas under AS 43.55.160 from the gross value at the point of production of the oil and gas produced from those leases or properties during the month for which the installment payment is calculated__**, except that, for the purposes of this calculation, a 20 percent exclusion from the gross value at the point of production may apply for oil and gas subject to AS 43.55.160(f)**__;

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

(i) zero; or

(ii) __**35 percent**__ [THE SUM OF 25 PERCENT AND THE TAX RATE CALCULATED FOR THE MONTH UNDER

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

(D) for oil and gas subject to AS 43.55.011(p), the lesser of

(i) **<u>35 percent</u>** [THE SUM OF 25 PERCENT AND THE TAX RATE CALCULATED FOR THE MONTH UNDER AS 43.55.011(g)] multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for the oil and gas under AS 43.55.160 from the gross value at the point of production of the oil and gas produced from the leases or properties during the month for which the installment payment is calculated, but not less than zero; or

(ii) four percent of the gross value at the point of production of the oil and gas produced from the leases or properties during the month, but not less than zero;

(2) an amount calculated under (1)(C) of this subsection for oil or gas subject to AS 43.55.011(j), (k), or (o) may not exceed the product obtained by carrying out the calculation set out in AS 43.55.011(j)(1) or (2) or 43.55.011(o), as applicable, for gas or set out in AS 43.55.011(k)(1) or (2), as applicable, for oil, but substituting in AS 43.55.011(j)(1)(A) or (2)(A) or 43.55.011(o), as applicable, the amount of taxable gas produced during the month for the amount of taxable gas produced during the calendar year and substituting in AS 43.55.011(k)(1)(A) or (2)(A), as applicable, the amount of taxable oil produced during the month for the amount of taxable oil produced during the calendar year;

(3) an installment payment of the estimated tax levied by AS 43.55.011(i) for each lease or property is due for each month of the calendar year

on the last day of the following month; the amount of the installment payment is the sum of

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

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

(4) any amount of tax levied by AS 43.55.011, net of any credits applied as allowed by law, that exceeds the total of the amounts due as installment payments of estimated tax is due on March 31 of the year following the calendar year of production.

*** Sec. 13.** AS 43.55.020(d) is amended to read:

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

(1) the numerator is the producer's total tax liability under **<u>AS 43.55.011(e)</u>** [AS 43.55.011(e) - (g)] for the calendar year of production; and

(2) the denominator is the total gross value at the point of production of the oil and gas taxable under **<u>AS 43.55.011(e)</u>** [AS 43.55.011(e) - (g)] produced by

the producer from all leases and properties in the state during the calendar year.

*** Sec. 14.** AS 43.55.020(g) is amended to read:

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

*** Sec. 15.** AS 43.55.023(a) is amended to read:

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

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

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

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

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

(3) a credit for a qualified capital expenditure incurred to explore for, develop, or produce oil or gas deposits located north of 68 degrees North latitude may be taken only if the expenditure is incurred before January 1, 2014.

*** Sec. 16.** AS 43.55.023(b) is amended to read:

(b) A producer or explorer may elect to take a tax credit in the amount of 25 percent of a carried-forward annual loss **for lease expenditures incurred to explore for, develop, or produce oil or gas deposits located south of 68 degrees North latitude, and 35 percent of a carried-forward annual loss based on lease expenditures incurred after December 31, 2013, to explore for, develop, or produce oil or gas deposits located north of 68 degrees North latitude**. A credit under this subsection may be applied against a tax levied by AS 43.55.011(e). For purposes of this subsection, a carried-forward annual loss is the amount of a producer's or explorer's adjusted lease expenditures under AS 43.55.165 and 43.55.170 for a previous calendar year that was not deductible in calculating production tax values for that calendar year under AS 43.55.160.

*** Sec. 17.** AS 43.55.023(d) is amended to read:

(d) Except as limited by (i) of this section, a person that is entitled to take a tax credit under this section that wishes to transfer the unused credit to another person or obtain a cash payment under AS 43.55.028 may apply to the department for **a** transferable tax credit **certificate** [CERTIFICATES]. An application under this subsection must be in a form prescribed by the department and must include supporting information and documentation that the department reasonably requires. The department shall grant or deny an application, or grant an application as to a lesser amount than that claimed and deny it as to the excess, not later than 120 days after the latest of (1) March 31 of the year following the calendar year in which the qualified capital expenditure or carried-forward annual loss for which the credit is claimed was incurred; (2) the date the statement required under AS 43.55.030(a) or (e) was filed for the calendar year in which the qualified capital expenditure or carried-forward annual loss for which the credit is claimed was incurred; or (3) the date the application was received by the department. If, based on the information then available to it, the department is reasonably satisfied that the applicant is entitled to a credit, the department shall issue the applicant **a** [TWO] transferable tax credit **certificate for** [CERTIFICATES, EACH FOR HALF OF] the amount of the credit. [THE CREDIT SHOWN ON ONE OF THE TWO CERTIFICATES IS AVAILABLE FOR IMMEDIATE USE. THE CREDIT SHOWN ON THE SECOND OF THE TWO CERTIFICATES MAY NOT BE APPLIED AGAINST A TAX FOR A CALENDAR YEAR EARLIER THAN THE CALENDAR YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE CERTIFICATE IS ISSUED, AND THE CERTIFICATE MUST CONTAIN A CONSPICUOUS STATEMENT TO THAT EFFECT.] A certificate issued under this subsection does not expire.

*** Sec. 18.** AS 43.55.023(d), as amended by sec. 17 of this Act, is amended to read:

(d) **A** [EXCEPT AS LIMITED BY (i) OF THIS SECTION, A] person that is entitled to take a tax credit under this section that wishes to transfer the unused credit to another person or obtain a cash payment under AS 43.55.028 may apply to the department for a transferable tax credit certificate. An application under this subsection must be in a form prescribed by the department and must include supporting information and documentation that the department reasonably requires. The department shall grant or deny an application, or grant an application as to a lesser amount than that claimed and deny it as to the excess, not later than 120 days after the latest of (1) March 31 of the year following the calendar year in which the qualified capital expenditure or carried-forward annual loss for which the credit is claimed was incurred; (2) the date the statement required under AS 43.55.030(a) or (e) was filed for the calendar year in which the qualified capital expenditure or carried-forward annual loss for which the credit is claimed was incurred; or (3) the date the application was received by the department. If, based on the information then available to it, the department is reasonably satisfied that the applicant is entitled to a credit, the department shall issue the applicant a transferable tax credit certificate for the amount of the credit. A certificate issued under this subsection does not expire.

*** Sec. 19.** AS 43.55.023(g) is amended to read:

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

*** Sec. 20.** AS 43.55.023(n) is amended to read:

(n) For the purposes of (*l*) [AND (m)] of this section, a well lease expenditure incurred in the state south of 68 degrees North latitude is a lease expenditure that is

(1) directly related to an exploration well, a stratigraphic test well, a producing well, or an injection well other than a disposal well, located in the state south of 68 degrees North latitude, if the expenditure is a qualified capital expenditure and an intangible drilling and development cost authorized under 26 U.S.C. (Internal Revenue Code), as amended, and 26 C.F.R. 1.612-4, regardless of the elections made under 26 U.S.C. 263(c); in this paragraph, an expenditure directly related to a well includes an expenditure for well sidetracking, well deepening, well completion or recompletion, or well workover, regardless of whether the well is or has been a producing well; or

(2) an expense for seismic work conducted within the boundaries of a production or exploration unit.

*** Sec. 21.** AS 43.55.024(e) is amended to read:

(e) On written application by a producer that includes any information the department may require, the department shall determine whether the producer qualifies for a calendar year under <u>**(a) and (c) of**</u> this section. To qualify under <u>**(a) and (c) of**</u> this section, a producer must demonstrate that its operation in the state or its ownership of an interest in a lease or property in the state as a distinct producer would not result in the division among multiple producer entities of any production tax liability under AS 43.55.011(e) that reasonably would be expected to be attributed to a single producer if the tax credit provisions of (a) or (c) of this section did not exist.

*** Sec. 22.** AS 43.55.024 is amended by adding a new subsection to read:

(i) A producer may apply a tax credit of $5 for each barrel of oil taxable under AS 43.55.011(e) produced during a calendar year against the producer's tax liability for the calendar year under AS 43.55.011(e). A tax credit authorized by this subsection may not reduce a producer's tax liability for a calendar year under AS 43.55.011(e) to below zero.

*** Sec. 23.** AS 43.55.028(e) is amended to read:

(e) The department, on the written application of a person to whom a transferable tax credit certificate has been issued under AS 43.55.023(d) or **<u>former AS 43.55.023(m)</u>** [(m)] or to whom a production tax credit certificate has been issued under AS 43.55.025(f), may use available money in the oil and gas tax credit fund to purchase, in whole or in part, the certificate if the department finds that

(1) the calendar year of the purchase is not earlier than the first calendar year for which the credit shown on the certificate would otherwise be allowed to be applied against a tax;

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

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

(4) the applicant's average daily production of oil and gas taxable under AS 43.55.011(e) during the calendar year preceding the calendar year in which the application is made was not more than 50,000 BTU equivalent barrels; and

(5) the purchase is consistent with this section and regulations adopted under this section.

*** Sec. 24.** 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 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 **<u>former</u>** AS 43.55.023(m) or a claim for a refund or payment under AS 43.20.046 or 43.20.047.

*** Sec. 25.** AS 43.55.030(e) is amended to read:

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

(1) the **<u>explorer's or</u>** producer's qualified capital expenditures, as defined in AS 43.55.023, other lease expenditures under AS 43.55.165, and adjustments or other payments or credits under AS 43.55.170; and

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

*** Sec. 26.** AS 43.55.160(a) is amended to read:

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

(1) AS 43.55.011(e), the annual production tax value of the taxable oil, gas, or oil and gas subject to this paragraph produced during a calendar year is the gross value at the point of production of the oil, gas, or oil and gas taxable under AS 43.55.011(e), less the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil, gas, or oil and gas, as applicable, produced by the producer from leases or properties, as adjusted under AS 43.55.170; this paragraph applies to

(A) oil and gas produced from leases or properties in the state that include land north of 68 degrees North latitude, other than gas produced before 2022 and used in the state;

(B) oil and gas produced from leases or properties in the state outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude; this subparagraph does not apply to [GAS]

(i) **gas** produced before 2022 and used in the state; or

(ii) oil and gas subject to AS 43.55.011(p);

(C) oil produced before 2022 from **each** [A] lease or property in the Cook Inlet sedimentary basin;

(D) gas produced before 2022 from **each** [A] lease or property in the Cook Inlet sedimentary basin;

(E) gas produced before 2022 from **each** [A] lease or property in the state outside the Cook Inlet sedimentary basin and used in the state**, other than gas subject to AS 43.55.011(p)**;

(F) oil and gas subject to AS 43.55.011(p) produced from leases or properties in the state;

(G) oil and gas produced from **leases or properties in the state** [A LEASE OR PROPERTY] no part of which is north of 68 degrees North latitude, other than oil or gas described in (B), (C), (D), (E), or (F) of this paragraph;

(2) AS 43.55.011(g), the monthly production tax value of the taxable

(A) oil and gas produced during a month from leases or properties in the state that include land north of 68 degrees North latitude is the gross value at the point of production of the oil and gas taxable under AS 43.55.011(e) and produced by the producer from those leases or properties, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil and gas produced by the producer from those leases or properties, as adjusted under AS 43.55.170; this subparagraph does not apply to gas subject to AS 43.55.011(o);

(B) oil and gas produced during a month from leases or properties in the state outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, is the gross value at the point of production of the oil and gas taxable under AS 43.55.011(e) and produced by the producer from those leases or properties, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil and gas produced by the producer from those leases or properties, as adjusted under AS 43.55.170; this subparagraph does not apply to gas subject to AS 43.55.011(o);

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

(D) gas produced during a month from a lease or property in the Cook Inlet sedimentary basin is the gross value at the point of production of the gas taxable under AS 43.55.011(e) and produced by the producer from that lease or property, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the gas produced by the producer from that lease or property, as adjusted under AS 43.55.170;

(E) gas produced during a month from a lease or property outside the Cook Inlet sedimentary basin and used in the state is the gross value at the point of production of that gas taxable under AS 43.55.011(e) and produced by the producer from that lease or property, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to that gas produced by the producer from that lease or property, as adjusted under AS 43.55.170.

*** Sec. 27.** AS 43.55.160(a) is repealed and reenacted to read:

(a) Except as provided in (b) and (f) of this section, for the purposes of AS 43.55.011(e), the annual production tax value of taxable oil, gas, or oil and gas produced by a producer during a calendar year in a specific category for which a separate production tax value is required to be calculated under this subsection is equal to the gross value at the point of production of that oil, gas, or oil and gas, respectively, taxable under AS 43.55.011(e), less the producer's lease expenditures under AS 43.55.165 for the calendar year that are applicable to the oil, gas, or oil and gas, respectively, in that category produced by the producer during the calendar year, as adjusted under AS 43.55.170. A separate annual production tax value must be calculated for

(1) oil and gas produced from leases or properties in the state that include land north of 68 degrees North latitude, other than gas produced before 2022 and used in the state;

(2) oil and gas produced from leases or properties in the state outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, during a calendar year before or during the last calendar year under AS 43.55.024(b) for which the producer could take a tax credit under AS 43.55.024(a); this paragraph does not apply to

(A) gas produced before 2022 and used in the state; or

(B) oil and gas subject to AS 43.55.011(p);

(3) oil produced before 2022 from each lease or property in the Cook Inlet sedimentary basin;

(4) gas produced before 2022 from each lease or property in the Cook Inlet sedimentary basin;

(5) gas produced before 2022 from each lease or property in the state outside the Cook Inlet sedimentary basin and used in the state, other than gas subject to AS 43.55.011(p);

(6) oil and gas subject to AS 43.55.011(p) produced from leases or properties in the state;

(7) oil and gas produced from leases or properties in the state no part of which is north of 68 degrees North latitude, other than oil or gas described in (2), (3), (4), (5), or (6) of this subsection.

*** Sec. 28.** AS 43.55.160(e) is amended to read:

(e) Any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that would otherwise be deductible by a producer in a calendar year but whose deduction would cause an annual production tax value calculated under **<u>(a)</u>** [(a)(1)] of this section of taxable oil or gas produced during the calendar year to be less than zero may be used to establish a carried-forward annual loss under AS 43.55.023(b). However, the department shall provide by regulation a method to ensure that, for a period for which a producer's tax liability is limited by AS 43.55.011(j), (k), (o), or (p), any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that would otherwise be deductible by a producer for that period but whose deduction would cause a production tax value calculated under **<u>(a)(3), (4), (5), or (6)</u>** [(a)(1)(C), (D), (E), OR (F)] of this section to be less than zero are accounted for as though the adjusted lease expenditures had first been used as deductions in calculating the production tax values of oil or gas subject to any of the limitations under AS 43.55.011(j), (k), (o), or (p) that have positive production tax values so as to reduce the tax liability calculated without regard to the limitation to the maximum amount provided for under the applicable provision of AS 43.55.011(j), (k), (o), or (p). Only the amount of those adjusted lease expenditures remaining after the accounting provided for under this subsection may be used to establish a carried-forward annual loss under AS 43.55.023(b). In this subsection, "producer" includes "explorer."

*** Sec. 29.** AS 43.55.160 is amended by adding a new subsection to read:

(f) In the calculation of an annual production tax value of a producer under (a)(1) of this section, the gross value at the point of production of oil or gas meeting one or more of the following criteria is reduced by 20 percent: (1) the oil or gas is produced from a lease or property that does not contain a lease that was within a unit on January 1, 2003; (2) the oil or gas is produced from a participating area established after December 31, 2011, that is within a unit formed under AS 38.05.180(p) before January 1, 2003, if the participating area does not contain a reservoir that had previously been in a participating area established before December 31, 2011; (3) the oil or gas is produced from a well that has been accurately metered and measured by the operator to the satisfaction of the commissioner, and the producer demonstrates to the department that the metered well drains a reservoir or portion of a reservoir that the Department of Natural Resources has certified was not contributing to production before January 1, 2013, and the producer demonstrates to the department that the volume of oil or gas produced from the well was subject to certification by the

Department of Natural Resources. An exclusion under this section may not reduce the gross value at the point of production below zero. In this subsection, "participating area" means a reservoir or portion of a reservoir producing or contributing to production as approved by the Department of Natural Resources.

*** Sec. 30.** AS 43.56.160 is amended to read:

Sec. 43.56.160. Interest and penalty. When the tax levied by AS 43.56.010(a) becomes delinquent, a penalty of 10 percent shall be added. Interest on the delinquent taxes, exclusive of penalty, shall be assessed at **<u>the rate specified in AS 43.05.225(1)</u>** [A RATE OF EIGHT PERCENT A YEAR].

*** Sec. 31.** AS 43.77.020(d) is amended to read:

(d) A person subject to the tax under this chapter shall make quarterly payments of the tax estimated to be due for the year, as required under regulations adopted by the department. A taxpayer will be subject to an estimated tax penalty, determined by applying the interest rate specified in **<u>AS 43.05.225(1)</u>** [AS 43.05.225] to the underpayment for each quarter, unless the taxpayer makes estimated tax payments in equal installments that total either

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

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

*** Sec. 32.** AS 43.90.430 is amended to read:

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

*** Sec. 33.** AS 43.98 is amended by adding new sections to read:

Article 2. Oil and Gas Competitiveness Review Board.

Sec. 43.98.040. Oil and Gas Competitiveness Review Board. (a) The Oil and Gas Competitiveness Review Board is established in the department.

(b) The board shall consist of nine members as follows:

(1) two members nominated by the two leading nonprofit trade associations representing the oil and gas industry in the state and appointed by the

governor, with one member nominated by each association;

(2) the chair of the Alaska Oil and Gas Conservation Commission or the chair's designee;

(3) three members of the public appointed by the governor, including one member who is a petroleum engineer, one member who is a geologist, and one member who is an economist;

(4) the commissioner of environmental conservation or the commissioner's designee;

(5) the commissioner of natural resources or the commissioner's designee; and

(6) the commissioner of revenue or the commissioner's designee.

(c) The governor shall, every two years, designate one of the members as chair.

(d) Members of the board appointed under (b)(1) and (b)(3) of this section serve for six years. An individual who has served on the board may be reappointed.

(e) A vacancy on the board shall be filled in the manner of the original appointment.

(f) A member of the board may be removed and replaced at the discretion of the governor.

(g) The members of the board appointed under (b)(1) and (b)(3) of this section serve without compensation but shall receive per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(h) The board may enter into contracts for professional services and may employ staff for administrative support for the board.

(i) The board may not meet more than once in a calendar year.

Sec. 43.98.050. Duties. The duties of the board include the following:

(1) establish and maintain a salient collection of information related to oil and gas exploration, development, and production in the state and related to tax structures, rates, and credits in other regions with oil and gas resources;

(2) evaluate and suggest changes to state laws and regulations governing the oil and gas industry;

(3) review historical, current, and potential levels of investment in the state's oil and gas sector;

(4) identify factors that affect investment in oil and gas exploration, development, and production in the state, including tax structure, rates, and credits; royalty requirements; infrastructure; workforce availability; and regulatory requirements;

(5) review the competitive position of the state to attract and maintain investment in the oil and gas sector in the state as compared to the competitive position of other regions with oil and gas resources;

(6) in order to facilitate the work of the board, establish procedures to accept and keep confidential information that is beneficial to the work of the board, including the creation of a secure data room and confidentiality agreements to be signed by individuals having access to confidential information;

(7) make written findings and recommendations, together with suggested legislation, to the Alaska State Legislature before December 1 of each year, or as soon thereafter as practicable, regarding

(A) changes to the state's regulatory environment that would be conducive to encouraging increased investment while protecting the interests of the people of the state and the environment;

(B) changes to the state's fiscal regime that would be conducive to increased and ongoing long-term investment in and development of the state's oil and gas resources; and

(C) alternative means for increasing the state's ability to attract and maintain investment in and development of the state's oil and gas resources.

Sec. 43.98.060. Information to be provided to board. (a) The commissioner of natural resources, the commissioner of revenue, the commissioner of environmental conservation, and other commissioners and state agencies that have responsibility for and maintain information related to oil and gas investment and activity in the state shall, at the request of the board, provide information required by the board to carry out the duties described in AS 43.98.050.

(b) At the request of the board, and except for information that is confidential under AS 40.25.100(a) or AS 43.05.230 and information required to be held confidential by the Alaska Oil and Gas Conservation Commission, a commissioner may disclose to the board information that is otherwise confidential after each member of the board and each staff member for the board with access to the information signs a confidentiality agreement prepared by the commissioner making the disclosure. Information that is confidential under AS 43.05.230 may not be disclosed to the board.

Sec. 43.98.070. Definition. In AS 43.98.040 - 43.98.070, "board" means the Oil and Gas Competitiveness Review Board.

*** Sec. 34.** AS 43.55.023(m) is repealed.

*** Sec. 35.** AS 43.55.011(g), 43.55.023(i), and 43.55.160(c) are repealed January 1, 2014.

*** Sec. 36.** AS 43.98.040, 43.98.050, 43.98.060, and 43.98.070 are repealed December 31, 2022.

*** Sec. 37.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 9, 12, 13, and 27 - 29 of this Act apply to oil and gas produced after December 31, 2013.

(b) Sections 10 and 26 of this Act apply to oil and gas produced after December 31, 2012.

(c) Sections 15 and 17 - 20 of this Act and AS 43.55.023(a)(1), as amended by sec. 15 of this Act, apply to expenditures incurred after December 31, 2012.

(d) Sections 16, 18, and 23 of this Act apply to expenditures incurred after December 31, 2013.

*** Sec. 38.** The uncodified law of the State of Alaska is amending by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Revenue may adopt regulations to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the respective provision of this Act.

*** Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: OIL AND GAS COMPETITIVENESS REVIEW BOARD. The governor shall appoint the initial members of the Oil and Gas Competitiveness Review Board, established in sec. 33 of this Act, before January 1, 2014. The initial terms of the members of the board appointed under AS 43.98.040(b)(1) and (b)(3) shall be set by the governor and staggered so that one member serves one year, two members serve four years, and two members serve six years. The first written findings and recommendations, together with suggested legislation, shall be delivered to the Alaska State Legislature on December 1, 2015, or as soon thereafter as practicable.

*** Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. Sections 10, 17, 19, 20, 23, 26, and 34 of this Act and AS 43.55.023(a)(1), as amended by sec. 15 of this Act, are retroactive to January 1, 2013.