

Summary of Tax Credits under AS 43.55 – The Alaska Oil and Gas Production Tax

Disclaimer:

This summary is intended as an informational guide only. The State of Alaska makes no warranty, expressed or implied, as to the accuracy of this summary. To be certain of the current statutes and regulations, refer to the official printed version of the statutes and regulations. This information only relates to tax credits in effect on and after January 1, 2014.

The Alaska Department of Revenue Tax Division (Division) offers many different production tax credits under AS 43.55. Below is a brief summary of the tax credits that the Division administers. Please note: there are other credits that the Department of Natural Resources or other sections of the Tax Division may offer that may be applied against royalty or rental payments, the production tax liability levied by AS 43.55, or the corporate income tax under AS 43.20 that are not included in this summary; please see the relevant Department or section for more information on those credits.

Education Tax Credit under AS 43.55.019

The education credit is a tiered credit based on cash contributions made to qualified educational and vocational entities or programs¹ outlined under AS 43.55.019(a). The credit is allowed for oil and gas producers against the tax due under this chapter for cash contributions to qualifying programs or entities. The credit was increased in 2010 for the period January 1, 2011 – December 31, 2013 and in 2011 the increase was extended through December 31, 2020.

Effective 1/1/2011 – 12/31/2020², the credit is limited to 50 percent of contributions of not more than \$100,000; 100 percent of the next \$200,000 of contributions; and 50 percent of the amount of contributions that exceed \$300,000.³ A contribution claimed as a credit under this section may not be the basis for a credit claimed under another provision of this title; and when combined with contributions that are the basis for credits taken during the taxpayer's tax year under AS 21.96.070, 21.96.075, AS 43.20.014, AS 43.56.018, AS 43.65.018, AS 43.75.018, or AS 43.77.045, may not result in the total amount of credits exceeding \$5,000,000 in a single calendar year for an affiliated group.⁴

Effective 1/1/2021, the credit is limited to 50 percent of contributions of not more than \$100,000; and 100 percent of the next \$100,000 of contributions. A contribution claimed as a credit under this section may not be the basis for a credit claimed under another provision of this title; and when combined with contributions that are the basis for credits taken during the taxpayer's tax year under AS 21.96.070, 21.96.075, AS 43.20.014, AS 43.56.018, AS 43.65.018, AS 43.75.018, or AS 43.77.045, may not result in the total amount of credits exceeding \$150,000.⁵

¹ Effective July 1, 2011, cash contributions for qualified athletic tournaments, Alaska Native culture programs, or coastal ecosystem learning centers also qualify. SB 84, (ch. 7, SLA 2010)

² Original change took place in 2010 with the passing of SB 236 (ch. 29, SLA 2010) and the sunset provision was extended for the increased credit amount through 12/31/2020 through the passage of SB 84.

³ AS 43.55.019(b)

⁴ AS 43.55.019(d)(2)

⁵ These are delayed amendments per SB 236

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Uses of Credit

This credit may be applied against any tax levied by 43.55. The credit is NOT transferable, is NOT available to be issued as a certificate, and may not reduce a person's tax liability below zero for any tax year. An unused credit or portion of a credit not used under this section for a tax year may not be sold, traded, transferred, or applied in a subsequent tax year.⁶

Pertinent Statutes and Regulations

AS 43.55.019; no regulations at this time

Qualified Capital Expenditures (QCE) Credit under AS 43.55.023(a)

The QCE credit is a 20% credit based on Qualified Capital Expenditures, as defined by AS 43.55.023(o).⁷ The QCEs must also be allowable Lease Expenditures under AS 43.55.165. If the expenditures are incurred in connection with geological or geophysical exploration or an exploration well under AS 43.55.023(a)(2), then there are also certain data requirements⁸ that must be met with the Department of Natural Resources (DNR). NOTE: After December 31, 2013, there is no longer a QCE credit for the North Slope⁹, as amended by SB 21.¹⁰

Uses of Credit

The full credit may be applied¹¹ directly against a producer's tax liability in the year it was incurred by taking the total credit allowed for the year and applying it equally against the liability for each month of the year.¹² This credit may also be requested as a tax credit certificate¹³, but no more frequently than once per calendar quarter¹⁴. To receive a credit certificate, an application¹⁵ must be submitted to the Department of Revenue (DOR) with all relevant backup required under regulation¹⁶ after the expenditures have been incurred.¹⁷ The DOR has until the later of 120 days from the date that the application is received by the Department, the date that the annual return is filed, or from March 31st of the calendar year following the calendar year in which the expenditures were incurred¹⁸ to grant or deny the application. All credits may be issued as one certificate available in the year it was issued.¹⁹ If the credit is issued as a certificate, the credit certificate may

⁶ AS 43.55.019(e)

⁷ Definition of a QCE was re-lettered as a revisers edit to AS 43.55.023(o) after HB 280 passed in 2010

⁸ The data requirements are outlined in AS 43.55.025(f)(2)

⁹ North of 68 degrees North latitude

¹⁰ Section 14 of the bill added AS 43.55.023(a)(3). SB 21 was enacted as ch. 10, SLA 2013.

¹¹ AS 43.55.023(a)(1) is amended by section 14 of SB 21 and effective for expenditures incurred on or after January 1, 2013, to allow the full credit

¹² Per AS 43.55.020(a)(1)

¹³ Under AS 43.55.023(d)

¹⁴ Per 15 AAC 55.320(a)(1)

¹⁵ Form 0405-330 located on the tax division website at <http://www.tax.alaska.gov//programs/programs/forms/index.aspx?60650>

¹⁶ See 15 AAC 55.320 and 345 for filing requirements

¹⁷ See regulation for "When cost is incurred" under 15 AAC 55.290

¹⁸ Per AS 43.55.023(d)

¹⁹ AS 43.55.023(d) is amended by section 16 of SB 21

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then be sold or transferred to another company, applied to tax liability under AS 43.55.011(e),²⁰ or if all requirements are met under AS 43.55.028, redeemed for cash from the State by the original applicant. The credit may not be used to reduce a person's tax liability below zero for any tax year.²¹

Pertinent Statutes and Regulations

AS 43.55.023; AS 43.55.165-170; 15 AAC 55.250-290; 15 AAC 55.305-381; 15 AAC 55.900

Carried-Forward Annual Loss Credit under AS 43.55.023(b)

The carried-forward annual loss credit is based on a producer or explorer's adjusted lease expenditures²² that were not deductible in calculating production tax values for that calendar year under AS 43.55.160. The credit is 25% for non-North Slope expenditures and North Slope expenditures incurred before January 1, 2014. The credit for North Slope expenditures is 45% between January 1, 2014 and December 31, 2015, and 35% for expenditures on or after January 1, 2016²³. This credit may also be requested as a tax credit certificate,²⁴ but not earlier than January 1st of the calendar year following the calendar year in which the loss was incurred.²⁵

Uses of Credit

This credit may be applied directly against a producer's tax liability in the year following the year it was incurred by taking the total credit allowed for the year and applying it equally against the liability for each month of the year.²⁶ This credit may also be requested as a tax credit certificate²⁷. To receive a credit certificate, an application²⁸ must be submitted to the Department of Revenue (DOR) with all relevant backup required under regulation²⁹ after the expenditures have been incurred.³⁰ The DOR has until the later of 120 days from the date that the application is received by the Department, the date that the annual return is filed, or from March 31st of the calendar year following the calendar year in which the expenditures were incurred³¹ to grant or deny the

to allow all certificates to be issued in full (no longer split into two) and is effective for expenditures incurred on or after January 1, 2013

²⁰ 15 AAC 55.381(b) allows for the credit certificate under this section to be applied against a single monthly installment payment

²¹ No credit or portion of credit may be used to reduce a person's tax liability under AS 43.55.011(e) for any calendar year below zero. See; 43.55.023(c); 43.55.025(f) and (g); and 43.55.025(i)

²² Under AS 43.55.165 and 170

²³ Section 15 of SB 21

²⁴ Under AS 43.55.023(d)

²⁵ Per 15 AAC 55.320(a)(2)

²⁶ Per AS 43.55.020(a)(1)

²⁷ Under AS 43.55.023(d)

²⁸ Form 0405-330 located on the tax division website at

<http://www.tax.alaska.gov//programs/programs/forms/index.aspx?60650>

²⁹ See 15 AAC 55.320 and 345 for filing requirements

³⁰ See regulation for "When cost is incurred" under 15 AAC 55.290

³¹ Per AS 43.55.023(d)

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application. All credits may be issued as one certificate available in the year it was issued.³² If the credit is issued as a certificate, the credit certificate may then be sold or transferred to another company, applied to tax liability under AS 43.55.011(e),³³ or if all requirements are met under AS 43.55.028, redeemed for cash from the State by the original applicant. The credit may not be used to reduce a person's tax liability below zero for any tax year.³⁴

Pertinent Statutes and Regulations

AS 43.55.023; AS 43.55.165-170; 15 AAC 55.250-290; 15 AAC 55.305-381; 15 AAC 55.900

Transitional Investment Expenditure (“TIE”) Credit under AS43.55.023(i) – repealed³⁵

The TIE credit is a 20% credit for qualified capital expenditures incurred between April 1, 2001, and March 31, 2006. The credit may not exceed 1/10 of the AS 43.55.023(a) QCE credit taken from the period April 1, 2006, through December 31, 2007, and may only be taken by a company that did not have commercial production before January 1, 2008.

Uses of Credit

This credit may be applied against a tax levied by AS 43.55.011(e), but not for any calendar year after 2013.³⁶ The credit is NOT transferable, is NOT available to be issued as a certificate, and may not be used to reduce a person's tax liability below zero for any tax year. An application form³⁷ must be submitted with the annual return for the year that the credit is applied with all applicable backup.

Well Lease Expenditure Credit under AS 43.55.023(l)

The Well Lease Expenditure credit is a 40% credit based on Well Lease Expenditures incurred south of 68 degrees North latitude, which includes “middle earth” and Cook Inlet, after June 30, 2010. The Well Lease Expenditures must also be allowable lease expenditures under AS 43.55.165, qualified capital expenditures under AS 43.55.023(o), and intangible drilling and development costs³⁸ authorized under 26 U.S.C. (Internal Revenue Code). If the expenditures are incurred in connection with geological or geophysical exploration or an exploration well under AS

³² AS 43.55.023(d) is amended by section 16 of SB 21 to allow all certificates to be issued in full (no longer split into two) and is effective for expenditures incurred on or after January 1, 2013

³³ 15 AAC 55.381(b) allows for the credit certificate under this section to be applied against a single monthly installment payment

³⁴ No credit or portion of credit may be used to reduce a person's tax liability under AS 43.55.011(e) for any calendar year below zero. See; 43.55.023(c); 43.55.025(f) and (g); and 43.55.025(i)

³⁵ This credit is repealed by section 33 of SB 21 effective January 1, 2014

³⁶ AS 43.55.023(i)(3)(A)

³⁷ Form 0405-330

³⁸ AS 43.55.023(n)

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43.55.023(l)(2), then there are also certain data requirements³⁹ that must be met with the Department of Natural Resources (DNR).

Uses of Credit

This credit may be applied directly against a tax levied by AS 43.55.011(e) in the year it was incurred by taking the total credit allowed for the year and applying it equally against the liability for each month of the year⁴⁰. This credit may also be requested as a tax credit certificate⁴¹, but no more frequently than once per calendar quarter.⁴² To receive a credit certificate, an application⁴³ must be submitted to the Department of Revenue (DOR) with all relevant backup required under regulation⁴⁴ after the expenditures have been incurred.⁴⁵ The DOR has until the later of 120 days from the date that the application is received by the Department or 120 days from March 31st of the calendar year following the calendar year in which the expenditures were incurred⁴⁶ to grant or deny the application. This credit is issued as one certificate available in the year it was issued⁴⁷. If the credit is issued as a certificate, the credit certificate may then be transferred to another company, applied to a tax levied by AS 43.55.011(e)⁴⁸, or redeemed for cash from the State by the original applicant if all requirements are met under AS 43.55.028.

Pertinent Statutes and Regulations

AS 43.55.023; AS 43.55.165-170; 15 AAC 55.250-290; 15 AAC 55.305-381; 15 AAC 55.900

Additional Nontransferable Tax Credits under AS 43.55.024(a) & (c)⁴⁹ (aka the “Middle Earth Credit” & “Small Producer Credit”)

Under AS 43.55.024(a), a prorated credit up to \$6,000,000 may be applied against a producer’s tax liability levied by AS 43.55.011(e) for a calendar year for oil and gas produced outside of Cook Inlet and south of 68 degrees North latitude⁵⁰ aka “middle earth”⁵¹. This credit may not be taken after the later of 2016 or after the 9th calendar year after the calendar year in which the producer first had commercial production before May 1, 2016⁵² from at least one lease or property in “middle earth”.

³⁹ The data requirements are outlined in AS 43.55.025(f)(2)

⁴⁰ Per AS 43.55.020(a)(1)

⁴¹ Under AS 43.55.023(d) or (m)

⁴² Per 15 AAC 55.320(a)(1)

⁴³ Form 0405-330 located on the tax division website at <http://www.tax.alaska.gov//programs/programs/forms/index.aspx?60650>

⁴⁴ See 15 AAC 55.320 and 345 for filing requirements

⁴⁵ See regulation for “When cost is incurred” under 15 AAC 55.290

⁴⁶ Per AS 43.55.023(d)

⁴⁷ AS 43.55.023(m)

⁴⁸ 15 AAC 55.381(b) allows for the credit certificate under this section to be applied against a single monthly installment payment.

⁴⁹ SB 21 added new credits under AS 43.55.024(i) and (j) that are not in effect until January 1, 2014

⁵⁰ AS 43.55.024(a)

⁵¹ “Middle Earth” is phrase commonly used to describe the land south of 68 degrees North latitude and outside of Cook Inlet

⁵² AS 43.55.024(b)

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Tax credits under AS 43.55.024(c), also known as the “small producer credit”, may be applied for a calendar year in which the producer’s tax liability exceeds zero against a producer’s tax levied by AS 43.55.011(e) for a producer whose average amount of oil and gas produced a day and taxable under AS 43.55.011(e) is less than 100,000 BTU equivalent barrels a day. If a producer’s average taxable production is more than 50,000 and less than 100,000 BTU equivalent barrels per day, a producer may apply a prorated portion of the \$12,000,000 credit for the calendar year.⁵³ A producer may not take a tax credit under (c) of this section after the later of 2016; or if the producer did not have commercial oil or gas production from a lease or property in the state before April 1, 2006, the ninth calendar year after the calendar year during which the producer first has commercial oil or gas production before May 1, 2016, from at least one lease or property in the state.⁵⁴

Uses of Credit

These credits may be applied against a tax levied by AS 43.55.011(e). The credits are NOT transferable and are NOT available to be issued as a certificate. An unused tax credit or portion of a tax credit under this section may not be carried forward for use in a later calendar year.⁵⁵ The credit may not be used to reduce a tax liability for any calendar year below zero.⁵⁶ For a calendar year during which two or more producers that qualify under AS 43.55.024(e) are succeeded through merger, acquisition, or a similar transaction by a single producer that qualifies under AS 43.55.024(e), they are each only allowed a portion of the credit.⁵⁷

Additional Nontransferable Tax Credits under AS 43.55.024(i) & (j)⁵⁸

Under AS 43.55.024(i), a five dollar per barrel credit is allowed for each barrel of taxable oil produced on the North Slope that qualifies for the Gross Value Reduction (GVR) under AS 43.55.160(f) and (g). Under AS 43.55.024(j), a sliding scale credit of one to eight dollars per barrel is based on the gross value of oil, when prices are below \$150 per barrel, that does not qualify for the Gross Value Reduction (GVR) under AS 43.55.160(f) and (g).

Uses of Credit

These credits may be applied against a tax levied by AS 43.55.011(e). The credits are NOT transferable and are NOT available to be issued as a certificate. An unused tax credit or portion of a tax credit under this section may not be carried forward for use in a later calendar year.⁵⁹ The credit may not be used to reduce a tax liability for any calendar year below zero.⁶⁰

⁵³ AS 43.55.024(c)(2)

⁵⁴ AS 43.55.024(d)

⁵⁵ AS 43.55.024(h)

⁵⁶ AS 43.55.024(g)

⁵⁷ 15 AAC 55.335(b)

⁵⁸ SB 21 added new credits under AS 43.55.024(i) and (j) effective for oil and gas produced after January 1, 2014

⁵⁹ AS 43.55.024(h)

⁶⁰ AS 43.55.024(g)

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Alternative Tax Credit for Oil and Gas Exploration under AS43.55.025(a)(1)-(4)

Depending on the type of exploration (seismic vs. exploration well) and the location of the project a company may receive a 30% or 40% credit under AS 43.55.025. For a qualifying exploration well that is bottom holed more than 3 miles from a preexisting well, other than in Cook Inlet, and pre-approved by the commissioner of natural resources before the project commences⁶¹ a company may receive a 30% credit.⁶² For a qualifying exploration well that is more than 25 miles outside an existing unit, or 10 miles outside of a unit in Cook Inlet, a company may receive a 30% credit.⁶³ For a qualifying exploration well that is both more than 3 miles from a preexisting well and 25 miles from a unit, other than in Cook Inlet, a company may receive a 40% credit.⁶⁴ For a qualifying seismic project outside a unit, a company may receive a 40% credit.⁶⁵ To qualify for any credits under this section the company must submit required data sets to the Department of Natural Resources. A credit application⁶⁶ must be completed and received by the Department of Revenue within six months of the completion of the exploration activity.⁶⁷ The application must be either submitted by a single applicant that holds a 100% interest in the project and incurred 100% of the expenditures or submitted by a designated joint applicant on behalf of and signed by all partners.⁶⁸ All credit requests under this section are audited before a certificate is issued and a tax credit certificate is always issued. These credits are only for work performed before July 1, 2016, for North Slope and Cook Inlet. The credits are for work performed before January 1, 2022, for “Middle Earth”.⁶⁹

A five percent credit for exploration expenditures performed before July 1, 2003 is available for seismic exploration performed outside the boundaries of an existing production unit if the Commissioner of the Department of Natural Resources determines public distribution of the seismic information is in the best interest of the State.⁷⁰

⁶¹ AS 43.55.025(c)(2)

⁶² AS 43.55.025(a)(1) and (c)

⁶³ AS 43.55.025(a)(2) and (d)

⁶⁴ AS 43.55.025(a)(3), (c), and (d)

⁶⁵ AS 43.55.025(a)(4) and (e)

⁶⁶ Form 0405-310

⁶⁷ The completion date of an exploration well is defined under 15 AAC 55.900(b)(10) and the completion date of a seismic project is generally the date that the initial processing of the seismic data has been completed.

⁶⁸ 15 AAC 55.355(a) and 15 AAC 55.356

⁶⁹ “Middle Earth” is phrase commonly used to describe the land south of 68 degrees North latitude (North Slope) and outside of Cook Inlet

⁷⁰ AS 43.55.025(k)

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Uses of Credit

The credit itself may be applied against a producer’s tax liability in the year in which it was incurred and also before the tax credit certificate is issued.⁷¹ The credit certificate may be transferred, applied to tax liability,⁷² or cashed out with the State under AS 43.55.028 by the original applicant.

Pertinent Statutes and Regulations

AS 43.55.025; 15 AAC 55.305-381

Alternative Tax Credit for Oil and Gas Exploration under AS43.55.025(a)(5) – aka the “Jack-up Rig Credit”

Signed into effect May 20, 2010⁷³, AS 43.55.025(a)(5) and (l) were added to AS 43.55.025 to provide tax credits for a jack-up rig in Cook Inlet applicable to work performed after March 31, 2010. These sections added credits of 100% of qualifying exploration expenditures up to \$25 million for the first well, 90% of qualifying exploration expenditures up to \$22.5 million for the second well, and 80% of qualifying exploration expenditures up to \$20 million for the third well incurred for exploratory drilling with a jack-up rig in Cook Inlet. The three wells must be drilled by unaffiliated parties, use the same jack-up rig, and penetrate and evaluate a prospect in the pre-Tertiary zone. The latter determination is made by the Commissioner of the Department of Natural Resources.

Uses of Credit

The credit itself may be applied against a producer’s tax liability in the year in which it was incurred and also before the certificate is issued.⁷⁴ The credit certificate may be transferred, applied to tax liability,⁷⁵ or cashed out with the State under AS 43.55.028 by the original applicant.

Pertinent Statutes and Regulations

AS 43.55.025; 15 AAC 305-381

Alternative Tax Credit for Oil and Gas Exploration under AS43.55.025(a)(6)&(7) – aka the “Frontier Basin Credits”

Effective January 1, 2013⁷⁶, AS 43.55.025(a)(6), (a)(7), (n) and (o) were added to the statute to provide tax credits for exploration wells and seismic projects performed after June 30, 2012 and

⁷¹ 15 AAC 55.370(c)

⁷² 15 AAC 55.381(b) allows for the credit certificate under this section to be applied against a single monthly installment payment

⁷³ Senate Bill 309, (Ch. 15 SLA 2010)

⁷⁴ 15 AAC 55.370(c)

⁷⁵ 15 AAC 55.381(b) allows for the credit certificate under this section to be applied against a single monthly installment payment

⁷⁶ Section 46 of SB 23

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before July 1, 2016, in certain “Frontier Basins” described in AS 43.55.025(p). These sections added credits of 80% of qualifying exploration expenditures up to \$25 million for the first two wells in any single basin and 75% of qualifying seismic exploration expenditures up to \$7.5 million for the first seismic project in each basin. Many requirements must be met with the Department of Natural Resources to qualify for the credits, including pre-qualifications.

Uses of Credit

The credit itself may be applied against a producer’s tax liability in the year in which it was incurred and also before the certificate is issued.⁷⁷ The credit certificate may be transferred, applied to tax liability,⁷⁸ or cashed out with the State under AS 43.55.028 by the original applicant.

Pertinent Statutes and Regulations

AS 43.55.025; 15 AAC 305-381

Assigning Tax Credit Certificates

Effective June 26, 2013,⁷⁹ all certificates under AS 43.55.023 and 43.55.025 are assignable within 30 days of the certificate request. The Department has created a form⁸⁰ that may be completed to assign the certificate and meet the specified criteria listed in the statute. A specific dollar amount up to 90% of the certificate request or a percentage up to 100% of the certificate request may be assigned. Once the Department receives the assignment form, the assignment can only be canceled with written permission from the assignee.

Pertinent Statutes and Regulations

AS 43.55.029

Contact Information

For additional information about the Department of Revenue Tax Credits and how to apply, please contact Destin Greeley at (907) 269-6642. For additional information regarding the data required to be submitted to the Department of Natural Resources for credits relating to exploration expenditures, please contact Heather Ann Heusser at (907) 269-0137.

⁷⁷ 15 AAC 55.370(c)

⁷⁸ 15 AAC 55.381(b) allows for the credit certificate under this section to be applied against a single monthly installment payment

⁷⁹ Section 4 of SB 83 takes effect immediately on June 26, 2013, when the governor signed the bill

⁸⁰ Form 0405-335 is located on the Tax Division’s website at <http://www.tax.alaska.gov/programs/programs/forms/index.aspx?60650>.