Introductory note from the department to readers of this unofficial transcript of the public hearing held May 27, 2021: This document was prepared by the department from a Microsoft Teams recording. The time indicators represent the approximate location in time, in the Teams recording where the notes from the conversation where made, as opposed to a legal transcription which would show the time of day.

00:05
John Larsen: Alright, we're just past 10:30 and it looks like hopefully everybody's here, if not, we'll let them start late.

Good morning! My name is John Larsen. I'm an Audit Master with the Alaska Department of Revenue. Today's date is Thursday, May 27th and the time is 10:32 AM. Welcome, everyone, to today's public hearing by the Alaska Department of Revenue regarding proposed regulation amendments and repeals that were first publicly noticed on December 25th, 2020 and again via supplemental public notice dated May 16th, 2021.

Before we begin, I would like everyone to note that today's hearing will be recorded via Teams and a transcription made available on the department's website. Please remember that this is a public forum and that all comments made here today will become part of the public record.

In comments received at the close of the public comment period on January 26, 2021 a request was made to have an oral hearing. Therefore, the purpose of today's public hearing is to receive input and testimony from the public and other interested parties regarding regulation changes proposed by the Department in public notices dated December 25, 2020 and May 16, 2021. In the public notices the Department identified numerous regulations as being proposed to either be implemented, amended, or in some cases, repealed, for regulations that are no longer in effect or necessary to conduct the Department's oil and gas production tax program. Today's public hearing is scheduled to run from 10:30 this morning to 12 p.m., but may be extended, if necessary, to accommodate those present before 11:00 a.m. who have not had an opportunity to comment.

After the close of the public comment period, at 4 p.m. on Thursday, June 10, the Department will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. If you believe that your interest's may be affected the Department encourages you to submit any relevant comments either here today, or by the close of the written comment period at 4 p.m. on Thursday, June 10, 2021.

A rough timeline, following today's public hearing:

- Concurrent with the drafting of the final regulations, the Department will aggregate its responses to questions received at least 10 days before the close of the public comment period and make the questions and responses available on the Alaska Online Public Notice System and Tax Division website.
- After the close of the public comment period, comments will be accumulated and posted online on the Alaska Online Public Notice System and Tax Division's website at www.tax.alaska.gov
- Especially with respect to the proposed changes at15 AAC 55.171(m), and in regards to the use of reporting services, in the event of any changes being adopted it will be the intent of the department to make the regulations effective on the first day of a month to avoid any overlapping of reporting services in a same month.

If you have any written comments, please submit them to me, John Larsen, by any of the following means:

- Via email, to: john.larsen@alaska.gov That's J-o-h-n, dot L-a-r-s-e-n at Alaska dot gov.
- Via FAX to: (907) 269-6644
- Delivered to me by U.S. Postal Service at: 550 W. 7th Ave., Suite, excuse me, 500 W. 7th Avenue, suite yeah, suite 500, 550 West 7th Avenue, suite 500, Anchorage, AK. 99501
- ALL COMMENTS MUST BE RECEIVED BY 4 p.m. on Thursday, June 10, 2021. Prior to beginning the hearing, please note the following:
- When making any comments, please give your name, and affiliation, if any.
- As previously mentioned the hearing is being recorded and either a transcription or copies of the hearing will be made available on the Department's website at: www.tax.alaska.gov. The

hearing and all written comments received will become a part of the public record and subject to public inspection, so please do not share any confidential taxpayer information.

So, prior to the beginning the, uh, public testimony, I'd like to go around first to the room here and then to the phone lines so everyone can introduce themselves um, my name's John Larsen, I'm an Audit Master with the Tax Division here in Anchorage.
Colleen Glover: Collen Glover, Tax Division Director.
Nicole Reynolds: Nicole Reynolds, Deputy Director of the Tax Division.
Destin Greeley: Destin Greeley, Oil and Gas Production Tax Supervisor.
Lennie Dees: Lennie Dees, Audit Master, with the Department of Revenue.

- 05:08

And so when we go to the phone lines, if there is more than one representative from a company, I'd like everybody to just introduce themselves at one time and maybe to have some type of semblance of order here. We'll try and go somewhat alphabetically so I don't know if Jennifer are you with the Anadarko still, or do I have that right? Conoco, I'm sorry.
Conoco! So, maybe let's go with AOGA, sorry about that.

- 05:36

Brooke Ivey: Brooke Ivey, External Affairs Manager for the Alaska Oil and Gas Association, or AOGA

- 05:39

Marie Evans: Let's go to ConocoPhillips. Marie Evans, Tax Counsel, and Jennifer Roberts. Jennifer, what's your title?
05:59
Jennifer Roberts: Production Tax Supervisor at, we also have Erin Rubelman Production Tax Analyst, listening in.
06:07
John Larsen: Thank you, next.
06:13
Jon Iversen: Hello, this is Jon Iversen. I'm with, this is Jon Iversen, I'm with Stoel Rieves, I'm the Vice-chair of the AOGA Tax Committee. I'm actually here representing Repsol.
06:25

Diane Colley: Diane Colley, and I'm here representing Oil Search Alaska. I'm the Alaska Tax Manager.

06:35

Steve Mahoney: Good Morning, John, this is Steve Mahoney with Manley and Brautigan.

John Larsen: Good morning, Steve.

Mary Gramling: Mary Gramling with the Department of Law.

David Herbert: David Herbert, with the Department of Revenue

07:07

John Larsen: And, I think that looks like everybody that we are showing on the screen there. We didn't have a sign-up list for people that want to present testimony, so maybe once again try and go somewhat in order and we'll start with you, Brooke, with AOGA.

07:27

Brooke Ivey: Certainly, thank you.

So good morning, my name is Brooke Ivey, External Affairs Manager for the Alaska Oil and Gas Association, and we appreciate the opportunity to provide comments today in response to the department's proposed regulations from December 2020. AOGA is the professional trade association for the oil and gas industry in Alaska. In keeping with our practice regarding tax matters, all of our members have had the opportunity to review and contribute to these comments today.

While we do not intend to completely repeat our written comments submitted in January 2021, we continue to have questions and concerns with some of the proposals, and I will comment on those as briefly as I can and leave time for others to speak in greater detail. First, in regards to confidentiality in 15 AAC 05.250(a). the deletion of the language is relevant to a sale, exchange, disposition or netback value of oil or gas, would expand the types of confidential documents allowed for release, including upstream cost information, so this often acutely, this is often acutely sensitive commercial and proprietary information and, also creates third party confidentiality concerns. Additionally, the current regulation only allows the release of information relating to a period of at least one year prior. The proposed regulation would delete

this one-year limitation, but given the potential sensitivity of the information, we actually recommend expanding the limitation to two years and the six year statute of limitations in AS 43.55.075 would still apply with ample time for audits and information requests. And, a two year limitation may lessen resistance to providing information and reduce appeals.

Next, we recommend maintaining the term taxpayer versus the proposed term of person. Person is is much broader and taken in conjunction with the other proposed changes, it appears that a taxpayer's contractors may be given notice that their information will be disclosed which would create complications, delay and appeals. At a minimum, the regulation should define person to be the owner of a working Interest, an operator, or a taxpayer.

And, finally, on this on this area, we are concerned about the proposed timing provisions, for example, the 15 Day Notice period prior to disclosure. It's really not enough time for internal deliberation, likewise that 10-day deadline to present arguments on appeal to the director in writing is simply too short even for taxpayers familiar with the tax. Realistically, it may not be possible to obtain internal approvals within the 10 days, which then may force appeals and thinking those less familiar with Alaska's task tax laws, such as refineries and contractors, will likely file protective appeals, so instead we would recommend DOR allow 30 days for the notice period and at least 30 days for written arguments to the director.

On second, topic in regards to field topping plant regulations in 15 AAC 55.151(e) and 15 AAC 55.163(a), we request, frankly, that DOR not implement changes as currently proposed as they appear to conflict with statute and the proposed proposed revisions to 15 AC 55.155(e) & (f) provide that the tax not apply to runs, excuse me, to oil run through a field topping plant, that one, is used in operations, and two, is not capable of being returned to the commingled stream or continuing down TAPS and being sold. In our question dated January 15, 2021, we attempted to explain that currently all oil run through a North Slope field topping plant until used on the lease or a property is capable of being returned upstream of the point of the point of production. So, the proposed regulation would then violate AS 43.55.020(e) which provides that oil or gas used in operations is not considered produced for production tax purposes.

Sometimes oil is diverted to the topping plant. The Arctic heating fuel tanks are filled and the rest of the stream is diverted back. In this case then oil has run through the topping plant but is capable of being returned to the commingled stream. Therefore, our question remains and, uhm, we'd appreciate those, you know, included in the aggregate responses, does DOR intend this to be taxed at 120%? Until that question is answered we suggest that DOR does not implement this regulation, and also request the deletion of the language, "capable of being" in 15 AAC 55.163(a).

Finally, on this area we see a specific problem with 15 AAC 55.151(e)(6)(A). The regulation would require that the product be used in production operations on "that" lease or property for the oil to be deemed not produced. This would then violate AS 43.55.020(e), which requires that oil be used for operation of "a" lease or property to be considered not produced. So, accordingly, we recommend the language of "that" lease or property be changed to "a" lease or property. Third, in regards to the tariff for prevailing value in 15 AAC 55.171(o), again we would request for DOR to not implement the changes as currently proposed. The public notice states that the definition of "applicable publicly filed pipeline tariff" as both the interstate and intrastate tariffs for the calculation of prevailing value for oil has been added for clarity. However, by our interpretation, the definition does not accomplish this goal. And although this proposed regulation states the fact that Interstate and intrastate tariffs apply to the transportation of oil, it does not clearly state that the applicable tariff for oil transported in Interstate commerce is the Interstate tariff, whereas the applicable tariff for oil transported in intrastate commerce is the intrastate tariff. And so, regardless of intent and the proposed proposed regulation, attempts to define the phrase applicable applicable publicly filed pipeline tariff as both the interstate and intrastate tariff, whichever is in effect at the point of the sale by the producer. However, certain auditors, we've found, have improperly applied the lowest rate regardless of the destination. Therefore, we recommend this regulation not be implemented without further clarification.

Fourth, in regards to rig demobilization in 15 AAC 55.250(c)(5), as proposed, this revision provides that demobilization does not include transportation beyond the nearest significant road, rail, or harbor transportation hub. The term "significant" we find ambiguous in this context and likely to lead to disputes. And the current, as it currently stands, the regulation meets the

policy objective of encouraging rig use in the state and discouraging their removal from the state by providing the language that demobilization does not include transportation out of the state. This limitation, we feel, is adequate. The issue is that certain auditors have imposed additional limitations that do not exist in the language of the regulations. So, from a policy perspective, the state should want rigs to be transported along, and past, significant transportation hubs to encourage exploration and development throughout Alaska.

Finally, in regards to travel expenditures, that would be in 15 AAC 55.260(a)(6), on its face expressly allowing travel expenditures for contractors as well as deleting the language "to or from the site of vicinity of oil or gas exploration, development, or production operations," these would appear, certainly, to be improvements, however, these costs are only allowed when incurred for purposes of labor activities under subsections (a)(3) and (11), which for non-technical labor that limits costs labor costs to labor performed on the site, or in the vicinity of operations which DOR has interpreted narrowly to mean the lease or property. So, accordingly, we feel DOR should amend 15 AAC 55.260(a)(3) and (11) to recognize that a lot of valuable work is performed at physical locations other than the actual lease or property.

With that I will close. We very much appreciate the opportunity to provide comments and certainly recognize the value of the department's efforts to streamline and improve regulations and audits. We will be available throughout the remainder of the process. Thank you, again, for the opportunity to comment and I'm, we're, certainly available for any questions.

17:10
John Larsen: Thanks Brooke, and, actually, I do have one question to start with. Did you have a chance to read the department's responses to questions that was published, I want to say, around May 18th? A day or two after the supplemental notice came out that tried to provide additional guidance on how oil run through a COTP would be treated?

Brooke Ivey: You know, I'm not sure that our Tax Committee has seen that? That was around May 2021?

John Larsen: Yes.
Brooke Ivey: Okay.

John Larsen: And, yeah, it's on the department's website. I guess I was somewhat particularly concerned that you're opposed that this be implemented, because, we see this as a clarifying provision that's intended to clarify that, it's, it's the feedstock of oil that's run through the COTP that will not be taxed, right? Because it really isn't any oil that's used in the operation of a lease of property, it's the product of oil that are used. And, so, what we're trying to do, and I'd encourage you before you submit your final comments, to go back and look at those responses, because the intent is that, like I say, the oil is not used, but the products are. So, the feed, the oil that is the feedstock to create those products will not be taxed. And, in the responses, the department states very simply, "no, it is not our intent to tax all oil run through the COTP at 120%."

Brooke Ivey: Okay, and thank you for that clarification, and I know there's others on the line who probably want to speak to that.

19:03
John Larsen: Yeah, and maybe some folks have gotten had chance to
look at that and maybe they have some responses to that.

Diane Colley: John, this is Diane Colley.

19:13
John Larsen: Sure, Diane?
Diane Colley: I'm a little confused. So, are you referring to the comments that are dated January 26, 2021 at the top of the header or is there something else?

John Larsen: No, to the comments dated January 26, 2021.
Diane Colley: OK, that you posted in May, but they're dated January 26th?
John Larsen: Correct.

Diane Colley: OK.

19:36
John Larsen: It's just it's, it's yeah it's the response to the January 26 Comments.

Diane Colley: Right. The top of the header says Department of Revenue's response to questions and comments dated January 26, 2021. I just want to make sure there's only one set of responses because you had me confused, you made it sound like you posted some new ones, but there's only one right?

20:02
John Larsen: Well, I believe that the department posted some responses on January 25th. I I'd have to go back and check the date to be sure, it was kind of late in the comment period, but there was an initial set set of responses. I I would say, I don't want to say, disregard those, but the most relevant comments are the most relevant comments and those that respond to the comments that were received at the close of the comment period on January 26, 2021, are the responses on the department's website that I believe are dated May 18th, a day or two after the supplemental notice.

Diane Colley: Okay, I think it would help in the future if you could put the posting date on on here because there is no, the one I'm looking at that I pulled down from the internet doesn't have any kind of posting date, so that's why we're confused about the date.
John Larsen: You know, it should have a date right next to it, where it's posted there on the department's website.

21:05
Diane Colley: In the document, John.
John Larsen: OK. Sure, I can do that.
Diane Colley: Document itself doesn't have anything. Indicating when it was posted.
21:17
John Larsen: OK, I will do that in the future. That's an easy thing to do.

Diane Colley: Thanks.

21:27

John Larsen: So, Marie, I don't know if that brings you up next, if you're ready? Would like to make, or have any comments to make?

21:36

Marie Evans: I had to unmute myself. Yes, I have a few items on the list for today, so for the record it's Marie Evans, tax counsel for ConocoPhillips, in Alaska. So, I had three areas to touch on: the confidentiality, the topping plant, and then the tariffs for prevailing value. So, when we're talking about your response from the Department of Revenue. I did read those. So, what I was trying to glean from this, this is the response for the questions and comments dated January 26, 2021? So, I think I have the right one because I think I pulled it off. You just posted it.

So, the question with regards to 15 AAC O5.250(a) on the use of confidential information enforcement proceedings, asks, like what type of tax information does the department intend to be covered? And, the response from DOR says that the regulation implements AS 43.55.040, and therefore, pertained to the enforcement of tax in 43.55. And, so, my question is, because this regulation is in 05 and not in 43.55, I really appreciate that your office has clarified its intent and is that intent as the public notice has the regulation currently written?

23:45

John Larsen: Marie, I'm not sure I fully understand your question, but the proposed regulation is exactly that. It's the proposed regulation, And, not necessarily the final regulation it it could be, but, you know one of the things that I'll talk about at the end of the meeting here, that if you think your interests are going to be impacted by what's been proposed, and we certainly encourage you to make a comment and it's always helpful, that when making comments, that if you have suggested language that that you include that in your comment. Now, that doesn't necessarily mean that we're going to accept that, but it certainly gives us more to consider as we go through making the final regulation.

24:33

Marie Evans: Okay, so I mean I can. I can make a comment, but so, I do think it impacts, as this is currently drafted. Let me turn here. Let me turn to page one of the draft. So, when I read 15 AAC 05.250 sub(a), the amendment it has in brackets, meaning it's removing the language "under AS 43.55," and I think, to clarify, and too and align it with the intent that it is only applicable to 43.55, that I would recommend the department actually include the language "under AS 43.55" and then start the bracket after that.

25:47

John Larsen: Right, yeah, not delete the 43.55?

Marie Evans: Right. Because I think like if I was a fisherman, paying fish tax, like I would just open up. OK, what is the use of confidential information enforcement proceeding? And, I'd be like, Oh well, this is in the administrative chapter. So, like I would not as a fisherman, understand that this is only 43.55. And, I wouldn't know to go and look at the question and answers for oil and oil and gas production tax, if that makes sense?

26:32

John Larsen: It doesn't. My first comment would be is I would advise the fisherman to retain the advice of an attorney, but nevertheless I appreciate the comment.

Marie Evans: Yeah Steve, I'm getting him some new clients. No, just kidding. So, I think that is where the question came and I think the clarification is wonderful in the comments dated January 26, 2020. But I think it would help, like non-oil and gas taxpayers very much so. I think it would also eliminate, perhaps arguments from people, in the, who really wants oil and gas tax information in other arenas such as income tax, and may, you know, have different interests than just the taxing agency and the taxpayer, so I'll leave it at that.

John Larsen: Okay.

Marie Evans: Okay. So, uh. AOGA made a comment about person, so I think that that, this is, was also on my list. Let me look here. Oh, I should have numbered my pages because I just move them around! So, my secondary comment here on this 15 AAC 05.250, was, I remembered the history of this as being very specific to 43.55 and, the way we're, the proposed removal of the language on sale, exchange, disposition or netback valuation of oil or gas is being removed. And the one year is also being removed. I- I'm struggling with that from the practical standpoint of contracts we enter into have confidentiality provisions and, like the rig contracts and some of the other like when you buy pipe, the pricing mechanisms in there, and if if it's really not necessary to release that information, I just think we're going to get into a web of confidentiality issues. Uhm? That can't easily be rectified because of the contractual nature and the small marketplace that were in up here.

29:47
John Larsen: So really, let me make sure I understand your concern here. So, are you concerned that that the language here would be used to delve deeper into, oh, a third party vendor of ConocoPhillips?

Marie Evans: Uh-huh.

John Larsen: And, I do not believe that's the intent. I I don't know that, that in any of the audits that that level of detail has ever been sought. You know I, I would say, that, that I, I think that if you have a third party invoice that unless we think, or that the department suspects that there's some type of fraud or something there would really be no reason to, to delve into the pricing mechanism of the vendor.

30:50
Marie Evans: Yes, so that's what I'm, I'm concerned about is, like, all of us sitting here having this conversation right now might understand that. But, I don't know that our vendors are want their, I don't know that they want to be exposed, for potential customers.
John Larsen: Right.

Marie Evans: I'm trying to articulate because I'm trying to step into the shoes of the vendor. As the taxpayer, you know, I understand. If I deduct it, I must support the deduction. But, the release of the information beyond the taxing agency to third parties, it just gives me heartburn. I don't know, maybe I could articulate it better in in words? And, some of it, some of it you know if it's, I don't know, it's hard to explain because the contracts are like this thick, and, oh, it was one of the concerns we kind of talked about, even with ballot measure one out in the public was the exposure of vendors into, to other parties. I don't see a you know, a huge issue when it's just the taxing agency and the taxpayer. It's when you go beyond that relationship, I guess is my concern.

32:45

John Larsen: Thanks, Marie, I appreciate that that comment there. Like I said, I don't believe that that's the intent. After we receive your comments, and as we drafting the regulation we'll certainly take that into consideration and see if there is, if we believe there's language that needs to be added to protect, you know, to keep that exposure from happening.

33:10

Marie Evans: Okay, I think it's worthy of a conversation and you look at it if you step back and you look at it and you say, okay, well we're going to, we're going to go and allow this information to a person and we're going to widen the circle. And then you think about, okay, the additional notice procedures that you have within this this regulation and you think about okay, and I think you heard this from AOGA, is like taxpayers are really familiar with how to deal with the Department of Revenue. But, are you going to have to give notice to all of our vendors that and I don't think that's something the Department of Revenue really wants to take, on personally, but that's up to you guys. So that's where I was kind of coming from there as well.

34:00

John Larsen: Yeah, and can you maybe expand a little when you say "widen the circle," what do you mean by that?

34:10

Marie Evans: OK, so if we look at the wording here, the information will be disclosed only to the parties' counsels, experts, and consultants involved in the proceeding after notification to the person whose information is to be disclosed. It's not to the taxpayer, so Marie is representing ConocoPhillips in a tax proceeding and I have a contract with say ASRC and I have a contract with Doyon Drilling and we've taken lease expenditures. And, so the information to be disclosed after notification to the person whose information is to be disclosed. So, if you were just blindly looking at this and not sitting in this conversation that we're having today, the person whose information is to be disclosed, the person is is the ASRC folks the Doyon folks. And, that's where the comment is coming from because the "person" has to have notice, not the taxpayer.

35:34

John Larsen: Okay, I see. And, and, then, just to kind of you know, I I don't know if this helps answer any, or you know, settle any of your concern, there Marie, but I I believe the intent here is that not that this information is going to be widely or categorically disclosed. The purpose of the change is to hopefully provide some audit efficiencies because I think that there's been comments by AOGA and others that the audit process could be streamlined and made more efficient. And that's one of the things that we're trying to accomplish here. Is that making sure that when we're auditing lease expenditures that we can hopefully streamline that process of sharing the operator information, that is already known to the taxpayer, and use that in the audit without having to go through the process processes that are maybe currently in place. And like I say this is mainly aimed at efficiency and streamlining the audit process. Making things run smoother so that the audits can be completed in a more timely fashion, because that also seems to have been a complaint in the past.

36:59

Marie Evans: Understood, understood definitely. I just I think that, with that that intent in mind, maybe defining person to the working interest owners or something along that nature? I'll give it a little more thought on how to implement, the intent. Uhm? And, the other thing we kind of have to think about is, is the working interest owners in field aren't going to be or unit aren't going to be necessarily the same in the other unit? I'll have to think through that a little bit more.

37:55
John Larsen: Okay.

Marie Evans: I think a person may be a, really wide.

John Larsen: I'll have to look and see if the statutes define person already somewhere and how that might be used?

Marie Evans: Can't remember if I looked, but, okay, so let me see if I had anything else? I don't think I had anything else, that was the word person in taxpayer was under my practical notes. So, my second topic was the topping plant. One of the most favorite topics of my career, I think.

38:35
OK, so I did look at the, is it question 2 on the comments dated January 26, 2020 [2021]? and the department stated that yes, it is aware that oil run through the North Slope Crude oil topping plants is capable of being returned to the commingled stream. The short answer is no, the department does not intend to tax all oil run through a North Slope topping plant at 120%. Which, I very, very much appreciate that clarification. So, let me return to the language here at 15 AAC 55.163

39:31
Let me hit the easy, actually, easy stuff first, so at 15 AAC 55.151 sub(e) we have a new subsection 6. And when subsection six starts out, it says "oil used in production operations on a lease or property in the state by the producer, if the oil is run through a field topping plant in the Alaska North Slope area," and then we go to capital sub (A) Capital (B) subsection. So, when we say oil is used in the production operations, could we just say oil used on a lease or property in the State? Because one of the things, If you look at the way our statute AS 43.55 is written and the way our regulations are written, we typically see the phrase: "production, development, and exploration."

And, while, the intent is clarified. I could see somebody who is auditing us to take the position Of, "Hey ConocoPhillips, you used that diesel for well protection in that exploration well that wasn't listed here." And I don't think that's your intent. I think what you were trying to say is oil used on a lease or a property, and you don't really care whether it's for development, production, or exploration.

41:30
John Larsen: OK, I see your point.

Marie Evans: So, continuing on, the easiest things to talk about under that same area we drop down to big (A) and so we have oil is run through a field topping plant in the Alaska North Slope area. Big (A) processed into a product that the producer uses in production operations on "that" lease or property. So, you've got the production operations there again, obviously. Consider parallel language, which we just discussed and then we've got on "that" lease or property. So, the word "that" is not something again that we've used in creating parallel language, and in fact, I think if you just said on a lease or property we would be good to go.

42:37
John Larsen: Thanks, Marie. I appreciate that comment. And, I think part of where the "that" language came from is, uhh

Marie Evans: we have it somewhere else?

John Larsen: Yeah, let me see here it was. I think it was it 43.55.165(e)? It was part of the exclusionary in .165.

Marie Evans: Yeah, are you looking somewhere in (e)(20)? Let me read that.

John Larsen: Yeah, it's (e)(20), and so I think that's where the "that" language came from. But, I think you're right that the other authorizing statute at 43.55.020(e) uses "'a' lease or property." So, I think we're willing to agree on that comment there.

43.55

Marie Evans: Okay, or, just, I don't know, put a clarifying note in there or something.

Oh, I think you have someone to admit?

Oh! Maybe Steve got back in. Alright, thank you, John.

44:14

OK, so then this is the the harder part, which I think pertain to the question, and I mean the clarification question. Says that, gives me a lot of relief in that you're, the department doesn't intend to tax everything that goes into the topping plant at 120%. Uhm? I think the concern you've heard from AOGA and the concern that you hear from me is the phrase "not capable of being returned."

45:03

"Not capable of being returned and blended back into a production stream upstream of the point of production of oil," and when I, when I look at how many different interpretations is it reasonable that someone can say, "hey, ConocoPhillips, your diesel?" "You just told me that you heat up your crude stream. You take your Number 2 cut of diesel Arctic Heating Fuel, and then you blend it all back together and put it down pipe one because your storage tanks are full. So, okay, you put it in the storage tank and you didn't use it, so you had to blend it back in with the stream and eventually put it down TAPS.

45:54

So it's, it's the phrasing of capable, so, not capable. Well, it is capable, so when is it not capable? When I use it down hole, it eventually does come back up and get blended in and go down TAPS. So, we put the load diesel, the Arctic Heating Fuel down and it goes in as freeze protection. But, then we know that it comes back up in the oil stream. Based on the way we have our calculation for production tax, and so sitting in my chair where I am, I could easily see an auditor saying, hey, I just totally disagree. It is capable of being blended back in. Therefore, you don't meet the exclusion.

Thankfully, you clarified it here. So, we have some clear intent is just I think you might want to give some consideration of whether what is that adding what is it clarifying for us, and I think your intent is good for clarification. I'm just not sure about the word "capable."

47:21

John Larsen: So, let me let me see if I can help allay some of your concerns Marie, and then maybe anybody else that has a similar concern. You know, as far as the load diesel, oil and gas is not considered, at least for tax purposes, considered as produced until it's, sold, you know, unlike DNR, I believe we allow people to re-inject gas and, but, until it comes up and is sold it's not taxed, right?

Marie Evans: Correct.

John Larsen: That's really when the Tax Division looks at it as being produced. Because if you're just, if you're, and I hate to use the same words here, but if you're reproducing or maybe recycling it, it hasn't been produced, and sold yet, and I believe both the current practice and the future intended practice is, it is not taxed as load diesel when it's sent down hole for freeze protection, priming pumps, whatever it's used for until such a point as when it's ultimately produced, and I'm sorry that there is such confusion over the word "capable" because I think once again, you know, the intent was to provide some clarity, and so maybe, rather than focusing on, "capable," let's look at what is "not capable." And, maybe this is addressing a problem that is no longer relevant. But say, for example, when diesel is produced and being used to run trucks or generate power, any things like that. I would say that that type of oil product is not capable of being returned to the stream, right?

49:23

John Larsen: It's been, it's been consumed in the operation of the lease or property.

49:29

Marie Evans: Agree.

John Larsen: Yes, right. And so that's kind of it. In my mind that's how I see adding the word "capable" is going to provide clarity, because if we simply say "not returned," If it's not returned, then I I think that goes back to your first example of oil that's maybe just sitting on lease, it may have a use, but it hasn't been returned yet, and so someone may take an opinion that it's "not returned," and should be taxed. And, so, I believe the intent was as long as it's "capable" of

being returned, and has not, it should not be taxed. And, so, until such a time as it is returned to a point upstream of a point of production and considered produced.

50:22
Marie Evans: OK, so let's, uh? Oh how?

50:35
Destin Greeley: Just to clarify, it doesn't have to be sold.
50:38

John Larsen: Right.

Destin Greeley: So, as soon as it hits the accurately metered, measured, but they can exchange it or other things that's, fine.

John Larsen: Yeah.

50:47
Marie Evans: So, we are still using, we have to use ULSD in vehicles, so when you were talking about maybe not returned, but we are still using and consuming in some of the generator's diesel.

John Larsen: Right.

Marie Evans: So, that would definitely not be capable of being returned?

John Larsen: Correct. Yes.

Marie Evans: Uh, so, then, if I go to my load diesel and it is, or my lease use, it's used, because, it goes down hole.
51:58
Big, um, (pause), but it is capable of being returned?

52:10
John Larsen: Right. And, so it should not be taxed.

52:13
Marie Evans: OK, so it should not be taxed.

John Larsen: Because we know, in most instances it's going to be reproduced at the surface. Right? And, so at the time that it's reproduced and sold is when it will be taxed. And it's, and it's my understanding that is kind of the current practice and will continue to be the practice after these regulation changes are made if they are accepted and adopted by the Commissioner.
Marie Evans: Okay. Hey Steve, I'm gonna ask Steve if I've properly articulated my lease use of load diesel and consumption. Because sometimes my engineering skills aren't the best.

53:09
Steve Mahoney: Well, I think one of the issues that that's that's driving this is that the recording and the processing of the crude oil into the topping plant. This diesel coming out when it's separated goes into a tank. Those tanks are several 1000 gallon tanks. You have time periods where it's going to sit in the tank, but it still, to be used on the lease or property. And, so, there's the production of whatever is produced at the end of the month when we're doing reporting. The reporting gets convoluted in relation to, because if it's capable of being reintroduced, sometimes it is. And, the volume is adjusted just coming out and it's recorded when it goes to the LACT meter, but most of the time it sits in the tank, but it's still "capable" and that that's really the issue, is that terminology, and wanting to be as absolute as we can in compliance, that creates a complexity.

Marie Evans: Thank you, I think you articulated that better than I did.

54:11
John Larsen: And so, Steve, I I, I think that that maybe you hit upon the point of why we did add the word "capable" in there, because while it's sitting in the tanks, it is still "capable" of being

returned and blended back into a point upstream of production, it hasn't been consumed in lease operations, right? It's one: it's neither been consumed in lease operations, nor has it been produced and sold.

55:46

Marie Evans: Right, but when Jennifer goes to do the reporting and it's in the tanks that Steve described, how does she report that? Because it is capable of being blended back in. But, we don't want to tax it.

55:06

But, it's not going to fit in the wording of the exclusion as as we're reading it. because it's, your excluded if it's "not capable" of being returned and what is it?

Sorry, Steve, go ahead.

55:24

Steve Mahoney: I was just gonna say this, the accounting kind of doesn't work that way. It's not necessarily the meter that takes the diesel out to the field, it's the reporting of the volume that is passed through as crude oil. And then what isn't passed through as crude oil is denominated into diesel fuel and then reconciled, but the analysis is that that diesel fuel is a reduction in the amount of volume of crude oil, that is reported as produced when it goes through the LACT meter, so the assumption is, except for the amounts that are sold, which are measured separately.

55:58

Okay, the difference in volume of crude oil going in and out is the amount that's used, that is diesel. And, the only adjustment to that is the amount that is sold to third parties, which means it's not used on the lease or property. So, what happens is the accounting, the way those volumes are accounted and reported doesn't work with the word "capable" because of what's going to happen then is the full volume in is going to be taxable until there's another reconciliation rather than the other way around where it is counted as it goes out of the end.

56:34

John Larsen: Steve, let me first go back to one of the earlier points, is that where you said that it's sold to third parties? I don't necessarily believe that means that it's not used in the operation of a lease of property.

You know, at that point and I, I don't know for certain, but I I would guess that's the purpose. And if it is, then that is not a taxable event as far as the feedstock, however, the sale to the third party would create an adjustment under AS 43.55.170. Because, the party buying the oil is going to incur a lease expenditure, right? There's been a third-party exchange there, so they're going to incur a lease expenditure and, then, on the other end, the party that made the sale is going to show the 43.55.170 adjustment as a reduction in their lease expenditures. But the oil that's sold to those third parties and used it in the operation of a lease of property, under 43.55.020(e), is not subject to tax.

58:05

Steve Mahoney: Yeah, and I I, I think we're all saying the same thing and I think we do understand, how we're articulating what is, used or not used, on the lease, or property. What is taxable. What ends up in LSE because a third-party uses it and then charges the working interest owners. I think we're all on the same page there, John. My concern is related to the account for the topping plants. The volumes, doesn't work with "capable of" just because of the way it's accounted for, and think that's the real problem, so just, so again, I appreciate that we're trying to put clarity here. I'm just concerned that that terminology doesn't provide more clarity to someone who isn't in this room right now, and knows how this works. Which is gonna be John Doe for the regulation if that occurs.

58:57

Mary Gramling: This is Mary. It's 11:30, and I think Marie, you had one other point, but I would just say I think this is a highly technical area and so I would very much encourage you, if you have concerns in this area, and it sounds like there are, to submit, you know, examples to the extent that you can, and not have concerns about taxpayer confidentiality in the examples and then also, you know you can propose suggested language you know and that can be helpful,

sometimes not. But you know it, that you know is very helpful when suggested language is proposed.

59:31

Marie Evans: Okay, Mary, we will move along to my next one an I will think we have 'til June 10th. So I'll try and think up kink of example and how we do the accounting just so were not in, I completely understand the intent. I just don't want to put Jennifer in an awkward position so that we get our compliance correct.

59:55

So, Number three on my list and I have moved everything around in this room, uhm, was tariffs, tariffs, oh tariffs, yeah and AOGA did meet, mentioned this. So, there seems to be confusion, oftentimes with our audits. And, I I know we're in a public forum, so I'm not going to go into the details of that. But, and I think that, let me look at the department's responses.

So, you had question four, John, that the department respond to, responded to it, does DOR intend for the applicable tariff to be intra, versus inter depending on whether the oil is destined for intra versus interstate commerce? And, thankfully, the department is not doing barrel tracking because we aren't either, and that the ultimate destination of a barrel of oil may not be known at the time of sale. For purposes of determining prevailing value, the department relies on the sales delivery point as the point at which the tax levied in .011(e) is assessed on the producer.

The proposed regulation regarding 15 AAC 55.171(g) and (h) refers to the quote "carrier ownership-(hyphen) weighted average of all applicable publicly filed pipeline tariffs" end-quote, on file for all carriers at the sales delivery point by the producer of the oil or gas.
And, that, the intent is to clarify when determining prevailing value, that quote "all applicable publicly filed pipeline pipeline tariffs includes both the FERC or RCA tariffs for each individual carrier." So, if the barrel is destined for the West Coast because we look at the sales delivery point. To the taxpayer, the applicable public filed tariff is Interstate because it was sold on the West Coast.

01:02:37

John Larsen: I think we're talking about sales that occur inside Alaska, right? Not sales that occurred on the West Coast, we're talking about the first sales delivery point.

01:02:48

Marie Evans: OK, so let me turn tracking.

John Larsen: We don't do barrel tracking.

Marie Evans: Thank goodness!

01:02:51

John Larsen: So, we don't know that the barrel is destined for the West Coast.

01:02:57

Marie Evans: Ultimately, we know how many barrels are sold on the West Coast, or in Asia or in, in in-state. So, when we're calculating the prevailing value, we're at 171, we're proposing adding language where the applicable publicly filed pipeline tariff means both the inter and intrastate tariffs. Uhm? So, I think the concern is that we report based on the contract of sale. Say a contract by contract, and so, we calculate our sales price less our transportation and then we have the prevailing value. And, so, prevailing value, as this regulation is now amended, looks like it has to use both interstate and intrastate, irrelevant of the fact that we do it contract by contract and we know that the barrel was on the West Coast.

01:04:21

Does that make sense? What I'm trying to say? Jennifer, you're welcome to step in if I am completely, Uh, messing up, the prevailing calc.

01:04:38

Jennifer Roberts: I think it wasn't clear when we were reading these proposed regulation, um, that it was trying to assign the RCA tariff to the in-state sales and the TAPS tariff to the out of state sales. Because we have exactly what we sold. We have those sales invoices and we know

exactly what they are. So, we can probably try and frame that up in written comments and get those to you.

01:05:07
John Larsen: Thanks, Jennifer, that would be great. I think I kind of like to keep this moving, so are there other comments? Marie that you'd like to add? Or, can we move to the next commenter?

Marie Evans: Oh, I just had one overall question which would be, like, what is the process after this? But, if you could just cover that in, closing comments, I'd appreciate it. I didn't have any other substantive comments.

01:05:31
John Larsen: Sure, I'll do that, thanks.

01:05:34
Marie Evans: Since I'm taking up too much time.

01:05:42
John Larsen: Is there someone else that would like to make some comments for the record?
01:05:48

Diane Colley: Yes, this is Diane Colley.

John Larsen: Okay, Diane, go ahead.

Diane Colley: I have a prepared statement that I'd like to share. For the record, my name is Diane Colley and I am the Tax Manager for Oil Search Alaska. My observation with respect to the proposed change to 11 AAC 55.171(o), this is the tariff one that we were just talking about, is that the department's response, the one dated January 26, 2021 does not address the concerns raised in the public comments.

The type of policy the department is outlining, impacts new entrants and small producers. The destination of most barrels is known at the time of sale and very little oil remains in state. Moreover, the main supplier of oil in state is DNR through the sale of RIK Oil.

New entrants and small producers who either do not have Jones Act Vessels, or not enough volume, to justify arranging their own vessel will often sell their oil in-state to a producer who does own a Jones Act vessel. This oil will ultimately be delivered and sold out of state.
The sales contract between the producers will normally reflect this and use the Interstate tariff. In this case, the applicable tariff is the Interstate tariff and the prevailing value should be the contract price and not a constructed price. And, that's my comment. Thank you.

John Larsen: Thank you, Diane. And, that's the only proposed changes you wanted to comment on?

Diane Colley: Yes, that's all.

John Larsen: Alright. Thanks.

01:07:43
John Larsen: Jon Iversen, do you have any comments that you wanted to add?

01:07:50
Jon Iversen: No, thank you, John, I have nothing further to add, appreciate it.

01:07:54
John Larsen: Is there anybody else that's on the call today that has any initial comments to make? Hearing none, we'll move to the close, and, Marie, I was kind of hoping that I had answered the question earlier, but just let me repeat that the more or less timeline process. Following today's public hearing is that concurrent with the drafting of final regulations, the department will aggregate its responses to questions received at least 10 days before the close of the public comment period and make those questions and responses available on the Online

Public Notice System and Tax Division website. After the close of the public comment period the comments will be accumulated and posted on the Online Public Notice System and Tax Division website.

01:08:53
You know, but as far as a timeline, if that's what you're asking about, you know, I don't know that I can give you a date certain, you know, but as far as process after the close of the public comment period, the department the department does assess and consider all of the comments received, when drafting the final regulations. Uh, and and then, once the, kind of draft final of the regulations is ready, it has to be approved and adopted by the Commissioner too, before it can become law.

Following adoption by the Commissioner, there's a review by the Department of Law, to make sure that the, any changes are consistent with statute. And, then, after LAW has done their review, they send it to the Lieutenant Governor, who then files the regulation with an effective date. And, as I said earlier, you know, due to the proposed change to the reporting service, if that is adopted, it would be the department's desire to have the changes take effect on the first day of a month. Without that specific language they take effect 30 days after the date of filing by the Lt. Governor. So, we'll want to be sure to include some type of language to make sure that there's not two different reporting services being used in the same month, if that change is proposed.

And, so, that's kind of the process.

So, as previously stated, the department held this public hearing in order to provide opportunity for the public and interested parties to provide input and testimony for suggestions on regulations first publicly noticed on December 25, 2020, and buy supplemental notice dated May 16, 2021, that may need to be amended, implemented or repealed. Thank you, everyone for your comments here today.

After the close of the public comment period at 4:00 PM on Thursday, June 10, 2021, the department will either adopt the proposed regulation changes or other provisions dealing with the

same subject without further notice or decide to take no action. So, as reminder, places you can submit your written comments are to me, via email to: john.larsen@alaska.gov. Once again, that's J-O-H-N dot L-A-R-S-E-N @ Alaska.gov.
via fax to: (907) 269-6644;
Delivered by postal mail to 550 W 7th Ave, Ste. 500, Anchorage, AK 99501.

All comments will be considered in the final drafting of regulations proposed for adoption by the Commissioner of Revenue. This is a great opportunity for commenter's to provide suggested language. The language of the final regulations may be different from that of the proposed regulations. Therefore, if you believe your interest may be affected, you should comment during the time allowed. Written comments received are public records and subject to public inspection. Thank you. Once again, everyone, for your time here today, for your participation and interest in these matters. The public hearing is now closed, and the time is 11:44. Thanks and good day.
Thank you, thank you.
01:12:40
Thank you. Thank you.
01:12:43
Thanks.