Alaska Oil and Gas Association

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June 10, 2021

VIA EMAIL: john.larsen@alaska.gov

Mr. John Larsen, Audit Master
Tax Division, Alaska Dept. of Revenue
550 West 7th Avenue, Suite 500
Anchorage, AK 99501

Re: Proposed Regulations (December 23, 2020 Supplemental Public Notice)

Dear Mr. Larsen:

The Alaska Oil and Gas Association ("AOGA") appreciates the opportunity to provide comments in response to the Department of Revenue's ("DOR") proposed regulations in Title 15. For nearly half a century, AOGA has been the trade association of the petroleum industry in Alaska, and our members actively continue to explore for, develop, produce, transport and refine oil and gas in the state. In keeping with our practice regarding tax matters, all our members have had the opportunity to review and contribute to these comments, and they have been approved without dissent.

Our comments concern proposed changes to regulations that DOR has proposed pursuant to the public notice dated December 23, 2020. We intend this letter to supplement, but not supersede, the comments submitted on January 26, 2021 and those comments made at the public hearing on May 27, 2021. To the extent we are not commenting on certain proposed regulations in this set of comments, our previous comments remain as stated.

15 AAC 05.250(a)
As noted at the May 27, 2021 hearing, DOR is proposing to change 15 AAC 05.250(a), a regulation that is interpreting, implementing, and making specific Chapter 05

(Administration of Revenue Laws) in Title 43 (Revenue and Taxation). We have several recommendations that follow regarding the proposed changes to 15 AAC 05.250(a).

First, since the proposed regulation change pertains to the Administration of the Revenue Laws, all tax types are impacted unless specified in the regulation, and to best align the regulation with DOR's intent "to clarify the procedures under AS 43.55.040"[1] we recommend restoring the reference to AS 43.55 as follows:

15 AAC 05.250(a) is amended to read:

> (a) Department representatives **may** [WILL, IN THEIR DISCRETION,] disclose confidential information [OBTAINED FROM A TAXPAYER] in an audit or investigation of a [ANOTHER] taxpayer under AS 43.55…

Second, the current language "if the information is relevant to a sale, exchange, disposition, or netback valuation of oil or gas that relates to a period of at least one year before DOR's release of the information" is proposed to be removed. Building on DOR's stated intent that regulation 15 AAC 05.250(a) pertains only to production tax, then we recommend restoring both the reference to the types of information and the temporal restriction to eliminate the disclosure of sensitive, commercial, or proprietary information and third-party confidentiality concerns. An example of proposed language is:

15 AAC 05.250(a) is amended to read:

> (a) Department representatives may [WILL, IN THEIR DISCRETION,] disclose confidential information [OBTAINED FROM A TAXPAYER] in an audit or investigation of a [ANOTHER] taxpayer under AS 43.55 if the information is relevant to a sale, exchange disposition, or netback valuation of oil or gas that relates to a period of at least one year before the Department's release of information.

Third, we recommend DOR return to the use of "taxpayer" rather than the proposed term "person." Although Title 43 and its accompanying regulations do not provide an applicable definition of "person," the statute that sets forth generally applicable definitions for Alaska laws (unless the context otherwise requires) provides that "'person' includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person."[2] We also found a definition of "taxpayer" at 43.05.499(11) and it "means a person required to pay a tax, including a

[1] Department of Revenue's Responses to Questions in Comments Dated January 26, 2021.
[2] AS 01.10.060(A)(8).

person required to pay a seafood marketing assessment under AS 16.51." The expansive definition of "person" is clearly much broader than "taxpayer" and indeed the definition of "taxpayer" shows that it is but one category of "person" – one required to pay a tax. We reiterate our recommendation that the term "taxpayer" continue to be used, particularly given the other proposed changes.

Fourth, as mentioned previously, we recommend a 30-day notice period prior to disclosure.

15 AAC 55.151(e), 15 AAC 55.163(a)

We appreciate DOR's clarification dated January 26, 2021[3] and the discussion at the public hearing on May 27, 2021. Our supplemental comments for DOR's consideration are as follows:

First, the phrase "production operations" was discussed at the May 27, 2021 hearing due to newly proposed language at 15 AAC 55.151(e)(6). We reviewed (e) in its entirety and noted that the regulation uses the phrase "production operations" at 15 AAC 55.151(e)(1) and that the proposed language at (6) was likely drafted to maintain parallel language within the regulation. Next, we reviewed the second sentence of 43.55.020(e) which does not use "production operations," but instead states, in relevant part, "[o]il or gas used in the operation of a lease or property…"

We recommend removing "production operations" from both (1) and (6) at 15 AAC 55.151 because the words do not add clarification, to read as follows:

15 AAC 55.151(e) is amended to read:

> (e) For purposes of AS 43.55 and this chapter, production of oil or gas does not include
>
> > (1) [OIL OR] gas used in production operations on a lease or property in the state by the producer;
> >
> > *****
> >
> > (6) 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

[3] See Question 2, Department of Revenue's Responses to Questions in Comments Dated January 26, 2021.

(A) processed into a product that the producer uses ~~in production operations~~ on ~~that~~[4] **a** lease or property; and
(B) not capable of being returned and blended back into a production stream upstream of the point of production of oil.

Second, DOR stated that it intended the phrase "not capable" to clarify that the crude oil entering the field topping plant and consumed on lease is not subject to tax pursuant to AS 43.55.020(e). Based on comments and discussion, and with this intent in mind, we propose the following:

15 AAC 55.151(e) is amended to read:

(e) For purposes of AS 43.55 and this chapter, production of oil or gas does not include
*****
(6) 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
(A) where certain liquid hydrocarbons fractions, separated and removed, are used on a lease or property; and
(B) where the remaining liquid hydrocarbons are returned and blended back into a stream of oil that continues on to the Trans-Alaska Pipeline System.

15 AAC 55.171(o)
DOR articulates that the purpose of the proposed addition of 15 AAC 55.171(o) is to add clarity to an issue that continues to be a point of controversy in various AS 43.55 audits of taxpayers. Specifically, the public notice states the clarification is to change the definition of "applicable publicly filed pipeline tariff" to "both the interstate and intrastate tariffs" for the calculation of prevailing value for oil.

By our interpretation, the definition does not accomplish this goal. 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-state (intrastate commerce) is the intrastate tariff. The "applicable publicly filed pipeline tariff" is that tariff that can only be applicable to a barrel of oil carried. It cannot be "both…tariffs." For each barrel of oil, the eventual delivery point is absolutely

[4] We proposed striking "that" to facilitate parallel language with statutes and regulations which use "on a lease or property."

certain when production tax is calculated, and in almost every circumstance certainty exists at the execution of the initial contract for sale.

Further, only one regulatory agency's tariff can be charged to any barrel of crude oil transported through the Trans Alaska Pipeline System: either the Interstate Federal Energy Regulatory Commission Tariff or the Intrastate Regulatory Commission of Alaska Tariff. To the extent any clarity is required, the regulation should read:

> (o) As used in the section "applicable publicly filed tariff" means either the interstate or intrastate tariffs.

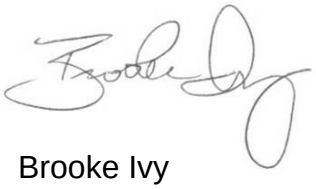
From the viewpoint of taxpayers, the proposed addition does not seek to clarify. Instead, it appears intended to strengthen an audit position that remains untenable and that fails to recognize that the vast majority of barrels produced from North Slope fields are destined for interstate commerce.

We appreciate the opportunity to provide additional comment and thank DOR for its ongoing efforts to improve regulations and audit processes.

Please contact us with any questions or if you wish to discuss in further detail.

Sincerely,

ALASKA OIL AND GAS ASSOCIATION



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June 10, 2021

Alaska Department of Revenue
John Larsen, Audit Master Tax Division Dir.
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Anchorage, AK 99501

Re: Supplemental Public Notice, Proposed Changes on the Administration of Revenue Laws and the Oil & Gas Production Tax in the Regulations of the Department of Revenue

Dear Mr. Larsen:

ConocoPhillips Alaska, Inc. participated in the May 27, 2021, public hearing that the Department of Revenue held on the proposed regulations with a public notice date of December 23, 2020. The proposed changes are to regulations for the Administration of Revenue Laws (AS 43.05) and the Oil & Gas Production Tax (AS 43.55). During the May 27, 2021, ConocoPhillips committed to further thought, draft language or other follow-up and thereby submits the following:

15 AAC 05.250(a)

The proposed changes to 15 AAC 05.250(a) impact all tax types because the change is made in the Administrative Chapter 5 of Title 43. Specifically, the proposed change removes the existing reference to AS 43.55 thereby creating a prospective regulation that applies to all taxes rather than only AS 43.55, the Oil & Gas Production Tax. Based on the Department's expressed intent at both the May 27, 2021, public hearing and the response to the questions dated January 26,

2021, [1] ConocoPhillips recommends the following change to clearly align the regulation's language with the Department's intent:

15 AAC 05.250(a) is amended to read:

> (a) Department representatives **may** [WILL, IN THEIR DISCRETION,] disclose confidential information [OBTAINED FROM A TAXPAYER] in an audit or investigation of a [ANOTHER] taxpayer under AS 43.55...

During the May 27, 2021, ConocoPhillips also discussed the removal of the listed types of tax information and the replacement of "taxpayer" with "person." Both changes expand information shared and who will become involved with the confidential information.

ConocoPhillips does not see the benefit for the expanding the list of tax information to be shared or involving third parties, like vendors, in production tax appeals. We recommend the proposed language be changed to:

15 AAC 05.250(a) is amended to read:

> (a) Department representatives may [WILL, IN THEIR DISCRETION,] disclose confidential information [OBTAINED FROM A TAXPAYER] in an audit or investigation of a [ANOTHER] taxpayer under AS 43.55 if the information is relevant to a sale, exchange disposition, or netback valuation of oil or gas that relates to a period of at least one year before the Department's release of information.

We believe that further consideration should be given to the age of the documents that might be shared wherein one producer's documents might be provided another producer. On both the revenue or sales contract side and the expense or services contracts and invoice side there are innumerable confidentiality, trade secret and even potentially antitrust issues that will arise when documents that are less than one year old are being shared among competitors. The need to have recently created documents

[1] Department of Revenue's Responses to Questions in Comments Dated January 26, 2021.

shared with taxpayers makes little sense given normal audit cycles and the issues that arise from forcibly sharing documents with a high likelihood of having confidential pricing and fee information will certainly cause litigious pushback on requests where there is no reasoned balance of need to potential irreparable harm.

15 AAC 55.151(e), 15 AAC 55.163(a)

The Department's clarification dated January 26, 2021[2] and the discussion at the public hearing on May 27, 2021, significantly assisted. In order to implement the Department's stated intent, that the crude oil entering the field topping plant and consumed on lease is not subject to tax as provided in AS 43.55.020(e), we propose the following:

(e) For purposes of AS 43.55 and this chapter, production of oil or gas does not include

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(6) 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

(A) where certain liquid hydrocarbons fractions, separated and removed, are used on a lease or property; and

(B) where the remaining liquid hydrocarbons are returned and blended back into a stream of oil that continues on to the Trans-Alaska Pipeline System.

The physical processes which separate the products (diesel fuel) from the crude oil stream at the Topping Units on the North Slope must be considered in the language used in the proposed regulation. When the products separated at the Topping Unit must be "not capable of being returned and blended back into production stream..." the regulation effectively excludes all products of the Topping Units from being deemed exempt. The regulation in essence creates an event driven decision that does not make production operation sense. The process in the Topping Units allows for separation and storage of products wherein the plant piping is designed to allow any liquid in the Unit, at any time, to be reinjected into the production stream. As well, after the products are removed from storage much of their use is for downhole freeze protection in well bores which in most instances will be subsequently restarted and those same downhole products will be blended back into the production stream.

The accounting and reporting of production is driven by the physical plant processes wherein the volume of products separated that are removed from the Unit and not sold

[2] See Question 2, Department of Revenue's Responses to Questions in Comments Dated January 26, 2021.

to third parties are properly considered used on the lease of property. The resulting output crude oil stream from the Unit is metered and measured and subjected to tax as well as the products sold. This accounts for all liquid hydrocarbons introduced to the Topping Unit and taxes only those hydrocarbons not used on the lease or property. If the terms used in the proposed regulation are adopted, even with the Department's verbal assurances otherwise, there will be confusion and less clarity that exists without the regulation.

15 AAC 55.171(o)

ConocoPhillips disagrees that the proposed language using the both the intrastate and interstate tariffs in a carrier weighted average averages provides clarity. A barrel of oil can only have one applicable tariff because the destination is either intrastate (RCA tariff) or interstate (FERC tariff). The transportation cost for a barrel of oil is one tariff a result of the disposition point, which is either in-state or out-of-state and that tariff is identified and billed by the transportation company for each disposition point leaving no question which tariff is applicable.

Sincerely,

Marie P. Evans

Marie P. Evans

Proposed changes to 15 AAC 55.520(f)
Dan E Dickinson, CPA
June 10, 2021

I very much appreciate this attempt to provide "exemptions for non-operators and minor working interest owners."[1] I currently make 384 monthly OGM filings every year on behalf of 16 "non-operators and minor interest owners" – including producers of gas in the Cook Inlet and oil on the North Slope. We would all be quite pleased if they could be exempted from those filings, and I don't think such an exemption would diminish the department's ability to administer AS 43.55 in any way, and may even produce a savings in state processing costs.

I don't have any comment on proposed changes to the regulatory language of 15 AAC 55.520(f). Whether in fact it effectively exempts certain "non-operators and minor working interest owners" from their monthly OGM filing requirements will be determined by other departmental actions which are not explicit in either the existing or proposed language.

Every month I do monthly OGM filings on behalf of each of 16 non-operator clients consisting of two distinct submissions.[2] These are (i) a 16-screen submission referred to as the "return" and (ii) an additional three-screen submission accessed as "Add Contract Data". All 16 of these clients both

- are well below the thresholds articulated in the proposed revisions to 15 AAC 55.520(f), and
- under defined procedures in unit documents, leave their hydro-carbons with the operator to market, with the proceeds credited to the WIO.

Because their respective operators handle their marketing, there are no contemporary contracts for sale, nor any monthly invoices. None the less, apparently using its authority under AS 43.55.030(f)(8) to request "other records and information the department considers necessary for the administration of this chapter" the department has requested – and I have complied with that request – that the "Add Contract Data" be filed every month checking the "no activity to report" box. Is it the department's intent to continue asking for this "no activity to report" filing? And moving to the 16-screen return, if the substantive requirements are removed will this just become a second "no activity to report" filing requirement?

To restate the question - is the notion to require all the monthly mechanics of filing, including entering demographic and third party filer information each month for each client for the 16-screen submission? The only thing that would change under

[1] Public Notice from the SOA, Tax Division, dated December 23, 2020
[2] 16 clients* two submissions a month* 12 months a year = 384 filings

the revised regulation is instead of monthly adding the volume and value of hydro-carbons produced, and credit and costs information, I would just check the "No activity to report" button? And then once a year when filing the annual OGP return, all the monthly value and volume data would be entered (generally just using "import" feature)? Entering the credit and the lease expenditures data once yearly in the OGP instead of entering one twelfth monthly in the OGM report would, at the margins, involve some savings in time and effort. However if am still making 384 OGM submissions every year, it hardly seems that my clients have been exempted from anything. While I am not asserting that these filings are terribly onerous – I am also not sure they are very useful.

I hope the Department's intent is to truly exempt these "non-operators and minor working interest owners" from having to make these 384 filings every year: Rather than adding to the monthly "no activity to report" filings, I would envision a status more like "ceased."[3] Making this explicit in the regulations could be as simple as adding to 15 AAC 55.520(g) a statement along the lines of:

> A producer of explorer with no activity to report need make no monthly filing indicating no activity to report.

On the other hand, if the department determines that these monthly assurances of "no activity to report" are among the "other records and information the department considers necessary for the administration of this chapter" then I would use this opportunity[4] to make that explicit (and to help me clarify to my clients what is going on) by adding to 15 AAC 55.520(g) a statement along the lines of:

> "A producer or explorer with no activity to report shall indicate "no activity to report" on the applicable form prescribed by the department."

Incidentally, the monthly tax amounts due (if any), are so small for these 16 clients that it is efficient to make annual estimated prepayments. Reviewing what I take to be the appropriate sections of AS 43.55.020 and Articles 2 and 3 of AS 43.55 I saw nothing that would require monthly OGM filings, and no reason that the pre-payment practice could not continue without OGM filings.

Finally, as a convenience to everyone involved, please make as explicit as practical with actual dates in the language of the regulations themselves the dates, whether by filing month or production month that any actual exemption will become effective. I realize this is somewhat in tension with some of my earlier suggestions

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[3] Provision for which I cannot find in 15 AAC 55, so I cannot recommend specific language to recapture that status for these returns.

[4] If these monthly filings will still be required to be made, what could provide relief to this process is to increase the amount of data – such as third party preparer information – that could be imported each month – still of course subject to review, change and confirmation with each monthly filing.

to change departmental practice not define in 15 AAC 55 However, this could all be implemented by adding to 15 AAC 55.520(g) a statement to the effect of:

> For activity occurring on or after January 1, 2022, a producer of explorer with no activity to report need make no monthly filing indicating no activity to report.

If an earlier date is feasible I see no problem with only having a partial year of OGM required filings, and encourage you to go for it.

Thank you for this opportunity to comment, and I hope the above proves useful in obtaining our mutual goal – shared with these 16 clients – of making them exempt from making these seemingly superfluous OGM filings.