ALASKA DEPARTMENT OF REVENUE, TAX DIVISION
ADVISORY BULLETIN 2009 - 01

Subject: Production tax for gas used in the state under AS 43.55.011(o) and AS 43.55.900(24)

Alaska's Clear and Equitable Share (ACES) legislation enacted in December, 2007, included two amendments to the production tax statute dealing with gas used in the state. The statute at AS 43.55.011(o) allows a producer of gas used in the state and produced from a lease or property outside the Cook Inlet sedimentary basin the benefit of the tax ceiling under AS 43.55.011(j)(2).[1] The statute at AS 43.55.900(24) defines the phrase "used in the state" to mean delivered for consumption as fuel in the state, including as fuel consumed to generate electricity.

A manufacturing company, hereafter referred to as "the Company," has requested an Advisory Bulletin to clarify the meaning of gas used in the state. The Company uses gas for two purposes. A portion of the gas is used as a feedstock of raw material in the manufacturing process, by which gas is subjected to chemical reactions to synthesize another product. This gas is referred to as "process gas" or "feedstock gas". The remainder of the gas is used as fuel to run equipment such as heaters and compressors. This is referred to as "fuel gas". The Company raised the following question:

The definition of "used in the state" means delivered for consumption as fuel in the state. Under this definition would a nitrogen complex that uses natural gas to manufacture anhydrous ammonia qualify for "used in the state"?

Under the statutory definition of "used in the state," only that portion of the gas used as "fuel gas" by the Company would qualify. Gas is consumed as fuel when it is burned to provide energy. Gas used as a chemical feedstock is not gas consumed as fuel, as required by that definition. Therefore, the Company's feedstock gas produced outside the Cook Inlet sedimentary basin would not qualify for the production tax ceiling under AS 43.55.011(o).

We note that this limitation on the applicability of the tax ceiling applies only to gas produced from a lease or property outside the Cook Inlet sedimentary basin. Gas produced from a lease or property in the Cook Inlet sedimentary basin enjoys a tax ceiling under AS 43.55.011(j) regardless of whether it is delivered for consumption as fuel in the state.

This advisory bulletin is issued for the information and guidance of producers, explorers, and other interested persons. Opinions expressed here are strictly limited to the proposed conditions as presented above interpreted in accordance with existing Alaska production tax law. These interpretations do not address other possible effects under other tax types or other tax laws, and, as provided under AS 43.55.110(g), interpretations stated in this advisory bulletin are not binding on the Department or others.

Jonathan E. Iversen
Director

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[1] The ceiling tax per Mcf (thousand cubic feet) under AS 43.55.011(j)(2) is derived by multiplying the average rate of tax that was imposed under AS 43.55 for taxable gas produced from all leases or properties in the Cook Inlet sedimentary basin for the 12-month period ending on March 31, 2006, times the average prevailing value for gas delivered in the Cook Inlet area for the 12-month period ending March 31, 2006, as determined by the Department of Revenue. The regulations at 15 AAC 55.440 provide that the average rate of tax for Cook Inlet for the 12-month period ending on March 31, 2006, was 4.947 percent and that the average prevailing value for gas delivered in the Cook Inlet area for the 12-month period ending March 31, 2006 was $3.585 per Mcf.