

15 AAC 55.280 is proposed to be amended by adding new subsections to read:

(b) A fee or other consideration received by or on behalf of a producer in connection with another person's use of a production facility in which the producer has an ownership interest does not constitute a payment or credit for the use of the production facility under AS 43.55.170(a)(1) or a reimbursement or other payment that offsets the producer's lease expenditures under AS 43.55.170(a)(2), to the extent that the fee or other consideration

(1) defrays the fraction of the producer's costs to operate and maintain the production facility that is attributable to the other person's use of the facility, except to the extent the producer treats that fraction of the costs as its own lease expenditures;

(2) compensates the producer for the deferral or loss of the producer's oil or gas production resulting from the other person's use of the production facility, except to the extent the other person treats the fee or other consideration as its own lease expenditure;

(3) reimburses the producer for its additional tax liability resulting from the receipt of fees or other consideration in connection with the other person's use of the production facility, except to the extent the other person treats the amount of the reimbursement as its own lease expenditure;

(4) consists of a contribution of a share of the capital investment to acquire, construct, or improve the production facility and that is in lieu of an increase in the fee that would otherwise be charged to the other person in connection with the other

person's use of the facility, except to the extent the producer treats that share of the capital investment as its own lease expenditure; or

(5) represents a charge for use of capital invested in the production facility before April 1, 2006.

(c) For purposes of (b)(1) of this section,

(1) costs to operate and maintain the production facility do not include costs that are treated as capitalized expenditures under 26 U.S.C. (Internal Revenue Code), as amended;

(2) if the facility use agreement between the other person and the producer provides for an identifiable amount of a fee that represents the other person's share of the costs to operate and maintain the production facility, that amount will be considered the fraction of the producer's costs to operate and maintain the production facility that is attributable to the other person's use of the facility, unless the department determines that the amount is unreasonable; otherwise, the department will determine that fraction using a method of allocation that is based on relative quantities of produced fluids processed by the facility or other characteristics of the produced fluids that are reasonably related to the costs to operate and maintain the facility.

(d) For purposes of (b)(5) of this section, the extent of a fee or other consideration for a given time period that represents a charge for use of capital invested in the production facility before April 1, 2006, is equal to the following:

$$F \times (CB / (CB + CA)),$$

where

F = the total amount of the fee or fees or other consideration, excluding amounts described in (b)(1) – (4) of this section (regardless of whether treated as a lease expenditure), that would be charged for that given time period in connection with the other person’s use of the facility if the total were calculated on the same per-unit basis that was used to calculate the total fee or fees or other consideration for the (1) last time period beginning before April 1, 2006, for which the other person was charged a fee or other consideration in connection with the other person’s use of the facility; or (2) first time period for which the other person was charged a fee or other consideration for use of the facility, if that first time period began after March 31, 2006 , but in either case not exceeding the amount of the actual total fee or fees or other consideration for the given time period for which the calculation is made;

CB = the producer’s total capital investment, if any, incurred before April 1, 2006, to acquire, construct, or improve the production facility, without deduction of depreciation; the producer’s capital investment excludes any contribution described in (b)(4) of this section (regardless of whether treated as a lease expenditure);

CA = the producer’s total capital investment, if any, incurred after March 31, 2006, and before the beginning date of the first time period for which the other person was charged a fee in connection with the other person’s use of the facility, to acquire, construct, or improve the production facility, without deduction of depreciation; the producer’s capital investment excludes any contribution described in (b)(4) of this section (regardless of whether treated as a lease expenditure).

(e) For purposes of AS 43.55.170(a)(1), if a producer treats as its lease expenditure a fee or other consideration that the producer pays or imputes to or on behalf of itself, whether directly or through an operator’s billing, in connection with its use of a

production facility that the producer owns in whole or in part, that fee or other consideration constitutes a payment or credit received by the producer for the use by another person of a production facility in which the producer has an ownership interest.

(f) For purposes of AS 43.55.170(a)(2), a payment or credit or portion thereof received by or on behalf of a producer to reimburse the producer for costs passed through to another person does not constitute a reimbursement or other payment that offsets the producer's lease expenditures if the reimbursed producer does not treat those costs as its own lease expenditures.

(g) For purposes of AS 43.55.170(a)(3), a fee or other consideration received by or on behalf of a producer in connection with another person's use of a production facility in which the producer has an ownership interest (1) that consists of a contribution of a share of the capital investment to acquire, construct, or improve the production facility and that is in lieu of an increase in the fee that would otherwise be charged to the other person in connection with its use of the facility, or (2) that represents a charge for use of capital invested in the production facility, does not constitute a payment or credit for the sale or transfer of an asset, unless legal title or a similar ownership interest in the facility is transferred from the producer to the other person. (Eff. 5/3/2007, Register 182; am ___/___/____, Register _____)

Authority: AS 43.05.080 AS 43.55.110 AS 43.55.170
AS 43.55.023 AS 43.55.165