

**ALASKA DEPARTMENT OF REVENUE, TAX DIVISION
ADVISORY BULLETIN 2009 - 03**

Re: Future Audit Liability Relating to Oil and Gas Production Tax Credits for Qualified Capital Expenditures

A representative of several oil and gas companies in Alaska has requested an advisory bulletin¹ on the following issue:

Are third party purchasers of AS 43.55.023 tax credits subject to future audit adjustments resulting from a Department of Revenue audit/adjustment of the .023 tax credit applications? In other words, are any future adjustments to the tax credit amounts the responsibility of the original applicant for the tax credit certificate?

Opinion

Third party purchasers of AS 43.55.023 tax credits are not subject to future DOR audit adjustments of original .023 tax credit claims and may apply the full amount of the credit as shown on a certificate to taxes levied under AS 43.55.011(e), as provided under AS 43.55.023(d) & (e). An adjustment made pursuant to an audit of a tax credit claim is the responsibility of the original applicant as provided under AS 43.55.023(g).

Discussion

AS 43.55.023 allows producers and explorers to take an oil and gas production tax credit for qualified capital expenditures. Under AS 43.55.023(d), a person entitled to take the credit that wishes to transfer the unused portion of the credit may apply to DOR for transferable tax credit certificates. If DOR is reasonably satisfied that the applicant is entitled to a credit, DOR will issue the certificates.² The applicant may then transfer the certificates and, “notwithstanding any action the department may take with respect to the applicant under (g) of this section, the *owner* of a certificate *may apply the credit* or a portion of the credit shown on the certificate only against a tax levied by AS 43.55011(e).”³ [Emphasis added.]

AS 43.55.023(g) permits DOR to later audit and adjust the tax credit claim, and if DOR “determines, as a result of the audit, that the *applicant* was not entitled to the amount of the credit for which the certificate was issued. The *tax liability of the applicant* under AS 43.55.011(e) and 43.55.017 – 43.55.180 is increased by the amount of the credit that

¹ AS 43.55.110(g) provides: “Notwithstanding AS 44.62, the department may issue, for the information and guidance of producers, explorers, and other interested persons, advisory bulletins stating the department’s interpretation of provisions of this chapter and of regulations adopted under this chapter. Unless otherwise provided by the department by regulations, interpretations stated in advisory bulletins are not binding on the department or others.”

² AS 43.55.023(d).

³ AS 43.55.023(e).

exceeded that to which the *applicant* was entitled, or the *applicant's* available valid outstanding credits applicable against the tax levied by AS 43.55.011(e) are reduced, by that amount.”⁴ [Emphasis added.]

This advisory bulletin is strictly limited to the proposed conditions as presented above interpreted in accordance with existing Alaska production tax law. This bulletin does not apply to the transfer, re-assignment or acquisition of tax credit certificates pursuant to a bankruptcy proceeding or other court-ordered or court-supervised liquidation or reorganization. This bulletin does not address other possible effects under other tax types or other tax laws, or with other laws of other relevant state agencies. The interpretation expressed in this bulletin may change if the proposed conditions or facts change or are supplemented or there are statutory changes.



Jonathan E. Iversen
Director

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⁴ AS 43.55.023(g).