

**In the Matter Of:**  
**PROPOSED CHANGES FOR HB 111**

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**PUBLIC HEARING**

*October 17, 2017*

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BEFORE THE DEPARTMENT OF REVENUE  
STATE OF ALASKA

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In re:  
Public Hearing for Proposed  
Changes in Oil & Gas Production  
Tax Regulations for HB 111,  
Packet #1, Tuesday, October 17,  
2017.

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TRANSCRIPT OF PROCEEDINGS

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Pages 1 - 43, inclusive  
Tuesday, October 17, 2017  
9:00 A.M.

Taken at  
REGULATORY COMMISSION OF ALASKA  
701 West 8th Avenue, Suite 300  
East Hearing Conference Room  
Anchorage, Alaska

PROPOSED CHANGES FOR HB 111  
PUBLIC HEARING on 10/17/2017

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1 A-P-P-E-A-R-A-N-C-E-S

2 For State of Alaska, Department of Revenue:

3 John Larsen, Audit Master

4 Lennie Dees, Audit Master

5 550 West 7th Avenue, Suite 500

6 Anchorage, Alaska 99501

7 907/269-8436

8 Also Present:

9 Diane Colley, BP

10 Dan E. Dickinson, Dan E. Dickinson CPA

11 Marie Evans, ConocoPhillips

12 Mike Faust, SAExploration

13 Colleen Glover, Department of Revenue

14 Michael Hurley, ConocoPhillips

15 Jon Iversen, Stoel Rives

16 Kara Moriarty, AOGA

17 Nicole Reynolds, Department of Law

18 Jenny Rogers, Department of Revenue

19 Erin Ruebelmann, Department of Revenue

20 Dan Seckers, Exxon

21 Jamie Volz, ConocoPhillips

22 Tom Williams, BP

23 Present via Teleconference:

24 Ryan Fitzpatrick, Manley & Brautigam

25 Mary Gramling, Department of Law

Court Reporter:

Gary Brooking, Registered Professional Reporter

PACIFIC RIM REPORTING

711 M Street, Suite 4

Anchorage, Alaska 99501

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1 accommodate those present before 10:00 a.m. who have

2 not had an opportunity to comment.

3 After the close of the public comment period

4 on Wednesday, November 1, 2017, the Department will

5 either adopt the proposed regulation changes or other

6 provisions dealing with the same subject without

7 further notice or decide to take no action.

8 The language in the final regulations may be

9 different from that in the proposed regulations. If

10 you believe that your interests may be affected, the

11 Department encourages you to submit any relevant

12 comments either here today or in writing by the close

13 of the written comment period on Wednesday,

14 November 1, 2017, at 4:00 p.m.

15 Written comments will be accumulated and

16 posted on line on the Tax Division's website at

17 www.tax.alaska.gov. As some of those statutes that

18 are the subject of regulations proposed by the

19 Department have various effective dates, regulations

20 related to those provisions include retroactivity

21 provisions when appropriate.

22 It is the aim of the Department to have the

23 regulations in effect on January 1, 2018. Written

24 comments may be submitted to me, John Larsen, by any

25 of the following means: By e-mail to John.Larsen --

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1 ANCHORAGE, ALASKA; TUESDAY, OCTOBER 17, 2017

2 9:05 A.M.

3 -o0o-

4 MR. LARSEN: Well, good morning. It looks

5 like we have everybody here, so we may as well go

6 ahead and get started.

7 My name is John Larsen. I'm an Audit Master

8 with the Alaska Department of Revenue. Today is

9 Tuesday, October 17th, 2017, and the time is 9:05.

10 Welcome everyone to today's public hearing on

11 regulation changes proposed by the Alaska Department

12 of Revenue to implement Chapter 3 of the Second

13 Special Session of the Legislature 2017, otherwise

14 known as HB 111, as well as other conforming changes.

15 The purpose of today's public hearing is to

16 receive input and testimony from the public and other

17 interested parties regarding regulation changes

18 proposed by the Department in the Department's Public

19 Notice dated September 27, 2017.

20 In the public notice, the Department

21 identified numerous regulations as being proposed to

22 be either amended or added for the administration of

23 the Department's Oil and Gas Production Tax Program.

24 Today's public hearing is scheduled from

25 9:00 to 12:00 but may be extended, if necessary, to

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1 that's J-o-h-n, dot, L-a-r-s-e-n at Alaska.gov; via

2 fax at 907/269-6644; delivered to me at 550 West 7th

3 Avenue, Suite 500, Anchorage, Alaska 99501.

4 All comments must be received by the close of

5 business on Wednesday, November 1, 2017, at 4:00 p.m.

6 Prior to beginning the hearing, there are

7 some administrative matters to be addressed. In the

8 event of fire, the stairs are located by the elevator

9 banks. There's also, down to the right, another exit

10 sign down that way. Restrooms are out the door to the

11 right, and your first right.

12 If you have an electronic device or cell

13 phone on, please mute. And especially listening in to

14 the teleconference on your cell phone, please put it

15 on mute.

16 There's a sign-in sheet at the door, if you

17 have not done so already, as well as copies of the

18 public notice and proposed regulation.

19 When making any comments, we have a reporter

20 here today, and we would like you to use these two

21 front microphones up here on the right-hand side of

22 the table. And please identify yourself and give your

23 name and affiliation, if any.

24 The hearing is being transcribed and copies

25 will be made available on the Department's website

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1 after they have been received by the Department.  
2 The hearing and all written comments will  
3 become part of the public record and subject to public  
4 inspection.  
5 With that, let's go around the room and have  
6 everyone introduce themselves and their affiliation,  
7 and then to the phone lines.  
8 My name is John Larsen, and I'm an Audit  
9 Master with the Alaska Department of Revenue.  
10 MR. DEES: My name is Lennie Dees, Audit  
11 Master with the Alaska Department of Revenue.  
12 MR. DICKINSON: Dan Dickinson with Dan  
13 Dickinson CPA.  
14 MS. ROGERS: Jenny Rogers, Audit Master,  
15 Department of Revenue.  
16 MS. RUEBELMANN: Erin Ruebelmann, Lead  
17 Auditor, Department of Revenue.  
18 MS. REYNOLDS: Nicole Reynolds, Department of  
19 Law.  
20 MR. WILLIAMS: Tom Williams, BP.  
21 MS. COLLEY: Diane Colley, BP.  
22 MR. HURLEY: Michael Hurley, ConocoPhillips.  
23 MS. MORIARTY: Good morning. Kara Moriarty  
24 with the Alaska Oil and Gas Association.  
25 MR. SECKERS: Dan Seckers, ExxonMobil.

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1 MR. IVERSEN: Jon Iversen, Stoel Rives.  
2 MS. EVANS: Marie Evans, ConocoPhillips.  
3 MS. VOLZ: Jamie Volz, ConocoPhillips.  
4 MS. GLOVER: Colleen Glover, Department of  
5 Revenue.  
6 MR. FAUST: Mike Faust, SAExploration and  
7 Kuukpik Corporation.  
8 MR. LARSEN: And on the phone lines, please.  
9 MR. FITZPATRICK: Ryan Fitzpatrick, Manley &  
10 Brautigam.  
11 MR. LARSEN: Okay.  
12 MS. GRAMLING: Mary Gramling, Department of  
13 Law.  
14 MR. LARSEN: Anyone else on the phone lines?  
15 All right. As previously stated, the  
16 Department is holding this public hearing in order to  
17 provide opportunity for public and interested parties  
18 to provide input and testimony for suggestions and  
19 regulations that may need to be amended, implemented  
20 or repealed.  
21 For making comments, I would first like to  
22 begin here in Anchorage and then move to the phone  
23 lines. So is there anyone that would like to step  
24 forward and be first?  
25 Thank you, Kara.

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1 MS. MORIARTY: Sure.  
2 MR. LARSEN: Good morning.  
3 MS. MORIARTY: Good morning.  
4 MR. LARSEN: I think it's these two.  
5 MS. MORIARTY: These two?  
6 MR. LARSEN: Either one. And you will need  
7 to press it to activate it, and make sure the green  
8 light is on.  
9 MS. MORIARTY: Okay. I can do that.  
10 And I have my life lines behind me.  
11 MR. LARSEN: Good.  
12 MS. MORIARTY: Good morning. For the record,  
13 my name is Kara Moriarty, and I am the President and  
14 CEO of the Alaska Oil and Gas Association, commonly  
15 referred to as AOGA.  
16 For nearly half a century now, AOGA has been  
17 the trade association for the petroleum industry in  
18 Alaska, and our members actively continue to explore  
19 for, discover, develop, produce, transport and refine  
20 oil and gas in the state.  
21 As with our comments, which we'll call the  
22 scoping comments that we submitted in response to the  
23 August 6th Notice of Public Scoping and Workshop on  
24 regulations to implement House Bill 111, all of our  
25 members have had the opportunity to review and comment

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1 on this testimony as it was being developed, and it  
2 has been approved without dissent, just as we do with  
3 all of our comments related to tax matters.  
4 So our testimony today addresses the proposed  
5 regulations for House Bill 111 at a broad level. And  
6 for the Department's convenience, I will submit these;  
7 I'll e-mail these to you as well for the record, so  
8 that you don't feel like you have to write fast and  
9 furious as I deliver this testimony.  
10 However, we will reserve our right to  
11 potentially submit an even more detailed and technical  
12 review in the written comments, as you mentioned, by  
13 the comment deadline on November 1st.  
14 So the most salient feature of House Bill 111  
15 is its phaseout and termination of most of Alaska's  
16 present system of tax credits, including all credits  
17 and credit certificates that can be cashed out with  
18 funds from the Oil and Gas Tax Credit Fund under  
19 Alaska Statute 43.55.028.  
20 But before we get into some of our continued  
21 concerns, we'd like to begin our discussion on a  
22 positive note by observing that the proposed  
23 regulations appear to respond appropriately to four  
24 concerns that we raised in our scoping comments the  
25 last time we were here.

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1 First, the proposed 15 AAC 55.365(e) we  
2 believe correctly resolves a potential technical  
3 timing problem in House Bill 111 and avoids a result  
4 that the Legislature manifestly did not intend with  
5 respect to the ability to assign tax credits generated  
6 under 43.55.023(b) for calendar year 2017.  
7 Second, our scoping comments expressed  
8 concern that the regulations on ring-fencing of lease  
9 expenditures incurred for a lease or property before  
10 it begins regular production might define "category"  
11 in a way that does not match the categories already  
12 set out in statute in 43.55.160, subsection  
13 (a)(1)(A)-(G), and then (h)(1) through (4). The  
14 proposed regulations do not seek to ring-fence such  
15 lease expenditures in this way.  
16 Third, we were concerned in the scoping  
17 comments that statutory language in Sections 6, 9 and  
18 16 of House Bill 111 might be construed and applied in  
19 the regulations differently from what Article IX,  
20 Section 17(a) of the Alaska Constitution requires, and  
21 could thereby prevent the carryback of credits against  
22 an increase in tax liability for a prior year arising  
23 from administrative proceedings or litigation that  
24 does not directly involve the production tax itself,  
25 but involves only indirect matters like transportation

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1 costs that affect the calculation of the amount of the  
2 tax liability for the respective prior year.  
3 The proposed regulations -- and 15 AAC  
4 55.305(c) and (d) in particular -- do not seem to  
5 construe and apply that statutory language in this  
6 way. In particular, Example 1 in subsection (d)  
7 refers specifically to -- I quote -- "a decision of a  
8 regulatory agency that results in a retroactive change  
9 to costs of the transportation that has a  
10 corresponding increase on the production tax value,"  
11 unquote.  
12 We see this as applying, for instance, to  
13 FERC's Opinion 544 for TAPS, and would like to confirm  
14 this on the record, if we may. So I'm going to ask  
15 this question, and you can get back to us, you know,  
16 in writing preferably, so I can make sure all of  
17 our -- because I don't have all of my member companies  
18 here today.  
19 MR. LARSEN: Okay.  
20 MS. MORIARTY: But the question is: Does the  
21 Department agree that Opinion 544 would be covered, by  
22 example, one for taxpayers with open, unaudited tax  
23 years to which that opinion, or FERC orders pursuant  
24 to that opinion, apply?  
25 So that's the question. I will get you the

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1 question. And we just want to make sure that that's  
2 clear.  
3 MR. LARSEN: Okay. I understand the  
4 question, Kara. And as is typical in a public  
5 hearing, we will take the question under advisement.  
6 I would have to consult with Law about whether we  
7 would get -- we'll respond in writing to that, that  
8 question there, but I do understand the question.  
9 MS. MORIARTY: Yeah. And that's fine. I  
10 understand you've got your attorney here. And we  
11 understand that process, but that is something that,  
12 for us, I think it would just provide some clarity, if  
13 we know the answer to that.  
14 MR. LARSEN: I understand the question and  
15 the background.  
16 MS. MORIARTY: Okay. Perfect.  
17 MR. LARSEN: Thank you.  
18 MS. MORIARTY: I knew you did, so yay.  
19 So fourth, in Example 2 in our scoping  
20 comments, we showed how a net operating loss for any  
21 given period is a function of both the amount of lease  
22 expenditures incurred in that period and the level of  
23 oil prices for that period.  
24 So in that example, there was no operating  
25 loss in the first half of the year, even though the

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1 great majority of the year's lease expenditures were  
2 incurred then, because oil prices in the first half  
3 were high enough to cover those costs with a little  
4 net revenue left over. And in the second half of the  
5 year, oil prices were so low that, even with lease  
6 expenditures at a much lower level than the first  
7 half, there was an operating loss in the second half  
8 that was big enough to put the entire year into a net  
9 loss position.  
10 So for 2017, the proposed regulation in  
11 15 AAC 55.525(m) seems to deal specifically with this  
12 by limiting purchases by the Tax Credit Fund for a  
13 certificate issued under 023(d) for an operating loss  
14 under AS 43.55.023(b) as the provisions of that  
15 subsection read before January 1st, 2018, for lease  
16 expenditures incurred in 2017. So only, quote, one  
17 half of the amount of the tax certificate, unquote,  
18 may be purchased by the Fund.  
19 So we understand this to mean, as it is put  
20 into operation, that any net operating loss under  
21 023(b) is determined for the full year of 2017, but  
22 only half of the tax certificate under 023(d) for that  
23 loss can be paid from -- by the Fund -- or can be paid  
24 from the Fund.  
25 So -- and the second half of the lease

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1 expenditures reflected in the certificate will not  
2 carry forward as a carryforward annual loss into 2018  
3 because they were already included in that  
4 certificate.  
5       So if this is indeed the operational effect  
6 of 525(m), then this neatly avoids all the analytical,  
7 you know, complexities, paradoxes and/or inequities  
8 that our Example 2 illustrates if one were to try  
9 instead to quantify the first-half loss for 2017  
10 purely on a stand-alone basis.  
11       So, of course, again, if we're incorrect in  
12 how we're reading 525(m) and how that will work in  
13 practice, again, that's another area that would need  
14 to be rewritten so that it is clear, because that is a  
15 really crucial, as you can imagine, point in  
16 understanding and clarification as we're in this  
17 transition between the elimination of the program and  
18 the half year and the effective date of July 1st. So  
19 that's just another -- that's just another one we're  
20 hoping to make sure we're reading it correctly,  
21 because it has huge consequences.  
22       MR. LARSEN: And I understand. Thanks.  
23       MS. MORIARTY: So, again, we've pointed out a  
24 couple of what we see as positive aspects, but now I'm  
25 going to go into, you know, some of the areas where we

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1 find some challenges and what we think maybe could be  
2 some errors, problems and questions.  
3       So the first one: We are concerned about the  
4 last sentence in 15 AAC 55.305(c) regarding the  
5 assessment of penalties. By its terms, the last  
6 sentence applies only to a situation where, and I  
7 quote, a producer underreports tax due on its original  
8 return in order to file an amended return and  
9 carryback tax credits to that tax year, unquote.  
10       So does this mean the Department cannot  
11 assess any of the listed penalties when the  
12 underreporting was not made to, quote, file an amended  
13 return and carryback tax credits to that tax year,  
14 unquote, even though there is another ground for  
15 receiving such penalty?  
16       We doubt the Department intends that, but if  
17 a penalty can be assessed on one of those other  
18 grounds in such a situation, then we don't see what  
19 that last sentence in subsection (c) accomplishes,  
20 because isn't such a purposeful underreporting in  
21 itself already, quote, civil fraud, failure to pay or  
22 negligence or intentional disregard, unquote? So if  
23 so, we just think the last sentence is unnecessary.  
24 So just something for you to look at.  
25       Alternatively, if somehow such a purposeful

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1 underreporting in order, quote, to file an amended  
2 return and carryback tax credits, unquote, is not  
3 already, quote, civil fraud, failure to pay or  
4 negligence or intentional disregard, unquote, in  
5 itself, then the regulation needs to identify what the  
6 taxpayer's specific intent for the underpayment must  
7 be in order for it to fall within the scope of this  
8 last sentence in section 305(c), but outside the  
9 existing scope of the other penalties for civil fraud,  
10 failure to pay, or negligence or intentional  
11 disregard. So basic principles of equity and due  
12 process require that if a taxpayer can be punished for  
13 having such an intent, it must be aware of what that  
14 intent is. Okay.  
15       Number two, another issue we have with that  
16 same subsection 305(c) is that its first two sentences  
17 both allow the carried-back credit to be applied only  
18 against, quote, the additional amount of tax and  
19 associated interest, unquote.  
20       However, there are several sections in  
21 statute, 023(c) and (3), 023(e)(2) and 025(h) as  
22 respectively enacted in Sections 6, 9 and 16 of House  
23 Bill 111, all provide that the credit, quote, may be  
24 used to satisfy a tax, interest, penalty, fee or other  
25 charge, unquote.

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1       By excluding any penalty, fee or other  
2 charge, the proposed regulation seems to be  
3 inconsistent when its underlying statute and, at least  
4 to that extent, would be invalid under 44.62.030. And  
5 there's another parallel problem with the proposed  
6 15 AAC 55.370(e).  
7       Third concern. The third concern, again with  
8 that same subsection, 305(c), is the following  
9 sentence in it, which appears near the middle of  
10 page 5 of the proposed regulations.  
11       And the sentence reads: A producer that  
12 elected to apply the tax credit in 024(j) in that  
13 prior year may, in its amended return reporting the  
14 additional amount of tax, withdraw the producer's  
15 application of "the," emphasis added on "the," the tax  
16 credit in 55.024(j) in order to carry back a tax  
17 credit under 023 or 205 or a tax credit certificate  
18 under 023 or 025 for application against the  
19 additional amount of tax, provided no claim for refund  
20 would result and no assessment has been issued by the  
21 Department for the prior year.  
22       So, again, our concern with the "the" that is  
23 emphasized with capital letters, and that I tried to  
24 stress in this oral testimony, is that it implies that  
25 only the entire amount of the sliding-scale credit

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1 under 024(j) may be withdrawn; that is, it is an  
2 all-or-nothing proposition for such a withdrawal.  
3 024(j) says categorially that a producer may  
4 apply these credits without limitation, except they  
5 may not reduce the producer's tax liability for a  
6 calendar year under 55.011(e) before the amount  
7 calculated under 011(f). So this does not allow any  
8 leeway for the Department, by regulation, to limit or  
9 restrict the use of these credits any further than as  
10 proposed in 15 AAC 55.305(c).  
11 And alternatively, if any withdrawal of a  
12 credit under 024(j) is allowed at all, we believe only  
13 the portion of the credit that brought the tax under  
14 011(e) down to the minimum tax under 011(f) should be  
15 withdrawn, so that in the event the Department, on  
16 audit, raises the production tax value above the  
17 crossover point where the minimum tax becomes payable,  
18 any initially unused portion of that credit remains  
19 unavailable to reduce the tax under the audit back  
20 down toward that crossover point. So otherwise, the  
21 Department will be taking away part of that credit to  
22 which the producer is statutorily entitled.  
23 Similarly, if the audit increases the gross  
24 value at the point of production so that the  
25 per-barrel amount of the credit under 025(j) [as

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1 spoken] is greater than the per-barrel amount that the  
2 taxpayer filed, this increase in the credit should be  
3 applicable -- the same as any initially unused portion  
4 of the original per-barrel amount -- to reduce the tax  
5 down to toward the statutory tax crossover point where  
6 the minimum tax becomes payable.  
7 So our final concern with this section of  
8 305(c) is the restriction imposed by the regulation  
9 that the carryback of any tax credit cannot result in  
10 a tax overpayment or claim for refund.  
11 Again, the sections that I've already  
12 mentioned, 023(c)(3), 023(e)(2) and 025(h), as  
13 respectively enacted again in those main sections of  
14 6, 9 and 16 of House Bill 111, all provide that the  
15 credit can be carried back to, quote, satisfy a tax,  
16 interest, penalty, fee or other charge, unquote,  
17 without limitation to whether such carried-back credit  
18 results in a tax overpayment or a claim of refund for  
19 such earlier tax year.  
20 The plain language of those sections does not  
21 prohibit the use of any carried-back tax credits to  
22 create an overpayment or claim a tax refund.  
23 While there were some brief comments by a  
24 single legislator on this issue during the legislature  
25 process surrounding the enactment of House Bill 111,

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1 the Legislature as a body chose not to include any  
2 restrictive language preventing the use of  
3 carried-back tax credits to generate a tax overpayment  
4 or claim of refund in the actual tax -- in the actual  
5 bill that was passed and signed into law. So by  
6 establishing such a regulation -- or such a  
7 restriction, the proposed regulation is inconsistent,  
8 we believe, with its underlying statute and, at least  
9 to that extent, would be invalid under 44.62.030.  
10 I have got a couple more things I want to  
11 mention, and then I'm almost done.  
12 Moving now to the subject of conditional tax  
13 credit certificates under 025(q), we understand the  
14 intent and purpose for that statute are to allow the  
15 holder of such a conditional certificate to secure a  
16 place in line under 43.55.028 among all others who are  
17 seeking payment from the Tax Credit Fund for their  
18 respective certificates.  
19 The proposed regulation in 15 AAC 55.356(e)  
20 generally implements this purpose reasonably, but we  
21 are concerned about the provision in paragraph (1)(A)  
22 regarding denial by the Department of a conditional  
23 certificate holder's application.  
24 Being in line under 028 not only determines  
25 priority for when a holder's regular tax credit

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1 certificate is purchased by the Fund, but also the  
2 amount that the Fund pays for that certificate if  
3 payments are proportionately reduced from the  
4 certificate's face value.  
5 So we believe that a dollar spent to earn a  
6 conditional tax credit certificate is just as worthy  
7 of being paid by the Fund as a dollar spent to earn a  
8 regular tax credit certificate. And accordingly, we  
9 would ask the Department to let the face amount of a  
10 conditional tax credit certificate reserve the same  
11 opportunity for payment by the Fund as the face amount  
12 of the regular certificate, because in our view after  
13 all, the supporting data for the underlying  
14 conditional tax credit will have been duly submitted  
15 to the Department of Natural Resources at least six  
16 months earlier, except for the credit under 025(k).  
17 That's the exception.  
18 So its face value should be comparably  
19 reliable as that for a regular tax credit certificate.  
20 So we would propose that the Department  
21 change the proposed 55.365(e) so that, for purposes of  
22 priority in receiving payment from the Fund and for  
23 any pro rata discount reflected in that payment, the  
24 face amount of a conditional tax credit certificate is  
25 counted the same as the face amount for a regular tax

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1 credit certificate.  
2 If the Department denies the application for  
3 the conditional tax credit certificate, the holder of  
4 that conditional certificate should be able to, quote,  
5 unquote, backfill, if you will, that certificate's  
6 face amount with the face amount of other certificates  
7 it is holding.  
8 If only the holder has nothing to -- if the  
9 holder has nothing to backfill then, with what -- with  
10 the Department's denial of the conditional certificate  
11 application effect, the amount to be paid by the Fund  
12 to that holder.  
13 So finally, again, before closing, let me --  
14 I just want to state, for the record, that what we've  
15 pointed out, any statement or omission in this  
16 testimony or in our future written comments is not  
17 intended to, nor may be construed to express or simply  
18 imply any endorsement or acquiescence of the Advisory  
19 Bulletin of 2016-01 dated December 21st, 2016, or the  
20 Advisory Bulletin dated March 31st, 2017.  
21 And so, you know, we recognize a lot of work  
22 has gone into this. We also know that there are some  
23 sections of House Bill 111 that you're still working  
24 on regulations for, and so, you know, we recognize  
25 we're now in the fourth quarter of 2017. So we look

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1 forward to seeing the "final" final version of all the  
2 regulations required to fully implement this new piece  
3 of legislation.  
4 So, again, thank you, on behalf of AOGA and  
5 all of our members, for the opportunity to testify  
6 today and again for your constant attention and  
7 consideration for what we bring forward.  
8 MR. LARSEN: Thanks, Kara. I appreciate your  
9 AOGA comments here this morning.  
10 MS. MORIARTY: And like I said, I will e-mail  
11 them so that you have them for the record and for you  
12 to consider.  
13 MR. LARSEN: Thank you.  
14 MS. MORIARTY: Yes.  
15 MR. FAUST: Good morning. My name is Mike  
16 Faust. I'm the lead independent director for  
17 SAExploration, and I'll be speaking on behalf of them.  
18 SAExploration is a seismic contractor as well as  
19 Kuukpik Corporation.  
20 We'll also be submitting written comments  
21 later this week.  
22 Kuukpik/SAExploration joint venture employs  
23 400 people. It is a consistent revenue source for  
24 Kuukpik Corporation, the village of Nuiqsut and  
25 hundreds of Alaska families.

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1 Over the past two years, the State of Alaska  
2 has only paid a small portion of refundable tax  
3 credits, even though it has obtained valuable well and  
4 seismic data. This forced SAE to restructure, and  
5 Kuukpik has deferred shareholder payments.  
6 Seismic explorers need the State payment of  
7 tax credit certificates or a secondary market for tax  
8 credits because they will never produce oil and use  
9 certificates against production taxes.  
10 If we read the proposed regulation at  
11 15 ACC 55.305(c) and (d) correctly, we commend DOR for  
12 not interpreting Sections 6, 9 and 16 of HB 111  
13 differently from what is required under the Alaska  
14 Constitution.  
15 In other words, "i", the quote,  
16 administrative proceeding or litigation, unquote,  
17 would directly involve the production tax and would  
18 not include indirect matters that impact the  
19 production tax calculation such as FERC tariff  
20 decisions like Opinion 544.  
21 And "ii," The quote, administrative  
22 proceedings, unquote, commences when DOR issues an  
23 assessment notice of demand for payment.  
24 15 AAC 55.305(c) inappropriately restricts  
25 the use of credits against taxes from prior years when

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1 the result would be a refund. There's simply no basis  
2 in the statute for the limitation that DOR is  
3 intending to impose.  
4 We also note that 15 AAC 55.305(c) and (d)  
5 refer to using tax credits against taxes and interest,  
6 but not penalties. Yet, Sections 6, 9 and 16 of  
7 HB 111 specifically include, quote, penalty, fee or  
8 other charge, end quote, related to production taxes  
9 for a prior year.  
10 Finally, we do not agree that Advisory  
11 Bulletins 2016-01 and 2017-01 are correct, and we note  
12 that the proposed regulations do not mitigate the harm  
13 done by Advisory Bulletin 2017-01.  
14 We detrimentally relied, at great expense, on  
15 a number of communications from DOR, before Advisory  
16 Bulletin 2017-01 was issued, including presentations  
17 made to the Alaska Legislature, stating that taxpayers  
18 that use the sliding-scale tax credit can use other  
19 credits to drive production tax liability below the  
20 minimum tax. DOR must consider the damage that it has  
21 done through Advisory Bulletin 2017-01 and take  
22 corrective action.  
23 Thank you.  
24 MR. LARSEN: Thank you, Mike. Appreciate  
25 your comments.

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1 Is there someone else?  
2 MR. DICKINSON: Good morning. I'm someone  
3 else.  
4 MR. LARSEN: Good morning, Dan.  
5 MR. DICKINSON: More specifically, Dan  
6 Dickinson, Dan Dickinson, CPA. I represent many  
7 clients that are affected by this, but I'm here on my  
8 own today sort of making some comments.  
9 I'm just going to build on two things that  
10 were mentioned by prior commenters. The first one,  
11 and this is probably the critical one, or a very  
12 important one, has to do with the provisions for 2017  
13 and how the half year is calculated. So I'm referring  
14 to specifically to 525(l) and (m). I'm less sanguine  
15 about that than AOGA is, in that I understand (l) -- I  
16 understand (m). But if you go to (l), it says except  
17 as provided in (m). So (l) is saying here's some  
18 instructions, but you can ignore (m). And then you  
19 turn to (m), and it says here's some instructions that  
20 you have to do in addition to what you did back in  
21 (l). Other smarter folks may be able to figure that  
22 out. I really don't understand how those two fit  
23 together.  
24 And I, again, repeat what I said in my  
25 original scoping things: Can you please give us the

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1 rule and give us the example?  
2 I have got some examples, which I'll submit  
3 to you in writing, that if you could work them out or  
4 say which is the intended outcome, that would be  
5 greatly appreciated. It is -- because of what's  
6 happening in the second -- in the market, the issue of  
7 which credits are going to be held in reserve and  
8 which ones can be purchased is very important to  
9 people who are still making investments in the state  
10 this year.  
11 Two other comments on this section. For the  
12 last decade we have spent working out exactly what  
13 "when costs incurred" mean. There's a lengthy  
14 regulation. There's been a lot of back-and-forth,  
15 disallowances, decisions made on appeal.  
16 So why, I ask, does the Department choose  
17 this time, when this program is winding down, to bring  
18 in a second test namely when costs occurred,  
19 o-c-c-u-r-r-e-d as opposed to i-n-c-u-r-r-e-d.  
20 It may sound like I'm being petty and  
21 pedantic, but it's not. Presumably those words mean  
22 different things. The legislation -- the Legislature  
23 still used the words "costs incurred." That was the  
24 test they provided the two times they -- the two  
25 sections they mention this in. Yet, if we look at the

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1 tests -- you know, the language of proposed  
2 15 AAC 55.525, test (l)(1), it says for activity  
3 occurring before July 1st, 2017.  
4 So I really -- in terms of keeping things  
5 consistent, can we just stay with the test for costs  
6 incurred and not bring in a new concept of costs  
7 occurred, because -- and, you know, the flip side is  
8 if you do, then can you -- you know, we need a  
9 parallel to 290 now that says what "costs occurred"  
10 mean and all the various tests back and forth. So I  
11 think that's -- I really suggest you look at the use  
12 of that word.  
13 The next piece of that is losses have to be  
14 calculated, and conceptually calculating a loss is  
15 essentially a three-step process. You start out with  
16 destination value, less the cost of transportation.  
17 And it's not clear from this whether the DOR  
18 thinks that the costs of transportation are part of  
19 what has to be divvied up one way or another, but  
20 that -- so you start, destination value. That's cost  
21 of transportation, gets you GVPP. Then from that you  
22 subtract the costs of exploring, producing,  
23 developing, i.e., lease expenditures, to get to either  
24 a loss or PTV.  
25 We need to understand: When a clear rule is

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1 articulated, does it apply to GVPP, does it -- is  
2 there going to be a separate set of tests for the cost  
3 of transportation, or are the "costs incurred" issue,  
4 is that just having to do with lease expenditures and  
5 the difference between GVPP and the loss, or PTV.  
6 So, again, I -- I really encourage, rather  
7 than giving us the broad outlines that the statutes  
8 set out, and including the tensions, because the  
9 statute has two different places and there's a real  
10 tension between the two sections, can you -- can you  
11 sort of articulate the rule and further exemplify that  
12 rule by giving us an example.  
13 And in both of these, again, I would like  
14 to -- or remind folks, putting on a different set of  
15 glasses, that, for example, I have 12 clients that are  
16 tiny, tiny owners in the Pt. Thomson Unit, and their  
17 costs show up in a single joint interest billing from  
18 ExxonMobil. And trying to get into new definitions of  
19 when those costs were "occurred" and how the  
20 transportation and GVPP -- all those complexities, as  
21 you put on a hat for an operator or someone who is  
22 controlling the flow of the oil themselves, may be  
23 something they have control over for someone who's  
24 just receiving this all passively, this information.  
25 If the rule could be clear, it would make a

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1 difference.  
2 So -- and I will -- I actually -- I mean, I  
3 worked out some examples and sort of can come out  
4 with, like I say, four different -- what I believe is  
5 reasonable interpretations from the language as it's  
6 now construed, and I, you know, ask you to limit it to  
7 where -- where -- if the Department's going to come  
8 out on one of those eventually, can you come out  
9 before the regulations are here. So that would be  
10 the -- those are the three points I'd like to make  
11 about the half-year credit.  
12 The second issue I'd like to bring up again,  
13 brought up by folks previously, was -- is 305(c) and  
14 (d). And I generally concur with the comments that  
15 are made. I applaud the fact that a lot of this was  
16 worked through and is cleaner, but there's still work  
17 to be done on those. In general, it does set  
18 things -- set things forth.  
19 One of the points that I would like to have  
20 clarified again -- maybe it's implicit in there, but  
21 if it could be made explicit, it would be good -- is:  
22 Does this rule apply to certificates that have been  
23 acquired, or is it just applying to -- to the  
24 taxpayer's own internally generated certificates?  
25 There seems to be evidence within the

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1 language here. I could pick out points and say, oh,  
2 this is a hint, suggesting it's one, this is a hint  
3 suggesting it's the other, but I would suggest that  
4 you -- if the Department knows, please make it  
5 explicit.  
6 MR. LARSEN: Okay.  
7 MR. DICKINSON: And, you know, again, if you  
8 do so, I would -- you know, the language, if we're  
9 going to cover 023 and 025, it would be, you know,  
10 certificates transferred, conveyed to, sold to or  
11 acquired by the taxpayer, as well as the -- those  
12 internally generated by the taxpayer.  
13 So knowing that those rules apply to all  
14 certificates, as opposed to just the internally  
15 generated ones, would be very useful.  
16 And that's all I have.  
17 MR. LARSEN: All right. Thanks, Dan. And  
18 you said you had some examples worked out. Will you  
19 be submitting those with your comments?  
20 MR. DICKINSON: Yes, I will.  
21 MR. LARSEN: All right. Thanks. Appreciate  
22 it.  
23 MR. DICKINSON: I presume you don't want me  
24 to walk through them here on a whiteboard today.  
25 MR. LARSEN: Good morning, Marie.

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1 MS. EVANS: Good morning. All right. For  
2 the record, my name is Marie Evans, with  
3 ConocoPhillips.  
4 Several of the comments I'll make today have  
5 already been made. I'm going to start with one  
6 comment that hasn't been made, and I'm beginning to  
7 think that maybe it's just me who does not understand.  
8 So when I turn to the proposed regulation  
9 15 AAC 05.330(e), which is on interest -- and it might  
10 just be that interest has changed so many different  
11 times that I am just not following -- there is a  
12 sentence that (e) begins with that never existed  
13 before.  
14 And that sentence says: For the purposes of  
15 this subsection, a delinquent tax consists of the  
16 balance of unpaid tax on January 1st, 2017, including  
17 any accrued and unpaid interest the taxpayer owes on  
18 that date. An overpayment of tax consists of the  
19 balance of the overpaid tax -- or I'm sorry -- of the  
20 tax overpaid on January 1st, 2017, including any  
21 accrued interest owed to the taxpayer on that date.  
22 And then the next part of 330(e) goes on to  
23 specifically talk about AS 43.55, production tax. So  
24 my assumption is, is that the first two sentences,  
25 which I just read for 330(e), pertain to all other

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1 taxes other than production tax. But what I can't  
2 follow is the structure above that pertains to -- let  
3 me see if I can read it. It might be easier.  
4 So for (b), (c) and (d), we always -- those  
5 always say "except for as provided in (e)," and now I  
6 think it's been amended to say "except for as provided  
7 in (e) and (f)." Is that correct? Let me look here.  
8 Yeah.  
9 And so when you look at (b), (c), (d),  
10 subsections of 330, it's going to January 1st, 2018.  
11 But then we have the exception in (e), which is doing  
12 something different starting January 1st, 2017.  
13 And when I look at House Bill 111, I can't  
14 reconcile that. But it could be just me. And it  
15 might be that I have missed, like, a section change  
16 where there's some retroactivity to January 1st, 2017.  
17 MR. LARSEN: So Marie -- Marie, I'm sorry.  
18 I'm not quite clear on your question about what you  
19 don't recognize there.  
20 MS. EVANS: So in 330(e), those first two  
21 sentences, what is that addressing? All other taxes  
22 other than AS 43.55?  
23 MR. LARSEN: Yeah. I believe that's true,  
24 but we will take that -- your comments under  
25 consideration and make sure that if there's a way that

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1 we can clarify what's happening in that subsection  
2 there, we'll try and take a look at that language.  
3 MS. EVANS: Okay. Because I was looking at  
4 the -- like the description. It says the proposed  
5 amendment's implementing statutory changes regarding  
6 the compounding of interest in the periods to which  
7 that compounding applies. And then we have some  
8 conforming amendment. I just couldn't figure it out.  
9 And I'll talk to Dan or Tom. I haven't had time to  
10 chase anybody else down and bounce this off of them.  
11 But if there is a way to clarify it, I would  
12 appreciate it. Or you can just give a tutoring lesson  
13 in it.  
14 MR. LARSEN: Okay. Thanks, Marie.  
15 MS. EVANS: Okay. The next section that I  
16 have comments on is Section 15 AAC 55.305, the  
17 application of tax credits. And we've had several  
18 people mention this subsection.  
19 And the first subsection is (a), under 305.  
20 And this section says: A producer may apply a tax  
21 credit as allowed by law only against the specified  
22 type of tax liability. A producer may not apply a tax  
23 credit against a penalty or interest, except for  
24 interest associated with an additional amount of tax  
25 as provided in subsection (c) of this section.

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1 And I think that the second sentence, "A  
2 producer may not apply a tax credit against a penalty  
3 or interest," is inappropriately implementing the  
4 legislative intent that was set forth in HB 111 in  
5 Sections 6, 9 and 16.  
6 And just turning to Section 6, if we look at  
7 what part of that I am specifically looking at with  
8 regard to the proposed regulation, it says: A credit  
9 may, regardless of when the credit was earned, be used  
10 to satisfy a tax, penalty, fee, or other charge  
11 that -- and it goes on to large letter (A) and large  
12 letter (B) subsections underneath it.  
13 So when you go back to the proposed  
14 regulation at 15 AAC 55.305(a), it appears that that  
15 is in direct conflict with what the Legislature stated  
16 in Sections 6, 9 and, I believe, 16 of HB 111.  
17 My second comment has also to do with  
18 proposed regulation 15 AAC 55.305. And I'm moving on  
19 to subsection (c). As we understand HB 111, the  
20 Legislature made a purposeful and explicit change to  
21 the production tax statute, and it modified, as well  
22 as added, some statutory language to purposefully  
23 rehabilitate the secondary tax credit market. And it  
24 had discussions during the legislative session when it  
25 was modifying, editing, moving along HB 111 about the

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1 secondary market.  
2 And the secondary market was essentially  
3 nonexistent due to regulation 15 AAC 55.335(g) and two  
4 advisory bulletins that have been discussed in the  
5 previous testimony today.  
6 When I look at House Bill 111 and I look at  
7 Sections 6, 9 and 16, which modified three different  
8 sections of Title 43, Chapter 55, specifically it  
9 modified section 023 and 025. I think 023 was  
10 modified twice. And the general modification in that  
11 language I'm going to read just to keep the record  
12 clear, and because this -- the comments are so  
13 technical, it's hard not to read part of this.  
14 In the proposed regulation -- I'm sorry. At  
15 House Bill 111, in Section 6, subsection (c), a credit  
16 or portion of a credit under this section, (1), may  
17 not be used to reduce a person's tax liability under  
18 AS 43.55.011(e) for any calendar year below zero.  
19 (2), may, if not used under this subsection,  
20 be applied in a later calendar year.  
21 (3), may, regardless of when the credit was  
22 earned, be used to satisfy a tax, penalty, fee, or  
23 other charge that, capital (A), is related to the tax  
24 due under this chapter for a prior -- except for a --  
25 let me grab the bill. I think that I actually copied

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1 that language wrong. Section 6.  
2 (3), large (A): Is related to the tax due  
3 under this chapter for a prior year, except for a  
4 surcharge under AS 43.55.201 through 299 or 43.55.300  
5 or the tax levied by AS 43.55.011(i) or 43.55.014; and  
6 has not, for the purposes of Article IX, Section  
7 17(a), Constitution of the State of Alaska, been  
8 subject to an administrative proceeding or litigation.  
9 With that new statutory language in mind, the  
10 regulations, whether proposed or existing, need to  
11 implement the legislative decision to make the  
12 statutory change.  
13 And when I look at that legislative language,  
14 it does not prohibit the application of an  
15 AS 43.55.023 or 025 tax credit to the gross minimum on  
16 the North Slope as it is calculated in 43.55.011(f).  
17 Nor do I see that language prohibiting the application  
18 of tax credits when a taxpayer has per-barrel  
19 sliding-scale credits.  
20 The legislature statutory language allows a  
21 credit regardless of when it was earned, to reduce a  
22 person's tax liability to zero as long as it is not  
23 subject to an administrative proceeding or litigation.  
24 And so when I look at the proposed regulation  
25 at 15 AAC 305, subsection (c), I don't believe that it

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1 is appropriately implementing the legislative change  
2 in House Bill 111, because it is clear that the  
3 Legislature stated and changed the law to say the  
4 credit or a portion of a credit under this section may  
5 not be used to reduce a person's tax liability under  
6 43.55.011(e) for any calendar year below zero.  
7 So I'm concerned that this proposed  
8 regulation is nullifying the legislative changes in  
9 House Bill 111 by prohibiting a taxpayer with tax  
10 credits earned under 042(j) from reducing the tax  
11 levied under 43.55.011(e) for that prior year to the  
12 amount in 43.55.011(f).  
13 And it further negates the legislative intent  
14 by incorporating regulation 15 AAC 55.335(g) into the  
15 proposed regulation 305(c).  
16 As I know both of you know, we do not agree  
17 with 15 AAC 55.335(g). It was created before House  
18 Bill 111. And I don't believe that adding a  
19 conflicting regulation into 305(c) is going to  
20 implement the Legislature's intent or the plain  
21 statutory language in House Bill 111.  
22 I have a third comment which also has been  
23 mentioned today, but the last sentence of proposed  
24 regulation 15 AAC 55.305(c) states: A producer may be  
25 assessed penalties under 15 AAC 05 for civil fraud,

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1 failure to pay, or negligence or intentional disregard  
2 if a producer underreports tax due on its original  
3 return in order to file an amended return and carry  
4 back tax credits under this subsection.  
5 I've reread this sentence several times, and  
6 I cannot figure out what the purpose of this sentence  
7 is. If you go to the drafting manual on regulations,  
8 it recommends no paraphrasing of existing statutes.  
9 So then I thought, well, perhaps we're trying to  
10 expand or contract the penalties under 15 AAC 05, but  
11 the penalties for civil and criminal behaviors are  
12 actually in statute. So then I couldn't figure out  
13 why we were referencing the regulation.  
14 So I'm going to leave you with a "I am  
15 actually unable to discern the purpose of this  
16 language with regard to House Bill 111."  
17 MR. LARSEN: Okay. And I'm sorry, Marie.  
18 Which regulation were you referring to specifically  
19 there?  
20 MS. EVANS: I believe it's the last sentence  
21 in 305 sub (c), where it says: A producer may be  
22 assessed penalties under 15 AAC 05 for civil fraud,  
23 failure to pay, or negligence or intentional  
24 disregard.  
25 MR. LARSEN: Okay.

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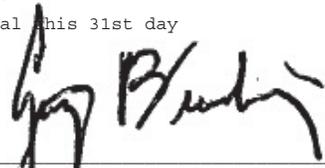
1 MS. EVANS: It's the last sentence prior to  
2 (d), which begins with examples to illustrate,  
3 subsection (c) of 305.  
4 MR. LARSEN: All right. We'll take a look at  
5 that language.  
6 MS. EVANS: And that's all the comments I  
7 have for today.  
8 MR. LARSEN: Thank you, Marie. Appreciate  
9 it.  
10 Is there anybody else that would like to make  
11 comments here today, either in the hearing room or on  
12 the phone lines?  
13 And before we recess, I want to take just a  
14 five-minute break here. So it's 10:00 o'clock -- or  
15 10:02. We will come back at 10:07.  
16 (Recess taken.)  
17 MR. LARSEN: Okay. It's 10:07. We're back  
18 on the record here.  
19 And, Marie, just to clarify your question on  
20 335(e), 335(e) is strictly for 2017, and we tried to  
21 set out the rates that actually are in effect as  
22 opposed to stating formulaically, because I think  
23 those rates from the Federal Reserve are known, so we  
24 did set those rates out for 2017.  
25 However, subsection (f) applies to all of

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1 Title 43, whereas subsection (e) applies to 43.55 for  
2 2017.  
3 MS. EVANS: Okay. I'll go back and look at  
4 that.  
5 MR. LARSEN: Okay. And then also, just for  
6 everyone's advisement here, I think Kara and AOGA  
7 alluded to this early, that there was maybe some parts  
8 of this HB 111 that were not addressed. And I want  
9 everyone to know that the Department is working on a  
10 discussion draft for the carryforward losses, and that  
11 we hope to have that issued possibly next week.  
12 But we -- the intent of the Department will  
13 be for -- for that particular set of regulations, to  
14 issue a discussion draft, have a brief time for people  
15 to look at it and make comment on it before coming out  
16 with a proposed regulation. And so I just wanted to  
17 let everybody here know that we are working on that  
18 process as well.  
19 So I'll make one more call for comments  
20 either in the room or on the phone lines.  
21 Hearing none, the proceeding here is closed  
22 today at -- excuse me. I will do my closing comments.  
23 After the close of the public comment period  
24 on Wednesday, November 1, 2017, the Department will  
25 either adopt the proposed regulation changes or other

1 provisions dealing with the same subject without  
2 further notice or decide to take no action.  
3 As a reminder, please have all written  
4 comments to me by the close of business 4:00 p.m. on  
5 Wednesday, November 1, 2017. Those contacts again are  
6 by e-mail to John.Larsen, John, J-o-h-n, dot,  
7 L-a-r-s-e-n at Alaska.gov; delivered to me at 550 West  
8 7th Avenue, Suite 500, Anchorage, Alaska; via fax,  
9 259-6644.  
10 Please note that all comments will be  
11 considered in the final drafting of regulations  
12 proposed for adoption by the Commissioner of Revenue.  
13 The language of the final regulations may be different  
14 from that of the proposed regulations; therefore, if  
15 you believe your interests may be affected, you should  
16 comment during the time allowed.  
17 Written comments received are public records  
18 and subject to public inspection.  
19 Thank you again everyone here today for your  
20 participation and interest in these matters. The  
21 public hearing is now closed. The time is 10:12.  
22 (Proceedings concluded at 10:12 a.m.)  
23 -o0o-  
24  
25

1 CERTIFICATE  
2  
3 I, GARY BROOKING, Registered Professional  
4 Reporter and Notary Public in and for the State of  
5 Alaska, do hereby certify that the foregoing  
6 proceedings were taken before me at the time and  
7 place herein set forth; that the proceedings were  
8 reported stenographically by me and later transcribed  
9 by computer transcription; that the foregoing is a  
10 true record of the proceedings taken at that time;  
11 and that I am not a party to nor have I any  
12 interest in the outcome of the action herein  
13 contained.  
14 IN WITNESS WHEREOF, I have hereunto set  
15 my hand and affixed my seal this 31st day  
16 of October, 2017.  
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GARY BROOKING, RPR  
My Commission Expires 6/28/2020

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	<b>028</b> 20:24	<b>21st</b> 22:19
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