



THE STATE  
of **ALASKA**  
GOVERNOR MICHAEL J. DUNLEAVY

Department of Administration

OFFICE OF ADMINISTRATIVE HEARINGS

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September 5, 2019

**VIA EMAIL TO JOHN.LARSEN@ALASKA.GOV**

John Larsen  
Audit Master  
Alaska Department of Revenue  
550 W. 5<sup>th</sup> Ave, Suite 500  
Anchorage, Alaska 99501

Re: Proposed Changes to the Regulations at 15 AAC 05 and 15 AAC 116

Dear Mr. Larsen:

I write on behalf of the Chief Administrative Law Judge to comment on the regulation amendments circulated for public comment on August 5, 2019. One of the statutory duties of the Chief Administrative Law Judge for the state's Office of Administrative Hearings (OAH) is to "review and comment on regulations proposed by state agencies to govern procedures in administrative hearings[.]" See AS 44.64.020(a)(8). My comments are limited to the provision of the proposed regulations that relates to hearings.

Regarding the proposed changes to 15 AAC 05.035: OAH notes that in virtually every context with which we are familiar, 15 AAC 05.035 is entirely preempted by operation of AS 44.64.060 and 2 AAC 64.350(b). This came about because a pre-final reconsideration round is already built into AS 44.64.060(e), and it has not seemed wise to have duplicative rounds of reconsideration. However, the presence of this largely outdated regulation on the books is a potential source of confusion for parties. If 15 AAC 05.035 is to be amended, this may be a good occasion to acknowledge the limitations on its applicability. OAH suggests that 15 AAC 05.035(a) be amended to read: "(a) Except in a matter subject to AS 44.64.060, a [A] party to a formal hearing may, within 10 days ...."

Regarding the proposed changes to 15 AAC 116.630: The formal taxpayer remedies for this type of assessment are found in AS 43.05.405 *et seq.* See AS 43.05.405(2). Most of 15 AAC 05 (with the exception of 15 AAC 05.020 and 15 AAC 05.050) does not apply to tax appeals within OAH's AS 43.05.405 jurisdiction for a variety of reasons, including the fact that authority to adopt regulations to govern formal appeals in this area is not vested in the Department of Revenue. See AS 43.05.420(c). We would suggest changing the proposed language in 15 AAC 116.630(2) to the following: "(2) the availability of taxpayer remedies is provided for under AS 43.05.240, AS 43.05.405 – AS 43.05.499, 15 AAC 05.020, and [15 AAC 05 005] 15 AAC 05.050;".

John Larsen  
September 5, 2019

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Thank you for taking the time to consider OAH's concerns and suggestions. If you have any questions about these comments, please do not hesitate to contact me.

Very truly yours,



Cheryl Mandala  
Deputy Chief Administrative Law Judge

cc: Kathleen A. Frederick

## Alaska Oil and Gas Association

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121 W. Fireweed Lane, Suite 207  
Anchorage, Alaska 99503-2035  
Phone: (907) 272-1481 Fax: (907) 279-8114  
*Kara Moriarty, President/CEO*

September 11, 2019

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

Re: Regulations Proposed for Repeal (August 5, 2019 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 repeal of certain regulations in Title 15. For over half a century, AOGA has been the trade association for 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 the regulations that DOR has proposed to repeal pursuant to the public notice dated August 5, 2019. Based on the public notice, DOR is proposing to repeal regulations that are obsolete, essentially copy existing statutes, or have been superseded.

We appreciate DOR’s efforts to clarify this complex regulatory regime through the repeal of unnecessary regulations. These proposed changes represent a step toward reducing the sheer volume of regulations and the confusion caused by regulations that duplicate statutes or are no longer relevant.

In a parallel vein, we would also appreciate DOR’s attention to a number of items that AOGA has previously discussed with DOR that we believe would further clarify and streamline the implementation and management of the AS 43.55 production tax. These areas for improvement include:

- Providing regulatory guidance regarding the exclusion from lease expenditures for unscheduled interruptions in production under AS 43.55.165(e)(19), including materiality thresholds
- Clarifying the application of AS 43.55.170 to major asset sales

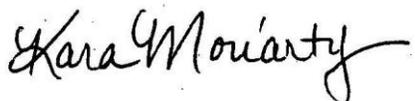
- Aligning the application of 15 AAC 55.260 with modern industry practices related to labor charges
- Recognizing that the “applicable tariff” for the calculation of prevailing value under 15 AAC 55.171(g) for North Slope oil sales is the FERC tariff
- Shortening the six-year Statute of Limitations (“SOL”) to improve compliance and reduce audit burdens
- Clarifying the prevailing value under 15 AAC 55.171(g) so taxpayers can file accurate and complete tax returns
- Revisiting Advisory Bulletin 2017-01 regarding the North Slope minimum tax
- Addressing audit inefficiencies through a variety of means, including:
  - Making good use of joint interest billings in the audit process to increase audit efficiency
  - Implementing policies to refine issue targeting within audits, including issue selection-based materiality, sampling, and reducing audit effort on low risk issues
  - Recognizing that many upstream and downstream costs are stable and do not require a detailed review of every account and invoice for every audit
  - Not re-creating a taxpayer’s workbooks and calculations from scratch when a review and verification of them is adequate
  - Establishing audit policies that are consistent from one audit cycle to the next—regardless of the auditor
  - Incorporating appeal decisions into audits such that issues need not be repeatedly contested
  - Providing clear, concise audit work papers

We appreciate the opportunity to comment and recognize the value in DOR’s efforts to improve regulations and audit processes.

Please contact me if DOR has any questions or would like to meet to discuss these comments.

Very truly yours,

ALASKA OIL AND GAS ASSOCIATION



Kara Moriarty  
President/CEO



Marie P. Evans  
Sr. Counsel Taxation

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September 11, 2019

Mr. John Larsen  
Audit Master, Department of Revenue  
550 W. 7<sup>th</sup> Ave., Ste 500  
Anchorage, AK 99501

RECEIVED  
SEP 11 2019  
Tax Division  
Department of Revenue  
Anchorage, Alaska

HAND DELIVERED

Re: Department of Revenue Notice of Proposed Changes on  
Oil & Gas Production Tax –Regulations for Repeal Title 15 – Revenue, August 5, 2019

Dear Mr. Larsen:

The Department of Revenue issued a public notice to repeal regulations in Title 15 (Revenue) on August 5, 2019 (“Notice”). The Notice proposes repealing certain regulations because those regulations “mimic existing statutes, have been superseded, or are otherwise no longer in effect.”

The description in the Notice does not lend itself to assisting the taxpayer in understanding the Department’s goal with the proposed change to 15 AAC 05.010(a) to remove “AS 43.56.110” and the entire repeal of 15 AAC 05.010(a)(4). Both proposed regulations make specific and describe part of making a request for appeal.

Alaska Statute 43.56.110(a) directs that an owner of taxable property or a municipality receiving an assessment notice may object to the assessment. The statute requires the objection must be (1) in writing, (2) to the Department of Revenue; (3) state the objections and (4) be filed within 20 days of the effective date of the notice. By removing the reference to AS 43.56.110 from 15 AAC 05.010, it appears the Department is no longer requiring a request for appeal to state the relief sought, set forth the facts and legal authority for the objection, or be signed by the taxpayer or an authorized representative. If this is a correct interpretation of the proposed change, then it would significantly assist the taxpayer if the Notice articulated why the appeal requirements of 15 AAC 05.010 no longer apply to AS 43.56.110 appeals and more

importantly, what the requirements would be for AS 43.56.110 appeals if this change is implemented. If the Department does not provide this necessary information and waits till some later time to provide notice to taxpayers of the requirements, there is an unnecessary gap created to the detriment of appealing taxpayers.

The Notice states that 15 AAC 05.010(a)(4) is repealed entirely because “there are no circumstances for skipping the **informal appeal process** to go directly to a formal hearing (Emphasis Added).” At 15 AAC 05.010(a)(4) the regulation requests the taxpayer indicate if they would like an “**informal conference**” not an informal appeal. Informal **conferences** are used within the appeal process to resolve tax matters in a conference or meeting setting where possible, before commencing a formal hearing. In light of the regular use and minimal cost to both the Department and the taxpayer in resolving differences at the informal **conference**, we recommend the Department reconsider its appeal of this regulation. If it is, alternatively, the Department’s intent that all appeals must go through an informal conference (i.e., “there are no circumstances for skipping” the informal conference step), deleting this subsection of the regulation does not accomplish that intent. It merely eliminates a party’s opportunity to confirm its intent to engage in an informal conference with the Department and says nothing of requiring all appealing taxpayers to engage in an informal conference.

For ease of reference 15 AAC 05.010 is pasted below with the proposed changes reflected in blue font with strike through to indicate what is being removed.

#### **15 AAC 05.010. Request for appeal**

(a) An appeal is initiated by filing a request for appeal. For the purpose of this section, "request for appeal" includes a request for a formal hearing under AS 25.25, AS 25.27, ~~AS 43.55.013~~, and ~~AS 43.56.110~~ but does not include a request for an administrative review under 15 AAC 125.118, 15 AAC 125.216, 15 AAC 125.222, 15 AAC 125.226, 15 AAC 125.242, 15 AAC 125.246, 15 AAC 125.252, 15 AAC 125.321, 15 AAC 125.331, 15 AAC 125.335, 15 AAC 125.410, 15 AAC 125.418, 15 AAC 125.420, 15 AAC 125.425, 15 AAC 125.440, 15 AAC 125.505, 15 AAC 125.510, 15 AAC 125.550, 15 AAC 125.560, 15 AAC 125.610, 15 AAC 125.630, 15 AAC 125.715, or 15 AAC 125.870. A request for appeal filed under this section must

(1) state the department action to which the person objects and the relief sought;

(2) state the grounds for the objection, including a brief summary of the facts at issue, the legal authority, and, if appropriate, any generally accepted accounting principles that support the request for appeal;

Mr. John Larsen  
September 11, 2019  
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(3) be signed

(A) by the taxpayer or the taxpayer's authorized representative;

(B) in the case of an appeal of a permanent fund dividend denial or assessment, by the adult applicant or the adult sponsor or authorized representative of the applicant; or

(C) in the case of an appeal of a child support administrative review decision or an appeal of a decision granting or denying a petition for modification, by the parent appealing or authorized representative of that person; and

~~(4) if the request for appeal concerns a tax, tax credit, or license fee matter under AS 43, state whether an informal conference is requested, or waived in favor of proceeding directly to a formal hearing.~~

Sincerely,

A handwritten signature in black ink that reads "Marie P. Evans". The signature is written in a cursive style with a long, sweeping flourish extending from the end of the name.

Marie P. Evans