ALASKA DEPARTMENT OF REVENUE • TAX DIVISION

Petroleum Profits Tax

HB3001 in the 24th Legislature

HB 3001 was signed into law by Gov. Frank H. Murkowski on Aug. 19, 2006: "An Act relating to the production tax on oil and gas and to conservation surcharges on oil; relating to criminal penalties for violating conditions governing access to and use of confidential information relating to the production tax; amending the definition of 'gas' as that definition applies in the Alaska Stranded Gas Development Act; making conforming amendments; and providing for an effective date."

Bill Text

BILL ID: HB3001

Enrolled HB 3001

Relating to the production tax on oil and gas and to conservation surcharges on oil; relating to criminal penalties for violating conditions governing access to and use of confidential information relating to the production tax; amending the definition of "gas" as that definition applies in the Alaska Stranded Gas Development Act; making conforming amendments; and providing for an effective date.

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*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. (a) It is the intent of the legislature through sec. 11 of this Act to confirm by clarification the long-standing interpretation of AS 43.55.020(f) by the Department of Revenue.

(b) It is the intent of the legislature that the division or other unit of the Department of Environmental Conservation assigned responsibility for administration of the programs under AS 46.08 that are principally supported by the conservation surcharges on oil levied under AS 43.55.201 - 43.55.299 and 43.55.300 - 43.55.310

(1) reduce program costs, including personnel costs, as necessary to operate within the revenue anticipated to be generated by those surcharges, in the amounts of those surcharges as amended by secs. 26 and 28 of this Act; and

(2) request appropriations for exceptional program needs and expansions beyond what can be provided from the estimated amounts collected from those surcharges from alternative funding sources.

*** Sec. 2.** AS 43.05.230(f) is amended to read:

(f) A wilful violation of the provisions of this section **or of a condition imposed under AS 43.55.040(1)(B)** is punishable by a fine of not more than $5,000, or by imprisonment for not more than two years, or by both.

*** Sec. 3.** AS 43.20.031(c) is amended to read:

(c) In computing the tax under this chapter, the taxpayer is not entitled to deduct any taxes based on or measured by net income. **The taxpayer may deduct the tax levied and paid under AS 43.55.**

*** Sec. 4.** AS 43.20.072(b) is amended to read:

(b) A taxpayer's business income to be apportioned under this section to the state shall be the federal taxable income of the taxpayer's consolidated business for the tax period, except that

(1) taxes based on or measured by net income that are deducted in the determination of the federal taxable income shall be added back; **the tax levied and paid under AS 43.55 may not be added back;**

(2) intangible drilling and development costs that are deducted as expenses under 26 U.S.C. 263(c) (Internal Revenue Code) in the determination of the

federal taxable income shall be capitalized and depreciated as if the option to treat them as expenses under 26 U.S.C. 263(c) (Internal Revenue Code) had not been exercised;

(3) depletion deducted on the percentage depletion basis under 26 U.S.C. 613 (Internal Revenue Code) in the determination of the federal taxable income shall be recomputed and deducted on the cost depletion basis under 26 U.S.C. 612 (Internal Revenue Code)**;** and

(4) depreciation shall be computed on the basis of 26 U.S.C. 167 (Internal Revenue Code) as that section read on June 30, 1981.

* **Sec. 5.** AS 43.55.011 is amended by adding new subsections to read:

(e) There is levied on the producer of oil or gas a tax for all oil and gas produced each month from each lease or property in the state, less any oil and gas the ownership or right to which is exempt from taxation or constitutes a landowner's royalty interest. Except as otherwise provided under (j) and (k) of this section, the tax is equal to the greater of 22.5 percent of the production tax value of the taxable oil and gas as calculated under AS 43.55.160, or the minimum tax determined under (f) of this section.

(f) The levy of tax under this section on a producer of oil and gas produced north of 68 degrees North latitude may not be less than

(1) four percent of the gross value at the point of production when the average price per barrel for Alaska North Slope crude oil for sale on the United States West Coast during the calendar year for which the tax is due is more than $25;

(2) three percent of the gross value at the point of production when the average price per barrel for Alaska North Slope crude oil for sale on the United States West Coast during the calendar year for which the tax is due is over $20 but not over $25;

(3) two percent of the gross value at the point of production when the average price per barrel for Alaska North Slope crude oil for sale on the United States West Coast during the calendar year for which the tax is due is over $17.50 but not over $20;

(4) one percent of the gross value at the point of production when the average price per barrel for Alaska North Slope crude oil for sale on the United States West Coast during the calendar year for which the tax is due is over $15 but not over $17.50; or

(5) zero percent of the gross value at the point of production when the average price per barrel for Alaska North Slope crude oil for sale on the United States West Coast during the calendar year for which the tax is due is $15 or less.

(g) In addition to the tax levied under (e) of this section, for each calendar year that includes one or more months for which the price index determined under (h) of this section is greater than zero, there is levied on the producer of oil or gas a tax for all oil and gas produced that calendar year from each lease or property in the state, less any oil and gas the ownership or right to which is exempt from taxation or constitutes a landowner's royalty interest. Except as otherwise provided under (j) and (k) of this section, the tax levied under this subsection is equal to the sum, over all months in the calendar year, of the amounts calculated for each month as follows: .25 percent of the monthly production tax value of the taxable oil and gas as calculated under AS 43.55.160, multiplied by the price index determined under (h) of this section. However, the amount calculated under this subsection for any month may not exceed 25 percent of the monthly production tax value of the taxable oil and gas as calculated under AS 43.55.160.

(h) For purposes of (g) of this section, the price index for a month is calculated by subtracting 40 from the number that is equal to the quotient of the total monthly production tax value of the taxable oil and gas produced by the producer during that month, as calculated under AS 43.55.160, divided by the total amount of the taxable oil and gas produced by the producer during that month, in BTU equivalent barrels. However, a price index may not be less than zero.

(i) There is levied on the producer of oil or gas a tax for all oil and gas produced each calendar year from each lease or property in the state the ownership or right to which constitutes a landowner's royalty interest, except for oil and gas the ownership or right to which is exempt from taxation. The provisions of this subsection apply to a landowner's royalty interest as follows:

(1) the tax levied for oil is equal to five percent of the gross value at the point of production of the oil;

(2) the tax levied for gas is equal to 1.667 percent of the gross value at the point of production of the gas;

(3) if the department determines that, for purposes of reducing the producer's tax liability under (1) or (2) of this subsection, the producer has received or will receive consideration from the royalty owner offsetting all or a part of the producer's royalty obligation, other than a deduction under AS 43.55.020(d) of the amount of a tax paid, then, notwithstanding (1) and (2) of this subsection, the tax is equal to 25 percent of the gross value at the point of production of the oil and gas.

(j) For a calendar year before 2022, the total tax levied by (e) and (g) of this section on gas produced from a lease or property in the Cook Inlet sedimentary basin may not exceed

(1) for a lease or property that first commenced commercial production of gas before April 1, 2006, the product obtained by multiplying (A) the amount of taxable gas produced during the calendar year from the lease or property, times (B) the average rate of tax that was imposed under this chapter on taxable gas produced from the lease or property for the 12-month period ending on March 31, 2006, times (C) the quotient obtained by dividing the total gross value at the point of production of the taxable gas produced from the lease or property during the 12-month period ending on March 31, 2006, by the total amount of that gas;

(2) for a lease or property that first commences commercial production of gas after March 31, 2006, the product obtained by multiplying (A) the amount of taxable gas produced during the calendar year from the lease or property, times (B) the average rate of tax that was imposed under this chapter on 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 (C) 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 under AS 43.55.020(f).

(k) For a calendar year before 2022, the total tax levied by (e) and (g) of this section on oil produced from a lease or property in the Cook Inlet sedimentary basin may not exceed

(1) for a lease or property that first commenced commercial production of oil before April 1, 2006, the product obtained by multiplying (A) the amount of taxable oil produced during the calendar year from the lease or property, times (B) the average rate of tax that was imposed under this chapter on taxable oil produced from the lease or property for the 12-month period ending on March 31, 2006, times (C) the quotient obtained by dividing the total gross value at the point of production of the taxable oil produced from the lease or property during the 12-month period ending on March 31, 2006, by the total amount of that oil;

(2) for a lease or property that first commences commercial production of oil after March 31, 2006, the product obtained by multiplying (A) the amount of taxable oil produced during the calendar year from the lease or property, times (B) the average rate of tax that was imposed under this chapter on taxable oil produced from all leases or properties in the Cook Inlet sedimentary basin for the 12-month period ending on March 31, 2006, times (C) the average prevailing value for oil produced and delivered in the Cook Inlet area for the 12-month period ending on March 31, 2006, as determined by the department under AS 43.55.020(f).

(l) When a limitation under (j) or (k) of this section on the tax levied by (e) and (g) of this section has the effect of reducing the producer's tax on oil or gas produced from a lease or property below the amount of tax that would be levied in the absence of that limitation, the amount of the reduction is applied first against the tax levied by (g) of this section. However, that tax may not be reduced below zero.

(m) Notwithstanding any contrary provision of AS 38.05.180(i), AS 41.09.010, AS 43.20.043, AS 43.55.024, or 43.55.025, tax credits under AS 38.05.180(i), AS 41.09.010, AS 43.20.043, AS 43.55.024, and 43.55.025 that are allocated to gas produced from leases or properties in the Cook Inlet sedimentary basin and that are available to be applied against a tax levied by (e) of this section on gas produced from leases or properties in the Cook Inlet sedimentary basin during a calendar year may be applied only against the tax levied by (e) of this section on that gas. The amount by which the amount of tax credits that are allocated to gas produced from leases or properties in the Cook Inlet sedimentary basin and that the producer would otherwise be allowed to use for a later calendar year or transfer to another person exceeds the amount of tax credits whose application would reduce the tax levied by (e) of this section on that gas to zero, if any, is considered the amount of excess tax credits, and the excess tax credits are subject to the following:

(1) for each lease or property for which a limitation under (j) or (k) of this section on the tax levied by (e) and (g) of this section has the effect of reducing the producer's tax below the amount of tax that would be levied in the absence of that limitation, the producer shall calculate the amount of that reduction;

(2) the producer shall calculate the total of the reductions calculated under (1) of this subsection for all affected leases or properties;

(3) the producer shall reduce the amount of excess tax credits by the total calculated under (2) of this subsection, but not to less than zero;

(4) any amount of excess tax credits remaining after reduction under (3) of this subsection may be used for a later calendar year, transferred to another person, or applied against a tax levied on oil or gas produced from a lease or property located anywhere in the state to the extent otherwise allowed under applicable law governing the tax credits.

(n) Allocation of credits under (m) of this section shall be made under regulations adopted by the department that provide for reasonable methods of allocating tax credits to gas produced from leases or properties in the Cook Inlet sedimentary basin. The method of allocating tax credits available under AS 43.55.024 shall be based on the number of BTU equivalent barrels produced from a lease or property.

* **Sec. 6.** AS 43.55.017(a) is amended to read:

(a) Except as provided in this chapter, the taxes imposed by this chapter are in place of all taxes now imposed by the state or any of its municipalities, and neither the state nor a municipality may impose a tax **on** [UPON]

(1) producing oil or gas leases;

(2) oil or gas produced or extracted in the state;

(3) the value of intangible drilling and **development costs, as described in 26 U.S.C. 263(c) (Internal Revenue Code), as amended through January 1, 1974** [EXPLORATION EXPENSES].

* **Sec. 7.** AS 43.55.020(a) is repealed and reenacted to read:

(a) For a calendar year, a producer subject to tax under AS 43.55.011(e), (f), (g), or (i), and notwithstanding that a producer may be liable for the tax under AS 43.55.011(f) rather than the tax under AS 43.55.011(e), shall pay the tax as follows:

(1) an installment payment of the estimated tax levied by AS 43.55.011(e) or (f), net of any tax credits applied as allowed by law, is due for each month of the calendar year on the last day of the following month; the amount of the installment payment is the sum of the amounts calculated under (2) and (3) of this subsection, but not less than zero;

(2) the first of the two amounts used to calculate the installment payment for a month under (1) of this subsection is equal to the remainder obtained by subtracting

(A) 1/12 of the tax credits that are allowed by law to be applied against the tax levied by AS 43.55.011(e) for the calendar year; from

(B) the total of the monthly production values calculated in the manner provided in AS 43.55.160(a)(2) of all oil and gas taxable under AS 43.55.011(e) and produced by the producer from leases or properties in the state during the month, multiplied by 22.5 percent;

(3) the second of the two amounts used to calculate the installment payment for a month under (1) of this subsection is the amount calculated for the month under AS 43.55.011(g);

(4) an installment payment of the estimated tax levied by AS 43.55.011(i) for each lease or property is due for each month of the calendar year on the last day of the following month; the amount of the installment payment is the sum of

(A) the applicable percentage rate for oil provided under AS 43.55.011(i), multiplied by the gross value at the point of production of the oil taxable under AS 43.55.011(i) and produced from the lease or property during the month; plus

(B) the applicable percentage rate for gas provided under AS 43.55.011(i), multiplied times the gross value at the point of production of the gas taxable under AS 43.55.011(i) and produced from the lease or property during the month;

(5) any amount of tax levied by AS 43.55.011(e) - (g) and (i), net of any credits applied as allowed by law, that exceeds the total of the amounts due as installment payments of estimated tax is due on March 31 of the year following the calendar year of production.

* **Sec. 8.** AS 43.55.020(b) is amended to read:

(b) The production tax on oil **and** [OR] gas shall be paid **to the department** by or on behalf of the producer.

* **Sec. 9.** AS 43.55.020(d) is amended to read:

(d) In making settlement with the royalty owner **for oil and gas that is taxable under AS 43.55.011,** the producer may deduct the amount of the tax paid on **taxable** royalty oil **and** [OR] gas, or may deduct **taxable** royalty oil or gas equivalent in value at the time the tax becomes due to the amount of the tax paid. **If the total deductions of installment payments of estimated tax for a calendar year exceed the actual tax for that calendar year, the producer shall, before April 1 of the following year, refund the excess to the royalty owner. Unless otherwise agreed between the producer and the royalty owner, the amount of the tax paid under AS 43.55.011(e) - (g) on taxable royalty oil and gas for a calendar year, other than oil and gas the ownership or right to which constitutes a landowner's royalty interest, is considered to be the gross value at the point of production of the taxable royalty oil and gas produced during the calendar year multiplied by a figure that is a quotient, in which**

(1) the numerator is the producer's total tax liability under AS 43.55.011(e) - (g) for the calendar year of production; and

(2) the denominator is the total gross value at the point of production of the oil and gas taxable under AS 43.55.011(e) - (g) produced by the producer from all leases and properties in the state during the calendar year.

* **Sec. 10.** AS 43.55.020(e) is repealed and reenacted to read:

(e) Gas flared, released, or allowed to escape in excess of the amount authorized by the Alaska Oil and Gas Conservation Commission is considered, for the purpose of AS 43.55.011 - 43.55.180, as gas produced from a lease or property. Oil or gas used in the operation of a lease or property in the state in drilling for or producing oil or gas, or for repressuring, except to the extent determined by the Alaska Oil and Gas Conservation Commission to be waste, is not considered, for the purpose of AS 43.55.011 - 43.55.180, as oil or gas produced from a lease or property.

* **Sec. 11.** AS 43.55.020(f) is amended to read:

(f) If oil or gas is **produced but not sold, or if oil or gas is produced and** sold under circumstances where the sale price does not represent the prevailing value for oil or gas of like kind, character, or quality in the field or area from which the product is produced, the department may require the tax to be paid upon the basis of the value of oil or gas of the same kind, quality, and character prevailing **for that field or area** during the calendar month of production **or sale** [FOR THAT FIELD OR AREA].

*** Sec. 12.** AS 43.55.020 is amended by adding new subsections to read:

(g) Notwithstanding any contrary provision of AS 43.05.225, an unpaid amount of an installment payment required under (a)(1) - (4) of this section that is not paid when due bears interest (1) at the rate provided for an underpayment under 26 U.S.C. 6621 (Internal Revenue Code), as amended, compounded daily, from the date the installment payment is due until the March 31 described in AS 43.55.030(a), and (2) as provided for a delinquent tax under AS 43.05.225 after that March 31. Interest accrued under (1) of this subsection that remains unpaid after that March 31 is treated as an addition to tax that bears interest under (2) of this subsection. An unpaid amount of tax due under (a)(5) of this section that is not paid when due bears interest as provided for a delinquent tax under AS 43.05.225.

(h) Notwithstanding any contrary provision of AS 43.05.280,

(1) an overpayment of an installment payment required under (a)(1) - (4) of this section bears interest at the rate provided for an overpayment under 26 U.S.C. 6621 (Internal Revenue Code), as amended, compounded daily, from the later of the date the installment payment is due or the date the overpayment is made, until the earlier of (A) the date it is refunded or is applied to an underpayment, or (B) the March 31 described in AS 43.55.030(a);

(2) except as provided under (1) of this subsection, interest with respect to an overpayment is allowed only on any net overpayment of the payments required under (a) of this section that remains after the later of the March 31 described in AS 43.55.030(a) or the date that the statement required under AS 43.55.030(a) is filed;

(3) interest is allowed under (2) of this subsection only from a date that is 90 days after the later of the March 31 described in AS 43.55.030(a) or the date that the statement required under AS 43.55.030(a) is filed; interest is not allowed if the overpayment was refunded within the 90-day period;

(4) interest under (2) and (3) of this subsection is paid at the rate and in the manner provided in AS 43.05.225(1).

*** Sec. 13.** AS 43.55 is amended by adding new sections to read:

Sec. 43.55.023. Tax credits for certain losses and expenditures. (a) A producer or explorer may take a tax credit for a qualified capital expenditure as follows:

(1) notwithstanding that a qualified capital expenditure may be a deductible lease expenditure for purposes of calculating the production tax value of oil and gas under AS 43.55.160(a), unless a credit for that expenditure is taken under AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025, a producer or explorer that incurs a qualified capital expenditure may also elect to take a tax credit against a tax due under AS 43.55.011(e) in the amount of 20 percent of that expenditure;

(2) a producer or explorer may take a credit for a qualified capital expenditure incurred in connection with geological or geophysical exploration or in connection with an exploration well only if the producer or explorer provides to the department, as part of the statement required under AS 43.55.030(a) for the calendar year for which the credit is sought to be taken, the producer's or explorer's written agreement

(A) to notify the Department of Natural Resources, before the later of 30 days after completion of the geological or geophysical data processing or completion of the well, or 30 days after the statement is filed, of the date of completion and to submit a report to that department describing the processing sequence and provide a list of data sets available;

(B) to provide to the Department of Natural Resources, within 30 days after the date of a request, specific data sets, ancillary data, and reports identified in (A) of this paragraph;

(C) that, notwithstanding any provision of AS 38, the Department of Natural Resources shall hold confidential the information provided to that department under this paragraph for 10 years following the completion date, after which the department shall publicly release the information after 30 days' public notice.

(b) A producer or explorer may elect to take a tax credit in the amount of 20 percent of a carried-forward annual loss. A credit under this subsection may be applied against a tax due under AS 43.55.011(e). For purposes of this subsection, a carried-forward annual loss is the amount of a producer's or explorer's adjusted lease expenditures under AS 43.55.165 and 43.55.170 for a previous calendar year that was not deductible for that calendar year under AS 43.55.160(b) and (e).

(c) A credit or portion of a credit under this section may not be used to reduce a person's tax liability under AS 43.55.011(e) for any calendar year below zero, and any unused credit or portion of a credit not used under this subsection may be applied in a later calendar year.

(d) Except as limited by (i) of this section, a person entitled to take a tax credit under this section that wishes to transfer the unused credit to another person may apply to the department for a transferable tax credit certificate. An application under this subsection must be in a form prescribed by the department and must include supporting information and documentation that the department reasonably requires. The department shall grant or deny an application, or grant an application as to a lesser amount than that claimed and deny it as to the excess, not later than 60 days after the latest of (1) March 31 of the year following the calendar year in which the qualified capital expenditure or carried-forward annual loss for which the credit is claimed was incurred; (2) if the applicant is required under AS 43.55.030(a) to file a statement on or before March 31 of the year following the calendar year in which the qualified capital expenditures or carried-forward annual loss for which the credit is claimed was incurred, the date the statement was filed; or (3) the date the application was received by the department. If, based on the information then available to it, the department is reasonably satisfied that the applicant is entitled to a credit, the department shall issue the applicant a transferable tax credit certificate for the amount of the credit. A certificate issued under this subsection does not expire.

(e) A person to which a transferable tax credit certificate is issued under (d) of this section may transfer the certificate to another person, and a transferee may further transfer the certificate. Subject to the limitations set out in (a) - (c) of this section, 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 due under AS 43.55.011(e). However, a credit shown on a transferable tax credit certificate may not be applied to reduce a transferee's total tax due under AS 43.55.011(e) on oil and gas produced during a calendar year to less than 80 percent of the tax that would otherwise be due without applying that credit. Any portion of a credit not used under this subsection may be applied in a later period.

(f) Under standards established in regulations adopted by the department and subject to appropriations made by law, the department, on the written application of the person to whom a transferable tax credit has been issued under (d) of this section and whose average amount of oil and gas produced a day taxable under AS 43.55.011(e) is not more than 50,000 BTU equivalent barrels a day for the preceding calendar year, shall issue a cash refund, in whole or in part, for the certificate if the department finds

(1) within 24 months after having applied for the transferable tax credit

certificate, that the applicant incurred a qualified capital expenditure or was the successful bidder on a bid submitted for a lease on state land under AS 38.05.180(f);

(2) that the amount of the refund would not exceed the total of qualified capital expenditures and successful bids described in (1) of this subsection that have not been the subject of a finding made under this paragraph for purposes of a previous refund;

(3) that the applicant does not have an outstanding liability to the state for unpaid delinquent taxes under this title; and

(4) that the sum of the amount of the refund applied for and amounts previously refunded to the applicant during the calendar year under this subsection would not exceed $25,000,000.

(g) The issuance of a transferable tax credit certificate under (d) of this section or the issuance of a cash refund under (f) of this section does not limit the department's ability to later audit a tax credit claim to which the certificate relates or to adjust the claim if the department 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 exceeds 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. If the applicant's tax liability is increased under this subsection, the increase bears interest under AS 43.05.225 from the date the transferable tax credit certificate was issued. For purposes of this subsection, an applicant that is an explorer is considered a producer subject to the tax levied by AS 43.55.011(e).

(h) Regulations adopted to implement this section must include provisions prescribing reporting, record keeping, and certification procedures and requirements to verify the accuracy of credits claimed and to ensure that a credit is not used more than once.

(i) For the purposes of this section,

(1) a producer's or explorer's transitional investment expenditures are the sum of the expenditures the producer or explorer incurred after March 31, 2001, and before April 1, 2006, that would be qualified capital expenditures if they were incurred after March 31, 2006, less the sum of the payments or credits the producer or explorer received before April 1, 2006, for the sale or other transfer of assets, including geological, geophysical, or well data or interpretations, acquired by the producer or explorer as a result of expenditures the producer or explorer incurred before April 1, 2006, that would be qualified capital expenditures, if they were incurred after March 31, 2006;

(2) a producer or explorer may elect to take a tax credit against a tax due under AS 43.55.011(e) in the amount of 20 percent of the producer's or explorer's transitional investment expenditures, but only to the extent that the amount does not exceed 1/10 of the producer's or explorer's qualified capital expenditures that are incurred during the calendar year for which the credit is taken;

(3) a producer or explorer may not take a tax credit for a transitional investment expenditure

(A) for any calendar year after the later of

(i) 2013; or

(ii) the sixth calendar year after the calendar year for which the producer first applies a credit under this subsection against a tax due under AS 43.55.011(e), if the producer did not have commercial production of oil or gas from a lease or property in the state before April 1, 2006;

(B) more than once; or

(C) if a credit for that expenditure was taken under AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025;

(4) notwithstanding (d), (e), and (g) of this section, a producer or

explorer may not transfer a tax credit or obtain a transferable tax credit certificate for a transitional investment expenditure.

(j) As a condition of receiving a tax credit under this section, a producer or explorer that obtains the tax credit for or directly related to a pipeline, facility, or other asset that is or becomes subject to regulation by the Federal Energy Regulatory Commission, the Regulatory Commission of Alaska, or a successor regulatory body shall at all times support and in all rate proceedings file to flow through 100 percent of the tax credits to ratepayers as a reduction in the costs of service for the pipeline, facility, or other asset.

(k) In this section, "qualified capital expenditure"

(1) means, except as otherwise provided in (2) of this subsection, an expenditure that is a lease expenditure under AS 43.55.165 and is

(A) incurred for geological or geophysical exploration; or

(B) treated as a capitalized expenditure under 26 U.S.C. (Internal Revenue Code), as amended, regardless of elections made under 26 U.S.C. 263(c) (Internal Revenue Code), as amended, and is

(i) treated as a capitalized expenditure for federal income tax reporting purposes by the person incurring the expenditure; or

(ii) eligible to be deducted as an expense under 26 U.S.C. 263(c) (Internal Revenue Code), as amended;

(2) does not include an expenditure incurred to acquire an asset (A) the cost of previously acquiring which was a lease expenditure under AS 43.55.165 or would have been a lease expenditure under AS 43.55.165 if it had been incurred after March 31, 2006; for purposes of this subparagraph, "asset" includes geological, geophysical, and well data and interpretations; or (B) that has previously been placed in service in the state; an expenditure to acquire an asset is not excluded under this paragraph if not more than an immaterial portion of the asset meets a description under this paragraph.

Sec. 43.55.024. Additional nontransferable tax credits. (a) For a calendar year for which a producer's tax liability under AS 43.55.011(e) or (f) on oil and gas produced from leases or properties outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, exceeds zero before application of any credits under this chapter, a producer that is qualified under (e) of this section may apply a tax credit against that liability of not more than $6,000,000.

(b) A producer may not take a tax credit under (a) of this section for any calendar year after the later of

(1) 2016; or

(2) the ninth calendar year after the calendar year during which the producer first has commercial oil or gas production before May 1, 2016, from at least one lease or property in the state outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, if the producer did not have commercial oil or gas production from a lease or property in the state outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, before April 1, 2006.

(c) For a calendar year for which a producer's tax liability under AS 43.55.011(e) or (f) exceeds zero before application of any credits under this chapter, other than a credit under (a) of this section but after application of any credit under (a) of this section, a producer that is qualified under (e) of this section and whose average amount of oil and gas produced a day and taxable under AS 43.55.011(e) or (f) is less than 100,000 BTU equivalent barrels a day may apply a tax credit under this subsection against that liability. A producer whose average amount of oil and gas produced a day and taxable under AS 43.55.011(e) or (f) is

(1) not more than 50,000 BTU equivalent barrels may apply a tax credit of not more than $12,000,000 for the calendar year;

(2) more than 50,000 and less than 100,000 BTU equivalent barrels

may apply a tax credit of not more than $12,000,000 multiplied by the following fraction for the calendar year:

1 - [2 X (AP - 50,000)] ¸ 100,000

where AP = the average amount of oil and gas taxable under AS 43.55.011(e) or (f), produced a day during the calendar year in BTU equivalent barrels.

(d) A producer may not take a tax credit under (c) of this section for any calendar year after the later of

(1) 2016; or

(2) if the producer did not have commercial oil or gas production from a lease or property in the state before April 1, 2006, the ninth calendar year after the calendar year during which the producer first has commercial oil or gas production before May 1, 2016, from at least one lease or property in the state.

(e) On written application by a producer that includes any information the department may require, the department shall determine whether the producer qualifies for a calendar year under this section. To qualify under this section, a producer must demonstrate that its operation in the state or its ownership of an interest in a lease or property in the state as a distinct producer would not result in the division among multiple producer entities of any production tax liability under AS 43.55.011(e) or (f) that reasonably would be expected to be attributed to a single producer if the tax credit provisions of (a) or (c) of this section did not exist.

(f) A tax credit authorized by (a) of this section may not be applied to reduce a producer's tax liability for any calendar year under AS 43.55.011(e) on oil and gas produced from leases or properties outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, below zero.

(g) A tax credit authorized by (c) of this section may not be applied to reduce a producer's tax liability for any calendar year under AS 43.55.011(e) or (f) below zero.

(h) An unused tax credit or portion of a tax credit under this section is not transferable and may not be carried forward for use in a later calendar year.

*** Sec. 14.** AS 43.55.025(a) is amended to read:

(a) Subject to the terms and conditions of this section, [ON OIL AND GAS PRODUCED ON OR AFTER JULY 1, 2004, FROM AN OIL AND GAS LEASE, OR ON GAS PRODUCED FROM A GAS ONLY LEASE,] a credit against the production tax due under **AS 43.55.011(e) or (f)** [THIS CHAPTER] is allowed for exploration expenditures that qualify under (b) of this section in an amount equal to one of the following:

(1) 20 percent of the total exploration expenditures that qualify only under (b) and (c) of this section;

(2) 20 percent of the total exploration expenditures for work performed before July 1, 2007, and that qualify only under (b) and (d) of this section;

(3) 40 percent of the total exploration expenditures that qualify under (b), (c), and (d) of this section; or

(4) 40 percent of the total exploration expenditures that qualify only under (b) and (e) of this section.

*** Sec. 15.** AS 43.55.025(b) is amended to read:

(b) To qualify for the production tax credit under (a) of this section, an exploration expenditure must be incurred for work performed on or after July 1, 2003, and before July 1, **2016** [2007], except that an exploration expenditure for a Cook Inlet prospect must be incurred for work performed on or after July 1, 2005, [AND BEFORE JULY 1, 2010, AND EXCEPT THAT AN EXPLORATION EXPENDITURE, IN WHOLE OR IN PART, SOUTH OF 68 DEGREES, 15 MINUTES, NORTH LATITUDE, AND NOT PART OF A COOK INLET PROSPECT MUST BE INCURRED FOR WORK PERFORMED ON OR AFTER JULY 1, 2003, AND BEFORE JULY 1, 2010,] and

(1) may be for seismic or geophysical exploration costs not connected with a specific well;

(2) if for an exploration well,

(A) must be incurred by an explorer that holds an interest in the exploration well for which the production tax credit is claimed;

(B) may be for either an oil or gas discovery well or a dry hole; and

(C) must be for goods, services, or rentals of personal property reasonably required for the surface preparation, drilling, casing, cementing, and logging of an exploration well, and, in the case of a dry hole, for the expenses required for abandonment if the well is abandoned within 18 months after the date the well was spudded;

(3) may not be for testing, stimulation, or completion costs; administration, supervision, engineering, or lease operating costs; geological or management costs; community relations or environmental costs; bonuses, taxes, or other payments to governments related to the well; or other costs that are generally recognized as indirect costs or financing costs; and

(4) may not be incurred for an exploration well or seismic exploration that is included in a plan of exploration or a plan of development for any unit on May 13, 2003.

*** Sec. 16.** AS 43.55.025(f) is amended to read:

(f) For a production tax credit under this section,

(1) an explorer shall, in a form prescribed by the department and within six months of the completion of the exploration activity, claim the credit and submit information sufficient to demonstrate to the department's satisfaction that the claimed exploration expenditures qualify under this section;

(2) an explorer shall agree, in writing,

(A) to notify the Department of Natural Resources, within 30 days after completion of seismic or geophysical data processing, completion of a well, or filing of a claim for credit, whichever is the latest, for which exploration costs are claimed, of the date of completion and submit a report to that department describing the processing sequence and providing a list of data sets available; if, under (c)(2)(B) of this section, an explorer submits a claim for a credit for expenditures for an exploration well that is located within three miles of a well already drilled for oil and gas, in addition to the submissions required under (1) of this subsection, the explorer shall submit the information necessary for the commissioner of natural resources to evaluate the validity of the explorer's claim that the well is directed at a distinctly separate exploration target, and the commissioner of natural resources shall, upon receipt of all evidence sufficient for the commissioner to evaluate the explorer's claim, make that determination within 60 days;

(B) to provide to the Department of Natural Resources, within 30 days after the date of a request, specific data sets, ancillary data, and reports identified in (A) of this paragraph;

(C) that, notwithstanding any provision of AS 38, information provided under this paragraph will be held confidential by the Department of Natural Resources for 10 years following the completion date, at which time that department will release the information after 30 days' public notice;

(3) if more than one explorer holds an interest in a well or seismic exploration, each explorer may claim an amount of credit that is proportional to the explorer's cost incurred;

(4) the department may exercise the full extent of its powers as though the explorer were a taxpayer under this title, in order to verify that the claimed expenditures are qualified exploration expenditures under this section; and

(5) if the department is satisfied that the explorer's claimed expenditures are qualified under this section, the department shall issue to the explorer a production tax credit certificate for the amount of credit to be allowed against production taxes due under **<u>AS 43.55.011(e) or (f)</u>** [THIS CHAPTER; HOWEVER,

NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE DEPARTMENT MAY NOT ISSUE TO AN EXPLORER A PRODUCTION TAX CREDIT CERTIFICATE IF THE TOTAL OF PRODUCTION TAX CREDITS SUBMITTED FOR COOK INLET PRODUCTION, BASED ON EXPLORATION EXPENDITURES FOR WORK PERFORMED DURING THE PERIOD DESCRIBED IN (b) OF THIS SECTION FOR THAT PRODUCTION, THAT HAVE BEEN APPROVED BY THE DEPARTMENT EXCEEDS $20,000,000].

* **Sec. 17.** AS 43.55.025(h) is amended to read:

(h) A producer that purchases a production tax credit certificate may apply the credits against its production tax liability under **AS 43.55.011(e) or (f)** [THIS CHAPTER]. Regardless of the price the producer paid for the certificate, the producer may receive a credit against its production tax liability for the full amount of the credit, but for not more than the amount for which the certificate is issued. A production tax credit allowed under this section may not be applied more than once.

* **Sec. 18.** AS 43.55.025(i) is amended to read:

(i) For a production tax credit under this section,

(1) the amount of the credit that may be applied against the production tax for each **calendar year** [TAX MONTH] may not exceed the total production tax liability **under AS 43.55.011(e) or (f)** of the taxpayer applying the credit for the same **calendar year** [MONTH]; and

(2) an amount of the production tax credit that is greater than the total tax liability **under AS 43.55.011(e) or (f)** of the taxpayer applying the credit for a **calendar year** [TAX MONTH] may be carried forward and applied against the taxpayer's production tax liability **under AS 43.55.011(e) or (f)** in one or more immediately following **calendar years** [MONTHS].

* **Sec. 19.** AS 43.55.030(a) is amended to read:

(a) The [TAX SHALL BE PAID TO THE DEPARTMENT AND THE] person paying the tax shall file with the department **on March 31 of the year following the calendar year for which the tax was levied** [AT THE TIME THE TAX IS REQUIRED TO BE PAID] a statement, under oath, **in a form** [ON FORMS] prescribed by [OR ACCEPTABLE TO] the department, giving**,** with other information required, the following:

(1) a description of **each** [THE] lease or property from which the oil **and** [OR] gas **were** [WAS] produced, by name, legal description, lease number**,** or [BY] accounting **codes** [CODE NUMBERS] assigned by the department;

(2) the names of the producer and the person paying the tax;

(3) the gross amount of oil **and the gross amount of** [OR] gas produced from **each** [THE] lease or property, and the percentage of the gross amount **of oil and gas** owned by each producer for whom the tax is paid;

(4) the **gross** [TOTAL] value **at the point of production** of the oil **and of the** [OR] gas produced from **each** [THE] lease or property owned by each producer for whom the tax is paid; [AND]

(5) the name of the first purchaser and the price received for the oil **and for the** [OR] gas**, unless relieved from this requirement in whole or in part by the department; and**

(6) the producer's lease expenditures and adjustments as calculated under AS 43.55.160 - 43.55.170 [IF SOLD IN THE STATE].

* **Sec. 20.** AS 43.55.030(d) is amended to read:

(d) Reports by or on behalf of the producer are delinquent the first day following the day the **report** [TAX] is due. [EACH PRODUCER IS SUBJECT TO A PENALTY OF $25 A DAY FOR EACH LEASE OR PROPERTY UPON WHICH THE REPORT IS NOT FILED. THE PENALTY FOR FAILURE TO FILE A REPORT IS IN ADDITION TO THE PENALTY FOR DELINQUENT TAXES, AND IS A LIEN AGAINST THE ASSETS OF THE PRODUCER.]

* **Sec. 21.** AS 43.55.040 is amended to read:

Sec. 43.55.040. Powers of Department of Revenue. Except as provided in

AS 43.05.405 - 43.05.499, the department may

(1) require a person engaged in production and the agent or employee of the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil or gas to furnish**, whether by the filing of regular statements or reports or otherwise,** additional information that is considered by the department as necessary to compute the amount of the tax**; notwithstanding any contrary provision of law, the disclosure of additional information under this paragraph to the producer obligated to pay the tax does not violate AS 40.25.100(a) or AS 43.05.230(a); before disclosing information under this paragraph that is otherwise required to be held confidential under AS 40.25.100(a) or AS 43.05.230(a), the department shall**

(A) provide the person that furnished the information a reasonable opportunity to be heard regarding the proposed disclosure and the conditions to be imposed under (B) of this paragraph; and

(B) impose appropriate conditions limiting

(i) access to the information to those legal counsel, consultants, employees, officers, and agents of the producer who have a need to know that information for the purpose of determining or contesting the producer's tax obligation; and

(ii) the use of the information to use for that purpose;

(2) examine the books, records, and files of such a person;

(3) conduct hearings and compel the attendance of witnesses and the production of books, records, and papers of any person; and

(4) make an investigation or hold an inquiry that is considered necessary to a disclosure of the facts as to

(A) the amount of production from any oil or gas location, or of a company or other producer of oil or gas; and

(B) the rendition of the oil and gas for taxing purposes.

*** Sec. 22.** AS 43.55.080 is amended to read:

Sec. 43.55.080. Collection and deposit of revenue. **Except as otherwise provided under art. IX, sec. 17, Constitution of the State of Alaska, the** [THE] department shall deposit in the general fund the money collected by it under **AS 43.55.011 - 43.55.180** [AS 43.55.011 - 43.55.150].

*** Sec. 23.** AS 43.55.135 is amended to read:

Sec. 43.55.135. Measurement. For the purposes of **AS 43.55.011 - 43.55.180, except as otherwise provided** [AS 43.55.011 - 43.55.150], oil **is** [SHALL BE] measured in terms of a "barrel of oil" and gas **is** [SHALL BE] measured in terms of a "cubic foot of gas."

*** Sec. 24.** AS 43.55.150(a) is amended to read:

(a) For the purposes of **AS 43.55.011 - 43.55.180** [AS 43.55.011 - 43.55.150], the gross value **at the point of production is** [SHALL BE] calculated using the reasonable costs of transportation of the oil or gas. The reasonable costs of transportation **are** [SHALL BE] the actual costs, except **when the**

(1) [WHEN THE] parties to the transportation of oil or gas are affiliated;

(2) [WHEN THE] contract for the transportation of oil or gas is not an arm's length transaction or is not representative of the market value of that transportation; **and**

(3) [WHEN THE] method of transportation of oil or gas is not reasonable in view of existing alternative methods of transportation.

*** Sec. 25.** AS 43.55 is amended by adding new sections to article 1 to read:

Sec. 43.55.160. Determination of production tax value of oil and gas. (a) Except as provided in (b) of this section, for the purposes of

(1) AS 43.55.011(e), the annual production tax value of the taxable

(A) oil and gas produced during a calendar year from leases or properties in the state that include land north of 68 degrees North latitude is the gross value at the point of production of the oil and gas taxable under AS 43.55.011(e) and produced by the producer from those leases or properties, less the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil and gas produced by the producer from those leases or properties, as adjusted under AS 43.55.170;

(B) oil and gas produced during a calendar year from leases or properties in the state outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, is the gross value at the point of production of the oil and gas taxable under AS 43.55.011(e) and produced by the producer from those leases or properties, less the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil and gas produced by the producer from those leases or properties, as adjusted under AS 43.55.170;

(C) oil produced during a calendar year from a lease or property in the Cook Inlet sedimentary basin is the gross value at the point of production of the oil taxable under AS 43.55.011(e) and produced by the producer from that lease or property, less the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil produced by the producer from that lease or property, as adjusted under AS 43.55.170;

(D) gas produced during a calendar year from a lease or property in the Cook Inlet sedimentary basin is the gross value at the point of production of the gas taxable under AS 43.55.011(e) and produced by the producer from that lease or property, less the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the gas produced by the producer from that lease or property, as adjusted under AS 43.55.170;

(2) AS 43.55.011(g), the monthly production tax value of the taxable

(A) oil and gas produced during a month from leases or properties in the state that include land north of 68 degrees North latitude is the gross value at the point of production of the oil and gas taxable under AS 43.55.011(g) and produced by the producer from those leases or properties, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil and gas produced by the producer from those leases or properties, as adjusted under AS 43.55.170;

(B) oil and gas produced during a month from leases or properties in the state outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, is the gross value at the point of production of the oil and gas taxable under AS 43.55.011(g) and produced by the producer from those leases or properties, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil and gas produced by the producer from those leases or properties, as adjusted under AS 43.55.170;

(C) oil produced during a month from a lease or property in the Cook Inlet sedimentary basin is the gross value at the point of production of the oil taxable under AS 43.55.011(g) and produced by the producer from that lease or property, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil produced by the producer from that lease or property, as adjusted under AS 43.55.170;

(D) gas produced during a month from a lease or property in the Cook Inlet sedimentary basin is the gross value at the point of production of the gas taxable under AS 43.55.011(g) and produced by the producer from that lease or property, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the gas produced by the producer from that lease or property, as adjusted under AS 43.55.170.

(b) A production tax value calculated under (a) of this section may not be less than zero.

(c) Notwithstanding any contrary provision of AS 43.55.150, for purposes of calculating a monthly production tax value under (a)(2) of this section, the gross value at the point of production of the oil and gas taxable under AS 43.55.011(g) is calculated under regulations adopted by the department that provide for using an appropriate monthly share of the producer's costs of transportation for the calendar year.

(d) Irrespective of whether a producer produces taxable oil or gas during a calendar year or month, the producer is considered to have generated a positive production tax value if a calculation described in (a) of this section yields a positive number because the producer's adjusted lease expenditures for a calendar year under AS 43.55.165 and 43.55.170 are less than zero as a result of the producer's receiving a payment or credit under AS 43.55.170. An explorer that has taken a tax credit under AS 43.55.023(b) or that has obtained a transferable tax credit certificate under AS 43.55.023(d) for the amount of a tax credit under AS 43.55.023(b) is considered a producer, subject to the tax levied under AS 43.55.011(e), to the extent that the explorer generates a positive production tax value as the result of the explorer's receiving a payment or credit under AS 43.55.170.

(e) Any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that would otherwise be deductible by a producer in a calendar year but whose deduction would cause an annual production tax value calculated under (a)(1) of this section of taxable oil or gas produced during the calendar year to be less than zero may be used to establish a carried-forward annual loss under AS 43.55.023(b). In this subsection, "producer" includes "explorer."

Sec. 43.55.165. Lease expenditures. (a) Except as provided under (c) - (e) of this section, for the purposes of AS 43.55.160, a producer's lease expenditures for a calendar year are the ordinary and necessary costs upstream of the point of production of oil and gas that are incurred during the calendar year by the producer after March 31, 2006, and that are direct costs of exploring for, developing, or producing oil or gas deposits located within the producer's leases or properties in the state or, in the case of land in which the producer does not own a working interest, that are direct costs of exploring for oil or gas deposits located within other land in the state. In determining whether costs are lease expenditures, the department shall consider, among other factors,

(1) the typical industry practices and standards in the state that determine the costs, other than items listed in (e) of this section, that an operator is allowed to bill a working interest owner that is not the operator, under unit operating agreements or similar operating agreements that were in effect before December 2, 2005, and were subject to negotiation with at least one working interest owner with substantial bargaining power, other than the operator; and

(2) the standards adopted by the Department of Natural Resources that determine the costs, other than items listed in (e) of this section, that a lessee is allowed to deduct from revenue in calculating net profits under a lease issued under AS 38.05.180(f)(3)(B), (D), or (E).

(b) For purposes of (a) of this section,

(1) direct costs include

(A) an expenditure, when incurred, to acquire an item if the acquisition cost is otherwise a direct cost, notwithstanding that the expenditure may be required to be capitalized rather than treated as an expense for financial accounting or federal income tax purposes;

(B) payments of or in lieu of property taxes, sales and use taxes, motor fuel taxes, and excise taxes;

(C) a reasonable allowance, as determined under regulations adopted by the department, for overhead expenses directly related to exploring for, developing, and producing oil or gas deposits located within leases or properties or other land in the state;

(2) an activity does not need to be physically located on, near, or

within the premises of the lease or property within which an oil or gas deposit being explored for, developed, or produced is located in order for the cost of the activity to be a cost upstream of the point of production of the oil or gas.

(c) Subject to (g) and (h) of this section, if the department finds that the pertinent provisions of a unit operating agreement or similar operating agreement are substantially consistent with the department's determinations and standards under (a) of this section concerning whether costs are lease expenditures, the department may authorize or require a producer, subject to conditions prescribed under regulations adopted by the department, to treat as that portion of its lease expenditures for a calendar year applicable to oil and gas produced from a lease or property in the state only

(1) the costs, other than items listed in (e) of this section, that are incurred by the operator during the calendar year and that

(A) are billable to the producer by the operator in accordance with the terms of the agreement to which that lease or property is subject;

(B) for a producer that is the operator, would be billable to the producer by the operator in accordance with the terms of the agreement to which that lease or property is subject if the producer were not the operator;

(C) would be billable to the producer by the operator in accordance with the terms of the agreement if that lease or property were subject to the agreement; or

(D) for a producer that is the operator, would be billable to the producer by the operator in accordance with the terms of the agreement if that lease or property were subject to the agreement and if the producer were not the operator; and

(2) a reasonable percentage, as determined under regulations adopted by the department, of the costs that are billable under (1) of this subsection as an allowance for overhead expenses directly related to exploring for, developing, and producing oil or gas deposits located within the lease or property, to the extent those expenses are not billable under the agreement.

(d) Subject to (g) and (h) of this section, if the department makes the finding described in (c) of this section with respect to a unit operating agreement or similar operating agreement and, in addition, finds that at least one working interest owner party to the agreement, other than the operator, with substantial incentive and ability to effectively audit billings under the agreement in fact is effectively auditing billings under the agreement, the department may authorize or require a producer, subject to conditions prescribed under regulations adopted by the department, to treat as that portion of its lease expenditures for a calendar year applicable to oil and gas produced from a lease or property in the state only

(1) the costs, other than items listed in (e) of this section, that are incurred by the operator during the calendar year and that

(A) are billed to the producer by the operator under the agreement to which that lease or property is subject and are either not disputed by a working interest owner party to the agreement or are finally determined to be properly billable as a result of dispute resolution; or

(B) for a producer that is the operator, would be billable to the producer by the operator in accordance with the terms of the agreement to which that lease or property is subject if the producer were not the operator; and

(2) a reasonable percentage, as determined under regulations adopted by the department, of the costs that are billed under (1) of this subsection as an allowance for overhead expenses directly related to exploring for, developing, and producing oil or gas deposits located within the lease or property, to the extent those expenses are not billable under the agreement.

(e) For purposes of this section, lease expenditures do not include

(1) depreciation, depletion, or amortization;

(2) oil or gas royalty payments, production payments, lease profit shares, or other payments or distributions of a share of oil or gas production, profit, or revenue;

(3) taxes based on or measured by net income;

(4) interest or other financing charges or costs of raising equity or debt capital;

(5) acquisition costs for a lease or property or exploration license;

(6) costs arising from fraud, wilful misconduct, or gross negligence;

(7) fines or penalties imposed by law;

(8) costs of arbitration, litigation, or other dispute resolution activities that involve the state or concern the rights or obligations among owners of interests in, or rights to production from, one or more leases or properties or a unit;

(9) costs incurred in organizing a partnership, joint venture, or other business entity or arrangement;

(10) amounts paid to indemnify the state; the exclusion provided by this paragraph does not apply to the costs of obtaining insurance or a surety bond from a third-party insurer or surety;

(11) surcharges levied under AS 43.55.201 or 43.55.300;

(12) for a transaction that is an internal transfer or is otherwise not an arm's length transaction, expenditures incurred that are in excess of fair market value;

(13) an expenditure incurred to purchase an interest in any corporation, partnership, limited liability company, business trust, or any other business entity, whether or not the transaction is treated as an asset sale for federal income tax purposes;

(14) a tax levied under AS 43.55.011;

(15) the portion of costs incurred for dismantlement, removal, surrender, or abandonment of a facility, pipeline, well pad, platform, or other structure, or for the restoration of a lease, field, unit, area, body of water, or right-of-way in conjunction with dismantlement, removal, surrender, or abandonment, that is attributable to production of oil or gas occurring before April 1, 2006; the portion is calculated as a ratio of the amount of oil and gas production, in barrels of oil equivalent, associated with the facility, pipeline, well pad, platform, other structure, lease, field, unit, area, body of water, or right-of-way occurring before April 1, 2006, to the total amount of oil and gas production, in barrels of oil equivalent, associated with that facility, pipeline, well pad, platform, other structure, lease, field, unit, area, body of water, or right-of-way through the end of the calendar month before commencement of the dismantlement, removal, surrender, or abandonment; a cost is not excluded under this paragraph if the dismantlement, removal, surrender, or abandonment for which the cost is incurred is undertaken for the purpose of replacing, renovating, or improving the facility, pipeline, well pad, platform, or other structure; for the purposes of this paragraph, "barrel of oil equivalent" means

(A) in the case of oil, one barrel;

(B) in the case of gas, 6,000 cubic feet;

(16) costs incurred for containment, control, cleanup, or removal in connection with any unpermitted release of oil or a hazardous substance and any liability for damages imposed on the producer or explorer for that unpermitted release; this paragraph does not apply to the cost of developing and maintaining an oil discharge prevention and contingency plan under AS 46.04.030;

(17) costs incurred to satisfy a work commitment under an exploration license under AS 38.05.132;

(18) that portion of expenditures, that would otherwise be qualified capital expenditures as defined in AS 43.55.023(k), incurred during a calendar year that are less than the product of $0.30 multiplied by the total taxable production from each lease or property, in BTU equivalent barrels, during that calendar year, except that, when a portion of a calendar year is subject to this provision, the expenditures and volumes shall be prorated within that calendar year.

(f) For purposes of AS 43.55.023(a) and (b) and only as to expenditures incurred to explore for an oil or gas deposit located within land in which an explorer does not own a working interest, the term "producer" in this section includes "explorer."

(g) The department shall specify or approve a reasonable allocation method for determining the portion of a cost that is appropriately treated as a lease expenditure under this section if a cost that would otherwise constitute a lease expenditure under this section is incurred to explore for, develop, or produce

(1) both an oil or gas deposit located within land outside the state and an oil or gas deposit located within a lease or property, or other land, in the state; or

(2) an oil or gas deposit located partly within land outside the state and partly within a lease or property, or other land, in the state.

(h) The department shall adopt regulations that provide for reasonable methods of allocating costs between oil and gas and between leases or properties in those circumstances where the determination of the lease expenditures that are applicable to oil or to gas, or that are applicable to oil and gas produced from different leases or properties, requires an allocation of costs.

(i) The department may adopt regulations that establish additional standards necessary to carrying out the purposes of this section and AS 43.55.170, including the incorporation of the concepts of 26 U.S.C. 482 (Internal Revenue Code), as amended, the related or accompanying regulations of that provision, and any ruling or guidance issued by the United States Internal Revenue Service that relates to that provision.

(j) For purposes of this section,

(1) "explore" includes conducting geological or geophysical exploration, including drilling a stratigraphic test well;

(2) "ordinary and necessary" has the meaning given in 26 U.S.C. 162 (Internal Revenue Code), as amended, and regulations adopted under that section;

(3) "stratigraphic test well" means a well drilled for the sole purpose of obtaining geological information to aid in exploring for an oil or gas deposit and the target zones of which are located in the state.

Sec. 43.55.170. Adjustments to lease expenditures. (a) Unless the payment or credit has already been subtracted in calculating billable or billed costs under AS 43.55.165(c) or (d), a producer's lease expenditures under AS 43.55.165 must be adjusted by subtracting payments or credits, other than tax credits, received by the producer or by an operator acting for the producer for

(1) the use by another person of a production facility in which the producer has an ownership interest or the management by the producer of a production facility under a management agreement providing for the producer to receive a management fee;

(2) a reimbursement or similar payment that offsets the producer's lease expenditures, including an insurance recovery from a third-party insurer and a payment from the state or federal government for reimbursement of the producer's upstream costs, including costs for gathering, separating, cleaning, dehydration, compressing, or other field handling associated with the production of oil or gas upstream of the point of production;

(3) the sale or other transfer of

(A) an asset, including geological, geophysical, or well data or interpretations, acquired by the producer as a result of a lease expenditure or an expenditure that would be a lease expenditure if it were incurred after March 31, 2006; for purposes of this subparagraph,

(i) if a producer removes from the state, for use outside the state, an asset described in this subparagraph, the value of the asset at the time it is removed is considered a payment received by the producer for sale or transfer of the asset;

(ii) for a transaction that is an internal transfer or is otherwise not an arm's length transaction, if the sale or transfer of the asset is made for less than fair market value, the amount subtracted must be the fair market value; and

(B) oil or gas

(i) that is not considered produced from a lease or property under AS 43.55.020(e); and

(ii) the cost of acquiring which is a lease expenditure incurred by the person that acquires the oil or gas.

(b) Except as otherwise provided under this subsection, if one or more payments or credits subject to this section are received by a producer or by an operator acting for the producer during a calendar year and if either the total amount of the payments or credits exceeds the amount of the producer's applicable lease expenditures for that calendar year or the producer has no lease expenditures for that calendar year, the producer shall nevertheless subtract those payments or credits from the lease expenditures or from zero, respectively, and the producer's applicable adjusted lease expenditures for that calendar year are a negative number and shall be applied to the pertinent calculation under AS 43.55.160(a) as a negative number.

(c) For purposes of AS 43.55.023(a) and (b) and only as to expenditures incurred to explore for an oil or gas deposit located within land in which an explorer does not own a working interest, the term "producer" in this section includes "explorer."

Sec. 43.55.180. Required report. (a) The department shall study

(1) the effects of the provisions of this chapter on oil and gas exploration, development, and production in the state, on investment expenditures for oil and gas exploration, development, and production in the state, on the entry of new producers into the oil and gas industry in the state, on state revenue, and on tax administration and compliance, giving particular attention to the tax rates provided under AS 43.55.011, the tax credits provided under AS 43.55.023 - 43.55.025, and the deductions for and adjustments to lease expenditures provided under AS 43.55.160 - 43.55.170; and

(2) the effects of the tax rates under AS 43.55.011(i) on state revenue and on oil and gas exploration, development, and production on private land, and the fairness of those tax rates for private landowners.

(b) The department shall prepare a report on or before the first day of the 2011 regular session of the legislature on the results of the study made under (a) of this section, including recommendations as to whether any changes should be made to this chapter. The department shall notify the legislature that the report prepared under this subsection is available.

* **Sec. 26.** AS 43.55.201 is amended to read:

Sec. 43.55.201. Surcharge levied. (a) Every producer of oil shall pay a surcharge of **$.01** [$.02] per barrel of oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation.

(b) The surcharge imposed by (a) of this section is in addition to **the tax imposed by AS 43.55.011** and **is due on the last day of the month on oil produced from each lease or property during the preceding month. The surcharge** [SHALL BE PAID IN THE SAME MANNER AS THE TAX IMPOSED BY AS 43.55.011 - 43.55.150; AND] is in addition to the surcharge imposed by AS 43.55.300 - 43.55.310.

(c) A producer of oil shall make **a report** [REPORTS] of production **on March 31 of the year following the calendar year of production and** in the same manner and under the same penalties as required under **AS 43.55.011 - 43.55.180** [AS 43.55.011 - 43.55.150].

* **Sec. 27.** AS 43.55.201 is amended by adding a new subsection to read:

(d) Oil not considered under AS 43.55.020(e) to be produced from a lease or property is not considered to be produced from a lease or property for purposes of this section.

* **Sec. 28.** AS 43.55.300 is amended to read:

Sec. 43.55.300. Surcharge levied. (a) Every producer of oil shall pay a surcharge of **$.04** [$.03] per barrel of oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation.

(b) The surcharge imposed by (a) of this section is in addition to **the tax imposed by AS 43.55.011** and **is due on the last day of the month on oil produced from each lease or property during the preceding month. The surcharge** [SHALL BE PAID IN THE SAME MANNER AS THE TAX IMPOSED BY AS 43.55.011 - 43.55.150; AND] is in addition to the surcharge imposed by AS 43.55.201 - 43.55.231.

(c) A producer of oil shall make **a report** [REPORTS] of production **on March 31 of the year following the calendar year of production and** in the same manner and under the same penalties as required under **AS 43.55.011 - 43.55.180** [AS 43.55.011 - 43.55.150].

*** Sec. 29.** AS 43.55.300 is amended by adding a new subsection to read:

(d) Oil not considered under AS 43.55.020(e) to be produced from a lease or property is not considered to be produced from a lease or property for purposes of this section.

*** Sec. 30.** AS 43.55.900(6) is repealed and reenacted to read:

(6) "gas" means

(A) all natural, associated, or casinghead gas;

(B) all hydrocarbons that

(i) are recovered by mechanical separation of well fluids or by gas processing in a gas processing plant; and

(ii) exist in a gaseous phase at the completion of mechanical separation and any gas processing in a gas processing plant; and

(C) all other hydrocarbons produced from a well not defined as oil;

*** Sec. 31.** AS 43.55.900(7) is repealed and reenacted to read:

(7) "gross value at the point of production" means

(A) for oil, the value of the oil at its point of production without deduction of any costs upstream of that point of production;

(B) for gas, the value of the gas at its point of production without deduction of any costs upstream of that point of production;

*** Sec. 32.** AS 43.55.900(10) is repealed and reenacted to read:

(10) "oil" means

(A) crude petroleum oil; and

(B) all liquid hydrocarbons that are recovered by mechanical separation of well fluids or by gas processing in a gas processing plant;

*** Sec. 33.** AS 43.55.900 is amended by adding new paragraphs to read:

(17) "British thermal unit" means the quantity of heat required to raise the temperature of one pound of water from 58.5 degrees Fahrenheit to 59.5 degrees Fahrenheit at a constant pressure of one atmosphere;

(18) "BTU equivalent barrel" means

(A) in the case of oil, one barrel;

(B) in the case of gas, the amount of gas that has a heating value of 6,000,000 British thermal units;

(19) "Cook Inlet sedimentary basin" has the meaning given in regulations adopted to implement AS 38.05.180(f)(4);

(20) "explorer" means a person who, in exploring for new oil or gas reserves, incurs expenditures;

(21) "gas processing"

(A) means processing a gaseous mixture of hydrocarbons

(i) by means of absorption, adsorption, externally applied refrigeration, artificial compression followed by adiabatic expansion using the Joule-Thomson effect, or another physical process that is not mechanical separation; and

(ii) for the purpose of extracting and recovering liquid hydrocarbons;

(B) does not include gas treatment;

(22) "gas processing plant" means a facility that

(A) extracts and recovers liquid hydrocarbons from a gaseous mixture of hydrocarbons by gas processing; and

(B) is located upstream of any gas treatment and upstream of the inlet of any gas pipeline system transporting gas to a market;

(23) "gas treatment"

(A) means conditioning gas and removing from gas nonhydrocarbon substances for the purpose of rendering the gas acceptable for tender and acceptance into a gas pipeline system;

(B) includes incidentally removing liquid hydrocarbons from the gas;

(C) does not include

(i) dehydration required to facilitate the movement of gas from the well to the point where gas processing takes place;

(ii) the scrubbing of liquids from gas to facilitate gas processing;

(24) "heating value" means the gross number of BTUs released by complete combustion of an amount of gas;

(25) "landowner's royalty interest" means

(A) a lessor's royalty interest under an oil and gas lease; or

(B) a royalty interest that is

(i) held by a surface owner of land from which oil or gas is produced; and

(ii) granted in exchange for the right to use the surface of that land or as compensation for damage to the surface of that land;

(26) "oil and gas lease" includes an oil and gas lease, a gas only lease, and an oil only lease;

(27) "point of production" means

(A) for oil, the automatic custody transfer meter or device through which the oil enters into the facilities of a carrier pipeline or other transportation carrier in a condition of pipeline quality; in the absence of an automatic custody transfer meter or device, "point of production" means the mechanism or device to measure the quantity of oil that has been approved by the department for that purpose, through which the oil is tendered and accepted in a condition of pipeline quality into the facilities of a carrier pipeline or other transportation carrier or into a field topping plant;

(B) for gas, other than gas described in (C) of this paragraph, that is

(i) not subjected to or recovered by mechanical separation or run through a gas processing plant, the first point where the gas is accurately metered;

(ii) subjected to or recovered by mechanical separation but not run through a gas processing plant, the first point where the gas is accurately metered after completion of mechanical separation;

(iii) run through a gas processing plant, the first point where the gas is accurately metered downstream of the plant;

(C) for gas run through an integrated gas processing plant and gas treatment facility that does not accurately meter the gas after the gas processing and before the gas treatment, the first point where gas processing is completed or where gas treatment begins, whichever is further upstream.

*** Sec. 34.** AS 43.55.011(a), 43.55.011(b), 43.55.011(c), 43.55.012, 43.55.013, 43.55.016, 43.55.025(k)(1), 43.55.025(k)(3), 43.55.900(1), 43.55.900(8), 43.55.900(11), 43.55.900(12), and 43.55.900(16) are repealed.

*** Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 5, 7 - 10, 12 - 14, 16 - 20, 24, and 26 - 34 of this Act and AS 43.55.160 - 43.55.170, enacted by sec. 25 of this Act, apply to oil and gas produced after March 31, 2006.

(b) Section 11 of this Act applies to oil and gas produced before, on, or after the effective date of sec. 11 of this Act.

*** Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITIONAL PROVISIONS. (a) Notwithstanding any contrary provision of AS 43.55.023(i), enacted by sec. 13 of this Act, for oil and gas produced after March 31, 2006, and before January 1, 2007, the phrase "20 percent" in AS 43.55.023(i)(2), enacted by sec. 13 of this Act, shall be replaced by the phrase "15 percent."

(b) For oil and gas produced before April 1, 2006, the provisions of AS 43.55, and regulations adopted under AS 43.55, that were in effect before April 1, 2006, and that were applicable to the oil and gas continue to apply to that oil and gas.

(c) Notwithstanding any contrary provision of AS 43.55.020(a), as repealed and reenacted by sec. 7 of this Act, for oil and gas produced after March 31, 2006, and before January 1, 2007,

(1) the amount of the taxes that would have been levied on the producer by AS 43.55, as the provisions of that chapter read on March 31, 2006, is due on the last day of each calendar month on the oil and gas that were produced from each lease or property during the preceding month;

(2) the amount, if any, of the taxes levied by AS 43.55.011(e) - (g) and (i), enacted by sec. 5 of this Act, net of any credits applied as allowed by law, that exceeds the amount due under (1) of this subsection, is due on March 31, 2007.

(d) Notwithstanding any contrary provision of AS 43.55.030(a), as amended by sec. 19 of this Act, for oil and gas produced after March 31, 2006, and before January 1, 2007, the person paying the tax shall file with the Department of Revenue, at the time an amount of tax is due

(1) under (c)(1) of this section, the statement required under former AS 43.55.030(a), as that subsection read on March 31, 2006; and

(2) under (c)(2) of this section, the statement required under AS 43.55.030(a), as amended by sec. 19 of this Act.

(e) Notwithstanding any contrary provision of AS 43.55.201(a) or (b), as amended by sec. 26 of this Act, or AS 43.55.300(a) or (b), as amended by sec. 28 of this Act, for oil produced after March 31, 2006, and before January 1, 2007,

(1) the amount of the surcharges that would have been imposed on the producer under AS 43.55, as the provisions of that chapter read on March 31, 2006, is due on the last day of each calendar month on oil produced from each lease or property during the preceding month;

(2) the amount, if any, of the surcharges imposed under AS 43.55.201(a), as amended by sec. 26 of this Act, and AS 43.55.300(a), as amended by sec. 28 of this Act, that exceeds the amount due under (1) of this subsection, is due on March 31, 2007.

(f) Notwithstanding any contrary provision of AS 43.55.201(c), as amended by sec. 26 of this Act, or AS 43.55.300(c), as amended by sec. 28 of this Act, for oil produced after March 31, 2006, and before January 1, 2007, at the time an amount of surcharge is due

(1) under (e)(1) of this section, the producer shall file the report of production required under former AS 43.55.201(c) and 43.55.300(c), as those provisions read on March 31, 2006; and

(2) under (e)(2) of this section, the producer shall file on March 31, 2007, the report of production otherwise required under AS 43.55.201(c), as amended by sec. 26 of this Act, and AS 43.55.300(c), as amended by sec. 28 of this Act.

(g) For purposes of taxes to be calculated and due under (c)(1) of this section and statements to be filed under (d)(1) of this section, regulations that were adopted by the

Department of Revenue under AS 43.55, as the provisions of that chapter read on March 31, 2006, and that were in effect on that date apply to those taxes and statements.

(h) Notwithstanding any contrary provision of AS 43.55.160(a)(2), enacted by sec. 25 of this Act, for oil and gas produced after March 31, 2006, and before January 1, 2007, the phrase "1/12" in AS 43.55.160(a)(2)(A) - (D), enacted by sec. 25 of this Act, shall be replaced by the phrase "1/9."

* **Sec. 37.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: RETROACTIVITY OF REGULATIONS. Notwithstanding any contrary provision of AS 44.62.240, a regulation adopted by the Department of Revenue to implement, interpret, make specific, or otherwise carry out the provisions of secs. 5, 7 - 10, 12 - 14, 16 - 20, 24 - 34, and 36 of this Act may apply retroactively to April 1, 2006, if the Department of Revenue expressly designates in the regulation that the regulation applies retroactively to that date.

* **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the heading of

(1) AS 43.55 from "Oil and Gas Production Taxes and Oil Surcharge" to "Oil and Gas Production Tax and Oil Surcharge";

(2) article 1 of AS 43.55 from "Oil and Gas Properties Production Taxes" to "Oil and Gas Production Tax";

(3) AS 43.55.011 from "Oil production tax" to "Oil and gas production tax";

(4) AS 43.55.025 from "Tax credit for oil and gas exploration or gas only exploration" to "Alternative tax credit for oil and gas exploration";

(5) AS 43.55.150 from "Determination of gross value" to "Determination of gross value at the point of production."

* **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY OF PROVISIONS OF ACT. Sections 5, 7 - 10, 12 - 14, 16 - 20, and 24 - 36 of this Act are retroactive to April 1, 2006.

* **Sec. 40.** This Act takes effect immediately under AS 01.10.070(c).