

A Topical Analysis of the ACES Bill

Robert E. Mintz, K & L Gates
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A Few Background Basics:

The oil and gas production tax . . .

- **is in AS 43.55**
- **is in addition to royalties, property tax, and income tax**
- **has existed since before statehood**
- **generally applies a percentage tax rate to the *value* of oil and gas produced**
- **unlike royalties, applies to production from private and federal leases as well as state leases**

Core Provisions of HB 3001 (enacted in 2006)

- **AS 43.55.011(e) – (i): tax levied on value of oil and gas produced**
- **AS 43.55.160: calculation of taxable value of oil and gas**
- **AS 43.55.165 & .170: determination of upstream costs that may be deducted in calculating taxable value of oil and gas**

(cont.)

Core Provisions (continued)

- **AS 43.55.023 & 43.55.024: new tax credits**
- **AS 43.55.020(a): monthly estimated tax payments and final payment on March 31 of year following production (because this is now an annual, not a monthly, tax)**
- **AS 43.55.030(a): just one annual return**

AS 43.55.011(e) (current)

- There is levied on the producer . . . a tax for all oil and gas produced . . . equal to **22.5 percent** of the **production tax value** of the taxable oil and gas **as calculated under AS 43.55.160** . . .
- *Note:* “production tax value” is net value

AS 43.55.011(e) (continued)

Exceptions:

- Tax does *not* apply to
 - state or federal share
 - landowner's royalty share (which is subject to a different tax provision)
- Cook Inlet production subject to ceilings based on past taxes (AS 43.55.011(j) & (k))
- North Slope production subject to a minimum tax depending on price of ANS (AS 43.55.011(f))

AS 43.55.011(g) (current)

- For each month when the net value of a producer's oil and gas exceeds \$40 per barrel, the tax rate under subsec. (e) is in effect increased by $\frac{1}{4}$ of a percentage point for each dollar per barrel over \$40
- Informally known as “progressivity tax”
- Gas and oil are added together by treating 6 million Btu of gas as equivalent to one barrel of oil (see AS 43.55.011(h), 43.55.900(17), (18) & (24))

AS 43.55.011(e) (new)

Bill sec. 15

- There is levied on the producer . . . a tax for all oil and gas produced . . . equal to the production tax value of the taxable oil and gas as calculated under AS 43.55.160 multiplied by **the tax rate determined under (g) of this section.**

AS 43.55.011(g) and (h) (new) Bill secs. 17 and 18

- “The tax rate . . . is **25 percent** plus” the progressivity tax rate
- The progressivity tax rate is **1/5** of a percentage point for each dollar per barrel over **\$30** net value
- Progressivity is calculated on an **annual**, not monthly, basis

North Slope Tax Floor

Bill sec. 16

- New AS 43.55.011(f): minimum tax is **10 percent of gross value** at the point of production of oil and gas from a unit (or nonunitized reservoir) that
 - (1) has produced a cumulative **total of 1 billion barrels**; and
 - (2) is producing over **100,000 barrels a day** (average during the most recent calendar year)

Cook Inlet Tax Ceilings

Bill secs. 19 and 20

- Tax ceilings are not changed (conforming amendments only)
- Note: sec. 21 of the bill adds language dealing with Cook Inlet tax credits to be consistent with sec. 55, which clarifies how excess lease expenditures are treated

AS 43.55.160 (bill secs. 52-55)

- The basic principle is unchanged:
taxable value = gross value at the point of production minus lease expenditures
- Wording has been changed:
- (1) monthly values are no longer needed (progressivity is now annual)

AS 43.55.160 (cont.)

- **(2) bill is clearer and more specific on when a producer may or may not use lease expenditures for operations at one location as deductions for oil and gas produced at another location**
- **These rules are necessary to implement the different tax treatments of different areas and fields (Cook Inlet ceilings, North Slope floor, tax credit under AS 43.55.024(a))**

AS 43.55.160 (cont.)

- For instance:
- (i) To avoid undercutting the tax floor, deductions may not be “exported” from units subject to the tax floor (AS 43.55.160(f)(2))
- (ii) To avoid double-dipping re: Cook Inlet tax ceilings, deductions must first be used up in Cook Inlet and may not be shielded by the ceilings (AS 43.55.160(h) and (i))

AS 43.55.165 (bill secs. 56-59, 64)

Lease Expenditures

AS 43.55.165(a) and (b) are rewritten and reorganized:

- **(1) for more clarity**
- **(2) to limit lease expenditures to only what the Department of Revenue allows by regulation**

Lease Expenditures (continued)

- **AS 43.55.165(c) and (d) are repealed.**
- **Those provisions allowed the Department to substitute cost billings under unit operating agreements in place of the general standards for determining lease expenditures.**

Lease Expenditures (continued)

- AS 43.55.165(e): the list of *excluded* costs is expanded:
- par. (6) – costs arising from violation of law or noncompliance with lease or permit obligation
- par. (15) – all dismantlement, removal, & restoration costs (costs are prorated for past production under current law)

Lease Expenditures Exclusions (cont.)

- **par. (19) - repair or replacement of facilities or equipment associated with an unscheduled drop in production or an oil spill or unpermitted release**
- **par. (20) – crude oil topping plant (but deduction is allowed for value added of product used in lease operations)**

Tax Credits under AS 43.55.023

Bill secs. 26-31, 65

Changes to .023(a) – qualified capital investment expenditure credits :

- Only 50% of a credit may be used the first year**
- For exploration, requirements are conformed to changes in .025 credits (see below)**

Tax Credits under AS 43.55.023 (continued)

Changes to .023(a) (continued)

- **Credits for capital expenditures in a unit subject to the tax floor may be applied only against tax on oil and gas production from that or another unit subject to the tax floor**

Tax Credits under AS 43.55.023 (continued)

**Change to .023(b) – carried-forward
annual loss credit :**

- **No carry-forward for unused lease expenditures for units subject to the tax floor**

Tax Credits under AS 43.55.023 (continued)

Change to .023(d) – transferable tax credit certificates:

- **Two certificates will be issued, each for half of the credit**
- **One certificate cannot be used until the next year**

Tax Credits under AS 43.55.023 (continued)

New subsection .023(1) :

- **Makes clear that a tax-exempt entity may not obtain a transferable tax credit certificate**

Tax Credits under AS 43.55.023 (continued)

AS 43.55.023(i) is repealed:

- **This eliminates the transitional investment expenditure credits for investments that were made during the five years before April 1, 2006.**

Tax Credits under AS 43.55.025

Bill secs. 36-44

- **Sec. 36 - Existing 2016 sunset is uniformly applied**
- **Secs. 37 & 43 - Exploration well credit expanded to delineation wells within 2 drilling seasons (rather than being limited to discovery well or dry hole)**
- **Sec. 37 - Well must be completed or abandoned, not just suspended, before credit may be claimed**

Tax Credits under AS 43.55.025 (continued)

- **Sec. 37 - Costs excluded if due to gross negligence or health/safety/environmental violation**
- **Sec. 38 – Clearer definition of requirement for new exploration target; 3-mile requirement deleted for Cook Inlet; DNR evaluation required in advance and after drilling**

Tax Credits under AS 43.55.025 (continued)

- **Sec. 39 – Data submission requirements are more specific**
- **Sec. 39 – Well data confidentiality limited to 24 months**
- **Sec. 39 - Two certificates will be issued, each for half of the credit; one certificate cannot be used until the next year**

Tax Credits under AS 43.55.025 (continued)

- **Sec. 39 - Makes clear that basic information about tax credit is public**
- **Sec. 40 - Makes clear that a tax-exempt entity may not transfer a tax credit certificate**
- **Sec. 44 - New five percent tax credit available for old seismic data if DNR determines that acquiring the data for public distribution is in state's interest**

State Purchase of Tax Credits Certificates – Bill secs. 45 & 63

- **New AS 43.55.028 establishes oil and gas tax credit fund to purchase credit certificates from explorers or small producers that have no tax liability to apply credits against**
- **Funded by appropriation of a percentage of production tax revenues**
- **Replaces existing cash refund authority under AS 43.55.023(f) (repealed by bill)**

State Purchase of Tax Credits Certificates (continued)

- **Retains existing criteria for refunds
except eliminates \$25 million maximum**

Payment of the Tax

Bill secs. 22-25, 51

- **Current system of monthly installment payments and final payment on March 31 is retained**
- **Installment payments now take account of the tax floor for units subject to the tax floor and also take account of Cook Inlet tax ceilings**
- **Installment payments do not take account of progressivity rate**

Payment of the Tax (continued)

- **AS 43.55.110(f), Bill sec. 51 – Gives express authority to Department to require tax payments to be made electronically**

Reporting Requirements

AS 43.55.030, 43.55.040

- **Bill sec. 46 – Makes clear that every oil or gas producer must file an annual return, whether or not tax is due**
- **Bill sec. 46 - Expands the list of specific information requirements for returns (note: Department retains general authority to require more information)**

Reporting Requirements (continued)

- **Bill secs. 47 & 49 – Additional penalty of up to \$1,000 per day for late filing or nonfiling of required returns or reports**
- **Bill sec. 48 – Requires explorers or producers to file an annual statement on expenditures (or adjustments) even if no oil or gas is produced during the year**

Reporting Requirements (continued)

- **Bill sec. 48 – Makes clear that the Department may also require monthly reports from producers, explorers, and operators**
- **Bill sec. 49 – Adds express authority for the Department to require reporting of forward-looking information for revenue forecasting purposes**

Reporting Requirements (continued): Bill sec. 51

- **AS 43.55.110(e) – Gives express authority to Department to require returns and reports to be filed electronically**

Confidential and Public Information

- **AS 38.05.035, Bill sec. 2 – broad authority for DNR to share oil and gas lease related information with DOR for purposes of administering the production tax**
- **AS 43.05.230, Bill sec. 13 – broad authority for DOR to share production tax related information with DNR**

Confidential and Public Information (continued)

- Under both provisions, confidential information is still confidential
- AS 43.55.890, Bill sec. 61 – Makes clear that Department of Revenue may publish extensive production tax information aggregated among at least three producers or explorers

Additional Administrative Improvements

- **AS 39.25.110, Bill sec. 10 – oil and gas auditors placed in exempt service**
- **Transition provision, Bill sec. 67 – current employees may opt to stay in classified service**
- **AS 43.05.260, 43.55.075, Bill secs. 14, 50 – statute of limitations for production tax is six years, not three years**

Additional Administrative Improvements (continued)

- **AS 43.55.075(b), Bill secs. 1, 50 -
Legislative confirmation of Department of Revenue's interpretation of statute of limitations as applied to events that retroactively change amount of production tax or credit: period of limitations begins to run when a return is filed reflecting the change**

Additional Administrative Improvements (continued)

- **AS 43.55.110(g), Bill sec. 51 – Gives express authority to the Department of Revenue to issue advisory bulletins interpreting production tax statute and regulations for guidance of taxpayers and others; non-binding unless Department provides otherwise**

Transition, Applicability, and Effective Dates

- **Bill secs. 66, 72 – Most substantive changes in the production tax are prospective beginning Jan. 1, 2008**
- **Bill secs. 66, 71 – Changes to lease expenditure exclusions and use of unit operating agreements for lease expenditures are retroactive to April 1, 2006**

Transition, Applicability, and Effective Dates (continued)

- **Bill secs. 66, 71 – Statute of limitations extension applies to still-open periods and retroactive to April 1, 2006**
- **Bill sec. 71 – Clarification that tax-exempt entities may not transfer tax credits applies back to beginning of the respective tax credit provisions**

Transition, Applicability, and Effective Dates (continued)

- Bill sec. 73 – Most other provisions of the bill take effect immediately**
- Bill secs. 68, 70 – DOR and DNR may start developing regulations immediately, and regulations may be retroactive to applicability date of the statutory provisions they implement**