ALASKA DEPARTMENT OF REVENUE
TAX DIVISION
ADVISORY BULLETIN 2011-02

Re: Application of tax credits against the minimum production tax for oil and gas produced from leases or properties on the North Slope after June 30, 2007

Introduction: AS 43.55.011(f) provides for a minimum production tax for oil and gas produced north of 68 degrees North latitude, except for gas used in the state or oil and gas the ownership or right to which constitutes a landowner's royalty interest. Before the enactment of comprehensive statutory revisions in 2007,[1] the production tax statute was explicit that certain categories of tax credits could be applied against a North Slope producer's minimum tax. With regard to other categories of tax credits the statute omitted reference to the minimum tax provision, and the implementing regulations of the Department of Revenue ("Department") made clear that the latter tax credits could *not* be applied against the minimum tax:

> If a provision of AS 43.55 or this chapter refers to application of a tax credit against a tax liability under AS 43.55.011(e) but not also AS 43.55.011(f), the tax credit may not be applied against the minimum tax for oil and gas produced from leases or properties in the state north of 68 degrees North latitude determined under AS 43.55.011(f).[2]

Among numerous other changes, the 2007 statutory revisions eliminated references to AS 43.55.011(f) in all categories of tax credits, generally[3] with an applicability date of July 1, 2007. For the reasons set out below, the Department has interpreted the revised production tax statute as allowing tax credits in all categories to be applied against the minimum tax. Accordingly, the Department amended the regulation in question to read, in relevant part:

> If a provision of AS 43.55, *as that chapter read on June 30, 2007,* or this chapter refers to application of a tax credit against a tax liability under AS 43.55.011(e) but not also AS 43.55.011(f), the tax credit may not be applied against the minimum tax for oil and gas produced *before July 1, 2007,* from leases or properties in the state north of 68 degrees North latitude determined under AS 43.55.011(f), *as that subsection read on June 30, 2007.*[4]

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1 The act in question, ch.1, SSSLA 2007, was popularly referred to as ACES.

2 15 AAC 55.305(b) (5/3/2007, Register 182).

3 See footnote 5, below.

4 15 AAC 55.305(b) (10/21/2009, Register 192) (emphasis supplied).

Apparently because this regulation was not explicit on the treatment of tax credits with respect to oil and gas produced *after* June 30, 2007, there reportedly is confusion among companies in the oil and gas industry on this issue. For this reason, the Department is issuing the present Advisory Bulletin.

Analysis: Before the production tax statute was revised by the enactment of ACES in 2007, AS 43.55.024(a) and (c) provided for tax credits that could be applied against "a producer's tax liability under AS 43.55.011(e) or (f)." Similarly, AS 43.55.025(a) provided for tax credits to be allowed "against the production tax due under AS 43.55.011(e) or (f)." By contrast, AS 43.55.023(a) and AS 43.55.023(b) provided for tax credits that could be taken "against a tax due under AS 43.55.011(e)" -- but without also referring to AS 43.55.011(f). It is clear that the legislature, by making this distinction between the former and latter categories of tax credits, intended that credits under AS 43.55.024 and AS 43.55.025 could be applied against a producer's minimum tax subject to AS 43.55.011(f), but that credits under AS 43.55.023 could not be so applied.

In 2007, the legislature removed the references to the minimum tax provision from AS 43.55.024 and AS 43.55.025. Although viewed in isolation that change might be interpreted as denying the application of those tax credits against a producer's minimum tax, for several reasons the Department has concluded otherwise.

First, the most straightforward reading of the production tax statute as a whole, as amended in 2007, supports the conclusion that all three categories of tax credits – AS 43.55.023, AS 43.55.024, and AS 43.55.025 – may be applied against the minimum tax for oil and gas produced after June 30, 2007.[5] Alaska Statute 43.55.011(e) expressly levies the oil and gas production tax on a producer for all oil and gas produced from each lease or property during a calendar year, "less any oil and gas the ownership or right to which is exempt from taxation or constitutes a landowner's royalty interest." Alaska Statute 43.55.011(e) also sets out the general rule for calculating the amount of the tax, but that general rule is made subject to several exceptions, one of which is AS 43.55.011(f). The latter provision establishes a floor on the amount of tax levied in the case of certain oil and gas produced on the North Slope. This floor depends on the West Coast price of Alaska North Slope crude oil.

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[5] While most of the amendments were made retroactive to July 1, 2007, the changes to AS 43.55.025 -- which were only a small part of a very extensive set of revisions to that section -- had a delayed effective date of July 1, 2008. However, this delayed effective date is of no substantive consequence, since tax credits under AS 43.55.025 were expressly allowed to be applied against the minimum tax both before July 1, 2007, and after.

Thus, it is AS 43.55.011(e) that *levies* the production tax, while AS 43.55.011(f) simply affects, in some cases, the *amount* of the tax levied by AS 43.55.011(e). The legislature rationalized certain tax credit language in 2007 consistent with this relationship. As amended in 2007, AS 43.55.023(a) and (b) now provide for tax credits to be "applied against a tax levied by AS 43.55.011(e)." Alaska Statutes 43.55.025(a), (f), and (h) were also amended in 2007 to provide for tax credits to be applied against taxes "levied by AS 43.55.011(e)."[6]

Second, the Department is aware of no legislative history indicating an intention in the 2007 legislation to restrict the then-existing use of tax credits with respect to the minimum tax. On the contrary, the legislature considered and chose not to adopt a provision in the bill originally proposed by the governor that would have established a "hard floor" version of the North Slope minimum tax: i.e., an express prohibition on the application of tax credits against the minimum amount determined under AS 43.55.011(f).[7]

Conclusion: Tax credits provided under AS 43.55.023, AS 43.55.024, and AS 43.55.025 may be applied against a North Slope producer's AS 43.55.011(f) minimum tax for oil and gas produced after June 30, 2007, subject to all applicable requirements and limitations in statute and regulation regarding the use of tax credits.

Scope and non-binding nature of this bulletin: This advisory bulletin is issued for the information and guidance of producers, explorers, and other interested persons. Opinions expressed here are strictly limited to the proposed conditions as presented above interpreted in accordance with existing Alaska oil and gas production tax law. These interpretations do not address other possible effects under other scenarios or types of tax laws, and as provided in AS 43.55.110(g), interpretations stated in this advisory bulletin are not binding on the Department or others.

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6 Secs. 36, 40 and 42, ch. 1, SSSLA 2007.
7 Sec. 16, HB 2001 (2007).