Kevin Meyer Lieutenant Governor State Capitol Juneau, Alaska 99811 907.465.3520 WWW.LTGOV.ALASKA.GOV



530 West 7<sup>th</sup> Ave, Suite 1700 Anchorage, Alaska 99501 907.269.7460 LT.GOVERNOR@ALASKA.GOV

## OFFICE OF THE LIEUTENANT GOVERNOR ALASKA

### MEMORANDUM

TO:

Genevieve Wojtusik

Department of Revenue

FROM:

April Simpson, Office of the Lieutenant Governor

465.4081

DATE:

November 25, 2019

RE:

Filed Permanent Regulations: Department of Revenue

Department of Revenue Regulations Part III: Weighted Average Cost of Capital for

Marine Transportation and Oil and Gas (15 AAC 55.195)

Attorney General File:

2018200789.003

Regulation Filed:

11/25/2019

Effective Date:

1/1/2020

Print:

232, January 2020

cc with enclosures:

Harry Hale, Department of Law

Judy Herndon, LexisNexis

## ORDER ADOPTING CHANGES TO REGULATIONS OF THE DEPARTMENT OF REVENUE

The attached 6 pages of regulations, dealing with amendments, repeals, and conforming changes to regulations for the oil and gas production tax and oil surcharge in 15 AAC 55 relating to relating to transportation costs, are adopted and certified to be a correct copy of the regulation changes that the Department of Revenue adopts under the authority of AS 43.05.080 and AS 43.55.110, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Revenue paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on January 1, 2020, as provided in AS 44.62.180.

11/19/19

Commissioner

Department of Revenue

April Simpson for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

Novamber 25 , 20 19, at 2:51 p.m., I filed the attached regulations according to the

provisions of AS 44.62.040 - 44.62.120.

Effective: January 1, 7020.

Register: 232, January 2020.

### FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

Josh Applebee, Chief of Staff Kady Levale, Notary Administrator April Simpson, Regulations and Initiatives Specialist

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on December 11th, 2018.

OF THE STATE OF TH

KEVIN MEYER LIEUTENANT GOVERNOR Register 232, Farmary, 2020 REVENUE

15 AAC 55.191(b)(3)(C) is amended to read:

(C) depreciation of the vessel as calculated by the producer for financial accounting purposes and used for reporting income and expenses to shareholders and owners, or as provided in [15 AAC 55.195(a), (b), (c), (f), OR (h) OR] 15 AAC 55.196, as applicable; and

15 AAC 55.191(b)(3)(D) is amended to read:

(D) an amount that, when added to the amount of depreciation allowed under (C) of this paragraph, will provide a reasonable return on the acquisition cost [, AS PROVIDED IN 15 AAC 55.195(a),] of the vessel over its expected useful life as used for financial accounting purposes and used for reporting income and expenses to shareholders and owners, or on the adjusted shipyard cost or invested capital as provided in [15 AAC 55.195(b), (c), (f), OR (h) OR] 15 AAC 55.196, as applicable;

15 AAC 55.191(b)(4)(B)(iii) is amended to read:

(iii) depreciation of the LNG transportation facility as calculated by the producer for financial accounting purposes and used for reporting income and expenses to shareholders and owners [, OR AS PROVIDED IN 15 AAC 55.195(Å), (Å), (Å), OR (Å), AS APPLICABLE];

15 AAC 55.191(b)(4)(B)(iv) is repealed:

(iv) repealed 1 / 1 /2020;

Register 232, January, 2020 REVENUE

15 AAC 55.191(b)(8)(A) is repealed;

(A) repealed // / 2020;

(Eff. 1/1/95, Register 132; am 1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2003, Register 164; am 5/3/2007, Register 182; am 4/30/2010, Register 194; am 3/1/2017, Register 221; am // / 2020, Register 232)

Authority: AS 43.05.080 AS 43.55.040 AS 43.55.150

 Authority:
 AS 43.05.080
 AS 43.55.040
 AS 43.55.150

 AS 43.55.020
 AS 43.55.110
 AS 43.55.900

 AS 43.55.030
 AS 43.55.030

15 AAC 55.193(b)(3)(B) is amended to read:

(B) the positioning cost, amortized over 36 months, for that vessel; and

15 AAC 55.193(b)(3)(C) is amended to read:

(C) depreciation of the vessel and a cost of capital allowance calculated under 15 AAC 55.196(d); [AS CALCULATED BY THE PRODUCER FOR FINANCIAL ACCOUNTING PURPOSES AND USED FOR REPORTING INCOME AND EXPENSES TO SHAREHOLDERS AND OWNERS, OR AS PROVIDED IN 15 AAC 55.195(a), (b), OR (c) OR 15 AAC 55.196, AS APPLICABLE; AND]

15 AAC 55.193(b)(3)(D) is repealed:

15 AAC 55.193(b)(4)(ii) is amended to read:

Register 232, Jawan, 2020 REVENUE

(ii) the positioning cost, amortized over 36 months, in the case of an LNG tanker; and

15 AAC 55.193(b)(4)(iii) is amended to read:

(iii) depreciation of the LNG transportation facility <u>and a cost of</u>

<u>capital allowance calculated under 15 AAC 55.196(d)</u> [AS CALCULATED

BY THE PRODUCER FOR FINANCIAL ACCOUNTING PURPOSES AND

USED FOR REPORTING INCOME AND EXPENSES TO SHAREHOLDERS

AND OWNERS, OR AS PROVIDED IN 15 AAC 55.195(a), (b), (c), OR (d) OR

15 AAC 55.196, AS APPLICABLE];

15 AAC 55.193(b)(4)(iv) is amended to read:

(iv) repealed \_\_\_\_/\_\_/ 2020;

(Eff. 4/30/2010, Register 194; am 3/1/2017, Register 221, am 1 / 1 / 2020, Register 232)

**Authority:** AS 43.05.080 AS 43.55.040 AS 43.55.150

AS 43.55.020 AS 43.55.110 AS 43.55.900

AS 43.55.030

15 AAC 55.195 is repealed.

15 AAC 55.195. Return on investment or cost of capital allowance to be used in calculation of costs of transportation for oil or gas, other than certain LNG or vessel transportation costs for oil or gas produced on or after January 1, 2003. Repealed. (Eff.

Register 232, January, 2020 REVENUE

1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2003, Register 164; am 5/3/2007, Register 182; am 4/30/2010, Register 194; am 3/1/2017, Register 221; repealed

1 / 1 / 2020, Register 232)

**Authority:** AS 43.05.080 AS 43.55.030 AS 43.55.110

AS 43.55.020 AS 43.55.040 AS 43.55.150

The section heading for 15 AAC 55.196 is amended to read:

15 AAC 55.196. Cost of capital allowance to be used in calculation of costs of vessel transportation for oil or gas [PRODUCED ON OR AFTER JANUARY 1, 2003, OTHER THAN CERTAIN COSTS PERTAINING TO VESSELS PLACED IN SERVICE BEFORE JANUARY 1, 1995], and in calculation of transportation costs for gas by an LNG transportation facility [PLACED IN SERVICE AFTER DECEMBER 31, 2010].

15 AAC 55.196(a) is amended to read:

(a) For [EXCEPT IF 15 AAC 55.195(a) APPLIES, FOR] oil or gas produced on or after January 1, 2003, a cost of capital allowance that consists of depreciation and a return on invested capital will be allowed under this section, as provided in 15 AAC 55.191 or 15 AAC 55.193, as applicable, for a (1) vessel, or an improvement completed on or after January 1, 2002 to a vessel, owned or effectively owned by the producer; or (2) LNG transportation facility owned or effectively owned by the producer and placed in service after December 31, 2010, or an improvement to that facility. However, a producer may elect to expense the first \$2,000,000 [\$1,000,000] in costs incurred with respect to improvements during a calendar year.

Register 232, Jawary, 2020 REVENUE

15 AAC 55.196(d) is amended to read:

- (d) A [WITH THE EXCEPTIONS SET OUT IN THIS SUBSECTION FOR AN LNG TRANSPORTATION FACILITY, A] cost of capital allowance under this section must be calculated using the methodology set out in the department's publication Computation of a Cost-of-Capital Allowance under 15 AAC 55.196, Incorporating Depreciation and Return on Invested Capital for Marine Vessels and Improvements, [THIRD] Edition 4.0, dated November 19, 2019

  November 3, 2018] and adopted by reference. [IN THE CASE OF AN LNG TRANSPORTATION FACILITY,
- (1) THE METHODOLOGY IS APPLIED AS IF THE TERM "VESSEL" READ "LNG TRANSPORTATION FACILITY";
- (2) THE USEFUL LIFE FOR PURPOSES OF THE METHODOLOGY IS 30 YEARS;
- (3) THE WEIGHTED AVERAGE COST OF CAPITAL IS 0.2 PERCENTAGE POINT GREATER THAN THAT OTHERWISE CALCULATED UNDER THE METHODOLOGY.]

(Eff. 1/1/2003, Register 164; am 1/1/2004, Register 168; am 4/30/2010, Register 194; am

12/28/2018, Register 228, am 1 / 1 / 2020, Register 232)

**Authority:** AS 43.05.080 AS 43.55.030 AS 43.55.110

AS 43.55.020 AS 43.55.040 AS 43.55.150

15 AAC 55.800(e)(5) is repealed:

(5) repealed / / / 2020;

## **MEMORANDUM**

## State of Alaska Department of Law

To: The Honorable Kevin Meyer Lieutenant Governor

Date: November 21, 2019

File No.: 2018200789.003

Tel. No.: 465-3600

From:

Susan R. Pollard

Chief Assistant Attorney General and Regulations Attorney

Legislation and Regulations Section

Re: Department of Revenue Regulations

Part III: Weighted Average Cost of Capital for Marine Transportation and Oil and Gas (15 AAC 55.195)

The Department of Law has reviewed the attached regulations of the Department of Revenue against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Department of Revenue after the close of the public comment period. The regulations concern the depreciation and the weighted average cost of capital for transportation of oil by a vessel and for LNG transportation facilities. The adoption order requests a special effective date of January 1, 2020 because the associated tax is assessed on a calendar year basis (AS 43.55). Please make note of this special effective date.

The changes proposed by the department restructure the cost of capital calculation allowance by eliminating calculations over multiple time periods. The regulations adopt by reference an updated Computation of a Cost-of-Capital Allowance under 11 AAC 55.196, Incorporating Depreciation and Return on Invested Capital for Marine Vessels and Improvements (November 19, 2019).

The public notice and the November 19, 2019 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made minor technical amendments, as shown on the attached copy. SRP:hih

cc:

Honorable Bruce Tangeman, Commissioner

Department of Revenue

Colleen Glover, Director Tax Division Department of Revenue

John Larsen, Audit Master Department of Revenue

Genevieve Wojtusik, Special Assistant to the Commissioner Department of Revenue

Mary Gramling, Senior Assistant Attorney General Department of Law

# PUBLIC NOTICE OF PROPOSED CHANGES ON OIL & GAS PRODUCTION TAX IN THE REGULATIONS OF THE DEPARTMENT OF REVENUE

**BRIEF DESCRIPTION:** The Department of Revenue proposes to change existing regulations regarding the administration of the Oil and Gas Production Tax and Oil Surcharge under 15 AAC 55 regarding depreciation and the weighted average cost of capital (WACC) for transportation of oil by a vessel and for LNG transportation facilities.

Existing regulations regarding the return on investment or cost of capital for transportation costs at 15 AAC 55.195 and 15 AAC 55.196 are extremely complex and the calculation model requires in excess of 2,000 inputs. The changes proposed by the department restructures the cost of capital calculation by eliminating calculations over multiple time periods in calculating the cost of capital allowance. As a result, the scope of the input data is reduced and the calculation is simplified. This should also work to reduce the administrative burden on both taxpayers and the state. Additionally, the weighted average cost of capital rate previously obtained from third-party sources has been replaced with a U.S. Treasury yield rate coupled with a set risk premium.

The Department of Revenue proposes to adopt regulation changes to 15 AAC 55 of the Alaska Administrative Code, dealing with the oil and gas production tax, including the following:

- (1) 15 AAC 55.193. Calculation of costs of transportation for oil and gas produced after June 30, 2007, is proposed to be amended to change the reference from 15 AAC 55.195 to 15 AAC 55.196 in regards to the cost of transportation of oil by a vessel, or for LNG transportation facilities, that are owned or effectively owned by a taxpayer;
- (2) 15 AAC 55.195. Return on investment or cost of capital allowance to be used in calculation of costs of transportation for oil or gas, other than certain LNG or vessel transportation costs for oil or gas produced on or after January 1, 2003, is proposed to be repealed;
- (3) 15 AAC 55.196. Cost of capital allowance to be used in calculation of costs of vessel transportation for oil or gas produced on or after January 1, 2003, other than certain costs pertaining to vessels placed in service before January 1, 1995, and in calculation of transportation costs for gas by an LNG transportation facility placed in service after December 31, 2010, is proposed to be amended to replace and simplify the current model which is used to calculate a Cost of Capital Allowance that incorporates both the depreciation cost and the after-tax return on capital for vessels transporting oil, or for LNG transportation facilities, that are owned or effectively owned by a taxpayer;
- (4) 15 AAC 55.192. Monthly share of annual transportation costs; and 15 AAC 55.800. Retroactive application of regulations, are proposed to be amended to make conforming changes to references to other regulations affected by this notice.

# ADDITIONAL REGULATIONS NOTICE INFORMATION [AS 44.62.190(d)]

- 1. Adopting Agency: Department of Revenue, Tax Division
- 2. General subject of regulation: Administration of Revenue Laws: Department's intent is to simplify the calculation for the weighted average cost of capital (WACC) index used in determining return on investment (ROI) for marine transportation of oil and LNG by reducing the number of inputs from over 2,000 to less than 70 in the model.
- 3. Citation of regulations to be amended: Title 15, Chapter 55, Sections: 192, 193, 195, 196, and 800.
- 4. Department of Law file number: 2018200789.003
- 5. Reason for the proposed action:
  - () compliance with federal law
    () compliance with new or changed state statutes
    () compliance with court order
    (x) development of program standards
    () other: (please list)
- 6. Appropriation/Allocation: Tax Division, Revenue Operations
- 7. Estimated annual cost to comply with the proposed action to:

A private person: \*

Another state agency: \$0. The department does not expect additional costs to any other state agency.

A municipality: \*

- \* The department is not able to make a numeric estimate based on information available to it. However, the department's intent is to reduce the administrative burden, and thereby, costs, for both taxpayers and the state. Municipalities are not expected to be impacted as they do not operate tankers for the marine transportation of oil or LNG.
- 8. Cost of implementation to the state agency and available funding (in thousands of dollars): No costs are expected in FY 2020 or subsequent years.

	Initial Year	Subsequent
	FY 2020	Years
Operating Cost	\$0_	\$0
Capital Cost	\$ 0	\$ 0
1002 Federal receipts	\$0	\$0

# ANCHORAGE DAILY NEWS AFFIDAVIT OF PUBLICATION

Account #: 270235 ST OF AK/DEPT OF REVENUE/TAX IDIV PO BOX 110420, JUNEAU, AK 99811

Order #: W0011894

### STATE OF ALASKA THIRD JUDICIAL DISTRICT

Lisi Misa being first duly sworn on oath deposes and says that she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

10/06/2019

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed

Subscribed and sworn to before me this 7th day of October 2019.

Notary Public in and for The State of Alaska. Third Division Anchorage, Alaska

MY COMMISSION EXPIRES

ANGELA M SIMMONS NOTARY PUBLIC State of Alaska

My Commission Expires Apr. 14, 2021

PUBLIC NOTICE OF PROPOSED CHANGES ON OIL & GAS PRODUCTION TAX IN THE REGULATIONS OF THE DEPARTMENT OF REVENUE

Cost: \$602.62

BRIEF DESCRIPTION: The Department of Revenue proposes to change existing regulations regarding the administration or the Oil and Gas Production Tax and Oil Surcharge under 15 AAC 55 regarding depreciation and the weighted average cost of capital (WACC) for transportation of oil by a vessel and for LNC transportation facilities.

Berspiration frequencies.

Besithing regulations regarding the return on investment or cost of capital for transportation costs at 15 AAC 55.195 and 15 AAC 55.196 are extremely complex and the calculation model requires in excess of 2,000 inputs. The changes proposed by the department restructures the cost of capital calculation by eliminating calculations over multiple time periods in calculating the cost of capital allowance. As a result, the scope of the input data is reduced and the calculation is simplified. This should also work to reduce the administrative burden on both taxpayers and the state. Additionally, the weighted average cost of capital rate previously obtained from third-party sources has been replaced with a U.S. Treasury yield rate coupled with a set risk premium.

(1) 15 AAC 55.193. Calculation of costs of transportation for oil and gas produced after June 30, 2007, is proposed to be amended to change the reference from 15 AAC 55.195 to 15 AAC 55.196 in regards to the cost of transportation of oil by a vessel or for LNG transportation facilities, that are owned or effectively

(2) 15 AAC 55.195, Return on investment or cost of capital allowance to be used in calculation of costs of transportation for oil or gas, other than certain LNG or vessel transportation costs for oil or gas produced on or after January 1, 2003, i proposed to be repealed;

(3) 15 AAC 55.196. Cost of capital allowance to be used in calculation of costs of vessel transportation for oil or gas produced on or after January 1, 2003, other than certain costs pertaining to vessels placed in service before January 1, 1995, and in Calculation of transportation costs for gas by at LNG transportation facility placed in service after December 31, 2010, is proposed to be amended to replace and simplify the current model which is used to calculate a Cost of Capital Alowance that incorporates both the depreciation cost and the after-tax return on capital for vessels transporting dit, of for the appropriation facilities, that are owned or effectively owned by appoint the control of the cost of the cos

You may comment on the proposed regulation changes, include costs to private persons of complying with the profit costs to private persons of complying with the profit costs of private persons of complying with the profit costs of the profit cost

programs document/ever/ever/especiasper/7/
you may submit written questions relevant to the prop-action to: John Larsen at John Larsen@alaska.gov via emañ, John Larsen, Audit Master, Alaska Department of Revenue, S-Th Ave, Stc. 500, Anchorage, AK 99501. The questions mu-received at least 10 days before the end of the public com-period. The Department of Revenue will aggregate its resp to substantially similar questions and make the questions responses available on the Alaska Online Public Notice Systen Tax Division website at (http://www.tax.alaska.gov).

A copy of the proposed regulation changes and Edition 4.0 of the bepartment's Computation of a Cost-of-Capital Allowance under IS-AAC 5.5 196, incorporating Depreciation and Return on invested Capital for Marine Vessels and improvements are available on the Alaska Online Public Notice System and the Tax Division website, and by contacting John Larsen at (907) 269-8436 or John.larsene alaska 900.

After the public comment period ends on Thursday, November 7, 2019, the Department of Revenue will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

Statutory Authority: AS 43.05.080; AS 43.55.110.
Statutes Being Implemented, Interpreted, or Made Specific AS 43.55.011; AS 43.55.020; AS 43.55.030, AS 43.55.040; and AS 43.55.050.

Fiscal Information: The proposed regulation changes are no expected to require an increased appropriation.

DATE: October 4, 2019 Anchorage, Alaska By: /s/ Colleen Glover Director, Tax Division (907) 269-6620

Published: October 6, 2019

OCT 10 2019 Tax Division JNU

## AFFIDAVIT OF NOTICE OF PROPOSED REGULATION AND FURNISHING OF ADDITIONAL INFORMATION

I, John M. Larsen, Audit Master, of the Alaska Department of Revenue, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to the Alaska Administrative Code to amend regulations in Title 15, Revenue, Chapter 55, Oil and Gas Production Tax and Oil Surcharge, sections .192, .193, .195, .196, and .800, has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1).

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 11/19/2019

John M. Larsen, Audit Master

Subscribed and sworn to before me at Anchorage, Alaska on \_\_\_\_\_\_

Notary Public in and for the State of Alaska

STATE OF ALASKA
NOTARY PUBLIC
K. Fletcher
My Commission Expires with office.

### AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, John M. Larsen, Audit Master, for the Alaska Department of Revenue, being duly sworn, state the following:

In compliance with AS 44.62.215, the Department of Revenue has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Revenue's regulations on proposed changes to Chapter 55, Oil and Gas Production Tax and Oil Surcharge.

Date: 11/19/2019

John M. Larsen, Audit Master

Subscribed and sworn to before me at Anchorage, Alaska on \_\_\_\_

Notary Public in and for the State of Alaska

