

# Technical Aspects of CS for HB 308 (Version E) (part II – issues 2, 4, 5, & 6)

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House Resources Committee

Feb 15, 2010

## 6 Changes in CSHB 308

- Interest rate is lower of fed funds +2 or 11% (February 8, 2010 Testimony)
- Interest not due on retroactive regs changes prior to implementation
- Change progressivity from .4% to .2% (February 8, 2010 Testimony)
- Tax rate tied to resident hire
- 30% credit for well work
- Restore 3 year statute of limitations

# Structure of CS for HB 308

## Structure of CS For HB 308

26-LS1328/E

Key Provision

Need  
2011

section:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	Eff Dt	
Interest rate is lower of fed funds + 2 or 11%						6																			25		
Interest not due on retroactive regs changes prior to implementation						7								14												25	
Change progressivity from .4 % to .2 %											11													24			
Housekeeping - reference to interest	1				5	6		8	9	10		12	13			16		18	19		21	22			25		
Tax rate tied to Resident hire		2	3	4											15			18					23		25		
30% credit for well work																	17							24			
Restore 3 year statute of limitations																				20					25		

## 6 Changes in CSHB 308

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## How is interest calculated?

- Production Tax is due on last day of the month following the month of production (AS 43.55.020 (a)).
- Amount of tax due change because of because of audit, revised reporting by taxpayer, retroactive revision of tariff due to a regulatory order in a rate case, retroactive change in regulations.
- Interest is charged back to when original tax is due.
- In a settlement Department can compromise amount of tax and amount of Penalty. (AS 43.55.070) – No mention of interest.

## Regulations required retroactive to July 2007\*

- In 2007 reforms (“ACES”) Department charged with a number of specific responsibilities for regulations, as well as general implementation.
  - AS 43.55.150 “the department shall determine the reasonable cost of transportation, using the fair market value of like transportation, the fair market value of equally efficient and available modes of transportation **or other reasonable methods.**”
  - AS 43.55.165(a) “**...a producer’s lease expenditures for a calendar year are ... costs ...allowed by the department by regulation...**”
  - Production tax is a yearly tax – however, effective dates of most of 2007 reform was July 1, 2007, so ways of combining two half years had to be implemented.
  - New reporting requirements (AS 43.55.030 & .040)
  - \*New rules for exploration credits (AS 43.55.025)

# Status of Regulations Affecting Returns after July 2007

	Discussion Draft				Public Comment Draft		Adopted
	1	2	3	4	1	2	
<b>Project One - Reporting Requirement</b>							
15 AAC 55. 520 Reporting					Feb-08		May '08 effective as of June '08
<b>Project Two - NS PV, Civil Penalties, Mid Year Statutory Changes, CI reporting</b>							
35 sections	Feb-08	Oct-08	Nov-08		Apr-08	Sep-08	Sep '09 effective as of Oct '09
<b>Project Three - Exploration Credits</b>							
6 sections					Aug-08	Jun-09	Nov '09 effective as of Dec '09
<b>Project Four - Lease Expenditures</b>							
10 Sections	Jan-08	Mar-08	Sep-08				Jan '10 effective as of Feb '10
<b>Project Five - Reasonable Transportation</b>							
5 sections	Mar-08	May-08	Jan-09		Feb-10		
6. Other Projects							
15 AAC 55. 173 NS Gas PV	Feb-08				Apr-08		Aug '08 effective as of Oct 1 '08
Facility Sharing	Oct-08	Nov-08	Feb-09	Jul-09			
Credit Safeguards	Nov-08						
"Affiliated" definition	Jan-09						
PV of oil					Jan-10		

## Interest on Retroactive Regulatory Changes

- Governor Parnell's approach in AS 43.55.020(i):
  - Requires interest waiver – not discretionary
  - More thorough – explicitly recognizes that the absence of regulations is not the absence of any rules
  - Explicitly retroactive – deals with the 2007 -2010 regulatory delay
  - Does not require restructuring AS 43.05.225 (thus eliminates half the provisions in the CS for HB 308)
  - (although in current CS Version E, section 6, page 3 line 5 requires in the insertion of an “a” in any case.)



# Gov Parnell's suggestion on interest from retroactive regs

- **\*Section 1.** AS 43.55.020 is amended by adding a new subsection to read:
- (i) Notwithstanding any contrary provision of AS 43.05.225 or (g) or (h) of this section, if the **amount of a tax payment**, including an installment payment, due under (a) (a) (1) – (4) of this section **is affected by the retroactive application of a regulation** adopted under this chapter, the **department shall determine** whether the retroactive application of the regulation caused an underpayment or an overpayment of the amount due and **adjust the interest due** on the affected payment as follows:
  - (1) if an underpayment of the amount due occurred, the department shall waive interest that would otherwise accrue for the underpayment before the first day of the second month following the month in which the regulation become effective, if the department determines that
    - (A) the producer's underpayment resulted because the regulation was not in effect when the payment was due; and
    - (B) **the producer made a good faith estimate of its tax obligation in light of the regulations then in effect when the payment was due**, and paid the estimated tax;
  - (2) if an overpayment of the amount due occurred and the department determines that the producer's overpayment resulted because the regulation was not in effect when the payment was due, the obligation for a refund for the overpayment does not begin to accrue [accrue] interest earlier than the following, as applicable:
    - (A) except as otherwise provided under (B) of this paragraph, the first day of the second month following the month in which the regulation became effective;
    - (B) 90 days after an amended statement under AS 34.55.030(a) and an application to request a refund of production tax paid is filed, if the overpayment was for a period for which an amended statement under AS 43.55.030(a) was required to be filed before the regulation became effective.

## Interest on Retroactive Regulatory Changes

- Possible upgrades to Governor's Language:
- Don't require a departmental determination of good faith by the producer in each case. Assume it, and allow the department to prove otherwise if it finds egregious behavior.
- AS 43.55.020 (a)(1)-(3) are monthly "installment payments of estimated tax" using  $1/12^{\text{th}}$  of estimated credits and  $1/12^{\text{th}}$  estimated lease expenditures - so
  - No true up caused by retroactive regs except for annual true up already required under AS 43.55.020 (a) (4) and
  - First first day of month more than 90 days after effective date of regs.

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- **Tax rate tied to Resident Hire**
- 30% credit for well work
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## Rate tied to Resident Hire

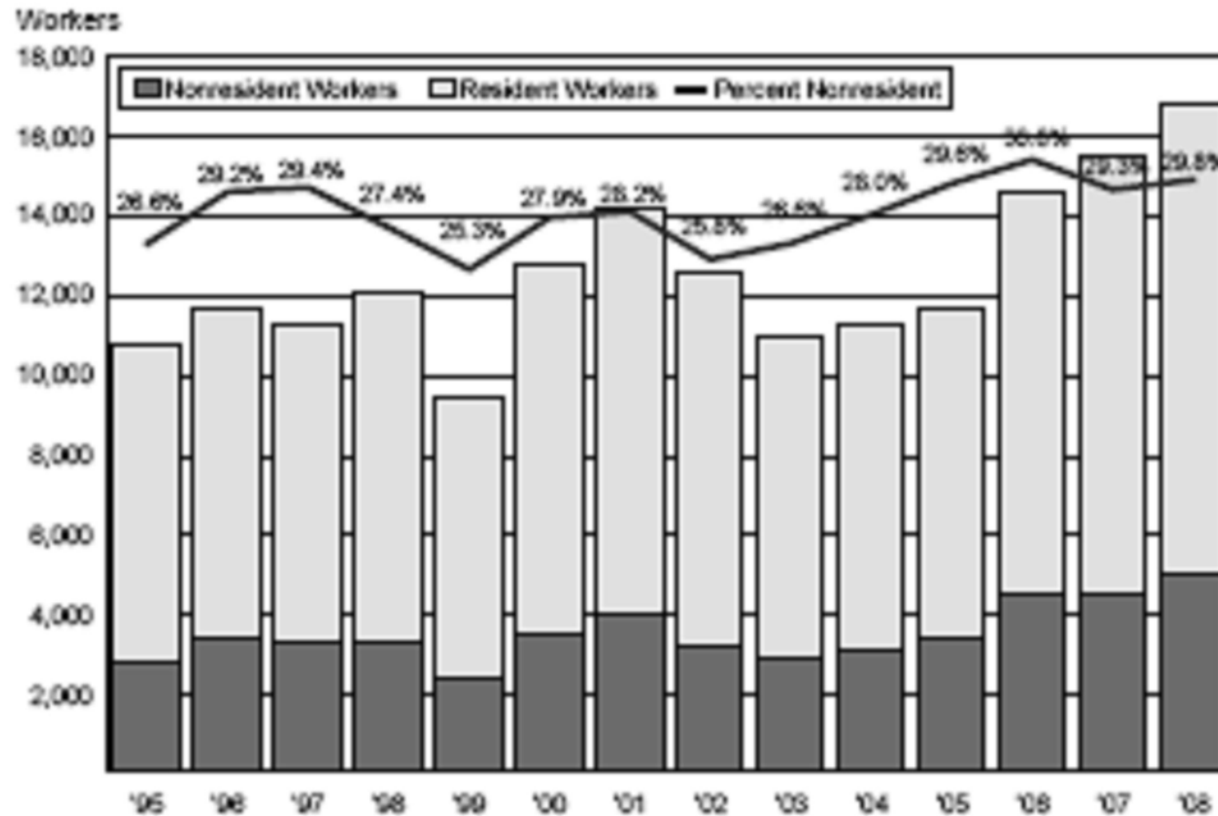
- General Approach – (section 15)
- Base Tax rate (in AS 43.55.011(e)) is 25%, and Taxpayers makes monthly payments at that rate
- Any direct labor that is a lease expenditure is accounted for as Resident or non-Resident.
- At the end of the year total hours of labor are used to calculate a ratio for the year: or resident hire %
- New effective rate is calculated:
  - 20% for a 100% Resident Hire ratio up to
  - 25% (current law) for an 80% Resident Hire ratio.
- Taxpayer can then apply for a rebate of the difference for the prior year.
- Note: effective date should be beginning of a year.

## Rates in CS HB 308 proposed 43.055.022 (b)

For Resident Hire Ratios		Rebate of amount under AS 43.55.011(e)(1)	Tax Rate in AS 43.55.011(e)(1)	Rebate as % of PTV	Effective Tax Rate
equal or above	but below				
70.0%	72.5%	0.0%	25.0%	0.0%	25.0%
72.5%	75.0%	0.0%	25.0%	0.0%	25.0%
75.0%	77.5%	0.0%	25.0%	0.0%	25.0%
80.0%	82.5%	2.0%	25.0%	0.5%	24.5%
82.5%	85.0%	4.0%	25.0%	1.0%	24.0%
85.0%	87.5%	6.0%	25.0%	1.5%	23.5%
87.5%	90.0%	8.0%	25.0%	2.0%	23.0%
90.0%	92.5%	10.0%	25.0%	2.5%	22.5%
92.5%	95.0%	12.0%	25.0%	3.0%	22.0%
95.0%	97.5%	14.0%	25.0%	3.5%	21.5%
97.5%	100.0%	16.0%	25.0%	4.0%	21.0%
100.0%		20.0%	25.0%	5.0%	20.0%

# Non Resident Workers

## 6 Oil Industry Number and Percent Nonresident Workers Alaska 1995-2008



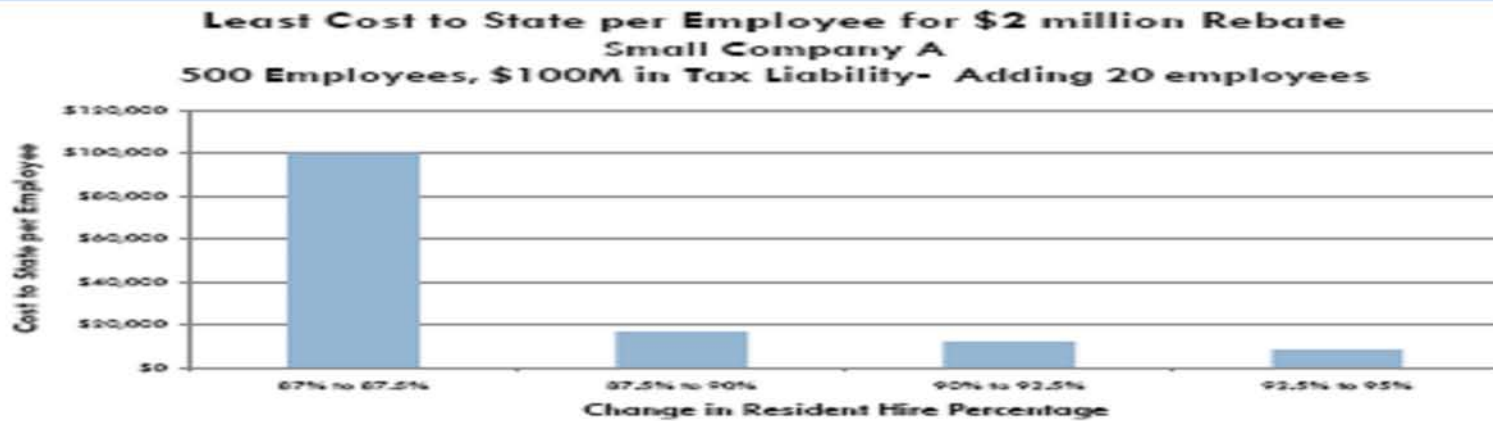
Note: Private Sector Only

Source: Alaska Department of Labor and Workforce Development, Research and Analysis Section

Source: Nonresidents Working in Alaska, 2008, State of Alaska, Dept of Labor and Workforce Development (Jan 2010) <http://www.labor.state.ak.us/research/reshire/nonres.pdf>

# DOR Presentation 2/10/2010 Tables 5-8

## Impact of Tax Rebate Provision



DOR

2/10/2010

Change in rebate (dollars) is constant per category

2%                      2%                      2%                      2%

Change in employees is small in first category - large in all the rest

	slide	Small Change	<b>BIG CHANGE</b>	<b>BIG CHANGE</b>	<b>BIG CHANGE</b>
Company A	6	87.0% - 87.5%	87.5% - 90.0%	90.0% - 92.5%	92.5% - 95.0%
Company B	7	82.0% - 82.5%	82.5% - 85.0%	85.0% - 87.5%	87.5% - 90.0%
Company C	8	79.5% - 80.0%	80.0% - 82.5%	82.5% - 85.0%	85.0% - 87.5%
Range		<b>0.50%</b>	2.50%	2.50%	2.50%
Resulting Dollars per employee:		<b>Big</b>	Small	Small	Small

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## Resident Hire -- What will it cost per job?

- “In an extreme example, [according to DOR] hiring just one Alaskan could mean \$30 million in tax savings” (Anchorage Daily News 2/11/2010, backpage (A-14))
- True: the bracket vs. formula issue
- DOR emphasized small employment change yielding large tax change – also true that large employment changes may not effect tax – formula fixes this feature.
- DOR emphasized employment changes about 80% however- Currently at 70%; no tax change until 80% achieved – formula preserves this feature



## Resident Hire – What will it cost per job?

All figures in Millions of Dollars:

FY2008 Estimated PTV (\$millions)	\$ 16,837.7
FY2009 Estimated PTV (\$millions)	9,313.1
Average for CY 2009	<u>13,075.4</u>

Assumption: One company is responsible for half AS 43.55.011(e)(1) taxes at 25%	6,537.7
	1,634.4

If one incremental employee (hour) moves taxpayer by one bracket in between 80 - 97.5% then effect is (.5%)	<b>32.7</b>
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Function of "brackets rate applied to base"  
Opposite effect also occurs.

## Resident Hire – What will it cost per job?

Opposite effect also occurs.

Assumption: Company employees and contractors are 1/2 the workforce  
(2009 Total Workforce of 13,000, so Company has 6,500)

(1) A company this big will be close to the average so 70% Resident

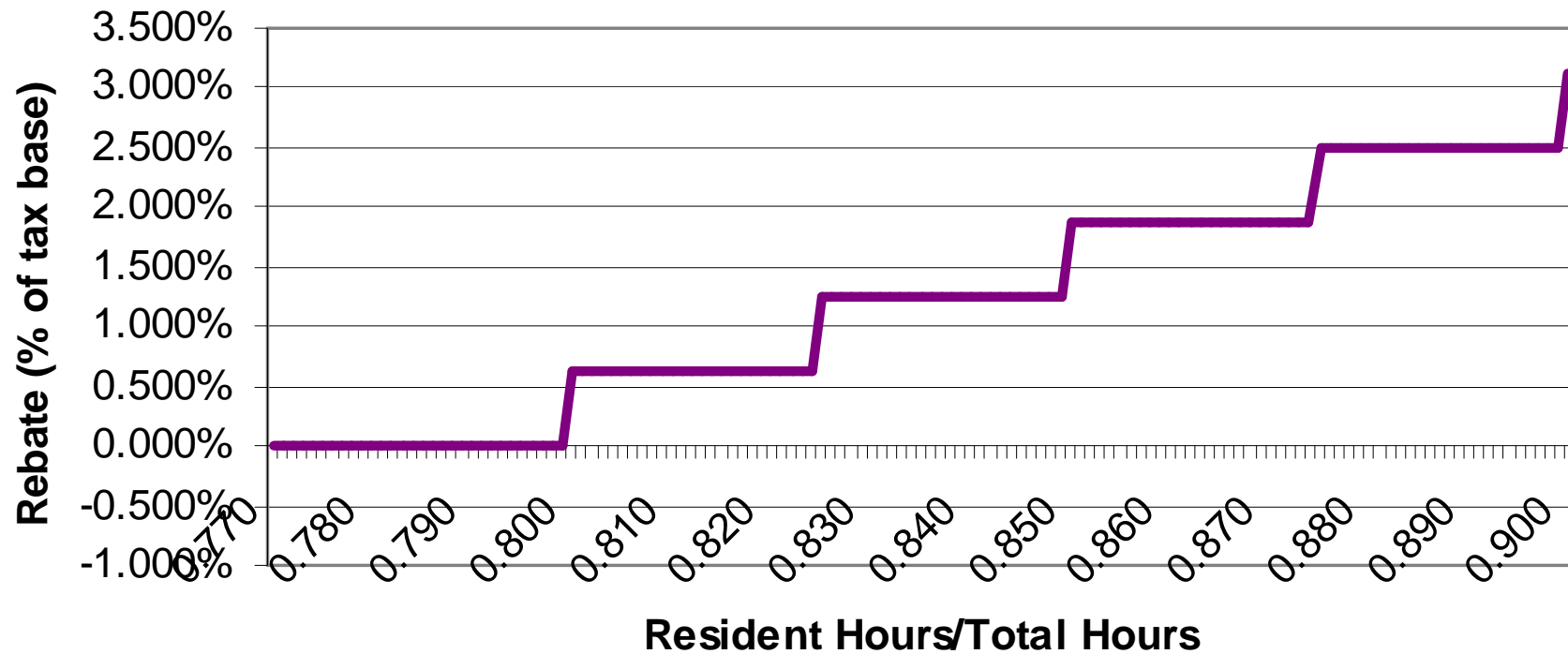
	Total Workers	Resident Workers	Ratio	Tax rate
year one	6,500	4,550	70.00%	25.0%
add		649		
year two	6,500	5,199	79.98%	25.0%

	Total Worker Hours	Resident Worker Hours	Ratio	Tax rate
year one	13,000,000	9,100,000	70.00%	25.0%
add		1,298,000		
year two	13,000,000	10,398,000	79.98%	25.0%

"need to be at 80% to start the conversation"

# Resident Hire – What will it cost per job?

## Bracket/Stair Step Hire Formula



## Resident Hire – What will it cost per job?

Opposite effect also occurs.

Assumption: Company employees and contractors are 1/2 the workforce  
(2009 Total Workforce of 13,000, so Company has 6,500)

(2)

	Total Workers	Resident Workers	Ratio	Tax rate
year one	6500	5200	80.00%	24.5%
add		162		
year two	6500	5362	82.49%	24.5%

	Total Worker Hours	Resident Worker Hours	Ratio	Tax rate
year one	13,000,000	10,400,000	80.00%	24.5%
add		324,000		
year two	13,000,000	10,724,000	82.49%	24.5%

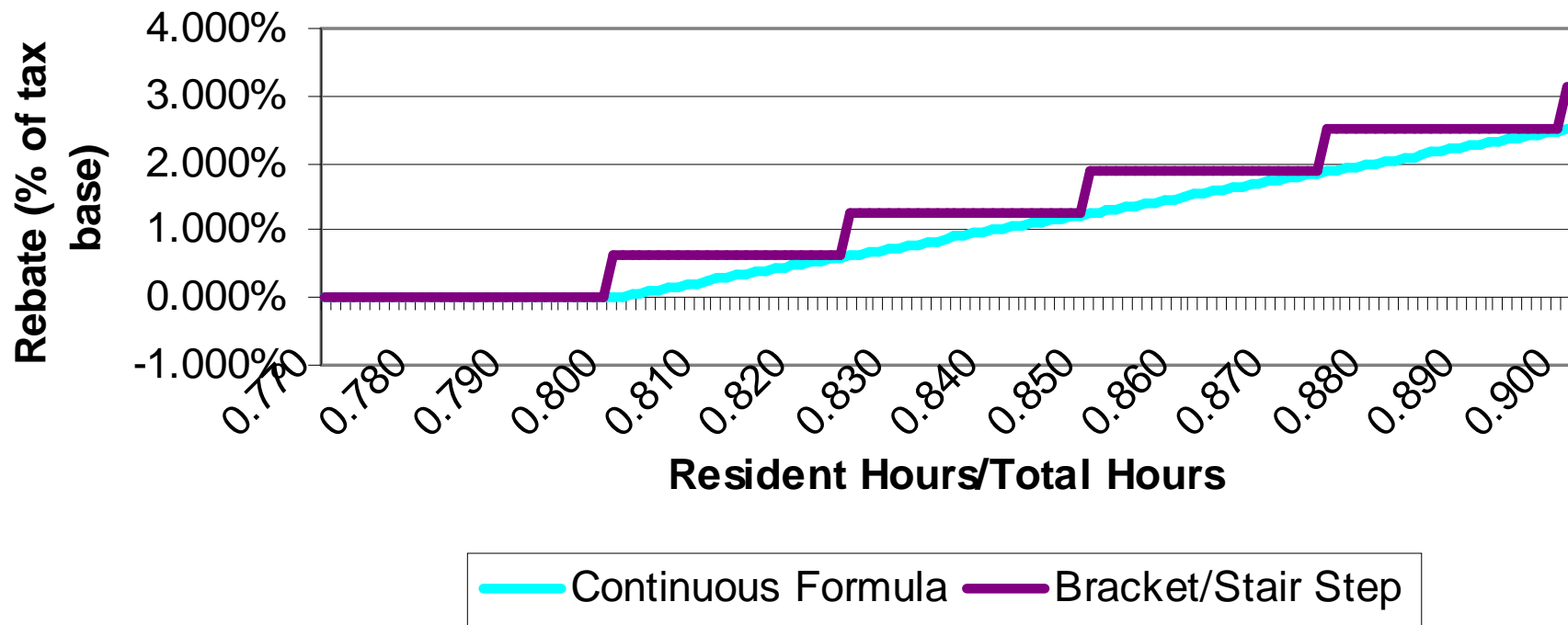
## Stair Step versus Continuous Function

Solution – Continuous function (with rounding)

- Rebate equal to tax base (PTV) times
- Higher of ((Resident Hours/Total hours) or .8)
- Less .8
  
- That transforms Resident Hire rates between 80% and 100% into a series from 0% to 20%

## 2. Stair Step versus Continuous Function

### Bracket/Stair Step vs Continuous Resident Hire Formula



2.15.2010

## Problem of “no reporting of nonresident wages”

	Actual	Rounded
FY2008 Estimated PTV (\$millions)	\$ 16,837.7	
FY2009 Estimated PTV (\$millions)	9,313.1	
Average for CY 2009	<u>13,075.4</u>	10,000
AS 43.55.011(e)(1) taxes at 25%	3,268.8	2,500
Maximum Rebate (20% of taxes, 5% of base)	<u>653.8</u>	<u>500</u>
Non Resident Workers in industry in 2008	5043	5,000
Average Wages ( 2008) per worker (\$million)	<u>0.083601</u>	<u>0.100000</u>
Total Non- Resident Wages	422	500
Effect of not claiming Non resident wages as lease expense (25%) (\$millions)	<u>105.4</u>	<u>125</u>
So by simply not reporting or deducting the 5043 non residents Decrease in taxes: (\$millions)	548.4	375

Sources: State of Alaska, Dept. of Labor and Workforce Development, Nonresidents Working in Alaska, 2008 (Jan 2010), derivations from figures in Dept of Revenue, Revenue Sources Book (Fall 2009)

## Some solutions to “no reporting of nonresident wages”

1. Shift the scale so maximum tax savings are not \$500 million by \$100 million and tax rate could range from 24% to 25%.
2. Require that for any labor to be allowed as a lease expense, all the labor from that company must be calculated in Resident Hire calculation – (with additional rules for pass through).
3. Focus on new hires only, and specific dollar rebate for every new resident hire.
4. Given structure of industry, have the DOR determine a tax rate every year based on the Resident Hire Ratios of 10 (20?) largest employers in the industry or largest generators of lease expenditures.



## Structure of Industry in Alaska

- Producers (taxpayers) have employees & hire
  - Operator who has employees & hires
    - Contractors, and buys “stuff”
- According to the Dept of Labor & Workforce Development (2008) employment in
- Oil and gas (direct) 4,055
- Oilfield Services 12,875
- Total 16,930

Sources: State of Alaska, Dept. of Labor and Workforce Development, Nonresidents Working in Alaska, 2008 (Jan 2010),

# Who are the 15 Tax Production Tax Filers (2009)?

	1 CP	2 BP	3 EM	4 Anadarko	5 Chevron	6 Pioneer	7-10 4 Others(1)	Total
Production in Millions of Bbls a day								
PBU & Sat	0.1317	0.0962	0.1328	-	0.0042	-	0.0001	0.365
KRU & Sat	0.0785	0.0558	0.0006	-	0.0071	-	-	0.142
North Star	-	0.0270	-	-	-	-	-	0.027
Alpine & Sat	0.0827	-	-	0.0233	-	-	-	0.106
Endicott	0.0004	0.0074	0.0045	-	0.0017	-	0.0001	0.014
Milne	-	0.0310	-	-	-	-	-	0.031
Oooguruk	-	-	-	-	-	0.0028	0.0012	0.004
Total bbl/day	0.2933	0.2174	0.1379	0.0233	0.0130	0.0028	0.0013	0.689

<b>MM bbl/yr</b>	<b>107.0</b>	<b>79.4</b>	<b>50.3</b>	<b>8.5</b>	<b>4.8</b>	<b>1.0</b>	<b>0.5</b>	<b>251.5</b>
% of NS	43%	32%	20%	3%	2%	0%	0%	100%

Cook Inlet 2009

Cook Inlet Production

	oil	4.0
10% of production	gas (boe)	24.9
1/2 of 1% of tax due to AS 43.55.011(j) and (k) limitations	Total CI	28.9
	<b>Total AK</b>	<b>280.43</b>

Cook Inlet:

(1) Others

- |   |            |
|---|------------|
| 11 Aurora                                     | 7 Nana     |
| *Chevron (heritage Unocal & Chevron)          | 8 Doyen    |
| *CP (heritage Arco and Phillips)              | 9 Forest & |
| 12 Pacific Energy (acquired Forest interests) | 10 ENI     |
| 13 Marathon                                   |            |
| 14 ML&P                                       |            |
| *EM (heritage Mobil & XTO)                    |            |
| 15 Pioneer (Lawrenceville, Ill)               |            |

Source: DNR Division of Oil and Gas 2006 & 2009 Annual Reports, DOR, Fall 2009 Revenue Sources Book

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North Star	-	0.0270	-	-	-	-	-	0.027
Alpine & Sat	0.0827	-	-	0.0233	-	-	-	0.106
Endicott	0.0004	0.0074	0.0045	-	0.0017	-	0.0001	0.014
Milne	-	0.0310	-	-	-	-	-	0.031
Oooguruk	-	-	-	-	-	0.0028	0.0012	0.004
<b>Total bbl/day</b>	<b>0.2933</b>	<b>0.2174</b>	<b>0.1379</b>	<b>0.0233</b>	<b>0.0130</b>	<b>0.0028</b>	<b>0.0013</b>	<b>0.689</b>

<b>MM bbl/yr</b>	<b>107.0</b>	<b>79.4</b>	<b>50.3</b>	<b>8.5</b>	<b>4.8</b>	<b>1.0</b>	<b>0.5</b>	<b>251.5</b>
% of NS	43%	32%	20%	3%	2%	0%	0%	100%

Cook Inlet 2009

Cook Inlet Production

	oil	4.0
10% of production	gas (boe)	24.9
1/2 of 1% of tax due to AS 43.55.011(j) and (k) limitations	Total CI	28.9
	<b>Total AK</b>	<b>280.43</b>

Cook Inlet:

(1) Others

- 11 **Aurora**  
\*Chevron (heritage Unocal & Chevron)  
\*CP (heritage Arco and Phillips)
- 12 **Pacific Energy (acquired Forest interests)**
- 13 **Marathon**
- 14 **ML&P**  
\*EM (heritage Mobil & XTO)
- 15 **Pioneer (Lawrenceville, Ill)**

- 7 Nana
- 8 Doyen
- 9 Forest &
- 10 ENI

**DED estimate covered  
by AS 43.55.024 credit**

Source: DNR Division of Oil and Gas 2006 & 2009 Annual Reports, DOR, Fall 2009 Revenue Sources Book

# Who are the Employers in the Oil and Gas Industry

- Recall EM, BP and CP are largest taxpayers – they would put pressure on employers to qualify for lower rate

Ranking in Top 100	Total Employees			Non Resident %
5 ASRC	2250	2499	Oil Field Services	24.1%
8 CH2MHill	1750	1999	Oil Field Services	35.5%
9 BP Exploration			Oil & Gas Extraction	27.7%
17 Conoco Phillips	1000	1249	Oil & Gas Extraction	20.7%
36 Nabors Alaska Drilling	500	749	Oil Field Services	
43 Schlumberger Technologies			Oil Field Services	30.5%
49 Udelhoven Oilfield System Services			Oil Field Services	30.5%
52 Peak Oilfield Service Company	250	499	Oil Field Services	26.8%
69 Norcon			Oil Field Services	23.2%
73 Chevron			Oil & Gas Extraction	
78 Halliburton			Oil Field Services	32.3%
95 Doyon Drilling			Oil Field Services	
Veritas Dgc Land Inc				47.9%
Baker Hughes Oilfield Operations Inc.				54.1%

NOTE: Does Not Include "Catering/Security", Engineering, Transportation, Communications, Construction

Sources: State of Alaska, Dept. of Labor and Workforce Development, 100 Largest Private Employers, 2008 (Alaska Economic Trends, July 2009), Nonresidents Working in Alaska, 2008 (Jan 2010)

## To be addressed by Regulations or Statute II

- Is the “overhead labor” that is replaced by a formula in 15 AAC 55.270 part of the resident labor calculation? (see DOR slides)
- If a contractor has a fixed price contract, or charges a fee that includes labor (such as for transportation, turnkey modules, any manufactured good) who determines, or how is it determined whether and to analyze the labor in that transaction for resident labor?
- Are billed professional services (say by an engineer) “labor” for the resident hire calculation.
- Should be effective on the first day of a year.

## To be addressed by Regulations or Statute I

- If tax was not paid due to limitations in AS 43.55.011(j), (k) and (o) – CI or instate gas, can it be rebated?
- If tax was not paid due to applications of .023 Capitol and Loss Carry Forward Credits, .024 “Low Production” Credits and/or .025 Exploration Credits, can it be rebated?
- If times are tough and taxpayers have to pay the “alternative minimum tax” under AS 43.55.011(f), can that be rebated? It is a tax based on gross – but will still require the calculation of labor costs.
- If there is lots of investment activity and so that generates a loss – No resident hire issues if no tax base? Or should the rebate effect the loss carryforward. (Perverse incentive)

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## Investment Credits

- Section 17 adds 30% well work credit to investment credits
- Under Current Law –
- 30% Credit for exploration wells (AS 43.55.025)
- 40% Credit for seismic work outside of existing unit,
  - or exploration wells 25 miles from existing unit, and
  - 3 miles from any prior well (or with certification from DNR that it is for a new target in the Cook Inlet)(AS 43.55.025)
- 20% Credit for any capital investment (AS 43.55.023(a))
- No change to Exploration Credits AS 43.55.025 under this bill



- How does this compare with Governor's "Well Credits" proposal
  - Both create a 30% credit for well work
  - Both include pertinent capex and opex
  - CS should be effective on the first day of a month (Gov's bill is July 1, 2010) year.
- Differences:
- CS for HB 308 places the credit among the .023 "Tax Credits for certain losses and expenditures" Governor's bill changes name of .025 from "Exploration" to "Exploration and Development" and places it there.
- Different definition of well related expense.
- (Other changes to AS 43.55.025 in Gov's bill)

## Differences between AS .023 and .025

AS 43.55.023 – Tax credits for certain losses and expenditures	AS 43.55.025 – Alternative tax credit for oil and gas exploration
AS 43.55.023 deals with capital costs in (a), lease expenditures in (b), and both in sections (c), (d), (e), (g), (h) and (j). (note – (f) repealed and (i) and (k) deal only with capital).	AS 43.55.025 deals only with exploration costs –by explorers. Administration suggests totally re-writing and re-titling to cover this work by explorers and producers.
21 specific exclusions from lease expenditures listed in AS 43.55.165 (e) (1) – (21) including exclusion of 30 cents a barrel from any capital cost, and certain transactions with affiliates or related parties.	Prohibitions summed up in one paragraph (AS 43.55.025(b)(3))
Restrictions in AS 43.55.011(m) (“credits clawback”) do not apply.	AS 43.55.011(m) (“credits clawback”) does apply.

Question: Are we certain that the restructuring of AS 43.55.025 will not result in inadvertent changes to the rules?

## Definitions of well work compared

CS for HB 308 proposed AS 43.55.023(m)(3)	Governor's Language proposed AS 43.55.025(b) (3) and (4)
“Well-related expenditures” means	Development well expenditures are for
A lease expenditure	Goods, services and rentals of personal property reasonable required for
related to a well	
and <b>includes</b> a lease expenditure for the purposes of sidetracking, well deepening, well recompletion, well workover,	Re-drilling, casing , cementing or logging, Completing, workover operations or other operations intended to increase or enhance well production
	from known productive pool;
an injection well and well related seismic work and	And the well is not a service well [injector] or stratigraphic test well.
an intangible drilling and development cost authorized under 26 USC (IRC) as amended, and 26 CFR 1.612-4, regardless of the elections make under 26 USC 263(C) as amended	
up to the flange connecting the well head to the well line.	

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- 30% credit for well work
- **Restore 3 year statute of limitations**

- Section 20 Restores statute of limitations to three years for production tax - time for the state to complete a production tax audit (or, agree to an extension with taxpayer or issue a blue sky assessment)
- Three year rule would begin with 2011 tax year
- Note: in the case of False or Fraudulent returns, or failure to file a return, may proceed “at any time”
  
- Prior to 2007, SOL was three years for all tax types under AS 43.05.260 –
- In 2007 production tax pulled out and extended to 6 years in AS 43.55.075

# Thank You

Dan E. Dickinson CPA

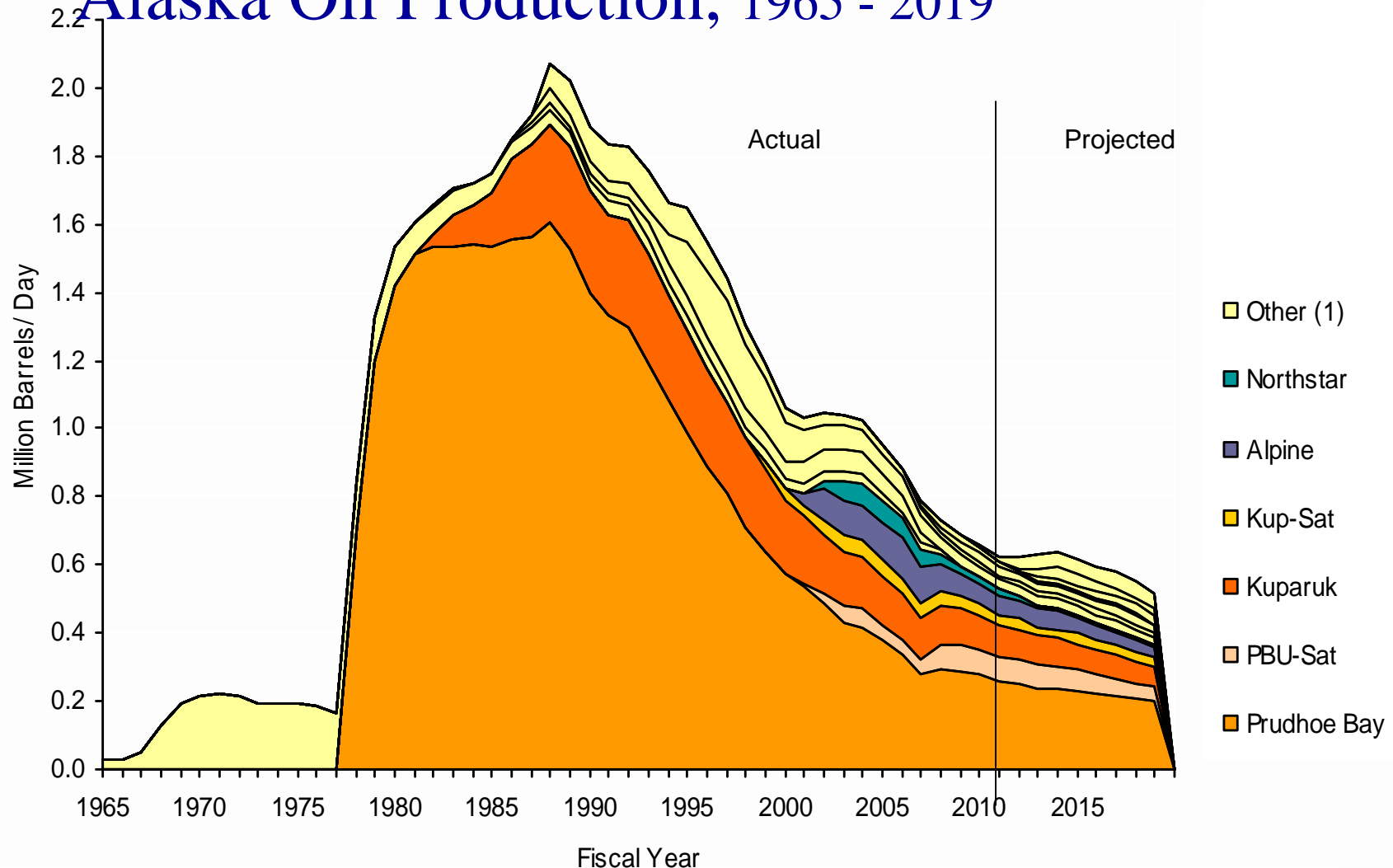
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# Alaska Oil Production, 1965 - 2019



Source: Alaska Department of Revenue, Fall 2009 Revenue Sources Book. Extrapolated  
 (1) Cook Inlet, Duck Island, Milne Point, Greater Point McIntyre, Liberty, Known On & Offshore, Fiord and NPRA.