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In this installment of Alaska Tax: The Last Frontier, Iversen discusses the Department of Revenue's revenue sources book for fall 2022, released ahead of the governor's proposed operating budget.

As of this writing, we are in deep winter. Southcentral Alaska was buried in several deluges of snow in December 2022, leading to school closures and early-season downhill and cross-country skiing opportunities to round out the year and ring in the holidays. Most Alaskans seem to embrace the elements, though, perhaps knowing that the alternative is a futile battle.

And as the calendar progresses, we are yet again moving past elections and toward the upcoming legislative session. There was a substantial amount of turnover in the Alaska State Legislature this year, and the Senate and House of Representatives are getting organized in anticipation of the legislative session this month. Indeed, the Senate formed a bipartisan majority coalition of all nine Democrats and eight of the 11 Republicans just two days after ballots were due to be submitted to election officials and before the election results were certified.[1]

Gov. Mike Dunleavy (R) was reelected in November and has been putting together his leadership team. Most notably for those interested in Alaska's revenue stream, Adam Crum has been named commissioner of the Alaska Department of Revenue, which administers Alaska's taxes and the permanent fund. The governor previously appointed Crum as the commissioner of the Department of Health.[2] The governor also appointed John Boyle as commissioner of the Department of Natural Resources, which administers Alaska state lands, including oil and gas leasing and the royalties generated by oil and gas production from state lands. Boyle was a government affairs representative in Alaska for BP and, more recently, Santos Ltd.[3] Both appointments are subject to confirmation by the Legislature, although it is unusual for an appointee not to be confirmed.

It is also the time of the year when DOR issues its Fall Revenue Sources Book, which generally coincides with the governor's release of his proposed operating budget. The budget is a perennial topic during the legislative session and tends to be a subject of substantial debate. The same is true with Alaska's tax regime and fiscal structure —topics that always merit substantial education and presentations to the Legislature and can generate lively discussions.

[1]Iris Samuels, "9 Democrats and 8 Republicans Form Bipartisan Majority in Alaska Senate," *Anchorage Daily News*, Nov. 26, 2022.

[2]Staff, "Dunleavy Picks Health Commissioner to Lead Revenue Agency," Associated Press, Nov. 14, 2022.

[3]Staff, "John Boyle Appointed Alaska Resources Commissioner," KINY, Dec. 17, 2022.

2022 Fall Forecast

As usual, the book includes discussions about historical revenues, as well as the revenue forecast that the governor and Legislature rely on during the budget discussions that are part and parcel of the legislative session. Alaska's economy is heavily reliant on the oil and gas industry, and unrestricted revenues (the funds for government operations) are driven by royalties for oil produced from state leases and three categories of taxes:

- **Oil and gas production tax:** A production (severance) tax levied on oil and gas produced in the state with a base tax rate of 35 percent of the net proceeds of production.[4]
- **Petroleum property tax:** An ad valorem tax of 20 mills (2 percent) levied on the assessed value of oil and gas exploration, production, and pipeline transportation properties in the state. Municipalities and boroughs receive proceeds based on their mill rates, with the remainder allocated to the state.[5]
- **Corporate income tax:** A net income tax of up to 9.4 percent on an oil and gas corporation's Alaska taxable income, determined by apportioning its worldwide income to Alaska relative to the rest of the world based on (1) tariffs and sales, (2) oil and gas production, and (3) oil and gas property.[6]

Royalties, production taxes, and corporate income taxes are all sensitive to oil prices and production. While property taxes are not directly sensitive to oil prices, state property taxes are assessed on oil and gas infrastructure — including wells, pipelines, facilities, drilling rigs, machinery, and equipment. A vibrant oil and gas industry leads to capital investment, which is the basis for the state property tax.

Although oil prices did not take the plunges in 2022 that they have in the past, this has not been a year without volatility. And because petroleum revenues are volatile, DOR implemented a new process in January 2022 to notify lawmakers and policymakers regarding changes in anticipated revenues, with the goal of providing accurate and up-to-date information about the state's fiscal condition. DOR puts together a monthly internal revenue outlook for the current and next fiscal year, and although it does not include the level of detail that is included in the official fall and spring revenue forecasts, it does provide a snapshot of expected revenues based on current information. If unrestricted revenues are estimated to be 10 percent more or less than the previous official forecast, DOR issues a notice to legislators and others who have asked to be included on the distribution list. The amount of volatility in calendar year 2022 led to eight of these revenue updates.[7]

We are at the halfway mark in fiscal 2023, with the next fiscal year commencing on July 1, 2024. Looking at the official forecast in the 2022 Fall Revenue Sources Book, compared with DOR's official spring 2022 forecast:

- The Alaska North Slope oil (ANS) price is forecast to be $88.45 per barrel ($12.55 per barrel lower) for fiscal 2023 and $81 per barrel ($9 per barrel lower) for fiscal 2024, and is forecast to stabilize at $75 per barrel by fiscal 2032.
- ANS oil production is expected to be 10,600 barrels per day lower for fiscal 2023 and 500 barrels per day higher for fiscal 2024.
- Unrestricted general fund revenue (before accounting for a transfer from the Alaska Permanent Fund) is forecast to be $3.9 billion ($1.1 billion lower) for fiscal 2023 and $3.4 billion ($0.7 billion lower) for fiscal 2024.
- ANS oil production is anticipated to average 491,700 barrels per day in fiscal 2023 and 503,700 barrels per day in fiscal 2024, and then rise to 543,300 barrels per day by fiscal 2032.[8]

The following tables show the effects of higher oil prices and production on unrestricted general fund revenues from production taxes, property taxes, and corporate income taxes on oil and gas corporations.[9]

[4] Alaska Stat. section 43.55.011, et seq.

[5] Alaska Stat. section 43.56.010, et seq.

[6] Alaska Stat. section 43.20.011, et seq.

[7] These updates, and the official fall and spring forecasts, can be found on the website for the Alaska DOR Tax Division.

[8] Alaska DOR Tax Division, "Fall 2022 Revenue Sources Book" (Dec. 15, 2022).

[9] *Id.*; Alaska DOR Tax Division, "Spring 2022 Revenue Forecast" (Mar. 15, 2022).

Fall 2022 Forecast (in millions)

Unrestricted Petroleum Revenues From Taxes Forecast	Fiscal 2022	Fiscal 2023	Fiscal 2024
Petroleum property tax	$122.4	$116.3	$114
Petroleum corporate income tax	$297.5	$390	$320
Oil and gas production tax	$1,801.6	$1,610.4	$1,228.7

Spring 2022 Forecast (in millions)

Unrestricted Petroleum Revenues From Taxes Forecast	Fiscal 2022	Fiscal 2023	Fiscal 2024
Petroleum property tax	$124	$116	$113
Petroleum corporate income tax	$190	$340	$320
Oil and gas production tax	$1,941	$2,534	$1,754

Payments for Tax Credits

For a little over a decade, companies that invested in oil and gas exploration and development and in refinery infrastructure in the state (among other things), could earn refundable/rebatable tax credits under the Alaska oil and gas production tax and corporate income tax regimes.[10] The funds for payment of the credits have always been subject to legislative appropriation to the oil and gas tax credit fund under Alaska Stat. section 43.55.028, although appropriations were sufficient to meet demand for a number of years. And yet, when oil prices softened in 2015 and fell further in 2016, lawmakers and policymakers were faced with rising budget deficits and the price tag that came with the rebatable tax credits.[11] Appropriations have fallen short of demand since then, and there were no appropriations for payments in fiscal 2020 and 2021.

There has consistently been an outstanding balance of rebatable tax credits since then, although the amount has varied because of appropriations for payments, audit assessments, amended oil and gas production tax returns, and sales of credits from the companies that earned them to producers for use against their oil and gas production taxes. Although companies can no longer earn rebatable tax credits, based on the DOR spring 2022 revenue forecast, released March 15, 2022, $532 million in tax credits awaited purchase.[12]

Alaska Stat. section 43.55.028 sets forth a formula for the appropriation to purchase the tax credits, although the Legislature has not consistently followed it. The formula is based on production tax revenue and oil prices forecast for the fiscal year when the appropriation is made: When oil prices are $60 per barrel or higher, the percentage of production tax revenue is 10 percent, whereas it is 15 percent of production tax revenue when oil prices are forecast to be less than $60 per barrel.[13]

The budget bill that passed the Legislature in 2022 included: (1) a $60 million supplemental appropriation for fiscal 2022 to make up the shortfall from the Legislature's inability to appropriate the amount yielded by the statutory formula in the previous legislative session; and (2) for fiscal 2023, an appropriation of 10 percent of revenue from production taxes levied by Alaska Stat. section 43.55.011, up to $349 million.

The governor left the $60 million fiscal 2022 supplement appropriation intact but reduced through partial veto the fiscal 2023 maximum appropriation amount to $330 million, which when combined with the $60 million appropriation would be adequate to pay for the remaining outstanding credits (the outstanding queue had decreased because of sales of tax credits to taxpayers).

Much to the relief of companies that had been holding rebatable credits for years, DOR moved expeditiously after the budget was passed to commence making payments for the outstanding tax credits. Because payment for the credits is

[10] Alaska Stat. sections 43.55 and 43.20.

[11] *See* Alaska DOR Tax Division, "Revenue Sources Book, Fall 2015," at 77-78 and 99-100 (Dec. 30, 2015).

[12] Spring 2022 Revenue Forecast, *supra* note 9.

[13] Alaska Stat. section 43.55.028(c).

prioritized in the first instance by the year in which the purchase application was made, the remaining queue of 2016 certificates needed to be paid before applications made in later years.[14] The resulting payments totaled around $196 million, which cleared the 2016 tranche of credits in full.

Based on the Fall Revenue Sources Book and forecast and the statutory formula, the total appropriation for fiscal 2023 would be $281 million, which when combined with the fiscal 2022 supplemental appropriation would yield payments in this fiscal year of potentially $341 million. This would mean that roughly $145 million in additional payments are expected this fiscal year if the forecast holds up, leaving $42.7 million for next fiscal year.[15] Applications for purchase in 2017 would be paid first, with applications made in that year prioritized based on resident hire.[16] Given the complications associated with the resident hire determination, it seems likely that DOR would want to pay an entire year's tranche of credits at the same time, meaning that it would likely want to ensure there is enough funding to pay for all of the 2017 purchase queue, then subsequent years.

The governor's proposed operating budget bill implicitly assumes that the forecast will hold up, and for fiscal 2024 includes an appropriation of an estimated $42.7 million for payment of tax credits, which would clear this outstanding obligation. This amount will need to be approved by the Legislature before the payment could be made.

On the Horizon

The next article will include a budget update and a discussion of any moves by the Legislature to change taxes. If anything can be said to be certain, it is that lawmakers and policymakers will be discussing Alaska's fiscal structure and tax regimes this legislative session and that taxpayers and potential investors will be anxious about the possible changes. ■

[14] *See* Alaska Admin. Code tit. 15, section 55.525.

[15] Alaska DOR, Fall 2022 sourcebook, *supra* note 8.

[16] *Supra* note 14.