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In this installment of Alaska Tax: The Last Frontier, Iversen explores recent legislative developments in Alaska and the prospects for yet another special session of the Legislature.

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As of this writing, Alaska is transitioning from summer to fall, and although we tend to cling to summer, there will be natural grace and beauty in the fall colors, morning frost, and cooler air. Termination dust — light snow on the tops of the Chugach Mountains that border Anchorage to the east — has already appeared to prepare us for the rapid shift to fall, and the equally swift welcome of winter. It is a good time to reflect on what has happened over the summer: hiking, camping, fishing, and time with family (occasionally even extended family), and even some time with friends in these unusual and often difficult times marked by frequent isolation. It is also a good time to look forward and prepare for the positive, challenging, and difficult times to come.

In that same reflective vein, Alaska North Slope oil prices have generally been ranging between the upper $60-per-barrel and lower-mid $70-per-barrel range[1] — and that stability is welcome for a state that relies on the oil and gas industry as its economic driver.[2] Not only does the oil and gas industry directly or indirectly employ many Alaskans, but revenues from oil and gas production taxes, corporate income taxes, royalties, and property taxes are tremendously important for state services.[3]

The Alaska Permanent Fund has had a banner year as well. The genesis of the Permanent Fund occurred in the late 1960s and early 1970s, through concerns that the young state's new oil wealth would be spent on government activity rather than preserved for current and future generations of Alaskans.[4] But directing funds generated from oil and gas into a separate account out of easy reach of the Legislature would violate the Alaska Constitution's prohibition on dedicating funds to a particular purpose:

> The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.[5]

[1] *See* Alaska Department of Revenue, Tax Division, Crude Oil and Natural Gas Prices.

[2] *See* McDowell Group, "The Role of the Oil & Gas Industry in Alaska's Economy," prepared for the Alaska Oil and Gas Association (January 2020).

[3] Alaska DOR, Tax Division, "Spring 2021 Revenue Forecast," at 2 (Mar. 15, 2021).

[4] Alaska Permanent Fund Corporation, History.

[5] Alaska Constitution, Article IX, section 7.

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Accordingly, in 1976 Alaska residents approved an amendment to the constitution to create the Permanent Fund.[6] Article IX, section 15 of the Alaska Constitution provides that:

> At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

Thus, not only are a portion of mineral revenues required to be deposited in the Permanent Fund, but the corpus of the fund cannot be spent by the Legislature without voter approval.[7] And the Permanent Fund was created just in time: Construction of the 800-mile Trans-Alaska Pipeline System was completed in June 1977, and the first tanker of North Slope crude oil departed from the Valdez Marine Terminal on August 1, 1977.[8]

Total Permanent Fund returns for 2021 hit 30 percent, raising the fund's value from roughly $65 billion in 2020 to $81 billion in 2021, comprising $60 billion in principal and $21 billion in the Earnings Reserve Account.[9] Although the principal of the Permanent Fund is protected savings, the Earnings Reserve Account — a separate account for net income from the Permanent Fund's investments — can be spent by the Legislature for government activity and has been used for specific services and programs and Permanent Fund dividends for Alaskans.[10]

Meanwhile, oil and gas companies that earned rebatable oil and gas production tax credits under Alaska Stat. section 43.55.023 and Alaska Stat. section 43.55.025 for investment in Alaska oil and gas exploration, development, and production have been left without payment by the state for any portion of them for over two years.[11] As of March 15, $744 million in tax credits await purchase, and almost half of this queue dates back to credits earned before 2017.[12]

For years, Alaskans have debated the state's fiscal structure, and this year has been no exception. To spend or not to spend the Earnings Reserve Account? How much Permanent Fund earnings should be preserved for future generations versus balancing the state's budget? How much should be used — this year and into the future — for Permanent Fund dividends? And to what extent — if at all — should new or increased taxes be included as part of a fiscal plan? And what about all those companies that invested in Alaska in reliance on the state paying for the rebatable credits?

All of a sudden, the reflection got muddy.

Regular Legislative Session

Gov. Mike Dunleavy (R) has been pushing hard for a fiscal package rather than a piecemeal approach to Alaska's financial conundrum. Before the regular legislative session — which ran from January 19 to May 19 — the governor announced his fiscal 2022 budget package, which included funding the previously unfunded portion of the 2020 Permanent Fund dividend, a full fiscal 2022 Permanent Fund dividend, a new Permanent Fund dividend formula, and constitutional amendments to protect the Permanent Fund, impose a government spending cap, and require voter approval for any new taxes.[13]

The operating budget bill introduced by Dunleavy included a proposed appropriation of $60 million for tax credit purchases in fiscal 2022 based on a statutory formula.[14] The formula is based on production tax revenues and oil prices forecast for the fiscal year when the appropriation

[6] Alaska Permanent Fund Corporation, History.

[7] *Id*.

[8] Alyeska Pipeline Service Company, TAPS Construction.

[9] Alaska Permanent Fund Corporation, Our Performance.

[10] Alaska Permanent Fund Corporation, Renewable Financial Resource; Alaska Stat. section 37.13.145(a).

[11] *See* letter from Alaska DOR, Commissioner's Office to Senate President Peter Micciche (R) and House Clerk (Feb. 5, 2021).

[12] Alaska DOR, Tax Division, "Spring 2021 Revenue Forecast," at 18 (Mar. 15, 2021); *see* letter from DOR to the Alaska Legislature (Jan. 29, 2020).

[13] Governor's office, "A Path Forward: Governor Dunleavy Introduces Budget to Stabilize Alaska's Economy" (Dec, 11, 2020).

[14] *See* H.B. 69. The budget bill and related documents are published by the Alaska Office of Management and Budget.

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is made: When oil prices are $60 per barrel or higher, the percentage of production tax revenues is 10 percent, whereas it is 15 percent of production tax revenues when oil prices are forecast to be less than $60 per barrel.[15] Because the governor released the proposed budget legislation on December 11, 2020, the inputs that yielded $60 million came from the Department of Revenue's fall forecast.[16] However, on March 15 the DOR released its spring forecast, and because of higher production tax revenues, the formula yielded $114 million and the governor amended his budget bill accordingly.[17]

Dunleavy did not introduce any legislation to increase taxes, but several legislators did, and while no tax measures passed, a high-level summary sheds some light on the various topics under consideration — which remain on the table for discussion in the next legislative session:

- S.B. 107 is similar to the Fair Share Act Initiative proposal to rewrite the oil and gas production tax that voters soundly rejected in the November 2020 election.[18] S.B. 107 would apply to oil produced from major fields, meaning fields that have produced 400 million barrels of oil in total and more than 40,000 barrels of oil in the previous year. It would increase the base tax and minimum tax rates, limit the application of tax credits, complicate reporting requirements, and make sensitive tax and other information publicly available.
- S.B. 13 would increase the property tax on oil and gas exploration, production, and pipeline transportation properties from 20 mills (2 percent of assessed value) to 30 mills (3 percent of assessed value).
- H.B. 130 would expand the application of Alaska's corporate income tax beyond just corporations by making any oil or gas business entity subject to the tax. An oil or gas business entity is defined as "a person engaged in the production of oil or gas from a lease or property in this state or engaged in the transportation of oil or gas by pipeline in this state." This would include not only passthrough entities like partnerships, S corporations, and limited liability companies but also individuals, joint ventures, and so forth engaged in oil and gas production or pipeline transportation. H.B. 130 would also change the limitation on the use of federal credits and a deduction for royalties, and reject the changes made to the income tax net operating loss provisions by the Coronavirus Aid, Relief, and Economic Security Act such that Alaska's treatment of NOLs would follow the law as it read before the CARES Act was enacted (this provision of the bill applies to all Alaska corporate income tax payers, including oil and gas and non-oil-and-gas corporations).
- H.B. 9 would create a graduated-rate income tax on individuals, partners in partnerships, shareholders in S corporations, trusts, and estates.
- H.B. 37 would create a broad-based income tax applying to individuals, trusts, and estates — including partners or shareholders of partnerships or S corporations. The tax rate would be 2.5 percent of the taxpayer's federal adjusted gross income.
- S.B. 100 would impose an income tax on individuals equal to 5 percent of federal AGI.
- S.B. 106 would impose an income tax on any entity of 9.4 percent of income from oil and gas production or transportation in Alaska in excess of $4 million in a tax year. The tax would not apply to corporations already subject to corporate income taxes, but would apply to sole proprietorships, partnerships, and other entities.
- H.B. 104, which would increase motor fuel tax rates, saw significant activity during the 2021 regular session.

None of these bills or the governor's proposals passed, nor did the Legislature approve a budget by the end of the regular session, which necessitated a special legislative session.

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

[16] Alaska DOR, Tax Division, "Revenue Sources Book Fall 2020," at 74 (Dec. 11, 2020).

[17] Alaska DOR, Tax Division, "Spring 2021 Revenue Forecast," at 18 (Mar. 15, 2021); Alaska OMB, FY 2022 Operating Amendments Backup (Apr. 19, 2021).

[18] *See* Elwood Brehmer, "Oil Tax Increase Defeated, but Revenue Issue Remains," *Alaska Journal of Commerce*, Nov. 18, 2020.

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A Tale of Three — Going on Four — Special Sessions

The governor convened the first special session from May 20 to June 18 to press his agenda and for the Legislature to pass a budget.[19] The clock ran out with neither the budget nor the governor's proposals passing, and Dunleavy convened the second special session on June 23 to avoid a government shutdown on July 1.[20] While the Legislature managed to pass a budget sufficient to avoid a shutdown, it did not provide appropriations for several items — including payment for the outstanding tax credits.

Dunleavy convened the third special session on August 16 to continue to press his constitutional amendments concerning the Permanent Fund, Permanent Fund dividend, and budget cap — and for the Legislature to consider revenue measures of its choosing and the $114 million payment for the outstanding rebatable tax credits.[21] Several lawmakers introduced bills to raise taxes:

- H.B. 3007 would dramatically reduce the production tax per-barrel credit for legacy oil fields.
- H.B. 3005 would change the production tax to increase the North Slope minimum tax for oil produced in 2022 and 2023.
- H.B. 3006 would create a 2 percent state sales and use tax.
- S.B. 3002 would:
  - apply the corporate income tax to an entity with taxable income over $4 million in a tax year at 9.4 percent on the qualified income over $4 million (an entity is defined to include a sole proprietorship, partnership, or S corporation);
  - double the motor fuel tax; and
  - reduce the production tax per-barrel credit for legacy fields.

And of course, COVID-19 is not helping matters. On September 2 the governor added bills relating to telehealth and nursing to the special session agenda in light of a COVID-19 surge.[22]

The third special session ended September 14. The only measure that passed was H.B. 3003, an appropriations bill that included $730.5 million for payment of Permanent Fund Dividends amounting to $1,100 per eligible individual (less than half of the governor's proposed $2,350), and $54 million for payment for the rebatable tax credits. The House voted on a version of H.B. 3003 that included $114 million in rebatable tax credits to align with the DOR's calculation based on the statutory formula, but $60 million of that was to be funded through the Constitutional Budget Reserve, a savings account requiring a 3/4 supermajority vote to access — a threshold the eventual vote did not meet. The Senate approved the legislation without amendment, so $54 million will be the payment for rebatable tax credits for fiscal 2022 absent further action.

On the Horizon

The governor called a fourth special session just hours after the Legislature — set to convene on October 1 — and the subject broadly includes any acts related to a fiscal plan. Alaska taxpayers are rightfully on edge about potential tax increases, while holders of rebatable tax credits anxiously await the anticipated payment and hope for an additional appropriation. What lies ahead is unclear, but we do know that debates about taxes and payments for credits will continue. My next article will include an update on the Legislature's progress (or lack thereof), perhaps with some reflection that is a little less muddy. ■

[19] Governor's office, "Governor Calls Special Session to Protect Alaska Permanent Fund" (May 13, 2021).

[20] Governor's office, "Governor Takes Immediate Action, Calls Legislature Into Second Special Session" (June 18, 2021).

[21] Governor's office, "Governor Dunleavy to Convene Special Session on August 16" (July 29, 2021); and Governor's office, "Governor Provides Vehicle for $2,350 PFD and Student Scholarships" (Aug. 19, 2021).

[22] Governor's office, "Governor Dunleavy Amends Special Session Call to Accelerate COVID-19 Response" (Sept. 2, 2021).

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