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Jonathan E. Iversen is the managing partner of Stoel Rives LLP's office in Anchorage, Alaska. He provides tax planning and tax structuring advice and represents clients in tax audits and appeals. His practice emphasizes Alaska state and local taxation. Previously, Iversen served as director of the Alaska Department of Revenue's Tax Division.

In this installment of Alaska Tax: The Last Frontier, Iversen reviews the factors that play into Alaska's current revenue forecast and what effect they will have on fiscal policy in this legislative session.

We have started the transition toward what Alaskans refer to as breakup, a period of warmer temperatures and sunshine — usually in April and May — that lead to quickly melting snow and the breaking up of ice. Sometimes it feels like a mixed blessing, because it can be a wet and gritty (literally — think road grit and muck and mire that has been covered in ice and snow for a few months) process that takes away winter activities and signals the shift into spring. We will be slogging through slushy puddles but grateful for the extra daylight, particularly in the evening. In some ways, it's the start of the year in Alaska, and it certainly lifts spirits.

This year, we are also seeing the energizing effects of increased oil prices. Although this is a double-edged sword because we will be paying higher prices at the pumps, Alaska's revenue stream unquestionably gets a big boost from higher oil prices. Higher oil prices should also signal additional — and larger — payments for outstanding rebatable Alaska tax credits, the bulk of which were earned by oil and gas companies for investments in oil and gas exploration, development, and production made before 2017.

We have also passed the midway point of the current regular session, which began January 18, but what that means in terms of the conclusion of legislative activity this year remains to be seen. The current regular session started January 18, and the Alaska Constitution sets a general limitation of 121 days on the duration of the regular session.[1] However, in the 2006 general election, Alaska voters approved a citizen initiative (Ballot Measure 1) to reduce the maximum length of the regular session from 121 days to 90 days.[2] Although the 90-day limit has been in effect since 2008, the Legislature has regularly blown through it,[3] only completing its work within 90 days — with no special sessions — in 2009 and 2013.[4] And last year, not only did the regular legislative session run the full 121 days, but the Legislature also broke a record for days in session during a calendar year because of an additional four special sessions.[5]

In any event, the Legislature has been busy this session with much of the typical agenda and priorities, many of which revolve around the budget. As usual, taxes are being discussed despite the revenue coming (and forecast to come)

[1] Alaska Constitution, Art. II, section 8.

[2] *See* State of Alaska, "2006 Official Election Pamphlet."

[3] Alaska Stat. section 24.05.150(b).

[4] *See* James Brooks, "Alaska Legislators Again Prepare to Bypass 90-Day Session-Limit Law," *Anchorage Daily News*, Apr. 7, 2021.

[5] *See* Andrew Kitchenman, "Alaska Legislature Breaks Record for Days in Session, With Frustration Rising to the Surface," Alaska Public Media and KTOO, Oct. 29, 2021.

in from higher oil prices, and companies that earned rebatable tax credits are anxiously hoping for additional, meaningful appropriations that will pay down the queue of outstanding credits.

Fall 2021 Revenue Forecast

To be fair, notwithstanding higher oil prices, any robust discussion of Alaska's revenue picture must include the Alaska Permanent Fund, and it is helpful to understand its genesis and ties to the state's oil wealth. Discussions about this fund were sparked by concerns in the late 1960s and early 1970s that revenues coming from North Slope oil production would be consumed by government spending rather than preserved for Alaskans.[6] But directing these funds to a dedicated account not readily accessible by the Legislature would violate the state constitution.[7] This led voters to approve a constitutional amendment in 1976 to establish the Permanent Fund:

> 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.[8]

Accordingly, a portion of mineral revenues must be deposited in the Permanent Fund, and the corpus of the fund cannot be spent by the Legislature without voter approval.[9]

The Permanent Fund had a banner year in 2021, and based on the Department of Revenue's official fall revenue forecast, issued December 15, 2021, it is expected to continue to be not only the reliable source of the Permanent Fund dividends that Alaskans enjoy, but the bedrock of unrestricted general fund revenue (which can be used for general government spending and payment of the dividends) for Alaska.[10] As of the forecast, the Permanent Fund was expected to contribute $3.1 billion to the general fund in fiscal 2022 and $3.4 billion in fiscal 2023.[11] The Permanent Fund is expected to generate at least 54 percent of unrestricted general fund revenue for the next 10 years.[12]

Unrestricted revenues are also 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.[13]
- **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 remainder allocated to the state.[14]
- **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 (i) tariffs and sales; (ii) oil and gas production; and (iii) oil and gas property.[15]

Royalties, production taxes, and corporate income taxes are all very sensitive to oil prices. While property taxes are not directly sensitive to oil prices, they are based on oil and gas infrastructure in the state — including wells, pipelines, facilities, drilling rigs, machinery, and equipment.

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[6] Alaska Permanent Fund Corporation, "History" (last visited Mar. 4, 2022).

[7] Alaska Constitution, Art. IX, section 7 (prohibiting the dedication of proceeds of any state tax or license to any special purpose).

[8] Alaska Constitution, Art. IX, section 15.

[9] *Id.*

[10] Alaska DOR, Tax Division, "Revenue Sources Book Fall 2021" (Dec. 15, 2021).

[11] *Id.* at Letter to Gov. Mike Dunleavy (R) from Revenue Commissioner Lucinda Mahoney.

[12] *Id.*

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

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

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

Compared with the DOR's spring 2021 forecast, the agency predicted in the fall that Alaska North Slope oil prices would increase by almost $15 per barrel for fiscal 2022 and $9 per barrel in fiscal 2023, with North Slope oil production expected to increase by 27,100 barrels per day in fiscal 2022 and 23,600 barrels per day in fiscal 2023.[16] The result would be unrestricted general fund revenue increases of $1 billion and $800 million, respectively, for those fiscal years.[17] Total unrestricted general fund revenue from petroleum was forecast to be (rounded) $2.3 billion for fiscal 2022 and $2.1 billion for fiscal 2023.

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.[18]

Fall 2021 Forecast			
	Millions of Dollars		
	History	**Forecast**	**Forecast**
Unrestricted Petroleum Revenue From Taxes	**Fiscal 2021**	**Fiscal 2022**	**Fiscal 2023**
Petroleum Property Tax	119.2	113.7	110.9
Petroleum Corporate Income Tax	-19.4	145	240
Oil and Gas Production Tax	389	979.6	741.2

Spring 2021 Forecast			
	Millions of Dollars		
	Forecast		
Unrestricted Petroleum Revenue From Taxes Forecast	**Fiscal 2021**	**Fiscal 2022**	**Fiscal 2023**
Petroleum Property Tax	122.2	114.9	112.4
Petroleum Corporate Income Tax	25	25	110
Production Tax	303	368.6	375.9

Rebatable Tax Credits

Although the laws allowing companies to earn rebatable tax credits have been repealed, as of January 1, $565 million in tax credits await purchase — $221 million of which date back to credits issued before 2017 for expenditures incurred in earlier years.[19] This figure accounts for $54 million in rebatable tax credits purchased by the state in 2021.

While the $54 million payment did result in an important reduction to the queue of outstanding rebatable tax credits, it fell short of the $114 million that would have been appropriated had the Legislature followed a statutory formula and the DOR's spring 2021 forecast last session.[20] 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 revenues is 10 percent, whereas it is 15 percent of production tax revenue when oil prices are forecast to be less than $60 per barrel.[21] Of the $114 million passed by the House last session, $60 million was to be funded through the Constitutional Budget Reserve, and that portion required a three-fourths supermajority vote — which failed. The Senate passed the bill without amendment, hence $54 million was approved

[16] Letter to Dunleavy, *supra* note 11.

[17] "Revenue Sources Book Fall 2021," *supra* note 10.

[18] *Id*. at 5; Alaska DOR, Tax Division, "Spring 2021 Revenue Forecast," at 17 (Mar. 15, 2021).

[19] *See* Letter from Mahoney to Alaska Senate President Peter Micciche (R) and House Speaker Louise Stutes (R), Feb. 8, 2022.

[20] "Spring 2021 Revenue Forecast," *supra* note 18, at 13.

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

for the fiscal 2022 budget in the third special session of 2021.

To make up for the fiscal 2022 budget shortfall, H.B. 287 has been introduced this session to appropriate $60 million for payment for tax credits. H.B. 250 would also accomplish that objective in addition to making appropriations to several other funds.

Based on higher oil price and production forecasts, the DOR's fall 2021 forecast would yield a $199 million appropriation for fiscal 2023 if the Legislature abides by the statutory formula.[22] Accordingly, Republican Gov. Mike Dunleavy's operating budget bill includes that amount as the proposed appropriation to the oil and gas tax credit fund.[23] Typically, the budget legislation is amended based on the DOR's spring forecast, which should be coming out within a few weeks of this writing. Given the continued rise in oil prices, the spring forecast is anticipated to yield a larger figure for the appropriation for payment for the tax credits.

Tax Legislation

As usual, taxes are a topic of conversation in the Legislature. Although the governor has not introduced legislation to increase taxes, and in spite of the much-improved revenue picture, several legislators have proposed tax changes that would:

- increase the oil and gas exploration, production, and pipeline transportation property tax from 20 mills to 30 mills;[24]
- increase the minimum oil and gas production tax for North Slope oil from a maximum of 4 percent to 6 percent of the gross value at the point of production for 2023 and 2024;[25]
- impose a 2 percent statewide sales and use tax (Alaska has no state sales and use tax, although several municipalities impose sales taxes);[26] and
- impose an income tax on individuals, partners in partnerships, shareholders in S corporations, trusts, and estates.[27]

On the Horizon

It is unclear how much traction any tax increase will get this legislative session, and passage of those changes seems unlikely in this environment. As for the budget, it typically remains unfinalized until the end of the session. Alaska taxpayers and holders of outstanding rebatable tax credits will be watching closely. ■

[22] "Revenue Sources Book Fall 2021," *supra* note 10, at 72.

[23] H.B. 281; S.B. 162.

[24] S.B. 13.

[25] H.B. 369.

[26] H.B. 373.

[27] S.B. 154.