From: "Alper, Ken (DOR)" <ken.alper@alaska.gov>
Date: May 17, 2015 at 3:19:14 PM AKDT
To: "Rep. Les Gara" <Rep.Les.Gara@akleg.gov>
Subject: tax credit fund

Rep. Gara,
The language you asked me about is in the statute that talks about how DOR purchases credits.
When ACES passed, language was added to broaden the state's ability to purchase oil and gas tax credits.

Credit repurchase is a two-step process. First, companies submit their accounting records, which are audited by Tax Division staff.
Based on the qualified amounts of spending, we issue tax credit certificates. The certificates can be used in one of three ways:

1) **Held until the taxpayer has a tax liability, and used to reduce their taxes (they don't expire);**
2) **Sold to another company with a tax liability; or**
3) **Cashed in ("repurchased") by the state.**

The tax credit fund, also called the "028 fund", is the mechanism we use to purchase them. At the Tax division, we approve transfers of funds from the GF to the 028 fund as needed, based on the demand from the companies that hold the credit certificates.
Importantly, as part of ACES, the legislature added language to indicate an intent that the amount we'd spend wouldn't be too large, compared to our actual tax revenues:
Sec. 43.55.028. Oil and gas tax credit fund established; cash purchases of tax credit certificates.

(a) The oil and gas tax credit fund is established as a separate fund of the state. The purpose of the fund is to purchase transferable tax credit certificates issued under AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 and to pay refunds and payments claimed under AS 43.20.046 , 43.20.047, or 43.20.053.

(b) **The oil and gas tax credit fund consists of**
(1) **money appropriated to the fund, including any appropriation of the percentage provided under (c) of this section of all revenue from taxes levied by AS 43.55.011** that is not required to be deposited in the constitutional budget reserve fund established in art. IX, sec. 17(a), Constitution of the State of Alaska; and
(2) earnings on the fund.

(c) The applicable percentage for a fiscal year under (b)(1) of this section is determined with reference to the average price or value forecast by the department for Alaska North Slope oil sold or otherwise disposed of on the United States West Coast during the fiscal year for which the appropriation of revenue from taxes levied by AS 43.55.011 is made. If that forecast is
(1) $60 a barrel or higher, the applicable percentage is 10 percent;
(2) less than $60 a barrel, the applicable percentage is 15 percent.

The way this is written, the maximum amount is intended to be 10% of the taxes levied by AS 43.55.011. That's the production tax, before any credits against liability are subtracted. For FY16, the production taxes we're estimated to actually receive (per the spring forecast) is $320 million, but this is after $590 million in credits is taken against tax liability (subtracted). This is mostly the per-barrel credit, reducing taxes down to the level of the 4% minimum tax. Those credits are from a different statute than AS 43.55.011. Therefore, the "tax" part is 320+590=$910 million. That's the amount collected from .011. And 10% of that is $91 million.
Strictly read, the intent of AS 43.55.028 is for the state to only repurchase $91 million worth of credits in FY16.

However, since at least FY11, the legislature has avoided this cap by writing open-ended appropriation language into the operating budget. This allows for purchasing as many credits as the companies ask for ("present for purchase"):

From CC HB72, the Operating Budget:

*** Sec. 25.** FUND CAPITALIZATION
(d) If the balance of the oil and gas tax credit fund (AS 43.55.028) is insufficient to purchase transferable tax credit certificates issued under AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 that are presented for purchase, **the amount by which the tax credit certificates presented for purchase exceeds the balance of the fund**, estimated to be $700,000,000**, is appropriated from the general fund to the oil and gas tax credit fund** (AS 43.55.028).

Identical language has been in every operating budget since 2010. Only the estimated amount changes from year to year.

To this email I've attached the latest version of our standard credit detail report, which we've shared widely. In it you can see how much was actually spent on credit reimbursements per year.
This is important, because the "estimated to be" language in the budget often falls far short of the "actual" amount we purchase.

Over the last 5 years, the legislature has greatly underestimated the credits in the operating budget in three of them. When they have overestimated, it has been by a much smaller amount:

Year	**Credit estimate (budget) (millions)**	**Credit Actual (millions)**	**Difference (millions)**
FY11	$180	$450	$270
FY12	$400	$353	-$47
FY13	$400	$369	-$31
FY14	$400	$593	$193
FY15	$450	(est) $625	$175
5 yr total	**$1,830**	**$2,390**	**$560**

So, from this you must understand that the $700 million "estimate" in the FY16 operating budget is just a placeholder.
As written, the actual amount that DOR purchases will be the amount that companies qualify and ask for. It is open ended.

Please let me know if you need any additional information.
Regards
Ken

Ken Alper, Director
Alaska Department of Revenue
Tax Division
907-465-8221