

ALASKA



STATE LEGISLATURE

MEMORANDUM

TO: Legislative Budget and Audit Committee Members

FROM: Representative Chris Tuck
Chairman, Legislative Budget and Audit Committee

Representative Ivy Spohnholz
Member, Legislative Budget and Audit Committee

DATE: December 4, 2020

RE: Oil and Gas Production Tax Audit Process

Chris Tuck

Ivy Spohnholz

The Department of Revenue's (DOR) Tax Division is charged with the responsibility of auditing tax payments made to the state under the Oil and Gas Production Tax, AS 43.55, as well as tax credits earned by producers and explorers. Over the past year, the division has refused auditors access to records which led to a qualified opinion in the FY2019 Statewide Single Audit. Additionally, my office has become aware DOR denied legislators requests for information regarding the status of audit assessments under the premise that information was confidential. However, this information has been willingly provided by past administrations and is not confidential.

In recognition of the significant role that taxes and royalties play in our state budget and the importance of transparency and accountability of state government, I respectfully request that an audit be performed of DOR's oil and gas production tax audit process.

Specifically, the audit should:

- 1) Analyze oil and gas production tax staff levels and workloads, and compare them to the prior legislative audit of the oil and gas audit process dated June 20, 2014.
- 2) Compare DOR's oil and gas tax audit process to the prior audit dated June 20, 2014, and identify substantial changes in DOR's audit process and priorities.
- 3) Determine whether there are any significant reinterpretations of statute or regulation that may have reduced taxes or tax audit assessments since the beginning of 2019.

- 4) Determine whether tax audit assessments have been paid using transferrable tax credit certificates. This should include an analysis of whether this practice may have diverted funds that should have constitutionally been deposited into the CBRF. Notably, this item should include analysis of any distinction between an audit assessment based on underpaid tax vs. an assessment based on a previous overpayment for tax credits. This item should also determine whether tax credits were used in the negotiation and settlement of not-yet-assessed tax obligations that have been rolled into the settlement of assessed tax years.
- 5) Determine whether taxpayers may have refiled taxes in advance of an audit decision, so as to avoid having any additional taxes be considered resulting from an “administrative proceeding.” If so, were such additional taxes classified as General Fund revenue rather than going into the Constitutional Budget Reserve Fund (CBRF) per Art. IX, Sec. 17(a). As part of this analysis, determine whether the state is entering into any form of agreement with the tax payer outside of the audit assessment process that could be interpreted to be part of an administrative proceeding.
- 6) Identify the total amount of additional tax, interest, and penalty assessed for each annual tax cycle. This information has been published from at least 2000 through 2012. However, DOR has chosen to no longer provide this aggregated, non-confidential data. (Note: 2000-2007 data was presented in the 2014 Legislative Audit report Exhibit 6; 2008-2012 was generated by the Tax Division in annual summary letters and distributed to interested parties.) To date, at least 2013 has been completed, and 2014 should be nearing completion. The statute of limitations for 2014 audits is March 31, 2021.
- 7) Provide an update on status of past audit assessments. Previously, DOR has provided this information to committees, regarding how much from each prior cycle had been paid, how much was in appeals, how much had been escalated to OAH or courts, etc. This is no longer being provided, although DOR in an email said that there were no open assessments through the 2013 cycle. If this is the case, about \$1.3 billion in open assessments that had been identified as of January 2019 (tax years 2006-2012) have been settled, plus an unknown amount from 2013.
- 8) Follow up of other related concerns identified by the Legislative Auditor during the audit.