

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 9, 2018

**SUBJECT:** Departures from the Multistate Tax Compact  
(Work Order No. 30-LS1231\A)

**TO:** Representative Neal Foster  
Attn: Brodie Anderson

**FROM:** Emily Nauman   
Legislative Counsel

The abovementioned bill is attached. Please consider the following drafting notes.

Departure from the MTC. The attached bill requires utilities to allocate and apportion their income under the Multistate Tax Compact (MTC). Currently, the MTC excludes public utilities. As you might be aware, there has been some disagreement about whether a state can amend or alter the calculation under the MTC without abandoning the compact in its entirety. On December 31, 2015, the California Supreme Court ruled in *Gillette Co. v. Franchise Tax Bd.* That ruling reversed the California Court of Appeals decision and held that the state may preclude a taxpayer from using the MTC's allocation and apportionment calculations by enacting an alternate allocation and apportionment formula into law.<sup>1</sup> More broadly, the Court held that the MTC was not a binding and reciprocal agreement and that it may be amended and superseded by state statute. The United States Supreme Court denied certiorari on the case.

Although the ruling of the California Supreme Court does not bind the federal or Alaska courts, it likely will provide guidance in the event that your bill is challenged.<sup>2</sup> Given the California holding, I believe it is likely that the public utility allocation and apportionment sections of the attached bill would be upheld if challenged in an Alaska court.

Utilities. In my research, I was unable to determine why public utilities were exempted from income allocation under the MTC. There may be a lingering reason we are unaware of. You might consider inquiring with the Department of Revenue about this issue.

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<sup>1</sup> 62 Cal. 4th 468, 363 P.3d 94, 96 (2015), cert. denied sub nom. *Gillette Co. v. California Franchise Tax Bd.*, 137 S. Ct. 294 (2016).

<sup>2</sup> Or the alternate allocation and apportionment formulas in existing law, at AS 43.20.143 - 43.20.145.

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Effective Date. I gave the bill an effective date of January 1, 2019. Is this consistent with your intent?

If I may be of further assistance, please advise.

ELN:mlp

18-010.mlp

Attachment