

CS FOR SENATE BILL NO. 122(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Multistate Tax Compact; relating to apportionment of income to**
2 **the state; establishing an income tax on certain entities producing or transporting oil or**
3 **gas in the state; relating to highly digitized businesses subject to the Alaska Net Income**
4 **Tax Act; and providing for an effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 43.19.010 is amended to read:

7 **Sec. 43.19.010. Compact.** The Multistate Tax Compact is hereby enacted into
8 law and entered into with all jurisdictions legally joining in it, in the form substantially
9 as follows:

10 **ARTICLE I.**

11 **PURPOSES.**

12 The purposes of this compact are to:

- 13 1. Facilitate proper determination of state and local tax liability of multistate
14 taxpayers, including the equitable apportionment of tax bases and settlement of

1 apportionment disputes.

2 2. Promote uniformity or compatibility in significant components of tax
3 systems.

4 3. Facilitate taxpayer convenience and compliance in the filing of tax returns
5 and in other phases of tax administration.

6 4. Avoid duplicative taxation.

7 ARTICLE II.

8 DEFINITIONS.

9 As used in this compact:

10 1. "State" means a state of the United States, the District of Columbia, the
11 Commonwealth of Puerto Rico, or any territory or possession of the United States.

12 2. "Subdivision" means any governmental unit or special district of a state.

13 3. "Taxpayer" means any corporation, partnership, firm, association,
14 governmental unit or agency or person acting as a business entity in more than one
15 state.

16 4. "Income tax" means a tax imposed on or measured by net income including
17 any tax imposed on or measured by an amount arrived at by deducting expenses from
18 gross income, one or more forms of which expenses are not specifically and directly
19 related to particular transactions.

20 5. "Capital stock tax" means a tax measured in any way by the capital of a
21 corporation considered in its entirety.

22 6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on
23 or measured by the gross volume of business, in terms of gross receipts or in other
24 terms, and in the determination of which no deduction is allowed which would
25 constitute the tax an income tax.

26 7. "Sales tax" means a tax imposed with respect to the transfer for a
27 consideration of ownership, possession or custody of tangible personal property or the
28 rendering of services measured by the price of the tangible personal property
29 transferred or services rendered and which is required by state or local law to be
30 separately stated from the sales price by the seller, or which is customarily separately
31 stated from the sales price, but does not include a tax imposed exclusively on the sale

1 of a specifically identified commodity or article or class of commodities or articles.

2 8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is
3 imposed on or with respect to the exercise or enjoyment of any right or power over
4 tangible personal property incident to the ownership, possession or custody of that
5 property or the leasing of that property from another including any consumption,
6 keeping, retention, or other use of tangible personal property and (b) is complementary
7 to a sales tax.

8 9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax,
9 use tax, and any other tax which has a multistate impact, except that the provisions of
10 Articles III, IV and V of this compact shall apply only to the taxes specifically
11 designated therein and the provisions of Article IX of this compact shall apply only in
12 respect to determinations pursuant to Article IV.

13 ARTICLE III.

14 ELEMENTS OF INCOME TAX LAWS.

15 TAXPAYERS OPTION, STATE AND LOCAL TAXES.

16 1. Any taxpayer subject to an income tax whose income is subject to
17 apportionment and allocation for tax purposes pursuant to the laws of a party state or
18 pursuant to the laws of subdivisions in two or more party states may elect to apportion
19 and allocate the taxpayer's income in the manner provided by the laws of such state or
20 by the laws of such states and subdivisions without reference to this compact, or may
21 elect to apportion and allocate in accordance with Article IV. This election for any tax
22 year may be made in all party states or subdivisions thereof or in any one or more of
23 the party states or subdivisions thereof without reference to the election made in the
24 others. For the purposes of this paragraph, taxes imposed by subdivisions shall be
25 considered separately from state taxes and the apportionment and allocation also may
26 be applied to the entire tax base. In no instance wherein Article IV is employed for all
27 subdivisions of a state may the sum of all apportionments and allocations to
28 subdivisions within a state be greater than the apportionment and allocation that would
29 be assignable to that state if the apportionment or allocation were being made with
30 respect to a state income tax.

31 TAXPAYER OPTION, SHORT FORM.

1 **Constitution of the United States, but that is apportioned rather than allocated**
2 **pursuant to the laws of this state** [OPERATIONS].

3 (b) "Commercial domicile" means the principal place from which the trade or
4 business of the taxpayer is directed or managed.

5 (c) "Compensation" means wages, salaries, commissions and any other form
6 of remuneration paid to employees for personal services.

7 (d) "Financial organization" means any bank, trust company, savings bank,
8 industrial bank, land bank, safe deposit company, private banker, savings and loan
9 association, credit union, cooperative bank, small loan company, sales finance
10 company, investment company, or any type of insurance company.

11 (e) "**Non-apportionable** [NONBUSINESS] income" means all income other
12 than **apportionable** [BUSINESS] income.

13 (f) "Public utility" means any business entity (1) which owns or operates any
14 plant, equipment, property, franchise, or license for the transmission of
15 communications, transportation of goods or persons, except by pipe line, or the
16 production, transmission, sale, delivery, or furnishing of electricity, water or steam;
17 and (2) whose rates of charges for goods or services have been established or
18 approved by a federal, state or local government or governmental agency.

19 (g) "sales" means all gross receipts of the taxpayer **that are** not allocated
20 under paragraphs of this Article, **and that are received from transactions and**
21 **activity in the regular course of the taxpayer's trade or business; except that sales**
22 **of a taxpayer from hedging transactions and from the maturity, redemption,**
23 **exchange, loan, or other disposition of cash or securities, shall be excluded.**

24 (h) "State" means any state of the United States, the District of Columbia, the
25 Commonwealth of Puerto Rico, any territory or possession of the United States, and
26 any foreign country or political subdivision thereof.

27 (i) "This state" means the state in which the relevant tax return is filed or, in
28 the case of application of this Article to the apportionment and allocation of income
29 for local tax purposes, the subdivision or local taxing district in which the relevant tax
30 return is filed.

31 2. Any taxpayer having income from business activity which is taxable both

1 within and outside this state, other than activity as a financial organization or public
2 utility or the rendering of purely personal services by an individual, shall allocate and
3 apportion net income as provided in this Article. If a taxpayer has income from
4 business activity as a public utility but derives the greater percentage of income from
5 activities subject to this Article, the taxpayer may elect to allocate and apportion the
6 taxpayer's entire net income as provided in this Article.

7 3. For purposes of allocation and apportionment of income under this Article, a
8 taxpayer is taxable in another state if (1) in that state the taxpayer is subject to a net
9 income tax, a franchise tax measured by net income, a franchise tax for the privilege
10 of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject
11 the taxpayer to a net income tax regardless of whether, in fact, the state does or does
12 not.

13 4. Rents and royalties from real or tangible personal property, capital gains,
14 interest, dividends or patent or copyright royalties, to the extent that they constitute
15 **nonapportionable** [NONBUSINESS] income, shall be allocated as provided in
16 paragraphs 5 through 8 of this Article.

17 5.(a) Net rents and royalties from real property located in this state are
18 allocable to this state.

19 (b) Net rents and royalties from tangible personal property are allocable to this
20 state: (1) if and to the extent that the property is utilized in this state, or (2) in their
21 entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not
22 organized under the laws of or taxable in the state in which the property is utilized.

23 (c) The extent of utilization of tangible personal property in a state is
24 determined by multiplying the rents and royalties by a fraction, the numerator of
25 which is the number of days of physical location of the property in the state during the
26 rental or royalty period in the taxable year and the denominator of which is the number
27 of days of physical location of the property everywhere during all rental or royalty
28 periods in the taxable year. If the physical location of the property during the rental or
29 royalty period is unknown or unascertainable by the taxpayer, tangible personal
30 property is utilized in the state in which the property was located at the time the rental
31 or royalty payer obtained possession.

1 6.(a) Capital gains and losses from sales of real property located in this state
2 are allocable to this state.

3 (b) Capital gains and losses from sales of tangible personal property are
4 allocable to this state if (1) the property had a situs in this state at the time of the sale,
5 or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not
6 taxable in the state in which the property had a situs.

7 (c) Capital gains and losses from sales of intangible personal property are
8 allocable to this state if the taxpayer's commercial domicile is in this state.

9 7. Interest and dividends are allocable to this state if the taxpayer's commercial
10 domicile is in this state.

11 8.(a) Patent and copyright royalties are allocable to this state: (1) if and to the
12 extent that the patent or copyright is utilized by the payer in this state, or (2) if and to
13 the extent that the patent or copyright is utilized by the payer in a state in which the
14 taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

15 (b) A patent is utilized in a state to the extent that it is employed in production,
16 fabrication, manufacturing, or other processing in the state or to the extent that a
17 patented product is produced in the state. If the basis of receipts from patent royalties
18 does not permit allocation to states or if the accounting procedures do not reflect states
19 of utilization, the patent is utilized in the state in which the taxpayer's commercial
20 domicile is located.

21 (c) A copyright is utilized in a state to the extent that printing or other
22 publication originates in the state. If the basis of receipts from copyright royalties does
23 not permit allocation to states or if the accounting procedures do not reflect states of
24 utilization, the copyright is utilized in the state in which the taxpayer's commercial
25 domicile is located.

26 9. All apportionable [BUSINESS] income shall be apportioned to this state by
27 multiplying the income by a fraction, the numerator of which is the property factor
28 plus the payroll factor plus the sales factor, and the denominator of which is three.

29 10. The property factor is a fraction, the numerator of which is the average
30 value of the taxpayer's real and tangible personal property owned or rented and used in
31 this state during the tax period and the denominator of which is the average value of

1 all the taxpayer's real and tangible personal property owned or rented and used during
2 the tax period.

3 11. Property owned by the taxpayer is valued at its original cost. Property
4 rented by the taxpayer is valued at eight times the net annual rental rate. Net annual
5 rental rate is the annual rental rate paid by the taxpayer less any annual rental rate
6 received by the taxpayer from subrentals.

7 12. The average value of property shall be determined by averaging the values
8 at the beginning and ending of the tax period but the tax administrator may require the
9 averaging of monthly values during the tax period if reasonably required to reflect
10 properly the average value of the taxpayer's property.

11 13. The payroll factor is a fraction, the numerator of which is the total amount
12 paid in this state during the tax period by the taxpayer for compensation and the
13 denominator of which is the total compensation paid everywhere during the tax period.

14 14. Compensation is paid in this state if:

15 (a) the individual's service is performed entirely within the state;

16 (b) the individual's service is performed both inside and outside the state, but
17 the service performed outside the state is incidental to the individual's service within
18 this state; or

19 (c) some of the service is performed in the state and (1) the base of operations
20 or, if there is no base of operations, the place from which the service is directed or
21 controlled is in the state, or (2) the base of operations or the place from which the
22 service is directed or controlled is not in any state in which some part of the service is
23 performed, but the individual's residence is in this state.

24 15. The sales factor is a fraction, the numerator of which is the total sales of
25 the taxpayer in this state during the tax period, and the denominator of which is the
26 total sales of the taxpayer everywhere during the tax period.

27 16. Sales of tangible personal property are in this state if:

28 (a) the property is delivered or shipped to a purchaser, other than the United
29 States Government, within this state regardless of the f.o.b. point or other conditions
30 of the sale; or

31 (b) the property is shipped from an office, store, warehouse, factory, or other

1 place of storage in this state and (1) the purchaser is the United States Government or
2 (2) the taxpayer is not taxable in the state of the purchaser.

3 17.(a) Sales, other than sales **described in Section 16** [OF TANGIBLE
4 PERSONAL PROPERTY], are in this state if **the taxpayer's market for the sales is**
5 **in this state. The taxpayer's market for sales is in this state:**

6 **(1) in the case of sale, rental, lease, or license of real property, if**
7 **and to the extent the property is located in this state;**

8 **(2) in the case of rental, lease, or license of tangible personal**
9 **property, if and to the extent the property is located in this state;**

10 **(3) in the case of sale of a service, if and to the extent the service is**
11 **delivered to a location in this state; and**

12 **(4) in the case of intangible property,**

13 **(i) that is rented, leased, or licensed, if and to the extent the**
14 **property is used in this state, provided that intangible property utilized in**
15 **marketing a good or service to a consumer is "used in this state" if that**
16 **good or service is purchased by a consumer who is in this state; and**

17 **(ii) that is sold, if and to the extent the property is used in**
18 **this state, provided that:**

19 **(A) a contract right, government license, or similar**
20 **intangible property that authorizes the holder to conduct a**
21 **business activity in a specific geographic area is "used in this state"**
22 **if the geographic area includes all or part of this state;**

23 **(B) sales from intangible property sales that are**
24 **contingent on the productivity, use, or disposition of the intangible**
25 **property shall be treated as a sale of the rental, lease, or licensing**
26 **of such intangible property under subsection (a)(4)(i); and**

27 **(C) all other sales of intangible property shall be**
28 **excluded from the numerator and denominator of the sales factor.**

29 [:(a) THE INCOME-PRODUCING ACTIVITY IS PERFORMED IN
30 THIS STATE; OR]

31 (b) **If the state or states of assignment under subsection (a) cannot be**

determined, the state or states of assignment shall be reasonably approximated.

(c) If the taxpayer is not taxable in a state to which a sale is assigned under subsection (a) or (b), or if the state of assignment cannot be determined under subsection (a) or reasonably approximated under subsection (b), such a sale shall be excluded from the denominator of the sales factor.

(d) The tax administrator may adopt regulations as necessary or appropriate to carry out the purposes of this section [THE INCOME-PRODUCING ACTIVITY IS PERFORMED BOTH IN AND OUTSIDE THIS STATE AND A GREATER PROPORTION OF THE INCOME-PRODUCING ACTIVITY IS PERFORMED IN THIS STATE THAN IN ANY OTHER STATE, BASED ON COSTS OF PERFORMANCE].

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (a) separate accounting;
- (b) the exclusion of any one or more of the factors;
- (c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V.

ELEMENTS OF SALES AND USE TAX LAWS.

TAX CREDIT.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the purchaser with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

EXEMPTION CERTIFICATES, VENDORS MAY RELY.

1 reasons therefor and an agenda of the items to be considered.

2 (f) The commission shall elect annually, from among its members, a chairman,
3 a vice-chairman and a treasurer. The commission shall appoint an executive director
4 who shall serve at its pleasure, and it shall fix the duties and compensation of the
5 executive director. The executive director shall be secretary of the commission. The
6 commission shall make provision for the bonding of such of its officers and employees
7 as it may deem appropriate.

8 (g) Irrespective of the civil service, personnel or other merit system laws of
9 any party state, the executive director shall appoint or discharge such personnel as
10 may be necessary for the performance of the functions of the commission and shall fix
11 their duties and compensation. The commission bylaws shall provide for personnel
12 policies and programs.

13 (h) The commission may borrow, accept or contract for the services of
14 personnel from any state, the United States, or any other governmental entity.

15 (i) The commission may accept for any of its purposes and functions any and
16 all donations and grants of money, equipment, supplies, materials and services,
17 conditional or otherwise, from any governmental entity, and may utilize and dispose
18 of the same.

19 (j) The commission may establish one or more offices for the transacting of its
20 business.

21 (k) The commission shall adopt bylaws for the conduct of its business. The
22 commission shall publish its bylaws in convenient form, and shall file a copy of the
23 bylaws and any amendments thereto with the appropriate agency or officer in each of
24 the party states.

25 (l) The commission annually shall make to the governor and legislature of
26 each party state a report covering its activities for the preceding year. Any donation or
27 grant accepted by the commission or services borrowed shall be reported in the annual
28 report of the commission, and shall include the nature, amount and conditions, if any,
29 of the donation, gift, grant or services borrowed and the identity of the donor or
30 lender. The commission may make additional reports as it may deem desirable.

31 COMMITTEES.

1 specific recommendations of the amounts to be appropriated by each of the party
2 states. The total amount of appropriations requested under any such budget shall be
3 apportioned among the party states as follows: one-tenth in equal shares; and the
4 remainder in proportion to the amount of revenue collected by each party state and its
5 subdivisions from income taxes, capital stock taxes, gross receipts, taxes, sales and use
6 taxes. In determining such amounts, the commission shall employ such available
7 public sources of information as, in its judgment, present the most equitable and
8 accurate comparisons among the party states. Each of the commission's budgets of
9 estimated expenditures and requests for appropriations shall indicate the sources used
10 in obtaining information employed in applying the formula contained in this
11 paragraph.

12 (c) The commission shall not pledge the credit of any party state. The
13 commission may meet any of its obligations in whole or in part with funds available to
14 it under paragraph 1(i) of this Article: provided that the commission takes specific
15 action setting aside such funds prior to incurring any obligation to be met in whole or
16 in part in such manner. Except where the commission makes use of funds available to
17 it under paragraph 1(i), the commission shall not incur any obligation prior to the
18 allotment of funds by the party states adequate to meet the same.

19 (d) The commission shall keep accurate accounts of all receipts and
20 disbursements. The receipts and disbursements of the commission shall be subject to
21 the audit and accounting procedures established under its bylaws. All receipts and
22 disbursements of funds handled by the commission shall be audited yearly by a
23 certified or licensed public accountant and the report of the audit shall be included in
24 and become part of the annual report of the commission.

25 (e) The accounts of the commission shall be open at any reasonable time for
26 inspection by duly constituted officers of the party states and by any persons
27 authorized by the commission.

28 (f) Nothing contained in this Article shall be construed to prevent commission
29 compliance with laws relating to audit or inspection of accounts by or on behalf of any
30 government contributing to the support of the commission.

31 ARTICLE VII.

UNIFORM REGULATIONS AND FORMS.

1
2 1. Whenever any two or more party states, or subdivisions of party states, have
3 uniform or similar provisions of law relating to an income tax, capital stock tax, gross
4 receipts tax, sales or use tax, the commission may adopt uniform regulations for any
5 phase of the administration of such law, including assertion of jurisdiction to tax, or
6 prescribing uniform tax forms. The commission may also act with respect to the
7 provisions of Article IV of this compact.

8 2. Prior to the adoption of any regulation, the commission shall:

9 (a) As provided in its bylaws, hold at least one public hearing on due notice to
10 all affected party states and subdivisions thereof and to all taxpayers and other persons
11 who have made timely request of the commission for advance notice of its regulation-
12 making proceedings.

13 (b) Afford all affected party states and subdivisions and interested persons an
14 opportunity to submit relevant written data and views, which shall be considered fully
15 by the commission.

16 3. The commission shall submit any regulations adopted by it to the
17 appropriate officials of all party states and subdivisions to which they might apply.
18 Each such state and subdivision shall consider any such regulations for adoption in
19 accordance with its own laws and procedures.

ARTICLE VIII.

INTERSTATE AUDITS.

20
21
22 1. This Article shall be in force only in those party states that specifically
23 provide therefor by statute.

24 2. Any party state or subdivision thereof desiring to make or participate in an
25 audit of any accounts, books, papers, records or other documents may request the
26 commission to perform the audit on its behalf. In responding to the request, the
27 commission shall have access to and may examine, at any reasonable time, such
28 accounts, books, papers, records, and other documents and any relevant property or
29 stock of merchandise. The commission may enter into agreements with party states or
30 their subdivisions for assistance in performance of the audit. The commission shall
31 make charges, to be paid by the state or local government or governments for which it

1 performs the service, for any audits performed by it in order to reimburse itself for the
2 actual costs incurred in making the audit.

3 3. The commission may require the attendance of any person within the state
4 where it is conducting an audit or part thereof at a time and place fixed by it within
5 such state for the purpose of giving testimony with respect to any account, book,
6 paper, document, other record, property or stock of merchandise being examined in
7 connection with the audit. If the person is not within the jurisdiction, the person may
8 be required to attend for such purpose at any time and place fixed by the commission
9 within the state of which the person is a resident: provided that such state has adopted
10 this Article.

11 4. The commission may apply to any court having power to issue compulsory
12 process for orders in aid of its powers and responsibilities pursuant to this Article and
13 any and all such courts shall have jurisdiction to issue such orders. Failure of any
14 person to obey any such order shall be punishable as contempt of the issuing court. If
15 the party or subject matter on account of which the commission seeks an order is
16 within the jurisdiction of the court to which application is made, such application may
17 be to a court in the state or subdivision on behalf of which the audit is being made or a
18 court in the state in which the object of the order being sought is situated. The
19 provisions of this paragraph apply only to courts in a state that has adopted this
20 Article.

21 5. The commission may decline to perform any audit requested if it finds that
22 its available personnel or other resources are insufficient for the purpose or that, in the
23 terms requested, the audit is impracticable of satisfactory performance. If the
24 commission, on the basis of its experience, has reason to believe that an audit of a
25 particular taxpayer, either at a particular time or on a particular schedule, would be of
26 interest to a number of party states or their subdivisions, it may offer to make the audit
27 or audits, the offer to be contingent on sufficient participation therein as determined by
28 the commission.

29 6. Information obtained by any audit pursuant to this Article shall be
30 confidential and available only for tax purposes to party states, their subdivisions or
31 the United States. Availability of information shall be in accordance with the laws of

1 the states or subdivisions on whose account the commission performs the audit, and
 2 only through the appropriate agencies or officers of such states or subdivisions.
 3 Nothing in this Article shall be construed to require any taxpayer to keep records for
 4 any period not otherwise required by law.

5 7. Other arrangements made or authorized pursuant to laws for cooperative
 6 audit by or on behalf of the party states or any of their subdivisions are not superseded
 7 or invalidated by this Article.

8 8. In no event shall the commission make any charge against a taxpayer for an
 9 audit.

10 9. As used in this Article, "tax," in addition to the meaning ascribed to it in
 11 Article II, means any tax or license fee imposed in whole or in part for revenue
 12 purposes.

13 ARTICLE IX.
 14 ARBITRATION.

15 1. Whenever the commission finds a need for settling disputes concerning
 16 apportionments and allocations by arbitration, it may adopt a regulation placing this
 17 Article in effect, notwithstanding the provisions of Article VII.

18 2. The commission shall select and maintain an arbitration panel composed of
 19 officers and employees of state and local governments and private persons who shall
 20 be knowledgeable and experienced in matters of tax law and administration.

21 3. Whenever a taxpayer who has elected to employ Article IV, or whenever the
 22 laws of the party state or subdivision thereof are substantially identical with the
 23 relevant provisions of Article IV, the taxpayer, by written notice to the commission
 24 and to each party state or subdivision thereof that would be affected, may secure
 25 arbitration of an apportionment or allocation, if the taxpayer is dissatisfied with the
 26 final administrative determination of the tax agency of the state or subdivision with
 27 respect thereto on the ground that it would subject the taxpayer to double or multiple
 28 taxation by two or more party states or subdivisions thereof. Each party state and
 29 subdivision thereof hereby consents to the arbitration as provided herein, and agrees to
 30 be bound thereby.

31 4. The arbitration board shall be composed of one person selected by the

1 taxpayer, one by the agency or agencies involved, and one member of the
2 commission's arbitration panel. If the agencies involved are unable to agree on the
3 person to be selected by them, such person shall be selected by lot from the total
4 membership of the arbitration panel. The two persons selected for the board in the
5 manner provided by the foregoing provisions of this paragraph shall jointly select the
6 third member of the board. If they are unable to agree on the selection, the third
7 member shall be selected by lot from among the total membership of the arbitration
8 panel. No member of a board selected by lot shall be qualified to serve if the member
9 is an officer or employee or is otherwise affiliated with any party to the arbitration
10 proceeding. Residence within the jurisdiction of a party to the arbitration proceeding
11 shall not constitute affiliation within the meaning of this paragraph.

12 5. The board may sit in any state or subdivision party to the proceeding, in the
13 state of the taxpayer's incorporation, residence or domicile, in any state where the
14 taxpayer does business, or in any place that it finds most appropriate for gaining
15 access to evidence relevant to the matter before it.

16 6. The board shall give due notice of the times and places of its hearings. The
17 parties shall be entitled to be heard, to present evidence, and to examine and cross-
18 examine witnesses. The board shall act by majority vote.

19 7. The board shall have power to administer oaths, take testimony, subpoena
20 and require the attendance of witnesses and the production of accounts, books, papers,
21 records, and other documents, and issue commissions to take testimony. Subpoenas
22 may be signed by any member of the board. In case of failure to obey a subpoena, and
23 upon application by the board, any judge of a court of competent jurisdiction of the
24 state in which the board is sitting or in which the person to whom the subpoena is
25 directed may be found may make an order requiring compliance with the subpoena,
26 and the court may punish failure to obey the order as a contempt. The provisions of
27 this paragraph apply only in states that have adopted this Article.

28 8. Unless the parties otherwise agree the expenses and other costs of the
29 arbitration shall be assessed and allocated among the parties by the board in such
30 manner as it may determine. The commission shall fix a schedule of compensation for
31 members of arbitration boards and of other allowable expenses and costs. No officer

1 or employee of a state or local government who serves as a member of a board shall be
 2 entitled to compensation therefor unless the member is required on account of the
 3 service as a board member to forego the regular compensation attaching to the public
 4 employment, but any such board member shall be entitled to expenses.

5 9. The board shall determine the disputed apportionment or allocation and any
 6 matters necessary thereto. The determinations of the board shall be final for purposes
 7 of making the apportionment or allocation, but for no other purpose.

8 10. The board shall file with the commission and with each tax agency
 9 represented in the proceeding: the determination of the board; the board's written
 10 statement of its reasons therefor; the record of the board's proceedings; and any other
 11 documents required by the arbitration rules of the commission to be filed.

12 11. The commission shall publish the determinations of boards together with
 13 the statements of the reasons therefor.

14 12. The commission shall adopt and publish rules of procedure and practice
 15 and shall file a copy of such rules and of any amendment thereto with the appropriate
 16 agency or officer in each of the party states.

17 13. Nothing contained herein shall prevent at any time a written compromise of
 18 any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration
 19 proceedings.

20 ARTICLE X.

21 ENTRY INTO FORCE AND WITHDRAWAL.

22 1. This compact shall enter into force when enacted into law by any seven
 23 states. Thereafter, this compact shall become effective as to any other state upon its
 24 enactment thereof. The commission shall arrange for notification of all party states
 25 whenever there is a new enactment of the compact.

26 2. Any party state may withdraw from this compact by enacting a statute
 27 repealing the same. No withdrawal shall affect any liability already incurred by or
 28 chargeable to a party state prior to the time of such withdrawal.

29 3. No proceeding commenced before an arbitration board prior to the
 30 withdrawal of a state and to which the withdrawing state or any subdivision thereof is
 31 a party shall be discontinued or terminated by the withdrawal, nor shall the board

1 thereby lose jurisdiction over any of the parties to the proceeding necessary to make a
2 binding determination therein.

3 ARTICLE XI.

4 EFFECT ON OTHER LAWS AND JURISDICTION.

5 Nothing in this compact shall be construed to:

6 (a) Affect the power of any state or subdivision thereof to fix rates of taxation,
7 except that a party state shall be obligated to implement Article III 2 of this compact.

8 (b) Apply to any tax or fixed fee imposed for the registration of a motor
9 vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of
10 "tax" in Article VIII 9 may apply for the purposes of that Article and the commission's
11 powers of study and recommendation pursuant to Article VI 3 may apply.

12 (c) Withdraw or limit the jurisdiction of any state or local court or
13 administrative officer or body with respect to any person, corporation or other entity
14 or subject matter, except to the extent that such jurisdiction is expressly conferred by
15 or pursuant to this compact upon another agency or body.

16 (d) Supersede or limit the jurisdiction of any court of the United States.

17 ARTICLE XII.

18 CONSTRUCTION AND SEVERABILITY.

19 This compact shall be liberally construed so as to effectuate the purposes
20 thereof. The provisions of this compact shall be severable and if any phrase, clause,
21 sentence, or provision of this compact is declared to be contrary to the constitution of
22 any state or of the United States or the applicability thereof to any government,
23 agency, person or circumstance is held invalid, the validity of the remainder of this
24 compact and the applicability thereof to any government, agency, person or
25 circumstance shall not be affected thereby. If this compact shall be held contrary to the
26 constitution of any state participating therein, the compact shall remain in full force
27 and effect as to the remaining party states and in full force and effect as to the state
28 affected as to all severable matters.

29 * **Sec. 2.** AS 43.20 is amended by adding a new section to read:

30 **Sec. 43.20.019. Tax on income of an oil or gas entity.** (a) If an oil or gas
31 entity has taxable income over \$4,000,000 in a tax year derived from sources within

1 the state, the oil or gas entity shall pay a tax of 9.4 percent on the taxable income over
2 \$4,000,000 derived from sources within the state.

3 (b) The tax under this section does not apply to a corporation paying tax under
4 AS 43.20.011.

5 (c) The department may aggregate the taxable income of two or more oil or
6 gas entities for the purpose of determining the tax due under this section if the
7 department determines that, without the provisions of this section, the taxable income
8 would reasonably be expected to be attributed to a single entity.

9 * **Sec. 3.** AS 43.20.030(a) is amended to read:

10 (a) If a corporation, [OR] a partnership that has a corporation as a partner, **or**
11 **an oil or gas entity** is required to make a return under the provisions of the Internal
12 Revenue Code, **the corporation, partnership, or entity** [IT] shall file with the
13 department, within 30 days after the federal return is required to be filed, a return
14 setting out

15 (1) the amount of tax due under this chapter, less credits claimed
16 against the tax; and

17 (2) other information for the purpose of carrying out the provisions of
18 this chapter that the department requires.

19 * **Sec. 4.** AS 43.20.031(i) is amended to read:

20 (i) A corporation **or an oil or gas entity that** [WHICH] is a member of a
21 group of unitary corporations **or oil or gas entities that** [WHICH] collectively has
22 income from business activity taxable both inside and outside the state, or income
23 from other sources both inside and outside the state, shall determine its income from
24 sources in this state by use of the combined method of accounting.

25 * **Sec. 5.** AS 43.20.143(a) is amended to read:

26 (a) All **apportionable** [BUSINESS] income of water transportation carriers
27 shall be apportioned to this state in accordance with AS 43.19 (Multistate Tax
28 Compact) as modified by the following:

29 (1) the numerator of the property factor is the sum of the value for
30 property in a fixed location, including buildings and land used in the business, and
31 intrastate equipment and personal property determined according to AS 43.19

1 (Multistate Tax Compact), and the value of interstate mobile property determined on a
2 days-spent-in-ports basis as provided in (4) of this subsection; the denominator of the
3 property factor is determined according to AS 43.19 (Multistate Tax Compact);

4 (2) the numerator of the payroll factor is the sum of the wages and
5 salaries of employees assigned to fixed locations determined according to AS 43.19
6 (Multistate Tax Compact) and the wages and salaries of employees assigned to
7 interstate mobile property determined on a days-spent-in-ports basis as provided in (4)
8 of this subsection; the denominator of the payroll factor is determined in accordance
9 with AS 43.19 (Multistate Tax Compact);

10 (3) the numerator of the sales factor is the sum of all revenues from
11 intrastate activities and revenues from interstate activities determined on a days-spent-
12 in-ports basis as provided in (4) of this subsection; the denominator is determined in
13 accordance with AS 43.19 (Multistate Tax Compact);

14 (4) the portions of the numerator of the property, payroll, and sales
15 factors which are directly related to interstate mobile property operations are
16 determined by a ratio which the number of days spent in ports inside the state bears to
17 the total number of days spent in ports inside and outside the state; the term "days
18 spent in ports" does not include periods when ships are tied up because of strikes or
19 withheld from Alaska service for repairs, or because of seasonal reduction of service;
20 days in port are computed by dividing the total number of hours in all ports by 24.

21 * **Sec. 6.** AS 43.20.144(a) is amended to read:

22 (a) All **apportionable** [BUSINESS] income of a taxpayer engaged in the
23 production of oil or gas from a lease or property in this state or engaged in the
24 transportation of oil or gas by pipeline in this state shall be apportioned to this state in
25 accordance with AS 43.19 (Multistate Tax Compact) as modified by this section.

26 * **Sec. 7.** AS 43.20.144(b) is amended to read:

27 (b) A taxpayer's **apportionable** [BUSINESS] income to be apportioned under
28 this section to the state shall be the federal taxable income of the taxpayer's
29 consolidated business for the tax period, except that

30 (1) taxes based on or measured by net income that are deducted in the
31 determination of the federal taxable income shall be added back; the tax levied and

1 paid under AS 43.55 may not be added back;

2 (2) intangible drilling and development costs that are deducted as
3 expenses under 26 U.S.C. 263(c) (Internal Revenue Code) in the determination of the
4 federal taxable income shall be capitalized and depreciated as if the option to treat
5 them as expenses under 26 U.S.C. 263(c) (Internal Revenue Code) had not been
6 exercised;

7 (3) depletion deducted on the percentage depletion basis under 26
8 U.S.C. 613 (Internal Revenue Code) in the determination of the federal taxable income
9 shall be recomputed and deducted on the cost depletion basis under 26 U.S.C. 612
10 (Internal Revenue Code); and

11 (4) depreciation shall be computed on the basis of 26 U.S.C. 167
12 (Internal Revenue Code) as that section read on June 30, 1981.

13 * **Sec. 8.** AS 43.20.144(c) is amended to read:

14 (c) A taxpayer's **apportionable** [BUSINESS] income shall be apportioned to
15 this state by multiplying the taxpayer's income determined under (b) of this section by
16 the apportionment factor applicable to the taxpayer among the following factors:

17 (1) the apportionment factor of a taxpayer subject to this section but
18 not engaged in the production of oil and gas, or of gas only, as appropriate, from a
19 lease or property in this state during the tax period is a fraction, the numerator of
20 which is the sum of the property factor under AS 43.19 (Multistate Tax Compact) and
21 the sales factor under (d) of this section for the taxpayer for that tax period, and the
22 denominator of which is two;

23 (2) the apportionment factor of a taxpayer subject to this section but
24 not engaged in the pipeline transportation of oil or gas in this state during the tax
25 period is a fraction, the numerator of which is the sum of the property factor under (e)
26 of this section and the extraction factor under (f) of this section for the taxpayer for the
27 tax period, and the denominator of which is two;

28 (3) the apportionment factor of a taxpayer engaged both in the
29 production of oil or gas from a lease or property in this state and in the pipeline
30 transportation of oil or gas in this state during the tax period is a fraction, the
31 numerator of which is the sum of the sales factor under (d) of this section, the property

1 factor under (e) of this section, and the extraction factor under (f) of this section for
2 the taxpayer for the tax period, and the denominator of which is three.

3 * **Sec. 9.** AS 43.20.144(h)(2) is amended to read:

4 (2) "consolidated business" means a corporation or an oil or gas
5 entity, or a group of corporations or oil or gas entities, having more than 50 percent
6 common ownership, direct or indirect, or a group of corporations or oil or gas entities
7 in which there is common control, either direct or indirect, as evidenced by any
8 arrangement, contract, or agreement; the requirements of this chapter apply whether or
9 not the taxpayer is the parent or controlling corporation or oil or gas entity;

10 * **Sec. 10.** AS 43.20.145(e) is amended to read:

11 (e) The department may require a corporation that files under (a) of this
12 section to file a report under AS 43.20.142, [AND] 43.20.143, and 43.20.148 prepared
13 without regard to this section if the corporation or an affiliated corporation

14 (1) fails to comply with regulations adopted under this chapter,
15 including domestic disclosure spread sheet filing requirements; or

16 (2) does not provide information that is requested by the department
17 that is necessary for the department to audit the taxpayer's corporate return in a
18 reasonable period of time.

19 * **Sec. 11.** AS 43.20 is amended by adding a new section to article 2 to read:

20 **Sec. 43.20.148. Highly digitized businesses.** (a) All apportionable income of a
21 taxpayer engaged in a highly digitized business in the state shall be apportioned to this
22 state in accordance with AS 43.19 (Multistate Tax Compact) as modified by this
23 section.

24 (b) The apportionment factor of a taxpayer subject to this section is the sales
25 factor. The sales factor is determined in accordance with AS 43.19 (Multistate Tax
26 Compact).

27 (c) A taxpayer is engaged in a highly digitized business in this state when 50
28 percent or more of the taxpayer's sales in this state consist of any combination of sales
29 of

30 (1) intangible property delivered by electronic transmission in this
31 state;

1 (2) services delivered by electronic transmission in this state;

2 (3) services related to computers, electronic transmissions, or Internet
3 technology delivered in this state; or

4 (4) tangible personal property delivered in this state from Internet
5 sales, if the Internet is the primary mode of customer access in this state.

6 (d) The department may require a taxpayer to apportion income under this
7 section if the department determines that the taxpayer's business activity in this state
8 may be otherwise characterized as a highly digitized business.

9 (e) This section does not apply to a

10 (1) public utility allocating and apportioning income under
11 AS 43.20.146; or

12 (2) utility furnishing telecommunications services.

13 (f) In this section,

14 (1) "delivered" includes delivered to or on behalf of a customer or
15 delivered through a customer;

16 (2) "electronic transmission" includes transmission by wire, lines,
17 cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or
18 similar means, whether or not the provider owns, leases, or otherwise controls the
19 transmission equipment;

20 (3) "intangible property" includes licenses and sublicenses for data
21 access, streaming or other electronic transmission of music, videos, books, games, or
22 other digital goods, and remote access software;

23 (4) "Internet sales" includes sales through an Internet website,
24 application, or other electronic means, including sales made by computer, tablet,
25 telephone, or other similar device.

26 * **Sec. 12.** AS 43.20.340 is amended by adding new paragraphs to read:

27 (11) "entity" includes

28 (A) a sole proprietorship;

29 (B) a partnership;

30 (C) an entity that has elected to file federal returns under 26
31 U.S.C. 1361 - 1379 (subchapter S of the Internal Revenue Code);

(D) a limited liability company with a single owner that is not a corporation and has elected not to be taxed as a separate entity for federal income tax purposes;

(E) an entity that has elected to file for federal income tax purposes as an entity listed under (A) - (D) of this paragraph;

(12) "oil or gas entity" means an entity engaged in production of oil or gas from a lease or property in the state or the transportation of oil or gas by pipeline in the state.

* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 43.20.019, added by sec. 2 of this Act, AS 43.20.030(a), as amended by sec. 3 of this Act, AS 43.20.031(i), as amended by sec. 4 of this Act, and AS 43.20.144(h)(2), as amended by sec. 9 of this Act, apply to an oil or gas entity with taxable income over \$4,000,000 derived from sources within the state for a tax year beginning on or after January 1, 2023. In this subsection, "entity" and "oil or gas entity" have the meanings given in AS 43.20.340, as amended by sec. 12 of this Act.

(b) AS 43.20.148, added by sec. 11 of this Act, applies to a taxpayer that is filing a return for a tax year beginning on or after January 1, 2024.

* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: PAYMENT OF TAX. A person subject to tax under AS 43.20.019, added by sec. 2 of this Act, shall pay the balance of the tax due as a result of the retroactivity of sec. 2 of this Act by October 1, 2024. The balance of the tax due as a result of the retroactivity of sec. 2 of this Act does not accrue interest under AS 43.05.225 or civil or criminal penalties under AS 43.05.220, 43.05.245, or 43.05.290 until after October 1, 2024.

* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY OF REGULATIONS. Notwithstanding a contrary provision of AS 44.62.240, if the Department of Revenue expressly designates in the regulation that the regulation applies retroactively to a specific date, a regulation adopted by the department to implement, interpret, make specific, or otherwise carry out this Act applies retroactively to

1 that date.

2 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 RETROACTIVITY. Sections 2, 3, 4, 9, and 12 of this Act are retroactive to January 1,
5 2023.

6 * **Sec. 17.** Sections 13(a) and 14 - 16 of this Act take effect immediately under
7 AS 01.10.070(c).

8 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect January 1, 2024.