

ALASKA STATE LEGISLATURE

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HB 37: Income Tax and POMV Allocation

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Sectional Analysis

*Please note that a sectional analysis of a bill or resolution should not be considered an authoritative interpretation of the measure itself.
The legislation is the best statement of its contents.*

Section 1 (page 1, line 8) – Conforming change with Sections 3 and 4, eliminating the statutory set-aside of earnings from the “Amerada Hess” portion of the permanent fund.

Section 2 (page 2, line 2) – Amends the language by which 50% of mineral lease bonuses, rentals, royalties, etc. for post-1979 leases are deposited into the Permanent Fund corpus. This reverts to the constitutional requirement for 25% of all mineral lease revenue to be so deposited.

Section 3 (page 2, line 20) – Amends AS 37.13.140(b), the annual Percent of Market Value appropriation, by removing the exclusion of earnings from the “Amerada Hess” portion of the permanent fund. Clarifies that the annual POMV draw cannot be greater than the balance in the Earnings Reserve Account.

Section 4 (page 3, line 1) – Repeats the changes made in Sec. 3, as amended by the delayed FY2022 effective date from SB26 that reduces the POMV from 5.25% to 5% of the average value of the fund for the first five of the preceding six fiscal years.

Section 5 (page 3, line 13) – Amends AS 37.13.145(b) to change the statutory permanent fund dividend formula. Instead of a formula that is based on earnings over the past five years, the dividend fund would now receive 20% of the annual Percent of Market Value appropriation with the other 80% going to the general fund.

Section 6 (page 3, line 23) – Conforming change with Sections 3 and 4, amending the inflation proofing statute in AS 37.13.145(c) to eliminate the reference to the statutory set-aside of earnings from the “Amerada Hess” funds. Also clarifies that inflation proofing is subject to appropriation and not a mandatory transfer.

Section 7 (page 4, line 12) – Amends AS 37.13.150 to clarify that the unexpended balance of the permanent fund corporation’s annual operating budget, which is retained by the fund, is not considered income but is included in the calculation of the permanent fund’s market value.

Section 8 (page 4, line 19) – The mental health trust fund is not included in the computation of net income or market value available for appropriation for PFD’s or the general fund.

Section 9 (page 4, line 23) – Creates an exception to AS 43.05.045 for individual income taxpayers, exempting them from the general requirement to file with the electronically with the Department of Revenue. The exception does not apply to paid tax preparers.

-----**Start of Income Tax section**-----

Section 10 (page 5, line 1) – Adds a new chapter, AS 43.22, to create an Individual Income Tax.

Subsection: Sec. 43.22.010 (page 5, line 4) – Imposes a flat rate 2.5% tax on the income of residents, and the income of non-residents derived from a source in the state. Two individuals who file their federal income tax jointly may choose to either file individually or jointly.

Subsection: Sec. 43.22.015 (page 5, line 19) – Determines how the tax is calculated for nonresident individuals. Broadly, it is the tax calculation, less any eligible credits, if they were a resident, multiplied by the percentage of their total income that comes from a source in the state.

Subsection: Sec. 43.22.020 (page 6, line 4) – Establishes that trusts and estates also pay the 2.5% income tax. Nonresident trusts pay the tax on income derived from a source in the state. Trusts exempt from federal income tax, and special needs trusts established to provide for a disabled beneficiary, are also exempt from the state tax.

Subsection: Sec. 43.22.025 (page 7, line 1) – Provides a credit to residents for taxes paid to another state based on income earned in that other state (so someone is not taxed twice on the same income). The credit may not reduce tax liability below what it would be if the out of state income was simply excluded from total income.

Subsection: Sec. 43.22.030 (page 8, line 13) – Defines “taxable income” as the taxpayers federal adjusted gross income (AGI) for the tax year. This can be adjusted by adding or subtracting certain income that may not be included within AGI. Additionally, this section provides for a “standard deduction” of non-taxable income for individual filers of \$10,000 and for joint filers of \$20,000. The standard deduction is pro-rated for nonresidents based on the portion of their income derived in-state. Also, the permanent fund dividend is not considered taxable income.

Subsection: Sec. 43.22.035 (page 11, line 15) – Establishes that income from an individual’s share of partnerships and S corporations is taxable income.

Subsection: Sec. 43.22.040 (page 12, line 8) – Establishes that income of estates and trusts is taxable as if the estate or trust were an individual. The department of Revenue may establish regulations regarding the allocation of tax liability between the trust itself and the beneficiaries.

Subsection: Sec. 43.22.045 (page 12, line 22) – Establishes a process to determine how nonresident income is derived from a source in the state. Broadly, taxable nonresident income includes income earned from a business or property located in the state, wages and other compensation for services performed in the state, earnings on stock and other securities carried on in the state, and gambling proceeds and performance fees earned in the state.

Subsection: Sec. 43.22.050 (page 17, line 2) – Provides that the Department of Revenue shall adopt regulations to provide more complete guidance regarding business income from a source in the state as described in AS 43.22.045. These regulations must be consistent with the Multistate Tax Compact.

Subsection: Sec. 43.22.055 (page 17, line 19) – Provides that the Department of Revenue shall adopt regulations to provide more complete guidance regarding trust income from a source in the state.

Subsection: Sec. 43.22.060 (page 18, line 5) – Provides a process for the Department of Revenue to determine the taxable income of a part-year resident.

Subsection: Sec. 43.22.065 (page 18, line 18) – Allows the Department of Revenue to reallocate transactions between a personal service corporations or S corporations and its employee owners, if it is determined that the purpose of the transaction is primarily to evade income taxes.

Subsection: Sec. 43.22.070 (page 19, line 15) – The taxable year and method of accounting is the same as what a taxpayer uses for federal income tax purposes.

Subsection: Sec. 43.22.075 (page 19, line 24) – Provides for the filing of annual tax returns in a form and format prescribed by the Department of Revenue. The return, and all taxes owed, on the same date as the taxpayer's federal return. A taxpayer must provide, upon request, a copy of their federal tax return, and must notify the department of any alternation or modification of their federal return. Provides for refunds to be paid for overpaid taxes. Partnerships must provide necessary information to their partners so that the partners can file their taxes.

Subsection: Sec. 43.22.080 (page 21, line 3) – Provides for employers to withholding wages and salaries to approximate a taxpayer's liability for the year. Employers shall remit withheld taxes to the Department and shall provide employees with an annual report of their wages and withholding.

Subsection: Sec. 43.22.085 (page 21, line 27) – Partnerships must also file returns. If a partnership distributes income to a nonresident, they must withhold taxes from that partner.

Subsection: Sec. 43.22.090 (page 22, line 16) – Alaskans can opt to have some or all of their PFD withheld to pay the tax due. The Department of Revenue shall establish the process for this.

Subsection: Sec. 43.22.090 (page 22, line 16) – DOR shall adopt regulations as needed to implement this chapter. Federal IRS regulations shall be considered persuasive unless federal law conflicts with our laws and regulations. The department may make adjustments to account for transactions between related persons that are for the primary purpose of reducing tax liability.

Subsection: Sec. 43.22.100 (page 23, line 31) – Adopts the IRS code by reference.

Subsection: Sec. 43.22.105 (page 24, line 10) – Allows the state to share taxpayer information with a banking institution related to direct deposits of tax refunds.

Subsection: Sec. 43.22.150 (page 24, line 14) – Adds multiple new definitions related to terms used in this chapter.

-----End of Income Tax section-----

Section 11 (page 27, line 19) – Conforms with changes made in Section 5, regarding the funds transferred to the dividend fund.

Section 12 (page 28, line 14) – Directs the Department of Revenue to modify the PFD application, to allow applicants to direct some or all of their dividend towards their tax obligation.

Section 13 (page 28, line 20) – Repeals several statutes made obsolete by changes in this bill. These include the historic earnings-based PFD formula and the exclusion of Amerada Hess earnings from the POMV formula.

Section 14 (page 28, line 22) – Repeals a former tax credit for political contributions that existed under Alaska’s prior individual income tax which was repealed in 1980.

Section 15 (page 28, line 23) – Repeals a delayed effective date from a 1992 law, which describes when the exclusion of Amerada Hess earnings should sunset.

Section 16 (page 28, line 24) – Applicability section conforming that the tax applies to income received on or after the effective date of the new tax.

Section 17 (page 28, line 28) – Authorizes DOR to adopt regulations to implement this Act. The regulations may not take effect before the effective date of the law.

Section 18 (page 29, line 2) – Immediate effective date for Section 17, authorization to draft and adopt regulations.

Section 19 (page 29, line 3) – Section 4, which references the switch from a 5.25% to a 5% POMV, becomes effective when this change takes effect per SB26: July 1, 2021.

Section 20 (page 29, line 5) – The sections of the bill pertaining to the Permanent Fund and the Dividend take effect on July 1, 2021.

Section 21 (page 29, line 6) – The sections of the bill pertaining to the Income Tax take effect on January 1, 2022.