

HOUSE BILL NO. 91

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/10/99

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to taxation, including taxation of income of individuals, estates,
2 and trusts; and providing for an effective date."

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

4 * **Section 1.** PURPOSE. The purpose of this Act is to create a sustainable source of
5 revenue to help balance the state budget. Although the majority of the state's funding will
6 be provided from other revenue sources, these sources do not provide sufficient revenue to
7 balance the budget. A tax on income earned in the state, coupled with a credit based on taxes
8 paid on the permanent fund dividend, is a fair and sustainable source of revenue.

9 * **Sec. 2.** AS 43.05.240 is amended by adding a new subsection to read:

10 (c) A taxpayer who seeks redress from a tax imposed under this title on the
11 grounds that a tax statute or regulation violates the United States Constitution, the
12 Alaska Constitution, or is preempted by federal statute, regulation, or treaty, shall file
13 the return with a notice of protest and pay the tax. The notice of protest initiates the
14 informal conference process described in (a) of this section; however, if the taxpayer

1 timely files an action in superior court under AS 43.05.275(c), the informal conference
 2 process is terminated. A taxpayer who fails to file a notice of protest with the return
 3 is not entitled to a refund if the tax statute or regulation is determined to be
 4 unconstitutional.

5 * **Sec. 3.** AS 43.05.275(a) is amended to read:

6 (a) Except as provided in AS 43.20.021 **and in (c) of this section**, a claim for
 7 credit or refund of a tax under this title for which a taxpayer is required to file a return
 8 or pay a tax may be filed by the taxpayer

9 (1) before the later of

10 (A) three years from the time the return was filed; or

11 (B) two years from the time the tax was paid; or

12 (2) within two years from the time the tax was paid, if no return was
 13 filed.

14 * **Sec. 4.** AS 43.05.275(c) is amended to read:

15 (c) A taxpayer who has filed a **notice of protest with a** return **and has** [,]
 16 paid the full amount due on the return **as provided in AS 43.05.240(c) is considered**
 17 **to have** [, AND] made a claim **for a credit or refund of a tax** under this **title and**
 18 [SECTION] may, without exhausting administrative remedies, **within 60 days after**
 19 **the date the protest and return were filed under AS 43.05.240(c)**, file an action in
 20 superior court to recover on the claim if the sole ground for appeal is that a tax statute
 21 is

22 (1) violative of the United States Constitution;

23 (2) violative of the state constitution; or

24 (3) preempted by federal statute, regulation, or treaty.

25 * **Sec. 5.** AS 43.20 is amended by adding a new section to read:

26 **Sec. 43.20.009. Tax on individuals, estates, and trusts.** (a) There is
 27 imposed for each taxable year an income tax, computed as provided in this section, on
 28 every

29 (1) resident individual; and

30 (2) nonresident and part-year resident individual, estate, and trust with
 31 income from sources in the state.

1 (b) For a resident individual, the tax under this section is 31 percent of the
2 federal income tax after federal credits and before other taxes.

3 (c) For a nonresident or part-year resident individual, or for an estate or a trust,
4 the tax under this section is 31 percent of the federal income tax after federal credits
5 and before other taxes, multiplied by a fraction, the numerator of which is income
6 from sources in the state and the denominator of which is income from all sources.

7 (d) In (c) of this section, "income" means total income before adjusted gross
8 income, as required to be shown on the federal return.

9 * **Sec. 6.** AS 43.20.030(a) is amended to read:

10 (a) **Every individual, trust, estate, partnership, and** [IF A] corporation
11 **subject to tax under this chapter** [, OR A PARTNERSHIP THAT HAS A
12 CORPORATION AS A PARTNER, IS] required to make a return **of income** under the
13 provisions of the Internal Revenue Code [, IT] shall file with the department, within
14 30 days after the federal return is required to be filed, a return setting out

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

17 (2) other information **that the department requires** for the purpose
18 of carrying out the provisions of this chapter [THAT THE DEPARTMENT
19 REQUIRES].

20 * **Sec. 7.** AS 43.20.030(d) is amended to read:

21 (d) A taxpayer, upon request by the department, shall **file with the taxpayer's**
22 **state return** [FURNISH TO THE DEPARTMENT] a true [AND CORRECT] copy of
23 the tax return [WHICH THE TAXPAYER HAS] filed with the United States Internal
24 Revenue Service. Every taxpayer shall **file an amended return with** [NOTIFY] the
25 department, **and remit any additional tax and interest due, within** [IN WRITING
26 OF ANY ALTERATION IN, OR MODIFICATION OF, THE TAXPAYER'S
27 FEDERAL INCOME TAX RETURN AND OF A RECOMPUTATION OF TAX OR
28 DETERMINATION OF DEFICIENCY, WHETHER WITH OR WITHOUT
29 ASSESSMENT. A FULL STATEMENT OF THE FACTS MUST ACCOMPANY
30 THIS NOTICE. THE NOTICE SHALL BE FILED WITHIN] 60 days after **any**
31 [THE] final determination of the **taxpayer's federal tax liability** [MODIFICATION,

1 RECOMPUTATION OR DEFICIENCY, AND THE TAXPAYER SHALL PAY THE
 2 ADDITIONAL TAX OR PENALTY UNDER THIS CHAPTER]. For purposes of this
 3 subsection [SECTION], a final determination means [SHALL MEAN] the date
 4 [TIME] that an amended federal return is filed, the date a federal [OR A NOTICE
 5 OF DEFICIENCY OR AN] assessment is made, or the date the restrictions on
 6 assessment are waived by [MAILED TO] the taxpayer [BY THE INTERNAL
 7 REVENUE SERVICE, EXCEPT THAT IN NO EVENT WILL THERE BE A FINAL
 8 DETERMINATION FOR PURPOSES OF THIS SECTION UNTIL THE TAXPAYER
 9 HAS EXHAUSTED RIGHTS OF APPEAL UNDER FEDERAL LAW].

10 * **Sec. 8.** AS 43.20.030 is amended by adding a new subsection to read:

11 (h) In satisfaction of the requirements of (a) of this section, a family unit shall
 12 file a single consolidated state return for all individuals in the family unit. For
 13 purposes of this subsection,

14 (1) "family unit" means all resident individuals for whom a personal
 15 exemption is claimed on a federal income tax return;

16 (2) "consolidated state return" means a return that reports and
 17 aggregates, for all individuals in a family unit, the sum of all

18 (A) federal income taxes, after federal credits and before other
 19 taxes; and

20 (B) state credits under AS 43.20.046.

21 * **Sec. 9.** AS 43.20.031(c) is amended to read:

22 (c) In computing the tax under this chapter, a corporation [THE TAXPAYER]
 23 is not entitled to deduct any taxes based on or measured by net income.

24 * **Sec. 10.** AS 43.20.040 is repealed and reenacted to read:

25 **Sec. 43.20.040. Income from sources in the state.** (a) In this chapter,
 26 income from sources in the state includes

27 (1) compensation for personal services rendered in the state;

28 (2) working in the state for salary or wages;

29 (3) income from real or tangible personal property located in the state;

30 (4) income from stocks, bonds, notes, bank deposits, and other
 31 intangible personal property having a taxable or business situs in the state; however,

1 the receipt of interest income from intangible property in the state does not alone
2 establish a taxable or business situs in the state;

3 (5) rentals and royalties for the use of or for the privilege of using, in
4 the state, patents, copyrights, secret processes and formulas, good will, marks, trade
5 brands, franchises, and other property having a taxable or business situs in the state;

6 (6) income distributed from a trust established under or governed by
7 the laws of the state;

8 (7) income of a trust established under or governed by the laws of the
9 state and income of the estate of a decedent who on the date of death was domiciled
10 in the state;

11 (8) income, from a source with a taxable or business situs in the state,
12 of

13 (A) a trust not established under or governed by the laws of the
14 state; or

15 (B) the estate of a decedent who on the date of death was not
16 domiciled in the state;

17 (9) income of whatever nature from a source with a taxable or business
18 situs in the state.

19 (b) In this section, income is from a source with a taxable or business situs in
20 the state if it is attributed to or derived from

21 (1) business facilities or property in the state;

22 (2) business, farming, or fishing activities in the state;

23 (3) conducting in the state the management or investment function for
24 intangible property;

25 (4) a partnership, limited liability company, estate, or trust conducting
26 business activities in the state;

27 (5) a corporation transacting business activities in the state that has
28 elected to file federal returns under subchapter S of the Internal Revenue Code;

29 (6) any other activity from which income is received, realized, or
30 derived in the state.

31 (c) If a business, trade, or profession is carried on partly inside and partly

1 outside the state, other than the rendering of purely personal services by an individual,
2 the income from sources in the state shall be determined as provided in AS 43.19.

3 * **Sec. 11.** AS 43.20 is amended by adding a new section to article 1 to read:

4 **Sec. 43.20.046. Individual, trust, and estate tax credits.** (a) For a resident,
5 a trust established under or governed by the laws of this state, or the estate of a
6 decedent who on the date of death was domiciled in this state, the income tax imposed
7 on that resident, trust, or estate by another state or territory of the United States for the
8 taxable year, on income derived from sources in that state or territory, is allowed as
9 a credit against the tax under this chapter.

10 (b) The credit under (a) of this section is determined by multiplying the tax
11 computed under this chapter by a fraction, the numerator of which is the income
12 derived from sources in the other state or territory and the denominator of which is
13 income derived from all sources. The credit under (a) of this section may not exceed
14 the actual tax paid to the other state or territory.

15 (c) For each personal exemption claimed on the federal return, 33 percent of
16 the amount of the Alaska permanent fund dividend under AS 43.23.045 is allowed as
17 a credit against the tax under this chapter if the individual for whom the personal
18 exemption is claimed received the dividend in the taxable year.

19 (d) An individual is allowed as a credit against the tax under this chapter 10.2
20 percent of the Alaska longevity bonus payments under AS 47.45 received by the
21 individual in the taxable year.

22 (e) To the extent required by federal law, an individual is allowed as a credit
23 against the tax under this chapter 10.2 percent of interest received by the individual
24 in the taxable year upon obligations unconditionally backed by the full faith and credit
25 of the United States.

26 (f) An individual, estate, or trust is allowed only the state credits provided in
27 this section. The total state credit allowed under this section may not exceed the tax
28 liability for the taxable year for the individual except that for an individual in a family
29 unit who files a consolidated state return under AS 43.20.030(h), the aggregate credit
30 of all individuals in the family unit may not exceed the aggregate tax liability of all
31 individuals in the family unit. A credit may not be carried, in whole or in part, to a

1 different taxable year.

2 * **Sec. 12.** AS 43.20.160(c) is amended to read:

3 (c) The department shall prescribe and furnish all necessary forms, and adopt
4 and publish all necessary regulations in plain and concise language conformable with
5 this chapter for the assessment and collection of the taxes imposed by this chapter.

6 [THE DEPARTMENT SHALL APPLY AS FAR AS PRACTICABLE THE
7 ADMINISTRATIVE AND JUDICIAL INTERPRETATIONS OF THE FEDERAL
8 INCOME TAX LAW. THE DEPARTMENT SHALL ALSO PREPARE A CONCISE
9 STATEMENT OF THE CONTENTS OF THE CODE SECTIONS REFERRED TO
10 IN THIS CHAPTER FOR THE INFORMATION OF THE TAXPAYER AND MAKE
11 THEM AVAILABLE TO THE TAXPAYER MAKING A RETURN].

12 * **Sec. 13.** AS 43.20 is amended by adding a new section to read:

13 **Sec. 43.20.171. Tax withholding on wages of individuals.** (a) Every
14 employer making payment of wages, salaries, or crew shares

15 (1) shall deduct and withhold an amount of tax computed in a manner
16 to approximate the amount of tax due on those wages, salaries, or crew shares under
17 this chapter for that taxable year;

18 (2) shall remit the tax withheld to the department accompanied by a
19 return on a form prescribed by the department at the times required by the department
20 by regulation;

21 (3) is liable for the payment of the tax required to be deducted and
22 withheld under this section but is not liable to any individual for the amount of the
23 payment; and

24 (4) shall furnish to the employee on or before January 31 of the
25 succeeding year, or within 30 days after a request by the employee after the
26 employee's termination if the 30-day period ends before January 31, a written
27 statement on a form prescribed by the department showing

28 (A) the name and taxpayer identification number of the
29 employer;

30 (B) the name and social security number of the employee;

31 (C) the total amount of wages, salary, or crew shares for the

1 taxable year; and

2 (D) the total amount deducted and withheld as tax for the
3 taxable year.

4 (b) The department shall publish the rate of withholding required by this
5 section.

6 (c) In this section,

7 (1) "employee" includes an individual who receives compensation on
8 a crew share basis in connection with a commercial fishing activity;

9 (2) "employer" includes a person who pays compensation to an
10 individual on a crew share basis in connection with a commercial fishing activity.

11 * **Sec. 14.** AS 43.20.200(b) is amended to read:

12 (b) The same period of limitation upon the assessment and collection of taxes
13 imposed under this chapter and the same exceptions to it shall apply as provided in 26
14 U.S.C. 6501 - 6503 (Internal Revenue Code). In the case of additional tax due by
15 reason of a modification, recomputation, or determination of deficiency in a taxpayer's
16 federal income tax return, the period of limitation on assessment commences from the
17 date that the **amended return** [NOTICE] required in AS 43.20.030(d) is filed, and if
18 no **amended return** [NOTICE] is filed the tax may be assessed at any time.

19 * **Sec. 15.** AS 43.20.340 is amended by adding new paragraphs to read:

20 (12) "domicile" means the place where an individual has established
21 a true permanent home and principal establishment to which the individual has the
22 intention of returning whenever absent;

23 (13) "individual" means a natural person, married or unmarried, adult
24 or minor, subject to payment of income tax under 26 U.S.C. (Internal Revenue Code);

25 (14) "nonresident" means an individual who is not a resident or part-
26 year resident;

27 (15) "resident" means an individual who, for the entire taxable year,
28 was domiciled in the state or resided in the state.

29 * **Sec. 16.** AS 43.20.012, 43.20.013, 43.20.200(a), and 43.20.300 are repealed.

30 * **Sec. 17.** TRANSITION: REGULATIONS. Notwithstanding sec. 20 of this Act, the
31 Department of Revenue may proceed to adopt regulations necessary to implement the

1 provisions of this Act. The regulations take effect under AS 44.62 (Administrative Procedure
2 Act), but not before January 1, 2000.

3 * **Sec. 18.** SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the
4 application of a provision of this Act to any person or circumstance is held invalid, the
5 remainder of this Act and the application to other persons is not affected.

6 * **Sec. 19.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).

7 * **Sec. 20.** Except as provided in sec. 19 of this Act, this Act takes effect January 1, 2000.