

HOUSE BILL NO. 413

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/13/02
Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the imposition of an income tax on individuals, estates, and trusts;**
2 **relating to the administration of revenue laws; relating to the Alaska Net Income Tax**
3 **Act; and providing for an effective date."**

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

5 * **Section 1.** AS 43.05 is amended by adding a new section to article 3 to read:

6 **Sec. 43.05.300. Definition.** In AS 43.05.220 – 43.05.300, unless the context
7 otherwise requires, "taxpayer"

8 (1) means a person required to pay a tax under this title; and

9 (2) includes an employer that is required to withhold taxes under
10 AS 43.20.041.

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

12 **Sec. 43.20.009. Tax on individuals, estates, and trusts; applicable Alaska**

13 **tax rate.** (a) There is imposed for each taxable year an income tax on every

14 (1) resident individual, resident estate, and resident trust;

1 (2) part-year resident individual with income from sources in the state;
2 and

3 (3) nonresident individual, nonresident estate, and nonresident trust,
4 with income from sources in the state.

5 (b) For a resident individual, resident estate, and resident trust, the tax under
6 this section is the sum of the taxpayer's federal income tax less the credits allowed in
7 AS 43.20.039, multiplied by the applicable Alaska tax rate set by (d) of this section,
8 and then less the offset allowed in (g) of this section.

9 (c) For a part-year resident individual, nonresident individual, nonresident
10 estate, and nonresident trust, the tax under this section is the sum of the taxpayer's
11 federal income tax less the credits allowed in AS 43.20.039, multiplied by the product
12 of the applicable Alaska tax rate set by (d) of this section, times a fraction the
13 numerator of which is gross income from sources within the state and the denominator
14 of which is gross income from all sources. In this subsection, "gross income" includes
15 the deductions provided for in 26 U.S.C. 62(a)(1), (2), (3), (4), (5), and (6).

16 (d) As soon as practicable after September 30 of each year, the department
17 shall publish the applicable Alaska tax rate under this subsection. The applicable
18 Alaska tax rate is

19 (1) 20 percent if the unaudited balance in the budget reserve fund
20 created by art. IX, sec. 17, Constitution of the State of Alaska is equal to or less than
21 \$2,000,000,000 on September 30 of the year preceding the tax year;

22 (2) 10 percent if the unaudited balance in the budget reserve fund
23 created by art. IX, sec. 17, Constitution of the State of Alaska is more than
24 \$2,000,000,000 but less than \$2,500,000,000; or

25 (3) five percent if the unaudited balance in the budget reserve fund
26 created by art. IX, sec. 17, Constitution of the State of Alaska is \$2,500,000,000 or
27 greater on September 30 of the year preceding the tax year.

28 (e) For purposes of (b) and (c) of this section, a taxpayer's federal income tax
29 is the sum of the tax imposed by 26 U.S.C. 1-3 on taxable income required to be
30 reported on the taxpayer's federal tax return and the tax, if any, imposed by 26 U.S.C.
31 55(a), less federal credits incorporated under AS 43.20.021(a) to the extent that the tax

1 after credits is not less than zero. Credits may not be carried back or forward to
 2 another tax year except to the extent allowed for federal income tax purposes by the
 3 Internal Revenue Code.

4 (f) For purposes of (g) of this section, the conversion fraction is a fraction the
 5 numerator of which is the federal tax on taxable income computed under 26 U.S.C. 1-
 6 3 and the denominator of which is federal adjusted gross income, except that if the
 7 computed fraction

8 (1) is less than the lowest rate of tax on taxable income under 26
 9 U.S.C. 1, the fraction is that lowest rate of tax; and

10 (2) exceeds the highest rate of tax on taxable income under 26 U.S.C.
 11 1, the fraction is that highest rate of tax.

12 (g) A resident individual, resident estate, and resident trust is allowed as an
 13 offset against the tax determined in (b) of this section the amount of income tax
 14 imposed for the taxable year by another state or territory of the United States on
 15 income derived from sources in the other state or territory that is also subject to tax
 16 under this chapter. The offset is the least of the following:

17 (1) the product from multiplying the income derived from sources in
 18 the other state or territory that is subject to tax under this chapter by the conversion
 19 fraction calculated in accordance with (f) of this section, and then by multiplying that
 20 amount by the applicable Alaska tax rate;

21 (2) the amount of the actual tax paid to the other state or territory; or

22 (3) the tax determined under (b) of this section but without regard to
 23 the offset provided in this subsection.

24 (h) In this section, unless the context otherwise requires, "unaudited balance in
 25 the budget reserve fund" means the balance in the fund on deposit with the state's
 26 custodian bank as certified by the commissioner, without regard to liabilities to the
 27 general fund under art. IX, sec. 17(d), Constitution of the State of Alaska.

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

29 **Sec. 43.20.029. Electronic filing incentive.** The commissioner may by
 30 regulation provide for an incentive to taxpayers for the electronic filing of tax returns
 31 and making of tax payments. An incentive under this section may not exceed \$25 per

1 taxpayer per year and is contingent upon the accurate and timely filing of the tax
2 return and timely payment of the tax due.

3 * **Sec. 4.** AS 43.20.030(a) is amended to read:

4 (a) **Every individual, trust, estate, partnership, and** [IF A] corporation [,
5 OR A PARTNERSHIP THAT HAS A CORPORATION AS A PARTNER, IS]
6 required to make a return under the provisions of the Internal Revenue Code [, IT]
7 shall file with the department [, WITHIN 30 DAYS AFTER THE FEDERAL
8 RETURN IS REQUIRED TO BE FILED,] a return setting out

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

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

14 * **Sec. 5.** AS 43.20.030(c) is amended to read:

15 (c) Notwithstanding **(h)** [(a)] of this section, the total amount of tax imposed
16 by this chapter is due and payable to the department at the same time and in the same
17 manner as the tax payable to the United States Internal Revenue Service.

18 * **Sec. 6.** AS 43.20.030 is amended by adding a new subsection to read:

19 (h) The return for a corporation is due within 30 days after the federal return is
20 required to be filed. The return for other taxpayers is due on the date the federal return
21 is required to be filed.

22 * **Sec. 7.** AS 43.20 is amended by adding a new section to read:

23 **Sec. 43.20.039. Credits.** (a) A resident individual, resident estate, and
24 resident trust, and, if (1) - (3) of this subsection are from a source in the state, a
25 nonresident or part-year resident individual, nonresident estate, and nonresident trust,
26 is allowed as a credit the product obtained from multiplying the conversion fraction
27 calculated in accordance with AS 43.20.009(f) by the sum of the following income
28 amounts:

29 (1) Alaska longevity bonus under AS 47.45;

30 (2) interest upon obligations unconditionally backed by the full faith
31 and credit of the United States; and

1 (3) any other income to the extent required by state or federal law.

2 (b) The total credits allowed by this section may not exceed the taxpayer's
3 federal income tax calculated in accordance with AS 43.20.009(e).

4 * **Sec. 8.** AS 43.20.040 is repealed and reenacted to read:

5 **Sec. 43.20.040. Income from sources in the state.** (a) In this chapter,
6 income from sources in the state, to the extent not otherwise preempted by federal law,
7 includes

8 (1) compensation for personal services rendered in the state except for
9 compensation for military or naval service by an individual physically present in the
10 state under military or naval orders with a legal residence or legal domicile in another
11 state as provided by 50 U.S.C. App. 574 (Soldiers' and Sailors' Civil Relief Act of
12 1940);

13 (2) income from salary or wages for work in the state;

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

15 (4) income from stocks, bonds, notes, bank deposits, and other
16 intangible personal property having a taxable situs in the state; however, the receipt of
17 interest income from intangible property in the state does not alone establish a taxable
18 situs in the state;

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

22 (6) income distributed from a resident trust and resident estate;

23 (7) the income of a resident trust and resident estate;

24 (8) income, from a source with a taxable situs in the state, of

25 (A) a nonresident trust; or

26 (B) a nonresident estate; and

27 (9) income of whatever nature from a source with a taxable situs in the
28 state.

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

31 (1) property in the state;

- 1 (2) business, farming, or fishing activities in the state;
- 2 (3) conducting in the state the management or investment function for
3 intangible property;
- 4 (4) a partnership, limited liability company, estate, or trust conducting
5 business activities in the state;
- 6 (5) a corporation transacting business activities in the state that has
7 elected to file federal returns under subchapter S of the Internal Revenue Code; or
- 8 (6) any other activities in the state.

9 (c) If a business, trade, or profession is carried on partly inside and partly
10 outside the state, other than the rendering of purely personal services by an individual,
11 the income from sources in the state shall be determined as provided in AS 43.19. The
12 department shall by regulation provide the methodology, including the use and
13 composition of an apportionment formula, to allocate and apportion the income of
14 individuals involved in commercial fishing or in water, air, or land transportation
15 activities. The department may allocate income of an individual as may be necessary
16 to clearly reflect the source of the income or to prevent an evasion of taxes.

17 * **Sec. 9.** AS 43.20 is amended by adding a new section to read:

18 **Sec. 43.20.041. Withholding and estimated tax payments.** (a) Every
19 employer making payment of wages or salaries

20 (1) shall deduct and withhold an amount of tax computed in a manner
21 to approximate the amount of tax due on those wages or salaries under this chapter for
22 that year;

23 (2) shall remit the tax withheld to the department accompanied by a
24 return on a form prescribed by the department at the times required by the department
25 by regulation;

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

29 (4) shall furnish to the employee on or before January 31 of the
30 succeeding year, or within 30 days after a request by the employee after the
31 employee's termination of employment if that 30-day period ends before January 31, a

1 written statement on a form prescribed by the department showing

2 (A) the name and taxpayer identification number of the
3 employer;

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

5 (C) the total amount of wages, salary, and other compensation
6 for the tax year; and

7 (D) the total amount deducted and withheld as tax.

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

10 (c) Individuals, trusts and estates shall make estimated payments of income
11 tax on income not subject to withholding. Income in the form of a permanent fund
12 dividend under AS 43.23 is not subject to this subsection.

13 (d) Tax withholdings and estimated tax payments under this section shall be
14 claimed as payments of tax for the tax year.

15 (e) In this section, unless the context otherwise requires,

16 (1) "employee" means an employee as determined under provisions of
17 the Internal Revenue Code;

18 (2) "employer" means an employer as determined under the provisions
19 of the Internal Revenue Code;

20 (3) "wages" means wages as determined under the provisions of the
21 Internal Revenue Code.

22 * **Sec. 10.** AS 43.20.160(c) is amended to read:

23 (c) The department shall prescribe and furnish all necessary forms, **shall**
24 **facilitate automated or other efficient means for the filing and processing of tax**
25 **returns and the making of tax payments**, and **shall** adopt and publish all necessary
26 regulations in plain and concise language conformable with this chapter for the
27 assessment and collection of the taxes imposed by this chapter. The department shall
28 apply as far as practicable the administrative and judicial interpretations of the federal
29 income tax law. [THE DEPARTMENT SHALL ALSO PREPARE A CONCISE
30 STATEMENT OF THE CONTENTS OF THE CODE SECTIONS REFERRED TO
31 IN THIS CHAPTER FOR THE INFORMATION OF THE TAXPAYER AND

1 MAKE THEM AVAILABLE TO THE TAXPAYER MAKING A RETURN.]

2 * **Sec. 11.** AS 43.20.340(7) is amended to read:

3 (7) "part-year resident **individual**" means an individual who enters or
4 leaves the state during the taxable year and who has resided or was domiciled in the
5 state for a period of less than 12 months during the taxable year;

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

7 (12) "domicile" means the place where an individual has a true, fixed,
8 permanent home and principal establishment and to which place the individual has the
9 intention of returning whenever absent for a temporary or transitory purpose;

10 (13) "individual" means a natural person, regardless of whether

11 (A) married or unmarried;

12 (B) adult or minor;

13 (14) "nonresident estate" means an estate of a decedent who on the
14 date of death was not domiciled in the state;

15 (15) "nonresident individual" means an individual

16 (A) who is not a resident or part-year resident individual; or

17 (B) who is physically present in the state pursuant to military or
18 naval orders with a legal residence or legal domicile in another state as
19 provided by 50 U.S.C. App. 574 (Soldiers' and Sailors' Civil Relief Act of
20 1940);

21 (16) "nonresident trust" means a trust not established under or
22 governed by the laws of the state;

23 (17) "residence" or "resided" means actual physical presence in the
24 state and is determined without regard to a person's domicile;

25 (18) "resident estate" means an estate of a decedent who on the date of
26 death was domiciled in the state;

27 (19) "resident individual" means an individual or natural person who
28 was domiciled in the state or resided within the state for the entire taxable year except
29 for temporary absences; however, an individual does not lose status as a resident
30 simply by reason of attending an educational institution or serving in the armed forces
31 not in this state;

1 (20) "resident trust" means a trust established under or governed by the
2 laws of the state.

3 * **Sec. 13.** AS 43.05.085; AS 43.20.012, and 43.20.013 are repealed.

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

6 APPLICABILITY. The changes made by this Act apply to tax years beginning on or
7 after January 1, 2003.

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

10 TRANSITION: REGULATIONS. Notwithstanding sec. 18 of this Act, the
11 Department of Revenue may proceed to adopt regulations to carry out the provisions of this
12 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
13 before January 1, 2003.

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

16 TRANSITION: APPLICABLE ALASKA TAX RATE. Notwithstanding
17 AS 43.20.009(d), enacted by sec. 2 of this Act, for tax year 2003 the applicable Alaska tax
18 rate is 20 percent. Nothing in this section limits the operation of AS 43.20.009(d), enacted by
19 sec. 2 of this Act, for subsequent tax years.

20 * **Sec. 17.** Section 15 of this Act takes effect immediately under AS 01.10.070(c).

21 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect January 1, 2003.