

AMENDMENT # 1

OFFERED IN THE SENATE
TO: CSSB 366(FIN)

BY SENATOR BEN STEVENS

1 Page 1, line 1, through page 26, line 15:

2 Delete all material and insert:

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

5

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

7

8 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
9 to read:

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

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

16 (c) A taxpayer who seeks redress from a tax imposed under this title on the
17 grounds that a tax statute or regulation violates the Constitution of the United States,
18 the Constitution of the State of Alaska, or is preempted by federal statute, regulation,
19 or treaty shall file the return with a notice of protest and pay the tax. The notice of
20 protest initiates the informal conference process described in (a) of this section;
21 however, if the taxpayer timely files an action in superior court under
22 AS 43.05.275(c), the informal conference process is terminated. A taxpayer who fails
23 to file a notice of protest with the return is not entitled to a refund if the tax statute or

1 regulation is determined to be unconstitutional.

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

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

6 (1) before the later of

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

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

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

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

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

19 (1) violative of the United States Constitution;

20 (2) violative of the state constitution; or

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

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

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

26 (1) resident individual; and

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

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

31 (c) For a nonresident or part-year resident individual, or for an estate or a trust,

1 the tax under this section is 31 percent of the federal income tax after federal credits
 2 and before other taxes, multiplied by a fraction, the numerator of which is income
 3 from sources in the state and the denominator of which is income from all sources.

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

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

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

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

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

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

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

1 [TIME] that an amended federal return is filed, the date a federal [OR A NOTICE
 2 OF DEFICIENCY OR AN] assessment is made, or the date the restrictions on
 3 assessment are waived by [MAILED TO] the taxpayer [BY THE INTERNAL
 4 REVENUE SERVICE, EXCEPT THAT IN NO EVENT WILL THERE BE A FINAL
 5 DETERMINATION FOR PURPOSES OF THIS SECTION UNTIL THE
 6 TAXPAYER HAS EXHAUSTED RIGHTS OF APPEAL UNDER FEDERAL
 7 LAW].

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

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

12 (1) "consolidated state return" means a return that reports and
 13 aggregates, for all individuals in a family unit, the sum of all

14 (A) federal income taxes, after federal credits and before other
 15 taxes; and

16 (B) state credits under AS 43.20.046;

17 (2) "family unit" means all resident individuals for whom a personal
 18 exemption is claimed on a federal income tax return.

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

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

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

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

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

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

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

28 (4) income from stocks, bonds, notes, bank deposits, and other
 29 intangible personal property having a taxable or business situs in the state; however,
 30 the receipt of interest income from intangible property in the state does not alone
 31 establish a taxable or business situs in the state;

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

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

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

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

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

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

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

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

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

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

21 (3) conducting in the state the management or investment function for
22 intangible property;

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

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

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

29 (c) If a business, trade, or profession is carried on partly inside and partly
30 outside the state, other than the rendering of purely personal services by an individual,
31 the income from sources in the state shall be determined as provided in AS 43.19.

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

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

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

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

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

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

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

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

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

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

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

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

14 (2) shall remit the tax withheld to the department accompanied by a
15 return on a form prescribed by the department at the times required by the department
16 by regulation;

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

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

24 (A) the name and taxpayer identification number of the
25 employer;

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

27 (C) the total amount of wages, salary, or crew shares for the
28 taxable year; and

29 (D) the total amount deducted and withheld as tax for the
30 taxable year.

31 (b) The department shall publish the rate of withholding required by this

1 section.

2 (c) In this section,

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

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

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

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

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

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

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

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

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

25 * **Sec. 16.** AS 43.20.010, 43.20.013, 43.20.200(a), and 43.20.300 are repealed.

26 * **Sec. 17.** TRANSITION: REGULATIONS. Notwithstanding sec. 20 of this Act, the
27 Department of Revenue may proceed to adopt regulations necessary to implement the
28 provisions of this Act. The regulations take effect under AS 44.62 (Administrative Procedure
29 Act), but not before January 1, 2005.

30 * **Sec. 18.** SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the
31 application of a provision of this Act to any person or circumstance is held invalid, the

- 1 remainder of this Act and the application to other persons is not affected.
- 2 * **Sec. 19.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).
- 3 * **Sec. 20.** Except as provided in sec. 19 of this Act, this Act takes effect January 1, 2005."