

AMENDMENT # 0

OFFERED IN THE HOUSE
TO: CSHB 118(FIN)

BY REPRESENTATIVE GRUENBERG

- 1 Page 1, line 10, following "chapter.":
- 2 Insert "If the taxpayer is a member of an affiliated group, then the total amount of
- 3 credits under this section may not exceed \$10,000,000 for the affiliated group. In this
- 4 subsection, "affiliated group" has the meaning given in AS 43.20.073."

NOTES TO DECISIONS

Use of formula apportionment method not constitutionally required. — The State of Alaska does not, as a matter of constitutional law, have to use the formula apportionment method to determine the portion of each corporation's worldwide oil production and pipeline transportation income that can be attrib-

uted to Alaska; the Oil and Gas Corporate Income Tax, former AS 43.21, which was repealed in 1982, was constitutional. *Atlantic Richfield Co. v. State*, 705 P.2d 418 (Alaska 1985), appeal dismissed, 474 U.S. 1043, 106 S. Ct. 774, 88 L. Ed. 2d 754 (1986).

Sec. 43.20.073. Affiliated groups. (a) A corporation that is a member of an affiliated group shall file a return using the water's edge combined reporting method. A return under this section must include the following corporations if the corporations are part of a unitary business with the filing corporation:

(1) an affiliated corporation that is eligible to be included in a federal consolidated return under 26 U.S.C. 1501 — 1505 (Internal Revenue Code) if the corporation's property, payroll, and sales factors in the United States average

(A) 20 percent or more; or

(B) under 20 percent, if the corporation does not meet the requirements of 26 U.S.C. 361(c);

(2) a domestic international sales corporation; in this paragraph, "domestic international sales corporation" has the meaning given in 26 U.S.C. 992(a);

(3) a foreign sales corporation; in this paragraph, "foreign sales corporation" has the meaning given to the term "FSC" in 26 U.S.C. 922(a);

(4) a corporation, regardless of the place where the corporation was incorporated, if the corporation's property, payroll, and sales factors in the United States average 20 percent or more;

(5) a corporation that is incorporated in or does business in a country that does not impose an income tax, or that imposes an income tax at a rate lower than 90 percent of the United States income tax rate on the income tax base of the corporation in the United States, if

(A) 50 percent or more of the sales, purchases, or payments of income or expenses, exclusive of payments for intangible property, of the corporation are made directly or indirectly to one or more members of a group of corporations filing under the water's edge combined reporting method;

(B) the corporation does not conduct significant economic activity.

(b) When computing taxable income for a corporation under (a) of this section, the following amounts shall be excluded:

(1) 80 percent of dividend income received from foreign corporations;

(2) an amount treated as a dividend under 26 U.S.C. 78;

(3) 80 percent of the royalties accrued or received from a foreign corporation.

(c) In (b)(1) and (3) of this section, a payment is considered to be received from a corporation that is part of the unitary business if the payment is received

(1) by a member of an affiliated group included in a water's edge combined report filed under this section; and

(2) from a corporation in which the recipient owns 50 percent or more of the stock of the corporation.

(d) Dividends and royalties taxable to a corporation using the water's edge combined reporting method are in lieu of an expense attribution for income excluded under (b) of this section.

(e) The department may require a corporation that files under (a) of this section to file a report under AS 43.20.065 — 43.20.071 prepared without regard to this section if the corporation or an affiliated corporation

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

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

(f) This section does not apply to taxpayers subject to AS 43.20.072 engaged in

(1) the production of oil or gas from a lease or property in the state; or

(2) the transportation of oil or gas by regulated pipeline in the state.

(g) A corporation that has signed a contract approved by the legislature as a result of submission of a proposed contract developed under AS 43.82 or as a result of acts by the legislature in implementing the purposes of AS 43.82, providing for payments in lieu of the tax under this chapter and that has nexus with the state solely as the result of the corporation's participation in the approved qualified project that is subject to the contract is not required to file a return under this section unless required to do so by the contract.

(h) In this section,

(1) "affiliated corporation" means a member of an affiliated group to which the taxpayer filing a return under (a) of this section belongs;

(2) "affiliated group" means a group of two or more corporations in which 50 percent or more of the voting stock of each member of the group is directly or indirectly owned by one or more corporate or noncorporate common owners, or by one or more of the members of the group;

(3) "foreign corporation" means a corporation created or organized outside of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States;

(4) "water's edge combined reporting method" means a reporting method in which the only corporations besides the taxpayer that may be included in the return are the corporations listed in (a) of this section. (§ 3 ch 11 SLA 1991; am § 9 ch 104 SLA 1998)

Revisor's notes. — Subsection (g) was enacted as (h). Relettered in 1998, at which time former subsection (g) was relettered as (h).

Cross references. — For legislative purpose and intent in enacting this section, see §§ 1, 2, ch. 11, SLA 1991 in the Temporary and Special Acts.

For findings, intent, and nonseverability provisions related to the enactment of subsection (g), see §§ 1, 2,

and 10, ch. 104, SLA 1998 in the 1998 Temporary and Special Acts.

Effect of amendments. — The 1998 amendment, effective June 18, 1998, added subsection (g).

Editor's notes. — Section 4, ch. 11, SLA 1991 provides that this section applies to tax years beginning after December 31, 1991.

Secs. 43.20.080 — 43.20.140. Allocation of nonbusiness income; net rents and royalties; capital gains and losses; interests and dividends; patent and copyright royalties; allocation of business income; apportionment by commissioner. [Repealed, § 13 ch 70 SLA 1975.]

Sec. 43.20.150. Definitions. [Repealed, § 45 ch 113 SLA 1980.]

Article 3. Administration.

Section

160. Administration

200. Review and assessment

Collateral references. — 71 Am. Jur. 2d, State and Local Taxation, §§ 530-539. 81A C.J.S., States, §§ 133-135.

Sec. 43.20.160. Administration. (a) The department shall administer this chapter.

(b) *[Repealed, § 45 ch 113 SLA 1980.]*

(c) The department shall prescribe and furnish all necessary forms, and adopt and publish all necessary regulations in plain and concise language conformable with this