

CS FOR HOUSE BILL NO. 115(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/12/17

Referred: Rules

Sponsor(s): HOUSE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act bearing the short title of the 'Education Funding Act'; relating to the taxation**
2 **of income of individuals, partners, shareholders in S corporations, trusts, and estates;**
3 **relating to a payment against the individual income tax from the permanent fund**
4 **dividend disbursement; repealing tax credits applied against the tax on individuals**
5 **under the Alaska Net Income Tax Act; and providing for an effective date."**

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

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

9 SHORT TITLE. This Act may be known as the Education Funding Act.

10 *** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 LEGISLATIVE INTENT. It is the intent of the legislature that, under this Act,

13 (1) income up to \$14,300 for an individual, plus income from permanent fund

dividends, will not be subject to income tax under AS 43.22;

(2) income up to \$28,600 for two individuals filing jointly who do not have dependents, plus income from permanent fund dividends, will not be subject to the income tax under AS 43.22;

(3) an individual, or two individuals filing jointly, will receive an additional \$4,000 deduction for each dependent, resulting in an increase in the amounts stated in (1) and (2) of this section of \$4,000 for each dependent.

* **Sec. 3.** AS 43.05.045(a) is amended to read:

(a) **Except as provided in AS 43.22.075(i), or unless** [UNLESS] an exemption is granted under (b) of this section, a taxpayer required to submit a return or report for a tax levied under this title or for any other tax administered by the department shall submit the return or report electronically in a format prescribed by the department. Failure to comply with this section may result in a civil penalty under AS 43.05.220(f). If a law under this title requires a report or return or a portion of a report or return to be in writing, an electronically filed report or return satisfies this section. A taxpayer shall submit attachments to a report or return required under this title electronically.

* **Sec. 4.** AS 43 is amended by adding a new chapter to read:

Chapter 22. Individual Income Tax.

Sec. 43.22.010. Income tax on individuals. (a) Each calendar year or fraction of a calendar year, an income tax is imposed on the income of a

(1) resident;

(2) nonresident that is derived from or connected with a source in the state.

(b) The tax under this section for an individual is determined as follows:

If the taxable income is	Then the tax is
Less than \$10,300	\$0
\$10,300 but less than \$50,000	2.5 percent of the amount in excess of \$10,300
\$50,000 but less than \$100,000	\$992.50 plus 4 percent of the amount in excess of \$50,000

1	\$100,000 but less than \$200,000	\$2,992.50 plus 5 percent of the
2		amount in excess of \$100,000
3	\$200,000 but less than \$250,000	\$7,992.50 plus 6 percent of the
4		amount in excess of \$200,000
5	\$250,000 or more	\$10,992.50 plus 7 percent of the
6		amount in excess of \$250,000.

7 (c) Except as otherwise provided in this section, the tax under this section for
8 two individuals who file a joint federal income tax return is determined as follows:

9	If the taxable income is	Then the tax is
10	Less than \$20,600	\$0
11	\$20,600 but less than \$100,000	2.5 percent of the amount in
12		excess of \$20,600
13	\$100,000 but less than \$200,000	\$1,985 plus 4 percent of the amount in
14		excess of \$100,000
15	\$200,000 but less than \$400,000	\$5,985 plus 5 percent of the amount in
16		excess of \$200,000
17	\$400,000 but less than \$500,000	\$15,985 plus 6 percent of the amount
18		in excess of \$400,000
19	\$500,000 or more	\$21,985 plus 7 percent of the amount
20		in excess of \$500,000.

21 (d) An individual who is eligible to file a joint federal income tax return but
22 who files an individual federal income tax return shall determine the tax imposed by
23 this chapter under (b) of this section.

24 (e) Two resident individuals who are eligible to file a joint federal income tax
25 return but who do not, individually or jointly, file a federal income tax return may
26 elect to determine the tax imposed by this chapter either

27 (1) individually under (b) of this section; or

28 (2) jointly under (c) of this section.

29 (f) Two individuals who file a joint federal income tax return one or both of
30 whom is not a resident may elect to determine the tax imposed by this chapter either

31 (1) individually under (b) of this section; or

(2) jointly under (c) of this section, as if both individuals were residents; the income of the individuals filing jointly under this paragraph is not subject to the calculation under AS 43.22.015.

Sec. 43.22.015. Calculation of tax on a nonresident individual. Except as otherwise provided in this chapter, the tax on a nonresident individual is the product of the tax determined under AS 43.22.010(b) on the nonresident individual's taxable income computed as if the nonresident individual were a resident individual, multiplied by a fraction, the numerator of which is the nonresident individual's income taxable under AS 43.22.045 and the denominator of which is the nonresident individual's taxable income computed as if the nonresident individual were a resident individual. However, if a nonresident individual's taxable income computed as if the nonresident individual were a resident individual is less than the nonresident individual's income taxable under AS 43.22.045, the tax imposed by this chapter is on the nonresident individual's taxable income.

Sec. 43.22.020. Tax on trusts and estates. (a) A tax is imposed for each taxable year or portion of a taxable year on the taxable income of a resident or nonresident trust or estate. Except as provided in (b) of this section, the tax under this section for a trust or estate is determined as follows:

If the taxable income is	Then the tax is
Less than \$50,000	2.5 percent of the amount in excess of \$0
\$50,000 but less than \$100,000	\$1,250 plus 4 percent of the amount in excess of \$50,000
\$100,000 but less than \$200,000	\$3,250 plus 5 percent of the amount in excess of \$100,000
\$200,000 but less than \$250,000	\$8,250 plus 6 percent of the amount in excess of \$200,000
\$250,000 or more	\$11,250 plus 7 percent of the amount in excess of \$250,000.

(b) A tax of 2.5 percent is imposed on the taxable income of a resident or nonresident Alaska Native Settlement Trust that has elected for alternative federal tax

1 treatment under 26 U.S.C. 646 (Internal Revenue Code).

2 (c) In this section, the taxable income of a nonresident trust or estate is the
3 income of the trust or estate that is derived from or connected with a source in the
4 state.

5 (d) A trust is not subject to tax under this chapter if

6 (1) all of the trustees of the trust are nonresidents;

7 (2) the entire corpus of the trust, including real, tangible, and
8 intangible property, is located outside the state; and

9 (3) no income or gains of the trust are derived from or connected with
10 a source in the state.

11 (e) For purposes of (d)(1) of this section, a trustee that is a nonresident
12 banking corporation at the time the banking corporation becomes a trustee is a
13 nonresident trustee even if the banking corporation later becomes a resident trustee
14 because it is acquired by or becomes an office or branch of a resident trustee.

15 (f) A trust that is exempt from federal income tax because of its purpose or
16 activities is not subject to tax under this chapter.

17 (g) A special needs trust or other trust established to provide solely for the
18 housing, living expenses, or medical care of a disabled beneficiary is not subject to tax
19 under this chapter. In this subsection,

20 (1) "disabled beneficiary" means an individual who has

21 (A) a physical or mental impairment that substantially limits
22 one or more major life activities; or

23 (B) a condition that may require the use of a prosthesis, special
24 equipment for mobility, or a service animal;

25 (2) "special needs trust" has the meaning given in AS 13.36.215(b).

26 **Sec. 43.22.025. Credit for income taxes imposed by other jurisdictions. (a)**

27 A resident individual, trust, or estate or part-year resident individual, trust, or estate of
28 the state is allowed a credit against the tax due under this chapter for an income tax
29 that was imposed on the resident or part-year resident for the taxable year by another
30 state or the political subdivision of another state on income derived from or connected
31 with that state or political subdivision.

1 (b) A credit allowed under (a) of this section

2 (1) for a resident individual, trust, or estate may not exceed the
3 individual's, trust's, or estate's tax due under this chapter before credits are applied,
4 multiplied by a ratio, the numerator of which is the portion of the individual's, trust's,
5 or estate's taxable income that is derived from or connected with a source in another
6 state or the political subdivision of another state and the denominator of which is the
7 resident individual's, trust's, or estate's taxable income;

8 (2) for a part-year resident individual, trust, or estate may not exceed
9 the individual's, trust's, or estate's tax due for the period of state residency before
10 credits are applied, multiplied by a ratio, the numerator of which is the individual's,
11 trust's, or estate's taxable income derived from or connected with a source in another
12 state or the political subdivision of another state during the period of state residency
13 and the denominator of which is the part-year resident individual's, trust's, or estate's
14 taxable income during the period of state residency;

15 (3) may not reduce the tax due under this chapter to less than the tax
16 that would have been due if the income derived from or connected with a source in
17 another state or the political subdivision of another state and subject to taxation by the
18 other state or political subdivision had been excluded from the resident or part-year
19 resident individual's, trust's, or estate's taxable income during the calculation of tax
20 under this chapter before the application of credits.

21 (c) If the tax administration of another state or a political subdivision of
22 another state determines that a taxpayer has overpaid tax, affecting the computation of
23 the credit allowed under this section for any taxable year, the taxpayer shall file an
24 amended return with the department not later than 90 days after the final determination
25 by the state or political subdivision that the tax was overpaid. The department may
26 assess a taxpayer additional tax, proportional to the amount overpaid in the other state
27 or political subdivision.

28 (d) A taxpayer is not allowed a credit under this section for taxes paid to
29 another jurisdiction if the taxpayer has or will claim a credit against the income tax
30 imposed by the other jurisdiction for the tax paid or payable under this chapter.

31 (e) Income tax imposed on a partner or the shareholder of an S corporation on

the income of the partnership or S corporation, including tax paid by the partnership or S corporation to satisfy the tax liability of the partner or shareholder, may be included in the calculation of a credit under this section. Tax imposed on the partnership or S corporation that is the direct liability of the partnership or S corporation and not that of the partner or shareholder may not be included in the calculation of a credit under this section.

Sec. 43.22.030. Taxable income; general rule. (a) In this chapter, taxable income is the taxpayer's federal adjusted gross income for the taxable year

(1) plus, if not already included in federal adjusted gross income,

(A) interest on obligations of another state, a political subdivision of another state, the public instrumentality of another state, or the local authority of another state;

(B) a loss on the sale or exchange of an obligation issued by or on behalf of

(i) the state;

(ii) a municipality of the state; or

(iii) a public instrumentality, public authority, or public corporation created under state law;

(C) a loss from the sale or exchange of shares in a unit investment trust if the loss is attributable to an obligation issued by or on behalf of

(i) the state;

(ii) a municipality of the state; or

(iii) a public instrumentality, public authority, or public corporation created under state law;

(D) interest or dividends on obligations or securities issued by the United States, or an authority, commission, or instrumentality of the United States, that the Internal Revenue Code exempts from federal income tax but does not prevent from including;

(E) income taxes under this chapter;

(F) a gain realized but not recognized under 26 U.S.C. 1031

1 (Internal Revenue Code);

2 (G) a deduction allowed in the determination of federal
3 adjusted gross income that is directly or indirectly related to income that is not
4 taxable under this chapter; and

5 (H) income of an incomplete gift nongrantor trust to which a
6 taxpayer transferred property, less deductions of the trust, if

7 (i) the income and deductions of the trust would be
8 taken into account in computing the taxpayer's federal taxable income
9 if the trust in its entirety was treated as a grantor trust under the Internal
10 Revenue Code;

11 (ii) the trust is a resident trust;

12 (iii) the trust does not qualify as a grantor trust under 26
13 U.S.C. 671 - 679 (Internal Revenue Code); and

14 (iv) the grantor's transfer of assets to the trust is treated
15 as an incomplete gift under 26 U.S.C. 2511 (Internal Revenue Code);

16 (2) minus, if included in federal adjusted gross income,

17 (A) interest income or a dividend from an obligation that is
18 exempt from taxation by a state under federal law;

19 (B) a refund or credit for the overpayment of an income tax;

20 (C) an ordinary and necessary expense, including an interest
21 expense, paid or incurred during the taxable year that is directly or indirectly
22 related to income exempt under the Internal Revenue Code but taxable by the
23 state;

24 (D) a gain recognized under 26 U.S.C. 1031 (Internal Revenue
25 Code) that was included in federal adjusted gross income under (1) of this
26 subsection;

27 (E) income exempt under 4 U.S.C. 114;

28 (F) compensation prohibited from state taxation by 50 U.S.C.
29 3901 - 4043 (Servicemembers Civil Relief Act);

30 (G) a gain from the sale or exchange of an obligation issued by
31 or on behalf of

(i) the state;

(ii) a municipality of the state; or

(iii) a public instrumentality, public authority, or public corporation created under state law; and

(H) a permanent fund dividend received under AS 43.23;

(I) \$4,000 for each exemption claimed on the taxpayer's federal income tax return for the individual, an individual filing jointly with the individual, or a dependent of the individual; a reduction under this subparagraph may not

(i) be claimed by a trust;

(ii) reduce a taxpayer's tax liability under this chapter to below zero.

(b) When calculating taxable income, a taxpayer

(1) may not carry back a net operating loss under 26 U.S.C. 172(b)(1)(A)(i) (Internal Revenue Code);

(2) may carry over a net operating loss under 26 U.S.C. 172(b)(1)(A)(ii) (Internal Revenue Code), except that a loss may not be carried over for more than five years; for a taxpayer subject to AS 43.19 (Multistate Tax Compact), the amount of a net operating loss allowed to be carried over is limited to the amount apportioned to the state in the taxable year in which the loss was generated under AS 43.19 (Multistate Tax Compact);

(3) shall include the modifications required by AS 43.20.144(b)(2), concerning intangible drilling and development costs, AS 43.20.144(b)(3), concerning percentage depletion, and AS 43.20.144(b)(3), concerning depreciation.

Sec. 43.22.035. Taxable income from partnerships and S corporations. (a)

A partner or shareholder shall make an adjustment described in AS 43.22.030 to an item of income, gain, loss, or deduction from a partnership or S corporation in proportion to a partner's distributive share of a partnership or a shareholder's pro rata share of an S corporation. If a partner's distributive or a shareholder's pro rata share of an adjustment is not required to be accounted for separately for federal income tax purposes, the partner's or shareholder's share of the adjustment must be determined in

1 proportion to the partner's or shareholder's share of partnership or S corporation
2 income or losses for federal income tax purposes.

3 (b) In determining taxable income, a partner or shareholder shall treat an item
4 of income, gain, loss, or deduction from a partnership or S corporation as if it has the
5 same character as it does for federal income tax purposes. If an item of income, gain,
6 loss, or deduction from a partnership or S corporation is not accounted for separately
7 for federal income tax purposes, a partner or shareholder shall treat it as if the item of
8 income, gain, loss, or deduction was realized directly from the source from which it
9 was realized by the partnership or S corporation or incurred in the same manner in
10 which it was incurred by the partnership or S corporation.

11 (c) If the principal purpose of a special allocation of an item of partnership
12 income, gain, loss, or deduction is the avoidance or evasion of tax under this chapter,
13 the partner's distributive share is determined as if the partnership agreement did not
14 contain the special allocation. In this subsection, "special allocation" means an
15 allocation of the distributive share of an item of partnership income, gain, loss,
16 expense, or deduction made under the partnership agreement to a partner in a
17 proportion different than the partner's partnership interest.

18 **Sec. 43.22.040. Taxable income of an estate, trust, or beneficiary.** (a) The
19 taxable income of an estate or trust is determined as if the estate or trust were an
20 individual and is subject to adjustments under AS 43.22.030 and reduction under
21 section 26 U.S.C. 661 (Internal Revenue Code). The department may establish in
22 regulation the method for determining the taxable income of an estate or trust,
23 including the manner in which the adjustments under AS 43.22.030 will be allocated
24 between the estate's or trust's taxable share and a beneficiary's distributive share.
25 Unless otherwise provided by the department in regulation, an allocation must be
26 made in proportion to the estate's or trust's taxable share or the beneficiary's
27 distributive share of the trust or estate for federal income tax purposes.

28 (b) If the principal purpose for a provision of an instrument directing the
29 distribution of an item of income, gain, loss, or deduction of an estate or trust is the
30 avoidance or evasion of tax under this chapter, the taxable income of the estate, trust,
31 or beneficiary shall be determined as if the instrument did not contain that provision.

1 **Sec. 43.22.045. Nonresident individuals; income derived from or**
 2 **connected with a source in the state.** (a) The taxable income of a nonresident
 3 individual is the nonresident individual's income that is derived from or connected
 4 with a source in the state, as adjusted under AS 43.22.030. Taxable income of a
 5 nonresident individual includes

6 (1) a partner's distributive share of an item of income, gain, loss, or
 7 deduction of a partnership as determined under AS 43.22.050;

8 (2) a shareholder's pro rata share of an S corporation's income or loss,
 9 increased by the reductions for taxes described in 26 U.S.C. 1366(f)(2) and (3)
 10 (Internal Revenue Code), as determined under AS 43.22.050;

11 (3) income or loss of a business conducted by a nonresident individual,
 12 nonresident estate, or nonresident trust, other than income or loss from a partnership or
 13 S corporation, as determined under AS 43.22.050;

14 (4) the share of estate or trust income, gain, loss, or deduction
 15 determined under AS 43.22.055;

16 (5) an item of income, gain, loss, or deduction from the sale or
 17 assignment of a beneficial interest, or other disposition of an interest in tangible
 18 personal property in the state, or rental income or loss from the use of tangible
 19 personal property in the state; if the item of income, gain, loss, or deduction is from
 20 tangible personal property used or employed both in and outside the state, the amount
 21 included in taxable income is determined by multiplying the item of income, gain,
 22 loss, or deduction by a fraction, the denominator of which is the total number of days
 23 during the taxable year that the property was used or employed to earn, accrue, or
 24 incur the item of income, gain, loss, or deduction and the numerator of which is the
 25 number of the days during which the property was used or employed to earn, accrue,
 26 or incur the item of income, gain, loss, or deduction in the state;

27 (6) an item of income, gain, loss, or deduction from the sale or
 28 assignment of a beneficial interest, or other disposition of an interest in real property
 29 in the state, or rental income or loss from the use of real property in the state,
 30 including the percentage of ordinary and capital gains received from a real estate
 31 investment trust, as defined in 26 U.S.C. 856 (Internal Revenue Code), that is

1 attributable to rents from or sale or other disposition of real property located in the
 2 state; in this paragraph, an item of income, gain, loss, or deduction from the sale,
 3 assignment of a beneficial interest, or other disposition of real property in the state
 4 includes an item of income, gain, loss, or deduction derived from the sale or
 5 assignment of a beneficial interest in a partnership, S corporation, nonpublicly traded
 6 C corporation with 100 or fewer shareholders, estate, or trust, if the entity owns real
 7 property in the state that has a fair market value equal to or exceeding 50 percent of all
 8 assets of the entity on the date of sale, assignment, or other disposition of the
 9 taxpayer's interest in the entity; for purposes of this paragraph,

10 (A) only assets owned for at least two years before the date of
 11 the sale, assignment, or other disposition of an interest in the entity shall be
 12 used to determine the fair market value of all of the assets of the entity on the
 13 date of sale, assignment, or other disposition; and

14 (B) the amount of an item of income, gain, loss, or deduction
 15 derived from or connected with a source in the state from the sale, assignment,
 16 or other disposition of an interest in an entity that is subject to the provisions of
 17 this paragraph is the amount recognized for federal income tax purposes
 18 related to the sale, assignment, or disposition, multiplied by a fraction, the
 19 numerator of which is the fair market value of the real property located in the
 20 state on the date of sale, assignment, or disposition and the denominator of
 21 which is the fair market value of all of the assets of the entity on the date of the
 22 sale, assignment, or disposition;

23 (7) compensation, salary, or wages for personal services rendered or
 24 performed in the state that are derived from a business, trade, profession, occupation,
 25 or employment carried on in the state; for purposes of this paragraph, personal
 26 services

27 (A) except as otherwise provided in (B) of this paragraph,
 28 include services performed

29 (i) in connection with presenting or receiving
 30 employment-related training or education in the state;

31 (ii) in connection with a site inspection, review,

analysis, or management or any other supervision of a facility located in the state;

(iii) in connection with research and development at a facility located in the state or in connection with the installation of new or upgraded equipment or systems at that facility;

(iv) as part of a project team working on the attraction or implementation of new investment in a facility located or planned to be located in the state;

(v) in connection with fishing, farming, or agriculture in the state; or

(vi) for the federal government;

(B) do not include services that are causal, isolated, inconsequential, or ancillary to out-of-state services;

(8) income derived from a business, trade, profession, occupation, or employment carried on in the state, including income

(A) received under a covenant not to compete, a severance agreement, a termination agreement, or unemployment compensation insurance attributable to a business, trade, profession, occupation, or employment previously carried on in the state, regardless of when received;

(B) derived from a business, trade, profession, occupation, or employment carried on in the state by an individual who maintains or operates an office, shop, store, warehouse, boat, plane, factory, agency, or other place where the individual's affairs are systematically and regularly carried on, regardless of other transactions carried on outside the state; this subparagraph does not include income from an activity of an individual whose presence in the state is casual, isolated, inconsequential, or ancillary to out-of-state activities, except that, if a business, trade, profession, occupation, or employment is carried on partly in and partly outside the state, other than for the rendering of purely personal services by the individual, the taxable income derived from or connected with a source in the state is determined under AS 43.19 (Multistate Tax Compact) and AS 43.22.030;

1 (9) income from the management or investment function or activities
2 conducted in the state from intangible property;

3 (10) dividends, interest, payments received under an annuity, gains, or
4 other intangible income received from, or attributable to, intangible personal property,
5 including stock, bonds, notes, bank deposits, or annuities, if the intangible personal
6 property is employed in a business, trade, profession, occupation, or employment
7 carried on in the state;

8 (11) a gain derived by a nonresident individual from a statutory stock
9 option, restricted stock, nonstatutory stock option, or stock appreciation right, who, at
10 the time the gain is received, performs services in the state for or is employed in the
11 state by the corporation granting the option, stock, or right, as determined in
12 regulations adopted by the department;

13 (12) income from nonqualified deferred compensation plans
14 attributable to services performed in the state, including compensation included in
15 federal gross income under 26 U.S.C. 457A (Internal Revenue Code);

16 (13) proceeds from a gambling activity conducted in the state or lottery
17 tickets purchased in the state, including payments received from a third party for the
18 transfer of the rights to future proceeds related to a gambling activity in the state or
19 lottery tickets purchased in the state;

20 (14) for an S corporation that terminates its taxable status in the state
21 during the tax year, income or a gain recognized on the receipt of payments from an
22 installment sale contract entered into at the time the S corporation was subject to tax in
23 the state, allocated consistent with the applicable methods and rules under this chapter;

24 (15) royalties or other compensation received for the use of a patent,
25 copyright, secret process or formula, good will, mark, trade brand, franchise, or other
26 property having a taxable or business situs in the state;

27 (16) royalties or other compensation received for the use of a patent if
28 the patent is employed in production, fabrication, manufacturing, or other process in
29 the state;

30 (17) income or a gain from the disposition of an asset if the
31 acquisition, management, or disposition of the asset constitutes an integral part of the

1 nonresident individual's regular trade or business operation;

2 (18) income from the transmission, broadcast, distribution, or
3 dissemination of a service directly or indirectly attributable to the performance in the
4 state of an athlete, entertainer, singer, musician, dancer, comedian, magician,
5 performing artist, actor, actress, or similar person, including syndication fees.

6 (b) A deduction included in taxable income that results from a capital loss,
7 passive activity loss, or net operating loss must be based solely on income, a gain, a
8 loss, or a deduction derived from or connected with a source in the state. A
9 nonresident individual shall treat a deduction under this subsection in the same manner
10 as the corresponding federal deduction, unless the department requires otherwise in
11 regulation.

12 **Sec. 43.22.050. Business conducted by a nonresident individual, trust, or**
13 **estate; income derived from or connected with a source in the state.** (a) The
14 department shall adopt regulations governing the amount of an item of income, gain,
15 loss, or deduction from a business conducted by a nonresident individual, trust, or
16 estate that is derived from or connected with a source in the state for purposes of
17 determining taxable income. Regulations adopted under this subsection must be
18 consistent with AS 43.19 (Multistate Tax Compact) and AS 43.22.045 and include
19 adjustments under AS 43.22.030.

20 (b) The department shall adopt regulations governing the amount of an item of
21 income, gain, loss, or deduction that is derived from or connected with a source in the
22 state and is included in a nonresident

23 (1) partner's distributive share for purposes of taxation under this
24 chapter;

25 (2) shareholder's pro-rata share of an S corporation for purposes of
26 taxation under this chapter.

27 (c) The department may by regulation require a taxpayer to allocate rather
28 than apportion an item of income, gain, loss, or deduction under this section.

29 **Sec. 43.22.055. Nonresident trust, estate, or beneficiary; income derived**
30 **from or connected with a source in the state.** (a) The department shall adopt
31 regulations governing whether an item of income, gain, loss, or deduction of a

1 nonresident estate or nonresident trust is included in taxable income derived from or
 2 connected with a source in the state. Regulations adopted under this subsection must
 3 be consistent with the remainder of this section and AS 43.22.045.

4 (b) A nonresident beneficiary shall include in taxable income derived from or
 5 connected with a source in the state a distribution from an estate or trust as if the
 6 nonresident beneficiary earned or incurred the item of income, gain, loss, or deduction
 7 attributable to the distribution directly from the source. For purposes of this
 8 subsection, the department may establish one or more methods for a nonresident
 9 beneficiary to determine whether an item of income, gain, loss, or deduction is
 10 attributable to a distribution. The department shall consistently apply a method from
 11 year to year and apply the same method to other nonresident beneficiaries of the same
 12 trust or estate. Nothing in this subsection requires the department to give effect to a
 13 provision of an instrument creating an estate or trust if the department reasonably
 14 believes that the principal purpose of the provision is to avoid or evade the tax
 15 imposed under this chapter.

16 **Sec. 43.22.060. Part-year resident individual, trust, or estate; residency**
 17 **income; income derived from or connected with a source in the state.** (a) Except as
 18 otherwise provided in this section, the taxable income of a part-year resident
 19 individual, trust, or estate is the sum of

20 (1) the taxable income of the part-year resident individual, trust, or
 21 estate during the period of residency; and

22 (2) the taxable income derived from or connected with a source in the
 23 state for the period of nonresidency of the individual, trust, or estate.

24 (b) The department shall adopt regulations to determine the taxable income of
 25 a part-year resident taxpayer who is granted a statutory stock option, restricted stock,
 26 nonstatutory stock option, or a stock appreciation right and who, during the grant
 27 period, performs services in the state for, or is employed in the state by, the
 28 corporation granting the option, stock, or right.

29 **Sec. 43.22.065. Personal service and S corporations formed or used to**
 30 **avoid or evade income tax.** (a) The department may allocate all income, deductions,
 31 credits, exclusions, and other allowances between a personal service or S corporation

1 and its employee-owners if the

2 (1) personal service or S corporation performs substantially all of its
3 services for or on behalf of another corporation, partnership, or other entity and the
4 effect is the avoidance or evasion of income tax; and

5 (2) allocation is necessary to reflect the source and amount of the
6 income, regardless of whether the corporation is otherwise taxable.

7 (b) For purposes of this section, avoidance or evasion of income tax occurs
8 when a personal service or S corporation is used to

9 (1) reduce the taxable income of a resident or the taxable income of a
10 nonresident derived from or connected with a source in the state; or

11 (2) secure the benefit of an expense, deduction, credit, exclusion, or
12 other allowance for any employee-owner that would not otherwise apply under this
13 chapter.

14 (c) The constructive ownership of stock rules under 26 U.S.C. 318 (Internal
15 Revenue Code) apply to this section, except that "5 percent" shall be substituted for
16 "50 percent" in 26 U.S.C. 318(a)(2)(C) (Internal Revenue Code).

17 (d) In this section, all persons specified in 26 U.S.C. 267(b) (Internal Revenue
18 Code) shall be treated as one entity.

19 (e) In this section,

20 (1) "employee-owner" means any employee who owns, on any day
21 during the taxable year, more than 10 percent of the outstanding stock of the personal
22 service or S corporation;

23 (2) "personal service" means a corporation whose principal activity is
24 the performance of personal services that are substantially performed by the
25 employee-owners of the corporation.

26 **Sec. 43.22.070. Determination of taxable year and method of accounting.**

27 (a) For purposes of the tax imposed under this chapter, a taxpayer's

28 (1) taxable year is the same as the taxpayer's taxable year for federal
29 income tax purposes; and

30 (2) method of accounting is the same as the taxpayer's method of
31 accounting for federal income tax purposes.

(b) The department shall adopt regulations to determine the taxable income of a taxpayer whose method of accounting changes during a taxable year or between taxable years.

Sec. 43.22.075. Returns and payment of taxes. (a) A taxpayer shall file with the department a return setting out

(1) the amount of tax due under this chapter; and

(2) other information necessary to carry out this chapter, as required by the department in regulation.

(b) The department shall determine and publish the federal adjusted gross income below which an individual is not required to file a tax return under this section.

(c) A person required to file a return under this chapter shall file the return on a form or in a format prescribed by the department. The return is due to the department at the same time and in the same manner, including extensions, as the taxpayer's federal income tax return to the United States Internal Revenue Service. A return filed under this chapter must be made under oath and on penalty of perjury.

(d) The total amount of tax imposed by this chapter is due and payable to the department at the same time and in the same manner as the federal individual income tax payable to the United States Internal Revenue Service.

(e) A taxpayer, upon request by the department, shall furnish to the department a true and correct copy of a return that the taxpayer has filed with the United States Internal Revenue Service.

(f) A taxpayer shall notify the department in writing of an alteration in, or modification of, the taxpayer's federal income tax return and of a recomputation of tax or determination of deficiency, whether with or without assessment. A full statement of the facts must accompany the notice. A taxpayer shall file the notice not later than 60 days after the final determination of the alteration, modification, recomputation, or deficiency and shall pay any additional tax due under this chapter at that time. In this subsection, "final determination" means the time that an amended federal return is filed, a notice of deficiency or an assessment is mailed to the taxpayer by the Internal Revenue Service, and the taxpayer has exhausted rights of appeal under federal law.

(g) The department may credit or refund overpayments of taxes, taxes erroneously or illegally assessed or collected, penalties collected without authority, and taxes that are found unjustly assessed or excessive in amount, or otherwise wrongfully collected. The department shall, in regulation, set limitations, specify the manner in which claims for credits or refunds are made, and give notice of allowance or disallowance. When a refund is allowed to a taxpayer, the refund may be paid out of the general fund on a warrant issued under a voucher approved by the department.

(h) A partnership, S corporation, estate, or trust shall provide to its partners, beneficiaries, or shareholders, and to the department, all information necessary for its partners, beneficiaries, and shareholders to comply with this chapter.

(i) An individual is not required to file a return under this section electronically, but a person employed to prepare and file income tax returns shall file the returns for those individuals electronically.

(j) The department shall adopt regulations that set out requirements for a spouse, upon request, to be partially or fully relieved from joint and several liability resulting from the joint filing of a tax return.

Sec. 43.22.080. Tax withholding on wages of individuals. (a) Every employer making payment of wages or salaries

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

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

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

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

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

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

(C) the total amount of wages and salary for the taxable year; and

(D) the total amount deducted and withheld as tax under this chapter for the taxable year.

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

Sec. 43.22.085. Withholding on nonresident partners; composite returns.

(a) Unless otherwise provided by this section, a partnership that is required to file an annual information return under subchapter K of the Internal Revenue Code (26 U.S.C. 701 - 777) shall file a partnership return as prescribed by the department and shall report any items of income, gain, loss, or deduction that are derived from or connected with a source in the state, as determined under this chapter.

(b) A partnership that is required to file a return under (a) of this section shall withhold income tax from a nonresident partner's distributive share of the partnership's items of income, gain, loss, or deduction derived from or connected with a source in the state at the highest marginal income tax rate applicable to individuals for the taxable year.

(c) Withholding under this section is not required by a partnership that

(1) is a publicly traded partnership, as defined in 26 U.S.C. 7704(b) (Internal Revenue Code); and

(2) files with the department an annual information return reporting the name, address, taxpayer identification number, and other information requested by the department concerning each unitholder whose distributive share of partnership income, regardless of source, is more than \$1,000.

(d) The department shall adopt regulations that allow a partnership subject to withholding under this section to file a composite return.

Sec. 43.22.090. Permanent fund tax payment. The department shall adopt regulations establishing procedures for an individual eligible for a dividend under

AS 43.23.005 to direct the department to hold all or a part of the amount of the dividend to pay the tax due under this chapter. The amount held under this section may not exceed the dividend amount after contributions, garnishments, levies, fees, attachments, assignments, or other reductions or donations allowed under AS 43.23. The department shall apply the amount held under this section to tax owed in the taxable year in which the taxpayer applies for the dividend. The department shall refund the amount of the dividend not applied against taxes under this section to the individual who appears on the application for the dividend.

Sec. 43.22.095. Administration. (a) The department shall adopt necessary regulations and forms to implement and interpret this chapter, including regulations and forms for the electronic filing and payment of tax due under this chapter. Federal regulations issued under the Internal Revenue Code shall be considered persuasive authority in interpreting any provision of the Internal Revenue Code on which the tax imposed by this chapter relies, whether or not a federal regulation has been specifically incorporated into a department regulation, unless the federal regulation

(1) conflicts with a provision of this chapter;

(2) conflicts with a regulation adopted by the department; or

(3) is inconsistent with the purposes of this chapter.

(b) A transaction or payment between related parties must have economic substance, must serve a bona fide business purpose, and must not have occurred for the primary purpose of lowering the tax due under this chapter. The department, upon review or audit of a taxpayer's return, may determine whether there is sufficient documentation or whether a transaction or payment meets the requirements of this subsection. If the department determines that the documentation or the transaction or payment fail to meet the requirements of this subsection, the department may adjust the amount of a payment or transaction, disregard the payment or transaction, or make another adjustment necessary for determining the tax under this chapter. If a payment in an amount greater than \$500,000 is made, or is required to be made, from one party to a related party, the parties shall submit documentation substantiating that the amount of the payment is consistent with 26 U.S.C. 482 (Internal Revenue Code). Payments subject to this subsection include payments for interest, royalties,

1 management fees, services, inventory, tangible personal property, intangible property,
2 and real property.

3 (c) A tax deficiency assessed by the department under this section is assumed
4 to be correct, and a taxpayer has the burden of proving that the tax deficiency is
5 erroneous.

6 (d) The department shall adjust the income bracket amounts in
7 AS 43.22.010(b) and (c) and the amount of the exemption under AS 43.22.030(a)(2)(I)
8 biennially for inflation from calendar year 2018 using the Consumer Price Index for
9 all urban consumers for Anchorage prepared by the Bureau of Labor Statistics, United
10 States Department of Labor. The department shall round amounts under this
11 subsection to the nearest \$100 and publish the adjusted amounts.

12 (e) The tax collected by the department under this chapter shall be deposited
13 into the general fund and accounted for separately. The legislature may appropriate the
14 estimated amounts separately accounted for under this subsection into the public
15 education fund established in AS 14.17.300. Nothing in this subsection creates a
16 dedicated fund.

17 **Sec. 43.22.100. References to Internal Revenue Code.** (a) Unless the
18 provision is inconsistent with this chapter or a regulation adopted under this chapter,
19 the provisions of the Internal Revenue Code as now in effect or hereafter amended that
20 are mentioned in this chapter are incorporated in this chapter by reference and have
21 effect as though fully set out in this chapter.

22 (b) Sections 26 U.S.C. 6654, 6662, 6664, 6694, 6695, 6700 - 6702, 6707,
23 6713, 7201, 7202, 7206, 7207, 7216, 7407, and 7408 (Internal Revenue Code), as
24 those sections read on January 1, 2017, are adopted by reference as a part of this
25 chapter.

26 (c) When provisions of the Internal Revenue Code incorporated by reference
27 as provided in (a) and (b) of this section refer to rules and regulations adopted by the
28 United States Commissioner of Internal Revenue, or hereafter adopted, they are
29 regarded as regulations adopted by the department under and in accordance with the
30 provisions of this chapter, unless and until the department adopts specific regulations
31 in their place conformable with this chapter.

Sec. 43.22.110. Information released to a banking institution.

Notwithstanding AS 43.05.230, information on an individual income tax return may be released to a banking institution to verify the direct deposit of an income tax refund or correct an error in that deposit.

Sec. 43.22.150. Definitions. In this chapter,

(1) "domicile" means an individual's true, fixed, principal, and permanent home, to which the individual intends to return even though currently living elsewhere; if an individual has two or more homes, "domicile" means the one that the individual regards and uses as the individual's more permanent home; once established, a domicile remains as such until an individual demonstrates a real change of intent and moves to a new domicile; indications of domicile include the

(A) location of the place of employment of the individual;

(B) location of real property owned by the individual;

(C) registration and physical location of motor vehicles, planes, boats, and snow machines owned by the individual;

(D) location of a bank account or active checking account of the individual;

(E) address where the individual receives mail;

(F) location of a school where the individual or a member of the individual's immediate family

(i) attends; or

(ii) receives resident tuition;

(G) location of an organization of which the individual is a member;

(H) location of a parent, child, grandchild, or great grandchild;

(I) location of dental and medical personnel that provide services to the individual on a regular or consistent basis;

(J) filing of a prior year tax return by the individual as a resident or nonresident;

(K) location where an individual is registered to vote;

(L) location where an individual holds a resident fishing,

1 hunting, or trapping license;

2 (2) "federal adjusted gross income" has the meaning given to "adjusted
3 gross income" in 26 U.S.C. 62;

4 (3) "fiduciary" means a guardian, trustee, executor, administrator,
5 receiver, conservator, or a person, whether individual or corporate, acting in a similar
6 position of special confidence toward another;

7 (4) "Internal Revenue Code" means the Internal Revenue Code of 1986
8 (26 U.S.C. 1 et seq.), as amended, and regulations issued thereunder, if the regulations
9 are consistent with this chapter;

10 (5) "irrevocable trust" means a trust or portion of a trust that is not
11 subject to a power to revest title in a person whose property constitutes the trust or a
12 portion of the trust;

13 (6) "nonresident estate" means an estate other than a resident estate or
14 part-year resident estate;

15 (7) "nonresident individual" means an individual who is not a resident
16 of the state for any portion of the taxable year;

17 (8) "nonresident S corporation" means an S corporation whose place of
18 management and control is outside the state;

19 (9) "nonresident trust" means a trust other than a resident trust or a
20 part-year resident trust;

21 (10) "partner" means a partner as defined in 26 U.S.C. 7701(a)
22 (Internal Revenue Code) and includes a member of a limited liability company or
23 similar entity that is treated as a partnership for federal income tax purposes;

24 (11) "partnership" means an entity as defined in 26 U.S.C. 7701(a)
25 (Internal Revenue Code) and includes a limited liability company and a similar entity
26 treated as a partnership for federal income tax purposes;

27 (12) "part-year resident estate" means an estate that is a resident of the
28 state for a portion of and not the entire taxable year;

29 (13) "part-year resident individual" means an individual who is a
30 resident of the state for a portion of and not the entire taxable year;

31 (14) "part-year resident trust" means a trust that is a resident of the

1 state for a portion of and not the entire taxable year;

2 (15) "related parties" means any parties that satisfy the definition of a
3 related party in 26 U.S.C. 144, 147, or 267 (Internal Revenue Code);

4 (16) "resident estate" means the estate of a

5 (A) decedent who at the time of death was a resident of the
6 state, regardless of the residence of the fiduciary or beneficiary, if the
7 disposition or administration of the estate is, or will be, subject to state law; or

8 (B) person who, at the time of commencement of a bankruptcy
9 proceeding under Title 11 of the United States Code, was a resident of the
10 state;

11 (17) "resident individual" means an individual who

12 (A) receives a permanent fund dividend under AS 43.23.005;

13 (B) receives a tax benefit available only to an individual
14 domiciled in the state; or

15 (C) is domiciled in the state for the entire taxable year unless
16 the individual maintains a permanent place of abode outside the state and
17 spends, in the aggregate, not more than 30 days during the taxable year in the
18 state;

19 (18) "resident S corporation" means an S corporation whose place of
20 management and control is in the state;

21 (19) "resident trust" means

22 (A) a trust, or a portion of a trust, consisting of property
23 transferred by will of a decedent who at the time of death was a resident of the
24 state if the disposition or administration of the property is, or will be, subject to
25 state law; or

26 (B) a trust consisting of the property of a person who was a
27 resident at the time the property was transferred to the trust and, at the time of
28 the transfer, the trust was

29 (i) an irrevocable trust;

30 (ii) a revocable trust and the trust has not later become
31 irrevocable;

(iii) a revocable trust and later became irrevocable at a time the person transferring property to the trust was a resident;

(20) "revocable trust" means a trust or portion of a trust that is subject to a power, exercisable immediately or at a future time, to revest title in a person whose property constitutes the trust or portion of the trust;

(21) "S corporation" means a corporation that has elected to file a federal income tax return under 26 U.S.C. 1361 - 1379 (Internal Revenue Code);

(22) "taxable income" means income taxable under this chapter;

(23) "taxable year" means the calendar year or a fiscal year ending during the calendar year;

(24) "taxpayer" means an individual, trust, or estate subject to a tax imposed by this chapter.

* **Sec. 5.** AS 43.23 is amended by adding a new section to read:

Sec. 43.23.092. Permanent fund dividend individual income tax payment.

In accordance with AS 43.22.090, the department shall prepare the Alaska permanent fund dividend application to allow an applicant to direct the department to hold all or part of the amount of the individual's permanent fund dividend for application against the individual income tax imposed under AS 43.22.

* **Sec. 6.** AS 43.05.085; AS 43.20.012(b), and 43.20.013 are repealed January 1, 2019.

* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 43.22, added by sec. 4 of this Act, applies to income received on or after the effective date of sec. 4 of this Act.

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

TRANSITION: REGULATIONS. The Department of Revenue may adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by the regulation.

* **Sec. 9.** Section 8 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 10.** Except as provided in sec. 9 of this Act, this Act takes effect January 1, 2019.